

Draft Discussion Paper: Water Right Sales Disclosure

NOTE: This paper was created only for the purposes of generating discussion to inform potential legislative recommendations for Ecology's report to the legislature. None of the topics described are proposed or endorsed by Ecology.

Summary

Ecology has heard concerns that private interests are buying and owning large amounts of water rights in the state. This could lead to monopoly power, with undue influence on water prices in certain areas. It could also result in investment speculation by entities using the trust water rights program (TWRP)/water banking in a way that prioritizes private profits over public interests using a publicly owned resource.

Making all water right sales information publicly available could increase transparency, potentially exposing monopoly power and investment speculation. Under Washington law, Ecology only receives current ownership information about existing water rights when a water right holder applies with the department to change an attribute of their water right. It may be possible to determine water right sales information through the land sale reporting to county governments; in practice, however, water right sales are simply bundled into land sale reporting without differentiation.

Instituting a water right sales disclosure requirements would better align how this information is reported with how land sales are reported. It would create a new information system that would allow the public to track current ownership of the state's water rights.

Background

In Washington, water rights remain valid through ongoing beneficial use, regardless of changes in ownership. Ecology currently maintains a database of all existing water rights in Washington based on those uses and their places of use. However, this database does not track changes in ownership because the state does not currently have a requirement that simple transactions (that is, the purchase and sale of existing water rights without changing their attributes) be reported to Ecology. Water right sales of this type are typically bundled with the sale of land associated with the place of use, and the inclusion of water rights in these transactions is also not typically recorded by county assessors responsible for tracking property sales. As a result, Ecology's database maintains an accurate snapshot of places and types of use of water within the state, but does not provide accurate information about patterns of changing ownership of these water rights.

This information gap also constitutes a transaction cost in the water rights market. People and entities seeking to acquire water rights to mitigate new beneficial uses of water often struggle to identify existing water right holders. This increased search cost may lead to increased overall costs of mitigation and depressed market activity. In such a thinly traded asset market, increased transaction costs of this nature typically advantage deep-pocketed buyers over small buyers and public entities who do not have the time and resources available to hire expert consultants.

The value of water rights trading may be an ongoing debate, but this barrier to market participation can present a real impact on water availability in areas of scarce supply when market actors engage in

market-distorting or monopolistic behavior. Price disclosure provides an opportunity to identify both potential price gouging in the water rights market and potential alternative sellers who may be able to correct market inefficiencies.

Discussion

Water rights are private property and underwrite large amounts of economic activity in the state, but water itself is a public resource. Public disclosure would not encumber new or existing water rights in any way, but would provide visibility for the public as to who is using and consuming this resource. This would require a statutory change stating that all transactions of existing water rights in Washington be reported to Ecology or another state agency.

This change would require Ecology (or another agency) to create and manage new water right sales information into its existing water rights tracking system.

To effectively implement a water right sale disclosure requirement, County assessor staff would need to be trained to identify and report property transactions that include water rights. Because most water right transactions are typically bundled with land sales, these county offices will likely be the most effective intervention point to collect this data.

A water right sale disclosure requirement would improve public awareness of water right transaction, as well as improve knowledge of water right valuation. In addition, this change would result in Ecology and the public having current and accurate data of ownership of water rights for existing water uses.