

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

HOUSE BILL 1070

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

INTRODUCED BY
Joseph Cervantes

AN ACT

RELATING TO WATER; AMENDING THE GROUND WATER STORAGE AND
RECOVERY ACT TO PROVIDE ELIGIBILITY FOR GROUND WATER STORAGE
AND RECOVERY BY A PUBLIC UTILITY.

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

Section 1. Section 72-5A-3 NMSA 1978 (being Laws 1999,
Chapter 285, Section 3, as amended) is amended to read:

"72-5A-3. DEFINITIONS.--As used in the Ground Water
Storage and Recovery Act:

A. "aquifer" means a geologic formation that
contains sufficient saturated material to be capable of storing
and transmitting water in usable quantities to a well;

B. "area of hydrologic effect" means the
underground area where the water is stored and located,
hydrologically connected surface waters, adjacent underground

underscored material = new
[bracketed material] = delete

underscored material = new
[bracketed material] = delete

1 areas in which water rights exist that may be impaired, the
2 land surface above the underground areas and any additional
3 land surface used for seepage or infiltration;

4 C. "governmental entity" means the interstate
5 stream commission, an Indian nation, tribe or pueblo or state
6 political subdivision, including a municipality, county,
7 acequia, irrigation district or conservancy district;

8 D. "project" means a permitted, engineered facility
9 designed specifically, constructed and operated pursuant to the
10 Ground Water Storage and Recovery Act, to add measured volumes
11 of water by injection or infiltration to an aquifer or system
12 of aquifers, to store the water underground and to recover it
13 for beneficial use pursuant to the Ground Water Storage and
14 Recovery Act but shall not include in situ leach mining
15 operations or water flood operations for petroleum recovery
16 that require approval by the state engineer outside the Ground
17 Water Storage and Recovery Act; [~~and~~]

18 E. "public utility" means a person not engaged
19 solely in interstate business and, except as provided in
20 Sections 62-3-4 and 62-3-4.1 NMSA 1978, that owns, operates,
21 leases or controls:

22 (1) a facility for storing or distributing to
23 the public water for manufacturing, municipal, domestic or
24 other uses except agricultural irrigation; or

25 (2) a facility for providing public sanitary

.155209.1

underscored material = new
[bracketed material] = delete

1 sewer services; and

2 (3) has a certificate of public convenience
3 and necessity from the public regulation commission; and

4 [~~E.~~] F. "stored water" means water that has been
5 stored underground for the purpose of recovery and permitted
6 pursuant to the Ground Water Storage and Recovery Act."

7 Section 2. Section 72-5A-4 NMSA 1978 (being Laws 1999,
8 Chapter 285, Section 4) is amended to read:

9 "72-5A-4. PERMIT REQUIRED.--

10 A. No public utility or governmental entity may
11 construct and operate a storage and recovery project in a
12 declared ground water basin without a permit from the state
13 engineer and other permits that may be required.

14 B. The state engineer shall prescribe application
15 forms for a permit. The application shall include:

16 (1) an application fee in the amount of five
17 thousand dollars (\$5,000) plus five dollars (\$5.00) per acre-
18 foot of the annual capacity of the proposed storage and
19 recovery project, not to exceed fifty thousand dollars
20 (\$50,000); an annual fee of fifty cents (\$.50) per acre-foot
21 of water stored, payable upon submission of the annual report
22 required by the Ground Water Storage and Recovery Act;

23 (2) the name and mailing address of the
24 applicant;

25 (3) the name and mailing address of the

.155209.1

underscored material = new
[bracketed material] = delete

1 owner of the land on which the applicant proposes to operate
2 the project;

3 (4) the name of the declared underground
4 water basin in which the applicant proposes to operate the
5 project;

6 (5) the legal description of the location of
7 the proposed project;

8 (6) evidence of financial and technical
9 capability;

10 (7) the source, annual quantity and quality
11 of water proposed to be injected and the quality of water in
12 the receiving aquifer;

13 (8) the identification, characteristics,
14 capacity and location of each recharge and recovery well,
15 including existing pre-basin wells, existing permitted wells
16 and new wells sought to be drilled for recharge or recovery
17 pursuant to the application and the identification of
18 existing permitted and declared wells in the underground area
19 [~~effected~~] affected by storage and recovery operations;

20 (9) a description of the proposed project,
21 including its capacity, plan of operation and percentage of
22 anticipated recoverable water;

23 (10) evidence that the applicant has a valid
24 water right quantified by one of the following legal
25 processes:

.155209.1

- 1 (a) a water rights adjudication;
2 (b) a consent decree;
3 (c) an act of congress, including a
4 negotiated settlement ratified by congress;
5 (d) a contract pursuant to 43 USC 620
6 et. seq.; or
7 (e) an agreement with an owner who has
8 a valid water right subject to an application for a change in
9 purpose, place of use or point of diversion;
- 10 (11) a project plan that:
11 (a) shows that the project will not
12 cause harm to users of land and water within the area of
13 hydrologic effect;
14 (b) demonstrates that the project is
15 hydrologically feasible;
16 (c) demonstrates that the project will
17 not impair existing water rights or the state's interstate
18 obligations;
19 (d) demonstrates that the project will
20 not be contrary to the conservation of water within the
21 state; and
22 (e) demonstrates that the project will
23 not be detrimental to the public welfare of the state;
- 24 (12) a sworn statement executed by the owner
25 of the land that the applicant is granted an easement and

underscoring material = new
[bracketed material] = delete

1 authorization to construct and operate the project on the
2 site, if project facilities are located on land not owned by
3 the applicant;

4 (13) copies of completed applications for
5 all other permits required under state and federal law;

6 (14) the proposed duration of the permit;
7 and

8 (15) any additional information required by
9 the state engineer."

