

CHAPTER 263.

[ H. B. 536. ]

REGULATION OF GROUND WATERS.

AN ACT providing for the regulation and control of certain ground waters within the State of Washington and rights to the use thereof; and making an appropriation.

*Be it enacted by the Legislature of the State of Washington:*

Regulation of ground waters.

SECTION 1. This act regulating and controlling ground waters of the State of Washington shall be supplemental to chapter 117, Laws of 1917, as amended, (sections 7351 to 7400, inclusive, Remington's Revised Statutes, also Pierce's Perpetual Code 993), which regulates the surface waters of the state, and is enacted for the purpose of extending the application of such surface water statutes to the appropriation and beneficial use of ground waters within the state.

Surface water not affected.

SEC. 2. The rights to appropriate the surface waters of the state and the rights acquired by the appropriation and use of surface waters shall not be affected or impaired by any of the provisions of this supplementary act and, to the extent that any underground water is part of or tributary to the source of any surface stream or lake, or that the withdrawal of ground water may affect the flow of any spring, water course, lake, or other body of surface water, the right of an appropriator and owner of surface water shall be superior to any subsequent right hereby authorized to be acquired in or to ground water.

Definition of ground water.

SEC. 3. All bodies of water that exist beneath the land surface and that there saturate the interstices of rocks or other materials—that is, the waters of underground streams or channels, artesian basins, underground reservoirs, lakes or basins, whose existence or whose boundaries may be rea-

sonably established or ascertained—are defined for the purposes of this act as “ground waters.” There is recognized a distinction between: (1) Water that exists in underground storage owing wholly to natural processes; for the purposes of this act such water is designated as “natural ground water.” (2) Water that is made available in underground storage artificially, either intentionally or incidentally, to irrigation and that otherwise would have been dissipated by natural waste; for the purposes of this act such water is designated as “artificially stored ground water.”

SEC. 4. Subject to existing rights, all natural ground waters of the state as defined in section 3 of this act, also all artificial ground waters that have been abandoned or forfeited, are hereby declared to be public ground waters and to belong to the public and to be subject to appropriation for beneficial use under the terms of this act and not otherwise.

Ground  
waters  
declared  
public  
property.

SEC. 5. After the effective date of this act no withdrawal of public ground waters of the state shall be begun, nor shall any well or other works for such withdrawal be constructed, unless an application to appropriate such waters has been made to the Supervisor of Hydraulics and a permit has been granted by him as herein provided: *Except, however,* That any withdrawal of public ground waters for stock-watering purposes, or for the watering of a lawn or of a non-commercial garden not exceeding one-half acre in area, or for single or group domestic uses in an amount not exceeding five thousand (5,000) gallons a day, or for an industrial purpose in an amount not exceeding five thousand (5,000) gallons a day, is and shall be exempt from the provisions of this section, but, to the extent that it is regularly used beneficially, shall be entitled to a right equal to that established by a permit issued

Permit for  
withdrawal.

under the provisions of this act: *Provided, however,* That the Supervisor of Hydraulics from time to time may require the person or agency making any such small withdrawal to furnish information as to the means for and the quantity of that withdrawal.

Applications  
for permits.

SEC. 6. Applications for permits for appropriation of underground water shall be made in the same form and manner provided in sections 27 to 35, inclusive, chapter 117, Laws of 1917, as amended, the provisions of which sections are hereby extended to govern and to apply to ground water, or ground water right certificates and to all permits that shall be issued pursuant to such applications, and the rights to the withdrawal of ground water acquired thereby shall be governed by said sections 27 to 35, inclusive: *Provided,* That each application to withdraw public ground water by means of a well or wells shall set forth the following additional information: (1) the name and post-office address of the applicant; (2) the name and post-office address of the owner of the land on which such well or wells or works will be located; (3) the location of the proposed well or wells or other works for the proposed withdrawal; (4) the ground water area, sub-area, or zone from which withdrawal is proposed, provided the Supervisor of Hydraulics has designated such area, sub-area, or zone in accord with section 12 of this act; (5) the amount of water proposed to be withdrawn, in gallons a minute and in acre-feet a year, or millions of gallons a year; (6) the depth and type of construction proposed for the well or wells or other works: *And provided further,* That any permit issued pursuant to an application for constructing a well or wells to withdraw public ground water may specify an approved type and manner of construction for the purposes of preventing waste of said public waters and of conserving their head.

