



An Overview of Water Rights In WRIAs 13 and 14

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Who Owns the Water?

In Washington and the West:

- All water is owned in common by the people

A water right is:

- A right to the beneficial use of a reasonable quantity of public water for a beneficial purpose during a certain period of time that occurs at a certain place.
- A water right holder uses that water to the exclusion of others.



What is a water right?

A water right is the legal authorization to use a certain amount of public water for a designated purpose. The water must be put to a “beneficial use”.

3 kinds of water rights:

- **Claim**: A “claim” that water was used prior to 1917 Surface Water Law or 1945 Ground Water Law (Can no longer can apply for)
- **Permit**: A “permit” is permission by the state to develop a water right – but is not a final water right
- **Certificate**: Once all the permit conditions are met, a Water Right Certificate is issued as a legal record of the water right and is recorded with the County Auditor. A water right certificate is considered a property right.

Groundwater vs. Surface Water

For Groundwater:

- The withdrawal of the first 5000 gallons per day is exempt from needing a water right *[There are actually 4 separate “exemptions” – more detail in a few slides]*
- **Measured in Gallons per Minute (GPM)**

For Surface Water:

- **ANY** amount of withdrawal (diversion) needs a water right
- **Measured in Cubic-feet per second (CFS)**

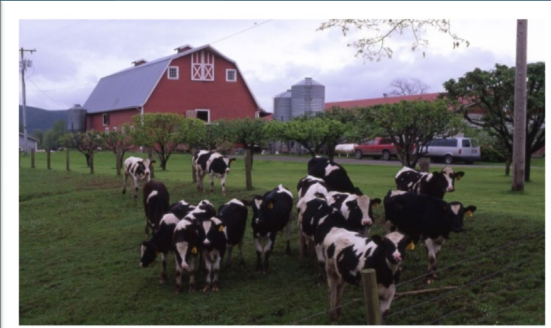


How is water used in Washington?

“beneficial uses”



Recreation



Livestock Watering



Municipal



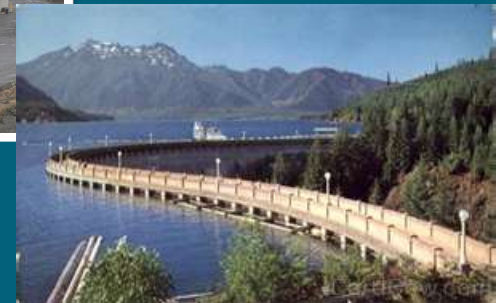
Irrigation



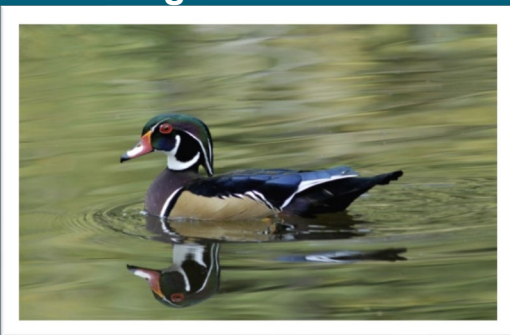
Fish Propagation



Industry



Power



Wildlife Propagation

How do you get a water right?

“Four Part Test”

The answer must be “yes” to all four of the following questions for each application for a water right:

1. Is the proposed use **beneficial**?
2. Is water is available, **physically** and **legally**?
3. Will existing water users will **not be impaired**?
4. Is the proposed use **not detrimental to public welfare**?



What does a Water Right Give You?

If the Four Part Test is met and there are no appeals, then Ecology may issue a water right permit, which specifies:

- Source of water
- How much can be used
- Purpose of use
- Place of use
- Conditions of use - (e.g., seasonal, minimum flow restrictions, metering)

And this use is at the exclusion of everyone else....



Stages of a Water Right

Stage	Purpose
Application <i>MANY YEARS CAN GO BY</i>	Establishes intent to appropriate
Permit	Authorization to develop
Proof of Appropriation <i>MANY YEARS CAN GO BY</i>	Water put to beneficial use
Certificate	Perfection of water right

How many Water Rights in WA?

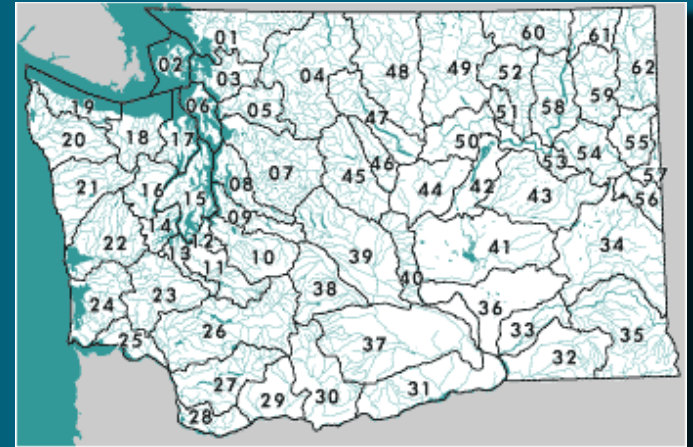
Water Rights: 53,000

- 50,000 “Certificates” issued
- 3,000 “Permits” in development

Claims - 170,000

- “Claims” to use surface water and groundwater pre-date modern water law and are called claims – not water rights.

- Permit exempt individual wells: 400,000 +



RCW 90.03 – Surface Water Code of 1917
RCW 90.44 – Ground Water Code of 1945

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Water Rights – Do I need one?

