

## **Water Banking A Primer and Case Studies for Municipalities**

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## ▶ Session Topics

- Water Banking Overview
- Why Water Banking?
- Case Studies Galore!
  - Prices
  - Science
  - Quantities
- Questions

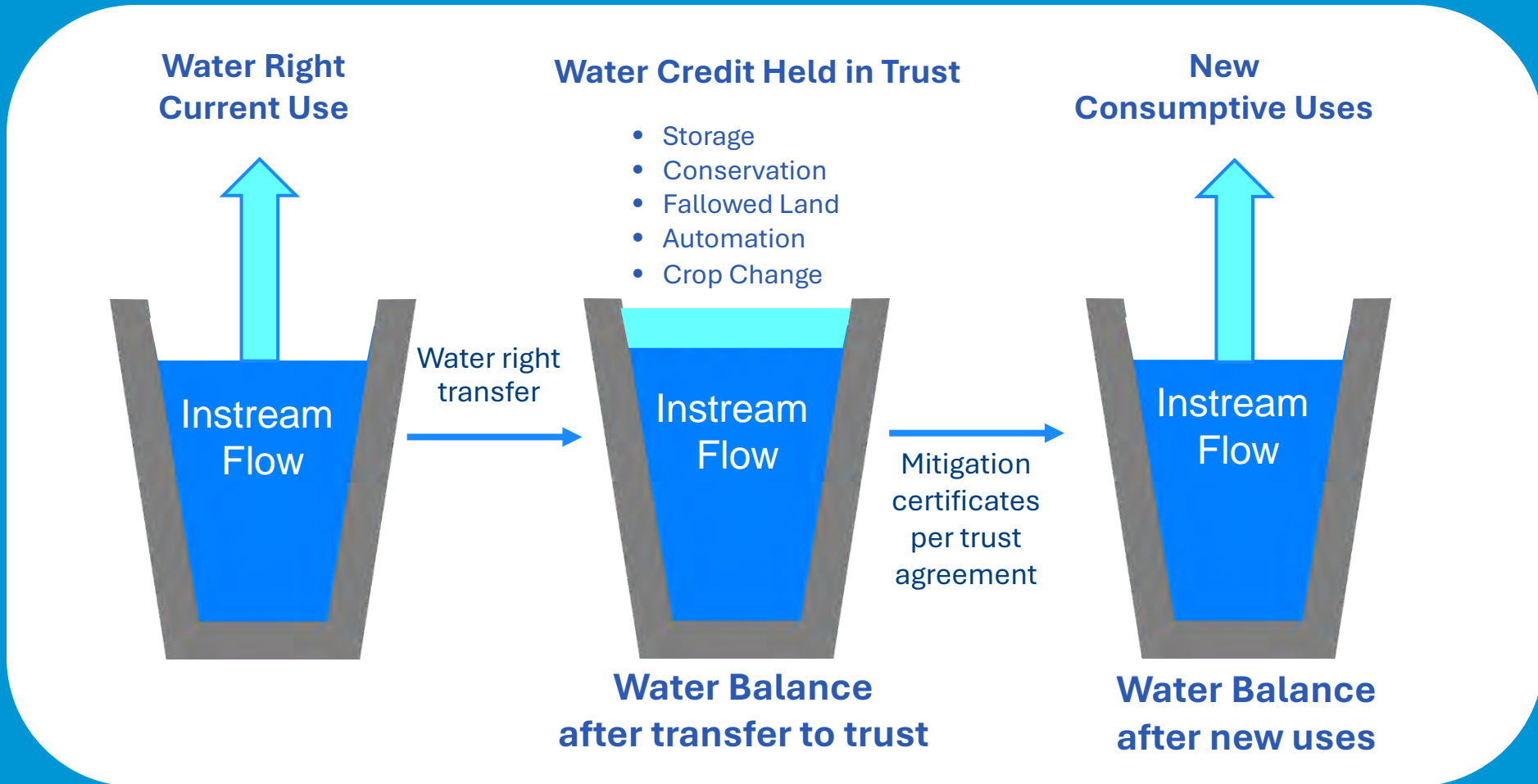




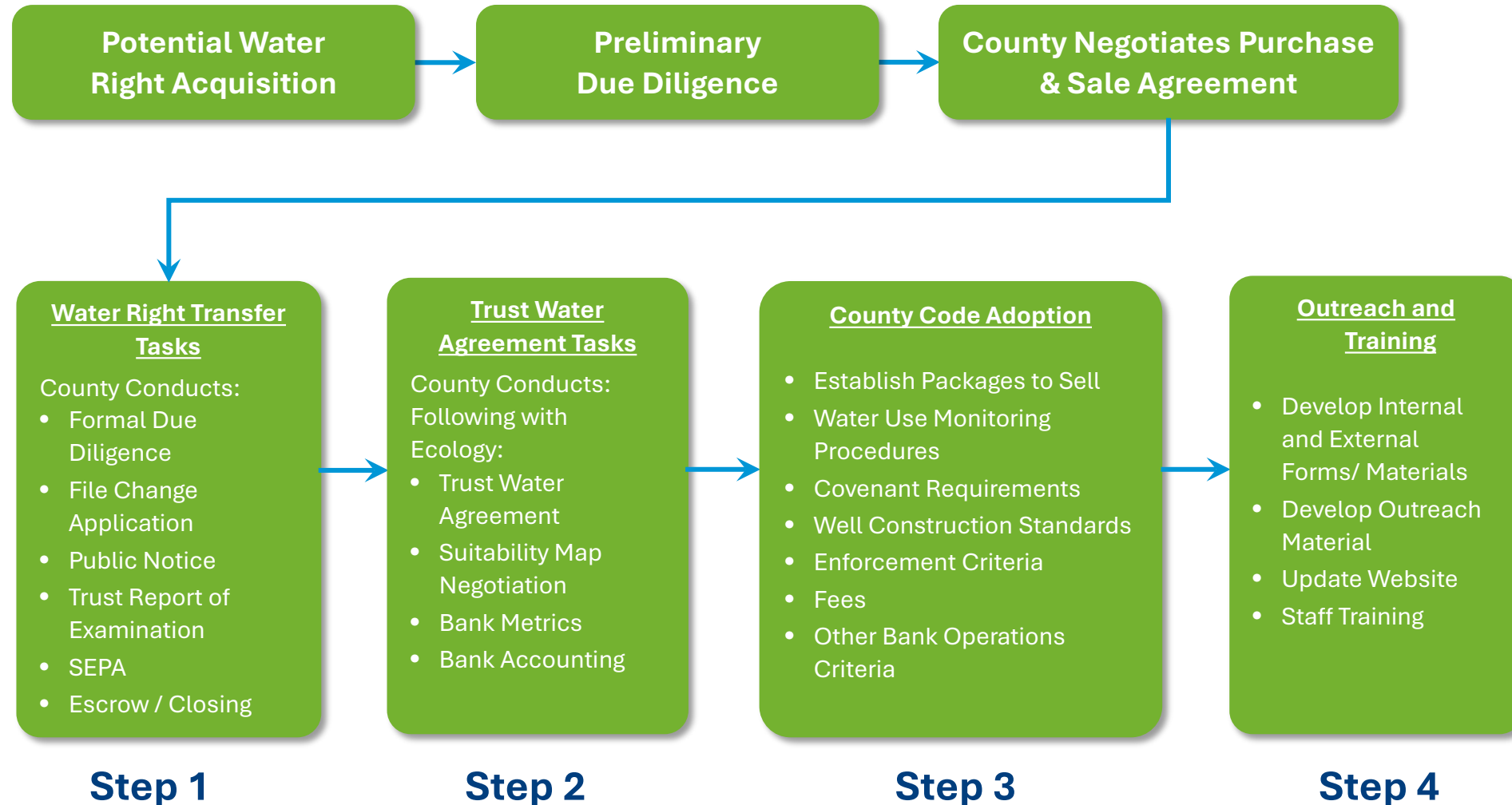
# What Is Water Banking?

# Water Bank Concept

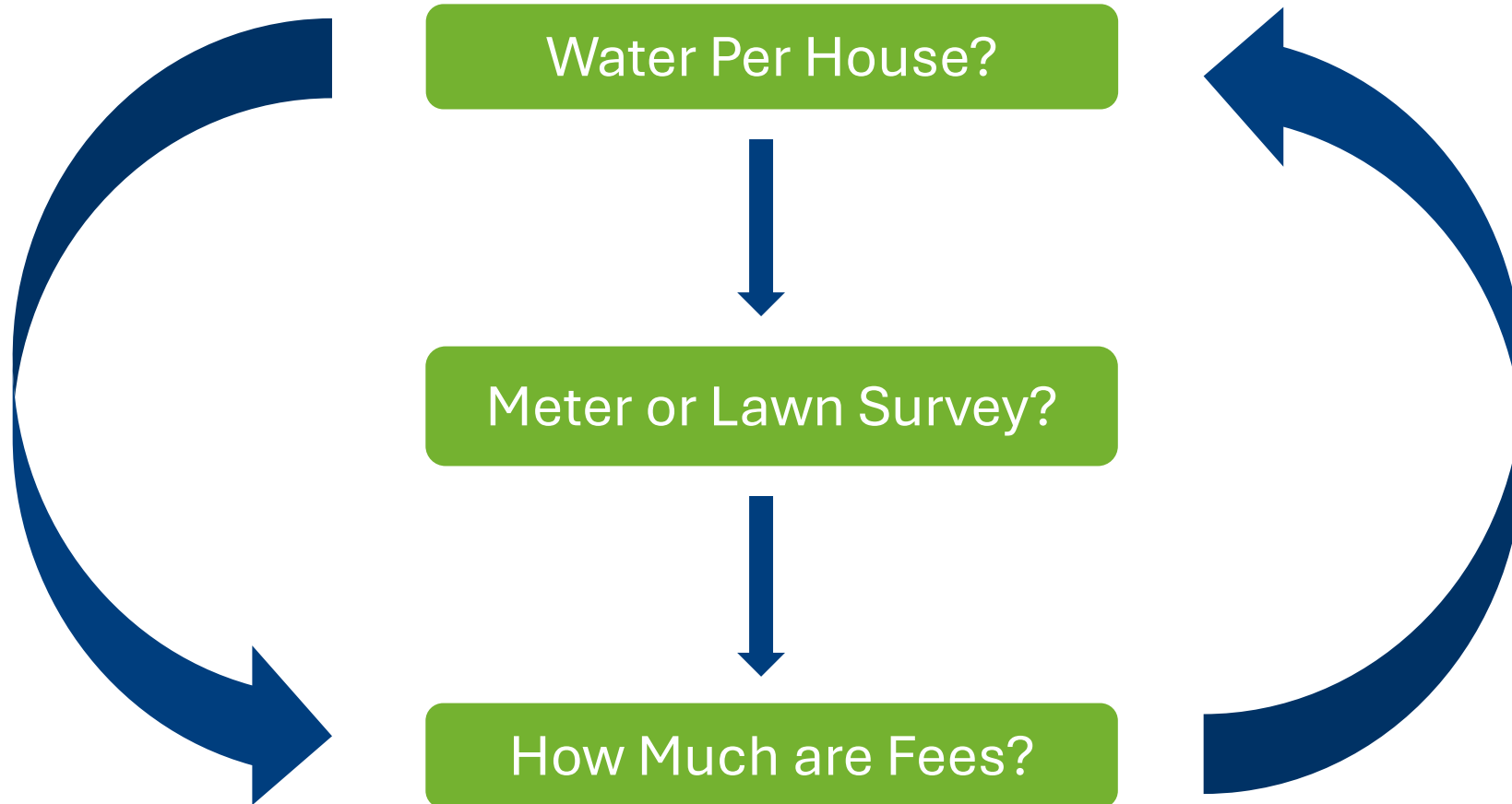
Water banks redistribute water right authority between sellers and buyers.



