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# INSLEE, BEST, DOEZIE & RYDER, P.S.

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## ATTORNEYS AT LAW

David A. Best  
Richard G. Birinyi  
Jerome D. Carpenter  
Don E. Dascenzo  
Thomas H. De Buys  
Peter A. Deming  
Michael Doezie  
Susan L. Fine  
Eric C. Frimodt  
Thomas H. Grimm\*\*  
Henry R. Hanssen, Jr.  
Evan E. Inslee  
Rod P. Kaseguma  
Rosemary A. Larson  
David J. Lawyer  
William J. Lindberg, Jr.

Rainier Plaza, Suite 1900  
777 - 108th Avenue N.E.  
P.O. Box C-90016  
Bellevue, Washington 98009-9016  
(425) 455-1234  
Fax: (425) 635-7720  
E-Mail: rkaseguma@insleebest.com

Dan S. Lossing\*  
Kim E. McCaulou  
John W. Miller  
John W. Milne  
Douglas L. Phillips  
John F. Rodda\*\*\*  
Stephen D. Rose\*  
Michael P. Ruark  
Milan Gail Ryder  
Adam G. Snyder  
John F. Sullivan\*  
Andrew L. Symons  
James S. Turner  
Katherine F. Weber  
Joe E. Wishcamper  
Of Counsel:  
William L. Choquette\*

- \* Also Admitted in Alaska  
\*\* Also Admitted in California  
\*\*\* Also Admitted in Oregon

## COMPARISON OF WATER-SEWER DISTRICTS AND PRIVATE WATER SYSTEM

### A. **Water-Sewer District v. Private Water System.**

The advantages of forming a water-sewer district are as follows:

1. **Statutory Authority.** A water-sewer district is a special purpose municipal corporation formed pursuant to Title 57 RCW. As such, it has broad powers to provide a wide range of services and to raise revenue to pay for such services.
2. **Financing Capability.** Unlike a private water company, a district is authorized to issue tax exempt municipal revenue and general obligation bonds to provide funds for the purchase and expansion of the water system. A district also is eligible for state and federal loans and grants.
3. **Condemnation Authority.** Unlike a private water company, a district may condemn property necessary for the operation of the district.
4. **Service Charge Collection.** A district has statutory authority to collect unpaid charges for utility services. If a property owner receives water service and fails to pay, the district may lien the property and foreclose on the lien for payment.
5. **Consultants.** Because a district can raise money, it is generally able to employ consultants (engineering, legal and accounting) on a regular basis. A district may also employ part-time or regular maintenance and administrative staff.

6. Regulation Compliance. A district is better equipped to comply with existing and updated federal, state and county regulations, such as the Federal Safe Drinking Water Act, and to upgrade the water system as those statutes and regulations require.

However, certain regulatory aspects of a water-sewer district must be considered, such as the following:

(a) Government Regulation. By definition, a water-sewer district exists pursuant to state law and is subject to Title 57 RCW. Statutes and regulations subject the district to state reporting and auditing regulations and procedures that are not applicable to a private water company.

(b) Open Public Meetings Act. All district meetings are open to the public, and the district must be managed by actions taken by the Board of Commissioners at such meetings. Commissioners must comply with campaign reporting and disclosure requirements, depending on district size. These requirements do not apply to a private water company.

(c) Open Public Records Act. All district records are public records subject to public inspection and copying at reasonable times. However, some documents are exempt from public disclosure, such as personnel and litigation documents. Private water company records are not public records.

(d) Comprehensive Plan. A district must prepare a comprehensive water system plan which outlines the district's present and future needs and sets forth the means of meeting those needs in the most efficient manner possible. In most cases, a private water company does not have to prepare such a plan.

## B. **Operation of a Water-Sewer District.**

The basic characteristics of water-sewer district operations are as follows:

1. Special Purpose Municipal Corporation. A water-sewer district is a special purpose municipal corporation, formed for the specific purpose of providing water service to customers both within and sometimes without the district's corporate limits.

