

Daniel Haller

Two things for Ecology to consider as a follow up to this great meeting on May 7, 2020.

First, the data you provided is helpful. I think it would be further helpful for the group to see a break out of those 75 transfers according to public or private entities (key word search should be easy in WRTS/GWIS by "department" "district" "City" "Bureau" etc. and to see dedicated trust transfers (purchases/leases) as Bill Neve suggested to get a sense of the public magnitude of trust transfers on this issue.

Second, as we move towards solutions, I think the magnitude of this problem is manageable. I'd rather see a tracking system that allows downstream transfers to be credited 1:1 against future upstream transfers to ensure that water can indeed return to counties of origin. Attached is the start of some proposed legislation that could make that work, although I'm sure details remain to be worked through.

RCW 90.03.380

Right to water attaches to land—Transfer or change in point of diversion—Transfer of rights from one district to another—Priority of water rights applications—Exemption for small irrigation impoundments—Electronic notice of an application for an interbasin water rights transfer. (*Effective until June 30, 2021.*)

(1) The right to the use of water which has been applied to a beneficial use in the state shall be and remain appurtenant to the land or place upon which the same is used: PROVIDED, HOWEVER, That the right may be transferred to another or to others and become appurtenant to any other land or place of use without loss of priority of right theretofore established if such change can be made without detriment or injury to existing rights. The point of diversion of water for beneficial use or the purpose of use may be changed, if such change can be made without detriment or injury to existing rights. A change in the place of use, point of diversion, and/or purpose of use of a water right to enable irrigation of additional acreage or the addition of new uses may be permitted if such change results in no increase in the annual consumptive quantity of water used under the water right. For purposes of this section, "annual consumptive quantity" means the estimated or actual annual amount of water diverted pursuant to the water right, reduced by the estimated annual amount of return flows, averaged over the two years of greatest use within the most recent five-year period of continuous beneficial use of the water right. Before any transfer of such right to use water or change of the point of diversion of water or change of purpose of use can be made, any person having an interest in the transfer or change, shall file a written application therefor with the department, and the application shall not be granted until notice of the application is published as provided in RCW 90.03.280. If it shall appear that such transfer or such change may be made without injury or detriment to existing rights, the department shall issue to the applicant a certificate in duplicate granting the right for such transfer or for such change of point of diversion or of use. The certificate so issued shall be filed and be made a record with the department and the duplicate certificate issued to the applicant may be filed with the county auditor in like manner and with the same effect as provided in the original certificate or permit to divert water. The time period that the water right was banked under RCW 90.92.070, in an approved local water plan created under RCW 90.92.090, or the water right was subject to an agreement to not divert under RCW 90.92.050 will not be included in the most recent five-year period of continuous beneficial use for the purpose of determining the annual consumptive quantity under this section. If the water right has not been used during the previous five years but the nonuse of which qualifies for one or more of the statutory good causes or exceptions to relinquishment in RCW 90.14.140 and 90.44.520, the period of nonuse is not included in the most recent five-year period of continuous beneficial use for purposes of determining the annual consumptive quantity of water under this section.

(2) If an application for change proposes to transfer water rights from one irrigation district to another, the department shall, before publication of notice, receive concurrence from each of the irrigation districts that such transfer or change will not adversely affect the ability to deliver water to other landowners or impair the financial integrity of either of the districts.

(3) A change in place of use by an individual water user or users of water provided by an irrigation district need only receive approval for the change from the board of directors of the district if the use of water continues within the irrigation district, and when water is provided by

an irrigation entity that is a member of a board of joint control created under chapter [87.80](#) RCW, approval need only be received from the board of joint control if the use of water continues within the area of jurisdiction of the joint board and the change can be made without detriment or injury to existing rights.

(4) This section shall not apply to trust water rights acquired by the state through the funding of water conservation projects under chapter [90.38](#) RCW or RCW [90.42.010](#) through [90.42.070](#).

