

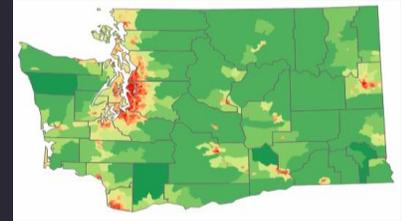
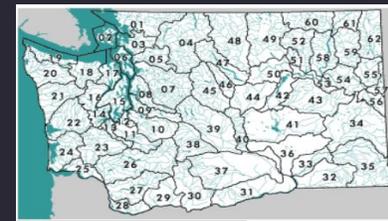
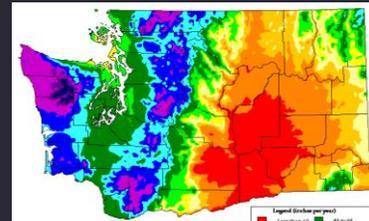
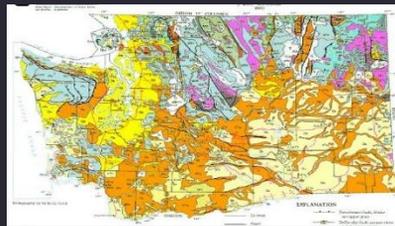
Advisory Group on Water Trust, Banking, & Transfers

Meeting 2

Transparency in water right sales and out-of-basin transfers

May 7, 2020

9:30am – 12:30pm



Today's Agenda

| Time | Topic | Presenter |
|---------------|-----------------------------------------------------------------------------|----------------------------------|
| 9:30 – 9:50 | Welcome, review agenda & objectives, introductions, summary of last meeting | Carrie Sessions |
| 9:50 – 10:30 | Background presentations: Overview of sales and transfers | Dave Christensen Scott Revell |
| 10:30 – 11:15 | Discussion part A: Out-of-basin transfers (see questions 1 and 2) | Carrie Sessions |
| 11:15 – 11:30 | Break | |
| 11:30 – 12:15 | Discussion part B: Water right sales (see questions 3 and 4) | Dave Christensen |
| 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 first meeting by identifying specific concerns on:
 - a. Transparency in water right sales
 - b. Out of basin transfers
2. Gather feedback on the state's role in regulating these issues. Are increased regulations warranted and a priority?
3. Increase understanding of water right sales and transfers in Washington, including the administrative process and issues of impairment.

WebEx Practice

The screenshot shows the Cisco WebEx Events interface. At the top, the title bar reads "Cisco Webex Events" and the status is "Connected". The main window title is "Water Quality HQ (Host)". A large "WH" logo is centered in the background. At the bottom, there is a toolbar with icons for mute, video, chat, and other functions. On the right side, there is a sidebar with "Participants" and "Chat" sections. The "Participants" section shows a list of participants, including the host "Water Q... (Host)" and an attendee "Your Name (me)". The "Chat" section shows a message input field and a "To: Host" dropdown. Two blue callout boxes with yellow borders provide instructions: one points to the chat icon in the toolbar, and the other points to the chat input field in the sidebar.

File Edit View Communicate Participant Event Help

Water Quality HQ (Host)

WH

Participants

Panelist: 1

WH Water Q... (Host)

Attendee:

YN Your Name (me)

