



2004 Progress Report to the Legislature

Water Right Applications Processing

December 2004

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Water Right Applications Processing

Fiscal Year 2004 Progress Report to the Legislature

Water Resources Program

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SUMMARY

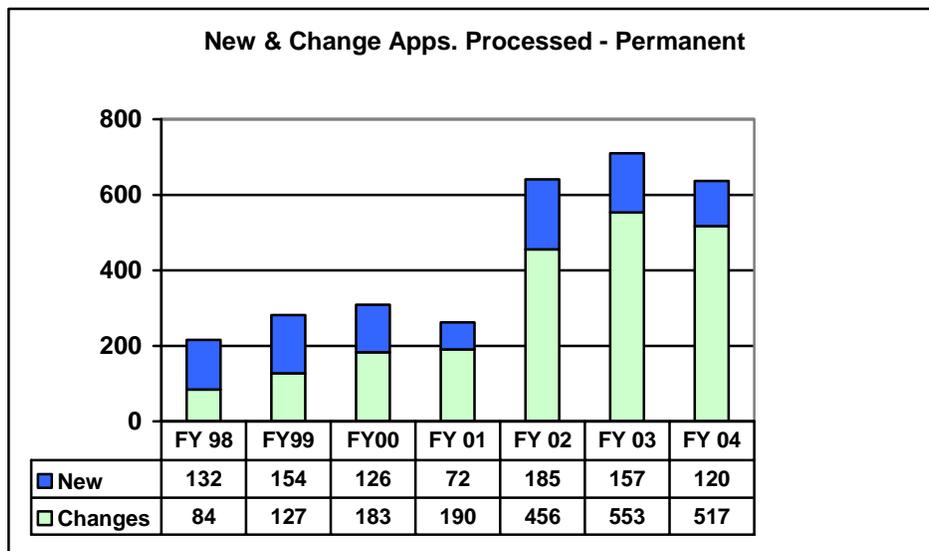
2004 WATER RIGHT APPLICATIONS PROCESSING

This report describes progress the Department of Ecology has made in processing applications for both changes to existing water rights and new water-right applications during Fiscal Year (FY) 2004 and makes recommendations regarding statutory provisions facilitating processing of water-right change applications.

Good progress continues to be made in processing water-right change applications after Ecology received increased funding, staffing, and policy flexibility in 2001. Ecology, along with conservancy boards and cost reimbursement contractors, has substantially increased the processing rate of water-right change applications. The number of pending new water-right applications is slowly increasing because the priority is on water-right change application processing.

Production Record ¹

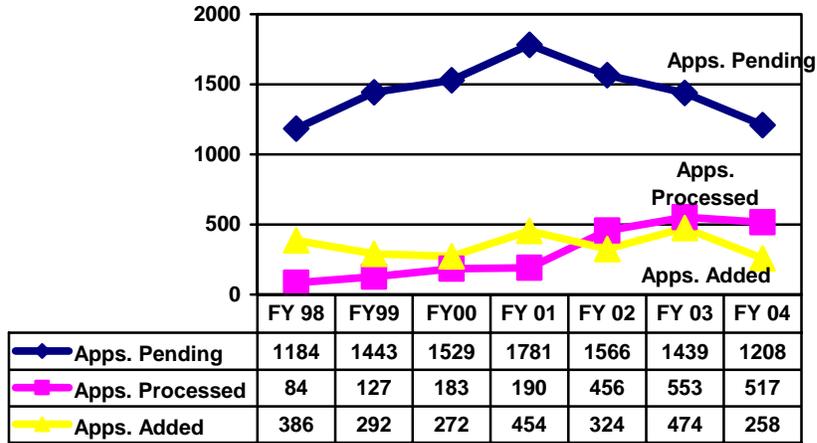
In FY 2004, 637 water right applications were processed including 517 applications for water-right changes and 120 applications for new water rights.



Water-right change Application Line Shrinks

Substantially more water-right change applications were processed than were added in FY 2004 which served to further drive down the number of pending change applications.

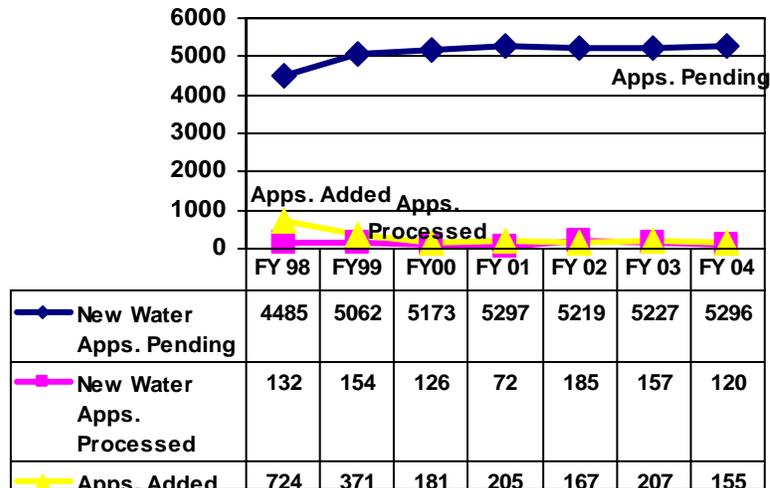
Change Applications Pending, Processed, Added



New Water Rights Application Line Lags

The processing rate for new water rights is lagging the number of new applications added in 2004 and slowly lengthening the new water rights processing line. Service demand exceeds service capacity.

