

Are water banks effective?

- Short Answer - yes!
- Long Answer - A qualified yes.
 - See Ecology's Water Right Transfer, Water Banking and Trust Legislative Report, December 2022.
 - Need more transparency (see Request form).
 - Need to reduce complexity of process.
 - Consider public interest test in surface right changes.

Negotiation Considerations

- Must deed rights to Ecology - difficult for water rights holders to grapple with this.
- Different buyers will have different diligence and financing considerations.
- Unforeseen contingencies - floods/droughts, uneven demand.
- Variable assumptions about the value of water rights.
- Educating up the chain - convincing corporate boards that water banks are good investments.

5 Mitigation Permits

- Most water banks require new users to file new applications for Mitigated Permit.
- Reviewed on a case-by-case basis.
- Suitability maps from original "no net loss" studies.
- Bank application can provide support.
- Subject to public notice and SEPA review.

4 Superceding Certificate

If Ecology determines that no other water rights will be impaired, it issues a superceding certificate reflecting the changes in purpose and place of use.

3 Trust Water Application

Trust Water Application

2 Cost Reimbursement Process

Costs to various energy operations associated with water banking systems, a water bank's operating costs, and the cost of the water right itself.

1 Creating a Water Bank

Trust Water Application

- Water rights holder files out an "Application to Create a Water Right" in the Trust Water Right Program.
- Prospective bank must discuss the overall plan and intent for the new bank.
- Ecology determines whether to proceed.
- If approved by permit, application allows the water right to be posted for public comment for at least 30 days.

Water Banking in Washington State

Trust Water Rights Program

Alyssa Moir, K&L Gates

Case Study

Water Banks Serve Changing Needs:
Creating multiple benefits for the local and neighboring communities



Water Banking - established statewide in 2009 under chapter 90.42 RCW



Legal Framework

- Trust Water Right Program (TWRP) - created by the Water Resource Management Act, 1991 (Chap. 90.42 RCW)
 - Allows a water right holder to avoid relinquishment by getting a water right out of trust and selling it.
 - Benefits streamflows and groundwater recharge.
 - Retains original priority date.
 - Can be converted to fee-simple via duration, lease purchase or "other appropriate means", which is the best used to create water banks. RCW 90.42.080.

An aerial photograph of a river valley, showing a winding river and surrounding green fields. The image is partially obscured by a large, semi-transparent blue shape that frames the text. The text is white and centered on the blue background.

Water Banking in Washington State

Trust Water Rights Program

Alyssa Moir, K&L Gates

Water Banks Serve Changing Needs:

Creating multiple benefits for the local and neighboring communities

Farming reliability is enhanced



Fish benefit from increased instream flow



Communities can plan for long-term municipal growth



Mitigation rights can offset rural domestic use or changes in industry needs



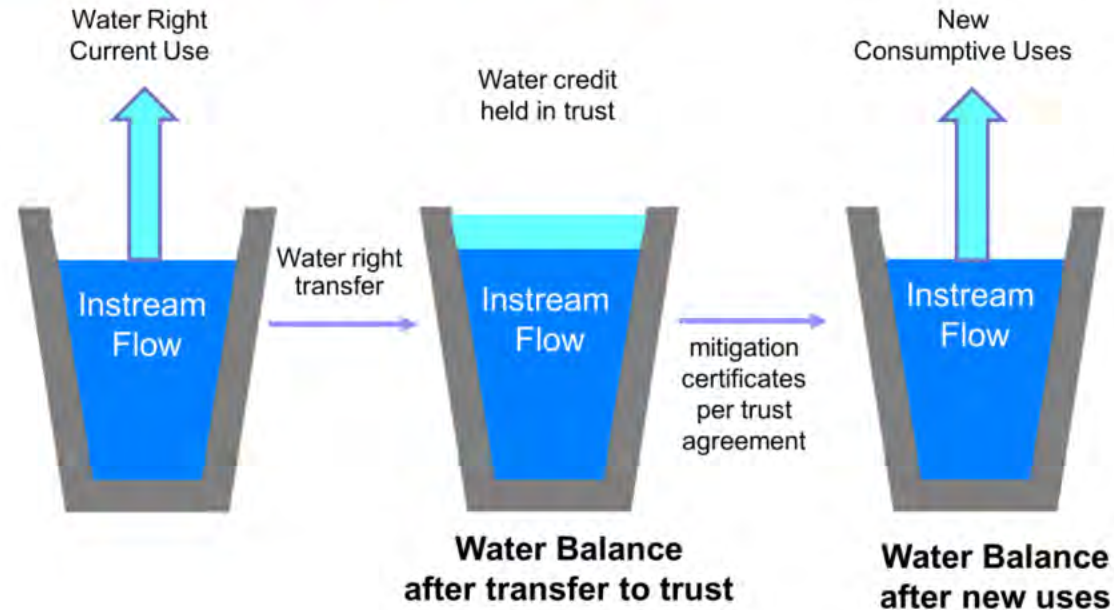
Legal Framework

- **Trust Water Right Program (TWRP)** - created by the Water Resource Management Act, 1991 (Chap. 90.42 RCW)
 - Allows a water right holder to avoid relinquishment by putting a water right into trust and ceasing use.
 - Benefits streamflows and groundwater recharge.
 - Retains original priority date.
 - Can be conveyed to Ecology via donation, lease, purchase or "**other appropriate means,**" which is the tool used to create water banks. RCW 90.42.080.

