

PUBLIC UTILITY DISTRICT NO. 1 OF SKAGIT COUNTY
BOARD OF COMMISSIONERS

AGENDA
JULY 18, 2023
4:30 PM

The public is invited to attend in person or via Zoom.

Join Zoom Meeting: <https://skagitpud.zoom.us/j/85053537666?pwd=RUxGQ1dFMepDL3d1N2luWEg3T015QT09>

Meeting ID: 850 5353 7666

Passcode: 409842

Or dial: 1-253-215-8782

Please turn your audio and video off during the meeting. Use the "Raise Hand" feature if you would like to speak during Audience Comments.

If you have a question or comment for the Board, please submit it by 5 p.m. the Monday prior to the meeting by calling (360) 848-4460 or send an email to pud@skagitpud.org

CALL TO ORDER

PLEDGE OF ALLEGIANCE

AUDIENCE COMMENTS

NEW BUSINESS

1. [Establishing an Administration Fee and Water Rate for Temporary Water Rights Transfers](#)

COMMISSIONER COMMENTS

ADJOURNMENT



1415 Freeway Drive | Mount Vernon, Washington 98273 | (360) 424-7104 | SkagitPUD.org

July 18, 2023

MEMORANDUM

TO: Board of Commissioners
FROM: George Sidhu, P.E., General Manager
SUBJECT: Establishing an Administration Fee and Water Rate for Temporary Water Rights Transfers

Requested Action:

Authorize the General Manager to enter into an interlocal agreement with Drainage and Irrigation Improvement District #15 and Consolidated Diking Improvement District #22 to provide a temporary water rights transfer during a declared drought for Water Resources Inventory Area 3, including an administration fee of \$1,500 and a water rate of \$25 per acre-foot for 2023 and \$50 per acre-foot for 2024.

Background:

At the July 11, 2023, regular meeting of the Board of Commissioners, we discussed in detail the possible emergency drought declaration by the Governor and a Temporary Drought Change Authorization application to the Department of Ecology (DOE) for a temporary transfer of water rights to Drainage and Irrigation Improvement District #15 (DIID 15) and Consolidated Diking Improvement District #22 (CDID 22) for irrigation. In the development of the interlocal agreement to allow for the temporary transfer, there are two fees that need to be established:

Administration Fee

There are direct staff costs related to the preparation of the application to DOE and the interlocal agreement, the tracking and monitoring of the pumping records, and the annual reporting of water rights information to DOE. These direct costs are estimated to be \$1,500.

Water Rate

More research and investigation has been done since the July 11, 2023, regular meeting of the Commission to better estimate a reasonable market value of the temporary transfer of water rights to DIID 15 and CDID 22 during a drought declaration. Unfortunately, the PUD does not track expenses at the level necessary to determine the non-potable, non-piped water rate from a cost basis, and it would be very difficult to establish a process to track those expenses. However, to prevent the potential gifting of public funds, a defensible water rate needs to be established to complete an interlocal agreement for this specific request. The best example of a simplified administration cost for participating in a project is the 6% factor used by PUD to allocate general administrative costs across capital and developer projects. Using the current Agricultural water rate of \$3.71 per ccf, or \$1,616 per acre-foot, the 6% administrative factor calculates the rate to be \$97 per ac-ft. While not a direct comparison to this type of transaction, this methodology provides a logical calculation to distribute administrative costs across broad expenditures. The basis of this 6% factor is different than the direct costs related to the administration fee. The 6% factor accounts for PUD overhead costs such as utilities, building maintenance, computers, accounting, taxes, etc., whereas the administration fee is specific to staff time

related to the water rights transfer.

Aspect Consulting, a recognized expert in water rights, was requested to provide an opinion on a supportable range for the current market related to the leasing of water rights. The attached memo from Aspect Consulting provides data and details supporting their opinion that market values in Washington State for drought leases in the range of \$100 to \$250 per ac-ft long-term are supportable. This information implies that the water rate of \$97 per ac-ft discussed above is near the floor of the market for the leasing of water rights, but unique circumstances will affect each individual situation.

It's important to acknowledge that the interlocal agreement places restrictions on the times when pumping of the water rights can occur, only allowing water withdrawals to occur during the three (3) hours before and after a high tide. Therefore, there are approximately 12 hours of the day that the temporary water rights cannot be utilized. As a result, it seems prudent to reduce the water rate by 50% to acknowledge a reduction in value due to restricted pumping times. This would reduce the water rate from \$97 per ac-ft to \$48.50 per ac-ft. For purposes of this agreement, and to simplify the calculations, we prefer to round this number to the nearest \$5 increment, which would be \$50 per ac-ft.

