

SENATE CONSERVATION COMMITTEE SUBSTITUTE FOR
SENATE BILL 12

54TH LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2019

AN ACT

RELATING TO WATER RIGHTS NOTIFICATIONS; REQUIRING THE OFFICE OF
THE STATE ENGINEER TO POST NOTICES ONLINE; PRESCRIBING A
DEADLINE FOR OBJECTING TO WATER DIVERSION APPLICATIONS.

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

SECTION 1. Section 72-5-4 NMSA 1978 (being Laws 1907,
Chapter 49, Section 26, as amended) is amended to read:

"72-5-4. NOTICE--PUBLICATION.--

A. Upon the filing of an application that complies
with the provisions of this article and the rules established
~~[thereunder]~~ pursuant to this article, accompanied by the
proper fees, the state engineer shall ~~[instruct]~~ issue
instructions to the applicant to publish notice ~~[thereof]~~ of
the application, in a form and in a newspaper prescribed by the
state engineer, in some newspaper that is published and

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1 distributed in each county affected by the diversion and in
2 each county where the water will be or has been put to
3 beneficial use, or if there is no such newspaper, then in some
4 newspaper of general circulation in the stream system, once a
5 week for three consecutive weeks. The notice shall:

6 (1) give all essential facts as to the
7 proposed appropriation; among them, the places of appropriation
8 and of use, amount of water, the purpose for which it is to be
9 used, name and address of applicant and the time when the
10 application shall be taken up by the state engineer for
11 consideration; and

12 (2) state the date by which objections may be
13 filed to the application, which date shall be seventy days from
14 the date the state engineer instructs the applicant to make
15 publication.

16 B. The applicant shall ensure that notice is
17 published in accordance with the state engineer's instructions
18 at least once a week for three consecutive weeks, with the last
19 date of publication no more than sixty days after the date the
20 state engineer issues instructions to publish the notice.

21 C. Proof of publication as required shall be filed
22 with the state engineer within [sixty] twenty days [of his
23 instructions to make] after the date of the last publication.

24 In case of failure to file satisfactory proof of publication in
25 accordance with the rules within the time required, the

1 application shall be treated as an original application filed
2 on the date of receipt of proofs of publication in proper form.

3 D. If the last of the three consecutive weekly
4 publications does not occur within sixty days of the date the
5 state engineer issues instructions to the applicant to publish
6 notice, the applicant shall request new instructions to publish
7 notice and the state engineer shall issue new instructions to
8 the applicant and the deadlines for publication, objection and
9 filing proof of publication shall be from the date of the new
10 instructions.

11 E. No later than five business days after the state
12 engineer issues instructions to publish notice, the state
13 engineer shall post the notice, application and date by which
14 objections shall be filed on the office of the state engineer
15 website. The electronic notice posted by the state engineer
16 shall provide the name of the newspaper in which the state
17 engineer instructed the applicant to publish and the location
18 and contact information of the state engineer district office
19 where the original application and supporting documentation are
20 located."

21 **SECTION 2.** Section 72-5A-5 NMSA 1978 (being Laws 1999,
22 Chapter 285, Section 5) is amended to read:

23 "72-5A-5. NOTICE--PROTESTS--HEARINGS--DETERMINATIONS--
24 JUDICIAL REVIEW.--

25 A. Upon receipt of an application for a permit to

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1 construct and operate a project, the state engineer shall
2 endorse on the application the date it was received and shall
3 keep a record of the application. The state engineer shall
4 conduct an initial review of the application within sixty days
5 of receipt. If the state engineer determines in the initial
6 review that the application is incomplete, the state engineer
7 shall notify the applicant of the application's deficiencies.
8 The application shall remain incomplete until the applicant
9 provides all information required by the Ground Water Storage
10 and Recovery Act. The state engineer may request additional
11 information from the applicant and shall conduct an
12 investigation of the project.

