

MEMORANDUM

Project No.: 140129

January 28, 2015

To: Mike Hermanson – Spokane County Utilities

cc: Rob Lindsay – Spokane County Utilities

From: Carl Einberger, LHG, Aspect Consulting, LLC
Dan Haller, PE, Aspect Consulting, LLC

Re: **Summary of Policy Advisory Group Meeting #1, Little Spokane Water Banking Feasibility Study**

Background

Spokane County (the County), in conjunction with Stevens and Pend Oreille Counties, is evaluating the use of a water bank to address existing and potential regulatory constraints on existing and new water use, in Water Resource Inventory Area (WRIA) 55, the Little Spokane Watershed. Considerable uncertainty exists regarding the future legal, regulatory, and policy environment that regulation of water resources in WRIA 55 will be subject to. In response to this uncertainty, the County is pursuing a water banking feasibility study to explore options for providing more certainty to existing and new water uses in the basin.

As part of this process, the County has convened a Policy Advisory Group (PAG) to allow interagency and stakeholder coordination and evaluation of alternatives for water banking in the watershed. Aspect Consulting LLC (Aspect) has been engaged by the County to provide consulting services for the Little Spokane Water Banking Feasibility Study. Aspect has been coordinating and moderating PAG meetings for the County.

Overview of Meeting Agenda

The first PAG meeting for this Feasibility Study occurred on October 15, 2015, at the Riverside Fire Station (Spokane Fire District 4). The following agenda was distributed before the meeting:

- 2:00 p.m. – 2:15 p.m. Welcome, Introductions, Agenda Check, and PAG Operating Guidelines
- 2:15 p.m. – 2:30 p.m. Overview of Project Scope and Key Decision Points
- 2:30 p.m. – 3:00 p.m. Regulatory Overview—WAC 173-555 Rule, Exempt Wells, OCPI
- 3:00 p.m. – 3:30 p.m. Water Banking Structure, Policy, and Framework Memo Overview
- 3:30 p.m. – 3:45 p.m. Break
- 3:45 p.m. – 4:15 p.m. Open Discussion
- 4:15 p.m. – 4:45 p.m. Return to Key Questions for PAG Meeting #1
- 4:45 p.m. – 5:00 p.m. Closing Issues, Expectation for PAG Meeting #2

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PAG Membership and Attendees

A list of PAG members and attendance at PAG Meeting #1 follows.

Mike Hermanson – Spokane County Utilities (present)
Rob Lindsay – Spokane County Utilities (present)
Todd Mielke, Spokane County (Shelly O’Quinn of Spokane County attended as substitute)
Wes McCart, Stevens County (present)
Karen Skoog, Pend Oreille County (present)
Keith Stoffel, Department of Ecology (present)
Rusty Post, Department of Ecology (present)
Ty Wick, Spokane County Water District #3 (present)
Dick Price, Stevens PUD (present)
Susan McGeorge, Whitworth Water District (present)
John Pederson, Spokane County (not present)
Mike Lithgow, Pend Oreille County Community Development (not present)
Erik Johansen, Stevens County Land Services (present)
Kevin Cooke, Spokane County (not present)
Steve Davenport, Spokane County (present)
Randy Vissia, Spokane County (present)
Linda Kiefer, Avista (present)

Dan Haller and Carl Einberger of Aspect attended in their role as the County’s consultant on this project. Dan served as the moderator of the meeting, and both Dan and Carl led portions of the meeting discussion.

Meeting Summary

Prior to the meeting, Aspect distributed a Technical Memorandum to the PAG addressing the legal, regulatory, and policy framework for water banking in Washington State. Aspect also prepared a PowerPoint presentation to guide the meeting discussion (attached). Key topics addressed in the discussion are summarized below, and additional information can be found in the attached presentation:

- PAG operating guidelines, focused on collaborative problem solving. The PAG concurred with the operating guidelines.
- The goals of the PAG meetings and Little Spokane Water Banking Feasibility Study were discussed. Key issues and goals highlighted by the PAG included:
 - Mutual understanding of the legal, regulatory, and policy issues affecting water allocations and potential water banking.
 - Finding a structure for water banking that can function efficiently over three different counties.
 - Minimizing risk to Counties related to water supply and land use decision making.
 - Evaluation of land use implications for water banking.
 - Proactive management of rural water supply issues.

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- Understanding if water banking is a good fit for WRIA 55, and why it is potentially needed.
- The PAG should seek a water banking structure that can provide solutions and security of water supply regardless of future court rulings.
- Aspect reviewed the approach for the Feasibility Study, and the schedule for the planned three PAG meetings and study deliverables. Topics to be addressed through technical memorandums and the final Feasibility Study include:
 - Legal, Regulatory, and Policy Framework
 - Streamflow and Water Transfer Framework
 - Future Water Demand Evaluation
 - Potential Availability of Water Rights
 - Water Market Evaluation
 - Proposed Bank Management Structure
- Aspect provided a regulatory overview, and addressed the question of ‘Why Water Banking in WRIA 55?’ Considerations discussed included:
 - 1976 Instream Flow Rule (WAC 173-555)
 - Instream flows are a right with priority based on establishment by rule
 - Is not met in most water years
 - Closed tributaries
 - Created interruptible rights
 - Has uncertainty with respect to groundwater
 - Increased County legal availability responsibility
 - New clarity from Courts on rule interpretations
 - Domestic exemption uncertainty
 - Adequate legal and physical availability required for county permitting
- A review of questions that were put forward for clarification by Ecology and the State Attorney General’s office were discussed, including:
 - Does WAC 173-555 apply to groundwater?
 - Does the 1975 WRIA 55 Basin Plan affect the rule?
 - Can the water bank provide new appropriations in closed tributary basins?
 - Can the bank be managed in subareas based on the stream gages or on a more localized basis?
 - Can a suite of mitigation options be part of the bank?
- Additional discussion of regulatory, legal, and policy issues included:
 - Clarification that water rights senior to the rule (pre-1976) are typically not interruptible and could be used for water bank seeding.
 - Relinquished water rights are unavailable for bank seeding.
 - Ecology (Keith Stoffel) noted that inchoate water rights would not likely be available for bank seeding.
 - Extent and validity analyses on existing rights contemplated for bank seeding are a critical component of bank development.

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- Consumptive use calculations typically factor into bank seeding and debits.
- Use of the trust water right program and trust water right agreements for water banking.
- Potential use of leased water rights for bank seeding.
- Aspect presented an overview of existing water banks in Washington, including the spatial distribution and management structures. Water bank pricing structures were also discussed, with specific examples from existing banks (see attachment).
- Stevens, Pend Oreille, and Spokane County departments potentially affected by water banking were reviewed.
- A discussion of water banking business rules focused on several questions:
 - Who to serve (Purpose? Existing? New?)
 - Where to serve (All? Mainstem? Tributary?)
 - Units of measurement (Total use? Consumptive use?)
 - Unit size (indoor only, lawn size)?
 - Pricing?
 - Marketing (Voluntary? Required? Phased?)
 - Any seeding restrictions?
- Ecology (Keith Stoffel) discussed Ecology's regulation of water supplies in WRIA 55. Key points included:
 - The Little Spokane Rule is one of the first instream flow rules enacted (1976) in Washington.
 - The natural interrelationships of surface and groundwater are recognized by Ecology.
 - Surface water rights approved after the rule was enacted were provisioned as subject to curtailment. Ecology sends curtailment letters to these users when instream flows aren't met at the Dartford gage.
 - Groundwater rights issued after the rule were not specifically provisioned as subject to curtailment, but the PAG acknowledged that future risk of curtailment exists.
 - As of the mid-1990's the state generally quit issuing water rights in WRIA 55 based on the connection of ground and surface water. Ecology denied numerous water right applications after this time. The denials were upheld by the PCHB.
 - Ecology's current position is that there is no water available in WRIA 55, thus the perceived need for a water bank.
 - Exempt wells have continued to be developed in WRIA 55, but there could be a future impairment issue that leads to regulation.
 - Ecology is currently reviewing statewide instream flow rules, including the Little Spokane Rule. Ecology expects to inform the counties of updated interpretations of the rules in the near future.
- Aspect reviewed plans for the upcoming water demand evaluation. The existing Spokane Water Demand Forecast model was discussed, and the PAG concurred that expanding that to Pend Oreille and Stevens Counties, and updating the model would be the best path forward.

