

Who Pays for Fire Hydrants



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What We Know



Legal Principles from three Washington Supreme Court cases

Okeson v. Seattle (2003)

Lane v. Seattle (2003)

Tacoma v. Bonney Lake (2012)

Background of *Lane v. Seattle*

In 2003, the Washington Supreme Court ruled in *Okeson v. Seattle* that street lights are a governmental function because they benefit the general public (not a proprietary function which provides individual benefit).

Seattle must be pay for street lights out of the City's general fund.

Seattle was required to refund the cost of street lights to rate payers.

Seattle argued the cost to maintain fire hydrants was also a governmental function, yet cost paid by ratepayers.

Lane Summary

In 2008, the Washington Supreme Court ruled in *Lane v. Seattle* that providing fire hydrants is a governmental function providing a general benefit and must be paid for out of the general fund.

Seattle Excise Tax on SPU was lawful.

Lake Forest Park had to pay for fire hydrants provided by Seattle (RCW 43.09.210 – “true and full value”).

Seattle must refund the cost of fire hydrants to ratepayers for a 3-year period plus 12% interest.

Lane Rule

“. . . providing hydrants is a government responsibility for which the general government of the area must pay . . .”

Tacoma v. Bonney Lake (2012)

After *Lane*, Tacoma stopped billing ratepayers for hydrants; billed other cities and counties who refused to pay.

Supreme Court confirmed franchise agreements are contracts; the contracts required Tacoma to provide the jurisdictions with water systems.

During the contracts, Tacoma had provided and paid for hydrants as part of its water system (“course of dealing”) and therefore had to continue to pay for hydrants.

Tacoma could expressly exclude hydrants (and the responsibility for their costs) from future franchise agreements.

Summary

- **City utilities can't recover fire hydrant costs from retail ratepayers**
- **Cities with water utilities must pay for fire hydrants out of the city's general fund**
- **Cities may generate revenue to pay for fire hydrants from utility taxes**
- **Cities serving in other jurisdictions may recover hydrant costs from those jurisdictions, unless a franchise requires the water utility to pay for hydrants**

What We Don't Know

Legal Questions after the *Lane* and
Tacoma Decisions

1. **When are Hydrants a “governmental” function and when are they a “proprietary” function?**

2. **Regarding the term “fire hydrants” used in the *Lane* and *Tacoma* decisions:**
 - **Is there a standard or recognized definition of fire hydrants?**

 - **How much latitude do utilities have in defining fire hydrants?**

3. Could any of the following factors determine governmental/proprietary function as to hydrants?

- Extraterritoriality
- Facilities v. provisions of water
- Nature of water utility entity
- Presence or absence of a franchise

4. *Lane* and *Tacoma* both involve city water utilities. Do the principles of the cases apply to other entities?

- Water districts
- Public utility districts
- Port districts
- Non-governmental water systems (e.g. mutuals, co-ops, for profits)



"GOOD SCHOOLS... NICE NEIGHBORHOODS...
PLENTY OF HYDRANTS..."

