

# Bringing New Land Into Cultivation

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# Trust Water Right Program (TWRP)– Protection from Relinquishment

- Chapter 90.42 RCW establishes and governs the Statewide TWRP.
- Water rights held in TWRP are not subject to relinquishment
  - RCW 90.14.140(2)(h)
- A trust water right is established when Ecology agrees to hold a water right in the TWRP. A change under RCW 90.03.380 or RCW 90.44.100 is not required to enter the TWRP. Specific TWRP form required.
- Water rights held temporarily in Trust does not constitute an extent and validity of the water right.

# Odessa Subarea Conservation Relinquishment Exception Program Protection from Relinquishment

- Chapter 90.44.520 RCW establishes and governs the Odessa Groundwater Subarea – Involuntary nonuse of water rights
  - Expired on July 1, 2021.

(2)(a) A water right holder choosing to not exercise a water right in accordance with the provisions of this section must provide notice to the department in writing within one hundred eighty days of such choice. The notice shall include the name of the water right holder and the number of the permit, certificate, or claim.

(b) When a water right holder chooses to discontinue nonuse under the provisions of this section, notice of such action must be provided to the department in writing. Notice is not required under this subsection (2)(b) for seasonal fluctuations in use if the right is not fully exercised as reflected in the notice provided under (a) of this subsection.

- Ecology Interpretation - Water rights in Odessa Reserve had to be filed prior to date and only applies to excuse nonuse of water that occurred after the date the statute became effective (March 22, 2006).



The image shows a form titled "Odessa Subarea Conservation Relinquishment Exception Form" with the Ecology logo. The form includes fields for "Today's date", "Name", "Address", and "Phone". It also contains a section for "Water Right No." and a "Please check which one applies" section with two checkboxes: "I have temporarily ceased exercising all or a part of the above water right to withdraw groundwater from the Odessa Ground Water Management Subarea" and "I have (temporarily) fully exercised the above water right to withdraw groundwater from the Odessa Ground Water Management Subarea".

# RCW 90.03.390 – Seasonal Change

- **Temporary changes—Emergency interties—Rotation in use.**
- RCW 90.03.380 shall not be construed to prevent water users from making a seasonal or temporary change of point of diversion or place of use of water when such change can be made without detriment to existing rights, but in no case shall such change be made without the permission of the water master of the district in which such proposed change is located, or of the department. Nor shall RCW 90.03.380 be construed to prevent construction of emergency interties between public water systems to permit exchange of water during short-term emergency situations, or rotation in the use of water for bringing about a more economical use of the available supply, provided however, that the department of health in consultation with the department of ecology shall adopt rules or develop written guidelines setting forth standards for determining when a short-term emergency exists and the circumstances in which emergency interties are permitted. The rules or guidelines shall be consistent with the procedures established in RCW 43.83B.400 through 43.83B.420. Water users owning lands to which water rights are attached may rotate in the use of water to which they are collectively entitled, or an individual water user having lands to which are attached water rights of a different priority, may in like manner rotate in use when such rotation can be made without detriment to other existing water rights, and has the approval of the water master or department

