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SUPERIOR COURT OF THE STATE OF WASHINGTON
FOR KING COUNTY

FRIENDS OF THE SNOQUALMIE VALLEY
TRAIL AND RIVER,

Petitioner,

v.

WASHINGTON DEPARTMENT OF
HEALTH, Secretary Umair A. Shah; CITY OF
NORTH BEND,

Respondents.

NO. 21-2-04318-2 SEA

AMENDED PETITION FOR JUDICIAL
REVIEW OF AGENCY ACTION

APPEAL OF DEPARTMENT OF
HEALTH’S APPROVAL OF CITY OF
NORTH BEND’S WATER SYSTEM PLAN
AND CITY OF NORTH BEND’S
DETERMINATION OF NON-
SIGNIFICANCE

(Clerk’s Action Required)

I. INTRODUCTION

1. Friends of the Snoqualmie Valley River and Trail, a Washington nonprofit corporation, petitions for judicial review of the Washington Department of Health’s approval of the City of North Bend’s Water System Plan (“WSP”) and the City of North Bend’s Determination of Non-Significance (“DNS”). The City of North Bend’s DNS, issued March 27, 2020, is attached hereto as Exhibit A, and its SEPA Addendum to the DNS, dated November 18, 2020, is attached hereto as Exhibit B. The Department of Health approved the WSP by letter dated March 4, 2020, regarding submittal #20-0303 (attached hereto as Exhibit C).

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II. JURISDICTION AND VENUE

2. This Court has jurisdiction over this action under RCW 34.05.570, which allows judicial review of agency action and inaction and under RCW 43.21C.075 and City of North Bend Municipal Code 14.04.340.

3. Venue is proper in King County under RCW 34.05.514.

III. PARTIES

4. Petitioner is Friends of the Snoqualmie Valley River and Trail, a Washington nonprofit corporation.

5. Respondent Washington Department of Health (“the Department”) is the agency of the State of Washington that is responsible for reviewing and approving water system plans. It must carry out its powers in a manner consistent with Chapters 43.70, 43.20, and 70A.125 RCW. The Department’s mailing address is P.O. Box 47823, Olympia, WA 98504-7823, and its physical headquarters address is 111 Israel Rd. SE, Tumwater, WA 98501.

6. Respondent City of North Bend (“City”) is a city organized under RCW Titles 35 and 35A and is responsible for, among other things, developing a water system plan for Department’s review and approval, submitting consistency determinations to the Department as part of the Department’s review of water system plans, and carrying out its duties and powers in a manner consistent with Chapters 70A.100, 70A.125, and 90.54 RCW. The City of North Bend’s mailing address is 920 SE Cedar Falls Way, North Bend, WA 98045.

IV. PETITIONER’S INTERESTS

7. Friends of the Snoqualmie Valley Trail and River (“Friends”) is a nonprofit organization with the mission to preserve and protect the North Bend area’s natural resources, especially the quantity and quality of the water that flows in the Snoqualmie River. Friends’ members believe that the quality of life for people who live in and visit North Bend is directly associated with their ability to protect the environment, and that protection of the area’s rivers, as well as its forests, fish, wildlife, and open spaces, is a fundamental right. As the North Bend

1 Comprehensive Plan states, “[t]he contamination or reduction of these resources[,] where people
2 reside and work, damages the very reasons that people choose to live here.”

3 8. Friends has 450 members residing in or near the City of North Bend. Friends’
4 members actively use the river to study, teach, fish, boat, swim, picnic, hike, train dogs, and
5 simply enjoy being near a living, vibrant river.

6 9. Friends and its members have participated and been fully engaged throughout the
7 process of developing the WSP in providing detailed comments to the City, King County, the
8 Washington Department of Ecology (“Ecology”), and the Department and calling their attention
9 to the continued deficiency of the City’s mitigation sources and questionable demand projections.
10 This participation has included: appeals to the City’s Hearing Examiner and King County Utilities
11 Technical Review Committee (“UTRC”) of land use decisions related to expansion of the City’s
12 water service, in October 2018 and September 2019; a response to the Determination of Non-
13 Significance on the WSP, dated April 10, 2020; comments dated January 18, 2021, regarding
14 errors and omissions in the December 23, 2020, Gray & Osborne Technical Memorandum
15 answering the Department’s questions about the WSP; and related correspondence with City,
16 County, and State officials.

