

SENATE PUBLIC AFFAIRS COMMITTEE SUBSTITUTE FOR  
SENATE BILL 478

45TH LEGISLATURE - STATE OF NEW MEXICO - SECOND SESSION, 2002

AN ACT

RELATING TO PUBLIC PEACE, HEALTH, SAFETY AND WELFARE; AMENDING  
SECTION 72-12-1 NMSA 1978 (BEING LAWS 1931, CHAPTER 131,  
SECTION 1, AS AMENDED) TO CHANGE PROVISIONS RELATING TO  
APPROPRIATION OF UNDERGROUND WATERS.

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

Section 1. Section 72-12-1 NMSA 1978 (being Laws 1931,  
Chapter 131, Section 1, as amended) is amended to read:

"72-12-1. UNDERGROUND WATERS DECLARED TO BE PUBLIC--  
APPLICATIONS FOR USE TO STATE ENGINEER--HEARINGS.--The water  
of underground streams, channels, artesian basins, reservoirs  
or lakes, having reasonably ascertainable boundaries, are  
declared to be public waters and to belong to the public and  
to be subject to appropriation for beneficial use. By reason  
of the varying amounts and time such water is used and the

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underscored material = new  
[bracketed material] = delete

1 relatively small amounts of water consumed in the watering of  
2 livestock; ~~[in irrigation of not to exceed one acre of~~  
3 ~~noncommercial trees, lawn or garden]~~ in household or other  
4 domestic use that may include a residential garden not to  
5 exceed one acre in size; and in prospecting, mining or  
6 construction of public works, highways and roads or drilling  
7 operations designed to discover or develop the natural  
8 resources of the state, application for any such use shall be  
9 governed by the following provisions:

10 A. a person, firm or corporation desiring to use  
11 public waters described in this section for watering livestock  
12 ~~[for irrigation of not to exceed one acre of noncommercial~~  
13 ~~trees, lawn or garden]~~ or for household or other domestic use  
14 that may include a residential garden not to exceed one acre  
15 in size shall make application to the state engineer on a form  
16 to be prescribed by him and upon the filing of each  
17 application describing the use applied for, the state engineer  
18 shall issue a permit to the applicant to so use the waters  
19 applied for ~~[provided that]~~, except as otherwise provided in  
20 this section;

21 B. permits for domestic water use within  
22 municipalities shall be conditioned to require the permittee  
23 to comply with all applicable municipal ordinances enacted  
24 pursuant to Chapter 3, Article 53 NMSA 1978; ~~[and provided~~  
25 ~~that]~~

1           C. the state engineer may deny an application or  
2 condition a new permit to limit the amount or use of water for  
3 household or other domestic use in those areas of the state  
4 defined as a critical management area as follows:

5                   (1) the state engineer may declare a critical  
6 management area having reasonable ascertainable boundaries  
7 when declaration of a critical management area is necessary to  
8 prevent impairment of existing water rights or where new uses  
9 of water are likely to affect the state's obligations pursuant  
10 to an interstate compact;

11                   (2) declaration of a critical management area  
12 shall be made in the same manner as special orders made  
13 pursuant to Section 72-2-8 NMSA 1978; and

14                   (3) in addition to transfers of water  
15 authorized pursuant to Chapter 72 NMSA 1978, in critical  
16 management areas, a person may transfer an existing water  
17 right to household or other domestic use without complying  
18 with the public notice provisions in Section 72-5-4 NMSA 1978  
19 if:

20                           (a) the amount of water right  
21 transferred is less than three-acre feet, complies with  
22 applicable municipal and county ordinances and serves no more  
23 than four households; and

24                           (b) the state engineer approves the  
25 transfer pursuant to the criteria set forth in Sections 72-5-6

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1 and 72-12-3 NMSA 1978 and the state engineer finds that there  
2 will be no new net depletions of water;

3 D. as part of an application for livestock  
4 watering use on state or federal land, the applicant shall  
5 submit proof that he:

6 (1) is legally entitled to place his  
7 livestock on the state or federal land where the water is to  
8 be used; and

9 (2) has been granted access to the drilling  
10 site and has permission to occupy the portion of the state or  
11 federal land as is necessary to drill and operate the well;  
12 and

13 [~~B.~~] E. whenever a person, firm or corporation or  
14 the state desires to use not to exceed three acre-feet of  
15 public water described in this section for a definite period  
16 of not to exceed one year in prospecting, mining or  
17 construction of public works, highways and roads or drilling  
18 operations designed to discover or develop the natural mineral  
19 resources of the state, only the application referred to in  
20 Section 72-12-3 NMSA 1978 shall be required. Separate  
21 application shall be made for each proposed use, whether in  
22 the same or in different basins. Upon the filing of an  
23 application, the state engineer shall make an examination of  
24 the facts and, if he finds that the proposed use will not  
25 permanently impair any existing rights of others, he shall

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1 grant the application. If he finds that the proposed use  
2 sought will permanently impair such rights, then there shall  
3 be advertisement and hearing as provided in the case of  
4 applications made under Section 72-12-3 NMSA 1978."

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