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Memorandum

Date: February 11, 2019

To: PNWS/AWWA Trustees

From: Doug Quinn, Chair

RE: Washington Water Utilities Council Winter 2019 Committee Report

**Activities and Focus for 2019**

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. The 2019 session of the Washington State Legislature has been quieter than usual for water legislation, likely because implementation of last session's major water policy bill, Engrossed Substitute Senate Bill 6091—pertaining to impacts of "permit exempt" wells on instream flows, and the State's authority to issue water rights that rely upon "out-of-kind" mitigation of impacts to in-stream flows—is a major focus of policymakers' attention, Department of Ecology staff time, and state financial investment.

Being considered this session are bills that would modify the state's programs that assist local-government utilities in financing their water and sewer projects. A number of bills would modify the state's public works contracting and construction laws, and the state Department of Ecology is promoting a bill to modernize its drought preparedness and planning law, which was drafted with input from a WWUC representative. Bills outlawing gas and oil fracking because of concerns about its impact on water quality and water use, and requiring rapid notification if firefighting foam containing PFAS is used or released into surface- or groundwater, have passed out of committee and could be enacted this session.

As it has done for more than 20 years, this session the WWUC is tracking and monitoring legislation of interest to water utilities, providing weekly written updates and legislative hearing calendars for bills of interest to WWUC members, and holding weekly member conference calls to share information about legislation and help coordinate water utility response and testimony when needed.

**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 new class action lawsuit against the City of Spokane is proceeding in Spokane County superior court in which water customers who are not residents of the city are challenging the lawfulness of "outside" rates.

In addition, we are tracking and evaluating a potential amicus brief role in a lawsuit brought by the state's largest county to adjudicate its franchise authority. The case involves a declaratory judgment action by King County to validate its recent ordinance to charge private and public utilities "rent" for underground facilities in the rights-of-way of county roads. King County named several water-sewer districts as defendants and several additional districts intervened in the trial court proceeding in Seattle. 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 trial court ruled against King County last year, the County has appealed and requested direct review by the Supreme Court, and the briefing schedule begins next month.

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.

### **Water Rights Issues**

With the passing of SB 6091 mentioned above several actions were initiated. A Water Resource Mitigation Joint Legislative Task Force was formed and Bob Hunter was selected to serve on this task force on behalf of the WWUC. To guide his participation, the WWUC developed a Water Resources Mitigation Issue Paper, which articulated the utilities' position on water right mitigation situation both in-kind and out-of-kind. In addition, Watershed Restoration and Enhancement Committees (WREC) were formed for many of the state's watersheds. Their primary purpose is to develop plans for instream resource enhancements that would allow for permit-exempt wells and result in a Net Ecological Benefit (NEB). WWUC members serve on these WRECs throughout the state.

### **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.