

RESOLUTION 2024-0803

BEFORE THE BOARD OF COMMISSIONERS OF BENTON COUNTY, WASHINGTON:

IN THE MATTER OF THE FIRST AMENDMENT TO THE WATER RIGHT PURCHASE AND SALE AGREEMENT BETWEEN BENTON COUNTY AND THE PORT OF KENNEWICK, AMENDING RESOLUTION 2023-728

WHEREAS, Benton County is in need of water rights to continue use of its existing irrigation system for the landscaping at the Benton County Fairgrounds and Event Center property; and

WHEREAS, the Port of Kennewick has water rights available that it is willing to transfer to the County for this purpose; and

WHEREAS, the County and the Port have shared a mutually beneficial partnership on many projects in the past; and

WHEREAS, in recognition of the long-standing partnership the Port will transfer these water rights in exchange for the County covering its administrative costs to do so; and

WHEREAS, on October 31, 2023, the Board of County Commissioners approved a Purchase and Sale Agreement (PSA) for the acquisition of water rights from the Port of Kennewick; and


WHEREAS, the PSA established December 31, 2024, as the "Termination Date" for purposes of closing the Parties' purchase and sale transaction, thereunder, unless otherwise agreed by the Parties in writing; and

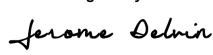
WHEREAS, the Parties have not, as of the amendment date, satisfied or waived all contingencies under Paragraph 2 and 3 of the PSA requiring final and binding administrative approval from the Washington State Department of Ecology of the Port of Kennewick's Water Right Transfer Application; and


WHEREAS, the Board finds that proper review and consideration has been made and it appears to be in the public's best interest to approve a First Amendment to the Water Right Purchase and Sale Agreement with the Port of Kennewick; **NOW THEREFORE**


BE IT RESOLVED, that the attached First Amendment to the Purchase and Sale Agreement (PSA) for the acquisition of water rights from the Port of Kennewick extending the "Termination Date" to December 31, 2025 and amending Resolution 2023-728 is hereby approved by the Board.

Dated this 19th day of November 2024.

Attest: 
34825A975E034CE...
Clerk of the Board

DocuSigned by:

7ED07603283E486...
Chairman

DocuSigned by:

D6C6F57E34874E4...
Chairman Pro-Tem

DocuSigned by:

135987D784E74CF...
Commissioner

Constituting the Board of
County Commissioners of Benton
County, Washington

**FIRST AMENDMENT
TO
WATER RIGHT PURCHASE AND SALE AGREEMENT**

THIS FIRST AMENDMENT TO WATER RIGHT PURCHASE AND SALE AGREEMENT (the "Amendment") is made and entered into as of this 19th day of November, 2024 (the "Amendment Date"), by and between the SELLER, Port of Kennewick, a Washington Municipal Corporation, and BUYER, Benton County, a municipal corporation established under the laws and constitution of the State of Washington. The Port of Kennewick and Benton County are collectively referred to herein as the "Parties".

WHEREAS, the Parties entered into a Water Right Purchase and Sale Agreement dated October 31, 2023 (the "PSA"), providing for the acquisition by the BUYER of up to 46.03 acre-feet per year of consumptive use water under the Port of Kennewick's Water Right, as described in the PSA; and

WHEREAS, the PSA established December 31, 2024, as the latest allowable date of closing for purposes of closing the Parties' purchase-and-sale transaction thereunder, unless otherwise agreed by the Parties in writing; and

WHEREAS, the Parties have not yet been able to satisfy all necessary conditions to effectuate the closing, including procurement of the required final and binding administrative approval from the Washington State Department of Ecology ("Ecology") of the Port of Kennewick's Water Right Transfer Application, as defined in the PSA, on terms consistent therewith, and do not expect to be able to do so to allow the transaction to close by December 31, 2024; and

WHEREAS, the Parties desire to amend the PSA to extend the latest possible date of closing allowed thereunder, with the expectation of procuring satisfactory Ecology approval of the Port of Kennewick's Water Right Transfer Application and satisfying all other PSA contingencies on or before December 31, 2025.

NOW, THEREFORE, IN CONSIDERATION of the mutual covenants set forth herein, the receipt of which are hereby acknowledged, the Parties hereby agree as follows:

1. Consistent with requirements under PSA Paragraph 14 (Changes in Writing), Paragraph 6 of the PSA is hereby amended, in its entirety, to read as follows:

CLOSING: The closing hereunder shall be held and delivery of all items to be made at the Closing under the terms of this Agreement shall be made at the offices of the parties' agreed Closing Agent: Pacific Alliance Title, 311 N. 4th St Suite 102, Yakima WA 98901, (509) 225-6809. The "Closing" or "date of closing" shall be construed as the date upon which all appropriate documents are recorded and proceeds of this sale are available for disbursement to SELLER. Notwithstanding the foregoing, the parties may agree, in writing, to extend the date of Closing; provided, the delay in Closing is not the fault of either party and both parties exercise their best efforts to

BUYER:

BOARD OF BENTON COUNTY COMMISSIONERS

DocuSigned by:
Jerome Delvin
7ED07603283E486...
Jerome Delvin, Commissioner

DocuSigned by:
Will McKay
135987D784E74CF...
Will McKay, Commissioner

DocuSigned by:
Michael Alvarez
D6C6F57E34874E4...
Michael Alvarez, Commissioner

Attest:
DocuSigned by:
Amanda Pearson
34825A975E034CE...
Amanda Pearson, Clerk of the Board

Approved as to form:

Ryan Brown
Ryan Brown, Chief Civil Deputy, Prosecutor's Office

STATE OF WASHINGTON)
) ss.
County of Benton)

On this day personally appeared before me Jerome Delvin, known to me to be a Commissioner of Benton County, a Washington municipal corporation, who executed the within and foregoing instrument, and acknowledged said instrument to be the free and voluntary act and deed of said corporation, for the uses and purposes therein mentioned and on oath stated that he was authorized to execute said instrument.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my official seal this
19th day of November, 2024.



