



## Washington Water Utilities Council

### ***Memorandum***

Date: January 20, 2017

To: PNWS/AWWA Trustees

From: Joan Kersnar, Chair

RE: Washington Water Utilities Council – Winter 2017 Committee Report

### **Activities and Focus for 2017**

The WWUC continues to monitor and participate on behalf of the water industry in relevant litigation, regulation, and legislation. The significant areas of focus over the past several months since our last report are specifically addressed below.

### **Legislative Activities**

The WWUC serves as a state legislative monitoring, information, and coordination resource for its member utilities. As we prepare for the 2017 legislative session, WWUC members are aware of several key points that will affect our efforts:

- Last November's elections determined the makeup and control of the Washington State House, Senate and Governor's Office. Republicans remain the majority in the Senate and Democrats in the House, both by slim margins, and the Democratic Governor was re-elected
- This year will be a 105-day legislative session. With the legislature needing to find billions of dollars to fund education to meet the state Supreme Court's *McCleary* decision, most observers expect a long session, with one or more special sessions a strong possibility.
- Recent water-related court cases will play heavily into legislators' thinking heading into the 2017 legislative session. To provide some guidance to the WWUC and its members, the WWUC Water Right Committee is preparing an "Exempt Well Issues Summary and Options Paper". This is primarily in response to the recent Hirst Decision which has put the onus of verifying water availability on individual property owners. This, in turn, has led to individuals and counties asking WWUC members for water or a portion of their water rights.

## **Regulatory Activities**

The WWUC routinely analyzes proposed Washington State agency guidance and policy documents, as well as rules and regulations, for their impact on WWUC members. We also regularly discuss proposals with agencies and provide informal and/or formal review and comment. In addition, the WWUC participates in or tracks stakeholder processes convened by state agencies to address pressing water issues. Below are some of the major activities underway:

- The WWUC is continuing to work with the Department of Health and Department of Ecology on water rights issues relating to small or failing water system consolidation.
- The WWUC is also tracking and providing input to the update to Washington State's Drought Contingency Plan, which is to be completed before July 2017.

## **Judicial Activities**

The WWUC monitors court cases and appeals involving water rights and other relevant legal issues. A considerable amount of both committee and meeting time is dedicated to this work.

In October 2016, the Washington Supreme Court issued its much-anticipated decision in *Whatcom County v. Hirst and Western Washington Growth Management Hearings Board*. Although the case did not directly involve a water utility or water rights, the Hirst decision will have significant indirect effects on water utilities and it is already driving water policy debates in the new legislative session, as noted earlier. In the case, the challengers (*Hirst*) alleged that Whatcom County's comprehensive plan provisions regarding water resources and water quality did not comply with the Growth Management Act (GMA). The county plan provided that it would rely on the State Department of Ecology's regulations and guidance as to water availability when the county decides an application for land development that would use a new domestic well for water supply. The Court disagreed that the county's approach met the GMA requirement and ruled that the act places an "independent responsibility" on counties to "ensure water availability" when approving land developments. The primary reason given by the Court was that the county's plan resulted in new water withdrawals that deplete minimum instream flows because Ecology had not closed the area to new water allocations. The Hirst decision has generated substantial controversy about how counties will comply with the decision, the relative roles of counties and Ecology as the state agency, the practical challenges of new water supply in rural areas with minimum instream flows, and whether state law should be amended to change or respond to the decision. Because municipal utilities are seen as a potential source of water or other role, WWUC is tracking legislative proposals and administrative reactions and initiatives in response to the court decision.

In addition, WWUC is continuing to track appeals arising from or in the context of water right actions following a small system water system consolidation, which relates to the inter-agency effort described above. The WWUC continues to be concerned about how the Department of Ecology is implementing provisions of the 2003 Municipal Water Law and is monitoring agency steps and any appeals.

We are also tracking some cases moving through hearing boards and lower courts regarding challenges to Department of Ecology's instream flow rules, the extent to which aesthetic flows are entitled to public interest protection, and appeals of water right decisions.

## **Membership and Financial Situation**

Overall, we continue to have good attendance at meetings and active participation in decisions. The work of the WWUC is well appreciated and respected throughout the water community in Washington State and also by affected stakeholders. We anticipate staying active throughout the legislative session and engaging in litigation that pertains to our mission.