

CHAPTER 15.18

RURAL WATER SUPPLY PROGRAM

SECTIONS:

15.18.010	Title
15.18.020	Purpose
15.18.030	Applicability
15.18.040	Definitions
15.18.050	Creation and Use of County Water Bank
15.18.060	Building Permits for Dwelling Units
15.18.070	Applications for Short Subdivisions or Subdivisions
15.18.080	Mitigation Certificates from the County
15.18.090	Consumptive Use of Water
15.18.100	Metering Requirements
15.18.110	Administration
15.18.120	Violations—Infraction—Misdemeanor
15.18.130	Injunctive Relief
15.18.140	Violations—Investigations—Evidence
15.18.150	Failure to Provide Information Identifying Person
15.18.160	Notice of Infraction—Service
15.18.170	Form—Contents
15.18.180	Filing—Hearing in District Court
15.18.190	Determination Infraction Committed
15.18.200	Response - Requesting a Hearing - Failure to Respond or Appear - Order Set Aside
15.18.210	Representation by Attorney
15.18.220	Infraction - Hearing - Procedure - Burden of Proof - Order - Appeal
15.18.230	Explanation of Mitigating Circumstances
15.18.240	Civil Penalty—Infraction
15.18.250	Violation—Penalties
15.18.260	Severability
15.18.270	Effective Date

15.18.010 TITLE. There is hereby added a new chapter to the Benton County Code, entitled "Rural Water Supply Program" and which shall include the sections that follow.

[Ord. 619 (2020) § 1]

15.18.020 PURPOSE. The purpose of this chapter is to: (1) protect the public health, safety and welfare of the citizens of Benton County; (2) comply with the requirements of the Growth Management Act set forth in chapter 36.70A RCW related to the protection of the quantity and quality of ground and surface water; and (3) protect the rural character of the County, while continuing to provide opportunities for citizens that desire rural residential lifestyle in areas not served by public water systems.

[Ord. 619 (2020) § 2]

15.18.030 APPLICABILITY. This chapter shall only apply to development of parcels for residential uses which are located wholly or partially within that portion of unincorporated Benton County as set forth in the two Mitigation Area maps attached hereto as Exhibit A, which in general terms is that portion of water resource inventory area 37 delineated by the Benton County line to the west, the northern and southern boundaries of water resource inventory area 37, and on the east as set forth in the Mitigation Area maps.

[Ord. 619 (2020) § 3; Ord. 645 (2022) § 1]

15.18.040 DEFINITIONS. The following words and phrases used in this chapter shall be given the meaning attributed to them by this section. Except where specifically defined below, all words used in this chapter shall carry their customary meaning as set forth in a commonly accepted dictionary.

(a) "Dwelling Unit" shall mean a room or rooms located within a structure that is designed, arranged, occupied or intended to be occupied by not more than one (1) household. The existence of food preparation and bathroom areas within the room or rooms shall be evidence of the existence of a dwelling unit.

(b) "Irrigation District" shall mean a district organized pursuant to chapter 87.03 RCW.

(c) "Water Resource Inventory Area 37" shall mean that area so designated by chapter 173-500 WAC, as now in existence or hereafter amended.

[Ord. 619 (2020) § 4]

15.18.050 CREATION AND USE OF COUNTY WATER BANK. Benton County has acquired certain water rights that will be placed into the State of Washington trust water rights program pursuant to chapters 90.38 and 90.42, RCW, and future acquired water rights may also be placed into the trust water rights program by Benton County. Mitigation certificates and supplemental mitigation certificates may be issued under BCC 15.18.080 only to the extent the aggregate amount of water considered to be consumptively used pursuant BCC 15.18.090 does not exceed the amount of water placed into the trust water rights program by Benton County for this purpose.

[Ord. 619 (2020) § 5; Ord. 645 (2022) § 2]

15.18.060 BUILDING PERMITS FOR DWELLING UNITS. An applicant for a building permit under Title 3 of the Benton County Code to construct a new building that will contain one or more dwelling units may rely on a private well for which no water right has been obtained for the necessary domestic water supply for such building only if the provisions of RCW 90.44.050 are satisfied and the applicant acquires a mitigation certificate from the Benton County Water Bank under the terms of this chapter or from a private water bank in a quantity of water equal to or greater than that required if the mitigation certificate were obtained from the Benton County Water Bank.

