

OSE – Stakeholders Meeting #11
House Memorial 42
June 11, 2009, 12:00 – 4:00 am
New Mexico Municipal League
Santa Fe

Summary of Points Raised by Participants

Facilitator/Recorder: Lucy Moore

Welcome and introductions: Lucy welcomed the group to the eleventh HM42 meeting. Participants introduced themselves. Representing the OSE were John Longworth, Chief, Water Use and Conservation Bureau, Cheri Vogel, OSE Water Conservation Coordinator, and Martha Franks, contract attorney with the OSE.

Agenda Review: Lucy reviewed the agenda and the handouts -- the agenda and the “Proposed Criteria for Water Development Plans Required,” Discussion Draft. [All handouts are on the OSE website.] The purpose of this last meeting of the HM42 Stakeholders Group, she said, was to reach as much agreement as possible on the proposed criteria and to discuss options for future work on the issue.

Updates:

Funding: Understanding that the OSE budget does not allow for any additional stakeholder meetings, stakeholders have researched other sources of funding. Cecilia Abeyta reported that all the entities she contacted were suffering under the current economic conditions. The Farm Bureau and the Water Resources Research Institute (WRRI) were unable to offer any hope. The USDA’s Rural Economic Development program is in transition, and has suffered budget cuts, but may be able to consider helping in the future. Regina Romero added that although cities and Councils of Government (COGs) are receiving stimulus package money, those budgets are also very tight.

Legislature: John Longworth reported on his presentation to the Interim Water Resources Committee. The list of items from the OSE/ISC was very long, and the committee’s priorities did not include HM42. He and others in the group agreed that the legislature is not ready to consider the issues in HM42, and that the group does not have a degree of consensus necessary to present anything meaningful to the IWRC. Many felt that the wisest course of action would be to reconvene prior to the next 60-day session, taking whatever opportunities arise to educate legislators in the meantime.

Draft Document: At the last Stakeholder meeting April 21, 2009, OSE staff was asked to create Draft Guidelines for Water Development Plans. On May 6, this document was sent to the full stakeholder group with a comment period. Comments are still being received on that document. A sub-group of volunteer stakeholders met to review the May 6 Draft, with the goals of working out some of the differences before the final meeting on June 11. At their first meeting, the sub-group created a new document, based on the May

6 draft. OSE staff met with them at their second meeting, June 9, and the result of that discussion was the “Proposed Criteria for Water Development Plans Required,” the subject of meeting # 11.

A stakeholder suggested also soliciting ideas and opinions on the current draft guidelines through the OSE website, and using those comments to help craft the next steps. Another said that stakeholders will need to take the document resulting from today’s meeting back to their constituencies for discussion.

Looking Back and Looking Ahead:

John offered his thoughts on the HM42 process, past, present and future. He emphasized how much he and his staff have appreciated the thoughtful and committed participation of the stakeholders. He also thanked his staff and contractors for their excellent work. The dialogue has been extremely helpful to him in understanding the issues surrounding the holding of water unused for a long period of time. His office receives and must respond to 40 year plans on a continual basis, and the work of this group has already impacted how these plans are considered. Whether or not the group reaches consensus on all the elements in the document, the criteria that emerge from today’s meeting, he said, will be very useful, with or without consensus from the stakeholders. He sees the draft guidelines as a tool for evaluating plans in this interim period or until the legislature decides to change the statute.

Acknowledging that there are differences of opinion about the interpretation of the authority granted to the State Engineer by statute, John offered his view of the governmental process. The legislature makes laws; the executive branch interprets those laws; disputes are taken to the courts for clarification.

John added that it is his responsibility to update the State Engineer on the progress of the HM42 stakeholder group, and that all decisions about the future of the group or the use of any work products will be those of the State Engineer. John D’Antonio, he said, has been a very strong supporter of this process, and has a personal interest in its work.

Review of Section III: Criteria

Today, John said, he hoped that the group could review and discuss the third section of the Proposed Criteria, working toward consensus to the greatest degree possible. The first two sections, “Who can apply?” and “Purpose of Water Development Plans” deal with the questions of expanding the list of applicants and the length of time water can be held. The group agreed to disagree on sections I and II, but felt that the criteria could be considered without consensus on those threshold questions. John noted that he believes the “who” question is one to be answered by the Water Rights bureau. With respect to the time frame, he favors a construction that is broad rather than narrow. His experience is that the fewer limiting factors in considering plans the better.

In answer to a question, John clarified that these proposed guidelines apply to plans that are submitted with an application for water rights. A stakeholder commented that this was

important because it allows for a public hearing process in conjunction with the consideration of the application and the plan. Currently, if water development plans are submitted without an application, they are received by John's office, but not commented on. The work load is simply too great to consider 40 year plans that are submitted without an application.

Stakeholders commented on the meaning of guidelines. Some felt that words like "shall" did not belong in guidelines, but were more appropriate in regulations. There was discussion about the use and enforcement of guidelines. Many assumed that they were a helpful guide for those submitting a 40 year plan, and that to have some certainty and consistency in the treatment of each plan was a benefit to all. A participant pointed out the difference between what is required statutorily and what is suggested in guidelines. She was concerned that applying entities would be required to comply with a set of guidelines, in addition to what is required in the statute. OSE staff repeated that an entity can submit any kind of plan they wish, in any format, but that the guidelines hopefully will bring some certainty and continuity to the process.

Another suggested that one benefit of regulations is that there is a place for public review and oversight; she hoped that these guidelines could include equivalent processes.

Changes were made to the Proposed Criteria document. The revised document can be found on the OSE website. The stakeholder group reached agreement on much of Section III, as well as the first paragraph describing a philosophical difference of opinion about the power of the State Engineer under the statute.

The outstanding issues are: self-fulfilling prophecy concept and language in B 1, and the language in D. Demonstration that Application is Non-Speculative.

Conclusion: Stakeholders expressed sincere appreciation to the OSE staff and consultants for their dedication to this process. They regret there are not funds for its continuation, believing that agreement on all issues may be near. They asked John to relay this message to the State Engineer. John repeated that the State Engineer is very enthusiastic about this process, and again thanked everyone for their energy and commitment.

Next Steps:

- Lucy will prepare a summary of this meeting within two days.
- In the next few days, Cheri will post the Proposed Criteria document, as changed at Meeting # 11, on the OSE website. Cheri will send an email notifying the complete listserv that the document has been posted and that comments will be received through June 30, 2009. She will also email the meeting summary to the listserv.
- John will report to the State Engineer on the progress of the HM42 stakeholder group to date, and present the Proposed Criteria document, with comments.

Summary prepared by Lucy Moore. Please contact her with questions or corrections. 505-820-2166, or lucymoore@nets.com