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Op-Ed: New Domestic Well Permits Need Clear Definition to Protect Senior Water Rights and Secure Compact Deliveries

by John D'Antonio, PE, New Mexico State Engineer

(SANTA FE, New Mexico) – It should be no surprise that interest and debate builds on legislation to limit domestic well permits as the opening of the 2005 Legislature draws close. The issue was a hot one in the last two sessions - and unless an 11th-hour compromise can be crafted, it looks to be a contentious one this year as well.

Let me make clear at the outset that it is Richardson Administration policy that the State Engineer must have the power to limit or deny new domestic wells in certain areas, under carefully defined and limited conditions, to protect existing users and interstate compact deliveries. We are actively working to find an acceptable alternative, but we will push hard on the former if no compromise is reached.

New Mexico law currently provides that anybody wishing to drill a well for domestic water use is entitled to a permit. It is the only use of public water in New Mexico for which no water rights are required.

It is not an absolute right. State law already allows municipalities with water systems to limit or prohibit domestic well permits for households capable of being served by the municipal water system. The Office of the State Engineer already has the power to limit the consumption of a domestic well to less than the three acre-feet.

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In the 1950s, the exception to the requirement of obtaining water rights for the use of state water made sense in an era of sparse, widely distributed population, as a government aid to urban growth and development. It still makes sense in areas of New Mexico with sparse, widely distributed population - and such areas will rarely be subject to domestic well limitations. Widely distributed domestic wells have a negligible effect on the water rights of nearby senior users, and consequently there is no public purpose in denying or limiting them.

Today, however, much of New Mexico is in a different population environment. Today we have growing urban areas outside the reach of municipal water systems, with growing concentrations of domestic wells and attendant septic sewer systems. While domestic wells consume less than 1 percent of the total human water consumption in New Mexico, their effects are concentrated in some areas.

The addition of numbers of new wells in such areas potentially reduce water availability for existing wells - but with no authority to deny domestic well permits, the State Engineer has no mechanism for carrying out his constitutional duty to protect existing users. Concentrations of domestic wells can affect the flows in adjacent streams - including those with interstate compact delivery requirements - and the diversions of water users with senior rights. There is a very real question of whether the domestic well statute is unconstitutional because it limits the State Engineer's power to protect senior water rights by allowing new appropriations when there is no data available.

A reassurance for concerned rural and semi-rural New Mexicans: There is no provision in the proposed legislation to limit or rescind the domestic well permits for existing wells. Those already in place will not be affected - except to the degree that future limits on new wells might protect their water supply.

Opponents of putting limits on domestic wells prefer that any landowner can be issued a domestic well permit. They fear economic development restrictions in some designated areas.

Proponents of the limits see them as part of the state's overall strategy for gaining control over this indispensable factor of all life, to help make its use do the most for the most people, while protecting senior water users as required by the state constitution. There are cynical fringe positions on both sides of this issue - but it is a genuine public policy question at the center.

Governor Richardson recently met with a large and diverse group of opponents of domestic well limits. He pointed out the obvious fact that he is not anti-growth for New Mexico. But, as he has instructed me since the beginning of the administration, he views control of water use and enforcement of water rights as central to the state's ability to stretch this resource to support quality growth.

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The Governor told the group he would work with them to find a way to carry out his objectives while addressing their concerns. He instructed me and Bill Hume, his primary water advisor, to work with opponents to seek a compromise. We will try hard to reach one. Rep. Rhonda King (D-Santa Fe), is coordinating the efforts of the opponents group.

There may well be a concept or method for addressing this issue that hasn't yet been considered. But, to be acceptable, any compromise has to incorporate the power to protect threatened aquifers and surface water supplies substantially as would the bill giving the State Engineer the power to deny permits.

"I don't want to fight you guys, but I will if I have to," warned the Governor.

We will work hard to find a compromise so that neither the Governor nor the opponents of the bill will have to do battle on this issue again in the upcoming session.

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The Office of the State Engineer is charged with administering the state's water resources. The State Engineer has power over the supervision, measurement, appropriation, and distribution of all surface and groundwater in New Mexico, including streams and rivers that cross state boundaries. The State Engineer is also Secretary of the Interstate Stream Commission and oversees its staff. The Interstate Stream Commission is charged with separate duties including protecting New Mexico's right to water under eight interstate stream compacts, ensuring the state complies with each of those compacts, as well as water planning.

964 total words