

# Orientation: Current Banking Work

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**Implementation of  
the water banking  
grant pilot**

You just heard about  
this from Robin

**Development of  
legislative  
recommendations**

**\*Today's discussion\***

**Adoption of a  
policy &  
interpretive  
statement**

September WRAC

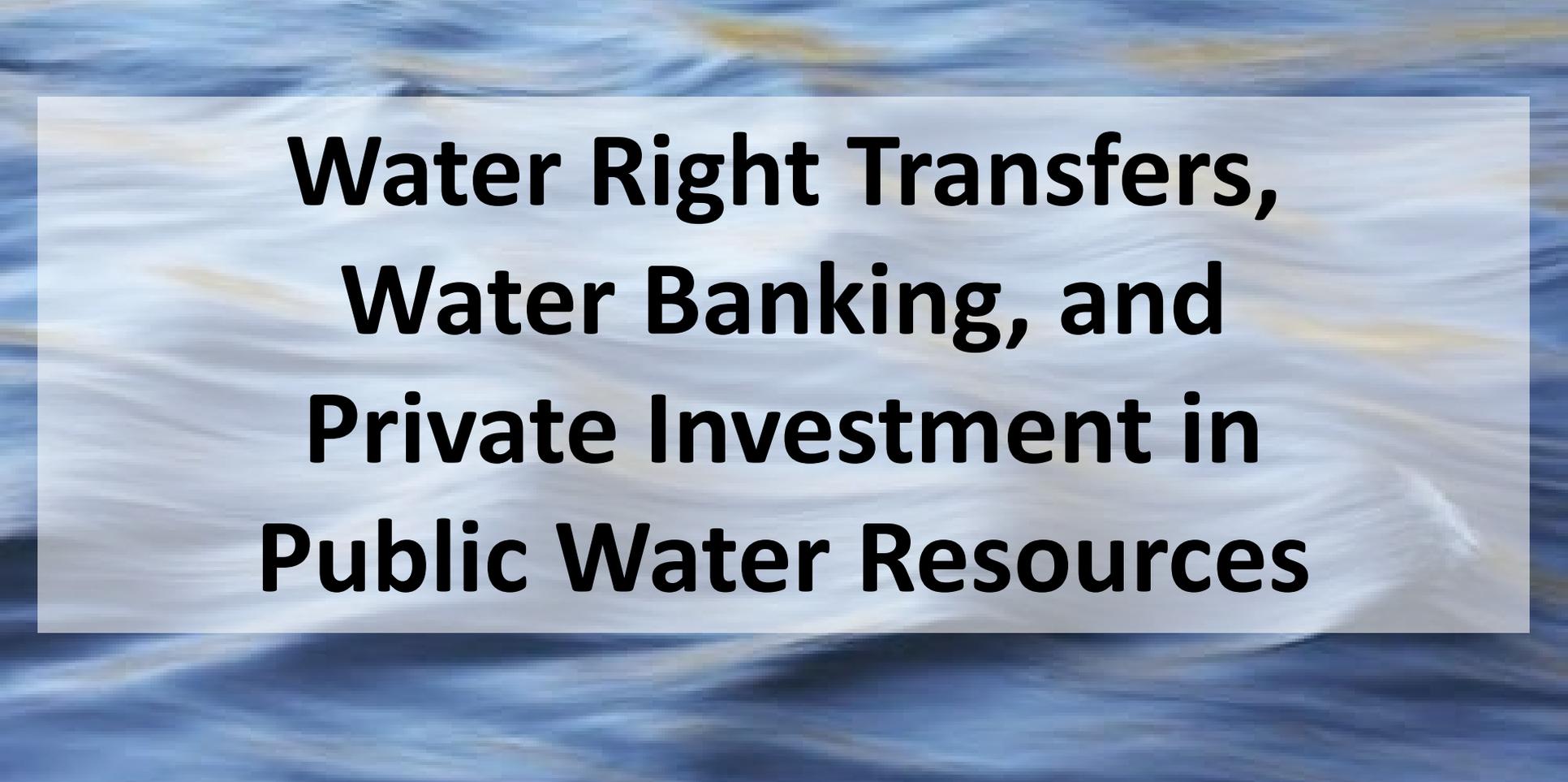


# Draft Policy on the TWRP

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- Published a draft policy on the *Administration of the Statewide Trust Water Rights Program*.
- Purpose of the policy is to provide transparency and consistency in the administration of the TWRP.
- Process:
  - WRAC discussion on **Sept 13**.
  - Accepting written comments through **Sept 19**.
  - Targeting final adoption in late **Fall 2021**.





