

**OSE – Stakeholders Meeting #4
House Memorial 42**

**May 28, 2008 – 9:00 – 11:30 am
Room 321, Roundhouse**

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, Elisa Sims, Senior Water Resource Specialist, Water Use and Conservation Bureau, Cheri Vogel, Water Conservation Coordinator, and Fred Abramowitz and Martha Franks, contract attorneys with the OSE. Those present introduced themselves.

Purpose of the Process: Lucy reviewed the history of this stakeholder consultation process. In response to HM 42, the State Engineer asked staff to design and implement a process that would allow OSE staff and stakeholders to engage in an informal conversation about potential recommendations on the future of statute 72-1-9. Although the initial topics for the stakeholder process were covered entities, time frame and criteria, OSE staff and stakeholders are now focusing on a draft template for the application process for a water development plan. This template incorporates all three topics. OSE staff presented the template at the third meeting in March 2008, and took comments on the draft both at the meeting, and following it. The goal of this meeting, Lucy said, was twofold: 1) to reflect to the group the comments received on the Draft Elements of the Template presented at the last meeting, and 2) to consider the future of this stakeholder process. Lucy reminded the group that the OSE has gone beyond the scope of the original mandate of HM42. The State Engineer is committed to this process as long as it is supported by the stakeholders and is productive. His office has no preconceived recommendations, and looks to the stakeholders for guidance.

John Longworth emphasized that the proposed elements in the draft template *do not* represent the final work product of the State Engineer, but are offered in order to focus discussion on some of the challenges. Comments received on the template, he said, revealed confusion about the relationship between the water rights application process and the water development plan template. The OSE believes those processes must be integrated and cannot stand separately.

John also told the group that OSE staff plan to prepare a document summarizing the process to date, including items on which consensus was reached, and items which require further attention. This report would be presented to the stakeholders, the State Engineer and the Legislature in the next few months.

The next stakeholder meeting will be July 30, 9:00 – 11:30, location to be announced.

Context for this Effort: Martha Franks reviewed the history of water development plan submissions at the OSE. In some cases (El Paso, for instances) the 40 year plan was simply a piece of evidence in the water rights application process. The surface water regulations say that anyone may file a water development plan at any time with the State Engineer, the assumption being that the applicant would apply for water rights later. The State Engineer, however, disagrees and believes that if the water development plan process is outside the water rights application process legal problems arise, such as the lack of opportunity for formal protest. She added that other planning processes -- water conservation plans, 40 year water plans, and regional water plans -- add to the confusion. It is unclear, she said, what is meant by the State Engineer “accepting” these plans and what weight they carry in the application process.

Fred Abramowitz spoke to the inconsistency between the water development plan process and the surface water regulations. The surface water regulations require “covered” entities to submit water development plans, whereas the proposed template is intended to cover all entities, whether applying for new water rights, or for extensions of time, transfers, etc.

Comments on the Draft Template: Cheri Vogel summarized for the group her compilation of the comments received from 10 entities. Feedback was requested from those present and amendments were noted. Her presentation is on the website at http://www.ose.state.nm.us/hot_HouseMemorial42.html.

DISCUSSION:

Conflict with 72-1-9: Several participants felt that the statute required amendment if the state were to pursue the template. Some felt that the statute constrains the time limit to 40 years, for instance, and the entities to those named as “covered.” Others felt that there were interpretation problems with the covered entities language in the statute, specifically dealing with the utilities and the role of the PRC.

Implementation of the Template: Some speculated whether the template would be formalized in a rule, regulation, guideline, or other vehicle. The current process for submitting water development plans simply calls for the State Engineer to testify as to the accuracy of population projections, gallons per person per day rates, etc., but not to formally approve or accept the plan.

Timing of Water Development Plan and Water Rights Application Processes: Most supported the concept of linking the two processes closely. Submitting a water development plan far in advance of the water rights application could prove a waste of time, if the plan needed to be revised at the time of the water rights application. A plethora of water development plans, without corollary water rights applications, could also be a burden on the OSE staff required to review the plans.

Other Water Plans:

Regional Water Plans: There was support for coordinating the regional water plans with the water development plans.

Water Conservation Plans: A participant believed that a water conservation plan was required prior to submitting a proposal to the water trust fund. There was confusion about the role of the State Engineer in this plan's acceptance.

Water Supply Plans: These plans address water availability, rights, and infrastructure needs. Their relationship to water development plans is also unclear.

Specificity in the Template: Some felt that the template must offer specifics, including standards or thresholds, if it is to be constitutional.

Support for the Template approach: OSE staff asked participants if they supported the template approach to addressing the challenges of 72-1-9. Several indicated that "it was too early to tell," and that they would know better when certain choices within the template were resolved. One likened the template to a tree with many branches, or alternatives. Some felt that amending 72-1-9 would be necessary in any case, and that perhaps the solution lay in using both the template and amending the law.

Next Steps:

Refinement of the Template: OSE staff will continue to work with the comments received to create a template that is closely related to the water rights application process, and which reconciles issues raised by stakeholders, including entities covered, time frame, relationship with other planning processes, etc. John added that he hoped that the template could help bridge differences within the stakeholder group. At the request of a participant, the comment period was extended to June 11.

OSE Status Report: John outlined a process for creating a summary document for the State Engineer and the appropriate legislative committees. During the next few weeks, staff and contractors will draft the report, which will describe the stakeholder process, identify items of consensus, and describe the points of difference among the stakeholders. Stakeholders are welcome to contact OSE staff to talk about their perspectives, or to send written comments. The draft report will be sent to stakeholders for comment. A fifth meeting will address those comments, seek consensus on certain points, and hopefully reach agreement on the form and content of the report.

John added that he hoped for a product with as much consensus as possible, but he understood that process would take time. The status report would not be the last opportunity for stakeholder involvement, if stakeholders were interested in continuing to work on the issues. Continuing would require a serious commitment of time and energy on the part of everyone, said John. Several in the room agreed, and said they looked forward to digging deeper into the issues and picking up the pace. A participant suggested that it would be important for many in the room to include their clients in this process, and that negotiations could occur outside the process. OSE staff encouraged

stakeholders to communicate with clients and other stakeholders, and to strive for agreement on as many issues as possible.

The group understood the tension between moving quickly in order to lay groundwork for any changes to the statute that might be contemplated, and taking the necessary time to work together through the issues. A participant recommended “ironing out the chaos of statute change” early on, prior to presenting to the legislative committee(s).

Timeline:

- | | |
|-----------------------|---|
| June 11 | end of comment period for the template |
| Mid-June | send summary of meeting # 4 to stakeholders
send options for meeting dates August – November |
| Mid-July | send draft status report to stakeholders |
| July 30, 9:00 – 11:30 | (tentative date and time) stakeholder meeting # 5: <ul style="list-style-type: none">• Review the draft status report• Identify areas of consensus• Prioritize remaining items for attention by the group• Develop a work plan for the group |
| Fall 2008? | deliver status report to State Engineer & Legislative committee(s)
(depending on 7/30 meeting outcomes) |

Contact info: The group said good-bye (with many thanks) to Elisa Sims who is moving to Salt Lake City. In the interim, Cheri Vogel will take her place in this process. Cheri can be reached at 827-4272, or at cheri.vogel@state.nm.us

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