

PROTECTION OF HEADWATER BASINS 6-19-20

Introduction

Water rights are private property rights to use water that may be transferred under the authority of RCW 90.03.380 or RCW 90.44.100. Transfers of water rights used for irrigated agriculture from one WRIA downstream to another WRIA can have serious adverse impacts on the WRIA of origin, including impacts on agriculture and community sustainability, and water available for future appropriation. (Protecting Local Economies, Lawrence J. MacDonnell, Report to the Legislature, State of Washington, November 30, 2008). This is particularly true where water from the WRIA flows into the Columbia River and there are no upstream sources of water to replace the water transferred out.

To protect agricultural water supply, rural economies and the local public interest in these headwater basins, and in recognition of the private property interest in water, we are proposing legislation that:

- (1) prohibits out-of-WRIA transfers,
- (2) allows for upstream transfers under specified conditions, and
- (3) funds a local water bank to purchase water from agricultural producers in exchange for compensation and a lease-back to continue to use the water at its current place of use.

PROHIBITION ON OUT-OF-WRIA TRANSFERS

Proposed Legislative Language

1. Ecology and County Water Conservancy Boards, authorized under Chapter 90.80 RCW, shall not approve any application for an out-of-WRIA transfer of all or a portion of a water right from the following WRIsAs:
 - 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. The prohibition on out-of-WRIA transfers would not apply to:
 - a. water permanently transferred to the Trust Water Rights Program for the purpose of instream flow,
 - b. water temporarily transferred to Trust for instream flow for a period of 5 years or less, provided the water once removed from Trust is beneficially used in the WRIA where it was used prior to the transfer, or
 - c. water temporarily transferred out of a WRIA if a drought declaration is made under RCW 43.83B.
3. The prohibition would also not apply to existing contractual obligations of Ecology's Office of the Columbia River.

4. In order to address the potential financial impact on individual producers from a prohibition on out-of-WRIA transfers, the legislature will appropriate \$_____ to each of the WRIAs listed in section 1 to establish a local water bank for purchase of agricultural water rights.

UPSTREAM TRANSFERS

In some of the WRIAs included in this proposed legislation, significant quantities of water have already been transferred downstream out of the WRIA. (E.g., WRIA 49 Okanogan _____ acre-feet since _____.) For all WRIAs where an out-of-WRIA transfer would be prohibited going forward, there is a need for the flexibility to transfer water more freely within the WRIA, including upstream, to allow for water to be used where needed.

Proposed Legislative Language

1. Upstream transfers may be allowed in WRIAs covered by this section under the following conditions:
 - a. The transfer is within the mainstem of the primary river in the WRIA, or
 - b. The transfer is in a tributary and the water being transferred was used in the tributary prior to being transferred downstream.
 - c. The transfer is to a new point of diversion at or downstream of the original point of diversion for the water right.
 - d. The maximum quantity of water transferred upstream does not exceed the amount historically used in that stream reach.

2. In order to protect instream flows, any right transferred upstream shall have a priority date that is junior to instream flows set by rule. The right will retain its original priority date as to other rights for out-of-stream uses. If instream flows are not being met, Ecology shall first regulate all other water rights junior to the instream flow. If this regulation does not result in instream flows being met, Ecology may then regulate any water right that has been transferred back upstream.

3. No changes under this section may impair existing water rights, including instream flows.

VOLUNTARY SALE OF WATER RIGHT TO LOCAL WATER BANK

The state or a non-profit entity would purchase valid water rights from a willing farmer at fair market value and place the right in a basin-specific agricultural water bank. The beneficially used portion of the water right, or a portion thereof, would then be leased back to the farmer [likely at little to no cost] for continued use by the farmer or current property owner in perpetuity. If, at any point in time, the water leased back to the farmer is no longer needed or is nearing the time for relinquishment, the water is returned to the agricultural water bank and can be re-appropriated for other agricultural uses within the previously approved area of use [and with Ecology approval].

- To ensure public benefit, all water rights purchased under this program would have to undergo a validity and extent review to confirm that the right is real wet water prior to initiating transfer proceedings through the Water Conservancy Board.
 - Local entity, trained in agricultural water law and relevant case law, would perform beneficial use review to meet a “highly likely” standard of validity and extent.
 - Formal validity and extent review by Ecology through the water right change process.
- Water right remains attached to the land it was purchased from, unless the farmer no longer needs (as much) water or the land is sold and the new owner no longer wishes to irrigate for agricultural purposes.
- The water bank manages against relinquishment with the contractual assistance of the current landowner/water right [user]. This would be accomplished by either:
 - Water right put to beneficial use for agriculture, in whole or in part; or
 - Statutory protection from relinquishment through the water bank.
- Retain quantity on-farm (Q_i (instantaneous (flow)) and Q_a (total quantity)) for highest crop-water duty and an existing or future efficiency AND increased evapotranspiration due to climate change and efficiency.
- Remainder of the consumptive portion of the valid water right may be available for other agricultural uses within the WRIA. Non-consumptive water savings from conservation efforts would be placed into the state’s Trust Water Rights Program for instream flows and/or other non-consumptive conservation related uses.
- A water right, when not in use in whole or in part, would be managed by the water bank.