SEC. 7. No permit shall be granted for the development or withdrawal of public ground waters beyond the capacity of the underground bed or formation in the given basin, district, or locality to yield such water within a reasonable or feasible pumping lift in case of pumping developments, or within a reasonable or feasible reduction of pressure in the case of artesian developments. The Supervisor of Hydraulics shall have the power to determine whether the granting of any such permit will injure or damage any vested or existing right or rights under prior permits and may in addition to the records of his office, require further evidence, proof, and testimony before granting or denying any such permits.

Power to  
deny permits.

SEC. 8. Upon a showing to the Supervisor of Hydraulics that construction has been completed in compliance with the terms of any permit issued under the provisions of this act, it shall be the duty of such Supervisor of Hydraulics to issue to the permittee a certificate of ground water right stating that the appropriation has been perfected under such permit: *Provided, however,* That such showing shall include the following information: (1) the location of each well or other means of withdrawal constructed under the permit, both with respect to official land surveys and in terms of distance and direction to any pre-existing well or wells or works constructed under an earlier permit or approved declaration of a vested right, provided the distance to such pre-existing well or works is not more than a quarter of a mile; (2) the depth and diameter of each well or the depth and general specifications of any other works constructed under the terms of the permit; (3) the thickness in feet and the physical character of each bed, stratum, or formation penetrated by each well; (4) the length and position, in feet below the land surface, and the commercial specifications of all casing, also of each screen or

Issuance of  
certificate.

Issuance of  
certificate.

perforated zone in the casing of each well constructed; (5) the tested capacity of each well in gallons a minute, as determined by measuring the discharge of the pump or pumps after continuous operation for at least four (4) hours or, in the case of a flowing well, by measuring the natural flow at the land surface; (6) for each non-flowing well, the depth to the static ground water level as measured in feet below the land surface immediately before the well-capacity test herein provided, also the draw-down of the water level, in feet, at the end of said well-capacity test; (7) for each flowing well, the shut-in pressure measured in feet above the land surface or in pounds per square inch at the land surface; and (8) such additional factual information as reasonably may be required by the Supervisor of Hydraulics to establish compliance with the terms of the permit and with the provisions of this act.

The well driller or other constructor of works for the withdrawal of public ground waters shall be obligated to furnish the permittee a certified record of the factual information necessary to show compliance with the provisions of this section.

Persons  
entitled to  
certificate.

SEC. 9. Any person, firm or corporation claiming a vested right to withdraw public ground waters of the state by virtue of prior beneficial use of such water shall, within three (3) years after the effective date of this act, be entitled to receive from the Supervisor of Hydraulics a certificate of ground water right to that effect: *Provided*, That the issuance by the Supervisor of Hydraulics of any such certificate of vested right shall be contingent on a declaration by the claimant in a form prescribed by said Supervisor, which declaration shall set forth: (1) the beneficial use for which such withdrawal has been made; (2) the date or approximate date of the earliest beneficial use of the water so withdrawn, and the continuity of such beneficial use;

(3) the amount of water claimed; (4) if the beneficial use has been for irrigation, the description of the land to which such water has been applied and the name of the owner thereof; and (5) so far as it may be available, descriptive information concerning each well or other works for the withdrawal of public ground water, as required of original permittees under the provisions of section 8 of this act: *Provided, however,* That in case of failure to comply with the provisions of this section within the three (3) years allotted, the claimant may apply to the Supervisor of Hydraulics for a reasonable extension of time, which shall not exceed two (2) additional years and which shall be granted only upon a showing of good cause for such failure: *And provided further,* That the small withdrawals in the classes exempted from the provisions of section 5 of this act are and shall be exempt from the provisions of this section.

