

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 s 612; 1987 c 109 s 116; 1947 c 122 s 4; 1945 c 263 s 12; Rem. Supp. 1947 s 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.