# **Water Right Transfers, Water Banking, and Private Investment in Public Water Resources**



WRAC Meeting  
August 9, 2021

# Today's Agenda

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1. Introduction and background
2. Discussion questions
3. Wrap up and next steps



# Legislative Recommendations

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**Sec 302(31)(b):** The department must build off its work ...to refine recommendations on **improving the state's framework for water banking, water trust, and water right transfers**. Recommendations should address issues of private investment in water banking and the merits of incentives and regulations pertaining to the out-of-basin transfer of water rights.

In refining its recommendations, the department shall **consult with tribes** and **consider input from stakeholders** with expertise in water banking.

- Update to the Legislature by Dec 31, 2021.
- Report to the Legislature by Dec 31, 2022.



# Today's Objectives

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- Remind everyone of the work we've undergone thus far.
- Provide a forum to give Ecology feedback on potential policy recommendations for the Legislature.





# BACKGROUND



# Water Right Transfers

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**RCW 90.03.250:** Any person, municipal corporation, firm, irrigation district, association, corporation or water users' association hereafter desiring to appropriate water for a beneficial use shall make an application to the department for a permit to make such appropriation

**RCW 90.03.380:** (1) The right to the use of water which has been applied to a beneficial use in the state shall be and remain appurtenant to the land or place upon which the same is used: PROVIDED, HOWEVER, That the right may be transferred to another or to others and become appurtenant to any other land or place of use without loss of priority of right theretofore established if such change can be made without detriment or injury to existing rights.

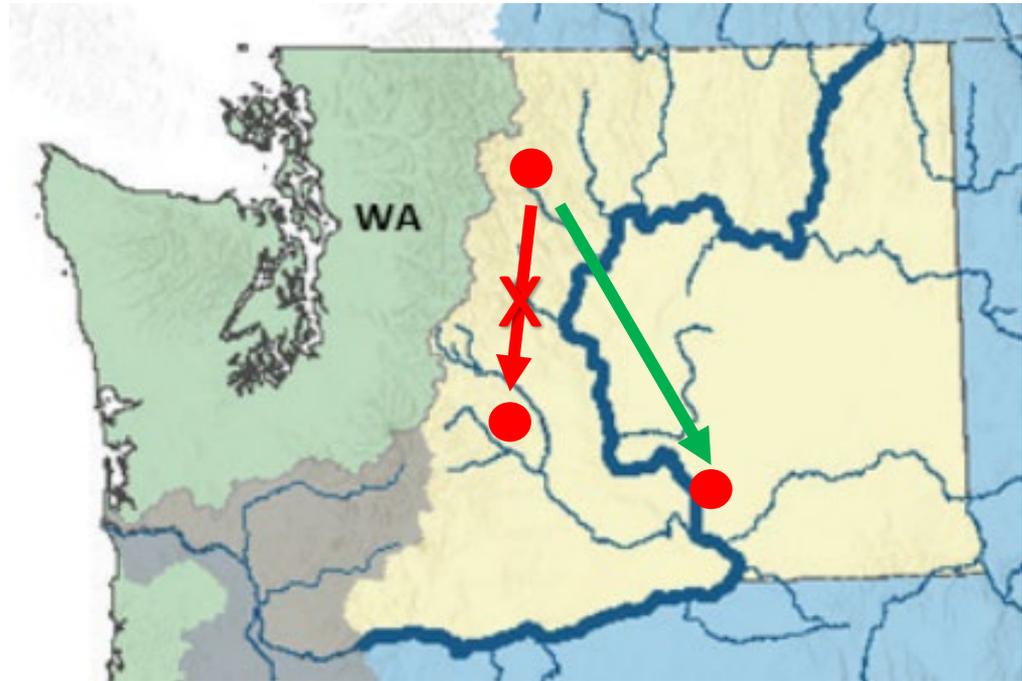
- **Part of the initial adoption of the water code in 1917.**



