

No. 86293-1

SUPREME COURT OF THE STATE OF WASHINGTON

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

*Appellants,*

v.

KING COUNTY,

*Respondent/Cross-Appellant, and*

SNOHOMISH COUNTY, *et al.,*

*Respondents.*

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**FILED**  
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*[Signature]*

**BRIEF OF APPELLANTS**

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## TABLE OF CONTENTS

<b>TABLE OF AUTHORITIES</b> .....	iv
<b>GLOSSARY OF NAMES AND ACRONYMS</b> .....	xi
<b>I. INTRODUCTION</b> .....	1
<b>II. ASSIGNMENTS OF ERROR AND ISSUES PERTAINING THERETO</b> .....	3
<b>III. STATEMENT OF THE CASE</b> .....	7
A. King County’s Assumption of Metro’s Sewage Disposal Function .....	7
B. Restrictions in the Sewage Disposal Contracts, County Charter and County Code on How Sewage Utility Funds May Be Used.....	8
C. Snohomish County “Community Mitigation” .....	9
D. Reclaimed Water.....	16
E. StockPot .....	18
F. Culver Fund .....	23
G. Overhead Allocation .....	27
1. Improper allocation of general government overhead .....	28
2. Admitted overcharges of overhead .....	29
3. Contractual limitation for “general administrative overhead” .....	30
H. LTGO Bonds “Credit Enhancement Fee”.....	32
<b>IV. ARGUMENT</b> .....	34
A. Standard of Review.....	34
B. King County Should Have Borne the Burden of Proving that It Used the Sewage Utility Fund Only for Authorized Purposes. ....	35
C. The “Community Mitigation” Payments to Snohomish County Were Unlawful. ....	38

1.	The districts’ challenge to the legality of the “community mitigation” payments was not subject to LUPA.....	41
2.	The “community mitigation” payments were illegal exactions from King County by Snohomish County.....	45
D.	King County Is Exceeding Its Authority by Building Infrastructure for a Reclaimed Water Utility and by Using Sewage Utility Funds for an Unauthorized Purpose that Provides Little or No Benefit to the Sewage Utility.....	50
1.	Distribution and sale of reclaimed water are water supply functions, not sewage disposal functions.....	51
2.	The county lacks both express and implied authority to operate a water utility.....	52
3.	WTD cannot be required to bear the cost of a reclaimed water distribution system which benefits the general public, not WTD or its sewage system customers. ....	55
E.	The Additional \$10 Million Payment to StockPot for Relocation Assistance under the Local Option, as Well as the \$2 Million Payment Expressly Attributable to “Job Retention,” Were Both Made for the General Governmental Purpose of Job Preservation, Not for a Utility Purpose.....	58
F.	The Culver Fund Projects Were Neither Directly nor Indirectly Related to Sewage Treatment or Disposal. ....	62
1.	RCW 35.58.200 does not authorize King County to use sewage revenues for non-sewage purposes. ....	64
2.	King County’s Financial Policy No. 8 does not supersede the parties’ contracts, the County Charter or other relevant provisions of the County Code. ....	66
G.	The County Should Reimburse WTD for Overhead Charges Improperly Allocated to the Utility. ....	68

1.	The county’s overhead allocation methodology does not satisfy the “best match” requirement.....	68
2.	The county has refused to reimburse WTD for admitted overhead overcharges resulting from failure to “true-up” and from an admitted arithmetic error.....	70
3.	The county has violated the 1% contractual limitation.....	71
H.	The “Credit Enhancement Fee” for LTGO Bonds Does Not Reflect Costs Incurred by the General Fund and Is Merely a Scheme to Raise Revenues for the General Fund.....	72
V.	<b>CONCLUSION</b> .....	75

**APPENDICES**

A.	Exhibit B to “Community Mitigation” Settlement Agreement and Map of Projects .....	A-1
B.	Culver Fund Projects .....	B-1
C.	Overhead Allocations to WTD (2002-2009) .....	C-1

## TABLE OF AUTHORITIES

### Cases

<i>Austin v. U.S. Bank of Wash.</i> , 73 Wn. App. 293, 869 P.2d 404 (1994).....	37
<i>Berg v. Hudesman</i> , 115 Wn.2d 657, 801 P.2d 222 (1990). ....	60
<i>Berglund v. City of Tacoma</i> , 70 Wn.2d 475, 423 P.2d 922 (1967).....	74
<i>Burton v. Clark County</i> , 91 Wn. App. 505, 958 P.2d 343 (1998).....	47
<i>Citizens' Alliance for Prop. Rights v. Sims</i> , 145 Wn App. 649, 187 P.3d 786 (2008).....	47
<i>City of Longview v. Longview Co.</i> , 21 Wn.2d 248, 150 P.2d 395 (1944).....	36
<i>City of Seattle v. Parker</i> , 2 Wn. App. 331, 467 P.2d 858 (1970).....	38
<i>City of Seattle v. Shepherd</i> , 93 Wn.2d 861, 613 P.2d 1158 (1980).....	34
<i>City of Tacoma v. Taxpayers of City of Tacoma</i> , 108 Wn. 2d 679, 743 P.2d 793 (1987).....	54, 55
<i>Covell v. City of Seattle</i> , 127 Wn.2d 874, 905 P.2d 324 (1995).....	74
<i>Cunningham v. Mun. of Metro. Seattle</i> , 751 F. Supp. 885 (W.D. Wash. 1990) .....	8
<i>Dolan v. Tigard</i> , 512 U.S. 374, 114 S.Ct. 2309, 129 L.Ed.2d 304 (1994).....	46, 47
<i>Honesty in Envtl. Analysis &amp; Legislation v. Cent. Puget Sound Growth Mgmt. Hrgs. Bd.</i> , 96 Wn. App. 522, 979 P.2d 864 (1999).....	46

<i>In re Dependency of Schermer</i> , 161 Wn.2d 927, 169 P.3d 452 (2007).....	34
<i>Ireland v. Scharpenberg</i> , 54 Wash. 558, 103 P. 801 (1909).....	37, 38
<i>Jewell v. WUTC</i> , 90 Wn.2d 775, 585 P.2d 1167 (1978).....	51
<i>Jolliffe v. N. Pac. R.R. Co.</i> , 52 Wash. 433, 100 P. 977 (1909).....	37
<i>Jones v. City of Centralia</i> , 157 Wash. 194, 289 P. 3 (1930).....	44
<i>Keyes v. City of Tacoma</i> , 12 Wn.2d 54, 120 P.2d 533 (1941).....	36
<i>Kitsap Alliance of Prop. Owners v. Cent. Puget Sound Growth Mgmt. Hrgs. Bd.</i> , 160 Wn. App. 250, 255 P.3d 696 (2011), <i>review denied</i> , 171 Wn.2d 1030, 257 P.3d 662 (2011).....	46, 47
<i>Knight v. City of Yelm</i> , 173 Wn.2d 325, 267 P.3d 973 (2011).....	43
<i>Lane v. City of Seattle</i> , 164 Wn.2d 875, 194 P.3d 977 (2008).....	56, 65
<i>Marantha Min., Inc. v. Pierce County</i> , 59 Wn. App. 795, 801 P.2d 985 (1990).....	49
<i>Moeller v. Farmers Ins. Co. of Wash.</i> , 173 Wn.2d 264, 267 P.3d 998 (2011).....	34
<i>Nat'l Elec. Contractors Ass'n v. Emp. Sec. Dep't</i> , 109 Wn. App. 213, 34 P.3d 860 (2001).....	38
<i>Nat'l Sur. Corp. v. Immunex Corp.</i> , 162 Wn. App. 762, 256 P.3d 439 (2011).....	60
<i>Nollan v. Calif. Coastal Comm'n</i> , 483 U.S. 825, 107 S.Ct. 3141, 97 L.Ed.2d 677 (1987).....	46, 47
<i>Okeson v. City of Seattle</i> , 150 Wn.2d 540, 78 P.3d 1279 (2003) (" <i>Okeson I</i> ").....	56, 57, 65, 66, 74

<i>Okeson v. City of Seattle</i> , 130 Wn. App. 814, 125 P.3d 172 (2005) (" <i>Okeson II</i> ") .....	56, 65
<i>Okeson v. City of Seattle</i> , 159 Wn.2d 436, 150 P.3d 556 (2007) (" <i>Okeson III</i> ") .....	56, 65
<i>Pac. First Fed. Savings &amp; Loan Ass'n v. Pierce County</i> , 27 Wn.2d 347, 178 P.2d 351 (1947) .....	51
<i>Platt Elec. Supply, Inc. v. City of Seattle</i> , 16 Wn. App. 265, 555 P.2d 421 (1977) .....	67
<i>Port of Seattle v. State Utils. &amp; Transp. Comm'n</i> , 92 Wn.2d 789, 597 P.2d 383 (1979) .....	54
<i>Potter v. City of New Whatcom</i> , 20 Wash. 589, 56 P. 394 (1899) .....	36
<i>Quaker City Nat'l Bank of Philadelphia v. City of Tacoma</i> , 27 Wash. 259, 67 P. 710 (1902) .....	36
<i>Ridgeview Props. v. Starbuck</i> , 96 Wn.2d 716, 638 P.2d 1231 (1982) .....	35
<i>Robel v. Roundup Corp.</i> , 148 Wn.2d 35, 59 P.3d 611 (2002) .....	35
<i>Smith v. Fitch</i> , 25 Wn.2d 619, 171 P.2d 682 (1946) .....	36
<i>State ex rel. Adams v. Irwin</i> , 74 Wash. 589, 134 P. 484 (1913) .....	73
<i>Sunderland Family Treatment Servs. v. City Pasco</i> , 127 Wn.2d 782, 903 P.2d 986 (1995) .....	49
<i>U.S. v. New York, N.H. &amp; H.R. Co.</i> , 355 U.S. 253, 78 S.Ct. 212, 2 L.Ed.2d 247 (1957) .....	37
<i>Wash. Dep't of Corrections v. City of Kennewick</i> , 86 Wn. App. 521, 937 P.2d 1119 (1997) .....	49
<i>Westview Inv., Ltd. v. U.S. Bank Nat. Ass'n</i> , 133 Wn. App. 835, 138 P.3d 638 (2006) .....	36

<i>Weyerhaeuser Co. v. Commercial Union Ins. Co.</i> , 142 Wn.2d 654, 15 P.3d 15 (2000).....	60
---	----

Constitutional Provisions

Wash. Const. art. VII, § 5 .....	65, 66
----------------------------------	--------

Statutes

Laws of 1974, Ex. Sess., ch. 70 .....	53
RCW ch. 35.58.....	8, 51, 53
RCW 35.58.050 .....	52
RCW 35.58.100 .....	53, 65
RCW 35.58.110 .....	53
RCW 35.58.200 .....	6, 64, 65, 66, 67
RCW 35.58.200(4).....	64
RCW 36.33.010 .....	73
RCW 36.56.010 .....	8
RCW ch. 36.70C ("LUPA").....	4, 15, 41, 42, 43, 44, 45
RCW 36.70C.020(2).....	42
RCW 36.70C.030(1)(c).....	4, 45
RCW 36.70C.040(3) .....	15
RCW 36.70C.060.....	42
RCW ch. 36.94.....	53, 54
RCW 36.94.020 .....	53
RCW 36.94.030 .....	53
RCW 36.94.050 .....	54

RCW 36.94.070 .....	54
RCW 36.94.080 .....	54
RCW 36.94.100 .....	54
RCW 36.94.120 .....	54
RCW 36.94.140 .....	54
RCW 36.94.170 .....	54
RCW 43.09.210 .....	73
RCW ch. 43.21C ("SEPA") .....	40, 46
RCW 43.21C.060.....	14, 40
RCW 82.02.020 .....	4, 39, 41, 44, 45, 46, 50
RCW 90.46.005 .....	52
RCW 90.46.010(15).....	52
RCW 90.82.070(2).....	52

Regulations

WAC 197-11-660(1)(b) .....	40
----------------------------	----

Rules

CR 54(b).....	3
---------------	---

King County Charter

King County Charter § 230.10.10.....	9, 55, 67
King County Charter § 270.30.....	28

King County Code

KCC 4.04.045..... 27

KCC 4.04.045.B..... 27

KCC 4.04.045.D ..... 27, 68

KCC ch. 28.86..... 9

KCC 28.86.050.B.TPP-7 ..... 16, 17

KCC 28.86.100.A..... 17

KCC 28.86.100.B.WRP-5 ..... 17

KCC 28.86.100.B.WRP-14 ..... 17

KCC 28.86.140.B.EMP-1 ..... 47

KCC 28.86.160.C.1.FP-5..... 23, 66

KCC 28.86.160.C.1.FP-7..... 66

KCC 28.86.160.C.1.FP-8..... 24, 66, 67

KCC 28.86.160.C.1.FP-9..... 27

KCC 28.86.160.C.1.FP-10..... 9, 55, 66, 67

Other Authorities

2003-04 House Bill 2757 ..... 50

2005-06 House Bill 1899 ..... 50

King County Ordinance 13680 ..... 9

Snohomish County Amended Motion 04-438 ..... 11

*Sno-King Envtl. Alliance v. Snohomish County, CPSGMHB*  
06-3-0005, 2006 WL 1668256 (May 25, 2006)..... 50

Treatises

23 A.L.R.2d 1243 §18[a] ..... 37

29 Am.Jur.2d *Evidence* § 178 (2008) ..... 37

5 Eugene McQuillin, *Municipal Corporations* § 15.19 (3d ed., rev. 1969) ..... 67

15 Eugene McQuillin, *Municipal Corporations* § 39.56 (3d ed., rev. vol. 2005) ..... 36, 37

Restatement (Third) of Trusts § 2, cmt. a (2003) ..... 37

## GLOSSARY OF NAMES AND ACRONYMS

<b>Name</b>	<b>Position</b>
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Tom Barnett	Snohomish County Planning Department representative
Pam Bissonnette	Former director, King County Department of Natural Resources and Parks (“DNRP”)
John Bodoia	Chief Financial Officer, DNRP
Chris Cortines	Principal Auditor for Local Government Performance Audits, State Auditor’s Office
Bob Cowan	Former director, King County Office of Management & Budget (“OMB”)
Steve Dickson	Snohomish County Public Works Director
Pam Elardo	Director WTD
Helene Ellickson	Budget Section Supervisor, OMB
Terri Flaherty	Former Senior Policy Analyst, OMB
Dave Gossett	Snohomish County Councilmember
Ken Guy	Director King County Finance & Business Operations Division (“FBOD”)
Alan Hess	Expert witness called by King County on economics issues
Stan Hummel	Capital Projects Managing Supervisor, WTD
Mark Isaacson	Director King County Water and Land Resources Division (“WLRD”)
Theresa Jennings	Former director DNRP
Larry Phillips	King County Councilmember
Michael Popiwny	King County siting and mitigation manager for Brightwater
Ken Pritchard	Grants Administrator, WLRD
Rob Shelley	Senior Vice President, Securities Northwest
Ron Sims	Former King County Executive
Don Theiler	Former director WTD

<b>Name</b>	<b>Position</b>
Kurt Triplett	Former King County Executive
Christie True	Director DNRP
Bob Wagner	Expert witness called by King County on accounting issues
Gary Weikel	Former Snohomish County Special Projects Director

### **Acronyms**

BSP	Binding Site Plan
CPSGMHB	Central Puget Sound Growth Management Hearings Board
CUP	Conditional Use Permit
DEIS	Draft Environmental Impact Statement
DNRP	Department of Natural Resources and Parks
DOE	Department of Ecology
EIS	Environmental Impact Statement
EMP	Environmental Mitigation Policy
EPF	Essential Public Facility
FBOD	Finance & Business Operations Division
FEIS	Final Environmental Impact Statement
FFCL	Findings of Fact and Conclusions of Law
FP	Financial Policy
GMA	Growth Management Act
KCC	King County Code
LTGO	Limited Tax General Obligation
LUPA	Land Use Petition Act
Metro	Municipality of Metropolitan Seattle
MWPAAC	Metropolitan Water Pollution Abatement Advisory Committee
NPDES	National Pollutant Discharge Elimination System
OMB	Office of Management and Budget
RWQC	Regional Water Quality Committee

RWSP	Regional Wastewater Services Plan
SAO	State Auditor's Office
SEPA	State Environmental Policy Act
SWM	Surface Water Management
TPP	Treatment Plant Policy
Tx	Trial Exhibit
WDNR	Washington Department of Natural Resources
WLRD	Water and Land Resources Division
WQF	Water Quality Fund
WRP	Water Reuse Policy
WTD	Wastewater Treatment Division

## I. INTRODUCTION

Citizens expect their government to obey the law. When a government exceeds its authority or otherwise acts unlawfully, it is the duty of the courts to enforce limits on governmental authority and to provide appropriate remedies for the abuse of governmental powers. Those principles apply not only to the protection of civil liberties but also to protection of the public purse. They apply not only to the highest endeavors of government but also to functions as basic as sewage disposal.

This case is about King County's misuse of sewage utility funds to (1) pay what amounted to a \$70 million bribe to Snohomish County to induce it to drop its political opposition to a new sewage treatment plant that King County wanted to build in south Snohomish County,<sup>1</sup> (2) pay millions of dollars to build pipelines for a water distribution system that the county is not authorized to own or operate, and (3) pay millions of dollars for general governmental and other non-sewage expenses, including (i) paying \$12 million to StockPot Soups, Inc. to preserve jobs in the local area, (ii) paying for water quality projects unrelated to sewage disposal, (iii) paying for non-sewage overhead expenses, and (iv) paying a phony "credit enhancement fee" to benefit the county's general fund.

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<sup>1</sup> King County paid \$67.05 million to Snohomish County in cash, plus \$2.95 million in the form of the agreed-upon value of the free use in perpetuity of a community center being built by King County on the treatment plant site. For simplicity, we refer to the payments made by King County to Snohomish County as totaling \$70 million.

Appellants (plaintiffs below) are two south King County water and sewer districts (“the districts”). They, along with 17 cities and 14 other sewer districts, have long-term sewage disposal contracts with King County, as successor-in-interest to the Municipality of Metropolitan Seattle (“Metro”). Under the sewage disposal contracts, the local utilities collect sewage from homeowners and other customers within their respective jurisdictions and convey it to King County for treatment and disposal. The local utilities pay King County a “sewage disposal charge” based on the county’s “total monetary requirements for the disposal of sewage” during the next calendar year.<sup>2</sup>

King County performs its sewage disposal function through a division of county government called the Wastewater Treatment Division (“WTD”).<sup>3</sup> King County operates WTD as a proprietary utility.<sup>4</sup> Under the King County Charter, the King County Code, the terms of the sewage disposal contracts, and well-established principles of municipal law, the county may use sewage utility funds only for authorized sewage utility purposes. The districts claim the county has breached the sewage disposal

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<sup>2</sup> See, e.g., CP 2342-48 (quote taken from CP 2345); trial exhibit (“Tx”) 9, Soos Creek sewage disposal contract, § 5.3(a); see also CP 18661, Findings of Fact and Conclusions of Law (hereinafter abbreviated as “FFCL”) ¶ 9. Each of the other local sewer utilities has a sewage disposal contract containing substantially identical terms.

<sup>3</sup> “Wastewater” is another term for sewage, as distinguished from “stormwater,” “surface water” (including lakes, ponds and rivers), and “groundwater.” King County has a separate division, the Water and Land Resources Division (“WLRD”), that deals with stormwater, surface water and groundwater issues.

<sup>4</sup> FFCL ¶ 13 (CP 18662).

contracts and violated state and local law by using sewage funds for illegal, unauthorized and general governmental purposes. The districts seek monetary relief requiring King County to reimburse the sewage utility fund for the unlawful expenditures.<sup>5</sup>

On cross-motions for partial summary judgment, the trial court dismissed the districts' claims regarding the county's \$70 million payment to Snohomish County and challenging the use of sewage funds to build pipelines for distributing reclaimed water, and ruled that there were issues of fact requiring trial of the districts' remaining claims.<sup>6</sup>

Following a non-jury trial, the court (i) ruled that sewage funds were wrongfully used to pay \$2 million to StockPot Soups for the general governmental purpose of job retention, and ordered King County to reimburse its sewage utility for that \$2 million, plus interest, and (ii) dismissed the districts' remaining claims.<sup>7</sup> The districts have appealed from the dismissal of their claims, and the county has cross-appealed.

## II. ASSIGNMENTS OF ERROR AND ISSUES PERTAINING THERETO

1. The trial court erred in dismissing the districts' claim that

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<sup>5</sup> The districts are not seeking affirmative relief from the other defendants. They were joined as parties only because they have an interest in the subject matter.

