

# House Bill Analysis

## HB 2735

HOUSE AGRICULTURE AND ECOLOGY COMMITTEE

January 27,  
2000

- Defines when a failure to use a water right is voluntary and, therefore, qualifies as a cause for a person to lose the water right for failing to use it.
- Alters the qualifying period of time for exemptions from the relinquishment-for-nonuse statutes.

### **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. (RCW 90.14.140.) Examples of the sufficient causes that provide exemptions for the voluntary non-use of water include: drought or unavailability of water, certain military service, and the operation of legal proceedings.

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:**

The type of voluntary failure to use a water right that, absent an exemption, triggers the relinquishment-for-nonuse provisions of water law is defined. It is a nonuse of water by the owner of a water right for a period of 25 or more consecutive years that occurs as a result of factors within the control of the water user. A failure to use water is *involuntary* when it is exercised in response to factors beyond the control of the water user, such as cyclical weather

patterns or the unintended presence of water from a source not within the control of the water user. (Section 1(1)(b).)

The sufficient causes– that provide an exemption from relinquishment-for-nonuse of a water right must now exist for at least 25 consecutive years or the exemption is not provided. (Section 1(1)(a).)