

Water Advisory Commission



La Plata County
Colorado

Policy Bulletin # 2

Date: June 11, 2015

Subject: County Regulation of Water Projects / Systems

Revised Policy Question: Concerning “proof of water,” should the La Plata County Code be minimally amended to conform with State statutes or should it be amended to require more than the minimum requirements established by State statutes?

Background/Issue(s): In approaching this policy issue, the Commission first determined that its focus should not be on “central water providers” alone, but should instead center on the “proof of water” issues that are critical to all water projects in La Plata County regardless of source. The Commission believes this approach is more judicious, in part, due to its concerns about lack of infrastructure, inefficiencies in current systems and the potential future water supply issues in La Plata County that affect all citizens, not just domestic water systems and their customers. *See Policy Bulletin #1.*

In considering what regulations are prudent for various types of water projects in La Plata County, the Commission studied State law and current La Plata County regulations, as well as tools available to the County in setting parameters for all water projects. Based on this review, the Commission determined that there are five (5) core areas of concern with regard to water regulation / “proof of water” in the County: (1) proof of “paper” water; (2) proof of “wet” water; (3) water quality; (4) operation and maintenance of water systems, and (5) conservation of water resources.

Core Areas of Concern / Proof of Water

With regard to the core areas of concern identified by the WAC, the Commission believes that the County needs to consider the following questions when addressing what regulations are appropriate in the water context:

1. Proof of Paper Water – How does the County ensure that an applicant obtains the appropriate well permits, water rights and augmentation plans for its proposed project?
2. Proof of Wet Water – How does the County ensure that an applicant’s proposed water source reliably produces a sufficient quantity of water?
3. Water Quality – How does the County ensure an applicant’s proposed water source produces safe drinking water?
4. Operation and Maintenance of Water Systems – How does the County ensure that the proposed water system will be properly operated and managed?

5. Conservation of Water Resources – How does the County ensure that an applicant’s proposed water source is efficiently and appropriately utilized to conserve water resources?

Simply stated, without adequate water, project applicants should not be allowed to pursue development. As such, applicants should be required to “prove up” their water, in accordance with the recommendations contained in the Policy Bulletin, before the planning commission reviews a project’s compatibility with its surrounding neighborhood. In the WAC’s view, proof of an adequate water supply is critical to showing that a proposed project fits the needs of its community.

Conclusion(s)/Recommendation(s): After learning about the various types of planning projects in the County and while being cognizant about the cost of additional regulations on the County, its staff and, most importantly, applicants, the Commission believes that many of the County’s regulations should be amended to require more stringent “proof of water” for proposed subdivision and commercial projects. Considering the impacts these projects have on La Plata County and its citizens, the Commission believes that taking measures to ensure that an adequate, clean and safe water supply is available to serve a project’s constituents is vital to addressing the County’s water resource issues, now and in the future. At the same time, the Commission believes that applicants whose projects require minimal review should only be subject to nominal additional regulations.

Below is a basic outline of the type of regulations recommended by the Commission to address each of the five (5) core areas of concern for each of the County’s various basic planning project types.

Projects Requiring Minimal Planning Review

The Commission recognizes that the water sources proposed by applicants seeking minimal land use review, such as Administrative or Class I review under the current code, typically serve only the applicant and his/her family (and not the larger community). Although the Commission is concerned about all of La Plata County’s citizens having access to reliable sources of clean, safe water, it also understands that the applicants have a significant self-interest in ensuring that their water supply and quality is adequate.

- **Paper Water** – The Commission believes that the County’s current regulations, which require either (1) a letter of intent from a water provider of their ability and intent to serve the proposed project; (2) a tap reservation or purchase; or (3) verification that the applicant has an approved well permit and/or water rights, are sufficient for demonstrating adequate legal water rights for projects submitted for minimal land use review. For projects served by surface water systems, the Commission agrees that an applicant need only provide documentation of sufficient water rights. For projects served by an exempt well, an applicant need only provide the appropriate well permit. For projects served by a non-exempt well, applicants should be required to provide both the appropriate well permit and documentation of sufficient water rights supporting the applicant’s use of the well. To the limited extent that

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commercial projects may be subject to minimal planning review, the Commission believes that the paper water requirements should be the same as those for residential projects.

