

ANALYSIS OF HB 1222

HOUSE AGRICULTURE & ECOLOGY COMMITTEE

February 1, 2001

- Expressly allows water conservancy boards to process the same types of modifications of water rights as may be processed by the Department of Ecology.
- Waives liability of water conservancy boards arising from the water right modifications they may consider and waives the liability of their commissioners, agents and employees from related non-contractual acts or omissions.
- Makes decisions of water conservancy boards to deny applications subject to review in the same manner as currently required for its decisions to approve applications.

Background:

Background: Modifications of Existing Water Rights. There are several fundamental elements of a water right. One is its priority (or seniority). The priority date of a right secured under the state's water right permit system is the date the permit application leading to the right was filed. Other elements of the water right include: the amount of water that may be withdrawn from a particular water source under the right, the time of year and point from which the water may be withdrawn, the type of water use authorized under the right (such as an agricultural or municipal use), and the place that the water may be used.

Certain of these elements of a water right may be modified with the approval of the Department of Ecology (DOE) if the modification would not impair other existing water rights. Such an approved modification does not affect the priority date of the right. Alterations in water rights are referred to in statute as transfers, changes, and amendments of water rights. (See RCW 90.03.380 and 90.44.100.)

Conservancy Boards. Historically, applications for modifying existing water rights were filed with and processed by the DOE and its predecessor agencies. An alternative processing system was established with the enactment of legislation in 1997 authorizing water conservancy boards. These boards may be created by a county legislative authority with the approval of the Department of Ecology for the purpose of expediting voluntary water transfers within the county. (RCW 90.80.020 and .030.)

Before taking actions on applications, board members, called commissioners, must comply with training requirements established by the Director of the DOE by rule. (RCW 90.80.040.) If the board approves an application, the Director has 45 days in which to review the board's action to affirm, reverse, or modify it. With the consent of the parties, this review period may be extended an additional 30 days. If the Director fails to act within this time period, the action taken by the board is considered to be final, although it is subject to appeal in the same manner as other water right decisions of the Director. (RCW 90.80.080.)

Recent Superior Court Case. The Director of the DOE has adopted rules to implement the statutes regarding water conservancy boards. In these rules, the type of modification of water rights that may be approved by a board is defined broadly: the board may consider the same types of modifications as may the DOE under the surface and ground water codes. (WAC 173-153-030(5).) In a Thurston County Superior Court case, the breadth of that authority was challenged. The superior court found the authority of the boards to be much more limited. As described by the Assistant Attorney General for the DOE assigned to the case, the court found that conservancy boards . . . are limited to reviewing applications to modify the place of use or the point of diversion/withdrawal. They may not review applications involving any other modification, including a change in the purpose of use of the water right.– (Water Resources Court Cases– Kathryn L. Gerla, dated December 2000.) The DOE has appealed the court's ruling.

Liability. The laws authorizing water conservancy boards also waive the liability of the county and the DOE regarding claims of damages arising from the water right modifications approved by such a board.

Summary:

Jurisdiction of the Board. The types of applications for modifying water rights that may be processed by the board is expressly stated broadly. They may process the same types of modifications as may the DOE under the surface and ground water codes. It is clarified that the withdrawals–of water for which the board may consider a modification include both withdrawals of ground water and diversions of surface water. (Section 1.)

Liability. The waiver of liability provided by law to the county and the DOE for claims of damages arising from water right modifications approved by a water conservancy board is

now extended to the board itself. The waiver also applies to decisions of the board to deny applications for such modifications. (Section 5.) No action may be brought against a commissioner, agent or employee of a water conservancy board for any non-contractual acts or omissions of the board or its commissioners, agents, or employees which are related to modifications of water rights it may consider. (Section 4.)

Review of Board's Decisions. An action taken by a water conservancy board to deny an application for a water right modification is subject to review and approval by the Director of the DOE in the same manner as prescribed for board actions approving such an application. (Section 3.)

Appropriation: None.

Fiscal Note: Requested on January 29, 2001.

Effective Date: Ninety days after adjournment of regular session.