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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 examiner appointed to hear any particular
case shall have the power to regulate all proceedings before him and to perform
acts and to take all measures necessary or proper for the efficient and orderly
conduct of such hearing, including the swearing of witnesses, receiving of testimony
and exhibits offered in evidence subject to such objections as may be imposed, and
shall cause a complete record of the proceedings to be made and shall make his
report and recommendations to the state engineer. The state engineer shall base

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1 his decision rendered in any matter heard by an examiner upon the record made by S
2 or under the supervision of the examiner in connection with such proceeding and B
3 the report and recommendation of the examiner. His decision shall have the same 3
4 effect as if the hearing had been conducted by the state engineer. Persons 8
5 appointed by the state engineer as hearing examiners shall be knowledgeable in 3
6 the water laws of this state and administrative hearing procedures and, if P
7 necessary, water engineering or hydrology." a
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8 Section 2. Section 72-2-17 NMSA 1978 (being Laws 1965, Chapter 285,
9 Section 5) is amended to read:

10 "72-2-17. HEARING--NOTICE--CONDUCT--RECORD.--

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

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

18 (2) the legal authority and jurisdiction under which the
19 hearing will be held.

20 B. In the conduct of the hearing:

21 (1) opportunity shall be afforded all parties to appear and
22 present evidence and argument on all issues involved;

23 (2) irrelevant, immaterial or unduly repetitious evidence shall
24 be excluded. The rules of evidence as applied in nonjury civil cases in the district
25 courts of this state shall be generally followed; however, when it is necessary to
ascertain facts not reasonably susceptible of proof under these rules, evidence not
admissible thereunder may be admitted if it is of a type commonly relied upon by

1 reasonably prudent men in the conduct of their affairs. Objections to evidentiary
2 offers may be made and shall be noted in the record. Subject to these
3 requirements, when a hearing will be expedited and interests of the parties will not
4 be prejudiced substantially, any part of the evidence may be received in written
5 form;

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

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

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

13 (6) findings of fact shall be based exclusively on the
14 evidence and on matters officially noticed; and

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

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

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

20 (2) evidence received or considered;

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

22 (4) questions and offers of proof, objections and rulings

23 thereon;

24 (5) any proposed findings submitted; and

25 (6) any decision, opinion or report by the state engineer or
hearing examiner conducting the hearing."

Section 3. EFFECTIVE DATE.--The effective date of the provisions of this

1 act is July 1, 2004.

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