

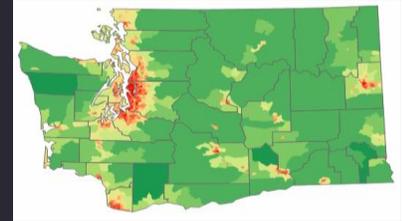
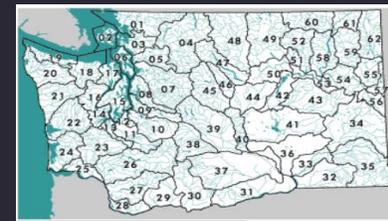
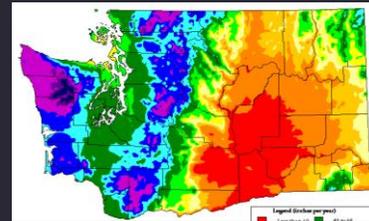
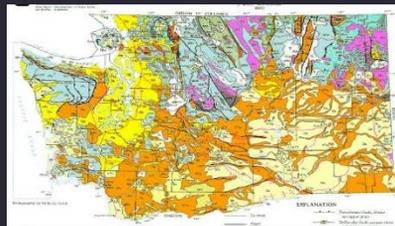
# Advisory Group on Water Trust, Banking, & Transfers

## Meeting 4

## Private investment & marketing of water rights: Part B – Water Banking

June 10, 2020

9:30am – 12:30pm



# Today's Agenda

Time	Topic	Presenter
9:30 – 9:40	Welcome, review agenda & objectives, introductions, summary of last meeting	Carrie Sessions
9:40 – 10:30	Background presentations: Water banking	Amanda Cronin Paul Jewell
10:30 – 11:20	Discussion question 1	Dave Christensen
11:20 – 11:30	Break	
11:30 – 12:15	Discussion question 2	Carrie Sessions
12:15 – 12:30	Wrap up, look ahead to next meeting, show and open the follow-up poll	Carrie Sessions

