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FISCAL IMPACT REPORT

SPONSOR Varela ORIGINAL DATE 2/9/07
LAST UPDATED _____ HB 726
SHORT TITLE Well Permits in Critical Management Areas SB _____
ANALYST Wilson

ESTIMATED ADDITIONAL OPERATING BUDGET IMPACT (dollars in thousands)

	FY07	FY08	FY09	3 Year Total Cost	Recurring or Non-Rec	Fund Affected
Total	\$416.7	\$5,000.0	\$5,000.0	\$10,416.7	Recurring	General Fund

(Parenthesis () Indicate Expenditure Decreases)

Office of State Engineer provided the projected additional costs
Duplicates SB 755 except short titles are different
Conflicts with HB 884

SOURCES OF INFORMATION

LFC Files

Responses Received From

Energy, Minerals & Natural Resources (EMNRD)
Environment Department (ED)
Department of Transportation (DOT)
State Engineer's Office (SEO)

SUMMARY

Synopsis of Bill

House Bill 726 redefines the terms by which a land owner may obtain a domestic well permit for appropriating groundwater in the State of New Mexico.

Currently, the SEO is obligated under law to issue domestic well permits to a landowner who applies. No determination is currently required as to the non-impairment of existing water rights.

The bill will reduce the amount of appropriated water for each domestic well for household use regardless of the conditions of management of the declared basin.

For permits for domestic household use, livestock and temporary uses of water such as prospecting, mining or construction of public works, the bill requires a determination from the SEO that the new well will not impair existing water rights. Additionally, the bill places constraints on the location of new livestock watering wells, and lowers the consumptive use from

temporary wells to one acre-foot.

Under this bill, the SEO also has the ability to declare a low impact area in an area where the water resources have not been fully appropriated. A designation of an area as a low impact area will require a “determination” from the SEO that the permitting of small amounts of water will not impair existing water rights or reduce flows in streams subject to interstate stream compacts. For low impact management areas, a determination by the State Engineer on a case-by-case basis regarding impairment of existing water rights is apparently not required. In a low impact area, the consumptive use for a temporary well is increased to three acre-feet.

The bill has an emergency clause.

FISCAL IMPLICATIONS

The SEO has provided the numbers for the estimated additional operating budget impact. They base these numbers on the approximately 50 FTEs they claim will be required for the evaluation of domestic, livestock and temporary permits that will be required by the provisions of this bill.

The SEO states that the additional FTEs will allow the SEO to maintain the current levels of service in regards to existing administrative duties and will help offset any potential increase in the water right application backlog the agency currently holds.

No justification has been provided to justify the personnel requirements.

EMNRD believes the cost of developing new facilities for government agencies requiring the installation of domestic well to provide drinking water will increase. Additionally, many of these installations will require more than the proposed quarter acre-foot limitation proposed for domestic household use. Therefore, state agencies will be required to acquire more water rights via purchase on open market, thus increasing the cost for development of new facilities. Additionally, time will be added on to the timeline associated with the development of any facilities associated with the transfer of water rights from any other location.

SIGNIFICANT ISSUES

The constitution provides that the SEO can only appropriate unappropriated water and senior water rights be protected. 72-1-1 et. seq. provide that the SEO shall approve all application whether or not there is unappropriated water and whether or not there will be impairment to senior users.

The state engineer, recognizing the need for regulation of domestic wells – especially in and around NM’s river corridors, promulgated Domestic Well Rules and Regulations on August 15, 2006, which placed a 1.0 acre-foot per annum limitation on domestic wells for household use and allowed for the creation of Domestic Well Management Areas (DWMA) as well as other restrictions and requirements.

This rule set outlined the procedure the state engineer will follow in declaring DWMA’s – areas where domestic wells may negatively impact senior water rights and flows of surface water sources. The declaration of a DWMA further restricts the amount of water that can be appropriated for domestic use – down to 0.25 acre-foot per annum or less. This rule set is currently being challenged in Santa Fe County District Court.

Both the constitutionality of 72-12-1.1 and the State Engineer's issuance of Domestic Well permits have been challenged in several law suits. There are two cases currently in the Supreme Court relating to the State Engineer's authority to regulate domestic wells permitted under existing 72-12-1.1. If any of the lawsuits filed manage to prevail, all domestic, livestock and temporary use well statutes will be void and those permits will have to be treated in the same manner as all other wells.

Proponents of this bill state that this bill is intended to put something in place in that event. It prevents impairment to senior water rights holders while providing for timely processing of applications within the constraints imposed by New Mexico's constitution.

SEO states that for the vast majority of the state, domestic wells have minimal impact on aquifer water level declines. However, numerous domestic wells on small lot parcels may interfere with the production of other wells in localized mountainous areas. These situations are relatively rare and several options are presently available to address this concern. The provisions of the New Mexico Subdivision Act allow the counties an effective avenue to limit the number of domestics and their withdrawals. The courts have also imposed limitations on domestic well diversions, and the state engineer has limited domestic well diversions under his existing authority.

