

NO. 18 - 0 4 5 9

BEFORE THE BOARD OF COUNTY COMMISSIONERS  
OF SPOKANE COUNTY, WASHINGTON

IN THE MATTER OF ADOPTING AN INTERIM )  
ORDINANCE TO ESTABLISH ELIGIBILITY )  
AND PROCEDURES TO ACQUIRE STREAM )  
FLOW MITIGATION WATER CERTIFICATES )  
FROM THE SPOKANE COUNTY LITTLE )  
SPOKANE WATER BANK FOR )  
NONCOMMERCIAL WATER USE ON )  
PARCELS WITH SINGLE FAMILY )  
RESIDENCES IN WATER RESOURCE )  
INVENTORY AREA 55; ESTABLISHING )  
PENALTIES IN CONJUNCTION THEREWITH; )  
AND PROVIDING FOR OTHER MATTERS )  
PROPERLY RELATING THERTO. )

**RESOLUTION:**  
**FINDINGS OF FACT,**  
**CONCLUSIONS AND ADOPTION OF**  
**INTERIM ORDINANCE**

**THIS MATTER** is the consideration of the Board of County Commissioners of Spokane County, Washington (Sometimes hereinafter referred to as the "Board") of legislative changes in Chapters 19.27, 58.17, 90.03, 36.70A, and 36.70 RCW imposed through ESSB 6091, Chapter 1, Laws of 2018 regarding the most recent changes in law governing water availability relating to the issuance of building permits and a mandated update to a watershed plan for Water Resource Inventory Area (WRIA) 55, located in Spokane, Pend Oreille, and Stevens counties.

**BACKGROUND SYNOPSIS:** Enactment of ESSB 6091 was in large part a response to the Washington State Supreme Court decision in *Whatcom County v. Hirst*, 186 Wash. 2d 648 (2016) ("*Hirst*"). The *Hirst* case involves an appeal of a Growth Management Hearings Board matter and includes analysis of the interplay between Chapters 19.27 and 58.17 RCW with Chapter 36.70A RCW regarding determinations on availability of water for building permits requiring potable water and protection of senior water rights under Title 90 RCW. One consequence of the *Hirst* decision was the inability of many private property owners' –to secure building permits for residences in WRIsA subject to instream flow restrictions. Another consequence of *Hirst* was the introduction of numerous legislative bills, arguably to either fix the problems created by *Hirst* or expand the decision by promulgating statutory amendments. It is generally thought the legislators' inability to timely pass a balanced budget in 2017 is largely attributable to the post-*Hirst* legislative battles over the various bills.

Spokane County has a Department of Environmental Services which includes water resource management and was working on the viability of establishing multi-jurisdictional water banks including one for WRIA 55 prior to the *Hirst* decision. Post *Hirst*, the BoCC conducted public hearing, workshops, and adopted interim ordinances to comply with its understanding of the *Hirst* requirements and to prepare for the issuance of mitigation certificates through a water bank in WRIA 55 (*Adopted Resolutions include:* 2016-0833, 2017-0059, 2017-0214, 2017-0537, 2017-0631, and 2017-1066).

On January 18, 2018, a compromise was reached and the Senate and the House passed ESSB 6091, Governor Inslee signed the bill on January 19, 2018 and it became effective immediately.

**NOW, THEREFORE**, pursuant to the provisions of RCW 36.32.120(6), the Board of County Commissioners of Spokane County, is vested with the care of County property and the management of county funds and business, and such other powers as are or may be conferred by law, the Board hereby makes the following:

## FINDINGS OF FACT

### I.

Pursuant to the provisions of chapters 36.70 and 36.70A RCW, Spokane County plans under the Growth Management Act codified under chapter 36.70A RCW and in conjunction therewith has adopted a Comprehensive Plan and a Zoning Code for the unincorporated areas of Spokane County.

### II.

Chapter 36.70A RCW goals encourage protection of the environment, including the availability of water. The Chapter further requires adopted comprehensive plans and development regulations be consistent.

The specific provisions within the Growth Management Act which address a County's obligations to address water in rural areas include but are not necessarily limited to:

- (1) RCW 36.70A.020(10),
- (2) RCW 36.70A.030(15)(g), and
- (3) RCW 36.70A.070(5)(c) (iv).

