



# WRAC LEGAL UPDATE DECEMBER 9, 2024

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## TOPICS:

- New PCHB cases: *RAN P'ship vs. Ecology; Tackman vs. Ecology*
- Settled PCHB case: *Underhill vs. Ecology*
- Hearing report: *RAN P'ship vs. Ecology*
- Appellate report: *Fode* cross-appeals
- PCHB Decision Report: *Vancour vs. Ecology* cases

## New PCHB case: *RAN General P'ship vs. Ecology*, PCHB No. 24-072

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- November 13<sup>th</sup> Appeal of Ecology Notice of Penalty, Dated October 16, 2024
- Irrigation of 40 acres without water rights
- Four separate penalties, 5000/day for observed wet/irrigated soils (May 15<sup>th</sup>, July 8<sup>th</sup>, August 5<sup>th</sup>, September 5<sup>th</sup>)
- Hearing set for early **2026!!!**

# **New PCHB case:**

## ***Tackman vs. Ecology*, PCHB No. 24-073**

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- November 18<sup>th</sup> Appeal of Ecology Order of Cancellation, Dated October 21, 2024
- Cancellation alleges failure to develop new permit (April 2016) that would be mitigated with water provided by MVID
- One permit extension already granted that allowed until October, 2022 to develop permit.
- Diversion on Alder creek provided insufficient water, and Tackman could not get an easement from WDFW to a better place for his diversion

# Settled PCHB case:

## *Underhill vs. Ecology*, PCHB No. 24-065

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- Appeal of Ecology Cease and Desist Order and Request for Stay (Appeal Dated October 14<sup>th</sup>)
- On September 18<sup>th</sup> Ecology issued Cease and Desist Order to Underwood ordering them to cease and desist from construction of individual wells for domestic use to serve a plat that Franklin County approved in July for 21 homes.
- Order requires compliance with RCW 90.44.050 and RCW 18.104 (GW and well construction authorities)
- Developer will limit exempt use to 14 of the lots, serve other lots with water system under construction
- Deed restrictions will be filed that other 7 lots cannot be served by exempt wells.
- All irrigation water will be served and delivered separately

## Hearing report: *Ran General P'ship vs. Ecology*, PCHB No. 23-040

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- Appeal of \$12,000 penalty for illegal irrigation of 40 acres in Whatcom County
- 6 specific violations for this penalty for observed wet crops/irrigation
- Hearing December 5<sup>th</sup> and 6<sup>th</sup> and (virtual/zoom)

# Appellate report: *Fode* appeal

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- **Fode vs. Ecology**: Cross-appeals by Ecology and PCHB of PCHB order that reduced a penalty against Mr. Fode for unauthorized irrigation in 2017 from 618K to 260K
- Should penalties be voided because Ecology did not provide proper technical assistance to Mr. Fode?
- Did the PCHB err when it concluded Ecology may only penalize for illegal irrigation for directly observed violations?
- Did Ecology engage in unauthorized “violation spreading?” (3 separate penalties on 3 separate properties)
- Ecology’s response/opening brief filed; Fode’s reply/response due soon

# **PCHB Decision Report:**

## ***Vancour vs. Ecology*, PCHB No. 23-060**

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- Appeal by 3<sup>rd</sup> party (neighbors) of Ecology decision approving transfer of a water right to a GW well for irrigation of vineyards. Neighbors maintain that exercise of the right will impair their GW well
- Ecology filed for SJ, including a declaration of a HG that the drawdown of the neighboring well will be insignificant and will not impair the neighbor's exercise of their right.
- Appellants did not substantively respond to Ecology's SJ motion
- Nov. 19<sup>th</sup> PCHB sends letter informing parties that it will be granting SJ and dismissing the case, cancelling hearing dates (December 17 to 19)
- Nov. 22, Appellants send a lengthy letter to the Board that more substantively states their objections to the transfer and what evidence they would have put on at hearing
- Ecology moves to strike the letter
- Order on SJ pending