

LFC Requester:

Austin Davidson

AGENCY BILL ANALYSIS - 2025 REGULAR SESSION

SECTION I: GENERAL INFORMATION

{Indicate if analysis is on an original bill, amendment, substitute or a correction of a previous bill}

Date Prepared: _____

Check all that apply:

Bill Number: SB 470

Original Correction _____
Amendment _____ Substitute _____

Sponsor: Sen. James Townsend

Agency Name and Code Number: 305 – New Mexico Department of Justice

Short Title: STOCK WATER APPLICATIONS TO STATE ENGINEER

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SECTION II: FISCAL IMPACT

APPROPRIATION (dollars in thousands)

Appropriation		Recurring or Nonrecurring	Fund Affected
FY25	FY26		

(Parenthesis () indicate expenditure decreases)

REVENUE (dollars in thousands)

Estimated Revenue			Recurring or Nonrecurring	Fund Affected
FY25	FY26	FY27		

(Parenthesis () indicate revenue decreases)

ESTIMATED ADDITIONAL OPERATING BUDGET IMPACT (dollars in thousands)

	FY25	FY26	FY27	3 Year Total Cost	Recurring or Nonrecurring	Fund Affected
Total						

(Parenthesis () Indicate Expenditure Decreases)

Duplicates/Conflicts with/Companion to/Relates to:
 Duplicates/Relates to Appropriation in the General Appropriation Act

SECTION III: NARRATIVE

This analysis is neither a formal Opinion nor an Advisory Letter issued by the New Mexico Department of Justice. This is a staff analysis in response to a committee or legislator’s request. The analysis does not represent any official policy or legal position of the NM Department of Justice.

BILL SUMMARY

Synopsis:

This bill changes a single word in 72-9-3, in the first sentence:

[Any] Only stockmen or stock owners desiring to impound any of the surface waters of the state for watering of livestock shall apply to the state engineer on a form prescribed by the state engineer.

FISCAL IMPLICATIONS

Note: major assumptions underlying fiscal impact should be documented.

Note: if additional operating budget impact is estimated, assumptions and calculations should be reported in this section.

SIGNIFICANT ISSUES

The change in this single word has an unclear import. Section 72-9-3 was almost entirely created in 2004 (Laws 2004, ch. 86, § 2,). The previous text was simply:

This article shall not be construed to apply to stockmen or stock owners who may build or construct water tanks or ponds for the purpose of watering stock which have a capacity of ten acre-feet of water or less.

The 2004 amendment of this Section had the effect of requiring *all* groundwater impoundment requests for livestock to be approved by the Office of the State Engineer (OSE), where previously those at or under ten acre-feet were completely exempt. However, it also ensured that all impoundments under ten acre-feet would be approved if the specific requirements in the statute were met, without the involved process otherwise required under the Water Code (Generally, Chapter 72 NMSA):

[I]f the state engineer finds that the capacity of the proposed impoundment is ten acre-feet or less, will not be on a perennial stream and will be used for watering of livestock as defined in Subsection D of this section, the state engineer *shall* issue a permit to the applicant to impound and use the waters applied for...

72-9-3(B) NMSA (emphasis added)

Under either the current or proposed version, a stock owner wishing to appropriate water for

livestock use must still apply to the OSE. Possibly the amendment seeks to clarify that other individuals do *not* need to apply. If this is the case, then the bill could be viewed as creating an exception for those who still wish to impound surface waters for watering of livestock but do not actually *own* the stock. The use of the word “only” could alternatively be read to mean that other individuals who wish to impound surface water do *not* have the ability to apply to the OSE or to be guaranteed a permit. This bill may be intended to specifically exclude entities from applying for a livestock water impoundment when those entities do not actually own any livestock but may be intending to commercialize one or a series of smaller water structures (taking advantage of the mandatory granting of the permit under the statute).

Since the intent is not completely clear, nor is it clear what problem is meant to be addressed by this very small change, more explicit language would be ideal to avoid confusion and judicially-imposed interpretation of this change. For instance, if the intent is to avoid a large-scale operation from commercializing the water permit ability, then adding a section clarifying that the under ten acre-feet exemption may only be granted to an entity that actually owns livestock and can only use it for watering its own livestock. The statute as it currently exists seems to contemplate this already. It is also possible that there is a concern that this type of impoundment is subject to abuse by transfer and that an entity could amass a large number of these small-scale impoundments by buying ones that are not in use, and result in more water use than was originally contemplated. Again, if this is the concern, an entirely new section would be more effective. If none of these are the concern addressed by the bill, then it is simply unclear why the change is proposed and what effect it would have.

PERFORMANCE IMPLICATIONS

N/A

ADMINISTRATIVE IMPLICATIONS

N/A

CONFLICT, DUPLICATION, COMPANIONSHIP, RELATIONSHIP

N/A

TECHNICAL ISSUES

N/A

OTHER SUBSTANTIVE ISSUES

N/A

ALTERNATIVES

N/A/

WHAT WILL BE THE CONSEQUENCES OF NOT ENACTING THIS BILL

Status Quo

AMENDMENTS