

FIRE IN THE HOLE



LEGAL AFFAIRS

CITIES NEED TO REASSESS THE WAYS THEY ASSESS FOR FIRE HYDRANTS.

IN OCTOBER 2008, the Washington State Supreme Court ruled in *Lane v. City of Seattle* that providing public fire protection through fire hydrants is a governmental function that must be paid for out of general fund revenue—and not through water-use rates and charges.

Who pays for what depends on your city's relationship with your water provider. For some cities, it's straightforward: cities with a water utility provide their own fire hydrants and water service. Or it can get more complicated, as in cases where a city or town receives its water and fire hydrant service from another municipal water utility, or where a municipality is served by a special purpose district within its corporate boundaries. Some cities even serve their population with a combination of a water utility and a special purpose district.

Whatever the case, cities may soon be receiving or delivering a bill for the fire protection portion of water services.

Are we talking about just the cost of fire hydrant service, or more? We're talking about a lot more than just the fire hydrants. Even though the ruling refers only to fire hydrants, it appears that the court intended to include the proportionate capital, operating, and maintenance utility costs needed to provide fire protection. This includes all of the infrastructure required to deliver water to the hydrants.

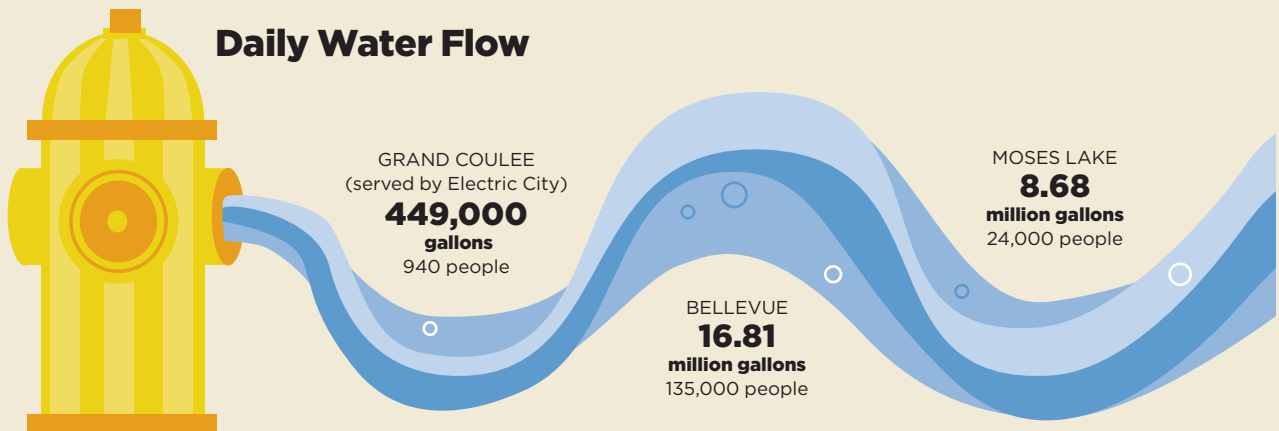
Until the courts provide further clarification, cities, towns, and perhaps other agencies that own water utilities need to determine their actual service costs for direct fire protection (DFP) and public fire protection (PFP) and remove those costs from their annual water utility budget and water rates. The real challenge cities will face is in finding the money to pay for those costs that previously could be recovered through rates and charges. The American Water Works Association (AWWA) addresses the "how to" of water rate studies and specifically references direct and public fire protection services. Some of that material directly supports the ruling's interpretation.

How can cities determine the impact on general expense funds?

Soliciting legal and technical engineering and consulting advice is a good place to start. Here's one possible approach:

1. Determine a reasonable estimate of the annual DFP and PFP costs. That includes capital cost and maintenance of the fire hydrants, portions of the supply, system mains (pipe), pumping facilities, and storage facilities.

David W. Findlay, CPA, CMC, is founder and president of FCS GROUP.
Angie Sanchez Virnoche is a senior project manager at FCS GROUP.
John Milne is an attorney at Inslee, Best, Doezie & Ryder, PS.



Life, liberty and the pursuit of answers.

We make a declaration of transparency to our members every day. That's why we're providing the tools they need to understand their options and the costs of care.

Learn more at asuris.com



You can only cut so much

Consider a public-private partnership next

More than 100 cities and towns across the nation are already realizing the benefits of a SAFEbuilt building department program. With long- and short-term advantages, a SAFEbuilt program provides all or part of the building department function for a share of permit revenues—it's a no risk source of revenue.

Contact us for more specifics on how SAFEbuilt can help your community.



Building Department Services for Public Agencies
1.888.977.4111, ext. 206 | Scott.Martin@SAFEbuilt.com
SAFEbuilt.com

Full-Service Building Department Programs
Building Code Plan Reviews
Complete Project Support • Building Code Inspections

CITYWISE



ties necessary to make hydrants operational.

2. Bill the general fund of the city owner or other cities, towns, and counties served by the water utility for the apportioned cost of the DFP/PFP water system or per hydrant.

