

WHATCOM COUNTY COUNCIL AGENDA BILL

NO. 1999 - 389

| CLEARANCES | Date | Date Received in Council Office | Agenda Date | Assigned To |
|-----------------------------|---------|--|-------------|----------------------------|
| Orig. Dept.: County Council | 10/5/99 | RECEIVED OCT 05 1999 WHATCOM COUNTY COUNCIL | 10/12/99 | Introduction |
| Division Head: | | | 10/26/99 | NAT. RES. / PUBLIC HEARING |
| Dept. Head: | | | | |
| Prosecutor: | | | | |
| Budget: | | | | |
| Executive: | | | | |

SUBJECT:

Ordinance creating a Whatcom County Water Conservancy Board and WCC 2.23

ATTACHMENTS

SUMMARY STATEMENT:

| | |
|----------------------------|--|
| Related County Contract #: | Should the Clerk schedule a hearing? (Y/N Y Requested Date: 10/26/99 |
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An ordinance authorizing the creation of a Whatcom County Water Conservancy Board and establishing Whatcom County Code Chapter 2.23

RECOMMENDED MOTION (for final action):

COUNCIL ACTION TAKEN:

1999 - 389 10/12/99: Introduced
 10/26/99: Amended and adopted 7-0, Ord. #99-060

Related File Numbers:

Ordinance or Resolution Number (this item only):

ORD. #99-060

SPONSORED BY: Consent

2 PROPOSED BY: Nat. Res. Committee

3 INTRODUCTION DATE: 10/12/99

4
5 ORDINANCE NO. 99-060

6
7 AUTHORIZING THE CREATION OF A WHATCOM COUNTY WATER
8 CONSERVANCY BOARD AND ESTABLISHING
9 WHATCOM COUNTY CODE 2.23

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11 WHEREAS, the Whatcom County Council has received a petition requesting
12 the formation of a Whatcom County Water Conservancy Board; and

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14 WHEREAS, the petition has been signed by five Whatcom County water right
15 holders, as required by RCW 90.80.020; and

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17 WHEREAS, state law allows the County legislative authority to authorize the
18 creation of a water conservancy board for the purpose of expediting voluntary
19 water transfers within the county; and

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21 WHEREAS, the State legislature finds that voluntary water transfers between
22 water users can reallocate water use in a manner that will result in more efficient
23 use of water resources; and

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25 WHEREAS, voluntary water transfers can help alleviate water shortages, save
26 capital outlays, reduce development costs, and provide an incentive for investment
27 in water conservation efforts by water right holders; and

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29 WHEREAS, the State should expedite the administrative process for
30 noncontested water transfers among water right holders, conveying greater
31 operational control to water managers and water right holders.

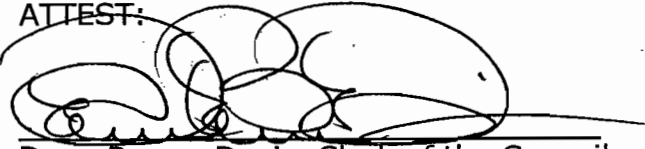
32
33 NOW, THEREFORE, BE IT ORDAINED that the Whatcom County Council
34 hereby authorizes the creation of the Whatcom County Water Conservancy Board
35 and establishes Whatcom County Code 2.23, Water Conservancy Board, as outlined
36 in Exhibit A to this ordinance.

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BE IT FINALLY ORDAINED that creation of the board shall be subject to approval by the director of the Washington State Department of Ecology.

