A water bank is “an institutionalized process specifically designed to facilitate the transfer of developed water to new uses.”

The purpose of this report is to describe the legal framework of water banks in Washington State, the different models currently used and recommend an approach for the Colville Watershed. The first part of this report will provide for transferring water rights and creating a “water bank” under Washington’s water code. The second part of this paper will provide an overview of the different water banks functioning in Washington and other parts of the western United States. The third part will consider models for a water bank in the Colville River Watershed.

I. Water Right Transfers in Washington State

Water rights in Washington State may be changed or transferred without losing priority if there is no injury to other water users. RCW 90.03.380 provides general guidelines for water right transfers. The statute provides authority for the change of use or transfer of water rights that have been applied to beneficial use. A water right owner may change the place of use or point of diversion. Likewise, the owner of a water right may change the purpose of use from one beneficial use to another. Finally, the water rights owner may transfer the water right to another user.

A water right can also be transferred to a new use through a “water bank.” In Washington, generally water banking is conducted through the State Trust Water Right Program. In 1991, the Legislature established the Trust Water Rights Program. The 1991 statute authorized the Department of Ecology to acquire surface or ground water rights and to place them “in trust” for any beneficial use, including instream flows, irrigation or municipal purposes. A water right in

2 This report is a deliverable under the WRIA 59 Water Bank Feasibility Study, a grant from the Washington State Department of Ecology to Stevens County. The water right transfer framework and feasibility study will likely be revised in light of an identified approach to amend the WRIA 59 Instream Flow Rule and identification of the supply of available water rights for water banking and market evaluation.
3 RCW 90.03.380; See also WAC 508-12-180, 190.
4 Haberman v. Sander, 166 Wash. 453, 460, 7 P.2d 563 (1932); In re Ahtanum Creek, 139 Wash. 84, 100, 245 P. 758 (1926).
6 Chapter 90.42 RCW.
7 RCW 90.42.040.
Trust is protected from relinquishment. A water right can be donated to the Trust Water Right Program on a temporary or permanent basis.

A so called “water bank” in Washington State is essentially an account of water in the State’s Trust Water Right Program that can be used to mitigate for state authorized new uses of water. In a general sense, a water bank is a depository for which a person can transfer a water right for use by the person or another person at that time or a later date. RCW 90.42.100, states in pertinent part that the Trust Water Rights Program can be used “[t]o provide a source of water rights the department can make available to third parties on a temporary or permanent basis for any beneficial use under chapter 90.03, 90.44 or 90.54.” However, Ecology shall not use the Trust Water Rights Program to cause detriment or injury to existing rights, “issue temporary water rights or portions thereof for new potable uses requiring an adequate and reliable water supply under RCW 19.27.097,” administer federal water rights or allow carry-over of storage in the Yakima River Basin.

In order to establish a water bank, a valid water right must first be transferred into the State Trust Water Right Program. At the time the water right is transferred into the State Trust Water Right Program the water right is subject to an extent and validity review under RCW 90.03.380 or RCW 90.44.100. After a water right is approved for transfer into the Trust Water Right Program, Ecology and the water right holder may negotiate and execute a Trust Water Right Agreement that describes the agreement between the parties to manage the water right for water banking purposes.

II. Existing Water Banks

There are a variety of different models of water banks. In Upper Kittitas, Dungeness and part of the Walla Walla basin, senior water rights have been transferred to the State Trust Water Right Program to be used as mitigation for new uses. In each of these basins, a non profit or private entity serves as the intermediary to convey water rights for new uses, subject to Ecology’s approval. An alternative to the permanent transfer of water to new uses is lease agreements, either short term or long term. In Arizona and Idaho, a water banking mechanism is used to reallocate water stored in reservoirs and surface and groundwater rights through leases. In Colorado and California, municipalities and irrigation districts have agreements to rotational fallowing in which irrigation districts agree to fallow a certain amount of land to provide additional water for other users.

