



July 7, 2023

Tricia Miller, Permit Administrator and Sean Wilson, Permit Manager  
Department of Ecology – NWRO  
PO Box 330316  
Shoreline, WA 98133-9716

Dear Ms. Miller and Mr. Wilson:

Thank you for the opportunity to provide input on the National Pollutant Discharge Elimination System (NPDES) Permit No. WA0029181 for King County's West Point Wastewater Treatment Plant. Washington Conservation Action Education Fund (WCA) is a 501(c)(3) organization founded in 1967 as Washington Environmental Council. Our mission is to develop, advocate for, and defend policies that ensure environmental progress and justice by centering and amplifying the voices of the most impacted communities. We are committed to clean water protections for all Washington State waters. Duwamish River Community Coalition (DRCC) is a 501(c)(3) organization that has long been a community steward for environmental justice in the Duwamish Valley, which is one of the most polluted areas in the entire Pacific Northwest following 100 years of industrial dumping and release of toxic waste. DRCC has worked tirelessly alongside community groups and neighbors for 20 years to clean up the water, land and air while fighting to eliminate ongoing industrial pollution that makes our communities among the least healthy in the County.

WCA has a deep history of pushing for measurable progress to prevent and manage sewage pollution. We have been involved with the Puget Sound Nutrient Forum and Nutrient General Permit Advisory Committee and remain committed to achieving clean water throughout the State. DRCC has actively pursued clean water strategies and has advocated for sewer infrastructure investments for years. DRCC is committed to protecting people most impacted by the cumulative impacts of living in a community with multiple sources of toxic exposure.

Each NPDES permit cycle must make progress toward eliminating pollution that impacts people, water, and aquatic life. For this permit cycle we would like to see exceptional progress towards the goal of clean water for all and have identified several priority areas key to achieving this goal: ensuring that King County reduces nitrogen pollution at West



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Point, prohibit any status quo facility expansion, strengthen Combined Sewer Overflow (CSO) provisions, accelerate progress toward reducing metals and toxics, increase public transparency and accountability, address environmental justice and affordability, and decrease inflow and infiltration.

Unfortunately, West Point Wastewater Treatment plant operators, including King County and its predecessor Metro, have a long history of requesting exceptions to the normal practices and pace of reducing sewage pollution that other wastewater treatment plants have adopted. As the Fact Sheet notes, when the Clean Water Act was amended in 1972 to require that all sewage treatment plants meet secondary treatment requirements by 1977, West Point's predecessor agency Metro applied for a waiver of those requirements, even while other wastewater treatment plants in the Puget Sound region, across the state, and across the country complied with that deadline. Ecology had to issue an Administrative Order, Docket No. DE 84 577, in September 1984 to direct Metro to proceed with planning for secondary treatment at the West Point plant no later than February 1991. When that deadline would not be met, Ecology amended the order to extend the compliance date until December 1995. King County assumed control of Metro's assets and obligations in 1994, and secondary treatment was brought online in 1995 – 18 years after the date set in the federal Clean Water Act, and one of the last major municipalities in the country to do so. That was unacceptable at the time and should not have required nearly two decades to comply with clean water requirements, especially in a municipality that prides itself on its environmental protection practices.

The February 2017 catastrophic failure of the West Point wastewater treatment plant required 89 days to return to normal operations. During that time, municipal sewage discharged to Puget Sound did not receive adequate treatment. While operators used a creative suite of practices to maximize other transmission system options to minimize pollution, there is no denying that inadequate sewage discharges caused harm, including harm to geographies outside of King County's boundaries. Surprisingly, King County's monitoring programs conducted in the wake of the failure found no detectable changes in Puget Sound water quality. This conclusion is beyond belief. At the time, King County also attempted to deflect blame for the power failure to Seattle City Light, even though King County alone is legally responsible for providing adequate power to its facilities. Ecology issued its largest pollution penalty in state history as a result.

West Point also suffered a power failure in July 2019 that led to the discharge of inadequately treated sewage to Puget Sound. As a result, a number of beaches were closed even across Puget Sound in Kitsap County. Multiple shellfish harvesting areas were closed



as well. People participating in the annual tribal Canoe Journey passed through the “closed” areas as the Suquamish Tribe hosted one of the nightly camping stops. The Suquamish Tribe noted this impact in its Notice of Intent to Sue King County over its failure to address recurring pollution violations and power issues.

From 2019 to 2022, King County hosted a forum of stakeholders to advise it on its clean water investments, and WCA served on the advisory group. Multiple times during that period, we and others noted that King County was incorrect and misleading in its assumption that complying with Clean Water Act requirements for sewage treatment and CSO abatement were optional. We invested untold hours trying to get King County’s Wastewater Treatment Division on a better path toward achieving clean water. Yet time and time again, the materials distributed in that process were wholly biased against addressing sewage treatment requirements and CSO requirements.

In fact, King County’s own independent Auditor’s Office found unsubstantiated escalated cost estimates for sewage upgrades and CSO controls and issued a report September 30, 2021, on the need for increased transparency around the costs, risks, and guiding principles of the Clean Water Plan process (<https://kingcounty.gov/depts/auditor/auditor-reports/cpo/clean-water-plan.aspx> and attached as a separate file to this comment letter). The King County Auditor’s Office found that the Wastewater Treatment Division incurred substantial risk by downplaying regulatory requirements around sewage treatment and CSO abatement. Importantly, the Auditor’s Office found a lack of transparency on cost estimates provided to the advisory group and that the information was biased away from actions related to sewage treatment and CSO controls.

After Ecology issued the Puget Sound Nutrient General Permit in 2022, King County appealed that permit on a variety of process and content terms to the Pollution Control Hearings Board. In addition, King County joined litigation currently in the Appeals Court alongside Tacoma to thwart the Puget Sound Nutrient General Permit, which Ecology designed to give the dischargers flexibility. King County essentially argues that Ecology has no basis for regulating nitrogen discharges to Puget Sound, fights the well-established science around the impacts of sewage discharges, and then obfuscates an astounding array of regulatory processes in a quest to avoid its obligations under the Clean Water Act. This is occurring even as King County states in multiple public venues that it will follow all clean water regulations.