Chat

To: Host

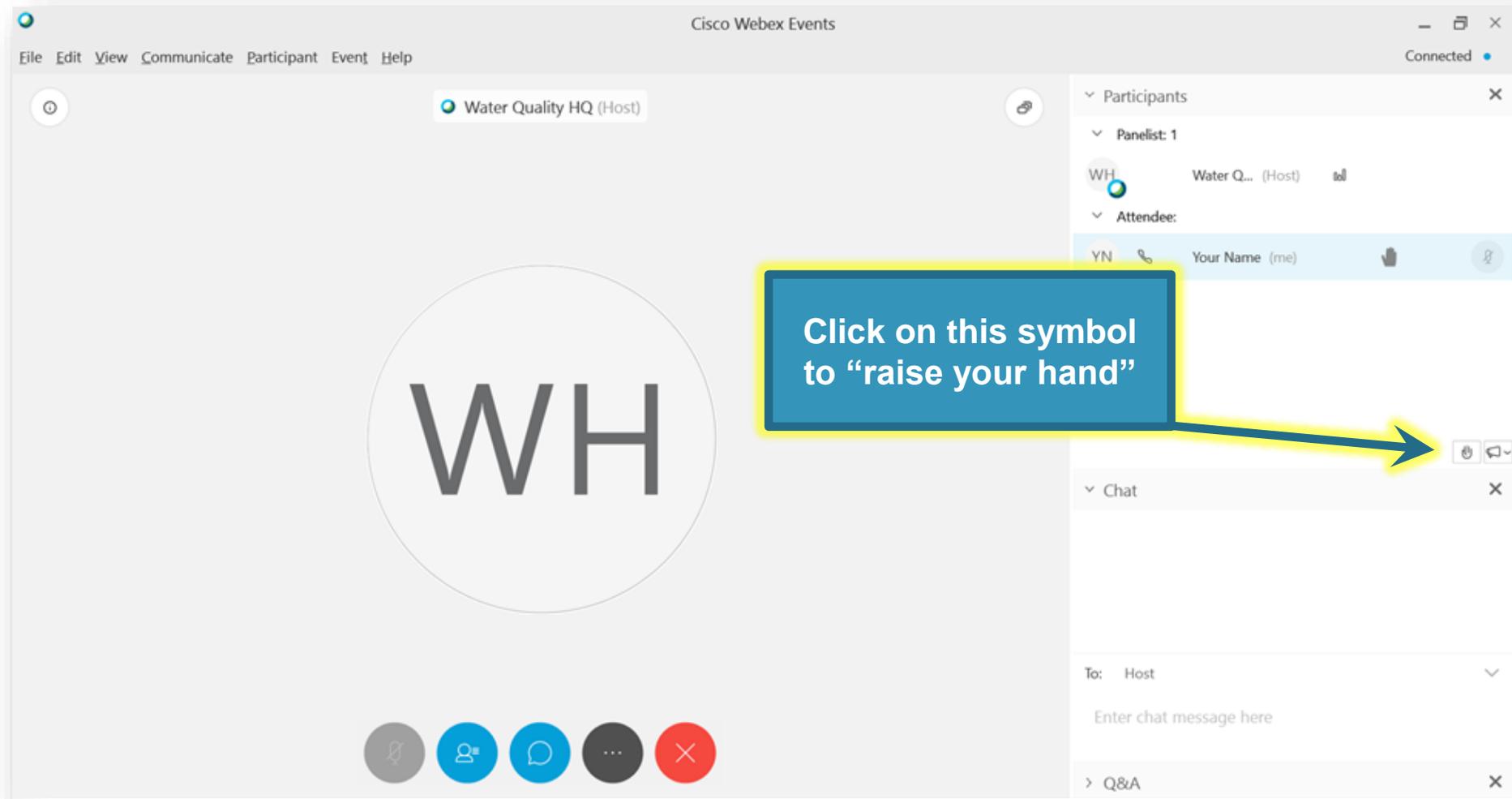
Enter chat message here

Q&A

Click on this symbol to open the chat box

Type here to chat with host

WebEx Practice



Participants in Today's Meeting

- Susan Adams, Washington Water Trust
- Linda Atkins, Davis Wright Tremaine LLP
- Justin Bezold, Trout Unlimited
- Henry Bierlink, Whatcom Ag Water
- Amy Boyd, Cowlitz Indian Tribe
- Joe Brogan, Foster Garvey, PC, Attorneys
- David Brown, City of Yakima
- Chuck Brushwood, Okanogan County Water Conservancy Board
- Megan Cardenas
- Tyson Carlson, Aspect Consulting
- Joseph Carroll, Attorney
- Alan Chapman, Planning Unit –Fishers
- Bill Clarke
- Marcie Clement, Chelan PUD
- Kathleen Collins, Washington Water Policy Alliance
- Joe Cook, Washington State University
- Stuart Crane, Yakama Nation
- Carol Creasey, Clallam county
- Amanda Cronin, AMP Insights
- John Crotty
- Mark Crowley, Kittitas County Conservation District
- Jon Culp, State Conservation Commission

- Jeanne Cushman, Attorney/Contract Lobbyist
- Tom Davis, Washington Farm Bureau
- Karlee Deatherage, RE Sources
- Seth Defoe, Kennewick Irrigation District
- Jeff Dengel, WDFW
- Cody Desautel, Confederated Tribes of the Colville Reservation
- Emily Dick, Washington Water Trust
- Nathan Draper, Irrigation District
- Peter Dykstra, Plauche and Carr
- Urban Eberhart, Kittitas Reclamation District
- Karen Epps, Senate Committee Services
- Nelson Falkenburg, Department of Fish and Wildlife
- Anna Franz
- Elizabeth Garcia, Seattle Public Utilities
- Davor Gjurasic, Nisqually, Swinomish, Port Gamble S'Klallam
- Keith Goehner, State Rep
- Jack Goldberg
- Adam Gravley, Van Ness Feldman
- Sharon Haensly, Squaxin Island Tribe
- Dan Haller, Aspect Consulting
- Jaclyn Hancock, WSDA
- Jim Hay, Robinson Noble, Inc.
- Jim Hedrick, Muckleshoot Indian Tribe
- Mike Hermanson, Spokane County
- Chris Hyland, Walla Walla Watershed Partnership
- Paul Jewell, Washington State Association of Counties
- Stephan Jilk, Public Utility District #1 of Whatcom County
- Alvin Josephy, Ecology
- Isaac Kastama, Yakima Basin Joint Board
- Megan Kernan, WDFW
- Patricia Kirk, OCR
- Jessica Kuchan, Confluence Law, PLLC

