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**HOUSE BILL 2866**

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**State of Washington 66th Legislature 2020 Regular Session**

**By** Representatives Goehner, Blake, Steele, Pettigrew, Dent, Chandler, and Eslick

AN ACT Relating to prohibiting transfers of water rights out of their original water resource inventory area; amending RCW 90.03.015 and 90.80.055; adding new sections to chapter 90.03 RCW; adding a new section to chapter 90.44 RCW; and creating a new section.

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

NEW SECTION. **Sec.**  The legislature recognizes that water rights are private property rights to use water and that they may be transferred to others and used at a new place of use and for a new purpose of use under the authority of RCW 90.03.380 or 90.44.100. However, the legislature finds that transfers of water rights used for irrigated agriculture from the water resource inventory area (WRIA) of origin to another WRIA are not in the public interest. These transfers can have serious adverse impacts on the WRIA of origin, including impacts on agriculture and community sustainability, and on the amount of water available for future appropriation. This is particularly true where water from the WRIA flows into the Columbia river and there are no WRIAs upstream to replace water that has been transferred out. Therefore, the legislature intends to protect agricultural water supply, rural economies, and the local public interest by prohibiting water right transfers out of an upstream WRIA into a downstream WRIA where water from the WRIA flows into the Columbia river and the WRIA is located east of the crest of the Cascade mountains.

**Sec.**  RCW 90.03.015 and 2003 1st sp.s. c 5 s 1 are each amended to read as follows:

The definitions in this section apply throughout this chapter unless the context clearly requires otherwise.

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

(2) "Director" means the director of ecology.

(3) "Municipal water supplier" means an entity that supplies water for municipal water supply purposes.

(4) "Municipal water supply purposes" means a beneficial use of water: (a) For residential purposes through fifteen or more residential service connections or for providing residential use of water for a nonresidential population that is, on average, at least twenty-five people for at least sixty days a year; (b) for governmental or governmental proprietary purposes by a city, town, public utility district, county, sewer district, or water district; or (c) indirectly for the purposes in (a) or (b) of this subsection through the delivery of treated or raw water to a public water system for such use. If water is beneficially used under a water right for the purposes listed in (a), (b), or (c) of this subsection, any other beneficial use of water under the right generally associated with the use of water within a municipality is also for "municipal water supply purposes," including, but not limited to, beneficial use for commercial, industrial, irrigation of parks and open spaces, institutional, landscaping, fire flow, water system maintenance and repair, or related purposes. If a governmental entity holds a water right that is for the purposes listed in (a), (b), or (c) of this subsection, its use of water or its delivery of water for any other beneficial use generally associated with the use of water within a municipality is also for "municipal water supply purposes," including, but not limited to, beneficial use for commercial, industrial, irrigation of parks and open spaces, institutional, landscaping, fire flow, water system maintenance and repair, or related purposes.

(5) "Person" means any firm, association, water users' association, corporation, irrigation district, or municipal corporation, as well as an individual.

(6) "Local public interest" means the interests in the WRIA of origin that would be affected by a proposed water right transfer out of the WRIA and the effects of such use on the public water resource.

(7) "Local water bank" means a water bank administered by a local governmental entity or a nonprofit organization in coordination with the department's trust water right program to facilitate water right transfers within a WRIA.

(8) "Out-of-WRIA transfer" means a change of all or a portion of a water right authorizing the use in a WRIA, other than the WRIA of origin, in which water from the WRIA of origin flows into the Columbia river and the WRIA of origin is located east of the crest of the Cascade mountains.

(9) "WRIA" means a water resource inventory area as defined in RCW 90.82.020.

(10) "WRIA of origin" means the WRIA of the current place of use of a water right sought to be transferred.

NEW SECTION. **Sec.**  A new section is added to chapter 90.03 RCW to read as follows:

 Neither the department nor a county water conservancy board, as authorized under chapter 90.80 RCW, may approve any application for a transfer of all or a portion of a water right from an upstream WRIA to a downstream WRIA, where water from the WRIA of origin flows into the Columbia river and the WRIA of origin is located east of the crest of the Cascade mountains. Nothing in this act may be construed to prohibit the upstream transfer of all or a portion of a water right, whether upstream within a single WRIA or from a downstream WRIA to an upstream WRIA.

