

RESOLUTION NO. 09 - 13499

A RESOLUTION ADOPTING A WATER RIGHTS
ACQUISITION POLICY

FACTUAL BACKGROUND AND REASONS FOR ACTION

District staff has identified a need for a policy to provide a means for the District to acquire water rights to support new development within the approved service areas of the Chelan Ridge, Dryden and Olalla Canyon Municipal Water Systems and any future Municipal Water System maintained and operated solely by the District (collectively the "Municipal Water Systems").

The policy will not apply to the District's Municipal Water System included in the regional water system serving the Greater Wenatchee Valley which is jointly owned by the District, the City of Wenatchee and the East Wenatchee Water District, pursuant to the Regional Water System Contract.

The purpose of the policy will be achieved through the transfer of water rights to the District or the payment of fees to the District to be used to acquire additional water rights as a condition of receiving water service from one of the District's Municipal Water Systems. The purpose for requiring a transfer of water rights or payment in lieu thereof is to enhance the public health, safety and welfare by providing a means for the District to meet the future water service needs of property that may connect to the District's Municipal Water Systems.

District staff recommends that it is in the best interest of the District to adopt the Water Rights Acquisition Policy as attached hereto as Exhibit A.

The General Manager of the District has reviewed staff's recommendation and concurs in the same.

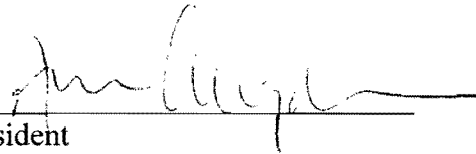
ACTION

IT IS RESOLVED BY THE COMMISSION OF PUBLIC UTILITY
DISTRICT NO. 1 OF CHELAN COUNTY, WASHINGTON, as follows:

Section 1. The District's Water Rights Acquisition Policy is determined by the Commission to be fair, reasonable, necessary and non-discriminatory and is hereby adopted as set forth in Exhibit A, effective immediately.

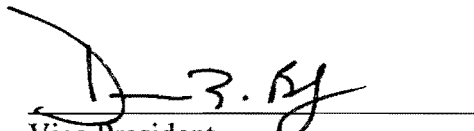
Section 2. The adoption of the Water Rights Acquisition Policy is exempt from the State Environmental Policy Act (SEPA).

Dated this 5th day of October 2009.

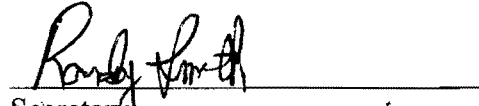


President


ATTEST:




Vice President



Secretary



Commissioner



Commissioner

Seal

Water Rights Acquisition Policy

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WATER RIGHTS ACQUISITION POLICY

1. Purpose

The purpose of this policy is to provide a means for the District to acquire water rights to support new development within the approved service areas of the Chelan Ridge, Dryden, and Olalla Canyon Municipal Water Systems and any future Municipal Water System maintained and operated and maintained solely by the District (collectively the "Municipal Water Systems").

This policy does not apply to the District's Municipal Water System included in the regional water system serving the Greater Wenatchee Valley jointly owned by the City of Wenatchee, the East Wenatchee Water District and the District, pursuant to the Regional Water System Contract.

The purpose of this policy shall be achieved through the transfer of water rights to the District or the payment of fees to the District to be used to acquire additional water rights as a condition of receiving Water Service from one of the District's Municipal Water Systems. The purpose for requiring a transfer of water rights or payment in lieu thereof is to enhance the public health, safety, and welfare by providing a means for the District to meet the future Water Service needs of property that may connect to the District's Municipal Water Systems.

2. General Provisions

- A. No Water Connection to the District's Municipal Water Systems shall be allowed or permitted until the Applicant has fully complied with this policy and, if applicable, the water rights have been successfully transferred, or, if permitted by the District, the payment in lieu of such transfer has occurred.
- B. To be considered for a Water Connection as set forth in this policy, the Applicant shall submit a complete Application on a form prepared by the District, together with all information reasonably requested by the District in order to process the Application.
- C. Nothing in this policy shall obligate the District to provide a Water Connection outside of the District's service area most recently approved by the Department of Health. The decision whether to request or pursue a revision in the boundaries of the Municipal Water System beyond that contained in an approved service area is committed to the sole discretion of the District.
- D. Nothing in this policy guarantees that a Water Connection or Water Service will be available within the approved service area. Water Service within the

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approved service area is generally available on a first come, first serve basis, and is subject to water availability, system limitations and other considerations.

