BILL REQ. #: Z-0699.3/09 3rd draft
ATTY/TYPIST: ML:lel
BRIEF DESCRIPTION: Regarding withdrawals of groundwater for stock watering purposes.
AN ACT Relating to withdrawals of groundwater for stock watering purposes; amending RCW 90.44.035; adding new sections to chapter 90.44 RCW; adding a new section to chapter 90.14 RCW; and creating a new section.

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

NEW SECTION. Sec. 1. The legislature finds that effective water resource management and a stable livestock industry are vital to the economic and environmental well-being of the state. The legislature further finds that achievement of these goals is hindered by a lack of agreement over the intent of the 1945 legislature's enactment of RCW 90.44.050 as it pertains to the quantity of water available under the exemption from water right permit requirements for withdrawals of public groundwater for "stock watering purposes" and the meaning of that undefined term. Therefore, in order to promote the clarity needed for both a sustainable livestock industry and effective water resource management, the legislature intends to: Define "stock watering purposes"; confirm the validity of the water rights used by existing operations under the authority of the exemption; provide a process for existing operations that rely upon the exemption to have their...
authorized water withdrawal quantities and beneficial uses of water registered and verified by the department of ecology; establish clear quantity limits for new livestock operations that intend to rely upon the exemption for small withdrawals in the future; provide a process to recognize and protect from relinquishment the water conservation efforts of registered livestock operations; and facilitate more efficient consolidation and movement of livestock and their associated water requirements among registered livestock operations.

NEW SECTION. Sec. 2. A new section is added to chapter 90.44 RCW to read as follows:

(1) Any existing withdrawal of water put to beneficial use for stock watering purposes under RCW 90.44.050 before the effective date of this section is and remains exempt from the water right permit requirements of this chapter under the following conditions:

(a) If the total withdrawal for stock watering purposes, combined with any other permit-exempt use withdrawals authorized under RCW 90.44.050, does not then or thereafter exceed ten acre-feet per year; or

(b) If the total withdrawal for stock watering purposes, combined with any other permit-exempt use withdrawals authorized under RCW 90.44.050, exceeds ten acre-feet per year:

(i) By December 31, 2010, the livestock operation making the withdrawal files a complete registration with the department to document the quantity and priority of the withdrawal as provided in section 3 of this act;

(ii) Water withdrawn under such a registration does not thereafter exceed the annual quantity withdrawal limits contained in such a registration, as originally filed, modified, or amended under sections 3 through 5 of this act; and

(iii) By December 31, 2012, for existing livestock operations withdrawing water from a groundwater body that has been closed to further withdrawal by rule, that is in hydraulic continuity with surface waters that are closed to further appropriation by rule or have an established instream flow that is not regularly met, or that is in hydraulic continuity with surface waters with depressed or critical salmonid stock status as determined by the Washington department of
fish and wildlife under RCW 90.03.360, the livestock operation begins
to meter its withdrawals, retains records of the amounts withdrawn, and
makes the records available to the department upon request.

(2) Any new withdrawal of water put to beneficial use for stock
watering purposes under RCW 90.44.050 and commenced after the effective
date of this section is and remains exempt from the water right permit
requirements of this chapter under the following conditions:

(a) The total withdrawal for stock watering purposes, combined with
any other permit-exempt use withdrawals authorized under RCW 90.44.050,
does not exceed ten acre-feet per year;

(b) Annual withdrawal quantities are metered and recorded, and
metering records are retained and made available to the department upon
request; and

(c) The withdrawal is not from a groundwater body that is closed to
further withdrawal by rule, that is in hydraulic continuity with
surface waters that are closed to further appropriation by rule or have
an established instream flow that is not regularly met, or that is in
hydraulic continuity with surface waters with depressed or critical
salmonid stock status as determined by the Washington department of
fish and wildlife under RCW 90.03.360.

