

Proposed Water Banking Legislation – 2009

Note: the following summarizes draft legislation developed prior to October 2, 2008

Brief Description: The purpose of the bill is to provide clear authority for water banks throughout the state. Such authority is needed in order to support the effective operation of water banks in areas outside the Yakima basin. The bill would amend RCW 90.42 (trust water rights program), 90.03 (water code), 90.44 (groundwater code).

Bill provisions may include:

- General authority for state-chartered local water banks – Banks would have general authority to facilitate transfer of both trust water rights and other water rights within specific geographic areas. Under this authority, a water bank entity would constitute a public body and separate unit of local government in the state.
- A process for the approval of proposed local banks – The process would specify (1) the requisite contents of a local request and (2) the criteria used for evaluating proposals.
- Details related to water bank boards – The proposal includes details related to board makeup, specific board authority and ethical duties of board members (conflict of interest). Boards would be authorized to carry out acts needed to facilitate banking activities – e.g., ability to purchase and manage real property, appoint staff, employ contractors, accept grants.
- A process for dissolution of water bank entities
- Federal crossover provisions – Water bank sponsors would be required to document consultation with affected Indian tribes. Ecology would be able to recover costs associated with water service contracts with federal agencies.
- Clarity of Ecology's function in facilitating bank activities – The bill would clarify Ecology's specific authority, such as the ability to accept groundwater rights in trust water program and ability to condition approval of water right applications (rather than require an applicant to volunteer an acceptable mitigation package). Ecology would also have general rulemaking authority to implement provisions of the bill.
- Amendments to surface and ground water change statutes (RCW 90.03.380 and 90.44.100) – The bill would clarify language in the water right change statutes in order to better allow conveyances for banking purposes. The bill would expressly allow for (1)

transfers made ground to ground, surface to ground, and ground to surface water without loss of priority; and allow for (2) expedited permit processing of such transfers. A transfer would be approved if it results in no impairment of existing rights, no detriment to public interest, and a net benefit to stream flows. The provisions would also cover amendments of ground water rights that are needed for public health and safety (potable supplies).

- Amendments to the change statutes to include exceptions to five year evaluation of beneficial use (“ACQ” evaluation) – The bill would clarify that the pertinent five year “annual consumptive quantity” review required under RCW 90.03.380 does not include periods of nonuse where the water right is in trust water status, in a water bank, or covered by an exception to relinquishment.

Status of Proposal:

Currently, language being worked through Code Reviser, Attorney General, and office of the Governor. Bill language will be vetted through interested public prior to being introduced by a legislative sponsor.