

ANALYSIS OF SSB 5785

House Agriculture & Ecology Committee

March 31, 1997

BACKGROUND:

Water Use Permits, Transfers, Changes, and Amendments. With the adoption of the surface water code in 1917 and the groundwater code in 1945, new rights to the use of water are established under a permit system. (RCW 90.03.250 and 90.44.050.) However, certain uses of groundwater not exceeding 5,000 gallons per day are exempted from this permit requirement. (RCW 90.44.050.) The permit system is based on the prior appropriation doctrine that "first in time is first in right." Other laws authorize the state to establish minimum flows and levels for streams and lakes. (Chapters 90.22 and 90.54 RCW.) The permit system and the state's laws for managing water resources are administered by the Department of Ecology (DOE).

State law permits the use of water under a water right or portion of a water right to be transferred, changed, or amended if the transfer, change, or amendment can be made without detriment or injury to existing rights. If a change in place of use involves surface water supplied by an irrigation district and the water remains in the district, the change need be approved only by the irrigation district. Other transfers, changes, and amendments of water rights must be approved by the DOE. (RCW 90.03.380.)

SUMMARY:

A person who holds a valid groundwater permit or certificated right may consolidate that right with a groundwater right for an exempt well. The consolidation is to be done in the form of an amendment to the permit or right issued by the DOE and does not affect the priority of the permitted or certificated right.

Notice of an application for such a consolidation must be published. To issue an amendment for the consolidation, the DOE must determine that:

- *the exempt well taps the same body of groundwater as the well governed by the permit or certificate;*
- *use of the exempt well will be discontinued when the consolidation is approved;*
- *legally enforceable agreements have been entered to prohibit the construction*

of another exempt well to serve the area previously served by the discontinued exempt well and the agreements are binding upon subsequent owners of the land;

- the exempt well or wells to be abandoned will be properly decommissioned; and*
- other existing rights will not be impaired.*

The amount of the water to be added to consolidated permit or certificate is the average withdrawal from the exempt well for the most recent five-year period, but not more than 5000 gallons per day. Up to this limit, the amount is to be not less than 800 gallons per day per residential connection or an alternative minimum amount set by the DOE. The DOE must accord a presumption in favor of the applicant's proposed amount if the applicant's information establishes activities for the five-year period in the area served by the well to be consistent with average water usage for such activities in the general area.

The DOE must develop a schedule of average household and small-area landscaping water usages in consultation with the Department of Health to aid in applying the presumption. The presumption may be rebutted by credible evidence of nonusage of the well during the required period or a substantially different use or intensity of use of the land.

The DOE must also accord a presumption in favor of approval of such a consolidation if these requirements are met and the discontinuance of the exempt well is consistent with an adopted coordinated water system plan, an adopted comprehensive land use plan, or other comprehensive watershed management plan applicable to the area that contains an objective of decreasing the number of existing and newly developed small groundwater withdrawal wells.

The DOE must give priority to a consolidation application and must make its decision within 60 days of the end of the comment period following publication of the notice by the applicant or within 60 days of the date on which compliance with the State Environmental Policy Act is completed, whichever is later. The applicant and the DOE may, by prior mutual agreement, extend the time for making a decision.