A. Washington State Water Banks

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8 RCW 90.42.100(2)(c).
i. Upper Kittitas Water Banks

On July 15, 2009, Ecology adopted an emergency rule “withdrawing from appropriation all unappropriated ground water within upper Kittitas County pending completion of a ground water study.”9 The rule also explained that “[n]ew ground water withdrawals will be limited to those that are water budget neutral, as defined in the rule.”10 Under WAC 173-539A-050 a new use of water is considered “water budget neutral if withdrawals of public ground water are proposed in exchange for placement of other water rights into the trust water right program that are at least equivalent to the amount of consumptive use.”11

At the time of adopting the rule, there were no water rights in the trust water rights program that were able to mitigate for new uses of water. In February 2010, Ecology approved an application by Suncadia, LLC to transfer some of its water rights into the trust program to offset new ground water uses. At the time of the transfer into Trust, the water right is subject to review under RCW 90.03.380 based on the foreseeable temporary or permanent uses for the water right. When those future water demands exist, the water right or a portion of the water right can be assigned to that new water user so long as the new use is consistent with the future use reviewed under RCW 90.03.380 at the time the water right was transferred to the Trust Water Program.

In the Yakima River Basin, there are now seven privately held water banks in operation.12 Each of those seven water banks has a “suitability map” based on the water rights attributes. Only one of the seven water banks includes a water right that can be used year-round. The remaining six water banks include only irrigation season water rights. In the Yakima River Basin, Ecology and the U.S. Bureau of Reclamation entered into a Water Storage and Exchange Contract.13 The Contract allows Ecology to request Reclamation to store and release water rights in order to offset impacts to fish and wildlife and from water right transfers. Therefore, a portion of the water transferred through the water bank process is assigned to the Contract in order to offset the change from irrigation season use to year-round use.

In order for a project proponent to rely on a water bank to provide mitigation for the intended new use of water, the new use must be sufficiently mitigated by the water right that was transferred into the State Trust Water Right Program that established the water bank. The

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9 WAC 173-539A-010
10 Id.
11 WAC 173-539A-030.
first step to determine if the new use will be approved is to apply for a permit to appropriate water for a beneficial purpose or to request a determination of water budget neutrality (if the use is exempt from permitting under RCW 90.44.050).\textsuperscript{14} The applicant files a request to use a certain amount of water for a specific purpose at a specific location. The applicant for a water right permit is required to publish notice of the application for two consecutive weeks in a newspaper of general circulation in the county in which the water is to be diverted.\textsuperscript{15} There is a 30-day comment period after publication. Any party alleging impairment can file a protest with Ecology after publication of public notice of the application for a new water right or a change of use of an existing water right.

In considering whether water is available and whether the proposed use will impact existing rights, Ecology will closely examine the attributes of the water right in the water bank that is proposed to mitigate the new use. Each senior water right transferred into the State Trust Water Right Program retains the attributes of its historic beneficial use for purposes of determining how it can be used to mitigate for new uses. For example, if a water right was historically used from the Yakima River, it may not be able to mitigate for certain tributaries because of impacts to existing users or fish and wildlife habitat. So far, water banks have transferred mitigation water to over 2,000 potential new homes. The seven different water banks charge new users anywhere from approximately $5,000 to $14,000.

\subsection*{ii. Dungeness Water Exchange}

Unlike Upper Kittitas, Ecology implemented a water bank program as part of its adoption of the Water Resources Management Program for the Dungeness Portion of the Elwha-Dungeness Water Resource Inventory Area.\textsuperscript{16} On November 16, 2012, Ecology adopted the Dungeness Rule. The Dungeness Rule established instream flows,\textsuperscript{17} closed certain subbasins,\textsuperscript{18} and established rules for new groundwater appropriations relying on reserves of water for new development.\textsuperscript{19} New ground water rights “may be obtained that are not subject to the instream flows established . . . or to the closures established . . . if all statutory requirements are met . . .” and the applicant purchases mitigation through the Dungeness water exchange.\textsuperscript{20} Alternatively,