For Surface Water – YES!!

- **ANY** amount of withdrawal (diversion) needs a water right

For Groundwater - Only if withdrawal > 5000 GPD

- The withdrawal of the first 5000 gallons per day for domestic use, irrigation of up to ½ acre, up to 5000 gallons per day of industrial use is exempt from needing a water right –
- **In WRIA 13 – 950 GPD average for Domestic and non-commercial irrigation**

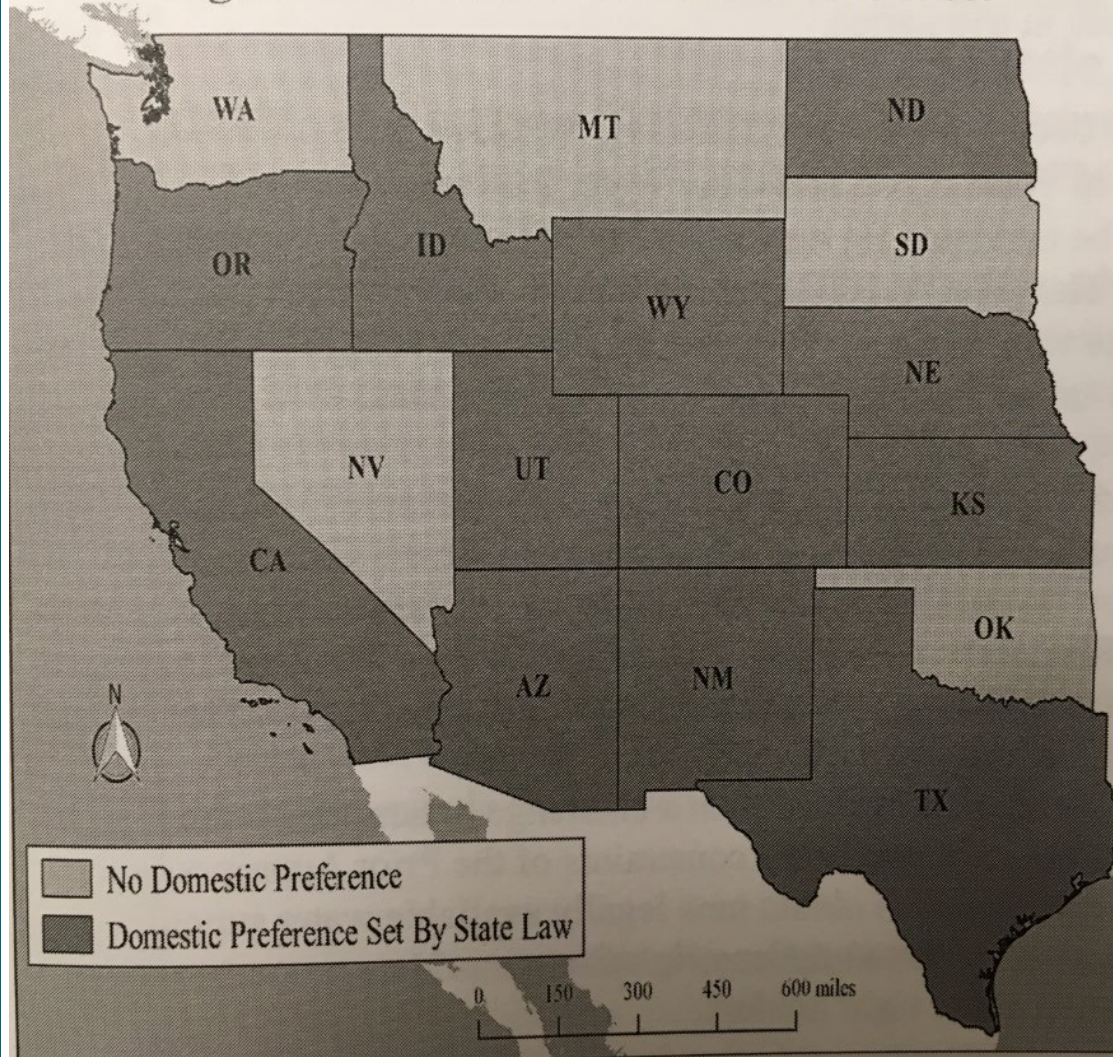
NOTE – state water laws are based on “first in time-first in right” premise – older rights have seniority over junior rights

What can I use water from an exempt well for? **[Exempt Well = 4 conditions below]**

1. Providing water for **livestock (no gallon per day limit or acre restriction)**
 2. Watering a **non-commercial lawn or garden one-half acre** in size or less **(no gallon per day limit)**
 3. Providing water for a **single home or groups of homes (limited to 5,000 gallons per day)**
 4. Providing water for **industrial purposes, [including commercial irrigation] (limited to 5,000 gallons per day but no acre limit).**
- It is important to remember that although you are exempt from the water right permit process under the ground water exemption, **all other water laws and regulations still apply.** For example, there are a number of rules and regulations associated with the actual drilling of the well.
 - Cannot irrigate two acres by installing four wells (each serving 1/2 acre).
 - When developing land and supplying the commercial or domestic development with water from several wells, **all the wells of the development together must pump 5,000 gallons a day** or less to be covered under this exemption.
 - If the cumulative total of withdrawn ground water for a project **exceeds 5,000 gallons a day, a water right from Ecology is needed.**
 - See: http://www.ecy.wa.gov/programs/wr/comp_enforce/gwpe.html

Washington state DOES NOT have a “domestic preference” right to water

Figure 4: Domestic Preference in the West



In other words, drilling a well on your property **does not give you the “right” to use the water.**

Water use in WA is subject to the prior appropriation doctrine, and recent Supreme Court decisions have ruled that even permit exempt wells can be subject to proof of no impairment to nearby surface waters and the legal availability of water.

