



Confederated Tribes and Bands  
of the Yakama Nation

Established by the  
Treaty of June 9, 1855

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**November 12, 2020**

Sent via Email

Carrie Sessions  
Dave Christensen  
Washington Department of Ecology  
Water Resources Program  
Olympia WA

**Re: Comments on Water Trust, Banking, and Transfers in Washington State-  
Findings and Recommendations - Pub. 20-11-091**

Dear: Ms. Sessions and Mr. Christensen:

This letter provides some preliminary comments from the Yakama Nation staff to the Department of Ecology's Water Trust, Banking, and Transfers in Washington State- Findings and Recommendations - Pub. 20-11-091. In its Report the Department of Ecology makes a number of findings and suggests some proposed changes to state statutes and Ecology regulations. The Nation has provided comments to some of these in the past and incorporates those comments into this letter as relevant. Since draft bills or rules have not been provided by the Department of Ecology the Nation reserves the right to comment further when draft bills or rules are provided.

1. Application of proposed changes to the Yakima Basins. (page 7, 13).

The Department of Ecology's Report needs to clarify how any proposed changes to law or regulation affects or might affect basins with multiple WRIAs. We especially ask for clarification concerning the Yakima Basin. The Nation opposes having any new proposed changes to transfer procedure apply to the Yakima Basin. WRIAs 37, 38 and 39 are located in the Yakima Basin. Surface water rights in these WRIAs have been regulated together following Ecology v. Acquavella. The Yakima Basin should be exempt from any new changes in law here.

The definitions in the Report also need to be clarified. The definition of the term "downstream out-of-basin water right transfers" in the glossary should be amended to clarify that it does not include downstream transfers within the Yakima Basin. It should also clarify what the intent is to apply to any other basins that may have multiple WRIAs. The definition states that a "downstream, out-of-basin water rights transfer" includes any transfer that moves water "out of the WRIA-of-origin". See page 7. However, this would arguably act to include transfers within the Yakima Basin.

2. Transfers Upstream (pages 13, 17,35).

The Department of Ecology is proposing changes to state law concerning transfers of water rights when the point of diversion is changed for “downstream, out-of-basin water rights transfer”. See page 7. The Nation is not in favor of changes in state law on this matter to protect upstream transfers. The Nation disagrees with Ecology’s proposal that it be allowed to transfer water upstream after first transferring water rights downstream. Ecology’s proposed changes on upstream transfers may act to reduce protection from impairment. The Yakama Nation also does not agree with the finding concerning upstream transfers. Report 13.

3. Rewrite Trust Water Statutes (page 18).

The Yakama Nation does not oppose in concept possible changes to RCW Chap. 90.42. However, we would have to see the proposed changes in a bill before we can comment further.

Currently there is a lack of consistent definitions in statute for terms such as “temporary donation” and “transfer into trust”. It is not clear under this proposal what Ecology’s role is or would be in managing the water right. Flexibility of the program is an asset. A state-based water right used for mitigation should first undergo a tentative determination of extent and validity. The Nation agrees that amendments to the current statutes may assist in providing clarity here but the Nation reserves further comments until it sees a draft bill.

4. Recovery of Administrative Costs of Developing Water Banks. (pages 18-19).

The Nation does not oppose the proposal that those who can afford to pay for the cost of developing water banks should pay the administrative costs. However, we think that there should be an exception for those who cannot afford to pay the full cost of developing a water bank. There needs to be some exception so that the development of a water bank is not limited to those with funds to fully pay for a bank.

5. Use of Conservation on Water Rights (page 19)

Ecology proposes to apply RCW 64.04.130 to water rights. While the Nation does not believe this is necessary, the Yakama Nation has no further comments until it sees any proposed regulations or guidance.

6. Concepts for future legislative evaluation. (pages 22-24).

Ecology outlines a number of possible legislative changes “that Ecology is not recommending, but ... believe merit further consideration and evaluation by the Legislature.” Id. 22. The Yakama Nation will comment on the proposed change in law concerning alignment of disclosure laws for water rights with if legislation is proposed. The Nation opposes adding a public interests test to RCW 90.03.380 as proposed since that term is not defined here. The Nation also opposes adding a right of first refusal provision for transfers of water outside of the basin of origin.

The Yakama Nation reserves the right to comment on other proposals. The Nation reserves the right to make all arguments and to pursue all remedies available to it concerning these matters. Nothing herein is intended to waive, limit, define or diminish the Treaty rights of the Yakama Nation.

Sincerely,



Philip Rigdon, Superintendent

YAKAMA NATION DEPARTMENT OF NATURAL RESOURCES