

RESOLUTION NO. 591

A RESOLUTION OF THE BOARD OF COMMISSIONERS OF POINT ROBERTS WATER DISTRICT NO. 4 OF WHATCOM COUNTY, WASHINGTON, RESCINDING RESOLUTIONS NOS. 573, 574, 577, 580, 584 AND 590 IMPOSING, AMENDING AND EXTENDING A MORATORIUM ON THE ISSUANCE OF CERTAIN WHATCOM COUNTY WATER AVAILABILITY NOTIFICATIONS AND WATER SERVICE CONNECTIONS; AND ESTABLISHING POLICIES AND PROCEDURES RELATING TO THE ISSUANCE OF WATER AVAILABILITY NOTIFICATIONS AND WATER SERVICE CONNECTIONS BY THE DISTRICT.

WHEREAS, Point Roberts Water District No. 4 (“District”), as a special purpose water district, is authorized to provide water supply within its municipal corporate and service area boundaries pursuant to Title 57 RCW; and

WHEREAS, when acting under Title 57 RCW the District exercises the police power of the State of Washington which has been delegated to it to provide for the public health, safety and welfare by providing potable water to its customers; and

WHEREAS, in furtherance of the delegation of the police power of the State of Washington, RCW 57.08.005(4) and other statutory authority, the District entered into a long-term wholesale water supply agreement dated the 28th day of August, 1987 (“Water Supply Agreement”) with the Greater Vancouver Water District (“GVWD”) to provide potable water supply to the District to enable the District to serve its customers; and

WHEREAS, pursuant to the Water Supply Agreement, GVWD agreed to provide the District with water supply not exceeding 3,182.2 cubic meters (700,000 Imperial gallons) per day as the District may require; and District staff have advised the District Board of Commissioners that the Water Supply Agreement provides water supply sufficient for the District to serve up to 2,050 single family units or equivalent residential units (“ERU”), an ERU being defined as average unit consumption of 410 gallons (US) of water per day (“gpd”); and

WHEREAS, the State of Washington Department of Health, a public agency vested with approval authority of the District’s Water System Plan (“Plan”), approved the District’s Plan and Amendment by letter dated May 29, 2001, and determined that, based on the maximum water supply source from the GVWD, the total number of connections to the District’s water system may not exceed 2,050 ERUs; and

WHEREAS, the State of Washington Department of Health, on February 1, 2006 further approved an interim water system analysis by William Reynolds, an engineer for the District, which evaluated the District's water consumption and redefined an ERU as an average unit consumption of 380 gpd, and determined that, based on the maximum water supply source from the GVWD, the total number of connections to the District's water system could be increased to, but not exceed, 2212 ERUs; and

WHEREAS, Whatcom County requires parties undertaking certain land use development approvals and permits, to provide evidence that adequate water supply is available to serve such new development, and such evidence may be in the form of an Availability Notification for Public Water ("Availability Notification") from a public purveyor of such utility services; and

WHEREAS, the District, as a purveyor of water utility service, receives requests by property owners and developers seeking to connect their property and development to the District water system to provide Whatcom County with evidence of the availability of water utility service to serve their property and development; and

WHEREAS, the District has experienced significant growth during the last three years and, because its ability to provide water supply is limited by the maximum amount it can purchase from the GVWD, the District is concerned that its commitments and allocations to provide water supply not exceed the maximum amount of water it may purchase from GVWD; and

WHEREAS, the District has allocated water supply to its existing customers and to certain properties identified by the District through service applications, previously issued Availability Notifications, developer extension agreements and other service agreements; and

WHEREAS, District staff have reported to the District Board of Commissioners that the demand on the District's water supply from its existing customers and allocations and commitments to provide future water service may be close to the maximum amount of water supply it can purchase from GVWD; and

WHEREAS, the District, by the adoption of Resolution No. 573 on the 20th day of July 2005, established a temporary moratorium on the issuance of new Whatcom County Availability Notifications and water service commitments by water service applications or otherwise, such temporary moratorium to expire at midnight on the 20th day of October 2005 unless otherwise terminated, modified or extended by the Board of Commissioners; and