<sup>6</sup> The trial court also dismissed on summary judgment various counterclaims and crossclaims asserted by King County, as well as the districts' claim that the county had fiduciary obligations as to its use of the sewage utility fund. *See* CP 18700-701.

<sup>7</sup> Certain crossclaims among defendants were reserved for determination following resolution of this appeal. CP 18705-06. Hence, the judgment on the claims between the districts and King County was entered pursuant to CR 54(b). *See* CP 18703-04.

King County has trust and fiduciary obligations to use the sewage utility fund only for sewage disposal purposes. *Issues:* (a) Does King County have trust or fiduciary obligations as to how the sewage utility fund is used? (b) Does King County have the burden of proof as to whether expenditures from its sewage utility fund were lawful?

2. The trial court erred in dismissing the districts' claims regarding "community mitigation" payments to Snohomish County and in denying the districts' motion for summary judgment on those claims. *Issues:* (a) Was the agreement between the two counties for the \$70 million in "community mitigation" payments to Snohomish County a "land use decision" within the meaning of the Land Use Petition Act ("LUPA," RCW ch. 36.70C)? (b) Were the districts' claims subject to the 21-day time limit for appeals under LUPA, where the districts were not "aggrieved" under the statute and lacked standing to bring a LUPA appeal? (c) Even if LUPA were otherwise applicable, would the districts' claims, which sought only monetary relief from King County, fall within the LUPA exception set forth in RCW 36.70C.030(1)(c)? (d) Were the "community mitigation" payments to Snohomish County illegal exactions prohibited under RCW 82.02.020 and the "essential nexus" and "rough proportionality" tests?

3. The trial court erred in dismissing the districts' claims

regarding reclaimed water, and in denying the districts' motion for summary judgment on those claims. *Issues*: (a) Are the distribution and sale of reclaimed water proper functions of King County's sewage utility, since neither the county nor Metro, the original operator of the sewage utility, has ever been authorized to operate a water utility? (b) Are the distribution and sale of reclaimed water primarily for the benefit of the general public or other entities, rather than for the benefit of the county's sewage utility and its customers?

4. The trial court erred in denying the districts' summary judgment motion on the StockPot claims, and in dismissing those claims after trial (except for the \$2 million payment to StockPot expressly for "job retention," on which the court ruled in the districts' favor). *Issues*: (a) May the county use its restricted sewage utility fund to pay a financial incentive to a company in order to preserve local jobs? (b) In addition to the \$2 million explicitly earmarked for job retention, did the county pay a \$10 million financial incentive to StockPot out of the sewage utility fund in order to preserve local jobs?

5. The trial court erred in denying the districts' motion for summary judgment regarding the use of sewage utility funds to pay for "Culver Fund" projects, and in dismissing those claims after trial without entering findings of fact specifying how each project was purportedly

related to sewage disposal. *Issues:* (a) Does King County have express authority under RCW 35.58.200 to use its sewage utility fund for water pollution abatement projects other than sewage disposal? (b) Did the Culver Fund projects have a sufficiently close nexus to sewage disposal?

6. The trial court erred in denying the districts' motion for summary judgment regarding use of the sewage utility fund to pay for non-sewage overhead expenses, and in dismissing those claims after trial.

*Issues:* (a) In the absence of appropriate documentation, does the county's method of allocating general government overhead expenses to operating divisions meet the requirement to use an allocation method which "best matches" the amount of benefit conferred? (b) Should the county reimburse its sewage utility for admitted overcharges for overhead expenses? (c) Has the county violated the provision in the sewage disposal contracts limiting the amount of "general administrative overhead" that can be included in calculating sewage disposal rates?

7. The trial court erred in denying the districts' motion for summary judgment seeking recovery of the so-called "credit enhancement fees" charged by King County to its sewage utility, and in dismissing that claim after trial. *Issues:* (a) May the general government charge a proprietary utility a fee that does not reflect actual costs incurred by the general fund? (b) Is the "credit enhancement fee" charged to the sewage

utility an arbitrary amount unrelated to quantifiable cost or benefit? (c) Is the “credit enhancement fee” an illegal (hidden) tax imposed on the local sewer utilities and their ratepayers?

8. The trial court erred in adopting the findings of fact and conclusions of law set forth in paragraphs 13, 14, 18, 22, 30, 37-39, 41-42, 45-54, 63, 70-72, 75, 76, 78, 83-86, 89, 93-102, 108, 113-115, 117-122, 124, 127-134, 140, 142-148, 150-155 and 157-159 of the Findings of Fact and Conclusions of Law. *Issues:* (a) Are the findings of fact set forth in those paragraphs supported by substantial evidence? (b) Are the “findings of fact” set forth in paragraphs 13, 30, 42, 70, 84, 119, 122, 151 and 153 actually conclusions of law? (c) Are the conclusions of law set forth in paragraphs 13, 30, 42, 45-54, 70, 84, 93-102, 119, 122, 124, 127-134, 151, 153-155 and 157-159 supported by applicable law? (d) Contrary to the conclusions set forth in paragraphs 47, 52, 53, 101, 122, 128, 129 and 132, did King County, rather than the districts, have the burden of proving whether the county’s sewage utility fund was properly used for the expenditures in question?

### **III. STATEMENT OF THE CASE**

#### **A. King County’s Assumption of Metro’s Sewage Disposal Function**

In 1958 King County voters passed a ballot measure to establish the Municipality of Metropolitan Seattle (“Metro”) for the purpose of

“metropolitan sewage disposal,” pursuant to RCW ch. 35.58.<sup>8</sup> In 1972 voters approved the expansion of Metro to be coterminous with the King County boundaries and to include public transportation as another Metro function. Voters subsequently approved a merger of Metro and King County, and in 1994 King County assumed the rights, powers, functions and obligations of Metro, pursuant to RCW 36.56.010.<sup>9</sup>

B. Restrictions in the Sewage Disposal Contracts, County Charter and County Code on How Sewage Utility Funds May Be Used

Under the sewage disposal contracts, the only costs that may be included as components of the sewage disposal charges imposed on the local sewer utilities are costs “for the disposal of sewage.”<sup>10</sup> Similarly, the County Charter and County Code prohibit King County from spending sewage revenues for purposes other than sewage disposal.

The King County Charter provides:

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

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<sup>8</sup> Tx 2; *see* FFCL ¶ 13 (CP 18662).

<sup>9</sup> In 1990, the structure of the Metro Council was deemed unconstitutional, as violative of the one-man, one-vote rule. *Cunningham v. Mun. of Metro. Seattle*, 751 F. Supp. 885 (W.D. Wash. 1990). With King County’s assumption of Metro in 1994, the component agencies (including the districts here), which had been constituent members of Metro with representation on its governing board, became mere customers of the WTD, with no authority to control the utility’s operations.

<sup>10</sup> CP 2345; Tx 9 (Soos Creek contract, § 5.3(a)); FFCL ¶ 9 (CP 18661).

of rates and charges for such functions.<sup>11</sup>

Under this provision, the Wastewater Treatment Division must be operated “as a distinct functional unit,” and its funds may not be used for purposes other than sewage disposal.

To the same effect, the King County Code provides:

The assets of the wastewater system are pledged to be used for the exclusive benefit of the wastewater system including operating expenses, debt service payments, asset assignment and the capital program associated therewith. The system shall be fully reimbursed for the value associated with any use or transfer of such assets for other county purposes.<sup>12</sup>

C. Snohomish County “Community Mitigation”

In 1999 King County adopted an updated comprehensive sewage disposal plan, referred to as the Regional Wastewater Services Plan (“RWSP”). The RWSP addressed operation of, and capital improvements to, the county’s wastewater system, including the construction of a new treatment plant. Various “policies” set forth in the Plan were codified in King County Code ch. 28.86.<sup>13</sup>

As part of its planning for the new treatment plant, which came to be called “Brightwater” and was to be located in south Snohomish County, King County issued a Draft Environmental Impact Statement (“DEIS”) in 2002, which identified potential project impacts and mitigation measures.

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<sup>11</sup> King County Charter § 230.10.10. See FFCL ¶ 17 (CP 18662-63).

<sup>12</sup> King County Code 28.86.160.C.1.FP-10. See FFCL ¶ 35 (CP 18667).

<sup>13</sup> FFCL ¶ 11 (CP 18661); Tx 31 (King County Ordinance 13680); CP 8548-97.

Snohomish County provided King County with comprehensive comments on the DEIS and raised concerns about the adequacy of the proposed mitigation measures.<sup>14</sup> King County addressed those concerns in the Final EIS (“FEIS”) issued in November 2003, stating that the FEIS disclosed “both direct impacts, or those within the project footprint, as well as indirect impacts; it identifies mitigation for both direct and indirect impacts where appropriate,”<sup>15</sup> and that “King County . . . has fully analyzed such impacts and identified mitigation measures in this EIS.”<sup>16</sup>

The site for the new Brightwater plant contained some degraded streams and housed a number of environmentally undesirable businesses, including several junk yards and a soup manufacturer (StockPot Soups) that emitted odors described by neighbors as “nauseating.”<sup>17</sup> The Brightwater project included \$140 million of environmental mitigation measures described in the FEIS, including odor controls (guaranteeing “zero” odor emissions from the treatment plant), reduced traffic to and from the site compared to pre-existing conditions, and onsite habitat and wetland improvements, including a new 40-acre nature park.<sup>18</sup>

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<sup>14</sup> King County paid Snohomish County about \$1 million to perform a thorough review of the DEIS. CP 2399-411 (*see* Task 1.g. at CP 2406); CP 993-94; CP 1000.

<sup>15</sup> CP 5091 (King County Response to Comment S3-110).

<sup>16</sup> CP 1943-44 (FEIS § 1.11.4).

<sup>17</sup> CP 480; CP 1018-21; CP 1035-36.

<sup>18</sup> The county’s planned mitigation included \$52 million for elimination of odors at the treatment plant (*see* CP 1038-39) and \$88 million for non-odor impacts. *See* CP 2241-42 and 2536-69, in particular table at CP 2543. *See also* CP 1110; CP 1028-29.

Despite King County's commitment to massive expenditures to mitigate Brightwater impacts, Snohomish County saw the project as an open pocketbook from which to fund long-planned general improvements to the community. In November 2004 Snohomish County adopted a prioritized list of projects for potential funding by King County.<sup>19</sup> Snohomish County developed its list based not on adverse impacts of Brightwater, but on known pre-existing needs of the general community identified in prior planning documents.<sup>20</sup> Snohomish County coined the term "community mitigation" to refer to these projects that were for the betterment of the general community but were unrelated to Brightwater.<sup>21</sup>

As the permitting authority in whose jurisdiction the new plant was to be built, Snohomish County threatened to block the project by withholding permits, and it adopted "emergency" ordinances that King County deemed to be impermissible constraints on its right to construct an essential public facility.<sup>22</sup> The two counties litigated in multiple judicial and administrative proceedings over the validity of Snohomish County's ordinances and its objections to the Brightwater project.<sup>23</sup>

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<sup>19</sup> CP 2416-30 (Amended Motion 04-438), see list of "Community Mitigation Opportunities" at CP 2421-30.

<sup>20</sup> CP 2066 ("...the consideration of impacts on the natural environment was not a part of the initial thought process in putting together the list of opportunities").

<sup>21</sup> Snohomish County staff testified that they had never heard of, or used, the phrase "community mitigation" before Brightwater. CP 2064-65; CP 2046; CP 1197-99.

<sup>22</sup> CP 2478-517 and particularly ¶¶ 1.2, 1.3, 2.15, 2.31, 2.37, 2.45, 2.53, 2.59.

<sup>23</sup> *Id.* at ¶¶ 2.15-2.30.

In April 2005, Snohomish County sent King County a proposal in which it offered to drop its opposition to Brightwater if King County paid \$80 million for “community mitigation.”<sup>24</sup> King County rejected that proposal in a strongly worded letter, stating in no uncertain terms:

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 approval of Brightwater. Use of King County funds for these extraneous purposes is not authorized by law and is not appropriate.<sup>25</sup>

On the same day as it sent that letter, King County filed a lawsuit against Snohomish County, alleging that Snohomish County was unlawfully attempting to delay or prevent construction of the Brightwater project.<sup>26</sup>

Several months later, after a closed door meeting between the King County Executive and two Snohomish County councilmembers,<sup>27</sup> the two counties entered into a Settlement Agreement in which King County agreed to pay \$70 million to Snohomish County for “community mitigation.”<sup>28</sup> The Settlement Agreement did not specify the source of the \$70 million payment, *i.e.*, that it would come from sewage funds.

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<sup>24</sup> CP 1134-44; *see* CP 1138, § 4. Snohomish County did not identify any specific projects for funding with the \$80 million.

<sup>25</sup> CP 1146-52 (quoted language at CP 1149, emphasis added).

<sup>26</sup> CP 2478-517 (*see* ¶¶9.25-9.31 at CP 2499).

<sup>27</sup> CP 2211-15.

<sup>28</sup> CP 2365-2372 (at 2367). This \$70 million was on top of the \$140 million already committed by King County for mitigation of true adverse impacts of the plant.

Exhibit B to the Settlement Agreement listed the projects or categories of projects and dollar amounts to be funded by the \$70 million to be paid by King County.<sup>29</sup> For each of the projects the “Impact Addressed/Nexus” is described simply as “community mitigation.” None of the projects was identified in the Brightwater EIS as a mitigation measure for any adverse impacts of the new treatment plant.<sup>30</sup>

The Settlement Agreement also provided that the two counties intended to enter into a separate Development Agreement.<sup>31</sup> The purpose of the Development Agreement was “to establish the permitting standards and conditions, certain mitigation measures, and permit process governing the review and construction of [Brightwater].”<sup>32</sup> The Development Agreement provided that King County would “voluntarily” submit to a “Binding Site Plan” process before a Snohomish County hearing examiner,<sup>33</sup> but that the hearing examiner would “accept the SEPA documents prepared by King County . . . as adequate for purposes of imposing mitigation of significant adverse environmental impacts.”<sup>34</sup>

Notably, the Development Agreement provided that Snohomish

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<sup>29</sup> CP 2396-97; *see also* CP 1878 (map showing location of “community mitigation” projects). For the Court’s convenience, copies of Exhibit B listing the projects and the map showing their location are attached hereto as Appendix A.

<sup>30</sup> The final EIS and supplemental EIS can be found on CDs provided at CP 5465-69.

<sup>31</sup> CP 2366 (§ 5).

<sup>32</sup> CP 2374.

<sup>33</sup> CP 2374-75 (§§1.1(a) & (c)).

<sup>34</sup> CP 2376 (§1.5(a)).

County “agrees that SEPA review on this project was a comprehensive project level review which identified all the significant adverse environmental impacts” and that Snohomish County “has evaluated the SEPA documents and in this Development Agreement has imposed the mitigation authorized under RCW 43.21C.060.”<sup>35</sup> The Development Agreement set forth various mitigation measures addressing seismic, odor and other issues, but it did not mention the \$70 million payment or the “community mitigation” projects described in the Settlement Agreement.

Snohomish County’s issuance of the permits for Brightwater was a condition precedent to King County’s obligation under the Settlement Agreement to make the “community mitigation” payments.<sup>36</sup> Over the next three years Snohomish County eventually issued the permits in accordance with the procedures laid out in the Development Agreement, and King County then made the “community mitigation” payments specified in the Settlement Agreement.<sup>37</sup> The cash payments totaling \$67.05 million were made out of King County’s sewage utility fund.<sup>38</sup>

The two counties recognized that the legality of the “community

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<sup>35</sup> CP 2383, § 4.1(c) (emphasis added).

<sup>36</sup> CP 2368, § 6.4. The Agreement also expressly provided that King County could choose not to go forward with the project, in which event it would have no obligation to make the payments to Snohomish County. CP 2369, § 7.

<sup>37</sup> The cash payments were made in three installments, in November 2006 (11 months after Settlement Agreement executed), October 2007 (22 months after Settlement Agreement executed) and October 2008 (34 months after Settlement Agreement executed). CP 2295-96.

<sup>38</sup> CP 2295-96 (table showing payments made from Wastewater Capital Fund).

mitigation” payments was questionable. The Settlement Agreement provides that in the event of a successful challenge to the legality of the payments, “Snohomish County shall promptly return any unexpended funds to King County where required by such court order,” but that “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.”<sup>39</sup> Thus, the Development Agreement would continue in effect regardless of later invalidation of the payments called for under the Settlement Agreement.<sup>40</sup>

The trial court addressed the districts’ claim challenging the legality of the “community mitigation” payments in two separate stages. First, the court ruled that the Settlement Agreement was:

... at least in part a “land use decision” within the meaning of the Land Use Petition Act (“LUPA”). Therefore, the 21-day time limit of LUPA (RCW 36.70C.040(3)) bars any claims by plaintiffs challenging the validity, legality or enforceability of the Settlement Agreement ... and any such claims of plaintiffs are hereby dismissed.<sup>41</sup>

Under that ruling the districts were barred from arguing that the “community mitigation” payments were unlawful. However, since the

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<sup>39</sup> CP 2369 (§ 6.5).

<sup>40</sup> After the districts filed this lawsuit challenging the legality of the payments, King County asserted a crossclaim against Snohomish County under § 6.5 of the Settlement Agreement, seeking a return of the funds if the districts prevail. Snohomish County continues to hold the bulk of that money in trust, pending the final outcome of the districts’ claim. CP 66-71.

<sup>41</sup> CP 18708-11 (quote taken from CP 18710).

Settlement Agreement did not specify where the money for the payments would come from, the court's ruling went on to provide that the districts were not barred from arguing that sewage utility funds could not be used for those payments, due to the lack of a sufficient nexus between the "community mitigation" projects and the disposal of sewage.<sup>42</sup>

After a further round of briefing, the trial court dismissed the districts' claim in its entirety, explaining that (i) it was unnecessary to identify any specific adverse environmental impacts supposedly mitigated by the "community mitigation" payments, and (ii) the mere fact that the payments were made as "incentives or amenities" to facilitate obtaining political acceptance of locating a sewage treatment plant in the community was a sufficient nexus to sewage disposal.<sup>43</sup>

D. Reclaimed Water

"Reclaimed water" is water that is "reclaimed" from the sewage treatment process and that is clean enough to be used as a substitute for potable water for irrigation or other purposes not involving human consumption. The King County Code includes a Treatment Plant Policy (TPP-7) requiring that "all reclaimed water used in the community shall be distributed through a municipal water supply or regional water supply

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<sup>42</sup> CP 18710 (¶ 3).

<sup>43</sup> RP vol. 4, at pp. 60-61 (abbreviated as "RP 4:60-61"); CP 18713-17 & CP 18719-23.

agency consistent with a regional water supply plan.”<sup>44</sup> The county is neither a municipal nor a regional “water supply agency.”

King County is spending tens of millions of dollars from the sewage utility fund on building infrastructure for the distribution and sale of reclaimed water from the Brightwater plant, without being legally authorized to engage in that business at all, without establishing a “municipal water supply or regional water supply agency consistent with a regional water supply plan” as required by the county’s own Code (TPP-7), and without first completing the financial feasibility assessment required by the Code (*see* n.44, *supra*) to determine whether the water reuse plan makes any economic sense. As of August 9, 2009, WTD had already spent \$14.7 million of the estimated \$127 million total cost (based on cost projections made in 2005) for design and construction of the basic infrastructure for distribution and sale of reclaimed water from

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<sup>44</sup> KCC 28.86.050.B.TPP-7 (emphasis added). A “regional water supply plan” is “a single, comprehensive plan that includes evaluation of alternative sources of supply (including reclaimed water), includes local governments interested in participating, [and] achieves regional agreement on a forecast for long-term water supply demands.” CP 9099. The RWSP also contains “Water Reuse Policies” (WRP) supporting the *production* of reclaimed water, but which first require that any projects beyond demonstration or pilot projects “shall be implemented subject to economic and financial feasibility assessments, including assessing environmental benefits and costs.” KCC 28.86.100.A; KCC 28.86.100.B.WRP-5; *see also* KCC 28.86.100.B.WRP-14 (requiring an “economic and financial feasibility assessment, ... [which] shall include the analysis of marginal costs including stranded costs and benefits to estimate equitable cost splits between participating governmental agencies and utilities”).

Brightwater (sometimes referred to as the reclaimed water “Backbone”).<sup>45</sup>

Despite a 2009 regional report concluding that existing water supplies in the region are adequate to meet all projected demands through 2050,<sup>46</sup> the county has continued to spend millions of dollars of sewage utility funds to build infrastructure for distributing reclaimed water.

