

No. 86293-1

SUPREME COURT OF THE STATE OF WASHINGTON

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BY RONALD R. CARPENTER

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CEDAR RIVER WATER AND SEWER DISTRICT and SOOS CREEK
WATER AND SEWER DISTRICT,

Appellants,

v.

KING COUNTY, *et al.*,

Respondents.

**APPELLANTS' STATEMENT OF
GROUNDS FOR DIRECT REVIEW**

ORIGINAL

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I. NATURE OF CASE AND DECISION BELOW

This is an action by two south King County water and sewer districts (“Cedar River” and “Soos Creek,” referred to herein as “the districts”) against King County for illegally spending millions of dollars of sewer revenues for non-sewer purposes. Snohomish County is also named as a defendant, as well as 17 cities and 14 other sewer districts which, like Cedar River and Soos Creek, have long-term sewage disposal contracts with King County, as successor-in-interest to Metro. King County and the local sewer utilities collectively provide sewer service to more than 1.5 million people and businesses in King County and in parts of Snohomish County and Pierce County.¹

Under the sewage disposal contracts between King County and each of the cities and sewer districts, the local utilities in effect act as “retail” sewer utilities by collecting sewage from homeowners and other customers within their respective jurisdictions and conveying it to King County’s Wastewater Treatment Division (“WTD”) for treatment and disposal. King County’s WTD in effect acts as a “wholesale” sewer utility by treating and disposing of the sewage received from the local sewer

¹ Also joined as defendants are the State of Washington, which contracts with King County for disposal of sewage from Lake Sammamish State Park, and Shorewood Heights Apts., LLC, which contracts with King County for disposal of sewage from a large apartment complex on Mercer Island. The Muckleshoot Indian Tribe was also named as a defendant, but it was dismissed from the action based on tribal immunity.

utilities. The local utilities pay WTD a “sewage disposal charge” based on WTD’s “total monetary requirements for the disposal of sewage during the next succeeding calendar year.”²

King County’s use of sewer revenues is limited by state law, by the King County Charter and Code, and by the terms of the sewage disposal contracts. The districts allege that the County has breached the contracts and violated state and local law by using sewer revenues (a) to make improper payments to Snohomish County, (b) to pay for general government and other non-sewage expenses, and (c) to pay for design and construction of infrastructure for an unauthorized water utility for the distribution and sale of reclaimed water from King County’s “Brightwater” project being constructed in Snohomish County.

A. Illegal payments made by King County to Snohomish County

The districts allege that King County illegally agreed to pay Snohomish County \$70 million for “community mitigation” projects which are neither identified in the County’s extensive Environmental Impact Statement and addenda for the Brightwater project nor serve to mitigate any adverse impacts caused by that project. The \$70 million was paid in order to induce Snohomish County to drop its political opposition to Brightwater and to guarantee King County the permits needed for the

² See, e.g., Appendix hereto at Tab A (Soos Creek/Metro contract) at § 5.3.a.

project. King County Executive Ron Sims had previously warned that “[u]se of King County funds for these extraneous purposes is not authorized by law and is not appropriate,” and a *Seattle Times* editorial columnist wrote that “[d]epending on which side of the table one is sitting on, it translates as either bribery or extortion.”³ Nevertheless, King County capitulated to Snohomish County’s illegal demands and paid the \$70 million, at the expense of sewer customers.⁴

B. Illegal payments of sewer utility funds for general government expenses

In addition to suing for recovery of the illegal \$70 million payment made to Snohomish County to “buy” permits for the Brightwater project, the districts challenge a number of other multimillion dollar expenditures made by King County using sewer utility funds:

- During the relevant time period more than \$10 million of sewer revenues have been wrongfully diverted to pay King County for general government overhead expenses, despite State Auditor findings criticizing King County’s allocation of general overhead expenses to the sewer utility without sufficient documentation of benefit to the utility.

³ See Appendix hereto at Tab B (letter from Sims to Snohomish County dated May 4, 2005) and Tab C (Seattle Times editorial dated May 19, 2006).

⁴ The Settlement Agreement between the two counties recognized that the arrangement might be illegal. It provided that Snohomish County would have to return the money if a court ultimately deemed the payment invalid. See Appendix hereto at Tab D (§ 6.5).

- King County has transferred more than \$12 million from the County's sewer utility (WTD) to a sister division within the County (the Water and Land Resources Division) for so-called "Culver Fund" water quality improvement projects unrelated to sewage disposal.
- King County has transferred nearly \$5 million from WTD to the County's general fund for payment of a so-called "Limited Tax General Obligation ('LTGO') bonds credit enhancement fee" that was newly invented by the County's financial officers in 2003 as a means of obtaining money for the County's cash-strapped general fund, not to reimburse the general fund for any actual expenses incurred for WTD.
- Using sewer funds, King County paid \$2 million for the stated purpose of "job retention" and an extra \$10 million for additional "relocation expenses" to a third party (StockPot Soups, a subsidiary of Campbell Soup Company) whose soup factory was displaced by the Brightwater project, in order to preserve jobs by inducing that company to relocate its facility within the Puget Sound area instead of relocating to another part of the country. While preserving jobs may be in the public interest and may be a laudable general governmental purpose, it is not a utility purpose.

C. Illegal expenditures for reclaimed water infrastructure

The districts also challenge the use of sewer utility funds to pay for

design and construction of infrastructure for the distribution and sale of reclaimed water from the Brightwater plant.⁵ King County has been authorized to operate a sewer utility, but it is not authorized to build or operate a water utility, even if the water is generated as a by-product of wastewater treatment. The districts contend that spending sewer utility funds to build infrastructure for an unauthorized water utility is illegal.

D. Relief Sought

The districts seek a judicial declaration that the payments described above are illegal because they violate the sewer contracts, the King County Charter, and other state and local laws. The districts also seek relief prohibiting King County from continuing to spend sewer utility funds for such payments, and (i) requiring the County's general fund to reimburse the WTD for the improper payments (dubbed "Level One" relief) and (ii) requiring WTD, in turn, to reimburse the local sewer utilities for wrongfully inflated sewage disposal charges (dubbed "Level Two" relief). A copy of the districts' second amended complaint is included in the Appendix hereto at Tab E.⁶

⁵ As of August 2009 the County had already spent nearly \$15 million of sewer funds for this unauthorized purpose and was planning to spend an additional \$112 million for this purpose, according to 2005 cost projections.

⁶ The districts are not seeking affirmative monetary relief against any defendants other than King County. The districts joined the other defendants as parties because they have an interest in the subject matter of the declaratory relief sought against King County. The other defendants are sometimes referred to as the "nominal defendants." Many of the

E. Summary Judgment Rulings

On a series of cross-motions for partial summary judgment,⁷ the trial court:

(a) dismissed the districts' claims regarding the payment of \$70 million to Snohomish County for "community mitigation," concluding that the districts' claims were barred by the 21-day time limit of the Land Use Petition Act ("LUPA") and that there was a sufficient nexus between sewage disposal and the "community mitigation" projects in question;

(b) dismissed the districts' claims challenging the use of sewer funds for design and construction of infrastructure for the distribution and sale of reclaimed water, concluding that distributing and selling reclaimed water was part of the sewage disposal business;

nominal defendants filed crossclaims against King County asserting that if the plaintiff districts prevail on any claims against King County then they are entitled to similar relief against the County. King County asserted various counterclaims against the plaintiff districts and crossclaims against the nominal defendants. In September 2009 the trial court entered an order "bifurcating" the nominal defendants' and King County's crossclaims against each other, pending the outcome of the claims between the plaintiff districts and King County. In September 2010 the trial court entered an order providing that the plaintiff districts' remaining claims against King County for "Level One" relief (*i.e.*, for reimbursement to WTD) would be tried in February 2011, that at the conclusion of that trial an appealable judgment on those claims would be entered under CR 54(b), and that any remaining claims for "Level Two" relief (*i.e.*, for reimbursement by WTD to individual local sewer utilities) would be stayed pending the outcome of any appeals from the CR 54(b) judgment on the "Level One" claims.

⁷ King County and the plaintiff districts believed that all of the issues presented in this case were appropriate for summary judgment; at trial, the parties presented largely the same information they had submitted on the summary judgment motions.

(c) dismissed King County's counterclaims⁸ and crossclaims as a matter of law; and

(d) ruled that there were issues of fact requiring trial of the districts' claims regarding King County's expenditure of sewer utility funds for (i) payment of general government overhead expenses, (ii) payment for "Culver Fund" projects, (iii) "relocation" and "job retention" payments to StockPot Soups, and (iv) payment of the "LTGO bonds credit enhancement fees" to the County's general fund.

F. Trial Rulings

Following a six-week non-jury trial, the trial court announced its oral decision on March 15, 2011 dismissing all of the districts' remaining "Level One" claims except for the districts' claim regarding payment of \$2 million to StockPot Soups for the stated purpose of "job retention." Written findings and conclusions were entered on July 14, 2011 (see Appendix hereto at Tab F). On the same day, judgment was entered on those claims under CR 54(b). The districts filed their notice of appeal on July 15, 2011. A copy of the judgment is attached to the notice of appeal, a copy of which is included in the Appendix hereto at Tab G.

II. ISSUES PRESENTED FOR REVIEW

1. Did the trial court err by granting summary judgment

⁸ One of the County's counterclaims was severed from this action rather than dismissed.

dismissing the districts' Snohomish County Community Mitigation Claims? Two important parts of this issue are:

a. Did the trial court err by ruling that the districts' claims challenging the validity of the agreement for King County to pay Snohomish County \$70 million for "community mitigation" was subject to LUPA and was barred by LUPA's 21-day time limit, even though the districts were seeking monetary relief and not challenging any land use decision and would have lacked standing to challenge a land use decision?

b. Did the trial court err by ruling that there was a "sufficiently close nexus" between WTD's primary purpose of sewage disposal and the various "community mitigation" projects to be funded with the \$70 million paid out of sewer utility funds, even though none of those projects mitigated adverse impacts of Brightwater or was identified in the Brightwater EIS as a way to mitigate environmental impacts?

2. Did the trial court err by ruling that King County does not have trust and fiduciary obligations to the districts requiring the County to use sewer revenues for sewer purposes?

3. Did the trial court err by granting summary judgment dismissing the districts' Reclaimed Water Claims?

4. Did the trial court err by dismissing the districts' Culver Fund Claims?

5. Did the trial court err by dismissing the districts' Overhead Allocation Claims?

6. Did the trial court err by dismissing the districts' LTGO Bonds Credit Enhancement Fee Claims?

7. Did the trial court err by dismissing the districts' StockPot Claims (other than the portion of those claims as to which the districts prevailed at trial, relating to King County's payment of \$2 million to StockPot for the stated purpose of job retention)?

III. GROUND FOR DIRECT REVIEW

This case presents important issues of first impression which build on well-established legal limitations on spending by publicly owned utilities. These issues include:

(1) Whether "community mitigation" is a legally valid concept allowing a county wishing to build an essential public facility ("EPF") in another county to use utility funds to buy political goodwill and to obtain project permits from the other county by paying for public amenities in the other county that do not mitigate adverse impacts of the EPF and were never identified in the EIS for the EPF.⁹

(2) Whether LUPA's 21-day appeal period can bar a challenge to

⁹ Past efforts in the state legislature to establish a "community mitigation program" failed in both the 2003-04 (HB 2757) and 2005-06 (HB 1899) legislative sessions.

an illegal payment made in a Settlement Agreement between a project proponent and a permitting authority when the plaintiff is not seeking to reverse or otherwise challenge the project or any land use decision.

(3) Whether a county (or other general government) can charge its sewer utility a fee when the county issues LTGO bonds (backed first by utility revenues and secondarily by the good faith and credit of the county) rather than utility revenue bonds. No other jurisdiction in Washington has imposed an “LTGO credit enhancement fee” but it is likely many will choose to follow King County’s example if this decision is not reversed.¹⁰

(4) Whether distribution and sale of reclaimed water constitutes operation of a water utility or a sewer utility. The state legislature has never answered this question.

(5) Whether a county bears the burden of proving with adequate documentation that any allocation of general government overhead to its proprietary utility reflects actual benefit to the utility from those services.

In Washington, the majority of our state’s citizens are served by electric, water and sewer utilities operated by cities, counties or special purpose utility districts that are not regulated by the Washington Utilities and Transportation Commission. The most fundamental limitation on an

¹⁰ Oregon and Minnesota have provided statutory authority for public bodies to purchase “credit enhancement” under certain conditions, but neither state (nor any other state) has authorized the type of fee imposed by King County. *See* Or. Rev. Stat. § 287A.340; Minn. Stat. § 446A.086 and 087.

unregulated utility's spending is that the expenditure must have a "sufficiently close nexus" to the utility's primary purpose of providing electric, water or sewer service to its customers. *City of Tacoma v. Taxpayers of City of Tacoma*, 108 Wn.2d 679, 695-96, 743 P.2d 793 (1987).

In the case of utilities operated by cities or counties, where the political leaders of the city or county control both the city's or county's general government and the utility in question, another fundamental limitation on utility spending is that the expenditure must serve a valid utility purpose rather than a general governmental or public purpose. This was the basic principle underlying the decisions in cases such as *Okeson v. City of Seattle*, 150 Wn.2d 540, 550, 78 P.3d 1279 (2003) ("*Okeson I*") (streetlight expenses were not properly chargeable to city's electric utility, because streetlights are for benefit of general public, not for electric utility or its customers in particular); *Okeson v. City of Seattle*, 130 Wn. App. 814, 125 P.3d 172 (2005) ("*Okeson II*") (city's electric utility could buy art for its own facilities but not for public exhibitions, other city offices or mitigation projects, because such expenditures were primarily designed to benefit the general public rather than the electric utility in particular); *Okeson v. City of Seattle*, 159 Wn.2d 436, ¶¶18-27, 150 P.3d 556 (2007) ("*Okeson III*") (city's electric utility could not pay third parties to reduce

their greenhouse gas emissions, because such payments benefit the general public (by combating global warming) rather than benefiting electric utility or its customers in particular); *Lane v. City of Seattle*, 164 Wn.2d 875, 194 P.3d 977 (2008) (fire hydrant expenses were not properly chargeable to city's water utility, because fire hydrants benefit general public rather than water utility or its customers in particular).

Both of these fundamental principles are at stake in this case. Here, the expenditures in question have at most a remote, tenuous and speculative connection to the disposal of sewage. Any such connection cannot be measured or quantified, and fails the "sufficiently close nexus" requirement.

Appellants seek direct review under RAP 4.2(a)(4) because this is "[a] case involving a fundamental and urgent issue of broad public import which requires prompt and ultimate determination." Direct review is also appropriate under RCW 2.06.030, which provides that all "cases involving fundamental and urgent issues of broad public import requiring prompt and ultimate determination . . . shall be appealed directly to the supreme court."

This appeal clearly presents issues of broad public import. It involves two of the most populous counties in the state. It involves 17 cities and 16 special purpose districts providing local sewer utility service

to more than 1.5 million people and businesses. It involves claims by local governmental entities against King County for recovery of more than \$100 million. And as highlighted above, this case involves important legal issues going to the heart of the fundamental legal principles governing expenditure of utility funds by unregulated, publicly owned utilities, and it raises important legal issues of first impression, including issues concerning the proper scope and application of LUPA.

These issues are urgent and require prompt and ultimate determination. The sooner the issues presented by this appeal are resolved, the sooner the ongoing, illegal draining of sewer utility funds can be ended and the sooner it can be determined whether Snohomish County must reimburse King County for the illegal “community mitigation” payments, and whether substantial refunds must be made from the King County general fund to WTD. It would be in the best interest of all parties, and in the interest of the ratepaying public, to have these fundamental issues affecting county and municipal budgets and financial planning resolved as soon as possible.

Given the importance of determining with finality whether the expenditures in question are lawful, there is every reason to suppose that this case will ultimately require a decision from the Supreme Court. In the interest of judicial efficiency, and given the public interest in reaching a

final and definitive resolution as soon as possible, it is appropriate for the Supreme Court to address these issues on direct review, without waiting for this case to wend its way through the appeal process via the intermediate appellate court.

Direct review has been granted in numerous cases raising similar issues concerning the validity of municipal spending programs or financing mechanisms for municipal purposes. *See, e.g., Lane v. City of Seattle, supra* (on direct review, requiring city's general fund to reimburse municipal water utility for fire hydrant expenses); *Okeson III, supra* (on direct review, invalidating municipal electric utility's payments to third parties for reducing greenhouse gas emissions); *Sheehan v. Central Puget Sound Regional Transit Authority*, 155 Wn.2d 790, 123 P.3d 88 (2005) (on direct review, upholding motor vehicle excise tax levied and collected by regional transit and city monorail authorities); *Okeson I, supra* (on direct review, invalidating ordinance shifting street lighting expenses from city's general fund to utility and its ratepayers); *Covell v. City of Seattle*, 127 Wn.2d 874, 905 P.2d 324 (1995) (on direct review, striking down ordinance imposing residential street utility charge); *Margola Assocs. v. City of Seattle*, 121 Wn.2d 625, 854 P.2d 23 (1993) (on direct review, reversing trial court ruling upholding validity of ordinance requiring registration and payment of fees for multiple dwelling units); *R/L Assocs.*

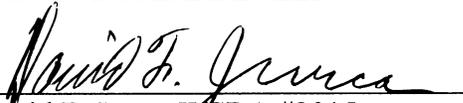
v. City of Seattle, 113 Wn.2d 402, 780 P.2d 838 (1989) (on direct review, enjoining enforcement of parts of Housing Preservation Ordinance); *San Telmo Assocs. v. City of Seattle*, 108 Wn.2d 20, 735 P.2d 673 (1987) (on direct review, invalidating ordinance imposing fees on property owners to support low income housing costs); *City of Tacoma v. Taxpayers of Tacoma, supra* (on direct review, upholding validity of Tacoma City Light energy conservation program). The issues raised in this case are no less important than the issues involved in those other cases in which direct review was granted, and the need for prompt and ultimate resolution is no less pressing here.

IV. CONCLUSION

This case involves fundamental and urgent issues of broad public import requiring prompt and ultimate determination by this Court. Accordingly, direct review should be granted pursuant to RAP 4.2(a)(4) and RCW 2.06.030.

Respectfully submitted this 28th day of July, 2011.

HELSELL FETTERMAN LLP

By 
David F. Jurca, WSBA #2015
Colette M. Kostelec, WSBA #37151
Attorneys for Appellants Cedar River Water
and Sewer District and Soos Creek
Water and Sewer District

APPENDIX

Tab A

Exhibit 160 Date 5-19-09
Witness Speer
Mindy Suurs

SOOS CREEK WATER AND SEWER DISTRICT
MUNICIPALITY OF METROPOLITAN SEATTLE
AMENDMENT TO AGREEMENT
FOR SEWAGE DISPOSAL

THIS AMENDMENT made as of the 19th 2nd day
of APRIL October, 1990-1997 between the Soos Creek
Water and Sewer District, formerly Cascade Sewer District a
municipal corporation of the State of Washington
(hereinafter referred to as the "District") and the
Municipality of Metropolitan Seattle, a metropolitan
municipal corporation of the State of Washington
(hereinafter referred to as "Metro");

WITNESSETH:

WHEREAS, the parties have entered into a long term
Agreement for Sewage Disposal dated August 1, 1963 , as
amended (hereinafter referred to as the "Basic Agreement");
and

WHEREAS, an advisory committee composed of elected
and appointed officials in the metropolitan area was
appointed by the Metropolitan Council to examine the
structure of Metro's charges to its participants; and

WHEREAS, said advisory committee, following
extensive research, study and deliberations, has recommended
certain changes in the structure of Metro's charges to its
participants and implementation of said changes requires
amendment of the Basic Agreement; and

WHEREAS, the parties have determined that the
recommendations are in the best public interest and
therefore desire to amend said Basic Agreement to implement
said recommendations;

A-1

NOW, THEREFORE, it is hereby agreed as follows:

Section 1. Amendment of Section 5 of the Basic Agreement. Section 5 of the Basic Agreement is hereby amended to read as follows:

"Section 5. Payment for Sewage Disposal. For the disposal of sewage hereafter collected by the District and delivered to Metro the District shall pay to Metro on or before the last day of each month during the term of this Agreement, a sewage disposal charge determined as provided in this Section 5.

1. For the quarterly periods ending March 31, June 30, September 30 and December 31 of each year every Participant shall submit a written report to Metro setting forth:

(a) the number of Residential Customers billed by such Participant for local sewerage charges as of the last day of the quarter,

(b) the total number of all customers billed for local sewerage charges by such Participant as of such day, and

(c) the total water consumption during such quarter for all customers billed for local sewerage charges by such Participant other than Residential Customers.

The quarterly water consumption report shall be taken from water meter records and may be adjusted to exclude water which does not enter the sanitary facilities of the customer. Where actual sewage flow from an individual customer is metered, the metered sewage flows shall be reported in lieu of adjusted water consumption. The total quarterly water consumption report in cubic feet shall be divided by 2,250 to determine the number of Residential Customer equivalents represented by each Participant's customers other than single family residences.

Metro shall maintain a permanent record of the quarterly customer reports from each Participant.

The District's first quarterly report shall cover the first quarterly period following the date when sewage is first delivered to Metro and shall be submitted within thirty days following the end of the quarter. Succeeding reports shall be made for each quarterly period thereafter and shall be submitted within thirty (30) days following the end of the quarter.

2. (a) To form a basis for determining the monthly sewage disposal charge to be paid by each Participant during any particular quarterly period, Metro shall ascertain the number of Residential Customers and Residential Customer equivalents of each Participant. This determination shall be made by taking the sum of the actual number of Residential customers reported as of the last day of the next to the last preceding quarter and the average number of Residential Customer Equivalents per quarter reported for the four quarters ending with said next to the last preceding quarter, adjusted for each Participant to eliminate any Residential Customers or Residential Customer equivalents whose sewage is delivered to a governmental agency other than Metro or other than a Participant for disposal outside of the Metropolitan Area.

(b) For the initial period until the District shall have submitted six consecutive quarterly reports, the reported number of Residential Customers and Residential Customer equivalents of the District shall be determined as provided in this subparagraph (b). On or before the tenth day of each month beginning with the month prior to the month in which sewage from the District is first delivered to Metro, the District shall submit a written statement of the number of Residential Customers and Residential Customer equivalents estimated to be billed by the District during

the next succeeding month. For the purpose of determining the basic reported number of Residential Customers and Residential Customer equivalents of the District for such next succeeding month, Metro may at its discretion adopt either such estimate or the actual number of Residential Customers and Residential Customer equivalents reported by the District as of the last day of the next to the last preceding reported quarter. After the District shall have furnished six consecutive quarterly reports the reported number of Residential Customers and Residential Customer equivalents of the District shall be determined as provided in the immediately preceding subparagraph (a).

(c) If the District shall fail to submit the required monthly and/or quarterly reports when due, Metro may make its own estimate of the number of Residential Customers and Residential Customer equivalents of the District and such estimate shall constitute the reported number for the purpose of determining sewage disposal charges.

3. The monthly sewage disposal charge payable to Metro shall be determined as follows:

(a) Prior to July 1st of each year Metro shall determine its total monetary requirements for the disposal of sewage during the next succeeding calendar year. Such requirements shall include the cost of administration, operation, maintenance, repair and replacement of the Metropolitan Sewerage System, establishment and maintenance of necessary working capital and reserves, the requirements of any resolution providing for the issuance of revenue bonds of Metro to finance the acquisition, construction or use of sewerage facilities, plus not to exceed 1% of the foregoing requirements for general administrative overhead costs.

(b) To determine the monthly rate per Residential Customer or Residential Customer equivalent to be used during said next succeeding calendar year, the total monetary requirements for disposal of sewage as determined in subparagraph 3(a) of this section shall be divided by twelve and the resulting quotient shall be divided by the total number of Residential Customers and Residential Customer equivalents of all Participants for the October-December quarter preceding said July 1st; provided, however, that the monthly rate shall not be less than Two Dollars (\$2.00) per month per Residential Customer or Residential Customer equivalent at any time during the period ending July 31, 1972.

(c) The monthly sewage disposal charge paid by each Participant to Metro shall be obtained by multiplying the monthly rate by the number of Residential Customers and Residential Customer equivalents of the Participant. An additional charge may be made for sewage or wastes of unusual quality or composition requiring special treatment, or Metro may require pretreatment of such sewage or wastes. An additional charge may be made for quantities of storm or ground waters entering those Local Sewerage Facilities which are constructed after January 1, 1961 in excess of the minimum standard established by the general rules and regulations of Metro.

4. The parties acknowledge that, by resolution of the Metropolitan Council, Metro may impose a charge or charges directly on the future customers of a Participant for purposes of paying for capacity in Metropolitan Sewerage Facilities and that such charges shall not constitute a breach of this agreement or any part thereof. The proceeds of said charge or charges, if imposed, shall be used only for capital expenditures or defeasance of outstanding revenue bonds prior to maturity.

In the event such a charge or charges are imposed, the District shall, at Metro's request, provide such information regarding new residential customers and residential customer equivalents as may be reasonable and appropriate for purposes of implementing such a charge or charges.

5. A statement of the amount of the monthly sewage disposal charge shall be submitted by Metro to each Participant on or before the first day of each month and payment of such charge shall be due on the last day of such month. If any charge or portion thereof due to Metro shall remain unpaid for fifteen days following its due date, the Participant shall be charged with and pay to Metro interest on the amount unpaid from its due date until paid at the rate of 6% per annum, and Metro may, upon failure to pay such amount, enforce payment by any remedy available at law or equity.

6. The District irrevocably obligates and binds itself to pay its sewage disposal charge out of the gross revenues of the sewer system of the District. The District further binds itself to establish, maintain and collect charges for sewer service which will at all times be sufficient to pay all costs of maintenance and operation of the sewer system of the District, including the sewage disposal charge payable to Metro hereunder and sufficient to pay the principal of and interest on any revenue bonds of the District which shall constitute a charge upon such gross revenues. It is recognized by Metro and the District that the sewage disposal charge paid by the District to Metro shall constitute an expense of the maintenance and operation of the sewer system of the District. The District shall provide in the issuance of future sewer revenue bonds of the District that expenses of maintenance and operations of the sewer system of the District shall be paid before payment of

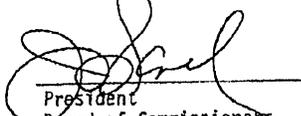
principal and interest of such bonds. The District shall have the right to fix its own schedule of rates and charges for sewer service provided that same shall produce revenue sufficient to meet the covenants contained in this Agreement.

Section 2. Effective Date of Amendment. This amendment shall take effect at the beginning of the first quarter following the date first written above with quarters beginning January 1, April 1, July 1, and October 1.

Section 3. Basic Agreement Unchanged. Except as otherwise provided in this amendment, all provisions of the basic agreement shall remain in full force and effect as written therein.

IN WITNESS WHEREOF, the parties have executed this Agreement as of the day and year first written above.

SOOS CREEK WATER AND SEWER DISTRICT



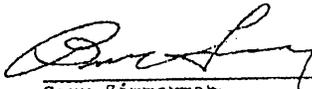
President
Board of Commissioners

ATTEST:



Secretary
Board of Commissioners

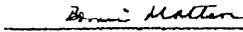
MUNICIPALITY OF METROPOLITAN SEATTLE



Gary Bimmermann
Chair of the Council

ATTEST:

MAY 22 1992



Tab B



King County



May 4, 2005

The Honorable Aaron Reardon, Snohomish County Executive
The Honorable Gary Nelson, Chair, Snohomish County Council
3000 Rockefeller Avenue M/S609
Everett, WA 98201-4046

Re: Consequences of Snohomish County's Delay of the Siting of Regional Wastewater Facilities

Dear Executive Reardon and Council Chair Nelson:

King County is firmly committed to doing whatever is necessary to satisfy our regional responsibility to develop Brightwater facilities by 2010 to protect the water quality of the region from potentially disastrous overloads and sewage overflows. We are writing at this time to express our urgent concern about Snohomish County policies against any regional wastewater treatment facilities in Snohomish County, even though these facilities would primarily serve Snohomish County residents.

Most importantly, our deepest concern transcends the immediate disagreement over the siting of Brightwater facilities. After many years of regional cooperation between Snohomish and King Counties, we fear that Snohomish County's words and actions insisting on local autonomy and no regional responsibility, may signal an era of conflict that will extend far beyond Brightwater and will be detrimental to all of our citizens.

King County readily acknowledges that such essential public facilities never are popular with their neighbors. However, such facilities must be located somewhere, and King County has diligently attempted, in cooperation with all interested local governments and citizens, to site Brightwater facilities in environmentally, economically, and socially optimal locations, rather than at points of least political resistance. In doing so, King County has reasonably assumed that it was proceeding in accordance with a fundamental reform of the Growth Management Act ("GMA") requiring that local governments accommodate, and not preclude, the siting of essential public facilities ("EPFs") such as Brightwater. RCW 36.70A.200. The central mission of the GMA is to concentrate population in narrowly circumscribed urban growth areas and prohibit sprawling development outside of such areas to protect environmentally sensitive areas and natural resource lands. Since concentrated development to accommodate projected population growth can occur only if essential public facilities are provided when and where they are needed, the insulation of essential public facilities from local preclusion is absolutely necessary.

B-1

KCC 5787

(A, 2)

The Honorable Gary Nelson
May 4, 2005
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As you know, pursuant to the authority of chapter 36.56 RCW and a special election held November 3, 1992, on January 1, 1994, King County assumed the authority and responsibility for planning, siting and operating regional wastewater facilities from Metro. In this regional role, King County assumed Metro's regional role, in close collaboration with sewer districts, organizations and governments throughout the three county wastewater service area, and carried forward the regional wastewater planning and management update process which had begun in 1992 under Metro's auspices, and concluded in 1999. In 1999, the King County Council, in its regional role as successor to Metro, adopted the Regional Wastewater Services Plan ("Regional Plan") calling for a third regional wastewater system to be located in North King County and/or South Snohomish County and to be in operation by the year 2010.

As you know, the timely commencement of operations of the new Brightwater system in 2010 is essential for reasons which should be extremely important to Snohomish County residents and businesses in particular. King County has been treating Snohomish County waste for nearly four decades. However, the existing wastewater facilities in Seattle and Renton will not be able to accommodate the growth projected in the Regional Plan by 2010. If the planned additional new capacity is not available by 2010, the planned residential, commercial and industrial growth, relied on by residents and officials in south Snohomish County, will be unable to proceed.

Virtually all of the wastewater generated in South Snohomish County currently is routed to one of the two regional wastewater treatment plants in Renton or the Magnolia district of Seattle, both of which are located in King County. The adoption of the Regional Plan in 1999 commenced a five year process for the planning, siting, environmental review and facility design necessary for what is now known as the "Brightwater" regional wastewater facilities, composed of a treatment plant, marine outfall and many miles of associated conveyances.

Snohomish County staff and elected officials have played an active role throughout the entire siting process. Former Snohomish County Executive Bob Drewel worked collaboratively with King County Executive Sims from the start to develop a siting process and ensure the active participation of representatives from Snohomish County and the municipalities within it, which are in the Brightwater service area. Snohomish County assisted, through its members on the Brightwater Siting Advisory Committee, in developing and recommending to the King County Council the specific siting criteria used to arrive at potential locations for various Brightwater facilities. The King County Council adopted these siting criteria in a series of ordinances in 2001, and then narrowed the number of candidate sites for Brightwater systems to three action alternatives, including a wide range of subalternatives, which were, along with a no-action alternative, evaluated in great detail in the Brightwater Environmental Impact Statement ("EIS").

However, when King County Executive Sims in late 2002 identified the Route 9 site in unincorporated Snohomish County as the preferred alternative in the draft EIS for the Brightwater treatment plant, regional cooperation ended. The Snohomish County Council took a series of actions designed to preclude the siting of the Brightwater treatment plant in Snohomish County.

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Prior to 2003, wastewater facilities were a permitted use at the Route 9 site in unincorporated Snohomish County. As you know, wastewater facilities are one of the types of essential public facilities, which, under the Growth Management Act, counties and cities must not preclude, but accommodate, facilitate, and expedite their siting. (RCW 36.70A.200(5); WAC 365-195-340(2); WAC 365-195-840(5); WAC 365-195-845). And prior to the proposal to site the Brightwater treatment plant in Snohomish County, both Snohomish County's County-wide Planning Policies ("CPPs") and the county's comprehensive plan, at Appendix B, had been appropriately accommodative of essential public facilities.

However, in sharp contrast to its earlier cooperative policies, in early 2003, the Snohomish County Council adopted its first ordinance regulating the siting of essential public facilities, Ordinance No. 30-006 ("EPF Ordinance 1"). In that Ordinance, the council opted not to facilitate or expedite EPF siting, but rather to erect obstructive new regulatory barriers for the siting of essential public facilities, including the Brightwater plant, at the chosen location.

When EPF Ordinance 1 was subsequently found to be unlawful and was invalidated by the Central Puget Sound Growth Management Hearings Board ("GMA Board"), Snohomish County's immediate response was not to rectify the specific deficiencies of the ordinance identified by the GMA Board, but to appeal the GMA Board decision and immediately adopt a blanket moratorium on acceptance of permit applications for large wastewater facilities anywhere in Snohomish County. Because Snohomish County was under a direct order of the GMA Board to adopt a new EPF ordinance compliant with GMA, the Snohomish County Council purported to do so in early 2004, adopting Ordinance No. 04-019 ("EPF Ordinance 2"). The GMA Board, as you know, subsequently found that EPF Ordinance 2 contained most of the problems of its predecessor, violated GMA, and was invalid.

Rather than fix the problems with both ordinances identified by the board, Snohomish County requested that the board delay its deadline to take action based on the board's Non-Compliance Order, so that a superior court could hear its appeals of both EPF Ordinance 1 and EPF Ordinance 2. These delays were granted, and Thurston County Superior Court Judge Paula Casey recently heard and decided Snohomish County's appeals. Judge Casey affirmed the GMA Board's decision ruling that both EPF Ordinance 1 and EPF Ordinance 2 violated the GMA. Both EPF 1 and 2 continue to be invalid.

We understand that the Snohomish County Council has passed two emergency ordinances on April 18, 2005 targeting the construction of wastewater treatment facilities in Snohomish County. Given the recent pattern of Snohomish County adopting ordinances which both the GMA Board and the Thurston County Superior Court have found to be in violation of the GMA's essential public facilities provisions, it appears that these newest ordinances also are intended to delay, preclude and make the siting of essential public facilities, such as Brightwater, impracticable. We are studying the newly enacted ordinances and will respond to them as we deem appropriate.

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Concurrent with the prosecution of the appeal associated with Snohomish County's adoption of the two EPF Ordinances, King County has been diligently attempting to negotiate, with Snohomish County, a comprehensive mitigation agreement which would address any identified impacts associated with the construction and operation of the Brightwater facilities. King County has already committed to a state of the art odor control system costing \$50 million, nearly 75 acres of buffer that will be nicely landscaped with wetlands and trails, a community/education facility, enhanced storm water treatment, and habitat protection of Little Bear Creek. In addition King County originally identified \$18 million of enhanced mitigation for Snohomish County to ensure that Brightwater would be an excellent neighbor. In subsequent negotiations with Snohomish County, King County proposed another \$32 million of enhanced mitigation projects bringing the total to \$50 million. These offers were not accepted by Snohomish County and as you know, these negotiations have reached an impasse.

King County has been ready, willing, and able to mitigate Brightwater's impacts. Unfortunately, Snohomish County has made it clear that King County must first commit to paying many additional millions for Snohomish County roadways and other capital projects unrelated to Brightwater's actual impacts, as the price tag for Snohomish County's approval of Brightwater. Use of King County funds for these extraneous purposes is not authorized by law and is not appropriate. Most important, it is not in the interest of Snohomish County residents, businesses, or communities to hold the water quality of this region and the planned growth of communities in North King County and South Snohomish County hostage, to the continued unlawful regulatory hurdles and unlawful requirements of the Snohomish County Council.

Regionalism requires the best in all of us. Jurisdictions which receive the benefits of regional facilities should be willing to host their fair share of regional facilities, along with their attendant impacts, as long as they are reasonably mitigated. In this case, the EIS issued by King County identifies a wide range of comprehensive mitigation measures in virtually every area of potential impacts associated with construction and operation of Brightwater. King County has repeatedly indicated its willingness to address and provide reasonable mitigation for these identified impacts. Unlike many essential public facilities, the construction and operation of Brightwater facilities will not result in any significant adverse environmental impacts which have not been mitigated to the greatest extent that is reasonably feasible.

In addition, King County has made every effort to consult with and fully hear the comments and concerns of interested citizens, organizations, cities and Snohomish County government from the time the Regional Plan was adopted. The public outreach process has been extensive, and even included extraordinary measures to ensure local government participation by paying for local jurisdiction staff and expert consultants. King County has compensated Snohomish County \$736,000 to date for its participation in the process. It is notable that King County has successfully entered into mitigation agreements long ago with virtually every jurisdiction except Snohomish County.

King County is ready to secure grading permits and commence construction of Brightwater facilities. As King County initiates the permit processes, Snohomish County permitting staff has been very helpful until their recent refusal to issue a grading permit. King County's ability to proceed on schedule is further threatened by recent actions and anticipated actions of the Snohomish County Council.

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KCC 5790

We sincerely and urgently propose that King County and Snohomish County return to our traditions of regional cooperation and pursue a path of mediation and negotiation rather than continued litigation. It is in the best interests of residents of Snohomish County and all residents of the region that this vitally needed public facility be completed and available by 2010 to accommodate planned growth and protect the water quality of the region. And, it is in everyone's interests to devote available funding to mitigation of impacts rather than costly litigation.

However, if the Snohomish County Council continues to proceed on the present course of delay and obstruction, King County will be forced to act in the interests of our ratepayers to accommodate planned growth and protect the region's water quality. As you know, the GMA Board previously has considered recommending to the Governor that severe sanctions be imposed against Snohomish County if it fails to timely comply with the requirements of the Act and the orders of the board. (*King County v. Snohomish County*, CPSGMHB No. 03-3-0011). If the board should decide to make this recommendation in the future, the sanctions specifically authorized under the Growth Management Act (RCW 36.70A.345) allow the Governor, where she finds that a county is not proceeding in good faith to meet the requirements of the Act, to consult with the appropriate GMA Board prior to imposing sanctions. Those sanctions which are specifically set forth in RCW 36.70A.340, include withholding the portion of the following sources of revenue to which a county is otherwise entitled:

- The motor vehicle fuel tax, as provided in Chapter 82.36 RCW;
- The transportation improvement account, as provided in RCW 47.26.084;
- The urban arterial trust fund account, as provided in RCW 47.26.080;
- The rural arterial trust fund account, as provided in RCW 36.79.150;
- The sales and use tax, as provided in Chapter 82.14 RCW;
- The liquor profit tax, as provided in RCW 66.08.190; and
- The liquor excise tax, as provided in RCW 82.08.170.

