

## **STATE ENGINEER'S OFFICE**

### **Quality of Life Result**

Result #8: Wyoming's natural resources are managed to maximize the economic, environmental, and social prosperity of current and future generations.

### **Contribution to Wyoming Quality of Life**

The office of the State Engineer was created by Article 8, Section 5 of the Wyoming Constitution and stipulates that the State Engineer "shall have general supervision of the waters of the state and of the officers connected with its distribution." Article 1, Section 31 of the Wyoming Constitution states, "Control of water - Water being essential to industrial prosperity, of limited amount, and easy of diversion from its natural channels, its control must be in the state, which, in providing for its use, shall equally guard all the various interests involved." In this constitutional provision, the state recognizes that water is essential to prosperity and of a limited amount. The role of the State Engineer is to administer a system that allocates the waters of the state based upon the doctrine of prior appropriation (Reference Article 8, Section 3 Wyoming Constitution which states, "Priority of appropriation for beneficial uses shall give the better right.")

### **Basic Facts**

In the 2005-2006 biennium budget, the State Engineer's Office was authorized to employ 120 full time and 20 part-time employees. Appropriated biennium funding was as follows:

General Fund	\$19,318,282
Other Funds	<u>\$ 746,488</u>
Total =	\$20,064,770

This agency has three core business functions described as follows:

1. Permitting and Adjudication of Water Rights - prior to using any water in the state, the appropriator is required to obtain a permit. The permit is the first step in acquiring a water right and it defines the conditions of use as well as the priority date. Once a permit has been issued, the permit holder may begin construction of the facility (well, ditch, reservoir, etc.) and beneficially use Wyoming water.

Upon satisfying the conditions of the permit, the appropriator may file a notice of beneficial use and seek adjudication of the water right by the Board of Control (BOC). The employees involved in permitting and adjudication of water rights are primarily located in the Herschler Building in Cheyenne, Wyoming.

2. Administration and Regulation – Wyoming has an arid climate and many areas of the state experience water shortages at some point during the year. During these times, water is allocated to senior water users based upon the doctrine of prior appropriation and numerous Wyoming Statutes that support this doctrine. This administration and regulation is supervised by the agency's four Division Superintendents. Each Superintendent is located in one of the four Division offices (Torrington, Sheridan, Riverton, and Cokeville). Each Superintendent has a staff of Hydrographer/Water Commissioners that are located in 24 offices across the state. These employees are responsible to allocate water by regulating headgates, pumps, wells, stream diversions, and reservoir storage.
3. Administration of Interstate Compacts and Decrees – Wyoming is party to seven interstate water compacts and three interstate court decrees. These documents describe how Wyoming must share water with downstream states. A staff of four employees in Cheyenne maintains contact with adjoining states and federal agencies to assure compliance with the various compacts and decrees. Additionally, they monitor federal actions that might impact Wyoming's ability to use its water.

The agency is making a supplemental budget request related to this core function to the Governor and 2007 Legislature. The request is to add one full-time employee to the Interstate Streams Division to monitor and assure state compliance in the Cooperative Agreement for Platte River Research and Other Efforts Relating to Endangered Species Habitats Along the Central Platte River, Nebraska (Cooperative Agreement). This request is the first priority of the agency's 2007 supplemental budget request.

