
HOUSE BILL 1381

State of Washington

62nd Legislature

2011 Regular Session

By Representatives Warnick, Blake, Hinkle, Taylor, Haler, McCune, Armstrong, Condotta, Johnson, Parker, and Shea

Read first time 01/20/11. Referred to Committee on Agriculture & Natural Resources.

1 AN ACT Relating to sufficient cause for the nonuse of water;
2 amending RCW 90.14.140; reenacting and amending RCW 90.14.140;
3 providing an effective date; and providing an expiration date.

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

5 **Sec. 1.** RCW 90.14.140 and 2009 c 183 s 14 are each amended to read
6 as follows:

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

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

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

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

15 (d) The operation of legal proceedings;

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

1 (f) Federal laws imposing land or water use restrictions either
2 directly or through the voluntary enrollment of a landowner in a
3 federal program implementing those laws, or acreage limitations, or
4 production quotas;

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

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15 or withdrawal or for the use of the water diverted or withdrawn for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

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

20 (j) Reliance by an irrigation water user on the transitory presence
21 of return flows in lieu of diversion or withdrawal of water from the
22 primary source of supply, if such return flows are measured or reliably
23 estimated using a scientific methodology generally accepted as reliable
24 within the scientific community; ((~~or~~))

25 (k) The reduced use of irrigation water resulting from crop
26 rotation. For purposes of this subsection, crop rotation means the
27 temporary change in the type of crops grown resulting from the exercise
28 of generally recognized sound farming practices. Unused water
29 resulting from crop rotation will not be relinquished if the remaining
30 portion of the water continues to be beneficially used; or

31 (1) Waiting for a final determination from the department of
32 ecology on a change application filed under RCW 90.03.250, 90.03.380,
33 or 90.44.100.

34 (2) Notwithstanding any other provisions of RCW 90.14.130 through
35 90.14.180, there shall be no relinquishment of any water right:

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

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

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

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

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

12 (f) If such right or portion of the right is leased to another
13 person for use on land other than the land to which the right is
14 appurtenant as long as the lessee makes beneficial use of the right in
15 accordance with this chapter and a transfer or change of the right has
16 been approved by the department in accordance with RCW 90.03.380,
17 90.03.383, 90.03.390, or 90.44.100;

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

21 (h) If such right is a trust water right under chapter 90.38 or
22 90.42 RCW;

23 (i) If such a right is involved in an approved local water plan
24 created under RCW 90.92.090, provided the right is subject to an
25 agreement not to divert under RCW 90.92.050, or provided the right is
26 banked under RCW 90.92.070.

27 (3) In adding provisions to this section by chapter 237, Laws of
28 2001, the 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 **Sec. 2.** RCW 90.14.140 and 2001 c 240 s 1, 2001 c 237 s 27, and
33 2001 c 69 s 5 are each reenacted and amended to read as follows:

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

- 1 (a) Drought, or other unavailability of water;
- 2 (b) Active service in the armed forces of the United States during
3 military crisis;
- 4 (c) Nonvoluntary service in the armed forces of the United States;
- 5 (d) The operation of legal proceedings;
- 6 (e) Federal or state agency leases of or options to purchase lands
7 or water rights which preclude or reduce the use of the right by the
8 owner of the water right;
- 9 (f) Federal laws imposing land or water use restrictions either
10 directly or through the voluntary enrollment of a landowner in a
11 federal program implementing those laws, or acreage limitations, or
12 production quotas;
- 13 (g) Temporarily reduced water need for irrigation use where such
14 reduction is due to varying weather conditions, including but not
15 limited to precipitation and temperature, that warranted the reduction
16 in water use, so long as the water user's diversion and delivery
17 facilities are maintained in good operating condition consistent with
18 beneficial use of the full amount of the water right;
- 19 (h) Temporarily reduced diversions or withdrawals of irrigation
20 water directly resulting from the provisions of a contract or similar
21 agreement in which a supplier of electricity buys back electricity from
22 the water right holder and the electricity is needed for the diversion
23 or withdrawal or for the use of the water diverted or withdrawn for
24 irrigation purposes;
- 25 (i) Water conservation measures implemented under the Yakima river
26 basin water enhancement project, so long as the conserved water is
27 reallocated in accordance with the provisions of P.L. 103-434;
- 28 (j) Reliance by an irrigation water user on the transitory presence
29 of return flows in lieu of diversion or withdrawal of water from the
30 primary source of supply, if such return flows are measured or reliably
31 estimated using a scientific methodology generally accepted as reliable
32 within the scientific community; (~~(e)~~)
- 33 (k) The reduced use of irrigation water resulting from crop
34 rotation. For purposes of this subsection, crop rotation means the
35 temporary change in the type of crops grown resulting from the exercise
36 of generally recognized sound farming practices. Unused water
37 resulting from crop rotation will not be relinquished if the remaining
38 portion of the water continues to be beneficially used; or

1 (1) Waiting for a final determination from the department of
2 ecology on a change application filed under RCW 90.03.250, 90.03.380,
3 or 90.44.100.

4 (2) Notwithstanding any other provisions of RCW 90.14.130 through
5 90.14.180, there shall be no relinquishment of any water right:

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

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

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

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

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

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

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

29 (h) If such right is a trust water right under chapter 90.38 or
30 90.42 RCW.

31 (3) In adding provisions to this section by chapter 237, Laws of
32 2001, the legislature does not intend to imply legislative approval or
33 disapproval of any existing administrative policy regarding, or any
34 existing administrative or judicial interpretation of, the provisions
35 of this section not expressly added or revised.

36 NEW SECTION. Sec. 3. Section 1 of this act expires June 30, 2019.

1 NEW SECTION. **Sec. 4.** Section 2 of this act takes effect June 30,
2 2019.

--- END ---