

Legislation Text

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AN ORDINANCE approving the Cascade Water Alliance 2004 Transmission and Supply Plan as a comprehensive water system plan, subject to specified conditions.

STATEMENT OF FACTS:

1. King County has adopted K.C.C. chapter 13.24 which requires approval of comprehensive plans for water and sewer utilities that distribute or obtain water, or provide sewer collection or treatment, in unincorporated King County as a prerequisite for operating in unincorporated King County, receiving approval for annexation proposals, being granted right-of-way franchises, and being given approval for right-of-way construction permits. K.C.C. 13.24.060 prescribes the requirements for approval of the plans, including consistency with state and local planning requirements.
2. RCW 43.20.260 requires that water system plans for any new industrial, commercial, or residential use are to be consistent with the requirements of any comprehensive plans or development regulations adopted under chapter 36.70A RCW or any other applicable comprehensive plan, land use plan or development regulation adopted by a city, town or county for the service area. King County has adopted a Comprehensive Plan that includes Water Supply policies in its provisions for Facilities and Services (Policies F-225 through F-244) that, among others, call for consistency with other adopted plans, support for regional water supply planning, pursuit of reclaimed water and water conservation, and protection of water resources.

3. The Cascade Water Alliance ("Cascade") is an intergovernmental organization formed through an interlocal agreement ("ILA") under the authority of the Interlocal Cooperation Act, Chapter 39.34 RCW, by five general purpose local governments (which are the cities of Bellevue, Issaquah, Kirkland, Redmond and Tukwila) and three special purpose districts (which are the Covington Water District, Sammamish Plateau Water and Sewer District and Skyway Water and Sewer District) in King County. Cascade was formed in 1999 and is incorporated as a public, nonprofit corporation.

4. The service area for Cascade is the aggregate of its members' water service areas. It currently supplies water to the combined service areas of its members, exclusive of the Covington Water District. Some of its members' service areas are within unincorporated King County. A number of Cascade members have service areas that are included in critical water supply service areas, and the members operate under comprehensive water system plans in areas that are part of or are subject to coordinated water system plans that have been established under the authority of chapter 70.116 RCW, the Public Water System Coordination Act of 1977 ("the Water Coordination Act"). Cascade members have service areas that are in three of the four King County approved coordinated water system plan service areas. The plans relevant to the Cascade members are plans for East King County (which was adopted in 1990 and updated and amended in 1994 and 1998), South King County (which was adopted in 1990 and not updated and amended) and Skyway (which was adopted in 1990 and updated and amended in 2000). These plans, and their updates, have been approved by ordinance by King County, and have been incorporated into the King County Code, in K.C.C. chapter 13.28. Washington state Department of Health ("DOH") rules, WAC 246-293-280, require that the plans be reviewed and updated as necessary every five years. Under a February 2005 memorandum of understanding ("MOU"), Cascade and King County agreed that these plans should be updated.

5. Cascade is a regional water supplier to each of its members that combined serve a population in excess of three hundred thousand with service areas that include some of the fastest growing residential areas in King County. Under the ILA, Cascade is obligated to meet all current and future supply needs of its members, after accounting for the supplies of each individual member. Cascade currently has contracts with Seattle Public Utilities and Tacoma Public Utilities ("TPU") to provide both term-limited and permanent sources of supply to Cascade and its members. Cascade is also pursuing a long-term permanent source of supply for its members and forecasts Lake Tapps as a potential source of the water supply. Under the ILA, Cascade is obligated to do water supply planning on behalf of its members to meet regulatory and Growth Management Act requirements. The members of Cascade are obligated to actively participate in the planning process, and each member's plan is required to be consistent with any plan developed by Cascade, and consistent with applicable requirements of the Growth Management Act and comprehensive plans.

6. As a wholesale water supplier, Cascade does not own or operate facilities for delivering water directly to retail customers. The only facility it currently owns is the recently-completed intertie between Bellevue and Issaquah, which is operated by Issaquah. However, it anticipates major capital investments of between four hundred two million dollars and four hundred eighty-one million dollars over the next twenty years to deliver water from the TPU Second Supply pipeline to Cascade members by 2008 and the Lake Tapps Water Supply Project to Cascade members by 2024. The range has to do with different potential alignments and routes, and different sizes and combinations of pipes, all of which are currently under evaluation. For the initial six years covered by the Cascade Transmission and Supply Plan ("TSP"), Cascade anticipates capital expenditures of between one hundred ninety-six million six hundred thousand dollars and two hundred forty-one million dollars, depending on decisions made relative to alternative pipeline

routes and sizes.