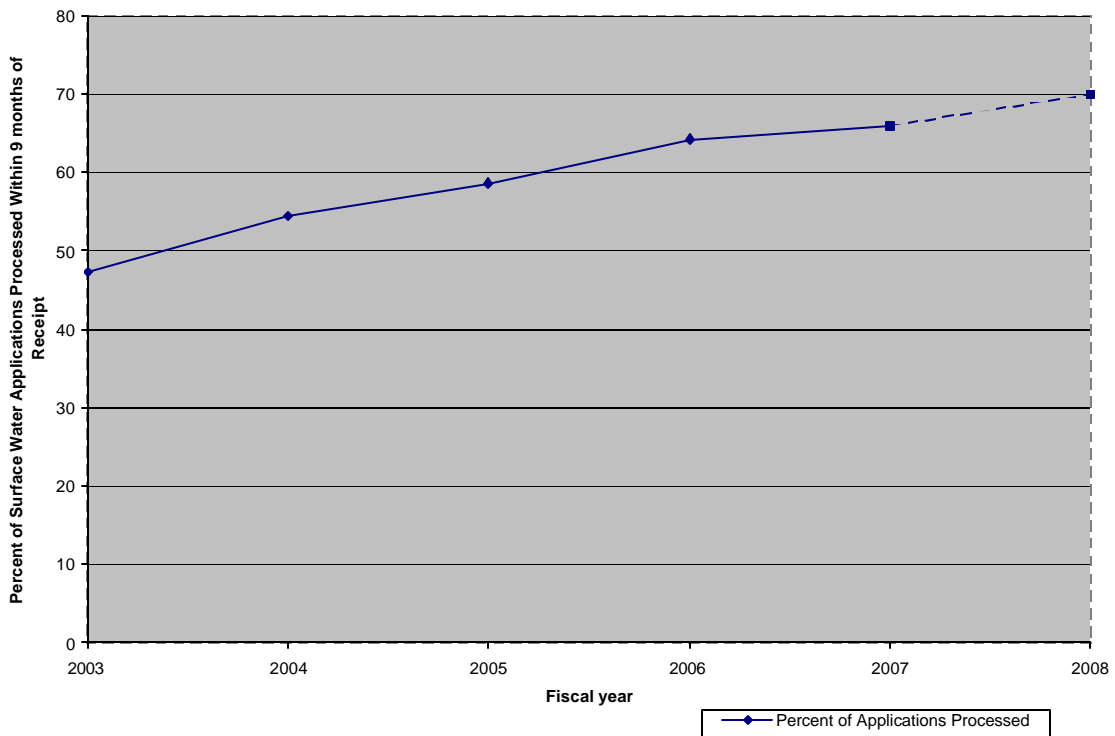
These core business functions serve the entire population of Wyoming in one way or another. Examples of water users in the state include farmers and ranchers that irrigate lands, the 98 municipalities within the state, homeowners that rely upon well water, and businesses that divert water for industrial use.

**Performance Measures**

This agency has selected six performance measures with the intent of improving the customer service in both the permitting and field administration operations of the agency. These performance measures are as follows:

**Performance Measure 1**

**Percentage of Surface Water applications for permit that are processed within 9 months or less of receipt.** Processing is complete when a permit has been issued, the application has been denied, or the application has been reviewed and placed in the pending file awaiting additional information from the applicant.



Story Behind The Performance Measure –

Prior to utilizing surface waters of the State, an appropriator must obtain a permit from the Surface Water Division. This division issues permits for stream diversions, canals, instream flows, reservoirs, and weather modification efforts. The permit allows the applicant to construct the proposed facilities and begin using water for its intended purpose. The Surface Water Division conducts extensive research on new applications in order to assure that new permits do not conflict with or overlap onto existing water rights.

This research is time consuming because of the complexity of water

rights and the paper records system maintained by the agency. In recent years the large demand to construct small reservoirs in the northeast part of the state has greatly added to the workload of the Surface Water Division. This has led to an increasing backlog of unprocessed water right applications. If this division can process the majority of its applications within 9 months of receipt, then the customers submitting their applications can expect to start construction in the following construction season.

#### What has Been Accomplished?

During the 2005-2006 biennium the Surface Water Division utilized mandatory overtime and two additional positions provided in the 2005-2006 supplementary budget to reduce the application backlog. During FY 2006 the division processed 1350 applications and the backlog was reduced from 1895 to 1346 applications. This in turn increased the percentage of applications processed in 9 months or less from 58.66% to 64.28% in FY 2006. The division intends to continue using these resources to further the progress on this performance measure.

