2006 Report to the Legislature:

Water Banking in Washington State

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2006 Report to the Legislature:

Water Banking in Washington State

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"Water banking in its most generalized sense is an institutionalized process specifically designed to facilitate the transfer of developed water to new uses. Broadly speaking, a water bank is an intermediary. Like a broker, it seeks to bring together buyers and sellers. Unlike a broker, however, it is an institutionalized process with known procedures and with some kind of public sanction for its activities."

Lawrence J. MacDonnell, "Water Banks: Untangling the Gordian Knot of Western Water," 1995.

Introduction

Washington State has had specific statutory authority to perform water banking since July of 2003. House Bill 1640 was adopted that year authorizing the Washington Department of Ecology (Ecology) to use the trust water rights program in the Yakima River Basin for water banking purposes.

The law amended sections of Chapter 90.42 RCW, which establishes a statewide trust water rights program. The bill required that Ecology talk with various water stakeholders about water banking procedures. Ecology is also to identify areas of the state where water banking could assist in providing water for instream and out-of-stream uses.

Ecology must report on water banking to appropriate legislative committees by December 31 of every even numbered year. The report must evaluate the effectiveness of water banking under the law, describe statutory, regulatory or other impediments to water banking in the state, and make recommendations for future efforts. Ecology filed the first report on December 31, 2004. This is the second report.

Under the legislation, Ecology was authorized to use water banking in the Yakima Basin for the following purposes:

- Mitigation for new water uses
- Meeting future water supply needs
- Statutorily beneficial uses consistent with terms established by the transferor

Water banking may also be used to document transfers of water rights to and from the trust water rights program and to provide a source of water rights that Ecology can make available to third parties on a temporary or permanent basis for any allowed beneficial use.

Under this statute Ecology may not use water banking to:

- Cause detriment or injury to existing rights
- Issue temporary rights for new potable uses
- Administer federal project water rights
- Allow carryover of stored water from one water year to another water year

Additionally, return flows from water rights authorized for any purpose must remain available as part of the Yakima River Basin's total water supply available and to satisfy existing rights for other downstream uses and users.[1]

Defining Water Banking

The report, published in July 2004 by Ecology, "Analysis of Water Banking in the Western United States," (see Appendix), discussed the variety of activities water banks are involved in, and attempted to establish a definition:

> Water banks exist in almost all western states. There are significant differences in the way banks operate, particularly the degree of involvement surrounding sales, pricing, and price controls. Although the approaches may differ, the common goal is moving water to where it is needed most.

Water banks can be involved to differing degrees in the exchange of water. Water banks have assumed the role of broker, clearinghouse, and market-maker. Brokers connect or solicit buyers and sellers to create sales. A clearinghouse serves mainly as a repository for bid and offer information. A market-maker attempts to ensure there are equal buyers to sellers in a market. Many water banks pool water supplies from willing sellers and make them available to willing buyers. Water banks can also provide a host of administrative and technical functions, for example:

- Determining what rights can be banked
- Establishing the quantity of bankable water
- Limiting who can purchase or rent from the bank if necessary
- Setting contract terms and/or prices
- Facilitating regulatory requirements

In the report, water banking is broadly defined as "an institutional mechanism that facilitates the legal transfer and market exchange of various types of surface, groundwater, and storage entitlements."[2]

[1] "Total water supply available" is defined for water banking purposes consistent with the 1945 consent decrees between the United States and Yakima River basin water users (Federal District Court, in KRD, et al., v. SVID, et al.) and later court interpretations.

[2] Analysis of Water Banking in the Western States, Peggy Clifford, Clay Landry, and Andrea Larsen-Hayden, 2004.

The Yakima Water Bank Work Group

The Water Bank Work Group Definition of Water Banking

Ecology, in cooperation with the U.S. Bureau of Reclamation (USBR), formed a work group to assist in developing recommendations for the formation of a water bank in the Yakima Basin. The work group included a wide representation of stakeholders. A list of stakeholders and minutes from the work group meetings can be found on Ecology's website.[3]

The work group met regularly in 2003 to design a Yakima Basin water bank. They found that even those who had been working on water transfers were unclear exactly what was meant by the term water bank. It took the committee several months of meetings to come to agreement, and the final definition was very broad.

