

SENATE BILL REPORT

SHB 2201

As of February 16, 1996

Title: An act relating to water transfers and changes.

Brief Description: Authorizing a change in the use of water made surplus by certain activities and modifying transfer provisions.

Sponsors: House Committee on Agriculture & Ecology (originally sponsored by Representatives Chandler, Mastin, Mulliken, Honeyford, Robertson, Boldt and Goldsmith).

Brief History:

Committee Activity: Ecology & Parks: 2/21/96.

SENATE COMMITTEE ON ECOLOGY & PARKS

Staff: Gary Wilburn (786-7453)

Background: Transfers and Relinquishment. The right to use water that has been applied to a beneficial use is to remain appurtenant to the land that the water is used. State law permits water rights or portions of water rights to be transferred to other uses or places if the transfer can be made without detriment or injury to existing rights. Water rights that are transferred retain the date of priority of the original right. If the transfer involves surface water supplied by an irrigation district and the transferred water remains in the district, the transfer need be approved only by the irrigation district.

If transfer is from one irrigation district to another, the involved districts must first concur that the transfer will not adversely affect the district's ability to deliver water nor impair the financial integrity of the district. Ecology is required to approve an inter-district transfer. Transfers of water rights between parcels located outside the boundaries must also be approved by the Department of Ecology. For water right transfers that are subject to approval by Ecology, public notice is to be published once a week for two consecutive weeks in the local newspaper. One consideration in approving the transfer of conserved water is whether the other existing water rights, including established instream flow, would be affected by the reduction of return flows.

In consideration for the financial assistance the state provides for a water conservation project, the state may receive a portion of the net water savings as a trust water right. Net water savings is defined as the amount of water that is conserved and usable without detriment to water rights existing at the time the water conservation project is undertaken. Under current law, water that is conserved may be transferred to other land if such transfer can be made without impairment to existing rights and the transfer is approved by the state. If a portion of a water right is not beneficially used for five consecutive years without sufficient cause recognized by statute, that portion of the right reverts to the state.

Groundwater Planning. The groundwater code permits the department to designate and manage groundwater areas, sub-areas, or depth zones to prevent the overdraft of groundwaters. In 1985, legislation was enacted that authorizes other groundwater management programs. The legislation permits local governments to be lead agencies in developing these programs.

Summary of Bill: Interdistrict Changes. When there is a request for a transfer of a water right from one district to another, the districts must concur that, in addition to existing criteria, that the proposed transfer does not adversely affect the operational integrity of either of the districts.

Intradistrict Changes. For changes in the place of use by individual water users within an irrigation district, the district's board may approve the change if the change:

1. Does not adversely affect the district's ability to deliver water to other landowners;
2. Does not require the construction by the district of diversion or drainage facilities, unless the district finds that the construction of such facilities are in the interest of the district;
3. Is consistent with the contractual obligations of the district; and
4. Will not impair the financial or operational integrity of the district.

Transfers of Surplus Waters. Transfers of surplus waters are not subject to existing water transfer law including requirements for public notice and review for impairment of existing rights. Surplus water is water previously applied to a beneficial use, but now surplus due to implementation of practices or technologies, which are more efficient than when the right was perfected. In the case of water not supplied by an irrigation district, the term includes water made surplus by a change in the crops grown. The surplus water provisions apply only to changes or expansions of agricultural uses. The change may be made without loss of the priority date of the right.

1. Intradistrict Transfers of Surplus Waters. Use of surplus water by an irrigation district is regulated solely by the board of directors of the district as follows:

1. The use must be authorized by the board of directors;
2. The board may approve the use if the use does not impair the financial or operational integrity of the district; and
3. The water made surplus through actions taken by an individual water user is not available for use as a matter of right by the individual water user making the change, but may be used by the board for the benefit of the district generally.

The district's board may approve or otherwise authorize use of surplus waters that increase the total irrigated acreage recorded with the department if notification of the department is provided. The notification provides a change in the district's water right.

2. Transfer of Surplus Nondistrict-Supplied Water. The holder of a right to use water not supplied by an irrigation district may apply the surplus water to contiguous lands. The holder must notify the department of the change, and the department must revise its records to reflect the change. The notice constitutes a change in the water right.

Ground Waters. Similar changes are made to the ground water code for transfers of surplus waters.

Relinquishment. The department may not initiate relinquishment proceedings for water rights for which a transfer or change is filed for a period of two years after the date the department makes a decision on the application.

Appropriation: None.

Fiscal Note: Not requested.

Effective Date: Ninety days after adjournment of session in which bill is passed.