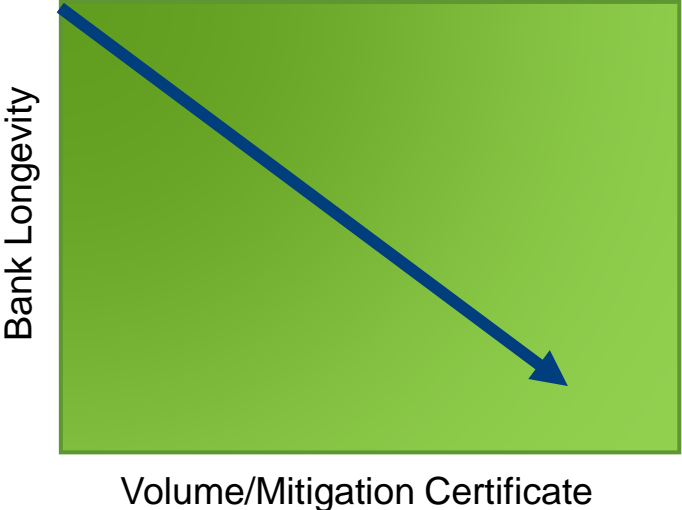
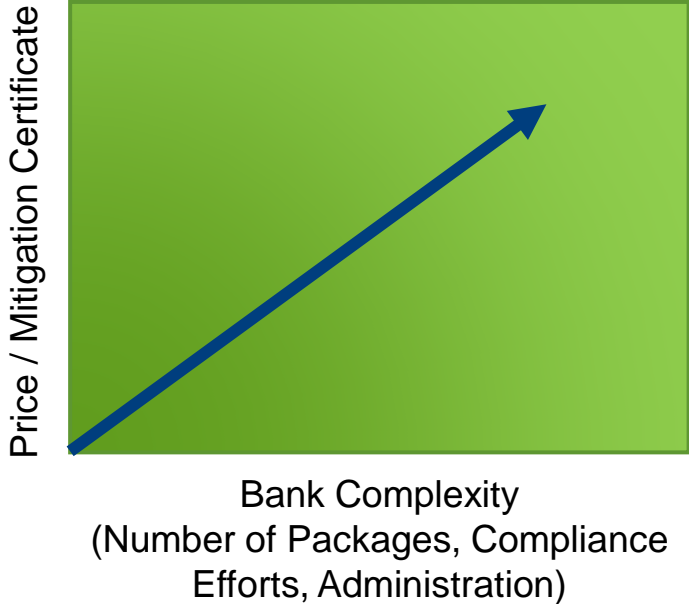
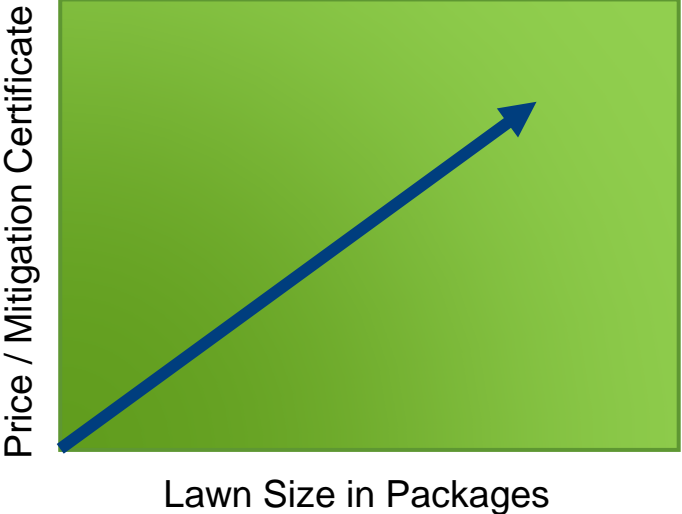
# County Water Bank Implementation



# 3 Big Interrelated Questions

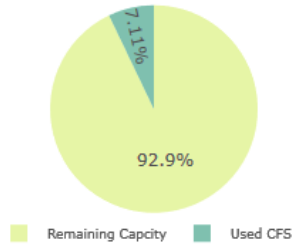


# Bank Choices and Consequences



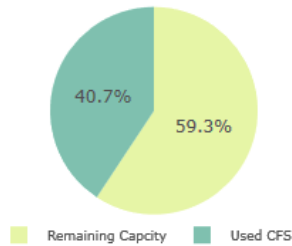
# Water Bank Accounting / Reporting

## Peshastin Creek



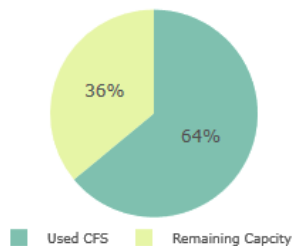
Total Exempt Debits (CFS%)	# of Exempt Well Parcels Debited	Total Permitted (Water Right) Debits (CFS)	Remaining Reserve (CFS)	Est. # of Exempt Well Debits Remaining
0.00711 7.11%	20	0	0.0929 92.89%	237

## Chumstick Creek



Total Exempt Debits (CFS%)	# of Exempt Well Parcels Debited	Total Permitted (Water Right) Debits (CFS)	Remaining Reserve (CFS)	Est. # of Exempt Well Debits Remaining
0.0175 40.70%	50	0	0.0255 59.30%	69

