

December 12, 2008

Brad Stebleton  
Senior Planner  
Sandoval County  
P.O. Box 40  
Bernalillo, NM 87004

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

**Re: Lands Of John N. Fidel Subdivision**

Dear Mr. Stebleton:

The Water Use & Conservation/Subdivision Review Bureau of the Office of the State Engineer has reviewed the referenced subdivision proposal pursuant to the Sandoval 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.

A staff memorandum providing 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, Albuquerque Office

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

**DATE:** December 10, 2008

**TO:** John Longworth, P.E. Water Use & Conservation Bureau Chief

**FROM:** Jerry Keller, Senior Water Resource Specialist

**SUBJECT:** Lands Of John N. Fidel Subdivision, Sandoval County

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**SUMMARY**

On November 21, 2008 the Office of the State Engineer (OSE) received additional/revised information for the Preliminary Plat for Lands Of John N. Fidel, a Type-Three Subdivision. The proposal is a request to subdivide two existing 2-acre parcels into 4 residential lots of approximately 1-acre each. The proposed water supply is by one shared 72-12-1 domestic well. The property is located approximately 2 miles north of Placitas within Section 19, Township 13 North, Range 5 East, NMPM.

The proposed subdivision is located within the area subject to the requirements of Appendix "A" of the Sandoval County Subdivision Regulations. Section 10 of Appendix "A" sets out the requirements for Summary Procedure. The geographic area is subject to unique circumstances or conditions that require additional review under the Summary Procedure beyond the provisions for such review under Article 4 of the Sandoval County Subdivision Regulations.

This office issued a negative opinion for this subdivision on October 10, 2007 and on July 31, 2008 for the reason that the water supply proposal was not in compliance with the requirements of Sections 4.2.5 of the Sandoval County Subdivision Regulations, Section 10.A.F of Appendix "A", of the Sandoval County Subdivision Regulations, and Section 47-6-11-F- (1) of the New Mexico Subdivision Act. Please see the previous letters for specific details.

The revised water supply documents submitted to this office consist of a Disclosure Statement, Water Association Agreement (shared well agreement), Declaration of Restrictive Covenants (Covenants), and Water Supply Evaluation Report (Geohydrologic Report).

The proposal was reviewed pursuant to the Sandoval County Subdivision Regulations and Appendix "A" of the Sandoval County Subdivision Regulations (Regulations), and the New Mexico Subdivision Act (Act). Based on the information provided, the water supply proposal is in substantial compliance with the requirements of the Regulations and the Act. Accordingly, a **positive** opinion should be issued.

**WATER DEMAND ANALYSIS AND WATER CONSERVATION**

The Disclosure Statement for a subdivision that qualifies for Summary Procedure under Section 4.2.5 of the Regulations only requires the subdivider to state the means of water delivery.

Section 4.A of Appendix “A” requires that the subdivider prove water exists within the boundaries of the subdivision in sufficient quantity to provide 85 gpm per capita per day per dwelling unit plus water needed for landscaping up to a maximum of 0.5 acre-feet per household per year.

As previously noted, the Water Supply Evaluation Report specifies that the subdivider will impose water use restrictions in keeping with the water demand analysis for the Wild Horse Mesa Subdivision directly north of this development. A copy of the Wild Horse Mesa water demand analysis is included in the Report. The annual water demand is estimated as 0.30 acre-feet, assuming 2.7 persons per dwelling at 74.6 gallons per person, 400 square feet of turf grass, 500 square feet of drip irrigated trees or shrubs and 150 square feet of drip irrigated garden area.

The revised proposal includes a “Declaration of Well Share”. Under paragraph 14, water use is restricted to 0.30 acre-feet per year.

The specific water use restrictions contained in the Covenants differ from the Wild Horse Mesa analysis above. The sprinkler-irrigated lawns are restricted to 700 square feet of non-native grasses. Kentucky Bluegrass is prohibited. However, the overall annual water use restriction of 0.30 acre-feet remains the same. The Covenants include a penalty clause that will be imposed on individual households that exceed the combined indoor and outdoor domestic use restriction of 0.30 acre-feet per annum.

#### **WATER AVAILABILITY ASSESSMENT**

Item No. 7 of the revised Disclosure Statement specifies that the source of water shall be a shared domestic well (RG-86806).

The subdivider submitted a revised Geohydrologic Report addressing previous OSE comments. The Report contains the information required by Sections 8.6.4 and 8.6.7 and Section 10 of Appendix “A” of the Regulations.

Based on the revised information provided, the subdivider has demonstrated water in sufficient quantity is available to fulfill the maximum annual water requirements of the subdivision, including water for indoor and outdoor domestic uses for a period of 100-years and the effects of pumping the well within the proposed subdivision on nearby wells, Las Huertas Creek and Frisco Spring will be negligible.

#### **PROPOSED 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.**