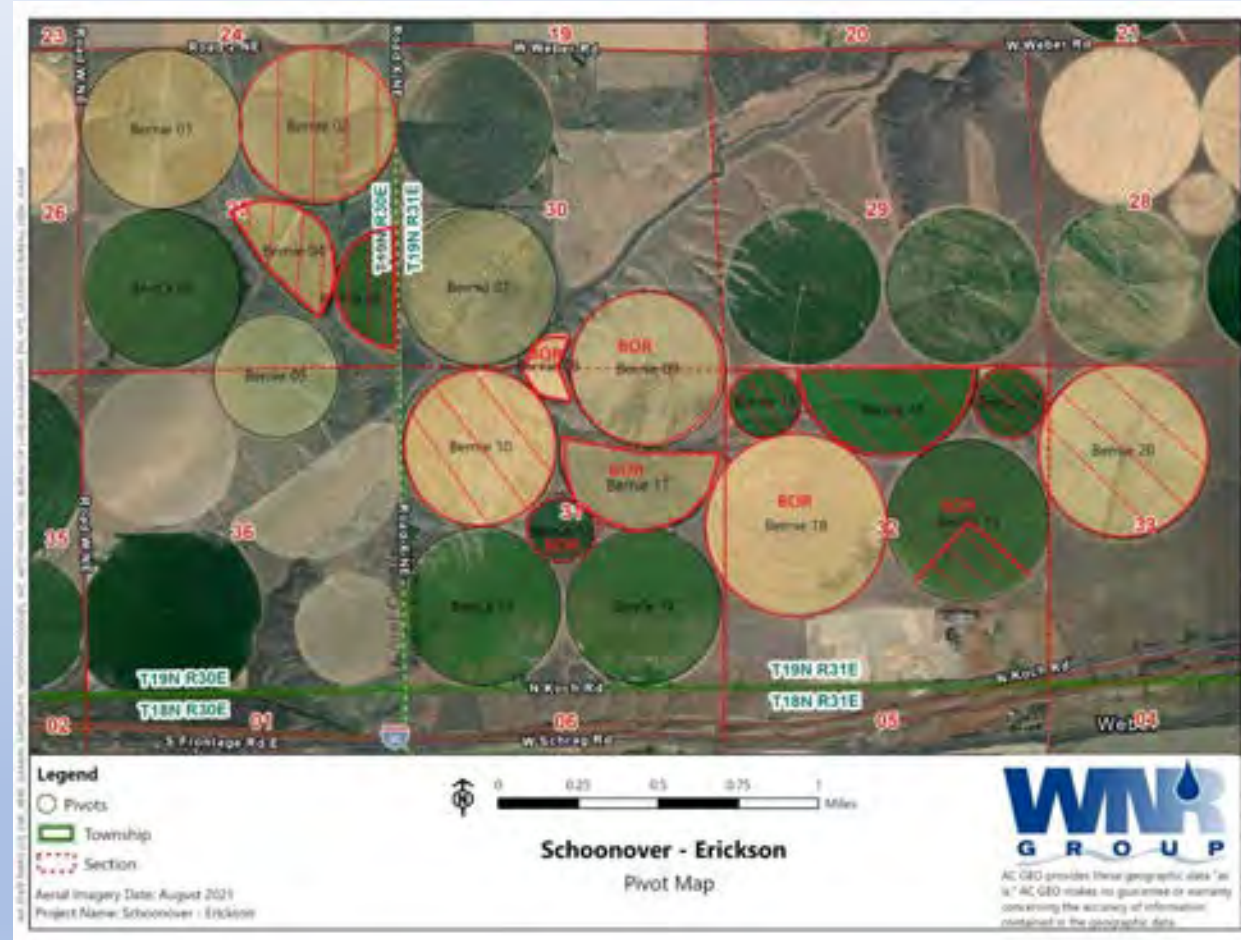
