



PNWS-AWWA 2018 Conference

Overview of Water Rights & Water Banking in Washington

April 27, 2018

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Why Should I Understand Water Banking

- **Helps solve water service problems**
- **Asset protection**
- **Emerging tool in your toolbox**
- **Leveraging for financial and resource gain**

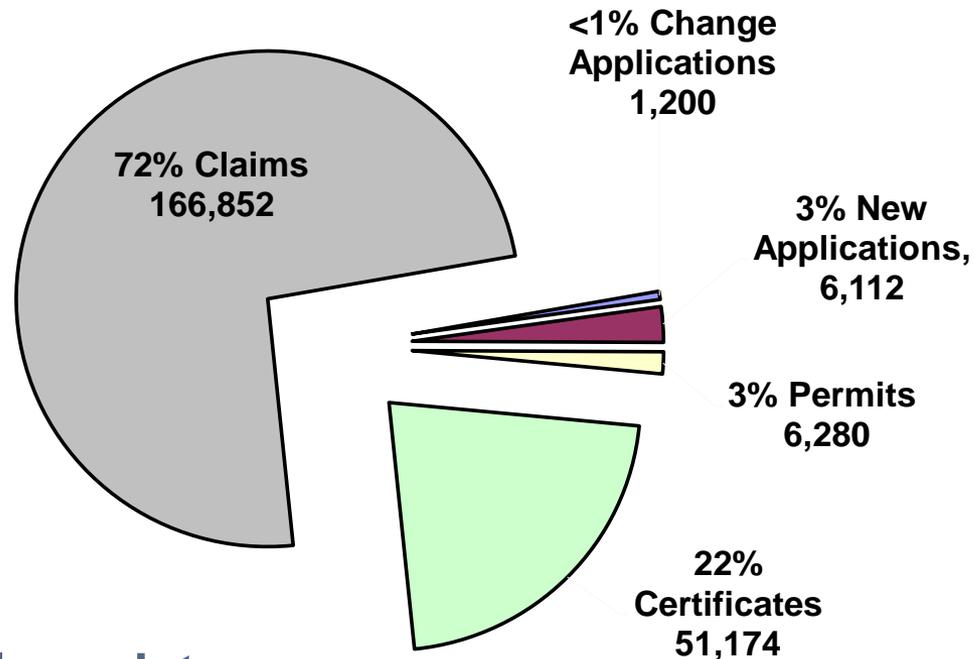
Overview

- **Water Rights Overview in WA**
- **Why are Water Banks Formed?**
- **Fundamentals of Water Banks**
- **4-Step Example on Water Utility Water Bank Issues**
- **Local Government Choices Around Bank Implementation**
- **Banking Example Teaser . . .**

By the Numbers . . .

Water Rights in the State

Water Rights Portfolio (approximate)



2015 Ecology data

What is an Application?

An application is the expression of the applicant's intent to develop a project. It's a dream; a goal; a proposal.

- Basic project information (quantities, location, purpose).
- Priority date tied to date application was filed.
- Fee has historically been very modest, so it was easy for applications for even speculative projects to be filed.

What is a Permit?

A permit to appropriate water is an inchoate (*undeveloped or unperfected*) right, which is “an incomplete appropriative right in good standing” which “remains in good standing so long as the requirements of law are being fulfilled.”

- “Go build what you wanted”
- Reasonable progress and due diligence
- No relinquishment
- Construction (Beginning, Completion)
- Perfection (Proof of Appropriation)

What is a Certificate?

A certificate to appropriate water is awarded when the water right holder beneficially uses the amount of water permitted, at the location identified, and for the intended purpose.

You're Done! (well . . . ?)

- Relinquishment
- Metering
- Changes



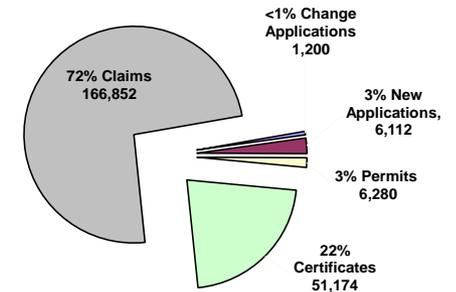
History—Claims

1967

Claim Registration Act

- Established a water rights claim registry.
- Supposed to cover vested water use not previously required to be documented. RCW 90.14
- \$2 and a single page required to be filed.
- Between 1969 and 1974 approximately 170,000 claims were filed. Claims also filed in 1985 and 1997-1998.
- Only an “assertion” that a water right exists.