[Ord. 619 (2020) § 6]

15.18.070 APPLICATIONS FOR SHORT SUBDIVISIONS OR SUBDIVISIONS. An applicant for a short subdivision or subdivision under Title 9 of the Benton County Code may rely on one or more private wells for which no water right has been obtained for the necessary domestic water supply for the lots to be created only if the provisions of RCW 90.44.050 are satisfied and the applicant acquires the required mitigation certificates for each proposed parcel from the Benton County Water Bank under the terms of this chapter or from a private water bank in quantities of water equal

to or greater than that required if the mitigation certificates were obtained from the Benton County Water Bank.

[Ord. 619 (2020) § 7]

15.18.080 MITIGATION CERTIFICATES FROM THE COUNTY.

(a) An applicant for a building permit on a parcel within the boundaries of an irrigation district at the time of application approval and that must acquire a mitigation certificate pursuant to BCC 15.18.060, may purchase one Package A Mitigation Certificate per dwelling unit from the County. A Package A Mitigation Certificate shall authorize an annual average of two hundred (200) gallons per day of private well water for indoor use only on the parcel, provided, so long as the daily annual average is not exceeded in any twelve (12) month period, the maximum withdrawal on any given day for parcels with a Package A Mitigation Certificate shall be six hundred seventy five (675) gallons. The price of a Package A Mitigation Certificate shall be set by resolution of the Board of County Commissioners.

(b) An applicant for a building permit that must acquire a mitigation certificate pursuant to BCC 15.18.060 with respect to a parcel that will not be within the boundaries of an irrigation district or that will be within the boundaries of an irrigation district but provides written confirmation from the district that the parcel will not be subject to assessments by the irrigation district at the time of application approval, may purchase either one Package B Mitigation Certificate or one Package C Mitigation Certificate per dwelling unit from the County. The prices of Package B and Package C Mitigation Certificates shall be set by resolution of the Board of County Commissioners.

(i) Package B Mitigation Certificates shall authorize the use of an annual average of three hundred (300) gallons per day, in the aggregate, of private well water for indoor use and outdoor irrigation of an area up to 1500 square feet. So long as the annual daily average is not exceeded in any twelve (12) month period, the maximum daily withdrawal on any given day for parcels with a Package B Mitigation Certificate shall be one thousand (1000) gallons.

(ii) Package C Mitigation Certificates shall authorize the use of an annual average of four hundred (400) gallons per

day, in the aggregate, of private well water for indoor use and outdoor irrigation of an area up to 3000 square feet. So long as the annual daily average is not exceeded in any twelve (12) month period, the maximum daily withdrawal on any given day for parcels with a Package C Mitigation Certificate shall be one thousand three hundred (1300) gallons.

(c) An applicant for a short subdivision or subdivision that needs to acquire one or more mitigation certificates pursuant to BCC 15.18.070 may purchase after preliminary approval of the short subdivision or subdivision one mitigation certificate per dwelling unit to be built on each buildable parcel proposed to be created.

(i) Package A Mitigation Certificates as described in BCC 15.18.080(a) above may be purchased for proposed parcels that will at the time of final plat approval be within the boundaries of an irrigation district.

(ii) Package B or Package C Mitigation Certificates as described in BCC 15.18.080(b)(i) and (ii) above may be purchased for proposed parcels that will at the time of final plat approval be outside the boundaries of an irrigation district or within the boundaries of an irrigation district if a written statement is provided by the irrigation district stating that the proposed parcels will not be subject to assessment by the district.

(d) Use of water pursuant to a mitigation certificate acquired from the County may be curtailed in extreme low water supply conditions notwithstanding the amounts of water otherwise set forth above. Any valid priority calls against the County's Trust Water Right based on local limitations of water availability and/or impairment of senior water rights shall result in temporary curtailment of the use of water under a mitigation certificate until the priority call for water ends.

(e) A mitigation certificate issued under subsections (a), (b), or (c) above satisfies the adequate water supply requirement for one dwelling unit. A building permit applicant for a parcel with multiple dwelling units and short subdivision and subdivision

applicants proposing to have multiple dwelling units on proposed parcels must obtain mitigation certificates for each dwelling unit if they are relying on mitigation certificates to satisfy the requirement for an adequate water supply.

