

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 Skagit County (County) water purveyors. 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 Skagit County Critical Water Supply Service Area (CWSSA) unless it is determined that existing purveyors are unable to provide the service, in the manner defined in Section 3.1. Section 4.3 outlines the sequence of steps designed to ensure that the Skagit County County-wide Planning Policies, including the appropriate level of rural or urban water service, is available when development or building occurs. This CWSP is designed to identify the standards and the utility responsible for providing the service.

Therefore, the local government building permit process is the step where local governments should apply a regulatory or control point to ensure that the CWSP and the Skagit County County-wide Planning Policies are consistent. This legislation, in itself, does not preclude the use of wells that meet the County siting criteria as set forth in Chapter 12.48 Skagit County Code (SCC).

This section of the CWSP presents the administrative procedures for reviewing development proposals and associated requests for water service in the unincorporated portion of Skagit County. This review process is for the purpose of identifying existing purveyors who are willing and able to extend this new water service, and to document availability of water supply.

A general philosophy of the CWSP is that water utility service does 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.

Water system plans (WSPs) must address the water system facilities required to accommodate growth. This growth is projected to occur within each utility's service area, based on the State Environmental Policy Act (SEPA), the Growth Management Act (GMA), the County-wide Planning Policies for Skagit County, and County and city land-use plans. Capital improvements are planned and

constructed to conform with the anticipated service requirements associated with those plans.

In addition, if an applicant for water service is proposing a land use change, such a change could incur a significant financial burden on the provider of water service. Because water utilities must, of necessity, develop their systems to conform with applicable land use plans, any major change in land use may require substantial system improvements to serve the proposed development. Therefore, additional review procedures will apply to applications which propose a land use change.

5.2 Activities Within City Boundaries

Water service requests within established city limits are not subject to the Utility Service Review Procedure (USRP). Applicants for such water service must contact the city directly. In those cities served by the Public Utility District No. 1 of Skagit County (PUD) (currently Mount Vernon, Burlington, and Sedro Woolley), the request for water service will be referred to the PUD by the appropriate city administrator.

5.3 Activities Within Indian Reservations

As is noted in Section 2, there is legal question as to whether the State laws governing the CWSP process apply to non-Indian owned fee lands within a "Reservation" and activities thereon. It is the position of at least the Swinomish Indian Tribal Community that Tribal Utility Law applies to all lands within the exterior boundaries of its Reservation.

One result of this CWSP is that the areas within the three Indian Reservations are determined to be the exclusive future service areas of the Tribal water systems. However, in the instance of the Swinomish Indian Reservation, a number of existing systems are situated within the exterior boundaries. As set forth in Section 3 (Water Utility Service Areas), the current service areas of existing systems are preserved as their geographical area of responsibility and operation. This condition applies even though, as result of the CWSP, a non-expanding system may be located entirely within the boundaries of a larger system (e.g., a Tribal system).

Since the Swinomish Tribal water system is confirmed in this CWSP as having responsibility for the entire Swinomish Indian Reservation, the following utility service review procedures will apply:

- New water service within existing systems on the Reservation will be approved only for "in-fill" development consistent with current County, Department of Health (DOH), or Swinomish Tribal Planning Department (STPD) system approval, as applicable.

- The County will coordinate review of all "in-fill" water service requests with the STPD. The spirit of this coordination will be to seek to assure that new development is consistent with County and Tribal land use policies.
- Requests for water service for new developments or expansion of existing non-Tribal systems will be referred to the STPD. If service cannot be provided consistent with CWSP and Tribal policies, by extension of the Tribal system, or by a new remote Tribal system, the conditions of the Satellite Management Agency (SMA) program (see Section 6) will apply.
- The appeal procedure provided for herein will apply to water service issues related to non-Indian lands.

5.4 Utility Service Review Procedure

The USRP identifies the utility in whose designated service area a proposed development lies. It then describes, in order of priority, the available water service options.

