

Joint Review Procedures for Planning and Engineering Documents

April 2007



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Introduction

In April 2007 the Department of Health (DOH) and the Department of Ecology (Ecology) signed a Memorandum of Understanding related to coordination between planning, engineering, public health and safety processes, and water resources. The purpose of this document is to outline procedures DOH and Ecology staff will follow when both agencies are doing a joint review on planning and engineering documents and associated water rights prior to the document approval, to meet the requirements of RCW 90.03.386(1). This document explains what elements of specific planning and engineering documents must have a coordinated review.

DOH has regulatory authority to ensure safe and reliable drinking water, including the review and approval of the design of water systems. Ecology has regulatory authority over water resources management in Washington State, including state issued water rights.

Elements that Require Coordinated Review

DOH and Ecology must coordinate the review of certain planning and engineering documents. The purpose of the coordination is to ensure water systems have sufficient water rights and also to document how a water right place of use expansion occurs through approval of a planning or engineering document.

Water Rights Adequacy

Water systems use planning and engineering documents to demonstrate they have sufficient capacity to provide safe and reliable drinking water to their customers. In these documents water systems may forecast their water production, request an increase in their number of approved connections, or request approval of a new source or intertie. By DOH coordinating the review of these documents with Ecology, water systems will be better informed as to their water rights and their sufficiency to meet projected needs. At most, Ecology can only make a tentative determination as to the extent and validity of any unadjudicated water right. Final determinations of the validity and extent of a water right can only be made in a general adjudication or other court action. Through its role in the review process, Ecology will provide evaluations of the validity and extent of water rights.

Expansion of Water Rights Place of Use to the Identified Service Area

Municipal water suppliers, as defined in RCW 90.03.015, are allowed to expand their water rights place of use to a service area identified in a DOH approved planning or engineering document. As outlined in RCW 90.03.386(2), in order to receive this benefit, the document must be “not inconsistent” with any local plans and development regulations¹; or approved/adopted watershed plans², and be in compliance with the terms of an approved water system plan or small water system management program. As required in RCW 90.03.386, consistency with certain plans and regulations, and compliance with an approved plan, are required at all times, including each time a place of use is expanded in a planning or engineering document. If the consistency and compliance requirements are met, expansion occurs at time of document approval. The expansion only applies to approvals made after September 9, 2003.

Consistency with local plans and development regulations and approved / adopted watershed plans is only required for the area in which the place of use is being expanded. DOH is the lead in making consistency determinations for local plans and development regulations. Ecology is the lead in making “not inconsistent” determinations for approved/adopted watershed plans. DOH and Ecology both have a role in determining compliance. The section on *Compliance with the Terms of a Water System Plan or Small Water System Management Program* and

¹ “Local plans and development regulations” is used as shorthand throughout the document when referring to the types of plans outlined in RCW 90.03.386 which includes: any comprehensive plans or development regulations adopted under chapter 36.70A RCW; any other applicable comprehensive plan, land use plan, or development regulation adopted by a city, town, or county.

² “Approved/adopted watershed plans” is used as shorthand throughout the document when referring to watershed plans approved under chapter 90.82 RCW and watershed plans adopted under chapter 90.54 RCW as outlined in the RCW 90.03.386.

Compliance Approach in this document outlines DOH's and Ecology's approach for determining compliance.

Expansion of the place of use to an identified service area is a benefit that municipal water suppliers may take advantage of. For municipal water suppliers who do not request this benefit, the consistency checks are not required under RCW 90.03.386.

Water System Documents for Joint Review

DOH receives many different types of planning and engineering documents. DOH and Ecology developed a list of documents DOH will route to Ecology for their review (Appendix A: *Documents Where Coordinated Review is Required*). This list represents documents where the water system is considered expanding or where additional water may be used. Appendix A also outlines the type of information to be routed, regional office leads, and review timelines.

There may be instances where DOH or Ecology determines the need for review of additional documents. This additional review will be addressed on a case-by-case basis between Ecology and DOH.

Coordination Prior to Document Submittal

Coordination between DOH and Ecology prior to document submittal helps ensure sufficient water rights and minimize costs to the water system. A water system plan is a highly complex document, integrating many regulatory aspects into a single document. Due to this complexity, water systems are urged (but not specifically required) to participate in a *pre-plan conference* with DOH prior to development. Participants in the pre-plan conference usually include representatives from the water system, the professional engineer developing the water system plan³, DOH's regional planner, and DOH's regional engineer. Pre-plan conferences are not routinely held for other type of document submittals. DOH and Ecology will use the steps outlined below when coordinating prior to document submittal.

1. DOH will notify Ecology (via e-mail or telephone) when a pre-plan conference is scheduled. Whenever possible, DOH will provide at least a 20-day notice to Ecology. Ecology may participate in the pre-plan conference, provide information to the water system, or choose not to participate in the pre-plan conference.
2. During the pre-plan conference, DOH staff will request the water system prepare a water rights self-assessment (self-assessment) and contact Ecology to discuss the status of its water rights prior to submitting its water system plan.
3. The water system may submit the self-assessment to Ecology prior to the document submittal. If DOH receives a self-assessment outside of a document submittal, it will send it to Ecology without verifying the content. Ecology may review and provide comments to the water system. During the self-assessment review, Ecology may inform DOH and the water system that there are no significant water resources issues and that the document submittal does not need to be forwarded to Ecology. The notification from Ecology to DOH will include a copy of the self-assessment Ecology reviewed.

³ "Water system plan" is used as shorthand to include both water system plans and water system plan updates as required in WAC 246-290-100.

Document Review

The following coordination process will be followed in the review of all documents identified in Appendix A.

1. The water system will submit a planning or engineering document to DOH.
2. DOH will verify whether the document is listed in Appendix A. If so, DOH will route the relevant information (as outlined in Appendix A) to Ecology using the template provided in Appendix B: *Request to Review Document*.
3. Ecology will review the document. The timeline allowed for the review is listed in Appendix A and begins the date DOH routes the information to Ecology. For water system plans, Ecology will closely follow Appendix C: *Water System Program Review Checklist* or for source approvals, Ecology will closely follow Appendix D: *Source Approval Checklist*.

Ecology's review and comments will be focused on the following areas:

- Water rights self-assessment.
- Improvement projects related to water rights.
- "Not inconsistent" determinations with approved/adopted watershed plans.

Comments made on other water resource related concerns are allowed but will not generally affect the review or approval of the planning or engineering document.

