
HOUSE BILL 1640

State of Washington

58th Legislature

2003 Regular Session

By Representatives Linville, Hinkle, Grant, Chandler, Eickmeyer and Hankins

Read first time 02/03/2003. Referred to Committee on Agriculture & Natural Resources.

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; 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,))~~ Reallocation, conservation
14 and water use efficiency programs, ~~((including))~~ and storage~~((,))~~
15 should be the preferred methods of addressing water ~~((uses))~~ demands
16 because they can relieve current critical water situations, provide for
17 presently unmet needs, and assist in meeting future water needs.
18 Presently unmet needs or current needs includes the water required to
19 increase the frequency of occurrence of base or minimum flow levels in

1 streams of the state, the water necessary to satisfy existing water
2 rights, or the water necessary to provide full supplies to existing
3 water systems with current supply deficiencies; (~~and~~)

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

11 (d) The trust water rights program can be used to achieve a variety
12 of water resource management objectives throughout the state, including
13 drought response, improving streamflows on a voluntary basis, providing
14 water mitigation, or reserving water supply for future uses. The
15 legislature also finds that the interests of the state will be served
16 by developing water banking programs within the trust water rights
17 program to administer trust water rights in a watershed or region.
18 Water banking is an important tool for implementing watershed plans
19 under chapter 90.82 RCW because it will allow the efficient management
20 of multiple trust water rights and will facilitate three-party
21 transfers of water rights needed to meet the instream and out-of-stream
22 needs of the watershed or region. Water banks can make water available
23 at another time or location, which otherwise might not be possible, and
24 thereby assist in minimizing the consequences of drought; help improve
25 streamflows and preserve instream values; hold and provide water
26 mitigation where needed for future water development projects; and
27 facilitate the reallocation of water from one beneficial use to
28 another; and

29 (e) The trust water rights program, including the potential for a
30 water bank, improves the ability of the state to work with the United
31 States and the various water users in the ongoing program to satisfy
32 both existing rights and other presently unmet as well as future needs
33 of the Yakima basin, through improvements to the existing federal water
34 project in the Yakima river basin, authorized under P.L. 96-162.

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

1 (1) Under the trust water rights program, the department may
2 establish water banks to administer trust water rights.

3 (a) The department shall create water banks by rule adopted
4 pursuant to chapter 34.05 RCW.

5 (b) A water bank may be created to administer rights in one or more
6 watersheds or for one or more water bodies.

7 (c) The department, with consent of the party establishing the
8 trust water right, shall identify the trust water rights to be
9 administered by a water bank. A water bank may be created to
10 administer water rights for a specified geographic area, for select
11 types of trust water rights, or for both, as specified in the rule
12 creating the water bank.

13 (d) A water bank may be created either within or outside the
14 department. A water bank created outside the department must be
15 constituted as a public entity or a private-public partnership.

16 (2) The department is authorized to enter into agreements with
17 neighboring states to establish a joint water bank for a watershed or
18 water body shared between states. Such a bank must operate subject to
19 the applicable legal requirements of each state.

20 (3) Water banks may be created for one or more of the following
21 purposes:

22 (a) To solicit water rights for the trust water rights program;

23 (b) To hold trust water rights for mitigation of future activities;

24 (c) To accept and manage funds to be used to establish trust water
25 rights;

26 (d) To purchase or lease water rights to be held in trust by the
27 department and to be administered by the water bank;

28 (e) To create a system of credits to track deposits of water rights
29 to, and withdrawals from, the bank;

30 (f) To assign water rights or credits to third parties authorizing
31 the beneficial use of water from the trust water rights program, in a
32 manner consistent with the terms of a trust water right; and

33 (g) To develop a schedule of the amount of net water saved as a
34 result of water conservation projects carried out in a watershed,
35 developed annually to reflect the predicted hydrologic and water supply
36 conditions, as well as anticipated water demands, for the upcoming
37 irrigation season, to serve as the basis for the distribution and
38 management of trust water rights each year.

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

3 (1) The department shall conduct pilot rule making under RCW
4 34.05.313 to evaluate the effectiveness of different types of water
5 banks.

6 (2) In selecting areas for the pilot rule making, the department
7 shall consider the following factors:

8 (a) The likelihood that water banking could provide temporary or
9 permanent water supply to address drought or future water supply
10 demands;

11 (b) The existence of plans, programs, or technical resources within
12 the water resource inventory area to assist with implementation and
13 review of the pilot rule making;

14 (c) Whether the area is located in one of the sixteen salmon
15 critical basins identified in the state salmon recovery strategy; and

16 (d) The degree of local watershed or regional group support.

17 (3) The department's pilot rules may include, but need not be
18 limited to, the following provisions:

19 (a) Procedures for establishing and quantifying consumptive and
20 nonconsumptive trust credits;

21 (b) Procedures for ensuring that assignments of trust water rights
22 or credits comply with the impairment provisions of this chapter;

23 (c) Geographical constraints on assignment of trust water rights or
24 credits by basin, subbasin, or water source;

25 (d) Procedures for appeals of assignment of trust water rights or
26 credits; and

27 (e) Standards to ensure that issuance of trust water rights or
28 credits for potable use provide an adequate and reliable supply of
29 water under RCW 19.27.097.

30 (4) Within one year of adopting a pilot rule under this section,
31 the department shall request review and comments from tribal and local
32 governments, federal agencies, watershed groups, regional entities,
33 conservation groups, developers, agricultural organizations, and
34 others, on the pilot rule. The department shall summarize the comments
35 received on the rule and prepare a report, including any
36 recommendations, to the appropriate committees of the legislature for
37 their consideration in the subsequent legislative session.

1 NEW SECTION. **Sec. 4.** This act is necessary for the immediate
2 preservation of the public peace, health, or safety, or support of the
3 state government and its existing public institutions, and takes effect
4 immediately.

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