

SENATE BILL REPORT

SHB 2099

As Reported By Senate Committee On:
Environmental Quality & Water Resources, April 2, 1999

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: House Committee on Agriculture & Ecology (originally sponsored by Representatives G. Chandler and Linville).

Brief History:

Committee Activity: Environmental Quality & Water Resources: 3/30/99, 4/2/99 [DPA].

SENATE COMMITTEE ON ENVIRONMENTAL QUALITY & WATER RESOURCES

Majority Report: Do pass as amended.

Signed by Senators Fraser, Chair; Eide, Vice Chair; Honeyford, Jacobsen, Morton and Swecker.

Staff: Genevieve Pisarski (786-7488)

Background: If a person abandons or voluntarily fails to put all or any part of the person's water right to beneficial use for five successive years, the right or the portion unused reverts to the state. A procedure has been established under which the Department of Ecology may determine that a water right has been relinquished 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 relinquishment are established by statute. One of these is the operation of legal proceedings. In a recent opinion regarding the adjudication of water rights in the Yakima Basin, the State Supreme Court stated that this exemption requires more than involvement in legal proceedings, it requires that the non-use of water be attributable to the legal proceedings, in the sense that the legal proceedings prevent the use of the water.

Summary of Amended Bill: The statutory circumstances that are sufficient cause for nonuse of a water right so as to avoid relinquishment is amended to include nonuse that has been excused by the superior court while the Yakima Basin adjudication is pending.

Amended Bill Compared to Substitute Bill: Nonuse as a result of the operation or pendency of any general adjudication under the surface or groundwater codes or of other legal proceedings concerning the water right or appurtenant real property is not included.

Appropriation: None.

Fiscal Note: Not requested.

Effective Date: Ninety days after adjournment of session in which bill is passed.

Testimony For: Over 40,000 water users have relied on being excused from relinquishment requirements by the court in the Yakima Basin adjudication, while it is pending. Adjudications are a form of quiet title action and both should be considered sufficient cause for nonuse, while they are pending. Common law abandonment doctrine will take care of situations that should not be excused from relinquishment. Water users should not have to feel they must use water needlessly in order to avoid relinquishment.

Testimony Against: Because the bill includes any adjudication, as well as any quiet title action, and appears to count pendency from the time a petition for adjudication is filed, it is too broad.

Testified: PRO: Joe Mentor, WA Water Policy Alliance; Mike Schwisow, WA State Water Resources Assn.; CON: Judy Turpin, WEC; Bill Clarke, WA Realtors.