

# SENATE BILL REPORT

## SB 6036

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As of January 16, 2020

**Title:** An act relating to providing opportunities for drought mitigation using trust water rights.

**Brief Description:** Providing opportunities for drought mitigation using trust water rights.

**Sponsors:** Senators Honeyford, Van De Wege, Warnick, Muzzall, Short and Wagoner.

**Brief History:**

**Committee Activity:** Agriculture, Water, Natural Resources & Parks: 1/14/20.

**Brief Summary of Bill**

- Allows water rights donated to the Trust Water Rights Program to be used for drought mitigation.
- Requires the donor to approve conditions under which their water right may be used for drought mitigation.

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### SENATE COMMITTEE ON AGRICULTURE, WATER, NATURAL RESOURCES & PARKS

**Staff:** Karen Epps (786-7424)

**Background:** Trust Water Rights. Two trust water rights systems, one for the Yakima River Basin and the other for the rest of the state (Trust Water Rights Programs), are established in state law. The Trust Water Rights Programs enable the voluntary transfer of water and water rights to the state, either temporarily or permanently. Trust water rights are placed in the programs and managed by the Department of Ecology (Ecology). While a water right is held in trust, it is considered an exercised water right and is protected from relinquishment. Additionally, water held in trust retains its original priority date.

Drought Emergencies. Ecology is authorized to declare drought emergencies by administrative order. Before it may declare a drought emergency, Ecology must determine an area is experiencing or is expected to experience less than 75 percent of normal water supply and is expected to suffer undue hardships because of the dry conditions. Prior to issuing an order, Ecology must consult with federal and state agencies and must receive approval from the Governor.

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*This analysis was prepared by non-partisan legislative staff for the use of legislative members in their deliberations. This analysis is not a part of the legislation nor does it constitute a statement of legislative intent.*

Ecology may, upon issuing a drought emergency order, authorize emergency withdrawals of public surface and ground waters, as long as the withdrawals are put to beneficial uses and will not reduce flows below the essential minimum for fisheries and other state and federal interests. Issuing a drought order also allows Ecology to approve temporary changes in the use of a water right, employ additional people, acquire emergency equipment, and revise any drought contingency plans.

The drought order also allows Ecology to make loans or grants from emergency water supply funds when necessary to help alleviate drought conditions. These expenditures are made from the bond-supported State Emergency Water Projects Revolving Account. In addition to that account, Ecology manages the appropriation-supported State Drought Preparedness Account (Preparedness Account). Funds in the Preparedness Account may be used by Ecology only for drought preparedness.

**Summary of Bill:** Ecology may allow water rights donated to the Trust Water Rights Programs to be used for drought mitigation when a drought emergency order is issued. When a person donates a water right to the Trust Water Rights Programs, Ecology must inform the donor they may agree to allow the trust water right to be used for drought mitigation in accordance with a drought emergency order. The donor is not required to allow their donated trust water right to be used for drought mitigation and must approve the conditions under which it is used. The donor may terminate the approval at any time.

**Appropriation:** None.

**Fiscal Note:** Requested on January 14, 2020.

**Creates Committee/Commission/Task Force that includes Legislative members:** No.

**Effective Date:** Ninety days after adjournment of session in which bill is passed.

**Staff Summary of Public Testimony:** PRO: The Yakima Basin is facing a drought. This bill is designed to allow the use of temporary donations in the Trust Water Rights Program, so those folks would have the option of leasing that water to provide drought relief. The bill is a way to get a little more water to folks during a drought. This bill applies and can be implemented across any region throughout the state. The bill provides clear protection from relinquishment for water right holders. The bill provides an important water supply avenue for future drought emergencies.

CON: There is concern about minimal streamflow during times of drought. The Trust Water Rights Program is an important part of instream flow protection and there are concerns that the bill will inadvertently affect the protection of instream flows. During the low water season in some rivers, the water in the Trust Water Rights Program is the only water that remains instream. This bill could result in water resources being removed from streams when the water is most needed for salmon. The bill is unclear as to what purposes the water will be used for related to drought mitigation. This bill could deprive streams of water that the people of the state enjoy having instream. This bill would put fisheries at risk without any planning efforts to balance those risks with other types of uses for the water. Donated

water rights do not go through a full extent and validity analysis, which could lead to the use of water rights that are not valid for mitigation purposes.

OTHER: Ecology supports the intent of finding mitigation and expanding options for users that are negatively impacted during drought. Trust water right donations do not undergo a full extent and validity examination and that examination would determine if there is sufficient water for those new uses. Because this bill allows donations to be used for drought mitigation, it could lead to impairment of senior water rights and instream flows. There is no definition of drought mitigation in the bill. It is unclear what the impacts of this bill would be on the total water available analysis that occurs in the Yakima Basin.

**Persons Testifying:** PRO: Senator Jim Honeyford, Prime Sponsor; Glen Smith, Washington State Ground Water Association.

CON: Bruce Wishart, Center for Environmental Law & Policy, Sierra Club; Tom McBride, Washington Department of Fish and Wildlife; Kiza Gates, Washington Department of Fish and Wildlife; Anne Savery, Tulalip Tribes.

OTHER: David Christensen, Washington Department of Ecology; Dawn Vyvyan, Yakama Nation.

**Persons Signed In To Testify But Not Testifying:** No one.