

Selah-Moxee Irrigation District

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Resolution 2022-09

A RESOLUTION GOVERNING ADMINISTRATION OF THE DISTRICT WATER BANK

Whereas, the Selah-Moxee Irrigation District (District) has an \$100 million dollar capital improvement program needed to modernize its irrigation system; and

Whereas, the District has been unable to effectively secure grants and loans for the capital improvement program sufficient to avoid unreasonably burdensome assessments to its members; and

Whereas, the District has created surplus water savings through numerous conservation projects over the last 20 years; and

Whereas, those surplus water savings have significant value and can be sold, leased, or otherwise managed as a revenue source to offset the required capital improvements; and

Whereas, the District received approval from the Department of Ecology (Ecology) on June 23, 2021 to transfer and manage 9,083.11 consumptive acre-feet/year (afy) of surplus water savings into the State Trust Water Right Program (RCW 90.42); and

Whereas, the District and Ecology entered into a Trust Water Agreement (TWA) on November 18, 2021 that governs the use, monitoring, tracking, permitting, and administration of surplus water in the SMID Water Bank; and

Whereas, the District has a need to adopt business rules and procedures regarding the fair, transparent, and efficient management of these surplus water savings;

Now Therefore, Be It Resolved, that the Selah-Moxee Irrigation District Board (the “District Board”) approves the creation of the SMID Water Bank and the associated rules and procedures outlined herein.

General Authority

1. The District may sell, lease, enter into water service contracts, or charge assessments for the use of its surplus water savings.
2. Funds collected from the use of its surplus water savings will first offset operational costs associated with operating the SMID Water Bank, and then be deposited in a capital fund to implement the SMID capital improvement program.
3. The District will review revenue generation, obligations, risks, and goals each year. The District Manager will provide recommendations at least annually whether modifications to this Resolution are needed.
4. The District will perform a consumptive use audit every 5 years consistent with Ecology’s permitting requirement to assess whether the 9,083.11 afy remains surplus, whether additional surpluses exist from changing SMID water use patterns and demographics, and whether the distribution of sales, leases, water service contracts, assessments, and other revenue generation methods employed for the surplus water savings are adequate.
5. The District may allocate surplus water savings either with or without direct physical service by District canals, pipes, and diversions. If the District provides water right authority without direct service, the user will be required to independently develop its source of water and obtain permit approval from Ecology.
6. The District may issue Mitigation Certificates to document sales, leases, water service contracts, or other allocation of surplus water savings.

Allocation of Surplus Water

1. The District intends to balance revenue generation goals with asset protection goals to ensure that the changing irrigation needs of the District are met. This will include designating some surplus water savings for:
 - a. Sales (expected to have the highest one-time return on investment)
 - b. Short-term leases (expected to provide steady returns but preserve options for future use)
 - c. Long-term leases or water service contracts (expected to provide steady returns but avoid a complete sale of water)
 - d. Additional assessed lands (expected to provide steady returns each year)

- e. Drought-Year Leases (expected to provide one-time revenue generation without creating long-term obligations)
2. The District intends to balance the priority in serving member water use needs with revenue generation that will benefit all District members by allocating surplus water as follows:
 - a. The District will first run an auction open to District members only.
 - i. A District member is defined as:
 1. A landowner within the current District service area whose assessments are paid and up-to-date, who has a meaningful interest of at least 10% ownership in the land where surplus water is proposed to be used.
 - ii. Proposed uses may be on lands not currently served by the District, but must be from surface water downstream of the District's Pomona diversion or groundwater in continuity therewith.
 - iii. A total of 25% of current District surplus water will be made available in the first auction apportioned between potential sales (200 acre-feet maximum), and drought, short, and long-term leases (1,650 acre-feet maximum).
 - b. The District will then run an auction open to District and non-District members that could be served by the surplus water savings.
 - c. Following these two auctions, if surplus water remains unobligated, the District will accept offers for use of surplus water at its regularly scheduled board meetings on a first come, first serve basis.
3. The District reserves the right to reject any offer of the use of surplus water if it conflicts with District goal regarding risk and revenue generation balancing, if the offer is not reflective of fair market value and would result in a gifting of District assets, or any other reason supported by Washington State Law.

