

1 SENATE BILL 435

2 **54TH LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2019**

3 INTRODUCED BY

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10 AN ACT

11 RELATING TO WATER; REQUIRING THE IDENTIFICATION OF END USERS IN
12 APPLICATIONS FOR THE APPROPRIATION OF UNDERGROUND WATER;
13 ESTABLISHING PRIOR UNDERGROUND WATER APPROPRIATION DECISIONS AS
14 LEGAL PRECEDENT IF NOT CLEARLY INCORRECT OR DISTINGUISHED;
15 PROVIDING GROUNDS TO REJECT AN APPLICATION.

16
17 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF NEW MEXICO:

18 SECTION 1. Section 72-12-3 NMSA 1978 (being Laws 1931,
19 Chapter 131, Section 3, as amended) is amended to read:

20 "72-12-3. APPLICATION FOR USE OF UNDERGROUND WATER--
21 PUBLICATION OF NOTICE--PERMIT.--

22 A. Any person, firm or corporation or any other
23 entity desiring to appropriate for beneficial use any of the
24 waters described in Chapter 72, Article 12 NMSA 1978 shall
25 apply to the state engineer in a form prescribed by ~~him~~ the

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1 state engineer. In the application, the applicant shall
2 designate:

3 (1) the particular underground stream,
4 channel, artesian basin, reservoir or lake from which water
5 will be appropriated;

6 (2) the beneficial use to which the water will
7 be applied;

8 (3) the location of the proposed well;

9 (4) the name of the owner of the land on which
10 the well will be located;

11 (5) the amount of water applied for;

12 (6) the place of the use for which the water
13 is desired; and

14 (7) if the use is for irrigation, the
15 description of the land to be irrigated and the name of the
16 owner of the land.

17 B. If the end user of all or part of the water
18 applied for is not the applicant itself, the application shall
19 identify all actual end users, including an entity subject to
20 Section 72-1-9 NMSA 1978, or another entity that provides water
21 service to identifiable customers within reasonably limited and
22 readily ascertainable service areas, such as existing
23 subdivisions. The application shall include documentary
24 evidence showing that the end user is contractually obligated
25 to take and beneficially use all of the water applied for

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1 within a reasonable time and that there is a substantial
2 probability that the applicant can and will complete the
3 appropriation with diligence within a reasonable time. If
4 there will be multiple end users, the amount each end user will
5 apply to beneficial use shall be identified. The requirements
6 of this subsection shall not apply to an applicant that is
7 subject to Section 72-1-9 NMSA 1978.

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

21 ~~[G-]~~ D. No application shall be accepted by the
22 state engineer unless it is accompanied by all the information
23 required by Subsections A, ~~[and]~~ B and C of this section.

24 ~~[D-]~~ E. The prior final decisions of the state
25 engineer or final court decisions arising from the decisions of

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1 the state engineer on underground water appropriations shall
2 constitute legal precedent, which shall be binding on the state
3 engineer in subsequent cases unless the prior decision was
4 demonstrably incorrect or clearly distinguished on the basis of
5 law or fact. In reaching a decision that reverses or is
6 otherwise inconsistent with a prior decision regarding an
7 appropriation from the same source or a hydrologically
8 connected source, the state engineer shall make specific
9 findings of fact and conclusions of law explaining why the
10 prior decision was incorrect or distinguished.

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

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

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

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