

LAKE CHELAN RECLAMATION DISTRICT

MANSON, WASHINGTON

RESOLUTION 19-03

AMENDING RESOLUTION 18-08

AUTHORIZING DELIVERY OF ADDITIONAL USBR WATER - Amendment

RECITALS

1.1 RCW 87.03.005 authorizes the District to establish lands to be served by the District;

1.2 RCW 87.03.010 authorizes the District to construct, operate and maintain irrigation works on lands within the District;

1.3 RCW 87.03.010 further authorizes the District to execute and perform any contract authorized by law with any department of the state or federal government for irrigation purposes and to perform all things necessary to enable the District to exercise its powers;

1.4 RCW 87.03.140 authorizes the District to acquire water and water rights necessary for the use, supply, maintenance, repair and improvements of canals for irrigation and drainage works for service of properties within the District;

1.5 RCW 87.03.240 allows the District to make assessments for the purpose of carrying out the duties of the District in such amounts as are deemed proportional to the benefits accruing to the lands assessed;

1.6 The District is party to a 1971 Contract with the United States Department of Interior, Bureau of Reclamation ("BOR") that provides for delivery of BOR water to irrigable lands within the District as established by BOR;

1.7 The 1971 Contract as originally interpreted by BOR allowed the District to deliver water to 6,336 acres of property located within the District boundaries;

1.8 The District interpreted the 1971 Contract in a manner different from BOR, and requested that BOR review the contract to further evaluate the intended acreage to be served by the District;

1.9 Following review of the District's position, BOR agreed that the District should be authorized to deliver water to an additional 108 acres of property within the District boundaries, with the total acreage available to be served by the District being 6,444 acres.

1.10 The District desires to adopt a policy for landowners within its boundaries to apply for additional water from the District, and adopt a policy for allocating that additional water among those applicants;

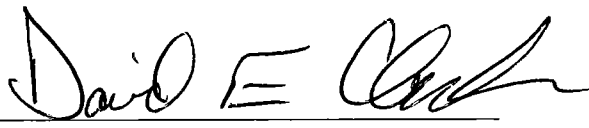
NOW THEREFORE, the Board of Directors of the Lake Chelan Reclamation District adopts the following by resolution:

2.1 The District hereby adopts the policy attached as Exhibit "A" hereto as the policies and procedures governing application for and processing of requests for the additional water, as allowed by BOR, for determining priorities among applicants and for establishing cost to the applicants for such water (the "Policies and Procedures Governing Applications for and Processing of Additional Water Requests");

2.4 The attached Policies and Procedures Governing Application for and Processing of New Water Rights Requests may be modified or amended by Further Action of the Board of Directors.

This Resolution 2018-08A supersedes Resolution 2018-08 as approved March 13, 2018. Resolution 2018-08A is adopted this 13th day of March, 2018 at the regular meeting of the Board of Directors.

LAKE CHELAN RECLAMATION DISTRICT

BY: 
President

ATTEST:

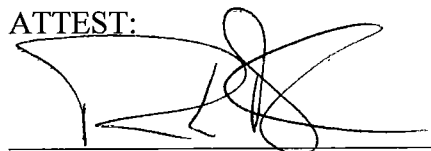

Secretary-Manager

EXHIBIT 'A'

LAKE CHELAN RECLAMATION DISTRICT

**POLICIES AND PROCEDURES GOVERNING APPLICATIONS FOR AND
PROCESSING OF ADDITIONAL WATER REQUESTS**

The Lake Chelan Reclamation District ("District") operates an irrigation water distribution system pursuant to a contract with the U.S. Department of Interior, Bureau of Reclamation ("BOR"). The District recently received authorization to allow distribution of irrigation water to an additional 108 acres of land within the District boundaries (the "Additional Water"). The following are the policies and procedures governing application for and processing of requests for Additional Water.

I. APPLICATION PROCESS AND GUIDELINES

A. Pre-Application.

1.1 Written Pre-Application. All requests for delivery of Additional Water shall be in writing on a pre-application form provided by the District including a refundable deposit.

1.2 Property Description and Ownership. The pre-application must include a legal description of the property to be served by the delivery of the Additional Water along with a legal description of any adjacent parcels owned by the applicant. Only the property owners shall be entitled to apply for the Additional Water. Proof of ownership shall be delivered with the pre-application.

1.3 Commercial Agricultural Use. Only lands determined as suitable for commercial agricultural use shall be eligible to receive Additional Water. Applicants must provide assurances to the District with the pre-application that the Additional Water delivered shall be for the purpose of commercial agricultural operations and that commercial agricultural operations are expected to continue for a minimum of five (5) years following initial delivery of water to the property.

1.4 Amount of Water Requested. Applicants shall include in the pre-application the amount of Additional Water requested, based on acreage or partial acreage. Any Additional Water requests submitted after November 1, 2017, shall be for a minimum of one-half (½) acre and shall be limited to a maximum of ten (10) acres per applicant. Applications submitted prior to November 1, 2017, will be considered for the amount requested. For purposes of this provision, the record owners of the property shall be considered the applicants. Where ownership is in the name of a legally recognized entity, the owners shall be considered both the entity and the owners of the entity. The purpose of this provision is to ensure a fair distribution of Additional Water among customers of the District without accumulation of the Additional Water onto properties owned by the same individuals or entities, while honoring requests made prior to the date of adoption of these limitations.

