
SENATE BILL 6464

State of Washington

61st Legislature

2010 Regular Session

By Senators Swecker and Holmquist

Read first time 01/14/10. Referred to Committee on Environment, Water & Energy.

1 AN ACT Relating to clarifying when a water right is relinquished;
2 amending RCW 90.14.140, 90.03.380, and 90.03.380; reenacting and
3 amending RCW 90.14.140; adding a new section to chapter 90.03 RCW;
4 creating a new section; providing an effective date; and providing an
5 expiration date.

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

7 NEW SECTION. **Sec. 1.** The legislature finds that certainty and
8 clarity in water resource administration is critical to the economic
9 vitality of the state, and that requiring water right holders to keep
10 water use records in perpetuity frustrates achievement of the certainty
11 and clarity needed for effective water resource management.

12 The legislature also finds that requiring water right holders to
13 prove full use of water rights over long periods of time contributes to
14 fear and uncertainty among all water users in a watershed, and is
15 overly costly and burdensome for water right holders and agencies
16 considering water right applications.

17 The legislature further finds that these extended recordkeeping and
18 burden of proof concerns create strong disincentives for more efficient

1 use of water and preclude many water right holders from seeking to
2 donate or transfer water that would benefit the instream resources and
3 economic vitality of the state.

4 Therefore the legislature declares that, in order to improve the
5 certainty and clarity of water resource management in the state,
6 holders of perfected water rights shall no longer be required to show
7 beneficial use of a water right beyond the most recent fifteen-year
8 period.

9 **Sec. 2.** RCW 90.14.140 and 2009 c 183 s 14 are each amended to read
10 as follows:

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

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

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

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

19 (d) The operation of legal proceedings;

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

23 (f) Federal laws imposing land or water use restrictions either
24 directly or through the voluntary enrollment of a landowner in a
25 federal program implementing those laws, or acreage limitations, or
26 production quotas;

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

33 (h) Temporarily reduced diversions or withdrawals of irrigation
34 water directly resulting from the provisions of a contract or similar
35 agreement in which a supplier of electricity buys back electricity from
36 the water right holder and the electricity is needed for the diversion

1 or withdrawal or for the use of the water diverted or withdrawn for
2 irrigation purposes;

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

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

11 (k) The reduced use of irrigation water resulting from crop
12 rotation. For purposes of this subsection, crop rotation means the
13 temporary change in the type of crops grown resulting from the exercise
14 of generally recognized sound farming practices. Unused water
15 resulting from crop rotation will not be relinquished if the remaining
16 portion of the water continues to be beneficially used.

17 (2) Notwithstanding any other provisions of RCW 90.14.130 through
18 90.14.180, there shall be no relinquishment of any water right:

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

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

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

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

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

33 (f) If such right or portion of the right is leased to another
34 person for use on land other than the land to which the right is
35 appurtenant as long as the lessee makes beneficial use of the right in
36 accordance with this chapter and a transfer or change of the right has
37 been approved by the department in accordance with RCW 90.03.380,
38 90.03.383, 90.03.390, or 90.44.100;

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

4 (h) If such right is a trust water right under chapter 90.38 or
5 90.42 RCW;

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

10 (j) If the full or partial nonuse of such a right occurred prior to
11 the fifteen-year period preceding the date upon which relinquishment
12 proceedings are commenced under RCW 90.14.130 or the date upon which
13 adjudication proceedings are commenced under RCW 90.03.105 through
14 90.03.245 or 90.44.220.

15 (3) In adding provisions to this section by chapter 237, Laws of
16 2001, the legislature does not intend to imply legislative approval or
17 disapproval of any existing administrative policy regarding, or any
18 existing administrative or judicial interpretation of, the provisions
19 of this section not expressly added or revised.

