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AN ACT

RELATING TO THE STATE ENGINEER; CHANGING CIVIL PROCEDURES IN  
STATE ENGINEER ADMINISTRATIVE HEARINGS; CHANGING  
QUALIFICATIONS FOR ADMINISTRATIVE HEARING OFFICERS.

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

Section 1. Section 72-2-12 NMSA 1978 (being Laws 1965,  
Chapter 285, Section 1) is amended to read:

"72-2-12. HEARING EXAMINERS.--In addition to the powers  
and authority, either express or implied, granted to the  
state engineer by other statutes of the state, the state  
engineer is given the authority and power in formulating  
rules and regulations, subject to the provisions of Section  
72-2-17 NMSA 1978, in connection with hearings or other  
proceedings before him to provide for the appointment of one  
or more examiners to conduct hearings with respect to matters  
properly coming before the state engineer and to make reports  
and recommendations. The state engineer, subject to the  
provisions of Section 72-2-17 NMSA 1978, shall promulgate,  
print and make available in the office of the state engineer  
rules and regulations with regard to hearings to be conducted  
before examiners, and the powers and duties of the examiners  
in any particular case may be limited by order of the state  
engineer to particular issues or to the performance of  
particular actions. In the absence of any limiting order, an

1 examiner appointed to hear any particular case shall have the  
2 power to regulate all proceedings before him and to perform  
3 acts and to take all measures necessary or proper for the  
4 efficient and orderly conduct of such hearing, including the  
5 swearing of witnesses, receiving of testimony and exhibits  
6 offered in evidence subject to such objections as may be  
7 imposed, and shall cause a complete record of the proceedings  
8 to be made and shall make his report and recommendations to  
9 the state engineer. The state engineer shall base his  
10 decision rendered in any matter heard by an examiner upon the  
11 record made by or under the supervision of the examiner in  
12 connection with such proceeding and the report and  
13 recommendation of the examiner. His decision shall have the  
14 same effect as if the hearing had been conducted by the state  
15 engineer. Persons appointed by the state engineer as hearing  
16 examiners shall be knowledgeable in the water laws of this  
17 state and administrative hearing procedures and, if  
18 necessary, water engineering or hydrology."

19 Section 2. Section 72-2-17 NMSA 1978 (being Laws 1965,  
20 Chapter 285, Section 5) is amended to read:

21 "72-2-17. HEARING--NOTICE--CONDUCT--RECORD.--

22 A. After a written request for hearing has been  
23 filed, the state engineer shall notify the requester and all  
24 interested parties by registered or certified mail, return  
25 receipt requested, of the hearing. The notice shall include:

1                   (1) the time, place, date and nature of the  
2 hearing, which time shall be not less than five nor more than  
3 sixty days from the date of filing of the request for  
4 hearing; provided that the state engineer may for good cause  
5 or upon stipulation of the parties set the hearing for a  
6 later date; and

7                   (2) the legal authority and jurisdiction  
8 under which the hearing will be held.

9                   B. In the conduct of the hearing:

10                   (1) opportunity shall be afforded all  
11 parties to appear and present evidence and argument on all  
12 issues involved;

13                   (2) irrelevant, immaterial or unduly  
14 repetitious evidence shall be excluded. The rules of  
15 evidence as applied in nonjury civil cases in the district  
16 courts of this state shall be generally followed; however,  
17 when it is necessary to ascertain facts not reasonably  
18 susceptible of proof under these rules, evidence not  
19 admissible thereunder may be admitted if it is of a type  
20 commonly relied upon by reasonably prudent men in the conduct  
21 of their affairs. Objections to evidentiary offers may be  
22 made and shall be noted in the record. Subject to these  
23 requirements, when a hearing will be expedited and interests  
24 of the parties will not be prejudiced substantially, any part  
25 of the evidence may be received in written form;

1                   (3) a party may have and be represented by  
2 counsel and may conduct cross-examinations required for a  
3 full and true disclosure of the facts;

4                   (4) notice may be taken of judicially  
5 cognizable facts. In addition, notice may be taken of  
6 generally recognized technical or scientific facts within the  
7 state engineer's specialized knowledge;

8                   (5) oral proceedings or any part thereof  
9 shall be transcribed on request of any party;

10                   (6) findings of fact shall be based  
11 exclusively on the evidence and on matters officially  
12 noticed; and

13                   (7) the Rules of Civil Procedure for the  
14 District Courts of New Mexico shall be generally followed.

15                   C. The state engineer or his appointed hearing  
16 examiner shall make a record of the hearing, which shall  
17 include:

18                   (1) all pleadings, motions and intermediate  
19 rulings;

20                   (2) evidence received or considered;

21                   (3) a statement of the matters officially  
22 noticed;

23                   (4) questions and offers of proof,  
24 objections and rulings thereon;

25                   (5) any proposed findings submitted; and