The work group determined, for the purposes of the committee, that *any* way that water was held for future use was considered banking. This definition of water banking included:

- Temporary leases and permanent purchases of water rights.
- The storage of water behind dams that the USBR operates
- Acquisition activities of those using the state trust statutes including Ecology, the Washington Water Trust (WWT), the Washington Rivers Conservancy, USBR and the private sector.

Implementation of the Yakima Water Bank Work Group recommendations

A report was completed which outlined possible future water banking activities in the Yakima River Basin and other work group decisions.[4] The work group envisioned a new Yakima Water Exchange which would be implemented by two groups. One is a technical group based on the general make up of the Yakima Basin Water Enhancement Program's Water Transfer Work Group. It would provide the technical support necessary to expedite temporary and/or permanent water right transfers. The other is an executive council to guide organizational decisions. The work group viewed the state trust program as the "vault" in which water rights would be held.

The Water Transfer Work Group (WTWG) is a voluntary team of agencies and water users that meet to provide technical review of proposed water right transfers in the Yakima basin. The

[3] For committee minutes go to http://www.ecy.wa.gov/programs/wr/instream-flows/wacq.html and click on Yakima River Basin Water Bank Project 2003, which is located near the bottom of the column at the right, then click on "meetings" which is located at upper left hand side.

[4] The report: Water Exchange in the Yakima Basin, October 6, 2003, is available at http://www.ecy.wa.gov/programs/wr/instream-flows/wacq.html Click on: Yakima River Basin Water Bank Project 2003, which is located near the bottom of the column at the right, then find the link to Water Bank Report Version 5.1 Final Draft (PDF) .

WTWG is solidly in place and has been active since the 2001 drought. It serves all of the technical review functions described in the work group's report and meets at least once a month. The WTWG process guides applicants to those types of water right changes and transfers that can quickly and easily gain approval from the state.[5]

The Yakima Water Exchange (YWE) has not yet been created. Water banking in the Yakima River Basin using the trust water rights program has advanced since 2004, but in a limited fashion. It is not realistic for it to be implemented until a private or public "market maker" with funding steps forward as a water seller on an ongoing basis. Ecology has been utilizing water banking in the Yakima Basin to provide water where there are shortages during drought years[6] and to increase instream flows in key stream reaches. Key regulatory obstacles to marketing water rights have been identified and are well understood in the Yakima Basin. The transaction costs to transfer small quantities of water can be staggering–not unlike trying to buy 100 shares of stock in a public company without the benefit of a broker with access to New York Stock Exchange or NASDAQ. We believe perceived obstacles will be overcome as prospective buyers and sellers are able to see "tried and true" examples of success.

One example of where water banking and the YWE could flourish is in providing a means to meet residential water needs. An example of this is described in Ecology's report to the legislature in response to Senate Bill 6861 (The Cabin Owner's Bill) which is expected to be published in early 2007.

Update on Memorandum of Understanding between Ecology and USBR

A memorandum of understanding between Ecology and USBR[7] was drafted to govern joint operation of the Yakima Water Exchange and joint management of trust water rights in the Yakima Basin. It has not received final approval at this date. Questions also still remain as to ongoing funding and staffing of the YWE, and as to how water rights will be managed.

[5] A description of the Water Transfer Working Group review process, the criteria they use, their meeting agendas, minutes, and project descriptions is available at: http://www.ecy.wa.gov/programs/wr/ywtwg/ywtwg.html

[6] The 2004 water banking report to the legislature described the post 1905 banking effort where this was done.

