

# Focus on: Water Banking and Trust Water Rights



## WHY IT MATTERS

We manage water resources to support public health, promote economic well-being, and preserve our state's natural resources and aesthetics. While water banks play an important role in water management, it's critical that they operate in support of these goals.

### What are Water Banks?

A tool to facilitate voluntary exchange of water rights from one use to another in areas of limited supply.

### Contact Information

Mary Verner,  
Water Resources  
Program Manager  
(360) 407-6672  
mary.verner@ecy.wa.gov

## Proposed Legislation

Water banking is a critical tool to manage the beneficial use of water resources in watersheds with limited available water supply for appropriation.

It is vital that water banks operate to preserve water and natural resources, support public health, and our state's economic well-being.

Over the past year, we have reviewed water banking and the potential unintended uses of state water trust (established in chapter 90.42 RCW). We accelerated our work when legislators, local community leaders, tribes and others raised significant concerns in response to news coverage highlighting large-scale investor acquisitions of state water rights.

Our proposed bill will make administrative improvements to increase transparency at the time banks are developed and ensure that water banks serve their intended purposes. The bill also lays the groundwork for further legislative consideration on these complex issues.

## The Problem

There is growing concern that water banking and the trust water statutes are being used in ways not intended by the Legislature. Minimal transparency when water banks are created, paired with unclear agency authority to approve new water banks, and increases concerns about speculation. There is also unclear statutory language on the various types of water rights in trust, which has elevated fears that existing water rights and instream flows could be impaired.

Water banking activities will likely increase in our state. As that happens, it's essential that we build a framework that supports transparent and effective use of the state water trust and water banking.

## Ecology's Proposal

Our proposed bill provides much-needed clarifications to the trust water statute creating a cohesive framework for water banking. The bill will make administrative improvements to increase transparency when water banks are established. The bill also creates a stakeholder process to evaluate further policy changes.

Specifically, the bill will:

- **Clarify existing statute to reduce potential legal risk, and to improve public confidence that water banks operate using valid water rights.** A key provision is to clearly differentiate between *donations* into trust (which cannot be used in water banking) and *transfers* into trust (which are used for water banks).
- **Create a transparent process for evaluating water bank proposals to ensure banks are serving the intended purpose.** The bill will require that water right holders apply to Ecology for approval of a proposed water bank and associated water right changes.
- **Increase transparency of water banking by giving the public a meaningful opportunity to comment on bank creation.**
- **Align Ecology's review of water banking proposals with our review of related water right change applications.** The bill will require related change applications to be processed by Ecology using cost reimbursement agreements. Aligning water right and water bank reviews will increase transparency and help us identify potential problems early in a bank's development.
- **Authorize cost recovery, which will enable us to process applications in a timely manner.**
- **Boost instream flow protection by recognizing the priority date of trust water rights from neighboring states.**

Our bill will not fully resolve issues related to private entities marketing water rights, but it will make measured, incremental improvements that will begin addressing these issues. It will also lay the foundation for further discussion by convening a stakeholder group to examine these complicated issues, develop policy recommendations, and report to the Legislature in November 2020.

### How it will benefit Washington

As demand for water in our state grows, it is important to manage water resources in a manner that preserves natural resources, supports public health, and maintains our state's economic well-being. Water banks will continue to be an important tool in water management. It's critical that banks operate with transparency and support our state's stewardship of water resources.

## More Information

For background information on trust water and water banking, please:

- See our focus sheet "[The State Water Trust and Water Banking: History and Function](#)", Publication 20-11-063 found at <https://ecology.wa.gov/publications>
- [Visit our webpage](https://ecology.wa.gov/waterbanks) <https://ecology.wa.gov/waterbanks>

## ADA Accommodations

To request ADA accommodation including materials in a format for the visually impaired, call Ecology at 360-407-6872 or visit <https://ecology.wa.gov/accessibility>. People with impaired hearing may call Washington Relay Service at 711. People with speech disability may call TTY at 877-833-6341.