CERTIFICATION OF ENROLLMENT

SUBSTITUTE HOUSE BILL 1118

Chapter 440, Laws of 1997
(partial veto)

55th Legislature
1997 Regular Session

WATER RIGHT CLAIMS--FILING REQUIREMENTS

EFFECTIVE DATE: 7/27/97

Passed by the House March 14, 1997
Yeas 82  Nays 14

CLYDE BALLARD
Speaker of the House of Representatives

Passed by the Senate April 26, 1997
Yeas 33  Nays 13

BRAD OWEN
President of the Senate

CERTIFICATE
I, Timothy A. Martin, Chief Clerk of the House of Representatives of the State of Washington, do hereby certify that the attached is SUBSTITUTE HOUSE BILL 1118 as passed by the House of Representatives and the Senate on the dates hereon set forth.

TIMOTHY A. MARTIN
Chief Clerk

Approved May 20, 1997, with the exception of sections 4 and 5, which are vetoed.

FILED

May 20, 1997 - 4:23 p.m.

GARY LOCKE
Governor of the State of Washington

Secretary of State
State of Washington
AN ACT Relating to water rights claims; amending RCW 90.14.041 and 90.14.071; and adding new sections to chapter 90.14 RCW.

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

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

(1) A new period for filing statements of claim for water rights is established. The filing period shall begin September 1, 1997, and shall end at midnight June 30, 1998. Each person or entity claiming under state law a right to withdraw or divert and beneficially use surface water under a right that was established before the effective date of water code established by chapter 117, Laws of 1917, and any person claiming under state law a right to withdraw and beneficially use ground water under a right that was established before the effective date of the ground water code established by chapter 263, Laws of 1945, shall register the claim with the department during the filing period unless the claim has been filed in the state water rights claims registry before the effective date of this section. A person who claims such a right and fails to register the claim as required is conclusively deemed to have waived and relinquished any right, title,
or interest in the right. A statement filed during this filing period shall be filed as provided in RCW 90.14.051 and 90.14.061 and shall be subject to the provisions of this chapter regarding statements of claim. This reopening of the period for filing statements of claim shall not affect or impair in any respect whatsoever any water right existing prior to the effective date of this section. A water right embodied in a statement of claim filed under this section is subordinate to any water right embodied in a permit or certificate issued under chapter 90.03 or 90.44 RCW prior to the date the statement of claim is filed with the department and is subordinate to any water right embodied in a statement of claim filed in the water rights claims registry before the effective date of this section.

(2) The department of ecology shall, at least once each week during the month of August 1997 and at least once each month during the filing period, publish a notice regarding this new filing period in newspapers of general circulation in the various regions of the state. The notice shall contain the substance of the following notice:

WATER RIGHTS NOTICE

Each person or entity claiming a right to withdraw or divert and beneficially use surface water under a right that was established before June 7, 1917, or claiming a right to withdraw and beneficially use ground water under a right that was established before June 7, 1945, under the laws of the state of Washington must register the claim with the department of ecology, Olympia, Washington. The claim must be registered on or after September 1, 1997, and not later than five o’clock on June 30, 1998.

FAILURE TO REGISTER THE CLAIM WILL RESULT IN A WAIVER AND RELINQUISHMENT OF THE WATER RIGHT OR CLAIMED WATER RIGHT

Registering a claim is NOT required for:

1. A water right that is based on the authority of a permit or certificate issued by the department of ecology or one of its predecessors;
2. A water right that is based on the exemption from permitting requirements provided by RCW 90.44.050 for certain very limited uses of ground water; or

3. A water right that is based on a statement of claim that has previously been filed in the state’s water rights claims registry during other registration periods.

For further information, for a copy of the law establishing this filing period, and for an explanation of the law and its requirements, contact the department of ecology, Olympia, Washington.

The department shall also prepare, make available to the public, and distribute to the communications media information describing the types of rights for which statements of claim need not be filed, the effect of filing, the effect of RCW 90.14.071, and other information relevant to filings and statements of claim.

(3) The department of ecology shall ensure that employees of the department are readily available to respond to inquiries regarding filing statements of claim and that all of the information the department has at its disposal that is relevant to an inquiry regarding a particular potential claim, including information regarding other rights and claims in the vicinity of the potentially claimed right, is available to the person making the inquiry. The department shall dedicate additional staff in each of the department’s regional offices and in the department’s central office to ensure that responses and information are provided in a timely manner during each of the business days during the month of August 1997 and during the new filing period.

(4) To assist the department in avoiding unnecessary duplication, the department shall provide to a requestor, within ten working days of receiving the request, the records of any water right claimed, listed, recorded, or otherwise existing in the records of the department or its predecessor agencies, including any report of a referee in a water rights adjudication. This information shall be provided as required by this subsection if the request is provided in writing from the owner of the water right or from the holder of a possessory interest in any real property for water right records associated with the property or if the requestor is an attorney for such an owner. The information regarding water rights in the area served by a regional office of the department
shall also be provided within ten working days to any requestor who requests to review the information in person in the department’s regional office. The information held by the headquarters office of the department shall also be provided within ten working days to any requestor who requests to review the information in person in the department’s headquarters office. The requirements of this subsection that records and information be provided to requestors within ten working days may not be construed as limiting in any manner the obligations of the department to provide public access to public records as required by chapter 42.17 RCW.

