

OKANOGAN COUNTY

ORDINANCE 2019 – 5

*An ordinance adopting as interim land use controls an amendment to
OCC 17A.400.130 - Water Availability Study Areas*

An ordinance adopting as interim land use controls an amendment to OCC 17A.400.130- Water Availability Study Areas to designate the restricted areas surrounding the closed lakes and tributaries located in water resource inventory area #48 as listed in Washington Administrative Code 173-548 as water availability study areas and scheduling a public hearing in accordance with Revised Code of Washington 36.70.795.

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 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 Okanogan Board of County Commissioners determined that Okanogan County Code (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 Okanogan Board of County Commissioners 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: In 1976 Washington Administrative Code 173-548-050 closed certain tributaries and lakes located in Water Resource Inventory Area #48-Methow River to further appropriations, and

Whereas: In 1991 amendments to WAC 173-548-050 extended the closure of certain surface waters to include groundwater in hydraulic continuity, and

Whereas: In 1991 the Department of Ecology created maps of areas surrounding the closed surface waters where hydraulic continuity between the surface water and groundwater was highly likely, and

Whereas: Beginning in Spring of 2018 the Department of Ecology began the process of reviewing the maps of the restricted areas to create a higher level of accuracy in terms of the areas where hydraulic continuity was highly likely, and

Whereas: The Department of Ecology determined in late 2018 that it could no longer continue the practice of approving groundwater wells in the mapped restricted areas surrounding the closed surface waters by assessing the absence of hydraulic continuity between the groundwater well and the closed surface water on a site specific basis, and

Whereas: The Okanogan Board of County Commissioners has started discussion with the Department of Ecology regarding mitigation and other measures that can be employed in the restricted areas to allow for legal and reliable supplies of potable water for existing lots, and

Whereas: The Okanogan Board of County Commissioners finds that additional information is necessary before it can be determined if sufficient groundwater is legally accessible in the restricted areas of WRIA #48 to meet the requirements of RCW 58.17.110 for an adequate supply of potable water for land division proposals, and

Whereas: The Okanogan Board of County Commissioners finds that completing a study of water availability and mitigation measures in the identified restricted areas before considering the creation of additional lots is in the best interest of the public, and

Whereas: RCW 36.70.795 allows the adoption of interim land use controls provided a public hearing is scheduled within 60 days of date of adoption, and

Whereas: A public hearing is scheduled with the Okanogan Board of County Commissioners on April 29, 2019 at 1:30 pm, and

Be it Further Ordained: OCC 17A.400.130 is amended by adopting subsection (2) listing the restricted areas surrounding the closed lakes and tributaries listed in WAC 173-548-050 as depicted in the map found as attachment A to this ordinance as water availability study areas, and be it further

Be it Further Ordained: The purpose of the water availability study area designation is to determine:

- 1) The types of mitigation measures necessary to meet the objectives of protecting the closed surface waters from further appropriation and impairment.
- 2) Consult with the Department of Ecology to determine if WAC 173-548-050 allows the appropriation of groundwater consistent with the restrictions of RCW 90.44.050 if the water consumptively used is replaced.
- 3) Consult with the Department of Ecology to determine if water appropriated from outside of the restricted areas may be used within the restricted areas, and be it further

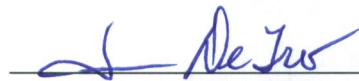
Be it Further Ordained: A public hearing is scheduled April 29, 2019 at 1:30 pm for to take public testimony regarding the adoption of these interim controls.

BE IT THEREFORE ORDAINED: The Okanogan Board of County Commissioners approves n ordinance adopting as interim land use controls an amendment to OCC 17A.400.130-Water Availability Study Areas

Ordered at Okanogan, Washington this 1st day of April 2019.



**BOARD OF COUNTY COMMISSIONERS
OKANOGAN, WASHINGTON**



Jim DeTro, Chairman




Chris Branch, Member



Andy Hover, Member

ATTEST:



Lalena Johns, Clerk of the Board

