

SHB 1640 - H AMD 291

By Representative Hinkle

ADOPTED 03/19/2003

1 Strike everything after the enacting clause and insert the
2 following:

3 "Sec. 1. RCW 90.42.005 and 1991 c 347 s 1 are each amended to read
4 as follows:

5 (1) It is the policy of the state of Washington to recognize and
6 preserve water rights in accordance with RCW 90.03.010.

7 (2) The legislature finds that:

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

11 (b) Consistent with RCW 90.54.180, issuance of new water rights,
12 voluntary water transfers, and conservation and water use efficiency
13 programs, including storage, (~~should be the preferred~~) all are
14 acceptable methods of addressing water uses because they can relieve
15 current critical water situations, provide for presently unmet needs,
16 and assist in meeting future water needs. Presently unmet needs or
17 current needs includes the water required to increase the frequency of
18 occurrence of base or minimum flow levels in streams of the state, the
19 water necessary to satisfy existing water rights, or the water
20 necessary to provide full supplies to existing water systems with
21 current supply deficiencies; (~~and~~)

22 (c) The interests of the state and its citizens will be served by
23 developing programs and regional water resource plans, in cooperation
24 with local governments, federally recognized tribal governments,
25 appropriate federal agencies, private citizens, and the various water
26 users and water interests in the state, that increase the overall
27 ability to manage the state's waters in order to resolve conflicts and
28 to better satisfy both present and future needs for water; and

1 (d) Water banking as a function of the trust water program and as
2 authorized by this chapter can provide an effective means to facilitate
3 the voluntary transfer of water rights established through
4 conservation, purchase, lease, or donation, to preserve water rights
5 and provide water for presently unmet and future needs; and to achieve
6 a variety of water resource management objectives throughout the state,
7 including drought response, improving streamflows on a voluntary basis,
8 providing water mitigation, or reserving water supply for future uses.

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

11 (1) The department is hereby authorized to use the trust water
12 rights program in the Yakima river basin for water banking purposes.

13 (2) Water banking may be used for one or more of the following
14 purposes:

15 (a) To authorize the use of trust water rights to mitigate for
16 water resource impacts, future water supply needs, or any beneficial
17 use under chapter 90.03, 90.44, or 90.54 RCW, consistent with any terms
18 and conditions established by the transferor, except that return flows
19 from water rights authorized in whole or in part for any purpose shall
20 remain available as part of the Yakima basin's total water supply
21 available and to satisfy existing rights for other downstream uses and
22 users;

23 (b) To document transfers of water rights to and from the trust
24 water rights program; and

25 (c) To provide a source of water rights the department can make
26 available to third parties on a temporary or permanent basis for any
27 beneficial use under chapter 90.03, 90.44, or 90.54 RCW.

28 (3) The department shall not use water banking to:

29 (a) Cause detriment or injury to existing rights;

30 (b) Issue temporary water rights or portions thereof for new
31 potable uses requiring an adequate and reliable water supply under RCW
32 19.27.097;

33 (c) Administer federal project water rights, including federal
34 storage rights; or

35 (d) Allow carryover of stored water from one water year to another
36 water 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, with the consent of the water right holder, may
4 identify trust water rights for administration for water banking
5 purposes, including trust water rights established before the effective
6 date of this section.

7 (2) An application to transfer a water right to the trust water
8 program shall be reviewed under RCW 90.03.380 at the time the water
9 right is transferred to the trust water program for administration for
10 water banking purposes, and notice of the application shall be
11 published by the applicant as provided under RCW 90.03.280. The
12 application must identify reasonably foreseeable future temporary or
13 permanent beneficial uses for which the water right or portion thereof
14 may be used by a third party upon transfer from the trust water right
15 program. In the event the future place of use, period of use, or other
16 elements of the water right are not specifically identified at the time
17 of the transfer into the trust water program, another review under RCW
18 90.03.380 will be necessary at the time of a proposed transfer from the
19 trust water program.

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

22 (1) The department shall transfer a water right or portion thereof
23 being administered for water banking purposes from the trust water
24 program to a third party upon occurrence of all of the following:

25 (a) The department receives a request for transfer of a water right
26 or portion thereof currently administered by the department for water
27 banking purposes;

28 (b) The request is consistent with any previous review under RCW
29 90.03.380 of the water right and future temporary or permanent
30 beneficial uses;

31 (c) The request is consistent with any condition, limitation, or
32 agreement affecting the water right, including but not limited to any
33 trust water right transfer agreement executed at the time the water
34 right was transferred to the trust water rights program; and

35 (d) The request is accompanied by and is consistent with an
36 assignment of interest or portion thereof from a person or entity

1 retaining an interest in the trust water right or portion thereof to
2 the party requesting transfer of the water right or portion thereof.

3 (2) The priority date of the water right or portion thereof
4 transferred by the department from the trust water program for water
5 banking purposes shall be the priority date of the underlying water
6 right.

7 (3) The department shall issue documentation for that water right
8 or portion thereof to the new water right holder based on the
9 requirements applicable to the transfer of other water rights from the
10 trust water rights program.

11 (4) The department's decision on the transfer of a water right or
12 portion thereof from the trust water program for water banking purposes
13 may be appealed to the pollution control hearings board under RCW
14 43.21B.230, or to a superior court conducting a general adjudication
15 under RCW 90.03.210.

