

CERTIFICATION OF ENROLLMENT
ENGROSSED SUBSTITUTE HOUSE BILL 1640

Chapter 144, Laws of 2003

58th Legislature
2003 Regular Session

WATER BANKING

EFFECTIVE DATE: 5/7/03

Passed by the House April 22, 2003
Yeas 98 Nays 0

FRANK CHOPP

Speaker of the House of Representatives

Passed by the Senate April 17, 2003
Yeas 47 Nays 0

BRAD OWEN

President of the Senate

Approved May 7, 2003.

GARY F. LOCKE

Governor of the State of Washington

CERTIFICATE

I, Cynthia Zehnder, Chief Clerk of the House of Representatives of the State of Washington, do hereby certify that the attached is **ENGROSSED SUBSTITUTE HOUSE BILL 1640** as passed by the House of Representatives and the Senate on the dates hereon set forth.

CYNTHIA ZEHNDER

Chief Clerk

FILED

May 7, 2003 - 3:18 p.m.

**Secretary of State
State of Washington**

ENGROSSED SUBSTITUTE HOUSE BILL 1640

AS AMENDED BY THE SENATE

Passed Legislature - 2003 Regular Session

State of Washington 58th Legislature 2003 Regular Session

By House Committee on Agriculture & Natural Resources (originally sponsored by Representatives Linville, Hinkle, Grant, Chandler, Eickmeyer and Hankins)

READ FIRST TIME 03/05/03.

1 AN ACT Relating to authorizing water banking within the trust water
2 program; amending RCW 90.42.005; adding new sections to chapter 90.42
3 RCW; creating a new section; and declaring an emergency.

4 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF WASHINGTON:

5 **Sec. 1.** RCW 90.42.005 and 1991 c 347 s 1 are each amended to read
6 as follows:

7 (1) It is the policy of the state of Washington to recognize and
8 preserve water rights in accordance with RCW 90.03.010.

9 (2) The legislature finds that:

10 (a) The state of Washington is faced with a shortage of water with
11 which to meet existing and future needs, particularly during the summer
12 and fall months and in dry years when the demand is greatest;

13 (b) Consistent with RCW 90.54.180, issuance of new water rights,
14 voluntary water transfers, and conservation and water use efficiency
15 programs, including storage, (~~should be the preferred~~) all are
16 acceptable methods of addressing water uses because they can relieve
17 current critical water situations, provide for presently unmet needs,
18 and assist in meeting future water needs. Presently unmet needs or
19 current needs includes the water required to increase the frequency of

1 occurrence of base or minimum flow levels in streams of the state, the
2 water necessary to satisfy existing water rights, or the water
3 necessary to provide full supplies to existing water systems with
4 current supply deficiencies; ((and))

5 (c) The interests of the state and its citizens will be served by
6 developing programs and regional water resource plans, in cooperation
7 with local governments, federally recognized tribal governments,
8 appropriate federal agencies, private citizens, and the various water
9 users and water interests in the state, that increase the overall
10 ability to manage the state's waters in order to resolve conflicts and
11 to better satisfy both present and future needs for water; and

12 (d) Water banking as a function of the trust water program and as
13 authorized by this chapter can provide an effective means to facilitate
14 the voluntary transfer of water rights established through
15 conservation, purchase, lease, or donation, to preserve water rights
16 and provide water for presently unmet and future needs; and to achieve
17 a variety of water resource management objectives throughout the state,
18 including drought response, improving streamflows on a voluntary basis,
19 providing water mitigation, or reserving water supply for future uses.

20 NEW SECTION. Sec. 2. A new section is added to chapter 90.42 RCW
21 to read as follows:

22 (1) The department is hereby authorized to use the trust water
23 rights program in the Yakima river basin for water banking purposes.