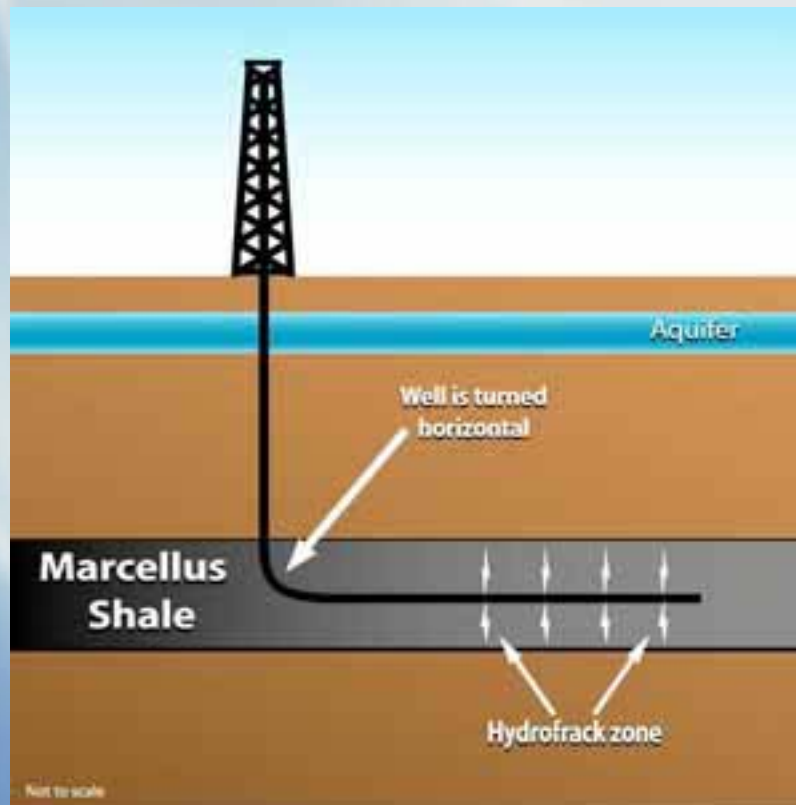
Fracking and Water

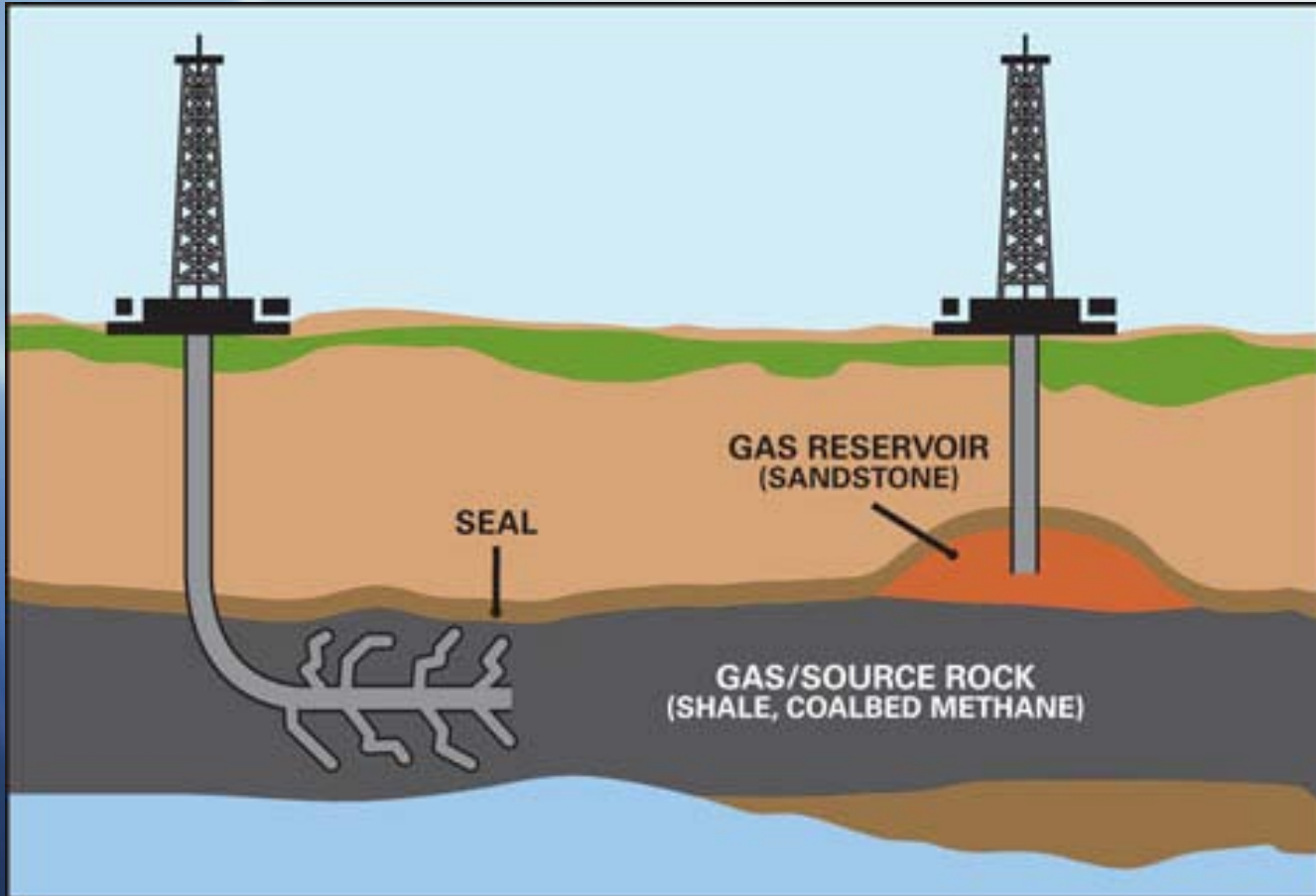
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