

Methow Valley Citizens Council



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Okanogan County Board of County Commissioners
Attention: Laleña Johns, Clerk of the Board
123 5th Avenue North, Ste 150
Okanogan, WA 98840
Emailed to: ljohns@co.okanogan.wa.us

Re: Ordinance 2019-11

January 24, 2020

Dear Commissioners DeTro, Hover and Branch,

Since 1976 the Methow Valley Citizens Council (MVCC) has raised a strong community voice for protection of the Methow Valley's natural environment and rural character. The organization's long history lends a unique perspective on the intersection of land use planning and water availability in our valley, and we intend to participate constructively in all discussions related to these important matters.

We appreciate Ordinance 2019-11 and other interim measures that Okanogan County has adopted to restrict new water uses and address accelerated growth while preparing a revised Comprehensive Plan and zoning regulations. The Ordinance is a necessary first step to limit the risk to the County and property owners posed by continuing approval of land divisions and building permits without legally available water. It does not, however, go far enough.

We believe that the ordinance must be amended to fully comply with the law and thus to reduce uncertainty for the County and for owners and potential buyers of many lots in the Valley. Adopting an interim measure consistent with the Methow Instream Flow Rule will allow the County and other interested parties time to obtain and analyze information, identify problems, and develop lasting solutions that protect the Methow Valley's future water supply and direct growth in ways consistent with the community's desires.

Our specific suggestions follow.

- A. The Ordinance should be amended to include a prohibition on issuing building permits using the two cubic feet per second (cfs) water reserves for lots resulting from subdivisions on or after March 28, 2002,**

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The Planning Enabling Act, RCW 36.70.692, provides that “county development regulations must ensure that proposed water uses are consistent with RCW 90.44.050 and with applicable rules,” including the Methow Instream Flow Rule, WAC 173-548-030. As you are aware, MVCC and Futurewise have been concerned for some time about the County’s practice of approving subdivisions in WRIA 48 using the Methow Rule’s two cfs water reserves.

The Methow Rule limits the two cfs reserves to single domestic and stock watering uses. WAC 173-548-030(2). As defined by the Washington Supreme Court in *State Dep’t of Ecology v. Campbell & Gwinn, L.L.C.*, 146 Wn.2d 1, 12, 43 P.3d 4, 10 (2002), single domestic use is use “by a single home,” and not use by several homes, a multiunit residence, or a subdivision, which are group uses. This interpretation is consistent with Ecology’s report on the Methow Rule, which defines “single domestic use” as “[w]ater used by a single household including up to one-half an acre lawn or garden irrigation.” Kris G. Kauffman, P.E. James R. Bucknell, *River Basin Program Series, No. 4 Water Resources Management Program Methow River Basin (Water Resources Inventory Area No. 48)* p. 23 (State of Washington, Department of Ecology Policy Development Section Water Resources Management Division Reprinted Nov. 1977).

Accordingly, to be compliant with state law, County regulations must provide that subdivisions and building permits on resulting parcels cannot be based on water from the reserves. Unfortunately, Ordinance 2019-11 restricts the use of the reserves only with respect to land division, not building permits on parcels created by past land divisions.

We understand that the BOCC did not include these lots because the appeal period for the subdivisions that created them has run. Therefore, the reasoning goes, these lots are now buildable. **While they may be legal lots, they do not have legally available water for building.**

The fact that the appeal period has run on a subdivision approval is irrelevant to whether or not the County may grant a building permit for a lot created by that subdivision. Granting a building permit is a new action. It is subject under state law to separate, equivalent, requirements for legal and physical water availability as is the approval of a subdivision and thus must comply with the Methow Rule. RCW 19.27.097(1)(a),(b). The fact that a subdivision that never had legally available water was approved without appeal does not somehow “create” legally available water for building permits issued on the resulting lots. A building permit for a resulting lot may be granted, but only if there is a water source other than the two cfs reserve.

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Consequently, the ordinance as it stands maintains significant uncertainty for owners and potential buyers of these lots. A building permit for any of these lots, if based on the two cfs reserve, may be challenged for failure to assure legally available water. Even if the permit is not challenged, the permitted home will not be able to use the 2 cfs reserves as a water source, and its water may be subject to curtailment by a senior water right holder. If one of the County's goals in adopting this ordinance was to reduce uncertainty for landowners, failure to prohibit the granting of building permits based on the reserve for lots created by subdivisions approved on or after March 28, 2002 seriously undermines that objective. It leads owners of homes built on those lots to believe they have legal uninterrupted water rights that they do not have.

- B. Similarly, the exception provided in Ordinance 2019-11 “for those land divisions where an existing residence with an existing water supply can create one additional lot” is not compliant with the law.**

Under the *Campbell & Gwinn* decision, all land divisions are group uses, regardless of the presence of an existing residence. We appreciate that the County may be trying to accommodate special circumstances, but this exception creates uncertainty for any property owner who makes use of it. Consequently, the ordinance should be amended by removing this exception.

- C. The ordinance should not repeal Ordinance 2019-5, which addresses land use in Restricted Areas (formerly Closed Basins).**

The information needed to address water availability in Restricted Areas is different than that needed to determine what actions may be necessary to allow carefully planned residential development to occur in other areas in the Methow Valley. Maintaining both 2019-5 and 2019-11 would allow each matter to be studied independently.

- D. The County does not appear to have developed information about the number of lots affected by Ordinance 2019-11 that is necessary to analyze the impacts of, or educate the public about, the ordinance either as written or as amended to fully comply with the law.**

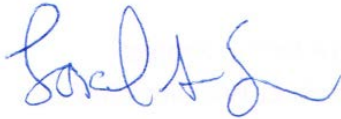
MVCC has attempted to obtain information from the Planning Department to determine how many potential land use actions will be affected by, or are excluded from, the current version of Ordinance 2019-11, and it does not appear the County has such information. For example, how many lots have been created through land division since March 28, 2002, but are not included in the ordinance? And, how many lots may be created under the exception for a second lot created from a lot with a house already built? Without this

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information, the scope of the risk to property owners – which could be considerable -- is unknown. We believe that the County should gather and provide this information as part of the analysis of what actions may best ensure physically and legally available water for future development.

We look forward to continued productive dialogue leading to lasting solutions that benefit the natural environment and rural character of the Methow Valley, its residents, visitors and future generations. Please address any questions about our views to Lorah Super, Program Director, at the address below.

Sincerely,



Lorah Super
MVCC Program Director
lorah@mvcitizens.org
(509)997-0888 ext.2

CC: Commissioners DeTro, Hover and Branch; David Gecas; Sage Park; Trevor Hutton; Alan Reichman; Shona Voelckers; Tim Trohimovich