Administration of Mitigation Certificates

1. If the District accepts an offer for a portion of its surplus water savings, and following payment of required fees, it will provide official written notice as follows:
 - a. If such an offer requires direct District service, it will clarify how, when, and under what terms such physical service can be provided.
 - b. If such an offer does not require District service, it will prepare a draft Mitigation Certificate on District Letterhead that can be used by the applicant to seek Ecology permit authority. The District agrees it will reserve water authority for

such Mitigation Certificate for a period not exceeding 2 years, unless extended at the request of the applicant and at the sole discretion of the District.

- c. The District may cancel a draft Mitigation Certificate if the applicant is unable to obtain required authorizations within the time periods allotted.
2. If Ecology grants permit authority, then following payment of remaining required fees, the District will issue a fully-executed Mitigation Certificate consistent with the sale, lease, water service contract, or other surplus water savings allocation method. The applicant may provide the fully-executed Mitigation Certificate to Ecology, record with the County, provide to lenders, or other notices as appropriate.
3. Mitigation certificates issued by the District are backed by the District's surplus water savings in Trust. While uses authorized by Ecology can diminish and be lost over time, such diminishment has no effect on the underlying validity of the District's trust water right holdings. Mitigation Certificates issued by the District will be subject to the following language and terms:
 - a. If Ecology determines a use backed by a District Mitigation Certificate has been abandoned, relinquished, cancelled, or otherwise forfeited, then such quantity becomes de-obligated and returns to the District without compensation to the original applicant. The applicant has a duty to use and protect such water for its own use.
4. The District does not intend to allow for speculation in its mitigation certificates. Mitigation certificates are intended to be appurtenant to the land where the use occurs for the term of the mitigation. During such term, they cannot be sold or assigned to any other party other than through sale of the land itself. While there may be some limited instances where minor modification in the location of mitigation authority is warranted, mitigation certificates are not intended to be portable to new lands. Mitigation certificates cannot be moved or changed to other lands without District concurrence.

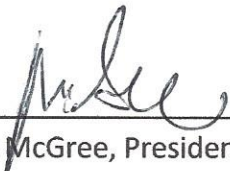
Fees

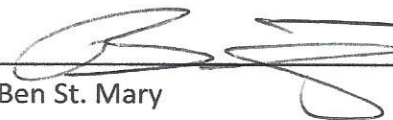
The District may recover costs associated with operating and managing the SMID Water Bank as follows:

1. Assessments
 - a. It may collect assessments for direct physical service of lands based on its normal annual assessment rate.
2. Auction and Proposal Fees


- a. SMID will consider revenue proposals from auctions and, subsequent to the initial auctions, proposals for use of surplus water savings on a case-by-case basis.
 - b. Auction proposal will be awarded to the highest bidders that meet qualifying auction criteria unless the bidder's proposal is found to be defective for cause.
3. Application Fee
- a. Any applicant petitioning for use of surplus water will pay a one-time application fee of \$500 to cover District evaluation of the proposed use.
4. Sale or Lease
- a. Any applicant petitioning the District to purchase or lease water from the District will, upon acceptance, be required to pay the District 10% of the purchase or lease price prior to receiving a draft Mitigation Certificate to reserve water for the transaction.
 - b. A Final Mitigation Certificate will be issued following balance of the 90% payment due.
 - c. If the District cancels a Draft Mitigation Certificate, it will refund the half of the 10% initial purchase or lease price. The balance is not refundable and will be retained by the District to cover District costs associated with the transaction and lost revenue from reserving the water.

Passed and Adopted by the Selah-Moxee Irrigation District on this 9th day of February 2022.

 Date: 2/9/22
 Mike McGree, President

 Date: 2/9/22
 Ben St. Mary

 Date: _____
 Michael Roy

 Date: 2-9-2022
 Nathan Draper, Manager