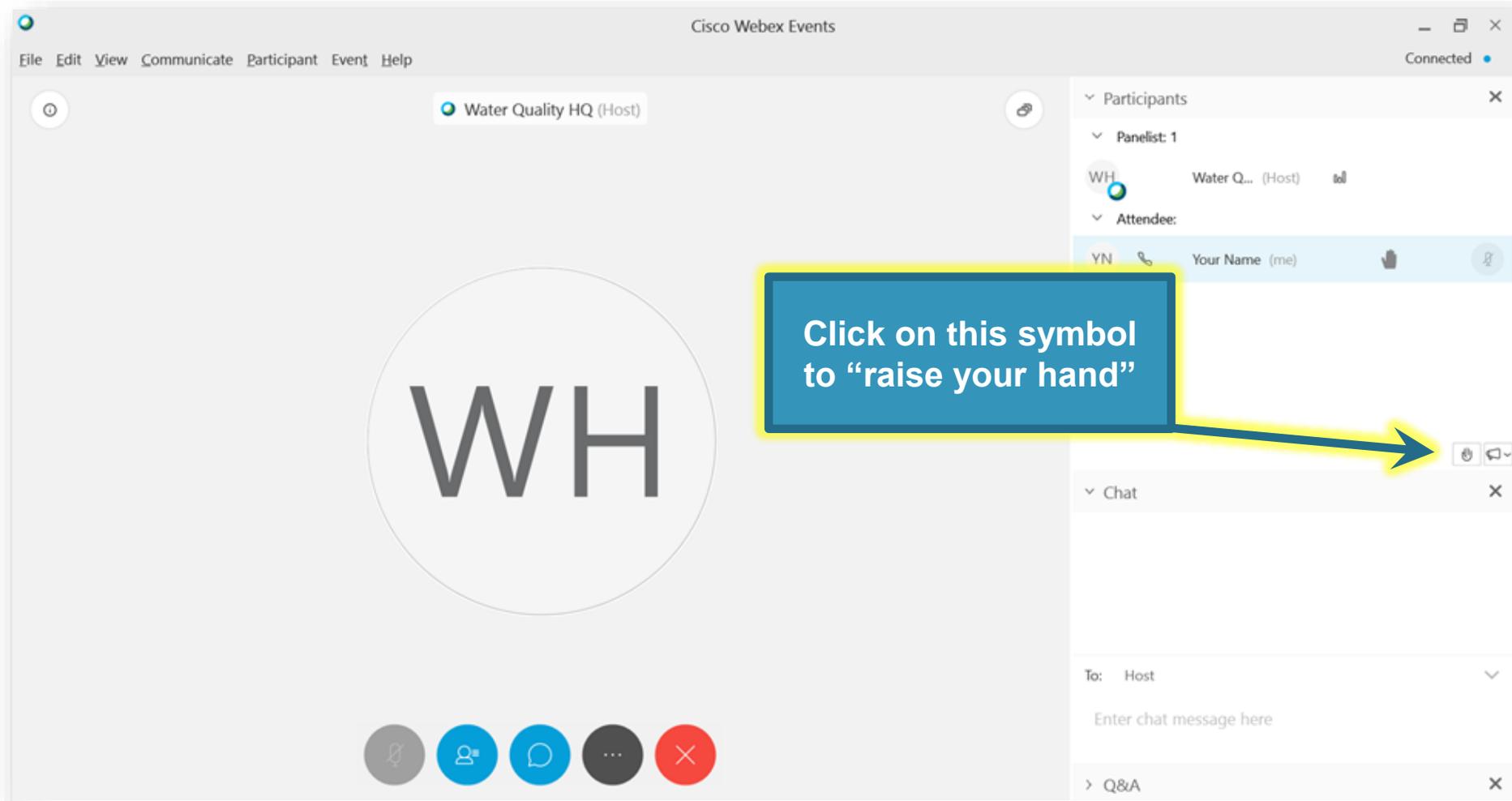
# Today's Objectives

1. Build upon the previous meetings by identifying specific concerns (or lack thereof) about private investment and marketing of water rights enabled through water banking.
2. Increase understanding of the functions and use of water banking in Washington.
3. Gather feedback on whether changes to the water banking statutes, either clarifying or substantive, are needed to address concerns identified in the discussion.

# WebEx Practice

The screenshot shows the Cisco WebEx Events interface for a meeting titled "Water Quality HQ (Host)". The interface includes a menu bar (File, Edit, View, Communicate, Participant, Event, Help) and a status bar (Connected). A large "WH" logo is centered on the screen. A blue callout box with a yellow border points to a chat icon in the bottom toolbar, containing the text "Click on this symbol to open the chat box". Another blue callout box with a yellow border points to the chat input field in the right-hand panel, containing the text "Type here to chat with host". The right-hand panel shows the "Participants" list with "Water Q... (Host)" and "Your Name (me)". Below this is the "Chat" section with a "To: Host" dropdown and an input field labeled "Enter chat message here".

# WebEx Practice



# Participants in Today's Meeting

- Susan Adams, Washington Water Trust
- Ron Anderson, Yakima County Commissioner
- Reetwika Basu, Washington State University
- Keeley Belva, Ecology
- Justin Bezold, Trout Unlimited
- Henry Bierlink, Ag Water Board of Whatcom Co.
- Amy Boyd, Cowlitz Indian Tribe
- Lori Brady, SVID
- Dale Budzinski, Parkland Light and Water Co.
- Kathleen Callison, Law Office of Kathleen Callison
- Tyson Carlson, Aspect Consulting
- Jay Chennault, Associated Earth Sciences, Inc.
- Dave Christensen, Department of Ecology
- Kelsey Collins, Department of Ecology
- Joe Cook, Washington State University
- Stuart Crane, Yakama Nation
- Carol Creasey, Clallam County
- Amanda Cronin, AMP Insights
- Mark Crowley, Kittitas County Conservation District
- Jon Culp, Washington State Conservation Commission

