

1 SENATE BILL 665

2 **52ND LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2015**

3 INTRODUCED BY

4 Ron Griggs

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10 AN ACT

11 RELATING TO WATER; ALLOWING THE USE OF A LEASED WATER RIGHT
12 DURING THE PENDENCY OF THE HEARING PROCESS FOR A LIMITED PERIOD
13 AND LIMITED AMOUNT OF WATER; ALLOWING THE DRILLING OF
14 SUPPLEMENTAL OR REPLACEMENT WELLS FOR THE AMOUNT OF WATER
15 ORIGINALLY PERMITTED TO OR DECLARED BY THE WATER RIGHT OWNER
16 REGARDLESS OF THE AMOUNT OF HISTORIC BENEFICIAL USE OF THE
17 WATER; REQUIRING THE FILING OF CERTAIN EVIDENCE BY PROTESTANTS
18 TO DETERMINE STANDING IN ADMINISTRATIVE HEARINGS ON WATER
19 RIGHTS ISSUES; PROVIDING THAT THE NON-USE OF WATER DOES NOT
20 AUTOMATICALLY RESULT IN THE LOSS OF WATER RIGHTS IN CERTAIN
21 INSTANCES.

22
23 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF NEW MEXICO:

24 SECTION 1. Section 72-1-9 NMSA 1978 (being Laws 1985,
25 Chapter 198, Section 1, as amended) is amended to read:

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1 "72-1-9. MUNICIPAL, COUNTY, MEMBER-OWNED COMMUNITY WATER
2 SYSTEMS, SCHOOL DISTRICT AND STATE UNIVERSITY WATER DEVELOPMENT
3 PLANS--PRESERVATION OF MUNICIPAL, COUNTY AND STATE UNIVERSITY
4 WATER SUPPLIES.--

5 A. It is recognized by the state that it promotes
6 the public welfare and the conservation of water within the
7 state for municipalities, counties, school districts, state
8 universities, member-owned community water systems, special
9 water users' associations, water and sanitation districts and
10 public utilities supplying water to municipalities or counties
11 to plan for the reasonable development and use of water
12 resources. The state further recognizes the state engineer's
13 administrative policy of not allowing municipalities, member-
14 owned community water systems, water and sanitation districts,
15 counties and state universities to acquire and hold unused
16 water rights in an amount greater than their reasonable needs
17 within forty years.

18 B. Municipalities, counties, school districts,
19 state universities, member-owned community water systems,
20 special water users' associations, water and sanitation
21 districts and public utilities supplying water to
22 municipalities or counties shall be allowed a water use
23 planning period not to exceed forty years, and water rights
24 for municipalities, counties, school districts, state
25 universities, water and sanitation districts, member-owned

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1 community water systems, special water users' associations
2 and public utilities supplying water to such municipalities
3 or counties shall be based upon a water development plan the
4 implementation of which shall not exceed a forty-year period
5 from the date of the application for an appropriation or a
6 change of place or purpose of use pursuant to a water
7 development plan or for preservation of a municipal, county,
8 school district, member-owned community water system, water
9 and sanitation district or state university water supply for
10 reasonably projected additional needs within forty years.

11 C. A water right acquired and held unused
12 pursuant to the provisions of this section shall not be
13 automatically lost after forty years, except by statutory
14 forfeiture or judicial proceedings to prove abandonment."

15 SECTION 2. Section 72-6-4 NMSA 1978 (being Laws 1967,
16 Chapter 100, Section 4) is amended to read:

17 "72-6-4. LESSEE'S APPLICATION--USE BEFORE APPROVAL.--

18 A. Prior to [~~his~~] the use of [~~such~~] the water,
19 the lessee shall apply to the state engineer requesting
20 approval for the use and location of use to which [~~such~~] the
21 water will be put. The state engineer shall prescribe the
22 form of [~~such~~] the application and may require any
23 information pertinent to the matter.

24 B. Notwithstanding the provisions of Section
25 72-6-6 NMSA 1978, the state engineer may approve a lessee's

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1 use of water during the pendency of the hearing process for
2 leases of less than three years for less than two hundred
3 acre-feet per year."

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

6 "72-12-3. APPLICATION FOR USE OF UNDERGROUND WATER--
7 PUBLICATION OF NOTICE--PERMIT--STANDING OF PROTESTANTS.--

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

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

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

19 (3) the location of the proposed well;

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

22 (5) the amount of water applied for;

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

25 (7) if the use is for irrigation, the

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1 description of the land to be irrigated and the name of the
2 owner of the land.

