

# HOUSE BILL REPORT

## ESHB 1317

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**As Reported by House Committee On:**  
Agriculture & Natural Resources

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

**Brief Description:** Enhancing the effectiveness of the trust water rights program.

**Sponsors:** House Committee on Agriculture & Natural Resources (originally sponsored by Representatives Linville, Kirby, Grant, Quall, Shabro, Jarrett, Rockefeller, Hunt, Delvin, Morris and Conway; by request of Governor Locke).

**Brief History:**

**Committee Activity:**

Agriculture & Natural Resources: 2/27/04 [DP2S].

**Brief Summary of Second Substitute Bill**

- Includes numerous revisions to reorganize sections and subsections of general trust water rights statutes.
- Revises notice procedures and includes new procedures for establishing temporary trust water rights.
- Revises various provisions regarding establishment, quantity, acquisition, and uses of trust water rights.
- Makes numerous technical revisions.

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### HOUSE COMMITTEE ON AGRICULTURE & NATURAL RESOURCES

**Majority Report:** The second substitute bill be substituted therefor and the second substitute bill do pass. Signed by 11 members: Representatives Linville, Chair; Rockefeller, Vice Chair; Schoesler, Ranking Minority Member; Kristiansen, Assistant Ranking Minority Member; Eickmeyer, Grant, Hunt, McDermott, Orcutt, Quall and Sump.

**Staff:** Caroleen Dineen (786-7156).

**Background:**

The state may acquire a trust water right by donation, purchase, lease, or means other than condemnation. Trust water rights are placed in the state's trust water rights program and

managed by the Department of Ecology (DOE). Two trust water rights systems, one for the Yakima River basin and the other for the rest of the state, are established in state law.

Trust water rights may be held or authorized for use for instream flows, irrigation, municipal, or other beneficial uses consistent with applicable regional plans. Trust water rights also may be used to resolve critical water supply problems. Trust water rights acquired in areas with an approved watershed plan must be consistent with any plan provisions regarding acquisition.

A trust water right has the same priority date as the water right from which it originated. The trust water right is junior in priority to the original right unless specified otherwise by agreement of the state and the original water right holder.

The DOE must determine that a trust water right will not impair existing water rights or the public interest before such a right may be exercised. The DOE also must stop or modify trust water right use if impairment occurs. For donated and leased trust water rights, the DOE must review an impairment claim from any person who believes his or her water right has been impaired by a donated or leased right and must alter the trust water right to eliminate any impairment. The DOE's impairment decisions may be appealed to the Pollution Control Hearings Board.

Statutory relinquishment provisions do not apply to trust water rights.

Legislative findings recognize the benefits of water use efficiency programs in addressing the state's water shortage for existing and future water needs. Legislative findings also address the importance of developing programs to increase the state's ability to manage state waters to resolve conflicts and satisfy water needs.

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### **Summary of Second Substitute Bill:**

The trust water rights program statutes applicable to areas of the state other than the Yakima River basin are reorganized. The trust water rights program statutes applicable to the Yakima River basin are repealed. Substantive provisions regarding acquisition, establishment, quantity, documentation, notice, and uses of trust water rights are amended. Numerous technical revisions also are included.

Trust water rights may be established on a temporary or permanent basis from existing surface or ground water rights represented by certificates, permits, claims, storage rights reflected as reservoir and secondary use rights, and other appropriate means other than condemnation. Permanent trust water rights are conveyed to the state; temporary trust water rights remain the property of the water right holder. Only the part of an existing water right established as a trust water right is subject to the provisions of the trust water rights program statutes.

Acceptance of an existing water right as a temporary trust water right is not a determination of the validity or extent of the water right. When expending state funds appropriated by the Legislature to establish trust water rights, the DOE must exercise due diligence as practiced by

other water rights purchasers to ensure the validity of the water right for which funds will be expended.

Uses. Trust water rights may be used for any beneficial use specified in the water statutes. These statutory beneficial uses include domestic, stock watering, industrial, commercial, agricultural, irrigation, hydroelectric power production, mining, fish and wildlife maintenance and enhancement, recreational, thermal power production, preservation of environmental and aesthetic values, and all other uses compatible with the enjoyment of the waters of the state. Trust water rights also may be established to protect water rights secured for mitigation and preserve water rights for future needs.

To the extent possible and subject to legislative appropriation, trust water rights established in a watershed with an approved watershed plan must be used consistently with that plan.

Management. Trust water rights must be placed in the state trust water rights program and held in trust by the DOE. Trust water rights must be administered in strict accordance with the terms under which the trust water right was established, including any agreement between the parties. All trust water rights must be managed to ensure the attributes of each water right, such as priority date, status, identification, and uses, remain distinct for each water right. The DOE may make arrangements and contracts to ensure these rights can be used to the fullest extent consistent with applicable law.

Temporary trust water rights must be managed consistent with the terms of any transfer agreement.

Water Conservation Projects. A trust water right resulting from a water conservation project must be established for the period of time during which the conservation project is in effect. Before state funds are expended, the state and water right holder must agree on the terms and duration of the trust water right transfer resulting from a conservation project.

