

ESSB 6402 - H COMM AMD

By Committee on Agriculture & Natural Resources

NOT CONSIDERED 03/11/2010

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

3 "Sec. 1. RCW 90.44.105 and 1997 c 446 s 1 are each amended to read
4 as follows:

5 (1)(a) Upon the issuance by the department of an amendment to the
6 appropriate permit or certificate of groundwater right, the holder of
7 a valid right to withdraw public groundwaters may consolidate that
8 right with a groundwater right exempt from the permit requirement under
9 RCW 90.44.050, without affecting the priority of either of the water
10 rights being consolidated.

11 (b) Such a consolidation amendment shall be issued only after
12 publication of a notice of the application, a comment period, and a
13 determination made by the department, in lieu of meeting the conditions
14 required for an amendment under RCW 90.44.100, that: ~~((1))~~ (i) The
15 exempt well either taps or is in connection with the same body of
16 public groundwater ~~((as the well to))~~ in which the holder has or has
17 applied to establish a water right ~~((of the exempt well is to be~~
18 ~~consolidated))~~ to withdraw groundwater; ~~((2))~~ (ii) use of the exempt
19 well shall be discontinued upon approval of the consolidation amendment
20 to the permit or certificate; ~~((3))~~ (iii) legally enforceable
21 agreements have been entered to prohibit the construction of another
22 exempt well to serve the area previously served by the exempt well to
23 be discontinued, and such agreements are binding upon subsequent owners
24 of the land through appropriate binding limitations on the title to the
25 land; ~~((4))~~ (iv) the exempt well or wells the use of which is to be
26 discontinued will be properly decommissioned in accordance with chapter
27 18.104 RCW and the rules of the department unless the department
28 authorizes that the well may continue to be used for groundwater
29 monitoring purposes; and ~~((5))~~ (v) other existing rights, including

1 ground and surface water rights and minimum stream flows adopted by
2 rule, shall not be impaired.

3 (c) The notice shall be published by the applicant in a newspaper
4 of general circulation in the county or counties in which the wells for
5 the rights to be consolidated are located once a week for two
6 consecutive weeks. The notice must include contact information for the
7 water system so that owners of existing exempt wells may contact the
8 water system if interested in well consolidation. The applicant shall
9 provide evidence of the publication of the notice to the department.
10 The comment period shall be for thirty days beginning on the date the
11 second notice is published.

12 (2) The amount of the water to be added to the holder's permit or
13 certificate upon discontinuance of the exempt well shall be the average
14 withdrawal from the well, in gallons per day, for the most recent five-
15 year period preceding the date of the application, except that the
16 amount shall not be less than eight hundred gallons per day for each
17 residential connection or such alternative minimum amount as may be
18 established by the department in consultation with the department of
19 health, and shall not exceed five thousand gallons per day. The
20 department shall presume that an amount identified by the applicant as
21 being the average withdrawal from the well during the most recent five-
22 year period is accurate if the applicant establishes that the amount
23 identified for the use or uses of water from the exempt well is
24 consistent with the average amount of water used for similar use or
25 uses in the general area in which the exempt well is located. The
26 department shall develop, in consultation with the department of
27 health, a schedule of average household and small-area landscaping
28 water usages in various regions of the state to aid the department and
29 applicants in identifying average amounts used for these purposes. The
30 presumption does not apply if the department finds credible evidence of
31 nonuse of the well during the required period or credible evidence that
32 the use of water from the exempt well or the intensity of the use of
33 the land supported by water from the exempt well is substantially
34 different than such uses in the general area in which the exempt well
35 is located. The department shall also accord a presumption in favor of
36 approval of such consolidation if the requirements of this subsection
37 are met and the discontinuance of the exempt well is consistent with an
38 adopted coordinated water system plan under chapter 70.116 RCW, an

1 adopted comprehensive land use plan under chapter 36.70A RCW, or other
2 comprehensive watershed management plan applicable to the area
3 containing an objective of decreasing the number of existing and newly
4 developed small groundwater withdrawal wells. The department shall
5 provide a priority to reviewing and deciding upon applications subject
6 to this subsection, and shall make its decision within sixty days of
7 the end of the comment period following publication of the notice by
8 the applicant or within sixty days of the date on which compliance with
9 the state environmental policy act, chapter 43.21C RCW, is completed,
10 whichever is later. The applicant and the department may by prior
11 mutual agreement extend the time for making a decision.

