

ESSB 6402 - H AMD 1346

By Representative Blake

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 a publicly owned and operated group
13 A or group B water system, as those terms are defined in RCW
14 70.119A.020, in existence as of the effective date of this section,
15 that holds a certificated right to withdraw public groundwaters is
16 unable to serve proposed new development within or adjacent to the
17 approved service area of the water system because it does not have
18 adequate water rights or a sufficient number of connections, and the
19 proposed new development would then seek to obtain water supply from
20 the same or a connected groundwater source under the groundwater permit
21 exemption in RCW 90.44.050, the water system may consolidate with its
22 water right an additional quantity of water that has not yet been put
23 to beneficial use under the permit exemption in RCW 90.44.050 and
24 necessary to serve the proposed new development subject to the
25 following requirements:

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

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

37 (c) The local government with land use authority over the proposed
38 new development shall ensure that the proposed consolidation is

1 consistent with an adopted coordinated water system plan under chapter
2 70.116 RCW, an adopted comprehensive land use plan under chapter 36.70A
3 RCW, or other comprehensive watershed management plan applicable to the
4 area containing an objective of decreasing the number of existing and
5 newly developed small groundwater withdrawal wells;

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

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

15 (f) Compliance with the state environmental policy act, chapter
16 43.21C RCW.

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

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

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

34 (5) In no case may the quantity of water consolidated with the
35 water system's water rights under subsection (3) of this section ever
36 exceed five thousand gallons per day or the number of new connections
37 exceed fourteen, whichever is a smaller quantity of water, and the

1 quantity of water withdrawn must also comply with rules adopted by the
2 department and ordinances adopted by the local government with land use
3 authority over the proposed new development.

4 (6) The water system must separately meter both existing
5 connections and new connections to be added under subsection (3) of
6 this section, and may be required by the department to report meter
7 data.

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

14 (8) A water system may exercise the authority in subsection (3) of
15 this section on multiple occasions, but only until a total of fourteen
16 residential connections or five thousand gallons per day of water has
17 been consolidated with the water rights of the water system as long as
18 the water system is operational.

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

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

EFFECT: Clarifies that a water system must be in existence as of the effective date of this act. Allows only water systems that have certified water rights to utilize the provisions of this act. Clarifies that the consolidation is of water not yet put to beneficial use. Extends the time period for consolidation review by the department of ecology by up to 60 days. Clarifies that the department of ecology may require reporting of meter data. Restricts the consolidation limit to the lesser of either 14 connections or 5,000 gallons per day, and clarifies that this limit extends for as long as the water system is operational.

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