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FISCAL IMPACT REPORT

SPONSOR Cisneros **DATE TYPED** 02/18/05 **HB** _____

SHORT TITLE Critical Management Area Domestic Wells **SB** 120

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)

Duplicates HB 285
 Conflicts with HB-500, HB-285, SB-451

SOURCES OF INFORMATION

LFC Files

Responses Received From

Office of the State Engineer (OSE)
 New Mexico Environment Department (NMED)
 Energy, Minerals and Natural Resources Department (EMNRD)
 Attorney General's Office (AGO)
 New Mexico Finance Authority (NMFA)

SUMMARY

Synopsis of Bill

Senate Bill 120 provides the State Engineer authority to designate critical management areas by special order under certain conditions. Within these critical management areas, the state engineer will have the authority to deny domestic well permit applications unless an applicant transfers a water right from within the critical 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 critical management area.

The bill also provides that in certain specified circumstances, persons required to transfer water rights pursuant to the new law may be exempted from the public notice requirements including

those cases where the State Engineer determines that the change will not impair existing water rights, be contrary to the conservation of water or be detrimental to the public welfare.

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. SB 120 would allow the state engineer to deny domestic well applications unless the applicant transfers in water rights for the new domestic use.

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 SB-120 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 FTE, 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

The Environment Department suggests the addition of the following language for consideration by the Legislature:

Page 8, line 4, and insert a new section.

C. The State Engineer may deny a permit for a domestic well in a critical management area where the department of environment determines that the proposed well would be located within the bounds of a body of contaminated ground water that is the subject of federal, state, or local regulation for the purpose of investigation and/or remediation to achieve water quality standards.

The Office of the State Engineer suggests the following changes for consideration by the Legislature:

Page 1, line 24

Insert "appropriation" after priority.

Page 7, strike lines 1-3 and insert thereof "notify persons on the list that new, revised or proposed regulations are available and may be requested from the state engineer. Such charges as will defray the expense incurred in preparation of copies and mailing shall be paid by the requestor."

Comment: Sending copies automatically to a list of individuals may be an unnecessary expense.

Page 8, line 8 Strike "obtained" and replace with "transferred"

Page 8, line 9 strike through "date" and insert thereof "shall retain the priority date of the transferred water right"

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.

Under the provisions of SB-120, new well owners may be faced with locating and purchasing valid water rights, which for some may be difficult to acquire. Many domestic well applications may be in areas that could be easily served by existing or proposed water system systems which may have advantages over domestic wells.