

AN ACT

RELATING TO WATER; PROVIDING FOR ADDITIONAL NOTICE WHEN  
APPLYING FOR SURFACE AND UNDERGROUND WATER RIGHTS.

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. NOTICE--PUBLICATION.--

A. Upon the filing of an application which  
complies with the provisions of this article and the rules  
established thereunder, accompanied by the proper fees, the  
state engineer shall instruct the applicant to publish  
notice, in a form and in a newspaper prescribed by the state  
engineer, in some newspaper that is published and distributed  
in each county affected by the diversion and in each county  
where the water will be or has been put to beneficial use, or  
if there is no such newspaper, then in some newspaper of  
general circulation in the stream system once a week for  
three consecutive weeks. The notice shall give all essential  
facts as to the proposed appropriation; among them, the  
places of appropriation and of use, amount of water, the  
purpose for which it is to be used, name and address of  
applicant and the time when the application will be  
considered by the state engineer. The applicant shall,  
within three working days after the first publication, mail a

copy of the notice by certified mail to all water managing political subdivisions in the county within which the proposed point of diversion would be located, if any, whose point of diversion is within the same basin as the proposed point of diversion. The applicant shall also mail notice to an association if any of the water managing political subdivisions is a community ditch or community acequia that is a member of the association of community ditches or community acequias eligible for funds from the acequia and community ditch fund pursuant to Sections 73-2A-1 through 73-2A-3 NMSA 1978.

B. The applicant shall be presumed to have complied with this section if the applicant mails the notices required by this section to the chairman, or in the absence of the chairman, the chief administrator, of each of the entities entitled to notice as reflected in a registry developed and maintained by the office of the state engineer. The office of the state engineer shall develop the initial registry based upon the most current name and address information reasonably available in the records of the office of the state engineer. Following the initial development of the registry, the office of the state engineer shall subsequently maintain the registry based upon name and address information provided to the office of the state engineer by the entities

entitled to notice, including any entities not contained in the initial registry. The applicant shall be responsible for providing notification by mail to only those entities entitled to notice that are included in the registry.

C. Proof of publication and mailing as required shall be filed with the state engineer within sixty days of his instructions to make publication. In case of failure to file satisfactory proof of publication and mailing in accordance with the rules, within the time required, the application shall be treated as an original application filed on the date of receipt of proofs of publication and mailing in proper form.

D. As used in Chapter 72, Article 5 NMSA 1978, "water managing political subdivision" means an incorporated city, town or village, whether incorporated under general act, special act or special charter, an incorporated county or H class county, a community ditch or acequia, a soil and water conservation district, an irrigation district, a conservancy district or an artesian conservancy district."

Section 2. Section 72-5-23 NMSA 1978 (being Laws 1907, Chapter 49, Section 44, as amended) is amended to read:

"72-5-23. WATER APPURTENANT TO LAND--CHANGE OF PLACE OF USE.--All water used in this state for irrigation purposes, except as otherwise provided in this article, shall

be considered appurtenant to the land upon which it is used, and the right to use it upon the land shall never be severed from the land without the consent of the owner of the land, but, by and with the consent of the owner of the land, all or any part of the right may be severed from the land, simultaneously transferred and become appurtenant to other land, or may be transferred for other purposes, without losing priority of right theretofore established, if such changes can be made without detriment to existing water rights and are not contrary to conservation of water within the state and not detrimental to the public welfare of the state, on the approval of an application of the owner by the state engineer. Publication of notice of application and mailing, opportunity for the filing of objections or protests and a hearing on the application shall be provided as required by Sections 72-5-4 and 72-5-5 NMSA 1978. Water managing political subdivisions entitled to notice by certified mail include all water managing political subdivisions in the county within which the proposed former point of diversion is located, if any, whose point of diversion is within the same basin as the proposed former point of diversion. The applicant shall also mail notice to an association if any of the water managing political subdivisions is a community ditch or community acequia that is a member of the association of community ditches or

community acequias eligible for funds from the acequia and community ditch fund pursuant to Sections 73-2A-1 through 73-2A-3 NMSA 1978. "

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

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

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

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

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

(3) the location of the proposed well;

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

(5) the amount of water applied for;

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

(7) if the use is for irrigation, the description of the land to be irrigated and the name of the

owner of the land.

