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ENGROSSED HOUSE BILL 1187

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State of Washington                      64th Legislature                      2015 Regular Session

By Representatives Chandler, Blake, Buys, Stanford, Hayes, and Parker

Read first time 01/15/15.      Referred to Committee on Agriculture & Natural Resources.

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 of surface water rights in  
8 the basin. In addition, the holders of junior water rights in the  
9 basin may be subject to water use curtailment. The unique nature of  
10 the Yakima basin has led to the development of an active water market  
11 for water reallocation that includes the use of the trust water right  
12 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 paid, unless the Yakima basin water bank sponsor provides  
37 notice to the department at least thirty days before the change goes  
38 into effect. The notice must plainly state the changes to be made in

1 the schedule then on file with the department and the effective date  
2 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, reliable, and  
27 uninterrupted water supply to mitigate for the intended purposes  
28 for which 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. This includes instream flows that otherwise could be  
36 adversely affected by the new water uses or lead to harm being caused  
37 to priority species of fish or wildlife or to critical habitat for  
38 species listed under the federal endangered species act.

1        NEW SECTION.    **Sec. 6.**    This act may be known and cited as the  
2    Yakima basin water banking best practices act.

3        NEW SECTION.    **Sec. 7.**    If any provision of this act or its  
4    application to any person or circumstance is held invalid, the  
5    remainder of the act or the application of the provision to other  
6    persons or circumstances is not affected.

7        NEW SECTION.    **Sec. 8.**    This act is necessary for the immediate  
8    preservation of the public peace, health, or safety, or support of  
9    the state government and its existing public institutions, and takes  
10   effect immediately.

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