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- Additional open discussion among the PAG was conducted. Key discussion points included:
 - The potential use and legal uncertainty regarding out-of-kind mitigation and Overriding Considerations of Public Interest (OCPI) for bank seeding. The likely need for this to support bank seeding with seasonal irrigation rights was reviewed. Pending court cases may provide clarity on this issue in the near future. These are discussed in detail in the memorandum on the legal, regulatory, and policy framework for water banking in Washington State that was distributed to the PAG prior to the meeting.
 - PAG concerns regarding an overreliance on seeding the bank with irrigation rights was discussed. In particular, preferences were voiced for focusing on poorer quality agricultural land while preserving prime farmland.
 - Ecology noted that consideration has been given to developing a pipeline from the Pend Oreille River to the Little Spokane watershed near the town of Newport, given the higher flows in the Pend Oreille River, and the more limited curtailment that occurs there. New water rights have been approved from the Pend Oreille watershed.
 - Including a lease option in the water bank design is considered an important component of planning.
 - Focus on addressing interruptability of existing surface water rights. This is the subject of numerous complaints to county commissioners.

- The meeting was adjourned, with the next meeting planned for January 2015. Key topics to be discussed at the next PAG meeting include the demand analysis, potential bank seeding and supply evaluations, and water transfer framework considerations.

Attachments:

Attachment 1 – PAG Meeting #1 PowerPoint Presentation

S:\Little Spokane Water Bank 140129\PAG\LSWB PAG Meeting 1 summary.docx



WRIA 55, PAG Meeting #1

Little Spokane River Basin Water Bank Feasibility Study

October 15, 2014

Presented by



with

Carlstad Consulting

Cascadia Law Group

Washington State University

PAG Meeting #1 Agenda

- Introductions, Agenda Check, Operating Guidelines
- Overview of Scope and Decisions
- Regulatory Overview
- Water Banking Policy, Framework Summary
- Open Discussion
- Decision-Making
- Closing, Expectations for PAG Meeting #2

PAG Operating Guidelines

- Equal representation & participation
- Consensus desired, but not required
- Representation of individual organizations expected
- Collaborative problem solving
- Respectful communication

Our Approach

- Understand stakeholder goals
- Assemble water bank information - pros/cons
- Screen data for WRIA 55 applicability
- Introduce options to PAG
- Evaluate water bank seeding options
- Develop water demand and market analysis
- Vet detailed analysis with PAG - preferred alternative development
- Finalize report and summarize next steps

WRIA 55 PAG Workplan

Meeting 1 (October 15, 2014):

- Accept operating guidelines
- Understand regulations/risk
- Define banking preferences
- Agree on demand approach

Meeting 2 (January 21, 2014):

- Define bank size
- Determine seeding options
- Determine data gaps
- Determine market conditions

Meeting 3 (May 27, 2015):

- Review bank pros/cons
- Confirm data gaps
- Advisory vote to move forward on further implementation

Technical Memorandums

- Prior to PAG Meeting 1:
 - Legal, Regulatory, and Policy Framework
- Prior to PAG Meeting 2:
 - Streamflow and Water Transfer Framework
 - Future Water Demand Evaluation
 - Potential Availability of Water Rights
- Prior to PAG Meeting 3:
 - Water Market Evaluation
 - Draft Feasibility Report and Implementation Plan

Regulatory Overview—Why Water Banking in WRIA 55?

- 1976 Instream Flow Rule (WAC 173-555)
 - Is not met in most water years
 - Closed tributaries
 - Created interruptible rights
 - Has uncertainty with respect to groundwater
- Increased County legal availability responsibility
- New clarity from Courts on rule interpretations

Regulatory Overview

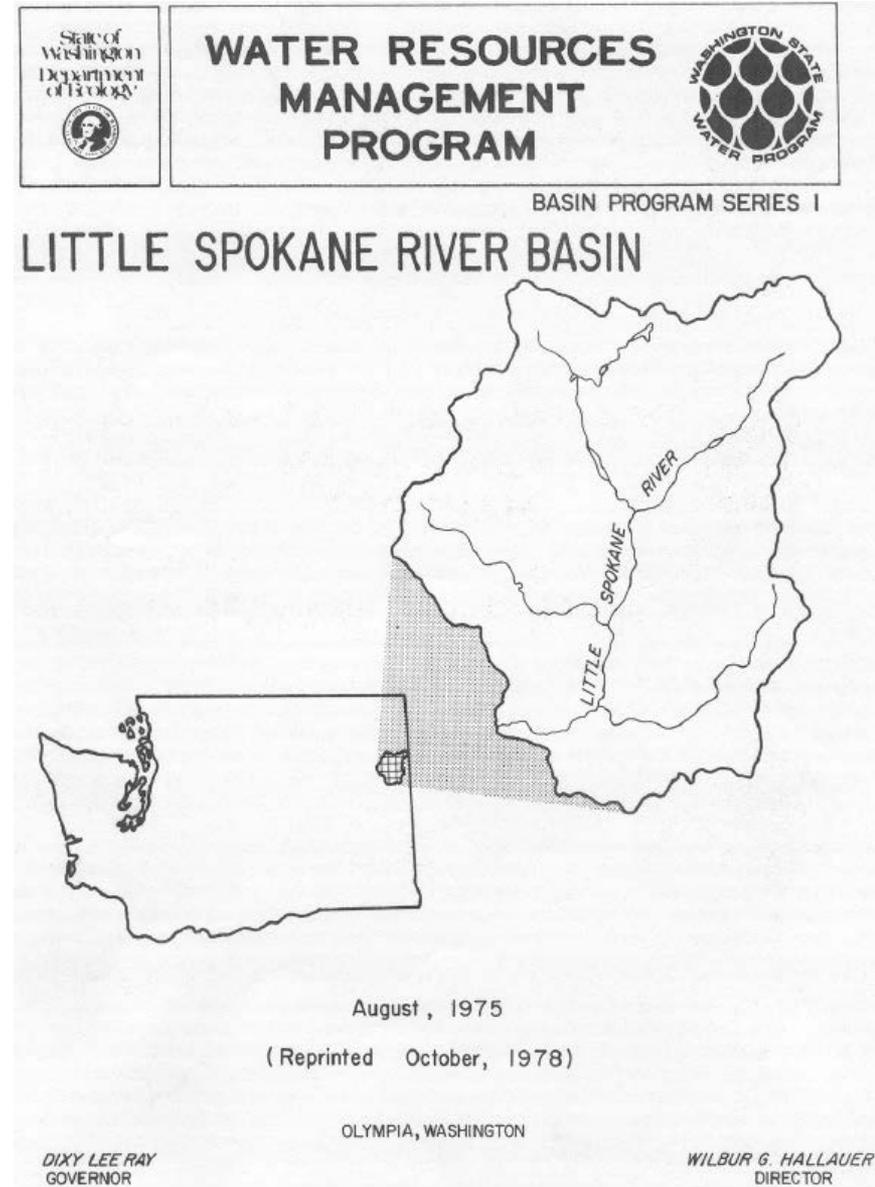
- 1975 WRIA 55 Basin Plan
- 1976 Instream Flow Rule (WAC 173-555)
- Domestic Exemption Uncertainty
- State / County Planning / Permitting Authority
- Impairment Guidance

Regulatory Overview

- The WRIA 55 PAG is not expected to resolve regulatory uncertainty.
- The WRIA 55 PAG is convened to determine whether a water bank would provide a planning and permitting tool in spite of and to manage regulatory uncertainty.

