
HOUSE BILL 3061

State of Washington

55th Legislature

1998 Regular Session

By Representative Chandler

Read first time 01/28/98. Referred to Committee on Agriculture & Ecology.

1 AN ACT Relating to determining the impairment of water rights and
2 uses; and amending RCW 90.44.030, 90.44.035, and 90.44.070.

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

4 **Sec. 1.** RCW 90.44.030 and 1945 c 263 s 2 are each amended to read
5 as follows:

6 (1) The rights to appropriate the surface waters of the state and
7 the rights acquired by the appropriation and use of surface waters
8 shall not be affected or impaired by any of the provisions of this
9 supplementary chapter and, to the extent that any underground water is
10 part of or tributary to the source of any surface stream or lake, or
11 that the withdrawal of ground water may affect the flow of any spring,
12 water course, lake, or other body of surface water, the right of an
13 appropriator and owner of surface water shall be superior to any
14 subsequent right hereby authorized to be acquired in or to ground
15 water.

16 (2) Rights acquired by appropriation of surface waters are affected
17 or impaired by a ground water withdrawal only if:

1 (a) After no more than six months pumping, the surface water will
2 lie within the cone of depression of a well tapping an unconfined
3 aquifer; or

4 (b) Withdrawal of ground water from a well tapping a confined
5 aquifer will cause a measurable head reduction within fifty feet of the
6 surface water body in question in the shallowest unconfined water table
7 aquifer that underlies that surface water body; or

8 (c) Withdrawal of ground water will cause a measurable reduction in
9 the flow or level of the surface water body.

10 (3) If any of the conditions in subsection (2) of this section
11 occur or will occur, then withdrawal of ground water affects or impairs
12 existing surface water rights, including instream flow appropriations
13 adopted by regulation, that are not being satisfied during the period
14 of the occurrence.

15 **Sec. 2.** RCW 90.44.035 and 1987 c 109 s 107 are each amended to
16 read as follows:

17 For purposes of this chapter:

18 (1) "Department" means the department of ecology;

19 (2) "Director" means the director of ecology;

20 (3) "Ground waters" means all waters that exist beneath the land
21 surface or beneath the bed of any stream, lake or reservoir, or other
22 body of surface water within the boundaries of this state, whatever may
23 be the geological formation or structure in which such water stands or
24 flows, percolates or otherwise moves. There is a recognized
25 distinction between natural ground water and artificially stored ground
26 water;

27 (4) "Natural ground water" means water that exists in underground
28 storage owing wholly to natural processes; ((and))

29 (5) "Artificially stored ground water" means water that is made
30 available in underground storage artificially, either intentionally, or
31 incidentally to irrigation and that otherwise would have been
32 dissipated by natural waste;

33 (6) "Confined aquifer" means an aquifer in which ground water is
34 under sufficient hydrostatic head to rise above the bottom of the
35 overlying confining bed;

36 (7) "Confining bed" means a layer of low permeability material
37 immediately overlying a confined aquifer; and

1 (8) "Measurable" means capable of being measured in the field with
2 the use of equipment normally used by professionals for the measurement
3 in question.

4 **Sec. 3.** RCW 90.44.070 and 1987 c 109 s 110 are each amended to
5 read as follows:

6 (1) No permit shall be granted for the development or withdrawal of
7 public ground waters beyond the capacity of the underground bed or
8 formation in the given basin, district, or locality to yield such water
9 within a reasonable or feasible pumping lift in case of pumping
10 developments, or within a reasonable or feasible reduction of pressure
11 in the case of artesian developments. The department shall have the
12 power to determine whether the granting of any such permit will injure
13 or damage any vested or existing right or rights under prior permits
14 and may in addition to the records of the department, require further
15 evidence, proof, and testimony before granting or denying any such
16 permits.

17 (2) No permit for the development or withdrawal of public ground
18 waters may be denied or conditioned due to injury to, impairment of, or
19 conflict with an existing surface water right unless the ground water
20 withdrawal in question will impair the surface water right pursuant to
21 RCW 90.44.030(2): PROVIDED, That this section does not affect the
22 ability of the department to limit or restrict future ground water
23 appropriations by adopting rules after following the procedures of RCW
24 90.44.180 or 90.44.400 through 90.44.420 or chapter 90.54 RCW.

25 (3) The department may grant a ground water permit for a withdrawal
26 that will impair a surface water right if the applicant has proposed a
27 satisfactory plan for mitigating the impairment. Mitigation may
28 include, but is not limited to: Reduction in pumping rates, limitation
29 of pumping to times that will not lead to impairment, increased
30 recharge of the ground water, and augmentation of stream flows either
31 through release of stored water or the import of water from out of the
32 basin.

--- END ---