

CASCADE WATER ALLIANCE

Municipal Corporation under Ch 39.106 RCW, The Joint Municipal Utilities Service Act

Members of Cascade Water Alliance

- City of Bellevue
- City of Issaquah
- City of Kirkland
- City of Redmond
- Sammamish Plateau Water and Sewer District
- Skyway Water and Sewer District
- City of Tukwila

Municipal Corporation

Cascade Water Alliance (“Cascade”) is a municipal corporation initially formed in 1999 as a nonprofit corporation under the terms of an interlocal agreement on April 1, 1999. The State Legislature in 2011 enacted the Joint Municipal Utility Services Act (the “Act”), which provided Cascade Members with the authority to convert the non-profit to a joint municipal utility services authority. Based on compliance with the requirements of Act, the Members agreed to such conversion by entering into the Cascade Joint Municipal Utilities Services Agreement, dated March 28, 2012 (the “Joint Agreement”). As a result, Cascade is a joint municipal utility services authority, or an "Authority" as defined in RCW 39.106.020(2). For reference, the complete Act is appended to the end of this overview.

Cascade’s Regional Mission

Cascade serves as a regional wholesale water supplier to the Members, which own independent water systems. The Members formed Cascade to enhance their ability to supply water to their respective service areas and the region by developing, owning and operating regional water supply and transmission assets.

Under the Joint Agreement Cascade’s purposes include to (underlining added):

(i) provide a safe, reliable and high quality drinking water supply to meet the current and projected demands of the Members, and for non-Members as determined by Cascade, and to carry out this task in a coordinated, cost-effective, and environmentally sensitive manner;

(vi) coordinate and plan cooperatively with other regional or local water utilities and other entities to maximize supply availability and to minimize system costs;

(vii) develop a Water Supply Plan addressing the needs of Cascade and the Members and Cascade itself and develop a regional water supply plan with other water providers as Cascade may find convenient or necessary to meet regional, state and federal planning requirements, and to take a leadership role in developing and coordinating those supply plans;

Central to Cascade’s mission is a regional approach to addressing the uncertainties of water supply in the face of a changing climate. The desire for a regional approach propelled these cities and districts to form a new separate municipal corporation, to jointly contract with Seattle and Tacoma for long-term water supply, and to purchase the Lake Tapps Reservoir. When Puget Sound Energy ceased operation of the White River Hydroelectric Project, the water rights could have been lost to the region. Instead, the Cascade, on behalf of these cities and districts, issued public bonds, entered into settlement agreements with two tribes and four other cities and saved the Lake Tapps Reservoir as a water supply that benefits the region in the face of uncertainty caused by the changing climate.

This regional strategic approach to water supply planning has proven successful. The flexibility provided by the knowledge of the future availability of the Lake Tapps Reservoir is key to that success. Since the Lake Tapps water rights were issued to Cascade in 2010, Cascade has built solid relationships with local and tribal governments throughout the three county region. It will work with Seattle and Tacoma to maximize use of their developed water supplies and then work within the region for the strategic and timely development and use of the Lake Tapps water rights.

An extension of the development period for the Lake Tapps Reservoir is key to the continued success of regional planning for resilience under the uncertainty caused by a changing climate.

Cascade’s Obligation to its Members

Cascade is responsible for managing, on behalf of the Members, a regional water transmission and supply system, together with any utility systems of Cascade that may be combined with the regional water transmission and supply system (the “System”), pursuant to the Joint Agreement. Cascade is required to plan and to provide water to the Members for use within their existing and future water service area boundaries and has made water supply commitments to the Members under the Joint Agreement.

To meet the water supply requirements of the Members, Cascade purchases water from Seattle under a 50-year Declining Block Water Supply Agreement (the “Seattle Agreement”) and Cascade has entered into a wholesale water purchase agreement with the city of Tacoma to supplement water purchased from Seattle (the “Tacoma Agreement”).