These are, to be sure, stiff sanctions and reflect the importance the state legislature attaches to every city or county complying in good faith with the mandate of growth management. No aspect of that mandate is more important than local responsibility in accommodating the timely siting and operation of regional wastewater and other essential public facilities.

As noted above, failure to take those actions needed to get Brightwater in place by 2010 not only will obstruct the successful implementation of the land use plans in South Snohomish County, but will jeopardize the water quality of the streams, rivers, lakes, and estuaries of the region, including Lake Washington and Puget Sound. Moreover, both the Regional Plan and the Brightwater EIS have identified potential significant adverse public health impacts associated with the overload and overflow of wastewater into streets, adjacent property, and nearby watercourses.

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As you know, when the Growth Board previously asked King County whether it recommended the imposition of sanctions, King County declined to recommend sanctions at that time, hoping that Snohomish County would discontinue its obstruction of Brightwater and return to its traditional pattern of regional cooperation. We hope that it will not be necessary to revisit this recommendation in the weeks and months ahead. In the spirit of beginning a new chapter in regional cooperation on Brightwater, we sincerely and urgently ask each of the Snohomish County Councilmembers, regardless of past positions, to adopt a regionally responsible role by working with King County and the other cities within the service area to reach agreement on fair and reasonable mitigation and ensure the timely siting of Brightwater.

Failure of the Snohomish County Council to change its present course could lead to several unintended, but inescapable, consequences in addition to the withholding of tax revenue if the Governor takes action. A second potential consequence of continued obstruction would be liability for interference with existing contracts between King County and sewer district providers in both King and Snohomish counties. More severely, in order to protect the water quality of the region, King County is authorized and may have no choice but to impose a building moratorium throughout south Snohomish County and in King County in the near future in light of this impending crisis in regional wastewater capacity.

The Department of Ecology has earlier expressed its concerns that such a moratorium may be necessary if Brightwater facilities are not provided when needed by 2010. Finally, delay results in direct cost to King County and its ratepayers. Reimbursement for these costs from Snohomish County may be sought in the event that this obstructive approach continues. Every day of delay results in added costs in a number of ways, not to mention the heightened risk to adopted land use plans and water quality in the region. It is not appropriate to ask the ratepayers of King and Snohomish counties, none of which are attempting to delay or deny Brightwater facilities in their area, to assume the cost of the delays associated with Snohomish County Council actions.

We strongly encourage the Snohomish County Councilmembers to take every available step to expedite and facilitate, rather than delay and obstruct, the timely siting of these vitally needed regional wastewater facilities. Failure to do so will leave King County no other choice than to exercise all options available under the law in order to protect the citizens of this region from the dire consequences which would occur if these regional facilities are not in place by the year 2010.

We regret having to write this letter and raise such serious issues that threaten the long-term relationship between our counties. King County and Snohomish County have a proven track record of working together on transportation, solid waste, public safety, and many other important and difficult regional issues. However, regarding Brightwater, our years of efforts to cooperate with Snohomish County and all other affected jurisdictions in siting these regional facilities have been jeopardized in recent years by the action of the Snohomish County Council.

KCC 5792

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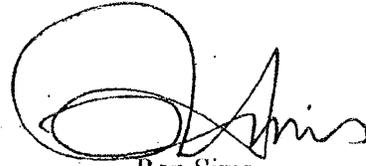
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It is critically important that we find new ways to resolve our disagreements on Brightwater through cooperation and conciliation to ensure that Brightwater's wastewater facilities are in place and operational by 2010 to protect the water quality of the region. We stand ready to work with you. Please join us.

Sincerely,



Larry Phillips, Chair
King County Council



Ron Sims
King County Executive

cc: The Honorable Ron Hansen, Mayor, City of Shoreline
The Honorable Gary Haakensen, Mayor, City of Edmonds
The Honorable Patrick Ewing, Mayor, City of Bothell
The Honorable Steven Colwell, Mayor, City of Kenmore
The Honorable Carla Nichols, Mayor, City of Woodway
The Honorable Don Brocha, Mayor, City of Woodinville
The Honorable Dave Hutchinson, Mayor, City of Lake Forest Park
The Honorable Terry Ryan, Mayor, City of Mill Creek
The Honorable Mike McKinnon, Mayor, City of Lynnwood
The Honorable Gary Starks, Mayor, City of Brier
John Powers, King County Economic Development Council
Steve Leahy, Greater Seattle Chamber of Commerce
Sam Anderson, Snohomish/King County Master Builders Association
Arden Bleckledge, General Manager, Alderwood Water and Sewer District
Gary Hajek, Manager, Cross Valley Water District
Fanny Yee, General Manager, Northshore Utility District
Jay Manning, Director, Washington State Department of Ecology
Merle Hayes, Vice Chairman, Suquamish Tribe
Daryl Williams, Environmental Liaison, Tulalip Tribes
Deborah Knutson, Economic Development Council of Snohomish County
Peter Coates, King County Labor Council
Steve Koch, Northwest Building Trades Council
John Powers, King County Economic Development Council

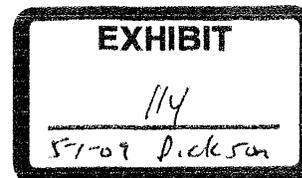
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Tab C



Friday, May 19, 2006 - 12:00 AM



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Lance Dickie / Seattle Times editorial columnist

No Brightwater? Put a cork in it

I love all the wailing about the cost of building a sewage treatment plant in Snohomish County. Hello! How does everyone imagine it ended up so expensive?

Certainly, the \$1.6 billion price tag is huge. It's a damn big number. And the annoying, easy-to-mock part is the \$140 million for *mitigation*. Depending on which side of the table one is sitting on, it translates as either bribery or extortion.

Let's start with a few basics. Everyone poops. No one wants to live next to where all of the sewage ends up. After some nasty experiences turning Washington waterways into cesspools, society agreed the waste ought to be adequately treated before discharge.

If no one had any more children and newcomers were scared off at the borders and we never built any more houses or allowed employers to start businesses or expand, then we probably could get by with no more sewage-treatment plants.

All the horrific expense of building Brightwater — a fine specimen of a name — would be wholly avoidable. Cap Snohomish County's population and say, thanks, but no thanks to new jobs.

Am I going too fast?

So we all chug along, and lo and behold, a couple of big sewage-treatment plants in King County at Renton and Seattle's West Point are reaching capacity after having already been expanded at least once, each. Waste from Snohomish and North King County has been sent south for years to Renton, but that community made an entirely fair announcement.

Yes, they would eventually expand their plant again, but they wanted to reserve space for South King County's own demonstrable growth. Up north, it's time for you all to take care of yourselves.

Vested with regional authority by the state Legislature, King County Executive Ron Sims began the thankless task of looking for a site to build a sewage-treatment plant. Years pass, blah blah blah, and Brightwater is located at the confluence of Highway 522, Highway 9 and a whole lot of angry people.

Nothing about this is easy or inexpensive. Brightwater is about 14 miles away from its outfall, a word that defines where the treated output is released into Puget Sound about a mile offshore.

This is where the numbers get big and bigger for engineering and politics. That means state-of-the-art secondary treatment and unmitigated mitigation.

KCC 2365

Putting Brightwater where Sims broke ground last month means the effluent has to travel through a very large pipe buried from 40 to 400 feet underground. The conveyance will be super-sized so it can eventually carry 4 million gallons of waste a day in 2040.

Did I mention the part about no one wanting to live next to a sewage-treatment plant? Odor control is a big, important commitment, and not inexpensive. The plant will be fully enclosed and everything going in will be scrubbed, spritzed, oxygenated, charcoaled, atomized, filtered and counseled about self-esteem issues.

If there is a mystery about whom to blame for the cost of the Taj Mapooh, the answer was provided by Agatha Christie in "Murder on the Orient Express." Everyone did it. Eleven permit-issuing, lawsuit-contemplating, delay-inducing jurisdictions all plunged a wish list into Brightwater's heaving budget.

Snohomish County whined and wheedled its way into \$70 million, or half of the \$140 million of walking-around money disbursed to keep the project on track. From treatment plant to outfall, the largesse covers parks, recreation, land costs, buffers, wetlands, stream restoration, art work and, well, tons of crap.

Remember dictum No. 1 — nobody wants to live next to a sewage treatment plant. Hence, landscaped bike paths and pedestrian walkways and wretched excess, unless one lives anywhere close by.

Maybe the cheesiest part was having Snohomish County negotiate behind a mask. That booming county is the ultimate beneficiary of a plethora of potties.

So Brightwater's cost is outrageous, or so it seems. Especially with a short memory. In 1991, after years of battling to expand the West Point plant beneath Discovery Park in Seattle, the roughly \$540 million project was approved with more than \$98 million in landscaping.

Have cities in other states magically done better? Those glib comparisons never hold up to examination.

Short of a pledge to quit going to the bathroom, Brightwater happens.

Lance Dickie's column appears regularly on editorial pages of The Times. His e-mail address is ldickie@seattletimes.com

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KCC 2366

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Tab D

SETTLEMENT AGREEMENT AND RELEASE

This Settlement Agreement is entered into this 20th day of December, 2005 by and between Plaintiff King County, a charter County and political subdivision of the State of Washington, and Defendant Snohomish County, a charter County and political subdivision of the State of Washington. Plaintiff and Defendant are collectively known as the "Parties."

RECITALS

1. King County, acting in its regional capacity as the successor to METRO, desires to construct a wastewater treatment plant and related conveyance, portal, and outfall system (hereinafter "Brightwater" or the "Brightwater project") in unincorporated south Snohomish County. The treatment plant will serve customers in northern King and southern Snohomish Counties and must be constructed by 2010 to serve anticipated growth in the area.

2. Snohomish County is the jurisdiction with land use and development permitting authority for the Route 9 treatment plant site, portions of the conveyance system and outfall pipe, and it will oversee the permitting and required mitigation for the Brightwater project for those facilities constructed within its jurisdiction.

3. There are currently four pending lawsuits between the parties:

3.1 Growth Management Hearings Board EPF Ordinance Claims. In 2003 and 2004, King County and the City of Renton appealed Snohomish County's adoption of Ordinance No. 03-006 and later, Emergency Ordinance No. 04-019, regulating the siting and permitting of essential public facilities or "EPFs" (which regulations are known as "EPF Ordinances I and II"). The cases are pending before the Central Puget Sound Growth Management Hearing Board ("CPSGMHB") *King County I and King County III* (Consolidated Cause No. 03-3-0011), and the consolidated cases are on remand to the Board following appeal and decision in Thurston County Superior Court (Consolidated Cause No. 04-2-00083-9).

3.2 Growth Management Hearings Board 2005 Seismic and Odor Ordinance Claims. In 2005, King County and the City of Renton (as an intervenor) appealed the adoption of Snohomish County's Emergency Ordinance No. 05-029 (establishing odor control standards for sewage treatment facilities) and Emergency Ordinance No. 05-030 (authorizing the imposition of seismic protections in addition to those standards set forth in state building codes adopted pursuant to chapter 19.27 RCW). This case is pending as King County IV (Cause No. 05-3-0031).

3.3 Superior Court Claims. King County and the City of Renton have filed a combined complaint and petitions ("Complaint") against Snohomish County in the Superior Court of Washington for King County, Cause No. 05-2-15430-6 SEA alleging several causes of action arising out of Snohomish County's adoption of Emergency Ordinance No. 05-029 (Odor Ordinance), and Emergency Ordinance No. 05-030 (Seismic Ordinance). The case is currently pending in Skagit County Superior Court under Cause No. 05-2-01384-5.

3.4 Snohomish County Appeal of the Brightwater Final SEIS. On August 5, 2005, Snohomish County filed an appeal under the State Environmental Policy Act (SEPA)

Settlement Agreement between King and Snohomish Counties
Relating to the Brightwater Wastewater Treatment Facilities - 1

SNO 1177

challenging the adequacy of the Brightwater Final Supplemental Environmental Impact Statement before the King County Hearing Examiner relating to seismic risks on the proposed site in south Snohomish County of King County's Brightwater sewage treatment plant.

4. Purpose and Intent of this Settlement Agreement. The Parties desire to enter into this Settlement Agreement in order to provide for regulatory certainty to both Snohomish County and its citizens, as well as King County for the timely construction of its Brightwater Wastewater Treatment System facilities within the unincorporated area of south Snohomish County. This agreement shall further settle all outstanding litigation between the parties, including future appeals of the decisions set forth in Section 3.1, 3.2, 3.3 and 3.4, above. Finally, this agreement establishes the total amount of community mitigation funds that shall be provided to Snohomish County for the construction of projects to mitigate the community impacts of King County's wastewater treatment facilities. The Parties intend that this Settlement Agreement is in full settlement and release and discharge of all claims which are now, or in the future might have been, the subject matter of the Complaints, Petitions and appeals of the Parties upon the terms and conditions set forth below.

5. Permit Process and Review Criteria—Development Agreement—Public Hearing Required. Pursuant to RCW 36.70B.170, the parties intend to enter into a development agreement governing the processing of permits for the construction of the Brightwater wastewater treatment plant and related facilities ("Brightwater facilities") that have not otherwise already been issued development permits or approvals ("Development Agreement"). The agreement shall provide for the review and permitting of Brightwater facilities using a voluntary binding site plan permit approval and a Type 2 process under Snohomish County's Unified Development Code (which process provides for a public hearing on certain permits before a hearing examiner prior to permit approval). This process shall be referred to in the Settlement Agreement and the Development Agreement as the "BSP Process." The parties agree to retain an independent hearing examiner to preside over the public hearings for the permit approvals. Appeals of the hearing examiner's final decision(s) shall be sent directly to Superior Court pursuant to the Land Use Petition Act (Ch. 36.70C RCW), in order to expedite legal review. In order to execute the Development Agreement, Snohomish County must approve it through the adoption of an ordinance and make the specific findings required by Chapter 30.75 SCC. The proposed Development Agreement is set forth in Exhibit A, which is attached hereto and incorporated herein by this reference. The adoption of an ordinance by Snohomish County approving the terms and conditions of the Development Agreement set forth in Exhibit A is a material condition of this settlement agreement. The failure of King County to execute the Development Agreement or the failure of Snohomish County to adopt an ordinance approving the Development Agreement shall render this settlement agreement null and void. *

6. Mitigation of Community Impacts.

6.1 Amount of Community Impact Mitigation. King County Ordinance 13680 requires that a minimum of 10 percent of the total cost of the project shall be spent on mitigating the impacts of the construction and ongoing operation of its Brightwater wastewater treatment facilities on the surrounding communities, which include certain unincorporated areas of south Snohomish County, consistent with Chapter 35.58 RCW; Section 230.10.10 of the King County Charter, agreements for sewage disposal entered into between King County and component agencies and

other applicable county ordinance and state law restrictions. In addition to meeting the requirements of Snohomish County regulations and the special conditions required by the development agreement set forth in Exhibit A, King County agrees to pay Snohomish County the following sums to implement mitigation measures as described in Exhibit B (which is attached hereto and incorporated herein by this reference), in order to mitigate the identified short-term and long-term impacts of the Brightwater wastewater treatment facilities in Snohomish County:

• Recreational Facilities and Improvements:	\$ 30,400,000
• Community Resource Center	\$ 2,950,000*
• Public Safety Improvements:	\$ 25,850,000
• Habitat Mitigation:	\$ 10,800,000
Total Community Mitigation Funding:	\$ <u>70,000,000</u>

The parties agree that the amount of funding specified in this Section represents mitigation funding for impacts to the affected neighborhoods and communities in and around the Brightwater facilities of the sewage treatment plant. The amounts specified within each category shown above may be allocated amongst the projects set forth in Exhibit B for the same category, in the sole discretion of Snohomish County. (For example, if one recreational mitigation project can be accomplished for less than the amount set forth in Exhibit B, then the remaining funds from that project may be reallocated to another recreational mitigation project in Exhibit B). Snohomish County may reallocate funds between the categories of "Habitat Mitigation" and "Recreational Facilities and Improvements" in an amount equal to no more than 10 percent of the combined total amount of funding for those categories. No additional projects may be added to Exhibit B without the express written consent of King County.

6.2 *Community Resource Center. The parties agree that the sum of \$2.95 million, represented as Community Resource Center funding in Exhibit B, shall be spent by King County for the benefit of Snohomish County for the use of a community center on the Brightwater plant site located at Highway 9 in unincorporated south Snohomish County. King County agrees to provide the use of the Community Resource Center that shall be constructed on the Brightwater treatment plant site for use by government agencies and bona fide nonprofit organizations located within Snohomish County at no charge, in perpetuity, when the Center is to be used by such government agency or nonprofit organization to provide services that will benefit the public, in accordance with King County Code Section 4.56.150(E)(1)(d).

In order to ensure that the terms of Section 6.1 and 6.2 of this agreement are met, each party shall submit to the other, an annual report detailing how the requirements of these sections are met.

(a) Snohomish County shall submit an annual report to King County setting forth, in detail, the expenditure of the community mitigation funds. The annual report shall set forth the project description, the amounts expended on the project, the project status and the percent completion of each project until the project is 100 percent completed. Any unexpended funds in each category shall be returned to King County if not spent by December 31, 2015. If the cost of

any project exceeds the cost estimate set forth in Exhibit B, then the additional cost shall be the sole responsibility of Snohomish County.

(b) On or before January 31st of each year, King County shall submit an annual report stating the names of all Snohomish County bona fide nonprofit and governmental organizations that utilized its Community Resource Center during the preceding calendar year, as well as the frequency of the use, and any organizations that were denied free use of the center as not meeting the criteria of this Agreement.

(c) Both parties shall maintain books, records, documents and other evidence which sufficiently and properly reflect all direct and indirect costs expended by it in the performance of the projects described in this Section 6.0. These records shall be subject to inspection, review or audit by personnel of King and Snohomish Counties, other personnel duly authorized by King and Snohomish Counties, the Office of the State Auditor, and federal officials to the extent authorized by law.

6.3 Mitigation Cap. Community mitigation funding for the Brightwater Project shall be capped at a maximum of \$70 million. King County agrees to mitigation in the amount of \$70 million (i.e. Community Mitigation Fund) as set forth above. King County and Snohomish County agree that additional mitigation imposed during the permitting process up to a maximum of \$2.95 million (Additional Conditions) may be recommended by the Director of Snohomish County's Department of Planning and Development Services ("PDS Director" or "Director"), and/or imposed by the Hearing Examiner if reasonably necessary to mitigate impacts that are the direct result of the proposed development, after giving consideration to its status as an EPF (RCW 36.70A.200(5)). In the event that the Director recommends and/or the Hearing Examiner imposes Additional Conditions after the BSP public hearing required under the Development Agreement in Exhibit A, the cost of which will exceed \$2.95 million dollars, the Community Mitigation Fund amount shown in Exhibit B shall be reduced by the cost of the Additional Conditions in excess of \$2.95 million. In that event, Snohomish County shall identify which categories of projects for which funding shall be reduced.

6.4 Conditions Precedent To Mitigation Payments. King County's obligation to provide the Community Mitigation and the use of the Community Resource Center described above is conditioned upon King County obtaining all permits and approvals necessary to construct the Brightwater project as specified in the Development Agreement and all applicable appeal periods having passed on said permits and approvals. Notwithstanding the above, the Parties agree that King County shall disburse to Snohomish County \$33.5 million of the Community Mitigation funds within 60 days of the latter of the approval of the BSP permit or the conclusion of any appeals associated with the BSP permit (including the conclusion of any appeals filed by either party or third parties of the conditions imposed by the hearing examiner). King County shall disburse the remaining Community Mitigation funds in two additional payments. The payment of \$17.5 million shall be paid within 60 days of the approval by Snohomish County of all of the Treatment Plant Building Permits set forth in Exhibit A; the remaining payment of \$16.05 million shall be paid 12 months thereafter. King County, at its sole election, may pay Snohomish County all or part of the mitigation payments due under this agreement at an earlier time than set forth herein.

6.5 Compliance With Applicable Laws. The parties intend that the payment of mitigation funds to Snohomish County shall be in compliance with all applicable laws and regulations. In the event that a court of competent jurisdiction finds that any expenditure or payment of funds by King County for the benefit of impacted communities required under this Agreement shall be illegal or in violation of any law or regulation, Snohomish County shall promptly return any unexpended funds to King County where required by such court order. To the extent that such funds have already been spent on projects under this Agreement, then the parties agree to immediately enter into discussions to promptly determine the manner and amount to which funds must be credited back to King County in light of the court's order. In the event that any of the Community Mitigation funds are held by a court to be illegally imposed, Snohomish County will nonetheless take no action to withdraw or otherwise invalidate any permits or approvals it has issued and the Parties agree to discuss any new concerns related to mitigation issues.

7. King County's Obligations. King County's obligations to make payment of the mitigation funds described in this Settlement Agreement (i.e. Community Mitigation or Additional Conditions, if any) shall accrue as set forth in Paragraph 6.4 above. However, King County's obligation to make payment of mitigation funds or to fulfill any other obligation under this Settlement Agreement is contingent on it actually proceeding with the Brightwater project. King County has the sole discretion to determine whether or not it will proceed with the Brightwater Project and it may, at its sole election, terminate construction of the Project and, thereby, its obligations under this Settlement Agreement by providing Snohomish County with written notice of its intent to terminate. If King County terminates construction of the Brightwater Project, then any unexpended mitigation funds will be reimbursed to King County.

8. Mutual Release. Based upon the mutual benefits and consideration conferred by this Settlement Agreement, the Parties hereby mutually release and forever discharge the other Party, its officers, elected and appointed officials, employees and agents, from any and all past, present or future claims, demands, obligations, actions, causes of action, rights, damages, costs, expenses and compensation of any nature whatsoever, whether based on a tort, contract or other theory of recovery, including challenges before the Central Puget Sound Growth Management Hearings Board, which each Party may now have, or which may hereafter accrue or otherwise be acquired, on account of, or may in any way grow out of, or which are the specific subject of the litigation described in Paragraph 3. This release shall be a fully binding and complete settlement between the Parties, and their heirs, assigns and successors.

9. Dismissals of Pending Litigation. Concurrently with the final execution of this Settlement Agreement, counsel for both Parties shall present to the Court, Growth Management Hearings Board, and King County Hearing Examiner stipulations for dismissal with prejudice of all Growth Board appeals, all Superior Court cases (including cases in Thurston and Skagit counties), and the King County Hearing Examiner SEPA appeal litigation set forth in Paragraph 3. Nothing in the foregoing shall limit King County's right to challenge the reasonableness of mitigation required by Snohomish County on any Brightwater project permit or approval under this Settlement Agreement and Development Agreement during the permitting process or limit the rights of either Party to sue for enforcement of this Settlement Agreement, except that King County may not challenge the imposition of standards on the construction and operation of the Brightwater facilities as set forth in the Special Conditions of the Development Agreement attached hereto as Exhibit A.

10. Hold Harmless and Indemnification. Snohomish County and King County agree, to the extent permitted by law, to defend, protect, save and hold harmless the other party, its officers, elected and appointed officials, employees and agents from any and all claims, costs, damages, and expenses suffered due to each party's own actions or those of its officers, elected and appointed officials, employees and agents in the performance of this Agreement. The obligations under this paragraph shall extend to any claim, demand and/or cause of action brought by or on behalf of any officer, appointed or elected official, employee or agent of either party. The foregoing duty is specifically and expressly intended to constitute a waiver of each parties' immunity under Washington's Industrial Insurance Act, RCW Title 51, as respects the other party only, and only to the extent necessary to provide the indemnified party with a full and complete indemnity and defense of claims, demands, causes of action, costs, damages and expenses, included above, that are made by the indemnifier's employees, agents, officials, officers and subcontractors. The parties acknowledge that these provisions were mutually negotiated and agreed upon by them.

11. Binding Effect; Assignment. This Settlement Agreement shall bind and inure to the benefit of the parties hereto and their respective heirs, legatees, representatives, receivers, trustees, successors, transferees and assigns.

12. Representations or Warranties. Each signatory to this Settlement Agreement represents and warrants that he or she has full power and authority to execute and deliver this Settlement Agreement on behalf of the entity or party for which he or she is signing, and that he or she will defend and hold harmless the other party and signatory from any claim that he or she was not fully authorized to execute this Settlement Agreement on behalf of the person or entity for whom he or she signed. Upon proper execution and delivery, this Settlement Agreement will have been duly entered into by the parties, will constitute as against each party a valid, legal and binding obligation, and will be enforceable against each party in accordance with the terms herein.

13. Governing Law and Venue. This Settlement Agreement shall be governed by and construed in accordance with the laws of the State of Washington. Venue for any action arising out of or relating to this Settlement Agreement shall lie in Thurston County Superior Court.

14. No Admission of Liability. This Settlement Agreement represents a compromise of all claims and does not constitute and shall not be construed as an admission of liability or responsibility on the part of any of the Parties or agreement to the complaints, petitions or responses of either party now set forth in the pleadings filed in the litigation pending between the parties.

15. No Third Party Beneficiary. Nothing in this Agreement shall be construed to create any rights in or duties to any third party, nor any liability to or standard of care with reference to any third party. This Agreement shall not confer any right, or remedy upon any person other than the parties hereto. This Agreement shall not release or discharge any obligation or liability of any third party to any party herein.

16. Notice of Default and Enforcement. In the event any Party, acting in good faith, believes that the other Party has violated the terms of this Settlement Agreement, the aggrieved Party shall give the believed offending Party notice of the alleged violation by sending a detailed

written statement of the same to the representative for the offending Party by first class mail or facsimile. This notice is intended to invite a resolution by the Parties of any dispute prior to the institution of litigation. This Settlement Agreement may be filed with a court to enforce its terms only upon the expiration of thirty (30) days after said notice is posted, at which time the aggrieved Party may file and serve an action for appropriate relief. For purposes of this paragraph, the identities and addresses of the Parties' representative are as set out in the following paragraph. The identity or address of the representative for any party may be changed for purposes of this paragraph by written notice to the representative for the other Party.

17. Notices. All notices, requests, demands, and other communications called for or contemplated by this Settlement Agreement shall be in writing, and shall be deemed to have been duly given by mailing the same by first-class mail, postage prepaid; by delivering the same by hand; or by sending the same by telex or telecopy, to the following addresses, or to such other addresses as the Parties may designate by written notice in the manner aforesaid, provided that communications that are mailed shall not be deemed to have been given until three business days after mailing:

KING COUNTY:
Christie True
Manager, Major CIP Section
201 South Jackson Street
Seattle, WA 98104
MS/ KSC-NR-0503

SNOHOMISH COUNTY:
Chair, Snohomish County Council
3000 Rockefeller Avenue
Everett, Washington 98208

18. Attorneys' Fees and Costs. Each party shall bear its own attorneys fees and costs in connection with this settlement agreement and with the litigation set forth in paragraph 3 herein.

19. Severability. This Settlement Agreement does not violate any federal or state statute, rule, regulation or common law known; but any provision which is found to be invalid or in violation of any statute, rule, regulation or common law shall be considered null and void, with the remaining provisions remaining viable and in effect.

20. Cooperation in Execution of Documents. The Parties agree properly and promptly to execute and deliver any and all additional documents, including the easement and quitclaim deed that may be necessary to render this Settlement Agreement practically effective. This paragraph shall not require the execution of any document that expands, alters or in any way changes the terms of this Settlement Agreement.

21. Counterparts; Facsimile. This Settlement Agreement may be executed in any number of identical counterparts, notwithstanding that all parties have not signed the same counterpart, with the same effect as if all parties had signed the same document. All counterparts shall be construed as and shall constitute one and the same agreement. Signatures transmitted by facsimile are sufficient.

22. Equal Opportunity to Participate in Drafting. The Parties have participated and had an equal opportunity to participate in the drafting of this Settlement Agreement. No ambiguity shall be construed against any party based upon a claim that that party drafted the ambiguous language.

Settlement Agreement between King and Snohomish Counties
Relating to the Brightwater Wastewater Treatment Facilities - 7

SNO 1183

23. Final and Complete Agreement. This Settlement Agreement constitutes the final and complete expression of the parties on all subjects. This Settlement Agreement may not be modified, interpreted, amended, waived or revoked orally, but only by a writing signed by all parties. This Settlement Agreement supersedes and replaces all prior agreements, discussions and representations on all subjects including without limitation. No party is entering into this Settlement Agreement in reliance on any oral or written promises, inducements, representations, understandings, interpretations or agreements other than those contained in this Settlement Agreement and the exhibits hereto.

24. Full Understanding. The Parties each acknowledge, represent and agree that they have read this Settlement Agreement; that they fully understand the terms thereof; that they have had the opportunity to be fully advised by their legal counsel, accountants and other advisors with respect thereto; and that they are executing this agreement after sufficient review and understanding of its contents.

25. Effectiveness. This Settlement Agreement is contingent upon and shall become effective immediately following its execution by both parties, the adoption of an ordinance by Snohomish County approving the development agreement attached as Exhibit A, and the execution of Exhibit A by both parties.

THE UNDERSIGNED HAVE READ THE FOREGOING SETTLEMENT AGREEMENT, KNOW THE CONTENTS THEREOF, ACKNOWLEDGE THAT ITS TERMS ARE CONTRACTUAL AND NOT MERE RECITALS, ACKNOWLEDGE THAT EACH HAS SIGNED OF HIS OR HER OWN FREE ACT IN THEIR INDIVIDUAL AND REPRESENTATIVE CAPACITIES, AND ACKNOWLEDGE THAT THEY FULLY UNDERSTAND THIS AGREEMENT.

IN WITNESS WHEREOF the parties have Executed this Development Agreement this 20 day of December, 2005.

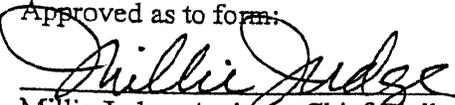
SNOHOMISH COUNTY


By: Aaron G. Reardon
County Executive
10/17/05
D-18

KING COUNTY


By: Ron Sims
County Executive

Approved as to form:


Millie Judge, Assistant Chief Civil
Deputy Prosecuting Attorney

Approved as to form:

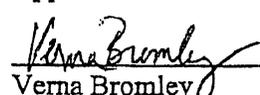

Verna Bromley
Senior Deputy Prosecuting Attorney

EXHIBIT A

**DEVELOPMENT AGREEMENT
BETWEEN KING COUNTY AND SNOHOMISH COUNTY
FOR THE
BRIGHTWATER WASTEWATER TREATMENT
FACILITIES**

Adopted by: Snohomish County Amended Ordinance No. 05-127 on December 7,
2005.

Expires: December 7, 2040.

SNO 1185

**DEVELOPMENT AGREEMENT
BETWEEN KING COUNTY AND SNOHOMISH COUNTY
FOR THE
BRIGHTWATER WASTEWATER TREATMENT FACILITIES**

This Development Agreement is entered into by and between King County, a charter county and political subdivision of the State of Washington, and Snohomish County, a charter county and political subdivision of the State of Washington pursuant to the authority set forth in Sections 36.70B.170 through 36.70B.210 RCW and Chapter 30.75 of the Snohomish County Code (SCC). Plaintiff and Defendant are collectively known as the "Parties." This Agreement shall become effective upon execution by King County and adoption of an ordinance by Snohomish County approving it as required by Ch. 36.70B RCW.

The purpose of this Agreement is to establish the permitting standards and conditions, certain mitigation measures, and permit process governing the review and construction of King County's Wastewater Treatment plant and related facilities within the unincorporated areas of south Snohomish County (hereinafter referred to as the "Brightwater" plant and/or facilities), as well providing certain additional requirements for the operation of Brightwater in the future.

This Development Agreement is an exhibit to and a part of the Settlement Agreement executed between Snohomish County and King County on the subject of Brightwater.

1.0 PERMIT TYPE AND PROCESS

1.1 Binding Site Plan Required

(a) BSP required. The parties agree that King County shall submit an application for its Brightwater wastewater treatment plant located at the Highway 9 site through a binding site plan ("BSP") process that will include a recommendation by the Director of Planning and Development Services ("Director"), followed by a public hearing on the permit and a decision by a Hearing Examiner as described in Section 5 of the Settlement Agreement between the parties ("Hearing Examiner"). The BSP process shall follow certain provisions of Chapter 30.41D SCC to the extent that such provisions are consistent with this Agreement. The applicable standards are set forth in the General Conditions at Section 2.0, below.

(b) Phased Development. The purpose of the voluntary BSP process will be to ensure through covenants, conditions, restrictions, easements and other requirements binding upon King County, its successors, or assignees, that the collective lots continue to function as one site concerning but not limited to public roads, improvements, open spaces, drainage and other elements as specified in the Snohomish County Code for both an initial phase to treat 36 million gallons per day (mgd) of wastewater and a second phase to treat 54 mgd. The application of this BSP process will recognize that the Brightwater facility is an essential public facility (EPF) under the Growth Management Act (RCW Ch 36.70A) and that any mitigation imposed must comply with the standards set forth in the GMA for EPFs.

Development Agreement between King and Snohomish Counties
For the Brightwater Wastewater Treatment Facilities - 1.

SNO 1186

(c). Voluntary Participation in the BSP Process. Snohomish County acknowledges that King County's agreement to submit its project to a BSP process is voluntary, and is not otherwise required by the existing provisions of the Snohomish County Code, and has been agreed to by Snohomish County in lieu of pursuing additional new regulations under an essential public facilities ordinance for the Brightwater project. The parties acknowledge that King County's voluntary agreement to submit its project to the BSP process outlined in this Agreement is a material provision of this agreement made to effectuate settlement and without waiver of King County's Brightwater project status as an EPF. King County's voluntary participation in this BSP process will not act as an affirmative defense, as a bar under the doctrines of collateral estoppel or res judicata, or for any other purpose in any appeal brought by King County challenging the reasonableness of additional mitigation that Snohomish County may seek to impose as part of the BSP permitting process.

1.2 Expedited Type 2 Process

(a). Public Hearing Required. The BSP shall be processed using the Type 2 permit process set forth in Chapter 30.72 SCC, requiring an open record public hearing, except that the Hearing Examiner's decision shall be the final decision of the County in order to expedite the permitting process. In the event of a conflict between the procedures and criteria set forth in Chapter 30.72 SCC and this Agreement, the provisions of this Agreement shall govern. Following receipt of a complete BSP application from King County, Snohomish County commits to prioritizing review of the BSP application and to render the Planning and Development Services ("PDS") Director's recommendation within 45 days of receipt of the complete application.

(b). Special Hearing Examiner. The parties agree to jointly select a special Hearing Examiner who shall conduct the open record public hearing and issue a decision on the BSP permit for the Brightwater facilities. The cost of hiring a special Hearing Examiner shall be the responsibility of Snohomish County. The Hearing Examiner shall conduct himself or herself according to the requirements of SCC 2.02.060 (freedom from improper influence), SCC 2.02.070 (conflict of interest), and SCC 2.02.100 (powers).

1.3 Director's Recommendation

(a). Binding Site Plan—Director's Recommendation. The PDS Director's recommendation shall be governed by the terms and conditions of this section:

(i). Environmental Documents. For purpose of recommending mitigation, the Director shall make a recommendation on the BSP permit application utilizing the Final Environmental Impact Statement (FEIS) issued by King County in November of 2003, and the Supplemental Environmental Impact Statement (SEIS) issued in July, 2005 pursuant to Ch. 43.21C RCW (SEPA) for the project, which are hereby deemed adequate for purposes of permitting under Ch. 30.61 SCC.

(ii). EPF status to be considered. In making a recommendation on the BSP application, the Director shall consider the fact that King County's Brightwater Wastewater

Treatment System is an essential public facility as defined by state law in making his recommendation and follow the requirements of RCW 36.70A.200(5).

(iii). Standards and Conditions. The Director's recommendation shall be limited to whether King County's BSP application meets the requirements of this Development Agreement. If the Director determines that it does not, the Director may not recommend denial of the permit given the fact that the proposal is for an EPF, but the Director may recommend to the Hearing Examiner that additional mitigation be imposed consistent with the terms and conditions set forth herein.

1.4 Public Hearing Procedures

(a). Requirement for a Public Hearing. Prior to approving the BSP and within 35 days of receiving the Director's recommendation, the Hearing Examiner shall hold an open record public hearing on the application for the purpose of receiving information from the public, affected agencies, Tribes, or County staff on the proposed BSP application. Notice of the open record public hearing shall be as specified in SCC 30.72.030. PDS shall coordinate and assemble any available comments of other county departments and governmental agencies having an interest in the BSP. At the open record hearing, the Department staff shall present a summary of the comments of the Department and governmental agencies and the PDS recommendation for the imposition of conditions on the BSP application. The Hearing Examiner shall receive written comment or oral testimony from any person or entity desiring to comment on the project and the proposed conditions for approval for each permit application.

(b). Conduct of the Hearing. The Hearing Examiner may impose a uniform time limit on oral testimony in order to afford all citizens that have appeared in person an opportunity to testify. The Hearing Examiner may, in his or her sole discretion on a one-time basis, continue the public hearing to a date and time certain no more than 10-days from the last date of hearing if, in his or her sole discretion, it becomes necessary to do so in order to provide adequate time for all citizens present to testify. The Hearing Examiner will provide King County with an ample opportunity to present testimony at the outset of the public hearing to state its response to the Department staff report(s), and, following all public testimony to respond to questions, comments or inquiries presented at or prior to the public hearing. The Hearing Examiner will also provide King County with an ample opportunity to present such responses even if a time limit on testimony has been imposed. The Hearing Examiner shall issue a decision within 14 days of the conclusion of the public hearing.

1.5 Hearing Examiner's Criteria and Decision

(a). Scope of Decision. Recognizing that Brightwater is a regional EPF (RCW 36.70A.200(5)), the Hearing Examiner's authority shall be limited to approving the BSP permit as proposed, or approving it with modifications or conditions. The Hearing Examiner shall accept the SEPA documents prepared by King County (as described in Section 1.3(a)(i), above), as adequate for purposes of imposing mitigation of significant adverse environmental impacts as part of the BSP permit approval. The Hearing Examiner's decision shall not include challenges to the SEPA documents prepared by King County because those documents have been subject to appeal before the King County Hearing Examiner and in Superior Court.

(b). Review of Conditions and Mitigation of Impacts. In rendering a decision on the BSP permit, the Hearing Examiner shall limit his or her review to whether the conditions of this Development Agreement relating to the BSP permit have been met for the Brightwater project as set forth in Section 2.0 (General Conditions), and Section 3.0 (Special Conditions). In reaching a decision on the BSP, the Hearing Examiner shall accord the recommendation of the PDS Director substantial weight. Approval of the BSP shall also serve as approval of an official site plan as set forth in SCC 30.31B.210. The Hearing Examiner's decision on the BSP shall be the final decision of the County for purposes of appeal under Chapter 36.70C RCW.