Each such declaration shall be certified, either on the basis of the personal knowledge of the declarant or on the basis of information and belief. With respect to each such declaration there shall be publication, and findings in the same manner as provided in section 6 of this act in the case of an original application to appropriate water. If his findings sustain the declaration, the Supervisor of Hydraulics shall approve said declaration, which then shall be recorded at length in his office and may also be recorded in the office of the County Auditor of the county within which the claimed withdrawal and beneficial use of public ground water have been made. When duly approved and recorded as herein provided, each such declaration or copies thereof shall have the same force and effect as an original permit granted under the provisions of section 6 of this act, with a priority as of the date of the earliest beneficial use of the water.

Approval of  
declaration.

Declarations heretofore filed with the Supervisor of Hydraulics in substantial compliance with the provisions of this section shall have the same force and effect as if filed after the effective date of this act.

Withdrawals  
at other  
locations.

SEC. 10. After an application to, and upon the issuance by the Supervisor of Hydraulics of an amendment to the appropriate permit or certificate of ground water right, the holder of a valid right to withdraw public ground waters may, without losing his priority of right, construct wells or other means of withdrawal at a new location in substitution for or in addition to those at the original location, or he may change the manner or the place of use of the water: *Provided, however,* That such amendment shall be issued only after publication of notice of the application and findings as prescribed in the case of an original application. Such amendment shall be issued by the Supervisor of Hydraulics only on the conditions that: (1) the additional or substitute well or wells shall tap the same body of public ground water as the original well or wells; (2) use of the original well or wells shall be discontinued upon construction of the substitute well or wells; (3) the construction of an additional well or wells shall not enlarge the right conveyed by the original permit or certificate; and (4) other existing rights shall not be impaired. The Supervisor of Hydraulics may specify an approved manner of construction and shall require a showing of compliance with the terms of the amendment, as provided in section 8 of this act in the case of an original permit.

Waste of  
water.

SEC. 11. No public ground waters that have been withdrawn shall be wasted without economical beneficial use. The Supervisor of Hydraulics shall require all flowing wells to be so capped or equipped with valves that the flow of water can be completely

stopped when the wells are not in use under the terms of their respective permits or approved declarations of vested rights. Likewise, he shall also require both flowing and non-flowing wells to be so constructed and maintained as to prevent the waste of public ground waters through leaky casings, pipes, fittings, valves, or pumps—either above or below the land surface: *Provided, however,* That the withdrawal of reasonable quantities of public ground water in connection with the construction, development, testing, or repair of a well shall not be construed as waste; also, that the inadvertent loss of such water owing to breakage of a pump, valve, pipe, or fitting shall not be construed as waste if reasonable diligence is shown by the permittee in effecting the necessary repair.

Waste of  
water  
prohibited.

In the issuance of an original permit, or of an amendment to an original permit or certificate of vested right to withdraw and appropriate public ground waters under the provisions of this act, the Supervisor of Hydraulics may, as in his judgment is necessary, specify for the proposed well or wells or other works a manner of construction adequate to accomplish the provisions of this section.

SEC. 12. As between appropriators of public ground water, the prior appropriator shall as against subsequent appropriators from the same ground water body be entitled to the preferred use of such ground water to the extent of his appropriation and beneficial use, and shall enjoy the right to have any withdrawals by a subsequent appropriator of ground water limited to an amount that will maintain and provide a safe sustaining yield in the amount of the prior appropriation. The Supervisor of Hydraulics shall have jurisdiction over the withdrawals of ground water and shall administer the ground water rights under the principle just set forth, and he shall have the jurisdiction to limit with-

Rights of  
prior appro-  
priator.