- **Wet Water** – The WAC believes that it is crucial that all projects have adequate water supplies and safe, clean water for their projects. As such, the Commission recommends that County regulations require all applicants proposing to use a new well or an existing well in which water demand will increase to complete an 8-hour pump test. While the WAC understands that this test provides a measurement at a single point in time, it ensures that applicants must actually drill permitted wells instead of merely obtaining a permit and then hauling water. Currently, the County does not require any water tests.
- **Water Quality** – As expressed in its first Policy Bulletin, the Commission believes that safe, clean water is of critical importance in all projects. Thus, the WAC believes that all projects relying on wells should be required, at a minimum,¹ to perform a one-time, up-front test for basic contaminants such as nitrates, nitrites, and total coliform before a land use permit is issued. Based on current laboratory costs, these tests would cost applicants a total of \$100.00.² When compared to the costs of drilling wells and the benefits of determining if an applicant’s water supply is safe at the start of its use, the WAC believes the cost of the test is minimal.

Further, the WAC is of the opinion that the County should adopt rules (to the extent possible) that require all property owners with an existing well to test the well for primary EPA maximum contaminant levels (“MCLs”) when the property is being sold to a third party. The WAC believes that potential buyers of property should understand the quality of the water source they will be using.

- **Operations & Maintenance** – The commission believes that current requirements in the La Plata County Code for creation of a legal entity to administer and operate the water supply of a project submitted to minimal land use review are too stringent. Thus, the Commission believes that the County’s Code should be amended to clarify that no such requirement is necessary in these situations. Instead, applicants who will not be obtaining water from a third-party water system should be required, as a condition of land use approval, to develop a system maintenance plan and identify a responsible party for carrying out the plan. Such plans must include basic criteria established by the County, which should include, but not necessarily be limited to:

- Access to and ownership of equipment and system infrastructure;

¹ A minority of WAC members believe that periodic well tests should be required on all projects to ensure that an applicant’s water is safe for consumption. Further, they would require that the data from such tests be maintained by the County for future use.

² The San Juan Basin Health Department charges \$25.00 to perform a coliform bacteria test. In addition, Green Analytical Laboratories charges \$24.00 to perform a nitrate/nitrite test; however, the lab has a minimum charge of \$75.00 for testing, meaning that residents can test other contaminants as part of the \$75.00 minimum.

- A list of equipment, parts and supplies needed to ensure mechanical functioning of the system; and
- A description of the proposed general operation and maintenance of the system.
- **Conservation** – While the WAC believes that the County should promote good water stewardship³ through the use of incentives and by raising public awareness, the majority of WAC members do not believe that the County should impose any regulations related to conservation on individuals applying for a land use permit requiring minimal review.⁴ It is the majority view that either the applicant’s own need for conservation of his water supply or the third-party water system’s own rules and policies are adequate to address conservation concerns on this limited scale.⁵

Typical Planning Review Projects

Under Colorado law, subdivision approval is conditioned upon adequate evidence that establishes that a “definite provision has been made for a water supply that is sufficient in terms of *quantity, dependability, and quality* to provide an appropriate supply of water for the type of subdivision proposed...” C.R.S. § 30-28-133(6)(a) (emphasis added). The Commission is aware that the most stringent State law applies to both residential and commercial projects where the water use is estimated to amount to more than that used by 50 single-family equivalents. C.R.S. § 29-20-301 *et seq.* However, the law also allows local governments to set a lower threshold and the WAC believes that more stringent requirements with regard to proof of water quantity, water quality, operations and maintenance and conservation should be required of **all** major projects, such as commercial Class II projects and subdivisions, to satisfy the Commission’s concerns about safe, clean drinking water and future water supplies for all residents of the unincorporated County.