2.0 GENERAL CONDITIONS

2.1 Applicable Binding Site Plan Provisions

(a). For purposes of this Development Agreement the following provisions of Chapter 30.41D SCC shall apply to this permit:

Snohomish County Code Sections:

- 30.41D.100(2),(3),(4),(5),(6),(8),(9),(10),(11) and (12) Decision criteria
- 30.41D.105 Subsequent development permits
- 30.41D.110 Decision criteria – conditions of approval
- 30.41D.200 Design standards – access requirements
- 30.41D.210 Road and right-of-way establishment & right-of-way dedication
- 30.41D.220 Phased development
- 30.41D.320(1),(2), and (3)(c) Revisions
- 30.41D.330 Taxes
- 30.41D.340 Recording with auditor
- 30.41D.350 Vacation

In lieu of SCC Chapter 30.41D.320 (3)(a) and (b), the definitions of “minor” revision and “major” revision shall be as set forth in Exhibit 2, which is attached hereto and incorporated herein by this reference.

(b). Certain Provisions Not Applicable. For purposes of this Development Agreement, the following provisions of SCC Chapter 30.41D shall not apply to this permit:

Snohomish County Code Sections:

- 30.41D.010 Purpose and applicability
- 30.41D.020 Procedure
- 30.41D.030 Application process for county owned property
- 30.41D.040 Additional submittal requirements
- 30.41D.100(1) and (7) Decision criteria
- 30.41D.120 Conditions for previously approved site plan
- 30.41D.130 Conditions when concurrently reviewed
- 30.41D.300 Acceptance of site improvements

- 30.41D.310 Bond or performance security
- 30.41D.320(3)(a), (b) Revisions

In addition, SCC 30.70.030 (general provisions - submittal requirements) shall not apply. Submittal requirements are governed by section 2.2, below.

2.2 Submittals – Determination of Completeness

The submittal criteria set forth in Exhibit 1, which is attached hereto and incorporated herein by this reference shall govern the determination of completeness for the BSP permit application. Upon satisfactory submission of the items set forth in Exhibit 1, PDS will issue a determination of completeness for purposes of vesting, except as otherwise provided in the Special Conditions of this Agreement.

2.3 Standard for Imposition of Additional Conditions

Any Additional Conditions imposed by the Hearing Examiner must be reasonably necessary as a direct result of the proposed development. The Hearing Examiner shall consider all of the information in the record, including the staff report(s), project file(s), and testimony received at or prior to the public hearing in issuing a decision on the BSP application and related permits, and shall ensure that any Additional Conditions do not render the construction of the Brightwater Wastewater Treatment System impossible or infeasible within the meaning of RCW 36.70A.200(5). The Hearing Examiner shall not impose conditions to mitigate odor and/or seismic impacts other than the requirements specified in the Special Conditions set forth in Section 3.0.

76 4.0

3.0 SPECIAL CONDITIONS

The parties have specifically negotiated the following special conditions that shall govern the construction and operation of the Brightwater Wastewater Treatment Plant. As such, compliance with the conditions in this section is a material condition of this Development Agreement.

3.1 Odor Standards and Long-Term Odor Control

(a) Odor Control System Required. The Brightwater Wastewater Treatment Plant shall be designed to operate and meet the standard of “no detectable odors” at the property boundaries of the Highway 9 plant site and beyond, which requires the use of best available control technologies in an odor control system. This standard shall apply to the design, construction, and long-term operation and maintenance of this facility. The phrase “no detectable odors” shall mean that no more than 0.8 parts per billion (ppb) of hydrogen sulfide and no more than 2800 ppb of ammonia may be detected at the property boundaries of the Brightwater facilities or beyond resulting from emissions from the treatment plant.

(b) Vesting and Compliance with Adopted Standards. For purposes of this Development Agreement, Snohomish County and King County agree that compliance with the terms and conditions set forth herein fully satisfy Snohomish County Emergency Ordinance

No. 05-121 ("Odor Ordinance") to the extent that it is still in existence at the time of the execution of the Settlement Agreement and applicable to the Brightwater facilities. Notwithstanding the provisions of Section 2.2, above, which govern the timing of vesting to the standards and requirements of the Snohomish County Code under this Agreement, the parties agree that King County is vested to Emergency Ordinance No. 05-121 at the time of execution of this Development Agreement.

(c). Design and Operational Requirements – No Detectable Odor. The Brightwater Treatment Plant and related facilities within the unincorporated areas of Snohomish County shall provide odor control systems using best available control technologies that are acceptable to the Puget Sound Clean Air Agency (PSCAA). The design shall be that known as King County's "Preferred Alternative 165E" as described in Exhibit 3, which is attached hereto and incorporated herein by this reference. (See, King County Odor Control Value Engineering Summary, September 2005). The construction of the odor control system described as Preferred Alternative 165E shall ensure that no detectable odors are present at the property line boundary or beyond. The odor prevention systems shall be designed to remove odorous compounds at peak load on a 24-hour, 365 days per year basis.

(d). Design and Operational Review Criteria. In order to meet the design criteria and odor standards set forth in paragraph (c), above, the King County Brightwater design (Preferred Alternative 165E) shall meet the following minimum requirements:

- i. All wastewater treatment processes, except as set forth in paragraph (e) below, shall be covered or enclosed to capture and treat process air;
- ii. Liquid-phase odor treatment shall be provided in the collection system to reduce the formation of odors, and to further reduce downstream treatment plant odor loading;
- iii. Odor prevention systems shall be sized and designed to handle a "worst-case" operating condition, i.e. when combinations of meteorological conditions (such as inversions and stagnant air) coincide with peak odor releases from treatment processes, and assuming an air dispersion ratio of 1:25;
- iv. Redundant odor control scrubbing equipment shall be included in the design of the Brightwater treatment plant;
- v. The redundant air scrubbing equipment shall be used during maintenance or repair activities to meet the objective of no detectable odors at the property line boundary;
- vi. Trucks or trains transporting biosolids shall be covered and secured in accordance with Chapter 296-17 WAC.

(e). Disinfection Facility. The disinfection facility for the reuse water that will be used on site will not be covered as it is not a source of odor and is meant to provide a public viewing

and education area where the public can observe the high quality of finished water treated at the plant.

(f). Monitoring and Response Plan Required. An odor control monitoring and response plan will be submitted by King County during the BSP permitting process. This plan will contain an "early warning" approach to odor monitoring and will be used to enforce the standards in this Agreement through routine stack and property line monitoring.

(g). Monitoring Devices. King County agrees to use the best available monitoring devices that are proven and reliable for ambient hydrogen sulfide and ammonia monitoring, to the maximum extent practicable, when monitoring at the odor control exhaust stacks and the treatment plant property line and beyond for compliance with the odor standards in this agreement.

(h) Creation of a Brightwater Air Quality Board. The parties shall create a Brightwater Air Quality Board, consisting of individuals representing:

- Wastewater, odor, science and engineering expertise;
- The Metropolitan Water Pollution Abatement Advisory Committee (MWPAAC);
- Local communities in close proximity to the plant; including the City of Woodinville and neighborhoods in south Snohomish County;
- King and Snohomish counties;
- Air Quality Regulators (PSCAA); and
- Affected Fire Department(s) or Fire Districts

Members shall be chosen jointly by the Executives of Snohomish County and King County. Board members shall have the appropriate training, skill, experience or interest in the operation of sewer utilities, municipalities, special purpose districts or in other related fields. Board members must commit to becoming educated about the Brightwater plant systems, operations, likely sources of odor complaints, and possible solutions. The Board will make recommendations to King County's Wastewater Treatment Division and/or the King County Executive, where requested. The terms of service for board members shall be staggered as established by King County. Administrative support to the Air Quality Board shall be furnished by King County.

(i) Odor Control Reserve Fund Budget. King County has agreed to meet the "no detectable odor" standard as required in this agreement for the duration of the operation of the Brightwater plant. To ensure that funds are immediately available to begin addressing any unanticipated odor issues, King County agrees to budget \$3 million in its annual capital facilities budget as an Odor Reserve Fund. These funds are to be used as needed exclusively for capital odor control facilities or other improvements to the Brightwater plant, should such measures become necessary. The amount of \$3 million shall not be considered a limitation on King County's obligation to meet the odor control standards in this Agreement. The Brightwater Air Quality Board will make recommendations on appropriate uses of this fund.

(j) Compliance with Applicable Odor Codes and Regulations. The Parties agree that the odor commitments set forth above constitute compliance with and reasonable and adequate

mitigation for purposes of Snohomish County's existing Odor Ordinance and development regulations, the Binding Site Plan review process, and the building permit review process for the Brightwater project.

3.2 Seismic Investigation and Construction Standards

(a). Additional Seismic Investigation and Trenching Required. King County has previously performed seismic investigation and trenching at the Highway 9 proposed plant site as a result of the King County Hearing Examiner's decision on seismic issues in an appeal of the Brightwater Final EIS. The investigation revealed the presence of an active fault on the northern portion of the site (lineament 4). King County agrees to construct two additional trenches across portions of the site in between lineament 4 and the postulated lineament X (located on the southern portion of the site), in order to prevent the placement of certain chemical facilities over unknown seismic faults and to minimize the risk of a chemical spill or release during a seismic event.

(b). Definition of Active Fault: For purposes of this Development Agreement, the definition of an "active fault/active fault trace" shall be the definition contained in the 2003 International Building Code, Section 1613.1, which provides:

A fault for which there is an average historic slip rate of 1 mm per year or more and geologic evidence of seismic activity within Holocene (past 11,000 years) times. Active fault traces are designated by the appropriate regulatory agency and/or registered design professional subject to identification by a geologic report.

(c). Investigative Protocol. King County shall prepare the following trenches:

i. For the proposed location of the south chemical storage building (the acids chemical storage building), King County will construct a trench at the proposed footprint of the acids chemical storage building. The exact length and orientation of this trench shall be determined by King County based upon the existing geological information and the recommendations of the US geological Survey, Snohomish County and King County seismic consultants.

ii. For the proposed location of the north chemical storage building (the alkaline chemical storage building) because the construction of a trench in the exact location of the proposed building footprint is not reasonable or feasible given the current uses, the existing roads and underground utilities at that location, a trench shall be constructed east of the proposed alkaline chemical storage building footprint. The exact length and orientation of this trench shall be determined by King County based upon existing geological information and the recommendations of the US Geological Survey, Snohomish County and King County seismic consultants.

iii. In the event that the investigative protocol described above discloses the presence of an "active fault/active fault trace" meeting the 2003 IBC definition within the foundation footprint of one or more of the chemical storage buildings, the Parties agree that

King County will move the chemical storage building(s) fifty (50) feet back from the active fault/fault trace, unless such location renders the chemical storage building's purpose in interacting with the treatment works infeasible. In that event, King County shall locate the building as far away from the active fault/fault trace as feasible, but in no case may the location be less than 25 feet from the location of the identified active fault trace.

(d). Seismic Design Standards Applicable. In light of the existence of certain seismic faults and/or lineaments on portions of its property, King County further agrees to follow the seismic design standards set forth in Chapter 16 of the IBC, 2003 Edition in designing all structures on the Brightwater Wastewater Treatment Plant site at Highway 9.

(e). Vesting and Compliance with Adopted Standards. For purposes of this Development Agreement, Snohomish County and King County agree that compliance with the terms and conditions set forth in this Section 3.2 fully satisfy Snohomish County Emergency Ordinance No. 05-122 ("Seismic Ordinance") to the extent that it is still in existence at the time of the execution of the Settlement Agreement and applicable to the Brightwater facilities. Notwithstanding the provisions of Section 2.2, above, which govern the timing of vesting to the standards and requirements of the Snohomish County Code under this Agreement, the parties agree that King County is vested to Emergency Ordinance No. 05-122 at the time of execution of this Development Agreement.

(f). Emergency Spill Response. King County's wastewater treatment facility at the Highway 9 site will be designed to temporarily contain a spill of up to 4 million gallons of materials from above-ground structures located within the boundaries of its site during an emergency situation. King County may use any site features such as stormwater ponds, or landscaping to accomplish such emergency spill containment. King County will prepare an emergency spill response plan for the Highway 9 treatment facilities and provide at least two (2) copies of the Plan to PDS for its records.

(g). Compliance with Applicable Seismic Codes and Regulations. The Parties agree that the seismic investigation and mitigation set forth above constitutes reasonable and adequate seismic investigation and mitigation of seismic impacts of the Brightwater project for purposes of Snohomish County's existing Seismic Ordinance, applicable development regulations, the BSP review process, and the building permit review process for the Brightwater project. Snohomish County further agrees that the existing SEPA documentation (the FEIS and SEIS) and its discussion of seismic conditions at the Route 9 treatment plant site and along the conveyance line is reasonable and adequate for the construction and operation associated with all Brightwater project permits and administrative approvals. No further environmental review is required under SEPA and Chapter 43.21C RCW or Chapter 30.61 SCC.

4.0 REVIEW AND ISSUANCE OF OTHER BRIGHTWATER PERMITS

The BSP process for the Brightwater project is addressed above. All other permits are governed by this section. The following permit applications shall be submitted by King County outside of the BSP process set forth in Section 1.0 herein. These permits shall be exempt from any

administrative, Type 1 or Type 2 appeal provisions because environmental review for these permits has been completed pursuant to 43.21C RCW and chapter 30.61 SCC and therefore these permits are exempt from the provisions of 30.71 SCC. The issuance of these permits shall be issued administratively. The decision of Snohomish County staff on these permits shall be the final decision of Snohomish County on these permits.

4.1 Treatment Plant Building Permits

King County shall submit a package containing approximately 16 building permit applications for the entirety of the wastewater treatment facility structures to be constructed on The Route 9 site. King County expects to submit a complete building permit application package no later than June 27, 2006.

(a). Permitting Procedure. The building permits shall be reviewed and issued by the PDS Director. The permits shall be conditioned upon receipt of a final decision approving the BSP by the Hearing Examiner. Snohomish County shall review the completed application and determine if it meets the applicable provisions of the Snohomish County Code governing such permits within eight (8) months of the receipt of such building permit applications. The decision of the Director shall be a final decision subject to appeal under Ch. 36.70C RCW. The treatment plant building permits shall expire 60 months after issuance by Snohomish County.

(b). Renewal and Fees. The treatment plant building permit(s) may be renewed prior to the expiration date for an additional period of 24 months upon payment by King County or its successor/assignee in the amount of fifty percent (50%) of the original building permit application fee to Snohomish County. This fee will be assessed only for those buildings needing renewed permits. Upon expiration of the renewal period, King County shall be required to apply for a new building permit application subject to the terms and conditions of the Snohomish County Code in effect at that time.

(c). SEPA Compliance. Snohomish County agrees that SEPA review on this project was a comprehensive project level review which identified all the significant adverse environmental impacts associated with the buildings included in the Brightwater Project. Snohomish County has evaluated the SEPA documents and in this Development Agreement has imposed the mitigation authorized under RCW 43.21C.060. As such the provisions of Chapter 30.71 SCC will not apply.

(d). Special Inspections. All special inspections required by the quality assurance plans set forth in any building permits approved by Snohomish County shall be performed at King County's sole cost and expense by qualified, independent inspection personnel, certified as a testing and inspection agency by the Washington Association of Building Officials (WABO) and shall have accreditation (or an application pending) for compliance with ASTM E 329, as modified by WABO Standard No. 1701. Copies of certifications shall be provided to Snohomish County for all inspection personnel performing special inspections on the Brightwater project.

4.2. North Mitigation Area Grading and Building Permits

King County shall submit requested revisions to Snohomish County for its pending grading and building permit applications for the North Mitigation Area on or before October 13, 2005. Snohomish County shall review the completed application and determine if it meets the applicable provisions of the Snohomish County Code governing such permit upon approval of this Agreement.

4.3 Haul Route Agreement and Right-of-Way Use Permits for the North Mitigation Area

King County has previously submitted proposed Haul Route Agreement(s) and right-of-way use permit applications to Snohomish County. Snohomish County agrees to review the completed applications and proposed haul route agreement(s) and will determine if these documents meet the applicable provisions of the Snohomish County Code governing such permits upon approval of this Agreement.

4.4 Portal 19 Grading and Building Permit

King County shall submit a complete application for these permits on or before January 31, 2006. Assuming King County submits its applications by that date, Snohomish County shall review the completed applications and determine if they meet the applicable provisions of the Snohomish County Code governing such permits no later than May 15, 2006.

4.5 Portal 19 Right-of-Way Use Permit

King County shall submit a complete application for this permit on or before January 31, 2006. Assuming King County submits its applications by that date, Snohomish County shall review the completed application and determine it meets the applicable provisions of the Snohomish County Code governing such permits no later than May 15, 2006.

4.6 Treatment Plant Site Preparation Grading Permit with Right-of-Way Use Permit

King County shall submit a completed application for this permit on or before November 30, 2005. Assuming King County submits its applications by that date, Snohomish County shall review the completed application and determine if it meets the applicable provisions of the Snohomish County Code governing such permit no later than March 31, 2006. Such permit shall state that it is effective only upon receipt of a final decision approving the BSP by the Hearing Examiner.

4.7 Portal 46 Grading Permit with Right-of-Way Use Permit

King County has already submitted a completed application for this permit. Snohomish County shall review the completed application and determine if it meets the applicable provisions of the Snohomish County Code governing such permit no later than January 4, 2006. Such permit shall state that it is effective only upon receipt of a final decision approving the BSP by the Hearing Examiner.

4.8 Treatment Plant Grading Permit with Right-of-Way Use Permit

Development Agreement between King and Snohomish Counties
For the Brightwater Wastewater Treatment Facilities - 11

SNO 1196

King County shall submit a completed application for this permit on or before February 15, 2006. Assuming King County submits its application by that date, Snohomish County shall review the completed application and determine if it meets the applicable provisions of the Snohomish County Code governing such permit no later than November 7, 2006. Such permit shall state that it is effective only upon receipt of a final decision approving the BSP by the Hearing Examiner.

5.0 APPEALS

5.1 BSP Appeal

The Hearing Examiner's decision on the BSP permit shall be the final decision of Snohomish County on the BSP. Appeals of the decision shall be filed in accordance with the provisions of the Land Use Petition Act (Ch. 36.70C RCW). The filing of an appeal shall not automatically stay the effectiveness of a permit and King County may proceed at its sole discretion and risk to act in accordance with any permit challenged under this section.

5.2 Other Permit Appeals

For all other Brightwater Project permits and approvals, the decision of the Director shall be the final land use decision of the County. Appeals shall be brought directly to Superior Court in accordance with the provisions of the land use petition act (Ch. 36.70C RCW). The filing of an appeal shall not automatically stay the effectiveness of a permit and King County may proceed at its sole discretion and risk to act in accordance with any permit challenged under this section.

6.0 RESERVATION OF RIGHTS.

Pursuant to the requirements of RCW 36.70B.170 and SCC 30.75.100(4), Snohomish County reserves the right to impose new or different conditions on the Brightwater facilities to the extent required by a serious threat to public health and safety.

7.0 TERM OF THE AGREEMENT

This Development Agreement shall govern the Brightwater Wastewater Treatment System facilities located at the Highway 9 plant site and related facilities off-site within areas of unincorporated Snohomish County constructed hereunder, for a period of thirty-five years from the date of execution of this Agreement. Pursuant to RCW 36.70B.170(3)(i) Snohomish County agrees that the Snohomish County Code as it exists at the date that this Development Agreement is executed shall govern the permitting for the Brightwater Project.

8.0 RECORDING; BINDING EFFECT

This agreement shall be recorded with the real property records of the Snohomish County Auditor and shall be binding during its term upon the parties, and their successors, including any

city that assumes jurisdiction through incorporation or annexation of the area covered by this Development Agreement.

IN WITNESS WHEREOF the parties have executed this Development Agreement this 15 day of December, 2005.

SNOHOMISH COUNTY



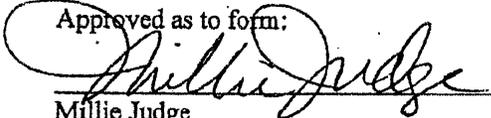
By: Aaron G. Reardon
County Executive 12/10/05 D-9

KING COUNTY



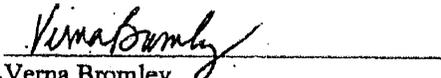
By: Ron Sims
County Executive

Approved as to form:



Millie Judge
Assistant Chief Civil Deputy
Prosecuting Attorney

Approved as to form:

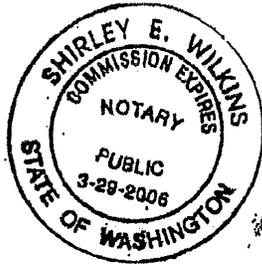


Verna Bromley
Senior Deputy Prosecuting Attorney

STATE OF WASHINGTON)
) ss.
COUNTY OF SNOHOMISH)

I certify that I know or have satisfactory evidence that Aaron Reardon is the person who appeared before me, and said person acknowledged that said person signed this instrument, on oath stated that said person was authorized to execute the instrument, and acknowledged it as the County Executive of Snohomish County, a municipal corporation, to be the free and voluntary act of such entity for the uses and purposes mentioned in the instrument.

Dated this 15th day of December, 2005.



Shirley E. Wilkins
(Signature of Notary)

Shirley E. Wilkins
(Legibly Print or Stamp Name of Notary)

Notary public in and for the State of Washington,
residing at Everett Wa.

My appointment expires 3-29-06

EXHIBIT 1

BINDING SITE PLAN SUBMITTAL REQUIREMENTS

The Binding Site Plan Submittal shall consist of the following elements:

1. To address requirements for Noise Control (SCC 30.41D.100(2)):
 - KC will submit narrative showing how county noise ordinance will be met.
2. To address requirements for public or private roads, right-of-way establishment and permits, accesses, and other applicable road and traffic requirements (SCC 30.41D.100(3)):
 - KC will submit a site plan with road layout, access points off SR9, ROW, clear zone, and temporary construction easements for WSDOT.
 - KC will re-submit its concurrency form pursuant to Ch. 30.66 SCC.
 - KC will provide a letter stating that no traffic changes from the last two traffic analysis provided to Snohomish County, along with the traffic studies.
 - KC will forward an executed copy of the Haul Route Agreement(s) applicable to the project.
3. To address compliance with fire lane, emergency access, fire-rated construction, hydrants and fire flow (SCC 30.41D.100(4)):
 - KC will submit a site plan showing roads that are at least 20 feet wide with any turnarounds of 40 feet in diameter. If no turnarounds will be used, KC will show how fire trucks will move internally with correct radius provided at corners.
 - KC will describe the fire flow required for the site. If hydrant locations are known, then KC will show them on the site plan.
 - KC will provide documentation of how the buildings on site are fire rated.
4. To address compliance with applicable construction code requirements (SCC 30.41D.100(5)):

KC will submit a statement indicating that King County will comply with applicable construction code requirements in the construction of Brightwater.
5. To address compliance with applicable use and development standard requirements (SCC 30.41D.100(6)):

- Using the zoning matrix in the County Code, show how the site fits with use of all zones, including FS.
- KC will provide a Parking Study.
- KC will submit a Landscape Modification request.

6. To address compliance with environmental policies and procedures, critical areas regulations, groundwater protection regulations and resource lands requirements (SCC 30.41D.100(8)):

- For purposes of demonstrating mitigation of impacts disclosed through SEPA review, show how project has complied with mitigation described in the FEIS and SEIS.
- Critical areas regulations- KC will submit CAR, CASPs and Critical Areas Pre-application file materials.
- KC will provide a narrative of how the project complies with groundwater protection regulations.
- KC will provide a report of how site has been designed for seismic hazards, especially in reference to the FEIS and SEIS.
- KC will provide a copy of the Facility Plan and approval letter from Ecology to show backup power.

7. To address compliance with applicable drainage requirements (SCC 30.41D.100(9)):

- KC will submit a targeted drainage review and site plan. The plan will include volume of runoff, downstream analysis, scale view and cross-section of ponds.

8. To address applicable sewerage regulations and provisions for adequate water supply and refuse disposal (SCC 30.41D.100(11)):

- KC will submit a statement that wastewater generated on-site will be processed on site.
- KC will provide a letter from the Cross Valley Water District of its intention to supply water to the site.

9. Other items to be submitted:

- Certificate of Title indicating property ownership;
- Declaration of Binding Site Plan with Record of Survey;

- Site plan showing existing and proposed easements (existing easements to have the recording number);
- A legal description;
- Survey to be completed that shows closure of boundaries using survey practices as required by state law;
- Final Geotechnical Report and Recommendations;
- Document the intent to extinguish the existing binding site plan for Woodinville North Business Park;
- Binding Site Plan (for area south of UGA, not including NMA) to show property boundaries, road layout, parking areas, building locations, NGPA for Howell Creek and steep slopes on east side of property and any NGPA from critical areas on the north of UGA, detention ponds, and landscape area in general terms;
- An Emergency Spill Response Plan
- Quality Assurance Plan.

EXHIBIT 2

Definitions of "Minor" and "Major" Revisions

For purposes of Chapter 30.41D.320 SCC the following definitions of "Minor" and "Major" revision shall apply:

- (a) A "minor" revision means any proposed change which does not involve substantial alteration of the character of the prior approval, including increases in a building footprint of no more than 10 percent.

- (b) A "major" revision means any expansion of the lot area covered by the permit or approval, or any proposed change whereby the character of the approved development will be substantially altered. A major revision exists whenever intensity of use is substantially increased, performance standards are reduced below those set forth in the original permit, detrimental impacts on adjacent properties or public rights-of-way are created or substantially increased, including increased trip generation in excess of 211 peak hour trips (the number of trip credits from existing businesses that the Brightwater project displaced through redevelopment of the site), or the site plan design is substantially altered.

EXHIBIT 3

Executive Summary

**King County Brightwater Odor Control System
Preferred Alternative Design 165E**

Development Agreement between King and Snohomish Counties
For the Brightwater Wastewater Treatment Facilities - 20

SNO 1205

D-29

Brightwater Odor Control Basis of Design Summary

October 2005

This summary describes the proposed Brightwater Treatment Plant odor control design approach. There are three planned odor control facilities:

- Headworks and Primaries Odor Control Facility (Facility 490)
- Aeration Basin and Membrane Basin Odor Control Facility (Facility 590)
- Solids Building Odor Control Facility (Facility 790)

High ventilation rates and redundant/maintenance scrubbers are included in the design to reduce fugitive odors, mitigate corrosion and prevent the odor control system from ever being out of service. The selected treatment process of biotowers and/or chemical scrubbers plus carbon, provides a robust system that takes advantage of state-of-the art technology and minimizes chemical use. Multiple treatment steps (e.g., biotower and/or chemical scrubber and carbon) provide assurance that all odorous compounds will be treated, even at trace concentrations.

The facility design (also known as Value Engineering Alternative 165E) is as follows:

- Headworks and Primaries Odor Control Facility (Facility 490) = biotower + sodium hydroxide (caustic)/sodium hypochlorite scrubber + carbon
- Aeration Basin and Membrane Basin Odor Control Facility (Facility 590) = caustic/sodium hypochlorite scrubber + carbon
- Solids Building Odor Control Facility (Facility 790) = biotower + caustic/sodium hypochlorite scrubber + carbon

Dispersion modeling, using meteorological data from the Route 9 site, was used to estimate off-site hydrogen sulfide, ammonia and odor concentrations. Under all conditions the off-site concentrations are below the initial detection thresholds for the Brightwater project, maintaining King County's commitment to no detectable off-site odors. The table below summarizes the maximum stack concentrations, maximum three-minute off-site concentrations and the annual average off-site concentrations of hydrogen sulfide, ammonia and odor. All of these values assume maximum odor generation within the treatment plant processing units.

The model results for maximum off-site concentrations occur when there is little to no wind or stagnant meteorology. When there is wind, the dispersion factor is higher, as shown by the average concentrations in the table.

In reality, maximum stack concentrations would likely occur in the summer, when there is more wind and less stable meteorology, and lower stack concentrations would likely occur in the winter, when there is less wind and the odor at the treatment plant is lower due to lower wastewater temperatures. The impact of these changes would be to lower the stack

SNO 1206

concentrations in the winter and improve the meteorology in the summer, which would lower the off-site concentrations over those shown in the table.

BRIGHTWATER TREATMENT PLANT

MAX AND AVERAGE OFF-SITE CONCENTRATIONS AND DISPERSION FACTORS

		Hydrogen Sulfide (ppbV)	Ammonia (ppbV)	Odor (D/T)
<i>Initial Detection Threshold/Off-Site Goal</i>		0.8	2,800	1
<i>Max Stack Concentration</i>		1.8	390	4.4
<i>Max Off-Site Concentration</i>		0.07	14.2	0.2
<i>Worst-Case Dispersion Factor</i>		26	28	22
<i>Average Off-Site Concentration</i>		0.003	0.7	0.01
<i>Average Dispersion Factor</i>		600	557	440

As discussed above, the Brightwater Treatment Plant odor control system is designed to meet the goal of no detectable off-site odors under worst case odor and meteorological conditions.

SNO 1207



EXHIBIT B TO THE SETTLEMENT AGREEMENT

Snohomish County Mitigation Project List

Project	Impact Addressed / Nexts	King County Portion of Total Project Cost	Comments
Recreation			
Melby Area Park - Approx. 40 acres within 4 miles of treatment plant site.	Community Mitigation - active recreation	\$ 16,900,000	This project will provide primarily active recreation facilities for the broad community surrounding the treatment plant site. The community and potential user groups will be included in the design process that will be lead by Snohomish County. Multiple locations are currently being considered; this funding is for acquisition and development of this active recreation facility.
Tambark Creek Park - Park Development	Community Mitigation - active recreation	\$ 8,000,000	This project will provide active and passive recreation for the broad community surrounding the treatment plant site. The existing site master plan, with possible amendments to reflect new design preferences will be the basis of design by Snohomish County. The property is currently in Snohomish County ownership; this funding is for park development.
39th/228th Park Facility - Land Acquisition	Community Mitigation - active recreation	\$ 2,200,000	This project will provide a community park near the treatment plant site; this funding is for land acquisition.
39th/228th Park Facility - Park Development	Community Mitigation - active recreation	\$ 3,300,000	This funding is for park development at the 39th/228th location referenced above. The community will be included in the design process that will be lead by Snohomish County.
Recreation		\$ 30,400,000	
Community Resources			
Community Resource Center	Community Mitigation - education and meeting facility	\$ 2,950,000	King County agrees to provide at Snohomish County's request the use of the Educational and Community Center that shall be constructed on the Brightwater treatment plant site for use by government agencies and bona fide nonprofit organizations located within Snohomish County at no charge if the Center is to be used by the government agency or nonprofit organization to provide services that will benefit the public. This equates to high, long-term value based on facility use and is estimated at 2.95 million dollars.
Community Resources		\$ 2,950,000	
Public Safety			
Sno-Wood Road (3 lane widening)	Community mitigation - safety and operational improvements	\$ 1,630,000	This project will widen the Snohomish-Woodinville Road to 3-lanes between SR522 and Woodinville city limits. This improvement will provide ease of traffic movement to and from the treatment plant site.
228th St. SE - 39th to SR-9 (addition of pedestrian sidewalks and bike lanes)	Community mitigation - pedestrian connections	\$ 12,200,000	This project will provide sidewalks and bicycle lanes along 228th SE between 39th Ave and SR-9 facilitating safe pedestrian and bicycle access to public spaces located on the Brightwater site. The project will be designed to include natural drainage systems where practical.
45th Ave SE - 240th to 212th (north and south of 228th), addition of pedestrian sidewalk on one side.	Community mitigation - pedestrian connections	\$ 4,600,000	This project will provide a sidewalk along 45th Ave SE between 240th and 212th SE facilitating safe pedestrian access to public spaces located on the Brightwater site. The project will be designed to include impervious sidewalks where practical. Minor road widening may be included to match curb if installed.

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EXHIBIT B TO THE SETTLEMENT AGREEMENT

Snohomish County Mitigation Project List

Public Safety continued			
49th Ave SE - 236th to 228th, addition of pedestrian sidewalk on one side.	Community mitigation - pedestrian connections	\$ 1,280,000	This project will provide a sidewalk along 49th Ave SE between 236th and 228th SE facilitating safe pedestrian access to public spaces located on the Brightwater site. Design will include low impact development techniques where practicable, such as pervious concrete. Minor road widening may be included to match curb if installed.
53rd Ave SE - 233rd to 228th, addition of pedestrian sidewalk on one side.	Community mitigation - pedestrian connections	\$ 1,370,000	This project will provide a sidewalk along 53rd Ave SE between 233rd and 228th SE facilitating safe pedestrian access to public spaces located on the Brightwater site. Design will include low impact development techniques where practicable, such as pervious concrete. Minor road widening may be included to match curb if installed.
57th Ave SE - 236th to 228th, addition of pedestrian sidewalk on one side.	Community mitigation - pedestrian connections	\$ 1,530,000	This project will provide a sidewalk along 57th Ave SE between 236th and 228th SE facilitating safe pedestrian access to public spaces located on the Brightwater site. Design will include low impact development techniques where practicable, such as pervious concrete. Minor road widening may be included to match curb if installed.
North Creek Trail, Bothell to Mill Creek (North Creek Park to Filbert Road).	Community mitigation - pedestrian connections	\$ 3,240,000	This project provides for the planning, public involvement and ROW acquisition to develop a new multi-use trail segment between North Creek Park and Filbert Road (SR524). The community will be included in the design process that will be lead by Snohomish County.
Broadway, SR 524 - 164th Street SE., addition of paved shoulders.	Community mitigation - pedestrian connections	\$	This project is estimated to cost \$1,000,000 and will be completed and funded with any savings realized after completion of all other public safety projects on this list. It will provide paved shoulders for safer bicycle travel along Broadway Ave.
Public Safety		\$ 25,850,000	
Habitat Mitigation			
Little Bear Creek Headwater Forest Preservation	Community mitigation - habitat	\$ 4,500,000	Funding is for acquisition of Little Bear Creek headwater watershed to preserve fish habitat.
Cutthroat Creek Headwaters Preservation	Community mitigation - habitat	\$ 1,000,000	Funding is for acquisition of Cutthroat Creek headwater watershed to preserve fish habitat.
Middle Little Bear Fens Preservation	Community mitigation - habitat and potential multiple use	\$ 4,000,000	Funding is for acquisition of Little Bear Creek watershed to preserve fish habitat.
Little Bear Creek Fish Passage	Community mitigation - habitat	\$ 1,300,000	This funding is for replacing/upgrading approximately 22 culverts to facilitate and improve fish passage. These culvert improvements will involve community-based non-profit organizations) where practical.
Habitat Mitigation		\$ 10,800,000	
Total		\$ 70,000,000	

SNO 1209

D-33

Tab E

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Hon. Thomas J. Felnagle

SUPERIOR COURT OF WASHINGTON FOR PIERCE COUNTY

CEDAR RIVER WATER AND SEWER DISTRICT; and SOOS CREEK WATER AND SEWER DISTRICT,

Plaintiffs,

v.

KING COUNTY; SNOHOMISH COUNTY; ALDERWOOD WATER AND WASTEWATER DISTRICT; CITY OF ALGONA; CITY OF AUBURN; CITY OF BELLEVUE; CITY OF BLACK DIAMOND; CITY OF BOTHELL; CITY OF BRIER; CITY OF CARNATION; COAL CREEK UTILITY DISTRICT; CROSS VALLEY WATER DISTRICT; HIGHLANDS SEWER DISTRICT; CITY OF ISSAQUAH; CITY OF KENT; CITY OF KIRKLAND; CITY OF LAKE FOREST PARK; LAKEHAVEN UTILITY DISTRICT; CITY OF MERCER ISLAND; NORTHEAST SAMMAMISH SEWER DISTRICT; NORTHSHORE UTILITY DISTRICT; OLYMPIC VIEW WATER AND SEWER DISTRICT; CITY OF PACIFIC; CITY OF REDMOND; CITY OF RENTON; RONALD WASTEWATER DISTRICT; SAMMAMISH PLATEAU WATER AND SEWER DISTRICT; CITY OF SEATTLE; SKYWAY WATER AND SEWER DISTRICT; CITY OF TUKWILA; VALLEY VIEW SEWER DISTRICT; VASHON SEWER DISTRICT; WOODINVILLE WATER DISTRICT;

No. 08-2-11167-4

SECOND AMENDED COMPLAINT FOR DECLARATORY, INJUNCTIVE AND OTHER RELIEF

SECOND AMENDED COMPLAINT FOR DECLARATORY, INJUNCTIVE AND OTHER RELIEF - 1



1001 Fourth Avenue, Suite 4200
Seattle, WA 98154
(206) 292-1144

E-1

1 MUCKLESHOOT INDIAN TRIBE;
2 SHOREWOOD HEIGHTS APTS., LLC, as
3 successor in interest to Bayshore Shorewood
4 G.P., Inc.; and the STATE OF WASHINGTON,
acting by and through the Washington State
Parks and Recreation Commission,

5 Defendants.

6
7 **I. Parties**

8 1. Plaintiffs Cedar River Water and Sewer District ("Cedar River") and Soos Creek
9 Water and Sewer District ("Soos Creek") are municipal corporations formed under the authority of
10 Title 57 RCW (Water-Sewer Districts) and are headquartered in the City of Renton in King County,
11 Washington. Cedar River and Soos Creek are each a water and sewer utility. In their capacity as
12 sewer utilities, Cedar River and Soos Creek collect sewage from residential and commercial
13 ratepayers within their respective service areas and transmit the sewage to defendant King County's
14 sewage system for treatment and disposal. Under long-term written contracts between Cedar River
15 and King County, and between Soos Creek and King County, the County treats the sewage at one of
16 its regional treatment plants. Cedar River and Soos Creek each pay King County for this service in
17 the form of sewage disposal charges, sometimes referred to as sewer rates; the contracts specify how
18 the rates are to be calculated. Cedar River and Soos Creek each pass the King County sewage
19 disposal charges on to their respective ratepayers in the form of sewer utility charges.
20

21
22 2. Defendant King County is a political subdivision of the State of Washington. As a
23 general purpose government, the County provides a wide variety of governmental services. As
24 described more fully below, on January 1, 1994 the County assumed the rights, powers, functions
25 and obligations of the Municipality of Metropolitan Seattle ("Metro"). These included the

1 development and operation of a regional transit system and the regional collection and treatment of
2 sewage. The County now provides transit services through its Department of Transportation, and it
3 provides sewage collection and treatment services through the Wastewater Treatment Division
4 (“WTD”) of the County’s Department of Natural Resources and Parks. King County operates the
5 WTD as a proprietary municipal utility that is primarily “wholesale” in character, in that WTD’s
6 “ratepayers” are primarily cities and utility districts that, like the plaintiffs, provide “retail” sewer
7 utility services to homeowners, businesses and other producers of wastewater.
8

9 3. Defendant Snohomish County is a political subdivision of the State of Washington.
10 King County is constructing a new sewage treatment plant (called “Brightwater”) in Snohomish
11 County. Brightwater will serve portions of north King County and south Snohomish County.
12 Snohomish County has significant land use and development permitting authority for Brightwater
13 inasmuch as the site of the treatment plant is located in Snohomish County; however, the pipeline for
14 transmitting the effluent from the treatment plant to the marine outfall in Puget Sound is to be
15 located primarily in King County.
16

17 4. The remaining defendants are Washington cities (Algona, Auburn, Bellevue, Black
18 Diamond, Bothell, Brier, Carnation, Issaquah, Kent, Kirkland, Lake Forest Park, Mercer Island,
19 Pacific, Redmond, Renton, Seattle and Tukwila), Washington utility districts (Alderwood Water and
20 Wastewater District, Coal Creek Utility District, Cross Valley Water District, Highlands Sewer
21 District, Lakehaven Utility District, Northeast Sammamish Sewer District, Northshore Utility
22 District, Olympic View Water and Sewer District, Ronald Wastewater District, Sammamish Plateau
23 Water and Sewer District, Skyway Water and Sewer District, Valley View Sewer District, Vashon
24 Sewer District and Woodinville Water District), an Indian tribe (Muckleshoot Indian Tribe), a
25

1 Washington limited liability company (Shorewood Heights Apts., LLC, as successor in interest to
2 Bayshore Shorewood G.P., Inc.), and the State of Washington (acting by and through the
3 Washington State Parks and Recreation Commission), which, like plaintiffs, have contracts with
4 King County for sewage treatment and disposal.

