
ENGROSSED SUBSTITUTE HOUSE BILL 1337

State of Washington

58th Legislature

2003 Regular Session

By House Committee on Agriculture & Natural Resources (originally sponsored by Representatives Rockefeller, Schoesler, Lantz, Linville, Shabro, Jarrett, Kirby, Grant, Quall, Hunt, Delvin, Woods, Chandler, Morris, Conway, Bush, Anderson and Pflug; by request of Governor Locke)

READ FIRST TIME 03/04/03.

1 AN ACT Relating to the construction of replacement or additional
2 wells; and amending RCW 90.44.100.

3 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF WASHINGTON:

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

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

14 (2) Except as provided in subsection (5) of this section, an
15 amendment to withdraw water under the right from an additional existing
16 well or wells, construct replacement or a new additional well or wells
17 at a location outside of the location of the original well or wells, or
18 to change the manner or place of use of the water shall be issued only
19 after publication of notice of the application and findings as

1 prescribed in the case of an original application. Such amendment
2 shall be issued by the department only on the conditions that: (a) The
3 additional or replacement well or wells shall (~~tap the same body of~~
4 ~~public ground water~~) be located within the same water resource
5 inventory area (WRIA), as defined in chapter 173-500 WAC, as the
6 original well or wells or in an adjoining WRIA. If a watershed plan
7 has been approved under chapter 90.82 RCW or a comprehensive watershed
8 plan has been adopted under RCW 90.54.040(1) for the WRIA or the
9 adjoining WRIA or for both WRIs, moving the location of the well or
10 wells through construction or addition must be consistent with the plan
11 or plans. If a ground water management program has been adopted by the
12 department under RCW 90.44.400 through 90.44.430 for the original or
13 new location for the well or wells, moving the location of the well or
14 wells through construction or addition must be consistent with the
15 adopted program; (b) where a replacement well or wells is approved, the
16 use of the original well or wells shall be discontinued and the
17 original well or wells shall be properly decommissioned as required
18 under chapter 18.104 RCW; (c) where an additional well or wells is
19 added or constructed, the original well or wells may continue to be
20 used, but the combined total withdrawal from the original and
21 additional well or wells shall not (~~enlarge the right~~) increase the
22 annual or instantaneous quantity conveyed by the original permit or
23 certificate; and (d) other existing rights shall not be impaired. The
24 department may specify an approved manner of construction and shall
25 require a showing of compliance with the terms of the amendment, as
26 provided in RCW 90.44.080 in the case of an original permit.

27 (3) The addition or construction of a replacement or new or
28 existing additional well or wells at the location of the original well
29 or wells shall be allowed without application to the department for an
30 amendment. However, the following apply to such a replacement or new
31 or existing additional well: (a) The well shall tap the same body of
32 public ground water as the original well or wells; (b) if a replacement
33 well is added or constructed, the use of the original well or wells
34 shall be discontinued and the original well or wells shall be properly
35 decommissioned as required under chapter 18.104 RCW; (c) if a new or
36 existing additional well is added or constructed, the original well or
37 wells may continue to be used, but the combined total withdrawal from
38 the original and additional well or wells shall not (~~enlarge the~~

1 ~~right~~) increase the annual or instantaneous quantity conveyed by the
2 original water use permit or certificate; (d) the addition or
3 construction and use of the well shall not interfere with or impair
4 water rights with an earlier date of priority than the water right or
5 rights for the original well or wells; (e) the replacement or
6 additional well shall be located no closer than the original well to a
7 well it might interfere with; (f) the department may specify an
8 approved manner of construction of the well; and (g) the department
9 shall require a showing of compliance with the conditions of this
10 subsection (3).

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

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

21 (i) At least sixty days before adding or starting construction of
22 the well or wells, the water right holder must provide written notice
23 to the department of the intention to add or construct the replacement
24 or additional well or wells and publish a legal notice prescribed by
25 the department describing the location of the additional existing or
26 proposed well or wells, the amounts of water to be withdrawn, and other
27 details deemed necessary by the department. The notice must state that
28 a person wishing to assert a claim of impairment of the person's water
29 right may do so by filing the claim with the department and the
30 deadline for doing so, which shall be within thirty days of the last
31 date of publication of the notice. The notice must be published once
32 a week for two consecutive weeks in a newspaper of general circulation
33 in the area in which the well or wells would be located or added. The
34 department must provide a copy of the notice to the tribal governments
35 of all Indian tribes in the watershed or watersheds involved and to any
36 planning unit conducting planning under chapter 90.82 RCW for the area
37 and must post a copy of the notice on its internet web site. The

1 department must file such a claim on behalf of the state if it believes
2 any water rights held by the state would be impaired;

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

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

9 (b) If a claim of impairment of a water right is timely filed by
10 the holder of the water right with the department, the department shall
11 make a determination regarding the impairment claim and shall issue its
12 determination in writing within ninety days of the date the claim was
13 filed, stating either that it finds that there will be impairment (a
14 "finding of impairment") or that it finds there will not be impairment
15 (a "finding of no impairment"). The department's written determination
16 or its failure to issue a determination within the ninety-day deadline
17 may be appealed, by the claimant or by the water right holder who
18 published notice under (a)(i) of this subsection, to the pollution
19 control hearings board as provided in chapter 43.21B RCW.

20 (c) Where an impairment claim has been filed, a replacement well
21 may only be added or constructed under this subsection (5) after a
22 final resolution of the impairment claim results in a finding of no
23 impairment. Final resolution of an impairment claim occurs at the
24 expiration of the appeal period following a final determination by the
25 department, the pollution control hearings board, and any reviewing
26 court.

27 (d) The failure of the department or a person authorized to file a
28 claim of impairment before the thirty-day deadline established in (a)
29 of this subsection shall not be construed as precluding the department
30 or the person from taking actions to require the discontinuance of or
31 reduction in the withdrawal of water from the well or wells added or
32 located and constructed under the authority of this subsection (5) if
33 the state's or person's rights are impaired by the withdrawals.

--- END ---