

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

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

GARY LOCKE
Governor of the State of Washington

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

FILED

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

**Secretary of State
State of Washington**

SUBSTITUTE HOUSE BILL 1118

Passed Legislature - 1997 Regular Session

State of Washington

55th Legislature

1997 Regular Session

By House Committee on Agriculture & Ecology (originally sponsored by Representatives Mastin, Chandler, Johnson, Boldt and Honeyford)

Read first time 02/13/97.

1 AN ACT Relating to water rights claims; amending RCW 90.14.041 and
2 90.14.071; and adding new sections to chapter 90.14 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 90.14 RCW
5 to read as follows:

6 (1) A new period for filing statements of claim for water rights is
7 established. The filing period shall begin September 1, 1997, and
8 shall end at midnight June 30, 1998. Each person or entity claiming
9 under state law a right to withdraw or divert and beneficially use
10 surface water under a right that was established before the effective
11 date of water code established by chapter 117, Laws of 1917, and any
12 person claiming under state law a right to withdraw and beneficially
13 use ground water under a right that was established before the
14 effective date of the ground water code established by chapter 263,
15 Laws of 1945, shall register the claim with the department during the
16 filing period unless the claim has been filed in the state water rights
17 claims registry before the effective date of this section. A person
18 who claims such a right and fails to register the claim as required is
19 conclusively deemed to have waived and relinquished any right, title,

1 or interest in the right. A statement filed during this filing period
2 shall be filed as provided in RCW 90.14.051 and 90.14.061 and shall be
3 subject to the provisions of this chapter regarding statements of
4 claim. This reopening of the period for filing statements of claim
5 shall not affect or impair in any respect whatsoever any water right
6 existing prior to the effective date of this section. A water right
7 embodied in a statement of claim filed under this section is
8 subordinate to any water right embodied in a permit or certificate
9 issued under chapter 90.03 or 90.44 RCW prior to the date the statement
10 of claim is filed with the department and is subordinate to any water
11 right embodied in a statement of claim filed in the water rights claims
12 registry before the effective date of this section.

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

18 WATER RIGHTS NOTICE

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

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

31 Registering a claim is NOT required for:

32 1. A water right that is based on the authority of a permit or
33 certificate issued by the department of ecology or one of its
34 predecessors;

1 2. A water right that is based on the exemption from permitting
2 requirements provided by RCW 90.44.050 for certain very limited
3 uses of ground water; or

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

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

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

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

27 (4) To assist the department in avoiding unnecessary duplication,
28 the department shall provide to a requestor, within ten working days of
29 receiving the request, the records of any water right claimed, listed,
30 recorded, or otherwise existing in the records of the department or its
31 predecessor agencies, including any report of a referee in a water
32 rights adjudication. This information shall be provided as required by
33 this subsection if the request is provided in writing from the owner of
34 the water right or from the holder of a possessory interest in any real
35 property for water right records associated with the property or if the
36 requestor is an attorney for such an owner. The information regarding
37 water rights in the area served by a regional office of the department

1 shall also be provided within ten working days to any requestor who
2 requests to review the information in person in the department's
3 regional office. The information held by the headquarters office of
4 the department shall also be provided within ten working days to any
5 requestor who requests to review the information in person in the
6 department's headquarters office. The requirements of this subsection
7 that records and information be provided to requestors within ten
8 working days may not be construed as limiting in any manner the
9 obligations of the department to provide public access to public
10 records as required by chapter 42.17 RCW.

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

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

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

28 All persons using or claiming the right to withdraw or divert and
29 make beneficial use of public surface or ground waters of the state,
30 except as (~~hereinafter~~) provided in this section, RCW 90.14.043, and
31 section 1 of this act, shall file with the department of ecology not
32 later than June 30, 1974, a statement of claim for each water right
33 asserted on a form provided by the department. Neither this section
34 (~~shall not~~) nor section 1 of this act apply to any water rights which
35 are based on the authority of a permit or certificate issued by the
36 department of ecology or one of its predecessors. Further, section 1
37 of this act does not apply to the beneficial uses of water which are
38 the subject of statements of claim in the water rights claims registry

1 prior to September 1, 1997, or which are exempted from permit and
2 application requirements by RCW 90.44.050 and neither this section nor
3 section 1 of this act requires that statements of claims for such uses
4 be filed during the filing period established by section 1 of this act.

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

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

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

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

27 ***The department shall accept any such submission and file the***
28 ***amendment in the registry unless the department by written***
29 ***determination concludes that the requirements of this section have not***
30 ***been satisfied. Any person aggrieved by a determination of the***
31 ***department may obtain a review thereof by filing a petition for review***
32 ***with the pollution control hearings board within thirty days of the***
33 ***date of the determination by the department. The provisions of RCW***
34 ***90.14.081 shall apply to any amendment filed under this section. This***
35 ***section shall not be construed as limiting the authority of a person or***
36 ***entity to submit an amendment under RCW 90.14.065.***

37 ****Sec. 4 was vetoed. See message at end of chapter.***

1 **NEW SECTION. Sec. 5. A new section is added to chapter 90.14 RCW*
2 *to read as follows:*

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

14 **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.

1 Note: Governor's explanation of partial veto is as follows:

2 "I am returning herewith, without my approval as to sections 4 and
3 5, Substitute House Bill No. 1118 entitled:

4 "AN ACT Relating to water right claims;"

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

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

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

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

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