12 (3) Until December 31, 2015, if an existing, publicly owned and
13 operated group A or group B water system, as those terms are defined in
14 RCW 70.119A.020, that holds a permitted or certificated right to
15 withdraw public groundwaters is unable to serve proposed new
16 development within or adjacent to the approved service area of the
17 water system because it does not have adequate water rights or a
18 sufficient number of connections, and the proposed new development
19 would then seek to obtain water supply under the groundwater permit
20 exemption in RCW 90.44.050, the water system may consolidate with its
21 water right an additional quantity of water authorized to be withdrawn
22 under the permit exemption in RCW 90.44.050 and necessary to serve the
23 proposed new development subject to the following requirements:

24 (a) The water system shall publish public notice of the intent to
25 consolidate an exempt withdrawal in a newspaper of general circulation
26 in the county or counties in which the water system and the proposed
27 new development are located once a week for two consecutive weeks. The
28 notice must include contact information for the water system so that
29 owners of existing exempt wells may contact the water system if
30 interested in well consolidation. The notice shall provide for a
31 thirty-day comment period;

32 (b) The water system shall provide evidence of publication of the
33 notice to the department, the department of health, and the local
34 government with land use authority over the proposed new development;

35 (c) The local government with land use authority over the proposed
36 new development shall ensure that the proposed consolidation is
37 consistent with an adopted coordinated water system plan under chapter
38 70.116 RCW, an adopted comprehensive land use plan under chapter 36.70A

1 RCW, or other comprehensive watershed management plan applicable to the
2 area containing an objective of decreasing the number of existing and
3 newly developed small groundwater withdrawal wells;

4 (d) The water system must make any necessary amendments to its
5 water system plan and receive approval from the department of health to
6 authorize the addition of new connections, new uses, or revise or
7 modify the retail service area boundary;

8 (e) Legally enforceable agreements have been entered to prohibit
9 the construction of an exempt well to serve the area of the proposed
10 new development, and such agreements are binding upon subsequent owners
11 of the land through appropriate binding limitations on the title to the
12 land; and

13 (f) Compliance with the state environmental policy act, chapter
14 43.21C RCW.

15 (4)(a) The department shall give priority to reviewing and deciding
16 upon applications subject to subsection (3) of this section, and shall
17 make its decision within sixty days of the date on which the
18 requirements in subsection (3) of this section have been completed.
19 The department may extend the sixty-day time period by forty-five days
20 for good cause or for any period of time at the request of the
21 applicant.

22 (b) The department shall consult with the department of health and
23 the local government with land use authority over the proposed new
24 development to ensure compliance with subsection (3) of this section
25 prior to deciding upon applications.

26 (c) Prior to deciding upon applications, the department shall: (i)
27 Review public comments; (ii) determine whether water is legally
28 available for purposes of the consolidation; (iii) determine whether
29 the proposed consolidation would violate any water resource management
30 rules; and (iv) determine whether the proposed consolidation would
31 impair existing rights, including instream flows.

32 (5) In no case may the quantity of water consolidated with the
33 water system's water rights under subsection (3) of this section exceed
34 five thousand gallons per day or the number of new connections exceed
35 fourteen, and the quantity of water withdrawn must also comply with
36 rules adopted by the department and ordinances adopted by the local
37 government with land use authority over the proposed new development.

1 (6) The water system must separately meter both existing
2 connections and new connections to be added under subsection (3) of
3 this section.

4 (7) Any letter, certificate, or other statement that water is
5 available to serve the proposed new development utilizing the procedure
6 in subsection (3) of this section to satisfy the water availability
7 requirement of RCW 19.27.097 or 58.17.110 must be provided to the
8 department, the department of health, and the local government with
9 land use authority upon issuance by the water system.

10 (8) A water system may exercise the authority in subsection (3) of
11 this section on multiple occasions, but only until a total of fourteen
12 residential connections or five thousand gallons per day of water has
13 been consolidated with the water rights of the water system.

14 (9) After beneficial use has occurred, the water system shall
15 submit a proof of appropriation demonstrating the actual quantity of
16 water beneficially used in order to obtain a consolidation amendment
17 from the department.

18 (10) Any determination by the department under this section is
19 appealable to the pollution control hearings board under chapter 43.21B
20 RCW."

EFFECT: Allows applicants for a groundwater right to also
consolidate the permit exempt well right. Contains additional notice
requirements. Makes technical changes.

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