The Spokane County's Comprehensive Plan addresses water resources in various Chapters and provides in part as follows:

#### (1) Chapter 10: Natural Environment

- a. NE. 18.1           Manage surface and ground waters throughout the county to stay within recharge capabilities.
- b. NE. 18.7           Discourage new water wells or increases in the extraction of water from existing wells in aquifers where water withdrawals exceed aquifer recharge, especially in the Little Spokane River Basin and the West Plains area. The provision of public water service to these areas from sources outside the area shall be encouraged.
- c. NE. 18.9           Support efforts to limit water use allowed under the state domestic exemption rule to provide supplies for single-family residences.

### III.

The amendments enacted through ESSB 6091, effective January 19, 2018, changed the requirements of how water availability was determined for building permits requiring potable water where the water source was identified as an exempt-well under RCW 90.44.050 and on January 30, 2018, the Board repealed Resolution 17-1066 as it was inconsistent with the amended statutes.

### IV.

Prior to ESSB 6091, Spokane County implemented The Little Spokane Water Bank for WRIA 55, including authorization to issue mitigation certificates under Resolution 17-1067. Under Resolution 17-1067, the qualifications to acquire a mitigation certificate and quantity authorized per certificate were extremely limited to comport with the restrictions under Resolution 17-1066 (the repealed resolution). Post ESSB 6091, the Board finds the structure for determining qualifications and quantities of water mitigation offered under Resolution 17-1067 is ineffective and restricts the ability to utilize the Little Spokane Water Bank to mitigate water withdrawals from permit-exempt wells.

V.

ESSB 6091 requires the WRIA 55 Watershed Plan be updated through a process requiring collaborative efforts between initiating agencies and interested parties. ESSB 6091 further requires the updated watershed plan for WRIA 55 include "... actions determined necessary to offset potential impacts to instream flows associated with permit-exempt domestic water use. The highest priority recommendations must include replacing the quantity of consumptive water use during the same time as the impact and in the same basin or tributary."

VI.

Chapters 36.70 and 36.70A authorize adoption of interim ordinances and official controls as methods by which local governments may implement planning measures within their respective jurisdictions without holding public hearings as follows:

RCW 36.70.795 provides that:

"A board that adopts a moratorium, interim zoning map, interim zoning ordinance, or interim official control without holding a public hearing on the proposed moratorium, interim zoning map, interim zoning ordinance, or interim official control, shall hold a public hearing on the moratorium, interim zoning map, interim zoning ordinance, or interim official control within at least sixty days of its adoption, whether or not the board received a recommendation on the matter from the commission or department. If the board does not adopt findings of fact justifying its action before this hearing, then the board shall do so immediately after this public hearing. A moratorium, interim zoning map, interim zoning ordinance, or interim official control adopted under this section may be effective for not longer than six months, but may be effective for up to one year if a work plan is developed for related studies providing such a longer period. A moratorium, interim zoning map, interim zoning ordinance, or interim official control may be renewed for one or more six-month periods if a subsequent public hearing is held and findings of fact are made prior to each renewal."

; and

RCW 36.70A.390 provides that:

"A county or city governing body that adopts a moratorium, interim zoning map, interim zoning ordinance, or interim official control, shall hold a public hearing on the adopted moratorium, interim zoning map, interim zoning ordinance, or interim official control within at least sixty days of its adoption, whether or not the governing body received a recommendation on the matter from the planning commission or department. If the governing body does not adopt findings of fact justifying its action before this hearing, then the governing body shall do so immediately after this public hearing. A moratorium, interim zoning map, interim zoning ordinance, or interim official control adopted under this section may be effective for not longer than six months, but may be effective for up to one year if a work plan is developed for related studies providing for such a longer period. A moratorium, interim zoning map, interim zoning ordinance, or interim official control may be renewed for one or more six-month periods if a subsequent public hearing is held and findings of fact are made prior to each renewal."

V.

The State Environmental Policy Act codified in chapter 43.21C RCW provides that an environmental review must be conducted in conjunction with all major actions significantly affecting the quality of the environment. Washington Administrative Code provisions, specifically WAC 197-11-880 further provides:

WAC 197-11-880 Emergencies.

