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**SUBSTITUTE HOUSE BILL 1999**

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**State of Washington**

**58th Legislature**

**2003 Regular Session**

**By** House Committee on Agriculture & Natural Resources (originally sponsored by Representatives Grant, Schoesler, Linville, Chandler, Morris, Hunt and Holmquist)

READ FIRST TIME 03/04/03.

1 AN ACT Relating to nonuse of water for water conservation measures;  
2 amending RCW 90.03.380; and reenacting and amending RCW 90.14.140.

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

4 **Sec. 1.** RCW 90.14.140 and 2001 c 240 s 1, 2001 c 237 s 27, and  
5 2001 c 69 s 5 are each reenacted and amended to read as follows:

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

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

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

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

14 (d) The operation of legal proceedings;

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

18 (f) Federal laws imposing land or water use restrictions either

1 directly or through the voluntary enrollment of a landowner in a  
2 federal program implementing those laws, or acreage limitations, or  
3 production quotas;

4 (g) Temporarily reduced water need for irrigation use where such  
5 reduction is due to varying weather conditions, including but not  
6 limited to precipitation and temperature, that warranted the reduction  
7 in water use, so long as the water user's diversion and delivery  
8 facilities are maintained in good operating condition consistent with  
9 beneficial use of the full amount of the water right;

10 (h) Temporarily reduced diversions or withdrawals of irrigation  
11 water directly resulting from the provisions of a contract or similar  
12 agreement in which a supplier of electricity buys back electricity from  
13 the water right holder and the electricity is needed for the diversion  
14 or withdrawal or for the use of the water diverted or withdrawn for  
15 irrigation purposes;

16 (i) Water conservation measures implemented under the Yakima river  
17 basin water enhancement project, so long as the conserved water is  
18 reallocated in accordance with the provisions of P.L. 103-434;

19 (j) Irrigation and other agricultural water conservation measures  
20 other than those implemented under the Yakima river basin water  
21 enhancement project. The use of water resulting from such a  
22 conservation measure may be transferred, changed, or amended under RCW  
23 90.03.380 or 90.44.100 if the water source is in a watershed for which  
24 a watershed plan has been approved under chapter 90.82 RCW or for which  
25 a comprehensive watershed plan has been adopted under RCW 90.54.040(1);  
26 instream flows have been established by rule for the watershed; and  
27 other water rights will not be impaired;

28 (k) Reliance by an irrigation water user on the transitory presence  
29 of return flows in lieu of diversion or withdrawal of water from the  
30 primary source of supply, if such return flows are measured or reliably  
31 estimated using a scientific methodology generally accepted as reliable  
32 within the scientific community; or

33 ((k)) (l) The reduced use of irrigation water resulting from crop  
34 rotation. For purposes of this subsection, crop rotation means the  
35 temporary change in the type of crops grown resulting from the exercise  
36 of generally recognized sound farming practices. Unused water  
37 resulting from crop rotation will not be relinquished if the remaining  
38 portion of the water continues to be beneficially used.

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

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

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

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

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

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

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

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

26 (h) If such right is a trust water right under chapter 90.38 or  
27 90.42 RCW.

28 (3) In adding provisions to this section by chapter 237, Laws of  
29 2001, the legislature does not intend to imply legislative approval or  
30 disapproval of any existing administrative policy regarding, or any  
31 existing administrative or judicial interpretation of, the provisions  
32 of this section not expressly added or revised.

33 **Sec. 2.** RCW 90.03.380 and 2001 c 237 s 5 are each amended to read  
34 as follows:

35 (1) The right to the use of water which has been applied to a  
36 beneficial use in the state shall be and remain appurtenant to the land  
37 or place upon which the same is used: PROVIDED, HOWEVER, That the

