

SSB 5583 - S AMD 62

By Senator Honeyford

1 On page 8, after line 13, insert the following:

2 "NEW SECTION. **Sec. 7.** A new section is added to chapter 90.42 RCW  
3 to read as follows:

4 (1) The legislature finds that on a seasonal or longer term basis,  
5 a water right holder or claimant may not need to divert or withdraw any  
6 or a part of the water allowable under the right or claim, but may be  
7 uncertain whether foregoing the use or a portion of the use for a  
8 season or successive seasons may cause the right or a portion of the  
9 right to relinquish. It is the intent of this section to provide a  
10 streamlined procedure to allow a water right holder to notify the state  
11 of the water right holder's intent to forego water use without that  
12 period of nonuse counting toward relinquishment of the right and with  
13 the forgone water benefitting instream flows and enhancing water  
14 banking opportunities.

15 (2) A person entitled to divert or withdraw waters of the state may  
16 elect to forego water use or a portion thereof without the period of  
17 nonuse being included within the five-year period of nonuse  
18 constituting relinquishment under RCW 90.14.160, 90.14.170, or  
19 90.14.180, when the person provides prior written notice to the  
20 department regarding reduced use.

21 (3)(a) Notice under this section must include:

22 (i) Information regarding the ownership of the rights, including  
23 the identifying numbers of pertinent permits, certificates, or  
24 previously filed water right claims;

25 (ii) A description of each water right or claim, including the land  
26 area to which it is appurtenant, the purpose of use, the location of  
27 the point of diversion or withdrawal, and the instantaneous quantity  
28 and annual quantity allowed;

29 (iii) The period of time during which it is anticipated that use  
30 will be foregone, if known;

1 (iv) An estimate of the quantity of water use that has been and  
2 will be foregone, including both the total quantity in acre-feet per  
3 year and the instantaneous diversion or withdrawal rate in cubic feet  
4 per second or gallons per minute; and

5 (v) An estimate of reduced irrigated acres, if applicable.

6 (b) The anticipated period of future foregone use identified in  
7 (a)(iii) of this subsection is not binding on the water right holder  
8 and the notice of foregone use remains in effect until the water right  
9 holder files a notice of amendment or revocation under subsection (6)  
10 of this section.

11 (4) The department shall, through guidelines, establish the forms  
12 of notification necessary to implement this section.

13 (5) When the department receives a notice of foregone water use,  
14 the foregone water is deemed to be a temporary trust water right under  
15 this chapter.

16 (6) The water right holder or claimant must maintain their  
17 diversion and conveyance facilities in good working order and capable  
18 of diverting and conveying the full quantity of the right while the  
19 water is foregone.

20 (7) The water right holder or claimant may revoke or amend the  
21 election to forego water use at any time by submitting a notice in  
22 writing to the department. Upon receipt of such a notice, the  
23 accumulation of time during which nonuse of water may constitute  
24 relinquishment must be resumed if the water right holder or claimant  
25 does not immediately resume the use of the water.

26 (8) During the period of foregone use of a water right, the water  
27 represented by the consumptive use portion of the right must be  
28 managed, to the extent practicable, by the department for the  
29 maintenance and enhancement of stream flows and to preserve or restore  
30 aquifer conditions.

31 (9) The department shall make a record of all notices of election  
32 to forego water use and notices to amend or revoke such an election  
33 that are received under this section and shall append the notices to  
34 the water right and claim files associated with the notices. There is  
35 no fee for filing and recording a notice under this section.

36 (10) The person who files a notice of foregone water use under this  
37 section shall notify the department in writing of any changes in  
38 contact information.

1 (11) The department shall provide notice annually to a water right  
2 holder or claimant who has filed a notice of foregone water that is  
3 still in operation. The water right holder or claimant must provide  
4 updated notice if he or she would like to change any information  
5 contained in the existing notice of foregone water use.

6 (12) The department may invalidate a notice of foregone water use  
7 for good cause including, but not limited to, situations in which the  
8 water right holder or claimant is not acting in good faith, if the  
9 water right holder or claimant is acting fraudulently, or in situations  
10 in which the foregone water use is not bona fide."

11 Renumber the remaining sections consecutively and correct any  
12 internal references accordingly.

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