#### Supplemental Budget Implications:

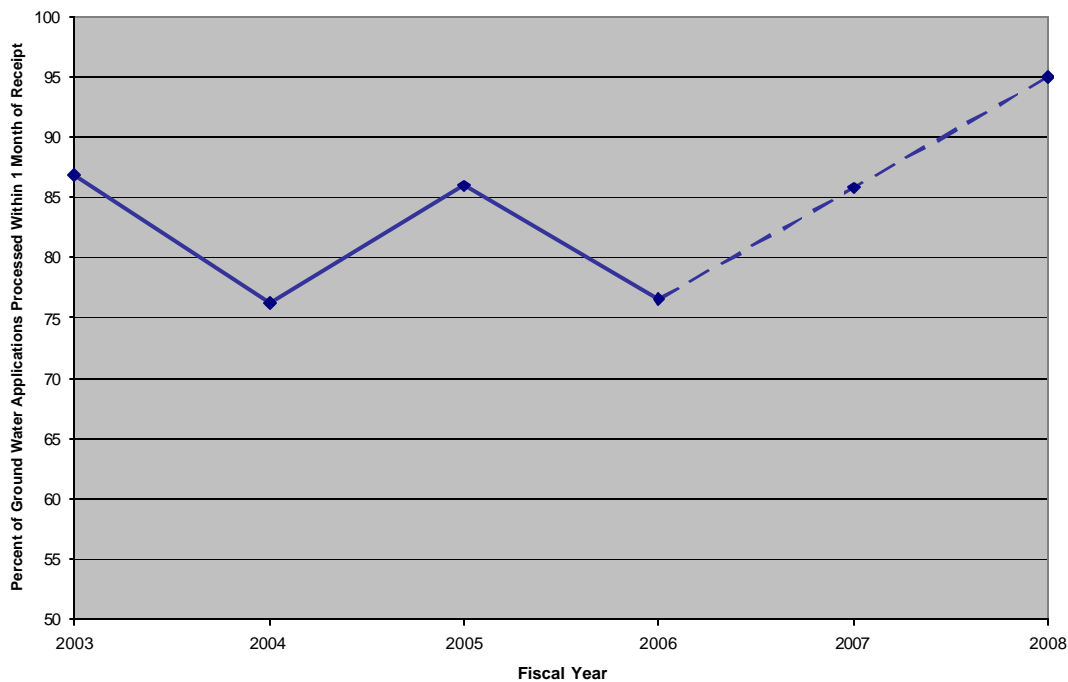
The agency is submitting a 2007-2008 supplemental budget request to add two full-time positions to the Support Services Division. The two positions will start the conversion of the agency's microfilm water rights records (6,000,000 plus images) to a more accessible electronic form. Once complete, this conversion will increase the efficiency of application processing by reducing research time now spent in the microfilm record system. This request was included in the agency's biennial budget request, but was removed by the Governor to allow time to research alternatives. This request is priority number two of the agency's two supplemental budget requests.

#### **Performance Measure 2**

##### **Percentage of Ground Water applications for permit that are processed within one (1) month or less of receipt.**

Processing is complete when a permit has been issued, application has been denied, or the application has been reviewed and placed in a pending file awaiting additional information from the applicant. This performance measure includes wells located in control areas. Control areas are areas of special ground water concerns such as declining water tables. The State currently has three control areas

and any applications for a new well permit must first be reviewed by the Control Area's Advisory Board. In most cases, the control area process takes more than the one month performance measure goal to complete. However, the number of control area applications is generally small.



#### Story Behind the Performance Measure –

Prior to utilizing ground waters of the State, an appropriator must obtain a permit from the Ground Water Division. This division issues permits for wells and small springs. The permit allows the applicant to construct the proposed water facilities and begin using water for its intended purpose (beneficial use). The Ground Water Division does not perform extensive records searches on new applications, because the drilling of a well does not guarantee the production of water. Instead, the division uses the permit system to place conditions on well operations and to establish a data base in which to address future problems such as interference claims. As such, a one month permit processing goal is viewed to be reasonable and will provide the constituents with certainty in the process.

