

# SENATE BILL REPORT

## SB 5209

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As of February 9, 2011

**Title:** An act relating to extending the time period permitted to put water to beneficial use.

**Brief Description:** Concerning the relinquishment of a water right.

**Sponsors:** Senators Delvin, Hatfield, Schoesler, Hewitt, Honeyford, Holmquist Newbry, Haugen, Hobbs, Morton and King.

**Brief History:**

**Committee Activity:** Environment, Water & Energy: 2/04/11.

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### SENATE COMMITTEE ON ENVIRONMENT, WATER & ENERGY

**Staff:** Karen Epps (786-7424)

**Background:** Washington operates under a water right permit system. With certain exceptions, new rights to use surface or ground water or to establish reservoir and storage projects must be established according to the permit system. A person seeking a new water right files an application with the Department of Ecology (Ecology), which must consider a four-part test when deciding whether to issue the requested right: (1) whether water is available; (2) whether a beneficial use of water would be made; (3) whether granting the right would impair existing rights; and (4) whether the proposed use would detrimentally affect the public welfare. If an application passes this test, Ecology issues a permit which establishes a time table for constructing the infrastructure to access the water and for putting water to beneficial use. When the conditions of the permit are satisfied, Ecology issues a water right certificate.

Ecology may permit certain changes to a water right. Ecology may also permit a transfer of a water right from one holder to another. In processing change or transfer applications, Ecology analyzes the validity, limits, and quantity of the right. Changes or transfers cannot impair existing rights of other water right holders. A change to enable irrigation of additional acreage or the addition of new uses may be permitted if there is no increase in annual water consumption. The annual consumptive quantity of water available to be changed or transferred is currently determined by calculating the average of the two years of greatest water consumption within the past five years of continuous beneficial use.

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*This analysis was prepared by non-partisan legislative staff for the use of legislative members in their deliberations. This analysis is not a part of the legislation nor does it constitute a statement of legislative intent.*

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 unused portion is relinquished and reverts to the state. A number of exemptions from this relinquishment requirement are listed by statute.

**Summary of Bill:** Annual consumptive quantity means the estimated or actual amount of water diverted pursuant to the water right during the peak year of water use within the most recent 15-year period of beneficial use, reduced by the estimated annual amount of return flows. Additionally, beneficial use means or refers to the peak year of water use during the most recent 15-year period.

Any time period that a water right was held in the Trust Water Rights Program will not be included in the most recent 15-year period of beneficial use for the purpose of determining annual consumptive quantity. If a portion of a water right is not beneficially used for 15 consecutive years without sufficient cause recognized by statute, the right or unused portion of the right is relinquished. Any time period that the water right has not been used during the most recent 15-year period, but the nonuse qualifies for an exemption or exception from relinquishment is not included in the most recent 15-year period of beneficial use for purposes of determining the annual consumptive quantity.

The act applies to all administrative matters that were commenced or pending on the effective date of the act. The act also applies to any judicial action in which no final non-appealable judicial order has been entered prior to the effective date of the act.

The act does not apply if a senior water right holder objects to the application of the act to a matter, and it is determined that the objecting party holds an existing water right that would be impaired by the application of the act to the matter. In such cases, the law as it existed prior to the effective date of the act applies.

**Appropriation:** None.

**Fiscal Note:** Available.

**Committee/Commission/Task Force Created:** No.

**Effective Date:** Ninety days after adjournment of session in which bill is passed.

**Staff Summary of Public Testimony:** PRO: This bill is trying to address the relinquishment issue. Relinquishment creates a disincentive to the transfer of water. Taking relinquishment to the standard of 15 years, there is a better chance that a water right holder has the records and all to protect that water and keep it in play for transfer, but also possibly use that water on additional lands as the water right holder conserves water under their existing right. This bill will help facilitate transfers of water rights. The reason for the change from five years to 15 years is that it more accurately reflects normal fluctuations that would occur when growing food and through a normal climatic cycle.

CON: There is the need for some very careful and narrow changes to the relinquishment law, but it should be part of a balanced package. There is a section in the bill that could reopen conditional final orders in the Yakima Adjudication that could lead to additional appeals,

additional costs, and a delay to the completion of that adjudication. The Trust Water Rights Program provides an alternative for a water right holder who is not using their water right in order to avoid relinquishment. The relinquishment statute should not be changed to 15 years, but rather the Trust Water Rights Program should be used as the mechanism to provide water right holders with flexibility.

**Persons Testifying:** PRO: Senator Delvin, prime sponsor; John Stuhlmiller, Washington Farm Bureau; Kathleen Collins, Washington Water Policy Alliance; Wes McCart, Stevens County Farm Bureau.

CON: Ken Slattery, Ecology; Tom McDonald, Trout Unlimited, American Rivers, Washington Environmental Council.