
SENATE BILL 5888

State of Washington

61st Legislature

2009 Regular Session

By Senators Rockefeller, Fraser, and Regala

Read first time 02/05/09. Referred to Committee on Environment, Water & Energy.

1 AN ACT Relating to managing permit exempt groundwater withdrawals;
2 and amending RCW 90.44.050 and 90.44.105.

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

4 **Sec. 1.** RCW 90.44.050 and 2003 c 307 s 1 are each amended to read
5 as follows:

6 (1) After June 6, 1945, no withdrawal of public groundwaters of the
7 state shall be begun, nor shall any well or other works for such
8 withdrawal be constructed, unless an application to appropriate such
9 waters has been made to the department and a permit has been granted by
10 it as herein provided(~~(: EXCEPT, HOWEVER, That)~~).

11 (2) After June 6, 1945, and until the effective date of this
12 section, any withdrawal of public groundwaters for stock-watering
13 purposes, or for the watering of a lawn or of a noncommercial garden
14 not exceeding one-half acre in area, or for single or group domestic
15 uses in an amount not exceeding five thousand gallons a day, or as
16 provided in RCW 90.44.052, or for an industrial purpose in an amount
17 not exceeding five thousand gallons a day, is and shall be exempt from
18 the provisions of this section, but, to the extent that it is regularly
19 used beneficially, shall be entitled to a right equal to that

1 established by a permit issued under the provisions of this chapter:
2 PROVIDED, HOWEVER, That the department from time to time may require
3 the person or agency making any such small withdrawal to furnish
4 information as to the means for and the quantity of that withdrawal:
5 PROVIDED, FURTHER, That at the option of the party making withdrawals
6 of groundwaters of the state not exceeding five thousand gallons per
7 day, applications under this section or declarations under RCW
8 90.44.090 may be filed and permits and certificates obtained in the
9 same manner and under the same requirements as is in this chapter
10 provided in the case of withdrawals in excess of five thousand gallons
11 a day.

12 (3) After the effective date of this section, a withdrawal of
13 public groundwaters is exempt from the application and permit
14 requirements of this section as long as the beneficial use or uses of
15 the public groundwaters do not individually or collectively exceed five
16 thousand gallons a day for the following purposes:

17 (a) A single domestic use or a group domestic use by six or fewer
18 residences;

19 (b) Watering of a noncommercial lawn or garden not exceeding one-
20 half acre in area;

21 (c) Stock watering use;

22 (d) Commercial irrigation not exceeding one-half acre in area; and

23 (e) Industrial or commercial use.

24 (4) For any new permit exempt use commenced after the effective
25 date of this section, the department shall require the person making
26 any such new small withdrawal to meter the water use and to retain
27 records of the amounts withdrawn. In areas in which instream flows are
28 being affected or in areas in which withdrawals are reduced pursuant to
29 subsection (6) of this section, the department may require periodic
30 submittal to the department of the amounts withdrawn or the department
31 may require the installation of electronic data recording and
32 transmission devices.

33 (5) At the option of the person making a withdrawal of groundwaters
34 of the state not exceeding five thousand gallons per day, applications
35 under this section may be filed and permits and certificates obtained
36 in the same manner and under the same requirements as provided for in
37 this chapter in the case of withdrawals in excess of five thousand
38 gallons a day.

1 (6) Notwithstanding subsection (3) of this section, the amount of
2 public groundwaters that may be withdrawn that are exempt from permit
3 requirements may be reduced to some lesser amount through rules adopted
4 by the department when the department determines, in consultation with
5 the department of fish and wildlife and federally recognized Indian
6 tribes, that effective water management requires such a limitation.
7 The rules may only be adopted for the protection of public groundwaters
8 occurring in watersheds in which:

9 (a) Salmonid stocks are listed or proposed for listing as
10 threatened or endangered under the federal endangered species act or
11 listed as critical or depressed under the state salmon and steelhead
12 stock inventory;

13 (b) Stream flows have been diminishing as a result of the reduction
14 of base flows due to well withdrawals;

15 (c) Surface waters or groundwaters have been fully appropriated;

16 (d) Existing water rights have been restricted or interrupted or
17 the basin has ever been closed;

18 (e) There is an ongoing stream adjudication; or

19 (f) The rules are necessary to prevent impairment of existing water
20 rights or harm to fish, wildlife, navigation, or an existing public
21 recreational use.

22 (7) Notwithstanding subsections (3) through (5) of this section,
23 after the effective date of this section, no new permit exempt
24 withdrawal may be commenced or a new purpose of exempt use added by any
25 person whose place of use is within a service area of a water purveyor
26 that has sufficient capacity to provide water under existing water
27 rights, provided a purveyor determines that it can provide water
28 service on a timely and reasonable basis and the purveyor is willing to
29 provide the service.

30 (8) The priority date of a water right established through the
31 groundwater permit exemption in this section is the date that water is
32 first put to beneficial use for the exempt purpose in question. Permit
33 exempt groundwater rights may be relinquished or abandoned through
34 nonuse in the same manner as other water rights.

35 (9) Permit exempt groundwater rights are subject to regulation in
36 favor of senior water rights in the same manner as any other water
37 right on the basis of priority date.

1 (10) A permit exempt groundwater withdrawal may be supplied from
2 more than one well, but all the wells combined may not exceed a total
3 daily withdrawal of five thousand gallons under the exemption. An
4 exempt withdrawal may be made from a well that also supplies water for
5 a water right permit or certificate.

