Public Utility District No. 1 of Klickitat County

80 Years of Service * 1938-2018

GENERAL MANAGER'S REPORT TO THE BOARD

For the July 28, 2020 Meeting

AGENDA ITEMS:

A. Call for Bid- CIC Conductor – Due to the current volatile market and increasing delivery lead times, staff recommends bidding now when we can realize increased savings over spot purchases.

B. Strategic Financial Discussion – Mike DeMott has prepared initial discussion for purposes of reviewing financial contribution of production assets on KPUD's overall position. This will help inform future discussions related to utilization of surplus funds when available.

C. Executive Sessions - Potential Litigation per RCW 42.30.110(1)(i)

NON-AGENDA ITEMS:

1. **Lund Hill Water Supply** – Their contractor has requested, and we agreed to supply, up to 150k gallons a day for construction of their solar project that is located to the north and west of the landfill. This is actual water supply and is on a temporary basis until they receive a temporary water right from the state using our Cliffs water rights for mitigation. As such, all funds will flow directly to the respective water system supplying the water. We will have monitoring and communications in place with the local fire districts to ensure fire suppression water is available. The water supply is interruptible at our discretion.

2. **Water Banking Advisory Committee** – I am attaching an email summary by John Kounts, along with a write-up of the issues from WPUDA and the draft report from the Advisory Group on Water Trust, Banking, and Transfers. Ecology is looking for comments by July 31. I do not see specific WPUDA recommendations in any of this. Given that we received the report on Monday, I think there is a discussion to have on Tuesday. Doug should be able to supply some background.

3. **Goldendale Pumped Storage Project** – Brian has revised the Commerce funding scope of work with National Grid and Rye Development to include locating an alternative to the existing withdrawal location on Corps property. We are also working with National Grid and Rye Development on a revised MOU and a water supply agreement.

4. **Strategic Planning** – The only update here is that the financial forecasting work Mike will

present today is key for you all to think about and get comfortable with. These forecasts will be the basis for the models we use to help us adjust our strategic direction.

5. **Update on State Parks** – we have completed a legal review and are currently doing some follow-up work. We will be reporting back to you, likely at the next meeting.

6. **GM Update Videos** – is there interest in board members recording any of the future updates?

7. **My Performance Review** – I would like a short discussion with you all to confirm board direction for the second half of 2020.

8. **Largest battery storage system in US connects to California ISO grid** - (Attachment)

9. **Federal Clean Energy Legislation Introduced** - (Attachment)

10. **Energy EIA 2020 Report Summary** – (Attachment)

11. **2020 WPUDA Meeting Schedule** – I would like to touch base with you guys on who plans to attend which session. (See Attached Schedule)

Issues in Water Right Transfers/Water Banking/Trust Water Legislation
Potential PUD Impacts and Considerations

1. Prohibitions on Out-of-Basin Water Right Transfers

Summary: Some environmental groups and counties may seek legislation prohibiting out-of-basin transfers of water rights. This type of prohibition would largely impact counties in the Columbia River Basin. For example, water rights in Upper Columbia Counties (ie, Ferry, Stevens, Pend Oreille, Okanogan) could not be sold and transferred to Mid- or Lower Columbia counties (ie, Chelan, Grant, Douglas, Benton, Franklin, Klickitat, Clark, Cowlitz, Wahkiakum). Or, a water right from the Mid Columbia area could not be transferred further downstream (ie, Chelan to Benton, Benton to Klickitat, Klickitat to Clark, etc.)

Impact & Considerations for Mid- and Lower Columbia PUD Areas: This type of prohibition would prevent Mid- and Lower Columbia PUDs from acquiring upstream water rights that may be needed to serve future growth. Mid- and Lower Columbia Basin PUDs could only acquire water rights from their own area, greatly limiting water acquisition options and potentially increasing the price of water acquisition. Economic growth in these counties may be limited due to water acquisition limitations.

Impact & Considerations for Upper Columbia PUD Areas: Since water rights could not leave these Upper Columbia Basin areas, PUDs could benefit by being able to acquire these water rights with no competition from downstream buyers, so prices may be lower. But, this lower price would be to the detriment of water right holders (the sellers) in the Upper Columbia Basin areas.

2. Local Right of First Refusal or Right to Retain Portion of Water Right Being Transferred Out of Basin

Summary: A variant of a prohibition against out-of-basin water right transfers would be to provide certain entities with a statutory right of first refusal to buy a water right on the same terms and price as a willing and able out-of-basin buyer, or to acquire a portion of the water right (ie, 25% of the water right must be retained in the area of origin at a proportionate price share. For example, if a water right of 100 acre feet were to be sold from a seller in Okanogan County to a buyer in Benton County for $5,000 per acre-foot – certain entities would have a statutory right to either buy the entire water for $500,000 (the purchase price to be paid by the willing and able buyer), or 25% of the water right (25 acre-feet for $125,000).

PUD Impacts & Considerations: The impacts are similar to the example above in that water right acquisitions would become more limited and difficult for lower-basin PUD areas, because there would be fewer water rights to buy. On the other hand, water right acquisitions may become easier for upper-basin PUD areas. In addition, this idea raises a number of questions, including:

(a) Which entities at the local level should have this statutory right of first refusal to buy a water right – cities, counties, PUDs, non-profits, Indian tribes, or others?

(b) If a local entity sought to exercise its right of first refusal, how would it raise funds for the purchase?

(c) Can Upper Columbia Basin buyers realistically compete with the prices being paid for water rights in the Mid and Lower Columbia?

3. Acquisition/Speculation in Water Rights by Private Entities, Increased Transparency in Water Right Sales

Summary: There is concern over the ability of private investors, banks, or other entities to acquire water rights and protect them from relinquishment in the state Trust Water Program, solely for the purpose of speculating on the increase in value for future sale. Some people have suggested prohibiting certain entities from buying/owning water rights, or limiting temporary Trust Water Program donations to limit speculative behavior. Another idea is to increase the transparency in water right sales by increasing public information on who is buying and selling water rights, for what purpose, and increasing standards to create new water banks.

PUD Impacts & Considerations: Water rights are considered real property subject to constitutional protections in their ownership, use, purchase, and sale. Agricultural interests have generally opposed restrictions on water right sales because that can reduce the value of a valuable, tradable asset owned by farmers.