Regulatory Overview—Basin Plan

- 1975 Basin Report
- Basis for WAC 173-555
- Provides clarifying guidance beyond rule
- Uncertainty regarding influence today



Regulatory Overview— WAC 173-555

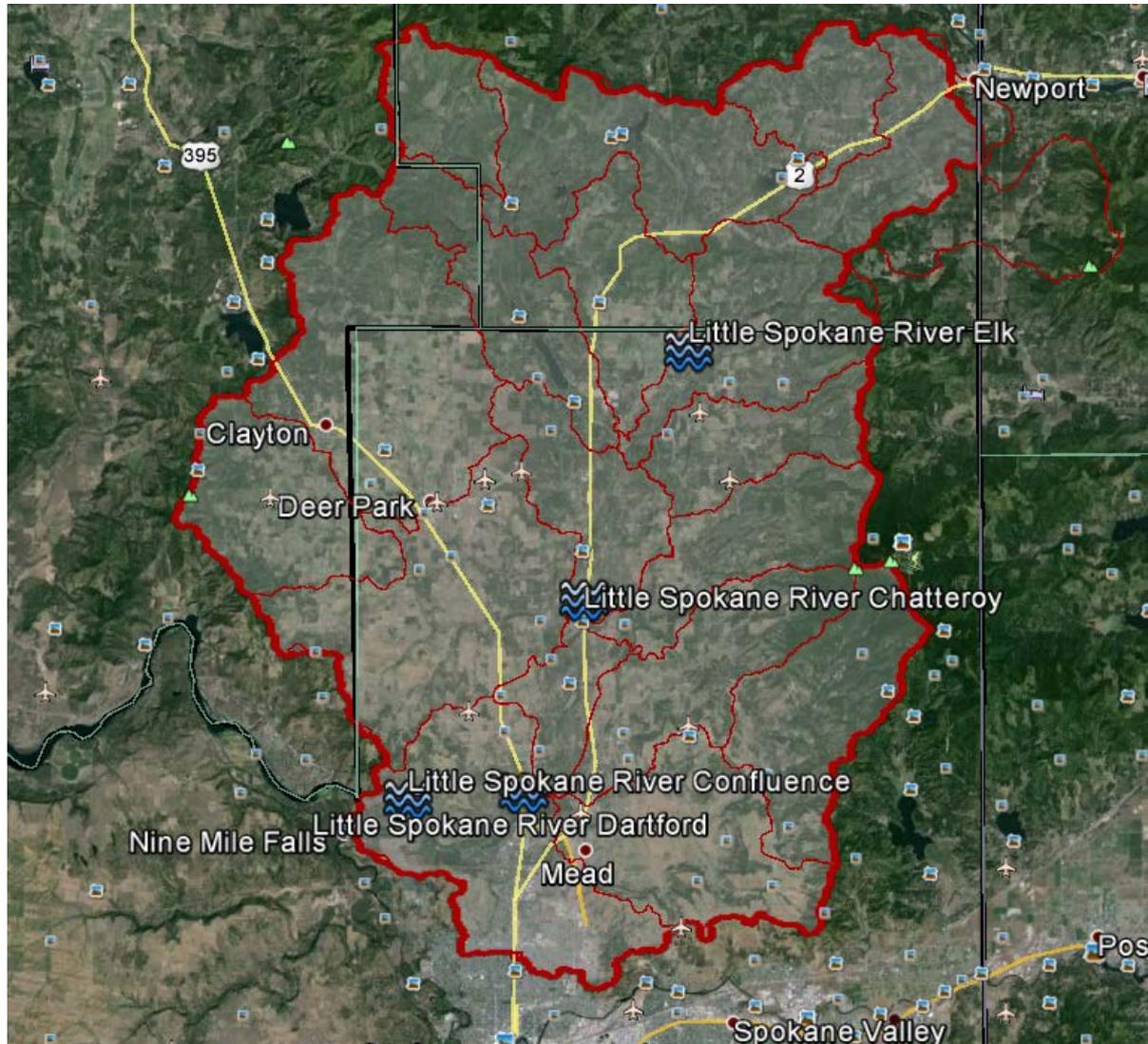
CHAPTER 173–555 WAC WATER RESOURCES PROGRAM IN THE LITTLE SPOKANE RIVER BASIN, WRIA 55

Last Update: 6/9/88

<u>WAC</u>	
173–555–010	General provision.
173–555–020	Definition.
173–555–030	Establishment of base flows.
173–555–040	Future allocations—Reservation of surface water for beneficial uses.
173–555–050	Priority of future water rights during times of water shortage.
173–555–060	Streams and lakes closed to further consumptive appropriations.
173–555–070	Effect on prior rights.
173–555–080	Enforcement.
173–555–090	Appeals.
173–555–100	Regulation review.

Regulatory Overview—WAC 173-555

- Baseflows for 4 Stations
- Reserve of surface water
- Tributary closures, except domestic and stock
- Spokane Rule Amendments



Regulatory Overview—Permit Exemption

- Stockwater (no limit)
- Non-commercial lawn/garden (1/2 acre)
- Single or group domestic (5,000 gpd)
- Industrial use, including irrigation (5,000 gpd)
- All exemptions apply to a single project (but can include multiple wells)

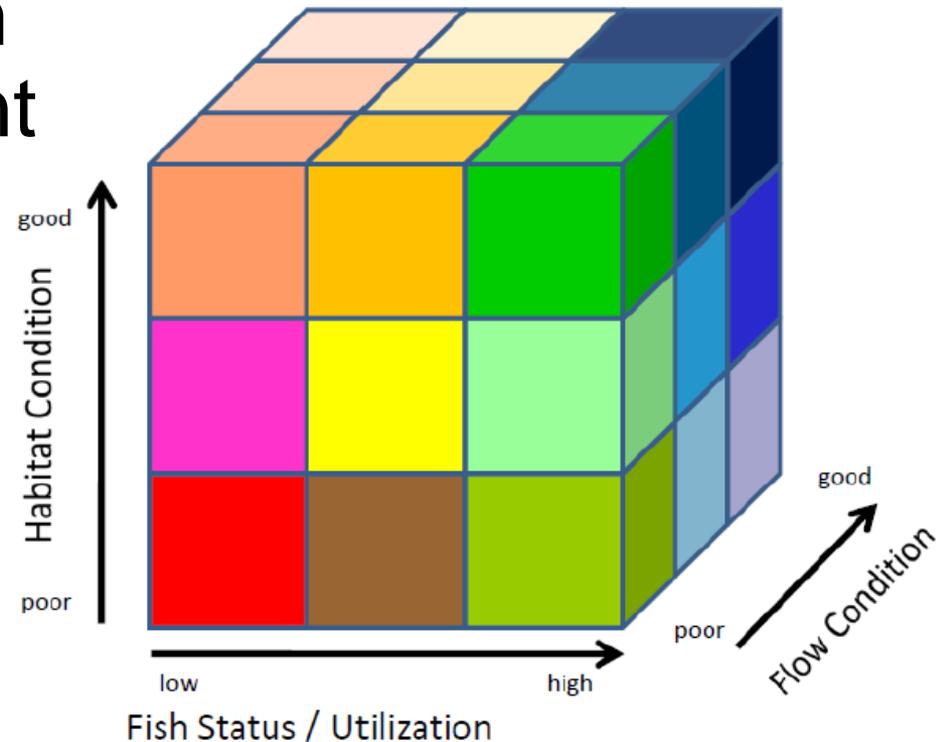
Regulatory Overview— State / County Planning/Permit Authority

