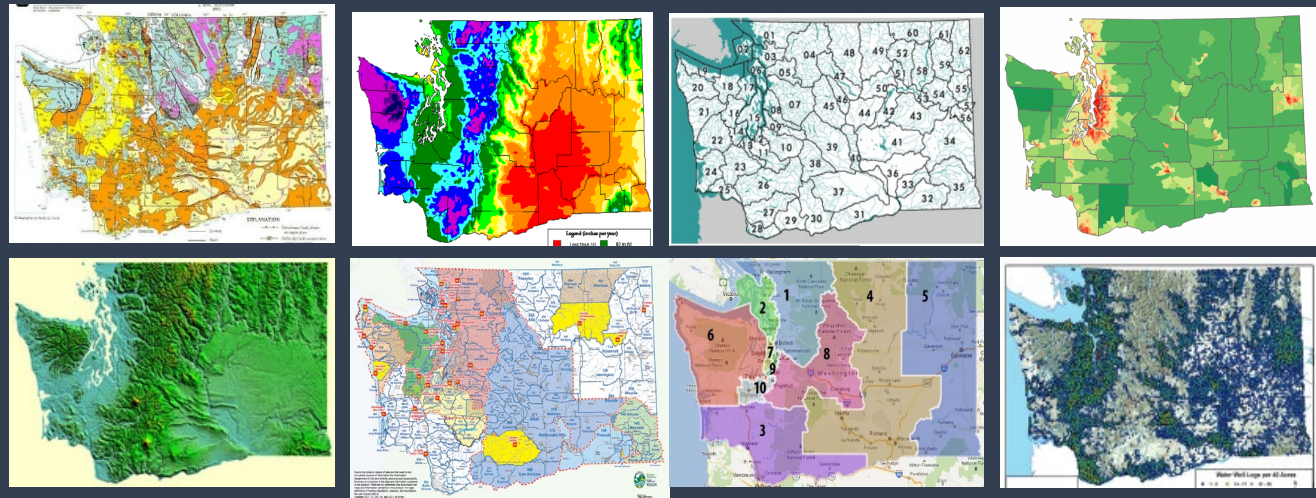


# Report on Ecology's Advisory Group on Water Trust, Banking, & Transfers

Presentation for the Columbia River Policy Advisory Group  
September 9, 2020

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Water Resources Program





# Overview

- Background & Advisory Group process
- Summary of discussions and draft findings
- Ecology's draft policy recommendations
- Next steps



# Legislative Direction – ESSB 6168

Sec 302(37): Ecology shall...

- Convene a work group ... to study the design and use of the state water trust, water banking, and water transfers...
- Invite representatives to serve on the work group...
- Consult with affected federally recognized tribal governments upon request...
- Present its findings, including a summary of discussions and any recommendations on policy improvements...



# Advisory Group Objectives

- Inform Ecology's findings and recommendations to the Legislature.
- Convene discussion to enhance understanding among entities on priorities, concerns, and potential solutions.
- Increase shared understanding of trust water, banking, and transfers in Washington.



# Schedule of Meetings

1. **Kickoff** (April 16)
2. **Policy discussion:** Transparency in water right sales & out-of-basin transfers of water rights (May 7)
3. **Policy discussion:** Private investment and marketing of water rights (part A): Use of the state water trust (May 26)
4. **Policy discussion:** Private investment and marketing of water rights (part B): Water banking (June 10)
5. **Review session:** Draft policy options (June 30)
6. **Wrap-up:** Finalization of Advisory Group feedback (July 16)

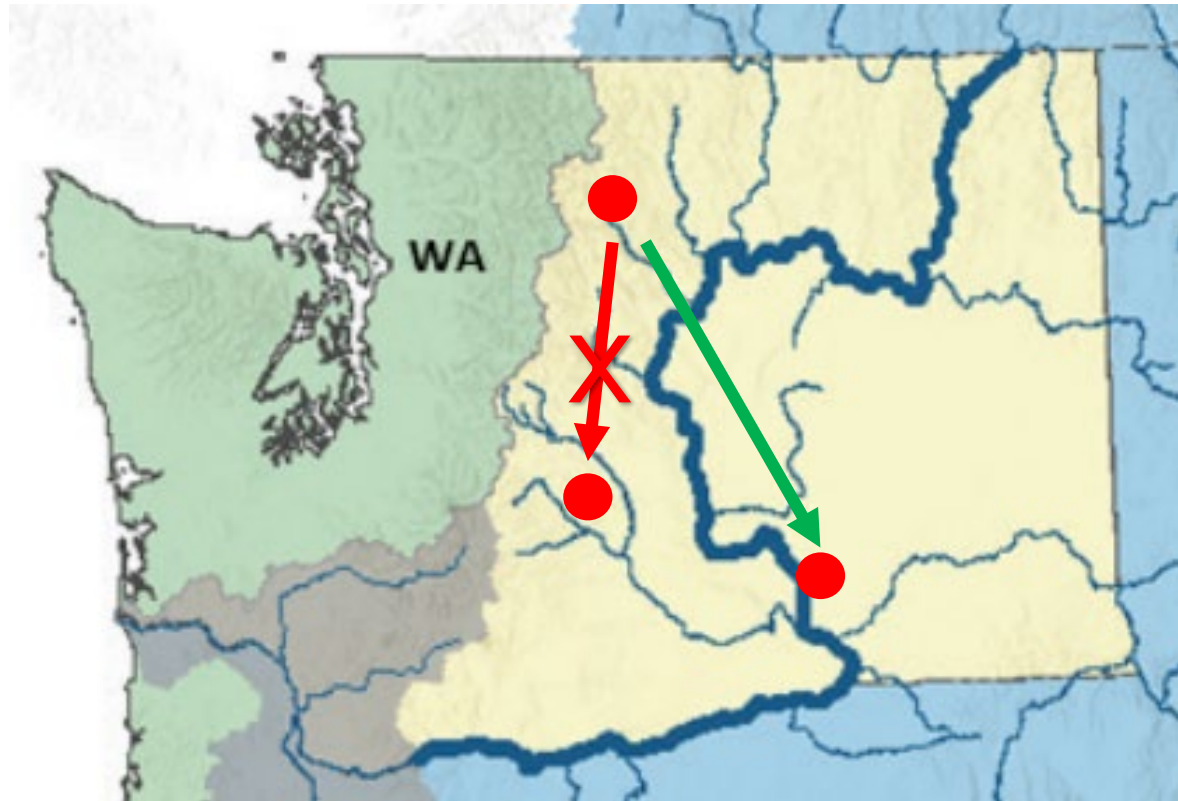
# Summary of Discussions and Draft Findings