- Natalie Kuehler, Ryan & Kuehler PLLC
- Ilene Le Vee, ranch/farmland owner
- Amber D. Lewis
- Chris Liu
- Sarah Mack, Tupper Mack Wells
- Nick Manning, center for environmental law and policy
- Chris Marks, Confederated Tribes of the Umatilla Indian Reservation
- Larry Martin, Attorney
- Kerrie Mathews, Bureau of Reclamation
- Wes McCart, Stevens County Commissioner
- David McClure, Klickitat County
- Paul McCollum, Port Gamble S'Klallam Tribe
- Jason McCormick, MWS
- Mary McCrea,
- Tom McDonald, Cascadia Law
- Ken Merrill, Kalispel
- Cassandra Moore
- Jamie Morin, Confluence Law,
- Holly Myers, Ecology
- Tom Myrum, Washington State Water Resources Association
- Mary Neil, Muckleshoot Indian Tribe
- Craig Nelson, Okanogan Conservation District
- Bill Neve, Water Right Solutions
- Jay OBrien, Oroville -Tonasket Irrigation Dist.
- Tom Ostrom, Suquamish Tribe
- Sage Park, Ecology
- Lisa Pelly, Trout Unlimited

- Mark Peterson, Crown
- Nicholas Potter, Washington State University
- Sandra Richartz, Senate Republicans Caucus
- Laura Robinson, Upper Columbia United Tribes
- Trish Rolfe, Center for Environmental Law & Policy
- Katherine Ryf, Landau Associates, Inc.
- Jesse Salomon, Washington State Senate
- Mike Schwisow, Washington State Water Resources Association
- Norman Semanko, Parsons Behle & Latimer
- John Sirois, Upper Columbia United Tribes
- Suzanne Skinner, WWT
- Jeff Slothower, Attorney
- Glen Smith, Washington State Ground Water Association
- Danielle Squeochs, Yakama Nation
- Lorah Super, Methow Valley Citizens Council; Okanogan Conservation District
- Arden Thomas, Kittitas County
- Benjamin Tindall, Washington State Farm Bureau
- Jill Van Hulle, Aspect Consulting
- Mary Verner, Ecology Water Resources
- Dawn Vyvyan, Tribal lobbyist
- 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
- Jonathan Yoder, Washington State University

Summary of Last Meeting

- 130 participants, including representatives from the State Legislature, tribes, local governments, environmental groups, and agriculture.
- Meeting notes, recording, presentation, and poll results posted on our [webpage](#).
- Things accomplished:
 - Shared overall goals for the advisory group process
 - Provided background information
 - Started the conversation about concerns
 - Began to establish common understanding and awareness.

Key Lessons & Takeaways

- Trust, banking, and transfers are important issue to many of you!
- Some of you want more discussion on:
 - The role of Conservancy Boards
 - Water as a public resource vs. private property
 - Local interest vs. statewide interest
 - The need for more data

Key Lessons & Takeaways (cont.)

- Sentiment that the Advisory Group will be successful if it:
 - Achieves strong basis for future legislation
 - Increases understanding among participants
 - Doesn't cause more problems
- Advice that Ecology should:
 - Send questions ahead of time, allow written responses
 - Listen and have an open mind
 - Walk, don't run

Forum for Written Input

- eComments form available on our webpage
- Comments will be accessible to everyone

MEETINGS

May 7 - Transparency in Water Right Sales and Out-of-Basin Transfers

[Agenda](#)

[Registration](#)

Resources

- [Background Paper on Water Right Sales and Transfers](#)
- [Roza Water Market Overview Paper](#)

Meeting Materials

- [Link for eComment submissions](#)



Background

Sales, changes, and transfers of water rights

Overview

- Water right sales
- Changes to water rights
 - Process
 - Evaluation
 - Public notice
- Out-of-basin transfers



Sales, Changes, and Transfers

- Water rights can be transferred to others with no loss of priority date.
- Changing an attribute of the right requires filing a change application.
 - Attributes include: purpose of use, place of use, point of diversion or withdrawal, season of use, and quantity of water

Selling a water right without a change to its attributes

- Selling a water right (or changing ownership) alone does not require filing a change application.
- Ecology will not be notified.
- No “public notice”.
- Recorded on property title, filed at County Assessor’s Office (creates a public record).
- Payment of the Real Estate Excise Tax is required.