(3) A water right permit, certificate, or claim, a department
approved transfer of an existing water right, or a department approved
change or consolidation amendment as provided under section 5 of this
act, is required for, and prior to, any amount of expanded water use
exceeding:

(a) Ten acre-feet per year for any livestock operation that
commenced a withdrawal for stock watering purposes after the effective
date of this section, as provided under subsection (2) of this section;

(b) Ten acre-feet per year for any livestock operation that existed
and had a total withdrawal for stock watering purposes of less than ten
acre-feet per year prior to the effective date of this section, as
provided under subsection (1)(a) of this section; and

(c) The registered annual quantity withdrawal limit, as originally
filed, modified, or amended under sections 3 through 5 of this act, for
any livestock operation that existed prior to the effective date of
this section and that registered a withdrawal of more than ten acre-
feet per year, as provided under subsection (1)(b) of this section.
NEW SECTION. Sec. 3. A new section is added to chapter 90.44 RCW to read as follows:

(1)(a) A complete registration and declaration of beneficial use for stock watering purposes under this chapter must be on a form or electronic template provided by the department and must include:

(i) The name and address of either the water user or the stock watering operation, or both;

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

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

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

(v) The date or approximate date as best it can be estimated of the first beneficial use of groundwater withdrawn and any year in which the operation expanded either its livestock numbers or its withdrawal of water, or both, by an amount of ten percent or greater, including estimated additional livestock numbers and amounts of water withdrawn to the nearest annual acre-foot increment;

(vi) A description of the seasonal and year-to-year continuity or variability of the amount withdrawn for beneficial use;

(vii) A description of the stock watering purposes, and any other permit exempt purposes, associated with such withdrawal and use;

(viii) A declaration of the highest annual quantity, estimated to the nearest acre-foot, of water withdrawn and beneficially used by the livestock operation for stock watering purposes, and for other permit exempt purposes, during the period of January 1, 2004, through December 31, 2010. Appropriate means of demonstrating water use may include, but are not limited to:

(A) Power records;

(B) Livestock records including numbers and type of stock;

(C) Metering records of the operation or a similarly situated and managed operation; and

(D) Calculations acceptable to the department based on reputable state or federal agency estimates of water requirements for various
uses, livestock operation types, livestock types and varieties, and other pertinent conditions; and

(ix) The identifying number of any of the operation's water rights authorized by a permit, certificate, or claim and a brief description of how the rights contribute to the daily water needs of the livestock operation.

(b)(i) A registrant may use the following livestock annual water use conservation standards as an alternative way to calculate and quantify livestock operation water requirements:

(A) Cow, horse, or mule: .028 acre-foot per year;
(B) Sheep, goat, or swine: 0.0056 acre-foot per year;
(C) Ostrich or emu: 0.0036 acre-foot per year;
(D) Llama: 0.0022 acre-foot per year; and
(E) Chicken or turkey: 0.00084 acre-foot per year.

(ii) The estimated withdrawal requirements provided in the list of specified livestock in (b)(i) of this subsection are based on year-round watering. The list is not exclusive, and may not be construed as a limit to the type of livestock to which this act applies. For livestock not expressly listed under (b)(i) of this subsection, estimated water requirements may be based on other sources or methods acceptable to the department, including but not limited to third-party technical materials or on calculations of equivalent water requirements for the most similar type of livestock listed under (b)(i) of this subsection. Livestock operations withdrawing water for lesser or intermittent periods would need to adjust accordingly when calculating a cumulative annual acre-foot quantity of withdrawal. Water diverted for stock watering purposes is generally considered to be one hundred percent depleted by the animal, evaporation, and/or waste water collection. In no instance may the registered withdrawal amount related to stock watering purposes exceed the estimated water requirements for the operation, as calculated under this subsection, by more than ten percent.

(c) A registration under this section pertains to the quantity of permit-exempt groundwater withdrawn and not to quantities of water use authorized by an existing water right permit, certificate, or claim. However, where an operation depends upon a mixture of permit-exempt withdrawals and other water rights authorized by a permit, certificate,
or claim, the identifying number of the rights and claims and a brief
description of how they contribute to the daily water needs of the
livestock operation must also be included.

(2) A livestock operation that, prior to the effective date of this
section, has relied upon combined permit-exempt withdrawals of more
than ten acre-feet per year, as provided under section 2(2) of this
act, that fails to register by the December 31, 2010, deadline may
apply to the department for a waiver and a reasonable extension of
time, which may not exceed two additional years and that may be granted
only upon a showing of good cause. Unregistered operations may not
avail themselves of the protections and programs provided by sections
5 and 6 of this act.

