

TU, KRD, Roza, Kittitas County and Yakima Joint Board

Trout Unlimited, Kittitas Reclamation District, Roza Irrigation District, Kittitas County and the Yakima Joint Board have worked closely with the Washington State Department of Ecology (Ecology) and water resource stakeholders throughout Washington State to design and implement water resource solutions that have broad public and local support. Transfers of water rights, establishment and the implementation of water banks, and the TWRP have all been critical to these efforts. The attached comments have been prepared on behalf of these organizations and are based on decades of work in the Yakima Basin and across the State of Washington on water right transfers, use of the Trust Water Rights Program (TWRP), creation and operation of water banks, and other water right acquisition, permitting, and mitigation efforts for both instream and out-of-stream water uses.

To: Washington State Department of Ecology

From: Lisa Pelly, Director, Trout Unlimited
Arden Thomas, Water Resource Manager Kittitas County
Urban Eberhart, Manager, Kittitas Reclamation District and Member, Yakima Joint Board
Scott Revell, Manager, Roza Irrigation District and Member, Yakima Joint Board
Peter Dykstra, representing Trout Unlimited
Jeff Slothower, representing Kittitas Reclamation District
Bill Clarke, representing Kittitas Reclamation District and Kittitas County
Isaac Kastama, representing Yakima Joint Board

Date: November 15, 2020

Re: Comments regarding Findings and Recommendations Informed by Ecology's Advisory Group on Water Trust, Banking, and Transfers

Introduction

Our organizations have worked closely with the Washington State Department of Ecology (Ecology) and water resource stakeholders throughout Washington State to design and implement water resource solutions that have broad public and local support. Transfers of water rights, establishment and the implementation of water banks, and the TWRP have all been critical to these efforts. The following comments have been prepared by the above individuals on behalf of our organizations and are based on decades of work in the Yakima Basin and across the State of Washington on water right transfers, use of the Trust Water Rights Program (TWRP), creation and operation of water banks, and other water right acquisition, permitting, and mitigation efforts for both instream and out-of-stream water uses. We submit these comments along with several attachments which represent information we provided Ecology during the Advisory Group process.

Overall, the lack of flexibility in the State Water Code, from many of Ecology's regulations, and arising out of recent court decisions creates a difficult environment for creative solutions to increasingly pressing water problems. Nevertheless, our organizations have been successful finding many solutions using these tools in partnership with Ecology and others. Overall, we are concerned that imposing further limitations on water right transfers, water banks, or the TWRP will eliminate potential strategies that will be need for meaningful water management across Washington.

General Comments

1. **Ecology's report omits the crucial role that transfers, water banks, and the TWRP have played over the last three decades in improving instream flows, protecting water rights for water right holders, and facilitating the movement of water to new or different uses, especially during drought.** Historically, Ecology has been a stalwart advocate and central figure in achieving these goals in partnership with irrigation districts and other water right holders, conservation non-profits, local government, tribes, and many, many others. Each one of these goals were explicitly part of the discussion of the creation of the TWRP in 1991 and in every modification of the TWRP by the Legislature ever since. We find it disappointing, mystifying, and misleading that Ecology does not mention the positive outcomes from these collaborative efforts.

Ecology incorrectly suggests in its Report that its only role has been to investigate "potential misuse of the state's trust water statutes." Doing so ignores the great work of Ecology and its many partners over the past

three decades to use the TWRP, water banks, and transfers to implement and achieve in many places the very goals that the Legislature designed those tools to achieve. It also ignores the well-spent millions of dollars in local, state, federal, and tribal governments fund, as well as private (including philanthropic) money, that have been used, much through the great leadership of Ecology, over the years to achieve these goals.

Each of the Ecology Advisory Group meetings was replete with testimony of examples of these successes. In fact, the record of those meetings should show that few if any examples of “misuse” of the transfers, water banks, and the TWRP were ever provided. In the rare instance where “misuse” was alleged, those claims were refuted in testimony as a valid use of the transfer, water banking or TWRP process at issue. The alleged “misuse” simply equated to a policy or political disagreement with the proposed use. We are unaware of any instance where either Ecology, the PCHB, or a court has found evidence of “misuse” of the TWRP. Until it can provide a specific example of such “misuse,” Ecology should not continue to perpetuate the false narrative that such abuses are occurring.

