

Division Engineer & Water Court Interaction



COLORADO

Division of Water Resources

Department of Natural Resources

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State and Division Engineer's Forum - April 15, 2014

Purpose -

Provide transparency on the State and Division Engineer's Interaction with the Water Court,
from the Engineer's perspective.

Topics of Discussion -

- Summary of Consultation
- Draft Ruling Review

Summary of Consultation

37-92-302(4), C.R.S.

- *“The referee, without conducting a formal hearing, shall make such investigations as are necessary to determine whether or not the statements in the application and statements of opposition are true and to become fully advised with respect to the subject matter of the applications and statements of opposition.”*
- *“The referee shall consult with the appropriate division engineer or the state engineer or both.”*

Summary of Consultation

- Assignment of Cases
- Loading the Draft Summary of Consultation
- State & Division Engineer's Office Interaction
- Consultation with the Court

Assignment of Cases

Division Engineer's Office

Corey DeAngelis – WD 7, 49 & 65

Dean Santistevan – WDs 2, 8, 9, 23 & 80

Michael Hein – WDs 1, 3, 4, 5, 6, 48, 64 & 76

State Engineer's Office

Tracy Kosloff's Team – Outside Denver Basin

Joanna William's Team – Inside Denver Basin

Loading the Draft Summary

- The Division Office has the task of loading the draft summary of consultation.
- Division Staff reviews each case, drafts the case summary and compiles the initial list of comments.
- Once this draft is generated it is provided to the State Engineer's Office for their review and comment.

SEO & DEO Interaction

- The SEO reviews each case and the comments provided by the DEO, and provides any additional comments.
- The SEO and DEO will then meet to discuss each case prior to scheduling a conference with the Referees.
- This meeting occurs prior to the close of the statement of opposition period.

Consultation with the Court

- Once the statement of opposition period has expired, the draft summary is sent to the Court in advance of the summary conference.
- Only those cases the State has **not** filed a statement of opposition are included in the draft summary sent to the Court and discussed at the consultation.
- DEO reviews each case with the responsible Referee and comments are modified, added and omitted as agreed upon by the Referee and Division Engineer's office.

Consultation with the Court (cont'd)

Key Points

The Summary of Consultation is a report from both the Referee and the State and Division Engineers.

The comments in the Summary of Consultation are only as specific as the information provided at the time of application.

Consultation with the Court (cont'd)

Goal – Make SOC Meaningful!

1. Include Specific Comments
2. Provide Sufficient Notice of Potential Issues
3. Represent Issues from the Proper Venue

Consultation with the Court (cont'd)

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Consultation with the Court (cont'd)

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 - Address Criticism SOC Content is Repetitive.

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 - Address Criticism SOC Content is Repetitive.
 - Include specific language needed in the ruling for proper administration.

Consultation with the Court (cont'd)

Goal – Make SOC Meaningful!

1. Include Specific Comments

- Address Criticism SOC Content is Repetitive.
- Include specific language needed in the ruling for proper administration.
- Separate the required responses from the applicant and advisory comments to the Court.

Consultation with the Court (cont'd)

Goal – Make SOC Meaningful!

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Consultation with the Court (cont'd)

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 - Address Criticisms the Engineers are raising issues at the “*eleventh hour*”.

Consultation with the Court (cont'd)

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 - Address Criticisms the Engineers are raising issues at the “*eleventh hour*”.
 - Engineers cannot foresee all potential issues.

Consultation with the Court (cont'd)

Goal – Make SOC Meaningful!

1. Include Specific Comments
2. Provide Sufficient Notice of Potential Issues
 - Address Criticisms the Engineers are raising issues at the “*eleventh hour*”.
 - Engineers cannot foresee all potential issues.
 - The Engineers cannot get into every case.

Consultation with the Court (cont'd)

Goal – Make SOC Meaningful!

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Consultation with the Court (cont'd)

Goal – Make SOC Meaningful!

1. Include Specific Comments
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3. Represent Issues from the Proper Venue
 - Court – Legal Issues
 - Engineers – Engineering & Administrative Issues

Draft Ruling Review

Rule 6(n) Uniform Local Rules for all State Water Court Divisions

“.....The referee may ask the division engineer for information as part of the referee’s ongoing informal investigation, but shall discontinue making such requests if the state or division engineer has become a party to the case.”

Why are we doing this?

- The Referees must Investigate.
 - The Referee's are requesting we review the rulings for:
 - A. Administrability,
 - B. Non-Injury, and,
 - C. Legal Concerns.

What are we looking for?

- Is the decree administrable?
 - Are the notice provisions alerting the water commissioner of water deliveries adequate?
 - Are measuring and recording devices adequate?
 - Where and at what interval is the replacement water being released, and where is the water to be delivered?
 - Can the replacement water be delivered to its intended place of use without being diverted?

What are we looking for?

- Is there the potential injury?
 - Are the reporting and accounting terms sufficient?
 - Is the decree clear on how the Division Engineer must mitigate any future injury?

What are we looking for?

- Is the decree consistent with statutes, rules and prior decrees of the Court?
 - We are charged with administering the statutes, rules and prior decree we have the duty to raise these types of issues with the Court, and more importantly,
 - The Court is asking for our comments.

What are we looking for?

- We also review the legal description, and references to permits and prior decrees.
- Offer comments on clarity, grammar and spelling.

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 - Separates those comments the Court agrees are a concern and also includes any additional comments from the State.

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- The Referee reviews all comments.
- Court forwards all comments to the Applicant.
 - Separates those comments the Court agrees are a concern and also includes any additional comments from the State.
 - Yes, the Court often does not agree with all the comments provided by the State.



WHAT CAN WE DO TO MAKE
THIS PROCESS BETTER?



Questions?