What has been accomplished?

A total of 3798 Coal Bed Natural Gas (CBNG) applications for new wells were received, and continue to be a significant portion to this division's workload. In FY 2006 the division processed a total of 6076 applications for permit. Additionally, the staff spent a considerable amount of effort completing the court mandated North Platte River adjudication process for large wells in advance of the November 2006 deadline. This effort caused the application processing performance measure to fall to 76.5% in FY 2006.

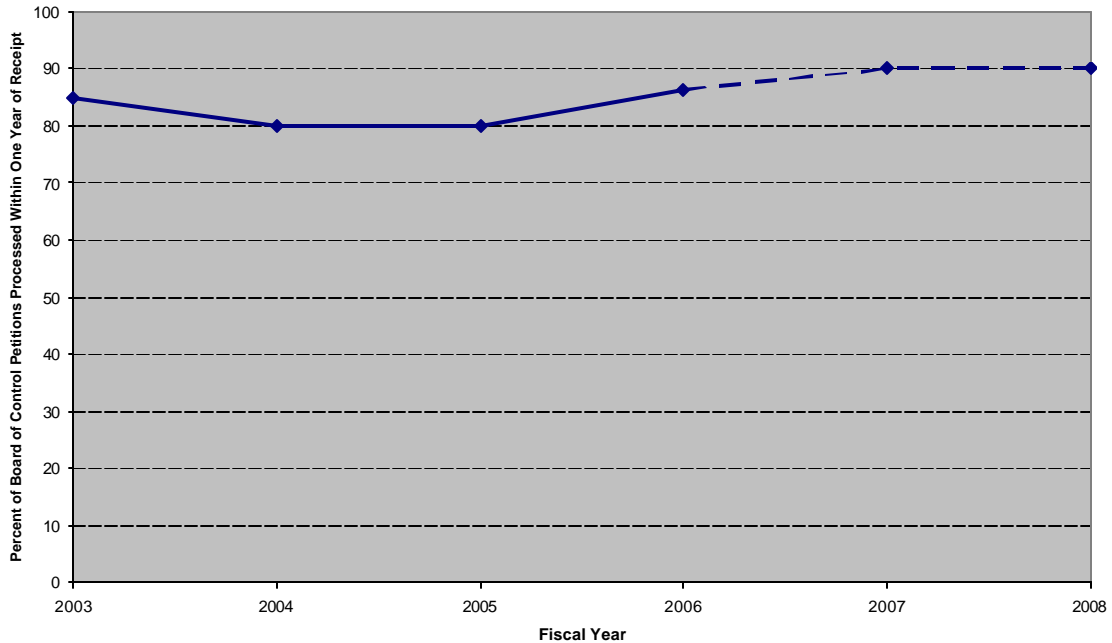
**Supplemental Budget Implications:**

The agency is submitting a 2007-2008 supplemental budget request to add two full-time positions to the Support Services Division as previously described. The two positions will start the conversion of the agency's microfilm water rights records (6,000,000 plus images) to a more accessible electronic form. Once complete, this conversion will increase the efficiency of application processing by reducing research time now spent in the microfilm record system. This request was included in the agency's biennial budget request, but was removed by the Governor to allow time to research alternatives. This request is priority number two of the agency's two supplemental budget requests.

**Performance Measure 3**

**Percentage of Board of Control (BOC) petitions that are processed within one (1) year or less of receipt.**

Processing is complete when the petition is approved, or the petition has been denied or withdrawn.



#### Story Behind The Performance –

Once an appropriator has been granted a permit, they may use the waters of the State as allowed for in the permit. In order to complete the establishment of a water right, the appropriator is expected to file a notice of beneficial use statement and seek adjudication of the water right by the Board of Control. Once adjudicated, the water right may be used in compliance with the terms of the original permit and adjudication. If at some later date the appropriator wishes to change some aspect of the adjudicated water right, they are required to petition the Board of Control. The Board reviews the petition for compliance with State statutes and determines if any other appropriator will be injured by the approval of the petition. Processing of the petition can require extensive staff review and deliberations by the Board of Control, including holding hearings if necessary. Expeditious review and action is a service that Wyoming water users should expect with regards to their petitions.