Actions that must be undertaken immediately or within a time too short to allow full compliance with this chapter, to avoid an imminent threat to public health or safety, to prevent an imminent danger to public or private property, to prevent an imminent threat of serious environmental degradation, shall be exempt. Agencies may specify these emergency actions in their procedures.”

## VII.

Adoption of an ordinance to allow issuance of mitigation certificates though the Little Spokane Water Bank will allow the certificates to be used as evidence of adequate water supply by applicants when applying for building permits requiring potable water under RCW 19.27.097 which in pertinent part provides:

“RCW 19.27.097 Building permit application—Evidence of adequate water supply—Applicability—Exemption.

(1) Each applicant for a building permit of a building necessitating potable water shall provide evidence of an adequate water supply for the intended use of the building. Evidence may be in the form of a water right permit from the department of ecology, a letter from an approved water purveyor stating the ability to provide water, or another form sufficient to verify the existence of an adequate water supply. In addition to other authorities, the county or city may impose conditions on building permits requiring connection to an existing public water system where the existing system is willing and able to provide safe and reliable potable water to the applicant with reasonable economy and efficiency. An application for a water right shall not be sufficient proof of an adequate water supply.

## VIII.

Potable water for domestic use on properties outside a water purveyor’s service area have historically relied upon permit exempt wells authorized under RCW 90.44.050 to satisfy a determination of the legal availability of water when making application for a building permit. The *Hirst* decision impacted the ability for building applicants to rely on the exemption and required a showing by the applicant that the use of a permit exempt well would not impair a senior water right holder. A senior water right can be a water right authorized under federal or state law, or a water right established by an instream flow regulation adopted by the Washington State Department Ecology under chapters 90.22 RCW and 90.54 RCW. Spokane County has six (6) Water Resource Inventory Areas (“WRIAs”), i. e. WRIA 55, 57, 56, 54, 34, and 43. The Washington State Department of Ecology has adopted instream flow regulations in WRIA 55 (WAC 173-555) and WRIA 57 (WAC 173-557) to protect senior water rights. Other WRIA’s have senior water rights, both surface water and groundwater, but no adopted instream flow regulation.

## IX.

ESSB 6091 lessens the impact of the *Hirst* decision, in two ways. First, for WRIAs that are not subject to instream flow rules, the following section applies:

**Section 101 (5).** Any permit-exempt groundwater withdrawal authorized under RCW2690.44.050 associated with a water well constructed in accordance with the provisions of chapter 18.104 RCW before the effective date of this section is deemed to be evidence of adequate water supply under this section.

Second, for WRIAs where instream flow rules have been adopted but do not specifically address permit-exempt wells, like WRIA 55, ESSB 6091 adopts the following interim provisions while the watershed plan is updated:

**Section 202 (5).** Until an updated watershed plan is approved and rules are adopted under this chapter or chapter 90.54 RCW, a city or county issuing a building permit under RCW 19.27.097(1)(c), or approving a subdivision under chapter 58.17 RCW in a watershed listed in subsection (2) of this section must:

- (a) Record relevant restrictions or limitations associated with water supply with the property title;
- (b) Collect applicable fees, as described under this section;
- (c) Record the number of building permits issued under chapter 19.27 RCW or subdivision approvals issued under chapter 58.17 RCW subject to the provisions of this section;
- (d) Annually transmit to the department three hundred fifty dollars of each fee collected under this subsection;
- (e) Annually transmit an accounting of building permits and subdivision approvals subject to the provisions of this section to the department;
- (f) Until rules have been adopted that specify otherwise, require the following measures for each new domestic use that relies on a withdrawal exempt from permitting under RCW 90.44.050:
  - (i) An applicant shall pay a fee of five hundred dollars to the permitting authority;
  - (ii) An applicant may obtain approval for a withdrawal exempt from permitting under RCW 90.44.050 for domestic use only, with a maximum annual average withdrawal of three thousand gallons per day per connection.

X.

Prerequisites to Spokane County's use of the Little Spokane Water Bank as a basis for the issuance of Stream Flow Mitigation Certificates in WRIA 55 were completed when Washington State Department of Ecology issued a "*Report of Examination*" and approval of the County's Application for Change No. CG3-24214C(A). And, Spokane County has acquired water-rights, which are the subject of the Application for Change No. CG3-24214C(A) approved by Department of Ecology, and are available to back the issuance of mitigation certificates.

