

**Appendix B**  
**City of Anacortes and PUD**  
**1993 Joint Use Agreement**

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CITY OF ANACORTES AND  
PUBLIC UTILITY DISTRICT NO. 1 OF SKAGIT COUNTY  
AGREEMENT REGARDING SKAGIT REGIONAL WATER SUPPLY SYSTEM

THIS AGREEMENT is entered into by the City of Anacortes (City) and Public Utility District No. 1 of Skagit County, Washington (PUD) for the continuation of reliable public water systems within Skagit County.

Section 1. RECITALS.

1.1 The City and PUD are parties to a Water Supply Agreement dated April 1, 1989, and last amended April 1, 1992 (Supply Agreement). The Supply Agreement provides, in part, for:

1.1.1 Connection of the public water systems of City and PUD;

1.1.2 Supply of water by City to PUD for use throughout PUD's existing service area;

1.1.3 Rates and charges for service by City to PUD; and

1.1.4 Other matters affecting the rights and responsibilities in operation and maintenance of the City and PUD water supply systems.

1.2 An adequate and safe water supply for Skagit County is necessary to current and future residents, and vital to the comprehensive plans of City, County and other local governments.

1.3 The State of Washington (State), County, tribes and public water purveyors have participated in the past preparation, maintenance and revision of a Coordinated Water System Plan (CWSP) for Fidalgo Island. The initial CWSP was prepared in 1985, and was revised in 1993 for the entire County. The CWSP is a management plan and program under Chapter 70.116 RCW and Chapter 246-293 WAC.

1.4 Cooperative development, operation and maintenance of waterworks and facilities minimizes costs and is in the best interest of the citizens of the County.

1.5 The CWSP identifies current and future needs of local governments in Skagit County, and the process for establishing a cooperative regional water supply system.

1.6 City and PUD have the necessary water rights and facilities, as identified in the CWSP, with capability and capacity to meet public water supply needs of Skagit County. However, there is a need to plan for additional water supply for Skagit County. The City and PUD have maintained interties between their systems prior to and after January 1, 1991. Further interties to facilitate development of the regional water supply system may be necessary in the future.

1.7 City and PUD acknowledge their rights and obligations under the Growth Management Act to coordinate land use and water supply planning.

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1.8 City and PUD recognize the benefits of a regional water system that allows the conjunctive use of surface and groundwater and better manages and protects the area's water resources.

1.9 This Agreement Regarding Skagit Regional Water Supply System (Agreement) provides for the cooperation of City and PUD in the development of regional solutions for long range water supply needs for the fifty-year planning period (through 2040).

## Section 2. INTENT.

2.1 It is the intent of the parties to cooperate in the development of additional waterworks and facilities that would form a Skagit Regional Water Supply System. The City and PUD will work cooperatively in the development of additional or expanded water resources and systems for distribution within Skagit County. Absent further agreement, the City and PUD will maintain present service areas, and their customers will continue to enjoy the present level of supply and service.

2.2 This Agreement provides a framework for development of each new joint facility. Each joint facility not specifically addressed by this Agreement shall be addressed by amendment to this Agreement. The specific intent of this Agreement is to make provisions for a standardized method to expand the Skagit Regional Water Supply System to meet the public water supply needs, and to establish a basis for agreement between the City and PUD for financing, ownership, construction and operation of new joint facilities required for the Skagit Regional Water Supply System.

2.3 It is the further intent of the parties that this agreement be incorporated into the Skagit County CWSP.

## Section 3. REGIONAL WATER SYSTEM AND SERVICE AREA.

3.1 "Skagit Regional Water Supply System" (System) shall mean:

3.1.1 Those facilities of the City and PUD supplying water to the service area of the Skagit Regional Water Supply System.

3.2 "Service area of the Skagit Regional Supply System" shall mean the City's and PUD's Designated Water Supply Service Areas identified in the CWSP.

If it is in the best interests of both parties to change their present service areas, they may do so by mutual agreement and by amendment to this Agreement, all subject to applicable CWSP process.

3.3 "Facilities" and "Waterworks" shall mean those designated intake, treatment, pumping, storage, transmission and distribution plants or systems within the City and PUD public water systems as specifically identified in this Agreement, or amendments hereto.

