

Water Resources & Local Planning

Jaime Short, Eastern Region Section Manager

June 9, 2023

Full Disclosure



- I am not an attorney, this presentation is not a legal primer
- Water rights are complicated
- Everything we'll discuss is highly case-specific
- Other resources
 - Water Rights Attorneys
 - Local Water Conservancy Boards
 - Department of Ecology Staff
 - Certified Water Rights Examiners
 - Consulting Firms

Key Topics

- Water Resources: Who we are
- Water rights in Washington State
- Intersection with Planning
 - Campbell and Gwinn
 - Hirst & Hirst “fix”
- Streamflow Restoration
 - Metering, Kittitas & Dungeness Pilots
 - Foster Pilots
- Adjudication
 - Nooksack & Upper Columbia

Our Mission

We manage water resources to meet the needs of people and the natural environment, in partnership with Washington communities.

Program at-a-glance

- 4 regions, 2 field offices
- Approx 155 staff
- Manage water rights
- Dam safety
- Well construction
- Streamflow Restoration
- Office of Columbia River



Program Resources

(info for later)

Contact information

Central Region

(Benton, Chelan, Douglas, Kittitas, Klickitat, Okanogan, and Yakima counties)

Help desk: 509-575-2597

Eastern Region

(Adams, Asotin, Columbia, Ferry, Franklin, Garfield, Grant, Lincoln, Pend Oreille, Spokane, Stevens, Walla Walla, and Whitman counties)

Help desk: 509-329-3400

Northwest Region

(Island, King, Kitsap, San Juan, Skagit, Snohomish, and Whatcom counties)

Help desk: 206-594-0193

Southwest Region

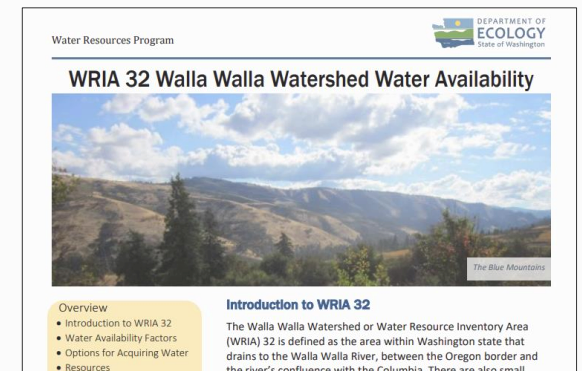
(Clallam, Clark, Cowlitz, Grays Harbor, Jefferson, Mason, Lewis, Pacific, Pierce, Skamania, Thurston, and Wahkiakum counties)

Help desk: 360-407-0278

Water Availability Focus Sheets (by WRIA)

[In your watershed - Washington State Department of Ecology](https://ecology.wa.gov/water-shorelines/water-supply/water-availability/in-your-watershed)

<https://ecology.wa.gov/water-shorelines/water-supply/water-availability/in-your-watershed>



Certificate Of Adjudicated Water Right

This Is To Certify:

That by virtue of a decree of the Superior Court of the State of Washington in and for Adams County, made and entered on the 22nd day of December 1986, in the case of *State of Washington v. Bar U Ranch Company, et al.*, County Cause No. 13538, which decree determined the rights of all known claimants to the use of the surface waters of Cow Creek Drainage Basin, in accordance with Chapter 90.03 Revised Code of Washington.

United States of America
Department of the Interior
U.S. Fish & Wildlife Service
Turnbull National Wildlife Refuge

is entitled to use, subject to provisions set forth in said decree, and the laws of the State of Washington, the waters of Upper Cow Creek drainage (Cossalman Lake, West Tritt Lake, Findley Lake.

The water right is confirmed in the amount of water that is reasonably and actually necessary for the purpose of storage for and maintenance of wildlife habitat and shall not exceed 7.1 cfs (nonconsumptive); 1,292 acre-feet continuous wildlife habitat.