Ecology’s continued framing of the transfer, water banking and the TWRP processes as in need of investigation and fixing while ignoring the long and clear history of successful uses of these programs perpetuates inaccurate claims about tools that are working well and as intended. Ecology’s use of this framing and failure to discuss any of the positive results of these efforts in this Report is an inaccurate picture of the history and value of these tools and a failure to accurately portray the facts on the ground of how Ecology and its partners around the State are using these programs to solve the most vexing water resource challenges we face.

2. The Advisory Group composition and process relied heavily on unsubstantiated opinions and anecdote and did not prioritize the actual experience of subject matter experts. We wish to reiterate our concern that the Advisory Group composition/process was flawed in that was not a balanced group of stakeholder interests represented by people with expertise in the subject matter as we think was intended by the Legislature’s proviso language. While Ecology took efforts to make meetings functional, we believe conference calls of 150+ people are extremely difficult to manage and does not lend itself to high-quality input and discussion. Much of the time was devoted to providing participants with education and understanding of the water code, how water right acquisitions and transfers are completed, and how water banks functions. As such, the group was not “advisory” to Ecology in many respects. Such a process may have been valuable in gathering information and in educating people are interested in, but not directly involved with, the use of the trust water right program, but we believe it is a misguided way to develop policy recommendations. These policy recommendations suffer from attempting to address biases and perceptions and are not an accurate reflection of reality.

3. Ecology failed to recognize the constitutionally protected real property attributes of water rights. While water resources are public resources, the ownership, use, and transfer of those resources is subject to an extensive body of case law, including but not limited to private property rights with constitutional protections. Given that these principles are essential underpinnings to why transfers, water banks, and the TWRP exist and are used on a regular basis, we encourage Ecology to make a specific finding regarding the real property aspects of water rights.

Specific Comments on Findings of Fact

4. Ecology deserves praise for its long history of helping to identify, develop, and fund the establishment of water banks and TWRP transactions, particularly in Central Washington. Therefore, it is surprising that Ecology continues to frame its role in water banking and the TWRP as merely a “regulatory” role (Finding of Fact 19). Throughout the Advisory Group meetings, there was abundant

testimony from Ecology's partners in these endeavors about Ecology's larger role in this process. For example, Ecology's Streamflow Restoration program staff are relying heavily on the use of water transfers and the TWRP to implement the Legislature's goals and commitment of \$300 million in funding over 20 years in the Streamflow Restoration Act. We do not understand Ecology's apparent unwillingness to discuss any of this in the Findings of Fact. We believe it to be an important legacy of Ecology in implementing successful projects that clearly meet the Legislature's goals of these programs. We are concerned that by not acknowledging its role in this process, Ecology is either attempting to deflect political criticism or signaling a change in its willingness to play similar roles in the future. In either case, we ask that Ecology be transparent about its history in these efforts and clear about whether a change in that role is under consideration. Frankly, we believe Ecology knows better, and are disappointed to see the department reinforce unsubstantiated claims and rhetoric, rather than stand with its partners and our shared record of success.

5. We agree with Ecology's finding that one of the most significant inefficiencies and challenges that faces the transfer, water banking, and TWRP processes is a lack of Ecology capacity to process change applications, trust water agreements, and other elements of Ecology's role in these processes (Finding of Fact 21). Ecology's lack of capacity frustrates water right holders trying to make water right changes, increases the costs of instream flow TWRP projects, and makes the workload on existing staff untenable. That said, we believe Ecology's report under appreciates the importance of this issue; it is the single biggest challenge that we have encountered in implementing these crucial tools for effective water management. Further, we believe that there was general agreement during the Advisory Group process on the need for additional Ecology resources to process change applications regardless of whether those change applications involved a water bank or trust water right. We encourage Ecology to clarify Finding of Fact 21 to state: "Participants generally agreed that additional resources for implementation of change applications, water banks and the TWRP would benefit state water management." We support ongoing efforts to ensure that Ecology has improved staff resources and capacity to process water right transfer and water bank applications and manage the Trust Water Program.

Specific Comments on Policy Recommendations

6. Policy Recommendation No. 1: We believe that the tools exist in current law to address the question regarding whether a water right transferred downstream may later be moved back upstream. There was testimony during the Advisory Group process to this effect. For example, if as part of a change application the proposed downstream transfer retains the original point of diversion as part of the proposed change, then that original upstream point of diversion may remain part of the water right. If the water right becomes a trust water right, then it is not subject to relinquishment, so the original point of diversion should remain a valid point of diversion for that water right in the future. We disagree that this is administratively burdensome since it will remain as a point of diversion on record in the Report of Examination that Ecology issues.