Within the USRP process, reference to "service area(s)" means the specific geographical area described in the written agreement required by RCW 90.116.070(1) and WAC 246-293-250(1). The service area boundaries are identified by map in Section 3 of this CWSP and on file with Skagit County Planning and Permit Center (SCPPC) and/or Skagit County Health Department (SCHD). The boundary will include the area within which direct/retail service connection to customers is currently available (existing service area) and the area for which water service is planned (future service area) by the designated utility.

The USRP applies to all development proposals requiring approval by SCPPC. These include building permits and their related prior land use approvals for which either connection to, or a determination of, adequate and potable water is required. Included are related land use approvals that could affect future building permits such as: special use permits, variances, "quasi-judicial" property rezones, shoreline substantial development/conditional use permits, and boundary line adjustments.

At the time an application is submitted for permits or approvals involving water supply, or upon request, the SCPPC will initiate and administer the review procedure. A flow chart of steps to be followed in the USRP is provided as Exhibit 5-1.

The USRP procedures are intended to identify an existing water purveyor willing and able to provide water supply facilities and to include the new development within its service area. Such a determination is subject to the new development complying with the SEPA, GMA, the County-wide Planning Policies for Skagit

County, and County and city land-use plans. In effect, the result of the USRP is to assign the proposed new development or land use to the service area of a designated water utility. In the event that a designated utility is unable or unwilling to provide service, the referral process referenced in subsequent paragraphs is to be followed. The service identified through this process must be consistent with the SEPA, the GMA, the County-wide Planning Policies for Skagit County, and County and city land-use plans as described in Section 3.1.

Pursuant to State law, water service requests occurring within a contested service area or the service area of a utility that has not completed either its individual WSP or its service area agreement may be denied until these issues are resolved. If the affected utilities are unable or unwilling to resolve their service area conflicts, the local legislative authority may attempt to resolve the conflict through procedures established under RCW 70.116.060(5). If the local legislative authority chooses not to act, DOH shall render a determination following appropriate due process.

5.4.1 Review Process for Development Proposals or Water Service Requests in Conformance with Applicable Land Use Plans

When development and associated water service applications conform with land use plans and zoning ordinances, the USRP will generally follow the sequential steps outlined in Exhibit 5-1. This procedure is described by the following:

Responsible Agency

The SCPPC will coordinate review of all development proposals within the unincorporated area of the County. Through this coordination, the SCPPC will be responsible for ensuring the proposal is in conformance with the applicable comprehensive land use plans, zoning code, and utilities' comprehensive water system plans. Upon determination of appropriate land use designation, the SCPPC will review building permit requests for conformance with fire flow requirements adopted in this CWSP.

Individual Residential Developments

The review of proposals for development and use of an individual water supply will be coordinated by the SCPPC in the following manner.

If the proposed development is outside the designated service areas of existing purveyors, the applicant will be required to provide suitable evidence of the availability of an adequate water supply in accordance with SCC 12.48.

Where the proposed development is within the designated service area of an existing utility, the applicant will be notified of that utility. The intent of this referral is to bring the applicant and utility together for a discussion and

examination of the alternative of connecting to the existing public system, provided that the proposed development conforms to the SEPA, the GMA, the County-wide Planning Policies for Skagit County, and County and city land-use plans. Should the utility not be willing or able to provide timely service or the applicant considers the conditions of service to be unreasonable, an individual water system may be developed upon showing of an adequate water supply consistent with SCC 12.48. If agreement is reached, appropriate documentation of the availability of an adequate water supply must be included in the application for building permit as provided in SCC 12.48.

Public Supplies

Where three or more service connections are proposed, the applicant must coordinate the supply needs with an existing utility, as assigned. The SCHED will review the proposed water service request and refer the applicant to a designated utility, adjacent utilities, the PUD, or allow the creation of a new utility, as outlined in the steps below.

