

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

AGENDA
APRIL 9, 2024
4:30 PM

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

Join the meeting via Zoom: <https://skagitpud.zoom.us/j/82082590753?pwd=ZkUrVGE4T2xXK3NUV1ZRK2pxUDlxdz09>

Meeting ID: 820 8259 0753

Passcode: 009457

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

PLEDGE OF ALLEGIANCE

CONSENT AGENDA

1. Approval of Agenda 4/9/24
2. Approval of Minutes 3/26/24 Regular Meeting
3. Ratification of Voucher 4/2/24
4. Voucher Approval 4/9/24

AUDIENCE COMMENTS

OLD BUSINESS

5. General Manager's Report
6. Engineering Department Update
7. [Temporary Seasonal Water Right Transfers - *Action*](#)

NEW BUSINESS

INFORMATION

8. Judy Reservoir Data Report
9. Recent News Article

COMMISSIONER COMMENTS

ADJOURNMENT

MINUTES OF THE REGULAR MEETING OF THE COMMISSION
PUBLIC UTILITY DISTRICT NO. 1 OF SKAGIT COUNTY, WASHINGTON

March 26, 2024

The regular meeting of the Commission of Public Utility District No. 1 was held in the Aqua Room of the utility located at 1415 Freeway Drive, Mount Vernon, Washington.

The meeting was called to order at 4:30 p.m. Commissioners in attendance were: Joe Lindquist, president; Andrew Miller, vice president; and Corrin Hamburg, secretary.

Also, in attendance were George Sidhu, Shannon Patiño, Alistair Boudreaux, Nick Semrau, Bill Trueman, Brian Henshaw, Mark Handzlik, Pete Gilbert, Mike Fox, Mark Semrau, Sam Shipp, Dave Johnson, Kellie Johnson, and Nick Cecotti.

Participating remotely were: Chris Shaff

Commissioner Lindquist led the Pledge of Allegiance.

CONSENT AGENDA

Commissioner Miller moved to approve the Consent Agenda for 3/26/2024, as presented.

1. Approval of Agenda 3/26/24
2. Approval of Minutes: 3/12/24 Regular Meeting
3. Ratification of Voucher 3/19/2024 No. 3127 (\$957,142.50)
Accounts Payable Voucher No. 28766-2880 (\$705,872.92)
Electronic Funds Transfer (\$251,269.58)
4. Voucher Approval 3/26/24 No. 3128 (\$569,488.85)
Accounts Payable Voucher No. 28804-28854 (\$211,812.08)
Electronic Funds Transfer (\$122,353.26)
Payroll Electronic Funds Transfers and Checks No. 043486-043570 (\$235,323.51)
5. MV-28 RV Resort Project Acceptance

The motion passed unanimously.

AUDIENCE COMMENTS

Nick Cecotti, near Memorial Hwy, sought an appeal for their neighbor whose pipes froze in the winter and had an unknown leak, which resulted in receiving a \$4,000 water bill and will soon be receiving an additional \$3,000 bill. His appeal is to waive the second bill of \$3,000.

Commissioner Hamburg commented on needing to reevaluate the leak adjustment policy to consider low-income households and good faith intents.

Dave Johnson, Big Lake, requested the installation of a bulk water-filling station at Big Lake. Commissioner Lindquist stated that he was going to bring up the bulk water filling station request during the commissioner comments section.

OLD BUSINESS

6. Manager's Report: General Manager Sidhu provided an update on the following:
 - PUD staff visited with the dike and irrigation districts to look at each diversion point and finalize a plan for the metering that will be used as part of the water rights transfer agreement.
 - The water rights transfer interlocal agreements are being reviewed by the dike and irrigation district members, who will be voting on the agreement on April 3. If approved, the agreements will be on the April 9 meeting agenda. The transfer may not get completed by May 15 due to the Department of Ecology processing and public notice times, but the irrigators are aware and are fine if it is completed a little later.
 - The governor has not yet signed the capital state budget, but the PUD continues to be a line item for waterline relocation funding of \$300,000.
 - Manager Sidhu had a meeting with the Big Lake fire chief regarding a fire hydrant maintenance agreement. A brief discussion ensued.
 - The West Mount Vernon and Burlington Country Club waterline projects are moving ahead.

- Interviews for the maintenance technician position have been completed and interviews for the temporary records management position are in-process.

Commissioner Miller asked about establishing a water rights transfer agreement with the city of Burlington, so they do not use potable water to water their ball fields. A brief discussion ensued.

7. Resolution No. 2304-24: General Manager Sidhu explained that all of the work related to the failure of the power transformer at the Skagit River Diversion was completed last week. Therefore, Resolution 2299-23, Declaring an Emergency Related to the Failure of the Power Transformer at the Skagit River Diversion, is no longer needed and can be terminated. The total cost of the new transformer and associated improvements was \$897,777.94. A brief discussion ensued.

Commissioner Hamburg moved to approve Resolution No. 2304-24, Canceling Resolution 2299-23, Declaring an emergency related to the failure of the power transformer at the Skagit River Diversion.

The motion passed unanimously.

NEW BUSINESS

7. Gilligan Creek Automation: Operations Manager Fox presented the proposition to purchase and install a remote-operated intake valve at Gilligan Creek to facilitate diverting water from Gilligan Creek to Judy Reservoir, especially when only one operator is on duty and cannot leave the treatment plant. This item was discussed during the 2024 Budget meetings, but a separate line item was not approved because of a lack of information at the time. A brief discussion ensued.

Commissioner Hamburg moved to approve the labor and material expenses to install a remote valve and telemetry to maximize water collection from Gilligan Creek.

The motion passed unanimously.

8. Dump Truck Purchase Order: Operations Manager Fox also presented the proposition to submit a purchase order for a new dump truck that has become a challenge to acquire due to ongoing supply chain issues. The dump truck would be a 2025-year build and added to next year's budget, but a purchase order must be made to secure our order and prevent further price increases or not being able to obtain one in the future.

Commissioner Miller moved to approve the purchase order to acquire a 2025 dump truck.

The motion passed unanimously.

INFORMATION

9. Judy Reservoir Data Report
10. Recent News Articles

COMMISSIONER COMMENTS

Commissioner Lindquist proposed that the PUD consider installing a bulk water fill station at Big Lake. Mark Handzlik provided a brief overview of the history of bulk water fill stations and the costs and timeline to install a new fill station. He also proposed upgrading the technology that customers use to access the fill station if a new fill station is added. A brief discussion of grant funding, including the Skagit County .09 grant, that the PUD should apply for to obtain funding for the installation of a bulk water fill station at Big Lake.

Commissioner Hamburg commented that she would like to circle back to discussing the PUD leak adjustment policy to provide relief for low-income households or major household leak events. A brief discussion ensued.

ADJOURNMENT

Having no further business to come before the board, Commissioner Lindquist moved for adjournment. The motion passed and the March 26, 2024, meeting adjourned at 5:20 p.m.

