

SB 5014 - S AMD 142

By Senators Honeyford, Hatfield

ADOPTED 3/6/2015

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 water banking
12 in the Yakima basin, it is not the intent of the legislature to imply
13 that the types of water mitigation currently used in the Yakima basin
14 can or should be applied to other parts of Washington.

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

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

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

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

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

30 (4) "Pilot planning areas" means the geographic areas designated
31 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) "Yakima basin water bank sponsor" means any person,
5 corporation, or other entity, including a state agency, nonprofit
6 organization, or local government, that holds a legal or beneficial
7 interest in a trust water right from which mitigation credits will be
8 offered for sale to other parties for domestic supply purposes in the
9 Yakima river basin.

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

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 water bank sponsor shall file with the
18 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 water bank sponsors on its agency internet web 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 water bank sponsor
24 provides notice to the department at least thirty days before the
25 change goes into effect. The notice must plainly state the changes to
26 be made in the schedule then on file with the department and the
27 effective date of the changes.

28 (3) For water banks established prior to the effective date of
29 this section, the Yakima basin water bank sponsor must submit a
30 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 water bank sponsor may establish a water bank
35 for any lawful purpose and retains all authority to establish any
36 costs, fees, or other charges for the purchase and sale of mitigation
37 credits. This includes the authority to establish a sliding scale of
38 charges, whereby a charge is made for mitigation based on the

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

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

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

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

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

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

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

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

25 (1) No Yakima basin water bank sponsor may use leased water to
26 provide mitigation after January 1, 2020. Between the effective date
27 of this section and January 1, 2020, if an adequate and reliable
28 water supply is available for mitigation, the Yakima basin water bank
29 sponsor must use that source instead of leased water to provide
30 mitigation. This section does not alter, confirm, undermine, or in
31 any way affect the rights or responsibilities of any party who
32 received mitigation using leased water from a Yakima basin water bank
33 sponsor prior to January 1, 2020.

34 (2) Any Yakima basin water bank sponsor that provided mitigation
35 to any person using leased water must provide mitigation to that
36 person from an adequate and reliable water supply as soon as
37 practicable, but no later than January 1, 2020.

1 NEW SECTION. **Sec. 7.** This act may be known and cited as the
2 Yakima basin water banking best practices act.

3 NEW SECTION. **Sec. 8.** If any provision of this act or its
4 application to any person or circumstance is held invalid, the
5 remainder of the act or the application of the provision to other
6 persons or circumstances is not affected.

7 NEW SECTION. **Sec. 9.** This act is necessary for the immediate
8 preservation of the public peace, health, or safety, or support of
9 the state government and its existing public institutions, and takes
10 effect immediately."

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11 On page 1, line 1 of the title, after "banks;" strike the
12 remainder of the title and insert "reenacting and amending RCW
13 90.42.020; adding new sections to chapter 90.42 RCW; creating new
14 sections; and declaring an emergency."

EFFECT: Limits the applicability of the bill to water bank sponsors operating in the Yakima basin, requires all existing affected water bank sponsors to submit an initial schedule of charges to the department of ecology within ninety days of the bill's effective date, specifically allows a water bank sponsor to establish a sliding scale of charges for mitigation credits and to establish a water bank for specific and limited purposes, prohibits a water bank sponsor from charging different rates to similarly situated individuals, removes the express prohibition on a water bank sponsor to not charge an amount other than that reported to the department of ecology, removes the express authority for a water bank sponsor to offer reduced price or free mitigation credits to specific classes of water users, adds an intent section, and reorganizes sections.

Prohibits use of leased water for mitigation after January 1, 2020. Holds harmless those receiving mitigation with leased water prior to January 1, 2020. Provides a date certain, January 1, 2020, by which a Yakima basin water bank providing mitigation using leased water as of the effective date of the act, must transition the mitigation to an adequate and reliable source. Requires the sponsor to use adequate and reliable sources of water for mitigation, if those sources are available between the effective date of the act and January 1, 2020.

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