13 B. ~~[Within thirty days]~~ After determining that an
14 application is complete, ~~[unless an extension is requested by~~
15 ~~the applicant, the applicant shall]~~ the state engineer shall
16 issue instructions to the applicant to publish a notice of the
17 application in a form and in a newspaper prescribed by the
18 state engineer that is of general circulation in the county in
19 which persons reside who could reasonably be expected to be
20 affected by the project. The notice ~~[shall be given once a~~
21 ~~week for three consecutive weeks and]~~ shall contain:

22 (1) the legal description of the location of
23 the proposed project;

24 (2) a brief description of the proposed
25 project, including its capacity;

1 (3) the name of the applicant;

2 (4) the date of the last publication;

3 (5) the requirements for an objection; and

4 (6) ~~[disclosure that objections to the~~
5 ~~application shall be filed within ten days after the last~~
6 ~~publication of the notice]~~ the date by which objections may be
7 filed to the application, which date shall be seventy days from
8 the date the state engineer issues instructions to the
9 applicant to make publication.

10 C. The applicant shall ensure that notice is
11 published in accordance with the state engineer's instructions
12 at least once a week for three consecutive weeks, with the last
13 date of publication no more than sixty days after the date the
14 state engineer issues instructions to publish notice.

15 D. Objections to the granting of the application
16 may be filed with the state engineer no later than seventy days
17 after the date the state engineer issues instructions to
18 publish notice. The state engineer shall identify in the
19 instructions to publish notice the date by which objections
20 shall be filed.

21 E. The applicant shall file proof of publication
22 with the state engineer within twenty days after the date of
23 the last publication. In case of failure to file satisfactory
24 proof of publication in accordance with the rules within the
25 time required, the application shall be treated as an original

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1 application filed on the date of receipt of proofs of
2 publication in proper form.

3 F. If the last of the three consecutive weekly
4 publications does not occur within sixty days of the date the
5 state engineer issues instructions to the applicant to publish
6 notice, the applicant shall request new instructions to publish
7 notice and the state engineer shall issue new instructions to
8 the applicant and the deadlines for publication, objection and
9 filing proof of publication shall be from the date of the new
10 instructions.

11 G. No later than five business days after the state
12 engineer issues instructions to publish notice, the state
13 engineer shall post the notice, application and date by which
14 objections shall be filed on the office of the state engineer
15 website. The electronic notice posted by the state engineer
16 shall provide the name of the newspaper in which the state
17 engineer instructed the applicant to publish notice and the
18 location and contact information of the state engineer district
19 office where the original application and supporting
20 documentation are located.

21 [G.] H. A person objecting that the granting of the
22 application will impair the objector's water right, will be
23 contrary to the conservation of water or will be detrimental to
24 the public welfare and showing that the objector will be
25 substantially and specifically affected by the granting of the

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

7 ~~[D.]~~ I. An objection shall be filed in writing,
8 include the name and mailing address of the objector, identify
9 the grounds for the objection and include the signature of the
10 objector or ~~[his]~~ the objector's legal representative. The
11 state engineer shall schedule a hearing on the application and
12 provide at least thirty days' notice of the hearing, by
13 certified mail, to the applicant and any objector.

14 ~~[E.]~~ J. After the expiration of the time for filing
15 objections, if no objections have been filed, the state
16 engineer shall, if ~~[he]~~ the state engineer finds that the
17 application meets the requirements of the Ground Water Storage
18 and Recovery Act, issue a permit to the applicant to construct
19 the project to store and recover all or a part of the waters
20 applied for, as conditioned by the state engineer.

21 ~~[F.]~~ K. A person or governmental entity aggrieved
22 by any decision of the state engineer may appeal that decision
23 to the district court pursuant to Section 72-7-1 NMSA 1978."

24 **SECTION 3.** Section 72-6-6 NMSA 1978 (being Laws 1967,
25 Chapter 100, Section 6, as amended) is amended to read:

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1 "72-6-6. APPLICATION--NOTICE--PROTEST--HEARING.--

2 A. Upon the filing of an application by a lessee,
3 the state engineer shall ~~[cause a notice of the filing to be~~
4 ~~published once a week for three consecutive weeks]~~ issue
5 instructions to the applicant to publish notice of the
6 application in a form and in a newspaper prescribed by the
7 state engineer that is of general circulation in the county in
8 which the water right is situated. The notice shall state the
9 date by which objections may be filed to the application, which
10 date shall be seventy days from the date the state engineer
11 issues instructions to the applicant to make publication.

12 B. The applicant shall ensure that notice is
13 published in accordance with the state engineer's instructions
14 at least once a week for three consecutive weeks, with the last
15 date of publication no more than sixty days after the date the
16 state engineer issues instructions to publish notice.

