

The Tap



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President's Pipeline

A Tale of Two Meetings

First, as the most recently elected member of your board, thank you for the opportunity to serve in that capacity. I appreciate your trust and hope to continue making this organization an effective vehicle in serving our region with safe, affordable, and reliable water.

Having enjoyed participating in the organization over the past several years, and as a newly appointed target for newsletter submissions, let me take this opportunity to give a perspective on what I have observed makes this organization so special and offer a challenge to all of us to continue making it so.

When I started at my current job, I began participating in two monthly meetings that were very similar in many respects but with a very different tenor to their meetings. Both groups met one Thursday a month. Both focused on a specific sector of the public works field. Both involved senior managers from nearly all the South Puget Sound's communities. Both also served as a forum for

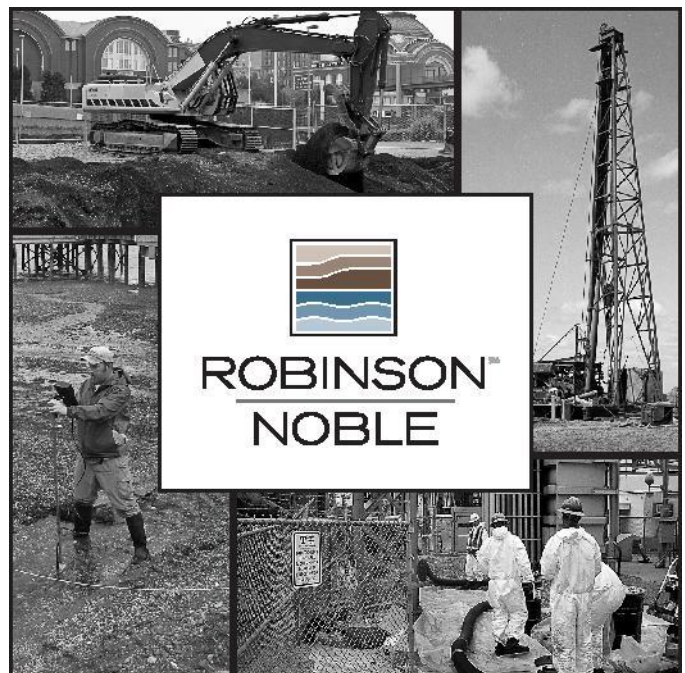
regional input and guidance from regulators and outside professionals. And both facilitated dialogue between professionals of neighboring jurisdictions.

For all those similarities, the interesting thing about the two meetings was the tone I observed at the meetings was completely different. One meeting was largely adversarial, posturing, and argumentative. The other

was quite the opposite. This newsletter's readers will surmise that one of the meetings was the cooperative's and they will also be correct in assuming the more challenging meeting was the "other" meeting.

Having the two meetings juxtaposed in my schedule a week apart, I tried to discern why these meetings seemed so different.

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President's Pipeline

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A first thought was that "Water" managers just got along better. Perhaps "drinking water" lent itself to fewer disagreements in general. Or maybe Larry Jones just ran a better meeting. While it is true that water managers seem to be good people who are generally nice to each other and Larry does a great job leading our meetings; it wasn't obvious that any of these specific characteristics were the distinguishing factor between the two meetings. I could say exactly the same positive things about the individuals at both meetings. It wasn't even the case that perhaps one or two members of the other group might be souring the experience for everyone else.

After puzzling over this question for a number of months an explanation

became apparent when I stumbled upon the following quote from Peter Drucker,

"Every enterprise requires commitment to common goals and shared values. Without such commitment there is no enterprise; there is only a mob. The enterprise must have simple, clear, and unifying objectives. The mission of the organization has to be clear enough and big enough to provide common vision. The goals that embody it have to be clear, public, and constantly reaffirmed."

– Peter Drucker

What I came to realize was that the purpose of this other meeting was shaped by the fact that it was tasked with distributing large amounts of federal



dollars among its participants. This meant that each organization's representative was sent to the meeting with the same objective. Namely, "How can they bring the most money back to my organization?" We all had a similar goal, but it was not a common goal. What we ended up with resembled, as Peter Drucker predicted, a mob mentality. We wrangled for months over the wording and point allocations to attribute to each question on our funding application form. Then we wrangled about the scores for the applications. In the end, we distributed the money, but we also wore ourselves out doing it.