XI.

The staff for Spokane County Department of Environmental Services and staff of the Department of Building and Planning have developed the necessary components to operate the Little Spokane Water Bank and allow issuance of Stream Flow Mitigation Certificates, and enforcement activities.

XII.

County staff estimates the completion of the Watershed Plan Update will take in excess of six (6) months and could easily take over one (1) year depending upon how rapidly the ESSB 6091 criteria can be met.

## CONCLUSIONS

### I

The Board finds making instream flow mitigation available immediately rather than waiting for the development an adoption of an Updated Watershed Plan for WRIA 55 will benefit the watershed by making water available to offset new and existing withdrawals from permit-exempt wells used for domestic purposes.

### II.

If the County were to begin consideration of a development regulation to address the eligibility, issuance, regulation, and enforcement of stream flow mitigation through issuance of mitigation certificates backed by Little Spokane Water Bank, without first adopting an interim ordinance (Stream Flow Mitigation Ordinance), mitigation of permit-exempt well withdrawals benefiting the WRIA 55 Watershed would be needlessly delayed, and those involved in the process of land use development would for all practical purposes be prohibited and or needlessly delayed in filing applications for building permits in certain rural areas until the process were completed or they might argue the County is required to grant access to the water held in trust without needed controls to avoid degradation of water resources.

### III.

While the Board fully expects the WRIA 55 Watershed Plan Update to comply with the ESSB 6091 and to be adopted timely, it is in the best interest of public health, safety and welfare to make instream flow mitigation available immediately by adoption of an Interim Ordinance (Stream Flow Mitigation Ordinance), as authorized under RCW 36.70.795 and RCW 36.70A.390; and

## DECISION

**NOW, THEREFORE, BE IT RESOLVED** by the Board of County Commissioners of Spokane County, Washington, pursuant to the provisions of RCW 36.32.120(6), RCW 36.70.795, RCW 36.70A.390, RCW 36.70A.130, Spokane County Comprehensive Plan Provisions Chapter 10: Natural Environment: NE: 18.1, NE: 18.7 and NE: 18.9 and WAC 197-11-880, that the Board declares an emergency and in so doing does adopt an Interim Ordinance as set forth in Attachment "A" attached hereto and incorporated herein by reference. By adoption of this Interim Ordinance, the Board further enters a formal repeal of Resolution 17-1067.

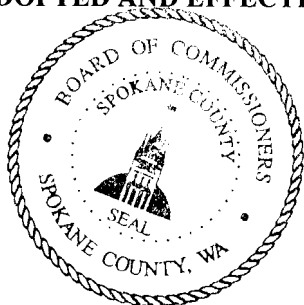
**BE IT FURTHER RESOLVED** that the Board of County Commissioners further adopts each and every finding of fact, in support of the above action and additionally the Board does:

- 1) Direct the staff of the Spokane County Division of Building and Planning as well as Department of Environmental Services to develop or amend documents necessary to implement the Interim Stream Flow Ordinance.
- 2) Direct the Spokane County Division of Building and Planning as well as the Department of Environmental Services to schedule and give proper notice of any hearings and meetings held under (1) above consistent with applicable regulations.
- 3) Determine to hold a public hearing on the Interim Ordinance set forth in Attachment "A" within sixty (60) days of the adoption of this resolution.
- 4) Acknowledge that the Interim Ordinance set forth in Attachment "A" adopted herein may be effective for not longer than six months, but may be effective for up to one (1) year to allow development of the Watershed Plan Update work plan.

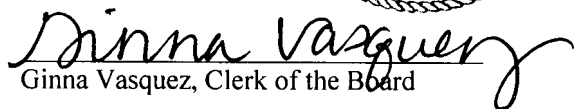
- 5) Acknowledge that an Interim Ordinance set forth in Attachment “A” may be renewed for one or more six (6) month periods if subsequent public hearing is held and findings of fact are made prior to each renewal.

**BE IT FURTHER RESOLVED.** that the adoption of this Interim Ordinance as set forth in Attachment “A” is exempt from the requirements of the threshold determination under the State Environmental Policy Act. pursuant to WAC 197-11-880.