ATTEST

Joe Lindquist, President

Corrin Hamburg, Secretary

Andrew Miller, Vice President



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

April 9, 2024

MEMORANDUM

TO: Board of Commissioners
FROM: George Sidhu, P.E., General Manager
SUBJECT: Temporary Seasonal Water Right Transfers

Requested Action:

Authorize the general manager to enter into an interlocal agreement with Consolidated Diking Improvement District #22, Drainage and Irrigation Improvement District #15, and a Water Service Agreement with Skagit Valley Farms for the transfer of certain surplus water rights.

Background:

There have been four drought declarations in Skagit County in recent years where Skagit PUD has temporarily transferred a portion of its water rights to Drainage and Irrigation Improvement District (DIID) #15 and Consolidated Diking Improvement District (CDID) #22 to be used for irrigation purposes. In each of these years, 2015, 2019, 2021, and 2023, the PUD applied for a temporary drought change authorization from the Department of Ecology (DOE) to facilitate the transfer of PUD water rights to be used for agricultural irrigation. The transfer benefits the contracting parties because they each hold water rights that are interruptible during periods of low flows in the Skagit River, preventing them from irrigating their fields when the Skagit River drops below the instream flow threshold.

There is mutual interest from DIID #15, CDID #22, Skagit Valley Farms, and the PUD to organize a longer-term agreement that includes temporary water rights transfers in non-drought years. Such an agreement will provide a secondary source of reliable water supply for each of the parties if flow in the Skagit River falls below the minimum instream flow rule. Many discussions have taken place in recent months to work towards a longer-term agreement.

Attached to this memo are the results of that work. The first attachment is a red-line copy of an interlocal agreement showing changes from the last version to the proposed final version. Each of the parties will receive a similar agreement, and the red-line version is for DIID #15. The other attachments are final versions with the changes accepted. The clean documents will be provided to each of the parties.

After these agreements are approved, PUD staff will work with the DOE to start the application process beginning with the publication of a public notice. It is anticipated the authorization will occur before the instream flow rule is activated.

Through discussions with our local partners and stakeholders, the conditions of the 2024 temporary water rights transfers will differ from previous years. Highlights of the proposed new conditions include:

- The temporary water rights transfer period will begin immediately following the transfer authorization and no earlier than May 15 and end on or before October 1.
- Pumping can occur under the agreement at any time of day, regardless of the tidal condition, up

to the maximum agreed-upon flow rate.

- A Skagit PUD metering device that records historical pumping data will be installed by Skagit PUD at each diversion point identified by this authorization.
- Each of the parties will compensate the PUD a water transfer fee of \$5,000 for the 2024 irrigation season at each diversion location.
- The water transfer fee will include all costs associated with the administration of the water transfers, a volume of 300 acre-feet to be used during the transfer period, and all equipment needed for the metering of the water that is pumped. Any water pumped over 300 acre-feet will be billed at \$13.50 per acre-foot.

Completing a temporary water rights transfer agreement for 2024 will provide water security to the parties for the upcoming irrigation season.

Fiscal Impact:

The water transfer fee will reimburse the PUD for all administrative costs, metering equipment, and the cost of the water being pumped. Therefore, the transfer agreement will have no financial impact on the PUD.

- Enclosures:
1. [2024 Redline Interlocal and Water Service Agreement](#)
 2. [2024 Interlocal CDID 22](#)
 3. [2024 Interlocal DIID 15](#)
 4. [2024 SVF Temporary Water Service Agreement](#)

**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 _____ 2024, by and between Drainage and Irrigation Improvement District #15 of Skagit County, herein referred to as “DIID #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 recognizes the impact and value of robust agricultural productivity on the overall health of the community; and

C. WHEREAS, DIID #15 is a special purpose district formed for drainage and irrigation improvement; and

D. WHEREAS, DIID #15 owns water rights on the Skagit River that allow them to [divert water for the purposes of irrigation of their](#)-agricultural fields, those rights are subject to the Skagit River Instream Flow Rule (WAC 173-503), and they are often unable to divert river flows during the summer months when irrigation is needed due to low river flows; and

E. WHEREAS, on four prior occasions, Skagit PUD has transferred a portion of its available uninterrupted water rights to DIID #15 during state-declared droughts after determining that the water used for this purpose was not essential for Skagit PUD operations during the transfer period; and

F. WHEREAS, DIID #15 benefits from a secondary source of reliable water during non-drought and drought conditions for ~~its~~-agricultural operations and planning [within the DIID #15](#); and

G. WHEREAS, both Skagit PUD and DIID #15 benefit from the development and implementation of a longer-term agreement to temporarily transfer certain Skagit PUD water rights to DIID #15 for seasonal use between [May 15 and October 1](#) of each year the agreement is valid; and

H. WHEREAS, Skagit PUD has reviewed its historical operational and water demand scenarios from [May 15 to October 1](#) and determined that a portion of its uninterrupted water rights are available over the next three years for temporary, seasonal use by DIID #15; and

I. WHEREAS, Skagit PUD endeavors to provide all customers within its retail service area with water where feasible, with the clarification that customers with permanent metered services are Skagit PUD’s first priority; and

J. WHEREAS, it is essential for Skagit PUD to establish reasonable and defensible water rates for the use of the water rights; and

K. WHEREAS, DIID #15 and Skagit PUD are each independently authorized by law to conduct such activity; and,

L. 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,

M. 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,

N. WHEREAS, it is necessary for DIID #15 and Skagit PUD to enter into an agreement setting forth the terms, conditions, and requirements for completing a temporary, seasonal water rights transfer.

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 conditions of the temporary change authorization are as follows:

i. Temporary 2024 Change Authorization. Skagit PUD will prepare an “Application for Change/Transfer of a Water Right” for submittal to the Washington State Department of Ecology (Ecology) for a temporary seasonal water rights transfer unrelated to any drought declaration. The application will request authorization for DIID #15 to divert surface water in 2024 from the Skagit River from **May 15, 2024, to October 1, 2024**.

ii. Withdrawal Terms

DIID #15 is only permitted to pump water from the established diversion points (shown in the attached figures) in the following amounts and are over and above those permitted in DIID #15’s interruptible water rights. **The amounts listed below are cumulative amounts for all of the diversions within DIID #15, and supersede variations from the amounts listed in Ecology authorizations.**

(1) Maximum total instantaneous rate of **2,500 gallons per minute (5.57 cfs)**

(2) Maximum total withdrawal of **1,000 acre-feet**

When the Skagit River is above the flows in the instream flow rule, any withdrawals will be counted against DIID #15’s interruptible water right. When the flows are below the flows in the instream flow rule, withdrawals will be counted against Skagit PUD’s water rights under the terms contained within this agreement and the change authorization from Ecology.

DIID #15 shall comply with all lawful conditions of the application and Ecology authorization documents.

Skagit PUD will make a reasonable attempt to obtain Ecology authorization for the water rights changes but cannot guarantee such approvals.

The following conditions are a requirement of this agreement and will be included in the applications. Additional conditions may be required by Ecology and may change from year to year:

(1) Water use under this authorization can occur at any time of day, regardless of the tidal condition, up to the maximum ~~cumulative~~ agreed-upon flow rate.