Water purchased under the Seattle Agreement and Tacoma Agreement is expected to serve as Cascade’s primary water supply source through 2040. Cascade anticipates developing Lake Tapps, located in Pierce County (adjacent to King County), for long-term water supply. Based on Cascade’s demand forecast, the Lake Tapps supply will offer capacity sufficient to meet the needs

of the current Members beyond the needs expected to be met through the Seattle Agreement and the Tacoma Agreement.

Lake Tapps Reservoir

Cascade purchased certain assets from Puget Sound Energy referred to as the Lake Tapps assets for a cost of \$40,000,000. Cascade subsequently worked with the State Department of Ecology to secure municipal water rights, which were issued in December 2010. Cascade also entered into agreements with the Muckleshoot Indian Tribe, the Puyallup Tribe of Indians, the Lake Tapps community and the cities of Auburn, Bonney Lake, Buckley and Sumner which address issues related to operations of Lake Tapps and provision of regional water supply.

To utilize Lake Tapps as a water source, Cascade is required to develop and construct infrastructure, including building a water treatment facility and transmission pipeline. The Transmission and Supply Plan includes a timeline for construction of the improvements to the facilities of Lake Tapps, which is expected to be needed no earlier than 2040. Lake Tapps is permitted to provide Cascade a permanent supply of 48.5 MGD of water (average daily demand) each year, with the ability to produce up to 80.0 MGD on a peak day basis.

Transmission and Supply Plan

In 2018, the Board adopted a four-year extension to its Transmission and Supply Plan required by the State Department of Health. The plan defines a resource strategy designed to meet the projected supply needs of the Members through 2060, including purchase of water from Seattle and Tacoma, acquisition and development of transmission facilities, and development of new water supply sources and treatment facilities. If Cascade is able to obtain additional water under new or amended water purchase contracts, development of the Lake Tapps supply could be further delayed. Lake Tapps is a regional asset and that delaying its development will facilitate regional coordination through the Seattle and Tacoma Agreements.

Water Supply Forum

Cascade is a founding member of the [Water Supply Forum](#). The purpose of the Forum is to provide leadership, from the utility perspective, on current and future regional water supply and related water resources issues in King, Pierce and Snohomish counties. Member agencies are:

- Alderwood Water & Wastewater District
- Bellevue Utilities
- Cascade Water Alliance
- City of Auburn
- City of Everett
- City of Kent
- Covington Water District
- Everett Water Utility Committee
- King County
- Lakehaven Water & Sewer District

- Regional Water Cooperative of Pierce County
- Seattle Public Utilities
- Tacoma Water

The Forum addresses current and future water supply issues, including supply system resiliency, planning, policy and regulation, and environmental stewardship. It is comprised of representatives of public water systems and local governments in Washington state's central Puget Sound region. Working cooperatively, the Forum's members promote the reliable delivery of safe, clean water throughout the region.

Chapter 39.106 RCW

JOINT MUNICIPAL UTILITY SERVICES

Sections

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 - 39.106.020** Definitions.
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 - 39.106.040** Corporate powers of authorities.
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 - 39.106.060** Authority of members to assist authority and to transfer funds, property, and other assets.
 - 39.106.070** Tax exemptions and preferences.
 - 39.106.080** Conversion of existing entities into authorities.
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RCW 39.106.010

Short title—Purpose—Intent—2011 c 258.

(1) Chapter 258, Laws of 2011 shall be known as the joint municipal utility services act.

(2) It is the purpose of chapter 258, Laws of 2011 to improve the ability of local government utilities to plan, finance, construct, acquire, maintain, operate, and provide facilities and utility services to the public, and to reduce costs and improve the benefits, efficiency, and quality of utility services.

(3) Chapter 258, Laws of 2011 is intended to facilitate joint municipal utility services and is not intended to expand the types of services provided by local governments or their utilities. Further, nothing in chapter 258, Laws of 2011 is intended to alter the regulatory powers of cities, counties, or other local governments or state agencies that exercise such powers. Further, nothing in chapter 258, Laws of 2011 may be construed to alter the underlying authority of the units of local government that enter into agreements under chapter 258, Laws of 2011 or to diminish in any way the authority of local governments to enter into agreements under chapter 39.34 RCW or other applicable law.