In 2020, the Governor’s Office convened a meeting of scientists as King County began disputing the science around sewage discharges. WCA, then called Washington



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Environmental Council, has provided expert scientific information that summarizes the robust 20+ years of modeling and analyses conducted by Ecology. As stated in the attachment, *"Parts of Puget Sound experience low levels of dissolved oxygen, which is vital for aquatic life.... Human activities increase nitrogen and carbon contributions through both wastewater treatment plant discharges and watershed activities, with wastewater loads the dominant source in the summer months.... Added nutrients from human-derived activities cause or contribute to violations of the Washington State water quality standard for dissolved oxygen in Puget Sound due to complex circulation and biogeochemical processes.... Future growth and development will increase nutrients from human activities in the Puget Sound watershed, which will worsen dissolved oxygen impacts from local human activities unless nutrients and carbon are managed differently.... The Salish Sea Model, built on years of application, is the most appropriate tool to explore the relative impacts of different natural and human stressors that influence dissolved oxygen. At each phase of model development, Ecology concluded that human nutrient sources likely were violating the dissolved oxygen criteria in portions of Puget Sound. The magnitude and location of the violations have remained remarkably consistent over 19 years, even as the modeling tools continued to be refined in response to uncertainties identified by the modeling team.... At each phase of model development, Ecology was held to the highest standards of peer review, stakeholder input, and public review to ensure the integrity of the work and to hold up in a court of law...."*

In a 2022 briefing to the legislature, King County claimed it would be better for Puget Sound to fund programs such as reducing septic system impacts to Penn Cove in Island County and reducing agricultural pollution in Snohomish County. We note that pursuing actions in Island County or Snohomish County in lieu of cleaning up its own pollution would be contrary to environmental justice principles; King County cannot sacrifice the health and environment of people impacted by its CSOs and West Point discharge to clean up pollution in other communities, particularly those with lower populations of BIPOC people. In addition, the 2021 King County Auditor's Office report flagged that alternative compliance approaches are not currently legal and that changes to Washington Administrative Code would be needed to allow King County to pursue alternative water quality investments in lieu of CSO investments. This out-of-kind mitigation attempt is also wholly out of scale to the problems caused by sewage from King County's system.

We also note that many of the arguments that King County is currently using to avoid tertiary treatment are nearly identical to the arguments previously used to avoid expanding from primary treatment to secondary treatment in the 1990s – costs are too high, technology is untested, Puget Sound does not need the protection, upgraded sewage



treatment will not result in any measurable improvement to Puget Sound water quality, and no one is actually harmed.

Appendix E to the Fact Sheet lists an extraordinary number of violations of the current permit for the period between 2015 and 2021, not limited to the 2017 West Point catastrophic failure. For West Point, 16 months exceeded 85% of the design capacity for carbonaceous biochemical oxygen demand (CBOD) or total suspended solids (TSS) and one month (February 2017) exceeded the actual design capacity for TSS during the plant failure. Every CSO plant violated permit limits for fecal coliform, pH, and/or total residual chlorine. The Elliott West CSO Plant alone violated permit limits more than 100 times. The latter led to Ecology and EPA issuing stipulated penalties of \$184,000 in December 2022 for violating the County's CSO Consent Decree.

Given that West Point is the largest source of sewage discharge anywhere in the state, and given the long and deep history of the West Point and CSO facility violations of its NPDES permit, Ecology needs to develop stringent permit conditions and hold King County accountable for any violations of those permit terms. The final permit must require far more progress toward achieving long-term reductions in sewage pollution to Puget Sound than reflected in the draft permit.

We offer the following comments on the draft permit and look forward to seeing these issues resolved in the final permit.

## **Reduce Nitrogen Pollution**

King County is pursuing litigation fighting the Puget Sound Nutrient General Permit, currently in the Court of Appeals, and is appealing the permit through the Pollution Control Hearings Board, currently stayed pending the appeal. If King County succeeds in undermining the permit on procedural arguments, then the West Point facility will have no obligations to monitor for nitrogen, no pathway toward planning for nutrient-removal technology, and no progress toward reducing nitrogen in the short term. That is too big of a risk for the largest sewage discharge in the entire State of Washington, and the largest U.S. sewage discharger to the Salish Sea.

While the Puget Sound Nutrient General Permit had been intended to give dischargers more flexibility in complying with nitrogen reductions, it is clear from King County's actions that they will continue to fight this inevitable conclusion as long as they possibly can,



consistent with trying to avoid adding secondary treatment in the 1970s, 1980s, and 1990s. In addition to litigation, King County is obfuscating the science through a sham process, consistent with finding no measurable harm to Puget Sound following the February 2017 catastrophic plant failure. Ecology intended to roll nitrogen requirements into future iterations of the individual permits, but that needs to happen now and in this permit.

Pierce County knew that nutrient regulations were coming when it upgraded the Chambers Creek plant in the early 2000s and has been decreasing nitrogen discharges even before the Puget Sound Nutrient General Permit was issued. Joint Base Lewis McChord rebuilt its wastewater treatment plant and is achieving very low nitrogen concentrations even though EPA had not yet required the reductions. The Lacey Olympia Tumwater Thurston County (LOTT) plant has been implementing nutrient removal since the mid-1990s. As you know, multiple mid-size plants have gone to nutrient removal technology. Ecology must require King County to begin this transition for West Point in this NPDES permit and must not reward poor decisionmaking by King County Wastewater Treatment Division.

**Ecology should incorporate monitoring, planning, and engineering provisions building from those in the Puget Sound Nutrient General Permit into the West Point permit, strengthen those provisions for the largest sewage source to Puget Sound, establish a technology-based nitrogen limit for West Point, and eliminate West Point from general permit coverage now.**

In WCA's appeal of the Puget Sound Nutrient General Permit with the Suquamish Tribe to the Pollution Control Hearings Board, the appropriate venue for addressing pollution disputes and not the Courts, we argue that the "action levels" that Ecology calculated for the West Point plant and the other discharges used an egregiously lax statistical basis. The 99<sup>th</sup> percentile of the existing discharge loads would allow King County to continue to increase nitrogen pollution loads over many years. We urge Ecology to review King County's 2022 nitrogen loads reported under the Puget Sound Nutrient General Permit, which have not been made available to the public, and calculate the ratio of the actual 2022 loads to the action levels. We anticipate that King County's West Point 2022 nitrogen discharge loads were significantly below the action levels in the Puget Sound Nutrient General Permit. This is why we do not recommend adopting the action levels as permit limits. The King County Auditor's Office report provided a timeline of discharge loads from West Point, including what would happen at a technology-based limit of 8 mg/L of nitrogen. We encourage Ecology to establish a technology-based limit of 2 mg/L based on what the LOTT plant and JBLM plant are currently achieving.