4. Ecology will provide written comments to the water system and to DOH using the template provided in Appendix E: *Providing Comments on a Document*.
 - a. Water rights adequacy – Ecology may provide one of the following types of comments on the adequacy of the water rights:
 - i. Request no changes to the document.
 - ii. Request the water system make changes to the document. DOH will require the water system to respond⁴ to Ecology's comments. The water system will provide their response to DOH and Ecology. If there are still outstanding issues, DOH will request the water system work with Ecology to resolve them. For water rights related changes, Ecology is responsible for ensuring the response is sufficient outside of the document approval process. Ecology's response may range from technical assistance to an appealable enforcement action. DOH will generally use the information provided by the water system when approving the document, unless Ecology has issued an appealable enforcement action (see *Compliance Approach*).

⁴ "Respond" does not imply the water system will concur with Ecology prior to approval.

- iii. Request DOH's on support an appealable enforcement action taken by Ecology when acting on the document submittal. If Ecology issues an enforcement action, Ecology will notify DOH.

- b. Expansion of water rights place of use to the identified service area – Ecology may issue the following comments on “not inconsistent” determinations for watershed planning under chapters 90.82 and 90.54 RCW. If inconsistent, Ecology will document what the inconsistency is.
 - i. There is no approved/adopted watershed plan and therefore a “not inconsistent” check is not required.
 - ii. There is an approved/adopted watershed plan and the expansion is “not inconsistent”.
 - iii. There is an approved watershed plan and a portion of the expanded place of use is inconsistent. The water rights place of use can be expanded to all other portions of the service area (map must be attached).
 - iv. There is an approved watershed plan and the entire expanded place of use is inconsistent with it. Therefore, the water rights place of use cannot expand to the service area identified in the document.

- c. Other water resource related comments – Ecology may provide other comments on water resources concerns. These comments will not generally affect the review or the approval of the planning or engineering document.

Document Approval or Other Action

DOH acts on the document. DOH will provide the approval letter or other action and other appropriate information to Ecology as outlined in Appendix A.

The following are situations and actions DOH will generally take when approving a planning or engineering document. If no comments are received from Ecology, DOH will proceed based on the water system's water rights self-assessment. In certain situations when Ecology does not comment, but DOH is aware of a water rights issue that requires a response, staff will elevate the situation to Ecology's and DOH's management for resolution.

Water Rights Adequacy

The following situations and actions are consistent with Appendix F, DOH's Directive Memorandum B.02: *Water System Capacity Determinations in Engineering and Planning Documents*. Ecology will provide an evaluation on the extent and validity of the associated water rights.

Situation 1

The water system and Ecology agree the existing total annual or instantaneous water rights are sufficient to serve connections through the six-year planning horizon or requested approved number of connections.

DOH's Action

DOH will approve the document and set the water system's capacity based on the capacity analysis provided.

Situation 2

The water system and Ecology agree the existing total annual or instantaneous water rights are insufficient to serve existing connections.

DOH's Action

DOH will adjust the water system's approved number of connections to equal the existing number of connections. When additional capacity is obtained, the water system may submit a revised capacity analysis for DOH's review.

Situation 3

The water system and Ecology agree the existing total annual or instantaneous water rights are insufficient to serve the projected six-year forecast or approved number of connections.

DOH's Action

If water rights are the limiting factor, DOH will adjust the water system's approved number of connections as provided in the capacity analysis to equal the water right limitation. When additional capacity is obtained, the water system may submit a revised capacity analysis for DOH's review.

Situation 4

Ecology and the water system disagree as to whether water rights are insufficient.

DOH's Action

Ecology will first seek voluntary compliance as required in RCW 90.03.605 and will notify DOH. DOH will use the capacity analysis provided by the water system for setting capacity while Ecology is seeking voluntary compliance. DOH will include the disclaimer language (Appendix G) in the approval letter stating there are uncertainties about the water system's water rights and notifying the water system that if those uncertainties are resolved in favor of Ecology, DOH will adjust the water system's capacity accordingly. See *Compliance Approach* for the complete compliance approach.

Situation 5

Ecology provides documentation to DOH there are no water rights related to a proposed source or non-emergency intertie.

DOH's Action

DOH will not approve the source or a non-emergency intertie, even though Ecology has not issued enforcement, unless it is a redundant or replacement source which will solve a public health and safety concern.

Situation 6

Ecology and water system disagree as to whether water rights are insufficient and Ecology has issued an appealable enforcement action.

DOH's Action

DOH will modify the number of approved connections to be consistent with the enforcement action, pending its resolution, as outlined in the *Compliance Approach*. DOH will not set the approved number of connections lower than the existing number of connections.

Expansion of Water Rights Place of Use to the Identified Service Area

If the following criteria are met by operation of law, a municipal water supplier's place of use expands to the service area identified when DOH approves the planning or engineering document.

- a. DOH determines the document is "not inconsistent" with local plans and development regulations.
- b. Ecology determines the document is "not inconsistent" with an approved/adopted watershed plan for the service area.
- c. The municipal water supplier is in compliance with the terms of its approved water system plan or small water system management program.

If an inconsistent determination is made for local plans, development regulations, or approved/adopted watershed plans, DOH and Ecology will follow the compliance approach as outlined in *Compliance Approach*. The document may still be approved, but the place of use will not be expanded for the affected portion of the service area.

Compliance with the Terms of a Water System Plan or Small Water System Management Program

Applicability

In order to receive certain benefits, a municipal water supplier, as defined in RCW 90.03.015, must be in compliance with the terms of its approved water system plan or small water system management program. This is required, in accordance with RCW 90.03.386(2), for expanding a municipal water supplier's water rights place of use to the service area identified in an approved planning or engineering document, including any subsequent expansions. This is also required when a municipal water supplier seeks to change or transfer an unperfected surface water right under RCW 90.03.570.

Elements for Determining Compliance

Both DOH and Ecology have a role in determining compliance. The following elements will be considered for "in compliance determinations":

- Plan approval date is current (DOH).
- Water use efficiency requirements are met (DOH).
- Service area is designated (DOH).
- Water rights self assessment is completed (DOH) and accurate (Ecology).
- Reclaimed water is evaluated for municipal water supplier with 1,000 or more connections (DOH).
- Local government consistency determinations are completed for the retail service area and for expanded portions of the service area (DOH).
- A "not inconsistent" determination is completed for approved/adopted watershed plans for expanded portions of the service area (Ecology).

Compliance Checks

Compliance is required at all times to receive benefits under RCW 90.03.386(2) and 90.03.570. DOH and Ecology will check compliance at the following times:

- When DOH approves a water system plan or a small water system management program.
- When DOH approves an engineering document that affects one of the elements for determining compliance listed above.
- When Ecology issues a change to a municipal water supply purpose water right.
- When DOH or Ecology receives any verifiable concern from any external source.

