

Chapter 90.44 RCW
REGULATION OF PUBLIC GROUNDWATERS

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RCW 90.44.020 Purpose of chapter. This chapter regulating and controlling groundwaters of the state of Washington shall be supplemental to chapter 90.03 RCW, which regulates the surface waters of the state, and is enacted for the purpose of extending the application of such surface water statutes to the appropriation and beneficial use of groundwaters within the state. [1945 c 263 § 1; Rem. Supp. 1945 § 7400-1.]

RCW 90.44.030 Chapter not to affect surface water rights. The rights to appropriate the surface waters of the state and the rights acquired by the appropriation and use of surface waters shall not be affected or impaired by any of the provisions of this supplementary chapter and, to the extent that any underground water is part of or tributary to the source of any surface stream or lake, or that the withdrawal of groundwater may affect the flow of any spring, water course, lake, or other body of surface water, the right of an appropriator and owner of surface water shall be superior to any subsequent right hereby authorized to be acquired in or to groundwater. [1945 c 263 § 2; Rem. Supp. 1945 § 7400-2.]

RCW 90.44.035 Definitions. For purposes of this chapter:

- (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; and
- (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. [2000 c 98 § 2; 1987 c 109 § 107; 1973 c 94 § 2; 1945 c 263 § 3; RRS § 7400-3. Formerly RCW 90.44.010.]

Purpose—Short title—Construction—Rules—Severability—Captions—
1987 c 109: See notes following RCW 43.21B.001.

Purpose—1973 c 94: "It is the purpose of this 1973 amendatory act to state as well as reaffirm the intent of the legislature that "groundwaters," as defined in chapter 263, Laws of 1945, means all waters within the state existing beneath the land surface, and to remove any possible ambiguity which may exist as a result of the dissenting opinion in State v. Ponten, 77 Wn.2d 463 (1969), or otherwise, with regard to the meaning of "groundwaters" in the present wording of RCW 90.44.035. The definition set forth in section 2 of this 1973 amendatory act accords with the interpretation given by all of the various administrative agencies having responsibility for administration of the act since its enactment in 1945." [1973 c 94 § 1.] This applies to the amendment to RCW 90.44.035 by 1973 c 94 § 2.

RCW 90.44.040 Public groundwaters subject to appropriation.
Subject to existing rights, all natural groundwaters of the state as defined in RCW 90.44.035, also all artificial groundwaters that have been abandoned or forfeited, are hereby declared to be public groundwaters and to belong to the public and to be subject to appropriation for beneficial use under the terms of this chapter and not otherwise. [1945 c 263 § 4; Rem. Supp. 1945 § 7400-4.]

RCW 90.44.050 Permit to withdraw. After June 6, 1945, no withdrawal of public groundwaters of the state shall be begun, nor shall any well or other works for such withdrawal be constructed, unless an application to appropriate such waters has been made to the department and a permit has been granted by it as herein provided: 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: PROVIDED, FURTHER, That at the option of the party making withdrawals of groundwaters of the state not exceeding five thousand gallons per day, applications under this section or declarations under RCW 90.44.090 may be filed and permits and certificates obtained in

the same manner and under the same requirements as is in this chapter provided in the case of withdrawals in excess of five thousand gallons a day. [2003 c 307 § 1; 1987 c 109 § 108; 1947 c 122 § 1; 1945 c 263 § 5; Rem. Supp. 1947 § 7400-5.]

Purpose—Short title—Construction—Rules—Severability—Captions—
1987 c 109: See notes following RCW 43.21B.001.

RCW 90.44.052 Whitman county clustered residential developments pilot project—Exemption from permit requirements. (1) On a pilot project basis, the use of water for domestic use in clustered residential developments is exempt as described in subsection (2) of this section from the permit requirements of RCW 90.44.050 in Whitman county. The department must review the use of water under this section and its impact on water resources in the county and maintain information regarding the pilot project on its website.

(2) For the pilot project, the domestic use of water for a clustered residential development is exempt from the permit requirements of RCW 90.44.050 for an amount of water that is not more than one thousand two hundred gallons a day per residence for a residential development that has an overall density equal to or less than one residence per ten acres and a minimum of six homes.

(3) No new right to use water may be established for a clustered development under this section where the first residential use of water for the development begins after December 31, 2015. [2014 c 76 § 10; 2003 c 307 § 2.]

RCW 90.44.055 Applications for water right or amendment—Consideration of water impoundment or other resource management technique. The department shall, when evaluating an application for a water right or an amendment filed pursuant to RCW 90.44.050 or 90.44.100 that includes provision for any water impoundment or other resource management technique, take into consideration the benefits and costs, including environmental effects, of any water impoundment or other resource management technique that is included as a component of the application. The department's consideration shall extend to any increased water supply that results from the impoundment or other resource management technique, including but not limited to any recharge of groundwater that may occur, as a means of making water available or otherwise offsetting the impact of the withdrawal of groundwater proposed in the application for the water right or amendment in the same water resource inventory area. Provision for an impoundment or other resource management technique in an application shall be made solely at the discretion of the applicant and shall not be made by the department as a condition for approving an application that does not include such provision.

This section does not lessen, enlarge, or modify the rights of any riparian owner, or any existing water right acquired by appropriation or otherwise. [1997 c 360 § 3; 1996 c 306 § 2.]

Findings—Purpose—1997 c 360: See note following RCW 90.03.255.

