~ MEMORANDUM ~

TO: Island County Water Resources Advisory Committee  
FROM: Nathan Howard, Long Range Planner, Island County  
DATE: May 3, 2018  
SUBJECT: 2018 CWSP Review – Timely and Reasonable

Background
The Public Water System Coordination Act of 1977 states that,

“No other purveyor shall establish a public water system within the area covered by the plan, unless the local legislative authority determines that existing purveyors are unable to provide the service in a timely and reasonable manner, pursuant to guidelines developed by the secretary. An existing purveyor is unable to provide the service in a timely manner if the water cannot be provided to an applicant for water within one hundred twenty days unless specified otherwise by the local legislative authority. If such a determination is made, the local legislative authority shall require the new public water system to be constructed in accordance with the construction standards and specifications embodied in the coordinated water system plan approved for the area. The service area boundaries in the coordinated plan for the affected utilities shall be revised to reflect the decision of the local legislative authority,” RCW 70.116.060(3)(b)).

When Island County adopted its Coordinated Water System Plan (CWSP) in 1990, timely and reasonable was not clearly defined either in the State law or in the CWSP. In 1995, the State legislature revised RCW 70.116.060 to include a definition of timely and reasonable, specifically setting a minimum standard of 120 days. However, it does allow the local legislature to modify that time. The State law also does not address reasonable. There is some language in the existing CWSP that discusses reasonable, but it could be revised to be clearer.

Benchmark Studies
Of the 12 Coordinated Water System Plans (CWSP) reviewed during this benchmarking study, the following Jurisdictions had information on timely and reasonable:

- **Island County**
  - Does not define a specific time, but has language about timely and reasonable

- **Jefferson County**
  - Only adopts the State’s definition
• **King County**
  o Adopts the 120 days for timely, but requires the local legislature to determine if service is timely and reasonable.

• **Kitsap County**
  o Adopts the 120 days for timely, but goes into more detail about what that means. Provides much more detail than most CWSPs about what reasonable means, including specification on conditions of service, cost, and consistency with adopted land use plans.

• **Pierce County**
  o Adopts the 120 days for timely. Provides much more detail than most CWSPs about what reasonable means. Describes in more detail on the process of how timely and reasonable should be determined.

• **Skagit County**
  o Adopts the 120 days for timely, but requires the local legislature to determine if service is timely and reasonable.

• **Snohomish County**
  o Adopts the 120 days for timely. Takes a much simpler approach to this topic than other CWSPs. Snohomish requires water systems to demonstrate they either have lines fronting the property, or the plan to extend, at its own expense, service to that property. Timely and reasonable can also be when the property owner is willing, at his/her own expense to extend service to the property.

• **Whatcom County**
  o Adopts the 120 days for timely. Provides some detail about timely and reasonable, but not as much detail about what is considered reasonable.

**Questions to Consider**
While reviewing the CWSP sections on Timely and Reasonable, the following questions might be useful to think about for discussion at the next meeting:

• Is 120 days a good definition of timely (keep in mind both property owners and utility owners)?
• When considering “timely” as defined in the RCW, is Island County’s explanation of timely and reasonable adequate?
• Should Island County more fully address this issue now or during a later review/update?
• After review of the other jurisdictions CWSPs, is there a preferred approach that would be more appropriate for Island County, and why?

**Options**
During the discussions, the WRAC has the following options for moving forward:

• **No change.** No recommended change at this time. The existing language, considering the RCW, is sufficient and this issue should not be included as a recommended update in the final recommendation document; OR

• **More research/outreach.** Additional research/outreach is necessary before making final recommendation; OR

• **Move forward with recommendation.** Sufficient information has been provided to make a recommendation to the Board.
2018 Island County Coordinated Water System Plan (CWSP) Review

Informational Packet

Timely and Reasonable
Table of Contents

Island County – Page 3
Jefferson County – Page 4
King County (1996 update) – Page 5
Kitsap County – Page 7
Pierce County – Page 11
Skagit County – Page 17
Snohomish County – Page 18
Whatcom County – Page 20
(4) **Requirement of Timely and Reasonable Service**

The requirement to provide service in a timely and reasonable manner implies that the purveyor has established fees and charges which can be shown to be consistent with costs of service to be provided to the applicant, that other terms required by the purveyor are consistent with normal and prudent practices of the water supply industry, that all applicable provisions of state law and County code are met, and that the purveyor shall agree upon a schedule for construction based on meeting service responsibilities at the earliest practical time, subject to circumstances within its control. If delay is encountered because of unforeseen circumstances, the purveyor must promptly notify the applicant of the reasons.

When an applicant assumes responsibility to construct the facilities in accordance with the standards of the utility, the utility must, on request, identify all pertinent standards, and must accept facilities complying with the identified standards.

(5) **Resolution of Disputes**

Disputes which occur in implementation of the USRP should be resolved by mediation wherever possible. A peer review committee shall be established to conduct fact finding and dispute resolution. The peer committee shall be comprised of five persons appointed by the Board of County Commissioners (BICC).

A finding by the review committee cannot be binding on the parties unless all parties agree, but a finding may be required prior to further appeal. If the peer review committee requires supporting administrative services from the County, such as collection of information or clerical services, the County may establish a fee to cover actual costs of such services. When a dispute on matters other than service area boundaries cannot be resolved by mediation, it is recommended the dispute be referred to the BICC. The BICC shall decide after review of testimony, provisions of the CWSP, and requirements of County code. Appeal of the decision shall be to the BICC.

2. **MINIMUM DESIGN STANDARDS**

Island County will adopt, concurrently with the CWSP, minimum standards for public water systems as ICC Chapter 13.03. A combined enforcement responsibility is vested in the Island County Health and Engineering Departments. The Coordination Act requires that the WUCC determine minimum standards for
Section 5

Utility Service Review Procedure

5.1 Introduction

This Coordinated Water System Plan (CWSP) establishes a set of administrative procedures, water resource policies, and growth objectives for Jefferson County (County) water utilities located within the Critical Water Supply Service Area (CWSSA). The procedures are to guide local officials, citizens, developers, and State and federal regulatory agencies in identifying the necessary facilities for providing an adequate water service.

