

RESOLUTION R- 4193

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF KIRKLAND APPROVING THE PROPOSED CASCADE WATER ALLIANCE INTERLOCAL CONTRACT AMENDMENTS OF SECTION 5.1 TO REQUIRE SUPERMAJORITY APPROVAL OF THE ACQUISITION BY CONTRACT OF INITIAL WATER SUPPLY ASSETS FROM SEATTLE, SECTION 3.7 TO PROVIDE ADDITIONAL MEANS OF WITHDRAWAL AT THE END OF THE FORMATION PERIOD AND SECTION G TO MODIFY THE LIST OF OTHER DOCUMENTS OR ACTIONS REFERENCED IN THE CONTRACT.

WHEREAS, the City of Kirkland authorized membership in the Cascade Water Alliance (the "CWA") on April 6, 1999 and authorized the City Manager to sign the Interlocal Contract; and

WHEREAS, the Cascade Water Alliance desires to amend the Interlocal Contract as provided in the attached CWA Resolution 99-6; and

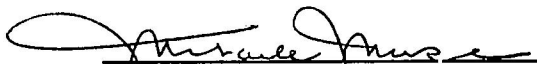
WHEREAS, the City Council has reviewed the proposed amendments;

NOW, THEREFORE, be it resolved by the City Council of the City of Kirkland as follows:

Section 1. That the Council approves CWA Resolution 99-6 and the proposed amendments to the Cascade Water Alliance Interlocal Contract.

Passed by majority vote of the Kirkland City Council in regular, open meeting this 20th day of July, 1999.

Signed in authentication thereof this 20th day of July, 1999.


MAYOR

Attest:


City Clerk
Reso\cascamend

RESOLUTION NO. 99-6

A RESOLUTION OF THE BOARD OF DIRECTORS OF THE CASCADE WATER ALLIANCE; AMENDING SECTION 5.1 OF THE INTERLOCAL CONTRACT TO REQUIRE SUPERMAJORITY APPROVAL OF THE ACQUISITION BY CONTRACT OF INITIAL WATER SUPPLY ASSETS FROM SEATTLE; AMENDING SECTION 3.7 OF THE INTERLOCAL CONTRACT TO PROVIDE ADDITIONAL MEANS OF WITHDRAWAL AT THE END OF THE FORMATION PERIOD; AND AMENDING SECTION G TO THE INTERLOCAL CONTRACT.

WHEREAS, the Board of Directors of Cascade Water Alliance desires to amend the Interlocal Agreement to clarify that approval of a an initial contract with the City of Seattle committing the Alliance to the acquisition of substantial water supply assets, must receive a 65% dual majority vote;

NOW THEREFORE, BE IT RESOLVED BY THE BOARD OF DIRECTORS OF THE CASCADE WATER ALLIANCE, as follows:

Section 1. Section 5.1 of the Cascade Water Alliance Interlocal Contract is amended to read as follows:

Section 5.1 Property Acquisition, Ownership, and Disposition. Cascade may construct, purchase, rent, lease, or otherwise acquire and dispose of Water Supply Assets and other assets. Cascade may control and manage both the assets it owns and the assets that are owned by Members that have transferred control of those assets to Cascade. This Contract does not vest in Cascade any authority with respect to Members' other facilities or assets, such as Water Supply Assets retained by Members as Independent Supply. The approval of the initial contract with the City of Seattle providing for the acquisition of substantial Water Supply Assets in the form of contractual rights to water supply, and any material amendment to that contract, shall require a 65% dual majority vote.

A Member may transfer to Cascade its title to, or operational control of, water supply and regional transmission assets. Cascade and a Member may mutually determine that Water Supply Assets shall be retained by the Member as Independent Supply subject to Article VI, or that title to specified assets should be transferred to Cascade or retained by the Member with full operational control of those assets transferred to Cascade, in order to (a) observe the requirements of a Member's existing bond covenants, (b) protect and preserve water rights, or (c) provide for other purposes determined by the Board. Water Supply Assets may also be fully retained by Members as Independent Supply, subject to the provisions of Article VI. Transfers of Water Supply Assets must be made in substantially the form of documents approved by the Board, with Board-approved adjustments to meet the needs of the specific transfers. Notwithstanding the foregoing, Members that are Seattle Contract Purveyors shall execute such documents as may be necessary to relinquish their rights under The City of Seattle Water Purveyor Contracts and to transfer their water supply rights thereunder to Cascade.