What has been accomplished?

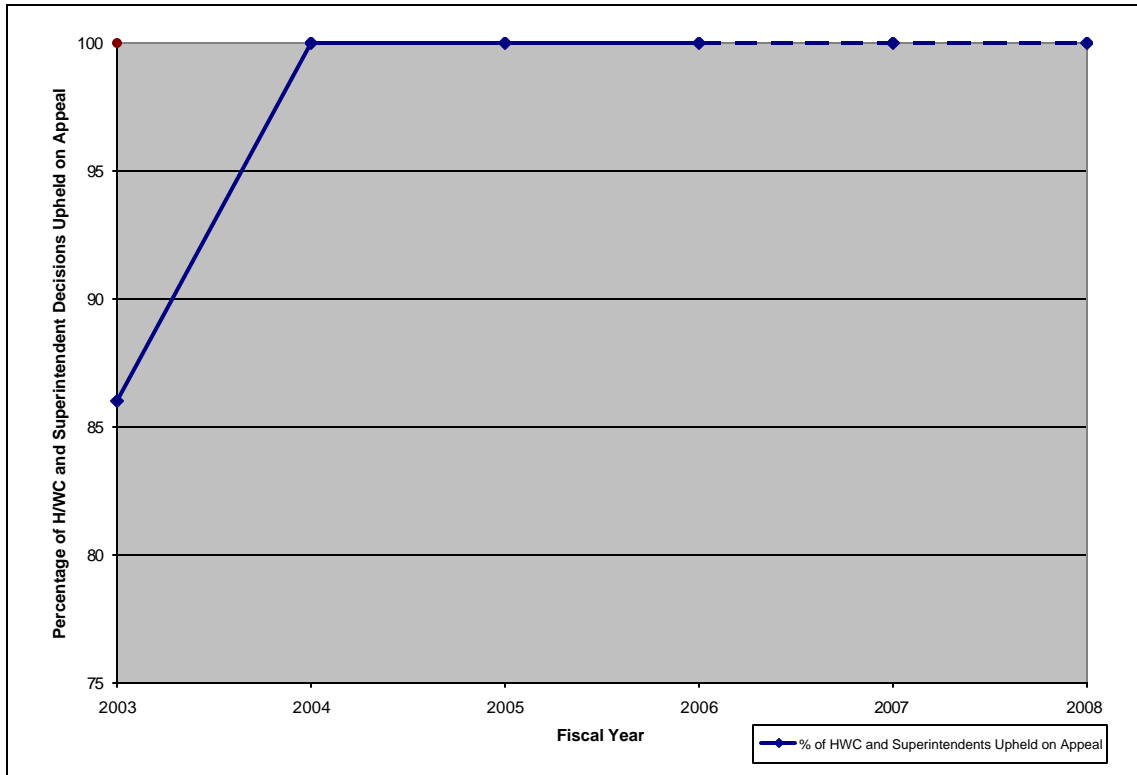
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In FY 2006 the Board of Control has made a concentrated effort to process petitions in one year or less. During this period of time the Board of Control received a record number of new petitions (253) which has impeded the goal of achieving 90% levels for Performance Measure 3. Never the less, this division did achieve an 86.36% process efficiency as measured against a FY 2006 goal of 85% as listed in the agency's strategic plan.

**Supplemental Budget Implications:**

The agency is submitting a 2007-2008 supplemental budget request to add two full-time positions to the Support Services Division as mentioned earlier in this report. The two positions will start the conversion of the agency's microfilm water rights records (6,000,000 plus images) to a more accessible electronic form. Once complete, this conversion will increase the efficiency of application processing by reducing research time now spent in the microfilm record system. This request was included in the agency's biennial budget request, but was removed by the Governor to allow time to research alternatives. This request is priority number 2 of the agency's two supplemental budget requests.

