



## **CITY OF KIRKLAND**

**Department of Parks & Community Services**

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### **MEMORANDUM**

**To:** David Ramsay, City Manager

**From:** Jennifer Schroder, Parks and Community Services Director  
Marilynne Beard, Assistant City Manager  
William R. Evans, Assistant City Attorney

**Date:** July 2, 2006

**Subject:** King County Water District #1 Water Rights Update

#### RECOMMENDATION

That the City limits the purchase of water rights from the King County Water District #1 to 41.8 acre feet.

#### BACKGROUND

Since the purchase of the Water District #1 Property, Kirkland has had the Right of First Refusal for the water rights on the property. A total of approximately 473 acre feet of water were potentially available for purchase. The water is not considered potable and so cannot be used for purposes other than irrigation or other similar uses. On February 21<sup>st</sup> Council authorized the City Manager to execute an amendment to the Right of First Refusal for the purchase of up to 75 acre feet of the water which was the amount staff estimated as the maximum that might be used for irrigating waterfront parks and parks near the waterfront. The amendment (attached) provided the City with an extension of time until May 31, 2006, to determine whether it wished to purchase up to 75 acre feet of the water. At their April 18<sup>th</sup> meeting, the City Council directed staff to proceed with the purchase of the 75 acre feet and to investigate the possibility of purchasing the entire water right available for future use. Since that time, staff has met with Commissioner Bob Trimble, water rights attorney Rick Kirkby and staff of the State Department of Ecology (DOE) responsible for reviewing applications for water rights transfers. As a result of those meetings, staff is recommending that the City should not purchase more than 41.8 acre feet of water rights at this time.

To better understand the recommendation, it is important to note two complimentary factors that comprise the District #1 Water Right. The District's 473 acre feet of water (154,127,523 gallons of water) can only be utilized at 293 gallons per minute (GPM). Further, the availability of the water right is divided into 24 one-hour increments for each day of the year. At no time during the course of a year can more than 293 GPM be withdrawn from the lake at any time from any of the

combined holders of District #1 water right. Therefore, all requests to purchase water rights must specify how much water will be used for each hour of each day, by month, and the anticipated GPM to be drawn. With the primary use of this water right being summer irrigation there is a premium for the ability to utilize the water during the summer months.

Irrigation of parks takes place generally between May 1<sup>st</sup> and October 1<sup>st</sup>. This is a critical factor in the value of the District's water right to the City of Kirkland. Staff estimates that simply irrigating the waterfront parks already identified will require only 41.8 acre feet of water. Each park is divided into irrigation zones. In total, there are 150 irrigation zones among the eight waterfront parks (David Brink, Houghton Beach, Juanita Bay, Juanita Beach, Marina, Marsh, Waverly Beach and Heritage Park). All parks are irrigated between the hours of 11 p.m. and 7 a.m. so that watering does not interfere with the public's use of the park. These eight parks consume approximately 380 GPM which means a staggered watering plan was developed with specific start times and end times that alternate the hours of irrigation in order to prevent the city from exceeding its maximum allowable water usage at any one time.

The initial watering plan used most of the available time slots during the months/hours of the day for irrigation but did not use all of the gallons per minutes for each time slot. At that point, the District asked the City to develop a watering plan that limited the maximum draw to 142 GPM. Their reason for doing so was to preserve the marketability of the remaining water rights. Recall that at no time during the course of a year can more than 293 GPM be withdrawn from the lake at any time from any of the combined holders of District #1 water rights. Irrigation is the most popular motivation to purchase their water rights. Therefore, it is in the District's best interest to keep as much of the premium watering times available for other water right applicants. The district's request was achievable by staggering the specific time each zone will run. In doing so, the City was able to address the needs of the parks and still provide the district with marketable water rights. Purchase of any additional water rights by the City for those time slots would provide more water than the City can justify.

As the Council previously suggested, staff considered whether other parks not on the waterfront could also be irrigated with lake water. Given that there are additional gallons-per-minute of water available, this could be done. However, the cost of installing the infrastructure to accomplish this is so high the return on investment does not approach that realized with the waterfront parks. For instance, staff estimates that Peter Kirk Park (which is the next closest park to the lake) would require thirteen acre feet of water to irrigate. However, with a capital cost of \$297,290, the payback period extends to nearly 16 years. Staff also looked at potential applications in the annexation. O.O. Denny is the only waterfront park in the annexation area and is owned by the City of Seattle and managed by the Finn Hill Park District. The park itself is 40 acres; the park has approximately 10 acres of area that is mowed but not irrigated. The only use for water at the park is to serve the restroom facility.