[7] The draft MOU is at: http://www.ecy.wa.gov/programs/wr/ywtwg/images/pdfs/mou_ecy_bor10122006.pdf

Ecology's 2005-2006 Yakima Water Banking Activities

Yakima Basin Reverse Auctions

For the second year in a row the Department of Ecology has run a reverse auction for water acquisition in the Yakima Basin. Reverse auctions are used to define a market in a specific area and to help determine prices. Reverse auctions are different from typical auctions in that they are run by the buyer rather than the seller. The prospective buyer announces its intention to lease or purchase water rights and requests that potential sellers submit bids. The goal of the reverse auction is to increase water right market activity, which may result in:

- Increased water available for use by those who may not have other water options.
- A clearer idea of prices for water rights in the area.
- Increased activity in the local water right market.

To operate a reverse auction, Ecology announces interest in receiving bids from water right holders who are willing to sell or lease their water rights. The bids must be from those holding senior water rights which are currently used for irrigation. Bidders must determine what they think the water right is worth, and submit an offer. Ecology sets criteria for which rights will be accepted, including location, priority date, the "value of the stream affected," and price. Once the deadline for submission has passed, the bids are rated and selected based on the criteria.

2005 Reverse Auction

Owing to the limited time to respond to the March 10 drought declaration, the March 2005 auction was a single round, sealed bid auction.

The auction targeted three objectives:

1) Mitigation for domestic water users with surface water rights with post-May 10, 1905 water rights who would have otherwise had water cut off when the USBR mandates rationing among pro-ratable irrigation districts.
2) Mitigation for the negative effects to the lower Yakima River resulting from Sunnyside Valley Irrigation District to Roza Irrigation District transfers enabled by tailwater recovery projects.
3) Improving streamflow conditions for fish in key tributaries to the upper Yakima River.

Ecology accepted those bids that gave acceptable value for the state's drought response effort. As a result of that effort five leases were signed; details are in the following table.

2005 Reverse Auction Leases

Lessor	Total lease amount (ac-ft)	Consumptive Quantity (ac-ft)
Buena ID	287.4	180.77
Roslyn/PLP	864	222.9
Stovall	178.2	57.7
TRROA	1863	696.89
Masterson	1572	467.94
Total	4764.6	1626.2

2007 Reverse Auction

Another reverse auction is planned for early 2007. Ecology intends to announce a call for bids by the end of January. This auction is intended to provide Ecology with a portfolio of leases, dry-year options, and purchases that can be used for improving tributary stream and lower Yakima River flows. The goal is to benefit fish and water quality. Unlike the 2005 auction, the 2007 auction is designed to be a sealed-bid, multiple-round auction.

Ecology has $500,000 available[8] to lease or buy water rights if we receive enough acceptable bids.

Water Banking in other areas of Washington State

Watershed Groups

The water bank that was designed for the Yakima River Basin focuses specifically on meeting the needs of the Yakima Basin. However, we have learned much from the process that we believe can help with the design of future water banks in other areas of the state.

Considerable interest has been expressed in other regions of the state about the possibility of using water banking. A large number of local watershed planning groups (planning under Chapter 90.82 RCW) are examining the potential of water banking as one of many options to address water supply issues. Several planning groups have mentioned water acquisition and water banking as future options in their draft watershed planning documents.

[8] Funds for both reverse auctions were appropriated for Watershed Plan Implementation and Flow Achievement in Section 136 subsection 10 of the Supplemental Capital Budget for Ecology. For the 2007 reverse auction the Bonneville Power Administration committed $125,000 to the project through the Columbia Basin Water Transactions Program, which is administered by the National Fish and Wildlife Foundation.

Some watersheds that have specifically mentioned water banking in their plans are WRIA 17 (Quilcene/Snow), WRIAs 25/26 (Grays-Elochoman/Cowlitz), WRIAs 27/28 (Lewis/Salmon-Washougal), WRIA 30 (Klickitat), and WRIA 45 (Wenatchee).

- The Wenatchee Watershed Management Plan, in particular, contains detailed recommendations for water banking in their watershed.[9]

- Water banking is an element in the approved watershed plan for WRIA 30 (Klickitat). This element has strong support from the watershed committee.

