

Chapter 90.03 RCW
WATER CODE

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Prior acts on this subject: Code 1881 c 141; 1889 pp 706-728 ss 1-67, 1889 p 728 s 1; 1889 p 729 ss 1-2; 1891 c 142; 1899 c 131; 1901 cc 30, 33, 36; 1903 c 53; 1907 c 144; and 1909 c 209.

Aquifer protection areas: Chapter 36.36 RCW.

RCW 90.03.005 State water policy—Cooperation with other agencies—Reduction of wasteful practices. It is the policy of the state to promote the use of the public waters in a fashion which provides for obtaining maximum net benefits arising from both diversionary uses of the state's public waters and the retention of waters within streams and lakes in sufficient quantity and quality to protect instream and natural values and rights. Consistent with this policy, the state supports economically feasible and environmentally sound development of physical facilities through the concerted efforts of the state with the United States, public corporations, Indian tribes, or other public or private entities. Further, based on the tenet of water law which precludes wasteful practices in the exercise of rights to the use of waters, the department of ecology shall reduce these practices to the maximum extent practicable, taking into account sound principles of water management, the benefits and costs of improved water use efficiency, and the most effective use of public and private funds, and, when appropriate, to work to that end in concert with the agencies of the United States and other public and private entities. [1989 c 348 s 2; 1979 ex.s. c 216 s 8.]

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

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

Effective date—Severability—1979 ex.s. c 216: See notes following RCW 90.03.245.

RCW 90.03.010 Appropriation of water rights—Existing rights preserved. The power of the state to regulate and control the waters within the state shall be exercised as hereinafter in this chapter provided. Subject to existing rights all waters within the state belong to the public, and any right thereto, or to the use thereof, shall be hereafter acquired only by appropriation for a beneficial use and in the manner provided and not otherwise; and, as between appropriations, the first in time shall be the first in right. Nothing contained in this chapter shall be construed to lessen, enlarge, or modify the existing rights of any riparian owner, or any existing right acquired by appropriation, or otherwise. They shall, however, be subject to condemnation as provided in RCW 90.03.040, and the amount and priority thereof may be determined by the procedure set out in RCW 90.03.110 through 90.03.240. [1917 c 117 s 1; RRS s 7351. Prior: 1891 p 127 s 1. Formerly RCW 90.04.020.]

RCW 90.03.015 Definitions. The definitions in this section apply throughout this chapter unless the context clearly requires otherwise.

- (1) "Department" means the department of ecology.
- (2) "Director" means the director of ecology.
- (3) "Municipal water supplier" means an entity that supplies water for municipal water supply purposes.
- (4) "Municipal water supply purposes" means a beneficial use of water: (a) For residential purposes through fifteen or more residential service connections or for providing residential use of water for a nonresidential population that is, on average, at least

twenty-five people for at least sixty days a year; (b) for governmental or governmental proprietary purposes by a city, town, public utility district, county, sewer district, or water district; or (c) indirectly for the purposes in (a) or (b) of this subsection through the delivery of treated or raw water to a public water system for such use. If water is beneficially used under a water right for the purposes listed in (a), (b), or (c) of this subsection, any other beneficial use of water under the right generally associated with the use of water within a municipality is also for "municipal water supply purposes," including, but not limited to, beneficial use for commercial, industrial, irrigation of parks and open spaces, institutional, landscaping, fire flow, water system maintenance and repair, or related purposes. If a governmental entity holds a water right that is for the purposes listed in (a), (b), or (c) of this subsection, its use of water or its delivery of water for any other beneficial use generally associated with the use of water within a municipality is also for "municipal water supply purposes," including, but not limited to, beneficial use for commercial, industrial, irrigation of parks and open spaces, institutional, landscaping, fire flow, water system maintenance and repair, or related purposes.

(5) "Person" means any firm, association, water users' association, corporation, irrigation district, or municipal corporation, as well as an individual. [2003 1st sp.s. c 5 s 1; 1987 c 109 s 65.]

Severability—2003 1st sp.s. c 5: "If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected." [2003 1st sp.s. c 5 s 19.]

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

RCW 90.03.020 Units of water measurement. The legally recognized units of water measurement shall be as follows: For flowing water—one cubic foot of water per second of time, and to be designated "secondfoot." For absolute volume or quantity of water—forty-three thousand five hundred sixty cubic feet of water, and to be designated "acrefoot." [1917 c 117 s 2; RRS s 7352. Prior: 1890 p 729 s 1. Formerly RCW 90.04.010, part.]

RCW 90.03.030 Right to convey water along lake or stream—Conveyance to intake structure in neighboring state. Any person may convey any water which he or she may have a right to use along any of the natural streams or lakes of this state, but not so as to raise the water thereof above ordinary highwater mark, without making just compensation to persons injured thereby; but due allowance shall be made for evaporation and seepage, the amount of such seepage to be determined by the department, upon the application of any person interested. Water conveyed under this section may be conveyed to an approved intake structure located in a neighboring state in order to accomplish an approved modification of the point of diversion in a permit to appropriate water for a beneficial use, if approval of the neighboring state is documented to the satisfaction of the department.

[1999 c 232 s 3; 1987 c 109 s 68; 1917 c 117 s 3; RRS s 7353. Formerly RCW 90.28.050.]

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

RCW 90.03.040 Eminent domain—Use of water declared public use.

The beneficial use of water is hereby declared to be a public use, and any person may exercise the right of eminent domain to acquire any property or rights now or hereafter existing when found necessary for the storage of water for, or the application of water to, any beneficial use, including the right to enlarge existing structures employed for the public purposes mentioned in this chapter and use the same in common with the former owner, and including the right and power to condemn an inferior use of water for a superior use. In condemnation proceedings the court shall determine what use will be for the greatest public benefit, and that use shall be deemed a superior one: PROVIDED, That no property right in water or the use of water shall be acquired hereunder by condemnation for irrigation purposes, which shall deprive any person of such quantity of water as may be reasonably necessary for the irrigation of his or her land then under irrigation to the full extent of the soil, by the most economical method of artificial irrigation applicable to such land according to the usual methods of artificial irrigation employed in the vicinity where such land is situated. In any case, the court shall determine what is the most economical method of irrigation. Such property or rights shall be acquired in the manner provided by law for the taking of private property for public use by private corporations. [2013 c 23 s 592; 1917 c 117 s 4; RRS s 7354. Formerly RCW 90.04.030.]

Eminent domain by corporations: Chapter 8.20 RCW.

RCW 90.03.060 Water masters—Appointment, compensation. (1)

Water masters shall be appointed by the department whenever it shall find the interests of the state or of the water users to require them. The districts for or in which the water masters serve shall be designated water master districts, which shall be fixed from time to time by the department, as required, and they shall be subject to revision as to boundaries or to complete abandonment as local conditions may indicate to be expedient, the spirit of this provision being that no district shall be created or continued where the need for the same does not exist. Water masters shall be supervised by the department, shall be compensated for services from funds of the department, and shall be technically qualified to the extent of understanding the elementary principals of hydraulics and irrigation, and of being able to make water measurements in streams and in open and closed conduits of all characters, by the usual methods employed for that purpose. Counties and municipal and public corporations of the state are authorized to contribute moneys to the department to be used as compensation to water masters in carrying out their duties. All such moneys received by the department shall be used exclusively for said purpose.

(2) A water master may be appointed by the department for a watershed management area for which a plan adopted by a planning unit

and by the counties with territory in the watershed management area under RCW 90.82.130 contains a requirement or request that a water master be appointed, subject to availability of state or nonstate funding. [1999 c 237 s 1; 1987 c 109 s 69; 1967 c 80 s 1; 1947 c 123 s 2; 1917 c 117 s 9; Rem. Supp. 1947 s 7359. Formerly RCW 90.08.010.]

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

Stream patrollers (approval, supervision of, by water masters):
Chapter 90.08 RCW.

RCW 90.03.070 Water masters—Duties—Office space and equipment—Clerical assistance. It shall be the duty of the water master, acting under the direction of the department, to divide in whole or in part, the water supply of his or her district among the several water conduits and reservoirs using said supply, according to the right and priority of each, respectively. He or she shall divide, regulate, and control the use of water within his or her district by such regulation of headgates, conduits, and reservoirs as shall be necessary to prevent the use of water in excess of the amount to which the owner of the right is lawfully entitled. Whenever, in the pursuance of his or her duties, the water master regulates a headgate of a water conduit or the controlling works of a reservoir, he or she shall attach to such headgate or controlling works a written notice, properly dated and signed, stating that such headgate or controlling works has been properly regulated and is wholly under his or her control and such notice shall be a legal notice to all parties. In addition to dividing the available waters and supervising the stream patroller in his or her district, he or she shall enforce such rules and regulations as the department shall from time to time prescribe.

The county or counties in which water master districts are created shall deputize the water masters appointed hereunder, and may without charge provide to each water master suitable office space, supplies, equipment, and clerical assistance as are necessary to the water master in the performance of his or her duties. [2013 c 23 s 593; 1987 c 109 s 70; 1967 c 80 s 2; 1917 c 117 s 10; RRS s 7360. Formerly RCW 90.08.020.]

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 90.03.090 Water master's power of arrest. The water master shall have the power, within his or her district, to arrest any person in the act of violating any of the provisions of this chapter and to deliver such person promptly into the custody of the sheriff or other competent officer within the county and immediately upon such delivery the water master making the arrest shall, in writing and upon oath, make complaint before the proper district judge against the person so arrested. [1987 c 202 s 250; 1917 c 117 s 12; RRS s 7362. Formerly RCW 90.08.030.]

Intent—1987 c 202: See note following RCW 2.04.190.

RCW 90.03.100 Prosecuting attorney, legal assistant. It shall be the duty of the prosecuting attorney of any county to appear for or on behalf of the department or any water master, upon request of any such officer in any case which may arise in the performance of the official duties of any such officer within the jurisdiction of said prosecuting attorney. [1987 c 109 s 71; 1917 c 117 s 13; RRS s 7363.]

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

Attorney general to represent state, agencies, etc.: RCW 43.10.040.

Prosecuting attorney, duties: RCW 36.27.020(3), (4).

RCW 90.03.105 Petition by planning units for general adjudication. The legislature finds that the lack of certainty regarding water rights within a water resource basin may impede management and planning for water resources. The legislature further finds that planning units conducting water resource planning under chapter 90.82 RCW may find that the certainty provided by a general adjudication of water rights under this chapter is required for water planning or water management in a water resource inventory area or in a portion of the area. Therefore, such planning units may petition the department to conduct such a general adjudication and the department shall give high priority to such a request in initiating any such general adjudications under this chapter. [1997 c 442 s 301.]

RCW 90.03.110 Determination of water rights—Petition—Statement and plan. (1) Upon the filing of a petition with the department by a planning unit or by one or more persons claiming the 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 prepare a statement of the facts, together with a plan or map of the locality under investigation, and file such statement and plan or map in the superior court of the county in which said water is situated, or, in case such water flows or is situated in more than one county, in the county which the department shall determine to be the most convenient to the parties interested therein. Such a statement shall:

(a) Either (i) identify each person or entity owning real property situated within the area to be adjudicated but outside the boundaries of a city, town, or special purpose district that provides water to property within its service area; (ii) identify all known persons claiming a right to the water sought to be determined; or (iii) identify both; and

(b) Include a brief statement of the facts in relation to such water, and the necessity for a determination of the rights thereto.

(2) Prior to filing an adjudication under this chapter, the department shall:

(a) Consult with the administrative office of the courts to determine whether sufficient judicial resources are available to commence and to prosecute the adjudication in a timely manner; and

(b) Report to the appropriate committees of the legislature on the estimated budget needs for the court and the department to conduct the adjudication. [2009 c 332 s 1; 1987 c 109 s 72; 1917 c 117 s 14; RRS s 7364. Formerly RCW 90.12.010.]

Application—2009 c 332: "Except for section 14 of this act, this act applies only to adjudications initiated after July 26, 2009." [2009 c 332 s 21.]

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

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

Application of RCW sections to specific proceedings: RCW 90.14.200.

Schedule of fees: RCW 90.03.470.

RCW 90.03.120 Determination of water rights—Order—Summons—Necessary parties—Use of innovative practices and technologies encouraged. (1) Upon the filing of the statement and map as provided in RCW 90.03.110 the judge of such superior court shall make an order directing summons to be issued, and fixing the return day thereof, which shall be not less than 100 nor more than 130 days, after the making of such order: PROVIDED, That for good cause, the court, at the request of the department, may modify said time period: PROVIDED FURTHER, That for an adjudication filed in water resource inventory area 1 after June 1, 2023, the return day for the latest time to file claims pursuant to such a summons shall be not less than one year after the making of such an order, unless special rules of procedure established by the court pursuant to RCW 90.03.160(3) provide for a later date.

(2) A summons issued under this section shall be issued out of said superior court, signed and attested by the clerk thereof, in the name of the state of Washington, as plaintiff, against all known persons identified by the department under RCW 90.03.110. The summons shall contain a brief statement of the objects and purpose of the proceedings and shall require the defendants to appear on the return day thereof, and make and file an adjudication claim to, or interest in, the water involved and a statement that unless they appear at the time and place fixed and assert such right, judgment will be entered determining their rights according to the evidence: PROVIDED, HOWEVER, That any persons claiming the right to water by virtue of a contract with a claimant to the right to divert the same, shall not be necessary parties to the proceeding: PROVIDED FURTHER, That for an adjudication filed in water resource inventory area 1 after June 1, 2023, the latest day for a party to appear by filing a claim in response to such a summons shall be set by the court and listed within the summons as a date not less than one year after the service of said summons, unless special rules of procedure established by the court pursuant to RCW 90.03.160(3) provide for a later date.

(3) To the extent consistent with court rules and subject to the availability of funds provided either by direct appropriation or funded through the administrative office of the courts for this specific adjudicative proceeding, the court is encouraged to conduct the water rights adjudication employing innovative practices and technologies appropriate to large scale and complex cases, such as: (a) Electronic filing of documents, including notice and claims; (b) appearance via teleconferencing; (c) pre-filing of testimony; and (d) other practices and technologies consistent with court rules and emerging technologies. [2023 c 160 s 1; 2009 c 332 s 2; 1987 c 109 s 73; 1977 ex.s. c 357 s 1; 1917 c 117 s 15; RRS s 7365. Formerly RCW 90.12.020.]

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.

RCW 90.03.130 Determination of water rights—Service of summons.

(1) Service of said summons shall be made in the same manner and with the same force and effect as service of summons in civil actions commenced in the superior courts of the state: PROVIDED, That as an alternative to personal service, service may be made by certified mail, with return receipt signed and dated by defendant, a spouse of a defendant, or another person authorized to accept service. If the defendants, or either of them, cannot be found within the state of Washington, of which the return of the sheriff of the county in which the proceeding is pending or the failure to sign a receipt for certified mail shall be prima facie evidence, upon the filing of an affidavit by the department, or its attorney, in conformity with the statute relative to the service of summons by publication in civil actions, such service may be made by publication in a newspaper of general circulation in the county in which such proceeding is pending, and also publication of said summons in a newspaper of general circulation in each county in which any portion of the water is situated, once a week for six consecutive weeks (six publications). Except as provided in subsection (3) of this section, the summons by publication shall state that adjudication claims must be filed within sixty days after the last publication or before the return date, whichever is later. In cases where personal service or service by certified mail is had, summons must be served at least 60 days before the return day thereof. For summons by certified mail, completion of service occurs upon the date of receipt by the defendant.

(2) Personal service of summons may be made by department of ecology employees for actions pertaining to water rights.

(3) For an adjudication filed in water resource inventory area 1 after June 1, 2023, any summons shall state that adjudication claims must be within the time frame set pursuant to RCW 90.03.120, unless special rules of procedure established by the court pursuant to RCW 90.03.160(3) provide for a later date. [2023 c 160 s 2; 2009 c 332 s 6; 1987 c 109 s 74; 1979 ex.s. c 216 s 2; 1977 ex.s. c 357 s 2; 1929 c 122 s 1; 1917 c 117 s 16; RRS s 7366. Formerly RCW 90.12.030.]

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.

~~Effective date—Severability—1979 ex.s. c 216:~~ See notes following RCW 90.03.245.

Commencement of actions (service of summons): Chapter 4.28 RCW.

Manner of publication and form of summons: RCW 4.28.110.

Service of summons by publication—When authorized: RCW 4.28.100.