Proposed Development Within Designated Service Areas. The applicant will be referred to the designated utility. In response to a request for water service, the utility will give notice of its intent to exercise one of the following options, in order of priority:

- The designated utility provides service to extended or expanded mains provided by the developer or utility as agreed upon by the parties.
- The previous SMA approved designated utility approves design of a detached, remote system and upon construction in accordance with said design, owns and operates the system. Design of the system shall be in accordance with the standards and specifications of the designated utility. A contract establishes financial obligations for maintenance, operation, and management until the two systems are connected; or
- The previous SMA approved designated utility approves design of a detached, remote system and enters into an agreement specifying the operational requirements and financial obligations of the originators of the remote system. The remote system may be operated on a daily basis by an adjacent utility, or a developer/homeowners association under the direction and guidelines of the designated utility. The designated utility retains contractual responsibility for monitoring the water system operation and for water quality. Where the remote system consists of four or fewer connections and requires no fire flow, the designated utility may allow facilities which meet DOH standards

but are less stringent than the CWSP minimum design standards. It is anticipated that these more lenient standards will be utilized primarily when the small system will be absorbed and served by larger facilities planned for future installation by the designated utility; or

- The designated utility denies the provision of service for reasons other than failure to conform to the requirements of SEPA, GMA, the County-wide Planning Policies for Skagit County, and County and city land-use plans. Thus, the utility relinquishes that portion of its service area pursuant to the service area adjustment provision of Section 3 and service options are further determined through the procedures described below.

Proposed Development in Relinquished Service Areas or Undesignated Areas. If a designated utility is unwilling or unable to provide service for reasons other than compliance with the SEPA, the GMA, the County-wide Planning Policies for Skagit County, and County and city land use plans or if the development is in an undesignated area, the following will occur:

- The SCPPC and/or SCHED identifies adjacent purveyors with an approved WSP that provides for expansion and gives them the first option to serve the new development. An existing system shall be considered "adjacent" to the proposed development if service can be provided with a service line extension not to exceed one-half mile in length. If responsibility is accepted, service area boundaries are changed; or
- If an existing purveyor is unwilling to assume ownership and/or system operational responsibility, the SCPPC and/or SCHED will refer the developer to the PUD for development of a remote/satellite system under ownership and/or management of the PUD.

Review of Contested Issues. Each of the referral steps described above may result in an offer of water service by an existing purveyor under conditions deemed to be unacceptable by the developer. For resolution of such issues, not involving compliance with SEPA, GMA, the County-wide Planning Policies for Skagit County, or County and city land use plans, an appeal process has been established and is described below in Sub-Section 5.5

Within the referral process, authority for creation of a new water system will be granted only in the non-designated area of the County and as a result of the denial of water service by the PUD for economic reasons or the imposition of conditions of service by the PUD that are unacceptable to the developer. The determination that a new system may be created within unincorporated

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areas of the County will be by the Skagit County Hearing Examiner and the Skagit Board of County Commissioners. When such issues are associated with development activities within incorporated areas, their resolution will be through the procedures established by the responsible city or town.

Project Review

The proposed project must be reviewed with the assigned utility to identify the engineering, design standards, financial, managerial, and other requirements of service. Fire flow requirements consistent with the CWSP design standards (Section 4) will be determined for the proposed project by the appropriate Fire Marshal. Review by the assigned utility will ensure that the applicant and purveyor have discussed the requirements of both parties.

The utility will provide to the applicant either a satisfactory Public Water System Evaluation or a service connection fee receipt as per SCC 12.48.

Written Contract

After the preliminary plat and applicable land use permits are approved, a written contract should be developed and executed between the utility and applicant to formalize the conditions of service responsibilities. Prior to County approval of final plats or building permits, the water facilities are to be installed to meet the utility's minimum standards.

5.4.2 Review Process for Development Proposals or Water Service Requests Not in Conformance with Applicable Land Use Plans

If a development proposal requires a zoning change or alteration of applicable land use plans, then each affected utility shall be contacted by the SCPPC and allowed to comment on the proposal prior to approval of that change. By identifying new or additional utility costs associated with changes in land use or zoning, these costs of development can be integrated into the decision making process. This will allow the assignment of these costs to customers benefiting from the land use change.