**Performance Measure 4**  
**Percentage of Hydrographer/Water Commissioner (H/WC) and**  
**Division Superintendent decisions that are upheld on appeal.**



Story Behind The Performance Measure –

Each year the agency's field staff are required to make hundreds of water regulations decisions when drainages are unable to supply all water demands. These decisions are often controversial when a junior appropriator is shutoff due to lack of water. It is imperative that field decisions be in compliance with the State's complex water right statutes. In order for this to occur, the field staff must be professional and well educated in the field of water rights. W.S. 41-3-603 provides for an appeal process whereby any person who may be injured by a decision of a H/WC can appeal the decision to the Division Superintendent, and from his decision may appeal to the State Engineer, and from his decision may appeal to district court. If the State Engineer's Office is providing knowledgeable and well trained field personnel, the H/WC will make good decisions. Any decision they make may be appealed. If the H/WC makes poor decisions, they can be overturned on an appeal.

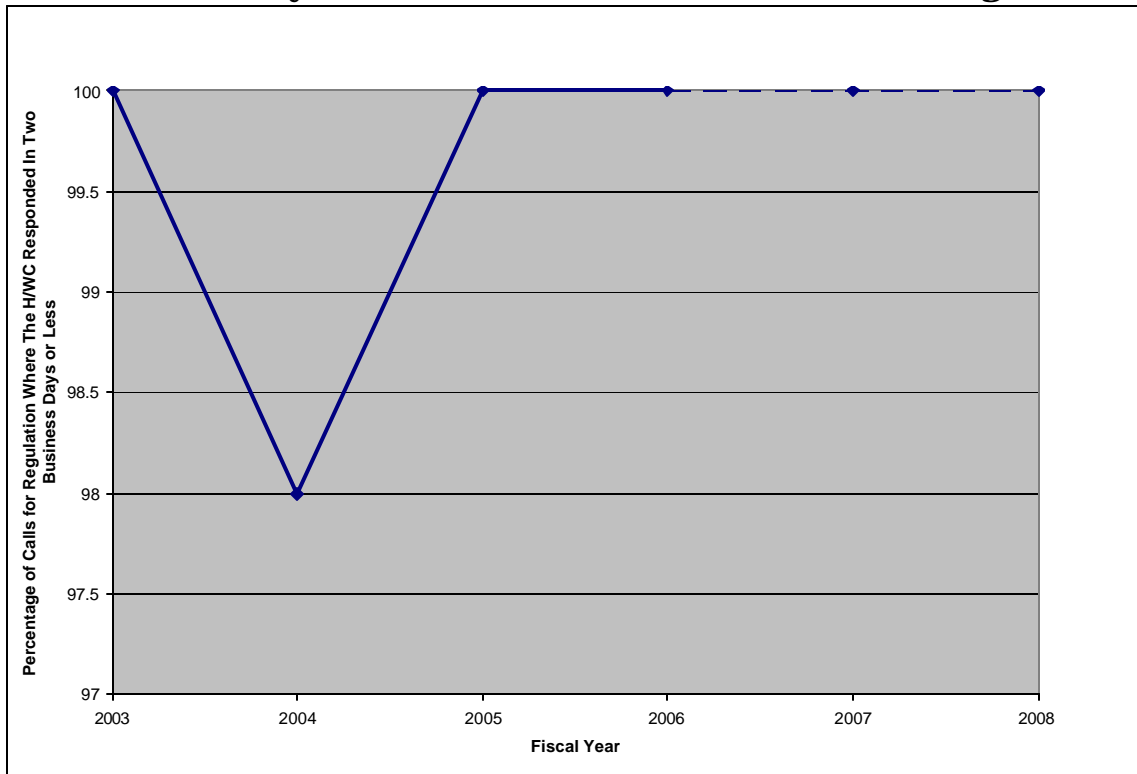
What has Been Accomplished?

