
**Rural Development, Agriculture &
Natural Resources Committee**

HB 1132

Brief Description: Concerning the protection of water supply for farming and rural economic development.

Sponsors: Representatives Kretz, Chapman, Dent and Springer.

Brief Summary of Bill

- Provides that a water right used for agricultural irrigation is not subject to relinquishment if it meets certain specified criteria.
- Changes the period of time within which the Department of Ecology may assess whether a water right has not been beneficially used for a five-year period of time under the water right relinquishment statute.

Hearing Date: 1/20/21

Staff: Robert Hatfield (786-7117).

Background:

Water Code.

Washington operates under a water right permit system. With certain exceptions, new rights to use surface or ground water must be established according to the permit system. A person seeking a new water right must file an application with the Department of Ecology (Ecology), which must then consider a four-part test when deciding whether to issue the requested right: (1) whether water is available; (2) whether a beneficial use of water would be made; (3) whether granting the right would impair existing rights; and (4) whether the proposed use would detrimentally affect the public welfare.

This analysis was prepared by non-partisan legislative staff for the use of legislative members in their deliberations. This analysis is not part of the legislation nor does it constitute a statement of legislative intent.

The Trust Water Rights Program.

The state may acquire a trust water right by donation, purchase, or lease. Trust water rights are placed in the state's Trust Water Rights Program and managed by Ecology. Two trust water rights systems, one for the Yakima River basin and the other for the rest of the state, are established in state law.

The Trust Water Rights Program enables the voluntary transfer of water and water rights to the state, either temporarily or permanently. While a water right is held in trust, it is considered an exercised water right and is protected from relinquishment. Water held in trust retains its original priority date.

Water Banks.

The process to establish a water bank begins with a consultation between Ecology's Water Resources Program and a would-be banker. If Ecology agrees that the banker's proposal is in the public interest, a water banking agreement may be negotiated. This agreement describes how Ecology will take ownership of a water right and hold it in the Trust Water Rights Program in exchange for processing applications for mitigated new uses.

Ecology is authorized to use water banking to mitigate for new water uses, hold water for beneficial uses consistent with terms established by the transferor, meet future water supply needs, and provide a source of water to third parties, on a temporary or permanent basis, for any allowed beneficial use.

Water Rights Relinquishment.

A landowner who has the right to use water will lose that right if he or she does not put the water to a beneficial use over a period of five consecutive years. This is commonly known as both "relinquishment" and the "use it or lose it" principle. The water right holder can lose, or relinquish, their entire right to use any water or a portion of their original water right depending on how much water was not put to beneficial use over the five years in question.

There are, however, instances when a water right holder cannot use the water for five years and still retain his or her rights to the water. This occurs when the water right holder can show a sufficient cause for not using the water. The qualifying sufficient causes have been identified in statute and include causes such as drought, military service, legal proceedings, participation in the Trust Water Rights Program, and crop rotation practices. Water right holders that can show a sufficient cause do not relinquish their right to water even if they go more than five years without putting the water to a beneficial use.

Summary of Bill:

A definition of "good faith purchaser" is added to the Water Code. A "good faith purchaser" is defined as a person who purchased real property after 2000, together with a water right permit, certificate, or claim, and who did not have knowledge at the time of purchase that the water right

may have been relinquished due to nonuse.

The list of sufficient causes for which nonuse of water is excused from relinquishment is amended to add the circumstance in which a water right is used for agricultural irrigation, the right or a portion of the right is purchased by a good faith purchaser together with real property, and the water is either put to beneficial use within five years after the purchase or any nonuse beyond the five-year period is based on any of the other sufficient causes specified in law.

The sufficient cause described above applies only to land being used for agricultural purposes that is located in a county that is east of the crest of the Cascade Mountains in which at least 40 percent of the county is public land, borders Canada, and where there are no anadromous fisheries in the stream where the diversion of water occurs or where the diversion from a groundwater withdrawal occurs.

The span of time in which the Department of Ecology (Ecology) may evaluate whether the water right has been unused for five consecutive years is limited to the 15-year period prior to notification to the water right holder that the water right may be subject to an administrative or judicial relinquishment action.

The provisions described above apply both prospectively and retroactively to water rights that on January 2, 2021 were subject to relinquishment proceedings before Ecology or on appeal of a relinquishment order.

Appropriation: None.

Fiscal Note: Available.

Effective Date: The bill contains an emergency clause and takes effect immediately, except for section 4, which takes effect June 30, 2021.