1.5. Maintenance of Application Log. The date the pre-application is received by the District shall be marked on the face sheet of the pre-application and shall be the official date for purposes of determining priorities among applicants. Provided, however, that for those water requests pending as of the date of adoption of this policy, the official date for determining priorities shall be the date as noted on the District's records. Those property owners having previously filed a request must still complete a pre-application form. The District shall continue to maintain a log of all applications showing the date of receipt of the pre-application for Additional Water.

B. Supplemental Application and Assessments.

1.6 Supplemental Application. Applicants will be notified by the District of their potential eligibility for Additional Water based on the priority of applications. Applicants must submit a supplemental application to the District for Additional Water within ninety (60) days of the date that they are notified by the District of their potential eligibility for Additional Water. Supplemental applications shall be on a form provided by the District. Applicants who fail to submit a supplemental application for Additional Water within ninety (60) days of notification shall lose their priority and their application shall be considered void. Owners shall be required to resubmit a pre-application should they desire Additional Water.

1.7 Location within District Boundaries. Any property for which Additional Water is requested must be within the current District boundaries before water delivery will occur. In addition, the lands must be classified as irrigable by the BOR before the District will approve of the Additional Water request or deliver the Additional Water to the property.

The District Manager will determine whether the applicant property is within the District boundaries and whether it has been classified as irrigable by the BOR. In the event that the property is within the District boundaries but not classified as irrigable, the applicant will be notified and given an opportunity to petition the BOR for reclassification of their property as irrigable.

Applicants who petition the BOR for a reclassification of the property shall have twenty-four (24) months in which to complete the process with the BOR. Properties that have not been reclassified as irrigable, within twenty-four (24) months of the property owner's notification of their potential eligibility for Additional Water shall lose their priority and their application shall be considered void. Owners shall be required to resubmit a pre-application should they desire Additional Water.

An applicant with a request pending before the BOR for reclassification of land as irrigable may petition the District Manager for an extension of time for the BOR to make its determinations. The District Manager shall have discretion to approve or deny any such petition based on the diligence of the applicant in pursuing the BOR change and other circumstances relating to the request. Any further appeal shall be made to the District's Board of Directors pursuant to section 4.3 below.

1.8 Requirement to put Water to Beneficial Use. Applicants must provide assurances with the supplemental application that any Additional Water approved for delivery by the District

shall be put to beneficial use for commercial agricultural purposes within five (5) years of the granting of the application. In the event that the Additional Water has not been put to beneficial use five (5) years after an application has been granted, and if there have been no meaningful and measurable efforts to develop the property for commercial agricultural purposes, the Additional Water will be canceled and the amount granted to the application returned to the District for further allocation. The Applicant shall have no further rights to the water and shall be required to reapply for any Additional Water in the future. The District Manager shall be responsible for making the determination as to whether meaningful and measurable efforts have been made to develop the property for commercial agricultural purposes. Any decision by the District Manager is subject to review under the appeal procedures of section 4.3 below. A sale or transfer of ownership shall not extend the time frame for putting the Additional Water to beneficial use.

1.9 Inspection of Property to be Served. All properties for which Additional Water is requested shall be inspected by the District Manager or some other appointed representative of the District for the purpose of verifying acreage, verifying the location of water delivery, determining the feasibility of delivery, verifying the suitability of the property for commercial agricultural use and for such other purposes as the District deems appropriate for purposes of granting or denying the new water request.

The property to be served by the Additional Water must be situated such that any additional infrastructure or water delivery system needs can be accomplished without exercise of the District's eminent domain powers. In other words, the property must be adjacent to an existing District mainline or in such proximity to existing District infrastructure as to allow for extension of the District delivery system to the property. Under no circumstances will the District engage in eminent domain proceedings for the purpose of delivering Additional Water.

1.10 Assessments. Upon the District's approval of a request for Additional Water, the District shall notify the applicant of the one-time assessment (purchase price) required for becoming eligible for the Additional Water. Pursuant to RCW 87.03.240, the purchase price shall be based on the nature of the benefit conferred. The District has considered the Chelan County Assessor's records and appraisals to determine the market value of similarly situated irrigated land as compared to non-irrigated land to arrive at its initial determination of the purchase price. The District has also reviewed historic assessments to properties added to the District in arriving at this determined price. The assessments to individual property owners shall be based on number of acres or partial acres to be served multiplied by the District's purchase price.

1.11 Payment of Assessments. Applicants must submit with their supplemental application a deposit of ten percent (10%) of the price to be incurred in the event that the application is approved. The deposit will be held by the District in a separate trust account to be applied towards the purchase if the application is approved. Any deposit received by the District for an application that is denied shall be returned to the applicant immediately upon denial of the application or following denial of an appeal if one is filed.

