

# WATER RIGHTS 101

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Okanogan River – Loup Loup Creek Project

# PRESENTATION SUMMARY

- Washington Water Trust
- Water Right Fundamentals
- Protecting Your Water Rights
- Changing & Acquiring Water Rights
- Trust Water Incentives
- Examples

# MISSION OF WASHINGTON WATER TRUST

We are a non-regulatory, nonprofit, dedicated to improving and protecting stream flows and water quality throughout Washington state. We use voluntary, market-based transactions and cooperative partnerships to create balanced solutions so fish, agriculture, business and wildlife—upon which we all depend—can thrive.



Salmon Creek – Dry (Photo by Jeff Gersh)

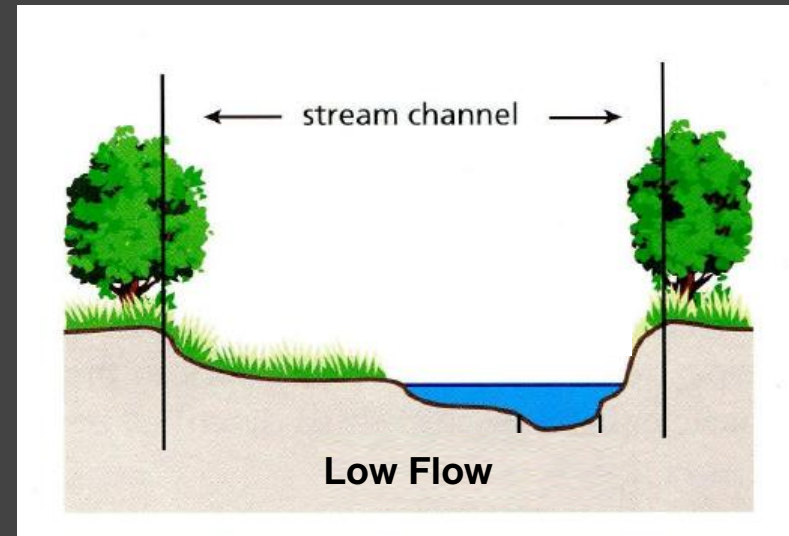


Fish Flows Return to Salmon Creek

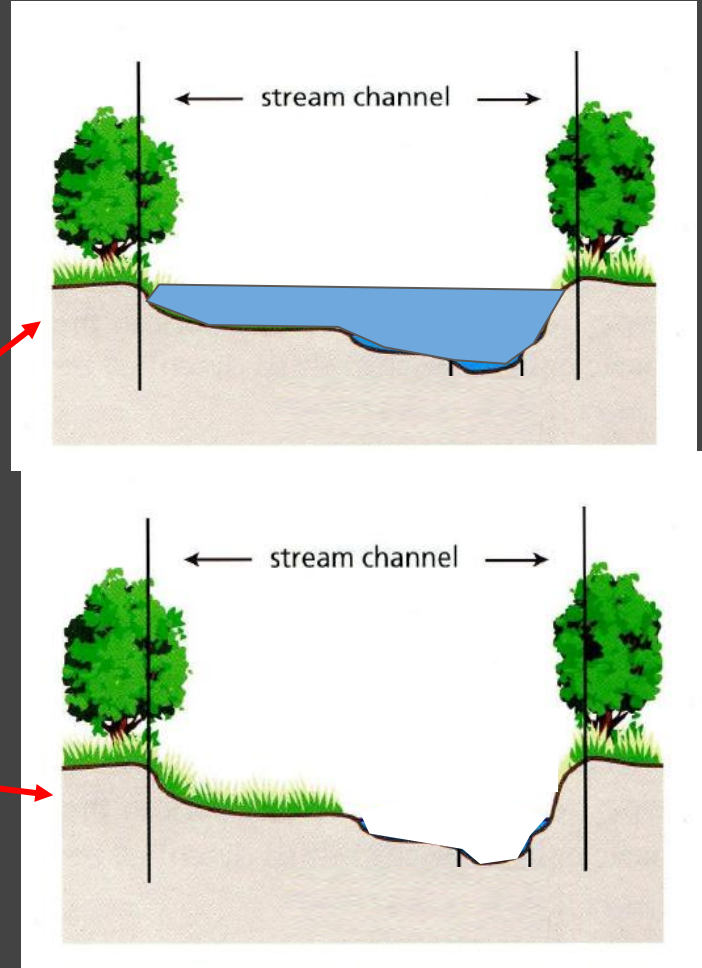
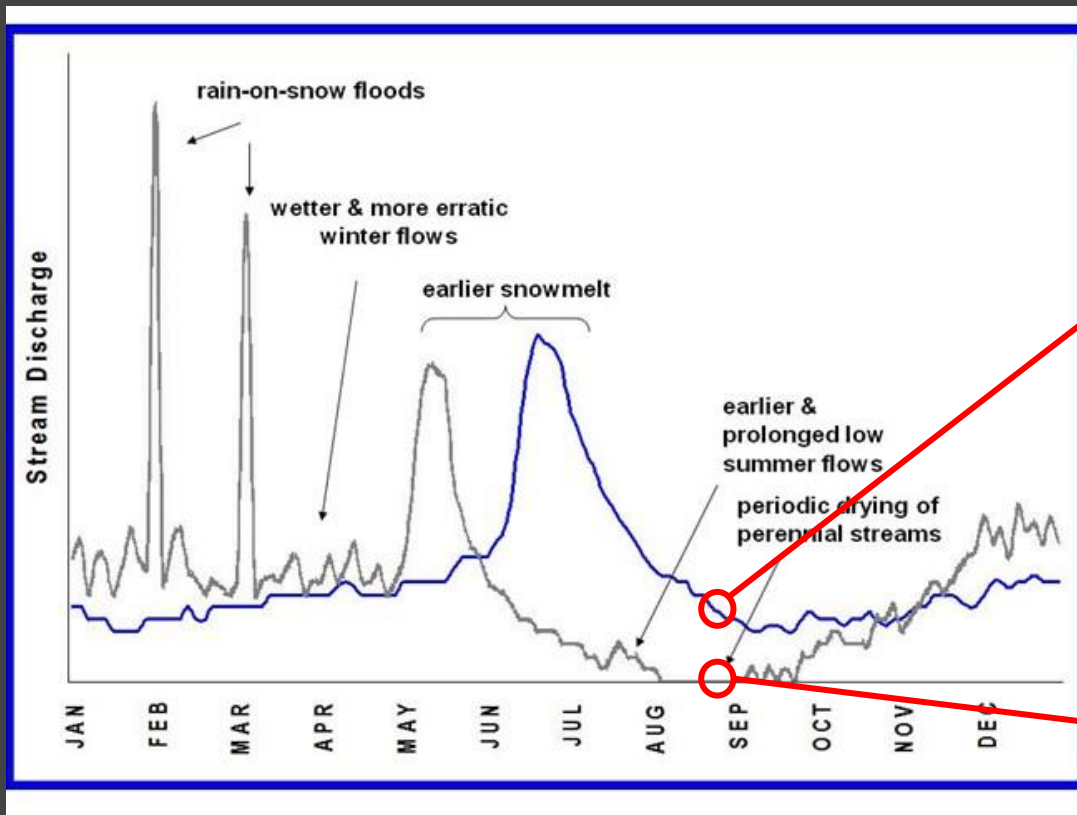
# Habitat and Stream Flow: What's the Connection?

## Biological Impacts of Low Flows

- Increased water temperature
- Decreased dissolved oxygen
- Low flow barriers to fish passage
- Fish stranding in disconnected pools
- Decreased amount of available habitat
- Decreased complexity of habitat



# Making the Hydrograph Right Again



# WHAT IS A WATER RIGHT?



- A water right is a :
  - Legal authorization to use a quantity of public water for a designated, beneficial purpose.
  - Usufructuary property right – right to use a public resource.



- Managed and regulated by the Washington Department of Ecology (Ecology) based on Washington water law, administrative rules, and case law.

# WATER RIGHTS TYPES

- Water right **claim**
  - Predates the water permitting system (1917 for surface water, RCW 90.03; 1945 for groundwater, RCW 90.44).
  - 1967 Claims Registration Act – WR’s must be filed with State (RCW 90.14).
- Water right **permit**
  - Permission by the state to develop a water right (put to beneficial use); it is not a final water right, and must be perfected.
  - *Rettkowsky v. Ecology* (1993) Adjudication required as stated in RCW 90.03 – Ecology manages permits via “tentative” determinations.
- Water right **certificate**
  - Ecology issues a certificate after confirming that all the conditions of the permit have been met. Water right “perfected”.
  - A Certificate of Water Right is a private right (“usufructuary”).

