
SENATE BILL 5060

State of Washington

67th Legislature

2021 Regular Session

By Senators Short, Holy, King, and Warnick

Prefiled 01/05/21. Read first time 01/11/21. Referred to Committee on Agriculture, Water, Natural Resources & Parks.

1 AN ACT Relating to the preservation of water rights for farmland
2 and economic development; amending RCW 90.14.031, 90.14.140,
3 90.14.140, 90.14.160, 90.14.170, and 90.14.180; creating new
4 sections; providing an effective date; providing an expiration date;
5 and declaring an emergency.

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

7 NEW SECTION. **Sec. 1.** In RCW 89.10.005, the legislature has
8 found and previously recognized the importance of retaining land in
9 agriculture to produce food, livestock, and other agricultural
10 products as well as to maintain the state economy and environmental
11 conditions. The legislature now finds that there have been situations
12 in this state where agricultural land has been lost due to unforeseen
13 circumstances that commonly befall an aging farming population. The
14 legislature finds that there is a public interest in retaining farms
15 and the water rights needed to continue the operation of these farms.
16 Small farms, especially, are often owned by families whose history is
17 vested in the land. Farming is often the result of a generational
18 commitment to feeding the nation and the world. Farmers are stewards
19 of the land and have learned to adapt over time. The practices they
20 use preserve the land and provide additional benefits of wildlife
21 habitat and open space. Modern times have made it challenging to

1 transition these farms through generations. As such, the legislature
2 finds that temporary reductions in use of water on agricultural
3 property for many reasons, including a future development of the use
4 of property with the intent to continue irrigation in the future upon
5 completion of the development, should not result in relinquishment.
6 Additionally, farmers should have the opportunity to maintain their
7 use of water purchased in good faith. The transition of small to mid-
8 size farmers to new owners and a new generation of farmers, as well
9 as the transition to more efficient irrigation systems, should be
10 encouraged, not discouraged. The legislature recognizes that there
11 are times when these transitions sometimes require more than a five-
12 year period and the legislature wants to encourage the retention of
13 the water that is essential to the viability of agriculture.

14 **Sec. 2.** RCW 90.14.031 and 1969 ex.s. c 284 s 12 are each amended
15 to read as follows:

16 (1) The definitions in this subsection apply throughout this
17 chapter unless the context clearly requires otherwise.

18 "Good faith purchaser" means a person who purchased real property
19 after 2000, together with a water right permit, certificate, or claim
20 that has been disclosed to have been put to beneficial use pursuant
21 to RCW 64.06.020, and who did not have knowledge at the time of
22 purchase that the water right may have been relinquished due to
23 nonuse under RCW 90.14.130.

24 (2) Unless a different meaning is plainly required by the
25 context, the following words and phrases in this subsection as used
26 in this section and RCW ((90.14.031)) 90.14.041 through 90.14.121
27 shall have the following meanings:

28 ((+1)) (a) "Person" shall mean an individual, partnership,
29 association, public or private corporation, city or other
30 municipality, county, or a state agency, and the United States of
31 America when claiming water rights established under the laws of the
32 state of Washington.

33 ((+2)) (b) "Beneficial use" shall include, but not be limited
34 to, use for domestic water, irrigation, fish, shellfish, game and
35 other aquatic life, municipal, recreation, industrial water,
36 generation of electric power, and navigation.

37 **Sec. 3.** RCW 90.14.140 and 2012 c 7 s 2 are each amended to read
38 as follows:

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

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

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

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

10 (d) The operation of legal proceedings;

11 (e) Illness, injury, disability, or death of the holder of the
12 water right documented by a recording of an official medical document
13 with the county auditor that shows that the illness, injury,
14 disability, or death precluded or temporarily reduced the use of a
15 water right or a portion of the water right;

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

19 (~~(f)~~) (g) Federal laws imposing land or water use restrictions
20 either directly or through the voluntary enrollment of a landowner in
21 a federal program implementing those laws, or acreage limitations, or
22 production quotas;