Since this is a new fee being introduced to the interlocal agreement and recognizing that the irrigators may not have factored this into their operational expenses, it also seems prudent to phase in the fee over a period of two years. Therefore, it is recommended that the water rate for 2023 be \$25 per ac-ft, and the water rate for 2024 be \$50 per ac-ft. It is also recommended that we establish a two-year interlocal agreement with each district to adequately respond to the present and near-term possibility of drought conditions.

Long Term Solution

Much of the challenge in the development of a water rate for the temporary transfer is that there is not a well-developed market for the leasing of this type of water rights in Skagit County. There are other areas of the state that deal in the temporary and seasonal leases of water rights, as well as in the sale of water rights for irrigation and other needs. However, Skagit County is unique, and the market value of temporary water rights in other areas of the state does not necessarily reflect the market value of temporary water rights in Skagit County. As a result, I recommend that we conduct research to understand the need and value of setting up a water market in Skagit County to facilitate the use of portions of PUD water rights during times when they are determined by the PUD to be available. This market could make water rights available on a limited basis to any customers eligible for a temporary transfer. In concept, the water market could make PUD water rights available for lease on an annual basis, regardless of drought conditions, and would satisfy requirements for the PUD to obtain reasonable compensation for the leasing of its valuable water rights at actual market rates.

There are many challenges involved in setting up a water market, but there can also be many advantages:

- The PUD's water rights are a community resource, and allowing the available water rights to be leased on an annual basis will allow members of the community to have access to water for their farms and businesses, which may not have been possible previously.
- Any farms and businesses that are successful in leasing water rights from the PUD will have a dependable supply of water for their needs during that time, regardless of whether a drought is declared. This will ensure certainty and sustainability in their business operations.
- There are existing PUD customers who utilize fire hydrant meters for their irrigation needs, which can become expensive. Having access to water rights that can be pumped directly from the Skagit River, or from a hydraulically connected groundwater well, may reduce the irrigation expenses

considerably.

Discussion about this long-term solution can happen over the next year, but it is proposed to have something ready for the 2025 irrigation season, and beyond. It is our intent to establish this water market so that temporary transfers during drought declarations are not necessary.

Fiscal Impact:

The administration fee and the water rate charged in the interlocal will be used to offset the PUD's costs for staff time involved in the development of the interlocal agreement and change application to DOE.


Enclosures: 1. [Skagit PUD Lease Valuation Memo](#)
 2. [2023 Interlocal DID 15 DRAFT.docx](#)

MEMORANDUM

Project No.: 170646-C2-01

July 14, 2023

To: George Sidhu, Mark Handzlik, and Bill Trueman
Skagit Public Utility District

From: 
Daniel R. Haller, PE, CWRE
Principal Engineer

Re: **2023 Drought Lease Valuation Opinion**

Aspect Consulting (Aspect) understands that Skagit Public Utility District (Skagit PUD) desires a valuation opinion to support drought year leases for 2023. Aspect has experience in assisting public utilities and private parties in buying, selling, leasing, permitting, and valuing water rights. Aspect was asked to render a high-level valuation opinion with just a few business days of lead time given the emergent issues associated with this year's drought.

Aspect believes that drought year values on the order of \$100 - \$250/acre-foot are supportable.

Background

Skagit PUD has historically leased surplus perfected water rights on a temporary basis in drought years at no cost to downstream agricultural users. Water rights are a use-based type of real property that have value. As a public entity, Skagit PUD is subject to laws regarding how it divests itself of property, either on a permanent or a temporary basis to avoid gifting of public funds. Aspect understands that Skagit PUD is evaluating how to start implementing a plan to charge for drought leases to meet its fiduciary responsibilities.

Water Right Valuations

Aspect routinely works with water right valuation data, either because we are directly assisting clients in buying and selling water; transactions are in the public sphere and we record them; or because we are working on water right transactions after a sale where the terms of that sale are disclosed. Based on this experience, we are often called upon to advise on the value of water rights in different locales.

Comparable Leases

This section summarizes data on water right leases that can help inform valuation of a Skagit PUD drought lease. Table 1 summarizes a sampling of publicly available lease data over time. Aspect also maintains additional data on confidential or private leases that help inform our valuation opinion. Older data should also be considered through the lens of historical regulatory considerations and modern inflationary increases.