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

18 (1) The department shall seek input from agricultural
19 organizations, federal agencies, tribal governments, local governments,
20 watershed groups, conservation groups, and developers on water banking,
21 including water banking procedures and identification of areas in
22 Washington state where water banking could assist in providing water
23 supplies for instream and out-of-stream uses. The department shall
24 summarize any comments received on water banking and submit a report,
25 including any recommendations, to the appropriate committees of the
26 legislature for their consideration in the subsequent legislative
27 session.

28 (2) By December 31st of every even-numbered year, the department
29 shall submit a report to the appropriate committees of the legislature
30 on water banking activities authorized under section 2 of this act.
31 The report shall:

32 (a) Evaluate the effectiveness of water banking in meeting the
33 policies and objectives of this chapter;

34 (b) Describe any statutory, regulatory, or other impediments to
35 water banking in other areas of the state; and

36 (c) Identify other basins or regions that may benefit from

1 authorization for the department to use the trust water program for
2 water banking purposes.

3 NEW SECTION. **Sec. 6.** A new section is added to chapter 90.42 RCW
4 to read as follows:

5 Nothing in this act shall:

6 (1) Cause detriment or injury to existing rights or to the
7 operation of the federal Yakima project to provide water for irrigation
8 purposes, existing water supply contracts, or existing water rights;

9 (2) Diminish in any way existing rights or the total water supply
10 available for irrigation and other purposes in the Yakima basin; or

11 (3) Affect or modify the authority of a court conducting a general
12 adjudication pursuant to RCW 90.03.210.

13 NEW SECTION. **Sec. 7.** Nothing in this act may be construed to:

14 (1) Affect or modify any treaty or other federal rights of an
15 Indian tribe, or the rights of any federal agency or other person or
16 entity arising under state or federal law;

17 (2) Affect or modify the rights or jurisdictions of the United
18 States, the state of Washington, the Yakama Nation, or other person or
19 entity over waters of any river or stream or over any ground water
20 resource;

21 (3) Alter, amend, repeal, interpret, modify, or be in conflict with
22 any interstate compact made by the states;

23 (4) Alter, establish, or impair the respective rights of states,
24 the United States, the Yakama Nation, or any other person or entity
25 with respect to any water or water-related right;

26 (5) Alter, diminish, or abridge the rights and obligations of any
27 federal, state, or local agency, the Yakama Nation, or other person or
28 entity;

29 (6) Affect or modify the rights of the Yakama Indian Nation or its
30 successors in interest to, and management and regulation of, those
31 water resources arising or used, within the external boundaries of the
32 Yakama Indian Reservation;

33 (7) Affect or modify the settlement agreement between the United
34 States and the state of Washington filed in Yakima county superior
35 court with regard to federal reserved water rights other than those

1 rights reserved by the United States for the benefit of the Yakama
2 Indian Nation and its members; or

3 (8) Affect or modify the rights of any federal, state, or local
4 agency, the Yakama Nation, or any other person or entity, public or
5 private, with respect to any unresolved and unsettled claims in any
6 water right adjudications, or court decisions, including *State v.*
7 *Acquavella*, or constitute evidence in any such proceeding in which any
8 water or water-related right is adjudicated.

9 NEW SECTION. **Sec. 8.** This act is necessary for the immediate
10 preservation of the public peace, health, or safety, or support of the
11 state government and its existing public institutions, and takes effect
12 immediately."

13 Correct the title.

EFFECT: (1) Changes authority for the Department of Ecology (DOE)
to establish a water bank in the Yakima River basin with authority to
use the trust water rights program for water banking purposes in the
Yakima River basin. (2) Revises water banking purposes to specify that
return flows for any purposes must remain available as part of the
Yakima River total water supply available (TWSA) and to satisfy
existing rights for other downstream uses and users. (3) Prohibits the
DOE from using water banking to cause detriment or injury to existing
rights, issue temporary water rights for new potable uses, administer
federal project water rights, or allow carryover of stored water from
one water year to another water year. (4) Specifies the water right
must be reviewed under statutory change or transfer provisions when the
water right is transferred to the trust water program, with required
notice of the application to do so and identification of reasonably
foreseeable future uses, and requires another review at the time of
transfer if the place or period of use or other elements are not
specifically identified at the time of the initial review. (5) Removes
provision regarding due diligence review by water rights' holders. (6)
Requires report on water banking comments in the subsequent legislative
session (rather than December 31, 2004). (7) Specifies the water
banking provisions will not cause detriment or injury or diminish
existing rights or diminish the TWSA for irrigation in other purposes
in the Yakima River basin. (8) Specifies the water banking provisions
may not be construed to: (a) Affect or modify federal agency or tribal
rights under state or federal law; (b) affect or modify rights of the
federal government, state, Yakama Nation, or other person or entity
over ground or surface waters; (c) change or conflict with any
interstate compact; (d) change or impair the rights of the United
States, this or other states, the Yakama Nation, or any person or

entity; (c) change or diminish federal, state, local, tribal, or individual obligations; (d) affect or modify the Yakama Nation's interests and management of water resources within the reservation area; or (e) affect or modify the settle agreement between the United States and this state regarding federal reserved water rights or any unresolved or unsettled claims. (9) Revises legislative intent to reflect these changes and include new legislative findings. (10) Includes some technical revisions.

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