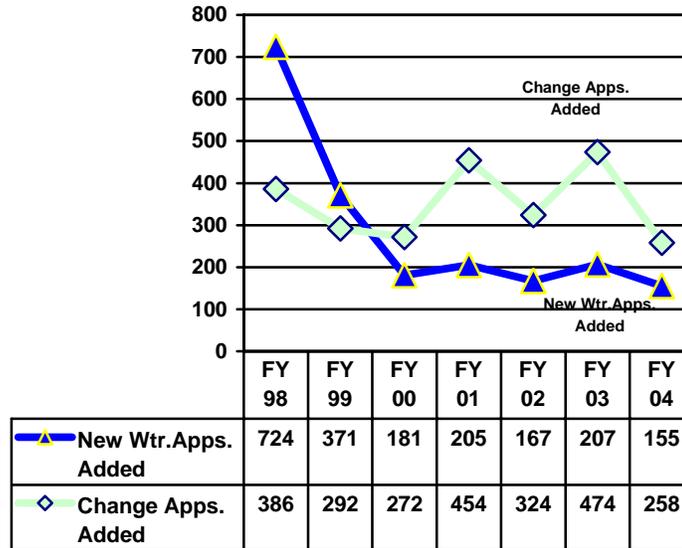
New Applications Pending, Processed, Added



Additional Service Demand Shifts from New Water Rights to Changes

Additional demand for new water-right applications has fallen substantially and shifted to change applications.

Additional Apps. - New vs. Change



Recommendations on Priority Processing for Water-right change Applications

The enactment of ESHB 1832 in 2001 was a breakthrough for improving Ecology’s ability to process water-right change requests. Section 5 of the act contained key provisions that facilitate processing changes to existing water rights. Reporting requirements under the Act (RCW 90.80.901 (2) require a review and recommendations regarding these provisions as a part of this 2004 water-right change processing progress report. We conclude that that the provisions have proven to work well.

Two-line processing option: Under the new law, water-right change applications can be processed independent of applications for new water rights within the same water supply source without first having to evaluate the effects on new water-right applications. This is a modification of the strict “first-in-time, first-in-right” doctrine of Western water law. This provision has worked quite well in that it has allowed Ecology to meet the legislative intent of providing priority processing for water-right change applications and increasing their processing rate as described in this report.

No-line-blocking: Under this statutory revision, applications for changes to existing water rights can proceed ahead of previously-filed change applications when sufficient information is not available to make a decision on more senior applications. This provision has also worked well. The practical effect is that more senior water-right change applications with inadequate information do not block or delay processing change applications further back in line.

Because the two-line priority processing option and the no-line-blocking provision enacted by the legislature have worked well, Ecology recommends no changes to them.

¹ Note that these figures and throughout the report, except as noted, exclude drought applications, temporary applications which weren't converted to permanent applications later in the process, and seasonal change applications. Production data in report is based on Water Rights Tracking system as initially reported quarterly. Actual counts may vary due to data migration from earlier system, data entry and timing and/or the method of constructing the data queries.

BACKGROUND - WATER RIGHT APPLICATIONS PROCESSING

Purpose

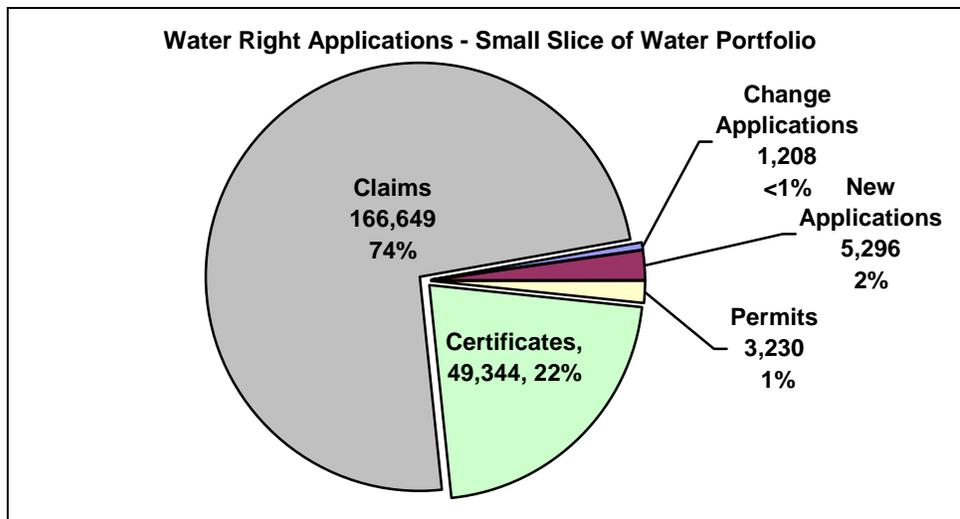
This report describes the progress the Department of Ecology has made in processing water-right changes over the past year as required under RCW 90.80.901. While the focus of this report is on changes to water rights, the report also describes progress on new water-right applications. This year's report also addresses the 2004 requirement to evaluate and make recommendations regarding modification of certain priority processing provisions for water-right change applications.