DocuSigned by:
Amanda Pearson
34825A975E034CE...
Notary Public in and for the state of
Washington, residing in Kennewick
My Commission Expires: 02-29-2028

STATE OF WASHINGTON)
) ss.
County of Benton)

On this day personally appeared before me Will McKay, known to me to be a Commissioner of Benton County, a Washington municipal corporation, who executed the within and foregoing instrument, and acknowledged said instrument to be the free and voluntary act and deed of said corporation, for the uses and purposes therein mentioned and on oath stated that he was authorized to execute said instrument.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my official seal this ^{DS} 19th day of November, 2024.



DocuSigned by:

Amanda Pearson

34825A975E034CE...

Notary Public in and for the state of
Washington, residing in Kennewick
My Commission Expires: 02-29-2028

STATE OF WASHINGTON)
) ss.
County of Benton)

On this day personally appeared before me Michael Alvarez, known to me to be a Commissioner of Benton County, a Washington municipal corporation, who executed the within and foregoing instrument, and acknowledged said instrument to be the free and voluntary act and deed of said corporation, for the uses and purposes therein mentioned and on oath stated that he was authorized to execute said instrument.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my official seal this ^{DS} 19th day of November, 2024.



DocuSigned by:

Amanda Pearson

34825A975E034CE...

Notary Public in and for the state of
Washington, residing in Kennewick
My Commission Expires: 02-29-2028

PORT OF KENNEWICK

RESOLUTION 2024-31

A RESOLUTION OF THE BOARD OF COMMISSIONERS OF THE PORT OF KENNEWICK AUTHORIZING THE PORT CHIEF EXECUTIVE OFFICER TO EXECUTE THE FIRST AMENDMENT TO THE WATER RIGHT PURCHASE AND SALE AGREEMENT WITH BENTON COUNTY

WHEREAS, the Port of Kennewick and Benton County have negotiated a purchase and sale agreement on favorable terms for the Port’s surplus water rights remaining from real property sold in 2021 in the Oak Street area; and

WHEREAS, the Board of Commissioners of the Port of Kennewick approved Resolution 2023-28 on October 10, 2023 authorizing the Chief Executive Officer to execute the Purchase and Sale Agreement; and

WHEREAS, both parties agree it is necessary to extend the closing date of the Agreement from December 31, 2024 to not later than December 31, 2025.

NOW, THEREFORE, BE IT RESOLVED that the Board of Commissioners of the Port of Kennewick authorizes the Chief Executive Officer to execute the First Amendment to the Water Right Purchase and Sale Agreement extending the closing date from December 31, 2024 to “not later than December 31, 2025.”

BE IT FURTHER RESOLVED that all action by port officers and employees in furtherance hereof is ratified and approved; and further that the port Chief Executive Officer is authorized to take all action necessary in furtherance hereof.

ADOPTED by the Board of Commissioners of the Port of Kennewick this 12th day of November 2024.

**PORT OF KENNEWICK
BOARD OF COMMISSIONERS**

By: DocuSigned by:
Skip Novakovich
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SKIP NOVAKOVICH, President

By: DocuSigned by:
Kenneth Hohenberg
89F77EAC8921416...

KENNETH HOHENBERG, Vice President

By: DocuSigned by:
Thomas Moak
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THOMAS MOAK, Secretary



Commissioners' Agenda Action Sheet

Meeting Date: November 19, 2024
Subject: Water Rights for Benton County Fairgrounds and Event Center – First Amendment
Presenter:
Prepared By: Jerrod MacPherson
Reviewed By:
PA Review: **Approved:** Yes **Denied:** No **N/A:** No
(If denied, include reasoning)

Type of Agenda Item: Consent Agenda

Summary / Background Information

On October 31, 2023, the Board of County Commissioners approved a Purchase and Sale Agreement for the acquisition of water rights from the Port of Kennewick. These water rights are to be assigned to the Benton County Fairgrounds and Event Center property. This document established a "Termination Date" of December 31, 2024, for the purposes of closing the Parties' purchase and sale transaction. This was in part due to the requirement of a final and binding administrative approval from the Washington State Department of Ecology for the Port of Kennewick's water right transfer application. The Benton County Water Conservancy Board accepted the Port of Kennewick's water right transfer application in March of 2024. The Water Conservancy Board works on applications in the order that they are filed. There were two applications filed ahead of the Port of Kennewick's water right transfer application at the time. Those two applications were resolved in August/September of this year and the Water Conservancy Board is now turning to the Port of Kennewick's application for review, which will ultimately extend the review and approval process into 2025 – which is beyond the existing "Termination Date" of December 31, 2024.

Therefore, an amendment to the Water Right Purchase and Sale Agreement has been drawn up to extend the "Termination Date" of said agreement to December 31, 2025, and has been signed by the Port of Kennewick.

Fiscal Impact

The County will pay \$10,000 to cover the administrative costs of the transfer. The value of the water rights exceeds \$250,000.

Recommendation

Move to approve as part of the Consent Agenda.

Suggested Motion

I move to approve the Board signs and adopts the attached Resolution and First Amendment to the Water Right Purchase and Sales Agreement with the Port of Kennewick extending the "Termination Date" to December 31, 2025.

Signatures Required on Agreements/Contracts

Agreement and Notary.