- E. The District reserves the right to declare moratoria, establish limitations on water use, and adopt other measures to preserve the Municipal Water Systems, especially in times where water availability is a concern due to limitations within existing water right documents (such as permits, claims, certificates, etc.), drought, emergency, or otherwise

3. Definitions

The following terms wherever used in this Water Rights Acquisition Policy, Rate Schedules and in any Application or Line Extension Agreement shall have the following meanings and will be supplemented by the definitions in the District's Utility Service Regulations and the District's Design and Construction Standards (In the event of conflict, these definitions will control Water Rights Acquisitions):

A. Applicant

The person, partnership, firm, corporation, entity, or municipal corporation having filed an Application and who is qualified (by reason of property ownership) to obtain Water Connection from one of the Municipal Water Systems solely owned and operated by the District.

B. Application

A complete Application is required prior to the District review of the same. An Application shall be made on a form prepared by the District and will include all information reasonably requested by the District in order to process the request for Water Connection. A complete Application is required prior to the District's review. An Application shall only be found to be complete if the Applicant has submitted satisfactory evidence to the District, as determined by the District, that the water right or rights sought to be transferred to the District in furtherance of this policy are in good standing and not subject to relinquishment or abandonment, and that the Applicant can demonstrate beneficial use of the water in amounts equal to the amounts that will need to be transferred to the District to satisfy this policy.

C. Benefited Property

The real property owned by the Applicant that will benefit from the Water Connection.

D. Comprehensive Water Plan

The District's water system planning document(s) prepared in accordance with applicable laws and regulations, including Chapter 246-290 of the Washington Administrative Code (as they now exists or is hereafter amended) and approved by the Washington State Department of Health.

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E. District

Public Utility District No. 1 of Chelan County, Washington

F. Estimated Equivalent Residential Usage or ERU

The volume of water, measured in gallons per day, used by the average residential customer of the subject water system, as determined by the District.

G. Manager

The Executive Manager of Operations or a person in another position employed by the District as appointed by the General Manager.

H. Municipal Water System

Chelan Ridge, Dryden and Olalla Canyon Municipal Water Systems and any future Municipal Water System owned, maintained and operated solely by the District.

I. RCW

Revised Code of Washington

J. Water Connection

A request for a point of connection to a District Municipal Water System as set forth in this policy to facilitate Water Service to the Benefited Property.

K. Water Service

The availability of water at a point of delivery for use by the Applicant, irrespective of whether water is actually used, as defined by the District Utility Service Regulations, as they now exist or are hereafter amended.

4. Types of Water Rights

This policy shall apply to all of the various types of water rights or rights to water that are appurtenant to or associated with the real property that is subject to this policy (excluding shares in an irrigation district formed pursuant to RCW Chapter 87.03 or water rights held by federal reclamation projects), and shall include all real and personal property interests in and to the water rights at issue. For example, the various types of water rights subject to this policy include, but are not necessarily limited to, the following: permits, certificates, adjudicated water rights, and claims issued by or on file with the Washington State Department of Ecology, or any of its predecessors.

5. Line Extensions

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Prior to approval of any line extension (as defined by the District's Water/Wastewater Line Extension Policy, as it now exists or is hereafter amended) to any real property (inside or outside a service area approved by the Department of Health), the Applicant shall obtain an approved Water Connection for the Benefited Property subject to the provisions of this policy.

6. Water Connection

- A. The owner of a legal lot of record existing as of the date this policy is adopted and located within a present service area approved by the Department of Health, who seeks a Water Connection to the District's Municipal Water System shall not be required to transfer water rights or make a payment in lieu of a water right transfer to this policy; provided that said Water Connection shall be for a single family dwelling and said dwelling does not have a water demand greater than one equivalent residential unit (ERU). If the conditions of this subsection 6(A) have been satisfied, then the Application shall be marked "Exempt".
- B. Prior to the approval of Water Connection outside of the District's service area, as determined by the most recent Comprehensive Water Plan, the District may, but is not required to, initiate the steps, at the Applicant's expense, to amend the approved service area to include the Benefited Property. If the District elects not to pursue an amendment to the applicable Comprehensive Water Plan, or after initiating the steps the District elects to no longer pursue an amendment to the applicable Comprehensive Water Plan, or the amendment to include the Benefited Property is denied by the Department of Health or challenged by a third party, then the request for the Water Service shall be deemed denied.
- C. Except as provided in Section 6(A), above, any Applicant seeking Water Connection to one of the District's Municipal Water Systems shall comply with one of the following conditions, as determined by the District (listed in order of preference):
 - i. Transfer water rights associated with the Benefited Property to the District consistent with this policy; or
 - ii. Transfer water rights from another source (unrelated to the Benefited Property) to the District consistent with this policy; or
 - iii. Submit a payment in lieu of a water right transfer consistent with this policy.
- D. At the sole discretion of the District, the District may accept a bond to proceed with a project for which Water Connection is sought equal to the payment in lieu amount which shall be payable to the District in the event the water right transfer is not successful, in whole or in part. The bond shall be in a form acceptable to the District in its sole discretion.