RCW 90.03.140 Determination of water rights—Adjudication claim by defendant. (1) On or before the date specified in the summons, each defendant shall file with the clerk of the superior court an adjudication claim on a form and in a manner provided by the department, and mail or electronically mail a copy to the department. The department shall provide information that will assist claimants of small uses of water in completing their adjudication claims. The adjudication claim must contain substantially the following, except that when the legal basis for the claimed right is a federally reserved right, the information must be filed only as applicable:

- (a) The name, mailing address, and telephone contact number of each defendant on the claim, and email address, if available;
- (b) The purpose or purposes of use of the water and the annual and instantaneous quantities of water put to beneficial use;
- (c) For each use, the date the first steps were taken under the law to put the water to beneficial use;
- (d) The date of beginning and completion of the construction of wells, ditches, or other works to put the water to use;
- (e) The maximum amount of land ever under irrigation and the maximum annual and instantaneous quantities of water ever used thereon prior to the date of the statement and if for power, or other purposes, the maximum annual and instantaneous quantities of water ever used prior to the date of the adjudication claim;
- (f) The dates between which water is used annually;
- (g) If located outside the boundaries of a city, town, or special purpose district that provides water to property within its service area, the legal description and county tax parcel number of the land upon which the water as presently claimed has been, or may be, put to beneficial use;
- (h) The legal description and county tax parcel number of the subdivision of land on which the point of diversion or withdrawal is located as well as land survey and geographic positioning coordinates of the same if available;
- (i) Whether a right to surface or groundwater, or both, is claimed and the source of the surface water and the location and depth of all wells;
- (j) The legal basis for the claimed right;
- (k) Whether a statement of claim relating to the water right was filed under chapter 90.14 RCW or whether a declaration relating to the water right was filed under chapter 90.44 RCW and, if so, the claim or declaration number, and whether the right is documented by a permit or certificate and, if so, the permit number or certificate number. When

the source is a well, the well log number must be provided, when available;

(1) The amount of land and the annual and instantaneous quantities of water used thereon, or used for power or other purposes, that the defendant claims as a present right.

(2) The adjudication claim shall be verified on oath by the defendant. The department shall furnish the form for the adjudication claim. A claimant may file an adjudication claim electronically if authorized under state and local court rules. The department may assist claimants in their effort by making the department's pertinent records and information accessible electronically or by other means and through conferring with claimants.

(3) For an adjudication filed in water resource inventory area 1 after June 1, 2023, the department shall broadly distribute a draft version of the adjudication claim form to enable review and input by prospective claimants. The draft version must, at a minimum, be provided to Indian tribes, local governments, and special purpose districts and allow for at least 60 days of public comment on the draft adjudication claim form prior to the department finalizing the form. [2023 c 160 s 3; 2009 c 332 s 7; 1987 c 109 s 75; 1929 c 122 s 2; 1917 c 117 s 17; RRS s 7367. Formerly RCW 90.12.040.]

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.

RCW 90.03.150 Determination of water rights—Guardian ad litem for defendant. Whenever any defendant in any proceeding instituted under this chapter is an infant, or an alleged incompetent or disabled person for whom the court has not yet appointed either a guardian or a limited guardian, the court shall appoint a guardian ad litem for such minor or alleged incompetent or disabled defendant. [1977 ex.s. c 80 s 75; 1917 c 117 s 18; RRS s 7368. Formerly RCW 90.12.050.]

Purpose—Intent—Severability—1977 ex.s. c 80: See notes following RCW 4.16.190.

Guardian ad litem

for infant: RCW 4.08.050.

for incapacitated person: RCW 4.08.060.

RCW 90.03.160 Determination of water rights—Response to motions under RCW 90.03.640(3)—Notice of intent to cross-examine—Appointment of a referee—Special rules of procedure. (1) Upon filing of the department's motion or motions under RCW 90.03.640(3), any party with a claim filed under RCW 90.03.140 for the appropriation of water or waters of the subject adjudication may file and serve a response to the department's motion or motions within the time set by the court for such a response. Objections must include specific information in regard to the particular disposition against which the objection is being made. Objections must also state the underlying basis of the objection being made, including general information about the forms of evidence that support the objection. Any party may file testimony with

the court and serve it on other parties. If a party intends to cross-examine a claimant or witness based on another party's prefiled testimony, the party intending to cross-examine shall file a notice of intent to cross-examine no later than fifteen days in advance of the hearing. If no notice of intent to cross-examine based on the prefiled testimony is given, then the claimant or witness is not required to appear at the hearing. Any party may present evidence in support of or in response to an objection.

(2) The superior court may appoint a referee or other judicial officer to assist the court. The court may order all or any issues in a water adjudication, whether of fact or law, or both, referred to a referee by order of reference. RCW 4.48.010, 4.48.020, 4.48.050, and 4.48.110 do not apply to referees appointed pursuant to this chapter. Challenges to the appointment of a referee must be made pursuant to RCW 90.03.620. Consent of parties is not required for a court-appointed referee to hear water rights adjudication matters.

(3) The superior court may adopt special rules of procedure for an adjudication of water rights under this chapter, including simplified procedures for claimants of small uses of water. The rules of procedure for a superior court apply to an adjudication of water rights under this chapter unless superseded by special rules of the court under this subsection. The superior court is encouraged to consider entering, after notice and hearing and as the court determines appropriate, pretrial orders from an adjudication commenced on October 12, 1977. [2024 c 268 s 3; 2009 c 332 s 10; 1989 c 80 s 1; 1987 c 109 s 76; 1917 c 117 s 19; RRS s 7369. Formerly RCW 90.12.060.]

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.

RCW 90.03.180 Determination of water rights—Filing fee. At the time of filing the adjudication claim as provided in RCW 90.03.140, each defendant, except the United States or an Indian tribe under 43 U.S.C. Sec. 666, shall pay to the clerk of the superior court a fee as set under RCW 36.18.016. [2009 c 332 s 12; 1995 c 292 s 21; 1982 c 15 s 2; 1979 ex.s. c 216 s 3; 1929 c 122 s 3; 1919 c 71 s 2; 1917 c 117 s 21; RRS s 7371. Formerly RCW 90.12.080, part.]

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

Effective date—Severability—1979 ex.s. c 216: See notes following RCW 90.03.245.

RCW 90.03.200 Determination of water rights—Final decree and notice of decree—Payment of fees—Appellate review of decree. Upon the court's determination of all issues, the court shall issue a final decree and provide notice of the decree to all parties. The final decree must order each party whose rights have been confirmed, except the United States or an Indian tribe under 43 U.S.C. Sec. 666, to pay the department the fees required by RCW 90.03.470(10) and any other applicable fee schedule within ninety days after the department sends notice to the party under RCW 90.03.240. Appellate review of the

decree shall be in the same manner as in other cases in equity, except that review must be sought within sixty days from the entry thereof. [2009 c 332 s 13; 1988 c 202 s 91; 1987 c 109 s 79; 1971 c 81 s 176; 1917 c 117 s 23; RRS s 7373. Formerly RCW 90.12.100.]

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

Severability—1988 c 202: See note following RCW 2.24.050.

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

RCW 90.03.210 Determination of water rights—Interim regulation of water—Appeals. (1) During the pendency of such adjudication proceedings prior to judgment or upon review by an appellate court, the stream or other water involved shall be regulated or partially regulated according to the schedule of rights specified in the department's report upon an order of the court authorizing such regulation: PROVIDED, Any interested party may file a bond and obtain an order staying the regulation of said stream as to him or her, in which case the court shall make such order regarding the regulation of the stream or other water as he or she may deem just. The bond shall be filed within five days following the service of notice of appeal in an amount to be fixed by the court and with sureties satisfactory to the court, conditioned to perform the judgment of the court.

(2) Any appeal of a decision of the department on an application to change or transfer a water right subject to an adjudication that is being litigated actively shall be conducted as follows:

(a) The appeal shall be filed with the court conducting the adjudication and served under RCW 34.05.542(3). The content of the notice of appeal shall conform to RCW 34.05.546. Standing to appeal shall be based on the requirements of RCW 34.05.530 and is not limited to parties to the adjudication.

(b) If the appeal includes a challenge to the portion of the department's decision that pertains to tentative determinations of the validity and extent of the water right, review of those tentative determinations shall be conducted by the court consistent with the provisions of RCW 34.05.510 through 34.05.598, except that the review shall be de novo.

(c) If the appeal includes a challenge to any portion of the department's decision other than the tentative determinations of the validity and extent of the right, the court must certify to the pollution control hearings board for review and decision those portions of the department's decision. Review by the pollution control hearings board shall be conducted consistent with chapter 43.21B RCW and the board's implementing regulations, except that the requirements for filing, service, and content of the notice of appeal shall be governed by (a) of this subsection. Any party to an appeal may move the court to certify portions of the appeal to the pollution control hearings board, but the appellant must file a motion for certification no later than ninety days after the appeal is filed under this section.

(d) Appeals shall be scheduled to afford all parties full opportunity to participate before the superior court and the pollution control hearings board.

(e) Any person wishing to appeal the decision of the board made under (c) of this subsection shall seek review of the decision in accordance with chapter 34.05 RCW, except that the petition for review must be filed with the superior court conducting the adjudication.

(3) Nothing in this section shall be construed to affect or modify any treaty or other federal rights of an Indian tribe, or the rights of any federal agency or other person or entity arising under federal law. Nothing in this section is intended or shall be construed as affecting or modifying any existing right of a federally recognized Indian tribe to protect from impairment its federally reserved water rights in federal court. [2013 c 23 s 594; 2009 c 332 s 14; 2001 c 220 s 5; 1988 c 202 s 92; 1987 c 109 s 80; 1921 c 103 s 1; RRS s 7374. Formerly RCW 90.12.110.]

Intent—Construction—Effective date—2001 c 220: See notes following RCW 43.21B.110.

Severability—1988 c 202: See note following RCW 2.24.050.

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

RCW 90.03.220 Determination of water rights—Failure to appear—Estoppel. Whenever proceedings shall be instituted for the determination of the rights to the use of water, any defendant who shall fail to appear in such proceedings, after legal service, and submit proof of his or her claim, shall be estopped from subsequently asserting any right to the use of such water embraced in such proceeding, except as determined by such decree. [2013 c 23 s 595; 1917 c 117 s 24; RRS s 7375. Formerly RCW 90.12.120.]

RCW 90.03.230 Determination of water rights—Copy of decree to director. The clerk of the superior court, immediately upon the entry of any decree by the superior court, shall transmit a certified copy thereof to the director, who shall immediately enter the same upon the records of the department. [1987 c 109 s 81; 1917 c 117 s 25; RRS s 7376. Formerly RCW 90.12.130.]

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

RCW 90.03.240 Determination of water rights—Certificate of adjudicated water right—Notice—Fees. Upon the court's final determination of the rights to water, the department shall issue to each person entitled to a water right by such a determination, a certificate of adjudicated water right, setting forth the name and mailing address of record with the court of such person; the priority and purpose of the right; the period during which said right may be exercised, the point of diversion or withdrawal, and the place of use; the land to which said water right is appurtenant; the maximum annual and instantaneous quantities of water allowed; and specific provisions or limitations or both under which the water right has been confirmed.

The department shall provide notice to the water right holder that the certificate has been prepared for issuance and that fees for the issuance of the certificate are due in accordance with RCW 90.03.470 and any other applicable fee schedule. If the water right holder fails to submit the required fees within one year from the date the notice was issued by the department, the department may move the court for sanctions for violation of the court's order in the final decree requiring payment. [2009 c 332 s 15; 1987 c 109 s 82; 1917 c 117 s 26; RRS s 7377. Formerly RCW 90.12.140.]

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.

RCW 90.03.243 Determination of water rights—State to bear its expenses, when—County must be provided extraordinary costs imposed due to adjudication. The expenses incurred by the state in a proceeding to determine rights to water initiated under RCW 90.03.110 or 90.44.220 or upon appeal of such a determination shall be borne by the state. Subject to the availability of state funding provided either by direct appropriation or funded through the administrative office of the courts for this specific purpose, the county in which an adjudication or a suit to administer an adjudication is being held must be provided the extraordinary costs imposed on the superior court of that county due to the adjudication. [2009 c 332 s 16; 1982 c 15 s 1.]

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

RCW 90.03.245 Determination of water rights—Scope. Rights subject to determination proceedings conducted under RCW 90.03.110 through 90.03.240 and 90.44.220 include all rights to the use of water, including all diversionary and instream water rights, and include rights to the use of water claimed by the United States.

Nothing in this section may be construed as establishing or creating any new rights to the use of water. This section relates exclusively to the confirmation of water rights established or created under other provisions of state law or under federal laws. [1979 ex.s. c 216 s 1.]

Effective date—1979 ex.s. c 216: "Section 2 of this act is necessary for the immediate preservation of the public peace, health, and safety, the support of the state government and its existing public institutions, and shall take effect immediately [June 4, 1979]." [1979 ex.s. c 216 s 12.]

Severability—1979 ex.s. c 216: "If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected." [1979 ex.s. c 216 s 13.]

RCW 90.03.247 Minimum flows and levels—Departmental authority exclusive—Other recommendations considered. (1) Whenever an application for a permit to make beneficial use of public waters is approved relating to a stream or other water body for which minimum flows or levels have been adopted and are in effect at the time of approval, the permit shall be conditioned to: (a) Protect the levels or flows; or (b) require water resource mitigation of impacts to instream flows and closed surface water bodies for water resource mitigation pilot projects authorized under RCW 90.94.090.

(2) No agency may establish minimum flows and levels or similar water flow or level restrictions for any stream or lake of the state other than the department of ecology whose authority to establish is exclusive, as provided in chapter 90.03 RCW and RCW 90.22.010 and 90.54.040. The provisions of other statutes, including but not limited to chapter 43.21C RCW, may not be interpreted in a manner that is inconsistent with this section. In establishing such minimum flows, levels, or similar restrictions, the department shall, during all stages of development by the department of ecology of minimum flow proposals, consult with, and carefully consider the recommendations of, the department of fish and wildlife, the department of commerce, the department of agriculture, and representatives of the affected Indian tribes. Nothing herein shall preclude the department of fish and wildlife, the department of commerce, or the department of agriculture from presenting its views on minimum flow needs at any public hearing or to any person or agency, and the department of fish and wildlife, the department of commerce, and the department of agriculture are each empowered to participate in proceedings of the federal energy regulatory commission and other agencies to present its views on minimum flow needs. [2018 c 1 s 302; 2003 c 39 s 48; 1996 c 186 s 523; 1994 c 264 s 82. Prior: 1987 c 506 s 95; 1987 c 505 s 81; 1980 c 87 s 46; 1979 ex.s. c 166 s 1.]

Intent—2018 c 1: See note following RCW 90.94.010.

Effective date—2018 c 1: See RCW 90.94.900.

Findings—Intent—Part headings not law—Effective date—1996 c 186: See notes following RCW 43.330.904.

Legislative findings and intent—1987 c 506: See note following RCW 77.04.020.

RCW 90.03.250 Appropriation procedure—Application for permit—Temporary permit. Any person, municipal corporation, firm, irrigation district, association, corporation or water users' association hereafter desiring to appropriate water for a beneficial use shall make an application to the department for a permit to make such appropriation, and shall not use or divert such waters until he or she has received a permit from the department as in this chapter provided. The construction of any ditch, canal or works, or performing any work in connection with said construction or appropriation, or the use of any waters, shall not be an appropriation of such water nor an act for the purpose of appropriating water unless a permit to make said appropriation has first been granted by the department: PROVIDED, That a temporary permit may be granted upon a proper showing made to the

department to be valid only during the pendency of such application for a permit unless sooner revoked by the department: PROVIDED, FURTHER, That nothing in this chapter contained shall be deemed to affect RCW 90.40.010 through 90.40.080 except that the notice and certificate therein provided for in RCW 90.40.030 shall be addressed to the department, and the department shall exercise the powers and perform the duties prescribed by RCW 90.40.030. [2013 c 23 s 596; 1987 c 109 s 83; 1917 c 117 s 27; RRS s 7378. Formerly RCW 90.20.010.]

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

Schedule of fees: RCW 90.03.470.

RCW 90.03.252 Use of reclaimed water by wastewater treatment facility—Permit requirements inapplicable. The permit requirements of RCW 90.03.250 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 s 6; 1997 c 444 s 2.]

