

CLEARANCES	Initial	Date	Date Received in Council Office	Agenda Date	Assigned to:
Originator:	Brenner/Byr	3/27/2018		3/27/2018	Introduction
Division Head:				4/10/2018	NR/Council
Dept. Head:	<i>DBD</i>	3-27-18		4/24/2018	SCOTW/Council
Prosecutor:				5/8/2018	SCOTW/Council
Purchasing/Budget:					
Executive:					

TITLE OF DOCUMENT:

Resolution re: roles of water resource planning under RCW 90.82 & ESSB 6091

ATTACHMENTS:

<i>SEPA review required?</i>	() Yes	() NO	<i>Should Clerk schedule a hearing?</i>	() Yes	() NO
<i>SEPA review completed?</i>	() Yes	() NO	<i>Requested Date:</i>		

SUMMARY STATEMENT OR LEGAL NOTICE LANGUAGE: (If this item is an ordinance or requires a public hearing, you must provide the language for use in the required public notice. Be specific and cite RCW or WCC as appropriate. Be clear in explaining the intent of the action.)

Resolution recognizing the roles and duties of Whatcom County, the WRIA 1 Planning Unit, and the WRIA 1 initiating governments regarding water resources planning under RCW 90.82 and ESSB 6091

COMMITTEE ACTION:

4/10/2018: Held in SCOTW for two weeks
4/24/2018: Held in Committee

COUNCIL ACTION:

3/27/2018: Introduced 5-1, Browne opposed and Sidhu absent
4/10/2018: Held in Committee
4/24/2018: Held in Committee

Related County Contract #:

Related File Numbers:

Ordinance or Resolution Number:

Please Note: Once adopted and signed, ordinances and resolutions are available for viewing and printing on the County's website at: www.co.whatcom.wa.us/council.

RESOLUTION NO. 2018-_____

RECOGNIZING THE ROLES AND DUTIES OF WHATCOM COUNTY, THE WRIA 1 PLANNING UNIT, AND THE WRIA 1 INITIATING GOVERNMENTS REGARDING WATER RESOURCES PLANNING UNDER RCW 90.82 AND ESSB 6091

WHEREAS, in 1998, the Washington State Legislature adopted ESHB 2514, 90.82 RCW, the Watershed Planning Act (WPA); and

WHEREAS, RCW 90.82.005 states, "The purpose of this chapter is to develop a more thorough and cooperative method of determining what the current water resource situation is in each water resource inventory area of the state and to provide local citizens with the maximum possible input concerning their goals and objectives for water resource management and development"; and

WHEREAS, RCW 90.82.005 states, "The legislature finds that the local development of watershed plans for managing water resources and for protecting existing water rights is vital to both state and local interests. The local development of these plans serves 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. The development of such plans serves the state's vital interests by ensuring that the state's water resources are used wisely, by protecting existing water rights, by protecting instream flows for fish, and by providing for the economic well-being of the state's citizenry and communities. Therefore, the legislature believes it necessary for units of local government throughout the state to engage in the orderly development of these watershed plans"; and

WHEREAS, RCW 90.82.060 called out the "initiating governments" as the entities responsible for developing a scope of work for watershed planning and organizing a Planning Unit to oversee and approve watershed planning activities under the WPA; and

WHEREAS, the WRIA 1 Initiating Governments consist of Whatcom County, the Lummi Nation, the Nooksack Tribe, the City of Bellingham and PUD No. 1 of Whatcom County; and

WHEREAS, on May 5, 1998, Whatcom County Council unanimously adopted Resolution 1998-024 whereby Whatcom County affirmed its duty under RCW 90.82 to serve as "watershed planning lead agency" among the Initiating Governments; and

WHEREAS, on October 26, 1999, Whatcom County Council unanimously adopted Resolution 1999-050 whereby Whatcom County affirmed that it is the duty of the Whatcom County Councilmembers to represent their constituents in watershed issues, and resolved that regular monthly meetings would be scheduled with the County Administration to provide ongoing opportunities for the County Council to review and approve policy and budget matters prior to joint review and agreement among the Initiating Governments; and

WHEREAS, RCW 90.82.030 (1) states, "All WRIA planning units established under this chapter shall develop a process to assure that water resource user interests and directly involved interest groups at the local level have the opportunity, in a fair and equitable manner, to give input and direction to the process"; and

WHEREAS, on December 22, 1999, the WRIA 1 Planning Unit ("Planning Unit") was formed through adoption of the Watershed Management Project Planning Unit Process and Procedural Agreement; and