(2) A Skagit PUD metering device that records historical pumping data will be installed by Skagit PUD at each diversion point identified by this authorization. DIID #15 shall provide reasonable access to the irrigation pipelines to facilitate meter installation.

(3) Detailed written records ~~do not need to be kept. All data~~, including pumping flow rates, totalizer meter readings, and total volumes, will be collected by Skagit PUD. ~~This information will not be made public or shared with and provided to any interested stakeholders and partners until the end of the irrigation season when the final reports are submitted to Ecology.~~

iii. Duration

Surface water withdrawals by DIID #15 will be from **May 15, 2024, and ending on or before October 1, 2024**, contingent on Ecology authorization.

iv. Payment by DIID #15 to Skagit PUD

DIID #15 agrees to compensate Skagit PUD a non-refundable water transfer fee of **\$5,000** for the seasonal use of PUD water rights in 2024, which must be paid before **May 15**. The compensation includes the following:

- (1) Administrative fee for Skagit PUD staff to manage the water rights transfers and the data.**
- (2) Volume of 300 acre-feet of water to be used during the water rights transfer period. Any volume pumped over 300 acre-feet will be billed to DIID #15 at **\$13.50 per acre-foot**.**
- (3) Meter installation and maintenance fee for a single diversion location. There will be an **additional fee of \$1,000 for each added diversion** location to account for the extra metering equipment.**

The water meter and telemetry equipment shall be installed, owned, and maintained by Skagit PUD, similar to other metered customers. Skagit PUD will remove the equipment at the end of the irrigation season. DIID #15 can install their metering equipment on

the diversions for their operations, but only the Skagit PUD meter will be used to determine the total volume pumped using the PUD water right.

The water transfer fee must be paid by **May 15**, but the charges for any additional volume pumped over 300 acre-feet will be billed at the end of the irrigation season and must be paid by December 1.

v. Penalties for Non-Conformance

In the event that a maximum flow rate is exceeded over ~~two~~four, 15-minute intervals within any 12-hour period, during the seasonal pumping window or pumping occurs outside of that window, based on the information provided by the metering equipment, all withdrawals under this agreement shall stop immediately and will not resume until an investigation determines the cause. If there is evidence of negligence or intentional unauthorized withdrawals, a monetary penalty will be imposed by Skagit PUD upon DIID #15 of **\$500 per day** of non-compliance. DIID #15 agrees to pay all lawful regulatory monetary penalties arising from non-compliance to which Skagit PUD is subject caused by DIID#15.

vi. Interruption of Service

In the event of a declared operational emergency by the PUD Board of Commissioners where Skagit PUD requires the flexibility to use its full uninterruptible water right to serve its other customers with permanent metered services, the seasonal water rights transfer to DIID #15 may be reduced or canceled until the issues are resolved, and the emergency canceled.

AGREEMENT EXTENSION

2. The statement of work above is specific to the 2024 irrigation season. Skagit PUD intends to request this temporary authorization from Ecology for 2025 and 2026, but the terms and conditions of those transfers cannot be clearly described at this time. These future transfers are expected to have terms and conditions similar to this agreement. However, there may be a change to the water transfer fee based on more specific information regarding the staff effort of administration, the cost of the meter installation and maintenance, and the cost per acre-foot of water. If no specific change is calculated, an annual escalation based on the Consumer Price Index shall be applied. Also, DIID #15 may be responsible for additional fees or operational conditions originating from Ecology.

Skagit PUD will endeavor to complete the multi-year authorizations by the 2025 irrigation season but cannot guarantee such timelines.

Any time extension to this agreement beyond the 2026 irrigation season shall be negotiated in good faith by December 31, 2026. There is no expectation of continued service by either party and the terms of any extension may be revised.

INDEPENDENT CAPACITY

3. 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

4. Neither party shall be liable for damage or claims that 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. Each party, by entering into this agreement, does not waive or relinquish any of their statutory rights.

INDEMNIFICATION

5. DIID #15 agrees to defend, indemnify, and hold the Skagit PUD 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 agreement by DIID#15, 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

6. 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. DIID #15 cannot transfer, sell, or otherwise convey any of the water rights included in this agreement to any other parties.

DISPUTES

7. 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 the Skagit PUD general manager and the DIID #15 commissioners.

If a dispute cannot be resolved in the manner described above, the 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

8. This agreement shall be amended only by written mutual agreement of the parties. Any of the parties may initiate amendments to this agreement, but amendments shall not be considered until the first year of the agreement has passed. Amendments will become final after written agreement by all parties and appropriate signatories are executed.

TERMINATION

9. This agreement is effective from the date of signature by all parties and remains in effect until modified by written mutual agreement, termination, or completion of the seasonal water rights transfer, including satisfaction of all terms and conditions by DIID #15.

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 of Skagit County
Bill Trueman
Engineering Supervisor
Public Utility District No. 1 of Skagit County
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 that 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.
- 17. This agreement, and all of the terms contained herein, are non-precedent setting and shall have no bearing or influence on any discussions or negotiations for the future temporary transfer of water rights.

DATED this ____ day of _____, 2024.

Drainage and Irrigation Improvement District #15 of Skagit County

By: _____
Commissioner Position # _____

Public Utility District No. 1 of Skagit County

George Sidhu, P.E., General Manager

**INTERLOCAL AGREEMENT BETWEEN
CONSOLIDATED DIKING IMPROVEMENT DISTRICT #22
AND
PUBLIC UTILITY DISTRICT No. 1 OF SKAGIT COUNTY**

THIS AGREEMENT is made and entered into this _____ day of _____ 2024, by and between Consolidated Diking Improvement District #22 of Skagit County, herein referred to as “CDID #22” 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 recognizes the impact and value of robust agricultural productivity on the overall health of the community; and

C. WHEREAS, CDID #22 is a special purpose district formed for drainage and irrigation improvement; and

D. WHEREAS, CDID #22 owns water rights on the Skagit River that allow them to divert water for the purposes of irrigation of agricultural fields, those rights are subject to the Skagit River Instream Flow Rule (WAC 173-503), and they are often unable to divert river flows during the summer months when irrigation is needed due to low river flows; and

E. WHEREAS, on four prior occasions, Skagit PUD has transferred a portion of its available uninterrupted water rights to CDID #22 during state-declared droughts after determining that the water used for this purpose was not essential for Skagit PUD operations during the transfer period; and

F. WHEREAS, CDID #22 benefits from a secondary source of reliable water during non-drought and drought conditions for agricultural operations and planning within the CDID #22; and

G. WHEREAS, both Skagit PUD and CDID #22 benefit from the development and implementation of a longer-term agreement to temporarily transfer certain Skagit PUD water rights to CDID #22 for seasonal use between May 15 and October 1 of each year the agreement is valid; and

H. WHEREAS, Skagit PUD has reviewed its historical operational and water demand scenarios from May 15 to October 1 and determined that a portion of its uninterrupted water rights are available over the next three years for temporary, seasonal use by CDID #22; and

I. WHEREAS, Skagit PUD endeavors to provide all customers within its retail service area with water where feasible, with the clarification that customers with permanent metered services are Skagit PUD’s first priority; and

J. WHEREAS, it is essential for Skagit PUD to establish reasonable and defensible water rates for the use of the water rights; and

K. WHEREAS, CDID #22 and Skagit PUD are each independently authorized by law to conduct such activity; and,

L. 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,

M. 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,

N. WHEREAS, it is necessary for CDID #22 and Skagit PUD to enter into an agreement setting forth the terms, conditions, and requirements for completing a temporary, seasonal water rights transfer.