7. The TSP is a comprehensive water system plan, as defined in K.C.C. chapter 13.24, that identifies Cascade as a regional supplier of water to its eight members, which are independent public water systems. The TSP covers a six-year planning period, 2004-2009, and a twenty-year period, 2004-2023, as required by the regulations of DOH.

8. The February 2005 MOU outlined both parties' intent to participate in a planning process to address King County's longstanding policy in support of developing a statutorily recognized countywide water supply plan (in accordance with King County Comprehensive Plan Policies F-233 through F-235), and Cascade's obligation to comply with the water system planning requirements of its ILA and those requirements of King County and DOH. In accordance with the terms of the MOU, and in consultation with DOH and King County, Cascade developed a draft transmission and supply plan intended to meet those requirements, and submitted it to King County for review and approval, pursuant to the terms of the MOU. King County and Cascade also initiated a regional water supply planning process for King County, and potentially a broader tricity area, that is currently managed by a multistakeholder "coordinating committee" that includes, among others, King County, Cascade, Seattle Public Utilities, the city of Auburn, the Washington Environmental Council, three state agencies and other interested local governments, utilities and parties. That planning process is intended to address priority issues for King County, Cascade and other participants, including the use of reclaimed water as a source of supply, updating regional water demand forecasts, develop water supply alternatives, impacts from climate change and assuring adequate instream flows for fish. That process has an objective of completion by December 2007, but will not alone meet the standard of being statutorily based. However, it is intended that the products of this process at least in part be reflected in a statutorily recognized comprehensive water system plan.

9. A determination of nonsignificance for the Cascade TSP was issued by Cascade on March 30, 2005, in accordance with the state Environmental Policy Act.

10. The King County utilities technical review committee ("UTRC") reviewed the TSP at its June 8, 2005, meeting, and conditionally approved it, subject to satisfactory responses to issues and questions raised by the UTRC that generally concerned population and demand forecasts, predicted levels of water conservation, specific opportunities of Cascade members for use of reclaimed water and the relationship between Cascade and its members with regard to meeting regulatory requirements and assuring adequate supplies. The UTRC conditionally approved the TSP, subject to changes made to address the issues and concerns identified by the UTRC.

11. On September 28, 2005, the Cascade board of directors adopted a final TSP after making changes to respond to the UTRC and DOH comments. In February 2006, Cascade provided King County with a formal letter that satisfactorily clarified and explained the changes made in the final TSP in response to the UTRC issues and concerns, and addressed the conditions of approval identified by the UTRC.

12. In acting upon the TSP, the UTRC certified that the TSP, once changes were made to address UTRC issues and concerns, met and was consistent with the following key requirements for comprehensive water system plans: a. the infrastructure and proposed water service to the service areas of the Cascade members were consistent with adopted land use plans and development regulations for King County (K.C.C. 13.24.010; King County Comprehensive Plan Policy F-240); b. the Cascade members had the ability and intention to meet their duty to serve within their entire utility area (K.C.C. 13.24.010); c. the provisions of the TSP met the regulatory and planning requirements of DOH (K.C.C. 13.24.010); d. identifying opportunities for reclaimed water by the Cascade members, and a strategy for pursuing them (K.C.C. 13.24.010); e. addressing other relevant planning processes, including salmon recovery,

groundwater management and Endangered Species Act compliance (K.C.C. 13.24.060; King County Comprehensive Plan Policy F-240]; f. commitment to engage in regional water supply planning (King County Comprehensive Plan Policies F-233 through F-235); g. using utility system interties for effective water management (King County Comprehensive Plan Policy F-236); and h. including a Cascade-wide strategy for a strong water conservation program, built on a conservation potential assessment (K.C. Comprehensive Plan Policy F-239). The King County Code also requires individual plans be consistent with the Water Coordination Act (K.C.C. 13.24.060). In the February 2005 MOU with King County, Cascade acknowledged that the existing Coordinated Water System Plans were outdated, and stated its support for initiation of planning under the Water Coordination Act, and its support and willingness to participate in a process for updating the Coordinated Water System Plans, in order to facilitate approval of its TSP. Initiation of planning under the Coordination Act, and completion of a new plan or updated plans within two years and before approval of Lake Tapps as a new source of supply, will meet this requirement and the requirement of the King County Code.

