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

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

Click on this symbol to open the chat box

Type here to chat with host
WebEx Practice

Click on this symbol to “raise your hand”
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 O'Brien, 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
Presentation Outline

• Process of developing water banks
• Water bank mechanics
• Dungeness Case Study
Definitions

**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 Bank Tracking

- Dungeness Water Exchange
- Kittitas County Water Bank (18 Separate Banks)
- Walla Walla Basin Exempts
- OCR Leases
- Sullivan Lake
- Lake Roosevelt

February 2020
Steps to Develop a Bank

• 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

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

<table>
<thead>
<tr>
<th><strong>Regulatory</strong></th>
<th><strong>Voluntary</strong></th>
</tr>
</thead>
<tbody>
<tr>
<td>People and entities mitigate because <em>they are required to</em></td>
<td></td>
</tr>
<tr>
<td>- By law or regulation limiting new groundwater pumping</td>
<td></td>
</tr>
<tr>
<td>- New uses only allowed if mitigated</td>
<td></td>
</tr>
<tr>
<td>- Examples: Walla Walla, Kittitas, Skagit, Dungeness basins</td>
<td></td>
</tr>
<tr>
<td>People and entities mitigate because <em>they want to</em></td>
<td></td>
</tr>
<tr>
<td>- Some will participate out of pure altruism; but</td>
<td></td>
</tr>
<tr>
<td>- Success requires incentives; for example:</td>
<td></td>
</tr>
<tr>
<td>- Environmental marketing benefit (for a business)</td>
<td></td>
</tr>
</tbody>
</table>
Assessing Supply

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?

**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

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

- 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
Dungeness Groundwater Model
Using the Groundwater Model as a Tool
Predicting the Amount of Surface Water Capture

<table>
<thead>
<tr>
<th>Parcel #</th>
<th>Bagley Creek</th>
<th>Bell Creek</th>
<th>Cassalery Creek</th>
<th>Dungeness River</th>
<th>Gierin Creek</th>
<th>Matriotti Creek</th>
<th>McDonald Creek</th>
<th>Meadowbrook Creek</th>
<th>Siebert Creek</th>
<th>Total Impact (Shallow Aquifer)</th>
</tr>
</thead>
<tbody>
<tr>
<td>43012340</td>
<td>0.002%</td>
<td>0.65%</td>
<td>21.3%</td>
<td>66.32%</td>
<td>9.8%</td>
<td>0.88%</td>
<td>0.044%</td>
<td>0.874%</td>
<td>0.002%</td>
<td>92.580%</td>
</tr>
<tr>
<td>0501000</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
</tbody>
</table>
Source of Mitigation

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:

- **Indoor Only Package** (Avg. 150 gallons per day indoor no irrigation outside, minimal incidental outdoor use only) Price: $1,000
- **Indoor with Basic Outdoor Package** (Avg. 240 gallons per day. Indoor use and 2,500 sq. ft., approx. 50x50 ft or .06 of irrigated area outside) Price: $2,000
- **Indoor with Extended Outdoor Package** (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

• 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
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

360.489.3024  pjewell@wsac.org

206 10th Ave SE, Olympia, WA 98501-1311 /wacounties
360.753.1886  @wacounties
www.wsac.org  @wacounties
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?
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 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 to 3 days per week.

<table>
<thead>
<tr>
<th>Pro’s</th>
<th>Con’s</th>
</tr>
</thead>
<tbody>
<tr>
<td>Reduced commuting leads to less emissions</td>
<td>Decreased collaboration</td>
</tr>
<tr>
<td>Increased staff satisfaction and happiness</td>
<td></td>
</tr>
</tbody>
</table>
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

<table>
<thead>
<tr>
<th>June 23</th>
<th>ECY to send agenda and meeting materials</th>
</tr>
</thead>
<tbody>
<tr>
<td>June 30</td>
<td>Meeting 5</td>
</tr>
<tr>
<td>July 7</td>
<td>Deadline to send additional policy tools and written comments for consideration</td>
</tr>
<tr>
<td>July 10</td>
<td>ECY to send agenda and meeting materials</td>
</tr>
<tr>
<td>July 16</td>
<td>Meeting 6</td>
</tr>
</tbody>
</table>
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, (360) 742-6582