LAKE FOREST PARK
WATER DISTRICT

Commissioners:
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GOOD WATER, NATURALLY

July 31, 2007

Christie True, Waste Water Treatment Director
Waste Water Treatment Division
Department of Natural Resources and Parks
201 South Jackson Street
Seattle, WA 98104-3855

RE: **BRIGHTWATER AGREEMENT WITH LAKE FOREST PARK WATER DISTRICT**

Dear Ms. True:

This is in response to your May 29, 2007, letter addressed to Hon. Gordon Hungar on behalf of the District. We are the three Commissioners elected by the public to ensure that our 860 homes and businesses in Lake Forest Park have a reliable and affordable supply of naturally pure water to drink. We seek to uphold the wishes and rights of our customers to continue their tradition of drinking naturally pure well water. We are one of the few water purveyors in King County that supply untreated, naturally pristine water. Our customers value this resource highly. To protect our water supply, and for this reason only, our District approached King County very early in the Brightwater program development to ask for protection of our source of water. We did not not approach King County asking for mitigation money. Our plea was and remains the same: to ensure that the proposed Brightwater tunnel would not impair the continued supply of affordable and naturally pure water for our customers.

When we approached King County in 2002 after learning about Brightwater, the county's studies did not even consider possible impacts to our water supply, even though plans showed the construction of a 20-foot wide sewer effluent tunnel that was slated to bisect our aquifer! Your team assured us that there were "no risks" to our aquifer, and that an agreement to protect the aquifer was unneeded and in any event, impossible until detailed design plans were created. In good faith we subsequently drafted a brief, five-part agreement that in a fair way provided for protection of the District's pristine water supply and allowed for unknown details and contingencies by delineating a fair course of action in various scenarios. We did not ask for money. Over the following 18 months we negotiated the elements of this document with you and your staff and made many concessions in the interest of a mutually beneficial and feasible agreement.

We are a small water District; we do not have the financial, administrative might of your department to bring to this occasion. While we cannot argue the *might* of King County to attempt to abrogate its contractual obligations we will make every effort to honor our commitment to the citizens of Lake Forest Park. We appeal to your moral integrity and request that you honor the facts of our agreement that was signed by King County officials on December 5, 2003 and later ratified by the King County Council.

Furthermore, as a senior official of a government agency representing the 1.7 million people of King County it is incumbent on you to conduct your business with honesty and integrity. Sadly, your letter of May 29, 2007 fails in these respects. We shall do our best to respond below to the essential elements of your letter.

RE: *"I was disappointed by Lake Forest Park Water District's unwillingness to address the concerns outlined in my prior letter..."* C. True 4/18/07 page 1 paragraph 1

> **Comment 1**: Please re-read our letter as we believe it contains detailed discussion addressing every major element in your March 9 letter. While it is true that we are a small District, we are making every reasonable effort to assist King County in meeting the objectives outlined in our Agreement signed in late 2003.

RE: *"The 'Agreement' was premised upon a number of factors which have turned out to be not true. First....the District misrepresented the authorized withdrawal limits and locations under its existing water rights and the status of those existing water rights."*

> **Comment 1**: Our agreement signed December 5, 2003 reads: "As set forth above, the County shall at its sole cost, drill and develop an additional back-up water supply well or wells within the District or in the vicinity of the District that will meet the District's current annual and instantaneous withdrawal rights." Section 5.A.1, Page 10, last paragraph.
>
> There is no representation by the District in the Agreement as to what were the "current annual and instantaneous rights" of the District, nor any mention of how these were to be determined. Neither is there any representation as to the authorized withdrawal locations for the District's water rights. The District Comprehensive Water System Plan that is referred to in footnote 3 of your letter did not exist at the time of the agreement, nor was it referred to in the agreement. We recall meetings with King County consulting hydrogeologists during the course of contract negotiations where the value of 750 gallons per minute was established as a reference, based on copies of actual water rights documents that were in possession of King County and their consultants at that time. The District's rights are old, are described in several water right certificates and supporting documents and are subject to interpretation. The water rights do need to be updated but that is not an uncommon situation for an old water purveyor. It is a common fact that points of withdrawal are often changed over time and withdrawal quantities can shift as well. As to extent of the actual water rights of the District and the authorized withdrawal locations – these are ultimately what Washington Department of Ecology will determine when we submit an application for transfer of withdrawal location. None of this affects the viability of the District's water rights or the ability to make changes. Whether a new pump is set at 750 gpm or somewhat less is a construction detail which we can work out.

Comment 2: The District's water rights are sufficient and changeable and the construction of an additional back-up water supply well or wells referred to in the 2003 Agreement is easily achievable under these rights. It is the responsibility of King County under the agreement to build the back-up supply regardless of legally insignificant differences in your understanding of the District's current annual and instantaneous withdrawal rights or allowed locations of the withdrawal points.