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

RCW 90.03.255 Applications for water right, transfer, or change—Consideration of water impoundment or other resource management technique. The department shall, when evaluating an application for a water right, transfer, or change filed pursuant to RCW 90.03.250 or 90.03.380 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 diversion of surface water proposed in the application for the water right, transfer, or change. 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 otherwise 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 s 2; 1996 c 306 s 1.]

Findings—Purpose—1997 c 360: "The legislature finds that in many basins in the state there is water available on a seasonal basis that is in excess of the needs of either existing water right holders or instream resources. The legislature finds that excess waters often result in significant flooding and damage to public and private resources. Further, it is in the public interest to encourage the impoundment of excess water and other measures that can be used to

offset the impact of withdrawals and diversions on existing rights and instream resources. Further, in some areas of the state additional supplies of water are needed to meet the needs of a growing economy and population. The legislature finds there is a range of alternatives that offset the impacts that should be encouraged including the creation, restoration, enhancement, or enlargement of ponds, wetlands, and reservoirs and the artificial recharge of aquifers.

The purpose of this act is to foster the improvement in the water supplies available to meet the needs of the state. It is the goal of this act to strengthen the state's economy while maintaining and improving the overall quality of the state's environment." [1997 c 360 s 1.]

RCW 90.03.260 Appropriation procedure—Application—Contents.

(1) Each application for permit to appropriate water shall set forth the name and post office address of the applicant, the source of water supply, the nature and amount of the proposed use, the time during which water will be required each year, the location and description of the proposed ditch, canal, or other work, the time within which the completion of the construction and the time for the complete application of the water to the proposed use.

(2) If for agricultural purposes, the application shall give the legal subdivision of the land and the acreage to be irrigated, as near as may be, and the amount of water expressed in acre feet to be supplied per season. If for power purposes, it shall give the nature of the works by means of which the power is to be developed, the head and amount of water to be utilized, and the uses to which the power is to be applied.

(3) If for construction of a reservoir, the application shall give the height of the dam, the capacity of the reservoir, and the uses to be made of the impounded waters.

(4) If for community or multiple domestic water supply, the application shall give the projected number of service connections sought to be served. However, for a municipal water supplier that has an approved water system plan under chapter 43.20 RCW or an approval from the department of health to serve a specified number of service connections, the service connection figure in the application or any subsequent water right document is not an attribute limiting exercise of the water right as long as the number of service connections to be served under the right is consistent with the approved water system plan or specified number.

(5) If for municipal water supply, the application shall give the present population to be served, and, as near as may be estimated, the future requirement of the municipality. However, for a municipal water supplier that has an approved water system plan under chapter 43.20 RCW or an approval from the department of health to serve a specified number of service connections, the population figures in the application or any subsequent water right document are not an attribute limiting exercise of the water right as long as the population to be provided water under the right is consistent with the approved water system plan or specified number.

(6) If for mining purposes, the application shall give the nature of the mines to be served and the method of supplying and utilizing the water; also their location by legal subdivisions.

(7) All applications shall be accompanied by such maps and drawings, in duplicate, and such other data, as may be required by the department, and such accompanying data shall be considered as a part of the application. [2003 1st sp.s. c 5 s 4; 1987 c 109 s 84; 1917 c 117 s 28; RRS s 7379. Formerly RCW 90.20.020.]

Severability—2003 1st sp.s. c 5: See note following RCW 90.03.015.

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

Height of dams on tributaries of Columbia river: RCW 77.55.191.

RCW 90.03.265 Appropriation procedure—Cost-reimbursement agreement for expedited review of application—Adoption of rules.

(1)(a) Any applicant for a new withdrawal or a change, transfer, or amendment of a water right pending before the department may initiate a cost-reimbursement agreement with the department to provide expedited review of the application. A cost-reimbursement agreement may be initiated under this section if the applicant agrees to pay for, or as part of a cooperative effort agrees to pay for, the cost of processing his or her application and all other applications from the same source of supply which must be acted upon before the applicant's request because they were filed prior to the date of when the applicant filed.

(b) The requirement to pay for the cost of other applications under (a) of this subsection does not apply to an application for a new appropriation that would not diminish the water available to earlier pending applicants for new appropriations from the same source of supply.

(c) The requirement to pay for the cost of processing other applications under (a) of this subsection does not apply to an application for a change, transfer, or other amendment that would not diminish the water available to earlier pending applicants for changes or transfers from the same source of supply.

(d) In determining whether an application would not diminish the water available to earlier pending applicants, the department shall consider any water impoundment or other water resource management mitigation technique proposed by the applicant under RCW 90.03.255 or 90.44.055.

(e) The department may enter into cost-reimbursement agreements provided resources are available and shall use the process established under RCW 43.21A.690 for entering into cost-reimbursement agreements. The department's share of work related to a cost-reimbursement application, such as final certificate approval, must be prioritized within the framework of other water right processing needs and as determined by agency rule.

(f) Each individual applicant is responsible for his or her own appeal costs that may result from a water right decision made by the department under this section. In the event that the department's approval of an application under this section is appealed under chapter 43.21B RCW by a third party, the applicant for the water right in question must reimburse the department for the cost of defending the decision before the pollution control hearings board unless

otherwise agreed to by the applicant and the department. If an applicant appeals either an approval or a denial made by the department under this section, the applicant is responsible only for its own appeal costs.

(2) In pursuing a cost-reimbursement project, the department must determine the source of water proposed to be diverted or withdrawn from, including the boundaries of the area that delimits the source. The department must determine if any other water right permit applications are pending from the same source. A water source may include surface water only, groundwater only, or surface and groundwater together if the department finds they are hydraulically connected. The department shall consider technical information submitted by the applicant in making its determinations under this subsection. The department may recover from a cost-reimbursement applicant its own costs in making the same source determination under this subsection.

(3) Upon request of the applicant seeking cost-reimbursement processing, the department may elect to initiate a coordinated cost-reimbursement process. To initiate this process, 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 cost-reimbursement 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 a cost-reimbursement basis;

(d) Provide an estimate of how long the cost-reimbursement 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 the cost-reimbursement process.

(4) The applicant initiating the cost-reimbursement request must pay for the cost of the determination under subsections (2) and (3) of this section and other costs necessary for the initial phase of cost-reimbursement processing. The cost for each applicant for conducting processing under a coordinated cost-reimbursement agreement must be based primarily on the proportionate quantity of water requested by each applicant. The cost may be adjusted if it appears that an application will require a disproportionately greater amount of time and effort to process due to its complexity.

(5) (a) Only the department may approve or deny a water right application processed under this section, and such a final decision remains solely the responsibility and function of the department. The department retains full authority to amend, refuse, or approve any work product provided by any consultant under this section. The department may recover its costs related to: (i) The review of a consultant to ensure that no conflict of interest exists; (ii) the management of consultant contracts and cost-reimbursement agreements;

and (iii) the review of work products provided by participating consultants.

(b) For any cost-reimbursement process initiated under subsection (1) of this section, the applicant may, after consulting with the department, select a prequalified consultant listed by the department under subsection (7) of this section or may be assigned such a prequalified consultant by the department.

(c) For any coordinated cost-reimbursement process initiated under subsection (3) of this section, the applicant may, after consulting with the department, select a prequalified consultant listed by the department under subsection (7) of this section or may be assigned a prequalified consultant by the department.

(d) In lieu of having one or more of the work products performed by a prequalified consultant listed under subsection (7) of this section, the department may, at its discretion, recognize specific work completed by an applicant or an applicant's consultant prior to the initiation of cost-reimbursement processing. The department may also, at its discretion, authorize the use of such a consultant to perform a specific scope of the work that would otherwise be assigned to prequalified consultants listed under subsection (7) of this section.

(e) At any point during the cost-reimbursement process, the department may request or accept technical information, data, and analysis from the applicant or the applicant's consultant to support the cost-reimbursement process or the department's decision on the application.

(6) The department is authorized to adopt rules or guidance providing minimum qualifications and standards for any consultant's submission of work products under this section, including standards for submission of technical information, scientific analysis, work product documentation, review for conflict of interest, and report presentation that such a consultant must meet.

(7) The department must provide notice to potential consultants of the opportunity to be considered for inclusion on the list of cost-reimbursement consultants to whom work assignments will be made. The department must competitively select an appropriate number of consultants who are qualified by training and experience to investigate and make recommendations on the disposition of water right applications. The prequalified consultant list must be renewed at least every six years, though the department may add qualified cost-reimbursement consultants to the list at any time. The department must enter a master contract with each consultant selected and thereafter make work assignments based on availability and qualifications.

(8) The department may remove any consultant from the consultant list for poor performance, malfeasance, or excessive complaints from cost-reimbursement participants. The department may interview any cost-reimbursement consultant to determine whether the person is qualified for this work, and must spot-check the work of consultants to ensure that the public is being competently served.

(9) When a prequalified cost-reimbursement consultant from the department's list described in subsection (7) of this section is assigned or selected to investigate an application or set of applications, the consultant must document its findings and recommended disposition in the form of written draft technical reports and preliminary draft reports of examination. Within two weeks of the department receiving draft technical reports and preliminary draft reports of examination, the department shall provide the applicant

such documents for review and comment prior to their completion by the consultant. The department shall consider such comments by the applicant prior to the department's issuance of a draft report of examination. The department may modify the preliminary draft reports of examination submitted by the consultant. The department's decision on a permit application is final unless it is appealed to the pollution control hearings board under chapter 43.21B RCW.

(10) If an applicant elects not to participate in a cost-reimbursement process, the application remains on file with the department, retains its priority date, and may be processed under 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. [2010 c 285 s 3; 2003 c 70 s 6; 2000 c 251 s 7.]

Intent—2010 c 285: "Water is an essential element for economic prosperity and it generates new, family-wage jobs and state revenues. It is the intent of the legislature to provide both water right applicants and the department of ecology with the necessary tools to expedite the processing of water right applications depending on the needs of the project and agency workload." [2010 c 285 s 1.]

Intent—Captions not law—Effective date—2000 c 251: See notes following RCW 43.21A.690.

RCW 90.03.270 Appropriation procedure—Record of application.

Upon receipt of an application it shall be the duty of the department to make an endorsement thereon of the date of its receipt, and to keep a record of same. If upon examination, the application is found to be defective, it shall be returned to the applicant for correction or completion, and the date and the reasons for the return thereof shall be endorsed thereon and made a record in his or her office. No application shall lose its priority of filing on account of such defects, provided acceptable maps, drawings, and such data as is required by the department shall be filed with the department within such reasonable time as it shall require. [2013 c 23 s 597; 1987 c 109 s 85; 1917 c 117 s 29; RRS s 7380. Formerly RCW 90.20.030.]

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

RCW 90.03.280 Appropriation procedure—Notice. Upon receipt of a proper application, the department shall instruct the applicant to publish notice thereof in a form and within a time prescribed by the department in a newspaper of general circulation published in the county or counties in which the storage, diversion, and use is to be made, and in such other newspapers as the department may direct, once a week for two consecutive weeks. Upon receipt by the department of an application it shall send notice thereof containing pertinent information to the director of fish and wildlife. [1994 c 264 s 83; 1988 c 36 s 65; 1987 c 109 s 66; 1953 c 275 s 1; 1939 c 127 s 1; 1925 ex.s. c 161 s 1; 1917 c 117 s 30; RRS s 7381. Formerly RCW 90.20.040.]

~~RCW 90.03.290 Appropriation procedure—Department to investigate~~
~~—Preliminary permit—Findings and action on application.~~ (1) When an application complying with the provisions of this chapter and with the rules of the department has been filed, the same shall be placed on record with the department, and it shall be its duty to investigate the application, and determine what water, if any, is available for appropriation, and find and determine to what beneficial use or uses it can be applied. If it is proposed to appropriate water for irrigation purposes, the department shall investigate, determine and find what lands are capable of irrigation by means of water found available for appropriation. If it is proposed to appropriate water for the purpose of power development, the department shall investigate, determine and find whether the proposed development is likely to prove detrimental to the public interest, having in mind the highest feasible use of the waters belonging to the public.

(2) (a) If the application does not contain, and the applicant does not promptly furnish sufficient information on which to base such findings, the department may issue a preliminary permit, for a period of not to exceed three years, requiring the applicant to make such surveys, investigations, studies, and progress reports, as in the opinion of the department may be necessary. If the applicant fails to comply with the conditions of the preliminary permit, it and the application or applications on which it is based shall be automatically canceled and the applicant so notified. If the holder of a preliminary permit shall, before its expiration, file with the department a verified report of expenditures made and work done under the preliminary permit, which, in the opinion of the department, establishes the good faith, intent, and ability of the applicant to carry on the proposed development, the preliminary permit may, with the approval of the governor, be extended, but not to exceed a maximum period of five years from the date of the issuance of the preliminary permit.

(b) For any application for which a preliminary permit was issued and for which the availability of water was directly affected by a moratorium on further diversions from the Columbia river during the years from 1990 to 1998, the preliminary permit is extended through June 30, 2002. If such an application and preliminary permit were canceled during the moratorium, the application and preliminary permit shall be reinstated until June 30, 2002, if the application and permit: (i) Are for providing regional water supplies in more than one urban growth area designated under chapter 36.70A RCW and in one or more areas near such urban growth areas, or the application and permit are modified for providing such supplies, and (ii) provide or are modified to provide such regional supplies through the use of existing intake or diversion structures. The authority to modify such a canceled application and permit to accomplish the objectives of (b) (i) and (ii) of this subsection is hereby granted.

(3) The department shall make and file as part of the record in the matter, written findings of fact concerning all things investigated, and if it shall find that there is water available for appropriation for a beneficial use, and the appropriation thereof as proposed in the application will not impair existing rights or be

detrimental to the public welfare, it shall issue a permit stating the amount of water to which the applicant shall be entitled and the beneficial use or uses to which it may be applied: PROVIDED, That where the water applied for is to be used for irrigation purposes, it shall become appurtenant only to such land as may be reclaimed thereby to the full extent of the soil for agricultural purposes. But where there is no unappropriated water in the proposed source of supply, or where the proposed use conflicts with existing rights, or threatens to prove detrimental to the public interest, having due regard to the highest feasible development of the use of the waters belonging to the public, it shall be duty of the department to reject such application and to refuse to issue the permit asked for.

(4) If the permit is refused because of conflict with existing rights and such applicant shall acquire same by purchase or condemnation under RCW 90.03.040, the department may thereupon grant such permit. Any application may be approved for a less amount of water than that applied for, if there exists substantial reason therefor, and in any event shall not be approved for more water than can be applied to beneficial use for the purposes named in the application. In determining whether or not a permit shall issue upon any application, it shall be the duty of the department to investigate all facts relevant and material to the application. After the department approves said application in whole or in part and before any permit shall be issued thereon to the applicant, such applicant shall pay the fee provided in RCW 90.03.470: PROVIDED FURTHER, That in the event a permit is issued by the department upon any application, it shall be its duty to notify the director of fish and wildlife of such issuance.

(5) The requirements of subsections (1) and (3) of this section do not apply to water resource mitigation pilot projects for which permits are issued in reliance upon water resource mitigation of impacts to instream flows and closed surface water bodies under RCW 90.94.090. [2018 c 1 s 303; 2001 c 239 s 1; 1994 c 264 s 84; 1988 c 36 s 66; 1987 c 109 s 86; 1947 c 133 s 1; 1939 c 127 s 2; 1929 c 122 s 4; 1917 c 117 s 31; Rem. Supp. 1947 s 7382. Formerly RCW 90.20.050 and 90.20.060.]

Intent—2018 c 1: See note following RCW 90.94.010.

Effective date—2018 c 1: See RCW 90.94.900.

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

Inapplicability of section to RCW 90.03.290: RCW 90.14.200.

RCW 90.03.300 Appropriation procedure—Diversion of water for out-of-state use—Reciprocity. No permit for the appropriation of water shall be denied because of the fact that the point of diversion described in the application for such permit, or any portion of the works in such application described and to be constructed for the purpose of storing, conserving, diverting or distributing such water, or because the place of intended use or the lands to be irrigated by means of such water, or any part thereof, may be situated in some other state or nation, but in all such cases where either the point of

diversion or any of such works or the place of intended use, or the lands, or part of the lands, to be irrigated by means of such water, are situated within the state of Washington, the permit shall issue as in other cases: PROVIDED, HOWEVER, That the department may in its discretion, decline to issue a permit where the point of diversion described in the application is within the state of Washington but the place of beneficial use in some other state or nation, unless under the laws of such state or nation water may be lawfully diverted within such state or nation for beneficial use in the state of Washington. [1987 c 109 s 87; 1921 c 103 s 3; RRS s 7383. Formerly RCW 90.20.070.]