The only other justification for purchasing additional water rights is if the city could identify a significant use for non-potable water during the daytime or during the non-irrigation months (October – March). We consulted with Public Works to explore ways to use non-potable water during the times when water would not be used for irrigation purposes, and staff was unable to

identify a current use or a future use that would provide a cost benefit to warrant the capital and ongoing cost of purchasing additional water rights.

According to the DOE, water rights can be placed in a trust when there is no immediate need identified. At some future time when the City does identify a use, we could then apply to DOE based on the new identified use. We could also resell the water right to another entity if they identified a use. It should be noted that the water right could only be sold to an entity that can extract the water from Lake Washington or upstream from the lake at the same place as the district's source. In other words, the City could not resell the water right to someone in eastern Washington so that they could take water from a river or lake unrelated to the Lake Washington watershed.

There are two risks inherent to purchasing the balance of the water right for future use. First, the City may not be able to identify an acceptable use for the balance of the water right, but would have already purchased the right. Second, the value of the water right for resale purposes could diminish based on the 293 GPM limitations and the fact that the premium irrigation times have already been obligated. The cost to purchase the balance of the water right for the current asking price would be about \$574,000. Presumably, the district may be willing to sell the balance of the water right at a lower price given the limited uses. Even at half the price, the City would need to make an outlay of about \$285,000 for a resource that may have limited future application.

## CONCLUSION

At this time, the City has two options for proceeding:

1. Purchase 41.8 acre feet of water at \$1,330 per acre foot with the understanding that additional water rights can be purchased in the future if additional uses are identified.
2. Purchase 41.8 acre feet of water for irrigation and purchase the balance of water rights to be placed in a trust for potential future uses to be identified.

After careful analysis of our current irrigation use and foreseeable water use for irrigation it is staff's belief that an investment of more than 41.8 acre feet of water would not be in the City's best interest. The limiting ability of the water right to only draw 293 GPM which encompasses the entire water right presents significant limitations on its use for City purposes.

At this point, staff has submitted the application for 41.8 acre feet. Commissioner Bob Trimble signed the application and it is now with the DOE for review and approval. If DOE approves the City's application, then a payment of \$55,594 (41.8 x \$1330/acre feet) will be due to the District. We anticipate that the DOE approval process may take up to one year. In the meantime, if additional uses are identified, the City can apply for additional water rights.

**AMENDMENT TO THE RIGHT OF FIRST REFUSAL  
TO PURCHASE WATER CLAIM**

This Amendment to the Right of First Refusal to Purchase Water Claim ("the Amendment"), is made on this 22<sup>nd</sup> day of February, 2006, by and between King County Water District #1, a Washington municipal corporation ("the District") and the City of Kirkland ("the City"), a Washington municipal corporation.

Whereas, the District and the City entered into the Right of First Refusal to Purchase Water Claim on January 28, 2004 ("the Agreement"), herein incorporated by reference, so that the City would have an opportunity to purchase the water claim if it so desired; and

Whereas, the District received offers for portions of the water claim, which were forwarded by the District and received by the City on December 29, 2005; and

Whereas the City and the District thereafter agreed to extensions for the City to respond to these forwarded offers, which latest extension will expire on February 22, 2006; and

Whereas the City needs additional time to determine if it wishes to purchase some of the water claim and the District is willing to provide another extension so long as it is on terms that allows the District to accept the offers made and to accept other offers as well; and

Whereas, the City has no objection to the District accepting and conveying portions of the water claim so long as the City receives an extension of time to consider whether it wishes to purchase up to 75 acre feet of the water claim under the Right of First Refusal

Now therefore, the parties hereby amend the Agreement on the following terms as evidenced by their signatures below:

1. In consideration for the extension granted in Section #2 below, the City waives its right to match the above identified offers the District has received to date and further waives its right to match future offers received by the District so long as any such acceptance by the District does not impair the City's rights as provided in Section #2 below.
  
2. In consideration for the waivers granted in Section #1 above, the District agrees that the City has an extension of time until May 31, 2006, to determine whether it wishes to purchase up to 75 acre feet of the water claim under the Right of First Refusal.

KING COUNTY WATER DISTRICT #1

CITY OF KIRKLAND

By: \_\_\_\_\_

By: \_\_\_\_\_

Its: \_\_\_\_\_

Its: \_\_\_\_\_

Dated: \_\_\_\_\_

Dated: \_\_\_\_\_

Approved as to Form:

\_\_\_\_\_  
City Attorney