We also anticipate that King County will pursue a facility expansion request to Ecology as it nears its design capacity at West Point during the next permit term, a concern described in the next section. Therefore, particularly if King County succeeds in overturning the Puget Sound Nutrient General Permit, Ecology must establish stringent nutrient limits in this individual permit for West Point. Ecology must require King County to make progress on planning for nutrient-removal technology at West Point, where King County is currently reserving physical space for future tank expansions to treat more sewage as population increases.

**Given that the shift from primary to secondary treatment at the West Point Wastewater Treatment Plant required 18 years after the federal deadline and an Administrative Order, Ecology needs to incorporate meaningful progress toward nitrogen reduction in the individual West Point permit.**

## **Prohibit Status Quo Facility Expansion at West Point and Address Emergency Bypass**

As presented in Appendix E of the Fact Sheet, CBOD and TSS loads have already exceeded the 85<sup>th</sup> percentile for 15 separate months between 2015 and 2021. We expect that King County will begin work toward status quo expansions during this permit term, which would be allowable by this permit as written. **Ecology needs to be clear that status quo facility expansions are not acceptable.**

Special Condition S4.B(a) describes the conditions triggering the requirement to submit a plan for maintaining adequate capacity when actual flows and loads reach 85 percent or when projected flows and loads within 5 years exceed any of the triggers in Table 31.

However, the provision as written leaves open the option that King County will be approved for an expansion of plant capacity. Because King County's West Point discharge already contributes to violations of the water quality standards for nitrogen, Ecology cannot approve any expansion without a concomitant technology change that reduces the concentration of nitrogen in the effluent. Therefore, Ecology must add clarity that any plant expansion process must include all parameters covered by both the individual and general permits that apply to the facility, if West Point remains subject to the Puget Sound Nutrient General Permit. Ecology should include a clear statement under Special Condition S4.B.b that the engineering design report must address all parameters included in the individual permit as well as the Puget Sound Nutrient General Permit.



Special Condition S4.E includes a requirement for a Wasteload Assessment. Because all nitrogen monitoring and analyses are proposed to be in the separate Puget Sound Nutrient General Permit, Ecology must include a clear statement that this Wasteload Assessment must include nitrogen if any or all provisions of the Puget Sound Nutrient General Permit are overturned.

Special Condition S4.A Table 31 now includes a distinct discharge flow limit of 300 mgd for secondary treatment flow capacity (maximum daily flow) in addition to the maximum month design flow of 215 mgd. We agree with having a flow limit that includes a maximum daily value. The fact sheet should include more information around how often this value had been met or exceeded in previous years to justify the establishment of the 300 mgd value.

Fact Sheet Table 4 presents the projected average annual flows through the 2060s as 127 mgd, substantially below 215 mgd. However, 215 mgd is the maximum monthly design flow, not the average annual flow. Table 4 should include more of an apples-to-apples comparison and the maximum monthly flows relative to the design of the plant since that is the statistical basis for the flow trigger for expanding capacity.

Special Condition S16 requires King County to “... submit a new application or addendum at least one hundred eighty (180) days prior to commencement of discharges, resulting from the activities listed below, which may result in permit violations. These activities include any facility expansions, production increases, or other planned changes, such as process modifications, in the permitted facility.” However, this implies that Ecology could approve an increase in capacity. This permit must state definitively that King County should not expect Ecology to approve any applications for increases in flows or loads from the West Point Treatment Plant.

Fact Sheet page 16 describes that “*During wet weather, flow through the West Point WWTP can exceed the design capacity of the secondary treatment processes. When instantaneous internal flow rates reach 300 MGD...*” and that “*KC-WTD is in the process of redesigning this bypass to rely on passive weirs to allow emergency bypasses rather than the hydraulically-operated gates. Ecology’s review of the passive weir project concluded that the redesign improves overall protection of the plant during emergency conditions without increasing the potential for inadvertent bypasses. Although Ecology recognizes the need for this safety feature to protect against catastrophic conditions that may risk operator safety or severe property damage, the proposed permit considers any discharge through the emergency outfall as an unpermitted bypass*” (underlining added). Ecology describes the emergency bypass outfall as discharging





in 40 feet of water in the Fact Sheet and includes the following text: *"While Ecology recognizes the importance of this outfall to protect the facility and its operators, the proposed permit does not consider the outfall as a permitted discharge location. Ecology may take enforcement actions for discharges through this outfall. Figure 2 also shows the location of this outfall."* (Underlining added)

We recognize that this solution was added in the wake of the 2017 catastrophic failure and agree that worker safety is critical. However, this does not appear to be a long-term solution that protects the health of Puget Sound as it still essentially provides the plumbing for under- and un-treated sewage to enter Puget Sound. Rather than simply build this into the permit, Ecology needs to require King County to develop a long-term fix that eliminates the need to bypass secondary treatment. After all, the state spent 18 years forcing West Point to build secondary treatment. Ecology should not settle for allowing King County to avoid secondary treatment, even if it is considered an unpermitted bypass. Fining a discharger for something they are already planning to allow for does not achieve clean water. Ecology must require King County to plan for a permanent solution that avoids the need for emergency bypasses except in truly exceptional conditions. Emergency bypasses should not become annual or more frequent events.

**Specifically, the permit must state unequivocally that Ecology will take enforcement action for discharges through the emergency bypass outfall, not may take action. Ecology also needs to require a long-term fix that eliminates the need to bypass secondary treatment.**

## **Strengthen Combined Sewer Overflow provisions**

The Fact Sheet history on page 12 notes that EPA finalized the federal policy for reducing pollution from combined sewer overflows in 1994. While King County made some progress, in 2007 EPA concluded that King County's ongoing CSOs violated state and federal regulations. A 2012 Crosscut article (<https://crosscut.com/2012/06/surface-water-pollution-consent-decrees>) provides a good summary of the issues at the time. This led to a 2013 Consent Decree between King County, Ecology, EPA, and the US Department of Justice that required actions necessary to bring King County's CSO program into compliance with the Clean Water Act. King County has repeatedly noted that it is not achieving the deadlines in that Consent Decree, and King County has requested that the terms be renegotiated. To



date, no public review draft has been released and all negotiations have occurred behind closed doors.

