

October 21, 2005

Mr. Alex Tafoya
Planning and Zoning Supervisor
San Miguel County
500 West National, Suite 104
Las Vegas, NM 87701

CERTIFIED
RETURN RECEIPT
REQUESTED

Re: Rubel Allemand Subdivision

Dear Mr. Tafoya:

On October 11, 2005, the Office of the State Engineer (OSE) received a request to review additional documentation on the referenced subdivision. The proposal is a request to subdivide 121.6 acres of land into four lots with sizes ranging between 10.0 and 91.6 acres. The subdivision is located approximately one mile north of Los Montoyas, west of US Highway 84, within projected Section 23, Township 14 North, Range 16 East, NMPM. The proposed water supply is individual domestic wells.

This office had previously reviewed water demand analysis and water availability for the proposed subdivision and issued two negative opinions, with letters dated April 22, 2005, and July 7, 2005.

The issues that this office had raised on the water budget and water conservation had been adequately addressed in the second submittal. Therefore, the current proposal deals with water availability only.

For this type of subdivision, Part 6, Appendix E of the San Miguel County Subdivision Regulations requires a water availability assessment consisting of at least one log from an on-site well or from an existing nearby well completed in geologic conditions representative of the conditions within the proposed subdivision.

The developer has provided copy of the log for well UP 3652 with the current submittal. However, the coordinates for this well indicate that it is located a few miles from the subdivision, and therefore might not be representative of the conditions within the proposed subdivision. The proposal states that a search of the OSE records shows only two wells within a one-mile radius from the subdivision. The same search, conducted by this office, shows 11 wells (a copy of the print-out is attached for the developer's convenience).

It seems that the consultant did not use the correct coordinates in the search of the OSE well records.

The letter by Mr. Tafoya mentions that the negative opinions that this office issued may be based in part on incorrect well coordinates that are on file with the OSE. It is possible that the coordinates on file are not correct, and when this happens it is essential that the records are updated to reflect the correct well location. The correction is done by the OSE Water Right Division, and it is based on a plat with the legal description of the property where the well in question is located. When such cases come to our attention we alert the Water Rights Division, who provides to contact the owner of the well (and property) and update the records. A copy of this letter is forwarded to the Water Right Division for this purpose.

The proposal contains also a letter by the developer's consultant, dated September 13, 2005, which proposes "*in the interest of finding a mutual position that may be acceptable to the State Engineer's office ...*" to add the following statement to the disclosure statement: "*Location of underground water yielding veins have occasionally been difficult to located in this area. Buyers should be aware that some well holes drilled might not yield water. The subdivider does not guarantee that all well holes drilled will produce water*".

It is improper that the developer would propose to request the OSE to issue a positive opinion on water availability based on this statement, when the OSE is required, by the New Mexico Subdivision Act, to issue an opinion on whether water will be available to meet the projected demand for a period of time that would not put the investment and welfare of the property owners at risk during their lifetime.

In conclusion, it is our opinion that the developer has not proved that water is available for his subdivision, and therefore our negative opinion cannot be changed at this time, based on the documentation provided.

If you have any questions, please call me at 505-827-4273.

Sincerely,

Mara Smith
Water Resource Master

Enclosure

cc: John W. Longworth, P.E., OSE Water Use and Conservation Bureau Chief
OSE Water Rights Division, Santa Fe Office