

ANALYSIS OF HB 1113

House Agriculture & Ecology Committee
1997

January 20,

BACKGROUND:

Transfers and Relinquishment. 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. 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. Other transfers must be approved by the Department of Ecology (DOE). (RCW 90.03.380.)

In consideration for the financial assistance the state provides for certain water conservation projects, the state may receive a portion of the net water savings resulting from the projects as trust water rights. (RCW 90.42.030.) Although the state may acquire such net water savings, conserved water, and other rights to the use of water for its trust water right system, state statutes do not expressly provide for the transfer of conserved water under other circumstances. Indeed, 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 is relinquished. (RCW 90.14.160 - 90.14.180.) However, a related acreage expansion program set by DOE by rule as part of a groundwater management program is recognized by statute. (RCW 90.44.445.)

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. (RCW 90.44.130.)

Summary: Water Made Surplus. New rules are established for water made surplus to a water right through the implementation of practices or technologies that are more efficient or more water-use efficient than those under which the right was perfected and for water made surplus through a change in the crops grown with the water. These rules apply only to a change of an agricultural use of water to another agricultural use or expanded agricultural use of water. (Section 2(1).)

If the water is not supplied by an irrigation district, the person who holds the water right may use the water on other lands owned by the person that are contiguous to the lands upon which use of the water was authorized before this change in use. The person who holds the water right is to notify the DOE of the change. The notification provides a change in the person's water

right, and the department is to revise its records for the right accordingly. (Section 2(3).)

The provision regarding water made surplus through changes in crops does not apply to water supplied by an irrigation district. (Section 2(1)(b).) If water supplied by such a district is made surplus through an individual water user's implementation of efficiency practices or technologies, the individual water user does not have a right to the use of the surplus water. However, the surplus water may be used for the benefit of the district generally. The use of such surplus water is regulated solely by the irrigation district and must be approved or authorized by the district. If the use of such surplus water results in the total irrigated acreage within the district exceeding the irrigated acreage recorded with the DOE for the district's water right, the board is to notify the department of the change. The notification provides a change in the district's water right. If an irrigation district is within a federal reclamation project and the use of such surplus water results in the total acreage within the project exceeding the total irrigated acreage recorded with the DOE for the project's water right, the district is to notify the department of the change. The notification provides a change in the project's right. However, the change cannot exceed the total irrigated acreage authorized for the project by the United States. (Section 2(2).)

Whether the water is or is not supplied by an irrigation district, the priority date for the right to use the surplus water is the same as for the original water right. (Section 2(4).) These new rules regarding the use of surplus water do not authorize the use of a junior water right in a manner that impairs or interferes with the use of a senior water right. (Section 2(5).) These provisions regarding the use of surplus water do not apply in an area with a groundwater management program with an acreage expansion program set by rule that is in effect on the effective date of this bill. (Section 5.)

Transfers in General. The rights expressly protected from being detrimentally affected by a transfer or change do not include those represented by applications for new water rights or undeveloped permits for water use. (Sections 1(6) and 3(3).) The Department of Ecology may not initiate relinquishment proceedings regarding a water right for which an application for a transfer or change is filed until two years after the department has approved or denied the application. (Sections 1(7) and 3(4).) A provision of the surface water code regarding processing an application for a new water right expressly does not apply to transfers or changes of water rights. (Section 4.)

When an irrigation district is requested, under current law, to approve a transfer or change regarding water provided by the district, or when it is requested, under this bill, to approve changes for surplus water, the district must consider the effect of the transfer or change on the financial and operational integrity of the district. (Section 1(2)&(3).)