That said, there are consequences from deploying this approach. For instance, this approach would undermine any perpetual instream flow benefits that are achieved as part of the downstream transfer; one would have to consider those benefits temporary because the possibility would always remain that the water right could be diverted/withdrawn from its upstream point of diversion. Furthermore, this approach would not allow for an upstream transfer above the original point of diversion, and we caution Ecology that any effort, legislative or otherwise, to allow for a general policy of upstream transfers above existing points of diversion is dangerous. We believe such a transfer is theoretical possibility but only in discrete, case-by-case situations with sophisticated impairment analyses employed.

7. Policy Recommendation No. 5: Ecology's use of the term "conservation easement" is inaccurate and would likely be opposed by entities that regularly use conservation easements to protect land and

water resources. While we agree that there are real property tools that could be used to restrict the use of a water right to their basin-of-origin, conservation easements are a very specific type of tool. Conservation easements involve a landowner granting a third party, usually a land trust or local government, rights to real property through which that third party gains rights but also takes on certain obligations through the Conservation Easement. While this tool could and has been used in Washington State to restrict how a water right is used in the future (including whether it could ever be transferred), it is a very specific tool. Because conservation easements are only one type of real property tool that could achieve the goal of Policy Recommendation No. 5 and involve a much greater level of administration, we recommend that Ecology change the language of the Policy Recommendation No. 5 to state: “Promote the use of real property restrictions on water rights to limit their use to the basin-of-origin.”

8. Policy Recommendation 8: We fully support this recommendation regarding an application form for prospective water bankers. We have been advocates of this concept from the beginning of this Advisory Group process, and it is reflective of how we have operated in developing water banks with Ecology for many years.

9. Policy Recommendation No. 12: We encourage a much richer dialogue around Ecology’s recommendation for future legislative action regarding a “public interest” test for downstream transfers. As we have said above, we do not believe that Ecology or the Advisory Group process fully discussed the important real property attributes of water rights. Attempting to legislatively impose a new test that would burden existing water rights is replete with constitutional issues. In addition, there was substantial disagreement on what is meant by the “public interest” during the Advisory Group process. Saying it is “largely undefined” is a gross understatement; it was a source of debate during the Advisory Group process and there would be an even larger, more difficult debate during any legislative process.

Finally, in this section, we believe Ecology undervalues the “[o]ther factors stressing agriculture today[.]” As we have said before, loss of irrigated farmland is a legitimate socio-economic concern, and it has been happening around Washington State for decades. In fact, many of the farmers that we have worked with have used the TWRP as tool to help avoid loss of their farms, either as a tool to ensure their water right was protected as they adjusted to new economic conditions, as vehicle for managing their water rights as the upgrade their irrigation infrastructure, or to bring capital into their farming operations through the lease or sale of water to other farms or instream flows. That said, the loss of irrigated farmland is most often driven by issues that are regional, national and global in scale. While some people enjoy living in proximity to restaurants and retail, other people want proximity to farms. But farms, retail, and restaurants are all businesses that should not be forced to remain in business so neighbors can enjoy them at the owner’s financial expense.

10. Policy Recommendation No. 13: We encourage a much richer dialogue around Ecology’s recommendation for future legislative action regarding granting “right of first refusal” to certain parties when a water right owner for downstream transfers. Again, this involves significant real property and constitutional issues.

Moreover, anyone of the entities listed in the Policy Recommendation could go out and negotiate for such a right of first refusal today without any statutory change; it simply takes the will to do so and the financial resources to pay compensation to any landowner willing to enter into such an agreement. We do not understand why Ecology has leapt to a policy recommendation of seeking legislation before considering a willing seller/willing buyer approach to the policy concept. Taking this more cautious first step would allow Ecology and any willing partners to this idea to explore whether there are interested water right holders in the area without any of the constitutional challenges. Such an approach is more consistent with the market-based approach to water rights that Ecology has pursued in its water acquisition program for the last 20 years.

11. **One global, editorial note.** Throughout the document, Ecology uses the term “publically” to describe making information available to the public; that is a misspelling of the proper term, “publicly.”

