
SUBSTITUTE HOUSE BILL 1640

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 new sections; 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 and the
9 beneficial uses of water described in RCW 90.54.020(1).

10 (2) The legislature finds that:

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

14 (b) Consistent with RCW 90.54.180, conservation and water use
15 efficiency programs, including storage, and voluntary water right
16 transfers, should be the preferred methods (~~(of addressing water uses~~
17 ~~because they can relieve))~~ to address current critical water
18 situations(~~(7))~~ and provide for (~~(presently unmet needs, and assist in~~
19 ~~meeting))~~ current and future water needs(~~(. Presently unmet needs or~~

1 ~~current needs includes the~~), including water (~~required~~) to increase
2 the frequency of occurrence of base or minimum flow levels in streams
3 of the state, (~~the~~) water necessary to satisfy existing water rights,
4 (~~or the~~) water necessary to provide full supplies to existing water
5 systems with current supply deficiencies, or as otherwise needed to
6 meet the needs of growing communities for adequate and reliable water
7 supplies, and to provide the water necessary to satisfy existing water
8 rights for other beneficial uses listed in RCW 90.54.020(1); (~~and~~)

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

17 (d) Water banking within the trust water program can provide an
18 effective means to facilitate the voluntary transfer of water rights
19 established through conservation, purchase, lease, or donation, to
20 preserve water rights and provide water for presently unmet and future
21 needs; and to achieve a variety of water resource management objectives
22 throughout the state, including drought response, improving streamflows
23 on a voluntary basis, providing water mitigation, or reserving water
24 supply for future uses. Water banking can be an important tool for
25 implementing watershed plans under chapter 90.82 RCW because it will
26 allow the efficient management of multiple trust water rights and will
27 facilitate three-party transfers of water rights needed to meet the
28 instream and out-of-stream needs of the watershed or region.

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

31 (1) Under the trust water rights program, the department shall
32 establish a water bank in the Yakima river basin to administer trust
33 water rights.

34 (2) The water bank may be established for one or more of the
35 following purposes:

36 (a) To hold trust water rights for mitigation, future water supply

1 needs, or any beneficial use under chapter 90.03, 90.44, or 90.54 RCW,
2 consistent with any terms and conditions established by the transferor;

3 (b) To accept and manage funds to be used to administer the water
4 bank;

5 (c) To document transfers of water rights to and from the trust
6 water rights program; and

7 (d) To provide a source of water rights that the department can use
8 to transfer to third parties on a temporary or permanent basis for any
9 beneficial uses under chapter 90.03, 90.44, or 90.54 RCW.

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

12 (1) The department, with the consent of the water right holder, may
13 identify trust water rights for administration by the water bank,
14 including trust water rights established before the effective date of
15 this section.

16 (2) An application to transfer water rights to the trust water
17 rights program for administration by the water bank may identify future
18 temporary or permanent beneficial uses for which the water right or
19 portion thereof may be used by a third party upon issuance from the
20 trust water rights program. In such case, the water right and future
21 temporary or permanent beneficial uses identified in the application
22 shall be reviewed under RCW 90.03.380 at the time the water right is
23 transferred to the trust water program for administration by the water
24 bank.

25 (3) If the water right and future temporary or permanent beneficial
26 uses are not reviewed under RCW 90.03.380 at the time the water right
27 is transferred to the trust water rights program, such review shall
28 occur before the department's transfer of the water right or portion
29 thereof to a third party.

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

32 (1) The department shall issue a water right or portion thereof
33 from a water bank to a third party upon occurrence of all of the
34 following:

35 (a) The department receives a request for issuance of a water right
36 or portion thereof currently administered by the water bank;

1 (b) The request is consistent with the department's review under
2 RCW 90.03.380 of the water right and future temporary or permanent
3 beneficial uses;

4 (c) The request is consistent with any trust water right transfer
5 agreement executed at the time the water right was transferred to the
6 trust water rights program or as modified by the party or parties
7 retaining an interest in the trust water right; and

8 (d) Any party or parties retaining an interest in the trust water
9 right assigns its interest in the water right or portion thereof to the
10 party requesting issuance of the water right or portion thereof.

11 (2) The priority date of the water right or portion thereof issued
12 by the department from a water bank shall be the priority date of the
13 underlying water right.

14 (3) Upon permanent issuance of a water right or portion thereof by
15 the department, that water right or portion thereof shall no longer be
16 a trust water right. The department shall issue documentation for that
17 water right or portion thereof to the new water right holder based on
18 the requirements applicable to the withdrawal of other water rights
19 from the trust water rights program.

20 (4) The procedures and documentation used and the records
21 maintained by the department to implement sections 2 through 5 of this
22 act shall not prevent water right holders from performing due diligence
23 review of trust water rights administered by the water bank or of water
24 rights or portions thereof issued by the department from the water bank
25 to a third party.

26 (5) The department shall not issue temporary water rights or
27 portions thereof for new potable uses requiring an adequate and
28 reliable water supply under RCW 19.27.097.

29 (6) The department's decision on the transfer of a water right or
30 portion thereof from a water bank may be appealed to the pollution
31 control hearings board under RCW 43.21B.230, a superior court
32 conducting a general adjudication under RCW 90.03.210, or under other
33 applicable law.

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

36 (1) The department shall seek input from agricultural
37 organizations, federal agencies, tribal governments, local governments,

1 watershed groups, conservation groups, and developers on water banking,
2 including water banking procedures and identification of areas in
3 Washington state where water banking could assist in providing water
4 supplies for instream and out-of-stream uses. The department shall
5 summarize any comments received on water banking and submit a report,
6 including any recommendations, to the appropriate committees of the
7 legislature for their consideration by December 31, 2004.

8 (2) By December 31st of every even-numbered year, the department
9 shall submit a report to the appropriate committees of the legislature
10 on the water bank established according to section 2 of this act. The
11 report shall:

12 (a) Evaluate the effectiveness of the water bank in meeting the
13 policies and objectives of this chapter;

14 (b) Describe any statutory, regulatory, or other impediments to
15 water banking in the state; and

16 (c) Identify other basins or regions that may benefit from the
17 establishment of a water bank.

18 NEW SECTION. **Sec. 6.** Nothing in this act shall cause detriment or
19 injury to the operation of the Yakima river basin enhancement act to
20 provide water for irrigation purposes or existing water supply
21 contracts. Nothing in this act shall affect or modify the authority of
22 a court conducting a general adjudication pursuant to RCW 90.03.210.

23 NEW SECTION. **Sec. 7.** Nothing in this act may be construed to
24 affect or modify any treaty or other federal rights of an Indian tribe,
25 or the rights of any federal agency or other person or entity arising
26 under federal law.

27 NEW SECTION. **Sec. 8.** This act is necessary for the immediate
28 preservation of the public peace, health, or safety, or support of the
29 state government and its existing public institutions, and takes effect
30 immediately.

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