

ANALYSIS OF HB 1957

House Agriculture & Ecology Committee
1999

February 22,

- Requires each application for a transfer to be conditionally approved by a water conservancy board before it can be acted upon by DOE.
- Broadens the conflict of interest restrictions that apply to the commissioners of water conservancy boards.
- Separates the requirements for processing applications for transfers of existing rights from those for processing applications for new water right permits.
- Requires training for commissioners of boards to be provided by or through DOE.

BACKGROUND: Legislation enacted in 1997 authorizes a county to create a water conservancy board subject to approval by the Department of Ecology (DOE). (RCW 90.80.020) Such a board consists of three commissioners who are appointed by the county commissioners for 6-year terms and is a unit of government, but does not have the power to tax or exercise eminent domain. (RCW 90.80.050 and 90.80.060) Such a board may give preliminary approval to water transfers, subject to final approval by the DOE. If the DOE fails to act on the board's approval within certain deadlines, the board's action is final. (RCW 90.80.080) A commissioner may not participate in board decisions until he or she has successfully completed required training, which must include training in state water law and hydrology. (RCW 90.80.040 and 90.80.050) A commissioner may not participate in the board's review or decision of an application in which he or she has an ownership interest or certain municipal water system interest. (RCW 90.80.120)

A water right is appurtenant to the land or place that the right is used. However, the Surface and Ground Water Codes allow the right to be changed, transferred, or amended to change the place of use, the point of diversion or withdrawal, or purpose of use. These changes, transfers, and amendments to existing surface and ground water rights are often referred to collectively as transfers.— Such a transfer requires the approval of the DOE and must be done without detriment or injury to existing rights, whether junior or senior to the right being transferred. A right transferred in this manner retains the date of priority (seniority) of the

Prepared for the House Agriculture & Ecology Committee
by Ken Hirst, (786-7105)
Office of Program Research

existing right. (RCW 90.03.380 and 90.44.100.)

In a case decided by the State Supreme Court in 1993, one of the issues discussed by the court was the range of existing rights– to be protected from detriment or injury under the statute authorizing amendments to groundwater rights. Specifically, do individuals in the application line for new water right permits have rights– that must be considered? The court stated:

. . . the Court of Appeals refused to characterize applications as existing rights. This ruling too was error. Permits are issued in the same order as the applications are received, thus the DOE concluded correctly that an individual’s place in line for these permits is an existing right to be considered under this statute.– (Schuh v. Department of Ecology 100 Wn.2d 180, at page 187.)

In general, the statutes governing applications for new water right permits require the DOE to make determinations as to whether water is available for the proposed use, what beneficial uses the water is to be applied to, and whether the requested use conflicts with existing water rights or threatens to prove detrimental to the public interest. (RCW 90.03.290.)

SUMMARY: *Each application for a change or amendment to or other transfer of an existing water right must be reviewed by the water conservancy board within the jurisdictional boundaries of which the place of use of the right is located. The DOE is to conduct its review of such a transfer only if the board conditionally approves the transfer. Decisions on applications must be made by the board in the order in which the applications are filed with it. The DOE must make decisions regarding the conditional approvals forwarded to it by a board in the order in which they are filed with the DOE by the board. (Sections 3, 4, and 5.) It is clarified that the transfers– that a water conservancy board may conditionally approve expressly include amendments to existing groundwater rights and include temporary changes in existing rights. (Section 6.)*

If two or more applications for transfers are pending before a board and a commissioner of the board has certain ownership or municipal water system interest in one of the applications and the approval or disapproval of another of the applications would affect the approval of the application in which the commissioner has such an interest, the commissioner cannot participate in the board’s review or decision regarding that other application. (Section 8.)

The DOE may process applications for transfers of existing water rights as a matter of higher priority than applications for new water rights. An application for a new water right for which a permit decision has not yet been made is not considered in determining the rights to be protected from injury, impairment, or detrimental effect by the transfer. (Section 1.) The requirements of the water code regarding applications for new water right permits do not apply to such transfers. (Section 2.)

Training courses for commissioners of the boards must be provided by or through the DOE. (Section 7.)