WHEREAS, the District, by the adoption of Resolution No. 574 on the 13th day of October 2005, extended the temporary moratorium to the 20th day of January 2006, unless otherwise terminated, modified or extended sooner by the District Board of Commissioners; and

WHEREAS, the District, by the adoption of Resolution No. 577 on the 12th day of January 2006, extended the temporary moratorium to the 20th day of July 2006, unless otherwise terminated, modified or extended sooner by the District Board of Commissioners; and

WHEREAS, the District, by the adoption of Resolution No. 580 on the 13th day of July, 2006, extended the temporary moratorium to the 20th day of January, 2007, unless otherwise terminated, modified or extended sooner by the District Board of Commissioners; and

WHEREAS, the District, by the adoption of Resolution No. 584 on the 19th day of January, 2007, extended the temporary moratorium to the 20th day of July, 2007, unless otherwise terminated, modified or extended sooner by the District Board of Commissioners; and

WHEREAS, the District, by the adoption of Resolution No. 590 on the 10th day of July, 2007, extended the temporary moratorium to the 20th day of January, 2008 unless otherwise terminated, modified or extended sooner by the District Board of Commissioners; and

WHEREAS, the District has solicited and received input regarding the District's water supply and methods for allocating available ERUs including a public hearing on May 9, 2006, public input at regular and special District Board of Commissioner meetings, an Interim Water System Analysis dated November 2005 prepared by William Reynolds, PE, a Cost of Service Rate and General Facility Charge Study Reports dated March 31, 2006 and May 3, 2007 respectively prepared by the District's financial consultant, FCS Group, and a draft Comprehensive Water Plan update dated November, 2006; and

WHEREAS, the District adopted a Comprehensive Water Plan update ("Comprehensive Water Plan") by Resolution No. 586 on March 28, 2007, which plan has been submitted to Whatcom County and the Washington State Department of Health for approval; and

WHEREAS, the District has determined that future capital facility improvements recommended in the reports and studies and Comprehensive Water Plan referenced above may create the capacity to serve additional connections and that would be available upon completion of these future improvements; and

WHEREAS, District staff has recommended that a reserve of 60 ERUs be established for provision of water service to new developments by developers or other parties who commit to building major District water infrastructure, such as reservoirs and wells, on a negotiated basis as further identified by the District ("Major Infrastructure Reserve"); and

WHEREAS, District staff has recommended that an reserve of 12 ERUs be established for continued provision of water service to provide for emergency needs as further identified by the District ("Emergency Reserve"); and

WHEREAS, District staff has now recommended that the District extend the temporary moratorium until September 10th, 2007 at 9:00 AM, following which date and time the temporary moratorium on the issuance of Availability Notifications and water service

commitments for the District's water supply that has not been previously allocated or identified to be held in reserve ("Available ERUs") on certain terms and conditions will be terminated; and

WHEREAS, the District Board of Commissioners desires to set forth the policies and procedures under which the Available ERUs may be made available for allocation to parties desiring to obtain such water supply from the District; and

WHEREAS, pursuant to RCW 57.08.005(3), the District possesses full authority to regulate the use, content, distribution and price of its water supply and water system; now, therefore,

BE IT RESOLVED, by the Board of Commissioners of Point Roberts Water District No. 4, Whatcom County, Washington, as follows:

1. The temporary moratorium on Available ERUs established, extended and modified by Resolution Nos. 573, 574, 577, 580, 584 and 590 previously adopted by the District Board of Commissioners is hereby extended until 9:00 AM on the 10th day of September, 2007, unless otherwise terminated, modified or extended sooner by the District Board of Commissioners.
2. Resolution Nos. 573, 574, 577, 580, 584 and 590 previously adopted by the District Board of Commissioners are hereby rescinded as of 9:00 AM on the 10th day of September, 2007.
3. An Emergency Reserve of 12 ERUs is hereby established. [See 6 below for application for use of the Emergency Reserve.]
4. A Major Infrastructure Reserve of 60 ERUs is hereby established. [See 7 below for application for use of the Major Infrastructure Reserve.]
5. Availability Notifications based on Available ERUs shall be made available for issuance by the District on the following terms and conditions:
 - A. The District will determine the number of ERUs available for allocation, after reviewing the water supply available, previously allocated and committed ERUs, and reserve requirements ("Available ERUs"). For the Water Allocation to be held at or around 9:00 AM on September 10, 2007.
 - B. The District shall hold periodic Water Allocations ("Allocation") for the use of Available ERUs to determine parties ("Applicants") that will have an **opportunity** to have water service allocated through the issuance of Availability Notifications and/or the approval of water service requests. For water service to be considered allocated to an Applicant, the issuance of an Availability Notification or provision of water service to the Applicant shall comply with all District policies and procedures for such actions.
 - C. Application for Allocation shall be made on a District Water Allocation Application ("Application") form. The forms shall be available at the

