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**HOUSE BILL 1385**

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**State of Washington 67th Legislature 2021 Regular Session**

**By** Representatives Goehner, Steele, Chandler, Dent, and Pollet

AN ACT Relating to limiting transfers of water rights out of their original water resource inventory area; amending RCW 90.44.100; adding new sections to chapter 90.03 RCW; adding a new section to chapter 90.42 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 usufructuary property rights that 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 amended under the authority of RCW 90.44.100. However, the legislature finds that there may be instances in which 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 the WRIAs described in section 2 of this act except as in the manner described in section 2 of this act.

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

(1) This section applies to the following water resource inventory areas:

(a) WRIA 45 - Wenatchee;

(b) WRIA 46 - Entiat;

(c) WRIA 48 - Methow;

(d) WRIA 49 - Okanogan;

(e) WRIA 55 - Little Spokane;

(f) WRIA 57 - Middle Spokane; and

(g) WRIA 59 - Colville.

(2)(a) Before August 15, 2022, neither the department nor a county water conservancy board, as authorized under chapter 90.80 RCW, may approve any application for a permanent or temporary transfer of all or a portion of a water right to a downstream water resource inventory area.

(b) After August 15, 2022, neither the department nor a county water conservancy board, as authorized under chapter 90.80 RCW, may approve any application for a permanent or temporary transfer of all or a portion of a water right to a downstream water resource inventory area until the following have occurred:

(i) The holder of the water right sought to be transferred has provided to the department or the water conservancy board, as appropriate, a copy of the signed, bona fide offer to purchase the water right sought to be transferred;

(ii) The department or the water conservancy board, as appropriate, has provided a copy of the signed, bona fide offer to the local agricultural water bank that serves the water resource inventory area from which the water right is sought to be transferred; and

(iii) The water bank has failed, after an evaluation period of 90 days, to match the terms of the signed, bona fide offer to purchase the water right.

(c) The department or a water conservancy board, as appropriate, may not approve any application for a permanent or temporary transfer of all or a portion of a water right to a downstream water resource inventory area if a local agricultural water bank has, within the 90-day evaluation period required in (b)(iii) of this subsection, matched the terms of a signed, bona fide offer to purchase the water right sought to be transferred.

(d) The requirements set forth in (b) of this subsection, including the 90-day evaluation period required by (b)(iii) of this subsection, do not apply to the proposed transfer of water rights from a water resource inventory area in which a local agricultural water bank has not been established as of August 15, 2022.

(3) The prohibition set forth in subsection (2) of this section does not apply to:

(a) The temporary transfer out of a water resource inventory area of all or a portion of a water right in response to a drought order issued pursuant to chapter 43.83B RCW;

(b) Existing contractual obligations of the office of the Columbia river; or

(c) Water rights permanently transferred to trust solely for the purpose of instream flows.

(4)(a) Upstream transfers may be allowed both into the water resource inventory areas listed in subsection (1) of this section and within those water resource inventory areas if they satisfy the following three criteria:

(i) The transfer is either into or within the mainstem of the primary river in the water resource inventory area, or the transfer is to a tributary to the primary river in the water resource inventory area and the water being transferred was used in the same tributary prior to being transferred downstream;

(ii) The transfer is to a new point of diversion at or downstream of the original point of diversion for the water right; and

(iii) The maximum quantity of water transferred upstream does not exceed the quantity historically used in that stream reach.

(b) A water right transferred upstream pursuant to (a) of this subsection retains its original priority date as to other water rights.

(c) Nothing in this section changes the requirements for water right transfers under RCW 90.03.380 or 90.44.100 in water resource inventory areas not listed in subsection (1) of this section.

