

Exempt Wells

Background – Beginning in 1945, the state of Washington has required all users of groundwater to obtain a permit from the state prior to using the water, just as surface water users have been required to do since 1917. However, the Legislature also provided an exemption from this permit if the groundwater is used under certain conditions. Groundwater from wells used under the conditions set forth in RCW 90.44.050 is commonly referred to as exempt wells.

Exempt Well Statute – RCW 90.44.050 is the state law which provides the exemption from a state permit for groundwater withdrawals. The following is the relevant language of the law:

EXCEPT, HOWEVER, That any withdrawal of public groundwaters for stock-watering purposes, or for the watering of a lawn or of a noncommercial garden not exceeding one-half acre in area, or for single or group domestic uses in an amount not exceeding five thousand gallons a day, or as provided in RCW [90.44.052](#), or for an industrial purpose in an amount not exceeding five thousand gallons a day, is and shall be exempt from the provisions of this section, but, to the extent that it is regularly used beneficially, shall be entitled to a right equal to that established by a permit issued under the provisions of this chapter: PROVIDED, HOWEVER, That the department from time to time may require the person or agency making any such small withdrawal to furnish information as to the means for and the quantity of that withdrawal:...

Summary of Statute

Groundwater withdrawals are exempt from the required state permit under the following conditions:

- ◆ If used for stock-watering purposes, the amount is unlimited.
- ◆ If used for the watering of a lawn or non-commercial garden on land not exceeding one-half acre, the amount is unlimited. (However, it is against state law to “waste” water, so the full amount of water which could be placed on a half acre really does have a limit).
- ◆ Domestic uses of water for single or group residences are entitled to a maximum use of up to 5,000 gallons per day.
- ◆ Industrial uses of water are entitled to a maximum use of up to 5,000 gallons per day.

Recent Issues

Decisions by the courts, laws passed the Legislature, and policies pushed by the state Department of Ecology have generated much conflict relative to exempt well usage.

- ◆ The **courts** have made decisions which recognize “hydraulic continuity” between groundwater and surface water.
- ◆ The **Legislature** has passed laws and provided funding for setting and achieving instream flows throughout the state, which have the full protection of a water right.
- ◆ The **Department** of Ecology has set instream flows in many watersheds, regardless of whether local watershed planning groups were willing to address flow levels themselves. In doing so, many watersheds of the state are slowly being closed to new withdrawals of water from surface and groundwater sources. Furthermore, the DOE has initiated rule-making to limit the capture of rainwater from roof-top collection for beneficial uses. Water availability throughout the state is only becoming less available to its residents.

One of the few last remaining opportunities for obtaining water for small incidental uses has been through the exempt well statute.

Stockwatering – Attorney General Opinion

In 2005, legislative frustration over the Department of Ecology's limitation of 5,000 gallons per day for a stockwater right caused Rep. Holmquist and Senator Morton to solicit a formal opinion from Attorney General Rob McKenna. The opinion was very clear in articulating the 1945 statute concerning stockwatering rights which states the amount of water needed for livestock is unlimited. This AGO opinion has proven very beneficial to the livestock industry by removing the uncertainty about their stockwatering rights. The director of the Department of Ecology has publicly stated that his department will implement policies and actions that reflect this interpretation of state law. The following is a link to the text of the Attorney General opinion: http://www.atg.wa.gov/opinions/2005/2005_17.htm

Kittitas County – Aqua Permanente

Increased rural development in upper Kittitas County using the exempt well statute to provide a supply of water for these developments spurred a petition to the DOE from a local group calling itself Aqua Permanente. This petition by three individuals in September 2007 requested the DOE to prohibit the drilling of all exempt wells in Kittitas County until it is certain that exempt wells are not impairing senior water rights in the Yakima Basin. This basin has been a closed to permitted water withdrawals since the Aquavella Adjudication was initiated in Yakima County Superior Court in the 1970's. The petitioners requested the DOE to close the basin under RCW 90.54.050. This law says that DOE "may by rule . . . withdraw various waters of the state from future additional appropriations until such data and information are available."

Subsequent to the petition, DOE reached an agreement with Kittitas County that will guide how decisions are made on residential developments served by exempt wells. The county was reluctant to sign this agreement, however, the threat by the department to shut down all future exempt wells in the county was all too real. On April 7, 2008, the agreement was signed. Key components of the agreement are:

- ◆ A groundwater study will be commissioned by the DOE which will define the hydrogeology of upper Kittitas County.
- ◆ DOE will hire a watermaster for the region.
- ◆ Kittitas County will hire additional staff and equipment to monitor and collect data on groundwater use in western Kittitas County.
- ◆ Temporary management measures will be in place while the groundwater study is underway.
- ◆ Only one groundwater exemption will be allowed for rural developments.
- ◆ Development applications will be required to demonstrate that domestic and lawn and garden water use will not exceed the 5,000 gallons per day limit.
- ◆ Water metering will be required.

It is anticipated that future petitions will be showing up around the state requesting DOE to further limit the ability of residents to use the exempt well provision as allowed in RCW 90.44.050.