

Chapter 90.40 RCW
WATER RIGHTS OF UNITED STATES

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RCW 90.40.010 Eminent domain by the United States. The United States is hereby granted the right to exercise the power of eminent domain to acquire the right to the use of any water, to acquire or extinguish any rights, and to acquire any lands or other property, for the construction, operation, repairs to, maintenance or control of any plant or system of works for the storage, conveyance, or use of water for irrigation purposes, and whether such water, rights, lands or other property so to be acquired belong to any private party, association, corporation or to the state of Washington, or any municipality thereof; and such power of eminent domain shall be exercised under and by the same procedure as now is or may be hereafter provided by the law of this state for the exercise of the right of eminent domain by ordinary railroad corporations, except that the United States may exercise such right in the proper court of the United States as well as the proper state court. [1905 c 88 § 1; RRS § 7408.]

Condemnation by corporations: Chapter 8.20 RCW.

Eminent domain, railroads—Corporate powers and duties: RCW 81.36.010.

Special railroad eminent domain proceedings: RCW 8.20.140, 28B.20.330, 81.36.020, 81.36.060, 81.53.180.

RCW 90.40.020 Right to use water courses. The United States shall have the right to turn into any natural or artificial water course, any water that it may have acquired the right to store, divert, or store and divert, and may again divert and reclaim said waters from said water course for irrigation purposes subject to existing rights. [1905 c 88 § 2; RRS § 7409.]

RCW 90.40.030 Notice and certificate, effect of. Whenever the secretary of the interior of the United States, or any officer of the United States duly authorized, shall notify the commissioner of public lands of this state that pursuant to the provisions of the act of

Congress approved June 17, 1902, entitled, "An act appropriating the receipts from the sale and disposal of public lands in certain states and territories to the construction of irrigation works for the reclamation of arid lands," or any amendment of said act or substitute therefor, the United States intends to make examinations or surveys for the utilization of certain specified waters, the waters so described shall not thereafter be subject to appropriation under any law of this state for a period of one year from and after the date of the receipt of such notice by such commissioner of public lands; but such notice shall not in any wise affect the appropriation of any water theretofore in good faith initiated under any law of this state, but such appropriation may be completed in accordance with the law in the same manner and to the same extent as though such notice had not been given. No adverse claim to any of such waters initiated subsequent to the receipt by the commissioner of public lands of such notice shall be recognized, under the laws of this state, except as to such amount of the waters described in such notice or certificate hereinafter provided as may be formally released in writing by a duly authorized officer of the United States. If the said secretary of the interior or other duly authorized officer of the United States shall, before the expiration of said period of one year, certify in writing to the said commissioner of public lands that the project contemplated in such notice appears to be feasible and that the investigation will be made in detail, the waters specified in such notice shall not be subject to appropriation under any law of this state for the further period of three years following the date of receipt of such certificate, and such further time as the commissioner of public lands may grant, upon application of the United States or some one of its authorized officers and notice thereof first published once in each week for four consecutive weeks in a newspaper published in the county where the works for the utilization of such waters are to be constructed, and if such works are to be in or extend into two or more counties, then for the same period in a newspaper in each of such counties: PROVIDED, That in case such certificate shall not be filed with said commissioner of public lands within the period of one year herein limited therefor the waters specified in such notice shall, after the expiration of said period of one year, become unaffected by such notice and subject to appropriation as they would have been had such notice never been given: AND PROVIDED FURTHER, That in case such certificate be filed within said one year and the United States does not authorize the construction of works for the utilization of such waters within said three years after the filing of said certificate, then the waters specified in such notice and certificate shall, after the expiration of said last named period of three years, become unaffected by such notice or certificate and subject to appropriation as they would have been had such notice never been given and such certificate never filed. [1905 c 88 § 3; RRS § 7410.]

Reviser's note: This section refers to the "commissioner of public lands" in several instances. Note that a later act, the 1917 Water Code, in section 27 (RCW 90.03.250) states in part:

"PROVIDED, FURTHER, That nothing in this act contained shall be deemed to affect chapter 88 of the Laws of 1905 except that the notice and certificate therein provided for in section 3 thereof shall be addressed to the state hydraulic engineer after the passage of this act, and the state hydraulic engineer shall exercise the powers and perform the duties prescribed by said section 3."

Chapter 88, Laws of 1905 referred to in the above quotation is the instant chapter and "section 3" is the instant section. The language "this act" in the above quotation refers to the 1917 Water Code codified as chapter 90.03 RCW. The "state hydraulic engineer" referred to in the quotation has been changed throughout the remainder of this title because of the devolution of the powers and duties to "supervisor of water resources", see note following the title digest. Thus, the language "commissioner of public lands" is retained in the instant section and in RCW 90.40.050 and 90.40.060 because while some of the duties have been transferred to the hydraulic engineer thence to the supervisor of water resources not all of such duties prescribed in this chapter have so devolved.

RCW 90.40.040 Appropriation of water—Title to beds and shores.

Whenever said secretary of the interior or other duly authorized officer of the United States shall cause to be let a contract for the construction of any irrigation works or any works for the storage of water for use in irrigation, or any portion or section thereof, for which the withdrawal has been effected as provided in RCW 90.40.030, any authorized officer of the United States, either in the name of the United States or in such name as may be determined by the secretary of the interior, may appropriate, in behalf of the United States, so much of the unappropriated waters of the state as may be required for the project, or projects, for which water has been withdrawn or reserved under RCW 90.40.030, including any and all divisions thereof, theretofore constructed, in whole or in part, by the United States or proposed to be thereafter constructed by the United States, such appropriation to be made, maintained and perfected in the same manner and to the same extent as though such appropriation had been made by a private person, corporation or association, except that the date of priority as to all rights under such appropriation in behalf of the United States shall relate back to the date of the first withdrawal or reservation of the waters so appropriated, and in case of filings on water previously withdrawn under RCW 90.40.030, no payment of fees will be required. Such appropriation by or on behalf of the United States shall inure to the United States, and its successors in interest, in the same manner and to the same extent as though said appropriation had been made by a private person, corporation or association. The title to the beds and shores of any navigable lake or stream utilized by the construction of any reservoir or other irrigation works created or constructed as a part of such appropriation hereinbefore in this section provided for, shall vest in the United States to the extent necessary for the maintenance, operation and control of such reservoir or other irrigation works. [1929 c 95 § 1; 1905 c 88 § 4; RRS § 7411.]

