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HOUSE BILL 325

46TH LEGISLATURE - STATE OF NEW MEXICO - SECOND SESSION, 2004

INTRODUCED BY

Joe M. Stell

AN ACT

RELATING TO WATER; PROVIDING FOR THE REGULATION OF LIVESTOCK
WATER TANKS; AMENDING SECTIONS OF CHAPTER 72 NMSA 1978;
DECLARING AN EMERGENCY.

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

Section 1. Section 72-5-32 NMSA 1978 (being Laws 1941,
Chapter 126, Section 25, as amended) is amended to read:

"72-5-32. CONSTRUCTION OF DAMS EXCEEDING TEN FEET IN
HEIGHT.--Any person, association or corporation, public or
private, the state or the United States hereafter intending to
construct a dam shall meet the requirements of filing
applications for appropriations and use of water pursuant to
Section 72-5-1, 72-5-22, 72-5-23 or 72-5-24 NMSA 1978. Any
person, association or corporation, public or private, the
state or the United States intending to construct a dam that

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1 exceeds ten feet in height from the lowest natural ground
2 surface elevation to the crest of the dam or impounds more than
3 ten acre-feet of water shall submit on a form prescribed by the
4 state engineer detailed plans to the state engineer for
5 approval before construction. If the state engineer finds that
6 the dam design is safe, he shall approve the plans; provided
7 that this section shall not apply to ~~[stock dams or]~~ erosion
8 control structures whose maximum storage capacity does not
9 exceed ten acre-feet ~~[or any dam]~~ and are constructed for the
10 sole purpose of sediment ~~[and flood]~~ control under ~~[the~~
11 ~~supervision of the United States army corps of engineers]~~ an
12 approved United States department of agriculture's natural
13 resources conservation service's conservation plan pursuant to
14 the Farm Security and Rural Investment Act of 2002."

15 Section 2. Section 72-9-3 NMSA 1978 (being Laws 1907,
16 Chapter 49, Section 74, as amended) is amended to read:

17 "72-9-3. STOCK WATER.--

18 A. Any person or governmental entity desiring to
19 impound any of the surface waters of the state for watering of
20 livestock shall apply to the state engineer on a form
21 prescribed by the state engineer. If the capacity of the
22 proposed impoundment is ten acre-feet or less, the applicant
23 shall meet the requirements of this section. If the capacity
24 of the proposed impoundment exceeds ten acre-feet, the
25 applicant shall meet the requirements of filing applications

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1 for the appropriation and use of water pursuant to
2 Section 72-5-1, 72-5-22, 72-5-23 or 72-5-24 NMSA 1978.

3 B. Upon the filing of an application pursuant to
4 this section, if the state engineer finds that the capacity of
5 the proposed impoundment is ten acre-feet or less, will not be
6 on a perennial stream and will be used for watering of
7 livestock as defined in Subsection D of this section, the state
8 engineer shall issue a permit to the applicant to impound and
9 use the waters applied for; provided that if the proposed
10 impoundment will be located on private, state or federal land
11 not owned by the applicant, the application shall be
12 accompanied by an acknowledged statement executed by the owner
13 of the land or governmental entity that the applicant is
14 granted access across the owner's land to the construction site
15 and has permission to occupy that portion of the owner's land
16 as is necessary for construction and use of the impoundment.

17 C. This [article] section shall [not be construed
18 to] only apply to [stockmen or stock owners who may build or
19 construct water tanks or ponds for the purpose of watering
20 stock which have a capacity of ten-acre feet of water or less]
21 impoundments constructed for the watering of livestock after
22 the effective date of this 2004 act.

23 D. As used in this section, "livestock" means
24 "livestock" as defined in Section 77-2-1.1 NMSA 1978 and this
25 section applies only to the impoundment of surface water for

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1 the purpose of watering livestock. Watering of livestock does
2 not include an impoundment of surface or ground water in any
3 amount for fishing, fish propagation, recreation or aesthetic
4 purposes, which shall require a permit pursuant to Section
5 72-5-1 NMSA 1978. In determining whether an impoundment will
6 be used for the watering of livestock, the state engineer may
7 consider the maximum amount of water required per livestock
8 unit."

9 Section 3. EMERGENCY.--It is necessary for the public
10 peace, health and safety that this act take effect immediately.

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