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 conditions of the temporary change authorization are as follows:
 - i. Temporary 2024 Change Authorization. Skagit PUD will prepare an “Application for Change/Transfer of a Water Right” for submittal to the Washington State Department of Ecology (Ecology) for a temporary seasonal water rights transfer unrelated to any drought declaration. The application will request authorization for CDID #22 to divert surface water in 2024 from the Skagit River from May 15, 2024, to October 1, 2024.

- ii. Withdrawal Terms

CDID #22 is only permitted to pump water from the established diversion points (shown in the attached figures) in the following amounts and are over and above those permitted in CDID #22’s interruptible water rights. **The amounts listed below are cumulative amounts for all of the diversions within CDID #22, and supersede variations from the amounts listed in Ecology authorizations.**

- (1) Maximum total instantaneous rate of 2,500 gallons per minute (5.57 cfs)
- (2) Maximum total withdrawal of 1,000 acre-feet

When the Skagit River is above the flows in the instream flow rule, any withdrawals will be counted against CDID #22’s interruptible water right. When the flows are below the flows in the instream flow rule, withdrawals will be counted against Skagit PUD’s water rights under the terms contained within this agreement and the change authorization from Ecology.

CDID #22 shall comply with all lawful conditions of the application and Ecology authorization documents.

Skagit PUD will make a reasonable attempt to obtain Ecology authorization for the water rights changes but cannot guarantee such approvals.

The following conditions are a requirement of this agreement and will be included in the applications. Additional conditions may be required by Ecology and may change from year to year:

(1) Water use under this authorization can occur at any time of day, regardless of the tidal condition, up to the maximum agreed-upon flow rate.

(2) A Skagit PUD metering device that records historical pumping data will be installed by Skagit PUD at each diversion point identified by this authorization. CDID #22 shall provide reasonable access to the irrigation pipelines to facilitate meter installation.

(3) Detailed written records, including pumping flow rates, totalizer meter readings, and total volumes, will be collected by Skagit PUD.

iii. Duration

Surface water withdrawals by CDID #22 will be from May 15, 2024, and ending on or before October 1, 2024, contingent on Ecology authorization.

iv. Payment by CDID #22 to Skagit PUD

CDID #22 agrees to compensate Skagit PUD a non-refundable water transfer fee of \$5,000 for the seasonal use of PUD water rights in 2024, which must be paid before May 15. The compensation includes the following:

(1) Administrative fee for Skagit PUD staff to manage the water rights transfers and the data.

(2) Volume of 300 acre-feet of water to be used during the water rights transfer period. Any volume pumped over 300 acre-feet will be billed to CDID #22 at \$13.50 per acre-foot.

(3) Meter installation and maintenance fee for a single diversion location. There will be an additional fee of \$1,000 for each added diversion location to account for the extra metering equipment.

The water meter and telemetry equipment shall be installed, owned, and maintained by Skagit PUD, similar to other metered customers. Skagit PUD will remove the equipment at the end of the irrigation season. CDID #22 can install their metering equipment on the diversions for their operations, but only the Skagit PUD meter will be used to determine the total volume pumped using the PUD water right.

The water transfer fee must be paid by May 15, but the charges for any additional volume pumped over 300 acre-feet will be billed at the end of the irrigation season and must be paid by December 1.

v. Penalties for Non-Conformance

In the event that a maximum flow rate is exceeded over four, 15-minute intervals within any 12-hour period during the seasonal pumping window or pumping occurs outside of that window, based on the information provided by the metering equipment, all withdrawals under this agreement shall stop immediately and will

not resume until an investigation determines the cause. If there is evidence of negligence or intentional unauthorized withdrawals, a monetary penalty will be imposed by Skagit PUD upon CDID #22 of \$500 per day of non-compliance. CDID #22 agrees to pay all lawful regulatory monetary penalties arising from non-compliance to which Skagit PUD is subject caused by DIID#15.

vi. Interruption of Service

In the event of a declared operational emergency by the PUD Board of Commissioners where Skagit PUD requires the flexibility to use its full uninterruptible water right to serve its other customers with permanent metered services, the seasonal water rights transfer to CDID #22 may be reduced or canceled until the issues are resolved, and the emergency canceled.

AGREEMENT EXTENSION

2. The statement of work above is specific to the 2024 irrigation season. Skagit PUD intends to request this temporary authorization from Ecology for 2025 and 2026, but the terms and conditions of those transfers cannot be clearly described at this time. These future transfers are expected to have terms and conditions similar to this agreement. However, there may be a change to the water transfer fee based on more specific information regarding the staff effort of administration, the cost of the meter installation and maintenance, and the cost per acre-foot of water. If no specific change is calculated, an annual escalation based on the Consumer Price Index shall be applied. Also, CDID #22 may be responsible for additional fees or operational conditions originating from Ecology.

Skagit PUD will endeavor to complete the multi-year authorizations by the 2025 irrigation season but cannot guarantee such timelines.

Any time extension to this agreement beyond the 2026 irrigation season shall be negotiated in good faith by December 31, 2026. There is no expectation of continued service by either party and the terms of any extension may be revised.

INDEPENDENT CAPACITY

3. 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

4. Neither party shall be liable for damage or claims that 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. Each party, by entering into this agreement, does not waive or relinquish any of their statutory rights.

INDEMNIFICATION

5. CDID #22 agrees to defend, indemnify, and hold the Skagit PUD 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 agreement by DIID#15, 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

6. 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. CDID #22 cannot transfer, sell, or otherwise convey any of the water rights included in this agreement to any other parties.

DISPUTES

7. 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 the Skagit PUD general manager and the CDID #22 commissioners.

If a dispute cannot be resolved in the manner described above, the 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

8. This agreement shall be amended only by written mutual agreement of the parties. Any of the parties may initiate amendments to this agreement, but amendments shall not be considered until the first year of the agreement has passed. Amendments will become final after written agreement by all parties and appropriate signatories are executed.

TERMINATION

9. This agreement is effective from the date of signature by all parties and remains in effect until modified by written mutual agreement, termination, or completion of the seasonal water rights transfer, including satisfaction of all terms and conditions by CDID #22.

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

Consolidated Diking Improvement District #22

Name: _____
Consolidated Diking Improvement District #22 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 that 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.
- 17. This agreement, and all of the terms contained herein, are non-precedent setting and shall have no bearing or influence on any discussions or negotiations for the future temporary transfer of water rights.

DATED this ____ day of _____, 2024.

