
NEW MEXICO GROUND WATER ASSOCIATION

WHY WELL OWNERS SHOULD BE CONCERNED ABOUT THE FUTURE OF DOMESTIC & LIVESTOCK WELLS IN NEW MEXICO

THE SHORT VERSION: Currently in New Mexico there are three significant issues threatening well rights for domestic, stock and irrigation uses.

First, the Court of Appeals is deciding whether New Mexico's domestic well statute is constitutional. The outcome may apply equally to stock wells.

Second, the Lower Rio Grande Adjudication is beginning to litigate domestic well issues such as priority, transferability and beneficial use. This litigation might also involve the impact of domestic wells on surface water rights, especially since the court is considering creating a hydrology committee to consider such impacts.

Third, an EBID claim in the Lower Rio Grande Adjudication threatens its members' rights to use irrigation wells.

We Water New Mexico!

THE ISSUES IN MORE DETAIL

THE BOUNDS CASE

On July 10, 2008, District Judge J.C. Robinson in Grant County ruled the state's domestic well statute unconstitutional. His decision has been appealed to the New Mexico Court of Appeals. Farmer Horace Bounds, Jr., and his wife, Jo, claim that 45 domestic wells drilled near their farm in recent years are drying up the Upper Mimbres River and impairing their senior 1869 water rights. The New Mexico Farm & Livestock Bureau intervened in the case in support of the Bounds.

Although the Bounds *did not prove they suffered any actual impairment or damage* from the surrounding domestic wells, Judge Robinson still ruled that the automatic approval of domestic well applications violates the state doctrine of prior appropriation and violates the due process rights of senior water rights holders. He ruled that domestic well permits, to be constitutional, must be issued in the same type of proceeding required of other water appropriations—including public notice, a staff decision about potential impairment of existing water rights, and a full hearing if there is a protest. Because the State Engineer issues approximately 7,000 - 8,000 domestic well permits a year, the court's decision likely will overwhelm State Engineer staff. It also will greatly increase the cost of, and the amount of time required to obtain a well permit.

For now, Judge Robinson's ruling applies only in Grant, Luna and Hidalgo Counties, but it will not be enforced while the case is on appeal. Although the State Engineer himself has, for years, taken the position that the domestic well statute is unconstitutional, he has appealed Judge Robinson's decision to "ensure that every legal basis in support of the presumption [that the statute is constitutional] is fully deliberated."

The original domestic well statute, N.M. Stat. Ann. § 72-12-1, was enacted in 1953 to exempt domestic and livestock well applicants from the notice and hearing requirements required for new appropriations of groundwater. The Legislature divided the statute into four sections in 2003, including sections for domestic wells and stock watering wells. N.M. Stat. Ann. §§ 72-12-1.1 to -1.2. Because the domestic well statute and the statute concerning stock wells contain the same language, Judge Robinson's ruling likely applies equally to stock wells. The domestic well statute now requires the State Engineer to issue a well permit to anyone applying to use groundwater for limited noncommercial irrigation of one acre or less, or for household or other domestic uses. Automatic issuance of domestic well permits is a practice common throughout the Western states, and if upheld, Judge Robinson's ruling could set a dangerous precedent for water law in all of these states.

The New Mexico Ground Water Association is participating in the appeal as an amicus curiae (friend of the court) in support of the constitutionality of the domestic well statute. After the Court of Appeals makes its ruling, its decision could be appealed to the New Mexico Supreme Court.

LOWER RIO GRANDE ADJUDICATION

Judge Valentine has entered an order establishing the "priority, transferability and beneficial use of domestic wells" as Proceeding No. 103. Any water right "claimant" desiring to participate in the litigation of this issue must file a notice of intent to participate by February 5, 2010.

Judge Valentine has indicated that impairment of other water rights (i.e., whether domestic wells impair surface rights), although not really a part of the domestic well issue, "may be considered

in context if needed to adequately address the designated stream system issues.” Judge Valentine also is considering establishing a hydrology committee made up of expert hydrologists to advise him on issues such as the impact of domestic wells on surface water rights. It is therefore imperative that domestic well owners in the Lower Rio Grande Adjudication actively participate in Proceeding No. 103 in order to protect their water rights.

