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HOUSE BILL 2504

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State of Washington

58th Legislature

2004 Regular Session

By Representatives Schoesler, Grant, Holmquist, Cox, Newhouse, Hinkle, Chandler, Sump and McMorris

Read first time 01/15/2004. Referred to Committee on Agriculture & Natural Resources.

1 AN ACT Relating to water policy in regions with regulated  
2 reductions in aquifer levels; amending RCW 90.44.445; reenacting and  
3 amending RCW 90.14.140; and adding new sections to chapter 89.12 RCW.

4 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF WASHINGTON:

5 NEW SECTION. **Sec. 1.** A new section is added to chapter 89.12 RCW  
6 to read as follows:

7 (1) The legislature finds that conserved water from the developed  
8 portions of the federal Columbia basin project can provide an immediate  
9 source of surface water to offset a limited portion of ground water  
10 depletions within the undeveloped portions of the federal project  
11 extending the availability of ground water for domestic, municipal,  
12 industrial, and agricultural uses. The department of ecology has  
13 adopted rules establishing the Odessa ground water management subarea  
14 and a management policy for the area in chapters 173-128A and 173-130A  
15 WAC, respectively. A majority of the land within the subarea lies  
16 within the federal Columbia basin project. A primary purpose of the  
17 rules was to manage ground water depletions that are occurring as a  
18 result of the department's decision to allow continued deep well  
19 agricultural irrigation in anticipation that development of the federal

1 Columbia basin project would continue at its historic pace and that  
2 project water would replace ground water and recharge the depleted  
3 aquifer.

4 (2) The legislature also finds that recent studies have documented  
5 water conservation in areas served by project irrigation districts as  
6 a result of distribution system lining and piping and use of more  
7 efficient conveyance system technology.

8 NEW SECTION. **Sec. 2.** A new section is added to chapter 89.12 RCW  
9 to read as follows:

10 It is the intent of the legislature that the department of ecology  
11 enter into agreements with the United States and Columbia basin project  
12 irrigation districts regarding the allocation of water conserved from  
13 within areas currently served by project waters to deep well irrigated  
14 lands within the federal Columbia basin project and for other  
15 authorized project beneficial uses. The department may provide the  
16 irrigation districts data identifying areas with the most serious  
17 ground water depletions. The irrigation districts shall consider and  
18 may rely on the department's data and recommendations in making  
19 allocation decisions to offset groundwater withdrawals consistent with  
20 the operational constraints of the distribution system.

21 **Sec. 3.** RCW 90.14.140 and 2001 c 240 s 1, 2001 c 237 s 27, and  
22 2001 c 69 s 5 are each reenacted and amended to read as follows:

23 (1) For the purposes of RCW 90.14.130 through 90.14.180,  
24 "sufficient cause" shall be defined as the nonuse of all or a portion  
25 of the water by the owner of a water right for a period of five or more  
26 consecutive years where such nonuse occurs as a result of:

- 27 (a) Drought, or other unavailability of water;
- 28 (b) Active service in the armed forces of the United States during  
29 military crisis;
- 30 (c) Nonvoluntary service in the armed forces of the United States;
- 31 (d) The operation of legal proceedings;
- 32 (e) Federal or state agency leases of or options to purchase lands  
33 or water rights which preclude or reduce the use of the right by the  
34 owner of the water right;
- 35 (f) Federal laws imposing land or water use restrictions either

1 directly or through the voluntary enrollment of a landowner in a  
2 federal program implementing those laws, or acreage limitations, or  
3 production quotas;

4 (g) Temporarily reduced water need for irrigation use where such  
5 reduction is due to varying weather conditions, including but not  
6 limited to precipitation and temperature, that warranted the reduction  
7 in water use, so long as the water user's diversion and delivery  
8 facilities are maintained in good operating condition consistent with  
9 beneficial use of the full amount of the water right;

10 (h) Temporarily reduced diversions or withdrawals of irrigation  
11 water directly resulting from the provisions of a contract or similar  
12 agreement in which a supplier of electricity buys back electricity from  
13 the water right holder and the electricity is needed for the diversion  
14 or withdrawal or for the use of the water diverted or withdrawn for  
15 irrigation purposes;

