

POLICY FOR IMPLEMENTING THE CONSOLIDATION OF RIGHTS FOR  
EXEMPT GROUND WATER WITHDRAWALS

Resource Contact: Policy and Planning Section

Effective Date: 01/11/99

Revised: NEW

References: Chapter 446, Laws of 1997 (SSB 5785), Consolidation of exempt ground water rights. Now codified as RCW 90.44.105.

Purpose: To establish procedures the Department of Ecology (Ecology) will use to assist ground water right certificate and permit holders seeking to consolidate that right with a right or rights established under the ground water exemption in complying with Chapter 446, Laws of 1997.

Application: These procedures apply to all holders of water right permits and certificates of ground water right issued pursuant to chapter 90.44 RCW.

1. Amendment of a ground water right permit or certificate

Any person that holds a valid right to withdraw public ground waters may, with Ecology's approval, consolidate that right with one or more rights established under the exemption from the water right permitting process specified in RCW 90.44.050 without affecting the priority of any of the water rights being consolidated provided the statutory criteria specified in RCW 90.44.105 are satisfied. This process may be in lieu of the ground water right amendment process specified in RCW 90.44.100.

2. Application to Ecology

Any person seeking to consolidate a valid right to withdraw public ground waters with a right established under the ground water exemption must first make application to Ecology. The application must be filed on a change of water right application form provided by Ecology.

3. Ecology review of application, publication, and comment period

Ecology will review the application in the same manner as it does other applications for change. Once Ecology has all the necessary information and prior to Ecology making a determination on an application for such a consolidation amendment, 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 well or wells for the right or rights to be consolidated are located. Preparation of the notice must be in compliance with the provisions of RCW 90.03.280. The notice must then be published once a week for two consecutive weeks. The applicant is responsible for providing evidence of the publication of the notice to the department. The comment period will be for thirty (30) days beginning on the date the second notice is published.

4. Basis for determination on proposed consolidation

Ecology will only issue a consolidation amendment after determining that, in lieu of meeting the conditions required for an amendment under RCW 90.44.100:

- a. The well from which water for the right established under the exemption is withdrawn taps the same body of public ground water as the well for the valid right to withdraw public ground waters;
- b. The applicant has made suitable arrangements to discontinue use of the well established under the exemption upon approval of the consolidation amendment to the permit or certificate;
- c. The applicant has made arrangements to properly decommission the well or wells using rights established under the exemption in accordance with Chapter 18.104 RCW and relevant Ecology rules;
- d. The applicant has entered into legally enforceable agreements, such as property title notes or locally-adopted ordinances, that bind present and future owners of the land through appropriate title limitations that prohibit the construction of another well or wells to serve the area previously served by the right established under the exemption; and
- e. Other existing rights, including ground and surface water rights and minimum stream flows adopted by rule, will not be impaired as a result of the consolidation.

5. Quantification of the right or rights to be consolidated

The maximum amount of water that can be consolidated from any right established under the exemption is that amount beneficially used by that water user, not to exceed 5000 gallons per day. Ecology will use the following procedure to determine the amount of water to be added to the applicant's permit or certificate once the use established under the exemption is discontinued:

- a. The amount will be the average withdrawal from the well, in gallons per day, for the most recent five-year period preceding the date of the application if the applicant has submitted credible supporting evidence and established that the amount used is consistent with the average amount of water used for similar use or uses in the general area in which the exempted use is located. Ecology will not use that amount if it finds:
  - (i) Credible evidence of nonuse of the well during the required period, or
  - (ii) Credible evidence that the exempted use of water or the intensity of the use of the land supported by water from the exempted use is substantially different than such uses in the general area in which the source is located.

- b. If credible evidence in support of the above amount is lacking, the amount will be eight hundred gallons per day for each residential connection, up to a maximum of five thousand gallons per day, or, in the alternative, an amount to be established by Ecology, in consultation with the Washington State Department of Health, that is reflective of average household and small-area landscaping water uses in that region of the state.

6. Presumption for approval

Ecology will accord a presumption favoring approval of a proposed consolidation if the requirements above are met and the discontinuance of the exempt use is consistent with one or more of the following:

- a. An adopted coordinated water system plan under chapter 70.116 RCW,
- b. An adopted comprehensive land use plan under chapter 36.70A RCW, or
- c. Another comprehensive watershed management plan applicable to the area containing an objective of decreasing the number of existing and newly developed small ground water withdrawals.

7. Prioritization of applications for consolidation

Ecology will make reviewing and deciding upon applications for consolidation of rights established using the ground water exemption a priority and will make decisions on consolidation applications within sixty days of whichever of the following events is later:

- a. The end of the comment period following publication of the notice by the applicant, or
- b. The date on which compliance with the state environmental policy act is completed.

The applicant and Ecology may extend the time for making a decision by prior mutual agreement.

8. Ecology procedures for consolidation, applicant's showing of compliance, and recording fees.

Ecology will, upon making a determination that the proposed consolidation meets the statutory criteria specified in RCW 90.44.105, prepare the appropriate superseding documents effecting the consolidation. Prior to Ecology's issuance of a superseding permit or certificate, the permittee or certificate holder must show compliance by submitting to Ecology a water well report from a licensed well contractor verifying that the well or wells for which the rights have been consolidated have been properly decommissioned.

The applicant may need to pay fees for the issuance of superseding documents. Fees payable to Ecology are set in RCW 90.03.470. Fees payable to the County Auditor for the recording of documents are specified in RCW 36.18.010.

9. Ecology response to showing of compliance

Ecology will issue a Report of Examination that summarizes its determinations pertaining to the consolidations. Based upon that Report of Examination, Ecology will send the applicant a superseding document reflecting the consolidation of that right with the right or rights established under the exemption. If the superseding document is a certificate, Ecology will forward the superseding certificate to the appropriate County Auditor for recording.

Ecology will revise its records to reflect the consolidation. The superseding right will reflect the different priority dates for those rights that have been consolidated. For each right to be consolidated, Ecology will assign as the priority date the date of first occupancy of the residence unless provided with compelling information that actual use of water commenced at an different date, in which case that date will be assigned as the priority date. The annual quantity for the superseding right will be increased by the amount of water determined to be used per day multiplied by the number of days per year the right had been used. The period of use for the irrigation component of any right established under the exemption will be considered to be from April 1 to October 31 of the year. The increase, if any, to the withdrawal rate for the superseding right will be based upon an evaluation by Ecology of the patterns of pumping and water usage from the wells for which the rights are being consolidated.

/s/ Keith E. Phillips

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**Special Note:** These policies and procedures are used to guide and ensure consistency among water resources program staff in the administration of laws and regulations. These policies and procedures are not formal administrative regulations that have been adopted through a rule-making process. In some cases, the policies may not reflect subsequent changes in statutory law or judicial findings, but they are indicative of the department's practices and interpretations of laws and regulations at the time they are adopted. If you have any questions regarding a policy or procedure, please contact the department.