RCW 90.44.060 Laws governing withdrawal. Applications for permits for appropriation of underground water shall be made in the same form and manner provided in RCW 90.03.250 through 90.03.340, as amended, the provisions of which sections are hereby extended to govern and to apply to groundwater, or groundwater right certificates and to all permits that shall be issued pursuant to such applications, and the rights to the withdrawal of groundwater acquired thereby shall be governed by RCW 90.03.250 through 90.03.340, inclusive: PROVIDED, That each application to withdraw public groundwater by means of a well or wells shall set forth the following additional information: (1) the name and post office address of the applicant; (2) the name and post office address of the owner of the land on which such well or wells or works will be located; (3) the location of the proposed well or wells or other works for the proposed withdrawal; (4) the groundwater area, sub-area, or zone from which withdrawal is proposed, provided the department has designated such area, sub-area, or zone in accord with RCW 90.44.130; (5) the amount of water proposed to be withdrawn, in gallons a minute and in acre feet a year, or millions of gallons a year; (6) the depth and type of construction proposed for the well or wells or other works: AND PROVIDED FURTHER, That any permit issued pursuant to an application for constructing a well or wells to withdraw public groundwater may specify an approved type and manner of construction for the purposes of preventing waste of said public waters and of conserving their head. [1987 c 109 § 109; 1945 c 263 § 6; Rem. Supp. 1945 § 7400-6.]

~~**Purpose—Short title—Construction—Rules—Severability—Captions—**~~
1987 c 109: See notes following RCW 43.21B.001.

RCW 90.44.062 Use of reclaimed water by wastewater treatment facility—Permit requirements inapplicable. The permit requirements of RCW 90.44.060 do not apply to the use of reclaimed water by the owner of a wastewater treatment facility under the provisions of RCW 90.46.120 and do not apply to the use of agricultural industrial process water as provided under RCW 90.46.150. [2001 c 69 § 7; 1997 c 444 § 3.]

~~**Severability—1997 c 444:**~~ See note following RCW 90.46.010.

RCW 90.44.070 Limitations on granting permit. No permit shall be granted for the development or withdrawal of public groundwaters beyond the capacity of the underground bed or formation in the given basin, district, or locality to yield such water within a reasonable or feasible pumping lift in case of pumping developments, or within a reasonable or feasible reduction of pressure in the case of artesian developments. The department shall have the power to determine whether the granting of any such permit will injure or damage any vested or existing right or rights under prior permits and may in addition to the records of the department, require further evidence, proof, and testimony before granting or denying any such permits. [1987 c 109 § 110; 1945 c 263 § 7; Rem. Supp. 1945 § 7400-7.]

~~**Purpose—Short title—Construction—Rules—Severability—Captions—**~~
1987 c 109: See notes following RCW 43.21B.001.

RCW 90.44.080 Certificate—Showing required. Upon a showing to the department that construction has been completed in compliance with the terms of any permit issued under the provisions of this chapter, it shall be the duty of the department to issue to the permittee a certificate of groundwater right stating that the appropriation has been perfected under such permit: PROVIDED, HOWEVER, That such showing shall include the following information: (1) the location of each well or other means of withdrawal constructed under the permit, both with respect to official land surveys and in terms of distance and direction to any preexisting well or wells or works constructed under an earlier permit or approved declaration of a vested right, provided the distance to such preexisting well or works is not more than a quarter of a mile; (2) the depth and diameter of each well or the depth and general specifications of any other works constructed under the terms of the permit; (3) the thickness in feet and the physical character of each bed, stratum, or formation penetrated by each well; (4) the length and position, in feet below the land surface, and the commercial specifications of all casing, also of each screen or perforated zone in the casing of each well constructed; (5) the tested capacity of each well in gallons a minute, as determined by measuring the discharge of the pump or pumps after continuous operation for at least four hours or, in the case of a flowing well, by measuring the natural flow at the land surface; (6) for each nonflowing well, the depth to the static groundwater level as measured in feet below the land surface immediately before the well-capacity test herein provided, also the draw-down of the water level, in feet, at the end of said well-capacity test; (7) for each flowing well, the shut-in pressure measured in feet above the land surface or in pounds per square inch at the land surface; and (8) such additional factual information as reasonably may be required by the department to establish compliance with the terms of the permit and with the provisions of this chapter.

The well driller or other constructor of works for the withdrawal of public groundwaters shall be obligated to furnish the permittee a certified record of the factual information necessary to show compliance with the provisions of this section. [1987 c 109 § 111; 1945 c 263 § 8; Rem. Supp. 1945 § 7400-8.]

Purpose—Short title—Construction—Rules—Severability—Captions—1987 c 109: See notes following RCW 43.21B.001.

RCW 90.44.090 Certificate of vested rights. Any person, firm or corporation claiming a vested right to withdraw public groundwaters of the state by virtue of prior beneficial use of such water shall, within three years after June 6, 1945, be entitled to receive from the department a certificate of groundwater right to that effect: PROVIDED, That the issuance by the department of any such certificate of vested right shall be contingent on a declaration by the claimant in a form prescribed by the department, which declaration shall set forth: (1) the beneficial use for which such withdrawal has been made; (2) the date or approximate date of the earliest beneficial use of the water so withdrawn, and the continuity of such beneficial use; (3) the amount of water claimed; (4) if the beneficial use has been for irrigation, the description of the land to which such water has been applied and the name of the owner thereof; and (5) so far as it may be

available, descriptive information concerning each well or other works for the withdrawal of public groundwater, as required of original permittees under the provisions of RCW 90.44.080: PROVIDED, HOWEVER, That in case of failure to comply with the provisions of this section within the three years allotted, the claimant may apply to the department for a reasonable extension of time, which shall not exceed two additional years and which shall be granted only upon a showing of good cause for such failure.

Each such declaration shall be certified, either on the basis of the personal knowledge of the declarant or on the basis of information and belief. With respect to each such declaration there shall be publication, and findings in the same manner as provided in RCW 90.44.060 in the case of an original application to appropriate water. If the department's findings sustain the declaration, the department shall approve said declaration, which then shall be recorded at length with the department and may also be recorded in the office of the county auditor of the county within which the claimed withdrawal and beneficial use of public groundwater have been made. When duly approved and recorded as herein provided, each such declaration or copies thereof shall have the same force and effect as an original permit granted under the provisions of RCW 90.44.060, with a priority as of the date of the earliest beneficial use of the water.

