

1. Handful of water bills went the distance to final enactment this session

With the conclusion of this year's regular and special legislative sessions we now know which water policy bills passed the House and Senate and were approved or vetoed by Governor Jay Inslee.

Of the water bills followed this session by WPUDA, only six have been enacted:

- **County approval of new small water systems.** [Engrossed Second Substitute House Bill 2061](#) sets conditions allowing county commissioners to approve construction of new or expanding small water systems that need water treatment (for contaminants such as arsenic), but don't have ongoing monitoring to make sure the treatment process is working properly. The bill applies to eastern Washington counties with fewer than 50,000 residents that border Canada, and to water systems with nine or fewer connections in those counties. The approval authority granted to county commissioners by the bill expires January 1, 2021. An approved system would be required to submit annual test results showing the delivered water meets the same "local potable water standards" that apply to private, permit-exempt wells drilled in the county. Stevens and Pend Oreille Counties are the only two water-service PUD counties affected by the final version of the bill. **GOVERNOR VETOED BILL AS REQUESTED BY DOH.**
- **Funding to clean up underground tank leaks.** [Substitute House Bill 2357](#) is a collaboration between the Department of Health and the state's Pollution Liability Insurance Agency to set up a new grant and loan program that would help finance cleanup of leaking underground oil-products storage tanks that threaten drinking-water sources. **GOVERNOR SIGNED BILL APRIL 1.**
- **Moving the DWSRF program to the Department of Health.** [Second Engrossed Senate Bill 5251](#) puts the Drinking Water State Revolving Fund (DWSRF) program under sole control of Health's Office of Drinking Water (ODW). The bill ends division of program administration between ODW and the state Department of Commerce, which currently manages DWSRF project contracts held by PUDs and other water utilities. Once the move to ODW is complete, estimated administrative cost savings are \$862,000 per biennium, which ODW Director Clark Halvorson said he wanted to invest in more DWSRF projects for PUDs and other utilities. **GOVERNOR SIGNED BILL MARCH 31.**
- **Internet posting of water-bank charges.** [Substitute Senate Bill 6179](#) amends the water banking statute (RCW 90.42.100) to require that the Department of Ecology maintain a quarterly-updated schedule of each water bank's charges for mitigation water, plus information about the water rights in the bank, such as their priority dates and the amount of water available for mitigation. The bill's required schedule of water banks' charges for mitigation water could be helpful to PUDs seeking mitigation credits for their proposed new water rights or to mitigate the impact of changes they request for their existing water rights. **GOVERNOR SIGNED BILL APRIL 1.**
- **Preventing water-sewer districts from prohibiting multipurpose fire sprinklers.** [Substitute Senate Bill 6284](#) amends the statute governing water-sewer districts (RCW 57) to prevent districts from prohibiting use of multipurpose fire sprinkler systems in single-family homes and townhouses, or to require that such systems have a separate water meter or backflow preventer. The bill defines a multipurpose sprinkler system as one that is incorporated into a home's plumbing system, is supplied water only by the district that serves the home, does not

have a fire pumper connection, is constructed of approved potable water plumbing components, and terminates at a plumbing fixture that will prevent water stagnation.

GOVERNOR VETOED BILL, HOUSE AND SENATE OVERRODE VETO MARCH 28 AND 29, BILL ENACTED.

- **Preserving water for out-of-stream uses.** [Engrossed Substitute Senate Bill 6513](#) preserves out-of-stream water reservations that are part of the Department of Ecology's instream flow rules for WRIA 45, the Wenatchee basin watershed, and WRIA 18, the Elwha-Dungeness watershed. The bill supports water allocations for communities served by Chelan and Clallam PUDs.
GOVERNOR SIGNED BILL MARCH 31.
- **Studying water-supply options for exempt wells.** [Engrossed Senate Bill 6589](#) directs the Departments of Ecology and Health, along with "non-municipally owned public water systems in Skagit County," to conduct a study of the feasibility of using water storage to "recharge" the Skagit River basin sufficiently to meet instream flows and provide "non-interruptible" water for permit-exempt wells in the Skagit basin. This bill is in response to a moratorium on exempt-well drilling that occurred after the state Supreme Court issued its *Swinomish* ruling in 2013.
GOVERNOR SIGNED BILL APRIL 1.

2. New state budget takes all money away from public-works account for next three years *Move would likely end PWTF loan program; Public Works Board urges governor's veto*

The state supplemental operating budget passed by the Legislature on March 29 diverts more than \$273 million in future loan repayments from the state's Public Works Trust Fund (PWTF). Prior state budgets have diverted available cash and tax revenues from the program, but the Legislature's final budget includes a plan to divert all loan repayments through the 2017-2019 biennium and use the money to pay for K-12 education, leaving the program with no capacity to issue new PWTF loans in upcoming years.

