

Interlocal Agreement between Okanogan Conservation District and Okanogan County Commissioners

This Agreement is made and entered into between the Okanogan Conservation District (OCD) and the Board of Okanogan County Commissioners (BOCC).

WHEREAS, OCD and BOCC have jurisdiction to enter into this agreement as provided in RCW Chapter 89.08 (Conservation Districts Act), RCW Chapter 36.70 (Planning Enabling Act), and RCW Chapter 39.34 (Interlocal Cooperation Act); and

WHEREAS, water resources in Okanogan County are broadly defined by Chapter 173-548 WAC (Methow River Basin WRIA 48), Chapter 173-549 WAC (Okanogan River Basin WRIA 49), and Chapter 173-563 WAC (mainstem Columbia River) which specify minimum instream flows, consultation requirements, reservations, and tributary closures.

WHEREAS, unless mitigated or qualified for a mainstem reserve set aside for single domestic and stock water use (per WAC 173-548 the Methow Instream Flow Rule), these Rules may result in limited legal availability of water for new consumptive uses and/or curtailment of junior water rights during periods of low flow; and

WHEREAS, OCD and BOCC wish to jointly develop the Okanogan County Water Bank (OCWB), consisting of a suite of water rights held in the State Trust Water Right Program; and

WHEREAS, OCWB is managed under the current governing Master Trust Water Right Agreement (TWA) as may be amended between the OCD and the Washington State Department of Ecology (Ecology); and

WHEREAS, OCD and BOCC recognize that the primary purpose of the water bank is to retain water rights in headwater watersheds within the County and to provide reliable legal water supply for new uses for Okanogan County residents; and

WHEREAS, OCD and BOCC shall work cooperatively with Ecology and other stakeholders to identify, evaluate, secure, and manage water rights that can be used for mitigation for new uses.

NOW, THEREFORE, in consideration of the mutual benefits to be derived from this agreement, OCD and BOCC agree as follows.

1. Water Bank Operations: The OCD shall operate the OCWB on a day-to-day basis. OCD and BOCC shall jointly develop water bank priorities, policies, and operational guidelines. Operational guidance will be adopted by resolution by OCD. Okanogan County will develop water mitigation policies and rules as may be deemed necessary to allow access to the water bank for development within the County.
2. Water Bank Priorities: Water right acquisitions and distribution will be prioritized by both the OCD and BOCC, subject to established priorities, available funding, and public input. Priorities may be reviewed on an annual basis and updated as needed by a joint decision of the OCD and BOCC. Where feasible and appropriate, OCD and BOCC shall seek public input from community members and stakeholders on water bank priorities, management, and operations.
3. Cost of Services: The OCD and BOCC shall jointly approve the value of water for mitigation at the time water is acquired based upon the value of the water at the time of acquisition, including cost related to permitting new mitigated uses and ongoing management of the OCWB, including both direct and indirect costs. This valuation may be revisited on an annual basis and updated by a joint decision of the OCD and BOCC.
4. Termination: Either party may terminate this agreement by giving the other written notice by e-mail or mail, at least 365 days in advance of termination date, to the appropriate address as noted below. Termination of this agreement under this section becomes effective 365 days following the date of delivery of the written notice, or later as mutually agreed by the parties, Notices are to be sent to:

Okanogan Conservation District
1251 S 2nd Ave, Rm 102
Okanogan, WA 98840
craig@okanogancd.org

Board of Okanogan County Commissioners
123 5th Ave. North,
Okanogan, WA 98840
ljohns@co.okanogan.wa.us

5. Records Maintenance: OCD and BOCC shall each maintain books, records, documents, and other evidence that sufficiently and properly reflect all direct and indirect costs expended by either party in the performance of the services described herein and agrees to make the same available for inspection as needed during usual business hours. All work products to include but not be limited to documents, maps, charts, graphs, and mailing

lists created as a result of this agreement is the property of OCD. Nothing in this agreement prohibits BOCC from retaining copies of all work products.

6. INDEMNIFICATION. The OCD and the BOCC shall defend, indemnify and hold each other harmless from and against any and all claims, demands, losses and liabilities to or by third parties arising from, resulting from, or connected with, services performed or to be performed under this contract to the fullest extent permitted by law whether arising from contract liability(ies) or otherwise.

This mutual duty to indemnify shall not apply to liability from damages arising out of bodily injury to persons or damages to the property caused by, or resulting from, the sole negligence of either the County or the District, or their respective officers, agents, and employees.

This mutual duty to indemnify for liability for damages arising out of bodily injury to persons or damages to property caused by or resulting from the concurrent negligence of either the County's or the District's agents or employees, subcontractors and suppliers, shall apply only to the extent of negligence of the damages caused by or resulting from the concurrent negligence of the County's or the District's agents, employees, subcontractors and suppliers.

The County and the District specifically and expressly waive any immunity that may be granted under the Washington State Industrial Act, Title 51, RCW. Further, the indemnification obligation under this Contract shall not be limited in any way by any limitation on the amount of type of damages, compensation, benefits payable to or by any third party under Worker's Compensation Acts, Disability Benefits Acts, or other employee benefit acts.

This mutual duty to defend, indemnify, and hold harmless shall include all related costs, reasonable attorney fees, court costs and related expenses asserted against or incurred by either party, or their officers, agents and employees.

The parties hereby certify that these indemnification provisions were mutually negotiated and agreed to by the parties.

7. Agreement Alterations and Amendments: OCD and BOCC may mutually amend this agreement. Such amendments shall not be binding unless they are in writing and signed by personnel authorized to bind OCD and BOCC.
8. Conflict Resolution: If a dispute arises out of or relates to this contract, or the breach thereof, and if the dispute cannot be settled through negotiation, OCD and BOCC agree first to try in good faith to settle the dispute by mediation administered by the American

Arbitration Association under its Government Mediation Procedures before resorting to arbitration, litigation, or some other dispute resolution procedure.

9. All Writings Contained Herein: This Agreement contains all the terms and conditions agreed upon by the parties relative to the Okanogan County Water Bank. No other understandings, oral or otherwise, regarding the subject matter of this Agreement shall be deemed to exist or bind any of the parties hereto.

10. Governance: This agreement is entered into pursuant to and under the authority granted by RCW 39.34 (the Interlocal Cooperation Act). 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:

- a. Applicable state and federal statutes and rules; and
- b. Any other provisions of the agreement, including materials incorporated by reference.

11. Filing: Prior to its entry into force, an executed copy of this agreement shall be filed as required with the Auditor or listed by subject on each party's web site pursuant to RCW 39.34.040.

12. Effective Date: The effective date of this agreement is October 1, 2023 and will expire September 30, 2033 or when replaced or superseded unless terminated earlier at the written election of either party.

Dated at Okanogan, Washington this 26th day of December 2023.

OKANOGAN CONSERVATION DISTRICT

Lorah Super 1/4/2024
By Lorah Super, Chair Date



**BOARD OF COUNTY COMMISSIONERS
OKANOGAN, WASHINGTON**

Approved Remotely
Chris Branch, Chairman

[Signature]
Andy Hover, Member

[Signature]
Jon Neal, Member

ATTEST:
[Signature]
Laleña Johns, CMC, Clerk of the Board