

2 **ESSB 5703 - H AMD 1182 ADOPTED 3-10-98**

3 By Representative Chandler

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5 Strike everything after the enacting clause and insert the
6 following:

7 "NEW SECTION. **Sec. 1.** (1) If a person placed surface or ground
8 water to beneficial use before January 1, 1993, for irrigation, stock
9 watering, or domestic use supplied by a public water supply system with
10 one hundred or fewer service connections for which a permit or
11 certificate was not issued by the department or its predecessors, the
12 person or the public water supply system, or their respective
13 successors may continue to use water on an interim basis as provided in
14 section 2 of this act and only in the amount that has been beneficially
15 used if:

16 (a) The person or the public water supply system files with the
17 department a statement of claim and the evidence required under
18 subsections (2) and (3) of this section during the period beginning
19 September 1, 1998, and ending midnight June 30, 1999, using the
20 standard form prescribed by RCW 90.14.051;

21 (b) The person or public water supply system has applied the water
22 to beneficial use to the full extent stated in the statement of claim
23 during at least three of the five years preceding the date the
24 statement is filed and the person attests to having done so on the
25 statement; and

26 (c) The claimant has filed or simultaneously files with the
27 statement of claim an application to appropriate public water under RCW
28 90.03.250 or 90.44.060 for the quantity of water being put to
29 beneficial use.

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

35 (a) A statement signed by two persons other than the person filing
36 the statement of claim verifying that the claimant beneficially used

1 the water before January 1, 1993, and during three of the five years
2 preceding the date the statement was filed as described in the
3 statement of claim;

4 (b) A copy of a dated photograph clearly demonstrating the presence
5 of grass or a crop requiring irrigation in the amounts asserted in the
6 statement of claim or of livestock requiring water in such amounts; or
7 records of receipts of the sale of crops by the person or the person's
8 successor indicating that irrigation in the amount claimed was required
9 to produce the crops;

10 (c) Receipts or records of irrigation or stockwatering equipment
11 purchases or repairs associated with the water use specified in the
12 statement of claim;

13 (d) Water well construction records identifying the date the well
14 specified in the statement of claim as the point of withdrawal was
15 constructed;

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

18 (f) Personal records such as photographs, journals, or
19 correspondence indicating the use of water as asserted in the statement
20 of claim.

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

25 (4) A claimant who has filed both a statement of claim and an
26 application for a water right has standing to assert a claim of a water
27 right in a general adjudication under RCW 90.03.105 through 90.03.245
28 for the water use stated in the statement of claim. The statement of
29 claim shall be reviewed by the court as provided in section 2(5) of
30 this act.

31 NEW SECTION. **Sec. 2.** (1) A person may continue to use water on an
32 interim basis for the purposes claimed as provided in section 1 of this
33 act until one of the following occurs:

34 (a) The department makes its final decision granting or denying the
35 water right application filed by the applicant. However, for an
36 application filed under chapter . . . , Laws of 1998 (this act) located
37 within a watershed in which a watershed management planning process
38 established under chapter 90.82 or 90.54 RCW has been initiated prior

1 to July 1, 2000, the department shall make a final decision on the
2 application only after completion of the watershed management plan.
3 The decision must be consistent with an approved and adopted watershed
4 management plan. If the watershed management plan recommends granting
5 applications for water rights or for transfer of water or water rights
6 to uses that are represented by claims filed under section 1 of this
7 act, the department shall grant the application according to the plan.
8 If the planning effort is abandoned or if a watershed management plan
9 is not completed within four years of the date it was initiated,
10 whichever comes earlier, the department shall thereafter make a final
11 decision on the application; or

12 (b) If the department has not made a final decision on the water
13 right application and a court of competent jurisdiction issues a decree
14 pursuant to a general adjudication under RCW 90.03.200 that defines or
15 denies the claimant's right to appropriate water as provided in
16 subsection (5) of this section.

17 (2) The department shall notify the claimant/applicant of the
18 instream flow conditions with which each diversion or withdrawal must
19 comply pending the completion of a watershed management plan or general
20 adjudication. If instream flows have been established by rule, the
21 department shall use those flows to regulate the diversion or
22 withdrawal of water during times when the flows are not being met. For
23 areas in which instream flows have not been established by rule, the
24 department shall specify the flow conditions, determined in
25 consultation with the department of fish and wildlife, to which the
26 diversions or withdrawals will be conditioned pending completion of
27 watershed management planning or general adjudication. Upon the
28 completion of a watershed management plan and adoption of instream
29 flows by rule, the diversions or withdrawals permitted under this
30 section shall thereafter be conditioned in accordance with the rule
31 adopting the flows.

32 (3) In making decisions regarding an application associated with
33 such a claim in the watershed, the department shall consider
34 alternative sources or augmented sources of water for the water use in
35 the application, including but not limited to water supplied through
36 storage enhancements or through the substitution of the use of ground
37 water for the use of surface water. The department may approve the use
38 of such an alternative or augmented source under the application

1 without requiring the application to be resubmitted and without
2 affecting the priority date of the application.

3 (4) If a watershed management plan adopts locally based standards
4 for water use efficiency, any certificates issued thereafter under this
5 section shall be conditioned accordingly.

