

CHAPTER 233.

[Senate Bill No. 175.]

WATER RIGHTS.

AN ACT relating to water rights; requiring registration of certain water rights; providing for the relinquishment of water rights under certain conditions; prescribing powers, duties and functions; repealing section 14, chapter 263, Laws of 1945 and RCW 90.44.190; and declaring an effective date.

Be it enacted by the Legislature of the State of Washington:

Water rights—
Registration—
Waiver and
relinquish-
ment. Purpose.

Section 1. The future growth and development of the state is dependent upon effective management and efficient use of the state's water resources. The purpose of this act is to provide adequate records for efficient administration of the state's waters, and to cause a return to the state of any water rights which are no longer exercised by putting said waters to beneficial use.

Legislative
findings.

Sec. 2. The legislature finds that:

- (1) Extensive uncertainty exists regarding the volume of private claims to water in the state;
- (2) Such uncertainty seriously retards the efficient utilization and administration of the state's water resources, and impedes the fullest beneficial use thereof;
- (3) A strong beneficial use requirement as a condition precedent to the continued ownership of a right to withdraw or divert water is essential to the orderly development of the state;
- (4) Enforcement of the state's beneficial use policy is required by the state's rapid growth;
- (5) All rights to divert or withdraw water, except riparian rights which do not diminish the quantity of water remaining in the source such as boating, swimming, and other recreational and aesthetic

uses must be subjected to the beneficial use requirement;

(6) The availability for appropriation of additional water as a result of the requirements of this act will accelerate growth, development, and diversification of the economy of the state;

(7) Water rights will gain sufficient certainty of ownership as a result of this act to become more freely transferable, thereby increasing the economic value of the uses to which they are put, and augmenting the alienability of titles to land.

Sec. 3. Unless a different meaning is plainly required by the context, the following words and phrases as hereinafter used in this act shall have the following meanings: Definitions.

(1) "Person" shall mean an individual, partnership, association, public or private corporation, city or other municipality, county, state agency, the state of Washington, or the United States of America.

(2) "Beneficial use" shall include, but not be limited to, domestic water supplies; irrigation; fish, shellfish, game, and other aquatic life; recreation; industrial water supplies; generation of hydroelectric power; and navigation.

Sec. 4. Each person using or claiming a right to withdraw or divert and make use of ground or surface waters of the state shall file with the supervisor of water resources prior to July 1, 1972, a statement of claim for each right asserted on a form provided by the supervisor: *Provided*, That any person who is a holder of and entitled to the benefits arising from a permit or certificate issued by the supervisor of water resources pursuant to RCW 90.03.250 through 90.03.340, or RCW 90.44.060 through 90.44.090, or to RCW 90.03.240, or to RCW 90.03.370, shall, with respect to the rights deriving from such Claim of right to withdraw, divert or use ground or surface waters—Filing statement required—Exemptions.

permit or certificate, be exempt from the provisions of this section.

Water rights—
Filing—State-
ment of claim
—Contents.

Sec. 5. The statement of claim shall include the following:

- (1) The name and mailing address of the claimant;
- (2) The name of the watercourse or water source from which the right to divert or make use of water is claimed;
- (3) The legal description, with reasonable certainty, of the point or points of diversion and place of use of waters;
- (4) The purpose of use, and, if for irrigation, the number of acres irrigated;
- (5) The approximate quantity of water and times of use claimed; and
- (6) The approximate date of first putting water to beneficial use.

Filing
procedure—
Processing.

Sec. 6. Filing of a statement of a claim shall take place and be completed upon receipt by the supervisor of water resources at his office in Olympia, of an original statement signed by the claimant or his authorized agent, and two copies thereof. Any person required to file hereunder may file through any representative. A company, association, district, or the United States may file a blanket claim for the total benefits of those served by such company, association, district, or by the United States. Within thirty days after receipt of each statement of claim, the supervisor shall acknowledge receipt of each statement of claim, by a notation on one copy indicating receipt thereof and the date of receipt, and shall set forth thereon the control number assigned thereto, together with the wording, in full, of section 8 of this act, and shall return said copy by certified or registered mail to the claimant at the address set forth in the statement of claim.

Sec. 7. Any person claiming the right to divert or withdraw waters of the state as set forth in section 4 of this act, who fails to submit a statement of claim as provided in sections 4 and 5 of this act, shall be conclusively deemed to have waived and relinquished any right, title, or interest in said right.

Failure to submit claim—Effect.

Sec. 8. The filing of a statement of claim does not constitute an adjudication of any claim to the right to use of waters as between the water use claimant and the state, or as between one or more water use claimants and another or others.

Filing not adjudication of rights.

Sec. 9. For the purpose of this act, the following words and phrases shall have the following meanings:

Additional definitions.