King County’s reclaimed water distribution system is intended to benefit primarily the general public rather than sewer utilities or sewer ratepayers in particular. In 2009 the county issued a draft report identifying potential “benefits” of reclaimed water. Of the 44 supposed “benefits” listed, WTD is identified as a “beneficiary” of only two.<sup>47</sup>

E. StockPot

StockPot Soups, Inc., a subsidiary of Campbell Soup Company, formerly operated a soup-making plant adjacent to the Brightwater site.

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<sup>45</sup> CP 7440-41; CP 8748-49.

<sup>46</sup> CP 8979.

<sup>47</sup> Even the two purported sewage utility benefits are questionable. One is that the utility avoids capital expenditures for effluent conveyance (*see* CP 9015), but that does not apply to the Brightwater project because the county had to construct a 13-mile long effluent conveyance system and a new mile-long outfall to Puget Sound, regardless of any reclaimed water distribution system. The other purported “benefit” to WTD – that the reclaimed water system provides another option for disposing of effluent (*see* CP 9029) – is no benefit at all, given the unrecoverable costs of acquiring that additional “option.” The other “beneficiaries” listed include: water utilities, the general public, individuals who derive cultural/spiritual value from environmental resources enhanced by the use of reclaimed water, individuals who derive value from actions that promote natural-resource conservation, consumers of natural-resource amenities enhanced by reclaimed water, agricultural producers and consumers of their products, and taxpayers. CP 8983-9034, in particular CP 9015-34 (Table A-3 quantitative benefits and Table A-4 qualitative benefits). King County has conceded that “There are a limited number of water reuse customers, but the entire population benefits from this new water source and the environmental benefits of the project.” CP 8808 (emphasis added).

When King County decided to locate the treatment plant on that site, StockPot objected and filed an appeal challenging the adequacy of the county's EIS. In July 2004 the county and StockPot entered into a settlement agreement in which StockPot agreed to withdraw its appeal of the EIS and the county agreed to designate StockPot as a "displaced person" and to provide relocation assistance.<sup>48</sup> The agreement provided that StockPot and the county would use their best efforts to negotiate "a mutually agreeable relocation agreement to provide adequate relocation assistance and other support to StockPot to prevent the loss of StockPot Culinary Campus jobs in the Puget Sound region."<sup>49</sup>

Over the next several months StockPot and the county negotiated the terms of the relocation agreement. Former county executive Triplett<sup>50</sup> testified in his deposition that the county wanted to give StockPot "incentives" to relocate locally instead of moving out of state.<sup>51</sup>

In early 2005 the parties reached an "Agreement for the Purchase and Sale of Property in Lieu of Condemnation" (the "relocation agreement") regarding the assistance to be provided to StockPot.<sup>52</sup> The relocation agreement gave StockPot a choice of relocating either locally or

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<sup>48</sup> CP 13713-16 (Tx 74) ¶¶ 2, 4.

<sup>49</sup> *Id.*, ¶ 5 (emphasis added).

<sup>50</sup> Mr. Triplett succeeded Ron Sims as county executive in May 2009, after serving as chief of staff for Mr. Sims at the time of the negotiations with StockPot. RP 16:654-55.

<sup>51</sup> RP 16:665-67.

<sup>52</sup> CP 13718-68; Tx 90.

non-locally. Under the non-local option, the county would pay StockPot \$5.5 million for relocation assistance, which the parties agreed would represent “the cost of actual, reasonable and necessary, moving and related expenses and reestablishment expenses.”<sup>53</sup> Under the local option, the relocation assistance was increased to \$16.17 million (reduced by later amendments to just over \$15.5 million) and the county would pay an additional \$2 million expressly described as being for “job retention.”<sup>54</sup> Thus, under the local option StockPot would receive approximately \$10 million more for relocation assistance, plus the additional \$2 million expressly for “job retention.” The agreement contained a “claw-back” provision for the local option, under which StockPot would have to repay up to \$5 million if it did not maintain sufficient levels of employment for five years at the new location.<sup>55</sup>

In an April 2005 press release announcing the agreement, then-county executive Sims stated that “[o]ur goal was to preserve Stockpot jobs and its \$20 million annual payroll for the local economy . . .,” and that the parties “structured the agreement to provide incentives to support

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<sup>53</sup> Tx 90, ¶ 3.1.

<sup>54</sup> Tx 90, ¶¶ 3.1 & 5. Under the local option, the county would also purchase certain equipment (“acquired personal property”) that StockPot would leave at the site. *Id.*, ¶ 3.4. The county had little or no use for that equipment, and it was worth only a few hundred thousand dollars. RP 16:672-73; RP 18:894-99 and Tx 194.

<sup>55</sup> Tx 90, ¶¶ 4.1.2 & 4.1.4, RP 16:734-37.

StockPot staying in our region rather than moving out of state.”<sup>56</sup> In a newsletter about Brightwater, the county explained (under the boldface heading “*King County offers incentives for StockPot to stay local*”):

Recognizing the value of preserving family wage jobs and keeping a major employer in the region, King County reached an agreement with StockPot Inc. . . . to provide relocation benefits that may help the company to stay in the region.

Under the agreement, StockPot must stay in Snohomish, Pierce or King counties to get an additional \$12 million in relocation benefits.<sup>57</sup>

Not surprisingly, StockPot chose the “local” option and built its new facility in Everett. The county made the specified payments to StockPot using sewage funds, including \$15,534,650 supposedly for relocation assistance and the \$2,000,000 expressly for “job retention.”<sup>58</sup>

The districts did not challenge the propriety of paying the \$5.5 million amount that would have been allowed for relocation expenses under the non-local option. The districts did challenge the use of sewage funds for the \$2 million payment made expressly for “job retention” and the extra \$10 million paid for relocation expenses under the local option, contending that both those payments were for the general governmental purpose of job preservation, not for a utility purpose. On cross-motions for summary judgment, the trial court ruled that there were issues of fact

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<sup>56</sup> CP 13770-72 (quote from CP 13770); Tx 93.

<sup>57</sup> CP 13774-76 (quote from CP 13775-76); Tx 97.

<sup>58</sup> CP 13783-85; FFCL ¶ 81 (CP 18677-78).

requiring a trial.<sup>59</sup>

At the trial, the county argued that the \$2 million “job retention” payment and the additional \$10 million payment for relocation assistance under the local option were not intended to give a \$12 million *incentive* to StockPot to stay locally, but instead were intended to give a \$12 million “disincentive” to StockPot to move out of the region. The court concluded after trial that “[t]he difference between the amounts the County offered under the Local and Non-Local Options reflects the County’s attempt to create a disincentive to StockPot for leaving the area.”<sup>60</sup> The court characterized as mere “political spin” the county’s admissions in 2005 that it had indeed agreed to pay an incentive to StockPot to choose the local option: “It should come as no surprise that the County would put a political spin on this agreement and characterize it in press releases as an incentive payment to encourage the company to stay within the region.”<sup>61</sup> On that basis, the court dismissed the districts’ claim as to the additional \$10 million paid for relocation assistance under the local option.

The court reached the opposite conclusion regarding the \$2 million payment expressly for “job retention.” The court found that that payment “was a general community-wide investment made to benefit the region’s

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<sup>59</sup> CP 18751-54; RP 7:42-43.

<sup>60</sup> FFCL ¶ 76 (CP 18676-77).

<sup>61</sup> *Id.*

economy as a whole, primarily benefiting the public and not ratepayers,” and held that it “primarily benefited the general public and thus should have come from a funding source other than the Water Quality Fund.”<sup>62</sup>

F. Culver Fund

Prior to the 1994 merger with King County, Metro had an informal practice of using a small percentage of sewer revenues to pay for various water quality activities not directly related to sewage disposal (for historical reasons the pool of funds used for that purpose became known as the “Culver Fund”).<sup>63</sup> Shortly after the merger the local sewer utilities asked the county to eliminate the Culver Fund program.<sup>64</sup> Instead, the county tried to legitimize the program by adopting the following policy:

Water quality improvement activities, programs and projects, in addition to those that are functions of sewage treatment, may be eligible for funding assistance from sewer rate revenues after consideration of criteria and limitations suggested by the metropolitan water pollution abatement advisory committee, and, if deemed eligible, shall be limited to one and one half percent of the annual wastewater system operating budget. . . . This policy shall remain in effect until such time as a financial plan for the surface water regional needs assessment is adopted and implemented.<sup>65</sup>

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<sup>62</sup> FFCL ¶¶ 91, 106 (CP 18680, 18682). “Water Quality Fund” is the county’s euphemistically misleading name for its sewage utility fund. It is a restricted fund intended to be used solely by the Wastewater Treatment Division for wastewater (sewage) purposes, not for other “water quality” purposes like those administered by WTD’s sister division WLRD (Water and Land Resources Division). *See* FFCL ¶ 17 (CP 18662-63).

<sup>63</sup> FFCL ¶¶ 21 & 22 (CP 18663-64).

<sup>64</sup> FFCL ¶ 26 (CP 18664-65).

<sup>65</sup> KCC 28.86.160.C.1.FP-5 (emphasis added). The last line of the policy suggests that the funding would only be temporary, but the regional needs assessment was never adopted

Based on that policy, the county has been using 1.5% of each year's sewer revenues to pay for projects such as removal of sunken vessels from Lake Washington, eradication of invasive plants, development of hiking trails, celebration of salmon, and education about lawn care methods.<sup>66</sup> These activities, while laudable, are not related to sewage treatment or disposal, as acknowledged by the county's own classification system.

The county classifies Culver Fund expenditures as being neither directly nor indirectly related to sewage treatment or disposal:

King County classifies wastewater expenditures into three categories as follows: Category I expenses are direct costs incurred for sewage treatment or disposal; Category II expenses are indirect costs incurred for sewage treatment or disposal or that reduce the direct costs described in Category I (*e.g.*, infiltration and inflow reduction projects); and Category III expenses are costs incurred for Culver Fund projects (*i.e.*, for water quality or other programs not directly or indirectly related to sewage treatment or disposal).<sup>67</sup>

Each year prior to 2011, the King County Council adopted an ordinance appropriating money from the Water Quality Fund to be used for Culver

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or implemented; the county simply abandoned that effort. RP 13:170; RP 24:1829; RP 25:1960. This "financial policy" was renumbered as FP-8 in 2006, at which time the last sentence was replaced with: "Alternative methods of providing a similar level of funding assistance for water quality improvement activities shall be transmitted . . . within seven months of policy adoption." FFCL ¶ 34 (CP 18667). Although alternative funding sources were identified (including the general fund), the county continued to fund the program using sewer revenues. *Id.*

<sup>66</sup> The Culver projects (with references to the record) are listed in Appendix B hereto.

<sup>67</sup> FFCL ¶ 27 (CP 18665) (emphasis added).

Fund projects expressly described as Category III expenses.<sup>68</sup>

King County's Department of Natural Resources and Parks ("DNRP") includes both the WTD and the Water and Land Resources Division ("WLRD").<sup>69</sup> While both WTD and WLRD have water quality objectives, the water quality functions of the two divisions differ in accordance with the different purposes of each division. WTD's water quality interests are strictly related to sewage treatment and disposal, while WLRD's water quality goals are much broader, and include, for example, surface water drainage and the protection of watersheds.<sup>70</sup>

Although WTD funds the "Category III" Culver Fund projects, the program is administered by WLRD.<sup>71</sup> WTD does not decide how the Culver Fund money will be spent. WTD transfers the Culver Fund money to WLRD, which then distributes the money either (i) through competitive grants to cities, neighborhood groups and non-profit organizations ("Waterworks grants"), or (ii) as directly specified in the county's annual budget.<sup>72</sup> The projects chosen by the County Council to receive Culver funding (called "Council" or "direct" grants) are sometimes referred to by

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<sup>68</sup> FFCL ¶ 28 (CP 18665).

<sup>69</sup> FFCL ¶ 20 (CP 18663); Tx 40.

<sup>70</sup> Tx 127 at KC 34234-35; Tx 151 at 14-15 (WTD) and 16-17 (WLRD); RP 15:422-23 & 426-29.

<sup>71</sup> RP 15:426; FFCL ¶ 40 (CP 18668).

<sup>72</sup> RP 14:303-05.

county staff as councilmembers' "pet projects" or "lollipops."<sup>73</sup> The criteria used for evaluating the competitive "Waterworks grants" do not include any consideration of benefit to the sewage utility.<sup>74</sup>

The districts challenged the county's use of wastewater funds to make the Culver Fund expenditures. On cross-motions for summary judgment, the trial court ruled in part as follows:

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 Culver Fund expenditures provide no direct benefit for sewage treatment and disposal, ...<sup>75</sup>

In the same order the trial court concluded that "there may be" issues of fact requiring a trial on the county's affirmative defenses of laches and equitable estoppel and on the issues of damages and remedy.<sup>76</sup>

At trial, the court backed away from its prior ruling and dismissed the districts' claims, concluding that "wastewater treatment is a broad enough concept to include water quality"<sup>77</sup> and that "[a]ll Culver Fund activities and projects at issue in this lawsuit are for water pollution abatement as defined by the statute, and relate directly and indirectly to

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<sup>73</sup> RP 14:311-17; RP 16:700-01; RP 19:1187-88.

<sup>74</sup> RP 15:515-24.

<sup>75</sup> CP 18732-36 (quote taken from CP 18735, ¶ 1(a), emphasis added).

<sup>76</sup> *Id.* (CP 18735), ¶ 1(b).

<sup>77</sup> FFCL ¶ 45 (CP 18669).

sewage treatment and disposal.”<sup>78</sup> The court made no finding as to how any particular Culver Fund activity or project was related to sewage treatment or disposal.

G. Overhead Allocation

King County accounts for its general overhead expenses (also known as “central services” expenses) in a number of “cost pools,” including one for “general government.” Each year the county allocates the anticipated general government overhead expenses for the forthcoming year to various divisions or departments of the county (including WTD) in proportion to their pro rata share of operating expenditures compared to total county operating expenditures, using historical data.<sup>79</sup>

In 1993 King County adopted as part of the county code an overhead cost allocation policy.<sup>80</sup> The policy requires, as a starting point, that overhead expenses be allocated based on the amount of actual benefit received.<sup>81</sup> If the amount of the benefit must be estimated, the county must use a methodology which “best matches the estimated cost of the services provided to the actual overhead charge.”<sup>82</sup>

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<sup>78</sup> FFCL ¶ 47 (CP 18669).

<sup>79</sup> FFCL ¶ 112 (CP 18683); *see also* CP 13421-28.

<sup>80</sup> CP 14425-29; CP 14431-32; KCC 4.04.045; *see also* KCC 28.86.160.C.1.FP-9.

<sup>81</sup> KCC 4.04.045.B.

<sup>82</sup> KCC 4.04.045.D (emphasis added).

1. Improper allocation of general government overhead

In September 2005 the State Auditor issued an Accountability Audit Report of King County.<sup>83</sup> That report contained an Auditor's Finding that from January 1, 2004 through August 31, 2005, the county improperly allocated almost \$2 million in general government costs to the wastewater utility's Water Quality Fund.<sup>84</sup> The Auditor noted that the "County has no documentation showing [its] allocation methodology accurately reflects services provided to these restricted funds."<sup>85</sup> The Auditor concluded that without such documentation the county cannot use the Water Quality Fund to pay for general government costs.<sup>86</sup>

In its response King County promised to "make appropriate allocation changes as early as possible."<sup>87</sup> Two years later, when a member of the Regional Water Quality Committee ("RWQC")<sup>88</sup> asked how the county was addressing the Audit finding, the county's Office of Management and Budget director told staff that "this is a dog that should

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<sup>83</sup> Tx 107.

<sup>84</sup> *Id.* at 10, 11.

<sup>85</sup> *Id.* at 10.

<sup>86</sup> *Id.* at 11. As the State Auditor noted, "when restricted revenues are used for unauthorized purposes, taxpayers and ratepayers do not receive the full intended benefit of those revenues. In addition, future user fees for some funds will be higher than they should be." *Id.*

<sup>87</sup> *Id.* at 12.

<sup>88</sup> The RWQC is a committee formed by the county to "develop, propose, review and recommend action on ordinances and motions adopting, repealing, or amending ... water quality ... policies and plans." King County Charter § 270.30.

be left sleeping.”<sup>89</sup>

In 2009 the State Auditor issued another audit of King County, which essentially repeated the 2005 audit finding. The 2009 audit stated:

[n]on-general fund departments such as WTD, SWD [solid waste division], transit and others, are being charged questionable costs that represent general government charges, as there is no documented support to show that these allocated charges reflect the true value of actual services rendered.<sup>90</sup>

The Auditor calculated that in 2005-09 WTD had been overcharged over \$4.8 million as a result of these “questionable” allocations.<sup>91</sup>

## 2. Admitted overcharges of overhead

The 2009 Audit also found that King County based its allocation of central services expenses on estimates for the upcoming year but failed to “true up” those allocations using actual data at the end of the year.<sup>92</sup> The failure to “true up” resulted in over-charging WTD \$750,000 for central services expenses for the period 2005-09.<sup>93</sup>

King County agreed that the overhead charges should be “trued up.”<sup>94</sup> Although it admitted that failing to “true up” resulted in overhead overcharges amounting to hundreds of thousands of dollars in recent

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<sup>89</sup> Tx 132 at KC 3548-49.

<sup>90</sup> Tx 187 at 15 (Issue OH.2).

<sup>91</sup> *Id.* at 16; Tx 179.

<sup>92</sup> *Id.* at 13 (Issue OH.1).

<sup>93</sup> *Id.* at 14; Tx 180; RP 19:1171-75 (county never performed its own calculation to challenge auditor’s numbers).

<sup>94</sup> Tx 187, Appendix I at 3; RP 22:1520-21 (as the county’s former budget director, Mr. Cowan agreed that true-ing up “would probably be appropriate”).

years, the county has never reimbursed WTD for the past overcharges.<sup>95</sup>

The county also admitted at trial that it had made an arithmetical calculation error in 2003 that resulted in a \$200,000 overcharge to WTD for general government overhead.<sup>96</sup> Despite admitting that error, the county has not reimbursed WTD for the overcharge.

3. Contractual limitation for “general administrative overhead”

The sewage disposal contracts limit costs that may be included in the sewage disposal rates to “the cost of administration, operation, maintenance, repair and replacement of the Metropolitan Sewerage System, ... plus not to exceed 1% of the foregoing requirements for general administrative overhead costs.”<sup>97</sup> Every year, King County adopts an ordinance that specifies the monetary requirements of the wastewater utility and sets the monthly sewage disposal charge.<sup>98</sup> The county has ignored the contractual 1% limitation for “general administrative overhead

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<sup>95</sup> RP 23:1691-93 (finance director testified that the county did not believe the overhead overcharges of \$145,000 to \$150,000 per year were “significant or material”).

<sup>96</sup> RP 30:2841-43 (county’s accounting expert testified that he pointed out the error to the county and agreed that it would be “fair and equitable and good policy to try to make it up to the party that was overcharged erroneously”); *see also* RP 20:1289-91, discussing Tx 47 (percentage of overhead allocated to WTD was too high because of failure to deduct SWM expenditures; amount allocated to WTD was \$1,445,434 (shown on p. 1124) but should have been \$1,224,296 (shown on p. 1127)).

<sup>97</sup> Tx 9 at SC\_CR021478 (emphasis added); FFCL ¶ 9 (CP 18661).

<sup>98</sup> Tx 35 at 2, Tx 42 at 2, Tx 55 at 1, Tx 71 at 4, Tx 98 at 2-3, Tx 115 at 2, Tx 135 at 2, Tx 163 at 2-3, Tx 183 at 2 (ordinances setting sewer rates for 2002-2010); RP 21:1448-58.

costs”<sup>99</sup> and has consistently exceeded it.<sup>100</sup>

The districts claimed that (i) the county’s overhead allocation methodology for general government costs did not meet the “best match” requirement, (ii) the county had wrongfully refused to reimburse WTD for admitted overcharges of overhead costs, and (iii) the county had violated the contractual 1% limitation on “general administrative overhead costs.” On cross-motions for summary judgment, the trial court ruled that there were issues of fact requiring trial.<sup>101</sup>

After the districts rested their case at the trial, the court dismissed the claim for breach of the contractual 1% limitation, concluding that the 1% provision was not a limitation but an allowable addition to what may be included in the sewage disposal charge.<sup>102</sup> At the conclusion of trial, the court dismissed the remaining overhead allocation claims, concluding that the county’s allocation methodology satisfied the “best match” requirement and that retroactive true-ing up was unnecessary because it would be “immaterial.”<sup>103</sup> The trial court ignored the county’s admitted

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<sup>99</sup> County witnesses had no understanding of the distinction between “cost of administration” and “general administrative overhead costs” as used in the contract, and they pointed fingers at each other as being responsible for ensuring compliance with this provision. RP 17:384-87; RP 18:913-14 & 918-19; RP 19:1152; RP 13:179-80.