6 (5) The department or the court may authorize the continued use of
7 water under subsection (1) of this section only if the claimant's
8 application meets the requirements of RCW 90.03.247 through 90.03.330,
9 chapter 90.44 RCW, and RCW 90.54.020. If the department finds that the
10 applicable requirements are met, it shall grant the water right
11 application and issue a certificate under RCW 90.03.330 authorizing the
12 person to use that quantity of water that has been put to beneficial
13 use, not to exceed that quantity requested in the application or
14 documented in the statement of claim under section 1 of this act,
15 whichever is less. If in a general adjudication the court finds that
16 the requirements are met, it shall confirm such use of water in a
17 decree issued under RCW 90.03.200 and the department shall issue a
18 certificate under RCW 90.03.240. The claimant has the burden of
19 presenting evidence that the claim and application meet the
20 requirements for granting a water right. The court shall consider all
21 relevant evidence in making its findings and decision. The court may
22 not confirm a right in excess of the quantity of water that has been
23 applied to beneficial use as documented in the statement of claim under
24 section 1 of this act or the quantity requested in the application for
25 a water right, whichever is less. The priority date of any right
26 issued by the department or confirmed by a court under sections 1
27 through 9 of this act shall be the effective date of this act.

28 (6) If the department or the court denies the claimant's use of
29 water under subsection (5) of this section, the claimant must cease the
30 use of the water. A decision by the department or a court limiting or
31 denying a claimant's right to continue using water does not constitute
32 a compensable taking under state or federal law because such claimants
33 have no continuing legal right to use water.

34 NEW SECTION. **Sec. 3.** If no watershed management planning process
35 under chapter 90.82 or 90.54 RCW has been initiated as of July 1, 2000,
36 in the water resource inventory area in which a water use affected by
37 section 1 of this act is made, the claimant/applicant may continue to
38 use water, subject to the same limitation provided in section 2 (2) and

1 (4) of this act, for the purposes described in the statement of claim
2 until the department makes its decision to grant or deny the
3 application or a court makes its findings and decision under section
4 2(5) of this act. The department shall make its findings and decision
5 on an application as soon as it is able to do so, taking into
6 consideration its total permit processing workload. A water right
7 certificate issued under this section is subject to the same
8 limitations and conditions as are provided in section 2 of this act.

9 NEW SECTION. **Sec. 4.** Sections 1 through 9 of this act do not
10 apply to or authorize any use of water that was the subject of a water
11 right application filed with the department, where the department
12 denied such application.

13 NEW SECTION. **Sec. 5.** A continuing interim use of water authorized
14 under sections 1 through 9 of this act shall not affect or impair in
15 any respect whatsoever a water right existing before the effective date
16 of this act. Sections 1 through 9 of this act do not limit the ability
17 of a senior water right holder to take legal action against any other
18 water user to prevent impairment of his or her water right. A right
19 granted under sections 1 through 9 of this act is junior in every
20 respect to a right with a more senior date of priority. Any right
21 granted under sections 1 through 9 of this act may only be exercised in
22 a manner that does not impair or interfere with a water right that is
23 senior to it. The filing of a statement of claim under this section
24 does not constitute an adjudication of any claim to the right to the
25 use of waters as between the claimant and the state, or as between one
26 or more water use claimants. A statement of claim filed under this
27 section shall be admissible in a general adjudication of water rights
28 as prima facie evidence of the times of use and the quantity of water
29 the claimant was withdrawing or diverting to the same extent as is
30 provided by RCW 90.14.081 for a statement of claim in the water rights
31 claims registry on the effective date of this act.

32 NEW SECTION. **Sec. 6.** Sections 1 through 9 of this act do not
33 apply to ground water in an area that is, during the period established
34 by section 1(1)(a) of this act, the subject of a general adjudication
35 proceeding for water rights in superior court under RCW 90.03.110
36 through 90.03.245 and the proceeding applies to ground water rights.

1 Sections 1 through 9 of this act do not apply to surface water in an
2 area that is, during the period established by section 1(1)(a) of this
3 act, the subject of a general adjudication proceeding for water rights
4 in superior court under RCW 90.03.110 through 90.03.245 and the
5 proceeding applies to surface water rights.

6 NEW SECTION. **Sec. 7.** The two-dollar fee for filing a water right
7 claim required in RCW 90.14.061 is waived for purposes of claims filed
8 under section 1(1)(a) of this act.

9 NEW SECTION. **Sec. 8.** Sections 1 through 9 of this act do not
10 apply to rights embodied in a water right permit or certificate issued
11 by the department or its predecessors, a water right represented by a
12 claim in the water rights claims registry, created under RCW 90.14.111,
13 before September 1, 1998, or a water right exempted from permit and
14 application requirements by RCW 90.44.050.

15 NEW SECTION. **Sec. 9.** Sections 1 through 9 of this act do not
16 apply to claims for the use of water in a ground water area or subarea
17 for which a management program adopted by the department by rule and in
18 effect on the effective date of this act establishes acreage expansion
19 limitations for the use of ground water.

20 NEW SECTION. **Sec. 10.** Sections 1 through 9 of this act are each
21 added to chapter 90.03 RCW."

22 Correct the title.

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