17 C. Objections to the granting of the application
18 may be filed with the state engineer no later than seventy days
19 after the date the state engineer issues instructions to
20 publish notice. The state engineer shall identify in the
21 instructions to publish notice the date by which objections
22 shall be filed.

23 D. The applicant shall file proof of publication
24 with the state engineer within twenty days after the date of
25 the last publication. In case of failure to file satisfactory

1 proof of publication in accordance with the rules within the
2 time required, the application shall be treated as an original
3 application filed on the date of receipt of proofs of
4 publication in proper form.

5 E. If the last of the three consecutive weekly
6 publications does not occur within sixty days of the date the
7 state engineer issues instructions to the applicant to publish
8 notice, the applicant shall request new instructions to publish
9 notice and the state engineer shall issue new instructions to
10 the applicant and the deadlines for publication, objection and
11 filing proof of publication shall be from the date of the new
12 instructions.

13 F. No later than five business days after the state
14 engineer issues instructions to publish notice, the state
15 engineer shall post the notice, application and date by which
16 objections shall be filed on the office of the state engineer
17 website. The electronic notice posted by the state engineer
18 shall provide the name of the newspaper in which the state
19 engineer instructed the applicant to publish notice and the
20 location and contact information of the state engineer district
21 office where the original application and supporting
22 documentation are located.

23 [B.] G. Any owner who believes [his] the owner's
24 water rights will be adversely affected by the granting of the
25 application may file a protest. The protest shall be specific

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1 as to how the granting of the application will adversely affect
2 [~~his~~] the owner's water rights. The protest shall be filed in
3 writing with the state engineer and a copy sent to the
4 applicant by certified mail within ten days after the last
5 publication of notice of application.

6 [~~G.~~] H. If a protest is filed, the state engineer
7 shall hold a hearing on the granting of the application, and
8 the applicant and protestants shall be notified by the state
9 engineer as to the date and place of the hearing.

10 [~~D.~~] I. If no objections are filed, the state
11 engineer may grant the application without hearing. If no
12 objections are filed and the state engineer denies the
13 application, the state engineer shall hold a hearing if
14 requested to do so by the applicant. The request shall be
15 filed with the state engineer within ten days after the denial
16 of the application.

17 [~~E.~~] J. If the state engineer grants the
18 application but allows the applicant to use less water than the
19 amount of water the owner would be allowed to use, the state
20 engineer shall hold a hearing on the matter if requested to do
21 so by the applicant. The request shall be filed with the state
22 engineer within ten days after the granting of the application.

23 [~~F.~~] K. In a hearing before the state engineer, a
24 full record and transcript of the proceeding shall be kept by
25 [~~him~~] the state engineer.

1 [~~G.~~] L. The provisions of this section do not apply
2 to leases approved pursuant to Section 73-10-48 NMSA 1978."

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

5 "72-12-3. APPLICATION FOR USE OF UNDERGROUND WATER--
6 PUBLICATION OF NOTICE--PERMIT.--

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

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

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

18 (3) the location of the proposed well;

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

21 (5) the amount of water applied for;

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

24 (7) if the use is for irrigation, the
25 description of the land to be irrigated and the name of the

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1 owner of the land.

2 B. If the well will be located on privately owned
3 land and the applicant is not the owner of the land or the
4 owner or the lessee of the mineral or oil and gas rights under
5 the land, the application shall be accompanied by an
6 acknowledged statement executed by the owner of the land that
7 the applicant is granted access across the owner's land to the
8 drilling site and has permission to occupy such portion of the
9 owner's land as is necessary to drill and operate the well.

10 This subsection does not apply to the state or any of its
11 political subdivisions. If the application is approved, the
12 applicant shall have the permit and statement, executed by the
13 owner of the land, recorded in the office of the county clerk
14 of the county in which the land is located.

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

18 D. Upon the filing of an application, the state
19 engineer shall ~~[cause to be published]~~ issue instructions to
20 the applicant to publish notice of the application in a form
21 and in a newspaper prescribed by the state engineer that is
22 published and distributed in the county where the well will be
23 located and in each county where the water will be or has been
24 put to beneficial use or where other water rights may be
25 affected, or if there is no such newspaper, then in some

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1 newspaper of general circulation in the county in which the
2 well will be located [~~at least once a week for three~~
3 ~~consecutive weeks, a notice that the application has been filed~~
4 ~~and that objections to the granting of the application may be~~
5 ~~filed within ten days after the last publication of the~~
6 ~~notice~~]. The notice shall state the date by which objections
7 may be filed to the application, which date shall be seventy
8 days from the date the state engineer issues instructions to
9 the applicant to make publication.