5.5 Appeal Process

It may be expected that issues of protest or interpretation regarding requirements of the CWSP will be raised by either an applicant for a development permit or a utility. For issues related to development activities in the unincorporated area, a two-step appeals process will be established as described below and shown on Exhibit 5-2.

5.5.1 Issues Subject to Appeal and Review

Only water service issues relating to direct retail water services are subject to appeal and review under this process. Issues related to conformance with SEPA, GMA, the County-wide Planning Policies for Skagit County, and County and city land use plans, financing policies, and wholesale agreements are not subject to appeal and review under this process. In most instances, such issues will be identified when the applicant requests a Public Drinking Water System Evaluation from the water utility. Issues subject to review are limited to the following:

- (1) Interpretation and application of water utility service area boundaries.
- (2) Proposed schedule for providing service.
- (3) Conditions of service, excluding published rates and fees.
- (4) Design standards more stringent than the standards included in Section 4.

5.5.2 Step 1 Review Process

A recent change in the State law provides for a 120-day appeal period. This law is being interpreted, by DOH, such that the 120-day period commences at the first meeting between the purveyor and the applicant pursuant to the USRP process described in this Section. At the conclusion of this negotiation period, agreement to the satisfaction of both parties must be reached with written confirmation.

If an appeal exists, it will likely occur during the 120-day negotiation period. Therefore, the CWSP's 45-day local "Appeals" procedure, discussed in this subsection, will extend the 120-day period by the length of time equal to the time required to resolve the appeal.

It is expected that most issues will arise over the question of what constitutes timely and/or reasonable conditions of water service. The view of the Water Utilities Coordinating Committee (WUCC) is that the majority of such disputes can best be resolved if discussions between the parties are facilitated by persons knowledgeable as to public water system design, construction, and operation. To this end, the WUCC will form a subcommittee for purpose of peer review of appealable issues with the objective of reaching negotiated agreements.

If an applicant and a utility are unable to agree on conditions of service, a written request for review of the issues may be made to the SCHD or SCPPC by either party. The SCPPC will initiate review by sending a copy of the request to the chairperson of the WUCC. The WUCC will establish a process

for review and informal resolution of appeals. The process will generally function within the following framework:

Appeal Review Subcommittee

A subcommittee of the WUCC will be appointed by the Skagit Board of County Commissioners employing a staggered term format. Membership will consist of representatives of the following interests. Membership may change at the discretion of the WUCC as experience is gained in the appeal process.

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|--------------------------|--|-----------|
| <input type="checkbox"/> | Municipal Corporation Water Utilities | 2 members |
| <input type="checkbox"/> | Non-municipal Corporation Water Utilities | 2 members |
| <input type="checkbox"/> | Well Drilling Industry | 1 member |
| <input type="checkbox"/> | Skagit County Department of Health | 1 member |
| <input type="checkbox"/> | Skagit County of Planning
and Permit Center | 1 member |

(Note: The two Skagit County representatives will be ex-officio members.)

Objectives

The review process will be directed to achieving the following objectives:

- Provide a forum for negotiation of the issues between the parties.
- Facilitate the negotiations.
- Assure equitable representation between parties.
- Reach agreement between parties.
- Where parties choose not to participate in the negotiations, identify and evaluate the facts associated with the issues.

WUCC Subcommittee Report

The WUCC Subcommittee will conclude its review within 45-calendar days of receipt of the appeal. A 45-calendar day review period will serve as the standard for fact finding and facilitating agreement. When 45-calendar days does not provide adequate review, an extended review period can be set forth through establishment of a jointly agreed work plan. The WUCC Subcommittee chairperson will provide a written report to the SCPCC which contains the majority view of the Subcommittee. When the appeal has been resolved, the conditions of agreement will be reported. A full or conditional

notice of withdrawal of the appeal by the applicant should accompany the report. Where resolution was not achieved, the report should identify the controlling issues and the position of the parties. A Subcommittee recommendation for disposition of the issues is to be provided.

