

Draft Trust Policy and Guidance

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Statewide Trust Water Coordinator

Water Resources Advisory Committee

March 14, 2022

DRAFT FOR 2nd PUBLIC COMMENT PERIOD

February 1, 2022

Policy and Interpretive Statement

Administration of the Statewide Trust Water Rights Program

Draft for Public Comment

Contact: Program Development and Operational Support Section

References: *Statute:* Chapters 90.38, 90.42, and 90.66 RCW; RCW 19.27.097, 90.03.290, 90.03.380, 90.14.140, 90.44.050, 90.44.110, 90.54.020, 90.80.055, 90.80.090

Administrative Rule: WAC 173-153-060

Policy: POL 2030, Municipal Water Law Interpretive and Policy Statement

Forms & Guidance: Request to Establish or Modify a Water Bank; Application to Transfer a Water Right to the TWRP; Temporary Donation Form; Trust Water Guidance

Purpose: To provide transparency and consistency in the Water Resources Program's administration of the Trust Water Rights Program (TWRP) when considering water banks and water right donations.

Application: The policy covers water rights held in the TWRP under chapter 90.42 RCW for water banking and trust water right donations.

- This policy does not supersede requirements in Chapter 90.38 RCW, which apply specifically to the Yakima Basin.
- Municipal water rights have unique attributes and allowances under the Municipal Water Law that are not addressed in this policy. Specific provisions that apply to municipal water rights in regard to mitigation and water banking may be addressed in POL 2030, the Municipal Water Law Policy and Interpretive Statement.

SECTION 1: DEFINITIONS

Donation – A water right enrolled in the TWRP to preserve surface water or groundwater resources without monetary compensation.

- **Permanent Donation** – A donated water right held in the TWRP that has been deeded to Ecology.
- **Temporary Donation** – A donated water right held in the TWRP for a specified non-permanent period of time.

Mitigation for out-of-stream uses – Measures that eliminate impairment to existing rights from a proposed water use, referred to here as "mitigation."

To request accommodation including materials in a format for the visually impaired, call Ecology Water Resources Program at 360-407-6872. People with impaired hearing may call Washington Relay Service at 711. People with speech disability may call TTY at 877-833-6341.

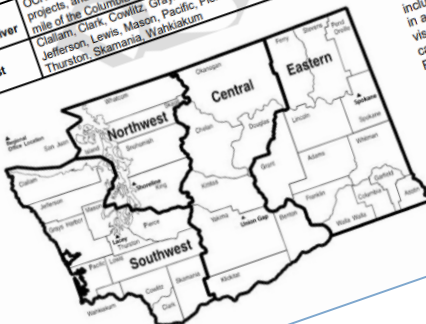
Request to Establish or Modify a Water Bank

Form No. ECY 070-XXX (XX-2021) | Publication 21-11-018
DRAFT FOR 2nd PUBLIC COMMENT

Submit your completed form:

Attach a scanned copy of the completed form and associated report in an email, and send it to the regional office where your proposed water bank intends to operate (see email addresses below); strongly encourage paperless processing, but if you do not have access to email, mail the form to appropriate regional office below.

Region/Office	Counties served	Mailing Address	Phone
Central	Benton, Chelan, Douglas, Kittitas, Klickitat, Okanogan, Yakima	ecycentral@ecy.wa.gov 1250 W Alder St Union Gap, WA 98003	
Eastern	Adams, Asotin, Columbia, Ferry, Franklin, Garfield, Grant, Lincoln, Pend Oreille, Spokane, Stevens, Walla Walla, Whitman	ecycentral@ecy.wa.gov 4601 N Monroe Spokane, WA 99205	
Northwest	Island, King, Kitsap, San Juan, Skagit, Snohomish, Whatcom	ecynw@ecy.wa.gov 15700 Dayton Ave N Shoreline, WA 98133	
Office of Columbia River	OCR has jurisdiction for designated OCR projects, and new projects located within one mile of the Columbia River	ecycentral@ecy.wa.gov 1250 W Alder St Union Gap, WA 98003	
Southwest	Challam, Clark, Cowlitz, Grays Harbor, Jefferson, Lewis, Mason, Pacific, Pierce, Thurston, Skamania, Waukegan	ecysw@ecy.wa.gov PO Box 47775 Olympia, WA 98503	



