

2 **ESHB 1111** - S AMD - S3198.1 - 411
3 By Senators Anderson and Spanel

4 #411 ADPT 4/16/97; RULE SUSPENDED, ADPT AS AMEND BY 516, 517-4/24/97

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 fifty 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 in the amount that has been
14 beneficially used as provided in subsection (3) of this section if:

15 (a) The person or the public water supply system files with the
16 department a statement of claim during the period beginning September
17 1, 1997, and ending midnight June 30, 1998, using the standard form
18 prescribed by RCW 90.14.051; and

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

23 (2) The person or public water supply system must file with the
24 statement of claim evidence that the quantity of water described in the
25 claim was used beneficially before January 1, 1993, and during one of
26 the five years preceding the date the statement was filed in the form
27 of any two of the following:

28 (a) A statement signed by two persons other than the person filing
29 the statement of claim verifying that the claimant beneficially used
30 the water before January 1, 1993, and during one of the five years
31 preceding the date the statement was filed as described in the
32 statement of claim;

33 (b) A copy of a dated photograph clearly demonstrating the presence
34 of grass or a crop requiring irrigation in the amounts asserted in the
35 statement of claim or of livestock requiring water in such amounts; or
36 records of receipts of the sale of crops by the person or the person's

1 successor indicating that irrigation in the amount claimed was required
2 to produce the crops;

3 (c) Receipts or records of irrigation or stockwatering equipment
4 purchases or repairs associated with the water use specified in the
5 statement of claim;

6 (d) Water well construction records identifying the date the well
7 specified in the statement of claim as the point of withdrawal was
8 constructed;

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

11 (f) Personal records such as photographs, journals, or
12 correspondence indicating the use of water as asserted in the statement
13 of claim.

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

18 NEW SECTION. **Sec. 2.** If the claimant has not already filed an
19 application for a water right under RCW 90.30.250 or 90.44.060 for the
20 water use stated in the statement of claim, the claimant shall file
21 such an application with the claimant's statement of claim. A claimant
22 who has filed both a statement of claim and an application for a water
23 right has standing to assert a claim of a water right in a general
24 adjudication under RCW 90.03.110 for the water use stated in the
25 statement of claim. The statement of claim shall be reviewed by the
26 court as provided in section 4 of this act.

27 NEW SECTION. **Sec. 3.** A person may continue to use water described
28 in the statement of claim until one of the following occurs:

29 (1) The department makes its final decision granting or denying the
30 water right application filed by the applicant as provided in section
31 2 of this act, following the completion and adoption of a locally
32 developed water resource watershed plan for the WRIA; or

33 (2) If the department has not made a final decision on the water
34 right application, a court of competent jurisdiction issues a decree
35 pursuant to a general adjudication under RCW 90.03.200 that defines or
36 denies the claimant's right to appropriate water as provided in section
37 4 of this act.

1 NEW SECTION. **Sec. 4.** The department or the court may authorize
2 the continued use of water under section 3 of this act only if the
3 claimant meets the requirements of RCW 90.03.247 through 90.03.330,
4 chapter 90.44 RCW, and RCW 90.54.020. If the department finds that the
5 applicable requirements are met, it shall grant the water right
6 application and issue a certificate under RCW 90.03.330 authorizing the
7 person to use that quantity of water that had been put to beneficial
8 use, not to exceed that quantity requested in the application or
9 documented in the statement of claim under section 1 of this act,
10 whichever is less. If in a general adjudication the court finds that
11 the requirements are met, it shall confirm such use of water in a
12 decree issued under RCW 90.03.200 and the department shall issue a
13 certificate under RCW 90.03.240. The court may not confirm a right in
14 excess of the quantity of water that was applied to beneficial use as
15 documented in the statement of claim under section 1 of this act or the
16 quantity requested in the application for a water right, whichever is
17 less. The priority date of any right issued by the department or
18 confirmed by a court shall be the date a water right application
19 authorizing the use of water was filed with the department.

20 NEW SECTION. **Sec. 5.** If the department or the court denies the
21 claimant's use of water under section 4 of this act, the claimant must
22 cease the use of the water. A decision by the department or a court
23 limiting or denying a claimant's right to continue using water does not
24 constitute a compensable taking under state or federal law because such
25 claimants have no continuing legal right to use water.

26 NEW SECTION. **Sec. 6.** Sections 1 through 8 of this act do not
27 apply to or authorize any use of water that was the subject of a water
28 right application filed with the department, where the department
29 denied such application.

30 NEW SECTION. **Sec. 7.** A continuing use of water authorized under
31 sections 1 through 8 of this act shall not affect or impair in any
32 respect whatsoever a water right existing before September 1, 1997.
33 Sections 1 through 8 of this act do not limit the ability of a senior
34 water right holder to take legal action against any other water user to
35 prevent impairment of his or her water right. A right granted under
36 sections 1 through 8 of this act may be junior in every respect to a

1 right with a more senior date of priority. Any right granted under
2 sections 1 through 8 of this act may only be exercised in a manner that
3 does not impair or interfere with a water right that is senior to it.
4 The filing of a statement of claim under this section does not
5 constitute an adjudication of any claim to the right to the use of
6 waters as between the claimant and the state, or as between one or more
7 water use claimants. A statement of claim filed under this section
8 shall be admissible in a general adjudication of water rights as prima
9 facie evidence of the times of use and the quantity of water the
10 claimant was withdrawing or diverting to the same extent as is provided
11 by RCW 90.14.081 for a statement of claim in the water rights claims
12 registry on the effective date of this section.

13 NEW SECTION. **Sec. 8.** This section does not apply to ground water
14 in an area that is, during the period established by section 1(2) of
15 this act, the subject of a general adjudication proceeding for water
16 rights in superior court under RCW 90.03.110 through 90.03.245 and the
17 proceeding applies to ground water rights. This section does not apply
18 to surface water in an area that is, during the period established by
19 section 1(2) of this act, the subject of a general adjudication
20 proceeding for water rights in superior court under RCW 90.03.110
21 through 90.03.245 and the proceeding applies to surface water rights.

22 NEW SECTION. **Sec. 9.** Sections 1 through 8 of this act do not
23 apply to rights embodied in a water right permit or certificate issued
24 by the department of ecology or its predecessors, a water right
25 represented by a claim in the water rights claims registry, created
26 under RCW 90.14.111, before September 1, 1997, or a water right
27 exempted from permit and application requirements by RCW 90.44.050.

28 NEW SECTION. **Sec. 10.** Sections 1 through 8 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 section establishes acreage
32 expansion limitations for the use of ground water.

33 NEW SECTION. **Sec. 11.** Sections 1 through 10 of this act are each
34 added to chapter 90.03 RCW."

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3 ADOPTED 4/16/97; RULE SUSPENDED, ADPT AS AMEND BY 516, 517 - 4/24/97

4 On page 1, line 1 of the title, after "rights;" strike the
5 remainder of the title and insert "adding new sections to chapter 90.03
6 RCW."

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