Counties now has this responsibility to determine this (under the GMA).

How do I get a water right?

- Water rights are issued by Ecology's regional office in Lacey, Bellevue, Yakima and Spokane.
- One fills out an "Application for a Water Right" and submits a \$50 fee (additional fees may be required for large water right applications)
- Once application is received, that date is the application's "priority date" – which establishes the water right's "Seniority"
- Often several years will pass between the application submittal and actual decision to either reject the application or approve the water right. Currently ~4950 application backlog statewide:
 - ~4100 new applications
 - ~850 change applications
- See: <http://www.ecy.wa.gov/pubs/961804swr.pdf>

Other factors to consider as water right applications are processed

- **Location**

- **Location**

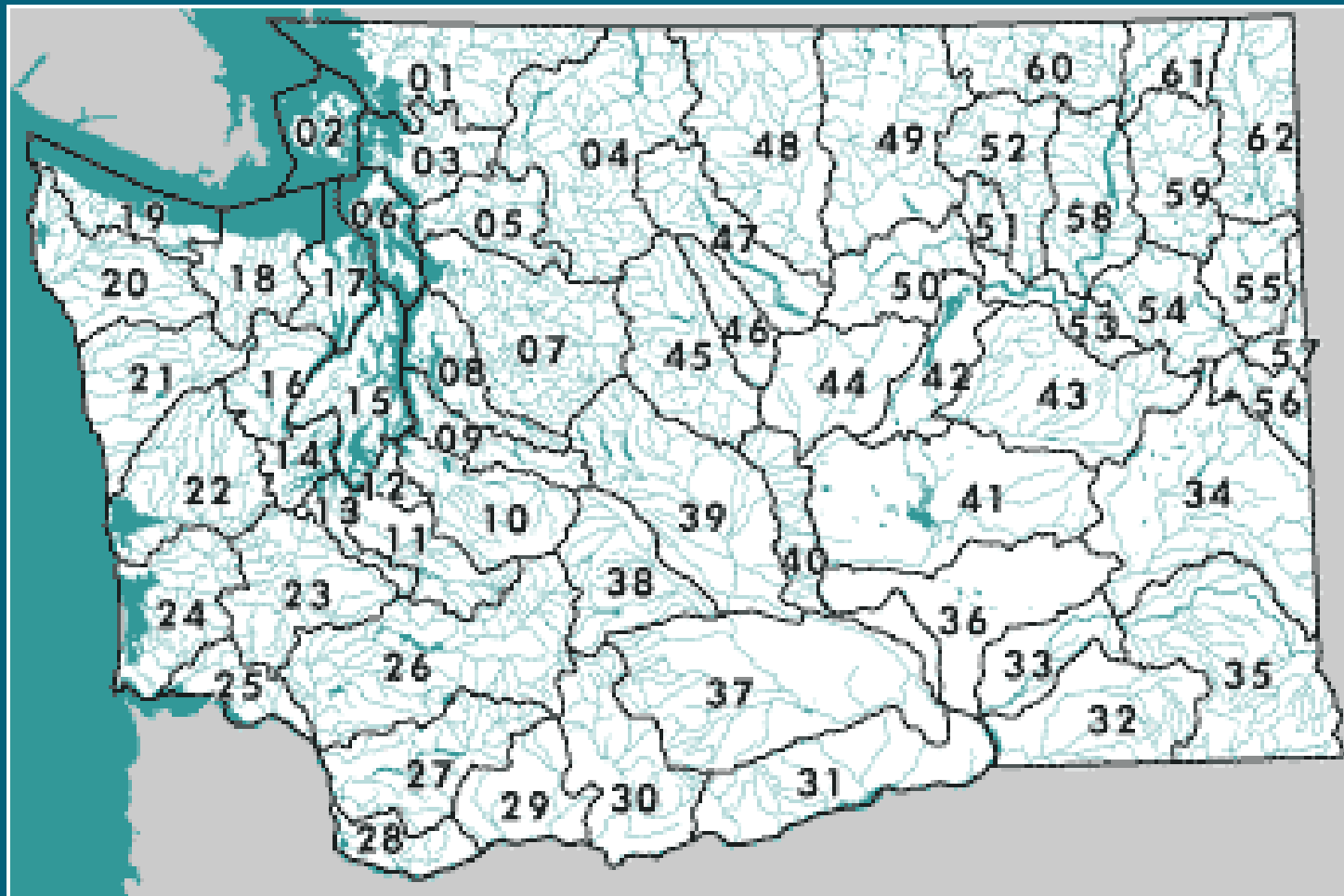
- What is physically **and legally available** in a glacially deposited sand and gravel aquifer (Yelm Prairie or Hawks Prairie) is not the same as what is available in fractured bedrock (Black Hills or Bald Hills)

- **Location**

- Physical **and legal** water availability is different depending on various factors.
 - What is available in the Deschutes:
 - is not the same as what is available in the Dungeness
 - is not the same as what is available in the Chehalis
 - is not the same as what is available in the Cowlitz
 - is not the same as what is available in the Kennedy-Goldsborough....

