
SUBSTITUTE SENATE BILL 6803

State of Washington

61st Legislature

2010 Regular Session

By Senate Environment, Water & Energy (originally sponsored by Senator Rockefeller)

READ FIRST TIME 02/05/10.

1 AN ACT Relating to clarifying withdrawal of groundwater for stock
2 watering purposes by a dairy farm; amending RCW 90.44.035 and
3 90.44.050; adding new sections to chapter 90.44 RCW; and creating new
4 sections.

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

6 NEW SECTION. **Sec. 1.** The legislature finds that effective water
7 resource management and a stable livestock industry are vital to the
8 economic and environmental well-being of the state. The livestock
9 industry is an important part of our state's economy and an important
10 part of many communities in our state, and this industry should be
11 treated fairly as with all other sectors of the economy seeking an
12 assured water supply for its activities. The legislature further finds
13 that achievement of these goals is hindered by uncertainty surrounding
14 the exemption from water right permit requirements for withdrawals of
15 public groundwater for "stock watering purposes." Attorney general
16 opinion No. 17 from 2005 and the decision from the pollution control
17 hearings board in *Dennis & DeVries v. Washington* (PCHB No. 01-073
18 (2001)) are not in harmony. Therefore, in order to promote the clarity

1 needed for both a sustainable livestock industry and effective water
2 resource management, the legislature intends to provide dairy farms
3 with some certainty under the permit exemption.

4 **Sec. 2.** RCW 90.44.035 and 2000 c 98 s 2 are each amended to read
5 as follows:

6 ~~((For purposes of this chapter:))~~ The definitions in this section
7 apply throughout this chapter unless the context clearly requires
8 otherwise.

9 (1) "Artificially stored groundwater" means water that is made
10 available in underground storage artificially, either intentionally, or
11 incidentally to irrigation and that otherwise would have been
12 dissipated by natural processes.

13 (2) "Dairy farm" means any farm that is licensed to produce milk
14 under chapter 15.36 RCW.

15 (3) "Department" means the department of ecology((+)).

16 ((+2)) (4) "Director" means the director of ecology((+)).

17 ((+3)) (5) "Groundwaters" means all waters that exist beneath the
18 land surface or beneath the bed of any stream, lake or reservoir, or
19 other body of surface water within the boundaries of this state,
20 whatever may be the geological formation or structure in which such
21 water stands or flows, percolates or otherwise moves. There is a
22 recognized distinction between natural groundwater and artificially
23 stored groundwater((+)).

24 ((+4)) (6) "Natural groundwater" means water that exists in
25 underground storage owing wholly to natural processes((+)).

26 ~~((+5) "Artificially stored groundwater" means water that is made~~
27 ~~available in underground storage artificially, either intentionally, or~~
28 ~~incidentally to irrigation and that otherwise would have been~~
29 ~~dissipated by natural processes; and~~

30 (+6)) (7) "Underground artificial storage and recovery project"
31 means any project in which it is intended to artificially store water
32 in the ground through injection, surface spreading and infiltration, or
33 other department-approved method, and to make subsequent use of the
34 stored water. However, (a) this subsection does not apply to
35 irrigation return flow, or to operational and seepage losses that occur
36 during the irrigation of land, or to water that is artificially stored
37 due to the construction, operation, or maintenance of an irrigation

1 district project, or to projects involving water reclaimed in
2 accordance with chapter 90.46 RCW; and (b) RCW 90.44.130 applies to
3 those instances of claimed artificial recharge occurring due to the
4 construction, operation, or maintenance of an irrigation district
5 project or operational and seepage losses that occur during the
6 irrigation of land, as well as other forms of claimed artificial
7 recharge already existing at the time a groundwater subarea is
8 established.

9 **Sec. 3.** RCW 90.44.050 and 2003 c 307 s 1 are each amended to read
10 as follows:

11 After June 6, 1945, no withdrawal of public groundwaters of the
12 state shall be begun, nor shall any well or other works for such
13 withdrawal be constructed, unless an application to appropriate such
14 waters has been made to the department and a permit has been granted by
15 it as herein provided: EXCEPT, HOWEVER, That any withdrawal of public
16 groundwaters for stock watering purposes except as provided in section
17 4 of this act, or for the watering of a lawn or of a noncommercial
18 garden not exceeding one-half acre in area, or for single or group
19 domestic uses in an amount not exceeding five thousand gallons a day,
20 or as provided in RCW 90.44.052, or for an industrial purpose in an
21 amount not exceeding five thousand gallons a day, is and shall be
22 exempt from the provisions of this section, but, to the extent that it
23 is regularly used beneficially, shall be entitled to a right equal to
24 that established by a permit issued under the provisions of this
25 chapter: PROVIDED, HOWEVER, That the department from time to time may
26 require the person or agency making any such small withdrawal to
27 furnish information as to the means for and the quantity of that
28 withdrawal: PROVIDED, FURTHER, That at the option of the party making
29 withdrawals of groundwaters of the state not exceeding five thousand
30 gallons per day, applications under this section or declarations under
31 RCW 90.44.090 may be filed and permits and certificates obtained in the
32 same manner and under the same requirements as is in this chapter
33 provided in the case of withdrawals in excess of five thousand gallons
34 a day.