- The Bertrand sub-basin of the Nooksack watershed (WRIA 1) is working on a cooperative, locally-managed water management program based on the achievement of instream flow targets. It will be implemented with contracts between water users and the Bertrand Watershed Improvement District (WID). It will function like a bank in that contracts will likely be provisioned to provide incentives for existing water rights holders and thus encourage their participation.

Other watersheds that have expressed an interest in water banking are WRIA 1 (Nooksack), WRIA 11 (Nisqually), WRIA 13 (Deschutes), WRIA 18 (Elwha/Dungeness), WRIA 22/23 (Chehalis), WRIA 32 (Walla Walla), WRIA 46 (Entiat), and, WRIA 59 (Colville).

The Lower Columbia Fish Recovery Board is also very interested in creating a water banking system for the lower Columbia area.

Columbia River Water Management Program

On February 14, 2006, the Washington State Legislature passed House Bill 2860 (Chapter 90.90 RCW) creating a new Columbia River Basin Water Management Program. The bill directed Ecology to aggressively pursue development of water supplies to benefit both instream and out-of-stream uses through storage, conservation, and voluntary regional water management agreements. The bill also required that Ecology complete a two-part report on:

1) The Columbia River's water supply and
2) A forecast of future water supply and demand requirements.

On November 16, 2006, Ecology released the report. Written in two sections, the report includes a water-supply inventory and a long-term water supply and demand forecast. It also identifies conservation and storage projects that might be used to meet future water needs.

[9] http://www.co.chelan.wa.us/nr/nr_wen_watershed.htm

The report specifically mentions water banking as a potential tool for managing water:

> Water marketing, the purchase of existing water rights for allocation to new uses, along with water banking have been proposed as an approach to water management in the Columbia River Basin. Water marketing and water banking could reallocate existing water rights to new uses…
>
> The legislation did not authorize water banking in the Columbia River Basin, but did not preclude Ecology from pursuing marketing options in the future. Ecology has established a pilot water bank project in the Yakima River Basin and that approach could be expanded in the future.[10]

The report also mentions the development of proposals for full and partial season water banking as a tool for solving problems and assisting conservation efforts for water users in the Columbia Basin counties of Grant, Adams, and Franklin.[11]

The Columbia River Water Management Program recommends activities that could be considered water banking. They are acquisition of water rights through both acquisitions and conservation to meet both instream flow and out-of-stream uses, and use of potential new storage facilities.

While the 2006 legislation did not *specifically* authorize "water banking" in the Columbia River Basin, it does direct Ecology to inventory conservation projects and identifies funding to implement the best projects. The net water saving from such projects is to be placed in trust in proportion to the state's financial contribution to the project.[12] While not using the term "water banking," the legislature has set up the mechanisms for the conservation benefits of the water rights placed in trust to be assigned to other water uses and users through new permits. The mechanisms are in every respect a form of water bank.

[10] Draft Programmatic Environmental Impact Statement for the Columbia River Water Management Program, Sec. 2.4.3, Water Marketing/Water Banking, p. 2-22 http://www.ecy.wa.gov/programs/wr/cwp/draft_eis.html

[11] Ibid, Sec. 2.1.2.2, Conservation Component p. 2-10

[12] See RCW 90.90.010(4).

Statutory Challenges

Uncertainty Created by the 2003 Amendments

House Bill 1640 amended sections of Chapter 90.42 RCW which is the statewide trust water rights program, to authorize water banking, but not Chapter 90.38 RCW which is the trust water rights program solely for the Yakima Basin. The legislation clearly states as codified in RCW 90.42.100(1), that "The department is hereby authorized to use the trust water rights program in the Yakima river basin for water banking purposes." For this reason the water banking legislation has the appearance of applying only in the Yakima Basin. However, some feel that this legislation, though limited to the Yakima Basin, does not limit the pre-existing authority to use the statewide trust water rights program for water banking purposes in the rest of the state.

