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SENATE MEMORIAL 17

55TH LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2021

INTRODUCED BY

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A MEMORIAL

REQUESTING THE STATE ENGINEER TO ESTABLISH OR OTHERWISE DEFINE THE TYPE OF FACTS AND PUBLIC POLICY THAT WILL DETERMINE WHETHER GRANTING AN APPLICATION FOR A NEW APPROPRIATION OF WATER WILL BE DETRIMENTAL TO THE PUBLIC WELFARE OF THE STATE.

WHEREAS, many cities, towns and unincorporated communities rely on ground water aquifers as their sole source of potable water to provide for the public health and safety of their residents, including the provision of safe drinking water that is essential for domestic consumption, sanitation, fire and police protection, medical services and veterinary services; and

WHEREAS, all sole source aquifers in New Mexico are mined because diversions exceed their recharge, and the water supply is finite; and

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1 WHEREAS, the state engineer supervises the mining of all
2 sole source aquifers; and

3 WHEREAS, almost uniformly, cities, towns and communities
4 relying on sole source aquifers are constrained geographically
5 and by the cost of engineering necessary to access alternative
6 water supplies; and

7 WHEREAS, the state engineer has a policy of granting new
8 appropriations from sole source mined aquifers or portions of
9 such aquifers based on the preservation of the water supply
10 sufficient to sustain existing water rights for forty years,
11 but not beyond forty years; and

12 WHEREAS, granting new appropriations that deplete a sole
13 source aquifer's fully appropriated water supply reduces the
14 conserved forty-year water supply to the detriment of prior
15 appropriators and impairs their prior rights to the water
16 supply intended to be conserved by the state engineer; and

17 WHEREAS, additionally, decisions to grant new depletions
18 to a water supply that the state engineer has determined to be
19 fully appropriated by the prior appropriators, including
20 cities, towns and communities, are conscious decisions to
21 deplete the water supply more quickly; and

22 WHEREAS, the statutory requirement that a new
23 appropriation of water be determined to "not be detrimental to
24 the public welfare" was added to the Water Code in 1985; and

25 WHEREAS, if dewatering sole source aquifers without regard

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1 to the public that will be left without water is not
2 detrimental to the public welfare of the state, then it is time
3 for the state engineer to clearly define the term "not
4 detrimental to the public welfare"; and

5 WHEREAS, state engineer staff are not informed of,
6 educated on, trained in or provided written directives for
7 determining whether an application for a new appropriation will
8 be detrimental to the public welfare of the state if granted;
9 and

10 WHEREAS, applicants and protestants are left to their
11 imaginations as to what is relevant to the state engineer in
12 the determination of whether the granting of an application
13 will be detrimental to the public welfare of the state; and

14 WHEREAS, after thirty-five years, the time has come and
15 the legislature hereby requests that the state engineer, in
16 finding that granting a new appropriation is not detrimental to
17 the public welfare, provide a specific rationale as required by
18 the law; and

19 WHEREAS, in doing so, the meaning of the term "not
20 detrimental to the public welfare of the state" will develop
21 and be understood by the state engineer and staff, applicants,
22 protestants and the courts;

23 NOW, THEREFORE, BE IT RESOLVED BY THE SENATE OF THE STATE
24 OF NEW MEXICO that the state engineer be requested to establish
25 or otherwise define the type of facts and public policy that

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1 will determine whether granting an application for a new
2 appropriation will be detrimental to the public welfare of the
3 state; and

4 BE IT FURTHER RESOLVED that the state engineer be
5 requested to not accept for filing applications for new
6 appropriations that will result in new depletions to aquifers,
7 or portions thereof, determined by the state engineer to have a
8 forty-year or less supply of water to sustain existing prior
9 appropriators until such time as the state engineer has
10 established or otherwise defined the term "detrimental to the
11 public welfare"; and

12 BE IT FURTHER RESOLVED that the state engineer be
13 requested to stay action on all pending applications for new
14 appropriations that will result in new depletions to aquifers,
15 or portions thereof, determined by the state engineer to have a
16 forty-year or less supply of water to sustain existing prior
17 appropriators until such time as the state engineer has
18 established or otherwise defined the term "detrimental to the
19 public welfare"; and

20 BE IT FURTHER RESOLVED that the state engineer be
21 requested to stay action on all pending applications for new
22 appropriations that will result in new depletions to aquifers,
23 or portions thereof, determined by the state engineer to have a
24 forty-year or less supply of water to sustain existing prior
25 appropriators docketed by the state engineer's hearing unit

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1 until such time as the state engineer has established the
2 criteria that the state engineer considers in order to
3 determine whether the granting of an application will be
4 "detrimental to the public welfare", unless the state engineer
5 explicitly sets forth findings of fact and policies for the
6 basis for the state engineer's determination as to whether the
7 application will not be "detrimental to the public welfare of
8 the state" if granted; and

9 BE IT FURTHER RESOLVED that copies of this memorial be
10 transmitted to the governor and the state engineer.