24 (2) Water banking may be used for one or more of the following
25 purposes:

26 (a) To authorize the use of trust water rights to mitigate for
27 water resource impacts, future water supply needs, or any beneficial
28 use under chapter 90.03, 90.44, or 90.54 RCW, consistent with any terms
29 and conditions established by the transferor, except that return flows
30 from water rights authorized in whole or in part for any purpose shall
31 remain available as part of the Yakima basin's total water supply
32 available and to satisfy existing rights for other downstream uses and
33 users;

34 (b) To document transfers of water rights to and from the trust
35 water rights program; and

36 (c) To provide a source of water rights the department can make

1 available to third parties on a temporary or permanent basis for any
2 beneficial use under chapter 90.03, 90.44, or 90.54 RCW.

3 (3) The department shall not use water banking to:

4 (a) Cause detriment or injury to existing rights;

5 (b) Issue temporary water rights or portions thereof for new
6 potable uses requiring an adequate and reliable water supply under RCW
7 19.27.097;

8 (c) Administer federal project water rights, including federal
9 storage rights; or

10 (d) Allow carryover of stored water from one water year to another
11 water year.

12 (4) For purposes of this section and section 6 of this act, "total
13 water supply available" shall be defined as provided in the 1945
14 consent decree between the United States and water users in the Yakima
15 river basin, and consistent with later interpretation by state and
16 federal courts.

17 NEW SECTION. **Sec. 3.** A new section is added to chapter 90.42 RCW
18 to read as follows:

19 (1) The department, with the consent of the water right holder, may
20 identify trust water rights for administration for water banking
21 purposes, including trust water rights established before the effective
22 date of this section.

23 (2) An application to transfer a water right to the trust water
24 program shall be reviewed under RCW 90.03.380 at the time the water
25 right is transferred to the trust water program for administration for
26 water banking purposes, and notice of the application shall be
27 published by the applicant as provided under RCW 90.03.280. The
28 application must indicate the reach or reaches of the stream where the
29 trust water right will be established before the transfer of the water
30 right or portion thereof from the trust water program, and identify
31 reasonably foreseeable future temporary or permanent beneficial uses
32 for which the water right or portion thereof may be used by a third
33 party upon transfer from the trust water right program. In the event
34 the future place of use, period of use, or other elements of the water
35 right are not specifically identified at the time of the transfer into
36 the trust water program, another review under RCW 90.03.380 will be

1 necessary at the time of a proposed transfer from the trust water
2 program.

3 NEW SECTION. **Sec. 4.** A new section is added to chapter 90.42 RCW
4 to read as follows:

5 (1) The department shall transfer a water right or portion thereof
6 being administered for water banking purposes from the trust water
7 program to a third party upon occurrence of all of the following:

8 (a) The department receives a request for transfer of a water right
9 or portion thereof currently administered by the department for water
10 banking purposes;

11 (b) The request is consistent with any previous review under RCW
12 90.03.380 of the water right and future temporary or permanent
13 beneficial uses;

14 (c) The request is consistent with any condition, limitation, or
15 agreement affecting the water right, including but not limited to any
16 trust water right transfer agreement executed at the time the water
17 right was transferred to the trust water rights program; and

18 (d) The request is accompanied by and is consistent with an
19 assignment of interest or portion thereof from a person or entity
20 retaining an interest in the trust water right or portion thereof to
21 the party requesting transfer of the water right or portion thereof.

22 (2) The priority date of the water right or portion thereof
23 transferred by the department from the trust water program for water
24 banking purposes shall be the priority date of the underlying water
25 right.

26 (3) The department shall issue documentation for that water right
27 or portion thereof to the new water right holder based on the
28 requirements applicable to the transfer of other water rights from the
29 trust water rights program. Such documentation shall include a
30 description of the property to which the water right will be
31 appurtenant after the water right or portion thereof is transferred
32 from the trust water program to a third party.

33 (4) The department's decision on the transfer of a water right or
34 portion thereof from the trust water program for water banking purposes
35 may be appealed to the pollution control hearings board under RCW
36 43.21B.230, or to a superior court conducting a general adjudication
37 under RCW 90.03.210.