NEW SECTION. **Sec.**  A new section is added to chapter 90.44 RCW to read as follows:

Neither the department nor a county water conservancy board, as authorized under chapter 90.80 RCW, may approve any application for a transfer of all or a portion of a water right from an upstream WRIA to a downstream WRIA, where water from the WRIA of origin flows into the Columbia river and the WRIA of origin is located east of the crest of the Cascade mountains. Nothing in this act may be construed to prohibit the upstream transfer of all or a portion of a water right, whether upstream within a single WRIA or from a downstream WRIA to an upstream WRIA.

NEW SECTION. **Sec.**  A new section is added to chapter 90.03 RCW to read as follows:

(1) Ninety percent of the quantity of water approved for transfer to a local water bank must be available for removal from the water bank for agricultural use within the WRIA of origin downstream of the original point of diversion or withdrawal.

(2) When a transfer from a local water bank is approved, the remaining ten percent of the water initially transferred to the water bank must be permanently dedicated to instream flows.

(3) If all or a portion of a water right is permanently transferred from an existing place of use to the trust water rights program for instream flows under RCW 90.42.040 or 90.42.080, ten percent of the total quantity approved for transfer to trust must be credited to the local water bank and made available for future agricultural use within the WRIA of origin.

(4) If any portion of a water right being transferred is retained at the current place of use, the amount of water continuing to be used must be metered and reported to the department.

(5) If the transfer would result in formerly irrigated land becoming fallow, the transferor of the right must manage the formerly irrigated land for noxious weed prevention and fire protection, including mowing, and must provide evidence of the maintenance to the local county noxious weed control board.

**Sec.**  RCW 90.80.055 and 2001 c 237 s 9 are each amended to read as follows:

(1) Except as provided in subsection (2) of this section, a board shall operate on a countywide basis or on an area-wide basis in the case of a board with jurisdiction in more than one county or water resource inventory area, and have the following powers, in addition to any other powers granted in this chapter:

(a) Except as provided in subsection (2) of this section, a board may act upon applications for the same kinds of transfers that the department itself is authorized to act upon, including an application to establish a trust water right under chapter 90.38 or 90.42 RCW. A board may not act upon an application for the type of transfer within an irrigation district as described in RCW 90.03.380(3). If a board receives an application for a transfer between two irrigation districts as described in RCW 90.03.380(2), the board must, before publication of notice of the application, receive the concurrence specified in that section.

(b) A board may act upon an application to transfer a water right claim filed under chapter 90.14 RCW. In acting upon such an application, the board must make a tentative determination as to the validity and extent of the right, if any, embodied in the claim and may only issue a record of decision regarding a transfer of such a claim to the extent it is tentatively determined to be valid. Neither the board's tentative determination, nor the director's acceptance of such a tentative determination, constitutes an adjudication of the right under RCW 90.03.110 through 90.03.240 or 90.44.220, and such a determination does not preclude or prejudice a subsequent challenge to the validity, priority, or quantity of the right in a general adjudication under those sections.

(c) A board may establish a water right transfer information exchange through which all or part of a water right may be listed for sale or lease. The board may also accept and post notices in the exchange from persons interested in acquiring or leasing water rights from willing sellers.

(d) The director shall assign a representative of the department to provide technical assistance to each board. If requested by the board, the representative shall work with the board as it reviews applications for formal acceptance, prepares draft records of decision, and considers other technical or legal factors affecting the board's development of a final record of decision. A board may request and accept additional technical assistance from the department. A board may also request and accept assistance and support from the county government or governments of the county or counties in which it operates.

(2) The jurisdiction of a board shall not apply within the boundaries of a federal Indian reservation or to lands held in trust for an Indian band, tribe, or nation by the federal government.

(3) The jurisdiction of a board does not apply to, and a board may not accept or act upon, any application for a transfer of all or a portion of a water right from an upstream WRIA to a downstream WRIA, where water from the WRIA of origin flows into the Columbia river and the WRIA of origin is located east of the crest of the Cascade mountains.

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