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

RCW 90.03.310 Appropriation procedure—Assignability of permit or application. Any permit to appropriate water may be assigned subject to the conditions of the permit, but no such assignment shall be binding or valid unless filed for record with the department. Any application for permits to appropriate water prior to permit issuing, may be assigned by the applicant, but no such assignment shall be valid or binding unless the written consent of the department is first obtained thereto, and unless such assignment is filed for record with the department. [1987 c 109 s 88; 1917 c 117 s 32; RRS s 7384. Prior: 1891 c 142 s 6. Formerly RCW 90.20.080.]

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

RCW 90.03.320 Appropriation procedure—Construction work. Actual construction work shall be commenced on any project for which permit has been granted within such reasonable time as shall be prescribed by the department, and shall thereafter be prosecuted with diligence and completed within the time prescribed by the department. The department, in fixing the time for the commencement of the work, or for the completion thereof and the application of the water to the beneficial use prescribed in the permit, shall take into consideration the cost and magnitude of the project and the engineering and physical features to be encountered, and shall allow such time as shall be reasonable and just under the conditions then existing, having due regard for the public welfare and public interests affected. For good cause shown, the department shall extend the time or times fixed as aforesaid, and shall grant such further period or periods as may be reasonably necessary, having due regard to the good faith of the applicant and the public interests affected. Good cause includes prevention or restriction of water use by operation of federal laws for the time or times fixed for commencing work, completing work, and applying water to beneficial use otherwise authorized under a water right permit issued for a federal reclamation project. In fixing construction schedules and the time, or extension of time, for application of water to beneficial use for municipal water supply purposes, the department shall also take into consideration the term and amount of financing required to complete the project, delays that may result from planned and existing conservation and water use efficiency measures implemented by the public water system, and the

supply needs of the public water system's service area, consistent with an approved comprehensive plan under chapter 36.70A RCW, or in the absence of such a plan, a county-approved comprehensive plan under chapter 36.70 RCW or a plan approved under chapter 35.63 RCW, and related water demand projections prepared by public water systems in accordance with state law. An existing comprehensive plan under chapter 36.70A or 36.70 RCW, plan under chapter 35.63 RCW, or demand projection may be used. If the terms of the permit or extension thereof, are not complied with the department shall give notice by registered mail that such permit will be canceled unless the holders thereof shall show cause within sixty days why the same should not be so canceled. If cause is not shown, the permit shall be canceled. [1999 c 400 s 1; 1997 c 445 s 3; 1987 c 109 s 67; 1917 c 117 s 33; RRS s 7385. Formerly RCW 90.20.090.]

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

RCW 90.03.330 Appropriation procedure—Water right certificate.

(1) Upon a showing satisfactory to the department that any appropriation has been perfected in accordance with the provisions of this chapter, it shall be the duty of the department to issue to the applicant a certificate stating such facts in a form to be prescribed by the director, and such certificate shall thereupon be recorded with the department. Any original water right certificate issued, as provided by this chapter, shall be recorded with the department and thereafter, at the expense of the party receiving the same, be transmitted by the department to the county auditor of the county or counties where the distributing system or any part thereof is located, and be recorded in the office of such county auditor, and thereafter be transmitted to the owner thereof.

(2) Except as provided for the issuance of certificates under RCW 90.03.240 and for the issuance of certificates following the approval of a change, transfer, or amendment under RCW 90.03.380 or 90.44.100, the department shall not revoke or diminish a certificate for a surface or ground water right for municipal water supply purposes as defined in RCW 90.03.015 unless the certificate was issued with ministerial errors or was obtained through misrepresentation. The department may adjust such a certificate under this subsection if ministerial errors are discovered, but only to the extent necessary to correct the ministerial errors. The department may diminish the right represented by such a certificate if the certificate was obtained through a misrepresentation on the part of the applicant or permit holder, but only to the extent of the misrepresentation. The authority provided by this subsection does not include revoking, diminishing, or adjusting a certificate based on any change in policy regarding the issuance of such certificates that has occurred since the certificate was issued. This subsection may not be construed as providing any authority to the department to revoke, diminish, or adjust any other water right.

(3) This subsection applies to the water right represented by a water right certificate issued prior to September 9, 2003, for municipal water supply purposes as defined in RCW 90.03.015 where the certificate was issued based on an administrative policy for issuing such certificates once works for diverting or withdrawing and

distributing water for municipal supply purposes were constructed rather than after the water had been placed to actual beneficial use. Such a water right is a right in good standing.

(4) After September 9, 2003, the department must issue a new certificate under subsection (1) of this section for a water right represented by a water right permit only for the perfected portion of a water right as demonstrated through actual beneficial use of water. [2003 1st sp.s. c 5 s 6; 1987 c 109 s 89; 1929 c 122 s 5; 1917 c 117 s 34; RRS s 7386. Formerly RCW 90.20.100.]

Severability—2003 1st sp.s. c 5: See note following RCW 90.03.015.

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

RCW 90.03.340 Appropriation procedure—Effective date of water right. The right acquired by appropriation shall relate back to the date of filing of the original application with the department. [1987 c 109 s 90; 1917 c 117 s 35; RRS s 7387. Formerly RCW 90.20.110.]

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

RCW 90.03.345 Establishment of reservations of water for certain purposes and minimum flows or levels as constituting appropriations with priority dates. The establishment of reservations of water for agriculture, hydroelectric energy, municipal, industrial, and other beneficial uses under RCW 90.54.050(1) or minimum flows or levels under RCW 90.22.010 or 90.54.040 shall constitute appropriations within the meaning of this chapter with priority dates as of the effective dates of their establishment. Whenever an application for a permit to make beneficial use of public waters embodied in a reservation, established after September 1, 1979, is filed with the department of ecology after the effective date of such reservation, the priority date for a permit issued pursuant to an approval by the department of ecology of the application shall be the effective date of the reservation. [1979 ex.s. c 216 s 7.]

Effective date—Severability—1979 ex.s. c 216: See notes following RCW 90.03.245.

RCW 90.03.350 Construction or modification of storage dam—Plans and specifications—Additional dam safety inspection requirements for metals mining and milling operations. Except as provided in RCW 43.21A.068, any person, corporation or association intending to construct or modify any dam or controlling works for the storage of ten acre feet or more of water, shall before beginning said construction or modification, submit plans and specifications of the same to the department for examination and approval as to its safety. Such plans and specifications shall be submitted in duplicate, one copy of which shall be retained as a public record, by the department, and the other returned with its approval or rejection endorsed

thereon. No such dam or controlling works shall be constructed or modified until the same or any modification thereof shall have been approved as to its safety by the department. Any such dam or controlling works constructed or modified in any manner other than in accordance with plans and specifications approved by the department or which shall not be maintained in accordance with the order of the department shall be presumed to be a public nuisance and may be abated in the manner provided by law, and it shall be the duty of the attorney general or prosecuting attorney of the county wherein such dam or controlling works, or the major portion thereof, is situated to institute abatement proceedings against the owner or owners of such dam or controlling works, whenever he or she is requested to do so by the department.

A metals mining and milling operation regulated under chapter 232, Laws of 1994 is subject to additional dam safety inspection requirements due to the special hazards associated with failure of a tailings pond impoundment. The department shall inspect these impoundments at least quarterly during the project's operation and at least annually thereafter for the postclosure monitoring period in order to ensure the safety of the dam or controlling works. The department shall conduct additional inspections as needed during the construction phase of the mining operation in order to ensure the safe construction of the tailings impoundment. [1995 c 8 s 6; 1994 c 232 s 20; 1987 c 109 s 91; 1955 c 362 s 1; 1939 c 107 s 1; 1917 c 117 s 36; RRS s 7388. Formerly RCW 90.28.060.] [1954 SLC-RO-18.]

Findings—1995 c 8: See note following RCW 43.21A.064.

Effective date—1994 c 232 ss 6-8 and 18-22: See RCW 78.56.902.

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

Height of dams on tributaries of Columbia river: RCW 77.55.191.

RCW 90.03.360 Controlling works and measuring devices—Metering of diversions—Impact on fish stock. (1) The owner or owners of any water diversion shall maintain, to the satisfaction of the department of ecology, substantial controlling works and a measuring device constructed and maintained to permit accurate measurement and practical regulation of the flow of water diverted. Every owner or manager of a reservoir for the storage of water shall construct and maintain, when required by the department, any measuring device necessary to ascertain the natural flow into and out of said reservoir.

Metering of diversions or measurement by other approved methods shall be required as a condition for all new surface water right permits, and except as provided in subsection (2) of this section, may be required as a condition for all previously existing surface water rights. The department may also require, as a condition for all water rights, metering of diversions, and reports regarding such metered diversions as to the amount of water being diverted. Such reports shall be in a form prescribed by the department.

(2) Where water diversions are from waters in which the salmonid stock status is depressed or critical, as determined by the department

of fish and wildlife, or where the volume of water being diverted exceeds one cubic foot per second, the department shall require metering or measurement by other approved methods as a condition for all new and previously existing water rights or claims. The department shall attempt to integrate the requirements of this subsection into its existing compliance workload priorities, but shall prioritize the requirements of this subsection ahead of the existing compliance workload where a delay may cause the decline of wild salmonids. The department shall notify the department of fish and wildlife of the status of fish screens associated with these diversions.

This subsection (2) shall not apply to diversions for public or private hatcheries or fish rearing facilities if the diverted water is returned directly to the waters from which it was diverted. [1994 c 264 s 85; 1993 sp.s. c 4 s 12; 1989 c 348 s 6; 1987 c 109 s 92; 1917 c 117 s 37; RRS s 7389. Formerly RCW 90.28.070.]

Findings—Grazing lands—1993 sp.s. c 4: See RCW 79.13.600.

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

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

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

Instream flows: RCW 90.22.060.

RCW 90.03.370 Reservoir permits—Secondary permits—Expedited processing—Underground artificial storage and recovery project standards and rules—Exemptions—Report to the legislature. (1)(a) All applications for reservoir permits are subject to the provisions of RCW 90.03.250 through 90.03.320. But the party or parties proposing to apply to a beneficial use the water stored in any such reservoir shall also file an application for a permit, to be known as the secondary permit, which shall be in compliance with the provisions of RCW 90.03.250 through 90.03.320. Such secondary application shall refer to such reservoir as its source of water supply and shall show documentary evidence that an agreement has been entered into with the owners of the reservoir for a permanent and sufficient interest in said reservoir to impound enough water for the purposes set forth in said application. When the beneficial use has been completed and perfected under the secondary permit, the department shall take the proof of the water users under such permit and the final certificate of appropriation shall refer to both the ditch and works described in the secondary permit and the reservoir described in the primary permit. The department may accept for processing a single application form covering both a proposed reservoir and a proposed secondary permit or permits for use of water from that reservoir.

(b) The department shall expedite processing applications for the following types of storage proposals:

(i) Development of storage facilities that will not require a new water right for diversion or withdrawal of the water to be stored;

(ii) Adding or changing one or more purposes of use of stored water;

(iii) Adding to the storage capacity of an existing storage facility; and

(iv) Applications for secondary permits to secure use from existing storage facilities.

(c) A secondary permit for the beneficial use of water shall not be required for use of water stored in a reservoir where the water right for the source of the stored water authorizes the beneficial use.

(2) (a) For the purposes of this section, "reservoir" includes, in addition to any surface reservoir, any naturally occurring underground geological formation where water is collected and stored for subsequent use as part of an underground artificial storage and recovery project. To qualify for issuance of a reservoir permit an underground geological formation must meet standards for review and mitigation of adverse impacts identified, for the following issues:

(i) Aquifer vulnerability and hydraulic continuity;

(ii) Potential impairment of existing water rights;

(iii) Geotechnical impacts and aquifer boundaries and characteristics;

(iv) Chemical compatibility of surface waters and groundwater;

(v) Recharge and recovery treatment requirements;

(vi) System operation;

(vii) Water rights and ownership of water stored for recovery;

and

(viii) Environmental impacts.

(b) Standards for review and standards for mitigation of adverse impacts for an underground artificial storage and recovery project shall be established by the department by rule. Notwithstanding the provisions of RCW 90.03.250 through 90.03.320, analysis of each underground artificial storage and recovery project and each underground geological formation for which an applicant seeks the status of a reservoir shall be through applicant-initiated studies reviewed by the department.

(3) For the purposes of this section, "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.

(4) Nothing in chapter 98, Laws of 2000 changes the requirements of existing law governing issuance of permits to appropriate or withdraw the waters of the state.

(5) The department shall report to the legislature by December 31, 2001, on the standards for review and standards for mitigation developed under subsection (3) of this section and on the status of any applications that have been filed with the department for underground artificial storage and recovery projects by that date.

(6) Where needed to ensure that existing storage capacity is effectively and efficiently used to meet multiple purposes, the department may authorize reservoirs to be filled more than once per year or more than once per season of use.

(7) This section does not apply to facilities to recapture and reuse return flow from irrigation operations serving a single farm under an existing water right as long as the acreage irrigated is not increased beyond the acreage allowed to be irrigated under the water right.

(8) In addition to the facilities exempted under subsection (7) of this section, this section does not apply to small irrigation impoundments. For purposes of this section, "small irrigation impoundments" means lined surface storage ponds less than ten acre feet in volume used to impound irrigation water under an existing water right where use of the impoundment: (a) (i) Facilitates efficient use of water; or (ii) promotes compliance with an approved recovery plan for endangered or threatened species; and (b) does not expand the number of acres irrigated or the annual consumptive quantity of water used. Such ponds must be lined unless a licensed engineer determines that a liner is not needed to retain water in the pond and to prevent groundwater contamination. Although it may also be composed of other materials, a properly maintained liner may be composed of bentonite. Water remaining in a small irrigation impoundment at the end of an irrigation season may be carried over for use in the next season. However, the limitations of this subsection (8) apply. Development and use of a small irrigation impoundment does not constitute a change or amendment for purposes of RCW 90.03.380 or 90.44.055. [2003 c 329 s 1; 2002 c 329 s 10; 2000 c 98 s 3; 1987 c 109 s 93; 1917 c 117 s 38; RRS s 7390. Formerly RCW 90.28.080.]

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

RCW 90.03.380 Right to water attaches to land—Transfer or change in point of diversion—Transfer of rights from one district to another—Priority of water rights applications—Exemption for small irrigation impoundments—Electronic notice of an application for an interbasin water rights transfer. (1) The right to the use of water which has been applied to a beneficial use in the state shall be and remain appurtenant to the land or place upon which the same is used: PROVIDED, HOWEVER, That the right may be transferred to another or to others and become appurtenant to any other land or place of use without loss of priority of right theretofore established if such change can be made without detriment or injury to existing rights. The point of diversion of water for beneficial use or the purpose of use may be changed, if such change can be made without detriment or injury to existing rights.

(a) A change in the place of use, point of diversion, and/or purpose of use of a water right to enable irrigation of additional acreage or the addition of new uses may be permitted if such change results in no increase in the annual consumptive quantity of water used under the water right.

(b) For water rights held by the United States bureau of reclamation for water use within the boundaries of the Columbia Basin project, the bureau of reclamation may apply for and obtain approval

for a change in the number of acres that may be irrigated with such water rights, so long as such a change does not result in any increase in the instantaneous or annual out-of-stream authorized quantity of such rights and so long as the department determines that such a change would not result in an impairment of any other water rights. The provisions of (a) of this subsection do not apply to a change application filed pursuant to this subsection (1)(b).

(c) For purposes of this section, "annual consumptive quantity" means the estimated or actual annual amount of water diverted pursuant to the water right, reduced by the estimated annual amount of return flows, averaged over the two years of greatest use within the most recent five-year period of continuous beneficial use of the water right.

(d) Before any transfer of such right to use water or change of the point of diversion of water or change of purpose of use can be made, any person having an interest in the transfer or change, shall file a written application therefor with the department, and the application shall not be granted until notice of the application is published as provided in RCW 90.03.280. If it shall appear that such transfer or such change may be made without injury or detriment to existing rights, the department shall issue to the applicant a certificate in duplicate granting the right for such transfer or for such change of point of diversion or of use. The certificate so issued shall be filed and be made a record with the department and the duplicate certificate issued to the applicant may be filed with the county auditor in like manner and with the same effect as provided in the original certificate or permit to divert water.