Water right applications: A slice of the larger water pie

Anyone seeking new uses of surface and ground water must apply to Ecology for a new water right, unless the proposed use is covered by the exempt withdrawal provisions for use of less than 5,000 gallons of water daily. An existing water right holder who wishes to make a change to their existing right must apply to Ecology or a local water conservancy board. Water-right change applications can include changing the purpose, place of use or point of withdrawal, and/or diversion.

To grant a new water right or change, reviewers must determine: 1) whether water is available for allocation; 2) if it would impair senior rights; 3) if it would be put to beneficial use; and 4) whether the proposed use would be in the public interest (no public interest test for surface water change). For a water-right change proposal, a tentative determination on the extent and validity of the current right must be completed, indicating how much has been put to beneficial use and therefore eligible for change.

Applications for water rights and changes are one segment of the larger portfolio of actual and potential legal water use portrayed below. Not represented below, are tribal treaty rights, federal reserved rights, and exempt withdrawals from wells numbering in hundreds of thousands.



This report focuses on processing water right applications – the front end of water management. This report does not address the various other activities that are part of larger picture of water management (adjudication of rights, compliance, metering and gauging, setting and achieving instream flows, watershed planning, policy and management, information systems). To make water allocation meaningful, other elements of water management systems need to be in place and operating effectively.

Historic Gap: Service demand and water-right production capacity

For years, the service demand for water right processing far exceeded the agency’s application processing capability. This resulted in a line-up of over 7,000 water right applications waiting to be processed. Applicants had to wait years to get decisions. As a part of a continuing multi-year joint executive and legislative effort to implement a State Water Strategy in 2001, funding was increased and policy changes were made to reduce the gap between service demand and water right application production.

REVIEW OF PRIORITY PROCESSING PROVISIONS FOR WATER-RIGHT CHANGE APPLICATIONS

The enactment of ESHB 1832 as part of the State Water Strategy in 2001 improved Ecology’s ability to process water-right change requests. The Act included a variety of water law changes ranging from watershed management to trust water rights. Section 5 of the act contained key provisions that facilitate the use and processing of changes to existing water rights. Reporting requirements under the Act (RCW 90.80.901 (2) require a review and recommendations regarding these provisions as a part of this 2004 water-right change processing progress report (90.03.380(5).

Two-line processing option

Under the new law, water-right change applications can be processed independently of applications for new water rights within the same water supply source without first having to evaluate the effects on new water-right applications. It allows, but does not require Ecology to process applications for water-right changes ahead, and independent of applications for new water rights. This is a modification of the strict “first-in-time, first-in-right” doctrine of Western water law and reads as follows:

RCW 90.03.380(5) (a) Pending applications for new water rights are not entitled to protection from impairment, injury, or detriment when an application relating to an existing surface or ground water right is considered.

(b) Applications relating to existing surface or ground water rights may be processed and decisions on them rendered independently of processing and rendering decisions on pending applications for new water rights within the same source of supply without regard to the date of filing of the pending applications for new water rights.

These provisions have worked quite well:

- **Increased Change Application Production.** It has allowed Ecology to meet the legislative intent of providing priority processing for water-right change applications. This can be seen in the production record described further in this report. In the fiscal year prior to implementing the two line provision, Ecology processed 190 water-right changes. Over the next three fiscal years, using the two line option, Ecology along with Conservancy Boards and cost reimbursement contractors were able to boost production to about 500 water-right change applications per fiscal year - more than double the previous production levels. Clearly production increased because of additional staffing and funding that accompanied the policy change. But absent the policy change, the additional funding and staffing alone would not have allowed Ecology to give the special focus and priority to water-right changes and thereby boost production of water-right change decisions.
- **Better Use of Existing Water.** The focus on water-right changes also reflected an increasing awareness concerning the benefits of making better use of water already legally appropriated. In areas where water is fully allocated, water-right changes are key to meeting local needs and yielding higher economic returns. More timely processing of water-right changes also allows the development of water markets where willing buyers working with willing sellers can meet their needs

No Line Blocking

Under this statutory revision, applications for changes to existing water rights can proceed ahead of previously-filed change applications when sufficient information is not available to make a decision on older applications and reads as follows:

RCW 90.03.380(5) (c) Notwithstanding any other existing authority to process applications, including but not limited to the authority to process applications under WAC 173-152-050 as it existed on January 1, 2001, an application relating to an existing surface or ground water right may be processed ahead of a previously filed application relating to an existing right when sufficient information for a decision on the previously filed application is not available and the applicant for the previously filed application is sent written notice that explains what information is not available and informs the applicant that processing of the next application will begin. The previously filed application does not lose its priority date and if the information is provided by the applicant within sixty days, the previously filed application shall be processed at that time. This subsection (5)(c) does not affect any other existing authority to process applications.

This provision has also worked well.