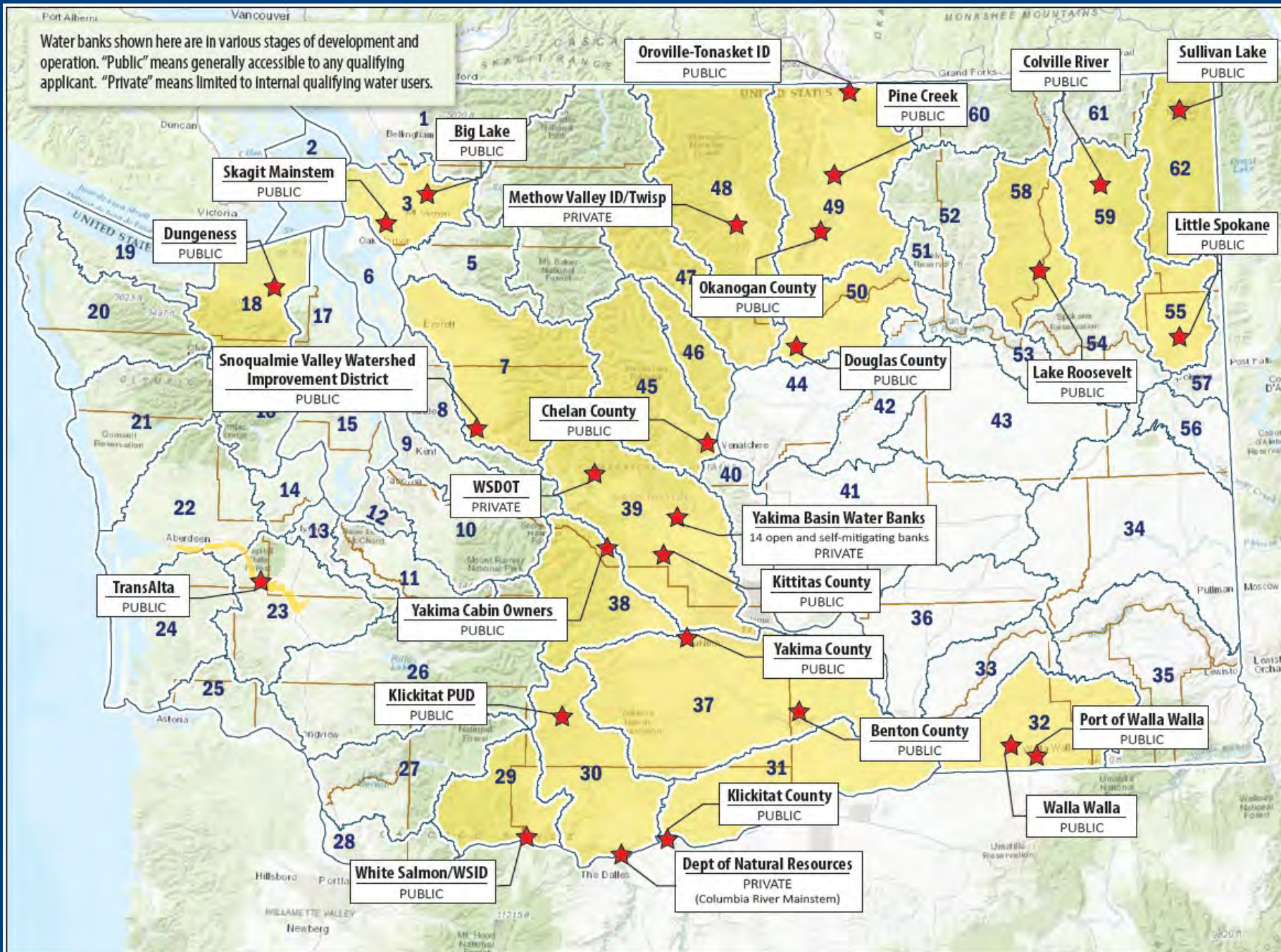
## Mission Creek



Total Exempt Debits (CFS%)	# of Exempt Well Parcels Debited	Total Permitted (Water Right) Debits (CFS)	Remaining Reserve (CFS)	Est. # of Exempt Well Debits Remaining
0.0192 64.00%	21	0	0.0108 36.00%	11



Water banks shown here are in various stages of development and operation. "Public" means generally accessible to any qualifying applicant. "Private" means limited to internal qualifying water users.





# Why Water Banking?

# Relinquishment Risk is Lower

**Water banks can be a safe haven for property transition, and an option to keep water local.**

**RCW [90.14.140](#). "Sufficient cause" for nonuse defined—Rights exempted.**

(2) Notwithstanding any other provisions of RCW [90.14.130](#) through [90.14.180](#), there shall be no relinquishment of any water right:

(h) If such right is a trust water right under chapter [90.38](#) or [90.42](#) RCW.

## Trust Water Right Agreement

5. Both the New Applications and Other New Applications, and their respective Permits once issued, shall be conditioned such that:

5.1 The forfeiture of a Permit or Certificate, or a subsequently issued certificate or portion thereof, does not disturb or prevent the assigned or associated portion of the Trust Water Right from further designation or use under this agreement.

5.2 In the event of forfeiture of a Permit or Certificate described above, Ecology shall notify MVID for the purposes of determining appropriate future designation or uses of the water right.

# No Loss of Priority

## RCW [90.03.340](#)

### **Appropriation procedure—Effective date of water right.**

The right acquired by appropriation shall relate back to the date of filing of the original application with the department.

4. The New Permits relative to the New Applications and Other New Applications will specify the conditions and limitations on the use of water in a manner consistent with the Water held in the MVID Water Bank as mitigation. Conditions relating to measuring and reporting water use will also be included in the permit(s). Permits issued based on New Applications and Other New Applications will have a priority date based on the date filed (pursuant to RCW 90.03.340), provided however, that they will be provisioned to clarify that their priority date for purposes of regulation, adjudication, or any other challenge is equal to the water rights held in Trust Water Rights Program in the MVID Water Bank as set forth in Exhibit A.

# Permitting Certainty

- Obtaining permits from banks are water budget neutral, which qualifies for priority processing under WAC 173-152-050(2)(g).
- Extent and validity of the right is fixed in trust. This creates certainty in transactions and water pledged for new uses (trust is “the gold standard” in water right transactions).
- Lower appeal risk for future transactions (largely based on impairment and public interest)

# Controlling Your Own Destiny . . .

**Municipal water purveyors with their own water rights assets are better able to solve problems and react to opportunities:**

- **Attracting business development**
- **Solving critical water supply needs**
- **Assisting at risk public water systems**
- **Creating public options to offset private solutions**

# Exempt Well Risk Remains—Court Cases

- ***Postema v. Ecology (2000)*** – So-called “one molecule” standard for impairment.
- ***Campbell & Gwinn v. Ecology (2002)*** – Single exemption per project, not per parcel.
  - **Recent Underwood PCHB 24-065 case**
  - **Kittitas County back-mitigation and large area permits**
- ***Five Corners Family Farms v. Ecology (2011)*** – All exemptions cumulative and no stockwater limit.
- ***Kittitas County v. Easter WA Growth Management Hearings Board (2011)*** – Subdivision regs must consider multiple applications for commonly owned property.



