

McDougall, Regina

From: O'Connor, Kathleen [KConnor@spokanecounty.org]
Sent: Wednesday, February 09, 2011 4:40 PM
To: Neidhardt, Rick
Cc: Clarke, Harold; McDougall, Regina
Subject: Re: hearings on water bills

Hi Rick

I did talk to the Leg Committee last Friday about both bills. I told them about the 5/15 issue with respect to orders that may be affected in Aquavella and that Judge Gavin did not feel comfortable commenting on that issue. The issue of 5 versus 15 per se is a policy issue and we would not take a position on it. The application of that policy to current litigation, especially of this length and complexity, might be something we want to comment on.

With respect to the other bill, we also discussed briefly the "informal process". I and Judge Clarke did not oppose this process as long as the appeal was to the Gen Adj Judge. I didn't look at this process as interfering with judicial discretion but rather offering an option of alternate dispute resolution which the SCJA has a policy of supporting as well.

I asked Regina to share this with the Leg Comm. If they want me to convene the Water Wotkgroup I can.

Thanks for bird-dogging this legislation for us.

Sent from my iPhone

Kathleen

On Feb 9, 2011, at 3:21 PM, "Neidhardt, Rick" <rick.neidhardt@courts.wa.gov> wrote:

I'm listening to the testimony in the House and Senate on Ecology's bills. Quite a few people have testified in each committee, and the variety of opinions is quite impressive. Everybody likes some parts of the bills and dislikes others, but I couldn't detect a lot of consensus as to which parts are good and which are bad.

More specifically, as to section 301 on tentative determinations, there was certainly no consensus. It received more attention in the testimony than had been expected. Some people, especially those representing tribes and environmental groups, favored the tentative determinations, pointing out that they provide more timely resolution of disputes than do the big, expensive adjudications. Some others opposed or had concerns about section 301, especially some of the associations of big water users. The comments opposed included that section 301 goes too far, that it is too subjective, that it gives too much power to Ecology, and that it improperly usurps the judiciary's role ("corrodes the adjudication process").

Given the comments about encroachment on judicial turf, I wouldn't be surprised if Ecology asks whether the SCJA will chime in on this point. Did the SCJA Leg Committee discuss this bill last Friday?

Just wanted to give you a heads-up.

Rick

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