

10-2008

Role of the State - OSE Water Availability Opinions

John Longworth, P.E.
Office of the State Engineer

Follow this and additional works at: https://digitalrepository.unm.edu/utton_pubs

 Part of the [Administrative Law Commons](#), [Agriculture Law Commons](#), [Environmental Law Commons](#), [Food and Drug Law Commons](#), [Indian and Aboriginal Law Commons](#), [International Law Commons](#), [Land Use Law Commons](#), [Litigation Commons](#), [Natural Resources Law Commons](#), and the [Water Law Commons](#)

Recommended Citation

Longworth, P.E., John. "Role of the State - OSE Water Availability Opinions." (2008).
https://digitalrepository.unm.edu/utton_pubs/32

This Presentation is brought to you for free and open access by the The Utton Transboundary Resources Center at UNM Digital Repository. It has been accepted for inclusion in Publications by an authorized administrator of UNM Digital Repository. For more information, please contact amywinter@unm.edu, lsloane@salud.unm.edu, sarahrk@unm.edu.

The Utton Transboundary Resources Center

Land and Water Workshop October 17, 2008

Role of the State -- OSE Water Availability Opinions
John Longworth P.E., Office of the State Engineer

Introduction

- Background
 - Name
 - Title
 - Nature of request to speak
- Responsibilities as Bureau Chief, Manage:
 - Water Use calculations
 - Adjudications
 - Water Rights
 - 40-year water development plans
 - Water Use By Categories Report
 - Water Conservation Program
 - Subdivision Review

Overview of Presentation

- Statute Requirements
- WUCB Review Protocols
- Subdivision Conclusions

Statute Requirements

- Types of Subdivisions
 - Type One: 500 or more parcels, any one of which is less than 10 acres.
 - Type Two: 25-499 parcels, any one of which is less than 10 acres.
 - Type Three: 24 or less parcels, any one of which is less than 10 acres.
 - Type Four: 25 or more parcels, each of which is greater than 10 acres.
 - Type Five: 24 or less parcels, each of which is greater than 10 acres.
- County Authority
 - Section 47-6-9 – paraphrase
 - BCC shall adopt regulations setting forth requirements for:
 - Quantifying the maximum annual water requirements of subdivisions, including water for indoor and outdoor domestic uses
 - Assessing water availability to meet the maximum annual water requirements of subdivisions
 - Water conservation measures.
 - This outlines the basic requirements for submittals and OSE review.

Statute Requirements

- Key direction for OSE – 47-6-11(f)1
- Requires that for preliminary plat approval of Type-One, Type-Two, Type-Three (except for those with 5 or less parcels--these are subject to summary review procedures), and Type-Four subdivisions, County Commissions request an opinion from the State Engineer to determine:
 - whether the subdivider can furnish water sufficient in quantity to fulfill the maximum annual water requirements of the subdivision, including water for indoor and outdoor domestic uses; and
 - whether the subdivider can fulfill the proposals in his disclosure statement concerning water, excepting water quality.
- Prior to final plat approval of Type-Three subdivisions with 5 or less parcels, and Type-Five subdivisions,
 - County Commissions may request an opinion from the State Engineer
 - An OSE review is not specifically required by the Subdivision Act.

Statute Requirements

- General process requirements
 - Section 47-6-20(A) provides that any public agency receiving a request from the County for an opinion shall provide the requested opinion within the time period set forth in Section 47-6-22(A). The County Commission shall provide the appropriate public agency with all relevant information received from the subdivider on the subject. If the public agency does not have sufficient information upon which to base an opinion, the public agency shall notify the Commission.
 - Section 47-6-20(B) states that all opinion requests mailed by the County Commissions shall be by certified mail "return receipt requested."
 - Section 47-6-22(A) – Time Limit
 - 30 calendar days

Statute Requirements

- Section 47-6-11 (H) – What happens when negative opinion is issued?
 - “Subdivider has the burden of showing that the adverse opinion is incorrect either as to factual or legal matters.”

Statute Requirements

- Contents of Disclosure Statement -- Section 47-6-17(B) and (C) require, with regard to water quantity, that the disclosure statement for subdivisions with not fewer than 5 parcels include:
 - a statement describing the maximum annual water requirements of the subdivision, including water for indoor and outdoor domestic uses, and describing the availability of water to meet the maximum annual water requirements;
 - a description of the means of water delivery within the subdivision; and
 - the average depth of water within the subdivision if water is available only from subterranean sources.
 - A summary of the opinions provided by the agencies

WUCB Review Protocols

- Review based on Statute and Co regulations
 - First review submittal for completeness
 - Review disclosure statement
 - Does submittal conform with Co code and statute
 - Incomplete submittals are issued a negative opinion
 - Once submittal is complete, two parts are reviewed
 - Water Demand Analysis and Conservation
 - Water Availability Assessment

WUCB Review Protocols

Quantifying the Maximum Annual Water Requirements

- Review Demand Analysis
 - Determine the gallons per capita per day determined.
 - OSE assesses the approach
 - Either an engineering calculation or a County per lot allowance.
 - County requirements from 0.25 to 1.0 af/lot/yr
 - Lowest budget 0.2 af/lot/yr or ~ 75 gpcd
 - Conservation measures are necessary
 - Is the value consistent with the Disclosure Statements?
 - Yes – Positive, go to the next step.
 - No -- Negative
 - Compare with Covenants, Rules, and Restrictions – may not necessarily be negative since statutes do not require this consistency

WUCB Review Protocols

Water Availability to Meet the Maximum Annual Water Requirements

- Water Availability Assessment
 - Two basic sources of supply
 - Public Water Supplier (New and Existing)
 - Domestic Wells
 - Two principal components
 - Hydrologic
 - Water Right

WUCB Review Protocols

Water Availability to Meet the Maximum Annual Water Requirements

- Public Water Suppliers
 - Ready, willing and able letter
 - Hydrologic Component
 - Demonstrate a min 40-year water availability (Range of Co ordinance 0 to 100 yrs)
 - Surface Water is rare, but source of supply review
 - GW – need geo-hydrology report
 - Demonstrate that the water is recoverable
 - Water Rights Component
 - How does the water right portfolio compare to
 - Existing use
 - Future Commitments yet unserved
 - Proposed Commitments
 - Are water rights transfers pending?

WUCB Review Protocols

Water Availability to Meet the Maximum Annual Water Requirements

- Domestic Wells
 - Hydrology component only
 - Impairment...
 - OSE does not review for impairment
 - Statute direction
 - What is impairment?

WUCB Review Protocols

Water Availability to Meet the Maximum Annual Water Requirements

- Geohydrology Report needs:
 - Prospective land purchasers with the information necessary to make an informed purchase decision.
 - Information requirements presented in the county regulations.
 - Assessment has been performed properly.
 - Adequate demonstration of water availability.
 - Review the proposal to ensure the disclosure statements pertaining to recommended well depths and yields are correct.
- For complex submittals, WUCB works with OSE's Hydrology Bureau

Conclusions

- WUCB reviews submittals based on
 - County code AND Statute
- Principal documents necessary
 - Disclosure Statement
 - Water Demand Analysis
 - Water Availability Assessment
- Incomplete submittals are issues a negative opinion

Conclusions

- Hydrology component necessary for all Availability Assessments
- Water Right review only for Public Water Suppliers

Closing Thoughts

- Interesting subdivision water availability challenges
 - Public Water Suppliers rescinding old commitments
 - How to best accommodate this challenge?
 - Extraterritorial Zones and CO/Muni authority
 - Does this provide the best model for consistency on water quantity assessments?