Declarations heretofore filed with the department in substantial compliance with the provisions of this section shall have the same force and effect as if filed after June 6, 1945.

The same fees shall be collected by the department in the case of applications for the issuance of certificates of vested rights, as are required to be collected in the case of application for permits for withdrawal of groundwaters and for the issuance of certificates of groundwater withdrawal rights under this chapter. [1987 c 109 § 112; 1947 c 122 § 2; 1945 c 263 § 9; Rem. Supp. 1947 § 7400-9.]

Purpose—Short title—Construction—Rules—Severability—Captions—
1987 c 109: See notes following RCW 43.21B.001.

RCW 90.44.100 Amendment to permit or certificate—Replacement or new additional wells—Exemption for small irrigation impoundments.

(1) After an application to, and upon the issuance by the department of an amendment to the appropriate permit or certificate of groundwater right, the holder of a valid right to withdraw public groundwaters may, without losing the holder's priority of right, construct wells or other means of withdrawal at a new location in substitution for or in addition to those at the original location, or the holder may change the manner or the place of use of the water.

(2) An amendment to construct replacement or a new additional well or wells at a location outside of the location of the original well or wells or to change the manner or place of use of the water shall be issued only after publication of notice of the application and findings as prescribed in the case of an original application. Such amendment shall be issued by the department only on the conditions that: (a) The additional or replacement well or wells shall tap the same body of public groundwater as the original well or wells; (b) where a replacement well or wells is approved, the use of the original well or wells shall be discontinued and the original well or wells shall be properly decommissioned as required under chapter

18.104 RCW; (c) where an additional well or wells is constructed, the original well or wells may continue to be used, but the combined total withdrawal from the original and additional well or wells shall not enlarge the right conveyed by the original permit or certificate; and (d) other existing rights shall not be impaired. The department may specify an approved manner of construction and shall require a showing of compliance with the terms of the amendment, as provided in RCW 90.44.080 in the case of an original permit.

(3) The construction of a replacement or new additional well or wells at the location of the original well or wells shall be allowed without application to the department for an amendment. However, the following apply to such a replacement or new additional well: (a) The well shall tap the same body of public groundwater as the original well or wells; (b) if a replacement well is constructed, the use of the original well or wells shall be discontinued and the original well or wells shall be properly decommissioned as required under chapter 18.104 RCW; (c) if a new additional well is constructed, the original well or wells may continue to be used, but the combined total withdrawal from the original and additional well or wells shall not enlarge the right conveyed by the original water use permit or certificate; (d) the construction and use of the well shall not interfere with or impair water rights with an earlier date of priority than the water right or rights for the original well or wells; (e) the replacement or additional well shall be located no closer than the original well to a well it might interfere with; (f) the department may specify an approved manner of construction of the well; and (g) the department shall require a showing of compliance with the conditions of this subsection (3).

(4) As used in this section, the "location of the original well or wells" is the area described as the point of withdrawal in the original public notice published for the application for the water right for the well.

(5) The development and use of a small irrigation impoundment, as defined in RCW 90.03.370(8), does not constitute a change or amendment for the purposes of this section. The exemption expressly provided by this subsection shall not be construed as requiring an amendment of any existing water right to enable the holder of the right to store water governed by the right. [2003 c 329 § 3; (2009 c 183 § 16 expired June 30, 2021); 1997 c 316 § 2; 1987 c 109 § 113; 1945 c 263 § 10; Rem. Supp. 1945 § 7400-10.]

Expiration date—2019 c 78; 2009 c 183: See note following RCW 90.03.380.

Intent—1997 c 316: "The legislature intends that the holder of a valid permit or certificate of groundwater right be permitted by the department of ecology to amend a valid permit or certificate to allow full and complete development of the valid right by the construction of replacement or additional wells at the original location or new locations." [1997 c 316 § 1.]

Purpose—Short title—Construction—Rules—Severability—Captions—1987 c 109: See notes following RCW 43.21B.001.

RCW 90.44.105 Amendment to permit or certificate—Consolidation of rights for exempt wells. Upon the issuance by the department of an amendment to the appropriate permit or certificate of groundwater right, the holder of a valid right to withdraw public groundwaters may consolidate that right with a groundwater right exempt from the permit requirement under RCW 90.44.050, without affecting the priority of either of the water rights being consolidated. Such a consolidation amendment shall be issued only after publication of a notice of the application, a comment period, and a determination made by the department, in lieu of meeting the conditions required for an amendment under RCW 90.44.100, that: (1) The exempt well taps the same body of public groundwater as the well to which the water right of the exempt well is to be consolidated; (2) use of the exempt well shall be discontinued upon approval of the consolidation amendment to the permit or certificate; (3) legally enforceable agreements have been entered to prohibit the construction of another exempt well to serve the area previously served by the exempt well to be discontinued, and such agreements are binding upon subsequent owners of the land through appropriate binding limitations on the title to the land; (4) the exempt well or wells the use of which is to be discontinued will be properly decommissioned in accordance with chapter 18.104 RCW and the rules of the department; and (5) other existing rights, including ground and surface water rights and minimum streamflows adopted by rule, shall not be impaired. The notice shall be published by the applicant in a newspaper of general circulation in the county or counties in which the wells for the rights to be consolidated are located once a week for two consecutive weeks. The applicant shall provide evidence of the publication of the notice to the department. The comment period shall be for thirty days beginning on the date the second notice is published.

