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HOUSE BILL 1266

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State of Washington

61st Legislature

2009 Regular Session

By Representatives Warnick, Chandler, Hinkle, Newhouse, Blake, Ross, Johnson, Kretz, McCune, and Condotta

Read first time 01/16/09. Referred to Committee on Agriculture & Natural Resources.

1 AN ACT Relating to sufficient cause for the 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14 or withdrawal or for the use of the water diverted or withdrawn for  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 exercise  
27 of generally recognized sound farming practices. Unused water  
28 resulting from crop rotation will not be relinquished if the remaining  
29 portion of the water continues to be beneficially used; or

30 (1) Waiting for a final determination from the department on a  
31 change application filed under RCW 90.03.250, 90.03.380, or 90.44.100.

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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