Compliance Approach

Water Rights Adequacy

In assessing water rights adequacy, Ecology performs an evaluation of the extent and validity of water rights associated with a water system. Ecology will notify the water rights holder and DOH of the evaluation of the water rights limitation. DOH will use the self-assessment provided by the water system to determine capacity. DOH will include the disclaimer language (Appendix G) in the approval letter when there are water rights uncertainties.

If Ecology determines water rights are a limiting factor and the water system disagrees, Ecology may use the following steps in working toward compliance:

1. **Seek voluntary compliance.** Under RCW 90.03.605, Ecology could first seek voluntary compliance if there is disagreement with a water rights self-assessment. Ecology will continue to work with the water system to achieve voluntary compliance. Ecology will first have a discussion with the water system regarding the differences of the water system's interpretation of their water rights, if this is successful, the water system will modify its self-assessment.
2. **Assess the need for additional actions.** If the above discussion is not successful, and Ecology felt it might take enforcement action, it could then issue warning letters clearly laying out its interpretation of the water rights; the violation of which could subject the water system to penalties and further sanctions. Ecology will "direct" (*i.e.* strongly advise) the water system to NOT exercise a certain portion of their alleged water right (*i.e.* that portion in dispute) until the water system and Ecology resolves the issue. If those additional actions do not resolve the situation, Ecology could issue a regulatory order.
3. **Issue a regulatory order.** Ecology could issue a regulatory order (*an appealable action*) under RCW 43.27A.190. The regulatory order could be issued prior to actual violation of water rights (*e.g.* exceeding authorized quantities based on viewing supplemental rights as being "additive" to other rights). This is allowable because orders can require the recipient to cease and desist from "potential violations" based on laws, regulations, and water right provisions that are "alleged to be or about to be violated." The order would be appealable to the Pollution Control Hearings Board.

If Ecology issues an appealable action to the water system for insufficient water rights, Ecology will notify DOH. DOH will support Ecology's enforcement and adjust the water system's approved number of connections pending the outcome of the enforcement. DOH will not set an approved number of connections lower than the existing number of connections.

For Source and Intertie Approvals

If Ecology determines there are not sufficient water rights for a new source or non-emergency intertie, Ecology will notify DOH. DOH will not approve the source or non-emergency intertie

until Ecology determines there are sufficient water rights, unless it is a redundant or replacement source which will solve a public health and safety concern.

Place of Use Expansion

Place of use expansion in DOH approved planning or engineering document occurs by operation of law when the document is approved if the following items are met:

- The municipal water supplier is in compliance with the terms of its approved water system plan or small water system management program.
- The document is “not inconsistent” with local plans and development regulations.
- The document is “non inconsistent” with approved or adopted watershed plans.

Compliance is required at all times to receive the place of use expansion benefit. If a municipal water supplier is not in compliance or it does not meet the consistency requirements, it does not qualify for the service area-based place of use. By operation of law, if a municipal water supplier is in compliance and meets the consistency requirements, the place of use is expanded.

If a municipal water supplier is out of compliance, the place of use reverts to the service area identified in the most recent DOH approved planning or engineering document, if approved after September 9, 2003. If no other planning or engineering document exists, the place of use reverts to the original water rights place of use. If the municipal water supplier is out of compliance because of an inconsistency that is limited to a specific area of the expanded place of use, only that area where there is an inconsistency is no longer expanded.

Both DOH and Ecology may take enforcement actions on “not inconsistent” or compliance issues. Each agency may only take enforcement on the elements where it has oversight. If a compliance-related concern is raised, the agency which has oversight will notify the municipal water supplier, the local government with jurisdiction, and the other agency. The agency with oversight will request the municipal water supplier to respond to the concern in a timeframe determined reasonable by the agency. If the concern is not resolved, the agency will use its existing compliance authorities to resolve the concern.

Both agencies will begin with voluntary compliance. As appropriate, they may take escalating levels of enforcement to achieve compliance. The goal is to achieve compliance, not to revert the place of use.

DOH will use their existing compliance matrix for determining the appropriate level of compliance.

Ecology will first seek voluntary compliance under RCW 90.03.605, which requires deliberate steps to achieve compliance are taken starting with education and technical assistance. An appealable enforcement action will only be issued after the requirements of RCW 90.03.605 have been met. Ecology will use its enforcement authority judiciously. While Ecology cannot predetermine the outcome of a compliance or legal action, or renounce its legal authorities and responsibilities, Ecology will work cooperatively with the water system to resolve the issue.

All correspondence related to any enforcement must be sent to the other agency, the municipal water supplier, and local government with jurisdiction.

Unperfected Surface Water Right Transfers

Municipal water suppliers may change or transfer an unperfected surface water right for municipal water supply purposes in accordance with RCW 90.03.570. One of the requirements for this transfer is the municipal water supplier must be in compliance with the terms of an approved water system plan or small water system management program. This compliance determination must be made at the time of the change or transfer. If a municipal water supplier is not in compliance with the terms of its water system plan or small water system management program, or it does not meet one of the other criteria outlined in RCW 90.03.570, it cannot change or transfer the unperfected surface water right.

Both agencies will use existing compliance authorities. Both will begin with voluntary compliance. As appropriate, they may take escalating levels of enforcement to achieve compliance. Each agency may only take enforcement on the elements where they have oversight. All correspondence related to enforcement must be sent to both agencies, the municipal water supplier, and local government with jurisdiction.

Appendices

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Appendix A: Documents Where Coordinated Review is Required

| Document | To be Forwarded by DOH to Ecology for Comments | What to Send | Not to be Forwarded | Timeline for Ecology Review | DOH Lead | Ecology Lead | Documentation of Approval or Other Action to Ecology |
|---|---|--|--|---|-------------------|-----------------------------------|--|
| Water System Plans | <ul style="list-style-type: none"> New Water System Plans Updated Water System Plans (six-year cycle) Amendments that increase number of approved connections or service area Amendments which are source approvals (see the source approval section below) | Entire Submittal | Other General Amendments | <ul style="list-style-type: none"> 60 days for initial review Following the initial submittal, Ecology will work with the water system directly | Regional Planner | Regional Water System Coordinator | <ul style="list-style-type: none"> Letter of Approval or Other Action (documenting the approved number of connections) Copy of Final Water System Plan or Amendment |
| Small Water System Management Program | <ul style="list-style-type: none"> Submittals when the number of approved connections is greater than the existing connections Submittals when the self-assessment shows a deficiency | Enter Submittal | Water Systems “at capacity” when the self-assessment shows sufficient or a surplus of water rights | <ul style="list-style-type: none"> 60 days for initial review Following the initial submittal, Ecology will work with the water system directly | Regional Planner | Regional Water System Coordinator | <ul style="list-style-type: none"> Letter of Approval or Other Action (documenting the approved number of connections) Copy of Final Small Water System Management Program |
| Source Approvals | <ul style="list-style-type: none"> Group A: New Source Group A: Replacement Source <p>NOTE: Group A wells with exempt water rights also to be included</p> | <ul style="list-style-type: none"> Self-assessment Well Log Well Location (map) | Group B | <ul style="list-style-type: none"> 30 days for initial review | Regional Engineer | Regional Water System Coordinator | <ul style="list-style-type: none"> Letter of Approval or Other Action |
| New Water System Approvals (non-community) | <ul style="list-style-type: none"> Group A proposals Group B proposals where there is an instream flow water reservation | <ul style="list-style-type: none"> Self-assessment Well Log Well Location (map) | Group B where there is NO instream flow water reservation | <ul style="list-style-type: none"> 30 days for initial review | Regional Engineer | Regional Water System Coordinator | <ul style="list-style-type: none"> Letter of Approval or Other Action |

