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SENATE BILL 5827

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State of Washington

54th Legislature

1995 Regular Session

By Senators A. Anderson and Morton

Read first time 02/08/95. Referred to Committee on Senate Select  
Committee on Water Policy.

1 AN ACT Relating to water rights claims filings; amending RCW  
2 90.14.220, 90.14.041, 90.14.071, 90.03.250, and 90.44.050; and adding  
3 a new section to chapter 90.14 RCW.

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

5 NEW SECTION. **Sec. 1.** A new section is added to chapter 90.14 RCW  
6 to read as follows:

7 (1) The legislature expressly acknowledges that establishing rights  
8 to the beneficial use of ground or surface waters of the state by  
9 prescription or adverse use was not prohibited until July 1, 1967. The  
10 legislature finds, however, that considerable confusion persists as to  
11 whether statements of claims regarding such rights were authorized to  
12 be filed during previous claim filing periods provided by this chapter.

13 (2) A filing period for filing statements of claims for water  
14 rights acquired by prescription or adverse use is established. The  
15 filing period shall begin September 1, 1995, and shall end at midnight  
16 June 30, 1996. A statement filed during this filing period shall be  
17 filed as provided in RCW 90.14.051 and 90.14.061 and shall be subject  
18 to the provisions of this chapter regarding statements of claim. The  
19 provisions of this chapter regarding the relinquishment of rights for

1 abandonment or failure beneficially to use water without sufficient  
2 cause apply to rights claimed under this section. Each statement of  
3 claim shall be accompanied by a signed certification that the waters  
4 governed by the claimed right have been applied to beneficial use  
5 continuously, with no period of nonuse exceeding five consecutive years  
6 without sufficient cause, since July 1, 1967. The statement of claim  
7 forms provided under RCW 90.14.051 shall identify or facilitate this  
8 certification requirement.

9 (3) The department of ecology shall, at least once each week during  
10 the month of August 1995 and at least once each month during the filing  
11 period, publish a notice regarding this filing period in newspapers of  
12 general circulation in the various regions of the state. The notice  
13 shall contain the substance of the following notice:

14 WATER RIGHTS NOTICE

15 Every person and entity, public or private, claiming rights to  
16 the beneficial use of water established by prescription or  
17 adverse use must register the claim with the department of  
18 ecology, Olympia, Washington, on or after September 1, 1995,  
19 and not later than June 30, 1996. FAILURE TO REGISTER AS  
20 REQUIRED BY LAW WILL RESULT IN A WAIVER AND RELINQUISHMENT OF  
21 SAID WATER RIGHT OR CLAIMED WATER RIGHT. For further  
22 information contact the department of ecology, Olympia,  
23 Washington, for a copy of the law providing this filing period  
24 and an explanation of the law and its requirements.

25 The department shall also prepare, make available to the public,  
26 and distribute to the communications media information describing the  
27 types of rights for which statements of claim need not be filed, the  
28 effect of filing, the effect of RCW 90.14.071, the certification that  
29 must accompany such a claim, and other information relevant to filings  
30 and statements of claim for such rights.

31 **Sec. 2.** RCW 90.14.220 and 1967 c 233 s 22 are each amended to read  
32 as follows:

33 Beginning July 1, 1967, no rights to the use of surface or ground  
34 waters of the state affecting either appropriated or unappropriated  
35 waters thereof may be acquired by prescription or adverse use.

1       **Sec. 3.** RCW 90.14.041 and 1988 c 127 s 73 are each amended to read  
2 as follows:

3       (1) All persons using or claiming the right to withdraw or divert  
4 and make beneficial use of public surface or ground waters of the  
5 state, except as ((hereinafter)) provided in this section, RCW  
6 90.14.043, and section 1 of this act, shall file with the department of  
7 ecology not later than June 30, 1974, a statement of claim for each  
8 water right asserted on a form provided by the department. This  
9 section shall not apply to any water rights which are based on the  
10 authority of a permit or certificate issued by the department of  
11 ecology or one of its predecessors.