- **Fewer delays.** The practical effect is that older water-right change applications with inadequate information do not delay newer, complete change applications. Sometimes when processing the most senior application, information necessary for making a decision may be delayed or not forthcoming. Without this provision, application processing and decisions on the next junior applications in line would be delayed until information regarding the lagging senior application is provided.

Our experience is that the two-line priority processing option and the no-line-blocking provisions have worked well. Water rights processors report that the provisions are helpful. Ecology has registered no complaints against the use of these new statutory provisions.

Given the success of these provisions, Ecology recommends that the statutory provisions be retained in their current form.

THREE SERVICE PROVIDER OPTIONS

There are three options available for applying for water rights, depending on the circumstances of the application. These are:

Conventional Ecology approach

Under this approach, applicants for new water rights and changes apply to one of the four regional Department of Ecology offices providing services in their area. Ecology staff completes all the work necessary to process applications from beginning through decision making. Historically, this is how all water right applications have been processed. Most decisions are still being made using the conventional approach. In response to the large number of pending water right applications and interest in other models of service delivery, two alternative service provider approaches have been added in recent years.

Local water conservancy boards

The legislature authorized local Water Conservancy Boards (Boards) to assist Ecology in processing the large inventory of water-right change applications. Starting in 1998, Boards were formed as local partners in processing water-right changes in many areas of the state. There are currently 21 Boards operating throughout the state – five are located in western Washington and 16 in eastern Washington. Ecology has responsibility for processing water-right changes in areas of the state without Boards. In areas with Boards, applicants have the option of submitting their applications for water-right changes to their local Board or Ecology. Applications being considered by a Board are also concurrently filed with Ecology but not processed by the department. Boards make

records of decisions (RODs) on water-right change applications. These decisions are reviewed by Ecology for compliance with state water law. Each Board is an independent unit of local government established by resolution of the county or counties it serves and approved by the Ecology director.

A Board can serve a single watershed, multiple watersheds, a single county, or multiple counties. Ecology staff is assigned to support Board activities, including training. Ecology has final authority to review Board RODs. After review them Ecology issues administrative orders to either affirm, modify or reverse them.

For additional information about Water Conservancy Boards see:

2004 Report to the Legislature - Water Conservancy Boards

This Ecology report is available on the Department of Ecology website at:
<http://www.ecy.wa.gov/biblio/0411026.html>

Water Conservancy Boards Review

This Joint Legislative Audit Review Committee report is available on the Joint Legislative Audit Review Committee website at:
<http://www1.leg.wa.gov/Reports/04-12.pdf>

Water Conservancy Boards (shaded areas)



Cost reimbursement contracting

Under this approach, applicants for water rights (both new and changes) have the option of speeding up their water right decisions by paying the costs of processing their applications. They must also pay the processing costs for other water right applications in line ahead of theirs that are proposing to draw from the same water source. This is

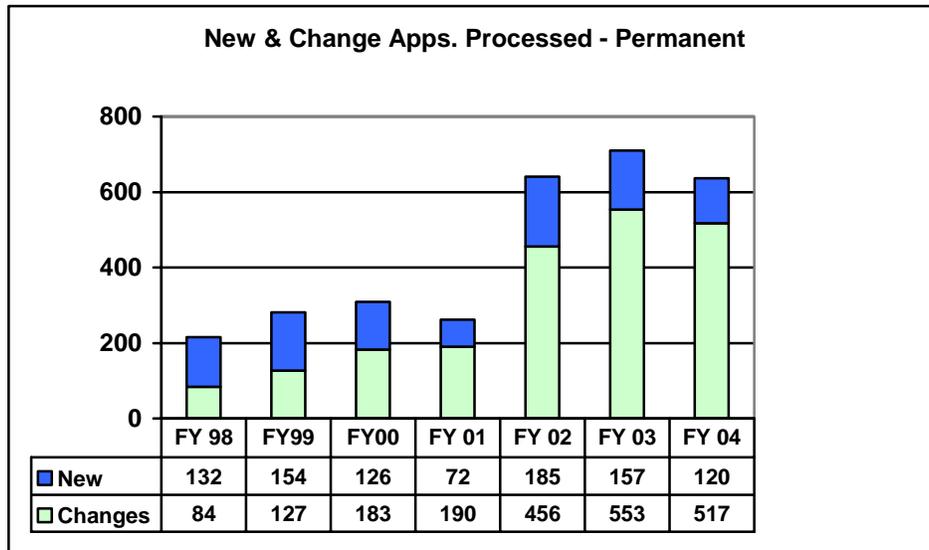
required to satisfy state water law that mandates applications to be processed in the order they are received. Applicants seeking expedited permit decision-making can use this optional, voluntary cost-reimbursement arrangement. Projects tend to be larger, time-sensitive and/or with higher economic returns and are proposed by applicants with a willingness to pay for priority processing.

Under terms of an applicant initiated cost-reimbursement arrangement, an applicant enters into an agreement with Ecology to pay Ecology's cost of hiring, managing and overseeing an independent consultant to do Ecology's routine and technical permit processing work (not approval or policy work). Final decisions are made by Ecology rather than the consultant.