[2011 c 258 § 1.]

RCW [39.106.020](#)

Definitions.

The definitions in this section apply throughout this chapter unless the context clearly requires otherwise.

(1) "Agreement" means a joint municipal utility services agreement, among members, that forms an authority, as more fully described in this chapter.

(2) "Authority" means a joint municipal utility services authority formed under this chapter.

(3) "Board of directors" or "board" means the board of directors of an authority.

(4) "Member" means a city, town, county, water-sewer district, public utility district, other special purpose district, municipal corporation, or other unit of local government of this or another state that provides utility services, and any Indian tribe recognized as such by the United States government, that is a party to an agreement forming an authority.

(5) "Utility services," for purposes of this chapter, means any or all of the following functions: The provision of retail or wholesale water supply and water conservation services; the provision of wastewater, sewage, or septage collection, handling, treatment, transmission, or disposal services; the provision of point and nonpoint water pollution monitoring programs; the provision for the generation, production, storage, distribution, use, or management of reclaimed water; and the management and handling of stormwater, surface water, drainage, and flood waters.

[[2011 c 258 § 2.](#)]

RCW [39.106.030](#)

Formation of authorities—Characteristics—Substantive powers.

(1) An authority may be formed by two or more members pursuant to this chapter by execution of a joint municipal utility services agreement that materially complies with the requirements of RCW [39.106.050](#). Except as otherwise provided in RCW [39.106.080](#), at the time of execution of an agreement each member must be providing the type of utility service or services that will be provided by the authority. The agreement must be approved by the legislative authority of each of the members. The agreement must be filed with the Washington state secretary of state, who must provide a certificate of filing with respect to any authority. An authority shall be deemed to have been formed as of the date of that filing. The formation and activities of an authority, and the admission or withdrawal of

members, are not subject to review by any boundary review board. Any amendments to an agreement must be filed with the Washington state secretary of state, and will become effective on the date of filing.

(2) An authority is a municipal corporation. Subject to RCW [39.106.040](#)(3), the provisions of a joint municipal utility services agreement, and any limitations imposed pursuant to RCW [39.106.050](#): (a) An authority may perform or provide any or all of the utility service or services that all of its members, other than tribal government members, perform or provide under applicable law; and (b) in performing or providing those utility services, an authority may exercise any or all of the powers described in RCW [39.106.040](#)(1).

(3) An authority shall be entitled to all the immunities and exemptions that are available to local governmental entities under applicable law, including without limitation the provisions of chapter [4.96](#) RCW. Notwithstanding this subsection (3), if all of an authority's members are the same type of Washington local government entity, then the immunities and exemptions available to that type of entity shall govern.

(4) Nothing in this chapter shall diminish a member's powers in connection with its provision or management of utility services, or its taxing power with respect to those services, nor does this chapter diminish in any way the authority of local governments to enter into agreements under chapter [39.34](#) RCW or other applicable law.

(5) Nothing in this chapter shall impair or diminish a valid water right, including rights established under state law and rights established under federal law.

[[2011 c 258 § 3.](#)]

RCW [39.106.040](#)

Corporate powers of authorities.

(1) For the purpose of performing or providing utility services, and subject to subsection (3) of this section and RCW [39.106.050](#), an authority has and is entitled to exercise the following powers:

(a) To sue and be sued, complain and defend, in its corporate name;

(b) To have a corporate seal which may be altered at pleasure, and to use the same by causing it, or a facsimile thereof, to be impressed or affixed or in any other manner reproduced;

(c) To purchase, take, receive, take by lease, condemn, receive by grant, or otherwise acquire, and to own, hold, improve, use, operate, maintain, add to, extend, and fully control the use of and otherwise deal in and with, real or personal

property or property rights, including without limitation water and water rights, or other assets, or any interest therein, wherever situated;