17 10. Friends’ members live in and are customers of both the City’s water system and
18 the adjacent Sallal Water Association.

19 11. Friends and its members have been aggrieved and adversely affected by the
20 Department’s approval of the WSP. The WSP permits additional residential development without
21 ensuring adequate water-supply. The inevitable result will be a lack of safe and reliable drinking
22 water for City residents and an unlawful impact on flows in the Snoqualmie River, to the
23 detriment of the health, aesthetic, recreational, and economic interests of Friends and its
24 members. Thus, the Department’s actions and inactions have prejudiced or are likely to prejudice
25 Friends and its members.

26 12. Friends and its members’ interests are among those that the Department was
27 required to consider when deciding whether to approve the City’s WSP. The Department has a

1 duty to ensure safe and reliable drinking water and to protect the public health when considering
2 WSP approvals. Chs. 43.20, 43.70 and 70A.125 RCW; Ch. 246-290 WAC. It also has a duty to
3 ensure the protection of the water quantity and quality of water sources and state environmental
4 policies. Ch. 43.21C RCW; ch. 246-03 WAC.

5 13. A judgment in favor of Friends would substantially eliminate or redress the
6 prejudice to Friends and its members that the Department’s approval has caused and is likely to
7 cause.

8 14. The invalidation of the Department’s approval of the WSP would prevent the City
9 from allowing residential development that greatly increases the immediate demand for water in
10 excess of the legally available supply of water until permanent and reliable sources of mitigation
11 are in place, thus preventing harm to Friends and its members’ interests in a safe and reliable
12 drinking water supply and protection of its interests and use of the Snoqualmie River.

13 V. STATUTORY AND REGULATORY BACKGROUND

14 A. Standards of review.

15 15. RCW 34.05.570(4)(b) allows a person whose rights are violated by an agency’s
16 failure to perform a duty that the law requires to be performed to file a petition for review under
17 RCW 34.05.514 seeking an order requiring performance.

18 16. RCW 34.05.570(4)(c) allows courts to grant relief to persons aggrieved by
19 performance of an agency action if the court determines that the action is outside of the agency’s
20 statutory authority of the agency or is arbitrary and capricious.

21 17. An agency action is arbitrary and capricious if the action “is willful and
22 unreasoning and taken without regard to the attending facts or circumstances.” *Wash. Indep. Tel.*
23 *Ass’n v. Wash. Utils. & Transp. Comm’n*, 148 Wn.2d 887, 905, 64 P.3d 606 (2003).

24 18. A Threshold Determination pursuant to State Environmental Policy Act is
25 reviewed under the “clearly erroneous” standard. *Bellevue Farm Owners Ass’n v. State of*
26 *Washington Shorelines Hearings Board*, 100 Wash. App. 341, 997 P.2d 380 (2000).

27

1 **B. The Department may approve water system plans only if they meet statutory and**
2 **regulatory requirements.**

3 19. Washington law requires safe and reliable drinking water supplies. *See* ch.
4 70A.125 RCW. The Department is responsible for implementing this mandate. *See* RCW
5 70A.125.060.

6 20. Under RCW 43.70.130, RCW 43.20.250, and WAC 246-290-100(2)(e), water
7 system purveyors must submit water system plans to the Department, for its review and approval,
8 if the purveyors propose to: (1) increase the service area identified in a previously approved
9 planning document; (2) enlarge the area where direct service is provided, if the Department has
10 not previously approved a planning or engineering document; or (3) install additions, extensions,
11 or changes to existing source, storage, or transmission facilities and increase the approved number
12 of service connections.

13 21. Under WAC 246-290-100(4), such plans must include a water resource analysis.
14 This must include, among other elements: (1) a source of supply analysis addressing “the
15 foreseeable effect from current and future use on the water quantity and quality of any body of
16 water from which its water is diverted or withdrawn based on existing data and studies,” (2) a
17 water rights self-assessment, (3) a water supply reliability analysis, and (4) interties. Plans must
18 also document SEPA compliance. *Id.*

19 22. All public water supply systems must provide adequate quantity and quality of
20 water in a reliable manner at all times. WAC 246-290-420(1).

