

1640-S

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

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

HB 1640-S.E - DIGEST

(DIGEST AS ENACTED)

Declares that water banking within the trust water program can provide an effective means to facilitate the voluntary transfer of water rights established through conservation, purchase, lease, or donation, to preserve water rights and provide water for presently unmet and future needs; and to achieve a variety of water resource management objectives throughout the state, including drought response, improving streamflows on a voluntary basis, providing water mitigation, or reserving water supply for future uses.

Authorizes the department to use the trust water rights program in the Yakima river basin for water banking purposes.

Declares that water banking may be used for one or more of the following purposes: (1) To authorize the use of trust water rights to mitigate for water resource impacts, future water supply needs, or any beneficial use under chapter 90.03, 90.44, or 90.54 RCW, consistent with any terms and conditions established by the transferor, except that return flows from water rights authorized in whole or in part for any purpose shall remain available as part of the Yakima basin's total water supply available and to satisfy existing rights for other downstream uses and users;

(2) To document transfers of water rights to and from the trust water rights program; and

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

Declares that the department shall not use water banking to: (1) Cause detriment or injury to existing rights;

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

(3) Administer federal project water rights, including federal storage rights; or

(4) Allow carryover of stored water from one water year to another water year.

Directs the department to seek input from agricultural organizations, federal agencies, tribal governments, local governments, watershed groups, conservation groups, and developers on water banking, including water banking procedures and identification of areas in Washington state where water banking could assist in providing water supplies for instream and out-of-stream uses. The department shall summarize any comments received on water banking and submit a report, including any recommendations, to the appropriate committees of the legislature

for their consideration in the subsequent legislative session.

Provides that, by December 31st of every even-numbered year, the department shall submit a report to the appropriate committees of the legislature on water banking activities authorized under this act. The report shall: (1) Evaluate the effectiveness of water banking in meeting the policies and objectives of this chapter;

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

(3) Identify other basins or regions that may benefit from authorization for the department to use the trust water program for water banking purposes.

Declares that nothing in this act shall: (1) Cause detriment or injury to existing rights or to the operation of the federal Yakima project to provide water for irrigation purposes, existing water supply contracts, or existing water rights;

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

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

(4) Affect or modify the rights of any person or entity under a water rights adjudication or under any order of the court conducting a water rights adjudication.

Declares that nothing in this act may be construed to: (1) Affect or modify any treaty or other federal rights of an Indian tribe, or the rights of any federal agency or other person or entity arising under state or federal law;

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

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

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

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

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

(7) Affect or modify the settlement agreement between the United States and the state of Washington filed in Yakima county superior court with regard to federal reserved water rights other than those rights reserved by the United States for the benefit of the Yakama Indian Nation and its members; or

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

proceeding in which any water or water-related right is adjudicated.