

Water Banking Legislation

Water banking is generally defined as a process to facilitate the transfer of existing water rights to new uses. The goal is to move water to where it is needed the most. Water banking is being used successfully around the country to solve water problems, for both in-stream and out-of-stream uses.

Why is water banking legislation needed?

Water banking is an important water management tool for local watershed planners around the state who want to use banking in their areas. Watershed planning is driving the need for clarification of the law that would allow water right transfers as a way for providing water for new uses.

Currently, water banking is limited to the Yakima Basin where water has been a scarce resource for decades. In 2003, the trust water rights statute (RCW 90.42) was amended to authorize Ecology to use the trust water program for water banking in the Yakima River basin. Presently, the statutory language is ambiguous as to whether the trust water program could be used to establish water banking in other parts of the state. (See reverse side for more information on Washington's trust water rights program.)

Ecology is developing a water banking bill that proposes changes to RCW 90.42 that would expressly allow water banking to operate throughout the entire state. Water-short basins around Washington would have clear authority to use the trust water rights program for water banking.

What are elements of the water banking legislation?

The legislation is designed to clarify the use of the trust water rights program for new water banks. Water banks would protect water rights from the use-it or lose-it law, also known as relinquishment. (Relinquishment is the loss of all or part of a water right after five or more years of non-use.) Banks would also serve to keep a right's original priority date (effective date, and therefore their place in line in water-short times) and protect water in the bank for new in-stream and out-of-stream uses.

Key elements include:

- Utilizing the Interlocal Cooperation Act (RCW 39.34) to allow governmental entities to enter into water management partnerships to implement water banks as part of watershed plans.

WHY IT MATTERS

Washington State is faced with a shortage of water to meet both existing and future needs of people and the environment.

Water banking provides a local tool for enabling water right transfers. It provides water for new out-of-stream uses and for restoring stream flows.

Clarification of the law is needed for water banking to be available statewide.

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See the 2006 Report to the Legislature: Water Banking in Washington State:
<http://www.ecy.wa.gov/biblio/0611048.html>

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- Clarifying procedures to protect water in trust (protection from relinquishment).
- Clarifying that ground water can be put in trust so it can be “moved around” for new uses as is allowed for surface water in water rights transfers.
- Clarifying the process of transferring surface water to ground water uses and vice versa.
- Describing how new banks can be created through interlocal agreements.
- Defining Ecology’s role in the development of water banks throughout the state.

How will it benefit Washington?

Much of Washington’s available water is legally spoken for. Shrinking snow packs, increasing drought years, population growth, and development are all straining this limited resource. Current law does not allow water to be “moved around” with relative ease to meet demands for new water supplies and to restore stream flows.

Water right transfers are one of the most important sources of water for new uses. Water banking provides a way to move water between uses (temporary and permanent) and support stream flows. It is an important tool for local water management. If you have water in the bank, then you have water in the streams, held in trust for future in-stream and out-of-stream uses.

How does Washington’s trust water rights program work?

The Washington State trust water rights program was created by the Legislature as a legal mechanism to enable the voluntary transfer of water and water rights to the state. These rights are held in trust, temporarily or permanently, and can be used for any purpose, meeting out-of-stream needs as well as restoring stream flows.

While in trust, the water right retains its seniority and is not subject to relinquishment. Although water banking can occur outside of the trust water program, the lack of protection from relinquishment limits its usefulness and appeal.

What other states are successfully using water banks?

Idaho’s Snake River Rental Pool was established in 1979, and is one of the most active water banks in the country. The bank leases stored water for agricultural purposes, and the U.S. Bureau of Reclamation leases water from the bank for environmental objectives.

Another successful banking story is Oregon’s Deschutes Groundwater Mitigation Bank. As surface water rights became scarce in 1995, demand shifted to ground water supplies. The Oregon Water Resources Commission declared a moratorium on further ground water permit approvals, concerned that ground water depletions would have a negative impact on surface water. The mitigation bank was approved in 2002 allowing for water development while mitigating for the effects of ground water withdrawals on surface water flows in the Deschutes River Basin.