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**SUBSTITUTE SENATE BILL 5860**

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**State of Washington**

**67th Legislature**

**2022 Regular Session**

**By** Senate Agriculture, Water, Natural Resources & Parks (originally sponsored by Senators Warnick, Dozier, and Schoesler)

READ FIRST TIME 02/03/22.

1 AN ACT Relating to water policy in regions with regulated  
2 reductions in aquifer levels; adding a new section to chapter 90.44  
3 RCW; and creating a new section.

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

5 NEW SECTION. **Sec. 1.** In 2006, the legislature approved chapter  
6 168, Laws of 2006 (Engrossed Substitute Senate Bill No. 6151) in  
7 order to encourage the efficient use of water in the Odessa subarea.  
8 Chapter 168, Laws of 2006 (Engrossed Substitute Senate Bill No. 6151)  
9 expired in July of 2021. The legislature finds that this program was  
10 effective and is necessary.

11 NEW SECTION. **Sec. 2.** A new section is added to chapter 90.44  
12 RCW to read as follows:

13 (1) In order to encourage more efficient use of water, where the  
14 source of water is an aquifer within the Odessa groundwater subarea  
15 as defined in chapter 173-128A WAC:

16 (a) Any period of nonuse of a right to withdraw groundwater from  
17 the aquifer is deemed to be involuntary due to a drought or low flow  
18 period under RCW 90.14.140(2)(b); and

19 (b) Such unused water is deemed a standby or reserve water supply  
20 that may again be used after the period of nonuse, as long as: (i)

1 Reductions in water use are a result of conservation practices,  
2 irrigation or water use efficiencies, long or short-term changes in  
3 the types or rotations of crops grown, economic hardship, pumping or  
4 system infrastructure costs, unavailability or unsuitability of  
5 water, or willing and documented participation in cooperative efforts  
6 to reduce aquifer depletion and optimize available water resources;  
7 (ii) withdrawal or diversion facilities are maintained in good  
8 operating condition; and (iii) the department has not issued a  
9 superseding water right permit or certificate to designate a portion  
10 of the groundwater right replaced by federal Columbia basin project  
11 water as a standby or reserve right under RCW 90.44.510.

12 (2) (a) A water right holder choosing to not exercise a water  
13 right in accordance with the provisions of this section must provide  
14 notice to the department in writing within 180 days of such a choice.  
15 The notice must include the name of the water right holder and the  
16 number of the permit, certificate, or claim.

17 (b) When a water right holder chooses to discontinue nonuse under  
18 the provisions of this section, notice of such action must be  
19 provided to the department in writing. Notice is not required under  
20 this subsection (2) (b) for seasonal fluctuations in use if the right  
21 is not fully exercised as reflected in the notice provided under (a)  
22 of this subsection.

23 (c) A water right holder who submitted notice under RCW  
24 90.44.520(2) (a) as it existed on June 30, 2021, is deemed to have  
25 provided notice under (a) of this subsection.

26 (3) The provisions of this section relating to the nonuse of all  
27 or a portion of a water right are in addition to any other provisions  
28 relating to such nonuse under existing law.

29 (4) If water from the federal Columbia basin project has been  
30 delivered to a place of use authorized under a right to withdraw  
31 groundwater from the aquifer, the provisions of RCW 90.44.510 apply  
32 and supersede the provisions of this section.

33 (5) Portions of rights protected under this section may not be  
34 transferred outside Odessa subarea boundaries as defined in WAC  
35 173-128A-040. Transfers within Odessa subarea boundaries remain  
36 subject to the provisions of RCW 90.03.380, 90.03.390, 90.44.100, and  
37 WAC 173-130A-200.

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