

ANALYSIS OF HB 2187

House Agriculture & Ecology Committee
1999

February 22,

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| <ul style="list-style-type: none">- Allows any person or entity to acquire a water right for instream use through the transfer, change, or amendment of an existing right.- Exempts a water right held for instream use from relinquishment-for-nonuse requirements. |
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BACKGROUND: Minimum instream flows and reservations of water that have been set by rule by the Department of Ecology (DOE) constitute appropriations under the water code. The priority (seniority) date of an instream water right set by rule is the date it was established by rule. (Chapters 90.22 and 90.54 RCW and RCW 90.03.345.)

A water right is appurtenant to the land or place 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 in the right, often referred to as transfers, require the approval of DOE and must be done without detriment or injury to existing rights. A right transferred in this manner retains the priority date of the existing right. (RCW 90.03.380, 90.030.390 and 90.44.100.) A right may also be transferred to the state for management by DOE as a trust water right. Among the uses expressly authorized for such trust water rights are instream uses. (Chapters 90.38 and 90.42 RCW.)

SUMMARY: A water right for an instream use may be established through the approval of a transfer, change, or amendment of a water right under the state's current water transfer laws. A water right established for instream use in this manner may expressly be held by any person or entity. (Section 1.) A water right held for instream use is exempt from the relinquishment-for-nonuse provisions of water law. (Section 2.)

If a water right acquired by the state for the state's trust water right systems is expressly conditioned to be for instream use, it must be managed in that manner. A water right conveyed to the state as a gift must be managed for public purposes to ensure that the gift qualifies as a deduction for federal income tax purposes for the person who gave it. (Sections

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