RCW 90.40.050 Reservation of needed lands—Procedure. When the notice provided for in RCW 90.40.030 shall be given to the commissioner of public lands the proper officers of the United States may file with the said commissioner a list of lands (including in the term "lands" as here used, the beds and shores of any lake, river, stream, or other waters) owned by the state, over or upon which the United States may require rights-of-way for canals, ditches or laterals or sites for reservoirs and structures therefor or

appurtenant thereto, or such additional rights-of-way and quantity of land as may be required for the operation and maintenance of the completed works for the irrigation project contemplated in such notice, and the filing of such list shall constitute a reservation from the sale or other disposal by the state of such lands so described, which reservation shall, upon the completion of such works and upon the United States by its proper officers filing with the commissioner of public lands of the state a description of such lands by metes and bounds or other definite description, ripen into a grant from the state to the United States. The state, in the disposal of lands granted from the United States to the state, shall reserve for the United States rights-of-way for ditches, canals, laterals, telephone and transmission lines which may be required by the United States for the construction, operation and maintenance of irrigation works. [1905 c 88 § 5; RRS § 7412.]

Reviser's note: See note following RCW 90.40.030.

RCW 90.40.060 Restrictions on sale of state lands within project. After the receipt by the commissioner of public lands of the notice from the secretary of the interior or other officer of the United States provided for in RCW 90.40.030, no lands belonging to the state, susceptible of irrigation and within the area to be irrigated from the works projected by the United States and specified in such notice shall be sold except in conformity to the classification of farm units by the United States, and the title to such lands shall not pass from the state until the applicant therefor shall have fully complied with the provisions of the laws of the United States and the regulations thereunder concerning the acquisition of the right to use water from such works and shall produce the evidence thereof duly issued: PROVIDED, That the restrictions upon the sale or other disposal by the state of any state lands provided for in this section shall continue for the same periods, respectively, and upon the same conditions, as specified in RCW 90.40.030 for the withdrawal of waters from appropriation: AND PROVIDED FURTHER, That in case the authorization by the United States for the construction of irrigation works pursuant to RCW 90.40.030 shall be made within the period of three years specified therefor in said section, then the restrictions upon and conditions prescribed for the sale or other disposal of said lands in this section shall continue so long as any such lands shall remain unsold or not disposed of. [1905 c 88 § 6; RRS § 7413.]

Reviser's note: See note following RCW 90.40.030.

RCW 90.40.070 Federal water users' association—Exemption from fees. Any water users' association which is organized in conformity with the requirements of the United States under said act of congress, and which under its articles of incorporation is authorized to furnish water only to its stockholders, shall be exempt from the payment of any incorporation tax, and from the payment of any annual franchise tax; but shall be required to pay, as preliminary to its incorporation, only a fee of twenty dollars for the filing and recording of its articles of incorporation and the issuance of certificates of incorporation. Whenever, with the consent of the secretary of the interior of the United States, the stockholders of

any such association shall adopt any other form of organization to manage the affairs of such reclamation project in connection with which any such water users' association has been organized, such association may dissolve or disincorporate itself by the procedure and subject to the laws relating to the disincorporation of corporations in this state when such dissolution is authorized by a vote of two-thirds of all the stockholders represented at a meeting of the stockholders called for such purpose. [1919 c 42 § 1; 1905 c 88 § 7; RRS § 7414.]

Corporations and associations (nonprofit): Title 24 RCW.

RCW 90.40.080 Federal water users' association—Records by county auditor. It shall be the duty of the county auditor to provide record books containing printed forms of the articles of incorporation and stock subscriptions to the stock of water users' associations organized in conformity with the requirements of the United States under said act of congress, and to use such books for recording stock subscriptions of such associations; and the charges for the recording thereof shall be made on the basis of the number of words actually written therein and not for the printed form. [1905 c 88 § 8; RRS § 7415.]

RCW 90.40.090 Permit for Grand Coulee project. An application filed by the department of ecology or its assignee, the United States Bureau of Reclamation, for a permit to appropriate waters of the Columbia River under chapter 90.03 RCW, for the development of the Grand Coulee project shall be perfected in the same manner and to the same extent as though such appropriation had been made by a private person, corporation or association, but no fees, as provided for in RCW 90.03.470, shall be required. [1988 c 127 § 83; 1933 ex.s. c 13 § 4; RRS § 7399-1, pocket part.]

Severability—1933 ex.s. c 13: "The adjudication of invalidity of any section, clause, or part of a section of this act, shall not impair or otherwise affect the validity of the act as a whole or any part thereof." [1933 ex.s. c 13 § 6; RRS § 7399-2.]

RCW 90.40.100 Columbia Basin Project—Water appropriated pursuant to RCW 90.40.030—Periodic renewal not required. Any water withdrawn from appropriation pursuant to RCW 90.40.030 associated with the Columbia Basin Project shall continue as withdrawn from appropriation, without need for periodic renewal, until the project is declared completed or abandoned by the United States acting by and through the secretary of the interior or such other duly authorized officer of the United States. [1987 c 491 § 1.]