PRODUCTION RESULTS

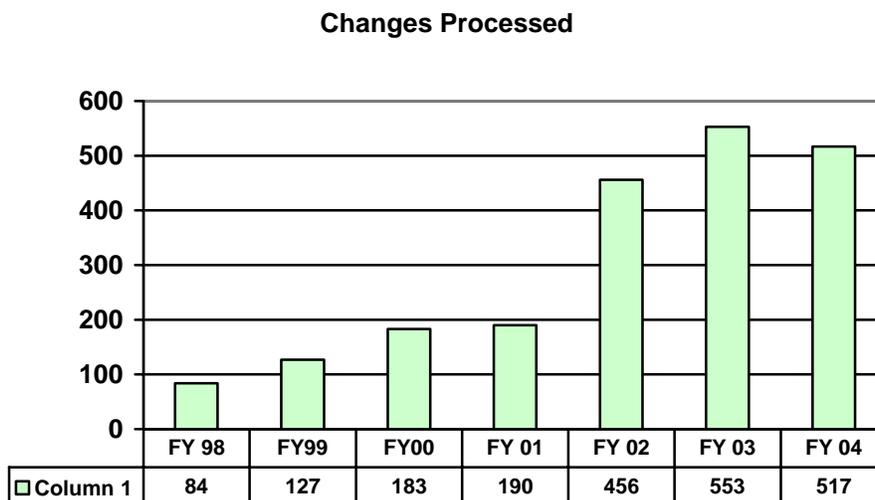
Overall production record - applications for new rights and changes

Combined change and new water right application processing jumped from 262 in FY 2001 to 641 in FY 2002 and a record 710 FY 2003. It dropped some from the record 710 level in 2003 to 637 in FY 2004.



Water-right change decisions lead way

In FY 2004, 517 permanent water-right change applications were processed. Since receiving the additional funding and flexibility and starting in FY 2002, the Program processed 1,526 applications for changes to water rights.

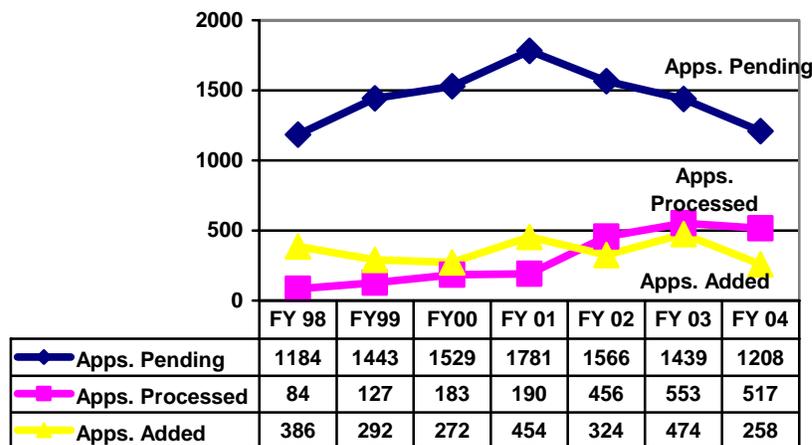


- These figures are permanent changes only and exclude processing of temporary, drought, and seasonal applications. See additional information under *Temporary and drought change applications* section below.
- Highest production is being achieved in the Yakima Central Regional Office, followed by the Spokane, Eastern Regional Office, the Bellevue Northwest Regional Office and the Lacey, Southwest Regional Office. This pattern directly reflects the strategy to target the deployment of additional new staff in proportion to the inventory of pending change applications, by region.

Change line shortens

Substantially more water-right change applications were processed than were added in FY 2004 which served to further drive down the number of pending change applications.

Change Applications Pending, Processed, Added

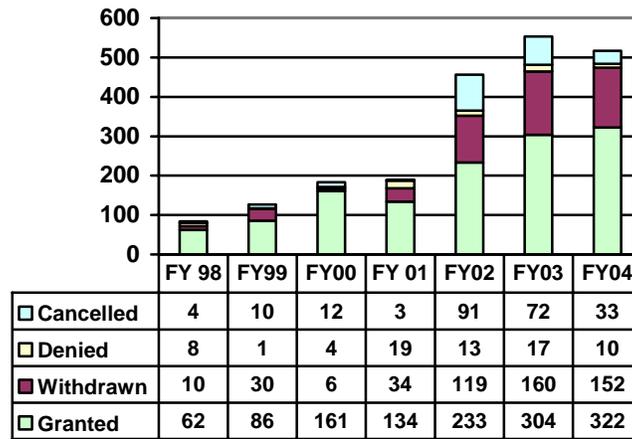


- In FY 2004, service capacity (517 applications processed) was over double additional service demand (258 additional change applications).
- At current FY 2004 processing rates, the Water Resources Program would achieve the goal of eliminating the equivalent of the original approximately 2,000 change applications pending July 2001 in 2005. However, given the rate of additional incoming applications and at FY 2004 processing rates, it would require additional time to get to a “zero” wait for application processing.
- The timing of this will be driven not only by the processing rate but also by the rate of additional applications submitted.

Approval rates for permanent change applications

Change application processing can result in applications being approved or denied. Applications can also be cancelled if requested information, fees, or some other basic threshold problem exists with the application. Also, applications can be withdrawn during processing if applicants change plans.