- Tom Davis, Washington Farm Bureau
- Karlee Deatherage, RE Sources
- Jeff Dengel, WDFW
- Atul Deshmane, Whatcom PUD
- Emily Dick, Washington Water Trust
- Nathan Draper, Selah-Moxee Irrigation District
- Peter Dykstra, Plauche and Carr LLP
- Urban Eberhart, Kittitas Reclamation District
- Chris Elder, Whatcom County Public Works
- Karen Epps, Senate Committee Services
- Elizabeth Garcia
- Sara Gaylon, CELP
- Keith Goehner, State Representative
- Jack Goldberg
- Adam Gravley, Van Ness Feldman LLP
- Sharon Haensly, Squaxin Island Tribe
- Dan Haller, Aspect Consulting
- Jaclyn Hancock, WSDA
- Justin Harter, Naches-Selah Irrigation District
- Mike Hermanson, Spokane County
- Chris Hyland, WWWMP
- Paul Jewell, Washington State Association of Counties
- Steve Jilk, PUD #1 of Whatcom County
- John Kirk, Ecology
- Patricia Kirk, OCR
- Ted Knight
- Jessica Kuchan, Confluence Law, PLLC

- Ilene Le Vee, ranch/farmland owner
- Debra Lekanoff, Representative
- Amber Lewis, The Suquamish Tribe
- Kelsey Mach, Landau Associates, Inc.
- Sarah Mack, Tupper Mack Wells PLLC
- Chris Marks, Confederated Tribes of the Umatilla Indian Reservation
- John Marsh, Cowlitz Indian Tribe
- Larry Martin, Attorney
- Mike Martinez, NWIFC
- Mark Mazeski, DOH-Office of Drinking Water
- Mary McCrea, Methow Group
- Tom McDonald, Cascadia Law Group
- Ken Merrill, Kalispel Tribe
- Doug Miller, Klickitat PUD
- Brandy Milroy, Mason County PUD No. 1
- Jason Moline, Tacoma Water
- Jamie Morin, Confluence Law, PLLC
- Holly Myers, Ecology
- Mary Neil, Muckleshoot Indian Tribe
- Craig Nelson, Okanogan Conservation District
- Steve Nelson
- Jay OBrien, Oroville Tonasket Irrigation Dist.
- Lisa Pelly, Trout Unlimited
- Mark Peterson, Crown
- Thomas Pors
- Nicholas Potter, Washington State University

- Brandy Reynecke ECY, Ecology
- Kristina Ribellia, Western Water Market
- Trish Rolfe, Center for Environmental Law & Policy
- Katherine Ryf, Landau Associates, Inc.
- Susan Saffery, City of Seattle, Seattle Public Utilities
- Robert Sappington
- Mike Schwisow, Washington State Water Resources Association
- Suzanne Skinner, WWT
- Jeff Slothower, Kittitas Reclamation District
- Glen Smith, WA State Ground Water Assoc.
- Tom Tebb, Department of Ecology Office of Columbia River
- Arden Thomas, Kittitas County
- Benjamin Tindall, WA State Farm Bureau
- Bill Trueman, Skagit PUD
- Jill Van Hulle, Aspect Consulting
- Mary Verner, Ecology Water Resources
- Dan Von Seggern, CELP
- Bruce Wakefield, Colville Tribes
- Jacquelyn Wallace, Trout Unlimited
- Jim Weber, Center for Environmental Law and Policy
- Jeanne White, Methow Conservancy
- Gary Wilburn, WA State Senate
- Mike Wolanek, City of Arlington
- Jonathan Yoder, Washington State University

# Summary of Last Meeting

- Focused on use of the Trust Water Rights Program and temporary donations.
- 118 participants
- Meeting notes, recording, presentation, and survey results are posted on our [webpage](#).
- We are synthesizing our takeaways from the meeting and will present them at Meeting 5.