The SEO currently designates critical management areas (CMA) as the basis for adopting basin administrative guidelines for water rights application processing. Impacts from municipal and irrigation wells were the primary factors in requiring these designations. Providing for low impact management areas in HB 726 may cause some confusion with existing CMAs.

The process to designate CMAs is technically based and has been in place for decades. CMA boundaries are established on technical criteria that are consistently applied throughout the state. Groundwater flow models are used to estimate future water level declines to compare with existing well depths. If the declines inhibit well production the state engineer will impose strict limitations. If water supply conditions are variable within a basin multiple layers of restriction may be required. The areas requiring the greatest level of restriction are referred to as a CMA. Areas that are not classified as CMA are also regulated to ensure rights are not impaired. A relatively small portion of the state has been classified as a CMA. All declared basins receive a high degree of protection regardless of CMA classification.

ADMINISTRATIVE IMPLICATIONS

The SEO claims they process on the average 6000 to 7000 domestic, stock and temporary well applications per year. Requiring the evaluation of all domestic wells will 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 notice and hearing requirements for CMA designation will have a significant administrative impact as no funding is provided in the bill to offset increased administrative costs. See the examples the SEO provided:

- Page 6, lines 4-6. The SEO will be responsible for evaluating each application for permit for domestic, livestock, and temporary use for impairment. This requirement will add significant administrative review to a domestic well application. The SEO will need to develop regional and local criteria for evaluating impairment for domestic, livestock, and temporary use.

- Page 6, lines 7 through 14: The bill proposes that the SEO make additional threshold determinations before issuing a permit for domestic use that proposes to use water outside the household. The SEO will have to determine if a proposed domestic well is located at least a quarter mile away from the nearest existing well and further determine if the applicant has justified the need to additional water. Such review will take significant administrative effort, will require the Office of the State Engineer to field check all existing wells (many well locations in the past were permitted to the nearest 40 acre parcel), and require the Office of the State Engineer to upgrade its GIS capabilities to properly review new domestic well applications.
- Page 6, lines 15 through 19: The bill proposes that the SEO make additional threshold determinations before issuing a permit for livestock use. Such review will take significant administrative effort as it will require the SEO to establish a five-mile buffer zone around perennial rivers and streams statewide, field check existing wells as many well locations in the past were permitted to the nearest 40 acre parcel and require the SEO upgrade its GIS capabilities to properly review new livestock well applications.
- Page 7, lines 8 through 13: The bill proposes that the SEO make additional threshold determinations before issuing a permit for domestic and livestock use. The SEO will have to determine if a proposed well is located at least a half mile away from the nearest existing well. Such review will take significant administrative effort, will require SEO to field check existing wells as many well locations in the past were permitted to the nearest 40 acre parcel and require the SEO upgrade its GIS capabilities to properly review new domestic well applications.
- Page 8, lines 3 through 7: The bill proposes establishing new review criteria for evaluating an application for permit to change of point of diversion, place of use, or purpose of use of a water right. . The SEO recommends the language in the bill should reference the existing review requirements established in paragraph E of 72-12-3. The proposed appropriation will not impair existing water rights from the source, is not contrary to conservation of water within the state and is not detrimental to the public welfare of the state.

In addition, the bill provides for long-impact area designations for purposes of acting on domestic, stock watering, and temporary use applications where the SEO finds there to be unappropriated water; however, it doesn't provide for areas of the state where there is no unappropriated water. Also, the bill appears to exclude the use of a domestic well to supply more than a single household.

DUPLICATION/ RELATIONSHIP

HB 726 duplicates SB 755, except short titles are different and conflicts with HB 884, Domestic Well Regulation.

TECHNICAL ISSUES

The SEO suggested the following:

Strike the reference to “Critical Management Areas” and insert in lieu thereof “Domestic Well Management Areas.” There does not appear to be a reason for including “critical management areas” at Section 1(E) because the term does not appear anywhere else in the bill

Page 6, line 18. Recommend the term “river or stream “be clarified by changing to” Perennial River or stream”. On page 6, line 18 insert “perennial” before the word “river.”

Page 6, lines 21-22. Recommend the term “for longer than” be replaced by “, does not exceed a one year period”. On page 6, line 21 Strike “for longer than” and insert in lieu thereof “, does not exceed a one year period”

Section 1.E., p.3 & 4, line 24 thru line 1 on page 4. Strike the sentence, “When a special order proposes to designate a critical or low-impact management area, the order shall not become effective until after notice and hearing”. This sentence should be stricken because it will or could cause a rush of applications depending on the proposed restrictions.

Section 1.G., p. 4, line 14 through line 16, strike “at convenient times distribute to these persons all such regulations, making such charges as will defray the expense incurred in their physical preparation and mailing.” and insert in lieu 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.” Sending copies automatically to a list of individuals may be an unnecessary effort and expense.