

SENATE BILL REPORT

ESHB 1640

As Reported By Senate Committee On:
Natural Resources, Energy & Water, April 4, 2003

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

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

Sponsors: House Committee on Agriculture & Natural Resources (originally sponsored by Representatives Linville, Hinkle, Grant, Chandler, Eickmeyer and Hankins).

Brief History:

Committee Activity: Natural Resources, Energy & Water: 4/3/03, 4/4/03 [DP, DNP].

SENATE COMMITTEE ON NATURAL RESOURCES, ENERGY & WATER

Majority Report: Do pass.

Signed by Senators Morton, Chair; Hewitt, Vice Chair; Doumit, Fraser, Hale, Oke and Regala.

Minority Report: Do not pass.

Signed by Senator Honeyford.

Staff: Sam Thompson (786-7413)

Background: The state has established two trust water rights programs managed by the Department of Ecology (DOE), one for the Yakima River Basin and one for the rest of the state. Both programs allow the state to acquire water rights, hold them as trust water rights, and reallocate them to other uses, including instream flows, irrigation, municipal, or other beneficial uses. The state may also use trust water rights to alleviate critical water supply problems.

Legislative findings concerning both programs specify that the state's interests will be served by developing programs that increase overall ability to manage waters to better satisfy both present and future needs.

Summary of Bill: Findings. Legislative findings specify that issuance of new water rights and voluntary water right transfers are acceptable methods of addressing current and future water needs and identify water banking as an effective means to facilitate voluntary water right transfers and achieve resource management objectives.

Water Banking Authorization. DOE is authorized to use the Yakima River Basin trust water rights program for water banking purposes. Water banking may be used for mitigation, future water supply needs, or any beneficial uses consistent with terms established by the transferor. Return flows from water rights must remain available as part of the Yakima Basin's total available water supply and to satisfy existing rights for other downstream uses

and users. Water banking may also be used to document transfers of water rights to and from the trust water rights program and provide a source of water rights that DOE can use to transfer to third parties on a temporary or permanent basis for any authorized beneficial use.

DOE may, with the water right holder's consent, identify trust water rights for administration for water banking purposes. An application to transfer a water right to the trust water rights program must be reviewed according to water right transfer procedures when the water right is transferred to the program for water banking. The application must identify reasonably foreseeable temporary or permanent beneficial uses for the water right upon transfer from the trust water rights program. If future place of use, period of use, or other elements of the water right are not specifically identified at the time of transfer, another review will be necessary at the time of proposed transfer from the trust water program.

Transfer to Third Party. DOE must transfer a water right administered for water banking purposes from the trust water rights program to a third party when:

- DOE receives a request to transfer;
- the request is consistent with DOE's previous water right transfer review and future temporary or permanent beneficial uses;
- the request is consistent with any condition, limitation, or agreement affecting the water right, including any transfer agreement executed at the time the water right was transferred to the trust water rights program; and
- the request is accompanied by an assignment of interest from a person or entity retaining an interest in the trust water right to the party requesting the transfer.

The priority date of the transferred water right is the priority date of the underlying right. DOE must issue documentation of the transferred water right to the new water right holder. DOE's decisions on water bank transfers may be appealed to the Pollution Control Hearings Board or a superior court conducting a general adjudication.

Consultation. DOE must 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 of every even-numbered year, DOE must report to the Legislature on water banking. The report must evaluate water banking's effectiveness, describe any statutory, regulatory, or other impediments to water banking in other areas of the state, and identify other basins or regions that may benefit from water banking.

Limitations. DOE may not use water banking to cause detriment or injury to existing rights, issue temporary rights for new potable uses, administer federal project rights, or allow carryover of stored water from one water year to another water year.

Water bank provisions must not be construed to:

- Cause detriment or injury to existing rights or the operation of the federal Yakima project to provide water for irrigation purposes, existing water supply contracts, or other existing water rights.

- Diminish existing rights or the total water supply available for irrigation or other purposes in the Yakima Basin.
- Affect or modify the authority of a court conducting a general adjudication.
- Affect or modify treaty or other federal rights of a tribe, federal agency, or other person or entity.
- Change, interpret, or conflict with any interstate compact.
- Alter, establish, or impair water or water-related rights of states, the U.S., the Yakama Nation, or any other person or entity.
- Affect or modify the rights of the Yakama Nation and management or regulation of water resources within external boundaries of the Yakama Indian Reservation.
- Affect or modify the settlement agreement between the U.S. and Washington State regarding federal reserved water rights other than rights reserved by the U.S. for the Yakama Indian Nation.
- Affect or modify the rights of any federal, state, or local agency, the Yakama Nation, or any other person or entity with respect to unsettled claims in any water rights adjudication, including *State v. Acquavella*.

Appropriation: None.

Fiscal Note: Available.

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

Testimony For: This bill facilitates transfer of water rights from the Yakima Basin Trust Water Program to third parties. A planned resort in the vicinity of Roslyn seeks to accommodate water requirements for off-site housing associated with the project. The bill is necessary because DOE must otherwise transfer a trust water right out of the program to the original transferor and ask them to transfer their right to the third party. Many limitations in the bill prevent impairment of existing water rights.

Testimony Against: DOE management of the trust water rights program in eastern Washington has led to impairment of water rights. This bill may lead to further impairment problems.

Testified: Rep. Linville, prime sponsor (pro); Keith Phillips, Department of Ecology/Governor's Water Team (pro); Bill Clarke, Mentor Law Group, Mountain Star Resort (pro); Steve Gano, Mountain Star Resort (pro); Chris Cheney, Washington Cattlemen's Association (concerns).