# ANATOMY OF A WATER RIGHT

**Certificate of Water Right**

THIS IS TO CERTIFY:

That by virtue of a decree of the Superior Court of the State of Washington in and for Walla Walla County, made and entered on the 19th day of September, 1922, and recorded in Volume 18 of the Superior Court Journal of said County at page 1, from which decree no appeal was taken, and which decree determined the rights of all known claimants to the use of the waters of the Touchet River a tributary of the Walla Walla River

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is entitled to use, subject to provisions set forth in said decree, and the laws of the State of Washington, the waters of said Touchet River

for the purpose of irrigation of 110.0 acres of land.

That the amount of water to which said water right is limited is limited to the quantity which is reasonably and actually necessary for the purpose aforesaid and shall not exceed 1.406 second feet from April 1st to Sept. 15th and 2.200 second feet from Sept. 15th to April 1st, with the following exception:  
**After all rights scheduled in the above mentioned decrees are filled, the surplus water is allotted in the order of priority in amounts sufficient to increase the rate to the quantity allotted for the period from September 15th to April 1st. The total diversion shall not exceed 6 acre feet per acre for any one year beginning September 15th**

That the date of priority of said water right is 1912; that the decree aforesaid establishes said right in Class Forty-one

That the point of diversion of said water right is as follows:  
**The NE $\frac{1}{4}$  of the NW $\frac{1}{4}$ , Sec. 2, Twp. 9 N., Rge. 35 E. W. M.**

and cannot be changed except as provided in Section 39, Chapter 117, Session Laws 1917.

That said water right was adjudged by said decree to be and is appertaining to the following described real property situated in Walla Walla County, Washington, to-wit:  
**W $\frac{1}{2}$  of NW $\frac{1}{4}$  of NE $\frac{1}{4}$  and N $\frac{1}{2}$  of NW $\frac{1}{4}$ , Sec. 2, Twp. 9 N., Rge. 35 E. W. M.  
Also S $\frac{1}{2}$  of S $\frac{1}{2}$  of Sec. 35, Twp. 10 N., Rge. 35 E. W. M., less 2 rod strip off east side thereof. Also N $\frac{1}{2}$  of S $\frac{1}{2}$  of said Sec. 35.**

Original name on water right

Purpose of use

Season of use

Instantaneous quantity (Qi)

Priority date

Point of diversion (PoD)

Place of use (PoU)

Annual quantity/water duty (Qa)



# WATER RIGHT FUNDAMENTALS

- **First in time, first in right**: priority based on seniority (prior appropriation)
- Subject to **impairment**: significant difference from land
- **Use it or lose it**: 5 yr+ of nonuse = relinquishment (RCW 90.14)
- Confirm and maintain through **beneficial use**: irrigation, domestic, municipal, stock, industrial
- **Consumptive use** vs. non-consumptive use water
- **Place of use** and **point of diversion**: water rights are appurtenant to land.
- All surface and groundwater withdrawals and rights must be permitted, except permit-exempt wells.
- Different elements of a water right can be changed, but Ecology rarely issues new water rights, given most water has already been allocated.

# WATER RIGHT CHANGES

- Changes can be made to:
  - Point of withdrawal
  - Place of use (including selling and transferring right to other land)
  - Purpose of use
  - NOT quantity
- Apply to Ecology or the County Water Conservancy Board (expedited process)
- In making a decision to change a water right:
  - An extent and validity review of the water right is conducted;
  - That is, the legal basis of the water right and also the historical use of the right is investigated.
  - Ecology is authorized to decide via 4-part test of water availability, beneficial use, impairment and public interest (RCW 90.03.290).

# PAPER VS. WET WATER RIGHT

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W 1/2 of NW 1/4 of NE 1/4 and N 1/2 of NW 1/4, Sec. 2, Twp. 2 N., Rge. 35 E. W. M. Also S 1/2 of S 1/2 of Sec. 35, Twp. 10 N., Rge. 35 E. W. M., less 2 rod strip off east side thereof. Also N 1/2 of S 1/2 of said Sec. 35.