Applicants shall not be charged to remain on the pre-application log.

The purchase price for Additional Water shall be paid in full within twelve (12) months of the approval of the supplemental application. In the alternative, the property owner may enter into a repayment contract with the District, requiring payment in equal annual installments over no more than five years. If the applicant requests a longer term repayment contract, the request will have to be approved by the District's Board on a case by case basis. Interest will accrue at the prime market rate as published by the Wall Street Journal, or comparable national publication, plus one percent, and the repayment obligation shall be a lien upon the owner's property. In the event that the price has not been paid in full within twelve (12) months of the approval, or in the event of a default under the repayment contract, the applicant's right to Additional Water shall be forfeited. Any deposit or partial payment shall be refunded to the applicant, less 10% fee paid to the District to cover administrative expenses. The applicant shall lose any priority and their application shall be considered void. The owner shall be required to resubmit a pre-application should they desire Additional Water.

The District will provide Additional Water upon either full payment of the assessment or the property owner's entry into the repayment contract. Water delivery will cease upon a default in any obligation for payment of the assessments.

1.12 District Expenditures. All costs associated with construction of any additional infrastructure needed for the delivery of Additional Water to a property owner shall be borne by the owner. Cost to be paid by the property owner shall include the cost of extending mainlines to the owner's property, costs of turnouts, pumps and motors, delivery of power, discharge lines and any distribution systems. In the event that an extension of the District's water delivery system is needed, the District will conduct all work, including obtaining easements or rights-of-way over county roadways, either with its own personnel or with contractors. The District shall provide the owner with an estimate of the costs. The owner shall be responsible to pay 25% of the estimated costs in advance, with the balance payable within two years of completion of the project. The District will make its best efforts to construct the necessary infrastructure and provide for the delivery of water as District resources and weather conditions permit.

No Additional Water shall be delivered to a property until all construction charges have been paid in full, or until a repayment contract has been entered into between the District and the owner. Any repayment contract shall allow for not more than two years to pay any construction charges, with interest accruing on the outstanding balance at prime plus one percent.

1.13 New Ownership. Any pre-application or supplemental application shall maintain its priority and remain with the land under a change in ownership *only* if specified in the real estate sales contract. If the contract of sale does not include the assignment of the owner's rights under the pre-application or supplemental application, the pre-application and/or supplemental application shall be deemed void. Subsequent owners shall be required to submit a pre-application and follow the same procedures as any owner requesting Additional Water.

II. PRIORITIES AMONG APPLICANTS

2.1 First in Time Priority. Consistent with section 1.12 of the District's Irrigation Water Policy, applications will be processed according to the date of the receipt of the requests.

Pursuant to section 2.1 above, owners identified on the existing log documenting prior water requests shall be notified if they appear to qualify for Additional Water. Those owners will be required to submit to the District the supplemental application and comply with the guidelines for delivery of Additional Water.

Applications for Additional Water received after adoption of this policy will likewise be placed on the District's log of water requests. Priority will be given based on the date of submission of the pre-application.

2.2 Failure to Meet Requirements. Applicants who fail to meet the requirements of Sections I and II above in the time frames required will have their applications voided. Any owner who has had an existing application voided shall be required to go through the pre-application and supplemental application process again, and will not retain any priority based on the time of submission of the original pre-application or request for Additional Water.

III. PRIOR EXCESS WATER USAGE AND UNAUTHORIZED USE

3.1 Assessment for Illegal Uses. Properties that are determined by the District Manager to have been irrigated with District water on lands not authorized shall pay all back assessments prior to being granted any new water rights. Back assessments shall be calculated for six (6) years and shall be based on the current District rates multiplied by the number of acres or partial acres receiving the unauthorized water.

3.2 No Credit for Excess Water Charges. No credit shall be available to any owner for excess water charges relating to irrigation of properties not authorized to receive water.

3.3 Enforcement of Water Limitations. Upon adoption of this policy, the District shall undertake efforts to enforce all rules and regulations governing water allocation and delivery to District customers. The District, in particular, will be undertaking enforcement actions to eliminate the unauthorized use of the District water.

IV. GENERAL PROVISIONS

4.1 Application of District Rules and Regulations. The District's delivery of Additional Water to any applicant property shall be governed by the rules and regulations applicable to irrigation water and as adopted or modified by the District. In the event of an inconsistency between the District rules and regulations and this policy, this policy shall control.

4.2 Applications Nontransferable. Except as provided in section 1.13 above, Pre-application and Supplemental Applications for Additional Water are not assignable or transferable.

4.3 Appeal Process. Any decision of the District manager relating to application of these policies procedures may be appealed to the District's Board of Directors. The appeal must be in writing, and must be filed within 60 days of the event giving rise to the appeal. The appeal must be delivered to the District manager or the District secretary at the District's offices. The

owner filing an appeal will be given an opportunity to address the District Board of Directors regarding the appeal.

The Board of Director shall issue a decision in writing on the appeal within 14 days of the meeting in which the owner filing the appeal has been given the opportunity to present his or her case.