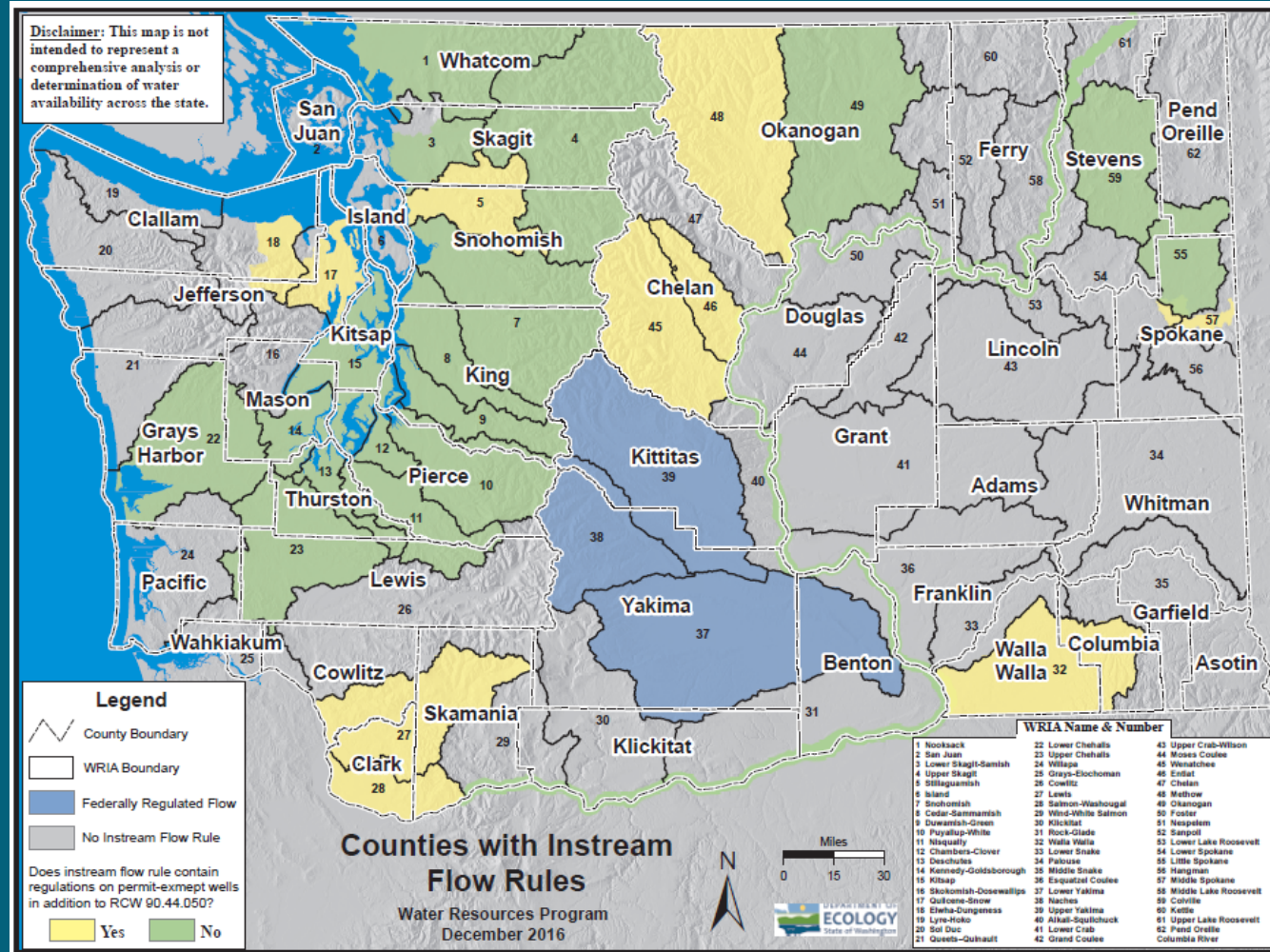
What Geographic Boundaries are used for Water Management in WA?

There are 62 “Water Resource Inventory Areas” (WRIAs) in WA



Instream Flow Regulations

- 27 of the 62 WRIsAs have instream flows set by rule, and 3 WRIsAs have Federally established flows



What is Mitigation?

- Mitigation = offset or compensate for the impacts of the new water use
- With the Foster Supreme Court decision, mitigation must be “in-kind” (i.e. water –for-water) and “in-time” and “in-place”.
- Examples:
 - Purchase and retire an existing water right
 - Aquifer recharge or reinfiltration
 - Direct discharge to surface water
 - Fill storage reservoir in wet season to use in dry season