Speculative behavior seen by private water banks in Kittitas County is reminiscent of the behavior of private utilities prior to PUD formation, as some water banks sought to create a "mitigation monopoly" and set the price of selling water at extremely high levels.

Overall, while there has been some evidence of monopolistic behavior over water rights, it is not yet systemic. Any entity can acquire a water right to "keep it local" and certain entities (cities, counties, PUDs, others) have condemnation authority over water rights that can be exercised to prevent abusive practices or to obtain water rights from another water rights holder.

4. Other Changes in Trust Water Statute/Water Transfers

Summary: It is possible that legislation could make changes to various definitions, require cost-reimbursement for water banks, require a specific type of application or water bank prospectus, or other types of changes to increase transparency.

PUD Impacts & Considerations: These types of statutory changes would not impact PUDs differently from any other entity, but even "clarifying" legislation can be difficult to draft and should be subject to review by attorneys. Procedural changes in the application process including the format of applications and annual reporting on water right transfers and banking may serve to increase transparency and understanding of existing trends in water right transfers.

From: "John Kounts" <JKounts@wpuda.org>
Cc: "bill@clarke-law.net" <bill@clarke-law.net>
Subject: Ecology's Advisory Group on Water Trust, Banking and Transfers

WPUDA Water Committee and other interested PUD water personnel:

As you might know, this spring and summer the state Department of Ecology convened an advisory group formed by the Legislature last session to look into issues and concerns about the state's trust water rights program, transfers of water rights (especially from upstream to downstream basins) and water banking.

The advisory group has finished its meetings and Ecology last week issued a report (attached) on the group's "draft findings and potential policy tools." **Comments on the report are due July 31** and should be filed here at Ecology's website for posting comments.

Also attached is a brief paper by WPUDA lobbyist Bill Clarke that describes issues and considerations for PUDs coming out of Ecology's work with the advisory group, and legislative proposals and possible policy changes that could emerge in the near future. **Please review this document and send any comments on it to Bill and me via a "reply all" to this message.**

We will discuss the work of the advisory group at upcoming WPUDA Water Committee meetings, and as the next session of the Legislature approaches, we will need to know how PUDs feel about the recommendations coming out of the advisory group's meetings. Below is a WPUDA Friday Facts article that summarizes those recommendations.

From WPUDA Friday Facts, July 17, 2020:
Ecology presents advisory group's recommendations on water right transfers and water banking

Yesterday the state Department of Ecology held the sixth and final meeting of its Advisory Group on Water Trust, Banking and Transfers. The meeting was mainly a presentation of program reform recommendations that Ecology staff had gleaned from the group's discussion and ideas presented at its prior meetings.

The Legislature created the multi-stakeholder advisory group last legislative session to study issues and disagreements over how to modify the state's trust water rights program and regulate transfer of water rights between basins. During session, legislators expressed concern over certain types of changes in water rights, including transfers that permanently remove water from an upstream area and move it downstream, and speculative acquisition of water rights by private investors. These topics spawned several bills introduced and debated during session that didn't have enough support to pass.

The advisory group met six times online this spring and summer, in videoconferences of more than 100 presenters and audience members, including several PUD representatives. At the group's final meeting yesterday, Ecology staff presented their interpretation of the group's main areas of agreement on policy changes that should be pursued, either by administrative action under Ecology's authority or through changes in state water law by the Legislature:

- Allow a water right that is transferred downstream to be moved back upstream without a finding of impairment to intervening users. Having this flexibility would help reverse the

economic impact on upstream areas that can occur when water rights are transferred downstream.

- Authorize "conservation easements" on water rights to restrict their use to their basin-of-origin. An entity could purchase the easement, which would have the effect of limiting transfer of the water right so it could not be transferred out of its basin-of-origin for future consumptive uses elsewhere.

- To improve transparency in the sale of water rights, modernize the requirement that notice of water right transfers must be published in local newspapers, and amend the law to allow Ecology to publish notice electronically. In addition, post water-right change applications in an integrated, publicly accessible digital format based on geographic information system (GIS) technology, which Ecology staff have already begun developing under the agency's existing authority and plan to complete by 2022.

- To improve the trust water rights program (TWRP), differentiate between water rights that are placed in trust for the purpose of instream flow enhancement and protection from relinquishment versus water rights that are placed in trust to be used as mitigation for other out-of-stream water uses. Clarify in the trust water statute that any water right used for long-term or permanent mitigation must first undergo a tentative determination of its extent and validity. Because temporary donations to the TWRP generally do not undergo a tentative extent-and-validity determination, this policy would clarify that temporary donations may not be used to mitigate for long-term or permanent water uses.

- To improve the transparency and public accountability of water banks, require prospective bankers to submit a "water banking prospectus" in which they outline their business plan. The prospectus would be made available for public comment. Ecology would use the comments to inform the trust water right agreement (or water banking agreement) negotiated with the banker.

- Other water banking reforms would allow Ecology to recover the administrative costs of developing water banking agreements, charge a fee for reviewing and processing a water banking prospectus, and require that applicants reimburse Ecology for its costs in processing banking-related water-right change applications. Ecology would also be authorized to require water banks to meet conditions beyond ensuring no impairment of senior water rights. These conditions could include enhancing stream flow benefits, or meeting other stipulations for consumer or environmental protection.

Next steps for these recommendations are public comment on Ecology's "Draft Findings and Potential Policy Tools" report containing the recommendations presented at yesterday's meeting. The report is available here and the website for posting comments is here. Comments are due July 31.

The initial draft of legislation needed to implement the recommendations must be submitted by Ecology to the governor's office by August 1, and final draft legislation must go to the governor's office by September 30 to be eligible for consideration as governor's request legislation in the Legislature next session.

More information about the advisory group is at Ecology's Advisory Group webpage.

John Kounts
Water Program Director
Washington PUD Association
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Draft Findings and Potential Policy Tools – for Meeting 6

Advisory Group on Water Trust, Banking, and Transfers

DRAFT; July 13 2020

Notes

This paper is a draft document. Concepts included have not been approved by Ecology leadership. They are reflective of the current thinking of Ecology Water Resources staff after completion of the Advisory Group on Water Trust, Banking, and Transfers; they should not be interpreted as a commitment to pursue (or not pursue) specific policy actions.

In this document, we present draft findings and potential policy tools for each of the four topics discussed. The draft findings reflect our central takeaways from the Advisory Group meetings. There are then three categories of potential policy tools presented.

