

SENATE BILL REPORT

SSB 5910

As Passed Senate, March 13, 2001

Title: An act relating to temporary nonuse of water by the owner of a water right.

Brief Description: Regarding temporary nonuse of a water right.

Sponsors: Senate Committee on Environment, Energy & Water (originally sponsored by Senators Fraser and Honeyford).

Brief History:

Committee Activity: Environment, Energy & Water: 2/15/01, 2/20/01 [DPS].
Passed Senate: 3/13/01, 37-10.

SENATE COMMITTEE ON ENVIRONMENT, ENERGY & WATER

Majority Report: That Substitute Senate Bill No. 5910 be substituted therefor, and the substitute bill do pass.

Signed by Senators Fraser, Chair; Regala, Vice Chair; Eide, Hale, Honeyford, Jacobsen, McDonald, Morton and Patterson.

Staff: Genevieve Pisarski (786-7488)

Background: Under current law, if a person abandons a water right, or, if a person voluntarily fails, without sufficient cause, to use a water right for five successive years, the water right reverts back to the state. Abandonment is a common law doctrine, and it requires both the intent to abandon and the actual nonuse of a water right, although long periods of nonuse raise a rebuttable presumption of intent to abandon. Voluntary failure, without sufficient cause, to use a water right for five successive years is a standard established by the state's relinquishment statute. Circumstances that are considered sufficient cause are also established by the statute and include nonuse as a result of drought or other unavailability of water and of the operation of legal proceedings, among others. The state Supreme Court has construed the statutory provisions relating to sufficient cause narrowly. Voluntary failure is not defined in the statute. Webster's Dictionary defines "voluntary" as being without compulsion, on purpose, or by choice.

Summary of Bill: Sufficient cause for nonuse of water includes temporarily reduced need for irrigation due to weather conditions, including precipitation and temperature, so long as facilities are maintained for use of the full amount of the water right. The water user has the burden of proving that weather conditions are significantly different from average and result in reduced need.

Sufficient cause for nonuse also includes conservation of water under the Yakima River Basin Water Enhancement Project, so long as the water is reallocated as required by the project; use of transitory return flows, if these are measured or reliably estimated using a methodology accepted by the Department of Ecology; and crop rotation.

Water rights that are not used due to weather conditions or presence of other water can be donated as trust water rights.

Appropriation: None.

Fiscal Note: Not requested.

Effective Date: The bill contains an emergency clause and takes effect immediately.

Testimony For: These are reasons for nonuse of water that are not in people's control. They are realities that need to be addressed. These provisions are fair.

Testimony Against: Oversight is needed to assure that these provisions benefit only legitimate water rights. They must only apply prospectively.

Testified: PRO: Kathleen Collins, Washington Water Policy Alliance; Hertha Lund, Washington Farm Bureau; Mike Schwisow, Washington State Water Resources Association; Josh Baldi, WEC; CON: Dawn Vyvyan, Yakama Nation; CONCERNS: Mike Moran, MIT.

House Amendment(s): A provision that weather conditions must warrant reduction in water use replaces the burden of proof on the water user. A contract or agreement to buy back electricity needed to use water for irrigation is added as sufficient cause for nonuse. Crop rotation is defined as temporary change in type of crop as a result of generally recognized farming practices. The option to make a temporary donation to the trust water rights program of water rights not used due to weather conditions is deleted.