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SENATE BILL 6803

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State of Washington

61st Legislature

2010 Regular Session

By Senator Rockefeller

Read first time 01/29/10. Referred to Committee on Environment, Water & Energy.

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

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

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

1 watering purposes"; establish a process under which existing operations  
2 may register groundwater that has been put to beneficial use; establish  
3 quantity limits for new livestock operations that intend to rely upon  
4 the permit exemption for withdrawals in the future; and facilitate more  
5 efficient consolidation and movement of livestock and their associated  
6 water requirements among registered livestock operations.

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

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

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

16 (2) "Department" means the department of ecology((+)).

17 ((+2)) (3) "Director" means the director of ecology((+)).

18 ((+3)) (4) "Groundwaters" means all waters that exist beneath the  
19 land surface or beneath the bed of any stream, lake or reservoir, or  
20 other body of surface water within the boundaries of this state,  
21 whatever may be the geological formation or structure in which such  
22 water stands or flows, percolates or otherwise moves. There is a  
23 recognized distinction between natural groundwater and artificially  
24 stored groundwater((+)).

25 ((+4)) (5) "Livestock" means all classes and breeds of animals  
26 generally kept for the production of food or fiber, or raised for use  
27 or sale, including but not limited to sheep, goats, swine, cows,  
28 horses, mules, llamas, ostriches, emus, rabbits, chickens, and turkeys.

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

34 (b) "Livestock operation" does not include carcass rendering plants  
35 or meat processing plants.

36 (7) "Natural groundwater" means water that exists in underground  
37 storage owing wholly to natural processes((+)).

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

5       ~~(6))~~ (8) "Stock watering purposes" means all reasonable uses of  
6 water normally associated with the sound husbandry of livestock. This  
7 includes, but is not limited to, drinking, feeding, cleaning stalls,  
8 washing livestock, washing the equipment used to feed or milk  
9 livestock, controlling dust around livestock, and cooling livestock.

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

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

27       After June 6, 1945, no withdrawal of public groundwaters of the  
28 state shall be begun, nor shall any well or other works for such  
29 withdrawal be constructed, unless an application to appropriate such  
30 waters has been made to the department and a permit has been granted by  
31 it as herein provided: EXCEPT, HOWEVER, That any withdrawal of public  
32 groundwaters for stock watering purposes as provided in sections 4 and  
33 5 of this act, or for the watering of a lawn or of a noncommercial  
34 garden not exceeding one-half acre in area, or for single or group  
35 domestic uses in an amount not exceeding five thousand gallons a day,  
36 or as provided in RCW 90.44.052, or for an industrial purpose in an  
37 amount not exceeding five thousand gallons a day, is and shall be

1 exempt from the provisions of this section, but, to the extent that it  
2 is regularly used beneficially, shall be entitled to a right equal to  
3 that established by a permit issued under the provisions of this  
4 chapter: PROVIDED, HOWEVER, That the department from time to time may  
5 require the person or agency making any such small withdrawal to  
6 furnish information as to the means for and the quantity of that  
7 withdrawal: PROVIDED, FURTHER, That at the option of the party making  
8 withdrawals of groundwaters of the state not exceeding five thousand  
9 gallons per day, applications under this section or declarations under  
10 RCW 90.44.090 may be filed and permits and certificates obtained in the  
11 same manner and under the same requirements as is in this chapter  
12 provided in the case of withdrawals in excess of five thousand gallons  
13 a day.

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

16 (1) Any existing withdrawal of water put to beneficial use for  
17 stock watering purposes under RCW 90.44.050 before the effective date  
18 of this section that does not exceed 5.6 acre feet per year is and  
19 remains exempt from the water right permit requirements of this  
20 chapter.

21 (2) Any existing withdrawal of water put to beneficial use for  
22 stock watering purposes under RCW 90.44.050 before the effective date  
23 of this section that does exceed 5.6 acre feet per year is and remains  
24 exempt from the water right permit requirements of this chapter if:

25 (a) By December 31, 2010, the livestock operation making the  
26 withdrawal files a registration with the department to document the  
27 quantity and priority of the withdrawal as provided in section 6 of  
28 this act;

29 (b) Water withdrawn under such a registration does not thereafter  
30 exceed the annual quantity withdrawal limits contained in such a  
31 registration; and

32 (c) By December 31, 2012, for existing livestock operations that,  
33 on or before the effective date of this section, are withdrawing water  
34 from a groundwater body that has been closed to further withdrawal by  
35 rule, that is in hydraulic continuity with surface waters that are  
36 closed to further appropriation by rule or have an established instream  
37 flow that is not regularly met, or that is in hydraulic continuity with

1 surface waters with depressed or critical salmonid stock status as  
2 determined by the Washington department of fish and wildlife under RCW  
3 90.03.360, the livestock operation begins to meter its withdrawals,  
4 retains records of the amounts withdrawn, and makes the records  
5 available to the department upon request.