# Background Presentations



# WATER BANK DEVELOPMENT AND DESIGN

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June 10, 2020  
Amanda Cronin  
[amanda@ampinsights.com](mailto:amanda@ampinsights.com)

# Presentation Outline

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- Process of developing water banks
- Water bank mechanics
- Dungeness Case Study



# Definitions

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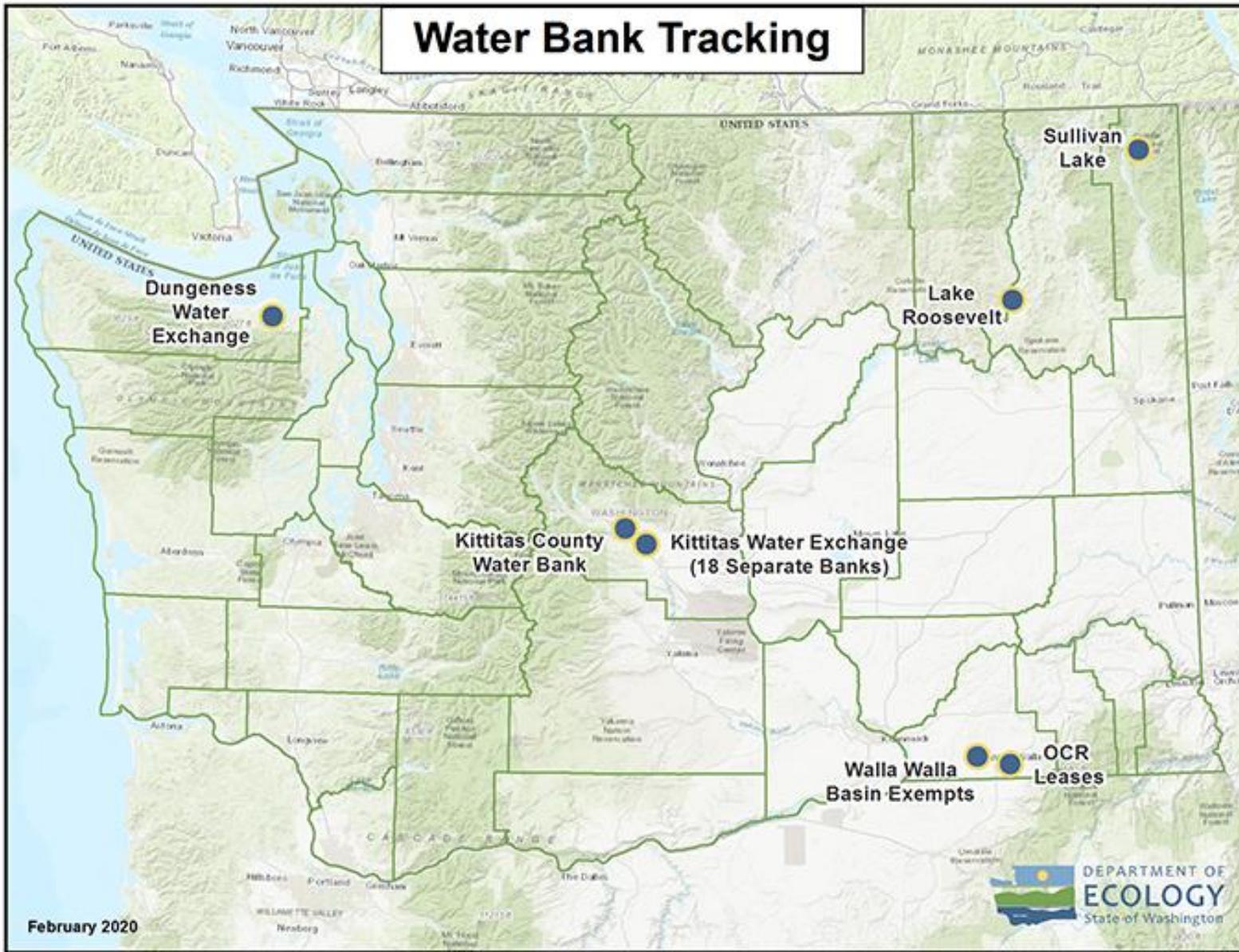
**Water Bank/ Exchange:** A water marketplace that facilitates moving water between multiple buyers and sellers and types of users.