District Offices during normal District office hours. There shall be separate application forms for each periodic Allocation. (i.e. an application form for the September 10, 2007 Allocation shall **not** be valid for the March 10, 2008 Allocation as referenced below or any other allocation which the District may determine to undertake). Only one application shall be considered for a specific parcel/tax lot in each periodic Allocation, and shall include all ERUs requested for the specific parcel/tax lot. For an Application to be considered by the District for an Allocation, it must be determined to be complete by the District and shall include, at a minimum:

- i) Project Description.
- ii) Number of ERUs requested for a project.
- iii) Identification of the Applicant – including name, address and authorized signature(s).
- iv) Identification of the Property Owner, at the time of the Allocation, - including name, address and signature(s).
- v) Identification of the Property for which an application is being made, including tax lot numbers and legal description.
- vi) Property information, including property size and current zoning.
- vii) The type of project land use action, such as short plat, plat, or building permit applications that the Availability Notification is required for.
- viii) Identification of whether the District currently provides water service to the property.

Applications will be made available to interested parties for the September 10, 2007 Allocation on and after July 30, 2007 at the District Office. Applications for any subsequent Allocation will be made available immediately following completion of the previous Allocation.

- D. Allocations shall be held approximately every 6 months, with the drawings occurring in September and March, if there are Available ERUs. The specific date of each Allocation shall be established by the Board of Commissioners prior to applications for that Allocation being made available and accepted by the District. Each Allocation shall be considered a separate event, with a specific separate application as prepared by the District required for each Allocation.

The initial Allocation shall be held on September 10, 2007 at 9:00 AM at the District Office located at 79 Tyee Drive – Suite A, Point Roberts, WA 98281. Applications for the initial Allocation shall be received by the District and must be delivered to the District Office no later than 4:30 PM on September 4, 2007. Applications for the September 10, 2007 Allocation received by the District after that time will not be accepted.

If there are available ERUs, the second Allocation shall be held on March 10, 2008 at 9:00 AM at the District Offices located at 79 Tye Drive – Suite A, Point Roberts, WA 98281. Applications for the second Allocation shall be received by the District and must be delivered to the District Offices no later than 4:30 PM on March 3, 2008. Applications for the March 10, 2008 Allocation received by the District after that time will not be accepted.

- E. When an application is received it shall be reviewed by District staff to determine if it appears to be complete and correct. If an application appears to be complete and correct, as determined by the District, District staff shall identify the application as complete and shall be assigned a number in the sequential order it was received by the District. If the District determines that an application is deficient because it fails to include all required information or contains incorrect information, District staff may request an Applicant to provide additional information. The District reserves the right to determine or seek an advisory opinion from Whatcom County regarding land uses allowed by current zoning. However, Availability Notification requests for rezones will be considered for inclusion in the Allocation. If an application is determined by the District to be deficient and the deficiency is not remedied prior to the close of business on September 7, 2007, the application shall be considered incomplete and shall not be included in the Allocation.
- F. Following the closure of the application period by the District for each Allocation, and prior to the time established for the Allocation, the District shall determine the total number of ERUs requested by all Applicants with complete applications for the Allocation. If the total number of ERUs requested is less than the Available ERUs, all Applicants with complete applications shall be identified as successful Applicants.
- G. Each Allocation, where there are more ERUs requested than there are Available ERUs, shall be held in the following manner:
 - i. All complete applications shall be drawn in a random order by an independent third party designated and retained by the District. As each application is drawn, such application shall be assigned a number in sequence with the first application drawn assigned number one and subsequent applications each assigned a sequential number.
 - ii. Each complete application, in the order established by the drawing beginning with number one, shall be considered relative to the number of Available ERUs, until all complete applications have been considered and identified as either successful or placed on an Allocation Waiting List. The following steps shall be undertaken for each individual Application.

