
HOUSE BILL 2866

State of Washington

66th Legislature

2020 Regular Session

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

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

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

6 NEW SECTION. **Sec. 1.** The legislature recognizes that water
7 rights are private property rights to use water and that they may be
8 transferred to others and used at a new place of use and for a new
9 purpose of use under the authority of RCW 90.03.380 or 90.44.100.
10 However, the legislature finds that transfers of water rights used
11 for irrigated agriculture from the water resource inventory area
12 (WRIA) of origin to another WRIA are not in the public interest.
13 These transfers can have serious adverse impacts on the WRIA of
14 origin, including impacts on agriculture and community
15 sustainability, and on the amount of water available for future
16 appropriation. This is particularly true where water from the WRIA
17 flows into the Columbia river and there are no WRIsAs upstream to
18 replace water that has been transferred out. Therefore, the
19 legislature intends to protect agricultural water supply, rural
20 economies, and the local public interest by prohibiting water right
21 transfers out of an upstream WRIA into a downstream WRIA where water

1 from the WRIA flows into the Columbia river and the WRIA is located
2 east of the crest of the Cascade mountains.

3 **Sec. 2.** RCW 90.03.015 and 2003 1st sp.s. c 5 s 1 are each
4 amended to read as follows:

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

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

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

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

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

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

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

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

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

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

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

17 NEW SECTION. Sec. 3. A new section is added to chapter 90.03
18 RCW to read as follows:

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

28 NEW SECTION. Sec. 4. A new section is added to chapter 90.44
29 RCW to read as follows:

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

1 NEW SECTION. **Sec. 5.** A new section is added to chapter 90.03
2 RCW to read as follows:

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

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

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

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

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

24 **Sec. 6.** RCW 90.80.055 and 2001 c 237 s 9 are each amended to
25 read as follows:

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

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

1 publication of notice of the application, receive the concurrence
2 specified in that section.

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

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

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

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

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

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