<sup>100</sup> See tables in Appendix C hereto. These tables were used at trial to confirm overhead allocations to WTD and monetary requirements for WTD (*see* RP 21:1342-44; trial exhibits listed in n.98, *supra*; RP 18:1001-08 and Tx 171, Tx 172, Tx 185, Tx 186).

<sup>101</sup> CP 18742-45; RP 7:67-68 & 72-73.

<sup>102</sup> RP 25:1948.

<sup>103</sup> FFCL ¶¶ 130, 132 (CP 18687, 18688).

\$200,000 arithmetic mistake.

H. LTGO Bonds “Credit Enhancement Fee”

As an alternative to issuing traditional “sewer revenue” bonds for financing WTD capital projects, King County sometimes issues “limited tax general obligation” (LTGO) bonds that are backed first by the revenues of the sewage system and, as a fall-back should sewer revenues be insufficient to cover the bond payments, by the “full faith and credit” of King County.<sup>104</sup> The county council makes the ultimate decision about which type of bond to issue.<sup>105</sup>

In 2003 the county devised a plan to increase revenues for the county’s general fund by imposing a new charge on WTD for the alleged “benefit” of a lower financing charge when the county issues LTGO bonds rather than revenue bonds. The charge is assessed based on the outstanding principal of all LTGO bonds at the beginning of the year multiplied by 0.00125, or half of an assumed 25 basis points difference between interest rates for LTGO and revenue bonds.<sup>106</sup> The county’s theory is that the general fund is entitled to “share” the “benefit” of the lower interest rate that WTD has to pay on LTGO bonds compared to

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<sup>104</sup> RP 29:2533-34; with two potential revenue sources, LTGO bonds are also referred to as “double-barrel” bonds. FFCL ¶ 135 (CP 18688).

<sup>105</sup> CP 16396; CP 16324.

<sup>106</sup> RP 22:1530-31. The county decreased that multiplier to 0.0010 in 2009, based on a presumed decrease in the difference in basis points to 20. RP 22:1531-32.

traditional revenue bonds.<sup>107</sup> The county refers to this charge as a “credit enhancement fee.” The county started imposing the charge on WTD in 2003, based on the principal balance (on which the fee is calculated) of bonds that it had issued in 1994, 1995, 1996 and 1998. Thus, the county imposed the charge retroactively.<sup>108</sup>

The county’s reason for imposing the charge was simply to raise revenue for the general fund.<sup>109</sup> The county’s witnesses admitted that the probability that the general fund would ever have to pay anything on the LTGO bonds due to a default by WTD was “very small,” and that no one had ever made any attempt to quantify that risk.<sup>110</sup>

The districts claimed the “credit enhancement fee” was invalid because issuing LTGO bonds rather than revenue bonds imposed no quantifiable cost on the general fund, and the county could not show that the fee charged was equivalent to any benefit conferred. On cross-motions for summary judgment, the trial court ruled that there were issues of fact

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<sup>107</sup> RP 22:1531 (“the policy decision was that that savings should be split fifty-fifty between Water Quality, which would receive a net savings of 12 and a half basis points on their debt, and the general fund, which would get the other 12 and a half basis points”).

<sup>108</sup> Tx 200 (summary of WTD revenue bonds and LTGO bonds). Although the county’s financial adviser testified that as of 2008 the 12.5 basis points fee represented half of the benefit of reduced interest rates (RP 29:2554), he also admitted that borrowing costs associated with bonds were “very volatile” (RP 29:2559), meaning that the credit spread changes a lot (RP 29:2570-71) and that “it was important to have ... discussion about whether or not it made sense on each issuance.” (RP 29:2559). There is no indication that the county had any such “discussion” when it issued LTGO bonds in 1994, 1995, 1996 and 1998.

<sup>109</sup> CP 16338-39; Tx 44 at 2; RP 22:1529-30.

<sup>110</sup> RP 22:1536-37; RP 22:1571; RP 22:1603-04; RP 29:2626.

requiring trial of this claim.<sup>111</sup>

At trial, the county's expert witness testified that he was not aware of any instance in which King County's bond rating was decreased (and thus financing cost increased) as a result of issuing LTGO bonds for WTD.<sup>112</sup> At the conclusion of trial, the court dismissed the districts' claim, concluding that the fee is a proper capital cost of WTD.<sup>113</sup>

#### IV. ARGUMENT

##### A. Standard of Review

Review of the trial court's summary judgment rulings is *de novo*. *Moeller v. Farmers Ins. Co. of Wash.*, 173 Wn.2d 264, ¶ 10, 267 P.3d 998 (2011). The trial court dismissed the districts' claim for violation of the contractual 1% limit for "general administrative overhead costs" at the close of plaintiffs' case at trial. Review of that ruling is also *de novo*. *In re Dependency of Schermer*, 161 Wn.2d 927, ¶ 29, 169 P.3d 452 (2007).

Where there is no conflict in the testimony and the sole question on appeal concerns the proper legal conclusions to be drawn from the undisputed evidence, the appellate court "has the duty to determine for itself the proper conclusions of law to be drawn from the evidence." *City of Seattle v. Shepherd*, 93 Wn.2d 861, 867, 613 P.2d 1158 (1980). The

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<sup>111</sup> CP 18747-49.

<sup>112</sup> RP 29:2634.

<sup>113</sup> FFCL ¶¶ 154-59 (CP 18692-93).

districts assert that the trial court's "findings of fact" in paragraphs 13, 30, 42, 70, 84, 119, 122, 151 and 153 were actually conclusions of law and thus should also be reviewed *de novo*, as should the trial court's other conclusions of law in paragraphs 45-54, 93-102, 124, 127-134, 154, 155 and 157-159. *Robel v. Roundup Corp.*, 148 Wn.2d 35, 42-43, 59 P.3d 611 (2002) (conclusion of law is subject to *de novo* review).

The remaining challenged findings of fact in paragraphs 14, 18, 22, 37-39, 41, 71, 72, 75, 76, 78, 83, 85, 86, 89, 108, 113-115, 117, 118, 120, 121, 140, 142-148, 150, and 152 are to be reviewed under the "substantial evidence" standard, namely, whether there was sufficient evidence to persuade a fair-minded person of the truth of the premise. *Ridgeview Props. v. Starbuck*, 96 Wn.2d 716, 719, 638 P.2d 1231 (1982).

B. King County Should Have Borne the Burden of Proving that It Used the Sewage Utility Fund Only for Authorized Purposes.

The trial court dismissed the districts' claim that the county had trust or fiduciary obligations as to how it used the sewage utility fund,<sup>114</sup> and it placed on the districts the burden of proof as to whether the county had used that fund properly.<sup>115</sup> That was error.

A trust is created when a person accepts possession of property "with the express or implied understanding that he is not to hold it as his

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<sup>114</sup> CP 18725-26

<sup>115</sup> FFCL ¶¶ 47, 52, 53, 101, 122, 128, 129 & 132 (CP 18669, 18671, 18681, 18685-88).

own absolute property, but to hold and apply it for certain specified purposes.” *Westview Inv., Ltd. v. U.S. Bank Nat. Ass’n*, 133 Wn. App. 835, ¶ 21, 138 P.3d 638 (2006), quoting *Smith v. Fitch*, 25 Wn.2d 619, 626-27, 171 P.2d 682 (1946). That is precisely the situation here. The county has possession of sewage utility funds that it knows are supposed to be used for the exclusive benefit of the wastewater system.<sup>116</sup>

It has long been held in Washington that a restricted fund is in the nature of a trust, and equity should treat it accordingly. See, e.g., *City of Longview v. Longview Co.*, 21 Wn.2d 248, 254, 150 P.2d 395 (1944) (local improvement district fund), citing *Keyes v. City of Tacoma*, 12 Wn.2d 54, 57, 120 P.2d 533 (1941) (“[w]hile a local improvement district fund may not be an express trust, in the strict sense of the word, it partakes of the nature of such a trust”); *Quaker City Nat’l Bank of Philadelphia v. City of Tacoma*, 27 Wash. 259, 67 P. 710 (1902); *Potter v. City of New Whatcom*, 20 Wash. 589, 56 P. 394 (1899). The leading treatise on municipal law notes that “a fund raised by a municipality for a special purpose is a trust fund, and equity will, in a proper case, interfere to prevent its diversion, or will entertain an action for an accounting.” 15 Eugene McQuillin, *Municipal Corporations* § 39.56 at 181-82 (3d ed.,

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<sup>116</sup> The King County Charter and King County Code both restrict the use of the Water Quality Fund to legitimate expenditures that benefit the wastewater system. See FFCL ¶¶ 17, 35 (CP 18662-63, CP 18667).

rev. vol. 2005); *see also* Restatement (Third) of Trusts § 2, cmt. a at 17 (2003) (“the term ‘trust’ also includes public funds ...”).

Once a plaintiff establishes a prima facie case against a trustee for misuse of funds held in trust, “the burden of proof is then on the defaulting trustee to disestablish the causal connection between default and loss to the beneficiary, rather than the contrary.” *Austin v. U.S. Bank of Wash.*, 73 Wn. App. 293, 307, 869 P.2d 404 (1994). Similarly, even in the absence of an actual trustee-beneficiary relationship, when information necessary to prove an issue is peculiarly or exclusively within the possession of a party, convenience and fairness justify placing the burden of proof on that party. 29 Am.Jur.2d *Evidence* § 178 at 194 (2008) (“The burden of proof should normally rest with the party who has the greater access to the proof”), *citing U.S. v. New York, N.H. & H.R. Co.*, 355 U.S. 253, 263-64, 78 S.Ct. 212, 2 L.Ed.2d 247 (1957); *see also* 23 A.L.R.2d 1243 §18[a] at 1271-72 (burden of proof is frequently placed upon a party to prove the existence of facts peculiarly within his own knowledge).

Washington has followed that rule for over 100 years:

This court and other courts have frequently said that, where it is necessary to make a character of proof which, by reason of the circumstances surrounding the case, is exclusively within the knowledge of one or the other of the parties, the burden would be upon the party possessed of that knowledge to make the proof ...

*Jolliffe v. N. Pac. R.R. Co.*, 52 Wash. 433, 436, 100 P. 977 (1909); *Ireland*

*v. Scharpenberg*, 54 Wash. 558, 567, 103 P. 801 (1909) (“few rules of law are better settled than that a party whose cause of action or defense rests upon facts peculiarly within his own knowledge must prove those facts”); *City of Seattle v. Parker*, 2 Wn. App. 331, 333, 467 P.2d 858 (1970) (“[w]here the facts lie more immediately within knowledge of the defendant, the onus probandi should be his”); *Nat’l Elec. Contractors Ass’n v. Emp. Sec. Dep’t*, 109 Wn. App. 213, 226, 34 P.3d 860 (2001) (citing “long recognized principle” that burden of proof should be on party having easier access to relevant information).

In this case, the districts claim that King County misused the Water Quality Fund, which is entirely within the county’s control and is supposed to be used for the exclusive benefit of the sewage utility, and which in equity should be treated as a trust. Because of the fiduciary duties arising from that trust, and because the county was in possession and control of all the evidence regarding its use of the fund, the county should have had the burden of proof as to whether its expenditures from that fund were proper.

C. The “Community Mitigation” Payments to Snohomish County Were Unlawful.

The \$70 million payment to Snohomish County for “community mitigation” was not for the purpose of mitigating any actual, identifiable

impacts of the Brightwater project. Instead, it was made simply to buy political approval from Snohomish County for the project.

RCW 82.02.020 provides that “no county, city, town or other municipal corporation shall impose any tax, fee, or charge, either direct or indirect,” on the construction of buildings or the development of land. Although the statute permits voluntary agreements for payments “to mitigate a direct impact that has been identified as a consequence of a proposed development,” it explicitly prohibits the exaction of any payment “which the county, city, town or other municipal corporation cannot establish is reasonably necessary as a direct result of the proposed development.” *Id.* Under that statute Snohomish County could not lawfully require King County to pay \$70 million for “community mitigation,” and King County could not lawfully make or agree to make those payments to Snohomish County. It is as wrong to pay a bribe as to receive one.<sup>117</sup>

The payments in question were not made “to mitigate a direct impact that has been identified as a consequence of the proposed

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<sup>117</sup> As an editorial columnist for the Seattle Times wrote in May 2006, “Depending on which side of the table one is sitting on, it translates as either bribery or extortion. . . . 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.” The columnist characterized such expenditures as “wretched excess.” CP 520-21.

development” and were not “reasonably necessary as a direct result of the proposed development.” That fact is confirmed by the absence of any mention of the “community mitigation” projects in the Brightwater EIS as measures to mitigate identified impacts of the Brightwater project.

The State Environmental Policy Act (RCW ch. 43.21C, “SEPA”) provides that any government action “may be conditioned only to mitigate specific adverse environmental impacts which are identified in the environmental documents prepared under this chapter.”<sup>118</sup> Since the “community mitigation” measures at issue here do not address specific, adverse environmental impacts identified in the Brightwater EIS, it was impermissible for the two counties to agree to the \$70 million payment as a means of obtaining the desired governmental approvals from Snohomish County. Paying money to Snohomish County for so-called “community mitigation” having nothing to do with addressing true adverse environmental impacts of the Brightwater project was unlawful and was an improper use of sewage funds. Including such unlawful expenditures in the calculation of sewage disposal rates charged to the local sewer utilities is a clear breach of the sewage disposal contracts.

The trial court never addressed the merits of the districts’ claim

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<sup>118</sup> RCW 43.21C.060; *see also* WAC 197-11-660(1)(b) (“Mitigation measures shall be related to specific, adverse environmental impacts clearly identified in an environmental document ...”).

that the “community mitigation” payments were unlawful under RCW 82.02.020. Instead, the trial court ruled that the 21-day time limit for petitions for review of land use decisions under LUPA barred the districts from challenging the lawfulness of those payments. That was a blatant misapplication of the LUPA statute. Likewise, the trial court’s further ruling that it was permissible for the county to use sewage utility funds to make those payments simply because the “community mitigation” was paid in conjunction with a capital improvement project was error, because it ignored well-established limitations on exactions for land development.

1. The districts’ challenge to the legality of the “community mitigation” payments was not subject to LUPA.

The Settlement Agreement between the two counties was not a land use decision, and the districts were not seeking review of a land use decision; indeed, the districts would not have had standing to do so. Even if LUPA were otherwise applicable, the districts’ claim was for monetary relief and as such would fall squarely within a LUPA exception.

LUPA defines “land use decision” to mean a “final determination by a local jurisdiction” on either: (a) an application for a project permit; (b) an interpretive or declaratory decision regarding zoning or other land use ordinances or rules to a specific property; or (c) enforcement of

ordinances regulating improvement or use of real property.<sup>119</sup> The Settlement Agreement meets none of those criteria.<sup>120</sup> No permit was either approved or denied by the Settlement Agreement; Snohomish County did not issue an interpretive or declaratory decision in the Settlement Agreement regarding application of land development rules to the Brightwater property; and the Settlement Agreement was not an enforcement decision by Snohomish County under its land use ordinances.

The only persons who have standing to bring a LUPA petition seeking review of a land use decision are (1) applicants and owners of property to which the land use decision is directed, or (2) other persons aggrieved or adversely affected by the decision. RCW 36.70C.060. A person is “aggrieved or adversely affected” only if (i) the land use decision is likely to prejudice that person, *and* (ii) that person’s asserted interests are among those that the local jurisdiction (in this case, Snohomish County) was required to consider when it made the land use decision, *and* (iii) a judgment in favor of that person would substantially eliminate or redress the prejudice to that person caused by the land use decision. *Id.*

Furthermore:

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<sup>119</sup> RCW 36.70C.020(2).

<sup>120</sup> The Development Agreement is not a land use decision, either. The Development Agreement describes a voluntary process (the “binding site plan” process) the parties agreed to follow in determining whether permits would be issued for Brightwater, but it was not a “final determination” as to issuance of any permit or as to any of the matters necessary to constitute a “land use decision” under the statutory definition.

To satisfy LUPA's prejudice requirement, a petitioner must show that he or she would suffer an "injury-in-fact" as a result of the land use decision. ... "To show an injury in fact, the plaintiff must allege specific and perceptible harm. If the plaintiff alleges a threatened rather than an existing injury, he or she 'must also show that the injury will be immediate, concrete and specific; a conjectural or hypothetical injury will not confer standing.'"

*Knight v. City of Yelm*, 173 Wn.2d 325, ¶ 24, 267 P.3d 973 (2011)

(citations omitted).

Here, the districts were not aggrieved by any land use decision, *i.e.*, by any aspect of the siting or permitting for Brightwater, nor by the binding site plan process outlined in the Development Agreement. The districts were aggrieved by King County's misuse of sewage utility funds by making unlawful payments to Snohomish County, after Snohomish County had issued permits that triggered King County's obligation to make the payments under the Settlement Agreement. The payments occurred in 2006, 2007 and 2008 (*see* n.37, *supra*), long after the Settlement Agreement was signed in late 2005. If King County had decided, after the Agreement was signed, not to go forward with the project, then under § 7 of the Agreement the payments would not have been required and the districts would not have been harmed. Nor would the districts have been harmed if King County had chosen to make the

payments out of some other fund.<sup>121</sup>

Moreover, the districts' interests as King County sewage disposal customers were not those that Snohomish County was required to consider in making any decision about whether or how to grant King County any permits for Brightwater. Although a judgment in favor of the districts would substantially redress the districts' injury, it is not an injury caused by any land use decision made by Snohomish County; rather, the injury resulted from King County's use of sewage funds to make payments to Snohomish County that were unlawful under RCW 82.02.020.

Since the districts were not aggrieved parties under LUPA, they did not have standing to bring a LUPA petition and the 21-day time limit under LUPA could not apply to the districts' claims.<sup>122</sup>

Even if LUPA were otherwise applicable, the districts' claim for monetary relief would fall within a LUPA exception. LUPA specifically exempts "[c]laims provided by any law for monetary damages or

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<sup>121</sup> Nothing in the Settlement Agreement between the two counties specified where King County would get the money to make the payments.

<sup>122</sup> Although the districts lacked standing to petition for review under LUPA, they did have standing to sue the county for misuse of the Water Quality Fund. As customers of the county's sewage utility, the districts have the same standing as ratepayers to sue for unlawful diversion of moneys in a utility fund. *See, e.g., Jones v. City of Centralia*, 157 Wash. 194, 203-04, 289 P. 3 (1930) (utility ratepayers have standing to sue for wrongful diversion of utility funds). The districts also have standing to sue the county for breaching the sewage disposal contracts by including the unlawful payments to Snohomish County as components of the sewage disposal charges.

compensation.”<sup>123</sup> This exemption is consistent with LUPA’s standing requirement. If only parties seeking affirmation or reversal of a land use decision have standing, it makes sense that those seeking other relief would not have to meet LUPA’s procedures or standards. The districts’ claim against King County for recovery of the “community mitigation” payments made to Snohomish County is for breach of contractual, statutory and other duties concerning unlawful use of sewage utility funds. It is a claim for monetary relief, and therefore LUPA is inapplicable under the express language of the statute.

2. The “community mitigation” payments were illegal exactions from King County by Snohomish County.

A local jurisdiction is prohibited from imposing a “tax, fee, or charge, either direct or indirect,” on the development of land. Although voluntary agreements are allowed between a jurisdiction and a developer for a payment “to mitigate a direct impact that has been identified as a consequence of a proposed development,” that only applies if the jurisdiction can “establish [it] is reasonably necessary as a direct result of the proposed development.” RCW 82.02.020 (emphasis added). Both King County and Snohomish County have acknowledged that the Settlement Agreement involved here was not such a voluntary agreement

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<sup>123</sup> RCW 36.70C.030(1)(c).

under RCW 82.02.020, nor a required mitigation measure under SEPA.<sup>124</sup>

In addition to the statutory test under RCW 82.02.020, a two-prong test (often called the *Nollan/Dolan* test named for the two U.S. Supreme Court decisions cited below) is used to determine whether a mitigation condition imposed by a government agency as a condition of project approval is lawful: first, an “essential nexus” is required between the mitigation measure and a specific, identifiable adverse impact of a project; and second, the mitigation measure must be “roughly proportional” to the impact it is designed to mitigate. *Kitsap Alliance of Prop. Owners v. Cent. Puget Sound Growth Mgmt. Hrgs. Bd.*, 160 Wn. App. 250, ¶ 55, 255 P.3d 696 (2011), *review denied*, 171 Wn.2d 1030, 257 P.3d 662 (2011) (“nexus rule permits only those regulations that are necessary to mitigate a specific adverse impact of a development proposal” and “the extent of the mitigation measures [are limited] to those that are roughly proportional to the impact they are designed to mitigate”), citing *Nollan v. Calif. Coastal Comm’n*, 483 U.S. 825, 107 S.Ct. 3141, 97 L.Ed.2d 677 (1987), *Dolan v. Tigard*, 512 U.S. 374, 114 S.Ct. 2309, 129 L.Ed.2d 304 (1994), and *Honesty in Envtl. Analysis & Legislation v. Cent. Puget Sound Growth Mgmt. Hrgs. Bd.*, 96 Wn. App. 522, 533-34, 979 P.2d 864 (1999)<sup>125</sup>; *see*

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<sup>124</sup> CP 127; CP 435 (King County Joinder).

