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**Agriculture & Natural Resources  
Committee**

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**HB 3033**

**Brief Description:** Regarding the agricultural use of water.

**Sponsors:** Representatives Chandler, Grant, Schoesler and Armstrong.

**Brief Summary of Bill**

- Authorizes certain changes in water rights within the general category of an agricultural use of water without state approval and provides an expedited process for reviewing other such changes.
- Provides for the issuance of water right permits for certain existing stock watering uses of water.
- Establishes a Stock Watering Account, the monies from which may be used to acquire, lease, or otherwise provide water for stock watering purposes in certain watersheds.

**Hearing Date:** 2/4/04

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

**Background:**

A water right has several elements or conditions that identify limitations on the use of water under the right. Certain of the elements or conditions of a water right may be modified with the approval of the Department of Ecology (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 making these modifications to the rights and may act on the applications. A board's decision regarding an application is subject to approval by the DOE. Approving such a modification does not affect the priority date of the right. A transfer, change, or amendment cannot be approved if it would impair other existing water rights, whether junior or senior. (RCW 90.03.380 and 90.44.100.)

The Ground Water Code was enacted in 1945. In general, it requires a water right permit for any new withdrawal of ground water after June 6, 1945. However, the 1945 code exempted certain new withdrawals from this permit requirement. The code currently states the exemption as follows:

". . . any withdrawal of public ground waters for stock-watering purposes, or for the watering of a lawn or of a noncommercial garden not exceeding one-half acre in area, or for single or group domestic uses in an amount not exceeding five thousand gallons a day, or [as specified for a Whitman County pilot project], or for an industrial purpose in an amount not exceeding five thousand gallons a day, is and shall be exempt. . . ." (RCW 90.44.050.)

Last year, the state's Court of Appeals (Division II) decided a case involving the application of the exemptions provided by the 1945 code. In its decision, the court found that a commercial nursery, as part of the nursery industry, falls within the exemption provided for industrial uses of ground water not exceeding 5,000 gallons per day. In reaching this conclusion, the court interpreted the exemptions from permit requirements provided by the statute, as it existed before the addition of an exemption for the Whitman County pilot project, as follows:

"The overall scheme of this statute [1945 code] is to require a permit except for certain 'small withdrawals.' The 1945 legislature defined a 'small withdrawal' as (1) any amount of water for livestock; (2) any amount of water for a lawn or for a noncommercial garden of a half acre or less; (3) not more than five thousand gallons per day for domestic use; and (4) not more than five thousand gallons per day' for an industrial purpose.'" (*Joo Il and Keum Ja Kim v. Pollution Control Hearings Board, et al.*, 115 Wn. App. 157 (2003).)

### **Summary of Bill:**

Changes within an Agricultural Use of Water. A surface or ground water right that has been applied to any beneficial use within the general category of an agricultural use may be changed to another agricultural use, within the other limitations of the water right. The general category of an agricultural use of water includes the beneficial uses of water for agricultural irrigation, frost protection, watering livestock, processing agricultural commodities, dust suppression, cleaning agricultural animals and agricultural equipment and facilities, and confined animal feeding operations with applicable land use and water quality permits.

A change in the type of crop irrigated or from one agricultural use to another agricultural use that does not involve a change in the season of water use may be made without seeking approval.

A change from one agricultural use to another that involves a change in the season of water use may be made after providing notice and an opportunity for the DOE to review it. The notice must describe the proposed change and provide evidence of the beneficial use of the right. The water right holder may proceed with the change unless the DOE notifies the water right holder within 20 days that the change raises concerns regarding potential impairment to other existing water rights. The Director of the DOE may extend the 20-day period by an additional 15 days if notice is provided to the water right holder within the 20-day period and the water right holder consents.

There is a rebuttable presumption of no impairment of other water rights if the season of use is to be changed from a period that is more critical for other water rights and stream flows to a period that is less critical. If the DOE determines that the proposed change raises concerns regarding impairment to other water rights, the proposed change may not proceed under this procedure.

The DOE's determination is not appealable. If the change is not allowed, the water right holder may subsequently apply for a change in the right under the more traditional transfer, change and amendment process. In making a decision under the more traditional process, the DOE is not

bound by its earlier determination, which may not result in a presumption of impairment of any water right. (Section 1.)

Stock Watering. Any existing withdrawal of ground water for stock watering purposes that is not otherwise embodied in a water right permit, certificate, or claim must be deemed a water right in good standing and must receive an agricultural water permit under this chapter if: the use of water exceeding the 5,000 gallons per day as a daily average over the period of a year is filed by the water user with the DOE by July 1, 2006, and the filing is accompanied by proof of beneficial water use based on meter records, livestock numbers, or other appropriate means; the water used does not exceed the quantity or rate listed in a permit so granted; and the water use remains within the general category of an agricultural use of water. (Section 2.)

The Stock Water Account (Account) is created in the custody of the State Treasurer. Money in the Account may only be used by the DOE to acquire, lease, or otherwise provide water for stock watering purposes in certain watersheds. These are the watersheds where local economics and the cost of water do not allow agricultural interests to compete with other interests for the purchase or lease of water rights. Water rights acquired must be held in the state trust water rights program until leased for stock watering purposes. Revenues derived from such leases must be placed in the Account. The DOE must seek federal and local funds to augment state funding for the Account. (Section 3.)

If the further diversion or withdrawal of water for stock watering purposes cannot be accomplished without significant instream flow impacts, the DOE may allocate funds to purchase or lease water rights that will benefit instream flow needs and provide for stock watering purposes.

**Appropriation:** None.

**Fiscal Note:** Requested on 2/2/04.

**Effective Date:** The bill contains an emergency clause and takes effect immediately.