Supervisor  
to designate  
ground water  
areas.

drawals by appropriators of ground water so as to enforce the maintenance of a safe sustaining yield from the ground water body. For this purpose, the Supervisor of Hydraulics shall have authority and it shall be his duty from time to time, as adequate factual data become available, to designate ground water areas or sub-areas, to designate separate depth zones within any such area or sub-area, or to modify the boundaries of existing such area, or sub-area, or zones to the end that the withdrawals therefrom may be administratively controlled as prescribed in section 13 of this act in order that overdraft of public ground waters may be prevented so far as is feasible. Each such area or zone shall, as nearly as known facts permit, be so designated as to enclose a single and distinct body of public ground water. Each such sub-area may be so designated as to enclose all or any part of a distinct body of public ground water, as the Supervisor of Hydraulics deems will most effectively accomplish the purposes of this act.

Notice of  
ground water  
zones.

Designation of, or modification of the boundaries of such a ground water area, sub-area, or zone may be proposed by the Supervisor of Hydraulics on his own motion or by petition to the Supervisor of Hydraulics signed by at least fifty (50) or one-fourth ( $\frac{1}{4}$ ), whichever is the lesser number, of the users of ground water in a proposed ground water area, sub-area, or zone. Before any proposed ground water area, sub-area, or zone shall be designated, or before the boundaries of any existing ground water area, sub-area, or zone shall be modified, the Supervisor of Hydraulics shall publish a notice setting forth: (1) in terms of the appropriate legal subdivisions a description of all lands enclosed within the proposed area, sub-area, or zone, or within the area, sub-area, or zone whose boundaries are proposed to be modified; (2) the object of the proposed designation or modification of boundaries; and (3)

the day and hour, and the place where written objections may be submitted and heard. Such notice shall be published in three (3) consecutive weekly issues of a newspaper of general circulation in the county or counties containing all or the greater portion of the lands involved, and the newspaper of publication shall be selected by the Supervisor of Hydraulics. Publication as just prescribed shall be construed as sufficient notice to the land owners and water users concerned.

Publication  
of notice.

Objections having been heard as herein provided, the Supervisor of Hydraulics shall make and file in his office written findings of fact with respect to the proposed designation or modification and, if the findings are in the affirmative, shall also enter a written order designating the ground water area, or sub-area, or zone or modifying the boundaries of the existing area, or sub-area, or zone. Such findings and order shall also be published substantially in the manner herein prescribed for notice of hearing, and when so published shall be final and conclusive unless an appeal therefrom is taken within the period and in the manner prescribed by section 16 of this act. Publication of such findings and order shall give force and effect to the remaining provisions of this section and to the provisions of section 13 of this act, with respect to the particular area, sub-area, or zone.

Finding  
of fact.

Publication.

Priorities of right to withdraw public ground water shall be established separately for each ground water area, sub-area, or zone and, as between such rights, the first in time shall be the superior in right. With respect to time, the effective date of a right shall be the date of issue of a valid permit under the provisions of section 5 of this act, or the date or approximate date of the earliest beneficial use of water as set forth in a certificate of a vested ground water right, under the provisions of section 7 of this act.

Must  
establish  
separate  
priorities.

Filing of  
declaration.Contents of  
declaration

Within ninety (90) days after the designation of a ground water area, sub-area or zone as herein provided, any person, firm or corporation then claiming to be the owner of artificially stored ground water within such area, sub-area, or zone shall file a certified declaration to that effect in the office of the Supervisor of Hydraulics on a form prescribed by said Supervisor. Such declaration shall cover:

- (1) the location and description of the works by whose operation such artificial ground water storage is purported to have been created, and the name or names of the owner or owners thereof;
- (2) a description of the lands purported to be underlain by such artificially stored ground water, and the name or names of the owner or owners thereof;
- (3) the amount of such water claimed;
- (4) the date or approximate date of the earliest artificial storage;
- (5) evidence competent to show that the water claimed is in fact water that would have been dissipated naturally except for artificial improvements by the claimant; and
- (6) such additional factual information as reasonably may be required by the Supervisor of Hydraulics.