May not  
=  
Actual Amount = Amount Beneficially Used

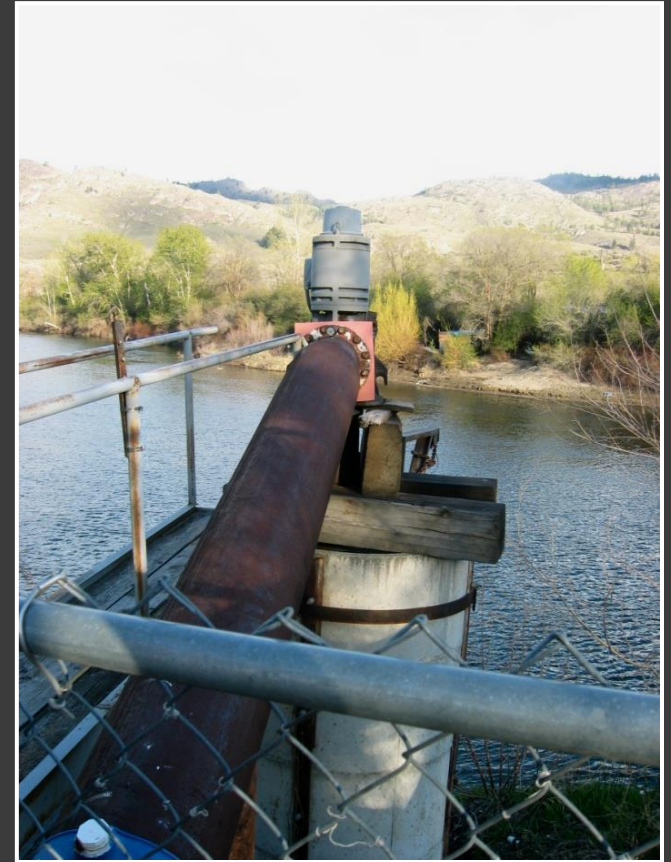


## Actual Amount = Amount Beneficially Used

- Is the water right valid?
- If so, to what extent has it been put to beneficial use?
  - How much “wet water” do you have?

# CARE AND FEEDING OF A WATER RIGHT

- Meter records (if possible)
- Pump records – convert from
  - -kwh used and pump specs
- Cropping/seed receipts
- Photographs of water use
- Affidavits of water use
- Season of use
- Aerial imagery (multiple years)
- Sufficient causes for non-use



# What is illegal water use?

**According to the Washington Water Code, it is illegal to:**

Divert surface water or withdraw groundwater without a valid permit, certificate, or water right claim, unless it is a valid groundwater withdrawal under the permit exemption in [RCW 90.44.050](#).

- Waste water
- Divert or withdraw water that prevents a senior water right from receiving their full measure
- Use water when ordered to halt
- Willfully interfere with or destroy water works



# What is illegal water use?

- Not comply with the conditions of your water right authorization, including:
  - divert or withdraw more water than authorized (annual and instantaneous quantity)
  - irrigate more acres than specified or outside the specified place of use
  - divert or withdraw water outside the season of use specified
  - use non-authorized locations to divert or withdraw water
  - use water for purposes other than those specified
  - fail to meter, record, and report water use, if required
  - use water in a manner that does not comply with permit and/or certificate provisions (such as instream flow restrictions, fish screen requirements, family farming, and others)

