

# DRAFT

## PUBLIC UTILITY DISTRICT No. 1 of Whatcom County

Agenda for the Regular Meeting of January 9, 2024  
8:15 a.m. at the PUD Office  
(In-person, Zoom, & Teleconference)

1. Call to Order | Pledge of Allegiance
2. Approval of Agenda (2 minutes)
3. Consent Agenda (5 min.)
  - a) Approval of the Minutes of the Regular Meeting of December 12, 2023
  - b) Approval of the Minutes of the Regular Meeting of December 19, 2023
  - c) Approval of Claims for January 9, 2024
4. Public Comment (10 minutes – Individual speakers: 3 min.)
5. General Manager Report (10 min.)
6. Old Business (30 min.)
  - a) Broadband Update
  - b) Adjudication Update
  - c) Geothermal Update
  - d) Board Retreat Discussion
  - e) WPUA Day on the Hill (Feb. 14) Planning Discussion
7. New Business (30 min.)
  - a) Nooksack Salmon Enhancement Association Presentation
  - b) Approve Professional Services Agreement with Electric Power Systems
8. Operations Report (10 minutes)
9. Commissioner Reports (10 minutes)
  - a) Upcoming Per Diem Requests
10. Public Comment (10 minutes– Individual speakers: 3 min.)
11. Executive Session: RCW 42.30.110(1)(i): Potential Litigation – Water Rights Adjudication; and RCW 42.30.110(1)(g) To review the qualifications and/or performance of a public employee (Estimated 25 min. total)
12. Adjourn (Estimated 10:00 AM)

**Notice:**

All Commissioners will participate either in-person, via Zoom/internet or teleconference.

**The public meeting can be accessed:** In-person at location announced;

**By internet:** <https://us02web.zoom.us/j/82400735937>

**Or telephone:** Dial 1 (253) 215 8782 or 1 (346) 248 7799

**Webinar ID:** 824 0073 5937

**Next Commission Meetings**

January 23 & February 13, 2024 | 8:15 a.m. | Regular Meetings – District Office

1705 Trigg Road, Ferndale, WA 98248

or other location announced

Contact: Ann Grimm, Commission Clerk (360) 384-4288 x 27

[www.pudwhatcom.org](http://www.pudwhatcom.org)

# DRAFT

AGENDA ITEM #3a  
January 9, 2024

## MINUTES OF THE REGULAR MEETING OF THE COMMISSION

December 12, 2023

### 1. Call to Order | Pledge of Allegiance

The regular meeting of the Board of Commissioners of Public Utility District No. 1 of Whatcom County was called to order at 8:15 a.m. by Commissioner Atul Deshmane. Said meeting was open to the public and notice thereof had been given as required by law. Those present included: Commissioner Atul Deshmane, Commissioner Christine Grant, Commissioner Jaime Arnett and Legal Counsel Jon Sitkin. Staff: Chris Heimgartner, General Manager; Assistant General Manager Brian Walters; Andrew Entrikin, Broadband Program Manager; Ann Grimm, Executive Assistant; Annette Smith, Director of Finance; Rebecca Schlotterback, Manager of Contracts and Regulatory Compliance; Paul Siegmund, Manager of Automation and Technology; Mike Macomber, IT/SCADA Technician; Aaron Peterson, IT/SCADA Technician; Kurt Wank, Director of Utility Operations; Stephanie Hooper, Accountant I; Devin Crabtree, Chief Water Operator; and Garrett Love-Smith, Project Manager.

Public attending:

Jack Wellman, Puget Sound Energy  
Tyler McDevitt, Phillips66

### 2. Approval of Agenda

No changes.

**ACTION:** Commissioner Grant made the motion to APPROVE THE AGENDA DECEMBER 12, 2023. Commissioner Arnett second the motion. Motion passed unanimously.

### 3. Approval of Consent Agenda

- a) Approval of Meeting Minutes of the Regular Meeting of November 28, 2023; and
- b) Approval of the Claims of December 12, 2023:

VENDOR NAME	AMOUNT
ALUMICHEM CANADA INC	93,824.00
BELLINGHAM HERALD	899.71
BRANOM EQUIPMENT	630.66
CDW/COMPUTER DISCOUNT WAREHOUSE	1,556.51
CELTIC CLEANER, INC.	665.00
CENTRAL WELDING SUPPLY	96.48
CORNERSTONE MANAGEMENT, INC.	1,376.00
CRABTREE, DEVIN	87.71
ENERGY NORTHWEST	6,211.99
FCS GROUP	1,652.50
FERNDALE ACE HARDWARE	144.54
FERNDALE AUTO PARTS	34.57
FLOWERVE FSD CORPORATION	14,831.45
GRAYBAR ELECTRIC COMPANY, INC	472.80
HEALTH PROMOTIONS NORTHWEST	150.00
K ENGINEERS, INC.	217.50
LEN HONCOOP GRAVEL, INC.	192,052.58
MILLS ELECTRIC	1,764.60
NORTHWEST FIBER DBA ZIPLY FIBER	1,450.16

# DRAFT

NP INFORMATION SYSTEMS (3-D CORP)	269.82
NW PUBLIC POWER ASSOCIATION	5,878.90
P&P EXCAVATING, LLC	59,038.33
PACIFIC POWER BATTERIES	217.60
PITNEY BOWES GLOBAL FINANCIAL SERVICES LLC	201.66
PLATT ELECTRIC SUPPLY CO	140.34
PUBLIC UTILITY RISK MANAGEMENT SERVICES	74.96
PUGET SOUND ENERGY, INC	7,810.83
REGENCE BLUE SHIELD	46,733.93
REISNER DISTRIBUTION, INC	1,400.76
RICOH USA	254.86
SSC - SANITARY SERVICE COMPANY	636.51
STAR RENTALS	1,705.78
STERICYCLE ENVIRONMENTAL SOLUTIONS	57.94
TEAMSTER LOCAL #231	616.00
UNITED WAY OF WHATCOM COUNTY	692.00
UTILITIES UNDERGROUND LOCATION	24.51
VALVOLINE	68.42
WASHINGTON DENTAL SERVICE	2,941.95
WASHINGTON TEAMSTERS WELFARE	13,567.40
<u>YEAGER'S SPORTING GOODS</u>	<u>245.99</u>
<b>GRAND TOTAL</b>	<b>\$460,697.25</b>

- c) Commissioner Deshmane Per Diem Expense Reimbursement Request
- d) Approve Resolution No. 844 – Increasing Monthly Compensation for Commissioners

**ACTION:** Commissioner Grant made the motion to APPROVE THE CONSENT AGENDA OF DECEMBER 12, 2023. Commissioner Arnett second the motion. Motion passed unanimously.

