
SENATE BILL 5463

State of Washington

63rd Legislature

2013 Regular Session

By Senators Honeyford and Carrell

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 that move the point of
3 withdrawal reducing the potential for surface water body impacts;
4 amending RCW 90.44.100 and 90.44.100; providing an effective date; and
5 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)(a)(i) When an amendment would move an existing permit or
17 certificate's annual quantity or portion thereof to another existing
18 right held by the applicant and meets the following conditions: (A)
19 The move of the point of withdrawal of the groundwater right's annual
20 quantity or a portion thereof is within the same body of groundwater
21 and further from a hydraulically connected surface water body; or (B)
22 the move of the point of withdrawal of the groundwater right's annual
23 quantity or a portion thereof is to a lower aquifer depth or unit
24 within the same body of public groundwater in the same watershed, as
25 that term is defined in RCW 90.74.010; or (C) the move is within the
26 same body of public groundwater that discharges into saltwater; and (D)
27 each individual water right's instantaneous quantity is not increased;
28 and (E) the annual quantity of water of the two amended rights does not
29 exceed the annual quantity of water granted under the combined
30 individual underlying water rights; and (F) the applicant provides a
31 hydrological analysis showing there is no impairment or reduced
32 impairment of an existing water right; and (G) the applicant complies
33 with the notice requirements of RCW 90.03.280; and (H) the applicant
34 provides the department with a draft report of examination identifying
35 the satisfaction of the criteria of this subsection; then

36 (ii) The department's consideration is limited to the determination
37 of the scope and validity of the existing rights and whether the
38 hydrological analysis presented by the applicant sufficiently

1 demonstrates that existing water rights will not be impaired or any
2 impairment will be less than that which would potentially occur under
3 the unamended rights.

4 (b) The department shall promptly determine the completeness of
5 applications satisfying the conditions of this subsection, assist the
6 applicant with advertising notice of the application, and post notice
7 of the application on the department's web site. Any third party who
8 alleges that the third party's senior water right will be impaired by
9 the proposed change may file a letter of concern or support with the
10 department and the department may consider the concern or support
11 expressed in the letter. These letters must be received by the
12 department within thirty days of the department's posting of the notice
13 of application. The director shall review the application and take
14 action to review and approve or deny it within one hundred twenty days
15 of posting notice. The one hundred twenty-day time period may be
16 extended for an additional one hundred twenty days by the director or
17 at the request of the applicant. If the director fails to act within
18 the prescribed time period, the application is deemed approved and is
19 appealable pursuant to RCW 43.21B.230(1) and 43.21B.310(4).

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

1 shall require a showing of compliance with the conditions of this
2 subsection (~~((3))~~) (4).

3 (~~((4))~~) (5) As used in this section, the "location of the original
4 well or wells" is the area described as the point of withdrawal in the
5 original public notice published for the application for the water
6 right for the well.

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

13 (~~((6))~~) (7) This section does not apply to a water right involved
14 in an approved local water plan created under RCW 90.92.090 or a banked
15 water right under RCW 90.92.070.

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

18 (1) After an application to, and upon the issuance by the
19 department of an amendment to the appropriate permit or certificate of
20 groundwater right, the holder of a valid right to withdraw public
21 groundwaters may, without losing the holder's priority of right,
22 construct wells or other means of withdrawal at a new location in
23 substitution for or in addition to those at the original location, or
24 the holder may change the manner or the place of use of the water.

25 (2) An amendment to construct replacement or a new additional well
26 or wells at a location outside of the location of the original well or
27 wells or to change the manner or place of use of the water shall be
28 issued only after publication of notice of the application and findings
29 as prescribed in the case of an original application. Such amendment
30 shall be issued by the department only on the conditions that: (a) The
31 additional or replacement well or wells shall tap the same body of
32 public groundwater as the original well or wells; (b) where a
33 replacement well or wells is approved, the use of the original well or
34 wells shall be discontinued and the original well or wells shall be
35 properly decommissioned as required under chapter 18.104 RCW; (c) where
36 an additional well or wells is constructed, the original well or wells
37 may continue to be used, but the combined total withdrawal from the

1 original and additional well or wells shall not enlarge the right
2 conveyed by the original permit or certificate; and (d) other existing
3 rights shall not be impaired. The department may specify an approved
4 manner of construction and shall require a showing of compliance with
5 the terms of the amendment, as provided in RCW 90.44.080 in the case of
6 an original permit.