21 23. For Group A water systems, ch. 246-290 WAC, source production capacity must
22 be sufficient to supply peak day demands. Those standards also require that peak day and
23 average daily demands comply with the maximum instantaneous and maximum annual
24 withdrawal limitations of the associated water rights.

25 24. Under WAC 246-290-108 and 100, municipal water suppliers must include a
26 consistency review and supporting documentation in planning documents showing that they are
27

1 consistent with local comprehensive plans and development regulations and describing how the
2 supplier has considered such consistency.

3 25. A municipal provider must be able to meet its duty to serve customers within its
4 service area with safe and reliable water supply in a reasonable period of time. WAC 246-290-
5 106, -130(1), -222(4), and -420; Washington State Department of Health, Water System Design
6 Manual, DOH Pub 331-123, p. 1 (rev. June 2020) (“Design Manual”).

7 26. A municipal provider must assess the capacity of each system component, such as
8 source, treatment, storage, transmission, or distribution, individually and in combination with
9 each other. WAC 246-290-222. The goal is to provide water of adequate quality, quantity, and
10 pressure during minimum supply and maximum demand scenarios.

11 27. A water system must have a reliable permanent source of supply, and projections
12 of water savings cannot be based on future leakage detection and repair (reduction of distribution
13 system leakage (“DSL”)) or future implementation of planned water use efficiencies. Design
14 Manual; WAC 246-290-221.

15 VI. BACKGROUND FACTS

16 28. The North, Middle, and South Forks of the Snoqualmie River originate in the
17 central Cascade Mountains and are all directly and independently associated with the City’s water
18 supply. After merging before the Snoqualmie Falls, the Snoqualmie River merges with the
19 Skykomish River to form the Snohomish River.

20 29. Among many ecological functions, the Snoqualmie and Snohomish Rivers are
21 home to critical Chinook salmon runs. Chinook are a vital food source for endangered Southern
22 Resident Orcas and are put at risk by further reduced flows and increased temperatures during the
23 summer and fall spawning period, when flows are naturally low.

24 30. Adequate instream flows are vital to the river’s water quality, its cold temperature,
25 its value as habitat for native salmonids and other species, and its aesthetic and recreational
26 qualities.

27

1 31. In 1979, Ecology sought to protect the flows of the Snoqualmie River from
2 additional impairment in water quantity and quality by adopting an Instream Resources Protection
3 Program (“instream flow rule”) for the watershed. Ch. 173-507 WAC.

4 32. The basis for adopting minimum instream flows is to retain base flows in perennial
5 rivers to provide for the preservation of wildlife, fish, scenic, aesthetic, and other environmental
6 values and other uses compatible with the enjoyment of the public waters of the state. RCW
7 90.54.020(1),(2).

8 33. During each year, there are periods of time, including specifically the summer
9 months, when flows in the Snoqualmie River are below the base flows established in the instream
10 flow rule.

11 34. The City’s primary source of water was historically Mount Si Springs, which
12 discharges, via ponds and channels, to the North and Middle Forks of the Snoqualmie River. To
13 comply with the City’s water right, a flow of 3.0 cubic feet per second (cfs) must bypass the point
14 of diversion at all times.

15 35. In 1999, it was discovered that the City of had been diverting water far in excess of
16 its water right for at least a decade, thus depleting discharge to the Snoqualmie River. The City
17 enacted a development moratorium until it could obtain an adequate water supply.

18 36. In 2009, the moratorium was lifted after Ecology, in 2007, granted the City a new
19 groundwater right permit, No. G1-26617(A)P (“Centennial Well Permit”), and the City installed
20 the Centennial Well.

21 37. Ecology determined that the withdrawal of water from the Centennial Well
22 hydraulically influences and has a 100% impact on the Snoqualmie River and is therefore subject
23 to regulation when the base flows in the instream flow rule are not met unless the City has full
24 mitigation for the impacts.

