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**HOUSE BILL 1132**

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**State of Washington**

**67th Legislature**

**2021 Regular Session**

**By** Representatives Kretz and Chapman

Prefiled 01/08/21.

1 AN ACT Relating to the protection of water supply for farming and  
2 rural 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  
20 claim, and who did not have knowledge at the time of purchase that  
21 the water right may have been relinquished due to nonuse under RCW  
22 90.14.130.

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

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

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

36 **Sec. 3.** RCW 90.14.140 and 2012 c 7 s 2 are each amended to read  
37 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) Federal or state agency leases of or options to purchase  
12 lands or water rights which preclude or reduce the use of the right  
13 by the owner of the water right;

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

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

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

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

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

38 (k) The reduced use of irrigation water resulting from crop  
39 rotation. For purposes of this subsection, crop rotation means the  
40 temporary change in the type of crops grown resulting from the

1 exercise of generally recognized sound farming practices. Unused  
2 water resulting from crop rotation will not be relinquished if the  
3 remaining portion of the water continues to be beneficially used; or

4 (1) Waiting for a final determination from the department of  
5 ecology on a change application filed under RCW 90.03.250, 90.03.380,  
6 or 90.44.100.

7 (2) Notwithstanding any other provisions of RCW 90.14.130 through  
8 90.14.180, there shall be no relinquishment of any water right:

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

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

16 (c) If such right is claimed for a determined future development  
17 to take place either within fifteen years of July 1, 1967, or the  
18 most recent beneficial use of the water right, whichever date is  
19 later, regardless of whether there was not any change in purpose of  
20 use of the water right;

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

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

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

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

34 (h) If such right is a trust water right under chapter 90.38 or  
35 90.42 RCW;

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

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

13        (3) In adding provisions to this section by chapter 237, Laws of  
14 2001, the legislature does not intend to imply legislative approval  
15 or disapproval of any existing administrative policy regarding, or  
16 any existing administrative or judicial interpretation of, the  
17 provisions of this section not expressly added or revised.

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

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

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

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

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

29        (d) The operation of legal proceedings;

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

33        (f) Federal laws imposing land or water use restrictions either  
34 directly or through the voluntary enrollment of a landowner in a  
35 federal program implementing those laws, or acreage limitations, or  
36 production quotas;

37        (g) Temporarily reduced water need for irrigation use where such  
38 reduction is due to varying weather conditions, including but not  
39 limited to precipitation and temperature, that warranted the

1 reduction in water use, so long as the water user's diversion and  
2 delivery facilities are maintained in good operating condition  
3 consistent with beneficial use of the full amount of the water right;

4 (h) Temporarily reduced diversions or withdrawals of irrigation  
5 water directly resulting from the provisions of a contract or similar  
6 agreement in which a supplier of electricity buys back electricity  
7 from the water right holder and the electricity is needed for the  
8 diversion or withdrawal or for the use of the water diverted or  
9 withdrawn for irrigation purposes;

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

13 (j) Reliance by an irrigation water user on the transitory  
14 presence of return flows in lieu of diversion or withdrawal of water  
15 from the primary source of supply, if such return flows are measured  
16 or reliably estimated using a scientific methodology generally  
17 accepted as reliable within the scientific community;

18 (k) The reduced use of irrigation water resulting from crop  
19 rotation. For purposes of this subsection, crop rotation means the  
20 temporary change in the type of crops grown resulting from the  
21 exercise of generally recognized sound farming practices. Unused  
22 water resulting from crop rotation will not be relinquished if the  
23 remaining portion of the water continues to be beneficially used; or

24 (l) Waiting for a final determination from the department of  
25 ecology on a change application filed under RCW 90.03.250, 90.03.380,  
26 or 90.44.100.

27 (2) Notwithstanding any other provisions of RCW 90.14.130 through  
28 90.14.180, there shall be no relinquishment of any water right:

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

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

36 (c) If such right is claimed for a determined future development  
37 to take place either within fifteen years of July 1, 1967, or the  
38 most recent beneficial use of the water right, whichever date is  
39 later, regardless of whether there was not any change in purpose of  
40 use of the water right;

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

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

5 (f) If such right or portion of the right is leased to another  
6 person for use on land other than the land to which the right is  
7 appurtenant as long as the lessee makes beneficial use of the right  
8 in accordance with this chapter and a transfer or change of the right  
9 has been approved by the department in accordance with RCW 90.03.380,  
10 90.03.383, 90.03.390, or 90.44.100;

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

14 (h) If such right is a trust water right under chapter 90.38 or  
15 90.42 RCW; or

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

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

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

35 Any person entitled to divert or withdraw waters of the state  
36 through any appropriation authorized by enactments of the legislature  
37 prior to enactment of chapter 117, Laws of 1917, or by custom, or by  
38 general adjudication, who abandons the same, or who voluntarily  
39 fails, without sufficient cause, to beneficially use all or any part

1 of said right to divert or withdraw for any period of five successive  
2 years (~~after July 1, 1967~~) within the fifteen years prior to notice  
3 to the person of an action by the department of ecology under RCW  
4 90.14.130 or by a court of law to relinquish the right, shall  
5 relinquish such right or portion thereof, and said right or portion  
6 thereof shall revert to the state, and the waters affected by said  
7 right shall become available for appropriation in accordance with RCW  
8 90.03.250.

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

11 Any person entitled to divert or withdraw waters of the state by  
12 virtue of his or her ownership of land abutting a stream, lake, or  
13 watercourse, who abandons the same, or who voluntarily fails, without  
14 sufficient cause, to beneficially use all or any part of said right  
15 to withdraw or divert said water for any period of five successive  
16 years (~~after July 1, 1967~~) within the fifteen years prior to notice  
17 to the person of an action by the department of ecology under RCW  
18 90.14.130 or by a court of law to relinquish the right, shall  
19 relinquish such right or portion thereof, and such right or portion  
20 thereof shall revert to the state, and the waters affected by said  
21 right shall become available for appropriation in accordance with the  
22 provisions of RCW 90.03.250.

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

25 (1) Any person hereafter entitled to divert or withdraw waters of  
26 the state through an appropriation authorized under RCW 90.03.330,  
27 90.44.080, or 90.44.090 who abandons the same, or who voluntarily  
28 fails, without sufficient cause, to beneficially use all or any part  
29 of said right to withdraw for any period of five successive years  
30 within the fifteen years prior to notice to the person of an action  
31 by the department of ecology under RCW 90.14.130 or by a court of law  
32 to relinquish the right shall relinquish such right or portion  
33 thereof, and such right or portion thereof shall revert to the state,  
34 and the waters affected by said right shall become available for  
35 appropriation in accordance with RCW 90.03.250.

36 (2) All certificates hereafter issued by the department of  
37 ecology pursuant to RCW 90.03.330 shall expressly incorporate this  
38 section by reference.

1        NEW SECTION.    **Sec. 8.**    Section 3 of this act expires June 30,  
2 2021.

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

5        NEW SECTION.    **Sec. 10.**    Except for section 4 of this act, this  
6 act is necessary for the immediate preservation of the public peace,  
7 health, or safety, or support of the state government and its  
8 existing public institutions, and takes effect immediately.

9        NEW SECTION.    **Sec. 11.**    The provisions of this act apply both  
10 prospectively and retroactively to water rights that on January 1,  
11 2021, were subject to relinquishment proceedings before the  
12 department of ecology or on appeal of a relinquishment order under  
13 RCW 90.14.130.

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