Provisions of the Public Water System Coordination Act require that no new public water system be established within the County CWSSA, unless it is determined that existing purveyors are unable to provide the service in a timely and reasonable manner. According to the 1995 amendments to the Coordination Act (RCW 70.116.060), timely and reasonable was defined as service within 120 days (E2SSB 5448, 1995), unless specified otherwise by the County Commissioners.

Section 63 of the Growth Management Act (GMA) was enacted by the 1990 Legislature. It requires that each applicant who applies for a building permit of a building necessitating potable water shall provide evidence of an adequate water supply for the intended use of the building. The Utility Service Review Procedure (USRP) describes the administrative procedures for reviewing development proposals and associated requests for water service in the unincorporated portion of the County CWSSA. The procedure will identify existing purveyors who are willing and able to provide this new water service and document the availability of water supply.

5.2 Context of the Utility Service Review Procedure

The USRP should be viewed in the context of other related procedures and requirements affecting development and water supply. Specifically, the following should be considered:

- The primary control of land use under existing County Comprehensive Plans and Zoning Ordinances.

A general philosophy of this CWSP is that water utility service should not dictate growth patterns. On the contrary, land use policies should establish growth trends within the water utility service areas to permit the water utility management program to be responsive to, and provide service commensurate with, applicable adopted land use policies.
Governor Mike Lowry signed into law the requirements of Senate Bill 5448 on May 16, 1995. The bill amended various state laws pertaining to water. This chapter highlights some of the more important aspects of the new law.

• Satellite Management

No new public water system may be approved or created unless it is owned or operated by a satellite system management agency established under RCW 70.116.134 and the satellite system management system complies with the financial viability requirements of the department. If a satellite management system is not available and it is determined that the new system will have sufficient management and financial resources to provide safe and reliable water service, it can be constructed. However, the approval of any new system that is not owned by a satellite system management agency shall be conditioned upon future management or ownership by a satellite system management agency, if the management or ownership can be made with reasonable economy and efficiency, or upon periodic review of the system's operational history to determine its ability to meet the Department of Health's financial viability and operating requirements. Both the Department of Health and the Seattle/King County Health Department will enforce these requirements.

Any entity or person operating a satellite system management agency must do so according to the standards in Chapter 246-295 WAC. This applies to agencies operating both inside or outside of service area boundaries claimed by water purveyors. It is recommended that purveyors incorporate these standards into their individual water comprehensive plans.

• Timely and Reasonable Water Service

State law states that no other purveyor shall establish a public water system within the area covered by a Coordinated Water System Plan unless the local legislative authority determines that the existing purveyors are unable to provide the service in a timely and reasonable manner. An existing purveyor is unable to provide the service in a timely manner if the water cannot be provided to the applicant for water within 120 days unless specified otherwise by the local legislative authority. If such a determination is made, the local legislative authority shall require the new public water system to be constructed in accordance with the construction standards and specifications of the East King County Coordinated Water System Plan. The service area boundaries of the plan for the affected purveyors will be revised to reflect the decision of the local legislative authority.

Disputes stemming from claims of untimely and/or unreasonable conditions of service usually arise when a developer wishes to receive service from an existing utility where it is not presently
providing service. The changes required in SB 5448 remove the Department of Health from the process of determining timeliness and reasonableness of service and places it with the local legislative authority. The department, however, has developed interim criteria for making decisions regarding reasonable service conditions in a document entitled "Interim Criteria for Making Timely and Reasonably Decisions." Final criteria will be issued. The department will also establish criteria for when the 120 day period for providing timely service will commence.

The 1989 CWSP laid out an appeal process which will not change. The items of appeal remain the same:

- Interpretation and applicability of water utility service area boundaries.
- Proposed schedule for providing service.
- Conditions of service, excluding published rates and fees.
- Annexation provisions imposed as a condition of service; provided, however, existing authorities of City government are not altered by the CWSP, except when an interlocal agreement exists between a city and the County or as are specifically authorized by Chapter 70.116 RCW.
- Established minimum design standards.

The WUCC will continue to provide a forum for negotiation when these issues of appeal arise. Within 45 days, the WUCC will provide a written report to the King County Utilities Technical Review Committee (UTRC) or its successor agency which states the conditions of the agreement reached by the parties, or where no agreement was reached, a statement of findings and recommendations for disposition of the issues.

RCW 70.116.060(5) contains the legal authority for local government to establish dispute resolution processes. It states:

(5) The affected legislative authority may develop and utilize a mechanism for addressing disputes that arise in the implementation of the coordinated water system plan after the plan has been approved by the secretary.

That function is now being performed by the King County UTRC which derives its authority from KCC 13.24 and the UTRC rules and administrative procedures. The county is encouraged to make certain that the UTRC's or its successor agency's process facilitates any appeals.
purveyor and adjacent purveyors. The ultimate goal of this effort was to establish a qualified, exclusive right of retail water service within the service areas identified and approved. Agreements were developed between adjacent water systems, which included maps of both current and planned future retail service areas for each system. Water systems were given until one year after the initial CWSP was adopted to identify a future service area and declare the system to be an expanding system. The current and future areas of expanding systems were designated as the exclusive retail service area of the respective utilities. Service area claim overlaps between systems were identified and eventually resolved. Systems that did not respond were designated as non-expanding water systems. They were not required to sign an interlocal service area agreement, but were limited to providing service only to parcels adjacent to existing water mains or within the geographic section or plat the non-expanding water system was designed to serve.