- *Potential Ecology Recommendations and Actions* – These are policy concepts that Ecology is considering for recommendation to the Legislature. This category also includes actions that Ecology can implement within our existing authority and which we currently plan to act upon.
- *For Future Legislative Evaluation* – These are policy concepts that Ecology is not recommending, but we believe merit further evaluation by the Legislature. Policy concepts in this category are worthy of continued discussion despite not currently being ripe for implementation or because the concept implicates actions for other state agencies or local governments, and thus would need broader legislative discussions.
- *Considered but not Recommended* – These are policies that Ecology considered and discussed with the Advisory Group and does not recommend for legislative consideration.

Topic 1: Out-of-basin transfers

Findings

F.1.1 Downstream out-of-basin transfers can be a valuable tool for providing water for new uses while also boosting instream flows (in those cases where the water in the intervening reach is not subject to withdrawal for other out-of-stream uses). Often, these transfers provide much needed flexibility for water management**.**

F.1.2 The needs of each basin are unique – it will be difficult (and likely unwise) to seek one solution that fits all basins. For example, some basins could see greater ecological or economic impacts of water moving downstream than other basins. Management considerations are also often basin-specific, such as whether instream flows are met in the basin-of-origin or whether the basin-of-origin is closed to new appropriation.

F.1.3 If water rights transferred downstream cannot be transferred back upstream, out-of-basin transfers may foreclose the potential for new out-of-stream uses in the basin of origin, which limits the capacity for future economic growth. Some participants expressed that

limiting downstream, out-of-basin transfers could prevent these economic losses. Others argued, however, that most downstream, out-of-basin transfers are driven by greater macro-economic factors, such as commercial agricultural enterprises outcompeting traditional family farms, and that limitations on the downstream sale of water rights are an inappropriate response. They voiced concern that limitations on agricultural water marketing would place an undue burden on farmers seeking to capitalize on a major asset.

F.1.4 Economic realities may make it difficult for communities in headwater basins to compete in an open marketplace for available water rights. In these basins, meeting long-term goals to keep water rights from being transferred downstream out-of-basin may require outside or state-level investment in local water banking programs or partnerships to level the playing field.

Policy Tools – Potential Ecology Recommendations and Actions

P.1.1 Create an administrative tool or implement a process or procedure such that a water right transferred downstream may be moved back upstream without a finding of impairment to intervening users. Ecology would still not approve a transfer that would cause impairment to an existing water right beyond what would have occurred in absence of the original downstream transfer. **Note, we are consulting with our attorneys on whether this could be implemented through existing authority or whether additional statutory authority would be necessary, and on whether it would face legal barriers.**

Objective: Create greater flexibility such that downstream, out-of-basin transfers are no longer "permanent" and may be transferred back upstream	
Pro's	**Con's**
Increased flexibility to move water rights back upstream after they have been transferred downstream	Could be costly, time consuming, and complicated to implement
Potential impacts on the local economy due to downstream transfers could become reversible	Moving a right back upstream after an extended period of time may result in ecological impacts, especially given the impacts of climate change
	This may not help resolve the issue if water is more valuable downstream, and thus the headwater basins still are negatively affected by downstream out-of-basin transfers
	Water rights in the affected reach issued after the downstream transfer may be subject to interruption if the subsequent upstream transfer would otherwise impair senior rights, including instream flows

P.1.2 Authorize "conservation easements" on water rights to limit their use to the basin-of-origin. An entity could purchase the easement, which would have the effect of limiting transfer of the water right so it could not be transferred out of the basin-of-origin for future

consumptive uses. **Note, we are consulting with our attorneys on whether this could be implemented through existing authority or whether additional statutory authority would be necessary, and on whether it would face legal barriers.**

Objective: Provide a non-regulatory tool to keep water rights in the basin-of-origin	
Pro's	**Con's**
Provides a mechanism to keep water rights in the basin of origin	

Policy Tools – For Future Legislative Evaluation

P.1.3 Establish that before a water right may be sold for transfer out of the basin of origin, state, local, and tribal governments, and non-profits would be provided a "right of first refusal." Parties would have a set duration of time to make an offer.

Objective: Increase the opportunity for water rights to stay in the basin of origin	
Pro's	**Con's**
Provides a mechanism to keep water rights in the basin of origin	Such a tool could be an unconstitutional taking of property rights
Increases local control	Disclosure of the sale before the sale is final could complicate or derail the transaction
Could maintain economic benefits in the local community	Lengthens the processing time for out-of-basin transfers
Does not prevent the marketing and sales of water rights	Requires a new source of funding to implement. Without funding this could create process with no result

P.1.4 Require that before the place of use of a water right may be transferred downstream out-of-basin, Ecology must determine that the change will not be detrimental to the public interest.

Objective: Prevent downstream out-of-basin transfers that would be detrimental to the public interest	
Pro's	**Con's**
Can be an effective way to evaluate the impacts of a downstream out-of-basin transfer and provide a mechanism to prevent it	Public interest is largely undefined and subjective
A requirement for a public interest review is not a novel idea in Washington water law (see, RCW 90.42.040; 90.44.100; 90.03.290; and 90.44.540)	It is unclear at what geographic scale would be appropriate to measure the impacts – at a county level, regional, or statewide?
A public interest test already exists for new water rights and for changes to most groundwater rights	Using a public interest test could start to value some beneficial uses over others, which many participants thought was unwise

	The core issue may be the loss of economic opportunities for farming in upstream communities – and preventing a water right from moving downstream will not incentivize people to keep farming; thus, the policy tool is misplaced

P.1.5 Create a revolving loan fund or grant program to fund purchases water rights for use in the basin of origin.

Objective: Assist tribes, local governments, and nonprofits in acquiring water rights to keep in the basin of origin	
Pro's	**Con's**
Creates a funding source to help tribes, local governments, and nonprofits to participate in the water market	The unavailability of water rights for sale may be more of a limiting factor than funding
	Could be administratively costly to establish and operate

Policy Tools – Considered but not Recommended

P.1.6 Authorize Ecology to "close" a basin (or subbasin) to out-of-basin transfers through rulemaking.