Contrasting this with the collegial nature of the cooperative's monthly meetings is instructive. My observation of the Cooperative participant's motivations is that they attend to learn what they need to know to provide better service to their customers and what opportunities exist to work across organizations to achieve that end. I've come to realize that this opportunity to have a common goal and set of shared values is really

what gives our Cooperative its ability to work together effectively.

For the challenge part of this article, let me continue on with the Peter Drucker quote. I ended the quote above with "The mission of the organization has to be clear enough and big enough to provide common vision. The goals that embody it have to be clear, public, and constantly reaffirmed." Dr. Drucker continues on with this sentence, "Management's first job is to think through, set, and exemplify those objectives, values, and goals."

As the newest member of your board, I take it as a challenge to continue the work of intentionally thinking through, setting, and exemplifying the shared objectives, values, and goals that are uniting our cooperative together. As a larger challenge to all of us, let us all remember that keeping the shared objectives, values, and goals at the forefront of every organization we are part of is our first job as managers.

*Jason Van Gilder, PE
Associate Engineer –
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Review of the *Crown West* Court Case

On February 26, 2019, the Washington State Court of Appeals (Division III) issued its decision in the case of *Crown West Realty, LLC., v: PCHB and Pollution Control Hearings Board*, 435 P.3d 288 (2019), which Crown West will appeal. The Crown West case has become a lightning rod for municipal systems concerned over the Department of Ecology's (Ecology) efforts to validate its Active Compliance Policy – in this case, by challenging the municipal purpose status of Crown West water rights proposed for change and trust donation. Under the Active Compliance Policy, to qualify as a municipal

water right under the Municipal Water Law (MWL) definition (and avoid relinquishment), municipal suppliers must make "active beneficial use" of their water rights at least once every 5 years, irrespective of RCW 90.14.140(2)(d) which expressly exempts the non-use of municipal rights from relinquishment.

In rendering its decision, the court found that Crown West did not qualify as municipal water supplier consistent with RCW 90.03.015(4)(a) when filing change applications in 2016. This sub-definition of the Municipal Water Law (MWL) provides in part that "municipal water supply purposes means a

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beneficial use of water... for providing residential use of water for a nonresidential population that is, on average, at least twenty-five people for at least sixty days a year." The court agreed with Ecology's interpretation of RCW 90.03.015(4)(a) to mean that the provision of industrial park water by Crown West must involve the same non-residential population of 25 people over 60 days a year, in a sleeping/domicile environment. The court found no evidence this standard had been met. Consequently, the court ruled it did not need to address Ecology's contention that the proposed trust donations (for private water bank purposes) were invalid because they involved inchoate water rights.

With regard to Active Compliance, the court

stated that "We reserve approval or disapproval of POL -2030 for another day and perhaps another court because of its irrelevance to our ruling." However, prior to this disclaimer, the court nonetheless engaged in a confusing, if not disturbing analysis of the MWL that appeared to both borrow and dispute certain elements of the Active Compliance Policy. Some of these elements are described below:

- Beneficial use is a term of art that means an actual rather than potential future use of water.
- The MWL employs the present tense which indicates the legislature's intent to adjudge the character of the water right in the present, not

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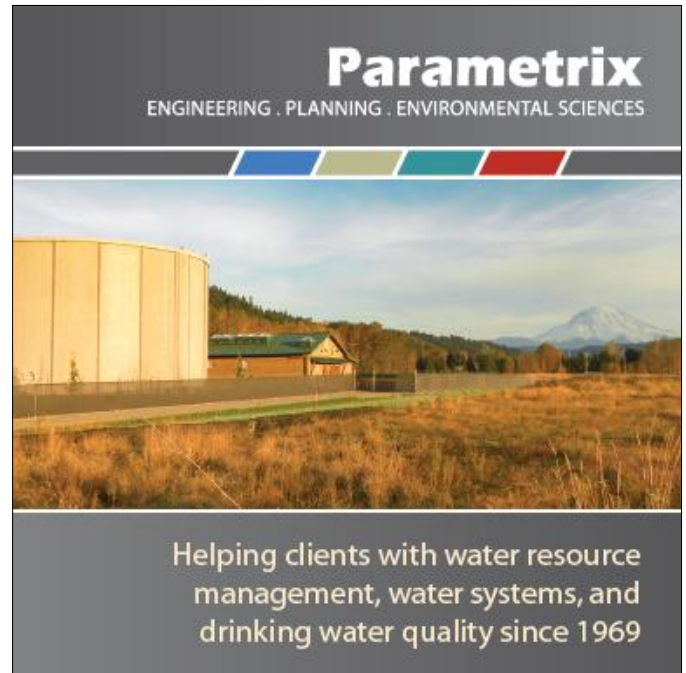
- speculative future use.
- One could conclude that a municipality only apply some of its use to municipal supply purposes in order to avoid partial relinquishment of the unused portion.

