



Brief History of Water Rights and Water Banking

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Today's Presentation

- Water Right Basics
- Ecology's role in the Water Market
- Trust Water Rights Program
- Creating water banks
- Water Banking Pilot Grants
- Discussion and Q&A





History of Water Rights

- **WATER LAW 101** by Natalie N. Kuehler
 - Presentation available at [this link](#), enter Passcode: fgjkBE5=
 - Also available at the Methow Watershed Council's website, Latest News section (www.methowwatershed.com)
- 100 years of Washington water law story map
 - <https://ecology.wa.gov/About-us/Get-to-know-us/Our-Programs/Water-Resources/Learn-the-history-of-water-law>

What is a water right?

A legal authorization to beneficially use a predefined quantity of public water for a designated purpose over a specified length of time.



8-537-1



**Prior Appropriation:
First in time, first in right**



What is a water right?

- Application
 - A request for a permit
- Permit
 - Permission to develop a water right issued by Ecology
- Certificate
 - State certified water right
- Vested Right
 - Water put to beneficial use pre-water code
- Claim
 - An assertion of a vested right
- Tribal/Federal Reserve Right
 - Water rights established through agreements
- Adjudicated Certificate
 - Superior Court certified water right



Water Right Sales

Water rights are appurtenant to the land, unless...

- Withheld in a sale
- Sold separate from the land
- Transferred to another location
- Transferred to the Trust Water Rights Program to benefit streamflow or seed a water bank



Ecology's Role in the Water Market

Acquire water rights into
the Trust Water Rights
Program to:

- Improve streamflow for fish
- Address water supply needs



Trust Water Rights Program

RCW 90.42.010 (1991)

“...develop and test a means to facilitate the voluntary transfer of water ... to provide water for presently unmet needs and emerging needs.”



Trust Fundamentals

A trust water right is created only when it is both:

- Conveyed to Ecology by the water right holder, and
- Accepted by Ecology into Trust

While in trust, these rights:

- Are not subject to relinquishment
- Retain their original priority date





“Tool Box”

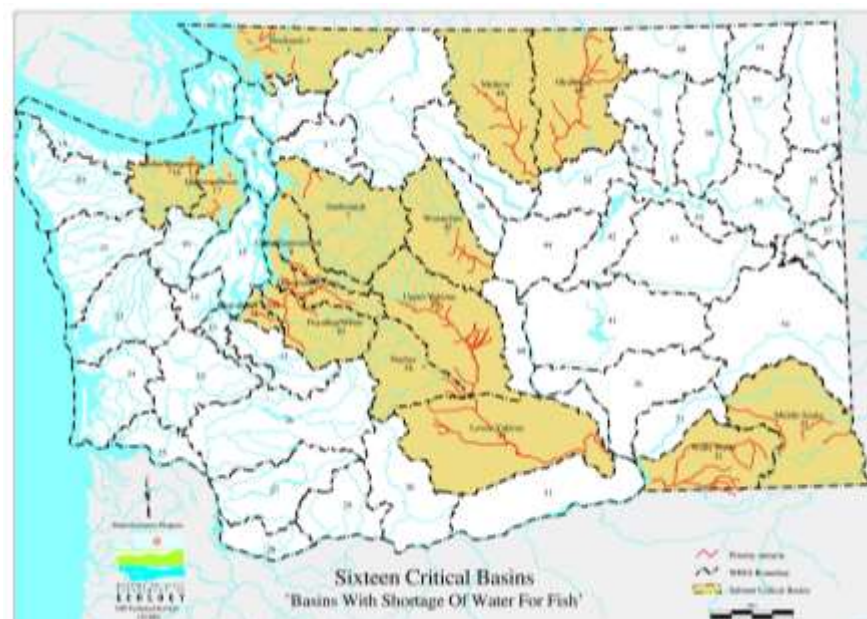
Water rights may be held in trust through:

- Temporary Donation
- Lease
- Purchase
- Other Means (Water Banking)

Ecology's Water Acquisitions Program

Established in 2003 to improve flows in critical basins:

- Leasing
 - improve streamflow especially during droughts
- Purchasing
 - improve streamflow and remove diversions/barriers
- Acquire through “other means”
 - Enter into water banking agreements that keeps water instream until its used to mitigate



Ecology's Water Acquisitions Program

- Leasing
 - \$15 - \$300 per ac-ft/yr
 - 2015 – ROZA offered \$500/fallowed acre
 - 2023 – \$300 per consumptive ac-ft mitigation
- Purchasing
 - \$500 - \$8500 per consumptive ac-ft/yr
 - \$100 - \$1500 per non-consumptive ac-ft/yr
- “other means”
 - \$0, and an agreement (usually for water banking)

Water Banking Grants

- In 2021, the Legislature provided \$14 M funding for a water banking pilot grant program
- Local concerns with large water right transfers out of basin
- Designed to help public entities and their partners preserve water rights in their basin and enhance streamflow
- Grant funding is available for:
 - Development of water banks in rural headwater counties
 - Acquisition of water rights appropriate for use in a water bank



Water Banking Grants

- Provides for purchasing water rights already in a water bank
 - Requires additional steps to transact
- Requires water right appraisals
 - Ecology may require an independent review of the appraisal
 - Final price negotiated:
= (cost per consumptive ac-ft) X (valid ac-ft determined in change process)
- Dedicating one-third of purchased water to instream flow
 - Groundwater not in direct hydraulic continuity with surface water is ineligible.

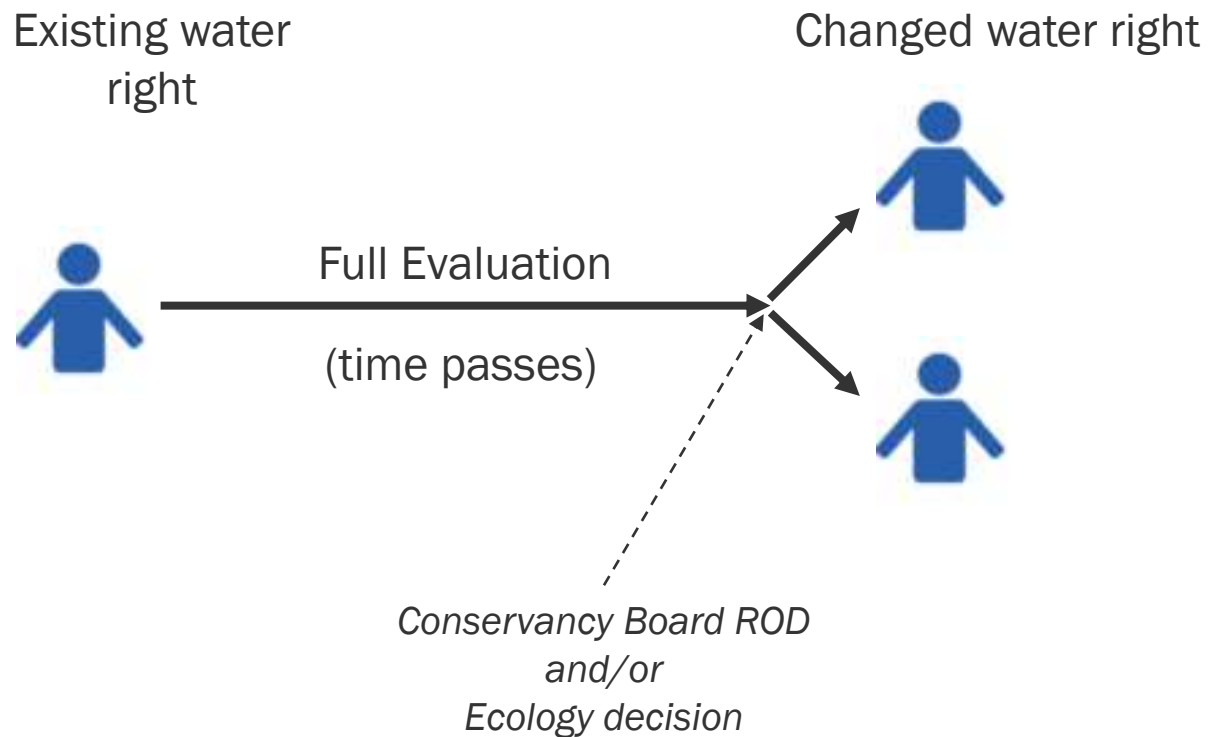


Water Banks

Why do we need water banks if water rights can be transferred directly to new uses?