MEMORANDUM

Project No.: 170646-C2-01

July 14, 2023

Considering the comparable prices in Table 1, and Aspect’s experience with confidential leases, Aspect believes that drought leases in the range of \$100 - \$250/acre-foot long-term are supportable.

Table 1: Comparison of Water Right Leases

Date	Buyer	Seller	\$/ac-ft/year	Volume (ac-ft)	Terms / Notes
2001	Roza Irrigation District	Sunnyside Valley Irrigation District (SVID) and multiple	\$100	16,818	Drought lease was based on \$300/acre and assumed 3 foot water duty
2001	Town of Twisp	Methow Valley Irrigation District	\$50	400	Later converted to a sale
2005	Roza Irrigation District	SVID and multiple	\$100	28,381	Drought lease was based on \$300/acre and assumed 3 foot water duty
2009	Ecology / WWT	Mundy	\$45	172.5	1-year seasonal lease
2010	City of White Salmon	Klickitat PUD	\$100	500	Annual inflationary escalator. After 5 years, contract changed to a capacity charge for 320 acre feet per year; later terminated in favor of a different purchase
			\$285.70	320	
2010	Ecology / WWT	Mundy	\$30	242.5	1-Year Seasonal Lease
2011	Ecology	Port of Walla Walla	\$105 to \$120	4,769	10-year lease; Ecology then offered annual leases. 2023 lease price is \$120/ac-ft/year.
2013	City of Kittitas	Warm Springs Water Company	\$38.33	1,207	30 year lease, with inflationary adjustments every 5 years
2015	Multiple	Ecology Drought Program	\$275	2,218	50% subsidy from drought account, plus \$350 processing fee
2015	Roza Irrigation District	SVID and multiple	\$167	4,534	Drought lease was based on \$500/acre and assumed 3 foot water duty
2016	101 Bar Ranch	Klickitat PUD	\$350	4,000	2% inflationary adjustment for 1st 10 years, 1% next 10 years, then 2%, 50 year lease
2016	Crown Columbia	Regional Water System	\$65	6,187	Included \$10,000 up-front payment
2019	Multiple lessees	OTID	\$250	variable	OTID runs a water bank in Okanogan County
2020	Crown Columbia	Regional Water System	\$94.55	2082	--
2022	Scout Clean Energy	Selah-Moxee Irrigation District (SMID)	\$275	184	3-year term, later terminated in favor of DNR lease
2022	Tapani	SMID	\$275	226	20-year lease term
2022	Evans	SMID	\$350	100	15-year lease term
2023	Chelan PUD	OTID	\$250	4,000	Structured as “perpetual” lease with unique termination clauses

MEMORANDUM

Project No.: 170646-C2-01

July 14, 2023

Limitations

Work for this project was performed for the Skagit PUD (Client), and this memorandum was prepared in accordance with generally accepted professional practices for the nature and conditions of work completed in the same or similar localities, at the time the work was performed. This memorandum does not represent a legal opinion. No other warranty, expressed or implied, is made.

All reports prepared by Aspect Consulting for the Client apply only to the services described in the Agreement(s) with the Client. Any use or reuse by any party other than the Client is at the sole risk of that party, and without liability to Aspect Consulting. Aspect Consulting's original files/reports shall govern in the event of any dispute regarding the content of electronic documents furnished to others.

V:\170646 Skagit PUD Water Right Assistance\Deliverables\Skagit PUD Lease Valuation Memo_071423.docx

**INTERLOCAL AGREEMENT BETWEEN DRAINAGE AND IRRIGATION DISTRICT #15
AND
PUBLIC UTILITY DISTRICT No. 1 OF SKAGIT COUNTY**

THIS AGREEMENT is made and entered into this _____ day of _____ 2023, by and between Drainage and Irrigation Improvement District #15 of Skagit County, herein referred to as “DID #15,” and Public Utility District No. 1 of Skagit County herein referred to as “Skagit PUD”