## Section 4. WATER SUPPLY - CAPACITY RIGHTS.

4.1 Capacity Rights. Each party shall retain its existing capacity rights in the Regional Water Supply System. Each party may, by mutual agreement, purchase regional capacity in planned improvements to the Regional Water Supply System. Any changes in these capacity rights shall be recognized by an amendment to this Agreement.

Any intertie agreement developed pursuant to this Agreement shall provide for a change of point or place of use only, and not a transfer or relinquishment of rights of the holder.

4.2 Additional Agreement Parties. Other agencies may purchase water or contract for other rights from the Regional Water Supply System, or become a party to this Agreement for future projects, by mutual agreement of the City and PUD.

4.3 Wholesaling Water. The City or PUD may wholesale water delivered through the Regional Water Supply System transmission system to areas outside of the City and PUD's respective Service Areas, so long as the other party's capacity rights are not negatively impacted.

4.4 Additional Facilities. Projected needs will be identified by both parties based on the party's designated service areas. As five or more years may be needed to bring major new capabilities on-line, five-year and ten-year forecasts are required, and must be updated whenever either party becomes aware of any significant change in the forecast demand. These will be discussed jointly as they arise, and reviewed at a Semiannual Meeting between City and PUD.

Planning for additional facilities will commence, unless otherwise agreed to in writing, no later than the date at which any party's demand reaches 85 percent of that party's capacity rights or when the five-year forecast exceeds the capacity. A schedule acceptable to both will be agreed upon to provide sufficient lead time for construction and expansion of the required facilities, and be incorporated as part of the necessary amendment to this Agreement.

4.5 Quality. The objective of the parties is to maintain the quality of the water in the Regional Water Supply System at or above the quality required by State or Federal drinking water standards. The City and PUD staff will meet periodically to exchange information and to help ensure that water quality and operational issues are addressed. The results of these meetings will be reviewed at a Semiannual Meeting.

4.6 Financing. Financing plans for specific projects are to be addressed by amendments to this Agreement, or by separate agreement of the parties to the project. Financial participation in existing and additional facilities may, by mutual agreement, be based on each party's projected need for each facility, and may be based on designated capacity rights.

4.7 Further Agreement Regarding Capacity Rights. The actual, five-year, and ten-year projected water needs of each party will be reviewed at a Semiannual Meeting. It is recognized that a party may have water capacity in excess of projected immediate needs. In the event a party is unable to meet its needs either solely or by joint facility development, the parties agree to meet and negotiate regarding lease rights, further water sales, or other methods to address System demands. Terms shall be on a mutually agreed basis that will cover the costs and investment of the party in facilities or rights covered by such further agreement. These costs may be included as a fixed and/or a variable charge on the water actually used. This further agreement shall terminate upon availability of capacity from additional facilities unless agreed upon by the parties in a further agreement or an amendment to this Agreement.

4.8 Cost of Service Charge. The parties will by mutual agreement establish rates and charges for System facilities. In establishing rates and charges, the parties will consider capital costs, fixed and variable operating costs, minimum fixed

charges, in lieu municipal service charges, and variable costs based on quantity of water delivered.

4.8.1 Capital Cost. Those costs incurred for Capacity Rights and planned capital expenses. Capital Costs are allocated based on designated capacity and may be financed by any lawful basis. The minimum cost will include an allocation for renewal and replacement based on designated capacity rights and the design life of joint facilities.

4.8.2 Fixed or Minimum Operating Cost. The cost of labor, supervision, utilities, services, taxes, insurance and all other expenses required to operate and maintain the system other than those items included under Variable Operating Cost.

4.8.3 Variable Operating Cost. Those costs directly proportionate to the volume of water produced, including chemicals, electric power, and other costs required to meet customer and System needs.

4.8.4 In Lieu Services. Those charges, imposed in lieu of municipal utility taxes, to provide for general governmental services. In lieu service charges shall be applied at a level not to exceed 5% to fixed and variable operating costs and to capital costs. However, if the PUD finances its share of the capital costs set out in a capital improvement program no in lieu tax will be charged to the PUD for this portion of the capital improvement program.

#### 4.8.5 Accounting.

4.8.5.1 The capital cost System facilities shall include the cost of construction, and be documented in accordance with an accredited accounting system mutually acceptable to the parties.