Cecilia Gardener, Executive Director of the state Public Works Board that oversees the PWTF, told the WPUDA Water Committee at its meeting on March 31 in Olympia that this budget provision, if approved by Governor Jay Inslee, most likely will end the PWTF program, which PUDs and other local governments have used since the 1980s for low-cost financing of basic infrastructure, including water and sewer projects. Since 2013 the Legislature has taken all tax revenues from the Public Works Assistance Account, which finances the PWTF, and used the money for education and to balance the state budget.

The Public Works Board has sent a letter to Gov. Inslee urging him to veto the budget section (Sec. 935 in 2ESHB 2376) that states the Legislature's intent "to continue the policy since 2013 of not authorizing new loans from the account [i.e. the PWTF] and to allocate the available \$273,367,000 of future loan repayments paid into the Public Works Assistance Account to support basic education" in the 2017-2019 fiscal biennium.

Board members also agreed to work with local-government associations including WPUDA, the Association of Washington Cities, and the Washington Association of Sewer and Water Districts to jointly lobby the Governor to veto this section of the budget.

3. Bill proposed new program for state-guaranteed financing of 'essential public infrastructure projects'

- [Second Engrossed Senate Bill 5624](#), if passed in the 2016 legislative session, would have created a new "public works financing assistance program" run by the Public Works Board. A similar program might be proposed again next session. The program would use revenue from state-issued bonds to finance loans to local governments for a broad range of local infrastructure projects, including water and wastewater systems, parking and transit projects, flood control improvements, watershed enhancements such as culvert removal for fish passage, criminal justice buildings, fire and emergency response facilities, and public libraries.
- According to state agency staff who worked on the bill this session, the proposed program is aimed at smaller and mid-size local governments that can't easily go to the bond market themselves to finance their projects. These program users would need to show they have difficulty borrowing in private credit markets at reasonable interest rates and that they can "reliably" pay back their loans to the state. The new program's loan interest rates weren't specified in the bill, but agency staff say the rate would match the state's borrowing rate for its bond issues, which currently is about 3.2 percent.
- If a similar bill is introduced and passed next session, the new financing program it creates would become either a companion to, or replacement for, the Public Works Board's 30-year-old low-interest loan program commonly called the Public Works Trust Fund, which has not issued any new loans to local governments since 2012 because of ongoing diversions of tax and loan-repayment revenue from the Public Works Assistance Account by the Legislature to help pay for K-12 education and balance the state budget. Stakeholders including WPUDA have voiced concerns that any new program should not become a replacement for the PWTF but instead should be an additional financing tool.
- Enactment of the new program in 2ESB 5624 would require passage by voters of a state constitutional amendment, which in the 2016 legislative session was [Second Engrossed Senate Joint Resolution 8204](#), allowing the state to guarantee repayment of the bonds it issues to finance local infrastructure loans, outside of the state's debt limit.

Pending legal cases involving water resource issues important to water utilities

1. Foster v. Ecology and City of Yelm

On March 4 the state Supreme Court issued an order denying requests from water utilities and cities that it reconsider its October 2015 ruling in a major municipal water rights case, *Foster v. Department of Ecology and the City of Yelm*.

The court's denial means that only temporary water withdrawals can be approved by the Department of Ecology when it believes "overriding considerations of the public interest" (OCPI) justify allowing a water use. The denial means Ecology cannot use OCPI to approve a new municipal water right, as sought by the City of Yelm in this case.

In its October *Yelm* decision, the court ruled that the Department of Ecology cannot issue a new municipal water right if the plan for mitigating the new right allows for any impairment of a senior instream-flow water right. The decision rejected the Department of Ecology's assertion of OCPI in approving Yelm's water withdrawal permit, which the city backed with an extensive mitigation plan to minimize impacts on stream flows and to improve overall stream and habitat conditions in the watershed affected by the new withdrawal.

Legal briefs filed last November by Washington Water Utilities Council (WWUC), the Association of Washington Cities, and the Cities of Lacey and Olympia urged the Supreme Court justices to reconsider their decision, arguing that it incorrectly interpreted the OCPI provision in state law, in RCW 90.54.020(3)(a), to allow only temporary withdrawals of water that might impair stream flow, such as for short-term drought relief, and not for permanent appropriations of water such as the new municipal water right sought by the City of Yelm.

The WWUC's brief pointed out numerous places in state water law where the term "withdrawal" is synonymous with a permanent water appropriation such as a municipal water right, arguing that the OCPI provision gives Ecology authority to issue new municipal water rights that are mitigated as much as possible to reduce adverse impact on stream flows.

Commenting on the decision by the court to deny reconsideration of its October ruling, WWUC attorney Adam Gravley said, "Clearly, this is a disappointing result. My initial reaction is surprise that the court did not revise the opinion to clarify some of the wording. This decision will no doubt now prompt various suggestions as to whether and how to address water statutes that use the word 'withdrawal.'"

2. Whatcom County v. Hirst

The state Supreme Court has heard a major case involving rural water supply and the state's Growth Management Act (GMA). We are still waiting for the court's ruling.

In *Whatcom County v. Eric Hirst, et al.*, the state Court of Appeals in February 2015 upheld Whatcom County's protection of rural streams and water resources in its GMA comprehensive plan, which allowed the drilling of permit-exempt wells to supply water to new homes in rural areas.