Permanent Change Apps. Processed



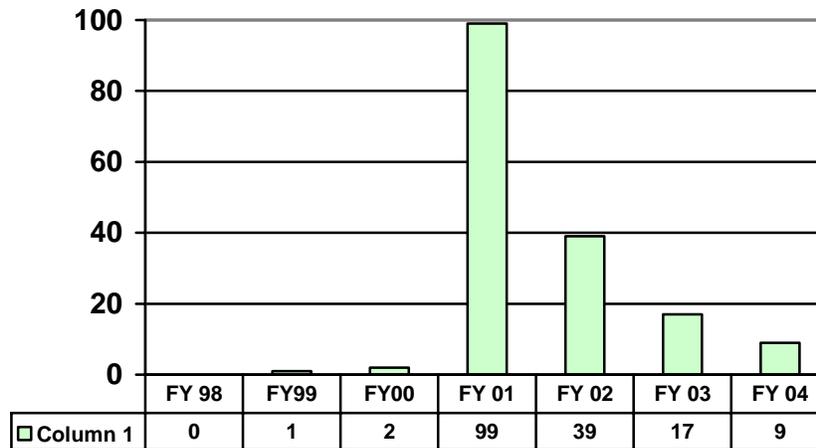
For FY 2004:

- 322 (62%) of the total 517 water-right change applications processed were approved.
- Only 10 (2%) percent of the total 517 water-right change applications processed were denied.
- 152 (29%) of applications were withdrawn by applicants. Withdrawals of applications occur when applicants no longer want their applications processed. In FY 2004 some of the withdrawals were due to changes in water law affecting municipal water suppliers.
- 33 (6%) of the applications were cancelled by Ecology prior to full processing of the applications for such reasons as not providing needed information or fees.

Temporary and drought change applications also processed

In addition to processing permanent applications for water-right changes, temporary and drought related applications were also processed.

Temporoary & Drougt Apps. Processed



- Nine temporary and short term and changes were recorded in FY 2004.
- The FY 2001-02 figures reflect a big jump due to drought-related water right applications using special drought funding and staff. Most of the 2001 drought and temporary changes were processed in the Central Regional Office in Yakima.

Seasonal change applications also processed

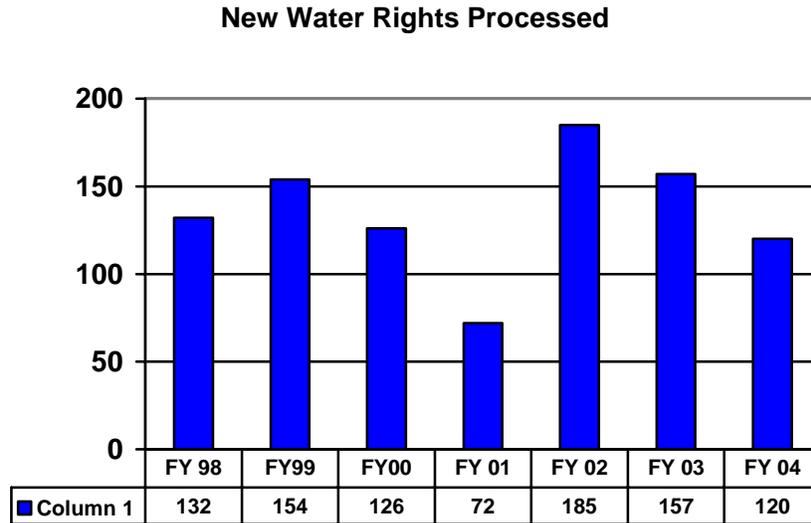
In addition to processing permanent applications for water-right changes, 150 seasonal changes were processed through Ecology's Eastern Regional Office including the Walla Walla Field Office using an expedited review process. Processing these applications is important:

- It enables farmers to quickly change irrigation patterns and rotate crops to adapt to changing agricultural and economic conditions including potato contracts.
- Land and crop rotation provides residual soil moisture benefits for the following year dry land crops and fall planting germination as well as reducing use of fertilizers and pesticides.

Seasonal change applications are processed on an expedited basis and no fee is required. Application processing work requires one-to-three staff for about four months annually to work with applicants, evaluate historical water right information, track and manage the changes. This effort is not reflected in water rights processing workload as these applications are not part of the line of permanent change applications. They do however, represent a significant and important water rights processing workload.

New water right decisions

Progress on new water right decisions continued even though the primary focus has been on processing water-right changes.

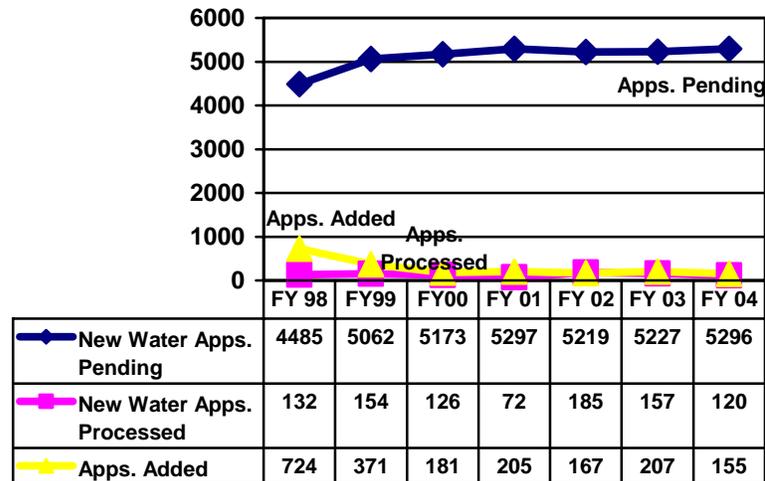


- In FY 2004, 120 new water-right applications were processed.
- These figures exclude temporary and drought applications.

