

Washington State Association of Counties

These comments are specifically regarding the "Draft Findings and Potential Policy Tool- for Meeting 5" document. They are organized specific to the numbered findings and the numbered potential policy tools (PPT). I have numbered the overall comments sequentially for convenience.

1. Regarding finding F.1.3, I'm not sure its accurate to state that "water rights cannot be transferred back upstream". While is is difficult to transfer water rights back upstream in many cases, it isn't always impossible. In addition, there are ways to preserve that ability as part of the transfer/sale transaction. Where usable infrastructure exists, or can be constructed (reservoirs, ground water storage, etc.) there is additional flexibility.

2. Regarding PPT P.1.1, there may be some legal restrictions regarding a strict "right of first refusal". I'm not sure that WSAC would support this proposal as written as we have members on both sides of this issue (potential sending basins/counties and potential receiving basins/counties). However, a modified concept that allowed a county of origin for a potential water right transfer to purchase and retain a portion of a right may be acceptable (for instance 30%). This would allow some of the resource to remain in-county, protecting upstream environmental and economic interests while also preserving the ability for water right holders to market their right. It would also protect the interest of potential buyers by assuring the resources expended in finding and negotiating a potential sale are not lost. Water markets could continue to work effectively by being responsive to need and effective use without creating other upward pressure on pricing.

3. Regarding PPT P.1.2, this just doesn't seem like a reasonable approach. It's not clear how Ecology would make this decision. For instance, what basins would qualify as "most affected". Also, this proposal ignores simple facts that markets change, needs change, and in many cases it makes absolute sense to redistribute resource use, including the use of water. While we appreciate the attention to the plight of upper basin communities being negatively impacted by downstream transfers, this proposal has too many uncertainties.

4. Without commenting on the other PPT or the Ideas Not Recommended (NR) in this section (Out of Basin Transfers) we very much appreciate the conversation and ideas to assist in addressing the concerns of upper basin communities and counties. We remain concerned about the long-term economic and environmental health of those communities who are often targets for water purchasers as water rights typically transfer down stream relatively easily. For most of those communities, when water rights originating in their counties are transferred downstream, they rarely, if every return. This creates a significant impact over time and limits the sending county's economic prospects from a variety of perspectives. We remain committed to working with stakeholders to find reasonable and acceptable solutions to this problem.

5. Regarding the findings for the "Transparency in Water Right Sales" section, we agree that public notice requirements of sales and transfers are adequate. Increasing notice requirements won't likely change the water markets or whether there are willing participants. Additionally, focusing on who is the purchaser of a water right and limiting who can purchase water rights, is

not really addressing what we see as the problem with sales and markets. Rather, focusing on how the water can be used and/or marketed after it is purchased would be our preferred strategy.

6. Regarding finding F.3.2, flexibility is one of the program's greatest assets and limiting that flexibility could hamper creative water solutions. Therefore, as the future need and use of water resources is not entirely predictable, flexibility should be maintained when possible. However, we do not agree with the portion of this finding that states "the value of flexibility outweighs any potential concerns of 'abuse' of the TWRP." Rather, as we have witnessed several abuses in the past when the TWRP has been used for conveying mitigation for new uses of water in certain circumstances, we should take action to prevent those abuses in the future. To do nothing would be irresponsible and would hurt the public and the resource.

7. Regarding finding F.3.5, We do not agree with this statement that "most participants were not concerned over the use of the TWRP in ways that yield private profit". We have advocated strongly for increased regulations and oversight where use of the TWRP is by private, for-profit entities as they are utilizing a public resource. Many participants expressed agreement with the arguments made in this regard. Like the next finding, this would be accurate if it was redrafted to state that "some" were not concerned rather than most.

8. Regarding PPT P.3.1, we believe it is appropriate to distinguish between certain uses of the TWRP. It should be easy to put water in the TWRP for instream flows, to protect it from relinquishment, and for simple agricultural transfers/uses. However, as water rights are placed in the trust for uses that would provide mitigation for new commercial and/or domestic purposes, and that are intended to perpetuate a for-profit business model, oversight and regulation should increase significantly.

9. Regarding finding F.4.3, the way this finding is stated, it appears to contradict the previous finding (F.4.2). This finding should be removed as it is not accurate.

10. Regarding finding F.4.4, it is not accurate to state that "several thought the bill passed in 2016 (SB 6179) resulted in significant improvement and that no further action is needed..." This bill was not discussed in depth and the conversation that did occur did not leave a sense that there was much awareness of the legislation among the group and certainly not agreement that it solved all the problems.

11. Regarding PPT P.4.1, we may support this idea so long as any future change to the prospectus would also need to be filed and there would be an additional opportunity for public comment. We would also like to see this required prior to the negotiation and approval of a trust water right agreement and the opportunity to amend the trust water right agreement if the prospectus is amended. This proposal would improve transparency as to the real intentions behind the formation of a water bank and provide input by the community that could bring potential concerns to light that may be addressed in the trust water right agreement.

12. Regarding PPT P.4.2., this is appropriate for certain types of water banks, including those which provide mitigation for new commercial and domestic uses and those with a for-profit business model. However, developing a water bank for purely environmental purposes like in-stream flow enhancements and for agricultural purposes provides significant public benefits and current cost responsibilities may be adequate in those and similar circumstances.

13. Regarding PPT P.4.3., this is an appropriate requirement for water banks that are operating as a for-profit entity and providing mitigation or transfers for new commercial and/or domestic uses. We think this can also likely be accomplished as a matter of negotiation in a trust water right agreement. We saw instances in Kittitas County where only one water bank was operating in an area, and/or where only one could operate because of limited existing water rights that could be repurposed, and some sales were refused because of related competitive considerations from the private bank. This should be avoided and if private banks are trusted to provide a public resource, they shouldn't be allowed to refuse to provide the resource to a willing and able purchaser. We are happy to explain this concern in more detail if needed.

14. Regarding PPT P.4.4., we do not agree with this proposal and believe it simply isn't necessary if our other concerns regarding monopolistic practices prevention, increased regulation, transparency, and cost recovery are addressed.