DRAFT Chapter 173-166 WAC

This is a preliminary draft of the rule amendment we are proposing to Chapter 173-166 WAC. It includes updates throughout the Chapter to be consistent with statute updates to RCW 43.83B and streamlines the administration of emergency drought funding during a declared drought.

If you have questions about this preliminary draft, please contact the Rule Lead at Danielle.Gallatin@ecy.wa.gov

How to use this document

Share your thoughts and tell us what you think about how we're incorporating statute requirements and streamlining funding administration into rule. What did we get right? What should we change?

Step 1: Read.

Read through the preliminary draft rule.

Step 2: Consider our questions.

- Do these requirements make sense?
- How can we improve readability?
- Do you have any thoughts or information about potential impacts related to this rulemaking?

Step 3: Provide feedback.

We encourage you to provide feedback on any element of the preliminary draft rule language.

- Share your feedback during our online discussion on Jan. 27, 2026, or Jan. 29, 2026. Join a webinar by signing up on our rule webpage.[1]
- Send us your feedback before the comment period closes on Friday, Feb. 20, 2026.

[1] Rule webpage: https://ecology.wa.gov/regulations-permits/laws-rules-rulemaking/rulemaking/wac-173-166

Tips for providing feedback

- Tell us what you support and what you disagree with.
- Suggest specific language. This helps our team understand what change you want.
- Use examples to illustrate concerns and explain your feedback.
- Offer solutions. Suggest ways we can address your concerns.

We'll use your feedback to improve our approach and write the formal draft rule. In Spring, we'll share the formal draft rule and provide a formal public comment period.

Amendment to Chapter 173-166 WAC

173-166-010

Authority and Purpose

(1) This Chapter implements 43.83B RCW which provides the Washington State Department of Ecology (the department) with authority to take actions to address undue hardship on water users and the natural environment from drought impacts.

(2) Chapter 43.83B RCW, as existing on the effective date of this chapter, provides the department with authority to:

(a) Issue emergency authorizations to withdraw public waters as an alternate source of water supply on a temporary basis upon the issuance of an emergency drought order under RCW 43.83B.405(2);

(b) Approve temporary water right changes between willing parties upon the issuance of an emergency drought order under RCW 43.83B.405(2); and

(c) Provide funding assistance to alleviate undue hardship from current and future drought conditions through implementation of projects, planning, and other actions.

173-166-020

Definitions

The definitions in this section apply throughout this chapter unless the context clearly requires otherwise.

(1) "The department" means the Washington State Department of Ecology.

(2) "Drought conditions" means that the water supply for a geographic area, or for a significant portion of a geographic area, is, or is projected to be, below seventy-five percent of normal water supply as a result of natural conditions, and the water shortage is likely to create undue hardships for water users or the environment.

(3) "Executive water emergency committee” and “EWEC" refer to a committee chaired by the department director and consists of executive members of state agencies impacted by

water availability. In addition to the department, other agencies are the Washington State Department of Health, Washington State Department of Natural Resources, Washington State Department of Fish & Wildlife, Washington State Department of Agriculture, Washington Military Department, Washington State Department of Commerce, and the Washington State Conservation Commission.

(4) "Geographic area" means an area within the state of Washington that can be described either by natural or political boundaries and can be specifically identified in an order declaring a drought emergency. Examples of specific geographic areas include, but are not limited to:

(a) The state of Washington;

(b) Counties;

(c) Water resource inventory areas (WRIAs) as defined in chapter 173-500 WAC;

(d) Individual watersheds which constitute only a portion of a WRIA but whose boundaries can be topographically described; and

(e) Combinations of the above areas.

(5) "Normal water supply" means the median amount of surface water available to a geographic area, relative to the most recent thirty-year base period used to define climate normal.

(6) "Water supply availability committee" and "WSAC" refer to a committee chaired by the department, with core membership consisting of the department and other state and federal agency representatives with expertise in weather and climate predictions, snowpack analysis, streamflow and soil moisture conditions and surface water supply forecasts. Examples of such agencies include: the Washington State Climate Office, the National Weather Service and the Northwest River Forecast Center within the National Oceanic and Atmospheric Administration, the Natural Resources Conservation Service, the U.S. Geological Survey, the U.S. Bureau of Reclamation, and as necessary, other state and federal agencies involved in water supply forecasting.

(7) "Water year" is the twelve-month period commencing on October 1 and continuing through September 30 of the following calendar year.

173-166-030

Drought Advisories

(1) The department may issue a drought advisory when hydrologic factors indicate that drought conditions may develop in a geographic area.

(2) A drought advisory does not authorize emergency actions or emergency drought response funding by the department but serves to increase public awareness and water user readiness for potential drought conditions. A drought advisory may recommend actions that water users can take to alleviate potential drought impacts.

