

ANALYSIS OF HB 1116

House Agriculture & Ecology Committee
1997

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BACKGROUND:

With the adoption of the surface water code in 1917, the Legislature created a permit system for establishing new rights to the use of surface water. (RCW 90.03.250.) The permit system is based on the prior appropriation doctrine that "first in time is first in right." (RCW 90.03.010.) Under this doctrine, a person with a junior water right may not exercise the right in a manner that interferes with the ability of a person with a more senior water right to exercise the senior right. With the enactment of the groundwater code in 1945, the permit system was, with certain exceptions, extended to apply to new rights to groundwater as well. (RCW 90.44.050.) The groundwater code declares that:

" . . . to the extent that any underground water is part of or tributary to the source of any surface stream or lake, or that the withdrawal of ground water may affect the flow of any spring, water course, lake, or other body of surface water, the right of an appropriator and owner of surface water shall be superior to any subsequent right hereby authorized to be acquired in or to ground water." (RCW 90.44.030.)

Other laws authorize the state to establish minimum flows and levels for streams and lakes. (Chapter 90.22 RCW and Chapter 90.54 RCW.) The surface water code states that "(t)he establishment of reservations of water . . . or minimum flows or levels . . . shall constitute appropriations within the meaning of this chapter with priority dates as of the effective dates of their establishment." (RCW 90.03.345.) And further that:

"Whenever an application for a permit to make beneficial use of public waters is approved relating to a stream or other water body for which minimum flows or levels have been adopted and are in effect at the time of approval, the permit shall be conditioned to protect the levels or flows." (RCW 90.03.247.)

The extent to which the withdrawal of groundwater would affect a senior right to the use of surface water or a minimum instream flow for or level for a body of surface water depends on the nature of the connection, if any, between the surface water and the groundwater that is or would be withdrawn. The connection between surface water and groundwater is referred to as the hydraulic continuity of the surface water and groundwater.

SUMMARY:

Rules for determining the hydraulic continuity of surface water and groundwater are established by statute.

- Groundwater at sites located less than one-fourth mile from a surface water body and in an unconfined aquifer is presumed to be hydraulically continuous to the surface water. (Section 2(1)(b).)
- Groundwater in a confined aquifer is presumed not to be hydraulically continuous with a particular surface water body. The continuity must be demonstrable in field tests or through similar sources of information. (Section 2(1)(a).)
- It is presumed that a well that uses water from an aquifer that is not hydraulically continuous a surface water body does not interfere with the surface water body. (Section 2(4).)
- If field evidence determines that a well is hydraulically continuous with a surface water body, it is presumed that the well has the potential to cause substantial interference with the surface water body under four specified circumstances. (Section 2(2).) Criteria are established for determining whether, under other circumstances, a well using water that is hydraulically continuous with a surface water body has the potential of causing substantial interference with the surface water source. (Section 2(3).)

The burden of proof in overcoming these presumptions is on a party asserting otherwise. (Sections 2(1), (2)&(4).)