4.8.5.2 Fixed and variable operating costs for System shall include costs as recorded and documented in accordance with the accounting that are directly attributable to the operation and maintenance of the System. The City and PUD will continue separate accounting for operation and maintenance costs for the facilities for which they are responsible. A standardized accounting procedure will be developed as far as practical to assess and credit cost among systems and record the net exchange of water on a monthly basis. Carry-over of credit for water delivered by either party may be allowed under mutually agreed conditions. However, all credits must be balanced by the end of a contract year.

4.8.5.3 Debt service for each party shall be addressed in financing plans for specific projects. See Section 4.6.

4.8.6 Billing. The parties will mutually agree on a method for accounts, billing and collection.

### Section 5. ADMINISTRATIVE, LEGAL AND OTHER PROVISIONS.

#### 5.1 Meetings.

5.1.1 The parties will hold joint meetings to review the status of this Agreement, Agreement amendments, further or associated agreements, as well as other issues of mutual interest or concern.

5.1.2 At least two joint meetings shall be held semiannually (Semiannual Meeting), to be scheduled by mutual agreement in the last week of March and September of each year. The purpose of the Semiannual Meetings are to review past activity and to propose efforts that may lead to further amendments to this Agreement. All forecasts of requirements will be reviewed at the meetings. The City and the PUD shall have representatives of their management and legislative authority attend the Semiannual Meetings. These will generally include the Mayor and one or more City Council Members, the General Manager and one or more PUD Commissioners. If other agencies become parties to this Agreement, they will provide for attendance of similarly qualified officials at the Semiannual Meetings.

5.2 Staff and Reporting. The coordination of this Agreement will be performed by the regular staff of the parties, with the addition of any non-staff people either party may care to include. These people will interchange information as often by meeting, teleconference, or other means they may choose. The purpose is to keep the joint projects moving forward in an efficient, cost-effective manner and to prevent any accumulation of misunderstanding. A monthly progress report shall be prepared by the party most active at that time and edited by the other until both are satisfied. Any further details will be included in amendments to the Agreement or in further agreements.

5.3 Schedule. At their first meeting, the staff of both parties involved in the coordination will prepare and publish a schedule and plan to facilitate the day-by-day operation of this Agreement. They may modify their schedule and plan as they wish within the limits of this Agreement, as long as both parties agree and publish the revised schedule and plan. Their work shall be reviewed at a Semiannual Meeting.

5.4 Other Efforts. Other means of recognizing and dealing with joint problems may be developed by mutual amendment.

5.5 Term. This Agreement shall remain in full force until the earlier of termination by mutual agreement, or adoption of a revised CWSP. Any party may request amendment to this Agreement at any time. Re-negotiation of this Agreement may be requested by any party for consideration at a Semiannual Meeting.

5.6 No Third Party Beneficiaries. The Agreement is for the benefit of the City and PUD only, to provide a framework for the development of System facilities. There are no third-party beneficiaries to this Agreement.

5.7 Compliance - Permits - Authority. Facilities that may be developed under this Agreement may be subject to preexisting rights, permits or approvals of the parties. Nothing in this Agreement constitutes a waiver of either party's rights, permits or authority to water, water use, or utility facilities. However, by this Agreement the parties reaffirm their commitment to the process for public water system coordination and planning.

## Section 6. SUPPLY AGREEMENT.

6.1 The Supply Agreement shall remain in force and effect until such time as amended or modified pursuant to amendment to this Agreement or other agreement. In the event of conflict, the Supply Agreement shall govern and be preemptive of terms in this Agreement.

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed by their proper Officers on the 27th day of April, 1993.

City of Anacortes

L.S.

By: *Douglas E. Green*

Attest:

By: *James P. Kirkpatrick*  
City Clerk

Approved As to Form:

By: *[Signature]*  
City Attorney

Public Utility District No. 1 of Skagit County

*Lee D. Bode*  
Lee D. Bode, Commission President

*Al Littlefield*  
Al Littlefield, Commission Vice President

*James A. Auerberry*  
James Auerberry, Commission Secretary

Attest:

*James P. Kirkpatrick*  
James P. Kirkpatrick, General Manager

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**Appendix C**  
**Evolving and Current**  
**DOH Guidelines for CWSP and SMA**

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**Appendix C**  
**Engrossed Second Substitute Senate Bill 5448**  
**E2SSB 5448 (CWSP Sections) Interpretation**  
**Public Water System Coordination Act Revisions by SSB 5448**