(1) "Statement of taxes due" means the statement required under RCW 84.56.050;

(2) "Notice in writing" means a notice substantially in the following form:

WATER RIGHTS NOTICE

Every individual, partnership, association, public or private corporation, city or other municipality, county and state agency is hereby notified that all WATER RIGHTS OR CLAIMED WATER RIGHTS must be registered with the Department of Conservation, Olympia, Washington, prior to July 1, 1972. FAILURE TO REGISTER AS REQUIRED BY LAW WILL RESULT IN A WAIVER AND RELINQUISHMENT OF SAID WATER RIGHT OR CLAIMED WATER RIGHT.

PROTECT YOUR WATER RIGHTS—Contact the Department of Conservation for a copy of the act and an explanation thereof.

Sec. 10. To insure that all persons referred to in section 3 of this act are notified of the provisions of this act, the supervisor of water resources is directed to give notice as follows:

Water rights registration—Notice of act—Requirements.

Water rights
registration—
Notice of act—
Requirements.

(1) He shall cause said notice to be placed in a prominent and conspicuous place in all newspapers of the state having a circulation of more than twenty thousand copies for each weekday, and in at least one newspaper in each county of the state, at least once every three months for five consecutive years.

(2) He shall cause a notice to be broadcast by radio and television stations which are heard and/or seen in the state, as designated by the supervisor, on at least six occasions a year for five consecutive years.

(3) He shall cause said notice to be placed in a prominent and conspicuous location in each county courthouse in the state.

(4) The county treasurer of each county shall attach to each statement of taxes due a written copy of the notice provided in section 9 (2) of this act, a statement of claim form, and a declaration that it shall be the duty of the recipient of the statement of taxes due to forward the notice and statement of claim form to the beneficial owner of the property. A sufficient number of copies of notices, statement of claim forms, and declarations shall be supplied to each county treasurer by the supervisor of the division of water resources before the fifteenth day of January of each year through 1972.

(5) He may also in his discretion give notice in any other manner which will carry out the purposes of this section.

(6) Where notice is given in writing pursuant to this section, sections 4, 5 and 7 of this act shall be set forth and quoted in full in addition to the notice set out in section 9 of this act.

Water rights
claim registry.

Sec. 11. The supervisor of water resources is directed to establish in the division of water resources of the department of conservation, a registry entitled the "Water Rights Claims Registry". All claims

set forth in accordance with this act shall be filed in the registry alphabetically and consecutively by control number, and by drainage basin where appropriate.

Sec. 12. The legislature hereby affirms the rule that no right to withdraw or divert any water shall accrue to any riparian unless said riparian shall have complied with the provisions of law applicable to the appropriation of water.

Affirmance of principles of law.

Sec. 13. When it appears to the supervisor of water resources that a person entitled to the use of water has not beneficially used his water right or some portion thereof, and it appears that said right has or may have reverted to the state because of such nonuse, as provided by sections 16, 17, or 18, the supervisor shall notify such person to show cause at a hearing before the supervisor why his right or portion thereof should not be declared relinquished: *Provided*, That where a company, association, district, or the United States has filed a blanket claim under the provisions of section 6 for the total benefits of those served by it, the notice to show cause shall be served on such company, association, district or the United States and not upon any of its individual water users who may not have used the water or some portion thereof which they were entitled to use. The notice shall contain, (1) the time and place of the hearing as determined by the supervisor, (2) a description of the water right, including the approximate location of the point of diversion, the general description of the lands or places where such waters were used, the water source, the amount involved, the purpose of use, the apparent authority upon which the right is based, and (3) a statement that unless sufficient cause be shown the water right will be declared relinquished. Said notice shall be served by registered or certified

Water rights—
Reversion to state for non-use—Notice—Hearing—Order.

Water rights—
Reversion to
state for non-
use—Notice—
Hearing—
Order.

mail and be posted at least sixty days before the hearing and sent to the last known address of said person. The supervisor shall, as soon as practicable after such hearing, make an order determining whether such water right has been relinquished and give notice to said person of the contents thereof in the same manner as in the notice procedure provided for in this section.

“Sufficient
cause” for
nonuse de-
fined—Rights
exempted.

Sec. 14. For the purposes of this act “sufficient cause” shall be defined as the nonuse of all or a portion of the water by the owner of a water right for a period of five or more consecutive years where such nonuse occurs as a result of:

- (1) Drought, or other unavailability of water;
- (2) Active service in the armed forces of the United States during military crisis;
- (3) Nonvoluntary service in the armed forces of the United States;
- (4) The operation of legal proceedings;
- (5) Federal laws imposing land or water use restrictions, or acreage limitations, or production quotas.