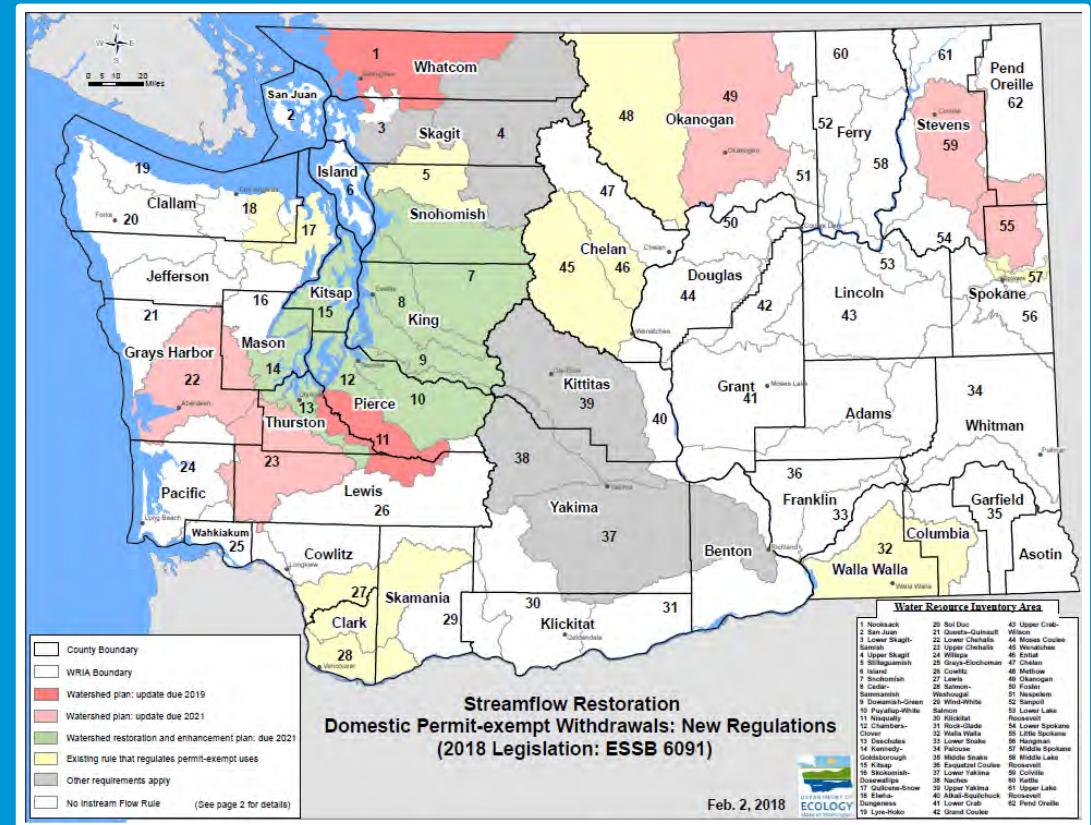
# Exempt Well Risk Remains—Court Cases

- *J.Z. Knight v. Yelm (2011)* – Water adequacy at preliminary plat stage, not building permit stage.
- *Swinomish v. Ecology (2013)* – Invalidated Skagit Rule finding Ecology exceeded their OCPI authority.
- *Foster v. Yelm (2015)* – OCPI authority only for infrequent and temporary public projects.
- *And then, Hirst (2016)* – No exempt well impacts to instream flows
- . . . And Legislature passes RCW 90.94 (2018)



# Being Outside the RCW 90.94 Mitigation Zones Isn't Forever Immunity

- Campbell & Gwinn jeopardy
- “Net Ecological Benefit” mitigation only for 20 years, so “re-opener” after 2038 possible
- Third-party risk
- Emerging Ecology policies and case law . . .



# Ecology Policies vs. Exemption

- Temporary Farm Worker Housing subject to “same project” criteria under Campbell & Gwinn
- Ecology considers Temporary Farm Worker Housing a “municipal use” (Policy 2030)

Ecology interprets “providing residential use of water for a nonresidential population” to mean a water right supplying the full range of residential water uses (e.g., drinking, cooking, cleaning, and sanitation). Temporary domiciles qualify when occupied by the same 25 people for at least 60 days a year. For example, this could include systems serving vacation homes and temporary farm worker housing, but might exclude water systems serving daycares, churches, campgrounds, hotels, fairgrounds, restaurants, commercial businesses, and factories. Ecology determines if systems that supply water for a nonresidential population hold water rights for municipal water supply purposes on a case-by-case basis.

# Ecology Policies vs. Exemption

- Ecology has recently stated that the exemption is not appropriate for any municipal use because “municipal” is not listed in RCW 90.44.050, only single and group domestic use.

## **RCW 90.44.050**

After June 6, 1945, no withdrawal of public groundwaters of the state shall be begun, nor shall any well or other works for such withdrawal be constructed, unless an application to appropriate such waters has been made to the department and a permit has been granted by it as herein provided: EXCEPT, HOWEVER, That any withdrawal of public groundwaters for stock-watering purposes, or for the watering of a lawn or of a noncommercial garden not exceeding one-half acre in area, or for single or group domestic uses in an amount not exceeding five thousand gallons a day, or as provided in RCW [90.44.052](#), or for an industrial purpose in an amount not exceeding five thousand gallons a day, is and shall be exempt from the provisions of this section

# Ecology Policies vs. Exemption

- But if this true, this leads to other challenges. Many governmental uses rely on the exemption, (e.g., road maintenance shops, landfills, fire stations, treatment plants, and other rural uses).

