**1187.E AMS AWRD S2651.3 - NOT FOR FLOOR USE**

**EHB 1187** - S COMM AMD

By Committee on Agriculture, Water & Rural Economic Development

**NOT ADOPTED 4/15/2015**

Strike everything after the enacting clause and insert the following:

"NEW SECTION. **Sec.**  (1) The legislature finds that, unlike other basins in Washington, the Yakima basin is unique in that it has recently undergone a legal adjudication for surface water rights in the basin. In addition, the holders of junior water rights may be subject to water use curtailment. Because of the unique nature of the Yakima basin, there has been the development of an active water market for water reallocation that includes the use of the trust water right program for mitigation purposes and water banking.

(2) In adopting this act to establish standards for domestic water banking in the Yakima basin, it is not the intent of the legislature to imply that the types of water mitigation currently used in the Yakima basin can or should be applied to other parts of Washington.

**Sec.**  RCW 90.42.020 and 2009 c 283 s 3 are each reenacted and amended to read as follows:

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

(1) "Department" means the department of ecology.

(2) "Local government" means a city, town, public utility district, irrigation district, public port, county, sewer district, or water district.

(3) "Net water savings" means the amount of water that is determined to be conserved and usable within a specified stream reach or reaches for other purposes without impairment or detriment to water rights existing at the time that a water conservation project is undertaken, reducing the ability to deliver water, or reducing the supply of water that otherwise would have been available to other existing water uses.

(4) "Pilot planning areas" means the geographic areas designated under RCW 90.54.045(2).

(5) "Trust water right" means any water right acquired by the state under this chapter for management in the state's trust water rights program.

(6) "Water conservation project" means any project or program that achieves physical or operational improvements that provide for increased water use efficiency in existing systems of diversion, conveyance, application, or use of water under water rights existing on July 28, 1991.

(7) "Yakima basin domestic water bank sponsor" means any person, corporation, or other entity, including a state agency, nonprofit organization, or local government, that holds a legal or beneficial interest in a trust water right from which mitigation credits will be offered for sale to other parties for domestic supply purposes in the Yakima river basin.

NEW SECTION. **Sec.**  A new section is added to chapter 90.42 RCW to read as follows:

(1)(a) Every Yakima basin domestic water bank sponsor shall file with the department a schedule showing the amount to be charged for a mitigation credit, including all costs and fees.

(b) The department must post the schedule received from all Yakima basin domestic water bank sponsors on its agency internet web site.

(2) No change may be made in the amount charged, or other costs and fees to be paid, unless the Yakima basin domestic water bank sponsor provides notice to the department at least thirty days before the change goes into effect. The notice must plainly state the changes to be made in the schedule then on file with the department and the effective date of the changes.

(3) For water banks established prior to the effective date of this section, the Yakima basin domestic water bank sponsor must submit a schedule to the department within ninety days of the effective date of this section.

NEW SECTION. **Sec.**  A new section is added to chapter 90.42 RCW to read as follows:

(1) A Yakima basin domestic water bank sponsor may establish a water bank for any lawful purpose and retains all authority to establish any costs, fees, or other charges for the purchase and sale of mitigation credits. This includes the authority to establish a sliding scale of charges, whereby a charge is made for mitigation based on the quantity of water use or on the services rendered as part of the water bank transaction or operations.

(2) Nothing in this section prohibits a Yakima basin domestic water bank sponsor from establishing a water bank for specific limited purposes, such as providing mitigation credits for certain water uses or users, but not other uses or users. However, a Yakima basin domestic water bank sponsor may not sell or otherwise provide mitigation credits to similarly situated uses or users on different prices or terms.

NEW SECTION. **Sec.**  A new section is added to chapter 90.42 RCW to read as follows:

(1) The department shall require each Yakima basin domestic water bank sponsor to:

(a) Demonstrate the availability of an adequate and reliable water supply to mitigate for the intended purposes for which mitigation is provided; and

(b) Record each mitigation credit with the appropriate county auditor for the parcel of land upon which the mitigation credit is used in like manner and in the same effect as provided for an original certificate or permit to divert water.

(2) The department shall ensure that new water uses for which mitigation is provided will not cause detriment or injury to existing water rights.

NEW SECTION. **Sec.**  A new section is added to chapter 90.42 RCW to read as follows:

(1) No Yakima basin domestic water bank sponsor may:

(a) Provide mitigation based on a water right with a priority date of May 10, 1905, or later; or

(b) Use leased water to provide mitigation if an adequate and reliable water supply is otherwise available for mitigation.

(2) Nothing in this section prohibits a Yakima basin domestic water bank sponsor from providing mitigation based in part on a long-term lease or water storage and exchange agreement, between the United States and the state of Washington, as provided in such an agreement.

NEW SECTION. **Sec.**  (1) The department of ecology must conduct a study of mitigation options for domestic water use in areas of the Yakima basin for which: (a) Mitigation water is unavailable; and (b) access to water from water banks is unsuitable.

(2) A report of the study's findings must be reported to the legislature by December 1, 2015.

(3) The department of ecology shall conduct the study within the department's appropriations.

NEW SECTION. **Sec.**  This act may be known and cited as the Yakima basin domestic water banking best practices act.

NEW SECTION. **Sec.**  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.

NEW SECTION. **Sec.**  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 immediately."

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On page 1, line 1 of the title, after "banks;" strike the remainder of the title and insert "reenacting and amending RCW 90.42.020; adding new sections to chapter 90.42 RCW; creating new sections; and declaring an emergency."

EFFECT: Removes requirement that a water supply that qualifies for deposit into the Yakima basin domestic water bank be uninterruptable.

Removes requirement that DOE ensure the new use of water rights obtained from the bank do not injure instream flows or lead to harming priority species or critical habitat for ESA-listed species while retaining the requirement not to injure existing water rights.

A Yakima basin domestic water bank sponsor may provide mitigation based in part on a long-term water storage and exchange agreement between the United States and the state of Washington, as provided in such an agreement.