(f) Owners of a parcel for which only a Package B Mitigation Certificate has been issued and recorded may apply for a Supplemental Mitigation Certificate that shall authorize the use of an annual average of an additional one hundred (100) gallons per day, in the aggregate, of private well water for indoor use and outdoor irrigation of an additional fifteen hundred (1500) square feet. So long as the annual daily average is not exceeded in any twelve (12) month period, the maximum daily withdrawal on any given day for parcels with a Package B Mitigation Certificate and a Supplemental Mitigation Certificate shall be one thousand three hundred (1300) gallons. The price of a Supplemental Mitigation Certificate shall be set by resolution of the Board of County Commissioners.

(g) Each mitigation certificate and Supplemental Mitigation Certificate must be recorded with the Benton County Auditor and indicate: (1) the parcel on which the water will be used; (2) the amount of use authorized; (3) the maximum number of square feet, if any, that may be irrigated thereunder; (4) the parcel on which the well is located; and (5) the maximum amount of water authorized for use daily and in any consecutive twelve (12) month period. [Ord. 619 (2020) § 8; Ord. 645 (2022) § 3]

15.18.090 CONSUMPTIVE USE OF WATER. (a) For each Package A Mitigation Certificate issued under this chapter, the annual consumptive use of water under that mitigation certificate shall be deemed to be .045 acre-feet per year.

(b) For each Package B Mitigation Certificate issued under this chapter, the annual consumptive use of water under that mitigation certificate shall be deemed to be .146 acre-feet per year.

(c) For each Package C Mitigation Certificate issued under this chapter, the annual consumptive use of water under that mitigation certificate shall be deemed to be .314 acre-feet per year.

(d) For each Supplemental Mitigation Certificate issued under this chapter, the annual consumptive use of water under that supplemental mitigation certificate shall be deemed to be .168 acre-feet per year.

(e) For each building permit issued between February 14, 2018, and the last business day prior to the effective date of this chapter authorizing the construction of a new building on a parcel within the Mitigation Area that will contain one or more dwelling units for which the domestic water source is a private well with no water right, the consumptive use of water shall be deemed as follows:

(i) .045 acre-feet per year for each dwelling unit located on parcels within an irrigation district; and

[NOTE: This chapter is continued on the following page.]

(ii) .146 acre-feet per year for each dwelling unit located on parcels outside of an irrigation district.

[Ord. 619 (2020) § 9; Ord. 645 (2022) § 4]

15.18.100 METERING REQUIREMENTS. (a) All dwelling units relying on private wells pursuant to a mitigation certificate issued by Benton County or by a private water bank shall meter their water usage through a meter approved by the County and pay an annual fee, in the amounts set forth by resolution adopted by the Board of County Commissioners, for the administration of a metering and monitoring program.

(b) Participants are responsible for the installation of meters and metering equipment and any associated costs as determined by County specifications, with the equipment and inspection fees set by Board of Commissioner resolution. Meter installment must meet the following specifications and will be subject to inspection:

(i) The meter must be installed on the mainline prior to any residential lateral connections, spigots, or pressure tanks in a well house.

(ii) Meters must be accessible.

(iii) The meter must be installed according to the manufacturer specifications despite varying pipe-fitting, pipe size, well locations and landscape conditions.

(iv) Meter installation must have an accessible, weather resistant, meter structure, such as a meter box or equivalent, and be appropriate for location and geographic area.

(v) Meter installation must contain provisions for cellular endpoints for automatic reading. Below ground installations shall utilize a manufacturer's recommended meter box and lid specifications with accommodations for the end point. Installations inside a building shall properly mount the end point in accordance with the manufacturer's recommendations. End points shall be mounted on the building exterior if necessary to ensure adequate signal strength.

(c) Installation of metering equipment and functional water flow must be complete and approved prior to the inspection and issuance of a Certificate of Occupancy.

