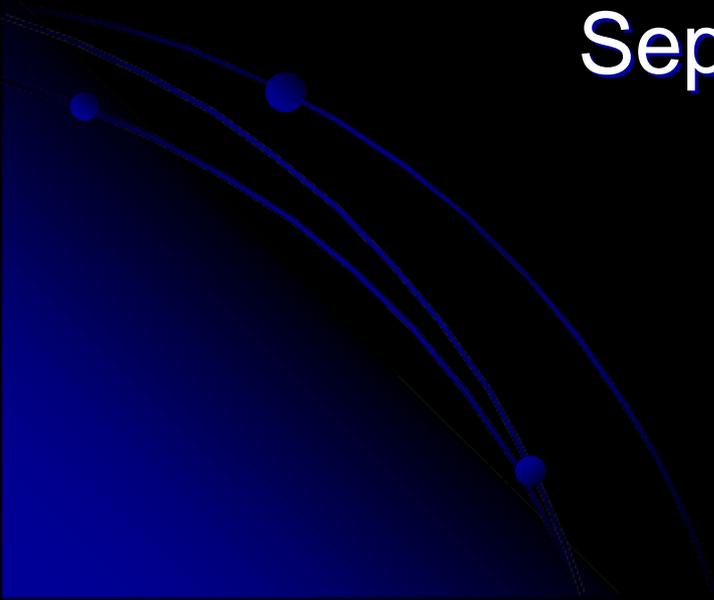


Trust Water Rights

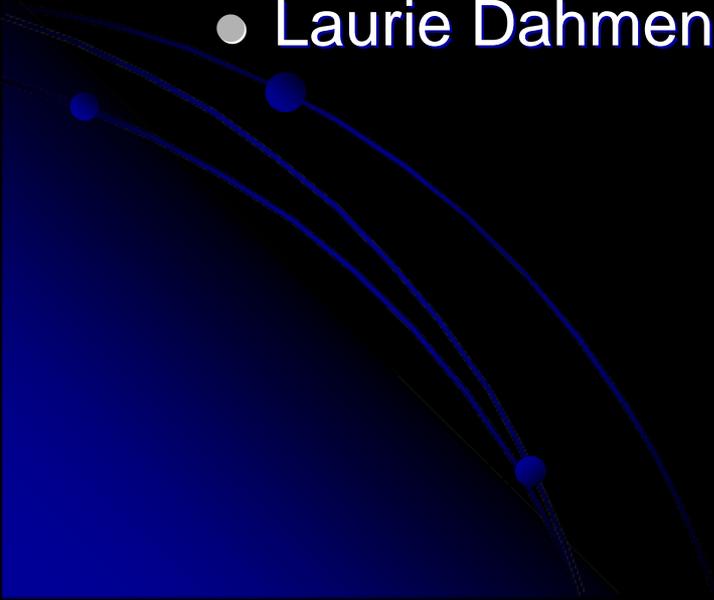
September 13, 2007



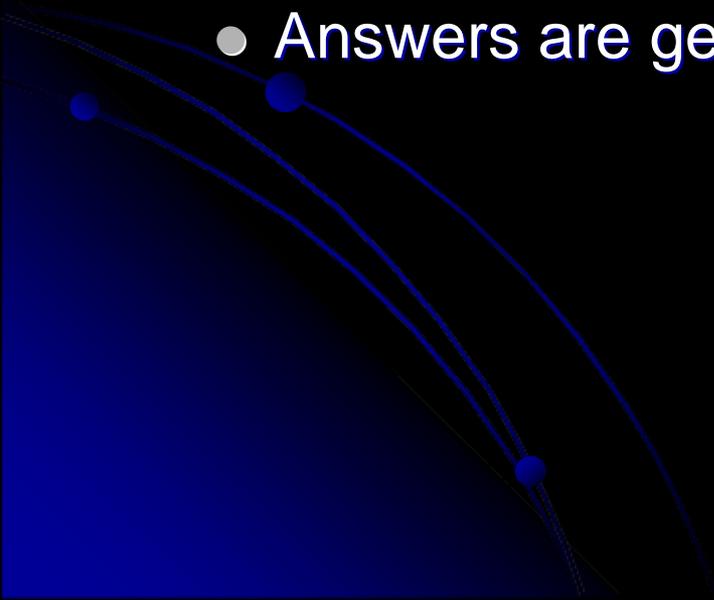
TWR Guidance History

- 1992 -- TWR Guidance – Appendix, Pub # 92-88
- 2002 – “The Matrix”, Appendix B
- November 2005 – Fred Rajala’s first internal draft
- July 2006 – TWR workshop, first public draft
- Aug-Nov 2006 – Development of draft for WRAC review
- Spring 2007 – Comments from WWT and WRC
- July-Aug 2007 – Development of current version