We urge Ecology to continue to require the largest municipality in the State of Washington to achieve its clean water obligations, including addressing its CSOs. King County personnel have repeatedly diminished the importance of reducing CSOs with an antiquated perspective that no one is harmed by CSOs. However, people are impacted by CSOs, including through exposure to toxic chemicals from CSOs, diminished use of beaches along Lake Washington, decreased fishing and shellfishing opportunities in the Duwamish Waterway, not to mention the accumulation of metals and other toxics in fish. Controlling CSOs is fundamentally an environmental justice issue, and those who are most impacted by and live in close proximity to CSOs are disproportionately low-income, BIPOC, and immigrant communities. See below for a related comment on requiring an environmental justice analysis as a condition in this permit.

Fact Sheet Table 26 also lists the numerous violations of the Sediment Management Standards surrounding most of the CSO outfalls, including those that discharge in and near Superfund sites and state Model Toxics Control Act sites. As those sites are cleaned up, source control will be even more important to protect those investments. Controlling CSOs is an integral part of achieving the EPA's long-term cleanup goal for PCBs in East Waterway sediments of two parts per billion. This type of health-protective standard will be impossible to achieve without controlling CSOs. Uncontrolled CSOs represent one category of many ongoing toxic sources, which is another reason to maintain strong CSO provisions in this permit as other sources are addressed through other regulatory mechanisms.

The Fact Sheet describes the Status of the CSO Program beginning on page 29 with a list of what has been done since 1988. However, this section should **begin with the clear statement that the CSO Program does not meet state and federal regulations and that the CSO Program is currently subject to a Consent Decree.** Further, the Fact Sheet should clearly state that King County requested that the Consent Decree be renegotiated and the outcomes have not been released to the public for comment.

Further, page 31 of the Fact Sheet describes that the permit will not include requirements related to a number of projects, and that Ecology is using the timelines established in the Consent Decree. We do not support any changes to the timelines and urge Ecology to require that King County meet its obligations relative to CSOs.

Overall we agree with increased attention to CSOs in this permit. After Everett finishes its CSO abatement work in a few years, King County will remain the only jurisdiction not



complying with the national standard of no more than one discharge per year per location in the Puget Sound region. That means that on both a regional and a national level, King County will be one of the last municipalities to fulfill its CSO obligations. Communities like Port Angeles and Bremerton have invested in solutions and have been complying with modern requirements for years. King County needs to do the same. We appreciate that the fact sheet notes that *"Due to the history of poor performance of the Elliott West CSO treatment plant, the proposed permit includes a compliance schedule that requires KC-WTD to complete planning and design for a replacement facility."* Historical context is important to document for future reference.

We concur with adding zinc (246 ug/L) and copper (84.1 ug/L interim and 15.0 ug/L) permit limits to the Elliott West CSO Treatment Plant and Henderson/MLK CSO Treatment Plant outfalls in Special Condition S1.B Tables 5 and 6, as well as decreasing the concentrations for total residual chlorine. However, the limits are still high in comparison with the marine water quality standards (<https://app.leg.wa.gov/WAC/default.aspx?cite=173-201A-240>) for these parameters – for zinc 90.0 ug/L acute and 81.0 ug/L chronic; for copper 4.8 ug/L acute and 3.1 ug/L chronic. The draft permit limits are roughly three times the allowable zinc concentrations and 17 to 27 times allowable copper concentrations. We are unclear why the ratios are different if using the same mixing zone calculations. We also disagree on the use of dilution factors and mixing zones for even controlled CSO discharges, especially for toxic chemicals.

The previous permit also included the maximum number of discharge events per year for the Alki CSO Treatment Plant (29 events per year and 108 million gallons per year long-term average), which we do not see in this permit. We recommend adopting the national standard of no more than one CSO event per year per location and specifically identifying the current Consent Decree signed with EPA, Ecology, King County, and Seattle regarding the CSO compliance requirements.

Special Condition S2.C describes the monitoring schedule for untreated CSO events and requires monitoring results be reported using electronic DMRs in Special Condition S3.A. However, this does not provide timely information to the public. As described under Public Transparency and Accountability below, Ecology must require King County to post this information in a more accessible format on its website alongside other events such as sewage spills. See below for specifics.

We concur with Special Condition S.11.F that an amendment is needed for the CSO reduction plan, and that any changes must comply with King County's 2013 federal CSO



Consent Decree, Civil Action No. 2:13-cv-677 or any modifications. We understand that King County has reopened negotiations on this Consent Decree and we are awaiting a public comment draft. We urge Ecology to keep the public's interest and needs in the forefront as that proceeds, even though the public is not part of the confidential negotiations process.

We concur with requiring a CSO Solids Characterization Study in Special Condition S12, and again urge Ecology to ensure that the resulting reports are easily locatable by the public, searchable using standard web searches, and communicated in effective formats with the public.

We concur with incorporating the Elliott West CSO Treatment Plant Improvements in the permit Special Condition S15. Annual progress reporting will be important to ensure the work stays on schedule. Given that King County has a long history of missing deadlines for CSO improvements, and will be one of the two last municipalities to meet the national performance standards in the state, Ecology needs to add specific penalties if progress falls behind. Simply documenting schedule slippage will not achieve clean water, and the permit needs specific steps toward enforcement.

Ecology should reconsider the use of mixing zones to establish discharge standards for the CSOs. Fact Sheet Section II.F.6 for the Henderson/MLK CSO Treatment Plant, Ecology mentions that "... *the Norfolk outfall also discharges stormwater from multiple jurisdictions in addition to untreated CSOs from the Norfolk Street Regulator Station and treated CSOs from the Henderson/MLK CSO Treatment Plant. In addition, multiple other public and private outfalls discharge stormwater into the Duwamish River near the Norfolk outfall.*" As a result, while Ecology is proposing mixing zones for individual outfall locations, this does not protect water quality because the cumulative impact of multiple pollution sources would cause violations of the water quality standards at the edge of the mixing zones. We do not believe this is legal to both note other sources that impact waters and also to grant a mixing zone. Therefore, Ecology must require more stringent requirements for CSO outfalls and also greater progress toward meeting the federal performance standards for these outfalls.

One option is for Ecology to recalculate mixing zone-based effluent standards that account for the additional pollution sources nearby. Another option is to require King County to address any of the mixing zones for controlled CSOs that overlap in the Duwamish Waterway or that overlap with other discharges that contribute pollution within the mixing zones. Either way, approving mixing zones that neglect other sources is inconsistent with meeting water quality standards as well as state and federal law.