- County and State have shared regulatory authority
 - County has increased responsibilities in permitting and planning, Ecology in advisory role
- Adequate legal and physical availability required for county permitting
- Ownership of adjacent parcels a factor in defining a project

Regulatory Overview— Impairment Guidance

- Instream flows are a right with priority based on establishment by rule
- A reduction in instream flow may be impairment
- Base flows should consider the functions and values behind the base flow numbers
- OCPI

2011 WDFW Instream Atlas



Questions for Ecology and AG's office

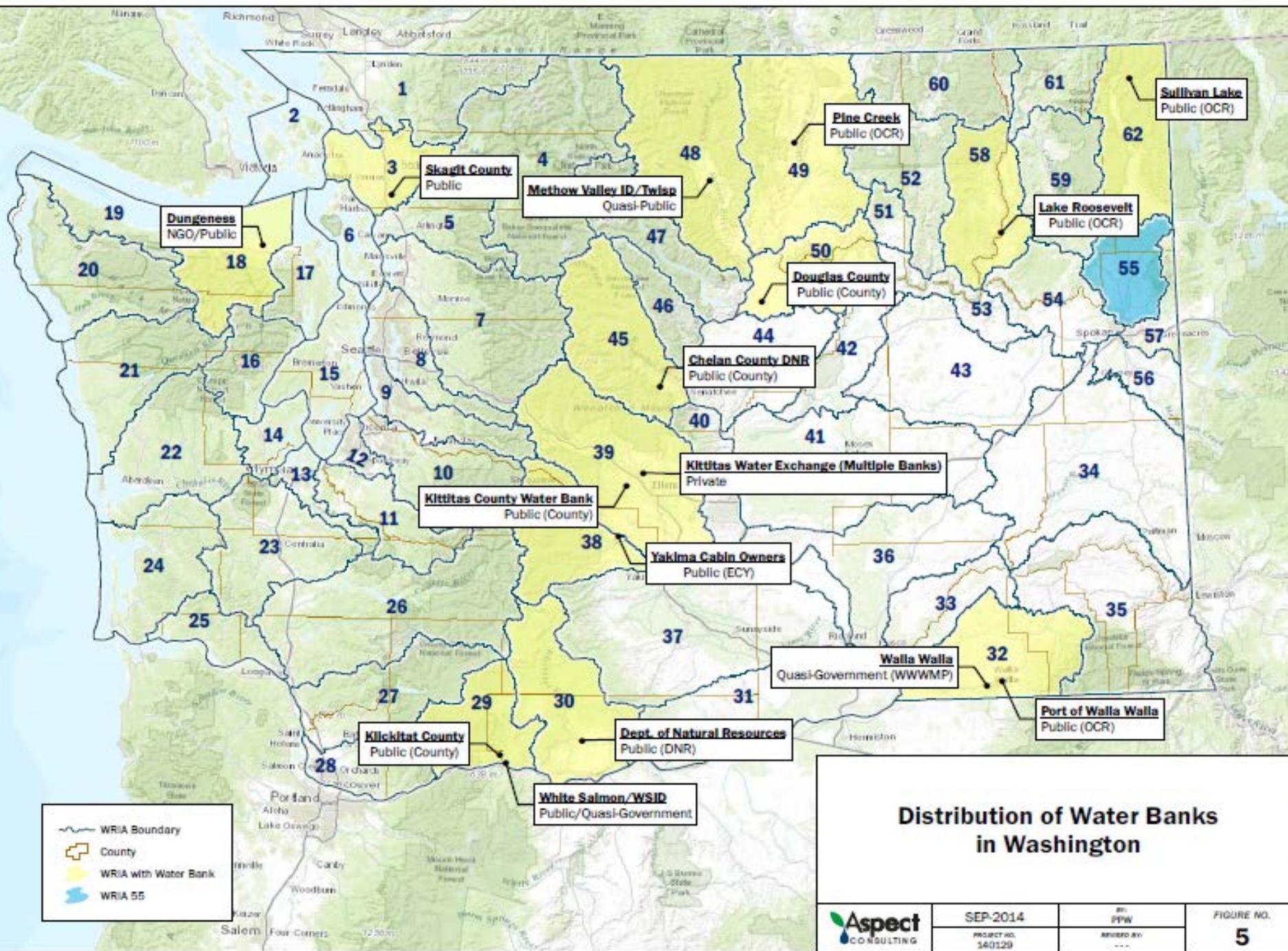
- Does WAC 173-555 apply to groundwater?
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Questions on Regulatory Overview



WRIA 55 PAG Goal

Distill the wide ranging options for water banks (regulatory, structural, operational, financial, legal, and political) into a focused recommendation endorsed by the PAG and appropriate for WRIA 55.

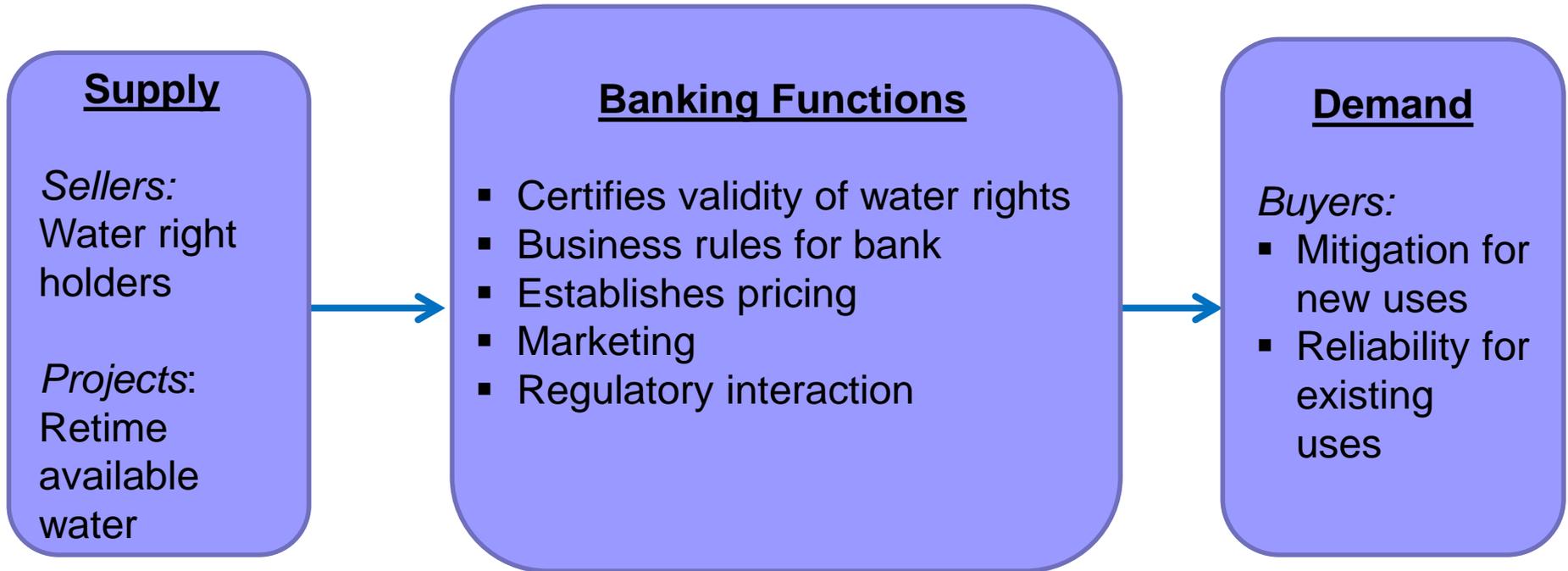


Distribution of Water Banks in Washington

	SEP-2014	by: JFW	FIGURE NO. 5
	PROJECT NO. 140129	ISSUED BY: ---	

What is a Water Bank?