(5)(a) Pending applications for new water rights are not entitled to protection from impairment, injury, or detriment when an application relating to an existing surface or ground water right is considered.

(b) Applications relating to existing surface or ground water rights may be processed and decisions on them rendered independently of processing and rendering decisions on pending applications for new water rights within the same source of supply without regard to the date of filing of the pending applications for new water rights.

(c) Notwithstanding any other existing authority to process applications, including but not limited to the authority to process applications under WAC 173-152-050 as it existed on January 1, 2001, an application relating to an existing surface or ground water right may be processed ahead of a previously filed application relating to an existing right when sufficient information for a decision on the previously filed application is not available and the applicant for the previously filed application is sent written notice that explains what information is not available and informs the applicant that processing of the next application will begin. The previously filed application does not lose its priority date and if the information is provided by the applicant within sixty days, the previously filed application shall be processed at that time. This subsection (5)(c) does not affect any other existing authority to process applications.

(d) Nothing in this subsection (5) is intended to stop the processing of applications for new water rights.

(6) No applicant for a change, transfer, or amendment of a water right may be required to give up any part of the applicant's valid water right or claim to a state agency, the trust water rights program, or to other persons as a condition of processing the application.

(7) In revising the provisions of this section and adding provisions to this section by chapter 237, Laws of 2001, the legislature does not intend to imply legislative approval or disapproval of any existing administrative policy regarding, or any existing administrative or judicial interpretation of, the provisions of this section not expressly added or revised.

(8) 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 a change or transfer of any existing water right to enable the holder of the right to store water governed by the right.

(9) This section does not apply to a water right involved in an approved local water plan created under RCW [90.92.090](#), a water right that is subject to an agreement not to divert under RCW [90.92.050](#), or a banked water right under RCW [90.92.070](#).

(10)(a) The department may only approve an application submitted after July 22, 2011, for an interbasin water rights transfer after providing notice electronically to the board of county commissioners in the county of origin upon receipt of an application. The department must maintain information on its web site regarding interbasin water rights transfers noticed after July 22, 2011 in the same manner as in RCW 90.42.170.

(b) For the purposes of this subsection:

(i) "Interbasin water rights transfer" means a transfer of a water right for which the proposed point of diversion is in a different basin than the proposed place of beneficial use.

(ii) "County of origin" means the county from which a water right is transferred or proposed to be transferred.

(c) This subsection applies to counties located east of the crest of the Cascade mountains.

(11) A transfer of an equal or lessor quantity of water back to a County of origin may be mitigated by a previous transfer out of the County of origin after July 22, 2011.

[2011 c 112 § 3; (2011 c 112 § 2 expired June 30, 2019); 2009 c 183 § 15; 2003 c 329 § 2; 2001 c 237 § 5; 1997 c 442 § 801; 1996 c 320 § 19; 1991 c 347 § 15; 1987 c 109 § 94; 1929 c 122 § 6; 1917 c 117 § 39; RRS § 7391. Formerly RCW 90.28.090.]

RCW 90.42.170

Water banking—Department must maintain information on its web site.

(1)(a) The department must maintain information on its web site regarding water banking, including information on water banks and related programs in various areas of the state.

(b) The information maintained on the department's web site under this subsection must include a schedule or table for each water bank that shows:

(i) The amount charged for mitigation, including any fees;

(ii) If applicable, the priority date of the water rights made available for mitigation;

(iii) The amount of water made available for mitigation;

(iv) If applicable, any geographic areas in the state where the department may issue permits or other approvals to use the water rights associated with the water bank as mitigation;

(v) The processes utilized by the water bank to obtain approval from the department, or any other applicable governmental agency, to use the water rights as mitigation for new water uses; and

(vi) The nature of the ownership interest of the water right available to be conveyed to the landowner and whether the ownership interest will be recorded on the title.

(2) The department must update the schedule or table required under this section on a quarterly basis, using information provided to the department by the operator of each water bank. Any person operating a water bank in Washington must provide the information required under this section to the department upon request.