**4. Public Comment** – None made.

**5. General Manager's Report**

- Continues to work on the draft letter/decision document on the geothermal project;
- Dec. 19 Commission Meeting is online only to approve claims;
- Environmental Protection Agency (EPA) notice of grant programs; which could include projects such as the electric line extension project from Glacier to Mt. Baker Ski Area; and a possible state grant for engineering purposes.

**6. Old Business**

**a) Broadband Program Update**

- Point Roberts Broadband Project Request for Qualifications – EntriKin reported after evaluating the responses, one of the six engineering firms has been selected; the District is now working on contract negotiations and expects to prepare for Commission approval in January.
- Countywide Franchise for Telecom process received minor edits from the County Council; next steps include council introduction/approval and a public hearing planned in January.

**b) Adjudication Update**

- Sitkin continues discussions with tribal attorneys and the Ag Board;
- Developing a list of topical procedures to assist with streamlining the adjudication;
- A court commissioner (other than a Superior Court Judge) will need to be appointed to oversee the Nooksack adjudication process – there are over 10,000 water right holders;

## DRAFT

- Working on a draft provision that adjudication cases should take priority over civil cases in court and that there should not be any jury trials which could hold up the process.

### c) Geothermal Update

- *Clean Energy Research Development and Demonstration Grants* – The District submitted a concept paper for a study on December 5. Agencies will be notified if the proposal is feasible to move forward to the application stage in February 2024.
- *Nomination of Lands* – Reached out to Bureau of Land Management regarding the lease timeframe was estimated at two years. A new environmental impact statement may not need to be repeated, and could shorten the timeline.
- Commissioner Grant commented on her recent discussions with the Whatcom Democrats, Senators Lovelett and Ramel; the Nooksack Tribal Council would like to meet with Grant and Heimgartner in January; and she has contacted NW Indian College regarding energy study programs.

### d) Board Retreat Discussion

- No report – will be included in the January 9 Commission Meeting.

## 7. New Business

### a) Approval of 2024 Budget and Rates Resolution

- i. Approve Resolution No. 839 – Adopt District Budget for 2024 including Emergency Reserve Level set at \$360,000

**ACTION:** Commissioner Grant made the motion to APPROVE RESOLUTION NO. 839 – ADOPT DISTRICT BUDGET FOR 2024 INCLUDING EMERGENCY RESERVE LEVEL SET AT \$360,000. Commissioner Arnett second the motion. Motion passed unanimously.

- ii. Approve Resolution No. 840 – Adopt Industrial Raw Water Utility Rates and Grandview Water Rates for 2024

**ACTION:** Commissioner Grant made the motion to APPROVE RESOLUTION NO. 840 – ADOPT INDUSTRIAL RAW WATER UTILITY RATES AND GRANDVIEW WATER RATES FOR 2024. Commissioner Arnett second the motion. Motion passed unanimously.

- iii. Approve Resolution No. 841 – Adopt Electric Utility Rates for 2024

**ACTION:** Commissioner Grant made the motion to APPROVE RESOLUTION NO. 841 – ADOPT ELECTRIC UTILITY RATES FOR 2024. Commissioner Arnett second the motion. Motion passed unanimously.

### b) Approve Resolution No. 842 – Delegation of Authority

The master policy directive of the Commission of the Public Utility District No. 1 of Whatcom County was originally adopted as Resolution No. 559 on November 27, 2007, for the purpose of establishing the delegated administrative powers and duties of the General Manager and designees. This is a recommendation to amend the Delegation of Authority to remain in effect until December 31, 2025, unless it is extended prior to that date.

This amendment includes two updates under Exhibit A – Authorized Purchasing Limits: Increasing the amount of the Director of Utility Operations and adding Director of Broadband to the list.

# DRAFT

**ACTION:** Commissioner Grant made the motion to APPROVE RESOLUTION NO. 842 FOR THE DISTRICT’S DELGATING ADMINISTRATIVE POWERS AND DUTIES OF THE GENERAL MANAGER AND DESIGNEES REPEALING ALL PRIOR RESOLUTIONS DEALING WITH THE SAME SUBJECT MATTER. Commissioner Arnett second the motion. Motion passed unanimously.

**c) Approve Resolution No. 843 – Amend Compensation Policy for Administrative Employees**

This resolution amends two salary ranges and an increase to the District’s Retirement Contribution (in lieu of PERS) at 9.39%, effective January 1, 2024.

**ACTION:** Commissioner Arnett made the motion to ADOPT RESOLUTION NO. 843 – A RESOLUTION OF THE BOARD OF COMMISSIONERS OF THE PUBLIC UTILITY DISTRICT NO. 1 OF WHATCOM COUNTY (“DISTRICT”) AMENDING THE POLICY FOR EMPLOYEE COMPENSATION FOR ADMINISTRATIVE EMPLOYEES FOR THE PURPOSES OF UPDATING SALARY RANGES AND RETIREMENT CONTRIBUTION AMOUNT. Commissioner Grant second the motion. Motion passed unanimously.

**d) Approve Commission Meeting Schedule for 2024**

To provide the general meeting schedule for the Commission, District staff and public for year 2024, and to review potential meeting date changes, the Commission meeting schedule is presented for consideration. During the year, meeting schedules may be revised to respond to individual needs, other industry training and meeting schedules, as well as federal holidays.