Consolidated Diking Improvement District #22 of Skagit County

By: _____

Commissioner Position # _____

Public Utility District No. 1 of Skagit County

George Sidhu, P.E., General Manager

**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 _____ 2024, by and between Drainage and Irrigation Improvement District #15 of Skagit County, herein referred to as “DIID #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 recognizes the impact and value of robust agricultural productivity on the overall health of the community; and

C. WHEREAS, DIID #15 is a special purpose district formed for drainage and irrigation improvement; and

D. WHEREAS, DIID #15 owns water rights on the Skagit River that allow them to divert water for the purposes of irrigation of agricultural fields, those rights are subject to the Skagit River Instream Flow Rule (WAC 173-503), and they are often unable to divert river flows during the summer months when irrigation is needed due to low river flows; and

E. WHEREAS, on four prior occasions, Skagit PUD has transferred a portion of its available uninterrupted water rights to DIID #15 during state-declared droughts after determining that the water used for this purpose was not essential for Skagit PUD operations during the transfer period; and

F. WHEREAS, DIID #15 benefits from a secondary source of reliable water during non-drought and drought conditions for agricultural operations and planning within the DIID #15; and

G. WHEREAS, both Skagit PUD and DIID #15 benefit from the development and implementation of a longer-term agreement to temporarily transfer certain Skagit PUD water rights to DIID #15 for seasonal use between May 15 and October 1 of each year the agreement is valid; and

H. WHEREAS, Skagit PUD has reviewed its historical operational and water demand scenarios from May 15 to October 1 and determined that a portion of its uninterrupted water rights are available over the next three years for temporary, seasonal use by DIID #15; and

I. WHEREAS, Skagit PUD endeavors to provide all customers within its retail service area with water where feasible, with the clarification that customers with permanent metered services are Skagit PUD’s first priority; and

J. WHEREAS, it is essential for Skagit PUD to establish reasonable and defensible water rates for the use of the water rights; and

K. WHEREAS, DIID #15 and Skagit PUD are each independently authorized by law to conduct such activity; and,

L. 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,

M. 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,

N. WHEREAS, it is necessary for DIID #15 and Skagit PUD to enter into an agreement setting forth the terms, conditions, and requirements for completing a temporary, seasonal water rights transfer.

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 conditions of the temporary change authorization are as follows:

i. Temporary 2024 Change Authorization. Skagit PUD will prepare an “Application for Change/Transfer of a Water Right” for submittal to the Washington State Department of Ecology (Ecology) for a temporary seasonal water rights transfer unrelated to any drought declaration. The application will request authorization for DIID #15 to divert surface water in 2024 from the Skagit River from May 15, 2024, to October 1, 2024.

ii. Withdrawal Terms

DIID #15 is only permitted to pump water from the established diversion points (shown in the attached figures) in the following amounts and are over and above those permitted in DIID #15’s interruptible water rights. **The amounts listed below are cumulative amounts for all of the diversions within DIID #15, and supersede variations from the amounts listed in Ecology authorizations.**

(1) Maximum total instantaneous rate of 2,500 gallons per minute (5.57 cfs)

(2) Maximum total withdrawal of 1,000 acre-feet

When the Skagit River is above the flows in the instream flow rule, any withdrawals will be counted against DIID #15’s interruptible water right. When the flows are below the flows in the instream flow rule, withdrawals will be counted against Skagit PUD’s water rights under the terms contained within this agreement and the change authorization from Ecology.

DIID #15 shall comply with all lawful conditions of the application and Ecology authorization documents.

Skagit PUD will make a reasonable attempt to obtain Ecology authorization for the water rights changes but cannot guarantee such approvals.

The following conditions are a requirement of this agreement and will be included in the applications. Additional conditions may be required by Ecology and may change from year to year:

(1) Water use under this authorization can occur at any time of day, regardless of the tidal condition, up to the maximum agreed-upon flow rate.

(2) A Skagit PUD metering device that records historical pumping data will be installed by Skagit PUD at each diversion point identified by this authorization. DIID #15 shall provide reasonable access to the irrigation pipelines to facilitate meter installation.

(3) Detailed written records, including pumping flow rates, totalizer meter readings, and total volumes, will be collected by Skagit PUD.

iii. Duration

Surface water withdrawals by DIID #15 will be from May 15, 2024, and ending on or before October 1, 2024, contingent on Ecology authorization.

iv. Payment by DIID #15 to Skagit PUD

DIID #15 agrees to compensate Skagit PUD a non-refundable water transfer fee of \$5,000 for the seasonal use of PUD water rights in 2024, which must be paid before May 15. The compensation includes the following:

(1) Administrative fee for Skagit PUD staff to manage the water rights transfers and the data.

(2) Volume of 300 acre-feet of water to be used during the water rights transfer period. Any volume pumped over 300 acre-feet will be billed to DIID #15 at \$13.50 per acre-foot.

(3) Meter installation and maintenance fee for a single diversion location. There will be an additional fee of \$1,000 for each added diversion location to account for the extra metering equipment.

The water meter and telemetry equipment shall be installed, owned, and maintained by Skagit PUD, similar to other metered customers. Skagit PUD will remove the equipment at the end of the irrigation season. DIID #15 can install their metering equipment on the diversions for their operations, but only the Skagit PUD meter will be used to determine the total volume pumped using the PUD water right.

The water transfer fee must be paid by May 15, but the charges for any additional volume pumped over 300 acre-feet will be billed at the end of the irrigation season and must be paid by December 1.

v. Penalties for Non-Conformance

In the event that a maximum flow rate is exceeded over four, 15-minute intervals within any 12-hour period during the seasonal pumping window or pumping occurs outside of that window, based on the information provided by the metering equipment, all withdrawals under this agreement shall stop immediately and will not resume until an investigation determines the cause. If there is evidence of negligence or intentional unauthorized withdrawals, a monetary penalty will be imposed by Skagit PUD upon DIID #15 of \$500 per day of non-compliance. DIID #15 agrees to pay all lawful regulatory monetary penalties arising from non-compliance to which Skagit PUD is subject caused by DIID#15.

vi. Interruption of Service

In the event of a declared operational emergency by the PUD Board of Commissioners where Skagit PUD requires the flexibility to use its full uninterruptible water right to serve its other customers with permanent metered services, the seasonal water rights transfer to DIID #15 may be reduced or canceled until the issues are resolved, and the emergency canceled.

AGREEMENT EXTENSION

2. The statement of work above is specific to the 2024 irrigation season. Skagit PUD intends to request this temporary authorization from Ecology for 2025 and 2026, but the terms and conditions of those transfers cannot be clearly described at this time. These future transfers are expected to have terms and conditions similar to this agreement. However, there may be a change to the water transfer fee based on more specific information regarding the staff effort of administration, the cost of the meter installation and maintenance, and the cost per acre-foot of water. If no specific change is calculated, an annual escalation based on the Consumer Price Index shall be applied. Also, DIID #15 may be responsible for additional fees or operational conditions originating from Ecology.

Skagit PUD will endeavor to complete the multi-year authorizations by the 2025 irrigation season but cannot guarantee such timelines.