RECITALS

- A. WHEREAS, legal and uninterrupted water withdrawals in the Skagit River watershed are a scarce and valuable resource; and
- B. WHEREAS, Skagit PUD has transferred a portion of its available uninterrupted water rights to DID #15 in the past during three state-declared droughts; and
- C. WHEREAS, DID #15 is currently relying on the availability of a similar transfer of Skagit PUD water rights if a drought is declared in 2023; and
- D. WHEREAS, Skagit PUD recognizes that new water rates reflecting the value of the water rights may significantly impact the current financial plans of DID #15, and it would be an appropriate consideration of those impacts to establish a phased approach to establishing rates for the use of the water rights; and
- E. WHEREAS, DID #15 has requested temporary and short-term use of a portion of Skagit PUD’s water rights due to anticipated extreme seasonal drought conditions (“Temporary Drought Change Authorization”); and
- F. WHEREAS, Skagit PUD has historically been able to temporarily transfer some of their water rights to DID #15 to meet their irrigation needs during drought conditions; and
- G. WHEREAS, DID #15 and Skagit PUD are each independently authorized by law to conduct such activity; and,
- H. WHEREAS, RCW 39.34.080 authorizes a public agency to contract with another public agency to perform any governmental service, activity, or undertaking that each public agency is authorized to perform, provided that such contract shall be authorized by the governing body of each party to the contract; and,
- I. WHEREAS, RCW 39.34.010 permits local governmental units to make the most efficient use of their powers by enabling them to cooperate with other localities, including an agency of state government, on the basis of mutual advantage. In addition, under the authority of the Interlocal Cooperation Act, specifically RCW 39.34.030, public agencies, such as the parties, may enter into Interlocal Agreements such as this one; and,
- J. WHEREAS, it is necessary for DID #15 and Skagit PUD to enter into an agreement setting forth the terms, conditions, and requirements for completing the Project.

AGREEMENT

NOW, THEREFORE, in consideration of the terms and conditions contained herein, the parties agree as follows:

STATEMENT OF WORK

1. The parties agree the sequential steps of the temporary drought change authorization is as follows:

- i. Temporary Drought Change Authorization. Skagit PUD will prepare an “Application for Change/Transfer of a Water Right” for submittal to Washington State Department of Ecology (Ecology). The application will request authorization for DID #15 to divert surface water in 2023 during a state-declared drought conditions from the Skagit River at their previously established diversion points (shown on the attached figures) in the following amounts.

- (1) Maximum instantaneous rate of 4,000 gallons per minute

- (2) Maximum total withdrawal of 150 acre-feet

DID #15 shall sign the application as the landowner and shall comply with all conditions of the application and Ecology authorization documents.

The following conditions are anticipated to be included in the authorization. Additional conditions may be required by Ecology:

- (1) “To be protective of the environment and fishery resources, water use under this Authorization shall only occur for a maximum of 3 hours prior to each high tide event and a maximum of 3 hours following each high tide event. This equates to approximately 12 hours per day based on two high tide cycles per calendar day.”

- (2) “An approved measuring device must be installed and maintained on the source identified by this Authorization in accordance with the rule “Requirements for Measuring and Reporting Water Use”, Chapter 173-173 WAC. The existing meter installed on this source may be used.”

- (3) “Detailed written records shall be kept to ensure compliance with the conditions of this Authorization. At a minimum, records shall include the dates, times of high tides, diversion start times, diversion end times, peak instantaneous pumping rates, totalizer meter readings, and name(s) of record keeper(s). DIID #15 shall provide emailed provisional daily water use records to the PUD and Ecology following each day of the authorized use period, regardless of the amount of diversion. Final and complete records shall be submitted to Ecology by January 31 of the following year, as part of the reporting required by DIID #15 for its existing interruptible water right permit xx.”

If a drought is declared in 2024, and the PUD determines that adequate water rights are available, a similar application will be prepared and submitted to Ecology under similar terms and conditions.

- ii. Duration

Surface water withdrawals by DID #15 may occur at specified times in 2023 and 2024 following execution of this Agreement and authorization by Ecology. 2023 Surface water withdrawals will commence no earlier than July xx, 2023, and will terminate on or before September 30, 2023. 2024 surface water withdrawals will commence no earlier than July 1, 2024, and will terminate on or before September 30, 2024.

iii. Payment by DID #15 to Skagit PUD

DID #15 agrees to compensate Skagit PUD for the temporary use of PUD water rights at the following rates:

2023 rates:

Annual administrative fee (regardless of withdrawal quantity): \$1,500

Consumption rate: \$25.00 per acre-foot of withdrawals

2024 rates:

Annual administrative fee (regardless of withdrawal quantity): \$1,800

Consumption rate: \$50.00 per acre-foot of withdrawals

INDEPENDENT CAPACITY

2. The officials, employees and agents of each party who are engaged in the performance of this Agreement shall continue to be officials, employees or agents of that party and shall not be considered for any purpose to be officials, employees or agents of the other party.