**ACTION:** Commissioner Grant made the motion to APPROVE THE COMMISSION MEETING SCHEDULE FOR 2024. Commissioner Arnett second the motion. Motion passed unanimously

**e) Elect Commission Officers for 2024**

Each year, the Commission nominate and elect officers for the Board of Commissioners for the upcoming calendar year. The Commission takes action on the election of officers without recommendation from staff.

**ACTION:** Commissioner Grant made the motion to: NOMINATE JAIME ARNETT AS PRESIDENT; ATUL DESHMANE AS VICE PRESIDENT AND CHRISTINE GRANT AS SECRETARY. Commissioner Arnett second the motion. Motion passed unanimously.

**f) Select Committee Commission Representatives/Staff Alternates for 2024**

Each year, the Commission acts to approve Commission and staff representatives to agencies that the District is a member. The following agencies should have representatives designated by the Commission to speak on behalf of the District, as appropriate.

**1. Washington Public Utility Districts Association for 2024:**

<u>Committee</u>	<u>Primary Representative</u>	<u>Alternate</u>
Board of Directors	Christine Grant	Jaime Arnett
Managers	Chris Heimgartner	Brian Walters
Government Relations	Jaime Arnett	Christine Grant
Communications	Jaime Arnett	Christine Grant
Energy	Christine Grant	Atul Deshmane
Water	Christine Grant	Jaime Arnett
Telecom (non-voting)	Atul Deshmane	Christine Grant

**2. Whatcom County Economic Development Investment (EDI) Board**

Current: Deshmane is the representative and will be the 2024 designee.

# DRAFT

3. **Whatcom County Council of Governments (WWCOG) Associate Membership:**  
Current: Grant is the elected representative, Heimgartner is the alternate; to remain the same for 2024.
4. **Public Utility Risk Management Services (PURMS)**  
Current: Deshmane is the elected representative, Heimgartner and Smith as voting alternates; to remain the same for 2024.
5. **Watershed Resource Inventory Area (WRIA):** Appoint Management Board Representative and Alternate; and, Appoint Planning Unit Representative and Alternate.

<u>WRIA-1</u>	<u>Representative</u>	<u>Alternate</u>
Management Board	Jaime Arnett	Chris Heimgartner
Planning Unit	Chris Heimgartner	Rebecca Schlotterback

6. **Energy Northwest**  
Representative: Christine Grant  
Alternate: Atul Deshmane
7. **Port/PUD Broadband Steering Committee**  
Representative: Chris Heimgartner  
Staff: Andrew Entrikin

**ACTION:** Commissioner Grant made the motion to SELECT DISTRICT REPRESENTATIVES TO THE FOLLOWING AGENCIES. Commissioner Arnett second the motion. Motion passed unanimously.

1. **WASHINGTON PUBLIC UTILITY DISTRICTS ASSOCIATION (WPUDA) for 2024**  
CHRISTINE GRANT AS DISTRICT REPRESENTATIVE

<b>ASSOCIATION COMMITTEES</b>	<b>PRIMARY</b>	<b>ALTERNATE</b>
<i>BOARD OF DIRECTORS</i>	GRANT	ARNETT
<i>MANAGERS COMMITTEE</i>	HEIMGARTNER	WALTERS
<i>GOVT RELATIONS</i>	ARNETT	GRANT
<i>COMMUNICATIONS</i>	ARNETT	GRANT
<i>ENERGY</i>	DESHMANE	GRANT
<i>WATER</i>	ARNETT	DESHMANE
<i>TELECOM</i>	DESHMANE	GRANT

2. **WHATCOM COUNTY ECONOMIC DEVELOPMENT INVESTMENT (EDI) BOARD 2024**  
PRIMARY: DESHMANE                      ALTERNATE: HEIMGARTNER
3. **WHATCOM COUNTY COUNCIL OF GOVERNMENTS (WCCOG) 2024**  
PRIMARY: GRANT                      ALTERNATE:
4. **PUBLIC UTILITY RISK MANAGEMENT SERVICES (PURMS) 2024**  
PRIMARY: DESHMANE                      VOTING ALTERNATES: HEIMGARTNER AND SMITH
5. **WRIA1 WATERSHED MANAGEMENT BOARD 2024**  
PRIMARY: ARNETT                      ALTERNATE: HEIMGARTNER

# DRAFT

## WRIA 1 PLANNING UNIT 2024

PRIMARY: HEIMGARTNER ALTERNATE: SCHLOTTERBACK

### 6. ENERGY NORTHWEST 2024

PRIMARY: GRANT ALTERNATE: DESHMANE

### 7. PORT/PUD BROADBAND STEERING COMMITTEE 2024

PRIMARY: HEIMGARTNER ALTERNATE: ENTRIKIN

#### g) Approve Amendment No. 1 to Professional Engineering Services Agreement with RH2 Engineering

The amendment extends the term of the agreement an additional year, to December 31, 2024. As work is required, a scope of work and budget will be included in work orders to be approved by the Commission or General Manager in accordance with the District's policy.

**ACTION:** Commissioner Arnett made the motion to APPROVE AMENDMENT NO. 1 TO AGREEMENT FOR PROFESSIONAL ENGINEERING SERVICES WITH RH2 ENGINEERING AND AUTHORIZE THE DISTRICT'S GENERAL MANAGER TO EXECUTE THE AMENDMENT WITH RH2.

#### 8. Operations Report

- Walters reported the selection of engineering firms from the Statement of Qualifications are now at the contract negotiation phase. These firms offer a variety of expertise and approval of Professional Services Agreement(s) are forthcoming in January.
- Ruby Flats Solar Project - Energy Northwest is asking members who want to participate in the project to submit a nonbinding letter of commitment. The estimated output is 127 MWh, online date would be mid to late 2025 and some terms of the contract were also released. More information is forthcoming.