5
6 5. King County sometimes refers (for example, in Official Statements for sewer revenue
7 bonds) to the plaintiffs and the defendant cities and utility districts as “municipal participants” in the
8 County’s wastewater treatment system, and it sometimes refers to the defendant Indian tribe, the
9 defendant limited liability company and the State as “non-municipal participants” in that system.
10 The defendants other than King County and Snohomish County are referred to collectively in this
11 complaint as the “participant defendants,” and the plaintiffs and participant defendants are referred
12 to collectively as the “participants.” The defendant cities and utility districts are sometimes referred
13 to collectively in this complaint as the “sewer utility defendants,” and the plaintiffs and sewer utility
14 defendants are sometimes referred to collectively as the “sewer utilities.”
15

16 6. As set forth more fully below, the plaintiffs and other participants all have sewage
17 disposal contracts with King County that contain identical or substantially similar terms relating to
18 the issues raised in this action, and thus the participant defendants will receive benefits similar to
19 those received by the plaintiffs if the plaintiffs prevail on their claims against King County in this
20 action.
21

22 7. As set forth below, plaintiffs are seeking affirmative declaratory, injunctive and
23 monetary relief against King County. Snohomish County and the participant defendants are
24 “nominal” defendants in that plaintiffs are not seeking any relief against them except insofar as they
25 may have an interest that would be affected by the declaratory relief sought in this action, within the

1 meaning of RCW 7.24.110.

2 **II. Jurisdiction and Venue**

3 8. This Court has subject matter jurisdiction under RCW 2.08.010.

4 9. King County is the principal defendant in this action, and venue is proper in Pierce
5 County Superior Court under RCW 36.01.050. In addition, venue is also proper in this Court under
6 RCW 4.12.025 because King County and other defendants (including without limitation the City of
7 Auburn, the Muckleshoot Indian Tribe and the State of Washington) are located in part in or regularly
8 conduct business in Pierce County. In particular, King County's wastewater service area includes
9 portions of Pierce County. See King County Code 28.86.110.A.

10
11 10. In the sewage disposal agreement between King County and the Muckleshoot Indian
12 Tribe, the Tribe agrees to a limited waiver of sovereign immunity and "consents to the personal
13 jurisdiction of any court referenced herein with respect to any action to enforce any of the terms and
14 conditions and/or rights and remedies under this Agreement, . . ." (Agreement, §16). However,
15 given that the plaintiffs are not seeking any affirmative relief from the Tribe, that the Tribe is named
16 as a (nominal) defendant merely because it may have an interest that would be affected by the
17 declaratory relief sought in this action, that the Tribe's share of King County's sewer system
18 revenues from sewage disposal charges is less than one-twentieth of one per cent of the total, and that
19 the rights and interests of the other parties could be protected adequately even if the Tribe were not a
20 party to this action, the Tribe is not an indispensable party within the meaning of CR 19(b).
21 Accordingly, even if the Tribe is not subject to the jurisdiction of this Court, this action should
22 proceed against the other parties. On March 6, 2009 the Court dismissed the Muckleshoot Indian
23 Tribe from this action and ruled that the Tribe is not an indispensable party under CR 19(b).
24
25

1 area as a means to address pollution in Lake Washington and Elliot Bay. In 1972 voters approved an
2 expansion of Metro to be coterminous with the King County boundaries and to include public
3 transportation as one of its functions in addition to sewage treatment.

4
5 15. In 1990, the structure of the Metro Council (the governing body for Metro) was found
6 to be unconstitutional because it violated the one person, one vote principle of the Equal Protection
7 Clause of the Fourteenth Amendment of the United States Constitution. *Cunningham v. Mun. of*
8 *Metro. Seattle*, 751 F. Supp. 885 (W.D. Wash. 1990). Voters subsequently approved the merger of
9 Metro and King County, and on January 1, 1994 King County assumed the rights, powers, functions
10 and obligations of Metro. Accordingly, references in this complaint to King County include Metro as
11 the County's predecessor-in-interest with respect to wastewater treatment matters.

12 B. Sewage Disposal Contracts

13
14 16. King County has constructed, maintained and paid for its wastewater treatment system
15 with proceeds from the sale of bonds, revenues collected under contracts with sewer utilities and
16 other parties, and capacity charges imposed by the County directly on new customers of the sewer
17 utilities.

18 17. Each plaintiff has entered into a long-term contract with King County for sewage
19 disposal. Section 5 of each contract provides that a "sewage disposal charge" shall be paid to the
20 County "for the disposal of sewage hereafter collected by the [sewer utility] and delivered to Metro,"
21 and it spells out how the sewage disposal charge is to be calculated. Paragraph 3(a) of section 5 of
22 the contract limits what costs may be included in the calculation of the sewage disposal charge. It
23 provides that:
24

25 . . . Metro shall determine its total monetary requirements for the disposal of sewage

1 during the next succeeding calendar year. Such requirements shall include the cost of
2 administration, operation, maintenance, repair and replacement of the Metropolitan
3 Sewage System, establishment and maintenance of necessary working capital and
4 reserves, the requirements of any resolution providing for the issuance of revenue
5 bonds of Metro to finance the acquisition, construction or use of the sewerage
6 facilities, plus not to exceed 1% of the foregoing requirements for general
7 administrative overhead costs.

8 The sewage disposal charge to be paid by a particular sewer utility or other participant is to be based
9 upon the County's "total monetary requirements for the disposal of sewage," divided by the total
10 number of residential customers and residential customer equivalents of all participants in the
11 County's wastewater treatment system, multiplied by the number of residential customers and
12 residential customer equivalents of the particular sewer utility or other participant, subject to certain
13 adjustments. Nothing in the contract allows the sewage disposal charge to include any component
14 other than those set forth in section 5, paragraph 3 of the contract.

15 18. Each of the participant defendants has a sewage disposal contract with King County
16 containing terms substantially similar to the terms of the contracts between the plaintiffs and King
17 County, including identical or substantially similar language to that quoted or described above from
18 plaintiffs' contracts. In addition, certain of the participant defendants (including the cities of Renton,
19 Pacific, Issaquah, Tukwila and Carnation, the Vashon Sewer District, and the Muckleshoot Indian
20 Tribe) have recently entered into extended contracts with King County which run through 2056 and
21 which also provide for sewer rate increases in emergency situations.

22 C. Restrictions on King County's Expenditures from Sewer Revenues

23 19. As explained above, under the sewage disposal contracts the only costs that are to be
24 included as components of the sewage disposal charge are those set forth in section 5, paragraph 3 of
25 the contracts. While the sewage disposal contracts provide that expenses other than sewage disposal

1 costs may not be included in calculating sewage disposal charges, the converse of the same
2 proposition is addressed by state and local laws prohibiting King County from spending sewer
3 revenues on costs other than sewage disposal costs or for purposes other than sewage disposal. Thus,
4 the County may not include non-sewage costs in sewer rates, and it may not use sewer revenues to
5 pay non-sewage costs.
6

7 20. The ownership and operation of King County's sewage disposal system is a
8 metropolitan municipal function authorized to be performed by the County pursuant to RCW ch.
9 35.58 and Title 28 of the King County Code.

10 21. The King County Charter provides that:

11 Each metropolitan municipal function authorized to be performed by the county
12 pursuant to RCW ch. 35.58 shall be operated as a distinct functional unit. Revenues or
13 property received for such functions shall never be used for any purposes other than
14 the operating expenses thereof, interest on and redemption of the outstanding debt
thereof, capital improvements, and the reduction of rates and charges for such
functions.

15 King County Charter § 230.10.10. Under this provision, sewage disposal revenues may not be used
16 for purposes other than sewage disposal.

17 22. The King County Code provides that:

18 The assets of the wastewater system are pledged to be used for the exclusive benefit of
19 the wastewater system including operating expenses, debt service payments, asset
20 assignment and the capital program associated therewith. The system shall be fully
21 reimbursed for the value associated with any use or transfer of such assets for other
county purposes.

22 King County Code 28.86.160.C.1.FP-10. Under this provision, the assets of the wastewater system
23 (including sewage disposal revenues) are to be used for the exclusive benefit of the wastewater
24 system, and the wastewater system is to be fully reimbursed for the value of any assets (including
25

1 sewage disposal revenues) used for other county purposes.

2 23. In ordinances adopted by King County and official statements issued by King County
3 in connection with King County sewer revenue bonds, the County has pledged to bondholders and
4 others that, so long as any such bonds are outstanding, all sewer revenues will be deposited into a
5 special fund called the Water Quality Operating Account, also known as the Revenue Fund, and will
6 be used only for specified purposes relating to the County's sewer system. See, for example, King
7 County Ordinance 16133, §14. Spending sewage disposal revenues on costs unrelated to the sewer
8 system constitutes a violation of the County's duties and obligations as set forth in the bond
9 ordinances and official statements.
10

11 24. The Washington local government accounting statute, RCW 43.09.210 (sometimes
12 referred to as the state accountancy act), provides that:

13 All service rendered by, or property transferred from, one department, public
14 improvement, undertaking, institution, or public service industry to another, shall be
15 paid for at its true and full value by the department, public improvement, undertaking,
16 institution, or public service industry receiving the same, and no department, public
17 improvement, undertaking, institution, or public service industry shall benefit in any
18 financial manner whatever by an appropriation or fund made for the support of
19 another.

20 Under this statute, any assets transferred from or services provided by King County's Wastewater
21 Treatment Division to other King County or non-King County governmental bodies or departments
22 are to be paid for at their true and full value, and no other King County or non-King County
23 governmental body or department is to benefit financially from the WTD's sewage disposal revenues.

24 25. Under the sewage disposal contracts and the statutory, charter, code, ordinance and
25 other provisions described above, King County's sewage disposal revenues are not to be used for
26 purposes other than sewage disposal or spent on costs other than sewage disposal costs.

1 D. Brightwater Treatment Plant

2 26. King County has three functioning sewage treatment plants which discharge effluent
3 into Puget Sound, namely, the South Treatment Plant in Renton (having an average capacity for wet
4 weather flow of 115 million gallons per day), the West Point Treatment Plant in Seattle (having an
5 average wet weather flow capacity of 133 million gallons per day), and the Vashon Treatment Plant
6 on Vashon Island (having an average wet weather flow capacity of 180,000 gallons per day). King
7 County's new treatment plant serving the City of Carnation (having an initial capacity of
8 approximately 400,000 gallons per day) became operational in June 2008; effluent from the
9 Carnation plant will be discharged into the Chinook Bend wetlands along the Snoqualmie River.
10

11 27. In November 1999 King County adopted Ordinance 13680 (the "1999 Ordinance"),
12 readopting, ratifying and making certain changes to the comprehensive water pollution abatement
13 plan for King County that had theretofore been adopted by Metro. Sections 1 through 18 of the 1999
14 Ordinance were codified as part of King County Code Title 28.
15

16 28. As set forth in the 1999 Ordinance, King County concluded that it was necessary to
17 construct a new "north" treatment plant based upon anticipated population growth in the area of north
18 King County and south Snohomish County. After considering a number of options, in December
19 2003 King County decided to locate a relatively small new plant, to be called Brightwater, in south
20 Snohomish County near the City of Woodinville. The effluent from the plant will be discharged
21 approximately 5,200 feet offshore from Point Wells near Edmonds, Washington. The effluent
22 pipeline from the plant to the outfall will be approximately 14 miles long. The County expects the
23 plant to become operational in 2011, with an initial average wet weather flow capacity of 36 million
24 gallons per day. The County plans to expand the plant by 2040 to provide an average wet weather
25

1 flow capacity of 54 million gallons per day.

2 29. As set forth in Ordinance 13680 in November 1999, the County anticipated a need to
3 increase its wastewater system capacity from 248 mgd (million gallons per day) to 304 mgd by the
4 year 2030, or an increase of 56 mgd. It planned to achieve that increase in capacity by constructing a
5 new north treatment plant (which subsequently became known as Brightwater) with a capacity of 36
6 mgd by 2010 and expanding the capacity of the existing south treatment plant in Renton by 20 mgd
7 by 2029. The estimated costs of treatment facilities to achieve that expanded capacity was estimated
8 to be \$277 million, and the estimated costs of conveyance facilities was estimated to be \$582 million,
9 or a total of \$859 million for treatment and conveyance facilities for both the new north plant and the
10 expanded south plant.
11

12 30. The current estimated cost for the 36 mgd Brightwater plant alone, with associated
13 conveyance facilities, is now \$1.83 to \$1.86 billion – more than double the original combined
14 estimated costs for both the new north plant and the expansion of the south plant.
15

16 E. Improper Payments to Snohomish County for “Mitigation” of Brightwater

17 31. The 1999 Ordinance set forth a number of policies to provide direction for the
18 operation and further development of King County’s wastewater system, its capital improvement
19 program and the development of subsequent policies. Included among these were five so-called
20 “environmental mitigation policies” (“EMP”).
21

22 32. EMP-1, codified as King County Code 28.86.140.B.EMP-1, directed King County to
23 work with affected communities to develop mitigation measures for environmental
24 impacts created by the construction, operation, maintenance, expansion or replacement
25 of regional wastewater facilities. These mitigation measures shall:

1. Address the adverse environmental impacts caused by the project;

1
2 2. Address the adverse environmental impacts identified in the county's
3 environmental documents; and

4 3. Be reasonable in terms of costs and magnitude as measured against
5 severity and duration of impact.

6 Thus, under EMP-1 the mitigation measures must (1) address actual adverse environmental impacts
7 that are caused by the project, (2) be identified in the County's environmental documents and (3) be
8 reasonable in terms of costs and magnitude as measured against severity and duration of impact.

9 33. EMP-5, codified at King County Code 28.86.140.B.EMP-5, provides in relevant part:

10 For the south treatment plant and the new north treatment plant [Brightwater], a target
11 for mitigation shall be at least ten percent of individual project costs, or a cumulative
12 total of ten million dollars for each plant, whichever is greater, provided that
13 mitigation funded through wastewater revenues is consistent with chapter 35.58 RCW;
Section 230.10.10 of the King County Charter; agreements for sewage disposal
entered into between King County and component agencies; and other applicable
county ordinance and state law restrictions.

14 (Bracketed matter and emphasis added). Thus, under EMP-5 any mitigation measures that are funded
15 through wastewater revenues must comply with all applicable legal restrictions, including without
16 limitation those described above in paragraphs 19 through 25 prohibiting the use of sewer revenues
17 for purposes other than sewage disposal.

18 34. In a March 2005 monthly report on the Brightwater project, King County listed total
19 committed and uncommitted mitigation spending amounting to \$88 million, with more than half of
20 that amount (\$45,257,762) committed to Snohomish County. The \$88 million figure did not include
21 mitigation that the County was already planning to spend on odor control.

22 35. Despite King County's commitments and plans to spend substantial amounts for
23 "mitigation" relating to the Brightwater project, relations between King County and Snohomish
24
25

1 County were strained by opposition within Snohomish County to the Brightwater project and by
2 demands made by Snohomish County for additional so-called "mitigation" measures that King
3 County regarded as unrelated to Brightwater's actual impacts.

4
5 36. On April 18, 2005 Snohomish County passed two emergency ordinances targeting the
6 construction of wastewater treatment facilities in Snohomish County. It also denied demolition and
7 grading permit applications by King County for the Brightwater project.

8 37. In a letter dated May 4, 2005 to the Snohomish County Executive and the Chair of the
9 Snohomish County Council, King County Executive Ron Sims stated that "Unfortunately,
10 Snohomish County has made it clear that King County must first commit to paying many additional
11 millions for Snohomish County roadways and other capital projects unrelated to Brightwater's actual
12 impacts, as the price tag for Snohomish County's approval of Brightwater," and warned that "Use of
13 King County funds for these extraneous purposes is not authorized by law and is not appropriate."
14 (Emphasis added).

15
16 38. On May 11, 2005 the State Department of Ecology wrote to Snohomish County,
17 supporting King County's concerns, reiterating the Department of Ecology's support for the
18 Brightwater project, and threatening a sewer connection moratorium within King and Snohomish
19 Counties if existing sewage treatment plants reached 100% capacity and if capacity-related effluent-
20 limit violations occurred.

21 39. Nevertheless, King County capitulated in large part to Snohomish County's demands
22 for unauthorized and unlawful "mitigation" payments for projects unrelated to Brightwater's actual
23 impacts. On December 20, 2005 King County entered into an agreement with Snohomish County
24 (the "Settlement Agreement") in which Snohomish County agreed to cease its opposition to
25

1 Brightwater in exchange for a commitment by King County to pay an additional \$70 million to
2 Snohomish County to implement so-called "mitigation" measures unrelated to actual adverse
3 environmental impacts of Brightwater, in addition to meeting the requirements of Snohomish County
4 regulations and special conditions required by the development agreement between the two counties
5 for the Brightwater project.

6
7 40. Under the Settlement Agreement between the two counties, King County has paid or
8 will pay Snohomish County up to \$30.4 million for parks, \$25.85 million for pedestrian and bicycle
9 paths, and \$10.8 million for habitat mitigation and conservation in the Little Bear Creek watershed,
10 and will also provide \$2.95 million worth of in-kind services to Snohomish County in the form of
11 free use, in perpetuity, of a community center (to be built by King County and now estimated to cost
12 \$8 million).

13
14 41. King County's December 2005 monthly report for Brightwater shows total committed
15 mitigation spending at \$140.9 million, with more than \$114 million committed to Snohomish County
16 (including the \$70 million in so-called "mitigation" spending under the Settlement Agreement).

17 42. King County and Snohomish County have sometimes used the phrase "community
18 mitigation" to refer to payments or expenditures made for projects or purposes, like those provided
19 for in the Settlement Agreement between the two counties, that are not for purposes of addressing
20 direct, identifiable, actual impacts of the Brightwater project.

21 43. The \$70 million of so-called "community mitigation" payments provided for in the
22 Settlement Agreement between the two counties were not for the purpose of addressing direct,
23 identifiable, actual impacts of the Brightwater project. Instead, they were made simply to win
24 political approval from Snohomish County and to induce it to drop its objections to Brightwater.
25

1 44. RCW 82.02.020 prohibits a county from imposing, either directly or indirectly, a “tax,
2 fee, or charge, either direct or indirect,” on the development of land. That statute permits voluntary
3 agreements that allow a payment “to mitigate a direct impact that has been identified as a
4 consequence of a proposed development,” but it explicitly prohibits the exaction of any payment
5 which the county “cannot establish is reasonably necessary as a direct result of the proposed
6 development.” Under that statute Snohomish County could not lawfully require King County to pay
7 \$70 million for “community mitigation” as part of the Settlement Agreement between the two
8 counties, and King County could not lawfully make or agree to make those unlawfully exacted
9 payments to Snohomish County.
10

11 45. The State Environmental Policy Act (“SEPA”) provides that any government action
12 “may be conditioned only to mitigate specific adverse environmental impacts which are identified in
13 the environmental documents prepared under this chapter.” RCW 43.21C.060. That requirement is
14 reinforced by WAC 197-11-660(1)(b), which provides: “Mitigation measures shall be related to
15 specific, adverse environmental impacts clearly identified in an environmental document on the
16 proposal and shall be stated in writing by the decision maker.” To the extent that the Final
17 Environmental Impact Statement (“FEIS”) for Brightwater did not identify existing Snohomish
18 County transportation, drainage or other problems as “specific adverse environmental impacts” of
19 Brightwater, under that statute and regulation Snohomish County could not and cannot lawfully
20 demand or require King County to pay to mitigate those existing problems.
21

22 46. Under EMP-1.2 (KCC 28.86.140.B.EMP-1.2, “mitigation measures shall . . . [a]ddress
23 the adverse environmental impacts identified in the county’s environmental documents”), any specific
24 adverse environmental impacts requiring mitigation should have been identified in the FEIS.
25

1 Moreover, pursuant to EMP-2 (KCC 28.86.140.B.EMP-2, "Mitigation measures identified through
2 the state Environmental Policy Act process shall be incorporated into design plans and construction
3 contracts to ensure full compliance"), any mitigation measures identified through the SEPA process
4 should already have been incorporated into the design plans and construction contracts for the project.
5

6 47. Prior to the negotiations with King County which culminated in the Settlement
7 Agreement, Snohomish County developed a strategy for identifying priority projects to be funded
8 with "mitigation" money from King County. Many of the projects had been previously identified in
9 other Snohomish County planning documents, such as the Transportation Needs Report, the Parks
10 Comprehensive Plan, and the Water Resource Inventory Area ("WRIA") 8 planning process.
11 Inasmuch as such planning documents preceded the design of Brightwater, any problems being
12 mitigated by the projects identified in those documents were not caused by Brightwater.
13

14 48. Consistent with the King County Executive's letter of May 4, 2005 warning that use of
15 King County funds for "extraneous purposes" as demanded by Snohomish County "is not authorized
16 by law and is not appropriate," the Settlement Agreement between the two counties expressly
17 contemplated the likelihood that a court would find the payments to be made by King County to
18 Snohomish County under the Agreement to be unlawful. The agreement provided:

19 Compliance with Applicable Laws. The parties intend that the payment of mitigation
20 funds to Snohomish County shall be in compliance with all applicable laws and
21 regulations. In the event that a court of competent jurisdiction finds that any
22 expenditure or payment of funds by King County for the benefit of impacted
23 communities required under this Agreement shall be illegal or in violation of any law
24 or regulation, Snohomish County shall promptly return any unexpended funds to King
25 County where required by such court order. To the extent that such funds have
already been spent on projects under this Agreement, then the parties agree to
immediately enter into discussions to promptly determine the manner and amount to
which funds must be credited back to King County in light of the court's order. In the
event that any of the Community Mitigation funds are held by a court to be illegally

1 imposed, Snohomish County will nonetheless take no action to withdraw or otherwise
2 invalidate any permits or approvals it has issued and the Parties agree to discuss any
3 new concerns related to mitigation issues.

4 Settlement Agreement, §6.5 (emphasis added).

5 49. As an editorial columnist for the Seattle Times commented in May 2006, in reference
6 to the projected total of \$140 million for Brightwater mitigation costs, "Depending on which side of
7 the table one is sitting on, it translates as either bribery or extortion." As the editorial columnist went
8 on to state, "Snohomish County whined and wheedled its way into \$70 million, or half of the \$140
9 million of walking around money disbursed to keep the project on track. From treatment plant to
10 outfall, the largesse covers parks, recreation, land costs, buffers, wetlands, stream restoration, art
11 work and, well, tons of crap." The columnist characterized such expenditures as "wretched excess."

12 50. Although King County may have had an interest in "greasing the skids" for the
13 Brightwater project, paying money to Snohomish County for so-called "community mitigation"
14 which has nothing to do with addressing true adverse environmental impacts of the project is an
15 improper use of sewer revenues and is unlawful. Including such expenditures in the calculation of
16 sewage disposal rates charged to the plaintiffs and other participants in the County's wastewater
17 treatment system is a clear breach of the sewage disposal contracts.

18
19 F. Improper Allocation of General Governmental and Other Administrative and Overhead
20 Expenses to the Water Quality Fund

21 51. The revenues and expenses of King County's Wastewater Treatment Division
22 ("WTD") must be accounted for separately from other King County departments and divisions. The
23 finances of the Wastewater Treatment Division are managed through a separate fund known as the
24 "Water Quality Fund." As noted above, the use of sewer revenues in the Water Quality Fund is
25

1 required to be limited to the purposes for which they are pledged.

2 52. As noted above, the monthly sewage disposal rate charged by WTD to plaintiffs and
3 the participant defendants is limited by contract to WTD's estimated annual monetary requirements
4 for "disposal of sewage," including a limit of 1% of such requirements for "general administrative
5 overhead costs." Rather than restricting the use of sewer revenues for these limited purposes, King
6 County has improperly used the Water Quality Fund for expenses of activities or functions other than
7 sewage disposal, including payments to other departments of county government and payments for
8 general government expenses and administrative and overhead expenses of governmental functions
9 or activities other than sewage treatment and disposal, and has exceeded the contractual 1% limit for
10 "general administrative overhead costs". These improper expenditures and contractual breaches have
11 resulted in higher sewage disposal rates than legally and contractually permitted for plaintiffs and the
12 participant defendants.
13

14 53. King County is audited by the Washington State Auditor on an annual basis; however,
15 the state Auditor does not audit every portion of the County's financial activities during each audit.
16 In its audit report No. 69606 on the Water Quality Fund, dated September 27, 2005, the Auditor
17 found that:
18

19 From January 1, 2004 through August 31, 2005, the County allocated approximately
20 \$1,997,000 in governmental costs to its water quality fund, which is financed by user
21 fees. Those fees may only be used only for the benefit of the wastewater system,
22 which includes wastewater operating expenses, debt service payments on wastewater
23 debt, and capital purchases made for the wastewater system. County policy states
24 overhead will be allocated on the basis of the estimated cost of services provided, but
the County cannot demonstrate how these services benefit the water quality fund's
operations. The County therefore cannot use these fees to pay for general government
costs.

25 (Report at 11). The Auditor's report stated that the cause of the problem was that "The County

1 allocates costs to funds without considering the restricted revenues that finance those funds, or
2 whether allocated costs correspond with services rendered to those funds.” *Id.* The Auditor
3 described the effect of the County’s improper allocation practices as follows: “When restricted
4 revenues are used for unauthorized purposes, taxpayers and ratepayers do not receive the full
5 intended benefit of those revenues. In addition, future user fees for some funds will be higher than
6 they should be.” *Id.*

8 54. In its response to the Auditor’s finding, the County stated that “Reevaluation of the
9 county’s cost allocation plans will be a major undertaking and will require some time to accomplish
10 effectively,” but promised that “the Office of Management and Budget will begin work immediately
11 with the Financial Management Section and the King County Prosecuting Attorney and will make
12 appropriate allocation changes as early as possible.” (Auditor Report at 12). However, little if any
13 progress has been made toward correcting the County’s illegal allocation practices. On April 13,
14 2007 the County’s Director of Management and Budget, in responding to inquiries about what was
15 being done on the issue, wrote in an email to key personnel on the County’s executive staff,

17 Unless there have been specific questions raised by either Councilmembers or Council
18 staff on this issue, this is a dog that should be left sleeping. I see no reason to respond
19 to this unless there is a question. Responding only keeps it alive and it should be on
20 the Council or council staff to raise the question – not for us to keep it alive.

21 (Emphasis added).

22 55. In 2009 the State Auditor issued another audit report on King County accounting
23 (Performance Audit Report No. 1002103). The SAO made a finding in the 2009 performance audit
24 similar to the 2005 finding; namely, that the expenses for the County Council, Council Administrator,
25 County Executive, and Office of the Executive should not be allocated to WTD, due to lack of

1 documentation showing what services were rendered to WTD and the true value of those services.
2 The SAO calculated the amount of improper allocation of budgeted general government overhead
3 expenses to WTD over fiscal years 2005-09 to be \$4,818,183. The SAO also noted that the County
4 failed to “true up” the allocation of budgeted general government expenses after the actual
5 expenditures were known, resulting in an additional overallocation of expenses to WTD of at least
6 \$750,000 over five years.

8 56. King County acted unlawfully and breached the sewage disposal contracts with
9 plaintiffs and the participant defendants by including general government and other administrative
10 and overhead costs (including administrative and overhead expenses of the King County Department
11 of Natural Resources and Parks) not related to sewage disposal in calculating the sewage disposal
12 rates, by exceeding the contractual 1% limit on “general administrative overhead costs” includable in
13 calculating sewage disposal charges and by failing to “true-up” allocations based on actual
14 expenditures.

16 G. Improper Use of Water Quality Fund for Financing Culver Fund Projects

17 57. Since 1988, King County has improperly charged WTD for monies spent to finance
18 the so-called “Culver Fund,” named after a former mayor of Issaquah who headed a committee
19 formed to look into the amount of money that Metro was spending on activities not directly related to
20 sewage treatment.

21 58. The monies in the Culver Fund are used for projects unrelated to sewage disposal,
22 including projects “earmarked” or promoted by individual King County Council members to, in the
23 County’s own words, fund “pet projects” for Councilmembers. Typically the Culver Fund is used to
24 pay for surface water related projects, completely unrelated to sewage disposal and ineligible to be
25

1 funded by sewer revenues.

2 59. An example of a recipient of Culver Funds is "Friends of Hylebos Creek." Hylebos
3 Creek is located entirely outside of WTD's service area -- it does not even drain into the WTD
4 service area. The group "Friends of Hylebos Creek" has received almost \$500,000 in Culver Funds
5 since 2002. In July 2003 a county employee wrote about another multi-year recipient of Culver
6 Funds, Earthcorps, "We checked the earth corps work and they do virtually nothing for wastewater. I
7 see this as a real problem, if someone starts to look into it." Earthcorps has received over \$700,000
8 in Culver Funds.
9

10 60. The amounts allocated to Culver Fund projects are unlawfully passed through to the
11 plaintiffs and the participant defendants by the County through the sewage disposal rates. These
12 improper allocations and expenditures have cost the Water Quality Fund approximately \$1.2 million
13 to \$1.5 million per year, and were projected to increase to \$2 million per year by 2012. Such use of
14 sewer revenues ignores the restricted purpose for which funds paid to WTD may be used, and using
15 the Water Quality Fund to finance the Culver Fund projects violates the terms of the sewage disposal
16 contracts.
17

18 H. Improper Use of Sewer Revenues for Payments to StockPot Soups

19 61. StockPot Soups, Inc., a wholly owned subsidiary of Campbell Soups, operated a plant
20 in Snohomish County near the site of the proposed Brightwater plant. StockPot decided that "the
21 proximity of the wastewater facility [was] inconsistent with the company's desired product image" --
22 this despite the fact that the company had been cited numerous times itself for air quality violations
23 and had received hundreds of complaints from neighbors about odors from its plant (particularly on
24 days when the plant was making onion soup).
25

1 62. StockPot threatened to relocate out of the area (and take the 250 jobs at the plant with
2 it) if King County did not buy it out. Under pressure, King County reached an agreement with
3 StockPot in April 2005 under which the County paid StockPot \$7.28 million for its facilities and an
4 additional \$16.17 million for relocation, replacement and reestablishment expenses if StockPot
5 relocated to another site within the Puget Sound area. The goal of the additional payment, in the
6 words of the King County Executive, was to “provide incentives to support StockPot staying in our
7 region rather than moving out of state.” Besides relocation incentives, StockPot also received \$2
8 million from the “job retention program” that was part of the Brightwater mitigation budget.

9
10 63. The County is authorized to pay actual relocation expenses to certain businesses
11 (RCW Ch. 8.26), but the blanket \$16.17 million payment to StockPot was improper to the extent it
12 exceeded actual relocation costs. In addition, paying a private company in order to save the jobs of
13 hundreds of workers, even if it is otherwise lawful and commendable, may serve a general
14 governmental purpose but it does not serve a sewage disposal purpose. Therefore, it was improper
15 for the County to fund the additional \$16.17 million payment to StockPot from the Water Quality
16 Fund, rather than from the County’s general fund or some other fund of the County.

17
18 I. King County’s Lack of Authority to Engage in the Business of Distributing and Selling
19 Reclaimed Water

20 64. King County is spending or planning to spend at least \$127 million on the design and
21 construction of infrastructure for the distribution and sale of reclaimed water from Brightwater.
22 Phase 1, referred to as the “backbone” of the reclaimed water distribution system, was anticipated to
23 cost \$26 million in 2005. Phase 2 (pump station) was anticipated to cost \$13 million, and phase 3
24 (distribution lines to carry the water to the end customers) was projected to cost \$88 million (all
25

1 based on 2005 estimates).

2 65. The King County Code defines “wastewater system” to include “production of
3 reclaimed water.” KCC 28.86.010.X (emphasis added). That definition does not include
4 “distribution” or “sale” of reclaimed water as part of a wastewater system. Distribution and sale of
5 water, whether potable or not, and whether reclaimed or not, is a different line of business from
6 sewage disposal, and expenses incurred for the purpose of distributing and selling reclaimed water do
7 not constitute sewage disposal expenses within the meaning of the sewage disposal contracts and
8 other legal restrictions on the use of sewer revenues. Including such expenses in the calculation of
9 sewage disposal charges is a breach of the sewage disposal contracts.
10

11 66. One of the functions authorized under the Metro statute is “metropolitan water
12 supply.” RCW 35.58.050(2). However, in order for a metropolitan municipal corporation to engage
13 in a new function, such as water supply, a majority of voters must first approve it. RCW 35.58.100.
14 The voters of King County have never approved Metro or the County to operate a water supply
15 system, either under Metro authority or otherwise.
16

17 67. Under RCW ch. 36.94 (Sewerage, Water and Drainage Systems), a county may
18 construct, operate and maintain a water system. RCW 36.94.020. However, the statute requires the
19 county to first adopt a “water general plan” as an element of the County Comprehensive Plan. RCW
20 36.94.030.
21

22 68. If a county wishes to adopt a water system plan, it must submit the plan to a review
23 committee, which has ninety days to provide suggested amendments or approval of the plan. RCW
24 36.94.070. The county is then required to hold a public hearing prior to adoption of the plan. RCW
25 36.94.080.

1 69. Prior to commencement of actual work on any approved plan, the county must submit
2 the plan for written approval by the state Department of Social and Health Services (“DSHS”) and
3 the state Department of Ecology (“DOE”). RCW 36.94.100.

4 70. To the extent King County is proposing to serve reclaimed water within the
5 boundaries of a municipal corporation which itself has the authority to operate a water utility, the
6 municipal corporation must first give its written consent to the County and the County must submit
7 its proposal for review by the Boundary Review Board. RCW 36.94.170.

8 71. King County has commenced work on a reclaimed water system for the purpose of
9 distributing and selling such water without preparing a water system plan, without submitting any
10 such plan to a review committee, without holding a public hearing, without seeking approval from
11 DSHS and DOE, without obtaining written approval from municipal corporations within which such
12 water will be served, and without submitting its proposal for review by the Boundary Review Board.
13

14 72. Actions taken by King County towards design, construction and operation of a
15 reclaimed water system are therefore ultra vires and illegal.

16 73. Expenditures made from the Water Quality Fund towards a reclaimed water system
17 are unlawful, and including such expenditures or costs in calculating sewage disposal charges is a
18 breach of the sewage disposal contracts.
19

20 J. King County’s Improper Charges to WTD for LTGO Bonds.

21 74. On or about 2003, King County began imposing a charge on WTD for the purported
22 purpose of “reimbursing” the County general fund for a benefit conferred on the utility as a result of
23 lower interest rates that WTD pays when the County issues Limited Tax General Obligation
24 (“LTGO”) bonds, rather than traditional sewer revenue bonds, for financing wastewater capital
25

1 improvements. The charge imposed by the County on WTD does not reflect any actual expenditures
2 or increased costs incurred by the County for issuing LTGO bonds rather than traditional sewer
3 revenue bonds.

4 75. The decision to issue LTGO bonds rather than traditional revenue bonds is at the
5 complete discretion of the King County Council and, under KCC 28.86.160.C.2.FP-13, is made only
6 after "consideration is given to competing demands for use of the county's overall general obligation
7 debt capacity."
8

9 76. The charge imposed on WTD when the King County Council chooses to issue LTGO
10 bonds is not a legitimate regulatory fee because (1) the primary purpose of the charge is to raise
11 revenue for general governmental purposes, rather than to regulate the utility, (2) the money collected
12 is deposited to the county's general fund and is not restricted only to an authorized regulatory
13 purpose, and (3) there is no relationship between the fee charged and the service received by those
14 who pay the fee (i.e. the local sewer utilities and other customers of the WTD), or between the fee
15 charged and the burden produced by the fee payer.
16

17 77. The charge imposed on WTD supposedly reflecting the benefit of lower interest rates
18 payable under LTGO bonds instead of traditional revenue bonds is simply a revenue-raising ploy for
19 the King County general fund, rather than a regulatory fee. It constitutes an unlawful hidden tax
20 imposed by the County on WTD and its customers.
21

22 **IV. King County Has Violated Its Trust Responsibilities**

23 78. As noted above, sewer revenues are pledged to be used only for sewage disposal
24 purposes, and under King County Charter § 230.10.10 are "never" to be used for another purpose.
25

1 79. King County stands in the position of a trustee for the plaintiffs and the participant
2 defendants with respect to the use of sewer revenues in the Water Quality Fund, and the County is
3 liable to them for the wrongful diversion of monies from the Fund.