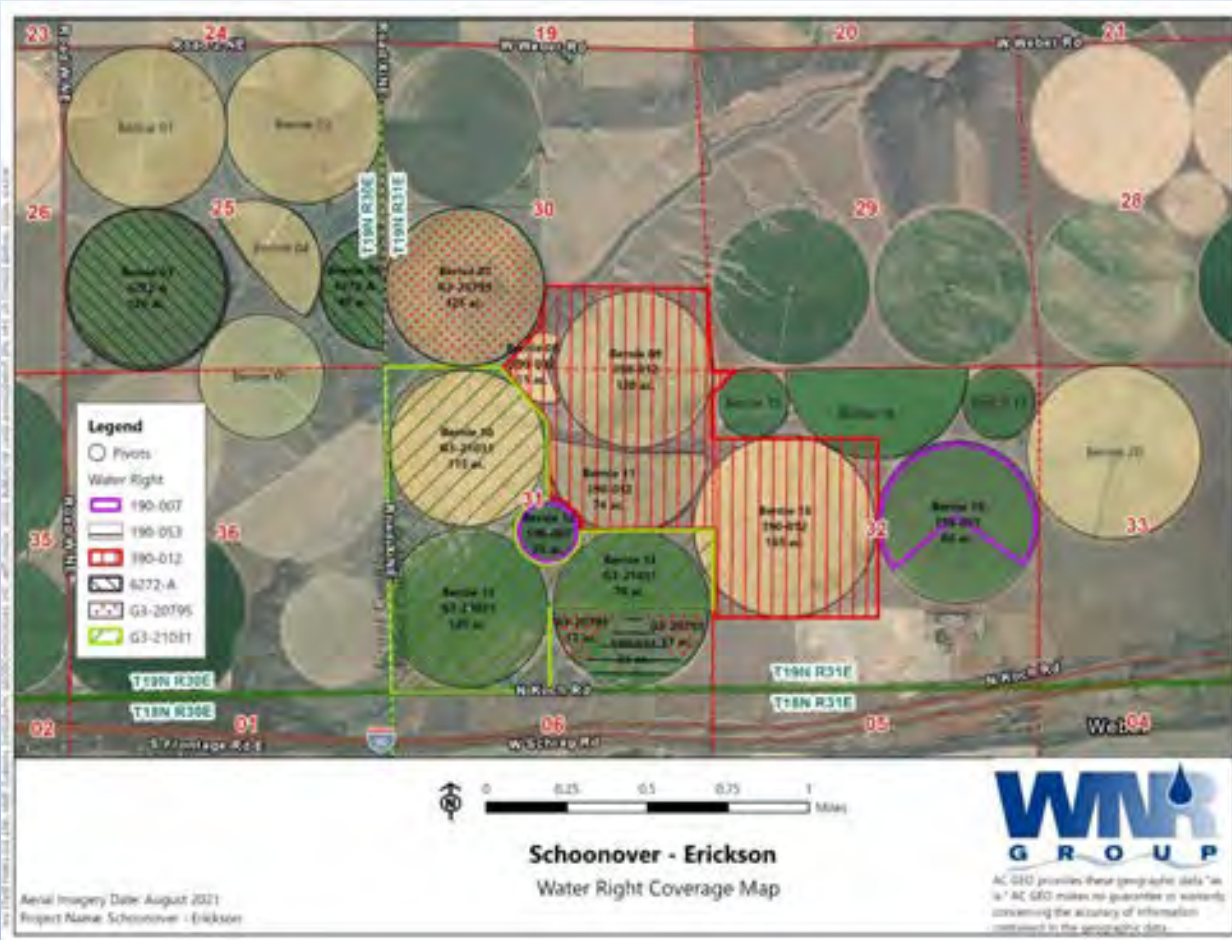
# Seasonal Changes (RCW 90.03.390)

