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**Agriculture & Natural  
Resources Committee**

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**HB 1538**

**Brief Description:** Regarding water resources.

**Sponsors:** Representatives Schoesler, Holmquist, Benson, Clements, Woods, Delvin, Kristiansen, Chandler, Armstrong, Cox, Condotta, Skinner and Anderson.

**Brief Summary of Bill**

- Alters the "annual consumptive quantity" of water that may be spread and confines the use of the term to spreading.
- Identifies a general category of agricultural use of water within which changes of use do not require approval.
- Exempts certain water storage and use from requirements for reservoir and secondary use permits.
- Allows relinquishment to be found only under formal relinquishment or general adjudication proceedings, and specifies the amount of water to be considered as beneficially used when relinquishment is considered.
- Extends the number of years of non-use of water that causes relinquishment to 15 years (from 5 years).
- Establishes a 15-year statute of repose for initiating actions to find that relinquishment has occurred.
- Provides new and expands existing exemptions from relinquishment requirements.
- Identifies the place of use for a public water system's water right and removes certain restrictions on the number of persons or connections it may serve.
- Defines "municipal water suppliers" for the purposes of determining relinquishment and identifies when their rights are in good standing.
- Identifies the withdrawals from an "exempt well" that are limited to 5,000 gallons/day.

- Prohibits the DOE from revoking or diminishing certificates and provides exceptions to the prohibition.
- Alters the type of modifications of groundwater rights that may be approved and allows certain conjunctive use of surface and ground water rights without approval.
- Expands the purposes for which interties may be developed and used.
- Expands the types of trust water right acquisitions for which expedited processing is to be provided.
- Creates a water infrastructure and stewardship sub-chapter of the public works laws, creates an account for agriculture, salmon, and humans, and provides for the allocation of monies from the account.

**Hearing Date:** 2/12/03

**Staff:** Kenneth Hirst (786-7105).

**Background:**

Water Rights. A water right has several elements or conditions that identify limitations on the use of water under the right. One is its priority. 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.

In the past, many water right certificates were issued by the state for municipal use once the main withdrawal and distribution works had been constructed for using the water, but before all of the water was actually put to use. Under this "pumps and pipes" philosophy, a municipality could develop its actual use over time, without affecting its certificated water right. In a recent case involving the water right of a private developer, the state's Supreme Court stated that a final water right certificate cannot be issued for the developer's right for a quantity of water that has not actually been put to beneficial use. The court stated that it declined to address issues concerning municipal water suppliers in the context of the case. However, in a draft policy that the Department of Ecology (DOE) circulated and subsequently withdrew, the DOE stated its conclusion that the holdings of the court in the case apply to all water rights, including municipal water rights.

Transfers. Certain of the elements or conditions of a water right may be modified with the approval of the DOE. These modifications are referred to in the water codes as transfers, changes, and amendments. Where a county or counties have created a water conservancy board, the board may process applications for transfers and may act on the applications. A board's decision regarding an application is subject to approval by the DOE. Approving a modification does not affect the priority date of the right. The modification cannot be approved if it would impair other existing water rights, whether junior or senior.

Watershed Planning. The watershed planning law enacted in 1998 establishes a process for the development of watershed plans under a locally initiated planning process.

Water System Plans. The State Board of Health is directed by state law to adopt rules regarding public water supply systems. Under these rules, certain public water systems are required to submit water system plans or small water system management programs to the Department of Health (DOH) for review and approval. Other law requires the development of coordinated water system plans for critical water supply areas.

Public Works Board. The Public Works Board is composed of 13 members appointed by the Governor representing certain statutorily specified sectors. It administers a public works assistance account from which monies may be appropriated by the Legislature to make loans and give financial guarantees to local governments for public works projects and to provide state matching monies for projects receiving certain federal funding. Each year, the Board submits to the Legislature a list of projects, prioritized using certain statutorily provided considerations, which it recommends be funded. The Department of Community, Trade, and Economic Development (DCTED) provides staff support for the Board.

### **Summary of Bill:**

"Annual consumptive quantity." The period used for calculating the annual consumptive quantity of water that may be transferred or changed is altered. It is now determined during the year of greatest use within the most recent 15 year period of continuous beneficial use. It represents only the consumptive use portion of the amount of water that may be spread to provide water for both existing and new or expanded uses. It does not define either the extent of the right or the total amount of water that may be transferred or changed, nor does it apply to any formal modification of the right that may be required to accommodate crop rotation. (Section 1(1).)

