

OKANOGAN COUNTY COMMISSIONERS'

ORDINANCE NO. 2018 - 13

An ordinance which imposes interim land use controls in accordance with RCW 36.70.795 Moratoria, interim zoning controls—Public hearing—Limitation on length by amending OCC 17A.400.130-Water Availability Study Areas to designate the Upper Tunk Basin, Lower Tunk Basin, and Tamarack Springs Basin all located in Water Resource Inventory Area #49, as water availability study areas.

WHEREAS: In November of 2016 the Washington State Supreme Court issued a decision cited as *Whatcom-Hirst*, 186 Wn.2d 648, 381 P.3d 1 (2016) which further defined the role of Counties in determining the legal and physical availability of water for building permits and land division applications that propose to use a permit exempt well as authorized in Revised Code of Washington 90.44.050 as the source of potable water, and

WHEREAS: The Okanogan Board of County Commissioners (BOCC) believes that insufficient information exists in certain basins and sub-basins to determine if water is physically and legally available for potable water supplies, and

WHEREAS: The BOCC determined that OCC 17A zoning should allow for the designation of water availability study areas within which boundaries a review of water supplies and their ability to support additional levels of land development would be conducted, and

WHEREAS: On August 6, 2018 the BOCC adopted Ordinance 2018-10 which amended OCC 17A by creating a new section OCC 17A.400 titled water availability study areas which created the process by which water availability study areas would be created, and

WHEREAS: On January 19, 2018 the Washington state legislature adopted ESSB 6091 which identified Water Resource Inventory Area #49-Okanogan River as a "Hirst affected WRIA" which requires the watershed plan adopted in 2009 to be revised by February of 2021, and

WHEREAS: Scientific Investigations Report 2009-5143 conducted by the USGS found the Tunk Basin to be a mix of negative and positive gain reaches and that a high degree of groundwater and surface water connectivity exists, and

WHEREAS: Senior water right holders in the Tunk Basins have raised concerns over new permit exempt wells impairing their ability to divert the water to which they are entitled by reducing stream flows during low water periods, and

WHEREAS: The BOCC finds additional information is necessary before it can be determined if sufficient groundwater exists in the Upper and Lower Tunk Basins to meet the requirements of RCW 58.17.110 for an adequate supply of potable water for land division proposals, and

WHEREAS: RCW 36.70.795 Moratoria, interim zoning controls—Public hearing—Limitation on length allows the adoption of interim land use controls without a public hearing provided a public hearing is scheduled on the interim controls within 60 days of adoption,


BE IT THEREFORE ORDAINED: The Okanogan Board of County Commissioners amends OCC 17A.400.130 by adopting subsection (1) listing the Upper Tunk Basin, Lower Tunk Basin, and Tamarack Springs Basin in WRIA 49 as water availability study areas and,

BE IT FURTHER ORDAINED: The purpose of the water availability study area designation is to determine:

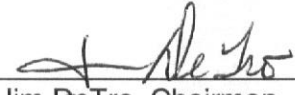
- 1) if the current use of permit exempt wells has impaired the ability of senior water right holders to obtain the surface water to which they are legally entitled.
- 2) If the projected use of permit exempt wells will likely impair the ability of senior water right holders to obtain the surface water to which they are legally entitled.
- 3) If the current and projected use of permit exempt wells has contributed to an inability to meet instream flow appropriations identified in WAC 173-549, and

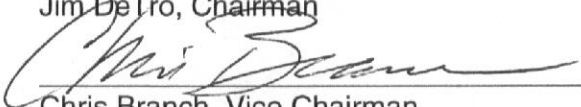
BE IT FURTHER ORDAINED: The BOCC has scheduled a public hearing on Tuesday September 18, 2018 at 3:30 p.m. to take public testimony on the interim controls adopted as amendments to OCC 17A.400.130 by this ordinance.

ORDAINED this 28th day of August, 2018, at Okanogan, Washington.

ATTEST:

Laleña Johns, Clerk of the Board

**BOARD OF COUNTY COMMISSIONERS
OKANOGAN COUNTY, WASHINGTON**



Jim DeTro, Chairman


Chris Branch, Vice Chairman

ABSENT

Andy Hover, Member