

**Chapter 43.83B RCW
DROUGHT CONDITIONS**

(Formerly: Water supply facilities)

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RCW 43.83B.011 Definitions. The definitions in this section apply throughout this chapter unless the context clearly requires otherwise.

(1) "Department" means the department of ecology.

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

(3) "Normal" water supply, for the purpose of determining drought conditions, means the median amount of water available to a geographical area, relative to the most recent thirty-year base period used to define climate normals. [2020 c 168 s 1.]

RCW 43.83B.230 Provision for recreation, fish and wildlife enhancement and other public benefits. In the course of considering applications under this chapter, the department of ecology shall make known to other state agencies possibilities which may arise to provide public benefits such as recreation or fish and wildlife enhancement in connection with proposed projects. Such agencies, including the department of ecology, are authorized to participate in said projects provided agency funds are made available to pay the full cost of their participation. [1975 1st ex.s. c 295 s 14.]

RCW 43.83B.400 Findings—Intent. The legislature recognizes that drought and water shortages can place a significant hardship on Washington communities, farms, and the natural environment. Rising temperatures due to climate change may cause water supply shortages to

be more frequent and severe in the future. Therefore, the ability to respond to drought and water shortage emergencies is critical to the long-term prosperity of our state. It is the intent of the legislature to provide the department with the authority to effectively and efficiently take actions when a drought emergency occurs to alleviate hardship on water users and our natural environment.

The legislature also recognizes that effective emergency drought response is predicated on building resiliency and preparedness before water shortages occur. Therefore, it is also the intent of the legislature that the department assist water users by supporting measures to strengthen the resiliency and preparedness of water users to drought conditions in the long term. [2020 c 168 s 2; 1989 c 171 s 1.]

Severability—1989 c 171: "If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected." [1989 c 171 s 14.]

RCW 43.83B.405 Drought advisories—Orders of drought emergency—Procedure. (1) Whenever it appears to the department, based on the definitions of drought condition and normal water supply set forth in RCW 43.83B.011, that drought conditions may develop, the department may issue a drought advisory. The drought advisory should seek to increase the awareness and readiness of affected water users and may recommend voluntary actions to alleviate drought impacts.

(2) (a) Whenever it appears to the department, based on the definitions of drought condition and normal water supply set forth in RCW 43.83B.011, that a drought condition either exists or is forecast to occur within the state or portions thereof, the department is authorized to issue orders of drought emergency, pursuant to adopted rules, to implement the powers as set forth in RCW 43.83B.410 through 43.83B.420.

(b) Prior to the issuance of an order of drought emergency, the department shall:

(i) Consult with the federal and state government entities identified in the drought contingency plan periodically revised by the department pursuant to RCW 43.83B.440 and consult with affected federally recognized tribes;

(ii) Consider input from local water users, including nursery and landscape professionals, in the determination of undue hardship under RCW 43.83B.011(2); and

(iii) Obtain the written approval of the governor.

(c) Upon issuance of an order of drought emergency, the department shall notify the public of the order consistent with rules adopted by the department.

(d) Orders of drought emergency issued under (a) of this subsection shall be deemed orders for the purposes of chapter 34.05 RCW.

(e) A person may petition the department to declare a drought emergency for the state or portions of the state. The department may review a petition, but any order of drought emergency issued after receipt of a petition must be based on the definitions of drought condition and normal water supply set forth in RCW 43.83B.011, and must be issued according to the procedure set forth in this section.

The department must not rely exclusively on information presented in a petition when determining whether to issue an order of drought emergency.

(3) (a) Any order issued under subsection (2) of this section shall contain a termination date for the order. The termination date shall be not later than one calendar year from the date the order is issued. Although the department may, with the written approval of the governor, change the termination date by amending the order, no such amendment or series of amendments may have the effect of extending its termination to a date which is later than two calendar years after the issuance of the order.