The amount of the water to be added to the holder's permit or certificate upon discontinuance of the exempt well shall be the average withdrawal from the well, in gallons per day, for the most recent five-year period preceding the date of the application, except that the amount shall not be less than eight hundred gallons per day for each residential connection or such alternative minimum amount as may be established by the department in consultation with the department of health, and shall not exceed five thousand gallons per day. The department shall presume that an amount identified by the applicant as being the average withdrawal from the well during the most recent five-year period is accurate if the applicant establishes that the amount identified for the use or uses of water from the exempt well is consistent with the average amount of water used for similar use or uses in the general area in which the exempt well is located. The department shall develop, in consultation with the department of health, a schedule of average household and small-area landscaping water usages in various regions of the state to aid the department and applicants in identifying average amounts used for these purposes. The presumption does not apply if the department finds credible evidence of nonuse of the well during the required period or credible evidence that the use of water from the exempt well or the intensity of the use of the land supported by water from the exempt well is substantially different than such uses in the general area in which the exempt well is located. The department shall also accord a presumption in favor of approval of such consolidation if the requirements of this subsection are met and the discontinuance of the

exempt well is consistent with an adopted coordinated water system plan under chapter 70A.100 RCW, an adopted comprehensive land use plan under chapter 36.70A RCW, or other comprehensive watershed management plan applicable to the area containing an objective of decreasing the number of existing and newly developed small groundwater withdrawal wells. The department shall provide a priority to reviewing and deciding upon applications subject to this subsection, and shall make its decision within sixty days of the end of the comment period following publication of the notice by the applicant or within sixty days of the date on which compliance with the state environmental policy act, chapter 43.21C RCW, is completed, whichever is later. The applicant and the department may by prior mutual agreement extend the time for making a decision. [2021 c 65 § 102; 1997 c 446 § 1.]

Explanatory statement—2021 c 65: See note following RCW 53.54.030.

RCW 90.44.110 Waste of water prohibited—Exceptions. No public groundwaters that have been withdrawn shall be wasted without economical beneficial use. The department shall require all wells producing waters which contaminate other waters to be plugged or capped. The department shall also require all flowing wells to be so capped or equipped with valves that the flow of water can be completely stopped when the wells are not in use under the terms of their respective permits or approved declarations of vested rights. Likewise, the department shall also require both flowing and nonflowing wells to be so constructed and maintained as to prevent the waste of public groundwaters through leaky casings, pipes, fittings, valves, or pumps—either above or below the land surface: PROVIDED, HOWEVER, That the withdrawal of reasonable quantities of public groundwater in connection with the construction, development, testing, or repair of a well shall not be construed as waste; also, that the inadvertent loss of such water owing to breakage of a pump, valve, pipe, or fitting shall not be construed as waste if reasonable diligence is shown by the permittee in effecting the necessary repair.

In the issuance of an original permit, or of an amendment to an original permit or certificate of vested right to withdraw and appropriate public groundwaters under the provisions of this chapter, the department may, as in his or her judgment is necessary, specify for the proposed well or wells or other works a manner of construction adequate to accomplish the provisions of this section. [2013 c 23 § 611; 1987 c 109 § 114; 1949 c 63 § 1; 1945 c 263 § 11; Rem. Supp. 1949 § 7400-11.]

Purpose—Short title—Construction—Rules—Severability—Captions—1987 c 109: See notes following RCW 43.21B.001.

RCW 90.44.120 Penalty for waste or unauthorized use of water. The unauthorized use of groundwater to which another person is entitled, or the wilful or negligent waste of groundwater, or the failure, when required by the department, to cap flowing wells or equip the same with valves, fittings, or casings to prevent waste of groundwaters, or to cap or plug wells producing waters which

contaminate other waters, shall be a misdemeanor. [1987 c 109 § 115; 1949 c 63 § 2; 1947 c 122 § 3; Rem. Supp. 1949 § 7400-11A.]

~~Purpose—Short title—Construction—Rules—Severability—Captions—~~
1987 c 109: See notes following RCW 43.21B.001.

RCW 90.44.130 Priorities as between appropriators—Department in charge of groundwater withdrawals—Establishment and modification of groundwater areas and depth zones—Declarations by claimant of artificially stored water. As between appropriators of public groundwater, the prior appropriator shall as against subsequent appropriators from the same groundwater body be entitled to the preferred use of such groundwater to the extent of his or her appropriation and beneficial use, and shall enjoy the right to have any withdrawals by a subsequent appropriator of groundwater limited to an amount that will maintain and provide a safe sustaining yield in the amount of the prior appropriation. The department shall have jurisdiction over the withdrawals of groundwater and shall administer the groundwater rights under the principle just set forth, and it shall have the jurisdiction to limit withdrawals by appropriators of groundwater so as to enforce the maintenance of a safe sustaining yield from the groundwater body. For this purpose, the department shall have authority and it shall be its duty from time to time, as adequate factual data become available, to designate groundwater areas or subareas, to designate separate depth zones within any such area or subarea, or to modify the boundaries of such existing area, or subarea, or zones to the end that the withdrawals therefrom may be administratively controlled as prescribed in RCW 90.44.180 in order that overdraft of public groundwaters may be prevented so far as is feasible. Each such area or zone shall, as nearly as known facts permit, be so designated as to enclose a single and distinct body of public groundwater. Each such subarea may be so designated as to enclose all or any part of a distinct body of public groundwater, as the department deems will most effectively accomplish the purposes of this chapter.

Designation of, or modification of the boundaries of such a groundwater area, subarea, or zone may be proposed by the department on its own motion or by petition to the department signed by at least fifty or one-fourth, whichever is the lesser number, of the users of groundwater in a proposed groundwater area, subarea, or zone. Before any proposed groundwater area, subarea, or zone shall be designated, or before the boundaries or any existing groundwater area, subarea, or zone shall be modified the department shall publish a notice setting forth: (1) In terms of the appropriate legal subdivisions a description of all lands enclosed within the proposed area, subarea, or zone, or within the area, subarea, or zone whose boundaries are proposed to be modified; (2) the object of the proposed designation or modification of boundaries; and (3) the day and hour, and the place where written objections may be submitted and heard. Such notice shall be published in three consecutive weekly issues of a newspaper of general circulation in the county or counties containing all or the greater portion of the lands involved, and the newspaper of publication shall be selected by the department. Publication as just prescribed shall be construed as sufficient notice to the landowners and water users concerned.

