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SENATE BILL 451

**47TH LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2005**

INTRODUCED BY

John Arthur Smith

AN ACT

RELATING TO WATER; PROVIDING FOR ACTIVE RESOURCE MANAGEMENT AND DESIGNATION OF CRITICAL MANAGEMENT AREAS; AMENDING AND ENACTING SECTIONS OF CHAPTER 72 NMSA 1978 TO ENABLE THE STATE ENGINEER TO REGULATE DOMESTIC WELLS IN CRITICAL MANAGEMENT AREAS; DECLARING AN EMERGENCY.

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

Section 1. A new section of Chapter 72, Article 2 NMSA 1978 is enacted to read:

"[NEW MATERIAL] DESIGNATION OF CRITICAL MANAGEMENT AREAS.--

A. The state engineer may declare a critical management area in specific areas in the same manner as special orders made pursuant to Section 72-2-8 NMSA 1978.

B. As used in Chapter 72 NMSA 1978, "critical

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1 management area" means a bounded area specifically described by  
2 section, township and range, or by other land survey  
3 descriptions, that requires special water resource protection  
4 because:

5 (1) water resources may be inadequate to  
6 sustain well production as evidenced by water level decline  
7 rates and available aquifer thickness; or

8 (2) additional depletions are shown to  
9 negatively affect interstate compact delivery requirements.

10 C. The state engineer shall treat all domestic well  
11 applications filed pursuant to Section 72-12-1.1 NMSA 1978 in  
12 the same manner within each critical management area.

13 D. A critical management area designation is  
14 subject to reconsideration upon petition by a person owning  
15 land or water rights within that critical management area. The  
16 state engineer shall consider the petition pursuant to  
17 procedures set forth for the promulgation of special orders in  
18 Section 72-2-8 NMSA 1978. The petition shall be granted if the  
19 critical management area has recovered such that the conditions  
20 under which the critical management area was declared no longer  
21 exist.

22 E. A critical management area designation shall be  
23 reviewed every five years to ascertain whether the critical  
24 management area continues to meet the criteria for  
25 designation."

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1           Section 2. Section 72-2-8 NMSA 1978 (being Laws 1967,  
2 Chapter 246, Section 1) is amended to read:

3           "72-2-8. ADMINISTRATIVE REGULATIONS, CODES, INSTRUCTIONS,  
4 ORDERS--PRESUMPTION OF CORRECTNESS.--

5           A. The state engineer may adopt regulations and  
6 codes to implement and enforce any provision of any law  
7 administered by ~~[him]~~ the state engineer and may issue orders  
8 necessary to implement ~~[his]~~ decisions and to aid ~~[him]~~ in the  
9 accomplishment of ~~[his]~~ the state engineer's duties. In order  
10 to accomplish its purpose, this provision is to be liberally  
11 construed.

12           B. Directives issued by the state engineer shall be  
13 in form substantially as follows:

14                   (1) regulations are written statements of the  
15 state engineer of general application to the public,  
16 implementing statutes, prescribing procedures and interpreting  
17 and exemplifying the statutes to which they relate;

18                   (2) codes are written standards and  
19 specifications governing design and construction of dams;

20                   (3) orders are written statements of the state  
21 engineer to implement ~~[his decision]~~ the state engineer's  
22 decisions; and

23                   (4) special orders are written statements  
24 defining the declared boundaries of underground streams,  
25 channels, artesian basins, reservoirs, ~~[or]~~ lakes or critical

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1 management areas.

2 C. To be effective, a regulation, code or special  
3 order issued by the state engineer shall be reviewed by the  
4 attorney general or other legal counsel of the office of the  
5 state [~~engineer's office~~] engineer prior to being filed as  
6 required by law and the fact of [~~his~~] the review shall be  
7 indicated thereon.

8 D. To be effective, a regulation or code shall  
9 first be issued as a proposed regulation or proposed code and  
10 filed for public inspection in the office of the state engineer  
11 along with the findings of fact that in the opinion of the  
12 state engineer justify the regulation or code. Distribution  
13 shall also be made to each district and field office for public  
14 inspection and to each of the persons on the file of interested  
15 persons [~~hereinafter~~] mentioned in Subsection G of this  
16 section. After the proposed regulation or code has been on  
17 file for one month, [~~he~~] the state engineer shall publish it  
18 or, if it is lengthy, a resume of it in not less than five  
19 newspapers of general circulation in the state, once a week for  
20 two consecutive weeks, with the statement that there will be a  
21 hearing on the proposed regulation or code on a day set in the  
22 publication, which shall be not more than thirty days nor less  
23 than twenty days after the last publication. The hearing shall  
24 be held in Santa Fe, and any person who is or may be affected  
25 by the proposed regulation or code may appear and testify.