- Allows irrigator to seasonally change all or a portion of the irrigation water right to lands not currently authorized under the existing certificate.
- Used as a tool for crop-rotation farming.
- Acre for acre transfer (or less). Must be valid acres that have historically been irrigated.
- Water source must be same body of water and not cause impairment to other water users.
- Metering requirements attached to seasonal transfer.
- If water source (GW well) not an existing authorized POW, must be advertised. Otherwise, no advertisement required.
- Due on February 15 of each year (ERO)
- Approved until end of the irrigation season, at which time it will automatically revert back to its original POU on certificate.





# Seasonal Changes (RCW 90.03.390)



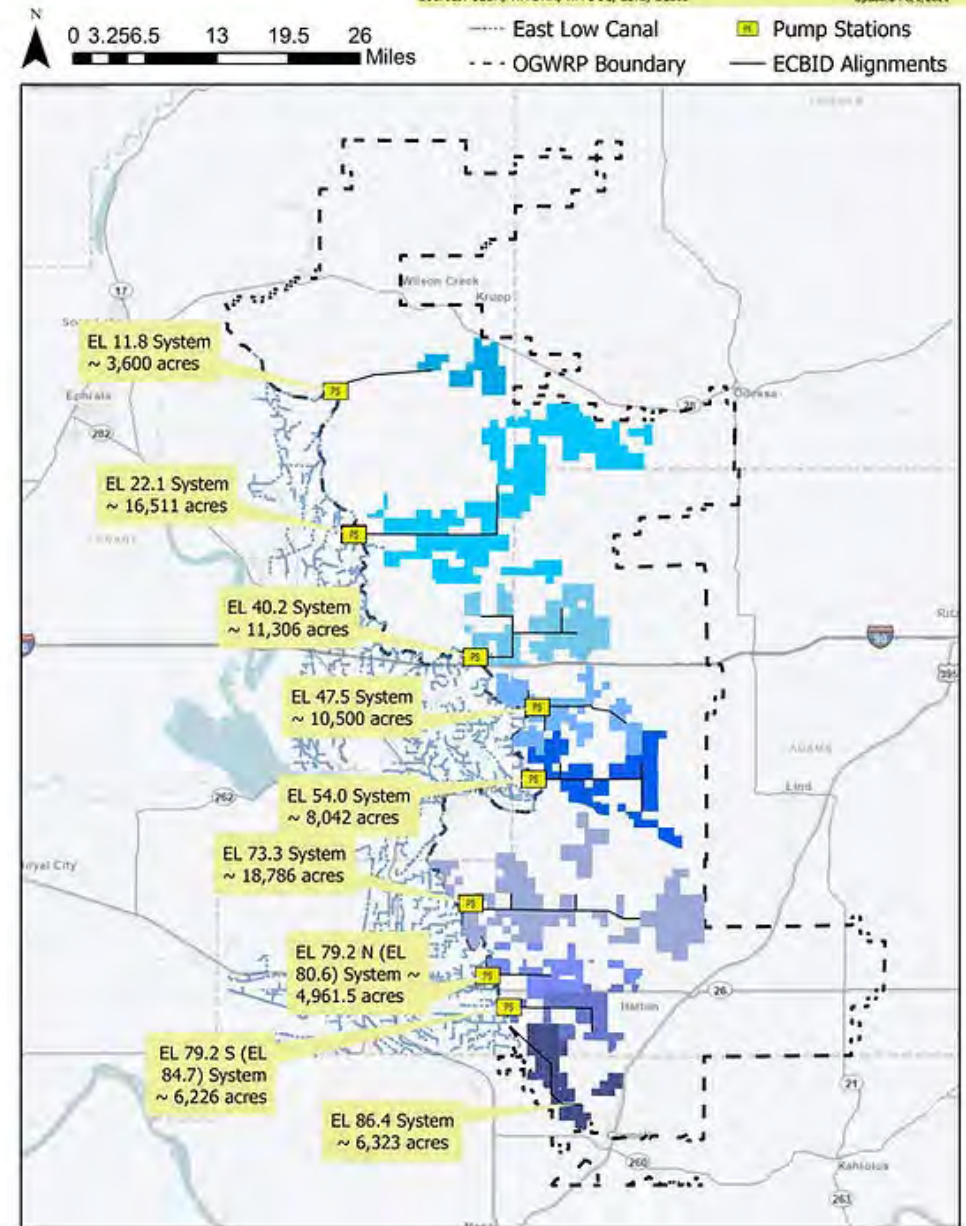
# Odessa Groundwater Replacement Program (OGWRP)

- Implemented to design and construct the infrastructure needed to deliver the Columbia Basin Project water to an additional 65,000+ acres of irrigation.
- Developed to attempt to save the vitally important resource of agricultural production and to mitigate the groundwater declines of up 10 ft per year from the Basalt Aquifers used for irrigation in the Odessa Management area. (173-130A-060: The rate of decline in the water level will be limited to a total amount of thirty feet in three consecutive years.)
- Includes the construction of numerous lateral delivery systems to convey water from the East Low Canal to lands that are eligible



# OGWRP Eligibility

- Eligibility for participation in OGWRP include:
  - Lands that are within the boundaries of the federally managed Columbia River Basin Project
  - Lands that are in the Odessa Special Study Area (OSSA, FEIS 2012).
    - Later altered to include all GW rights within the Odessa Subarea to be transferred into the OSSA
  - Lands that have a valid state-issued groundwater right.
  - Landowners must be able to enter into a water service contract.