Water banks redistribute water right authority between sellers and buyers.



Why are Water Banks Formed?

- To mitigate for out-of-priority use
- To mitigate for new uses
- In response to regulatory pressure
- Because the rules of water banking can be more favorable than conventional transfers
- For profit
- For transaction efficiency
- For instream objectives

Types of Water Banks

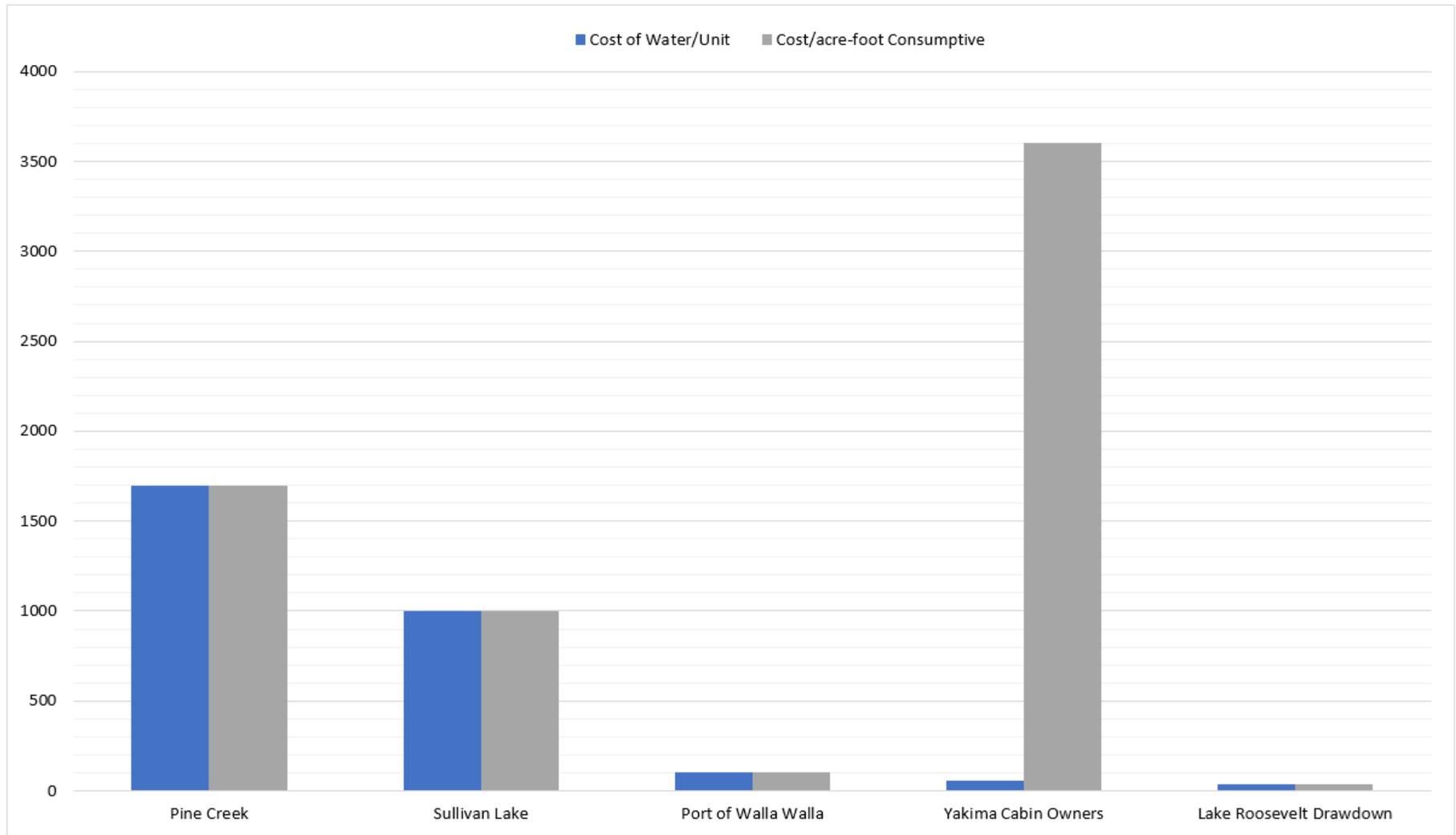
- Public
- Private
- Quasi-Government / NGO
- One (Seller) to Many (Buyer)
- One (Seller) to One (Buyer)

Water Banks Pricing and Transaction Summary

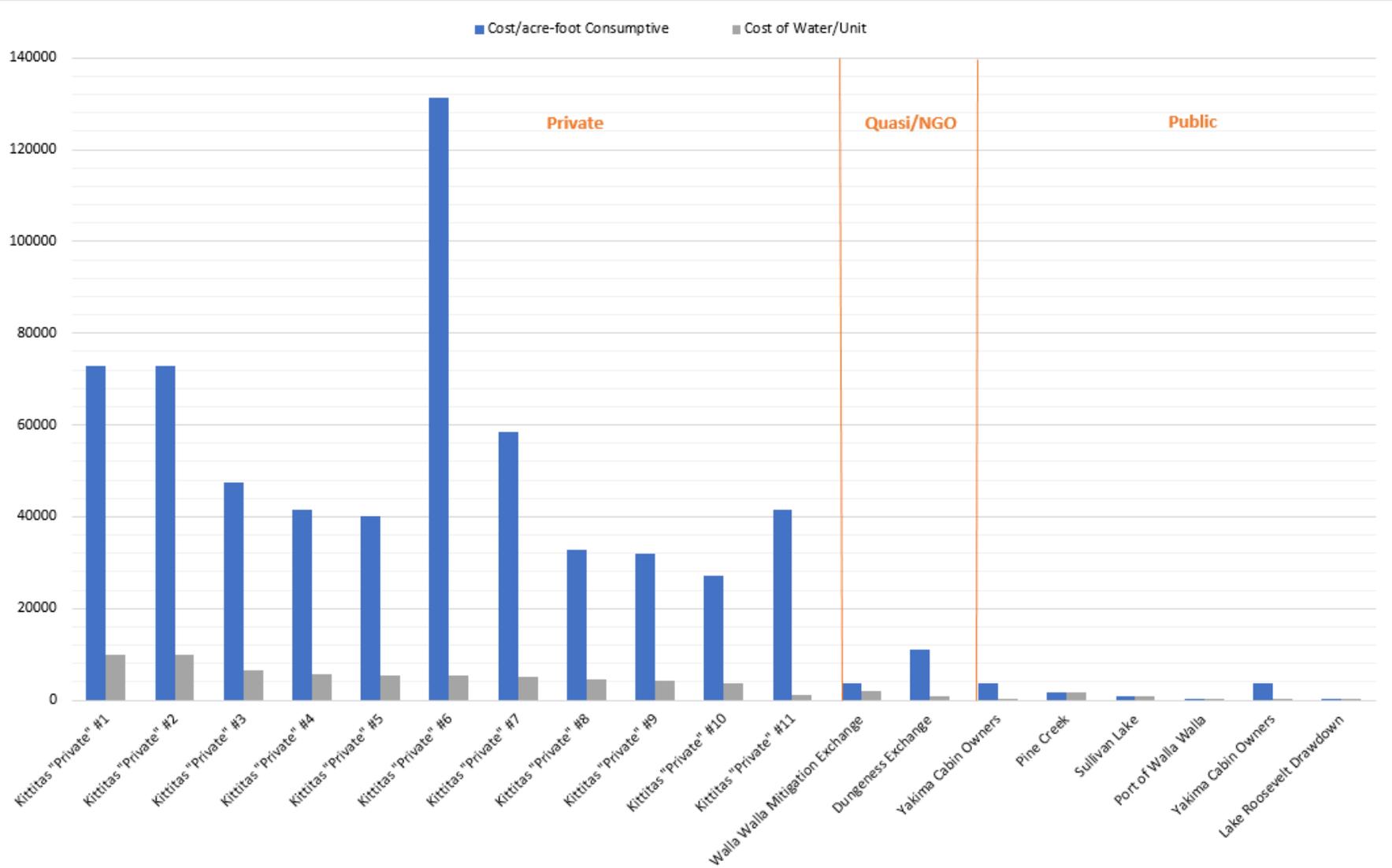
Table 5: Summary of Cost of Water for Public/Private Water Banks