(2) If an application for change proposes to transfer water rights from one irrigation district to another, the department shall, before publication of notice, receive concurrence from each of the irrigation districts that such transfer or change will not adversely affect the ability to deliver water to other landowners or impair the financial integrity of either of the districts.

(3) A change in place of use by an individual water user or users of water provided by an irrigation district need only receive approval for the change from the board of directors of the district if the use of water continues within the irrigation district, and when water is provided by an irrigation entity that is a member of a board of joint control created under chapter 87.80 RCW, approval need only be received from the board of joint control if the use of water continues within the area of jurisdiction of the joint board and the change can be made without detriment or injury to existing rights.

(4) This section shall not apply to trust water rights acquired by the state through the funding of water conservation projects under chapter 90.38 RCW or RCW 90.42.010 through 90.42.070.

(5)(a) Pending applications for new water rights are not entitled to protection from impairment, injury, or detriment when an application relating to an existing surface or ground water right is considered.

(b) Applications relating to existing surface or ground water rights may be processed and decisions on them rendered independently of processing and rendering decisions on pending applications for new water rights within the same source of supply without regard to the date of filing of the pending applications for new water rights.

(c) Notwithstanding any other existing authority to process applications, including but not limited to the authority to process applications under WAC 173-152-050 as it existed on January 1, 2001,

an application relating to an existing surface or ground water right may be processed ahead of a previously filed application relating to an existing right when sufficient information for a decision on the previously filed application is not available and the applicant for the previously filed application is sent written notice that explains what information is not available and informs the applicant that processing of the next application will begin. The previously filed application does not lose its priority date and if the information is provided by the applicant within 60 days, the previously filed application shall be processed at that time. This subsection (5)(c) does not affect any other existing authority to process applications.

(d) Nothing in this subsection (5) is intended to stop the processing of applications for new water rights.

(6) No applicant for a change, transfer, or amendment of a water right may be required to give up any part of the applicant's valid water right or claim to a state agency, the trust water rights program, or to other persons as a condition of processing the application.

(7) In revising the provisions of this section and adding provisions to this section by chapter 237, Laws of 2001, the legislature does not intend to imply legislative approval or disapproval of any existing administrative policy regarding, or any existing administrative or judicial interpretation of, the provisions of this section not expressly added or revised.

(8) 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 a change or transfer of any existing water right to enable the holder of the right to store water governed by the right.

(9)(a) The department may only approve an application submitted after June 30, 2019, for an interbasin water rights transfer after providing notice electronically to the board of county commissioners in the county of origin upon receipt of an application.

(b) For the purposes of this subsection:

(i) "Interbasin water rights transfer" means a transfer of a water right for which the proposed point of diversion is in a different basin than the proposed place of beneficial use.

(ii) "County of origin" means the county from which a water right is transferred or proposed to be transferred.

(c) This subsection applies to counties located east of the crest of the Cascade mountains. [2024 c 108 s 1; 2011 c 112 s 3; (2011 c 112 s 2 expired June 30, 2019); (2009 c 183 s 15 expired June 30, 2021); 2003 c 329 s 2; 2001 c 237 s 5; 1997 c 442 s 801; 1996 c 320 s 19; 1991 c 347 s 15; 1987 c 109 s 94; 1929 c 122 s 6; 1917 c 117 s 39; RRS s 7391. Formerly RCW 90.28.090.]

Effective date—2011 c 112 s 3: "Section 3 of this act takes effect June 30, 2019." [2011 c 112 s 5.]

Expiration date—2011 c 112 s 2: "Section 2 of this act expires June 30, 2019." [2011 c 112 s 4.]

Findings—Intent—2011 c 112: "The legislature finds that because it is increasingly difficult for water users to acquire new water rights, transfers are a valuable and necessary water management tool.

The legislature further finds that interbasin water right transfers may impact the economic and social welfare of rural communities. Therefore, the legislature intends for the department of ecology to provide notice electronically of a proposed interbasin water rights transfer to the board of commissioners in the county of origin before issuing a change authorization." [2011 c 112 s 1.]

Expiration date—2019 c 78; 2009 c 183: "This act expires June 30, 2021." [2019 c 78 s 4; 2009 c 183 s 20.]

Finding—Intent—Severability—Effective date—2001 c 237: See notes following RCW 90.82.040.

Intent—2001 c 237: See note following RCW 90.66.065.

Purposes—1991 c 347: See note following RCW 90.42.005.

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

Application to Yakima river basin trust water rights: RCW 90.38.040.

RCW 90.03.383 Interties—Findings—Definitions—Review and approval. (1) The legislature recognizes the value of interties for improving the reliability of public water systems, enhancing their management, and more efficiently utilizing the increasingly limited resource. Given the continued growth in the most populous areas of the state, the increased complexity of public water supply management, and the trend toward regional planning and regional solutions to resource issues, interconnections of public water systems through interties provide a valuable tool to ensure reliable public water supplies for the citizens of the state. Public water systems have been encouraged in the past to utilize interties to achieve public health and resource management objectives. The legislature finds that it is in the public interest to recognize interties existing and in use as of January 1, 1991, and to have associated water rights modified by the department of ecology to reflect current use of water through those interties, pursuant to subsection (3) of this section. The legislature further finds it in the public interest to develop a coordinated process to review proposals for interties commencing use after January 1, 1991.

(2) For the purposes of this section, the following definitions shall apply:

(a) "Interties" are interconnections between public water systems permitting exchange or delivery of water between those systems for other than emergency supply purposes, where such exchange or delivery is within established instantaneous and annual withdrawal rates specified in the systems' existing water right permits or certificates, or contained in claims filed pursuant to chapter 90.14 RCW, and which results in better management of public water supply consistent with existing rights and obligations. Interties include interconnections between public water systems permitting exchange or delivery of water to serve as primary or secondary sources of supply, but do not include development of new sources of supply to meet future demand.

(b) "Service area" is the area designated in a water system plan or a coordinated water system plan pursuant to chapter 43.20 or 70A.100 RCW respectively. When a public water system does not have a designated service area subject to the approval process of those chapters, the service area shall be the designated place of use contained in the water right permit or certificate, or contained in the claim filed pursuant to chapter 90.14 RCW.

(3) Public water systems with interties existing and in use as of January 1, 1991, or that have received written approval from the department of health prior to that date, shall file written notice of those interties with the department of health and the department of ecology. The notice may be incorporated into the public water system's five-year update of its water system plan, but shall be filed no later than June 30, 1996. The notice shall identify the location of the intertie; the dates of its first use; the purpose, capacity, and current use; the intertie agreement of the parties and the service areas assigned; and other information reasonably necessary to modify the water right permit. Notwithstanding the provisions of RCW 90.03.380 and 90.44.100, for public water systems with interties existing and in use as of January 1, 1991, the department of ecology, upon receipt of notice meeting the requirements of this subsection, shall, as soon as practicable, modify the place of use descriptions in the water right permits, certificates, or claims to reflect the actual use through such interties, provided that the place of use is within service area designations established in a water system plan approved pursuant to chapter 43.20 RCW, or a coordinated water system plan approved pursuant to chapter 70A.100 RCW, and further provided that the water used is within the instantaneous and annual withdrawal rates specified in the water right permit and that no outstanding complaints of impairment to existing water rights have been filed with the department of ecology prior to September 1, 1991. Where such complaints of impairment have been received, the department of ecology shall make all reasonable efforts to resolve them in a timely manner through agreement of the parties or through available administrative remedies.

(4) Notwithstanding the provisions of RCW 90.03.380 and 90.44.100, exchange or delivery of water through interties commencing use after January 1, 1991, shall be permitted when the intertie improves overall system reliability, enhances the manageability of the systems, provides opportunities for conjunctive use, or delays or avoids the need to develop new water sources, and otherwise meets the requirements of this section, provided that each public water system's water use shall not exceed the instantaneous or annual withdrawal rate specified in its water right authorization, shall not adversely affect existing water rights, and shall not be inconsistent with state-approved plans such as water system plans or other plans which include specific proposals for construction of interties. Interties commencing use after January 1, 1991, shall not be inconsistent with regional water resource plans developed pursuant to chapter 90.54 RCW.

(5) For public water systems subject to the approval process of chapter 43.20 RCW or chapter 70A.100 RCW, proposals for interties commencing use after January 1, 1991, shall be incorporated into water system plans pursuant to chapter 43.20 RCW or coordinated water system plans pursuant to chapter 70A.100 RCW and submitted to the department of health and the department of ecology for review and approval as provided for in subsections (5) through (9) of this section. The plan shall state how the proposed intertie will improve overall system

reliability, enhance the manageability of the systems, provide opportunities for conjunctive use, or delay or avoid the need to develop new water sources.

(6) The department of health shall be responsible for review and approval of proposals for new interties. In its review the department of health shall determine whether the intertie satisfies the criteria of subsection (4) of this section, with the exception of water rights considerations, which are the responsibility of the department of ecology, and shall determine whether the intertie is necessary to address emergent public health or safety concerns associated with public water supply.

(7) If the intertie is determined by the department of health to be necessary to address emergent public health or safety concerns associated with public water supply, the public water system shall amend its water system plan as required and shall file an application with the department of ecology to change its existing water right to reflect the proposed use of the water as described in the approved water system plan. The department of ecology shall process the application for change pursuant to RCW 90.03.380 or 90.44.100 as appropriate, except that, notwithstanding the requirements of those sections regarding notice and protest periods, applicants shall be required to publish notice one time, and the comment period shall be fifteen days from the date of publication of the notice. Within sixty days of receiving the application, the department of ecology shall issue findings and advise the department of health if existing water rights are determined to be adversely affected. If no determination is provided by the department of ecology within the sixty-day period, the department of health shall proceed as if existing rights are not adversely affected by the proposed intertie. The department of ecology may obtain an extension of the sixty-day period by submitting written notice to the department of health and to the applicant indicating a definite date by which its determination will be made. No additional extensions shall be granted, and in no event shall the total review period for the department of ecology exceed one hundred eighty days.

(8) If the department of health determines the proposed intertie appears to meet the requirements of subsection (4) of this section but is not necessary to address emergent public health or safety concerns associated with public water supply, the department of health shall instruct the applicant to submit to the department of ecology an application for change to the underlying water right or claim as necessary to reflect the new place of use. The department of ecology shall consider the applications pursuant to the provisions of RCW 90.03.380 and 90.44.100 as appropriate. If in its review of proposed interties and associated water rights the department of ecology determines that additional information is required to act on the application, the department may request applicants to provide information necessary for its decision, consistent with agency rules and written guidelines. Parties disagreeing with the decision of the department of ecology on the application for change in place of use may appeal the decision to the pollution control hearings board.

(9) The department of health may approve plans containing intertie proposals prior to the department of ecology's decision on the water right application for change in place of use. However, notwithstanding such approval, construction work on the intertie shall not begin until the department of ecology issues the appropriate water right document to the applicant consistent with the approved plan.

[2020 c 20 s 1491; 1991 c 350 s 1.]

RCW 90.03.386 Coordination of approval procedures for compliance and consistency with approved water system plan. (1) Within service areas established pursuant to chapter 43.20 or 70A.100 RCW, the department of ecology and the department of health shall coordinate approval procedures to ensure compliance and consistency with the approved water system plan or small water system management program.

(2) The effect of the department of health's approval of a planning or engineering document that describes a municipal water supplier's service area under chapter 43.20 RCW, or the local legislative authority's approval of service area boundaries in accordance with procedures adopted pursuant to chapter 70A.100 RCW, is that the place of use of a surface water right or groundwater right used by the supplier includes any portion of the approved service area that was not previously within the place of use for the water right if the supplier is in compliance with the terms of the water system plan or small water system management program, including those regarding water conservation, and the alteration of the place of use is not inconsistent, regarding an area added to the place of use, with: Any comprehensive plans or development regulations adopted under chapter 36.70A RCW; any other applicable comprehensive plan, land use plan, or development regulation adopted by a city, town, or county; or any watershed plan approved under chapter 90.82 RCW, or a comprehensive watershed plan adopted under RCW 90.54.040(1) after September 9, 2003, if such a watershed plan has been approved for the area.

(3) A municipal water supplier must implement cost-effective water conservation in accordance with the requirements of RCW 70A.125.170 as part of its approved water system plan or small water system management program. In preparing its regular water system plan update, a municipal water supplier with one thousand or more service connections must describe: (a) The projects, technologies, and other cost-effective measures that comprise its water conservation program; (b) improvements in the efficiency of water system use resulting from implementation of its conservation program over the previous six years; and (c) projected effects of delaying the use of existing inchoate rights over the next six years through the addition of further cost-effective water conservation measures before it may divert or withdraw further amounts of its inchoate right for beneficial use. When establishing or extending a surface or ground water right construction schedule under RCW 90.03.320, the department must take into consideration the public water system's use of conserved water. [2020 c 20 s 1492; 2003 1st sp.s. c 5 s 5; 1991 c 350 s 2.]

Severability—2003 1st sp.s. c 5: See note following RCW 90.03.015.

RCW 90.03.390 Temporary changes—Emergency interties—Rotation in use. RCW 90.03.380 shall not be construed to prevent water users from making a seasonal or temporary change of point of diversion or place of use of water when such change can be made without detriment to existing rights, but in no case shall such change be made without the permission of the water master of the district in which such proposed change is located, or of the department. Nor shall RCW 90.03.380 be construed to prevent construction of emergency interties between public water systems to permit exchange of water during short-term

emergency situations, or rotation in the use of water for bringing about a more economical use of the available supply, provided however, that the department of health in consultation with the department of ecology shall adopt rules or develop written guidelines setting forth standards for determining when a short-term emergency exists and the circumstances in which emergency interties are permitted. The rules or guidelines shall be consistent with the procedures established in RCW 43.83B.400 through 43.83B.420. Water users owning lands to which water rights are attached may rotate in the use of water to which they are collectively entitled, or an individual water user having lands to which are attached water rights of a different priority, may in like manner rotate in use when such rotation can be made without detriment to other existing water rights, and has the approval of the water master or department. [1991 c 350 s 3; 1987 c 109 s 95; 1929 c 122 s 7; RRS s 7391a. Formerly RCW 90.28.100.]

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

RCW 90.03.395 Change of point of diversion to downstream intake structure—Intent. The legislature intends to allow modification of the point of diversion in a water right permit when such a modification will provide both environmental benefits and water supply benefits and nothing in RCW 90.03.397 is to be construed as allowing any other change or transfer of a right to the use of surface water which has not been applied to a beneficial use. [1999 c 232 s 1.]

RCW 90.03.397 Department may approve change of the point of diversion prescribed in a permit to appropriate surface water—Requirements. (1) The department may approve a change of the point of diversion prescribed in a permit to appropriate surface water for a beneficial use if the ownership, purpose of use, season of use, and place of use of the permit remain the same to an approved intake structure with capacity to transport the additional diversion to either: (a) A point of diversion that is located downstream; or (b) a point of diversion located between Columbia river miles 215.6 and 292, if the existing point of diversion is contained therein.

(2) This section may not be construed as limiting in any manner whatsoever other authorities of the department under RCW 90.03.380 or other changes that may be approved under RCW 90.03.380 under authorities existing before July 25, 1999. [2011 c 117 s 1; 1999 c 232 s 2.]

RCW 90.03.400 Crimes against water code—Unauthorized use of water. (1) (a) The unauthorized use of water to which another person is entitled or the willful or negligent waste of water to the detriment of another, is a misdemeanor.

(b) For instances of the waste of water under this subsection, the department may alternatively follow the sequence of enforcement actions as provided in RCW 90.03.605.

(2) The possession or use of water without legal right shall be prima facie evidence of the guilt of the person using it.

(3) It is also a misdemeanor to use, store, or divert any water until after the issuance of permit to appropriate such water. [2003 1st sp.s. c 15 s 2; 2003 c 53 s 418; 1917 c 117 s 40; RRS s 7392. Formerly RCW 90.32.010.]

Reviser's note: The effective date of 2003 c 53 s 418 is July 1, 2004. However, 2003 c 53 s 418 was amended by 2003 1st sp.s. c 15 s 2 which has an effective date of September 9, 2003. Consequently, the effective date of this section is September 9, 2003.

Intent—Effective date—2003 c 53: See notes following RCW 2.48.180.

Punishment of misdemeanor when not fixed by statute: RCW 9.92.030.