\begin{itemize}
\item \textsuperscript{14} RCW 90.03.250; RCW 90.44.050.
\item \textsuperscript{15} RCW 90.03.280.
\item \textsuperscript{16} Chapter 173-518 WAC.
\item \textsuperscript{17} WAC 173-518-040.
\item \textsuperscript{18} WAC 173-518-050.
\item \textsuperscript{19} WAC 173-518-070, -090.
\item \textsuperscript{20} WAC 173-518-070(3)(i).
\end{itemize}
Ecology may approve a new use of water if the applicant submits a mitigation plan that offsets the impact of the new uses. In coordination with the adoption of the Dungeness Rule and Dungeness water exchange, Ecology also funded and developed a groundwater flow model. The Rule describes that: “The 2008 Dungeness Groundwater Flow Model (Pacific Groundwater Group, 2009) will be the basis for determining credits for offsetting the consumptive associated with the proposed water use.” The Model is used to predict the amount of surface water capture of a given parcel and calculate the location(s) of impact to surface water streams.

In 2013, the Washington State Legislature appropriated $2.05 million for Dungeness Water Supply and Mitigation. The appropriation states that funding may be used for Ecology “to develop projects and acquire water rights to enhance flows and to mitigate for rural development within the basin.” Ecology granted Clallam County $100,000 to pay for the first 100 groundwater mitigation certificates for landowners seeking building permits.

On January 21, 2014, the Olympic Resource Protection Council (ORPC) petitioned the Department of Ecology to amend the Dungeness Rule. The ORPC cited numerous reasons to amend the rule, it also asserted that: “The Dungeness water management rule is fatally flawed because it rests upon a system of “OCPI”-based water reservations that are ultra vires under Swinomish v. Ecology.” On March 18, 2014, Ecology denied the petition for numerous reasons and responded that the Dungeness Rule is not fatally flawed because the reservations will be mitigated by the Dungeness water exchange. Since the denial, ORPC has been quoted in local media.

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21 WAC 173-518-075.

22 WAC 173-518-070(3)(a)(i).


26 Id. at pg. 4.

newspaper articles indicating that it will challenge the rule, but as of the writing of this report, the challenge has not been filed.  

Ecology continues to implement the Dungeness Rule and Dungeness water exchange. The Dungeness water exchange holds a portfolio of interests in water rights and other mitigation measures such as aquifer recharge projects to create mitigation credits to offset new groundwater uses. The Dungeness water exchange is operated by the Washington Water Trust, a non profit corporation, and overseen by the Exchange Advisory Council. The Council consists of representatives from the Dungeness Water Users Association, Clallam County, Jamestown S’Klallam Tribe, Ecology, Clallam PUD, City of Sequim, Washington Department of Fish and Wildlife and Clallam Conservation District.

The Dungeness water exchange works closely with Clallam County to coordinate the purchase of groundwater mitigation. If a landowner is only seeking to use water for domestic use, then that new use will be credited against the first 100 mitigation certificates paid for by the Ecology grant. If a landowner intends to use water for irrigation or for stock watering, the landowner will be required to pay an additional fee between $1,000 and $5,200 for additional mitigation water. The landowner is required to record a mitigation certificate with the County auditor. The mitigation certificate will be appurtenant to the property and cannot be transferred. So far 58 mitigation certificates have been issued in the Dungeness water resource area.

iii. Walla Walla Water Exchange and Walla Walla Watershed Management Partnership

In the Walla Walla watershed, water banking has evolved from offsetting some new permit exempt uses to a pilot project that provides for greater local control in water right transfers. In 2007, Ecology adopted the Water Resources Program for the Walla Walla Basin by rule. The Walla Walla Rule established instream flows, closed certain subbasins, established limitations on permit exempt uses in the gravel aquifer area, and required new permit exempt

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29 Chapter 173-532 WAC.

