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SENATE BILL 118

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

INTRODUCED BY

Carlos R. Cisneros

AN ACT

RELATING TO WATER; PROVIDING FOR ADDITIONAL NOTICE WHEN  
APPLYING FOR SURFACE AND UNDERGROUND WATER RIGHTS.

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.--

A. Upon the filing of an application which  
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~~] the newspaper [~~of general~~] with the  
largest circulation in the [~~stream system~~] county within which  
the proposed point of diversion would be located, once a week

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1 for three consecutive weeks. [~~Such~~] The notice shall give all  
2 essential facts as to the proposed appropriation; among them,  
3 the places of appropriation and of use, amount of water, the  
4 purpose for which it is to be used, name and address of  
5 applicant and the time when the application [~~shall be taken~~  
6 up] will be considered by the state engineer [~~for~~  
7 consideration]. The applicant shall, within three working  
8 days after the first publication, mail a copy of the notice by  
9 certified mail to all water managing political subdivisions in  
10 the county within which the proposed point of diversion would  
11 be located, if any, whose point of diversion is within the  
12 same basin as the proposed point of diversion. The applicant  
13 shall also mail notice to an association if any of the water  
14 managing political subdivisions is a community ditch or  
15 community acequia that is a member of the association of  
16 community ditches or community acequias eligible for funds  
17 from the acequia and community ditch fund pursuant to Sections  
18 73-2A-1 through 73-2A-3 NMSA 1978.

19 B. The applicant shall be presumed to have  
20 complied with this section if the applicant mails the notices  
21 required by this section to the chairmen of the entities  
22 entitled to notice that are in the files of the office of the  
23 state engineer. The applicant shall be responsible to notify  
24 only entities that have name and address information in the  
25 records of the office of the state engineer.

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1           C. Proof of publication and mailing as required  
2 shall be filed with the state engineer within sixty days of  
3 his instructions to make publication. In case of failure to  
4 file satisfactory proof of publication and mailing in  
5 accordance with the rules [~~and regulations applicable~~  
6 ~~thereto~~], within the time required, the application shall  
7 [~~thereafter~~] be treated as an original application filed on  
8 the date of receipt of proofs of publication and mailing  
9 in proper form.

10           D. As used in Chapter 72, Article 5 NMSA 1978,  
11 "water managing political subdivision" means an incorporated  
12 city, town or village, whether incorporated under general act,  
13 special act or special charter, an incorporated county or H  
14 class county, a community ditch or acequia, a soil and water  
15 conservation district, an irrigation district, a conservancy  
16 district or an artesian conservancy district."

17           Section 2. Section 72-5-23 NMSA 1978 (being Laws 1907,  
18 Chapter 49, Section 44, as amended) is amended to read:

19           "72-5-23. WATER APPURTENANT TO LAND--CHANGE OF PLACE OF  
20 USE.--All water used in this state for irrigation purposes,  
21 except as otherwise provided in this article, shall be  
22 considered appurtenant to the land upon which it is used, and  
23 the right to use it upon the land shall never be severed from  
24 the land without the consent of the owner of the land, but, by  
25 and with the consent of the owner of the land, all or any part

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1 of the right may be severed from the land, simultaneously  
2 transferred and become appurtenant to other land, or may be  
3 transferred for other purposes, without losing priority of  
4 right theretofore established, if such changes can be made  
5 without detriment to existing water rights and are not  
6 contrary to conservation of water within the state and not  
7 detrimental to the public welfare of the state, on the  
8 approval of an application of the owner by the state engineer.  
9 Publication of notice of application and mailing, opportunity  
10 for the filing of objections or protests and a hearing on the  
11 application shall be provided as required by Sections 72-5-4  
12 and 72-5-5 NMSA 1978. Water managing political subdivisions  
13 entitled to notice by certified mail include all water  
14 managing political subdivisions in the county within which the  
15 proposed former point of diversion is located, if any, whose  
16 point of diversion is within the same basin as the proposed  
17 former point of diversion. The applicant shall also mail  
18 notice to an association if any of the water managing  
19 political subdivisions is a community ditch or community  
20 acequia that is a member of the association of community  
21 ditches or community acequias eligible for funds from the  
22 acequia and community ditch fund pursuant to Sections 73-2A-1  
23 through 73-2A-3 NMSA 1978. "

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

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1 "72-12-3. APPLICATION FOR USE OF UNDERGROUND WATER--  
2 PUBLICATION OF NOTICE--PERMIT.--

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

8 (1) the particular underground stream,  
9 channel, artesian basin, reservoir or lake from which water  
10 will be appropriated;

11 (2) the beneficial use to which the water  
12 will be applied;

13 (3) the location of the proposed well;

14 (4) the name of the owner of the land on  
15 which the well will be located;

16 (5) the amount of water applied for;

17 (6) the place of the use for which the water  
18 is desired; and

19 (7) if the use is for irrigation, the  
20 description of the land to be irrigated and the name of the  
21 owner of the land.