**PASSED, ADOPTED AND EFFECTIVE AS OF 2:21 P.M.** on the 26<sup>th</sup> day of June, 2018.



ATTEST:

  
Ginna Vasquez, Clerk of the Board

BOARD OF COUNTY COMMISSIONERS  
OF SPOKANE COUNTY, WASHINGTON

  
JOSH KERNS, CHAIR

  
MARY KLUNEY, VICE-CHAIR

  
AL FRENCH, COMMISSIONER

**ATTACHMENT "A"**

**ORDINANCE NO.**

**AN ORDINANCE OF THE BOARD OF COUNTY COMMISSIONERS OF SPOKANE, WASHINGTON, AUTHORIZED BY CHAPTER 36.70A RCW, RCW 36.32.120(6) AND RCW 36.01.085, ESTABLISHING ELIGIBILITY AND PROCEDURES TO ACQUIRE STREAM FLOW MITIGATION WATER CERTIFICATES FROM THE SPOKANE COUNTY LITTLE SPOKANE WATER BANK FOR NONCOMMERCIAL WATER USE ON PARCELS WITH SINGLE FAMILY RESIDENCES FOR WATER RESOURCE INVENTORY AREA 55; ESTABLISHING PENALTIES IN CONJUNCTION THEREWITH; AND PROVIDING FOR OTHER MATTERS PROPERLY RELATING THERETO.**

**BE IT RESOLVED BY THE BOARD OF COUNTY COMMISSIONERS OF SPOKANE COUNTY, WASHINGTON, as follows:**

**SECTION NO. 1: PURPOSE**

The purpose of this Ordinance is to provide for and promote the health, safety and welfare of the general public and the environment in conjunction with implementation of legislative changes imposed under ESSB 6091, Chapter 1, Laws of 2018. ESSB 6091 requires the watershed plan for WRIA 55 be updated and includes provisions amending how agencies determine the adequacy of water supply for a building permits necessitating potable water that complies with chapters 90.03 and 90.44 RCW as provided for in RCW 19.27.097(1)(c). This Ordinance is not intended to create or otherwise establish or designate any particular class or group of persons who will or should be specially protected or benefitted by its terms.

**SECTION NO. 2: DEFINITIONS**

The following words and terms as used herein shall be held and construed to have the following meanings:

- (1) "Publicly-operated Spokane County Little Spokane Water Bank" or "Little Spokane Water Bank" means that water bank used to provide mitigation sources to off-set consumptive water use and allow for new permit exempt and permitted uses of water within portions of WRIA 55.
- (2) "WRIA 55 Building Permit" or "Building Permit" means a permit issued by the Spokane County Building and Planning Department for a building necessitating potable water which is located within portions of WRIA 55 and which relies on a permit exempt domestic use as provided for in RCW 90.44.050 as "another form sufficient to verify the existence of an adequate water supply" as required in RCW 19.27.097.
- (3) "Water Resource Inventory Area" or "WRIA" means the regional areas developed by the Department of Ecology to implement a comprehensive state water program as directed by the Water Resources Act of 1971 (chapter 90.54 RCW) and defined in chapter 173-500 WAC.
- (4) "Water Resource Inventory Area 55" or "WRIA 55" means that area identified in chapter 173-555 WAC.
- (5) "Mitigation Certificate" or "Stream Flow Mitigation Certificate" means a parcel specific legal document recognized by Washington State Department of Ecology and Spokane County



Department of Building and Planning as other evidence of an adequate water supply that complies with chapters 90.03 and 90.44 RCW as provided for in chapter RCW 19.27.097(1)(c) and has established a sufficient right to a designated quantity of water senior to the base flow established under chapter 173-555 WAC.

- (6) “Approved Mitigation Area” or “Suitability Area” means that area defined in a Trust Water Agreement where Department of Ecology has authorized Spokane County to grant mitigation certificates.
- (7) “County” shall mean Director of Environmental Services or his or her designee unless otherwise specified.
- (8) “Existing Permit Exempt Domestic Water Use” shall mean water use from an existing well that is exempt from the permitting requirements of RCW 90.54 and is located on a parcel with a domestic residence constructed and occupied prior to January 19, 2018. .