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

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

19 D. Upon the filing of an application, the state
20 engineer shall cause to be published in a newspaper that is
21 published and distributed in the county where the well will
22 be located and in each county where the water will be or has
23 been put to beneficial use or where other water rights may be
24 affected, or if there is no such newspaper, then in some
25 newspaper of general circulation in the county in which the

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1 well will be located, at least once a week for three
2 consecutive weeks, a notice that the application has been
3 filed and that objections to the granting of the application
4 may be filed within ten days after the last publication of
5 the notice. Any person, firm or corporation or other entity
6 objecting that the granting of the application will impair
7 the objector's water right shall have standing to file
8 objections or protests. Any person, firm or corporation or
9 other entity objecting that the granting of the application
10 will be contrary to the conservation of water within the
11 state or detrimental to the public welfare of the state and
12 showing that the objector will be substantially and
13 specifically affected by the granting of the application
14 shall have standing to file objections or protests; provided,
15 however, that the state [~~of New Mexico~~] or any of its
16 branches, agencies, departments, boards, instrumentalities or
17 institutions, and all political subdivisions of the state and
18 their agencies, instrumentalities and institutions shall have
19 standing to file objections or protests.

20 E. If alleging impairment to the protestant's
21 water right, the protestant shall provide evidence of a valid
22 existing water right, which shall include:

23 (1) the protestant's state engineer water
24 right file number; or

25 (2) if there is no state engineer file

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1 number, a description of the affected water rights that
2 specifies the place and purpose of use, amount of beneficial
3 use, point of diversion, name of water source, whether
4 aquifer or stream, and priority date of the water right; and

5 (3) such other evidence that the state
6 engineer may require.

7 F. If the protestant is alleging that granting an
8 application will be contrary to the conservation of water
9 within the state or detrimental to the public welfare of the
10 state, the protestant shall provide evidence that the
11 protestant will be substantially and specifically affected by
12 the granting of the application. Alleged impairment to the
13 protestant's water right cannot also be the basis to claim
14 the protestant is substantially and specifically affected by
15 the granting of the application.

16 G. Evidence of a protestant's standing shall be
17 included in the written protest filed within ten days after
18 the last publication of the notice required by Subsection D
19 of this section. No late or amended protests shall be
20 allowed. A protestant's participation in a state engineer
21 administrative hearing shall be limited to those issues
22 contained in the written protest. An applicant may seek to
23 recover attorney fees and costs for a frivolous protest.

24 ~~[E.]~~ H. After the expiration of the time for
25 filing objections, if no objections have been filed, the

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1 state engineer shall, if ~~[he]~~ the state engineer finds that
2 there are in the underground stream, channel, artesian basin,
3 reservoir or lake unappropriated waters or that the proposed
4 appropriation would not impair existing water rights from the
5 source, is not contrary to conservation of water within the
6 state and is not detrimental to the public welfare of the
7 state, grant the application and issue a permit to the
8 applicant to appropriate all or a part of the waters applied
9 for, subject to the rights of all prior appropriators from
10 the source.

11 ~~[F-]~~ I. If objections or protests have been filed
12 within the time prescribed in the notice or if the state
13 engineer is of the opinion that the permit should not be
14 issued, the state engineer may deny the application without a
15 hearing or, before ~~[he]~~ the state engineer acts on the
16 application, may order that a hearing be held. ~~[He]~~ The
17 state engineer shall notify the applicant of ~~[his]~~ the action
18 by certified mail sent to the address shown in the
19 application."

20 **SECTION 4.** Section 72-12-22 NMSA 1978 (being Laws 1959,
21 Chapter 41, Section 1) is amended to read:

22 "72-12-22. REPLACEMENT WELL WITHIN ONE HUNDRED FEET.--

23 A. The owner of a water right may drill and use a
24 replacement well drilled within one hundred feet of the
25 original well prior to application to the state engineer and

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1 the publication and hearing set out in Section [~~75-11-3 New~~
2 ~~Mexico Statutes Annotated, 1953 Compilation~~] 72-12-3 NMSA
3 1978 if:

4 (1) the well is drilled into the same [~~and~~
5 ~~only the same~~] underground stream, channel, artesian basin,
6 reservoir or lake as the original well; [~~and~~]

7 (2) the appropriation is of the same amount
8 of water allowed by [~~his~~] the owner's water right in the
9 original well; [~~and~~]

10 (3) an emergency situation exists in which
11 the delay caused by application, publication and hearing
12 would result in crop loss or other serious economic loss; and

13 (4) [~~he~~] the owner files an application or
14 notifies the office of the state engineer [~~office~~] of these
15 facts and the location of the proposed replacement well by
16 registered letter, prior to drilling; provided that [~~he~~] the
17 owner shall file application for a permit within [~~30~~] thirty
18 days after drilling begins.