That the decree aforesaid establishes said right in Class XXXII, with a priority date of June 30, 1914.

That the approximate point(s) of diversion are as follows:

2,250 feet south and 2,375 feet east of the northwest corner of Section 36, being within the SE $\frac{1}{4}$ SE $\frac{1}{4}$ NW $\frac{1}{4}$ of Section 36, T. 23 N., R. 41 E.W.M.

That said water right was adjudged by said decree to be and is appurtenant to the following described real property situated in Spokane County, Washington, to-wit:

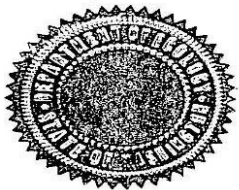
S $\frac{1}{2}$ NE $\frac{1}{4}$, SE $\frac{1}{4}$, S $\frac{1}{2}$ SW $\frac{1}{4}$ of Section 25; S $\frac{1}{2}$ and NE $\frac{1}{4}$ of Section 35; W $\frac{1}{2}$ of Section 36, ALL within T. 23 N., R. 41 E.W.M.

Any changes in these rights can only be in compliance with Chapter 90.03 RCW.

This certificate of adjudicated water right is specifically subject to relinquishment for nonuse of water as provided in Chapter 90.14 RCW.

This instrument is recorded in the office of the Department of Ecology, Olympia, Washington, in Volume XVI, of Adjudicated Water Right Certificates, at Page 68.

Witness the seal and signature of the Water Resources Program Manager, Department of Ecology, affixed this 11th day of March, 1988.




Water Resources Program Manager
Department of Ecology
State of Washington

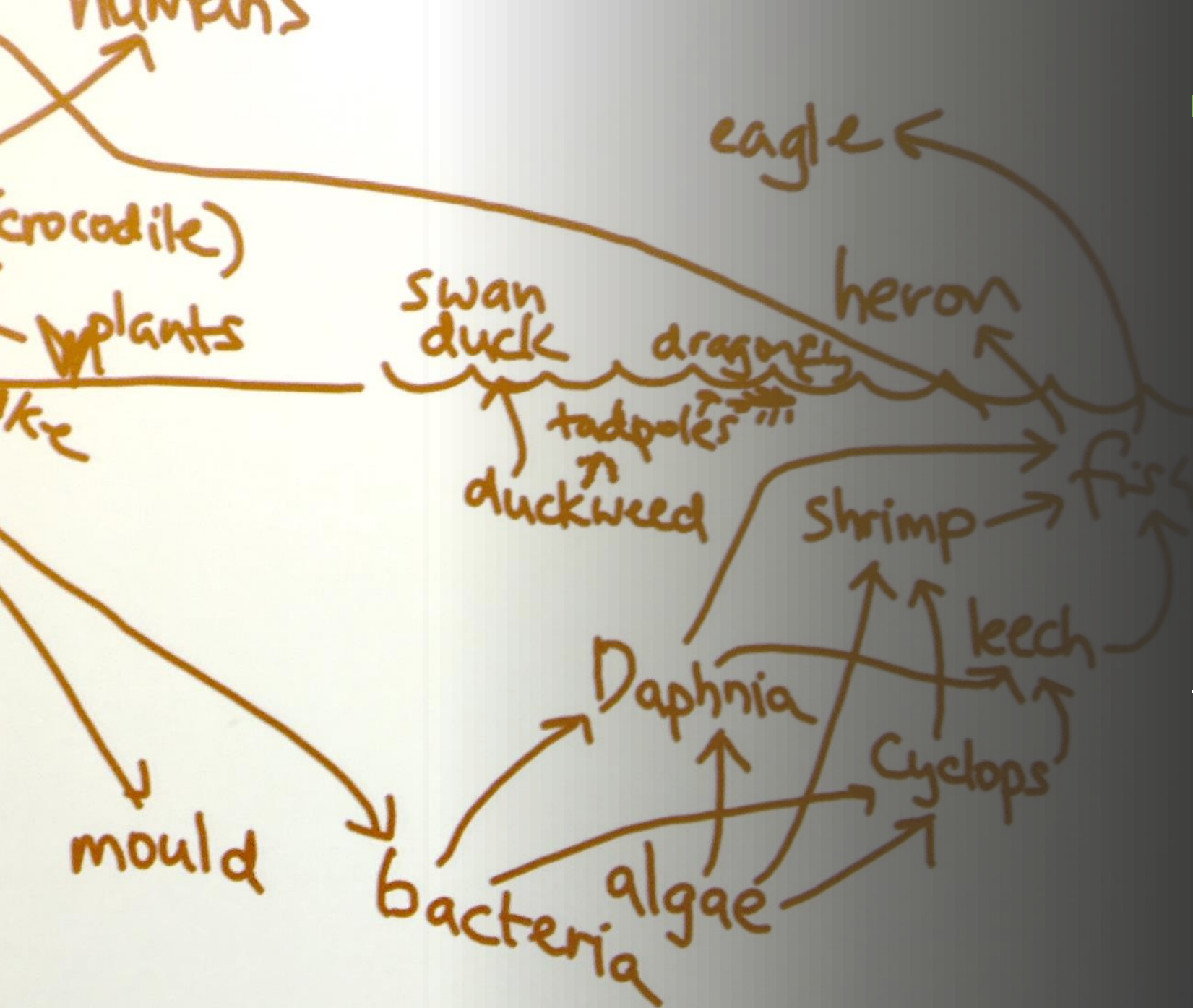
What is a water right? The right to use water for:

- A specific **beneficial use**.
- A specific **quantity**.
- During a specified **season**.
- From a specific **point** of diversion or withdrawal.
- At a specific **location**.

Water Use Categories

- Claim (pre-code use)
- Application to Ecology
- Permit-exempt use
- Instream flows (rule)





Water Rights & Planning



Remember those permit exempt wells?

Under RCW 90.44.050, permit-exempt uses include:

- Single or groups domestic (up to 5,000 gpd*);
- Livestock (no gallon per day limit);
- A non-commercial lawn or garden one-half acre in size or less (limited to reasonable use); and
- Commercial/Industrial purposes, including irrigation (up to 5,000 gpd).

* Slight difference in basins addressed in RCW 90.94

**Hirst: where
instream flows
and exempt
wells collide**



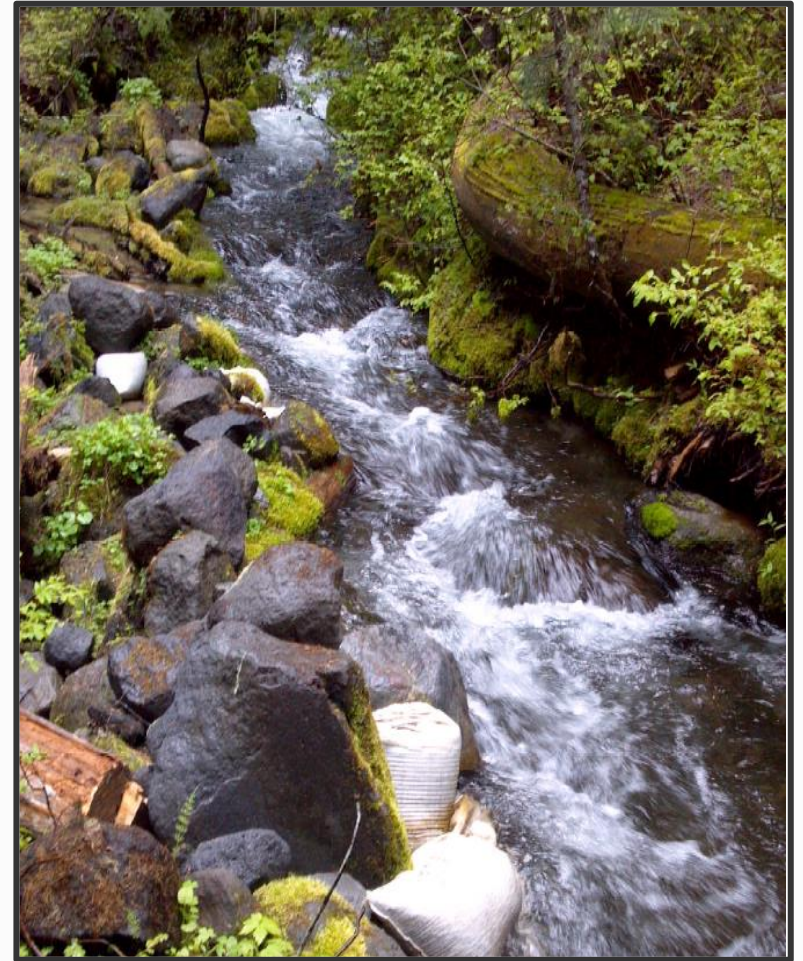
Groundwork for Hirst

Instream flows adopted by rule starting in mid 1970s, 26* basins affected

Water right for the stream, protected from new impacts

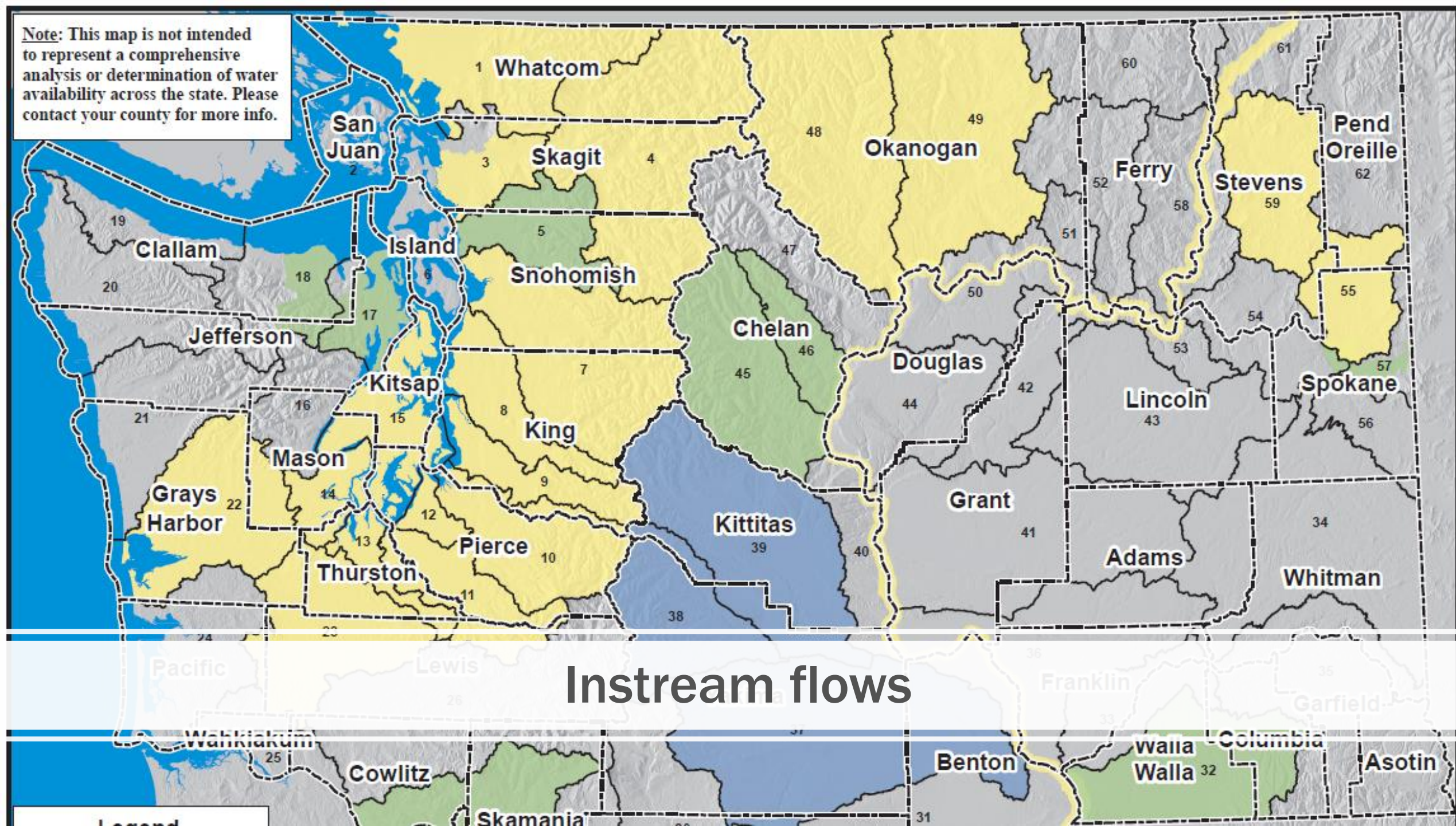
Many applications for new unmitigated water uses or changes to existing rights denied/rejected