Water Banking - established statewide in 2009 under chapter 90.42 RCW

K&L GATES

Basic Water Bank Concept



1

Creating a Water Bank

Trust Water Application

- Water rights holder fills out an "Application to Enter a Water Right into the Trust Water Right Program;"
- Prospective banker must describe the overall plan and intent for the new bank;
- Ecology determines whether to proceed;
- If approved to proceed, Application serves as public notice to be posted for public comment for at least 30 days.

2

Cost-Reimbursement Process

- Used to process change applications associated with water banking requests (not the request review or document negotiation)
- A certified consultant drafts a Report of Examination (ROE):
 - a tentative determination of extent and vailidity;
 - confirm that the use of the water right as mitigation will not impair existing water rights.
- ROE is submitted for Ecology's review and approval.



3

Trust Water Agreement

TWA between Ecology and the water rights holder outlines:

- how and where the mitigation water can be used;
- monitoring and reporting requirements for the banker.

Final TWA requires public notice and SEPA review.



4

Superseding Certificate

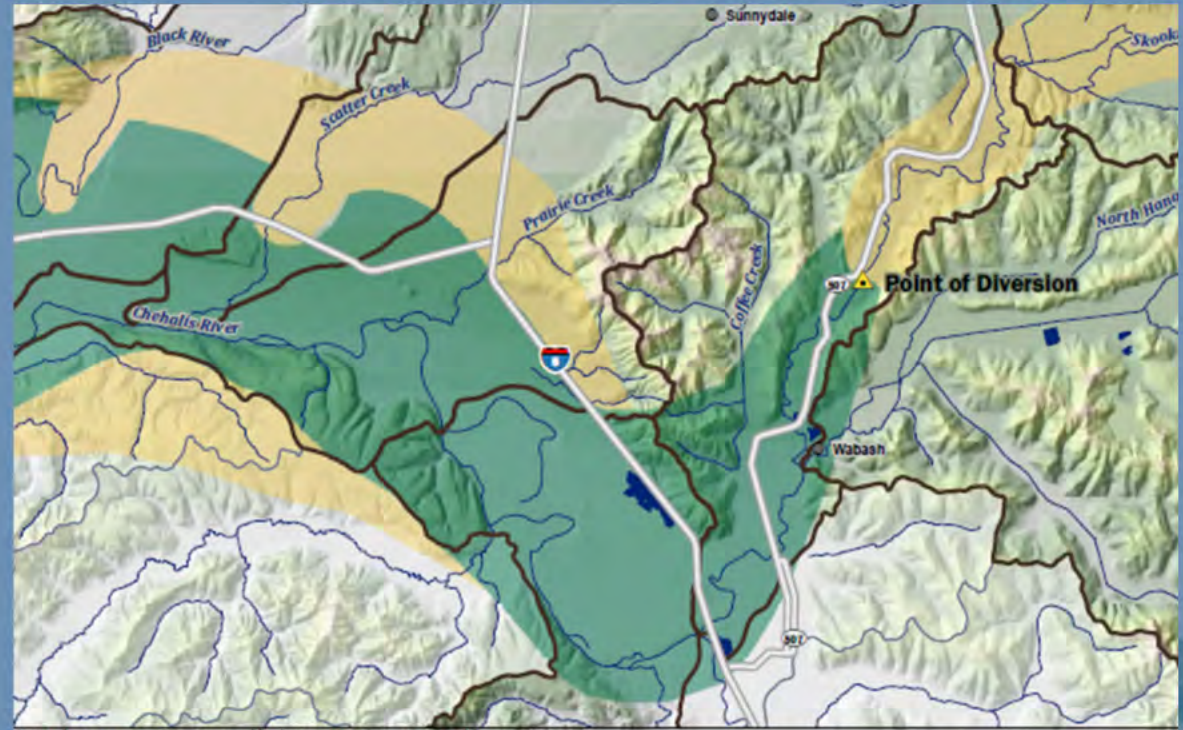
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Mitigation Permits

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- Reviewed on a case-by-case basis.
- Suitability map from original bank application can provide support.
- Subject to public notice and SEPA review.



Negotiation Considerations

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- Different buyers will have different diligence and financing considerations.
- Unforeseen contingencies - floods/droughts, eminent domain.
- Variable assumptions about the value of water rights.
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