### **SECTION NO. 3: ELIGIBILITY / APPLICATION**

Applicants for a Building Permit requiring potable water and any owners of a parcel with an Existing Permit Exempt Domestic Water Use in WRIA 55 may apply to purchase a Stream Flow Mitigation Certificate if the following requirements are met:

1. The water source for the proposed or existing permit exempt domestic use is located within an Approved Mitigation Area in which the Little Spokane Water Bank can issue stream flow mitigation; and

2. The parcel connected to the Stream Flow Mitigation Certificate is located outside of the retail service area of any public water purveyor, unless the purveyor informs the applicant and Spokane County Building and Planning Department in writing that the purveyor is unable to provide water to the applicant in a timely and reasonable manner; and

3. Applicants agree to sign a property covenant limiting domestic water use and associated noncommercial outdoor irrigation authorized under the stream flow mitigation certificate from a groundwater source exempt from permitting requirements of RCW 90.44.050, to the quantities designated on the Stream Flow Mitigation Certificate; and

4. Applicants agree to provide an avigation easement to be used by the County in the enforcement of this Ordinance.

Applicants must submit a Stream Flow Mitigation Certificate application, all applicable documentation, and all applicable fees (according to the Spokane County Building and Planning Department fee schedule) to Spokane County Environmental Services Department.

Applicants for a Mitigation Certificate on a parcel that is not wholly within an Approved Mitigation Area must use a well located within that portion of the parcel that is within an Approved Mitigation Area. The Applicant must provide the location of the withdrawal and associated well log at the time of application. If a well log is not available, the Applicant must sign an affidavit identifying the location of the well.

The County may, at its sole discretion, restrict the sale of Mitigation Certificates and or suspend the application process in certain areas served by the Little Spokane Water Bank based on the number of mitigation certificates deemed locally available in an Approved Mitigation Area and the projected demands for mitigation certificates.

A Stream Flow Mitigation Certificate granted through the Little Spokane Water Bank addresses the legal water availability only relative to curtailment under the instream flow rule (chapter 173-555 WAC). The applicant is still required to meet physical availability requirements of the Spokane Regional Health District for domestic water use to receive a building permit.

Upon issuance of the Stream Flow Mitigation Certificate, the County will record at the Spokane County Auditor's Recording Office the Mitigation Certificate and any applicable agreements on the title record related to the parcel associated with the Stream Flow Mitigation Certificate.

Stream Flow Mitigation Certificates are not transferable to other parcels unless the prior County approval for the transfer is obtained in writing.

A Stream Flow Mitigation Certificate associated with a WRIA 55 Existing Domestic Water Use is valid upon purchase and cannot be invalidated. A Stream Flow Mitigation Certificate not associated with an Existing Permit Exempt Domestic Water use will be valid for a period of three (3) years from the date of issuance unless the Stream Flow Mitigation Certificate holder has obtained an applicable WRIA 55 Building Permit. If during the applicable three (3) year period, the Mitigation Certificate holder obtains an applicable WRIA 55 Building Permit, the Stream Flow Mitigation Certificate continues to be valid while the Building Permit remains in an active status. If a Stream Flow Mitigation Certificate holder obtains an applicable WRIA 55 Building Permit and a Certificate of Occupancy is granted the Stream Flow Mitigation Certificate cannot be invalidated. Upon Stream Flow Mitigation Certificate invalidation, the County will automatically refund the Mitigation Certificate cost paid by the Stream Flow Mitigation Certificate holder less all recording and program administration fees, the Stream Flow Certificate will be returned to the Little Spokane Water Bank, and the invalidation will be documented on the property title by the Department of Environmental Services.

#### **SECTION NO. 4: STREAM FLOW MITIGATION CERTIFICATE QUANTITIES AND COST**

The County is offering Stream Flow Mitigation Certificates for the following two types of water use:

Indoor Domestic Use: Consists of indoor domestic use at one single family residence and associated accessory dwelling units located on the same qualifying parcel.

Irrigation Use: Consists of noncommercial irrigation use for lawns and gardens located on a qualifying parcel in blocks of 1,000 ft<sup>2</sup>, up to a maximum of 21,000 ft<sup>2</sup> of irrigation.

An applicant in conjunction with a Stream Flow Mitigation Certificate application shall designate the number of 1,000 ft<sup>2</sup> blocks of irrigation requested for noncommercial lawn or garden. The County may, at its sole discretion, limit the number of 1,000 ft<sup>2</sup> blocks available for purchase in certain areas served by the Little Spokane Water Bank based on the number of mitigation certificates deemed locally available and projected demands for mitigation certificates.