Any time extension to this agreement beyond the 2026 irrigation season shall be negotiated in good faith by December 31, 2026. There is no expectation of continued service by either party and the terms of any extension may be revised.

INDEPENDENT CAPACITY

3. 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

4. Neither party shall be liable for damage or claims that 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. Each party, by entering into this agreement, does not waive or relinquish any of their statutory rights.

INDEMNIFICATION

5. DIID #15 agrees to defend, indemnify, and hold the Skagit PUD 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 agreement by DIID#15, 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

6. 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. DIID #15 cannot transfer, sell, or otherwise convey any of the water rights included in this agreement to any other parties.

DISPUTES

7. 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 the Skagit PUD general manager and the DIID #15 commissioners.

If a dispute cannot be resolved in the manner described above, the 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

8. This agreement shall be amended only by written mutual agreement of the parties. Any of the parties may initiate amendments to this agreement, but amendments shall not be considered until the first year of the agreement has passed. Amendments will become final after written agreement by all parties and appropriate signatories are executed.

TERMINATION

9. This agreement is effective from the date of signature by all parties and remains in effect until modified by written mutual agreement, termination, or completion of the seasonal water rights transfer, including satisfaction of all terms and conditions by DIID #15.

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 of Skagit County
Bill Trueman
Engineering Supervisor
Public Utility District No. 1 of Skagit County
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 that 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.
17. This agreement, and all of the terms contained herein, are non-precedent setting and shall have no bearing or influence on any discussions or negotiations for the future temporary transfer of water rights.

DATED this ____ day of _____, 2024.

Drainage and Irrigation Improvement District #15 of Skagit County

By: _____
Commissioner Position # _____

Public Utility District No. 1 of Skagit County

George Sidhu, P.E., General Manager

**TEMPORARY WATER SERVICE AGREEMENT BETWEEN SKAGIT VALLEY FARM
LLC AND
PUBLIC UTILITY DISTRICT No. 1 OF SKAGIT COUNTY**

THIS AGREEMENT is made and entered into this _____ day of _____ 2024, by and between Skagit Valley Farm LLC, herein referred to as “SVF” 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 recognizes the impact and value of robust agricultural productivity on the overall health of the community; and

C. WHEREAS, SVF is a special purpose district formed for drainage and irrigation improvement; and

D. WHEREAS, SVF owns water rights on the Skagit River that allow them to divert water for the purposes of irrigation of agricultural fields, those rights are subject to the Skagit River Instream Flow Rule (WAC 173-503), and they are often unable to divert river flows during the summer months when irrigation is needed due to low river flows; and

E. WHEREAS, on four prior occasions, Skagit PUD has transferred a portion of its available uninterrupted water rights to SVF during state-declared droughts after determining that the water used for this purpose was not essential for Skagit PUD operations during the transfer period; and

F. WHEREAS, SVF benefits from a secondary source of reliable water during non-drought and drought conditions for its agricultural operations and planning, and Skagit PUD benefits from a direct water rights transfer to SVF so that the irrigation water does not need to be pumped, treated, stored and delivered through the Skagit PUD distribution system; and

G. WHEREAS, both Skagit PUD and SVF benefit from the development and implementation of a longer-term agreement to temporarily transfer certain Skagit PUD water rights to SVF for seasonal use between May 15 and October 1 of each year the agreement is valid; and

H. WHEREAS, Skagit PUD has reviewed its historical operational and water demand scenarios from May 15 to October 1 and determined that a portion of its uninterrupted water rights are available over the next three years for temporary, seasonal use by SVF; and

I. WHEREAS, Skagit PUD endeavors to provide all customers within its retail service area with water where feasible, with the clarification that customers with permanent metered services are Skagit PUD’s first priority; and

J. WHEREAS, it is essential for Skagit PUD to establish reasonable and defensible water rates for the use of the water rights; and

K. WHEREAS, SVF and Skagit PUD are each independently authorized by law to conduct such activity; and,

L. 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,

M. 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,

N. WHEREAS, it is necessary for SVF and Skagit PUD to enter into an agreement setting forth the terms, conditions, and requirements for completing a temporary, seasonal water rights transfer.

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 conditions of the temporary change authorization are as follows:

i. Temporary 2024 Change Authorization. Skagit PUD will prepare an “Application for Change/Transfer of a Water Right” for submittal to the Washington State Department of Ecology (Ecology) for a temporary seasonal water rights transfer unrelated to any drought declaration. The application will request authorization for SVF to divert surface water in 2024 from the Skagit River from May 15, 2024, to October 1, 2024.

ii. Withdrawal Terms

SVF is only permitted to pump water from the established diversion points (shown in the attached figures) in the following amounts and are over and above those permitted in SVF’s interruptible water rights. **The amounts listed below are cumulative amounts for all of the diversions within SVF, and supersede variations from the amounts listed in Ecology authorizations.**

(1) Maximum total instantaneous rate of 898 gallons per minute (2 cfs)

(2) Maximum total withdrawal of 400 acre-feet

When the Skagit River is above the flows in the instream flow rule, any withdrawals will be counted against SVF’s interruptible water right. When the flows are below the flows in the instream flow rule, withdrawals will be counted against Skagit PUD’s water rights under the terms contained within this agreement and the change authorization from Ecology.

SVF shall comply with all lawful conditions of the application and Ecology authorization documents.

Skagit PUD will make a reasonable attempt to obtain Ecology authorization for the water rights changes but cannot guarantee such approvals.

The following conditions are a requirement of this agreement and will be included in the applications. Additional conditions may be required by Ecology and may change from year to year:

(1) Water use under this authorization can occur at any time of day, regardless of the tidal condition, up to the maximum agreed-upon flow rate.

(2) A Skagit PUD metering device that records historical pumping data will be installed by Skagit PUD at each diversion point identified by this authorization. SVF shall provide reasonable access to the irrigation pipelines to facilitate meter installation.

(3) Detailed written records, including pumping flow rates, totalizer meter readings, and total volumes, will be collected by Skagit PUD.

iii. Duration

Surface water withdrawals by SVF will be from May 15, 2024, and ending on or before October 1, 2024, contingent on Ecology authorization.

iv. Payment by SVF to Skagit PUD

SVF agrees to compensate Skagit PUD a non-refundable water transfer fee of \$5,000 for the seasonal use of PUD water rights in 2024, which must be paid before May 15. The compensation includes the following:

(1) Administrative fee for Skagit PUD staff to manage the water rights transfers and the data.

(2) Volume of 300 acre-feet of water to be used during the water rights transfer period. Any volume pumped over 300 acre-feet will be billed to SVF at \$13.50 per acre-foot.

(3) Meter installation and maintenance fee for a single diversion location. There will be an additional fee of \$1,000 for each added diversion location to account for the extra metering equipment.

The water meter and telemetry equipment shall be installed, owned, and maintained by Skagit PUD, similar to other metered customers. Skagit PUD will remove the equipment at the end of the irrigation season. SVF can install their metering equipment on the diversions for their operations, but only the Skagit PUD meter will be used to determine the total volume pumped using the PUD water right.