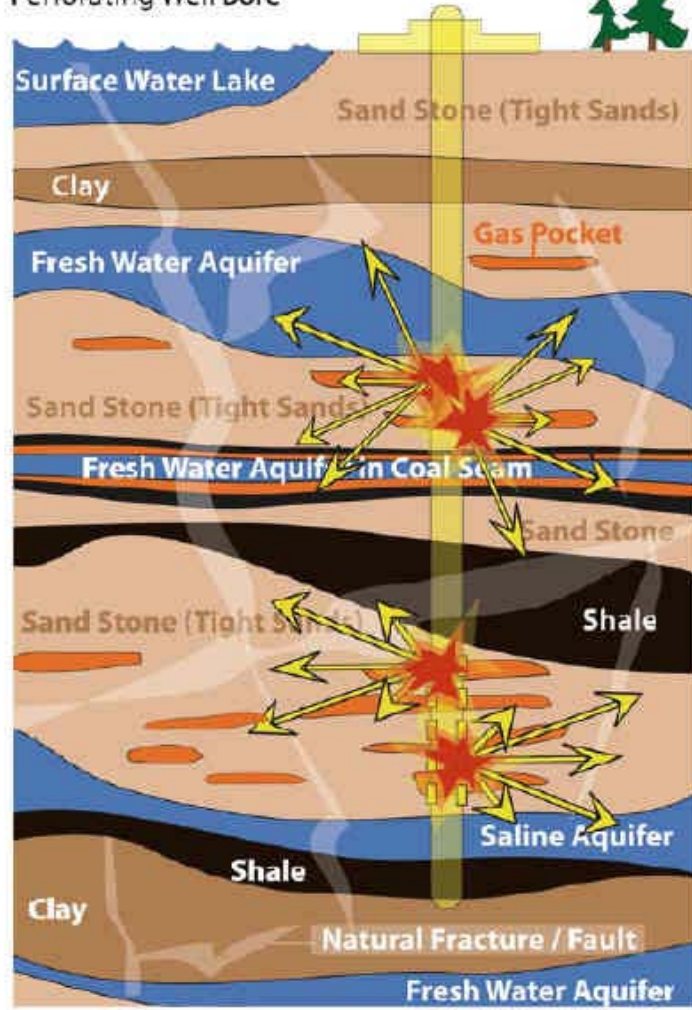
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