

SENATE BILL REPORT

SB 5077

As Reported By Senate Committee On:
Natural Resources, Energy & Water, February 19, 2003

Title: An act relating to withdrawals for stock-watering.

Brief Description: Exempting certain withdrawals of water from the provisions of RCW 90.44.050.

Sponsors: Senators Honeyford, Rasmussen, Doumit, Hewitt, Swecker, Morton, Brandland, Hale and Mulliken.

Brief History:

Committee Activity: Natural Resources, Energy & Water: 1/21/03, 2/19/03 [DPS, DNP].

SENATE COMMITTEE ON NATURAL RESOURCES, ENERGY & WATER

Majority Report: That Substitute Senate Bill No. 5077 be substituted therefor, and the substitute bill do pass.

Signed by Senators Morton, Chair; Hewitt, Vice Chair; Doumit, Hale, Honeyford and Oke.

Minority Report: Do not pass.

Signed by Senators Fraser and Regala.

Staff: Evan Sheffels (786-7486)

Background: With the adoption of the surface water code in 1917 and the groundwater code in 1945, new rights to the use of water were to be established under a permit system. The groundwater code extended the application of the surface water statutes, Chapter 90.03 RCW, to the groundwaters of the state. The effect of the groundwater legislation was to apply the same permit system to groundwater as had been developed for surface waters. Current law prohibits the withdrawal of public groundwater, unless a permit has been granted by the Department of Ecology (DOE). Washington's permit system is based on the prior appropriation doctrine that "first in time is first in right."

There are several exempt uses listed in the groundwater statute. Under the statute, exempt wells are entitled to water rights equal to those for which DOE permits are issued. Owners of exempt use wells may apply for a permit, but they are not required to do so. Exempt uses include: (1) stock-watering purposes; (2) watering a lawn or non-commercial garden up to one-half acre; (3) single or group domestic uses of up to 5,000 gallons per day; and, (4) an industrial use not to exceed 5,000 gallons per day. In a recent decision, the Pollution Control Hearings Board (PCHB) found RCW 90.44.050 to be ambiguous regarding the quantitative extent of the exemption for the watering of livestock. The PCHB determined that the two provisos (or conditions) that follow the list of exemptions modified all listed exemptions, limiting them to "small" withdrawals "not exceeding 5,000 gallons per day."

Summary of Substitute Bill: RCW 90.44.050 is amended with language from a January 2003 Washington State Court of Appeals decision (*Kim v. PCHB*), holding that the "industrial purpose" exemption from groundwater permit requirements applied to a commercial nursery. The *Kim* decision interpreted the intent of the 1945 Legislature, when it enacted RCW 90.44.050, as follows: "The overall scheme of this statute is to require a permit except for certain 'small withdrawals.' The 1945 legislature defined a 'small withdrawal' as (1) any amount of water for livestock; (2) any amount of water for a noncommercial garden of a half acre or less; (3) not more than five thousand gallons per day for domestic use; and (4) not more than five thousand gallons per day 'for an industrial purpose.'"

Substitute Bill Compared to Original Bill: The original bill copied and inserted the current statute's exemption language between the second and third exemption provisions in the list of exemptions.

Appropriation: None.

Fiscal Note: Available.

Effective Date: Ninety days after adjournment of session in which bill is passed.

Testimony For: Washington has the second most water of any state, behind only Alaska. Everyone needs to eat, and we need water to raise and grow the food. After almost 60 years of using the exemption, a reinterpretation just last spring limits stockwatering to just 5000 gallons per day. Don't change the rules in the middle of the game. Bankers will not put up money without a real water right. The farm and ranch economy is a primary driver of Washington's economy. We can't farm and ranch without adequate water, as the Governor's Competitive Council noted.

Testimony Against: Big commercial dairies would be allowed unlimited use of groundwater for stockwatering purposes. The original bill mentioned something like 50 cows in 1945; stockwatering needs to be narrowly defined. Exempt wells should not be allowed with impunity in closed basins. There are no substantive safeguards; the bill could lead to additional litigation, is still ambiguous, and may not have the intended effect; it is an unfair right to the few over rights of the general public. Future generations need a reliable supply of groundwater.

Testified: PRO: Tom Myrum, Washington Water Resources Assn.; Chris Cheney, Dairy Federation, Washington Cattlemen's Assn., Washington Fryer Commission; Darryll Olsen, Rep. Columbia-Snake River; Toni McKinley, Washington State Grange; Hertha Lund, Washington Farm Bureau; Mike Kaysen, WA Fryer Commission. CON: Richard Reich, Muckleshoot Tribe; Nancy Rust, Board Member CELP; Mike Moran, CELP, SINTC, Samish Indian Nation; Kevin Lyon Esq., Northwest Indian Fisheries Commission; Josh Baldi, Washington Enviro Council; Denise D Smith, LWV Washington.