

**OSE – Stakeholders Meeting #7
House Memorial 42**

**September 25, 2008 – 9:00 – 2:00
Toney Anaya Building
2550 Cerrillos Road**

Summary of Points Raised by Participants

Facilitator/Recorder: Lucy Moore

Welcome and introductions: Lucy welcomed the group and introduced OSE staff present, including John Longworth, Chief, Water Use and Conservation Bureau, Cheri Vogel, OSE Water Conservation Coordinator, and Fred Abramowitz and Martha Franks, contract attorneys with the OSE. Those present introduced themselves.

Agenda Review: Lucy reviewed the agenda and the handouts, which included: the agenda, the Draft Status Report for HM 42 Process and the Draft Consensus Memo (both revised following Meeting # 6). [All handouts are on the OSE website]

Timeline Update: John Longworth brought the group up to date on the schedule of the Interim Water Resources Committee: October 27 – 28, 2008 in Artesia and November 24 – 25, 2008 in Santa Fe. There is the potential for the HM42 stakeholder group to present at the November meeting if they are ready. The legislative session begins January 20, 2009.

Draft Status Report for HM 42 Process [revised]: Martha Franks had added language to the Draft Status Report that summarized Meeting # 6. Lucy reminded the group that the document is intended to provide a running description of the HM 42 stakeholder process, including the schedule of meetings, discussion highlights and issues raised. She emphasized that it is not intended to reflect any consensus or support for one position or another, but to provide a common foundation for the group to move forward.

***The group reached consensus on accepting the draft status report, as amended.
[available on the website]***

Condemnation: At the last meeting, the group had reviewed a memo from the State Engineer on the condemnation issue. Given his view that condemnation is not part of this process, the group authorized a subcommittee to further consider the issue. If the subcommittee could reach consensus on including condemnation language in this process, they would be able to bring this recommendation to the larger stakeholder group for consideration. The subcommittee includes stakeholder group members Conci, Cecilia, Jay, Hoyt, Regina, and Joy, as well as Randy VanVleck and Bill Fulginetti. At a recent meeting, the subcommittee agreed to consider including a statement in the Draft Status Report concerning condemnation, following consultation with constituents. The subcommittee will continue to work on draft language.

Draft Consensus Memo [revised]: Lucy reminded the group that there were only a few outstanding items in the document to be resolved. She hoped that members would be able to reach consensus on the document by the end of the day. At that point, the group could consider the question of format for the recommendations.

The group addressed the bolded items in the document. Cheri Vogel made changes on the screen.

Covered entities:

At the last meeting, members had identified four options: 1) keeping the present list; 2) keep the present list and set qualifications; 3) set qualifications and meet criteria; and 4) develop a perfect list.

There was initial agreement that the present list (72-1-9) should be accepted with no deletions. A member spoke in favor of adding “regulated utilities that use water to provide services to customers,” either by including this category in the named list, or by adopting qualifications that would make them eligible. There was fear in the group that individual entities would continue, as they have in the past, to petition the legislature for inclusion on the list. John explained that the State Engineer is concerned with the constitutionality of whatever system is recommended by the group. All uses must be treated equally, with no hierarchy in place. He could evaluate each application on a case-by-case basis, if there was a process (of qualifications or criteria, for instance) in place that was equitable. John offered to attend any meetings of stakeholder constituents to explain this position.

The group attempted to list potential qualifications:

- Those listed in *Crider*
- Entities with a public responsibility
- Entities with the expectation of a growing demand
- Entities with a regulatory obligation to serve

Some feared that setting qualifications for additional entities to submit a water development plan would “open the door to everyone,” and there would be unintended consequences. Others were concerned that qualifications would inevitably establish a hierarchy, and risk being unconstitutional. Some members suggested that working with criteria for the water development plans would be a preferable approach. There was tentative agreement that the consensus document include a paragraph authorizing the State Engineer to grant exception to entities that meet the criteria, but may not already be on the list.

There was consensus to honor the existing list of covered entities in 72-1-9.

Criteria for a water development plan:

The group clarified that “qualifications” were intended to apply to the types of applicants that could apply, and “criteria” was being used to describe the elements required in the water development plan. It was understood that these terms might “merge” and serve the same purpose, as the discussion progressed. Members were confused by the bolded paragraph and eventually agreed to delete it.

The discussion clarified that the criteria would apply to both new applicants and existing permits. The goal is to prevent entities from playing a “three year game,” returning for an extension every three years, knowing that a longer planning period is necessary. There were concerns that if a permit were extended to a longer planning period, administrative changes to the permit conditions might happen without the opportunity for notice and public review.

The group supported the concept of requiring applicants to meet the criteria in the water development plan application process. Depending on these criteria, members may abandon the qualifications requirement, and find the criteria an adequate standard for applicants. The basis for criteria is found in the Elements of a Water Development Plan template.

Review or status reports:

Item E. was modified to read: “That if granted, there will be appropriate review or status reports to the State Engineer to assure that the assumptions made underlying the request are still valid.”

There was consensus to modify E. as reflected in the revised document.

Notice requirements: Item F. concerns the public notice requirement. Some felt that the notice should include specific reference to the plan to hold water unused. After examination of the notice requirements in the Surface Water Regulations, and after consideration of the criteria that would be included in the development plan, the group agreed to delete F. Members noted inconsistencies among the various regulating agencies – ED, WQCC, OSE, etc. -- for notice requirements. There is an ongoing effort to address these inconsistencies.

There was consensus to remove F. from the document.

Consensus on the Draft Consensus Memo: The group reached consensus on the Draft Consensus Memo, with the understanding that members would take the document to their constituents for approval. John had two requests to the group. First, if consensus is achieved on these principles, all members commit to supporting them through the legislative session. Divisiveness and competition during the session would undermine the power of this process. Second, he told the group that for these recommendations to go forward and be implemented, additional resources will be needed for the OSE.

Next Steps: Given agreement on the Draft Consensus Memo, the group asked OSE staff to draft statutory language reflecting the principles in the memo. Fred agreed to have this

prepared and distributed to the group within two weeks. Cheri agreed to have the Draft Consensus Memo, as revised, on the website within two days. Lucy will prepare a summary of this meeting within one week.

NEXT MEETING: OCTOBER 22, 9:00 – 2:00 (including a working lunch), preferably at the Toney Anaya Building

Agenda items will include:

- Final consideration of the Draft Consensus Memo
- Review of the statutory language document
- Discussion on the “rolling 40 year” concept
- Report from the condemnation subcommittee

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