Only one informal appeal of a H/WC decision was made in FY 2006. This occurred in Division 3, and was denied by the Superintendent. The lack of formal appeals continues to speak well of the informed professional decisions being made by H/WC and Superintendents, especially during a drought cycle.

Supplemental Budget Implications: None

**Performance Measure 5**

**Percentage of calls for stream regulation where the Hydrographer/Water Commissioner (H/WC) responds in two business days or less as a function of total calls for regulation.**



Story Behind The Performance Measure –

As streams recede from their runoff peaks, less water is available for diversions. When there is insufficient water in a stream system to satisfy senior water rights, the appropriator may place a call with the local H/WC. The H/WC then begins to regulate off, junior water right diversions until the calling party's water right has been satisfied. Based upon the doctrine of prior appropriation, the newest water

rights are regulated off first and senior water rights are allowed to continue to divert.

During the peak growing season, availability of water is critical to crop production and yields. If a senior irrigator runs short of water, time is of the essence and prompt H/WC response to a call for regulation is critical. As such the agency has adopted a standard of responding to all calls for regulation within two business days. By tracking response times, the Division Superintendent can assess where additional resources may be needed in times of water shortages.

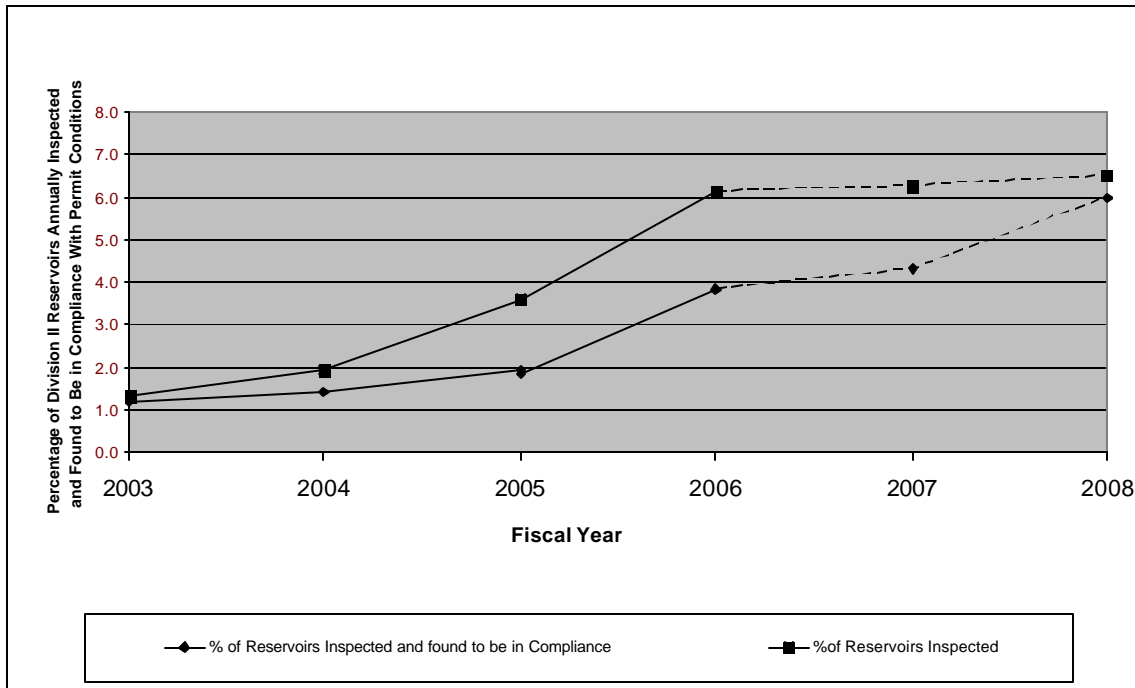
What has Been Accomplished?

