

HOUSE AGRICULTURE AND WATER RESOURCES COMMITTEE SUBSTITUTE FOR
HOUSE BILL 196

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

AN ACT

RELATING TO WATER; PROVIDING FOR ACTIVE RESOURCE MANAGEMENT AND
DESIGNATION OF CRITICAL MANAGEMENT AREAS; AMENDING AND ENACTING
SECTIONS OF CHAPTER 72 NMSA 1978 TO ENABLE THE STATE ENGINEER
TO REGULATE DOMESTIC WELLS IN CRITICAL MANAGEMENT AREAS;
DECLARING AN EMERGENCY.

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 DESIGNATION OF CRITICAL MANAGEMENT
AREAS.--

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

B. As used in Chapter 72 NMSA 1978, "critical

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underscored material = new
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1 management area" means a bounded area specifically described by
2 section, township and range, or by other land survey
3 descriptions, that requires special water resource protection
4 because:

5 (1) water resources may be inadequate to
6 sustain well production as evidenced by water level decline
7 rates and available aquifer thickness; or

8 (2) additional depletions are shown to
9 negatively affect interstate compact delivery requirements.

10 C. The state engineer shall treat all applications
11 for wells of the same type in the same manner within each
12 critical management area.

13 D. A critical management area designation is
14 subject to reconsideration upon petition by a person owning
15 land or water rights within that critical management area. The
16 state engineer shall consider the petition pursuant to
17 procedures set forth for the promulgation of special orders in
18 Section 72-2-8 NMSA 1978. The petition shall be granted if the
19 critical management area has recovered such that the conditions
20 under which the critical management area was declared no longer
21 exist.

22 E. A critical management area designation shall be
23 reviewed every five years to ascertain whether the critical
24 management area continues to meet the criteria for
25 designation."

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1 Section 2. Section 72-2-8 NMSA 1978 (being Laws 1967,
2 Chapter 246, Section 1) is amended to read:

3 "72-2-8. ADMINISTRATIVE REGULATIONS, CODES, INSTRUCTIONS,
4 ORDERS--PRESUMPTION OF CORRECTNESS.--

5 A. The state engineer may adopt regulations and
6 codes to implement and enforce any provision of any law
7 administered by him and may issue orders necessary to implement
8 his decisions and to aid him in the accomplishment of his
9 duties. In order to accomplish its purpose, this provision is
10 to be liberally construed.

11 B. Directives issued by the state engineer shall be
12 in form substantially as follows:

13 (1) regulations are written statements of the
14 state engineer of general application to the public,
15 implementing statutes, prescribing procedures and interpreting
16 and exemplifying the statutes to which they relate;

17 (2) codes are written standards and
18 specifications governing design and construction of dams;

19 (3) orders are written statements of the state
20 engineer to implement his [~~decision~~] decisions; and

21 (4) special orders are written statements
22 defining the declared boundaries of underground streams,
23 channels, artesian basins, reservoirs [~~or~~], lakes or critical
24 management areas.

25 C. To be effective, a regulation, code or special

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1 order issued by the state engineer shall be reviewed by the
2 attorney general or other legal counsel of the office of the
3 state [~~engineer's office~~] engineer prior to being filed as
4 required by law and the fact of his review shall be indicated
5 thereon.

6 D. To be effective, a regulation or code shall
7 first be issued as a proposed regulation or proposed code and
8 filed for public inspection in the office of the state engineer
9 along with the findings of fact that in the opinion of the
10 state engineer justify the regulation or code. Distribution
11 shall also be made to each district and field office for public
12 inspection and to each of the persons on the file of interested
13 persons [~~hereinafter~~] mentioned in Subsection G of this
14 section. After the proposed regulation or code has been on
15 file for one month, [~~he~~] the state engineer shall publish it
16 or, if it is lengthy, a resume of it in not less than five
17 newspapers of general circulation in the state, once a week for
18 two consecutive weeks, with the statement that there will be a
19 hearing on the proposed regulation or code on a day set in the
20 publication, which shall be not more than thirty days nor less
21 than twenty days after the last publication. The hearing shall
22 be held in Santa Fe, and any person who is or may be affected
23 by the proposed regulation or code may appear and testify.

24 E. Special orders may be promulgated without prior
25 notice and hearing, but the state engineer shall, within ten

1 days of promulgation of a special order, set a date for a
2 hearing on the special order and publish notice of the public
3 hearing in the same manner required [~~above~~] in Subsection D of
4 this section. When a special order is issued to designate a
5 critical management area, the order shall not become effective
6 until after notice and hearing. All applications submitted
7 after issuance of the special order shall be subject to the
8 provisions of the final adopted special order. Hearings on
9 special orders to create a critical management area shall be
10 held within the proposed critical management area.

11 F. In addition to filing copies of regulations as
12 required by law, the state engineer shall maintain in his
13 office duplicate official sets of current regulations, codes
14 and special orders, which sets shall be available for
15 inspection by the public.

16 G. The state engineer shall develop and maintain a
17 file of names and addresses of individuals and professional,
18 agricultural and other groups having an interest in the
19 promulgation of new, revised or proposed regulations and shall
20 at convenient times distribute to these persons all such
21 regulations, making such charges [~~therefor~~] as will defray the
22 expense incurred in their physical preparation and mailing.

23 H. Any regulation, code or order issued by the
24 state engineer is presumed to be in proper implementation of
25 the provisions of the water laws administered by him.

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1 I. The state engineer shall state the extent to
2 which regulations, codes and orders will have retroactive
3 effect and, if no such statement is made, they will be applied
4 prospectively only."

5 Section 3. Section 72-12-1.1 NMSA 1978 (being Laws 2003,
6 Chapter 298, Section 2) is amended to read:

7 "72-12-1.1. UNDERGROUND WATERS--DOMESTIC USE--PERMIT.--

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

18 B. Permits for domestic water use within
19 municipalities shall be conditioned to require the permittee to
20 comply with all applicable municipal ordinances enacted
21 pursuant to Chapter 3, Article 53 NMSA 1978.

22 C. The state engineer may deny a domestic well
23 permit in a critical management area unless the applicant
24 obtains a water right pursuant to Subsection D of this section.
25 Water rights obtained pursuant to this section are water rights

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1 with a priority date and may be transferred to a new location
2 or purpose of use subject to the provisions of Chapter 72 NMSA
3 1978.

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

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

16 (2) the water right transferred is one acre-
17 foot or less and:

18 (a) the state engineer determines that
19 the change will not impair existing water rights, be contrary
20 to conservation of water or be detrimental to the public
21 welfare; and

22 (b) the water right to be transferred is
23 not from an acequia or community ditch.

24 E. A person may appeal the decision of the state
25 engineer pursuant to the provisions of Section 72-7-1 NMSA

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1 1978."

2 Section 4. EMERGENCY.--It is necessary for the public
3 peace, health and safety that this act take effect immediately.

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