
ENGROSSED SENATE BILL 5014

State of Washington

64th Legislature

2015 Regular Session

By Senators Honeyford and Ericksen

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1 AN ACT Relating to best practices for water banks; reenacting and
2 amending RCW 90.42.020; adding new sections to chapter 90.42 RCW;
3 creating new sections; and declaring an emergency.

4 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF WASHINGTON:

5 NEW SECTION. **Sec. 1.** (1) The legislature finds that, unlike
6 other basins in Washington, the Yakima basin is unique in that it has
7 recently undergone a legal adjudication for surface water rights in
8 the basin. In addition, the holders of junior water rights may be
9 subject to water use curtailment. Because of the unique nature of the
10 Yakima basin, there has been the development of an active water
11 market for water reallocation that includes the use of the trust
12 water right program for mitigation purposes and water banking.

13 (2) In adopting this act to establish standards for water banking
14 in the Yakima basin, it is not the intent of the legislature to imply
15 that the types of water mitigation currently used in the Yakima basin
16 can or should be applied to other parts of Washington.

17 **Sec. 2.** RCW 90.42.020 and 2009 c 283 s 3 are each reenacted and
18 amended to read as follows:

19 The definitions in this section apply throughout this chapter
20 unless the context clearly requires otherwise.

- 1 (1) "Department" means the department of ecology.
- 2 (2) "Local government" means a city, town, public utility
3 district, irrigation district, public port, county, sewer district,
4 or water district.
- 5 (3) "Net water savings" means the amount of water that is
6 determined to be conserved and usable within a specified stream reach
7 or reaches for other purposes without impairment or detriment to
8 water rights existing at the time that a water conservation project
9 is undertaken, reducing the ability to deliver water, or reducing the
10 supply of water that otherwise would have been available to other
11 existing water uses.
- 12 (4) "Pilot planning areas" means the geographic areas designated
13 under RCW 90.54.045(2).
- 14 (5) "Trust water right" means any water right acquired by the
15 state under this chapter for management in the state's trust water
16 rights program.
- 17 (6) "Yakima basin water bank sponsor" means any person,
18 corporation, or other entity, including a state agency, nonprofit
19 organization, or local government, that holds a legal or beneficial
20 interest in a trust water right from which mitigation credits will be
21 offered for sale to other parties for domestic supply purposes in the
22 Yakima river basin.
- 23 (7) "Water conservation project" means any project or program
24 that achieves physical or operational improvements that provide for
25 increased water use efficiency in existing systems of diversion,
26 conveyance, application, or use of water under water rights existing
27 on July 28, 1991.

28 NEW SECTION. Sec. 3. A new section is added to chapter 90.42
29 RCW to read as follows:

30 (1)(a) Every Yakima basin water bank sponsor shall file with the
31 department a schedule showing the amount to be charged for a
32 mitigation credit, including all costs and fees.

33 (b) The department must post the schedule received from all
34 Yakima basin water bank sponsors on its agency internet web site.

35 (2) No change may be made in the amount charged, or other costs
36 and fees to be paid, unless the Yakima basin water bank sponsor
37 provides notice to the department at least thirty days before the
38 change goes into effect. The notice must plainly state the changes to

1 be made in the schedule then on file with the department and the
2 effective date of the changes.

3 (3) For water banks established prior to the effective date of
4 this section, the Yakima basin water bank sponsor must submit a
5 schedule to the department within ninety days of the effective date
6 of this section.

7 NEW SECTION. **Sec. 4.** A new section is added to chapter 90.42
8 RCW to read as follows:

9 (1) A Yakima basin water bank sponsor may establish a water bank
10 for any lawful purpose and retains all authority to establish any
11 costs, fees, or other charges for the purchase and sale of mitigation
12 credits. This includes the authority to establish a sliding scale of
13 charges, whereby a charge is made for mitigation based on the
14 quantity of water use or on the services rendered as part of the
15 water bank transaction or operations.

16 (2) Nothing in this section prohibits a Yakima basin water bank
17 sponsor from establishing a water bank for specific limited purposes,
18 such as providing mitigation credits for certain water uses or users,
19 but not other uses or users. However, a Yakima basin water bank
20 sponsor may not sell or otherwise provide mitigation credits to
21 similarly situated uses or users on different prices or terms.

22 NEW SECTION. **Sec. 5.** A new section is added to chapter 90.42
23 RCW to read as follows:

24 (1) The department shall require each Yakima basin water bank
25 sponsor to:

26 (a) Demonstrate the availability of an adequate and reliable
27 water supply to mitigate for the intended purposes for which
28 mitigation is provided; and

29 (b) Record each mitigation credit with the appropriate county
30 auditor for the parcel of land upon which the mitigation credit is
31 used in like manner and in the same effect as provided for an
32 original certificate or permit to divert water.

33 (2) The department shall ensure that new water uses for which
34 mitigation is provided will not cause detriment or injury to existing
35 water rights.

36 NEW SECTION. **Sec. 6.** A new section is added to chapter 90.42
37 RCW to read as follows:

1 (1) No Yakima basin water bank sponsor may use leased water to
2 provide mitigation after January 1, 2020. Between the effective date
3 of this section and January 1, 2020, if an adequate and reliable
4 water supply is available for mitigation, the Yakima basin water bank
5 sponsor must use that source instead of leased water to provide
6 mitigation. This section does not alter, confirm, undermine, or in
7 any way affect the rights or responsibilities of any party who
8 received mitigation using leased water from a Yakima basin water bank
9 sponsor prior to January 1, 2020.

10 (2) Any Yakima basin water bank sponsor that provided mitigation
11 to any person using leased water must provide mitigation to that
12 person from an adequate and reliable water supply as soon as
13 practicable, but no later than January 1, 2020.

14 NEW SECTION. **Sec. 7.** This act may be known and cited as the
15 Yakima basin water banking best practices act.

16 NEW SECTION. **Sec. 8.** If any provision of this act or its
17 application to any person or circumstance is held invalid, the
18 remainder of the act or the application of the provision to other
19 persons or circumstances is not affected.

20 NEW SECTION. **Sec. 9.** This act is necessary for the immediate
21 preservation of the public peace, health, or safety, or support of
22 the state government and its existing public institutions, and takes
23 effect immediately.

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