



ISLAND COUNTY PLANNING & COMMUNITY DEVELOPMENT

PHONE: (360) 679-7339 ■ from Camano (360) 629-4522, Ext. 7339 ■ from S. Whidbey (360) 321-5111, Ext. 7339 FAX: (360) 679-7306 ■ 1 NE 6th Street, P. O. Box 5000, Coupeville, WA 98239-5000

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MEMORANDUM

To: Island County Water Resources Advisory Committee
From: Tony Mills Long Range Planner, Island County
Date: November 30, 2018
Subject: 2018 CWSP Review – Receivership(draft)

Background

This memo is meant to provide background on the issue of receivership in the context of failing water systems; and allow for the Water Resources Advisory Committee to identify recommendations for the Board of Island County Commissioners in an effort to update the process for receivership within the Island County Coordinated Water System Plan.

Regulatory Context

Washington State

RCW 70.116.050 Development of water system plans for critical water supply service areas.

(4) To insure that the plan incorporates the proper designs to protect public health, the secretary shall adopt regulations pursuant to chapter 34.05 RCW concerning the scope and content of coordinated water system plans, and shall ensure, as minimum requirements, that such plans:

(a) Are reviewed by the appropriate local governmental agency to insure that the plan is not inconsistent with the land use plans, shoreline master programs, and/or developmental policies of the general purpose local government or governments whose jurisdiction the water system plan affects.

(b) Recognize all water resource plans, water quality plans, and water pollution control plans which have been adopted by units of local, regional, and state government.

(c) Incorporate the fire protection standards developed pursuant to RCW 70.116.080.

(d) Identify the future service area boundaries of the public water system or systems included in the plan within the critical water supply service area.

(e) Identify feasible emergency inter-ties between adjacent purveyors.

(f) Include satellite system management requirements consistent with RCW 70.116.134.

(g) Include policies and procedures that generally address failing water systems for which counties may become responsible under RCW 43.70.195.

**RCW 43.70.195 Public water systems—Receivership actions brought by secretary—
Plan for disposition**

(1) In any action brought by the secretary of health or by a local health officer pursuant to chapter 7.60 RCW 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. The department shall maintain a list of interested and qualified individuals, municipal entities, special purpose districts, and investor-owned water companies with experience in the provision of water service and a history of satisfactory operation of a 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. The county may designate a county agency to operate the system, or it may contract with another individual or public water system to provide management for the system. If the county is appointed as receiver, the secretary of health and the county health officer shall provide regulatory oversight for the agency or other person responsible for managing the water system.

(2) In any petition for receivership under subsection (1) of this section, the department shall recommend that the court grant to the receiver full authority to act in the best interests of the customers served by the public water system. The receiver shall assess the capability, in conjunction with the department and local government, for the system to operate in compliance with health and safety standards, and shall report to the court and the petitioning agency its recommendations for the system's future operation, including the formation of a water-sewer district or other public entity, or ownership by another existing water system capable of providing service.

(3) If a petition for receivership and verifying affidavit executed by an appropriate departmental official allege an immediate and serious danger to residents constituting an emergency, the court shall set the matter for hearing within three days and may appoint a temporary receiver ex parte upon the strength of such petition and affidavit pending a full evidentiary hearing, which shall be held within fourteen days after receipt of the petition.

(4) A bond, if any is imposed upon a receiver, shall be minimal and shall reasonably relate to the level of operating revenue generated by the system. Any receiver appointed pursuant to this section shall not be held personally liable for any good faith, reasonable effort to assume possession of, and to operate, the system in compliance with the court's orders.

(5) The court shall authorize the receiver to impose reasonable assessments on a water system's customers to recover expenditures for improvements necessary for the public health and safety.