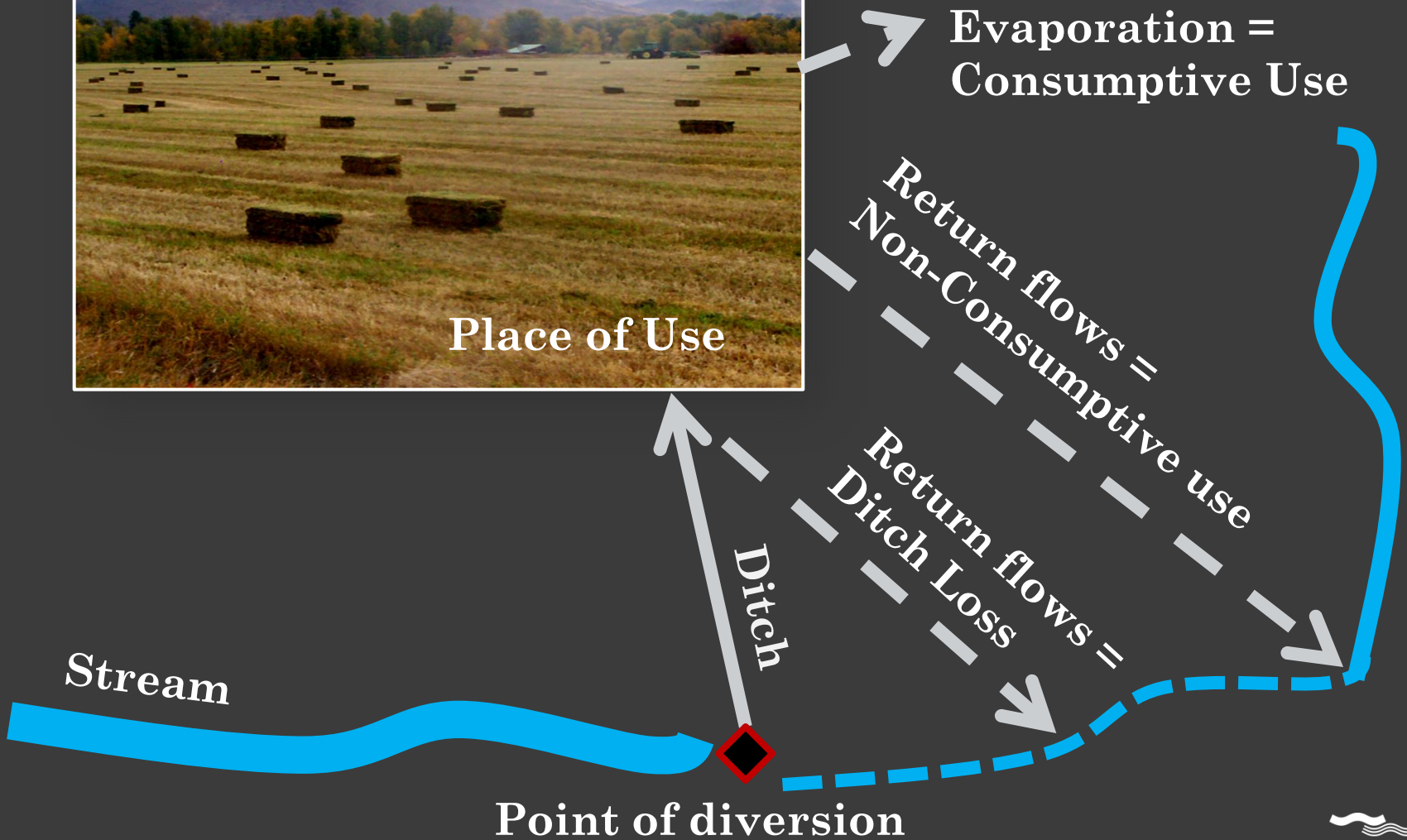


# WA TRUST WATER RIGHTS PROGRAM



- Created in 1991 to hold and protect water rights for future uses while enhancing stream flows
  - Key: Stops the clock and protects water from relinquishment while benefiting people and the environment
- Managed by the Washington State Dept. of Ecology
- Retains priority date (seniority) and all other attributes
- Offers flexibility: Temporary, permanent, partial, entire

# WATER RIGHTS AND INSTREAM FLOW





# WATER AND AG ECONOMICS

## DIVERSIFYING REVENUE

<b>Crop Budgeting Tool (version 1.0)</b>						
Type:	Corn after 1	Soybea ns 3	Wheat 5	Corn after corn 2		Total
Acres	0.50	0.50	0.00	0.00		1.00
Yield per acre	163	50	75	155		
Price per bu	\$2.20	\$5.00	\$3.00	\$2.20		
	----- \$ per acre -----					\$/far m
Crop revenue	\$359	\$250	\$225	\$341		\$304
<b>Government payments</b>	<b>23</b>	<b>23</b>	<b>23</b>	<b>23</b>		<b>\$23</b>
<b>Conservation/Water Payments</b>	<b>??</b>	<b>??</b>	<b>??</b>	<b>??</b>		<b>??</b>
Total Income	\$382	\$273	\$248	\$364		\$327