Public Information

| | Type of Sale | | |
|----------------------|-------------------------------------|--------------------------------------------|-----------------------------------------|
| | Land (with or without water rights) | Water Rights without changing an attribute | Water Rights with changing an attribute |
| Notice | | | ✓ |
| Readily Available | ✓ | | ✓ |
| Recorded with County | ✓ | ✓ | ✓ |

Changing a water right – Process

Two avenues:

1. Ecology (under RCW 90.03.380)
 - a. Ecology reviews the application & makes a draft decision;
 - b. Public notice issued per RCW 90.03.280.
2. Water Conservancy Boards (WCB) (under chapter 90.80 RCW)
 - a. The WCB reviews the application & makes a decision;
 - b. The decision is posted for 30 days for public comment;
 - c. Ecology reviews the decision and affirms, reverses, or modifies.

Changing a water right – Evaluation

- [RCW 90.03.380](#): The right to the use of water which has been applied to a beneficial use in the state shall be and remain appurtenant to the land or place upon which the same is used: PROVIDED, HOWEVER, That the right may be transferred to another or to others and become appurtenant to any other land or place of use without loss of priority of right theretofore established if such change can be made without detriment or injury to existing rights.
- **Ecology shall approve the application if it will not impair existing rights.**
- Additional public interest requirements for groundwater changes.

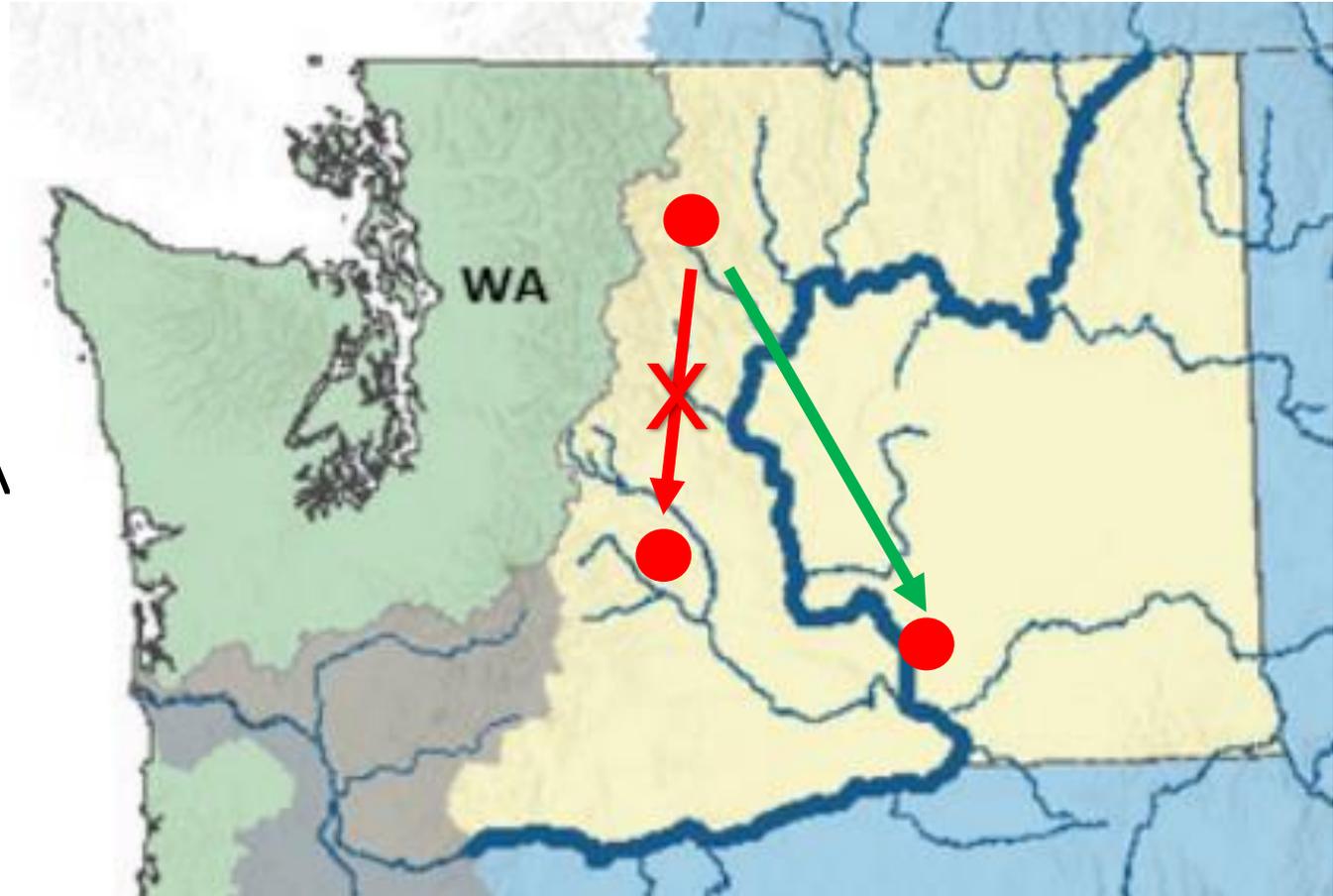
Public Interest

- New appropriations of water must be determined as “not detrimental to the public interest” (RCW 90.03.290).
- Changes to groundwater rights must not be detrimental to the public interest (*Public Utility District No. 1, of Pend Oreille County v. Ecology*, “Sullivan Creek”, 2002).
- “Public interest” is not defined in statute, policy, or case law.