The water transfer fee must be paid by May 15, but the charges for any additional volume pumped over 300 acre-feet will be billed at the end of the irrigation season and must be paid by December 1.

v. Penalties for Non-Conformance

In the event that a maximum flow rate is exceeded over four, 15-minute intervals within any 12-hour period during the seasonal pumping window or pumping occurs outside of that window, based on the information provided by the metering equipment, all withdrawals under this agreement shall stop immediately and will not resume until an investigation determines the cause. If there is evidence of negligence or intentional unauthorized withdrawals, a monetary penalty will be imposed by Skagit PUD upon SVF of \$500 per day of non-compliance. SVF agrees to pay all lawful regulatory monetary penalties arising from non-compliance to which Skagit PUD is subject caused by DIID#15.

vi. Interruption of Service

In the event of a declared operational emergency by the PUD Board of Commissioners where Skagit PUD requires the flexibility to use its full uninterruptible water right to serve its other customers with permanent metered services, the seasonal water rights transfer to SVF may be reduced or canceled until the issues are resolved, and the emergency canceled.

AGREEMENT EXTENSION

2. The statement of work above is specific to the 2024 irrigation season. Skagit PUD intends to request this temporary authorization from Ecology for 2025 and 2026, but the terms and conditions of those transfers cannot be clearly described at this time. These future transfers are expected to have terms and conditions similar to this agreement. However, there may be a change to the water transfer fee based on more specific information regarding the staff effort of administration, the cost of the meter installation and maintenance, and the cost per acre-foot of water. If no specific change is calculated, an annual escalation based on the Consumer Price Index shall be applied. Also, SVF may be responsible for additional fees or operational conditions originating from Ecology.

Skagit PUD will endeavor to complete the multi-year authorizations by the 2025 irrigation season but cannot guarantee such timelines.

Any time extension to this agreement beyond the 2026 irrigation season shall be negotiated in good faith by December 31, 2026. There is no expectation of continued service by either party and the terms of any extension may be revised.

INDEPENDENT CAPACITY

3. 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

4. Neither party shall be liable for damage or claims that 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. Each party, by entering into this agreement, does not waive or relinquish any of their statutory rights.

INDEMNIFICATION

5. SVF agrees to defend, indemnify, and hold the Skagit PUD 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 agreement by DIID#15, 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

6. 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. SVF cannot transfer, sell, or otherwise convey any of the water rights included in this agreement to any other parties.

DISPUTES

7. 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 the Skagit PUD general manager and the SVF commissioners.

If a dispute cannot be resolved in the manner described above, the 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

8. This agreement shall be amended only by written mutual agreement of the parties. Any of the parties may initiate amendments to this agreement, but amendments shall not be considered until the first year of the agreement has passed. Amendments will become final after written agreement by all parties and appropriate signatories are executed.

TERMINATION

9. This agreement is effective from the date of signature by all parties and remains in effect until modified by written mutual agreement, termination, or completion of the seasonal water rights transfer, including satisfaction of all terms and conditions by SVF.

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

Consolidated Diking Improvement District #22

Name: _____
Skagit Valley Farm LLC

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 that 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.
17. This agreement, and all of the terms contained herein, are non-precedent setting and shall have no bearing or influence on any discussions or negotiations for the future temporary transfer of water rights.

DATED this ____ day of _____, 2024.