	Cost of Water/Unit	Cost/acre-foot	Units Transacted
Public			
Average	\$580	\$1,290	46
Minimum	\$35	\$35	0
Maximum	\$1,700	\$3,600	200
Sum	-	-	230
Quasi-Government/NGO			
Average	\$1,500	\$7,350	27
Minimum	\$1,000	\$3,600	3
Maximum	\$2,000	\$11,100	50
Sum	-	-	60
Private			
Average	\$5,620	\$54,345	62
Minimum	\$1,250	\$27,000	1
Maximum	\$10,000	\$131,200	329
Sum	-	-	700

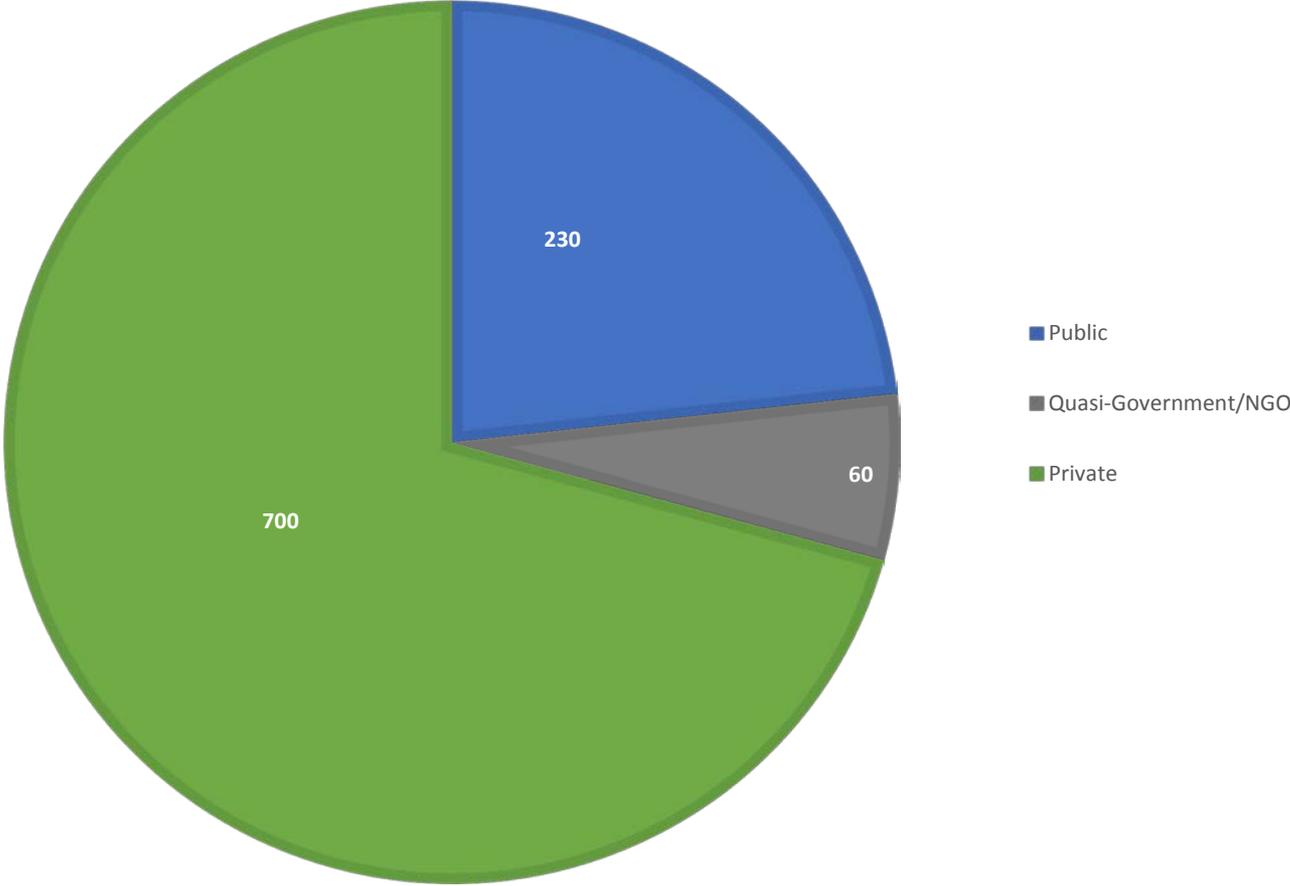
Public Water Bank Summary



Water Bank Pricing Summary



Water Bank Transaction Summary



County Departments Potentially Affected by Water Banking

	Formation	Operations	Management
Stevens County			
Land Services	X	X	
Auditors		X	X
Treasurers	X	X	
Public Works		X	X
Assessor		X	
Pend Oreille			
Planning	X	X	
Auditors		X	X
Treasurers	X	X	
Public Works		X	X
Assessor		X	
Spokane County			
Building and Planning	X	X	
Auditors		X	X
Treasurers	X	X	
Utilities	X	X	X
Assessor		X	
Spokane Regional Health District		X	X

Water Bank Business Rules

- Who to serve (Purpose? Existing? New?)
- Where to serve (All? Mainstem? Tributary?)
- Units of measurement (Total use? Consumptive use?)
- Unit size (indoor only, lawn size)?
- Pricing?
- Marketing (Voluntary? Required? Phased?)
- Any seeding restrictions?

Water Bank Business Rules

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Answers to these questions help define how much water and where it is needed to seed a bank.

