Orientation: Current Banking Work

- Implementation of the water banking grant pilot
- Development of legislative recommendations
- Adoption of a policy & interpretive statement

*Today’s discussion*

You just heard about this from Robin

September WRAC
Draft Policy on the TWRP

• 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

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

• 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

**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

- 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

Existing water right

Full Evaluation
(time passes)

Decision

Changed water right(s)
Transfers Using State Trust (Water Banking)

Existing water right(s) → Full Evaluation → Decision →
(Independently or through a Full Evaluation)

Changed water right(s) → Banked Held in Trust (Instream Benefit)

Mitigated water right(s)
Background Summary

• 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

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

**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

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.
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.
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.
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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<th>Task</th>
<th>Estimated Timeframe</th>
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<td>Solicit input on the problem statement &amp; potential statutory changes.</td>
<td>July 1 – Aug 15</td>
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<td>• WRAC 2-hour discussion August 9</td>
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<td>Internally develop draft concepts paper on statutory changes</td>
<td>Aug 15 – Sept 15</td>
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<td>Share the draft concepts paper with tribes &amp; stakeholders</td>
<td>Sept 15 – Oct 15</td>
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<td>• WRAC 2-hour discussion October 10</td>
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<td>• Follow-up meetings to discuss content</td>
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<td>• 30 day period for accepting written comments</td>
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<tr>
<td>Finalize policy concepts. Share final version externally</td>
<td>Oct 15 – Nov 10</td>
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<tr>
<td>Present update at Legislative Assembly Days</td>
<td>Nov 15 – 19</td>
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* Standing offer for G-to-G and meetings with tribes to continue the discussion
Any Further Thoughts?

• We’re here to listen.
• Is there anything we haven’t yet discussed that you would like to raise?
Thank You!

Dave.Christensen@ecy.wa.gov
Carrie.Sessions@ecy.wa.gov