(6) No later than twelve months after appointment of a receiver, the petitioning agency, in conjunction with the county in which the system is located, and the appropriate state and local health agencies, shall develop and present to the court a plan for the disposition of the system. The report shall include the recommendations of the receiver made pursuant to subsection (2) of this section. The report shall include all reasonable and feasible alternatives. After receiving the report, the court shall provide notice to interested parties and conduct such hearings as are necessary. The court shall then order the parties to implement one of the alternatives, or any combination thereof, for the disposition of the system. Such order shall include a date, or proposed date, for the termination of the receivership. Nothing in this section authorizes a court to require a city, town, public utility district, water-sewer district, or irrigation district to accept a system that has been in receivership unless the city, town, public utility district, water-sewer district, or irrigation district agrees to the terms and conditions outlined in the plan adopted by the court.

(7) The court shall not terminate the receivership, and order the return of the system to the owners, unless the department of health approves of such an action. The court may impose reasonable conditions upon the return of the system to the owner, including the posting of a bond or other security, routine performance and financial audits, employment of qualified operators and other staff or contracted services, compliance with financial viability requirements, or other measures sufficient to ensure the ongoing proper operation of the system.

(8) If, as part of the ultimate disposition of the system, an eminent domain action is commenced by a public entity to acquire the system, the court shall oversee any appraisal of the system conducted under Title 7 RCW to assure that the appraised value properly reflects any reduced value because of the necessity to make improvements to the system. The court shall have the authority to approve the appraisal, and to modify it based on any information provided at an evidentiary hearing. The court's determination of the proper value of the system, based on the appraisal, shall be final, and only appealable if not supported by substantial evidence. If the appraised value is appealed, the court may order that the system's ownership be transferred upon payment of the approved appraised value.

Island County

Island County has no additional standards associated with the issue of receivership, and is currently held to the process outlined in RCW 43.70.195.

Other Jurisdictions

Jefferson County

Designates areas where certain utilities (specifically those with 100 or more permanent connections) are the receiver of small failing water systems. Also, they designate the Public Utility District (PUD) to be the receiver if those designated utilities do not accept receivership, or for areas outside of those utility receivership areas.

King County

Developed an action plan for the county, in the event the county becomes the receiver of a failing water system. This action plan includes provisions on notification, coordination, agency support, and assessments procedures.

Kitsap County

Designates Group A water systems with 100 or more permanent connections receivers of failing water systems adjacent to their service areas. The Kitsap PUD is the designated receiver for all other failing water systems. Also discusses the possibility for Satellite Management Agencies (SMA) to be receivers of failing water systems.

Pierce County

Has a policy to encourage the use of SMAs for receiving failing water systems. Developed policies which clearly define Pierce County's role and responsibilities when designated the receiver of a failing water system. Defines the responsibilities and powers for receivers of failing water systems. Developed a more thorough evaluation process (including flow charts) for receivership.

Skagit County

Designates Group A water systems with 100 or more permanent connections receivers of failing water systems adjacent to their service areas. The PUD is the designated receiver for all other failing water systems.

Snohomish County

Designates Group A water systems with 100 or more permanent connections receivers of failing water systems adjacent to their service areas.

Whatcom County

The water system must exhaust all reasonable justifications for not meeting DOH requirements. Receivership is intended to be a process to bring water systems into compliance, not to permanently manage the system. Designates Group A water systems with 100 or more permanent connections receivers of failing water systems adjacent to their service areas.

Island County Water System Statistics

<i>Island County Water Systems</i>			
<i>Water System Type</i>	<i>Whidbey</i>	<i>Camano</i>	<i>Total</i>
<i>Group A</i>	205	80	285
<i>Group B</i>	473	118	591
<i>Two Party</i>	328	142	470
<i>Totals</i>	1006	340	1346

Issue(s)	WRAC Recommendation(s)	Staff Comments	Potential Impacts
<p><i>The IC CWSP outlines no process for receivership.</i></p> <p><i>Without local guidance IC is strictly held to the process outlined in 43.70.195.</i></p> <p><i>RCW 43.70.195(1) outlines that the county can become the receiver in the event that there are no other WSP willing or able to act as a receiver.</i></p>			