Reasoning: Incentive and market-based solutions provide a more effective mechanism to keep water in a basin. Ecology also has concerns with closing a basin through rulemaking, even if specific statutory authority were provided to do so. We would need clear criteria for what would justify this rulemaking, which could be difficult to articulate and/or measure. In addition, even with authority to adopt rules with this standard, rulemaking requires that the benefits outweigh the costs and it's unclear whether that would be the case. Lastly, rulemaking is costly and time consuming for the agency. With other rulemaking priorities, it is unclear when Ecology will have resources to undertake this rulemaking in the near term.

P.1.7 Restrict the number of water rights that may be transferred for use out-of-basin from any one WRIA.

Reasoning: It is unclear how Ecology would determine the appropriate number of water rights (or the quantity of water) that can be transferred.

Topic 2: Transparency in water right sales

Findings

F.2.1 There was general sentiment among participants that the public notice requirements of sales and transfers are not the problem. Instead, Ecology should be concerned that online postings of transfer applications are not sufficiently accessible to the general public.

F.2.2 Increased knowledge of sales and prices could help to develop a more robust marketplace for trading water rights.

F.2.3 The statutory requirement to post notice of water right transfers in the newspaper is outdated. However, local newspapers may still provide a useful medium for public notice in some rural areas with limited internet access.

F.2.4 There was common agreement that limiting who can buy a water right (such as prohibiting out-of-state entities) is unwise. Differentiating between in-state and out-of-state buyers of water rights is likely to be problematic (and potentially unconstitutional). See P.2.4 for details.

Policy Tools – Potential Ecology Recommendations and Actions

P.2.1 Modernize the requirement that notice of water right transfers is published in local newspapers. Amend RCW 90.03.380 to allow Ecology to publish notice electronically.

Objective: Improve transparency	
Pro's	**Con's**
Newspaper posting is archaic, costly and reaches a limited audience	Particularly in rural areas, newspapers still provide the only notice to many people and the advertising supports local papers
Cost savings for the agency	
Modern means of communication will reach a broader audience	

P.2.2 Make water right transfer application information more accessible to the public through administrative improvements. Post water right change applications in an integrated, publicly-accessible GIS interface. Note, Ecology can implement this within existing authority. We have begun work on this project and anticipate completion by 2022.

Objective: Improve transparency	
Pro's	**Con's**
Improves access to information about water right transfers	Requires some administrative resources to implement

Policy Tools – For Future Legislative Evaluation

P.2.3 Align disclosure laws for water rights sold separately from land with the laws for land sales. Require that water right sales (including prices) are reported to the state and made publically available.[1]

[1] This could potentially tie to the Real Estate Excise Tax, which is collected on water right sales. Though collected, our current understanding is that this information is not currently tracked or published in publically-available, searchable database.

Objective: Improve transparency	
Pro's	**Con's**
Improves market transparency	Administratively costly for both the state and local governments
Could make more water rights available with knowledge of prices	Might increase the price of water, including the cost of water right acquisitions
In the event that trading of water rights in transactions distinct from the appurtenant land becomes common, such recording would simplify tracking ownership of water rights and create greater certainty of ownership	Unclear that the need for this information outweighs the cost of the undertaking

Policy Tools – Considered but not Recommended

P.2.4 Limit who can buy a Washington water right.

Reasoning: This policy option would have significant negative implications because out-of-state entities, like the Bureau of Reclamation, play an important role in water management in Washington. Implementation could hinder water management in interstate basins.

In addition, such a regulation limiting out-of-state entities would have easy workarounds and loopholes. Any entity can buy land in Washington, and it would be incongruent to restrict who can buy water.

P.2.5 Provide advance public notice of sales including price disclosure.

Reasoning: This could set the expectation that Ecology or local governments could prevent a sale from happening, which they would not have authority to do. This also has high potential to disrupt sales. In addition, participants noted that we do not require advance public notice of land sales and that water rights should not be treated any differently.

P.2.6 Require that any water right sale be reported to county commissioners.

Reasoning: It is unclear what benefit would come from reporting all sales. It could also set the expectation that local governments could prevent a sale from happening, which they would not have authority to do.

Topic 3: Private investment & marketing of water rights – Use of the Trust Water Rights Program (TWRP)

Findings

F.3.1 There is lack of consensus and common understanding of basic terminology of the trust program, including terms such as *temporary donation* and *transfer into trust*. The most important distinction between "types" of trust water rights is the intended end use of that

water right – or more precisely, the role that Ecology will play in managing the right. This is not clear in statute.

F.3.2 Lack of clarity in chapter 90.42 RCW promotes confusion and disagreement on terms, standards, and processes, which could result in use of the Trust Statutes in ways not intended by the legislature or impairment to existing water rights.

F.3.3 The flexibility of the TWRP is one of its greatest assets. Limiting its flexibility by clarifying certain definitions and processes could hamper creative water solutions. Several participants expressed opinions that the value of flexibility outweighs any potential concerns over "abuse" of the TWRP.

F.3.4 There is broad agreement that a water right being used for mitigation should first undergo a tentative determination of extent and validity. There was general sentiment (but not consensus) that Ecology already has the statutory authority to require this condition.

F.3.5 There was no consensus whether or not the TWRP enables speculation in water rights and, if so, whether this activity constitutes a significant problem. Moreover, there was no common definition for "speculation" accepted by the group. To some, the non-consumptive beneficial use of the right for instream flow is comparable to any other beneficial use, shielding it from classification as speculation. To others, this non-consumptive use is simply legal cover for "speculative" behavior.

F.3.6 Many participants were not concerned over use of the TWRP in ways that yield private profit. They contend that private use rights are inherently intended to drive public benefits through efficient use of the resource through private incentives, and that the intentions of the owner should not matter as long as rights are being beneficially used in accordance with the Water Code. Therefore, water right owners are allowed to profit from instream uses just as from out-of-stream uses. Moreover, the ongoing streamflow benefits of trust water rights provide the opportunity for a "win-win" scenario to both public and private interests.

F.3.7 Some participants, however, voiced concern over the scenario whereby a person buys a water right with no plan to put it to beneficial use themselves (other than instream flows), but rather with the express intent of simply reselling the water right at a later time for a higher price. They view this activity as speculative and therefore abusive.

Policy Tools – Potential Ecology Recommendations and Actions

Note that statewide, the Trust Water Rights Program is governed by chapter 90.42 RCW. Trust water is also governed by chapter 90.38 RCW, which is strictly applied to the Yakima Basin. Ecology is not currently considering any changes to chapter 90.38 RCW.

