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**Agriculture & Natural Resources  
Committee**

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**E2SSB 5219**

**Brief Description:** Retaining water resources to assure the vitality of local economies.

**Sponsors:** Senate Committee on Ways & Means (originally sponsored by Senators Honeyford, Hatfield, Smith, Schoesler, Delvin and Hewitt).

**Brief Summary of Engrossed Second Substitute Bill**

- Requires the Department of Ecology to establish a local economy water trust account for each watershed in which water appurtenant to certain state lands may be added if the water is not planned to be put to beneficial use by the state.
- Requires certain state agencies to inventory their water usage on the lands they manage and initiate a process that makes available for other water right applicants the portion of any water rights not beneficially used over a four-year period.

**Hearing Date:** 3/21/13

**Staff:** Jason Callahan (786-7117).

**Background:**

State Land Management.

The management of land owned in the name of the state has been delegated to a number of state agencies and universities. The management philosophy of the land is generally determined by the jurisdiction, authorities, and priorities of the agency delegated the management responsibilities. The State Parks and Recreation Commission (Parks Commission), the Washington Department of Fish and Wildlife (WDFW), and the Department of Natural Resources (DNR) are three agencies that manage many acres of developed and undeveloped public lands in the state. Each of these agencies implements different management goals. For instance, the Parks Commission primarily provides recreational access; the WDFW manages

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land to enhance wildlife habitat and hunting access; while the DNR is primarily responsible for managing land in a manner that satisfies its fiduciary duty to the various state trust beneficiaries.

#### Relinquishment.

A person who has the right to use water will lose that right if he or she does not put the water to a beneficial use over a period of five consecutive years. This is commonly known as both “relinquishment” and the “use it or lose it” principle. The water right holder can lose, or relinquish, their entire right to use any water or a portion of their original water right depending on how much water was not put to beneficial use over the five years in question.

There are, however, instances when a water right holder cannot use the water for five years and still retain his or her rights to the water. This occurs when the water right holder can show a “sufficient cause” for not using the water. The qualifying sufficient causes have been identified in statute and include causes such as drought, military service, legal proceedings, and crop rotation practices. Water right holders that can show a sufficient cause do not relinquish their right to water even if they go more than five years without putting the water to a beneficial use.

#### Water Banks.

According to the Department of Ecology (DOE), water banking is an institutional mechanism used to facilitate the legal transfer and market exchange of various types of surface, groundwater, and storage entitlements. The term “water banking” is widely used to refer to a variety of water management practices. Banking is typically facilitated by an institution that operates in the role of broker or clearinghouse. Many banks pool water supplies from willing sellers and make them available as credits to willing buyers. In 2003, legislation was passed to allow banking in the Yakima basin using the state Trust Water Program. During the 2009 legislative session, that law was amended to clarify that this tool is available to use for banking statewide.

#### Watershed Planning.

The Watershed Planning Act establishes a process through which local groups can develop and implement plans for managing and protecting local water resources and rights. The local groups authorized to develop watershed plans are organized by water resource inventory areas (WRIAs). A WRIA is, generally speaking, an area determined to be a distinct watershed.

There are 62 WRIAs identified by the DOE. Each WRIA is identified by a number and may contain a local watershed planning group with an identified lead entity. Once constituted, a WRIA is eligible for grant funding from the DOE. There are funding opportunities available for both planning and implementation.

#### **Summary of Bill:**

The DOE is required to establish a local economy water trust account (trust account) for each WRIA in which water appurtenant to certain state lands may be added if the water is not planned to be put to beneficial use by the state. Water in a trust account may be allocated to a new water use if the change does not cause detriment or injury to existing rights. After reallocation, the water right maintains its priority date unless otherwise agreed to by all parties.

Any water rights in a trust account must have originated from land owned by the DNR, the WDFW, or the Parks Commission. Those three agencies must, with the assistance of the DOE,

maintain an inventory of water rights appurtenant to land purchased by each agency. At least once each year, the three agencies must review the inventory and record whether all or a portion of the water rights have been beneficially used. Any agency with a water right included on the inventory that is not beneficially used in a 4-year period must initiate a process to transfer that unused portion of the water right to the DOE's trust account for the applicable WRIA. The transfer must be completed prior to the end of the fifth year with no beneficial use unless the transferring agency decides to put the water to continuous beneficial use or the agency's non-use of water is covered by one of the sufficient cause exceptions to relinquishment. The duty to inventory and transfer water that is not beneficially used does not apply lands with conflicting deed restrictions, non-consumptive uses associated with fish hatcheries, the use of permit-exempt wells, and trust lands managed by the DNR.

Once in the trust account, the DOE may make the water available for a new use within the same WRIA as the original use to the next water right applicant in line for processing. Each applicant for the water use has 30 days to respond regarding their interest and must agree to pay the DOE's costs associated with placing the water into the trust account and transferring it to a new use. Failure to accept water from the trust account has no bearing on an applicant's original water right application. If the first applicant in line declines the water available in the trust account, then the DOE must offer the water to each subsequent applicant.

Any decision of the DOE related to the transfer of a water right from a trust account may be appealed to the Pollution Control Hearings Board or a Superior Court.

**Appropriation:** None.

**Fiscal Note:** Available.

**Effective Date:** The bill takes effect 90 days after adjournment of the session in which the bill is passed.