WATER RESOURCES PROGRAM GUIDANCE

Administering the Trust Water Rights Program

February 2022
Publication 22-11-012 – Draft for comment period

Water Resources Program
Washington State Department of Ecology
Olympia, Washington

Timeline

- 2020 Legislative Session:
 - Ecology's Draft Legislation didn't pass
 - Budget Proviso for Advisory Group passed
- April-July 2020 Advisory Group meetings
- November 2020 Findings informed by Advisory Group
 - Action using existing authority
 - Began drafting trust policy
- August 2021 First comment period
 - Policy, Water Banking Request Form
- February 22, 2022 Start of second comment period
- March 28th, 2022 Second Comment period ends
 - Policy, Request Form, and Guidance (NEW!)

DRAFT Trust water rights policy

Changes from 1st Draft

- Edited language throughout
 - Addressed confusion and removed potential conflicts with statute.
- Donations
 - Specified that donations cannot be used for mitigation.
- Cost Reimbursement
 - Clarified role of cost reimbursement in creating water banks.
- Change Decisions
 - Provided one year after change decision for a water banking agreement before cancelling the change (vs. 6 months w/ possible extension)
- Clarify opportunities for public review, comment, and appeal
- Removed examples that belong in guidance

Updated Trust Water Guidance

- Supporting the trust policy
 - Doesn't address:
 - Yakima Basin specific statutes (RCW 90.38)
 - Municipal water rights - to be addressed in update to municipal water law policy (POL 2030)
- Replacing GUID 1220
 - Effective Date: 2011
- Goal to update regularly
- What's new?
 - Water Banking
 - Example Quit Claim Deed
 - Assigning consumptive use to stream reaches



Updated Trust Water Guidance

Table 1. Steps to Establish a Water Bank

1. Consult	<ul style="list-style-type: none">• Consultation between a prospective banker and Ecology provides an informal opportunity to discuss a water banking request being submitted, or ask questions about a future request.• Consultation is encouraged but not required.
2. Request	<ul style="list-style-type: none">• Prospective banker submits:<ul style="list-style-type: none">• <i>Form: Request to Establish or Modify a Water Bank</i>• Water Right Change Application
3. Evaluate	<ul style="list-style-type: none">• Ecology evaluates the water banking request to determine whether to proceed with establishing a water bank.
4. Negotiate 5. Change/ Transfer	<ul style="list-style-type: none">• These steps occur at the same time:<ul style="list-style-type: none">• Ecology and the water right holder negotiate a water banking agreement that defines the terms and conditions for operation of a bank.• Ecology or a conservancy board processes the water right change/transfer to create a mitigating right.
6. Establish	<ul style="list-style-type: none">• A final water right change/transfer decision is issued by Ecology to provide the mitigating right for the bank.• Ecology and the water right holder execute a water banking agreement.• The water right holder conveys the mitigating right to Ecology by recorded deed.
7. Manage	<ul style="list-style-type: none">• Ecology manages the mitigating right in trust, responds to impairment concerns, and provides reporting of bank information on its website.

Updated Trust Water Guidance

Appendix A. Example Quit Claim Deed

After recording return to:

Trust Water Rights Program
Dept. of Ecology, Water Resources
PO Box 47600, Olympia, WA
98504-7600

DOCUMENT TITLE: Quit Claim Deed – Water Right

GRANTOR: _____

GRANTEE: Washington State Department of Ecology, State Trust
Water Rights Program

LEGAL DESCRIPTION: Instream Flow in the _____ River (or creek; could be multiple connected surface water sources, or could be "Groundwater Preservation in the XXXX Aquifer")