NEW SECTION. **Sec.**  A new section is added to chapter 90.42 RCW to read as follows:

(1) In order to provide flexibility for the sale of a water right within the water resource inventory areas listed in section 2 of this act, a conservation district organized under chapter 89.08 RCW and located within a water resource inventory area listed in section 2 of this act may establish a local agricultural water bank approved by the department and the county in which the water resource inventory area is located, for the purpose of acquiring valid water rights in the applicable water resource inventory area from willing water right holders at fair market value and placing such water rights in the water bank. The establishment of the infrastructure of a local agricultural water bank pursuant to this section must occur by August 15, 2022.

(2) The operation of a local agricultural water bank must be consistent with the terms of a trust water right agreement with the department.

(3) Any water rights acquired pursuant to this section and a trust water right agreement are subject to the following requirements:

(a) The beneficially used portion of the purchased water right, or a portion thereof, must be leased back to the water right holder at the water right holder's request for continued use by the water right holder or current property owner in perpetuity;

(b) If, at any point in time, the water leased back to the water right holder is no longer needed for irrigation, the water must be returned to the agricultural water bank and may be reallocated for other agricultural uses within the same water resource inventory area, subject to approval by the department;

(c) A water right, when not in use for irrigation in whole or in part, must be managed by the water bank; and

(d) To ensure public benefit, all water rights purchased by a local agricultural water bank must undergo a tentative extent and validity analysis prior to being accepted by the water bank.

(4) A water bank established pursuant to this section may enter into other transactions with a willing water right holder that result in a legally valid agreement that the water right not be transferred out of the water resource inventory area where the water right is being used.

**Sec.**  RCW 90.44.100 and 2003 c 329 s 3 are each amended to read as follows:

(1) After an application to, and upon the issuance by the department of an amendment to the appropriate permit or certificate of groundwater right, the holder of a valid right to withdraw public groundwaters may, without losing the holder's priority of right, construct wells or other means of withdrawal at a new location in substitution for or in addition to those at the original location, or the holder may change the manner or the place of use of the water.

(2) An amendment to construct replacement or a new additional well or wells at a location outside of the location of the original well or wells or to change the manner or place of use of the water shall be issued only after publication of notice of the application and findings as prescribed in the case of an original application. Such amendment shall be issued by the department only on the conditions that: (a) The additional or replacement well or wells shall tap the same body of public groundwater as the original well or wells; (b) where a replacement well or wells is approved, the use of the original well or wells shall be discontinued and the original well or wells shall be properly decommissioned as required under chapter 18.104 RCW; (c) where an additional well or wells is constructed, the original well or wells may continue to be used, but the combined total withdrawal from the original and additional well or wells shall not enlarge the right conveyed by the original permit or certificate; and (d) other existing rights shall not be impaired. The department may specify an approved manner of construction and shall require a showing of compliance with the terms of the amendment, as provided in RCW 90.44.080 in the case of an original permit.

(3) The construction of a replacement or new additional well or wells at the location of the original well or wells shall be allowed without application to the department for an amendment. However, the following apply to such a replacement or new additional well: (a) The well shall tap the same body of public groundwater as the original well or wells; (b) if a replacement well is constructed, the use of the original well or wells shall be discontinued and the original well or wells shall be properly decommissioned as required under chapter 18.104 RCW; (c) if a new additional well is constructed, the original well or wells may continue to be used, but the combined total withdrawal from the original and additional well or wells shall not enlarge the right conveyed by the original water use permit or certificate; (d) the construction and use of the well shall not interfere with or impair water rights with an earlier date of priority than the water right or rights for the original well or wells; (e) the replacement or additional well shall be located no closer than the original well to a well it might interfere with; (f) the department may specify an approved manner of construction of the well; and (g) the department shall require a showing of compliance with the conditions of this subsection (3).

(4) As used in this section, the "location of the original well or wells" is the area described as the point of withdrawal in the original public notice published for the application for the water right for the well.

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

(6) An amendment issued pursuant to this section is subject to the limitations set forth in section 2 of this act.

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

Nothing in chapter . . ., Laws of 2021 (this act) may be construed so as to allow a junior water right to impair a senior water right.

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