Attachments

From: Bill Clarke

Sent: Friday, May 15, 2020 11:03 AM

To: cses461@ecy.wa.gov; Christensen, Dave (ECY) <davc461@ECY.WA.GOV>; Verner, Mary (ECY) <mave461@ECY.WA.GOV>

Cc: Peter Dykstra <peter@plauchecarr.com>; Lisa Pelly <Lisa.Pelly@tu.org>; Arden Thomas <arden.thomas@co.kittitas.wa.us>; Cory Wright <cory.wright@co.kittitas.wa.us>; Urban Eberhart <urbaneberhart@gmail.com>; Revell, Scott <srevell@roza.org>; Isaac Kastama <kastama@waterstreetpa.com>; Jeff Slothower (JSlothower@lwhsd.com) <JSlothower@lwhsd.com>

Subject: Comments on Water Banking work group

Hi Carrie, Dave & Mary -

Here are some thoughts for your and the group's consideration from those of us on the cc: list. These are based on discussions among Trout Unlimited, the Kittitas Reclamation District, the Roza Irrigation District, Yakima Basin Joint Board, and Kittitas County. These should be taken as staff-level comments as they have not been reviewed by electeds/governing boards. We are happy to have separate call with you on these comments and efforts going forward. Thanks & enjoy the weekend - Bill

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1. We find the discussions to be confusing as they co-mingle different types of water rights activities – water right transfers, water rights changes of use, use of the Trust Water Program, creation of water banks, etc. While we understand that there are common concepts among all of these topics, the reality is that there is considerable variation within each category. Further, these actions have different legal requirements and processes under current law, and raise different public policy considerations. It is often unclear what type of water right action is being discussed during the sessions and the lack of clarity leads to confusion.
 2. We believe that there is a fundamental misunderstanding about or minimization of the real property attributes of water rights. Yes, water resources are public resources, but the ownership, use, and transfer of those resources is subject to an extensive body of case law, including but not limited to water rights as a private property right with constitutional protections.
 3. The group composition and process is flawed in that it is not a balanced group of stakeholder interests represented by people with expertise in the subject matter as we think was intended by the proviso language. While we appreciate everything you are doing to make them functional, we believe you would agree that conference calls of 150+ people are extremely difficult to manage let alone as a means of gathering high-quality input and initiating thoughtful dialogue.
 4. Using a “y’all come” group of voluntary participants as the sample group is not a valid polling methodology for this or any issue. The polling results are driven by quantity, not quality. We are concerned how these poll results will be described and used.
 5. There has been significant discussion about water right holder motivations and actions, but little or no discussion about how such actions are in response to the regulatory system. For example, speculation and predatory pricing by water banks in Kittitas County occurred as a response to Ecology's regulatory structure. By contrast, under Ecology rules in Spokane and Clallam Counties, there was no speculation because Ecology's regulatory structure and acquisition of water rights eliminated the real estate/water rights market conditions that created the speculation seen in Kittitas County. Ensuring that everyone understands the unique underlying regulatory drivers that lead to the conditions that drive water right

owners, potential sellers and potential buyers to use market-based approaches (for good or not), is essential to understanding whether or not there is a problem that requires intervention, let alone legislative intervention.

6. We think it is possible to improve transparency in both water right transfers and changes as well as in the creation of new water banks, but those are different processes that shouldn't be treated the same. Some transparency improvements can be made without statutory changes, while others would require legislation. But the goal of "improving transparency" in the abstract should not complicate the water code or remove currently or potentially viable water resource management options.

7. Loss of irrigated farmland is a legitimate socio-economic concern, and it has been happening around Washington State for decades. In fact, many of the farmers that we have worked with have used the Trust Water Rights Program as tool to help avoid loss of their farms. Farmers have used the program as a tool to ensure their water right was protected as they adjusted to new economic conditions, as a vehicle for managing their water rights when upgrading their irrigation infrastructure, and to bring capital into their farming operations through the lease or sale of water to other farms or for instream flows. That said, the loss of irrigated farmland is most often driven by issues that are regional, national and global in scale. Acknowledging that there are policy measures that shape how our communities grow and change, we also need to consider policy implications for private landowners. While some people enjoy living in proximity to restaurants and retail, other people want proximity to farms. But farms, retail, and restaurants are all businesses that should not be forced to remain in business or sell to someone who will maintain that same business so neighbors can enjoy them at the owner's financial expense.

