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HOUSE BILL 285

47TH LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2005

INTRODUCED BY

Luciano "Lucky" Varela

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:

"~~[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 its 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 constitutional and compact duties and
14 obligations and if the citizens in those areas are to be
15 protected from the 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, contribute to excessive draw-down of the water
19 table, threaten the short-term viability of areas with thin or
20 reduced aquifer thickness or negatively impact the state's
21 ability to meet its interstate compact obligations. In other
22 areas, domestic wells are drilled into contaminated aquifers,
23 compromising the health and safety of the citizens; and

24 (6) in areas of the state that require
25 heightened protection, designation of critical management areas

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

5 B. The state engineer may declare a critical
6 management area, which shall be declared in the same manner as
7 special orders made pursuant to Section 72-2-8 NMSA 1978.

8 C. As used in Chapter 72 NMSA 1978, "critical
9 management area" means a bounded area, specifically described
10 by section, township and range, or by other land survey
11 descriptions, that requires special water resource protection
12 because:

13 (1) water resources may be inadequate to
14 sustain well production as evidenced by the decline of water
15 levels, well yields and available aquifer thickness; or

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

18 D. The state engineer shall treat all domestic well
19 applications filed pursuant to Section 72-12-1.1 NMSA 1978 in
20 the same manner within each critical management area.

21 E. A critical management area designation is
22 subject to reconsideration upon petition by a person owning
23 land or water rights within that critical management area. The
24 state engineer shall consider the petition pursuant to
25 procedures set forth for the promulgation of special orders in

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1 Section 72-2-8 NMSA 1978. The petition shall be granted if the
2 critical management area has recovered such that the conditions
3 under which the critical management area was declared no longer
4 exist. "

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

7 "72-2-8. ADMINISTRATIVE REGULATIONS, CODES, INSTRUCTIONS,
8 ORDERS-- PRESUMPTION OF CORRECTNESS. --

9 A. The state engineer may adopt regulations and
10 codes to implement and enforce any provision of any law
11 administered by ~~[him]~~ the state engineer and may issue orders
12 necessary to implement ~~[his]~~ decisions and to aid ~~[him]~~ in the
13 accomplishment of ~~[his]~~ the state engineer's duties. In order
14 to accomplish its purpose, this provision is to be liberally
15 construed.

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

18 (1) regulations are written statements of the
19 state engineer of general application to the public,
20 implementing statutes, prescribing procedures and interpreting
21 and exemplifying the statutes to which they relate;

22 (2) codes are written standards and
23 specifications governing design and construction of dams;

24 (3) orders are written statements of the state
25 engineer to implement ~~[his decision]~~ the state engineer's

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1 decisions; and

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

6 C. To be effective, a regulation, code or special
7 order issued by the state engineer shall be reviewed by the
8 attorney general or other legal counsel of the state
9 ~~[engineer's office]~~ engineer prior to being filed as required
10 by law and the fact of his review shall be indicated thereon.

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

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1 than twenty days after the last publication. The hearing shall
2 be held in Santa Fe, and any person who is or may be affected
3 by the proposed regulation or code may appear and testify.

4 E. Special orders may be promulgated without prior
5 notice and hearing, but the state engineer shall, within ten
6 days of promulgation of a special order, set a date for a
7 hearing on the special order and publish notice of the public
8 hearing in the same manner required ~~[above]~~ in Subsection D of
9 this section. When a special order is issued to designate a
10 critical management area, the order shall not become effective
11 until after notice and hearing. All applications submitted
12 after issuance of the special order shall be subject to the
13 provisions of the final adopted special order. Hearings on
14 special orders to create a critical management area shall be
15 held within the proposed critical management area.

16 F. In addition to filing copies of regulations as
17 required by law, the state engineer shall maintain in ~~[his]~~ the
18 office of the state engineer duplicate official sets of current
19 regulations, codes and special orders, which sets shall be
20 available for inspection by the public.

21 G. The state engineer shall develop and maintain a
22 file of names and addresses of individuals and professional,
23 agricultural and other groups having an interest in the
24 promulgation of new, revised or proposed regulations and shall
25 at convenient times distribute to these persons all such

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1 regulations, making such charges [~~therefor~~] as will defray the
2 expense incurred in their physical preparation and mailing.

3 H. Any regulation, code or order issued by the
4 state engineer is presumed to be in proper implementation of
5 the provisions of the water laws administered by [~~him~~] the
6 state engineer.

7 I. The state engineer shall state the extent to
8 which regulations, codes and orders will have retroactive
9 effect and, if no such statement is made, they will be applied
10 prospectively only. "

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

13 "72-12-1.1. UNDERGROUND WATERS--DOMESTIC USE--PERMIT.--

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

24 B. Permits for domestic water use within
25 municipalities shall be conditioned to require the permittee to

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1 comply with all applicable municipal ordinances enacted
2 pursuant to Chapter 3, Article 53 NMSA 1978.

3 C. The state engineer may deny domestic well permit
4 applications in critical management areas unless the applicant
5 transfers a water right pursuant to Subsection E of this
6 section.

7 D. Water rights obtained pursuant to this section
8 are water rights with a priority date and may be transferred to
9 a new location or purpose of use subject to the provisions of
10 Chapter 72 NMSA 1978.

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

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

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

25 (a) the state engineer determines that

1 the change will not impair existing water rights, be contrary
2 to conservation of water or be detrimental to the public
3 welfare; and

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

6 F. A person may appeal the decision of the state
7 engineer pursuant to the provisions of Section 72-7-1 NMSA
8 1978. "