

Draft Legislation
on
Water Banking

For 2009 session

Summary of key provisions

Clarify Authority

(1) The department is hereby authorized to use the trust water rights program (~~(in the Yakima river basin)~~) for water banking purposes.

Establish local banks

- After the effective date of this section, the department may establish state water banks as appropriate throughout the state.
- The department may also approve the establishment of state-chartered local water banks upon receipt of a written request from the legislative authority of each county with territory in the proposed geographic area to be served by the water bank.
- The geographic area served by the bank must be contiguous.

Local documentation

- The request must include the following information:
 - (a) Documentation that **public notice** was given that a water bank is under consideration, and that a public **meeting** or meetings were held;
 - (b) Documentation that **consultations** were held with affected **Indian tribes, local governments, and other affected parties** in the county or counties where the bank is being proposed;
 - (c) **Comments** and concerns expressed at the meetings and consultations;
 - (d) The **identity of the sponsoring** county legislative authority or authorities or other sponsoring governmental body or bodies;

Documentation continued

- (e) The proposed **geographic area** of the water bank;
- (f) **Bylaws** for operation of the water bank;
- (g) The proposed **governance structure** including composition of a governing board;
- (h) The identification of means of **financial and administrative support**;
- (i) The proposed **purposes** of the water bank; and
- (j) A demonstration of **consistency with local watershed and land use plans**.

Criteria for approval

The department must **consider** the following criteria to determine whether to approve a proposed water bank:

- (a) Representation of **diverse community interests** on the water bank board;
- (b) **Financial** viability;
- (c) Demonstration of **need**;
- (d) **Adoption of instream flow rules** in the geographic area to be served;
- (e) **Benefits** to both instream and out-of-stream uses;
- (f) **Local support**; and
- (g) The appropriateness of the **geographic area** to be served.

Establishment of boards

- Water bank boards constitute public bodies and a separate unit of local government in the state.
- Each board must consist of an odd number of members appointed by the county legislative authority or authorities as applicable for staggered four-year terms.
- The board members shall represent the full spectrum of water stakeholders and governmental entities with an interest in water management in the area.
- In making appointments to the board, the county legislative authority or authorities shall choose from among persons who are residents of the county or counties that the water bank is to serve.

Board Authority & Function

A water bank board may:

- acquire, purchase, hold, lease, manage, occupy, and sell real and personal property or any interest,
- enter into and perform all necessary contracts,
- appoint and employ necessary agents and employees ,
- employ & contract for professional services,
- sue and be sued, and
- do any and all lawful acts required and expedient to carry out the purposes of this chapter.

Board Funding

- A water bank board constitutes an independently funded entity, and may provide for its own funding as determined by the board.
- The board may accept grants and other receipts and may adopt fees to defray water bank operating costs.
- A water bank may establish a revolving fund to acquire and disburse water rights.

Dissolution of Banks

- A water bank may be formally dissolved by the county, or jointly by the counties as applicable, in which it operates by adoption of a resolution of the county legislative authority or authorities. Notice of the dissolution must be provided to the department's director.
- The department may petition the county legislative authority of the county or the lead county for a water bank to request that the water bank be dissolved for:
 - repeated statutory violations or
 - demonstrated inability to perform the functions for which the water bank board was created.

Dissolution continued

- After consultation with the county or counties in which a water bank operates, the director may issue an order suspending the operations of a water bank in the event of insolvency, malfeasance, prolonged inactivity, or violation of state law.
- In the event of a suspension, the director shall assume management and control of the water bank until such time as the issues leading to suspension are resolved.

Groundwater may be put in Trust

- The state may acquire all or portions of existing (~~water~~) surface or groundwater rights...Once acquired, such rights are trust water rights.
- Groundwater may also be donated to trust.

Open Public Meetings Act

(1) Water bank governing board activities are subject to the open public meetings act, chapter 42.30 RCW and to chapter 42.32 RCW. This includes announcing meetings in advance.

Mitigation guidance for banked water

- Amend RCW 90.44.055 & RCW 90.03.255
- Except when used as a condition for approving applications that identify use of trust water rights held in water banks for mitigation purposes, provision for an impoundment or other resource management technique in an application shall be made solely at the discretion of the applicant and shall not otherwise be made by the department as a condition for approving an application that does not include such provision.