

Water Litigation Trial Summary
Count V
September 23, 2009

The trial regarding Fairfax Water's complaint against of the City of Falls Church regarding the constitutionality of the City's water service charges and water fund transfer ended after seven days on Sept. 23, 2009. Attorneys for the City of Falls Church and Fairfax Water will submit written closing arguments over the next few weeks and Fairfax District Court Judge R. Terrence Ney is expected to rule later this year.

On the final day of the trial, counsel for the City stressed that Virginia statutory and common law authorize the City to profit from the operation of its water system and decisions of the Virginia Supreme Court from the 1930s forward authorize such a practice. (The City charter was adopted by the Virginia General Assembly, and language regarding water system operations mirrors the language of charters around the state including Newport News, Norfolk, Harrisonburg, Danville and Richmond.)

Counsel for the City also reiterated that Fairfax Water has been aware of the City's Return on Investment transfer to the general fund from the water fund for decades and waited until 2008 to raise objections.

Fairfax Water brought litigation against the City of Falls Church on December 8, 2008, alleging interference with its attempt to selectively provide water service for customers in the City's traditional service area. Fairfax Water subsequently amended its suit to add a fifth count on the constitutionality of the City's Return on Investment from the water fund. On August 27, 2009, Judge Ney stayed trial on all counts except count five, the constitutionality claim, to February 1, 2010. Therefore, trial ending September 23 was on count five only.

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