2. Commissioners and Public Meetings. The district is run by three elected commissioners whose terms run six years each; the terms are staggered so that a commissioner is elected every two years. (The number of commissioners can be increased to five pursuant to an election or, for districts with more than 10,000 customers, by commissioner resolution subject to an election if requested by 10% of the voters of the district.) Meetings are open to the public and are governed by Title 42 RCW relating to public officers and agencies. Most actions of the Board of Commissioners must be in the form of resolutions adopted by the Board at either regular monthly meetings or at special meetings held pursuant to notice as required

by Chapter 42.30 RCW. Meetings may be closed to the public only under special circumstances set forth in Chapter 42.30 RCW, which includes, for example, consideration of the appointment, employment, or dismissal of a public officer or employee, the hearing of complaints or the discussion of the sale, acquisition or lease price of real estate. Chapter 42.30 RCW also permits meetings to be held in emergencies without complying with the notice requirements of that statute.

3. Comprehensive Plan. As stated above, a water-sewer district must prepare a comprehensive water system plan which outlines the district's present and future needs and sets forth the means of meeting those needs in the most efficient manner possible. The comprehensive plan must be updated every five years or sooner and submitted to the Department of Health in counties and cities which may be affected by the plan for their approval.

4. Right to Serve. The corporate boundary of a water-sewer district established a first-in-time, first-in-right ability to serve the property lying within the district's corporate boundaries. Another water-sewer district cannot provide water service within the corporate boundaries of an already existing district without approval by the Board of Commissioners of the already existing district.

5. ULIDs. A water-sewer district is authorized to form utility local improvement districts (ULIDs) to provide for the construction and installation of improvements. The major advantage of a ULID is that a property owner may pay the ULID assessment over a period of up to 30 years (as a practical matter, the maximum period is 20 years), which length of time for installment payments and interest are established by the Board of Commissioners. A ULID is usually formed by adoption of a resolution of intention to create the ULID, often after receipt of a petition signed by property owners.

Following a public hearing, if the Board determines that the ULID should be formed, the Board adopts a resolution forming the ULID and the district's engineers prepare detailed plans and specifications for the water improvements to be constructed in the ULID. The costs of construction, engineering, easements, legal expenses, and other expenses are computed and apportioned to the area included within the ULID in the form of an assessment.

The assessments may be established prior to or after the construction of the improvements at the discretion of the Board. Regardless of whether actual costs or estimated costs are used, the Board publishes and mails a notice to each property owner advising of the amount of the assessment against the property and setting an assessment roll hearing. After that hearing, the Board approves the assessment roll for all properties within the ULID, which is then forwarded to the County Treasurer. The Treasurer publishes and mails a notice to the property owners advising that the full amount of an assessment may be paid without interest within 30 days after the date of the first publication of the notice.

If an assessment is not paid in cash within 30 days, the Treasurer places the assessment on an installment payment program for the number of years established by the Board, and the first installment is due one year after the end of the 30 day period, and thereafter, once a year. In addition to the principal amount, interest as established by the Board is charged on the declining principal balance. The assessments and interest are paid directly to the Treasurer and are deposited into the district's revenue bond fund to pay off revenue bonds. Bonds may be sold based upon the credit of the entire district and the ULID assessments.

6. Condemnation Powers. A district may acquire property, including easements, by eminent domain. The procedure involves a two-part process: a hearing to determine the necessity for condemning the property or easement, and a trial to determine the amount to be paid to the property owner for the acquisition of the property or easement.

7. Collection of Service and Connection Charges. A district adopts a schedule of rates and charges for water service and connection charges so that each owner pays a fair pro-rata share of the cost of the system. To enforce collection of water service and connection charges, a district may discontinue water service and may also lien property for delinquent charges, which lien is second only to the lien of general taxes.

8. Contracts. A district may enter into contracts with any government or private person or corporation for the acquisition, ownership, use and operation of property in connection with the distribution and supplying of water.

9. Fiscal Agent. The County Treasurer is the fiscal agent for a water-sewer district and bills are paid by warrants issued by the County.

10. State Audits. A water-sewer district is subject to audit periodically by the Washington State Auditor. The Auditor issues an audit report and exceptions, if any, are noted in the report. A district is required to revise procedures to conform to the Auditor's report.

11. Excise Taxes. A water-sewer district pays a public utility tax upon gross revenues, generally without any deduction on account of the cost of the water or other expense paid or accrued in providing water service.