(d) To sell, convey, lease out, exchange, transfer, surplus, and otherwise dispose of all or any part of its property and assets;

(e) To incur liabilities for any of its utility services purposes, to borrow money at such rates of interest as the authority may determine, to issue its bonds, notes, and other obligations, and to pledge any or all of its revenues to the repayment of bonds, notes, and other obligations;

(f) To enter into contracts for any of its utility services purposes with any individual or entity, both public and private, and to enter into intergovernmental agreements with its members and with other public agencies;

(g) To be eligible to apply for and to receive state, federal, and private grants, loans, and assistance that any of its members are eligible to receive in connection with the development, design, acquisition, construction, maintenance, and/or operation of facilities and programs for utility services;

(h) To adopt and alter rules, policies, and guidelines, not inconsistent with this chapter or with other laws of this state, for the administration and regulation of the affairs and assets of the authority;

(i) To obtain insurance, to self-insure, and to participate in pool insurance programs;

(j) To indemnify any officer, director, employee, volunteer, or former officer, employee, or volunteer, or any member, for acts, errors, or omissions performed in the exercise of their duties in the manner approved by the board;

(k) To employ such persons, as public employees, that the board determines are needed to carry out the authority's purposes and to fix wages, salaries, and benefits, and to establish any bond requirements for those employees;

(l) To provide for and pay pensions and participate in pension plans and other benefit plans for any or all of its officers or employees, as public employees;

(m) To determine and impose fees, rates, and charges for its utility services;

(n) Subject to RCW [39.106.050](#)(20), to have a lien for delinquent and unpaid rates and charges for retail connections and retail utility service to the public, together with recording fees and penalties (not exceeding eight percent) determined by the board, including interest (at a rate determined by the board) on such rates, charges, fees, and penalties, against the premises to which such service has been furnished or is available, which lien shall be superior to all other liens and encumbrances except general taxes and local and special assessments;

(o) To make expenditures to promote and advertise its programs, educate its members, customers, and the general public, and provide and support conservation and other practices in connection with providing utility services;

(p) With the consent of the member within whose geographic boundaries an authority is so acting, to compel all property owners within an area served by a wastewater collection system owned or operated by an authority to connect their private drain and sewer systems with that system, or to participate in and follow the requirements of an inspection and maintenance program for on-site systems, and to pay associated rates and charges, under such terms and conditions, and such penalties, as the board shall prescribe by resolution;

(q) With the consent of the member within whose geographic or service area boundaries an authority is so acting, to create local improvement districts or utility local improvement districts, to impose and collect assessments and to issue bonds and notes, all consistent with the statutes governing local improvement districts or utility local improvement districts applicable to the member that has provided such consent. Notwithstanding this subsection (1)(q), the guaranty fund provisions of chapter [35.54](#) RCW shall not apply to a local improvement district created by an authority;

(r) To receive contributions or other transfers of real and personal property and property rights, money, other assets, and franchise rights, wherever situated, from its members or from any other person;

(s) To prepare and submit plans relating to utility services on behalf of itself or its members;

(t) To terminate its operations, wind up its affairs, dissolve, and provide for the handling and distribution of its assets and liabilities in a manner consistent with the applicable agreement;

(u) To transfer its assets, rights, obligations, and liabilities to a successor entity, including without limitation a successor authority or municipal corporation;

(v) Subject to subsection (3) of this section, RCW [39.106.050](#), and applicable law, to have and exercise any other corporate powers capable of being exercised by any of its members in providing utility services.

(2) An authority, as a municipal corporation, is subject to the public records act (chapter [42.56](#) RCW), the open public meetings act (chapter [42.30](#) RCW), and the code of ethics for municipal officers (chapter [42.23](#) RCW), and an authority is subject to audit by the state auditor under chapter [43.09](#) RCW.

(3) In the exercise of its powers in connection with performing or providing utility services, an authority is subject to the following:

(a) An authority has no power to levy taxes.