After a review of legislative history and the legislative bill report, it seems fairly clear that the limitation of authorization to the Yakima Basin was intentional. However, because the functions of the state trust water program and water banking are so similar, and because water banking is not defined in the legislation, there remain questions.

Legislative Amendments Needed

In working with the water banking statute, Ecology has identified the following potential amendments for consideration:

1. Expand water banking authority to apply statewide.
2. Define water banking.
3. Create a new line of applications for permits exclusively used to assign mitigation credit for water rights "banked" in the trust water rights program.
4. Provide authority to place revenue generated from the sale or assignment of trust water rights into a dedicated account.
5. Provide authority for Ecology to purchase water and land together as a package.

Expand Banking Authority Statewide. If the legislation does indeed limit Ecology's water banking authority to the Yakima Basin, then it would need to be amended to authorize water banking in other areas of the state. Many communities are interested in the potential of this tool to make new supplies available.

Define Water Banking. There also needs to be some clarification as to what the legislature considers water banking activities, and how they differ from other activities authorized under the trust water program.

Priority Processing. One of the key impediments to the efficient exchange of water through water banking is the length of time it takes to process a change application to utilize a previously banked water right. This time restraint is in part because Ecology is required to process change applications in order of receipt. There are long lines of applications for changing water rights in

many areas of our state. The length of the line that may be ahead of the change application required for a water right to be moved from the bank will have an effect on the time it will take to legally move the water. Currently changes to water rights that provide a substantial environmental benefit can receive expedited processing. However, the transfer of banked water to address agricultural shortages or to be used as mitigation cannot be expedited. If either water right transfers used to remove water from the bank for mitigation, or mitigated permits relying on water rights in the bank, were allowed to form a separate line, it would greatly facilitate the banking process and make it more responsive to market pressures. This could be done by amending the "Hillis rule"[13] by adding mitigation as criteria for priority processing.

Dedicated Account. Ecology is authorized to use water banking to mitigate for new water uses and meet future water supply needs. The statute directs Ecology to provide a source of water rights and make them available to third parties on a temporary or permanent basis. In order to sell or assign water rights that have been purchased with state funds to individuals, utilities or local governments, the state must be paid back. For this reason Ecology would need specific authority to place revenue generated from the sale or assignment of trust water rights into a dedicated account. Funds would then be available to secure new sources of water.

Purchasing Land and Water Together. Also, it would be helpful in some cases for Ecology to have the ability to purchase land and water together as a package. This is particularly true where the land would provide habitat benefits for critical salmonid stocks or other important public needs, or where the sale of a critical water right is dependent on purchase of both land and water. Many landowners are uncomfortable separating their water right from their land. In the current market separation of the two can be an advantage or disadvantage depending on the local economy. Landowners are concerned about the effect the loss of the water right could have on the value and future use of the land. Also, it is more difficult to determine market value of water separated from the land it is attached to. For this reason, the ability to purchase the land and water together provides an advantage to the purchaser. While USBR may purchase land and water together, Ecology's appropriations have all been specifically limited to purchase of water. This is one of the reasons the two agencies have partnered on some acquisitions. In some instances it would be helpful for Ecology to be able to purchase land and water together. As in previous instances when Ecology has partnered with other agencies to purchase the water portion of a land purchase, the ownership of any property purchased with the water would be transferred to a land trust organization to manage.

Possible Changes to Federal Regulation

In the Yakima Basin a large portion of the available water is managed by the USBR. USBR leases and purchases both water and land for environmental mitigation. Ecology partners with USBR on water leases and purchases in the basin. These two agencies sponsor much of the trading activity in the basin, and would be important participants in creating an active market for any banking activities. However, USBR is hindered by federal acquisition regulations that place strict limitations on obtaining separate valuations of land and water. This has been an

[13] The Hillis Rule, RCW 173-152-050(3)

impediment to water trading in the basin. Federal regulation regarding land and water acquisition would need to be amended to alleviate this problem.

