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For more information, contact:

Karin Stangl, Planning and Communication Director
Office of the State Engineer/Interstate Stream
(505) 827-6139

Op-Ed: New Draft Regulations for Domestic Well Permits Protect Senior Water Rights and Compact Deliveries

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

(SANTA FE, New Mexico) – Future smart growth in New Mexico depends upon strengthening and enforcing New Mexico's system of water rights administration to protect existing water rights while making supplies available to new uses. To that end, I have initiated new regulations for domestic wells for household use to protect existing water rights from future impacts that would be caused by new domestic wells throughout the state.

The statutory provisions governing domestic wells have been a contentious issue in the past several legislative sessions. Rather than attempting again to revise the process of issuing domestic well permits through legislation, I am exercising my existing authority to limit and condition domestic well permits, by issuing draft regulations establishing new limits on the amount of water that may be diverted under new domestic well permits. This will be an open, public discussion available through the regulatory process, my approach will encourage focused consideration of a limited number of issues, which has not been possible by pursuing a single comprehensive legislative enactment.

My goal is to introduce a regulatory means for balancing the needs of new domestic ground-water users with the protection of existing water rights, not to prevent New Mexicans from having access to the water necessary for their household. The access to water intended by the domestic well statute, for households that are not within reach of an established water supply system, will not be denied, provided there is water available.

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As the first step in the rulemaking process, I have released draft regulations, which are available for public inspection in all the district offices of the Office of the State Engineer, and on our web site (www.ose.state.nm.us). Public hearings will be held in January and February to receive comments. I urge all interested New Mexicans to participate in this public process. The resulting public input will be used to refine the final draft of the regulations, which will be formally adopted following a hearing in Santa Fe in the spring. It is my hope that the final version will be clearer and fairer to all New Mexicans by the benefit of this public participation.

The draft regulations raise the fees for domestic well permit applications, establish a statewide limit of one acre-foot per year (326,000 gallons per year) for new domestic wells, allow expedited transfers of water rights into domestic wells, and provide for the declaration of domestic well management areas. It is important to note that the draft regulations do not affect the uses of existing domestic wells or water right owners, other than to protect their future access to water, nor do they apply to stock wells or permits for temporary uses.

The one-acre-foot limitation still provides plenty of water for household use, as the amount currently used statewide per household usually falls between one-third (105,200 gallons) and one-quarter (81,500 gallons) of an acre-foot per year. On average, a New Mexico household accounts for 67 gallons per person per day, which is 97,552 gallons per year (excluding use of swamp coolers) for a family of four. Other than that limitation, the new regulations do not impose any immediate limitations on new domestic wells anywhere in the state. The regulations continue to provide that the state will recognize any limitation on domestic wells lawfully imposed by an order of a court or municipal or county ordinance.

In areas of the state where I determine that additional diversions of water would threaten the supply of existing water rights or the state's ability to comply with interstate compacts, the regulations provide that I may declare a domestic well management area. These areas meriting special water resource protection will be identified by hydrological conditions and existing water demands, not by political boundaries or other considerations. Within a domestic well management area, which will require a subsequent formal rulemaking process, with public notice, comment and hearing, to establish, the regulations provide that I develop area-specific guidelines that will set lower limits on use from new domestic wells, and may require the transfer of water rights prior to the approval of a new domestic well permit. This process will also be carried out in full public view, with full public participation, and subject to all the conditions state law imposes on my rulemaking authority.

This administration is committed to smart growth across New Mexico. My administration of the waters of the state will remain consistent with that commitment, while honoring my constitutional obligation to protect existing water rights.

The task will become more difficult as New Mexico grows. The new domestic well regulations I have posted will result in a valuable tool to help me in meeting my commitments to serve smart growth while protecting the rights of New Mexicans already putting water to beneficial use.

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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.

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