Section	Change	Interpretation
70.116.050 (1)	Each purveyor within the boundaries of a critical water supply service area shall develop a water system plan for the purveyor's future service area if such a plan has not already been developed: PROVIDED, That non-municipally owned public water systems are exempt from the planning requirements of this chapter, except for the establishment of service area boundaries if they (a) <del>Were in existence as of September 21, 1977;</del> and (b) <del>have no plans for water service beyond their existing service area and;</del> (e) <del>meet minimum quality and pressure design criteria established by the state board of health...</del>	<ul style="list-style-type: none"> <li>Deletes the exemption for non-municipally owned public water systems in existence as of September 21, 1977 that meet minimum quality and pressure design criteria.</li> </ul>
70.116.050 (2)	After the boundaries of a critical water supply service area have been established pursuant to RCW 70.116.040, the committee established in RCW 70.116.040 shall participate in the development of a coordinated water system plan for the designated area. Such a Plan shall incorporate all water system plans developed pursuant to subsection (1) of this section. The plan shall provide for maximum integration and coordination of public water system facilities consistent with the protection and enhancement of the public health and well being. <u>Decisions of the committee shall be by majority vote of those present at meetings of the committee.</u>	<ul style="list-style-type: none"> <li>Old interpretation was that decisions had to be made by a majority vote of the entire committee. This was changed to require that decisions could be made by a majority vote of those present at the meetings of the committee.</li> </ul>
70.116.050 (3) (f) (g)	<p><u>(f) Include satellite system management requirements consistent with RCW 70.116.134.</u></p> <p><u>(g) Include policies and procedures that generally address failing water systems for which counties may become responsible under RCW 43.70.195.</u></p>	<p><u>New Subsections</u></p> <ul style="list-style-type: none"> <li>Required that SMA provision be addressed in the CWSP.</li> <li>Required that policies and procedures addressing failing water systems be addressed in the CWSP.</li> </ul>
70.116.050 (6)	<u>The committee established in RCW 70.116.040 may develop and utilize a mechanism for addressing disputes that arise in the development of the coordinated water system plan.</u>	<p><u>New Subsection (replaced old subsection (6) which is now subsection (7))</u></p> <ul style="list-style-type: none"> <li>Allowed the WUC to develop and utilize a dispute resolution process during the development of the CWSP.</li> </ul>
70.116.050 (7)	Prior to the submission of a coordinated water system plan to the secretary for approval of the design of the proposed facilities pursuant to RCW	<u>Subsection was moved from (6) to (7)</u>

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	<p>70.116.060, the plan shall be reviewed for consistency with subsection (4) of this section by the legislative authorities of the counties in which the critical water supply service area is located <u>shall hold a public hearing thereon and shall determine the plan's consistency with subsection (4) of this section...</u></p>	<ul style="list-style-type: none"> <li>Deleted the specific direction for DOH to approve "design of the proposed facilities." (Since many aspects of the plan are policy or process related)</li> <li>Expanded the county consistency review process from inter office to include a public hearing.</li> </ul>
70.116.060 (2)	<p>The secretary shall <u>review the coordinated water system plan and, to the extent the plan is consistent with the requirements of this chapter and regulations adopted hereunder, shall approve the plan, provided that the secretary shall not approve those portions of a coordinated water system plan which that fail to meet the requirements for future service area boundaries until any boundary dispute is resolved as set forth in RCW 70.116.070.</u></p>	<ul style="list-style-type: none"> <li>Limits DOH approval of the plan to those portions of the plan which are consistent with RCW 70.116.</li> <li>Allows DOH not to approve parts of the CWSP related to areas of dispute.</li> </ul>
70.116.060 (3)(b)	<p>No other purveyor shall establish a public water system within the area covered by the plan, unless the <del>secretary</del> <u>local legislative authority</u> determines that existing purveyors are unable to provide the service in a <u>timely and reasonable manner, pursuant to guidelines developed by the secretary. An existing purveyor is unable to provide the service in a timely manner if the water cannot be provided to an applicant for water within one hundred twenty days unless specified otherwise by the local legislative authority.</u> If such a determination is made, the <del>secretary</del> <u>local legislative authority shall require the new public water system to be constructed in accordance with the construction standards and specifications embodied in the coordinated water system plan approved for the area. The service area boundaries in the coordinated plan for the affected utilities shall be revised to reflect the decision of the local legislative authority.</u></p>	<ul style="list-style-type: none"> <li>Puts burden of determining timely and reasonable upon the County.</li> <li>Requires DOH to develop timely and reasonable guidance.</li> <li>Defines timely and reasonable as the purveyor being able to provide water within 120 days unless specified otherwise the County.</li> <li>Puts the burden on the County to require the design of new public water systems to meet the requirements of the CWSP.</li> <li>Allows for Counties to make boundary changes when a new system is developed.</li> </ul>
70.116.060 (5)	<p><u>The affected legislative authorities may develop and utilize a mechanism for addressing disputes that arise in the implementation of the coordinated water system plan after the plan has been approved by the secretary.</u></p>	<p><u>New Subsection</u></p> <ul style="list-style-type: none"> <li>Allows counties to develop and utilize a dispute resolution process for addressing disputes that arise in the implementation of the CWSP, once the CWSP has been approved.</li> </ul>
70.116.060 (6)	<p><u>After adoption of the initial coordinated water system plan, the local legislative authority or the secretary may determine that the plan should be updated or revised. The legislative authority may initiate an update at any time, but the secretary may initiate an update no more frequently than once every five years. The update may encompass all or a portion of the plan, with the</u></p>	<p><u>New subsection</u></p> <ul style="list-style-type: none"> <li>Once the CWSP is adopted, the County or DOH may require update.</li> </ul>