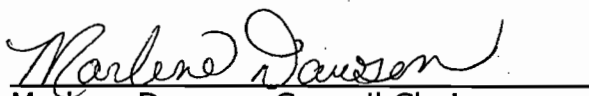
ADOPTED this 26th day of October, 1999

ATTEST:



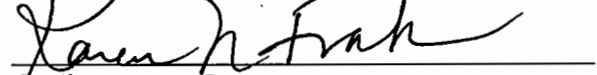
Dana Brown-Davis, Clerk of the Council

WHATCOM COUNTY COUNCIL
WHATCOM COUNTY, WASHINGTON



Marlene Dawson, Council Chair

APPROVED AS TO FORM:



Civil Deputy Prosecutor

Approved () Denied



Pete Kremen, County Executive

EXHIBIT A

CHAPTER 2.23 WATER CONSERVANCY BOARD

Section:

- 2.23.010 Established**
- 2.23.012 Definitions**
- 2.23.015 Purpose**
- 2.23.020 Members – Appointments – Terms**
- 2.23.025 Members – Training**
- 2.23.030 Powers and Duties**
- 2.23.033 Meetings – Officers - Quorum**
- 2.23.035 Funding**
- 2.23.040 Application for water transfer – Notice**
- 2.23.045 Transfers – Review – Approval**
- 2.23.050 Appeals from director’s decisions**
- 2.23.055 Damages arising from board-approved transfers – Immunity of county and department**
- 2.23.060 Conflict of interest**

2.23.010 Established. There is hereby established a water conservancy board for Whatcom County, created pursuant to RCW 90.80. The board constitutes a public body corporate and politic and a separate unit in local government.

2.23.012 Definitions. The following definitions apply throughout this chapter, unless the context clearly requires otherwise.

- (1) "Board" means the Whatcom County Water Conservancy Board.
- (2) "Commissioner" means a member of the Whatcom County Water Conservancy Board.
- (3) "Department" means the Department of Ecology.
- (4) "Director" means the director of the Department of Ecology.

2.23.015 Purpose. The Whatcom County Water Conservancy Board is created for the purpose of expediting voluntary water transfers within the same sub-basin or aquifer within Whatcom County.

2.23.020 Members – Appointments – Terms. The water conservancy board shall consist of three commissioners appointed by the County Council for six-year terms. The County Council shall stagger the initial appointment of the commissioners so that the first commissioners who are appointed shall serve terms of two, four, and six years, respectively, from the date of their appointment. All vacancies shall be filled for the unexpired term. The County Council shall consider, but is not limited in appointing, nominations to

the board by people or entities petitioning or requesting the creation of the board. However, the County Council shall ensure that individual water right holders who divert water for use within the county are represented on the board. In making appointments to the board, the County Council shall choose from among persons who are residents of Whatcom County. Commissioners shall serve without compensation, but are entitled to reimbursement for necessary travel expenses in accordance with RCW 43.03.050 and 43.03.060 and costs incident to training.

2.23.025 Members – Training. No commissioner may participate in board decisions until he or she has successfully completed all training requirements set forth by the Department of Ecology. Training courses for commissioners shall include, but are not limited to, an overview of state water law and hydrology.

2.23.030 Powers and Duties. The water conservancy board may acquire, purchase, hold, lease, manage, occupy, and sell real and personal property or any interest herein, enter into and perform all necessary contracts. It may appoint and employ necessary agents and employees and fix their compensation, employ contractors including contracts for professional services, sue and be sued, and do any and all lawful acts required and expedient to carry out the purposes of this chapter.

2.23.033 Meetings – Officers – Quorum. At its first meeting, the board shall establish its business rules, meeting schedule, and elect one of its members as chairman and one as vice chair. All board activities are subject to the Open Public Meetings Act, as outlined in RCW 42.30. A majority of commissioners shall constitute a quorum for the transaction of business and shall be necessary for any action to be taken by the board.

2.23.035 Funding. The board constitutes an independently founded entity, and may provide for its own funding as determined by the commissioners. The board may accept grants and may adopt fees for processing applications for transfers of water rights to fund the activities of the board. A board may not impose taxes or acquire property by the exercise of eminent domain. All financial transactions, including funding for water board operations, will be approved during a board meeting and carried out by the water board or its designee.