- a. If there are sufficient Available ERUs to satisfy the request, the application shall be determined to be successful.
 - b. If there are insufficient Available ERUs to satisfy the minimum number of ERUs acceptable to the Applicant, as indicated on the application, the application shall be held on a Waiting List for that specific Allocation. The applications held on the Waiting List shall be held in the order established by the drawing. [Consideration of applications shall continue and subsequent applications may be identified as successful, even following placement of certain applications on the Waiting List.] (See 5.J. below.)
 - c. The number of Available ERUs shall be reduced by the number of ERUs that are made available to the successful Applicants under 5.G.ii.a. above.
- H. Successful Applicants shall be notified by certified mail sent to the address designated on the application. The date of the mailing of the notice by the District shall constitute the date of notice, not the date of receipt. The notice shall advise the Applicants of their opportunity to obtain Availability Notifications or water service for the project identified on the application. The District shall provide written notification of policies and procedures associated with and required to be completed and complied with to obtain the Availability Notification and/or service requested on the application. The policies and procedures required for each successful Applicant shall be further determined by the District.

Each successful Applicant shall have 60 calendar days from the date of District notification to complete the required procedures including execution of any required documents and payment of any required fees, as identified by the District.

- i. Applicants for projects which are requesting an Availability Notification shall be required to pay a fee of \$100 (One hundred dollars) for each Availability Notification.
- ii. Applicants for all projects shall be required to pay the General Facility Charge for the service connection(s) requested.

General Facility Charges and requirements for each requested service connection shall be determined by District policies and procedures in effect at the time of the allocation, and shall be paid at the rate in effect at the time the payment is received by the District; provided that if connection to the District's water system occurs more than one year after the date of the issuance of the Availability Notification or the Applicant is required to enter into a Developer Extension Agreement with the District as referenced

below, the General Facility Charge in effect at the time of such connection or final acceptance of the Developer Extension improvements shall apply and shall be paid to the District.

- iii. Applicants for all projects shall be required to pay the meter installation or meter drop fee for the service connection(s) requested.

Cost and requirements for service connections shall be determined by District policies and procedures in effect at the time of the allocation, and shall be paid at the rate in effect at the time the payment is received by the District.

- iv. Applicants for projects that, in the opinion of the District at the District's sole discretion, require an extension of the District's infrastructure may also be required as a condition of receiving an Availability Notification to execute a Developer Extension Agreement for the extension of such infrastructure when required by the District, prior to provision of water service.

- v. If the District does not receive the required documents and fees from a successful Applicant within the sixty (60) day time limit, the District shall cancel the identification of an application as successful, terminate the ability of the Applicant to obtain an Availability Notification and/or water service connection for the project under the specific Allocation, and identify the ERUs associated with the Application as "Unused ERUs." Requests for extensions to the sixty (60) day time limit shall not be considered. The Unused ERUs may be used by the District to satisfy applications on the Waiting List for the same Allocation in which such ERUs were made available. (See 5.G.ii.b. above and 5.J. below.)

- I. Availability Notifications shall be issued, following District policies and procedures in effect at the time of the request, if the District receives the required documents and fees within the sixty (60) day period established above.

- i Projects shall have Availability Notifications issued in accordance with applicable District policies and procedures. (Currently these are issued to be valid for one (1) year from the date of issuance.)

- ii Once an Availability Notification has been provided to and accepted by Whatcom County as part of a valid, complete project/land use or permit application, the Availability Notification shall remain valid as long as the land use application for which Whatcom County required the Availability Notification is active and pending with Whatcom County.

