

SSB 5023 - H AMD 477

By Representative Rockefeller

1 Strike everything after the enacting clause and insert the
2 following:

3 "Sec. 1. RCW 90.44.100 and 1997 c 316 s 2 are each amended to read
4 as follows:

5 (1) After an application to, and upon the issuance by the
6 department of an amendment to the appropriate permit or certificate of
7 ground water right, the holder of a valid right to withdraw public
8 ground waters may, without losing the holder's priority of right,
9 construct wells or other means of withdrawal or withdraw water under
10 the right from an additional existing well or wells at a new location
11 in substitution for or in addition to those at the original location,
12 or the holder may change the manner or the place of use of the water.

13 (2) Except as provided in subsection (5) of this section, an
14 amendment to withdraw water under the right from an additional existing
15 well or wells, construct replacement or a new additional well or wells
16 at a location outside of the location of the original well or wells, or
17 to change the manner or place of use of the water shall be issued only
18 after publication of notice of the application and findings as
19 prescribed in the case of an original application. Such amendment
20 shall be issued by the department only on the conditions that: (a) The
21 additional or replacement well or wells shall ((~~tap the same body of~~
22 public ground water)) be located within the same water resource
23 inventory area (WRIA), as defined in chapter 173-500 WAC, as the
24 original well or wells or in an adjoining WRIA. If a watershed plan
25 has been approved under chapter 90.82 RCW or a comprehensive watershed
26 plan has been adopted under RCW 90.54.040(1) for the WRIA or the
27 adjoining WRIA or for both WRIAs, moving the location of the well or
28 wells through construction or addition must be consistent with the plan
29 or plans; (b) where a replacement well or wells is approved, the use of
30 the original well or wells shall be discontinued and the original well

1 or wells shall be properly decommissioned as required under chapter
2 18.104 RCW; (c) where an additional well or wells is added or
3 constructed, the original well or wells may continue to be used, but
4 the combined total withdrawal from the original and additional well or
5 wells shall not (~~enlarge the right~~) increase the annual or
6 instantaneous quantity conveyed by the original permit or certificate;
7 and (d) other existing rights shall not be impaired. The department
8 may specify an approved manner of construction and shall require a
9 showing of compliance with the terms of the amendment, as provided in
10 RCW 90.44.080 in the case of an original permit.

11 (3) The addition or construction of a replacement or new or
12 existing additional well or wells at the location of the original well
13 or wells shall be allowed without application to the department for an
14 amendment. However, the following apply to such a replacement or new
15 or existing additional well: (a) The well shall tap the same body of
16 public ground water as the original well or wells; (b) if a replacement
17 well is added or constructed, the use of the original well or wells
18 shall be discontinued and the original well or wells shall be properly
19 decommissioned as required under chapter 18.104 RCW; (c) if a new or
20 existing additional well is added or constructed, the original well or
21 wells may continue to be used, but the combined total withdrawal from
22 the original and additional well or wells shall not (~~enlarge the~~
23 ~~right~~) increase the annual or instantaneous quantity conveyed by the
24 original water use permit or certificate; (d) the addition or
25 construction and use of the well shall not interfere with or impair
26 water rights with an earlier date of priority than the water right or
27 rights for the original well or wells; (e) the replacement or
28 additional well shall be located no closer than the original well to a
29 well it might interfere with; (f) the department may specify an
30 approved manner of construction of the well; and (g) the department
31 shall require a showing of compliance with the conditions of this
32 subsection (3).

33 (4) As used in this section, the "location of the original well or
34 wells" is the larger of: (a) The area described as the point of
35 withdrawal in the original public notice published for the application
36 for the water right for the well; or (b) the area up to one-quarter
37 mile radius from the current well or wells.

1 (5)(a) A water right holder may add or construct a replacement or
2 new or existing additional well or wells at a location outside the
3 location of the original well or wells but not more than two miles from
4 the current well or wells without obtaining approval from the
5 department under the following conditions:

6 (i) The water right holder must provide written notice to the
7 department of the intention to add or construct the replacement or
8 additional well or wells and publish a legal notice prescribed by the
9 department describing the location of the additional existing or
10 proposed well or wells, the amounts of water to be withdrawn, and other
11 details deemed necessary by the department. The notice must state that
12 a person wishing to assert a claim of impairment of the person's water
13 right may do so by filing the claim with the department and the
14 deadline for doing so, which shall be thirty days of the last date of
15 publication of the notice. The notice must be published once a week
16 for two consecutive weeks in a newspaper of general circulation in the
17 area in which the well or wells would be located or added. For the
18 purposes of this subsection (5), a water right is not impaired if no
19 greater impact upon the water right will occur as a result of a
20 proposed additional or replacement well or wells than would have
21 occurred had the water right been fully used at the currently
22 authorized well location or locations under the right. An impairment
23 claim based on alleged impairment to an instream flow established by
24 rule, a water right held by the state in trust, or to a stream closed
25 to further appropriation by rule, may only be asserted by the
26 department. However, the department must file a claim on behalf of the
27 state if it believes any water rights held by the state would be
28 impaired. The department must provide a copy of the notice to the
29 tribal governments of all Indian tribes in the watershed or watersheds
30 involved and to any planning unit conducting planning under chapter
31 90.82 RCW for the area and must post a copy of the notice on its
32 internet web site;

33 (ii) No claims of impairment of a water right are filed by the
34 holder of the water right with the department relating to the proposed
35 replacement or additional well or wells within thirty days of the last
36 date of publication of the legal notice; and

1 (iii) The conditions of subsection (3)(a) through (d), (f), and (g)
2 of this section are met.

3 (b) If a claim of impairment of a water right is timely filed by
4 the holder of the water right with the department, the department shall
5 make a determination regarding the impairment claim and shall issue its
6 determination in writing within forty-five days of the date the claim
7 was filed, stating either that it finds that there will be impairment
8 (a "finding of impairment") or that it finds there will not be
9 impairment (a "finding of no impairment"). The department's written
10 determination or its failure to issue a determination within the forty-
11 five-day deadline may be appealed, by the claimant or by the water
12 right holder who published notice under (a)(i) of this subsection, to
13 the pollution control hearings board as provided in chapter 43.21B RCW
14 or, at the option of the person filing the appeal, with the superior
15 court in the county in which the additional or replacement well is or
16 would be located for de novo review. An appeal filed directly with the
17 superior court must be filed within thirty days of the date the
18 department makes a determination under this subsection (5)(b) or of the
19 forty-five-day deadline for making such a determination, whichever is
20 earlier.

21 (c) Where an impairment claim has been filed, a replacement well
22 may be added or constructed under this subsection (5) if the department
23 makes a finding of no impairment regarding the claim or the forty-five-
24 day period for the department to make a determination lapses and the
25 department has not made a determination."

26 Correct the title.

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