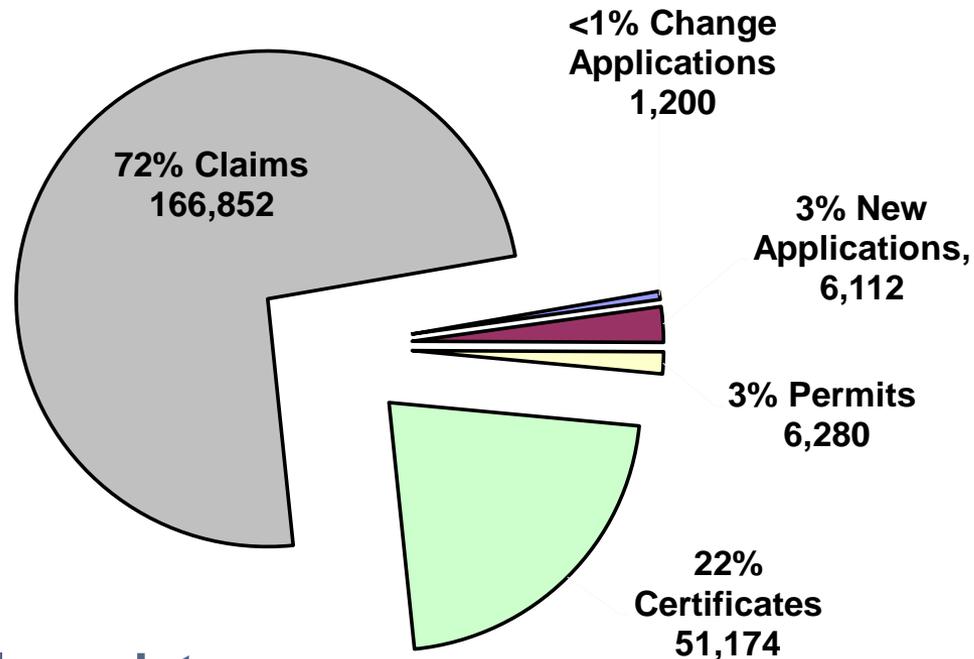
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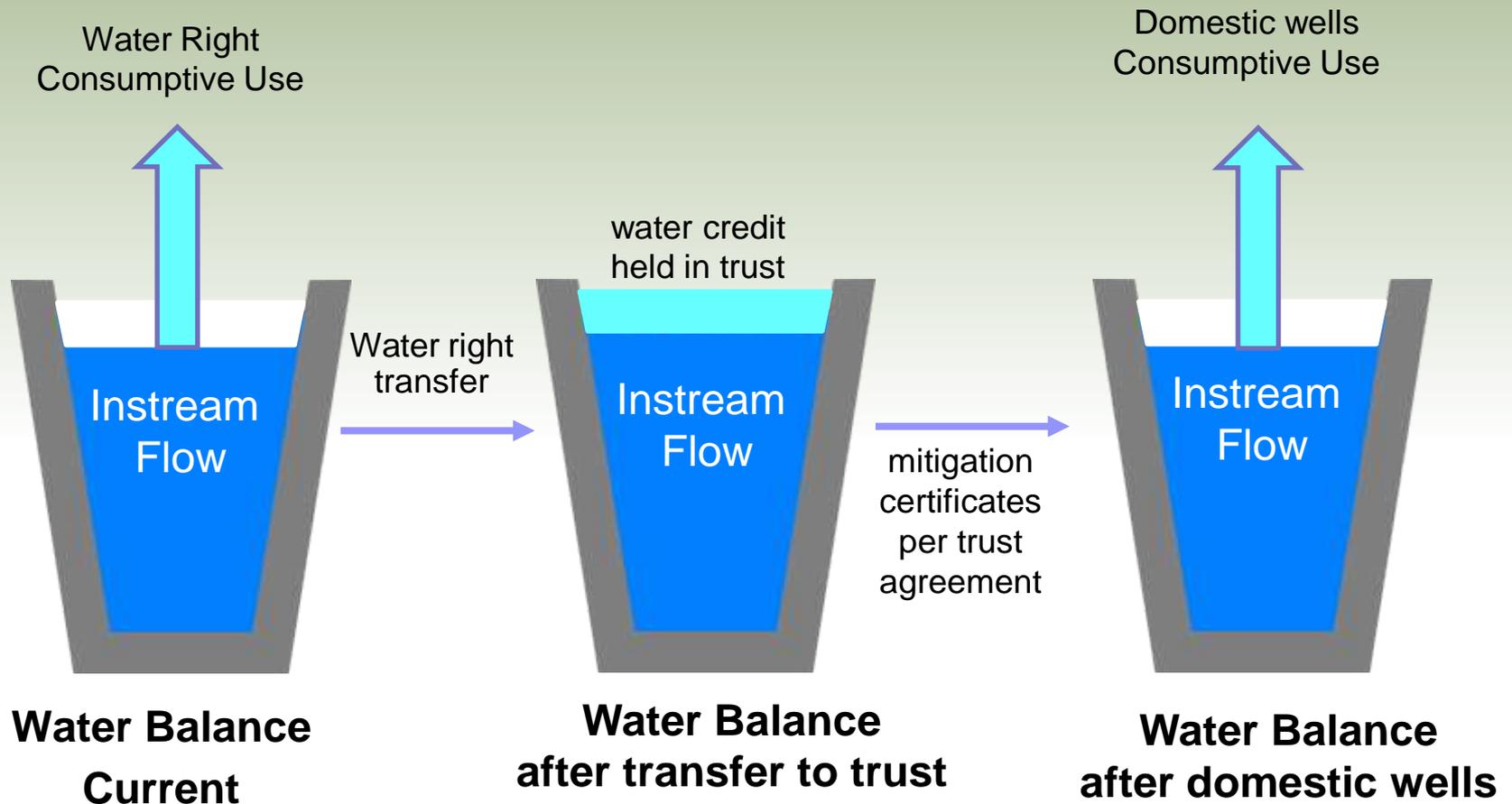
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Why are Water Banks Formed?

