

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

HOUSE BILL 573

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

INTRODUCED BY

Joseph Cervantes

AN ACT

RELATING TO THE STATE ENGINEER; CHANGING CIVIL PROCEDURES IN
STATE ENGINEER ADMINISTRATIVE HEARINGS; CLARIFYING WHO HAS
STANDING TO PROTEST PENDING WATER RIGHTS APPLICATIONS ON THE
BASIS OF IMPAIRMENT; CHANGING QUALIFICATIONS FOR ADMINISTRATIVE
HEARING OFFICERS.

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

Section 1. Section 72-2-12 NMSA 1978 (being Laws 1965,
Chapter 285, Section 1) is amended to read:

"72-2-12. HEARING EXAMINERS.--In addition to the powers
and authority, either express or implied, granted to the state
engineer by other statutes of the state [~~of New Mexico~~], the
state engineer is [~~hereby~~] given the authority and power in
formulating rules and regulations, subject to the provisions of
Section [5] 72-2-17 NMSA 1978, in connection with hearings or

underscored material = new
[bracketed material] = del etc

underscored material = new
[bracketed material] = delete

1 other proceedings before him to provide for the appointment of
2 one or more examiners to conduct hearings with respect to
3 matters properly coming before the state engineer and to make
4 reports and recommendations [~~with respect thereto~~]. The state
5 engineer, subject to the provisions of Section [5] 72-2-17 NMSA
6 1978, shall promulgate, print and make available in the office
7 of the state [~~engineer's office~~] engineer rules and regulations
8 with regard to hearings to be conducted before examiners, and
9 the powers and duties of the examiners in any particular case
10 may be limited by order of the state engineer to particular
11 issues or to the performance of particular actions. In the
12 absence of any limiting order, an examiner appointed to hear
13 any particular case shall have the power to regulate all
14 proceedings before him and to perform acts and to take all
15 measures necessary or proper for the efficient and orderly
16 conduct of such hearing, including the swearing of witnesses,
17 receiving of testimony and exhibits offered in evidence subject
18 to such objections as may be imposed, and shall cause a
19 complete record of the proceedings to be made and shall make
20 his report and recommendations [~~in connection therewith~~] to the
21 state engineer. The state engineer shall base his decision
22 rendered in any matter heard by an examiner upon the record
23 made by or under the supervision of the examiner in connection
24 with such proceeding and the report and recommendation of the
25 examiner [~~and~~]. His decision shall have the same [~~force and~~]

. 150094. 1

underscored material = new
[bracketed material] = delete

1 effect as if [~~said~~] the hearing had been conducted by the state
2 engineer. Persons appointed by the state engineer as hearing
3 examiners shall be knowledgeable in the water laws of this
4 state [~~water engineering~~] and administrative hearing procedures
5 and, if necessary, water engineering or hydrology. "

6 Section 2. Section 72-2-17 NMSA 1978 (being Laws 1965,
7 Chapter 285, Section 5) is amended to read:

8 "72-2-17. HEARING--NOTICE--CONDUCT--RECORD. --

9 A. After a written request for hearing has been
10 filed, the state engineer shall notify the [~~requester~~]
11 requester and all interested parties by registered or certified
12 mail, return receipt requested, of the hearing. The notice
13 shall include:

14 (1) the time, place, date and nature of the
15 hearing, which time shall be not less than five nor more than
16 sixty days from the date of filing of the request for hearing;
17 provided that the state engineer may for good cause or upon
18 stipulation of the parties set the hearing for a later date;
19 and

20 (2) the legal authority and jurisdiction under
21 which the hearing will be held.

22 B. In the conduct of the hearing:

23 (1) opportunity shall be afforded all parties
24 to appear and present evidence and argument on all issues
25 involved;

. 150094. 1

underscored material = new
[bracketed material] = delete

1 (2) irrelevant, immaterial or unduly
2 repetitious evidence shall be excluded. The rules of evidence
3 as applied in nonjury civil cases in the district courts of
4 this state shall be generally followed; however, when it is
5 necessary to ascertain facts not reasonably susceptible of
6 proof under these rules, evidence not admissible thereunder may
7 be admitted if it is of a type commonly relied upon by
8 reasonably prudent men in the conduct of their affairs.
9 Objections to evidentiary offers may be made and shall be noted
10 in the record. Subject to these requirements, when a hearing
11 will be expedited and interests of the parties will not be
12 prejudiced substantially, any part of the evidence may be
13 received in written form;