| Document | To be Forwarded by DOH to Ecology for Comments | What to Send | Not to be Forwarded | Timeline for Ecology Review | DOH Lead | Ecology Lead | Documentation of Approval or Other Action to Ecology |
|--|---|---|--|--|-------------------|-----------------------------------|---|
| Requests to Increase the Number of Approved Connections | | <ul style="list-style-type: none"> Self-assessment | Information previously included in an approved Water System Plan | <ul style="list-style-type: none"> 30 days for initial review | Regional Engineer | Regional Water System Coordinator | <ul style="list-style-type: none"> Letter of Approval or Other Action (documenting the approved number of connections) |
| Intertie Proposals | <ul style="list-style-type: none"> Group A proposals | <ul style="list-style-type: none"> Self-assessment | Group B | <ul style="list-style-type: none"> 30 days for initial review | Regional Engineer | Regional Water System Coordinator | <ul style="list-style-type: none"> Letter of Approval or Other Action |

NOTE: Administrative errors (*i.e.* where approvals already occurred, but which were entered mistakenly or not entered) and existing water system approvals (water system is “at capacity”) not forwarded to Ecology.

Appendix B: Request to Review Document

DOH will use this template when requesting Ecology to review a planning or engineering document.

DATE

Contact Person
Departmental of Ecology
_____ Regional Office
Address
Address

Subject: Water System; PWS ID#; County; Project Number; Name of Document

Dear Contact Person:

I have attached a copy of the document type for the name of water system water system located in _____ County. Please review and provide comments, as required in the 2007 Memorandum of Understanding. Comments should be focused on the elements identified in the *Joint Review Procedures for Planning and Engineering Documents*. Comments on other elements of the document are welcome, but a response from the water system on other elements is not required.

Please provide written comments by 30 or 60 days from the date of this letter. Any changes to the document regarding water rights will be forwarded to your office for review.

If no response is received by the comment deadline, DOH may determine compliance based on information provided by the water system. Please mail comments to:

Regional Planner or Engineer
Department of Health
Regional Office Address

If you have any questions, please contact me at _____. Thank you for your time and assistance.

Sincerely,

Regional Office Planner or Engineer
Office of Drinking Water
Division of Environmental Health

Appendix C: Water System Plan Review Checklist

Ecology will use this checklist when reviewing water system plans.

System Name: _____

Comments Due By: _____

Date Received: _____

Date Comments sent to DOH: _____

Water System Plan Review Checklist

The purpose of this checklist is to provide consistent Ecology review of water system planning documents. Items Ecology considers mandatory are in **bold font**.

- 1. Completed Read the Executive Summary _____
- 2. **Completed** **Plan is “not inconsistent with” county-approved watershed plan. Comments on watershed planning coordination (coordinate with Watershed Leads)**
- 3. **Completed** **Compare water rights self-assessment to Ecology water right files.**
 - a. **Is a self-assessment included?**
 - b. **Is the self-assessment complete? Does it include all water rights held by the system? (Do a WRTS check based on system name and system TRS, sometimes rights listed under original developer name).**
 - c. **Are additive/non-additive relationships correct?**
 - d. **Are pending applications and change applications identified?**
 - e. **Are self-assessment’s included for current, 6 and 20-year projections?**
 - f. **Is the authorized Qi compared to installed pump capacity (not MDD)?**
 - g. **Is the math correct in the self-assessment?**
- 4. Completed If system is over total Qa on total water rights, recommend a growth restriction⁵ _____
- 5. Completed If system sources are over individual Qa limit on a water right, determine comment based on enforcement criteria (e.g. potential for change application, impairment issues, voluntary compliance, notice of violation, departmental order). _____
- 6. Completed If system projects it will exceed total Qa within 6-year planning period, recommend a growth limitation for the number of projected connections that can be served by the rights¹.
- 7. Completed If system sources are over total or individual Qi on water rights, determine comment based on enforcement criteria (e.g. throttling/replacing pumps, public health/safety needs, compliance criteria).
- 8. Completed Compare all sources listed in system inventory to existing water right authorizations. If unauthorized sources exist, comment on need for new water right application, change application or showing of compliance form. _____
- 9. Completed If system is over its water rights, consider issuing a metering order to track compliance.
- 10. Completed Review source capacity projections/capital improvement plan (CIP) for 6-year and 20-year demand projections. If additional source capacity is needed in the next 6 years, what water rights will be used (e.g. existing rights through change/showing of compliance, new rights)?
- 11. Completed Review capital improvement plan. If acquisition/transfer of water rights is planned to address water right deficiencies, are expenditures being budgeted (e.g. acquisition costs, conservancy board fees, study costs to locate rights to acquire)? If they show new source capacity, how will they get to that capacity?
- 12. Completed If wells are identified as “abandoned” or no longer in use, check if Ecology has record of proper decommissioning. If no record exists and well location is still known, include comment that wells must be decommissioned in accordance with WAC 173-160-381.
- 13. Completed Comments on the effectiveness of the water conservation program as appropriate.
- 14. Completed Comments on the reasonableness of the water shortage response program as appropriate.
- 15. Completed Comments on the plans for water reuse (coordinate with Ecology Water Reuse Workgroup) as appropriate.
- 16. Completed Include Ecology comment response form with comment letter.

See reverse side for any explanatory notes.

Ecology Reviewer

Date

⁵ DOH will condition WSP approvals to limit new connections if water right quantity (QaQi) or physical capacity is determined to be a limiting factor for the system (DOH *Municipal Water Law Guidance*, Page 2)

Appendix D: Source Approval Checklist

Ecology will use this checklist when reviewing engineering documents requesting approval of a new source.