New water right application line lags

The processing rate for new water-right applications is lagging the number of new applications added in 2004 and slowly lengthening the new water rights processing line. Service demand exceeds service capacity.

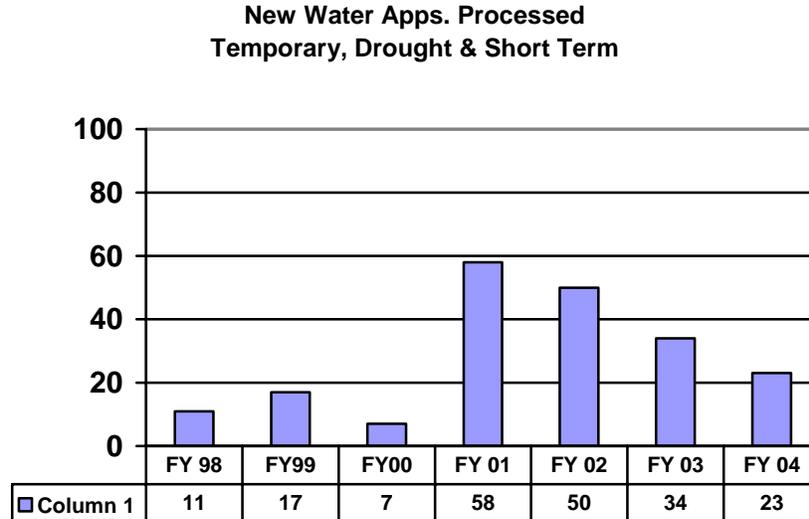
New Applications Pending, Processed, Added



- In FY 2004, service capacity (120 applications processed) was lower than the additional service demand (155 new applications added).
- There has been a fairly steady decline in the demand for additional new water rights.
- There was a slight increase in pending new water-right applications - 5,296 in FY 2004 compared to 5,227 in FY 2003.
- At current production and service demand rates, the number of pending applications for new water rights will continue to increase rather than decline.
- Note: Figures do not include new drought and temporary applications.

Temporary and drought new water-right applications also processed

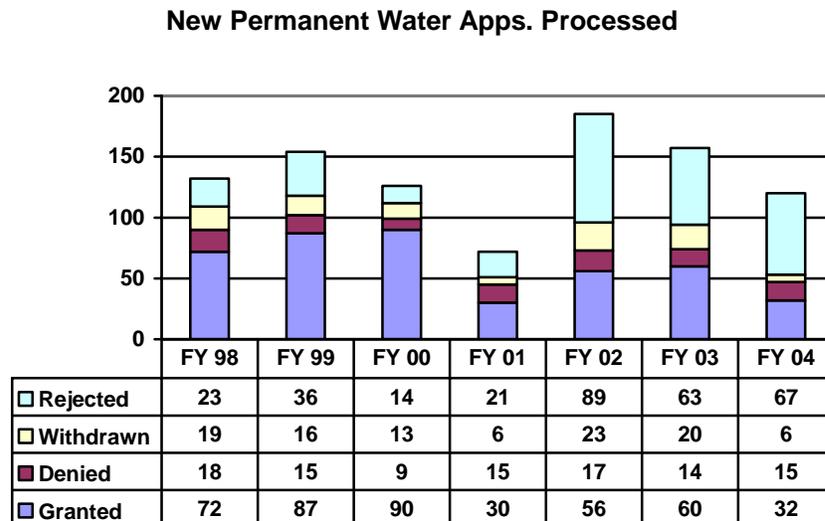
In addition to processing permanent applications for new water rights, new temporary and drought related applications were also processed.



- The 2001 drought produced a big jump in new temporary and drought-related water right applications. Most of the drought and temporary changes were processed in the Central Regional Office in Yakima.

Approval rates for new water-right applications

Applications for new water rights result in permits being granted or denied by Ecology. Applications are also rejected if required information, fees, or some other basic threshold problem exists with the application. Also, applications can be withdrawn by the applicant during processing.