Objections having been heard as herein provided, the department shall make and file in its office written findings of fact with respect to the proposed designation or modification and, if the findings are in the affirmative, shall also enter a written order designating the groundwater area, or subarea, or zone or modifying the boundaries of the existing area, subarea, or zone. Such findings and order shall also be published substantially in the manner herein prescribed for notice of hearing, and when so published shall be final and conclusive unless an appeal therefrom is taken within the period and in the manner prescribed by RCW 43.21B.310. Publication of such findings and order shall give force and effect to the remaining provisions of this section and to the provisions of RCW 90.44.180, with respect to the particular area, subarea, or zone.

Priorities of right to withdraw public groundwater shall be established separately for each groundwater area, subarea, or zone and, as between such rights, the first in time shall be the superior in right. The priority of the right acquired under a certificate of groundwater right shall be the date of filing of the original application for a withdrawal with the department, or the date or approximate date of the earliest beneficial use of water as set forth in a certificate of a vested groundwater right, under the provisions of RCW 90.44.090.

Within ninety days after the designation of a groundwater area, subarea, or zone as herein provided, any person, firm, or corporation then claiming to be the owner of artificially stored groundwater within such area, subarea, or zone shall file a certified declaration to that effect with the department on a form prescribed by the department. Such declaration shall cover: (1) The location and description of the works by whose operation such artificial groundwater storage is purported to have been created, and the name or names of the owner or owners thereof; (2) a description of the lands purported to be underlain by such artificially stored groundwater, and the name or names of the owner or owners thereof; (3) the amount of such water claimed; (4) the date or approximate date of the earliest artificial storage; (5) evidence competent to show that the water claimed is in fact water that would have been dissipated naturally except for artificial improvements by the claimant; and (6) such additional factual information as reasonably may be required by the department. If any of the purported artificially stored groundwater has been or then is being withdrawn, the claimant also shall file (1) the declarations which this chapter requires of claimants to a vested right to withdraw public groundwaters, and (2) evidence competent to show that none of the water withdrawn under those declarations is in fact public groundwater from the area, subarea, or zone concerned: PROVIDED, HOWEVER, That in case of failure to file a declaration within the ninety-day period herein provided, the claimant may apply to the department for a reasonable extension of time, which shall not exceed two additional years and which shall be granted only upon a showing of good cause for such failure.

Following publication of the declaration and findings—as in the case of an original application, permit, or certificate of right to appropriate public groundwaters—the department shall accept or reject such declaration or declarations with respect to ownership or withdrawal of artificially stored groundwater. Acceptance of such declaration or declarations by the department shall convey to the declarant no right to withdraw public groundwaters from the particular

area, subarea, or zone, nor to impair existing or subsequent rights to such public waters.

Any person, firm, or corporation hereafter claiming to be the owner of groundwater within a designated groundwater area, subarea, or zone by virtue of its artificial storage subsequent to such designation shall, within three years following the earliest artificial storage file a declaration of claim with the department, as herein prescribed for claims based on artificial storage prior to such designation: PROVIDED, HOWEVER, That in case of such failure the claimant may apply to the department for a reasonable extension of time, which shall not exceed two additional years and which shall be granted upon a showing of good cause for such failure.

Any person, firm, or corporation hereafter withdrawing groundwater claimed to be owned by virtue of artificial storage subsequent to designation of the relevant groundwater area, subarea, or zone shall, within ninety days following the earliest such withdrawal, file with the department the declarations required by this chapter with respect to withdrawals of public groundwater. [2013 c 23 § 612; 1987 c 109 § 116; 1947 c 122 § 4; 1945 c 263 § 12; Rem. Supp. 1947 § 7400-12. Formerly RCW 90.44.130 through 90.44.170.]

Purpose—Short title—Construction—Rules—Severability—Captions—
1987 c 109: See notes following RCW 43.21B.001.

RCW 90.44.180 Hearing to adjust supply to current needs. At any time the department may hold a hearing on its own motion, and shall hold a hearing upon petition of at least fifty or one-fourth, whichever is the lesser number, of the holders of valid rights to withdraw public groundwaters from any designated groundwater area, sub-area, or zone, to determine whether the water supply in such area, sub-area, or zone is adequate for the current needs of all such holders. Notice of any such hearing, and the findings and order resulting therefrom shall be published in the manner prescribed in RCW 90.44.130 with respect to the designation or modification of a groundwater area, or sub-area, or zone.

If such hearing finds that the total available supply is inadequate for the current needs of all holders of valid rights to withdraw public groundwaters from the particular groundwater area, sub-area, or zone, the department shall order the aggregate withdrawal from such area, sub-area, or zone decreased so that it shall not exceed such available supply. Such decrease shall conform to the priority of the pertinent valid rights and shall prevail for the term of shortage in the available supply. Except that by mutual agreement among the respective holders and with the department, the ordered decrease in aggregate withdrawal may be accomplished by the waiving of all or some specified part of a senior right or rights in favor of a junior right or rights: PROVIDED, That such waiving of a right or rights by agreement shall not modify the relative priorities of such right or rights as recorded in the department. [1987 c 109 § 117; 1945 c 263 § 13; Rem. Supp. 1945 § 7400-13.]

Purpose—Short title—Construction—Rules—Severability—Captions—
1987 c 109: See notes following RCW 43.21B.001.