3.2.2 Conditions of Service by Designated Utility

Water service can be provided by the designated utility either through direct connection to the utility’s existing water system, or as a detached, remote system managed by the utility or others through agreement. In either case, the utility will identify for the applicant all of the conditions of service which must be agreed to prior to the provision of water service. The managing utility must be an approved SSMA if the system is to remain remote and detached. If remote and/or interim systems are not installed to the standards of the designated utility, the applicants will be advised of their responsibility to pay additional costs later if required to upgrade facilities to specified standards to integrate with the designated utility. The County or local jurisdictional authority is responsible to ensure that covenants explaining these potential future costs are recorded with all applicable parcels as a condition of all final plat, short plat, and land use approvals. Once the applicant agrees to these conditions, a building permit or preliminary plat approval can be issued.

The Coordination Act requires that the utility be willing to extend service in a timely and reasonable manner. The applicant is able to utilize an Appeals Process established by the CWSP if it is felt the designated utility is responding in an untimely or unreasonable manner. If service cannot be provided in a timely and reasonable manner, interim service area agreements or retail service area adjustments should be made.

3.2.3 “Timely and Reasonable Service”

An individual or developer seeking public water system service is required to receive service from the designated utility, but is entitled to appeal this requirement. The appeal will prevail if the requesting party can demonstrate that service is not being pursued in a “timely and reasonable” manner. “Timely service” is defined as receiving service within 120 days. If the extent of water service requested requires construction of major facilities such as the replacement or installation of new storage tanks, wells, booster pumps or transmission or distribution mains, the time associated with construction may be added to the 120 days. The 120-day time period shall be defined as calendar days. The time
period will commence after the submittal of an application and payment of fees. Construction of water facilities are subject to design review and approval both at the state and local levels, local permitting processes, construction season considerations, and are often done in conjunction with other planned infrastructure projects such as road, sewer, lights, etc. The previous activities are part of “construction time” and are in addition to the 120-day period.

A completed agreement on the provision of service that is satisfactory to both parties, must be reached within the 120-day period. A completed agreement will contain the schedule and terms of providing service within 120 days plus construction time (or a time period acceptable to both parties). The purveyor should document the record start date.

If an appeal exists, it will likely occur during the 120-day period. The appeal process as specified in the CWSP will be initiated, and will extend the 120-day period by a length of time equal to the time required to resolve the appeal.

An existing purveyor might be considered unable to provide the service in a timely manner if:

- Where no infrastructure is required (other than a water service connection), the water service is not provided to the applicant within 120 days of submitting a completed agreement and payment of necessary fees to the purveyor; or

- Where infrastructure installation by the purveyor is required (other than a water service connection), the water service is not provided to the applicant within 120 days (plus construction time) of final payment of applicable fees and infrastructure costs and completion of all required administrative work by the applicant; or

- Where infrastructure installation by the applicant is required, the purveyor has not provided the applicant access to its system within 120 days of the applicant submitting a written request and paying applicable fees to the purveyor unless the county or a local jurisdictional authority has specified otherwise; or

- The purveyor states in writing that it is unable or unwilling to provide the service; or

- The purveyor and applicant are unable to achieve an agreement on the schedule and terms of provision of service within 120 days of commencement of good faith negotiations by both parties because the purveyor has been determined to be unreasonable.

Water Rights - DOH requires all projects to be supported by adequate water rights. Purveyors may not assume that water rights will eventually be issued. Water rights may take years to obtain or may be denied. Therefore, waiting for a water right permit to be issued is neither timely nor reasonable.
Reasonableness criteria will consist of comparison with requirements, conditions, and character of service provided by other typical purveyors in the county or city, including consideration of the regulations of controlling government authorities.

Conditions of Service – Conditions of service shall be found to be reasonable, provided that they are consistent with the conditions of service policies detailed in the utility’s DOH-approved water system plan.

An existing purveyor might be considered unable to provide service in a reasonable manner if:

- The purveyor’s conditions of water service differ adversely and in an arbitrary and capricious manner from the stated conditions of service in the purveyor’s approved water system plan or small water system management program; or

- The purveyor’s conditions of water service differ adversely and in an arbitrary and capricious manner from the purveyor’s acknowledged standard practice with other applicants requesting similar service.

Cost of Water Service – Cost of service specifically relates to system installation charges such as connection fees, capital facilities charges, front footage fees, and terms of developer extension agreements necessary to support requests for new water service in a utility’s designated service area. System installation charges are typically addressed and justified in a utility’s water system plan. Assuming consumer awareness and input, and adequate agency review of these elements prior to approval of the WSP, the reasonableness of cost of service should not be an issue for a given utility with an approved WSP. However, it is recognized that a utility’s cost of service may be different for specific projects, which may require that cost become a topic of concern. Therefore, in some limited and unique circumstances, cost of service can be discussed as part of an appeal.

Service Area – A utility’s service area(s) in its water system plan should be consistent with the service area(s) designated through the CWSP process.

A DOH approved water system plan- A water system that has committed to providing service for new requests for water must have an approved water system plan or have a development schedule to prepare a WSP, agreed upon by DOH.

Current operating permit status of water system – A system in a RED operating permit category cannot be expanded. A system in a BLUE operating permit category indicates that the system has yet to be evaluated for current adequacy status or its ability to expand. Systems with BLUE operating permits cannot be expanded until their adequacy for expansion has been determined. A system in a YELLOW operating permit category may or may not be considered capable of expansion, depending upon the nature of the problem(s) that caused the system to be placed in the YELLOW category. A system in the GREEN category has no restrictions on expansion up to their allowed number of connections, if a limit has been established by DOH.
Consistency with local land use plans and policies – Service area boundaries and utility level of service standards should be consistent with minimum design standards contained in the CWSP and be consisted with minimum level of service requirements in local jurisdictional plans and policies. Water system plans, designs, and policies should be consistent with local land use authority construction scheduling for capital improvements, financing schedules for capital improvements, and general purpose government comprehensive plans.

3.2.4 Interim Service Agreements

A utility may receive a request for service within its designated retail service area and may not be able to provide immediate service. If this occurs, interim operating services by an adjacent utility, an SSMA, or non-expanding system may be allowed providing the designated utility is in concurrence. Service may be provided either through physical connection to an adjacent utility's system or installation of a detached, remote system. The appropriate level of services shall be stipulated in a written agreement between the designated utility and the operating entity. Retail service area adjustments are not required for provision of interim services.

