A Summary of the 2009 Water Banking Bill

5/7/09

ESSB 5583 was passed in the 2009 legislature. It takes effect on July 26, 2009.

The bill clarifies that Ecology has the authority to use the State Trust Water program (RCW 90.42) for water banking purposes statewide. Water banking is not defined. Crafters of the bill were careful to describe banking as a verb (activity), rather than a noun (institution) in order to allow flexibility in bank formation and governance.

Other new provisions in the bill:

- Groundwater may be donated or purchased to place in trust.
- A water right is considered to be exercised while held in trust.
- Ecology is directed to exercise its authority where appropriate to protect trust water rights.
- The first time the trust program is used for water banking in each WRIA, the department is required to provide electronic notice (email), and opportunity for comment. The notice goes to “affected local governments & affected federally recognized tribal governments.” Local governments are defined as a “city, town, public utility district, irrigation district, public port, county, sewer district, or water district.”
- Donations of any length and short term leases (5 years or less) that go into trust now have a public notice requirement, but instead of using a newspaper, the notice may be posted on Ecology’s website, and local governments may be notified by email.
- The consumptive quantity of a water right when removed from trust is equal to the consumptive quantity prior to going into trust.
- Where nonuse of a water right is excused from relinquishment under the exceptions listed under RCW 90.14.140 (1), the amount of water eligible to put into trust will be calculated by looking at the highest use in the most recent 5 year period prior to the date when nonuse was established. Where nonuse is excused under RCW 90.14.140 (2) (a) or (d), which exempt hydro power and municipal water supply water rights from
relinquishment, water may also be put into trust, but the amount eligible will be based on historical beneficial use; and the total amount of water donated plus the portion continuing to be used cannot exceed historical beneficial use.

**Yakima:** Water banking in the Yakima basin operates under both Chapters 90.42 and 90.38 RCW, with 90.38 governing only where there are more specific provisions.

- Carryover of water from one water year to another is allowed in the Yakima basin if it will not negatively impact the total water supply available (TWSA). Return flows in the Yakima River basin must also remain available for TWSA and other uses.
- Costs incurred by Ecology for water service contracts with federal agencies may be recovered from individuals receiving water. This was included specifically for the Yakima basin, but is not limited to it.

**Walla Walla:** Where provisions of the statewide water banking law and the new Walla Walla law (SB 5800) overlap, the Walla Walla provisions prevail.

* This is not a legal analysis