25 38. As a condition of the Centennial Well Permit, during periods of low instream flow
26 in the Snoqualmie River, the City must supply mitigation water for the impacts caused by
27 withdrawal of water from the Centennial Well on the Snoqualmie River.

1 39. Ecology premised its approval of the Centennial Well Permit on the City having
2 two sources of mitigation: surface water from Hobo Springs and groundwater purchased from the
3 Sallal Water Association (“Sallal”) via existing wells. Ecology, Protested Report of Examination,
4 G1-26617(A), pp. 16, 35-36 (Sept. 27, 2007).

5 40. Fourteen years after Ecology authorized the Centennial Well, the City has not
6 obtained the Sallal water for mitigation.

7 41. The only current mitigation source for the Centennial Well Permit is Hobo
8 Springs. Hobo Springs conveys water to Boxley Creek, a tributary to the Snoqualmie River.

9 42. Hobo Springs is fed by seepage water from Masonry Pool, a reservoir owned by
10 the City of Seattle and managed by Seattle Public Utilities (“SPU”).

11 43. The City has a contract with SPU regarding this arrangement. The contract
12 provides that the amount of seepage from Masonry Pool to Hobo Springs is not guaranteed and
13 the City needs additional mitigation sources.

14 44. To date, the City has failed to secure adequate additional sources of mitigation for
15 the Centennial Well.

16 45. The base flows in the instream flow rule for the Snoqualmie River under ch. 173-
17 507 WAC have been impaired by the City’s use of the Centennial Well, specifically in 2015,
18 because Hobo Springs was insufficient to fully mitigate the City’s withdrawals.

19 46. The WSP acknowledges that the City does not have water supplies that are
20 adequate for mitigation as required under the Centennial Well Permit: “Under present peak
21 summer demand, if a drier summer were to occur, the flows at Hobo Springs would be at or just
22 below those required to properly mitigate water demand.” WSP at E-2, 3-30. The WSP
23 acknowledges the City “must therefore increase its mitigation capacity by implementing two
24 measures.” *Id.* One of these is to obtain additional mitigation sources. *Id.*

25 47. The mitigation sources proposed in the WSP are speculative and insufficient.
26
27

1 48. Despite many years of unsuccessful negotiations between the City and Sallal, the
2 WSP again proposes to use Sallal’s water supply to satisfy the City’s mitigation obligation under
3 the Centennial Well Permit.

4 49. Groundwater withdrawn from Sallal Wells 1 and 2 is water that also flows to and
5 supports the base flows in the Snoqualmie River above the location of the Centennial Well, and
6 would therefore not result in a source of actual mitigation for impacts to the river from
7 withdrawal of water from the Centennial Well.

8 50. The proposed arrangement for the City to use Sallal’s water as mitigation does not
9 currently allow the water to be used for mitigation. The water right authorizes only the use of
10 water for municipal purposes within the area served by Sallal. The water right does not authorize
11 the use of water for mitigation or instream flows. No application to change the water right has
12 been filed with Ecology.

13 51. Sallal’s water right does not authorize a sufficient supply of water to meet the
14 present and future projected demands of Sallal and also provide mitigation water to the City. The
15 proposed intertie agreement would place at risk the Sallal water right and jeopardize Sallal’s
16 ability to provide a safe and reliable supply of water to serve its member-owners.

17 52. The WSP authorizes an expanded service area and increased use of water to meet
18 future demands based on proposed mitigation projects that are unproven, speculative, and in
19 direct conflict with the Department’s requirement to approve only reliable permanent sources of
20 supply. These proposed mitigation projects are:

- 21 a. Cascade Golf Course water right, purchased in 2018: This will provide
22 insignificant water for mitigation. Among several obstacles to this project,
23 the City must obtain Ecology’s approval to change the purpose of the water
24 right to allow its use for mitigation. The City has not applied for a change
25 of use.

