

EHB 1187 - S AMD 456
By Senator Honeyford

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 or entity that holds a legal or beneficial interest in a trust water
11 right from which mitigation credits will be offered for domestic
12 supply purposes in the Yakima basin. The department is not a Yakima
13 basin domestic water bank sponsor.

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

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

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

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

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

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

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

1 based on the quantity of water use or on the services rendered as
2 part of the water bank transaction or operations.

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

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

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

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

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

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

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

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

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

29 (b) Except as provided in subsection (2) of this section, use
30 leased water to provide mitigation if an adequate and reliable water
31 supply is otherwise available to provide mitigation.

32 (2) Nothing in this section prohibits a Yakima basin domestic
33 water bank sponsor from providing mitigation based on:

34 (a) A long-term lease or water storage and exchange agreement,
35 between the United States and the state of Washington, as provided in
36 such a lease or agreement; or

1 (b) A water right lease that satisfies mitigation requirements
2 pursuant to an agreement between the department and a county located
3 in the Yakima basin and executed on or before May 15, 2014.

4 NEW SECTION. **Sec. 7.** (1) The department of ecology must
5 evaluate mitigation options for domestic water use in areas of the
6 Yakima basin for which mitigation water is unavailable and access to
7 water from water banks is unsuitable. The department of ecology must
8 recommend solutions for providing mitigation water for domestic use
9 in such areas.

10 (2) A report of the department of ecology's findings must be
11 provided to the legislature by December 1, 2015.

12 (3) The department of ecology shall produce the report within the
13 department's appropriations.

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

16 NEW SECTION. **Sec. 9.** If any provision of this act or its
17 application to any person or circumstance is held invalid, the
18 remainder of the act or the application of the provision to other
19 persons or circumstances is not affected.

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

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24 On page 1, line 1 of the title, after "banks;" strike the
25 remainder of the title and insert "reenacting and amending RCW
26 90.42.020; adding new sections to chapter 90.42 RCW; creating new
27 sections; and declaring an emergency."

EFFECT: "Yakima basin domestic water bank sponsor" is defined as
any person or entity without adding a list of examples of what this
can mean. Instead of the term "sale," the less specific term "offer"

is used. The department of ecology is expressly excluded from the definition of Yakima basin domestic water bank sponsor.

The use of leased water is allowed for mitigation in two situations - where it is based on an agreement with the federal government and where it satisfies the terms of the settlement agreement executed between the department of ecology and Kittitas county last year. In all cases, water provided for mitigation must not postdate 1905.

The department of ecology's report is changed to provide more specific direction for its content but to require a less formal presentation.

Requires recording only for new domestic, not historical, mitigation credits.

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