6 (3)(a) A livestock operation that existed on or before the  
7 effective date of this section shall obtain a water right permit,  
8 certificate, or claim, a department-approved transfer of an existing  
9 water right, or a department-approved change or consolidation amendment  
10 as provided under sections 6 and 7 of this act for any amount of water  
11 use exceeding the registered annual quantity withdrawal limit contained  
12 in the registration required in section 6 of this act.

13 (b) A livestock operation that existed on or before the effective  
14 date of this section and had a withdrawal for stock watering purposes  
15 of less than 5.6 acre feet per year prior to the effective date of this  
16 section shall obtain a water right permit, certificate, or claim, a  
17 department-approved transfer of an existing water right, or a  
18 department-approved change or consolidation amendment as provided under  
19 sections 6 and 7 of this act for any amount of water use exceeding 5.6  
20 acre feet per year.

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

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

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

33 (a) The total withdrawal for stock watering purposes does not  
34 exceed 5.6 acre feet per year; and

35 (b) Annual withdrawal quantities are metered and recorded and  
36 metering records are retained and made available to the department upon  
37 request.

1 (2) A water right permit, certificate, or claim, a department-  
2 approved transfer of an existing water right, or a department-approved  
3 change or consolidation amendment as provided under sections 7 and 8 of  
4 this act, is required for, and prior to, any amount of water use  
5 exceeding 5.6 acre feet per year for any livestock operation that  
6 commenced a withdrawal for stock watering purposes after the effective  
7 date of this section.

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

10 (1)(a) A registration for a livestock operation that existed prior  
11 to the effective date of this section that uses over 5.6 acre feet per  
12 year for stock watering purposes must be on a form or electronic  
13 template provided by the department and must include:

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

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

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

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

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

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

28 (vii) A declaration of the highest annual quantity, estimated to  
29 the nearest acre foot, of water withdrawn and beneficially used by the  
30 livestock operation for stock watering purposes during the period of  
31 January 1, 2005, through December 31, 2009.

32 (b) A registration under this section pertains to the quantity of  
33 permit-exempt groundwater withdrawn and not to quantities of water use  
34 authorized by an existing water right permit, certificate, or claim.  
35 However, where an operation depends upon a mixture of permit-exempt  
36 withdrawals and other water rights authorized by a permit, certificate,

1 or claim, the identifying number of the water rights and claims and a  
2 brief description of how they contribute to the daily water needs of  
3 the livestock operation must also be included in the registration.

4 (c) The department may return registrations for modification as  
5 needed, to correct ministerial errors, and to ensure that the  
6 information, including but not limited to the annual quantity withdrawn  
7 and the priority date, provided in the registration is accurate and  
8 consistent with all conditions and requirements of this section.

9 (d) Causing a registration to be filed with the department  
10 constitutes the affirmation or acknowledgment under penalty of perjury  
11 under the laws of the state of Washington that the registration is true  
12 and complete to the best of the registrant's knowledge.

13 (2) A livestock operation that, prior to the effective date of this  
14 section, has relied upon permit-exempt withdrawals that exceeded 5.6  
15 acre feet per year for stock watering purposes, that fails to register  
16 by the December 31, 2010, deadline has a priority date as of the date  
17 of filing, except that a livestock operation retains their priority  
18 date if the livestock operation applies to the department by December  
19 31, 2010, for an extension of time not to exceed December 31, 2012,  
20 that may be granted only upon a showing of good cause.

21 (3) A livestock operation that, prior to the effective date of this  
22 section, has relied upon permit-exempt withdrawals of 5.6 or fewer acre  
23 feet per year is not required to register under this section. A  
24 livestock operation that, after the effective date of this section,  
25 will not exceed the limits provided for new permit-exempt withdrawals  
26 under section 4(3) of this act is also not required to register.  
27 However, these types of permit-exempt operations may voluntarily  
28 register with the department at any time, consistent with the  
29 provisions of this chapter.

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

32 A livestock operation that has registered under section 6 of this  
33 act may submit a request in writing to the department that the  
34 department undertake a review of the extent and validity of the water  
35 used for stock watering purposes described in the registration  
36 submitted under section 6 of this act. After such a review, livestock  
37 operations registered under section 6 of this act may be approved by

1 the department for transfer and change or amendment to another place or  
2 purpose of use, consistent with the requirements of RCW 90.44.100. The  
3 department may also approve an expedited transfer and change or  
4 amendment to accommodate the expansion or consolidation of registered  
5 livestock operations consistent with section 8 of this act and RCW  
6 90.44.100. For purposes of RCW 90.44.100, the department shall treat  
7 such registered permit-exempt withdrawals for stock watering purposes  
8 as an appropriate permit when considering an application for transfer  
9 and change or amendment.