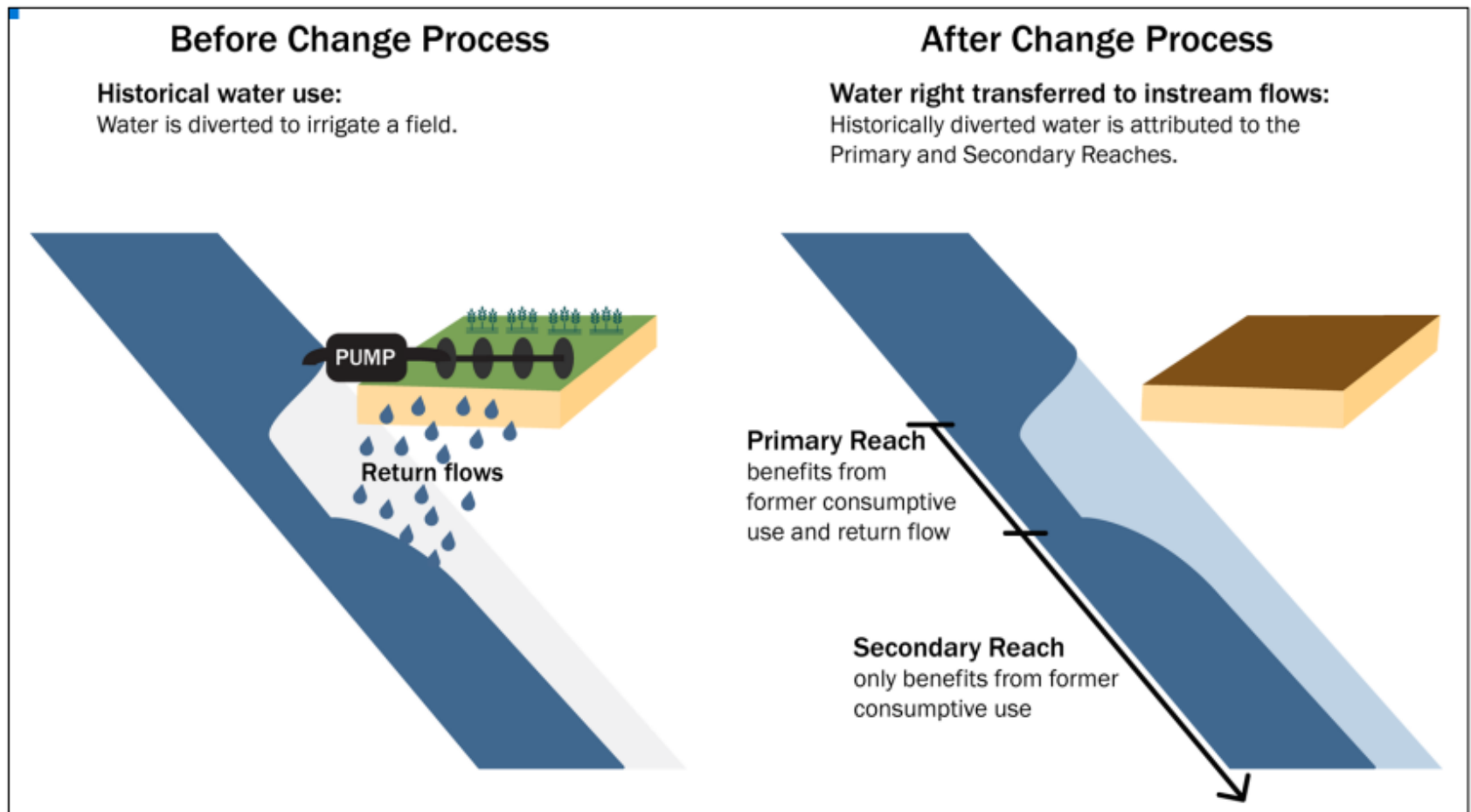
QUIT CLAIM DEED – WATER RIGHT

THE GRANTORS, _____ and _____, for valuable consideration, convey and quit claim to the WASHINGTON STATE DEPARTMENT OF ECOLOGY, STATE TRUST WATER RIGHTS PROGRAM ("Grantee") all of Grantor's right, title and interest in water right Certificate No. XXXXXX, (or a portion of water right No.) described as follows:

XXX cubic feet per second, XXX acre-feet per year (XXX acre-feet per year consumptive), instream in a reach beginning at a point XXX, continuing downstream in the _____ River to its confluence with the _____ River, and continuing downstream to the (next confluence or Pacific Ocean). This instream flow right was established in Change Authorization CXX-XXXXX and was historically appurtenant to real property situated in the County of _____, State of Washington.

