

HOUSE BILL REPORT

HB 1098

As Reported by House Committee On:
Economic Development, Agriculture & Trade

Title: An act relating to the trust water rights program.

Brief Description: Changing provisions relating to the trust water rights program.

Sponsors: Representatives Linville, Kristiansen and Grant.

Brief History:

Committee Activity:

Economic Development, Agriculture & Trade: 2/1/05, 3/2/05 [DPS].

Brief Summary of Substitute Bill

- Consolidates the trust water rights program provisions specific to the Yakima River basin into the general trust water rights statutory chapter.
- Repeals the Yakima River basin trust water rights program statutory chapter.
- Includes numerous technical revisions.

HOUSE COMMITTEE ON ECONOMIC DEVELOPMENT, AGRICULTURE & TRADE

Majority Report: The substitute bill be substituted therefor and the substitute bill do pass. Signed by 13 members: Representatives Linville, Chair; Pettigrew, Vice Chair; Kristiansen, Ranking Minority Member; Blake, Buri, Clibborn, Condotta, Grant, Kretz, Newhouse, Quall, Strow and Wallace.

Minority Report: Do not pass. Signed by 10 members: Representatives Skinner, Assistant Ranking Minority Member; Chase, Dunn, Haler, Holmquist, Kenney, Kilmer, McCoy, Morrell and P. Sullivan.

Staff: Caroleen Dineen (786-7156).

Background:

Trust water rights are water rights that have been placed into the state's trust water rights program. Two trust water rights systems - one for the Yakima River basin and the other for the rest of the state - are established in state law.

Acquisition. The state may acquire a trust water right by donation, purchase, lease, or means other than condemnation. Trust water rights acquired in areas with an approved watershed plan must be consistent with the plan's acquisition provisions.

For donations and for leases not exceeding five years, the quantity of water placed into trust (or the total of the trust amount and amount remaining with the water right holder) cannot exceed the amount exercised during the five years preceding acquisition.

Management. Trust water rights must be held in trust and managed by the Washington Department of Ecology (DOE). Water rights donated for instream flow purposes must be managed to ensure the donation qualifies as a gift for federal income taxation purposes.

For temporary trust water rights, the full quantity of the original right reverts to the water right holder when the trust period ends.

Funding. Funds may not be expended to purchase water rights unless specifically appropriated by the Legislature for that purpose. The state must cooperate with the United States in implementing the trust water rights program and must treat trust water rights acquired with federal funds in the same manner as those acquired with state funds.

Uses. Trust water rights may be held or used for instream flows, irrigation, municipal, or other beneficial uses consistent with applicable regional plans. Trust water rights also may be used to resolve critical water supply problems.

Priority. Trust water rights retain the same priority date as the originating water right. Between the trust water right and its originating right, the trust water right is junior in priority unless otherwise specified by the water right holder and the DOE.

Water Conservation Projects. The state receives the "net water savings" achieved through state funding of a water conservation project. Conveyance of a trust water right pursuant to water conservation project funding can be achieved through transfer, lease, or other agreements. The state and water right holder must determine the amount of water the water right holder retains.

Irrigation Districts. An irrigation district proposing to transfer water to the trust water right program must provide evidence of its authority to represent the water rights holders. The state may not contract to acquire a water right served by an irrigation district without approval of the district's board of directors. The irrigation district board's disapproval of an acquisition must be based on factual evidence of probable adverse effects on the district's financial stability or ability to deliver water to the district.

Impairment. The trust water rights statutes do not authorize the involuntary impairment of any existing water right. The DOE must determine that a trust water right will not impair existing water rights or the public interest before such a right may be exercised. The DOE also must stop or modify trust water right use if impairment occurs. Impairment provisions do not apply to a donated trust water right for instream flows or a right leased for fewer than five years.

For donated and leased trust water rights, the DOE must review an impairment claim from any person who believes his or her water right has been impaired by a donated or leased right and must alter the trust water right to eliminate any impairment.

Transfers, Changes, or Amendments. Statutory provisions regarding water rights transfers, changes, or amendments do not apply to trust water rights acquired through funding of water conservation projects. Change and transfer provisions do not apply to trust water rights donated for instream flows but do apply to other transfers of water rights through the trust water rights program.

Relinquishment. Statutory relinquishment provisions do not apply to trust water rights.

Instream Flows. A trust water right expressly conditioned for instream flow purposes must be administered according to that condition. The DOE must process a donated water right without reviewing the extent and validity of the portion of the right remaining with the water right holder.

Notice. The DOE must require published notice in a newspaper of general circulation in the relevant county once a week for two consecutive weeks. The DOE also must send notice to all appropriate state agencies, local and tribal governments, and other interested parties.