Temporary Trust Water Rights. A temporary trust water right is established after the water right holder provides written notice to the DOE of intent to establish a temporary trust water right, the water right holder publishes a legal notice, and no impairment claim is filed or verified. A temporary trust water right also may be established by a superior court conducting a water rights adjudication.

The legal notice required for establishing a temporary trust water right must state that a water right holder who wishes to assert a claim of impairment may do so by filing a claim with the DOE by a certain date. The temporary trust water right is established if, within 30 days of the last publication date, no claims of impairment are filed. If any impairment claims are filed, the DOE must issue a written determination regarding the impairment claim.

Notice. The DOE must provide notice and opportunity to comment before acquiring, establishing, or modifying any trust water right. The DOE must develop expedited notice procedures for comment on proposals to establish trust water rights during a formally declared drought.

Documentation. The DOE must develop forms for use in the establishment of trust water rights to gather information regarding the right.

Final Decision. The DOE must provide copies of its final decision to the applicant and any person or entity providing comments on the proposed transfer. The DOE's decision to establish a permanent trust water right may be appealed to the Pollution Control Hearings Board.

Certificates. The DOE must issue a certificate of change or transfer for any water right established as a permanent trust water right. This certificate must be filed for record with the DOE, and a duplicate must be issued to the applicant. The duplicate certificate may be filed with the appropriate county auditor.

Upon the request of the water right holder, the DOE may require a final investigation before issuing a superseding certificate for water rights for which a certificate of change or transfer has been issued. The superseding certificate must be issued only when and to the extent water has been applied to actual beneficial use as described in the certificate of change or transfer.

When only part of an existing right is established as a permanent trust water right, the DOE must issue a superseding certificate or permit to the original water right holder for the quantity of water remaining with the original right holder. For claims, the superseding certificate or permit must be issued only for the perfected portion of a claim demonstrated through actual beneficial use of water.

Transfers, Changes, or Amendments. Statutory provisions regarding water rights transfers, changes, or amendments do not apply to trust water rights established on a temporary basis unless these rights are transferred to another person.

Priority. Priority of an unperfected water right in good standing is based on date of establishment. For a temporary transfer, the priority date of an unperfected right reverts to the priority date of the original right when the trust period expires.

Perfection. All or part of a water right perfected through actual beneficial use or an unperfected water right in good standing may be established as a trust water right.

Quantity. The quantity of a trust water right is the extent to which the use under the original right is reduced or foregone under the trust transfer, resulting in net benefit to the water body. This reduction may result from:

- reduced diversion or withdrawal because of a water conservation project;
- reduced number of irrigated acres or a long-term change in crop production;
- reduced seasonal period of use because of low stream flows or trust water right conditions;
- elimination of water use under the original right;
- a downstream change in point of diversion resulting in increased flows in the affected stream reach;
- temporary or permanent use of a different water supply; or

- other appropriate changes agreed to between the DOE and the water right holder.

The full and unperfected quantity of a water right established as a temporary trust water right reverts to the water right holder when the temporary trust period expires.

Water Banking. The DOE may use previously unappropriated water released from withdrawal by the United States for water banking purposes.

Definitions. "Impairment" is defined by reference to the water code's impairment provisions. The definition of "net water savings" is amended to include surface and ground water bodies and to reference time of funding. The "trust water right" definition is amended to include any existing water right. The definitions of "pilot planning areas" and "water conservation project" are removed.

Findings. Legislative findings are added regarding the ability of the trust water rights program to facilitate voluntary water rights transfers, secure and preserve water rights, meet the needs of growing communities for adequate and reliable water supplies, and satisfy existing and future, instream and out-of-stream needs for water. Legislative findings also recognize the importance of the trust water rights program and the complexity and difficulties associated with the current program. In addition, legislative findings recognize the trust water rights program's ability to promote cooperative efforts to satisfy existing rights and other needs in the Yakima basin.

Legislative intent is specified to enhance program effectiveness, clarify and consolidate procedures, improve incentives, and remove disincentives. Legislative policy to preserve beneficial uses of water is specified.

### **Second Substitute Bill Compared to Engrossed Substitute Bill:**

The amendment consolidates the two state trust water rights programs (Yakima River basin program and general program), repeals the Yakima River basin program statutes, and reorganizes and revises the general program statutes. The amendment also allows trust water rights to be established from permits as well as from certificates, claims, and storage and secondary use rights. In addition, the amendment requires the DOE to establish expedited notice for establishment of trust water rights during periods of formally declared droughts. Further, the amendment includes specific notice requirements and procedures for establishment of temporary trust water rights. The amendment also authorizes use of previously unappropriated water released from withdrawal by the United States for water banking purposes. Finally, the amendment adds legislative findings regarding the role of the trust water rights program with respect to water rights and needs in the Yakima River basin.

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**Appropriation:** None.

**Fiscal Note:** Requested on February 27, 2004.

**Effective Date of Second Substitute Bill:** The bill contains an emergency clause and takes effect immediately.

**Testimony For:** None

**Testimony Against:** None.

**Persons Testifying:** None.

**Persons Signed In To Testify But Not Testifying:** None.