4 80. King County's diversion of at least \$70 million to Snohomish County for so-called
5 "community mitigation" was not for lawful sewage disposal purposes but was to placate Snohomish
6 County. This was a violation not only of King County's contractual and other legal responsibilities
7 but also of its fiduciary duty, and it is liable to all of its wastewater customers, including plaintiffs
8 and the participant defendants, for such diversions. Similarly, King County's improper allocation of
9 general government expenses to the Water Quality Fund, its improper uses of the Water Quality Fund
10 to finance Culver Projects, its improper payments to StockPot Soups, its improper expenditures in
11 connection with preparations for the unauthorized distribution and sale of reclaimed water, and its
12 improper charges for issuance of LTGO bonds were likewise breaches of contract and of its fiduciary
13 duty.
14
15

16 **V. Breaches of Contract and Violations of Law**

17 81. King County's acts and conduct described above constitute breaches of the sewage
18 disposal contracts insofar as costs other than sewage disposal costs have been included in calculating
19 sewage disposal charges. Those breaches have resulted in wrongfully inflated sewage disposal
20 charges imposed upon and paid by the plaintiffs and the participant defendants and have damaged
21 them in amounts to be established at trial.

22 82. King County's acts and conduct described above constitute violations of King County
23 Charter § 230.10.10, King County Code 28.86.160.C.1.FP-10, King County sewer bond ordinances
24 and official statements, and RCW 43.09.210, all of which require that sewer revenues and the Water
25

1 Quality Fund be used only for sewage disposal purposes. The County's acts and conduct also violate
2 the other provisions of law described above and the basic principle of municipal law that the funds of
3 a proprietary municipal utility must be used for authorized utility purposes and not for general
4 governmental or other non-utility purposes. Those violations of law have resulted in wrongfully
5 inflated sewage disposal charges imposed upon and paid by the plaintiffs and the participant
6 defendants and have damaged them in amounts to be established at trial, and in the improper
7 diminution of funds held in the Water Quality Fund for the benefit of WTD ratepayers and
8 customers, including the plaintiffs and the participant defendants.

10 **VI. Declaratory, Injunctive and Monetary Remedies**

11 83. There is an actual, present and existing dispute between the plaintiffs and King County
12 concerning: (a) the legality of Brightwater "community mitigation" payments to Snohomish County;
13 (b) King County's use of sewer revenues and the Water Quality Fund for general governmental and
14 other administrative and overhead costs unrelated to sewage disposal or in excess of the 1%
15 contractual limit for "general administrative overhead costs" and the County's failure to "true-up"
16 allocations based on actual expenditures; (c) for payments made to encourage retention of the
17 StockPot business in the local area; (d) the legality of King County's funding of Culver Fund projects
18 with sewer revenues from the Water Quality Fund; (e) the authority of King County to spend sewer
19 revenues or other monies from the Water Quality Fund on costs for the distribution and sale of
20 reclaimed water, and (f) the legality of King County's charges imposed on the WTD and paid for
21 through the WQF when the County chooses to issue LTGO bonds rather than sewer revenue bonds.
22 Accordingly, plaintiffs are entitled to declaratory relief on these matters.
23

24 84. On December 11, 2009, the Court granted Defendant King County's Motion for
25

1 Partial Summary Judgment Dismissing Plaintiffs' Breach of Contract Claims regarding Snohomish
2 County mitigation and also denied plaintiffs' Cross-Motion for Partial Summary Judgment on the
3 Snohomish County mitigation claim.

4 85. On February 5, 2010, the Court granted Defendant King County's Motion for Partial
5 Summary Judgment to Dismiss Plaintiffs' Reclaimed Water Claims and denied plaintiffs' Cross-
6 Motion regarding Reclaimed Water.

7 86. On October 16, 2009, the Court granted Defendant King County's Motion to Dismiss
8 Trust and Fiduciary Duty Claims.

9 87. On October 16, 2009, the Court granted Defendant King County's Motion to Dismiss
10 Claims Based on the Accountancy Act.

11 88. With respect to past expenditures and calculation of sewage disposal charges, King
12 County has caused WTD to incur and pay expenses that should not have been borne by WTD or its
13 customers (including plaintiffs and the participant defendants), and have unlawfully caused the
14 customers to incur and pay overcharges for sewage disposal service. These sums, together with
15 interest thereon, should be reimbursed by the County to the Water Quality Fund and, in turn, should
16 be reimbursed by WTD to the plaintiffs and participant defendants.

17 89. With respect to future expenditures and calculation of future sewage disposal charges,
18 plaintiffs have no adequate remedy at law and are entitled to injunctive relief as to the matters
19 described above.

20 WHEREFORE, plaintiffs pray for judgment against King County (and, insofar as their
21 interests may appear, the other defendants), as follows:

- 22 1. Declaring that the payments made from the Water Quality Fund for improper
23
24
25

1 “community mitigation” expenses unrelated to adverse environmental impacts of Brightwater breach the
2 sewage disposal contracts between the County and the plaintiffs and other participants, violate state law
3 and the County’s own charter and ordinances, and are beyond the authority of King County to make;

4 2. Requiring King County to return to the Water Quality Fund all illegal “community
5 mitigation” payments made since August 6, 2002, together with interest thereon;

6 3. Requiring the Water Quality Fund to reimburse plaintiffs and the participant defendants
7 for excessive sewage disposal charges incurred and paid since August 6, 2002, together with interest
8 thereon, because of such illegal “community mitigation” payments;

9 4. Enjoining King County from making any further improper “community mitigation”
10 payments to Snohomish County;

11 5. Declaring that the allocations made from the Water Quality Fund for expenditures or
12 purposes other than sewage disposal, including, but not limited to, general governmental expenses and
13 other administrative and overhead expenses for purposes other than wastewater treatment and disposal,
14 including excess payments made as a result of the County’s failure to “true-up” allocations based on
15 actual expenditures, or in excess of the 1% contractual limitation for “general administrative overhead
16 costs”, Culver Fund projects, and the payments made to StockPot Soups to induce it to relocate locally,
17 breached the contracts between King County and the plaintiffs and participant defendants and were
18 beyond the authority of King County to make;

19 6. Requiring King County to return to the Water Quality Fund all illegal payments made for
20 purposes other than sewage disposal, including excess payments made as a result of the County’s failure
21 to “true-up” allocations to actual expenditures, or in excess of the 1% contractual limitation for “general
22 administrative overhead costs” since August 6, 2002, together with interest thereon;

1 7. Requiring the Water Quality Fund to reimburse plaintiffs and participant defendants for
2 excessive sewer rates charged since August 6, 2002 because of such illegal allocations, together with
3 interest thereon;

4 8. Enjoining King County from making any further improper allocations or transfers of
5 funds from the Water Quality Fund to King County for purposes other than sewage disposal or in excess
6 of the 1% contractual limitation for “general administrative overhead costs” and requiring King County
7 to “true-up” future allocations based on actual expenditures;

8 9. Declaring that King County is not authorized to make expenditures from sewer revenues,
9 the Water Quality Fund or any other fund on design, construction or operation of infrastructure for the
10 distribution and sale of reclaimed water;

11 10. Requiring King County to return to the Water Quality Fund all money spent on design or
12 construction of infrastructure to distribute or sell reclaimed water, together with interest thereon;

13 11. Enjoining King County from spending any future monies from the Water Quality Fund
14 on infrastructure for the distribution or sale of reclaimed water;

15 12. Declaring that the charge imposed by King County on the WTD and appropriated from
16 the Water Quality Fund for the purported “benefit” received by the utility when the County chooses to
17 issue LTGO bonds rather than sewer revenue bonds is an unauthorized tax on the utility;

18 13. Enjoining King County from imposing the LTGO charge/tax on the WTD or
19 appropriating that charge/tax from the Water Quality Fund;

20 14. Requiring King County to return to the Water Quality Fund all money appropriated from
21 the fund for the LTGO charge/tax, together with interest thereon;

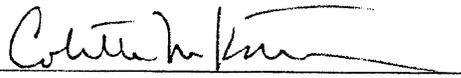
22 15. Awarding plaintiffs and their attorneys, out of any common fund created or preserved as
23
24
25

1 a result of their efforts, reasonable attorney fees, expenses and costs incurred in this action; and

2 16. Awarding plaintiffs such other and further legal and equitable relief as may be just and
3 proper.

4 Dated this 16th day of September, 2010.

5
6 HELSELL FETTERMAN LLP

7 By 

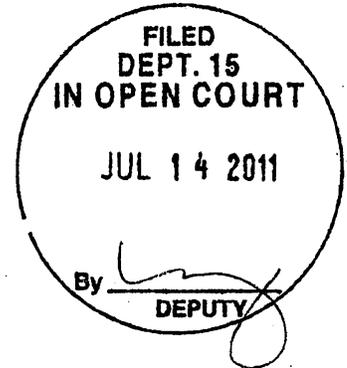
8 David F. Jurca, WSBA #2015

9 Colette M. Kostelec, WSBA #37151

10 Attorneys for Plaintiffs
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Tab F

HONORABLE THOMAS J. FELNAGLE



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SUPERIOR COURT FOR THE STATE OF WASHINGTON
IN AND FOR THE COUNTY OF PIERCE

CEDAR RIVER WATER AND SEWER DISTRICT; and SOOS CREEK WATER AND SEWER DISTRICT,

Case No. 08-2-11167-4

Plaintiffs,

FINDINGS OF FACT AND CONCLUSIONS OF LAW

vs.

KING COUNTY, *et al.*,

Defendants.

I. INTRODUCTION

1. This matter was tried to the Court, without a jury, from February 7 to March 10, 2011. The undersigned judge presided at the trial. The claims presented at trial for adjudication were plaintiffs' claims that defendant King County ("the County") had breached or was breaching its Agreements for Sewage Disposal ("the Contracts") with the plaintiffs, Cedar River Water and Sewer District and Soos Creek Sewer and Water District, and/or otherwise violated Washington law, by:

FINDINGS OF FACT AND CONCLUSIONS OF LAW - 1

LAW OFFICES
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SEATTLE, WASHINGTON 98104
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F-1

1 a. Using up to 1.5 percent of the annual operating budget of the King
2 County Wastewater Treatment Division ("WTD") for certain water quality
3 improvement or other activities not sufficiently closely related to sewage treatment and
4 disposal ("Culver Fund Claims");

5 b. Using the Water Quality Fund ("WQF") to pay StockPot Soups
6 ("StockPot"), a company displaced by construction of the Brightwater Treatment Plant,
7 as an incentive to preserve jobs in the region by relocating locally, (i) approximately
8 \$10 million more for relocation and re-establishment expenses than King County would
9 have paid if StockPot chose to relocate outside of Pierce, Snohomish or King County,
10 and (ii) \$2 million explicitly for job retention, and that such payments were for the
11 general government purpose of job preservation rather than for a sewage disposal
12 purpose ("StockPot Claims");

13 c. Allocating to WTD certain general overhead costs of the County's
14 centralized departments and the Department of Natural Resources and Parks ("DNRP")
15 ("Allocation Claims"); and

16 d. Imposing a "credit enhancement fee" on WTD for the County's issuance
17 of Limited Tax General Obligation ("LTGO") bonds for WTD, although such fees did
18 not represent expenses actually incurred by the County for bond issuance or for sewage
19 disposal ("Credit Enhancement Fee Claims").
20

21 2. Plaintiffs appeared through their attorneys of record, David Jurca and Colette
22 Kostelec of the law firm Helsell Fetterman LLP. Defendant King County appeared at trial
23 through its attorneys of record, Timothy G. Leyh and Randall Thomsen of the law firm
24 Danielson Harrigan Leyh & Tollefson LLP.
25

1 3. After plaintiffs rested their case, defendant King County moved to dismiss all of
2 plaintiffs' claims. On February 28, 2011, in an oral ruling the Court granted the motion to
3 dismiss only on the portion of the Allocation Claims related to the 1% contract provision
4 regarding general administrative overhead costs; that ruling is adopted as part of these Findings
5 and Conclusions. On March 15, 2011, after both parties had rested their cases and made
6 closing argument, the Court made oral rulings resolving the merits of the remaining claims
7 between plaintiffs and King County. That oral ruling also is adopted as part of these Findings
8 and Conclusions.

9 4. Based on the evidence presented at trial, the Court hereby makes the following
10 Findings of Fact and Conclusions of Law regarding plaintiffs' Culver Fund, StockPot,
11 Allocation, and Credit Enhancement Fee claims.

12 **II. GENERAL FINDINGS OF FACT**

13 5. Plaintiffs are two of 34 government and private entities that have Agreements for
14 Sewage Disposal ("Contracts") with King County, as successor-in-interest to the Municipality of
15 Metropolitan Seattle ("Metro"). The parties with such Contracts include numerous cities, utility
16 districts, an Indian tribe, a Washington limited liability company, and the State of Washington.
17 All of these Contracts are similar to plaintiffs' Contracts. Together with the plaintiffs, the
18 entities that have Contracts with the County are sometimes referred to as "component
19 agencies" or "local sewer utilities."
20

21 6. Under the Contracts, the County provides wholesale wastewater treatment and
22 disposal services to plaintiffs and the other local sewer utilities. Plaintiffs and the other local
23 sewer utilities provide wastewater collection services to their customers ("the ratepayers"), and
24 deliver that wastewater to the County for treatment and disposal.
25

1 7. Plaintiffs are sewer and water districts formed and operating under Title 57 of the
2 Revised Code of Washington. Plaintiffs' wastewater flow (calculated as "Residential Customer
3 Equivalentents") comprise over five percent of the total flow served by King County under the
4 Contracts.

5 8. Section 2 of the Contracts states:

6 The District shall deliver to Metro all of the sewage and industrial waste
7 collected by the District and Metro shall accept the sewage and waste delivered
8 for treatment and disposal as hereinafter provided subject to such reasonable
9 rules and regulations as may be adopted from time to time by the Metropolitan
10 Council.

11 9. Section 5 of the Contracts states:

12 Prior to July 1st of each year Metro shall determine its total monetary
13 requirements for the disposal of sewage during the next succeeding calendar
14 year. Such requirements shall include the cost of administration, operation,
15 maintenance, repair and replacement of the Metropolitan Sewerage System,
16 establishment and maintenance of necessary working capital and reserves, the
17 requirements of any resolution providing for the issuance of revenue bonds of
18 Metro to finance the acquisition, construction or use of sewerage facilities, plus
19 not to exceed 1% of the foregoing requirements for general administrative
20 overhead costs.

21 10. The Contracts define "Metropolitan Sewerage System" to mean "all of the
22 facilities to be constructed, acquired, or used by Metro as part of the Comprehensive Plan." The
23 Contracts define "Comprehensive Plan" to mean "the Comprehensive Sewage Disposal Plan
24 adopted in Resolution No. 23 of the Municipality of Metropolitan Seattle and all amendments
25 therefore heretofore or hereafter adopted."

11. The current comprehensive plan referred to in the Contracts is the "Regional
Wastewater Services Plan" ("RWSP"), codified at King County Code §28.86.

12. King County Ordinance 13680, which adopted the RWSP, states:

King County provides conveyance, treatment and disposal of sewage consistent
with the terms of the agreements between Metro and local sewer utilities.
Those agreements provide for the county accepting sewage and industrial waste

1 delivered by those local governments to county's regional wastewater treatment
2 system, subject to such reasonable regulations as may be adopted from time to
time by the council.

3 13. The Municipality of Metropolitan Seattle ("Metro") was a municipal corporation
4 formed in 1958 pursuant to RCW ch. 35.58 for the stated purpose of "metropolitan sewage
5 disposal." In 1972 the voters authorized Metro to engage in the additional function of public
6 transportation. In 1974 statutory references to "sewage disposal" were changed to "water
7 pollution abatement." In 1992 the voters approved the merger of Metro into King County. King
8 County, as the successor to Metro, is authorized by RCW 35.58.200 to engage in water
9 pollution abatement activities, including sewage treatment and disposal, and water-quality
10 improvement. King County performs many of these activities through its Wastewater
11 Treatment Division ("WTD"). King County operates the "WTD" as a proprietary utility.
12

13 14. These activities were formerly performed by Metro for the component agencies
14 under the Contracts.

15 15. The County provides wastewater treatment services at two "regional" wastewater
16 treatment facilities (the West Point Treatment Plant located in Seattle, Washington, and the South
17 Treatment Plant located in Renton, Washington) and two local wastewater treatment plants (the
18 Carnation Treatment Plant located in Carnation, Washington, and the Vashon Island Treatment
19 Plant, located on Vashon Island, Washington).

20 16. WTD currently is constructing a third regional treatment plant in Snohomish
21 County, referred to as the Brightwater Treatment Plant ("Brightwater").
22

23 17. WTD maintains a separate operating account called the "Water Quality Fund"
24 ("WQF") that is comprised largely of sewage treatment revenues. The King County Charter
25 contains the following provision governing the WQF:

1 Each metropolitan function authorized to be performed by the county pursuant to
2 RCW ch.35.58 shall be operated as a distinct functional unit. Revenues or
3 property received for such functions shall never be used for any purposes other
4 than the operating expenses thereof, interest on and redemption of the outstanding
5 debt thereof, capital improvements, and the reduction of rates and charges for such
6 functions.

7 King County Charter § 230.10.10.

8 III. CULVER FUND CLAIMS

9 A. Findings of Fact on Culver Fund Claims.

10 18. The County is the successor to the Municipality of Metropolitan Seattle
11 (“Metro”), a municipal corporation established by regional voters in 1958 for the stated
12 purpose of “metropolitan sewage disposal” and to address local water pollution issues and to
13 enhance water quality in the area’s fresh and salt water bodies. Metro’s functions included
14 development of a sewage treatment system and water-quality improvement activities in the
15 Seattle Metropolitan area.

16 19. The County and Metro merged pursuant to a County-wide voter-approved ballot
17 proposition in 1992. As a result of the merger, the County assumed Metro’s responsibilities.

18 20. The County performs water pollution abatement functions through WTD and its
19 “sister” division, the Water and Land Resources Division (“WLRD”). Both WTD and WLRD
20 are part of the County’s Department of Natural Resources and Parks (“DNRP”).

21 21. In 1988, prior to the merger with the County, Metro formed a special task force,
22 the “Water Quality Program Review Committee,” to review Metro’s responsibilities, authority,
23 programs and funding relating to water quality. The then-mayor of Issaquah, A.J. Culver,
24 chaired the Committee. On June 1, 1988, the Committee issued its “Final Report of the Water
25 Quality Program Review Committee,” commonly referred to as the “Culver Report.”

22. The Culver Report noted that Metro historically had spent about 3.5 percent of

1 its operating funds in areas which arguably were "not absolutely required in order to achieve a
2 regulatory requirement and/or fulfill component agency agreements." The Culver Report
3 concluded that these expenditures directly benefited Metro, and recommended that Metro
4 continue to fund water quality programs including those not directly related to sewage
5 treatment, subject to a limit of 3.5 percent of Metro's operating budget, until the anticipated
6 completion of the Secondary Treatment/CSO program in 1995. This funding source for such
7 expenditures became known as "the Culver Fund."

8 23. Plaintiffs and other local sewer utilities are members of the Metropolitan Water
9 Pollution Abatement Advisory Committee ("MWPAAC"), an advisory body created under
10 RCW 35.58.210. MWPAAC's function is to "advise the metropolitan council in matters
11 relating to the performance of water pollution abatement function."
12

13 24. In 1988, MWPAAC unanimously endorsed the Culver Report conclusions.

14 25. Between the 1988 issuance of the Culver Report and the County's merger with
15 Metro in 1992, Metro continued to make Culver Fund expenditures for water quality programs.

16 26. After the County assumed Metro's functions, a controversy emerged between
17 the County and certain members of MWPAAC with regard to the use of Culver Funds. In
18 1996 the percentage of WTD's operating budget to be used for Culver Fund water quality
19 projects was decreased to 1.5 percent of WTD's operating budget. In 1995, MWPAAC
20 recommended criteria to be used in determining eligibility of water quality project funding
21 using sewer rate revenues. MWPAAC also recommended that Culver funding not exceed
22 1.5% of the 1996 wastewater operating budget and requested that the County ramp down that
23 funding ceiling by 0.5% per year starting in 1997, for a total elimination of all Culver funding
24 by 1999. The King County Council revised its Culver policy in 1996, adopting in part
25

1 MWPAAC's recommendation. The revised policy decreased Culver funding to 1.5 percent of
2 WTD's operating budget without the indexing to WTD's 1996 budget and without the ramp
3 down provision. Instead, as revised, the policy was to remain in effect "until such time as a
4 financial plan for the Surface Water Regional Needs Assessment is developed." Later, in
5 conjunction with sewer contract negotiations, MWPAAC again recommended phasing out the
6 Culver Fund program (this time over five years starting in 2005). King County categorically
7 rejected that recommendation.

8 27. King County classifies wastewater expenditures into three categories as
9 follows: Category I expenses are direct costs incurred for sewage treatment or disposal;
10 Category II expenses are indirect costs incurred for sewage treatment or disposal or that reduce
11 the costs described in Category I (*e.g.*, infiltration and inflow reduction projects); and Category
12 III expenses are costs incurred for Culver Fund projects (*i.e.*, for water quality or other
13 programs not directly or indirectly related to sewage treatment or disposal).
14

15 28. Each year prior to 2011 the King County Council adopted an ordinance
16 appropriating funds from the Water Quality Fund to be used for Culver Fund projects
17 described as Category III expenses.

18 29. As part of the merger between King County and Metro, the region's voters
19 amended the County's charter to create several regional committees, including the "Regional
20 Water Quality Committee" ("RWQC"). The RWQC's role is to "develop, review and
21 recommend countywide policies and plans related to the water pollution control functions
22 formerly provided by the municipality of metropolitan Seattle." Such plans and policies
23 include "water quality comprehensive and long-range improvement plans, service area and
24 extension policies, rate policies, and the facility siting policy and major facilities siting
25

1 process." RWQC members include representatives of the County, sewer and water districts,
2 the City of Seattle, and the suburban cities association. At all relevant times herein, Walt
3 Canter, Commissioner for Plaintiff Cedar River, has been a member of the RWQC and has
4 represented the sewer and water districts on that committee.

5 30. The County performs its water pollution abatement functions in accordance
6 with a comprehensive plan created pursuant to RCW 35.58.200. The County adopted the
7 current comprehensive plan – referred to as the "Regional Wastewater Services Plan"
8 ("RWSP") – in 1999. The RWSP is the current version of the "comprehensive plan" referred
9 to in the Contracts.

10 31. Prior to adoption of the RWSP, the RWQC held a special meeting in 1998 at the
11 Robinswood Retreat Center in Bellevue, Washington.

12 32. A key result of the Robinswood meeting was a Three Musketeers philosophy of
13 one for all and all for one, which stressed a regional approach to the question of sewage
14 treatment and water quality. It acknowledged that all have to work together to solve problems.

15 33. In 1999, the County incorporated a Culver Fund policy in the RWSP. The
16 provision was codified in the King County Code at § 28.86.160C.1 as Financial Policy 5 ("FP-
17 5"). FP-5 provided as follows:

18
19 Water quality improvement activities, programs and projects, in addition to
20 those that are functions of sewage treatment, may be eligible for funding
21 assistance from sewer rate revenues after consideration of criteria and
22 limitations suggested by the metropolitan water pollution abatement advisory
23 committee, and, if deemed eligible, shall be limited to one and one half percent
24 of the annual wastewater system operating budget. An annual report on
25 activities, programs and projects funded will be made to the RWQC. This
policy shall remain in effect until such time as a financial plan for the surface
water regional needs assessment is adopted and implemented.

1 34. In 2006, the County amended this policy. This policy was renumbered at that
2 time as Financial Policy 8 ("FP-8"), and the last sentence of the policy was changed to state as
3 follows: "Alternative methods of providing a similar level of funding assistance for water
4 quality improvement activities shall be transmitted to the RQWC and the council within seven
5 months of policy adoption." In response to the directive in renumbered FP-8, the County
6 Executive issued the Alternatives to Culver Report in April 2007. The report contained a
7 history of Culver and a summary of Culver expenditures from 1997 to 2007. The Executive
8 reviewed the following alternative funding sources for financing Culver projects: general
9 fund, levy lid lift, endowment fund, and Flood Control Zone District, but concluded that none
10 of the alternatives were viable and therefore recommended continuing with the status quo but
11 with a cap at the 2007 levels with inflationary adjustments.

12 35. The RWSP adopted by the King County Council in 1999 also included a
13 Financial Policy 7 (later renumbered in 2006 as Financial Policy 10), which provided:

14 The assets of the wastewater system are pledged to be used for the exclusive
15 benefit of the wastewater system including operating expenses, debt service
16 payments, asset assignment and the capital program associated therewith. The
17 system shall be fully reimbursed for the value associated with any use or
18 transfer of such assets for other county purposes.

19 KCC § 28.86.160.C.1.FP-10.

20 36. In 1999 MWPAAC, including plaintiffs, unanimously approved the RWSP.

21 37. In part because of the previous controversy surrounding Culver Fund projects,
22 the County has exercised vigilance to ensure that the Culver projects did have a relation to the
23 functions of WTD and benefit the wastewater system.

24 38. Activities and projects funded by the Culver Fund are primarily education and
25 water-quality programs, with a number of the activities and projects serving both wastewater

1 treatment and water quality goals. One example is the “daylighting” of Ravenna Creek by
2 Earthcorps, where a natural creek bed was recreated and creek water was removed from
3 stormwater pipes conveying water into the County’s wastewater treatment plants.

4 39. The County’s witnesses at trial established the relationship between wastewater
5 treatment and water quality improvements. For example, they pointed out that you can’t
6 divorce treatment costs from the quality of the water that WTD is discharging into. They
7 showed the effect of nutrients in effluent discharged from the wastewater treatment plants and
8 “combined sewer overflow” (“CSO”) facilities. They also identified vector waste, non-point
9 source pollution, stormwater disposal, and increasing demands by federal and state regulators
10 as other examples of water-quality issues related to wastewater treatment.

11 40. WTD maintains a separate operating account called the “Water Quality Fund”
12 (“WQF”) that is comprised largely of sewage treatment revenues. The WQF is the source of
13 money for Culver Fund expenditures. The Culver Fund money is transferred from the WTD to
14 WLRD and then is paid to recipients of the funds. The King County Council and WLRD
15 decide on what specific projects should be funded by the Culver Fund. Culver Fund
16 expenditures are administered by WLRD, not by WTD.

17 41. The projects and activities funded by the Culver Fund are not a “raid” on the
18 WQF, but result in identifiable benefits to water quality and/or sewage treatment and disposal
19 in the region, and are reasonably necessary to the operation of the wastewater treatment
20 system.

21 42. The projects and activities funded by the Culver Fund are costs of administration
22 and operation of the Metropolitan Sewerage System.

23 **B. Conclusions of Law on Culver Fund Claims**
24
25

1 Based on the foregoing Findings of Fact, the Court issues the following Conclusions of
2 Law on the Culver Fund Claims.

3 43. Plaintiffs are not barred by the doctrines of estoppel, acquiescence, waiver, or
4 accord and satisfaction from maintaining their claims relating to the Culver Fund.

5 44. Neither the statute of limitations nor the doctrine of laches bars plaintiffs'
6 claims relating to the Culver Fund.

7 45. Wastewater treatment is a broad enough concept to include water quality. For
8 example, see 33 U.S.C § 1251 *et seq.* and RCW 35.58.200.

9 46. King County, as Metro's successor, is authorized by RCW 35.58.200 to engage
10 in water pollution abatement activities, including activities related to sewage treatment and
11 disposal, and water quality improvements including the Culver Fund activities at issue in this
12 lawsuit.

13 47. King County has express statutory authority to include in sewage treatment
14 rates the costs for Culver Fund projects and activities under RCW 35.58.200(4), which
15 authorizes the County
16

17 to fix rates and charges for the use of metropolitan water pollution abatement
18 facilities, and to expend the moneys so collected for authorized water pollution
abatement activities.

19 All Culver Fund activities and projects at issue in this lawsuit are for water pollution abatement
20 as defined by the statute, and relate directly and indirectly to sewage treatment and disposal.

21 Plaintiffs have failed to carry their burden of establishing that the County lacks the legal
22 authority to include Culver expenditures in calculating the sewage system's total monetary
23 requirements under the Contracts.
24
25

1 48. Financial Policy 8 (quoted above) authorizes the County to engage in water
2 quality improvement activities, programs, and projects, in addition to those that are functions
3 of sewage treatment, after consideration of criteria and limitations suggested by MWPAAC,
4 and to fund those projects from sewer rate revenues up to 1.5 percent of the annual wastewater
5 system's operating budget. The Culver Fund expenditures at issue in this case were properly
6 determined to be eligible for funding from sewer rate revenues after consideration of criteria
7 and limitations suggested by MWPAAC, and did not exceed 1.5 percent of the annual
8 wastewater system operating budget.

9 49. The Contracts between the County and plaintiffs expressly contemplate that the
10 component agencies are subject to the County's reasonable rules and regulations as they may be
11 enacted and evolve over time, and that the County will operate its wastewater treatment facilities
12 pursuant to a Comprehensive Plan that evolves over time. These evolving obligations include the
13 component agencies' obligations to pay for water pollution abatement activities, including water
14 improvement activities. The reasonable rules and regulations referenced in the Contracts include
15 the RWSP enacted in 1999, and the Culver Fund policy (Financial Policy 8) contained therein.

16 50. The Contracts require the component agencies to pay for "total monetary
17 requirements for the disposal of sewage during the next succeeding calendar year," including
18 but not limited to "the cost of administration, operation, maintenance, repair and replacement
19 of the Metropolitan Sewerage System." Those requirements and costs include the County's
20 Culver Fund expenditures.

21 51. The *Okeson* line of cases (*see, e.g., Okeson v. City of Seattle*, 150 Wn.2d 540,
22 78 P.3d 1279 (2003)) does not apply to plaintiffs' Culver Fund claims because King County
23 has express statutory authority to include Culver Fund expenditures in the monetary
24
25

1 requirements of the Metropolitan Sewerage System, and because the parties' rights and
2 obligations here are defined by the Contracts. However, applying *Okeson* by analogy, the
3 evidence has established a sufficiently close nexus between the Culver Fund expenditures and
4 the purpose and object the legislature intended to serve in authorizing Metro (now King
5 County) to act under RCW 35.58.200.

6 52. Moreover, applying analogously the other requirements of the implied authority
7 test of *City of Tacoma v. Taxpayers of Tacoma*, 108 Wn.2d 679, 695, 743 P.2d 793 (1987), the
8 County exercises a proprietary power in treating and disposing of sewage; the Culver Fund
9 expenditures are not contrary to express statutory or constitutional limitations; and plaintiffs
10 have failed to establish that the County acted unreasonably or arbitrarily and capriciously in
11 including Culver Fund expenditures in the total monetary requirements for the disposal of
12 sewage. The County's use of the Water Quality Fund for Culver water quality expenditures
13 has been reasonable, lawful and proper.

14 53. Plaintiffs bear the burden of establishing by a preponderance of the evidence
15 that the County's Culver Fund expenditures breach the Contracts and/or violate Washington
16 law. Plaintiffs have failed to carry that burden.

17 54. Plaintiffs' claims for damages, declaratory and injunctive relief relating to the
18 Culver Fund should be dismissed with prejudice.

20 IV. STOCKPOT CLAIMS

21 A. Findings of Fact on StockPot Claims

22 55. The RWSP calls for construction of a new sewage treatment plant in the "north
23 service area." KCC 28.86.050.TPP-2. The new sewage treatment plant is referred to as the
24 Brightwater Treatment Plant ("Brightwater").
25

1 56. The County selected a location along State Route 9 in South Snohomish County
2 as the site for Brightwater. This site included the five-acre Woodinville North Business Park.
3 StockPot Soups (“StockPot”), a subsidiary of the Campbell Soup Company, operated at the
4 Woodinville North Business Park.

5 57. StockPot had built and operated a manufacturing facility at the Woodinville
6 North Business Park for the production and distribution of specialty soups to restaurants and
7 other customers throughout the United States. StockPot employed more than 300 people at the
8 site.

9 58. Between approximately 2002 and 2004, StockPot and the County were engaged
10 in a dispute regarding whether King County would condemn the StockPot property in order to
11 construct Brightwater, and, if so, the appropriate payments to be made to StockPot for its real
12 property interests and for relocation assistance under the Washington Relocation Assistance
13 Act, RCW 8.26 *et seq.* and regulations and King County’s Wastewater Treatment Division
14 Real Property Acquisition and Relocation Policies, Procedures and Guidelines (“Relocation
15 Policies”).
16

17 59. StockPot objected to the County’s Draft and Final Environmental Impact
18 Statements for Brightwater and the County’s initial decision to not condemn the StockPot
19 property if the Route 9 site were selected. StockPot contended that the siting, construction, and
20 operation of Brightwater would cause significant adverse impacts to its business.

21 60. Recorded Conditions, Covenants, and Restrictions (“CCRs”) prohibited the use
22 of any portion of the Woodinville North Business Park for the processing of sewage. The
23 County concluded that the only way to avoid those covenants was to acquire all of the
24 Woodinville Business Park.
25

1 61. On December 8, 2003 StockPot appealed the County's Final Environmental
2 Impact Statement ("FEIS") for Brightwater which the County had issued in November 2003.

3 62. In March 2004, the County notified StockPot of its intent to condemn
4 StockPot's real property and of StockPot's eligibility to receive relocation assistance under the
5 County's Relocation Policies.

6 **1. Relocation Assistance Payments**

7 63. On July 6, 2004, King County and StockPot entered into an initial Settlement
8 Agreement, under which StockPot agreed to withdraw its appeal of the FEIS and King County
9 agreed that before it began construction of Brightwater, it would either become the vested
10 owner of the StockPot property or take possession and use under applicable eminent domain
11 laws. King County further agreed to "take all necessary and appropriate steps to provide
12 StockPot with relocation assistance . . . in accordance with all applicable federal, state and
13 local laws," and the parties agreed to meet weekly over the next 90 days in an attempt to work
14 out a mutually-agreed relocation agreement. In that initial Settlement Agreement, StockPot did
15 not release any other rights or claims that it may have had against the County.
16

17 64. On October 4, 2004, the King County Council adopted Ordinance 15039,
18 authorizing condemnation of the StockPot real property. The Ordinance provided that the
19 condemnation was for the public purpose of constructing Brightwater and in the best interest of
20 the ratepayers of the regional wastewater system. The Ordinance further provided that the
21 County would provide relocation assistance to the property owners, tenants and businesses
22 forced to relocate as a result of the acquisition of the StockPot property, consistent with federal
23 and state law and the County's Relocation Policies.
24
25

1 65. King County and StockPot subsequently engaged in lengthy negotiations
2 regarding the value of StockPot's real property, the amount and types of relocation assistance
3 to which StockPot was entitled, and other issues related to the County's condemnation,
4 StockPot's tenancy, and StockPot's relocation. StockPot negotiated aggressively and initially
5 demanded \$32 million in relocation benefits, which the County was unwilling to pay.

6 66. Reaching a resolution with StockPot was critical to the County's Brightwater
7 construction schedule. The StockPot issues were complex, described by a County witness as
8 like "playing three-dimensional chess." The County also faced upcoming negotiations with
9 other parties such as Snohomish County, the entity that would issue or deny building and land-
10 use permits for Brightwater. King County wanted the StockPot negotiations to set an
11 appropriate tone for future negotiations.

12 67. In January 2005, King County and StockPot entered into an "Agreement for the
13 Purchase and Sale of Property in Lieu of Condemnation" ("Final Agreement"), by which
14 StockPot could choose one of two potential options, with different amounts to be paid by the
15 County under each. The options were referred to in the Final Agreement as the "Local
16 Replacement Site Administrative Settlement Amount" ("Local Option") and a "Non-Local
17 Replacement Site Administrative Settlement Amount" ("Non-Local Option").

18 68. The Local Option described the relocation benefits King County would pay if
19 StockPot relocated in Snohomish, King or Pierce Counties. The Non-Local Option described
20 the relocation benefits King County would pay if StockPot relocated outside of those three
21 counties.
22

23 69. StockPot contended that its business would be destroyed if it was required to
24 shut down operations for more than 72 hours. StockPot claimed that its operations involved
25

1 “just-in-time” delivery of products with a very short shelf life, and it delivered fresh product
2 throughout the country.

3 70. The County at first was skeptical of StockPot’s claim that it could not be shut
4 down for more than 72 hours. However, the County conceded that StockPot could suffer
5 serious business losses if it were shut down for longer than 72 hours. It also appeared to the
6 County that it would be physically impossible to relocate StockPot’s business in less than 30 to
7 60 days because of the complexity of its operations. StockPot’s inability to be shut down
8 longer than 72 hours required that StockPot have a new facility ready to open when it closed
9 the doors of its existing plant. This meant the County had to provide certain relocation
10 assistance to accommodate StockPot, including substitute personal property. The County
11 believed that StockPot’s inability to be shut down for more than 72 hours made providing
12 substitute personal property to StockPot “reasonable and necessary” under applicable law.
13

14 71. During the negotiations with StockPot, King County developed a suspicion that
15 StockPot already was considering moving out of the Puget Sound area for business reasons
16 independent of the County’s condemnation of the StockPot property. The County reasoned
17 that if StockPot already had a business plan to move out of the area, StockPot already would
18 have addressed the company’s need for virtually-continuous operation. The County concluded
19 it would not pay for substitute personal property if StockPot were leaving the region pursuant
20 to its own business plans.

21 72. The County’s position was not unreasonable. During settlement negotiations,
22 StockPot had threatened to move out of the area and had stated that it would soon outgrow its
23 Woodinville North Business Park facility. The County also understood that StockPot had
24 acquired the Woodinville facility as a business experiment, to see if it wanted to expand that
25

1 line of business. The County understood that StockPot's nationwide distribution costs would
2 be lower if it had a more centrally-located facility.

3 73. The County concluded that if StockPot chose to relocate outside the region,
4 reimbursing StockPot for substitute personal property to accommodate StockPot's inability to
5 be shut down for more than 72 hours was not reasonable or necessary. The County did not
6 want to give StockPot the opportunity to use the condemnation as a vehicle for obtaining
7 reimbursement of costs that StockPot incurred in leaving the Puget Sound region for its own
8 businesses reasons.

9 74. Under the Non-Local Option, applicable if StockPot relocated outside of the
10 region, the County agreed to pay StockPot \$5.5 million for relocation and re-establishment
11 expenses.

12 75. If StockPot chose to relocate locally, the County could be assured that the
13 reason for the relocation was the County's condemnation of StockPot's property. The County
14 determined that in that event, because it was impossible to move StockPot within 72 hours,
15 Washington law and the County's Relocation Policies required the County to reimburse
16 StockPot for its reasonable and necessary costs, including the costs of substitute personal
17 property plus installation and connections to enable StockPot to operate continuously. The
18 County calculated those costs at approximately \$16.17 million. This was the cap that the
19 County offered for the Local Option in the Final Agreement (prior to amendments to the cap,
20 as described below).
21

22 76. The County recognized that offering to pay StockPot less money for a non-local
23 move was a risky strategy. StockPot could have rejected both options and sought
24 reimbursement for substitute personal property in a non-local move. The difference between
25

1 the amounts the County offered under the Local and Non-Local Options reflects the County's
2 attempt to create a disincentive to StockPot for leaving the area. It should come as no surprise
3 that the County would put a political spin on this agreement and characterize it in press
4 releases as an incentive payment to encourage the company to stay within the region.

