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SENATE BILL 5462

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State of Washington

63rd Legislature

2013 Regular Session

By Senators Honeyford, Carrell, and McAuliffe

Read first time 01/31/13. Referred to Committee on Agriculture, Water & Rural Economic Development.

1 AN ACT Relating to efficiencies in the department of ecology  
2 processing of water right change applications to permit the  
3 consolidation of the annual quantities of those water rights held by  
4 the applicant; amending RCW 90.44.100 and 90.44.100; providing an  
5 effective date; and providing an expiration date.

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

7 **Sec. 1.** RCW 90.44.100 and 2009 c 183 s 16 are each amended to read  
8 as follows:

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

16 (2) An amendment to construct replacement or a new additional well  
17 or wells at a location outside of the location of the original well or  
18 wells or to change the manner or place of use of the water shall be  
19 issued only after publication of notice of the application and findings

1 as 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 groundwater as the original well or wells; (b) where a  
5 replacement well or wells is approved, the use of the original well or  
6 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 conveyed by the original permit or certificate; and (d) other existing  
12 rights shall not be impaired. The department may specify an approved  
13 manner of construction and shall require a showing of compliance with  
14 the terms of the amendment, as provided in RCW 90.44.080 in the case of  
15 an original permit.

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

36 (4) As used in this section, the "location of the original well or  
37 wells" is the area described as the point of withdrawal in the original

1 public notice published for the application for the water right for the  
2 well.

3 (5) The development and use of a small irrigation impoundment, as  
4 defined in RCW 90.03.370(8), does not constitute a change or amendment  
5 for the purposes of this section. The exemption expressly provided by  
6 this subsection shall not be construed as requiring an amendment of any  
7 existing water right to enable the holder of the right to store water  
8 governed by the right.

9 (6)(a) An application or applications to consolidate the annual  
10 quantities of multiple water rights or permits from the same body of  
11 public groundwater held by the applicant must be approved by the  
12 department under the limited review identified in (b) of this  
13 subsection when:

14 (i)(A) The annual quantity of water of the consolidated water  
15 rights and permits does not exceed the annual quantity of water granted  
16 under the combined individual underlying water rights or permits;

17 (B) Each individual water right's instantaneous quantity is not  
18 increased;

19 (C) The applicant provides a hydrological analysis showing there is  
20 no impairment or reduced potential impairment of existing water rights;

21 (D) The applicant complies with the notice requirements of RCW  
22 90.03.280; and

23 (E) The applicant provides the department with a draft report of  
24 examination identifying the satisfaction of the criteria of this  
25 subsection; and

26 (ii) The department, in a review limited to existing water rights  
27 as provided in (b) of this subsection, finds that existing water rights  
28 will not be impaired or potential impairment is reduced.

29 (b) The department's consideration under this subsection is limited  
30 to the determination of the following:

31 (i) The scope and validity or the rights for which the application  
32 is submitted; and

33 (ii) Whether the hydrological analysis presented by the applicant  
34 sufficiently demonstrates that existing water rights will not be  
35 impaired or any impairment will be less than that which would  
36 potentially occur under the unamended rights.

37 (7) This section does not apply to a water right involved in an

1 approved local water plan created under RCW 90.92.090 or a banked water  
2 right under RCW 90.92.070.

3 **Sec. 2.** RCW 90.44.100 and 2003 c 329 s 3 are each amended to read  
4 as follows:

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

12 (2) An amendment to construct replacement or a new additional well  
13 or wells at a location outside of the location of the original well or  
14 wells or to change the manner or place of use of the water shall be  
15 issued only after publication of notice of the application and findings  
16 as prescribed in the case of an original application. Such amendment  
17 shall be issued by the department only on the conditions that: (a) The  
18 additional or replacement well or wells shall tap the same body of  
19 public groundwater as the original well or wells; (b) where a  
20 replacement well or wells is approved, the use of the original well or  
21 wells shall be discontinued and the original well or wells shall be  
22 properly decommissioned as required under chapter 18.104 RCW; (c) where  
23 an additional well or wells is constructed, the original well or wells  
24 may continue to be used, but the combined total withdrawal from the  
25 original and additional well or wells shall not enlarge the right  
26 conveyed by the original permit or certificate; and (d) other existing  
27 rights shall not be impaired. The department may specify an approved  
28 manner of construction and shall require a showing of compliance with  
29 the terms of the amendment, as provided in RCW 90.44.080 in the case of  
30 an original permit.

31 (3) The construction of a replacement or new additional well or  
32 wells at the location of the original well or wells shall be allowed  
33 without application to the department for an amendment. However, the  
34 following apply to such a replacement or new additional well: (a) The  
35 well shall tap the same body of public groundwater as the original well  
36 or wells; (b) if a replacement well is constructed, the use of the  
37 original well or wells shall be discontinued and the original well or

1 wells shall be properly decommissioned as required under chapter 18.104  
2 RCW; (c) if a new additional well is constructed, the original well or  
3 wells may continue to be used, but the combined total withdrawal from  
4 the original and additional well or wells shall not enlarge the right  
5 conveyed by the original water use permit or certificate; (d) the  
6 construction and use of the well shall not interfere with or impair  
7 water rights with an earlier date of priority than the water right or  
8 rights for the original well or wells; (e) the replacement or  
9 additional well shall be located no closer than the original well to a  
10 well it might interfere with; (f) the department may specify an  
11 approved manner of construction of the well; and (g) the department  
12 shall require a showing of compliance with the conditions of this  
13 subsection (3).

14 (4) As used in this section, the "location of the original well or  
15 wells" is the area described as the point of withdrawal in the original  
16 public notice published for the application for the water right for the  
17 well.

18 (5) The development and use of a small irrigation impoundment, as  
19 defined in RCW 90.03.370(8), does not constitute a change or amendment  
20 for the purposes of this section. The exemption expressly provided by  
21 this subsection shall not be construed as requiring an amendment of any  
22 existing water right to enable the holder of the right to store water  
23 governed by the right.

24 (6)(a) An application or applications to consolidate the annual  
25 quantities of multiple water rights or permits from the same body of  
26 public groundwater held by the applicant must be approved by the  
27 department under the limited review identified in (b) of this  
28 subsection when:

29 (i)(A) The annual quantity of water of the consolidated water  
30 rights and permits does not exceed the annual quantity of water granted  
31 under the combined individual underlying water rights or permits;

32 (B) Each individual water right's instantaneous quantity is not  
33 increased;

34 (C) The applicant provides a hydrological analysis showing there is  
35 no impairment or reduced potential impairment of existing water rights;

36 (D) The applicant complies with the notice requirements of RCW  
37 90.03.280; and

1       (E) The applicant provides the department with a draft report of  
2 examination identifying the satisfaction of the criteria of this  
3 subsection; and

4       (ii) The department, in a review limited to existing water rights  
5 as provided in (b) of this subsection, finds that existing water rights  
6 will not be impaired or potential impairment is reduced.

7       (b) The department's consideration under this subsection is limited  
8 to the determination of the following:

9       (i) The scope and validity or the rights for which the application  
10 is submitted; and

11       (ii) Whether the hydrological analysis presented by the applicant  
12 sufficiently demonstrates that existing water rights will not be  
13 impaired or any impairment will be less than that which would  
14 potentially occur under the unamended rights.

15       NEW SECTION. Sec. 3. Section 1 of this act expires June 30, 2019.

16       NEW SECTION. Sec. 4. Section 2 of this act takes effect June 30,  
17 2019.

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