

CERTIFICATION OF ENROLLMENT
ENGROSSED SUBSTITUTE SENATE BILL 5703

55th Legislature
1998 Regular Session

Passed by the Senate March 11, 1998
YEAS 32 NAYS 11

President of the Senate

Passed by the House March 10, 1998
YEAS 65 NAYS 30

**Speaker of the
House of Representatives**

Approved

Governor of the State of Washington

CERTIFICATE

I, Mike O Connell, Secretary of the Senate of the State of Washington, do hereby certify that the attached is **ENGROSSED SUBSTITUTE SENATE BILL 5703** as passed by the Senate and the House of Representatives on the dates hereon set forth.

Secretary

FILED

**Secretary of State
State of Washington**

ENGROSSED SUBSTITUTE SENATE BILL 5703

AS AMENDED BY THE HOUSE

Passed Legislature - 1998 Regular Session

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 on an interim basis as provided in
11 section 2 of this act and only in the amount that has been beneficially
12 used if:

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

18 (b) The person or public water supply system has applied the water
19 to beneficial use to the full extent stated in the statement of claim

1 during at least three of the five years preceding the date the
2 statement is filed and the person attests to having done so on the
3 statement; and

4 (c) The claimant has filed or simultaneously files with the
5 statement of claim an application to appropriate public water under RCW
6 90.03.250 or 90.44.060 for the quantity of water being put to
7 beneficial use.

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

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

18 (b) A copy of a dated photograph clearly demonstrating the presence
19 of grass or a crop requiring irrigation in the amounts asserted in the
20 statement of claim or of livestock requiring water in such amounts; or
21 records of receipts of the sale of crops by the person or the person's
22 successor indicating that irrigation in the amount claimed was required
23 to produce the crops;

24 (c) Receipts or records of irrigation or stockwatering equipment
25 purchases or repairs associated with the water use specified in the
26 statement of claim;

27 (d) Water well construction records identifying the date the well
28 specified in the statement of claim as the point of withdrawal was
29 constructed;

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

32 (f) Personal records such as photographs, journals, or
33 correspondence indicating the use of water as asserted in the statement
34 of claim.

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

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

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

10 (a) The department makes its final decision granting or denying the
11 water right application filed by the applicant. However, for an
12 application filed under chapter . . ., Laws of 1998 (this act) located
13 within a watershed in which a watershed management planning process
14 established under chapter 90.82 or 90.54 RCW has been initiated prior
15 to July 1, 2000, the department shall make a final decision on the
16 application only after completion of the watershed management plan.
17 The decision must be consistent with an approved and adopted watershed
18 management plan. If the watershed management plan recommends granting
19 applications for water rights or for transfer of water or water rights
20 to uses that are represented by claims filed under section 1 of this
21 act, the department shall grant the application according to the plan.
22 If the planning effort is abandoned or if a watershed management plan
23 is not completed within four years of the date it was initiated,
24 whichever comes earlier, the department shall thereafter make a final
25 decision on the application; or

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

31 (2) The department shall notify the claimant/applicant of the
32 instream flow conditions with which each diversion or withdrawal must
33 comply pending the completion of a watershed management plan or general
34 adjudication. If instream flows have been established by rule, the
35 department shall use those flows to regulate the diversion or
36 withdrawal of water during times when the flows are not being met. For
37 areas in which instream flows have not been established by rule, the
38 department shall specify the flow conditions, determined in

1 consultation with the department of fish and wildlife, to which the
2 diversions or withdrawals will be conditioned pending completion of
3 watershed management planning or general adjudication. Upon the
4 completion of a watershed management plan and adoption of instream
5 flows by rule, the diversions or withdrawals permitted under this
6 section shall thereafter be conditioned in accordance with the rule
7 adopting the flows.

