

RESOLUTION NO. 644

A RESOLUTION OF THE BOARD OF COMMISSIONERS  
OF BIRCH BAY WATER & SEWER DISTRICT, WHATCOM COUNTY,  
WASHINGTON, AUTHORIZING QUALIFIED AND CONDITIONAL APPROVAL  
OF THE WATERSHED MANAGEMENT PLAN - PHASE 1

WHEREAS, in 1997 the Washington State Legislature adopted Chapter 90.82 RCW, entitled "Watershed Planning;" and

WHEREAS, the stated purpose of watershed planning is to develop a more thorough and cooperative method of determining the current water resource situation in each Water Resource Inventory Area ("WRIA") and to provide local citizens with the maximum possible input concerning their goals and objectives for water resource management and development (RCW 90.82.005); and

WHEREAS, the local development of watershed plans is intended to serve vital local interests by placing it in the hands of people: Who have the greatest knowledge of both the resources and the aspirations of those who live and work in the watershed; and who have the greatest stake in the proper, long-term management of the resources (RCW 90.82.010); and

WHEREAS, the legislature found that it is necessary for units of local government to engage in the orderly development of watershed plans (RCW 90.82.010); and

WHEREAS, the Birch Bay Water & Sewer District ("District") is one such unit of local government; and

WHEREAS, RCW 90.82.060 specifies procedures for initiation of watershed planning within a Water Resource Inventory Area ("WRIA"), as such areas are established in chapter 173-500 WAC; and

WHEREAS, most of Whatcom County lies within WRIA 1; and

WHEREAS, a portion of Whatcom County lies within WRIA 3; and

WHEREAS, pursuant to RCW 90.82.060, Whatcom County, the City of Bellingham and Whatcom County PUD #1 decided jointly and unanimously to proceed with watershed planning in WRIA 1 and invited, as further provided under RCW 90.82.060, the Lummi Nation and Nooksack Tribe to participate; and

WHEREAS, the five above-named entities together are regarded as the initiating governments ("Initiating Governments") as defined in RCW 90.82.060; and

WHEREAS, RCW 90.82.060 assigns the Initiating Governments the task of determining the scope of the planning to be conducted within the WRIA; and

WHEREAS, RCW 90.82.060 further assigns the Initiating Governments the task of organizing a planning unit ("Planning Unit"); and

WHEREAS, in 1998 the Initiating Governments organized a Planning Unit and provided for representation of water districts in the WRIA 1 watershed planning process by establishing a Water Districts Caucus as a member of said Planning Unit; and

WHEREAS, Birch Bay Water & Sewer District is a member of the Water Districts Caucus; and

WHEREAS, the WRIA 1 watershed planning process was initiated in 1998 and has continued until the present time; and

WHEREAS, the WRIA 1 watershed planning process conducted pursuant to Chapter 90.82 RCW has produced a document entitled Watershed Management Plan - Phase 1 ("WMP"); and

WHEREAS, the Planning Unit is currently considering approval of the proposed WMP; and

WHEREAS, Chapter 90.82 RCW establishes that the scope of watershed planning under the Act must include a Water Quantity element (RCW 90.82.070), and may include elements for Water Quality (RCW 90.82.090), Habitat (RCW 90.82.100) and Instream Flow (RCW 90.82.080) as optional elements of a watershed management plan; and

WHEREAS, the Initiating Governments decided that in addition to the mandatory Water Quantity element, the proposed WMP would include all optional components identified in the statute, to wit: Instream Flow, Water Quality and Habitat. This decision was later approved by the Planning Unit; and

WHEREAS, Chapter 90.82 RCW mandates that detailed requirements must be satisfied and that specific information shall be included in the Water Quantity, Water Quality, Habitat and Instream Flow components of a watershed management plan (RCW 90.82.070 through 90.82.100); and

WHEREAS, these statutory components of a watershed management plan (Water Quantity, Water Quality, Habitat and Instream Flow) are interrelated; and

WHEREAS, the proposed WMP is incomplete and does not meet the statutory requirements of Chapter 90.82 RCW for watershed management plan components; and

WHEREAS, consensus has not been reached on certain matters logically precedent to completion of a final watershed management plan for WRIA 1, including without limitation instream flows; and



WHEREAS, it is the understanding of the District that neither the proposed WMP, nor any portion thereof, gives rise to any legal obligation on the part of the District; and

WHEREAS, the proposed WMP represents a potential non-binding road map, subject to change, for undertaking additional work related to Water Quantity, Water Quality, Instream Flows and Habitat; and

WHEREAS, state law provides an adjudicatory framework and process for obtaining certainty and finality in determination of disputes concerning water rights and other related legal issues; and