14 (3) a party may have and be represented by
15 counsel and may conduct cross-examinations required for a full
16 and true disclosure of the facts;

17 (4) notice may be taken of judicially
18 cognizable facts. In addition, notice may be taken of
19 generally recognized technical or scientific facts within the
20 state engineer's specialized knowledge;

21 (5) oral proceedings or any part thereof shall
22 be transcribed on request of any party; [and]

23 (6) findings of fact shall be based
24 exclusively on the evidence and on matters officially noticed;
25 and

underscored material = new
[bracketed material] = delete

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

(7) the Rules of Civil Procedure for the District Courts of New Mexico shall be generally followed.

C. The state engineer or his appointed hearing examiner shall make a record of the hearing, which shall include:

- (1) all pleadings, motions and intermediate rulings;
- (2) evidence received or considered;
- (3) a statement of the matters officially noticed;
- (4) questions and offers of proof, objections and rulings thereon;
- (5) any proposed findings submitted; and
- (6) any decision, opinion or report by the state engineer or hearing examiner conducting the hearing. "

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,

underscored material = new
[bracketed material] = delete

1 channel, artesian basin, reservoir or lake from which water
2 will be appropriated;

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

5 (3) the location of the proposed well;

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

8 (5) the amount of water applied for;

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

11 (7) if the use is for irrigation, the
12 description of the land to be irrigated and the name of the
13 owner of the land.

14 B. If the well will be located on privately owned
15 land and the applicant is not the owner of the land or the
16 owner or the lessee of the mineral or oil and gas rights under
17 the land, the application shall be accompanied by an
18 acknowledged statement executed by the owner of the land that
19 the applicant is granted access across the owner's land to the
20 drilling site and has permission to occupy such portion of the
21 owner's land as is necessary to drill and operate the well.

22 This subsection does not apply to the state or any of its
23 political subdivisions. If the application is approved, the
24 applicant shall have the permit and statement, executed by the
25 owner of the land, recorded in the office of the county clerk

. 150094. 1

underscored material = new
[bracketed material] = delete

1 of the county in which the land is located.

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

5 D. Upon the filing of an application, the state
6 engineer shall cause to be published in a newspaper that is
7 published and distributed in the county where the well will be
8 located and in each county where the water will be or has been
9 put to beneficial use or where other water rights may be
10 affected, or if there is no such newspaper, then in some
11 newspaper of general circulation in the county in which the
12 well will be located, at least once a week for three
13 consecutive weeks, a notice that the application has been filed
14 and that objections to the granting of the application may be
15 filed within ten days after the last publication of the notice.
16 Any person, firm or corporation or other entity objecting that
17 the granting of the application will substantially and
18 specifically impair the objector's water right shall have
19 standing to file objections or protests. Any person, firm or
20 corporation or other entity objecting that the granting of the
21 application will be contrary to the conservation of water
22 within the state or detrimental to the public welfare of the
23 state and showing that the objector will be substantially and
24 specifically affected by the granting of the application shall
25 have standing to file objections or protests; provided,

. 150094. 1

underscored material = new
[bracketed material] = delete

1 however, that the state of New Mexico or any of its branches,
2 agencies, departments, boards, instrumentalities or
3 institutions, and all political subdivisions of the state and
4 their agencies, instrumentalities and institutions shall have
5 standing to file objections or protests.

6 E. After the expiration of the time for filing
7 objections, if no objections have been filed, the state
8 engineer shall, if he finds that there are in the underground
9 stream, channel, artesian basin, reservoir or lake
10 unappropriated waters or that the proposed appropriation would
11 not impair existing water rights from the source, is not
12 contrary to conservation of water within the state and is not
13 detrimental to the public welfare of the state, grant the
14 application and issue a permit to the applicant to appropriate
15 all or a part of the waters applied for, subject to the rights
16 of all prior appropriators from the source.

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

24 Section 4. EFFECTIVE DATE. --The effective date of the
25 provisions of this act is July 1, 2004.

. 150094. 1