#### 9. Commissioner Reports

Grant:

- Had an in-person meeting with Eric Hirst;
- Geothermal update (above); and
- Is interested in Puget Sound Energy's *Demand Response Program*.

Arnett:

- Attending the WRIA1 Management Board meeting this week.

Deshmane:

- Attending a meeting with Rob Fix (Port) and the Mayor and staff of the City Ferndale on Thursday to discuss economic development at Grandview, will take a per diem;
- Plans to listen to the WRIA1 Management Board and the Ag Board meetings this week.
- Has had discussions with Heimgartner relating to adjudication and water.

Sitkin readdressed the Per Diem compensation policy, which includes a list of Commission-preapproved meetings which Commissioners may attend. For other non-approved per diem requests, the practice has been if there is no objection, it is deemed approved. The Per Diem Policy and new forms will be reviewed in early 2024.

#### 10. Public Comment – None made.

# DRAFT

## 11. Adjourn

There being no further business for the regular meeting, Deshmane adjourned the regular meeting at 9:52 a.m.

---

Atul Deshmane, President/Commissioner

---

Christine Grant, Vice President/Commissioner

---

Jaime Arnett, Secretary/Commissioner

### **Commission Clerk Note:**

Video recordings of the Whatcom PUD Commission Meetings are available online at the following link on the PUD's Website: <https://www.pudwhatcom.org/the-commission/2023-agendas-packets-meeting-minutes-recordings/>



# DRAFT

AGENDA ITEM #3b  
January 9, 2024

## MINUTES OF THE REGULAR MEETING OF THE COMMISSION

December 19, 2023

### 1. Call to Order | Pledge of Allegiance

The regular meeting of the Board of Commissioners of Public Utility District No. 1 of Whatcom County was called to order at 8:15 a.m. by Commissioner Deshmane. Said meeting was open to the public and notice thereof had been given as required by law. Those present included: Commissioner Christine Grant, Commissioner Jaime Arnett and Commissioner Atul Deshmane; and Legal Counsel Jon Sitkin. Staff: General Manager Chris Heimgartner; Ann Grimm, Executive Assistant; Brian Walters, Assistant General Manager; Annette Smith, Director of Finance; Kurt Wank, Director of Utility Operations; Rebecca Schlotterback, Manager of Contracts and Regulatory Compliance; Mike Macomber, IT/SCADA Technician; and Stephanie Hooper, Accountant I.

Public attending:  
Rick Maricle, Citizen  
Jack Wellman, PSE

### 2. Approval of Claims of December 19, 2024:

<u>VENDOR NAME</u>	<u>AMOUNT</u>
INDUSTRIAL SUPPLY, INC	355.93
AT&T MOBILITY	1,801.21
BAY CITY SUPPLY	145.11
BONNEVILLE POWER ADMINISTRATION	761,513.00
BRANOM EQUIPMENT	2,649.24
CENTRAL WELDING SUPPLY	96.48
COMCAST	191.61
COMCAST - NWRC	300.00
DESHMANE, ATUL	1,459.40
GRAINGER	75.54
GUARDIAN SECURITY SYSTEMS, INC	232.62
HACH COMPANY	284.49
HARDWARE SALES, INC	1,187.22
INTERNAL REVENUE SERVICE	20,877.44
K&L PRESTON GATES & ELLIS	3,027.00
KCDA PURCHASING COOPERATIVE	58.87
LAPLAUNT, DAVID	57.30
MASSMUTUAL RETIREMENT SVCS LLC	12,640.00
NORTH COAST ELECTRIC COMPANY	127.59
ON-SITE TESTING	314.00
PACIFIC SURVEY & ENGINEERING	8,166.25
PAYLOCITY	206.40
PAYROLL	259,478.68
PLATT ELECTRIC SUPPLY CO	188.89
PORTAL WAY FARM & GARDEN	52.21
POTELCO, INC	350,362.86
TUPPER MACK WELLS PLLC	6,461.50
ULINE, INC.	341.06
WA FEDERAL VISA CARD MEMBER SERVICES	7,737.68
WA ST AUDITOR'S OFFICE	6,272.00

# DRAFT

WA ST DEPT OF REVENUE - EXCISE TAX	80,918.88
WESTERN CONFERENCE OF TEAMSTERS	8,935.50
WESTSIDE LUMBER	110.89
WIN-911	120.40
<u>ZYLSTRA TIRE CENTER, INC</u>	<u>1,200.80</u>
<b>GRAND TOTAL</b>	<b>\$1,537,948.05</b>

**ACTION:** Commissioner Arnett made the motion to APPROVE THE CLAIMS OF DECEMBER 19, 2023. Commissioner Grant second the motion. Motion passed unanimously.

### 3. Adjourn

There being no further business for the regular meeting, Commissioner Deshmane adjourned the regular meeting and wished everyone Happy Holidays at 8:17 a.m.

---

Atul Deshmane, President/Commissioner

---

Christine Grant, Vice President/Commissioner

---

Jaime Arnett, Secretary/Commissioner

**Commission Clerk Note:**

Video recordings of the Whatcom PUD Commission Meetings are available online at the following link on the PUD's Website: <https://www.pudwhatcom.org/the-commission/2023-agendas-packets-meeting-minutes-recordings/>

## Action Memo

**To:** Commissioners Arnett, Deshmane, and Grant  
**From:** Chris Heimgartner, General Manager  
**Date:** January 9, 2024  
**Re:** Approve Funding Request from Nooksack Salmon Enhancement Association for Habitat Restoration Projects for 2024

---

**Requested Action:** APPROVE FUNDING IN THE AMOUNT OF \$20,000 FOR NOOKSACK SALMON ENHANCEMENT ASSOCIATION TO SUPPORT WASHINGTON CONSERVATION CORPS WORK ON HABITAT RESTORATION PROJECTS FOR 2024.

**Background:** Since 2010, the Commission has approved funding requests from the Nooksack Salmon Enhancement Association (NSEA) for habitat restoration projects. The funding supports the Washington Conservation Corps (WCC) Crew's work on habitat restoration on various streams throughout Whatcom County and Nooksack River tributaries. From 2010 to 2023, the Commission has continued to provide funds to support the request from NSEA. There were no funding requests in 2011 and 2020.