3.2.5 Retail Service Area Adjustment

If a utility determines that its retail service area is either too large or too small, the service area boundaries may be revised at any time. The retail service area boundary adjustment will require the agreement and signing of a revised service area agreement by all affected purveyors. Such revised agreements shall be executed by the authorized utility representative(s), approved by the County, and filed with the KCHD and KPUD for inclusion in the official CWSP file. The official maps will be updated by KPUD and provided to KCHD (see Subsection 3.7 below). The individual water utility may submit a change to its water system plan or wait until the next revision is required by DOH.

3.3 Retail Service Area Selection Process

The Coordination Act specifies that no new public water systems be created after the boundaries of the CWSSA are established unless an existing system is unable or unwilling to provide service. Existing water systems were involved in the initial development of the CWSP. The WUCC adopted the following definition of an existing public water system:

All municipal water systems; utilities with a DOH approved water system plan; properties served by existing distribution systems; and developments that have been given preliminary plat approval before June 4, 1990 with properties served by distribution systems for proposed or phased developments which have submitted written information for review or received approval.
Purveyor
As defined in WAC 246-293: "Any agency or subdivision of the state or any municipality, firm, company, mutual or cooperative association, institution, partnership, person, or any other entity that owns or operates a public water system for wholesale or retail service (or their authorized agent).

Reasonable Service
Means the provision of potable water service and/or associated water utility services which are consistent with the conditions of service policies detailed in the utility’s DOH-approved WSP.

Rural
Land which is not located within the Pierce County Urban Growth Area, including land classified as "rural fringe" and "rural transitional".

Satellite System
A water system whose service area is generally remote from other existing systems, or for which connection to adjacent water systems is not feasible.

Service Area
A geographical area which is assigned to a water purveyor for the purpose of providing both current and future public water service. Boundaries are defined by agreements among adjacent purveyors and are recorded on a set of maps on file with the Tacoma/Pierce County Health Department.

Service Connection
A physical connection through which water may be delivered to customer for discretionary use. Unless otherwise indicated, all such connections, whether currently in use or not, shall be considered as a service connection. The service connection defines the limit of the water purveyor's responsibility for system design and operation unless otherwise provided for in the water purveyor's condition of service policies.

Water customers such as mobile home parks, planned unit developments, condominiums, apartment buildings, industrial/commercial sites, or other similar complexes are generally considered exterior to the water system. In such cases, the purveyor shall be required to meet design standards for water systems up to the point of service to the customer and beyond that point, the applicable plumbing and building codes, fire codes, County health regulations, and local ordinances are deemed to be sufficient to protect the public health and to ensure adequate water service. These customers are not themselves considered herein as water purveyors unless specifically designated as such by DOH.
<table>
<thead>
<tr>
<th>Term</th>
<th>Definition</th>
</tr>
</thead>
<tbody>
<tr>
<td>Service Area Dispute</td>
<td>A dispute between two or more purveyors planning to or proposing to provide water service to the same area.</td>
</tr>
<tr>
<td>Timely and Reasonable Dispute</td>
<td>A dispute between a potential water customer and the designated water purveyor which occurs when a formal request for service is made to the water purveyor and the purveyor makes a proposal to the potential customer that is considered by the potential customer to be untimely or unreasonable. If a determination is made that the purveyor's proposal is not timely or reasonable, a change in service area boundaries may occur.</td>
</tr>
<tr>
<td>Timely Service</td>
<td>Means receiving a commitment to provide service, or the reaching of an agreement with the potential customer, within 120 days of request for water service. The 120-day time period is defined as calendar days.</td>
</tr>
<tr>
<td>Water System Plan</td>
<td>A written plan prepared for a particular water system and service area that identifies a schedule of needed improvements, a financial program, and an operations program. A water system which is expanding within a designated service area may be required to include other elements in its plan. Details of Water System Plan requirements can be found in WAC 246-290. An &quot;approved Water System Plan&quot; is a water system plan that has been reviewed and approved by both Pierce County and DOH.</td>
</tr>
</tbody>
</table>
“APPENDIX C”

TIMELY AND REASONABLE CRITERIA

INTRODUCTION

The following represents the non-exclusive list of elements that will be considered by the Lead Agency, Pierce County Planning and Land Services Department, the Tacoma-Pierce County Health Department, the Pierce County Water Utilities Coordinating Committee and the Pierce County Hearings Examiner when making a timely and reasonable service determination as requested by the filing of a timely and reasonable service dispute by a potential water customer as detailed in the Pierce County Coordinated Water System Plan, Chapter 19D.140 Pierce County Code and Washington Administrative Code 246.293.

Issues Subject to Appeal Under the Timely and Reasonable Process

Only water service issues relating to new requests for retail water service are subject to appeal under the Timely and Reasonable process. Issues related to conformance with SEPA, the Growth Management Act, any County-wide Regional Planning Policies, County and City land use plans, financing policies, and wholesale agreements are not subject to the appeal process under the Timely and Reasonable consideration. Issues subject to review are limited to the following:

- Interpretation and application of water utility service area boundaries.
- Proposed schedule for providing service.
- Conditions of service, excluding published rates and fees.
- Annexation provisions imposed as a condition of service, provided existing authorities of City government are not altered by the CWSP, except where a Service area agreement exists between a city and a County, or as are specifically authorized by Chapter 70.116 RCW.
- Design standards more stringent than the minimum design standards specified in the CWSP, DOH-approved WSP and related water industry statutes and standards.

Definitions

Timely Service

Timely service is defined as receiving a commitment to provide service, or the reaching of an agreement with the potential customer, within 120 days of request for water service. The 120-day time period shall be defined as calendar days.
It is fairly unlikely that water service will be received within 120 days after initial contact between the applicant for water service and the purveyor, nor after the submittal of an application and/or payment of fees. An applicant (developer) must generally extend or construct additional facilities in order to serve the property being developed. The construction of these water facilities are subject to design review and approval at both the state and local levels, local permitting processes, construction season considerations, and are often done in conjunction with other planned infrastructure projects such as road, sewer, lights, etc. The previous activities are on the applicant’s timeframe, outside of the control of the water purveyor.