WHEREAS, the Planning Unit included a broad range of water resource user interests and directly involved interest groups in two categories: governmental participants included Whatcom County, PUD No. 1 of Whatcom County, the City of Bellingham, the State Department of Ecology, the Small Cities Caucus, the Water Districts Caucus, the Diking and Drainage Districts Caucus and the Port of Bellingham and non-governmental participants included caucuses representing agriculture, fishers, forestry, land development, environmental, private well owners, and non-municipal-governmental water systems; and

WHEREAS, the Lummi Nation and Nooksack Tribe were invited to join the Planning Unit but declined, choosing instead to participate through a Memorandum of Understanding with the three other Initiating Governments establishing that group as the Watershed Management Project Joint Board; and

WHEREAS, the Whatcom County Council designated the County Executive as the representative for Whatcom County on the Watershed Management Project Joint Board; and

WHEREAS, in March of 2000 the Planning Unit approved a scope of work that called for development of a watershed management plan that addressed water quantity, water quality, instream flow, and fish habitat; and

WHEREAS, in 2005 the Planning Unit approved and Whatcom County adopted the WRIA 1 Watershed Management Plan – Phase 1 (WMP); and

WHEREAS, the Lummi Indian Business Council and Nooksack Tribal Council also approved the WRIA 1 Watershed Management Plan; and

WHEREAS, in 2007 the Planning Unit approved and Whatcom County adopted the WRIA 1 Detailed Implementation Plan (DIP), which was required pursuant to RCW 90.82.043; and

WHEREAS, both the WMP and DIP called for the Planning Unit to continue functioning to address instream flows and WMP updates; and

WHEREAS, in July of 2013 the Whatcom County Council recognized that the Planning Unit had not met since June 30, 2009; and

WHEREAS, on July 23, 2013, Whatcom County Council unanimously adopted Resolution 2013-025 wherein the Whatcom County Council declared its policy on the continuing role of the Planning Unit and re-affirmed the Council's role in approving water resource plans pursuant to RCW 90.82; and

WHEREAS, Resolution 2013-025 requested that the Planning Unit report regularly to the County Council and that the County Executive facilitate this reporting function; and

WHEREAS, the Planning Unit resumed meeting in September 2013 and has met regularly since that time; and

WHEREAS, on May 21, 2014, the Planning Unit revised its Process and

Procedural Agreement to clarify that its decisions would be based on majority vote of the members present, except where other procedures were mandated by statute; and

WHEREAS, on December 14, 2016, the Initiating Governments entered into an interlocal agreement dissolving the Watershed Management Project Joint Board and transferring the duties and functions of the Watershed Management Project Joint Board to a newly established WRIA 1 Watershed Management Board consisting of the Initiating Governments and the Washington Department of Fish & Wildlife and the small cities in Whatcom County; and

WHEREAS, RCW 90.82.130 states, "Upon completing its proposed watershed plan, the planning unit may approve the proposal by consensus of all of the members of the planning unit or by consensus among the members of the planning unit appointed to represent units of government and a majority vote of the nongovernmental members of the planning unit"; and

WHEREAS, If the County Council does not approve the updated Watershed Management Plan, pursuant to RCW 90.82.130(2)(b), it shall be returned to the Planning Unit with recommendations for revisions; and

WHEREAS, Whatcom County, represented by staff of the County Executive, is a governmental member of the Planning Unit; and

WHEREAS, on January 19, 2018, Engrossed Substitute Senate Bill 6091 (ESSB 6091), an act relating to ensuring that water is available to support development, took effect; and

WHEREAS, ESSB 6091 at Section 202, Subsection 4(a) states, "In collaboration with the planning unit, the initiating governments must update the watershed plan requires the Initiating Governments to collaborate with the Planning Unit to update the WRIA 1 Watershed Plan,"to include recommendations for projects and actions that will measure, protect and enhance instream resources and improve watershed functions that support the recovery of threatened and endangered salmonids"; and

WHEREAS, ESSB 6091 (Section 202, Subsection 4(b)) specifies that the updated watershed plan must include at a minimum "those actions that the planning units determine to be necessary to offset potential impacts to instream flows associated with permit-exempt domestic water use"; and

WHEREAS, ESSB 6091 (Section 202 Subsection 5) establishes a fee of five hundred dollars to be paid to Whatcom County by applicants for building permits or subdivisions, three hundred fifty dollars of which is to be deposited in a new watershed restoration and enhancement account in the custody of the State Treasurer; and

