

Agriculture & Ecology Committee

HB 2038

Brief Description: Clarifying "voluntarily fails" for water rights relinquishment purposes.

Sponsors: Representatives Linville and G. Chandler .

Brief Summary of Bill

- Defines when a failure to use a water right is voluntary and, therefore, subjects the right to relinquishment for nonuse and identifies circumstances that qualify as involuntary failures to use a water right.

Hearing Date: February 23, 2001.

Staff: Kenneth Hirst (786-7105).

Background:

In general, if a person abandons his or her water right or voluntarily fails to use the right for five successive years, the person relinquishes the right or the portion of the right abandoned or not used. (RCW 90.14.160 - 90.14.180.) However, exemptions from this requirement are provided in two forms: (1) outright exemptions from these statutory relinquishment provisions, and (2) a list of "sufficient causes" for the voluntary non-use. These "sufficient causes" provide exemptions from relinquishment. (RCW 90.14.140.) Examples of the sufficient causes that provide exemptions for the voluntary non-use of water include: drought or unavailability of water, certain military service, and the operation of legal proceedings.

Abandonment of a water right is the intentional relinquishment of the right. In its Okanogan v. Town of Twisp decision, the state's Supreme Court adopted the general rule that, under the common law theory of abandonment of water rights, long periods of nonuse raise a rebuttable presumption of intent to abandon a water right. (133 Wn. 2d 769 (1997) at page 783.)

Summary of Bill:

The type of voluntary failure to use a water right that, absent an exemption, triggers the relinquishment-for-nonuse provisions of water law is defined. It is the nonuse by the owner of the water right where the nonuse occurs as a result of factors within the control of the water user.

Nonuse is involuntary when it is in response to factors beyond the control of the water user, such as cyclical weather patterns or the presence of water from a source not within the control of the water user. The latter example applies only if diversion and delivery facilities are maintained in good operating condition consistent with the full amount of the water right.

Appropriation: None.

Fiscal Note: Not Requested.

Effective Date: The bill is remedial in nature and applies retroactively to October 12, 1977. The bill contains an emergency clause and takes effect immediately.