<sup>125</sup> King County has codified the *Nollan/Dolan* test. The County Code provides that mitigation measures must “[a]ddress the adverse environmental impacts caused by the

also *Citizens' Alliance for Prop. Rights v. Sims*, 145 Wn App. 649, ¶¶ 48-51, 187 P.3d 786 (2008); *Burton v. Clark County*, 91 Wn. App. 505, 520-25, 958 P.2d 343 (1998).<sup>126</sup>

The governmental entity imposing a mitigation requirement carries the burden of showing both nexus and rough proportionality between the mitigation measure and the impact of the proposed development. *Kitsap Alliance*, 160 Wn. App. at ¶ 51; *Citizens' Alliance*, 145 Wn. App. at ¶ 15.

The “community mitigation” payments required under the Settlement Agreement do not meet either the essential nexus test or the rough proportionality test. Neither those payments, nor the projects to be funded by them as provided in the Settlement Agreement, were set forth as mitigation measures addressing adverse impacts identified in the EIS. Since both counties agreed that the EIS adequately identified all adverse impacts and the mitigation measures to address them (*see discussion supra* at 10 and 13-14), the absence of any reference in the EIS to the

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project” (the nexus requirement) and “[b]e reasonable in terms of cost and magnitude as measured against severity and duration of impact” (the rough proportionality requirement). KCC 28.86.140.B.EMP-1.

<sup>126</sup> In addition to adopting the *Nollan/Dolan* test, the *Burton* court identified two preliminary requirements: first, that the government conditioning a land use permit must identify a public problem that the condition is designed to address (“if the government can identify only a private problem, or no problem at all, the government lacks a “legitimate state interest” or “legitimate public purpose” in regulating the project.” 91 Wn. App. at 520. Second, the government must show that the development for which a permit is sought will create or exacerbate the identified public problem. *Id.* at 521. Here, Snohomish County did not meet either of these two preliminary requirements, nor the *Nollan/Dolan* test, in demanding \$70 million from King County for “community mitigation” for Brightwater.

“community mitigation” payments or the Settlement Agreement projects constitutes an admission that those payments and projects were not mitigation for identified adverse impacts of the Brightwater project.

The projects, or categories of projects, to be funded by the payments in question were listed in Exhibit B to the Settlement Agreement (copy attached as Appendix A hereto), and are described in greater detail at CP 1837-45 and CP 1861-74. \$30.4 million of the \$70 million total was earmarked for “recreation” projects, consisting of improvements to existing parks or acquisition of new parks up to four miles away from the Brightwater site, although no existing parks or recreation facilities were displaced or adversely affected by the Brightwater project.<sup>127</sup> \$25.85 million was earmarked for “public safety” projects, consisting of bicycle, pedestrian and roadway improvements in the general vicinity of Brightwater, although it was undisputed that the new treatment plant would generate less traffic than the existing businesses being displaced.<sup>128</sup> \$10.8 million was earmarked for off-site “habitat mitigation” projects that were all upstream from the Brightwater site and had nothing to do with any impacts of downstream activities at the Brightwater site; these projects were in addition to the many millions of dollars already being spent by King County for on-site habitat improvements that were identified in the

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<sup>127</sup> CP 1984 (FEIS); CP 2194-95; CP 2131-32.

<sup>128</sup> CP 1102-08 (FEIS), see in particular CP 1106.

EIS and included as part of the Brightwater project, and which are not at issue here.<sup>129</sup> The remaining \$2.95 million of the \$70 million total was the agreed value of new “community resources,” consisting of providing free use “in perpetuity” of a multi-million dollar community center being built on the site, to be used for “services that will benefit the public.”<sup>130</sup>

All of these projects were intended to benefit the general community in south Snohomish County, rather than to mitigate identified adverse impacts of Brightwater. The counties’ witnesses referred to the “community mitigation” as addressing “perceived impacts” or the “stigma” associated with a sewage treatment plant. But neighborhood fears that are not substantiated are not relevant to siting or development of an essential public facility. *Wash. Dep’t of Corrs. v. City of Kennewick*, 86 Wn. App. 521, 533-34, 937 P.2d 1119 (1997); *see also Sunderland Family Treatment Servs. v. City of Pasco*, 127 Wn.2d 782, 797, 903 P.2d 986 (1995) (neighborhood opposition to group home based on unsubstantiated fear of reduction in property values does not constitute competent and substantial evidence to support denial of permit); *Marantha Min., Inc. v. Pierce County*, 59 Wn. App. 795, 804, 801 P.2d 985 (1990) (“Community displeasure cannot be the basis of a permit denial”).

In sum, there is no such thing as “community mitigation” in

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<sup>129</sup> CP 2169-76; CP 2059-62.

<sup>130</sup> *See* page A-1 of Appendix A (Ex. B to Settlement Agreement).

Washington law.<sup>131</sup> Past efforts in the state legislature to authorize “community mitigation” have failed.<sup>132</sup>

King County’s use of the sewage utility fund to pay \$70 million to Snohomish County for community amenities unrelated to adverse project impacts identified in the EIS, supposedly to mitigate unsubstantiated concerns about the “stigma” of having a treatment facility in the area, was unlawful. Condoning such payments would undermine well-established law requiring an “essential nexus” and “rough proportionality” between mitigation requirements and project impacts, and would set a dangerous precedent for extortion by one public entity against another over permits for essential public facilities, or for approving a proposed development based on the payment of money rather than on the merits or adverse impacts of the project. That is exactly what RCW 82.02.020 prohibits.

D. King County Is Exceeding Its Authority by Building Infrastructure for a Reclaimed Water Utility and by Using Sewage Utility Funds for an Unauthorized Purpose that Provides Little or No Benefit to the Sewage Utility.

A utility’s powers are limited to those granted by statute, and “if

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<sup>131</sup> A search of the phrase “community mitigation” in the Westlaw databases of Washington cases, annotated statutes, attorney general opinions, environmental administrative decisions and Growth Management Hearings Board decisions resulted in only two “hits”: an unreported case referring to a Federal Emergency Management Agency Community Mitigation Programs Team Leader, and a Growth Management Hearings Board decision on the subject of Brightwater quoting a press release regarding the Settlement Agreement at issue in this case (Order on Motions, *Sno-King Envtl. Alliance v. Snohomish County*, CPSGMHB 06-3-0005, 2006 WL 1668256 (May 25, 2006)).

<sup>132</sup> See 2003-04 House Bill 2757 and 2005-06 House Bill 1899.

there is a doubt as to whether the power is granted, it must be denied.”  
*Pac. First Fed. Savings & Loan Ass’n v. Pierce County*, 27 Wn.2d 347,  
353, 178 P.2d 351 (1947); *see also Jewell v. WUTC*, 90 Wn.2d 775, 777,  
585 P.2d 1167 (1978). Under RCW ch. 35.58 and by virtue of its merger  
with Metro, King County is authorized to operate a sewage disposal  
utility, but not a water utility. Although *production* of reclaimed water  
might be considered incidental to the operation of a sewage utility,<sup>133</sup> the  
off-site *distribution* and *sale* of reclaimed water cannot be – those are  
water supply functions of a different kind of utility, not a sewage utility.  
King County is not authorized to operate a water supply utility, either as  
successor to Metro or under its independent powers as a county.

1. Distribution and sale of reclaimed water are water supply  
functions, not sewage disposal functions.

Washington law recognizes the distribution and sale of reclaimed  
water as a *water supply* function, not a sewage disposal function. The  
1992 Reclaimed Water Act explicitly provides that “[u]se of reclaimed  
water constitutes the development of new basic water supplies” and that  
“local and regional water management planning ... should consider ...  
water reclamation and reuse ... as strategies to meet water demands

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<sup>133</sup> The districts have not challenged the additional costs needed to treat the sewage to  
reclaimed water standards. CP 8472.

associated with population growth and impacts of global warming.”<sup>134</sup> The Act defines “reclaimed water” as “water derived in any part from wastewater with a domestic wastewater component that has been adequately and reliably treated, so that it can be used for beneficial purposes. Reclaimed water is not considered a wastewater.”<sup>135</sup> The Department of Ecology (“Ecology”) takes it a step further by defining reclaimed water as “a water supply obtained through the treatment of the waste water used for municipal or domestic purposes.”<sup>136</sup> Similarly, the state watershed planning statute recognizes reclaimed water as a means to increase “water supplies” in order to improve instream flows for fish and as a water supply for “out-of-stream” uses.<sup>137</sup> In the SEPA Determination of Non-Significance for the “Backbone” system to distribute reclaimed water from Brightwater, King County itself described the project as construction of a “water main system,”<sup>138</sup> acknowledging that it was supplying water, not sewage effluent, through those pipes.

2. The county lacks both express and implied authority to operate a water utility.

RCW 35.58.050 lists various functions that a metropolitan municipal corporation (“metro”) may perform. “Metropolitan water

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<sup>134</sup> RCW 90.46.005 (emphasis added).

<sup>135</sup> RCW 90.46.010(15) (emphasis added).

<sup>136</sup> CP 9036 (FAQ about Reclaimed Water Use) (emphasis added).

<sup>137</sup> RCW 90.82.070(2).

<sup>138</sup> CP 8731.

supply” is listed as a separate function from “metropolitan water pollution abatement.”<sup>139</sup> As with all of the functions listed, in order for “metropolitan water supply” to be an authorized function it must first be “authorized in the manner provided in this chapter,” *i.e.*, by the voters (RCW 35.58.100) or by the alternative procedure set forth in RCW 35.58.110. King County voters never authorized Metro to engage in any function other than “sewage disposal” or “public transportation.” Nor has the alternative procedure set forth in RCW 35.58.110 ever been invoked. Accordingly, King County did not inherit any power to perform a “water supply” function as a result of its 1994 merger with Metro.

Nor has King County taken the steps necessary for it to operate a water supply utility pursuant to RCW ch. 36.94 (county powers, as distinguished from metro powers).<sup>140</sup> In particular, while RCW 36.94.020 lists “the construction, operation, and maintenance of a system of ... water” as a “county purpose,” a county must follow certain procedures prior to operating a water utility. For instance, a county must first adopt a “water general plan” as an element of its comprehensive plan.<sup>141</sup> King

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<sup>139</sup> References to “sewage disposal” in RCW ch. 35.58 were changed to “water pollution abatement” by a legislative amendment in 1974. Laws of 1974, Ex. Sess., ch. 70.

<sup>140</sup> King County recognizes that it is not in the water supply business. “Needed services include many that are not provided by King County, such as water supply, local sanitary sewers, fire protection, schools, energy facilities, and telecommunications.” CP 8600 (King County 2008 Comprehensive Plan) (emphasis added).

<sup>141</sup> RCW 36.94.030.

County has not adopted such a plan, nor has it complied with the other requirements under RCW ch. 36.94.<sup>142</sup> Unless and until it does so, it is not authorized to operate a water utility. Thus, the county lacks express authority to operate a water utility, whether reclaimed or otherwise.

Nor does the county have implied authority to engage in a water supply business. The county's distribution and sale of reclaimed water does not meet the implied power test, *i.e.*, "powers ... necessarily or fairly implied in or incident to [express powers] and also those essential to the declared objects and purposes of the [municipal corporation]." *City of Tacoma v. Taxpayers of City of Tacoma*, 108 Wn. 2d 679, 695, 743 P.2d 793 (1987), quoting *Port of Seattle v. State Utils. & Transp. Comm'n*, 92 Wn.2d 789, 794-95, 597 P.2d 383 (1979). As the Court made clear in *Taxpayers of Tacoma*, "we have rejected the contention that the legislative purpose in granting authority to operate one business, impliedly conveys the authority to operate a separate, but necessarily incident, business."

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<sup>142</sup> See, e.g., RCW 36.94.050, .070, .080 (must submit draft water general plan to review committee, which then reports to county commissioners, who then must hold public hearing on proposed plan); RCW 36.94.100 (county must submit plan to state departments of social and health services and ecology); RCW 36.94.170 (county must receive written consent to operate utility within boundaries of other municipal corporations); RCW 36.94.120 (county must establish department for purposes of operating and maintaining water system); RCW 36.94.140 (county must set service charges and rates "sufficient to take care of the costs of maintenance and operation, revenue bond and warrant interest and principal amortization requirements, and all other charges necessary for the efficient and proper operation of the system"; it is undisputed that county has not done this as to reclaimed water, inasmuch as the sewer utility is paying to build the water distribution system). These are substantive requirements intended to ensure coordination with other utility providers and ensure against unplanned entry into a utility business.

108 Wn.2d at 696 n.10. Thus, even if distribution and sale of reclaimed water were incidental to sewage treatment and disposal (which they are not), the county's authority to operate a sewage utility does not give it implied power to operate a reclaimed water utility.

3. WTD cannot be required to bear the cost of a reclaimed water distribution system which benefits the general public, not WTD or its sewage system customers.

In response to criticism by the City of Seattle that the county's reclaimed water Backbone project is economically unfeasible,<sup>143</sup> King County distinguished its vision of the sewage utility's mission from that of a typical utility:

The point of this is to demonstrate that SPU [Seattle's water utility] behaves as a Utility, not as an environmental agency unless compelled to. Any environmental benefit they elect to do is based on "cost effectiveness," with little or no value assigned to the environmental benefits. Their paper is very clear about this. This is not a criticism of SPU because that is the way most utilities act. It is just not the way that King County acts.<sup>144</sup>

King County may be proud that it does not operate as a "typical utility," but that pride is founded on a violation of local and state law requiring that the Water Quality Fund be used for the exclusive benefit of the sewage utility. As noted above, the County Charter (§ 230.10.10) and the County Code (KCC 28.86.160.C.1.FP-10) provide that WTD revenues must be used for the exclusive benefit of WTD, and the sewage disposal

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<sup>143</sup> CP 8751-80.

<sup>144</sup> CP 9126-29 (quote taken from CP 9127).

contracts provide that sewage disposal charges must be based solely on sewage disposal costs. Similarly, under general municipal law as set forth in cases such as the *Okeson v. City of Seattle* trilogy (about municipal funding for streetlights, public art and reduction of greenhouse gas emissions),<sup>145</sup> and *Lane v. City of Seattle* (about municipal funding for fire hydrants),<sup>146</sup> utility revenues must be used for the benefit of the utility, not primarily for the benefit of other entities or the general public.

For the restricted sewage utility fund to properly be used to build infrastructure for the distribution and sale of reclaimed water, the county would have to show that there was a substantial, non-incidental benefit to the sewage utility from doing so. For example, the county would have to show that building that infrastructure saved WTD from having to construct other conveyance or disposal facilities. But with the Brightwater project, WTD was required to invest millions of dollars in the construction of a 13-mile effluent conveyance system and a new mile-long outfall in Puget Sound, regardless of any distribution or sale of reclaimed water.

The trial court's rationale for dismissing the districts' claim concerning reclaimed water was as follows:

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<sup>145</sup> *Okeson v. City of Seattle*, 150 Wn.2d 540, 78 P.3d 1279 (2003) ("*Okeson I*") (streetlights); *Okeson v. City of Seattle*, 130 Wn. App. 814, 125 P.3d 172 (2005) ("*Okeson II*") (public art); and *Okeson v. City of Seattle*, 159 Wn.2d 436, 150 P.3d 556 (2007) ("*Okeson III*") (greenhouse gas emissions).

<sup>146</sup> *Lane v. City of Seattle*, 164 Wn.2d 875, 194 P.3d 977 (2008) (fire hydrants).

Nobody disagrees that getting the sewerage into the system is part of the sewerage system as a whole, so why isn't getting the water out of it part of the sewerage system as a whole? They can't just hold the water. And even if the decision is to dump it into Puget Sound, it's still part of the system to get rid of the water.<sup>147</sup>

But that is a *non sequitur* and does not come to grips with the problem. WTD and its customers have already paid for a system to get rid of the water, through an expensive effluent conveyance and disposal system. The reclaimed water could easily be included in the effluent flowing through those pipes. What is at issue here is the millions of dollars of additional costs for the infrastructure to distribute that reclaimed water to other users, for purposes having nothing to do with sewage disposal.

Because of the lack of any substantial benefit to the wastewater utility, and since the county's goal of distributing reclaimed water is "for the common good of all" and not for the "comfort and use of individual [sewage utility] customers,"<sup>148</sup> the general government (*i.e.*, King County's general fund), or perhaps some future reclaimed water utility if one is ever authorized, should pay for the reclaimed water distribution system – not the sewage utility or its customers. The trial court's order dismissing the districts' reclaimed water claim should be reversed.

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<sup>147</sup> RP 5:49.

<sup>148</sup> Quoting *Okeson I* at 550 ("The principal test in distinguishing governmental functions from proprietary functions is whether the act performed is for the common good of all, or whether it is for the special benefit or profit of the corporate entity").

E. The Additional \$10 Million Payment to StockPot for Relocation Assistance under the Local Option, as Well as the \$2 Million Payment Expressly Attributable to “Job Retention,” Were Both Made for the General Governmental Purpose of Job Preservation, Not for a Utility Purpose.

The trial court observed that it would be “absolutely asinine” not to invest money to keep StockPot’s jobs in the area.<sup>149</sup> The court ultimately concluded that job preservation was a general governmental purpose, not a utility purpose, and that the utility fund should not have been used to pay for it (*see supra* at 22-23). The districts agree. Where the districts differ with the trial court is as to the amount that was paid for job preservation. The districts contend that the amount paid for that purpose included the additional \$10 million in relocation assistance under the local option, as well as the \$2 million amount expressly earmarked for “job retention.”

The county’s principal argument at trial, which the court evidently accepted,<sup>150</sup> was that the county did not really pay a \$12 million incentive for StockPot to stay locally, but rather it provided a \$12 million disincentive for choosing not to stay locally.<sup>151</sup> But the county’s reasoning

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<sup>149</sup> RP 17:833.

<sup>150</sup> FFCL ¶ 76 (CP 18676-77).

<sup>151</sup> During the pretrial phase of this litigation, the county’s rationale for the \$10 million difference between the local and non-local options was that it represented the value of equipment StockPot was leaving behind at the Brightwater site for the county’s use. CP 11425-26. However, during discovery it became clear that the county had little or no use for that equipment and that its value was less than \$700,000. *See* n.54, *supra*. Abandoning its prior rationale, the county argued at trial, for the first time, that the arrangement to pay \$10 million less to StockPot for relocation assistance under the non-local option was intended not as an incentive to stay locally but as a

is semantic nonsense. Paying StockPot \$12 million less if it does not stay locally is the same as paying StockPot \$12 million more if it does stay.

In the relocation agreement, StockPot and the county explicitly agreed that \$5.5 million represented “the cost of actual, reasonable, and necessary, moving and related expenses and reestablishment expenses” for a non-local move.<sup>152</sup> The county in effect argued at trial that this plain and unambiguous contract provision was false and that the *actual* relocation and reestablishment expense was the \$16 million amount offered under the local option. But, argued the county at trial, due to its clever negotiating skills the county persuaded StockPot to accept \$10 million less than the *actual* relocation costs if it chose the non-local option. Thus, said the county, it did not pay StockPot an *incentive* to stay locally, but instead it provided a *disincentive* for the company to move out of the area.

The problem with that argument is not only that it is ridiculous on its face, but also it is contradicted by the terms of the parties’ contract and by the county’s own contemporaneous statements at the time of the agreement, as well as by the county’s pretrial deposition testimony.<sup>153</sup>

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“disincentive” to the company to move out of the area. The words “disincentive” and “disincentivize” were never used by any King County witness during pre-trial depositions. But at trial the county’s witnesses followed their script by insisting that there was no incentive to StockPot to stay locally, but rather a “disincentive” to move away from the region. RP 24:1874-75; RP 25:1994-97; RP 27: 2349-51; RP 28:2412; RP 28:2415-16.

<sup>152</sup> See Tx 90, ¶ 3.1.

<sup>153</sup> See discussion *supra* at 19-21; RP 16:665-67 (deposition testimony of Mr. Triplett).