**** There is no public interest test for changes to surface water ****

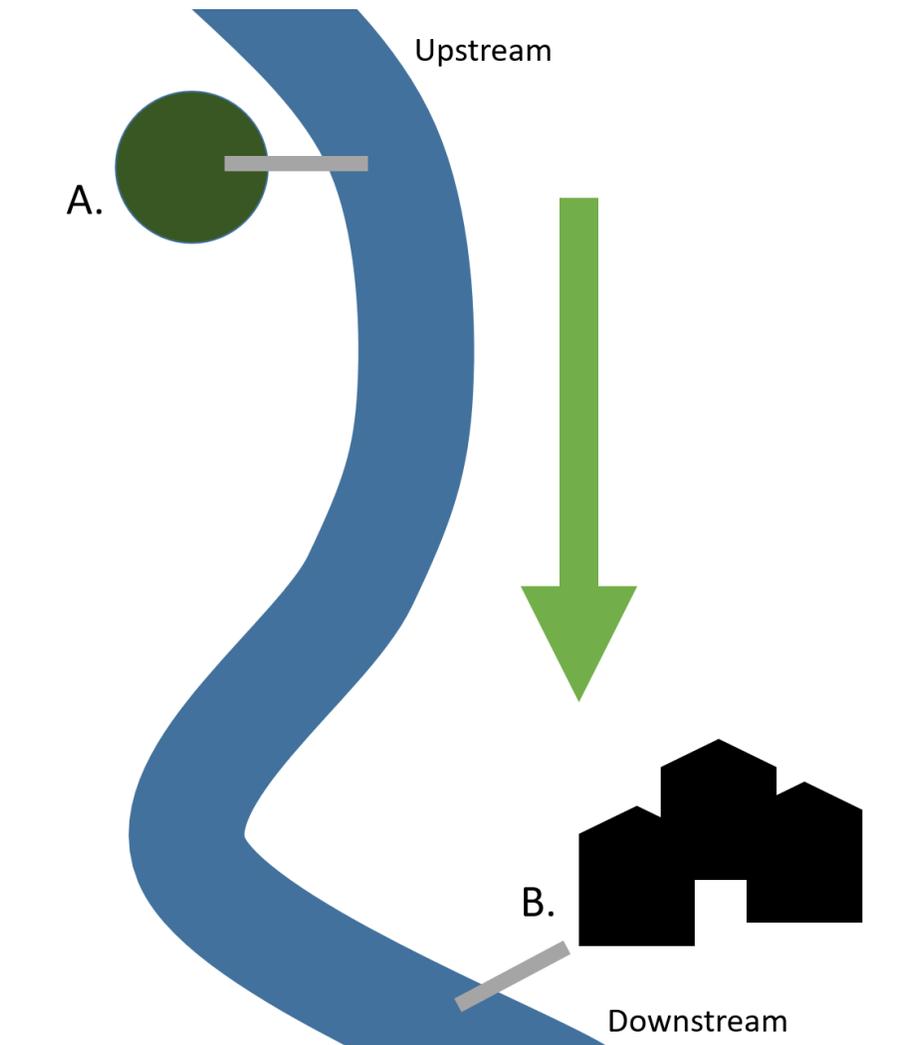
Out-of-Basin Transfers

- Changing the place of use (or point of diversion) from one WRIA to another downstream WRIA
- NOT the same as “inter-basin” transfer