**Groundwater Mitigation:** Reducing or fully offsetting the impacts of new or existing groundwater pumping on aquifers and/or connected surface water sources through projects that add water to the impacted source

# Water Banking Activity



# Water Bank Tracking



# Steps to Develop a Bank

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- Feasibility of supply and demand
- Water bank design
  - Goals for water bank
  - Rules for buyers and sellers
  - Governance and oversight
- Secure supply in coordination with Ecology
  - Contract negotiation; project development; water right changes

# Supply and Demand

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## Types of Demand

### Out of Stream Use

- New rural homes on wells
- Municipalities
- New agricultural uses
- New commercial & industrial

### Instream Use

## Types of Supply

- In-kind senior water rights
  - Irrigation
  - Industrial etc.
- Out of kind habitat projects



# Water Bank Demand

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## Regulatory

People and entities mitigate because they are required to

- By law or regulation limiting new groundwater pumping
- New uses only allowed if mitigated
- Examples: Walla Walla, Kittitas, Skagit, Dungeness basins

## Voluntary

People and entities mitigate because they want to

- Some will participate out of pure altruism; but
- Success requires incentives; for example:
  - Environmental marketing benefit (for a business)

# Assessing Supply

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## Likely sources of Supply

- Agricultural Water rights-groundwater and surface water
- Recharge groundwater from water previously consumed (like treated water from an evap. pond)

## Less likely sources

- Water conservation savings
- Out-of-kind habitat



# How Does A Water Bank Work?

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## Water Bank as Broker

### Supply

*Sellers:*  
water  
right  
holders



### Typical Functions

- Sets rules/criteria for bank
- Sets prices
- Matches buyers and sellers
- Handles State Admin process
- Determines priorities for banking transactions



### Demand

*Buyers:*

- Mitigation for new water use
- Flow restoration

# Dungeness Watershed



- 4 ESA Listed Fish
- Development Pressure
- 6,000 acres of irrigation
- 15 inches of rain annually

# Development of the Dungeness Water Exchange

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1. Assessed feasibility of supply and demand in the watershed
2. Multi-criteria analysis for evaluating mitigation projects
3. Costs-benefit analysis
4. Developed bank design
5. Developed bank guidance document
6. Negotiation of water rights purchase with senior irrigators
7. Integration of mitigation into the building permit process