8. We think the group should discuss methods/strategies for keeping water rights local. The biggest influence, and largest funder of water right transactions has been Ecology (not Wall Street), and so if loss of water rights in certain areas of the State is a water resource funding priority for Ecology, there are ways to prioritize funding to address the issue. We think the model used by land trusts, the work of NGOs, and other examples can show how strategies currently exist if people in local areas want to take action. We also think there are additional tools that could be developed to advance this objective and are concerned about the current narrow focus of the discussion. We are happy to share our own experiences using the tools that seem to be the focus of criticism in these dialogues in order to solve the problem of keeping water local, including in the very communities from which the loudest advocates for some legislative changes in this process hail.

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From Lisa Pelly

Dave and Carrie;

Here are some comments from TU, sorry for the delay.

In general, the draft Ecology material presents several detailed potential policy tools. TU is in support of tools that do not restrict out of basin transfers, help with transparency in water right sales, retain the flexibility of the TWRP, and enable water banking to be used to creatively solve water management and instream flow challenges. However, we are concerned that DOE will not have enough funding nor

capacity to implement new policy tools. We are seeing a huge delay in the permitting department that have impacted our ability to process water right change applications in a timely fashion. In addition, we are seeing limited staffing capacity impacting enforcement capability for existing instream flow transactions. Therefore, we would encourage this report to the legislature to emphasize the need for DOE to be funded and staffed at a level where any existing and new policy tools can be effectively implemented and enforced.

TU supports Ecology's development, whether through rulemaking or existing authorities, of consistent terminology for trust water and water banking statutes, rules, and/or policies. Clear, consistent, and accurate definitions should provide an opportunity for all interested stakeholders to better understand trust water and water banking. TU would be happy to support this effort.

TU does not believe restricting out-of-basin transfers is an equitable or sustainable solution to meet the water management challenges of headwaters basins. However, TU does recognize that headwaters basins like the Methow face unique challenges, and those challenges need special attention. We feel that market-based solutions like the creation of local water banks are a viable solution to help address these challenges. To support a viable local water bank and compete in the statewide marketplace, however, headwaters basins may need help with funding. We encourage the legislature to establish a funding mechanism for targeted funds that could be used help headwaters basins at risk of losing water to downstream users. This funding could be used to help 1) model and define long term local water protection targets for a range of needs (fish, agriculture, towns, rural wells, industry), 2) establish local water banks, and 3) enable banks to compete with downstream buyers/investors to acquire water for the local water bank. This funding should be allocated and managed like a straightforward grant program, where organizations or entities sponsoring a local bank apply for funding and manage its allocation towards projects based on their local expertise. It should also include cost share from any applicant.

Limitations on the alienability of property rights is a slippery slope. TU would strongly caution against any tool that provides any entity a statutory "right of first refusal" over any other entity based on factors outside a willing seller's control. Despite best intentions, such a right could have a chilling effect on market-based transactions and discourage multiple benefit projects that foster meaningful partnerships over a larger landscape. Reduced market opportunities for willing sellers and buyers could lead to unintended economic detriments and restrict creative future development with significant local environmental and tax benefits. I can't think of one water right holder that we have worked with that would support someone else making a choice about what they can or will do with their water right.

As I mentioned on our call with other Yakima partners last week I think some transparency about the data of water right sales that you presented during the meetings is important. As I mentioned, the table representing Okanogan transfers could be misinterpreted to think all of those sales have gone out of basin to other types of users. The fact that they have all gone to other ag users is an important message considering that is the main concern coming from Okanogan and Methow folks is they want to see ag continue. It is a little different message than water rights going to the Tri-Cities.

TU fully supports the tool of an up-front water banking prospectus to increase transparency in water banking motivations and outcomes.

We also fully support the comments made by Jeff Slothower in his response to both of you and appreciate his thoughtful and detailed response.

TU remains fully committed to working through these issues through this process and also through legislation if any proposal takes that form.

Happy to respond to any clarifications needed.

Lisa

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From Scott Revell

Overview

Most farmers want their farms to continue to the next generation. When they retire, and when do not have a next generation coming in to take over, many farmers often sell to a neighbor, but they are not precluded from selling to someone from another state or country. They sell to the person who makes the highest offer.

Changes in markets, demographics and labor regulations mean that some crops are no longer viable in the places that they have been historically grown. A farmer cannot be forced to farm. If they are losing enough money on a parcel they will stop farming it.

I have spent 25+ years in water resources and city/county land use planning in Washington, and have had thousands of conversations with farmers who were looking to either retire or expand, and not one had said they want to be restricted in who they could sell their property to or buy it from. The same goes for their farm products, farm equipment and water rights.