For 2024, NSEA is requesting funding to provide project oversight, acquire restoration materials such as plants, vole and beaver protection, and large woody debris for salmon habitat restoration of lowland streams. The work will be performed again by the Washington Conservation Corps (WCC) Crew and managed by NSEA staff. A minimum of 20 salmon habitat restorations projects will be implemented on Watershed Resource Inventory Area 1 lowland streams. NSEA provides a project report to the Commission at the completion of the project.

James van der Voort of NSEA will present information on past work funded by the Whatcom PUD at the January 9 Commission Meeting. Whatcom PUD has had no other requests to support habitat restoration other than NSEA's request for 2024.

**Fiscal Impact:** Funding has been allocated in the 2024 budget for this purpose.

**Recommended Action:** APPROVE FUNDING IN THE AMOUNT OF \$20,000 FOR NOOKSACK SALMON ENHANCEMENT ASSOCIATION (NSEA) TO SUPPORT WASHINGTON CONSERVATION CORPS WORK ON HABITAT RESTORATION PROJECTS FOR 2024.



***“Community support and involvement are essential to recovering salmon.”***

– WRIA1 Salmon Recovery Plan

Dear Whatcom PUD Commissioners, Christine Grant, Atul Deshmane, and Jaime Arnett,

The Nooksack Salmon Enhancement Association is greatly appreciative of the opportunity to present our 2024 project proposal to Public Utility District # 1 of Whatcom County. Below is a brief overview of our proposal.

**Project Background:**

NSEA regularly receives calls from WRIA 1 lowland stream landowners regarding salmon and salmon habitat on their property. These calls present a great opportunity to educate landowners about salmon and their habitat needs, and ultimately encourage stewardship of this valuable resource. Most calls are followed up with a site visit to assess the existing habitat, understand the landowner’s needs, and discuss possible habitat improvement opportunities. However, with the majority of current salmon habitat restoration funding being directed towards Chinook recovery in the upper Nooksack Forks, it has become more difficult to find resources to implement salmon habitat restoration projects on WRIA 1 lowland streams.

NSEA annually sponsors a Washington Conservation Corps Crew to assist with on the ground WRIA 1 salmon habitat restoration projects. The crew consists of a supervisor and 5 crewmembers and comes with their own transportation and a good selection of hand and small power tools. NSEA provides the crew with project oversight, office space, storage and staging areas, and a large inventory of tools and equipment. NSEA prides itself on being able to respond to landowner inquiries promptly and implement habitat restorations projects in a cost efficient and timely manner. What we are currently lacking to accomplish such projects is funding to provide project oversight, and acquire restoration materials such as plants, vole and beaver protection, and large woody debris (LWD). We feel great opportunities are being missed and that without follow up and support landowners will get discouraged and will be less inclined to improve salmon habitat on their property.

**Project Goals:**

- Educate Landowners about salmon and their habitat needs.
- Present opportunities for improving salmon habitat on their property.
- Implement salmon habitat restoration projects appropriate for their property and their needs.
- Whenever possible, directly involve landowners in on the ground salmon habitat restoration.



**Project Tasks:**

1. Respond immediately to landowner inquiries regarding streams, salmon and salmon habitat on their property.
2. Arrange site visits to discuss landowner needs and opportunities for salmon habitat improvements on their property.
3. Develop restoration plans.
4. Complete appropriate pre-project monitoring
5. Implement restoration projects.
6. Complete appropriate post project monitoring to document project success

**Project Timeline: 04/01/2023– 3/31/2024**

**Project Deliverables:**

Implement a minimum of 20 salmon habitat restoration projects on WRIA 1 lowland streams. Projects may include the following:

- Riparian planting
- Livestock exclusion
- LWD placement and minor channel modification
- Fish passage barrier removal

NSEA would be happy to follow up with a report and/or a presentation of the projects accomplished.

**Funding Request: \$20,000**

We are looking forward to presenting some of the Salmon Habitat Restoration Projects you helped support in 2023 at your January 9th Board meeting and hope you will consider our request of \$20,000 for continuing this great partnership in 2024.

Darrell Gray  
NSEA Project Manager

## Action Memo

**To:** Commissioners Arnett, Deshmane, and Grant  
**From:** Kurt Wank – Director of Utility Operations  
**Date:** January 9, 2024  
**Re:** Professional Services Agreement with Electric Power Systems

---

**Requested Action:** APPROVE A PROFESSIONAL CONSULTING SERVICES AGREEMENT WITH ELECTRIC POWER SYSTEMS FOR ELECTRICAL CONSULTING SERVICES, AND AUTHORIZE THE GENERAL MANAGER TO EXECUTE THE AGREEMENT.

**Background:** In February of 2021, the Commission approved the Standard Agreement for Professional Consulting Services with Electric Power Systems to provide services to the District that involved current and/or future capital improvement and maintenance projects related to the District's electric facilities. The initial term of the Agreement extended through December 31, 2023.

Under the Agreement, the Consultant's general scope of services will include the performance of tasks focused on completing Capital Improvement and other maintenance projects associated with Whatcom PUD's systems related to its electric operations and administrative services.

If approved, the term of the new PSA would extend through December 31, 2026.

**Fiscal Impact:** Whatcom PUD's planned 2024 Annual Budget includes sufficient funds to cover work to be performed by Electric Power Systems under the Agreement during this calendar year.

**Recommended Action:** APPROVE A PROFESSIONAL CONSULTING SERVICES AGREEMENT WITH ELECTRIC POWER SYSTEMS FOR ELECTRICAL CONSULTING SERVICES, AND AUTHORIZE THE GENERAL MANAGER TO EXECUTE THE AGREEMENT.