2.23.040 Application for water transfer – Notice.

(1) Applications to the board for transfers shall be made on a form provided by, or approved by, the department, and shall contain such additional information as may be required by the board in order to review and act upon the application. At a minimum, the application shall include information sufficient to establish, to the board's satisfaction, the transferor's right to the quantity of water being transferred, and a description of any applicable limitations on the right to use water. The description shall include the point of diversion or withdrawal, place of use, source of supply, purpose of use,

quantity of use permitted, time of use, period of use, and the place of storage.

(2) The transferor and the transferee of any proposed water transfer may apply to the board for approval of the transfer if the water proposed to be transferred is currently diverted or used within the geographic boundaries of the county if the transfer is approved. In the case of a proposed water transfer in which the water is currently diverted or would be diverted outside the geographic boundaries of the county, the board shall hold a public hearing in the county of the diversion or proposed diversion. The board shall provide for prominent publication of notice of such hearing in a newspaper of general circulation published in the county in which the hearing is to be held for the purpose of affording an opportunity for interested persons to comment upon the application.

(3) After an application for a transfer is filed with the board, the board shall publish notice of the application in accordance with the publication requirements and send notice to state agencies as provided in RCW 90.03.280. Any person may submit comments to the board regarding the application. Any water right holder claiming detriment or injury to an existing water right may intervene in the application before the board pursuant to subsection (4) of this section. If a majority of the board determines that the application is complete, in accordance with the law, the transferor and transferee are within the same sub-basin or aquifer, and the transfer can be made without injury or detriment to existing water rights in accordance with RCW 90.03.380, the board shall issue the applicant a certificate conditionally approving the transfer. The transfer is subject to review by the director of the Department of Ecology.

(4) If a water right holder claims a proposed transfer will cause an impairment to that right, the water right holder is entitled to a hearing before the board. The board shall receive such evidence as it deems material and necessary to determine the validity of the claim of impairment. If the party claiming the impairment establishes by a preponderance of the evidence that his or her water right will be impaired by the proposed transfer, the board may not approve the transfer unless the applicant and the impaired party agree upon compensation for the impairment.

2.23.045 Transfers – Review – Approval.

(1) If the board approves a transfer, it shall submit a copy of the proposed certificate conditionally approving the transfer to the department for review. The board shall also submit a report summarizing any factual findings on which the board relied in deciding to approve the proposed transfer. The board shall also transmit notice by mail to any person who objected to the transfer or who requested the notice.

(2) The director shall review each proposed transfer conditionally approved by a board for compliance with state water transfer laws including RCW 90.03.380, 90.03.390, and 90.44.100, rules and guidelines adopted by the department, and other applicable law.

(3) Any party to a transfer or a third party who alleges his or her water right will be impaired by the proposed transfer may file objections with the

department. If objections to the transfer are filed with the department, the board shall forward the files and records upon which it based its decision to the department.

(4) The director shall review the action of the board and affirm, reverse, or modify the action of the board within forty-five days of receipt. The director may extend the forty-five day time period for an additional thirty days upon consent of the parties to the transfer. If the director fails to act within this time period, the board's action is final. Upon approval of a water transfer by the action or non-action of the director, the conditional certificate issued by the board is final and valid.

2.23.050 Appeals from director's decisions. The decision of the director to approve an action to create a board, or to approve, deny, or modify a water transfer either by action or non-action shall be appealable in the same manner as other water right decisions made pursuant to RCW 90.03.

2.23.055 Damages arising from board-approved transfers – Immunity of county and department. Neither the county nor the department shall be subject to any cause of action or claim for damages arising out of transfers approved by a board under this chapter.

2.23.060 Conflict of interest.

(1) A commissioner of a water conservancy board who has an ownership interest in a water right subject to an application for approval of a transfer or change by the board, shall not participate in the board's review or decision upon the application.

(2) A commissioner of a water conservancy board who also serves as an employee or upon the governing body of a municipality-owned water system, shall not participate in the board's review or decision upon an application for the transfer or change of a water right in which that water system has or is proposed to have an ownership interest.