35 NEW SECTION. **Sec. 4.** A new section is added to chapter 90.44 RCW
36 to read as follows:

1 (1) Any existing withdrawal of water put to beneficial use for
2 stock watering purposes under RCW 90.44.050 by a dairy farm before the
3 effective date of this section that does not exceed 13.8 acre feet per
4 year is and remains exempt from the water right permit requirements of
5 this chapter.

6 (2) Any existing withdrawal of water put to beneficial use for
7 stock watering purposes under RCW 90.44.050 by a dairy farm before the
8 effective date of this section that does exceed 13.8 acre feet per year
9 is and remains exempt from the water right permit requirements of this
10 chapter if:

11 (a) By December 31, 2010, the dairy farm making the withdrawal
12 files a registration with the department to document the quantity and
13 priority of the withdrawal as provided in section 5 of this act;

14 (b) Water withdrawn under such a registration does not thereafter
15 exceed the annual quantity withdrawal limits contained in such a
16 registration; and

17 (c) By December 31, 2012, for existing dairy farms that, on or
18 before the effective date of this section, are withdrawing water from
19 a groundwater body that has been closed to further withdrawal by rule,
20 that is in hydraulic continuity with surface waters that are closed to
21 further appropriation by rule or have an established instream flow that
22 is not regularly met, or that is in hydraulic continuity with surface
23 waters with depressed or critical salmonid stock status as determined
24 by the Washington department of fish and wildlife under RCW 90.03.360,
25 the dairy farm begins to meter its withdrawals, retains records of the
26 amounts withdrawn, and makes the records available to the department
27 upon request.

28 (3)(a) A dairy farm that existed on or before the effective date of
29 this section shall obtain a water right permit, certificate, or claim,
30 a department-approved transfer of an existing water right, or a
31 department-approved change or consolidation amendment as provided under
32 sections 5 and 6 of this act for any amount of water use exceeding the
33 registered annual quantity withdrawal limit contained in the
34 registration required in section 5 of this act.

35 (b) A dairy farm that existed on or before the effective date of
36 this section and had a withdrawal for stock watering purposes of less
37 than 13.8 acre feet per year prior to the effective date of this
38 section or a new dairy farm that begins operating after the effective

1 date of this section shall obtain a water right permit, certificate, or
2 claim, a department-approved transfer of an existing water right, or a
3 department-approved change or consolidation amendment as provided under
4 sections 5 and 6 of this act for any amount of water use exceeding 13.8
5 acre feet per year.

6 (4) Any new withdrawal of water put to beneficial use for stock
7 watering purposes under RCW 90.44.050 by a new dairy farm commenced
8 after the effective date of this section is and remains exempt from the
9 water right permit requirements of this chapter if the total withdrawal
10 for stock watering purposes by the dairy farm does not exceed 13.8 acre
11 feet per year, and annual withdrawal quantities are metered and
12 recorded and metering records are retained and made available to the
13 department upon request.

14 (5) Nothing in this act authorizes the impairment of, or operates
15 to impair, any existing water right. Nothing in this act precludes an
16 action, on the basis of priority date, in favor of senior water rights,
17 whether such an action is brought by the holder of an existing water
18 right or by the department which is authorized to use the authorities
19 of RCW 90.03.605 to pursue such an action.

20 NEW SECTION. **Sec. 5.** A new section is added to chapter 90.44 RCW
21 to read as follows:

22 (1)(a) A registration for a dairy farm that existed prior to the
23 effective date of this section that uses over 13.8 acre feet per year
24 for stock watering purposes must be on a form or electronic template
25 provided by the department and must include:

26 (i) The name and address of either the water user or the dairy
27 farm, or both;

28 (ii) The name and address of the owner of the land on which the
29 well, wells, or other means used for the withdrawal are located;

30 (iii) The legal description of the location of the point of
31 withdrawal and the place of use;

32 (iv) The depth, and any other pertinent specifications, of the
33 well, wells, or other means used for the withdrawal that may reasonably
34 be required by the department to determine the body of public
35 groundwater being withdrawn from;

36 (v) The date or approximate date, to the best of the registrant's
37 knowledge, of the first beneficial use of groundwater withdrawn;

1 (vi) A description of the stock watering purposes associated with
2 such a withdrawal and use; and

3 (vii) A declaration of the highest annual quantity, estimated to
4 the nearest acre foot, of water withdrawn and beneficially used by the
5 dairy farm for stock watering purposes during the period of January 1,
6 2005, through December 31, 2009.

