CONFLUENCE LAW

MEMORANDUM

TO: Kristina Nelson-Gross, City Attorney

FROM: Jessica Kuchan, Confluence Law, PLLC

RE: City of Sequim: Water System and Comprehensive Plan

DATE: September 25, 2026

The City of Sequim is currently updating its Comprehensive Plan under the Growth Management Act. Under the Growth Management Act, a Comprehensive Plan must consider plans for potable water supply and protection of water resources. The City's Comprehensive Plan addresses adequate water supply planning and protection through goals, policies, Capital Facility planning and regulations. As one of the water purveyors, the City of Sequim has also included in its Comprehensive Plan a review of the City's Water System's ability to provide potable water for future water needs.

You requested that I prepare this memorandum to provide an overview of the legal framework surrounding the City's Water System's water rights, regulatory oversight and water resource planning. This memorandum is organized into four parts. The first part will consider the City's water rights and use of the water rights to meet the City's Water System's future water needs. The second part will consider the regulatory framework for operating the Water System, including planning and oversight by Washington's Department of Health. The third part will consider the legal framework for the protection of water resources within the Dungeness River Watershed. The fourth part will consider the City's obligations to consider water resources in its Growth Management Act Planning.

The City of Sequim's Water Rights

The City of Sequim's Water System holds surface and groundwater water rights issued by the State of Washington. As more completely explained in the City's Water System Plan, the City

holds a water right to withdraw water from the Dungeness River,[1] three groundwater rights,[2] and a pending groundwater application.[3]

A water right under Washington law is both a property right and a license to use the public waters of the State. Washington has adopted the prior appropriation doctrine as the legal framework for the regulation and use of water resources.[4] Under the prior appropriation doctrine, the first claimant has priority over other claimants. Senior water rights also are protected from impairment by later claimants, including instream and out of stream water rights, based on seniority. In 2013, Ecology adopted the Water Resources Management Program for the Dungeness Portion of the Elwha-Dungeness Water Resources Inventory Area (WRIA) 18. Chapter 173-518 WAC. Ecology's rule addresses instream flows, groundwater appropriations, allocations, mitigation plans, and compliance and enforcement. The City of Sequim's water rights to use water from the Dungeness River, Infiltration Gallery,[5] Silberhorn Wellfield,[6] and Port Williams Wellfield[7] are senior in priority to the instream flow rule under WAC 173-518-040.

The City's Water System currently is relying on three groundwater rights from three sources: the Infiltration Gallery,[8] the Silberhorn Wellfield,[9] and the Port Williams Wellfield.[10] As noted above, the City also owns a Dungeness River surface water right and a pending groundwater

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[1] Dungeness Surface Water Right Certificate No. 1316 (Priority Date: May 23, 1924), authorized to withdraw up to 1.4 cubic-feet per second.

[2] Water Right Certificate 2102-A (Priority Date: February 16, 1953), authorized to withdraw up to 718 gallons per minute, not to exceed 1,160 acre-feet annually; Water Right Certificate G2-23856 (Priority Date: June 12, 1975), authorized to withdraw up to 700 gallons per minute, not to exceed 690 acre-feet annually; and Groundwater Permit No. G2-29239 (Priority Date: June 13, 1995), authorized to withdraw up to 2,250 gallons per minute, not to exceed 1,850 acre-feet annually.

[3] Groundwater Right Application G2-30721 (Priority Date November 14, 2017), seeking to withdraw up to 1,000 gallons per minute, not to exceed 2,000 acre-feet annually.

[4] *See* generally W. Hutchins, WATER RIGHTS LAWS OF THE NINETEEN WESTERN STATES (1977).

[5] Served by Water Right Certificate 2102-A (Priority Date: February 16, 1953), authorized to withdraw up to 718 gallons per minute, not to exceed 1,160 acre-feet annually.

[6] Water Right Certificate G2-23856 (Priority Date: June 12, 1975), authorized to withdraw up to 700 gallons per minute, not to exceed 690 acre-feet annually.

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application.[11] Funding the upgrade to the Dungeness River Surface Water Treatment is not necessary at this time to meet the water demands for the growth allocations in this Comprehensive Plan period. As explained in the draft Capital Facilities Plan, the City is currently operating within its water right authorizations and has planned for sufficient capacity to meet the future growth allocations from Clallam County as noted in the Comprehensive Plan. The City's Water System also continues to consider growth demands and plan for improvements to provide adequate and reliable water supplies for its customers.

Water System Regulation

The City of Sequim's Water System is overseen by the Washington State Department of Health (DOH). Under Chapters 70A.120 and 70A.125 RCW, public water systems must comply with operational and planning requirements. Water purveyors must prepare a water system plan to demonstrate the water system has the technical, managerial, and financial capacity to achieve and remain in compliance with all local, state and federal regulations.[12] The Water System Plan provides the DOH with the means to verify that a water system complies with the system capacity requirements of the federal Safe Drinking Water Act. The Water System Plan must demonstrate system capacity to serve existing and proposed service areas for specified planning periods.

City of Sequim is an approved Group A Water System. Group A water systems must comply with rigorous water quality, source protection and operational standards.[13] The City of Sequim adopted an updated water system plan in 2023.[14] The City's Water System Plan provides an extensive analysis of the water conveyance system, water rights, water use planning, water efficiency, source water protection, operation and maintenance, capital improvements, and financial planning. The City's Water System meets all applicable water quality regulations.[15] The City monitors its water quality and provides an annual Water Quality report, also referred to as a Consumer Confidence Report to water users, which also includes water conservation

[11] Dungeness Surface Water Right Certificate No. 1316 (Priority Date: May 23, 1924), authorized to withdraw up to 1.4 cubic-feet per second. Groundwater Right Application G2-30721 (Priority Date November 14, 2017), seeking to withdraw up to 1,000 gallons per minute, not to exceed 2,000 acre-feet annually.