Skagit Valley Farm LLC

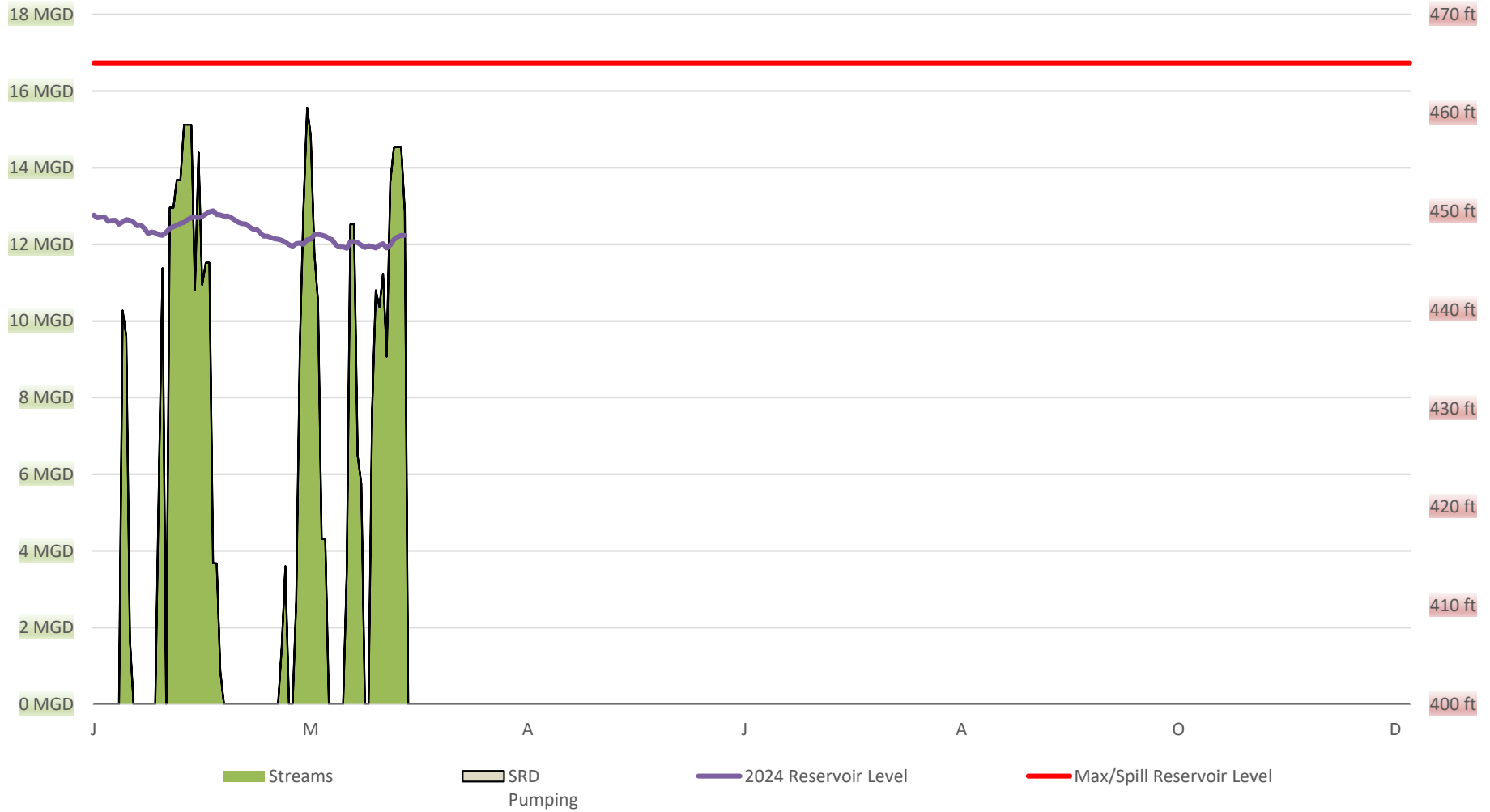
By: _____
Commissioner Position # _____

Public Utility District No. 1 of Skagit County

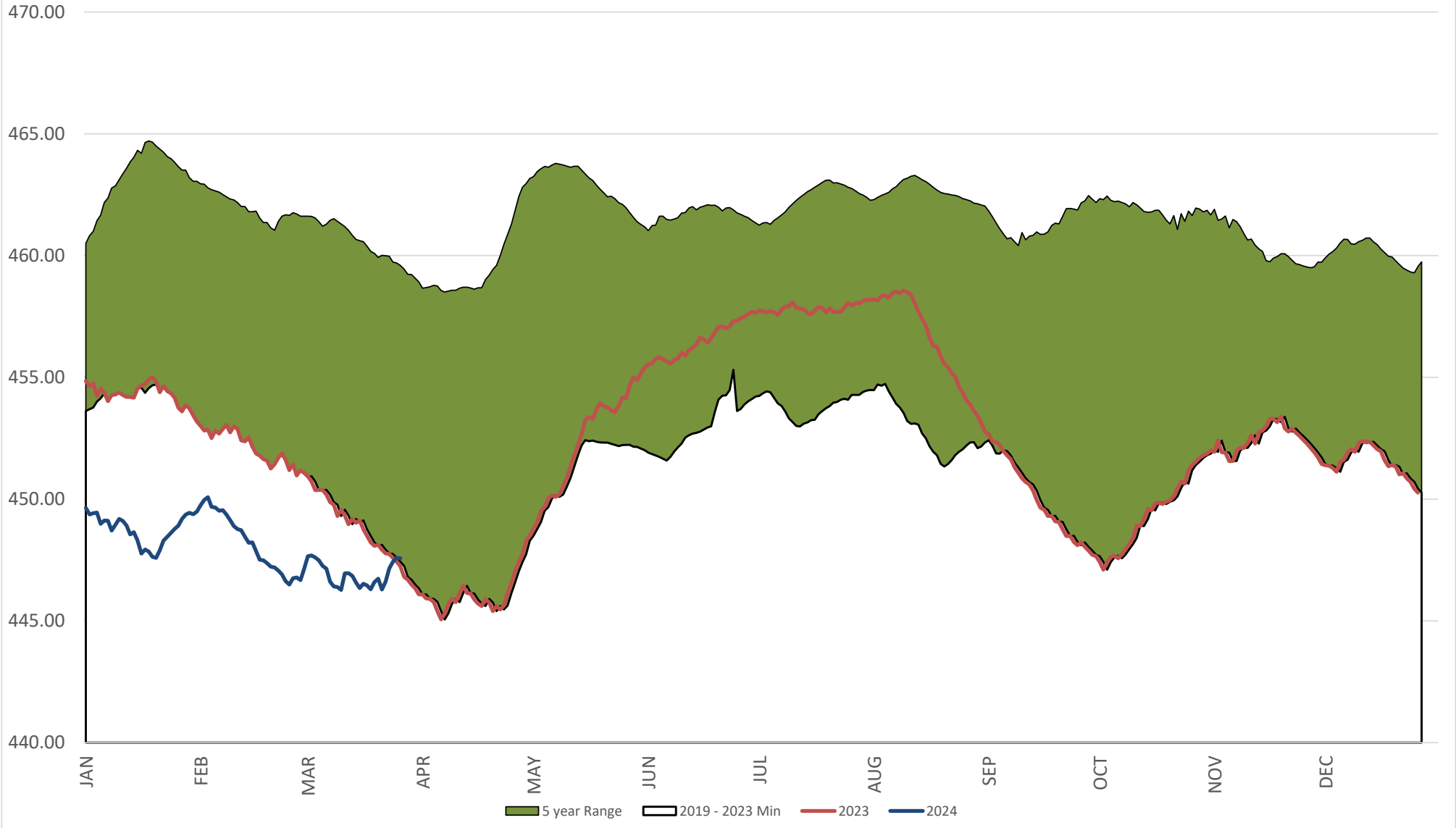
George Sidhu, P.E., General Manager

2024 Judy Reservoir Inflows & Elevation

March 20 Elevation:	446.59 (ft)
March 27 Elevation:	447.57 (ft)
Change in Elevation:	<u>0.98</u> (+ 11.8 Inches)
Spillway Elevation:	465.10
Stream Inflow YTD:	456.27 MG
Skagit River YTD:	0.00 MG



5-YEAR JUDY RESERVOIR ELEVATIONS



Skagit PUD wins area competition for the quality of its water

VINCE RICHARDSON Skagit Valley Herald
Mar 27, 2024



Judy Reservoir on April 21, 2021.
Skagit Valley Herald file

MOUNT VERNON — The Skagit Public Utility District's water is some of the best around, and it has the hardware to prove it.

The PUD's Marblemount water system placed first and its Judy Reservoir water third in the Best Tasting Water contest held March 20 by the American Water Works Association Northwest Subsection.

Others that were entered into the competition were water systems in Bellingham and Everett.

A three-judge panel critiqued water samples based on odor, taste and aftertaste.

"They know the elements in water they are looking for, and they judge who has the best tasting water," said Mike Fox, who has worked for the PUD for the past 33 years, including the past 13 as operations manager. "It's as simple as that."

The water is sampled at room temperature because dissolved gases, odors and tastes are more discernible at temperatures higher than chilled water.

"It's a blind taste test," Fox said. "The various water systems in the AWWA North Sound Subsection turn in samples of water by 1 p.m. on the day of judging, so it is allowed to come to room temperature before the tasting around 5 p.m."

Unlike some competitions, this one did not place water into specific categories such as treated and untreated.

The Marblemount system is a 163-foot deep, untreated groundwater well located on the North Cascades Highway, and serves about 30 households.

"Our Marblemount system is young water served right to the customers direct from the source," Fox said.

And getting the sample was about as simple as it gets.

Fox said the water comes in from the well, passes through a meter and goes to a tap nearby. That's where the sample was collected.

"We collect it as it comes right out of the pipe as it came out of the ground," he said.

The Judy Reservoir system supplies water to Burlington, Mount Vernon and Sedro-Woolley with water from watershed streams and the Skagit River. That water is treated at the PUD's water treatment plant with direct filtration.

"This water is finished with residual chloramines which is a milder, but longer lasting disinfection method," Fox said.

The next stop for the Marblemount and Judy Reservoir water is Spokane on May 1-3 for a sectional competition, where the Skagit PUD will go head to head with 10 to 15 water systems from Washington, Oregon and Idaho for Best Tasting Water regional honors.

Win there, and it's on to Anaheim, California, in June for the national showdown at the American Water Works Association Annual Conference and Exposition, where another panel of judges will rate each water sample on its flavor characteristics.

"So, if we make it there, we'll go against the best tasting water out of the Southwest, Central and East AWWA regions," Fox said.

Vince Richardson can be reached at 360-416-2181, vrichardson@skagitpublishing.com

Vince Richardson

Newsroom

