
SENATE BILL 5877

State of Washington 60th Legislature 2007 Regular Session

By Senators Honeyford, Hargrove, Clements, Rasmussen, Morton,
Parlette, Schoesler and Holmquist

Read first time 02/05/2007. Referred to Committee on Water, Energy &
Telecommunications.

1 AN ACT Relating to clarifying when a water right is relinquished;
2 amending RCW 90.03.380; reenacting and amending RCW 90.14.140; adding
3 a new section to chapter 90.03 RCW; creating a new section; and
4 providing an effective date.

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

6 NEW SECTION. **Sec. 1.** The legislature finds that certainty and
7 clarity in water resource administration is critical to the economic
8 vitality of the state, and that requiring water right holders to keep
9 water use records in perpetuity frustrates achievement of the certainty
10 and clarity needed for effective water resource management.

11 The legislature also finds that requiring water right holders to
12 prove full use of water rights over long periods of time contributes to
13 fear and uncertainty among all water users in a watershed, and is
14 overly costly and burdensome for water right holders and agencies
15 considering water right applications.

16 The legislature further finds that these extended recordkeeping and
17 burden of proof concerns create strong disincentives for more efficient
18 use of water and preclude many water right holders from seeking to

1 donate or transfer water that would benefit the instream resources and
2 economic vitality of the state.

3 Therefore the legislature declares that, in order to improve the
4 certainty and clarity of water resource management in the state,
5 holders of perfected water rights shall no longer be required to show
6 beneficial use of a water right beyond the most recent fifteen-year
7 period.

8 **Sec. 2.** RCW 90.14.140 and 2001 c 240 s 1, 2001 c 237 s 27, and
9 2001 c 69 s 5 are each reenacted and amended to read as follows:

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

14 (a) Drought, or other unavailability of water;

15 (b) Active service in the armed forces of the United States during
16 military crisis;

17 (c) Nonvoluntary service in the armed forces of the United States;

18 (d) The operation of legal proceedings;

19 (e) Federal or state agency leases of or options to purchase lands
20 or water rights which preclude or reduce the use of the right by the
21 owner of the water right;

22 (f) Federal laws imposing land or water use restrictions either
23 directly or through the voluntary enrollment of a landowner in a
24 federal program implementing those laws, or acreage limitations, or
25 production quotas;

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

32 (h) Temporarily reduced diversions or withdrawals of irrigation
33 water directly resulting from the provisions of a contract or similar
34 agreement in which a supplier of electricity buys back electricity from
35 the water right holder and the electricity is needed for the diversion
36 or withdrawal or for the use of the water diverted or withdrawn for
37 irrigation purposes;

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

4 (j) Reliance by an irrigation water user on the transitory presence
5 of return flows in lieu of diversion or withdrawal of water from the
6 primary source of supply, if such return flows are measured or reliably
7 estimated using a scientific methodology generally accepted as reliable
8 within the scientific community; or

9 (k) The reduced use of irrigation water resulting from crop
10 rotation. For purposes of this subsection, crop rotation means the
11 temporary change in the type of crops grown resulting from the exercise
12 of generally recognized sound farming practices. Unused water
13 resulting from crop rotation will not be relinquished if the remaining
14 portion of the water continues to be beneficially used.

15 (2) Notwithstanding any other provisions of RCW 90.14.130 through
16 90.14.180, there shall be no relinquishment of any water right:

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

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

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

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

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

31 (f) If such right or portion of the right is leased to another
32 person for use on land other than the land to which the right is
33 appurtenant as long as the lessee makes beneficial use of the right in
34 accordance with this chapter and a transfer or change of the right has
35 been approved by the department in accordance with RCW 90.03.380,
36 90.03.383, 90.03.390, or 90.44.100;

37 (g) If such a right or portion of the right is authorized for a

1 purpose that is satisfied by the use of agricultural industrial process
2 water as authorized under RCW 90.46.150; ((~~or~~))

3 (h) If such right is a trust water right under chapter 90.38 or
4 90.42 RCW; or

5 (i) If the full or partial nonuse of such a right occurred prior to
6 the fifteen-year period preceding the date upon which relinquishment
7 proceedings are commenced under RCW 90.14.130 or the date upon which
8 adjudication proceedings are commenced under RCW 90.03.105 through
9 90.03.245 or 90.44.220.

10 (3) In adding provisions to this section by chapter 237, Laws of
11 2001, the legislature does not intend to imply legislative approval or
12 disapproval of any existing administrative policy regarding, or any
13 existing administrative or judicial interpretation of, the provisions
14 of this section not expressly added or revised.

15 NEW SECTION. Sec. 3. A new section is added to chapter 90.03 RCW
16 to read as follows:

17 The provisions of this act do not apply to surface water rights and
18 claims already undergoing adjudication for which final orders or
19 conditional final orders have not yet been issued.