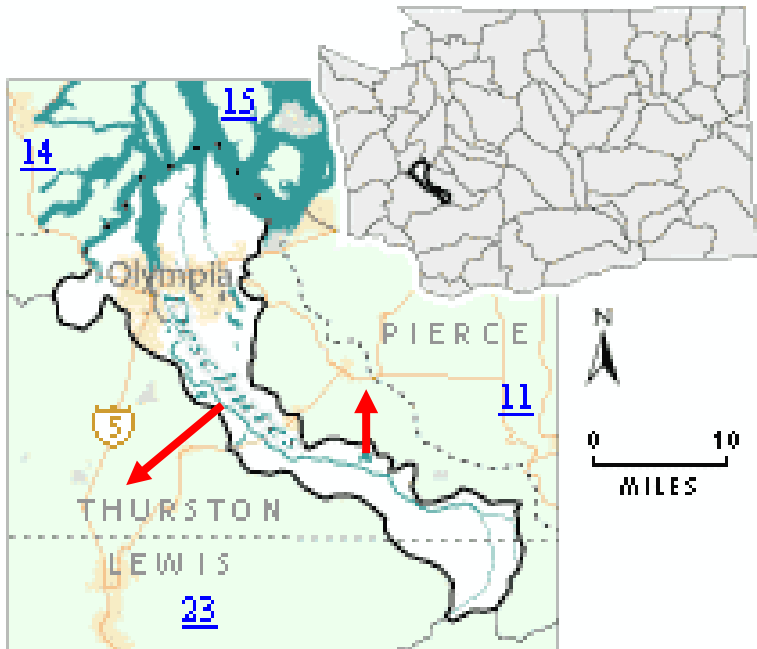
WRIA 13

Added Context...

- Deschutes (WRIA 13) Instream Flow Regulation adopted June 24, 1980
- In 1980:
 - Mt. St. Helens erupted
 - Jimmy Carter was President
 - Dixie Lee Ray was WA Governor
 - First time in 3 years that the Seattle Supersonics were NOT in the NBA Finals
 - Seahawks would begin their 5th season, Seattle Mariners were in their 4th season
 - US Olympic Hockey Team defeated USSR in the semifinals of the Winter Olympics in Lake Placid, NY
 - China hits 1 Billion in population
 - John Lennon murdered
 - Fax machines, the Internet, cell phones, iPads, desktop or lap top computers did not exist
 - Cable television was in early development stages. CNN was founded.
 - WA had two Area Codes – 206 and 509
 - WA State population was 4,132,156, an increase of 21.1 percent from the 1970 count of 3,413,244
 - Very limited understanding and awareness of hydraulic connectivity between groundwater and surface water
 - We were just beginning to realize that burying hazardous and solid waste materials (out of site, out of mind) was resulting in groundwater contamination problems - Federal “Superfund” Law adopted by Congress

Deschutes Watershed

some factual information



- About 270 square miles in area.
- A very “narrow” watershed
- Elevation ranges from sea level to 4000+’
- Average Annual Precipitation: 50” – 80”/year
- A “mixed rain and snow” basin
- About 2.5 miles wide at its narrowest point
- Deschutes River loses its last ~100 feet of elevation in last river mile at Tumwater Falls
 - All other major Puget Sound rivers have a floodplain area where tides extend inland on the mainstem river
- Deschutes River *may* be naturally *losing* some flow to Nisqually and Upper Chehalis Watersheds

Existing Water Rights in the Deschutes Watershed (WRIA 13)



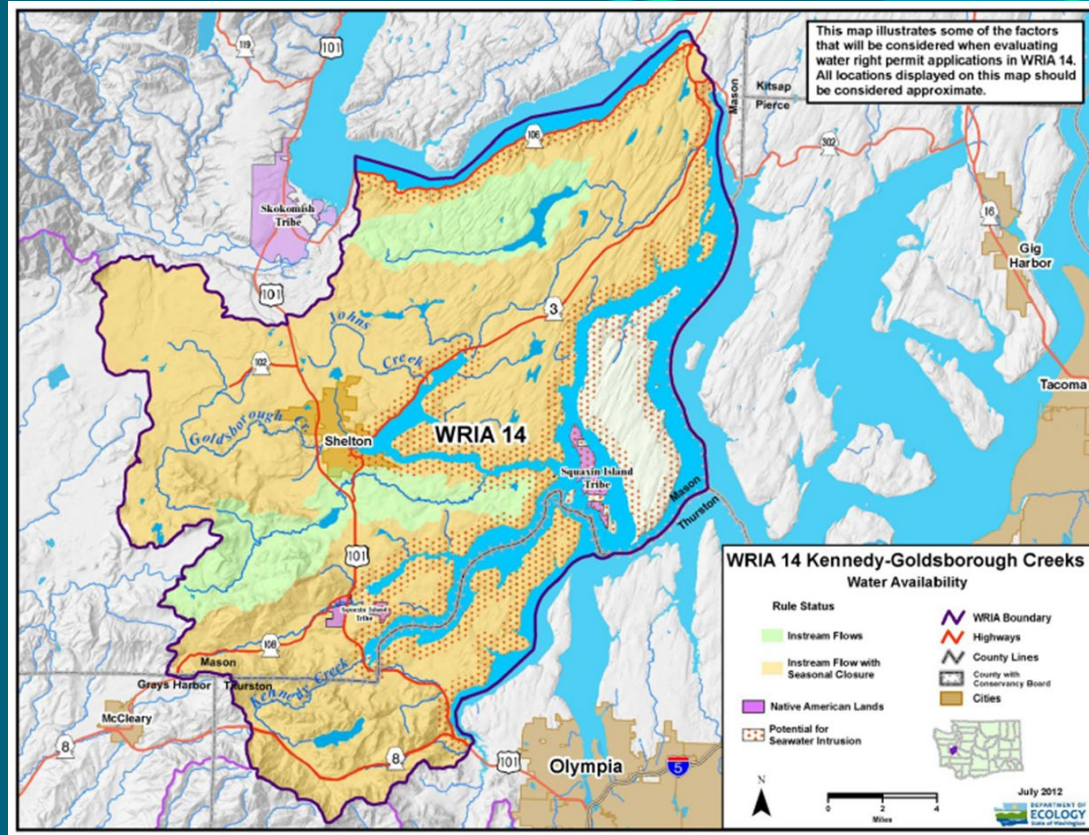
	WRIA 13
New Applications	17
Change Applications	2
Existing Water Right Certificates	1,042
Existing Water Right Permits	40
Existing Water Right Claims	3,931

WRIA 14

Added Context...