P.3.1. Differentiate between water rights that are placed in trust for the purpose of instream flow enhancement and protection from relinquishment versus water rights that are placed in trust to be used as mitigation. Clarify terminology such that there is a common definition for widely used terms. Note, Ecology is currently evaluating whether to pursue these changes in

statute, rule, or policy. If such clarification were pursued through statutory amendment, we anticipate it would require substantial changes to chapter 90.42 RCW, if not a near-complete rewrite.

Objective: Create two categories of trust water rights to clearly differentiate their end use	
Pro's	**Con's**
Clarifies both Ecology's administrative role and the water right holder's long-term intentions for use, reducing potential speculation	Lack of consensus on terminology and proper distinctions indicates this could be a difficult and potentially lengthy process
Provides clarity on administrative processes	Clarity could reduce flexibility for water right holders when their future plans are uncertain
Ensures that use of trust water rights will not impair existing rights	

P.3.2. Amend chapter 90.42 RCW to clarify that any water right being used for long-term[2] or permanent mitigation must first undergo a tentative determination of extent and validity. Because temporary donations to the TWRP generally do not undergo a tentative determination of extent and validity, this policy would clarify that temporary donations may not be used to mitigate for long-term or permanent uses.[3] Note, we believe this could be accomplished through a surgical, brief amendment to chapter 90.42 RCW (as opposed to P.3.1, which would necessitate a more comprehensive amendment).

Objective: Ensure that new mitigated uses will not impair existing water users or instream flows	
Pro's	**Con's**
Added clarity from the Legislature will increase certainty and reduce legal risk	Unclear whether this is necessary – existing statutory authority may be sufficient
Ensures that use of trust water rights will not impair existing rights	Limits flexibility – although the use of donations for mitigation is often inadvisable, it may be appropriate in some unique circumstances
This distinction would help to keep track of which rights can be used for mitigation	
Helps to prevent the scenario whereby a permanent use is mitigated by a temporary trust right	

P.3.3. Update the Trust Water Guidance document as to clarify administrative processes for trust water and water banking. Note, Ecology can pursue this under existing authorities. We have begun this work and anticipate completion by Summer 2021.

[2] Long term could be defined as more than 5 years in the same way chapter 90.42 RCW establishes different processes and standards for leases shorter than five years versus longer than 5 years.
[3] Note, there could be provision to grandfather any donations that are actively being used as mitigation.

Objective: Clarify administrative practices	
Pro's	**Con's**
Increased clarity and consistency	

Policy Tools – For Future Legislative Evaluation

None.

Policy Tools – Considered but not Recommended

P.3.4. Limit use of the TWRP such that that individuals who buy a water right must plan to put the water to beneficial use themselves.

Reasoning: Placing a right into the TWRP inherently constitutes putting the water to beneficial use, and it is within a water right owner's prerogative to dedicate a right to non-consumptive beneficial use while determining future out-of-stream use. Therefore this restriction would have no effect. However, if this restriction is applied so that the purchaser must plan for out-of-stream use, it would functionally give priority to out-of-stream uses over instream uses.

P.3.5. Limit the number of trust water rights that can be removed from trust in any given year.

Reasoning: We have not seen that water being withdrawn from trust has caused streamflow problems. Also, it would be difficult to determine the appropriate number of water rights that could be removed. If the limit were based on geographic distribution, it would be difficult to track administratively.

P.3.6. Restrict how long a temporarily donated water right may remain in trust.

Reasoning: Data shows that most rights are in the TWRP for 5 years or shorter, so any limit above that timeframe would have limited utility. In addition, there can be significant streamflow benefits to water rights being left in the TWRP. We see little utility in mandating removal from trust after a specified duration. Also, it is unclear what limitations Ecology would then be able to place on that right to either remove it from trust or prevent its re-donation for another 10-year period.

Topic 4: Private investment & marketing of water rights – Water banking

Findings

F.4.1 Water banks play a critical role in reallocating water between beneficial uses, including instream flows. Both public and private water banks play an important role.

F.4.2 There was general agreement among participants that it can be concerning when a bank that provides water to meet basic health needs gains disproportionate market power or becomes a monopoly. However, participants debated whether the appropriate remedy is through carrots (incentivizing competition) or through sticks (increased regulation).

- Some participants expressed that there should be greater government regulation of water banks providing water for public health and safety (like in-home use). Though there was no clear recommendation on what that that regulation should entail, some participants recommend learning lessons from oversight of public utilities.

- Other participants argued that while monopolistic behavior can be worrisome, increased regulation is not warranted. They expressed that the solution to monopolies would be to reduce barriers to entry as to increase bank competition. They expressed that rather than regulating the marketplace, Ecology should be positioned to support more banks.

F.4.3 Many participants expressed that rather than expanding the regulation of water banking, Ecology should focus on how the state can better support banking where it can play a critical role in addressing public health and safety and other water supply challenges. Every basin is unique, and so are the conditions that drive the need for water banks.

F.4.4 It is important to recognize the role that Ecology's regulatory actions have played in driving banking activity, both positive and negative. When writing instream flow rules, Ecology should consider how the regulation may enable or hinder market conditions conducive to water banking and/or speculative or monopolistic activity.

F.4.5 Many participants expressed that transparency in water banks helps to ensure equity and fairness, especially regarding prices that banks charge customers. It was noted that the bill passed in 2016 (SB 6179) requiring that banks disclose their costs and fees for mitigation resulted in significant improvement.

F.4.6 Many participants thought it would be appropriate for water banks to pay the full administrative cost of bank establishment.

F.4.7 Staffing and capacity limitations at Ecology sometimes results in lengthy processing times for water bank agreements and related water right change applications. It may also contribute to inconsistent practices that create uncertainty for clients. Additional resources for implementation of the TWRP would benefit state water management.

Policy Tools – Potential Ecology Recommendations and Actions

P.4.1. Require that prospective bankers submit a "water banking prospectus" in which they outline their business plan.[4] The prospectus would be made available for public comment. Ecology would use the comments received to inform the trust water right agreement (or water banking agreement) negotiated with the banker. Note, this proposal would be tied to P.4.2, Cost Recovery. The legislature could consider adding specific elements to be addressed in

[4] Information such as intended uses and customers, and the suitability of the mitigating water right to meet those uses.

the prospectus. If P.4.2 were not pursued, we could implement this policy under current authority.