173-166-040

Emergency Drought Order and Procedures

(1) To determine if the water supply threshold has been met prior to issuing an emergency drought order under RCW 43.83B.405(2), the department shall convene the WSAC. WSAC will determine whether water supply in a geographic area, or a significant portion of a geographic area, is below or is forecasted to be below seventy-five percent of normal surface water supply as the result of natural conditions. In evaluating water supply conditions under this section, the WSAC:

(a) Shall review relevant hydrological and meteorological information including but not limited to precipitation, snowpack, soil moisture, streamflow and surface water supply forecasts;

(b) May consider seasonal water supply forecasts and extreme departures from normal conditions over subseasonal time frames and water supply information, including other sources of information from agencies that participate in Columbia River water management such as the U.S. Army Corps of Engineers and other public water managers; and

(c) If the WSAC determines that the water supply threshold for drought has been met, the WSAC shall recommend the department convene the executive water emergency committee (EWEC) to evaluate undue hardship.

(2) In evaluating water supply threshold under this section, the department will notify potentially affected federally recognized Tribes, offer consultation, and solicit input on threshold determination.

(3) The department may convene the EWEC upon receiving a recommendation from the WSAC under subsection (1) of this section to determine if the undue hardship threshold is met. The EWEC shall make the threshold determination as to whether current or forecasted hydrologic conditions create undue hardships due to water unavailability on the agricultural economy, public health, or aquatic species.

(a) For the purposes of this section, undue hardship caused by drought impacts includes, but is not limited to:

(i) Economic impacts from limited water supply access;

(ii) Irrigated agricultural impacts;

(iii) Impacts to drinking water supplies; and

(iv) Impacts to fish and instream resources from inadequate streamflow and excessive temperature.

(b) In evaluating undue hardship under this section, the department shall:

(i) Notify potentially affected federally recognized Tribes, offer consultation, and solicit input on the undue hardship evaluation;

(ii) Solicit input from state, federal, and local water managers to aid in evaluating undue hardship; and

(iii) Notify association(s) of nursery and landscape professionals and invite comments to inform the undue hardship evaluation.

(4) If the WSAC determines the water supply threshold is met and the EWEC determines the undue hardship threshold is met under this section, the department shall seek governor approval to issue an emergency drought order. Upon receiving written approval from the governor, the department will issue an order for drought emergency.

(5) An emergency drought order must describe the following elements:

(a) The geographic area subject to the order;

(b) The water supply and undue hardship factors leading to the issuance of the order; and

(c) The effective date of the order and a termination date of the order that may be no later than one calendar year from the effective date.

(6) Upon issuing an emergency drought order, the department will:

(a) Notify affected federally recognized Tribes;

(b) Publish a media release that communicates the contents of the order to the public and affected water users; and

(c) Publish the emergency drought order on the department's website.

(7) An emergency drought order may be amended by following the procedures and determinations outlined in this section, and with written approval of the governor as follows:

(a) The department may amend an emergency drought order one or more times to extend the termination date, provided that the amended termination date is no more than two calendar years from the date the order is first issued; and

(b) The department may modify the geographic area identified in an emergency drought order one or more times as drought conditions develop, provided that the water supply and undue burden thresholds continue to be met using the same evaluation process described in this section.

173-166-050

Petition for Emergency Drought Order

(1) Any person may petition the department to declare a drought emergency in areas not currently included in an emergency drought order. A complete petition must contain the following information:

(a) A description of the geographic area requested for inclusion; and

(b) A description of how the water supply and undue hardship thresholds are met, as described in WAC 173-166-040(1).

(2) Upon receipt of a complete petition submitted under this section, the department may evaluate the petition following the same procedure under WAC 173-166-040.

173-166-060

Emergency Drought Grant Funding

(1) This section applies to projects for Emergency Drought Response funded under RCW 43.83B.435.

(2) Under RCW 43.83B.415(1)(c), the following public entities are eligible to receive grant funding to reduce undue hardship caused by drought conditions:

(a) Counties, cities, and towns;

(b) Water and sewer districts formed under chapter 57.02 RCW;

(c) Public utility districts formed under chapter 54.04 RCW;

(d) Port districts formed under chapter 53.04 RCW;

(e) Conservation districts formed under chapter 89.08 RCW;

(f) Irrigation districts formed under chapter 87.03 RCW;

(g) Watershed management partnerships formed under RCW 39.34.200; and

(h) Federally recognized Tribes.

(3) State agencies are not eligible for emergency drought grants under RCW 43.83B.415(1)(c). RCW 43.83B.410(6) authorizes state agencies to enter into interagency agreements with the department to partner in emergency drought response.

(4) Ecology will evaluate emergency drought grant applications to determine if the following eligibility criteria are met:

(a) The application demonstrates that current drought conditions are causing current water supply deficit;

(b) Associated drought impacts are causing undue hardship to the applicant, which may include impacts caused by multiple years of consecutive drought; and

(c) Funding will provide substantial benefit in securing water supply relative to the project cost.

(5) Projects seeking funding for emergency drought impacts must be at least partially within the geographic area of a current emergency drought order.

(6) Projects that receive grant funding do not need to be completed while the emergency drought order is in effect.