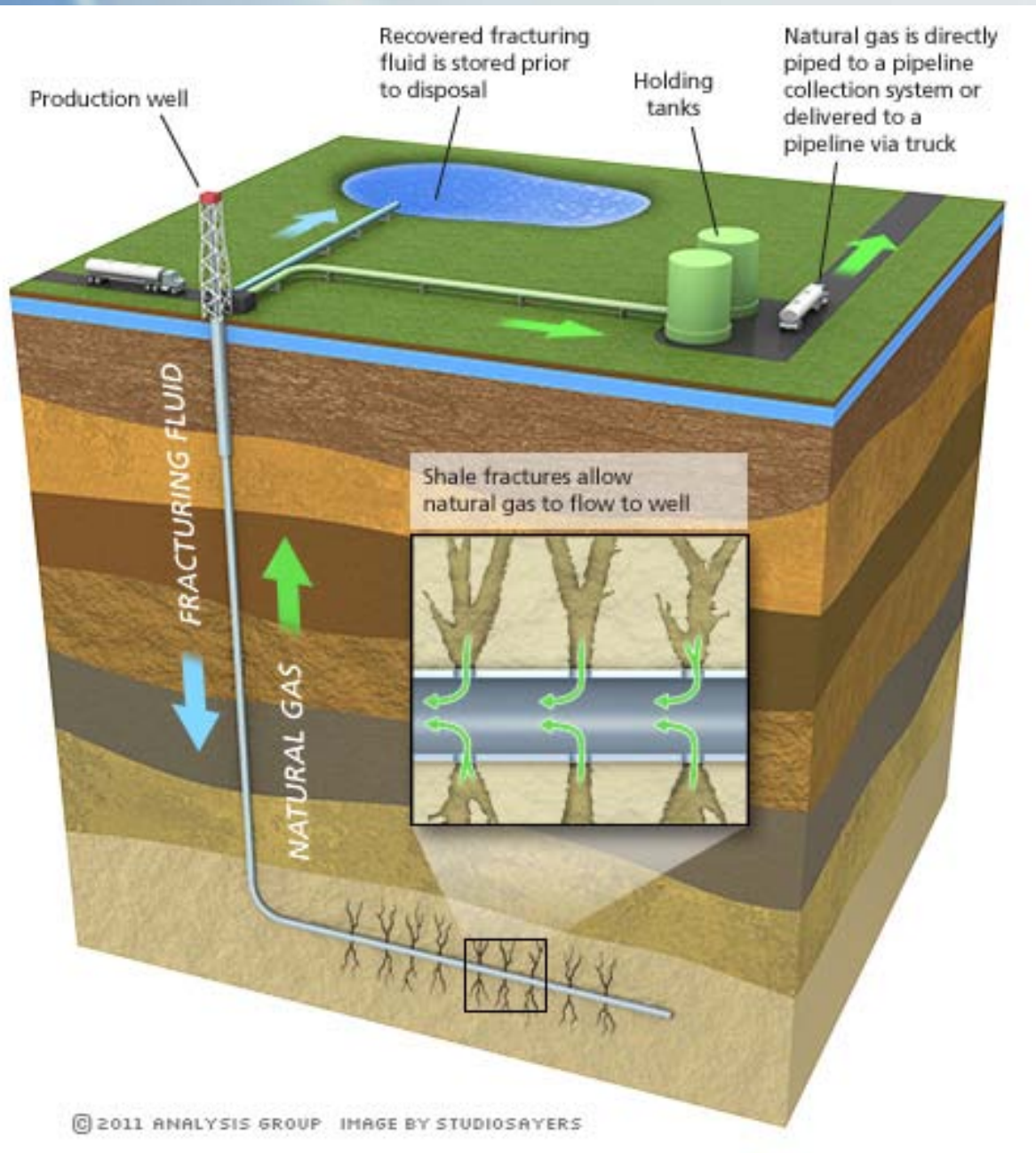
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Hydraulic Fracing Diagram 3 Perforating Well Bore







