

November 24, 2009

Mr. E. Gary Vigil  
Planner, Taos County  
105 Albright Street, Suite C  
Taos, NM 87571

**CERTIFIED MAIL**  
**RETURN RECEIPT**  
**REQUESTED**

**Re: Alice Sanchez Mobile Home Park**

Dear Mr. Vigil:

The Water Use & Conservation/Subdivision Review Bureau of the Office of the State Engineer (OSE) has reviewed the referenced subdivision proposal pursuant to the Taos County Subdivision Regulations and the New Mexico Subdivision Act.

Based on the information provided, this office has determined that the subdivider can furnish water sufficient in quantity to fulfill the maximum annual water requirements of the subdivision, including water for indoor and outdoor domestic uses, and that the subdivider can fulfill the proposals in his disclosure statement concerning water, excepting water quality. Accordingly, a **positive** opinion is issued.

However, the determination that developer has demonstrated water availability should not be construed as support for the developer's request for a variance from Section 4.3.4.A.1 of the Taos County Subdivision Regulations requirement that a shared well serve a maximum of six lots.

A staff memorandum providing the specific comments is attached for your information. If you have any questions, please call Jerry Keller at 505-827-3845.

Sincerely,

John W. Longworth, P.E.  
Water Use & Conservation/Subdivision Review Bureau Chief

Encl.

cc: OSE Water Rights Division, Santa Fe Office

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**MEMORANDUM**  
**New Mexico Office of the State Engineer**  
**Water Use and Conservation Bureau**

**DATE:** November 20, 2009  
**TO:** John Longworth, P.E. Water Use & Conservation Bureau Chief  
**FROM:** Jerry Keller, Senior Water Resource Specialist  
**SUBJECT:** Alice Sanchez Mobile Home Park, Taos County

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**SUMMARY**

On November 3, 2009 the Office of the State Engineer (OSE) received additional/revised information for the subdivision proposal for the Alice Sanchez Mobile Home Park. The revised proposal is a request to subdivide a 3.91-acre parcel into 14 mobile home lots. The proposed water supply is one shared 72-12-1 domestic well. The property is located approximately 5 miles north of Taos on Valencia Road east of NM 522, within projected Section 24, Township 26 North, Range 12 East, NMPM, Antonio Martinez Grant.

This office issued a negative opinion for this subdivision proposal on April 13, 2009 and June 24, 2009. The water supply proposal was not in compliance with the requirements Section 4.3.4.A.1 of the Taos County Subdivision Regulations and Section 47-6-11-F (1) of the New Mexico Subdivision Act.

The revised water supply documents submitted to this office consist of proposed revisions to the Disclosure Statement, Rental Agreement (with water restrictions), and Plat Map.

The revised proposal was reviewed pursuant to the Taos County Subdivision Regulations (Regulations) and the New Mexico Subdivision Act (Act). The water supply proposal is in substantial compliance with the requirements of the Act. Accordingly, a **positive** opinion should be issued. However, the proposal is not in compliance with the requirements of Section 4.3.4.A.1 of the Regulations.

**WATER DEMAND ANALYSIS AND WATER CONSERVATION**

The subdivider has reduced the number of lots from 16 to 14 lots. The Rental Agreement is revised to restrict water use to 5,850 gallons per month based on 65 gallons per capita per day (3 persons per dwelling unit). The estimated annual demand for the development is 3 acre-feet.

Outdoor water use restrictions include “washing of automobiles and lawn irrigation will not be allowed.”

## **WATER AVAILABILITY ASSESSMENT**

The developer proposes to provide water service to the 14 lots by one 72-12-1 domestic well. The developer is requesting a variance from the requirements of Section 4.3.4.A.1 of the Regulations that stipulates the maximum number of lots served by a one well shall not exceed six (6).

OSE regulations, Title 19, Chapter 27, Part 5 of the New Mexico Administrative Code (19.27.5 NMAC) do not specify the maximum number of lots allowed to be served by one domestic well. Under Section 19.27.5.9.D.2 of the regulations the maximum combined diversion from a 72-12-1.1 domestic well serving three or more households shall not exceed 3.0 acre-feet per annum.

For a 72-12-1.1 domestic well serving multiple households, the permit holder shall file documentation with the state engineer listing the number of households being served by the well, the owner's contact information for each household being served, and a description of the legal lot of record for each household being served. A copy of a well share agreement may be filed to support the claim that the 72-12-1.1 domestic well is serving more than one household.

As previously noted, based on the information provided, it appears that the aquifer underlying the development has sufficient capacity to provide the required water supply for a period of 50-years.

## **DOMESTIC WELLS**

Domestic wells are permitted under Section 72-12-1.1 NMSA 1978 which states:

*A person, firm or corporation desiring to use public underground waters described in this section for irrigation of not to exceed one acre of noncommercial trees, lawn or garden or for household or other domestic use shall make application to the state engineer for a well on a form to be prescribed by the state engineer. Upon the filing of each application describing the use applied for, the state engineer shall issue a permit to the applicant to use the underground waters applied for; provided that permits for domestic water use within municipalities shall be conditioned to require the permittee to comply with all applicable municipal ordinances enacted pursuant to Chapter 3, Article 53 NMSA 1978.*

Updated rules and regulations on 72-12-1.1 domestic well permits were adopted on August 15, 2006 and filed under Title 19, Chapter 27, Part 5 of the New Mexico Administrative Code (19.27.5 NMAC). The updated rules and regulations replaced Articles 1-15 through 1-15.5, 1-

15.7, 1-15.8, and 1-16 of the existing Rules and Regulations Governing the Drilling of Wells and the Appropriation and Use of the Ground Water in New Mexico.

On July 10, 2008 a decision issued by Judge J. C. Robinson of the Sixth Judicial District Court in Silver City held that the Domestic Well Statute (72-12-1.1) is unconstitutional, is an impermissible exception to the state doctrine of prior appropriation, and that the State Engineer should be required to administer applications for domestic well permits in the same manner as all other applications to appropriate water.

Statutes enacted by the legislature are given the presumption of constitutionality; therefore, the State Engineer has appealed the decision to the New Mexico Court of Appeals. **The appeal stays enforcement of the decision, therefore, the State Engineer will continue to accept and act on domestic well applications pending a ruling by the appellate court.**