RE: *"And second, as another example, the Agreement was premised upon the ability to drill a new well within the District or create an emergency intertie; it was never contemplated or agreed that the county would develop a new water system for the District."*

Comment 1: Again we refer to our Agreement with King County, signed December 5, 2003, which reads: "As set forth above, the County shall at its sole cost, drill and develop an additional back-up water supply well or wells within the District **or in the vicinity of the District** that will meet the District's current annual and instantaneous withdrawal rights." Section 5 to Attachment 1.A.1, Page 10, last paragraph. (emphasis supplied)

Comment 2: It is clear that our Agreement contemplates drilling a new well, whether inside or outside the boundaries of the District.

Comment 3: We agree that the Agreement does not infer development of a new water system, rather it refers to adding a source to the District water system with water right withdrawal locations transferred to include this new location.

RE: *"The County is prepared to either develop a new interim intertie or to provide funds for the District to develop such an intertie with SPU."*

Comment 1: The Agreement expressly provides that the development of an intertie with SPU is to only occur if a back-up well is not feasible. The construction of a back-up well is the first course of action under the agreement. According to your letter, the County wants to give up on the first course of action without even trying. Developing an intertie with SPU is a last resort and here's why. SPU sells treated water and charges a substantial wholesale rate for all water sold. The District obviously does not have to pay for water it pumps from the aquifer, and the District's water is untreated. The only scenario in which the District would acquire SPU water would be if the County destroyed the District's water supply and failed to develop a good back-up supply. This would be a disaster for the Lake Forest Park community, and if that happened, the provisions of the Agreement requiring the County to make the District whole would not just cover the cost of an intertie. The County's obligation to make the District whole is much broader than that. It is premature to argue about the extent of the District's damages for having to use SPU water, but it should suffice to say that the County's liabilities would be enormous. We want to avoid that scenario by having the County develop a back-up supply source for the District in accordance with the terms of the Agreement. To the best of everyone's knowledge, constructing a back-up source is feasible. We won't know that it is not feasible until we try and fail. We don't think that will happen.

RE: ***"Construction of An Out-of-District "Replacement" Well is Beyond the Terms of the Agreement"***

Comment 1: Again we refer to our Agreement with King County, signed December 5, 2003, which reads: "As set forth above, the County shall at its sole cost, drill and develop an additional back-up water supply well or wells within the District **or in the vicinity of the District** that will meet the District's current annual and instantaneous withdrawal rights. Section 5.A.1, Page 10, last paragraph. (emphasis supplied)

Comment 2: It is clear that our Agreement contemplates drilling a new well, whether inside or outside the boundaries of the District.

RE: ***"The County has continually been asked by the District to pursue alternatives for a permanent water supply replacement plan which are outside of the Agreement. The District's insistence, reiterated in the District's recent letter, that the County drill and develop a "replacement" well water source outside of the District is beyond the terms of the Agreement, violates the State Local Government Accounting Statute (RCW 43.09.210) and is commercially impractical."***

Comment 1: Again we refer to our Agreement with King County, signed December 5, 2003, which reads: "As set forth above, the County shall at its sole cost, drill and develop an additional back-up water supply well or wells within the District **or in the vicinity of the District** that will meet the District's current annual and instantaneous withdrawal rights. Section 5.A.1, Page 10, last paragraph. (emphasis supplied)

Comment 2: Drilling a well outside of the District would not constitute a violation of RCW 43.09.210 or any other statute. There is no statutory requirement that water districts have their source facilities within district boundaries. An agreement requiring the drilling of a well for water district that may be located outside of district boundaries is not violative of any statute. Finally, because the Agreement contemplated the possibility of drilling a well outside of the District's boundaries, the carrying out of that obligation is not violative of any statute including RCW 43.09.210. Further we note that in months of negotiation and review of the Agreement by the County this issue was never raised. And more than three years elapsed since signing the agreement without a mention of this.

Comment 3: All well locations under review were selected by King County hydrogeologic consultants as substantial correspondence indicates. The District did not direct King County to a specific well location. Outside of boundary locations were chosen by County consultants, because of the lack of other viable locations within the District that would be upgradient of the tunnel. The County has not demonstrated any evidence that the well locations selected by King County are "commercially impractical" and we regard this as a frivolous assertion.

RE: ***"The agreement provides only for possible construction of a well inside or in close proximity to the District. No such well sites have been found. The agreement and the authorizing legislation from the King County Council do not provide for the construction of an out-of-District replacement well system requiring several miles of transmission pipelines at a cost of potentially***

several million dollars. The agreement provides only for "ancillary piping" not miles of transmission mains throught streets and private properties."

Comment 1: Again we refer to our Agreement with King County, signed December 5, 2003 which reads: "As set forth above, the County shall at its sole cost, drill and develop an additional back-up water supply well or wells within the District **or in the vicinity of the District** that will meet the District's current annual and instantaneous withdrawal rights. Section 5.A.1, Page 10, last paragraph. (emphasis supplied)

Comment 2: It is clear that our Agreement contemplates drilling a new well, whether inside or outside the boundaries of the District. Nowhere does the term "close proximity" appear in the language of the Agreement.