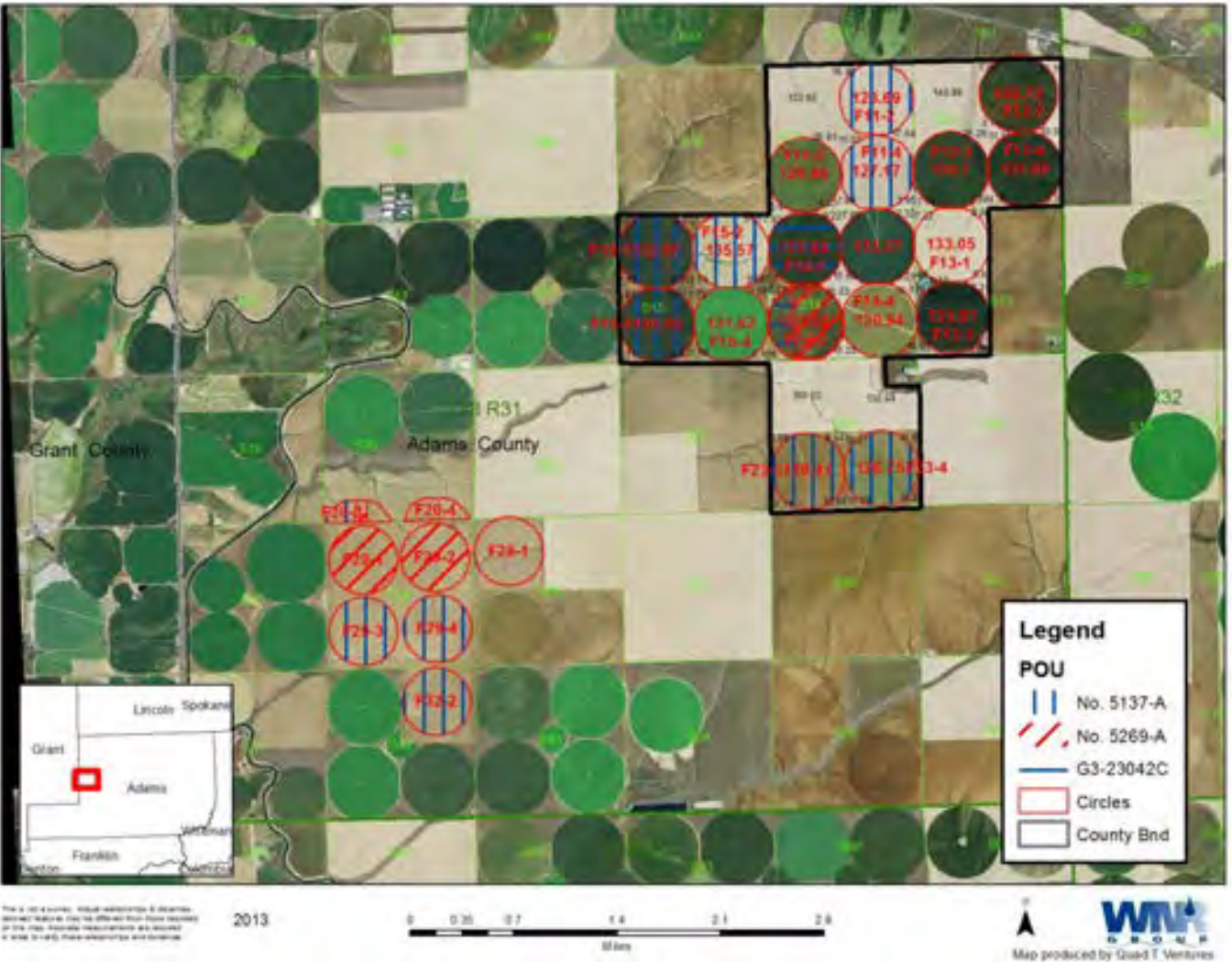


# OGWRP Eligibility

- Must have an existing groundwater right to be exchanged to a District (ECBID, CBCD) surface water service contract (WSC)
- RCW 90.44.510 – Ecology “shall issue a superseding water right permit or certificate for a groundwater right where the source of water is an aquifer for which the department adopts rules establishing a groundwater management subarea and water from the federal Columbia Basin project is delivered for use by a person who holds such a groundwater right...
  - Acre for acre transfer (no quantification of water duty)
    - Allowable acres for transfer is amount of acres irrigated in the last 5 years, **or within 5 years prior to 2006, the date of when RCW 90.44.520 was adopted, if placed in Odessa Reserve.**
  - Acres transferred allowed 3 ft per acre water duty on all transferred certificates.
  - **Lands can be that upon which the existing GW right is appurtenant (if within a proposed/designed delivery lateral) or a valid Basalt GW right from the Odessa management area transferred into the new lateral delivery area.**
  - For transferred Water Rights - New ground irrigated under OGWRP for proposed change to rights must have been previously tilled.