The County may, at its sole discretion, based on the number of mitigation certificates deemed locally available and projected demands for mitigation certificates, make available additional 1,000 ft<sup>2</sup> blocks of irrigation of noncommercial lawn or garden for purchase after the initial Stream Flow Mitigation Certificate is purchased. Recording and administrative fees are required for each additional purchase.

The cost of a stream flow mitigation certificate will be based on the cost to develop the Little Spokane Water Bank, acquire water rights, recording fees, and program administration fees.

**SECTION NO. 5: MONITORING AND ENFORCEMENT**

The Stream Flow Mitigation Certificate holder is responsible for self-monitoring water usage and area of irrigated noncommercial lawn or garden. The County is required under the Trust Water Agreements held in the Little Spokane Water Bank to submit periodic reports to Department of Ecology on the area of irrigated noncommercial lawn or garden and may utilize aerial photo review, site inspections, and other means to determine compliance with the Stream Flow Mitigation Certificate. An aerial photo depicting an area of noncommercial lawn or garden in excess of the amount authorized when accompanied by supporting affidavit shall create a rebuttable presumption of a Stream Flow Mitigation Certificate violation.

**SECTION NO. 6: ENFORCMENT POWER**

The County Director of Environmental Services or his/her designee is authorized to take such lawful action as may be required to enforce the provision of this Ordinance, including but not limited to the Mitigation Certificate and/or the property covenant requiring compliance with the terms of the Mitigation Certificate, through the imposition of civil penalties, referrals for criminal charges, or other actions provided by law. The Mitigation Certificate shall identify a Mitigation Package provided for in Section No. 4.

**SECTION NO. 7: NOTICE OF VIOLATION CIVIL MONETARY PENALTY**

Except as noted in Section No. 10 of this Ordinance, any person, firm or corporation who owns, controls, or is in possession of the residence connected to the Stream Flow Mitigation Certificate and that through *negligence* violates or fails to comply with any of the provisions of this Ordinance, including but not limited to the Mitigation Certificate, shall be deemed to have committed a civil violation subject to the following monetary penalties.

The civil penalty for the first civil violation will be assessed at the rate of \$500.00. Second, third and subsequent but separate violations of a like nature, are repeat violations. Penalties for second civil violations shall be assessed at two times (2X) the initial assessment rate or \$1,000.00. Penalties for third and subsequent civil violations shall be assessed at three times (3X) the initial assessment rate or \$1,500.00. Each and every day or portion thereof during which the violation continues to exist after service of a Notice of Violation, shall be deemed a continuing violation for purposes of this Ordinance and cumulative civil penalties may be assessed at the rate of \$500.00 per day.

This section does not exempt an offender from any other suit, prosecution or penalty otherwise provided by law.

**SECTION NO. 8: NOTICE OF CIVIL VIOLATION – DETERMINATION FINAL UNLESS APPEALED – SERVICE**

If the Spokane County Director of Environmental Services or his/her designee determines through investigation, inspection, or other means that a person, firm or corporation has violated any provision of this Ordinance, including but not limited to the Stream Flow Mitigation Certificate, he or she may issue a Notice of Violation. The Notice of Violation represents a determination that a civil violation has been committed. The determination is final unless appealed.

1. The Notice of Violation shall include the following:
  - (i) The name and address of the person, firm or corporation who owns, controls, or is in possession of the residence connected to the Stream Flow Mitigation Certificate related to the determination of violation of this Ordinance.

- (ii) The Spokane County Assessor Parcel Number of the property which the person, firm or corporation identified in (i) owns, controls, or has possession.
- (iii) The Little Spokane Water Bank Stream Flow Mitigation Certificate Number associated with the Parcel Number identified in (ii).
- (iv) A brief description of the violation.
- (v) A statement assessing a civil penalty as provided for in Section No. 7 for each violation that must be paid to the county within 21-days from the date of issuance.
- (vi) A statement that each and every day or portion thereof the violation continues is a violation and subjects the offender to cumulative penalty assessment of \$500.00 per day.
- (vii) A statement advising that if any civil penalty is not timely paid, the matter will be referred to a collection company.
- (viii) A statement advising that third (3<sup>rd</sup>) and subsequent issues of Notice of Civil Violation of any provision constituting a civil violation of the Mitigation Certificate involving unauthorized irrigation or water usage within a five-year-period preceding the issuance of the Notice of Civil Violation are punishable as misdemeanors and subject to criminal prosecution.
- (ix) A statement advising:
  - (a) That the Notice of Violation may be administratively appealed to the Spokane County hearing examiner within fourteen (14) calendar days following service of the Notice of Violation, such appeals shall be pursuant to the provisions of chapter 1.46 of the Spokane County Code.
  - (b) That cumulative per diem civil penalties will not accrue during the pendency of such appeal.
  - (c) That the failure to file a timely and complete appeal will constitute a waiver of all rights to an administrative appeal under the Spokane County Code and a failure to exhaust administrative remedies.