If any of the purported artificially stored ground water has been or then is being withdrawn, the claimant also shall file (1) the declarations which sections 7 and 8 of this act require of claimants to a vested right to withdraw public ground waters, and (2) evidence competent to show that none of the water withdrawn under those declarations is in fact public ground water from the area, sub-area, or zone concerned: *Provided, however,* That in case of failure to file a declaration within the 90-day period herein provided, the claimant may apply to the Supervisor of Hydraulics for a reasonable extension of time, which shall not exceed two (2) additional years and which shall be granted only upon a showing of good cause for such failure.

Following publication of the declaration and findings—as in the case of an original application, permit, or certificate of right to appropriate public ground waters—the Supervisor of Hydraulics shall accept or reject such declaration or declarations with respect to ownership or withdrawal of artificially stored ground water. Acceptance of such declaration or declarations by the Supervisor of Hydraulics shall convey to the declarant no right to withdraw public ground waters from the particular area, sub-area, or zone, nor to impair existing or subsequent rights to such public waters.

Publication  
of declara-  
tion.

Any person, firm or corporation hereafter claiming to be the owner of ground water within a designated ground water area, sub-area, or zone by virtue of its artificial storage subsequent to such designation shall, within three (3) years following the earliest artificial storage file a declaration of claim in the office of the Supervisor of Hydraulics, as herein prescribed for claims based on artificial storage prior to such designation: *Provided, however,* That in case of such failure the claimant may apply to the Supervisor of Hydraulics for a reasonable extension of time, which shall not exceed two (2) additional years and which shall be granted upon a showing of good cause for such failure.

Limitation  
of time.

Any person, firm or corporation hereafter withdrawing ground water claimed to be owned by virtue of artificial storage subsequent to designation of the relevant ground water area, sub-area, or zone shall, within ninety (90) days following the earliest such withdrawal, file in the office of the Supervisor of Hydraulics the declarations required by section 8 of this act with respect to withdrawals of public ground water.

SEC. 13. At any time the Supervisor of Hydraulics may hold a hearing on his own motion, and shall hold a hearing upon petition of at least fifty (50) or one-fourth ( $\frac{1}{4}$ ), whichever is the lesser

Hearings.

number, of the holders of valid rights to withdraw public ground waters from any designated ground water area, sub-area, or zone, to determine whether the water supply in such area, sub-area, or zone is adequate for the current needs of all such holders. Notice of any such hearing, and the findings and order resulting therefrom shall be published in the manner prescribed in section 12 of this act with respect to the designation or modification of a ground water area, or sub-area, or zone.

Withdrawals  
may be  
decreased.

If such hearing finds that the total available supply is inadequate for the current needs of all holders of valid rights to withdraw public ground waters from the particular ground water area, sub-area, or zone, the Supervisor of Hydraulics shall order the aggregate withdrawal from such area, sub-area, or zone decreased so that it shall not exceed such available supply. Such decrease shall conform to the priority of the pertinent valid rights and shall prevail for the term of shortage in the available supply. Except that by mutual agreement among the respective holders and with the Supervisor of Hydraulics, the ordered decrease in aggregate withdrawal may be accomplished by the waiving of all or some specified part of a senior right or rights in favor of a junior right or rights: *Provided*, That such waiving of a right or rights by agreement shall not modify the relative priorities of such right or rights as recorded in the office of the Supervisor of Hydraulics.

Abandon-  
ment of use.

SEC. 14. In the event that the Supervisor of Hydraulics shall find that withdrawal and use of ground water under a claimed or valid ground water right has been discontinued for a period of five (5) years, he may presume such rights to have been abandoned and upon notice to the person owning or claiming such right he may require such owner or claimant to show cause before the Supervisor why such right should not be determined to have been aban-

doned by non-use. If upon the hearing, at the time and place fixed in the notice thereof, the Supervisor shall find and determine such use of water to have been abandoned, he shall enter an order determining such right to have been abandoned and shall cancel any water right covered by such appropriation.