# Local & Regional Changes





# OGWRP – WATER RIGHTS

- Permanent change is conducted by Ecology, which then notifies/coordinates with District to let them know of approved acreage available for issuance of a OGWRP Water Service Contract (WSC).
- Once a WSC is signed with the District –
  - No actions if used at original authorized acreage under the WSC.
  - Seasonal Changes can be made to new lands outside the WSC, if the new lands are served by the same lateral turnout as the original WSC.
    - Acre for acre transfer
    - Acres transferred allowed 3 ft per acre water duty.
    - For seasonal transfer - New ground irrigated under OGWRP for seasonally changed rights must have been previously tilled.
    - Reverts back to original WSC place after irrigation season.



# Acre Expansion Program (AEP) – Odessa WAC 173-130A-200 (Odessa Groundwater Subarea Management Policy)

**(1) Water right certificate holders who wish to expand their authorized irrigated acreage while not increasing actual historic withdrawal rates in gallons per minute or acre feet per year, within the maximum limits of their water right, may submit a request in writing to the department at least four months prior to initiation of irrigation. Such request shall include documentation substantiating actual quantities applied to a beneficial use within authorized acreage for a minimum of the three previous consecutive irrigation seasons.**

**(2) The acreage expansion, if authorized, will allow the certificate holder to apply the average of the quantity of water beneficially used during the past three consecutive years to more land.**

(3) Where the acreage expansion program is continuous from year to year, the initial documentation of beneficial use of water shall apply to each subsequent year.

(4) New wells will not be permitted to be drilled as part of this program. Every well authorized for use under this program must be equipped with an accurately operating flow meter before acreage expansion can be implemented.

(5) By December 31 of each year, the water user shall submit in writing to the department a statement of the total water used, in acre feet, under the acreage expansion program for the completed irrigation season.

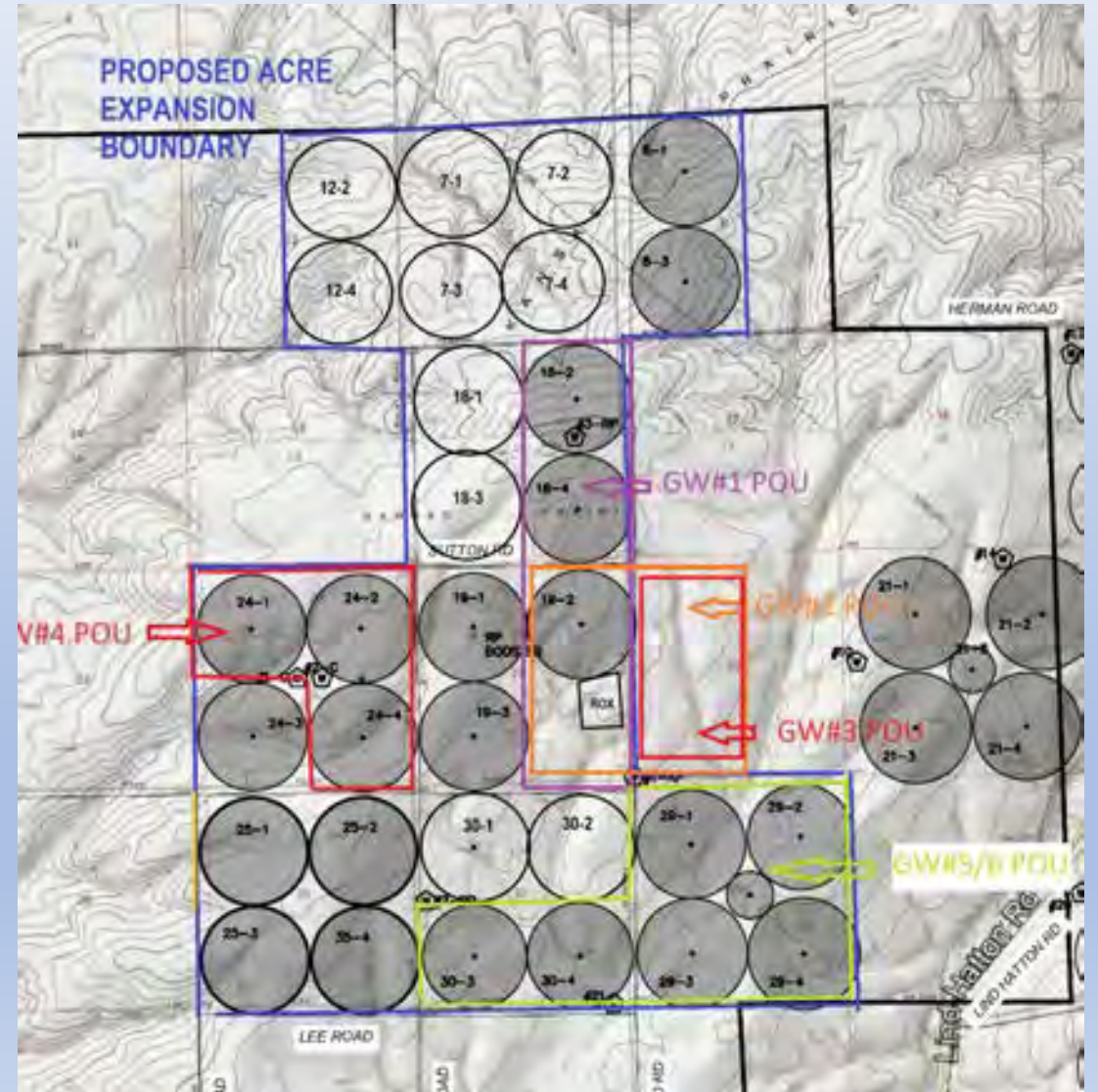
(6) The acreage expansion program will be administered as a temporary change through an annual letter of authorization. No permanent amendment or change in any water right certificate shall be issued as part of this program.





