

**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 9th day of April 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: Riley Jungquist
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.

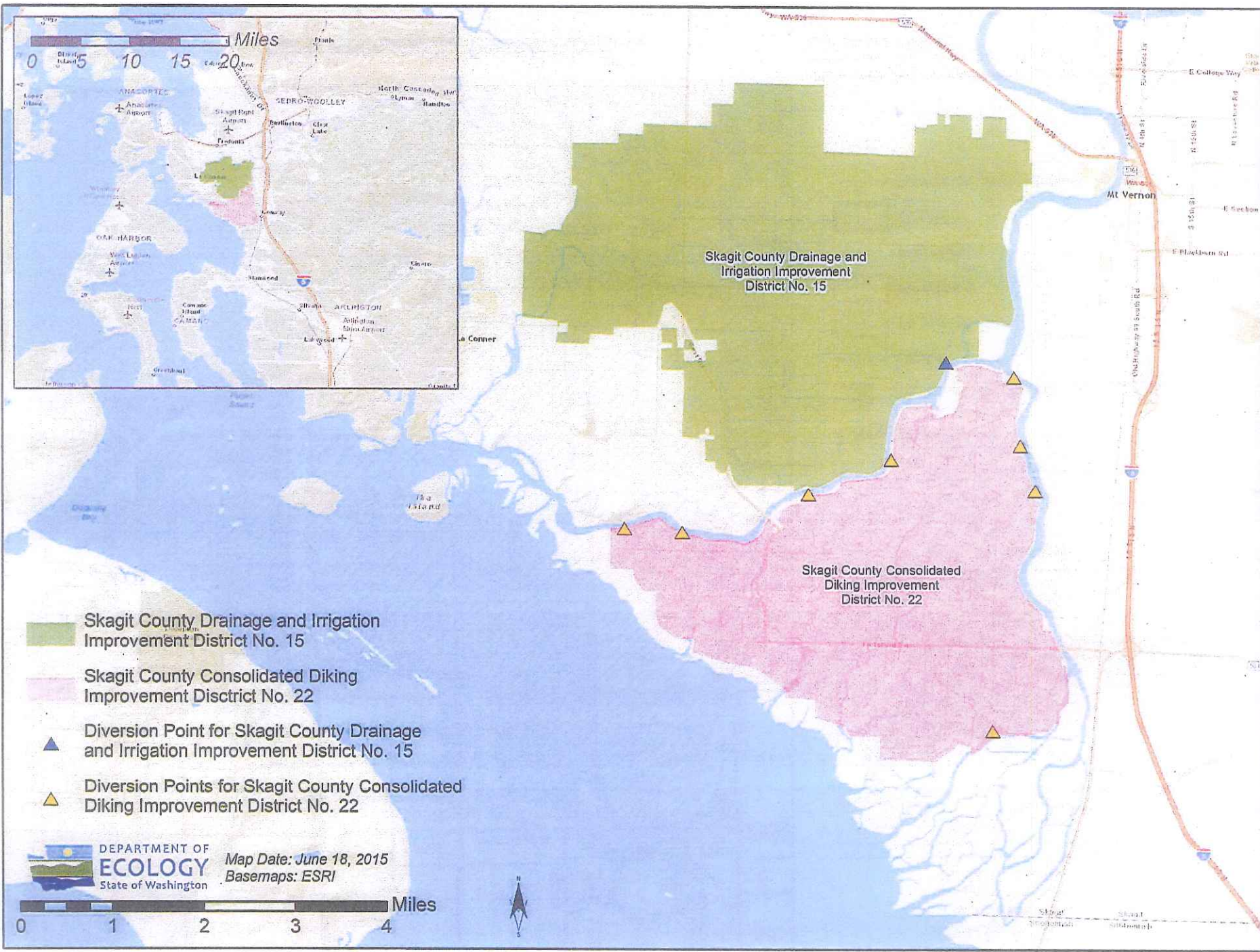
DATED this 9 day of April, 2024.

Drainage and Irrigation Improvement District #15 of Skagit County

By: 
Commissioner Position # 3
Nick Moga

Public Utility District No. 1 of Skagit County


George Sidhu, P.E., General Manager



- Skagit County Drainage and Irrigation Improvement District No. 15
- Skagit County Consolidated Diking Improvement District No. 22
- Diversion Point for Skagit County Drainage and Irrigation Improvement District No. 15
- Diversion Points for Skagit County Consolidated Diking Improvement District No. 22


DEPARTMENT OF ECOLOGY
 State of Washington

Map Date: June 18, 2015
Basemaps: ESRI