RCW 90.44.200 Water supervisors—Duties—Compensation. The department, as in its judgment is deemed necessary and advisable, may appoint one or more groundwater supervisors for each designated groundwater area, sub-area, or zone, or may appoint one or more groundwater supervisors-at-large. Within their respective jurisdictions and under the direction of the department, such supervisor and supervisors-at-large shall supervise the withdrawal of public groundwaters and the carrying out of orders issued by the department under the provisions of this chapter.

The duties, compensation, and authority of such supervisors or supervisors-at-large shall be those prescribed for water masters under the terms of RCW 90.03.060 and 90.03.070. [1987 c 109 § 118; 1945 c 263 § 15; Rem. Supp. 1945 § 7400-15.]

Purpose—Short title—Construction—Rules—Severability—Captions—1987 c 109: See notes following RCW 43.21B.001.

Water master's power of arrest: RCW 90.03.090.

RCW 90.44.220 Petition to conduct an adjudication to determine rights to water. Upon the filing of a petition with the department by a planning unit or by one or more persons claiming a right to any waters within the state or when, after investigation, in the judgment of the department, the public interest will be served by a determination of the rights thereto, the department shall file a petition to conduct an adjudication with the superior court of the county for the determination of the rights of appropriators of any particular groundwater body and all the provisions of RCW 90.03.110 through 90.03.240 and 90.03.620 through 90.03.645, shall govern and apply to the adjudication and determination of such groundwater body and to the ownership thereof. Hereafter, in any proceedings for the adjudication and determination of water rights—either rights to the use of surface water or to the use of groundwater, or both—pursuant to chapter 90.03 RCW, all appropriators of groundwater or of surface water in the particular basin or area may be included as parties to such adjudication, as set forth in chapter 90.03 RCW. [2009 c 332 § 17; 1987 c 109 § 119; 1945 c 263 § 17; Rem. Supp. 1945 § 7400-17.]

Application—2009 c 332: See note following RCW 90.03.110.

Purpose—Short title—Construction—Rules—Severability—Captions—1987 c 109: See notes following RCW 43.21B.001.

Additional powers and duties enumerated—Payment from reclamation account: RCW 89.16.055.

Application of RCW sections to specific proceedings: RCW 90.14.200.

Determination of water rights

scope: RCW 90.03.245.

state to bear its expenses incurred in and on appeal: RCW 90.03.243.

RCW 90.44.230 Effect of findings and judgment. In any determination of the right to withdrawal of groundwater under RCW 90.44.220, the department's findings and the court's findings and judgment shall determine the priority of right and the quantity of water to which each appropriator who is a party to the proceedings shall be entitled, shall determine the level below which the groundwater body shall not be drawn down by appropriators, or shall reserve jurisdiction for the determination of a safe sustaining water yield as necessary from time to time to preserve the rights of the several appropriators and to prevent depletion of the groundwater body. [1987 c 109 § 120; 1945 c 263 § 18; Rem. Supp. 1945 § 7400-18.]

~~**Purpose—Short title—Construction—Rules—Severability—Captions—**~~
1987 c 109: See notes following RCW 43.21B.001.

RCW 90.44.250 Investigations—Reports of appropriators. The department is hereby authorized to make such investigations as may be necessary to determine the location, extent, depth, volume, and flow of all groundwaters within the state and in making such examination, hereby is authorized and directed to cooperate with the federal government, with any county or municipal corporation, or any person, firm, association or corporation, and upon such terms as may seem appropriate to it.

In connection with such investigation, the department from time to time may require reports from each groundwater appropriator as to the amount of public groundwater being withdrawn and as to the manner and extent of the beneficial use. Such reports shall be in a form prescribed by the department. [1987 c 109 § 121; 1945 c 263 § 19; Rem. Supp. 1945 § 7400-19. Formerly RCW 90.44.210.]

~~**Purpose—Short title—Construction—Rules—Severability—Captions—**~~
1987 c 109: See notes following RCW 43.21B.001.

RCW 90.44.400 Groundwater management areas—Purpose—Standards—Identification—Designation. (1) This legislation is enacted for the purpose of identifying groundwater management procedures that are consistent with both local needs and state water resource policies and management objectives; including the protection of water quality, assurance of quantity, and efficient management of water resources to meet future needs.

In recognition of existing water rights and the need to manage groundwater aquifers for future use, the department of ecology shall, by rule, establish standards, criteria, and a process for the designation of specific groundwater areas or sub-areas, or separate depth zones within such area or sub-area, and provide for either the department of ecology, local governments, or groundwater users of the area to initiate development of a groundwater management program for each area or sub-area, consistent with state and local government objectives, policies, and authorities. The department shall develop and adopt these rules by January 1, 1986.

(2) The department of ecology, in cooperation with other state agencies, local government, and user groups, shall identify probable groundwater management areas or sub-areas. The department shall also prepare a general schedule for the development of groundwater

management programs that recognizes the available local or state agency staff and financial resources to carry out the intent of RCW 90.44.400 through 90.44.420. The department shall also provide the option for locally initiated studies and for local government to assume the lead agency role in developing the groundwater management program and in implementing the provisions of RCW 90.44.400 through 90.44.420. The criteria to guide identification of the groundwater areas or sub-areas shall include but not be limited to, the following:

(a) Aquifer systems that are declining due to restricted recharge or over-utilization;

(b) Aquifer systems in which overappropriation may have occurred and adjudication of water rights has not yet been completed;

(c) Aquifer systems currently being considered for water supply reservation under chapter 90.54 RCW for future beneficial uses;

(d) Aquifers identified as the primary source of supply for public water supply systems;

(e) Aquifers designated as a sole source aquifer by the federal environmental protection agency; and

(f) Geographical areas where land use may result in contamination or degradation of the groundwater quality.

(3) In developing the groundwater management programs, priority shall be given to areas or sub-areas where water quality is imminently threatened. [1985 c 453 § 1.]

