

Benton-Franklin Counties Water Conservancy Boards

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Interested Parties, Water Conservancy Boards

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SUBJECT: BCWCB-FCWCB Comments on Ecology Policy Review
Changes to the Water Right Trust/Water Banking RCW, and
Related Factors to Direct Water Right Change/Transfers

When the French King asked his economic counselors what he should do about managing land and agriculture, they replied, “laissez-faire,” let do—do not intervene in the course of natural economic forces.

The BCWCB and FCWCB members have participated in several of the water right Trust-Banking policy webinars and are submitting comments on potential RCW-WAC changes.

1. It should be highlighted that the impetus for the Ecology water right Trust-Banking policy review came from perceived negative economic impacts to subbasins, where water rights were/are being transferred to downstream points of diversion. For example, a transfer from the Methow Basin to some point on the Mainstem Columbia River. Yet a significant portion of the policy discussion has shifted to questions surrounding instream or environmental benefits. We question whether the policy review discussion is losing focus and moving off-point.
2. Regarding the economic impact question, it is unclear to us what actual, negative impacts have occurred that have been empirically documented by County Commissioners or others. It appears to us that most of the impact concerns are based on academic discussion or dystopian visions of the future. What have been the real economic impacts? Have concerned County Commissioners documented such?

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3. The BCWCB-FCWCB have been associated with about a dozen water right change/transfers from upper basin origins. Most of these have involved very small quantities of water, where: the right had been owned by an irrigation district that was no longer using the water (water left instream); orchard ground was being transformed into residential developments (water left instream); old pasture-alfalfa ground had no longer been irrigated (water left instream); an industrial facility had closed within a municipal jurisdiction (water left instream); or the OCR was moving water from Lake Roosevelt to municipal-industrial entities (water left instream).
4. It is unclear to us how select subbasins could be closed from downstream water right change/transfers, without at least a vote of consent by a majority of county residents. What County Commissioner would tell citizens that their legally recognized property rights should be voided? What exactly do County Commissioners think they will do with the non-transferrable water rights? Why should the state fund restricted movement of water rights, where downstream transfers would likely maintain, or enhance, instream benefits?
5. Within the state water right system for changes/transfers, Trusting, and Banking, there is very little that the legislature can do about “localized” economic impacts, to the extent they actually exist, that would not significantly usurp private property rights; and the changes do increase net (and local) state economic development. Water does freely move toward higher value demand; and regulated markets can functionally extract value from a community’s economic benefits and production (the result of “good intentions”).
6. The concept of a “conservation easement” in water right transfers—in effect, requiring that a portion of a water right be “left” in-basin--seems very problematic. Whatever is left on the original site likely has little value for in-basin use (and who gets it?); and the water left in-basin, until used, simply “follows” the water moving downstream. Neither an economic nor environmental good is essentially produced separate from the actual water right change/transfer. We are not sure how a conservation easement will maintain the economic viability of water right, if it is more valuable to the user to either change the use or to move the location to a downstream use. Simply “purchasing” an easement does not increase the likelihood that the current operation will become profitable. This does not protect the economy of a region but rather has the potential for having water rights become abandoned because the user cannot use them without a financial loss.
7. Water right donations for either instream flows (Trusting) or water Banking should be subject to full extent and validity requirements for beneficial use, the annual consumptive quantity verified under one year of use. So that the RCW 90.03.380 requirements are universally and consistently applied for all types of change/transfers, the ACQ requirement should be changed to one-year, peak consumptive use. Moreover, to eliminate significantly the highly contentious disputes over implementing RCW 90.14.140 with RCW 90.03.380, the five-year review period for non-use, and determining peak-year use, should be extended to

ten years for both statutes. These measures would dramatically improve water code implementation.

8. It is unsound water resources policy to do anything to limit or disrupt the existing authority of the Water Conservancy Boards; particularly where many point-to-point water right changes/transfers include instream flow purposes designations. Nor do water right holders always seek to process water rights through water Banking. Water rights can be given an instream flow designation, then later used for other purposes, after being processed by the Water Conservancy Boards.
9. If local county and legislative leaders are concerned about “community needs” and local public interests, then they should be turning to their respective Water Conservancy Boards for oversight, not a centralized state water Banking structure. The Water Conservancy Boards formation was primarily created for water marketing facilitation at the local level. Moreover, concerned citizens should request to serve on the Water Conservancy Boards.
10. In addition to providing public/stakeholder notice, some Water Conservancy Boards already provide change/transfer notices to County Commissions. This practice should be adopted by all Water Conservancy Boards, and it does not require new legislative guidance or authority. It only requires an informal agreement—a joint memorandum of understanding--among the Boards and the WRP-Ecology director.