remains, as should the concern of municipal water systems over Ecology's future, and potentially arbitrary application of the policy.

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While it can be argued that much, if not all, of the court's discussion of Active Compliance is non-binding dicta, Ecology's Assistant Attorney General has intimated the decision validates Ecology's Active Compliance Policy and related legal arguments.

As a consequence, the tension between municipal water systems and Ecology over Active Compliance arguably



American Water Works Association
Pacific Northwest Section

Registration is now open for the
**8th Annual South Sound Subsection
PNWS – AWWA
Charity Golf Tournament**

Friday, July 19, 2019
Oakbrook Golf Club
Lakewood, Washington

Use the link below to get more information, to register as a player, or to become a sponsor:
<https://sites.google.com/a/pnws-awwa.org/washington-south-sound/events/golf-tournament>

2019 Children's Water Festival

The 2019 Children's Water Festival (CWF) was a great success, thanks, in part, to participation and support from the Water Cooperative and many of its individual members.

Focused on 5th-grade classes from up to 8 Tacoma-area schools, the Festival is a day-long event of displays and interactive teaching about water, water quality, conservation, and the environment.

Volunteers from Co-op member firms shepherded students between events and classes, helped as teacher aides and helped run exhibits.

As in past years, the Co-op provided funding to help cover bussing costs for the festival.

The CWF is always in need of support and, of course, more volunteers. If you are interested, please contact Chris Towe, Environmental Education Program Manager at Christopher@piercecd.org or 253-845-9770, ext. 112.



2019 Children's Water Festival

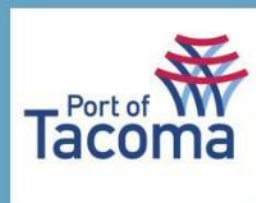
We would like to thank all of those who contributed their time and energy to the 2019 Children's Water Festival. Because of your efforts, 698 students were able to benefit from the Festival's activities and their important messages about water quality and conservation. We cannot thank you enough!

- Pierce Conservation District



CWF by the Numbers:

- * 10 Schools
- * 27 Classes
- * 698 Students
- * 115 Volunteers



Thank you to our event sponsors and donors!

2019 Best Tasting Water Event

The PNWS-AWWA, South Sound Subsection, held its 11th Annual Best Tasting Water Event in March. Congratulations to the winners!



1st Place – City of Puyallup

2nd Place – Mt. View-Edgewood Water



3rd Place – Lake Josephine Riviera Water

2019 Legislative Update and Ongoing Litigation and Regulatory Issues

By Bill Clarke, RWPCPC Lobbyist

2019 State Legislature and Interim Activities

The 2019 State Legislative Session was heavy on climate policy, housing, and new taxes, but light on water resource issues. No major water resource or water supply bills were seriously considered in either the House or Senate, due in part to the focus on climate and orca legislation and the reluctance of legislators to engage in water resource issues after the grueling Hirst/Foster legislation that stretched over the 2017 and 2018 Sessions.

Bills of note relating to water resource and water supply issues that passed the Legislature include HB 1444, which changes appliance water efficiency requirements; SB 5352 which extends the timeline for the Walla Walla Watershed Management Pilot Program; SB 5418 which modifies contracting procedures for water districts, PUDs, and cities; and SB 5145 which bans hydraulic fracturing in Washington State.