WHEREAS, ESSB 6091 (Section 202 Subsection 5) also establishes a maximum annual average withdrawal rate of three thousand gallons per day for domestic withdrawals exempt from permitting under RCW 90.44.050; and

WHEREAS, ESSB 6091 contemplates that the updated watershed plan may recommend modifications to the water use quantity standards and fees established under Section 202 Subsection 5 and may also identify evidence-based conservation requirements and other water resource management measures; and

WHEREAS, ESSB 6091 (Section 202 Subsection 6) states that rules adopted pursuant to this Act may: (1) rely on the updated watershed plan's recommendations

and procedures to authorize new withdrawals exempt from permitting under RCW 90.44.050 that would potentially impact a closed waterbody or minimum flow or level; (2) rely on projects identified in the updated watershed plan to offset consumptive water use; and (3) include updates to fees based on the Planning Unit's determination of the costs for offsetting water use; and

WHEREAS, the WRIA 1 Watershed Management Plan was adopted pursuant to RCW 90.82.130, which states that the Planning Unit's recommended plan must be submitted to the County for final approval or disapproval; and

WHEREAS, the adopted WRIA 1 Watershed Management Plan may be amended only through a form of negotiated rule making that uses the same processes that applied in WRIA 1 for developing the plan.

NOW, THEREFORE BE IT RESOLVED:

Section 1: Findings. The County Council finds that the update of the adopted WRIA 1 Watershed Management Plan specified in ESSB 6091 is a high priority that warrants extremely careful Council oversight. Because of its potentially significant impacts on citizens of Whatcom County, the updated plan must be developed in an open and transparent manner. Meetings of the County Council provide an essential opportunity for public involvement in the process of updating this important plan.

Section 2: Council Authority. Whatcom County Council is the legislative body with exclusive authority under Chapter 90.82 to finally approve the updated WRIA 1 Watershed Management Plan required under ESSB 6091. If the County Council does not approve the updated Watershed Management Plan, pursuant to RCW 90.82.130(2)(b), it shall be returned to the Planning Unit with recommendations for revisions.

Section 3: Planning Unit Role. Pursuant to RCW 90.82, the Planning Unit is designed to be broadly representative of local water interests in WRIA 1. The Planning Unit is the sole entity, established under RCW 90.82, responsible for recommending initially approving amendments to the adopted WRIA 1 Watershed Management Plan, which then shall be put forward for Council action, in accordance with the process presented in "Exhibit A". Because the Planning Unit is established pursuant to statute with the power to take actions which are necessary antecedents to the Council's action in final plan approval, the Planning Unit is a sub agency of government subject to the Open Public Meetings Act. Meetings of the Planning Unit provide an additional opportunity for public involvement in the process of updating the WRIA 1 Watershed Management Plan.

Section 4: Initiating Governments Role. Under RCW 90.82, the Initiating Governments developed the scope of work for watershed planning and organized the WRIA 1 Planning Unit. Under ESSB 6091, the Initiating Governments have the additional task of collaborating with the Planning Unit to update the WRIA 1 Watershed Management Plan. The Initiating Governments have chosen to participate in the ESSB 6091 process as the WRIA 1 Watershed Management Board pursuant to a 2016 interlocal agreement.

Section 5: Requests for Information. The County Council requests that the Planning Unit continue to report regularly to the County Council on the status of its work. In order to enhance public involvement, many of these reports should take place at Surface Water Work Sessions and during regular evening Council meetings. The

Council further requests that the County Executive continue to facilitate this reporting function. The Council also requests a briefing from the County Executive on how the Initiating Governments will collaborate with the Planning Unit to update the WRIA 1 Watershed Management Plan, while maintaining and supporting the Planning Unit's statutory responsibilities per RCW 90.82 and ESSB 6091. Ideally, this briefing will convey a joint statement from the Initiating Governments and the Planning Unit.

Section 6: Watershed Management Plan Approval. The County Council approves the Process for Developing and Approving Streamflow Restoration Act (ESSB 6091) Update of WRIA 1 Watershed Management Plan Watershed Plan approval process attached as "Exhibit A".

APPROVED this ____ day of _____, 2018

ATTEST:

WHATCOM COUNTY COUNCIL
WHATCOM COUNTY WASHINGTON

Dana Brown-Davis, Clerk of the Council

Rud Browne, Council Chair

APPROVED AS TO FORM:

Karen Frakes, Prosecuting Attorney