Source: Modern Shale Gas Development in the United States, US Department of Energy

North American shale plays (as of May 2011)



Sources: U.S. Energy Information Administration based on data from various published studies. Canada and Mexico plays from ARI.
 Updated: May 9, 2011

More information

- fracfocus.org
- epa.gov/hydraulicfracture
- National Geographic: Breaking Fuel from the Rock
- Gaslands (the movie)

The Board, Values, And General Manager Selection: The Soft Stuff Matters

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Kim Anderson

Sunrise Water Authority



Board

Values

Selection

Business Case

Employee Engagement

Retention

Talent Acquisition

Customer Satisfaction >

General Manager

Key Performance
Indicators

Customers



Questions?

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What Public Officials Need to Know about Tap Water

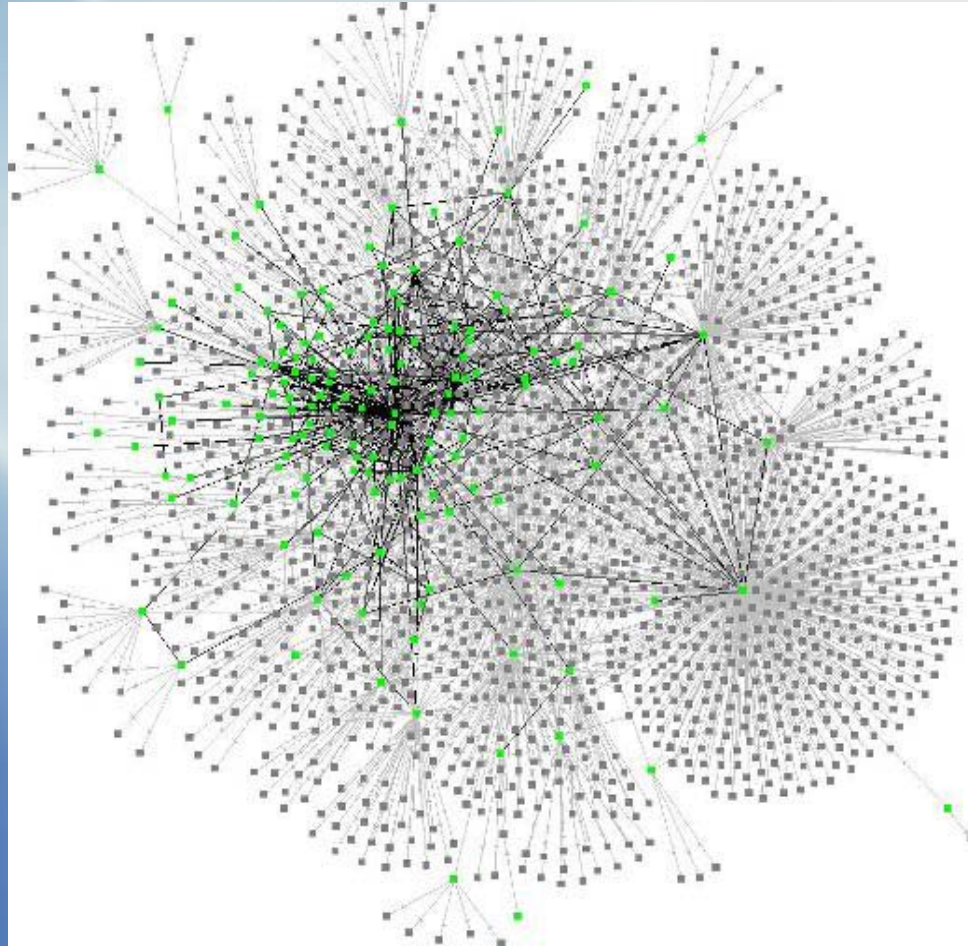
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It's complicated



Board/Commission Governance

- Policy not projects
- John Carver: Policy Governance

Know the Law

- Your responsibilities
- Responsibilities of water utility professionals
- Regulations

Water Utility Professionals

- Listen
- Think policy

Public Health

- Clean water was the greatest triumph of the 20th Century
- Standing on the shoulders of the founders of our water systems
- Drinking water is highly regulated

Safe Drinking Water Act

- USEPA
- Oregon Health Authority
- Washington Department of Health
- Idaho Department of Environmental Quality
- California Department of Public Health

Water Rights



**IN THE FUTURE, WARS WILL
BE FOUGHT OVER WATER**

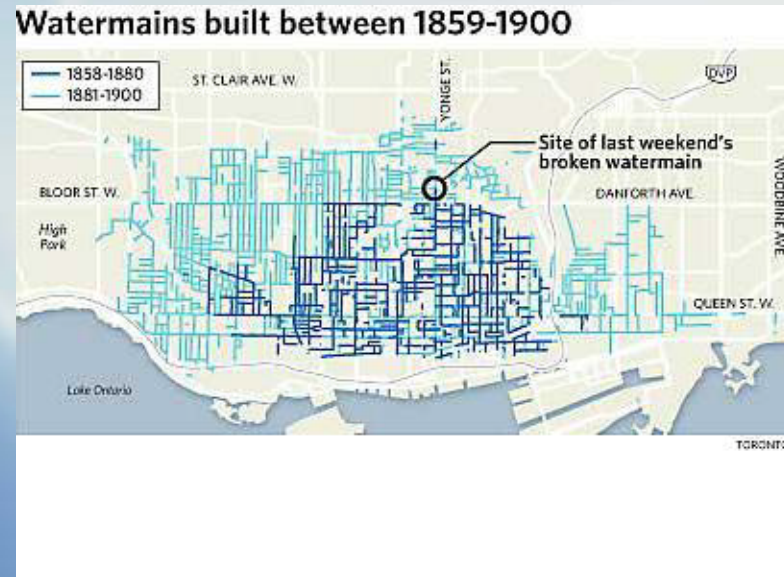
Source to Tap



Treatment

- Chlorine
- Filtration
- Etc., etc.

Delivery System



Strategic Planning

- Aging Infrastructure
- Regional picture
- Resiliency

Water Rates

- Kicking the can down the road?
- Long-term budgets

Workforce Development

- Training
- Licensing
- Next generation

Customer Service

- Listen to all customers
- Represent all customers (even the silent happy ones)

Informed Citizens

- Manage the message
- Educate your public

Leadership