- 1 b. Hobo Springs capital improvements (new catchment basin): These have not
2 been started and it is unknown what water will be provided from the
3 improvements.
- 4 c. Mitigation Reservoir project: This project would provide a small amount of
5 mitigation water (10 MG) compared to the amount needed. Construction
6 on this project is not permitted and not projected to begin until 2031, well
7 beyond the period of the WSP.
- 8 d. Lowering distribution system leakage (DSL): This source is speculative
9 and uncertain. For over a decade the City has known of its high DSL and
10 has not adequately controlled and fixed the leakage.
- 11 e. Mandatory conservation measures at peak demand times (City Ord. 1723
12 and Water Shortage Plan): Like reduction of DSL, this is a speculative and
13 unproven source of demand reduction that cannot, under the Department’s
14 rules and criteria, be relied on as a present additional source of water
15 supply.

16 53. The City’s demand projections do not accurately reflect the new domestic
17 demands based on imminent planned development.

18 54. The City will be required to support an expected 20 percent increase in equivalent
19 residential units (ERUs) by 2025, with no assured additional mitigation water.

20 55. The City lacks a permanent and reliable water supply to support that additional
21 growth.

22 56. The Department’s approval of the WSP adopts a reactive approach to the water
23 supply issues rather than the proactive approach that insures a safe and reliable water supply that
24 will not cause an illegal impact to the Snoqualmie River.

25 57. The approval of the WSP states the City’s “water system can support an
26 ‘unspecified’ designation for its approved number of connections;” that the City could add new
27 service connections under the WSP; that the approval letter meets local government consistency

1 requirements; that, under RCW 90.03.386(2), the Department’s approval expanded the place of
2 use for the system’s water rights; that it was the City’s duty to ensure that it did not exceed its
3 water rights; and that if Ecology or another authority determined that the City had less water than
4 it had represented, the Department might decrease the number of approved connections.

5 58. The City issued a Determination of Non-significance (“DNS”) under the State
6 Environmental Policy Act (“SEPA”) for the WSP on March 27, 2020. A SEPA addendum
7 (“Addendum”) to the DNS was issued on November 14, 2020, after several changes to the WSP
8 were made including expansion of the City’s service area, a Water Shortage Plan, a Well Head
9 Protection Plan, and a change to the period of time for the validity of the WSP. The Addendum
10 states that the SEPA Checklist was not amended, that there is no comment period, and that it was
11 not circulated for distribution.

12 VII. BASIS FOR RELIEF

13 A. The Department erred in approving a legally defective Water System Plan.

14 59. The allegations of paragraphs 1 - 57 are incorporated by reference and realleged
15 here.

16 60. The Department acted beyond its authority and in an arbitrary and capricious
17 manner in approving the WSP in violation of RCW 70A.125.060, which requires both the
18 Department and the City to assure the availability of safe and reliable drinking water.

19 61. The Department acted beyond its authority and in an arbitrary and capricious
20 manner in approving the WSP in violation of the law including Ch. 246-290 and Ch. 246-293
21 WAC which, among other requirements, provides that the City must submit a water system plan
22 with a source of supply analysis that includes but is not limited to: (1) the foreseeable effect from
23 current and future use on the water quantity and quality of any body of water from which water is
24 diverted or withdrawn based on existing data and studies; (2) a water rights self-assessment that
25 evaluates the legal ability of a water system to use water for existing or proposed usages in
26 conformance with state water rights (WAC 246-290-010(299)); and (3) a water supply reliability
27 analysis.

1 62. The Department acted beyond its capacity and in an arbitrary and capricious
2 manner in finding that the WSP has sufficient capacity to meet the growth projections during the
3 planning period and can support an unspecified designation for its number of connections, in
4 violation of the law including Ch. 246-290 and Ch. 246-293 WAC.

5 **B. The City erred in issuing the Determination of Non-Significance.**

6 63. The allegations of paragraphs 1 - 60 are incorporated by reference and realleged
7 here.

8 64. Under WAC 246-03-030(2)(c), WAC 246-03-110, and WAC 197-11-100(4)(k)(i),
9 water system plans must document SEPA compliance.

10 65. The City's proposal and Department's approval of the WSP will have probable
11 significant environmental impacts, specifically the Snoqualmie River, due to the lack of
12 mitigation for the use of water from the Centennial Well for the future expansion of the water
13 system and the increased water demand authorized. *See* North Bend Municipal Code 14.04.110,
14 .120, .130, and .330.