5 77. In the Final Agreement, the County and StockPot capped the amounts to be paid
6 under both the Local and Non-Local Options. Under either Option, StockPot was required to
7 document its actual relocation expenses for the County, which would review the
8 documentation and, upon approval, reimburse StockPot up to the amount of the agreed-upon
9 cap.

10 78. To determine the cap under the Local Option, the County inventoried the
11 equipment in StockPot's facility that would be replaced at a new facility to allow StockPot to
12 operate continuously. An independent appraiser determined the value "in place" of the
13 personal property that would be replaced. The total cost of the substitute personal property,
14 plus estimated installation and connection costs, formed the basis of the cap in the Local
15 Option.
16

17 79. But for the construction of Brightwater, the County would not have made any
18 relocation payments to StockPot.

19 80. StockPot chose the Local Option and relocated in Snohomish County.

20 81. The Final Agreement was amended several times. Under the first amendment,
21 certain equipment was removed from the list of Acquired Personal Property and the
22 \$16,170,000 relocation payment to StockPot was reduced to \$15,655,000. Under the second
23 amendment, dated September 19, 2007, additional equipment was removed from the list of
24 Acquired Personal Property and StockPot reimbursed the County \$178,019.20. Under the third
25

1 and final amendment, StockPot agreed to a deduction of \$120,350 to account for equipment
2 either improperly removed by StockPot or not delivered to the County in good working order.
3 As a result of these amendments to the Final Agreement, King County was obligated to pay,
4 and did pay, StockPot a total of \$24,814,650 (\$7,280,000 for the StockPot building,
5 \$15,534,650 for relocation and re-establishment expenses, and \$2,000,000 for "job retention,"
6 discussed below) as follows:

- 7 (i) \$7,280,000 on February 22, 2005;
8 (ii) \$4,799,405.07 on April 18, 2006;
9 (iii) \$6,510,699.79 on June 26, 2006;
10 (iv) \$4,344,895.14 on November 17, 2006;
11 (v) \$1,749,300 on August 18, 2007; and
12 (iv) \$130,350 on July 16, 2008.

13
14 82. StockPot documented its relocation expenses to the County by providing
15 detailed invoices showing its expenditures. The County reviewed and approved the invoices
16 before it reimbursed StockPot for its relocation expenses. StockPot submitted invoices in
17 excess of the cap for relocation expenses, but the County reimbursed StockPot only up to the
18 negotiated cap, as amended.

19 83. The Final Agreement between the County and StockPot resolved all disputes
20 between them and cleared key obstacles to the timely construction of Brightwater.

21 84. The County's relocation payments to StockPot were capital costs reasonably
22 necessary for the siting and construction of Brightwater.

23
24 **2. Job Retention Funding**

1 85. The County was justifiably concerned in January 2005, when it entered into its
2 Final Agreement with StockPot, that it would need to obtain a Conditional Use Permit
3 (“CUP”) from Snohomish County in order to construct Brightwater.

4 86. At the time of the Final Agreement between King County and StockPot, King
5 County was involved in a contentious dispute with Snohomish County regarding the validity of
6 the Essential Public Facilities ordinance No. 04-019 which included provisions for adequate
7 mitigation.

8 87. On May 24, 2004, the Growth Management Hearing Board (“GMHB”) issued
9 an Order Finding the EPF Ordinance invalid.

10 88. Snohomish County appealed the GMHB’s Order. As of January 2005 when the
11 Final Agreement with StockPot was executed, Snohomish County’s appeal was pending in the
12 Thurston County Superior Court.

13 89. In the Final Agreement, the County agreed to pay StockPot an additional \$2
14 million for job retention if StockPot selected the Local Option and met certain other
15 conditions, including maintaining at least 300 employees for at least five years, and investing
16 at least \$35 million in land, improvements, and equipment at its new local site.

17 90. The County effectively paid \$2 million to StockPot out of the Water Quality
18 Fund for job retention on August 18, 2007. \$1,749,300 of that amount was paid in the form of
19 cash; the remaining \$250,700 was “paid” in the form of a holdback based on the County’s
20 claim that equipment having that value that should have been left on the site by StockPot and
21 conveyed to the County was either defective or missing. The amount of the “holdback” was
22 later compromised, and resulted in the payment by the County of an additional \$130,350 to
23 StockPot on July 16, 2008 for the equipment that had been claimed to be defective or missing.
24
25

1 91. The \$2 million paid to StockPot for job retention was not a relocation expense
2 to which StockPot was entitled; there was no showing that StockPot property could not have
3 been obtained without it. It was a general community-wide investment made to benefit the
4 region's economy as a whole, primarily benefiting the public and not ratepayers.

5 92. The County's job retention fund for StockPot was not a cost of the Metropolitan
6 Sewerage System and no part of it should have been paid out of the Water Quality Fund or
7 charged to the component agencies or included in the System's total monetary requirements
8 under Section 5 of the Contracts.

9 **B. Conclusions of Law on StockPot Claims**

10 Based on the foregoing Findings of Fact, the Court issues the following Conclusions of
11 Law on the StockPot claims.

12 **1. Relocation Assistance Payments**

13 93. All relocation expense reimbursements to StockPot by the County were legal
14 and authorized costs of siting and constructing Brightwater, a sewage disposal facility.
15

16 94. The StockPot relocation expenditures at issue in this lawsuit are capital costs of
17 Brightwater.

18 95. StockPot was entitled to payment from the County of its actual reasonable and
19 necessary expenses of moving its business and personal property. RCW 8.26.035(1)(a); WAC
20 468-100-301(1(a)); Relocation Policy 8.1.1.

21 96. King County's reimbursement to StockPot of its relocation and re-establishment
22 expenses in the amount of \$15,534,650, which included reimbursement of the cost of substitute
23 personal property, plus installation and connection costs, was reasonable, necessary and lawful,
24 was properly paid out of the Water Quality Fund, and was not arbitrary and capricious.
25

1 97. The amount that King County and StockPot agreed that the County would pay
2 StockPot under the Local Option had a reasonable and rational basis. The difference in the
3 amounts that the County would pay StockPot under the Local versus the Non-Local Option
4 was reasonable and rational and reflected, in part, the County's desire to create a disincentive
5 for StockPot to relocate non-locally. The amount the County paid StockPot for relocation
6 assistance does not exceed the amount reasonably required under the relevant statutes and
7 policies.

8 98. King County did not reimburse StockPot more in relocation expenses than
9 StockPot was entitled to receive under Washington law and the County's Relocation Policies.

10 99. The County's reimbursement to StockPot of StockPot's relocation expenses was
11 made pursuant to reasonable, good faith settlement of a bona fide dispute.

12 100. StockPot relocation expenditures, as costs associated with the County's capital
13 program, also are authorized by the King County Code Financial Policy 10. Financial Policy
14 10 provides:

15
16 The assets of the wastewater system are pledged to be used for the exclusive
17 benefit of the wastewater system including operating expenses, debt service
18 payments, asset assignment and the capital program associated therewith. The
19 system shall be fully reimbursed for the value associated with any use or
20 transfer of such assets for other county purposes.

21 KCC § 28.86.160.C.1.FP-10.

22 101. Plaintiffs failed to bear the burden of establishing by a preponderance of the
23 evidence that the County's relocation payments to StockPot breach the Contracts and/or violate
24 Washington law.

25 102. Plaintiffs' breach-of-contract, declaratory, and injunctive claims relating to the
StockPot relocation expenses should be dismissed with prejudice.

2. **Job Retention Funding**

103. The County's \$2 million job retention payment to StockPot was not a relocation expense to which StockPot was entitled under the Washington Relocation Act and regulations and the County's Relocation Policies.

104. Payment of \$2 million to StockPot for job retention was not proper "mitigation" of impacts of the siting, construction, and operation of Brightwater.

105. The County lacked authority to use the Water Quality Fund for any portion of the \$2 million job retention payment to StockPot, and it breached the Contracts by making the job retention payment out of that Fund.

106. The \$2 million job retention payment primarily benefited the general public and thus should have come from a funding source other than the Water Quality Fund.

107. The County is obligated to reimburse the Water Quality Fund for the \$2 million job retention payment to StockPot that was improperly made out of the Water Quality Fund, together with 12% prejudgment and postjudgment interest thereon until paid. Plaintiffs' request for an award of common fund attorney fees based on the recovery for the Water Quality Fund is reserved for consideration by the Court following resolution of any appeals from the judgment to be entered based on these findings and conclusions.

V. CENTRALIZED COST ALLOCATIONS

A. Findings of Fact on Centralized Cost Allocation Claims

108. The County centralizes certain functions to streamline its operations and minimize costs. The County allocates a portion of the cost of its centralized functions to operating departments that benefit from those functions, such as WTD.

109. The County allocates central services costs through the use of cost pools. A

1 cost pool is a group of County departments, divisions, or units that provide centralized services
2 to a number of the County's operating departments or divisions.

3 110. One of the County's cost pools is the "General Government Cost Pool," which
4 has historically included the costs of the County Council, County Executive, Office of the
5 County Executive, the Council Administrator, the County Auditor, the Department of
6 Executive Services Administration, King County Civic Television, and the Office of Economic
7 and Financial Analysis, and on occasion includes other expenses such as the periodically-
8 constituted Charter Review Commission.

9 111. For the 2008 budget and thereafter, the County has excluded the costs of the
10 elected County Executive and the elected County Councilmembers from the General
11 Government Cost Pool. As a result, those costs are no longer allocated; however, the staff for
12 the Executive and Councilmembers are still included in the allocated cost pool.
13

14 112. The County allocates the General Government Cost Pool based on the "direct
15 budgeted cost method," by which a particular operating department's actual operating expenses
16 in the last year for which the information is available (usually two years prior to the budget
17 year being developed), is divided by the actual expenses of the County as a whole for that year.
18 The resulting fraction then is multiplied by the budgeted costs of the General Government Cost
19 Pool for the budget year being developed. That product is allocated to the particular operating
20 department. In the "13th month" reconciliation in the January following the calendar year in
21 question, the County determines its actual expenses of all of the cost pools for the prior
22 calendar year, but prior to 2010 it did not do a "true-ing up" of the allocations to the operating
23 departments based on the actual expenses.
24
25

1 113. In 1994, soon after King County took over from Metro, Deloitte & Touche
2 ("D&T") was retained by the County to review overhead allocation methodologies. D&T
3 found that while the most accurate allocation method was the most equitable, and that time
4 charges were generally the most accurate, the most equitable method was not the most cost
5 effective. Because time charge data was not readily available, D&T recommended the direct
6 budgeted cost allocation methodology to the County. The County had requested that Deloitte
7 & Touche recommend an allocation methodology that would be consistent with the County's
8 Code. Deloitte & Touche recommended the direct budgeted cost method, which the County
9 adopted and currently employs.

10 114. The County allocates General Government Cost Pool expenses to all operating
11 departments and divisions, including WTD.

12 115. WTD receives significant benefit from the work performed by the units that
13 comprise the General Government Cost Pool. But for the performance of those functions on a
14 centralized basis by the units in the General Government Cost Pool, WTD would have to
15 employ other employees and managers to perform those functions for itself.

16 116. The State Auditor, in an "Accountability Audit Report" issued on September
17 27, 2005, and a "Performance Audit Report" issued on September 16, 2009, issued findings
18 stating that the County's general government cost pool overhead allocations to WTD were not
19 properly documented.

20 117. Sufficient documentation exists to support the County's allocations. During the
21 course of the 2009 performance audit, the County offered to provide documents to the
22 Auditor's representative, including meeting minutes, staff reports and rate models, but the
23 Auditor did not accept the County's offer to review that documentation.
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25

1 118. The 2005 and 2009 audits did not say that the County should use a different
2 methodology for allocating costs of the units within the General Government Cost Pool. The
3 subject also was not raised in other, financial audits by the State Auditor between 2005 and
4 2010.

5 119. The County's methodology for allocating the General Government Cost Pool is
6 reasonable and consistent with County policy. There is no single "best practice" for allocating
7 centralized costs to operating departments. The Contracts do not require that any particular
8 methodology be used in allocating centralized expenses.

9 120. King County surveyed other jurisdictions regarding their methodologies for
10 allocating the costs of centralized services. The surveys supported the methodology used by
11 the County.

12 121. Plaintiffs made no showing that a "time sheet" or other "time charges" method
13 would provide a better match than the methodology the County currently employs. A time
14 sheet or time charges method could cost more than it would save. Furthermore, a time sheet or
15 time charges method would not necessarily yield more accurate results, because of the
16 complexity of the work performed by the units in the General Government Cost Pool and the
17 multiple and overlapping tasks undertaken for various County departments or divisions at any
18 particular time.

19 122. Plaintiffs did not establish that the County's current methodology does not
20 accurately reflect the benefit of services received by WTD from the entities in the General
21 Government Cost Pool. Moreover, plaintiffs did not establish that allocations to WTD would
22 be lower if the State Auditor had reviewed additional documentation. Therefore, even if
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1 plaintiffs had established that the County used an improper allocation methodology, there is no
2 proof of any injury to plaintiffs.

3 123. In the 2009 performance audit, the Auditor pointed out that the County failed to
4 perform a "true up" of the general government costs that had been allocated to the WTD on the
5 basis of estimated costs after the actual costs became known. The Auditor did not explicitly
6 say that the County was required to perform a retroactive "true up." Nevertheless, the County
7 agreed to begin to "true up" the budgeted costs of centralized government services with actual
8 expenditures after the end of each fiscal year, beginning in 2010.

9 **B. Conclusions of Law on Centralized Cost Allocation Claims**

10 Based on the foregoing Findings of Fact, the Court issues the following Conclusions of
11 Law on the allocation claims.

12 124. RCW 43.09.210, the State Accountancy Act, states in pertinent part:

13 All service rendered by, or property transferred from, one department, . . . to
14 another, shall be paid for at its true and full value by the department, . . .
15 receiving the same, and no department, . . . shall benefit in any financial manner
16 whatever by an appropriation or fund for the support of another.

17 This statute applies to services rendered to WTD by other departments, divisions, and branches
18 of King County government, including the departments, divisions, and units in the General
19 Government Cost Pool.

20 125. King County Code § 4.04.045 allows for the allocation of centralized expenses,
21 specifically including "estimated overhead charges," to benefited funds, when certain
22 requirements are met. King County Code § 4.04.045 states in relevant part:

23 A. The current expense fund may allocate costs to other county funds if it
24 can be demonstrated that other county funds benefit from services
25 provided by current expense funded agencies.

B. Wherever possible, the current expense cost to be allocated shall equal
the benefit received by the county fund receiving the charge.

1 C. Recognizing that many current expense services are indirect and not
easily quantifiable, overhead charges may be estimated.

2 D. Estimated overhead charges shall be calculated in a fair and consistent
3 manner, utilizing a methodology which best matches the estimated cost
of the services provided to the actual overhead charge.

4 126. KCC § 4.04.045 provides the standard by which centralized cost allocations to
5 WTD, including those allocated within the General Government Cost Pool, should be
6 evaluated.

7
8 127. "Best match" under KCC § 4.04.045 is broader than simply the most "accurate"
9 or "equitable," and may take into account cost-effectiveness as well as accuracy, fairness, and
10 consistency. There may be more than one allocation approach that results in the "best match"
11 under particular circumstances.

12 128. Plaintiffs bear the burden to establish that the County's allocation approach
13 violates KCC § 4.04.045, and that the General Government Cost Pool allocations to WTD are
14 unauthorized and/or breach the Contracts.

15 129. Plaintiffs have not carried their burden of proof. Plaintiffs have not shown that
16 WTD does not benefit from the centralized services of the General Government Cost Pool
17 whose costs are allocated to WTD; the evidence is to the contrary. Moreover, plaintiffs have
18 not established that the allocation method used by the County is unfair, applied inconsistently,
19 or does not "best match" the estimated cost of the services to the actual allocated charges.

20
21 130. The County's allocation methodology satisfies the requirements of KCC §
22 4.04.045. The County has established sufficient benefit to WTD from the services provided by
23 the units within the General Government Cost Pool. It also has established that it calculates
24 estimated charges in a fair and consistent manner, utilizing a methodology that best matches
25 the estimated cost of the services provided to the actual allocated charges.

FINDINGS OF FACT AND CONCLUSIONS OF
LAW - 30

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1 131. The County's allocation method is consistent with GAAP principles of
2 accounting. It does not include expenditures related to WTD's capital program.

3 132. There is nothing in the law or the facts of this case that requires the County to
4 perform a retroactive "true-up" of centralized costs allocated to WTD. The results of such a
5 true-up would be immaterial in the context of WTD's and/or the County's overall annual
6 budgets. Plaintiffs have not established any reasonable basis for requiring the County to
7 perform a retroactive true-up.

8 133. The allocated costs at issue in this lawsuit are costs of "administration,
9 operation [or] maintenance . . . of the Metropolitan Sewerage System" under Section 5 of the
10 Contracts, properly included in the total monetary requirements of the Sewerage System and in
11 the sewage disposal rates. The County did not violate Washington law or breach the Contracts
12 in its allocations of centralized expenses to WTD.

13 134. Plaintiffs' claims for breach of contract and declaratory and injunctive relief
14 relating to the centralized allocations should be dismissed with prejudice.
15

16 VI. LTGO BONDS CREDIT ENHANCEMENT FEE CLAIMS

17 A. Findings of Fact on LTGO Bonds Credit Enhancement Fee Claims

18 135. King County issues two kinds of bonds to finance WTD capital projects:
19 revenue bonds, payable from sewer revenues, and limited tax general obligation ("LTGO")
20 bonds, paid first by sewer revenues but also secured by the County's "full faith and credit" – in
21 particular, a pledge of County property tax revenues if sewer revenues are insufficient to pay
22 the bonds. The latter are known as "double-barreled bonds" since they are secured by two
23 payment means.
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1 136. In 2003, the County began charging WTD and other County departments and
2 divisions a "credit enhancement fee" for the County's LTGO bonds issued on behalf of WTD
3 or other departments or divisions.

4 137. The County issued new LTGO bonds for WTD's capital program in 1994 (\$170
5 million), 1995 (\$90 million), 1996 (\$130,965,000), 1998 (\$261,625,000), 2005 (\$200 million),
6 2008 (\$236,950,000), 2009 (\$300 million), and 2010 (\$100 million). Each of these bond
7 issuances was for the purpose of obtaining proceeds to fund WTD's capital projects or to retire
8 bonds that had been issued previously for that purpose.

9 138. The County's credit enhancement fee charged to WTD is calculated as one-half
10 of the estimated difference in the financing costs that WTD would incur were the County to
11 issue revenue bonds rather than LTGO bonds on WTD's behalf, *i.e.*, one half of the "spread."
12

13 139. The credit enhancement fee is measured using basis points, one basis point
14 being 1/100 of a percent. For LTGO bond issuances prior to 2009, the County annually
15 charges WTD an amount equal to 12.5 basis points, multiplied by the outstanding principal
16 balance of the bonds. For the LTGO bond principal balance in 2009 and subsequent years, the
17 County charges an amount equal to 10 basis points, reflecting an estimated narrowing of the
18 "spread."

19 140. The County uses the same method to calculate the credit enhancement charge to
20 other departments or divisions.

21 141. From 2003 to 2010, the total amount of credit enhancement fees the County
22 charged to WTD was about \$4.6 million.

23 142. The County's issuance of LTGO bonds for WTD capital projects directly
24 benefits WTD. When the County issues LTGO bonds and guarantees payment, WTD pays a
25

1 lower interest rate on the bonds than it otherwise would pay for revenue bonds of like size and
2 maturity. After paying the credit enhancement fee, WTD still receives about half of the benefit
3 of the lower interest rates attributable to the use of LTGO bonds rather than revenue bonds of
4 like size and maturity. If WTD had to finance its capital program entirely from sewer revenue
5 bonds, WTD would pay substantially more in financing costs over the duration of the bonds
6 than it pays for LTGO bonds of like size and maturity.

7 143. Besides receiving lower interest rates, WTD also benefits from the lower cost of
8 issuing LTGO bonds, compared with the cost of issuing revenue bonds.

9 144. WTD also benefits from the issuance of LTGO bonds by avoiding the need to
10 establish a debt service reserve fund. When WTD issues revenue bonds, the bond covenants
11 require WTD to establish a debt service reserve fund equaling the highest amount of debt
12 service required by WTD during the life of the bonds. WTD must borrow more to obtain
13 sufficient funds for its reserve. Because the debt service reserve fund must be invested
14 conservatively, the reserve fund earns less interest than WTD has to pay to borrow the amount
15 of the reserve, resulting in a cost to WTD. When the County issues LTGO bonds for WTD,
16 WTD is not required to establish a debt service reserve fund.

17 145. Historically, the County could purchase "monoline" insurance to improve the
18 debt rating on a particular bond issuance. Monoline insurers would charge a premium based
19 on the credit spread, *i.e.*, the difference between the interest rate the issuer would pay on the
20 bonds without monoline insurance and the interest rate the issuer would pay on the bonds with
21 monoline insurance. King County has been unable to procure monoline insurance after the
22 financial crisis of 2008.
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1 146. Component agencies and sewer ratepayers benefit from the County's issuance
2 of LTGO bonds as compared to revenue bonds on WTD's behalf.

3 147. The issuance of LTGO bonds on WTD's behalf involves costs to the County.
4 When the County issues a LTGO bond instead of a revenue bond, the County's total debt, or
5 leverage, increases. The increase in leverage increases the risk perceived by investors and, as a
6 result, the County pays a higher interest rate on subsequent issuances of LTGO bonds.

7 148. The County also is burdened because the rating agencies consider the total
8 amount of debt that the County has outstanding in determining its credit rating. When the
9 County issues additional debt, this affects the ratings that the credit rating agencies, such as
10 Moody's and Standard and Poor's, assign to the County. Although the County currently has a
11 high credit rating, increased leverage increases the probability that the County's rating will be
12 downgraded, which would result in additional costs.

13 149. The County is limited in its ability to issue LTGO bonds. The County has a
14 limit on LTGO debt for metropolitan functions of three-quarters of one percent of assessed
15 value; as of 2010 the County had approximately \$1.9 billion in remaining LTGO debt capacity
16 for metropolitan functions. The County's issuance of LTGO bonds on WTD's behalf uses
17 some of that capacity and limits the County's capacity to issue bonds for future projects.

18 150. The "additional bonds test" required by existing bond covenants limits the
19 County's capacity to issue additional LTGO debt. Under that test, the County must meet
20 certain criteria to ensure that the County is not over-diluting the revenue stream pledged to
21 certain classes of bondholders. Because of the additional bonds test, the County was required
22 to issue about \$900 million of additional debt on behalf of WTD with sewer revenue bonds
23 rather than LTGO bonds.
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1 151. The County assumes the risk of a WTD default for the term of the LTGO bonds
2 by pledging its full faith and guarantee to the bonds.

3 152. The credit enhancement fee, in fact, may be too low to cover the costs
4 associated with the risks the County incurs for issuing LTGO bonds on WTD's behalf, since
5 the fee the County receives is only one-half of the spread between the interest rate of a LTGO
6 bond and a revenue bond of like size and maturity.

7 153. The Contracts authorize King County to recover the capital costs of the
8 wastewater system (among other costs) in sewage disposal rates. The credit enhancement fee
9 is a capital cost of the wastewater system included in "total monetary requirements for the
10 disposal of sewage" under Section 5 of the Contracts.

11 **B. Conclusions of Law on LTGO Bonds Credit Enhancement Fee Claims**

12 Based on the foregoing Findings of Fact, the Court issues the following Conclusions of
13 Law on the LTGO bonds credit enhancement fee claims.

14 154. RCW 43.09.210, the State Accountancy Act, states in pertinent part:
15

16 All service rendered by, or property transferred from, one department, . . . to
17 another, shall be paid for at its true and full value by the department, . . .
18 receiving the same, and no department, . . . shall benefit in any financial manner
whatever by an appropriation or fund for the support of another.

19 This statute applies to the benefits and services rendered to WTD by the County in issuing
20 LTGO bonds on behalf of WTD.

21 155. The principles underlying the Accountancy Act apply with particular force here,
22 where the County's taxpayers have conferred benefits and services on WTD and its ratepayers.
23 Taxpayers are a different group from ratepayers, with different rights and obligations. When
24 the County pledges its full faith and credit as security for LTGO bonds, it commits taxpayers to
25 the costs and risks identified above. But it is WTD and the sewer ratepayers who benefit from

1 the LTGO bonds, since bond proceeds are used to construct capital projects for the
2 Metropolitan Sewerage System.

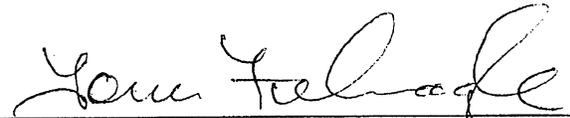
3 156. The County has no obligation to issue LTGO bonds on WTD's behalf.

4 157. The credit enhancement fee the County charges to WTD is lawful. It is
5 reasonable, not excessive, and reflects both the benefits to WTD and risks and costs incurred
6 by the County. The credit enhancement fee represents fair value of benefits and services the
7 County provides to WTD.

8 158. The credit enhancement fee is a capital cost of the Metropolitan Sewerage
9 System under the Contracts, properly included in the total monetary requirements of the
10 sewerage system and in sewage disposal rates. The County did not violate Washington law or
11 breach the Contracts in charging the credit enhancement fee.

12 159. Plaintiffs' claims for breach of contract and for declaratory and injunctive relief
13 relating to the credit enhancement fee should be dismissed with prejudice.

14 DATED this 14th day of July, 2011.

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20 THE HON. THOMAS J. FELNAGLE
21 PIERCE COUNTY SUPERIOR COURT



FINDINGS OF FACT AND CONCLUSIONS OF
LAW - 36

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1 Presented by:

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3

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FINDINGS OF FACT AND CONCLUSIONS OF
LAW - 37

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Tab G

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Hon. Thomas J. Felnagle

SUPERIOR COURT OF WASHINGTON FOR PIERCE COUNTY

CEDAR RIVER WATER AND SEWER DISTRICT; and SOOS CREEK WATER AND SEWER DISTRICT,

Plaintiffs,

v.

KING COUNTY; *et al.*,

Defendants.

No. 08-2-11167-4

PLAINTIFFS' NOTICE OF APPEAL

(Plaintiffs seek direct review by the Washington Supreme Court pursuant to RAP 4.2)

Plaintiffs Cedar River Water and Sewer District ("Cedar River") and Soos Creek Water and Sewer District ("Soos Creek") hereby appeal from the following parts of the Order and Judgment Under CR 54(b) On Level One Claims (the "Judgment") entered in this action on July 14, 2011, a copy of which is attached hereto as Exhibit A:

1. Plaintiffs appeal from the dismissal of their Snohomish County Community Mitigation Claims, as set forth in paragraph 1 of the Judgment, and from (i) paragraphs 1 and 2 of the Order Granting in Part and Denying in Part Defendants' Motions for Summary Judgment, dated July 6, 2009 (copy attached hereto as Exhibit B), (ii) the Order Granting King County's Motion for Partial Summary Judgment to Dismiss Plaintiffs' Breach of Contract Claims Regarding Snohomish County Mitigation, dated December 11, 2009 (copy attached hereto as Exhibit C), and (iii) the Order Denying Plaintiffs' Cross-Motion for Partial Summary Judgment Re: Snohomish County Mitigation,



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1 dated December 11, 2009 (copy attached hereto as Exhibit D);

2 2. Plaintiffs appeal from the dismissal of their claims alleging breach of fiduciary duties
3 and trust duties, as set forth in paragraph 2 of the Judgment, and from the Order Granting Defendant
4 King County's Partial Summary Judgment Motion to Dismiss Trust and Fiduciary Duty Claims,
5 dated October 16, 2009 (copy attached hereto as Exhibit E);

6 3. Plaintiffs appeal from the dismissal of their Reclaimed Water Claims, as set forth in
7 paragraph 4 of the Judgment, and from the Order Granting Defendant King County's Motion for
8 Partial Summary Judgment to Dismiss Plaintiffs' Reclaimed Water Claims and Denying Plaintiffs'
9 Cross-Motion, dated February 5, 2010 (copy attached hereto as Exhibit F);

10 4. Plaintiffs appeal from the dismissal of their Culver Fund Claims, as set forth in
11 paragraph 5 of the Judgment, and from (i) paragraph 1(b) of the Order Denying King County's
12 Motion for Partial Summary Judgment and Granting in Part and Denying in Part Plaintiffs' Cross-
13 Motion for Partial Summary Judgment Regarding Culver Claims, dated March 19, 2010 (copy
14 attached hereto as Exhibit G) and (ii) paragraph 2 of the Order on Plaintiffs' Motion for
15 Reconsideration of Prior Ruling Regarding King County's Laches and Estoppel Defenses to Culver
16 Fund Claims, dated May 14, 2010 (copy attached hereto as Exhibit H);

17 5. Plaintiffs appeal from the dismissal of their Overhead Allocation Claims, as set forth
18 in paragraph 6 of the Judgment, and from paragraph 2 of the Order Regarding Allocation Claims,
19 dated March 19, 2010 (copy attached hereto as Exhibit I);

20 6. Plaintiffs appeal from the dismissal of their LTGO Bonds Credit Enhancement Fee
21 Claims, as set forth in paragraph 7 of the Judgment, and from the partial denial of plaintiffs' motion
22 for partial summary judgment as set forth in paragraph 1 of the Order Granting in Part and Denying
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in Part Plaintiffs' Motion for Partial Summary Judgment Regarding Alleged Bond and Insurance "Benefits" Provided by King County to Local Sewer Utilities, dated June 4, 2010 (copy attached hereto as Exhibit J); and

7. Plaintiffs appeal from the dismissal of their StockPot Claims, as set forth in paragraph 8 of the Judgment, and from paragraph 1 of the Order Granting [sic] Plaintiffs' Motion and Denying King County's Motion for Partial Summary Judgment Regarding StockPot, dated March 19, 2010 (copy attached hereto as Exhibit K).

Plaintiffs seek direct review by the Washington Supreme Court pursuant to RAP 4.2.

The names and addresses of the attorneys for the parties are set forth in Exhibit L attached hereto.

Dated this 15th day of July, 2011.

HELSELL FETTERMAN LLP
By David F. Jurca
David F. Jurca, WSBA #2015
Colette M. Kostelec, WSBA #37151
Attorneys for Plaintiffs

G-3

EXHIBIT A

G-4

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Hon. Thomas J. Feltnagle



SUPERIOR COURT OF WASHINGTON FOR PIERCE COUNTY

CEDAR RIVER WATER AND SEWER DISTRICT; and SOOS CREEK WATER AND SEWER DISTRICT,

Plaintiffs,

v.

KING COUNTY; et al.,

Defendants.

No. 08-2-11167-4

ORDER AND JUDGMENT UNDER CR 54(b)
ON LEVEL ONE CLAIMS

Plaintiffs asserted claims in this action relating to six subjects: (1) so-called "community mitigation" payments made out of the Water Quality Fund ("WQF") by King County to Snohomish County ("Snohomish County Community Mitigation Claims"); (2) expenditures made by King County out of the WQF for design and construction of infrastructure for distribution and sale of reclaimed water from the Brightwater plant ("Reclaimed Water Claims"); (3) expenditures out of the WQF for so-called "Culver Fund" projects ("Culver Fund Claims"); (4) payments made by King County out of the WQF to Campbell Soup Company in connection with the relocation of the StockPot Soups facility from the Brightwater site ("StockPot Claims"); (5) allocation by King County of general government and other overhead expenses to the County's Wastewater Treatment Division ("WTD") ("Overhead Allocation Claims"); and (6) the County's imposing on WTD so-called "credit enhancement fees" in connection with the County's issuance of Limited Tax General

ORDER AND JUDGMENT UNDER CR 54(b) ON LEVEL ONE CLAIMS - 1



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1 Obligation bonds ("LTGO Bonds Credit Enhancement Fee Claims"). Plaintiffs referred to their
2 claims for reimbursement by King County to the WQF as claims for "Level One" relief and their
3 claims for reimbursement from the WQF to the local sewer utilities having Sewage Disposal
4 Contracts with the County as claims for "Level Two" relief.

5 King County asserted various counterclaims against plaintiffs and crossclaims against other
6 defendants, and various defendants asserted crossclaims against King County.

7 Plaintiffs' Snohomish County Community Mitigation Claims were dismissed in their entirety
8 as a matter of law by (i) the Order Granting in Part and Denying in Part Defendants' Motions for
9 Summary Judgment, dated July 6, 2009, (ii) the Order Granting King County's Motion for Partial
10 Summary Judgment to Dismiss Plaintiffs' Breach of Contract Claims Regarding Snohomish County
11 Mitigation, dated December 11, 2009, and (iii) the Order Denying Plaintiffs' Cross-Motion for Partial
12 Summary Judgment Re: Snohomish County Mitigation, dated December 11, 2009.

13 Plaintiffs' claims alleging breach of fiduciary duty and trust duties were dismissed as a matter
14 of law by the Order Granting Defendant King County's Partial Summary Judgment Motion to
15 Dismiss Trust and Fiduciary Duty Claims, dated October 16, 2009.

16 Plaintiffs' claims alleging breach of the Accountancy Act were dismissed as a matter of law
17 by the Order Granting Defendant King County's Motion to Dismiss Claims Based on Accountancy
18 Act, dated October 16, 2009.

19 King County's counterclaims and crossclaims based on the Accountancy Act were dismissed
20 as a matter of law by the Order Granting Plaintiffs' Motion to Dismiss King County's Counterclaims
21 and Crossclaims Based on Accountancy Act, dated December 11, 2009.

1 Plaintiffs' Reclaimed Water Claims were dismissed in their entirety as a matter of law by the
2 Order Granting Defendant King County's Motion for Partial Summary Judgment to Dismiss
3 Plaintiffs' Reclaimed Water Claims and Denying Plaintiffs' Cross-Motion, dated February 5, 2010.

4 King County's counterclaims, crossclaims and affirmative defense of offset based on alleged
5 "benefits" provided to WTD or to plaintiffs and other local sewer utilities in the form of lower
6 interest rates on bonds issued by the County and lower property insurance premiums were dismissed
7 as a matter of law by the Order Granting Plaintiffs' Motion for Partial Summary Judgment Regarding
8 Alleged Bond and Insurance "Benefits" Provided by King County to Local Sewer Utilities, dated
9 June 4, 2010.

10
11 King County's counterclaims, crossclaims and offset and recoupment defenses for alleged
12 "benefits, payments, and in-kind products or services" provided to WTD or to plaintiffs and other
13 local sewer utilities based on (i) infrastructure improvements (including but not limited to the
14 Fairwood Interceptor project), (ii) mitigation payments, and (iii) environmental lab services to
15 Lakehaven Utility District were dismissed, and King County's counterclaims, crossclaims and offset
16 and recoupment defenses for alleged "benefits, payments, and in-kind products or services" provided
17 to WTD or to plaintiffs and other local sewer utilities based on (i) Culver Fund grants to local sewer
18 utilities and (ii) overhead allocation, were also dismissed (except that the Court reserved for later
19 consideration the question of the extent to which King County would be entitled to an offset or
20 recoupment as a result of Culver Fund projects or overhead allocation, if it were to be determined that
21 plaintiffs were entitled to relief in connection with Culver Fund expenditures and overhead
22 allocation), by the Order Granting Plaintiffs' Motion for Partial Summary Judgment Dismissing
23 Certain King County Counterclaims, Crossclaims and Offset Defenses, dated July 9, 2010.
24
25

1 In the Order Regarding Trial Scheduling, dated September 24, 2010, the Court ordered that:

2 (i) plaintiffs' claims for "Level One" relief regarding the Culver Fund Claims, the
3 StockPot Claims, the Overhead Allocation Claims and the LTGO Bonds Credit Enhancement Fee
4 Claims would be tried commencing on February 7, 2011;

5 (ii) at the conclusion of the February 7, 2011 trial the Court would enter an appropriate
6 order under CR 54(b) directing entry of judgment on claims resolved as of that time, thereby allowing
7 an immediate appeal from that judgment;

8 (iii) any findings of fact or conclusions of law entered with respect to the February 7,
9 2011 trial would not be binding on or prejudice, whether by collateral estoppel or otherwise, any of
10 the defendants other than King County, provided, however, that if any of plaintiffs' claims against
11 King County were unsuccessful then any crossclaim of a defendant against King County that was
12 premised on the success of such claim by plaintiffs would be deemed dismissed; and

13 (iv) discovery as to any remaining claims would be stayed pending resolution of all
14 appeals from the judgment to be entered at the conclusion of the February 7, 2011 trial, and following
15 resolution of the claims addressed in such appeals the Court would set an appropriate trial date
16 (allowing adequate time for discovery and for pretrial motions) on any claims or crossclaims
17 remaining in this case.

18 King County's "summer/winter averaging counterclaims" against plaintiff Soos Creek were
19 severed from this action by the Order Severing King County's Summer/Winter Averaging
20 Counterclaims Against Soos Creek, dated November 19, 2010.

21 In accordance with the Order Regarding Trial Scheduling, plaintiffs' claims for "Level One"
22 relief regarding the Culver Fund Claims, the StockPot Claims, the Overhead Allocation Claims and
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1 the LTGO Bonds Credit Enhancement Fee Claims were tried commencing on February 7, 2011.

2 Following the conclusion of the trial, the Court announced its Oral Decision on March 15, 2011.

3 At a hearing on June 1, 2011 on plaintiffs' and King County's respective proposed findings of
4 fact and conclusions of law and on Plaintiffs' Motion for Award of Common Fund Attorney Fees, the
5 Court (1) ruled that King County is obligated to reimburse the Water Quality Fund for the \$2 million
6 payment to StockPot for job retention, together with prejudgment and postjudgment interest thereon
7 at the rate of 12% per annum until paid, (2) ruled that the parties will bear their own costs incurred to
8 date in this litigation, (3) ruled that the Court will defer ruling on and reserve further consideration of
9 Plaintiffs' Motion for Award of Common Fund Attorney Fees until any appeals from this Judgment
10 are resolved and that plaintiffs do not waive their right to request fees as a result of this deferment,
11 and (4) took under advisement the remaining issues concerning the proposed findings of fact and
12 conclusions of law.
13

14
15 Thereafter, the Court entered its written Findings of Fact and Conclusions of Law on July 14,
16 2011.