**STANDARD AGREEMENT  
FOR PROFESSIONAL CONSULTING SERVICES**

**THIS AGREEMENT** (“Agreement”) is made and entered into this \_\_\_\_ day of \_\_\_\_\_ 20\_\_, by and between the **PUBLIC UTILITY DISTRICT NO. 1 of WHATCOM COUNTY**, 1705 Trigg Road Ferndale, WA 98248, hereinafter called the "Whatcom PUD," and **ELECTRIC POWER SYSTEMS, INC** having an address of 4020 148<sup>th</sup> Ave NE, Suite C, Redmond, WA 98052 hereinafter called "Consultant," for a project generally described as:

**To Provide Electrical Consulting Services for the purpose of assisting Whatcom PUD in completing Capital Improvement and other maintenance projects.**

WHEREAS, the Whatcom PUD desires to retain a Consultant to provide professional Electrical Engineering services for Whatcom PUD; and

WHEREAS, the selection of the consultants, and the Consultant herein, were made after the completion of a process that complied with all provisions of Federal, State, and local laws concerning selection of professional services.

WHEREAS, the Whatcom PUD Electric Power Systems does offer to provide such professional services.

**NOW, THEREFORE**, for and in consideration of the promises and the mutual covenants set forth herein, the parties agree as follows:

1. **Scope of Services.** The specific assignments for the Consultant will be identified from time to time by Whatcom PUD. The Consultant will prepare and submit to Whatcom PUD a proposed Work Order which shall include the proposed scope of services and fee estimate for the proposed assignment. If acceptable, Whatcom PUD will execute the Work Order for the specific assignment. The scope of Work Orders is hereinafter referred to as “Work”. Services of the Consultant shall conform with the standard of care applicable to professionals providing similar such services in the State of Washington. All Work Orders must be approved in writing and approved in advance by the Commission and/or General Manager of Whatcom PUD. The terms and conditions of this Agreement shall apply in all Work Orders approved by the Whatcom PUD, unless a Work Order contains terms and conditions different than those provided herein. Any Work Order and this Agreement shall be interpreted to give full meaning to all provisions. In the event that any provision of this Agreement is in conflict with any provision of an approved Work Order, the more specific shall control, and if a conflict still exists, then the Work Order shall control the specific conflicting provision

2. **Term.** The term of this Agreement shall commence on execution of this Agreement until all tasks associated with the scope of services herein, as may be amended, have been completed by Consultant or December 31, 2026, whichever is sooner, unless terminated earlier as provided herein.

3. **Termination.** Whatcom PUD reserves the right to terminate this Agreement at any time by sending written notice of termination to the Consultant. The notice shall specify a termination date at least fourteen (14) calendar days after the date the notice is issued. The notice shall be effective upon the earlier of either actual receipt by the Consultant (whether by fax, mail, delivery or other method reasonably calculated to be received by the Consultant in a reasonably prompt manner) or three (3) calendar days after issuance of the notice. Upon the notice date, the Consultant shall immediately commence to end the Work in a reasonable and orderly manner. Unless terminated for the Consultant's material breach, the Consultant shall be paid or reimbursed for: (a) all hours worked and eligible expenses incurred up to the notice date, less all payments previously made; and (b) those hours worked and eligible expenses incurred after the notice date, but prior to the termination date, that were reasonably necessary to terminate the Work in an orderly manner. The notice shall be sent by the United States Mail to the Consultant's address provided herein, postage prepaid, certified or registered mail, return receipt requested, or by hand delivery. In addition, the notice may also be sent by any other method reasonably believed to provide the Consultant actual notice in a timely manner, such as fax. Whatcom PUD does not by this Section waive, release or forego any legal remedy for any violation, breach or non-performance of any of the provision of this Agreement. At its sole option, Whatcom PUD may deduct from the final payment due the Consultant (a) any damages, expenses or costs arising out of any such violations, breaches, or non-performance and (b) any other back charges or credits.

4. **Compensation and Payment.** Whatcom PUD shall pay the Consultant only for completed Work and for services actually rendered which are described in each Work Order. Such payment shall be full compensation for Work performed or services rendered, including, but not limited to, all labor, materials, supplies, equipment and incidentals necessary to complete the Work. The Consultant shall obtain the prior written approval of Whatcom PUD for any charges for additional services by the Consultant, the additional services of others retained by the Consultant, or the furnishing of additional supplies, materials or equipment. The Consultant shall not be entitled to compensation for any such additional charges incurred in violation of this paragraph.

4.1 The Consultant shall submit monthly statements, including project budget status and a narrative progress description of services rendered in a form and in such detail as requested by Whatcom PUD. Whatcom PUD shall make prompt monthly payments for work completed to the Whatcom PUD's satisfaction and billed before the first day of the month. Whatcom PUD shall review and consider for approval all bills submitted one week prior to a regularly scheduled meeting of Whatcom PUD Commissioners. After approval of the Consultant's statement of bill, Whatcom PUD shall forward the approval to the County Treasurer for payment in the normal course of events. In no event shall Whatcom PUD be charged interest on payments due under this Agreement. Whatcom PUD shall not be obligated to pay for services deemed unsatisfactory.



5. **Compliance With Laws.** All Federal, State and local laws applicable in the rendering of the services by the Consultant shall be complied with in all respects by the Consultant, as shall all rules and regulations of Whatcom PUD and any other governmental agency. The Consultant shall register, as required by RCW 23B.15.010, to do business in the State of Washington and provide proof of the same to Whatcom PUD.

6. **Project Management.** Whatcom PUD's designated representative may at any time issue written directions within the general scope of this Agreement. If any such direction causes an increase or decrease in the cost of this Agreement or otherwise affects any other provision of this Agreement, the Consultant shall immediately notify the designated representative in writing and take no further action concerning those written directions until such time as the parties have executed a written change order. No additional work shall be performed or charges incurred unless and until Whatcom PUD approves in writing the change order and the increased cost thereof. Any work done in violation of this paragraph shall be at the sole expense of the Consultant.

7. **Recordation of Documents Affecting Title.** Prior to the execution or recordation of any documents affecting title to any property, the said document shall be reviewed by Whatcom PUD. Whatcom PUD shall be responsible for all costs associated with such review.