## **Accelerate Progress toward Reducing Metals and Toxics**

Tables 11, 13, 15, and 17 of the Fact Sheet summarize the existing water quality concentrations for a variety of parameters of interest. We note that the copper and zinc concentrations in the Lower Duwamish are much higher than those in Elliott Bay, which are much higher than those in Puget Sound. In addition, PCBs are many orders of magnitude higher in the Duwamish Waterway than they are in Elliott Bay, which are still elevated. In fact, recent research has found such high levels of PCBs in the Duwamish that they are impairing the survival of juvenile chinook salmon. PCBs in fish tissue in the Duwamish are also much higher than values considered safe for human consumption. Some communities, including indigenous populations, AAPI communities, and immigrant communities consume more fish than average for the overall population of the region.

Clearly, the Duwamish Waterway remains a hot spot for multiple toxic chemicals, due to the discharges they receive. This is another reason why CSOs absolutely need to be addressed as they remain ongoing sources of metals and other toxic compounds. We realize that other sources are present in the Duwamish Waterway, but this permit is the mechanism to make progress on reducing toxics and other pollution from CSOs and we urge Ecology to establish stringent requirements that accelerate the pace of reducing pollution.

Fact Sheet Tables 21, 22, 23, and 24 summarize the CSO treatment plant effluent data. We note that metals concentrations and a variety of toxic chemicals are high across the board. These chemicals do not break down and some can bioaccumulate in fish. Therefore, the slow pace of progress on controlling King County's CSOs means that more and more chemicals are impacting the beneficial uses of the receiving waters and downstream water bodies, and the people that depend on these waters and resources. Most toxic chemical concentrations are much higher than state water quality standards designed to protect the public's use and enjoyment of public resources. We mention this here because regulatory permit processes can lose sight of why reducing pollution is important.

The implications of these tables are that pollutants known to cause cancer continue to discharge into waterways used by real people, and King County is behind not just other jurisdictions in the Puget Sound region but nationally in controlling these pollution sources. Arguments that the work is too expensive and that CSOs do not really impact people have been around for decades. However, there remain real costs to people unable to access food, cultural, and recreational opportunities, not to mention treaty-reserved resources that can never be quantified.



Because the PCB concentrations are so high and have a direct impact on juvenile chinook survival, Ecology needs include a separate condition for King County to report on the magnitude and timeline for reducing CSO impacts on PCBs. To do so, Ecology's Water Quality Program should work with its Toxics Cleanup Program, Tribes, DRCC, and other organizations that represent impacted communities to develop this condition to add to the work already underway on PCBs.

More importantly, Ecology's use of mixing zones to determine compliance with water quality standards is problematic. Given the very high number of CSO pipes in the region, the mixing zone of individual pipes could be impacted by other known pollutants. Therefore, Ecology should require King County to verify that mixing zones do not overlap before granting them. Moreover, Ecology should revisit its policy of allowing mixing zones at all for metals and other toxic chemicals, especially in CSO discharges.

The Fact Sheet includes a summary of the 2018 Copper Assessment Report, which did not determine a clear explanation for the elevated copper levels in the Elliott West CSO Treatment Plant effluent. Many factors were ruled out, but the report had no strong conclusions as to the source of the elevated copper. Nothing in the current permit requires King County to continue this work. We urge Ecology to require further source identification for elevated copper levels in the Elliott West CSO Treatment Plant and piping network. Given the very high levels of PCBs, we suggest that this source tracing also include PCBs as well.

We concur with adding PFAS monitoring in Section 2, Table 21. However, given that the West Point treatment plant is the largest single source of sewage in the entire state, the quarterly frequency for the influent is insufficient to fully characterize the level of PFAS coming into the plant. We urge Ecology to require weekly influent and effluent monitoring for the first two years of the permit, with a provision to decrease to monthly monitoring if King County can demonstrate statistically that monthly monitoring would sufficiently characterize the variability in concentrations received at the plant. In addition, Ecology needs to require biosolids monitoring as well given the widespread dispersal of biosolids.

We concur with adding a new Special Condition S6.E Identification and Control of PFAS Discharges to the permit requirements. The industrial categories described in Special Condition S6.E.1 miss some previously documented potential sources of PFAS, including laundries, electronic products, hazardous waste, chemical wholesalers, and more. We note that these facilities tend to be concentrated in communities with large populations of BIPOC and low-income people, and addressing other impacts to surrounding communities





should be considered in addition to local source control work within the sewage and stormwater transmission systems. We encourage Ecology to expand this list to all well documented sources. We agree with the sequential reporting proposed, with April 30, 2025 for the IU inventory and July 1, 2025 for pretreatment requirements for IUs and BMPs plus pollution prevention to reduce PFAS in West Point influent.

In addition, Ecology should require 6PPD-related monitoring of the CSO treatment plant effluent and in untreated CSO discharges. As Ecology knows, 6PPD was found to cause direct mortality to coho salmon adults returning to spawn. More recent research has identified potential impacts to other species and other life stages as well. Given that CSO discharges are 90% stormwater, and King County's CSO basins all contain intensively developed land covers that are highly associated with tire and other road runoff, CSOs should be characterized. Ecology should require a QAPP for monitoring in the first year of the permit followed by 3 years of monitoring and one year to summarize the data in a technical report.

While local jurisdictions are making some progress toward local source control, which many have identified as the least expensive way to reduce metals and toxics, King County can do more through its own municipal holdings. Many of these land holdings are in other jurisdictions, like the City of Seattle. Rather than leaving those facilities to Seattle's responsibility, King County should be required to address its own facilities under its local source control program. Moreover, King County should be required to work throughout the transmission system to reduce sources of toxics and metals, and not all of its municipal customers are investing adequately in source control. Ecology should do all it can to incentive strong source control programs throughout King County's network and upstream jurisdictions.

Finally, Ecology and its partners completed the Control of Toxic Chemicals in Puget Sound (<https://ecology.wa.gov/Water-Shorelines/Puget-Sound/Issues-problems/Toxic-chemicals>) nearly a decade ago yet this remains the best available science on which sources contribute which contaminants through which pathway. We urge Ecology to consult its final report (<https://apps.ecology.wa.gov/publications/SummaryPages/1103055.html>) and focus sheet (<https://apps.ecology.wa.gov/publications/SummaryPages/1103060.html>) to identify toxic chemicals that should be monitored in sewage effluent at West Point and in controlled and untreated CSO discharges.



