

SENATE BILL REPORT

SB 5002

As of February 28, 2017

Title: An act relating to requiring certain water banks to replace leased water rights provided for mitigation with water rights that will be permanently available.

Brief Description: Requiring certain water banks to replace leased water rights provided for mitigation with water rights that will be permanently available.

Sponsors: Senator Honeyford.

Brief History:

Committee Activity: Agriculture, Water, Trade & Economic Development: 1/12/17.

Brief Summary of Bill

- Requires county-operated water banks to replace leased water rights provided for mitigation with permanently available water rights.

SENATE COMMITTEE ON AGRICULTURE, WATER, TRADE & ECONOMIC DEVELOPMENT

Staff: Greg Vogel (786-7413)

Background: Water Banking Generally. The Department of Ecology (Department) considers water banking to be an institutional mechanism that facilitates the legal transfer and market exchange of various types of surface water, groundwater, and water storage. Used as a water management tool, water banking is facilitated by a public or private institution that operates in the role of an intermediary. Water banks pool water supplies from willing sellers and make them available as mitigation credits to willing buyers.

In Washington State, water banking is put to such uses as increasing stream flows and providing water for development. Most of the banking in the state utilizes the state's Trust Water Rights Program.

Trust Water Rights Program. The Trust Water Rights Program enables the voluntary transfer of water and water rights to the state, either temporarily or permanently. While a water right

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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.

Generally, the process to establish a water bank begins with a consultation between the Department's Water Resources Program and a would-be banker. If the Department agrees that the banker's proposal is within the public's interest, a water banking agreement may be negotiated. This agreement describes how the Department will take ownership of a water right and hold it in the Trust Water Rights Program in exchange for processing applications for mitigated new uses.

Statutory History. Washington State has had specific statutory authority to perform water banking since 2003, when it authorized the Department to use the Trust Water Rights Program in the Yakima River Basin for water banking purposes. In 2009, the trust water statute was amended to allow the Department to conduct water banking activities statewide. Basins that currently have active water banks include the Yakima River Basin, Dungeness River Basin, Columbia River (Mainstem), and Walla Walla River Basin.

Water Banking Authority. The Department is authorized to use water banking to:

- mitigate for new water uses;
- hold water for beneficial uses consistent with terms established by the transferor;
- meet future water supply needs; and
- provide a source of water to third parties, on a temporary or permanent basis, for any allowed beneficial use.

The Department may not use water banking to:

- cause detriment or injury to existing rights;
- issue temporary rights for new potable uses; or
- administer federal project water rights.

Summary of Bill: County-operated water banks that lease water rights to offer for mitigation are required to replace the leased water rights with water rights that will be permanently available for mitigation prior to expiration of the lease.

Appropriation: None.

Fiscal Note: Not requested.

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: This bill is concerned with providing real water, wet water, as opposed to paper water, for people that obtain water from water banks that lease water rights for mitigation use. The concern is over the possibility of water being shut off at the end of the lease for those who use leased water rights for mitigating home use. This bill is in line with the Department of Ecology's past practices and policies about how water banks obtain water, which is by obtaining permanent water rights. The bill might affect how future banks operate going forward. One suggestion for the bill would be to have

a provision for rolling over long-term leases, which are pretty consistent with long-term supply strategy.

OTHER: There are some concerns about dropping the use of leased water rights for mitigation provided by a water bank. The bill would be better if it allowed farmers and irrigators to have the option to lease water rights, especially long-term leases, for water banking, rather than just spilling water.

Persons Testifying: PRO: Senator Jim Honeyford, Prime Sponsor; Dave Christensen, Department of Ecology; Bruce Wishart, Sierra Club / CELP.

OTHER: Glen Smith, Washington State Ground Water Association.

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