2006-7 Reviewers

- Stan Isley
 - Kelly McCaffrey
 - Lisa Pelly
 - Mary McCrea
 - Laurie Dahmen
 - Suzanne Blakeney
 - Peggy Clifford
 - Cynthia Knudsen
 - Steve Hirschey
- 

TWR Guidance - Section 1

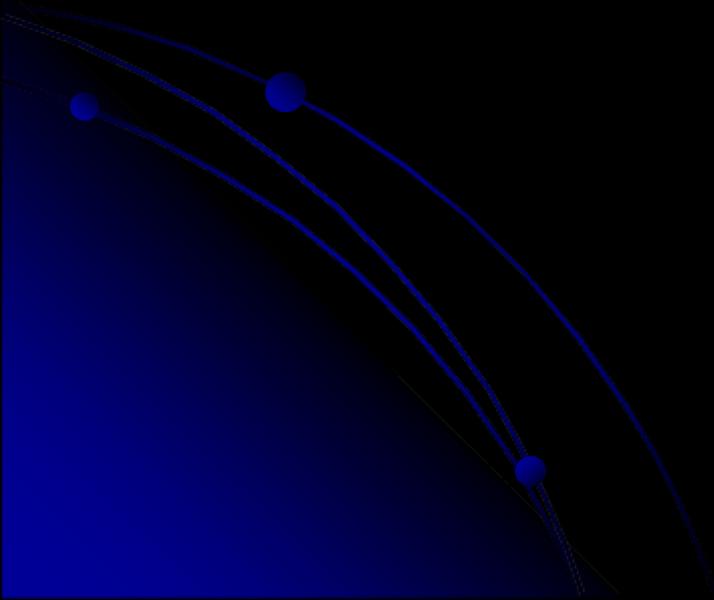
- Frequently Asked Questions
 - Completely reworked since 2006
 - New questions
 - Answers are generalized as much as possible
- 

What is a trust water right?

- A water right held by the state for management in the Trust Water Program.
 - It can be acquired by purchase, lease, donation, or gift.
 - Yakima trust water program refers specifically to water conservation projects and any other acquisitions.
- 

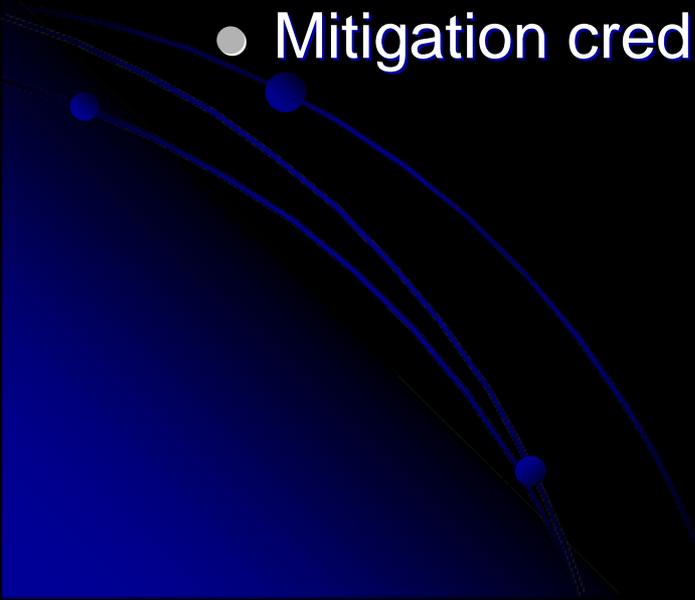
What statutes govern trust water rights?

- Chapter 90.42 RCW – Statewide program
- Chapter 90.38 RCW – Yakima basin



Are trust water rights only for instream purposes?

- No, trust water rights can be for any purpose.
- Examples of uses other than instream flow include:
 - Wetlands maintenance or enhancement
 - Mitigation credit for out-of-priority use



Is Ecology required to change the purpose of use of a trust water right to instream flow?

- Yes, if we want the purpose of use to be for instream flow protection or enhancement.
- RCW 90.03.380 or RCW 90.03.390 apply to all changes of purpose of use, except:
 - Donations – RCW 90.42.080(5)
 - Acquisition by funding conservation projects – RCW 90.42.040(7)
 - Any TWR acquired or held exclusively under RCW 90.38.

