
HOUSE BILL 2159

State of Washington

59th Legislature

2005 Regular Session

By Representatives Grant, Newhouse, Hankins, Linville, Holmquist and Haler

Read first time 02/21/2005. Referred to Committee on Economic Development, Agriculture & Trade.

1 AN ACT Relating to sufficient cause for nonuse of water; and
2 reenacting and amending RCW 90.14.140.

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

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

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

- 10 (a) Drought, or other unavailability of water;
- 11 (b) Active service in the armed forces of the United States during
12 military crisis;
- 13 (c) Nonvoluntary service in the armed forces of the United States;
- 14 (d) The operation of legal proceedings;
- 15 (e) Federal or state agency leases of or options to purchase lands
16 or water rights which preclude or reduce the use of the right by the
17 owner of the water right;
- 18 (f) Federal laws imposing land or water use restrictions either

1 directly or through the voluntary enrollment of a landowner in a
2 federal program implementing those laws, or acreage limitations, or
3 production quotas;

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

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14 or withdrawal or for the use of the water diverted or withdrawn for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

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

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

24 (k) The reduced use of irrigation water resulting from crop
25 rotation. For purposes of this subsection, crop rotation means the
26 (~~temporary~~) change in the type of crops grown resulting from the
27 exercise of generally recognized sound farming practices to cultivate
28 specific crops for periods of time, including periods of time the water
29 user requires for a perennial crop. Unused water resulting from crop
30 rotation will not be relinquished if the remaining portion of the water
31 continues to be beneficially used.

32 (2) Notwithstanding any other provisions of RCW 90.14.130 through
33 90.14.180, there shall be no relinquishment of any water right:

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

37 (b) If such right is used for a standby or reserve water supply to

1 be used in time of drought or other low flow period so long as
2 withdrawal or diversion facilities are maintained in good operating
3 condition for the use of such reserve or standby water supply;

4 (c) If such right is claimed for a determined future development to
5 take place either within fifteen years of July 1, 1967, or the most
6 recent beneficial use of the water right, whichever date is 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 in
14 accordance with this chapter and a transfer or change of the right has
15 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 process
19 water as authorized under RCW 90.46.150; or

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

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

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