15 66. The City erred in issuing the DNS and Addendum to the DNS under Ch. 43.21C
16 RCW and North Bend Municipal Code 14.04.110, .120, .130, and .330 because of the significant
17 impact on the environment caused by the additional demand of water authorized in the WSP on
18 the Snoqualmie River without a permanent and reliable source of mitigation. Such action
19 conflicts with the federal laws for protection of endangered species and the state laws on
20 protecting base flows, is based on inaccurate demand projections and inadequate mitigation
21 measure for water supply, and fails to take into consideration impacts on the Snoqualmie River
22 from climate change.

23 67. The City's DNS was clearly erroneous in light of the record and the public policies
24 of SEPA and the law regarding water system planning and the development of safe and reliable
25 public water systems.

26 68. The City abused its discretion and acted in an arbitrary and capricious manner in
27 adopting the DNS and the Addendum to the DNS.

1 **C. The Department erred in accepting the City’s DNS without mitigation measures, and**
2 **in not assuming lead agency status to ensure compliance with SEPA.**

3 69. The allegations of paragraphs 1 - 64 are incorporated by reference and realleged
4 here.

5 70. Under state environmental policy, RCW 43.21C.030, and the Department’s SEPA
6 guidelines, chapter 246-03 WAC (adopting parts of SEPA rules in ch. 197-11 WAC), the
7 Department must, “to the fullest extent possible,” administer governing laws, regulations, and
8 policies in accordance with environmentally protective policies; ensure a systematic,
9 interdisciplinary use of science in decision making that may affect the environment; consider
10 significant environmental impacts and alternatives; prepare environmental documents that are
11 supported by evidence and necessary environmental analyses; carefully consider reasonable
12 alternatives that would mitigate environmental impacts; ensure an environmental review that
13 conforms to WAC 197-11-060; require further information of an application when the
14 information initially supplied is not reasonably adequate to fulfill the purposes for which it is
15 required; and, under WAC 246-03-110, condition or deny an approval in order to avoid or
16 mitigate adverse environmental impacts.

17 71. The Department’s acceptance of the DNS and failure to: (1) require that the City
18 withdraw its checklist and DNS and revise its SEPA documents to correctly reflect the proposed
19 action and its consequences; (2) assume lead agency status and prepare proper SEPA documents;
20 and (3) condition or deny its WSP approval to avoid or mitigate environmental impacts to the
21 Snoqualmie River, is outside of its statutory authority, including but not limited to WAC 246-03-
22 030(2)(c), WAC 197-11-060, WAC 197-11-100(4)(k)(i), RCW 43.21C.030, and the
23 Department’s SEPA guidelines in WAC Ch. 246-03 (which adopt portions of WAC Ch. 197-11),
24 and WAC 246-03-110, and is arbitrary and capricious.

25 **VIII. REQUEST FOR RELIEF**

26 72. Friends respectfully requests that this Court:
27

- 1 a. Impose an immediate stay on the City’s implementation of the WSP
- 2 pending the Court’s decision.
- 3 b. Vacate and set aside the Department’s decision approving the WSP.
- 4 c. Vacate and set aside the DNS.
- 5 d. Order a moratorium on further development in the City under its prior
- 6 water system plan until a new water system plan that is based on adequate
- 7 and guaranteed mitigation of impacts to the Snoqualmie River is submitted
- 8 to and approved by the Department.

9 DATED this 5th day of April, 2021.

10 CASCADIA LAW GROUP PLLC

11 

12 _____
13 Tom McDonald, WSBA No. 17549
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15 606 Columbia Street NW, Suite 212
16 Olympia, WA 98501
17 Telephone: (206) 786-5057
18 Email: tmcdonald@cascadialaw.com
19 Email: lrussell@cascadialaw.com

20 *Attorneys for Petitioner Friends of the Snoqualmie*
21 *Valley Trail and River*

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EXHIBIT A



**NOTICE OF STATE ENVIRONMENTAL POLICY ACT (SEPA)
DETERMINATION OF NONSIGNIFICANCE (DNS)**

Project Name: City of North Bend Water System Plan

DNS Issuance Date: March 27, 2020
Public Comment Deadline: April 10, 2020, 12p.m.