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1           E. Special orders may be promulgated without prior  
2 notice and hearing, but the state engineer shall, within ten  
3 days of promulgation of a special order, set a date for a  
4 hearing on the special order and publish notice of the public  
5 hearing in the same manner required [~~above~~] in Subsection D of  
6 this section. When a special order is issued to designate a  
7 critical management area, the order shall not become effective  
8 until after notice and hearing. All applications submitted  
9 after issuance of the special order shall be subject to the  
10 provisions of the final adopted special order. Hearings on  
11 special orders to create a critical management area shall be  
12 held within the proposed critical management area.

13           F. In addition to filing copies of regulations as  
14 required by law, the state engineer shall maintain in [~~his~~] the  
15 office of the state engineer duplicate official sets of current  
16 regulations, codes and special orders, which sets shall be  
17 available for inspection by the public.

18           G. The state engineer shall develop and maintain a  
19 file of names and addresses of individuals and professional,  
20 agricultural and other groups having an interest in the  
21 promulgation of new, revised or proposed regulations and shall  
22 at convenient times distribute to these persons all such  
23 regulations, making such charges [~~therefor~~] as will defray the  
24 expense incurred in their physical preparation and mailing.

25           H. Any regulation, code or order issued by the

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1 state engineer is presumed to be in proper implementation of  
2 the provisions of the water laws administered by ~~[him]~~ the  
3 state engineer.

4 I. The state engineer shall state the extent to  
5 which regulations, codes and orders will have retroactive  
6 effect and, if no such statement is made, they will be applied  
7 prospectively only."

8 Section 3. Section 72-12-1.1 NMSA 1978 (being Laws 2003,  
9 Chapter 298, Section 2) is amended to read:

10 "72-12-1.1. UNDERGROUND WATERS--DOMESTIC USE--PERMIT.--

11 A. A person, firm or corporation desiring to use  
12 public underground waters described in this section for  
13 irrigation of not to exceed one acre of noncommercial trees,  
14 lawn or garden or for household or other domestic use shall  
15 make application to the state engineer for a well on a form to  
16 be prescribed by the state engineer. Upon the filing of each  
17 application describing the use applied for, the state engineer  
18 shall issue a permit to the applicant to use the underground  
19 waters applied for, ~~[provided that]~~ except as otherwise  
20 provided in this section.

21 B. Permits for domestic water use within  
22 municipalities shall be conditioned to require the permittee to  
23 comply with all applicable municipal ordinances enacted  
24 pursuant to Chapter 3, Article 53 NMSA 1978.

25 C. The state engineer may limit a domestic well

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1 permit to no less than one-half acre-foot per year per  
2 household in a critical management area, unless the applicant  
3 transfers a water right pursuant to Subsection F of this  
4 section or discontinues use of an existing, permitted domestic  
5 well in that critical management area pursuant to Subsection D  
6 of this section.

7 D. The state engineer shall approve a domestic well  
8 for use of water in an amount equal to the amount of:

9 (1) water rights transferred to that well  
10 pursuant to Subsection F of this section; or

11 (2) water under an existing domestic well  
12 permit issued pursuant to this section in the critical  
13 management area and for which the applicant has certified to  
14 the state engineer that the existing use has been discontinued  
15 and the existing well has been capped.

16 E. Water rights obtained pursuant to this section  
17 are water rights with a priority date and may be transferred to  
18 a new location or purpose of use subject to the provisions of  
19 Chapter 72 NMSA 1978.

20 F. A water right transferred pursuant to this  
21 section shall be made pursuant to the provisions of Section  
22 72-5-24 or 72-12-7 NMSA 1978, except that a water right  
23 transfer pursuant to this section may be exempted from the  
24 public notice requirements if:

25 (1) there is a change of use to domestic use

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1 with no change in location of use; or

2 (2) the water right transferred is one acre-  
3 foot or less and:

4 (a) the state engineer determines that  
5 the change will not impair existing water rights, be contrary  
6 to conservation of water or be detrimental to the public  
7 welfare; and

8 (b) the water right to be transferred is  
9 not from an acequia or community ditch.

10 G. A person may appeal the decision of the state  
11 engineer pursuant to the provisions of Section 72-7-1 NMSA  
12 1978."

13 Section 4. EMERGENCY.--It is necessary for the public  
14 peace, health and safety that this act take effect immediately.

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