1 NEW SECTION. **Sec. 5.** A new section is added to chapter 90.42 RCW
2 to read as follows:

3 (1) The department shall seek input from agricultural
4 organizations, federal agencies, tribal governments, local governments,
5 watershed groups, conservation groups, and developers on water banking,
6 including water banking procedures and identification of areas in
7 Washington state where water banking could assist in providing water
8 supplies for instream and out-of-stream uses. The department shall
9 summarize any comments received on water banking and submit a report,
10 including any recommendations, to the appropriate committees of the
11 legislature for their consideration in the subsequent legislative
12 session.

13 (2) By December 31st of every even-numbered year, the department
14 shall submit a report to the appropriate committees of the legislature
15 on water banking activities authorized under section 2 of this act.
16 The report shall:

17 (a) Evaluate the effectiveness of water banking in meeting the
18 policies and objectives of this chapter;

19 (b) Describe any statutory, regulatory, or other impediments to
20 water banking in other areas of the state; and

21 (c) Identify other basins or regions that may benefit from
22 authorization for the department to use the trust water program for
23 water banking purposes.

24 NEW SECTION. **Sec. 6.** A new section is added to chapter 90.42 RCW
25 to read as follows:

26 Nothing in this act shall:

27 (1) Cause detriment or injury to existing rights or to the
28 operation of the federal Yakima project to provide water for irrigation
29 purposes, existing water supply contracts, or existing water rights;

30 (2) Diminish in any way existing rights or the total water supply
31 available for irrigation and other purposes in the Yakima basin;

32 (3) Affect or modify the authority of a court conducting a general
33 adjudication pursuant to RCW 90.03.210; or

34 (4) Affect or modify the rights of any person or entity under a
35 water rights adjudication or under any order of the court conducting a
36 water rights adjudication.

1 NEW SECTION. **Sec. 7.** Nothing in this act may be construed to:

2 (1) Affect or modify any treaty or other federal rights of an
3 Indian tribe, or the rights of any federal agency or other person or
4 entity arising under state or federal law;

5 (2) Affect or modify the rights or jurisdictions of the United
6 States, the state of Washington, the Yakama Nation, or other person or
7 entity over waters of any river or stream or over any ground water
8 resource;

9 (3) Alter, amend, repeal, interpret, modify, or be in conflict with
10 any interstate compact made by the states;

11 (4) Alter, establish, or impair the respective rights of states,
12 the United States, the Yakama Nation, or any other person or entity
13 with respect to any water or water-related right;

14 (5) Alter, diminish, or abridge the rights and obligations of any
15 federal, state, or local agency, the Yakama Nation, or other person or
16 entity;

17 (6) Affect or modify the rights of the Yakama Indian Nation or its
18 successors in interest to, and management and regulation of, those
19 water resources arising or used, within the external boundaries of the
20 Yakama Indian Reservation;

21 (7) Affect or modify the settlement agreement between the United
22 States and the state of Washington filed in Yakima county superior
23 court with regard to federal reserved water rights other than those
24 rights reserved by the United States for the benefit of the Yakama
25 Indian Nation and its members; or

26 (8) Affect or modify the rights of any federal, state, or local
27 agency, the Yakama Nation, or any other person or entity, public or
28 private, with respect to any unresolved and unsettled claims in any
29 water right adjudications, or court decisions, including *State v.*
30 *Acquavella*, or constitute evidence in any such proceeding in which any
31 water or water-related right is adjudicated.

32 NEW SECTION. **Sec. 8.** This act is necessary for the immediate
33 preservation of the public peace, health, or safety, or support of the
34 state government and its existing public institutions, and takes effect
35 immediately.

 Passed by the House April 22, 2003.

 Passed by the Senate April 17, 2003.

 Approved by the Governor May 7, 2003.

 Filed in Office of Secretary of State May 7, 2003.