

EHB 1187 - S COMM AMD

By Committee on Agriculture, Water & Rural Economic Development

NOT ADOPTED 4/15/2015

1 Strike everything after the enacting clause and insert the
2 following:

3 "NEW SECTION. **Sec. 1.** (1) The legislature finds that, unlike
4 other basins in Washington, the Yakima basin is unique in that it has
5 recently undergone a legal adjudication for surface water rights in
6 the basin. In addition, the holders of junior water rights may be
7 subject to water use curtailment. Because of the unique nature of the
8 Yakima basin, there has been the development of an active water
9 market for water reallocation that includes the use of the trust
10 water right program for mitigation purposes and water banking.

11 (2) In adopting this act to establish standards for domestic
12 water banking in the Yakima basin, it is not the intent of the
13 legislature to imply that the types of water mitigation currently
14 used in the Yakima basin can or should be applied to other parts of
15 Washington.

16 **Sec. 2.** RCW 90.42.020 and 2009 c 283 s 3 are each reenacted and
17 amended to read as follows:

18 The definitions in this section apply throughout this chapter
19 unless the context clearly requires otherwise.

20 (1) "Department" means the department of ecology.

21 (2) "Local government" means a city, town, public utility
22 district, irrigation district, public port, county, sewer district,
23 or water district.

24 (3) "Net water savings" means the amount of water that is
25 determined to be conserved and usable within a specified stream reach
26 or reaches for other purposes without impairment or detriment to
27 water rights existing at the time that a water conservation project
28 is undertaken, reducing the ability to deliver water, or reducing the
29 supply of water that otherwise would have been available to other
30 existing water uses.

31 (4) "Pilot planning areas" means the geographic areas designated
32 under RCW 90.54.045(2).

1 (5) "Trust water right" means any water right acquired by the
2 state under this chapter for management in the state's trust water
3 rights program.

4 (6) "Water conservation project" means any project or program
5 that achieves physical or operational improvements that provide for
6 increased water use efficiency in existing systems of diversion,
7 conveyance, application, or use of water under water rights existing
8 on July 28, 1991.

9 (7) "Yakima basin domestic water bank sponsor" means any person,
10 corporation, or other entity, including a state agency, nonprofit
11 organization, or local government, that holds a legal or beneficial
12 interest in a trust water right from which mitigation credits will be
13 offered for sale to other parties for domestic supply purposes in the
14 Yakima river basin.

15 NEW SECTION. Sec. 3. A new section is added to chapter 90.42
16 RCW to read as follows:

17 (1)(a) Every Yakima basin domestic water bank sponsor shall file
18 with the department a schedule showing the amount to be charged for a
19 mitigation credit, including all costs and fees.

20 (b) The department must post the schedule received from all
21 Yakima basin domestic water bank sponsors on its agency internet web
22 site.

23 (2) No change may be made in the amount charged, or other costs
24 and fees to be paid, unless the Yakima basin domestic water bank
25 sponsor provides notice to the department at least thirty days before
26 the change goes into effect. The notice must plainly state the
27 changes to be made in the schedule then on file with the department
28 and the effective date of the changes.

29 (3) For water banks established prior to the effective date of
30 this section, the Yakima basin domestic water bank sponsor must
31 submit a schedule to the department within ninety days of the
32 effective date of this section.

33 NEW SECTION. Sec. 4. A new section is added to chapter 90.42
34 RCW to read as follows:

35 (1) A Yakima basin domestic water bank sponsor may establish a
36 water bank for any lawful purpose and retains all authority to
37 establish any costs, fees, or other charges for the purchase and sale
38 of mitigation credits. This includes the authority to establish a

1 sliding scale of charges, whereby a charge is made for mitigation
2 based on the quantity of water use or on the services rendered as
3 part of the water bank transaction or operations.

4 (2) Nothing in this section prohibits a Yakima basin domestic
5 water bank sponsor from establishing a water bank for specific
6 limited purposes, such as providing mitigation credits for certain
7 water uses or users, but not other uses or users. However, a Yakima
8 basin domestic water bank sponsor may not sell or otherwise provide
9 mitigation credits to similarly situated uses or users on different
10 prices or terms.

11 NEW SECTION. **Sec. 5.** A new section is added to chapter 90.42
12 RCW to read as follows:

13 (1) The department shall require each Yakima basin domestic water
14 bank sponsor to:

15 (a) Demonstrate the availability of an adequate and reliable
16 water supply to mitigate for the intended purposes for which
17 mitigation is provided; and

18 (b) Record each mitigation credit with the appropriate county
19 auditor for the parcel of land upon which the mitigation credit is
20 used in like manner and in the same effect as provided for an
21 original certificate or permit to divert water.

22 (2) The department shall ensure that new water uses for which
23 mitigation is provided will not cause detriment or injury to existing
24 water rights.

25 NEW SECTION. **Sec. 6.** A new section is added to chapter 90.42
26 RCW to read as follows:

27 (1) No Yakima basin domestic water bank sponsor may:

28 (a) Provide mitigation based on a water right with a priority
29 date of May 10, 1905, or later; or

30 (b) Use leased water to provide mitigation if an adequate and
31 reliable water supply is otherwise available for mitigation.

32 (2) Nothing in this section prohibits a Yakima basin domestic
33 water bank sponsor from providing mitigation based in part on a long-
34 term lease or water storage and exchange agreement, between the
35 United States and the state of Washington, as provided in such an
36 agreement.

1 NEW SECTION. **Sec. 7.** (1) The department of ecology must conduct
2 a study of mitigation options for domestic water use in areas of the
3 Yakima basin for which: (a) Mitigation water is unavailable; and (b)
4 access to water from water banks is unsuitable.

5 (2) A report of the study's findings must be reported to the
6 legislature by December 1, 2015.

7 (3) The department of ecology shall conduct the study within the
8 department's appropriations.

9 NEW SECTION. **Sec. 8.** This act may be known and cited as the
10 Yakima basin domestic water banking best practices act.

11 NEW SECTION. **Sec. 9.** If any provision of this act or its
12 application to any person or circumstance is held invalid, the
13 remainder of the act or the application of the provision to other
14 persons or circumstances is not affected.

15 NEW SECTION. **Sec. 10.** This act is necessary for the immediate
16 preservation of the public peace, health, or safety, or support of
17 the state government and its existing public institutions, and takes
18 effect immediately."

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19 On page 1, line 1 of the title, after "banks;" strike the
20 remainder of the title and insert "reenacting and amending RCW
21 90.42.020; adding new sections to chapter 90.42 RCW; creating new
22 sections; and declaring an emergency."

EFFECT: Removes requirement that a water supply that qualifies
for deposit into the Yakima basin domestic water bank be
uninterruptable.

Removes requirement that DOE ensure the new use of water rights
obtained from the bank do not injure instream flows or lead to
harming priority species or critical habitat for ESA-listed species
while retaining the requirement not to injure existing water rights.

A Yakima basin domestic water bank sponsor may provide mitigation
based in part on a long-term water storage and exchange agreement

between the United States and the state of Washington, as provided in such an agreement.

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