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FISCAL IMPACT REPORT

SPONSOR: SCONC DATE TYPED: 3/04/03 HB _____

SHORT TITLE: Domestic Well Management SB 484/SCONCS

ANALYST: Chabot

APPROPRIATION

Appropriation Contained		Estimated Additional Impact		Recurring or Non-Rec	Fund Affected
FY03	FY04	FY03	FY04		
			\$330.0	Recurring	General Fund

(Parenthesis () Indicate Expenditure Decreases)

Related to SB 484, SB 565, HB 307 and HB 976.

SOURCES OF INFORMATION

LFC Files

Responses Received From

New Mexico Environment Department (NMED)

Office of the State Engineer (OSE)

SUMMARY

Synopsis of Bill

Senate Conservation Committee Substitute for Senate Bill 484 amends Section 72-12-1 NMSA 1978 concerning underground waters stating they belong to the public, eliminates subsections A. and B. and adds Sections 72-12.1.1 through 72-12.1.3 covering the permitting process.

Section 72-12.1.1 pertains to domestic well permits that are defined by type. Domestic wells are either household or shared household wells. Household wells are for use inside a single family residence and for outside use related to the enjoyment of the residence including landscaping, lawn and garden uses totaling no more than one acre. Shared household wells are those used by more than one family.

A limited use area requires heightened protection because water resources may be inadequate to sustain well production due to excessive drawdown rates or where addition depletions may impair existing water users. Specific procedures are to be followed by the State Engineer for declaring a limited area including written notice by certified mail, return postage pre-paid to all

property owners of record in the declared area.

Applications for domestic wells will be made to the State Engineer and must comply with any applicable municipal ordinances enacted pursuant to Chapter 3, Article 53 NMSA. Wells must be metered and periodic reports must be made to OSE. A household well is limited to one acre-foot per year. If the request is in a limited use area, the amount is limited to one-half acre-foot per year. A shared well in a limited use is limited to a maximum of three acre-feet per year.

Persons issued permits for single household uses prior to July 1, 2003 will be allowed up to three acre-feet of water and not be required to meter the well unless required by local or county ordinance.

Owners of wells permitted after July 1, 2003 that exceed the permitted amount are subject to a fine of \$1,000.00 per acre-foot or an alternate amount determined by OSE.

Section 72-12-1.2 pertains to livestock well permits and requires that applicants have proof that they have permission to use the land for grazing prior to requesting a permit for livestock wells.

Section 72-12-1.3 pertains to temporary uses of up to three acre-feet of water not to exceed a period of one year for prospecting, mining or construction or public works, highways and roads or drilling operations. OSE must assess whether the water use will impact over users and, if it does, a public hearing will be held before approval.

The effective date is to be July 1, 2003.

Significant Issues

OSE processes approximately 5,000 domestic well permits annually and would require the agency become more active in the administration of domestic well permits. It estimates 2 FTE would be required to process permits and monitor the metering and accounting for use. Another 2 FTE would be required for doing assessments in limited use areas and complying with the statutory requirements of notice and conducting hearings. In addition, there will be administrative costs, particularly in postage, to comply with proposed statute.

OSE is concerned notice provisions in the bill are different than for other actions. This "might lead to the expectation of similar notice provisions for other special orders."

This bill would still require OSE to issue permits in areas not declared as limited use areas that would still impact other users with more senior rights.

This bill provides for a fine of \$1,000 per acre-foot of water over diverted; however, in Section 72-2-18.F NMSA 1978, the State Engineer can levy fines of up to \$100 per day for violation of a compliance order. Wells permitted before July 1, 2003 would be subject to the compliance order amounts and those permitted after that date would be subject to \$1,000 per acre-foot fine. These sections should be reconciled. OSE recommends the section on the \$1,000 fine should apply to all domestic wells.

OSE also recommends revising the bill to allow well withdrawals greater than the specified limits if a person obtains an existing water right from within the limited use area and changes the

place or purpose of use of the water and the proposed change does not increase depletions within the limited use area.

FISCAL IMPLICATIONS

Senate Conservation Committee Substitute for Senate Bill 484 does not have an appropriation but OSE would incur costs to implement of this bill. The agency estimates \$330.0 would be needed.

ADMINISTRATIVE IMPLICATIONS

OSE would be required to be more active in the administration of domestic well permits. Currently, OSE cannot deny a domestic well permit so only cursory reviews are done. Under provisions of this bill, OSE will have to actively manage the program. The agency estimates that 4 FTE will be required. OSE would have to develop implementing rules and regulations on domestic wells.

OTHER SUBSTANTIVE ISSUES

NMED recommends, due to potential pollution problems, this legislation should include design specifications to be followed if a domestic well is drilled anywhere in the State.

TECHNICAL ISSUES

Recommend for editorial purposes on page 4, lines 7 and 14 that the subparagraphs be switched in position so that the definitions are listed as domestic well, household well, shared household well and limited use area.

OSE recommends the following changes:

1. On page 2, line 1 and 2 strike the deletion.
2. On page 4, line 19 through page 5, line 11 strike the material beginning with “Additionally”.
3. On page 5, line 16 strike “shall” and insert “may”.
4. On page 6, lines 4-6 strike the sentence and insert “a shared well shall be limited to three households.”
5. On page 6, line 7 after the word “meter” insert “on the well”.
6. On page 6, lines 19 strike “three acre-feet per year” and insert “one-half acre-foot per year for each household, not to exceed a total of three households.”
7. On page 7, line 6 after the word “ordinance” insert “or pursuant to court order”.

POSSIBLE QUESTIONS

1. Is groundwater used at state parks concerned as a domestic (household or shared household) well?

GAC/njw:yr