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SENATE BILL 16

**44TH LEGISLATURE - STATE OF NEW MEXICO - SECOND SESSION,
2000**

INTRODUCED BY

Timothy Z. Jennings

AN ACT

RELATING TO WATER; PROVIDING THAT APPLICATIONS TO APPROPRIATE
WATER BE PUBLISHED IN A NEWSPAPER IN THE COUNTY OF THE
PROPOSED 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~~] a newspaper that is published and distributed in the
county in which the diversion will be located, or if there is
no such newspaper, in one of general circulation in the

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

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

17 "72-12-3. APPLICATION FOR USE OF UNDERGROUND WATER--
18 PUBLICATION OF NOTICE--PERMIT.--

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

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

(2) the beneficial use to which the water

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- 1 will be applied;
- 2 (3) the location of the proposed well;
- 3 (4) the name of the owner of the land on
- 4 which the well will be located;
- 5 (5) the amount of water applied for;
- 6 (6) the place of the use for which the water
- 7 is desired; and
- 8 (7) if the use is for irrigation, the
- 9 description of the land to be irrigated and the name of the
- 10 owner of the land.

11 B. If the well will be located on privately owned
12 land and the applicant is not the owner of the land or the
13 owner or the lessee of the mineral or oil and gas rights
14 under the land, the application shall be accompanied by an
15 acknowledged statement executed by the owner of the land that
16 the applicant is granted access across the owner's land to
17 the drilling site and has permission to occupy such portion
18 of the owner's land as is necessary to drill and operate the
19 well. This subsection does not apply to the state or any of
20 its political subdivisions. If the application is approved,
21 the applicant shall have the permit and statement, executed
22 by the owner of the land, recorded in the office of the
23 county clerk of the county in which the land is located.

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

D. Upon the filing of an application, the state

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1 engineer shall cause to be published in a newspaper that is
2 published and distributed in the county on which the well
3 will be located, or if there is no such newspaper, in one of
4 general circulation in the county in which the well will be
5 located, at least once a week for three consecutive weeks, a
6 notice that the application has been filed and that
7 objections to the granting of the application may be filed
8 within ten days after the last publication of the notice.
9 Any person, firm or corporation or other entity objecting
10 that the granting of the application will impair the
11 objector's water right shall have standing to file objections
12 or protests. Any person, firm or corporation or other entity
13 objecting that the granting of the application will be
14 contrary to the conservation of water within the state or
15 detrimental to the public welfare of the state and showing
16 that the objector will be substantially and specifically
17 affected by the granting of the application shall have
18 standing to file objections or protests. Provided, however,
19 that the state of New Mexico or any of its branches,
20 agencies, departments, boards, instrumentalities or
21 institutions, and all political subdivisions of the state and
22 their agencies, instrumentalities and institutions shall have
23 standing to file objections or protests.

24 E. After the expiration of the time for filing
25 objections, if no objections have been filed, the state
engineer shall, if he finds that there are in the underground
stream, channel, artesian basin, reservoir or lake

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1 unappropriated waters or that the proposed appropriation
2 would not impair existing water rights from the source, is
3 not contrary to conservation of water within the state and is
4 not detrimental to the public welfare of the state, grant the
5 application and issue a permit to the applicant to
6 appropriate all or a part of the waters applied for, subject
7 to the rights of all prior appropriators from the source.

8 F. If objections or protests have been filed
9 within the time prescribed in the notice or if the state
10 engineer is of the opinion that the permit should not be
11 issued, the state engineer may deny the application without a
12 hearing or, before he acts on the application, may order that
13 a hearing be held. He shall notify the applicant of his
14 action by certified mail sent to the address shown in the
15 application."