The appeals court's ruling reversed the state's Growth Management Hearings Board, which had concluded in a June 2013 decision that the county's planning efforts did not comply with the GMA's requirements for protection of rural areas, and that, by allowing exempt wells to be drilled, the county was not sufficiently protecting the rural character of rural Whatcom County.

The *Hirst* opponents to Whatcom County in the case, including the environmental group Futurewise, disagreed with the appeals court's decision and were successful in asking the Supreme Court to review the decision and issue a final ruling on the rural water supply issues at stake in the case. The Supreme Court heard the case last October and could issue its ruling soon.

3. Bassett v. Ecology

This case stems from a Dungeness-area property group's petition to Ecology to reopen watershed rulemaking. Ecology rejected the petition and litigation is now in Thurston County Superior Court.

Petitioners Bassett and Olympic Resource Protection Council object to Elwha-Dungeness WRIA 18's instream flow rule that requires purchase of mitigation credits for drilling of wells and other new water supplies in the watershed. They claim that Ecology couldn't legally use OCPI as basis for adopting the Dungeness WRIA 18 rule.

Legislation passed this session and signed by Governor Jay Inslee, ESSB 6315, preserves the out-of-stream water reservation that is part of Ecology's instream flow rule for WRIA 18.



**Washington State
Public Works Board**

Post Office Box 48319
Olympia, Washington 98504-8319

April 5, 2016

Governor Jay Inslee
Office of the Governor
PO Box 40002
Olympia WA 98504-0002

RE: Veto Section 935 in H-4773.2, the Striking Amendment to ESHB 2376
(Supplemental Operating Budget)

Governor Jay Inslee:

On behalf of the Public Works Board, and the cities, counties, and special purpose districts, of Washington State, I respectfully request that you veto Section 935 in H-4773.2, the Striking Amendment to ESHB 2376 (Supplemental Operating Budget). I would like to express my grave concerns with the actions the Legislature has taken since the 2011-13 biennium, regarding the Public Works Assistance Account (PWAA).

Section 935 in the Supplemental Budget inserts language into 43.155.050 RCW stating that the legislature intends to "continue the policy since 2013 of not authorizing new loans from the [PWAA] account and to allocate the available two hundred twenty-seven million three hundred sixty—seven thousand dollars of future loan repayments paid into the public works assistance account to support basic education."

The Public Works Assistance Account (PWAA) was established as the source of funds to make loans and to give financial guarantees to local governments for public works projects (43.155.050 RCW). For thirty years, programs funded through the PWAA provided a stable, cost-effective, progressive, and flexible source of funding that local governments could reliably access in order to proactively maintain Washington's economic foundation: sound infrastructure.

Starting with the 2011-13 biennium, the legislature started redirecting tax revenues from the PWAA to the education legacy trust account and the general fund. Then, in the 2013-15 biennium, cash from the account was redirected as well. Section 935 is a policy statement. However, the policy that it promotes is that of using funds originally intended to address critical local government infrastructure needs for purposes outside the original intent of the tax increases enacted in 1985 to meet those needs.

Starting in 2011, the legislature has developed a policy of redirecting revenues from dedicated funds to the general fund. With the advent of the McCleary Decision, they have included the education legacy trust account as a recipient of these redirected funds. Transferring funds between accounts at such a rate

that the original use of the funds can no longer be honored is contrary to the maintenance of an efficient, effective, and accountable government.

Currently, the State of Washington has no state funded loan programs that provide broad, cost effective infrastructure funding to support state policies promoting Washington as the place to live for current and future generations. The available loan programs are federally financed and specifically targeted to resolve catastrophic health and safety issues, or are strategically directed investment tools geared towards promoting economic development. PWAA loan programs provide the niche funding desperately needed by local governments who are sustainably managing their systems and need assistance accessing capital. Their systems are not yet broken, so they fail to merit the funding available for disastrous health and safety issues.

Local governments, much the same as the state, struggle to prioritize taxpayer investments. However, the one element that is universal across the federal, state, and local levels, as well as the private sector, is the need to maintain existing capital assets in order to flourish. Infrastructure is key to a prosperous economy. Maintaining infrastructure assets in satisfactory condition at 2013 baseline levels through 2020 is a Results Washington goal. This is an impossible goal for local governments to meet without state assistance that does not require catastrophic failure in order to qualify for funding.

We applaud your efforts to ensure that Washington is a leader in clean technology, sustainability, and efficient use of our resources. Vetoing Section 935 allows you to reinforce your message of transparent government and commitment to vibrant communities.

Please veto Section 935 in H-4773.2, the Striking Amendment to ESHB 2376.

Thank you for your consideration,

A handwritten signature in black ink, reading "Stan Finkelstein". The signature is fluid and cursive, with the first name "Stan" and last name "Finkelstein" clearly legible.

Stan Finkelstein, Chair
Public Works Board

cc: Brian Bonlender, Director of the Department of Commerce
David Schumacher, Director of the Office of Financial Management

SF:cg