The New Mexico Ground Water Association will be seeking approval from the court to participate as an intervenor on behalf of domestic well owners and to appoint a hydrologist to the hydrology committee.

ELEPHANT BUTTE IRRIGATION DISTRICT

In the Lower Rio Grande Adjudication, EBID has filed a claim to underground waters on 90,640 acres of its members’ lands. EBID and the U.S. government are claiming that up to two acre feet of groundwater per acre is federal project water. Such a right could significantly impair the right of EBID members to use groundwater for irrigation in years when they do not receive sufficient surface water from EBID. Other concerns about the EBID/U.S. claim include the applicability and impact of federal environmental laws, including the Endangered Species Act, if the groundwater of EBID members is declared to be part of the EBID project. For instance, the groundwater might become subject to use for endangered species.

WHY JOIN THE NEW MEXICO GROUND WATER ASSOCIATION

The NMGWA is a 501(C)-(6) Non-Profit organization that works to assist, promote, encourage, support and protect the interest and welfare of the ground water industry and its users within the state of New Mexico. While our focus primarily lies with issues related to well driller and pump installer licensing and installation regulations, the NMGWA has a vested interest in a property owners’ right to drill and operate a domestic well.

By increasing our Well Owner Membership we create a louder voice that legislators, government agencies and the court system will be more apt to listen to. With the ever increasing issues coming down the pipeline that could have devastating effects on well ownership, it is important that we all stand together to maintain the right to drill and use domestic and stock wells.

BENEFITS OF MEMBERSHIP

The NMGWA Well Owner Newsletter will be sent on a biannual basis to keep well owners up to date on issues that could affect well ownership. In addition, the NMGWA employs a full time lobbyist that keeps a close watch on all activities that could impact members of the NMGWA. Furthermore, we also have an attorney that keeps an eye on activities in the court system and alerts us when an issue has come up.

As an added benefit the NMGWA will enroll you in the Water Systems Council Well Owner Network. As a Network member, you will enjoy online access to free information and tools to help you better understand your drinking water source.

FOR MORE INFORMATION

Contact the NMGWA at 505-867-9500 (ask for Robin), e-mail info@nmgwa.org or check the web site at www.nmgwa.org.

NEW MEXICO GROUND WATER ASSOCIATION

P.O. Box 1556 Bernalillo, NM 87004

Phone: 505-867-9500 Fax: 505-867-0733

www.nmgwa.org

WELL OWNER MEMBERSHIP APPLICATION

(Membership Runs January 1 to December 31)

CONTACT INFORMATION:

NAME: _____

ADDRESS: _____

CITY: _____ ST: _____ ZIP: _____

PHONE: _____ FAX: _____

EMAIL ADDRESS: _____

WELL INFORMATION:

STATE ENGINEER PERMIT NUMBER: _____

LOCAL CITY OR COUNTY WELL PERMIT NUMBER (IF REQUIRED) _____

PROPERTY ADDRESS OF WELL LOCATION: _____

PERMITTED TO BE USED FOR: _____ DOMESTIC _____ LIVESTOCK _____ IRRIGATION

WELL OWNER MEMBERSHIP ANNUAL DUES: \$10.00

Well Owner Membership does not hold a voting right.

Receives "Member" rate at association sponsored events.

Will receive a biannual NMGWA Well Owner Newsletter & Auto Enrollment in the WSC Wellowner Network.

RETURN WITH PAYMENT TO ABOVE ADDRESS OR FAX CREDIT CARD PAYMENTS TO: 505-867-0733

____ VISA _____ MASTERCARD _____ DISCOVER

CARD HOLDER NAME: _____ 3-DIGIT CODE ON BACK: _____

CREDIT CARD # _____ EXP _____

CARD BILLING ADDRESS: _____

CITY: _____ ST: _____ ZIP: _____