Because . . .

- A regulatory imperative exists
- They are better at solving one-to-many water authority issues than traditional transfers
- They can be more advantageous under the water code than traditional transfer
 - Relinquishment protection for trust rights
 - Consumptive math can be more favorable

Water Banking Fundamentals



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Utility Water Bank Implementation

Potential Water Right Acquisition

Preliminary Due Diligence

Water Utility Negotiates Purchase & Sale Agreement

Water Right Transfer Tasks

Water Utility Conducts:

- Formal Due Diligence
- File Change Application
- Public Notice
- Trust Report of Examination
- SEPA
- Escrow / Closing

Step 1

Trust Water Agreement Tasks

Water Utility Conducts Following with Ecology:

- Trust Water Agreement
- Suitability Map Negotiation
- Bank Metrics
- Bank Accounting

Step 2

Water Utility Code Adoption

- Establish Packages to Sell
- Water Use Monitoring Procedures
- Covenant Requirements
- Well Construction Standards
- Enforcement Criteria
- Fees
- Other Bank Operations Criteria

Step 3

Outreach and Training

- Develop Internal and External Forms/ Materials
- Develop Outreach Material
- Update Website
- Staff Training

Step 4

Step 1 – Water Right Transfers

- **Identify interested sellers and establish Purchase and Sale Agreement**
- **Conduct due diligence on validity of right**
- **Formal processing of transfer by Ecology, including evaluation of extent and validity right**
- **Use of water right stops = benefit to instream flows**
- **Water placed in State trust program**
- **Offsets impact of new uses on instream flows**

Step 2 – Trust Water Agreement

- Establishes how the water in trust will be managed
- Establishes area where new uses will be offset with water in trust - Suitability map agreement with Ecology
- Establishes bank metrics (amount of consumptive (CU) water debited for new uses)
 - Domestic uses
 - Irrigation uses
 - Stockwatering
- Accounting of bank credits and debits
- Compliance and reporting
- Bank “evolution” clauses: assignment, portability, modification