RCW 90.03.410 Crimes against water code—Interference with works—Wrongful use of water—Property destruction—Penalty. (1) Any person or persons who shall willfully interfere with, or injure or destroy any dam, dike, headgate, weir, canal or reservoir, flume, or other structure or appliance for the diversion, carriage, storage, apportionment, or measurement of water for irrigation, reclamation, power, or other beneficial uses, or who shall willfully use or conduct water into or through his or her ditch, which has been lawfully denied him or her by the water master or other competent authority, or shall willfully injure or destroy any telegraph, telephone, or electric transmission line, or any other property owned, occupied, or controlled by any person, association, or corporation, or by the United States and used in connection with said beneficial use of water, shall be guilty of a misdemeanor or, if there is actual physical injury to or destruction of any real or personal property, of property destruction and shall incur the penalties set forth in *RCW 9.61.070.

(2) Any person or persons who shall willfully or unlawfully take or use water, or conduct the same into his or her ditch or to his or her land, or land occupied by him or her, and for such purpose shall cut, dig, break down, or open any headgate, bank, embankment, canal or reservoir, flume, or conduit, or interfere with, injure, or destroy any weir, measuring box, or other appliance for the apportionment and measurement of water, or unlawfully take or cause to run or pour out of such structure or appliance any water, shall be guilty of a misdemeanor or, if there is actual physical injury to or destruction of any real or personal property, of property destruction and shall incur the penalties set forth in *RCW 9.61.070.

(3) The use of water through such structure or structures, appliance or appliances hereinbefore named after its or their having been interfered with, injured or destroyed, shall be prima facie evidence of the guilt of the person using it. [2013 c 23 s 598; 1971 ex.s. c 152 s 8; 1921 c 103 s 2; 1917 c 117 s 41; RRS s 7393. Formerly RCW 90.32.020.]

***Reviser's note:** RCW 9.61.070 was repealed by 1975 1st ex.s. c 260 s 9A.92.010, effective July 1, 1976.

RCW 90.03.420 Crimes against water code—Obstruction of right-of-way. Whenever any appropriator of water has the lawful

right-of-way for the storage, diversion, or carriage of water, it shall be unlawful to place or maintain any obstruction that shall interfere with the use of the works, or prevent convenient access thereto or trespass thereon. [1917 c 117 s 42; RRS s 7394. Formerly RCW 90.32.030.]

RCW 90.03.430 Partnership ditches—Action for reimbursement for work done. In all cases where irrigating ditches are owned by two or more persons and one or more of such persons shall fail or neglect to do his, her or their proportionate share of the work necessary for the proper maintenance and operation of such ditch or ditches or to construct suitable headgates or measuring devices at the points where water is diverted from the main ditch, such owner or owners desiring the performance of such work as is reasonably necessary to maintain the ditch, may, after having given ten days' written notice to such owner or owners who have failed to perform his, her or their proportionate share of such work, necessary for the operation and maintenance of said ditch or ditches, perform his, her or their share of such work, and recover therefor from such person or persons so failing to perform his, her or their share of such work in any court having jurisdiction of the matter the expense or value of such work or labor so performed: PROVIDED, That no improvement involving an expenditure in excess of one hundred dollars shall be made without the written approval of the department having first been obtained. [1987 c 109 s 96; 1919 c 71 s 3; RRS s 7395. Formerly RCW 90.28.110.]

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

RCW 90.03.440 Partnership ditches—Procedure for division of water between joint owners. When two or more persons, joint owners in an irrigation ditch or reservoir, not incorporated, or their lessees, are unable to agree relative to the division or distribution of water received through their ditch or from their reservoir, and where there is no disagreement as to the ownership of said water, it shall be lawful for any such owner or owners, his or her or their lessee or lessees, or either of them, to apply to the department, in writing, setting forth such fact and giving such information as shall enable the department to estimate the probable expense of such service, asking the department to appoint some suitable person to take charge of such ditch or reservoir for the purpose of making a just division or distribution of the water from the same to the parties entitled to the use thereof. The department shall upon the receipt of such application notify the applicant of the probable expense of such division and upon receipt of certified check for said amount, the department shall appoint a suitable person to make such division. The person so appointed shall take exclusive charge of such ditch or reservoir for the purpose of dividing the water therefrom in accordance with the established rights of the diverters therefrom, and continue the said work until the necessity therefor shall cease to exist. The expense of such investigation and division shall be a charge upon all of the co-owners and the person advancing the payment to the department shall be entitled to recover in any court of competent jurisdiction from his or her co-owners their proportionate

share of the expense. [2013 c 23 s 599; 1987 c 109 s 97; 1919 c 71 s 4; RRS s 7396. Formerly RCW 90.28.130.]

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

RCW 90.03.450 Partnership ditches—Lien for labor performed.

Upon the failure of any co-owner to pay his or her proportionate share of such expense as mentioned in RCW 90.03.430 within thirty days after receiving a statement of the same as performed by his or her co-owner or owners, such person or persons so performing such labor may secure payment of said claim by filing an itemized and sworn statement thereof, setting forth the date of the performance and the nature of the labor so performed, with the county auditor of the county wherein said ditch is situated, and when so filed it shall constitute a valid lien against the interest of such person or persons who shall fail to perform their proportionate share of the work requisite to the proper maintenance of said ditch, which said lien when so taken may be enforced in the same manner as provided by law for the enforcement of mechanics' and builders' liens. [2013 c 23 s 600; 1919 c 71 s 5; RRS s 7397. Formerly RCW 90.28.120.]

Mechanics' and materialmen's liens: Chapter 60.04 RCW.

RCW 90.03.460 Inchoate rights not affected. Nothing in this chapter contained shall operate to effect an impairment of any inchoate right to divert and use water while the application of the water in question to a beneficial use is being prosecuted with reasonable diligence, having due regard to the circumstances surrounding the enterprise, including the magnitude of the project for putting the water to a beneficial use and the market for the resulting water right for irrigation or power or other beneficial use, in the locality in question. [1917 c 117 s 43; RRS s 7398. Formerly RCW 90.28.140.]

RCW 90.03.470 Schedule of fees. The fees specified in this section shall be collected by the department in advance of the requested action.

(1) For the examination of an application for a permit to appropriate water, a minimum fee of fifty dollars must be remitted with the application. For an amount of water exceeding one-half cubic foot per second, the examination fee shall be assessed at the rate of one dollar per one-hundredth cubic foot per second. In no case will the examination fee be less than fifty dollars or more than twenty-five thousand dollars. No fee is required under this subsection (1) for an application filed by a party to a cost-reimbursement agreement made under RCW 90.03.265.

(2) For the examination of an application to store water, a fee of two dollars for each acre foot of storage proposed shall be charged, but a minimum fee of fifty dollars must be remitted with the application. In no case will the examination fee for a storage project be less than fifty dollars or more than twenty-five thousand dollars.

No fee is required under this subsection (2) for an application filed by a party to a cost-reimbursement agreement made under RCW 90.03.265.

(3) (a) For the examination of an application to transfer, change, or amend a water right certificate, permit, or claim as authorized by RCW 90.44.100, 90.44.105, or 90.03.380, a minimum fee of fifty dollars must be remitted with the application. For an application for change involving an amount of water exceeding one cubic foot per second, the total examination fee shall be assessed at the rate of fifty cents per one-hundredth cubic foot per second. For an application for change of a storage water right, the total examination fee shall be assessed at the rate of one dollar for each acre foot of water involved in the change. The fee shall be based on the amount of water subject to change as proposed in the application, not on the total amount of water reflected in the water right certificate, permit, or claim. In no case will the examination fee charged for a change application be less than fifty dollars or more than twelve thousand five hundred dollars.

(b) The examination fee for a temporary or seasonal change under RCW 90.03.390 is fifty dollars and must be remitted with the application.

(c) No fee is required under this subsection (3) for:

(i) An application to process a change relating to donation of a trust water right to the state;

(ii) An application to process a change when the department otherwise acquires a trust water right for purposes of improving instream flows or for other public purposes;

(iii) An application filed with a water conservancy board according to chapter 90.80 RCW or for the review of a water conservancy board's record of decision submitted to the department according to chapter 90.80 RCW; or

(iv) An application filed by a party to a cost-reimbursement agreement made under RCW 90.03.265.

(d) For a change, transfer, or amendment involving a single project operating under more than one water right, including related secondary diversion rights, or involving the consolidation of multiple water rights, only one examination fee and one certificate fee are required to be paid.

(4) The fifty-dollar minimum fee payable with the application shall be a credit to the total amount whenever the examination fee totals more than fifty dollars under the schedule specified in subsections (1) through (3) of this section and in such case the further fee due shall be the total computed amount, less the amount previously paid. Within five working days from receipt of an application, the department shall notify the applicant by registered mail of any additional fees due under subsections (1) through (3) of this section.

(5) The fees specified in subsections (1) through (3) of this section do not apply to any filings for emergency withdrawal authorizations or temporary drought-related water right changes authorized under RCW 43.83B.410 that are received by the department while a drought condition order issued under RCW 43.83B.405 is in effect.

(6) For applying for each extension of time for beginning construction work under a permit to appropriate water, for completion of construction work, or for completing application of water to a beneficial use, a fee of fifty dollars is required. These fees also

apply to similar extensions of time requested under a change or transfer authorization.

(7) For the inspection of any hydraulic works to insure safety to life and property, a fee based on the actual cost of the inspection, including the expense incident thereto, is required except as follows:

(a) For any hydraulic works less than ten years old, that the department examined and approved the construction plans and specifications as to its safety when required under RCW 90.03.350, there shall be no fee charged; or (b) for any hydraulic works more than ten years old, but less than twenty years old, that the department examined and approved the construction plans and specifications as to its safety when required under RCW 90.03.350, the fee charged shall not exceed the fee for a significant hazard dam.

(8) For the examination of plans and specifications as to safety of controlling works for storage of ten acre feet or more of water, a minimum fee of ten dollars, or a fee equal to the actual cost, is required.

(9) For recording an assignment either of a permit to appropriate water or of an application for such a permit, a fee of fifty dollars is required.

(10) For preparing and issuing all water right certificates, a fee of fifty dollars is required.

(11) For filing and recording a formal protest against granting any application, a fee of fifty dollars is required. No fee is required to submit a comment, by mail or otherwise, regarding an application.

(12) For filing an application to amend a water right claim filed under chapter 90.14 RCW, a fee of fifty dollars is required.

(13) An application or request for an action as provided for under this section is incomplete unless accompanied by the fee or the minimum fee. If no fee or an amount less than the minimum fee accompanies an application or other request for an action as provided under this section, the department shall return the application or request to the applicant with advice as to the fee that must be remitted with the application or request for it to be accepted for processing. If additional fees are due, the department shall provide timely notification by certified mail with return receipt requested to the applicant. No action may be taken by the department until the fee is paid in full. Failure to remit fees within sixty days of the department's notification is grounds for rejecting the application or request or canceling the permit. Cash shall not be accepted. Fees must be paid by check or money order and are nonrefundable.

(14) For purposes of calculating fees for groundwater filings, one cubic foot per second shall be regarded as equivalent to four hundred fifty gallons per minute.

(15) Eighty percent of the fees collected by the department under this section shall be deposited in the state general fund. Twenty percent of the fees collected by the department under this section shall be deposited in the water rights tracking system account established in RCW 90.14.240.

(16) Except for the fees relating to the inspection of hydraulic works and the examination of plans and specifications of controlling works provided for in subsections (7) and (8) of this section, nothing in this section is intended to grant authority to the department to amend the fees in this section by adoption of rules or otherwise.

[2005 c 412 s 2; 1993 c 495 s 2; 1987 c 109 s 98; 1965 ex.s. c 160 s

1; 1951 c 57 s 5; 1929 c 122 s 8; 1925 ex.s. c 161 s 2; 1917 c 117 s 44; RRS s 7399. Formerly RCW 90.04.040.]

Findings—Intent—2005 c 412: "The legislature finds that the fees associated with various actions of the department of ecology relating to the processing and administration of water rights are outdated and are insufficient even to recover the cost of handling the funds submitted. The legislature also finds that water right processing fees are currently collected at three different stages of the water rights process and that reducing the number of instances of fee collection to two stages of the process would increase efficiency and reduce administrative costs. The legislature further finds that several current statutory fees are archaic or are otherwise covered by other general statutes, including the state's public disclosure laws. The legislature therefore intends to update and modernize the fee schedule associated with water right-related actions of the department of ecology." [2005 c 412 s 1.]

Findings—1993 c 495: "The legislature finds that a water right confers significant economic benefits to the water right holder. The fees associated with acquiring a water right have not changed significantly since 1917. Water rights applicants pay less than two percent of the costs of the administration of the water rights program. The legislature finds that, since water rights are of significant value, water rights applicants should contribute more to the cost of administration of the water rights program.

The legislature also finds that an abrupt increase in water rights fees could be disruptive to water rights holders and applicants. The legislature further finds that water rights applicants have a right to know that the water rights program is being administered efficiently and that the fees charged for various services relate directly to the cost of providing those services.

Therefore, the legislature creates a task force to review the water rights program, to make recommendations for streamlining the application process and increasing the overall efficiency and accountability of the administration of the program, and to return to the legislature with a proposal for a fee schedule where the fee levels relate clearly to the cost of services provided." [1993 c 495 s 1.]

Reviser's note: 1993 c 495 s 3 created a water rights task force that expired June 30, 1994.

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

RCW 90.03.471 Disposition of fees. All fees, collections and revenues derived under RCW 90.03.470 or by virtue of RCW 90.03.180, shall be used exclusively for the purpose of carrying out the work and performing the functions of the division of water resources of the department. [1987 c 109 s 99; 1925 ex.s. c 161 s 3; RRS s 7399-1.]

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

RCW 90.03.500 Stormwater control facilities—Imposition of rates and charges—Legislative findings. The legislature finds that increasing the surface water or stormwater accumulation on or flow over real property, beyond that which naturally occurs on the real property, may cause severe damage to the real property and limit the gainful use or enjoyment of the real property, resulting in a tort, nuisance, or taking. The damage can arise from activities increasing the point or nonpoint flow of surface water or stormwater over the real property, or altering or interrupting the natural drainage from the real property. The legislature finds that it is in the public interest to permit the construction and operation of public improvements to lessen the damage. The legislature further finds that it is in the public interest to provide for the equitable imposition of special assessments, rates, and charges to fund such improvements. This shall include the imposition of special assessments, rates, and charges on real property to fund that reasonable portion of the public improvements that alleviate the damage arising from activities that are the proximate cause of the damage on other real property. Except as otherwise provided in RCW 90.03.525, these special assessments, rates, and charges may be imposed on any publicly-owned, including state-owned, real property that causes such damage. [1986 c 278 s 62; 1983 c 315 s 8.]

Severability—1986 c 278: See note following RCW 36.01.010.

Severability—1983 c 315: "If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected." [1983 c 315 s 26.]

Flood control zone districts—Stormwater control improvements: Chapter 86.15 RCW.

Public property subject to rates and charges for stormwater control facilities: RCW 35.67.025, 35.92.021, 36.89.085, and 36.94.145.

RCW 90.03.510 Stormwater control facilities—Imposition of rates and charges—Credit for other improvements. Whenever a county, city, town, water-sewer district, or flood control zone district imposes rates or charges to fund stormwater control facilities or improvements and the operation and maintenance of such facilities or improvements under RCW 35.67.020, 35.92.020, 36.89.080, 36.94.140, 57.08.005, or 57.08.081, it may provide a credit for the value of stormwater control facilities or improvements that a person or entity has installed or located that mitigate or lessen the impact of stormwater which otherwise would occur. [1996 c 230 s 1616; 1986 c 278 s 63; 1983 c 315 s 9.]

Part headings not law—Effective date—1996 c 230: See notes following RCW 57.02.001.

Severability—1986 c 278: See note following RCW 36.01.010.

Severability—1983 c 315: See note following RCW 90.03.500.

RCW 90.03.520 Stormwater control facilities—Imposition of rates and charges—Definitions. The definitions set forth in this section apply to RCW 90.03.525 and 35.67.025.

(1) "State highway right-of-way" means the right-of-way for a state highway. The phrase includes the right-of-way of a state limited access highway inside or outside a city or town but does not include city or town streets forming a part of the route of state highways that are not limited access highways. The term does not include state property under the jurisdiction of the department of transportation that is outside the right-of-way lines of a state highway.

(2) "Stormwater control facility" means any facility, improvement, development, property, or interest therein, made, constructed, or acquired for the purpose of controlling, or protecting life or property from, any storm, waste, flood, or surplus waters.

(3) "Rate" means the dollar amount charged per unit of surface area of a parcel of real property based upon factors established by the local government utility.