# Dungeness Instream Flow Rule

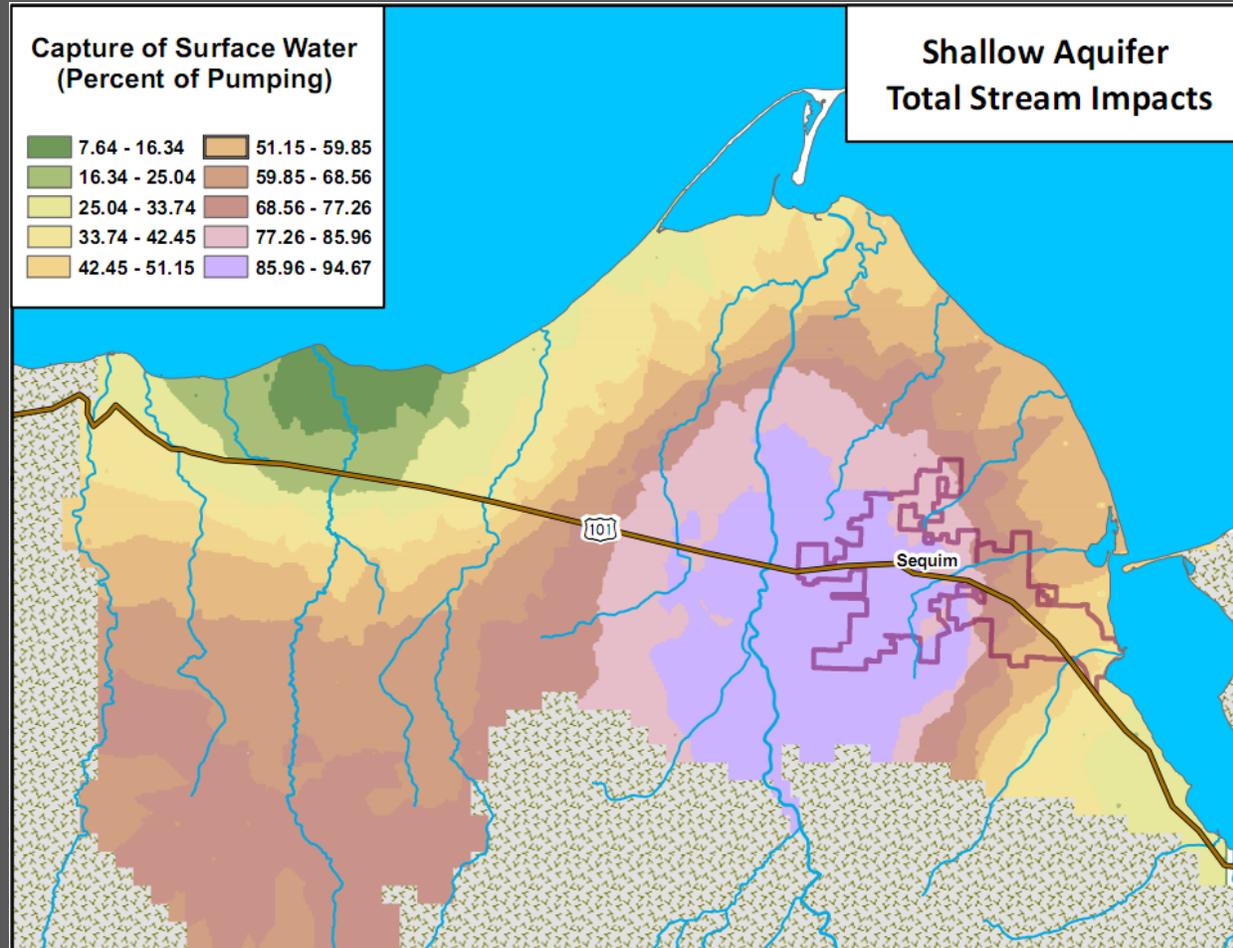
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- Regulatory program 173–518 WAC
- WA Dept. of Ecology set instream flows in Dungeness R. and tributaries
- Required all new GW uses (including exempt wells) to fully offset impacts to surface water



Photo: Dungeness Audubon River Center

# Dungeness Groundwater Model



# Using the Groundwater Model as a Tool

## Predicting the Amount of Surface Water Capture

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Parcel #	Bagley Creek	Bell Creek	Cassalery Creek	Dungeness River	Gierin Creek	Matriotti Creek	McDonald Creek	Meadowbrook Creek	Siebert Creek	Total Impact (Shallow Aquifer)
43012340 0501000	0.002%	0.65%	21.3%	66.32%	9.8%	0.88%	0.044%	0.874%	0.002%	92.580%

# Source of Mitigation

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Mitigation projects include:

- Acquire water rights from Dungeness Water Users Association: 175 acre feet
  - 30 AF instream late season
  - 145 AF aquifer recharge
- Implement aquifer recharge projects



# DWE Mechanics

- Program of Washington Water Trust
- Mitigation must be in place before building permit
- Buyers select a *mitigation package* and pay one-time fee
- Remote read meters required
- Dungeness Water Exchange Advisory Council provides local input

Section 3. MITIGATION PACKAGE SELECTION:		
Please select the mitigation package you would like to purchase:		
<input type="checkbox"/> <b>Indoor Only Package</b> (Avg. 150 gallons per day indoor no irrigation outside, minimal incidental outdoor use only) Price: \$1,000	<input type="checkbox"/> <b>Indoor with Basic Outdoor Package</b> (Avg. 240 gallons per day. Indoor use and 2,500 sq. ft., approx. 50x50 ft or .06 of irrigated area outside) Price: \$2,000	<input type="checkbox"/> <b>Indoor with Extended Outdoor Package</b> (Avg. 350 gallons per day. Indoor use and 5,625 sq. ft. approx. 75x75 ft or .13 acres of irrigated area outside) Price: \$3,000

