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HOUSE BILL 833

45TH LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2001

INTRODUCED BY

Joe M Stell

AN ACT

RELATING TO WATER; PROVIDING FOR PUBLIC NOTIFICATION OF A
WATER APPROPRIATION IN THE COUNTY OF THAT APPROPRIATION.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF NEW MEXICO:

Section 1. Section 72-5-4 NMSA 1978 (being Laws 1907,
Chapter 49, Section 26, as amended) is amended to read:

"72-5-4. [~~151-132. Id.~~] NOTICE--PUBLICATION.--Upon the
filing of an application [~~which~~] that complies with the
provisions of this article and the rules [~~and regulations~~]
established thereunder, accompanied by the proper fees, the
state engineer shall instruct the applicant to publish notice
thereof, in a form prescribed by [~~him~~] the state engineer, in
some newspaper that is published and distributed in the county
of the diversion and in the county where the water will be or
has been put to beneficial use, or if there is no such

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1 newspaper, then in some newspaper of general circulation in
2 the stream system, once a week for three consecutive weeks.
3 [~~Such~~] The notice shall give all essential facts as to the
4 proposed appropriation; among them, the places of
5 appropriation and of use, amount of water, the purpose for
6 which it is to be used, name and address of applicant and the
7 time when the application shall be taken up by the state
8 engineer for consideration. Proof of publication as required
9 shall be filed with the state engineer within sixty days of
10 his instructions to make publication. In case of failure to
11 file satisfactory proof of publication in accordance with the
12 rules [~~and regulations applicable thereto~~] within the time
13 required, the application shall [~~thereafter~~] be treated as an
14 original application filed on the date of receipt of proofs of
15 publication in proper form."

16 Section 2. Section 72-12-3 NMSA 1978 (being Laws 1931,
17 Chapter 131, Section 3, as amended) is amended to read:

18 "72-12-3. APPLICATION FOR USE OF UNDERGROUND WATER--
19 PUBLICATION OF NOTICE--PERMIT.--

20 A. Any person, firm or corporation or any other
21 entity desiring to appropriate for beneficial use any of the
22 waters described in Chapter 72, Article 12 NMSA 1978 shall
23 apply to the state engineer in a form prescribed by him. In
24 the application, the applicant shall designate:

25 (1) the particular underground stream,

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1 channel, artesian basin, reservoir or lake from which water
2 will be appropriated;

3 (2) the beneficial use to which the water
4 will be applied;

5 (3) the location of the proposed well;

6 (4) the name of the owner of the land on
7 which the well will be located;

8 (5) the amount of water applied for;

9 (6) the place of the use for which the water
10 is desired; and

11 (7) if the use is for irrigation, the
12 description of the land to be irrigated and the name of the
13 owner of the land.

14 B. If the well will be located on privately owned
15 land and the applicant is not the owner of the land or the
16 owner or the lessee of the mineral or oil and gas rights under
17 the land, the application shall be accompanied by an
18 acknowledged statement executed by the owner of the land that
19 the applicant is granted access across the owner's land to the
20 drilling site and has permission to occupy such portion of the
21 owner's land as is necessary to drill and operate the well.

22 This subsection does not apply to the state or any of its
23 political subdivisions. If the application is approved, the
24 applicant shall have the permit and statement, executed by the
25 owner of the land, recorded in the office of the county clerk

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1 of the county in which the land is located.

2 C. No application shall be accepted by the state
3 engineer unless it is accompanied by all the information
4 required by Subsections A and B of this section.

5 D. Upon the filing of an application, the state
6 engineer shall cause to be published in a newspaper that is
7 published and distributed in the county where the well will be
8 located and in the county where the water will be or has been
9 put to beneficial use, or if there is no such newspaper, then
10 in some newspaper of general circulation in the county in
11 which the well will be located, at least once a week for three
12 consecutive weeks, a notice that the application has been
13 filed and that objections to the granting of the application
14 may be filed within ten days after the last publication of the
15 notice. Any person, firm or corporation or other entity
16 objecting that the granting of the application will impair the
17 objector's water right shall have standing to file objections
18 or protests. Any person, firm or corporation or other entity
19 objecting that the granting of the application will be
20 contrary to the conservation of water within the state or
21 detrimental to the public welfare of the state and showing
22 that the objector will be substantially and specifically
23 affected by the granting of the application shall have
24 standing to file objections or protests; provided, however,
25 that the state of New Mexico or any of its branches, agencies,

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1 departments, boards, instrumentalities or institutions, and
2 all political subdivisions of the state and their agencies,
3 instrumentalities and institutions shall have standing to file
4 objections or protests.

5 E. After the expiration of the time for filing
6 objections, if no objections have been filed, the state
7 engineer shall, if he finds that there are in the underground
8 stream, channel, artesian basin, reservoir or lake
9 unappropriated waters or that the proposed appropriation would
10 not impair existing water rights from the source, is not
11 contrary to conservation of water within the state and is not
12 detrimental to the public welfare of the state, grant the
13 application and issue a permit to the applicant to appropriate
14 all or a part of the waters applied for, subject to the rights
15 of all prior appropriators from the source.

16 F. If objections or protests have been filed
17 within the time prescribed in the notice or if the state
18 engineer is of the opinion that the permit should not be
19 issued, the state engineer may deny the application without a
20 hearing or, before he acts on the application, may order that
21 a hearing be held. He shall notify the applicant of his
22 action by certified mail sent to the address shown in the
23 application. "