22 B. If the well will be located on privately owned  
23 land and the applicant is not the owner of the land or the  
24 owner or the lessee of the mineral or oil and gas rights under  
25 the land, the application shall be accompanied by an

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1 acknowledged statement executed by the owner of the land that  
2 the applicant is granted access across the owner's land to the  
3 drilling site and has permission to occupy such portion of the  
4 owner's land as is necessary to drill and operate the well.

5 This subsection does not apply to the state or any of its  
6 political subdivisions. If the application is approved, the  
7 applicant shall have the permit and statement, executed by the  
8 owner of the land, recorded in the office of the county clerk  
9 of the county in which the land is located.

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

13 D. Upon the filing of an application, the state  
14 engineer shall cause to be published in [a] the newspaper [of  
15 general] with the largest circulation in the county in which  
16 the well will be located, at least once a week for three  
17 consecutive weeks, a notice that the application has been  
18 filed and that objections to the granting of the application  
19 may be filed within ten days after the last publication of the  
20 notice. The applicant shall, within three working days after  
21 the first publication, mail a copy of the notice by certified  
22 mail to all water managing political subdivisions in the  
23 county within which the proposed point of diversion would be  
24 located, if any, whose point of diversion is within the same  
25 basin or shares the same underground source as the proposed

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1 point of diversion. The applicant shall also mail notice to  
2 an association if any of the water managing political  
3 subdivisions is a community ditch or community acequia that is  
4 a member of an association of community ditches or community  
5 acequias eligible for funds from the acequia and community  
6 ditch fund pursuant to Sections 73-2A-1 through 73-2A-3 NMSA  
7 1978.

8 E. The applicant shall be presumed to have  
9 complied with this section if the applicant mails the notices  
10 required by this section to the chairmen of the entities  
11 entitled to notice in the files of the office of the state  
12 engineer. The applicant shall be responsible to notify only  
13 entities that have name and address information in the records  
14 of the office of the state engineer. Any person, firm or  
15 corporation or other entity objecting that the granting of the  
16 application will impair the objector's water right shall have  
17 standing to file objections or protests. Any person, firm or  
18 corporation or other entity objecting that the granting of the  
19 application will be contrary to the conservation of water  
20 within the state or detrimental to the public welfare of the  
21 state and showing that the objector will be substantially and  
22 specifically affected by the granting of the application shall  
23 have standing to file objections or protests; provided,  
24 however, that the state of New Mexico or any of its branches,  
25 agencies, departments, boards, instrumentalities or

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

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

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

23 H. For purposes of this section, "water managing  
24 political subdivision" means an incorporated city, town or  
25 village, whether incorporated under general act, special act



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1 or special charter, an incorporated county or H class county,  
2 a community ditch or acequia, a soil and water conservation  
3 district, an irrigation district, a conservancy district or an  
4 artesian conservancy district."

5 Section 4. Section 72-12-7 NMSA 1978 (being Laws 1931,  
6 Chapter 131, Section 7, as amended) is amended to read:

7 "72-12-7. CHANGE OF LOCATION OF WELL--CHANGE IN USE ON  
8 APPLICATION--TEMPORARY CHANGE. --

9 A. The owner of a water right may change the  
10 location of his well or change the use of the water, but only  
11 upon application to the state engineer and upon showing that  
12 the change will not impair existing rights and will not be  
13 contrary to the conservation of water within the state and  
14 will not be detrimental to the public welfare of the state.  
15 The application may be granted only after such advertisement  
16 and mailing and hearing as are prescribed in the case of  
17 original applications. Water managing political subdivisions  
18 entitled to notice by certified mail include all water  
19 managing political subdivisions in the county within which the  
20 proposed former point of diversion is located, if any, whose  
21 point of diversion is within the same basin or shares the same  
22 underground source as the proposed former point of diversion.  
23 The applicant shall also mail notice to an association if any  
24 of the water managing political subdivisions is a community  
25 ditch or community acequia that is a member of the association

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1 of community ditches or community acequias eligible for funds  
2 from the acequia and community ditch fund pursuant to Sections  
3 73-2A-1 through 73-2A-3 NMSA 1978.

4 B. When the owner of a water right applies for a  
5 temporary change of not to exceed one year for not more than  
6 three acre-feet of water to a different location or to a  
7 different use, or both, the state engineer shall make an  
8 investigation and, if the change does not permanently impair  
9 any vested rights of others, he shall enter an order  
10 authorizing the change. If he finds that the change sought  
11 might impair vested rights, he shall order advertisement and  
12 hearing as in other cases.

13 C. If objections or protests have been filed  
14 within the time prescribed in the notice or if the state  
15 engineer is of the opinion that the permit should not be  
16 issued, the state engineer may deny the application or, before  
17 he acts on the application, may order that a hearing be held.  
18 He shall notify the applicant of his action by certified mail  
19 sent to the address shown in the application.

20 D. For purposes of this section, "water managing  
21 political subdivision" means an incorporated city, town or  
22 village, whether incorporated under general act, special act  
23 or special charter, an incorporated county or H class county,  
24 a community ditch or acequia, a soil and water conservation  
25 district, an irrigation district, a conservancy district or an

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