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**Agriculture & Natural  
Resources Committee**

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**HB 1640**

**Brief Description:** Authorizing water banking within the trust water program.

**Sponsors:** Representatives Linville, Hinkle, Grant, Chandler, Eickmeyer and Hankins.

**Brief Summary of Bill**

- Authorizes establishment of water banks to be administered by the Department of Ecology or by other entities.
- Requires the Department of Ecology to conduct pilot rule making to determine the effectiveness of water banks.
- Includes legislative findings regarding the benefits of water banks and the trust water rights program.

**Hearing Date:** 2/12/03

**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.

Uses

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.

Funding

The state may finance water conservation projects. The state deposits into the trust water rights program the "net water savings" achieved through funded projects. "Net water savings" is defined as the amount of water determined to be conserved and usable for other purposes without impairing water rights existing at the time a water conservation project is undertaken. No state funding may be expended to acquire trust water rights unless specifically appropriated by the Legislature.

#### Notice

Before a trust water right is created or modified, the DOE must publish notice and provide notice to various government entities and interest groups according to statutory requirements.

#### Documentation

For each permanent trust water right conveyed to the state, the DOE issues a water right certificate. The DOE issues a superseding certificate, which has the same priority date as the original water right, to identify the amount of water a water right holder would continue to be entitled to use as a result of a water conservation project. The DOE uses other certificates or instruments to document nonpermanent water rights conveyances into the trust water rights program.

#### Amendments

Statutory requirements regarding water rights amendments for changes in point of diversion, place of use, or purpose of use do not apply to trust water rights acquired through funding of water conservation projects.

#### Priority

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

#### Extent and Validity of Right

For donations and leases, the amount of the trust water right (or the donated/leased portion and the portion reserved by the water right holder) does not exceed the extent to which the right was exercised during the five years preceding the donation or lease. When part of an existing water right donated to the trust water rights program will assist in achieving established instream flows, the DOE must process a change or amendment of an existing right without reviewing the extent and validity of the part of the right retained by the water right holder. The donated or leased right's status as a trust water right is not evidence of the validity or quantity of the water right.

#### Donations and Leases

The DOE must accept donations on the terms prescribed by the donor. Donations must be managed to ensure they qualify as deductible for the donor for federal income tax purposes.

#### Temporary Trust Water Rights

The DOE places into the trust water rights program the full amount of water diverted or withdrawn according to a water right donated or acquired on a temporary basis. This same amount reverts to the donor or original right holder when the trust period ends.

#### Irrigation Districts

Evidence of an irrigation district's authority to represent water rights holders must be submitted to the DOE for any trust water rights conveyed by an irrigation district. The state may not contract for acquisition of trust water rights from any person served by an irrigation district without the district board's approval. Any disapproval by an irrigation district must be factually based on adverse effects on the district's ability to deliver water to other members or to maintain its financial stability.

#### Federal Cooperation

The state must cooperate fully with the United States in implementing the trust water rights program. The state must treat any trust water rights acquired with federal funds in the same manner as trust water rights acquired with state funds.

#### Relinquishment

Statutory relinquishment provisions do not apply to trust water rights.

#### Impairment

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.

#### Appeals

The DOE's impairment decisions are appealable to the Pollution Control Hearings Board.

#### Findings

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.

#### **Summary of Bill:**

## Water Bank Authority

The Department of Ecology (DOE) is authorized to establish water banks by rule in one or more watersheds to administer trust water rights. Water banks may be created to:

- solicit water rights for the trust water rights program;
- hold trust water rights for mitigation of future activities;
- accept and manage funds used to establish trust water rights;
- purchase or lease water rights to be held as trust water rights;
- create a system of credits to track water bank deposits and withdrawals;
- assign water rights or credits to third parties; and
- develop an annual schedule of the net water saved and anticipated water demands.

Water banks may be created to administer water rights for a specified geographic area and/or certain types of trust water rights. Water banks also may be created as joint water banks with neighboring states for a shared watershed or waterbody. With the consent of the party establishing the trust water right, the DOE must identify the trust water rights to be administered by the water bank.

Water banks may be created within or outside the DOE. Any water bank created outside the DOE must be constituted as either a public entity or a public-private partnership.

## Pilot Rule Making

The DOE is required to conduct pilot rule making to evaluate the effectiveness of different types of water banks. In choosing pilot rule making areas, the DOE must consider the:

- likelihood of addressing drought or future water supply demands with temporary or permanent water supply;
- existence of plans, programs, or technical resources within the water resource inventory area (WRIA) to assist with implementation and review of the pilot rule making;
- location in one of the 16 salmon critical basins; and
- degree of local watershed or regional group support.

The pilot rules may include procedures to establish, quantify, and appeal trust water rights. The pilot rules also may include procedures to ensure trust water rights assignments or credits comply with statutory impairment provisions. In addition, the pilot rules may address geographical constraints on trust assignments or credits by basin, subbasin, or water source and standards to ensure trust water rights or credits issued for potable use provide an adequate and reliable water supply.

The DOE is required to request comments on the pilot rule from a variety of governmental entities and interest groups within one year of pilot rule adoption. The DOE must submit a report on these comments and any legislative recommendations to the appropriate committees of the Legislature for consideration in the subsequent legislative session.

## Findings

Legislative findings specify reallocation of water is a preferred method for addressing water demands in the state. Legislative findings are included to recognize the effective use of the state's trust water rights program to achieve a variety of water resource management objectives, including drought response, voluntary improvement of stream flows, water mitigation, and reserved water supply for future uses. Legislative findings also specify the state's interests are served by developing water banking programs within the trust water rights program to administer trust water rights in a watershed or region. In addition, legislative findings declare that water banking will allow efficient management of multiple trust water rights, facilitate three-party transfers, assist in implementing watershed plans, and meet other objectives. Further, legislative findings state the trust water rights program and water banking improve the state's ability to work with the United States and various water users to satisfy existing and future needs in the Yakima basin.

**Appropriation:** None.

**Fiscal Note:** Available.

**Effective Date:** The bill takes effect ninety days after adjournment of session in which bill is passed.