

House Bill Analysis

SHB 2614

HOUSE AGRICULTURE AND ECOLOGY COMMITTEE

February 1, 2000

- 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.

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. (RCW 90.14.160 - 90.14.180.) 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. These 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. (RCW 90.14.140(1)(f).)

Abandonment of a water right is the *intentional* relinquishment of the right. In its *Okanogan v. Town of Twisp* decision, the state's Supreme Court adopted the general rule that, under the common law theory of abandonment of water rights, long periods of nonuse raise a rebuttable presumption of intent to abandon a water right. (133 Wn. 2d 769 (1997) at page 783.)

SUMMARY:

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 or threatened to be 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.