8. **Conflict of Interest.** Consultant covenants that it presently has no interest and shall not acquire an interest, directly or indirectly, which would conflict in any manner or degree with its performance under this Agreement. Consultant further covenants that in the performance of this Agreement, no person having such interest shall be employed by it or any of its subcontractors.

9. **Insurance.** Consultant shall procure and maintain during the term of this Agreement the following insurance:

a. Comprehensive general liability policy covering all claims for personal injury (including death) and/or property damage arising out of Consultant's services. The limits of liability shall be not less than One Million Dollars (\$1,000,000) for each occurrence and in the aggregate unless Whatcom PUD approves in writing a lesser limit.

b. Automobile Liability Insurance covering all owned and non-owned automobiles or vehicles used by or on behalf of Consultant. The limits of liability shall be not less than One Million Dollars (\$1,000,000) for each occurrence and in the aggregate unless Whatcom PUD approves in writing a lesser limit.

c. Workers Compensation Insurance as required by law.

9.1 The foregoing insurance policies shall name Whatcom PUD as an additional insured. Consultant shall provide two (2) certificates of insurance and, if requested, copies of any policy to Whatcom PUD. Receipt of such certificate or policy by Whatcom PUD does not constitute approval by Whatcom PUD of the terms of such policy. Furthermore, the policy of insurance required herein shall: (i) be written as a primary policy; (ii) expressly provide that such insurance may not be materially changed, amended or canceled with respect to Whatcom PUD

except upon forty-five (45) days prior written notice from the insurance company to Whatcom PUD; (iii) contain an express waiver of any right of subrogation by the insurance company against Whatcom PUD and Whatcom PUD's elected officials, employees, or agents; (iv) expressly provide that the insurance proceeds of any loss will be payable notwithstanding any act or negligence of Consultant which might otherwise result in a forfeiture of said insurance; and (v) in regard to physical property damage coverage, expressly provide that all proceeds shall be paid jointly to Whatcom PUD and Consultant.

9.2 If Consultant fails to procure and maintain the insurance described above, Whatcom PUD shall have the right, but not the obligation, to procure and maintain substitute insurance and to pay the premiums. Consultant shall pay to Whatcom PUD upon demand the full amount paid by Whatcom PUD, or Whatcom PUD may offset such premiums against amounts to be paid to Consultant.

**10. Indemnification.** Consultant shall indemnify and hold Whatcom PUD harmless from and against all costs and losses, and all claims, demands, suits, actions, payments and judgments, arising from personal injury or otherwise, brought or recovered against Whatcom PUD by reason of any negligent act or omission of Consultant, its directors, officers, agents or employees in the performance and execution of the Services hereunder, including any and all expenses, legal or otherwise, incurred by Whatcom PUD or its representatives in the defense of any claim or suit.

**11. Confidentiality.** Any reports, documents, questionnaires, records, information or data given to or prepared or assembled under this Agreement which Whatcom PUD requests to be kept confidential shall not be made available by the Consultant to any individual or organization without prior written approval of Whatcom PUD, except as may be ordered by a court of competent jurisdiction. The provisions of this section shall survive the expiration or earlier termination of this Agreement. No reports, records, questionnaires, software programs provided by Whatcom PUD or other documents produced in whole or in part by the Consultant under this contract shall be the subject of an application for copyright by or on behalf of the Consultant.

**12. Property of District.** All Plans, Reports, Documents, Photographs, Drawings, and Specifications that are generated by the Consultant for Whatcom PUD under this contract are and shall remain the property of Whatcom PUD whether the Project for which they are made is executed or not. The Consultant assumes no liability for any use of the Drawings and Specifications other than that originally intended for this Project. The Consultant shall retain originals during the performance of the Services and reproducible copies shall be provided as requested by Whatcom PUD. Upon completion of the work, the originals of all Plans, Drawings and Specifications shall be delivered to Whatcom PUD.

**13. Electronic Transmission.** All electronically transmitted output must be compatible with existing District software and must be accompanied by at least one (1) copy of written reports. Consultant shall check with Whatcom PUD for software application and system compatibility.

**14. Contamination.** For the purpose of this clause, contamination conditions shall mean the actual or alleged existence, discharge, release or escape of any irritant, pollutant,

contaminant, or hazardous substance into or upon the atmosphere, land, groundwater, or surface water of or near the property. Consultant will promptly notify Whatcom PUD of contamination conditions, if identified.

15. **No Employment Relation Created.** Consultant is an independent contractor, who will provide services to Whatcom PUD. The Parties are not “partners” and this Agreement does not create a partnership, joint venture relationship or an employer-employee relationship. The relationship between Whatcom PUD and the Consultant is not and shall not be construed to be an employment relationship under any circumstance, and shall be construed only to be an independent contractor relationship with Whatcom PUD.

16. **Industrial Insurance Act Defense Waiver.** The Consultant expressly waives any claim of defense against Whatcom PUD as may be provided by the Industrial Insurance Act, RCW 51.04.010 *et seq.* for any claim asserted by any person (or relative or estate thereof) for injury or death sustained during the course of the Contract work.

17. **Subconsultants.** Contractor shall notify Whatcom PUD in writing of all subconsultants hired or utilized by Consultant. At the time of project completion, the Consultant agrees to certify to Whatcom PUD that all subconsultants have been paid in full. Consultant shall be solely responsible for the performance of any sub-consultant. All such subconsultants shall possess all licenses and insurance as required by the laws of the State of Washington.

18. **Discrimination.** In connection with the performance of this Agreement, the Consultant shall not discriminate against any employee or applicant for employment because of race, color, religion, sex, national origin, age, marital status, or being handicapped, a disadvantaged person, or a disabled or Vietnam era veteran. The Consultant shall take affirmative action to ensure that the employees are treated during employment without regard to, their race, color, religion, sex, national origin, age, marital status, or being handicapped, or disadvantaged person, or disabled or Vietnam era veteran.