## Topics:

- Downstream, out-of-basin transfers
- Transparency in water right sales
- Use of the Trust Water Rights Program
- Water banking

# Topic 1: Out-of-basin Transfers

- Changing the place of use (or point of diversion) from one WRIA to another downstream WRIA.
- Not the same as an “inter-basin” transfer.



# Topic 1: Out-of-basin Transfers

*Driving concern:* Downstream, out-of-basin transfers foreclose economic opportunity in the basin-of-origin.

## *Takeaways:*

- Out-of-basin transfers may foreclose potential for future economic growth.
- Incentives to keep water rights in their basin-of-origin are more appropriate right now than regulatory limits.





## Topic 2: Transparency in Water Right Sales

*Driving concern:* Out-of-state actors can buy WA water rights for speculative purposes, sometimes with little public knowledge.

### *Takeaways:*

- While notice requirements for water right transfers are sufficient, Ecology could improve the access to information.
- Limiting who can buy a water right (such as prohibiting out-of-state entities) would be unwise.

# Use of the Trust Water Rights Program

## *Driving concerns:*

- Flexibility of the TWRP enables speculation in water rights in a way that promotes private profit over public benefit.
- Lack of clarity in statute could result in impairment to existing rights from the use of the TWRP.

# Topic 3: The Trust Water Rights Program

## *Takeaways:*

- We need to remain aware of the possibility that the TWRP could benefit private interests at a detriment to public interests.
  - But, we believe that the flexibility of the TWRP, and benefits to streamflow enhancement in the short term, currently outweighs those other concerns.
- Clarifying terms and requirements in the TWRP statutes would ensure that senior water rights, including instream flows, are adequately protected.

# Topic 4: Water Banking

*Driving concerns:* Water banks are being used in ways that benefit private interests at a detriment to public interests.

## *Takeaways:*

- Water banks play a critical role in reallocating water between beneficial uses.
- It is concerning when a bank that provides water to meet basic health needs gains disproportionate market power.
- Increased transparency will allow the public to better understand water banks' plans to help inform public interest.

# Ecology's Draft Policy Recommendations

# Caveats & Notes

- This content is still a **DRAFT**.
  - Concepts included have not been approved by Ecology leadership.
  - This should not be interpreted as a commitment to pursue (or not pursue) specific policy actions.
- We are consulting with our attorneys on whether potential recommendations could be implemented through existing authority.

# Potential Policy Tools

- *Potential Ecology Recommendations and Actions:* Concepts that Ecology is considering for recommendation to the Legislature. This includes:
  - Policies that require new legislative authority.
  - Actions that can be pursued under existing law.
- *For Future Legislative Evaluation:* Concepts that Ecology is not recommending, but believes merit further evaluation by the Legislature.
- *Considered but Not Recommended:* Concepts that Ecology considered and discussed but do not recommend.



# Potential Recommendations:

## New legislative authority needed

1. Establish that a water right transferred downstream may be moved back upstream without a finding of impairment to intervening users.





# Potential Recommendations:

## New legislative authority needed

2. Rewrite the trust water statutes (chapter 90.42 RCW) to clarify key terminology and create a cohesive framework for trust water and water banking.



# Potential Recommendations:

## New legislative authority needed

3. Authorize Ecology to recover the administrative costs of developing water banks.

# Potential Recommendations:

## **New legislative authority needed**

4. Modernize how Ecology provides public notice of water right transfers.

# Potential Recommendations:

## To pursue under existing authority

1. Authorize “conservation easements” on water rights to limit their use to the basin-of-origin.

# Potential Recommendations:

## To pursue under existing authority

2. Make information on applications to change or transfer water rights more accessible to the public through administrative improvements.

# Potential Recommendations:

## To pursue under existing authority

3. Clarify that any water right being used for long-term or permanent mitigation must first undergo a tentative determination of extent and validity.



# Potential Recommendations:

## To pursue under existing authority

4. Require that prospective bankers submit a “water banking prospectus” in which they outline their proposed banking and operations plan.
5. Post draft water banking agreements for public comment before being finalized.
6. Update the Trust Water Guidance document as to clarify administrative processes for trust water and water banking.



# Next Steps

- *Ecology's findings and recommendations to the Legislature:*
  - Ecology will post the final version for public comment (target date of October 15).
  - Comments will be appended to the report.
  - Required to present to the Legislature by December 1, 2020.
- *Agency request legislation*
  - Decision to not pursue in 2021.





# Thank You!

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