- Seasonal flow impacts must be fully addressed
- Mitigate in-time, in-place, in-kind (Postema 2001 & Foster 2015)



* Other basins affected by

Note: This map is not intended to represent a comprehensive analysis or determination of water availability across the state. Please contact your county for more info.



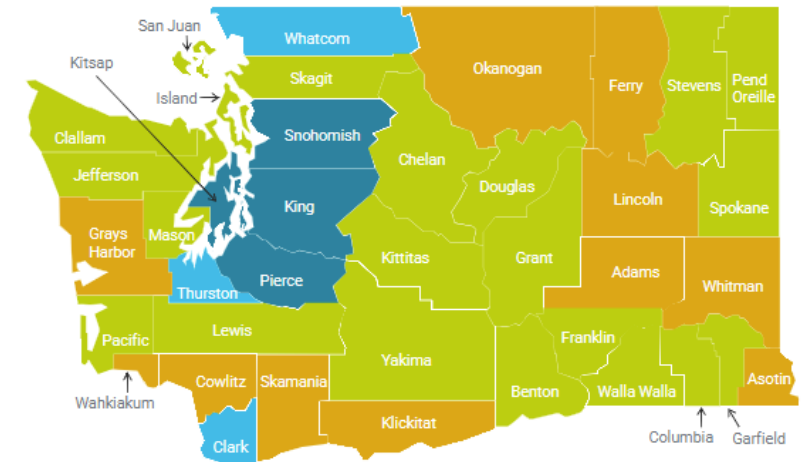
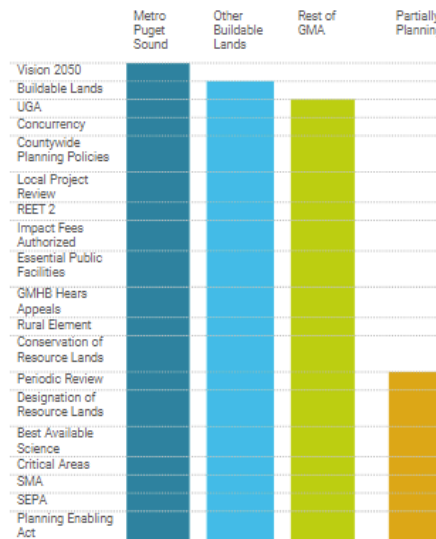
Water & Growth Management

Growth Management Act (GMA), passed in 1991

Key provisions

- “The land use element shall provide for protection of the quality and quantity of groundwater used for public water supplies.”
- “Each applicant for a building permit of a building necessitating potable water shall provide evidence of an adequate water supply for the intended use of the building.”