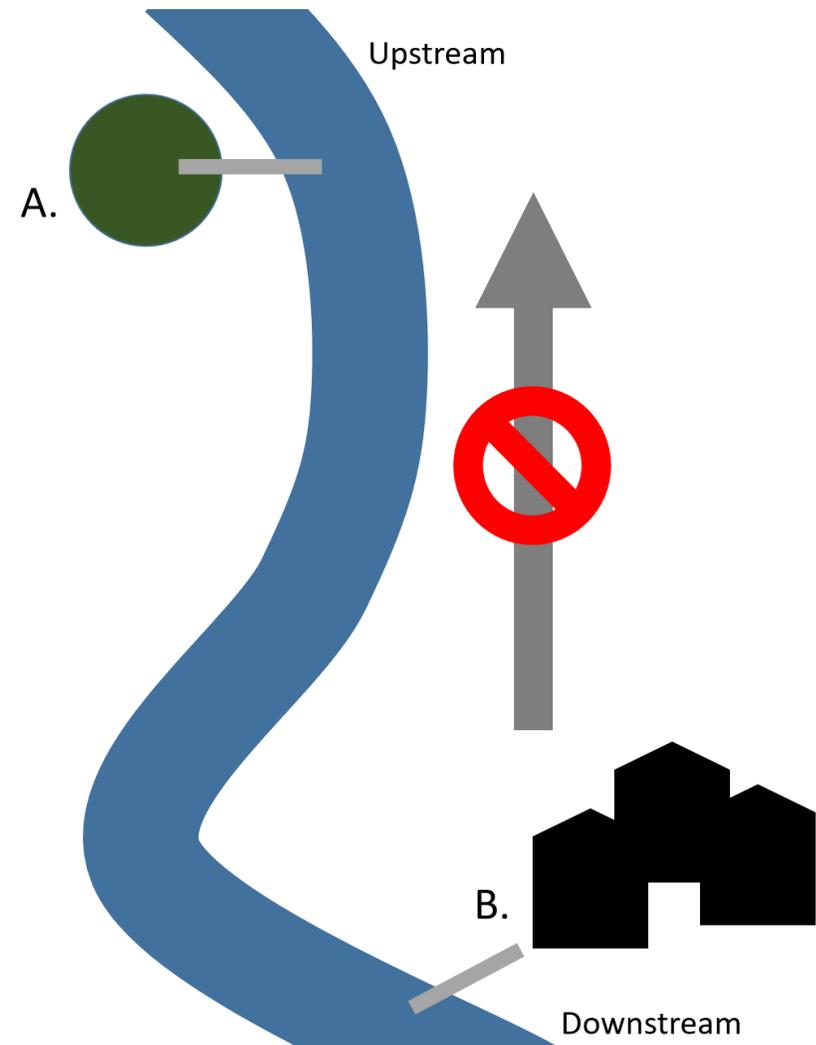
Downstream Transfer

Okay



Upstream Transfer

No!



Out-of-Basin Direct Transfers 2003 to 2020

| WRIA | # Transfers | Qa (AF/Yr) |
|------------------------|-------------|------------|
| 23 - Upper Chehalis | 1 | 26 |
| 30 - Klickitat | 2 | 193 |
| 34 - Palouse | 2 | 184 |
| 36 - Esquatzel Coulee | 4 | 1,426 |
| 37 - Lower Yakima | 1 | 42 |
| 40 - Alkali-Squilchuck | 3 | 164 |
| 43 - Upper Crab-Wilson | 1 | 56 |
| 44 - Moses Coulee | 1 | 352 |
| 45 - Wenatchee | 1 | 51 |
| 46 - Entiat | 1 | 140 |
| 47 - Chelan | 2 | 64 |

| WRIA | # Transfers | Qa (AF/Yr) |
|--------------------------|-------------|------------|
| 49 - Okanogan | 11 | 1,843 |
| 50 - Foster | 4 | 1,216 |
| 53 - Lower Lk Roosevelt | 1 | 218 |
| 54 - Lower Spokane | 2 | 310 |
| 55 - Little Spokane | 1 | 60 |
| 58 - Middle Lk Roosevelt | 1 | 87 |
| 59 - Colville | 10 | 1,266 |
| 60 - Kettle | 1 | 204 |

| | | |
|--------------|-----------|--------------|
| TOTAL | 50 | 7,902 |
|--------------|-----------|--------------|

Out-of-Basin Transfers through Water Banks, 2003 - 2020

| WRIA | # Transfers | Qa (AF/Yr) |
|-----------------------|-------------|---------------|
| 32 - Walla Walla | 8 | 4,981 |
| 35 - Middle Snake | 2 | 302 |
| 36 - Esquatzel Coulee | 1 | 716 |
| 37 - Lower Yakima | 1 | 484 |
| 39 - Upper Yakima* | 5 | 2,565 |
| 42 - Grand Coulee** | 1 | 25,000 |
| 44 - Moses Coulee | 1 | 85 |
| 49 - Okanogan | 4 | 894 |
| 52 - Sanpoil | 2 | 337 |
| TOTAL | 25 | 35,364 |

* There are several water banks in Kittitas County that could mitigate new uses out of the WRIA of origin, but the banks were not created with that intent.

** Lake Roosevelt water bank, operated by the Office of the Columbia River.

Questions?