23 (~~(g)~~) (h) Temporarily reduced water need for irrigation use
24 where such reduction is due to varying weather conditions, including
25 but not limited to precipitation and temperature, that warranted the
26 reduction in water use, so long as the water user's diversion and
27 delivery facilities are maintained in good operating condition
28 consistent with beneficial use of the full amount of the water right;

29 (~~(h)~~) (i) Temporarily reduced diversions or withdrawals of
30 irrigation water directly resulting from the provisions of a contract
31 or similar agreement in which a supplier of electricity buys back
32 electricity from the water right holder and the electricity is needed
33 for the diversion or withdrawal or for the use of the water diverted
34 or withdrawn for irrigation purposes;

35 (~~(i)~~) (j) Water conservation measures implemented under the
36 Yakima river basin water enhancement project, so long as the
37 conserved water is reallocated in accordance with the provisions of
38 P.L. 103-434;

39 (~~(j)~~) (k) Reliance by an irrigation water user on the
40 transitory presence of return flows in lieu of diversion or

1 withdrawal of water from the primary source of supply, if such return
2 flows are measured or reliably estimated using a scientific
3 methodology generally accepted as reliable within the scientific
4 community; or

5 ~~((k))~~ (l) The reduced use of irrigation water resulting from
6 crop rotation. For purposes of this subsection, crop rotation means
7 the temporary change in the type of crops grown resulting from the
8 exercise of generally recognized sound farming practices. Unused
9 water resulting from crop rotation will not be relinquished if the
10 remaining portion of the water continues to be beneficially used(~~(+~~
11 ~~or~~

12 ~~(1) Waiting for a final determination from the department of~~
13 ~~ecology on a change application filed under RCW 90.03.250, 90.03.380,~~
14 ~~or 90.44.100)).~~

15 (2) Notwithstanding any other provisions of RCW 90.14.130 through
16 90.14.180, there shall be no relinquishment of any water right:

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

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

24 (c) If such right is claimed for a determined future development,
25 regardless of whether the development involves a change in the
26 purpose of use, to take place either within fifteen years of July 1,
27 1967, or the most recent beneficial use of the water right, whichever
28 date is later;

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

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

33 (f) If such right or portion of the right is leased to another
34 person for use on land other than the land to which the right is
35 appurtenant as long as the lessee makes beneficial use of the right
36 in accordance with this chapter and a transfer or change of the right
37 has been approved by the department in accordance with RCW 90.03.380,
38 90.03.383, 90.03.390, or 90.44.100;

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

4 (h) If such right is a trust water right under chapter 90.38 or
5 90.42 RCW;

6 (i) If such a right is involved in an approved local water plan
7 created under RCW 90.92.090, provided the right is subject to an
8 agreement not to divert under RCW 90.92.050, or provided the right is
9 banked under RCW 90.92.070;

10 (j) If the use of such a right is contingent upon a final
11 determination from the department of ecology on a change application
12 filed under RCW 90.03.250, 90.03.380, or 90.44.100;

13 (k) If such a right is used for agricultural irrigation and the
14 right or portion of the right is purchased by a good faith purchaser
15 together with real property, and the water is either put to
16 beneficial use within five years after the purchase or any nonuse
17 beyond the five-year period is based on sufficient cause under
18 subsection (1) of this section or otherwise qualifies as being exempt
19 under this subsection. This subsection (2)(k) applies only to land
20 being used for agricultural purposes that is located in a county that
21 is east of the crest of the Cascade mountains in which at least forty
22 percent of the county is public land, borders Canada, and where there
23 are no anadromous fisheries in the stream where the diversion of
24 water occurs or where the diversion from a groundwater withdrawal
25 occurs; or

26 (l) If the use of such a right is the subject of any legal
27 proceedings including, but not limited to, divorce, probate, or
28 bankruptcy.