(b) The provisions of this section do not preclude the issuance of more than one order under subsection (2) of this section for different areas of the state, or sequentially for the same area, as the need arises. [2020 c 168 s 3; 1989 c 171 s 2.]

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

RCW 43.83B.406 Transfers from general fund to emergency drought response account. Upon the issuance of an order of drought emergency under RCW 43.83B.405(2), the state treasurer shall transfer from the general fund to the emergency drought response account created in RCW 43.83B.435 those amounts necessary to bring the balance of the emergency drought response account to \$3,000,000, based upon the determination of the transfer amount from the office of financial management. The office of financial management must determine the fund balance of the emergency drought response account as of the previous fiscal month before the issuance of an order of drought emergency. The office of financial management must promptly notify the state treasurer and the department of the account balance and the necessary transfer amount once a determination is made. A transfer based on the determination by the office of financial management may be made only once every fiscal year. [2023 c 287 s 3.]

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 s 4; 1989 c 171 s 3.]

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

RCW 43.83B.415 Grants to public entities. (1)(a) The department is authorized to issue grants to eligible public entities to reduce current or future hardship caused by water unavailability stemming from drought conditions. No single entity may receive more than 25 percent of the total funds available. The department is not obligated to fund projects that do not provide sufficient benefit to alleviating hardship caused by drought or water unavailability. Projects must show substantial benefit from securing water supply, availability, or reliability relative to project costs. Projects do not need to be completed while a drought emergency order under RCW 43.83B.405(2) is in effect.

(b) Except for projects for public water systems serving economically disadvantaged communities, the department may only fund up to 50 percent of the total eligible cost of the project. Money used by applicants as a cash match may not originate from other state funds.

(c) For the purposes of this chapter, eligible public entities include only:

- (i) Counties, cities, and towns;
- (ii) Water and sewer districts formed under chapter 57.02 RCW;
- (iii) Public utility districts formed under chapter 54.04 RCW;
- (iv) Port districts formed under chapter 53.04 RCW;
- (v) Conservation districts formed under chapter 89.08 RCW;
- (vi) Irrigation districts formed under chapter 87.03 RCW;
- (vii) Watershed management partnerships formed under RCW 39.34.200; and
- (viii) Federally recognized tribes.

(2) Grants may be used to develop projects that enhance the ability of water users to effectively mitigate for the impacts of water unavailability arising from drought. Project applicants must demonstrate that the projects will increase their resiliency, preparedness, or ability to withstand drought conditions when they occur. Projects may include, but are not limited to:

- (a) Creation of additional water storage;
- (b) Implementation of source substitution projects;
- (c) Development of alternative, backup, or emergency water supplies or interties;
- (d) Installation of infrastructure or creation of educational programs that improve water conservation and efficiency or promote use of reclaimed water;
- (e) Development or update of local drought contingency plans if not already required by state rules adopted under chapter 246-290 WAC;
- (f) Mitigation of emergency withdrawals authorized under RCW 43.83B.410(1);
- (g) Projects designed to mitigate for the impacts of water supply shortages on fish and wildlife; and
- (h) Emergency construction or modification of water recreational facilities.

(3) During a drought emergency order pursuant to RCW 43.83B.405(2), the department shall prioritize funding for projects designed to relieve the immediate hardship caused by water unavailability. [2023 c 287 s 1; 2020 c 168 s 5; 1989 c 171 s 4.]

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

RCW 43.83B.420 Rules. The department shall adopt such rules as are necessary to ensure the successful implementation of this chapter. [1989 c 171 s 5.]

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

RCW 43.83B.425 Applicability—Construction. Nothing in this chapter shall:

(1) Authorize any interference whatsoever with existing water rights;

(2) Authorize the establishment of rights to withdrawal of waters of a permanent nature or of rights with any priority;

(3) Authorize the establishment of a water right under RCW 90.03.250 or 90.44.060;

(4) Preclude any person from filing an application pursuant to RCW 90.03.250 or 90.44.060. [1989 c 171 s 6.]