Step 3 – Water Utility Code Adoption

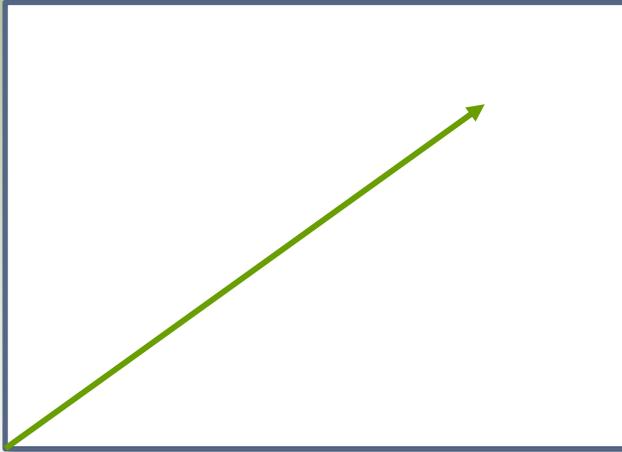
Utility decisions:

- **Who is the target customer for the bank?**
 - Minimum public health and safety for exempt uses?
 - Full authority for exempt uses?
 - Exempt and permitted uses?

- **Who will the bank sell mitigation credits to?**
 - Building permit applicants only?
 - Future building permit applicants with 'sunset' clause?
 - Existing property owners?

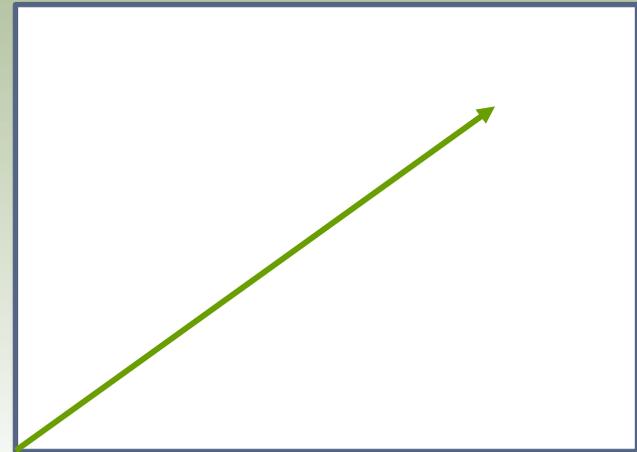
Bank Choices and Consequences

Price / Mitigation Certificate



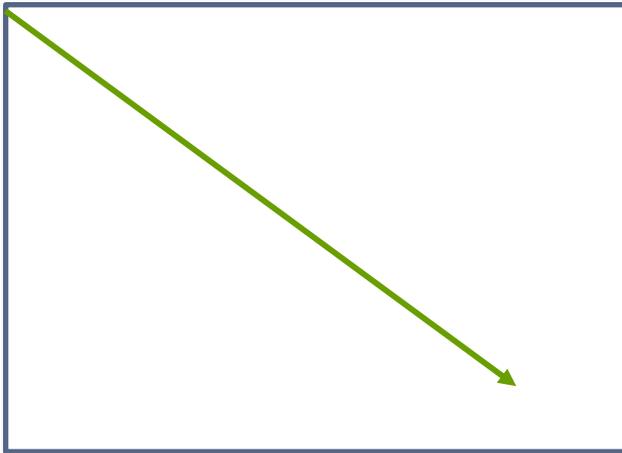
Lawn Size in Packages

Price / Mitigation Certificate



Bank Complexity (Number of Packages, Compliance Efforts, Administration)