Objective: Increase transparency on water banking activity	
Pro's	**Con's**
Requires bankers to engage with Ecology early in the process	If not paired with cost recovery in P.4.2, this would create new administrative costs on Ecology
Clarity about the purpose of a water bank at the onset would serve the public's interest in understanding how the public's water resources are being managed, and to understand potential impacts on the state	There is no cut-and-dry delineation of what constitutes a water bank. There could be confusion on when a prospectus is required
Public comment could inform the terms and conditions of the water banking agreement	
Formalizes and standardizes the process for creating a water bank	

P.4.2. Authorize Ecology to recover the administrative costs of developing water banking agreements. Amend chapter 90.42 RCW to establish a fee for reviewing and processing the water banking prospectus.[5] Also establish that Ecology may require that applicants use the cost reimbursement process for associated water right change applications that are submitted to Ecology.

Objective: Minimizes the public resources that are spent towards an activity that mostly results in private benefits	
Pro's	**Con's**
User pays; the burden is on the banker	The cost could be burdensome for non-profits or local governments seeking to water bank
Will fund additional resources for Ecology to help with permitting, which will allow Ecology to process applications more quickly and build more capacity and consistency among staff	

P.4.3. Clarify Ecology's authority to require water banks to address issues beyond ensuring that there is no impairment to senior water rights. This could include requirements to create enhanced stream flow benefits, or other stipulations for additional consumer or environmental protection. **Note, we are consulting with our attorneys on whether this could be implemented through existing authority or whether additional statutory authority would be necessary, and on whether it would face legal barriers.**

Objective: Provide greater consumer or environmental protections in banking agreements

[5] This could be a flat fee or based upon a fee schedule. The fee will be based upon the amount of staff time Ecology spends in working with potential bankers on developing a trust water right agreement or water banking agreement.

Pro's	Con's
Provides clear authority for more specific provisions in water banking agreements that address environmental enhancement and/or level of service and operational issues	Oversight of these provisions would require additional resources at Ecology
Provides a way to address unique issues in each water bank development with lower legal risk of being arbitrary and capricious	If specific authorities are not detailed in statute, would require Ecology rulemaking. Rulemaking is costly and time consuming for the agency. With other rulemaking priorities, it is unclear when Ecology will have resources to undertake this rulemaking in the near term

P.4.4. Require that draft water banking agreements are posted for public comment before being finalized. Ecology will consider public comment before finalizing terms of the agreement. Note, Ecology plans to pursue this under current authorities. No statutory changes are needed.

Objective: Increase transparency and opportunity for public comment	
Pro's	**Con's**
Increased transparency. Under the current system, it's difficult for the general public to know what's in these agreements	Will lengthen the time it takes to develop water banking agreements
May give the public greater input on the terms and conditions placed on a water bank	Related to P.4.3, certain comments may require conditions for water banking agreements that are outside Ecology's current authority

Policy Tools – For Future Legislative Evaluation

None.

Policy Tools – Considered but not Recommended

P.4.5. Amend chapter 90.42 RCW to establish that water banks must define their service area and then have a "duty to serve" within that area.[6]

Reasoning: Ecology originally considered this policy as a way to prevent price discrimination and ensure that a customer is not denied service based upon who they are. There was also hope that this could decrease the number of banks established to serve the same customers. However, this policy option could result in reduced competition and increased cost to consumers. In addition, this could create an expectation that water will be available in a given area and lead to increased development pressure.

[6] Meaning that the bank could not deny providing mitigation to any customer in their defined service area.

P.4.6. Amend chapter 90.42 RCW to establish that Ecology may prioritize working on water banks serving the greatest public need (such as public health and safety or creating a new water supply solutions).

Reasoning: Prioritizing "public health and safety" might be seen as endorsing a priority for domestic water use, which is contrary to the Water Code. This policy option would contribute to the perception that Ecology would be "picking winners and losers" in water banking. And, if Ecology deprioritized an application, it may be years before we process it. Instead of pursing this, we believe it is preferable to authorize cost recovery as to provide Ecology with the resources to process trust water agreements and banking proposals in a timely manner.

P.4.7. Clarify in statute that Ecology may deny a proposal to establish a new water bank.

Reasoning: This policy option would result in the perception that Ecology would be "picking winners and losers" for new water banks.

News Release

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Largest battery storage system in US connects to California ISO grid

2020 will see a rise of almost six times the storage capacity in ISO markets

FOLSOM, Calif. – The California Independent System Operator (ISO) connected the largest battery storage resource in the nation to its power grid last month, signaling an era of rapid battery growth for the ISO in the next several years.

The initial phase of LS Power Group's Gateway Energy Storage Project in San Diego County came online June 9, adding 62.5 megawatts (MW) of storage interconnection to the ISO grid. The power grid, which serves about 80 percent of California and a small portion of Nevada, currently has just over 216 MW of storage capacity in commercial operation. If all planned projects in the interconnection queue are completed on schedule, storage capacity will jump to 923 MW by the end of 2020, a six-fold rise from 136 MW at the beginning of the year.

"We are at a turning point for storage on our system," said Steve Berberich, ISO president and CEO. "For many years, we have understood the promise of storage to take oversupply off the grid in the middle of the day and deliver it at the end of the day when the need is great. With some of these large-capacity projects coming online, 2020 will be the transition year for battery storage to play a critical role in integrating renewables in the future."

Berberich predicts that as much as 15,000 MW of battery storage – of different duration levels and various technologies – will be needed to help the state reach its goal of cutting carbon from power grids by 100 percent by 2045. The ISO anticipates large increases in its battery storage resources through 2023 based on the state's procurement targets.

Batteries are widely seen as an important strategy for managing rising amounts of renewables onto electricity grids. Solar output soars most middays, but demand is low – partly due to the abundance of rooftop solar panel production – resulting in an excess of renewable energy that must be curtailed or sold to other grids. At the end of the day, demand is high, coinciding with the sun setting. System operators largely rely on natural gas generation to provide energy during that time. With accelerated efforts to decarbonize power grids, natural gas plants are increasingly being retired. Batteries could take the place of natural gas generation by charging during times of oversupply, and storing the energy for use during the evening hours.

The Gateway project, a lithium-ion battery system, will have a total capacity of 250 MW when it is in full operation. The company plans for it to be fully online in August 2020, when it will reportedly be the largest operating Battery Energy Storage System (BESS) in the world. The initial 62.5 MW of storage already makes it the largest BESS in the nation, according to a database maintained by the US Energy Information Administration (EIA). Out of a total of more than 170 BESS facilities of 1 MW or more currently operating in the United States, the two second-largest are 40 MW, one each in California and Alaska.