7 (b) A registration under this section pertains to the quantity of
8 permit-exempt groundwater withdrawn and not to quantities of water use
9 authorized by an existing water right permit, certificate, or claim.
10 However, where a dairy farm depends upon a mixture of permit-exempt
11 withdrawals and other water rights authorized by a permit, certificate,
12 or claim, the identifying number of the water rights and claims and a
13 brief description of how they contribute to the daily water needs of
14 the dairy farm must also be included in the registration.

15 (c) The department may return registrations for modification as
16 needed, to correct ministerial errors, and to ensure that the
17 information, including but not limited to the annual quantity withdrawn
18 and the priority date, provided in the registration is accurate and
19 consistent.

20 (d) A registration may be amended if the dairy farm increases the
21 highest annual quantity, estimated to the nearest acre foot, of water
22 withdrawn and beneficially used by the dairy farm for stock watering
23 purposes from December 31, 2010, through December 31, 2015. The
24 amendment must be submitted on a form or electronic template provided
25 by the department.

26 (e) Causing a registration or an amendment to be filed with the
27 department constitutes the affirmation or acknowledgment under penalty
28 of perjury under the laws of the state of Washington that the
29 registration is true and complete to the best of the registrant's
30 knowledge.

31 (2) A dairy farm that, prior to the effective date of this section,
32 has relied upon permit-exempt withdrawals that exceeded 13.8 acre feet
33 per year for stock watering purposes, that fails to register by the
34 December 31, 2010, deadline has a priority date as of the date of
35 filing, except that a dairy farm retains their priority date if the
36 dairy farm applies to the department by December 31, 2010, for an
37 extension of time not to exceed December 31, 2012, that may be granted
38 only upon a showing of good cause.

1 (3) A dairy farm that, prior to the effective date of this section,
2 has relied upon permit-exempt withdrawals of 13.8 or fewer acre feet
3 per year is not required to register under this section. However, a
4 dairy farm may voluntarily register with the department at any time,
5 consistent with the provisions of this chapter.

6 NEW SECTION. **Sec. 6.** A new section is added to chapter 90.44 RCW
7 to read as follows:

8 A dairy farm that has registered under section 5 of this act may
9 submit a request in writing to the department that the department
10 undertake a review of the extent and validity of the water used for
11 stock watering purposes described in the registration submitted under
12 section 5 of this act. After such a review, dairy farms registered
13 under section 5 of this act may be approved by the department for
14 transfer and change or amendment to another place or purpose of use,
15 consistent with the requirements of RCW 90.44.100. The department may
16 also approve an expedited transfer and change or amendment to
17 accommodate the expansion or consolidation of registered dairy farms
18 consistent with section 7 of this act and RCW 90.44.100. For purposes
19 of RCW 90.44.100, the department shall treat such registered permit-
20 exempt withdrawals for stock watering purposes as an appropriate permit
21 when considering an application for transfer and change or amendment.

22 NEW SECTION. **Sec. 7.** A new section is added to chapter 90.44 RCW
23 to read as follows:

24 (1) A dairy farm that has registered under section 5 of this act
25 may submit a request in writing to the department that the department
26 undertake a review of the extent and validity of the water used for
27 stock watering purposes described in the registration submitted under
28 section 5 of this act. After such a review, the department shall
29 expedite change and consolidation amendments under this section.

30 (2) Upon the issuance by the department of an amendment to the
31 appropriate permit-exempt groundwater right registrations, claims,
32 permits, or certificates of dairy farms registered under this chapter,
33 the holder of such a valid water right to withdraw public groundwaters
34 may use the expedited procedures provided under this section to change
35 or consolidate water rights with consenting owners of other dairy farms
36 registered under this chapter or water rights used for agricultural

1 purposes. Such an amendment does not affect the priority of any water
2 rights involved in the change or consolidation, and may be issued only
3 after a determination has been made by the department that all
4 applicable criteria established under subsections (3) through (7) of
5 this section have been satisfied.