## Increase Public Transparency and Accountability

While we appreciate the Fact Sheet retrospective synopsis of discharge monitoring and receiving water conditions, the public needs to access this information in real time. We note that King County maintains a web page reporting on active CSOs at any one time. However, there is no way to access other important information related to the West Point and CSO discharges. Unfortunately, Ecology's PARIS database used to track submittals required by the permits is simply unusable by the general public. Therefore, Ecology must require that King County establish a dedicated web page where all information transmitted to Ecology for compliance with its permit terms can be accessed by members of the public. To serve people without internet access, we also recommend that King County summarize annual NPDES permit requirements in fact sheets that they make available through their community networks and community hubs such as libraries and community centers. We provided similar comments during Ecology's recent MTCA rulemaking period recently and urge Ecology to modernize public communications throughout the organization. The public does not know what it has no idea exists. Ecology needs to require increased transparency and accountability for the largest jurisdiction in the state, above and beyond what the Permit Manual may require of all jurisdictions.

The PARIS database is woefully out of date and insufficient to make the information in Discharge Monitoring Reports available to the public. During the 2022 Municipal Wastewater Permit Fees Advisory Committee proceedings, in which WCA participated, Ecology stated that even the flow monitoring data are not trustworthy, which calls into question the ability to reflect more complex parameters. We recommend that Ecology overhaul PARIS because it is insufficient to ensure compliance with the Clean Water Act. We realize that this is outside of the scope of the West Point permit. The West Point plant is the largest in the state, and it has had catastrophic failures and numerous permit violations and penalties over the years. This is why Ecology must require more transparency and accountability to the public in this permit while modernizing communication approaches overall. The public has a right to know about pollution releases.

Special Condition S3.A, Discharge Monitoring Reports, allows King County "... to submit written reports that summarizes the performance of the West Point WWTP and the CSO treatment plants during the monitoring period. If the Permittee chooses to submit supplemental written reports, it must consolidate all reports for the monitoring period into a single PDF document attached to the DMR." However, given that Ecology does not trust the records stored in PARIS and that members of the public would need to first know the permit



number of this facility, navigate through PARIS, and then look for individual PDFs that are not text searchable, this option does not protect the public's right to know. Ecology must require a more accessible way for the public to find this information through web-based searches and not buried in insufficient databases.

Further, the permittee is responsible for the quality of the data in PARIS. Ecology needs to begin stipulating that each permittee is solely responsible for the accurate and complete reporting in databases such as PARIS and any errors in reporting are subject to fines. We recommend that Ecology add a new provision to Special Condition S3.A such as *"The permittee is solely responsible for ensuring that electronically-submitted data are accurate and reflect the actual conditions of the plant. Any errors are the responsibility of the permittee and subject to fines for inaccurate reporting."*

Special Condition S3.B allows the permittee to submit hard copy reports. Because these would not be available to the public, this option must be removed from the final permit. Further, all PDFs submitted to Ecology must use text recognition so that the information is searchable.

Special Condition S3.F needs far more transparency added to the permit provisions around reporting permit violations. We generally agree with the distinct phases of notification, beginning with "immediately" in Special Condition S3.F.c. However, Ecology needs to define "immediately" – is that within 2 hours of discovery? The phone number listed for Public Health Seattle – King County 206-296-4932 has been disconnected when tried on June 27, 2023. The draft permit includes no information as to how the information is collected and maintained in the files related to the permit itself. While multiple options are available, including Ecology's Northwest Regional Office and Public Health Seattle – King County, all reports need to be gathered in one location and clearly searchable by the public.

Special Condition S3.F.b, Twenty-four Hour Reporting, now appears to include CSOs, an improvement from the previous permit. We concur, and we also urge Ecology to identify a clear repository for these reports that is searchable by the public.

We commend Ecology on requiring sewage spill reporting within 5 days under Special Condition S3.F.c to the central Water Quality Permitting Portal. We concur with the required elements of the report. However, Ecology must ensure that the ERTS reports are available to and searchable by the public. Relatedly, we disagree with S3.F.d, which allows Ecology to waive the requirement for a written report based on an oral report. Oral reports are not available to the public and are insufficient to document sewage spills. Ecology should strike



this section entirely, and should also ensure that the oral reports mentioned in (a) and (b) are documented and searchable in a public-facing portal.

Special Condition S3.F.e describes the quarterly violation reports and provides a spreadsheet option. While we concur with the content, we are unclear how a spreadsheet would be available to and searchable by the public. This is an important element of transparency, as multiple jurisdictions may impact the same waterbody, such as the Duwamish Waterway. Therefore, this information needs to be easily compiled by Ecology, and Ecology should consider what the permittees will need to do to facilitate this step toward transparency.

Special Condition S5.C describes provisions related to Bypass Procedures, but there is no information on where the records would be kept or how Ecology would know whether King County is in compliance or not. When flows exceed 300 mgd as a result of precipitation, effluent quality would likely be impaired and would not meet standards. The public needs to be able to access this information. In addition, Special Condition S5.C.2.a allows bypasses for non-essential maintenance yet requires King County to notify Ecology within at least 10 days notice "if possible." Ecology should strike "if possible" from this section.

Special Condition S.11.D describes CSO Annual Report requirements, including summaries of events. However, the section lacks clarity on where these must be submitted, and we suggest adding specificity to ensure the public can easily locate and access the report.

Ecology needs to add a provision that King County compile an annual report with all CSOs and unpermitted discharges from the West Point facility and the CSO facilities, including the water bodies potentially impacted by those discharges. The Fact Sheet describes each facility including the location of outfalls. However, Ecology should also require King County to conduct an environmental justice analysis of the communities near those receiving waters or using those receiving waters. See additional information below.

## **Address Environmental Justice and Affordability**

Washington State is making strides toward achieving a future where everyone has access to clean water. Until that time, the state has more work to do, and needs to pick up the pace where pollution-reduction schedule delays impact some people disproportionately more than others. Given the passage of the HEAL Act and the goals outlined in Ecology's 2023 – 2025 Strategic Plan, this permit cycle must make environmental justice a direct and



actionable component of the requirements under individual sewage permits, and in this permit specifically for West Point and CSOs.