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

C. No application shall be accepted by the state 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 engineer shall cause to be published in a newspaper that is published and distributed in the county where the well will be located and in each county where the water will be or has been put to beneficial use or where other water rights may be affected, or if there is no such newspaper, then in some newspaper of general circulation in the county in which the well will be located, at least once a week for three

consecutive weeks, a notice that the application has been filed and that objections to the granting of the application may be filed within ten days after the last publication of the notice. The applicant shall, within three working days after the first publication, mail a copy of the notice by certified mail to all water managing political subdivisions in the county within which the proposed point of diversion would be located, if any, whose point of diversion is within the same basin or shares the same underground source as the proposed point of diversion. The applicant shall also mail notice to an association if any of the water managing political subdivisions is a community ditch or community acequia that is a member of an association of community ditches or community acequias eligible for funds from the acequia and community ditch fund pursuant to Sections 73-2A-1 through 73-2A-3 NMSA 1978.

E. The applicant shall be presumed to have complied with this section if the applicant mails the notices required by this section to the chairman, or in the absence of the chairman, the chief administrator, of each of the entities entitled to notice as reflected in a registry developed and maintained by the office of the state engineer. The office of the state engineer shall develop the initial registry based upon the most current name and address information reasonably available in the records of the office

of the state engineer. Following the initial development of the registry, the office of the state engineer shall subsequently maintain the registry based upon name and address information provided to the office of the state engineer by the entities entitled to notice, including any entities not contained in the initial registry. The applicant shall be responsible for providing notification by mail to only those entities entitled to notice that are included in the registry. Any person, firm or corporation or other entity objecting that the granting of the application will impair the objector's water right shall have standing to file objections or protests. Any person, firm or corporation or other entity objecting that the granting of the application will be contrary to the conservation of water within the state or detrimental to the public welfare of the state and showing that the objector will be substantially and specifically affected by the granting of the application shall have standing to file objections or protests; provided, however, that the state of New Mexico or any of its branches, agencies, departments, boards, instrumentalities or institutions, and all political subdivisions of the state and their agencies, instrumentalities and institutions shall have standing to file objections or protests.

F. After the expiration of the time for filing 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 unappropriated waters or that the proposed appropriation would not impair existing water rights from the source, is not contrary to conservation of water within the state and is not detrimental to the public welfare of the state, grant the application and issue a permit to the applicant to appropriate all or a part of the waters applied for, subject to the rights of all prior appropriators from the source.

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

H. For purposes of this section, "water managing political subdivision" means an incorporated city, town or village, whether incorporated under general act, special act or special charter, an incorporated county or H class county, a community ditch or acequia, a soil and water conservation district, an irrigation district, a conservancy district or an artesian conservancy district."

Chapter 131, Section 7, as amended) is amended to read:

"72-12-7. CHANGE OF LOCATION OF WELL--CHANGE IN USE ON APPLICATION--TEMPORARY CHANGE. --

A. The owner of a water right may change the location of his well or change the use of the water, but only upon application to the state engineer and upon showing that the change will not impair existing rights and will not be contrary to the conservation of water within the state and will not be detrimental to the public welfare of the state. The application may be granted only after such advertisement and mailing and hearing as are prescribed in the case of original applications. Water managing political subdivisions entitled to notice by certified mail include all water managing political subdivisions in the county within which the proposed former point of diversion is located, if any, whose point of diversion is within the same basin or shares the same underground source as the proposed former point of diversion. The applicant shall also mail notice to an association if any of the water managing political subdivisions is a community ditch or community acequia that is a member of the association of community ditches or community acequias eligible for funds from the acequia and community ditch fund pursuant to Sections 73-2A-1 through 73-2A-3 NMSA 1978.

B. When the owner of a water right applies for a

temporary change of not to exceed one year for not more than three acre-feet of water to a different location or to a different use, or both, the state engineer shall make an investigation and, if the change does not permanently impair any vested rights of others, he shall enter an order authorizing the change. If he finds that the change sought might impair vested rights, he shall order advertisement and hearing as in other cases.

C. If objections or protests have been filed within the time prescribed in the notice or if the state engineer is of the opinion that the permit should not be issued, the state engineer may deny the application or, before he acts on the application, may order that a hearing be held. He shall notify the applicant of his action by certified mail sent to the address shown in the application.

D. For purposes of this section, "water managing political subdivision" means an incorporated city, town or village, whether incorporated under general act, special act or special charter, an incorporated county or H class county, a community ditch or acequia, a soil and water conservation district, an irrigation district, a conservancy district or an artesian conservancy district. "

---

---

==

