
HOUSE BILL 2978

State of Washington

60th Legislature

2008 Regular Session

By Representatives Kretz and Sump

Read first time 01/18/08. Referred to Committee on Agriculture & Natural Resources.

1 AN ACT Relating to the interwatershed transfer of water rights;
2 amending RCW 90.03.380; and creating new sections.

3 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF WASHINGTON:

4 NEW SECTION. **Sec. 1.** The legislature finds that interwatershed
5 water rights transfers pose a threat to the economic and social welfare
6 of rural communities. Because it is increasingly difficult for water
7 users to acquire new water rights, transfers are indeed a valuable and
8 necessary water management tool. However, the permanent transfer of
9 water rights away from Washington's rural communities has serious
10 economic and social impacts. Although a rural water rights holder
11 receives compensation for transferring water rights outside of a
12 watershed, third parties such as laborers and supporting businesses
13 suffer. The loss of water rights also reduces land use options and
14 property values, resulting in a shrinking revenue base for rural local
15 governments. Finally, the loss of water rights can permanently change
16 the character of agricultural land and the surrounding rural community.
17 Therefore, the legislature intends to protect rural communities from
18 the permanent and harmful impacts of interwatershed water rights
19 transfers.

1 **Sec. 2.** RCW 90.03.380 and 2003 c 329 s 2 are each amended to read
2 as follows:

3 (1) The right to the use of water which has been applied to a
4 beneficial use in the state shall be and remain appurtenant to the land
5 or place upon which the same is used: PROVIDED, HOWEVER, That the
6 right may be transferred to another or to others and become appurtenant
7 to any other land or place of use without loss of priority of right
8 theretofore established if such change can be made without detriment or
9 injury to existing rights. The point of diversion of water for
10 beneficial use or the purpose of use may be changed, if such change can
11 be made without detriment or injury to existing rights. A change in
12 the place of use, point of diversion, and/or purpose of use of a water
13 right to enable irrigation of additional acreage or the addition of new
14 uses may be permitted if such change results in no increase in the
15 annual consumptive quantity of water used under the water right. For
16 purposes of this section, "annual consumptive quantity" means the
17 estimated or actual annual amount of water diverted pursuant to the
18 water right, reduced by the estimated annual amount of return flows,
19 averaged over the two years of greatest use within the most recent
20 five-year period of continuous beneficial use of the water right.
21 Before any transfer of such right to use water or change of the point
22 of diversion of water or change of purpose of use can be made, any
23 person having an interest in the transfer or change, shall file a
24 written application therefor with the department, and the application
25 shall not be granted until notice of the application is published as
26 provided in RCW 90.03.280. If it shall appear that such transfer or
27 such change may be made without injury or detriment to existing rights,
28 the department shall issue to the applicant a certificate in duplicate
29 granting the right for such transfer or for such change of point of
30 diversion or of use. The certificate so issued shall be filed and be
31 made a record with the department and the duplicate certificate issued
32 to the applicant may be filed with the county auditor in like manner
33 and with the same effect as provided in the original certificate or
34 permit to divert water.

35 (2) If an application for change proposes to transfer water rights
36 from one irrigation district to another, the department shall, before
37 publication of notice, receive concurrence from each of the irrigation

1 districts that such transfer or change will not adversely affect the
2 ability to deliver water to other landowners or impair the financial
3 integrity of either of the districts.

4 (3) A change in place of use by an individual water user or users
5 of water provided by an irrigation district need only receive approval
6 for the change from the board of directors of the district if the use
7 of water continues within the irrigation district, and when water is
8 provided by an irrigation entity that is a member of a board of joint
9 control created under chapter 87.80 RCW, approval need only be received
10 from the board of joint control if the use of water continues within
11 the area of jurisdiction of the joint board and the change can be made
12 without detriment or injury to existing rights.

13 (4) This section shall not apply to trust water rights acquired by
14 the state through the funding of water conservation projects under
15 chapter 90.38 RCW or RCW 90.42.010 through 90.42.070.

16 (5)(a) Pending applications for new water rights are not entitled
17 to protection from impairment, injury, or detriment when an application
18 relating to an existing surface or ground water right is considered.

19 (b) Applications relating to existing surface or ground water
20 rights may be processed and decisions on them rendered independently of
21 processing and rendering decisions on pending applications for new
22 water rights within the same source of supply without regard to the
23 date of filing of the pending applications for new water rights.

24 (c) Notwithstanding any other existing authority to process
25 applications, including but not limited to the authority to process
26 applications under WAC 173-152-050 as it existed on January 1, 2001, an
27 application relating to an existing surface or ground water right may
28 be processed ahead of a previously filed application relating to an
29 existing right when sufficient information for a decision on the
30 previously filed application is not available and the applicant for the
31 previously filed application is sent written notice that explains what
32 information is not available and informs the applicant that processing
33 of the next application will begin. The previously filed application
34 does not lose its priority date and if the information is provided by
35 the applicant within sixty days, the previously filed application shall
36 be processed at that time. This subsection (5)(c) does not affect any
37 other existing authority to process applications.

1 (d) Nothing in this subsection (5) is intended to stop the
2 processing of applications for new water rights.

3 (6) No applicant for a change, transfer, or amendment of a water
4 right may be required to give up any part of the applicant's valid
5 water right or claim to a state agency, the trust water rights program,
6 or to other persons as a condition of processing the application.

7 (7) In revising the provisions of this section and adding
8 provisions to this section by chapter 237, Laws of 2001, the
9 legislature does not intend to imply legislative approval or
10 disapproval of any existing administrative policy regarding, or any
11 existing administrative or judicial interpretation of, the provisions
12 of this section not expressly added or revised.

13 (8) The development and use of a small irrigation impoundment, as
14 defined in RCW 90.03.370(8), does not constitute a change or amendment
15 for the purposes of this section. The exemption expressly provided by
16 this subsection shall not be construed as requiring a change or
17 transfer of any existing water right to enable the holder of the right
18 to store water governed by the right.

19 (9)(a) The department may only approve an application submitted
20 after the effective date of this section that seeks to temporarily
21 transfer the point of diversion or place of use of a water right from
22 the Columbia drainage area, within the state of Washington, to any
23 place outside the WRIA for which the right was issued for a lease
24 period not to exceed the requirements of (b) of this subsection.

25 (b) The transfers described in (a) of this subsection expire
26 December 31, 2011, unless the department makes a finding of water
27 supply availability so that no more limitations on transfers are
28 necessary.

29 (c) For the purposes of this subsection, "WRIA" means a water
30 resource inventory area established in WAC 173-500-040 and 173-500-990
31 as they exist on the effective date of this section.

32 NEW SECTION. Sec. 3. The department of ecology must work
33 diligently with appropriate legislators, stakeholders, and local
34 governments to develop new water sources in order to protect the
35 economic and social welfare of rural communities. The department of
36 ecology must submit a report, including detailed legislative and policy

1 recommendations, to the appropriate committees of the legislature by
2 November 1, 2010.

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