Restraints upon the sale of real property are usually deemed unreasonable restraints on alienation. If the government limits the right to sell property, that limitation may be a taking of private property and require the government to pay damages to the property owner.

Leasing or purchasing additional water is one of several tools that are key to stabilizing water supply in drought years. Drought related losses in 2015 just within Roza were estimated by WSDAg at around \$77M (not including processing). A slight additional decrease in water supply in 2015 and those losses could have been double or triple. Roza has for decades examined upstream lease and purchases of water to bolster supplies in drought years.

Roza leases more water than any other entity in the Yakima basin during droughts. Roza has also considered purchasing several thousand acres upstream in order to move the water downstream during drought years. By comparison the total amount of water involved in eastern Washington that was the subject of the article last Fall was equivalent to one mid-sized Roza farm.

- ü **Real property**-Many Roza farms are comprised of multiple parcels located in multiple irrigation districts. Many Roza farms also include non-Roza farm units in the Columbia Basin Project and along the Columbia and Snake Rivers.

Water rights are a private interest in a public resource. Water rights can be sold with the property it is appurtenant to or sold separately. Water rights are issued by the state rather than counties. An irrigation allotment within an irrigation district can only be transferred out of the district with the approval of the board of directors.

There are farms in the Roza Irrigation Districts that are owned by companies in other countries and Roza growers who farm in other countries. Farms that are looking to expand are not limited to only buying adjacent land. There are currently only a handful of institutional investor land owners from other states on the Roza. Local dairies buy feed and in some cases own land to grow forage crops in surrounding states. Some Roza growers also have processing facilities in surrounding states.

- ü **Personal Property**-Farm equipment comes from all over the world: Some grape and blueberry harvesters come from France, some tractors come from Japan and Germany, fruit boxing and pallet stacking technology comes from Spain, fruit scanning technology comes from Holland, shade cloth and trellis technology comes from Australia & New Zealand, pickup trucks on the farm come from Mexico, Canada and Japan among other places. Farmers are not restricted from buying equipment in other states or countries, and they are not prevented from selling their equipment to people in other states or countries.
- ü **Crops**-Washington farm products are sold both domestically and exported. “Local” is awfully subjective for farmers whose farms are spread out over 100+ miles and whose crops are exported thousands of miles away. The federal and state government actively promote the export of Washington crops to markets outside of Washington and the U.S.
- **Example A**- A Roza grower owns land in the upper part of the district which is in WRIA 39 in order to transfer it to other Roza ground in WRIA 37 during drought years. These internal transfers are crucial to Roza’s grower ability to manage their water during drought years.
- **Example B**- Roza leases water from landowners in other irrigation districts and private property owners to supplement the District’s supply during drought years (4,500 ac. ft. in 2015 & 28,000 ac. ft. in 2001) . Some of these leases are from lands in WRIA 39 for use in WRIA 37 on non-Roza land.
- **Example C**- 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.
- **Example D**- A grower in Kittitas county takes money from an environmental group to fund on-farm irrigation efficiencies and the conserved water savings are donated by the environmental group to the trust program for in-stream flows in perpetuity.
- **Example E**- A grower in Kittitas county sells surface water in WRIA 39 to a Roza grower who leaves the water in-stream to offset equivalent withdrawals of groundwater in hydraulic continuity in WRIA 37.
- **Example F**- A Kittitas county farmer in WRIA 39 is taking land out of ag production due to urbanization and sells the Yakima River surface water to a municipality 75 miles downstream in WRIA 37 to bolster the municipalities water supply.

Summary

When water is transferred downstream, the economic activity associated with the water still occurs in Washington. There are strong barriers in place to prevent speculation, bearing in mind that one what person may view as speculation is merely prudent planning on the part of another.

The transfer process is very transparent currently, particularly in the Yakima Basin where every molecule has been litigated over for 40+ years. Other than internal District transfers, other water transfers must be processed through the Department of Ecology which provides notice of a proposed transfer before it is approved.

Merely disagreeing with the concept of water moving downstream is not a reason to deny a transfer. Ag land purchases and equipment purchases In Washington are routinely financed by institutions in other places. The source of the funds or the buyers home address is not a decision criterion when reviewing a water transfer. Water transfer decision makers are not permitted to arbitrary in their actions.

Preserving farmland and ag water in hopes that the resulting “local” farm economy will remain unchanged is illusory, because doing so does not mean that the land will be farmed in either the short term or the long term if it cannot be done at a profit.

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