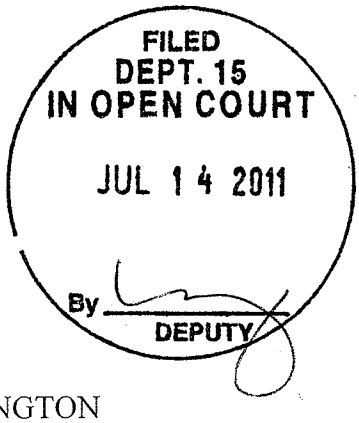
HONORABLE THOMAS J. FELNAGLE



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

CEDAR RIVER WATER AND SEWER DISTRICT; and SOOS CREEK WATER AND SEWER DISTRICT, Plaintiffs, vs. KING COUNTY, *et al.*, Defendants.	Case No. 08-2-11167-4 FINDINGS OF FACT AND CONCLUSIONS OF LAW

I. INTRODUCTION

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

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

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

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

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

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

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

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

II. GENERAL FINDINGS OF FACT

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

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

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

8. Section 2 of the Contracts states:

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

9. Section 5 of the Contracts states:

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

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

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

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

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

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

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

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

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

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

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

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> Each metropolitan 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 of rates and charges for such functions.

King County Charter § 230.10.10.

III. CULVER FUND CLAIMS

A. Findings of Fact on Culver Fund Claims.

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

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

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

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

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

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

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

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

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

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

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

27. 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 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).

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

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

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

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

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

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

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

> 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. An annual report on activities, programs and projects funded will be made to the RWQC. This policy shall remain in effect until such time as a financial plan for the surface water regional needs assessment is adopted and implemented.

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

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

> 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.

KCC § 28.86.160.C.1.FP-10.

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

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

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

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

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

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

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

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

B. Conclusions of Law on Culver Fund Claims

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

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

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

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

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

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

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

All 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 sewage treatment and disposal. Plaintiffs have failed to carry their burden of establishing that the County lacks the legal authority to include Culver expenditures in calculating the sewage system's total monetary requirements under the Contracts.

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

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

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

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

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

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

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

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

IV. STOCKPOT CLAIMS

A. Findings of Fact on StockPot Claims

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

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

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

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

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

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

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

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

1. Relocation Assistance Payments

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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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. 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.

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

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

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

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

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

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

(i) $7,280,000 on February 22, 2005;

(ii) $4,799,405.07 on April 18, 2006;

(iii) $6,510,699.79 on June 26, 2006;

(iv) $4,344,895.14 on November 17, 2006;

(v) $1,749,300 on August 18, 2007; and

(iv) $130,350 on July 16, 2008.

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

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

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

2. Job Retention Funding

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

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

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

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

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

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

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

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

B. Conclusions of Law on StockPot Claims

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

1. Relocation Assistance Payments

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

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

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

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

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

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

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

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

KCC § 28.86.160.C.1.FP-10.

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

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

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2. Job Retention Funding

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

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

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

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

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

V. CENTRALIZED COST ALLOCATIONS

A. Findings of Fact on Centralized Cost Allocation Claims

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

122. Plaintiffs did not establish that the County's current methodology does not accurately reflect the benefit of services received by WTD from the entities in the General Government Cost Pool. Moreover, plaintiffs did not establish that allocations to WTD would be lower if the State Auditor had reviewed additional documentation. Therefore, even if

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plaintiffs had established that the County used an improper allocation methodology, there is no proof of any injury to plaintiffs.

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

B. Conclusions of Law on Centralized Cost Allocation Claims

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

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

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

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

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

> A. The current expense fund may allocate costs to other county funds if it can be demonstrated that other county funds benefit from services provided by current expense funded agencies.
>
> B. Wherever possible, the current expense cost to be allocated shall equal the benefit received by the county fund receiving the charge.

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

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

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

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

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

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

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

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

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

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

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

VI. LTGO BONDS CREDIT ENHANCEMENT FEE CLAIMS

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

135. King County issues two kinds of bonds to finance WTD capital projects: revenue bonds, payable from sewer revenues, and limited tax general obligation ("LTGO") bonds, paid first by sewer revenues but also secured by the County's "full faith and credit" – in particular, a pledge of County property tax revenues if sewer revenues are insufficient to pay the bonds. The latter are known as "double-barreled bonds" since they are secured by two payment means.

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136. In 2003, the County began charging WTD and other County departments and divisions a "credit enhancement fee" for the County's LTGO bonds issued on behalf of WTD or other departments or divisions.

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

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

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

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

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

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

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

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

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

145. Historically, the County could purchase "monoline" insurance to improve the debt rating on a particular bond issuance. Monoline insurers would charge a premium based on the credit spread, *i.e.,* the difference between the interest rate the issuer would pay on the bonds without monoline insurance and the interest rate the issuer would pay on the bonds with monoline insurance. King County has been unable to procure monoline insurance after the financial crisis of 2008.

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146. Component agencies and sewer ratepayers benefit from the County's issuance of LTGO bonds as compared to revenue bonds on WTD's behalf.

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

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

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

150. The "additional bonds test" required by existing bond covenants limits the County's capacity to issue additional LTGO debt. Under that test, the County must meet certain criteria to ensure that the County is not over-diluting the revenue stream pledged to certain classes of bondholders. Because of the additional bonds test, the County was required to issue about $900 million of additional debt on behalf of WTD with sewer revenue bonds rather than LTGO bonds.

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151. The County assumes the risk of a WTD default for the term of the LTGO bonds by pledging its full faith and guarantee to the bonds.

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

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

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

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

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

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

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

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

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

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

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

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

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

DATED this 14th day of July, 2011.

THE HON. THOMAS J. FELNAGLE
PIERCE COUNTY SUPERIOR COURT

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

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