# Lessons Learned

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- Adequate supply and demand must be available
- Considerable effort required for set up of banks/exchanges
- Understanding of SW-GW is key but GW model may not be
- Implementation of aquifer recharge projects is complex
- Metering politically less difficult than expected
- Linking flow restoration & groundwater mitigation is win-win
- Trading ratios can address uncertainty



**Thank You!**  
**Amanda Cronin**  
**[amanda@ampinsights.com](mailto:amanda@ampinsights.com)**  
**m**  
**[www.ampinsights.com](http://www.ampinsights.com)**



# Water Banking Lessons Learned

Case Study – Kittitas County

June 10, 2020



# Water Banking in Kittitas County

- What happened and why it happened there.
- How private water banks and the trust water rights program delivered a solution.
- Actual examples of what can happen when for-profit water banking is used for domestic mitigation.
- How Kittitas County used the trust water rights program to reduce the risks for new users.
- What have we learned? The county perspective on the lessons of water banking, so far.

## Case Study Background

- Over-appropriated Yakima River Basin
- Kittitas County v. EWGMHB
- WAC 173-539A Upper Kittitas Rule
- Settlement agreement

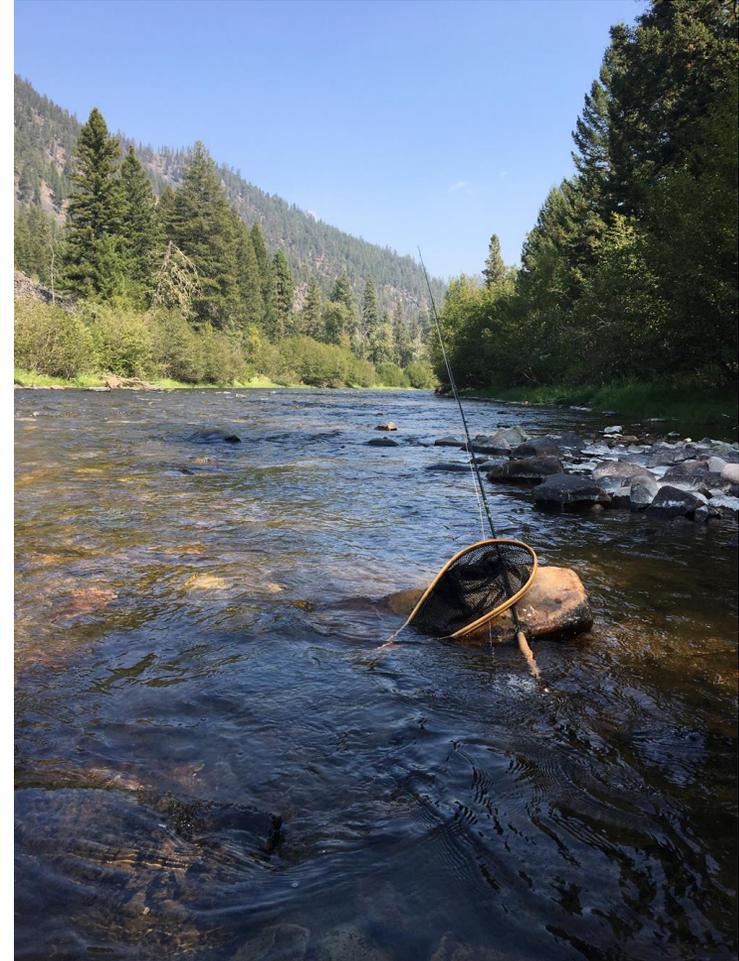


## Water Banking to the Rescue

- Ground water withdrawal – July 2009
- Private water banking developed first – 2010
- Solved the problem for some
- Many private water banks followed

## Early Challenges

- Lengthy and Complex Process
- Cost
- Limited Availability
- Water becoming a commodity



# Unintended Consequence – The Solution Unravels

- Monopolistic Practices
- Conflict of Interest Concerns
- Transfer of Legislative Authority
- High Cost & Variable Cost
- Speculation Potential
- Lack of Regulation

## Rescuing the Rescue

- County-owned Public Water Bank
- Cost-recovery, Limited Use
- Over-the-counter Program
- General Permit Program



## Lessons Learned – The County Perspective

- Whether a water bank is public or private matters.
- The purpose of the water bank matters.
- With private banks, competition matters.
- Where the water in the bank comes from matters.
- The ability to be flexible and creative matters.



