HOUSE BILL REPORT
HB 1113

As Reported By House Committee On:
Agriculture & Ecology

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: Representatives Chandler, Mastin, McMorris, Koster, Delvin, Mulliken, Johnson, Schoesler and Honeyford.

Brief History:
Committee Activity:
Agriculture & Ecology: 1/20/9, 1/27/97, 2/10/97 [DPS].

HOUSE COMMITTEE ON AGRICULTURE & ECOLOGY

Majority Report: The substitute bill be substituted therefor and the substitute bill do pass. Signed by 8 members: Representatives Chandler, Chairman; Parlette, Vice Chairman; Schoesler, Vice Chairman; Anderson, Assistant Ranking Minority Member; Delvin; Koster; Mastin and Sump.

Minority Report: Do not pass. Signed by 3 members: Representatives Linville, Ranking Minority Member; Cooper and Regala.

Staff: Kenneth Hirst (786-7105).

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).

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. 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. However, a related acreage expansion program set by the DOE by rule as part of a groundwater management program is recognized by statute.

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.

Summary of Substitute Bill: 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.

If the water is not supplied by an irrigation district, the person who holds the water right may use the water on other parcels of land owned by the person that are contiguous to the parcel 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.

The provision regarding water-made surplus through changes in crops does not apply to water supplied by an irrigation district. 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.

It is presumed that a change made in a water right regarding the use of surplus water does not impair or interfere with the use of a water right that is senior to the right being changed. However, if within one year of being notified of a change, the

department determines that the change would impair or interfere with the use of a senior water right, the department is to notify the person making the change and file a notice with local the superior court. This notice does not stay the change made to the water right. The superior court reviews the department's determination de novo. The burden of proof in overcoming the presumption of non-impairment is on the department. It can be overcome only through the application of scientific data. At the conclusion of its review, the court may cancel the change, modify the conditions or extent of the change, or affirm the change. The presumption regarding non-impairment does not apply with regard to a claim made in superior court by a person with a water right that a change made under this section by a junior water right holder impairs or interferes with the use of the person's senior water right.

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. 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. 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.

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. 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. 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.

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.

Substitute Bill Compared to Original Bill: Added by the substitute bill are the provisions regarding the department's authority to challenge a change made to a water right based on the department's determination that the change would impair a senior water right and establishing a presumption of non-impairment regarding the review of that determination. The substitute bill restricts to contiguous parcels,– rather than lands,– the use of non-irrigation district water-made surplus. The substitute bill also clarifies how the records of a right in the water rights claims registry are revised to reflect a change made to the right under the bill, and clarifies the provisions of the original bill making the provisions regarding surplus water inapplicable to groundwater management areas with acreage expansion limitations.

Appropriation: None.

Fiscal Note: Available.

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

Testimony For: (1) The bill provides incentives for becoming more efficient in the use of water. (2) The bill recognizes the role of irrigation districts in acting on behalf of the irrigators in the district. (3) The bill is consistent with the notion that water is reused while it is within an irrigation project; for example, the water used by the South Columbia Basin Irrigation District is water recycled within the Columbia Basin Project.

Testimony Against: (1) If the new use of water-made surplus through efficiencies includes any water other than conserved water that is otherwise irretrievably lost, the use of the water may affect other right holders and third parties. It may reduce the water otherwise available to them through ground water recharge or return flows. (2) The transfer provisions of the bill reverse current policy that requires that the rights of people in the permit line be considered when a transfer is approved. The constitutional rights of those with undeveloped permit rights may be impaired by the bill. (3) The wasting water is not a part of a person's right to beneficially use water.

Testified: Mike Schwisow, Washington Water Resources Association (in favor). Judy Turpin, Washington Environmental Council (opposed).