SEC. 15. The Supervisor of Hydraulics, as in his judgment is deemed necessary and advisable, may appoint one or more ground water supervisors for each designated ground water area, sub-area, or zone, or may appoint one or more ground water supervisors-at-large. Within their respective jurisdictions and under the direction of the Supervisor of Hydraulics, such supervisor and supervisors-at-large shall supervise the withdrawal of public ground waters and the carrying out of orders issued by the Supervisor of Hydraulics under the provisions of this act. Supervisors.

The duties, compensation, and authority of such supervisors or supervisors-at-large shall be those prescribed for water masters under the terms of sections 9 and 10 of chapter 117, Laws of 1917. Duties.

SEC. 16. Any person, corporation or association feeling aggrieved at any order, decision, or determination of the State Supervisor of Hydraulics, or of any assistant or deputy, or any ground water supervisor or ground water supervisor-at-large, affecting his interests, may have the same reviewed by a proceeding for that purpose, in the nature of an appeal, and in the manner provided by section 11, chapter 117, Laws of 1917, as amended by section 1, chapter 71, Laws of 1919, with respect to surface waters. Appeals.

SEC. 17. In his discretion or upon the application of any party claiming right to the withdrawal and use of public ground water, the Supervisor of Hydraulics may file a petition with the Superior

Court  
determina-  
tion of  
withdrawal  
rights.

Court of the county for the determination of the rights of appropriators of any particular ground water body and all the provisions of sections 14 to 26, inclusive, chapter 117, Laws of 1917 as heretofore amended, shall govern and apply to the adjudication and determination of such ground water body and to the ownership thereof. Hereafter, in any proceedings for the adjudication and determination of water rights—either rights to the use of surface water or to the use of ground water, or both—pursuant to chapter 117, Laws of 1917 as heretofore amended, all appropriators of ground water or of surface water in the particular basin or area may be included as parties to such adjudication, as pertinent.

Jurisdiction  
reserved.

SEC. 18. In any determination of the right to withdrawal of ground water under sections 16 or 17 of this act, the Supervisor's findings and the court's findings and judgment shall determine the priority of right and the quantity of water to which each appropriator who is a party to the proceedings shall be entitled, shall determine the level below which the ground water body shall not be drawn down by appropriators, or shall reserve jurisdiction for the determination of a safe sustaining water yield as necessary from time to time to preserve the rights of the several appropriators and to prevent depletion of the ground water body.

Investiga-  
tions.

SEC. 19. The Supervisor of Hydraulics is hereby authorized to make such investigations, as may be necessary to determine the location, extent, depth, volume, and flow of all ground waters within the state and in making such examination, hereby is authorized and directed to cooperate with the Federal Government, with any county or municipal corporation, or any person, firm, association or corporation, and upon such terms as may seem appropriate to him.

In connection with such investigation, the Supervisor of Hydraulics from time to time may require reports from each ground water appropriator as to the amount of public ground water being withdrawn and as to the manner and extent of the beneficial use. Such reports shall be in a form prescribed by said Supervisor. Reports.

SEC. 20. The sum of thirty thousand dollars (\$30,000) is hereby appropriated to the Department of Conservation and Development from the moneys of the General Fund, not otherwise appropriated, to carry out the provisions of this act. Appropriation.

Passed the House March 3, 1945.

Passed the Senate March 7, 1945.

Approved by the Governor March 19, 1945.

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## CHAPTER 264.

[ H. B. 47. ]

### PUBLIC HOSPITAL DISTRICTS.

AN ACT relating to and authorizing the establishment of Public Hospital Districts, and the consolidation thereof and annexation thereto; providing for the construction, purchase, lease, condemnation and purchase, acquisition, maintenance, conducting, operation, development and regulation by such districts of hospital facilities; providing for the revenue for the operation of such hospitals; and prescribing, defining and regulating the powers, duties and government of such hospital districts.

*Be it enacted by the Legislature of the State of Washington:*

SECTION 1. The purpose of this act is to authorize the establishment of Public Hospital Districts to own and operate hospitals and to supply hospital service for the residents of such districts and other persons. Public hospital districts.

SEC. 2. Municipal corporations, to be known as Public Hospital Districts, are hereby authorized