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SENATE BILL 99

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

INTRODUCED BY
Pauline B. Eisenstadt

FOR THE WATER AND NATURAL RESOURCES COMMITTEE

AN ACT

RELATING TO WATER; PROVIDING FOR MUNICIPAL AUTHORITY BY
ORDINANCE TO LIMIT NEW DOMESTIC WATER WELL DRILLING; AMENDING
AND ENACTING SECTIONS OF THE NMSA 1978.

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

Section 1. [NEW MATERIAL] NEW DOMESTIC WATER WELLS--
MUNICIPAL AUTHORITY.--

A. A municipality may by ordinance restrict the
drilling of new domestic water wells if the property line of
the applicant is within three hundred feet of the municipal
water distribution lines located within the exterior
boundaries of that municipality.

B. No municipality may deny authorization for a
new domestic water well permit to an applicant if the cost to
the applicant of extending the municipal water distribution
lines to the applicant's property exceeds the cost of

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1 drilling a new domestic water well.

2 C. A municipality that fails to authorize the
3 drilling of a new domestic water well shall provide within
4 ninety days domestic water service to the property owner
5 under the municipal water provider's usual and customary
6 charges and rate schedules.

7 D. A municipality shall file with the state
8 engineer its municipal ordinance restricting the drilling of
9 new domestic water wells.

10 E. An applicant for a new domestic water well
11 permit to drill a well located within the exterior boundaries
12 of a municipality with a new domestic water well drilling
13 ordinance shall obtain authorization to drill the well from
14 the municipality prior to submittal of an application to the
15 state engineer.

16 F. A municipality with a new domestic water well
17 drilling ordinance shall act upon a new domestic water well
18 permit application within thirty days of receipt of the
19 request.

20 G. If an application for a new domestic water well
21 permit is authorized by a municipality, the applicant shall
22 submit the notice of authorization to the state engineer.

23 H. A municipality shall notify the state engineer
24 of all denials for well authorization.

25 I. The state engineer may approve or deny an
application for a new domestic water well permit based on the
action of a municipality and may impose conditions of

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1 approval. An applicant may appeal the decision of the state
2 engineer to the district court in the county of the
3 municipality.

4 J. Nothing in this section shall limit the
5 authority of the state engineer to administer water rights as
6 provided by law.

7 K. The state engineer shall not be liable for
8 actions taken in accordance with a municipal ordinance
9 authorizing restriction of the drilling of wells within the
10 exterior boundaries of a qualified municipality.

11 Section 2. Section 72-12-1 NMSA 1978 (being Laws 1931,
12 Chapter 131, Section 1, as amended) is amended to read:

13 "72-12-1. UNDERGROUND WATERS DECLARED TO BE PUBLIC--
14 APPLICATIONS FOR USE TO STATE ENGINEER--HEARINGS.--The water
15 of underground streams, channels, artesian basins, reservoirs
16 or lakes, having reasonably ascertainable boundaries, are
17 declared to be public waters and to belong to the public and
18 to be subject to appropriation for beneficial use. By reason
19 of the varying amounts and time such water is used and the
20 relatively small amounts of water consumed in the watering of
21 livestock; in irrigation of not to exceed one acre of
22 noncommercial trees, lawn or garden; in household or other
23 domestic use; and in prospecting, mining or construction of
24 public works, highways and roads or drilling operations
25 designed to discover or develop the natural resources of the
state, application for any such use shall be governed by the
following provisions:

.130072.2

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1 A. ~~[any]~~ a person, firm or corporation desiring to
2 use ~~[any]~~ public waters described in this section for
3 watering livestock; for irrigation of not to exceed one acre
4 of noncommercial trees, lawn or garden; or for household or
5 other domestic use shall make application to the state
6 engineer on a form to be prescribed by him. Unless the
7 applicant has been denied authorization for a new domestic
8 water well by a municipality that has a water well ordinance,
9 upon the filing of each application describing the use
10 applied for, the state engineer shall issue a permit to the
11 applicant to so use the waters applied for; provided that as
12 part of an application for livestock watering use on state or
13 federal land, the applicant shall submit proof that he:

14 (1) is legally entitled to place his
15 livestock on the state or federal land where the water is to
16 be used; and

17 (2) has been granted access to the drilling
18 site and has permission to occupy the portion of the state or
19 federal land as is necessary to drill and operate the well;
20 and

21 B. whenever ~~[any]~~ a person, firm or corporation
22 or the state desires to use not to exceed three acre-feet
23 of public water described in this section for a definite
24 period of not to exceed one year in prospecting, mining or
25 construction of public works, highways and roads or
drilling operations designed to discover or develop the
natural mineral resources of the state, only the

.130072.2

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1 application referred to in Section 72-12-3 NMSA 1978 shall
2 be required. Separate application shall be made for each
3 proposed use, whether in the same or in different basins.
4 Upon the filing of [~~such applications~~] an application, the
5 state engineer shall make an examination of the facts and,
6 if he finds that the proposed use will not permanently
7 impair any existing rights of others, he shall grant the
8 application. If he finds that the proposed use sought will
9 permanently impair such rights, then there shall be
10 advertisement and hearing as provided in the case of
11 applications made under Section 72-12-3 NMSA 1978."

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