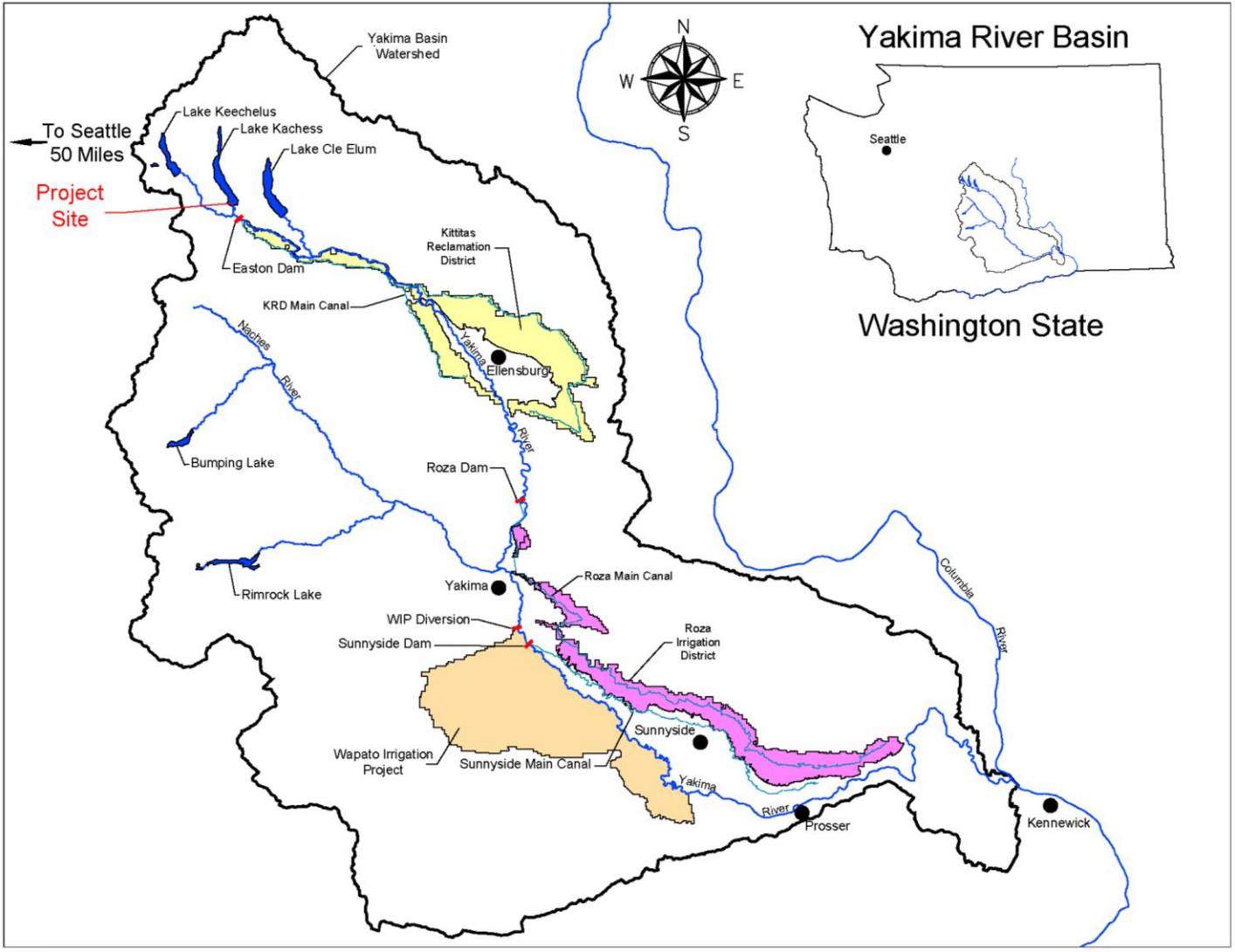
More Background

Scott Revell, Roza Irrigation District

Farmer's experiences – why might a farmer decide to sell a water right?



Roza Irrigation District Location



Farm basics

- ✓ Most farmers want to see their farms continue as farms for generations to come
- ✓ A farmer cannot be forced to farm...if they are losing enough money on a parcel they will stop farming it!
- ✓ Farm consolidations are occurring every day in Washington for a long list of reasons
- ✓ Changes in markets, demographics and labor mean that some crops can no longer be grown economically in certain locations





BUREAU OF RECLAMATION

Diversity of Farm Geography

- ✓ Many farms are comprised of multiple parcels including land in several irrigation districts
- ✓ Some growers also own farms and processing facilities in other states and even other countries.
- ✓ Crops grown by Roza growers on and off the Roza are sold in the U.S. and are exported globally.





Farm Equipment and Technology

- ✓ Farm technology in Washington comes from all over the world
- ✓ Farmers in Washington buy equipment from tractors to harvesters to irrigation components to processing equipment
- ✓ Washington firms sell ag technology all over the world





Example

A Roza grower also owns land in Okanogan county and wants to move the Okanogan water downstream to their non-Roza farm units along the Columbia River in Benton County.