Bank Longevity



Volume/Mitigation Certificate

Step 3 – Water Utility Code Adoption

Lawn size example

- **Assumes 275 gallons per day per house**
- **Assumes 30% consumptive use for indoor and 90% CU for outdoor**
- **Estimated new exempt well houses per 250 ac-ft in water bank credit (e.g. retiring about 80 acres of irrigation)**
 - **2,700 houses – no outdoor use (10.8 houses/ac-ft)**
 - **1,950 houses – with 500 ft² outdoor use (7.8 houses/ac-ft)**
 - **1,550 houses – with 1000 ft² outdoor use (6.2 houses/ac-ft)**
 - **950 houses – with 2500 ft² outdoor use (3.8 houses/ac-ft)**
 - **155 houses – with ½ acre outdoor use (0.6 houses/ac-ft)**

Step 3 Water Utility Code Adoption

- **What will you charge bank customers?**
 - **Cost recovery approach**
 - **Impacted by purchase price of water rights**
 - **Impacted by packages offered (e.g. number of houses/ac-ft)**
 - **Requires tracking of external costs and internal staff time**

- **How will the Water Utility address water use limitations?**
 - **Direct measurement?**
 - **No direct measurement, but conservative debits to bank?**
 - **Cloud or bank-level approaches to deal with uncertainty?**

Step 3 Water Utility Code Adoption

- **How will Water Utility monitor, enforce, and report bank performance to Ecology?**
 - **Property covenants?**
 - **Periodic review of lawn size?**
 - **Enforcement action options (education, penalties, referral to Ecology?)**
 - **Frequency of reporting to Ecology?**

- **Will well construction requirements be required?**
 - **Setback requirements to avoid local impairment?**
 - **Completion depth requirements to augment suitability map coverage area?**

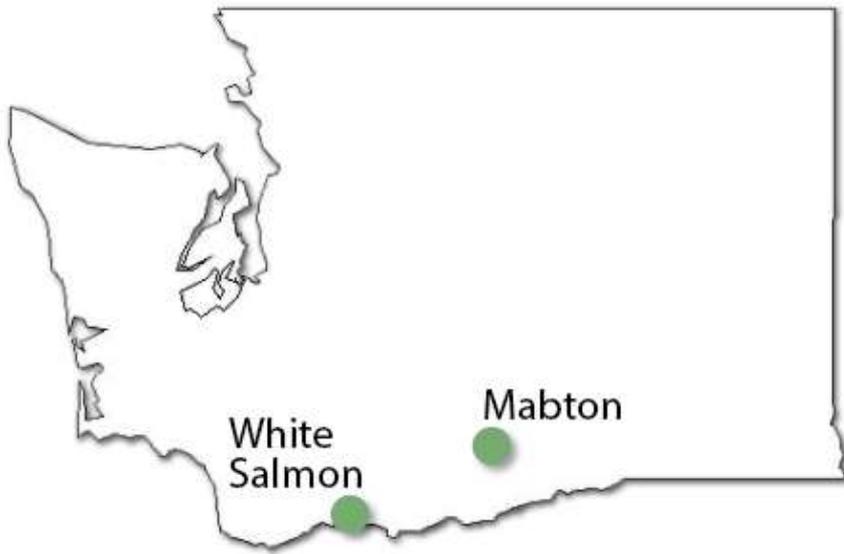
Step 4 – Public Outreach/Training

- Inform public of options to participate
- Establish methods for issuing and recording mitigation certificates
- Establish outreach materials
- Improve website presence
- Water Utility staff training
- Internal auditing of bank management costs

Water Banking Example “Teasers”

■ City of White Salmon

- After growth moratorium due to water right deficit, purchased water rights from local irrigation district for next 50 years, and now runs a lease bank to offset costs.



■ City of Mabton

- After facing growth moratorium due to water right limit, purchased senior water rights and now runs a lease bank to offset costs.

Water Banking Example “Teasers”

■ Klickitat PUD

- After acquiring an industrial water right, runs a lease bank to serve PUD members and offset costs.



■ Klickitat County

- After acquiring a historic hydropower right, developing a water bank to serve County customers.

Upcoming presentations...

- **Water Banking in Spokane County** - *Mike Hermanson*
- **Dungeness Water Exchange** - *Susan Adams*
- **Water Banking to Address Rural Water Supplies in the Yakima River Basin** – *Paul Jewell*
- **Status of Water Banking in Oregon** – *Amanda Cronin*
- **Water Banking in Idaho: A Tool for Water Suppliers** – *Scott King*

Open Discussion