- iii If an Availability Notification is not provided to Whatcom County when required as provided above, the Notifications shall be cancelled and invalid. The ERUs associated with the Availability Notification that are not used shall cease to be valid, shall no longer be considered allocated by the District, and may be included with available ERUs for future Allocations.
- J. Applications that are not successful in a specific Allocation shall be held on a Waiting List, in the order drawn for that specific Allocation (see 5.G.ii.b. above). Unused ERUs shall be identified to provide an opportunity for applications on the Waiting List to obtain Availability Notifications and/or water service connection(s).

Unused ERUs shall include, and are limited to:

- i. Available ERUs identified at the time of the Allocation that were not made available to an Applicant as part of that Allocation.
- ii. ERUs made available to an Applicant as part of a successful application under a specific Allocation, where the Applicant did not provide the required documents and fees to the District within the sixty (60) day time limit. (See 5.H. above.)
- iii. ERUs made available to an Applicant as part of a successful application under a specific Allocation, where the Applicant provided the required documents and fees to the District within the sixty (60) day time limit, but reduced their requested number of ERUs.

Unused ERUs shall be available for allocation to applications on the Waiting List until the time the District closes the application acceptance period for a subsequent Allocation.

If and when an application on the Waiting List can be satisfied by the Unused ERUs available, the District shall identify the application as successful and shall proceed in the same manner as with those initially identified as successful in a specific Allocation. (See 5.H. and 5.I. above.)

At the time the application period for a subsequent Allocation is closed by the District, the Waiting List shall be terminated and all applications for the previous Allocation that were **not** successful shall be null and void. Applications held on the waiting list for a specific Allocation shall **not** be placed into a subsequent Allocation. Separate applications shall be required for each subsequent and new Allocation.

- 6. The Emergency Reserve shall be maintained for use in emergency situations, such as, but not limited to, the failure of a private well providing service to an existing home. Situations will be identified as an emergency by the District Board of Commissioners in its sole discretion. Any party applying to the District for water allocation through the Emergency Reserve may be exempted by the District

Board of Commissioners from the water allocation process described above on terms and conditions as determined by the Board. Each request for water allocation from the Emergency Reserve must be provided to the District, in writing, and will be considered by the Board of Commissioners on a case by case basis.

7. The Major Infrastructure Reserve shall be maintained for use by developers or other parties applying for water allocation where the District has entered into a written agreement with a developer or other parties to have water allocated from the Major Infrastructure Reserve ERUs (“MIR ERUs”) on terms and conditions as determined by the District. Availability Notifications from the MIR ERUs shall be made available by the District on the following terms and conditions, and are not subject to the terms and conditions for the general Allocation process described in section 5 above.

- A. The District shall negotiate agreements (“MIR Agreements”) for the use of MIR ERUs to determine parties (“MIR Applicants”) that will have an **opportunity** to have water service allocated through the issuance of Availability Notifications and/or the approval of water service requests. The MIR Agreements shall include, but not be limited to provisions for the construction and financing of major improvements to the District’s water system that will, when completed, provide additional water supply availability, such as storage tanks, new wells and associated appurtenances.

For water service to be considered allocated to a MIR Applicant and before the issuance of an Availability Notification or provision of water service to the MIR Applicant, the MIR Applicant shall comply with all District policies and procedures for such actions.

- B. Application for consideration in the allocation of MIR ERUs shall be made on a District Major Infrastructure Reserve Application (“MIR Application”) form. The MIR Application forms will be made available to interested parties at the District Offices during normal District office hours from July 30, 2007 to September 4, 2007. The MIR Application is distinct from the general Allocation Application described above in Section 5.

Only one MIR Application shall be considered for a specific parcel/tax lot for consideration in the allocation of MIR ERUs, and shall include all ERUs requested for the specific parcel/tax lot. For a MIR Application to be considered by the District for the allocation of MIR ERUs it must be determined to be complete by the District and shall include, at a minimum:

- i Project Description.
- ii Number of ERUs requested for a project.
- iii Identification of the Applicant – including name, address and authorized signature(s).