- **Paper Water** – The WAC believes that the County’s current tools for verification of legal water rights (as discussed under minimal review above) is the appropriate starting point for all major applicants – large residential subdivisions, commercial projects and industrial operations. However, given the Commission’s concerns over ensuring that sufficient water supply exists to serve a proposed project into perpetuity, the WAC cautions that if an

³ In this regard, the WAC endorses SB 2015-008, sponsored by Senator Ellen Roberts, which advocates training for land use planners on topics of best management practices for water demand management, water efficiency and water conservation. The WAC believes that such training is crucial to the County’s need to promote water stewardship and conservation.

⁴ The Commission believes that low-flow fixtures should be required for such projects, but is of the understanding that new state laws, which became effective in 2015, will prohibit the sale of any fixtures which are not low-flow fixtures.

⁵ A minority of WAC members believes that conservation is key in all projects and would like to see conservation measures addressed in all projects considered by the County.

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applicant's paper water portfolio does not satisfy the necessary "wet" water prerequisites described below, additional water rights will need to be obtained. Commercial and industrial projects should be required to meet the same requirements as residential projects, unless exceptional circumstances exist that would allow them to obtain a variance.

- **Wet Water** – The WAC recognizes that the legal right to obtain water (either through court adjudication, well permit or a tap commitment) does not necessarily translate into ample and sufficient water supply for any proposed project. As such, the Commission fervently supports the need for completion of a safe yield analysis⁶ for **all** Class II projects and subdivisions that are not served by a third-party supplier who has a current safe yield analysis on file with the planning department.
- **Water Quality** – At a minimum, all Class II projects and subdivision applicants should be obligated to complete the same water quality tests required of applicants seeking minimal review (as set forth above). Further, periodic water quality testing is recommended. In the WAC's opinion, testing for nitrates, nitrites and total coliform should be completed once every 12 months by all subdivision and Class II projects. The results of the tests should be mailed to all of the system's users, the La Plata County planning department and San Juan Basin Health Department, and the data should be maintained in a database by the County. If periodic testing is not required, the Commission urges the County to require water quality tests to be performed whenever property is sold if a test from the previous 12 months is not available.

In addition, if any Class II project or proposed subdivision has the potential for ultimate regulation by the Colorado Department of Public Health and Environment ("CDPHE"),⁷ then the Commission urges the County to adopt regulations that ensure the project is capable of complying with CDPHE standards regarding water quality and operations and maintenance in the project's future. Such regulations may necessitate that the applicant design and obtain CDPHE's preliminary approval of the requisite future water treatment plant, install the water distribution system components pursuant to any applicable County pipe and design standards, and include plat notes to inform lot purchasers that a subdivision's small water system will subsequently require treatment and CDPHE oversight.

⁶ The Commission believes that the requirements currently set forth in Section 82-186(f) of the La Plata County Code should be the baseline prerequisites required for all such analyses, while recognizing that a "safe yield analysis" – as traditionally defined in the engineering field – may require additional testing and/or reports.

⁷ The Safe Drinking Water Act does not protect private wells or small water systems. It only applies to "public drinking water systems," which are defined as "government or privately run companies supplying water to 25 people or 15 service connections for at least 60 days of the year." Individual well owners and small system providers are responsible for the safety of their water supplies and do not have to comply with federal and state regulations for frequent analysis, testing, and reporting of results. CDPHE, *Wells and Aquifers (Groundwater)*, available at <http://www.colorado.gov/cs/Satellite/CDPHE-WQ/CBON/1251596876659> (last accessed July 30, 2014).

- **Operations & Maintenance** – Due to the infrastructure and efficiency concerns previously expressed by the WAC, especially with regard to small, currently unregulated systems, the Commission again recommends that **all** new systems and **all** existing systems planning major repairs or expansion be required to comply with designated pipe and design standards to be established by the County. Further, all systems should be compelled to prepare an operations and maintenance plan for the system that includes the same criteria discussed above and to designate a responsible party or licensed operator.
- **Conservation** – Since the Commission feels that an application for a Class II project or subdivision, no matter how small, has significantly different implications from an application for an additional dwelling unit or the like, conservation requirements should be imposed as a condition of all such project approvals. With regard to conservation efforts, the County needs to raise public awareness, educate the citizens of La Plata County about water conservation and promote water stewardship through various means, including but not limited to: education campaigns and certifications for professional horticulturalists, landscapers and other landscape architects in the County, planning incentives for developers, water demand planning and mitigation efforts.

