

# **Bond Case Briefs**

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## **PUBLIC UTILITIES - WASHINGTON**

### **Cedar River Water and Sewer Dist. v. King County**

**Supreme Court of Washington, En Banc - October 24, 2013 - P.3d - 2013 WL 5760654**

Snohomish County agreed to let King County build the Brightwater sewage treatment plant in south Snohomish County. As part of the agreement, King County agreed to provide a substantial mitigation package for the local Snohomish County community near Brightwater. The cost of the mitigation was included in the capital cost of the plant. Capital funding for the plant came mostly from the sale of bonds that were primarily secured by sewage treatment fees and capacity charges imposed on new sewage hookups. Two local utility districts that contract with King County for sewage treatment filed a suit arguing that the mitigation package was excessive.

The Supreme Court of Washington began its analysis by ruling against the districts' contention that King County has trust or fiduciary obligations as to how it used the sewage utility fund, finding that no such relationship is created unless there exists an explicit agreement to do so. Based on this ruling, it followed that the districts, rather than King County, bore the burden of proof on whether the sewage funds were properly used.

The Court affirmed the lower court's decision that the districts' challenge to the "validity, legality, or enforceability of the Settlement Agreement, including any land use aspects of that Agreement," were time barred under LUPA.

The Court also affirmed the lower court's finding that the mitigation was proper, that it was properly part of the capital cost of Brightwater's construction, and that it was properly paid for out of the Water Quality Fund. In essence, the court found a sufficient nexus between the project and its mitigation.

The Court affirmed agreed that the credit enhancement fee paid by the King County conferred a benefit on ratepayers and that it was not a hidden tax.