## **RCW 90.03.015(4)**

"Municipal water supply purposes" means a beneficial use of water: (a) For residential purposes through fifteen or more residential service connections or for providing residential use of water for a nonresidential population that is, on average, at least twenty-five people for at least sixty days a year; (b) for governmental or governmental proprietary purposes by a city, town, public utility district, county, sewer district, or water district; or (c) indirectly for the purposes in (a) or (b) of this subsection through the delivery of treated or raw water to a public water system for such use.

- If these are municipal and not exempt, we have larger emerging compliance issues.



# Kittitas County Case Study

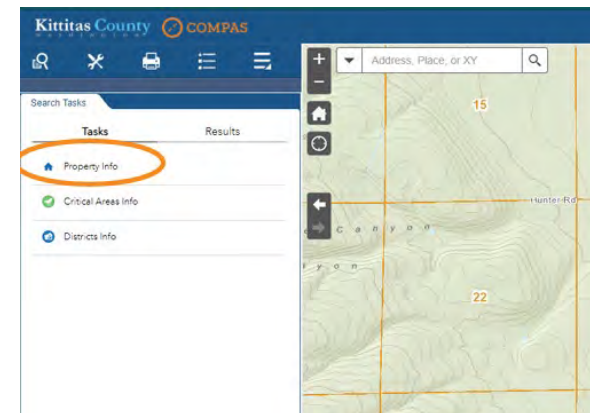
# Kittitas County

- The “OG” of water banks
- Third-party lawsuit regarding subdivision “same project” violations, whose duty was it to figure out?
- Then, concern over risk of private water bank “control” overgrowth
- Kittitas County purchased 3 banks to start their public alternative
- But it’s lean—two packages, not everything to everyone
  - \$4,075 (indoor) - \$4,990 (outdoor) mitigation fee
  - \$370 meter inspection fee
  - \$180 annual meter reporting fee



Water Mitigation Suitability Map

*Launch the Application*



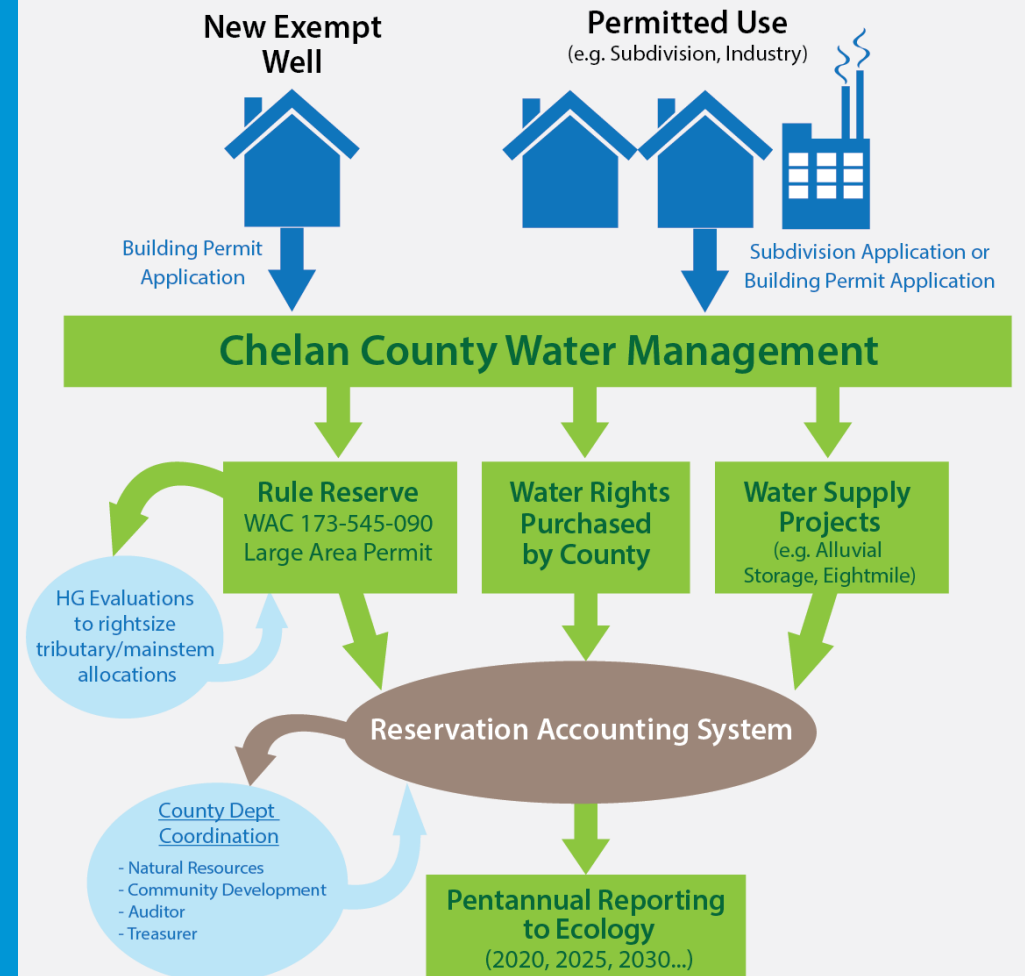


# Chelan County Case Study

# Chelan County

- Not a “Hirst” County, so why water banking?
- Limited reserves of water under instream flow rules
- Economic development
- Local water retention
- Also “single offering”:
  - \$1,000 bank admin fee
  - \$1,000 mitigation fee
  - No meters, lawn audits

## Envisioning Chelan County Reserve Accounting







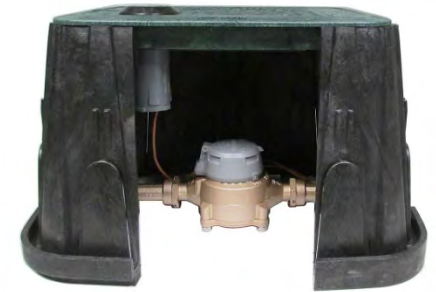
# Yakima County Case Study

# Yakima County

- Also, not a “Hirst” County, so why water banking?
- Litigation risk following Kittitas County
- Yakima basin operates on no impact to TWSA/juniors
- Also “single offering”:
  - \$650 domestic well permit
  - \$500 meter fee
  - \$140/year “pipeless utility” ready to serve charge
  - Cost / cf (see 2018 table)



