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**SENATE BILL 5060**

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**State of Washington 67th Legislature 2021 Regular Session**

**By** Senators Short, Holy, King, and Warnick

AN ACT Relating to the preservation of water rights for farmland and economic development; amending RCW 90.14.031, 90.14.140, 90.14.140, 90.14.160, 90.14.170, and 90.14.180; creating new sections; providing an effective date; providing an expiration date; and declaring an emergency.

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

NEW SECTION. **Sec.**  In RCW 89.10.005, the legislature has found and previously recognized the importance of retaining land in agriculture to produce food, livestock, and other agricultural products as well as to maintain the state economy and environmental conditions. The legislature now finds that there have been situations in this state where agricultural land has been lost due to unforeseen circumstances that commonly befall an aging farming population. The legislature finds that there is a public interest in retaining farms and the water rights needed to continue the operation of these farms. Small farms, especially, are often owned by families whose history is vested in the land. Farming is often the result of a generational commitment to feeding the nation and the world. Farmers are stewards of the land and have learned to adapt over time. The practices they use preserve the land and provide additional benefits of wildlife habitat and open space. Modern times have made it challenging to transition these farms through generations. As such, the legislature finds that temporary reductions in use of water on agricultural property for many reasons, including a future development of the use of property with the intent to continue irrigation in the future upon completion of the development, should not result in relinquishment. Additionally, farmers should have the opportunity to maintain their use of water purchased in good faith. The transition of small to mid-size farmers to new owners and a new generation of farmers, as well as the transition to more efficient irrigation systems, should be encouraged, not discouraged. The legislature recognizes that there are times when these transitions sometimes require more than a five-year period and the legislature wants to encourage the retention of the water that is essential to the viability of agriculture.

**Sec.**  RCW 90.14.031 and 1969 ex.s. c 284 s 12 are each amended to read as follows:

(1) The definitions in this subsection apply throughout this chapter unless the context clearly requires otherwise.

"Good faith purchaser" means a person who purchased real property after 2000, together with a water right permit, certificate, or claim that has been disclosed to have been put to beneficial use pursuant to RCW 64.06.020, and who did not have knowledge at the time of purchase that the water right may have been relinquished due to nonuse under RCW 90.14.130.

(2) Unless a different meaning is plainly required by the context, the following words and phrases in this subsection as used in this section and RCW ((~~90.14.031~~)) 90.14.041 through 90.14.121 shall have the following meanings:

((~~(1)~~)) (a) "Person" shall mean an individual, partnership, association, public or private corporation, city or other municipality, county, or a state agency, and the United States of America when claiming water rights established under the laws of the state of Washington.

((~~(2)~~)) (b) "Beneficial use" shall include, but not be limited to, use for domestic water, irrigation, fish, shellfish, game and other aquatic life, municipal, recreation, industrial water, generation of electric power, and navigation.

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

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

(a) Drought, or other unavailability of water;

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

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

(d) The operation of legal proceedings;

(e) Illness, injury, disability, or death of the holder of the water right documented by a recording of an official medical document with the county auditor that shows that the illness, injury, disability, or death precluded or temporarily reduced the use of a water right or a portion of the water right;

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(j) If the use of such a right is contingent upon a final determination from the department of ecology on a change application filed under RCW 90.03.250, 90.03.380, or 90.44.100;

(k) If such a right is used for agricultural irrigation and the right or portion of the right is purchased by a good faith purchaser together with real property, and the water is either put to beneficial use within five years after the purchase or any nonuse beyond the five-year period is based on sufficient cause under subsection (1) of this section or otherwise qualifies as being exempt under this subsection. This subsection (2)(k) applies only to land being used for agricultural purposes that is located in a county that is east of the crest of the Cascade mountains in which at least forty percent of the county is public land, borders Canada, and where there are no anadromous fisheries in the stream where the diversion of water occurs or where the diversion from a groundwater withdrawal occurs; or

(l) If the use of such a right is the subject of any legal proceedings including, but not limited to, divorce, probate, or bankruptcy.