Documentation. The DOE must issue a water rights certificate in the state's name for a permanent trust water right. For trust water rights acquired through funding of water conservation projects, the DOE must issue a superseding certificate reflecting the amount of water to which the water right holder is entitled. The DOE must issue certificates or other instruments for temporary trust water rights.

Appeals. The DOE's impairment decisions may be appealed to the Pollution Control Hearings Board.

Water Banking. In 2003 the Legislature enacted provisions allowing the DOE to use the trust water rights program for water banking purposes in the Yakima River basin. The 2003 legislation specified authorized purposes of water banking, including mitigation, water supply needs, beneficial uses, documentation of trust water rights transfers, and new water rights sources. This legislation also included prohibitions against using the water banking authority to injure existing water rights, issue temporary rights for new potable water uses, administer federal project rights, or allow carryover of stored water from one water year to another water year. Finally, the 2003 legislation established a process for applications and appeals related to water banking activities.

Definitions. "Net water savings" is defined as the amount of water determined to be conserved and usable for other purposes without impairment of existing water rights or reduction of available supply. Definitions of "water conservation project," "trust water rights," and other terms are included.

Findings. Legislative findings recognize the benefits of water use efficiency programs in addressing the state's water shortage for existing and future water needs. Legislative findings

also address the importance of developing programs to increase the state's ability to manage state waters in order to resolve conflicts and satisfy water needs.

Summary of Substitute Bill:

The trust water rights program statutes specific to the Yakima River basin are consolidated into the general trust water rights statutes. Yakima River basin provisions identical or substantively similar to general program statutes are replaced by or harmonized with the general trust statutes. Provisions in the Yakima River basin program that differ or conflict with the general trust program statutes are added to the general statutes as alternatives that govern only Yakima River basin trust water rights.

The Yakima River basin statutory chapter is repealed. Numerous technical revisions are included in the general trust water rights program statutes.

Substitute Bill Compared to Original Bill:

The substitute replaces the statutory consolidation and recodification provisions with amendments to the general trust water rights program statutes that incorporate, harmonize, or add provisions in the Yakima River basin trust water rights program into the existing general trust water rights program. The substitute does not include the substantive changes to the general trust water rights program statutes. The substitute repeals all sections of Chapter 90.38 RCW but none of the Chapter 90.42 RCW provisions.

Appropriation: None.

Fiscal Note: Available.

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

Testimony For: (In support of original bill) The bill provides a necessary update of the trust water rights statutes. Suncadia Resort has been using the trust water rights program to manage water acquisitions for mitigation. This bill is needed to: (1) ensure consistency in statutory standards; (2) address the fiduciary obligation to those who transfer water rights into the system; (3) specify procedures for temporary versus permanent trust water rights; and (4) include use authorization in trust transfers to the water banking program. Provisions regarding inchoate water rights are not included in this bill.

The trust water rights program needs to be improved. The program can be an excellent management tool, but it has not reached its potential. Trust water rights legislation has been considered and negotiated for the past several years. There is some confusion regarding current law versus new policy in this bill. The bill is not the final product; it will change numerous times before the issues are resolved.

The trust water rights program is really important for business and those who use water for commerce. Until the relinquishment statutes can be revised in a way that makes sense, the trust water rights program is the only way to protect water rights for economic development.

(With concerns on original bill) Some issues need clarification in this bill. Several provisions in legislation negotiated during the last few years are not included in this bill. The water banking provision regarding previously unappropriated water raises some concerns.

Testimony Against: (Opposed to original bill) This bill adds complexity and confusion to the statutes and creates unintended consequences for the state. The bill attempts to make the trust water rights program function like a water bank. The bill is based on two faulty assumptions that the state: (1) has the resources to manage the program; and (2) has accurate water rights records. The potential fiscal impact of managing thousands of water rights also is not addressed.

This bill allows water not put to beneficial use into trust. This bill also requires the DOE to put water into trust without an extent and validity determination. Section 4 of this bill broadens the use of this program to all beneficial uses and adds a future use component. This bill also impedes the incentive to adjudicate water rights.

Persons Testifying: (In support of original bill) Steve Gano and Joe Mentor, Suncadia Resort; and Kristen Sawin, Association of Washington Business.

(With concerns on original bill) Joe Stohr, Department of Ecology; Kathleen Collins, Washington Water Policy Alliance; and Mike Schwisow, Washington State Water Resources Association.

(Opposed to original bill) Dawn Vyvyan, Yakama Nation; and Josh Baldi, Washington Environmental Council.

Persons Signed In To Testify But Not Testifying: None.