

HOUSE BILL REPORT

HB 2735

As Reported By House Committee On:
Agriculture & Ecology

Title: An act relating to clarifying "voluntarily fails" for water rights relinquishment purposes.

Brief Description: Clarifying "voluntarily fails" for water rights relinquishment purposes.

Sponsors: Representatives B. Chandler, G. Chandler, Linville, Clements, Lisk and Sump.

Brief History:

Committee Activity:

Agriculture & Ecology: 1/27/00, 2/4/00 [DPS].

Brief Summary of Substitute Bill

- Defines when a failure to use a water right is voluntary and, therefore, qualifies as a cause for a person to lose the water right for failing to use it.

HOUSE COMMITTEE ON AGRICULTURE & ECOLOGY

Majority Report: The substitute bill be substituted therefor and the substitute bill do pass. Signed by 14 members: Representatives G. Chandler, Republican Co-Chair; Linville, Democratic Co-Chair; Cooper, Democratic Vice Chair; Koster, Republican Vice Chair; Anderson; B. Chandler; Delvin; Fortunato; Grant; Reardon; Schoesler; Stensen; Sump and Wood.

Staff: Kenneth Hirst (786-7105).

Background:

In general, if a person abandons his or her water right or voluntarily fails to use the right for five successive years, the person relinquishes the right or the portion of the right abandoned or not used. However, exemptions from this requirement are provided in two forms: (1) outright exemptions from these statutory relinquishment provisions, and (2)

a list of "sufficient causes" for the voluntary nonuse. The sufficient causes provide exemptions from relinquishment. Examples of the sufficient causes that provide exemptions for the voluntary nonuse of water include: drought or unavailability of water, certain military service, and the operation of legal proceedings.

Abandonment of a water right is the intentional relinquishment of the right. In a 1997 decision, the state Supreme Court adopted the general rule that, under the common law theory of abandonment of water rights, long periods of nonuse raise a rebuttable presumption of intent to abandon a water right.

The superior court in Yakima County has been conducting a general adjudication proceeding for surface water rights in the Yakima river basin since 1977. The judge in that adjudication has recently made rulings regarding relinquishment of water rights as part of the adjudication.

Summary of Substitute Bill:

The type of voluntary failure to use a water right that, absent an exemption, triggers the relinquishment-for-nonuse provisions of water law is defined. It is the nonuse by the owner of the water right where the nonuse occurs as a result of factors within the control of the water user. Nonuse is involuntary when it is in response to factors beyond the control of the water user, such as cyclical weather patterns, changes in cropping patterns, or the presence of water from a source not within the control of the water user. The latter example applies only if diversion and delivery facilities are maintained in good operating condition consistent with the full amount of the water right.

Substitute Bill Compared to Original Bill: The provisions of the original bill requiring a nonuse to exist for 25 or more consecutive years for relinquishment purposes are not part of the substitute bill. Changes in cropping patterns are added by the substitute bill to the factors that are beyond the control of the water right owner. Under the substitute bill and not the original bill, the unintended presence of water not within the control of the owner is a factor only if the diversion and delivery facilities are well maintained within the full amount of the water right. Added by the substitute bill are the retroactivity, severability, and emergency clauses.

Appropriation: None.

Fiscal Note: Not requested.

Effective Date of Substitute Bill: The bill is remedial in nature and applies retroactively to October 12, 1977. The bill contains an emergency clause and takes effect immediately.

Testimony For: (Original bill) 1) The purpose of the bill is to give the superior court judge in the Yakima adjudication proceeding the opportunity to change his response to a 1999 decision of the state Supreme Court regarding relinquishment. Without the bill, a train wreck is on its way in the Yakima adjudication. 2) Current policies threaten both water rights and water conservation. The policy of making significant public investments in conservation efforts is at odds with the policies of the relinquishment laws. 3) The bill distinguishes between voluntary actions and involuntary failures to use water. Irrigation districts should not be penalized for their conservation efforts by losing large parts of their water rights. 4) The bill addresses two potential causes for relinquishing a water right: nonuse because of cyclical weather patterns, and use prevented by the return flows of another. These should be addressed; parties should not be forced to help themselves by using water they do not need to use just to protect their rights. 5) Unlike the Arizona case, water was withdrawn from further appropriation for the Yakima River Basin Water Enhancement Project, so no new vested rights have been created that would be adversely affected by the bill. 6) Relinquishment in the Yakima basin will not provide instream flows.

Testimony Against: (Original bill): 1) The five-year cycle in current law is long enough; the 25-year nonuse required under the bill is too long. Rather than changing the law, the Legislature should provide the Department of Ecology with more funding to enforce current law. 2) One person's loss of water through relinquishment is a gain for a more junior user, and eventually, for instream flows. Reallocation is the way to move water around. 3) In Arizona, the state's supreme court struck down legislation that attempted to assist parties involved in an adjudication.

Testified: (In Support)(Original bill): Representative Bruce Chandler, prime sponsor; Mike Schwisow, Washington Water Resources Association; Joe Mentor, Washington Water Policy Alliance; and Jim Halstrom, Washington Horticultural Association.

(Against)(Original bill): Mike Moran, Muckleshoot Indian Tribe; and Judy Turpin, Washington Environmental Council.