Small Water Systems Technical Committee
9:30-12:30, November 29, 2006
Seattle KC Public Health Eastgate
Facilitator: Tamie Kellogg, Kellogg Consulting

Meeting Summary Notes

Attending: Richard Rodriguez, Sheri Miller, Craig Shuk, Bob Pancoast, Larry Fay, Jay Cook (Ecology), Don Wright, Jane Lamensdorf-Bucher, Ron Sheadel, Dave Monthie, Dustan Bott, Jim Nilson.

1. Introductions – Housekeeping

- The Committee approved the October 30 meeting summary notes, with the changes that were made by Dustan in the electronic version he emailed to Committee members. The Committee also agreed that the list of potential presentations at future meetings could be recycled. A comment about the characterization in the notes of the year-end report was deferred to the agenda item later in the meeting on the report.
- No reports from other Technical Committees.
- The Committee agreed not to submit for now a specific request for the remaining $10,000 of the Ecology grant allocated to the Small Systems Committee, and to return the money to the "pot" for possible reallocation by the Funding Committee. The grant agreement with Ecology expires December 31, 2007.
- Jay Cook of Ecology reported on the Exempt Well committee that was convened by Ecology, and has been working largely with local public health officials on exempt well issues. Its purpose is to develop common understandings and policies in applying the state Supreme Court decision in the Campbell and Gwinn case (which essentially precluded using multiple exempt wells for single projects where total water use exceeds 5000 gallons per day), with state rulemaking a possibility. Further discussion on the topic was tabled.
- ***Action item: Public Health will provide updates as information becomes available***.

2. Timely and Reasonable Presentations and Discussion

- Sheri Miller and Richard Rodriguez led a discussion on the DOH approach to this issue, using the draft policy statements and documents that have been prepared as part of DOH's Municipal Water Law implementation process (which Sheri sent out electronically before the meeting). Key points, issues, and concerns from the DOH presentation and discussion:
  - The "timely and reasonable" issue is contained within the policy document on "Duty to Serve," as one of four "threshold" items with regard to "duty to serve." Some of the MWL elements will be placed in rule, some just in policy. It's not clear yet what will go where.
  - DOH objective is to establish an approach and consistently apply it to water systems.

- Decisions on timely and reasonable will not be made by DOH, nor will DOH provide oversight, but it will be left up to the utilities and developers. Disputes will be resolved in court.
- "Timely and reasonable" under the MWL only applies to "retail service areas," a construct developed by DOH after the MWL passed.
- Under the Coordination Act, there is a separate "timely and reasonable" requirement that applies to the creation of new systems within identified "future service areas" of water utilities. The Coordination Act provides a definition of "timely" as 120 days, unless defined differently by a local government, but does not say when the 120-day period starts or what it applies to. There is no definition of reasonable. The Coordination Act (state law) says that DOH should provide guidance on "timely and reasonable." The DOH policy document says that DOH will develop guidance, and that local governments may also provide oversight.
- DOH does not explicitly require a utility to discuss its understanding of "timely and reasonable" in a water system plan, although water systems have been required to describe their service area policies. DOH will also comment, as part of their review of water system plans, on any issues regarding the discussion of service area policies, and generally will not approve a plan until those issues are addressed. The DOH policy document says that utilities will be expected to describe in their water system plans how they meet the "threshold factors," including timely and reasonable, and whether any of those factors preclude meeting duty to serve obligations. KC thinks it would be useful to have an explicit discussion of what the utility believes is "timely and reasonable" as part of its water system plan, which could be used when questions come up about service to new development, and maybe avoid appeals to KC.
- Development of "retail service area" under MWL may lead, or is leading, utilities to draw back their Coordination Act future service areas to a smaller service area, potentially leading to competition to supply those areas that the utility says it no longer has any duty (or intention) to serve. If another utility can provide service more cost-effectively and efficiently, then it may be good public policy to allow that.

- Dave Monthie and Larry Fay distributed a paper with the "King County Perspective" on "timely and reasonable." Dave walked through the bullet points on King County's interests, some background points, and a set of "possible key questions and/or approaches." Larry described the final page as a draft approach developed by Bill Lasby to define "timely" as two pieces: a response by the utility to a request for conditions of service for new water service (suggested to be 30 days), and a time for actual delivery of service (suggested as one year or less for actual construction and providing water to the site). Bill also suggested that "reasonable" exclude the requirement for certain actions by the developer (e.g., obtaining easements), and the dollar amount be set at 150% of the cost of drilling an exempt well.[1] Larry noted that

[1] The utilities do not think that it is reasonable to compare costs of utility service to costs for creation of exempt wells or small water systems. Please see page 5 of these summary notes.

single-family exempt wells do not even go through a utility review procedure; PHSKC simply approves them if they meet relevant siting criteria and well construction requirements. Dave said that in the past year and a half there had been about half a dozen appeals filed with the County, but he knows of only two decisions issued by KC in the past 15 years; some have gotten close to a hearing but were resolved instead. KC would prefer to minimize appeals, but still provide fairness and predictability to developers and all parties. Key points, issues, and concerns from the KC presentation:

- Utilities should not be expected to deliver service that is at variance from land use plans (e.g., developing a school in a rural area).
- For some utilities, it is OK not to have the utility review single-family exempt well applications to KC within the utility's rural service areas where such exempt wells are allowed. For others, the utility may want to look at exempt wells, particularly for multi-connection Group B's, and consider providing satellite management where the costs of providing direct service are high. This may require encouragement of clustering and development of exempt wells, rather than single-domestic supplies.
- There is a problem under state law/Ecology process for a larger utility to obtain/consolidate an exempt well water right if it takes over a Group B system.
- It is not reasonable to compare the cost of an exempt well (which does not have to take into account such things as fire flow, minimum pipe size, etc) with the costs incurred by a water utility in delivering service where it does have to comply with additional requirements. Reasonable involves more than just cost.
- There is a lack of clarity around the response time by utilities to requests for service.
- Some utilities are clearer than others as to what their conditions of service are. Utilities should clearly communicate their expectations/policies to developers.
- Some developers are using the existing structure/system to their advantage in designing development where direct service from an existing utility would likely be not timely or reasonable.
- Developers of small lots (e.g., ¾ acre) are almost always likely to be able to get a decision that putting in an exempt well will be more "timely and reasonable" if there are no other parcels to which the utility can allocate a portion of costs.
- It is not fair to a utility to remove a portion of their service area where they are willing to provide service but an exempt well offers a cheaper service.
- King County agencies/departments should get on the same page. KC comp plan policies favor delivery of water service by existing utilities, even outside their service areas, but DDES staff try to keep "rural" character by making it difficult/expensive for utilities to provide the service, and make rural development more difficult.
- Section 63 of the GMA (RCW 19.27.097) allows KC to require hookup to an existing system when it can be done with "reasonable economy and efficiency," which is reflected in KC comp plan. There is no definition of "reasonable economy and efficiency."

- Don Wright and Ron Sheadel followed with a presentation on the utility perspective. Don provided copies of the statutory language (MWL and Coordination Act) and posted diagrams of six illustrative situations: (1) extension of service to a new house along an existing pipe; (2) extension of service to a single parcel requiring a pipe to cross an existing, privately-owned parcel; (3) extending a water main quite some distance to serve a new parcel, with no intervening parcels receiving service; (4) providing service to a short plat by constructing a pipe off an existing utility main; (5) providing service to a large development proximate to an existing utility pipe, which will require engineering design to serve all the parcels; and (6) providing service to a new development at a distance from any existing utility pipes. For each of these situations, there will be a different level of analysis, complexity, and cost. The utility's objective is to be fair in developing its service conditions in each of these situations, but it cannot be expected to provide equal service conditions and costs. And although the utility is expected to—and does—plan to have the capacity to meet its targeted growth under the GMA, it cannot know precisely where this growth is going to occur within its service area. It is probably fair to expect utilities to conform to some guidelines on providing an answer to a request for service, but it is difficult to come up with guidance on when "timely and reasonable" service—i.e., wet water—should be supplied that can apply to all of these situations and the many others utilities face. Most utilities will also do the engineering/design for the proposed development (either in-house or under contract), requiring the developer to pay those costs up front, and can then give the developer some pretty good information on alternatives/costs/schedule; this analysis should be able to be done fairly quickly. Key points/issues/concerns from the utility presentation:
  - Utility costs and schedules are being driven by regulatory (e.g., bidding out construction) and permit (e.g., KC construction standards) requirements that the utilities don't control. Utilities should not be penalized for complying with these requirements.
  - Situation 3 of the ones described by Don is probably the most problematic because of cost and permit issues.
  - Utilities can help put together financing approaches (e.g., creation of ULID), but this requires significant time, effort, and resources to do.
  - Pierce County has a pre-screening process under its CWSP utility review procedure. Only certain issues that meet the threshold for review are allowed to proceed under "timely and reasonable" appeals. KC might want to consider if it wants to limit such appeals. For instance, an appeal might not be available if the developer has not gone through the utility pre-development process, even if they have to pay for it. Pierce County also has fees to file an appeal.
  - The utility has no control over land use and growth, which can create factors that impact how quickly the utility can provide service, or reach its service limits. A good example would be the Sammamish Plateau, where KC authorized development at a pace that exceeded the capacity to provide service.

Some concluding comments/points:

- The situations most likely to create problems for KC in timely and reasonable appeals are those in Don's examples 2, 3, and 4—where exempt wells are offered up as an alternative to single-lot or small developments. It may be useful to focus discussion on these.
- It is not reasonable to compare the costs of utility service to an exempt, shallow well or to creation of a small water system. Utilities have higher costs (fire flows, emergency service, pump replacement) and thus provide a higher level of service than exempt wells; exempt wells have environmental and social costs other than construction (opening up another aquifer, creating another point of contamination).

Action Item: Don and Ron will complete their presentation at the next meeting.

3. Remaining agenda items

- Tamie will put the agenda items that the Committee didn't get to on the agenda for the next meeting (December 11).

Tamie asked that members note the schedule of meetings—every month instead of every three weeks—being proposed for 2007. They are January 8, February 12, March 12. ***Action item: Tamie will confirm via email***.

4. Next Meeting: December 11

Abbreviations: DOH—Washington State Department of Health, DNRP—King County Department of Natural Resources and Parks, Ecology—Washington State Department of Ecology, PHSKC—Public Health–Seattle and King County, CWSP—Coordinated Water System Plan, MWL—Municipal Water Law, SPU—Seattle Public Utilities, WLRD—Water and Land Resources Division within King County DNRP.