(d) If metering equipment requires maintenance, repair, and/or replacement, the property owner is responsible for ensuring proper equipment functionality. If the property owner does not comply with any needed maintenance, repair, and/or replacement of the metering equipment at the cost of the property owner Benton County may undertake such work and recover the costs from the property owner through either an invoice for costs or a lien on the parcel.
[Ord. 619 (2020) § 10]

15.18.110 ADMINISTRATION. Both the Benton County Planning Administrator and the Benton County Building Official and their authorized representatives shall have the responsibility for the administration and enforcement of this chapter.
[Ord. 619 (2020) § 11]

15.18.120 VIOLATIONS--INFRACTION--MISDEMEANOR. The first violation of any provision of this chapter shall constitute an infraction. Upon final disposition of an infraction, a determination of a continuing violation of the same provision by an official authorized to enforce the provision at issue shall constitute a second or subsequent offense. The court's finding of a second or subsequent violation of the same provision of this chapter shall constitute a misdemeanor.
[Ord. 619 (2020) § 12]

15.18.130 INJUNCTIVE RELIEF. Notwithstanding the existence or use of any other remedy or means of enforcement of the provisions hereof, Benton County may seek legal or equitable relief to enjoin any acts or practices which constitute a violation of any of the provisions hereof and compel compliance with all provisions of this chapter. The costs of such action shall be taxed against the person violating the provisions of this chapter. The Planning Administrator may accept written assurance of discontinuance of any act in violation of this chapter from any

person who has engaged in such act. Failure to comply with the assurance of discontinuance shall be a further violation of this chapter.

[Ord. 619 (2020) § 13]

15.18.140 VIOLATIONS - INVESTIGATIONS - EVIDENCE. If the name of the person allegedly or apparently in violation of this chapter is not known, or if the name of the person does not appear on the latest list of permits compiled by the County, upon presentation of credentials, an authorized official may inspect parcels for which a mitigation certificate has been issued as is required under this chapter to determine compliance with this chapter. Upon request of the authorized representative of either authorized department, the person allegedly or apparently in violation of this chapter shall provide information identifying themselves.

[Ord. 619 (2020) § 14]

15.18.150 FAILURE TO PROVIDE INFORMATION IDENTIFYING PERSON. Willful refusal to provide information identifying a person as required by BCC 15.18.140 is a misdemeanor.

[Ord. 619 (2020) § 15]

15.18.160 NOTICE OF INFRACTION--SERVICE. If an authorized official reasonably believes that a provision of this chapter that he or she is authorized to enforce has been violated, that authorized official or the Prosecuting Attorney may issue a notice of infraction for the first such violation. A notice of infraction issued under this chapter shall be personally served upon the person named in the notice or filed with the court for service.

[Ord. 619 (2020) § 16]

15.18.170 FORM--CONTENTS. The notice of infraction shall include the following:

(a) A statement that the notice represents a determination that the infraction has been committed by the person named in the notice and that the determination shall be final unless contested as provided in this chapter;

(b) A statement that the infraction is a noncriminal offense for which imprisonment shall not be imposed as a sanction;

(c) A statement of the specific infraction for which the notice was issued, the date and place the infraction occurred and the date the notice was issued;

(d) A statement that the civil penalty shall not exceed five hundred dollars (\$500) for said violation and that the person may be ordered to pay court costs, if applicable, and restitution for any damages caused by said violation;

(e) A statement of the options provided in this chapter for responding to the notice and the procedures necessary to exercise these options, including the name, address, and phone number of the court where the notice of infraction is to be filed and that the defendant must respond within fifteen (15) days;

(f) A statement that a mailed response must be mailed not later than midnight on the day the response is due; and

(g) A statement that at any hearing to contest the determination the county has the burden of proving, by a preponderance of the evidence, that the infraction was committed; and that the person may subpoena witnesses, including the authorized official who issued and served the notice of infraction.

[Ord. 619 (2020) § 17]

15.18.180 FILING - HEARING IN DISTRICT COURT. A violation designated as an infraction under this chapter can be heard and determined by either a district or superior court.

[Ord. 619 (2020) § 18]

15.18.190 DETERMINATION INFRACTION COMMITTED. Unless contested in accordance with this chapter, the notice of infraction represents a determination that the person to whom the notice was issued committed the infraction.

[Ord. 619 (2020) § 19]

15.18.200 RESPONSE - REQUESTING A HEARING - FAILURE TO RESPOND OR APPEAR - ORDER SET ASIDE.

(a) A person who receives a notice of infraction shall respond to the notice as provided in this section within fifteen (15) days of the date the notice was served.

(b) If the person named in the notice of infraction does not want to contest the determination, the person shall respond by completing the appropriate portion of the notice of infraction and submitting it, either by mail or in person, to the court specified on the notice. A check or money order in the amount of the penalty prescribed for the infraction must be submitted with the response. When a response which does not contest the determination is received, an appropriate order shall be entered in the court's records, and a record of the response and order shall be furnished to the department.