17 Further in accordance with the Order Regarding Trial Scheduling, the Court hereby finds that
18 the claims resolved by the orders, rulings, findings of fact and conclusions of law described above are
19 sufficiently independent of and distinct from the claims remaining in this case and that it is in the
20 public interest to enter judgment on the resolved claims at this time as set forth herein, since the
21 prompt, final appellate resolution of the claims resolved to date by the trial court is essential to the
22 timely budgeting and financial planning for King County, Snohomish County, and the numerous
23 cities and water and sewer districts that are parties in this case. Accordingly, there is no just reason
24 for delay in entry of judgment on the claims resolved to date by this Court as set forth herein, and
25

1 pursuant to CR 54(b) the Court directs that judgment be entered as set forth herein.

2 Based on the foregoing, it is hereby ORDERED, ADJUDGED and DECREED as follows:

3 1. Plaintiffs' Snohomish County Community Mitigation Claims are dismissed in their
4 entirety, with prejudice.

5 2. Plaintiffs' claims alleging breach of fiduciary duties and trust duties are dismissed in
6 their entirety, with prejudice.

7 3. Plaintiffs' and King County's respective claims alleging breach of the Accountancy
8 Act, RCW. 43.09.210, are dismissed in their entirety, with prejudice.

9 4. Plaintiffs' Reclaimed Water Claims are dismissed in their entirety, with prejudice.

10 5. Plaintiffs' Culver Fund Claims are dismissed in their entirety, with prejudice.

11 6. Plaintiffs' Overhead Allocation Claims are dismissed in their entirety, with prejudice.

12 7. Plaintiffs' LTGO Bonds Credit Enhancement Fee Claims are dismissed in their
13 entirety, with prejudice.

14 8. Plaintiffs' StockPot Claims are dismissed in their entirety, with prejudice, except for
15 that portion of the StockPot Claims relating to King County's payment of \$2 million out of the Water
16 Quality Fund to StockPot for the purpose of job retention.

17 9. King County shall reimburse the Water Quality Fund for the \$2 million job retention
18 payment to StockPot, plus prejudgment and postjudgment interest thereon calculated at the rate of
19 12% per annum from August 18, 2007 until paid. Including prejudgment interest, the total payment
20 due from King County to the Water Quality Fund as of July 14, 2011 amounts to \$2,937,644.

21 10. The Court defers ruling on and reserves further consideration of Plaintiffs' Motion for
22 Award of Common Fund Attorney Fees until any appeals from this Judgment are resolved, and
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1 plaintiffs do not waive their right to request fees as a result of this deferment.

2 11. All counterclaims asserted in this action by King County against plaintiffs (except for
3 King County's "summer/winter averaging counterclaim against Soos Creek, which has been severed
4 from this action) are dismissed in their entirety, with prejudice.

5 12. The findings of fact and conclusions of law entered by this Court on July 14, 2011 are
6 not binding on and do not prejudice, whether by collateral estoppel or otherwise, any of the nominal
7 defendants, provided, however, that all crossclaims by any defendants against King County that are
8 premised on the success of plaintiffs' claims against King County are dismissed, with prejudice,
9 except for crossclaims relating to the \$2 million job retention payment to StockPot. If the dismissal
10 of any of plaintiffs' claims is reversed on appeal, any crossclaims that were premised on the success
11 of those claims will be deemed reinstated to the same extent as plaintiffs' claims.

12 13. All crossclaims by King County against any defendants other than Snohomish County
13 are dismissed in their entirety, with prejudice. King County's crossclaims against Snohomish County
14 are dismissed as moot; however, if the dismissal of any of plaintiffs' Snohomish County Community
15 Mitigation Claims is reversed on appeal, then King County's crossclaims against Snohomish County
16 will be deemed reinstated.

17 14. Any remaining claims, including any claims for "Level Two" relief (i.e., claims for
18 reimbursement from the WQF to any local sewer utilities), are reserved for further consideration
19 following final resolution of any appeals from this Judgment.

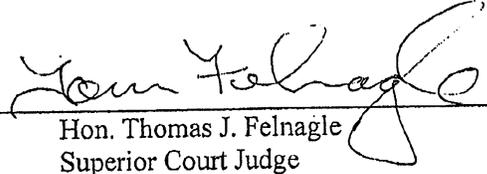
20 15. All remaining claims are stayed pending resolution of all appeals from this judgment.
21 Following resolution of the claims addressed in such appeals the Court will set an appropriate trial
22 date (allowing adequate time for discovery and for pretrial motions) on any claims or crossclaims
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remaining in this case.

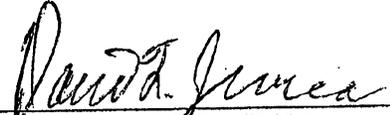
16. The parties shall bear their own costs incurred to date in this litigation.

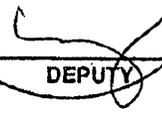
Dated this 14th day of July, 2011.


Hon. Thomas J. Felnagle
Superior Court Judge

Presented by:

HELSELL FETTERMAN LLP

By 
David F. Jurca, WSBA #2015
Colette M. Kostelec, WSBA #37151
Attorneys for Plaintiffs

FILED
DEPT. 15
IN OPEN COURT
JUL 14 2011
By 
DEPUTY

Approved as to Form:

DANIELSON HARRIGAN LEYH &
TOLLEFSON LLP

By 
Timothy G. Leyh, WSBA #14853
Randall T. Thomsen, WSBA #25310
Attorneys for Defendant King County

G-12

EXHIBIT B

G-13

08-2-11167-4 32444857 ORRE 07-15-09

Hon. Thomas J. Felnagle

FILED DEPT. 15 IN OPEN COURT JUL 6 2009 Pierce County Clerk By [Signature] Deputy

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SUPERIOR COURT OF WASHINGTON FOR PIERCE COUNTY

CEDAR RIVER WATER AND SEWER DISTRICT; and SOOS CREEK WATER AND SEWER DISTRICT,

Plaintiffs,

v.

KING COUNTY; et al.,

Defendants.

NO. 08-2-11167-4

[proposed] ORDER GRANTING IN PART AND DENYING IN PART DEFENDANTS' MOTIONS FOR SUMMARY JUDGMENT

This matter having come on for hearing on May 29, 2009, before the undersigned judge of the above-entitled Court, upon (1) Defendant Snohomish County's Motion for Summary Judgment and (2) Defendant King County's Motion and Memorandum for Partial Summary Judgment under LUPA;

And the Court having reviewed and duly considered all papers submitted in support of or in opposition to the aforesaid motions, including the following:

1. Defendant Snohomish County's Motion for Summary Judgment, dated May 1, 2009;
2. Declaration of Robert Tad Seder in Support of Motion for Summary Judgment, dated May 1, 2009;
3. Defendant King County's Motion and Memorandum for Partial Summary Judgment under LUPA, dated May 1, 2009;

ORDER GRANTING IN PART AND DENYING IN PART DEFENDANTS' MOTIONS FOR SUMMARY JUDGMENT - 1

HELSELL FETTERMAN

1001 Fourth Avenue, Suite 4200 Seattle, WA 98154 (206) 292-7144

G-14

1 4. Declaration of Randall T. Thomsen in Support of Defendant King County's Motion
2 for Summary Judgment under LUPA, dated April 30, 2009;

3 5. Defendant King County's Joinder in Defendant Snohomish County's Motion for
4 Summary Judgment, dated May 7, 2009;

5 6. Defendant City of Bothell's Joinder in Defendant King County's Motion and
6 Memorandum for Partial Summary Judgment under LUPA and in Snohomish County's Motion for
7 Summary Judgment, dated May 13, 2009;

8 7. Plaintiffs' Opposition to Snohomish County's Motion for Summary Judgment and to
9 King County's Motion for Partial Summary Judgment under LUPA, dated May 18, 2009;

10 8. Declaration of David F. Jurca in Opposition to Snohomish County's Motion for
11 Summary Judgment and to King County's Motion for Partial Summary Judgment under LUPA, dated
12 May 18, 2009;

13 9. Defendant Snohomish County's Reply to Its Motion for Summary Judgment, dated
14 May 26, 2009;

15 10. Defendant Snohomish County's Motion to Strike, dated May 26, 2009;

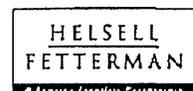
16 11. Defendant King County's Reply in Support of Motion for Partial Summary Judgment
17 under LUPA, dated May 26, 2009; and

18 12. Defendant City of Lake Forest Park's Partial Joinder in Summary Judgment Motions
19 of Defendants King County and Snohomish County, dated May 27, 2009;

20 And the Court having heard and duly considered the oral argument of counsel in support of or
21 in opposition to the aforesaid motions presented at the aforesaid hearing;

22 Now, therefore, it is hereby ORDERED as follows:

23 ORDER GRANTING IN PART AND DENYING IN PART
24 DEFENDANTS' MOTIONS FOR SUMMARY JUDGMENT - 2



1001 Fourth Avenue, Suite 4200
Seattle, WA 98154
(206) 292-1144

1 1. Defendant Snohomish County's Motion for Summary Judgment is granted in part and
2 denied in part, and Defendant King County's Motion for Partial Summary Judgment under LUPA is
3 granted, as set forth below.

4 2. The Court concludes that the December 20, 2005 Settlement Agreement between King
5 County and Snohomish County, read in conjunction with the December 15, 2005 Development
6 Agreement between the two counties, constitutes at least in part a "land use decision" within the
7 meaning of the Land Use Petition Act ("LUPA"). Therefore, the 21-day time limit of LUPA (RCW
8 36.70C.040(3)) bars any claims by plaintiffs challenging the validity, legality or enforceability of the
9 Settlement Agreement, including any land use aspects of that Agreement, and any such claims of
10 plaintiffs are hereby dismissed.

11 3. However, nothing in this Order bars plaintiffs from pursuing their claims that the so-
12 called "community mitigation" projects set forth in the Settlement Agreement lack a sufficient nexus
13 to sewage disposal to be paid for with money from King County's Water Quality Fund, or that the
14 payments made or to be made by King County under the Settlement Agreement could not lawfully be
15 made out of the Water Quality Fund, or that King County must reimburse the Water Quality Fund for
16 any such payments or for the value of any free use of the "community resource center" to be provided
17 to Snohomish County under the Settlement Agreement.

18 4. Snohomish County's Motion to Strike is denied.

19 5. Snohomish County's Motion for Summary Judgment as to tort claims is moot, as
20 plaintiffs have not asserted such a claim against Snohomish County.

21 6. Except as otherwise set forth above, Snohomish County's motion for summary
22 judgment and King County's motion for partial summary judgment under LUPA are denied.
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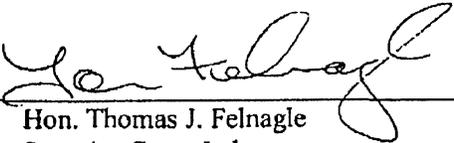
ORDER GRANTING IN PART AND DENYING IN PART
DEFENDANTS' MOTIONS FOR SUMMARY JUDGMENT - 3



1001 Fourth Avenue, Suite 4200
Seattle, WA 98154
(206) 292-1144

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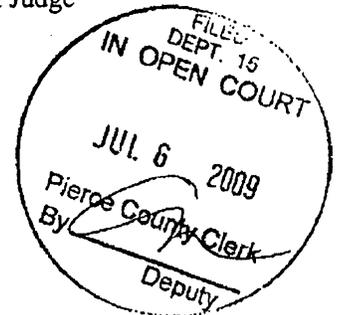
Dated this 6th day of July, 2009.


Hon. Thomas J. Felnagle
Superior Court Judge

Presented by:

HELSELL FETTERMAN LLP

By David F. Jurca
David F. Jurca, WSBA #2015
Attorneys for Plaintiffs



Approved as to form, and notice of presentation waived:

DANIELSON HARRIGAN LEYH & TOLLEFSON LLP

By David F. Jurca *per email authorization received 6/22/09*
for Timothy G. Leth, WSBA #14853
Randall T. Thomsen, WSBA #25310
Special Deputy Prosecuting Attorneys for
Defendant King County

KING COUNTY PROSECUTING ATTORNEY

By David F. Jurca *per email authorization received 6/22/09*
for William Blakney, WSBA #16734
Verna P. Bromley, WSBA #24703
Senior Deputy Prosecuting Attorneys for
Defendant King County

JANICE E. ELLIS
Snohomish County Prosecuting Attorney

By David F. Jurca *per email authorization received 6/22/09*
for Robert Tad Seder, WSBA #14521
Hillary J. Evans, WSBA #35784
Deputy Prosecuting Attorneys

ORDER GRANTING IN PART AND DENYING IN PART
DEFENDANTS' MOTIONS FOR SUMMARY JUDGMENT - 4



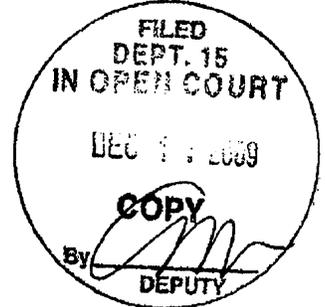
1001 Fourth Avenue, Suite 4200
Seattle, WA 98154
(206) 292-1144

G-17

EXHIBIT C

G-18

HONORABLE THOMAS J. FELNAGLE



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SUPERIOR COURT FOR THE STATE OF WASHINGTON
IN AND FOR THE COUNTY OF PIERCE

CEDAR RIVER WATER AND SEWER DISTRICT; and SOOS CREEK WATER AND SEWER DISTRICT,

Plaintiffs,

vs.

KING COUNTY, *et al.*,

Defendants.

Case No. 08-2-11167-4

ORDER GRANTING KING COUNTY'S MOTION FOR PARTIAL SUMMARY JUDGMENT TO DISMISS PLAINTIFFS' BREACH OF CONTRACT CLAIMS REGARDING SNOHOMISH COUNTY MITIGATION

Noted: December 11, 2009
9:00 a.m.

This matter came before the Court on the motion of defendant King County for partial summary judgment to dismiss plaintiffs' breach of contract claims regarding the mitigation funding provided by King County to Snohomish County. The Court heard the oral argument of counsel on August 14, 2009 and December 11, 2009, and considered the following pleadings as well as the other files and records in this case:

1. King County's Motion for Partial Summary Judgment to Dismiss Plaintiffs' Breach of Contract Claims Regarding Snohomish County Mitigation;

ORDER GRANTING KING COUNTY'S MOTION FOR PARTIAL SUMMARY JUDGMENT TO DISMISS PLAINTIFFS' BREACH OF CONTRACT CLAIMS REGARDING SNOHOMISH COUNTY MITIGATION - 1

LAW OFFICES
DANIELSON HARRIGAN LEYH & TOLLEFSON LLP
999 THIRD AVENUE, SUITE 4400
SEATTLE, WASHINGTON 98104
TEL. (206) 623-1700 FAX. (206) 623-8717

ORIGINAL

G-19

- 1 2. Declaration of Randall Thomsen in Support of King County's Motion for
2 Partial Summary Judgment to Dismiss Plaintiffs' Breach of Contract Claims Regarding
3 Snohomish County Mitigation, and the exhibits attached thereto;
- 4 3. Snohomish County's Joinder in King County's Motion for Partial Summary
5 Judgment;
- 6 4. Joint Response of Certain Defendants to King County's Motion for Partial
7 Summary Judgment to Dismiss Plaintiffs' Breach of Contract Claims Regarding Snohomish
8 County Mitigation;
- 9 5. King County's Response to Joint Response of Certain Defendants;
- 10 6. Plaintiffs' Opposition to King County's Motion for Partial Summary Judgment;
- 11 7. Declaration of Colette M. Kostelec in Opposition to King County's Motion for
12 Partial Summary Judgment, and the exhibits attached thereto;
- 13 8. King County's Reply in Support of Partial Summary Judgment to Dismiss
14 Plaintiffs' Contract Claims Regarding Snohomish County Mitigation;
- 15 9. Snohomish County's Reply to Plaintiffs' Response to King County Motion for
16 Partial Summary Judgment;
- 17 10. Plaintiffs' Motion to Shorten Time and for Leave to File Supplemental
18 Declaration of David F. Jurca in Opposition to King County's Motion for Partial Summary
19 Judgment;
- 20 11. Supplemental Declaration of David F. Jurca in Opposition to King County's
21 Motion for Partial Summary Judgment, and the exhibits attached thereto;
- 22 12. King County's Response to Plaintiffs' Motion for Leave to File Supplemental
23 Declaration of David F. Jurca;
- 24 13. Declaration of Timothy Leyh Regarding Additional Supplemental Excerpts
25 from Christie True Deposition, and the exhibit attached thereto;

ORDER GRANTING KING COUNTY'S MOTION
FOR PARTIAL SUMMARY JUDGMENT TO
DISMISS PLAINTIFFS' BREACH OF CONTRACT
CLAIMS REGARDING SNOHOMISH COUNTY
MITIGATION - 2

LAW OFFICES
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TEL. (206) 623-1700 FAX. (206) 623-8717

- 1 14. Defendant King County's Supplemental Memorandum in Support of Motion for
2 Partial Summary Judgment to Dismiss Plaintiffs' Contract Claims Regarding Snohomish
3 County Mitigation;
- 4 15. Declaration of Randall Thomsen in Support of Defendant King County's
5 Supplemental Memorandum in Support of Motion for Partial Summary Judgment to Dismiss
6 Plaintiffs' Contract Claims Regarding Snohomish County Mitigation, and the exhibits attached
7 thereto;
- 8 16. Plaintiffs' Cross-Motion for Partial Summary Judgment re Snohomish County
9 Mitigation;
- 10 17. Declaration of Colette M. Kostelec in Support of Plaintiffs' Cross-Motion for
11 Partial Summary Judgment re Snohomish County Mitigation, and the exhibits attached thereto;
- 12 18. King County's Response to Plaintiffs' Cross-Motion for Partial Summary
13 Judgment;
- 14 19. Declaration of Verna Bromley in Support of King County's Response to
15 Plaintiffs' Cross-Motion for Partial Summary Judgment, and the exhibits attached thereto;
- 16 20. Declaration of G. Richard Hill in Support of King County's Response to
17 Plaintiffs' Cross-Motion for Partial Summary Judgment;
- 18 21. Declaration of Michael Popiwny in Support of King County's Response to
19 Plaintiffs' Cross-Motion for Partial Summary Judgment, and the exhibits attached thereto;
- 20 22. Declaration of Randall Thomsen in Support of King County's Response to
21 Plaintiffs' Cross-Motion for Partial Summary Judgment, and the exhibits attached thereto;
- 22 23. Declaration of Kurt Triplett in Support of King County's Response to Plaintiffs'
23 Cross-Motion for Partial Summary Judgment;
- 24 24. Declaration of Christie True in Support of King County's Response to
25 Plaintiffs' Cross-Motion for Partial Summary Judgment, and the exhibits attached thereto;

ORDER GRANTING KING COUNTY'S MOTION
FOR PARTIAL SUMMARY JUDGMENT TO
DISMISS PLAINTIFFS' BREACH OF CONTRACT
CLAIMS REGARDING SNOHOMISH COUNTY
MITIGATION - 3

LAW OFFICES
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SEATTLE, WASHINGTON 98104
TEL. (206) 623-1700 FAX, (206) 623-8717

- 1 25. Snohomish County's Response to Plaintiffs' Cross-Motion for Partial summary
2 Judgment Regarding Snohomish County Mitigation;
- 3 26. Declaration of Robert Tad Seder in Support of Snohomish County's Response
4 to Plaintiffs' Cross-Motion for Partial summary Judgment Regarding Snohomish County
5 Mitigation, and the exhibits attached thereto;
- 6 27. Declaration of Gary Nelson in Support of Snohomish County's Response to
7 Plaintiffs' Cross-Motion for Partial summary Judgment Regarding Snohomish County
8 Mitigation;
- 9 28. Declaration of Sara Mueller in Support of Snohomish County's Response to
10 Plaintiffs' Cross-Motion for Partial summary Judgment Regarding Snohomish County
11 Mitigation, and the exhibits attached thereto;
- 12 29. Declaration of Frank Leonetti in Support of Snohomish County's Response to
13 Plaintiffs' Cross-Motion for Partial summary Judgment Regarding Snohomish County
14 Mitigation; and the exhibits attached thereto;
- 15 30. Declaration of Millie Judge in Support of Snohomish County's Response to
16 Plaintiffs' Cross-Motion for Partial summary Judgment Regarding Snohomish County
17 Mitigation;
- 18 31. Declaration of Stephen Dickson in Support of Snohomish County's Response to
19 Plaintiffs' Cross-Motion for Partial summary Judgment Regarding Snohomish County
20 Mitigation, and the exhibits attached thereto;
- 21 32. Declaration of Dianne Bailey in Support of Snohomish County's Response to
22 Plaintiffs' Cross-Motion for Partial summary Judgment Regarding Snohomish County
23 Mitigation, and the exhibits attached thereto;
- 24 33. Plaintiffs' Reply on Cross-Motion for Partial Summary Judgment Regarding
25 Snohomish County Mitigation; and

ORDER GRANTING KING COUNTY'S MOTION
FOR PARTIAL SUMMARY JUDGMENT TO
DISMISS PLAINTIFFS' BREACH OF CONTRACT
CLAIMS REGARDING SNOHOMISH COUNTY
MITIGATION - 4

LAW OFFICES
DANIELSON HARRIGAN LEYH & TOLLEFSON LLP
999 THIRD AVENUE, SUITE 4400
SEATTLE, WASHINGTON 98104
TEL. (206) 623-1700 FAX. (206) 623-8717

1 34. Supplemental Declaration of Colette M. Kostelec in Support of Plaintiffs' Reply
2 on Cross-Motion for Partial Summary Judgment Regarding Snohomish County Mitigation, and
3 the exhibit attached thereto.

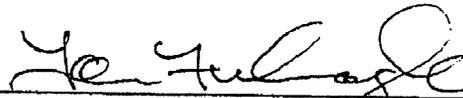
4 Having considered the above pleadings and materials submitted to the court, heard oral
5 argument of counsel, and being otherwise fully advised,

6 IT IS ORDERED that:

7 1. King County's Motion for Partial Summary Judgment to Dismiss Plaintiffs'
8 Breach of Contract Claims Regarding Snohomish County Mitigation is GRANTED in its
9 entirety; and

10 2. Plaintiffs' breach of contract claims regarding the Snohomish County mitigation
11 funded by King County are DISMISSED WITH PREJUDICE.

12 DONE IN OPEN COURT this 11th day of December, 2009.

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15 HONORABLE THOMAS J. FELNAGLE
16 PIERCE COUNTY SUPERIOR COURT JUDGE

17 Presented by:

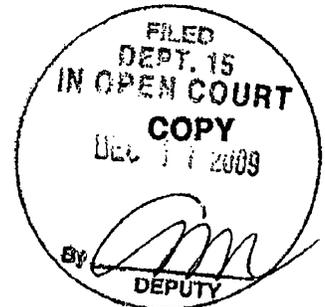
18 DANIELSON HARRIGAN LEYH & TOLLEFSON LLP

19 By _____

20 Timothy G. Leyh, WSBA #14853
21 Randall Thomsen, WSBA #25310
22 Special Deputy Prosecuting Attorneys for
23 Defendant King County

24 KING COUNTY PROSECUTING ATTORNEY CIVIL DIVISION

25 William Blakney, WSBA #16734
Verna P. Bromley, WSBA #24703
Senior Deputy Prosecuting Attorneys
for Defendant King County



ORDER GRANTING KING COUNTY'S MOTION
FOR PARTIAL SUMMARY JUDGMENT TO
DISMISS PLAINTIFFS' BREACH OF CONTRACT
CLAIMS REGARDING SNOHOMISH COUNTY
MITIGATION - 5

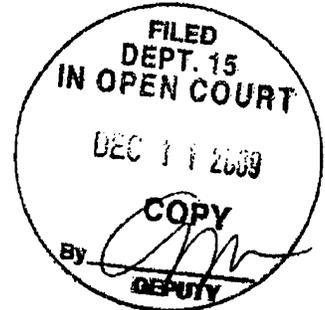
LAW OFFICES
DANIELSON HARRIGAN LEYH & TOLLEFSON LLP
999 THIRD AVENUE, SUITE 4400
SEATTLE, WASHINGTON 98104
TEL. (206) 623-1700 FAX. (206) 623-8717

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EXHIBIT D

G-24

HONORABLE THOMAS J. FELNAGLE



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SUPERIOR COURT FOR THE STATE OF WASHINGTON
IN AND FOR THE COUNTY OF PIERCE

CEDAR RIVER WATER AND SEWER DISTRICT; and SOOS CREEK WATER AND SEWER DISTRICT,

Plaintiffs,

vs.

KING COUNTY, *et al.*,

Defendants.

Case No. 08-2-11167-4

ORDER DENYING PLAINTIFFS' CROSS-MOTION FOR PARTIAL SUMMARY JUDGMENT RE: SNOHOMISH COUNTY MITIGATION

Noted: December 11, 2009
9:00 a.m.

This matter came before the Court on the motion of Plaintiffs Cedar River Water and Sewer District and Soos Creek Water and Sewer District, for partial summary judgment requiring King County to reimburse the Water Quality Fund for payments made to fund the Snohomish County mitigation. The Court heard the oral argument of counsel on December 11, 2009, and considered the following pleadings as well as the other files and records in this case:

1. King County's Motion for Partial Summary Judgment to Dismiss Plaintiffs' Breach of Contract Claims Regarding Snohomish County Mitigation;

ORDER DENYING PLAINTIFFS' CROSS-MOTION FOR PARTIAL SUMMARY JUDGMENT RE: SNOHOMISH COUNTY MITIGATION - 1

ORIGINAL

LAW OFFICES
DANIELSON HARRIGAN LEYH & TOLLEFSON LLP
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SEATTLE, WASHINGTON 98104
TEL. (206) 623-1700 FAX. (206) 623-8717

G-25

- 1 2. Declaration of Randall Thomsen in Support of King County's Motion for
2 Partial Summary Judgment to Dismiss Plaintiffs' Breach of Contract Claims Regarding
3 Snohomish County Mitigation, and the exhibits attached thereto;
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- 6 4. Joint Response of Certain Defendants to King County's Motion for Partial
7 Summary Judgment to Dismiss Plaintiffs' Breach of Contract Claims Regarding Snohomish
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- 9 5. King County's Response to Joint Response of Certain Defendants;
- 10 6. Plaintiffs' Opposition to King County's Motion for Partial Summary Judgment;
- 11 7. Declaration of Colette M. Kostelec in Opposition to King County's Motion for
12 Partial Summary Judgment, and the exhibits attached thereto;
- 13 8. King County's Reply in Support of Partial Summary Judgment to Dismiss
14 Plaintiffs' Contract Claims Regarding Snohomish County Mitigation;
- 15 9. Snohomish County's Reply to Plaintiffs' Response to King County Motion for
16 Partial Summary Judgment;
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18 Declaration of David F. Jurca in Opposition to King County's Motion for Partial Summary
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21 Motion for Partial Summary Judgment, and the exhibits attached thereto;
- 22 12. King County's Response to Plaintiffs' Motion for Leave to File Supplemental
23 Declaration of David F. Jurca;
- 24 13. Declaration of Timothy Leyh Regarding Additional Supplemental Excerpts
25 from Christie True Deposition, and the exhibit attached thereto;

ORDER DENYING PLAINTIFFS' CROSS-
MOTION FOR PARTIAL SUMMARY
JUDGMENT RE: SNOHOMISH COUNTY
MITIGATION - 2

LAW OFFICES
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999 THIRD AVENUE, SUITE 4400
SEATTLE, WASHINGTON 98104
TEL. (206) 623-1700 FAX. (206) 623-8717

- 1 14. Defendant King County's Supplemental Memorandum in Support of Motion for
2 Partial Summary Judgment to Dismiss Plaintiffs' Contract Claims Regarding Snohomish
3 County Mitigation;
- 4 15. Declaration of Randall Thomsen in Support of Defendant King County's
5 Supplemental Memorandum in Support of Motion for Partial Summary Judgment to Dismiss
6 Plaintiffs' Contract Claims Regarding Snohomish County Mitigation, and the exhibits attached
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- 8 16. Plaintiffs' Cross-Motion for Partial Summary Judgment re Snohomish County
9 Mitigation;
- 10 17. Declaration of Colette M. Kostelec in Support of Plaintiffs' Cross-Motion for
11 Partial Summary Judgment re Snohomish County Mitigation, and the exhibits attached thereto;
- 12 18. King County's Response to Plaintiffs' Cross-Motion for Partial Summary
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- 14 19. Declaration of Verna Bromley in Support of King County's Response to
15 Plaintiffs' Cross-Motion for Partial Summary Judgment, and the exhibits attached thereto;
- 16 20. Declaration of G. Richard Hill in Support of King County's Response to
17 Plaintiffs' Cross-Motion for Partial Summary Judgment;
- 18 21. Declaration of Michael Popiwny in Support of King County's Response to
19 Plaintiffs' Cross-Motion for Partial Summary Judgment, and the exhibits attached thereto;
- 20 22. Declaration of Randall Thomsen in Support of King County's Response to
21 Plaintiffs' Cross-Motion for Partial Summary Judgment, and the exhibits attached thereto;
- 22 23. Declaration of Kurt Triplett in Support of King County's Response to Plaintiffs'
23 Cross-Motion for Partial Summary Judgment;
- 24 24. Declaration of Christie True in Support of King County's Response to
25 Plaintiffs' Cross-Motion for Partial Summary Judgment, and the exhibits attached thereto;

- 1 25. Snohomish County's Response to Plaintiffs' Cross-Motion for Partial summary
2 Judgment Regarding Snohomish County Mitigation;
- 3 26. Declaration of Robert Tad Seder in Support of Snohomish County's Response
4 to Plaintiffs' Cross-Motion for Partial summary Judgment Regarding Snohomish County
5 Mitigation, and the exhibits attached thereto;
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11 Mitigation, and the exhibits attached thereto;
- 12 29. Declaration of Frank Leonetti in Support of Snohomish County's Response to
13 Plaintiffs' Cross-Motion for Partial summary Judgment Regarding Snohomish County
14 Mitigation; and the exhibits attached thereto;
- 15 30. Declaration of Millie Judge in Support of Snohomish County's Response to
16 Plaintiffs' Cross-Motion for Partial summary Judgment Regarding Snohomish County
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- 21 32. Declaration of Dianne Bailey in Support of Snohomish County's Response to
22 Plaintiffs' Cross-Motion for Partial summary Judgment Regarding Snohomish County
23 Mitigation, and the exhibits attached thereto;
- 24 33. Plaintiffs' Reply on Cross-Motion for Partial Summary Judgment Regarding
25 Snohomish County Mitigation; and

EXHIBIT E

G-30

HONORABLE THOMAS J. FELNAGLE

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SUPERIOR COURT FOR THE STATE OF WASHINGTON
IN AND FOR THE COUNTY OF PIERCE

CEDAR RIVER WATER AND SEWER
DISTRICT; and SOOS CREEK WATER
AND SEWER DISTRICT,

Plaintiff,

vs.

KING COUNTY, et al.,

Defendants.

Case No. 08-2-11167-4

ORDER GRANTING DEFENDANT
KING COUNTY'S PARTIAL
SUMMARY JUDGMENT MOTION TO
DISMISS TRUST AND FIDUCIARY
DUTY CLAIMS

**Noted: October 16, 2009
10:30 a.m.**

This matter came before the Court on King County's Partial Summary Judgment Motion to Dismiss Trust and Fiduciary Duty Claims. The Court heard the oral argument of counsel and considered the following-listed pleadings as well as the other files and records in this case:

1. Defendant King County's Partial Summary Judgment Motion to Dismiss Trust and Fiduciary Duty Claims;

2. Declaration of Katherine Kennedy in Support of Defendant King County's Partial Summary Judgment Motion to Dismiss Trust and Fiduciary Duty Claims, with attached exhibits;

ORDER GRANTING DEFENDANT KING
COUNTY'S PARTIAL SUMMARY JUDGMENT
MOTION TO DISMISS TRUST AND
FIDUCIARY DUTY CLAIMS - 1

LAW OFFICES
DANIELSON HARRIGAN LEYH & TOLLEFSON LLP
999 THIRD AVENUE, SUITE 4400
SEATTLE, WASHINGTON 98104
TEL. (206) 623-1700 FAX. (206) 623-8717

G-31

1 3. Plaintiffs' Opposition to King County's Partial Summary Judgment Motion to
2 Dismiss Trust and Fiduciary Duty Claims;

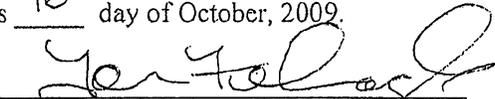
3 4. Declaration of David F. Jurca in Opposition to King County's Partial Summary
4 Judgment Motion to Dismiss Trust and Fiduciary Duty Claims;

5 5. Reply in Support of King County's partial Summary Judgment Motion to
6 Dismiss Trust and Fiduciary Duty Claims

7 Having considered the pleadings and materials submitted to the court, heard oral
8 argument of counsel, and being otherwise fully advised,

9 IT IS HEREBY ORDERED that plaintiff's claims alleging breach of fiduciary and trust
10 duties are dismissed.

11 DONE IN OPEN COURT this 16th day of October, 2009.

12 
13 HONORABLE THOMAS J. FELNAGLE
14 Pierce County Superior Court Judge

15 Presented by:

16 DANIELSON HARRIGAN LEYH & TOLLEFSON LLP

17 By 

18 Timothy G. Leyh, WSBA #14853
19 Randall T. Thomsen, WSBA #25310
20 Special Deputy Prosecuting Attorneys for
21 Defendant King County

22 KING COUNTY PROSECUTING ATTORNEY
23 CIVIL DIVISION

24 William Blakney, WSBA #16734
25 Verna P. Bromley, WSBA #24703
Senior Deputy Prosecuting Attorneys
for Defendant King County

ORDER GRANTING DEFENDANT KING
COUNTY'S PARTIAL SUMMARY JUDGMENT
MOTION TO DISMISS TRUST AND
FIDUCIARY DUTY CLAIMS - 2

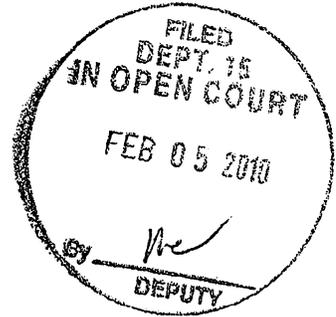
LAW OFFICES
DANIELSON HARRIGAN LEYH & TOLLEFSON LLP
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EXHIBIT F

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HONORABLE THOMAS J. FELNAGLE



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SUPERIOR COURT FOR THE STATE OF WASHINGTON
IN AND FOR THE COUNTY OF PIERCE

CEDAR RIVER WATER AND SEWER DISTRICT; and SOOS CREEK WATER AND SEWER DISTRICT,

Plaintiffs,

vs.

KING COUNTY, *et al.*,

Defendants.

Case No. 08-2-11167-4

ORDER GRANTING DEFENDANT KING COUNTY'S MOTION FOR PARTIAL SUMMARY JUDGMENT TO DISMISS PLAINTIFFS' RECLAIMED WATER CLAIMS AND DENYING PLAINTIFFS' CROSS-MOTION

This matter came before the Court on the motion of defendant King County for partial summary judgment to dismiss plaintiffs' Reclaimed Water claims and plaintiffs' cross-motion. The Court heard the oral argument of counsel on February 5, 2010, and considered the following pleadings as well as the other files and records in this case:

1. King County's Motion for Partial Summary Judgment to Dismiss Plaintiffs' Reclaimed Water Claims;
2. Declaration of Randall Thomsen in Support of King County's Motion for Partial Summary Judgment to Dismiss Plaintiffs' Reclaimed Water Claims and exhibits attached thereto;

ORDER GRANTING DEF. K.C.'S MOTION FOR PARTIAL S.J. TO DISMISS PLFFS.' RECLAIMED WATER CLAIMS & DENYING PLAINTIFFS' CROSS-MOTION - 1

LAW OFFICES
DANIELSON HARRIGAN LEYH & TOLLEFSON LLP
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1 3. Declaration of Susan Una-Kaufman in Support of King County's Motion for
2 Partial Summary Judgment to Dismiss Plaintiffs' Reclaimed Water Claims and exhibits
3 attached thereto;

4 4. Declaration of Bob Peterson in Support of King County's Motion for Partial
5 Summary Judgment to Dismiss Plaintiffs' Reclaimed Water Claims and exhibits attached
6 thereto;

7 5. Declaration of Betsy Cooper in Support of King County's Motion for Partial
8 Summary Judgment to Dismiss Plaintiffs' Reclaimed Water Claims;

9 6. Plaintiffs' Cross-Motion and Response to King County's Motion for Partial
10 Summary Judgment Regarding Reclaimed Water;

11 7. Declaration of Collette Kostelec in Support of Plaintiffs' Cross-Motion and
12 Response to King County's Motion for Partial Summary Judgment Regarding Reclaimed
13 Water and exhibits attached thereto;

14 8. King County's Reply in Support of Motion for Partial Summary Judgment
15 Regarding Reclaimed Water, and Response to Plaintiffs' Cross-Motion;

16 9. Declaration of Pam Bissonnette;

17 10. Supplemental Declaration of Bob Peterson and exhibits attached thereto;

18 11. Supplemental Declaration of Susan Kaufman-Una;

19 12. Supplemental Declaration of Betsy Cooper and the exhibit attached thereto;

20 13. Plaintiffs' Reply Regarding Reclaimed Water, and;

21 14. Supplemental Declaration of Colette M. Kostelec in Support of Plaintiffs' Reply
22 Regarding Reclaimed Water and exhibits attached thereto.

23 Having considered the above pleadings and materials submitted to the court, heard oral
24 argument of counsel, and being otherwise fully advised,

25

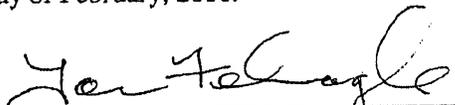
ORDER GRANTING DEF. K.C.'S MOTION FOR
PARTIAL S.J. TO DISMISS PLFFS.'
RECLAIMED WATER CLAIMS & DENYING
PLAINTIFFS' CROSS-MOTION - 2

LAW OFFICES
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G-35

1 IT IS ORDERED that King County's Motion for Partial Summary Judgment to
2 Dismiss Plaintiffs' Reclaimed Water Claims is GRANTED in its entirety, plaintiffs' Cross-
3 Motion is DENIED, and plaintiffs' claims related to King County's authority to distribute and
4 sell reclaimed water are DISMISSED WITH PREJUDICE, including plaintiffs' claims that the
5 cost of the "backbone" cannot be charged to the Water Quality Fund.

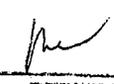
6 DONE IN OPEN COURT this 5th day of February, 2010.

