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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.

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:

"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 management area" means a bounded area specifically described by section, township and range, or by other land survey descriptions, that requires special water resource protection because:

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

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

C. The state engineer shall treat all domestic

1 well applications filed pursuant to Section 72-12-1.1 NMSA  
2 1978 in the same manner within each critical management area.

3 D. A critical management area designation is  
4 subject to reconsideration upon petition by a person owning  
5 land or water rights within that critical management area.  
6 The state engineer shall consider the petition pursuant to  
7 procedures set forth for the promulgation of special orders  
8 in Section 72-2-8 NMSA 1978. The petition shall be granted  
9 if the critical management area has recovered such that the  
10 conditions under which the critical management area was  
11 declared no longer exist.

12 E. A critical management area designation shall be  
13 reviewed every five years to ascertain whether the critical  
14 management area continues to meet the criteria for  
15 designation."

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

18 "72-2-8. ADMINISTRATIVE REGULATIONS, CODES,  
19 INSTRUCTIONS, ORDERS--PRESUMPTION OF CORRECTNESS.--

20 A. The state engineer may adopt regulations and  
21 codes to implement and enforce any provision of any law  
22 administered by him and may issue orders necessary to  
23 implement his decisions and to aid him in the accomplishment  
24 of his duties. In order to accomplish its purpose, this  
25 provision is to be liberally construed.

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

3                   (1) regulations are written statements of  
4 the state engineer of general application to the public,  
5 implementing statutes, prescribing procedures and  
6 interpreting and exemplifying the statutes to which they  
7 relate;

8                   (2) codes are written standards and  
9 specifications governing design and construction of dams;

10                   (3) orders are written statements of the  
11 state engineer to implement his decisions; and

12                   (4) special orders are written statements  
13 defining the declared boundaries of underground streams,  
14 channels, artesian basins, reservoirs, lakes or critical  
15 management areas.

16           C. To be effective, a regulation, code or special  
17 order issued by the state engineer shall be reviewed by the  
18 attorney general or other legal counsel of the office of the  
19 state engineer prior to being filed as required by law and  
20 the fact of his review shall be indicated thereon.

21           D. To be effective, a regulation or code shall  
22 first be issued as a proposed regulation or proposed code and  
23 filed for public inspection in the office of the state  
24 engineer along with the findings of fact that in the opinion  
25 of the state engineer justify the regulation or code.

1 Distribution shall also be made to each district and field  
2 office for public inspection and to each of the persons on  
3 the file of interested persons mentioned in Subsection G of  
4 this section. After the proposed regulation or code has been  
5 on file for one month, the state engineer shall publish it  
6 or, if it is lengthy, a resume of it in not less than five  
7 newspapers of general circulation in the state, once a week  
8 for two consecutive weeks, with the statement that there will  
9 be a hearing on the proposed regulation or code on a day set  
10 in the publication, which shall be not more than thirty days  
11 nor less than twenty days after the last publication. The  
12 hearing shall be held in Santa Fe, and any person who is or  
13 may be affected by the proposed regulation or code may appear  
14 and testify.

15 E. Special orders may be promulgated without prior  
16 notice and hearing, but the state engineer shall, within ten  
17 days of promulgation of a special order, set a date for a  
18 hearing on the special order and publish notice of the public  
19 hearing in the same manner required in Subsection D of this  
20 section. When a special order is issued to designate a  
21 critical management area, the order shall not become  
22 effective until after notice and hearing. All applications  
23 submitted after issuance of the special order shall be  
24 subject to the provisions of the final adopted special order.  
25 Hearings on special orders to create a critical management

1 area shall be held within the proposed critical management  
2 area.

3 F. In addition to filing copies of regulations as  
4 required by law, the state engineer shall maintain in his  
5 office duplicate official sets of current regulations, codes  
6 and special orders, which sets shall be available for  
7 inspection by the public.

8 G. The state engineer shall develop and maintain a  
9 file of names and addresses of individuals and professional,  
10 agricultural and other groups having an interest in the  
11 promulgation of new, revised or proposed regulations and  
12 shall at convenient times distribute to these persons all  
13 such regulations, making such charges as will defray the  
14 expense incurred in their physical preparation and mailing.

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

18 I. The state engineer shall state the extent to  
19 which regulations, codes and orders will have retroactive  
20 effect and, if no such statement is made, they will be  
21 applied prospectively only."

22 Section 3. Section 72-12-1.1 NMSA 1978 (being Laws  
23 2003, Chapter 298, Section 2) is amended to read:

24 "72-12-1.1. UNDERGROUND WATERS--DOMESTIC USE--PERMIT.--

25 A. A person, firm or corporation desiring to use

1 public underground waters described in this section for  
2 irrigation of not to exceed one acre of noncommercial trees,  
3 lawn or garden or for household or other domestic use shall  
4 make application to the state engineer for a well on a form  
5 to be prescribed by the state engineer. Upon the filing of  
6 each application describing the use applied for, the state  
7 engineer shall issue a permit to the applicant to use the  
8 underground waters applied for, except as otherwise provided  
9 in this section.

10 B. Permits for domestic water use within  
11 municipalities shall be conditioned to require the permittee  
12 to comply with all applicable municipal ordinances enacted  
13 pursuant to Chapter 3, Article 53 NMSA 1978.

14 C. The state engineer may condition domestic well  
15 permits in critical management areas if wells permitted  
16 pursuant to this section will impair existing domestic well  
17 rights, senior water rights or interstate compact delivery  
18 requirements.

19 D. The state engineer shall approve a domestic  
20 well for use of water in an amount equal to the amount of:

21 (1) water rights transferred to that well  
22 pursuant to Subsection F of this section; or

23 (2) water under an existing domestic well  
24 permit issued pursuant to Section 72-12-1.1 NMSA 1978 in the  
25 critical management area and for which the applicant has

1 certified to the state engineer that the existing use has  
2 been discontinued and the existing well has been capped.

3 E. Water rights obtained pursuant to this section  
4 are water rights with a priority date and may be transferred  
5 to a new location or purpose of use subject to the provisions  
6 of Chapter 72 NMSA 1978.

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

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

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

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

25 (b) the water right to be transferred

1 is not from an acequia or community ditch.

2 G. A person may appeal the decision of the state  
3 engineer pursuant to the provisions of Section 72-7-1 NMSA  
4 1978." \_\_\_\_\_

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