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

HB 1385

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

Sponsors: Representatives Goehner, Steele, Chandler, Dent and Pollet.

Brief Summary of Bill

- Prohibits downstream transfers of water rights in certain Water Resource Inventory Areas (WRIAs), subject to certain requirements and exceptions.
- Authorizes the upstream transfer of water rights in certain WRIAs, subject to certain requirements and exceptions.
- Authorizes conservation districts in certain counties to establish local agricultural water banks for the purpose of purchasing water rights at fair market value and placing such water rights in the water bank.

Hearing Date: 3/10/21

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),

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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.

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. A 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.

Conservation Districts.

A conservation district is a governmental subdivision of the state, which exercises public powers. Conservation districts work with landowners on a voluntary basis, providing incentive-based conservation help on private lands. The board of supervisors of a conservation district is composed of five members, three of whom are elected and two of whom are appointed by the

Conservation Commission.

Summary of Bill:

Downstream Transfers of Water Rights.

Before August 15, 2022, neither the Department of Ecology (Ecology) nor a county water conservancy board may approve any application for a permanent or temporary transfer of all or a portion of a water right out of certain specified Water Resource Inventory Areas (WRIAs) to a downstream WRIA.

This prohibition applies to the following WRIAs:

- WRIA 45—Wenatchee;
- WRIA 46—Entiat;
- WRIA 48—Methow;
- WRIA 49—Okanogan;
- WRIA 55—Little Spokane;
- WRIA 57—Middle Spokane; and
- WRIA 59—Colville.

After August 15, 2022, neither Ecology nor a county water conservancy board may approve any application for a permanent or temporary transfer of all or a portion of a water right out of the specified WRIAs to a downstream WRIA until the following have occurred:

- the holder of the water right sought to be transferred has provided to Ecology or the water conservancy board, as appropriate, a copy of the signed, bona fide offer to purchase the water right sought to be transferred;
- Ecology 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 WRIA from which the water right is sought to be transferred; and
- 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.

The prohibition described above does not apply in any WRIA in which a local agricultural water bank has not been established as of August 15, 2022. In addition, the prohibition does not apply to the following transfers:

- the temporary transfer out of a WRIA of all or a portion of a water right in response to a drought order;
- existing contractual obligations of the Office of the Columbia River; or
- water rights permanently transferred to trust solely for the purpose of instream flows.

Upstream Transfers of Water Rights.

Upstream transfers may be allowed both into the WRIAs listed above and within those WRIAs if they satisfy the following three criteria:

- the transfer is either into or within the mainstem of the primary river in the WRIA, or the transfer is to a tributary to the primary river in the WRIA and the water being transferred was used in the same tributary prior to being transferred downstream;
- the transfer is to a new point of diversion at or downstream of the original point of diversion for the water right; and
- the maximum quantity of water transferred upstream does not exceed the quantity historically used in that stream reach.

A water right transferred upstream pursuant to the provisions above retains its original priority date as to other water rights.

Local Agricultural Water Banks.

A conservation district located within a WRIA described above may establish a local agricultural water bank approved by Ecology and the county in which the WRIA is located, for the purpose of acquiring valid water rights in the applicable WRIA from willing water right holders at fair market value and placing such water rights in the water bank.

Any water rights acquired according to the process described above are subject to the following requirements:

- 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;
- 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 WRIA, subject to approval by Ecology;
- a water right, when not in use for irrigation in whole or in part, must be managed by the water bank; and
- 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.

A water bank established pursuant to the process described above 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 WRIA where the water right is being used.

No Impairment of Senior Water Rights.

Nothing in the act may be construed so as to allow a junior water right to impair a senior water right.

Appropriation: None.

Fiscal Note: Requested on March 2, 2021.

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