Updated Trust Water Guidance

Appendix B. Assigning Quantities to Primary and Secondary Reaches



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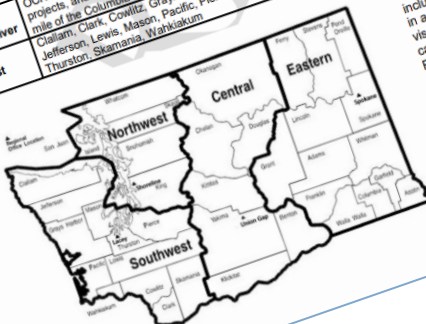
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Eastern	Adams, Asotin, Columbia, Ferry, Franklin, Garfield, Grant, Lincoln, Pend Oreille, Spokane, Stevens, Walla Walla, Whitman	ecycentral@ecy.wa.gov 4601 N Monroe Spokane, WA 99205	
Northwest	Island, King, Kitsap, San Juan, Skagit, Snohomish, Whatcom	ecynw@ecy.wa.gov 15700 Dayton Ave N Shoreline, WA 98133	
Office of Columbia River	OCR has jurisdiction for designated OCR projects, and new projects located within one mile of the Columbia River	ecycentral@ecy.wa.gov 1250 W Alder St Union Gap, WA 98903	
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Publication Summary

Our Ecology website has changed, which can cause broken links.
To report these, please [contact us](#) with the publication and broken link.

TITLE	Draft: Policy and Interpretive Statement Administration of the Statewide Trust Water Rights Program		
DRAFT FOR PUBLIC COMMENT	Comment on this draft		
	Publication number	Date Published	Date Revised
	21-11-017	July 2021	February 2022
VIEW NOW	Draft: Policy and Interpretive Statement Administration of the Statewide Trust Water Rights Program (Number of pages: 8) (Publication Size: 293KB) Note: PDF file for viewing/printing.		
	Trouble viewing? Try these free options. <ul style="list-style-type: none"> • Get the latest Adobe Reader for PDFs. • For Excel or Word viewing get Open Office, Microsoft OneDrive, DropBox Basic or a mobile app at your favorite app store. 		
AUTHOR(S)	Water Resources Program		
DESCRIPTION	Once finalized, this policy will provide transparency and consistency in the Water Resources Program's administration of the Trust Water Rights Program (TWRP). This is the second draft of the policy for comment, based on changes made after the first round of comments.		
NOTES	There are two additional documents out for review and comment. Documents are linked in the 'Related Publications' section. Use the same comment form for all three documents.		
REQUEST A COPY	The mission of the Department of Ecology is to protect, preserve, and enhance Washington's environment. To help us meet that goal, please consider the environment before you print or request a copy. ADA Accessibility The Department of Ecology is committed to providing people with disabilities access to information and services by meeting or exceeding the requirements of the Americans with Disabilities Act (ADA), Section 504 and 508 of the Rehabilitation Act, and Washington State Policy #188. Visit Ecology's website for more information. <ul style="list-style-type: none"> • Water Resources Order Form 		
CONTACT	Kelsey Collins at 509-731-0976 or kelsey.collins@ecy.wa.gov		
KEYWORDS	trust water right, draft, water management, comment period		
RELATED PUBLICATIONS	Title: Draft Form: Request to Establish or Modify a Water Bank Draft guidance: Administering the Trust Water Rights Program		

Summary

- Second Comment period ends March 28th, 2022
 - Trust Policy
 - Water Banking Request Form
 - Trust Guidance (NEW!)
- Thank you!
 - Kelsey.Collins@ecy.wa.gov
 - 509-731-0976