# WATER AND AG ECONOMICS

## REDUCING EXPENSES/OVERHEAD

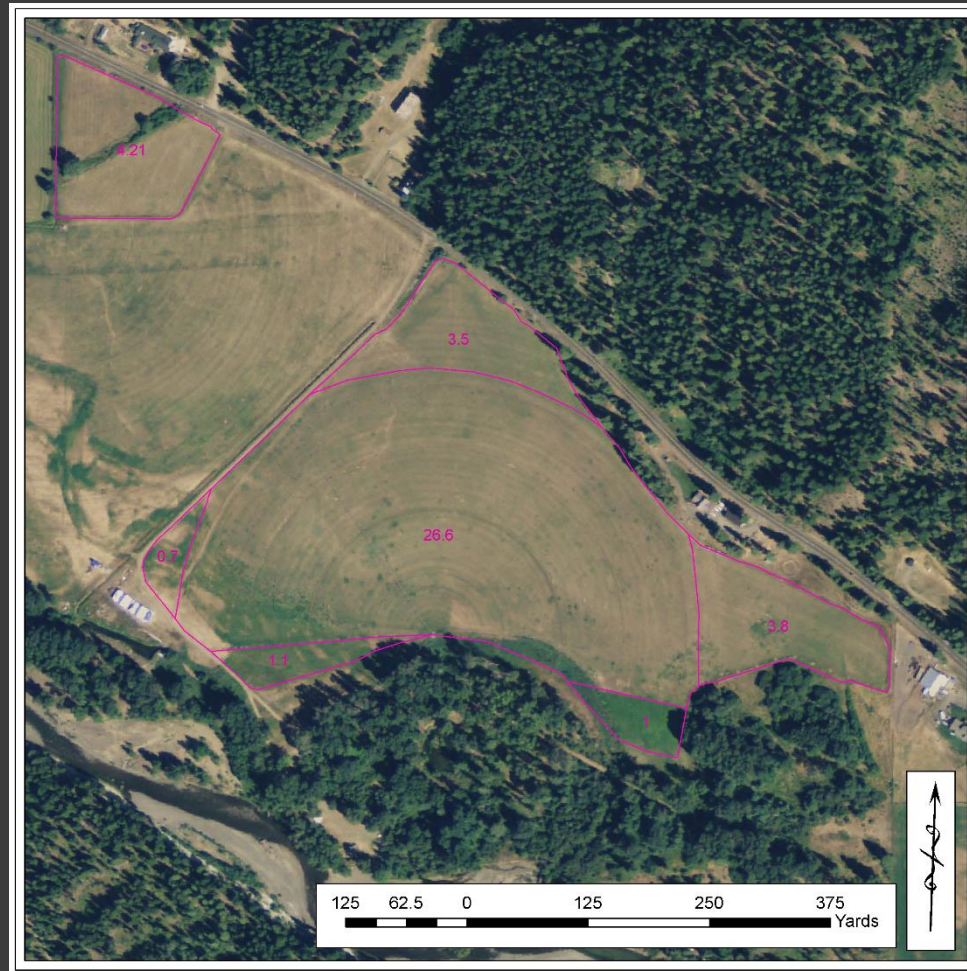
*Where are the economic inefficiencies?*

Expenses		----- \$ per acre				\$/farm
Fertilizer	Fertilizer	\$54	\$19	\$25	\$59	\$37
Pesticides	Pesticides	33	30	10	36	32
Seed	Seed	34	21	17	34	28
Misc	Misc	17	3	5	17	10
<b>Total direct expense</b>		<b>\$146</b>	<b>\$78</b>	<b>\$60</b>	<b>\$154</b>	<b>\$112</b>
Machine hire/lease, repair and Maint		31	25	16	31	30
Utilities		4	4	4	4	4
Mach. depreciation		30	25	14	30	28
<b>Total power expense</b>		<b>\$65</b>	<b>\$55</b>	<b>\$34</b>	<b>\$65</b>	<b>\$60</b>
Hired labor		\$8	\$8	\$7	\$8	\$8
Building repair and rent		3	3	3	3	3
Building depreciation		5	5	3	5	5
Insurance		5	5	5	5	5
Misc.		4	4	4	4	4
Interest		5	5	3	5	5
<b>Total overhead</b>		<b>\$30</b>	<b>\$30</b>	<b>\$25</b>	<b>\$30</b>	<b>\$30</b>
<b>Total expenses</b>		<b>\$241</b>	<b>\$163</b>	<b>\$119</b>	<b>\$249</b>	<b>\$202</b>