7 (3)(a)(i) When an amendment would move an existing permit or
8 certificate's annual quantity or portion thereof to another existing
9 right held by the applicant and meets the following conditions: (A)
10 The move of the point of withdrawal of the groundwater right's annual
11 quantity or a portion thereof is within the same body of groundwater
12 and further from a hydraulically connected surface water body; or (B)
13 the move of the point of withdrawal of the groundwater right's annual
14 quantity or a portion thereof is to a lower aquifer depth or unit
15 within the same body of public groundwater in the same watershed, as
16 that term is defined in RCW 90.74.010; or (C) the move is within the
17 same body of public groundwater that discharges into saltwater; and (D)
18 each individual water right's instantaneous quantity is not increased;
19 and (E) the annual quantity of water of the two amended rights does not
20 exceed the annual quantity of water granted under the combined
21 individual underlying water rights; and (F) the applicant provides a
22 hydrological analysis showing there is no impairment or reduced
23 impairment of an existing water right; and (G) the applicant complies
24 with the notice requirements of RCW 90.03.280; and (H) the applicant
25 provides the department with a draft report of examination identifying
26 the satisfaction of the criteria of this subsection; then

27 (ii) The department's consideration is limited to the determination
28 of the scope and validity of the existing rights and whether the
29 hydrological analysis presented by the applicant sufficiently
30 demonstrates that existing water rights will not be impaired or any
31 impairment will be less than that which would potentially occur under
32 the unamended rights.

33 (b) The department shall promptly determine the completeness of
34 applications satisfying the conditions of this subsection, assist the
35 applicant with advertising notice of the application, and post notice
36 of the application on the department's web site. Any third party who
37 alleges that the third party's senior water right will be impaired by
38 the proposed change may file a letter of concern or support with the

1 department and the department may consider the concern or support
2 expressed in the letter. These letters must be received by the
3 department within thirty days of the department's posting of the notice
4 of application. The director shall review the application and take
5 action to review and approve or deny it within one hundred twenty days
6 of posting notice. The one hundred twenty-day time period may be
7 extended for an additional one hundred twenty days by the director or
8 at the request of the applicant. If the director fails to act within
9 the prescribed time period, the application is deemed approved and is
10 appealable pursuant to RCW 43.21B.230(1) and 43.21B.310(4).

11 (4) The construction of a replacement or new additional well or
12 wells at the location of the original well or wells shall be allowed
13 without application to the department for an amendment. However, the
14 following apply to such a replacement or new additional well: (a) The
15 well shall tap the same body of public groundwater as the original well
16 or wells; (b) if a replacement well is constructed, the use of the
17 original well or wells shall be discontinued and the original well or
18 wells shall be properly decommissioned as required under chapter 18.104
19 RCW; (c) if a new additional well is constructed, the original well or
20 wells may continue to be used, but the combined total withdrawal from
21 the original and additional well or wells shall not enlarge the right
22 conveyed by the original water use permit or certificate; (d) the
23 construction and use of the well shall not interfere with or impair
24 water rights with an earlier date of priority than the water right or
25 rights for the original well or wells; (e) the replacement or
26 additional well shall be located no closer than the original well to a
27 well it might interfere with; (f) the department may specify an
28 approved manner of construction of the well; and (g) the department
29 shall require a showing of compliance with the conditions of this
30 subsection ~~((+3))~~ (4).

31 ~~((+4))~~ (5) As used in this section, the "location of the original
32 well or wells" is the area described as the point of withdrawal in the
33 original public notice published for the application for the water
34 right for the well.

35 ~~((+5))~~ (6) The development and use of a small irrigation
36 impoundment, as defined in RCW 90.03.370(8), does not constitute a
37 change or amendment for the purposes of this section. The exemption

1 expressly provided by this subsection shall not be construed as
2 requiring an amendment of any existing water right to enable the holder
3 of the right to store water governed by the right.

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

5 NEW SECTION. **Sec. 4.** Section 2 of this act takes effect June 30,
6 2019.

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