Open Discussion



WRIA 55 PAG Workplan

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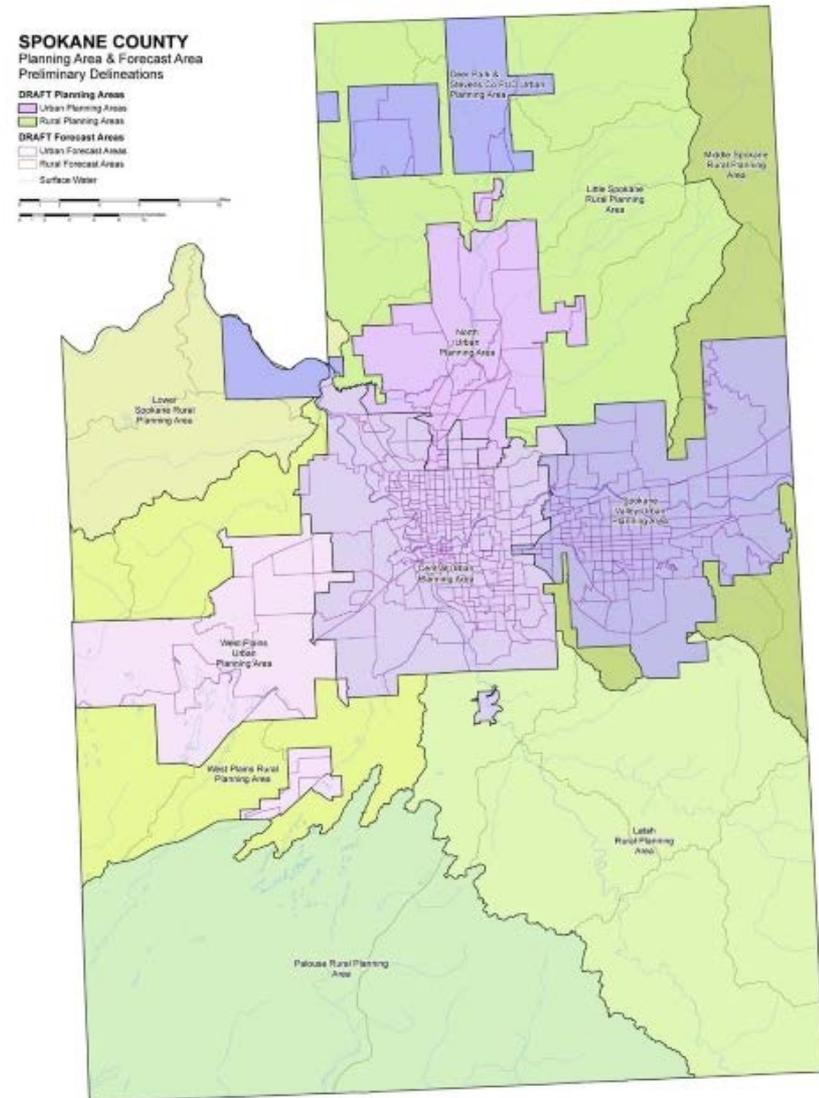
Meeting 3 (May 27, 2015):

- Review bank pros/cons
- Confirm data gaps
- Advisory vote to move forward on further implementation

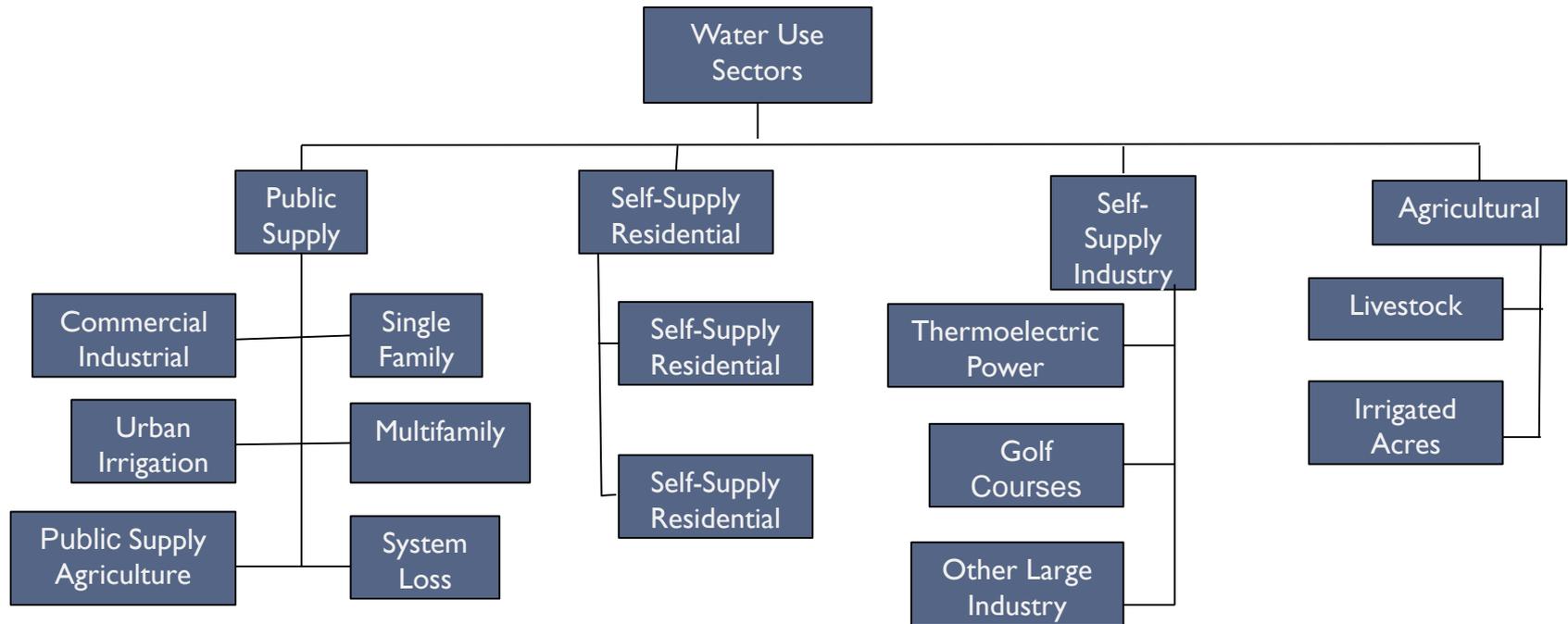
Evaluation Using Demand Model

- Powerful tool already available that enables “what-if” scenarios
- Can be readily expanded to Stevens and Pend Oreille portions of WRIA 55
- Customized water use estimates by sector and geography

Stevens and Pend Oreille County areas will need to be added.



Demand Evaluation: Specific Water Use Sectors



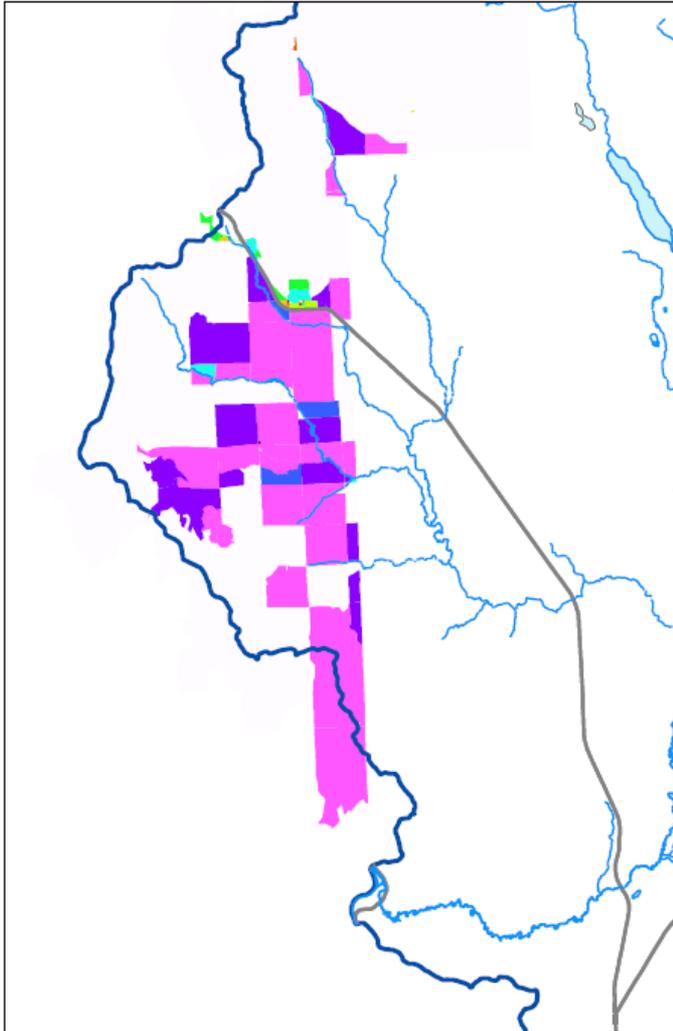
1. Identify water use sectors of interest for water bank feasibility analysis.