The Notice of Violation must be served on the person, firm or corporation in violation either personally or by mailing a copy of the Notice of Violation by certified mail, postage prepaid, return receipt requested, to the person, firm or corporation at his/its last known address. Proof of personal service of the notice must be made at the time of service by a written declaration under penalty of perjury executed by the person effecting service, declaring time, date and manner in which service was made. Any notice or determination mailed pursuant to this section shall be deemed received by the party to whom it is addressed on the third (3<sup>rd</sup>) day after it is placed in the mail, as set forth by declaration of the sender.

The person, firm or corporation served with a Notice of Violation may appeal to the hearing examiner within 14-days of service. Appeals must be filed and processed in accordance with the provisions of chapter 1.46 of the Spokane County Code. At the appeal, the Spokane County Director of Environmental Services or his/her designee will have the burden of proving the violation by a preponderance of the evidence. The decision of the hearing examiner on any appeal will be final and conclusive. An aggrieved party may seek

judicial review in the Spokane County Superior Court within 21 calendar days of the issuance of the examiner's final decision.

**SECTION NO. 10: VIOLATIONS CRIMINAL – PENALTIES**

Failure to perform any act required or performance of any act prohibited by this Ordinance, a Stream Flow Mitigation Certificate, and or a property covenant requiring compliance with the terms of the Mitigation Certificate is designated a civil violation under Section No. 7, except the following violations are criminal – classification misdemeanor:

- (1) The intentional violation of any provisions of this Ordinance including but not limited to the Stream Flow Mitigation Certificate.
- (2) The third or subsequent separate violation of any provisions of a Stream Flow Mitigation Certificate constituting a civil violation of this Ordinance within a five (5) year period calculated from when the first Notice of Violation was issued, regardless of whether the civil violations have been fully adjudicated and deemed committed, *provided*, that a finding by the court that the prior civil violation was not committed shall render the prior violation not countable toward the third or subsequent violation.

Commission of a misdemeanor identified in this Ordinance is punishable by imprisonment in the county jail for a maximum term fixed by the court of not more than ninety days or a fine in an amount fixed by the court of not more than one thousand dollars, or both imprisonment and fine. The probationary period shall be up to one-year and may impose such crime related conditions warranted.

This section does not exempt an offender from any other suit, prosecution or penalty otherwise provided by law.

**SECTION NO. 11: COMPLIANCE WITH OTHER LAWS**

In addition to complying with the provisions of this Ordinance, an application for or holder of a mitigation certificate shall comply will all other applicable federal, state and local laws, ordinances and regulations.

**SECTION NO. 12: REMEDIES NOT EXCLUSIVE**

The remedies for violations of this Ordinance are not exclusive.

**SECTION NO. 13: ORDINANCE CONTROLS**

All ordinances and sections of the Spokane County Code in conflict with this Ordinance are, to the extent of the conflict, superseded and unless adopted subsequent to this Ordinance and contain specific language superseding provisions herein.

**SECTION NO. 14: SEVERABILITY**

If any part or provision of this Ordinance, or its application to any person, firm, or corporation, or circumstance is held invalid, it is the intent of the Board of County Commissioners of Spokane County that the remainder of this Ordinance or its application of the provisions to other persons, firms, corporations, or circumstances is not affected.

**SECTION NO. 15: SHORT TITLE**

This Ordinance shall be known as the Stream Flow Mitigation Certificate Ordinance and may be cited as such.

**SECTION NO. 16: EFFECTIVE DATE**

This Ordinance is effective upon adoption.