

WAC 173-166-080 Temporary transfers of water rights. (1) Ecology may approve emergency water right changes in order to effect a transfer of water between willing parties. Water right changes can include purpose of use, place of use, and point of diversion.

(2) Examples of possible water right transfers include, but are not limited to, the following situations:

(a) A water right holder may choose to reduce irrigated acreage and transfer the unused water to another water right holder whose normal water supply is decreased by drought conditions. The acreage irrigated with transferred water on the second parcel may not exceed the acreage reduction on the first parcel.

(b) A water right holder may transfer a water right from an out-of-stream use to an instream use.

(c) Municipalities or other public bodies may transfer water between one another.

(3) Requests for water right transfers will be processed under the following criteria:

(a) Applicants must be conducting a previously established activity within a geographical area declared to be suffering from drought conditions.

(b) An application for a water right transfer will be processed if the recipient water user is receiving, or is projected to receive, less than seventy-five percent of normal water supply, as the result of natural drought conditions, for the previously established activity and experiencing, or is expected to experience, undue hardship as a result.

(c) All approvals by ecology for water right transfers under this chapter will be temporary in nature and will be for the purpose of alleviating drought conditions. These approvals must terminate no later than the expiration date of the order which declares the area to be suffering from drought conditions.

(d) Water right transfers between willing parties may be approved when an emergency exists only if such a transfer will not affect existing rights whatsoever, or reduce flows or levels below essential minimums, or adversely affect federal and state interests including, but not limited to, power generation, navigation, and water quality.

(e) Water rights may be transferred within areas declared to be suffering from drought conditions. Water rights may also be transferred from outside an area declared to be suffering from drought conditions into an area declared to be suffering from drought conditions, provided such a transfer of water is physically possible and is consistent with the provisions of RCW 90.03.380, 90.03.390, and 90.44.100. Water rights will not be transferred from within an area declared to be suffering from drought conditions to outside that area.

(f) To expedite water transfers during drought conditions, ecology can approve temporary changes in water rights without compliance with requirements for:

(i) Notice of newspaper publication.

(ii) The State Environmental Policy Act.

(g) In those cases where temporary water transfers require court approval while general adjudication proceedings are ongoing, ecology will assist the court in coordination, maintaining communications, and providing technical assistance when requested.

(h) The temporary changing of a water right under this chapter will not be admissible as evidence in either supporting or contesting the validity of water claims in a general adjudication of water rights in the state of Washington.

(i) Ecology, plus all state and local agencies with authority to issue permits or other authorizations in connection with emergency actions authorized under the provisions of this chapter, will have fifteen calendar days from the date of receipt of the respective application(s) in which to provide a decision to the applicant. Agencies with authority to review applications for temporary water right transfers, such as under RCW 75.20.050, and affected Indian tribes will have fifteen calendar days from the date ecology receives the application in which to provide ecology with an opinion as to any effects of the proposed transfer.

[Statutory Authority: RCW 43.83B.420. WSR 18-09-031 (Order 17-01), § 173-166-080, filed 4/11/18, effective 5/12/18; WSR 91-03-081 (Order 90-53), § 173-166-080, filed 1/17/91, effective 2/17/91.]