(4) "Comparable real property" means real property equal to the state highway right-of-way or a section of state highway right-of-way in terms of the factors considered by the local government utility in establishing rates. [1986 c 278 s 53.]

Severability—1986 c 278: See note following RCW 36.01.010.

Public property subject to rates and charges for stormwater control facilities: RCW 35.67.025.

RCW 90.03.525 Stormwater control facilities—Imposition of rates and charges with respect to state highway rights-of-way—Annual plan for expenditure of charges. (1) The rate charged by a local government utility to the department of transportation with respect to state highway right-of-way or any section of state highway right-of-way for the construction, operation, and maintenance of stormwater control facilities under chapters 35.67, 35.92, 36.89, 36.94, 57.08, and 86.15 RCW, shall be thirty percent of the rate for comparable real property, except as otherwise provided in this section. The rate charged to the department with respect to state highway right-of-way or any section of state highway right-of-way within a local government utility's jurisdiction shall not, however, exceed the rate charged for comparable city street or county road right-of-way within the same jurisdiction. The legislature finds that the aforesaid rates are presumptively fair and equitable because of the traditional and continuing expenditures of the department of transportation for the construction, operation, and maintenance of stormwater control facilities designed to control surface water or stormwater runoff from state highway rights-of-way.

(2) Charges paid under subsection (1) of this section by the department of transportation must be used solely for stormwater control facilities that directly reduce state highway runoff impacts or implementation of best management practices that will reduce the need for such facilities. By January 1st of each year, beginning with calendar year 2020, the local government utility, in coordination with the department of transportation, shall develop a plan for the expenditure of the charges for that calendar year. The plan must be consistent with the objectives identified in former RCW 90.78.010. In

addition, the utility shall provide a progress report on the use of charges assessed for the prior year. No charges may be paid until the plan and report have been submitted to the department of transportation.

(3) The utility imposing the charge and the department of transportation may, however, agree to either higher or lower rates with respect to the construction, operation, or maintenance of any specific stormwater control facilities based upon the annual plan prescribed in subsection (2) of this section. If, after mediation, the local government utility and the department of transportation cannot agree upon the proper rate, either may commence an action in the superior court for the county in which the state highway right-of-way is located to establish the proper rate. The court in establishing the proper rate shall take into account the extent and adequacy of stormwater control facilities constructed by the department and the actual benefits to the sections of state highway rights-of-way from stormwater control facilities constructed, operated, and maintained by the local government utility. Control of surface water runoff and stormwater runoff from state highway rights-of-way shall be deemed an actual benefit to the state highway rights-of-way. The rate for sections of state highway right-of-way as determined by the court shall be set forth in terms of the percentage of the rate for comparable real property, but shall in no event exceed the rate charged for comparable city street or county road right-of-way within the same jurisdiction.

(4) The legislature finds that the federal clean water act (national pollutant discharge elimination system, 40 C.F.R. parts 122-124), the state water pollution control act, chapter 90.48 RCW, and the highway runoff program under chapter 90.71 RCW, mandate the treatment and control of stormwater runoff from state highway rights-of-way owned by the department of transportation. Appropriations made by the legislature to the department of transportation for the construction, operation, and maintenance of stormwater control facilities are intended to address applicable federal and state mandates related to stormwater control and treatment. This section is not intended to limit opportunities for sharing the costs of stormwater improvements between cities, counties, and the state. [2019 c 435 s 1; 2015 c 231 s 1; (2014 c 222 s 708 expired June 30, 2015); 2005 c 319 s 140. Prior: 1996 c 285 s 1; 1996 c 230 s 1617; 1986 c 278 s 54.]

Effective date—2015 c 231: "This act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and takes effect June 30, 2015." [2015 c 231 s 2.]

Expiration date—2014 c 222 s 708: "Section 708 of this act expires June 30, 2015." [2014 c 222 s 803.]

Effective date—2014 c 222: See note following RCW 47.28.030.

Findings—Intent—Part headings—Effective dates—2005 c 319: See notes following RCW 43.17.020.

Part headings not law—Effective date—1996 c 230: See notes following RCW 57.02.001.

Severability—1986 c 278: See note following RCW 36.01.010.

RCW 90.03.540 Highway construction improvement projects—Joint stormwater treatment facilities. In the development of highway construction improvement projects, the department of transportation shall coordinate with adjacent local governments, ports, and other public and private organizations to determine opportunities for cost-effective joint stormwater treatment facilities for both new and existing impervious surfaces. [1996 c 285 s 6.]

RCW 90.03.550 Municipal water supply purposes—Beneficial uses. Beneficial uses of water under a municipal water supply purposes water right may include water withdrawn or diverted under such a right and used for:

(1) Uses that benefit fish and wildlife, water quality, or other instream resources or related habitat values; or

(2) Uses that are needed to implement environmental obligations called for by a watershed plan approved under chapter 90.82 RCW, or a comprehensive watershed plan adopted under RCW 90.54.040(1) after September 9, 2003, a federally approved habitat conservation plan prepared in response to the listing of a species as being endangered or threatened under the federal endangered species act, 16 U.S.C. Sec. 1531 et seq., a hydropower license of the federal energy regulatory commission, or a comprehensive irrigation district management plan. [2003 1st sp.s. c 5 s 2.]

Severability—2003 1st sp.s. c 5: See note following RCW 90.03.015.

RCW 90.03.560 Municipal water supply purposes—Identification. When requested by a municipal water supplier or when processing a change or amendment to the right, the department shall amend the water right documents and related records to ensure that water rights that are for municipal water supply purposes, as defined in RCW 90.03.015, are correctly identified as being for municipal water supply purposes. This section authorizes a water right or portion of a water right held or acquired by a municipal water supplier that is for municipal water supply purposes as defined in RCW 90.03.015 to be identified as being a water right for municipal water supply purposes. However, it does not authorize any other water right or other portion of a right held or acquired by a municipal water supplier to be so identified without the approval of a change or transfer of the right or portion of the right for such a purpose. [2003 1st sp.s. c 5 s 3.]

Severability—2003 1st sp.s. c 5: See note following RCW 90.03.015.

RCW 90.03.570 Change or transfer of an unperfected surface water right for municipal water supply purposes. (1) An unperfected surface water right for municipal water supply purposes or a portion thereof held by a municipal water supplier may be changed or transferred in the same manner as provided by RCW 90.03.380 for any purpose if:

(a) The supplier is in compliance with the terms of an approved water system plan or small water system management program under chapter 43.20 or 70A.100 RCW that applies to the supplier, including those regarding water conservation;

(b) Instream flows have been established by rule for the water resource inventory area, as established in chapter 173-500 WAC as it exists on September 9, 2003, that is the source of the water for the transfer or change;

(c) A watershed plan has been approved for the water resource inventory area referred to in (b) of this subsection under chapter 90.82 RCW and a detailed implementation plan has been completed that satisfies the requirements of RCW 90.82.043 or a watershed plan has been adopted after September 9, 2003, for that water resource inventory area under RCW 90.54.040(1) and a detailed implementation plan has been completed that satisfies the requirements of RCW 90.82.043; and

(d) Streamflows that satisfy the instream flows referred to in (b) of this subsection are met or the milestones for satisfying those instream flows required under (c) of this subsection are being met.

(2) If the criteria listed in subsection (1)(a) through (d) of this section are not satisfied, an unperfected surface water right for municipal water supply purposes or a portion thereof held by a municipal water supplier may nonetheless be changed or transferred in the same manner as provided by RCW 90.03.380 if the change or transfer is:

(a) To provide water for an instream flow requirement that has been established by the department by rule;

(b) Subject to streamflow protection or restoration requirements contained in: A federally approved habitat conservation plan under the federal endangered species act, 16 U.S.C. Sec. 1531 et seq., a hydropower license of the federal energy regulatory commission, or a watershed agreement established under RCW 90.03.590;

(c) For a water right that is subject to instream flow requirements or agreements with the department and the change or transfer is also subject to those instream flow requirements or agreements; or

(d) For resolving or alleviating a public health or safety emergency caused by a failing public water supply system currently providing potable water to existing users, as such a system is described in RCW 90.03.580, and if the change, transfer, or amendment is for correcting the actual or anticipated cause or causes of the public water system failure. Inadequate water rights for a public water system to serve existing hookups or to accommodate future population growth or other future uses do not constitute a public health or safety emergency.

(3) If the recipient of water under a change or transfer authorized by subsection (1) of this section is a water supply system, the receiving system must also be in compliance with the terms of an approved water system plan or small water system management program under chapter 43.20 or 70A.100 RCW that applies to the system, including those regarding water conservation.

(4) The department must provide notice to affected tribes of any transfer or change proposed under this section. [2020 c 20 s 1493; 2003 1st sp.s. c 5 s 14.]

Severability—2003 1st sp.s. c 5: See note following RCW 90.03.015.

RCW 90.03.580 Failing public water system—Conditions. To be considered a failing public water system for the purposes of RCW 90.03.570, the department of health, in consultation with the department and the local health authority, must make a determination that the system meets one or more of the following conditions:

(1) A public water system has failed, or is in danger of failing within two years, to meet state board of health standards for the delivery of potable water to existing users in adequate quantity or quality to meet basic human drinking, cooking, and sanitation needs or to provide adequate fire protection flows;

(2) The current water source has failed or will fail so that the public water system is or will become incapable of exercising its existing water rights to meet existing needs for drinking, cooking, and sanitation purposes after all reasonable conservation efforts have been implemented; or

(3) A change in source is required to meet drinking water quality standards and avoid unreasonable treatment costs, or the state department of health determines that the existing source of supply is unacceptable for human use. [2003 1st sp.s. c 5 s 15.]

Severability—2003 1st sp.s. c 5: See note following RCW 90.03.015.

RCW 90.03.590 Municipal water suppliers—Watershed agreement—Pilot project. (1) On a pilot project basis, the department may enter into a watershed agreement with one or more municipal water suppliers in water resource inventory area number one to meet the objectives established in a water resource management program approved or being developed under chapter 90.82 RCW with the consent of the initiating governments of the water resource inventory area. The term of an agreement may not exceed ten years, but the agreement may be renewed or amended upon agreement of the parties.

(2) A watershed agreement must be consistent with:

(a) Growth management plans developed under chapter 36.70A RCW where these plans are adopted and in effect;

(b) Water supply plans and small water system management programs approved under chapter 43.20 or 70A.100 RCW;

(c) Coordinated water supply plans approved under chapter 70A.100 RCW; and

(d) Water use efficiency and conservation requirements and standards established by the state department of health or such requirements and standards as are provided in an approved watershed plan, whichever are the more stringent.

(3) A watershed agreement must:

(a) Require the public water system operated by the participating municipal water supplier to meet obligations under the watershed plan;

(b) Establish performance measures and timelines for measures to be completed;

(c) Provide for monitoring of streamflows and metering of water use as needed to ensure that the terms of the agreement are met; and

(d) Require annual reports from the water users regarding performance under the agreement.

(4) As needed to implement watershed agreement activities, the department may provide or receive funding, or both, under its existing authorities.

(5) The department must provide opportunity for public review of a proposed agreement before it is executed. The department must make proposed and executed watershed agreements and annual reports available on the department's internet website.

(6) The department must consult with affected local governments and the state departments of health and fish and wildlife before executing an agreement.

(7) Before executing a watershed agreement, the department must conduct a government-to-government consultation with affected tribal governments. The municipal water suppliers operating the public water systems that are proposing to enter into the agreements must be invited to participate in the consultations. During these consultations, the department and the municipal water suppliers shall explore the potential interest of the tribal governments or governments in participating in the agreement.

(8) Any person aggrieved by the department's failure to satisfy the requirements in subsection (3) of this section as embodied in the department's decision to enter into a watershed agreement under this section may, within thirty days of the execution of such an agreement, appeal the department's decision to the pollution control hearings board under chapter 43.21B RCW.

(9) Any projects implemented by a municipal water system under the terms of an agreement reached under this section may be continued and maintained by the municipal water system after the agreement expires or is terminated as long as the conditions of the agreement under which they were implemented continue to be met.

(10) Before December 31, 2003, and December 31, 2004, the department must report to the appropriate committees of the legislature the results of the pilot project provided for in this section. Based on the experience of the pilot project, the department must offer any suggested changes in law that would improve, facilitate, and maximize the implementation of watershed plans adopted under this chapter. [2020 c 20 s 1494; 2003 1st sp.s. c 5 s 16.]

Severability—2003 1st sp.s. c 5: See note following RCW 90.03.015.

RCW 90.03.591 New watershed agreements prohibited after July 1, 2008. The department may not enter into new watershed agreements under RCW 90.03.590 after July 1, 2008. This section does not apply to the renewal of agreements in effect prior to that date. [2003 1st sp.s. c 5 s 17.]

Severability—2003 1st sp.s. c 5: See note following RCW 90.03.015.

RCW 90.03.600 Civil penalties. In determining the amount of a penalty to be levied, the department shall consider the seriousness of the violation, whether the violation is repeated or continuous after

notice of the violation is given, and whether any damage has occurred to the health or property of other persons. Except as provided in RCW 43.05.060 through 43.05.080 and 43.05.150, the department of ecology may levy civil penalties ranging from one hundred dollars to five thousand dollars per day for violation of any of the provisions of this chapter and chapters 43.83B, 90.22, and 90.44 RCW, and rules, permits, and similar documents and regulatory orders of the department of ecology adopted or issued pursuant to such chapters. The procedures of RCW 90.48.144 shall be applicable to all phases of the levying of a penalty as well as review and appeal of the same. [2003 1st sp.s. c 15 s 3; 1995 c 403 s 635; 1987 c 109 s 157; 1977 ex.s. c 1 s 8. Formerly RCW 43.83B.335.]

Findings—Short title—Intent—1995 c 403: See note following RCW 34.05.328.

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

RCW 90.03.605 Compliance—Sequence of enforcement measures—Location of compliance personnel. (1) The department shall, through a network of water masters appointed under this chapter, stream patrollers appointed under chapter 90.08 RCW, and other assigned compliance staff to the extent such a network is funded, achieve compliance with the water laws and rules of the state of Washington in the following sequence:

(a) The department shall prepare and distribute technical and educational information to the general public to assist the public in complying with the requirements of their water rights and applicable water laws;

(b) When the department determines that a violation has occurred or is about to occur, it shall first attempt to achieve voluntary compliance. As part of this first response, the department shall offer information and technical assistance to the person in writing identifying one or more means to accomplish the person's purposes within the framework of the law; and

(c) If education and technical assistance do not achieve compliance the department shall issue a notice of violation, a formal administrative order under RCW 43.27A.190, or assess penalties under RCW 90.03.600 unless the noncompliance is corrected expeditiously or the department determines no impairment or harm.

(2) Nothing in the section is intended to prevent the department of ecology from taking immediate action to cause a violation to be ceased immediately if in the opinion of the department the nature of the violation is causing harm to other water rights or to public resources.

(3) The department of ecology shall to the extent practicable station its compliance personnel within the watershed communities they serve. To the extent practicable, compliance personnel shall be distributed evenly among the regions of the state. [2002 c 329 s 2.]

RCW 90.03.615 Calculating annual consumptive quantity. For purposes of calculating annual consumptive quantity as defined under RCW 90.03.380(1), if, within the most recent five-year period, the

water right has been in the trust water rights program under chapter 90.38 or 90.42 RCW, or the nonuse of the water right has been excused from relinquishment under RCW 90.14.140, the department shall look to the most recent five-year period of continuous beneficial use preceding the date where the excuse for nonuse under RCW 90.14.140 was established and remained in effect. [2009 c 283 s 7.]

Findings—Intent—2009 c 283: See note following RCW 90.42.100.

RCW 90.03.620 Water rights adjudication—Disqualification of judge. (1) A judge in a water right adjudication filed under this chapter may be partially or fully disqualified from hearing the adjudication. Partial disqualification means disqualification from hearing specified claims. Full disqualification means disqualification from hearing any aspect of the adjudication.

(a) A judge is partially disqualified when the judge's impartiality might reasonably be questioned and the apparent or actual partiality is limited to specified claims.

(b) A judge is fully disqualified when the judge's impartiality might reasonably be questioned and the apparent or actual partiality extends beyond limited claims such that the judge should not hear any part of the adjudication.

(2) A judge may recuse himself or herself under this section or a party may file a motion for disqualification. A motion for disqualification must state whether the remedy being sought is full or partial disqualification.