# WATER AND AG ECONOMICS

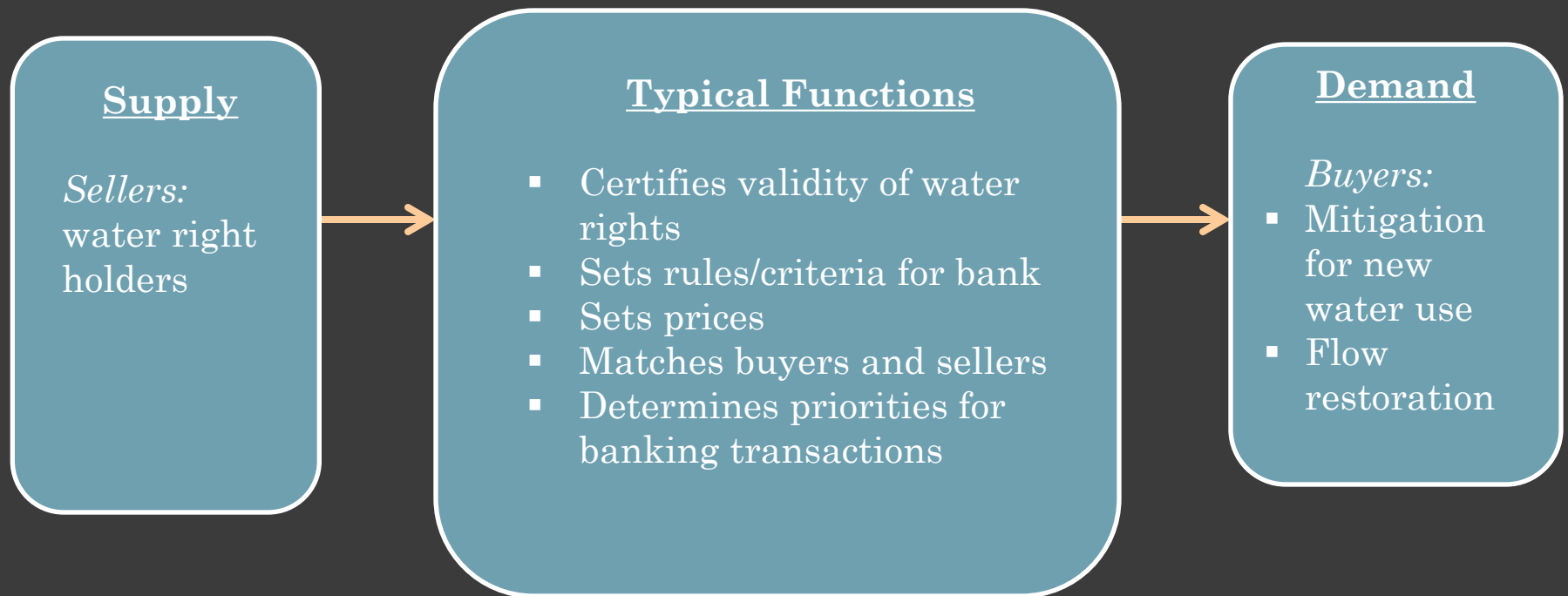
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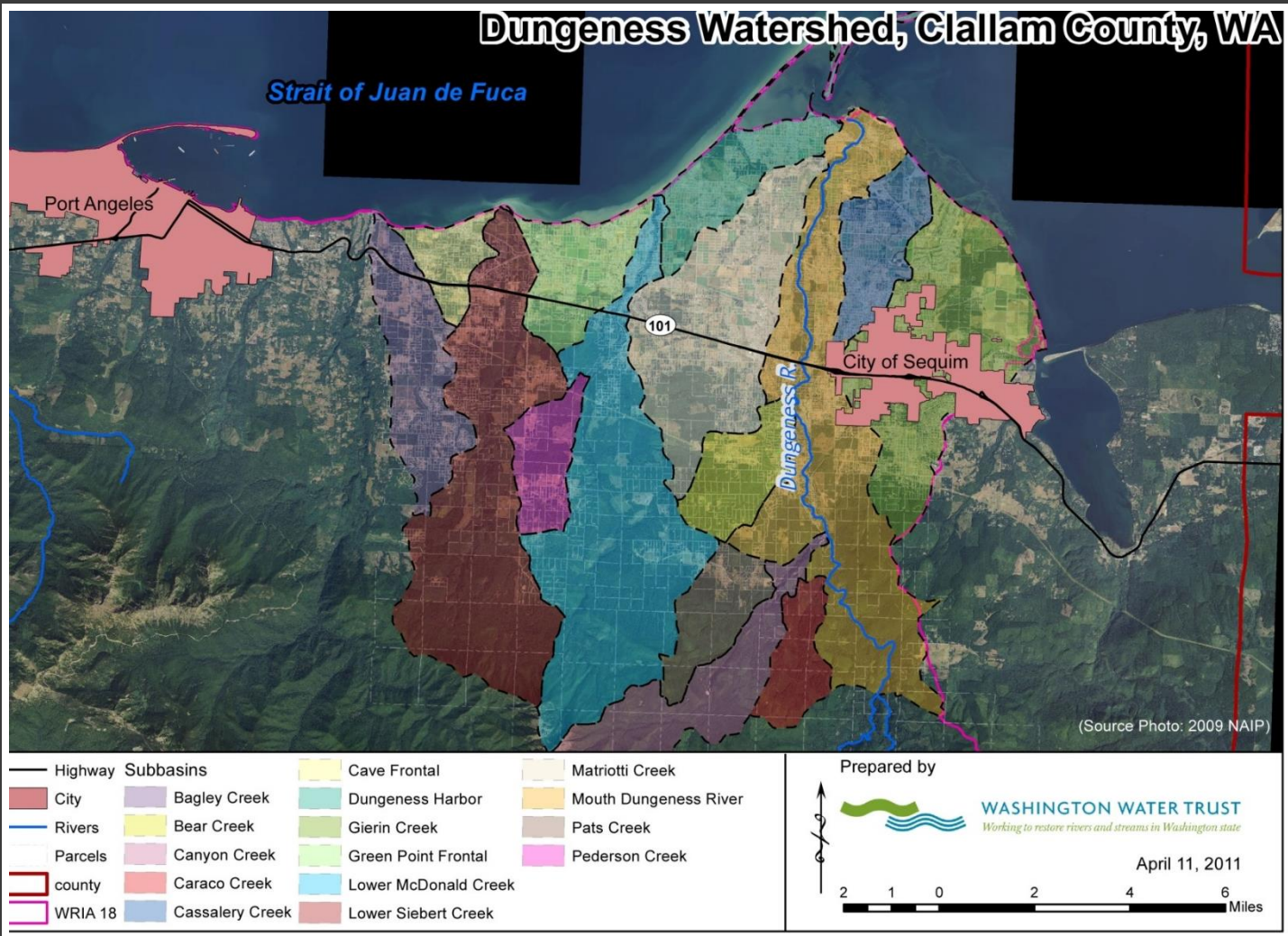
# TRANSACTION EXAMPLE: MITIGATION BANK

