

**POLICY TO REPLACE AN EXISTING WELL OR TO ADD AN ADDITIONAL WELL(S)**

Resource Contact: Policy and Planning Section

Effective Date: 09/30/99

Revised: NEW

References: Chapter 316, Session Law of 1997 (ESHB 2013, 1997 Regular Session) related to full and complete development of existing ground water right permits or certificates codified at RCW 90.44.100(3).

Purpose: To assist water right permit or certificate holders in complying with Chapter 316, Session Laws of 1997 and to state how Ecology will administer the law.

Applicability: To replace an existing well(s) or to add an additional well(s) to water right permits or certificates issued pursuant to chapter 90.44 RCW.

1. How can a ground water right permit or certificate be amended?

The ground water code provides the holder of a valid statutory water right permit or certificate two different ways to obtain an amendment to their water right permit or certificate to replace or add an additional well. The two different ways are:

- a. The water right permit or certificate holder may file an application for change of water right in accordance with RCW 90.44.100, or
- b. In certain circumstances, an amendment is statutorily granted (an application for change of water right is not required) upon a showing of compliance with RCW 90.44.100(3).

2. What is a Showing of Compliance with RCW 90.44.100(3)?

The showing of compliance documents the additional or replacement well(s) (see 3(a) through 3(g) of this policy statement) complies with the law regarding water rights and well construction requirements (See chapter 18.104 RCW and chapter 173-160 WAC).

An affidavit, with supporting information, signed by the water right permit or certificate holder and filed with the Department of Ecology's regional office would constitute a showing of compliance. See chapter 173-152 WAC for a description of the geographic areas served by each region.

3. How can a water right permit or certificate holder show compliance with RCW 90.44.100(3)?

A water right permit or certificate holder can show compliance with RCW 90.44.100(3) by sending a written affidavit to Ecology that identifies the water right permit or certificate proposed for amendment and addresses those attributes of the water right or well required by law to be the same for the new well(s) as the original well. The affidavit must document the instantaneous and annual use of water pursuant to the right from initial perfection of the right through the present. (Water rights are established by the actual application of water to a beneficial use.) In addition, the affidavit must include information about the well(s) constructed pursuant to the right, including the location (by Section, Township, Range); diameter and depth of the well(s); the length and position (in feet below land surface) and commercial specifications of all casing; static water elevation; and the length of screening and perforated zone in the casing for the well(s) to be replaced or that additional well(s) will be added to. The affidavit must verify that:

- a. The new well(s) or replacement well(s) taps the same body of public ground water as the original well(s);
- b. In the case of a replacement well(s), the use of the original well(s) has been discontinued and the original well(s) has been properly decommissioned as required under chapter 18.104 RCW and chapter 173-160 WAC;
- c. The combined withdrawal of water from a replacement well(s) or from a new additional well(s) and the original well(s) authorized by the water right certificate or permit has not enlarged the valid water right conveyed by the original water right certificate or permit to the extent it (the certificate) has been developed. In asserting the amendment will not enlarge a valid water right, meter data or other information demonstrating the use of water should be provided;
- d. The use of the new or replacement well(s) does not interfere with or impair water rights with an earlier priority date;
- e. The new or replacement well(s) is located no closer than the original well(s) to a well(s) or surface water body it might interfere with;
- f. The well(s) construction meets all construction requirements contained in the original water right including but not limited to depth, casing, sealing, and also shall be in compliance with chapter 18.104 RCW and chapter 173-160 WAC; and
- g. The new or replacement well(s) is located within the area described as the point of withdrawal in the public notice published for the original application for water right, or the most current published legal description in the file.

4. Does Ecology have a recommended format for a showing of compliance?

Yes. Ecology has a form entitled "Showing of Compliance with RCW 90.44.100(3)," the form has the number [ECY 040-74](#). You are not required to use the form. However, the statute requires the same information (as requested by the form) be submitted to Ecology to demonstrate compliance.

5. What will Ecology do in response to a showing of compliance?

If the showing of compliance conforms with the law, Ecology will make the affidavit attesting to compliance with RCW 90.44.100(3) a part of Ecology's public record associated with the water right permit or certificate. No superseding water right certificate will be issued to the certificate holder, because Ecology will not have evaluated the validity of the information supplied by the certificate holder or the historical development under the asserted right. A superseding permit will be issued to the holder of a water right permit who amends a permit pursuant to RCW 90.44.100(3).

If the showing of compliance does not appear to conform with the law, Ecology will return the affidavit along with an explanation of why the affidavit does not appear to comply with the law. The project proponent can clarify or change the affidavit and resubmit the affidavit to Ecology.

6. Can a water right permit or certificate holder request technical assistance from Ecology to show compliance with RCW 90.44.100(3)?

Yes. At the discretion of a person seeking to amend a water right permit or certificate pursuant to RCW 90.44.100(3), a written request for technical assistance in order to comply with the law may be filed with Ecology's regional office. See chapter 173-152 WAC for a description of the geographic areas served by each region. The written request for technical assistance should demonstrate why the water right permit or certificate holder believes a statutorily granted amendment under RCW 90.44.100(3) is appropriate and must provide supporting evidence (See RCW 90.44.100(3)(a) through RCW 90.44.100(3)(g)).

7. What issues need to be addressed in the notice or request to Ecology for technical assistance?

The issues to address in the request for technical assistance are the same as those listed in 3(a) through 3(g) of this policy. The proponent must identify the water right permit or certificate proposed for amendment and then address each of the points in 3(a) through 3(g).

8. What will Ecology do in response to a request for technical assistance?

Ecology will review the information provided for the proposed new or replacement well(s) and will respond, either verbally or in writing, to the notification. Ecology's role in regard to technical assistance is to (a) advise, based on the information at hand, that it either does or does not appear the proposed amendment complies with the law and (b) specify the manner of well(s) construction if necessary to comply with the well construction statute (chapter 18.104 RCW). The burden to comply with the law rests with the water right permit or certificate holder asserting an amendment pursuant to RCW 90.44.100(3).

In providing technical assistance, Ecology will inform the proponent of the change that it can not advise as to whether the water right sought to be amended is valid. Any written correspondence will contain the following sentences: *Nothing in this correspondence should be construed by you as affirming the validity of any water right. Ecology is providing information as to whether or not the amendment appears to conform to the statutory mandates of RCW 90.44.100(3).*

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**Special Note:** These policies and procedures are used to guide and ensure consistency among water resources program staff in the administration of laws and regulations. These policies and procedures are not formal administrative regulations that have been adopted through a rule-making process. In some cases, the policies may not reflect subsequent changes in statutory law or judicial findings, but they are indicative of the department's practices and interpretations of laws and regulations at the time they are adopted. If you have any questions regarding a policy or procedure, please contact the department.