



State Engineer's Office

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STATE ENGINEER

Subdivision Water Right Issues:

This document has been prepared by the State Engineer's Office (SEO) at the request of the Department of Environmental Quality (DEQ), and is to be included as an attachment to the DEQ document entitled RULE MAKING OUTREACH DOCUMENT TO IMPLEMENT "SUBDIVISION" LEGISLATION dated June 15, 2000. It is intended to stimulate discussion, in the area of water right issues in the subdivision process. With this in mind, a short background discussion followed by several SEO observations made as the result of recent involvement in the process, as well as pertinent SEO statutory objectives, are provided.

Background:

It should be noted that the State Engineer's Office has been, and continues to be, involved to an extent in the process of land division, including the subdivision process. Historic involvement under Title 18 Statutes has been limited to water rights (property rights) that are appurtenant (legally attached) to lands that have been proposed to be subdivided. Under certain conditions, the division of these lands does in fact result in the division of appurtenant water rights; and the continued beneficial use of these subject rights needs to continue to be recognized in the County planning process to assure that water rights attached to the lands can be administered.

The recent enactment of legislation requiring expanded State level involvement in the County subdivision processes has empowered and directed DEQ to become involved in the review of waste water and water supply systems proposed for new subdivision developments. It should be recognized at the onset that there is a necessary and unavoidable interface in agency missions that will be required when one considers issues relating water quality and water quantification. Thus, the statute specifically references the potential expanded involvement of the State Engineer's Office in the Department of Environmental Quality directive, relative to the County subdivision process.

The new legislation has also required the subdivider to consider existing water rights on lands surrounding the lands proposed to be subdivided, as well as interrelationships including potential conflicts produced as the result of changes in current water use patterns and/or new water supply concerns resulting from the subdivision of the land. Filing of the necessary water right permit application, which recognizes the proposed subdivision water supply, should be an integral part of this planning process. Several other specific items and issues have also become evident as the result of State Engineer involvement in this new legislation:

Observations:

1. Water may not be legally available to be appropriated, irrespective of the physical availability of a sufficient water supply as proposed for a specific subdivision development. Various State water commitments including numerous interstate compacts and court decrees can also influence the type of subdivision water supply proposed. This type of concern is site specific (i.e. dependent on the specific aquifer and/or drainage basin being identified as the source) and can be time dependent. This is one reason to consider water right issues early in the subdivision water supply planning process.

2. A water right is a property right, and as such its identification in the records of the State Engineer, as well as its required quantification by subdivision parcel, requires that a proper legal land description be provided with each review request. It is therefore prudent that any DEQ water supply adequacy review request contain a proper legal description identifying the lands to be subdivided. This description should correctly identify the location of the subdivision within the public land survey system, as well as identify the size and configuration of the various parcels within the subdivision.

3. The responsibility for certifying to the adequacy of the proposed water supply has been and should remain in the hands of professionals in the private sector. It should be recognized that the procurement of the necessary and appropriate State Engineer water right permit allows the applicant to attempt to develop a water supply adequate to meet the proposed needs, and is no guarantee that any water will be physically available. The State Engineer's Office has not and will not be placed in the position of making determinations on the physical adequacy of proposed water supplies.

State Engineer Mission Objectives:

Water rights are property rights and warrant protection under State Statute. The State Engineer's Office is currently in the process of revising and updating its **Rules and Regulations** documents, and revisions have not as yet been completed. To the extent possible, input received relevant to expanded SEO involvement in the subdivision process will also be included in this effort.

5/5/2000

Effective 1/1/2006, questions regarding State Engineer **Subdivision Review Responsibilities** should be directed as follows;

**Existing Appurtenant
Water Right Reviews:**

State Engineers Office
Board of Control Division
Herschler Building, 4E
Cheyenne, Wyoming 82002
(307) 777-6178

**Proposed Water Supply
Water Right Reviews:**

State Engineers Office
Ground Water Division
Herschler Building, 4E
Cheyenne, Wyoming 82002
(307) 777-6163



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Wyoming Department of Environmental Quality (DEQ), Safety & Adequacy Reviews for Subdivision Water and Sewer Systems, State Engineer's Office (SEO) involvement. 2/13/07

1. DEQ may request assistance from SEO and SEO shall fully cooperate to the extent possible and shall furnish the information or recommendations requested within the time period specified by DEQ [per WS 18-5-306(c)(i)]. Typically DEQ does request that SEO determine if water right issues have been addressed.
2. To determine what water right issues may be associated with the development of a proposed subdivision, a preliminary search of the State Engineer's records on lands in the area of the proposed subdivision is conducted and potential existing water right concerns, as well as concerns associated with the new subdivision's proposed water supply are identified.
3. Based on the issues as identified in the DEQ submittal and the SEO preliminary search results, appropriate water right actions are proposed. This involves coordinating appropriate Surface Water Division, Ground Water Division, and Board of Control Division input, as well as conveying this input to the County, the Subdivider, DEQ, and the appropriate SEO field staff.

Questions regarding State Engineer **Water Right Permitting Procedures** should be directed as follows:

For New Ground Water Applications and amending existing Well Permits please contact the State Engineers Office, Ground Water Division, Herschler Building, 4E, Cheyenne, Wyoming, (307) 777-6163.

For New Surface Water Applications and amending existing Surface Water Permits please contact the State Engineers Office, Surface Water Division, Herschler Building, 4E, Cheyenne, Wyoming, (307) 777-6475.

To Amending existing, Adjudicated Surface or Ground Water Permits, or for Changes in Use please contact the State Engineers Office, Board of Control Division, Herschler Building, 4E, Cheyenne, Wyoming, (307) 777-6475.

Questions regarding State Engineer **Subdivision Review Responsibilities** should be directed as follows:

With respect to existing water rights attached to lands proposed to be subdivided, as outlined under W.S. 18-5-306 (a) (xi), the Board of Control Division has assumed primary review responsibilities, and has adopted appropriate review procedures to meet these commitments. Please find Board of Control Division contact information above.

With respect to proposed subdivision water supplies, as outlined under W.S. 18-5-306(c)(i), the Ground Water Division will continue to review and comment on water right issues associated with proposed subdivision developments. See Ground Water Division contact information above.

Surface Water
(307) 777-7354

Ground Water
(307) 777-6163

Board of Control
(307) 777-6178