Water that may have generated \$1M to 2M upstream may generate \$10 to \$15M in another location with a higher value crop in Washington though a water transfer

Takeaways

- The transfer process is currently very transparent and there are strong barriers to speculation in place.
- Water rights are property rights. Unpopular transfers are not subject to arbitrary decision criteria to prevent the transfer.
- When water is transferred the economic benefits still occur in Washington
- Local farming is global...farmers can buy and sell property, equipment and crops to people in other states and countries



Roza Irrigation District Farmland

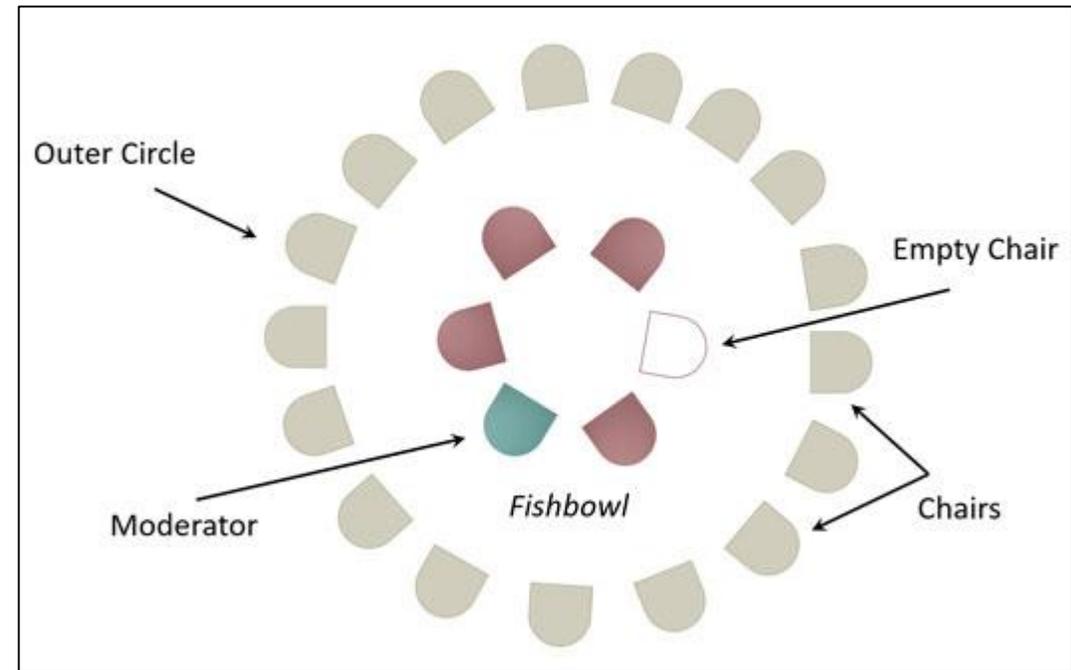


Cherries and Nectarines



Fishbowl Discussions

1. Listen to the discussion.
2. Raise your hand to join the discussion group.
The moderator will add you.
3. Stay in the group for ~5 minutes.
4. The moderator will rotate you out.



Discussion Part A: Out-of-basin transfers

Mary McCrea, Methow Valley Group

Wes McCart, County Commissioner,
Stevens County

Mark Peterson, Crown Columbia

Dan Haller, Aspect Consulting

Chris Marks, Confederated Tribes of
the Umatilla Indian Reservation



Discussion A: Out-of-basin transfers

1. We have heard concerns that out-of-basin transfers:
 - a. Negatively impact the social and economic wellbeing of communities;
 - b. Prohibit communities from ever getting the water back; and
 - c. Can be used by outside actors to profit from water rights.

Please discuss your specific concerns about out-of-basin transfers and explain what is driving them. If out-of-basin transfers don't concern you, why not?

Discussion A: Out-of-basin transfers

2. Most out-of-basin transfers benefit instream resources. Does this benefit outweigh some of the potential social costs?

Break



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Discussion Part B: Water Right Sales

Jamie Morin, Confluence Law

Urban Eberhart, Kittitas
Reclamation District

Bill Neve, Water Right Solutions

Dan Von Seegern, CELP

Washington Water Trust



Discussion B: Water right sales

3. **The only public notification of a water right sale occurs with the application to change or transfer the water right.**

Is this a sufficient level of public notice?

What would we gain by having more transparency?

What would we lose?

Is there a benefit to added transparency if the standard for review is only impairment?

Discussion B: Water right sales

4. **Though water is a public resource, the right to use water is privately-held.**

Should the State regulate the sale of water rights when they occur apart from the land?

For example, should we restrict out-of-state entities from buying Washington water rights and putting them in the Trust Water Rights Program?

Why or why not?

Post-Meeting Poll

<https://www.surveymonkey.com/r/C3RGZGY>

Next Meeting

- Policy discussion
- Private investment and marketing of water rights (part A): Use of the state water trust
- May 26, 9:30am to 12:30pm
- Via WebEx



Thank You!

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