
SENATE BILL 5288

State of Washington

58th Legislature

2003 Regular Session

By Senators Fraser, Jacobsen, Kline and Kohl-Welles

Read first time 01/21/2003. Referred to Committee on Natural Resources, Energy & Water.

1 AN ACT Relating to water rights for instream beneficial uses;
2 reenacting and amending RCW 90.14.140; and adding a new section to
3 chapter 90.03 RCW.

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

5 NEW SECTION. **Sec. 1.** A new section is added to chapter 90.03 RCW
6 to read as follows:

7 A right to the instream beneficial use of water may be held by any
8 person or by a unit of state or local government.

9 **Sec. 2.** RCW 90.14.140 and 2001 c 240 s 1, 2001 c 237 s 27, and
10 2001 c 69 s 5 are each reenacted and amended to read as follows:

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

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

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

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

- 1 (d) The operation of legal proceedings;
- 2 (e) Federal or state agency leases of or options to purchase lands
3 or water rights which preclude or reduce the use of the right by the
4 owner of the water right;
- 5 (f) Federal laws imposing land or water use restrictions either
6 directly or through the voluntary enrollment of a landowner in a
7 federal program implementing those laws, or acreage limitations, or
8 production quotas;
- 9 (g) Temporarily reduced water need for irrigation use where such
10 reduction is due to varying weather conditions, including but not
11 limited to precipitation and temperature, that warranted the reduction
12 in water use, so long as the water user's diversion and delivery
13 facilities are maintained in good operating condition consistent with
14 beneficial use of the full amount of the water right;
- 15 (h) Temporarily reduced diversions or withdrawals of irrigation
16 water directly resulting from the provisions of a contract or similar
17 agreement in which a supplier of electricity buys back electricity from
18 the water right holder and the electricity is needed for the diversion
19 or withdrawal or for the use of the water diverted or withdrawn for
20 irrigation purposes;
- 21 (i) Water conservation measures implemented under the Yakima river
22 basin water enhancement project, so long as the conserved water is
23 reallocated in accordance with the provisions of P.L. 103-434;
- 24 (j) Reliance by an irrigation water user on the transitory presence
25 of return flows in lieu of diversion or withdrawal of water from the
26 primary source of supply, if such return flows are measured or reliably
27 estimated using a scientific methodology generally accepted as reliable
28 within the scientific community; or
- 29 (k) The reduced use of irrigation water resulting from crop
30 rotation. For purposes of this subsection, crop rotation means the
31 temporary change in the type of crops grown resulting from the exercise
32 of generally recognized sound farming practices. Unused water
33 resulting from crop rotation will not be relinquished if the remaining
34 portion of the water continues to be beneficially used.
- 35 (2) Notwithstanding any other provisions of RCW 90.14.130 through
36 90.14.180, there shall be no relinquishment of any water right:
- 37 (a) If such right is claimed for power development purposes under

1 chapter 90.16 RCW and annual license fees are paid in accordance with
2 chapter 90.16 RCW;

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

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

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

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

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

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

23 (h) If such right is a trust water right under chapter 90.38 or
24 90.42 RCW; or

25 (i) If such right is authorized for any instream beneficial use of
26 water.

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

--- END ---