(3) A livestock operation that, prior to the effective date of this
section, has relied upon combined permit-exempt withdrawals of ten or
fewer acre-feet per year under section 2(1)(a) of this act is not
required to register under this section. A livestock operation that,
after the effective date of this section, will not exceed the combined
limits provided for new small permit-exempt withdrawals under section
2(2) of this act is also not required to register. However, these
types of permit-exempt operations may voluntarily register with the
department at any time, consistent with the provisions of this chapter.

(4) Permit-exempt withdrawals of livestock operations registered
under this section may be approved by the department for transfer and
change or amendment to another place or purpose of use, consistent with
the requirements of RCW 90.44.100. The department may also approve an
expedited transfer and change or amendment to accommodate the expansion
or consolidation of registered livestock operations consistent with
section 5 of this act and RCW 90.44.100. For purposes of RCW
90.44.100, the department shall treat such registered permit-exempt
stock water withdrawals as an appropriate permit when considering an
application for transfer and change or amendment.

(5) Any livestock operation, whether relying on a water right
permit, certificate, claim, or exemption, or some combination of such
rights, may register at any time unless the livestock operation: (a)
Existed prior to the effective date of this section; (b) relied on
combined permit-exempt withdrawals of more than ten acre-feet per year,
as provided under section 2(2) of this act; and (c) failed to register
within the deadline or extension periods provided under subsection (2) of this section.

(6) All livestock operations registered under this section and using more than ten acre-feet per year that withdraw water from a groundwater body that has been closed to further withdrawal by rule, that is in hydraulic continuity with surface waters that are closed to further appropriation by rule or have an established instream flow that is not regularly met, or that is in hydraulic continuity with surface waters with depressed or critical salmonid stock status as determined by the Washington department of fish and wildlife under RCW 90.03.360, must: (a) Meter and record their groundwater withdrawals; and (b) retain the records and make them available to the department upon request, unless an operation will entirely cease withdrawal of public groundwater for stock watering purposes following the department's approval of a change or consolidation amendment under section 5 of this act.

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

(1) Upon receipt, the department shall review all registration applications received under this chapter, and shall record all registrations that appear accurate and complete. Prior to recording such registration, and any time thereafter, the department may verify beneficial use quantities of withdrawals registered under this chapter and may return registrations for modification as needed, to correct ministerial errors and to ensure that information, including but not limited to withdrawal quantities and priority dates, provided in the registration is accurate and consistent with all conditions and requirements of this chapter.

(2) A registered livestock operation may request, and the department is authorized to provide, confirmation via written verification of:

(a) The department's tentative determination of permit-exempt water right withdrawal quantities authorized and available for beneficial use by the livestock operation; and

(b) The department's tentative determination of the priority date or dates of such rights, as supported by documentation provided, or by other evidence available to the department.
(3) The department's receipt and recording of information regarding a water right permit, certificate, or claim under the registration provisions of this section does not constitute a final determination of the extent and validity of such a right. In verifying a registered livestock operation's permit-exempt withdrawals under subsection (2)(a) of this section, the department may not conduct a tentative determination of the extent and validity of any other water right permit, certificate, or claim associated with such a livestock operation unless the permit, certificate, or claim is proposed to be changed or amended.

(4) For purposes of this chapter, the initial priority date of a water right established through the permit exemption for stock watering purposes is the date of the first beneficial use of water for such purposes. If annual water use has increased since the time of first beneficial use, each incremental increase of ten percent or more, over previously established withdrawal amounts and priority dates, must have its own priority date.

(5) For purposes of enforcement, the department shall treat the beneficial use of permit-exempt stock water withdrawals registered under this chapter as a perfected water right, and to the extent the registered right is regularly used beneficially, the livestock operation making the withdrawal is entitled to a right equal to that established by a permit issued under the provisions of, and subject to all conditions and limitations of, this chapter. However, the department from time to time may require the livestock operation making such a withdrawal to furnish information as to the means for and the quantity of that withdrawal.

(6) The filing or confirmation of a statement of registration under this chapter does not constitute an adjudication of any claim to the right to use of waters as between the water use registrant and the state or as between one or more water use registrants and another or others. A registration confirmed under subsection (2) of this section shall be admissible in an adjudication of water rights as prima facie evidence of the times of use and quantity of water the registrant was authorized to withdraw as of the year of filing, if, and only if, the quantities of water right in use and the time of use when considered in such adjudication are substantially in accord with the times of use and quantity of water confirmed in the statement of registration, or nonuse
of the water right is excused under chapter 90.14 RCW. A statement of
registration may not otherwise be evidence of the priority of the
registered water right in such an adjudication.