30 WAC 173-532-030.

31 WAC 173-532-040.

32 WAC 173-532-050.
In 2008, Ecology, Walla Walla County and the Washington Water Trust launched the Walla Walla Water Exchange. The exchange holds a beneficial interest in water rights transferred into the State Trust Water Right Program for instream flows and to offset new permit exempt uses. New home builders that are required to purchase mitigation under the Walla Walla Rule pay a one-time fee of approximately $2,000 to purchase mitigation.

In 2009, the State Legislature established a pilot local water management program for the Walla Walla Watershed, which authorized a local board, the Walla Walla Watershed Management Partnership, with the authorities to:

- Assume the duties, responsibilities and activities of the watershed planning unit;
- Develop strategic actions for the planning unit based on the watershed plan;
- Acquire water rights by donation, purchase, or lease;
- Enter into agreements with water rights holders not to divert; and
- Enter into all necessary contracts, appoint and employ necessary agents and employees to carry out duties.

The Partnership is also authorized to create Local Water Plans. Under RCW 90.92.020, a “Local water plan” means –

A voluntary water management plan developed by local water rights holders within the planning area to manage their water use in a manner that enhances stream flows in exchange for greater flexibility in exercising their water rights. These plans are reach-scaled, customized water plans designed to enable sustainable management of groundwater. Essentially, it allows for temporary changes to water use practices through the adoption of the Local Water Plan.

The nine-member Partnership Board includes entity-appointed representatives of Walla Walla County, Columbia County, the City of Walla Walla, Gardena Farms Irrigation District #13 (the largest irrigation district), the Confederated Tribes of the Umatilla Indian Reservation, and a representative jointly appointed by the Walla Walla County and Columbia Conservation Districts. The Partnership is advised by two committees created by the Board: the Policy Advisory Group and the Water Resource Panel. The Partnership employs two full time employees co-located on

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33 WAC 173-532-050.
34 Second Substitute House Bill 1580, Chapter 90.92 RCW.
35 Permanent water right transfers to the State Trust Water Right Program must comply with RCW 90.42.080. RCW 90.92.070(3)(b).
the campus of Walla Walla Community College. The Partnership is a local public agency and operates as an independently funded entity. The Partnership received initial funding from the Legislature of approximately $200,000 a year. Additionally the Partnership has received funding from the Snake River Salmon Recovery Board, Department of Ecology Administrative Support Grants, watershed planning funding and grants from the National Fish and Wildlife Foundation’s Columbia Basin Water Transaction Program.

Between 2009 and 2012, the Partnership executed non-use agreements to keep 8,418 acre-feet of water in the river. The Partnership also administers the Walla Walla Exempt Well Mitigation Exchange, which sells mitigation water for new permit-exempt uses. The Exchange uses funding from mitigation credit sales to then purchase additional water rights for future uses.

B. Water Bank Storage Projects

i. Arizona Water Bank Authority

In 1996, Arizona established the Water Banking Authority (AWBA). The AWBA utilizes Arizona’s otherwise-unused Colorado River entitlements by storing unused water in existing aquifers or use by irrigators in lieu of groundwater use. The AWBA is administered by the Arizona Department of Water Resources (ADWR). The AWBA pays the delivery and storage costs to bring Colorado River water through the Central Arizona Project canal to central and southern Arizona. The AWBA is funded by fees from groundwater pumping within the Phoenix, Pinal and Tucson management areas, an *ad valorem* property tax collected in the three county Central Arizona Project service areas and general fund appropriation from the state.36

The AWBA operates in accordance with its Plan of Operations. The Plan details the previous year’s operations including how much water was stored and delivered. The Plan also provides estimates about the amount of water that will be stored in 2013 and delivered in 2013 as well as accounting of funding for the program. Each year the AWBA is required to present a draft operation plan to the Groundwater Users Advisory Council for the Phoenix, Pinal and Tucson areas. AWBA also must provide public notice of the proposed plans and opportunity for the public to comment. By January of each year the AWBA is required to approve an annual Plan of Operation.