System Name: _____

Comments Due By: _____

Date Received: _____

Date Comments sent to DOH: _____

Source Approval Review Checklist

The purpose of this checklist is to provide consistent Ecology review of new source approval documents. The focus of this checklist is to ensure that new source(s) are authorized consistent with water rights held by the system. Items Ecology considers mandatory are in **bold** font.

1. **Completed** **Make sure the following information has been provided by the Department of Health:**
 - h. **Map showing location of new well(s), and preferably the location of existing wells.**
 - i. **Water Rights Self-Assessment Form.**
 - j. **Well drilling report(s) for the new well(s).**
 - k. **Completed "Showing of Compliance with RCW 90.44.100(3)" form for each new source (if applicable, and if it was sent it to Health).**
 1. **(Optional): Brief letter or report describing the replacement project.**
2. **Completed**
 - a. **Review copies of all water rights documents.**
 - b. **Compare new source(s) identified on system map to existing water right authorizations:**
 1. **If new source(s) is/are outside most recently published point of withdrawal's legal description for the water right, comment on need for new water right application or change application.**
 2. **If new source(s) is/are within the most recently published point of withdrawal's legal description for water rights of record, make sure the "Showing of Compliance with RCW 90.44.100(3)" form is correctly filled out for the appropriate water right. If no form is included, contact the system directly to request one.**
3. **Completed** **Verify well drilling report(s) match the source(s) being evaluated by inspecting the document and comparing it with those in Ecology's Well Log Database.**
4. **Completed** **If any wells are identified as "abandoned" or no longer in use, check if Ecology has record of proper decommissioning. If no record exists and well location is still known, include comment that wells must be decommissioned in accordance with WAC 173-160-381.**
5. **Completed** **Compare water right self-assessment quantities to Ecology water right files.**
 - a. **Is the self-assessment complete? Does it include all water rights held by the system? (Do a WRTS check based on system name and system TRS, sometimes rights listed under original developer name).**
 - b. **Is the math correct in the self assessment?**
 - c. **Are additive/non-additive water right relationships correct, including Qi and Qa?**
 - d. **Are pending applications and change applications (if any) identified?**
 - e. **If the capacity of the new source exceeds the authorized quantity for one or more of the water rights, then recommend the source capacity be conditioned to the water right authorization.**
6. **Completed** **If system sources are over individual Qa limit on a water right, determine comment based on enforcement criteria (e.g. potential for change application, impairment issues, voluntary compliance, notice of violation, departmental order)._____**
7. **Completed** **If system sources are over total or individual Qi on water rights, determine comment based on enforcement criteria (e.g. throttling/replacing pumps, public health/safety needs, compliance criteria).**
8. **Completed** **Include Ecology comment response form with comment letter.**

Ecology Reviewer

Date

Notes:

Appendix E: Providing Comments on a Document

Ecology will use this template when providing comments to DOH and the water system on a planning or engineering document.

DATE

Water System Name DOH Regional Office
Address Address
City, ST Zip City, ST Zip

Subject: Water System Name; PWS ID#; County; Project #; Name of Document

Dear Contact Person:

Ecology received a request from the Department of Health (DOH) to review and comment on the type of document for the name of water system water system. Below are Ecology's comments.

_____ Ecology has no comments on the document.

_____ Attached are Ecology's comments on the document. Please revise the document based on the attached comments.

_____ Ecology has taken regulatory action against name of water system which can be appealed directly to the Pollution Control Hearings Board (attached). Consistent with the *Joint Review Procedures for Planning and Engineering Documents*, Ecology requests DOH use this information in determining the water system's capacity.

_____ A "not inconsistent" determination is not required because there is not approved/adopted watershed plan for WRIA name or the expansion of the place of use is not needed.

_____ Ecology has determined this type of document is "not inconsistent" with the adopted/approved watershed plan for WRIA name.

_____ Ecology has determined this document is inconsistent with the approved/adopted watershed plan for WRIA name. Please revise based on the attached comments.

_____ Ecology has determined this document is inconsistent with the approved/adopted watershed plan for WRIA name in one portion of the service area. The place of use can be expanded to all areas except as identified in the attached map or you may revise based on the attached comments.

Please send a copy of your responses to me and the DOH Regional Office. If you have any questions, please contact me at _____.

Sincerely,

Water System Plan Reviewer
Department of Ecology

Enclosures: Comments on document

Appendix F: DOH's Directive Memorandum – Water System Capacity Determinations in Engineering and Planning Documents

Office of Drinking Water Directive Memorandum

| |
|--|
| Number: B.02 |
| Title: Water System Capacity Determinations in Engineering and Planning Documents |
| To: Regional Office Staff |
| Deputy Director Signature: Rich Hoey |
| Date: August 27, 2004 |

BACKGROUND

The 2003 legislature passed and the Governor signed the Municipal Water Supply – Efficiency Requirements Act, Chapter 5, laws of 2003 (Municipal Water Law or MWL). This legislation assigns special significance to Office of Drinking Water (ODW) approvals of water system plans (WSPs) or other approvals “to serve a specified number of service connections.” The service areas and number of connections approved by ODW will now have an effect on municipal water rights. It is important that ODW is able to justify and defend all new approvals.

GOAL

To ensure that appropriate procedures are consistently used to establish Group A public water systems’ approved number of connections.

PURPOSE:

1. Articulate the relationship between water system planning, engineering documents and water rights.
2. Recognize relevant policy and procedures that have previously been established by ODW.
3. Provide staff with direction on coordination procedures with the Department of Ecology (Ecology) until a new Memorandum of Understanding (MOU) is negotiated.
4. Document general procedures for ODW to follow to ensure that water rights are adequately addressed when processing water system planning or engineering document approvals.

TERMS:

The term water right limitation, as referenced in this directive memo, refers to water system limitations in aggregate quantities of instantaneous and annual allocations.

DIRECTION:

1. Water System Plans (WSPs), Small Water System Management Programs (SWSMPs), Existing System Approvals (ESAs) and engineering documents establish the basis for approved number of connections. WSP approvals will establish a baseline count for the approved number of connections a water system can support (see directive #3). When a WSP is not required, an approved number of connections may be identified through approval of a SWSMP, ESA, or engineering document.

A. A water system's approved number of connections must be based on physical capacity limits and water right limitations. ODW will set the approved number of connections at the physical capacity limit or water right limitation, whichever is lower. When reviewing ESAs, or capacity determinations that were approved prior to September 9, 2003, ODW will not set the approved number of connections below the existing number of connections (i.e., ODW will not require a water system to disconnect current customers).

ODW will not approve construction or non-construction related submittals intended to increase the approved number of connections without a demonstration of adequate water rights. A completed water right self-assessment indicating sufficient water rights may be considered acceptable demonstration of adequate water rights unless Ecology has issued an appealable action. See Section 6.A. below.