(7) A permit-exempt withdrawal right under this chapter may be
relinquished or abandoned through nonuse in the same manner as other
water rights.

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

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

(1) Registration, consistent with the provisions of section 3 of
this act, is required for livestock operations wishing to participate
in the change and consolidation amendment program provided under this
section. The department shall expedite change and consolidation
amendments under this section.

(2) Upon the issuance by the department of an amendment to the
appropriate permit-exempt groundwater right registrations, claims,
permits, or certificates of livestock operations registered under this
chapter, the holder of such a valid right to withdraw public
groundwaters may use the expedited procedures provided under this
section to change or consolidate water rights with consenting owners of
other livestock operations registered under this chapter. Such an
amendment does not affect the priority of any water rights involved in
the change or consolidation, and may be issued only after a
determination has been made by the department that all applicable
criteria established under subsections (3) through (8) of this section
have been satisfied.

(3)(a) Any registered livestock operation that conserves water and
reduces the water withdrawal quantities required by the operation may:

(i) Increase either the operation's numbers or types, or both, of
livestock without notice to the department as long as withdrawal
quantities authorized under registration with the department are not
exceeded; or
(ii) Elect to protect the excess and unused portion of registered withdrawal quantities from relinquishment under section 6 of this act by submitting a notice of reduced use to the department. In order to prevent relinquishment:

(A) The notice must be received by the department within five years of the date when reduced water use began; and

(B) The livestock operation's withdrawal facilities must be maintained in good operating condition consistent with the ability to withdraw and make full beneficial use of the livestock operation's registered withdrawal quantities.

(b) The livestock operation may, at any date after submitting a notice of reduced use, resume the use of some or all of the amounts of water preserved under this section by submitting notice to the department of the intent to resume water use, as long as the operation has met the requirements of (a)(ii) of this subsection.

(4) Upon receipt of a notice of reduced or resumed use, and subject to department verification:

(a) The department shall append such a notice to the applicable registration; and

(b) The department may, consistent with the provisions of this section, approve a change application to make the conserved and unused water available for use by another registered livestock operation. Prior to such a change approval, the department shall amend the registrations of the sending and receiving livestock operations to appropriately reflect the corresponding reduction and increase of water withdrawal quantities available.

(5) The department may approve the consolidation of two or more registered stock water rights to accommodate the expansion or consolidation of livestock operations. A registered livestock operation may increase water withdrawal associated with a consolidation of livestock to be received from another registered livestock operation if the department first approves the consolidation application in accordance with RCW 90.44.105. Prior to such a consolidation approval, the department shall amend the registrations of the sending and receiving livestock operations to appropriately reflect the corresponding reduction and increase of water withdrawal quantities available.
(6) Applications for a change or consolidation amendment under this section must:
   (a) Use a change of water right application form provided by the department;
   (b) Provide registration or water right identification numbers for the registered livestock operation proposing to receive conserved water under subsection (2) of this section or proposing to receive livestock and their associated water requirements under subsection (3) of this section;
   (c) Provide registration or water right identification numbers for the registered operation proposing to send conserved water under subsection (2) of this section or proposing to send livestock and their associated water requirements under subsection (3) of this section;
   (d) Provide the date or approximate date of the change or consolidation, or the date of deposit in a water bank established under:
      (i) RCW 90.42.100;
      (ii) Chapter . . ., Laws of 2009 (sections . . ., . . ., and . . ., of Senate Bill No. 5583/House Bill No. 1494 (water banking)); or
      (iii) Chapter . . ., Laws of 2009 (sections . . ., . . ., and . . ., of Senate Bill No. 5647/House Bill No. 1580 (Walla Walla water banking sections)); and
   (e) Provide the proposed increase and corresponding decrease in the amount of water to be withdrawn and beneficially used by each operation, in gallons per day, following the change of conserved water or the consolidation and movement of animals, based on a prorated operational share of water associated with animals moved.

