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Drought Dilemma — The risk of conserving water

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GRANDVIEW — The buds are beginning to swell on the grape vines at Mark Tudor's farm in this fruit-rich landscape that was once mostly sagebrush.

In recent years, it's been good business for Tudor and his brother to replant some of their orchards into more profitable vineyards.

The move has also had a spinoff benefit: Wine grapes use only a quarter of the water that apple trees require. And in this region, particularly parched right now, saving water is common sense.

But there's a downside to this equation, one that haunts the decisions of farmers who grow perennial crops. When they switch from a water-intensive crop to one that uses less, they risk losing the water saved.

It's called the relinquishment law, passed in 1967 to prevent water hoarding and wild speculation in water rights. The agricultural industry supported the law at the time.

Commonly called "use-it-or-lose-it," the law states that if water-right holders fail to put the water to good use for five successive years, they lose the right or that portion of it not used.

The drought has heightened awareness of what agriculture says is the law's biggest weakness: It encourages farmers to use water they would otherwise lose.



**SANDY SUMMERS/Yakima Herald-Republic**

Mark Tudor grows fruit trees and grapes on his farm near Grandview. Tudor says farmers have little incentive to grow more water-friendly crops like wine grapes because of the possibility of losing their water rights.

Tudor would like the flexibility to switch some of his vineyards back to orchards when market conditions change. But because of the law, the Department of Ecology could come in and take what he had saved on the wine grapes, roughly enough to cover one acre with 1 1/2 feet of water.

Farmers say they are tempted to pump the water they aren't using down the drain so their meters show it's been "used." The Roza Irrigation District, where Tudor gets his water, doesn't permit farmers to run water off their property. But the temptation is obvious.

"The law is skewed against conservation because the water you save, you have to give up," he said.

Efforts to amend the law have failed over the years, but growers thought they had a chance for a modest change this year.

Tudor traveled to Olympia to testify in support of legislation to relax the law as it applies to perennial crops. Farmers who grow annual crops, like alfalfa, can get some protection from losing their water when they rotate crops. Perennial growers want the same protection.

A bipartisan House Bill 2159 had the full support of Rep. Kelli Linville, D-Bellingham, the House Economic Development, Agriculture & Trade Committee chairwoman.

Even the Department of Ecology did not oppose the bill, sponsored by Rep. Bill Grant, D-Walla Walla.

But a companion bill in the Senate (5950) drew last-minute opposition from environmental groups. Linville subsequently did not schedule a vote in her committee. She said in a recent interview that opposition arose within her committee from many new members who don't yet understand water law.

"When you have a new issue as complicated as water, you want to make sure people have had a chance to do their homework," Linville said.

She said the bill will have a good chance of passing next year after the committee studies the issue in the interim.

The Sierra Club and the Washington Environmental Council both testified against the Senate bill, saying it would unwisely provide farmers a perpetual claim on water they haven't used.

"Water is a public resource and what's not being used one place needs to be put to beneficial use in another," said Josh Baldi of the Environmental Council.

For environmentalists, that means in the streams to benefit fish.

Baldi and others say farmers can temporarily park their unused water rights in the state's water trust program. But that program has had few, if any, agricultural takers. Farmers simply don't trust it.

"It's an unproved system," said Tudor. "So who wants to be the first one out there?"

Despite the relinquishment law, Ecology has not gone out to round up unused water rights. The department has said doing so would be time-consuming and costly, probably resulting in litigation. Others say it would be politically incorrect.

That's no comfort to Jim Hazen, executive director of the Washington State Horticultural Association in Wenatchee. He said the Sierra Club or an Indian tribe could take Ecology to court for not recapturing water rights.

"The law is on the books. Is Ecology out there actively enforcing it? They don't have the funds," Hazen said. "But is the threat there? Yeah. Is waste generated? Yeah."

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