## Paul Jewell

Policy Director – Water, Land Use, Natural Resources & Environment

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# Discussion 1

Jessica Kuchan, Confluence Law

Kristina Ribellia, Western Water Market

Tom McDonald, Cascadia Law Group

Joe Cook, WSU



# Discussion Question 1

Are you concerned that water banks are being used in ways to benefit private interests at a detriment to public interests? If so, what specifically concerns you?

For example, are you concerned about the potential for:

- Private entities to control and manage water supplies?
- Monopolization such that one bank can gain disproportionate market power in a basin?
- Creation of banks that do not have a demonstrated need in the basin or potential customers?

**Break**



# Discussion 2

Jason McCormick, McCormick Strategies

Arden Thomas, Kittitas County

Peter Dykstra, Plauche and Carr



# Discussion Question 2

Should the state be more active in regulating the creation and ongoing operation of new water banks to ensure consumer protection?

- a. Does your answer differ if the banker is public, private, or nonprofit? Does your answer differ if the bank serves domestic uses, irrigation, or environmental services?

## Discussion Question 2 (cont.)

*b. For the creation of new banks* – Should prospective bankers have to meet specific criteria before a bank may be created? If so, what criteria would you think appropriate?

Should Ecology have the authority to deny the creation of a bank if the prospective banker fails to adequately meet those criteria?

*c. For the ongoing operation of banks* – What elements of operation should be monitored and potentially regulated?

# Next Steps



# Looking Ahead

- **Review session:** Draft policy options (June 30)
- **Wrap-up:** Finalization of Advisory Group feedback (July 16)

# Meeting 5 – Policy Review

Materials provided ahead of time:

- Draft findings
- Potential policy recommendations with analysis
- Instructions

Meeting agenda: For each topic discussed:

- Brief discussion of draft findings
- Robust discussion of draft policy tools and analysis
- Time permitting – discussion of additional policy tools

# Example

## *Draft finding:*

- There was significant agreement that working from home is preferable to commuting to the office.

## *Potential policy:*

- Establish that all state employees may work from home to up 3 days per week.

Pro's	Con's
Reduced commuting leads to less emissions	Decreased collaboration
Increased staff satisfaction and happiness	

# Meeting 6 – Wrap Up

Materials provided ahead of time:

- Refined version of the draft findings.
- Refined version of possible policy tools with analysis, to include:
  - Additional policy tools not previously analyzed.
  - Potential Ecology recommendations.

Meeting agenda: For each topic discussed:

- Continued discussion of summary and potential Ecology recommendations.

# Draft Schedule

June 23	ECY to send agenda and meeting materials
June 30	Meeting 5
July 7	Deadline to send additional policy tools and written comments for consideration
July 10	ECY to send agenda and meeting materials
July 16	Meeting 6

# Forum for Written Input

- eComments form available on our webpage
  - Comments will be accessible to everyone
- Post-meeting survey, to complete by Friday COB.
  - <https://www.surveymonkey.com/r/3KH8N9B>

# After we Conclude

Ecology will:

1. Consider comments and feedback.
2. With the Governor's Office, decide whether to pursue request legislation.
3. Finalize our findings and recommendations.
  - This will be posted for public comment. Comments will be appended to the final version.
  - The final version, including comments, will be provided to the legislature.

# Questions?





# Thank You!

Contact: Carrie Sessions, [Carrie.sessions@ecy.wa.gov](mailto:Carrie.sessions@ecy.wa.gov), (360) 742-6582