[12] WAC 246-290-100.

[13] Chapter 246-290 WAC.

[14] City of Sequim, Resolution No. R2023-18, Water System Plan (September 11, 2023) (herein after referred to as the Water System Plan).

[15] Water System Plan, 3.4.1.3 (pg. 57)

suggestions. The City's Water System Plan also considers and monitors the sources of water supply through data collection.[16]

As noted in the draft Comprehensive Plan, the City's Water System Plan considered a conservative three percent growth rate in its planning. The City's Comprehensive Plan relies on updated growth allocations from Clallam County. As explained in the Draft Comprehensive Plan and Capital Facilities Plan, the Water System Plan demonstrates that at the current Comprehensive Plan growth allocation, the City's Water System Plan has sufficient water rights, system capacity and improvement plans to provide water supply within its service area.

State Oversight of Available Water Supplies

The Washington State Department of Ecology manages the issuance of water rights for the State, as well as the administration of water rights in times of shortage or drought.[17] To achieve water rights management objectives, Ecology is empowered to designate "groundwater areas or sub-areas" and "separate depth zones" within an area or subarea. RCW 90.44.130. Senior priority groundwater rights holders have the right to have any withdrawals by subsequent rights holders limited to an amount that will maintain and provide a safe sustaining yield. RCW 90.44.130. The Water Code further provides that Ecology "shall have jurisdiction over the withdrawals of groundwater and shall administer the groundwater" to protect the yield of senior rights holders.[18] Ecology has the authority to "…establish standards, criteria, and a process for the designation of specific groundwater areas…[and] to initiate development of a groundwater management program…."[19]

Additionally, Ecology, along with other governments, has conducted watershed planning efforts in the Dungeness Planning Area (WRIA 18, extending from the eastern boundary to encompass the Dungeness River Basin).[20] The Dungeness Watershed Plan was a collaboration of state, local, tribal governments and citizens to protect the Dungeness River Watershed. These efforts included the Dungeness Instream Flow Rule, Chapter 173-518 WAC, mitigation and groundwater

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[16] Water System Plan, 5.4 (pg. 99-100).

[17] Watershed planning (chapter 90.82 RCW), Water Resources Act of 1971 (chapter 90.54 RCW), Water code (chapter 90.03 RCW), Regulation of public groundwaters (chapter 90.44 RCW, RCW 90.44.130, RCW 90.44.180, and RCW 90.44.200), Minimum Water Flows and Levels Act (chapter 90.22 RCW), and Water resource management (chapter 90.42 RCW) and in accordance with the Administrative Procedure Act (chapter 34.05 RCW) (See WAC 173-518-010).

[18] RCW 90.44.130; RCW 90.44.180.

[19] RCW 90.44.400(1).

[20] Elwha-Dungeness Watershed Plan, Water Resource Inventory Area 18 (WRIA 18) and Sequim Bay in West WRIA 17 (May 2005), available online at https://www.clallamcountywa.gov/812/Elwha-Dungeness-Watershed-Plan.

modeling. The management of the groundwater and surface water of the Dungeness River Watershed have continued to be a collaborative effort.

Planning Efforts: Growth Management Act, Water System and Water Rights

The Growth Management Act requires that local governments plan for future water needs and protect water resources.[21] The Growth Management Act also requires a comprehensive plan of a county or city to consider water resource issues, including "protection of the quality and quantity of groundwater used for public water supplies" when adopting comprehensive plans.[22] The City's Draft Comprehensive Plan seeks to address considerations of meeting future water needs and protecting water resources through its goals, policies and Capital Facilities Plan.

The City's Comprehensive Plan addresses the need to plan for potable water supplies. The City's Title 18 code requires a finding of adequate water supply for development of new public and private land uses. The City's Water System holds sufficient water rights authorized by the State of Washington to supply potable water in its service area in accordance with the Clallam County growth allocations for the planning period. The City's Draft Comprehensive Plan includes Policy LU-12.2 to ensure the City's public groundwater sources provide a water supply that meets state and federal drinking water standards.[23] The City's Water System Plan includes monitoring, water quality measuring and water source protections to provide water supply that meets state and federal drinking water standards. The City's Draft Comprehensive Plan includes Policy LU-12.3 to develop and implement proactive water use efficiency measures in its Water System Plan. The City's Water System Plan and the Capital Facilities Plan describe the implementation of water conservation and efficiency measures.[24] The Capital Facilities Plan identifies that the City's Water System Plan provides a complete inventory, overview, identification of planned improvements and ability to serve. In total, the City's Draft Comprehensive Plan, its Capital Facilities Plan and development regulations plan for potable water supplies consistent with the County's growth allocations.

[21] RCW 36.70A.070.

[22] RCW 36.70A.210; RCW 36.70A.070; *see also* RCW 36.70A.020(10).

[23] 2025 Draft Comprehensive Plan, Planning Commission Draft, Policy LU-12.2, pg. 27 (July 2026).

[24] Water System Plan, Chapter 4; 2025 Draft Comprehensive Plan, Planning Commission Draft, Capital Facilities Plan, pg. 19.