10 E. The applicant shall ensure that notice is
11 published in accordance with the state engineer's instructions
12 at least once a week for three consecutive weeks, with the last
13 date of publication no more than sixty days after the date the
14 state engineer issues instructions to publish notice.

15 F. Objections to the granting of the application
16 may be filed with the state engineer no later than seventy days
17 after the date the state engineer issues instructions to
18 publish notice. The state engineer shall identify in the
19 instructions to publish notice the date by which objections
20 shall be filed.

21 G. The applicant shall file proof of publication
22 with the state engineer within twenty days after the date of
23 the last publication. In case of failure to file satisfactory
24 proof of publication in accordance with the rules within the
25 time required, the application shall be treated as an original

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1 application filed on the date of receipt of proofs of
2 publication in proper form.

3 H. If the last of the three consecutive weekly
4 publications does not occur within sixty days of the date the
5 state engineer issues instructions to the applicant to publish
6 notice, the applicant shall request new instructions to publish
7 notice and the state engineer shall issue new instructions to
8 the applicant and the deadlines for publication, objection and
9 filing proof of publication shall be from the date of the new
10 instructions.

11 I. No later than five business days after the state
12 engineer issues instructions to publish notice, the state
13 engineer shall post the notice, application and date by which
14 objections shall be filed on the office of the state engineer
15 website. The electronic notice posted by the state engineer
16 shall provide the name of the newspaper in which the state
17 engineer instructed the applicant to publish notice and the
18 location and contact information of the state engineer district
19 office where the original application and supporting
20 documentation are located.

21 J. Any person, firm or corporation or other entity
22 objecting that the granting of the application will impair the
23 objector's water right shall have standing to file objections
24 or protests. Any person, firm or corporation or other entity
25 objecting that the granting of the application will be contrary

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1 to the conservation of water within the state or detrimental to
2 the public welfare of the state and showing that the objector
3 will be substantially and specifically affected by the granting
4 of the application shall have standing to file objections or
5 protests; provided, however, that the state [~~of New Mexico~~] or
6 any of its branches, agencies, departments, boards,
7 instrumentalities or institutions, and all political
8 subdivisions of the state and their agencies, instrumentalities
9 and institutions shall have standing to file objections or
10 protests.

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

23 ~~[F.]~~ L. If objections or protests have been filed
24 within the time prescribed in the notice or if the state
25 engineer is of the opinion that the permit should not be

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1 issued, the state engineer may deny the application without a
2 hearing or, before [~~he~~] the state engineer acts on the
3 application, may order that a hearing be held. [~~He~~] The state
4 engineer shall notify the applicant of [~~his~~] the action by
5 certified mail sent to the address shown in the application."

6 SECTION 5. Section 72-12B-1 NMSA 1978 (being Laws 1983,
7 Chapter 2, Section 1, as amended) is amended to read:

8 "72-12B-1. APPLICATIONS FOR THE TRANSPORTATION AND USE OF
9 PUBLIC WATERS OUTSIDE THE STATE.--

10 A. The state of New Mexico has long recognized the
11 importance of the conservation of its public waters and the
12 necessity to maintain adequate water supplies for the state's
13 water requirements. The state of New Mexico also recognizes
14 that under appropriate conditions the out-of-state
15 transportation and use of its public waters is not in conflict
16 with the public welfare of its citizens or the conservation of
17 its waters.

18 B. Any person, firm or corporation or any other
19 entity intending to withdraw water from any surface or
20 underground water source in the state of New Mexico and
21 transport it for use outside the state or to change the place
22 or purpose of use of a water right from a place in New Mexico
23 to a place out of that state shall apply to the state engineer
24 for a permit to do so. Upon the filing of an application, the
25 state engineer shall [~~cause to be published~~] issue instructions

1 to the applicant to publish notice of the application in a form
2 and in a newspaper prescribed by the state engineer that is of
3 general circulation in the county in which the well will be
4 located or the stream system from which surface water will be
5 taken [at least once a week for three consecutive weeks, a
6 notice that the application has been filed and that objections
7 to the granting of the application may be filed within ten days
8 after the last publication of the notice]. The notice shall
9 state the date by which objections may be filed to the
10 application, which date shall be seventy days from the date the
11 state engineer issues instructions to the applicant to make
12 publication.