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

34 **Sec. 4.** RCW 90.14.140 and 2012 c 7 s 2 are each amended to read
35 as follows:

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

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

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

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

6 (d) The operation of legal proceedings;

7 (e) Illness, injury, disability, or death of the holder of the
8 water right documented by the recording of an official medical
9 document with the county auditor that shows that the illness, injury,
10 disability, or death precluded or temporarily reduced the use of a
11 water right or a portion of the water right;

12 (f) Federal or state agency leases of or options to purchase
13 lands or water rights which preclude or reduce the use of the right
14 by the owner of the water right;

15 (~~(f)~~) (g) Federal laws imposing land or water use restrictions
16 either directly or through the voluntary enrollment of a landowner in
17 a federal program implementing those laws, or acreage limitations, or
18 production quotas;

19 (~~(g)~~) (h) Temporarily reduced water need for irrigation use
20 where such reduction is due to varying weather conditions, including
21 but not limited to precipitation and temperature, that warranted the
22 reduction in water use, so long as the water user's diversion and
23 delivery facilities are maintained in good operating condition
24 consistent with beneficial use of the full amount of the water right;

25 (~~(h)~~) (i) Temporarily reduced diversions or withdrawals of
26 irrigation water directly resulting from the provisions of a contract
27 or similar agreement in which a supplier of electricity buys back
28 electricity from the water right holder and the electricity is needed
29 for the diversion or withdrawal or for the use of the water diverted
30 or withdrawn for irrigation purposes;

31 (~~(i)~~) (j) Water conservation measures implemented under the
32 Yakima river basin water enhancement project, so long as the
33 conserved water is reallocated in accordance with the provisions of
34 P.L. 103-434;

35 (~~(j)~~) (k) Reliance by an irrigation water user on the
36 transitory presence of return flows in lieu of diversion or
37 withdrawal of water from the primary source of supply, if such return
38 flows are measured or reliably estimated using a scientific
39 methodology generally accepted as reliable within the scientific
40 community; or

1 ~~((k))~~ (l) The reduced use of irrigation water resulting from
2 crop rotation. For purposes of this subsection, crop rotation means
3 the temporary change in the type of crops grown resulting from the
4 exercise of generally recognized sound farming practices. Unused
5 water resulting from crop rotation will not be relinquished if the
6 remaining portion of the water continues to be beneficially used(~~or~~
7 ~~or~~

8 ~~(1) Waiting for a final determination from the department of~~
9 ~~ecology on a change application filed under RCW 90.03.250, 90.03.380,~~
10 ~~or 90.44.100).~~

11 (2) Notwithstanding any other provisions of RCW 90.14.130 through
12 90.14.180, there shall be no relinquishment of any water right:

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

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

20 (c) If such right is claimed for a determined future development,
21 regardless of whether the development involves a change in the
22 purpose of use, to take place either within fifteen years of July 1,
23 1967, or the most recent beneficial use of the water right, whichever
24 date is later;

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

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

29 (f) If such right or portion of the right is leased to another
30 person for use on land other than the land to which the right is
31 appurtenant as long as the lessee makes beneficial use of the right
32 in accordance with this chapter and a transfer or change of the right
33 has been approved by the department in accordance with RCW 90.03.380,
34 90.03.383, 90.03.390, or 90.44.100;

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

38 (h) If such right is a trust water right under chapter 90.38 or
39 90.42 RCW;

1 (i) If the use of such a right is contingent upon a final
2 determination from the department of ecology on a change application
3 filed under RCW 90.03.250, 90.03.380, or 90.44.100; or

4 (j) If such a right is used for agricultural irrigation and the
5 right or portion of the right is purchased by a good faith purchaser
6 together with real property, and the water is either put to
7 beneficial use within five years after the purchase or any nonuse
8 beyond the five-year period is based on sufficient cause under
9 subsection (1) of this section or otherwise qualifies as being exempt
10 under this subsection. This subsection (2)(j) applies only to land
11 being used for agricultural purposes that is located in a county that
12 is east of the crest of the Cascade mountains in which at least forty
13 percent of the county is public land, borders Canada, and where there
14 are no anadromous fisheries in the stream where the diversion of
15 water occurs or where the diversion from a groundwater withdrawal
16 occurs; or

17 (k) If the use of such a right is the subject of any legal
18 proceedings including, but not limited to, divorce, probate, or
19 bankruptcy.