5.5.3 Step 2 Review Process

When the WUCC Subcommittee is not successful in facilitating a resolution of the appeal, the SCPPC shall formally forward the appeal and "Report" of the WUCC Subcommittee to the Skagit County Hearing Examiner. Further review will then take place under Skagit County Code 14.01. The report of the WUCC Subcommittee will be entered as part of the hearing record, be fully considered by the Hearing Examiner, but will not be binding with respect to substance or process.

In the event that a city is a party to an appeal relating to GMA issues, the appeal shall not be forwarded to the County Hearing Examiner. Instead, the appeal shall be referred to a third party arbitrator jointly agreed to by the city and the Board of County Commissioners.

5.5.4 Further Appeal

There shall be no further appeal of review conducted by a third party arbitrator. However, a request for review of the Hearing Examiner decision may be filed with the Skagit Board of County Commissioners pursuant to Skagit County Code 14.01. The decision of the Board shall be final and binding upon the parties to the appeal.

Upon completion of the appeal process, the SCPPC will continue processing of the development application consistent with the final resolution.

5.5.5 Appeal Process Review

The need for effectiveness and efficiency of the described process can only be determined through plan implementation. Refinement or re-direction may be needed. Adjustments should be made within the framework of the described appeal process. Major changes will require CWSP amendments.

5.6 Special Review Considerations

In the review of development proposals and associated requests for water service, the SCHED shall be guided by the following special considerations.

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5.6.1 Applications for Service to Non-Residential Properties

Commercial and industrial properties represent a fire flow responsibility that may greatly exceed flows required for residential housing. These flow requirements are critical to the sizing of the storage, pumping, and piping facilities. For these reasons, the SCPPC shall also use the referral process described herein for all proposed commercial and industrial developments.

5.6.2 Expansion of Small Water Systems

The inventory of small systems was updated by DOH for this CWSP. This inventory was of systems classified as Group A and Group B. A total of 162 systems in these categories were identified within the CWSSA. Expansion of all systems will be tracked by SCHD with respect to the number of active services versus initially approved services. Expansion beyond the initial approval will not be allowed without further review of system capabilities by the SCHD or DOH.

Special consideration is required for the future expansion of small systems (after adoption of the CWSP) both inside and outside designated service areas. These considerations are addressed below:

Expansion Outside Designated Service Areas

An expanding Group A - Non-Community, and Group B system located outside of designated service areas will be referred by the SCHD or SCPPC to adjacent, larger utilities with approved WSPs or the PUD as the SMA. This will allow the expanding system to discuss and evaluate utility service proposals by an adjacent utility, or SMA versus expansion. If the decision is made to pursue expansion, the system owner must submit to the SCHD or SCPPC a completed Service Area Agreement. A WSP commensurate with the planned system expansion must be submitted to, and be approved by, the appropriate agency, either DOH, or the SCHD or SCPPC.

Expansion Within 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.

5.7 Receivership of Failing Systems

RCW 43.70.195, enacted by the 1990 State Legislature, 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.

