
SENATE BILL 5910

State of Washington

57th Legislature

2001 Regular Session

By Senators Fraser and Honeyford

Read first time 02/07/2001. Referred to Committee on Environment,
Energy & Water.

1 AN ACT Relating to temporary nonuse of water by the owner of a
2 water right; amending RCW 90.14.140 and 90.42.080; and declaring an
3 emergency.

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

5 **Sec. 1.** RCW 90.14.140 and 1998 c 258 s 1 are each amended to read
6 as follows:

7 (1) For the purposes of RCW 90.14.130 through 90.14.180,
8 "sufficient cause" shall be defined as the nonuse of all or a portion
9 of the water by the owner of a water right for a period of five or more
10 consecutive years where such nonuse occurs as a result of:

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

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

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

15 (d) The operation of legal proceedings;

16 (e) Federal or state agency leases of or options to purchase lands
17 or water rights which preclude or reduce the use of the right by the
18 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 (g) Temporarily reduced water need for irrigation use where such
6 reduction is due to varying weather conditions including but not
7 limited to precipitation and temperature, so long as the water user's
8 diversion and delivery facilities are maintained in good operating
9 condition consistent with beneficial use of the full amount of the
10 water right. The burden is on the water user to prove that the weather
11 conditions are significantly different from average conditions such
12 that they resulted in the reduction of water use;

13 (h) Water conservation measures implemented under the Yakima river
14 basin water enhancement project, so long as the conserved water is
15 reallocated in accordance with the provisions of P.L. 103-434; or

16 (i) Reliance by an irrigation water user on the transitory presence
17 of return flows in lieu of diversion or withdrawal of water from the
18 primary source of supply, if such return flows are measured or reliably
19 estimated using a scientific methodology accepted as reliable by the
20 director of the department of ecology.

21 (2) Notwithstanding any other provisions of RCW 90.14.130 through
22 90.14.180, there shall be no relinquishment of any water right:

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

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

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

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

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

37 (f) If such right or portion of the right is leased to another
38 person for use on land other than the land to which the right is
39 appurtenant as long as the lessee makes beneficial use of the right in

1 accordance with this chapter and a transfer or change of the right has
2 been approved by the department in accordance with RCW 90.03.380,
3 90.03.383, 90.03.390, or 90.44.100.

4 **Sec. 2.** RCW 90.42.080 and 1993 c 98 s 4 are each amended to read
5 as follows:

6 (1) The state may acquire all or portions of existing water rights,
7 by purchase, gift, or other appropriate means other than by
8 condemnation, from any person or entity or combination of persons or
9 entities. Once acquired, such rights are trust water rights.

10 (2) The department may enter into leases, contracts, or such other
11 arrangements with other persons or entities as appropriate, to ensure
12 that trust water rights acquired in accordance with this chapter may be
13 exercised to the fullest possible extent.

14 (3) Trust water rights may be acquired by the state on a temporary
15 or permanent basis.

16 (4) The provisions of RCW 90.03.380 and 90.03.390 apply to
17 transfers of water rights under this section.

18 (5) No funds may be expended for the purchase of water rights by
19 the state pursuant to this section unless specifically appropriated for
20 this purpose by the legislature.

21 (6) Trust water rights may be expressly conditioned by the grantor
22 to include all or portions of existing water rights as trust water
23 rights on a temporary basis as a result of temporarily reduced water
24 need where such reduction is due to varying weather conditions,
25 including but not limited to precipitation and temperature, or the
26 presence of water from a source not within the control of the water
27 user, so long as the water user's diversion and delivery facilities are
28 maintained in good operating condition consistent with beneficial use
29 of the full amount of the water right.

30 NEW SECTION. **Sec. 3.** This act is necessary for the immediate
31 preservation of the public peace, health, or safety, or support of the
32 state government and its existing public institutions, and takes effect
33 immediately.

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