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HOUSE BILL 1769

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State of Washington

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2001 Regular Session

By Representatives G. Chandler, B. Chandler, Clements, Armstrong, Lisk, Delvin and Mulliken

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1 AN ACT Relating to nonuse of water for sufficient cause; and  
2 amending RCW 90.14.043, 90.14.140, 90.14.160, 90.14.170, and 90.14.180.

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

4 **Sec. 1.** RCW 90.14.043 and 1985 c 435 s 1 are each amended to read  
5 as follows:

6 (1) Notwithstanding any time restrictions imposed by the provisions  
7 of chapter 90.14 RCW, a person may file a claim pursuant to RCW  
8 90.14.041 if such person obtains a certification from the pollution  
9 control hearings board as provided in this section.

10 (2) A certification shall be issued by the pollution control  
11 hearings board if, upon petition to the board, it is shown to the  
12 satisfaction of the board that:

13 (a) Waters of the state have been applied to beneficial use  
14 continuously (with no period of nonuse exceeding ~~((five))~~ ten  
15 consecutive years) in the case of surface water beginning not later  
16 than June 7, 1917, and in the case of ground water beginning not later  
17 than June 7, 1945, or

18 (b) Waters of the state have been applied to beneficial use  
19 continuously (with no period of nonuse exceeding five consecutive

1 years) from the date of entry of a court decree confirming a water  
2 right and any failure to register a claim resulted from a reasonable  
3 misinterpretation of the requirements as they related to such court  
4 decreed rights.

5 (3) The board shall have jurisdiction to accept petitions for  
6 certification from any person through September 1, 1985, and not  
7 thereafter.

8 (4) A petition for certification shall include complete information  
9 on the claim pursuant to RCW 90.14.051 (1) through (8), and any such  
10 information as the board may require.

11 (5) The department of ecology is directed to accept for filing any  
12 claim certified by the board as provided in subsection (2) of this  
13 section. The department of ecology, upon request of the board, may  
14 provide assistance to the board pertinent to any certification  
15 petition.

16 (6) A certification by the pollution control hearings board or a  
17 filing with the department of ecology of a claim under this section  
18 shall not constitute a determination or confirmation that a water right  
19 exists.

20 (7) The provisions of RCW 90.14.071 shall have no applicability to  
21 certified claims filed pursuant to this section.

22 (8) This section shall have no applicability to ground waters  
23 resulting from the operations of reclamation projects.

24 **Sec. 2.** RCW 90.14.140 and 1998 c 258 s 1 are each amended to read  
25 as follows:

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

30 (a) Drought, or other unavailability of water;

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

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

34 (d) The operation of legal proceedings;

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

1 (f) Federal laws imposing land or water use restrictions either  
2 directly or through the voluntary enrollment of a landowner in a  
3 federal program implementing those laws, or acreage limitations, or  
4 production quotas.

5 (2) Notwithstanding any other provisions of RCW 90.14.130 through  
6 90.14.180, there shall be no relinquishment of any water right:

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

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

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

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

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

21 (f) If such right or portion of the right is leased to another  
22 person for use on land other than the land to which the right is  
23 appurtenant as long as the lessee makes beneficial use of the right in  
24 accordance with this chapter and a transfer or change of the right has  
25 been approved by the department in accordance with RCW 90.03.380,  
26 90.03.383, 90.03.390, or 90.44.100.

27 **Sec. 3.** RCW 90.14.160 and 1981 c 291 s 1 are each amended to read  
28 as follows:

29 Any person entitled to divert or withdraw waters of the state  
30 through any appropriation authorized by enactments of the legislature  
31 prior to enactment of chapter 117, Laws of 1917, or by custom, or by  
32 general adjudication, who abandons the same, or who voluntarily fails,  
33 without sufficient cause, to beneficially use all or any part of said  
34 right to divert or withdraw for any period of (~~five~~) ten successive  
35 years after July 1, 1967, shall relinquish such right or portion  
36 thereof, and said right or portion thereof shall revert to the state,  
37 and the waters affected by said right shall become available for  
38 appropriation in accordance with RCW 90.03.250.

1       **Sec. 4.** RCW 90.14.170 and 1967 c 233 s 17 are each amended to read  
2 as follows:

3       Any person entitled to divert or withdraw waters of the state by  
4 virtue of his ownership of land abutting a stream, lake, or  
5 watercourse, who abandons the same, or who voluntarily fails, without  
6 sufficient cause, to beneficially use all or any part of said right to  
7 withdraw or divert said water for any period of (~~five~~) ten successive  
8 years after July 1, 1967, shall relinquish such right or portion  
9 thereof, and such right or portion thereof shall revert to the state,  
10 and the waters affected by said right shall become available for  
11 appropriation in accordance with the provisions of RCW 90.03.250.

12       **Sec. 5.** RCW 90.14.180 and 1987 c 109 s 101 are each amended to  
13 read as follows:

14       Any person hereafter entitled to divert or withdraw waters of the  
15 state through an appropriation authorized under RCW 90.03.330,  
16 90.44.080, or 90.44.090 who abandons the same, or who voluntarily  
17 fails, without sufficient cause, to beneficially use all or any part of  
18 said right to withdraw for any period of (~~five~~) ten successive years  
19 shall relinquish such right or portion thereof, and such right or  
20 portion thereof shall revert to the state, and the waters affected by  
21 said right shall become available for appropriation in accordance with  
22 RCW 90.03.250. All certificates hereafter issued by the department of  
23 ecology pursuant to RCW 90.03.330 shall expressly incorporate this  
24 section by reference.

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