

ANALYSIS OF HB 2099

House Agriculture & Ecology Committee
1999

February 22,

- Expressly broadens an exemption from relinquishment provided for the non-use of a water right resulting from the operation of legal proceedings.

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. (RCW 90.14.160 through 90.14.180.) A procedure has been established under which the Department of Ecology may determine and the Pollution Control Hearings Board may confirm that a water right has reverted to the state for non-use. (RCW 90.14.130.)*

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. (RCW 90.14.140(1)(d).) In a recent decision, the State Supreme Court discussed the applicability of this exemption in the case of a development delayed during general adjudication proceedings conducted in the Yakima River basin. The court stated that the statutory construction of the exemption requires more than involvement in legal proceedings, it . . . requires that the nonuse of water be attributable to the legal proceedings, i.e., that the legal proceedings prevent the use of the water.- The court added that . . . while development plans may have been delayed as a result of the litigation, it is not clear whether beneficial use of the water for other purposes was prevented while the litigation was pending.- (R.D. Merrill Co. v. P.C.H.B. Slip Opinion (January 1999) at Page 25.)

SUMMARY: *The exemption from relinquishment of a water right provided by law for non-use resulting from the operation of legal proceedings is modified. The exemption now applies if the non-use occurs as a result of the operation or pendency of a general adjudication proceeding initiated under the surface or groundwater code or other legal proceedings concerning the water right or appurtenant real property.*

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