Draft Trust Policy and Guidance

Kelsey Collins

Statewide Trust Water Coordinator

Water Resources Advisory Committee

March 14, 2022
Draft for Public Comment

Policy and Interpretive Statement
Administration of the Statewide Trust Water Rights Program

Contact: Program Development and Operational Support Section

References:
- Statute: Chapters 90.36, 90.42, and 90.66 RCW; RCW 19.27.097, 90.03.290, 90.03.380, 90.14.140, 90.44.010, 90.44.110, 90.54.020, 90.80.055, 90.80.090
- Administrative Rule: WAC 173-132-060
- 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 banking 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 90.36 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.”
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

<table>
<thead>
<tr>
<th>Step</th>
<th>Description</th>
</tr>
</thead>
<tbody>
<tr>
<td>1. Consult</td>
<td>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.</td>
</tr>
</tbody>
</table>
| 2. Request | Prospective banker submits:  
  - *Form: Request to Establish or Modify a Water Bank*  
  - Water Right Change Application |
| 3. Evaluate | Ecology evaluates the water banking request to determine whether to proceed with establishing a water bank. |
| 4. Negotiate | These steps occur at the same time:  
  - Ecology and the water right holder negotiate a water banking agreement that defines the terms and conditions for operation of the bank.  
  - Ecology or a conservancy board processes the water right change/transfer to create a mitigating right. |
| 5. Change/Transfer | |
| 6. Establish | 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 | 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. XXXX, (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
XXXX-XXXXX and was historically appurtenant to real property situated in the
County of ____________, State of Washington.
Appendix B. Assigning Quantities to Primary and Secondary Reaches

Before Change Process

**Historical water use:**
Water is diverted to irrigate a field.

After Change Process

**Water right transferred to instream flows:**
Historically diverted water is attributed to the Primary and Secondary Reaches.

**Primary Reach**
benefits from former consumptive use and return flow

**Secondary Reach**
only benefits from former consumptive use
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<table>
<thead>
<tr>
<th>TITLE</th>
<th>Draft: Policy and Interpretive Statement Administration of the Statewide Trust Water Rights Program</th>
</tr>
</thead>
<tbody>
<tr>
<td>DRAFT FOR PUBLIC COMMENT</td>
<td><a href="#">Comment on this draft</a></td>
</tr>
<tr>
<td>Publication number</td>
<td>Date Published</td>
</tr>
<tr>
<td>21-11-017</td>
<td>July 2021</td>
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</table>

**VIEW NOW**

Draft: Policy and Interpretive Statement Administration of the Statewide Trust Water Rights Program (Number of pages: 8) (Publication Size: 253KB)

Notes: PDF file for viewing/printing.

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<table>
<thead>
<tr>
<th>AUTHOR(S)</th>
<th>Water Resources Program</th>
</tr>
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<tbody>
<tr>
<td>DESCRIPTION</td>
<td>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.</td>
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<tr>
<td>NOTES</td>
<td>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.</td>
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**CONTACT**

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**KEYWORDS**

trust water right, draft, water management, comment period

**RELATED PUBLICATIONS**

- 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!
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  • 509-731-0976