
SUBSTITUTE SENATE BILL 5023

State of Washington

58th Legislature

2003 Regular Session

By Senate Committee on Natural Resources, Energy & Water (originally sponsored by Senators Honeyford and Hale)

READ FIRST TIME 03/03/03.

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 1997 c 316 s 2 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 than
35 the original well to a well it might interfere with; (f) the department
36 may specify an approved manner of construction of the well; and (g) the
37 department shall require a showing of compliance with the conditions of
38 this subsection (3).

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

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

11 (a) The provisions of subsection (3)(a) through (g) of this section
12 are met;

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16 amounts of water to be withdrawn;

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

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

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

32 (f) Following a claim investigation in accordance with (e) of this
33 subsection, the person filing the claim and the water right holder
34 shall attempt to resolve any potential impairment issues raised in the
35 claim;

36 (g) After a claimant has attempted to resolve any potential
37 impairment issues in accordance with (f) of this subsection, the

1 claimant may bring an action before the superior court in the county
2 where the proposed new or additional well is to be located; and
3 (h) The addition or construction of a replacement or new additional
4 well or wells may begin sixty days after the publication date of the
5 first notice under (c) of this subsection.

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