B. Water systems calculate their own system capacity. ODW reviews WSPs, SWSMPs, and engineering documents that identify a water system's capacity, and verify that the stated capacity does not exceed physical capacity limits or water right limitations. ODW does not independently determine a water system's capacity.

Existing water system approvals, granted prior to September 9, 2003, will not automatically be reevaluated pursuant to this memorandum. ODW staff will apply the directions in this memorandum as new or updated SWSMPs, WSPs or engineering documents are submitted. Staff may also apply the directions in the memorandum to an existing approval upon request by the water system.

ODW approval letters will communicate water system capacity as "approved number of connections with physical capacity and water right limitations considered".

2. A water right self-assessment is required whenever an increase in the approved number of connections is considered, and for all source approvals. A water right self-assessment, as defined by WAC 246-290 and Policy C.05, is the means by which water systems will evaluate their water rights.

ODW will not evaluate water right documents. ODW water right limitation evaluations will be based on the information supplied by the water system on the Water Right Self-Assessment Form. (See directive #6.A)

Water right self-assessments for all source approval projects must be forwarded to Ecology for review. (See directive #6.B)

3. Project reports and construction documents that are intended to increase the approved number of connections must be adequately addressed in an approved and current WSP when a WSP is required. If a project is not adequately addressed in the WSP, then the water system must amend the WSP to include the project before ODW will consider approving the project with the exception that, pursuant to WAC 296-290-110 and -120, ODW may review and approve projects from water systems without a current and approved WSP on a case-by-case basis if the Regional Office has approved a WSP development schedule (BCA or Agreed Order).

The *Decision Tree For Processing Engineering Document Submittals* flowchart in Appendix B graphically illustrates the relationship between WSPs and engineering document submittals.

4. ODW may assign an “unspecified” designation, rather than an approved number of connections, in certain cases. Staff may use the “unspecified” designation if a water system meets all of the following criteria:

- A. The water system has a current and approved WSP; and
- B. The water right self-assessment indicates sufficient water rights to meet projected 6-year water demands (based on historical water use). If a water system purchases water from another water system, then the water right element of the water supply agreement in conjunction with water system-owned water rights (if any) must be adequate throughout the entire 6-year planning horizon; and
- C. The WSP presents a credible capital improvement plan; and
- D. The WSP includes standard specifications for water main installation; and
- E. The water system has a significant number of non-residential connections (i.e. ERU’s cannot be meaningfully converted to a number of connections) and/or the water system is complex (multiple pressure zones, mixed use with a wide variation in water uses).

Once the water system capacity has been designated “unspecified”, the designation will remain in place unless staff raise concerns relating to the water system’s physical capacity or water right limitations. In this case, the “unspecified” designation may be modified by regional office staff with the approval of the Regional Office Manager or Assistant Regional Office Manager.

ODW staff are not expected to reevaluate all WSPs for water systems with an “unspecified” designation if the plan was approved with the “unspecified” designation prior to September 9, 2003. Known situations in which questions have been raised about the continued application of the “unspecified” designation, or WSPs submitted for an update or amendment, may have the “unspecified” designation replaced by an approved number of connections. NOTE: If ODW seeks to unilaterally modify an existing approval, consultation with the Attorney General’s Office (AGO) is expected.

5. ODW documentation of approved number of connections is required. ODW will document the approved number of connections for all WSPs; SWSMPs for a water system that is not yet “at capacity”; engineering documents intended to increase the approved number of connections; and non-construction documents assessing (or re-assessing) water system capacity.

With all approvals of construction projects intended to increase the approved number of connections, ODW will require the water system to submit a Construction Completion Report (CCR) in accordance with WAC 246-290-120. The approved number of connections will not be increased until the CCR has been received and the appropriate ODW action taken.

The water system’s approved number of connections will be calculated as the sum of the existing connections and the additional number of equivalent residential units the water system has demonstrated the capacity to serve. This approved number of connections will be documented in ODW approval letters and recorded in SENTRY. The approval letter may include (for informational purposes) the breakdown of connections at a more detailed level (i.e. approved residential, approved recreational and approved non-residential) if the information is readily available or if requested on a case-by-case basis by a local health jurisdiction.

6. Except as modified by this document, ODW will follow established procedures for coordinating the processing of planning and engineering document approvals with Ecology.

A. ODW and Ecology have specific roles in evaluating water systems’ water right limitations. It is Ecology’s role to evaluate the water right information presented in the water right self assessment for accuracy, validity and completeness, and to respond to ODW in accordance with the current MOU. ODW’s role in this regard is to ensure that the water right self-assessment is completed when required by regulation. It is not ODW’s role to review water right documents or to provide comments to the water system relating to water right information in the water right self-assessment. ODW will not require submittal of water right documents. ODW may comment to the water system on consumption/production/forecasted use information in the water right self-assessment. If ODW’s review process identifies any obvious errors or questionable information related to water rights, ODW may communicate the information to Ecology.

B. Coordinating the Review Process with Ecology. ODW will coordinate with Ecology on the review of WSPs, certain SWSMPs, and source approval engineering documents.

ODW’s processing of WSP submittals, including WSP amendments that require an updated water right self-assessment, will include coordination with Ecology in accordance with the current MOU. If ODW does not receive comments from Ecology within 60 days, ODW may rely on the water right self-assessment and move forward with review and approval. The approval letter shall include the current disclaimer language as stated in Attachment I of the current MOU. In unusually sensitive circumstances, if Ecology does not comment, then ODW should take extra measures to get comments from Ecology as well as seek further input from the water system. (NOTE: In these instances,

ODW staff must elevate the issue to management. Management will decide if AGO consultation is advisable.)

ODW will process SWSMP submittals in coordination with Ecology using the coordination procedures outlined for WSPs in the current MOU as described above.

ODW will process source approval engineering documents in coordination with Ecology by submitting the water right self-assessment for all source projects to Ecology for review. In accordance with Policy C.05, Determination of Water Rights Adequacy in Reviewing Construction Documents and Project Reports, if ODW has requested Ecology review and does not receive comments from Ecology within 30 days, ODW may rely on the water right self-assessment and move forward with the review process. ODW will notify Ecology by cover letter, when it transmits the water right self-assessment submittal, that it will act on the submittal if it does not receive comments from Ecology within 30 days. If ODW approves the submittal, the approval letter shall include the current disclaimer language as stated in Policy C.05. In unusually sensitive circumstances, when Ecology does not comment, ODW should take extra measures to get feedback from Ecology and seek further input from the water system. (NOTE: In these instances, ODW staff must elevate the issue to management. Management will decide if AGO consultation is advisable.)