20 **Sec. 3.** RCW 90.14.140 and 2001 c 240 s 1, 2001 c 237 s 27, and
21 2001 c 69 s 5 are each reenacted and amended to read as follows:

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

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

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

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

30 (d) The operation of legal proceedings;

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

34 (f) Federal laws imposing land or water use restrictions either
35 directly or through the voluntary enrollment of a landowner in a
36 federal program implementing those laws, or acreage limitations, or
37 production quotas;

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

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

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

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

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

27 (2) Notwithstanding any other provisions of RCW 90.14.130 through
28 90.14.180, there shall be no relinquishment of any water right:

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

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

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

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

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

5 (f) If such right or portion of the right is leased to another
6 person for use on land other than the land to which the right is
7 appurtenant as long as the lessee makes beneficial use of the right in
8 accordance with this chapter and a transfer or change of the right has
9 been approved by the department in accordance with RCW 90.03.380,
10 90.03.383, 90.03.390, or 90.44.100;

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

14 (h) If such right is a trust water right under chapter 90.38 or
15 90.42 RCW; or

16 (i) If the full or partial nonuse of such a right occurred prior to
17 the fifteen-year period preceding the date upon which relinquishment
18 proceedings are commenced under RCW 90.14.130 or the date upon which
19 adjudication proceedings are commenced under RCW 90.03.105 through
20 90.03.245 or 90.44.220.

21 (3) In adding provisions to this section by chapter 237, Laws of
22 2001, the legislature does not intend to imply legislative approval or
23 disapproval of any existing administrative policy regarding, or any
24 existing administrative or judicial interpretation of, the provisions
25 of this section not expressly added or revised.

26 NEW SECTION. Sec. 4. A new section is added to chapter 90.03 RCW
27 to read as follows:

28 The provisions of this act do not apply to surface water rights and
29 claims already undergoing adjudication for which final orders or
30 conditional final orders have not yet been issued.

31 **Sec. 5.** RCW 90.03.380 and 2009 c 183 s 15 are each amended to read
32 as follows:

33 (1) The right to the use of water which has been applied to a
34 beneficial use in the state shall be and remain appurtenant to the land
35 or place upon which the same is used: PROVIDED, HOWEVER, That the
36 right may be transferred to another or to others and become appurtenant

1 to any other land or place of use without loss of priority of right
2 theretofore established if such change can be made without detriment or
3 injury to existing rights. The point of diversion of water for
4 beneficial use or the purpose of use may be changed, if such change can
5 be made without detriment or injury to existing rights. A change in
6 the place of use, point of diversion, and/or purpose of use of a water
7 right to enable irrigation of additional acreage or the addition of new
8 uses may be permitted if such change results in no increase in the
9 annual consumptive quantity of water used under the water right. For
10 purposes of this section, "annual consumptive quantity" means the
11 estimated or actual annual amount of water diverted pursuant to the
12 water right, reduced by the estimated annual amount of return flows,
13 averaged over the two years of greatest use within the most recent
14 five-year period of continuous beneficial use of the water right.
15 Before any transfer of such right to use water or change of the point
16 of diversion of water or change of purpose of use can be made, any
17 person having an interest in the transfer or change, shall file a
18 written application therefor with the department, and the application
19 shall not be granted until notice of the application is published as
20 provided in RCW 90.03.280. If it shall appear that such transfer or
21 such change may be made without injury or detriment to existing rights,
22 the department shall issue to the applicant a certificate in duplicate
23 granting the right for such transfer or for such change of point of
24 diversion or of use. The certificate so issued shall be filed and be
25 made a record with the department and the duplicate certificate issued
26 to the applicant may be filed with the county auditor in like manner
27 and with the same effect as provided in the original certificate or
28 permit to divert water. The time period that the water right was
29 banked under RCW 90.92.070, in an approved local water plan created
30 under RCW 90.92.090, or the water right was subject to an agreement to
31 not divert under RCW 90.92.050 will not be included in the most recent
32 five-year period of continuous beneficial use for the purpose of
33 determining the annual consumptive quantity under this section. If the
34 water right has not been used during the previous five years but the
35 nonuse of which qualifies for one or more of the statutory good causes
36 or exceptions to relinquishment in RCW 90.14.140 and 90.44.520, the
37 period of nonuse is not included in the most recent five-year period of

1 continuous beneficial use for purposes of determining the annual
2 consumptive quantity of water under this section.

3 (2) If an application for change proposes to transfer water rights
4 from one irrigation district to another, the department shall, before
5 publication of notice, receive concurrence from each of the irrigation
6 districts that such transfer or change will not adversely affect the
7 ability to deliver water to other landowners or impair the financial
8 integrity of either of the districts.

