

HOUSE BILL REPORT

HB 2614

As Reported By House Committee On:
Agriculture & Ecology

Title: An act relating to the effect on water rights of water use restrictions in response to listing of species as threatened or endangered under federal law.

Brief Description: Expanding sufficient cause for nonuse of water rights.

Sponsors: Representatives G. Chandler, Parlette, Linville, Sump, Schoesler and Ruderman.

Brief History:

Committee Activity:

Agriculture & Ecology: 2/1/00, 2/4/00 [DPS].

Brief Summary of Substitute Bill

- Provides an example of a directly imposed federal restriction which, if it causes the non-use of a water right, is "sufficient cause" for not using the water and exempts the right from being voluntarily relinquished.

HOUSE COMMITTEE ON AGRICULTURE & ECOLOGY

Majority Report: The substitute bill be substituted therefor and the substitute bill do pass. Signed by 14 members: Representatives G. Chandler, Republican Co-Chair; Linville, Democratic Co-Chair; Cooper, Democratic Vice Chair; Koster, Republican Vice Chair; Anderson; B. Chandler; Delvin; Fortunato; Grant; Reardon; Schoesler; Stensen; Sump; and Wood.

Staff: Kenneth Hirst (786-7105).

Background:

In general, if a person abandons his or her water right or voluntarily fails to use the right for five successive years, the person relinquishes the right or the portion of the right abandoned or not used. However, exemptions from this requirement are provided in two forms: (1) outright exemptions from these statutory relinquishment

provisions, and (2) a list of "sufficient causes" for the voluntary non-use. The "sufficient causes" provide exemptions from relinquishment. One of these sufficient causes arises if the non-use is the result of federal laws imposing land or water use restrictions. This exemption applies if the federal restrictions apply directly or through the voluntary enrollment of a landowner in a federal program implementing those laws, or acreage limitations, or production quotas.

Abandonment of a water right is the intentional relinquishment of the right. In a 1997 decision, the state's Supreme Court adopted the general rule that, under the common law theory of abandonment of water rights, long periods of non-use raise a rebuttable presumption of intent to abandon a water right.

Summary of Substitute Bill:

An example is provided of a directly imposed federal restriction that qualifies as a "sufficient cause" for the non-use of a water right and, therefore, exempts the non-use from voluntary relinquishment. It is any restriction on the diversion or use of water imposed by the federal or state government or by a unit of local government in response to the listing of a species as being threatened or endangered under the federal Endangered Species Act, during the time the species is listed.

Substitute Bill Compared to Original Bill: The example provided by the original bill no longer includes, in the substitute bill, a restriction that is "threatened" to be imposed.

Appropriation: None.

Fiscal Note: Not requested.

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

Testimony For: (Original bill) Some have indicated that the content of this bill is how the current law would be interpreted. It is important to ensure the law is interpreted this way throughout the state by passing the bill.

Testimony Against: (Original bill) The bill should not apply to restrictions that are "threatened" to be imposed, or the bill could apply state-wide. The bill could delay the clarification of who has a water right. A better approach would be to use the trust water right system.

Testified: (In support) (Original bill) Kathleen Collins, Washington Water Policy Alliance.

(Commented) (Original bill) Dick Ducharme, Yakima Growers and Shippers Association and Building Industry Association of Washington.

(With concerns) (Original bill) Carl Samuelson, Department of Fish and Wildlife; and Judy Turpin, Washington Environmental Council.