10 NEW SECTION. **Sec. 8.** A new section is added to chapter 90.44 RCW  
11 to read as follows:

12 (1) A livestock operation that has registered under section 6 of  
13 this act may submit a request in writing to the department that the  
14 department undertake a review of the extent and validity of the water  
15 used for stock watering purposes described in the registration  
16 submitted under section 6 of this act. After such a review, the  
17 department shall expedite change and consolidation amendments under  
18 this section.

19 (2) Upon the issuance by the department of an amendment to the  
20 appropriate permit-exempt groundwater right registrations, claims,  
21 permits, or certificates of livestock operations registered under this  
22 chapter, the holder of such a valid water right to withdraw public  
23 groundwaters may use the expedited procedures provided under this  
24 section to change or consolidate water rights with consenting owners of  
25 other livestock operations registered under this chapter. Such an  
26 amendment does not affect the priority of any water rights involved in  
27 the change or consolidation, and may be issued only after a  
28 determination has been made by the department that all applicable  
29 criteria established under subsections (3) through (7) of this section  
30 have been satisfied.

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

33 (a) Increase either the operation's numbers or types, or both, of  
34 livestock without notice to the department as long as withdrawal  
35 quantities authorized under registration with the department are not  
36 exceeded; or



1 (b) Elect to protect the excess and unused portion of registered  
2 withdrawal quantities from relinquishment by submitting the excess and  
3 unused portion of the registered withdrawal quantities into the trust  
4 water rights program under RCW 90.42.080.

5 (4) The department may approve the consolidation of two or more  
6 registered stock water rights to accommodate the expansion or  
7 consolidation of livestock operations. A registered livestock  
8 operation may increase water withdrawal associated with a consolidation  
9 of livestock to be received from another registered livestock operation  
10 if the department first approves the consolidation application in  
11 accordance with RCW 90.44.105. Prior to such a consolidation approval,  
12 the department shall amend the registrations of the sending and  
13 receiving livestock operations to appropriately reflect the  
14 corresponding reduction and increase of water withdrawal quantities  
15 available.

16 (5) Applications for a change or consolidation amendment under this  
17 section must:

18 (a) Use a change of water right application form provided by the  
19 department;

20 (b) Provide registration or water right identification numbers for  
21 the registered livestock operation proposing to receive conserved water  
22 under subsection (2) of this section or proposing to receive livestock  
23 and their associated water requirements under subsection (3) of this  
24 section;

25 (c) Provide registration or water right identification numbers for  
26 the registered operation proposing to send conserved water under  
27 subsection (2) of this section or proposing to send livestock and their  
28 associated water requirements under subsection (3) of this section;

29 (d) Provide the date or approximate date of the change or  
30 consolidation, or the date of deposit in the trust water rights program  
31 under chapter 90.38 or 90.42 RCW or a water bank established under RCW  
32 90.38.040, 90.42.100, or 90.92.070; and

33 (e) Provide the proposed increase and corresponding decrease in the  
34 amount of water to be withdrawn and beneficially used by each  
35 operation, in gallons per day, following the change of conserved water  
36 or the consolidation and movement of animals, based on a prorated  
37 operational share of water associated with animals moved.

1 (6) Prior to the department making a determination on an  
2 application for a change or consolidation amendment under this section,  
3 the applicant seeking the consolidation must publish notice of the  
4 application in a newspaper of general circulation in the county or  
5 counties in which the proposed withdrawal or withdrawals for the water  
6 right or rights to be changed or consolidated are located once a week  
7 for two consecutive weeks. Preparation of the notice must be  
8 consistent with the provisions of RCW 90.03.280. The applicant shall  
9 provide evidence of the publication of notice to the department. There  
10 is a thirty-day comment period beginning on the date the second notice  
11 is published.

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

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

18 (b) Determining that:

19 (i) The sending and receiving livestock operations utilize  
20 withdrawals that tap the same body of public groundwater unless the  
21 department determines that withdrawing the water from a different body  
22 of public groundwater would improve the overall sustainability of  
23 groundwater resources;

24 (ii) Any increase in water legally withdrawn by the receiving  
25 livestock operation will be matched by an equal or greater reduction in  
26 water legally withdrawn by the sending operation;

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

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

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

36 NEW SECTION. **Sec. 9.** If any provision of this act or its

1 application to any person or circumstance is held invalid, the  
2 remainder of the act or the application of the provision to other  
3 persons or circumstances is not affected.

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