



# The State Water Trust and Water Banking: History and Function

## DEFINITIONS

### Relinquishment

Water rights revert to the state for new appropriation following five successive years of nonuse without sufficient cause

### Trust Water Rights

Water rights held by Ecology that remain instream to supplement flows and improve habitat

### Water Banking

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

## HOW ARE TEMPORARY WATER RIGHT DONATIONS PROCESSED?

### 1. Request

A water right holder submits a Temporary Donation Form to us.

### 2. Review

We review the most recent five years of beneficial use to determine the quantity available for donation.

### 3. Execute

We issue a letter stating that the water right is in trust and protected from relinquishment.

### 4. Removal

The water right holder may remove the right from trust at any time and resume use as before the donation.

## History of the State Water Trust

Since 1917, Washington has managed water as a common property resource available for private use under the prior appropriation doctrine of “first-in-time, first-in-right.” Privately held water rights are “usufructory rights” to use the water and are only protected to the extent of ongoing beneficial use.

As the state developed and unclaimed water supplies diminished, state leaders recognized the need to maximize the public benefit of existing resources. In 1967, the legislature created a formal process known as *relinquishment* to eliminate unused water rights and make water available for other uses. This process is commonly referred to as the “use it or lose it” provision of the state’s water code (RCW 90.14.140).

However, the relinquishment provision also had the unintended effect of discouraging water conservation. In response, the legislature created authority for a state water trust to protect conserved water from relinquishment. This provision was enacted in 1989 for the Yakima River Basin (chapter 90.38 RCW) and subsequently expanded statewide with the adoption of chapter 90.42 RCW in 1991.

Chapter 90.42 RCW was later amended to expand our ability “to meet presently unmet needs and future needs.” We were directed to acquire water rights through the following activities with the assurance that the acquired rights would be in state water trust and exempt from relinquishment:

- Accept voluntary donations into trust;
- Purchase or lease water rights into trust; and
- Use trust water rights for water banking purposes.

## Donations into Trust

Under chapter 90.42 RCW, water right holders may voluntarily donate some or all of a water right into trust on a temporary or permanent basis. Upon receiving a temporary donation request, we review the most recent five years of beneficial use to assess the quantity of water available for donation. This review does not produce a determination of the extent and validity of the pertinent right. Temporary donations may be removed from trust by the water right holder at any time. Upon removal from trust, the

## HOW ARE WATER BANKS CREATED?

### 1. Request

We meet with a water banking applicant to identify a water right for mitigation use and the needs a bank would serve.

### 2. Negotiate

We negotiate a trust water right agreement with the banking applicant to define water bank operations and expectations.

### 3. Evaluate

We determine the extent and validity of the pertinent water right(s).

### 4. Notice and Change

We issue an order changing the water right's purpose, identifies the quantity available for mitigation, and provides public notice of the change.

### 5. Execute

We execute the trust water right agreement with the banker. If the water bank intends to mitigate permanent new uses, the water right is deeded to us.

### 6. Track

We issue a trust water certificate and post accounting of fees, unit price, and available supply to the agency website.

### 7. Mitigate

Banks assign mitigation credits and account for water used by permit exempt users. We issue new mitigated permits.

water right holder may immediately resume use under the original terms of the water right, which is once again subject to relinquishment. Permanently donated rights are simply deeded to us, and we issue a trust water right certificate.

## Transfers into Trust

Under chapter 90.42 RCW, Ecology may purchase or lease water rights from private water right holders and transfer the rights into state trust. Water rights transferred into the state trust are processed under RCW 90.03.380, which requires us to make a determination of extent and validity and confirm that no existing rights will be impaired. Permanent transfers into trust are deeded to us, and we issue a trust water right certificate. Temporary transfers into trust for leases revert to the original water right holder under the original terms of the right following the end of the lease.

## Water Banking

The water banking provisions in chapter 90.42 RCW enable us to use trust water rights to provide mitigation for new and existing uses that would otherwise impair existing rights. Water banking is a critical tool to manage the beneficial use of water resources in watersheds with limited available water supply for appropriation.

In order to qualify for banking purposes, a water right must be designated for mitigation use as the right is transferred into trust. The trust water right may then be used for mitigation. The water banking entity sells mitigated credits to the user and we issue new mitigated rights.

Mitigation use requires us to evaluate the right sufficiently to ensure that changes of place and purpose of use will not cause impairment to existing rights. As a result, a trust water right must have received a determination of extent and validity under RCW 90.03.380 in order to qualify for mitigation use. Therefore, rights that are *transferred* into trust are eligible for water banking and rights that are *donated* into trust are ineligible for water banking.

## More Information

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

- [Visit our webpage](https://ecology.wa.gov/waterbanks): <https://ecology.wa.gov/waterbanks>
- Contact: Dave Christensen at (360) 407-6647

### 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.