
**Agriculture & Natural Resources
Committee**

HB 1460

Brief Description: Redesigning the transfer of water rights, including the statutory process of relinquishment.

Sponsors: Representatives Buys, Taylor, Van Werven, Dent, Hayes and Condotta.

Brief Summary of Bill

- Establishes a rebuttable presumption that, in the absence of conclusive information, a water right holder has applied the water to a beneficial use so as to retain the water right.
- Directs that relinquished water rights revert to the Trust Water Rights Program and be made available for a variety of uses on a temporary basis.
- Prohibits the Department of Ecology (Ecology) from requiring the installation of new metering as part of a transfer, sale, or partial sale or transfer of a water right.
- Requires Ecology to rely on existing water use data in order to determine whether a water rights transfer can be made without damaging existing water rights.
- Restricts Ecology's retention of annual consumptive use data.
- Exempts annual consumptive use data from disclosure under the Public Records Act.

Hearing Date: 2/8/17

Staff: Robert Hatfield (786-7117).

Background:

Water Rights.

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. Exemptions

This analysis was prepared by non-partisan legislative staff for the use of legislative members in their deliberations. This analysis is not a part of the legislation nor does it constitute a statement of legislative intent.

include any withdrawal of public groundwater for stock watering purposes, for watering a lawn, or for a noncommercial garden less than one half an acre. Single or group domestic uses or industrial purposes not exceeding 5,000 gallons per day are also exempt.

The Department of Ecology (Ecology) must consider a four-part test when deciding whether to issue a new water right, specifically whether: (1) water is available, (2) a beneficial use of water would be made, (3) granting the right would impair existing rights, and (4) the proposed use would detrimentally affect the public welfare. If an application passes this test, Ecology issues a permit which establishes a time table for constructing the infrastructure to access the water and for putting water to beneficial use. When the conditions of the permit are satisfied, Ecology issues a water right certificate.

Beneficial Use.

A beneficial use of water includes, but is not limited to, use for domestic water, irrigation, fish, shellfish, game and other aquatic life, municipal, recreation, industrial water, generation of electric power, and navigation.

Water Rights Relinquishment.

A landowner who has the right to use water will lose that right if he or she does not put the water to a beneficial use over a period of five consecutive years. This is commonly known as both "relinquishment" and the "use it or lose it" principle. The water right holder can lose, or relinquish, their entire right to use any water or a portion of their original water right depending on how much water was not put to beneficial use over the five years in question.

There are, however, instances when a water right holder cannot use the water for five years and still retain his or her rights to the water. This occurs when the water right holder can show a sufficient cause for not using the water. The qualifying sufficient causes have been identified in statute and include causes such as drought, military service, legal proceedings, participation in the Trust Water Rights Program, and crop rotation practices. Water right holders that can show a sufficient cause do not relinquish their right to water even if they go more than five years without putting the water to a beneficial use.

Trust Water Rights Program.

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. Additionally, water held in trust retains its original priority date. Water enrolled in the program is held by Ecology and put to beneficial uses.

Water Banks.

Generally, 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 within the public's interest, a water banking agreement may be negotiated. This agreement describes how the Department 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.

Metering of Diversions.

The owner of any water diversion must maintain a measuring device that permits accurate measurement of the flow diverted. Ecology must require metering of diversions as a condition for all new surface water right permits. For previously existing surface water rights, Ecology has the authority and discretion, with some exceptions, to require metering of diversions.

Transfer of Water Right.

A water right may be transferred without loss of priority if such a transfer can be accomplished without damaging any existing rights. A change in place of use, point of diversion, or purpose of use may be permitted if such change does not result in any increase in the annual consumptive quantity of water used under the water right.

Disclosure of Public Records.

The Public Records Act (PRA) requires state and local agencies to make all public records available for public inspection and copying, unless a record falls within an exemption in the PRA or another statute that exempts or prohibits disclosure of specific information or records.

Summary of Bill:

Presumption of Beneficial Use.

In the absence of information conclusively demonstrating that a person has abandoned a right to divert or withdraw, or failed to beneficially use all or part of it, the Department of Ecology (Ecology) must presume that the water has been applied to beneficial use so as to retain the entirety of the water right.

Relinquishment - Ecology Notice to Water Right Holder.

When Ecology has conclusive evidence demonstrating that a water right may be subject to relinquishment, Ecology must provide certain information to the water right holder, including that the water right is subject to relinquishment to the Trust Water Rights Program.

Relinquishment to the Trust Water Rights Program.

Water rights acquired by the Trust Water Rights Program due to relinquishment, including groundwater rights, must be held in trust and be made available for irrigation, municipal, and other beneficial uses, be made available for water banking, or be used to resolve critical water supply problems.

Each year, priority use of trust water rights acquired through relinquishment may be retained by the water right holder upon notice to Ecology that the water right holder intends to put the relinquished water right to beneficial use in the upcoming year. Upon such notification, the water right holder is deemed to have retained the full extent of the water right unless and until the water right is relinquished again.

In the absence of notification to Ecology by the water right holder, the water right may be made available for irrigation, municipal, and other beneficial uses, be made available for water banking, or be used to resolve critical water supply problems.

Ecology may not apply water rights acquired through relinquishment for a period longer than one year, and Ecology's application of such a water right is not considered a permanent appropriation of the trust water.

Limitation on Metering of Diversions Upon Transfer of Water Right.

Ecology may not require the installation of new metering as part of a transfer, sale, or partial sale or transfer of a water right. Instead, Ecology must rely on existing water use data that is available to both Ecology and the applicant for the transfer in order to determine whether the transfer can be made without damaging existing water rights.

Restrictions on Retention and Disclosure of Annual Consumptive Data.

Ecology may not retain annual consumptive use data for any longer than necessary to to finalize the determination of the water right transfer application. Within 30 days of a final decision on a water rights transfer application, Ecology must transfer all consumptive use data to the Washington Department of Agriculture.

Annual consumptive water use data is exempt from disclosure under the Public Records Act.

Appropriation: None.

Fiscal Note: Available.

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