

Advisory Group on Water Trust, Banking, and Transfers

Meeting 5: Policy Review

9:30 am to 12:30 pm

June 30, 2020

Online via WebEx

WebEx Access:

Please register for the meeting [here](#).¹ Once registered, WebEx will send you instructions to join the meeting.

Agenda:

Time	Topic	Speaker/Lead
9:30 – 9:45	Welcome, review agenda & objectives, introductions, summary of last meeting	Carrie Sessions
9:45 – 10:30	Topics 1 & 2: Out-of-basin transfers and transparency in water right sales	Dave Christensen
10:30 – 11:20	Topic 3: Private investment and marketing of water rights (part A): Use of the state water trust	Carrie Sessions
11:20 – 11:30	Break	
11:30 – 12:20	Topic 4: Private investment and marketing of water rights (part B): Water banking	Dave Christensen
12:20 – 12:30	Wrap up, look ahead to next meeting	Carrie Sessions

For each topic, Ecology will present on our draft findings and potential policy tools for 10 minutes. We will then discuss selected potential policy tools for 30 to 40 minutes. We will not discuss draft findings during the meeting.

Times are subject to change based on discussion flow.

Materials:

- [Draft findings and potential policy tools – for Meeting 5](#)

Meeting Objectives:

1. Gather feedback on potential policy tools – which policies are most warranted? Which are least warranted or would cause significant problems?
2. Refine the pro's and con's for each potential policy tool discussed.

Potential Policy Tools to Discuss:

Time constraints will prevent us from discussing all of the potential policy tools that we outline in the draft paper. Based on your feedback, below is the list of policy tools we plan to discuss in the meeting.

¹ www.webex.com

Event number: 133 017 2491

Event password: HPIF6f5W5HM

Topics 1 & 2:

- P.1.1 Provide state and local governments “right of first refusal” before a water right may be sold for transfer out of the basin-of-origin. Governments would have a set duration of time to act on the sale.
- P.1.3 Create an administrative tool or implement a process/procedure such that a water right may be moved back upstream without a finding of impairment to intervening users. [Note, Ecology could implement this within existing authority].

Topic 3:

- P.3.1. Amend chapter 90.42 RCW to differentiate between water that is put in trust for the purpose of instream flow enhancement and protection from relinquishment versus water that is placed in trust to be used as mitigation.²
- P.3.2. Clarify in chapter 90.42 RCW that any water right being used for permanent mitigation or mitigation lasting longer than 5 years must first undergo a tentative determination of extent and validity.

Topic 4:

- P.4.1. Require that prospective bankers submit a “water banking prospectus” in which they outline their business plan.³ The prospectus would be made available for public comment.
- P.4.3. Amend chapter 90.42 RCW to establish that water banks must define their service area and then have a “duty to serve” within that area.⁴
- P.4.5. In rulemaking, clarify Ecology’s authority to provision certain water bank activities, such as specifying a duty to serve or requiring that a portion of water remain instream, in water banking agreements and trust water right agreements. Use these provisions to shift risk away from the state and mitigation user and onto the person providing the mitigation right.

ADA Accessibility

To request an ADA accommodation, contact Ecology by phone at 360-522-0885 or email at Barbara.Brooks@ecy.wa.gov. For Washington Relay Service or TTY call 711 or 877-833-6341. Visit [Ecology’s website](#) for more information.

² Note that flexibilities exist under chapter 90.38 RCW for the Yakima Basin that do not apply elsewhere in the state. Ecology is not currently considering any changes to chapter 90.38 RCW.

³ Information such as: intended uses and customers, and the suitability of the mitigating water right to meet those uses.

⁴ Meaning that the bank could not deny providing mitigation to any customer in their defined service area