# Acre Expansion Program (AEP) – Example

- Six Original GW Certs (1 standalone, 3 provisioned to each other, and two stacked/supplemental)
- Allowed for: (3072 total acres)
  - #1: 3000 gpm, 1719 AF, 390 acres
  - #2: 495 gpm, 384 AF, 484 acres
  - #3: 820 gpm, 422 AF, 474 acres
  - #4: 635 gpm, 125 AF, 254 acres
  - Total use under #2,#3,#4 not to exceed 1950 gpm, 931 AF, 728 acres
  - #5/#6: 1900 gpm, 1855 AF, 742 acres
- Approved for:
  - 6850 gpm, 3,962.3 AF, 3991 acres



# MITIGATED WATER RIGHTS

Issuance of a new water right permit from Ecology that is mitigated for instream flows by a senior water right

- Application is submitted to Ecology
- Data is required to determine how much (in acre-feet of cfs) will be required for mitigation to an instream flow if the new permit is approved at the new point of withdrawal.
- Must have water right that is senior to the instream flow rule for mitigation.
  
- For Surface Water
  - 1:1 mitigation, so not an applicable process;
- Used for new requested groundwater permits in a “closed” basin.
  - Some modeling must be done to determine how much (quantity) of impact will occur to the regulated river if the new permit is issued for groundwater.
  - Estimated impact for the set flow rate, throughout year, or partial year if flow or use is not continuous.
  - Quantity of required mitigated water is directly dependent upon the quantity of water requested in the new permit, pumping rates, distance from the surface water body, and the hydrogeological characteristics of the aquifer.







# Purchase & Sale Agreements (PSA) at Closing

## Purchase and Sale Agreements for Water Rights

- Purchase Price is based on a value per acre foot of total or consumptively used water.
  - Needs to be called out in PSA
- PSA calls out existing water right number and attributes, existing and proposed place of use, and the PSA outlines contingency of Ecology authorizing new place of use.
- PSA should have agreement on who will be responsible for Extent & Validity costs, change application fees and related costs, professional expertise costs (e.g. hydrogeologist), legal costs, and recording fee costs.
- PSA should have statement that final agreed upon quantity of water of sale is that which is approved by the Washington Department of Ecology after final review and acceptance of the Change Report of Examination.
  
- If for a grant sponsored purchase: Agreement contingent upon obtaining Ecology or other funding entity grant funding;
- If for water banking or mitigated water rights: Agreement contingent upon obtaining Ecology's approval to transfer the Water Right to the State Trust Water Right Program.



# *QUESTIONS?*

