

# SENATE BILL REPORT

## SSB 5860

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As Passed Senate, February 14, 2022

**Title:** An act relating to water policy in regions with regulated reductions in aquifer levels.

**Brief Description:** Concerning water policy in regions with regulated reductions in aquifer levels.

**Sponsors:** Senate Committee on Agriculture, Water, Natural Resources & Parks (originally sponsored by Senators Warnick, Dozier and Schoesler).

**Brief History:**

**Committee Activity:** Agriculture, Water, Natural Resources & Parks: 2/01/22, 2/03/22 [DPS, w/oRec].

**Floor Activity:** Passed Senate: 2/14/22, 43-4.

**Brief Summary of First Substitute Bill**

- Reestablishes the process for a water right holder to avoid relinquishment for the non-use of a groundwater right from the Odessa aquifer if certain conditions are satisfied.
- Provides that a water user who fails to exercise a right to withdraw ground water from the Odessa aquifer subarea is deemed to have done so involuntarily due to a drought or low flow period, and does not relinquish their right to use the water.

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### SENATE COMMITTEE ON AGRICULTURE, WATER, NATURAL RESOURCES & PARKS

**Majority Report:** That Substitute Senate Bill No. 5860 be substituted therefor, and the substitute bill do pass.

Signed by Senators Van De Wege, Chair; Salomon, Vice Chair; Warnick, Ranking Member; Honeyford and Rolfes.

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*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.*

**Minority Report:** That it be referred without recommendation.

Signed by Senator Stanford.

**Staff:** Karen Epps (786-7424)

**Background:** Ground Water Management Subareas. Ground Water Management Subareas may be established by rules adopted by the Department of Ecology (Ecology) to address declining aquifer levels and regulate withdrawals of public ground water.

Ecology has the authority to enter into agreements with the United States and irrigation districts to offset aquifer depletions due to ground water withdrawals. The agreements allow conserved surface water to be delivered to certain deep well irrigated lands. Where such deliveries occur, Ecology must issue a superseding water right permit or certificate to indicate that the unused portion of a replaced subarea ground water right is a reserve right with low flow protection from relinquishment. This reserve right may again be used if the delivery of conserved water is curtailed or otherwise unavailable. The total acreage irrigated under the subarea ground water right and delivered water must not exceed quantity or acreage limits described in the ground water permit or certificate.

Relinquishment. Under the relinquishment statute, if a water right holder abandons or voluntarily fails to beneficially use all or any part of their water right for five successive years without sufficient cause, the right or portion unused reverts to the state. The relinquishment statute provides a list of sufficient causes for voluntary nonuse that protect a water right from relinquishment. Examples of sufficient causes include drought or unavailability of water, certain military service, the operation of legal proceedings, or when waiting for a final determination from Ecology on a change application. Water right holders who can show a sufficient cause do not relinquish their right to water even if it has been more than five years without that water being put to beneficial use.

The statute includes a list of exemptions under which there is no relinquishment. Examples of these exemptions include the use of water rights for power development, water rights used only in times of drought or low flow periods, municipal water supply for residential purposes, and water that is placed in the Trust Water Rights Program.

Odessa Groundwater Subarea. Ecology has adopted rules establishing the Odessa Groundwater Management Subarea. In 2006, the Legislature established a process for a water right holder to avoid relinquishment for the non-use of a groundwater right from the Odessa aquifer for a period of 15 years if certain conditions are satisfied. A water user who failed to exercise a right to withdraw ground water from the Odessa aquifer subarea was deemed to have done so involuntarily due to a drought or low flow period, and thus did not relinquish their right to use the water. The amount of water that was not used was considered a standby or reserve water supply, and could be used after the period of non-use had ended, if certain conditions were met. The process required water right holders who chose not to use water to notify Ecology in writing within 180 days of stopping the water

use and upon the recommencement of use. These provisions expired July 1, 2021.

**Summary of First Substitute Bill:** The process for a water right holder to avoid relinquishment for the non-use of a groundwater right from the Odessa aquifer if certain conditions are satisfied is reestablished. A water user who fails to exercise a right to withdraw ground water from the Odessa aquifer subarea is deemed to have done so involuntarily due to a drought or low flow period, and does not relinquish their right to use the water. The amount of water that is not used was considered a standby or reserve water supply, and may be used after the period of non-use has ended, if certain conditions are met, including:

- the reduction in water use must result from conservation practices, water use efficiencies, crop type or rotation changes, an unavailability of water, economic hardship, infrastructure costs, or participation in an effort to reduce aquifer depletion;
- the withdraw or diversion facility is maintained in good operating condition; and
- Ecology has not issued a superseding water right permit or certificate to designate a portion of the ground water right replaced by water from the federal Columbia Basin Project.

Water right holders who choose not to use water must notify Ecology in writing within 180 days of stopping the water use and upon the recommencement of use. Water right holders who notified Ecology under the prior process are deemed to have provided notice to Ecology under the reestablished process.

**Appropriation:** None.

**Fiscal Note:** Not requested.

**Creates Committee/Commission/Task Force that includes Legislative members:** No.

**Effective Date:** Ninety days after adjournment of session in which bill is passed.

**Staff Summary of Public Testimony on First Substitute:** PRO: This bill reestablishes a process that has been in place since 2006. Water is so important to this part of the Columbia Basin. In 2006, the Legislature allowed farmers in the Odessa subarea to stop their water use and still protect their water right from relinquishment, which provided for immediate aquifer relief and put a hold on those serious depletions. The Odessa groundwater program is a water exchange program and the landowners need to have their groundwater right to exchange for surface water supplies from the Bureau of Reclamation. This bill reestablishes a mechanism for people to retain their rights, benefit the aquifer, and maintain eligibility to participate in the groundwater replacement program. The 2006 program enables deep well irrigators to efficiently utilize the groundwater until transition to surface water and the bill allows for this transition to continue without interruption. This bill reinstates a relinquishment exemption for groundwater users in the Odessa subarea, allows for nonuse of water to be classified as involuntary, and excuses the nonuse of water

if certain conditions are met. This program enables farmers pumping from the aquifer to enable best management practices and technologies to conserve as much water as possible without the fear of losing part of their historical water right allocations.

**Persons Testifying:** PRO: Mike Schwisow, Columbia Basin Development League & Washington State Water Resources Association; MICHELE KIESZ, East Basin Irrigators Assoc./WAWG; Melissa Downes, Department of Ecology; Clark Kagele, OGWRP Landowner.

**Persons Signed In To Testify But Not Testifying:** No one.