Some larger projects are on the horizon in the US, including plans for a system of more than 400 MW in Florida, and another in Nevada slated to be 380 MW.

More battery storage is also expected to be added to the ISO market in the next few years, most notably 300 MW of a 400-MW project planned by Vistra Energy Corp. at Moss Landing in Monterey Bay, and the remaining 187.5 MW at the Gateway station.

Battery technology is advancing to allow for longer duration of discharge, which is cost-beneficial to commercial developers, and more efficient for grid operations. Batteries are also versatile performers in energy markets, as they can charge and discharge for different durations and power levels, based on market opportunities at any given time.

When batteries are paired with other resources, a design known as hybrid generation, they can manage oversupply, help alleviate local congestion on lines, mitigate variability, allow for generation dispatches upward and downward, and reduce curtailments. Coupling with a wind or solar plant also allows for leveraging of inverter-based smart technology. Recent test results showed that solar and wind power plants with such technology can offer ancillary services needed for grid reliability, making renewable generation more cost-effective for developers.

For more information on how energy storage can help support the transition to low-carbon power systems, visit the caiso.com website to read a discussion paper by the ISO and Renewables Grid Initiative.

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Federal Clean Energy Legislation Introduced

On July 9, U.S. Representative Diana DeGette introduced The Clean Energy Innovation and Deployment (or CEIDA) to require electricity producers to fully eliminate their net carbon emissions by 2050 and to provide job training assistance to workers whose jobs are impacted by the closure of power plants. A copy of the legislation can be found here. Rep. DeGette, a senior member of the U.S. House Energy and Commerce Committee, compiled a long list of supportive statements for her legislation from large power companies and some environmental organizations, see here. DeGette has advertised her intention to introduce this legislation for nearly a year. It is thought that this may be the beginning of Democrats trying to move legislation in advance of a hopeful win in the upcoming November elections.

The legislation would create a Zero-emission Electricity Standard, requiring utilities to submit starting in 2022 an increasing amount of zero-emission electricity credits (ZEEC) to the U.S. Department of Energy. Below are a few details:

- Each ZEEC will represent one unit of zero-emission electricity.
- ZEECs will be tradable – a company generating more than its required amount of zero-emission electricity will be able to sell its excess ZEECs to a company that has not generated its required amount.
- By 2030, the amount of ZEECs submitted will equate to a 50% reduction of aggregate carbon emissions below 2005 levels and reach 100% by 2050.
- If zero-emission electricity technology is far less costly than currently projected, the date by which the zero-emission fraction reaches 100% could be advanced to as early as 2037.
- Investment tax credits or grants will be provided to utilities making early investments.
- Current programs to support low-income customers will be reformed and expanded to provide protections to these customers.
- States will be required to establish individualized State Energy Plans to deal with the elimination of greenhouse gas emissions, as well as workforce and economic transition.

2018-2019 Conservation Targets and Acquisitions						2020-2021	
Utility	2018-19 Conservation Target (MWh)	2018 Conservation Acquired (MWh)	2019 Conservation Acquired (MWh)	2018-19 Conservation as a Percent of 2018-19 Target	2018-2019 Conservation as a Percent of Retail Load	2020-21 Conservation Target (MWh)	Change from 2018-19 Target
Avista	89,771	51,980	47,914	111%	0.9%	72,844	-19%
Benton PUD	19,710	12,449	14,741	138%	0.8%	14,980	-24%
Chelan PUD	21,199	18,059	19,993	179%	1.1%	24,740	17%
Clallam PUD	9,198	7,060	5,542	137%	1.0%	6,833	-26%
Clark Public Utilities	85,760	63,573	64,611	149%	1.4%	78,577	-8%
Cowlitz PUD	61,145	39,443	61,275	165%	1.1%	60,707	-1%
Franklin PUD						14,669	NA
Grant PUD	32,149	86,463	8,224	295%	0.9%	35,828	11%
Grays Harbor PUD	12,790	5,242	9,887	118%	0.8%	10,775	-16%
Inland Power	9,811	6,444	4,971	116%	0.6%	9,286	-5%
Lewis PUD	10,337	7,769	3,798	112%	0.6%	11,300	9%
Mason PUD #3	5,050	4,765	3,342	161%	0.6%	3,623	-28%
Pacific Power	83,484	55,247	33,217	106%	1.1%	101,899	22%
Peninsula Light	7,884	7,124	3,684	137%	0.9%	4,687	-41%
Puget Sound Energy	520,456	299,918	249,197	106%	1.3%	526,044	1%
Seattle City Light	214,620	142,001	144,212	133%	1.6%	186,325	-13%
Snohomish PUD	127,984	79,692	73,033	119%	1.2%	107,222	-16%
Tacoma Power	55,538	75,959	46,545	221%	1.3%	46,732	-16%
Total	1,366,886	963,186	794,187	129%	1.2%	1,317,071	-4%

Notes: Conservation acquired excludes any excess claimed from prior periods.
Franklin PUD's first period of compliance with the EIA conservation requirements is 2020-2021.

Source: Utility reports submitted June 1, 2020. Available at:
http://www.commerce.wa.gov/EIA

2018-19 Conservation Acquisitions by End Use Sector

Utility	Residential	Commercial	Industrial	Agricultural	NEEA	Distribution	Other
Avista	30%	58%	0%	0%	11%	1%	0%
Benton PUD	18%	23%	13%	11%	34%	0%	0%
Chelan PUD	16%	53%	11%	2%	17%	0%	0%
Clallam PUD	36%	31%	5%	0%	28%	0%	0%
Clark Public Utilities	28%	32%	21%	0%	20%	0%	0%
Cowlitz PUD	5%	16%	60%	0%	20%	0%	0%
Grant PUD	1%	3%	83%	0%	13%	0%	0%
Grays Harbor PUD	22%	28%	17%	1%	32%	0%	0%
Inland Power	16%	41%	0%	6%	38%	0%	0%
Lewis PUD	25%	19%	13%	0%	44%	0%	0%
Mason PUD #3	29%	18%	9%	0%	44%	0%	0%
Pacific Power	27%	50%	13%	2%	9%	0%	0%
Peninsula Light	30%	40%	0%	0%	31%	0%	0%
Puget Sound Energy	46%	43%	5%	0%	5%	1%	0%
Seattle City Light	28%	41%	12%	0%	19%	0%	0%
Snohomish PUD	30%	20%	25%	0%	25%	0%	0%
Tacoma Power	12%	53%	14%	0%	21%	0%	0%
Total	30%	37%	17%	0%	15%	0%	0%

NEEA (Northwest Energy Efficiency Alliance) programs include savings in multiple end use sectors.

