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AN ACT

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

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  
exceeds ten feet in height from the lowest natural ground surface elevation to the  
crest of the dam or impounds more than ten acre-feet of water shall submit on a  
form prescribed by the state engineer detailed plans to the state engineer for  
approval before construction. If the state engineer finds that the dam design is  
safe, he shall approve the plans; provided that this section shall not apply to erosion  
control structures whose maximum storage capacity does not exceed ten acre-feet  
and are constructed for the sole purpose of sediment control. An erosion control  
structure shall not impound surface water in any amount for fishing, fish  
propagation, recreation or aesthetic purposes, which shall require a permit pursuant  
to Section 72-5-1 NMSA 1978."

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

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

A. Any stockmen or stock owners desiring to impound any of the

1 surface waters of the state for watering of livestock shall apply to the state engineer  
2 on a form prescribed by the state engineer. If the capacity of the proposed  
3 impoundment is ten acre-feet or less, the applicant shall meet the requirements of  
4 this section. If the capacity of the proposed impoundment exceeds ten acre-feet,  
5 the applicant shall meet the requirements of filing applications for the appropriation  
6 and use of water pursuant to  
7 Section 72-5-1, 72-5-22, 72-5-23 or 72-5-24 NMSA 1978.

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8 B. Upon the filing of an application pursuant to this section, if the  
9 state engineer finds that the capacity of the proposed impoundment is ten acre-feet  
10 or less, will not be on a perennial stream and will be used for watering of livestock  
11 as defined in Subsection D of this section, the state engineer shall issue a permit to  
12 the applicant to impound and use the waters applied for; provided that as part of an  
13 application for an impoundment on state or federal land, the applicant submits proof  
14 that the applicant is legally entitled to place livestock on the state or federal land  
15 where the water is to be impounded and has been granted access to the site and  
16 has permission to occupy the portion of the state or federal land as is necessary for  
17 the impoundment.

18 C. This section shall only apply to impoundments constructed for the  
19 watering of livestock after the effective date of this 2004 act.

20 D. As used in this section, "livestock" means "livestock" as defined  
21 in Section 77-2-1.1 NMSA 1978 and this section applies only to the impoundment of  
22 surface water for the purpose of watering livestock. Watering of livestock does not  
23 include an impoundment of surface or ground water in any amount for fishing, fish  
24 propagation, recreation or aesthetic purposes, which shall require a permit pursuant  
25 to Section 72-5-1 NMSA 1978. In determining whether an impoundment will be  
used for the watering of livestock, the state engineer may consider the maximum  
amount of water required per livestock unit and shall take into account

1 regional and climatic conditions that affect consumption."

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