

# SENATE BILL REPORT

## EHB 1187

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As Reported by Senate Committee On:  
Agriculture, Water & Rural Economic Development, March 31, 2015

**Title:** An act relating to best practices for water banks.

**Brief Description:** Concerning best practices for water banks.

**Sponsors:** Representatives Chandler, Blake, Buys, Stanford, Hayes and Parker.

**Brief History:** Passed House: 3/10/15, 76-21.

**Committee Activity:** Agriculture, Water & Rural Economic Development: 3/17/15, 3/31/15 [DPA].

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### SENATE COMMITTEE ON AGRICULTURE, WATER & RURAL ECONOMIC DEVELOPMENT

**Majority Report:** Do pass as amended.

Signed by Senators Warnick, Chair; Dandel, Vice Chair; Hatfield, Ranking Minority Member; Hobbs and Honeyford.

**Staff:** Diane Smith (786-7410)

**Background:** The Department of Ecology (Department) considers water banking to be an institutional mechanism used to facilitate the legal transfer and market exchange of various types of surface water, groundwater, and water storage.

The phrase, water banking, is widely used to refer to a variety of water management practices. Water banking is typically facilitated by a public or private institution that operates in the role of broker or clearinghouse. Many banks pool water supplies from willing sellers and make them available as mitigation credits to willing buyers.

In 2003 legislation was passed to allow water banking in the Yakima basin using the State Trust Water Rights Program. During the 2009 legislative session, the law was amended to clarify that this tool is available to use for banking statewide.

The State Trust Water Rights Program allows either a permanent donation of a water right or a temporary donation that allows the water right holder to maintain the holder's water rights for future uses without the water right being relinquished. Water enrolled in the program is

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held by the Department and put to beneficial uses. Water enrolled in the State Trust Water Rights Program is held in trust and retains its original priority date.

**Summary of Bill (Recommended Amendments):** For water bank sponsors operating in the Yakima basin, all existing affected water bank sponsors must submit an initial schedule of charges to the Department within 90 days of the bill's effective date. The requirements apply to any person, corporation, or other entity that holds a legal or beneficial interest in a trust water right from which mitigation credits are offered for sale for domestic purposes in the Yakima River basin. This includes state agencies, local governments, and nonprofit organizations.

A water bank sponsor may establish a sliding scale of charges for mitigation credits and establish a water bank for specific and limited purposes. A water bank sponsor may not charge different rates to similarly situated individuals.

The Department must display the schedule of charges provided by water bank sponsors operating in the Yakima River basin on its Internet website. The Department must also ensure that any new water uses for which mitigation is required do not cause detriment or injury to existing water rights.

All water bank sponsors operating in the Yakima River basin must demonstrate the availability of an adequate and reliable water supply to mitigate for the intended purposes of the mitigation credits. All mitigation credits issued in the Yakima River basin must be recorded for each mitigation credit with the county auditor.

A Yakima basin domestic water bank sponsor may provide mitigation based in part on provisions in agreements between the United States and the state of Washington regarding long-term leases and water storage and exchange.

The Department must report to the Legislature by December 1, 2015, on its study of mitigation options for areas of the Yakima basin for which mitigation water is unavailable and for which access to water from water banks is unsuitable.

**EFFECT OF CHANGES MADE BY AGRICULTURE, WATER & RURAL ECONOMIC DEVELOPMENT COMMITTEE (Recommended Amendments):** Clarifies throughout the bill that it applies to mitigation of domestic uses. Removes a requirement that a water supply that qualifies for deposit into the Yakima basin domestic water bank be uninterrupted.

Removes a requirement that the Department ensure the new use of water rights obtained from the bank does not injure instream flows or lead to harming priority species or critical habitat for Endangered Species Act listed species while retaining the requirement not to injure existing water rights.

A provision is added that a Yakima basin domestic water bank sponsor may provide mitigation based in part on provisions in agreements between the United States and the state of Washington regarding long-term leases and water storage and exchange.

Also added is a requirement for the Department to report to the Legislature by December 1, 2015, on its study of mitigation options for areas of the Yakima basin for which mitigation water is unavailable and for which access to water from water banks is unsuitable.

**Appropriation:** None.

**Fiscal Note:** Available.

**Committee/Commission/Task Force Created:** No.

**Effective Date:** The bill contains an emergency clause and takes effect immediately.

**Staff Summary of Public Testimony on Engrossed House Bill:** PRO: This bill is an attempt to have a serious discussion about the future of water management throughout this state. We need to work more thoughtfully and strategically toward a system that moves water to where it is needed. This bill does not change seniority or other water law. It allows water to go to people who no longer need it, to people who do. This provides more price and process transparency as well as providing that all buyers must be treated equally. It is limited to just the Yakima and just domestic use. This will provide fair and reliable operation which is critical. The Endangered Species Act (ESA) language does not expand the definition of impairment. It is a reminder that state and federal requirements must be met. It codifies existing law.

CON: The bill could expose water sponsors to liability from legal challenges to the sponsors' pre-deposit proofs. Is this actually applicable to wet water or only paper water?

OTHER: Putting the Department in the position of being both the regulator and mitigation water seller could be a conflict of interest. The requirement of interruptible mitigation water should be removed since interruptibility has been allowed since 2009. The ESA limitation is a standard nowhere else in the Water Code. People need real water that is ongoing. The bill is not fully integrated into existing code which could result in dangerous precedents. Other ways to move water must be recognized without creating barriers to ongoing federal efforts.

**Persons Testifying:** PRO: Representative Chandler, prime sponsor; Paul Eisenberg, Suncadia; Jessica Kuchan, Mentor Law Group; Bruce Wishart, Sierra Club, Center for Environmental Law and Policy.

CON: Jack Field, WA Cattlemen's Assn.

OTHER: Bill Clarke, Kittitas County, WA Realtors; Jim Halstrom, WA Assn. of Tree Fruit Growers; David Christensen, Dept. of Ecology; Evan Sheffels, WA Farm Bureau.

**Persons Signed in to Testify But Not Testifying:** No one.