Notwithstanding any other provisions of this act, there shall be no relinquishment of any water right:

- (1) If such right is claimed for power development purposes under RCW 90.16 and annual license fees are paid in accordance with RCW 90.16, or
- (2) If such right is used for a standby or reserve water supply to be used in time of drought or other low flow period so long as withdrawal or diversion facilities are maintained in good operating condition for the use of such reserve or standby water supply, or
- (3) If such right is claimed for a determined future development to take place either within fifteen years of the effective date of this act, or the most recent beneficial use of the water right, whichever date is later, or

(4) If such right is claimed for municipal water supply purposes under RCW 90.03, or

(5) If such waters are not subject to appropriation under the applicable provisions of RCW 90.40.030 as now or hereafter amended.

Sec. 15. Nothing in this act shall be construed to affect any rights or privileges arising from any permit to withdraw public waters or any application for such permit, but the supervisor shall grant extensions of time to the holder of a preliminary permit only as provided by RCW 90.03.290.

Rights arising from permit to withdraw.

Sec. 16. Any person entitled to divert or withdraw waters of the state through any appropriation authorized by enactments of the legislature prior to enactment of chapter 117, Laws of 1917, or by custom, or by general adjudication, who abandons the same, or who voluntarily fails, without sufficient cause, to beneficially use all or any part of said right to divert or withdraw for any period of five successive years after the effective date of this act, shall relinquish such right or portion thereof, and said right or portion thereof shall revert to the state, and the waters affected by said right shall become available for appropriation in accordance with RCW 90.03.250.

Abandonment or nonuse—Reversion to state. Rights through appropriation.

Sec. 17. Any person entitled to divert or withdraw waters of the state by virtue of his ownership of land abutting a stream, lake, or watercourse, who abandons the same, or who voluntarily fails, without sufficient cause, to beneficially use all or any part of said right to withdraw or divert said water for any period of five successive years after the effective date of this act shall relinquish such right or portion thereof, and such right or portion thereof shall revert to the state, and the waters affected by said right shall become available for appropriation in accordance with the provisions of RCW 90.03.250.

Relinquishment—Rights to land abutting stream, lake or watercourse.

Water rights—
Relinquish-
ment of future
rights ac-
quired
through
appropriation.

Sec. 18. Any person hereafter entitled to divert or withdraw waters of the state through an appropriation authorized under RCW 90.03.330, 90.44.080, or 90.44.090 who abandons the same, or who voluntarily fails, without sufficient cause, to beneficially use all or any part of said right to withdraw for any period of five successive years shall relinquish such right or portion thereof, and such right or portion thereof shall revert to the state, and the waters affected by said right shall become available for appropriation in accordance with RCW 90.03.250. All certificates hereafter issued by the supervisor of water resources pursuant to RCW 90.03.330 shall expressly incorporate this section by reference.

Judicial re-
view—Evi-
dence—Attor-
ney's fees.

Sec. 19. Any person feeling aggrieved by any order of the supervisor of water resources may have the same reviewed by the superior court of the county in which the waters under consideration are situated. In any review by the courts, the findings of fact as set forth in the report of the supervisor of water resources shall be prima facie evidence of the fact of any waiver or relinquishment of a water right or portion thereof. The court, reviewing any order of the supervisor, may award reasonable attorney's fees to any party injured by an arbitrary, capricious or erroneous order of the supervisor. Such attorney's fees shall be paid by the department of conservation from any funds available therefor.

Application of
administrative
procedures
act.

Sec. 20. All matters relating to the implementation and enforcement of this chapter shall be carried out in accordance with chapter 34.04 RCW as it now exists or hereafter shall be amended except where the provisions of this chapter expressly conflict herewith. Proceedings held pursuant to section 13 hereof are "contested cases" within the meaning of chapter 34.04 RCW.

Sec. 21. The provisions of this act shall apply to all rights to withdraw ground waters of the state, whether authorized by chapter 90.44 RCW or otherwise. **Scope of act.**

Sec. 22. No rights to the use of surface or ground waters of the state affecting either appropriated or unappropriated waters thereof may be acquired by prescription or adverse use. **No rights acquired by adverse use.**

Sec. 23. The supervisor of water resources is authorized to promulgate such rules and regulations as are necessary to carry out the provisions of this act. **Rules and regulations authorized.**

Sec. 24. Section 14, chapter 263, Laws of 1945 and RCW 90.44.190 are each repealed. **Repeal.**

Sec. 25. The effective date of this act is July 1, 1967. **Effective date.**

Sec. 26. If any provisions of this act or the application thereof to any person or circumstance is held invalid, the act can be given effect without the invalid provision or application; and to this end the provisions of this act are declared to be severable. This act shall be liberally construed to effectuate its purpose. **Severability.**

Passed the Senate March 9, 1967.

Passed the House March 8, 1967.

Approved by the Governor March 21, 1967.