

Draft Discussion Paper: Streamflow Dedication 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

Water banking is a tool to facilitate the voluntary exchange of water rights from one use to another in areas of limited supply. In some basins water banking represents one of the only options for creating new/expanded water supplies. However, concerns have been raised that water banks promote private investment in water resources and private profits without providing sufficient public benefits, particularly for instream resources.

Although Ecology has taken action under existing authority to create a new draft water banking policy and pilot water banking grant program, additional actions could be taken with new authority to ensure public benefits accrue from water banks. The law could be changed to require a portion of the water rights used for newly created water banks be dedicated for streamflow. This change would ensure a public benefit of enhancing streamflow occurs with the approval of each new water bank. However, it could create a disincentive to engage in water banking, which could reduce availability of new/expanded water supplies in areas that have few other options. Additionally, it could limit the secondary benefits that come with new/expanded water supplies that can include accommodating population growth, creating jobs, and increasing economic activity/tax revenue.

Most of the water banks in the state are private water banks, which contain about a quarter of the water held in all water banks statewide. One option is that this change could apply to just those privately created and operated water banks. Implementation of this policy concept would require further analysis to determine a dedication amount that balances the tradeoffs between maximizing public/streamflow benefits and reducing the availability of new/expanded water supplies through water banks.

Background

A water bank is a tool to facilitate the voluntary exchange of water rights from one use to another in areas of limited supply. The trust water rights program (TWRP) is used for water banking to provide mitigation for new and existing uses that could otherwise impair existing water rights. In basins where water is not available for new appropriation, transfers of water for banking represents an important tool for making water available to new or expanding uses.

To be used for water banking, a water right must first be evaluated by Ecology, which makes a tentative determination of the validity of the right. This occurs when the right is changed from its original purpose of use to mitigation. Additionally, a water banking agreement with Ecology must be executed that describes the new uses that can be mitigated by the water bank. Once these two steps are completed, the banked water right (mitigating right) is considered “enrolled” in the TWRP, under chapter 90.42 RCW and provides benefits to streamflow. Over time the water bank allocates mitigation to new uses.

A concern that Ecology has heard throughout our stakeholder engagement processes is that the water banking program could be promoting private investment in Washington’s water resources without

providing sufficient public benefit. There is a general sentiment that if a state-run program allows private entities to profit from a publicly owned resource it should also be providing a substantial public benefit.

Discussion

Currently, Ecology does not have explicit authority to require that a portion of the water rights used for banking be dedicated to streamflow. The Legislature could amend the water banking statutes so that all entities, or just private entities, using the TRWP for water banking purposes must dedicate a portion of that water right solely for streamflow. This would ensure that private water banks approved by Ecology are providing permanent and additive streamflow benefits and provide a public benefit from their proposal. Key considerations for this change include determining what the streamflow dedication amount should be (likely a percentage of the banked water rights) and if this dedication requirement should include all new water banks, or just new privately created and operated water banks.

One drawback from this change would be added costs that would likely be passed on to the users of the water bank. For example, this might increase the overall costs for housing in areas with limited water supply options. This impact could also act as a disincentive to create new water banks. The end result could limit water availability for new or expanded access to water supply in basins that are closed to further appropriation. This outcome could reduce the positive secondary effects of water banks and the creation of new water supplies that can include accommodating population growth, creating jobs, and increasing economic activity/tax revenue.

Water banks exist throughout the state and are operated for a number of different purposes and proposed uses. This includes water banks run by Ecology and the Office of Columbia River, some of which already use banked water for streamflow purposes. From 2003 to 2022 the majority (53%) of water banks were created by private entities, holding 25% (29,605 AFY) of the water rights in all water banks. The nine Ecology-run banks account for 36% (41,811 AFY) of the water held in all water banks. The six remaining other public and non-profit water banks account for 39% (45,226 AFY) of the water held in all water banks (see Table 1).

Table 1. Water Bank Quantities by Ownership Type

Type of Water Bank	# of Banks	Initial Quantity (AFY)	Allocated Quantity (AFY)	Remaining Quantity (AFY)
Ecology – Office of Columbia River	3	34,616	22,756	11,860
Ecology - Other	6	7,195	4,354	2,841
Other Public & Non-profit	6	45,226	21,672	23,554
Private	17	29,605	12,957	16,221

Note: Updated January 10, 2022.