



Memorandum

Date: September 21, 2018

To: PNWS/AWWA Trustees

From: Doug Quinn, Chair

RE: Washington Water Utilities Council Fall 2018 Committee Report

Activities and Focus for 2018

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 noted below.

Legislative Activities

The WWUC serves as a state legislative monitoring, information, and coordination resource for its member utilities. In the 2018, the Washington State Legislature passed a bill addressing two recent Supreme Court decisions referred to as the Hirst case, which pertains to impacts by “permit exempt” wells on instream flows, and the Foster case, challenging the State’s authority to issue water rights that rely upon “out-of-kind” mitigation to address impacts to in-stream flows.

Under Engrossed Substitute Senate Bill (ESSB) 6091, the legislature deferred resolution of the Foster mitigation issues and established a pilot program for five applications, a legislative task force, and report to legislature to inform future policymaking. This new legislation contemplates that the legislature will consider future measures on water resources mitigation that are informed by the work of the task force and the outcomes of the pilot applications. The legislation specifically called for representation on the legislative force by “an organization representing municipal water purveyors” and the WWUC has filled this seat on the task force. This task force work is a significant legislative activity for WWUC over the next year and will involve developing policy approaches and comments on the state’s implementation of ESSB 6091 to support the WWUC’s representative.

The WWUC will track and monitor water legislation to be proposed in the upcoming 2019 session. The administration will likely propose legislation to reform statutes regarding drought and drought “emergency” and well construction. We have had preliminary discussions with the Department of Ecology about these proposals, and we have already begun to organize for study and input.

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 tracking the Department of Health's rulemaking for PFAS. Mike Means, Director, Office of Drinking Water for DOH, has presented to the Board of Health proposed rulemaking on compounds, including but not limited to PFAS. The current proposal is for the Board to adopt a PFAS state advisory level, not an MCL, to help determine the timing of possible remedial action. The plan is to complete the rulemaking by the end of 2019.

The WWUC continues to monitor new regulations on matters such as installation of Underground Injection Control (UIC) wells, use of reclaimed water in water utility service areas, drought response, and replacement of lead components in water systems.

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. One significant case, *Crown West Realty v Ecology*, now at the state Court of Appeals, has potential implications to municipal water suppliers for protecting their water rights from relinquishment. WWUC has submitted an amicus brief to address these concerns and will continue to actively track this case. The Court of Appeals has scheduled oral argument for October, and a court decision sometime in 2019 seems likely.

The WWUC is also tracking several other court cases relevant to water utilities. There are two challenges to state instream flow rules in the Court of Appeals that should yield new law on the scope of the Department of Ecology's authority to set instream flow levels in rivers. A recent case of keen interest to some utilities was litigated at the trial court in Seattle, and an appeal of the decision is likely. The case involves a novel action by King County to charge utilities "rent" for underground facilities in the rights-of-way of county roads under state law that grants franchise authority to counties. Because this is a case of "first impression," the final outcome for the King County franchise proposal could have statewide consequences for all counties.

The WWUC is continuing to track appeals arising from or in the context of water right actions following a small system water system consolidations, which relates to the inter-agency effort described in prior reports. 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.

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 2019 legislative session and engaging in litigation that pertains to our mission.