When a contract is clear and unambiguous, the court must enforce it as written, not modify it or create ambiguity where none exists. *Nat'l Sur. Corp. v. Immunex Corp.*, 162 Wn. App. 762, ¶16, 256 P.3d 439 (2011), citing *Weyerhaeuser Co. v. Commercial Union Ins. Co.*, 142 Wn.2d 654, 665, 15 P.3d 15 (2000). As already noted, the relocation agreement stated that the \$5.5 million amount represented the full cost of actual relocation expenses for a non-local move. There is no logical reason why the relocation expenses would be greater for a local move.

Even if it were necessary under the “context rule” to look to extrinsic evidence to discern the parties’ intent,<sup>154</sup> the best such evidence was the county’s own contemporaneous press release and newsletter announcing the agreement with StockPot. In those documents the county stated that, in order to preserve jobs in the local region, the county was offering StockPot a \$12 million incentive to stay locally instead of moving across the country.<sup>155</sup> In contrast to the contrived new explanation offered at trial, those statements constitute unambiguous admissions by the county made at the time of the event in question.<sup>156</sup>

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<sup>154</sup> *Berg v. Hudesman*, 115 Wn.2d 657, 668-69, 801 P.2d 222 (1990).

<sup>155</sup> See Tx 93 (press release) at CP 13770; Tx 97 (newsletter) at CP 13775-76; see discussion *supra* at 20-21.

<sup>156</sup> When former county executive Triplett was asked at trial whether it was true, as stated in the county’s April 2005 press release (which he had helped draft) that the agreement was structured to provide incentives for StockPot to choose the local option, he testified – in a classic example of doubletalk – that “essentially, you know, it’s sort of the inverse of what we did, so, yes, I think so.” RP 27:2350-51.

Additional extrinsic evidence supporting the districts' position is the July 2004 settlement agreement between StockPot and King County, which was the precursor of the relocation agreement. The parties agreed there to use their best efforts to negotiate "a mutually agreeable relocation agreement to provide adequate relocation assistance and other support to StockPot to prevent the loss of StockPot Culinary Campus jobs in the Puget Sound region,"<sup>157</sup> clearly indicating the county's willingness to sweeten the pot with "other support" in addition to "adequate relocation assistance" in order to convince StockPot to relocate locally.

Also, reviewing the relocation agreement as a whole, the "claw-back" provision contained in that agreement, under which StockPot would have to return to the county up to \$5 million (the "Repayment Amount") if it did not maintain a sufficient level of employment at its new facility for five years,<sup>158</sup> also supports the districts' position that the additional money was being paid to StockPot for the purpose of job preservation. Otherwise, it would make no sense for StockPot to have to return that money if it did not maintain the specified level of employment.

In dismissing the districts' claim, the trial court unnecessarily created ambiguity where none existed in the relocation agreement, by accepting the county's newly invented rationale and interpreting the

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<sup>157</sup> CP 13714 (Tx 74) ¶ 5 (emphasis added); see discussion *supra* at 19.

<sup>158</sup> See Tx 90, ¶¶ 4.1.2 & 4.1.4.

agreement in a manner contrary to the express language of the contract, and by disregarding the county's own contemporaneous admissions as mere "political spin."<sup>159</sup> That was error and should be reversed.

The trial court did, however, conclude correctly that the \$2 million payment to StockPot expressly for "job retention" was for the general governmental purpose of job preservation, rather than a wastewater utility purpose. Thus, the court ruled that the county improperly made that payment from the restricted Water Quality Fund, and that the county must reimburse that fund for that improper expenditure.<sup>160</sup>

The same result should be reached with respect to the additional \$10 million paid to StockPot for choosing the local option. The additional \$10 million, like the \$2 million, was paid for the general governmental purpose of job preservation, not for a sewage utility purpose, and should not have been made out of the Water Quality Fund. Accordingly, the trial court judgment should be reversed to the extent it upheld the validity of using the Water Quality Fund to pay StockPot the additional \$10 million to preserve jobs, on top of the \$2 million paid expressly for that purpose.

F. The Culver Fund Projects Were Neither Directly nor Indirectly Related to Sewage Treatment or Disposal.

The trial court's surprising conclusion after trial that "All Culver

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<sup>159</sup> FFCL ¶ 76 (CP 18677).

<sup>160</sup> FFCL ¶¶ 91-92 (CP 18680), FFCL ¶¶ 106-107 (CP 18682).

Fund activities and projects ... relate directly and indirectly to sewage treatment and disposal”<sup>161</sup> directly contradicts the county’s own definition of Culver Fund (Category III) projects as neither directly nor indirectly related to sewage treatment or disposal. It flies in the face of the court’s pretrial summary judgment ruling that “sewer revenues may not properly be used for ‘water quality improvement’ purposes other than sewage treatment and disposal” and that “some or all Culver Fund expenditures provide no direct benefit for sewage treatment and disposal.”<sup>162</sup>

Space limitations do not allow for detailed description in this brief of all of the numerous Culver Fund projects, but they are briefly described in Appendix B hereto. It is obvious from even a cursory review of those projects that very few of them have anything resembling the necessary nexus to sewage treatment and disposal.<sup>163</sup> Notably, the trial court did not make any finding of fact describing any particular Culver Fund project or explaining how, in the court’s view, any specific project related to sewage treatment or disposal. The Culver Fund projects, worthy as they may be, received county funding for reasons other than sewage treatment and

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<sup>161</sup> FFCL ¶ 47 (CP 18669).

<sup>162</sup> CP 18735, ¶ 1(a).

<sup>163</sup> The county has admitted as much, at least as to certain councilmembers’ “pet projects.” *See, e.g.*, Tx 56 at 2 (7/9/03 email from Don Theiler, former director of WTD), “we checked the earth corps work and they do virtually nothing for wastewater. I see this as a real problem, if someone starts to look into it. They do work in the WLR area.” The county council has appropriated almost \$900,000 in Culver funding to EarthCorps since 2002. *See* Appendix B at B-17.

disposal. That is why they were funded through the Culver program, rather than as part of WTD operations or capital improvement programs.

1. RCW 35.58.200 does not authorize King County to use sewage revenues for non-sewage purposes.

The trial court misread and misapplied RCW 35.58.200 in concluding that WTD was authorized to engage in “water quality improvements including the Culver Fund activities at issue in this lawsuit.”<sup>164</sup> RCW 35.58.200 is part of the general statutory scheme for metropolitan municipal corporations. That particular section of the statute provides that if a metropolitan municipal corporation is authorized to perform water pollution abatement, then it is granted certain additional powers listed. One of the listed powers is to fix rates for the use of water pollution abatement facilities and to expend the monies so collected on “authorized” water pollution abatement activities.<sup>165</sup> However, the only water pollution abatement activity that WTD is authorized to perform is sewage treatment and disposal. Other “water pollution abatement” activities are the function of a different division of county government, the Water and Land Resources Division (“WLRD”), which, among other things, administers the county’s Surface Water Management Fund.<sup>166</sup> The districts have no objection to the county’s spending money on activities

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<sup>164</sup> FFCL ¶ 46 (CP 18669).

<sup>165</sup> RCW 35.58.200(4)

<sup>166</sup> CP 10551.

for water quality improvement unrelated to sewage treatment or disposal, so long as the county does not use sewage revenues to pay for it.

As successor to Metro, the county is authorized to engage in the sewage disposal and transportation services previously performed by Metro. However, the voters never authorized Metro to engage in services other than sewage disposal or transportation. Voter approval is required before a metropolitan municipal corporation may engage in a new line of business.<sup>167</sup> The county's authority to engage in other services must derive from its other powers, not as a successor to Metro.

If RCW 35.58.200 were construed as authorizing the use of county sewage utility funds to pay for non-sewage projects, the statute would run afoul of the state constitutional requirement that taxes be authorized and imposed openly and “stat[ing] distinctly the object of the [tax] to which only it shall be applied.” Wash. Const. art. VII, § 5. That is because using sewage revenues for general governmental or other non-sewage purposes (such as surface water quality improvement or other environmental purposes) constitutes imposition of a hidden tax on sewer customers, just as using electric utility revenues to pay for streetlights (*Okeson I*), public art (*Okeson II*) or third parties' greenhouse gas reduction (*Okeson III*), or using water utility revenues to pay for fire hydrants (*Lane*), constitutes

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<sup>167</sup> RCW 35.58.100.

imposition of an illegal hidden tax on utility ratepayers. For the same reasons that the Washington Supreme Court held unanimously in the *Okeson* streetlight case that a statute authorizing the use of electric utility revenues to pay for streetlight costs was constitutionally invalid, construing RCW 35.58.200 as authorizing the use of sewage revenues to pay for non-sewage projects would render the statute similarly violative of Wash. Const. art. VII, § 5. See *Okeson I*, 150 Wn.2d at 557-58.

2. King County's Financial Policy No. 8 does not supersede the parties' contracts, the County Charter or other relevant provisions of the County Code.

The county attempted to legitimize its Culver Fund program by adopting Financial Policy No. 8 (originally numbered as FP-5 in the 1999 RWSP), which provides in relevant part:

Water quality improvement activities, programs and projects, in addition to those that are functions of sewage treatment, may be eligible for funding assistance from sewer rate revenue after consideration of criteria and limitations suggested by MWPAAC and, if deemed eligible, shall be limited to one and one-half percent of the annual wastewater system operating budget. ...<sup>168</sup>

At the same time as the county adopted FP-8, it also adopted FP-10 (originally numbered as FP-7 in the 1999 RWSP), which provides:

The assets of the wastewater system are pledged to be used for the exclusive benefit of the wastewater system ... The system shall be fully reimbursed for the value associated with any use or transfer of such assets for other county purposes.<sup>169</sup>

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<sup>168</sup> KCC 28.86.160.C.1.FP-8 (emphasis added).

<sup>169</sup> KCC 28.86.160.C.1.FP-10.

Unlike FP-8, the language of FP-10 is mandatory, not permissive. FP-8 does not require the county to spend sewer revenues on non-sewage related projects and programs, while FP-10 does require that WTD be reimbursed for any non-wastewater expenditures.

To the extent FP-8 allows wastewater revenues to be used for non-wastewater purposes, it conflicts not only with FP-10 but also with the King County Charter, which provides that the sewage utility “shall be operated as a distinct functional unit” and that the utility revenues “shall never be used for any purposes other than” the expenses of that function.<sup>170</sup> A county ordinance that conflicts with the county charter is invalid.<sup>171</sup> King County Charter § 230.10.10 controls over FP-8.

Thus, the county does not have authority under either RCW 35.58.200 or FP-8 to incorporate into sewage rates the kinds of non-sewage expenditures represented by the Culver Fund. The county has overcharged the local sewer utilities (and through them, all sewer ratepayers in the county’s service area) by including the Culver Fund expenditures in calculating sewage disposal charges.

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<sup>170</sup> King County Charter § 230.10.10 (quoted *supra* at 8-9).

<sup>171</sup> See *Platt Elec. Supply, Inc. v. City of Seattle*, 16 Wn. App. 265, 272, 555 P.2d 421 (1977), citing 5 Eugene McQuillin, *Municipal Corporations* § 15.19 (3d ed., rev. 1969): “A city charter bears the same relation to city ordinances that a state constitution bears to state statutes. An ordinance, therefore, can no more change or limit the effect of a city charter than a legislative act can modify or supersede a provision of the state constitution.”

G. The County Should Reimburse WTD for Overhead Charges Improperly Allocated to the Utility.

The county has overcharged WTD for overhead in three ways: (1) it has used an overhead allocation methodology that does not meet the “best match” requirement of the county code; (2) it has refused to reimburse WTD for admitted overcharges of overhead resulting from the county’s failure to true-up allocations that were based on estimates and from a \$200,000 arithmetic error in 2003; and (3) it has ignored the contractual 1% limitation on “general administrative overhead costs.”

1. The county’s overhead allocation methodology does not satisfy the “best match” requirement.

The county code requires, as a starting point, that overhead expenses be allocated based on the amount of actual benefit received, and if it is necessary to estimate the benefit the county must use a methodology which “best matches the estimated cost of the services provided to the actual overhead charge.”<sup>172</sup>

A consultant King County hired to help develop an allocation methodology in 1994 concluded that: (a) an accurate allocation is the most equitable, (b) the most equitable allocation methodology should be used, and (c) the “time charges” method was the most equitable

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<sup>172</sup> KCC 4.04.045.D (emphasis added); see discussion at 27 and nn.80-82, *supra*.

methodology.<sup>173</sup> However, due to the lack of existing data in 1994 (when the county first took over the wastewater system from Metro), the consultant noted that the county could use a “surrogate method” based on budgeted costs. That does not justify continuing to use the surrogate method forever, after the county has had years of experience in operating the wastewater system, without determining whether the surrogate method produces the required “best match” between the amount of allocated overhead and the actual costs or value of the services received.

Due to county staff’s unwillingness to keep time records, the county has refused to adopt the recommended “time spent” method for allocating general government overhead costs.<sup>174</sup> And even after repeated admonitions by the State Auditor, the county has not documented that its surrogate allocation method reflects the amount of actual benefit to the utility. The county is unable to support its overhead cost allocation with anything other than bald assertions that the operating budget methodology is fair enough. It continues a practice today that makes the Water Quality Fund’s share of allocated overhead dependent on, for example, the Solid Waste Fund’s or Transit Fund’s operating budget – something over which

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<sup>173</sup> Tx 15 at KC-CR\_SC 002027 (Deloitte & Touche report).

<sup>174</sup> Requiring county employees to keep timesheets to document time spent on wastewater matters should not be unduly difficult or unrealistic, as any lawyer can attest.

WTD has no control.<sup>175</sup> Such a practice is arbitrary and insupportable.

2. The county has refused to reimburse WTD for admitted overhead overcharges resulting from failure to “true-up” and from an admitted arithmetic error.

King County concurred with the Auditor’s finding regarding the county’s failure to true-up its overhead allocations, and it committed to performing such adjustments in the future.<sup>176</sup> However, it has refused to reimburse WTD for prior years’ overcharges resulting from the county’s failure to “true-up” the overhead. The county’s only purported justification for that refusal is that the amounts involved are “immaterial.” The trial court agreed.<sup>177</sup> The State Auditor calculated that WTD was overcharged \$750,000 for the years 2005-2009 due to the county’s failure to “true-up.” If all relevant years (since 2002) were included, the amount would be even greater. Admitted errors amounting to hundreds of thousands of dollars are not “immaterial” to the districts and should not be ignored. They are certainly material in this context.

Similarly, the county has failed to reimburse WTD for the \$200,000 overcharge of overhead expenses resulting from an admitted

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<sup>175</sup> For example, if Solid Waste’s budget were suddenly cut in half, but WTD’s budget stayed the same, WTD would be allocated a correspondingly higher portion of general government overhead expenses, even if the general government spent no additional time on WTD issues and provided no additional services to WTD.

<sup>176</sup> CP 14022 (King County response to 2009 Audit finding OH-1).

<sup>177</sup> FFCL ¶ 132 (CP 18688).

arithmetic error in 2003.<sup>178</sup> Admitted errors should be corrected.

3. The county has violated the 1% contractual limitation.

The sewage disposal contracts contain a specific provision limiting “general administrative overhead costs” to 1% of the other costs of the wastewater system.<sup>179</sup> This 1% for “general administrative overhead costs” is in addition to the “cost of administration” of the sewage system. The only rational interpretation of this language (and the interpretation given by the county’s DNRP director)<sup>180</sup> is that the first reference to “cost of administration” of the sewage system means the costs of management and administration within the wastewater division, while the reference to “general administrative overhead costs” in the 1% clause means the costs of management and administration provided by those outside the wastewater division itself. Otherwise, the language would be a self-referential tautology – the costs of managers outside the wastewater division, to the extent they supposedly provided any “administrative” service for WTD, would be included in the first reference to

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<sup>178</sup> See discussion *supra* at 30 and n.96.

<sup>179</sup> The sewage disposal rates are based on “the monetary requirements for the disposal of sewage,” which in turn is defined as “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.” Tx 9 (1992 sewage disposal contract), §5.3(a) (emphasis added).

<sup>180</sup> RP 18:913-14.

“administrative” costs and then would be added again under the 1% clause. Such an interpretation would be unreasonable.

The county has violated the 1% limitation every year by charging the wastewater utility in excess of that amount for central services (general county government) and DNRP overhead, *i.e.*, for “general administrative overhead” of county staff outside the wastewater division itself. It does this by lumping general county overhead and DNRP overhead into the “administrative costs” of the utility, and failing to recognize the distinction made in the contract between administration of the utility itself (for example, the WTD manager and her staff) from the “general administrative overhead costs” (county and DNRP overhead outside of WTD). From 2002 to 2009 the county charged WTD over \$9 million for such general administrative overhead costs in excess of the 1% limit.<sup>181</sup>

H. The “Credit Enhancement Fee” for LTGO Bonds Does Not Reflect Costs Incurred by the General Fund and Is Merely a Scheme to Raise Revenues for the General Fund.

The “credit enhancement fee” invented by the county in 2003 and imposed on WTD for the purported purpose of sharing the benefit of the interest rate spread between LTGO bonds and revenue bonds is, as admitted by King County’s own witnesses, simply a means of raising revenue for the general government at the expense of the utility. The

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<sup>181</sup> See Appendix C attached hereto, and discussion *supra* at 30-31, n.100.

Court should invalidate those charges as a hidden tax and order the county to reimburse WTD for those charges.

The wastewater utility has no obligation to pay an extra fee to the county for issuing LTGO bonds for the utility when the county has not shown that the so-called “credit enhancement fee” accurately reflects a true cost to the county or its general fund. The Local Government Accounting Statute (RCW 43.09.210, also known as the Accountancy Act)<sup>182</sup> is not implicated until such time as the county has incurred an actual cost, the “true and full value” of which can be quantified. Moreover, the county’s general fund is not a fund “made for the support of another” within the meaning of RCW 43.09.210. Instead, the general fund by definition is comprised of revenues “which have not been specifically allocated to any other purpose.”<sup>183</sup> Washington law has long held that unless specifically earmarked for a particular purpose, the general fund can be used for any legitimate purpose. *State ex rel. Adams v. Irwin*, 74 Wash. 589, 593, 134 P. 484 (1913). Barring a statute, charter provision or ordinance requiring that a utility be self-sustaining or nontax supported,

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<sup>182</sup> “...All service rendered by, or property transferred from, one department, public improvement, undertaking, institution, or public service industry to another, shall be paid for at its true and full value by the department, public improvement, undertaking, institution, or public service industry receiving the same, and no department, public improvement, undertaking, institution, or public service industry shall benefit in any financial manner whatever by an appropriation or fund made for the support of another. ...”

<sup>183</sup> RCW 36.33.010.

the general fund can be used to support utility activities. *Berglund v. City of Tacoma*, 70 Wn.2d 475, 478, 423 P.2d 922 (1967).<sup>184</sup>

The “credit enhancement” fee is an illegal raid on the utility fund to raise money for the general fund without the county council having to make the politically-difficult decision to raise taxes. The three-part *Covell* test<sup>185</sup> is used in determining whether a charge is a tax or a regulatory fee. Here, the admitted purpose of the charge is to raise money for the general fund; there is no regulatory purpose; and there is no direct relationship between the fee charged and any cost incurred by or burden imposed on the general fund.<sup>186</sup>

Thus, the so-called “credit enhancement fee” is nothing more than a “revenue-raising ploy for the [county’s] general budget.”<sup>187</sup> It amounts to an illegal, hidden tax on WTD and, through WTD’s sewage disposal charges, on the local sewer utilities and their ratepayers. The dismissal of the districts’ claim should be reversed, and the sewage utility should be reimbursed for all “credit enhancement fees” paid since 2003.

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<sup>184</sup> The State Auditor’s representative agreed at trial that although a utility fund cannot be used to pay for general government expenses, the general fund can be used to pay for utility expenses. RP 21:1401-02.

<sup>185</sup> *Covell v. City of Seattle*, 127 Wn.2d 874, 879, 905 P.2d 324 (1995).

<sup>186</sup> WTD is required to maintain numerous debt coverage ratios to ensure that sewer charges are established and collected that are more than sufficient to cover bonds, which in turn ensures that there will be no burden on the general fund from a utility default. CP 16314-17. The county has made no attempt to quantify any “cost” imposed on the general fund as a result of issuing LTGO bonds rather than traditional revenue bonds for WTD. RP 29:2626.

<sup>187</sup> Quoting *Okeson I*, 150 Wn.2d at 554.

