
**Rural Development, Agriculture, &
Natural Resources Committee**

HB 2866

Brief Description: Prohibiting transfers of water rights out of their original water resource inventory area.

Sponsors: Representatives Goehner, Blake, Steele, Pettigrew, Dent, Chandler and Eslick.

Brief Summary of Bill

- Prohibits the transfer of any portion of a water right from an upstream Water Resource Inventory Area (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.
- Places certain restrictions on the transfer of water rights into and out of water banks.

Hearing Date: 1/31/20

Staff: Robert Hatfield (786-7117).

Background:

Water Code.

Washington operates under a water right permit system. With certain exceptions, new rights to use surface or ground water must be established according to the permit system. A person seeking a new water right must file an application with the Department of Ecology (Ecology), which must then consider a four-part test when deciding whether to issue the requested right: (1) whether water is available; (2) whether a beneficial use of water would be made; (3) whether granting the right would impair existing rights; and (4) whether the proposed use would detrimentally affect the public welfare.

This analysis was prepared by non-partisan legislative staff for the use of legislative members in their deliberations. This analysis is not a part of the legislation nor does it constitute a statement of legislative intent.

If an application passes this test, Ecology issues a permit. When the conditions of the permit are satisfied, Ecology issues a water right certificate.

Ecology may allow certain changes to a water right. Ecology may also allow a transfer of a water right from one holder to another. In processing applications to change or transfer a water right, Ecology analyzes the validity, limits, and quantity of the right. Changes or transfers cannot impair existing rights of other water right holders.

The Trust Water Rights Program.

The state may acquire a trust water right by donation, purchase, or lease. Trust water rights are placed in the state's Trust Water Rights Program and managed by Ecology. Two trust water rights systems, one for the Yakima River basin and the other for the rest of the state, are established in state law.

The Trust Water Rights Program enables the voluntary transfer of water and water rights to the state, either temporarily or permanently. While a water right is held in trust, it is considered an exercised water right and is protected from relinquishment. Water held in trust retains its original priority date.

Water Banks.

The process to establish a water bank begins with a consultation between Ecology's Water Resources Program and a would-be banker. If Ecology agrees that the banker's proposal is in the public interest, a water banking agreement may be negotiated. This agreement describes how Ecology will take ownership of a water right and hold it in the Trust Water Rights Program in exchange for processing applications for mitigated new uses.

Ecology is authorized to use water banking to mitigate for new water uses, hold water for beneficial uses consistent with terms established by the transferor, meet future water supply needs, and provide a source of water to third parties, on a temporary or permanent basis, for any allowed beneficial use.

Water Conservancy Boards.

Water conservancy boards (board) are created by resolution of the county or counties where they will serve and are subject to approval by the Director of Ecology (Director). The board is authorized to process the same kinds of transfer applications as Ecology, with certain exceptions. Boards do not have jurisdiction over new water rights. Approval or denial of a water right transfer application is determined by the majority vote of a board.

A board's decision is subject to Ecology approval. The Director must review the board's decision for compliance with applicable state water law. The Director may affirm, reverse, or modify the board's decision within 45 days, with a 30-day extension allowed. If the Director fails to act within these timelines, the board's record of decision becomes Ecology's decision.

Instream Flow Rules.

The Department of Ecology (Ecology) has the authority to adopt rules establishing a minimum water flow for streams, lakes, or other public water bodies for the purposes of protecting fish, game, birds, and the recreational and aesthetic values of the waterways. Ecology must set minimum water flows to protect fish, game, or wildlife resources, when requested by the Department of Fish and Wildlife or if Ecology finds it necessary to protect water quality.

These minimum water flow levels, commonly called instream flows, function as water rights with a priority date set at the adoption date of the corresponding rule. Instream flows have been set in 27 Water Resource Inventory Areas. The instream flow cannot affect an existing water right with a senior priority date.

Summary of Bill:

Water Code - Definitions.

The following definitions are added to the Water Code:

- "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;
- "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;
- "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.
- "WRIA" means a water resource inventory area as defined in RCW 90.82.020.
- "WRIA of origin" means the WRIA of the current place of use of a water right sought to be transferred.

Transfers of Water Rights.

Neither the Department of Ecology (Ecology) nor a county water conservancy board 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 the bill 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.

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.

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.

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 certain instream flows, 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.

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 Ecology.

If the transfer of a water right 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.

Appropriation: None.

Fiscal Note: Available.

Effective Date: The bill takes effect 90 days after adjournment of the session in which the bill is passed.