6 (11) For the purposes of subsection (3) of this section, "stock
7 watering use" means providing water for domestic farm animals for
8 drinking and for maintenance of animal health and welfare. This
9 includes water for cleaning animals and the buildings that the animals
10 occupy and misting the animals for cooling purposes in hot weather.
11 This does not include the use of water to cool or process and produce,
12 irrigation of vegetation, or dust control, all of which constitute
13 industrial or commercial water uses under this section.

14 (12) By December 1, 2009, the department shall identify, and rank
15 in priority order, all areas of the state in which the metering of
16 existing groundwater withdrawals, including permit exempt withdrawals,
17 is needed to effectively manage the waters of the state. The
18 department shall convey that information in a report to the appropriate
19 committees of the legislature. The report must include an estimate of
20 the cost to the state to require such metering and to manage the
21 resulting data and the cumulative cost to water right holders to
22 implement comprehensive metering and reporting of groundwater in the
23 highest priority areas.

24 **Sec. 2.** RCW 90.44.105 and 1997 c 446 s 1 are each amended to read
25 as follows:

26 (1)(a) Upon the issuance by the department of an amendment to the
27 appropriate permit or certificate of groundwater right, the holder of
28 a valid right to withdraw public groundwaters may consolidate that
29 right with a groundwater right exempt from the permit requirement under
30 RCW 90.44.050, without affecting the priority of either of the water
31 rights being consolidated. ((Such))

32 (b) Upon receiving the permission from the department and the
33 department of health, a group A water purveyor may consolidate the
34 water rights of consenting owners of permit exempt wells within its
35 service area. Notwithstanding subsection (2) of this section, the
36 purveyor is not required to own a well in the same body of groundwater.
37 However, all other requirements of subsection (2) of this section

1 apply. The purveyor may furnish the water from a new well or wells
2 approved by the department or may with approval from the department
3 supply the water from one or more of the acquired wells. Once the
4 consolidation action is completed, the department shall issue a water
5 right certificate to the water purveyor.

6 (2) A consolidation amendment or approval shall be issued only
7 after publication of a notice of the application, a comment period, and
8 a determination made by the department, in lieu of meeting the
9 conditions required for an amendment under RCW 90.44.100, that:

10 ~~((+1))~~ (a) The exempt well taps the same body of public groundwater as
11 the existing or future well to which the water right of the exempt well
12 is to be consolidated; ~~((+2))~~ (b) use of the exempt well or wells
13 shall be discontinued upon approval of ~~((the))~~ a consolidation
14 amendment to the permit or certificate; ~~((+3))~~ (c) legally enforceable
15 agreements have been entered to prohibit the construction of another
16 exempt well to serve the area previously served by the exempt well to
17 be discontinued, and such agreements are binding upon subsequent owners
18 of the land through appropriate binding limitations on the title to the
19 land; ~~((+4))~~ (d) the exempt well or wells the use of which is to be
20 discontinued will be properly decommissioned in accordance with chapter
21 18.104 RCW and the rules of the department; ~~((and—(5))~~ (e) other
22 existing rights, including ground and surface water rights and minimum
23 stream flows adopted by rule, shall not be impaired; and (f) no
24 detriment to the public interest shall occur. The notice shall be
25 published by the applicant in a newspaper of general circulation in the
26 county or counties in which the wells for the rights to be consolidated
27 are located once a week for two consecutive weeks. The applicant shall
28 provide evidence of the publication of the notice to the department.
29 The comment period shall be for thirty days beginning on the date the
30 second notice is published.

31 (3) The amount of the water to be added to the holder's permit or
32 certificate or the amount granted as a new water right certificate upon
33 discontinuance of the exempt well shall be the average withdrawal from
34 the well, in gallons per day, for the most recent five-year period
35 preceding the date of the application, except that the amount shall not
36 be less than eight hundred gallons per day for each residential
37 connection or such alternative minimum amount as may be established by
38 the department in consultation with the department of health, and shall

1 not exceed five thousand gallons per day. The department shall presume
2 that an amount identified by the applicant as being the average
3 withdrawal from the well during the most recent five-year period is
4 accurate if the applicant establishes that the amount identified for
5 the use or uses of water from the exempt well is consistent with the
6 average amount of water used for similar use or uses in the general
7 area in which the exempt well is located. The department shall
8 develop, in consultation with the department of health, a schedule of
9 average household and small-area landscaping water usages in various
10 regions of the state to aid the department and applicants in
11 identifying average amounts used for these purposes. The presumption
12 does not apply if the department finds credible evidence of nonuse of
13 the well during the required period or credible evidence that the use
14 of water from the exempt well or the intensity of the use of the land
15 supported by water from the exempt well is substantially different than
16 such uses in the general area in which the exempt well is located. The
17 department shall also accord a presumption in favor of approval of such
18 consolidation if the requirements of this subsection are met and the
19 discontinuance of the exempt well is consistent with an adopted
20 coordinated water system plan under chapter 70.116 RCW, an adopted
21 comprehensive land use plan under chapter 36.70A RCW, or other
22 comprehensive watershed management plan applicable to the area
23 containing an objective of decreasing the number of existing and newly
24 developed small groundwater withdrawal wells. The department shall
25 provide a priority to reviewing and deciding upon applications subject
26 to this subsection, and shall make its decision within sixty days of
27 the end of the comment period following publication of the notice by
28 the applicant or within sixty days of the date on which compliance with
29 the state environmental policy act, chapter 43.21C RCW, is completed,
30 whichever is later. The applicant and the department may by prior
31 mutual agreement extend the time for making a decision.

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