(c) If the person named in the notice of infraction wants to contest the determination, the person shall respond by completing the portion of the notice of infraction requesting a hearing and submitting it, either by mail or in person, to the court specified on the notice. The court shall notify the person in writing of the time, place, and date of the hearing. The date of the hearing shall not be sooner than fourteen (14) days from the date of the notice of hearing, except by agreement of the parties.

(d) If any person issued a notice of infraction (1) fails to respond to the notice of infraction as provided in subsection (b) of this section, or (2) fails to appear at a hearing requested pursuant to subsection (c) of this section, the court shall enter an appropriate order assessing the monetary penalty prescribed for the infraction and shall notify the authorized official of the failure of the person to respond to the notice of infraction or to appear at a requested hearing.

(e) An order entered by the court under subsection (d) (2) of this section may, for good cause shown and upon such terms as the court

deems just, be set aside for the same grounds a default judgment may be set aside in civil actions.

[Ord. 619 (2020) § 20]

15.18.210 REPRESENTATION BY ATTORNEY. A person subject to proceedings under this chapter may appear or be represented by counsel. Each party to an infraction case is responsible for costs incurred by that party. No costs or attorney fees may be awarded to either party in an infraction case.

[Ord. 619 (2020) § 21]

15.18.220 INFRACTION - HEARING - PROCEDURE - BURDEN OF PROOF - ORDER - APPEAL.

(a) A hearing held to contest the determination that an infraction has been committed shall be without a jury.

(b) The court may consider the notice of infraction and any sworn statement submitted by the authorized official who issued and served the notice in lieu of his or her personal appearance at the hearing. The person named in the notice may subpoena witnesses, including the authorized official who issued and served the notice, and has the right to present evidence and examine witnesses present in court.

(c) The burden of proof is on the authorized official to establish the commission of the infraction by a preponderance of the evidence.

(d) After consideration of the evidence and argument, the court shall determine whether the infraction was committed. If it has not been established that the infraction was committed, an order dismissing the notice shall be entered in the court's records. If it has been established that the infraction was committed, an appropriate order shall be entered in the court's records.

[Ord. 619 (2020) § 22]

15.18.230 EXPLANATION OF MITIGATING CIRCUMSTANCES.

(a) A hearing held for the purpose of allowing a person to explain mitigating circumstances surrounding the commission of an infraction shall be an informal proceeding. The person may not subpoena witnesses. The determination that an infraction has been committed may not be contested at a hearing held for the purpose of explaining mitigating circumstances.

(b) After the court has heard the explanation of the circumstances surrounding the commission of the infraction an appropriate order shall be entered in the court's records.

(c) The person may not appeal the court's determination or order.
[Ord. 619 (2020) § 23]

15.18.240 CIVIL PENALTY--INFRACTION. A civil penalty imposed by the court under this chapter is immediately payable. If the person or contractor is unable to pay at that time, the court may, in its discretion, grant an extension of the period in which the penalty may be paid. If the penalty is not paid on or before the time established for payment, the court shall notify the Planning Administrator of the failure to pay the penalty and the County shall not issue the person or contractor any future permits for any work until the penalty has been paid.
[Ord. 619 (2020) § 24]

15.18.250 VIOLATION--PENALTIES.

(a) Upon a finding of a first violation of any provision of this chapter, any person or contractor shall be punished by a civil penalty not to exceed five hundred dollars (\$500) for said violation, shall be responsible for court costs, if applicable, and shall be ordered to pay restitution for any damages caused by said violation.

(b) Upon the court's finding of a second or subsequent violation of the same provision of this chapter, any person or contractor shall be found guilty of a misdemeanor.
[Ord. 619 (2020) § 25]

15.18.260 SEVERABILITY. If any provision of this chapter is declared unconstitutional, or the applicability thereof to any person or circumstance is held invalid, the constitutionality of the remainder of the chapter and the applicability thereof to other persons and circumstances shall not be affected thereby.

[Ord. 619 (2020) § 26]

15.18.270 EFFECTIVE DATE. This chapter shall take effect and be in full force on February 1, 2020.

[Ord. 619 (2020) § 27]