9 (3) A change in place of use by an individual water user or users
10 of water provided by an irrigation district need only receive approval
11 for the change from the board of directors of the district if the use
12 of water continues within the irrigation district, and when water is
13 provided by an irrigation entity that is a member of a board of joint
14 control created under chapter 87.80 RCW, approval need only be received
15 from the board of joint control if the use of water continues within
16 the area of jurisdiction of the joint board and the change can be made
17 without detriment or injury to existing rights.

18 (4) This section shall not apply to trust water rights acquired by
19 the state through the funding of water conservation projects under
20 chapter 90.38 RCW or RCW 90.42.010 through 90.42.070.

21 (5)(a) Pending applications for new water rights are not entitled
22 to protection from impairment, injury, or detriment when an application
23 relating to an existing surface or ground water right is considered.

24 (b) Applications relating to existing surface or ground water
25 rights may be processed and decisions on them rendered independently of
26 processing and rendering decisions on pending applications for new
27 water rights within the same source of supply without regard to the
28 date of filing of the pending applications for new water rights.

29 (c) Notwithstanding any other existing authority to process
30 applications, including but not limited to the authority to process
31 applications under WAC 173-152-050 as it existed on January 1, 2001, an
32 application relating to an existing surface or ground water right may
33 be processed ahead of a previously filed application relating to an
34 existing right when sufficient information for a decision on the
35 previously filed application is not available and the applicant for the
36 previously filed application is sent written notice that explains what
37 information is not available and informs the applicant that processing
38 of the next application will begin. The previously filed application

1 does not lose its priority date and if the information is provided by
2 the applicant within sixty days, the previously filed application shall
3 be processed at that time. This subsection (5)(c) does not affect any
4 other existing authority to process applications.

5 (d) Nothing in this subsection (5) is intended to stop the
6 processing of applications for new water rights.

7 (6) No applicant for a change, transfer, or amendment of a water
8 right may be required to give up any part of the applicant's valid
9 water right or claim to a state agency, the trust water rights program,
10 or to other persons as a condition of processing the application.

11 (7) In revising the provisions of this section and adding
12 provisions to this section by chapter 237, Laws of 2001, the
13 legislature does not intend to imply legislative approval or
14 disapproval of any existing administrative policy regarding, or any
15 existing administrative or judicial interpretation of, the provisions
16 of this section not expressly added or revised.

17 (8) The development and use of a small irrigation impoundment, as
18 defined in RCW 90.03.370(8), does not constitute a change or amendment
19 for the purposes of this section. The exemption expressly provided by
20 this subsection shall not be construed as requiring a change or
21 transfer of any existing water right to enable the holder of the right
22 to store water governed by the right.

23 (9) This section does not apply to a water right involved in an
24 approved local water plan created under RCW 90.92.090, a water right
25 that is subject to an agreement not to divert under RCW 90.92.050, or
26 a banked water right under RCW 90.92.070.

27 (10) Determinations of a water right's extent and validity under
28 this section must be based solely on the extent to which the right was
29 originally perfected and the extent to which the right has been
30 beneficially used during the fifteen-year period preceding the date the
31 department commences processing a request for a change, transfer, or
32 amendment of a surface or groundwater right.

33 **Sec. 6.** RCW 90.03.380 and 2003 c 329 s 2 are each amended to read
34 as follows:

35 (1) The right to the use of water which has been applied to a
36 beneficial use in the state shall be and remain appurtenant to the land
37 or place upon which the same is used: PROVIDED, HOWEVER, That the

1 right may be transferred to another or to others and become appurtenant
2 to any other land or place of use without loss of priority of right
3 theretofore established if such change can be made without detriment or
4 injury to existing rights. The point of diversion of water for
5 beneficial use or the purpose of use may be changed, if such change can
6 be made without detriment or injury to existing rights. A change in
7 the place of use, point of diversion, and/or purpose of use of a water
8 right to enable irrigation of additional acreage or the addition of new
9 uses may be permitted if such change results in no increase in the
10 annual consumptive quantity of water used under the water right. For
11 purposes of this section, "annual consumptive quantity" means the
12 estimated or actual annual amount of water diverted pursuant to the
13 water right, reduced by the estimated annual amount of return flows,
14 averaged over the two years of greatest use within the most recent
15 five-year period of continuous beneficial use of the water right.
16 Before any transfer of such right to use water or change of the point
17 of diversion of water or change of purpose of use can be made, any
18 person having an interest in the transfer or change, shall file a
19 written application therefor with the department, and the application
20 shall not be granted until notice of the application is published as
21 provided in RCW 90.03.280. If it shall appear that such transfer or
22 such change may be made without injury or detriment to existing rights,
23 the department shall issue to the applicant a certificate in duplicate
24 granting the right for such transfer or for such change of point of
25 diversion or of use. The certificate so issued shall be filed and be
26 made a record with the department and the duplicate certificate issued
27 to the applicant may be filed with the county auditor in like manner
28 and with the same effect as provided in the original certificate or
29 permit to divert water.