General Category of an Agricultural Use of Water. The right to use water for any beneficial use within the general category of an agricultural use includes the right to use the water, without applying to any governmental entity for approval, for any other beneficial use within the general category of an agricultural use. The general category of an agricultural use of water includes use for stock watering, agricultural irrigation, processing agricultural commodities into agricultural products, and other agricultural uses. (Sections 1(4) and 15(6).)

Exemptions from Reservoir Permits. The following do not require a reservoir or secondary permit from the DOE for the storage and use of stored water: rain barrels and similar facilities for capturing runoff from roofs and other hard surfaces on a single residential, commercial, or industrial property or public facility when the total amount of storage does not exceed 10,000 gallons and the water stored is intended to be put to beneficial use; facilities to recapture and reuse irrigation return flow for a single farm operation if the acreage irrigated is not increased; off-stream ponds filled from a separate source not exceeding 10 acre feet in capacity; excavated ponds intercepting the water table; storm water management storage facilities if no beneficial use is made of the captured water; and excavated municipal water reservoirs, water towers, and other similar facilities that are integral to a water supply system's distribution system. (Section 2.)

Relinquishment not Part of Transfer Process. The DOE's review of an application for the formal modification of a surface or ground water right must not include a consideration of potential relinquishment of the water right or a portion of the right through prior non-use. The DOE's receipt or consideration of the application cannot be cause for it to initiate relinquishment proceedings for prior non-use of the water right. (Section 1(7)(b).)

Exemptions from Relinquishment. Non-use of water caused by any of the following is exempted from relinquishment requirements: the destruction of diversion and other facilities essential to use of the water by a cause not within the control of the water right holder as long as good faith repair or replacement efforts are made; or foreclosure, bankruptcy, or economic hardship. Also exempted is non-use of water that occurs when an application formally to modify the water right is before the DOE. Current exemptions are expanded. Non-use resulting from any conservation measure is exempted as is non-use from any short-term or long-term crop rotation. The exemption for temporary non-use caused by certain weather conditions now applies to any non-use or reduced use occurring when use of water from the water right was not necessary due to climatic conditions if the water right holder had the facilities for the full amount and was ready, willing, and able to use the full amount of water. (Section 3.)

Relinquishment - Statute of Repose. Relinquishment may now occur only if the non-use of a water right or a portion of the right occurs within 15 years of the date relinquishment proceedings are commenced by the DOE or of the date a general adjudication proceeding for water rights is commenced. (Sections 3(2)(i), 4 and 5(3).)

Relinquishment - When Found & Period of Non-use; Retroactivity. Relinquishment may be found to occur only as part of a formal relinquishment proceeding or as part of a general adjudication proceeding for water rights. (Sections 5(2), 6, 7 and 8.) The period during which continuous non-use of a water right or portion of a right causes relinquishment, unless otherwise exempted, is extended to 15 years (from five years). (Sections 6, 7 and 8.) These provisions apply retroactively, except with regard to determinations of relinquishment made by the Pollution Control Hearings Board or a court before their effective date. (Section 27.)

Relinquishment - Amount Beneficially Used. For the purpose of determining relinquishment, the amount of water that has been beneficially used under a water right on an annual basis is the amount used within the limits of the right during the year in which the greatest volume of water was used under the right during the most current 15-year period. (Section 9.)

Public Water System - Service. For a public water system, statements regarding the number of service connections or population to be served that appear on water right documents regarding the system's right are not attributes limiting the water right. (Section 10(3).) The place of use for the right is the larger of: the place of use listed on the water right certificate or the statement of claim for the right; or the service area identified in the water system plan submitted to or approved by the DOH for the system. (Section 10(1) & (2).)

Municipal Water Suppliers. A municipal water supplier has a minimum of 50 years from the latest approval of its water system plan to put to use its water rights identified for reasonably anticipated future use; it may have additional time based on the particular facts and circumstances. Two non-exclusive measures of whether a municipal water supplier is

prosecuting its water right with reasonable diligence are specified. They are: installed system capacity; and that the right has been or is identified to meet existing or reasonably anticipated future needs in an approved water system plan. (Section 12.)

An entity that qualifies as a municipal water supplier for these purposes and that qualifies for an exemption from relinquishment provided by current law is identified. It is a water purveyor that: owns or operates a public water system that is entitled or obligated to serve existing and additional customers and uses within one or more approved water service areas, as allowed under an applicable land use plan; and has an approved water system plan. Any beneficial use of water that is or is anticipated to be provided by a municipal water supplier is a municipal use of water. It includes water held to meet future demands or to meet state requirements for back-up supplies. (Section 11.)

Exempt Wells. The provisions of the "exempt well" statute that limit the withdrawals from such wells to 5,000 gallons/day do not apply to stockwatering, but do apply to watering a lawn and to watering a non-commercial garden not exceeding ½ acre in size. The DOE has no authority to require metering or measuring of the withdrawals from any exempt well. (Section 13.)

