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FISCAL IMPACT REPORT

SPONSOR HENRC DATE TYPED 2/18/05 HB 285/HENRCS

SHORT TITLE Critical Management Area Domestic Wells SB _____

ANALYST Aguilar

APPROPRIATION

Appropriation Contained		Estimated Additional Impact		Recurring or Non-Rec	Fund Affected
FY05	FY06	FY05	FY06		
	NFI		Indeterminate	Recurring	General Fund

(Parenthesis () Indicate Expenditure Decreases)

Relates to SB-120

Conflicts with HB-500, SB-120, SB-451

SOURCES OF INFORMATION

LFC Files

Responses Received From

Office of the State Engineer (OSE)

SUMMARY

Synopsis of Bill

The House Energy and Natural Resources Committee substitute for House Bill 285 provides the State Engineer authority to designate domestic well management areas by special order under certain conditions. Within these domestic well management areas, the state engineer is required to issues a well permit only if an applicant transfers a water right from within the domestic well management area and changes the place or purpose of use of the water right. Further, the State Engineer is directed to treat all domestic well applications in the same manner within each domestic well management area.

Significant Issues

Existing statute requires the issuance of domestic well permits but allows limits upon well diversions. The state engineer has no authority to deny these applications. HB 285/HENRCS would allow the state engineer to deny domestic well applications unless the applicant transfers water rights for the new domestic use.

The committee substitute provides for an expedited process to facilitate such transfers of water rights into proposed domestic wells. This expedited transfer process would be available to transfer into a new domestic well up to a total of one acre-foot of consumptive use from another water right. The expedited process would not be available to transfer any water rights from an acequia or community ditch. The fee charged for such expedited transfers would be limited to the amount charged for permits to change the location of a well or the place or purpose of use of a water right, which is currently \$50.00.

The committee substitute further provides water rights transferred into a domestic well through the expedited transfer process would retain the original priority date of the water right transferred, and may subsequently be transferred out of the domestic well to a new point of diversion pursuant to Section 72-12-7 NMSA 1978.

To ensure that a domestic well management area is in place only as long as necessary, HB 285/HENRCS requires the state engineer to review every management area least every ten years to determine whether the management area continues to meet the criteria for declaration.

While the popular notion is domestic wells are depleting aquifers at a rapid rate, the State Engineer notes studies performed indicate domestic wells are having a much more significant impact on the depletion of interstate streams. Individually, domestic wells have a relatively small impact but the collective impact is a growing concern. With domestic wells continuing to be a popular source of water, it is expected the combined impacts will increase with time.

Under current State Engineer rules, domestic wells are limited to three acre feet per year; however this amount can be reduced. Examples of this are the limits currently in place in the Estancia basin.

At present, the Office of the State Engineer processes over 6 thousand domestic well applications annually with each well authorized to produce 3 acre feet of water. Although the state engineer's office conservatively estimates the average diversion of each well at .25 acre feet per well, total authorized production could reach 18,000 acre feet per year if all users pumped to capacity. This is an extraordinary situation, however the impact is clear.

PERFORMANCE IMPLICATIONS

Provisions of HB 285/HENRCS will allow the Office of the State Engineer to further meet constitutional mandates.

FISCAL IMPLICATIONS

The State Engineer notes it processes an average of 6000 domestic well applications annually. Requiring the transfer of water rights for domestic wells would require additional FTEs, the level of which will depend on the degree to which the state engineer will exercise the provisions of the bill and available funding. The agency notes an indeterminate fiscal impact as a result.

CONFLICT, DUPLICATION, COMPANIONSHIP, RELATIONSHIP

Conflicts with HB 500 and SB 451. HB 500 and SB 451 do not vest the State Engineer with discretion to deny domestic well permits in Critical Management Areas (CMA); instead HB 500 and SB 451 require the State Engineer to grant applications for domestic well permits in CMAs,

but to limit such permits to no less than one-half acre-foot per year per household unless the applicant transfers a water right or discontinues use of an existing, permitted domestic well in the CMA.

TECHNICAL ISSUES

In response to concerns raised by members of the House Energy and Natural Resources Committee, the State Engineer offers the following proposed amendments for consideration:

1. On page 4, line 5, after the period insert “The state engineer shall adopt the final special order declaring a domestic well management area not more than sixty days after the close of the record in the hearing.”
2. On page 6, line 8, after the period insert “The state engineer shall act on an application made pursuant to the provisions of this subsection no later than sixty days after the application is filed with the state engineer.”
3. On page 6, line 15, after “right” insert a comma, and after “and” insert “thereafter”.
4. On page 6, line 16, after “transferred” insert “out of the domestic well”.

OTHER SUBSTANTIVE ISSUES

Ground water is a precious resource in New Mexico. Approximately 90 percent of New Mexicans rely on ground water for their drinking water needs. The Environment Department notes once the resource is contaminated it is no longer usable, and extremely expensive, time consuming and often difficult to clean up. The ability of the State Engineer to deny a domestic well permit if the ground water in the area is contaminated is a crucial authority the State Engineer needs to augment the New Mexico Environment Department in protecting the public health of well owners from polluted water supplies.

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