- Kennedy-Goldsborough (WRIA 14) Instream Flow Regulation adopted January 23, 1984
- In 1984:
 - Ronald Reagan was President
 - John Spellman was WA Governor
 - Seahawks would begin their 9th season, Seattle Mariners were in their 8th season
 - 1984 Winter Olympics occurred in a nation that no longer exists (Yugoslavia)
 - 1984 Summer Olympics were in Los Angeles
 - Fax machines, the Internet, cell phones, iPads, lap top computers did not exist, desk top computers in early stages of development
 - Cable television was in early development stages.
 - WA had two Area Codes – 206 and 509
 - Still a very limited understanding and awareness of hydraulic connectivity between groundwater and surface water

WRIA 14 Highlights - The Kennedy-Goldsborough Watershed



- WRIA 14 includes a significant portion of Mason County and the NW part of Thurston County
- WAC 173-514 is the instream resources protection program rule for the Kennedy-Goldsborough-Shumocher-Sherwood-Deer-Cranberry-Johnn-Mill-Gosnell-Elson-Snodgrass watersheds.
- This rule, adopted in 1984, closes the watershed to new appropriations that would harm stream flows.
- There is no water set aside in reserves for future uses in this watershed.
- Applicants seeking new water appropriations will need mitigation for the impacts of their water use on surface water bodies.

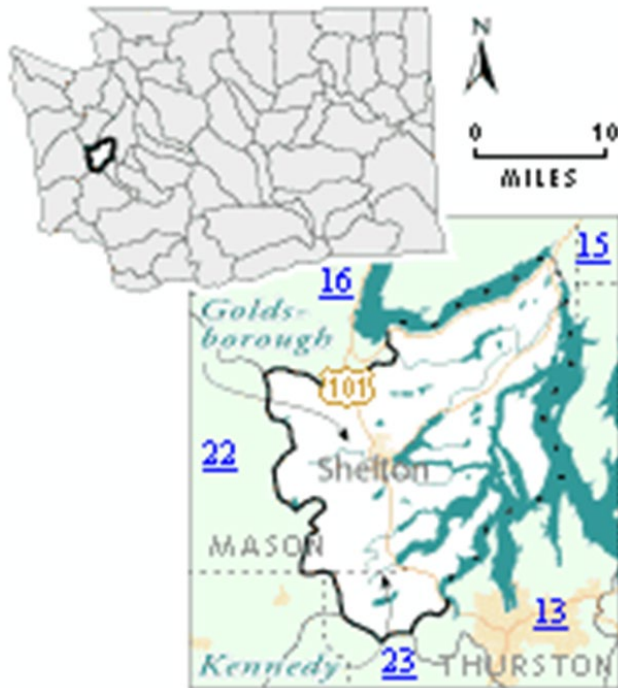
WRIA 14 Highlights

Kennedy-Goldsborough Watershed



- About 380 square miles in area
 - Elevation ranges from sea level to ~1,000'
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- WRIA 14 consists not of a major river, but a grouping of “independent streams”
 - Annual streamflow is largely driven by annual rainfall.
 - Annual precipitation in the Watershed ranges from 50 to 90 inches per year.
 - Most of this precipitation arrives during the winter months when overall water demands are the lowest.
 - During the summer, there is little rain, and naturally low stream flows are dependent on groundwater inflow.
 - At the same time the demand for water for human uses, including irrigation are at the yearly maximum.
 - *Groundwater and surface water are least available when water demands are the highest.*

Existing Water Rights in the Kennedy-Goldsborough Watershed (WRIA 14)