7. Amount of Water and Payment in Lieu; Costs

A. Water Use Determination

The amount of water rights to be transferred to the District pursuant to Section 6 shall be sufficient to serve the estimated equivalent residential units (ERUs) necessary for the development of the Benefited Property as described in the Application and related development permits sought by the Applicant. This determination shall be made by the Manager after receipt of a complete Application, as determined by the District. A determination will be communicated in writing to the Applicant.

B. Excess Water Rights

To the extent the water rights associated with the Benefited Property identified in the Application exceed (i) the anticipated water usage for the Benefited Property as determined pursuant to Section 7(A), and (ii) water rights retained by the Applicant for use solely on the Benefited Property identified in the Application for the irrigation of open space or common areas, or for recreational purposes or amenities identified in the Application and development permits sought by the Applicant, the District in its sole discretion may:

- i. Negotiate with the Applicant to transfer some or all of the excess water rights to the District and the District shall pay the Applicant for the excess water rights to be transferred to the District an amount to be agreed upon by the Applicant and the District.
- ii. Allow said owner to transfer the excess water rights to the District in exchange for credits (converted to ERUs) to be applied to other property owned by said Applicant within the same approved service area, subject to the provisions of this policy when the Applicant seeks to connect said other property to the District's Municipal Water System.

In the event the excess water rights are transferred to the District, the transfer will be processed simultaneously with and part of the transfer process outlined in Section 10, and the District shall be responsible for the proportionate share of the transfer costs attributable to the excess water rights. In the event the District does not acquire excess water rights, then the Applicant may transfer and use said excess water rights without further involvement of the District.

C. Previous Compliance with Policy

As part of the analysis of the amount of water that must be transferred to the District, if the Applicant demonstrates to the District's satisfaction that the property benefited by the Application was previously subject to the provisions of this policy and water was transferred to the District in furtherance of that prior Application, then the District shall take into consideration and provide appropriate credit for property that was previously subject to the provisions of this policy.

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D. Ability to Complete Transfer/Determination of District Best Interest

In the event the District requires the transfer of water rights, one aspect of the investigation associated with the change application that must be processed to complete the transfer is whether the existing point of withdrawal or diversion for the Applicant's water right is in hydraulic continuity with the District's point of withdrawal or diversion associated with the particular Municipal Water System. In addition, there are a number of issues that can arise during the change application process, including but not limited to matters involving the instantaneous rate of withdrawal or diversion, beneficial use, annual use limitations, instream flow conditions, relinquishment, abandonment concerns, any future or anticipated costs that may relate to or arise from the water right that may be imposed on or incurred by the District, and/or issues which may impact the best interest of the District and which District will consider in its decision on whether or not to proceed with the change application and the Application. The Applicant must provide proof, satisfactory to the District, that the Applicant currently owns and has the perfected title to the water rights to be transferred. The Applicant grants the District access to the Benefited Property if inspection of that property is deemed necessary by the District. The Applicant shall cooperate in requests for further information as deemed appropriate by the District.

If after commencing the change application process, the District elects to no longer pursue the change application, which decision is committed to the District's discretion, then the District may, in its sole discretion, (i) cancel the Application, or (ii) require the Applicant to transfer other water rights, or (iii) require the Applicant to pay the District the amount determined pursuant to Section 7(E) in lieu of the transfer of water rights.

E. Payment in Lieu

In the event water rights are not transferred to the District in an amount sufficient to meet the anticipated demand, expressed in ERUs, of the Benefited Property, then the District may elect to have the owner(s) of the Benefited Property pay to the District, at the then current market value as determined by the District, the value of the ERUs the District estimates will be necessary to serve the Benefited Property as determined in Section 7(A). For example, if no water rights are transferred to the District, the Manager shall use a per-ERU value to compute the payment in lieu for the Benefited Property. Further, if some water rights are transferred to the District, but are not adequate to serve the anticipated demand of the Benefited Property, the deficiency shall be computed in ERU's and the Manager shall use a per-ERU value to compute the payment in lieu for the water demand deficiency associated with the Benefited Property.