30 (2) If an application for change proposes to transfer water rights
31 from one irrigation district to another, the department shall, before
32 publication of notice, receive concurrence from each of the irrigation
33 districts that such transfer or change will not adversely affect the
34 ability to deliver water to other landowners or impair the financial
35 integrity of either of the districts.

36 (3) A change in place of use by an individual water user or users
37 of water provided by an irrigation district need only receive approval
38 for the change from the board of directors of the district if the use

1 of water continues within the irrigation district, and when water is
2 provided by an irrigation entity that is a member of a board of joint
3 control created under chapter 87.80 RCW, approval need only be received
4 from the board of joint control if the use of water continues within
5 the area of jurisdiction of the joint board and the change can be made
6 without detriment or injury to existing rights.

7 (4) This section shall not apply to trust water rights acquired by
8 the state through the funding of water conservation projects under
9 chapter 90.38 RCW or RCW 90.42.010 through 90.42.070.

10 (5)(a) Pending applications for new water rights are not entitled
11 to protection from impairment, injury, or detriment when an application
12 relating to an existing surface or ground water right is considered.

13 (b) Applications relating to existing surface or ground water
14 rights may be processed and decisions on them rendered independently of
15 processing and rendering decisions on pending applications for new
16 water rights within the same source of supply without regard to the
17 date of filing of the pending applications for new water rights.

18 (c) Notwithstanding any other existing authority to process
19 applications, including but not limited to the authority to process
20 applications under WAC 173-152-050 as it existed on January 1, 2001, an
21 application relating to an existing surface or ground water right may
22 be processed ahead of a previously filed application relating to an
23 existing right when sufficient information for a decision on the
24 previously filed application is not available and the applicant for the
25 previously filed application is sent written notice that explains what
26 information is not available and informs the applicant that processing
27 of the next application will begin. The previously filed application
28 does not lose its priority date and if the information is provided by
29 the applicant within sixty days, the previously filed application shall
30 be processed at that time. This subsection (5)(c) does not affect any
31 other existing authority to process applications.

32 (d) Nothing in this subsection (5) is intended to stop the
33 processing of applications for new water rights.

34 (6) No applicant for a change, transfer, or amendment of a water
35 right may be required to give up any part of the applicant's valid
36 water right or claim to a state agency, the trust water rights program,
37 or to other persons as a condition of processing the application.

1 (7) In revising the provisions of this section and adding
2 provisions to this section by chapter 237, Laws of 2001, the
3 legislature does not intend to imply legislative approval or
4 disapproval of any existing administrative policy regarding, or any
5 existing administrative or judicial interpretation of, the provisions
6 of this section not expressly added or revised.

7 (8) The development and use of a small irrigation impoundment, as
8 defined in RCW 90.03.370(8), does not constitute a change or amendment
9 for the purposes of this section. The exemption expressly provided by
10 this subsection shall not be construed as requiring a change or
11 transfer of any existing water right to enable the holder of the right
12 to store water governed by the right.

13 (9) Determinations of a water right's extent and validity under
14 this section must be based solely on the extent to which the right was
15 originally perfected and the extent to which the right has been
16 beneficially used during the fifteen-year period preceding the date the
17 department commences processing a request for a change, transfer, or
18 amendment of a surface or groundwater right.

19 NEW SECTION. Sec. 7. Sections 2 and 5 of this act expire June 30,
20 2019.

21 NEW SECTION. Sec. 8. Sections 3 and 6 of this act take effect
22 June 30, 2019.

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