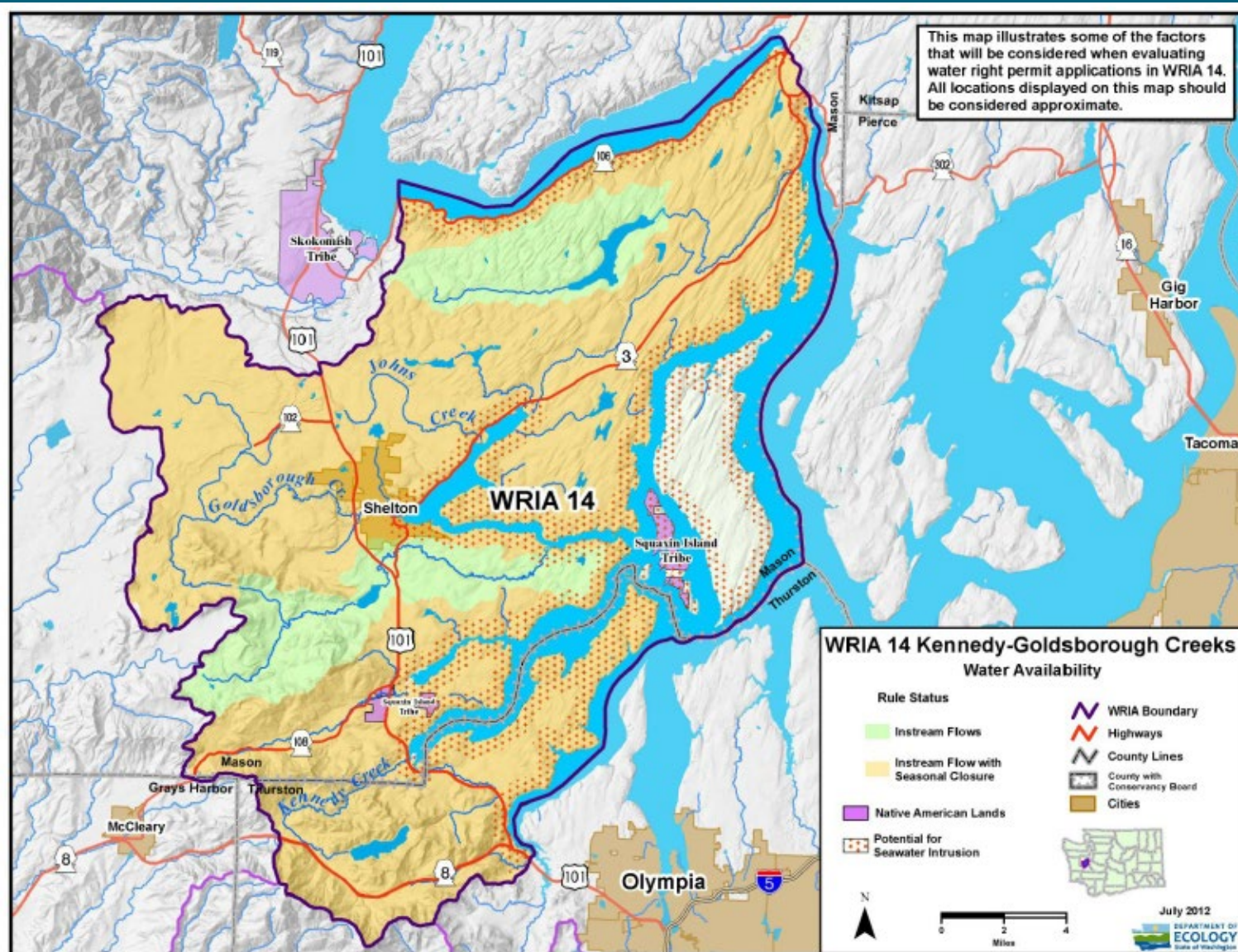


	WRIA 14
New Applications	31
Change Applications	5
Existing Water Right Certificates	1,188
Existing Water Right Permits	49
Existing Water Right Claims	3,501

Estimated number of water wells in WRIA 14

7,422 water wells

Estimated that ~98% of this total are single domestic or small group (Class B) exempt wells and 2% are municipal supply wells



Water Resources Management

“is a real balancing act between competing interests”