20 **Sec. 4.** RCW 90.03.380 and 2003 c 329 s 2 are each amended to read
21 as follows:

22 (1) The right to the use of water which has been applied to a
23 beneficial use in the state shall be and remain appurtenant to the land
24 or place upon which the same is used: PROVIDED, HOWEVER, That the
25 right may be transferred to another or to others and become appurtenant
26 to any other land or place of use without loss of priority of right
27 theretofore established if such change can be made without detriment or
28 injury to existing rights. The point of diversion of water for
29 beneficial use or the purpose of use may be changed, if such change can
30 be made without detriment or injury to existing rights. A change in
31 the place of use, point of diversion, and/or purpose of use of a water
32 right to enable irrigation of additional acreage or the addition of new
33 uses may be permitted if such change results in no increase in the
34 annual consumptive quantity of water used under the water right. For
35 purposes of this section, "annual consumptive quantity" means the
36 estimated or actual annual amount of water diverted pursuant to the

1 water right, reduced by the estimated annual amount of return flows,
2 averaged over the two years of greatest use within the most recent
3 five-year period of continuous beneficial use of the water right.
4 Before any transfer of such right to use water or change of the point
5 of diversion of water or change of purpose of use can be made, any
6 person having an interest in the transfer or change, shall file a
7 written application therefor with the department, and the application
8 shall not be granted until notice of the application is published as
9 provided in RCW 90.03.280. If it shall appear that such transfer or
10 such change may be made without injury or detriment to existing rights,
11 the department shall issue to the applicant a certificate in duplicate
12 granting the right for such transfer or for such change of point of
13 diversion or of use. The certificate so issued shall be filed and be
14 made a record with the department and the duplicate certificate issued
15 to the applicant may be filed with the county auditor in like manner
16 and with the same effect as provided in the original certificate or
17 permit to divert water.

18 (2) If an application for change proposes to transfer water rights
19 from one irrigation district to another, the department shall, before
20 publication of notice, receive concurrence from each of the irrigation
21 districts that such transfer or change will not adversely affect the
22 ability to deliver water to other landowners or impair the financial
23 integrity of either of the districts.

24 (3) A change in place of use by an individual water user or users
25 of water provided by an irrigation district need only receive approval
26 for the change from the board of directors of the district if the use
27 of water continues within the irrigation district, and when water is
28 provided by an irrigation entity that is a member of a board of joint
29 control created under chapter 87.80 RCW, approval need only be received
30 from the board of joint control if the use of water continues within
31 the area of jurisdiction of the joint board and the change can be made
32 without detriment or injury to existing rights.

33 (4) This section shall not apply to trust water rights acquired by
34 the state through the funding of water conservation projects under
35 chapter 90.38 RCW or RCW 90.42.010 through 90.42.070.

36 (5)(a) Pending applications for new water rights are not entitled
37 to protection from impairment, injury, or detriment when an application
38 relating to an existing surface or ground water right is considered.

1 (b) Applications relating to existing surface or ground water
2 rights may be processed and decisions on them rendered independently of
3 processing and rendering decisions on pending applications for new
4 water rights within the same source of supply without regard to the
5 date of filing of the pending applications for new water rights.

6 (c) Notwithstanding any other existing authority to process
7 applications, including but not limited to the authority to process
8 applications under WAC 173-152-050 as it existed on January 1, 2001, an
9 application relating to an existing surface or ground water right may
10 be processed ahead of a previously filed application relating to an
11 existing right when sufficient information for a decision on the
12 previously filed application is not available and the applicant for the
13 previously filed application is sent written notice that explains what
14 information is not available and informs the applicant that processing
15 of the next application will begin. The previously filed application
16 does not lose its priority date and if the information is provided by
17 the applicant within sixty days, the previously filed application shall
18 be processed at that time. This subsection (5)(c) does not affect any
19 other existing authority to process applications.

20 (d) Nothing in this subsection (5) is intended to stop the
21 processing of applications for new water rights.

22 (6) No applicant for a change, transfer, or amendment of a water
23 right may be required to give up any part of the applicant's valid
24 water right or claim to a state agency, the trust water rights program,
25 or to other persons as a condition of processing the application.

26 (7) In revising the provisions of this section and adding
27 provisions to this section by chapter 237, Laws of 2001, the
28 legislature does not intend to imply legislative approval or
29 disapproval of any existing administrative policy regarding, or any
30 existing administrative or judicial interpretation of, the provisions
31 of this section not expressly added or revised.

32 (8) The development and use of a small irrigation impoundment, as
33 defined in RCW 90.03.370(8), does not constitute a change or amendment
34 for the purposes of this section. The exemption expressly provided by
35 this subsection shall not be construed as requiring a change or
36 transfer of any existing water right to enable the holder of the right
37 to store water governed by the right.

1 (9) Determinations of a water right's extent and validity under
2 this section must be based solely on the extent to which the right was
3 originally perfected and the extent to which the right has been
4 beneficially used during the fifteen-year period preceding the date the
5 department commences processing a request for a change, transfer, or
6 amendment of a surface or groundwater right.

7 NEW SECTION. **Sec. 5.** Section 2 of this act takes effect July 1,
8 2008.

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