Revoking Certificates. A water right certificate may not be revoked or diminished without specific statutory direction to do. This prohibition does not apply if: the right represented by the certificate has been relinquished through a formal relinquishment proceeding or a general adjudication proceeding for water rights and the action taken represents that relinquishment; or the certificate was issued with ministerial errors or was obtained through the misrepresentation of the completion of the project or the quantity appropriated. Limitations on this latter authority are specified. None of these authorities includes revoking, diminishing, or adjusting a certificate based on any change in policy regarding the issuance of certificates occurring since the certificate was issued. (Section 14 and 15(4).)

Modifying Groundwater Rights. The purpose of use (not just the "manner" of use) of a groundwater right may be altered through an amendment of the right approved by the DOE. A modification of the right may not increase the amount of water that may be withdrawn under the right (rather than may not "enlarge" the right). (Section 15.)

Conjunctive Use. Surface and ground water rights held by the same person may be conjunctively used without an approved modification of the rights to maintain flows in streams during portions of the year of generally reduced flows. However, the total quantity of water used under the rights on an annual basis must remain within the total quantity of water authorized under the rights and other water rights existing when the conjunctive use is initiated cannot be impaired. (Section 16.)

Interties. Interties are no longer prohibited from being used to develop new sources of water supply to meet future demand. They may also expressly be used for acquiring water for primary or secondary supplies. (Section 17.)

Smaller Scale Adjudications. Although resolving uncertainty regarding water rights in entire regions may be required from time to time, initiating and conducting general adjudication procedures for water rights adjudications in smaller geographic areas to settle rights against

smaller bodies of water is to be given high priority in managing water resources. (Section 18.)

Expediting Processing for Additional Trust Water Rights. The procedures identified in the trust water laws for donations that assist instream flows and for certain leases also apply to donations or leases of other water rights for temporarily enhancing instream flows where either: existing agricultural water rights are donated or leased for the trust water system to preserve the opportunity for future agricultural use; or existing industrial water rights for lands designated as being industrial lands are donated or leased to preserve the opportunity for future industrial use. (Section 19 and 20.)

Water Infrastructure and Stewardship. A "water infrastructure and stewardship" sub-chapter is created in the public works laws. It creates an appropriated account in the State Treasury for agriculture, salmon and humans. Monies from the account may be used only for activities to develop water storage projects for multiple purposes, and to lease water, ensure safe drinking water, increase municipal and agricultural water conservation, promote water reuse, and implement projects developed through locally based watershed planning. The account retains its interest earnings. (Sections 22, 23(1), 25, and 26.) With certain exceptions, the proceeds of any bonds that may be authorized by the sub-chapter are to be placed in the account.

Funds from the account are to be appropriated as follows:

- 50% for water storage and conveyance projects for multiple instream and out-of-stream purposes. The DCTED must establish criteria for a grant and loan program for the construction, planning, design, and studies necessary for water storage and conveyance projects and must contract with the Public Works Board to administer the grants and loans.
- 25% is to be deposited into the Public Works Assistance Account for safe drinking water and reclaimed water projects. Storage facilities within the distribution works of a drinking water system are covered by this allocation rather than the allocation for storage.
- 10% for agricultural water conservation projects and instream flows.
- 7½% for leasing water to meet instream flow levels needed by fish.
- 7½% for implementing projects developed under the laws for locally initiated watershed planning. (Section 23(1).)

The percentage of the local match for a capital project that is required to receive this state funding must be the same for all types and categories of capital projects. If an agricultural water conservation project is provided funding and water available under a water right involved in the project is to be dedicated to the state, the dedication must be in the form of a lease of water for a period that is not more than the period during which the elements of the conservation project are estimated to operate effectively and efficiently. The quantity of water dedicated expressed as a percentage of the total water available under the right must not exceed the percentage of the total cost of the conservation project provided by the state. (Section 23(2) & (3).)

The Legislature may authorize expenditures from account to pay for the costs of establishing and administering the water infrastructure programs. The amount of funding for this purpose

must not exceed 1% of the total amount of bonds sold in any calendar year. (Section 23(4).) Appropriations of moneys from the account for capital projects, including planning, engineering, and other studies for such projects, must be made to the Public Works Board. Before November 1st of each year, the Board must submit to the Governor and the Legislature a prioritized list of projects that are recommended for funding. The Board approves and disburses grants and loans from such appropriations. (Section 24.)

**Appropriation:** None.

**Fiscal Note:** Requested on February 10, 2003.

**Effective Date:** The bill takes effect ninety days after adjournment of session in which bill is passed.