6 (3) Any registered dairy farm that conserves water and reduces the
7 water withdrawal quantities required by the farm may:

8 (a) Increase either the dairy farm's numbers or types, or both, of
9 livestock without notice to the department as long as withdrawal
10 quantities authorized under registration with the department are not
11 exceeded; or

12 (b) Elect to protect the excess and unused portion of registered
13 withdrawal quantities from relinquishment by submitting the excess and
14 unused portion of the registered withdrawal quantities into the trust
15 water rights program under RCW 90.42.080.

16 (4) The department may approve the consolidation of two or more
17 registered stock water rights of dairy farms or a dairy farm and a
18 water right used for agricultural purposes to accommodate the expansion
19 or consolidation of dairy farms. A registered dairy farm may increase
20 water withdrawal associated with a consolidation of livestock to be
21 received from another registered dairy farm if the department first
22 approves the consolidation application in accordance with RCW
23 90.44.105. Prior to such a consolidation approval, the department
24 shall amend the registrations of the sending and receiving dairy farms
25 to appropriately reflect the corresponding reduction and increase of
26 water withdrawal quantities available.

27 (5) Applications for a change or consolidation amendment under this
28 section must:

29 (a) Use a change of water right application form provided by the
30 department;

31 (b) Provide registration or water right identification numbers for
32 the registered dairy farms proposing to receive conserved water under
33 subsection (2) of this section or proposing to receive livestock and
34 their associated water requirements under subsection (3) of this
35 section;

36 (c) Provide registration or water right identification numbers for
37 the registered dairy farm or the water right used for agricultural

1 purposes, if applicable, proposing to send water under subsection (2)
2 of this section or proposing to send livestock and their associated
3 water requirements under subsection (3) of this section;

4 (d) Provide the date or approximate date of the change or
5 consolidation, or the date of deposit in the trust water rights program
6 under chapter 90.38 or 90.42 RCW or a water bank established under RCW
7 90.38.040, 90.42.100, or 90.92.070; and

8 (e) Provide the proposed increase and corresponding decrease in the
9 amount of water to be withdrawn and beneficially used by each dairy
10 farm, in gallons per day, following the change of conserved water or
11 the consolidation and movement of animals, based on a prorated
12 operational share of water associated with animals moved.

13 (6) Prior to the department making a determination on an
14 application for a change or consolidation amendment under this section,
15 the applicant seeking the consolidation must publish notice of the
16 application in a newspaper of general circulation in the county or
17 counties in which the proposed withdrawal or withdrawals for the water
18 right or rights to be changed or consolidated are located once a week
19 for two consecutive weeks. Preparation of the notice must be
20 consistent with the provisions of RCW 90.03.280. The applicant shall
21 provide evidence of the publication of notice to the department. There
22 is a thirty-day comment period beginning on the date the second notice
23 is published.

24 (7) The department may only approve expedited change and
25 consolidation amendments under this section after:

26 (a) Conducting a tentative determination, based on the water
27 right's full history, of the extent and validity of any water right
28 registration, permit, certificate, or claim associated with a change or
29 consolidation amendment under this section;

30 (b) Determining that:

31 (i) The sending dairy farm or water right for agricultural purposes
32 and receiving dairy farm utilize withdrawals that tap the same body of
33 public groundwater unless the department determines that withdrawing
34 the water from a different body of public groundwater would improve the
35 overall sustainability of groundwater resources;

36 (ii) Any increase in water legally withdrawn by the receiving dairy
37 farm will be matched by an equal or greater reduction in water legally
38 withdrawn by the sending dairy farm;

1 (iii) Other existing water rights, including groundwater and
2 surface water rights and minimum stream flows adopted by rule, will not
3 be impaired as a result of the change or consolidation amendment; and

4 (iv) The proposed change or consolidation amendment will not be
5 detrimental to the public welfare; and

6 (c) Requiring that, if the withdrawals do tap different bodies of
7 public groundwater, the priority date be subordinated to existing
8 rights in order to protect existing water right holders from
9 impairment.

10 NEW SECTION. **Sec. 8.** The department of ecology shall convene a
11 dairy stock water advisory group that includes: Members representing
12 the dairy industry, members representing environmental interests; and
13 the director of the department of agriculture or the director's
14 designee. Affected federally recognized tribes shall be invited to
15 send participants. The group shall review issues surrounding the use
16 of permit-exempt wells for stock watering purposes by dairy farms under
17 this act and may develop recommendations for legislative action. The
18 group shall meet periodically and report its activities and
19 recommendations to the governor and the appropriate legislative
20 committees by December 1, 2013.

21 NEW SECTION. **Sec. 9.** If any provision of this act or its
22 application to any person or circumstance is held invalid, the
23 remainder of the act or the application of the provision to other
24 persons or circumstances is not affected.

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