**YAKIMA**  
COUNTY



Water System	Rate Per 100 Cubic Feet Based on Annual Use
YCWRS Domestic Well	\$0.36/100cf (first 17,000cf)
	\$1.86/100cf (from 17,000 to 50,000cf)
	\$2.48/100cf (from 50,000 to 100,000cf)
	\$3.72/100cf (from 100,000 to 200,000cf)
	\$4.34/100cf (over 200,000cf)



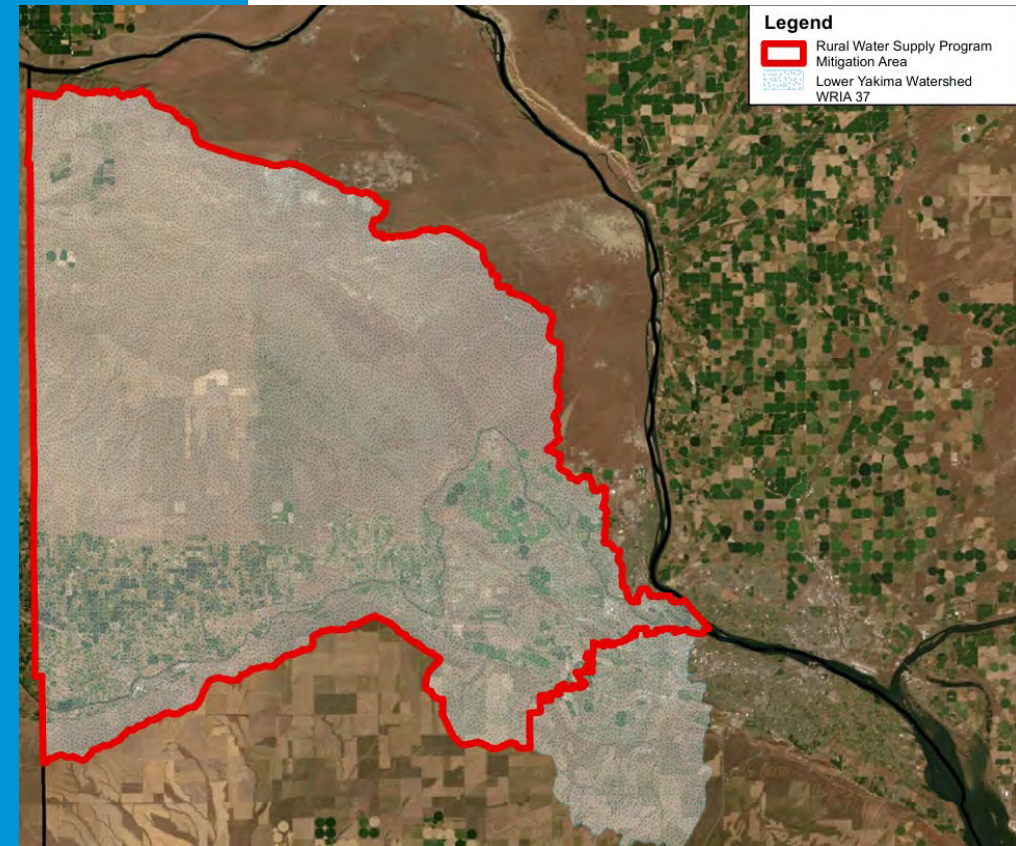
# Benton County Case Study

# Benton County

- Also not a “Hirst” County, so why water banking?
- Futurewise litigation
- Yakima basin operates on no impact to TWSA/juniors
- Also “single offering”:
  - \$663 (indoor) to \$1,410 (irrigation) to \$2,157 (more irrigation)
  - \$500 meter fee
  - \$180/year “pipeless utility” rates
  - Auditor Recording Fees \$310



## Benton County Rural Water Supply Program

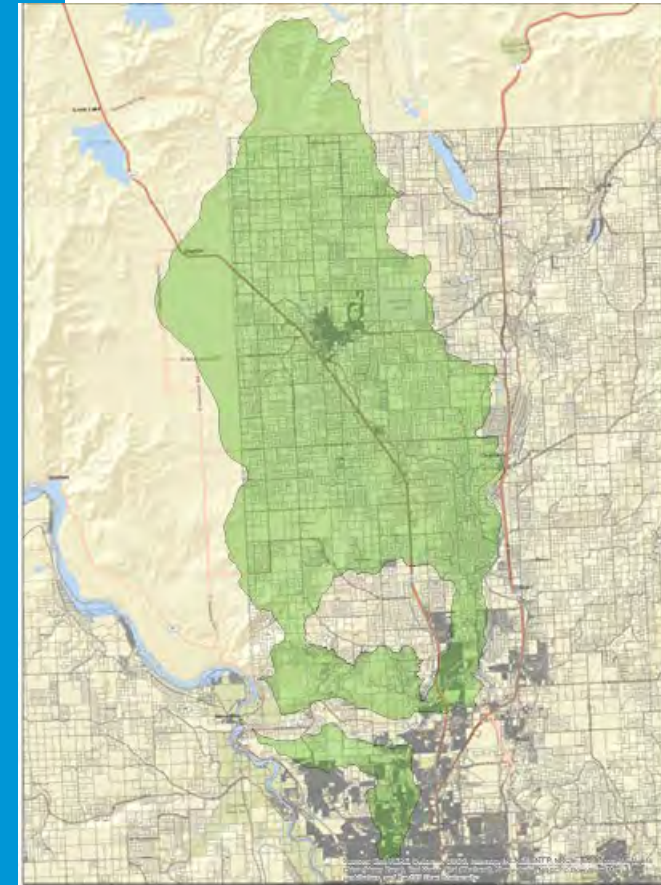




# Spokane County Case Study

# Spokane County

- Spokane was a “Hirst” County because of Little Spokane rule
- Created water bank in 1 year
- Purchased multiple ag rights
- Also “single offering”:
  - \$350 indoor + \$230/1,0002 lawn
  - \$500 mitigation fee
  - No meter, \$615 Recording fees
- But also participated in the RCW 90.94 NEB effort, so Spokane bank largely covering Campbell & Gwinn jeopardy and economic development opportunities



Little Spokane Water Bank  
Approved Mitigation Area  
December 4, 2017

The Approved Mitigation Area is the area where stream flow reduction certificates are available under the first water right put into the Little Spokane Water Bank.