19 B. The owners of other water rights, who claim to
20 be injured by the drilling of a replacement well under these
21 circumstances, may not enjoin the drilling of such a well or
22 the use of the water from the well, but are limited to an
23 action at law to recover damages and to their right to
24 protest the granting of a permit.

25 C. For the purposes of this section, the amount

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1 of water available for appropriation is the greater of the
2 amount of water put to full beneficial use by the water
3 right's owner, the amount of the owner's permitted water
4 right or the amount of the owner's declared water right;
5 provided that at least some portion of the owner's permitted
6 or declared water right previously has been put to beneficial
7 use."

8 SECTION 5. Section 72-12-23 NMSA 1978 (being Laws 1959,
9 Chapter 41, Section 2) is amended to read:

10 "72-12-23. REPLACEMENT WELL OVER ONE HUNDRED FEET FROM
11 ORIGINAL WELL.--

12 A. The owner of a water right may drill and use a
13 replacement well drilled over one hundred feet from ~~[his]~~ the
14 owner's original well upon making application but without
15 waiting for the completion of the publication and hearing set
16 out in Section ~~[75-11-3 New Mexico Statutes Annotated, 1953~~
17 ~~Compilation]~~ 72-12-3 NMSA 1978 if:

18 (1) the well is drilled into the same ~~[and~~
19 ~~only the same]~~ underground stream, channel, artesian basin,
20 reservoir or lake as the original well; ~~[and]~~

21 (2) the appropriation is of the same amount
22 of water allowed by ~~[his]~~ the owner's water right in the
23 original well; ~~[and]~~

24 (3) an emergency situation exists in which
25 the delay caused by publication and hearing would result in

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1 crop loss or other serious economic loss; and

2 (4) the state engineer, after a preliminary
3 investigation, finds the change does not impair existing
4 water rights and grants [~~him~~] a permit authorizing the
5 drilling and use of the replacement well prior to the
6 publication and hearing.

7 B. When the preliminary investigation by the
8 state engineer causes [~~him~~] the state engineer to reasonably
9 believe that the drilling and use of a replacement well may
10 impair existing rights, then no permit shall be issued until
11 after publication and hearing.

12 C. For the purposes of this section, the amount
13 of water available for appropriation is the greater of the
14 amount of water put to full beneficial use by the water
15 right's owner, the amount of the owner's permitted water
16 right or the amount of the owner's declared water right;
17 provided that at least some portion of the owner's permitted
18 or declared water right previously has been put to beneficial
19 use."

20 SECTION 6. Section 72-12-24 NMSA 1978 (being Laws 1959,
21 Chapter 41, Section 3) is amended to read:

22 "72-12-24. SUPPLEMENTAL WELL.--

23 A. The owner of a water right may drill and use a
24 supplemental well upon making application but prior to the
25 publication and hearing set out in Section [~~75-11-3~~ New

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1 ~~Mexico Statutes Annotated, 1953 Compilation]~~ 72-12-3 NMSA
2 1978 if:

3 (1) the supplemental well is drilled into
4 the same [~~and only the same~~] underground stream, channel,
5 artesian basin, reservoir or lake as the well being
6 supplemented; [~~and~~]

7 (2) the supplemental well does not increase
8 the appropriation of water to an amount above the existing
9 water right; [~~and~~]

10 (3) an emergency situation exists in which
11 the delay caused by publication and hearing would result in
12 crop loss or other serious economic loss; and

13 (4) the state engineer, after a preliminary
14 investigation, finds that the supplemental well does not
15 impair existing water rights and grants [~~him~~] a permit
16 authorizing the drilling and use of the supplemental well
17 prior to publication and hearing.

18 B. If the preliminary investigation by the state
19 engineer causes [~~him~~] the state engineer to reasonably
20 believe that the drilling and use of a supplemental well may
21 impair existing rights, then no permit shall be issued until
22 after publication and hearing.

23 C. For the purposes of this section, the amount
24 of water available for appropriation is the greater of the
25 amount of water put to full beneficial use by the water

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1 right's owner, the amount of the owner's permitted water
2 right or the amount of the owner's declared water right;
3 provided that at least some portion of the owner's permitted
4 or declared water right previously has been put to beneficial
5 use."