The 120-day clock shall commence at the filing of a written application or request by the applicant to the purveyor for utility service pursuant to the Utility Service Review Procedure (USRP) contained in the Pierce County CWSP. A completed agreement, to the satisfaction of both parties, must be reached within this time period. A completed agreement contains the schedule and terms of providing service within 120 days (or a time period acceptable to both parties). The purveyor should document the record start date of the first meeting with the applicant.

If an appeal exists, it will likely occur during the 120-day period. An existing purveyor might be considered unable to provide the service in a timely manner if:

- Where no infrastructure installation is required (other than a water service connection), the water service is not provided to the applicant within 120 days of submitting a completed agreement and necessary fees to the purveyor; or

- Where no infrastructure installation is required (other than a water service connection), the water service is not provided to the applicant within 120 days of final payment for the infrastructure and completion of all required administrative work by the applicant; or

- The water cannot be provided to the applicant within 120 days of submitting a written request and application fees to the purveyor unless by an agreement with the potential customer; or

- The purveyor states in writing that it is unable or unwilling to provide the service; or

- The purveyor and applicant are unable to achieve an agreement on the schedule and terms of provision of service within 120 days of commencement of good faith negotiations by both parties.

**Reasonable**

Reasonable service is defined as the provision of potable water service and/or associated water utility services, which are consistent with the conditions of service policies detailed in the utility’s DOH-approved WSP.
An existing purveyor might be considered unable to provide service in a reasonable manner if:

- The purveyor's conditions of water service differ adversely in an arbitrary and capricious manner from the stated conditions of service in the purveyor's approved water system plan or small water system management plan; or

- The purveyor's conditions of water service differ adversely in an arbitrary and capricious manner from the purveyor's acknowledged standard practice with other applicants requesting similar water services.

TIMELY AND REASONABLE SERVICE DETERMINATION CRITERIA

A. Status of Water Rights. *What consideration should be given to water rights status?*

DOH requires all projects to be supported by adequate water rights. It will not be assumed that water rights will eventually be issued. Therefore, waiting for a water right permit to be issued may not be timely nor reasonable.

B. Signed Service Area Agreement.

A utility's service area in its water system plan should be consistent with the service area claimed during the CWSP process. The entity requesting service must be located within this service area.

C. A DOH approved water system plan.

A water system that has committed to providing service for new requests for water must have an approved WSP or have a development schedule to prepare a WSP, agreed upon with the Department.

D. Consistency with local land use plans and policies. *What constitutes consistency with local land use plans and policies?*

Service area boundaries and utility level of service standards should be consistent with minimum design standards contained in the CWSP, DOH-approved WSP and related water industry statutes and standards and be consistent with minimum level of service requirements in the County's Comprehensive Plan and Regulations. Additionally, the following should be considered:

- Consistency with Local land use Authority construction scheduling for capital improvements.

- Consistency with Local land use Authority financing schedules for capital improvements.
• Consistency with Local land use Authority Growth Management Boundaries.

• Available water rights consistent with population projections.

E. Current operating permit status of water system. How does current DOH water system plan approval status affect provision of service?

A system in a “Red” operating permit category cannot be expanded. A system with a “Blue” operating permit designation indicates it has yet to be evaluated for current adequacy status or its ability to expand. If the system is in the “Yellow” category, service may or may not be considered available, depending on the nature of the problem(s) that caused the system to be placed in the yellow category. A system in the “Green” category may be expanded if it meets necessary requirements as determined by DOH.

F. Conditions of Service. What is reasonable?

Conditions of service shall be found to be reasonable, provided that they are consistent with the conditions of service policies detailed in the utility’s DOH-approved water system plan.

G. Cost of Water Service.

Cost of service specifically relates to system development charges and terms of developer extension agreements necessary to support requests for new water service in a utility’s future service area. System development charges are typically addressed and justified in a utility’s WSP. Assuming during utility preparation of water system plans, the DOH required public meeting was held, and adequate agency review of these elements prior to approval of the WSP, the reasonableness of cost of service should not be an issue for a given utility with an approved WSP. However, it is recognized that a utility’s cost of service may be different for specific projects, which may require that cost become a topic of concern. Therefore, in some limited and unique circumstances, cost of service can be discussed as a part of an appeal, but should not be the sole issue to initiate an appeal.

H. Pre-annexation Agreements.

Pursuant to Pierce County Code 19D.140.100, pre-annexation agreements were not contemplated in the designation of exclusive water service area boundaries by the Water Utility Coordinating Committee at the time of service area boundary designation and furthermore, are not necessary to the provision of timely and reasonable service within a purveyor’s exclusive water service area boundary. Therefore, a requirement that a potential customer enter into a pre-annexation agreement as a condition of service may be challenged as unreasonable through the dispute resolution process.