173-166-070

Drought Preparedness

(1) The department may fund drought preparedness grants to public entities for drought planning and preparedness activities to improve reliance and adaptation to drought. Funding availability for this purpose is subject to the availability of funds in the State Drought Preparedness Account.

(2) Grant applications for drought resilience projects and activities must demonstrate that the project or activity will increase drought resilience, preparedness, or adaptation to reduce future vulnerability to drought impacts. Example types of projects and activities include but are not limited to:

(a) Drought planning activities, including project planning efforts that increase resilience to future droughts and support water security before water shortages occur; and

(b) Drought resilience activities, including implementation of policies, projects, or water management practices to increase the capacity of Tribes and local governments to prepare for, respond to, and recover from, the impacts of future droughts or multi-year droughts.

(3) The department will prioritize drought resilience projects that consider the needs of overburdened communities including Tribes and vulnerable populations within the planning or project area.

173-166-080

Drought Grant Administration

(1) The department will administer drought grant funds in accordance with RCW 43.83B.415.

(2) The department may only fund up to 50 percent of the total eligible cost of the project, except for projects for public water systems serving economically disadvantaged communities.

(3) The department may fund up to 100 percent of the total eligible costs of projects for public water systems serving economically disadvantaged communities.

(a) For the purpose of this section, an “economically disadvantaged community” is a community that meets one or more of the following criteria:

(i) Communities ranked as a 9 or 10 for the cumulative indicator for socioeconomic factors on the Washington state environmental health disparities map;

(ii) Communities ranked as a 9 or 10 for the people of color indicator on the Washington state environmental health disparities map;

(iii) Communities ranked as a 9 or 10 for the population living in poverty indicator on the Washington state environmental health disparities map; or

(iv) Applicant is, or the public water system serves, a federally recognized tribe.

(4) Money used by applicants as a cash match may not originate from other state funds.

(5) Match requirements may be met through in-kind match, for example through volunteer services and/or interlocal agreements at a rate that is approved during grant scope negotiations.

173-166-090

Emergency Water Withdrawals and Changes

(1) Upon issuance of an emergency drought order, the department may authorize emergency water withdrawals or diversions and emergency water right transfers and other types of changes that are temporary in nature.

(2) The department may approve applications for emergency water withdrawals and emergency water right transfers and other types of emergency changes if the following criteria are met:

(a) The applicant is carrying out a previously established activity or purpose, and the activity or purpose is authorized under an existing valid water right permit, certificate, or registered water right claim; and

(b) The proposed project or place of use for an existing water right is within, or will alleviate hardship caused by drought conditions in, a geographic area that is subject to the emergency drought order.

(3) The following additional requirements apply to authorizations for emergency water withdrawal or diversion, transfers, and other types of emergency changes:

(a) The department may issue an emergency water withdrawal or diversion authorization that allows water use from alternate sources of groundwater and surface water, including

dead storage in reservoirs, and authorize temporary or permanent associated physical works;

(b) The proposed withdrawal must not reduce stream flows or lake levels below minimums necessary to ensure the maintenance of fisheries requirements and to protect federal and state interests including, but not limited to, power generation, navigation, and water quality;

(c) Emergency water withdrawal or diversion authorizations shall contain provisions to terminate the authorization, in part or in whole, if water withdrawals or diversions conflict with minimum stream flows and levels;

(d) Emergency withdrawals and diversions must end no later than the expiration or termination date of the emergency drought order;

(e) The department may issue an emergency water withdrawal or diversion authorization to approve all or a portion of the normal supply that is unavailable due to drought, only after providing appropriate federal, state, and local governmental bodies and affected federally recognized Tribes an opportunity to comment;

(f) The department will, to the extent possible, expedite the processing of the emergency water withdrawal or diversion authorizations in keeping with the emergency nature of the requests, and will provide a decision to the applicant within fifteen calendar days of receiving a complete application; and

(g) To expedite the issuance of emergency withdrawal or diversion authorizations, the department is authorized to process applications and approve temporary emergency withdrawals or diversions without compliance with the following:

(i) The State Environmental Policy Act, chapter 43.21C RCW; and

(ii) Public bidding requirements as otherwise provided by law.

(4) The following additional requirements apply only to emergency water right transfers and other types of emergency changes:

(a) The department may approve emergency water right changes for purpose, place of use, point of diversion, or point of withdrawal, consistent with existing state law allowing transfer or lease of waters between willing parties;

(b) Water rights may be transferred from outside a geographic area under an emergency drought order into a geographic area under the emergency drought order, provided the

transfer of water is physically possible and is consistent with the provisions of RCW 90.03.380, 90.03.390, and 90.44.100;

(c) Water rights cannot be transferred from within an area under the emergency drought order to a place of use located outside that area; and

(d) To expedite the issuance of emergency water change applications, the department is authorized to process applications without compliance with the following:

(i) Notice of newspaper publication; and

(ii) The State Environmental Policy Act.