

# SENATE BILL REPORT

## SB 5906

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As of March 1, 2005

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

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

**Sponsors:** Senators Fraser, Morton and Rasmussen.

**Brief History:**

**Committee Activity:** Water, Energy & Environment: 2/23/05.

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### SENATE COMMITTEE ON WATER, ENERGY & ENVIRONMENT

**Staff:** Margaret King (786-7416)

**Background:** 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. Trust water rights are water rights that have been placed into these trust water rights programs.

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. Funds may not be expended to purchase water rights unless specifically appropriated by the Legislature for that purpose.

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. Donations and leases of water 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. The full quantity of the original right reverts to the water right holder when the temporary trust water right period ends.

Trust water rights must be held in trust and managed by the Department of Ecology (DOE). A trust water right expressly conditioned for instream flow purposes must be administered according to that condition and 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. Water rights donated for instream flow purposes must also be managed to ensure the donation qualifies as a gift for federal income taxation purposes.

There are specific provisions related to water conservation projects. On such 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.

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

Statutory provisions regarding water rights transfers, changes, or amendments do not apply to trust water rights acquired through funding 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. Statutory relinquishment provisions do not apply to any rights in the trust water right program.

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.

**Summary of Bill:** The trust water rights program provisions specific to the Yakima River Basin are repealed and the general trust water rights program statutes are amended, reorganized, consolidated, and recodified. Substantive provisions regarding acquisition, establishment, quantity, documentation, notice, and uses of trust water rights are amended. Numerous technical revisions also are included.

Trust water rights are to be managed for the purposes for which the trust water right is transferred to the trust water program and may be used for any beneficial use set out in the water code. Trust water rights may also be managed for mitigation purposes, and for the reservation of water rights for future needs as set out by the Water Resources Act.

Trust water rights established by DOE through funding for a water conservation project must be limited to the period of time during which the conservation project is in effect and the terms and duration of the trust water right transfer must be agreed to by the state and the water right holder before funds may be expended. The specific provision relating to water conservation projects and the definition of "water conservation project" is repealed.

The specific provision related to impairment of existing water rights or the public interest with respect to the use of permanent or temporary trust water rights is repealed and, all permanent trust water rights, whether donated or purchased (except funded water conservation projects), must be processed using the formal procedures for transfers under the water code. Temporary trust water rights, however, are to receive an expedited process of notice, comment and review to be established by DOE rules. Statutory relinquishment provisions continue to not apply to any rights in the trust water right program as of the date the trust water right is established.

The water banking provision that allows water banking to be used to provide a source of water rights that the DOE can make available to third parties on a temporary or permanent basis is amended to allow the issuance of new water rights that, in combination with water rights held in the trust water rights program for water banking purposes, would not decrease total water supply available in the Yakima basin.

**Appropriation:** None.

**Fiscal Note:** Available.

**Committee/Commission/Task Force Created:** No.

**Effective Date:** The bill contains an emergency clause and takes effect immediately.

**Testimony For:** This bill attempts to clarify and reconcile inconsistent provisions in state trust water law adopted in 1991 and previous program in Yakima basin adopted in 1989.

Other: Temporary transfers are a good concept but we need to be able to determine impact or injury and define how long is temporary. We need to publish notice of temporary transfers and address extent and validity. This bill assumes an active management system and that DOE has such resources. It raises liability issues of state managing private assets. More direction is needed regarding expedited process to assure that it is not a method for enlargement, e.g., paper goes in, wet water comes out. Irrigation district provision should include required approval of land owner. There should be no impairment to existing rights. It needs to include the protection of fish. It should not be a tolling of rights while in temporary trust.

**Testimony Against:** There needs to be government to government talks between the state and the tribes before any changes are made to this bill. Temporary process should not be allowed to perfect or protect questionable rights. This bill removes current protection requiring that temporary water that goes into the trust program must have been beneficially used in previous five years. Should not expand beneficial uses for trust water.

**Who Testified:** PRO: Steve Gamo, Suncadia; Joe Mentor, Suncadia. OTHER: Mike Schwisow; WA State Water Resources Assn; Kristen Sawin, AWB; Kathleen Collins, WA Water Policy Alliance; Steve Robonson, NW Indian Fisheries; John Stuhlmiller; WA Farm Bureau; Jack Field, WA Cattlemen's Assn.

CON: Steve Wehrly, Muckleshoot Tribe; Dawn Vyvyan, Yakima Nation and Puyallup Tribe.