We recommend that Ecology require King County to conduct an environmental justice assessment of what Black, Indigenous, and other People of Color currently experience impacts from both the West Point discharge and the combination of treated and untreated CSOs covered in this permit. This is not a new concept. In fact, 2012 was the 40<sup>th</sup> anniversary of the Clean Water Act, and a news article published at that time acknowledges the environmental justice impacts of King County's CSO discharges (<https://crosscut.com/2012/06/surface-water-pollution-consent-decrees>). Over a decade later, those concerns remain.

The Fact Sheet section II.B. describes the receiving waters of Puget Sound and the Duwamish River but there is no mention of who uses those waters for what. This leads to a disconnect between the discharges and the end users of the system, which hides the real impacts of this pollution on people's uses of the receiving waters. First and foremost, the description of receiving waters must include the Tribes with treaty-protected resources in the impacted waterways, and we urge Ecology to consult directly with Suquamish Tribe and Muckleshoot Tribe, and also the Tribes with Usual and Accustomed Areas that are downstream of the discharges. This includes the Puyallup, Nisqually, and Squaxin Island Tribes, given the results of Ecology's Salish Sea Modeling and circulation patterns in the Salish Sea. For example, after the first sentence on page 32 of the Fact Sheet, Ecology should include the following:

*"This proposed permit authorizes discharges of treated domestic wastewater to various locations in central Puget Sound, Elliott Bay, and the Lower Duwamish Waterway. Due to Puget Sound circulation patterns, effluent from the West Point outfall flows southward, toward and into Commencement Bay and South Puget Sound. Collectively, these receiving waters are within the Usual and Accustomed Areas of the Suquamish Tribe, Muckleshoot Tribe, Puyallup Tribe, Nisqually Tribe, Squaxin Island Tribe. In addition, members of the public recreate within these waters, including for swimming, boating, shellfishing, fishing, and other active and passive uses."*

Members of the public use the receiving waters impacted by the West Point and CSO discharges extensively, and the Fact Sheet needs to be updated with this information. Public Health – Seattle and King County will have good information on Duwamish Waterway users, including communities engaging in fishing and shellfishing. We urge you to connect with Shirlee Tan ([shirlee.tan@kingcounty.gov](mailto:shirlee.tan@kingcounty.gov)) for more specific information on communities using the Duwamish Waterway.



Even if this information is not required by the Permit Writers Manual, Ecology is evolving its practices around Environmental Justice and Tribal Sovereignty. We stress that the West Point discharge is the largest in the state and warrants exceptional attention to new and evolving information and practices. Further, Ecology has new obligations under the HEAL Act and needs to center environmental justice throughout your operations, including in permits that are designed to achieve swimmable, fishable, and diggable waters for everyone in the State of Washington. Who is impacted by these discharges may be even more important than the water quality data summarized in the Fact Sheet for the discharges.

Finally, as King County's schedule for addressing known water quality problems continues to slip, infrastructure costs will continue to rise. We realize that rates are an issue for households with low income. We have advocated for increasing federal and state infrastructure funds for many years, including in advocacy letters alongside a number of local jurisdictions. We will continue to do so with Members of Congress and in the Washington State Legislature. King County cites costs as a reason for further delay. As described above, the costs of the impacts to real people have never been and can never be calculated. Moreover, other local jurisdictions, most notably the Lacey Olympia Tumwater and Thurston County sewage treatment system, have managed to both produce high-quality sewage effluent and address CSOs while also keeping rates affordable. Part of LOTT's success has been attributed to their governance structure where its member organizations have agreed to standard annual rate increases. In contrast, rate fights permeate the King County geography and lead to uncertainty in financing future infrastructure upgrades.

We recommend that Ecology require King County to conduct a funding and finance evaluation for the total of its clean water obligations, including deep engagement and review by its local government customers. In recent years King County has chosen not to pursue state funds because it found lower interest rates through other mechanisms. As economic conditions have changed, it would be helpful for the state to know how much demand there will be for state funding to help King County achieve its clean water obligations.





## Reduce Inflow and Infiltration

Fact Sheet section II.A.3 on Inflow and Infiltration (I/I) lists values of 17.5 mgd of dry weather flow and 27.5 mgd of non-storm wet weather flow, or approximately 25% of the influent to the West Point plant. The Fact Sheet also notes that the local jurisdictions have no flow limits to what they can convey to the County system nor are there incentives for reducing I/I. In December 2021, King County WTD published technical reports on guidance to the Metropolitan Water Pollution Abatement Advisory Committee to help manage private side sewer connections. However, Special Condition S4.B.b is the only permit provision covering I/I, and simply mentions that reducing excessive I/I should be part of any future plan for achieving plant capacity once certain thresholds are exceeded.

Rather than wait for a future trigger, Ecology needs to include more substantive work around reducing I/I in a special study in this individual permit. During the King County Clean Water Plan discussions that WCA attended in 2019-2022, system metering was discussed as a standard element that is done throughout the country yet is behind in King County. King County's responses generally described metering within the transmission system as too expensive or too difficult.

However, jurisdictions on the East Coast, including a comparable system in the greater Boston area managed by the Massachusetts Water Resources Authority, have been metering the transmission system for decades to pinpoint sites with high I/I. Further, the metering was a critical component to incentivize local jurisdictions to track down and address excessive I/I. In the 1990s, the City of Boston found that every \$1 invested in I/I reduced their overall costs paid for sewage treatment by >\$1, and in doing so significantly reduced I/I in their part of the transmission system. Only through metering was this viable.

Therefore, Ecology should require a much more detailed I/I assessment as a permit provision, including metering of jurisdictions and incentives for I/I abatement plus video of pipe condition to support asset management. The local jurisdictions that figure this out more quickly will be deeply incentivized to invest in addressing excessive I/I abatement, but only once cost shares are based on metered flows.

