

### Lesson Learned – Certificate of Water Availability Denials Can Be Costly!

**What Occurred:** The claimant was denied a request for a Certificate of Water Availability (CWA) even though State law requires water service to be provided within 120 days of a written request if a designated provider has the capacity to serve.

The Department of Health’s Drinking Water Programs and Services published an October 2009 newsletter (issue DOH 331-444) “Timely and Reasonable Water Service”, which can be found online at <http://www.doh.wa.gov/ehp/dw/Publications/331-444.pdf>, which further explains how The Coordination Act defines timely water service as 120 days.

In this case, the District had issued CWA’s for several single family residences while denying the claimant’s request for new water service for a modest mixed use commercial development.

According to RCW 19.27.097, which is included below, water certificates are required prior to an application for a building permit of a building requiring potable water, but it is not required until prior to final approval for rural and short subdivisions. It is the property owner’s responsibility to submit the application materials for a Certificate of Water Availability or to appoint an authorized agent or representative to do so. *A sample form is attached.*

#### RCW 19.27.097

Building permit application — Evidence of adequate water supply — Applicability — Exemption.

(1) Each applicant for a building permit of a building necessitating potable water shall provide evidence of an adequate water supply for the intended use of the building. Evidence may be in the form of a water right permit from the department of ecology, a letter from an approved water purveyor stating the ability to provide water, or another form sufficient to verify the existence of an adequate water supply. In addition to other authorities, the county or city may impose conditions on building permits requiring connection to an existing public water system where the existing system is willing and able to provide safe and reliable potable water to the applicant with reasonable economy and efficiency. An application for a water right shall not be sufficient proof of an adequate water supply.



(2) Within counties not required or not choosing to plan pursuant to RCW [36.70A.040](#), the county and the state may mutually determine those areas in the county in which the requirements of subsection (1) of this section shall not apply. The departments of health and ecology shall coordinate on the implementation of this section. Should the county and the state fail to mutually determine those



areas to be designated pursuant to this subsection, the county may petition the \*department of community, trade, and economic development to mediate or, if necessary, make the determination.

(3) Buildings that do not need potable water facilities are exempt from the provisions of this section. The department of ecology, after consultation with local governments, may adopt rules to implement this section, which may recognize differences between high-growth and low-growth counties.

[1995 c 399 § 9; 1991 sp.s. c 32 § 28; 1990 1st ex.s. c 17 § 63.]

**Notes:**

\*Reviser's note: The "department of community, trade, and economic development" was renamed the "department of commerce" by 2009 c 565.

Section headings not law -- 1991 sp.s. c 32: See RCW [36.70A.902](#).

Severability -- Part, section headings not law -- 1990 1st ex.s. c 17: See RCW [36.70A.900](#) and [36.70A.901](#).

**What Resulted:** After a lawsuit was filed, the discovery process began, and a trial date was set. Before the case went to trial, both parties agreed to a settlement. From beginning to end, this process took nearly two years.

**Direct Costs:** The total of the loss paid was **\$713,000**.

**Indirect Costs:** Uninsurable indirect costs for the District totaled **\$50,000** as well as hundreds of hours of staff time.

**Contributing Factors:**

1. The District did not have a consistent policy related to issuing CWA's, and therefore, they treated applicants differently.
2. There were inconsistent engineering opinions regarding the Districts' moratorium on new services, creating confusion with staff and applicants.
3. While still in the middle of this process, but after the plaintiff's water service application was declined, the District adopted a new resolution to require one meter per structure.
4. The District did not respond with their decision to deny the request for water service in writing within 120 days.

**Root Cause:**

1. Single family residential applicants were treated differently than a limited liability corporation.
2. There were inconsistencies in issuing CWA's to single family residential vs. developer applicants.

**Best Practice - Lessons Learned to Prevent Recurrence:**

1. Make sure your district has a written policy and associated procedures for issuing CWA's, supported by good engineering studies, and apply it uniformly and fairly to all applicants.
2. The 120 day window might be a benchmark for service if it is also supported by engineering data.

## Disparate treatment can mean costly claims!

**For additional information** about this and other Water and Sewer risk management programs please contact Leah Vergosen at 425-452-9750 or [leahv@wsrmp.org](mailto:leahv@wsrmp.org)

*This claim has been sanitized for risk management training purposes. The discussion and best practices suggested in this WSRMP Lessons Learned Fact Sheet should not be regarded as exhaustive legal advice. Readers should pursue legal counsel to gain more exhaustive advice.*

# CITY OF BURIEN CERTIFICATE OF WATER AVAILABILITY

Highline Water District  
P O Box 3867  
Kent, WA 98032  
824-0375

Water District 49  
415 SW 153rd St.  
Burien, WA 98166  
242-8535

Water District 20  
12606 1st AV S  
Burien, WA 98168  
243-3990

Seattle Water District  
710 2nd AV, 10th FL  
Dexter Building  
Seattle, WA 98104  
684-5900

## Part A (To Be Completed by Applicant)

Purpose of Certificate:

- |  |  |
|--|--|
| <input type="checkbox"/> Building Permit<br><input type="checkbox"/> Short Subdivision | <input type="checkbox"/> Preliminary Plat or PUD<br><input type="checkbox"/> Rezone or other _____ |
|--|--|

Applicant's Name \_\_\_\_\_

Proposed Use \_\_\_\_\_

Location \_\_\_\_\_

(Attach map and legal description if necessary)

The following structure or building shall have a **cross connection inspection** by the water purveyor WAC 246-290-490 because of the following item: (1) **Fire Protection System**, (2) **Boiler**, it shall be the requirement of the owner to notify the Water District. This is a requirement of the State of Washington and shall be complied with.

## Part B: (To Be Completed By Water Purveyor)

1. a.  Water will be provided by service connection only to an existing \_\_\_\_\_ water main \_\_\_\_\_ feet from the site.  
(size)
- or b.  Water service will require an improvement to the water system of:
  - (1) \_\_\_\_\_ fee of water main to reach the site; and/or
  - (2) The construction of a distribution system on the site; and/or
  - (3) Other (describe) \_\_\_\_\_
2. a.  The water service is in conformance with a County-approved water comprehensive plan.
- or b.  The water system improvement will require a water comprehensive plan amendment.
3. a.  The proposed project is within the corporate limits of the district, or has been granted Boundary Review Board (BRB) approval for extension of service outside the district or city, or is within the County-approved service area of a private water purveyor.
- or b.  Annexation or BRB approval will be necessary to provide service.
4. a.  Water is/or will be available at the rate of flow and duration indicated below at no less than 20 psi measured at the nearest fire hydrant \_\_\_\_\_ feet from the building/property (or as marked on the attached map):
 

<u>Rate of Flow</u> <input type="checkbox"/> less than 500 gpm (approx. _____ gpm) <input type="checkbox"/> 500 to 999 gpm <input type="checkbox"/> 1,000 gpm or more <input type="checkbox"/> flow test of _____ gpm <input type="checkbox"/> calculation of _____ gpm	FOR	<u>Duration</u> <input type="checkbox"/> less than 1 hour <input type="checkbox"/> 1 hour to 2 hours <input type="checkbox"/> 2 hours or more <input type="checkbox"/> Other _____
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(Commercial Building Permits require flow test or calculation)
- or b.  Water system is not capable of providing fire flow.

COMMENTS/CONDITIONS \_\_\_\_\_

I hereby certify that the above water purveyor information is true. This certification shall be valid for one year from date of signature.

\_\_\_\_\_  
(Agency Name) (Print Name)

\_\_\_\_\_  
(Title) (Signature/Date)