

HOUSE BILL REPORT

HB 1640

As Reported by House Committee On:
Agriculture & Natural Resources

Title: An act relating to authorizing water banking within the trust water program.

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

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

Brief History:

Committee Activity:

Agriculture & Natural Resources: 2/12/03, 3/5/03 [DPS].

Brief Summary of Substitute Bill

- Authorizes the Department of Ecology to establish and administer a water bank in the Yakima River basin.
- Requires a report to the Legislature regarding comments received on water banking and biennial assessments of the water bank program.
- Includes legislative findings regarding the benefits and uses of water banks.

HOUSE COMMITTEE ON AGRICULTURE & NATURAL RESOURCES

Majority Report: The substitute bill be substituted therefor and the substitute bill do pass. Signed by 10 members: Representatives Linville, Chair; Rockefeller, Vice Chair; Kristiansen, Assistant Ranking Minority Member; Chandler, Eickmeyer, Grant, Hunt, McDermott, Orcutt and Quall.

Minority Report: Do not pass. Signed by 3 members: Representatives Schoesler, Ranking Minority Member; Holmquist, Assistant Ranking Minority Member; 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 are appealable 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.

Summary of Substitute Bill:

The DOE is authorized to establish a water bank in the Yakima River basin to administer trust water rights. The water bank may be created to:

- hold trust water rights for mitigation, future water supply needs, or any statutory beneficial uses;
- accept and manage funds used to administer the water bank;
- document transfers of water rights to and from the trust water rights program; and
- provide a source of water rights that the DOE can use to transfer to third parties on a temporary or permanent basis for any beneficial use.

The DOE, with the water right holder's consent, may identify trust water rights for administration by the water bank. Trust water rights established before the effective date

of these provisions may be included in the water bank. The DOE may not issue temporary water rights for new potable uses requiring an adequate and reliable water supply.

The application to transfer to the water bank may identify future temporary or permanent beneficial uses for the water right upon issuance from the water bank. The water right and future uses must be reviewed according to statutory procedures for water rights transfers at the time the water right is transferred to the trust water rights program for water bank administration. If not conducted at the time the water right is transferred to the trust water rights program, the statutory transfer review must occur before the DOE transfers the water rights to a third party.

The DOE must issue a water right from a water bank when all of the following have occurred:

- the DOE receives a request to issue a water right from the water bank;
- the request is consistent with the DOE's statutory transfer review;
- the request is consistent with any transfer agreement executed at the time the water right was transferred to the trust water rights program; and
- any party with an interest has assigned his or her right to the party seeking issuance.

The water right issued from a water bank retains the same priority as the underlying right. When a water right has been permanently issued from the water bank, it is no longer a trust water right, and the DOE must issue appropriate documentation to the new water right holder. Water rights holders are not prevented by the procedural water bank provisions from performing due diligence review of trust water rights administered by or issued from the water bank.

The DOE's decisions on water banks transfers may be appealed to the Pollution Control Hearings Board, a superior court conducting a general adjudication, or under other applicable law. The statutory water bank provisions must not be construed to cause determent or injury to the operation of the Yakima River Basin Enhancement Act to provide water for irrigation purposes or to existing water supply contracts. The statutory water bank provisions do not affect or modify the authority of a court conducting a general adjudication.

The DOE is required to request comments on water banking from a variety of governmental entities and interest groups and must submit a report on these comments and any legislative recommendations to the appropriate committees of the Legislature by December 31, 2004. By December 31 of every even-numbered year, the DOE must report to the appropriate committees of the Legislature on the water bank and include: (1) an evaluation of the effectiveness of the water bank; (2) a description of any statutory, regulatory, or other impediments to water banking; and (3) an identification of other basins or regions that may benefit from the establishment of a water bank.

Legislative findings recognize voluntary water rights transfers as a preferred method to address current and future water needs, including the needs of growing communities and other needs. Legislative policy is stated to include preservation of beneficial uses as well as water rights. Legislative findings identify water banking as a way to facilitate voluntary water rights transfers and achieve a variety of resource management objectives. Legislative findings also specify that water banking can assist in implementing watershed plans by allowing the efficient management of multiple trust water rights and facilitating three-party transfers.

Substitute Bill Compared to Original Bill:

The substitute replaces the general statutory authority to establish water banks with authorization for the DOE to establish and administer a water bank in the Yakima River basin. The substitute removes provisions regarding pilot rules, selection of water bank areas, water banks with neighboring states, and administration by other public or public-private entities. The substitute also specifies the water bank is to be established in the trust water rights program. In addition, the substitute revises provisions regarding water bank purposes, procedures related to establishing a water bank, and legislative findings.

Appropriation: None.

Fiscal Note: Available.

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

Testimony For: Trendwest hopes to use water banking for some water it purchased in connection with its Mountain Star master planned resort near Roslyn. In addition to water purchased for the resort and to mitigate resort use, Trendwest purchased and agreed to supply water for the "induced housing" arising from the development. The supply Trendwest purchased allows it to supply water for induced housing as it is built during the next 30 years. Through this bill, the water will go into the trust program and then be issued out of the water bank as it is needed. During the intervening period, the water in the water bank will be available for other uses.

This bill will allow cost-effective water rights transfers. Water rights are processed as they go into the trust program, and users will know when and how it can be used. This bill gives users a way to deal with relinquishment concerns and is a flexible, proactive way to have water rights available for additional users in the future.

Water banks and the trust water rights program are ways to address the needs of out-of-stream water users and flow restoration needs. Water banks will engage local communities and provide more accountability as to how trust water rights are managed.

A more accountable banking system will help to promote trust in government. The DOE has a federal grant to develop a water bank by rule in the Yakima basin, so the initial rulemaking costs would not create fiscal impact.

(In support with concerns) The concept of water banking is intriguing, but concerns exist about how this process will work. Some of the language in the bill is vague and needs to be clarified. The DOE should not be given a broad mandate; this bill should specify the details regarding the program. The Legislature should consider a sunset in five years. Trendwest has worked with Kittitas irrigation districts to provide water in short years. The Yakima basin is one of the most complex and highly regulated in the state, and we need to ensure that no unintended consequences arise from this bill. The nature of return flows are an issue of concern.

Testimony Against: There is a great mistrust of government, and water rights are one of the most important rights to people. If a bank changes its name or goes out of business, there is no recourse.

Testified: (In support) Bill Clarke and Steve Gano, Trendwest Resorts; Carl Samuelson, Department of Fish and Wildlife; and Keith Phillips, Department of Ecology.

(In support with concerns) Hertha Lund and Mark Charlton, Washington Farm Bureau; and Mike Schwisow, Washington State Water Resources Association.

(Opposed) Mike Kayser.