
**Rural Development, Agriculture &
Natural Resources Committee**

SSB 5860

Brief Description: Concerning water policy in regions with regulated reductions in aquifer levels.

Sponsors: Senate Committee on Agriculture, Water, Natural Resources & Parks (originally sponsored by Senators Warnick, Dozier and Schoesler).

Brief Summary of Substitute Bill

- Reestablishes the prior process for protecting unused groundwater rights in the Odessa aquifer from relinquishment.

Hearing Date: 2/22/22

Staff: Robert Hatfield (786-7117).

Background:

Ground Water Management Subareas.

Ground Water Management Subareas may be established by rules adopted by the Department of Ecology (Ecology) to address declining aquifer levels and regulate withdrawals of public ground water.

Ecology has the authority to enter into agreements with the United States and with local irrigation districts to offset aquifer depletions due to ground water withdrawals. The agreements allow conserved surface water to be delivered to certain lands irrigated by deep wells. Where such deliveries occur, Ecology must issue a superseding water right permit or certificate to indicate that the unused portion of a replaced subarea ground water right is a reserve right with

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low flow protection from relinquishment. This reserve right may again be used if the delivery of conserved water is curtailed or otherwise unavailable. The total acreage irrigated under the subarea ground water right and delivered water must not exceed quantity or acreage limits described in the ground water permit or certificate.

Relinquishment.

Under the relinquishment statute, if a water right holder abandons or voluntarily fails to beneficially use all or any part of their water right for five successive years without sufficient cause, the right or portion unused reverts to the state. The relinquishment statute provides a list of sufficient causes for voluntary nonuse that protect a water right from relinquishment. Examples of sufficient causes include drought or unavailability of water, certain military service, the operation of legal proceedings, or when waiting for a final determination from Ecology on a change application.

In addition to the instances of sufficient cause described above, the relinquishment statute also establishes a list of exemptions under which there is no relinquishment. Examples of these exemptions include the use of water rights for power development, water rights used only in times of drought or low flow periods, municipal water supply for residential purposes, and water that is placed in the Trust Water Rights Program.

Odessa Groundwater Subarea.

Ecology has adopted rules establishing the Odessa Groundwater Management Subarea. In 2006, the Legislature established a process for a water right holder to avoid relinquishment for the non-use of a groundwater right from the Odessa aquifer for a period of 15 years if certain conditions were satisfied. A water user who failed to exercise a right to withdraw ground water from the Odessa aquifer subarea was deemed to have done so involuntarily due to a drought or low flow period, and thus did not relinquish their right to use the water. The amount of water that was not used was considered a standby or reserve water supply and could be used after the period of non-use had ended if certain conditions were met. The process required water right holders who chose not to use water to notify Ecology in writing within 180 days of stopping the water use and upon the recommencement of use. These provisions expired July 1, 2021.

Summary of Bill:

Any period of nonuse of a right to withdraw groundwater from an aquifer within the Odessa groundwater subarea is deemed to be involuntary due to a drought or low flow period. Such unused water is deemed a standby or reserve water supply that may again be used after the period of nonuse, provided the following requirements are met:

- reductions in water use are a result of conservation practices, irrigation or water use efficiencies, long or short-term changes in the types or rotations of crops grown, economic hardship, pumping or system infrastructure costs, unavailability or unsuitability of water, or willing and documented participation in cooperative efforts to reduce aquifer depletion

- and optimize available water resources;
- withdrawal or diversion facilities are maintained in good operating condition; and
- the Department of Ecology (Ecology) has not issued a superseding water right permit or certificate to designate a portion of the groundwater right replaced by federal Columbia Basin Project water as a standby or reserve right.

A water right holder choosing to not exercise a water right in accordance with the provisions described above must provide notice to Ecology in writing within 180 days of such a choice. The notice must include the name of the water right holder and the number of the permit, certificate, or claim. A water right holder who submitted notice under the prior process as it existed on June 30, 2021, is deemed to have provided such notice.

Appropriation: None.

Fiscal Note: Not requested.

Effective Date: The bill takes effect 90 days after adjournment of the session in which the bill is passed.