The federal restrictions fail to recognize a market trend that is emerging whereby the separate sale of the land and the separate sale of the appurtenant water, in sum, can yield a combined total value that exceeds the appraised value of the land with its appurtenant water right. The federal acquisition regulations do not allow the sum of the parts to exceed the value of the whole, and thus tend to undervalue water. This has put the USBR at a competitive disadvantage in the Yakima Basin market. Federal land appraisers are using the federal acquisition regulations to conduct water valuations, whereas expert water valuation specialists in the private sector are using less restrictive valuation methods to more accurately determine the value of water.

Federal regulations regarding land and water acquisition would need to be amended to alleviate this problem, perhaps by exempting water acquisition from certain land appraisal restrictions. USBR is working in coordination with the Yakima Basin Water Enhancement Program's Conservation Advisory Group to try to get the federal regulations corrected.

Examining Water Banking Programs in Other States

Recognizing the concerns related to the concept of water banking, Ecology set out to see how this water management tool was used in other states. Water banking programs in all of the Western states were examined, and a report summarizing their programs was published in July 2004 (see Appendix). The report identified water banking as a method that is still developing, but has had some success. Interestingly, regional banks that are run at a single or multiple watershed level were found to be more active than statewide banks.

Of particular interest to Ecology is a regional water bank in Oregon, the Central Oregon Water Bank. This bank brings together local irrigation districts, conservation interests and municipalities and is run by a private non-profit organization, the Deschutes River Conservancy.[14] The bank facilitates short-term and permanent reallocation of water among agricultural, municipal and environmental uses, including providing groundwater mitigation credits as part of an Oregon State conjunctive management program in the basin.

[14] Information about the water banking activities of the Deschutes Resources Conservancy may be found at the following link: http://www.deschutesrc.org/What_We_Do/Water_Banking/default.aspx

Concerns and Potential Benefits

Concerns about Water Banking

Several interest groups have expressed concerns about water banking:

- One concern is that banking could lead to increased use of water if water rights that had only been partially used may now be used in full. This could result in less water in streams.
- Agricultural groups that do not trust government–and specifically Ecology–are concerned at having Ecology administer a bank and examine or use their rights. They express fear that it might result in loss of all or a portion of their water rights. These groups also express concern that more water will be set aside for instream flows and there will be less water available for agricultural efforts.
- Conversely, tribes and environmental groups express concern that more water will be used out-of-stream as a result of banks, through privatization of public resources. They also express concern that water banking will create a more opaque system that would be difficult to track from the outside.
- Many citizens area also concerned that this use of the trust program will promote speculation with water rights. Speculation could arise from water rights being purchased and then held in trust until the demand for, and price of the rights has risen substantially.

As a result of these concerns, any attempt to amend the Trust Water statutes will encounter challenges.

Potential Benefits of Statewide Water Banking

The Yakima Water Bank Work Group felt that the creation of a Yakima Water Exchange would assist efforts to provide water for presently unmet needs in the Yakima Basin. Those unmet needs could be met by use of the Trust Water Rights Program in the following ways:

1) Increasing and protecting instream flows for the benefit of fish and wildlife.
2) Providing water for new and existing off-stream water uses.

Other parts of the state also have these same unmet needs. The ability to utilize the State Trust Water Rights Program to create and protect instream flow trust water rights provides the key mechanism to slowly, incrementally, increase instream flows for fish and wildlife. At the same time, it provides a way in water-short areas for new water users to obtain water from existing legal water users to meet their needs.

The Wenatchee River (WRIA 45) Watershed Plan, for example, identified several subbasins in the arid lower portion of the watershed where insufficient water is available to reliably meet future domestic or municipal water needs. The WRIA 45 planning unit identified strategies to meet future water needs, including the use of water banking in water short areas. Local water banks relying on the state's trust water right program would allow local jurisdictions to acquire water rights to offset the impacts resulting from continuing residential development outside municipal service areas and ensure accountability to senior water rights.

