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ENGROSSED SUBSTITUTE SENATE BILL 5703

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State of Washington

55th Legislature

1997 Regular Session

By Senate Committee on Agriculture & Environment (originally sponsored by Senators Anderson and Morton)

Read first time 02/28/97.

1 AN ACT Relating to granting water rights; and adding new sections  
2 to chapter 90.03 RCW.

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

4 NEW SECTION. **Sec. 1.** (1) If a person placed surface or ground  
5 water to beneficial use before January 1, 1993, for irrigation, stock  
6 watering, or domestic use supplied by a public water supply system with  
7 one hundred or fewer service connections for which a permit or  
8 certificate was not issued by the department or its predecessors, the  
9 person or the public water supply system, or their respective  
10 successors may continue to use water in the amount that has been  
11 beneficially used as provided in section 3 of this act if:

12 (a) The person or the public water supply system files with the  
13 department a statement of claim during the period beginning September  
14 1, 1998, and ending midnight June 30, 1999, using the standard form  
15 prescribed by RCW 90.14.051; and

16 (b) The person or public water supply system has applied the water  
17 to beneficial use to the full extent stated in the statement of claim  
18 during at least one of the five years preceding the date the statement  
19 is filed and the person attests to having done so on the statement.

1 (2) The person or public water supply system must file with the  
2 statement of claim evidence that the quantity of water described in the  
3 claim was used beneficially before January 1, 1993, and during three of  
4 the five years preceding the date the statement was filed in the form  
5 of any two of the following:

6 (a) A statement signed by two persons other than the person filing  
7 the statement of claim verifying that the claimant beneficially used  
8 the water before January 1, 1993, and during three of the five years  
9 preceding the date the statement was filed as described in the  
10 statement of claim;

11 (b) A copy of a dated photograph clearly demonstrating the presence  
12 of grass or a crop requiring irrigation in the amounts asserted in the  
13 statement of claim or of livestock requiring water in such amounts; or  
14 records of receipts of the sale of crops by the person or the person's  
15 successor indicating that irrigation in the amount claimed was required  
16 to produce the crops;

17 (c) Receipts or records of irrigation or stockwatering equipment  
18 purchases or repairs associated with the water use specified in the  
19 statement of claim;

20 (d) Water well construction records identifying the date the well  
21 specified in the statement of claim as the point of withdrawal was  
22 constructed;

23 (e) Records of electricity bills directly associated with the  
24 withdrawal of water as specified in the statement of claim;

25 (f) Personal records such as photographs, journals, or  
26 correspondence indicating the use of water as asserted in the statement  
27 of claim.

28 (3) Public water supply systems must, in addition to the  
29 requirements of subsection (2) of this section, provide evidence of  
30 service connections existing and using water as of January 1, 1993,  
31 including documentation that the homes were built and occupied.

32 NEW SECTION. **Sec. 2.** If the claimant has not already filed an  
33 application for a water right under RCW 90.03.250 or 90.44.060 for the  
34 water use stated in the statement of claim, the claimant shall file  
35 such an application with the claimant's statement of claim. A claimant  
36 who has filed both a statement of claim and an application for a water  
37 right has standing to assert a claim of a water right in a general  
38 adjudication under RCW 90.03.110 for the water use stated in the

1 statement of claim. The statement of claim shall be reviewed by the  
2 court as provided in section 3(3) of this act.

3 NEW SECTION. **Sec. 3.** (1) A person may continue to use water  
4 described in the statement of claim until one of the following occurs:

5 (a) The department makes its final decision granting or denying the  
6 water right application filed by the applicant as provided in section  
7 2 of this act, following the completion and adoption of a locally  
8 developed water resource watershed plan for the WRIA as provided in  
9 subsection (2) of this section; or

10 (b) If the department has not made a final decision on the water  
11 right application, a court of competent jurisdiction issues a decree  
12 pursuant to a general adjudication under RCW 90.03.200 that defines or  
13 denies the claimant's right to appropriate water as provided in  
14 subsection (3) of this section.

15 (2) The department may not make final decisions under subsection  
16 (1)(a) of this section that are on water right applications associated  
17 with a claim filed under section 1 of this act in those watersheds  
18 where a local watershed planning process established under chapter  
19 90.82 RCW has commenced by the effective date of this section. If the  
20 local planning process results in a watershed plan acceptable to the  
21 department, decisions on water right applications associated with  
22 claims filed under sections 1 through 6 of this act for water from the  
23 watershed shall be consistent with the watershed plan. If a watershed  
24 plan is not completed within four years of the effective date of this  
25 section, the department may thereafter make a final decision on any  
26 applications pending in the watershed.