Regional variation



Whatcom County v. Hirst, et al. (2016)

Appeal of Whatcom County's Comprehensive Plan. The WA Supreme Court ruled that the plan failed to sufficiently protect water resources under the Growth Management Act.

- Counties have an independent responsibility to ensure that new permit-exempt uses do not impair senior uses, including instream flows
- Cannot allow even *de minimus* impairment
- Must “go beyond” state rules if needed to meet GMA obligations





ESSB 6091

Streamflow Restoration Planning (aka Hirst “Fix”)

- 15 watersheds required to plan
- Estimate consumptive use for 20 years of exempt well development
- Plan for basin-wide offsets (flow & habitat improvements), Net Ecological Benefit
- 10 basins complete & approved
- 5 plans to the Salmon Recovery Funding Board for technical review, recommendations due October 2023
- Metering & Foster Pilots

Statewide Measuring & Reporting

Surface water: New rights must meter (new & existing in fish critical basin)

Ground water: new & existing that affect rivers/streams, all changes by policy

Recording and Reporting Requirements			
Average diversion rate in gallons per minute	<10 gpm	10-49 gpm	>50 gpm
Recording frequency	Monthly	Biweekly	Weekly
Volume or rate to report	Maximum rate of diversion	Maximum rate of diversion	Maximum rate of diversion
	Annual total volume	Annual total volume	Annual total volume
Date data must be reported to department	By Jan. 31 of the following calendar year	By Jan. 31 of the following calendar year	By Jan. 31 of the following calendar year
Monthly means calendar month			
Weekly means Monday 12:01 a.m. to Sunday 12:00 p.m.			
Biweekly means once every two weeks			
Daily means 12:01 a.m. to 12:00 p.m.			
1 gallon per minute is equivalent to .002 cubic feet per second			

Some instream flow rules have additional requirements.

Mitigated water may also have to meter.

WAC 173-173-060

Kittitas & Dungeness Pilots (90.94)

- RCW 90.94 put “maximum annual average” in certain watersheds that supersede the exemption. How to track?
- Pilots in 2 watersheds that already required metering by rule on new wells.
- Replaced existing manual-read meters with telemetered systems.
- Average cost to replace 270 meters, \$613 per well.
- Estimated cost to telemeter all wells projected for 15 planning basins, \$21 million.
- Going forward, benefit of local partnerships and existing rule.
- Is it worth the cost to measure such small quantities?

General Reporting Challenges

- Smaller users unaware of requirements
- Confusing provisions
- Meter failures
- Lack of compliance, mixed results with increased outreach



Goals for the future



ENCOURAGE
RESOURCES TO HELP
PAY FOR METERS



INCREASED TECHNICAL
ASSISTANCE, FIELD
CHECKS



IMPROVED ACCESS TO
ECOLOGY DATA



ACTIVE COMPLIANCE
MEASURES

Foster Pilots

- 5 pilots authorized under 90.94, using mitigation sequencing to avoid impacts
- Report to the Legislature, Nov 2022
- Status
 - City of Yelm – Permit issued in 2022, no appeals
 - City of Sumner – Draft ROE anticipated late 2023; USGS model January 2023. City is working on model scenarios to run for impact analysis.
 - City of Port Orchard – Draft ROE anticipated Fall 2023
 - Ag Water Board of Whatcom County – working under a preliminary permit quantify mitigation requirements
 - Spanaway Water Company – Not pursuing project

Adjudication

- Superior Court prioritizes rights from oldest to newest
- Only way to identify all legal water users on a source
- Single process to consider all water use history and law
- Result = Final Court Decree
- 83 completed since 1918, most surface only but some include groundwater

Current Adjudication Activity



2019 Legislative request for watershed assessment



Statewide review and petitions from tribes led to in-depth evaluations for WRIA 1 (Nooksack) and the Upper Columbia



Funding from Legislature this session to proceed



Anticipate filing both adjudications this coming biennium, extensive outreach to water users



Thank you

Jaime Short

jaime.short@ecy.wa.gov

509-990-7636