19. **Understanding of Agreement.** Each party acknowledges that such party has read this Agreement and understands its contents, that such party has had the opportunity to have this Agreement reviewed by an attorney of such party’s choice, and that such party either has consulted with an attorney or voluntarily has chosen not to consult with an attorney before signing this Agreement.

20. **Litigation/Arbitration.** In the event either party herein finds it necessary to bring an action against the other party to enforce any of the terms, covenants or conditions hereof or any instrument executed pursuant to this Agreement by reason of any breach or default hereunder or thereunder, the party prevailing in any such action or proceeding shall be paid all costs and attorneys’ fees incurred by the other party, and in the event any judgment is secured by such prevailing party all such costs and attorneys’ fees of collection shall be included in any such judgment. In the event of any dispute arising between the parties to this Agreement, any such dispute shall be submitted to binding arbitration as provided herein. The parties shall select an independent and unbiased arbitrator who is not affiliated directly or indirectly with either party within ten (10) days after any party demands arbitration. If the parties fail to select or cannot agree upon an arbitrator within this time, then they shall make application to the Superior Court of Whatcom County, pursuant to RCW 7.04 *et seq.*, for an order appointing an arbitrator. Such

application may be made at any time after the ten (10) day period has expired. Upon application to the court for an arbitrator, the Court shall select an arbitrator who shall render his/her decision no later than sixty (60) days after his/her appointment. If the arbitrator requests a hearing prior to rendering his/her decision, such hearing shall be held in Whatcom County, Washington within thirty (30) days of the arbitrator's appointment. The arbitrator's decision shall be binding on both parties. Each party shall bear its own expenses associated with the arbitration but shall share equally the costs of the arbitrator. RCW Chapter 7.04 and Rules 5.2 through 5.4 of the Mandatory Arbitration Rules for Superior Court ("MAR") shall govern the arbitration. In the event of any inconsistencies between the Binding Arbitration Clause, RCW Chapter 7.04, and MAR 5.2 through 5.4, the terms of the Binding Arbitration Clause shall take precedence over RCW Chapter 7.04 and MAR 5.2 through 5.4; and RCW Chapter 7.04 shall take precedence over MAR 5.2 through 5.

21. **Notices.** All notices, demands, requests, consents and approvals which may or are required to be given by any party to any other party hereunder shall be in writing and shall be deemed to have been duly given if delivered personally, sent by facsimile, sent by a nationally recognized overnight delivery service, or if mailed or deposited in the United States mail and sent by registered or certified mail, return receipt requested, postage prepaid to:

District: Kurt Wank, Director of Utility Operations  
Public Utility District No. 1 of Whatcom County  
1705 Trigg Road/PO Box 2308  
Ferndale, WA 98248

Consultant: Christopher T. Davis P.E.  
Electric Power Systems Inc.  
4020 148<sup>th</sup> Ave NE Suite C  
Redmond, WA 98052

or to such other address as the foregoing parties hereto may from time-to-time designate in writing and deliver in a like manner. All notices shall be deemed complete upon actual receipt or refusal to accept delivery. Facsimile transmission of any signed original document and retransmission of any signed facsimile transmission shall be the same as delivery of an original document.

22. **Amendment.** No modification, termination or amendment of this Agreement may be made except by written agreement signed by all parties, except as provided herein.

23. **Waiver.** No failure by any of the foregoing parties to insist upon the strict performance of any covenant, duty, agreement, or condition of this Agreement or to exercise any right or remedy consequent upon a breach thereof shall constitute a waiver of any such breach or any other covenant, agreement, term or condition. Any party hereto, by notice and only by notice as provided herein, may, but shall be under no obligation to, waive any of its rights or any conditions to its obligations hereunder, or any duty, obligation or covenant of any other party hereto. No waiver shall affect or alter this Agreement, and each and every covenant, agreement, term and condition of this Agreement shall continue in full force and effect with respect to any other then existing or subsequent breach thereof.

24. **Captions.** The captions of this Agreement are for convenience and reference only and in no way define, limit, or describe the scope or intent of this Agreement.

25. **Severability.** In case any one or more of the provisions contained in this Agreement shall for any reason be held to be invalid, illegal or unenforceable in any respect, such invalidity, illegality or unenforceability shall not affect any other provision hereof, and this Agreement shall be construed as if such invalid, illegal or unenforceable provision had never been contained herein.

26. **Counterparts.** This Agreement may be executed in any number of counterparts, and each such counterpart hereof shall be deemed to be an original instrument, but all such counterparts together shall constitute but one agreement.

27. **Neutral Authorship.** Each of the provisions of this Agreement has been reviewed and negotiated and represents the combined work product of all parties hereto. No presumption or other rules of construction which would interpret the provisions of this Agreement in favor of or against the party preparing the same shall be applicable in connection with the construction or interpretation of any of the provisions of this Agreement.

28. **Governing Law.** This Agreement and the right of the parties hereto shall be governed by and construed in accordance with the laws of the State of Washington.

29. **Time of Performance.** Time is specifically declared to be of the essence of this Agreement and of all acts required to be done and performed by the parties hereto.

30. **Entire Agreement.** The entire agreement between the parties hereto is contained in this Agreement and the exhibits hereto, and this Agreement supersedes all of their previous understandings and agreements, written and oral, with respect to this transaction. This Agreement may be amended only by written instrument executed by the parties subsequent to the date hereof. The Consultant specifically understands that no District employees other than the project manager or his/her supervisors are authorized to direct the work of the Consultant and/or amend this Agreement.

**IN WITNESS WHEREOF**, the parties hereto execute this Agreement.

**DISTRICT:**

PUBLIC UTILITY DISTRICT NO. 1 OF WHATCOM COUNTY

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

Title: General Manager

Date signed: \_\_\_\_\_

**CONSULTANT:**

\_\_\_\_\_

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

Title: \_\_\_\_\_

Firm's EIN: \_\_\_\_\_

Date signed: \_\_\_\_\_