ii. Idaho Water Banking

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Idaho has the longest running water supply bank. In 1979, the Idaho legislature created a statewide banking program and provided a framework for the operation of local water banks, building on the practice of renting stored water occurring in certain parts of the state since the 1920s. Idaho’s water banking statute authorizes the Idaho Water Resources Board to serve as an intermediary to acquire water rights or water right entitlements from willing sellers for reallocation by sale or lease to other new or existing users. A water right is protected from forfeiture while in the water bank. The water bank includes two categories of exchange markets: the rental of water stored in reservoirs called “rental pools”; and the Board’s Water Supply Bank which manages the exchange of natural flow water rights and privately held storage water rights. Under the Idaho water code, the Board may appoint local committees to administer rental pools. There are currently five rental pools: Upper Snake River Basin, Boise River Basin, Payette River Basin, Lemhi River Basin and one administered by the Shoshone Bannock Tribes. The Water Supply Bank is administered by the Idaho Department of Water Resources (IDWR).

Any person proposing to sell or lease water rights to the water banks shall make an application. The applicant will also need to submit proof of ownership, information of use and availability of the water right. Prior to accepting the right into the bank, the Board will verify ownership, use and availability of the water right.

A party may request to rent water from the Bank by filing an application. The IDWR identifies one of the rights in the Bank that meets the need of the renter. The water right owner receives payment only if a rental is executed. For rentals of less than five years, public notice and Board review is not required. However, if the renter does not already have a water right established, or the intention is for a long-term use, public notice and Board review may be required. The current rate for leased water in 2014 was $17 per acre-foot. In 2013, 700 water rights – approximately 256,000 acre-feet of water – were leased into the Board’s water bank. The Board facilitated 400 rental agreements – approximately 75,000 acre-feet of water.

C. Water Right Leasing and Fallowing Programs

38 IDAPA 37.02.03, Rule 40.01.
40 IDAPA 37.02.03, Rule 25.01.
41 IDAPA 37.02.03, Rule 25.06.
Like most of the western United States, the Arkansas Valley in eastern Colorado experienced large agriculture-to-urban water transfers, mostly out of the basin. The citizens, especially the agricultural community was concerned about lasting effects on the sustainability of agriculture in the valley. In 2002, citizens of five counties voted to create the Lower Arkansas Valley Water Conservancy District. The mission of the District is to:

To acquire, retain and conserve water resources within the Lower Arkansas River Valley. To encourage the use of such water for the socio-economic benefit of the District citizens. To participate in water-related projects that will embody thoughtful conservation, responsible growth, and beneficial water usage within the Lower Arkansas Valley, including the acceptance of conservation easements, with or without water.43

In 2006 the District announced a rotational fallowing agreement initiative, operated as the Super Ditch Corporation in an effort to keep agricultural industry viable in the area and allow for farmers to obtain lease payments from their water rights. Rotational fallowing is:

An agreement where a group of farmers rotate among themselves the amount of land fallowed each year to provide a consistent supply of water to the purchaser/lessee of the water. The ownership of the water is retained by the farmers while allowing them to generate additional income from their water and allowing the purchaser (cities) to gain an additional reliable water supply.44

The aim of rotational fallowing agreements is to spread the economic impact of removing irrigated land from production across a larger geographic area and to rotate the location of the fallowed land.45 The revenues lost from crop production are replaced by lease payments. The Super Ditch Corporation is managed by a Board of Directors elected by participating irrigators. Commentators have suggested that this model allows the participating irrigators to be on a level playing field in negotiations with municipal users.46


46 Presentation by Peter Nichols, Trout Raley Montano Witwer & Freeman PC, Water Leasing in the Lower Arkansas Valley: The “Super Ditch Company” (June 4, 2009).