I. Service Areas

Pursuant to Pierce County Code 19D.140.090.F(1), unresolved service area disputes shall be referred by the Lead Agency to the Washington State Department of Health for final resolution.
<table>
<thead>
<tr>
<th>Code</th>
<th>Text</th>
</tr>
</thead>
<tbody>
<tr>
<td>70.116.060</td>
<td>The plan shall be reviewed for consistency with subsection (4) of this section by the legislative authorities of the counties in which the critical water supply service area is located shall hold a public hearing thereon and shall determine the plan's consistency with subsection (4) of this section.</td>
</tr>
<tr>
<td>70.116.060 (2)</td>
<td>The secretary shall review the coordinated water system plan and, to the extent the plan is consistent with the requirements of this chapter and regulations adopted hereunder, shall approve the plan, provided that the secretary shall not approve those portions of a coordinated water system plan which fail to meet the requirements for future service area boundaries until any boundary dispute is resolved as set forth in RCW 70.116.070.</td>
</tr>
<tr>
<td>70.116.060 (3)(b)</td>
<td>No other purveyor shall establish a public water system within the area covered by the plan, unless the secretary or local legislative authority determines that existing purveyors are unable to provide the service in a timely and reasonable manner, pursuant to guidelines developed by the secretary. An existing purveyor is unable to provide the service in a timely manner if the water cannot be provided to an applicant for water within one hundred twenty days unless specified otherwise by the local legislative authority. If such a determination is made, the secretary or local legislative authority shall require the new public water system to be constructed in accordance with the construction standards and specifications embodied in the coordinated water system plan approved for the area. The service area boundaries in the coordinated plan for the affected utilities shall be revised to reflect the decision of the local legislative authority.</td>
</tr>
<tr>
<td>70.116.060 (5)</td>
<td>The affected legislative authorities may develop and utilize a mechanism for addressing disputes that arise in the implementation of the coordinated water system plan after the plan has been approved by the secretary.</td>
</tr>
<tr>
<td>70.116.060 (6)</td>
<td>After adoption of the initial coordinated water system plan, the local legislative authority or the secretary may determine that the plan should be updated or revised. The legislative authority may initiate an update at any time, but the secretary may initiate an update no more frequently than once every five years. The update may encompass all or a portion of the plan, with the</td>
</tr>
</tbody>
</table>
proposals by an adjacent utility or SSMA versus expansion. If the decision is made to pursue expansion, the system owner must submit to PDS a completed Service Area Agreement. A water system plan commensurate with the planned system expansion must be submitted to, and be approved by, the appropriate agency, either DOH or PDS.

(2) Expansion Within Utility's Designated Service Areas
Expansion beyond initially approved service connections for an existing smaller utility located within a designated utility service area will not be allowed without approval by the larger utility. The CWSP places responsibility on the review agencies to recognize a specific utility's service area. In turn, the utility is responsible for effective management within that service area.

6. RECEIVERSHIP OF FAILING SYSTEMS

RCW 43.70.195 provides that whenever an action is brought by the Secretary of Health or a local health officer to place a public water system in receivership, the petition shall include the names of one or more suitable candidates for receiver who have consented to assume operation of the water system. If there is no other person willing and able to be named as receiver, the court shall appoint the county in which the water system is located as receiver.

Existing utilities have accepted the lead responsibility for providing public water supply within their designated service areas through the establishment of service area boundaries in the CWSP and the review process described above. These utilities should therefore be the named receiver for a failing system. A logical extension of this responsibility is for the designated utilities to assist in correcting problems of failing systems within the boundaries of their service areas and accept ownership of the systems following the upgrade of the system to the utility's standards. Designated SSMAs are named as the receivers of failing systems outside all other designated services areas.

The Group A - Community systems with 100 or more permanent connections and all expanding public water systems which intend to have 100 or more permanent connections, will be considered candidates who have consented to assume the receivership role described in RCW 43.70.195 for failing systems within their designated service area. This is contingent on approval of this CWSP by DOH. The Secretary of Health or SHD Health Officer will advise the court of the name of the designated utility in any future petition for receivership.

7. AVAILABLE PUBLIC WATER SUPPLY

A public water supply is considered to be available if:

- The distribution line for the public water supply is of adequate size and across a frontage of the property being subdivided; or
• The existing public water supplier is planning, at the existing supplier's own expense, 
to extend the existing water supply line across a frontage of the property within one 
year from the initial written request for water availability; or 

• The applicant is willing to extend the existing water supply line to the property at the 
applicant’s own expense, per the existing public water supplier’s policies and 
procedures; and 

• Documentation is provided from the existing public water supplier that any of the 
above three provisions can be met; and 

• A Letter of Water Availability that is related to this procedure and acceptable to 
Snohomish County is provided from the existing public water supplier; and 

• Service can be provided in a "timely and reasonable" manner, per RCW 70.116.060.
Glossary of Acronyms and Terms

water quality monitoring, trouble-shooting, emergency response, response to complaints, public/press contact, and recordkeeping.

Secretary – The secretary of the Washington State Department of Health or the secretary’s authorized representative.

Service Area – A water system’s service area is the specific area or areas the system serves or plans to serve. This may include the:

- Existing service area;
- Retail service area (applies to municipal water suppliers only);
- Future service area; and
- Wholesale service area (where the system provides water to other public water systems).

The largest area identified on a map where a municipal water supplier currently provides direct service and remote service, and the area it plans to serve. The service area may include the existing service area, retail service area, and the future service area. The service area may also include where a water system provides wholesale water supply to other public water systems through an intertie. This area may represent a water right’s expanded place of use if the requirements of WAC 246-293-107 are met. Note: The service area and the water right place of use should be consistent with each other (i.e., the utility should have authority from a water rights perspective to serve water anywhere within its designated service area).

Boundaries are defined by agreements among adjacent utilities and are recorded on a set of maps on file with Whatcom County. Water service provided within designated service areas must be consistent with local land use plans.

Service Connection – A physical connection through which water may be delivered to a customer for discretionary use. Unless otherwise indicated, all such connections, whether currently in use or not, shall be considered as a service connection. The service connection defines the limit of the water utility’s responsibility for system design and operation unless otherwise provided for in the water utility’s condition of service policies.

Utility customers such as mobile home parks, planned unit developments, condominiums, apartment buildings, industrial/commercial sites, or other similar complexes are generally considered exterior to the water system. In such cases, the purveyor shall be required to meet design standards for water systems up to the point of service to the customer; and beyond that point, the applicable plumbing and building codes, fire codes, county health regulations, and local ordinances are deemed to be sufficient to protect the public health and to ensure adequate water service. These customers are not themselves considered herein as water purveyors unless specifically designated as such by DOH.