On the budget side, the Capital Budget (HB 1102) include \$96.5 million for infrastructure grants/ loans through the Public Works Assistance Account, \$46 million for WDOH's Drinking Water State Revolving Fund, \$40 million for water resource projects to implement SB 6091, and \$1.5 million for WDOH's Water System Consolidation and Repair Grant program. Other water-related Capital Budget programs like the Yakima Basin Integrated Plan, Chehalis Basin Partnership, and Floodplain by Design were well-funded.

In the Operating Budget (HB 1109), Ecology was provided with \$600,000 to assess opportunities for future water right adjudications after the completion of the Acquavella adjudication in the Yakima Basin, additional funding for water rights and water quality enforcement, and \$2 million for drought preparedness.

Interim legislative activities of interest to water utilities include the resumption of the Joint Legislative Task Force on Water Resource Mitigation (Foster Task Force) established under SB 6091. The Task Force is to provide recommendations on legislation to the Legislature by November 15, 2019, and the Task Force expires in December 2019. However, because of the meeting schedule to date, and the unlikelihood of final decisions for the Foster pilots prior to that date, it is possible that the Task Force will miss this deadline and seek to extend its work through 2020. In addition, there will be a facilitated process through the Utilities and Transportation Commission (UTC) regarding possible changes to the underground utility safety law (Dig Law).

Litigation of Interest to Water Utilities

A number of ongoing cases involving water rights or water utilities should be of interest to both public and private purveyors. Priority ongoing cases include the following:

Lakehaven Water & Sewer District, Midway Sewer District, and Highline Water District v. City of Federal Way (City "Excise Tax" Authority on Water/Sewer)

This case is a challenge by water districts against the City of Federal Way's adoption of a 7.75% "excise tax" on water and sewer service by the districts within the City. The Districts argued in King County Superior Court that the City does not have statutory authority to impose such a tax. The court ruled in favor of the City, and a Petition for Discretionary Review is pending before the State Supreme Court. If denied, the appeal will be heard by the Court of Appeals, Division I. This area of the law is the subject of a number of prior court decisions, most recently Chelan PUD vs. City of Wenatchee, in which the Court of Appeals, Division III ruled that water service that is "proprietary" in nature is subject to a city's excise tax authority, but water service that is "governmental" in nature is not taxable.

2019 Legislative Update and Ongoing Litigation and Regulatory Issues

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King County v. King County Water Districts et al. (County “Rental Fee” Authority in public rights of way)

A number of water districts challenged King County’s authority to impose a rental fee for water and sewer infrastructure in County rights of way. The Superior Court ruled that the County does not have such authority. The case has been accepted for review by the Washington Supreme Court.

Crown West Realty, LLC v. PCHB and Ecology (Interpretation of “Municipal Water Supply Purpose” definition and exception to relinquishment)

This case concerns a series of water rights held by Crown West Realty, at a business/industrial park in the Spokane area, and whether such water rights are within the definition of “municipal water supply purposes,” and therefore are not subject to relinquishment for water rights “claimed for” municipal use.

The Court of Appeals decision ruled that Crown West Realty’s water rights do not meet the definition of municipal water rights, and also issued rulings on a number of other related issues. The decision is now on appeal to the Washington Supreme Court.

Agency Rulemaking and Policy Guidance

Ecology continues to churn out regulations and guidance to implement the 2018 SB 6091 Hirst/Foster legislation. Regulations currently being proposed by Ecology include Chapter 173-566 WAC, the draft Grant Funding Rule. Likely to be adopted in June, and effective in July 2019, this rule would be used to prioritize funding for applications for the \$40 million in biennial SB 6091 funding. Ecology has also released draft rule language for Chapter 173-501 WAC, the Nooksack River Instream Flow Rule.

On the guidance side, Ecology has released Draft Final Net Ecological Benefit (NEB) Guidance for implementation of SB 6091, a Draft Streamflow Restoration Policy for implementation of SB 6091, and proposed revisions to the definition of “perfection” of water rights in Ecology’s Water Resource Policies 1060 and 1200. More information on Ecology’s ongoing rulemaking and policy guidance procedures can be reviewed at the website for the Water Resource Advisory Committee: <https://www.ezview.wa.gov/?alias=1962&pageid=37063>.

Department of Health has announced rulemaking under Group A Public Water Supplies, Chapter 246-290 WAC, the Group A Public Water Supply rule to address poly- and perfluoroalkyl substances (PFAS), through rulemaking activity is currently postponed.