(5) This section does not apply to claims for the use of ground water withdrawn in an area that is, during the period established by subsection (2) of this section, the subject of a general adjudication proceeding for water rights in superior court under RCW 90.03.110 through 90.03.245 and the proceeding applies to ground water rights. This section does not apply to claims for the use of surface water withdrawn in an area that is, during the period established by subsection (2) of this section, the subject of a general adjudication proceeding for water rights in superior court under RCW 90.03.110 through 90.03.245 and the proceeding applies to surface water rights.

(6) This section does not apply to claims for the use of water in a ground water area or subarea for which a management program adopted by the department by rule and in effect on the effective date of this section establishes acreage expansion limitations for the use of ground water.

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

All persons using or claiming the right to withdraw or divert and make beneficial use of public surface or ground waters of the state, except as (hereinafter) provided in this section, RCW 90.14.043, and section 1 of this act, shall file with the department of ecology not later than June 30, 1974, a statement of claim for each water right asserted on a form provided by the department. Neither this section (shall not) nor section 1 of this act apply to any water rights which are based on the authority of a permit or certificate issued by the department of ecology or one of its predecessors. Further, section 1 of this act does not apply to the beneficial uses of water which are the subject of statements of claim in the water rights claims registry.
prior to September 1, 1997, or which are exempted from permit and
application requirements by RCW 90.44.050 and neither this section nor
section 1 of this act requires that statements of claims for such uses
be filed during the filing period established by section 1 of this act.

Sec. 3. RCW 90.14.071 and 1969 ex.s. c 284 s 16 are each amended
to read as follows:

Except as provided in section 5 of this act or as exempted from
filing by RCW 90.14.041, any person claiming the right to divert or
withdraw waters of the state as set forth in RCW 90.14.041, who fails
to file a statement of claim as provided in RCW 90.14.041, 90.14.043,
or section 1 of this act and in RCW 90.14.051 and 90.14.061, shall be
conclusively deemed to have waived and relinquished any right, title,
or interest in said right.

*NEW SECTION. Sec. 4. A new section is added to chapter 90.14 RCW
to read as follows:

Any person or entity, or successor to such person or entity, having
a statement of claim on file with the water rights claims registry on
the effective date of this section, may submit to the department of
ecology for filing an amendment to such a statement of claim as
provided in this section. Such an amendment may be submitted only to
correct an error in the statement filed and the person submitting the
amendment shall attest in writing that the amendment does not
constitute an expansion of the right for which the statement of claim
was intended. Such an amendment may be submitted only during the
period established in section 1 of this act for filing statements of
claim.

The department shall accept any such submission and file the
amendment in the registry unless the department by written
determination concludes that the requirements of this section have not
been satisfied. Any person aggrieved by a determination of the
department may obtain a review thereof by filing a petition for review
with the pollution control hearings board within thirty days of the
date of the determination by the department. The provisions of RCW
90.14.081 shall apply to any amendment filed under this section. This
section shall not be construed as limiting the authority of a person or
entity to submit an amendment under RCW 90.14.065.

*Sec. 4 was vetoed. See message at end of chapter.
*NEW SECTION. Sec. 5. A new section is added to chapter 90.14 RCW to read as follows:

   During the period beginning March 1, 1994, and ending at midnight June 30, 1998, neither the department of ecology nor the pollution control hearings board may determine or find that a water right has been waived or relinquished under this chapter based on the failure of any person or entity to file a statement of claim for the right under this chapter. Any finding or determination issued contrary to this section is void. If the department or the board determined that a person waived or relinquished a water right during the time period specified in this section, but prior to the effective date of this section, the sole remedy for the person shall be to file a new claim or submit an amendment under section 1 or 4 of this act or RCW 90.14.065.

*Sec. 5 was vetoed. See message at end of chapter.

   Passed the House March 14, 1997.
   Passed the Senate April 26, 1997.
   Approved by the Governor May 20, 1997, with the exception of certain items that were vetoed.
   Filed in Office of Secretary of State May 20, 1997.

   Note: Governor’s explanation of partial veto is as follows:

   "I am returning herewith, without my approval as to sections 4 and 5, Substitute House Bill No. 1118 entitled:

   "AN ACT Relating to water right claims;"

   I have approved most sections of Substitute House Bill No. 1118. It is my hope that this legislation will clear up the murky past of water rights claims and put an end to the confusion over who needed to file claims in the Water Rights Claims Registry.

   I have vetoed section 4 for two reasons. The first reason is that an existing statute (RCW 90.14.065) provides a mechanism to amend an existing claim filed with the Water Rights Claim Registry. The second reason is that the burden of proof for such amendments would be placed on the Department Ecology instead of the claimant.

   I have vetoed section 5 because the exemption from relinquishment is retroactive to March 1, 1994. It is reasonable to provide protection from relinquishment for those filing new claims. However, the retroactive provision is problematic because it would conflict with one or more Superior Court decisions related to the relinquishment of water rights due to the failure to file a claim.

   For these reasons, I have vetoed sections 4 and 5 of Substitute House Bill No. 1118.

   With exception of sections 4 and 5, Substitute House Bill No. 1118 is approved."