LEGAL RELATIONS

3. Neither party shall be liable for damage or claims which arise from or relate to the performance or non-performance of this Agreement by the other party. Each party shall be responsible only for the negligent acts and omissions of its own officers, employees, and agents, and no party shall be considered the agent of the other.

INDEMNIFICATION

4. DID #15 agrees to defend, indemnify, and hold the District harmless from any and all claims, demands, losses, and liabilities to or by third parties arising from, resulting from, or connected with work performed or to be performed under this Contract by the Consultant, its agents, employees, and subconsultants, even though such claims may prove to be false, groundless or fraudulent, to the fullest extent permitted by law.

ASSIGNMENT

5. Neither party shall assign or convey its interests or obligations under this Agreement without the written consent of the other. There are no third-party beneficiaries of this agreement.

DISPUTES

6. It is expected that any conflicts arising out of the implementation of this Agreement will be resolved at the staff level. In the event that issues cannot be resolved by staff in a timely fashion, the parties agree to elevate the dispute through equivalent management levels of each party, and if necessary to Skagit PUD General Manager and the DID #15 Commissioners.

In the event that a dispute cannot be resolved in the manner described above, resolution of the dispute shall be determined by a Dispute Board in the following manner: Each party to this Agreement shall appoint one member to the Dispute Board. The members so appointed shall

jointly appoint an additional member to the Dispute Board. The Dispute Board shall review the facts, contract terms and applicable statutes and rules and make a determination of the dispute. The determination of the Dispute Board shall be final and binding on the parties hereto.

AMENDMENT

7. This Agreement shall be amended only by written mutual agreement of the parties. Amendments to this Agreement may be initiated by any of the parties and will become final after written agreement by all parties and appropriate signatories is executed.

TERMINATION

8. This Agreement is effective from the date of signature by all parties and remains in effect until modified by written mutual agreement, termination as provided below, or completion of the temporary drought change authorization including satisfaction of all terms and conditions by DID #15. Either party may terminate this Agreement upon thirty (30) days written notification to the other party.
9. Skagit PUD may terminate this Agreement immediately for any reason and at any time.

CONTACTS

10. The contacts for each party shall be responsible for and shall be the contact person for all notices and communications regarding the performance of this Agreement.

Public Utility District No. 1
Bill Trueman
Engineering Supervisor
Public Utility District No. 1 of Skagit County
PO Box 1436
1415 Freeway Drive
Mount Vernon, WA 98273
(360) 848-2151
trueman@skagitpud.org

Drainage and Irrigation Improvement District #15
Name: _____
Drainage and Irrigation Improvement District #15 of Skagit County

GOVERNANCE

11. This Agreement is entered into and under the authority granted by the laws of the state of Washington and any applicable federal laws. The provisions of this Agreement shall be construed to conform to those laws.

In the event of an inconsistency in the terms of this Agreement, or between its terms and any applicable statute or rule, the inconsistency shall be resolved by giving precedence in the following order:

- Applicable state and federal constitution statutes and rules;
- Statement of work; and
- Any other provisions of the Agreement, including materials incorporated by reference.

WAIVER

12. The failure to seek redress for violation of, or to insist upon the strict performance of, any covenant or condition of this Agreement shall not prevent a subsequent act, which would have originally constituted a violation, from having the effect of an original violation.

SEVERABILITY

13. If any provision of this Agreement, or any provision of any document incorporated by reference, shall be held by a court of competent jurisdiction to be invalid, the remainder of this Agreement, and such, will remain in full force and effect.

ALL WRITINGS CONTAINED HEREIN

14. This Agreement, including its exhibits, constitutes the entire agreement between the parties regarding the project and supersedes all prior agreements and understandings between the Parties relating to the subject matter of the Agreement. No other understandings, oral or otherwise, regarding the subject matter of this Agreement shall be deemed to exist or to bind any of the parties hereto.

ADDITIONAL PROVISIONS

15. This Agreement does not create any separate legal entity, create any joint organization, establish any common budget, nor authorize the joint acquisition of any personal or real property.

16. This Agreement may be executed in any number of counterparts, each of which will be deemed to be an original, but any number of which, taken together, will be deemed to constitute one and the same instrument.

DATED this ____ day of _____, 2023.

Drainage and Irrigation Improvement District #15 of Skagit County

By: _____
Commissioner Position # _____

PUD No. 1 of Skagit County

George Sidhu, P.E., General Manager