(b) An authority has the power of eminent domain as necessary to perform or provide utility services, but only if all of its members, other than tribal government members, have powers of eminent domain. Further, an authority may exercise the power of eminent domain only pursuant to the provisions of

Washington law, in the manner and subject to the statutory limitations applicable to one or more of its Washington local government members. If all of its members are the same type of Washington governmental entity, then the statute governing the exercise of eminent domain by that type of entity shall govern. An authority may not exercise the power of eminent domain with respect to property owned by a city, town, county, special purpose district, authority, or other unit of local government, but may acquire or use such property under mutually agreed upon terms and conditions.

(c) An authority may pledge its revenues in connection with its obligations, and may acquire property or property rights through and subject to the terms of a conditional sales contract, a real estate contract, or a financing contract under chapter [39.94](#) RCW, or other federal or state financing program. However, an authority must not in any other manner mortgage or provide security interests in its real or personal property or property rights. As a local governmental entity without taxing power, an authority may not issue general obligation bonds. However, an authority may pledge its full faith and credit to the payment of amounts due pursuant to a financing contract under chapter [39.94](#) RCW or other federal or state financing program.

(d) In order for an authority to provide a particular utility service in a geographical area, one or more of its members must have authority, under applicable law, to provide that utility service in that geographical area.

(e) As a separate municipal corporation, an authority's obligations and liabilities are its own and are not obligations or liabilities of its members except to the extent and in the manner established under the provisions of an agreement or otherwise expressly provided by contract.

(f) Upon its dissolution, after provision is made for an authority's liabilities, remaining assets must be distributed to a successor entity, or to one or more of the members, or to another public body of this state.

[[2011 c 258 § 4.](#)]

RCW [39.106.050](#)

Elements of joint municipal utility services agreements.

A joint municipal utility services agreement that forms and governs an authority must include the elements described in this section, together with such other provisions an authority's members deem appropriate. However, the failure of an agreement to include each and every one of the elements described in this section shall not render the agreement invalid. An agreement must:

(1) Identify the members, together with conditions upon which additional members that are providing utility services may join the authority, the conditions upon which members may or must withdraw, including provisions for handling of relevant assets and liabilities upon a withdrawal, and the effect of boundary adjustments of the authority and boundary adjustments between or among members;

(2) State the name of the authority;

(3) Describe the utility services that the authority will provide;

(4) Specify how the number of directors of the authority's board will be determined, and how those directors will be appointed. Each director on the board of an authority must be an elected official of a member. Except as limited by an agreement, an authority's board may exercise the authority's powers;

(5) Describe how votes of the members represented on the authority's board are to be weighted, and set forth any limitations on the exercise of powers of the authority's board, which may include, by way of example, requirements that certain decisions be made by a supermajority of members represented on an authority's board, based on the number of members and/or some other factor or factors, and that certain decisions be ratified by the legislative authorities of the members;

(6) Describe how the agreement is to be amended;

(7) Describe how the authority's rules may be adopted and amended;

(8) Specify the circumstances under which the authority may be dissolved, and how it may terminate its operations, wind up its affairs, and provide for the handling, assumption, and/or distribution of its assets and liabilities;

(9) List any legally authorized substantive or corporate powers that the authority will not exercise;

(10) Specify under which personnel laws the authority will operate, which may be the personnel laws applicable to any one of its Washington local government members;

(11) Specify under which public works and procurement laws the authority will operate, which may be the public works and procurement laws applicable to any one of its Washington local government members;

(12) Consistent with RCW [39.106.040](#)(3)(b), specify under which Washington eminent domain laws any condemnations by the authority will be subject;

(13) Specify how the treasurer of the authority will be appointed, which may be an officer or employee of the authority, the treasurer or chief finance officer of any Washington local government member, or the treasurer of any Washington county in which any member of the authority is located. However, if the total number of utility customers of all of the members of an authority does not exceed two thousand five hundred, the treasurer of an authority must be either the

treasurer of any member or the treasurer of a county in which any member of the authority is located;