C. Ensuring adequate consideration of water right limitations in the WSP review process. If the water right self-assessment indicates that water rights are currently inadequate or that the water system will reach its water right limitation within the 6-year planning horizon, and the WSP does not include a plan for obtaining additional water rights, ODW will request a plan for obtaining additional water rights. In the absence of a plan for obtaining additional water rights, ODW will review the WSP with current water right limitations considered as a limiting factor of water system capacity.

- a. If the water right self-assessment indicates that water rights are currently inadequate and the WSP includes a plan for obtaining additional water rights, ODW will proceed with WSP approval (assuming the plan meets other approval requirements) but limit the approved number of connections to current capacity (no growth) until water rights are obtained, or until Ecology and ODW agree on the viability of the plan for obtaining additional water rights.
- b. If the water right self-assessment indicates that the water system will reach its water right limitations within the 6-year planning horizon and the WSP includes a plan for obtaining additional water rights, ODW will proceed with WSP approval (assuming the plan meets other approval requirements) but limit the approved number of connections to that allowable under the quantity limits of valid water rights until additional water rights are obtained, or until Ecology and ODW agree on the viability of the plan for obtaining additional water rights.

- c. When Ecology indicates to ODW that it disagrees with the water system’s water right self-assessment but does not take an appealable action against the water system, ODW will request that the water system respond to Ecology’s concerns. Responses from the water system may include but are not limited to: 1) acceptance of Ecology’s review of the information and correction of the information in the self-assessment, or 2) defense of the water system’s water right self-assessment analysis. When Ecology has not provided the water system with a means of appealing Ecology’s position, ODW may move forward with review and approval of the submittal based on the information in the water right self-assessment. In unusually sensitive circumstances, ODW should take extra measures to get feedback from Ecology and seek further input from the water system. (NOTE: In these instances, ODW staff must elevate the issue to management. Management will decide if AGO consultation is advisable.)
- d. When Ecology has taken an appealable action against the water system, ODW will support Ecology’s action in the review process by evaluating the system’s capacity using the water right limitation provided by Ecology in the appealable action.

The *Decision Tree for Water System Plan Submittals* flowchart in Appendix A graphically illustrates the process for ensuring that water right limitations are considered.

PROCEDURE:

The following table describes the responsibilities assigned to ODW staff:

| # | Action By | Action |
|-----|--|--|
| (1) | Regional Office Staff | Process planning and engineering documents in accordance with the general direction provided herein. |
| (2) | Planning Coordinator, Engineering Coordinator, | Develop Implementation Plans consistent with the direction established herein. Provide training to staff on the directions set in this directive memorandum. |
| (3) | Planning Coordinator | In consultation with the Field Operations Manager and the Director, update Ecology/ODW MOU. |
| (4) | Field Operations Team | Conduct periodic reviews of the direction set forth in this directive memo and update as necessary. Conduct periodic reviews of regional office implementation of the direction set forth in the directive memo. |

REFERENCES:

Municipal Water Supply – Efficiency Requirements Act, Chapter 5, laws of 2003

WAC 246-290-100, Water system plan

WAC 246-290-105, Small water system management program

WAC 246-290-110, Project report

WAC 246-290-120, Construction documents

Memorandum Of Understanding Between The Washington State Department Of Ecology And The Washington State Department Of Health Related To The Coordination Of Water System Plan Review And Public Water Systems Water Right Application Review, January 2002 Revision (DOH # 10687).

WAC 246-290-030(1)(a) JPO relationship between ODW and LHJ listing roles and responsibilities of each agency.

Policy A.15, Water System Physical Capacity in ERU's, dated March 3, 1998.

Policy B.01, Planning Document Submittal Requirements for Problem Systems.

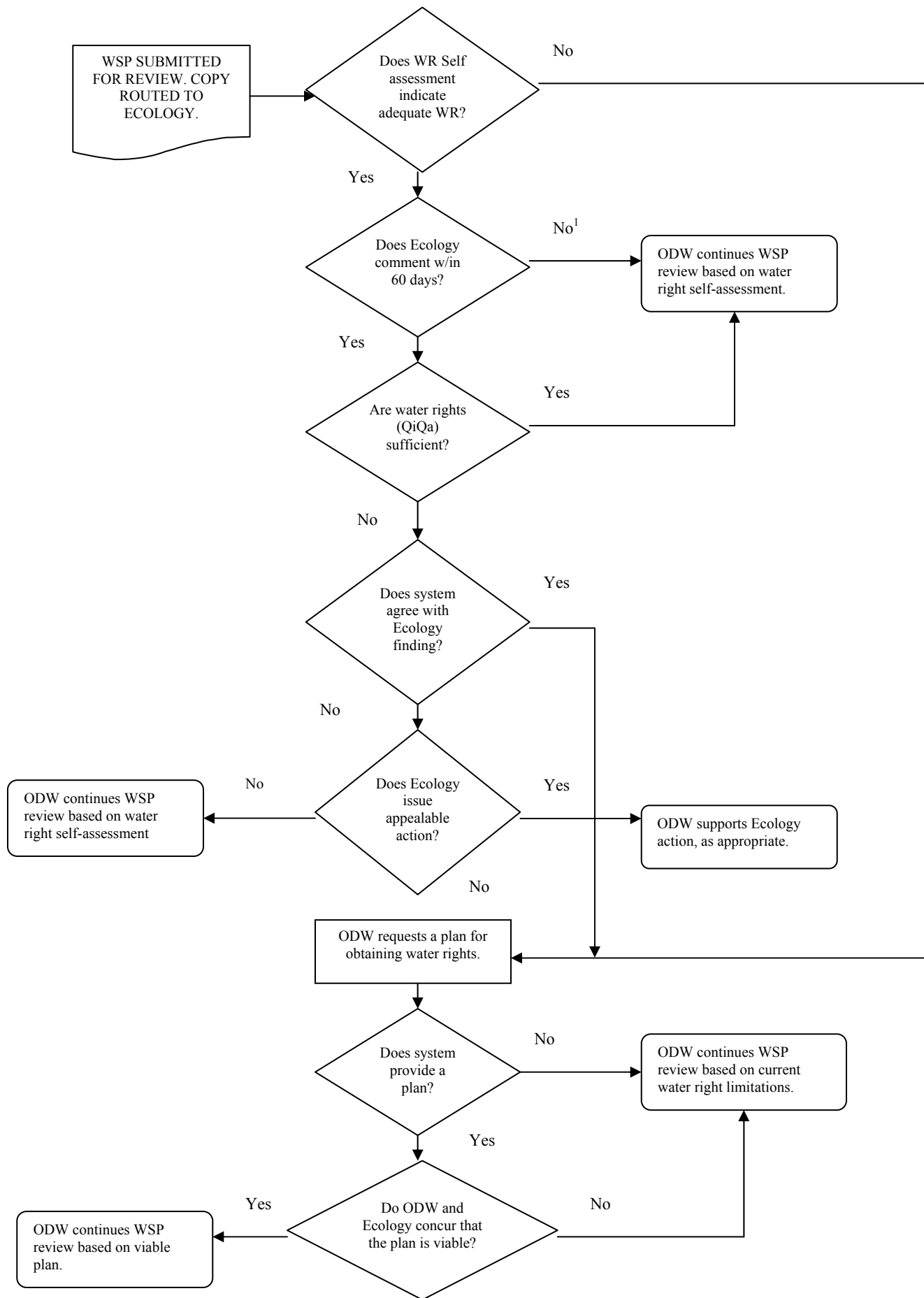
Policy B.03, Water System Plan Compliance Policy, dated 10/07/96.