13. On December 14, 2005, DOH sent a letter to Cascade, informing it of comments and conditions that must be addressed by Cascade before DOH approval of the TSP. One of those conditions was receipt of a copy of a King County ordinance approving the TSP in accordance with the provisions of the MOU. The other two conditions imposed by DOH were: a. a commitment on the part of each Cascade member to include Appendices I, addressing water shortages, and K, addressing alternative regional supply models, in their individual water system plans; and b. an acknowledgement from Cascade that all local governments affected by Cascade members' individual water system plans will have an opportunity to review the TSP and make a determination of adequacy and consistency with growth management before the department taking action on the individual water system plan. On July 25, 2006, DOH sent a letter

confirming King County's summary of the DOH positions on issues previously raised regarding the relationship of the provisions and requirements of the Water Coordination Act to the TSP.

The summary provided by King County and confirmed by DOH provided for planning activities to occur under the Water Coordination Act by Cascade and its members by either amending the boundaries of coordinated water system plans in which Cascade members provide service or creating a new critical water supply service area for Cascade that would include all member service areas.

14. Cascade, as a preliminary step in its efforts to obtain a long term source of water supply, has entered into a memorandum of understanding with Puget Sound Energy ("PSE") to acquire PSE's facilities and water rights associated with PSE's facilities and properties on Lake Tapps. Although mentioned as a potential future water supply source for Cascade, the Lake Tapps water supply project is not identified as delivering water within the twenty year planning horizon required by state law. Before Lake Tapps becomes a source of water supply for Cascade and its individual members, Cascade must meet planning and permitting requirements, including: a. Cascade must acquire PSE's Lake Tapps facilities and properties including all water rights associated therewith; b. the state Department of Ecology must issue new water rights for use of Lake Tapps as a municipal water supply source; c. Cascade must include the Lake Tapps water supply project within an updated comprehensive water system plan; and d. the DOH must approve Lake Tapps as a drinking water source. King County took the position in 2003 in commenting on Cascade's Lake Tapps water right proposal and underlying "regional plan" that Cascade's planning documents at that point did not appear to comply with existing law regarding planning processes for water supply facilities, including the Water Coordination Act. King County continued to assert the need to meet Water Coordination Act requirements by formally intervening as a party in 2004 in the Lake Tapps water right process.

15. The King County executive has recommended approval of the TSP as a comprehensive water system plan subject to specified conditions. These include that Cascade and its individual members continue participation in and support of regional water resource and supply planning efforts, and initiation of planning under the Water Coordination Act, as referenced by the February 2005 MOU with King County, and as consistent with Cascade's individual member commitment in the Cascade ILA to actively participate in Cascade's water supply planning efforts. Cascade and its individual members should participate with King County and other interested parties in planning efforts under the Water Coordination Act to either revise existing critical water supply plans in which Cascade members have service areas or to create a new critical water supply service area and plan for Cascade and its members that would include all members and all member water service areas, and the planning processes should be completed within two years. In order to accomplish these purposes, Cascade should, within six months of the effective date of this ordinance, provide a certification that it is committed to the planning processes and that it is authorized to conduct the planning efforts on behalf of each and all of its individual members and to bind the members to the results of the planning process. In lieu of the certification by Cascade, each and all of the individual members of Cascade should submit within six months of the effective date of this ordinance a certification expressing a commitment to participate in the planning efforts with King County under the Coordination Act by completing within a two-year period either: a. revisions to existing critical water supply plans in which that member has service area; or b. a new critical water supply service area and plan for Cascade and its members that shall include all members and cover all member service areas.

16. In addition the executive has recommended that individual members of Cascade be obligated to meet commitments made by Cascade in the TSP, including the provisions for planning to use reclaimed water and to implement water conservation measures, and continue to

be obligated to provide updates and amendments to their individual water supply plans that are consistent with the TSP, as required under their ILA, and in accordance with the requirements of the King County Code. If Cascade determines to proceed with the Lake Tapps water supply project, Cascade should submit the project within an updated comprehensive water system plan as required by law.

17. The executive has also recommended that approval of the TSP as a comprehensive water system plan explicitly not be construed as an approval of Lake Tapps, or any new source of drinking water supply other than water from the city of Tacoma, as a source of drinking water supply for planning purposes for Cascade or its individual members.

18. The executive has further recommended that any King County franchises or right of way permits that may be authorized or issued subsequent to the approval of the TSP should be limited to the use of County rights-of-way and real property interests necessary to construct, maintain, and operate facilities that will deliver water from the TPS water supply or through the Bellevue-Issaquah pipeline and shall not at this time include additional rights-of-way or real property interests necessary for the conveyance of water from Lake Tapps, or from any new source of drinking water supply other than the planned intertie with the Tacoma system.