V. CONCLUSION

Undoubtedly the temptation for a county or other local government to raid a utility fund for general government purposes is strong, especially in difficult financial times. However, King County has a duty to avoid that temptation and to protect its restricted sewage utility fund from improper expenditures for unlawful, unauthorized or non-sewage purposes, even if those expenditures are for projects to meet laudable county goals that benefit the general public. The county has violated that duty by making the expenditures at issue in this case. As a result, the appellant sewer districts and all of the other local sewer utilities, and their respective ratepayers, are paying higher sewer charges than would otherwise be required for sewage treatment and disposal.

The districts respectfully request that the Court reverse the trial court's dismissal of the districts' claims and remand the case to the trial court for determination of appropriate remedies.

Respectfully submitted this 14<sup>TH</sup> day of March, 2012.

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By   
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# APPENDIX A

(Exhibit B to “Community Mitigation”  
Settlement Agreement and Map of Projects)



Snohomish County Mitigation Project List

A-1

Project	Impact Addressed / Nexus	King County Portion of Total Project Cost	Comments
<b>Recreation</b>			
Maltby 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.
<b>Recreation</b>		<b>Subtotal</b>	<b>\$ 30,400,000</b>
<b>Community Resources</b>			
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.
<b>Community Resources</b>		<b>Subtotal</b>	<b>\$ 2,950,000</b>
<b>Public Safety</b>			
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 end 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.

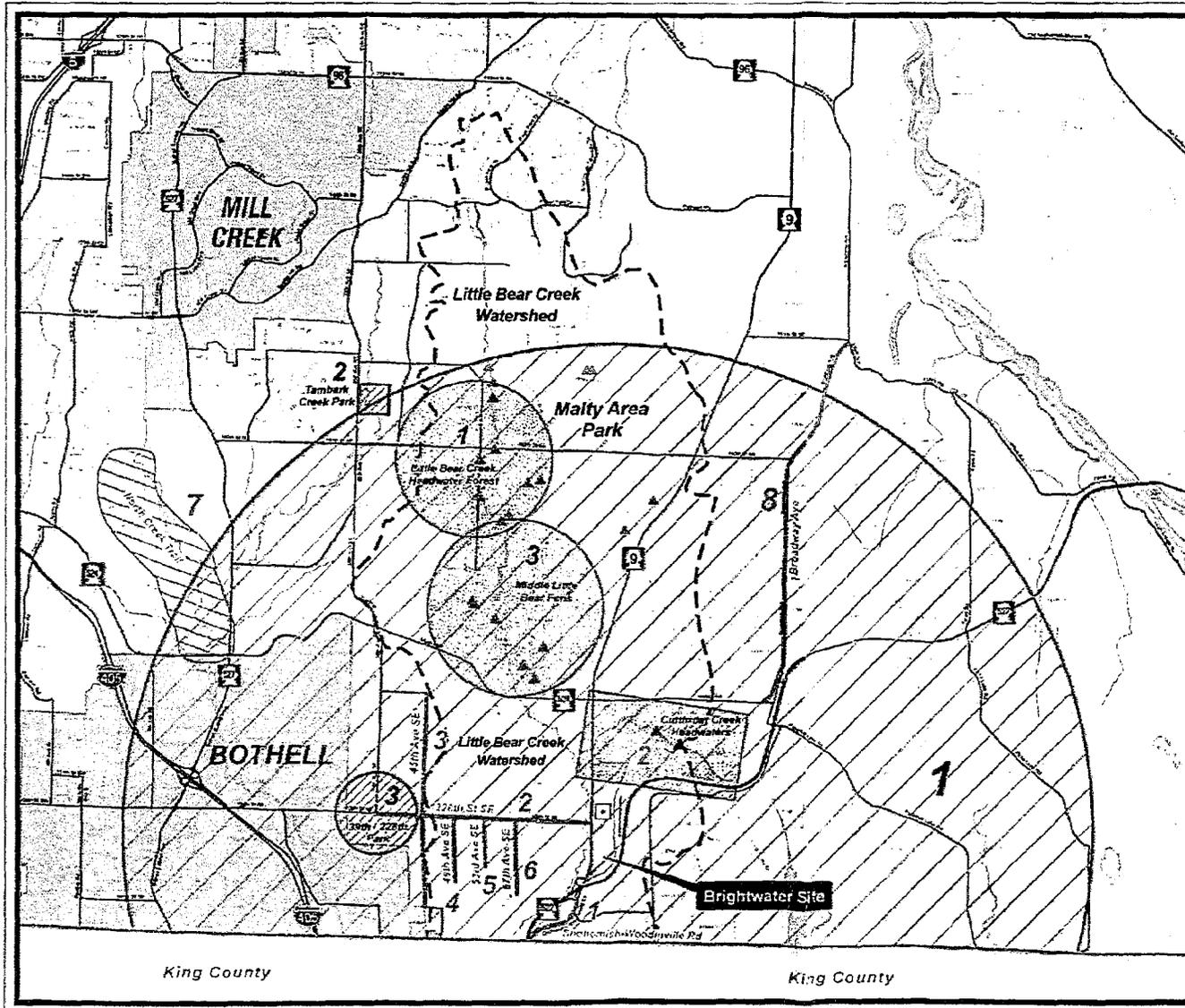


EXHIBIT B TO THE SETTLEMENT AGREEMENT

A-2

Snohomish County Mitigation Project List				
<b>Public Safety continued</b>				
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.
<b>Public Safety</b>		<b>Subtotal</b>	<b>\$ 25,850,000</b>	
<b>Habitat Mitigation</b>				
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.
<b>Habitat Mitigation</b>		<b>Subtotal</b>	<b>\$ 10,800,000</b>	
		<b>Total</b>	<b>\$ 70,000,000</b>	

SNO 1209



# Snohomish County Brightwater Mitigation Project List

**Public Safety Projects: \$25,850,000**

- 1 Snohomish-Woodinville Road
- 2 228th St SE (39th Ave SE to SR-9)
- 3 45th Ave SE (240th St SE to 212th St SE)
- 4 49th Ave SE (236th St SE to 228th St SE)
- 5 53rd Ave SE (233rd St SE to 228th St SE)
- 6 57th Ave SE (236th St SE to 228th St SE)
- 7 North Creek Trail
- 8 Broadway Ave (SR-524 to 164th St SE)

**Watershed Mitigation Projects: \$10,800,000**

- 1 Little Bear Creek Headwater Forest
- 2 Cutthroat Creek Headwaters
- 3 Middle Little Bear Fens
- ▲ Little Bear Creek Fish Passage (various)

**Community Resources: \$2,950,000**

- ☐ Community Resource Center

**Recreation Projects: \$30,400,000**

- 1 Malthy Area Park
- 2 Tambark Creek Park
- 3 39th Ave SE / 228th St SE Park

**TOTAL: \$70,000,000**

*Note: Detailed project descriptions can be found in Exhibit B of the Settlement Agreement.*

# APPENDIX B

(Culver Fund Projects)

## WATERWORKS GRANTS<sup>1</sup>

<b>Recipient</b>	<b>Project Description</b>	<b>Funding</b>	<b>Reference (Year)</b>
Adopt a Stream Foundation	Habitat restoration along Brookside Creek	\$ 17,770	Tx 415 (2003)
Adopt a Stream Foundation	Inventory North Creek to identify sources of non-point pollution and salmon habitat degradation areas	\$ 50,000	Tx 415 (2004)
Auburn School District on behalf of Cascade Middle School	Middle school program to restore native vegetation along Olson Creek	\$ 1,913	Tx 415 (2006)
Black River Watershed Alliance	Black River restoration project to enhance fish and wildlife habitat	\$ 20,340	Tx 415 (2005)
Boys and Girls Clubs of King County	Gold Creek Park restoration of native habitats, especially wetland areas overgrown with invasive weeds	\$ 15,000	Tx 415 (2004)
Brink, Jeff, Scout of the life Scout Troop 449	Storm drain stenciling	\$ 500	Tx 415 (2005)
Cascade Land Conservancy	Purchase conservation easements to protect wetlands	\$ 50,000	Tx 415 (2002)
Cascade Neighborhood Council	Renovate existing park building into environmentally responsible learning/gathering center	\$ 50,000	Tx 415 (2003)
City of Auburn	Olson Creek salmon habitat restoration	\$ 50,000	Tx 415 (2003) Tx 349

<sup>1</sup> Project descriptions are based on trial exhibits as noted.

**WATERWORKS GRANTS**

<b>Recipient</b>	<b>Project Description</b>	<b>Funding</b>	<b>Reference (Year)</b>
City of Auburn	Purchase car washing kits to prevent soap and other pollutants from entering storm water system	\$ 2,500	Tx 415 (2005) Tx 383
City of Bothell	Stenciling program for stormdrains - "Dump no Waste, Drains to Stream" logo	\$1,450	Tx 345 (2003)
City of Covington	Educate public on salmon recovery efforts and land acquisition in the Middle Green River Basin	\$ 5,000	Tx 415 (2003)
City of Issaquah	Riparian habitat restoration along Issaquah and Tibbetts Creek	\$ 36,100	Tx 415 (2003) Tx 343
City of Issaquah	Improve aquatic and riparian habitat in Issaquah Creek, including floodplain connectivity	\$ 25,000	Tx 415 (2006) Tx 408
City of Issaquah Parks and Recreation Dept.	Stewardship of Park Hill Open Space (removal of non-native invasive plants)	[no cash award]	Tx 403 (2006 award of three EarthCorps crew days valued at \$3,000)
City of Issaquah Resource Conservation Office [Recreation and Community Outreach]	Community Teaching Garden - illustrate ways to minimize effects of urban landscaping	\$ 31,980	Tx 415 (2002) Tx 334

**WATERWORKS GRANTS**

<b>Recipient</b>	<b>Project Description</b>	<b>Funding</b>	<b>Reference (Year)</b>
City of Kent	Lake Fenwick Park urban forest restoration including noxious weed removal	\$ 8,500	Tx 126 (2007) see also Tx 416 (2007-08 award of five EarthCorps crew days valued at \$6,250)
City of Kent	Clark Lake outlet stream and salmon habitat restoration including removal of invasive plants	\$ 21,500	Tx 415 (2006) Tx 414
City of Kirkland	Natural Yard Care Neighborhoods Program: seminars to teach gardeners how to reduce water and chemical usage, create healthy soil, and garden design with native and drought tolerant plants.	\$ 99,150	Tx 445 (2008-2010: \$ 49,150)  Tx 452 (2009-2011: \$50k)  see also Tx 456
City of Lake Forest Park	Grace Cole Nature Park wetland restoration	\$ 23,700	Tx 126 (2007) Tx 426
City of Lake Forest Park	Lyon Creek waterfront restoration (remove residence and bridge)	\$ 50,000	Tx 415 (2002) Tx 333
City of Mountlake Terrace	Lyon Creek habitat enhancement	\$ 60,000	Tx 415 (2004)
City of Redmond	Salmon-friendly water conservation demo garden	\$ 40,000	Tx 415 (2006) Tx 412
City of Shoreline	Assist with LEEDS certification of a City Hall and Civic Center	\$ 20,000	Tx 126 (2007)
City of Shoreline	Charity car wash kit loan program	\$ 500	Tx 126 (2007)

**WATERWORKS GRANTS**

<b>Recipient</b>	<b>Project Description</b>	<b>Funding</b>	<b>Reference (Year)</b>
City of Tukwila	Tukwila pond buffer enhancement and public access improvements (remove invasive plants, build trail and interpretative signage)	\$ 41,911	Tx 165 (2008)
City of Tukwila – Stream Team Stewardship Training Program	Education/training of residents/property owners, stream enhancement, and rain garden installation	\$ 22,208	Tx 453 (2009-11) see also Tx 456
City of Woodinville	Habitat restoration in Little Bear Creek Linear Park, including removal of invasive species	\$ 20,000	Tx 415 (2003)
City of Woodinville	Habitat improvement, including erosion control, within Sammamish River watershed	\$ 30,000	Tx 415 (2004)
Delridge Neighborhood Development Association on behalf of Denny Middle School	Grow native wetland plants for restoration projects in local watershed	\$ 38,000	Tx 415 (\$15k - 2004 & \$23k - 2005)
Denny Creek Neighborhood Alliance	Acquisition of urban forest and wildlife habitat reserve	\$ 44,750	Tx 415 (2003)
Discovery Elementary / Issaquah School District	Wetland restoration/outdoor classroom	\$ 2,499	Tx 157 (2008); same project/ funding listed on Tx126 (2007)
Ducks Unlimited Pacific NW Office	Wetland restoration/enhancement using reclaimed water	\$ 30,000	Tx 415 (2006)

## WATERWORKS GRANTS

<b>Recipient</b>	<b>Project Description</b>	<b>Funding</b>	<b>Reference (Year)</b>
Eastside Montessori Education Foundation	Demonstration garden using native plants	\$ 19,500	Tx 415 (2003) Tx 340
Eco-Cascade	Green roof for community center	\$ 5,000	Tx 126 (2007) Tx 149
Endeavour Elementary / Issaquah School District	Wetland development/restoration	\$ 3,000	Tx 415 (\$2k - 2005) Tx 126 (\$1k - 2007)
For the Sake of the Salmon	Education about culverts/fish & road crossings	\$ 5,000	Tx 415 (2002)
Friends of Ballard Corners Park / Groundswell Northwest	Construction of rain garden at Ballard Corners Park	\$ 43,250	Tx 126 (2007) Tx 144
Friends of Belltown P-Patch	Update and reprint book about turning street into urban park that can help treat and reuse stormwater	\$ 5,000	Tx 415 (2003)
Friends of the Cedar River Watershed	Teams of students are recruited and trained to analyze, engage in, measure and communicate sustainability trends in the Cedar River/Lake Washington watershed.	\$ 45,000	Tx 456 (2009)
Friends of Cottage Lake	Cottage Lake restoration including removal of noxious weeds	\$ 2,500	Tx 415 (2006)
Friends of Dahl Playfield	Habitat improvement of wetland and buffer at Dahl Playfield	[no cash award]	Tx 126 (2007) (five crew days)

**WATERWORKS GRANTS**

<b>Recipient</b>	<b>Project Description</b>	<b>Funding</b>	<b>Reference (Year)</b>
Friends of Hazel Heights P-Patch / P-Patch trust	Design and construction of rainwater catchment system at community p-patch	\$ 29,000	Tx 126 (2007)
Friends of the Trail	Litter cleanup on public lands and waterways in King County	\$ 22,170	Tx 415 (\$6,265 - 2006) Tx 444 (\$15,905 - 2008-2010)
Friends of the Woodinville Farmers Market	Design and construction of two green roofs at agri-urban center	\$ 50,000	Tx 415 (2005)
Friends of Wetlands of Issaquah Northfork	Habitat restoration along N. Fork of Issaquah Creek consisting of floodplain wetlands	\$ 2,344	Tx 415 (2006)
Green River Flood Control Zone District	Repair of Segale Levee & improve salmon/terrestrial wildlife habitat	\$ 5,000	Tx 415 (2003)
Groundswell NW	Educational tours of Cedar River Watershed	\$ 1,253	Tx 415 (2002)
Highline Community College	Marine Science education at Redondo Beach Pier marine lab	\$ 47,710	Tx 415 (2002)
Highline School District	Wetland restoration/outdoor classroom	\$ 16,000	Tx 415 (2003)
Huey, Jane on behalf of University of WA	Restoration of springs and stream headwaters at Licton Springs Park	\$ 1,500	Tx 415 (2004)

**WATERWORKS GRANTS**

<b>Recipient</b>	<b>Project Description</b>	<b>Funding</b>	<b>Reference (Year)</b>
Institute for Community Leadership	Riparian zone restoration, habitat preservation and in-stream improvements on Little Soos and Winter Creeks	\$ 5,000	Tx 415 (2004)
Interim Community Development Association	Educate elderly Chinese gardeners and Asian-American youth in responsible gardening practices	\$ 6,000	Tx 415 (2004)
Interim Community Development Association	Rebuild a block of Maynard Avenue to increase natural water infiltration and reuse rainwater	\$ 50,000	Tx 415 (2006)
IslandWood	Educate elementary school children to monitor water quality in area streams	\$ 34,000	Tx 415 (2002)
Issaquah High School / Issaquah School District	Charity car wash kit loan program	\$ 500	Tx 126 (2007)
Issaquah School District 411	Create outdoor classroom by restoring swale and building trail next to wetland	\$ 2,200	Tx 415 (2006)
King Conservation District	Purchase a water truck to haul reclaimed water to the Green Valley Farm	\$ 20,000	Tx 126 (2007); same project listed on Tx 150 (2008)
Klahanie Homeowners Association	Yellow Lake restoration, including removal of noxious weeds	\$ 1,600	Tx 415 (\$1600 - 2003) Tx 126 (two crew days, no cash)

**WATERWORKS GRANTS**

<b>Recipient</b>	<b>Project Description</b>	<b>Funding</b>	<b>Reference (Year)</b>
Klamath Bird Observatory	Volunteer wildlife monitoring pilot project along streams, lakes, wetlands, and Puget Sound	\$ 1,000	Tx 415 (2005)
Lake Forest Park Stewardship Foundation	Replacement of culvert on Brookside Creek to improve fish passage	\$ 36,640	Tx 415 (2004)
Lake Geneva Property Owners Association	Lake Geneva noxious weed eradication	\$ 17,000	Tx 415 (2005)
Lake Kathleen Homeowners Association	Non-native weed control on Lake Kathleen	\$ 2,500	Tx 415 (2005)
Madrona Community Council	Daylight and restore Madrona Park Creek	\$ 110,000	Tx 415 (\$60k – 2004 & \$50k - 2006)
Master Builders Education Foundation, Build Green	Provide sub-grants to encourage green building and low impact development practices	\$ 50,000	Tx 415 (2006) also shown on Tx 126 (2007); Tx 124
Mountain to Sound Greenway Trust	Restore shoreline of Lake Sammamish State Park and Issaquah Creek habitat including removal of invasive weeds and protection of adjacent wetlands	\$ 100,000	Tx 415 (\$50k – 2005) Tx 126 (\$50k – 2007) Tx 146
National Fish & Wildlife Foundation	Fund sub-grants from the Community Salmon Fund for salmon habitat projects	\$ 141,000	Tx 415 (2006) Tx 125
Nature Consortium	Urban Forest Restoration Project: engaging at-risk youth to improve and protect streams and wetlands in Seattle forest	\$ 50,000	Tx 456 (2009)

**WATERWORKS GRANTS**

<b>Recipient</b>	<b>Project Description</b>	<b>Funding</b>	<b>Reference (Year)</b>
NOAA Fisheries; Northwest Fisheries Science Center	Replace portion of parking lot with permeable pavement and restore adjacent lakeshore with native vegetation	\$ 28,358	Tx 456 (2009)
North Lake Improvement Club	Eradication of invasive plants at North Lake	\$ 2,000	Tx 415 (2004)
North Seattle Community College, Homewaters Project	Design and implement a water conservation educational program for upper elementary school students	\$ 11,775	Tx 415 (2003)
Northshore Utility District	Car wash kit for charity car washes	[no cash award]	Tx 389 (2005)
Northwest Environmental Education Council	Educational program for high school and elementary students about water quality/watershed protection	\$ 1,885	Tx 415 (2005)
ORCA Elementary School PTA	Establish a native plant garden and nursery at ORCA elementary school	\$ 2,471	Tx 415 (2005)
PACE - Kokanee Elementary School - Northshore School Elementary	Outdoor Education Day with workshops regarding water quality, native plants and water conservation	\$ 530	Tx 415 (2003)
PACE - Lockwood Elementary School - Northshore School District	Outdoor education - adopt-a-stream	\$ 1,900	Tx 415 (2003)
Pacific Northwest Pollution Prevention Center	Collect and dispose of unused pharmaceuticals	\$ 102,500	Tx 415 (\$2.5k & \$50k - 2006) Tx 126 (\$50k - 2007)

**WATERWORKS GRANTS**

<b>Recipient</b>	<b>Project Description</b>	<b>Funding</b>	<b>Reference (Year)</b>
Pacific Science Center	Paid high-school interns to monitor water quality at Kelsey Creek and Taylor Creek, and visit grade-school classrooms	\$ 6,696	Tx 415 (2003)
Partnership for Rural King County	Nursery for restoration plants; habitat restoration; noxious weed/invasive plant removal; storm drain stenciling; car wash education	\$ 2,000	Tx 147 (2007-08); project also included in Tx 126 (2007) with funding listed as \$2500
People for Puget Sound	Intensive, one-day forum that encapsulates the state of toxic pollution in the Puget Sound ecosystem	\$ 2,500	Tx 415 (2005)
Phinney Neighborhood Association	Rainwater collection system at community center	\$ 2,500	Tx 415 (2005)
Pomegranate Center	Build public demonstration roof garden	\$ 12,358	Tx 415 (2004)
Puget Sound Car Wash Association	Busboard campaign to educate fundraising groups about charity car washes	\$ 2,500	Tx 126 (2007) Tx 143
Puget Sound Car Wash Association	Public service announcement for television, contrasting home and professional car washing as they impact water quality	\$ 2,500	Tx 415 (2005)
Puget Soundkeeper Alliance	Promote alternatives to charity car washes	\$ 23,050	Tx 415 (2002)
Puget Soundkeeper Alliance	Expand Lake Union Cleanup stewardship program	\$ 15,000	Tx 415 (2003)