Description of Proposal:

The City of North Bend Water System Plan is a planning document evaluating and describing the City's water system and providing a list of capital projects necessary to provide water service through the 10-year planning period. It is used as a resource by the City and state regulatory agencies. The plan describes management, standards, policies, service area, geography, quality, infrastructure, operations and finance of the City's water utility.

The Checklist and Plan are available on the City's website under public notices.

Threshold Determination:

The City of North Bend (lead agency for this proposal) has determined that this proposal does not have a probable significant adverse impact on the environment that cannot be mitigated through compliance with the conditions of the North Bend Municipal Code and other applicable regulations. An environmental impact statement (EIS) is not required under RCW 43.21C.030(2)(c). This decision was made after review of a completed environmental checklist on file with the lead agency. This information is available to the public on request by contacting Senior Planner Jamie Burrell at the email or phone below and the Plan is available for viewing under Public Notices on the City website at <http://northbendwa.gov>.

This DNS is issued under WAC 197-11-340(2); the lead agency will not act on this proposal for 14 days from the date of publication of the notice of DNS, allowing time for public comment. The issuance of this DNS should not be interpreted as acceptance or approval of this proposal as presented. The City of North Bend reserves the right to deny or approve said proposal subject to conditions if it is determined to be in the best interest of the City and/or necessary for the general health, safety, and welfare of the public.

SEPA Responsible Official:

David Miller, CED Director

David E. Miller, AICP

3/19/20

For More Information:

Contact Jamie Burrell at the Community and Economic Development Department at (425) 888-7642 or via email to jburrell@northbendwa.gov. Email or mail written comments for the DNS to the North Bend Community and Economic Development Department, PO Box 896, North Bend, WA 98045.

City of North Bend Community & Economic Development
920 SE Cedar Falls Way, P.O. Box 896, North Bend, WA 98045 • Phone 425.888.5633 •
Fax 425.888-5636 • northbendwa.gov

EXHIBIT B



**SEPA Addendum to
Determination of Non-significance
City of North Bend Water System Plan**

Proponent: City of North Bend

Project/Addendum Description: Subsequent to SEPA determination issued March 27, 2020 the City of North Bend made changes between the March and August versions of the plan. The majority of changes were made to address technicalities and regulatory requirements in response to comments received from various agencies (Appendix U) and do not affect the SEPA Checklist or Determination. Between August and October the only changes made to the plan were the expansion of the RSA on Figures 1-2 through 1-9, 7-1, and 7-2 to include the parcels associated with the National Guard, the Water Shortage Plan (Appendix R), the Wellhead Protection Plan (Appendix Q) and a 5- year planning period approval (instead of 10) This Addendum is added to the file with the above referenced changes.

11/18/2020

Responsible Official: Rebecca Deming, Director of Community and Economic Development

Date of Addendum Issuance: November 18, 2020

Comment Period: There is no comment period.

Distribution: Pursuant to WAC 197-11-625 (5) no circulation necessary

FOR MORE INFORMATION CONTACT:

Jamie Burrell, Senior Planner 126 E. Fourth Street, North Bend, WA 98045 (425) 888-7642
or jburrell@northbendwa.gov

EXHIBIT C



State of Washington

DEPARTMENT OF HEALTH

NORTHWEST DRINKING WATER REGIONAL OPERATIONS
20425 72nd Avenue South, Suite 310 • Kent Washington 98032-2388

March 4, 2021

MARK RIGOS
NORTH BEND, CITY OF
PO BOX 896
NORTH BEND WA 98045

RECEIVED
MAR 10 2021

Cascadia Law Group PLLC

RE: North Bend, City of ID# 60100
King County
Water System Plan Approval
Submittal #20-0303

Dear Mr. Rigos:

The City of North Bend water system plan (WSP), received in this office on March 18, 2020, with subsequent submittals on September 23, 2020, December 23, 2020, and February 24, 2021 have been reviewed and in accordance with the provisions of WAC 246-290-100, is hereby **APPROVED**.