19. Finally, the executive has recommended that at the time within the applicable planning horizon that Lake Tapps, or any new source of drinking water supply other than the water to be delivered from the city of Tacoma, becomes an identified source for planning purposes of drinking water supply for Cascade, Cascade should submit a revised comprehensive water system plan identifying and reflecting the source; and the plan should meet and be consistent with the King County Code. The plan should also have met and followed the planning requirements mandated by the Water Coordination Act and implementing regulations for amending or establishing critical water supply plans. Upon approval of the plan, the

comprehensive plans of Cascade's individual members shall be revised to reflect the source.

20. The TSP has been challenged by the Muckleshoot Indian Tribe and the city of Auburn in a lawsuit brought in King County Superior Court in November, 2005, alleging that Cascade is not in compliance with the terms of the Water Coordination Act and with the state Environmental Policy Act. Cascade has denied these allegations. King County is not a defendant or a party in that action, nor is it taking a position at this time on the merits in the lawsuit.

BE IT ORDAINED BY THE COUNCIL OF KING COUNTY:

SECTION 1. The Cascade Water Alliance 2004 Transmission and Supply Plan, Attachment A to this ordinance, is hereby approved as a comprehensive water system plan, subject to the following conditions:

A The Cascade Water Alliance ("Cascade") shall continue its participation and support of regional water resource and supply planning as referenced by the February 2005 Memorandum of Understanding with King County;

B. Cascade shall participate with King County in planning efforts under the chapter 70.116 RCW, the Public Water System Coordination Act of 1977 ("the Water Coordination Act") by completing within a two year period from the effective date of this ordinance either revisions to existing critical water supply plans in which Cascade members have service areas or a new critical water supply service area and plan for Cascade and its members that shall include all members and cover all member service areas. In connection with the planning efforts, Cascade shall, within six months of the effective date of this ordinance, provide a certification, in substantial conformity to Attachment B to this ordinance, that it is committed to participating with King County in completing the planning efforts within two years from the effective date of this ordinance under the provisions of the Water Coordination Act, and that it is authorized to conduct the planning efforts on behalf of all of its individual members and to bind the members to the results of the planning process. In lieu of the certification by Cascade, each and all of the individual members of Cascade shall submit within six months of the effective date of this ordinance a certification, in substantial conformity to Attachment C to this ordinance,

expressing a commitment to participate in planning efforts with King County under the Coordination Act by completing within a two year period from the effective date of this ordinance either revisions to existing critical water supply plans in which that member has a service area or a new critical water supply service area and plan for Cascade and its members that shall include all members and cover all member service areas;

C. In accordance with the King County Code and applicable state law, the comprehensive water system plans of the individual members of Cascade shall be brought in a timely manner into consistency with the terms of the Cascade Transmission and Supply Plan ("TSP"), as amended from time to time, including the provisions regarding reclaimed water and water conservation;

D. This approval of the TSP as a comprehensive water system plan shall not be construed nor does it constitute approval for planning purposes of Lake Tapps, or any new source of drinking water supply other than water from the city of Tacoma, as a source of drinking water supply for Cascade or its individual members. At the time within the applicable either six-year or twenty-year planning horizon that Lake Tapps, or some new source of drinking water supply other than water from the city of Tacoma, becomes an identified source for planning purposes of drinking water supply for Cascade, Cascade shall submit a revised comprehensive water system plan identifying and reflecting the source; and the plan shall meet and be consistent with the requirements of the King County Code. The plan shall also have met and followed the applicable planning requirements mandated by Washington state Department of Health and the Water Coordination Act and implementing regulations for amending or establishing plans under the Water Coordination Act;

E. All individual members of Cascade that are identified in the revised comprehensive water system plan referred to in subsection D. of this section as having a new source of drinking water supply shall incorporate the new source into their water supply plans when and as required by law, including the applicable provisions of the King County Code;

F. In the event that Cascade is required to modify the TSP as a result of the lawsuit between Cascade and the Muckleshoot Indian Tribe and the city of Auburn, the modification shall be treated by Cascade as an

amendment to the TSP, which shall be submitted by Cascade to the King County council for review and approval by ordinance;

G. All revised plans referred to in subsections D., E. and F. of this section shall fully comply with all requirements of the state Environmental Policy Act, chapter 43.21C RCW, and implementing regulations; and

H. Any King County franchises or right of way permits that may be authorized or issued subsequent to this approval of the TSP shall be limited to the use of county rights-of-way and real property interests necessary to construct, maintain and operate facilities that will deliver water from the TPS water supply or through the Bellevue-Issaquah pipeline and shall not at this time include additional rights-of-way or real property interests necessary for the conveyance of water from Lake Tapps, or from any new source of drinking water supply other than the planned intertie with the Tacoma system. The franchises and right of way permits may be authorized or issued only upon approval

by the King County Council of the revised comprehensive water system plan referred to in subsection D. of this section.