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SENATE BILL 5334

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State of Washington                      58th Legislature                      2003 Regular Session

By Senators Honeyford, Hale, Parlette, B. Sheldon, Hewitt and T. Sheldon; by request of Governor Locke

Read first time 01/22/2003.            Referred to Committee on Natural Resources, Energy & Water.

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 at a new location in  
11 substitution for or in addition to those at the original location, or  
12 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 construct replacement or a new additional well or wells at  
15 a location outside of the location of the original well or wells or to  
16 change the manner or place of use of the water shall be issued only  
17 after publication of notice of the application and findings as  
18 prescribed in the case of an original application. Such amendment  
19 shall be issued by the department only on the conditions that: (a) The

1 additional or replacement well or wells shall (~~tap the same body of~~  
2 ~~public ground water~~) be located within the same water resource  
3 inventory area, as defined in chapter 173-500 WAC, or an adjoining  
4 water resource inventory area as the original well or wells; (b) where  
5 a replacement well or wells is approved, the use of the original well  
6 or wells shall be discontinued and the original well or wells shall be  
7 properly decommissioned as required under chapter 18.104 RCW; (c) where  
8 an additional well or wells is constructed, the original well or wells  
9 may continue to be used, but the combined total withdrawal from the  
10 original and additional well or wells shall not (~~enlarge the right~~)  
11 increase the annual or instantaneous quantity conveyed by the original  
12 permit or certificate; and (d) other existing rights shall not be  
13 impaired. The department may specify an approved manner of  
14 construction and shall require a showing of compliance with the terms  
15 of the amendment, as provided in RCW 90.44.080 in the case of an  
16 original permit.

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

37 (4) As used in this section, the "location of the original well or  
38 wells" is the larger of: (a) The area described as the point of

1 withdrawal in the original public notice published for the application  
2 for the water right for the well; or (b) the area up to one-quarter  
3 mile radius from the current well or wells.

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

9 (i) That, at least sixty days before starting construction of the  
10 well or wells, the water right holder provides written notice to the  
11 department of the intention to construct the replacement or additional  
12 well or wells and publishes a legal notice prescribed by the department  
13 describing the location of the proposed well or wells, the amounts of  
14 water to be withdrawn, and other details deemed necessary by the  
15 department. The notice must state that a person wishing to assert a  
16 claim of impairment of another water right may do so by filing the  
17 claim with the department and the deadline for doing so. The notice  
18 must be published once a week for two consecutive weeks in a newspaper  
19 of general circulation in the area in which the well or wells would be  
20 located;

21 (ii) That, within thirty days of the last date of publication of  
22 the legal notice, no claims of impairment are filed with the department  
23 relating to the proposed replacement or additional well or wells; and

24 (iii) That the conditions of subsection (3)(a) through (g) of this  
25 section are met.

26 (b) If any claims of impairment are filed with the department, the  
27 department shall make a determination regarding the impairment claim or  
28 claims and shall issue its determination in writing, stating either  
29 that it finds that there will be impairment (a "finding of impairment")  
30 or that it finds there will not be impairment (a "finding of no  
31 impairment"). The department's written determination may be appealed  
32 to the pollution control hearings board as provided in chapter 43.21B  
33 RCW.

34 (c) Where an impairment claim has been filed, a replacement well  
35 may only be constructed under this subsection (5) after a final  
36 resolution of the impairment claim results in a finding of no  
37 impairment. Final resolution of an impairment claim occurs at the

1 expiration of the appeal period following a final determination by the  
2 department, the pollution control hearings board, and any reviewing  
3 court.

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