3. If the bill comes from the city or town's own water utility, consider implementing a new or adjusted local utility tax.

This option could result in the utility paying an added utility tax and then folding that cost back into its water rates and charges. Seattle used this approach, and the court validated it. However, this is not a ready option in cases where other agencies bill the city for their related costs to provide fire protection.

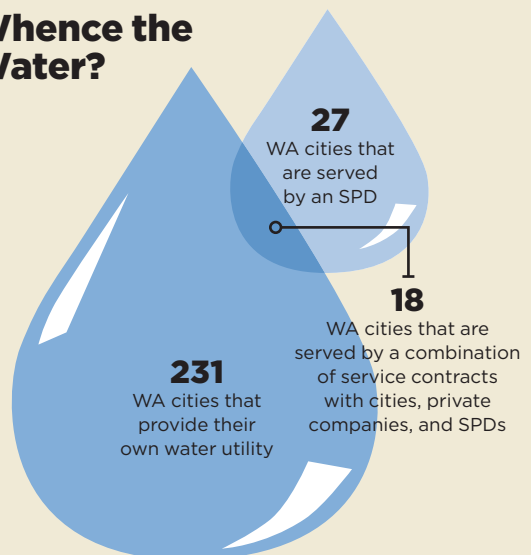
Another option starts with the assumption that whatever the cost of the fire suppression bill will be to the general fund, it will *not* be billed back to the utility via the utility tax. Using this approach:

1. Calculate cost-of-service allocations between water supply functions, including fire protection.

2. Determine the incremental cost of service focusing on a reasonable estimate of additional DFP and PFP costs (increments incurred by the owner over all other costs of service attributable to delivery of drinking and irrigation water).

3. Bill the general fund of the entity served for the incremental cost of providing fire protection services. This approach might result in a lower yet still defensible bill for fire protection, divided among the general fund and other agencies.

Whence the Water?



How can cities develop a defensible calculation of average or incremental fire suppression costs?

Determining the costs of fire protection can be complex, especially because the provision of these services relies on shared resources. In striving to make a reliable, defensible calculation, consider the following questions:

- Does the water utility maintain asset cost information by category, such as supply, transmission, distribution, pumping, hydrants, meters, and general?
- What water main sizes serve hydrants? What are the installed material and trenching costs per linear foot?
- What is the reserved capacity to provide fire flow on demand?
- What are the system's historical peak-hour demand, max-day demand, and overall system requirements for fire protection?
- Does water storage include operational, equalizing, standby, fire, and emergency components sufficient to determine whether total needs incorporate sufficient capacity to also meet fire flow requirements?
- Do the pumps provide domestic water service and/or adequate fire volume and pressure?
- Can annual water utility expenses be classified into functional areas such as administration, customer service, supply, transmission, distribution, storage, pumping, and fire protection costs?

What other effects of the ruling should cities be watching for?

The court did not address the trial court's rulings on whether fire districts had an obligation to pay and whether Seattle Public Utilities waived its right in its franchise agreement to bill King County for its apportioned cost of fire hydrant service. In June 2009, Tacoma filed a lawsuit against several cities and Pierce and King counties, claiming that the indemnification clauses in its franchise agreements with those agencies should not be an applicable defense for not paying the bills for the fire hydrant costs. The outcome could have far-reaching consequences.

Who else is interested in these outcomes?

Perhaps the State Auditor's Office (SAO). The SAO has a routine interest in how utility enterprise revenues and other sources of funds have been or are being used. Given this ruling, the SAO may amend its standard audit work plan to determine that the general government costs of fire protection have not been and are not improperly billed to water utility ratepayers. The SAO could be looking for compliance with the ruling for fiscal years as early as 2009 or 2010.

More on this issue will follow. Some of the specific questions will be resolved by further litigation. And some of the issues will be resolved as part of intergovernmental agreements. **C**



The Nation's Top-Ranked Bond Counsel Firm

Providing bond counsel services to cities and local governments throughout Washington.

Susan Barry
206-839-4345

Douglas Goe
206-839-4300

Courtney Muraski
206-839-4438

William Doyle
206-839-4300

Angela Trout
206-839-4341

Scott Schickli
206-839-4300

For more information visit
www.orrick.com/public_finance.



ORRICK

WWW.ORRICK.COM

ASIA | EUROPE | NORTH AMERICA

BEIJING HONG KONG SHANGHAI TAIPEI TOKYO | BERLIN
DÜSSELDORF FRANKFURT LONDON | MILAN MOSCOW
PARIS ROME | LOS ANGELES NEW YORK ORANGE COUNTY
PACIFIC NORTHWEST SACRAMENTO SAN FRANCISCO
SILICON VALLEY WASHINGTON DC

ORRICK, HERRINGTON & SUTCLIFFE LLP 701 Fifth Avenue, Suite 5700 | Seattle, WA 98104 | tel 206-839-4300 | Attorney advertising. As required by New York law, we hereby advise you that prior results do not guarantee a similar outcome.