The payment in lieu process is committed to the sole discretion of the District and may not be an available option for the Applicant, in which event, the Application will be denied by the District if the Applicant is unable to transfer sufficient water rights to the District consistent with this policy.

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F. Payment of Costs

The Applicant shall pay the District a deposit in the estimated amount to cover all costs associated with:

- i. The District's determination of the anticipated water usage for the Benefited Property and current market value of an ERU of water and all costs associated with the transfer of water rights to the District.
- ii. The costs associated with completing the transfer of the water rights to the District. The Applicants who make payment to the District in lieu of transfer of water rights to the District shall also pay the District's estimated costs of processing the transfer and acquisition of the water rights in the future.

The term "costs" as used in this sub-section shall include, but is not limited to, District staff time, engineering fees, attorneys fees, consultant fees, Application fees, Chelan County Water Conservancy Board Fees, publication fees, and any other fees or charges associated with processing and recording the transfer and acquisition of water rights.

If the deposit is inadequate to cover all costs, the Applicant shall be responsible to pay an additional deposit for additional costs or immediately reimburse the District for costs incurred as requested by the District.

8. Ownership of Water Rights by the District

All water rights transferred to the District pursuant to this policy shall become assets of the District.

9. Payments Received by the District

The District is an integrated utility under Washington State laws. All money paid pursuant to this policy shall be paid directly to the District.

10. Form of Transfer and Conveyance of Water Right

The transfer of water rights pursuant to this policy shall be in such forms as may be required and approved by the District as determined by the District in its sole discretion to be adequate. Applicants transferring water rights pursuant to this policy shall execute all documents required by the District and/or any other governmental entity that may be necessary to achieve the purposes of this policy. Those documents may include, but are not limited to, a change application seeking to change the point of diversion, the place of use, the purpose of use, and any other documents or forms. The District will diligently pursue approval of the water right transfer. In order for a water right transfer to be completed:

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- a. The water right transfer must ultimately be approved by the Department of Ecology and all appeal periods must have expired without challenge.
- b. The water right must be changed to a municipal water right.
- c. The Benefited Property is included within a Municipal Water System service area that is approved by the Department of Health.
- d. The Applicant transferring water rights pursuant to this policy must convey the water right to the District by Statutory Warranty Deed or other appropriate conveyance instrument, as determined by the District, upon completion of the water right transfer.
- e. The Applicant shall pay the real estate excise tax, fees and costs associated with the transfer.

11. Commitment by District

Effective upon the date the water rights are successfully transferred and conveyed to the District as required by this policy and for a period of ten (10) years thereafter, the District shall make available to the Benefited Property, water usage in amounts at least equal to the amount of water usage transferred to the District by the Applicant. The requirement of the District to make available this water usage shall not be construed to require the District to construct any District water system extensions or improvements that may be necessary to serve the Benefited Property. Any such District water system extensions or improvements shall be constructed by the Applicant at the Applicant's expense. In the event a building permit is denied within the above ten (10) year period solely because the water rights associated with the applicable Municipal Water System are not adequate to serve the property that is the subject of the building permit, and the property for which said building permit is sought was previously subject to the provisions of this policy resulting in a transfer and conveyance of water rights or the payment in lieu thereof to the District, then the building permit Applicant, as the sole and exclusive remedy, shall receive a payment equal to the ERU(s) originally attributed to said property at the value established at the time of the original Application (all as determined by the Manager) without interest from the date of the original Application.

12. Appeals

Any decision specifically committed to the Manager will be reviewed by the General Manager; provided the Applicant serves a written notice to the District requesting the review within 14 calendar days of the issuance of the written recommendation of the Manager. If a written notice requesting review is not timely served upon the District, then the Manager's recommendation shall be the final decision of the District. If a written notice requesting review is timely served on the District, the General Manager shall review the recommendation of the Manager and issue a final decision within 20 calendar days of the service of the notice requesting review on the District. If no action is taken by the District within said 20 calendar days, then the recommendation of the Manager shall be the final decision of the District. Any final decision within the

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limited scope of this Section 12 may be appealed for abuse of discretion by filing an appeal in the Chelan County Superior Court within 21 calendar days of the date of the final decision.