

ANALYSIS OF HB 3106

House Agriculture & Ecology Committee

February 5, 1998

BACKGROUND:

A provision of the Groundwater Code, RCW 90.44.050, requires a permit for withdrawals of ground water. The permit is issued by the Department of Ecology. This provision of the code also exempts certain withdrawals of ground water from the permit requirement. In AGO 1997 No. 6, the state's Attorney General (AG) responded to questions posed by the Director of the Department of Ecology and the Secretary of the Department of Health regarding these exempted withdrawals. The AG paraphrased the facts to be assumed for the questions as follows:

A property owner wishes to subdivide a tract of land for multiple-unit residential development. The development will require withdrawal of ground water to supply the planned housing with an adequate supply of water for drinking and other domestic use. To meet this requirement, the property owner plans to drill several wells. Each of the wells individually is expected to pump less than 5000 gallons of water per day, but the total pumped by all the wells will exceed 5000 gallons per day.— (Footnote omitted.)

The first question answered by the opinion addresses the applicability of the permit exemption:

Given the factual pattern just described, is each well a separate "withdrawal" of ground water exempt from the requirement to apply to the Department of Ecology for a permit under RCW 90.44.050?—

The AG's brief answer to the question posed is as follows: "A group of wells drilled by the same person or group at or about the same time in the same area for the same purpose or project should be considered a single 'withdrawal' and would not be exempt from the permitting requirement contained in RCW 90.44.050 if the total amount withdrawn for domestic use exceeds 5000 gallons per day." At the conclusion of the analysis provided for that brief answer, the AG further states:

" . . . we conclude that where water is withdrawn by a property owner for a single housing development, within a reasonable short period of time, a single 'withdrawal' occurs for purposes of applying RCW 90.44.050 and determining whether the withdrawal requires a water rights permit, no matter how many individual wells or other withdrawal mechanisms are employed."

The opinion also addresses questions regarding interconnecting systems that use water under the permit exemption, the applicability of a four element test for issuing water right permits, the issuance of water right certificates for exempted withdrawals, and the transfer of water rights established under the exemption.

SUMMARY:

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The express purpose of this legislation is to affirm the opinion of the AG contained in AGO 1997 No. 6 and the analysis that supports it.

The provision of the Groundwater Code is amended that requires permits for the withdrawal of ground water and exempts certain withdrawals for this requirement. A group of wells drilled by the same person or group at or about the same time in the same area for the same purpose or project constitutes a single withdrawal and is not exempt from the permitting requirement if the total amount withdrawn for use exceeds 5000 gallons per day.

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