
HOUSE BILL 3038

State of Washington

59th Legislature

2006 Regular Session

By Representative Pearson

Read first time 01/18/2006. Referred to Committee on Economic Development, Agriculture & Trade.

1 AN ACT Relating to the construction of replacement or additional
2 wells; and amending RCW 90.44.100.

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

4 **Sec. 1.** RCW 90.44.100 and 2003 c 329 s 3 are each amended to read
5 as follows:

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

14 (2) Except as provided in subsections (3) and (5) of this section,
15 an amendment to add an existing well or wells or construct replacement
16 or a new additional well or wells at a location outside of the location
17 of the original well or wells or to change the ((~~manner~~)) purpose or
18 place of use of the water shall be issued only after publication of
19 notice of the application and findings as prescribed in the case of an

1 original application. Such amendment shall be issued by the department
2 only on the conditions that: (a) The additional or replacement well or
3 wells shall (~~tap the same body of public ground water~~) be located
4 within the same water resource inventory area, as defined in chapter
5 173-500 WAC, or an adjoining water resource inventory area as the
6 original well or wells; (b) where a replacement well or wells is
7 approved, the use of the original well or wells shall be discontinued
8 and the original well or wells shall be properly decommissioned as
9 required under chapter 18.104 RCW; (c) where an additional well or
10 wells is added or constructed, the original well or wells may continue
11 to be used, but the combined total withdrawal from the original and
12 additional well or wells shall not (~~enlarge the right~~) increase the
13 annual or instantaneous quantity conveyed by the original permit or
14 certificate; and (d) other existing rights shall not be impaired. The
15 department may specify an approved manner of construction and shall
16 require a showing of compliance with the terms of the amendment, as
17 provided in RCW 90.44.080 in the case of an original permit.

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

1 RCW 90.44.400 through 90.44.445 as it exists on the effective date of
2 this section; and (g) the department shall require a showing of
3 compliance with the conditions of this subsection (3).

4 (4) As used in this section, the "location of the original well or
5 wells" is the larger of: (a) The area described as the point of
6 withdrawal in the original public notice published for the application
7 for the water right for the well; or (b) the area up to one-quarter
8 mile radius from the current well or wells.

9 (5) A water right holder may add or construct a replacement or new
10 additional well or wells at a location outside the location of the
11 original well or wells but not more than two miles from the current
12 well or wells without application to the department for an amendment
13 under the following conditions:

14 (a) The provisions of subsection (3)(a) through (g) of this section
15 are met;

16 (b) The water right holder shall publish a legal notice describing
17 the intention to add or construct the replacement or additional well or
18 wells, the location of the proposed well or wells, and the amount or
19 amounts of water to be withdrawn;

20 (c) The notice must be published once a week for two consecutive
21 weeks in a newspaper of general circulation in the area in which the
22 well or wells would be located;

23 (d) The notice shall further state as follows: A water right
24 holder wishing to assert a claim of potential quantity impairment may
25 do so by filing a claim with the department within twenty days of the
26 second publication date of the notice. The claim must describe how the
27 addition or construction of a replacement or new additional well will
28 cause potential quantity impairment to the water right holder's right;

29 (e) Upon receipt of a claim under (d) of this subsection, the
30 department shall investigate the claim and issue in writing a technical
31 opinion limited to whether or not the quantity of the claimant's water
32 right is likely to be impaired. The opinion is advisory only, is not
33 binding, and is not appealable;

34 (f) Within ten calendar days following the completion of a claim
35 investigation by the department in accordance with (e) of this
36 subsection, the person filing the claim shall be responsible for
37 contacting the water right holder and initiating efforts to resolve any

1 potential impairment issues raised in the claim. The water right
2 holder may also initiate discussions with a party asserting a claim of
3 impairment within the time period cited in this subsection (5)(f);

4 (g) After a claimant has contacted the water right holder and
5 attempted to resolve any potential impairment issues in accordance with
6 (f) of this subsection, the claimant may bring an action before the
7 superior court in the county where the proposed new or additional well
8 is to be located; and

9 (h) The addition or construction of a replacement or new additional
10 well or wells may begin sixty days after the publication date of the
11 first notice under (c) of this subsection.

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

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