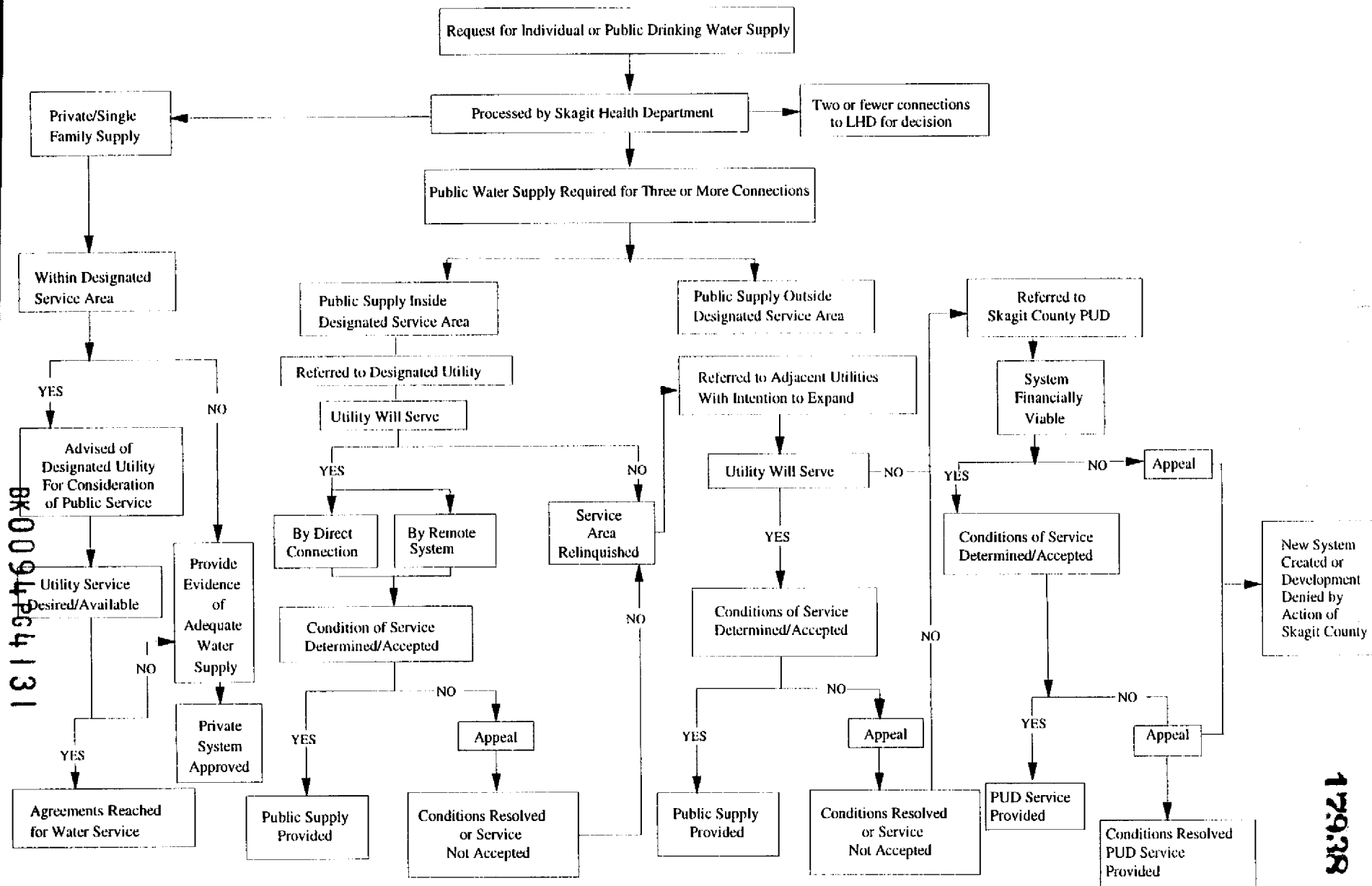
Through the establishment of service area boundaries and the review process described above, existing utilities have accepted the lead responsibility for providing public water supply within their designed service areas; and, therefore, should be the named receiver for the failing system. A logical extension 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. It should be noted that regardless of the ultimate responsibility for providing future water service, it is the customers of the water system that have the primary responsibility for paying for the system upgrades.

Upon adoption of this CWSP by DOH, the Group A systems with 100 or more permanent connections, and all expanding public water systems, will be considered candidates that have consented to assume the receivership role described in RCW 43.70.195 for failing systems within their designated service area. The Secretary of Health or DOH will advise the court of the name of the designated utility in any future petition for receivership.

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Exhibit 5-1 Utility Service Review Procedure

Utility Service Review Procedure



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Exhibit 5-2 Appeal Process

