

HOUSE BILL REPORT

2SSB 5199

As Reported by House Committee On: Agriculture & Natural Resources

Title: An act relating to de facto changes in water rights for irrigation purposes that involved conversion to more efficient irrigation technologies.

Brief Description: Concerning de facto changes in water rights for irrigation purposes that involved conversion to more efficient irrigation technologies.

Sponsors: Senate Committee on Ways & Means (originally sponsored by Senators Ericksen and Holmquist Newbry).

Brief History:

Committee Activity:

Agriculture & Natural Resources: 3/21/13, 3/28/13 [DPA].

Brief Summary of Second Substitute Bill (As Amended by Committee)

- Creates a new, temporary process for certain water users who have transitioned to a more efficient irrigation technology to change their place of water use with the Department of Ecology.

HOUSE COMMITTEE ON AGRICULTURE & NATURAL RESOURCES

Majority Report: Do pass as amended. Signed by 15 members: Representatives Blake, Chair; Lytton, Vice Chair; Chandler, Ranking Minority Member; MacEwen, Assistant Ranking Minority Member; Buys, Dunshee, Haigh, Hurst, Kretz, Orcutt, Pettigrew, Schmick, Stanford, Van De Wege and Warnick.

Staff: Jason Callahan (786-7117).

Background:

Water right certificates include, in addition to the quantity of water that may be withdrawn, specification as to where the water can be used, where the water is sourced from, and the purpose for which the water will be used. A water right holder can apply to the Department

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of Ecology (Department) for a change in the place of use, point of diversion, or purpose of use of a water right. A change in any of these qualities is only allowed if the change is not detrimental to another water right held by a different water user.

A change in a water right that is processed to allow for the irrigation of additional acreage is only permitted if the change does not increase the water user's annual consumptive quantity of water. This factor, the annual consumptive quantity of water, is measured as the amount of water diverted under a water right and reduced by the estimated return flows that result from the water use. These numbers are averaged based on the highest two years of water usage in the five years preceding the applicable calculation.

Summary of Amended Bill:

The Department is directed to initiate a process that enables water right holders located in a county with at least 6,000 acres in raspberry production to change the place of use on their water right certificate, permit, or claim without following the standard application and review process for such changes. To qualify for the process, the water right holder must be currently putting the associated water to a beneficial use in manner that is inconsistent with the place of use or number of acres identified on the water right certificate, permit, or claim. The change in the use of the water must have been a change from overhead irrigation to a microirrigation technology that occurred prior to January 1, 2010. The term "microirrigation technology" is defined to mean a conservation irrigation method that delivers water to the base of the plant and that allows for an increase in crop production without a corresponding increase in the total amount of water that is used consumptively.

A water right holder wishing to use the new process must have filed a water right change application, or a new water right application to cover the additional irrigated acreage, with the Department prior to the effective date of the act and must provide to the Department information relating to changes in use. The applicant must also pay applicable fees and, if requested by the Department, participate in a cost reimbursement process.

The Department must issue superseding water right documents if it finds that all of the requirements of the applicant, and for a change of use, have been satisfied. The superseding documents must indicate a beneficial use of water based on the time period prior to the change to microirrigation practices. In making these determinations, the Department may rely on evidence such as crop receipts, seed receipts, historical photographs, and metering records.

The authority to conduct the specialized change application process expires on June 30, 2020.

Amended Bill Compared to Second Substitute Bill:

The striking amendment limits the application of the bill to individuals who converted from overhead irrigation technology to microirrigation technology prior to January 1, 2010.

Appropriation: None.

Fiscal Note: Available.

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

Staff Summary of Public Testimony:

(In support) Allowing a small change in the water use documents for a small user group will allow Washington to remain a world leader in raspberry production and maintain agricultural jobs. Certain water users changed their water use to be more efficient based on direction from the Department but never had their water rights updated to reflect the change. They now face the possible loss of some of their water rights if their change applications are not processed. Water law can be confusing, so it is appropriate to have a small geographic and temporal scope in this bill.

(Other) The bill corrects a narrow problem with a narrow solution. Years ago, a war in Yugoslavia resulted in a market that encouraged some growers to switch from dairy to raspberries. They did what they were asked to do by the Department, but the Department's budget was subsequently cut and the change applications of the new raspberry growers were never processed. By the time the Department's budget rebounded, the laws had changed and processing the applications was no longer a simple task. These water users, and their water rights, are part of a larger conversation in the Nooksack River Basin.

(Opposed) None.

Persons Testifying: (In support) Bill Clarke, Whatcom Farm Friends; and John Stuhlmiller, Washington Farm Bureau.

(Other) Evan Sheffels, Department of Ecology.

(Opposed) None.

Persons Signed In To Testify But Not Testifying: None.