Allocation

- New Water Rights
- Transfers
- Adjudication

Conservation

- Water Use Efficiency
- Water Reuse
- Metering

Public Interest

- Watershed Planning
- Land use Planning
- Utility Planning
- ESA Recovery Plans

Prior Appropriation Doctrine
First in Time, First in Right

Protection

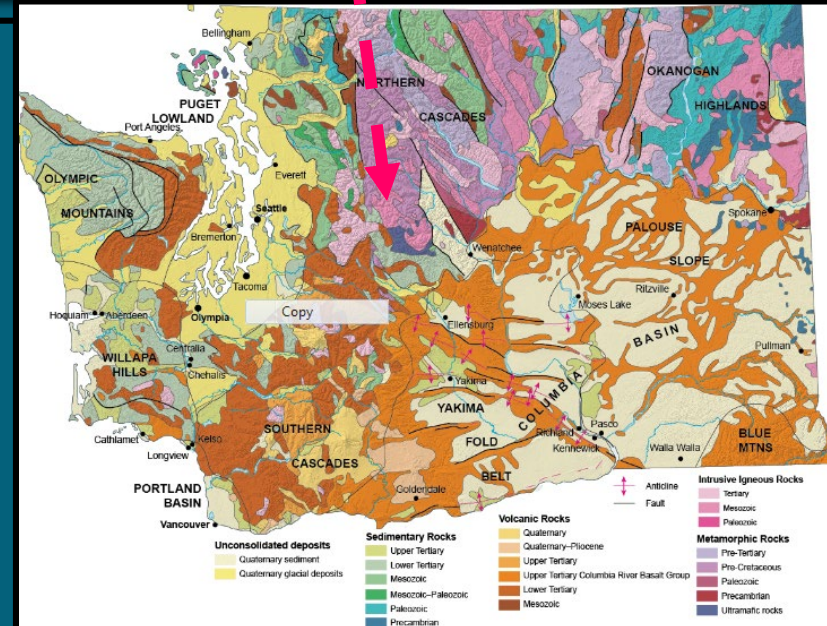
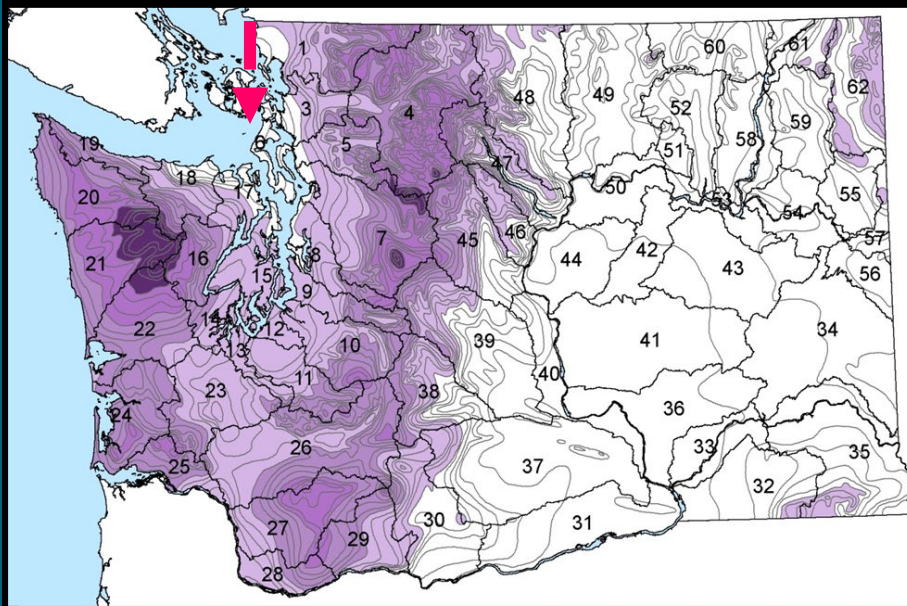
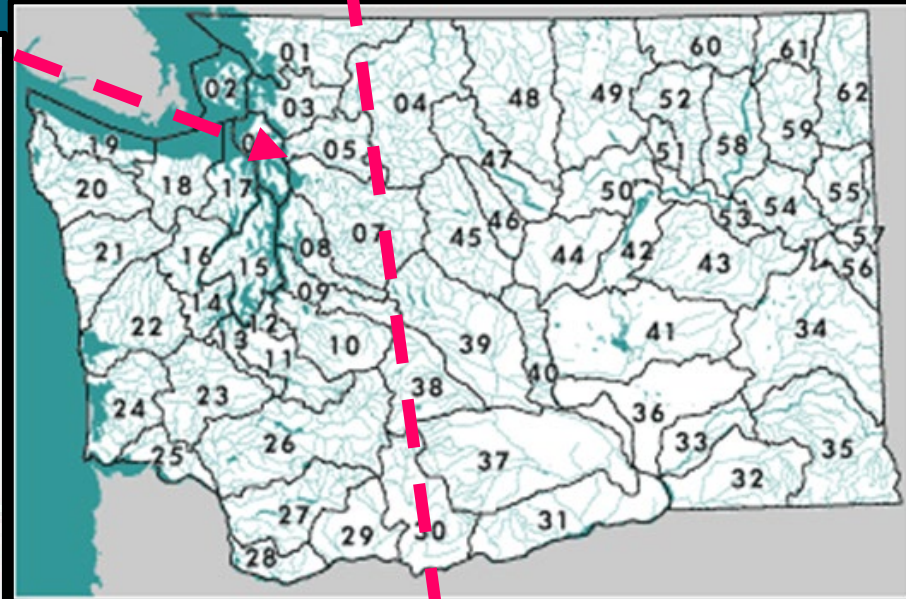
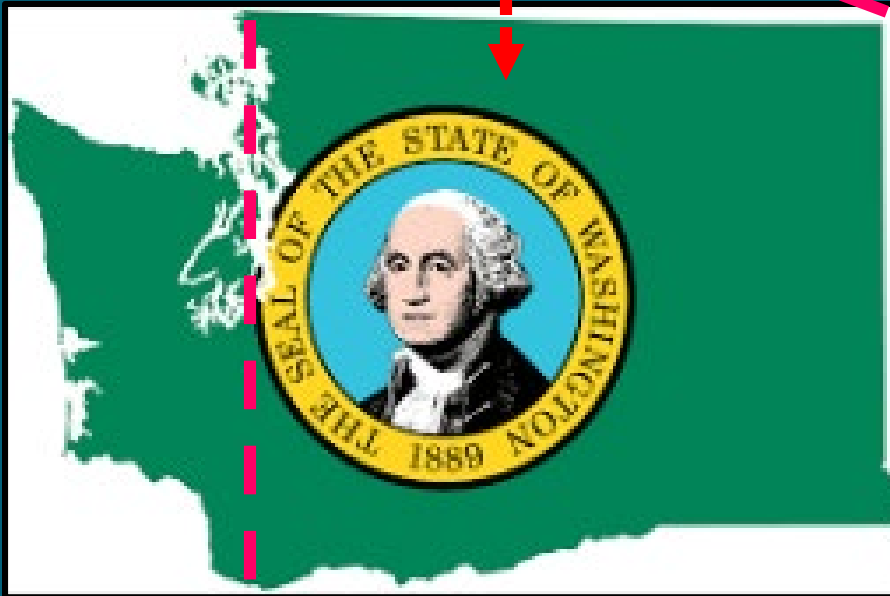
- Time Immemorial (Tribal) Water Rights
- Senior Water Rights
- Reserved Federal Rights
- Instream Flows
- Compliance
- Trust Water Rights

Science

- Fish biology
- Hydrogeology



Big Challenge: Fitting legal and Court directed statutes/decisions with the wide variation in precipitation/recharge, surficial water supply and complex hydrogeological conditions....



Questions?

Thank you

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