

RCW 43.83B.410 Drought emergencies—Withdrawals and diversions—Agreements. Upon the issuance of an order of drought emergency under RCW 43.83B.405(2), the department may:

(1) (a) Authorize emergency withdrawal of public surface and ground waters, including dead storage within reservoirs, on a temporary basis and authorize temporary or permanent associated physical works. The department shall prioritize the approval of emergency withdrawal authorizations in order to address those most affected by the water deficit to ensure the survival of irrigated crops, the state's fisheries, and the provision of water for small communities.

(b) The termination date for emergency withdrawals may not be later than the termination date of the order issued under RCW 43.83B.405(2).

(c) The department may issue emergency withdrawal authorizations only when, after investigation and after providing appropriate federal, state, and local governmental bodies and affected federally recognized tribes an opportunity to comment, the following are found:

(i) The waters proposed for withdrawal are to be used for a beneficial use involving a previously established activity or purpose;

(ii) The previously established activity or purpose was furnished water through rights applicable to the use of a public body of water that cannot be exercised due to the lack of water arising from natural drought conditions; and

(iii) The proposed withdrawal will not reduce flows or levels below essential minimums necessary to ensure the maintenance of fisheries requirements and to protect federal and state interests including, among others, power generation, navigation, and existing water rights.

(d) All emergency withdrawal authorizations issued under this section shall contain provisions that allow for termination of withdrawals, in whole or in part, whenever withdrawals will conflict with flows and levels as provided in (c) (iii) of this subsection.

(e) As to water withdrawal and associated works authorized under this subsection, the requirements of chapter 43.21C RCW and public bidding requirements as otherwise provided by law are waived and inapplicable. All state and local agencies with authority to issue permits or other authorizations for such works shall, to the extent possible, expedite the processing of the permits or authorizations in keeping with the emergency nature of the requests and shall provide a decision to the applicant within fifteen calendar days of the date of application. All state departments or other agencies having jurisdiction over state or other public lands, if such lands are necessary to effectuate the withdrawal authorizations issued under this subsection, shall provide short-term easements or other appropriate property interest upon the payment of the fair market value. This mandate shall not apply to any lands of the state that are reserved for a special purpose or use that cannot properly be carried out if the property interest were conveyed;

(2) Approve a temporary change in purpose, place of use, point of diversion, or point of withdrawal, consistent with existing state policy allowing transfer or lease of waters between willing parties, as provided for in RCW 90.03.380, 90.03.390, and 90.44.100. However, compliance with any requirements of notice of newspaper publication of these sections or the state environmental policy act under chapter 43.21C RCW, is not required when such changes are necessary to respond

to drought conditions as determined by the department. An approval of a temporary change of a water right as authorized under this subsection is not admissible as evidence in either supporting or contesting the validity of water claims in a general adjudication under RCW 90.03.210 or any similar proceeding where the existence of a water right is at issue;

(3) Employ additional persons for specified terms of time, consistent with the term of a drought condition, as are necessary to ensure the successful performance of the activities associated with implementing the emergency drought program of this chapter;

(4) Acquire needed emergency drought-related equipment;

(5) Enter into agreements with applicants receiving emergency withdrawal authorizations established under this section to recover the costs, or a portion thereof, of mitigation for emergency withdrawal authorizations, provided that mitigation is done to protect instream flows, federally regulated flows, or senior water rights. The department may establish the specifics of cost recovery by rule, based on the amount of water used in the emergency withdrawal, which shall not exceed the cost of mitigation; and

(6) Enter into interagency agreements as authorized under chapter 39.34 RCW to partner in emergency drought response. [2020 c 168 § 4; 1989 c 171 § 3.]

Severability—1989 c 171: See note following RCW 43.83B.400.