12       (2) Any person who placed water to beneficial use after July 1,  
13 1967, but before January 1, 1993, for which a permit or certificate was  
14 not issued by the department of ecology or its predecessor, holds a  
15 water right subject to the following conditions: (a) The priority date  
16 shall be the effective date of this section; (b) the amount of water  
17 withdrawn may not exceed the average amount used during the five-year  
18 period before January 1, 1993; and (c) there was not a period of nonuse  
19 for five consecutive years since 1967.

20       **Sec. 4.** RCW 90.14.071 and 1969 ex.s. c 284 s 16 are each amended  
21 to read as follows:

22       Any person claiming the right to divert or withdraw waters of the  
23 state as set forth in RCW 90.14.041, who fails to file a statement of  
24 claim as provided in RCW 90.14.041, 90.14.043, or section 1 of this  
25 act, and in RCW 90.14.051 and 90.14.061, shall be conclusively deemed  
26 to have waived and relinquished any right, title, or interest in said  
27 right.

28       **Sec. 5.** RCW 90.03.250 and 1987 c 109 s 83 are each amended to read  
29 as follows:

30       Except as provided in section 1 of this act, any person, municipal  
31 corporation, firm, irrigation district, association, corporation or  
32 water users' association hereafter desiring to appropriate water for a  
33 beneficial use shall make an application to the department for a permit  
34 to make such appropriation, and shall not use or divert such waters  
35 until he has received a permit from the department as in this chapter  
36 provided. The construction of any ditch, canal or works, or performing  
37 any work in connection with said construction or appropriation, or the

1 use of any waters, shall not be an appropriation of such water nor an  
2 act for the purpose of appropriating water unless a permit to make said  
3 appropriation has first been granted by the department: PROVIDED, That  
4 a temporary permit may be granted upon a proper showing made to the  
5 department to be valid only during the pendency of such application for  
6 a permit unless sooner revoked by the department: PROVIDED, FURTHER,  
7 That nothing in this chapter contained shall be deemed to affect RCW  
8 90.40.010 through 90.40.080 except that the notice and certificate  
9 therein provided for in RCW 90.40.030 shall be addressed to the  
10 department, and the department shall exercise the powers and perform  
11 the duties prescribed by RCW 90.40.030.

12 **Sec. 6.** RCW 90.44.050 and 1987 c 109 s 108 are each amended to  
13 read as follows:

14 Except as provided by section 1 of this act and this section, after  
15 June 6, 1945, no withdrawal of public ground waters of the state shall  
16 be begun, nor shall any well or other works for such withdrawal be  
17 constructed, unless an application to appropriate such waters has been  
18 made to the department and a permit has been granted by it as herein  
19 provided(~~(:—EXCEPT, HOWEVER, That)~~). However, any withdrawal of  
20 public ground waters for stock-watering purposes, or for the watering  
21 of a lawn or of a noncommercial garden not exceeding one-half acre in  
22 area, or for single or group domestic uses in an amount not exceeding  
23 five thousand gallons a day, or for an industrial purpose in an amount  
24 not exceeding five thousand gallons a day, is and shall be exempt from  
25 the provisions of this section, but, to the extent that it is regularly  
26 used beneficially, shall be entitled to a right equal to that  
27 established by a permit issued under the provisions of this chapter:  
28 PROVIDED, HOWEVER, That the department from time to time may require  
29 the person or agency making any such small withdrawal to furnish  
30 information as to the means for and the quantity of that withdrawal:  
31 PROVIDED, FURTHER, That at the option of the party making withdrawals  
32 of ground waters of the state not exceeding five thousand gallons per  
33 day, applications under this section or declarations under RCW  
34 90.44.090 may be filed and permits and certificates obtained in the  
35 same manner and under the same requirements as is in this chapter

1 provided in the case of withdrawals in excess of five thousand gallons  
2 a day.

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