Approval of this WSP is valid as it relates to current standards outlined in Washington Administrative Code (WAC) 246-290 revised January 2017, WAC 246-293 revised September 1997, RCW 70.116, and is subject to the qualifications herein. Future revisions in the rules and statutes may be more stringent and require facility modification or corrective action. This document requested and received approval for a period of not more than 5 years. An approved update of this WSP is required on or before **March 4, 2026** unless ODW requests an update or plan amendment pursuant to WAC 246-290-100(9).

APPROVED NUMBER OF CONNECTIONS

The analysis provided in this WSP shows the water system has sufficient capacity to meet the growth projections during this planning period. The City of North Bend water system can support an “**unspecified**” designation for its approved number of connections. A specific number of approved connections will not be applied at this time. Development may occur in compliance with the schedule and information provided in this WSP. This designation may be rescinded (and replaced with a specified number of approved connections) if ODW determines that the WSP is no longer representative of system activities.



LOCAL GOVERNMENT CONSISTENCY

This document meets local government consistency requirements of the City of North Bend and King County for WSP approval pursuant to RCW 90.03.386 and RCW 43.20. The WSP was adopted by the King County Council on February 12, 2021 and King County Utilities Technical Review Committee affirmed that subsequent noted above and did not indicate a need to change their previous ordinance or local government consistency statement.

SERVICE AREA AND DUTY TO SERVE

Pursuant to RCW 90.03.386(2), the service area identified in this WSP service area map may now represent an expanded “place of use” for this system’s water rights. Changes in service area should be made through a WSP amendment.

The City of North Bend has a duty to provide new water service within its retail service area. This WSP includes service policies to describe how your system plans to provide new service within your retail service area.

CONSTRUCTION WAIVERS

Standard Construction Specifications for distribution main extensions in this WSP are approved. Consistent with WAC 246-290-125(2), this system may proceed with the installation of distribution main extensions provided this system completes and keeps on file the enclosed construction completion report form in accordance with WAC 246-290-125(2) and WAC 246-290-120(5) and makes it available for review upon request by ODW.

WATER RESOURCES

Below is the general regulatory language that applies to all water system approvals:

The department’s review of your water system plan will not confer or guarantee any right to a specific quantity of water. The plan identifies growth projections and plans using a five-year development schedule. The plan indicates your water system has adequate water quantity to fulfill this growth. The Washington Department of Ecology (Ecology) has reviewed the plan, including all subsequent submittals noted above, for water resource availability. However, if Ecology, a local planning agency, or other authority responsible for determining water rights and water system adequacy determines that you have use of less water than you represented, the planned growth may need to be reduced or delayed commensurate with the actual amount of available water and your legal right to use it.

The department’s review of your water system plan will not confer or guarantee any right to a specific quantity of water. The approved number of service connections is based on your representation of available water quantity. If the Washington Department of Ecology, a local planning agency, or other authority responsible for determining water rights and water system

adequacy determines that you have use of less water than you represented, the number of approved connections may be reduced commensurate with the actual amount of water and your legal right to use it.

Thank you for your cooperation. King County is being notified of the terms and requirements of this approval and the determination of the approved number of connections. If you have any questions or wish to check our records, you may contact either of us at the numbers listed below.

Sincerely,



Richard Rodriguez
Regional Planner
(253) 395-6771



Brietta Carter, P.E.
Regional Engineer
(253) 395-6770

Encl: Construction Completion Report

cc: Derek Pell, DOH
John Ryding, DOH
Sierra McWilliams, Office of the Attorney General
Jay Cook, DOE-NWRO
Jae Hill, King County UTRC
Seattle/King County Health
Kurt Nelson, Tulalip Tribes
Ann Savery, Tulalip Tribes
Matthew Baerwalde, Snoqualmie Tribe
Tom McDonald, Cascadia Law Group
Jean Buckner – Friends of the Snoqualmie Valley Trail and River
Russ Porter, P.E., Gray & Osborne, Inc.
Senator Mark Mullet, Senate 5th Legislative District