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	<p>scope of the update to be determined by the secretary and the legislative authority. The process for the update shall be the one prescribed in RCW 70.116.050.</p>	<ul style="list-style-type: none"> <li>• The County may require update at any time, DOH can only require update no more than once every 5 years.</li> <li>• The update may address all or a portion of the CWSP.</li> <li>• The update must follow the process found in RCW 70.116.050.</li> </ul>
<p>70.116.060 (7)</p>	<p>The provisions of subsection (3) of this section shall not apply in any county for which a coordinated water system plan has not been approved under subsection (2) of this section.</p>	<p>New subsection</p> <ul style="list-style-type: none"> <li>• The rules of subsection 3 of this section do not apply in areas where a CWSP has not been approved by DOH.</li> </ul>
<p>70.116.060 (8)</p>	<p>If the secretary initiates an update or revision of a coordinated water system plan, the state shall pay for the cost of updating or revising the plan.</p>	<p>New subsection</p> <ul style="list-style-type: none"> <li>• If DOH requires an update of the CWSP, DOH must pay the cost of updating the CWSP.</li> </ul>
<p>70.116.070 (1)</p>	<p>The proposed service area boundaries of public water systems within the critical water supply service area that are required to submit water system plans under this chapter shall be determined by written agreement among the purveyors and with the approval of the appropriate legislative authority. Failure of the legislative authority to file with the secretary objections to the proposed service area boundaries within sixty days of receipt of the proposed boundary agreement may be construed as approval of the agreement identified in the system's plan. The local legislative authority, or its planning department or other designee, shall review the proposed boundaries to determine whether the proposed boundaries of one or more systems overlap. The boundaries determined by the local legislative authority not to overlap shall be incorporated into the coordinated water system plan. Where any overlap exists, the local legislative authority may attempt to resolve the conflict through procedures established under RCW 70.116.060 (5)</p>	<ul style="list-style-type: none"> <li>• Foregoes the requirement for systems to sign written agreements between purveyors and approved by the County. Requires that systems propose a service area boundary in their WSP and for the County to determine if those proposed boundaries overlap. If the boundaries do not overlap, requires the County to incorporate them into the CWSP.</li> </ul>
<p>70.116.070 (2)</p>	<p>If no service area boundary agreement has been established within a reasonable period of time, or if the legislative authority has filed with the secretary objections in writing as provided in subsection (1) of this section Any final decision by a local legislative authority regarding overlapping service areas, or any unresolved disputes regarding service area boundaries, may be appealed or referred to the secretary in writing for resolution. After receipt of an appeal or referral, the secretary shall hold a public hearing</p>	<ul style="list-style-type: none"> <li>• Allows appeal of the County's decision on overlapping boundaries to be appealed to DOH. The request for appeal must be in writing.</li> <li>• Eliminates the need to notify all purveyors of the dispute. Allows DOH to notify only those</li> </ul>

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	thereon. The secretary shall provide notice of the hearing by certified mail to each purveyor providing service in the critical water supply service area <u>involved in the dispute</u> to each county legislative authority having jurisdiction in the area and to the public...	purveyors involved in the dispute.
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