

Section 9

9.2 Appeals Process

As discussed in **Section 6**, the Utility Service Review Procedure (USRP) process gives existing systems preference for providing water service to new developments. Each service must be timely and reasonable. Disagreements as to what constitutes appropriate conditions of service may be expected to arise from time to time between applicants for new water service and existing systems. For these reasons, an appeal procedure was developed.

Per the USRP, applicants for land use permits that require potable water service within the designated service area of a water utility must work out the conditions for new service with the designated utility. An applicant who is not satisfied with the designated utility's conditions for new service may initiate an appeal as detailed in **Sections 9.2.1** through **9.2.3**, below.

9.2.1 Issues Subject to Appeal and Review

Only water service related issues are subject to appeal and review under this process. In most instances, such issues will be identified when the applicant requests the Water Availability Form from the water utility. Issues subject to appeal and review are limited to the following:

- Interpretation and application of water utility service area boundaries;
- Proposed schedule for providing service outside of the retail service area;
- Conditions of service, such as the timeliness and reasonableness of service, but 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 where an interlocal agreement exists between a city and the County or as are specifically authorized by Chapter 70.116 RCW; and
- Lack of response by a utility.

Issues other than conditions of service, such as those related to conformance with the State Environmental Policy Act (SEPA), the GMA, any county-wide planning policies, county and 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.

Future Service Areas.

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.

Retail Service Areas.

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).

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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.

Future and Retail Service Areas.

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:
 - Response to a request for service is considered timely when:
 - Response to a general request for information is timely if the utility responds within 60 days of the request. A general response to request for information is not a written commitment by the utility to serve but rather availability of general information intended to inform a potential applicant. General inquiries are commonly responded to within 1 – 7 days.
 - Response to a written request for service is timely if the applicant receives a commitment to provide service in the form of a Water Availability Form, reaches an agreement with the utility, or receives a denial, within 120 days of the utility receiving a complete application.
 - Water service delivery 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 subject to extenuating circumstances including but not limited to weather, contractor availability, etc.; 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 delivery is considered reasonable:

Where service 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 within the water system's service area has 30 days from receipt of a written decision from a utility to initiate a voluntary appeal resolution process of issues identified in Section 9.2.1 with the Whatcom County Health Department (WCHD) in hopes of avoiding the use of Superior Court.

Step 2 — Voluntary Appeal Resolution Process

When an aggrieved party notifies the WCHD, the WCHD 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 Superior Court.

The voluntary appeal resolution process can be initiated by either party sending a written request for review of the disputed issues to the Director of the WCHD. If all parties agree to the voluntary process, the appeal will be heard by an appeal resolution committee (ARC) consisting of the Director of WCHD (or his/her designee), the Director of Planning and Development Services (PDS) (or his/her designee), the Director of Public Works (or his/her designee), a representative from a Satellite Management Agency (SMA) currently approved for operation in Whatcom County, and a representative from a similar size utility if available and willing to participate. The ARC shall be chaired by the representative from the WCHD.

The appealing party shall have the opportunity to present first. The responding party may reply. The appealing party may rebut issues raised in the reply. The ARC shall have the discretion to ask questions during or after presentation of evidence and to relax or formalize the proceedings to facilitate a fair, orderly, efficient, and complete discussion of the issues.

The goal of the ARC shall be to find a mutually agreeable solution to the dispute and have the parties memorialize any agreement by executing a service agreement. However, neither party is bound by the findings; if either party subsequently wishes to pursue a final resolution in another venue, they may do so. No official recording of this appeal resolution process will be provided. However, nonbinding written findings shall be issued memorializing the evidence considered, the witnesses who appeared, and the reasons for the findings. See "Appendix 6- Conditions of Service Criteria for Consideration" for guidance during the dispute resolution process related to a future service area.

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The Voluntary Appeal Resolution Process:

- 1) Findings are Nonbinding.
- 2) Participation is encouraged but voluntary.
- 3) Disputing parties may pursue outside Arbitration/Mediation as an option.
- 4) Appropriate venue for legal action remains Superior Court.

Step 3— Review Court

An appeal may be made to Superior Court and/or other appropriate courts following the rules of that venue.

9.3 Coordinated Water System Plan Update

Because rules, laws, and practices change over time, it is recommended that the CWSP be updated in coordination with updates of the Whatcom County *Comprehensive Plan* to ensure that both documents remain relevant and useful. More frequent updates of the CWSP may be initiated, as necessary, at the direction of the County Council or DOH. In accordance with RCW 70.116.060(8), if DOH initiates an update or revision of the CWSP, the state shall pay for the cost of the update.

9.4 Periodic Review of CWSP Implementation

The Director of WCHD (or his/her designee) shall contact WUCC members at least once per calendar year to determine whether there are issues of significance requiring attention by the full WUCC or a sub-committee of the WUCC. The Director will also contact the members of the Water Resource Inventory Area (WRIA)1 watershed planning process established under RCW 90.82, including the WRIA 1 Planning Unit, at least annually to determine if there are issues from that process that require attention by the WUCC. These issues may include the identification of items for which the WUCC or the Planning Unit recommend the County engage in education-related efforts intended to foster the successful implementation of the CWSP.