Are there water rights that cannot be placed into the trust water right program?

- Ground water rights that cannot be related to specific stream reaches, if TWR is permanent.
- Family farm permits, with some exceptions for:
 - Acquired by lease; and
 - Within UGA, or
 - Within same WRIA.
- Water made available from conservation under water rights that did not exist on July 28, 1991.

What kinds of water rights may be held by the trust water right program, but Ecology would normally not acquire using public funds?

- Water rights subject to interruption due to instream flow rule provisions.
- Water rights with either severe limitations or lack of seniority that would not sufficiently benefit fisheries.
- Supplemental or stand-by rights, unless they are acquired in conjunction with the primary water right.
- Ground water rights that cannot be related to a specific stream reach offered for lease on a temporary basis.

Is a trust water right application form required to accept a water right into the trust water right program?

- Yes, except for IEGP.
- For the IEGP, the consolidated application fulfills the requirement for a trust water right application form.
- In the Yakima basin, any short-term lease also requires the court's approval by way of an Order Pendente Lite.

How does relinquishment apply to trust water rights?

- Trust water rights are exempted from relinquishment:
 - RCW 90.42.040(6)
 - RCW 90.38.040(6)
 - RCW 90.14.140(2)(h)

What happens to the water right when the temporary donation ends?

- The water right reverts to the donor in the same amount that was accepted into the TWRP.
- The amount accepted into the TWRP is not always the same as the amount that was, or could have been, exercised.



Does placing a water right into the trust water program by lease or donation for instream flow purposes “reset” or “suspend” the 5-year relinquishment clock?

- If a water right is acquired and exercised for the purposes stated on the trust water right, then the relinquishment clock would be “reset.”
- If the trust water right was not exercised, then the relinquishment clock would be “suspended.”

How would I know if a trust water right was exercised?

- Water right is acquired through donation, lease, or purchase.
- Public notice of the trust water right.
- Cessation or reduction of the use historically made under the trust water right.
- Junior diversions are curtailed or regulated by the watermaster or stream patrolman in favor of the senior instream flow trust water right.

How can the TWRP be used to prevent relinquishment of a water right?

- It must be for instream flow purposes.
- The temporary donation is accepted up to the maximum use in the most recent 5 years, subject to reasonable conditions.
- Relinquishment does not apply to any right in the TWP, so the right doesn't need to be exercised.
- Public notice is not required to accept the right into the TWRP.
- When term of the donation ends, the right is returned in the same amounts as were accepted into the TWRP.

What review will Ecology perform prior to making a decision to accept a donated water right into the TWRP?

- Trust water donation form
- Available aerial photography
- County assessor's information
- Supplemental materials evidencing the quantities of water used during the 5 years prior to the donation.

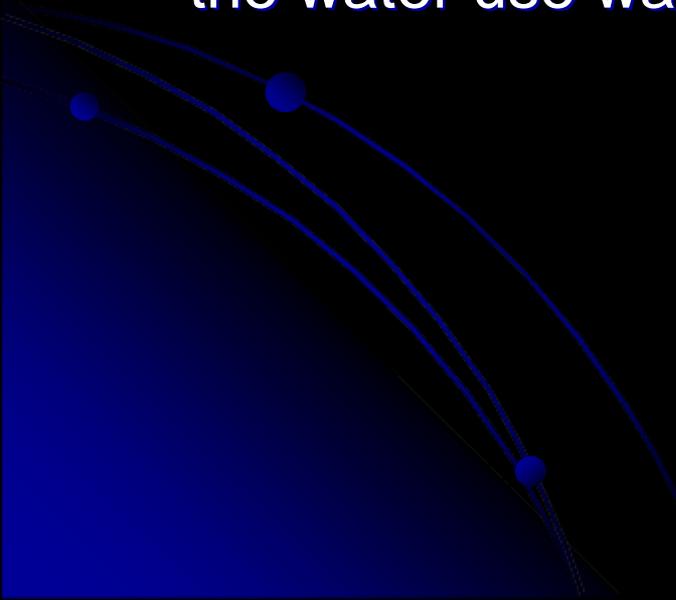
How does Ecology quantify the amount of water that can be accepted into the TWRP?

