

January 28, 2010

Mr. Roger J. Ellis
Hidalgo County Manager
300 S. Shakespeare
Lordsburg, NM 88045

CERTIFIED MAIL
RETURN RECEIPT
REQUESTED

Re: Rancho Hidalgo Subdivision

Dear Mr. Ellis:

The Water Use & Conservation/Subdivision Review Bureau of the Office of the State Engineer has reviewed the referenced subdivision proposal pursuant to the Hidalgo County Subdivision Regulations and the New Mexico Subdivision Act.

Based on the information provided, this office has determine that 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 that the subdivider can fulfill the proposals in his disclosure statement concerning water, excepting water quality. Accordingly, a **positive** opinion is issued.

A staff memorandum providing specific comments is attached for your information. If you have any questions, please call Jerry Keller at 505-827-3845.

Sincerely,

John W. Longworth, P.E.
Water Use & Conservation/Subdivision Review Bureau Chief

Encl.

cc: OSE Water Rights Division, Deming Office

JK:jk

MEMORANDUM
New Mexico Office of the State Engineer
Water Use and Conservation Bureau

DATE: January 26, 2010
TO: John Longworth, P.E. Water Use & Conservation Bureau Chief
FROM: Jerry Keller, Senior Water Resource Specialist
SUBJECT: Rancho Hidalgo Subdivision in Hidalgo County

SUMMARY

On January 12, 2010 the Office of the State Engineer received additional/revised information for the Preliminary Plat for Rancho Hidalgo, a Type Two Subdivision. The proposal is for the development of a 333.294-acre tract into 84 parcels ranging in size from 3.505 to 4.020 acres each. The proposed water supply is by 72-12-1 domestic wells. The property is located approximately 4 miles west of Animas on the north side of NM Highway 9 within Sections 15, 21, and 22, Township 27 South, Range 20 West, NMPM.

This office issued a negative opinion for this subdivision on August 20, 2009 for the reason that the water supply proposal was not in compliance with the requirements of Section 47-6-11 F (1) of the New Mexico Subdivision Act.

The revised water supply documents submitted to this office consist of a Disclosure Statement, Declaration of Covenants, Conditions, Restrictions, and Easements (CCR's), and the Plat Map

The proposal was reviewed pursuant to the Hidalgo County Subdivision Regulations (Regulations) and the New Mexico Subdivision Act (Act). The water supply proposal is in substantial compliance with the requirements of the Regulations and the Act. Accordingly, a **positive** opinion should be issued.

WATER DEMAND ANALYSIS AND WATER CONSERVATION

Under Item No. 17 of the revised Disclosure Statement the subdivider has revised the maximum annual water requirements for the subdivision from 0.46 acre-feet per lot and 38.7 acre-feet for the development to 0.20 acre-feet per lot and 16.7 acre-feet (0.2 x 84 =16.8 acre-feet) for the development.

Attachment 17 contains a revised detailed water demand analysis generally following the procedure presented in OSE Technical Report 48, Water Conservation and Quantification of Water Demands in Subdivisions A Guidance Manual for Public Officials and Developers, (Wilson 1996). The annual indoor use estimate of 0.179 acre-feet is based on 2.72 persons per dwelling unit at 58.9 gallons per capita per day. The estimate does not include water softening or evaporative cooling.

The previous estimate for annual outdoor use was 0.209 acre-feet is based on 1,500 square feet of Bermuda grass, 50 square feet of trees and shrubs, and 100 square feet of garden. The revised estimate does not include any outdoor use. However, the Disclosure Statement and CCR's state "Landscaping of outdoor areas is limited to low water use plants that are consistent with the indigenous natural desert environment." These types of plants usually require some irrigation for the few years to become established. Additionally, the CCR's permit horses, mules, and donkeys to be kept on the lots. These animals will require water.

Given that no estimate is provided for outdoor use, the CCR's and Disclosure Statement should specifically prohibit all outdoor use of water produced from the domestic wells, including landscaping, livestock, swimming pools, hot tubs, water fountains, and decorative ponds.

WATER AVAILABILITY ASSESSMENT

The proposed water supply for the subdivision is individual 72-12-1 domestic wells constructed by the lot purchaser.

The Regulations do not contain specific requirements to demonstrate water availability when 72-12-1 domestic wells are proposed as the source of water supply. Appendix "A" Section D.2 of the Regulations states "*If the subdivider proposes that the source of water shall be individual domestic wells or shared wells the plan is to be approved by the State Engineer pursuant to Section 72-12-1 NMSA 1978 Comp., as amended.*" However, the statute does not give the State Engineer the discretion to deny an application for a domestic well permit after the subdivision lots are created.

There are few existing wells in the vicinity of the development. OSE records indicate four existing wells in Section 21 and no existing wells within Sections 15 and 22. The subdivider provided a printout of a water column report from OSE's online database for the four wells within Section 21 and two wells within Section 16. A table developed from the database information showing the depth of wells and the depth to water is included under Item No. 19 of the Disclosure Statement. The average well depth of 349 feet and the average depth to water of 224 feet are based on the table. No actual well logs are provided.

The minimum and maximum well depth to be reasonably expected within the subdivision is 320 feet and 500 feet respectively based on information contained in the Southwest New Mexico Regional Water Plan (Daniel B. Stevens and Associates, 2005). The recommended total well depth is 360 feet. The subdivider also states that "Wells completed to the recommended depth are estimated to produce 20 gallons per minute." The basis for the estimated well yield is not provided.

Based on the information provided, the subdivider has demonstrated that wells have been completed in the vicinity of the proposed subdivision that should produce water in sufficient quantities to meet domestic demands.

DOMESTIC WELLS

Domestic wells are permitted under Section 72-12-1.1 NMSA 1978 which states:

A person, firm or corporation desiring to use public underground waters described in this section for irrigation of not to exceed one acre of noncommercial trees, lawn or garden or for household or other domestic use shall make application to the state engineer for a well on a form to be prescribed by the state engineer. Upon the filing of each application describing the use applied for, the state engineer shall issue a permit to the applicant to use the underground waters applied for; provided that permits for domestic water use within municipalities shall be conditioned to require the permittee to comply with all applicable municipal ordinances enacted pursuant to Chapter 3, Article 53 NMSA 1978.

Updated rules and regulations on 72-12-1.1 domestic well permits were adopted on August 15, 2006 and filed under Title 19, Chapter 27, Part 5 of the New Mexico Administrative Code (19.27.5 NMAC). The updated rules and regulations replaced Articles 1-15 through 1-15.5, 1-15.7, 1-15.8, and 1-16 of the existing Rules and Regulations Governing the Drilling of Wells and the Appropriation and Use of the Ground Water in New Mexico.

On July 10, 2008 a decision issued by Judge J. C. Robinson of the Sixth Judicial District Court in Silver City held that the Domestic Well Statute (72-12-1.1) is unconstitutional, is an impermissible exception to the state doctrine of prior appropriation, and that the State Engineer should be required to administer applications for domestic well permits in the same manner as all other applications to appropriate water.

Statutes enacted by the legislature are given the presumption of constitutionality; therefore, the State Engineer has appealed the decision to the New Mexico Court of Appeals. **The appeal stays enforcement of the decision, therefore, the State Engineer will continue to accept and act on domestic well applications pending a ruling by the appellate court.**