

SENATE BILL REPORT

SB 5071

As of February 1, 2013

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, Holmquist Newbry, Becker, Ericksen, Roach, Schoesler and Hewitt.

Brief History:

Committee Activity: Agriculture, Water & Rural Economic Development: 1/31/13.

SENATE COMMITTEE ON AGRICULTURE, WATER & RURAL ECONOMIC DEVELOPMENT

Staff: Bob Lee (786-7404)

Background: The Washington Department of Ecology (Ecology) may approve 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.

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: The five-year period that currently exists in water right transfer and relinquishment laws is changed to 20 years.

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 20-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 20-year period. If a portion of a water right is not beneficially used for 20 consecutive

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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 20-year period, but the nonuse qualifies for an exemption or exception from relinquishment, is not included in the most recent 20-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, 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: None.

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

Staff Summary of Public Testimony: PRO: Prior to the enactment of the relinquishment laws in the late 1960's, the legal standard was abandonment. When the relinquishment and water right claim registration acts passed, the thought would be to clean up old and unused water rights so that there would be confidence that water would be available to approve new permits to encourage economic development. But the penalty for not using water rights created an incentive to use all of the water right for fear of losing them. This has created a negative incentive for conserving water.

CON: It is important to put water to its highest and best use. If people are fearful of losing their water rights, they can be temporarily transferred to the trust water right program and avoid relinquishment. There are provisions that appear to be retroactive. Parts of the Yakima water adjudication are not yet completed and the 20-year standard would apply to instances where the a final court decision has not been made. Water right relinquishment statutes are generally applied in water right transfers and in general water adjudications.

Persons Testifying: PRO: Senator Delvin, prime sponsor; John Stuhlmiller, WA Farm Bureau; Patrick Boss, Columbia-Snake Irrigators Assn., Agricultural Water and Power Users of Eastern WA; Dan Miller, Agricultural Water and Power Users of Eastern WA; Jack Field, WA Cattlemen's Assn.

CON: Bruce Wishart, Center for Environmental Law and Policy; Evan Sheffels, Ecology.