**WATERWORKS GRANTS**

<b>Recipient</b>	<b>Project Description</b>	<b>Funding</b>	<b>Reference (Year)</b>
Puget Soundkeeper Alliance	Encourage behavior change that will benefit water quality by decreasing residential input to stormwater pollution	\$ 2,500	Tx 415 (2005)
Puget Soundkeeper Alliance	Native oyster restoration at Vashon Island and in Eastern Puget Sound	\$ 21,800	Tx 415 (2006)
Puget Sound Restoration Fund	Mitigate chronic nutrient loads in Quartermaster Harbor with mussels and microalgae and engage Vashon residents in recovery of marine resources	\$ 50,000	Tx 456 (2009)
Saint Edward State Park	Install native plant garden at Saint Edward State Park	\$ 1,250	Tx 415 (2006)
Salish Sea Expeditions	Educate 5th-12th grade students re scientific inquiry and watershed ecology	\$ 23,750	Tx 415 (2003 - \$13,750) Tx 456 (2009 - \$10k)
Salish Sea Expeditions	Purchase scientific research supplies for use by students in hands-on boat-based marine science programs	\$ 500	Tx 415 (2005)
Sanislo PTSA	Create interpretive garden in wetland buffer at Sanislo Community Playfield	\$ 15,000	Tx 415 (2004)
Save Habitat and Diversity of Wetlands Organization	Purchase conservation easements for protection of headwaters of Jenkins Creek	\$ 24,000	Tx 415 (2003)

## WATERWORKS GRANTS

<b>Recipient</b>	<b>Project Description</b>	<b>Funding</b>	<b>Reference (Year)</b>
Save Habitat and Diversity of Wetlands Organization	Wetland mapping and restoration	\$ 1,840	Tx 415 (2005)
Seattle Audubon	Restore riparian habitat along the Black River, including removal of invasive plants	\$ 28,350	Tx 415 (2004)
Seattle Conservation Corps	Train homeless or chronically unemployed SCC participants in rain garden and green roof installation at the Seattle Children's PlayGarden	\$ 75,000	Tx 450 (2009-11); see also Tx 456
Seattle Lakes Alliance	Restore habitat and stabilize Bitter Lake shoreline	\$ 32,000	Tx 415 (2005)
Seattle Parks and Recreation	Wetland development and restoration at Magnuson Park	\$ 50,000	Tx 415 (2005) Tx 390
Seattle Tilth	Build green roof on greenhouse	\$ 4,975	Tx 415 (2003)
Secondary Bilingual Orientation Center	Create biosolids demonstration project and expand environmental learning garden at Orientation Center	\$ 5,970	Tx 415 (2003)
Snohomish County	Restore streambank vegetation, protects slope stability and improve instream habitat on North Creek	\$ 50,000	Tx 415 (2002)

**WATERWORKS GRANTS**

<b>Recipient</b>	<b>Project Description</b>	<b>Funding</b>	<b>Reference (Year)</b>
Society for Ecological Restoration NW	Six workshops on restoration project techniques to improve success of restoration efforts	\$ 2,000	Tx 415 (2002)
Soos Creek Area Response	Hatchery Park restoration including control of noxious weeds at mouth of Soos Creek	\$ 20,000	Tx 415 (2002)
Spring Lake Community Club	Spring Lake water quality monitoring of herbicides	\$ 1,650	Tx 415 (2003)
Tahoma School District 409	Riparian zone and stream quality monitoring along Issaquah Creek by high school students	\$ 2,315	Tx 415 (2005)
Technology Access Foundation	Assist with LEEDS certification of community center	\$ 20,000	Tx 126 (2007)
The Springs Homeowners Association	Prevent pet waste runoff to Silver Creek	\$ 500	Tx 415 (2005)
Thornton Creek Alliance	Habitat restoration of Little Brook including removal of invasive plants	\$ 2,050	Tx 415 (2006)
University Preparatory Academy	Recreate a forested wetland at Dahl Playfield	\$ 50,000	Tx 415 (2005)
Vashon Groundwater Purveyors Association	Educate homeowners on septic system O&M, livestock owners on manure management, and water purveyors re water system management and strategies to protect groundwater	\$ 34,572	Tx 126 (2007) Tx 145

**WATERWORKS GRANTS**

<b>Recipient</b>	<b>Project Description</b>	<b>Funding</b>	<b>Reference (Year)</b>
Vashon Household/Roseballen Community Land Trust	Demonstrate low-impact development strategies	\$ 50,000	Tx 415 (2002)
Vashon Island School District	Offer high school coursework resulting in water quality enhancement, increased job skills and job experience for at-risk youth	\$ 73,700	Tx 456 (2009)
Vashon-Maury Island Land Trust	Whispering Fire Bog upland restoration, including removal of invasive plants	\$ 1,890	Tx 415 (2004)
Vashon-Maury Island Land Trust	Temporarily fence off a stream buffer during revegetation	\$ 2,500	Tx 126 (2007)
Vashon-Maury Island Land Trust	Fence livestock out of stream, wetland, and buffer on private property, remove driveway, clear blackberry, plant along Judd Creek; formalize parking area and build public access salmon viewing trail	\$ 37,000	Tx 456 (2009)
Washington Department of Natural Resources	Remove two derelict vessels that are currently sunk in Lake Washington	\$ 100,000	Tx 164 (2008); Tx 441
Washington Trout	Education program re importance of native plants, native animals, and healthy ecosystems	\$ 2,264	Tx 415 (2004)

**WATERWORKS GRANTS**

<b>Recipient</b>	<b>Project Description</b>	<b>Funding</b>	<b>Reference (Year)</b>
Watershed & Neighborhood Preservation Association	Restore banks along 100 feet of Swamp Creek	\$ 2,000	Tx 415 (2003)
White River Valley Museum	Restore lower reaches of Olson Creek and adjacent natural areas	\$ 24,920	Tx 456 (2009)
Watertenders	Train volunteer stewards to perform biological inventory of Paradise Valley Conservation Area	\$ 10,500	Tx 415 (2005)
Woodinville Water District	Install Waterwise demonstration garden	\$ 5,000	Tx 415 (2003) Tx 346
YMCA of Greater Seattle	Teach students environmental leadership and restoration skills, perform restoration projects (Earth Service Corps program)	\$ 85,000	Tx 415 (\$15k - 2004 & \$20k - 2006) Tx 456 (\$50k - 2009)

**COUNCIL (DIRECT) GRANTS<sup>2</sup>**

<b>Recipient</b>	<b>Project Description</b>	<b>Total Appropriation (2002-2010)</b>	<b>References</b>
Bear Creek Water Tenders	Citizen group education and outreach re water quality issues; perform clean-up and restoration projects	\$ 75,000	Tx 505 at 34 (\$25k) Tx 506 at 55 (\$25k) Tx 507 at 44 (\$25k) RP 13:122-24 RP 14:347-48 Tx 339 (7/04-12/05); Tx 342 (7/03-7/04); Tx 523 (2002-07)
Cedar River Council	Fund County staff member for group which promotes the health of the Cedar River through volunteer efforts	\$ 148,435	Tx 510 at 42 (\$50k) Tx 511 at 44 (\$50k, but see Tx 161 & Tx 523 says \$34,980 award for 2008) Tx 512 at 35 (\$63,455) RP 13:132-34 RP 14:329-30
Denny Creek Watershed Study	Final compilation of Denny Creek Watershed Survey, its printing and distribution; support citizen group in identifying best management practices for Denny Creek drainage to Lake Washington	\$ 4,000	Tx 510 at 42 (\$4k) RP 14:348 Tx 417 (11/06-12/07) Tx 523 (2002-07)
Des Moines Creek Basin Plan	Help implement plan to promote water quality of Des Moines Creek	\$ 160,000	Tx 509 at 31 (\$160k) RP 13:134-35 RP 14:330-31

<sup>2</sup> Appropriations from Txs 505-513 [King County annual budgets for 2002-2010]; project descriptions from trial testimony and other trial exhibits as noted; see also Tx 152 for spreadsheet of Culver expenditures for years 1997-2007

**COUNCIL (DIRECT) GRANTS**

<b>Recipient</b>	<b>Project Description</b>	<b>Total Appropriation (2002-2010)</b>	<b>References</b>
DNRP Environmental Projects Database	Database regarding effectiveness of water quality treatment per Endangered Species Act and other water quality objectives	\$ 54,990	Tx 506 at 55 (\$54,990) RP 14:331-32
EarthCorps	Volunteer activities, education and community projects and programs that promote water quality; teach young adults about habitat restoration techniques, trail building, native plants, invasive weed removal	\$ 880,312	Tx 508 at 39 (\$300k) Tx 509 at 30 (\$211,812) <sup>3</sup> Tx 510 at 42 (\$200k) <sup>4</sup> Tx 511 at 45 (\$168,500) <sup>5</sup> RP 13:124 RP 14:348-49 Tx 376 (2005); Tx 395 (2006); Tx 419 (2007)
Ecological Restoration Crews	[no testimony]	\$ 112,000	Tx 510 at 42 (\$112k)
EPA grant match	Local match for two water quality monitoring grants	\$ 386,896	Tx 512 at 35 (\$300k) Tx 513 at 33-34 (\$86,896) RP 14:363-64

<sup>3</sup> *But see* Tx 395 (contract for 2006) says \$212,000.

<sup>4</sup> *But see* Tx 419 (contract for 2007) says \$300,000.

<sup>5</sup> *But see* Tx 523 for 2008, says "not Culver, EarthCorps covered under Existing Restoration Contract – SWM CIP; other funds."

**COUNCIL (DIRECT) GRANTS**

<b>Recipient</b>	<b>Project Description</b>	<b>Total Appropriation (2002-2010)</b>	<b>References</b>
Friends of Hylebos/ Hylebos Stream Team	Volunteer activities in Hylebos Creek system to promote water quality education and programs; educate citizens re salmon habitat issues; implement restoration projects	\$ 584,256	Tx 505 at 34 (\$84,356) <sup>6</sup> Tx 506 at 55 (\$70k) Tx 507 at 44 (\$80k) Tx 508 at 39 (\$80k) Tx 509 at 30 (\$80k) <sup>7</sup> Tx 510 at 42 (\$60k) Tx 511 at 45 (\$80k +\$50k) RP 13:124-25 RP 14: 349-50 RP 14:361-62 Tx 160 (2/08-12/08); Tx 351 (2/04-6/05); Tx 365 (2003); Tx 407 (2005); Tx 429 (2006); Tx 433 (2007); Tx 523 (2002-07)
Friends of Issaquah Salmon Hatchery	Educate community about fish hatchery, Lake Sammamish system and water quality; advocate retaining and improving historic hatchery and promote watershed stewardship	\$ 160,000	Tx 505 at 34 (\$20k) Tx 506 at 55 (\$20k) Tx 507 at 44 (\$20k) Tx 508 at 39 (\$20k) Tx 509 at 31 (\$20k) Tx 510 at 42 (\$20k) Tx 511 at 45 (\$25k) <sup>8</sup> Tx 512 at 36 (\$15k) RP 13:125 RP 14:350 Tx 159 (3/08-12/08); Tx 335 (2/03-12/03); Tx 352 (2/04-12/04); Tx 379 (2/ 04-7/ 06); Tx 397 (3/06-12/06); Tx 420 (3/07-12/07); Tx 523 (2002-07)

<sup>6</sup> *But see* Tx 523, actual award was only \$84,256.

<sup>7</sup> *But see* Tx 429 (2006 Final Report) lists budget of \$170,000.

<sup>8</sup> *But see* Tx 523, says 2008 amount was only \$20k.

**COUNCIL (DIRECT) GRANTS**

<b>Recipient</b>	<b>Project Description</b>	<b>Total Appropriation (2002-2010)</b>	<b>References</b>
Friends of Madrona Woods	Construct bridge over daylighted creek in Madrona Woods	\$ 20,000	Tx 509 at 31 (\$20k) RP 13:126 RP 14:350-51 Tx 401 (6/06-12/06); Tx 523 (2002-07)
Friends of the Trail	Use of persons required to perform community service to remove trash and debris from rivers and waterways	\$ 350,000	Tx 505 at 34 (\$50k) Tx 506 at 55 (\$50k) Tx 507 at 44 (\$50k) Tx 508 at 39 (\$50k) Tx 509 at 31 (\$50k) <sup>9</sup> Tx 510 at 42 (\$50k) Tx 511 at 45 (\$50k) <sup>10</sup> RP 13:126 RP 14:351 Tx 336 (3/03-2/04); Tx 353 (2/04-2/05); Tx 356 (3/05-2/06); Tx 394 (2006); Tx 409 (8/07-6/08); Tx 523 (2002-07)
Ground Water Education/ Education Coordinator/ Treatment Plant Tours	County staff person hired to lead tours of treatment plant and educate the public about groundwater, water supply, wastewater treatment and pollution prevention	\$ 274,993	Tx 505 at 34 (\$103,393) Tx 506 at 55 (\$65,160) Tx 507 at 44 (\$106,440) RP 13:129 RP 14:335-36

<sup>9</sup> *But see* Tx 523 for 2006 – says “...paid out of SWM, not Culver...”

<sup>10</sup> *But see* Tx 523 for 2008 – says “Not Culver – Solid Waste Paid.”

**COUNCIL (DIRECT) GRANTS**

<b>Recipient</b>	<b>Project Description</b>	<b>Total Appropriation (2002-2010)</b>	<b>References</b>
Lake Stewardship Milfoil Reduction	Help citizens clean up milfoil in lakes; update 1999 study of milfoil in small lakes in King County	\$ 10,000	Tx 510 at 42 (\$10k) RP 13:136 RP 14:332-33
Lake Stewardship/ Volunteer Program	Educate lakefront property owners regarding lawn care and other water quality factors	\$ 165,000	Tx 505 at 34 (\$55k) Tx 506 at 55 (\$55k) Tx 507 (\$55k) RP 13:129-30 RP 14:341-42
Natural Yard Care	Educate public about best practices for yard care, reducing herbicide usage and planting native species	\$ 81,213	Tx 507 at 44 (\$31,213) Tx 508 at 39 (\$50k) RP 14:342-43
Puget Sound Fresh	Organization working towards economic viability of agriculture (encouraging purchase & consumption of locally-grown products)	\$ 25,090	Tx 505 at 34 (\$25,090) RP 13:127-28 RP 14:352-53 RP 15:504-06 Tx 40 at 50
Puget Sound on Wheels / Seattle Aquarium Mobile Field Lab	Classroom programs, exhibits, teacher/naturalist training, and mobile lab used to teach interrelationship between hydrologic cycle, salmon and ecology of Puget Sound	\$ 90,000	Tx 505 at 34 (\$30k) Tx 506 at 55 (\$30k) Tx 507 at 44 (\$30k) RP 13:127 RP 14:352 Tx 344 (2003); Tx 350 (2004); Tx 523 (2002-07)

**COUNCIL (DIRECT) GRANTS**

<b>Recipient</b>	<b>Project Description</b>	<b>Total Appropriation (2002-2010)</b>	<b>References</b>
Salmon Homecoming Celebration	Annual event to further community education, bring together tribal and non-tribal entities, and focus on issues related to preserving salmon	\$ 150,000	Tx 505 at 34 (\$30k) Tx 506 at 55 (\$30k) Tx 507 at 44 (\$30k) Tx 508 at 39 (\$30k) Tx 511 at 45 (\$30k) RP 13:128 RP 14:353-54 RP 15:446-47 Tx 170 (9/08-12/08); Tx 337 (2/03-12/03); Tx 354 (2/04-12/04); Tx 387 (7/05-12/05); Tx 523 (2002-07)
Strategic Initiatives/ WRIA planning	County contribution to multi-agency water resource inventory area planning and programs	\$ 18,948	Tx 506 at 55 (\$18,948) RP 13:136 RP 14:333-34
Surface Water Management Capital Improvement Projects	Surface water quality- related capital projects	\$ 256,145 <sup>11</sup>	Tx 512 at 36 (\$256,145) RP 14:364-67
Thornton Creek Alliance	Group of citizens promoting water quality through volunteer and education activities	\$ 20,000	Tx 505 at 34 (\$20k) RP 13:128-29 RP 14:354 Tx 523 (2002-07)

<sup>11</sup> *But see* testimony at RP 15:483-84; RP 15:488-90 (discussing Tx 515) saying this money was not spent.

**COUNCIL (DIRECT) GRANTS**

<b>Recipient</b>	<b>Project Description</b>	<b>Total Appropriation (2002-2010)</b>	<b>References</b>
Water Quality Awareness	WLRD staff & supplies for educating adults as to the benefits of improved water quality and less pollution in stormwater system	\$ 366,315	Tx 505 at 34 (\$101,072) Tx 506 at 55 (\$82,298) Tx 507 at 44 (\$86,992) Tx 508 at 39 (\$95,953) RP 14:343-45
Water Quality Schools/ Education program	WLRD staff & supplies to educate children about how their actions can affect water quality	\$ 251,667	Tx 505 at 34 (\$79,177) Tx 506 at 55 (\$88,519) Tx 507 at 44 (\$83,971) RP 14:344-45
WSU/Co-op Extension	Educate agricultural property owners how to manage their property better ( <i>e.g.</i> , manure management programs) to benefit water quality.	\$ 1,143,947	Tx 508 at 39 (\$200k) Tx 509 at 30 (\$235,847) Tx 510 at 43 (\$334,100) Tx 511 at 45 (\$374k) RP 14:345-47 RP 19:1179-84 Tx 111; Tx 431 (2005-07); Tx 442 (2008)

# APPENDIX C

(Overhead Allocations to WTD 2002-2009)

## OVERHEAD ALLOCATIONS TO WTD

	General Gov't Cost Pool	DNRP	Total OH	1% of Wastewater "Monetary Requirements"*	Excess Over 1% Cap
2002	\$1,208,929	\$1,745,413	\$2,954,342	\$1,949,367	\$1,004,975
2003	\$1,445,434	\$2,936,408	\$4,381,842	\$1,945,950	\$2,435,892
2004	\$1,198,476	\$2,151,408	\$3,349,884	\$1,879,884	\$1,470,000
2005	\$1,183,731	\$2,017,005	\$3,200,736	\$2,066,955	\$1,133,781
2006	\$1,202,965	\$2,249,449	\$3,452,414	\$2,086,068	\$1,366,346
2007	\$1,290,186	\$1,943,559	\$3,233,745	\$2,281,634	\$952,111
2008	\$1,237,703	\$1,683,486	\$2,921,189	\$2,296,120	\$625,069
2009	\$1,317,735	\$1,786,680	\$3,104,415	\$2,680,114	\$424,301
<b>TOTAL</b>					<b>\$9,412,475</b>

\* With General Gov't Cost Pool and DNRP Overhead removed

## MONETARY REQUIREMENTS FOR THE DISPOSAL OF SEWAGE

		Administration, operating, maintenance repair & replacement	Establishment & maintenance of necessary working capital reserves	Requirements of revenue bond resolutions	<b>Total</b>
2002	Ord. 14123 (2001-0232)	\$82,254,675	\$4,365,347	\$111,271,017	\$197,891,039
2003	Ord. 14395 (2002-0213)	\$66,903,347	\$10,833,301	\$121,240,198	\$198,976,846
2004	Ord. 14676 (2003-0189)	\$63,323,751	(\$1,390,826)	\$129,405,318	\$191,338,243
2005	Ord. 14942 (2004-0199)	\$60,732,941	\$7,903,388	\$141,259,914	\$209,896,243
2006	Ord. 15194 (2005-0182)	\$62,681,812	\$6,168,334	\$143,209,093	\$212,059,239
2007	Ord. 15522 (2006-0182)	\$66,229,533	\$3,478,065	\$161,689,558	\$231,397,156
2008	Ord. 15805 (2007-0272)	\$65,245,854	(\$18,676,016)	\$185,963,318	\$232,533,156
2009	Ord. 16135 (2008-0231)	\$60,049,344	\$7,387,044	\$203,679,416	\$271,115,804
2010	Ord. 16513 (2009-0309)	\$63,136,845	(\$5,019,241)	\$212,209,152	\$270,326,756