# Out-of-Basin Transfers

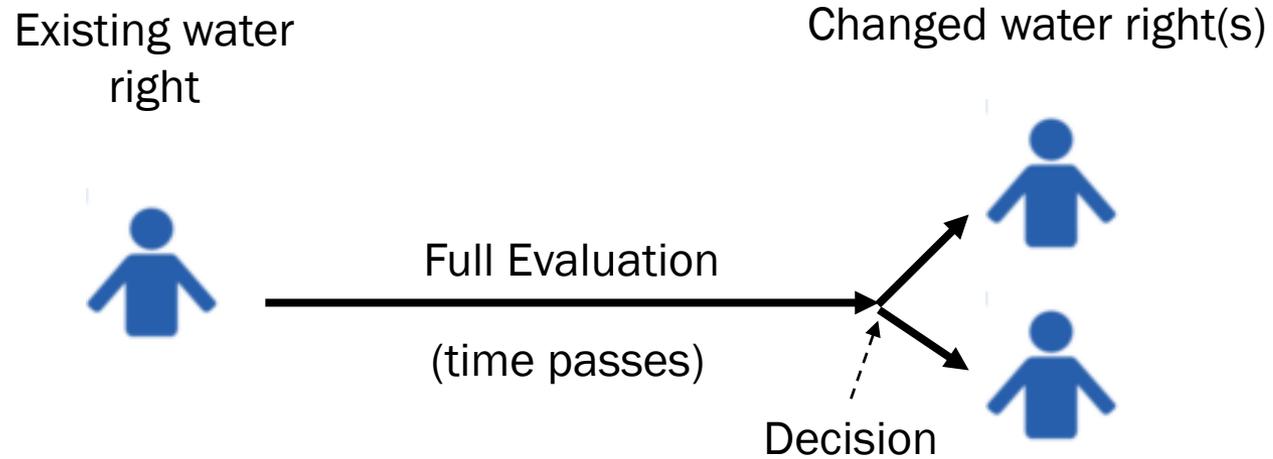
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- Changing the place of use (or point of diversion) from one WRIA to another downstream WRIA
- NOT the same as “inter-basin” transfer
- Transferring a water right is not the same as piping water from one location to another