To that end, lot owners within new subdivisions should have access to information, in the form of a conservation plan, which promotes efficient water usage. All applicants should be required to prepare a conservation plan,⁸ which could be recorded and cross-referenced as part of a plat notice, for the subdivision. Conservation plans must provide individuals and homeowners' associations with strategies and incentives for reducing water consumption, reducing the loss or waste of water and improving and maintaining the efficient use of water. These strategies should be aimed towards meeting the water consumption goals identified within the plans. Criteria for conservation plans should, at a minimum, include the following:

- A description of total lot consumption goals for the project, together with an explanation of how the project's design meets those goals;
- A description of any drought mitigation tools or steps used in the design, together with an estimate of the amount of water to be saved based on implementation of these tools;
- Tiered rate structures or other incentives to reduce water demand and consumption;
- Details on plans to educate lot owners on water conservation;
- Details of the water system and maintenance information;
- Requirements that conservation information be contained in subdivision covenants;
- Xeriscaping or dry-scaping requirements or information; and
- Requirements or information on use of low-flow fixtures.

⁸ Commission members have reviewed water conservation regulations imposed by various other governmental entities, such as Castle Rock, Colorado. The Commission believes that the regulations and philosophies adopted by Castle Rock in its water conservation master plan and landscaping and irrigation regulations may provide guidance to the County in establishing its own water conservation principles and rules.

In addition, when the proposed development will have a homeowners' association, the association should be required to send an annual notice to the lot owners relative to the achievement of established water consumption goals.

Further, metered taps should be required for all subdivision projects. Finally, in addition to existing provisions in the County's current regulations, members of the WAC believe that further incentives for consideration of indoor versus outdoor use (such as xeriscaping, etc.) be offered to applicants.

Exceptions / Additional Requirements for Projects Served by Domestic Water Systems

The Commission strongly believes that the best way to permit water projects served by domestic water systems⁹ is to directly ensure proper operation of the water provider, rather than enforcing standards by regulating the systems through conditions placed on individual applicants. This belief comes, in part, from the WAC's view that the system's own water quality standards must be relied upon for ensuring the applicant's access to a safe water supply.

It is the Commission's recommendation that various tools be adopted that will allow the County to permit all new water systems, as well as existing water projects which seek to upgrade or modify their current systems. In particular, to ensure that future infrastructure and efficiency goals are met and to help protect limited water resources, the Commission believes that proposed water systems/providers and providers seeking major modifications or upgrades should be required, at a minimum, to address all of the following issues:

- The proposed project's anticipated effect on adjacent communities and well users;
- Discussion of how the proposed project will compete with or duplicate the services of other existing municipal and industrial water projects in the vicinity, including reasons for and against consolidation/hooks into the preexisting facilities;
- The proposed project's plans for operation and maintenance of the proposed system, including a financial analysis of its proposed viability;
- The proposed project's effect on the design of existing storm water and sanitation systems; and
- The number of total taps the domestic water systems can serve, as set forth in an approved water supply plan.¹⁰

⁹ The Commission's recommendations are not meant to apply to municipalities in the County – i.e., Bayfield and Durango.

¹⁰ If a domestic water system has an approved water supply plan, the County should be able to confidently accept some form of tap commitment from an applicant, rather than forcing the applicant to submit data on behalf of the domestic water system. See C.R.S. § 29-20-304(2).

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If the operation of domestic water systems is better secured, the WAC is reasonably comfortable in continuing to rely on the system's commitment to provide water to an applicant (based on a letter of intent or proof of a tap reservation or purchase) as satisfaction of their concerns regarding proof of "paper" and "wet" water.

In addition, although not within the WAC's assigned tasks, the Commission strongly believes that the Board of County Commissioners should also look at regulating sewer/septic systems in La Plata County (to the extent possible) since water and sewer systems are interrelated.