8 (3) In making decisions regarding an application associated with
9 such a claim in the watershed, the department shall consider
10 alternative sources or augmented sources of water for the water use in
11 the application, including but not limited to water supplied through
12 storage enhancements or through the substitution of the use of ground
13 water for the use of surface water. The department may approve the use
14 of such an alternative or augmented source under the application
15 without requiring the application to be resubmitted and without
16 affecting the priority date of the application.

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

20 (5) The department or the court may authorize the continued use of
21 water under subsection (1) of this section only if the claimant's
22 application meets the requirements of RCW 90.03.247 through 90.03.330,
23 chapter 90.44 RCW, and RCW 90.54.020. If the department finds that the
24 applicable requirements are met, it shall grant the water right
25 application and issue a certificate under RCW 90.03.330 authorizing the
26 person to use that quantity of water that has been put to beneficial
27 use, not to exceed that quantity requested in the application or
28 documented in the statement of claim under section 1 of this act,
29 whichever is less. If in a general adjudication the court finds that
30 the requirements are met, it shall confirm such use of water in a
31 decree issued under RCW 90.03.200 and the department shall issue a
32 certificate under RCW 90.03.240. The claimant has the burden of
33 presenting evidence that the claim and application meet the
34 requirements for granting a water right. The court shall consider all
35 relevant evidence in making its findings and decision. The court may
36 not confirm a right in excess of the quantity of water that has been
37 applied to beneficial use as documented in the statement of claim under
38 section 1 of this act or the quantity requested in the application for
39 a water right, whichever is less. The priority date of any right

1 issued by the department or confirmed by a court under sections 1
2 through 9 of this act shall be the effective date of this act.

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

9 NEW SECTION. **Sec. 3.** If no watershed management planning process
10 under chapter 90.82 or 90.54 RCW has been initiated as of July 1, 2000,
11 in the water resource inventory area in which a water use affected by
12 section 1 of this act is made, the claimant/applicant may continue to
13 use water, subject to the same limitation provided in section 2 (2) and
14 (4) of this act, for the purposes described in the statement of claim
15 until the department makes its decision to grant or deny the
16 application or a court makes its findings and decision under section
17 2(5) of this act. The department shall make its findings and decision
18 on an application as soon as it is able to do so, taking into
19 consideration its total permit processing workload. A water right
20 certificate issued under this section is subject to the same
21 limitations and conditions as are provided in section 2 of this act.

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

26 NEW SECTION. **Sec. 5.** A continuing interim use of water authorized
27 under sections 1 through 9 of this act shall not affect or impair in
28 any respect whatsoever a water right existing before the effective date
29 of this act. Sections 1 through 9 of this act do not limit the ability
30 of a senior water right holder to take legal action against any other
31 water user to prevent impairment of his or her water right. A right
32 granted under sections 1 through 9 of this act is junior in every
33 respect to a right with a more senior date of priority. Any right
34 granted under sections 1 through 9 of this act may only be exercised in
35 a manner that does not impair or interfere with a water right that is
36 senior to it. The filing of a statement of claim under this section

1 does not constitute an adjudication of any claim to the right to the
2 use of waters as between the claimant and the state, or as between one
3 or more water use claimants. A statement of claim filed under this
4 section shall be admissible in a general adjudication of water rights
5 as prima facie evidence of the times of use and the quantity of water
6 the claimant was withdrawing or diverting to the same extent as is
7 provided by RCW 90.14.081 for a statement of claim in the water rights
8 claims registry on the effective date of this act.

9 NEW SECTION. **Sec. 6.** Sections 1 through 9 of this act do not
10 apply to ground water in an area that is, during the period established
11 by section 1(1)(a) of this act, the subject of a general adjudication
12 proceeding for water rights in superior court under RCW 90.03.110
13 through 90.03.245 and the proceeding applies to ground water rights.
14 Sections 1 through 9 of this act do not apply to surface water in an
15 area that is, during the period established by section 1(1)(a) of this
16 act, the subject of a general adjudication proceeding for water rights
17 in superior court under RCW 90.03.110 through 90.03.245 and the
18 proceeding applies to surface water rights.

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

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

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

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

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