The Yakima and Wenatchee basins, while facing sharper competition than basins in Western Washington, are not unique when it comes to the role of water markets. In many areas around the state markets are developing for purchasing and leasing water rights. Water banking can provide the clearinghouse to connect water sellers with water buyers for both off-stream and instream uses.

On the west side of the state in the Dungeness River Basin multiple water leases have been implemented through irrigation districts and companies with individual water right holders to benefit instream flows. If continued, this effort could lead to future water banking efforts in that area. The Dungeness watershed committee is working on language to establish a water bank in rule as a mechanism to address mitigation needs.

These are a few of many examples of innovative strategies to use the marketplace to move water to new uses. These water markets need assistance in developing. In spite of the fact that willing sellers and buyers of water exist in many areas of the state, they are finding it difficult to locate each other. The establishment of water banks will help to solve this problem by creating a known, centralized place where sellers and buyers can connect.

Recommendation for Water Banking in Washington State

The Department of Ecology makes the following recommendations:

1. Water banks in Washington should be established at the watershed level, or in some cases the multiple watershed level.

2. Water banking authority in Washington should be expanded to apply statewide.

We have found water banks to be easier administer at the watershed level because the "rules" that govern water distribution (regulation) typically are unique to each watershed or basin. This is due to many factors, including:

- The existence of adopted instream flow rules.
- The existence of a federal reclamation projects such as those in the Yakima or the Columbia Basins.

Water rights can be more freely transferred within the same watershed or regional basin where the same rules govern. Therefore, we recommend that water banks in Washington be established at the watershed level, or in some cases the multiple watershed level.

The experience that Ecology has had with water banking in the Yakima has been very positive. It is for this reason that the department recommends expanding water banking authority statewide to assist in addressing water shortages and instream flows.

Many areas of the state are interested in utilizing water banking to address new water supply needs or protect instream flows. It will take some time to develop the markets and create water banks, and there will be challenges related to stakeholder concerns about water banking, but the potential benefits of having a way to efficiently trade water in times of shortage are clear.

The following language is currently in the statute:

> RCW 90.42.100(1) The department is hereby authorized to use the trust water rights program <u>in the Yakima river basin</u> for water banking purposes.

We propose the removal of the language limiting water banking authority to the Yakima River Basin. The language would then read as follows:

> RCW 90.42.100(1) The department is hereby authorized to use the trust water rights program for water banking purposes.

Conclusion

The Yakima Water banking effort has been successful in providing water to those water systems who participated. The ability to utilize the Trust Water Rights Program to create and protect instream flow trust water rights provides the key mechanism to slowly, incrementally, increase instream flows for fish and wildlife.

Appendix

Report on Water Banks in the Western States

Ecology contracted with Clay Landry and Andrea Larsen-Hayden of Westwater Associates, to organize and help develop a report on water banking. The report is based on research provided by Ecology's Peggy Clifford, with editing by Ecology's Christine Corrigan. Published in July of 2004, the report is entitled "Analysis of Water Banks in the Western States," by Peggy Clifford, Clay Landry, and Andrea Larsen-Hayden. It is available on Ecology's website at http://www.ecy.wa.gov/programs/wr/instream-flows/wtrbank.html .

The report provides an analysis of water banking legislation, policies, and programs in 12 Western states. A primary purpose of the review is to identify banking programs and structures that promote and enhance environmental trades. The analysis examines each state individually, beginning with the legislative history of the development of the banking programs. In addition, the review provides a detailed description of banking rules and level of activity, and maps of the areas served in each state.

The review of water banking programs includes the characteristics that influence program participation and an assessment of program pricing structures and transaction contracts. The analysis generated a set of questions that should be addressed, and guidelines to consider, when establishing a water bank. The states reviewed are Arizona, California, Colorado, Idaho, Montana, Nevada, New Mexico, Oregon, Texas, Utah, Washington, and Wyoming.

Ecology hopes that the report will provide useful information for groups in our state who are wondering how existing water banks operate and whether a water bank might be a useful water management tool for their region.