When an agency applies to become a Member, Cascade shall conduct a water supply audit according to the methodology and within the period determined by the Board. Based on that audit the Board shall assign an initial Demand Share to the applicant. The audit shall assess all Water Supply Assets of the applicant, including those the applicant intends to retain as Independent Supply. The audit shall be performed by qualified professionals using existing available information. It shall address the following factors: existing customer base and demand; projected growth; existing supply; quantity and quality of existing supply; quantity, quality, and cost of resources being developed; the cost of upgrading or integrating existing supplies; and any other factors determined by the Board. Audit results shall be provided to the Board and to the agency being audited. The nature of the Water Supply Assets being transferred or retained, and the

"value" of those assets in terms of the calculation of a Member's Demand Share, RCFCs, and other matters relating to the rights and obligations of the Member and Cascade, must be recorded in the form that the Board determines.

Cascade may at any time and at its cost and expense may carry out additional audits of a Member's Independent Supply Water Supply Assets.

Except as provided in Section 3.6, Cascade may (but is not obligated to) accept supply assets offered by Members. Cascade may also (but is not obligated to) accept supply assets that constitute all or part of Satellite Systems. The Board may accept supply assets subject to the terms and conditions arranged between Cascade and the Member, based on the result of the audit process and mutual needs.

Members shall not be deemed to hold legal ownership rights in any Water Supply Assets owned by Cascade, whether those Water Supply Assets have been developed by, purchased by or transferred to Cascade, and regardless of the accounting treatment of RCFC payments and other payments made to Cascade. The fact that a Water Supply Asset shall have been transferred to Cascade by a Member shall create no special rights of that Member with respect to that Water Supply Asset.

Section 2. Section 3.7 of the Cascade Water Alliance Interlocal Contract shall be amended to read as follows:

Section 3.7 Special Withdrawal at End of Formation Period. Except as provided in this Section 3.7, Members may not withdraw from Cascade during the Formation Period. A Member may withdraw from Cascade between October 1, 1999, and November 15, 1999, without regard to the provisions of Section 10.2, if prior to October 1, 1999:

- (a) 75% of the Seattle Contract Purveyors remaining as Members on November 10, 1999 (measured by volume water supply usage as shown on Exhibit F) have not executed this Interlocal Contract; or
- (b) Either (i) Cascade or The City of Seattle has not executed a contract with the City of Tacoma or another provider that provides Cascade or Seattle (or both) with rights to at least one-third of the capacity of Tacoma's Second Supply Project or another source; or (ii) an authorized representative of The City of Seattle has not certified that Seattle has sufficient reasonably projected capacity to provide for the Full Supply needs of all the Members through the year 2014 (in no event less than 82 MGD).

A member must exercise its right to withdraw from Cascade Water Alliance under this Section 3.7, by written notice delivered to Cascade on or before November 15, 1999, and withdraw from Cascade without regard to the provisions of Section 10.2. The notice of withdrawal must be accompanied by a copy of the Member's resolution or ordinance authorizing the withdrawal.

In addition, a Member may withdraw from Cascade between October 1, 1999, and November 10, 1999, without regard to the provisions of Section 10.2, if the Member determines that the contract that Cascade shall have executed with the City of Seattle providing Cascades with rights to water supply from Seattle, is not in the best interests of the Member. A member may execute this right by written notice delivered to Cascade on or before November 10, 1999. The notice of withdrawal must be accompanied by a copy of the Member's resolution or ordinance authorizing the withdrawal.

Upon a withdrawal under this Section 3.7, any Seattle Purveyor Contract rights that the withdrawing Member had relinquished or transferred to Cascade shall be returned to that Member.

ADOPTED AND APPROVED by the Board of Directors of the Cascade Water Alliance, at a regular meeting thereof, held on _____, 1999.

CASCADE WATER ALLIANCE

Chairman, Board of Directors

Secretary, Board of Directors

Vote: _____ Members in Favor
_____ Members Against
_____ % Demand Share in Favor
_____ % Demand Share Against