7
8 
9 HONORABLE THOMAS J. FEINAGLE
PIERCE COUNTY SUPERIOR COURT JUDGE

10 Presented by:
11 DANIELSON HARRIGAN LEYH & TOLLEFSON LLP

12
13 
14 By _____
15 Timothy G. Leyh, WSBA #14853
16 Randall T. Thomsen, WSBA #25310
17 Katherine Kennedy, WSBA #15117
Special Deputy Prosecuting Attorneys for
Defendant King County

18 DANIEL T. SATTERBERG,
19 King County Prosecuting Attorney
20 William Blakney, WSBA #16734
21 Verna P. Bromley, WSBA #24703
22 Senior Deputy Prosecuting Attorneys
23 for Defendant King County.
24
25

FILED
DEPT. 15
IN OPEN COURT
FEB 05 2010
By 
DEPUTY

ORDER GRANTING DEF. K.C.'S MOTION FOR
PARTIAL S.J. TO DISMISS PLFFS.
RECLAIMED WATER CLAIMS & DENYING
PLAINTIFFS' CROSS-MOTION - 3

LAW OFFICES
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EXHIBIT G

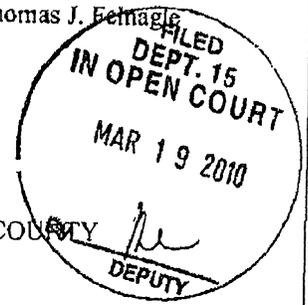
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08-2-11167-4 33978563 OR 03-22-10

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Hon. Thomas J. Fehagle



SUPERIOR COURT OF WASHINGTON FOR PIERCE COUNTY

CEDAR RIVER WATER AND SEWER DISTRICT; and SOOS CREEK WATER AND SEWER DISTRICT,

Plaintiffs,

v.

KING COUNTY; *et al.*,

Defendants.

No. 08-2-11167-4

[plaintiffs' proposed] ORDER DENYING KING COUNTY'S MOTION FOR PARTIAL SUMMARY JUDGMENT AND GRANTING IN PART AND DENYING IN PART PLAINTIFFS' CROSS-MOTION FOR PARTIAL SUMMARY JUDGMENT REGARDING CULVER FUND CLAIMS

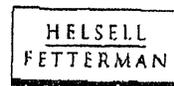
This matter having come on for hearing on February 26, 2010, before the undersigned judge of the above-entitled Court, upon Defendant King County's Motion for Partial Summary Judgment to Dismiss Plaintiffs' Culver Fund Claims ("King County's Motion") and upon Plaintiffs' Cross-Motion for Partial Summary Judgment Regarding Culver Fund Claims ("Plaintiffs' Cross-Motion");

And the Court having reviewed and duly considered all papers submitted in support of or in opposition to the aforesaid motion and cross-motion, including the following:

1. King County's Motion for Partial Summary Judgment Dismissal of Plaintiffs' Culver Fund Claims, dated December 11, 2009;
2. Declaration of Randall Thomsen in Support of King County's Motion for Partial Summary Judgment Dismissal of Plaintiffs' Culver Fund Claims, dated December 11, 2009, and exhibits attached thereto;

ORIGINAL

ORDER ON CROSS-MOTIONS FOR PARTIAL SUMMARY JUDGMENT ON CULVER FUND CLAIMS - 1

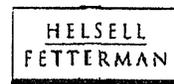


1001 Fourth Avenue, Suite 4200
Seattle, WA 98154
(206) 292-3144

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- 1 3. Declaration of Steve Oien in Support of King County's Motion for Partial Summary
2 Judgment Dismissal of Plaintiffs' Culver Fund Claims, dated December 11, 2009;
- 3 4. Declaration of Ken Pritchard in Support of King County's Motion for Partial
4 Summary Judgment Dismissal of Plaintiffs' Culver Fund Claims, dated December 10, 2009;
- 5 5. Declaration of Mark Isaacson in Support of King County's Motion for Partial
6 Summary Judgment Dismissal of Plaintiffs' Culver Fund Claims, dated December 11, 2009;
- 7 6. Declaration of Mike Huddleston in Support of King County's Motion for Partial
8 Summary Judgment Dismissal of Plaintiffs' Culver Fund Claims, dated December 11, 2009, and
9 exhibits attached thereto;
- 10 7. Declaration of Tim Aratani in Support of King County's Motion for Partial Summary
11 Judgment Dismissal of Plaintiffs' Culver Fund Claims, dated November 2009;
- 12 8. Plaintiffs' Response and Cross-Motion for Partial Summary Judgment on Culver
13 Fund Claims, dated January 29, 2010;
- 14 9. Declaration of David F. Jurca in Opposition to King County's Motion and in Support
15 of Plaintiffs' Cross-Motion for Partial Summary Judgment on Culver Fund Claims, dated January 29,
16 2010, and exhibits attached thereto;
- 17 10. King County's Reply in Support of Motion for Partial Summary Judgment Dismissal
18 of Plaintiffs' Culver Fund Claims and Opposition to Plaintiffs' Cross-Motion, dated February 12,
19 2010;
- 20 11. Supplemental Declaration of Mark Huddleston, dated February 12, 2010, and exhibits
21 attached thereto;
- 22 12. Supplemental Declaration of Mark Isaacson, dated February 11, 2010;
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ORDER ON CROSS-MOTIONS FOR PARTIAL SUMMARY
JUDGMENT ON CULVER FUND CLAIMS - 2



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13. Declaration of Randy Shuman, dated February 11, 2010;

14. Supplemental Declaration of Randall Thomsen, dated February 12, 2010, and exhibits attached thereto;

15. Plaintiffs' Reply in Support of Their Cross-Motion for Partial Summary Judgment on Culver Fund Claims, dated February 22, 2010; and

16. Supplemental Declaration of David F. Jurca in Further Support of Plaintiffs' Cross-Motion for Partial Summary Judgment on Culver Fund Claims, dated February 22, 2010, and exhibits attached thereto;

And the Court having heard and duly considered the oral argument of counsel in support of or in opposition to the motion and cross-motion, and having announced an oral ruling at the conclusion of the hearing on February 26, 2010;

And plaintiffs having filed on March 8, 2010, Plaintiffs' Motion for Reconsideration or Clarification of Court's Oral Ruling on Cross-Motions for Summary Judgment on Culver Fund Claims and the Second Supplemental Declaration of David F. Jurca Regarding Culver Fund Claims;

And counsel for King County having delivered a letter to the Court on March 9, 2010 requesting guidance regarding plaintiffs' motion for reconsideration or clarification, and plaintiffs' counsel having delivered a letter to the Court on March 10, 2010 in response to the letter from counsel for King County;

And the Court having duly considered the two letters from counsel and having advised counsel by an email on March 10, 2010 from the Court's judicial assistant that (1) no reconsideration motion will be heard until an order is entered, (2) summary judgment was denied on estoppel and laches, but without prejudice to further motions for summary judgment on those issues, and (3)

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summary judgment was continued on damages for additional briefing;

Now, therefore, it is hereby ORDERED as follows:

1. King County's motion for partial summary judgment on the Culver Fund claims is denied, and plaintiffs' cross-motion for partial summary judgment on the Culver Fund claims is granted in part and denied in part, as follows:

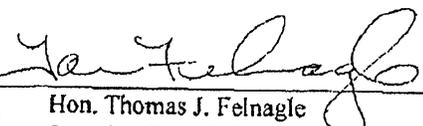
(a) The Court concludes that under the sewage disposal contracts and applicable legal principles, (i) sewer revenues may not properly be used for "water quality improvement" purposes other than sewage treatment and disposal, (ii) ^{some or all} ~~the~~ Culver Fund expenditures provided ^{no} direct benefit for sewage treatment and disposal, and (iii) plaintiffs' claims challenging the legality of using sewer revenues to pay for Culver Fund expenditures subsequent to August 8, 2002 are not barred by the statute of limitations. Accordingly, as to those issues King County's motion is denied and plaintiffs' cross-motion is granted.

(b) The Court further concludes that there may be issues of fact concerning the County's affirmative defenses of laches and equitable estoppel, and the Court has not yet considered the subject of damages. Accordingly, as to those issues both King County's motion and plaintiffs' cross-motion are denied.

2. This order is without prejudice to, and does not preclude, further motions for summary judgment on the issues of laches, estoppel or damages relating to the Culver Fund claims.

Dated this 19th day of March, 2010

FILED
DEPT. 15
IN OPEN COURT
MAR 19 2010
By 
DEPUTY


Hon. Thomas J. Felnagle
Superior Court Judge

ORDER ON CROSS-MOTIONS FOR PARTIAL SUMMARY JUDGMENT ON CULVER FUND CLAIMS - 4

HELSELL
FETTERMAN

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Presented by:

HELSELL FETTERMAN LLP

By Colette M. Kostelec / David F. Jurca
David F. Jurca, WSBA #2015
Colette M. Kostelec, WSBA #37151
Attorneys for Plaintiffs

ORDER ON CROSS-MOTIONS FOR PARTIAL SUMMARY
JUDGMENT ON CULVER FUND CLAIMS - 5



1001 Fourth Avenue, Suite 4200
Seattle, WA 98154
(206) 292-1144

G-42

EXHIBIT H

G-43

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Hon. Thomas



SUPERIOR COURT OF WASHINGTON FOR PIERCE COUNTY

CEDAR RIVER WATER AND SEWER DISTRICT; and SOOS CREEK WATER AND SEWER DISTRICT,

Plaintiffs,

v.

KING COUNTY; *et al.*,

Defendants.

No. 08-2-11167-4
28

[proposed] ORDER ON PLAINTIFFS' MOTION FOR RECONSIDERATION OF PRIOR RULING REGARDING KING COUNTY'S LACHES AND ESTOPPEL DEFENSES TO CULVER FUND CLAIMS

This matter having come on for hearing on April 23, 2010, before the undersigned judge of the above-entitled Court, upon Plaintiffs' Motion for Reconsideration or Clarification of Oral Ruling on Cross-Motions for Summary Judgment on Plaintiffs' Culver Fund Claims, dated March 8, 2010 ("Motion for Reconsideration");

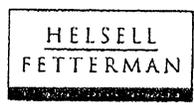
And the Court having previously entered an Order Denying King County's Motion for Partial Summary Judgment and Granting in Part and Denying in Part Plaintiffs' Cross-Motion for Partial Summary Judgment Regarding Culver Fund Claims, dated March 19, 2010;

And the Court having reviewed and duly considered all papers submitted in support of or in opposition to the aforesaid Motion for Reconsideration, including the following:

- 1. Plaintiffs' Motion for Reconsideration or Clarification of Oral Ruling on Cross-

ORDER ON PLAINTIFFS' MOTION FOR RECONSIDERATION OF PRIOR RULING REGARDING KING COUNTY'S LACHES AND ESTOPPEL DEFENSES TO CULVER FUND CLAIMS - 1

ORIGINAL



1001 Fourth Avenue, Suite 4200
Seattle, WA 98154
(206) 292-1144

G-44

1 Motions for Summary Judgment on Plaintiffs' Culver Fund Claims, dated March 8, 2010;

2 2. Second Supplemental Declaration of David F. Jurca and exhibits attached thereto,
3 dated March 8, 2010;

4 3. Defendant King County's Opposition to Plaintiffs' Motion for Reconsideration, dated
5 March 26, 2010;

6 4. Plaintiffs' Reply in Support of Motion for Reconsideration or Clarification of Ruling
7 on Cross-Motions for Summary Judgment Regarding Culver Fund, dated April 9, 2010;

8 5. King County's Surreply re New Arguments Presented in Plaintiffs' Reply in Support
9 of Motion for Reconsideration or Clarification, dated April 19, 2010; and

10 6. Plaintiffs' Response to King County's "Surreply" Regarding Culver Reconsideration,
11 dated April 22, 2010;

12 And the Court having heard and duly considered the oral argument of counsel presented at the
13 aforesaid hearing on April 23, 2010;

14 Now, therefore, upon reconsideration it is hereby ORDERED as follows:

15 1. Regarding the County's estoppel and laches defenses to plaintiffs' Culver Fund
16 claims, the sole issues of fact supporting the County's contentions as to acquiescence by plaintiffs,
17 detrimental reliance by the County and laches involve what occurred at the Robinswood summit and
18 whether or not there was agreement by plaintiffs at that summit that the County could reasonably rely
19 on regarding use of sewer revenues for Culver projects, whether any such funding was meant to be a
20 temporary situation or not, and whether the County picked a particular route of action because of and
21 in reliance on the acquiescence of plaintiffs. *To allow for context and implementation
22 the court will consider other specific
23 events as shall be identified and
24 approved pre*

25 2. In all other respects the Order dated March 19, 2010 remains in effect. *trial.*

ORDER ON PLAINTIFFS' MOTION FOR RECONSIDERATION
OF PRIOR RULING REGARDING KING COUNTY'S
LACHES AND ESTOPPEL DEFENSES TO CULVER FUND CLAIMS - 2

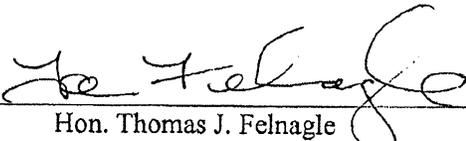
HELSELL
FETTERMAN

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Dated this 14th day of may, 2010.



Hon. Thomas J. Felnagle
Superior Court Judge

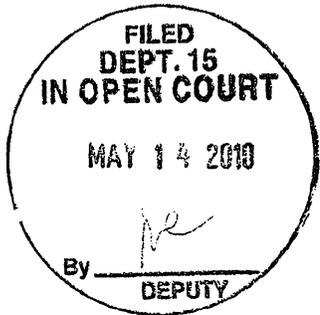
Presented by:
HELSELL FETTERMAN LLP

By 

David F. Jurca, WSBA #2015
Colette M. Kostelec, WSBA #37151
Attorneys for Plaintiffs

DANIELSON HARRIGAN LEYH & TOLLEFSON LLP

By _____
Timothy G. Leyh, WSBA #14853
Randall Thomsen, WSBA #25310
Special Deputy Prosecuting Attorneys for Defendant King County



ORDER ON PLAINTIFFS' MOTION FOR RECONSIDERATION
OF PRIOR RULING REGARDING KING COUNTY'S
LACHES AND ESTOPPEL DEFENSES TO CULVER FUND CLAIMS - 3



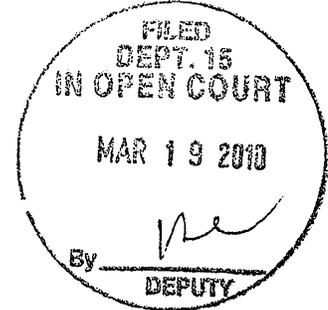
1001 Fourth Avenue, Suite 4200
Seattle, WA 98154
(206) 292-1144

G-46

EXHIBIT I

G-47

HONORABLE THOMAS J. FELNAGLE



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SUPERIOR COURT FOR THE STATE OF WASHINGTON
IN AND FOR THE COUNTY OF PIERCE

CEDAR RIVER WATER AND SEWER DISTRICT; and SOOS CREEK WATER AND SEWER DISTRICT,

Plaintiffs,

vs.

KING COUNTY, *et al.*,

Defendants.

Case No. 08-2-11167-4

ORDER REGARDING ALLOCATION CLAIMS

This matter came before the Court on the motion of Defendant King County for Partial Summary Judgment RE: Allocation of Overhead Relating to the Wastewater Treatment Division and the cross-motion of Plaintiffs Cedar River Water and Sewer District and Soos Creek Water and Sewer District for Partial Summary Judgment Regarding Allocation Claims. The Court heard the oral argument of counsel on March 19, 2010, and considered the following pleadings filed in support and opposition to the motion:

- I. Defendant King County's Motion for Partial Summary RE: Allocation of Overhead;

ORDER REGARDING ALLOCATION CLAIMS - 1

LAW OFFICES
DANIELSON HARRIGAN LEYH & TOLLEFSON LLP
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G-48

- 1 2. Declaration of Randall Thomsen in Support of King County's Motion for
- 2 Partial Summary Judgment RE: Allocation of Overhead and exhibits attached thereto;
- 3 3. Declaration of Bob Cowan and exhibits attached thereto;
- 4 4. Declaration of Bob Wagner and exhibits attached thereto;
- 5 5. Declaration of Helene Ellickson;
- 6 6. Plaintiffs' Motion for Partial Summary Judgment Regarding Allocation Claims;
- 7 7. Declaration of Chris Cortines and exhibits attached thereto;
- 8 8. Declaration of Colette M. Kostelec in Support of Plaintiffs' Motion for Partial
- 9 Summary Judgment Regarding Allocation Claims and exhibits attached thereto;
- 10 10. King County's Response to Plaintiffs' Motion for Partial Summary Judgment
- 11 Regarding Allocation Claims;
- 12 11. Declaration of Ken Guy and exhibits attached thereto;
- 13 12. Supplemental Declaration of Bob Wagner and exhibits attached thereto;
- 14 13. Supplemental Declaration of Bob Cowan;
- 15 14. Declaration of John Bodoia;
- 16 15. Supplemental Declaration of Randall Thomsen in Support of King County's
- 17 Response to Plaintiffs' Motion for Partial Summary Judgment Regarding Allocation Claims
- 18 and exhibits attached thereto;
- 19 18. Plaintiffs' Response to King County's Motion for Partial Summary Judgment
- 20 Regarding Allocation Claims;
- 21 19. Supplemental Declaration of Colette M. Kostelec in Support of Plaintiffs'
- 22 Response to King County's Motion for Partial Summary Judgment Regarding Allocation
- 23 Claims and exhibits attached thereto;
- 24 20. King County's Reply in Support of Motion for partial Summary Judgment RE:
- 25 Allocation of Overhead;

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- 21. Second Supplemental Declaration of Bob Cowan;
- 22. Second Supplemental Declaration of Bob Wagner;
- 23. Second Supplemental Declaration of Randall Thomsen;
- 24. Plaintiffs' Reply on Motion for Partial Summary Judgment Regarding

Allocation of Claims, and;

- 25. Second Supplemental Declaration of Colette M. Kostelec in Support of Plaintiffs' Motion for Partial Summary Judgment Regarding Allocation Claims and exhibits attached thereto.

Having considered the above pleadings and materials submitted to the court, heard oral argument of counsel, and being otherwise fully advised,

IT IS ORDERED that:

1. Defendant King County's Motion for Partial Summary Judgment regarding the Allocation of Overhead is ~~GRANTED~~ ^{denied} in its entirety; 587

2. Plaintiffs' Motion for Partial Summary Judgment Regarding Allocation Claims is DENIED ~~in its entirety~~; and

~~3. Plaintiffs' claims challenging any of King County's allocation of overhead to the Water Quality Fund and/or the Wastewater Treatment Division are DISMISSED with PREJUDICE.~~ 587

DONE IN OPEN COURT this 19th day of March, 2010.

Thomas J. Felnagle

 HONORABLE THOMAS J. FELNAGLE
 PIERCE COUNTY SUPERIOR COURT JUDGE

IN OPEN COURT
 MAR 19 2010
 By *[Signature]*
 DEPUTY

///
///

ORDER REGARDING ALLOCATION CLAIMS - 3

LAW OFFICES
 DANIELSON HARRIGAN LEYH & TOLLEFSON LLP
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1 Presented by:

2 DANIELSON HARRIGAN LEYH & TOLLEFSON LLP

3

4

By _____

5

Timothy G. Leyh, WSBA #14853
Randall T. Thomsen, WSBA #25310
Katherine Kennedy, WSBA #15117
Special Deputy Prosecuting Attorneys for
Defendant King County

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DANIEL T. SATTERBERG,
King County Prosecuting Attorney
William Blakney, WSBA #16734
Verna P. Bromley, WSBA #24703
Senior Deputy Prosecuting Attorneys
for Defendant King County

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ORDER REGARDING ALLOCATION
CLAIMS - 4

LAW OFFICES
DANIELSON HARRIGAN LEYH & TOLLEFSON LLP
999 THIRD AVENUE, SUITE 4400
SEATTLE, WASHINGTON 98104
TEL. (206) 623-1700 FAX. (206) 623-8717

G-51

EXHIBIT J

G-52

6/7/2010 8:04 418191

FILED
DEPT. 15
IN OPEN COURT

JUN 04 2010

Hon. Thomas J. Feltnagle *He*

By _____
DEPUTY



08-2-11167-4

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ORRE

06-07-10

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SUPERIOR COURT OF WASHINGTON FOR PIERCE COUNTY

6

CEDAR RIVER WATER AND SEWER
DISTRICT; and SOOS CREEK WATER AND
SEWER DISTRICT,

No. 08-2-11167-4

ST
IN PART AND
DENYING IN PART

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Plaintiffs,

[proposed] ORDER GRANTING PLAINTIFFS'
MOTION FOR PARTIAL SUMMARY
JUDGMENT REGARDING ALLEGED BOND
AND INSURANCE "BENEFITS" PROVIDED
BY KING COUNTY TO LOCAL SEWER
UTILITIES

9

v.

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KING COUNTY; et al.,

11

Defendants.

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This matter having come on for hearing on June 4, 2010, before the undersigned judge of the
above-entitled Court, upon Plaintiffs' Motion For Partial Summary Judgment Regarding Alleged
Bond and Insurance "Benefits" Provided by King County to Local Sewer Utilities;

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And the Court having reviewed and duly considered all papers submitted in support of or in
opposition to the aforesaid motion, including the following:

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1. Plaintiffs' Motion for Partial Summary Judgment Regarding Alleged Bond and
Insurance "Benefits" Provided by King County to Local Sewer Utilities, dated May 7, 2010;

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2. Declaration of Colette M. Kostelec in Support of Plaintiffs' Motion for Partial
Summary Judgment Regarding Alleged Bond and Insurance "Benefits," dated May 7, 2010 and
exhibits attached thereto;

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ORDER GRANTING PLAINTIFFS' MOTION FOR PARTIAL
SUMMARY JUDGMENT REGARDING
ALLEGED BOND AND INSURANCE "BENEFITS" - I



1001 Fourth Avenue, Suite 1200
Seattle, WA 98154
(206) 292-1144

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3. Defendant King County's Opposition to Plaintiffs' Motion for Summary Judgment and Cross-Motion for Partial Summary Judgment, dated May 24, 2010;

4. Declaration of Bob Cowan, dated May 24, 2010;

5. Declaration of Jennifer Hills, dated May 21, 2010;

6. Declaration of Rob Shelley, dated May 24, 2010 and exhibits attached thereto;

7. Declaration of Randall Thomsen in Support of King County's Opposition to Plaintiffs' Motion for Summary Judgment and Cross-Motion for Partial Summary Judgment, dated May 24, 2010 and exhibits attached thereto;

8. Declaration of Christie True, dated May 21, 2010;

9. Declaration of Bob Wagner, dated May 24, 2010;

10. Plaintiffs' Reply in Support of Motion for Partial Summary Judgment Regarding Alleged Bond and Insurance "Benefits," dated June 1, 2010; and

11. Supplemental Declaration of Colette M. Kostelec in Support of Plaintiffs' Motion for Partial Summary Judgment Regarding Alleged Bond and Insurance "Benefits," dated June 1, 2010 and exhibits attached thereto;

And the Court having heard and duly considered the oral argument of counsel in support of or in opposition to the aforesaid motion and cross-motion presented at the aforesaid hearing;

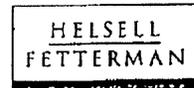
Now, therefore, it is hereby ORDERED as follows:

1. Plaintiffs' Motion for Partial Summary Judgment Regarding Alleged Bond and Insurance "Benefits" Provided by King County to Local Sewer Utilities is granted.

2. King County's Cross-Motion for Partial Summary Judgment is denied.

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TO THE EXTENT
SET FORTH BELOW
AND IS
OTHERWISE
DENIED.

ORDER GRANTING PLAINTIFFS' MOTION FOR PARTIAL SUMMARY JUDGMENT REGARDING ALLEGED BOND AND INSURANCE "BENEFITS" - 2



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(206) 292-1144

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3. King County's counterclaims, crossclaims and affirmative defense of offset based on alleged "benefits" provided to the Wastewater Treatment Division ("WTD") or to plaintiffs and other local sewer utilities in the form of lower interest rates on bonds issued by the County and lower property insurance premiums are dismissed as a matter of law.

~~4. King County shall reimburse the Water Quality Fund ("WQF") for all "credit enhancement" charges imposed on WTD since August 2002 for the County's issuance of "double barrel" bonds.~~

~~5. Counsel for plaintiffs and King County shall confer and attempt to agree on the amounts to be reimbursed to the WQF pursuant to paragraph 4 above, and on the amount of any prejudgment interest payable on such amounts. If agreement cannot be reached on those matters, the parties may apply to the Court for further relief.~~

Dated this 4th day of June, 2010.

Thomas J. Felagle

Hon. Thomas J. Felagle
Superior Court Judge

FILED
DEPT. 15
IN OPEN COURT
JUN 04 2010
By *He*
DEPUTY

Presented by:

HELSELL FETTERMAN LLP

By *David F. Jurca*
David F. Jurca, WSBA #2015
Colette M. Kostelec, WSBA #37151
Attorneys for Plaintiffs

ORDER GRANTING PLAINTIFFS' MOTION FOR PARTIAL SUMMARY JUDGMENT REGARDING ALLEGED BOND AND INSURANCE "BENEFITS" - 3

HELSELL
FETTERMAN

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(206) 292-1144

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EXHIBIT K

G-56



08-2-11167-4

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03-22-10



Hon. Thomas J. Felnagle

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SUPERIOR COURT OF WASHINGTON FOR PIERCE COUNTY

CEDAR RIVER WATER AND SEWER DISTRICT; and SOOS CREEK WATER AND SEWER DISTRICT,

Plaintiffs,

v.

KING COUNTY; et al.,

Defendants.

No. 08-2-11167-4

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[proposed] ORDER GRANTING PLAINTIFFS' MOTION AND DENYING KING COUNTY'S MOTION FOR PARTIAL SUMMARY JUDGMENT REGARDING STOCKPOT

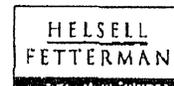
This matter having come on for hearing on March 19, 2010, before the undersigned judge of the above-entitled Court, upon Plaintiffs' Motion for Partial Summary Judgment Regarding StockPot and King County's Motion for Partial Summary Judgment RE: StockPot Claims, both dated February 19, 2010;

And the Court having reviewed and duly considered all papers submitted in support of or in opposition to the aforesaid motions, including the following:

1. Plaintiffs' Motion for Partial Summary Judgment Regarding StockPot, dated February 19, 2010;
2. Declaration of David F. Jurca in Support of Plaintiffs' Motion for Partial Summary Judgment Regarding StockPot, dated February 19, 2010, and exhibits attached thereto;

ORDER GRANTING PLAINTIFFS' MOTION AND DENYING KING COUNTY'S MOTION FOR PARTIAL SUMMARY JUDGMENT REGARDING STOCKPOT - 1

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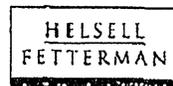


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- 1 3. Defendant King County's Motion for Partial Summary Judgment Re: StockPot
2 Claims, dated February 19, 2010;
- 3 4. Declaration of Randall Thomsen in Support of Defendant King County's Motion for
4 Partial Summary Judgment Re: StockPot Claims, dated February 19, 2010, and exhibits attached
5 thereto;
- 6 5. Declaration of Christie True, dated February 17, 2010, and exhibits attached thereto;
- 7 6. Declaration of Pam Elardo, dated February 18, 2010, and exhibits attached thereto;
- 8 7. Plaintiffs' Response to King County's Motion for Partial Summary Judgment
9 Regarding StockPot Claims, dated March 8, 2010;
- 10 8. Declaration of Jill R. Skinner in Support of Plaintiffs' Response to King County's
11 Motion for Partial Summary Judgment Regarding StockPot Claims, dated March 8, 2010, and
12 exhibits attached thereto;
- 13 9. King County's Response to Plaintiffs' Motion for Partial Summary Judgment
14 Regarding StockPot, dated March 8, 2010;
- 15 10. Supplemental Declaration of Randall Thomsen in Support of King County's Response
16 to Plaintiffs' Motion for Partial Summary Judgment Regarding StockPot, dated March 8, 2010, and
17 exhibits attached thereto;
- 18 11. Supplemental Declaration of Pam Elardo, dated March 8, 2010;
- 19 12. Declaration of Bob Wagner, dated March 8, 2010, and exhibits attached thereto;
- 20 13. Declaration of Tim Aratani, dated March 8, 2010;
- 21 14. Declaration of Brad Thomas, dated March 1, 2010, and exhibits attached thereto;
- 22 15. Declaration of Gary Nelson, dated March 5, 2010;
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ORDER GRANTING PLAINTIFFS' MOTION AND
DENYING KING COUNTY'S MOTION FOR
PARTIAL SUMMARY JUDGMENT REGARDING STOCKPOT - 2



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16. Plaintiffs' Reply in Support of Motion for Partial Summary Judgment on StockPot Claims; dated March 15, 2010;

17. Supplemental Declaration of David F. Jurca In Support of Plaintiffs' Motion For Partial Summary Judgment Regarding StockPot, dated March 15, 2010, and exhibits attached thereto;

18. King County's Reply in Support of Motion for Partial Summary Judgment Re: StockPot Claims, dated March 15, 2010; and

19. Second Supplemental Declaration of Randall Thomsen in Support of King County's Reply for Partial Summary Judgment Regarding StockPot, dated March 15, 2010, and exhibits attached thereto;

And the Court having heard and duly considered the oral argument of counsel in support of or in opposition to the aforesaid motions presented at the aforesaid hearing;

Now, therefore, it is hereby ORDERED as follows:

- 1. Plaintiffs' Motion for Partial Summary Judgment Regarding StockPot is ~~granted~~ ^{denied}.
- 2. King County's Motion for Partial Summary Judgment Re: StockPot Claims is denied.
- 3. King County shall reimburse the Water Quality Fund for all amounts paid to Campbell

~~Soup Company or StockPot, Inc. (collectively referred to herein as "StockPot") to induce StockPot to choose the "local" option rather than the "non-local" option, i.e., for all amounts paid to StockPot other than (a) the \$7.28 million paid for the real property acquired from StockPot, (b) the \$5.5 million amount that would have been paid under the non-local option, and (c) the value of personal property acquired from StockPot (which is no more than \$654,000).~~

~~4. Counsel for plaintiffs and King County shall confer and attempt to agree on the amounts to be reimbursed to the Water Quality Fund pursuant to the above paragraph, and on the~~

ORDER GRANTING PLAINTIFFS' MOTION AND DENYING KING COUNTY'S MOTION FOR PARTIAL SUMMARY JUDGMENT REGARDING STOCKPOT - 3

HEISELL FETTERMAN

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Seattle, WA 98154
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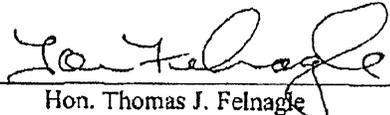
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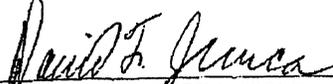
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~~amount of any prejudgment interest payable on such amounts. If agreement cannot be reached on these matters, the parties may apply to the Court for further relief.~~

Dated this 19th day of March, 2010.


Hon. Thomas J. Feltnagle
Superior Court Judge

Presented by:
HELSELL FETTERMAN LLP

By 
David F. Jurca, WSBA #2015
Attorneys for Plaintiffs



ORDER GRANTING PLAINTIFFS' MOTION AND DENYING KING COUNTY'S MOTION FOR PARTIAL SUMMARY JUDGMENT REGARDING STOCKPOT - 4



G-60

EXHIBIT L

G-61

Names and Addresses of Attorneys for the Parties

Plaintiffs:

Cedar River Water and
Sewer District
Soos Creek Water and
Sewer District

David F. Jurca, WSBA #2015
Colette M. Kostelec, WSBA #37151
Helsell Fetterman LLP
1001 Fourth Avenue, Suite 4200
Seattle, WA 98154-1154

Defendants:

King County

William Blakney, WSBA # 16734
Verna P. Bromley, WSBA #24703
King County Prosecuting Attorney
King County Courthouse
516 3rd Avenue, #W-400
Seattle, WA 98104

Arthur W. Harrigan, Jr., WSBA #1751
Timothy G. Leyh, WSBA #14853
Randall T. Thomsen, WSBA #25310
Danielson Harrigan Leyh & Tollefson LLP
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Snohomish County

Robert T. Seder, WSBA #14521
Hillary J. Evans, WSBA #35784
Snohomish County Prosecuting Attorney
3000 Rockefeller Avenue, 1st Floor
M/S 106
Everett, WA 98201

Alderwood Water and
Wastewater District

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Leslie C. Clark, WSBA #36164
Short Cressman & Burgess, PLLC
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Seattle, WA 98104

City of Algona	Shelley M. Kerslake, WSBA #21820 Chris D. Bacha, WSBA #16714 Bob C. Sterbank, WSBA #19514 Kenyon Disend, PLLC 11 Front Street South Issaquah, WA 98027
City of Auburn	Daniel B. Heid, WSBA #8217 City of Auburn, Legal Dept. 25 West Main Street Auburn, WA 98001 Wayne D. Tanaka, WSBA #6303 Ogden Murphy Wallace 1601 5 th Avenue, Suite #2100 Seattle, WA 98101
City of Bellevue	Cheryl A. Zakrzewski, WSBA #15906 Assistant City Attorney City of Bellevue 450 110 th Avenue N.E. Bellevue, WA 98004
City of Black Diamond	Bob C. Sterbank, WSBA #19514 Kenyon Disend, PLLC 11 Front Street South Issaquah, WA 98027
City of Bothell	Scott M. Missall, WSBA #14465 Leslie C. Clark, WSBA #36164 Short Cressman & Burgess, PLLC 999 3 rd Avenue, Suite #3000 Seattle, WA 98104
City of Brier	Rod P. Kaseguma, WSBA #6622 Inslee, Best, Doezie & Ryder, P.S. 777 108 th Avenue N.E., Suite #1900 Bellevue, WA 98009
City of Carnation	J. Zachary Lell, WSBA #28744 Ogden Murphy Wallace 1601 5 th Avenue, Suite #2100 Seattle, WA 98101

G-63

Coal Creek Utility District	John W. Milne, WSBA #10697 Inslee, Best, Doezie & Ryder, P.S. 777 108 th Avenue N.E., Suite #1900 Bellevue, WA 98009
Cross Valley Water District	Brian E. Lawler, WSBA #8149 Socius Law Group, PLLC 601 Union Street, Suite #4950 Seattle, WA 98101
Highlands Sewer District	Joseph P. Bennett, WSBA #20893 Hendricks-Bennett, PLLC 402 5 th Avenue South Edmonds, WA 98020
City of Issaquah	Wayne D. Tanaka, WSBA #6303 Ogden Murphy Wallace 1601 5 th Avenue, Suite #2100 Seattle, WA 98101
City of Kent	Thomas C. Brubaker, WSBA #18849 Kent City Attorney 220 4 th Avenue South Kent, WA 98032
City of Kirkland	William R. Evans, WSBA #21353 Kirkland City Attorney 123 5 th Avenue Kirkland, WA 98033
	Wayne D. Tanaka, WSBA #6303 Ogden Murphy Wallace 1601 5 th Avenue, Suite #2100 Seattle, WA 98101

City of Lake Forest Park

Michael P. Ruark, WSBA #2220
Inslee, Best, Doezie & Ryder, P.S.
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Bellevue, WA 98009

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Lakehaven Utility District

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Socius Law Group, PLLC
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Seattle, WA 98101

City of Mercer Island

Kathleen H. Knight, WSBA #18058
Mercer Island City Attorney
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Mercer Island, WA 98040

Wayne D. Tanaka, WSBA #6303
Ogden Murphy Wallace
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Seattle, WA 98101

Northeast Sammamish Sewer
District

John W. Milne, WSBA #10697
Mark S. Leen, WSBA #35934
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Bellevue, WA 98009

Northshore Utility District

Kinnon W. Williams, WSBA #16201
Williams & Williams, PSC
18806 Bothell Way N.E.
Bothell, WA 98011

Olympic View Water and Sewer
District

Allen J. Hendricks, WSBA #3580
Hendricks-Bennett, PLLC
402 5th Avenue South
Edmonds, WA 98020

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City of Pacific	Albert A. Abuan, WSBA #10597 Albert A. Abuan, PLLC 321 High School Road N.E., Suite #D3 PMB #341 Bainbridge Island, WA 98110
City of Redmond	James E. Haney, WSBA #11058 Ogden Murphy Wallace 1601 5 th Avenue, Suite #2100 Seattle, WA 98101
City of Renton	Lawrence J. Warren, WSBA #5853 City of Renton 100 South 2 nd Street Renton, WA 98057
Ronald Wastewater District	Joseph P. Bennett, WSBA #20893 Hendricks-Bennett, PLLC 402 5 th Avenue South Edmonds, WA 98020
Sammamish Plateau Water and Sewer District	John W. Milne, WSBA #10697 Inslee, Best, Doezie & Ryder, P.S. 777 108 th Avenue N.E., Suite #1900 Bellevue, WA 98009
City of Seattle	Gregory C. Narver, WSBA #18127 Seattle City Attorney 600 4 th Avenue, 4 th Floor Seattle, WA 98124
Shorewood Heights Apts., LLC	Dianna J. Caley, WSBA #23413* Wong Fleming, P.C. 2340 130 th Ave. NE #D-150 Bellevue, WA 98005

* Ms. Caley filed an "Amended Notice of Withdrawal for Dianna J. Caley formerly of the Law Firm Adorno Yoss Caley Dehkoda and Qadri" on June 13, 2011 indicating that further papers should be served upon this defendant by addressing them to Lynn DeFino, 711 High St., Des Moines, IA 50392, but the WSBA does not list Lynn DeFino as an attorney and this defendant, as an LLC, is not authorized to appear *pro se* in a Washington court.

Skyway Water and Sewer
District

Rod P. Kaseguma, WSBA #6622
Inslee, Best, Doezie & Ryder, P.S.
777 108th Avenue N.E., Suite #1900
Bellevue, WA 98009

City of Tukwila

Shelley M. Kerslake, WSBA #21820
Bob C. Sterbank, WSBA #19514
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Issaquah, WA 98027

Valley View Sewer District

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Bellevue, WA 98009

Vashon Sewer District

Eric C. Frimodt, WSBA #21938
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Bellevue, WA 98009

Washington State Parks and
Recreation Commission

James R. Schwartz, WSBA #20168
Assistant Attorney General
State of Washington
1125 Washington Street S.E.
P.O. Box 40100
Olympia, WA 98504

Woodinville Water District

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John W. Milne, WSBA #10697
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Bellevue, WA 98009

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