A mitigation certificate allows a new use of water in the Little Spokane Watershed (WRIA 52) that is not subject to restrictions found in RCW 173-005 (Little Spokane River Treatment Flow Rule). Building permits issued within the Approved Mitigation Area are still subject to wet setback requirements.





# Okanogan County Case Study

# Okanogan County

- WRIA 49 subject to “Hirst” and instream flow rules.  
WRIA 48 subject to instream flow rule/closures.
- In the process of establishing a water bank and acquiring water rights.
- Being led in collaboration between the Okanogan Conservation District and County.
- Unique in that it focuses on agricultural and rural residential uses.
- Goal to preserve water rights in upper basin and provide mitigation for new/interruptible uses.
- No fees determined yet.







# **City of White Salmon Case Study**

# City of White Salmon

- White Salmon Irrigation District (WSID) formed in 1920's.
- Northwestern Electric Co. objected to diversions which would diminish their senior power right.
- WSID dug a canal to import water 8 cfs from the Lewis River drainage into White Salmon River drainage.
- Condit Dam removal in 2011 allowed 8 cfs to transition to new uses.
- WSID and City formed a water bank.
- Currently only long-term lease customers considered.

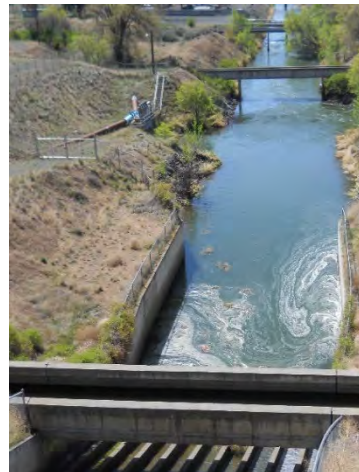




# **Selah Moxee Irrigation District (SMID) Case Study**

# SMID Case Study

- \$80M in improvements
- Water savings from conservation / crop change / urbanizing
- $\approx 9,000$  ac-ft bank
- Small sales and large leases

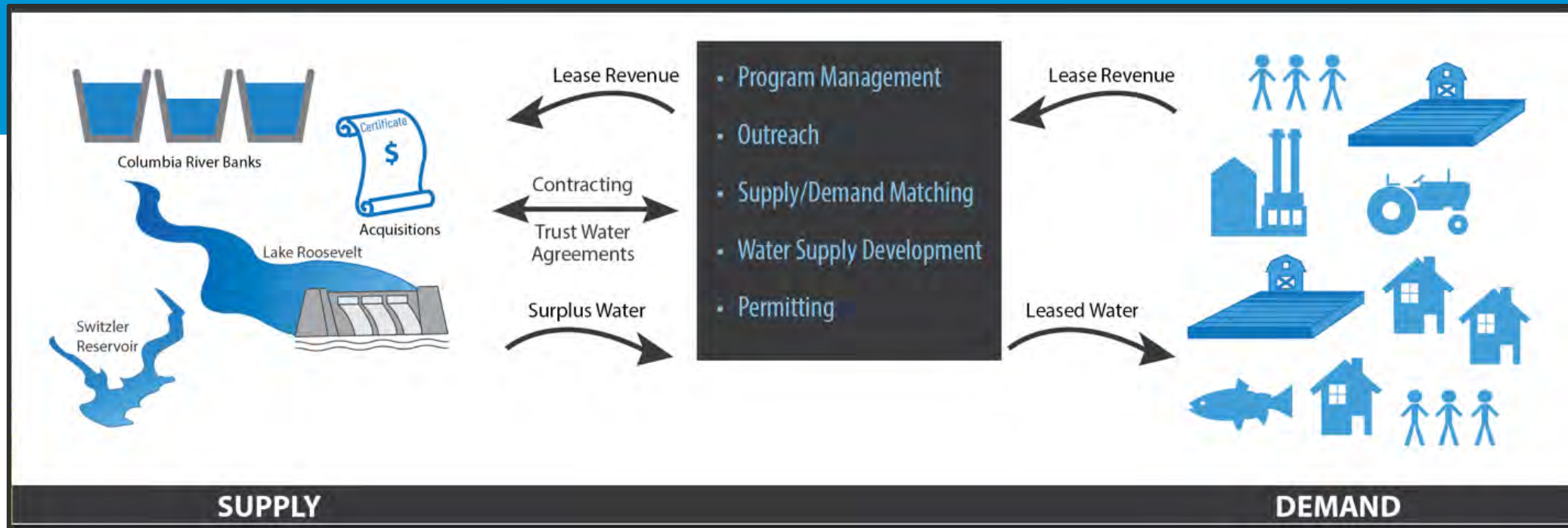




# State Bank Case Study

# Drought Insurance Program Concept

- Ecology OCR funding study and coordinated agreements with multiple existing water banks
- Provide water for Columbia River interruptibles (300+), fish, and water supply projects





**Looking Ahead...**

# Recommendations

- **Consider your exempt well risk**
- **Consider whether owned water right assets are important for your long-term goals**
- **Consider your “keeping water local” values**
- **Consider water banking grant program fits (e.g., both Reclamation WaterSmart and Ecology)**
- **If water banking is of interest, first step is often an audit of need and priorities**
- **Continue to monitor key issues affecting water policy and case law through organizations like WSAC, AWC, WPUA, WWUC, and Ecology’s WRAC**
- **Talk to others who have made these choices**



# Questions?



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