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HOUSE BILL 196

46TH LEGISLATURE - STATE OF NEW MEXICO - SECOND SESSION, 2004

INTRODUCED BY

Luciano "Lucky" Varela

AN ACT

RELATING TO WATER; PROVIDING FOR ACTIVE RESOURCE MANAGEMENT AND DESIGNATION OF CRITICAL MANAGEMENT AREAS; AMENDING A SECTION OF CHAPTER 72, ARTICLE 2 NMSA 1978 TO ENABLE THE STATE ENGINEER TO REGULATE WELLS IN CRITICAL MANAGEMENT AREAS.

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

Section 1. A new section of Chapter 72, Article 2 NMSA 1978 is enacted to read:

"~~[NEW MATERIAL]~~ ACTIVE RESOURCE MANAGEMENT-- DESIGNATION OF CRITICAL MANAGEMENT AREAS. --

A. The legislature finds that:

(1) the constitution of New Mexico provides that only unappropriated water is subject to appropriation and that priority gives the better right. Protection of senior water rights is the constitutional duty of the state engineer

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1 in New Mexico;

2 (2) pursuant to eight interstate stream  
3 compacts, New Mexico is required to deliver water to other  
4 states, and failure to meet compact obligations can result in  
5 multimillion dollar judgments and priority calls with severe  
6 economic disruption;

7 (3) active resource management is essential if  
8 New Mexico is to protect, manage and develop New Mexico's water  
9 resources;

10 (4) demand for water exceeds the available  
11 supply in many areas of the state, and some of these areas  
12 require heightened protection and management if the state  
13 engineer is to meet his constitutional and compact duties and  
14 obligations and if the citizens in those areas are to be  
15 protected from loss of a vital resource;

16 (5) in some areas, multiple wells used for  
17 domestic purposes and limited irrigation impair the rights of  
18 existing users in some areas, contribute to excessive draw-down  
19 of the water table, threaten the short-term viability of areas  
20 with thin or reduced aquifer thickness or negatively impact the  
21 state's ability to meet its interstate compact obligations. In  
22 other areas, domestic wells are drilled into contaminated  
23 aquifers, compromising the health and safety of the citizens;  
24 and

25 (6) in areas of the state that require

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1 heightened protection, designation of critical management areas  
2 may be necessary to prolong the life of an aquifer, protect the  
3 rights of existing water users, enhance the ability of the  
4 state to meet its interstate compact delivery requirements and  
5 protect the health and safety of its citizens.

6 B. The state engineer may declare a critical  
7 management area in specific areas in the same manner as special  
8 orders made pursuant to Section 72-2-8 NMSA 1978.

9 C. As used in this section and Section 72-12-1.1  
10 NMSA 1978, "critical management area" means a bounded area that  
11 requires heightened water resource protection because the  
12 aquifer is fully appropriated and:

13 (1) new depletions are in an amount sufficient  
14 to result in a short life for the aquifer and water resources  
15 may be inadequate to sustain well production as evidenced by:

16 (a) significant water level decline and  
17 draw-down rates that are deemed excessive for the aquifer; or

18 (b) thin or reduced aquifer thickness  
19 such that wells are dry or low-yielding;

20 (2) additional depletions are shown to  
21 negatively affect the state's interstate compact delivery  
22 requirements; or

23 (3) additional wells drilled pursuant to  
24 Section 72-12-1.1 NMSA 1978 will impair the rights of existing  
25 users and are shown to either negatively affect the longevity

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1 of the aquifer or the ability of the state to meet its  
2 interstate compact delivery obligations.

3 D. Upon petition by an affected party, the critical  
4 management area designation is subject to reconsideration. The  
5 petition shall be considered in the same manner as special  
6 orders made pursuant to Section 72-2-8 NMSA 1978. The petition  
7 shall be granted if the critical management area has recovered  
8 and no longer requires heightened protection. "

9 Section 2. Section 72-12-1.1 NMSA 1978 (being Laws 2003,  
10 Chapter 298, Section 2) is amended to read:

11 "72-12-1.1. UNDERGROUND WATERS--DOMESTIC USE--PERMIT.--

12 A. A person, firm or corporation desiring to use  
13 public underground waters described in this section for  
14 irrigation of not to exceed one acre of noncommercial trees,  
15 lawn or garden or for household or other domestic use shall  
16 make application to the state engineer for a well on a form to  
17 be prescribed by the state engineer. Upon the filing of each  
18 application describing the use applied for, the state engineer  
19 shall issue a permit to the applicant to use the underground  
20 waters applied for [~~provided that~~], except as otherwise  
21 provided in this section.

22 B. Permits for domestic water use within  
23 municipalities shall be conditioned to require the permittee to  
24 comply with all applicable municipal ordinances enacted  
25 pursuant to Chapter 3, Article 53 NMSA 1978.

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1                   C. The state engineer may deny a permit for a  
2 domestic well if the ground water in the area is contaminated.

3                   D. The state engineer may deny a domestic well  
4 permit in a critical management area unless the applicant  
5 obtains a water right pursuant to this section. Water rights  
6 obtained pursuant to this section shall be considered water  
7 rights with a priority date and may be transferred to a new  
8 location or purpose of use subject to the provisions of Chapter  
9 72 NMSA 1978.

10                  E. A person required to obtain a water right  
11 pursuant to this section shall obtain an existing water right  
12 from within that critical management area and change the place  
13 or purpose of use of the water; provided that the proposed  
14 change will not increase depletions within the critical  
15 management area. The change in place or purpose of use shall  
16 be made pursuant to the provisions of Section 72-5-24 or  
17 72-12-7 NMSA 1978, except that a person required to obtain a  
18 water right pursuant to this section may be exempted from the  
19 public notice requirements if:

20                               (1) there is a change of use to domestic use  
21 with no change in location of use; or

22                               (2) the quantity of the water rights  
23 transferred is no more than one acre-foot and:

24                                       (a) the state engineer determines that  
25 the change will not impair existing rights, be contrary to

1 conservation of water, be detrimental to the public welfare or  
2 result in depletions of water in the system greater than would  
3 have occurred in the absence of the transaction; and

4 (b) the governing board of the acequia  
5 or community ditch association has given written approval of  
6 the transfer when the water right to be transferred is from an  
7 acequia or community ditch.

8 F. A person may appeal the decision of the state  
9 engineer pursuant to the provisions of Section 72-7-1 NMSA 1978  
10 within thirty days after receipt by certified mail of the  
11 notice from the state engineer. "