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October 27, 2014
The Super Ditch Corporation established the terms of the fallowing agreements after the completion of a feasibility study. The study considered the amount and associated priority dates of the water rights within the area and developed scenarios of water availability based on a wet year, average year, dry year and extreme dry year. The fallowing agreements require a farmer to fallow land and lease water in three of every 10 years. Farmers are allowed to grow certain dryland farming plants. Under these terms, the Super Ditch will generate 25,000 acre-feet of water in an average year or 8,000 acre-feet in an extremely dry year for municipal uses.

The Metropolitan Water District of Southern California and the Palo Verde Irrigation District (PVID) also have a rotational fallowing agreement. The agreement allows the cities, such as Los Angeles, to firm up their supplies while at the same time, allow irrigators to retain ownership of their water rights and keep farming. The Water District and PVID entered into a 35-year lease agreement. PVID agreed to refrain from irrigating 7 to 28 percent of the valley lands each year in exchange for lease payments. The Metropolitan Water District pays Palo Verde Irrigation District $606 per acre fallowed.

The Rocky Ford Highline Canal and the City of Aurora Colorado also have a similar lease agreement in which the Canal Company agreed to provide a certain amount of water if requested. The agreement allows the City of Aurora to lease water no more than three years out of every ten year period. The City of Aurora paid the Rocky-Ford Highline Canal $528 per acre for 10,000 acres fallowed ($5,280,000).

Leasing agreements can provide predictable sources of revenue for farmers and ranchers and provide municipalities with additional sources of supply. Lease agreement and rotational fallowing can provide opportunities to create revenue for farmers and water available for new uses. However, RCW 90.42.100 specifically forbids leased water held in the State Trust Water Rights Program from being used for new domestic uses. Nonetheless, the storage leases and fallowing agreements are tools that can be used in WRIA 59.

III. Preferred Alternatives for Colville River Watershed
In the Colville River Watershed, a water bank must facilitate the principal needs of the watershed and its citizens. A water bank in the Colville River Watershed needs to facilitate the following:

- Reduce the amount of relinquishment of existing water rights;
- Provide public outreach on water rights and water banking;
- Reduce the transfer of existing water rights to areas outside of WRIA 59;
- Make water available for new uses, especially in those areas for which Sullivan Lake water cannot be used as a mitigation source.  

Any water right holder in the Colville River Watershed can set up a privately run water bank. In order to do so, the water right holder will need to apply to transfer their water rights, in whole or part, to the State Trust Water Right Program. In transferring the water right to the State Trust Water Right Program, Ecology will conduct an extent and validity review and accept the quantity of water historically put to beneficial use. Once the water right is successfully transferred to the State Trust Water Rights Program, the water right holder can contract to sell a portion of the water rights to third party users for new uses. The new uses will need to be approved by Ecology.

In order to meet the needs identified above, specifically the need to reduce the amount of relinquishment and out of basin transfer, Stevens County may consider a water bank operated by a non profit corporation or a governmental entity. A non profit corporation may be governed by an interlocal agreement agency (potentially the WRIA 59 Watershed Management Partnership) and or the WRIA 59 Watershed Management Board. The Interlocal Cooperation Act, provides local government agencies with the authority to enter in cooperative agreements to perform governmental functions in a coordinated manner. The Interlocal Cooperation Act contains a broad authorization for any one or more public agencies to contract with any one or more other public agencies to perform any governmental activity or service which each entity is otherwise authorized by law to perform individually. The Act interprets the term “public agency” broadly, to include state agencies, local governments, municipal corporations, and

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50 Technical Memorandum, Andrew Graham and Joe Miller, HDR, to Dick Price, Stevens County Public Utility District, Water Needs Assessment for WRIA 59 (Feb. 25, 2013). The report estimates a need of up to 12,800 acre-feet of water for continued development into 2050.

51 The WRIA 59 WMP includes Stevens County, Stevens County Conservation District, Stevens County public utility district, City of Chewelah, City of Colville and City of Kettle Falls. The purpose of the WMP is to provide the legal mechanism to administer funding for the WRIA 59 Water Resource Management Board and WMP activities.