- iv Identification of the Property Owner, at the time of the Allocation, - including name, address and signature(s).
 - v Identification of the Property for which an application is being made, including tax lot numbers and legal description.
 - vi Property information, including property size and current zoning.
 - vii The type of project land use action, such as short plat, plat, planned unit development or building permit applications that the Availability Notification is required for.
 - viii Identification of whether the District currently provides water service to the property.
- C. MIR Applications shall be received by the District at the District Office, located at 79 Tyee Drive – Suite A, Point Roberts, WA 98281, and must be delivered to the District Office no later than 4:30 PM on September 4, 2007. MIR Applications for allocation of the MIR ERUs received by the District after that time will not be accepted.
- D. When a MIR Application is received it shall be reviewed by District staff to determine if it appears to be complete and correct. If a MIR Application appears to be complete and correct, as determined by the District, District staff shall identify the MIR Application as complete and it shall be assigned a number in the sequential order it was received by the District. If the District determines that a MIR Application is deficient because it fails to include all required information or contains incorrect information, District staff may request a MIR Applicant to provide additional information. The District reserves the right to determine or seek an advisory opinion from Whatcom County regarding land uses allowed by current zoning. However, Availability Notification requests for rezones will be considered for inclusion in the consideration for allocation of the MIR ERUs. If a MIR Application is determined by the District to be deficient and the deficiency is not remedied prior to the close of business on September 7, 2007, the MIR Application shall be considered incomplete and shall not be included in the consideration for allocation of MIR ERUs.
- E. If a complete MIR Application is received for a Property that has also submitted a complete Application for the September 10, 2007 Allocation, the MIR Application shall be retained and processed by the District and the Application for the September 10, 2007 Allocation will be invalid, null and void.
- F. Following the closure of the period during which MIR Applications will be accepted by the District and prior to the close of business on September 7, 2007, the District shall determine the total number of ERUs requested by all MIR Applicants with complete applications for

consideration in the allocation of MIR ERUs. If the total number of ERUs requested is less than the MIR ERUs, all MIR Applicants with complete MIR Applications shall be identified as successful MIR Applicants.

Any MIR ERUs in excess of those requested by all MIR Applicants with complete MIR Applications shall be transferred to Available ERUs for potential allocation in the September 10, 2007 Allocation.

- G. Where the total number of ERUs requested by all MIR Applicants is more than the MIR ERUs, the allocation of MIR ERUs shall be made based on MIR Agreements to be developed between the District and the MIR Applicants.
- H. If the District does not have MIR Agreements developed by March 3, 2008, the MIR ERUs shall be transferred to Available ERUs for the March 10, 2008 Allocation.
- I. Availability Notifications for allocations from the MIR ERUs shall not be issued prior to the execution of the MIR Agreement referenced above between the District, the MIR Applicant and owner of the property (if not the MIR Applicant) which is the subject of the Availability Notification.
- J. In addition to the MIR Agreement, MIR Applicants shall be required to enter into a Developer Extension Agreement for the construction and extension of any infrastructure required by the District to provide water service for the development of the MIR Applicant's property and other property within the District.
- K. MIR Applicants shall only receive unconditioned Availability Notifications for MIR ERUs when, pursuant to the MIR Agreement, (1) the MIR Applicant has paid the General Facility Charge owing to the District for such ERUs, and (2) the MIR Applicant has provided the District a performance assurance device such as a performance bond or letter of credit in a form acceptable to the District to guarantee the construction of the infrastructure required by the MIR Agreement and the Developer Extension Agreement. In addition, if the required infrastructure improvements are included in the Water Comprehensive Plan and were not previously approved by state and county agencies with jurisdiction, Availability Notifications for ERUs in excess of the number of ERUs allocated to the MIR Applicant out of the MIR Reserve shall be conditioned on the approval of such plan by all necessary state and county agencies with jurisdiction and the performance of the applicable terms and conditions of the MIR Agreement and the Developer Extension Agreement between the District and the MIR Applicant.

8. This resolution shall be effective on the date of its adoption and shall supersede, amend and repeal all prior District resolutions, policies and procedures to the extent they are inconsistent with this resolution.

ADOPTED at a special open public meeting of the Board of Commissioners, Point Roberts Water District, Whatcom County, Washington, held on the 20th day of July, 2007.

N. Madeleine Anderson, President and
Commissioner

Reneé Coe, Secretary and Commissioner

William H. Meursing, Commissioner