In FY 2006, the agency received a total of 109 calls for regulation and responded to all of these calls within two business days or less. The performance measure of responding to all calls within two business days was therefore satisfied at the 100% level.

Supplemental Budget Implications: None

**Performance Measure 6**

**Percentage of Division II reservoirs that are inspected on a yearly basis and found to be in compliance with permit conditions as a function of total permitted reservoirs in Division II.**



Story Behind the Performance Measure – State Water Division II encompasses northeastern Wyoming and includes the drainages of the Tongue, Powder, Little Powder, Little Missouri, Belle Fourche, and Cheyenne Rivers. This area has significant coal reserves and has been experiencing extensive Coal Bed Natural Gas (CBNG) development in the last seven years. Due to the fact that the water produced as part of the CBNG development in this area is of very good quality, the water can generally be discharged to the surface environment. One of the most common water management programs utilized by CBNG developers is to store the produced water in reservoirs. This has led to rehabilitation of existing stock reservoirs and construction of many new reservoirs. As of June, 2006, a total of 14,107 reservoirs have been permitted in Division II. As CBNG development proceeded in this basin, a significant number of reservoirs have been upgraded and/or constructed without State Engineer's Office permits or not in compliance with permit conditions. As such, increased reservoir inspections in Division II have become a priority for this agency. By having reservoirs in compliance with permit conditions, the State Engineer's Office will be able to more effectively manage water uses in the basin and mitigate the conflicts between historic water uses and the new CBNG reservoirs.

In tracking this performance measure it is important to understand that this agency does not intend to annually inspect every reservoir in the division. The agency intends to focus on CBNG reservoirs. Inspecting a statistically significant number of the Division's reservoirs (5-6%) in a given year will give a good indication of the overall permit compliance. However, the most important aspect of this performance measure is the difference between inspected reservoirs (top graph) and inspected reservoirs in compliance (bottom graph). To the extent that this agency can reduce this separation difference between the two graphs, it will demonstrate the success of this inspection program. See Calculated Compliance Rate in the following example:

	<u>Actual</u> <u>F.Y. 2005</u>	<u>Projected</u> <u>FY 2008</u>
% of Reservoirs Inspected	3.6%	6.5%
% of Reservoirs Inspected and found to be in compliance	1.9%	6.0%
Calculated Compliance Rate	52.8%	92.3%

#### What Has Been Accomplished?

In FY 2006 the State Engineer's Office conducted a total of 988 reservoir inspections using a combination of full-time personnel and two outside

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consulting firms. Their collective results showed 610 facilities to be in compliance with agency regulations. The agency has a total of 14,107 reservoirs permitted within Division II. The breakdown of reservoir inspections in Division II are summarized as follows:

	Inspected Facilities	Inspected Facilities In Compliance	Percent In Compliance
• General Inspections	391	241	61.6%
• Wild Horse Creek Inspections	364	255	70.1%
• Pumpkin Creek and Four Mile Creek Inspections	<u>233</u>	<u>114</u>	<u>48.9%</u>
Total	988	610	61.7%

- Percent of reservoirs inspected =  $(988/14,107) (100) = 7.0\%$
- Percent of reservoirs inspected and found to be in compliance =  $(610/14,107) (100) = 4.3\%$

It is important to note that the above reported reservoir inspections were funded with exception budget requests in the 2005-2006 biennium budget and the 2006 supplemental budget. Prior to these appropriations, a focused reservoir inspection program did not exist in Water Division II.

Additionally, the data above do not indicate the number of reservoirs that were brought into compliance following their initially being found non-compliant. The agency strives to achieve compliance through a combination of letter notices, deadlines for compliance, cease storage orders, and more forceful enforcement measures. In FY2006, the SEO sought prosecution of two CBNG Corporations for reservoir compliance issues. One of those efforts resulted in a settlement agreement which provided \$40,000 for local community benefits. The second effort has yet to be prosecuted by the county attorney.

Supplemental Budget Implications: None