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

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

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

(a) Drought, or other unavailability of water;

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

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

(d) The operation of legal proceedings;

(e) Illness, injury, disability, or death of the holder of the water right documented by the recording of an official medical document with the county auditor that shows that the illness, injury, disability, or death precluded or temporarily reduced the use of a water right or a portion of the water right;

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(i) If the use of such a right is contingent upon a final determination from the department of ecology on a change application filed under RCW 90.03.250, 90.03.380, or 90.44.100; or

(j) If such a right is used for agricultural irrigation and the right or portion of the right is purchased by a good faith purchaser together with real property, and the water is either put to beneficial use within five years after the purchase or any nonuse beyond the five-year period is based on sufficient cause under subsection (1) of this section or otherwise qualifies as being exempt under this subsection. This subsection (2)(j) applies only to land being used for agricultural purposes that is located in a county that is east of the crest of the Cascade mountains in which at least forty percent of the county is public land, borders Canada, and where there are no anadromous fisheries in the stream where the diversion of water occurs or where the diversion from a groundwater withdrawal occurs; or

(k) If the use of such a right is the subject of any legal proceedings including, but not limited to, divorce, probate, or bankruptcy.

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

**Sec.**  RCW 90.14.160 and 1981 c 291 s 1 are each amended to read as follows:

Any person entitled to divert or withdraw waters of the state through any appropriation authorized by enactments of the legislature prior to enactment of chapter 117, Laws of 1917, or by custom, or by general adjudication, who abandons the same, or who voluntarily fails, without sufficient cause, to beneficially use all or any part of said right to divert or withdraw for any period of five successive years ((~~after July 1, 1967~~)) within the 15 years prior to notice to the person of any action by the department of ecology under RCW 90.14.130 or by a court of law to commence relinquishment of the right, shall relinquish such right or portion thereof, and said right or portion thereof shall revert to the state, and the waters affected by said right shall become available for appropriation in accordance with RCW 90.03.250.

**Sec.**  RCW 90.14.170 and 2013 c 23 s 608 are each amended to read as follows:

Any person entitled to divert or withdraw waters of the state by virtue of his or her ownership of land abutting a stream, lake, or watercourse, who abandons the same, or who voluntarily fails, without sufficient cause, to beneficially use all or any part of said right to withdraw or divert said water for any period of five successive years ((~~after July 1, 1967~~)) within the 15 years prior to notice to the person of any action by the department of ecology under RCW 90.14.130 or by a court of law to commence relinquishment of the right, shall relinquish such right or portion thereof, and such right or portion thereof shall revert to the state, and the waters affected by said right shall become available for appropriation in accordance with the provisions of RCW 90.03.250.

**Sec.**  RCW 90.14.180 and 1987 c 109 s 101 are each amended to read as follows:

(1) Any person hereafter entitled to divert or withdraw waters of the state through an appropriation authorized under RCW 90.03.330, 90.44.080, or 90.44.090 who abandons the same, or who voluntarily fails, without sufficient cause, to beneficially use all or any part of said right to withdraw for any period of five successive years within the 15 years prior to notice to the person of any action by the department of ecology under RCW 90.14.130 or by a court of law to commence relinquishment of the right, shall relinquish such right or portion thereof, and such right or portion thereof shall revert to the state, and the waters affected by said right shall become available for appropriation in accordance with RCW 90.03.250.

(2) All certificates hereafter issued by the department of ecology pursuant to RCW 90.03.330 shall expressly incorporate this section by reference.

NEW SECTION. **Sec.**  Section 3 of this act expires June 30, 2021.

NEW SECTION. **Sec.**  Section 4 of this act takes effect June 30, 2021.

NEW SECTION. **Sec.**  Except for section 4 of this act, this act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and takes effect immediately.

NEW SECTION. **Sec.**  The provisions of this act apply both prospectively and retroactively to water rights that on January 1, 2021, were subject to relinquishment proceedings before the department of ecology or on appeal of a relinquishment order.

**--- END ---**