

**Considerations for the Water Policy Task Force, Executive
Committee,
Surface Water Rights Transfer Sub-Committee**

A. Below is a general outline of one way the sub-committee can look at surface water transfers:

I. Transfer for the same use within Irrigation Districts

- A. Retain the guts of 46-294 [except for (2)(a).]
- B. Retain 46-2120 – 46-2130
- C. Consider combining A&B into one section
- D. Other items to consider adding e.g. temporary transfers

II. Transfers between Uses and Preference and between locations

- A. Short term leases
- B. Long term leases
- C. Permanent transfers

B. Below are some categories of subjects that can be put into A. I. and II. above:

I. Other Issues to be addressed and applied to transfers

- A. 3rd Party Impacts
- B. Irrigation District involvement
- C. Salvage water
- D. Level of protection for existing water rights
- E. Inter-basin transfers
- F. Out of state transfers
- G. Distance
- H. Miscellaneous considerations

II. General

- A. Review of many other state statutes indicates applications for transfer must be filed with the DNR if any of the following will change:
 - 1. Type of use
 - 2. Point of diversion
 - 3. Place of use
 - 4. Additional diversion points
 - 5. Season of use

- B. Also from reading other states' statutes, I believe it is important to have a thorough definition section.
- C. Basic premise – Transfers shall not harm or injure existing water rights.
- D. The quantity to be transferred is the consumptive portion of the water right. In this situation, the quantity of a summer irrigation right does not have to be calculated but:
 - a. Can that right be transferred to a yearly or annual right? Or only summer time consumption?
- E. Protection of the hydrologic supply to surface water rights includes:
 - 1. Upstream supply,
 - 2. Groundwater inflow, and
 - 3. Upstream water user return flows
- F. Transfers from irrigation must protect:
 - 1. Transportation losses of delivery – this portion could go to the Districts incidental recharge right.
 - 2. Groundwater recharge from field
 - 3. Return flows

THOUGHTS:

- 1. I think we need to give serious consideration to Item A.1 – retain existing process for agricultural transfers within irrigation districts.
 - Q. Should 46-294 remain for other transfers within the same use or preference? Is distance a consideration?
e.g. Upstream ___ miles or to a point no other water users are impacted.
- 2. Also, we need to discuss Item A.II. and determine if we want leases only, as a first step or if we want permanent transfers. I believe certain portions of the Ag community want the former and municipal and industry would prefer the latter.
- 3. Items in B.1. are discussed in more detail below but there may be items the Subcommittee would like to include in A.I. or A.II. above. They all play a role in the approval mechanism process for transfers. The items listed are taken from various state statutes, there is no preference indicated, but they are listed for discussion.

A. Third Party Impacts

Ways to address or minimize:

1. Transfer only the consumptive portion.
2. Limit the percent of water that can be transferred from an area to protect agricultural base. Alternative – have a criteria that the transfer would not significantly effect the Agricultural base.
3. Have a criteria that the transfer is in the local public's interest.
4. Provide for compensation for agricultural areas by providing for economical development payments for communities and/or counties.
5. Provide that Irrigation Districts must consent to transfers from their District.
 - a. This would enable collection of certain costs as part of the transfer. Alternative – provide that surface irrigation company rates will be paid during the lease period.
6. Ensure the change will not increase the consumption and is for a beneficial use as defined by the state.
7. Ensure there are no alternate sources of water available for the new use.
8. Require the application to include an economic impact analysis.
9. Ensure water quality of original and new water system is maintained.
10. Ensure the transfer will not have unreasonable effects on fish and wildlife and associated wetlands.
11. Require that land water is transferred from, is re-vegetated.
12. Will not have any impacts on any state decrees, compacts or contracts.
13. The Director may attach conditions to protect water rights of others including season of use, volume of diversion, place and type of use, or other necessary conditions.
14. Provide for a public comment process on impacts to existing water rights.
15. Require that the new use must be from the same source of supply.
16. Any 3rd party state impacts to the state could be collected through filing fees.
17. Ensure that the proposed means of diversion, design, construction and operation of the works are adequate.
18. Provide that the lease of water rights does not change land use category or classification of land for tax purposes.
19. Provide for utility revenue losses to be compensated for transfers that effect hydropower generation.
20. Director may, or require, hydrological, environmental, or other studies and/or mitigation plans with any change applications.

B. Irrigation District Involvement

1. Include a provision that any transfer does not adversely impact the ability of the irrigation district to continue to provide water to the remaining customers.
2. Individuals with an irrigation district can abandon a water right by providing a notarized notice to the DNR and irrigation district. Those water rights can be transferred by the irrigation district within 3 years of notice of abandonment without adjudication.
3. Provide for irrigation District approval for transfer of all rights from the District.
4. Provide that an Irrigation District can enter into agreements for payment of assessments and may require the water right (deed) as a security for payments for waters transferred from their district.

C. Salvage Water / Conserved Water

1. Q. Can conservation water be marketed separate from the water right use water?
 - a) Not without protecting groundwater recharge and returns!
 - b) In some states it cannot be transferred, but must remain in the stream for junior water right holders.
2. Salvaged water or conserved water is that amount of consumption saved above the delivery losses, groundwater recharge, and return flows put to beneficial use within the previous 3 (5? 10?) years.
 - a) Delivery losses and groundwater recharge water rights would stay with the irrigation district.
 - b) Returns to the stream must be maintained for downstream users – rights stay with the irrigation district or state.
 - c) A water right holder can receive authorization to use a portion of the conserved consumption portion on additional lands, with 10% of the conserved consumption going to the state for maintaining stream flows or to be used to offset interstate compact degree or contractual agreements.

D. Level of protection for existing water rights

1. Only transfer the consumptive portion of the water rights
2. Timing, quantity and location of the return flows must remain the same.
3. No injury provisions apply to all existing water rights.
4. If within an irrigation district, the District must approve the transfer.
5. Ensure use of transferable consumption within the previous 3(5?) years.