

Draft Discussion Paper: Graduated Fees for New Water Banks

NOTE: This paper was created only for the purposes of generating discussion to inform potential legislative recommendations. None of the topics described are proposed or endorsed by Ecology.

Summary

Ecology has heard concerns about both private water banks gaining monopoly power over water availability in some areas, and that Ecology does not efficiently process water banks that could increase competition and address potential price gouging from speculation. Adding a graduated fee to new water banking proposals could help address each of these concerns.

Amending RCW 90.42 to allow Ecology to add a graduated water banking fee based on the size of the water right and giving Ecology the authority to require the use of cost-reimbursement¹ for the water right change application associated with a water bank was supported during the previous Advisory Group process in 2020. This change could help dedicate Ecology staff time to most efficiently process water banks and consistently apply water banking practices and procedures. It also ensures that the private entities profiting from the state-run water banking program take on the cost of establishing water banks.

Increasing the cost burden of establishing a water bank could impact public and semi-public entities seeking to create a water bank. However, most water rights used in water banks are smaller than 50 AFY and wouldn't be substantially affected by a graduated fee.

Background

Ecology currently charges fees for a variety of applications involving water rights. These include fees for new water right applications, water right change applications, and water storage applications.² Fees for these different applications have both a minimum and maximum amount, as well as a graduated scale for fees based on the amount of water involved. This means that applications involving larger water rights pay higher fees.

To use the trust water rights program (TWRP) for water banking a prospective banker submits a Request to Establish or Modify a Water Bank (no fee required) and an Application to Change/Transfer a Water Right (fees apply). During the Advisory Group process in 2020, the idea of amending RCW 90.42 to add a fee to water banking proposals was widely supported by the Advisory Group participants.³

Discussion

We have heard concerns about private entities profiting from the state-run water banking program. Although water banks offer an opportunity to reallocate water to new/expanded uses, there are concerns that water banks could gain monopoly power in certain areas with few other water supply options. This could result in higher prices for water while increasing profits for private water banks. At

¹ RCW 90.03.265 describes how an applicant for a new water right or a change/transfer of a water right may initiate a cost-reimbursement agreement with Ecology to provide expedited review of the application. In this situation the applicant is responsible for the cost of Ecology retaining and managing a consultant to review the application, and the cost of defending a third-party appeal of Ecology's decision.

² RCW 90.03.470

³ *Water Trust, Banking, and Transfers in Washington State: Findings and Recommendations Informed by Ecology's Advisory Group on Water Trust, Banking, and Transfers*. November 2020. Publication 20-11-091.

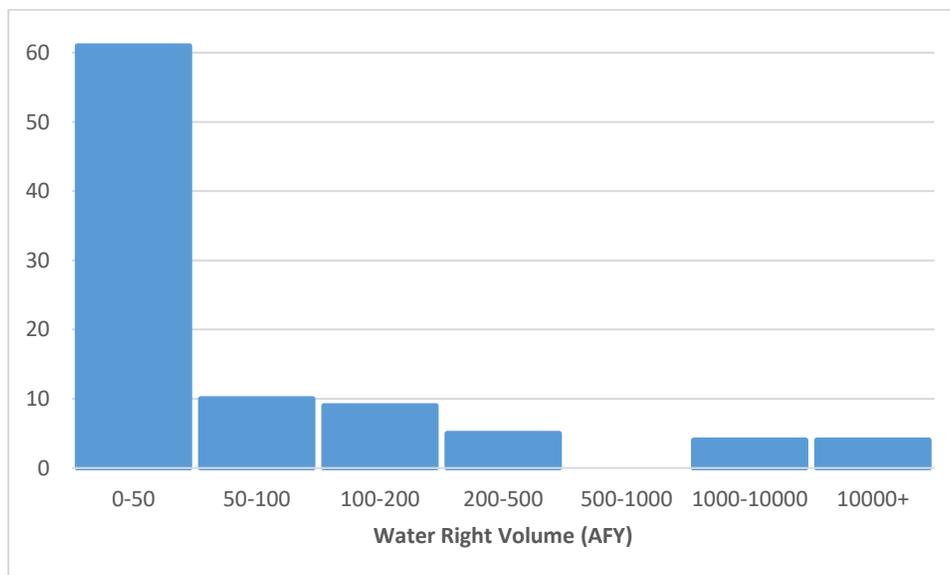
the same time there are some stakeholders who think the water banking process is too complicated, time consuming, and onerous. Some believe that facilitating the creation of more water banks will increase competition, reduce the chance of price gouging, and increase water availability. Adding a graduated fee for new water banking applications could help address the separate concerns around monopoly power and more efficient processing of water banks.

This change would require amending RCW 90.42 to establish a graduate fee (based on the volume of the water right) for reviewing and processing water banking proposals. As an additional option, it could establish that Ecology may require prospective water bankers to use the cost reimbursement process (RCW 90.03.365) for the water right change application associated with creating a water bank. The funds from these fees would provide additional resources so that staff time would not have to be diverted from Ecology’s water right permitting work to process water banking applications. It would also allow Ecology staff to more efficiently process water banking applications. Another benefit would be more consistent and effective application of water banking practices and procedures, while ensuring that the water bankers benefiting from use of the state’s resources take on the cost of establishing a water bank.

One drawback of this change is the increased cost to public or semi-public entities seeking to establish a water bank. In general, increased costs by government and non-profit entities would likely be passed on to the new water users seeking mitigation from these water banks. Additionally, a graduated fee could incentivize water bankers to split up water rights into smaller amounts and apply to use them for water banking in a piecemeal fashion to avoid paying higher fees.

To determine the effect of a graduated fee on water banking proposals we evaluated the size of water rights used in water banks. As of January 2022, approximately 66% of water rights used in water banking were smaller than 50 AFY and 87% were smaller than 200 AFY (see Figure 1). As a result, a graduated fee would not have an outsized financial impact on most water rights used in water banking, but could increase the cost burden on some of the larger water banks. Of the four largest water rights used in water banking, one is in a bank owned by Ecology, two are categorized as other public/non-profit water banks, and one is a private water bank.⁴

Figure 1. Water Right Size in Water Banks



⁴ <https://apps.wa.gov/ecology/docs/WaterRights/wrwebpdf/BankBalances.pdf>.