- Quantification is determined by the extent and validity review (required if RCW 90.03.380 applies) **OR** by the highest use within 5 years before the acquisition.
- In some cases, such as acquisitions by lease under RCW 90.42, both means of quantification apply. In such instances, Ecology will calculate the amount of water eligible for acceptance into the TWRP using both methods and then use the smaller of the two values.

What happens to any portion of IEGP or conservation project water savings not conveyed to the TWP?

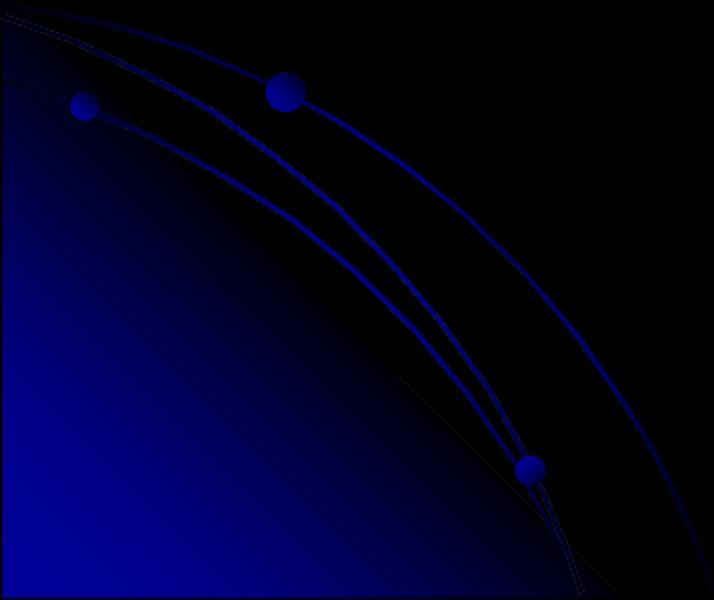
- IEGP and Ecology funding guidelines require conveyance of the savings to the TWP in the same proportion as the state's share of the project funding.
- The fraction of the water savings not conveyed into trust is not exempt from relinquishment.
- It may be unlawful (see *Grimes v Ecology*) for the right holder to reinstitute the use of the saved water. Both relinquishment and the reasonable use doctrine would apply.

What is an “extent and validity review?”

- It is a review required by RCW 90.03.380 to both determine the amount of water that has been applied to beneficial use and provide the basis for a conclusion that the water use was lawfully originated.
- 

Does Ecology perform an extent and validity review for trust water proposals that are exempted from RCW 90.03.380 or RCW 90.03.390?

- No.



How is the place of use of a trust water right for instream flows described?

- The place of use is from the point of diversion of the acquired water right downstream to as far as the Pacific Ocean.
- It is divided into a primary reach and a secondary reach.
- The full right can be exercised in the primary reach, the consumptive portion of the right can be exercised in the secondary reach.

How is the place of use of a trust water right for instream flows described (2)?

- The primary reach is the portion of a water body that benefits from cessation of the total amount of water historically diverted or withdrawn.
- The secondary reach is the portion of a water body that benefits from cessation of the amount formerly consumed through evaporation or crop transpiration. It is the reach of stream below where tail water and seepage (return flows) formerly returned to the stream.

How are the instantaneous and annual quantities of an instream flow trust water right determined?

- Analysis of historic use
 - Tentative determination of extent and validity, RCW 90.03.380 and POL-1120.
 - For instream flow donations, the quantity that can be exercised is limited to the maximum of most recent 5 years, less any amount to be used by the donor.
- Calculation of the consumptive amount
 - Secondary reach may be limited to the average of the most recent 5 years (ACQ).

Transaction-specific Procedures

- Sections 4-8
 - Publicly-funded (state or federal) conservation projects
 - Short-term leases (5 years or less)
 - Long-term leases (more than 5 years)
 - Purchases
 - Donations
- If you *don't* see an on-topic FAQ, look at the specific procedures.
- If you *do* see an on-topic FAQ, look at the specific procedures.
- Always look at the specific procedures.

Procedural Elements

- Application form
 - Authority
 - Public notice
 - Documentation
 - REET applicability
 - Evaluation procedures
 - Extent and validity
 - Quantification
 - Impairment
 - Public Interest
- 

Appendices

- **Appendix B** – “The Matrix” has been completely reworked, more consistent format.
 - **Appendix F** – Disclaimer added to the donation acceptance letter, explicit quantification.
 - **Appendix G** – New TWR Report of Examination template.
- 

More questions?

- Email me at rbar461@ecy.wa.gov