**RCW 90.44.410 Requirements for groundwater management programs—
Review of programs.** (1) The groundwater area or sub-area management programs shall include:

(a) A description of the specific groundwater area or sub-areas, or separate depth zones within any such area or sub-area, and the relationship of this zone or area to the land use management responsibilities of county government;

(b) A management program based on long-term monitoring and resource management objectives for the area or sub-area;

(c) Identification of water resources and the allocation of the resources to meet state and local needs;

(d) Projection of water supply needs for existing and future identified user groups and beneficial uses;

(e) Identification of water resource management policies and/or practices that may impact the recharge of the designated area or policies that may affect the safe yield and quantity of water available for future appropriation;

(f) Identification of land use and other activities that may impact the quality and efficient use of the groundwater, including domestic, industrial, solid, and other waste disposal, underground storage facilities, or stormwater management practices;

(g) The design of the program necessary to manage the resource to assure long-term benefits to the citizens of the state;

(h) Identification of water quality objectives for the aquifer system which recognize existing and future uses of the aquifer and that are in accordance with department of ecology and department of social and health services drinking and surface water quality standards;

(i) Long-term policies and construction practices necessary to protect existing water rights and subsequent facilities installed in

accordance with the groundwater area or sub-area management programs and/or other water right procedures;

(j) Annual withdrawal rates and safe yield guidelines which are directed by the long-term management programs that recognize annual variations in aquifer recharge;

(k) A description of conditions and potential conflicts and identification of a program to resolve conflicts with existing water rights;

(l) Alternative management programs to meet future needs and existing conditions, including water conservation plans; and

(m) A process for the periodic review of the groundwater management program and monitoring of the implementation of the program.

(2) The groundwater area or sub-area management programs shall be submitted for review in accordance with the state environmental policy act. [1988 c 186 § 1; 1985 c 453 § 2.]

Effective date—1988 c 186 § 1: "Section 1 of this act shall take effect June 30, 1998." [1988 c 186 § 2.]

RCW 90.44.420 Groundwater management programs—Consideration by department of ecology—Public hearing—Findings—Adoption of regulations, ordinances, and programs. The department of ecology shall consider the groundwater area or sub-area management plan for adoption in accordance with this chapter and chapter 90.54 RCW.

Upon completion of the groundwater area or sub-area management program, the department of ecology shall hold a public hearing within the designated groundwater management area for the purpose of taking public testimony on the proposed program. Following the public hearing, the department of ecology and affected local governments shall (1) prepare findings which either provide for the subsequent adoption of the program as proposed or identify the revisions necessary to ensure that the program is consistent with the intent of this chapter, and (2) adopt regulations, ordinances, and/or programs for implementing those provisions of the groundwater management program which are within their respective jurisdictional authorities. [1985 c 453 § 3.]

RCW 90.44.430 Groundwater management programs—Guidance to local governments and certain departments. The department of ecology, the department of social and health services, and affected local governments shall be guided by the adopted program when reviewing and considering approval of all studies, plans, and facilities that may utilize or impact the implementation of the program. [1985 c 453 § 4.]

RCW 90.44.440 Existing rights not affected. RCW 90.44.400 through 90.44.430 shall not affect any water rights existing as of May 21, 1985. [1985 c 453 § 5.]

RCW 90.44.445 Acreage expansion program—Authorization—Certification. In any acreage expansion program adopted by the

department as an element of a groundwater management program, the authorization for a water right certificate holder to participate in the program shall be on an annual basis for the first two years. After the two-year period, the department may authorize participation for ten-year periods. The department may authorize participation for ten-year periods for certificate holders who have already participated in an acreage expansion program for two years. The department may require annual certification that the certificate holder has complied with all requirements of the program. The department may terminate the authority of a certificate holder to participate in the program for one calendar year if the certificate holder fails to comply with the requirements of the program. [1993 c 99 § 1.]

RCW 90.44.450 Metering or measuring groundwater withdrawals—Reports. The department of ecology may require withdrawals of groundwater to be metered, or measured by other approved methods, as a condition for a new water right permit. The department may also require, as a condition for such permits, reports regarding such withdrawals as to the amount of water being withdrawn. These reports shall be in a form prescribed by the department. [1989 c 348 § 7.]

Severability—1989 c 348: See note following RCW 90.54.020.

Rights not impaired—1989 c 348: See RCW 90.54.920.

RCW 90.44.460 Reservoir permits. The legislature recognizes the importance of sound water management. In an effort to promote new and innovative methods of water storage, the legislature authorizes the department of ecology to issue reservoir permits that enable an entity to artificially store and recover water in any underground geological formation, which qualifies as a reservoir under RCW 90.03.370. [2000 c 98 § 1.]

RCW 90.44.500 Civil penalties. See RCW 90.03.600.

RCW 90.44.510 Superseding water right permit or certificate—Water delivered from federal Columbia Basin project. The department shall issue a superseding water right permit or certificate for a groundwater right where the source of water is an aquifer for which the department adopts rules establishing a groundwater management subarea and water from the federal Columbia Basin project is delivered for use by a person who holds such a groundwater right. The superseding water right permit or certificate shall designate that portion of the groundwater right that is replaced by water from the federal Columbia Basin project as a standby or reserve right that may be used when water delivered by the federal project is curtailed or otherwise not available. The period of curtailment or unavailability shall be deemed a low flow period under RCW 90.14.140(2)(b). The total number of acres irrigated by the person under the groundwater right and through the use of water delivered from the federal project must not exceed the quantity of water authorized by the federal bureau of reclamation and number of acres irrigated under the person's water

right permit or certificate for the use of water from the aquifer.
[2011 c 72 § 1; 2004 c 195 § 3.]

RCW 90.44.530 Applications to appropriate groundwater under a cost-reimbursement agreement. Applications to appropriate groundwater under a cost-reimbursement agreement must be processed in accordance with RCW 90.03.265 when an applicant requests the assignment of a cost-reimbursement consultant as provided in RCW 43.21A.690. [2010 c 285 § 11.]