WHEREAS, notwithstanding approval of the proposed WMP, future litigation of many if not most water right related issues in WRIA 1 remains a strong possibility; and

WHEREAS, substantial new and additional ongoing funding requirements may be sought by some members of the Initiating Governments and/or Planning Unit to further pursue the elements of the WRIA 1 Watershed Management Plan Phase I, which presently remain incomplete; and

WHEREAS, all of the foregoing recitals are legislative findings of the Board of Commissioners and are fully incorporated into the following resolution as a material part thereof;

NOW THEREFORE IT IS HEREBY RESOLVED THAT:

Section 1. The District's General Manager is authorized on behalf of the District to support approval of the proposed WMP document at the Water Districts Caucus and the Planning Unit; provided that, any such support for approval shall be contingent upon and subject to the conditions, reservations and exceptions set forth in Section 2 hereof.

Section 2. By adoption of this Resolution the Board of Commissioners declares that any approval by the District of the proposed WMP shall be contingent upon and subject to the following conditions, reservations and exceptions; and shall be further contingent and based upon the District's understanding that the below conditions, reservations and exceptions are an accurate statement of circumstances under which the WMP is adopted.

A. The WMP document will not meet the statutory requirements for any plan component, including RCW 90.82.070 (Water Quantity), RCW 90.82.080 (Instream Flow), RCW 90.82.090 (Water Quality), and RCW 90.82.100 (Habitat).

B. The WMP document has not undergone legal review by the District's legal counsel. Statements in the WMP document concerning any laws, court decisions, or legal principles associated with water law or water rights are not agreed upon or consented to by the District.

C. The WMP document will not be binding in any future litigation or administrative proceeding involving the District. Neither the WMP document nor statements in the WMP document shall be admissible in evidence in any future judicial, quasi-judicial, or rule-making proceeding.

D. The WMP document will not create binding obligations on the District under RCW 90.82.130 or by any other mechanism.

E. The WRIA 1 Instream Flow Selection and Adoption Plan, Version 6c (included in Appendix C of the WMP document and headed "DRAFT SUBJECT TO LEGAL REVIEW") is acknowledged only as a general point of departure for negotiations and does not and cannot represent a prescriptive formula for decision-making.

F. Implementation of new or existing groundwater withdrawals to augment streamflows, as contemplated in the pilot project Groundwater Augmentation of Streamflows, will require proponents to demonstrate non-impairment of any and all senior rights, including without limitation applications, permits, certificates and claims. This project is cited in Section 3 of the WMP document.

G. The preface to the WMP document states that the County expended \$3.8 million in developing this plan. This information was not presented to or specifically approved by the Planning Unit. The accuracy of these figures is not endorsed.

H. The idea of a single management entity with a dedicated source of funds, cited in Section 4 of the WMP document, is not supported. Any new county-wide sources of funding developed to support implementation of activities identified in the WMP or other watershed management activities in Whatcom County, must be shared equitably with all the County's local governments having watershed management responsibilities.

I. This Resolution and its limited authorization for conditional approval of the WMP shall be fully incorporated into the WMP.

J. The District is obliged to represent the interests of its ratepayers as well as those persons who have purchased property within the District's water service area. The District will continue to take reasonable steps to secure water supplies to serve such properties when they are ready to develop in the future.



Section 3. BE IT FURTHER RESOLVED that any resolutions or parts of resolutions in conflict herewith are hereby repealed insofar as they conflict with the provisions of this resolution.

Section 4. If any section, subsection, sentence, clause or phrase of this Resolution is for any reason held to be invalid or unconstitutional, such decision shall not affect the validity of the remaining portions of this Resolution. The Board of Commissioners hereby declare that it would have passed this code and each section, subsection, sentence, clause and phrase thereof, irrespective of the fact that any one or more sections, subsections, sentences, clauses or phrases has been declared invalid or unconstitutional, and if, for any reason, this Resolution should be declared invalid or unconstitutional, then the original Resolution or Resolutions shall be in full force and effect.

Section 5. This Resolution shall be effective immediately.

ADOPTED by the Board of Commissioners of the Birch Bay Water & Sewer District, Whatcom County, Washington, at a regular meeting held the 10<sup>th</sup> day of March, 2005.

  
COMMISSIONER

  
COMMISSIONER

  
COMMISSIONER

THIS IS TO CERTIFY that the above is a true and correct copy of Resolution No. 644 of Birch Bay Water & Sewer District, Whatcom County, Washington, adopted at the regular meeting of the Board of Commissioners on March 10, 2005.

  
SECRETARY