2. Consider:

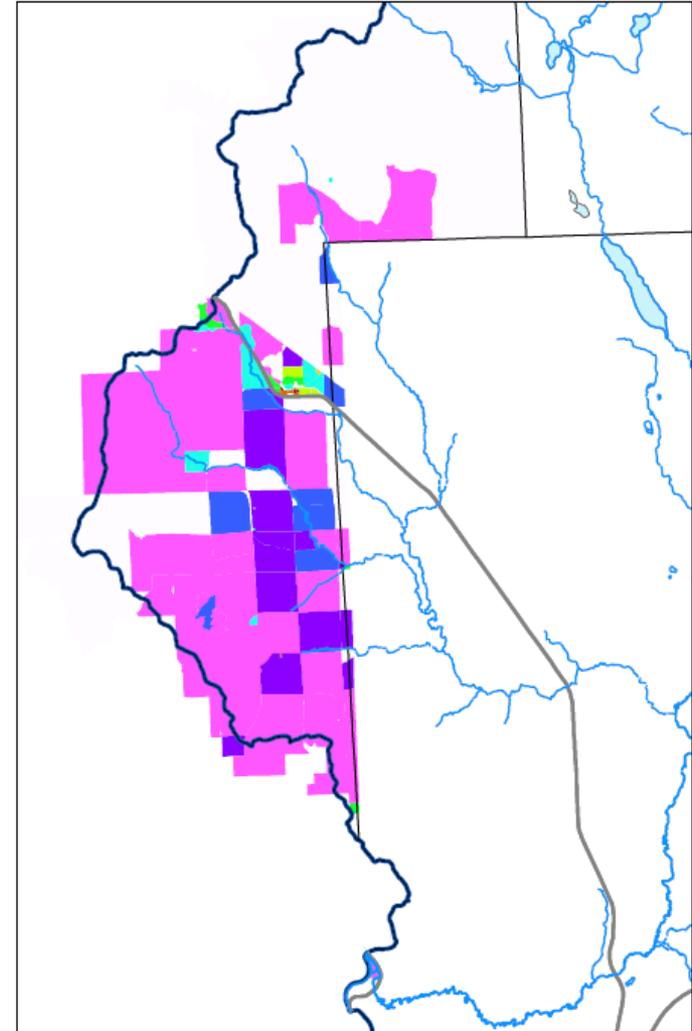
- How might demand drive interest in water bank?
- How might water bank change the characteristics of water uses?

Stevens County Population Growth

2000 Census Block Population Density



2010 Census Block Population Density

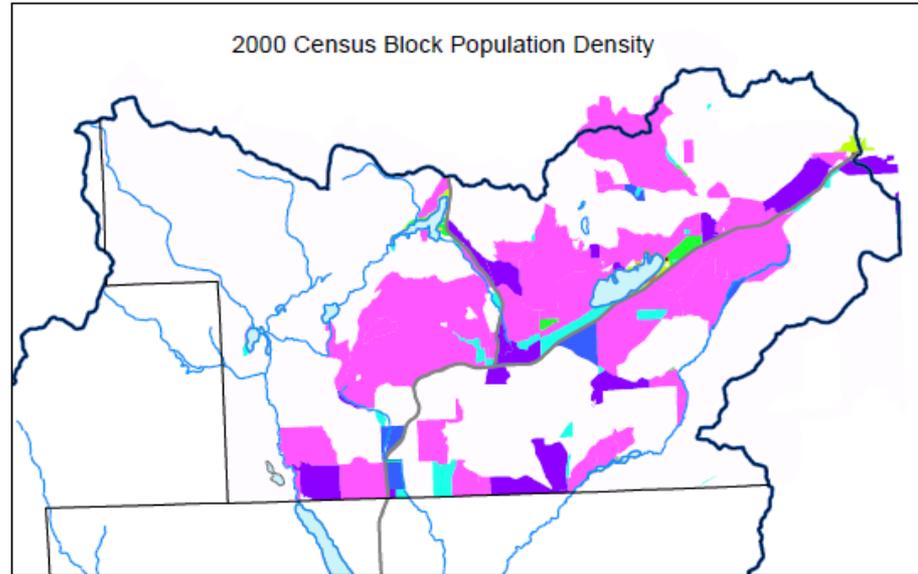
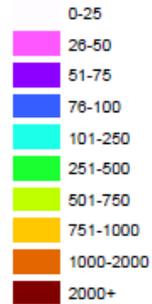


Population
per square mile

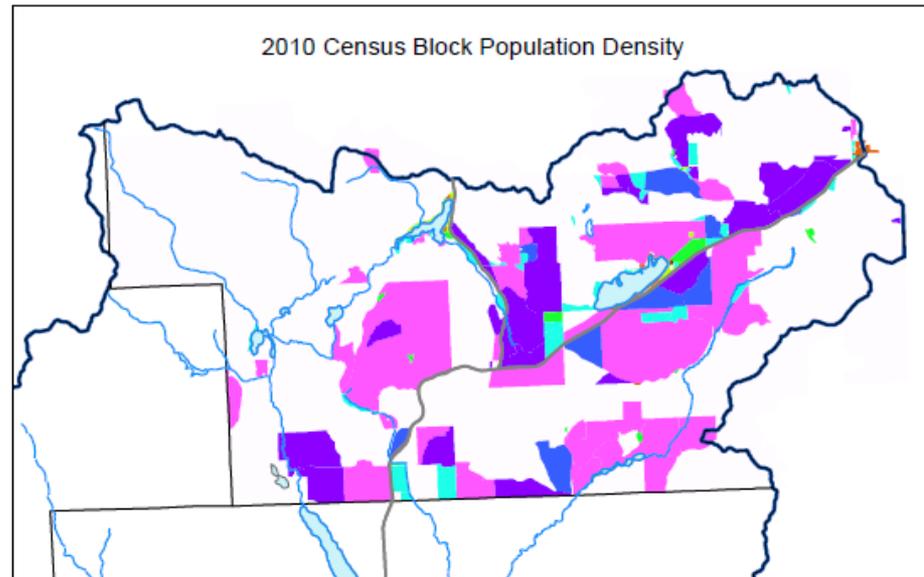
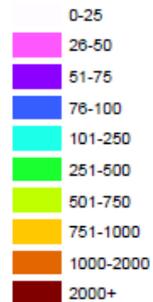


Pend Oreille County Population Growth

Population
per square mile



Population
per square mile



Questions?