Timely and Reasonable – Because the Coordination Act and Municipal Water Law use different definitions of “timely” and because neither defines “reasonable,” the term “timely and reasonable” is defined as follows (in order of priority) for the Whatcom County CWSP:

1. As defined in the water utility’s approved water system plan.
2. If the water utility does not have a water system plan, the definition shall be as defined in the utility’s service policies and not inconsistent with the Coordination Act.
3. If the water utility does not have a water system plan or service policies or the water system plan or service policies do not provide a definition for timely and reasonable, the definitions shall be as follows:

- Water service is considered timely when:
  - the water utility can provide service within 120 days of receiving all necessary permits to begin installation of required system improvements, if the utility is conducting system installation; or
  - the water utility can provide service within 120 days of the applicant installing all necessary system improvements; or
  - as otherwise agreed to between the applicant and utility.

- Water service is considered reasonable if costs and conditions of service are consistent with the utility’s acknowledged standard practice experienced by other applicants requesting similar service.

**Transient Non-community Water System** – A Group A public water system that serves:

(a) Twenty-five or more different people each day for 60 or more days within a calendar year; or

(b) Twenty-five or more of the same people each day for 60 or more days, but less than 180 days within the calendar year.

**Urban Growth Area (UGA)** – The Growth Management Act requires that participating counties designate a boundary that includes cities and other areas characterized by urban growth, or adjacent to such areas that are planned to accommodate future urban growth. Growth occurring outside the boundary cannot be urban in nature. A final UGA is determined and included in the completed comprehensive plan of each city and the county. As comprehensive plans are updated, the criteria for designation and placement of these boundaries are guided by the GMA and county-wide planning policies.

**Urban Levels of Service** – Includes those public services and public facilities historically and typically delivered at an intensity usually found in urban areas, and typically includes domestic water systems, fire, and police protection services.


**Utility Service Review Procedure** – An administrative procedure established under local agency jurisdiction to identify the water purveyor best able to serve an area where new public water service is requested.

**Water Availability** – Water is considered available when an applicant for a project requiring potable water has access to an adequate supply of safe drinking water which meets the intent of the Growth Management Act of 1990, as amended, and other requirements for the provision of a safe and adequate water supply (WCC 24.11).

**Water Availability Form** – The Water Availability Form (WAF) required by PDS, and reviewed by WCHD, as part of a building permit application to show that the applicant has access to an adequate supply of safe drinking water which meets the intent of the Growth Management Act of 1990, as amended, and other requirements for the provision of a safe and adequate water supply.

**Water Resource Inventory Area (WRIA)** – An administrative and planning boundary established by the Washington State Department of Ecology. Washington State is divided into
SECTION 6

The types of water service areas are as follows:

- **Existing Service Area**: DOH Publication 331-432 (dated November 2010) defines an existing service area as the area in which the utility currently provides direct service, remote service, or where service connections are currently available.

- **Future Service Area**: Public water utilities may identify future service areas that are outside of the current retail service area but in which they plan to serve water in the future.

- **Retail Service Area**: WAC 246-290-100 requires all municipal water suppliers to designate a retail service area where they currently provide or plan to provide direct retail service connection to customers.

- **Wholesale Service Area**: Utilities may also designate wholesale service areas in their water system plan where they provide or plan to provide only wholesale water service. Wholesale service areas are not regulated under the Coordination Act.

If a water system plan does not differentiate between retail and future service areas, then their entire service area is presumed to be a retail service area.

### 6.2 Activities within City Boundaries

Water service requests within incorporated areas are not subject to the USRP provided in this section. Applicants for such water service must contact the municipality directly.

### 6.3 Timely and Reasonable

The USRP makes reference to the provision of water service in a timely and reasonable manner. The term “timely and reasonable” is included in both the Coordination Act (RCW 70.116.060(3)(a)) and the Municipal Water Law, although with different meanings.

**With respect to the Coordination Act (Chapter 70.116 RCW),** the term **“timely and reasonable” is applied to the conditions of service for applicants seeking water service within the future service area of a water utility.** Applicants for water service located in an existing water system’s future service area must request service from the existing system. In this case, the existing utility has the “right of first refusal” of water service. If the system cannot provide the new service in a timely and reasonable manner, the applicant may pursue the following options in the order presented:

1. Seek service from another water system. If service is not available, the applicant may
2. Develop a new public water system if another system is not willing or able to provide the service.

Note: “Public water system” includes all systems except those serving one single-family residence or four or fewer service connections on the same farm. As used in this document, the term is generally synonymous with “Purveyor” and “Utility.” “Private water supply” means a non-Group B water supply serving up to two single-family residences (per Whatcom County Drinking Water Ordinance – WCC 24.11).
Utility Service Review Procedures

The Coordination Act defines “timely” as actions taken within 120 days, but it does not specify when the period begins and ends. The Coordination Act allows CWSPs to specify utility actions for completion in this 120-day period. The Coordination Act does not define “reasonable.” The DOH suggests the following criteria for defining reasonable (DOH Publication No. 331-444, December 2012):

- Conditions of service are consistent with local land use plans and development regulations;
- Conditions of service and associated costs are consistent with those documented in the system’s approved water system plan.
- Conditions of service and associated costs are consistent with the system’s acknowledged standard practice experienced by other applicants requesting similar water services.

Under the Municipal Water Law, the term “timely and reasonable” is used as one of the conditions in which a water utility has a “duty to serve” within their retail service area. Municipal water suppliers have a duty to provide service to all new connections within their retail service area where the circumstances meet four threshold factors (DOH Publication No. 331-366, November 2010):

1. The utility has sufficient capacity to serve water in a safe and reliable manner.
2. The service request is consistent with adopted local plans and development regulations.
3. The utility has sufficient water rights to provide service.
4. The utility can provide service in a timely and reasonable manner.

Because the two laws use the term “timely” differently and neither law defines “reasonable,” DOH recommends that a definition for timely and reasonable service be provided in the CWSP. Consequently, timely and reasonable service shall be defined as follows (in order of priority).

