

# Kathleen Collins

## Comments from Kathleen Collins, Washington Water Policy Alliance on the Proposed Policy Statement on the Trust Water Program and Water Banking

Thank you for the opportunity to comment on the proposed Ecology policy statement on Trust Water and Water Banking. The Washington Water Policy Alliance (WWPA) is a coalition group of water right holders and users representing agriculture, business, and municipal entities. Our group believes water banking has been and should continue to be an essential tool in making water available for both out of stream and in stream purposes.

A policy statement is an appropriate means to clarify existing law and the process and agency will use to implement it. A policy statement should not go beyond existing law and bring in new requirements and elements or interject interpretations that are not supported by existing law.

The current law was first started as a pilot project to encourage conservation and improvement of instream flows. In 2009 Ecology asked for a major rewrite of the law to allow use of water banking for a variety of uses including new water uses, offsets for impacts for future development and to protect and enhance instream resources. (See finding and intent from 2009 c 144 and RCW 90.42.100 (2)). The agency asked for the 2009 law to facilitate the establishment of the first state-funded water bank in the Dungeness.

The proposed policy statement appears to be narrowing the scope and purpose of water banks in current law to a more constrained condition of only mitigating instream impacts or mitigating impairment and assessing "public interest" for out of stream uses. This construct then defines not only the evaluation process Ecology will follow in granting a water banking agreement but presumably the universe of what water banks can be used for. The policy statement says mitigation cannot occur without a water bank agreement. We urge caution in defining mitigation too narrowly so it not will limit the ability to use water banks for future water supply which we know will be needed to accommodate growth.

WWPA does not support the introduction of a loosely written definition of "public interest" and reliance on it in the evaluation process for water banking approvals. This definition is not in the existing law except as an undefined reference in criteria for establishing a trust water right (RCW 90.42.040 (4)). Ecology is not only adding a definition that should be debated and decided in the legislative arena, or at the very least in a formal rule making process, but they are also transporting this reference to the operation of a water bank under the narrow "mitigation" construct in the policy statement. It is not appropriate to insert this new concept into a policy statement document.

WWPA appreciates clarification on the process for water bank proposals. This will provide those who want to comment on the proposal more information and input. We are concerned that Ecology is granting itself broad discretion in some areas. For example, there does not appear to be any criteria for deciding why a water bank would be terminated or appeal rights for the banker in that circumstance.

There are many other technical comments WWPA could make, but you have already received good comments from Chelan PUD and Trout Unlimited that will be helpful in refining the policy statement.

In closing, we appreciate the opportunity to comment on the proposed policy statement and look forward to more discussion with Ecology on this matter.