52 The primary duties of the Board are to implement actions in the WRIA 59 watershed.

53 Chapter 39.34 RCW.

54 RCW 39.34.080.

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federally-recognized Indian tribes. This approach is similar to the Walla Walla Partnership and Lower Arkansas Valley Water Conservancy District.

The bylaws of the WRIA 59 Watershed Management Board anticipate the possibility of creating a non profit corporation to seek private funding. However, amendments to the governing documents of each entity will be required for this approach. Alternatively, a water bank may be administered by a lead entity, such as a government entity.

To facilitate the need to prevent relinquishment, out of basin transfers and provide for mitigation options for new uses of water, the water bank operating entity needs to have the authority to undertake a wide range of actions, including:

*The ability to buy, sell and lease water rights and mitigation credits.* The entity can serve as an intermediary to acquire water rights from willing sellers for reallocation by sale or lease to other new or existing users. This purpose is consistent with the WRIA 59 Watershed Management Plan’s goal to “[d]evelop non-profit water rights clearing house to provide a local forum to bring together buyers and willing sellers of water rights.” The entity will need to facilitate the reallocation of water rights to facilitate the new uses of water under the WRIA 59 Instream Flow Rule.

*Seek outside funding sources.* The entity can serve to seek funding for water resource related projects in the Colville River Watershed. This may include funding from the Office of Columbia River, the Columbia River Basin Water Transactions Program and other available funding sources. The funding can be used to purchase water rights, from willing sellers, to lease water rights from interested parties, obtain agreements not to divert or to substitute a surface water source to groundwater and other water resource related matters.

*Seek and facilitate the distribution of Sullivan Lake mitigation.* In 2006, the State Legislature adopted the Columbia River Basin Water Supply Act, providing for a mechanism and funding to provide access to new water supplies for both instream and out-of-stream uses. Under RCW 90.90.110

“[t]wo-thirds of the water made available through reoperation of Sullivan lake funded from the Columbia river basin water supply development account created

55 RCW 39.34.020(1).
57 WRIA 59 Watershed Management Plan, Table 2, pg. 30.
58 Chapter 173-559 WAC.
59 RCW 90.90.010.
in RCW 90.90.010 must be used to supply or offset out-of-stream uses described in RCW 90.90.020(3) in Douglas, Ferry, Lincoln, Okanogan, Pend Oreille and Stevens counties. At least one-half of this quantity must be made available for municipal, domestic and industrial use.”

Ecology’s actions under this Act are primarily focused on additional opportunities for storage, water conservation projects and pump exchanges. RCW 90.90.030 states that Ecology shall enter into voluntary regional agreements with local watershed planning groups to provide “new water for out-of-stream use, streamlin[e] the application process, and protect[ ] instream flow.”

Investigate water storage projects. The Watershed Management Plan considers the need for water storage projects in order to provide mitigation or additional water supplies.

Furthermore, the operation of the water bank needs to be transparent, and encourage a local process for which water right holders and landowners will find information about their water rights. The water bank should include an operating procedure that includes the following provisions:

Provide local outreach to water right owners about opportunities. Use a simple local process to encourage participation. Forms used should be simple and only request the information needed. Staff must be given the tools to assist landowners in completing the forms and aiding in the completion of a transaction.

Operate with under Best Practices. Operating procedures should include:

- Common Pricing: everyone is treated fairly, except for low income or for charitable purposes
- No undue or unreasonable preferences or undue or unreasonable prejudices or disadvantages to any proposed legal use
- Mitigation only for the use of water that is consistent with state or local government land use plans or ordinances.

IV. Next Steps

This report is intended to provide an overview of water bank structural and operational operations for a WRIA 59 water bank. Additional information on potential amendment to the WRIA 59 instream flow rule, future demand, and evaluation of the supply of water rights are

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60 RCW 90.90.030.
61 Water Banking Best Practices Act, SB 6533 (Sponsors: Chandler and Blake), introduced February 4, 2014
currently being developed. The water rights framework will be reconsidered and amended as additional information is compiled.