(3) (a) For parties who are named in the original pleadings, a motion for disqualification is timely if it is filed before the judge issues a discretionary order or ruling in the adjudication.

(b) For a party who is joined in the adjudication after the original pleadings have been filed, a motion for disqualification is timely if it is filed within the earliest of either (i) thirty days of being joined in the adjudication; or (ii) after the joinder of the party, before the judge issues a discretionary order or ruling relating to the joined party.

(c) When a motion for disqualification is untimely filed under this subsection (3), the motion will be granted only when necessary to correct a substantial injustice.

(d) For purposes of this section, "discretionary order or ruling" has the same meaning as "order or ruling involving discretion" in RCW 4.12.050.

(4) A party filing a motion for disqualification under this section has the burden of proving by a preponderance of the evidence that the judge should be disqualified under the standards of subsection (1) of this section.

(5) The motion for disqualification may not be heard by the judge against whom the motion is filed. Subject to this limitation, the court may assign the disqualification motion to any superior court judge of the judicial district in which the adjudication was filed or to a visiting superior court judge under RCW 2.56.040.

(6) The standards set forth in RCW 2.28.030, which govern the disqualification of judicial officers generally, may be grounds for disqualification under this section. [2009 c 332 s 3.]

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

RCW 90.03.625 Water rights adjudication—Motion for default.

Upon expiration of the filing period established under RCW 90.03.120, the department shall file a motion for default against defendants who have been served but who have failed to timely file an adjudication claim under RCW 90.03.140. A party in default may file a late claim under the same circumstances the party could respond or defend under court rules on default judgments. [2023 c 160 s 4; 2009 c 332 s 4.]

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

RCW 90.03.630 Water rights adjudication—Use for which a statement of claim is required. If an adjudication claim is for a use for which a statement of claim was required to be filed under chapter 90.14 RCW and no such claim was filed, the department may move that the adjudication claim be denied. The court shall grant the department's motion unless the claimant shows good cause why the motion should not be granted. [2009 c 332 s 5.]

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

RCW 90.03.635 Water rights adjudication—Filing of evidence.

(1) Within the date set by the court for filing evidence, each claimant shall file with the court evidence to support the claimant's adjudication claims. The court is encouraged to set a date for filing evidence that is reasonable and fair for the timely processing of the adjudication. The evidence may include, without limitation, permits or certificates of water right, statements of claim made under chapter 90.14 RCW, deeds, documents related to issuance of a land patent, aerial photographs, decrees of previous water rights adjudications, crop records, records of livestock purchases and sales, records of power use, metering records, declarations containing testimonial evidence, records of diversion, withdrawal or storage and delivery by irrigation districts or ditch companies, and any other evidence to support that a water right was obtained and was not thereafter abandoned or relinquished. The evidence filed may include matters that are outside the original adjudication claim filed, and within the date set by the court for filing evidence, the claimant may amend the adjudication claim to conform to the evidence filed. Thereafter, except for good cause shown, a claimant may not file additional evidence to support the claim.

(2) For an adjudication filed in water resource inventory area 1 after June 1, 2023, the latest date for filing evidence to support the claimant's adjudication claims shall be no less than three years after the date for the filing of adjudication claims by a party set by the court under RCW 90.03.120, unless special rules of procedure established by the court pursuant to RCW 90.03.160(3) provide for a later date. Simplified procedures for claimants of small uses of water under RCW 90.03.160(3) are not subject to this provision. [2023 c 160 s 5; 2009 c 332 s 8.]

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

RCW 90.03.640 Water rights adjudication—Preliminary

investigation—Department's report of findings. (1) Upon the receipt of adjudication claims and the filing of claimants' evidence, the department shall conduct a preliminary investigation for the purpose of examining:

- (a) The uses of the subject waters by and any physical works in connection with the persons to whom the adjudication applies; and
- (b) The uses for which a statement of claim has been filed under chapter 90.14 RCW or for which the department has a permit or certificate of water right on record.

(2) (a) The examination may include, as the department deems appropriate:

- (i) An estimation of the amount of water that is reasonably necessary to accomplish various beneficial uses within the area;
- (ii) The measurement of streamflows;
- (iii) The measurement of any diversion or withdrawal rates;
- (iv) An estimation of storage capacity and the amount of water stored;
- (v) The types and numbers of stock watered;
- (vi) The number of residences served;
- (vii) The location and size of any irrigated land areas; and
- (viii) Any other information pertinent to the determination of water rights in an adjudication under this chapter.

(b) The department may also take other necessary steps and gather other data and information as may be essential to the proper understanding of the water uses and associated rights of the affected water users, including review of each claimant's adjudication claim and evidence the claimant filed to support the claim. The claimants and the department are encouraged to confer as may be beneficial to clarify the factual and legal basis for the claim. To the extent consistent with court rules, the court may deem it appropriate to encourage claimants and the department to work closely together to reach agreement on a claimed water right that may result in timely settlement of water rights, reduced costs for the parties, greater equity and general public service, and better information that may be used for overall water management.

(3) The department shall file with the court the department's report of findings as to each adjudication claim filed timely under RCW 90.03.140. The department may divide its report of findings into two or more segments, covering particular drainages, uses, or other appropriate bases for dividing the report on adjudication claims. Based on the evidence filed by claimants and the department's report of findings, the department shall file with the superior court either or both of the following motions:

(a) A motion for a partial decree in favor of all stated claims under RCW 90.03.140 that the department finds to be substantiated with factual evidence; or

(b) A motion seeking determination of contested claims before the court. [2009 c 332 s 9.]

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

RCW 90.03.645 Water rights adjudication—Early settlement encouraged—Approval of settlement. (1) The legislature finds that early settlement of contested claims is needed for a fair and

efficient adjudication of water rights. Therefore, the department and other parties should identify opportunities for settlement following the date set by the court for filing of claims. To the extent consistent with court rules, the court as it deems beneficial is encouraged to urge as many parties to the adjudication as possible to reach timely agreement on claimed water rights in a manner that limits costs to the public, claimants, counties, courts, and the department. Further, at appropriate times throughout the process the court as it deems beneficial is encouraged to direct parties to utilize alternative methods of dispute resolution, including informal meetings, negotiation, mediation, or other methods to reach agreement on disputed claims.

(2) Any time after the filing of all claims under RCW 90.03.140, the department or another party may move the superior court to allow parties to meet for settlement discussions for a set length of time, either before an appointed mediator or without a mediator. For good cause shown, the court may extend the length of time for settlement discussions. The costs of mediation must be equitably borne by the parties to the mediation.

(3) If the department and a claimant reach agreement on settlement, the department shall file a motion to approve the settlement pursuant to RCW 90.03.640(3)(a) and shall disclose the terms of the settlement to other parties to the adjudication. The court shall conduct a hearing prior to approving a settlement and any party to the adjudication may object or offer modifications to the settlement. [2023 c 160 s 6; 2009 c 332 s 11.]

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

RCW 90.03.650 Water rights processing account. The water rights processing account is created in the state treasury. All receipts from the fees collected under RCW 90.03.655, 90.03.665, and 90.44.540 must be deposited into the account. Money in the account may be spent only after appropriation. Expenditures from the account may only be used to support the processing of water right applications for a new appropriation, change, transfer, or amendment of a water right as provided in this chapter and chapters 90.42 and 90.44 RCW or for the examination, certification, and renewal of certification of water right examiners as provided in RCW 90.03.665. During the 2015-2017 fiscal biennium the legislature may transfer from the water rights processing account to the state drought preparedness account. [2016 sp.s. c 36 s 949; 2010 c 285 s 4.]

Effective date—2016 sp.s. c 36: See note following RCW 18.20.430.

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

RCW 90.03.655 Expedited processing of applications—On department's own volition—Notice—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 the 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 the 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 s 5.]

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

RCW 90.03.660 Expedited processing of applications—Notice to tribal governments. The department must post notice on its website and provide additional electronic notice and opportunity for comment to affected federally recognized tribal governments concurrently when providing notice to applicants under RCW 90.03.265, 90.03.655, and 90.44.540. [2010 c 285 s 6.]

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

RCW 90.03.665 Certified water right examiners—Fees—Rules. (1) The department shall establish and maintain a list of certified water right examiners. Certified water right examiners on the list are eligible to perform final proof examinations of permitted water uses leading to the issuance of a water right certificate under RCW 90.03.330. The list must be updated annually and must be made available to the public through written and electronic media.

(2) In order to qualify, an individual must be registered in Washington as a professional engineer, professional land surveyor, or registered hydrogeologist, or an individual must demonstrate at least five years of applicable experience to the department, or be a board member of a water conservancy board. Qualified individuals must also pass a written examination prior to being certified by the department. Such an examination must be administered by either the department or an entity formally approved by the department. Each certified water right examiner must demonstrate knowledge and competency regarding:

- (a) Water law in the state of Washington;
- (b) Measurement of the flow of water through open channels and enclosed pipes;
- (c) Water use and water level reporting;
- (d) Estimation of the capacity of reservoirs and ponds;
- (e) Irrigation crop water requirements;
- (f) Aerial photo interpretation;
- (g) Legal descriptions of land parcels;
- (h) Location of land and water infrastructure through the use of maps and global positioning;
- (i) Proper construction and sealing of well bores; and
- (j) Other topics related to the preparation and certification of water rights in Washington state.

(3) Except as provided in subsection (9) of this section, upon completion of a water appropriation and putting water to beneficial use, in order to receive a final water right certificate, the permit holder must secure the services of a certified water right examiner who has been tested and certified by the department. The examiner shall carry out a final examination of the project to verify its completion and to determine and document for the permit holder and the department the amount of water that has been appropriated for

beneficial use, the location of diversion or withdrawal and conveyance facilities, and the actual place of use. The examiner shall take measurements or make estimates of the maximum diversion or withdrawal, the capacity of water storage facilities, the acreage irrigated, the type and number of residences served, the type and number of stock watered, and other information relevant to making a final determination of the amount of water beneficially used. The examiner shall take photographs of the facilities to document the use or uses of water and the photographs must be submitted with the examiner's report to the department. The department shall specify the format and required content of the reports and may provide a form for that purpose.

(4) The department may suspend or revoke a certification based on poor performance, malfeasance, failure to acquire continuing education credits, or excessive complaints from the examiner's customers. The department may require the retesting of an examiner. The department may interview any examiner to determine whether the person is qualified for this work. The department shall spot-check the work of examiners to ensure that the public is being competently served. Any person aggrieved by an order of the department including the granting, denial, revocation, or suspension of a certificate issued by the department under this chapter may appeal pursuant to chapter 43.21B RCW.

(5) The decision regarding whether to issue a final water right certificate is solely the responsibility and function of the department.

(6) The department shall make its final decision under RCW 90.03.330 within sixty days of the date of receipt of the proof of examination from the certified water right examiner, unless otherwise requested by the applicant or returned for correction by the department. The department may return an initial proof of examination for correction within thirty days of the department's receipt of such initial proof from a certified water right examiner. Such proof must be returned to both the certified water right examiner and the applicant. Within thirty days of the department's receipt of such returned proof from the certified water right examiner, the department shall make its final decision under RCW 90.03.330, unless otherwise requested by the applicant.

(7) Each certified water right examiner must complete eight hours annually of qualifying continuing education in the water resources field. The department shall determine and specify the qualifying continuing education and shall inform examiners of the opportunities. The department shall track whether examiners are current in their continuing education and may suspend the certification of an examiner who has not complied with the continuing education requirement.

(8) Each certified water right examiner must furnish evidence of insurance or financial responsibility in a form acceptable to the department.

(9) The department may waive the requirement to secure the services of a certified water right examiner in situations in which the department has already conducted a final proof of examination or finds it unnecessary for purposes of issuing a certificate of water right.

(10) The department shall establish and collect fees for the examination, certification, and renewal of certification of water right examiners. Revenue collected from these fees must be deposited into the water rights processing account created in RCW 90.03.650.

Pursuant to RCW 43.135.055, the department is authorized to set fees for examination, certification, and renewal of certification for water right examiners.

(11) The department may adopt rules appropriate to carry out the purposes of this section. [2013 c 70 s 1; 2010 c 285 s 7.]

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

RCW 90.03.670 Processing of water right applications—Scope of chapter 285, Laws of 2010. Nothing in chapter 285, Laws of 2010 affects or diminishes the processing of water right applications under any other existing authority, including but not limited to existing authority for the priority processing of applications by the department. [2010 c 285 s 13.]

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

RCW 90.03.675 Stormwater retention ponds—Mosquito abatement.

(1) A county, city, town, water-sewer district, or flood control zone district constructing, improving, operating, or maintaining stormwater control facilities under chapter 35.67, 35.92, 36.89, 36.94, 57.08, or 86.15 RCW that include stormwater retention ponds, also known as wet ponds, wet retention ponds, or wet extended detention ponds, as part of a stormwater control facility for which the primary function of the pond is to detain stormwater, must:

(a) Consider and to the extent possible consistent with department design guidelines, and without compromising the intended function of the stormwater retention pond, construct stormwater retention ponds to maintain and control vegetation to minimize mosquito propagation;

(b) Consult with the local mosquito control district, where established, in the development of construction plans that include stormwater retention ponds; and

(c) Provide for maintenance and control of vegetation growth in stormwater retention ponds to reduce mosquito habitat and inhibit mosquito propagation without compromising the intended function of a stormwater retention pond.

(2) A county, city, town, water-sewer district, or flood control zone district operating or maintaining stormwater control facilities must, except where mosquito control districts are established, when notified by the department of health or a local health jurisdiction of the positive identification of west nile virus or other mosquito-borne human disease viruses in mosquitoes, birds, or mammals, including humans, consult with the department of health or a mosquito control district concerning which integrated pest management strategies, as defined under chapter 17.15 RCW, for mosquito control or abatement in stormwater retention ponds would be most effective to prevent the spread of the disease.

(3) Where a mosquito control district is established, when notified by the department of health or a local health jurisdiction of the positive identification of west nile virus or other mosquito-borne human disease viruses in mosquitoes, birds, or mammals, including humans, the mosquito control district is responsible for mosquito control or abatement in stormwater retention ponds. [2013 c 209 s 1.]

RCW 90.03.680 Water commissioners—Appointment—Training. (1) In each county, the superior court may appoint one or more attorneys to act as water commissioners to assist the superior court in disposing of its business.

(2) The appointments provided for in this section shall be made by a majority vote of the judges of the superior court of the county and may be in addition to all other appointments of commissioners and other judicial attaches otherwise authorized by law. Water commissioners shall serve at the pleasure of the judges appointing them.

(3) In appointing a water commissioner, the court shall consider a potential commissioner's experience with water law and water use.

(4) The appointments may be full-time or part-time positions. A person appointed as a water commissioner may also be appointed to any other commissioner position authorized by law.

(5) (a) A person appointed as a water commissioner must receive training as soon as reasonably practicable from the administrative office of the courts on the following topics:

(i) Water law, including state, federal, tribal, and international statutory and case law;

(ii) Indian law, including statutory and case law, agreements, executive orders, and treaties;

(iii) An overview of subjects in water science, such as physical and groundwater hydrology, hydrogeology, and irrigation management; and

(iv) Cultural awareness, including state and tribal history related to treaty and nontreaty tribes and governmental relationships with federally recognized tribes.

(b) The administrative office of the courts may contract with one or more academic institutions in Washington, as appropriate, to develop and deliver the training described in (a) of this subsection. [2024 c 268 s 1.]

RCW 90.03.683 Water commissioners—Authority in a water rights adjudication—Acts and proceedings subject to revision by superior court. The judges of the superior court of the county by majority vote may authorize water commissioners, appointed pursuant to RCW 90.03.680, to perform any and all of the following in a water rights adjudication:

(1) Appoint guardians ad litem for claimants under RCW 90.03.150 as necessary;

(2) Hold evidentiary hearings to determine the facts underlying individual and multiple water right claims;

(3) Hold hearings on all contested claims, objections, and stipulated agreements;

(4) Issue decisions on factual and legal issues;

(5) Enter default judgments, settlement agreements, and conditional final orders;

(6) Cause the orders and findings of the adjudication to be entered in the same manner as orders and findings are entered in cases in the superior court; and

(7) Provide such supervision of the water rights adjudication in connection with the exercise of its jurisdiction as may be ordered by the presiding judge and assigned water adjudication judge.

All acts and proceedings of a water commissioner are subject to revision by the superior court as provided in RCW 2.24.050. [2024 c 268 s 2.]