

HOUSE AGRICULTURE AND WATER RESOURCES COMMITTEE SUBSTITUTE FOR
HOUSE BILL 374

54TH LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2019

AN ACT

RELATING TO WATER; PROVIDING ADDITIONAL REQUIREMENTS FOR
APPROPRIATION OF UNDERGROUND WATER TO SUPPLY WATER TO A
MUNICIPALITY OR OTHER ENTITY WITH A FORTY-YEAR WATER USE
PLANNING PERIOD; ESTABLISHING PRIOR DECISIONS AS PRECEDENT.

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

SECTION 1. A new section of Chapter 72, Article 12 NMSA
1978 is enacted to read:

"[NEW MATERIAL] APPLICATION--ADDITIONAL REQUIREMENTS--
APPROPRIATION TO SUPPLY WATER TO AN ENTITY WITH A FORTY-YEAR
WATER USE PLANNING PERIOD.--

A. In addition to the requirements of Subsection A
of Section 72-12-3 NMSA 1978, a person desiring to appropriate
for beneficial use any waters described in Chapter 72, Article
12 NMSA 1978 in order to supply water to an entity described in

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1 Section 72-1-9 NMSA 1978 shall include with its application:

2 (1) a specific plan to divert, control and
3 deliver a specific quantity of water for specific beneficial
4 uses by the entity described in Section 72-1-9 NMSA 1978; and

5 (2) evidence of a firm contractual commitment
6 for the purchase and delivery of the water, in specific amounts
7 for specific beneficial uses, or evidence that the applicant's
8 proposed appropriation has been specifically included in a
9 water development plan prepared by an entity described in
10 Section 72-1-9 NMSA 1978 that has been approved by the state
11 engineer.

12 B. The requirements of this section shall not apply
13 to an entity described in Section 72-1-9 NMSA 1978 that applies
14 for a permit to appropriate water for its own uses.

15 C. An application shall not be accepted by the
16 state engineer for filing unless it includes all the
17 information required by Subsection A of this section.

18 D. Prior to approval by the state engineer of an
19 application to appropriate water under this section, the
20 applicant shall show in a hearing before the state engineer
21 that:

22 (1) the applicant's plan to divert, control
23 and deliver a specific quantity of water for specific
24 beneficial uses by an entity described in Section 72-1-9 NMSA
25 1978 is consistent with that entity's reasonably projected

1 water needs within forty years, based upon substantiated
 2 projections of population growth or other factors; and

3 (2) the applicant can and will complete the
 4 appropriation with diligence and place the water to beneficial
 5 use within a reasonable time.

6 E. The state engineer shall deny an application to
 7 appropriate water under this section if the state engineer
 8 finds that the applicant has failed to meet the requirements of
 9 Subsection D of this section.

10 F. Any amount of water approved for appropriation
 11 under this section for use by an entity described in Section
 12 72-1-9 NMSA 1978 shall be included in and subject to the limits
 13 of that entity's allowable forty-year water use planning
 14 period.

15 G. The provisions of this section shall apply to
 16 applications filed with the state engineer after the effective
 17 date of this section."

18 **SECTION 2.** Section 72-12-3 NMSA 1978 (being Laws 1931,
 19 Chapter 131, Section 3, as amended) is amended to read:

20 "72-12-3. APPLICATION FOR USE OF UNDERGROUND WATER--
 21 PUBLICATION OF NOTICE--PERMIT.--

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

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1 state engineer. In the application, the applicant shall
2 designate:

3 (1) the particular underground stream,
4 channel, artesian basin, reservoir or lake from which water
5 will be appropriated;

6 (2) the beneficial use to which the water will
7 be applied;

8 (3) the location of the proposed well;

9 (4) the name of the owner of the land on which
10 the well will be located;

11 (5) the amount of water applied for;

12 (6) the place of the use for which the water
13 is desired; and

14 (7) if the use is for irrigation, the
15 description of the land to be irrigated and the name of the
16 owner of the land.

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

25 This subsection does not apply to the state or any of its

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1 political subdivisions. If the application is approved, the
 2 applicant shall have the permit and statement, executed by the
 3 owner of the land, recorded in the office of the county clerk
 4 of the county in which the land is located.

5 C. In addition to the requirements of Subsection A
 6 of this section, a person desiring to appropriate for
 7 beneficial use any waters described in Chapter 72, Article 12
 8 NMSA 1978 in order to supply water to an entity described in
 9 Section 72-1-9 NMSA 1978 shall additionally comply with the
 10 provisions of Section 1 of this 2019 act.

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

14 [~~D.~~] E. Upon the filing of an application, the
 15 state engineer shall cause to be published in a newspaper that
 16 is published and distributed in the county where the well will
 17 be located and in each county where the water will be or has
 18 been put to beneficial use or where other water rights may be
 19 affected, or if there is no such newspaper, then in some
 20 newspaper of general circulation in the county in which the
 21 well will be located, at least once a week for three
 22 consecutive weeks, a notice that the application has been filed
 23 and that objections to the granting of the application may be
 24 filed within ten days after the last publication of the notice.
 25 Any person, firm or corporation or other entity objecting that

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1 the granting of the application will impair the objector's
2 water right shall have standing to file objections or protests.
3 Any person, firm or corporation or other entity objecting that
4 the granting of the application will be contrary to the
5 conservation of water within the state or detrimental to the
6 public welfare of the state and showing that the objector will
7 be substantially and specifically affected by the granting of
8 the application shall have standing to file objections or
9 protests; provided, however, that the state [~~of New Mexico~~] or
10 any of its branches, agencies, departments, boards,
11 instrumentalities or institutions and all political
12 subdivisions of the state and their agencies, instrumentalities
13 and institutions shall have standing to file objections or
14 protests.

15 ~~[E-]~~ F. After the expiration of the time for filing
16 objections, if no objections have been filed, the state
17 engineer shall, if [~~he~~] the state engineer finds that there are
18 in the underground stream, channel, artesian basin, reservoir
19 or lake unappropriated waters or that the proposed
20 appropriation would not impair existing water rights from the
21 source, is not contrary to conservation of water within the
22 state and is not detrimental to the public welfare of the
23 state, grant the application and issue a permit to the
24 applicant to appropriate all or a part of the waters applied
25 for, subject to the rights of all prior appropriators from the

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1 source.

2 [F-] G. If objections or protests have been filed
3 within the time prescribed in the notice or if the state
4 engineer is of the opinion that the permit should not be
5 issued, the state engineer may deny the application without a
6 hearing or, before [he] the state engineer acts on the
7 application, may order that a hearing be held. [He] The state
8 engineer shall notify the applicant of [his] the action by
9 certified mail sent to the address shown in the application."

10 SECTION 3. A new section of Chapter 72, Article 12 NMSA
11 1978 is enacted to read:

12 "[NEW MATERIAL] STATE ENGINEER DECISIONS--APPLICATION OF
13 EXISTING LAW.--In the evaluation of an application to
14 appropriate the waters described in Chapter 72, Article 12 NMSA
15 1978, the state engineer shall apply existing law, including
16 court decisions arising from the decisions of the state
17 engineer, to the specific facts raised by the application."

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