20 (3) In adding provisions to this section by chapter 237, Laws of
21 2001, the legislature does not intend to imply legislative approval
22 or disapproval of any existing administrative policy regarding, or
23 any existing administrative or judicial interpretation of, the
24 provisions of this section not expressly added or revised.

25 **Sec. 5.** RCW 90.14.160 and 1981 c 291 s 1 are each amended to
26 read as follows:

27 Any person entitled to divert or withdraw waters of the state
28 through any appropriation authorized by enactments of the legislature
29 prior to enactment of chapter 117, Laws of 1917, or by custom, or by
30 general adjudication, who abandons the same, or who voluntarily
31 fails, without sufficient cause, to beneficially use all or any part
32 of said right to divert or withdraw for any period of five successive
33 years (~~after July 1, 1967~~) within the 15 years prior to notice to
34 the person of any action by the department of ecology under RCW
35 90.14.130 or by a court of law to commence relinquishment of the
36 right, shall relinquish such right or portion thereof, and said right
37 or portion thereof shall revert to the state, and the waters affected
38 by said right shall become available for appropriation in accordance
39 with RCW 90.03.250.

1 **Sec. 6.** RCW 90.14.170 and 2013 c 23 s 608 are each amended to
2 read as follows:

3 Any person entitled to divert or withdraw waters of the state by
4 virtue of his or her ownership of land abutting a stream, lake, or
5 watercourse, who abandons the same, or who voluntarily fails, without
6 sufficient cause, to beneficially use all or any part of said right
7 to withdraw or divert said water for any period of five successive
8 years (~~after July 1, 1967~~) within the 15 years prior to notice to
9 the person of any action by the department of ecology under RCW
10 90.14.130 or by a court of law to commence relinquishment of the
11 right, shall relinquish such right or portion thereof, and such right
12 or portion thereof shall revert to the state, and the waters affected
13 by said right shall become available for appropriation in accordance
14 with the provisions of RCW 90.03.250.

15 **Sec. 7.** RCW 90.14.180 and 1987 c 109 s 101 are each amended to
16 read as follows:

17 (1) Any person hereafter entitled to divert or withdraw waters of
18 the state through an appropriation authorized under RCW 90.03.330,
19 90.44.080, or 90.44.090 who abandons the same, or who voluntarily
20 fails, without sufficient cause, to beneficially use all or any part
21 of said right to withdraw for any period of five successive years
22 within the 15 years prior to notice to the person of any action by
23 the department of ecology under RCW 90.14.130 or by a court of law to
24 commence relinquishment of the right, shall relinquish such right or
25 portion thereof, and such right or portion thereof shall revert to
26 the state, and the waters affected by said right shall become
27 available for appropriation in accordance with RCW 90.03.250.

28 (2) All certificates hereafter issued by the department of
29 ecology pursuant to RCW 90.03.330 shall expressly incorporate this
30 section by reference.

31 NEW SECTION. **Sec. 8.** Section 3 of this act expires June 30,
32 2021.

33 NEW SECTION. **Sec. 9.** Section 4 of this act takes effect June
34 30, 2021.

35 NEW SECTION. **Sec. 10.** Except for section 4 of this act, this
36 act is necessary for the immediate preservation of the public peace,

1 health, or safety, or support of the state government and its
2 existing public institutions, and takes effect immediately.

3 NEW SECTION. **Sec. 11.** The provisions of this act apply both
4 prospectively and retroactively to water rights that on January 1,
5 2021, were subject to relinquishment proceedings before the
6 department of ecology or on appeal of a relinquishment order.

--- END ---