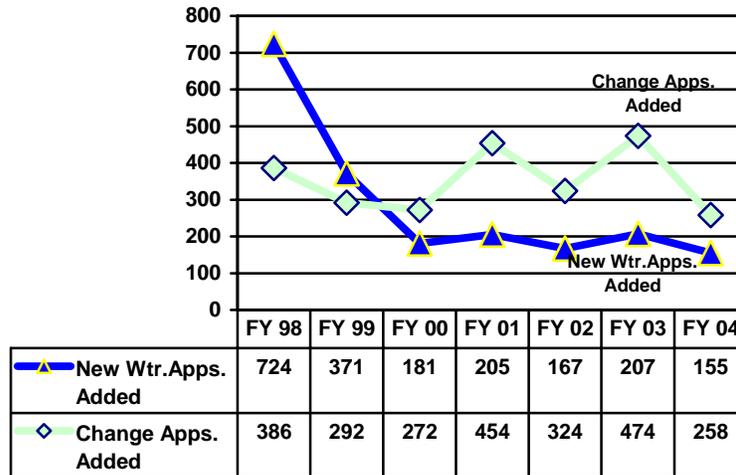
For FY 2004:

- 32 (27%) of the 120 new water-right applications processed were granted permits.
- 15 (13%) of the 120 new water-right applications processed were denied.
- 6 (5%) of the 120 new water-right applications processed were withdrawn by the applicants.
- 67 (56%) of the applicants were rejected prior to full processing.

Additional service demand shifts from new water rights and to changes

Additional demand for new water-right applications has fallen substantially below change applications.

Additional Apps. - New vs. Change

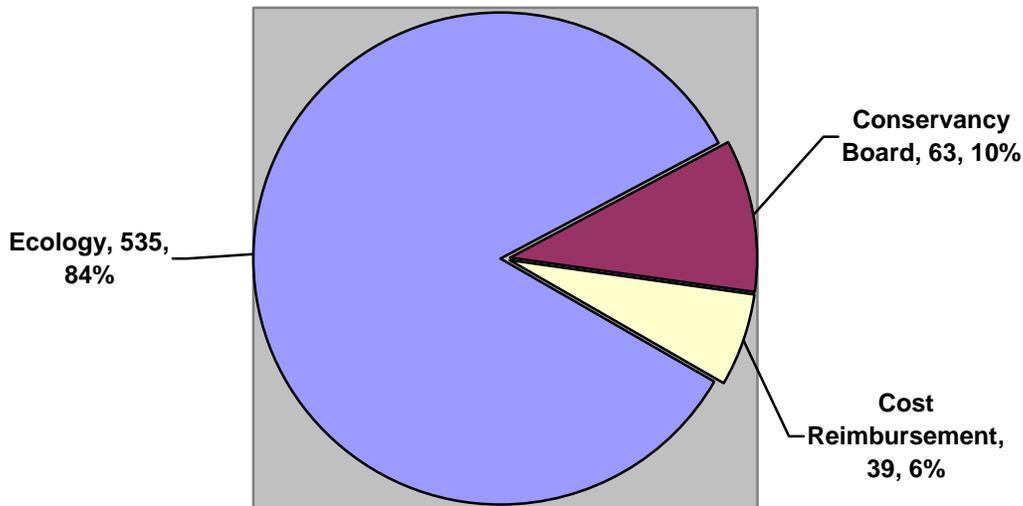


The number of pending new water-right applications has accumulated over the years (5,296 FY 2004) and stands at more than four times the number of pending water-right change applications (1,208 FY 2004). However, the current service demand pattern is shifting. Demand for *additional* changes to existing water rights (258 FY 2004) is 167% greater than the demand for *additional* new water rights (155 added FY 2004). This is likely a function of applicants going to the line that is shorter, moving faster and where the probability of a "yes" is higher. It may also be an indication of the increasing sophistication in meeting additional water needs via water-right changes, water use efficiencies and water markets, rather than new sources.

Production by Water Conservancy Boards and cost reimbursement contractors

Water Conservancy Boards (Boards) and private cost reimbursement contractors have added to the production of water right decisions.

FY 2004 Water Rights Production by Service Provider



- Boards (changes only) and cost reimbursement contractors contributed a combined 16 percent of the production the 637 water right applications processed, both new and changes in FY 2004.
- When new water rights are excluded, the relative contribution of Boards to water-right change processing production rises to over 12 percent and accounts for 63 of the 517 changes processed in FY 2004.
- 39 water right applications, for both changes and new water rights, have been processed under the cost reimbursement arrangement in FY 2004. Thirty-five were applications for new water rights and 4 were water-right change applications.



CONCLUSION

Good progress continues to be made in processing water-right change applications after receiving increased, funding, staffing, and policy flexibility in 2001. Ecology, together with conservancy boards and cost reimbursement contractors, has substantially increased the processing rate of water-right change applications.

The processing level of water-right change applications is steadily reducing the number of pending water-right change applications despite the increased demand of additional incoming applications for water-right changes. Because the two-line priority processing option and the no-line-blocking provision enacted by the legislature have worked well, Ecology recommends no changes to them. The priority and focus on water-right change processing has not translated into sustained increases for processing new water-right applications. While the already long new application line is slowly lengthening, more applicants are shifting to the change application line to adapt existing water rights to meet their water needs.

For more information

For questions or more information about Ecology's progress on processing water-right change applications, contact Ben Bonkowski at (360) 407-6990 (e-mail: bbon461@ecy.wa.gov). For information on water conservancy boards, contact Janet Carlson at (509) 329-3529, (e-mail: jaca461@ecy.wa.gov), or visit Ecology's Water Resources Program web site at <http://www.ecy.wa.gov/programs/wr/wrhome.html>