

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

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

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

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

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

(3) the location of the proposed well;

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

(5) the amount of water applied for;

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

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

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

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

D. Upon the filing of an application, the state engineer shall cause to be published in a newspaper that is published and distributed in the county where the well will be located and in each county where the water will be or has been put to beneficial use or where other water rights may be affected, or if there is no such newspaper, then in some newspaper of general circulation in the county in which the well will be located, at least once a week for three consecutive weeks, a notice that the application has been

filed and that objections to the granting of the application may be filed within ten days after the last publication of the notice. Any person, firm or corporation or other entity objecting that the granting of the application will impair the objector's water right shall have standing to file objections or protests. Any person, firm or corporation or other entity objecting that the granting of the application will be contrary to the conservation of water within the state or detrimental to the public welfare of the state and showing that the objector will be substantially and specifically affected by the granting of the application shall have standing to file objections or protests; provided, however, that the state [~~of New Mexico~~ ~~Mexico~~] or any of its branches, agencies, departments, boards, instrumentalities or institutions, and all political subdivisions of the state and their agencies, instrumentalities and institutions shall have standing to file objections or protests.

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

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

(2) if there is no state engineer file number, a description of the affected water rights that specifies the place and purpose of use, amount of beneficial use, point of diversion, name of water source, whether aquifer or stream, and priority date of the water right; and

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

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

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

~~[E.]~~ H. After the expiration of the time for filing objections, if no objections have been filed, the state engineer shall, if ~~[he]~~ the state engineer finds that there are in the underground stream, channel, artesian basin, reservoir or lake unappropriated waters or that the proposed appropriation would not impair existing water rights from the source, is not contrary to conservation of water within the state and is not detrimental to the

public welfare of the state, grant the application and issue a permit to the applicant to appropriate all or a part of the waters applied for, subject to the rights of all prior appropriators from the source.

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