

ANALYSIS OF ESSB 5527

House Agriculture & Ecology Committee
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BACKGROUND:

Water Use Permits, Transfers, Changes, and Amendments. With the adoption of the surface water code in 1917 and the groundwater code in 1945, new rights to the use of water are established under a permit system. (RCW 90.03.250 and 90.44.050.) However, certain uses of groundwater not exceeding 5,000 gallons per day are exempted from this permit requirement. (RCW 90.44.050.) The permit system is based on the prior appropriation doctrine that "first in time is first in right." Other laws authorize the state to establish minimum flows and levels for streams and lakes. (Chapters 90.22 and 90.54 RCW.) The permit system and the state's laws for managing water resources are administered by the Department of Ecology (DOE).

State law permits the use of water under a water right or portion of a water right to be transferred, changed, or amended if the transfer, change, or amendment can be made without detriment or injury to existing rights. If a change in place of use involves surface water supplied by an irrigation district and the water remains in the district, the change need be approved only by the irrigation district. Other transfers, changes, and amendments of water rights must be approved by the DOE. (RCW 90.03.380.)

Trust Water Rights. The state's trust water right system allows the transfer of water rights to the DOE for management in the system. Trust water rights acquired under the statewide system are to be used by the DOE for instream flows, irrigation, municipal, or other beneficial uses consistent with applicable regional plans for pilot planning areas or to resolve critical water supply problems. (RCW 90.42.040.) Among the water rights that may be transferred to the trust system are rights to certain net water savings—resulting from water conservation projects for which the state provides financial assistance. (RCW 90.42.030.)

SUMMARY:

The Agricultural Water Conservation Incentives Act is enacted. (Section 9.)

Transfers of Evaporative Loss and Additional Water Savings. A person with a valid water right who installs a water-efficient irrigation system may apply for a transfer of the reduction in evaporative loss, plus any additional net water savings, for the irrigation of an additional parcel of previously unirrigated land, land with less senior water rights, or land that lacks a full and

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sufficient supply. The application must be processed based upon the same criteria as if the transfer were to be made to another person. (Section 8.) If the person finances the installation of such a water-efficient irrigation system, the person may also enter into a contract with another person for the transfer of water saved. A contract may allow for a permanent transfer of a portion of the original water right, or for lease agreements with set expiration dates. (Section 3.)

In determining the amount that is transferrable, the DOE must allow the transfer of an amount equal to the reduction in the evaporative loss. (Section 3.) For this purpose, a reduction in evaporative loss" is the amount of water that is no longer lost to further use as a result of changing from a conventional irrigation system to a water-efficient irrigation system. It includes the reduction in the amount of water consumed through evaporation or through transpiration by nonproductive plants such as cover crops, but it does not include any water that contributed to return flows used to satisfy existing rights. (Section 2(5).)

Transfers of Additional Net Water Savings. In addition, the DOE must evaluate whether there are additional net water savings that result directly from installation of the water-efficient irrigation system that could be transferred to the purchaser without detriment to other existing water users. (Section 3.) This "net water savings" is as defined in the statewide trust water right system. It is the amount of water that is determined to be conserved and usable within a stream reach for other purposes without: impairment or detriment to water rights existing at the time that a water conservation project is undertaken, reducing the ability to deliver water, or reducing the supply of water that otherwise would have been available to other existing water uses. (Section 2(3).)

Priority Date; Processing Transfers. A person applying for a transfer of a water right must comply with current laws regarding the transfer of surface water rights. The transferred portion has the same date of priority (seniority) as the water right from which it originated. However, the transferred portion of the right is inferior in priority to the original right unless otherwise provided by the parties in the contract. (Section 3.) The application must be accompanied by a fee set by current law for such transfers. (Section 5.)

The reduction in evaporative loss is a readily transferrable component of net water savings. The DOE may not delay the approval of the transfer of the water that constitutes the reduction in evaporative loss while determining additional net water savings. The DOE must maintain a record of these contracts with the certificate of water right for the transferred water. (Section 3.)

The use of water supplied by an irrigation district that is saved through installation of a qualifying water-efficient irrigation system is regulated solely as provided by the board of directors of the irrigation district. (Section 3.)

Rules; Calculations. The DOE may adopt rules for procedures to be used to facilitate the processing of requests for these water right transfers and to establish a streamlined procedure to quantify the reduction in the evaporative loss. In developing streamlined procedures, the DOE may use data from the United States Natural Resource and Conservation Service or the cooperative extension service for calculating reduction in evaporative loss in various regions of

the state. The rules may establish procedures for the DOE to make preliminary findings that can be used as an initial basis for developing contracts by applicants. (Section 4.)

In processing applications for transfers of these portions of water rights, if the DOE is unable to conclusively determine the validity of the original water right, it may include a presumption of validity in the certificate of water rights. The presumption must provide to the contract purchaser the same right to the use of water embodied in the original water right. The presumption may not be used as evidence in a general adjudication proceeding for water rights. (Section 6.)

A person with a water right may voluntarily enter into a contract with the DOE. The DOE may use funds authorized for the purchase of water savings made available under these procedures. The methods of calculating the amount of water transferrable to another party and those for determining the amount of water that is transferrable to the state must be the same. If additional net water saved is available for the benefit of only a stream segment, the calculations may be made on a case-by-case basis while assuring no detriment to existing water users occurs. (Section 7.)

Transfers in General. When the DOE approves a transfer or change of a surface water right, it is to issue the applicant an authorization to make the transfer or change. When this action is completed, the DOE is to issue a water right certificate for the transfer or change. (Section 10(1).)

The board of directors of an irrigation district may approve such a change by an individual water user in the place of use for district supplied water. The board may do so if it determines that the change: (1) will not adversely affect the district's ability to deliver water to other landowners; (2) will not require the construction by the district of diversion or drainage facilities unless the board finds that the construction by the district is in the interest of the district; (3) will not impair the financial or operational integrity of the district; and (4) is consistent with the contractual obligations of the district. (Section 10(3).)