

# SENATE BILL REPORT

## ESHB 2994

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As Reported By Senate Committee On:  
Environmental Quality & Water Resources, February 25, 2000

**Title:** An act relating to trust water rights.

**Brief Description:** Regarding instream flows and trust water rights.

**Sponsors:** House Committee on Agriculture & Ecology (originally sponsored by Representatives Parlette, G. Chandler, B. Chandler and Linville).

**Brief History:**

**Committee Activity:** Environmental Quality & Water Resources: 2/22/2000, 2/25/2000 [DPA, DNP].

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### SENATE COMMITTEE ON ENVIRONMENTAL QUALITY & WATER RESOURCES

**Majority Report:** Do pass as amended.

Signed by Senators Fraser, Chair; Eide, Vice Chair; Jacobsen and McAuliffe.

**Minority Report:** Do not pass.

Signed by Senator Honeyford.

**Staff:** Genevieve Pisarski (786-7488)

**Background:** In 1989, the state created a system of trust water rights for the Yakima River Basin. In 1991, a similar system was created for the entire state. Both systems were created for the purpose of allowing voluntary reallocation of water rights to other uses, generally as a result of water conservation programs. In either system, the Department of Ecology may acquire water rights or portions of water rights, which then become trust water rights held by the state, on either a temporary or a permanent basis, by purchase, gift, or other means, including contract, but not including condemnation.

Conveyance of water rights to trust water rights in the Yakima system is not subject to the same approval process that is otherwise required for changes or transfers of water rights. Instead, before the trust water rights can be exercised, the department must determine that no existing water rights will be impaired, must publish notice, and may notify the Department of Fish and Wildlife.

Similarly, before trust water rights that are not under the Yakima system can be exercised, the department must also determine that no existing water rights will be impaired and, in addition, must determine that the public interest will not be impaired. When trust water rights that are not under the Yakima system are conveyed, however, they are subject to the same approval process that is generally required for changes or transfers of water rights, unless the trust water rights are acquired as a result of publicly financed water conservation projects.

Trust water rights are not subject to relinquishment. Trust water rights can be held for instream flow or irrigation use, and those that are not under the Yakima system can also be held for municipal or other beneficial uses.

**Summary of Amended Bill:** The relinquishment statute will not be construed to curtail availability of equitable relief from relinquishment for nonuse of water as a result of excuse by the court in an adjudication.

Grantors may condition conveyance of trust water rights on instream flows, on participation in an ESA plan or program, or for purposes of compliance with federal actions under ESA. For these purposes, the Department of Ecology will adopt reasonable alternatives to the water rights changes or transfers analysis that is currently required. Conveyance of trust water rights by contract is expressly allowed.

Water that is not used, as a result of temporarily reduced need, can be made a trust water right on a temporary basis.

**Amended Bill Compared to Original Bill:** Provisions to encourage and facilitate conveyance of trust water rights are changed. Provisions relating to equitable relief from relinquishment and availability of trust water rights for temporarily reduced need are added.

**Appropriation:** None.

**Fiscal Note:** Not requested.

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

**Testimony For:** To get water back instream to meet ESA needs requires grassroots initiative and voluntary efforts, which means that water users need assurance that their water rights will not be lost or diminished, if they are used for those needs. The objective is good, but the language of the bill is too broad and could result in unrealistic conditions by water users, for example. The water that is put into trust water rights must be "wet water" and not paper rights or inchoate rights.

**Testimony Against:** None

**Testified:** PRO: Representative Parlette, prime sponsor; Ken Slattery, Department of Ecology; Judy Turpin, Washington Environmental Council; Kathleen Collins, Washington Water Policy Alliance; Dick Ducharme, Yakima Growers & Shippers.