## Additional Specific Comments

In addition to the priority areas identified above, we offer the following comments on specific Special Conditions of the permit and in the Fact Sheet:



- We concur with adding Enterococci monitoring in Special Condition S2 Table 17; however, this should be analyzed once per day, coincident with the fecal coliform monitoring frequency as they both indicate pathogenic organisms.
- We concur with adding Total Ammonia, Nitrate plus Nitrite Nitrogen, and Total Kjeldahl Nitrogen to CSO monitoring requirements for the plants in Special Condition S2 Tables 26 and 27.
- Table 29 of Special Condition S2.C has no monitoring requirements for sediments nor settleable solids, which were in the previous permit, S13.C. These need to be added back in to provide a more complete quantification of pollutant loads from untreated CSOs.
- We concur with the new calibration requirements included in Special Condition S2.E3.
- Special Condition S2.3 A.8 has a typographical error – “Not report zero for bacteria monitoring” is more likely “Do not report zero for bacteria monitoring.”
- Special Condition S2.3.A.9 needs to be reflected because Enterococcus does not use a geometric mean for water quality compliance. From the state water quality standards for marine waters Table 210(3)(b) *“Enterococci organism levels within an averaging period must not exceed a geometric mean value of 30 CFU or MPN per 100 mL, with not more than 10 percent of all samples (or any single sample when less than ten sample values exist) obtained within the averaging period exceeding 110 CFU or MPN per 100 mL.”*
- The previous permit included a requirement that If permittee monitors sediment or untreated CSO discharges more frequently than required, the permittee must enter that data into the EIM database. Special Condition S3.E no longer includes this provision. However, this is important information that must be reported and should be included in the final permit as data entered into the DMR database, not EIM.
- We concur with the addition to Special Condition S5.A that *“... Permittee must notify Ecology when the operator in charge at the facility changes.”*
- Special Condition S5.D on Electrical Power Failure should be expanded to clearly include the provisions of the agreement reached with the Suquamish Tribe regarding maintaining adequate electrical service to the West Point plant.



- Special Condition S6.A on Pre Treatment references a 1996 King County Ordinance No. 11963 on Industrial Pretreatment and a 1981 document on Industrial Pretreatment. Pretreatment practices have improved over the past 42 years, and we encourage King County and Ecology to revisit the content and approach for pretreatment programs to ensure modern approaches are used.
- Special Condition S6.A.1.f requires King County to publish all domestic water users not in compliance with pretreatment requirements in the largest daily newspaper. This is no longer sufficient to reach the King County populace. Ecology should add a requirement that King County publish this information on the front page of the Wastewater Treatment Division web page and leave it visible for the duration of the permit term, adding sequentially each of the five years of the permit term.
- We concur with Special Condition S6.A.1.j that King County “... *must develop a Memorandum of Understanding (or Inter-local Agreement) that outlines the specific roles, responsibilities, and pretreatment activities of each jurisdiction.*”
- The pretreatment report described in Special Condition S6.A.4 needs a specific due date and S6.A.4.c should also require reports of any issues in jurisdictions covered by MOUs in S6.A.1.j. We concur with including PFAS source identification and/or reduction activities included in the pretreatment report.
- We concur with sections S9.A and S9.C on the Sediment sampling and analysis plan requirements around the West Point and CSO plant outfalls.
- While Ecology requires reporting on sediment quality under Special Condition S9.B and S9.D, storing the data in EIM decouples the data from DMRs. Ecology should require King County to summarize sediment data within their DMRs, in addition to adding to EIM. In addition, the previous permit allowed the Sediment Data Report to be submitted in hard copy, which has been removed from the draft. However, Ecology should explicitly include instructions that the PDF must be searchable and available to the public electronically. The sediment reports should also include trend analyses including data from previous permit terms, which was required for the CSO sediment data the previous permit term.
- We appreciate that Ecology included the status of each CSO location in Special Condition S.11.A Table 32 as Controlled or Uncontrolled. As noted in S.11.A, only Controlled CSOs may receive a mixing zone. However, we urge Ecology to revisit the status of each CSO annually during the permit term to check for any previously



Controlled CSOs that no longer meet requirements, which would then eliminate the use of a mixing zone. We concur with the corrective actions described in Special Condition S.11.C.d for facilities that no longer meet the performance standard of no more than one overflow per year and simply add a clarification through a footnote to Table 32 that the status would be re-evaluated annually. Ecology should clarify how King County should submit the Tier I and Tier II Corrective Action Reports and where they will be stored so the public can access this information.

- Special Condition S.11.E outlines engineering reports and plan requirements, including the need to submit a Quality Assurance Project Plan to Ecology. We suggest that Ecology add “for approval” to clarify the role that Ecology will have on the QAPP.
- The Fact Sheet history on pages 11-12 completely misses the July 2019 West Point Wastewater Treatment Plant power failure that led to the discharge of inadequately treated sewage to Puget Sound. This then led to beach closures, shellfish closures, and people exposed to sewage pollution, including participants in the annual Canoe Journey. The Suquamish Tribe noted this impact in its Notice of Intent to Sue King County, that then led to a negotiated Settlement Agreement requiring King County to provide adequate power and backup power to West Point, among other provisions. Ecology also issued stipulated penalties for CSO violations in December 2022, which are an important part of the Administrative Record for this facility. Ecology needs to add this important context to the history in the Fact Sheet.
- In the Fact Sheet sections summarizing water quality in the receiving waters, data are averaged over the entire water column. This is not appropriate for parameters such as dissolved oxygen, especially where the water quality standards specifically preclude averaging that would hide an impairment. We suggest that the DO values in Table 11, Table 13, and Table 15 be updated to present the minimum DO values and not the water column average. Similarly, the 90<sup>th</sup> percentile high values are not appropriate for this parameter and should be interpreted as the 10<sup>th</sup> percentile to remain consistent with the intent of the other water quality parameters like metals, where higher values are worse. For DO, lower values are worse and these tables hide the problematic water quality.
- Fact Sheet page 11, first paragraph contains a typographical error: “... two small community wastewater treatment plants....”



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Thank you again for the opportunity to comment on the draft permit. If you have questions on these comments, please do not hesitate to contact us.

Sincerely,

Mindy Roberts, Ph.D., P.E.

Jamie Hearn

Puget Sound Program Director

Superfund Program Manager

Washington Conservation Action

Duwamish River Community Coalition

## **ATTACHMENTS (see separate files)**

ATTACHMENT 1 – Effects of Nutrient and Carbon Loadings on Dissolved Oxygen and Ocean Acidification Conditions in Puget Sound – Scientific Perspectives, Mindy Roberts, Washington Environmental Council (March 16, 2020).

ATTACHMENT 2 – Clean Water Plan Strategies: Need for Increased Transparency around Costs, Risks, and Guiding Principles, King County Auditor’s Office Report, September 2021. (<https://kingcounty.gov/~media/depts/auditor/new-web-docs/cpo-reports/cwp/cwp-letter-2021.ashx?la=en>)