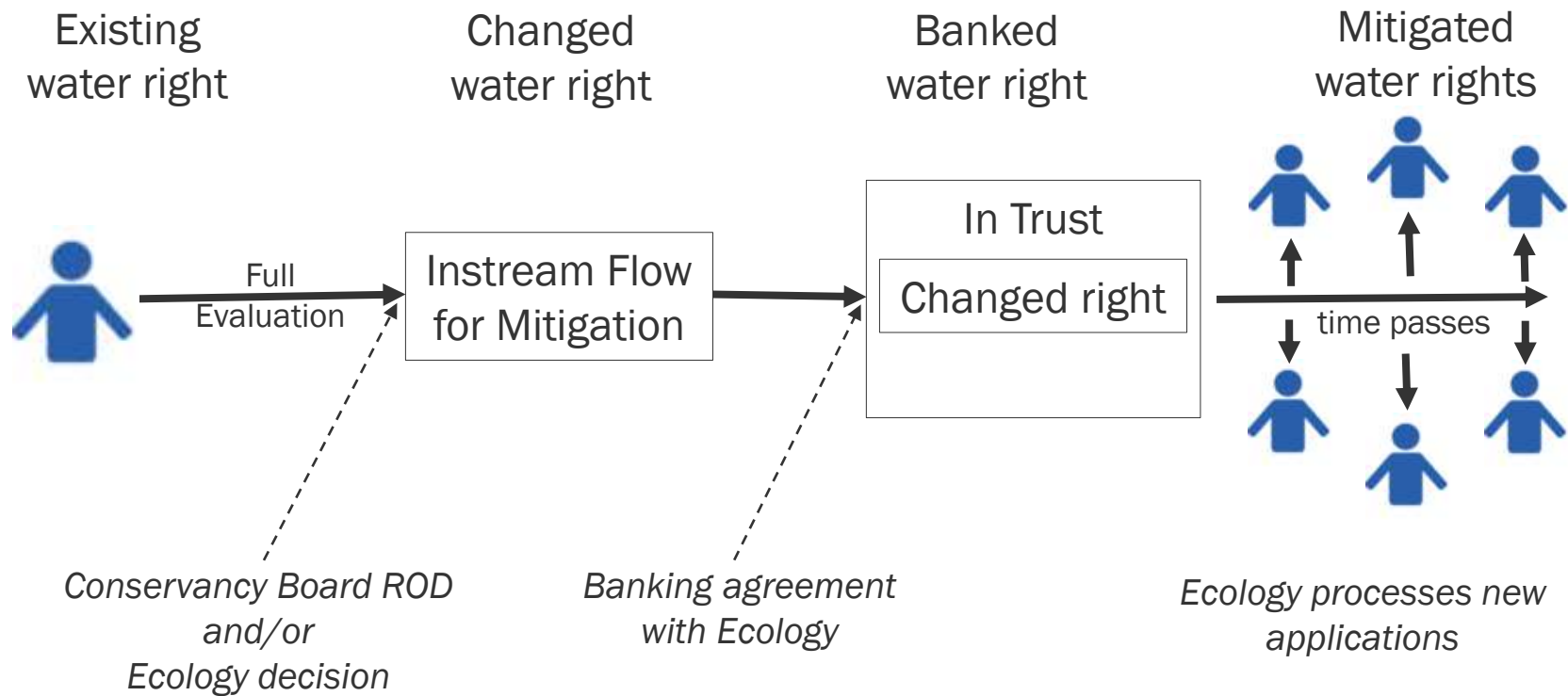


Transfers Without Banking



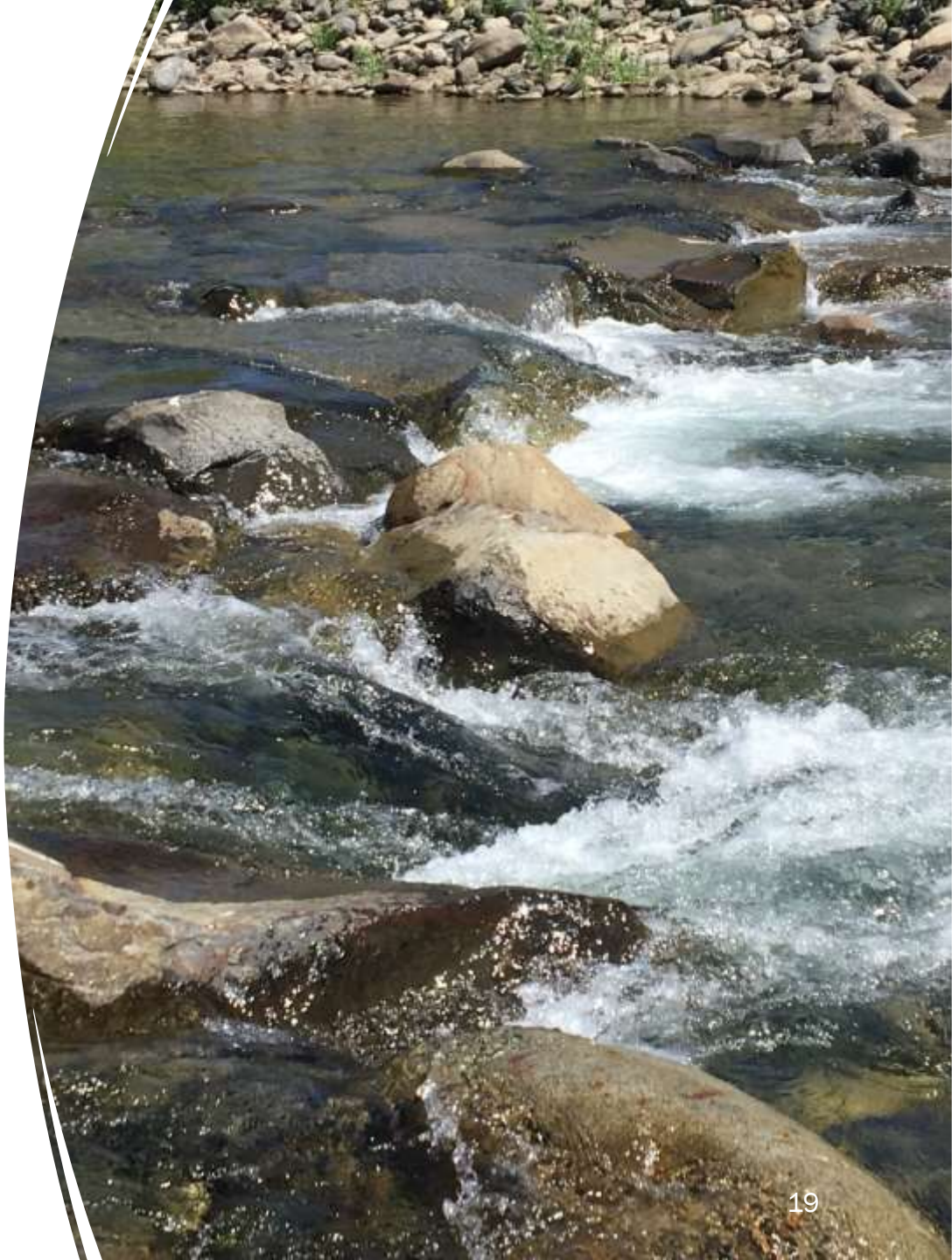


Transfers to Trust for Banking



Contact Info and Resources

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- [509-731-0976](tel:509-731-0976)
- Water Banking:
 - <https://ecology.wa.gov/water-shorelines/water-supply/water-rights/water-banks>
- Water banking grants
 - Funding Guidelines:
<https://apps.ecology.wa.gov/publications/documents/2311006.pdf>



Thank you!

