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HOUSE BILL 2700

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State of Washington

54th Legislature

1996 Regular Session

By Representatives Mastin, Chandler and Honeyford

Read first time 01/16/96. Referred to Committee on Agriculture & Ecology.

1 AN ACT Relating to water rights; amending RCW 90.14.081, 90.14.130,  
2 and 90.14.190; and adding a new section to chapter 90.03 RCW.

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

4 NEW SECTION. **Sec. 1.** A new section is added to chapter 90.03 RCW  
5 to read as follows:

6 (1) A statement of claim for a water right filed in the water  
7 rights claims registry under chapter 90.14 RCW and the provisions of a  
8 water right certificate issued by the department or its predecessor  
9 agencies under this title or issued as the result of a water right  
10 adjudication are each prima facie evidence of the water right in any  
11 proceeding involving the water right. The burden of proof in  
12 demonstrating that any aspect of the right evidenced in the statement  
13 or certificate is invalid is on the party challenging its validity.

14 (2) If a water right or portion of a water right applies only to  
15 the use of naturally occurring water and any party, including but not  
16 limited to the department, claims that any part of the water used under  
17 the right is artificially stored water, the burden is on the party  
18 making such an assertion to prove that the water used is artificially  
19 stored water.

1 (3) If a water right or portion of a water right applies only to  
2 the use of artificially stored water and any party, including but not  
3 limited to the department, claims that any part of the water used under  
4 the right is naturally occurring water, the burden is on the party  
5 making such an assertion to prove that the water used is naturally  
6 occurring water.

7 **Sec. 2.** RCW 90.14.081 and 1969 ex.s. c 284 s 17 are each amended  
8 to read as follows:

9 The filing of a statement of claim does not constitute an  
10 adjudication of any claim to the right to use of waters as between the  
11 water use claimant and the state, or as between one or more water use  
12 claimants and another or others. However, a statement of claim filed  
13 pursuant to RCW 90.14.061 shall be admissible in a general adjudication  
14 of water rights and in any administrative, quasi-judicial, or judicial  
15 proceeding regarding the validity of the water right claimed in the  
16 statement as prima facie evidence of the ((times of use and the  
17 quantity of water the claimant was withdrawing or diverting as of the  
18 year of the filing, if, but only if, the quantities of water in use and  
19 the time of use when a controversy is mooted are substantially in  
20 accord with the times of use and quantity of water claimed in the  
21 statement of claim. A statement of claim shall not otherwise be  
22 evidence of the priority of the)) claimed water right.

23 **Sec. 3.** RCW 90.14.130 and 1987 c 109 s 13 are each amended to read  
24 as follows:

25 When it appears to the department of ecology that a person entitled  
26 to the use of water has not beneficially used his or her water right or  
27 some portion thereof, and it appears that ((said)) the right ((has or))  
28 may have reverted to the state because of such nonuse, as provided by  
29 RCW 90.14.160, 90.14.170, or 90.14.180, the department of ecology shall  
30 notify such person by order: PROVIDED, That where a company,  
31 association, district, or the United States has filed a blanket claim  
32 under the provisions of RCW 90.14.060 for the total benefits of those  
33 served by it, the notice shall be served on such company, association,  
34 district or the United States and not upon any of its individual water  
35 users who may not have used the water or some portion thereof which  
36 they were entitled to use. The order shall contain: (1) A description  
37 of the water right, including the approximate location of the point of

1 diversion, the general description of the lands or places where such  
2 waters were used, the water source, the amount involved, the purpose of  
3 use, and the apparent authority upon which the right is based; and (2)  
4 a statement that ~~((unless))~~: (a) The department has determined that  
5 the person or the person's predecessor in right has abandoned the water  
6 right or has failed to use the water right or a portion of the right  
7 for a period of five successive years without sufficient cause as such  
8 nonuse is described in RCW 90.14.160, 90.14.170, or 90.14.180; (b) if  
9 the department's determination is found to be ~~((shown))~~ valid on  
10 appeal, the water right will be declared relinquished; and ~~((3) a~~  
11 statement that)) (c) such order ~~((may be))~~ is automatically appealed to  
12 the pollution control hearings board. ~~((Any person aggrieved by such~~  
13 an order may appeal it to)) The order shall be served by registered or  
14 certified mail to the last known address of the person and shall be  
15 posted at the point of division or withdrawal. The department shall  
16 notify the pollution control hearings board of each such order and,  
17 upon receipt, the board shall review the order as if it had been  
18 appealed pursuant to RCW 43.21B.310. ~~((The order shall be served by~~  
19 registered or certified mail to the last known address of the person  
20 and be posted at the point of division or withdrawal.)) The order by  
21 itself shall not alter the recipient's right to use water, if any.

22 **Sec. 4.** RCW 90.14.190 and 1987 c 109 s 14 are each amended to read  
23 as follows:

24 Any person feeling aggrieved by any decision of the department of  
25 ecology may have the same reviewed pursuant to RCW 43.21B.310. In any  
26 such review regarding the validity of a statement of claim filed in the  
27 water rights claims registry or regarding an order issued under RCW  
28 90.14.130, the ~~((findings of fact as set forth in the report of the~~  
29 department of ecology)) statement of claim or certificate of water  
30 right that is the subject of the review shall be prima facie evidence  
31 of the ~~((fact of any waiver or relinquishment of a))~~ water right or  
32 portion thereof that is in question. If the hearings board affirms the  
33 decision of the department, a party seeks review in superior court of  
34 that hearings board decision pursuant to chapter 34.05 RCW, and the  
35 court determines that the party was injured by an arbitrary,

1 capricious, or erroneous order of the department, the court may award  
2 reasonable attorneys' fees.

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