

FINAL BILL REPORT

ESSB 5583

C 283 L 09

Synopsis as Enacted

Brief Description: Improving the effectiveness of water bank authorization and exchange provisions.

Sponsors: Senate Committee on Environment, Water & Energy (originally sponsored by Senators Marr, Honeyford, Rockefeller, Morton, Fraser, Sheldon and Shin; by request of Department of Ecology).

Senate Committee on Environment, Water & Energy
House Committee on Agriculture & Natural Resources

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 (Ecology). 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.

Ecology may use the Trust Water Rights Program in the Yakima River basin for water banking purposes. Water banking may be used for mitigation, future water supply needs, or any statutory beneficial uses consistent with terms established by the transferor. The water bank must not cause detriment or injury to existing rights, issue temporary rights for new potable uses, administer federal project water rights, or allow carryover of stored water from one water year to another. Water banking may also be used to document transfers of water rights to and from the Trust Water Rights Program and to provide a source of water rights that Ecology can make available to third parties on a temporary or permanent basis for any allowed beneficial use.

Summary: The Trust Water Rights Program may be used by Ecology for water banking purposes statewide. Ecology must exercise its authority in a manner that protects trust water rights. Ecology may acquire both surface and groundwater rights for the Trust Water Rights

This analysis was prepared by non-partisan legislative staff for the use of legislative members in their deliberations. This analysis is not a part of the legislation nor does it constitute a statement of legislative intent.

Program. Water Banking may be used to allow carryover of stored water in the Yakima basin, from one water year to the next, so long as it does not negatively impact total water supply available. Ecology may adopt rules as necessary to implement the program.

Prior to initiating use of the Trust Water Rights Program for water banking purposes for the first time in each water resource inventory area, Ecology must provide electronic notice to affected governments and affected federally-recognized tribal governments. "Local government" is defined as a city, town, public utility district, irrigation district, public port, county, sewer district, or water district.

Ecology must issue a water right certificate for trust water that indicates the quantity of water transferred to trust, the reach or reaches of the stream or body of public groundwater, and the use or uses to which it may be applied.

If nonuse occurred in the five years preceding the donation or lease, Ecology must calculate the amount of water to be acquired by looking at the extent to which the right was exercised during the most recent five-year period preceding the date where sufficient cause for nonuse was established. In addition, when calculating annual consumptive quantity of a trust water right, Ecology must look to the most recent five-year period of continuous beneficial use prior to transfer into the trust water rights program. For water rights put into the Trust Water Rights Program that are exempt from relinquishment because the water is claimed for power development purposes or municipal water supply purposes, Ecology will look at the amount of water eligible to be acquired based on historical beneficial use.

Votes on Final Passage:

Senate	46	1	
House	93	0	(House amended)
Senate	46	1	(Senate concurred)

Effective: July 26, 2009