16 (i) Reduced withdrawals of ground water under a water right if the  
17 source of the water for the right is an aquifer for which the  
18 department has adopted rules establishing a ground water subarea  
19 management policy that specifies an authorized rate of decline in the  
20 spring static water level of the aquifer. If water from a federal  
21 irrigation project is delivered for use by a person who holds such a  
22 ground water right, the provisions of this subsection (1)(i) apply to  
23 reduced withdrawals under the ground water right only if: The delivery  
24 is designed to reduce the rate of decline in the static water level of  
25 the aquifer; and the total number of acres irrigated by the person  
26 under the ground water right and through the use of water delivered  
27 from the federal project does not exceed the number of acres authorized  
28 to be irrigated under the person's water right permit or certificate  
29 for the use of water from the aquifer;

30 (j) Water conservation measures implemented under the Yakima river  
31 basin water enhancement project, so long as the conserved water is  
32 reallocated in accordance with the provisions of P.L. 103-434;

33 ((+j)) (k) Reliance by an irrigation water user on the transitory  
34 presence of return flows in lieu of diversion or withdrawal of water  
35 from the primary source of supply, if such return flows are measured or  
36 reliably estimated using a scientific methodology generally accepted as  
37 reliable within the scientific community; or

1       (~~(k)~~) (l) The reduced use of irrigation water resulting from crop  
2 rotation. For purposes of this subsection, crop rotation means the  
3 temporary change in the type of crops grown resulting from the exercise  
4 of generally recognized sound farming practices. Unused water  
5 resulting from crop rotation will not be relinquished if the remaining  
6 portion of the water continues to be beneficially used.

7       (2) Notwithstanding any other provisions of RCW 90.14.130 through  
8 90.14.180, there shall be no relinquishment of any water right:

9       (a) If such right is claimed for power development purposes under  
10 chapter 90.16 RCW and annual license fees are paid in accordance with  
11 chapter 90.16 RCW;

12       (b) If such right is used for a standby or reserve water supply to  
13 be used in time of drought or other low flow period so long as  
14 withdrawal or diversion facilities are maintained in good operating  
15 condition for the use of such reserve or standby water supply;

16       (c) If such right is claimed for a determined future development to  
17 take place either within fifteen years of July 1, 1967, or the most  
18 recent beneficial use of the water right, whichever date is later;

19       (d) If such right is claimed for municipal water supply purposes  
20 under chapter 90.03 RCW;

21       (e) If such waters are not subject to appropriation under the  
22 applicable provisions of RCW 90.40.030;

23       (f) If such right or portion of the right is leased to another  
24 person for use on land other than the land to which the right is  
25 appurtenant as long as the lessee makes beneficial use of the right in  
26 accordance with this chapter and a transfer or change of the right has  
27 been approved by the department in accordance with RCW 90.03.380,  
28 90.03.383, 90.03.390, or 90.44.100;

29       (g) If such a right or portion of the right is authorized for a  
30 purpose that is satisfied by the use of agricultural industrial process  
31 water as authorized under RCW 90.46.150; or

32       (h) If such right is a trust water right under chapter 90.38 or  
33 90.42 RCW.

34       (3) In adding provisions to this section by chapter 237, Laws of  
35 2001, the legislature does not intend to imply legislative approval or  
36 disapproval of any existing administrative policy regarding, or any  
37 existing administrative or judicial interpretation of, the provisions  
38 of this section not expressly added or revised.

1       **Sec. 4.** RCW 90.44.445 and 1993 c 99 s 1 are each amended to read  
2 as follows:

3       (1) In any acreage expansion program adopted by the department as  
4 an element of a ground water management program, the authorization for  
5 a water right certificate holder to participate in the program shall be  
6 on an annual basis for the first two years. After the two-year period,  
7 the department may authorize participation for ten-year periods. The  
8 department may authorize participation for ten-year periods for  
9 certificate holders who have already participated in an acreage  
10 expansion program for two years. The department may require annual  
11 certification that the certificate holder has complied with all  
12 requirements of the program. The department may terminate the  
13 authority of a certificate holder to participate in the program for one  
14 calendar year if the certificate holder fails to comply with the  
15 requirements of the program.

16       (2) Where the source of water for a ground water right is an  
17 aquifer for which the department has adopted rules establishing a  
18 ground water subarea management policy that specifies an authorized  
19 rate of decline in the spring static water level of the aquifer and  
20 water from a federal irrigation project is delivered for use by a  
21 person who holds such a ground water right: The delivery of the water  
22 from the federal project must be designed to reduce the rate of decline  
23 in the static water level of the aquifer; and the total number of acres  
24 irrigated by the person under the ground water right and through the  
25 use of water delivered from the federal project must not exceed the  
26 number of acres authorized to be irrigated under the person's water  
27 right permit or certificate for the use of water from the aquifer.

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