1. As defined in the water utility’s approved water system plan.
2. If the water utility does not have a water system plan, the definition shall be as defined in the utility’s service policies provided that the definition is not inconsistent with the Coordination Act.
3. If the water utility does not have a water system plan or service policies or the water system plan or service policies do not provide a definition for timely and reasonable, the definitions shall be as follows:

- Water service is considered timely when:
  - the water utility can provide water service within 120 days of receiving all necessary permits to begin installation of required system improvements, if the utility is conducting system installation; or
  - the water utility can provide water within 120 days of the applicant installing all necessary system improvements; or
  - as otherwise agreed to between the applicant and utility.
• Water service is considered reasonable if costs and conditions of service are consistent with the utility’s acknowledged standard practice experienced by other applicants requesting similar service.

This CWSP update includes an appeals process to resolve disputes between applicants and utilities regarding the timely and reasonable provision of water service.

6.4 Utility Service Review Procedures

The first step in the USRP is to identify the utility service area within which a proposed development is located. The CWSP places responsibility on the review agencies to recognize a designated utility service area. In turn, the utility is responsible for effective management within that service area. The USRP then describes, in order of priority, the available water service options. It also describes options for water service to proposed developments lying outside of designated service areas (Figure 2-2 – Water System Service Area Map).

The USRP applies to all development proposals requiring potable water availability approval by Whatcom County including, but are not limited to: new plat or subdivision development; short plats; land use permits; rezones; issuance of residential and commercial building permits; creation of new water systems; resolution of health emergencies arising out of existing public water systems; source site inspections; and other related activities. PDS will initiate and administer the review procedure at the time an application is submitted for permits or approvals, or upon request. A flow chart of steps to be followed in the USRP is provided as Figure 6-1.
land use plans, financing policies, and wholesale agreements are not subject to the CWSP appeals process, but may be addressed through other avenues.

**9.2.2 Timeliness and Reasonableness of Service**

State law requires that no other utility shall establish a public water system within the area covered by a CWSP unless the local legislative authority (Whatcom County Council) determines that the existing utilities are unable to provide the service in a timely and reasonable manner. The USRP makes reference to the provision of water service in a timely and reasonable manner. The term “timely and reasonable,” as included in both the Public Water System Coordination Act (RCW 70.116.060(3)(a)) and the Municipal Water Law, have different meanings.

With respect to the Coordination Act (Chapter 70.116 RCW), the term is applied to the conditions of service for applicants seeking water service within the future service area of a water utility. Applicants for water service located in an existing water system’s future service area must request service from the existing system. In this case, the existing utility has the “right of first refusal” of water service. If the system cannot provide the new service in a timely and reasonable manner, the applicant may pursue the following options in the order presented.

1. Receive service from another water system.
2. If service is not available, the applicant may develop a new public water system or a private supply.\(^1\)

The Coordination Act defines “timely” as actions taken within 120 days, but it does not specify when the period begins and ends. The Coordination Act allows CWSPs to specify utility actions for completion in this 120-day period. The Coordination Act does not define “reasonable.” DOH suggests the following definitions for reasonable:

- Conditions of service are consistent with local land use plans and development regulations;
- Conditions of service and associated costs are consistent with those documented in the system’s approved water system plan; and
- Conditions of service and associated costs are consistent with the system’s acknowledged standard practice experienced by other applicants requesting similar water services.

Under the Municipal Water Law, the term “timely and reasonable” is used as one of the conditions in which a water utility has a “duty to serve” within their retail service area. Municipal water suppliers have a duty to provide service to all new connections within their retail service area when the following criteria are fulfilled.

1. The utility has sufficient capacity to serve water in a safe and reliable manner.

\(^1\) Note: “Public water system” includes all systems except those serving one single-family residence or four or fewer service connections on the same farm. As used in this document, the term is generally synonymous with “Purveyor” and “Utility.” “Private water supply” means a non-Group B water supply serving up to two single-family residences (per WCC 24.11).
2. The service request is consistent with adopted local plans and development regulations.

3. The utility has sufficient water rights to provide service.

4. The utility can provide service in a timely and reasonable manner.

Because the two laws define “timely” differently, and neither law defines “reasonable” service, the DOH recommends that a definition for timely and reasonable service be provided in the CWSP. Consequently, timely and reasonable service shall be defined as follows (in order of priority).

1. As defined in the water utility’s approved water system plan.

2. If the water utility does not have a water system plan, the definition shall be as defined in the utility’s service policies, so long as those policies are not inconsistent with the Coordination Act.

3. If the water utility does not have a water system plan or service policies, or the water system plan or service policies do not provide a definition for timely and reasonable, the definitions shall be as follows:
   - Water service is considered timely when:
     - the water utility can provide service within 120 days of receiving all necessary permits to begin installation of required system improvements, if the utility is conducting system installation; or
     - the water utility can provide service within 120 days of the applicant installing all necessary system improvements, or as otherwise agreed to between the applicant and utility.
   - Water service is considered reasonable if costs and conditions of service are consistent with the utility’s acknowledged standard practice experienced by other applicants requesting similar service.

9.2.3 Appeals Process

Step 1 — Filing of an Appeal

An aggrieved party has 30 days from receipt of a written decision from a utility to file an appeal of issues identified in Section 9.2.1 with the Whatcom County Hearing Examiner and notify the Whatcom County Health Department (WCHD). The appeal shall be accompanied by a fee as set forth in the Unified Fee Schedule. The current fee schedule is provided in Whatcom County Ordinance 2014-063.

Step 2 — Voluntary Appeal Resolution Process

When an aggrieved party notifies the WCHD that an appeal has been filed, the County will offer to initiate a voluntary appeal resolution process. The goal of the voluntary appeal resolution process is to amicably resolve the dispute of an issue subject to appeal with minimal cost to all parties in the hopes of avoiding the use of other more costly and time consuming remedies, such as a formal appeal before the Hearing Examiner or Superior Court. If both parties desire to enter into the voluntary appeal resolution process, the aggrieved party shall request a stay of the Hearing Examiner proceedings for a specific period of time. Additional stays can be requested, if necessary and desirable.