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Notice of filing and transmittal  
October 13, 2004

Attached is the official report on Whistleblower case No. 04-020 at the Department of Ecology.

This report is transmitted by the State Auditor's Office pursuant to Chapter 42.40 of the Revised Code of Washington, the Whistleblower Act.

Questions about this report should be directed to Investigator Sandra Miller at 360-902-0378, or Director of Operations Jim Brittain at 360-902-0372.

Sincerely,

A handwritten signature in black ink, appearing to read "Brian Sonntag".

**BRIAN SONNTAG, CGFM**  
STATE AUDITOR

cc: Linda Hoffman, Director  
Joy St. Germain, Director of Employee Services  
Thomas Loranger, Water Resources Supervisor  
Joe Stohr, Water Resources Program Manager



**REPORT OF WHISTLEBLOWER INVESTIGATION  
DEPARTMENT OF ECOLOGY  
No. 04-020  
OCTOBER 12, 2004**

The State Auditor's Office received assertions of improper governmental activity at the Department of Ecology. These assertions were submitted to us under the provisions of Chapter 42.40 of the Revised Code of Washington, the Whistleblower Act. We have investigated these assertions independently and objectively through interviews and by reviewing relevant documents. This is the result of our investigation.

**Assertion 1:**

**Two permit writers in the Southwest Region Water Resource Program in the Department of Ecology signed "Reports of Examination" without documenting the required findings of fact.**

Based on our legal counsel's review of information provided by the whistleblower, and subsequent review of state law that applies, we found no reasonable cause to believe that an improper governmental action has occurred. We reviewed the two Reports of Examination identified in the assertions. These reports relate to water rights changes, which are subject to state law (RCW 90.03.380).

**RCW 90.03.380 - Right to water attaches to land -- Transfer or change in point of diversion -- Transfer of rights from one district to another.**

- (1) The right to the use of water which has been applied to a beneficial use in the state shall be and remain appurtenant to the land or place upon which the same is used: PROVIDED, HOWEVER, That the right may be transferred to another or to others and become appurtenant to any other land or place of use without loss of priority of right theretofore established if such change can be made without detriment or injury to existing rights. The point of diversion of water for beneficial use or the purpose of use may be changed, if such change can be made without detriment or injury to existing rights. A change in the place of use, point of diversion, and/or purpose of use of a water right to enable irrigation of additional acreage or the addition of new uses may be permitted if such change results in no increase in the annual consumptive quantity of water used under the water right. For purposes of this section, "annual consumptive quantity" means the estimated or actual annual amount of water diverted pursuant to the water right, reduced by the estimated annual amount of return flows, averaged over the two years of greatest use within the most recent five-year period of continuous beneficial use of the water right. Before any transfer of such right to use water or change of the point of diversion of water or change of purpose of use can be made, any person having an interest in the transfer or change, shall file a written application therefore with the department, and the application shall not be granted until notice of the application is published as provided in RCW 90.03.280. If it shall appear that such transfer or such change may be made without injury or detriment to existing rights, the department shall issue to the applicant a certificate ...

Because the state law that is applicable to water rights changes does not require that Ecology document the findings of fact mentioned in the assertion, we find no reasonable cause to believe an improper governmental action has occurred since RCW 90.03.380 was not violated

We also would like to note that the Department stated that it will continue to work to improve the quality of documentation contained in Reports of Examination.

**Assertion 2:**

**The Southwest Region of the Department of Ecology does not have a system in place in its Southwest Region to identify and track relinquishments of water rights that could revert back to the state at little or no cost.**

Based on our legal counsel's review of information provided by the whistleblower and subsequent review of state law that applies, we found no reasonable cause to believe that an improper governmental action has occurred.

*RCW 90.14.170 - Relinquishment of right for abandonment or failure to beneficially use without sufficient cause -- Rights acquired due to ownership of land abutting stream, lake, or watercourse.*

*Any person entitled to divert or withdraw waters of the state by virtue of his ownership of land abutting a stream, lake, or watercourse, who abandons the same, or who voluntarily fails, without sufficient cause, to beneficially use all or any part of said right to withdraw or divert said water for any period of five successive years after July 1, 1967, shall relinquish such right or portion thereof, and such right or portion thereof shall revert to the state, and the waters affected by said right shall become available for appropriation in accordance with the provisions of RCW 90.03.250.*

We reviewed agency policies related to the relinquishment of water rights and conducted interviews which disclosed that the agency has rescinded 890 water rights through the relinquishment process, but has not developed a comprehensive method in the Southwest Region to identify water rights that have been diminished or extinguished and could revert to the state. However, the laws do not state that Ecology is required to take the specific types of actions suggested by the assertion to identify and track relinquishments.

Therefore, we find no reasonable cause to believe that an improper governmental activity occurred.