27 (3) The department or the court may authorize the continued use of  
28 water under subsection (1) of this section only if the claimant meets  
29 the requirements of RCW 90.03.247 through 90.03.330, chapter 90.44 RCW,  
30 and RCW 90.54.020. If the department finds that the applicable  
31 requirements are met, it shall grant the water right application and  
32 issue a certificate under RCW 90.03.330 authorizing the person to use  
33 that quantity of water that had been put to beneficial use, not to  
34 exceed that quantity requested in the application or documented in the  
35 statement of claim under section 1 of this act, whichever is less. If  
36 in a general adjudication the court finds that the requirements are  
37 met, it shall confirm such use of water in a decree issued under RCW  
38 90.03.200 and the department shall issue a certificate under RCW

1 90.03.240. The court may not confirm a right in excess of the quantity  
2 of water that was applied to beneficial use as documented in the  
3 statement of claim under section 1 of this act or the quantity  
4 requested in the application for a water right, whichever is less. The  
5 priority date of any right issued by the department or confirmed by a  
6 court shall be the date a water right application authorizing the use  
7 of water was filed with the department.

8 (4) If the department or the court denies the claimant's use of  
9 water under subsection (3) of this section, the claimant must cease the  
10 use of the water. A decision by the department or a court limiting or  
11 denying a claimant's right to continue using water does not constitute  
12 a compensable taking under state or federal law because such claimants  
13 have no continuing legal right to use water.

14 NEW SECTION. **Sec. 4.** Sections 1 through 6 of this act do not  
15 apply to or authorize any use of water that was the subject of a water  
16 right application filed with the department, where the department  
17 denied such application.

18 NEW SECTION. **Sec. 5.** A continuing use of water authorized under  
19 sections 1 through 6 of this act shall not affect or impair in any  
20 respect whatsoever a water right existing before September 1, 1998.  
21 Sections 1 through 6 of this act do not limit the ability of a senior  
22 water right holder to take legal action against any other water user to  
23 prevent impairment of his or her water right. A right granted under  
24 sections 1 through 6 of this act may be junior in every respect to a  
25 right with a more senior date of priority. Any right granted under  
26 sections 1 through 6 of this act may only be exercised in a manner that  
27 does not impair or interfere with a water right that is senior to it.  
28 The filing of a statement of claim under this section does not  
29 constitute an adjudication of any claim to the right to the use of  
30 waters as between the claimant and the state, or as between one or more  
31 water use claimants. A statement of claim filed under this section  
32 shall be admissible in a general adjudication of water rights as prima  
33 facie evidence of the times of use and the quantity of water the  
34 claimant was withdrawing or diverting to the same extent as is provided  
35 by RCW 90.14.081 for a statement of claim in the water rights claims  
36 registry on the effective date of this section.

1        NEW SECTION.    **Sec. 6.** This section does not apply to ground water  
2 in an area that is, during the period established by section 1(2) of  
3 this act, the subject of a general adjudication proceeding for water  
4 rights in superior court under RCW 90.03.110 through 90.03.245 and the  
5 proceeding applies to ground water rights. This section does not apply  
6 to surface water in an area that is, during the period established by  
7 section 1(2) of this act, the subject of a general adjudication  
8 proceeding for water rights in superior court under RCW 90.03.110  
9 through 90.03.245 and the proceeding applies to surface water rights.

10       NEW SECTION.    **Sec. 7.** Sections 1 through 6 of this act do not  
11 apply to rights embodied in a water right permit or certificate issued  
12 by the department or its predecessors, a water right represented by a  
13 claim in the water rights claims registry, created under RCW 90.14.111,  
14 before September 1, 1998, or a water right exempted from permit and  
15 application requirements by RCW 90.44.050.

16       NEW SECTION.    **Sec. 8.** Sections 1 through 6 of this act do not  
17 apply to claims for the use of water in a ground water area or subarea  
18 for which a management program adopted by the department by rule and in  
19 effect on the effective date of this section establishes acreage  
20 expansion limitations for the use of ground water.

21       NEW SECTION.    **Sec. 9.** Sections 1 through 8 of this act are each  
22 added to chapter 90.03 RCW.

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