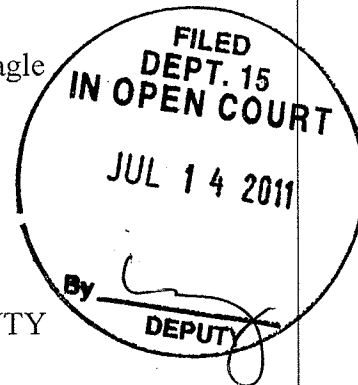


Hon. Thomas J. Feltnagle



SUPERIOR COURT OF WASHINGTON FOR PIERCE COUNTY

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

Plaintiffs,

v.

KING COUNTY; et al.,

Defendants.

No. 08-2-11167-4

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

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



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

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

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

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

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

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

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

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

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

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

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

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

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

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

21 In accordance with the Order Regarding Trial Scheduling, plaintiffs' claims for "Level One"
22 relief regarding the Culver Fund Claims, the StockPot Claims, the Overhead Allocation Claims and
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1 the LTGO Bonds Credit Enhancement Fee Claims were tried commencing on February 7, 2011.
2 Following the conclusion of the trial, the Court announced its Oral Decision on March 15, 2011.

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

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

17 Further in accordance with the Order Regarding Trial Scheduling, the Court hereby finds that
18 the claims resolved by the orders, rulings, findings of fact and conclusions of law described above are
19 sufficiently independent of and distinct from the claims remaining in this case and that it is in the
20 public interest to enter judgment on the resolved claims at this time as set forth herein, since the
21 prompt, final appellate resolution of the claims resolved to date by the trial court is essential to the
22 timely budgeting and financial planning for King County, Snohomish County, and the numerous
23 cities and water and sewer districts that are parties in this case. Accordingly, there is no just reason
24 for delay in entry of judgment on the claims resolved to date by this Court as set forth herein, and
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1 pursuant to CR 54(b) the Court directs that judgment be entered as set forth herein.

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

- 3 1. Plaintiffs' Snohomish County Community Mitigation Claims are dismissed in their
4 entirety, with prejudice.
- 5 2. Plaintiffs' claims alleging breach of fiduciary duties and trust duties are dismissed in
6 their entirety, with prejudice.
- 7 3. Plaintiffs' and King County's respective claims alleging breach of the Accountancy
8 Act, RCW. 43.09.210, are dismissed in their entirety, with prejudice.
- 9 4. Plaintiffs' Reclaimed Water Claims are dismissed in their entirety, with prejudice.
- 10 5. Plaintiffs' Culver Fund Claims are dismissed in their entirety, with prejudice.
- 11 6. Plaintiffs' Overhead Allocation Claims are dismissed in their entirety, with prejudice.
- 12 7. Plaintiffs' LTGO Bonds Credit Enhancement Fee Claims are dismissed in their
13 entirety, with prejudice.
- 14 8. Plaintiffs' StockPot Claims are dismissed in their entirety, with prejudice, except for
15 that portion of the StockPot Claims relating to King County's payment of \$2 million out of the Water
16 Quality Fund to StockPot for the purpose of job retention.
- 17 9. King County shall reimburse the Water Quality Fund for the \$2 million job retention
18 payment to StockPot, plus prejudgment and postjudgment interest thereon calculated at the rate of
19 12% per annum from August 18, 2007 until paid. Including prejudgment interest, the total payment
20 due from King County to the Water Quality Fund as of July 14, 2011 amounts to \$2,937,644.
- 21 22 23 24 25 10. The Court defers ruling on and reserves further consideration of Plaintiffs' Motion for
Award of Common Fund Attorney Fees until any appeals from this Judgment are resolved, and

1 plaintiffs do not waive their right to request fees as a result of this deferment.

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

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

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

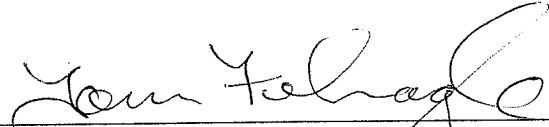
17 14. Any remaining claims, including any claims for "Level Two" relief (i.e., claims for
18 reimbursement from the WQF to any local sewer utilities), are reserved for further consideration
19 following final resolution of any appeals from this Judgment.

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

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

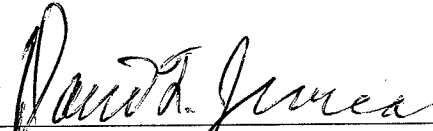
3 Dated this 14th day of July, 2011.

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6 

7 Hon. Thomas J. Felnagle
8 Superior Court Judge

9 Presented by:

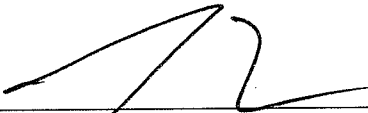
10 HELSELL FETTERMAN LLP

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