Source: Utility reports submitted June 1, 2020. Available at:
http://www.commerce.wa.gov/EIA

2020 Renewable Energy for Washington Qualifying Utilities

Utility	Average Load 2018-2019 (MWh)	15% Renewable Target for 2020 (MWh)	Qualifying Renewables for 2020 (MWh)	Qualifying Renewables for 2020 (% of load)	Incremental Cost of Renewable Energy and RECs (% of revenue requirement)
Avista	5,640,469	846,070	846,070	15.0%	-0.6%
Benton PUD	1,753,510	263,027	263,027	15.0%	3.1%
Chelan PUD	1,698,853	254,828	254,828	15.0%	0.0%
Clallam PUD	635,423	95,313	95,315	15.0%	1.8%
Clark Public Utilities	4,489,605	673,441	205,795	4.6%	4.0%
Cowlitz PUD	4,768,870	715,330	715,332	15.0%	1.7%
Grant PUD	5,034,072	755,111	755,186	15.0%	4.1%
Grays Harbor PUD	950,900	142,635	143,377	15.1%	5.4%
Inland Power	897,260	134,589	134,589	15.0%	1.9%
Lewis PUD	931,215	139,682	139,682	15.0%	3.0%
Mason PUD #3	650,081	97,512	97,512	15.0%	2.5%
Pacific Power	4,046,853	607,028	607,028	15.0%	1.5%
Peninsula Light	583,953	87,593	87,593	15.0%	0.6%
Puget Sound Energy	20,765,213	3,114,782	3,114,782	15.0%	1.4%
Seattle City Light	9,078,427	1,361,764	534,058	5.9%	0.7%
Snohomish PUD	6,509,307	976,396	976,396	15.0%	5.2%
Tacoma Power	4,644,322	696,648	654,764	14.1%	1.0%
Total	73,078,330	10,961,749	9,625,334	13.2%	1.9%

Note:
Clark Public Utilities intends to comply under the 4% cost cap provision.
Seattle City Light and Tacoma Power intend to comply under the 1% no-growth cost cap provision.

Source: Utility reports submitted June 1, 2020. Available at:
http://www.commerce.wa.gov/EIA

2020 Renewable Resources and RECs by Fuel Type

Utility	Water	Wind	Solar	Geothermal	Landfill Gas	Wave, Ocean, Tidal	Gas from Sewage Treatment	Biodiesel Energy	Biomass Energy	Qualified Biomass Energy	Subtotal	Apprentice Labor Multiplier	Distributed Generation Multiplier	Total
Avista	21%	41%	0%	0%	0%	0%	0%	0%	0%	30%	92%	8%	0%	100%
Benton PUD	8%	64%	0%	0%	13%	0%	0%	0%	4%	0%	89%	0%	11%	100%
Chelan PUD	100%	0%	0%	0%	0%	0%	0%	0%	0%	0%	100%	0%	0%	100%
Clallam PUD	0%	5%	0%	49%	0%	0%	23%	0%	0%	0%	77%	0%	23%	100%
Clark Public Utilities	17%	83%	0%	0%	0%	0%	0%	0%	0%	0%	100%	0%	0%	100%
Cowlitz PUD	6%	43%	26%	0%	0%	0%	0%	0%	0%	24%	99%	1%	0%	100%
Grant PUD	97%	3%	0%	0%	0%	0%	0%	0%	0%	0%	100%	0%	0%	100%
Grays Harbor PUD	0%	46%	0%	0%	0%	0%	0%	0%	54%	0%	100%	0%	0%	100%
Inland Power	9%	80%	0%	0%	0%	0%	0%	0%	0%	11%	100%	0%	0%	100%
Lewis PUD	0%	28%	72%	0%	0%	0%	0%	0%	0%	0%	100%	0%	0%	100%
Mason PUD #3	9%	91%	0%	0%	0%	0%	0%	0%	0%	0%	100%	0%	0%	100%
Pacific Power	5%	53%	42%	0%	0%	0%	0%	0%	0%	0%	100%	0%	0%	100%
Peninsula Light	0%	100%	0%	0%	0%	0%	0%	0%	0%	0%	100%	0%	0%	100%
Puget Sound Energy	3%	87%	0%	0%	0%	0%	0%	0%	0%	0%	90%	10%	0%	100%
Seattle City Light	1%	77%	0%	0%	19%	0%	3%	0%	0%	0%	100%	0%	0%	100%
Snohomish PUD	8%	68%	9%	0%	0%	0%	0%	0%	4%	0%	88%	0%	12%	100%
Tacoma Power	17%	71%	0%	5%	0%	0%	0%	0%	6%	0%	98%	2%	0%	100%
Total	8%	62%	6%	1%	1%	0%	0%	0%	2%	5%	85%	4%	2%	91%

Notes:
Qualified Biomass Energy is from biomass-fired generating units that commenced operation before 1999.

Source: Utility reports submitted June 1, 2020. Available at:
http://www.commerce.wa.gov/EIA

2020 WPUDA Meeting Schedule (updated July 2020)		
Date	**Meeting**	**Platform**
September 16-18	September Association Meetings • Committee Meetings • Budget Committee Announcement	**Zoom**
September 29-Oct 1	Water Workshop	**Zoom**
Fall TBD	Administrative Professionals Roundtable	**Zoom**
Fall TBD	Finance Officers Committee	**Zoom**
Fall TBD	Customer Service Managers Roundtable	**Zoom**
Fall TBD	Human Resource Managers Roundtable	**Zoom**
October 7	Records Managers Roundtable	**Zoom**
October 14	Budget Committee Meeting	**Zoom**
Fall TBD	General Managers Committee	**Zoom**
November 18-20	November Association Meeting • Committee Meetings • Budget Review and Vote	**Zoom**
December 2-4	Annual Conference • General Session • PUD/Muni Attorneys Group (tentative) • Communicator Roundtable • Managers Committee • Water Committee	**Zoom or Similar Virtual Platform**