
SENATE BILL 5010

State of Washington

65th Legislature

2017 Regular Session

By Senator Warnick

Prefiled 12/19/16.

1 AN ACT Relating to promoting water conservation by protecting
2 certain water rights from relinquishment; amending RCW 90.14.140 and
3 90.14.140; providing an effective date; and providing an expiration
4 date.

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

6 **Sec. 1.** RCW 90.14.140 and 2012 c 7 s 1 are each amended to read
7 as follows:

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

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

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

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

17 (d) The operation of legal proceedings;

18 (e) Federal or state agency leases of or options to purchase
19 lands or water rights which preclude or reduce the use of the right
20 by the 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
8 reduction in water use, so long as the water user's diversion and
9 delivery facilities are maintained in good operating condition
10 consistent with 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
14 from the water right holder and the electricity is needed for the
15 diversion or withdrawal or for the use of the water diverted or
16 withdrawn for irrigation purposes;

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

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

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
28 exercise of generally recognized sound farming practices. Unused
29 water resulting from crop rotation will not be relinquished if the
30 remaining portion of the water continues to be beneficially used; or

31 (l) 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;

39 (b) If such right is used for a standby or reserve water supply
40 to be used in time of drought or other low flow period so long as

1 withdrawal or diversion facilities are maintained in good operating
2 condition for the use of such reserve or standby water supply;

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

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

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

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

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

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

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

26 (j) If such a right is used for irrigation or agricultural
27 purposes and is not exercised to the full extent of the right due to
28 the implementation of water conservation or water use efficiency
29 measures.

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

35 **Sec. 2.** RCW 90.14.140 and 2012 c 7 s 2 are each amended to read
36 as follows:

37 (1) For the purposes of RCW 90.14.130 through 90.14.180,
38 "sufficient cause" shall be defined as the nonuse of all or a portion

1 of the water by the owner of a water right for a period of five or
2 more consecutive years where such nonuse occurs as a result of:

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

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

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

8 (d) The operation of legal proceedings;

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

12 (f) Federal laws imposing land or water use restrictions either
13 directly or through the voluntary enrollment of a landowner in a
14 federal program implementing those laws, or acreage limitations, or
15 production quotas;

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

22 (h) Temporarily reduced diversions or withdrawals of irrigation
23 water directly resulting from the provisions of a contract or similar
24 agreement in which a supplier of electricity buys back electricity
25 from the water right holder and the electricity is needed for the
26 diversion or withdrawal or for the use of the water diverted or
27 withdrawn for irrigation purposes;

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

31 (j) Reliance by an irrigation water user on the transitory
32 presence of return flows in lieu of diversion or withdrawal of water
33 from the primary source of supply, if such return flows are measured
34 or reliably estimated using a scientific methodology generally
35 accepted as reliable within the scientific community;

36 (k) The reduced use of irrigation water resulting from crop
37 rotation. For purposes of this subsection, crop rotation means the
38 temporary change in the type of crops grown resulting from the
39 exercise of generally recognized sound farming practices. Unused

1 water resulting from crop rotation will not be relinquished if the
2 remaining portion of the water continues to be beneficially used; or

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

6 (2) Notwithstanding any other provisions of RCW 90.14.130 through
7 90.14.180, there shall be no relinquishment of any water right:

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

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

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

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

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

23 (f) If such right or portion of the right is leased to another
24 person for use on land other than the land to which the right is
25 appurtenant as long as the lessee makes beneficial use of the right
26 in accordance with this chapter and a transfer or change of the right
27 has been approved by the department in accordance with RCW 90.03.380,
28 90.03.383, 90.03.390, or 90.44.100;

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

32 (h) If such right is a trust water right under chapter 90.38 or
33 90.42 RCW; or

34 (i) If such a right is used for irrigation or agricultural
35 purposes and is not exercised to the full extent of the right due to
36 the implementation of water conservation or water use efficiency
37 measures.

38 (3) In adding provisions to this section by chapter 237, Laws of
39 2001, the legislature does not intend to imply legislative approval
40 or disapproval of any existing administrative policy regarding, or

1 any existing administrative or judicial interpretation of, the
2 provisions of this section not expressly added or revised.

3 NEW SECTION. **Sec. 3.** Section 1 of this act expires June 30,
4 2019.

5 NEW SECTION. **Sec. 4.** Section 2 of this act takes effect June
6 30, 2019.

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