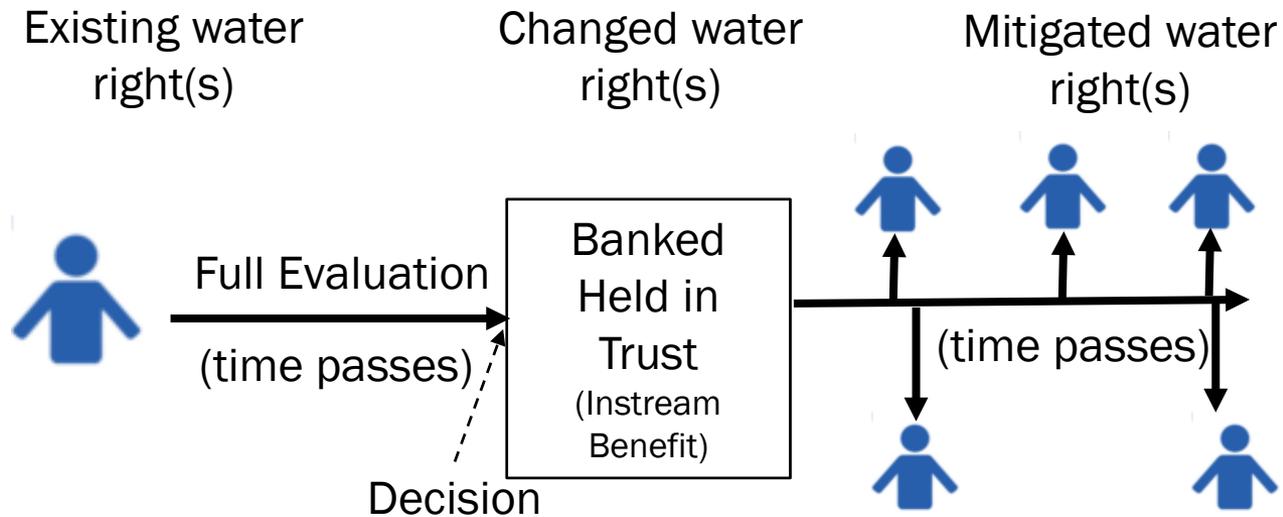
# Transfers Without Banking

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# Transfers Using State Trust (Water Banking)

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# Background Summary

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- All waters (surface and ground water) belong to the public.
- Private entities can obtain a permit to use public waters.
- Water rights can be transferred to other users if there is no impairment to existing water rights.
- Downstream transfers of water rights generally INCREASE streamflows for the affected reach
- Trust water rights allow water right holders to “stay” relinquishment to encourage ISF benefits and discourage waste.
- Water banks facilitate reallocation of existing rights so that new users have better access to water without increasing overall demand with at least a short-term streamflow benefit.



# QUESTIONS?





**BREAK**





# DISCUSSION

- Do you think the possible recommendation is good policy?
- If not, what policy would you recommend instead?

# Out-of-Basin Transfers

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## *Driving concern:*

Downstream, out-of-basin transfers permanently move water rights out of the basin-of-origin, thereby reducing economic opportunity and negatively impacting the local community.

## *Findings:*

- 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.

# Out-of-Basin Transfers

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## *Potential Legislative Recommendations:*

1. Fund continuance of the water banking pilot grant program as a mechanism to incentivize water rights remaining in a basin. Change details of the program based upon results and learnings in 2021/23.
2. Require that before the place of use of a water right may be transferred downstream out-of-basin, Ecology must determine that the change will not be detrimental to the public interest.

# Water Right Sales

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## *Driving concern:*

Out-of-state actors can buy Washington water rights for speculative purposes, sometimes with little public knowledge.

## *Findings:*

- While notice requirements for water right transfers may be 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.

# Water Right Sales

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## *Potential Legislative Recommendation:*

- Align disclosure laws for water right sales with the laws for land sales. Require that water right sales (including prices) are reported to the state and made publicly available. This could be achieved through a pilot program or a permanent statute change.

# Trust Water & Water Banking

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## *Driving concern:*

Flexibility of the TWRP enables speculation in water rights in a way that promotes private profit over public benefit. Water banks are being used in ways that benefit private interests at a detriment to public interests.

## *Ecology's Findings from the Advisory Group Process:*

- 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.
- Water banks play a critical role in reallocating water between beneficial uses. However, 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.

# Trust Water & Water Banking

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## *Potential Legislative Recommendation:*

- Provide legislative clarity around water banks and the public interest. This could look like strengthening the standard that banks not be detrimental to the public interest, or further defining objectives of the public interest.

# Next Steps

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Task	Estimated Timeframe
Solicit input on the problem statement & potential statutory changes. <ul style="list-style-type: none"><li>• WRAC 2-hour discussion <b>August 9</b></li></ul>	July 1 – Aug 15
Internally develop draft concepts paper on statutory changes	Aug 15 – Sept 15
Share the draft concepts paper with tribes & stakeholders <ul style="list-style-type: none"><li>• WRAC 2-hour discussion <b>October 10</b></li><li>• Follow-up meetings to discuss content</li><li>• 30 day period for accepting written comments</li></ul>	Sept 15 – Oct 15
Finalize policy concepts. Share final version externally	Oct 15 – Nov 10
Present update at Legislative Assembly Days	Nov 15 – 19

\* Standing offer for G-to-G and meetings with tribes to continue the discussion

# Any Further Thoughts?

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- We're here to listen.
- Is there anything we haven't yet discussed that you would like to raise?



# Thank You!

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[Dave.Christensen@ecy.wa.gov](mailto:Dave.Christensen@ecy.wa.gov)

[Carrie.Sessions@ecy.wa.gov](mailto:Carrie.Sessions@ecy.wa.gov)