

HOUSE BILL REPORT

HB 2099

As Reported By House Committee On:
Agriculture & Ecology

Title: An act relating to an exemption from relinquishment of a water right for nonuse resulting from the operation or pendency of legal proceedings.

Brief Description: Allowing an exemption from relinquishment of a water right for nonuse resulting from the operation or pendency of legal proceedings.

Sponsors: Representatives G. Chandler and Linville.

Brief History:

Committee Activity:

Agriculture & Ecology: 2/22/99, 2/25/99 [DPS].

Brief Summary of Substitute Bill

- Expressly broadens an exemption from relinquishment provided for the non-use of a water right resulting from the operation of legal proceedings.

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:

If a person abandons or voluntarily fails to use beneficially all or any part of the person's water right for five successive years, the right or portion unused is relinquished and reverts to the state. A procedure has been established under which the Department of Ecology may determine and the Pollution Control Hearings Board may confirm that a water right has reverted to the state for non-use.

A number of exemptions from this relinquishment requirement are listed by statute. One of these applies if the non-use occurs as the result of the operation of legal proceedings. In a recent decision, the State Supreme Court stated that the statutory construction of the exemption requires more than involvement in legal proceedings, it requires that the non-use of water be attributable to the legal proceedings, that is, it requires that the legal proceedings prevent the use of the water.

Summary of Substitute Bill:

The exemption from relinquishment of a water right provided by law for non-use resulting from the operation of legal proceedings is modified. The exemption now applies if the non-use occurs as a result of the operation or pendency of a general adjudication proceeding initiated under the surface or groundwater code or other legal proceedings concerning the water right or appurtenant real property.

Substitute Bill Compared to Original Bill: The retroactive effective date is added by the substitute bill.

Appropriation: None.

Fiscal Note: Not requested.

Effective Date of Substitute Bill: The exemption provided by the bill applies retroactively to the commencement of general adjudication proceedings for the Yakima River basin in October 1977.

Testimony For: (Original bill) (1) Relinquishment should not apply if a person's water right is involved in a general adjudication. The referee and judge in the Yakima basin adjudication have adopted the position that the relinquishment clock stopped at the beginning of the adjudication proceedings. Businesses and individuals who are party to the suit have relied on that ruling. The rules should not be changed 20 years later. (2) The current problem was not created by the Supreme Court's overturning a decision in the Yakima adjudication; it was arrived at inadvertently when the court addressed an unrelated ruling by the Pollution Control Hearings Board.

(Comments) (Original bill) A retroactive effective date should be added. It should apply to the beginning of the Yakima adjudication.

(Concerns) (Original bill) The exemption provided is too broad. It should not apply to inactive adjudications that exist in this state.

Testimony Against: None.

Testified: (In support) (Original bill) Karla Fullerton, Washington Cattlemens Association; Kathleen Collins, Washington Water Policy Alliance; Dick Ducharme, Yakima Growers and Shippers Association; and Sarah Mack, R.D. Merrill.

(With concerns) (Original bill) Ken Slattery, Department of Ecology.