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

RCW 43.83B.430 State drought preparedness account. The state drought preparedness account is created in the state treasury. All receipts from appropriated funds designated for the account and all cost recovery revenues collected under RCW 43.83B.410(5) must be deposited into the account. Expenditures from the account may be used for drought planning and preparedness activities under this chapter, including grants issued under RCW 43.83B.415. Moneys in the account may be spent only after appropriation. During the 2021-2023 and 2023-2025 fiscal biennia, the legislature may appropriate moneys from the account for activities related to water banking. [2023 c 474 s 8033; 2023 c 287 s 2. Prior: 2022 c 297 s 957; 2022 c 296 s 7008; 2020 c 168 s 6; 2016 sp.s. c 36 s 933; 2011 c 5 s 911; 2002 c 371 s 910; 1999 c 379 s 921.]

Reviser's note: This section was amended by 2023 c 287 s 2 and by 2023 c 474 s 8033, each without reference to the other. Both amendments are incorporated in the publication of this section under RCW 1.12.025(2). For rule of construction, see RCW 1.12.025(1).

Conflict with federal requirements—Effective date—2023 c 474: See notes following RCW 28A.320.330.

Effective date—2022 c 297: See note following RCW 43.79.565.

Effective date—2022 c 296: See note following RCW 43.63A.125.

Effective date—2016 sp.s. c 36: See note following RCW 18.20.430.

Effective date—2011 c 5: See note following RCW 43.03.220.

Severability—Effective date—2002 c 371: See notes following RCW 9.46.100.

Effective date—1999 c 379: See note following RCW 79A.15.040.

RCW 43.83B.435 Emergency drought response account. The emergency drought response account is created in the state treasury. All receipts from moneys received pursuant to RCW 43.83B.406, moneys appropriated to the account by the legislature for the purpose of funding emergency drought response actions or moneys directed to the account from any other lawful source must be deposited into the account. Moneys in the account may be spent only after appropriation. Expenditures from the account may be used only for the costs of implementing the powers set forth in RCW 43.83B.410 through 43.83B.420 to provide relief for the immediate hardship caused by water unavailability while a drought emergency order issued pursuant to RCW 43.83B.405(2) is in effect. The department must, at a minimum, provide the director of the office of financial management, legislative fiscal committees, and the joint legislative committee on water supply during drought, established under RCW 90.86.010, with a close-out cost summary following the expiration of an emergency drought order during which expenditures were made from the account. [2023 c 287 s 4.]

RCW 43.83B.440 Drought contingency plan revision. In collaboration with affected governments, the department may revise the existing drought contingency plan. The department shall notify interested parties of any updates to the drought contingency plan. [2020 c 168 s 7.]

RCW 43.83B.450 Long-term water right lease agreements—Pilot program. (Expires June 30, 2025.) (1) The department shall initiate a pilot program in a selected basin or basins to explore the cost, feasibility, and benefits of entering into long-term water right lease agreements. The purpose of the agreements is to alleviate water supply conditions that may affect public health and safety, drinking water supplies, agricultural activities, or fish and wildlife survival. Under this program, the department is authorized to negotiate and enter into contractual agreements before a drought emergency is declared under RCW 43.83B.405(2) that identify projects, measures, sources of water, and other resources that may be accessed during times of water shortage. Water right changes executed under agreement under this section are subject to the requirements of RCW 90.03.380.

(2) The department shall submit a report to the legislature by December 31, 2024, on the results of the pilot program. The department shall include a summary of the contracts entered into pursuant to this section and recommendations to the legislature.

(3) This section expires June 30, 2025. [2020 c 168 s 8.]

RCW 43.83B.901 Severability—1977 ex.s. c 1. If any provision of this 1977 amendatory act, or its application to any person or circumstance is held invalid, the remainder of the act, or the application of the provision to other persons or circumstances is not affected. [1977 ex.s. c 1 s 19.]