13 C. The applicant shall ensure that notice is
14 published in accordance with the state engineer's instructions
15 at least once a week for three consecutive weeks, with the last
16 date of publication no more than sixty days after the date the
17 state engineer issues the instructions to publish notice.

18 D. Objections to the granting of the application
19 may be filed with the state engineer no later than seventy days
20 after the date the state engineer issues instructions to
21 publish notice. The state engineer shall identify in the
22 instructions to publish notice the date by which objections
23 shall be filed.

24 E. The applicant shall file proof of publication
25 with the state engineer within twenty days after the date of

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1 the last publication. In case of failure to file satisfactory
2 proof of publication in accordance with the rules within the
3 time required, the application shall be treated as an original
4 application filed on the date of receipt of proofs of
5 publication in proper form.

6 F. If the last of the three consecutive weekly
7 publications does not occur within sixty days of the date the
8 state engineer issues instructions to the applicant to publish
9 notice, the applicant shall request new instructions to publish
10 notice and the state engineer shall issue new instructions to
11 the applicant and the deadlines for publication, objection and
12 filing proof of publication shall be from the date of the new
13 instructions.

14 G. No later than five business days after the state
15 engineer issues instructions to publish notice, the state
16 engineer shall post the notice, application and date by which
17 objections shall be filed on the office of the state engineer
18 website. The electronic notice posted by the state engineer
19 shall provide the name of the newspaper in which the state
20 engineer instructed the applicant to publish notice and the
21 location and contact information of the state engineer district
22 office where the original application and supporting
23 documentation are located.

24 H. Any person, firm or corporation or other entity
25 objecting that the granting of the application would impair or

1 be detrimental to the objector's water right shall have
2 standing to file objections or protests. Any person, firm or
3 corporation or other entity objecting that the granting of the
4 application will be contrary to the conservation of water
5 within the state or detrimental to the public welfare of the
6 state and showing that the objector will be substantially and
7 specifically affected by the granting of the application shall
8 have standing to file objections or protests. Provided,
9 however, that the state of New Mexico or any of its branches,
10 agencies, departments, boards, instrumentalities or
11 institutions, and all political subdivisions of the state and
12 their agencies, instrumentalities and institutions shall have
13 standing to file objections or protests. The state engineer
14 shall accept for filing and act upon all applications filed
15 under this section in accordance with the provisions of this
16 section. The state engineer shall require notice of the
17 application and shall thereafter proceed to consider the
18 application in accordance with existing administrative law and
19 procedure governing the appropriation of surface or ground
20 water.

21 ~~[G.]~~ I. In order to approve an application under
22 this act, the state engineer must find that the applicant's
23 withdrawal and transportation of water for use outside the
24 state would not impair existing water rights, is not contrary
25 to the conservation of water within the state and is not

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1 otherwise detrimental to the public welfare of the citizens of
2 New Mexico.

3 ~~[D.]~~ J. In acting upon an application under this
4 act, the state engineer shall consider, but not be limited to,
5 the following factors:

6 (1) the supply of water available to the state
7 of New Mexico;

8 (2) water demands of the state of New Mexico;

9 (3) whether there are water shortages within
10 the state of New Mexico;

11 (4) whether the water that is the subject of
12 the application could feasibly be transported to alleviate
13 water shortages in the state of New Mexico;

14 (5) the supply and sources of water available
15 to the applicant in the state where the applicant intends to
16 use the water; and

17 (6) the demands placed on the applicant's
18 supply in the state where the applicant intends to use the
19 water.

20 ~~[E.]~~ K. By filing an application to withdraw and
21 transport waters for use outside the state, the applicant shall
22 submit to and comply with the laws of the state of New Mexico
23 governing the appropriation and use of water.

24 ~~[F.]~~ L. The state engineer is empowered to
25 condition the permit to insure that the use of water in another

1 state is subject to the same regulations and restrictions that
2 may be imposed upon water use in the state of New Mexico.

3 ~~[G-]~~ M. Upon approval of the application, the
4 applicant shall designate an agent in New Mexico for reception
5 of service of process and other legal notices."

6 SECTION 6. EFFECTIVE DATE.--The effective date of the
7 provisions of this act is July 1, 2019.

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