

**Agriculture & Natural Resources
Committee**

ESB 5014

Brief Description: Concerning best practices for water banks.

Sponsors: Senators Honeyford and Ericksen.

Brief Summary of Engrossed Bill

- Requires all water bank sponsors operating in the Yakima River Basin to report a schedule of charges to the Department of Ecology.
- Prohibits a water bank sponsor operating in the Yakima River Basin from providing mitigation credits to similarly situated water uses or water users on different prices or terms.
- Requires all mitigation credits issued in the Yakima River Basin to be recorded for each mitigation credit with the county auditor in the same manner as is provided for water right certificates.
- Requires the Department of Ecology to ensure that any new water uses for which mitigation is required does not cause detriment or injury to existing water rights.
- Requires all water bank sponsors operating in the Yakima River Basin demonstrate the availability of an adequate and reliable water supply to mitigate for the intended purposes of the mitigation credits.
- Prohibits all water bank sponsors operating in the Yakima River Basin from using leased water to provide mitigation after the start of the year 2020, and limits the use of leased water before that date.

Hearing Date: 3/24/15

Staff: Jason Callahan (786-7117).

Background:

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.

According to the Department of Ecology (Department), water banking is an institutional mechanism used to facilitate the legal transfer and market exchange of various types of surface, groundwater, and water storage. The phrase "water banking" is widely used to refer to a variety of water management practices. Water banking is typically facilitated by an institution that operates in the role of broker or clearinghouse. Many banks pool water supplies from willing sellers and make them available as credits to willing buyers.

In 2003 legislation was passed to allow water banking in the Yakima Basin using the State Trust Water Rights Program (Program). During the 2009 legislative session, the law was amended to clarify that this tool is available to use for banking statewide.

The Program allows either a permanent donation of a water right or a temporary donation that allows the water right holder to maintain his or her water rights for future uses without the water right relinquishing. Water enrolled in the Program is held by the Department and put to beneficial uses. Water enrolled in the Program is held in trust and retains its original priority date.

Summary of Bill:

New requirements are established for a water bank sponsor operating in the Yakima River Basin. These requirements apply to any person, corporation, or other entity that holds a legal or beneficial interest in a trust water right from which mitigation credits will be offered for sale for domestic purposes in the Yakima River Basin. This includes: state agencies, local governments, and non-profit organizations.

A water bank sponsor operating in the Yakima River Basin may establish a water bank for any lawful purpose. The sponsor also retains all authority to establish the charges for mitigation credits from the water bank, including the authority to create a sliding scale of charges. However, all water bank sponsors operating in the Yakima River Basin must file with the Department a schedule showing the amount of all charges for mitigation credits. Existing water banks must submit an initial schedule within 90 days of the bill taking effect. Any changes to the prices shown on any schedule may only occur 30 days after giving the Department notice of the change.

Water bank sponsors have the authority to establish limited-purpose water banks that exist to provide mitigation credits for certain water uses or users but not others. However, a water bank sponsor may provide mitigation credits to similarly situated uses or users on different prices or terms.

The Department is required to display the schedule of charges provided by water bank sponsors operating in the Yakima River Basin on its internet website. The Department is also required to ensure that any new water uses for which mitigation is required does not cause detriment or injury to existing water rights, and must require that all water bank sponsors operating in the Yakima River Basin demonstrate the availability of an adequate and reliable water supply to mitigate for the intended purposes of the mitigation credits. All mitigation credits issued in the Yakima River Basin must be recorded for each mitigation credit with the county auditor in the same manner as is provided for water right certificates.

All water bank sponsors operating in the Yakima River Basin are prohibited from using leased water to provide mitigation after the start of the year 2020. Until the year 2020, a water bank sponsor must use any non-leased adequate and reliable water supplies instead of leased water if it is available and provide non-leased adequate and reliable water to any person receiving leased mitigation water as soon as practical and no later than the year 2020.

Appropriation: None.

Fiscal Note: Available.

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