(14) Specify under which Washington state statute or statutes surplus property of the authority will be disposed;

(15) Describe how the authority's budgets will be prepared and adopted;

(16) Describe how any assets of members that are transferred to or managed by the authority will be accounted for;

(17) Generally describe the financial obligations of members to the authority;

(18) Describe how rates and charges imposed by the authority, if any, will be determined. An agreement may specify a specific Washington state statute applicable to one or all of its members for the purpose of governing rate-setting criteria applicable to retail customers, if any;

(19) Specify the Washington state statute or statutes under which bonds, notes, and other obligations of the authority will be issued for the purpose of performing or providing utility services, which must be a bond issuance statute applicable to one or more of its members other than a tribal member. If all of its members are the same type of Washington governmental entity, then a Washington state statute or statutes governing the issuance of bonds, notes, and other obligations issued by that type of entity shall govern;

(20) Specify under which Washington state statute or statutes any liens of an authority shall be exercised, which must be statutes applicable to the type or types of utility service for which the lien shall apply. Further, if all of its members are the same type of Washington governmental entity, then the statute or statutes governing that type of entity shall govern;

(21) Include any other provisions deemed necessary and appropriate by the members.

[[2011 c 258 § 5.](#)]

RCW [39.106.060](#)

Authority of members to assist authority and to transfer funds, property, and other assets.

For the purpose of assisting the authority in providing utility services, the members of an authority are authorized, with or without payment or other consideration and without submitting the matter to the electors of those members, to lease, convey, transfer, assign, or otherwise make available to an authority any money, real or personal property or property rights, other assets including licenses, water rights (subject to applicable law), other property (whether held by a

member's utility or by a member's general government), or franchises or rights thereunder.

[[2011 c 258 § 6.](#)]

RCW 39.106.070

Tax exemptions and preferences.

(1) As a municipal corporation, the property of an authority is exempt from taxation.

(2) An authority is entitled to all of the exemptions from or preferences with respect to taxes that are available to any or all of its members, other than a tribal member, in connection with the provision or management of utility services.

[[2011 c 258 § 7.](#)]

RCW 39.106.080

Conversion of existing entities into authorities.

(1) Any intergovernmental entity formed under chapter [39.34](#) RCW or other applicable law may become a joint municipal utility services authority and be entitled to all the powers and privileges available under this chapter, if: (a) The public agencies that are parties to an existing interlocal agreement would otherwise be eligible to form an authority to provide the relevant utility services; (b) the public agencies that are parties to the existing interlocal agreement amend, restate, or replace that interlocal agreement so that it materially complies with the requirements of [RCW 39.106.050](#); (c) the amended, restated, or replacement agreement is filed with the Washington state secretary of state consistent with [RCW 39.106.030](#); and (d) the amended, restated, or replacement agreement expressly provides that all rights and obligations of the entity formerly existing under chapter [39.34](#) RCW or other applicable law shall thereafter be the obligations of the new authority created under this chapter. Upon compliance with those requirements, the new authority shall be a successor of the former intergovernmental entity for all purposes, and all rights and obligations of the former entity shall transfer to the new authority. Those obligations shall be treated as having been incurred, entered into, or issued by the new authority, and those obligations shall remain in full force and effect and shall continue to be enforceable in accordance with their terms.

(2) If an interlocal agreement under chapter [39.34](#) RCW or other applicable law relating to utility services includes among its original participants a city or county that does not itself provide or no longer provides utility services, that city or

county may continue as a party to the amended, restated, or replacement agreement and shall be treated as a member for all purposes under this chapter.
[[2011 c 258 § 8.](#)]

RCW [39.106.090](#)

Powers conferred by chapter are supplemental.

The powers and authority conferred by this chapter shall be construed as in addition and supplemental to powers or authority conferred by any other law, and nothing contained in this chapter shall be construed as limiting any other powers or authority of any member or any other entity formed under chapter [39.34](#) RCW or other applicable law.

[[2011 c 258 § 9.](#)]