1 right may be transferred to another or to others and become appurtenant  
2 to any other land or place of use without loss of priority of right  
3 theretofore established if such change can be made without detriment or  
4 injury to existing rights. The point of diversion of water for  
5 beneficial use or the purpose of use may be changed, if such change can  
6 be made without detriment or injury to existing rights. Except as  
7 provided in RCW 90.14.140(1)(i), a change in the place of use, point of  
8 diversion, and/or purpose of use of a water right to enable irrigation  
9 of additional acreage or the addition of new uses may be permitted if  
10 such change results in no increase in the annual consumptive quantity  
11 of water used under the water right. For purposes of this section,  
12 "annual consumptive quantity" means the estimated or actual annual  
13 amount of water diverted pursuant to the water right, reduced by the  
14 estimated annual amount of return flows, averaged over the two years of  
15 greatest use within the most recent five-year period of continuous  
16 beneficial use of the water right. Before any transfer of such right  
17 to use water or change of the point of diversion of water or change of  
18 purpose of use can be made, any person having an interest in the  
19 transfer or change, shall file a written application therefor with the  
20 department, and the application shall not be granted until notice of  
21 the application is published as provided in RCW 90.03.280. If it shall  
22 appear that such transfer or such change may be made without injury or  
23 detriment to existing rights, the department shall issue to the  
24 applicant a certificate in duplicate granting the right for such  
25 transfer or for such change of point of diversion or of use. The  
26 certificate so issued shall be filed and be made a record with the  
27 department and the duplicate certificate issued to the applicant may be  
28 filed with the county auditor in like manner and with the same effect  
29 as provided in the original certificate or permit to divert water.

30 (2) If an application for change proposes to transfer water rights  
31 from one irrigation district to another, the department shall, before  
32 publication of notice, receive concurrence from each of the irrigation  
33 districts that such transfer or change will not adversely affect the  
34 ability to deliver water to other landowners or impair the financial  
35 integrity of either of the districts.

36 (3) A change in place of use by an individual water user or users  
37 of water provided by an irrigation district need only receive approval  
38 for the change from the board of directors of the district if the use

1 of water continues within the irrigation district, and when water is  
2 provided by an irrigation entity that is a member of a board of joint  
3 control created under chapter 87.80 RCW, approval need only be received  
4 from the board of joint control if the use of water continues within  
5 the area of jurisdiction of the joint board and the change can be made  
6 without detriment or injury to existing rights.

7 (4) This section shall not apply to trust water rights acquired by  
8 the state through the funding of water conservation projects under  
9 chapter 90.38 RCW or RCW 90.42.010 through 90.42.070.

10 (5)(a) Pending applications for new water rights are not entitled  
11 to protection from impairment, injury, or detriment when an application  
12 relating to an existing surface or ground water right is considered.

13 (b) Applications relating to existing surface or ground water  
14 rights may be processed and decisions on them rendered independently of  
15 processing and rendering decisions on pending applications for new  
16 water rights within the same source of supply without regard to the  
17 date of filing of the pending applications for new water rights.

18 (c) Notwithstanding any other existing authority to process  
19 applications, including but not limited to the authority to process  
20 applications under WAC 173-152-050 as it existed on January 1, 2001, an  
21 application relating to an existing surface or ground water right may  
22 be processed ahead of a previously filed application relating to an  
23 existing right when sufficient information for a decision on the  
24 previously filed application is not available and the applicant for the  
25 previously filed application is sent written notice that explains what  
26 information is not available and informs the applicant that processing  
27 of the next application will begin. The previously filed application  
28 does not lose its priority date and if the information is provided by  
29 the applicant within sixty days, the previously filed application shall  
30 be processed at that time. This subsection (5)(c) does not affect any  
31 other existing authority to process applications.

32 (d) Nothing in this subsection (5) is intended to stop the  
33 processing of applications for new water rights.

34 (6) No applicant for a change, transfer, or amendment of a water  
35 right may be required to give up any part of the applicant's valid  
36 water right or claim to a state agency, the trust water rights program,  
37 or to other persons as a condition of processing the application.

1           (7) In revising the provisions of this section and adding  
2 provisions to this section by chapter 237, Laws of 2001, the  
3 legislature does not intend to imply legislative approval or  
4 disapproval of any existing administrative policy regarding, or any  
5 existing administrative or judicial interpretation of, the provisions  
6 of this section not expressly added or revised.

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