Policy B.04, Water System Plan Review and Approval, dated 10/07/96.

Policy C.05; Determination of Water Rights Adequacy in Reviewing Construction Documents and Project Reports, dated May 24, 1999.

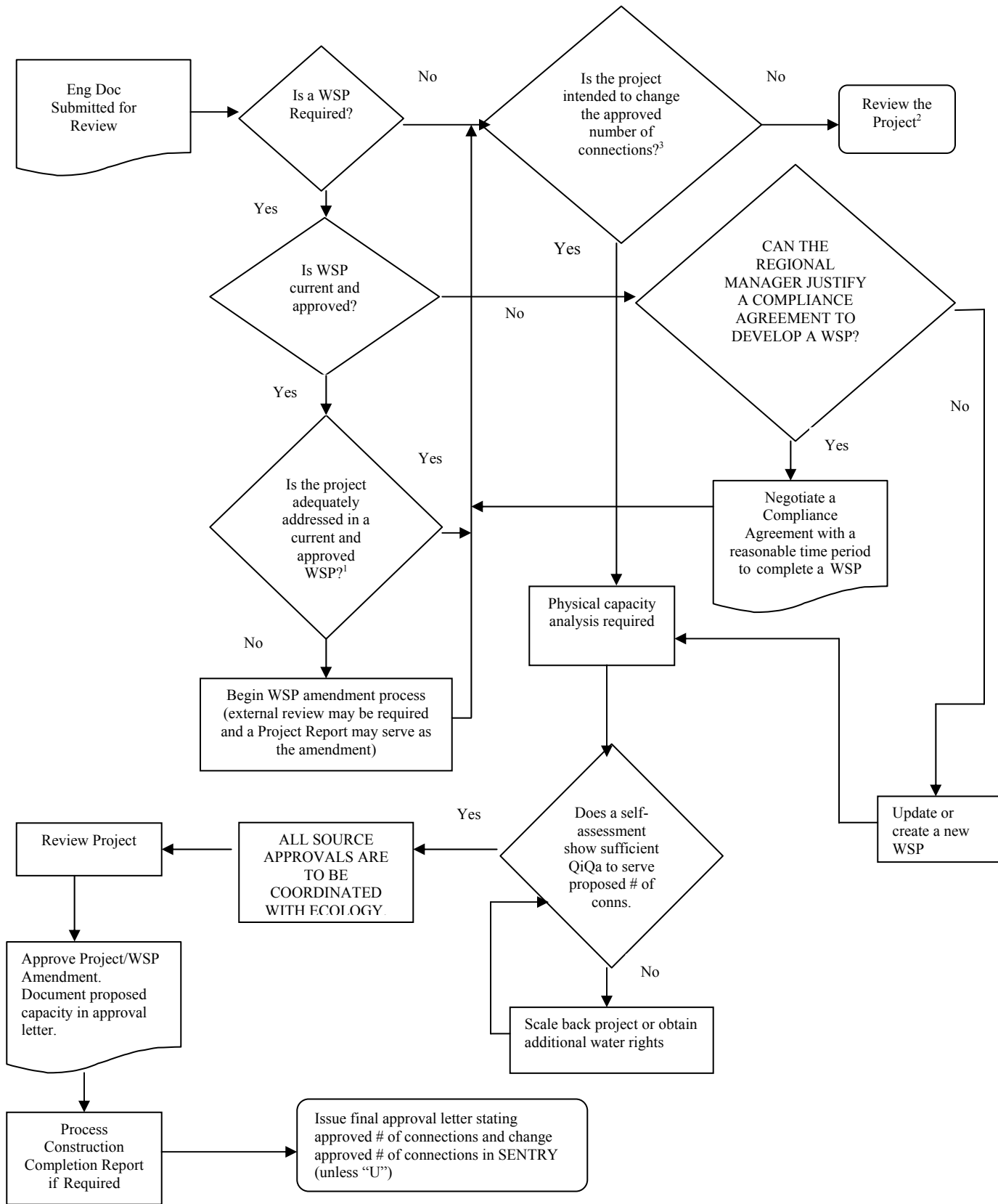
Policy C.06, Water Rights and Drinking Water Program Guiding Principles, dated May 29, 1998. Compliance Strategy Decision Matrix (8/12/00).

Appendix A – Decision Tree for Water System Plan Submittals



¹ In unusually sensitive circumstances, ODW should take extra measures to get feedback from Ecology and seek further input from the water system. In these instances, ODW staff must elevate the issue to management. Management will decide if AGO consultation is advisable.

Appendix B
Decision Tree For Processing Engineering Document Submittals
(minor correction 3-10-05)



¹If the project will expand the system service area, other planning considerations must be taken into account

²If the project is for a source, a water right self-assessment is required and it will be forwarded to Ecology.

³ODW will review past determinations as new SWSMPs, WSPs, and engineering documents are approved, or upon the request of the water system. See Directive #1.

Appendix G: Disclaimer Language

DOH will include the following disclaimer language regarding water rights uncertainties in the approval letter:

This approval does not provide any guarantee and should not be considered to provide any guarantee concerning legal use of water or any subsequent water right decisions by the Department of Ecology (Ecology). Ecology's comment letter dated (DATE) indicates that there are uncertainties regarding your water rights or the resolution of those uncertainties. Depending on the resolution of the uncertainties, further planning and/or other action may be necessary.

DOH will include the following disclaimer language when Ecology comments are not received in the approval letter:

This approval does not provide any guarantee and should not be considered to provide any guarantee concerning legal use of water or any subsequent water right decisions by the Department of Ecology (Ecology). A copy of this document was sent to Ecology on (date of transmittal). As of the date of this letter, comments have not been received from Ecology. DOH is making this approval based upon the water system's water rights analysis.