Comment 3: Nowhere does the term "ancillary piping" appear in the Agreement. Rather, the language reads:

> "The County will also construct and pay the actual costs of any new pumps, piping, electrical service or other appurtenances that are required to connect the new well or wells to the District's water distribution system in accordance with accepted public utility standards, including the costs of design and permitting." Section 5 to Attachment 1.A.2 Page 11

Comment 4: "Several miles" of piping will not be required. You are grossly exaggerating the length of pipe and the costs of installing the pipe. In fact each of the top three sites selected for review by King County would require less than 6000ft of piping to connect to our system.

RE: ***"Due to Deficiencies with the District's Existing Water Rights, Ecology Review of a new in-District Well Source (if one could be found) would be Untimely and Uncertain."***

Comment 1: There are no deficiencies in the District's water rights that would preclude the approval of a change in water rights. A change in water rights is subject to approval by the Washington State Dept. of Ecology and may well take some time and effort. The Agreement contemplated that. Please refer to the language of the Agreement presented here:

> "The District understands that securing either of these additional mitigation measures may take several years and involve numerous steps with third parties. **The parties specifically acknowledge that obtaining a change in its water rights is outside of the control of County and that jurisdiction over that determination is exclusively accorded to the Washington State Department of Ecology**. The parties also specifically acknowledge that both the well and the intertie options require permits authorized and approved by permitting authorities other than County. Accordingly, the parties specifically acknowledge that there is no assurance that either the new well or the intertie mitigation option will in fact be legally feasible. Nonetheless, the parties agree that County will exercise good faith efforts to make the District whole, as defined herein, by applying for such approvals and permits, constructing such

facilities and paying all costs pursuant to this Agreement within a reasonable time. King County's "good faith efforts" are defined as performing requisite engineering and planning, applying for appropriate permits and approvals and, if appeals are necessary, prosecuting or defending those permits and approvals using competent counsel and experts. Permitting shall be done in consultation with District and with assistance of District as needed." Section 5.A Page 10. (emphasis supplied)

Comment 2: King County has clearly failed to make a "good faith effort" to make the District whole and has thwarted the District in its own effort to carry out responsibilities of the contract. The District engaged a hydrogeologic consultant to assist in the location of a back-up supply to ensure that its interests were protected. We note unanswered correspondence sent from our consultant to the County on March 6, 2007 which reads:

> "In order to submit the formal application for change of water right we must have a specific, single withdrawal location for Ecology. We await word from you on what this location will be." E-Mail Sent to Bob Peterson, March 6, 2007.

RE: ***"The county is convinced that because of the numerous concerns associated with the District's existing water rights, the process required by Ecology even for an in-District replacement well source (if one could be found) cannot be completed in time for the Brightwater tunnel construction.***

Comment 1: Please refer to the language of the Agreement presented here:

> "The parties specifically acknowledge that obtaining a change in its water rights is outside of the control of County and that jurisdiction over that determination is exclusively accorded to the Washington State Department of Ecology." Section 5.A Page 10

The County has procedures for expediting changes to water rights and, in any event, the agency's backlog for processing changes in the northwest section of the State is up to date. The County is now delaying this project. Nearly five months have elapsed since our e-mail requesting a designated withdrawal point. We must proceed with designating a site and commencing the change process and we insist on the County performing its obligations under the Agreement.

RE: ***"...a "replacement" well source, as a possible mitigation measure, is technically and legally infeasible"***

Comment 1: There is no technical and legal unfeasibility with regard to developing a back-up supply. The County is not exercising "good faith efforts" to carry out its obligations under the Agreement and to make the District whole.

Our District has been burdened by what is essentially the failure of King County to make a good faith effort to fulfill the terms of the Agreement in a timely fashion. Instead of acknowledging this and mutually seeking a resolution, King County letters of March 9, 2007 and May 29, 2007 attempt to obfuscate and confuse the facts concerning its obligation to Lake Forest Park Water District.

We remain willing to work with King County to facilitate completion of the obligations inherent in the Agreement, and we will seek a workable resolution to these issues in our meeting planned for August 15, 2007. However, we will not tolerate willful distortion of the terms of our Agreement, dated December 5, 2003. Our District retains every right to plead our case to the people of King County and their elected representatives. We are saddened that the dignity of your office is diminished by your own failure to make good faith effort and further by attempting to wrongly characterize the terms of our Agreement.

We would appreciate your prompt response. If the County maintains its current position, then the District will proceed with legal enforcement of its rights under the Agreement.

Sincerely,

Gordon Hungar, President of Commissioners

Bill Currie, Commissioner

Tim Davis, Commissioner

cc. City of Lake Forest Park
Washington Department of Ecology
Jonson & Jonson, P.S.
Mundall Engineering & Consulting
King County Executive Ron Sims
King County Council

Encl.
1. "Lake Forest Park Water District and King County Wastewater Treatment Division Agreement, including Attachment 1, signed December 5, 2003 (15p)
2. Letter from Christie True, King County May 29, 2007 (3p)