Intent—2010 c 285: See note following RCW 90.03.265.

RCW 90.44.540 Expedited processing of applications—Notification—Fees. (1) The department may expedite processing of applications within the same source of water on its own volition when there is interest from a sufficient number of applicants or upon receipt of written requests from at least ten percent of the applicants within the same source of water.

(2) If the conditions of subsection (1) of this section have been met and the department determines that the public interest is best served by expediting applications within a water source, the department must notify in writing all persons who have pending applications on file for a new appropriation, change, transfer, or amendment of a water right from that water source. A water source may include surface water only, groundwater only, or surface and groundwater together if the department determines that they are hydraulically connected. The notice must be posted on the department's website and published in a newspaper of general circulation in the area where affected properties are located. The notice must also be made individually by way of mail to:

- (a) Inform those applicants that expedited processing of applications within the described water source is being initiated;
- (b) Provide to individual applicants the criteria under which the applications will be examined and determined;
- (c) Provide to individual applicants the estimated cost for having an application processed on an expedited basis;
- (d) Provide an estimate of how long the expedited process will take before an application is approved or denied; and
- (e) Provide at least sixty days for the applicants to respond in writing regarding the applicant's decision to participate in expedited processing of their applications.

(3) In addition to the application fees provided in RCW 90.03.470, the department must recover the full cost of processing all the applications from applicants who elect to participate within the water source through expedited processing fees. The department must calculate an expedited processing fee based primarily on the proportionate quantity of water requested by each applicant and may adjust the fee if it appears that an application will require a disproportionately greater amount of time and effort to process due to its complexity. Any application fees that were paid by the applicant under RCW 90.03.470 must be credited against the applicant's share of the cost of processing applications under the provisions of this section.

(4) The expedited processing fee must be collected by the department prior to the expedited processing of an application. Revenue collected from these fees must be deposited into the water rights processing account created in RCW 90.03.650. An applicant who has stated in writing that he or she wants his or her application processed using the expedited procedures in this section must transmit the processing fee within sixty days of the written request. Failure to do so will result in the applicant not being included in expedited processing for that water source.

(5) If an applicant elects not to participate in expedited processing, the application remains on file with the department, the applicant retains his or her priority date, and the application may be processed through regular processing, priority processing, expedited processing, coordinated cost-reimbursement processing, cost-reimbursement processing, or through conservancy board processing as authorized under chapter 90.80 RCW. Such an application may not be processed through expedited processing within twelve months after the department's issuance of decisions on participating applications at the conclusion of expedited processing unless the applicant agrees to pay the full proportionate share that would otherwise have been paid during such processing. Any proceeds collected from an applicant under this delayed entry into expedited processing shall be used to reimburse the other applicants who participated in the previous expedited processing of applications, provided sufficient proceeds remain to fully cover the department's cost of processing the delayed entry application and the department's estimated administrative costs to reimburse the previously expedited applicants. [2010 c 285 § 12.]

Intent—2010 c 285: See note following RCW 90.03.265.

RCW 90.44.550 Odessa groundwater subarea—Nonuse of a water right—Notice to the department—Conditions. (1) In order to encourage more efficient use of water, where the source of water is an aquifer within the Odessa groundwater subarea as defined in chapter 173-128A WAC:

(a) Any period of nonuse of a right to withdraw groundwater from the aquifer is deemed to be involuntary due to a drought or low flow period under RCW 90.14.140(2)(b); and

(b) Such unused water is deemed a standby or reserve water supply that may again be used after the period of nonuse, as long as: (i) Reductions in water use are a result of conservation practices, irrigation or water use efficiencies, long or short-term changes in the types or rotations of crops grown, economic hardship, pumping or system infrastructure costs, unavailability or unsuitability of water, or willing and documented participation in cooperative efforts to reduce aquifer depletion and optimize available water resources; (ii) withdrawal or diversion facilities are maintained in good operating condition; and (iii) the department has not issued a superseding water right permit or certificate to designate a portion of the groundwater right replaced by federal Columbia basin project water as a standby or reserve right under RCW 90.44.510.

(2) (a) A water right holder choosing to not exercise a water right in accordance with the provisions of this section must provide notice to the department in writing within 180 days of such a choice.

The notice must include the name of the water right holder and the number of the permit, certificate, or claim.

(b) When a water right holder chooses to discontinue nonuse under the provisions of this section, notice of such action must be provided to the department in writing. Notice is not required under this subsection (2)(b) for seasonal fluctuations in use if the right is not fully exercised as reflected in the notice provided under (a) of this subsection.

(c) A water right holder who submitted notice under RCW 90.44.520(2)(a) as it existed on June 30, 2021, is deemed to have provided notice under (a) of this subsection.

(3) The provisions of this section relating to the nonuse of all or a portion of a water right are in addition to any other provisions relating to such nonuse under existing law.

(4) If water from the federal Columbia basin project has been delivered to a place of use authorized under a right to withdraw groundwater from the aquifer, the provisions of RCW 90.44.510 apply and supersede the provisions of this section.

(5) Portions of rights protected under this section may not be transferred outside Odessa subarea boundaries as defined in WAC 173-128A-040. Transfers within Odessa subarea boundaries remain subject to the provisions of RCW 90.03.380, 90.03.390, 90.44.100, and WAC 173-130A-200. [2022 c 60 § 2.]

Finding—2022 c 60: "In 2006, the legislature approved chapter 168, Laws of 2006 (Engrossed Substitute Senate Bill No. 6151) in order to encourage the efficient use of water in the Odessa subarea. Chapter 168, Laws of 2006 (Engrossed Substitute Senate Bill No. 6151) expired in July of 2021. The legislature finds that this program was effective and is necessary." [2022 c 60 § 1.]