

RCW 90.14.140 "Sufficient cause" for nonuse defined—Rights exempted.

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

- (a) Drought, or other unavailability of water;
 - (b) Active service in the armed forces of the United States during military crisis;
 - (c) Nonvoluntary service in the armed forces of the United States;
 - (d) The operation of legal proceedings;
 - (e) Federal or state agency leases of or options to purchase lands or water rights which preclude or reduce the use of the right by the owner of the water right;
 - (f) Federal laws imposing land or water use restrictions either directly or through the voluntary enrollment of a landowner in a federal program implementing those laws, or acreage limitations, or production quotas;
 - (g) Temporarily reduced water need for irrigation use where such reduction is due to varying weather conditions, including but not limited to precipitation and temperature, that warranted the reduction in water use, so long as the water user's diversion and delivery facilities are maintained in good operating condition consistent with beneficial use of the full amount of the water right;
 - (h) Temporarily reduced diversions or withdrawals of irrigation water directly resulting from the provisions of a contract or similar agreement in which a supplier of electricity buys back electricity from the water right holder and the electricity is needed for the diversion or withdrawal or for the use of the water diverted or withdrawn for irrigation purposes;
 - (i) Water conservation measures implemented under the Yakima river basin water enhancement project, so long as the conserved water is reallocated in accordance with the provisions of P.L. 103-434;
 - (j) Reliance by an irrigation water user on the transitory presence of return flows in lieu of diversion or withdrawal of water from the primary source of supply, if such return flows are measured or reliably estimated using a scientific methodology generally accepted as reliable within the scientific community;
 - (k) The reduced use of irrigation water resulting from crop rotation. For purposes of this subsection, crop rotation means the temporary change in the type of crops grown resulting from the exercise of generally recognized sound farming practices. Unused water resulting from crop rotation will not be relinquished if the remaining portion of the water continues to be beneficially used; or
- (1) Waiting for a final determination from the department of ecology on a change application filed under RCW 90.03.250, 90.03.380, or 90.44.100.
- (2) Notwithstanding any other provisions of RCW 90.14.130 through 90.14.180, there shall be no relinquishment of any water right:
- (a) If such right is claimed for power development purposes under chapter 90.16 RCW and annual license fees are paid in accordance with chapter 90.16 RCW;
 - (b) If such right is used for a standby or reserve water supply to be used in time of drought or other low flow period so long as withdrawal or diversion facilities are maintained in good operating condition for the use of such reserve or standby water supply;

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

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

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

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

(g) If such a right or portion of the right is authorized for a purpose that is satisfied by the use of agricultural industrial process water as authorized under RCW 90.46.150; or

(h) If such right is a trust water right under chapter 90.38 or 90.42 RCW.

(3) In adding provisions to this section by chapter 237, Laws of 2001, the legislature does not intend to imply legislative approval or disapproval of any existing administrative policy regarding, or any existing administrative or judicial interpretation of, the provisions of this section not expressly added or revised. [2012 c 7 § 2; (2012 c 7 § 1 expired June 30, 2019); (2009 c 183 § 14 expired June 30, 2021). Prior: 2001 c 240 § 1; 2001 c 237 § 27; 2001 c 69 § 5; 1998 c 258 § 1; 1987 c 125 § 1; 1967 c 233 § 14.]

Effective date—2012 c 7 § 2: "Section 2 of this act takes effect June 30, 2019." [2012 c 7 § 4.]

Expiration date—2012 c 7 § 1: "Section 1 of this act expires June 30, 2019." [2012 c 7 § 3.]

Expiration date—2019 c 78; 2009 c 183: See note following RCW 90.03.380.

Effective date—2001 c 240: "This act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and takes effect immediately [May 11, 2001]." [2001 c 240 § 2.]

Finding—Intent—Severability—Effective date—2001 c 237: See notes following RCW 90.82.040.

Intent—2001 c 237: See note following RCW 90.66.065.

Effective date—1967 c 233: See RCW 90.14.900.

Application to Yakima river basin trust water rights: RCW 90.38.040.