## *Dungeness River – Dungeness River*

### Water Bank as Intermediary



# DUNGENESS SUBBASINS



# DUNGENESS WATER EXCHANGE

## *Domestic Mitigation Packages*

Package Description	Average Amount of Indoor Use (GPD)	Average Amount of Outdoor Use (GPD)	Amount of irrigated lawn Area (Square Feet)	Amount of irrigated lawn Area (Acres)
<b>Indoor Only Package:</b> \$1,000 (minimal incidental outdoor use only)	150	0	0	0
<b>Indoor with Basic Outdoor Package:</b> \$2,000	150	89	2,500 sq. ft. (approx. 50x50 ft)	.06 acres
<b>Indoor with Extended Outdoor Package:</b> \$3,000	150	200	5,625 sq. ft. (approx. 75x75 ft)	.13 acres

# DUNGENESS WATER EXCHANGE

## *Stockwater Mitigation Packages*

Number of Stock	Pumping Volume in Gallons/Day	Pumping Volume in Gallons/Year	Pumping Volume in Acre Feet/Year	Cost
Up to 5 Animals	60	19,500	0.06	\$1,300.00
Up to 10 Animals	120	39,000	0.12	\$1,800.00
Up to 15 Animals	180	58,500	0.18	\$2,200.00

Note: The amount of water consumed by stock animals varies considerably depending on the type of animal, the size of the animal, the temperature and climate and whether the animal is lactating. WWT worked with Department of Ecology to consult scientific information from the USDA on stock water consumption and choose 12 gallons per day as a conservative average for stock water consumption.

# THANK YOU! QUESTIONS?





# TEANAWAY RIVER – YAKIMA BASIN

## *Cumulative and Late Season*

21 partnerships from Headwaters to Mouth ~ 11.8 CFS



# TRANSACTION EXAMPLE: SOURCE SWITCH

## *Taneum Creek – Yakima Basin*

- 2005 Restored 28.8 cfs to Taneum Creek through source substitution
  - Restored access to 30 miles of fish habitat
  - Water users sourced to groundwater
  - Changed 130-yr practice
- 2009 Bruton Ditch source substitution with fish barrier removal
  - 1.9 cfs summer flow



# TRANSACTION EXAMPLE: STORAGE RELEASE

## *Salmon Creek – Okanogan Basin*

- **Challenge** – For nearly 100 years, Salmon Creek ran dry to serve a 5,000 acre irrigation district.
- **Strategy** – WWT worked with the Colville Tribes and the district to time reservoir releases to the critical flow periods needed for steelhead production.
- **Results** – 1,200 acre feet/year of agreed releases have restored access to the highest-quality steelhead spawning and holding habitat in the Okanogan basin.

