

HOUSE BILL REPORT

SHB 2099

As Reported By House Committee On:

Agriculture & Ecology

Title: An act relating to an exemption from relinquishment of a water right for nonuse resulting from the operation or pendency of legal proceedings.

Brief Description: Allowing an exemption from relinquishment of a water right for nonuse resulting from the operation or pendency of legal proceedings.

Sponsors: By House Committee on Agriculture & Ecology (originally sponsored by Representatives G. Chandler and Linville).

Brief History:

Committee Activity:

Agriculture & Ecology: 1/18/00, 1/21/00, 2/4/00 [DP2S].

Brief Summary of Second Substitute Bill

- Provides prospectively an exemption from relinquishment for the non-use of a water right if judges issue certain orders during general adjudication proceedings for water rights or during quiet title actions.
- Provides retroactively to October 12, 1977, an exemption from relinquishment for non-use for surface water rights that are the subject of claims in the proceeding for the Yakima river basin.

HOUSE COMMITTEE ON AGRICULTURE & ECOLOGY

Majority Report: The second substitute bill be substituted therefor and the substitute bill do pass. Signed by 9 members: Representatives G. Chandler, Republican Co-Chair; Linville, Democratic Co-Chair; Koster, Republican Vice Chair; B. Chandler; Delvin; Fortunato; Grant; Schoesler and Sump.

Minority Report: Do not pass. Signed by 2 members: Representatives Cooper, Democratic Vice Chair and Reardon.

Staff: Kenneth Hirst (786-7105).

Background:

If a person abandons or voluntarily fails to use beneficially all or any part of the person's water right for five successive years, the right or portion unused is relinquished and reverts to the state. A procedure has been established under which the Department of Ecology (DOE) may determine, and the Pollution Control Hearings Board may confirm, that a water right has reverted to the state for non-use.

A number of exemptions from this relinquishment requirement are listed by statute. One of these applies if the non-use occurs as the result of the operation of legal proceedings. In a January 1999 decision, the Washington Supreme Court stated that the statutory construction of the exemption requires more than involvement in legal proceedings, it requires that the non-use of water be attributable to the legal proceedings, that is, it requires that the legal proceedings prevent the use of the water. The superior court in Yakima County has been conducting a general adjudication proceeding for surface water rights in the Yakima river basin since 1977. The judge in that adjudication has recently made rulings regarding relinquishment based on the supreme court's decision.

Summary of Second Substitute Bill:

Provides prospectively an exemption from relinquishment for the non-use of a water right during general adjudication proceedings for water rights or during quiet title actions. The exemption applies if the superior court issues an order excusing or prohibiting a person from exercising the right during the adjudication or quiet title action.

Provides retroactively to October 12, 1977, an exemption from relinquishment for non-use for surface water rights that are the subject of claims in the adjudication or surface water rights in the Yakima river basin.

Second Substitute Bill Compared to Original Bill: The prospective application of the exemption provided by the substitute bill applies in the second substitute only to a general adjudication for water rights or a quiet title action (rather than to such an adjudication and any other legal proceedings concerning the water right or appurtenant real property) and only if a superior court issues an order excusing or prohibiting the use of the right. In the second substitute, the exemption of current law provided for the operation of legal proceedings is reinstated and an emergency clause is added.

Appropriation: None.**Fiscal Note:** Not requested.

Effective Date of Substitute Bill: The bill contains an emergency clause and takes effect immediately.

Testimony For: (1 Substitute bill) The purpose of the law was to toll the relinquishment clock during legal proceedings. All of the parties to the Yakima adjudication relied on the judge's decision that relinquishment would not be part of the proceeding and based on that decision, approximately half of the water users have had their rights approved without relinquishment in the conditional final orders issued to date. Now, the judge is applying the supreme court's decision to the other water rights raising equal protection issues. Similar rights and situations should not have different rules applied to them. The bill provides the certainty needed in the Yakima adjudication and upholds the Superior Court judge's earlier ruling. People should have been able to rely on the judge's earlier ruling. Without the bill, holders of thousands of rights will have to demonstrate non-relinquishment, extending the adjudication for years more. One irrigation district relinquished water rights based in part on the return flows of others over which it has no control. The recent decisions discourage conservation; everyone must use as much water as they can, even if they really do not need it, just to protect their right to water in water short years.

Testimony Against: (1 Substitute bill) Consideration of the bill should await the conclusion of the Yakima general adjudication. The exemption provided by the substitute bill is overly broad. Applying the bill retroactively could adversely affect third parties who have benefitted from the courts' recent decisions. The Arizona Supreme Court has overturned a state law that attempted to change similar provisions of law while an adjudication was on-going.

Testified: (In support) (1st Substitute bill) Mike Schwisow, Washington Water Resources Association; Tim Davis, Cascade Irrigation District; Tony Jantzer, Kittitas Reclamation District; Rick Dieker, Yakima Basin Water District; Walter Benner, Yakima-Tieton Irrigation District; Larry Martin, Yakima Tides and Irrigation; Kathleen Collins, Washington Water Policy Alliance; Dick Ducharme, Building Industry Association of Washington, Yakima Growers and Shippers Association and Wenatchee Traffic Association; and Mary Burke, Washington Cattlemen's Association.

(Opposed) (1 Substitute bill): Jeff Scheuster, Yakama Nation; Judy Turpin, Washington Environmental Council; and Ken Slattery, Department of Ecology.