(7) Prior to the department making a determination on an application for a change or consolidation amendment under this section, the applicant seeking the consolidation must publish notice of the application in a newspaper of general circulation in the county or counties in which the withdrawal or withdrawals for the right or rights to be changed or consolidated are located once a week for two consecutive weeks. Preparation of the notice must be consistent with the provisions of RCW 90.03.280. The applicant shall provide evidence of the publication of notice to the department. There is a thirty-day comment period beginning on the date the second notice is published.
(8) The department may only approve expedited change and consolidation amendments under this section after:
   (a) Conducting a tentative determination, based on the water right's full history, of the extent and validity of any water right registration, permit, certificate, or claim associated with a change or consolidation amendment under this section; and
   (b) Determining that:
      (i) The sending and receiving livestock operations utilize withdrawals that tap the same body of public groundwater unless the department determines that withdrawing the water from a different body of public groundwater would improve the overall management of groundwater resources;
      (ii) Any increase in water legally withdrawn by the receiving livestock operation will be matched by an equal or greater reduction in water legally withdrawn by the sending operation;
      (iii) Other existing rights, including groundwater and surface water rights and minimum stream flows adopted by rule, will not be impaired as a result of the change or consolidation amendment; and
      (iv) The proposed change or consolidation amendment will not be detrimental to the public welfare.

NEW SECTION. Sec. 6. A new section is added to chapter 90.14 RCW to read as follows:
(1) For a livestock operation registered under section 3 of this act, the nonuse of water for a period exceeding five years does not result in relinquishment of the unused quantity, and is available for future use by the livestock operation, provided:
   (a) Notice of reduced use is received by the department of ecology within five years of the date when reduced water use began;
   (b) Notice of the livestock operation's intent to resume use of water, up to the maximum amount allowed under the operation's registration, is received by the department of ecology; and
   (c) The livestock operation's withdrawal facilities are maintained in good operating condition consistent with the ability to withdraw and make full beneficial use of the registered right.
(2) The department's receipt and recording of water use reduction and resumption notices from a registered livestock operation does not
constitute a final determination of the extent and validity of the livestock operation's water right.

(3) In receiving and recording water use reduction and resumption notices from a registered livestock operation, the department may not conduct a tentative determination of the extent and validity of the livestock operation's water right, unless such a right is proposed to be changed or amended.

Sec. 7. RCW 90.44.035 and 2000 c 98 s 2 are each amended to read as follows:

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

(1) "Department" means the department of ecology.

(2) "Director" means the director of ecology.

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

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

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

(6) "Underground artificial storage and recovery project" means any project in which it is intended to artificially store water in the ground through injection, surface spreading and infiltration, or other department-approved method, and to make subsequent use of the stored water. However, (a) this subsection does not apply to irrigation return flow, or to operational and seepage losses that occur during the irrigation of land, or to water that is artificially stored due to the construction, operation, or maintenance of an irrigation district project, or to projects involving water reclaimed in accordance with chapter 90.46 RCW; and (b) RCW 90.44.130 applies to those instances of
claimed artificial recharge occurring due to the construction, operation, or maintenance of an irrigation district project or operational and seepage losses that occur during the irrigation of land, as well as other forms of claimed artificial recharge already existing at the time a groundwater subarea is established.

(7) "Livestock" means all classes and breeds of animals generally kept for the production of food or fiber, or raised for use or sale, including but not limited to sheep, goats, swine, cows, horses, mules, llamas, ostriches, emus, rabbits, chickens, and turkeys.

(8) "Livestock operation" means the contiguous facilities, premises, or parcels where livestock are kept for the purpose of owning, raising, maintenance, use, or production and sale of livestock or any livestock-related agricultural product, as that term is defined in RCW 82.04.213.

(9)(a) "Stock watering purposes" means providing water for livestock for drinking and for maintenance of animal health and welfare, and includes the primary and beneficial use of water for livestock drinking, feeding, cleaning equipment used to feed or milk livestock, cleaning the livestock and the buildings they occupy, and misting the livestock for cooling purposes.

(b) "Stock watering purposes" does not include the use of water to cool or process milk or milk products or meat or meat products, irrigation of vegetation, or dust control, all of which are industrial or commercial water uses under RCW 90.44.050, unless such uses are secondary and incidental to, and do not exceed quantities required solely for, the beneficial use of water associated with primary "stock watering purposes" authorized under this subsection.

(c) "Stock watering purposes" does not include use of water for households or their pets, which are domestic uses under RCW 90.44.050.

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