10 Section 3. Section 72-5A-5 NMSA 1978 (being Laws 1999,
11 Chapter 285, Section 5) is amended to read:

12 "72-5A-5. NOTICE--PROTESTS--HEARINGS--DETERMINATIONS--
13 JUDICIAL REVIEW.--

14 A. Upon receipt of an application for a permit to
15 construct and operate a project, the state engineer shall
16 endorse on the application the date it was received and shall
17 keep a record of the application. The state engineer shall
18 conduct an initial review of the application within sixty
19 days of receipt. If the state engineer determines in the
20 initial review that the application is incomplete, the state
21 engineer shall notify the applicant of the application's
22 deficiencies. The application shall remain incomplete until
23 the applicant provides all information required by the Ground
24 Water Storage and Recovery Act. The state engineer may
25 request additional information from the applicant and shall

.155209.1

underscored material = new
[bracketed material] = delete

1 conduct an investigation of the project.

2 B. Within thirty days after determining that an
3 application is complete, unless an extension is requested by
4 the applicant, the applicant shall publish a notice of the
5 application in a newspaper of general circulation in the
6 county in which persons reside who could reasonably be
7 expected to be affected by the project. The notice shall be
8 given once a week for three consecutive weeks and shall
9 contain:

10 (1) the legal description of the location of
11 the proposed project;

12 (2) a brief description of the proposed
13 project, including its capacity;

14 (3) the name of the applicant;

15 (4) the date of the last publication;

16 (5) the requirements for an objection; and

17 (6) disclosure that objections to the
18 application shall be filed within ten days after the last
19 publication of the notice.

20 C. A person objecting that the granting of the
21 application will impair the objector's water right, will be
22 contrary to the conservation of water or will be detrimental
23 to the public welfare and showing that the objector will be
24 substantially and specifically affected by the granting of
25 the application shall have standing to file objections or

.155209.1

underscored material = new
[bracketed material] = delete

1 protests; provided, however, that the state or any of its
2 branches, agencies, departments, boards, instrumentalities or
3 institutions, and all political subdivisions of the state and
4 their agencies, instrumentalities and institutions shall have
5 standing to file objections or protests.

6 D. An objection shall be filed in writing,
7 include the name and mailing address of the objector,
8 identify the grounds for the objection and include the
9 signature of the objector or his legal representative. The
10 state engineer shall schedule a hearing on the application
11 and provide at least thirty days' notice of the hearing, by
12 certified mail, to the applicant and any objector.

13 E. After the expiration of the time for filing
14 objections, if no objections have been filed, the state
15 engineer shall, if he finds that the application meets the
16 requirements of the Ground Water Storage and Recovery Act,
17 issue a permit to the applicant to construct the project to
18 store and recover all or a part of the waters applied for, as
19 conditioned by the state engineer.

20 F. A person, public utility or governmental
21 entity aggrieved by any decision of the state engineer may
22 appeal that decision to the district court pursuant to
23 Section 72-7-1 NMSA 1978."

24 Section 4. Section 72-5A-10 NMSA 1978 (being Laws 1999,
25 Chapter 285, Section 10) is amended to read:

.155209.1

underscored material = new
[bracketed material] = delete

1 "72-5A-10. ANNUAL REPORT TO STATE ENGINEER--PENALTY FOR
2 FAILURE TO FILE.--

3 A. Each permittee shall file an annual report
4 with the state engineer that includes:

5 (1) the total quantity of stored water and
6 recovered water;

7 (2) the water quality of the stored water,
8 the receiving aquifer and the recovered water;

9 (3) a sworn affidavit attesting to the
10 truthfulness and accuracy of the report's data; and

11 (4) a measurement of the static level of the
12 water table.

13 B. The annual report shall be maintained on a
14 calendar year basis and shall be filed with the state
15 engineer no later than March 31 for the preceding year. If a
16 public utility or governmental entity required to file an
17 annual report fails to do so when due, the state engineer may
18 assess and impose a penalty of five hundred dollars (\$500)
19 for each month or portion of a month that the report is not
20 filed. The total penalty assessed annually pursuant to this
21 subsection shall not exceed five thousand dollars (\$5,000).

22 C. All records and reports required to be
23 maintained and filed pursuant to this section shall be in a
24 form prescribed by the state engineer."

25 Section 5. Section 72-5A-11 NMSA 1978 (being Laws 1999,
.155209.1

underscoring material = new
[bracketed material] = delete

1 Chapter 285, Section 11) is amended to read:

2 "72-5A-11. REVOCATION OR SUSPENSION OF PERMITS--ORDERS
3 TO CEASE AND DESIST--INJUNCTION.--

4 A. The state engineer may periodically review a
5 project to determine if the permittee is complying with the
6 terms and conditions of the permit. The state engineer may
7 permanently revoke or temporarily suspend a permit for good
8 cause after an investigation and a hearing before the state
9 engineer or a hearing officer appointed by him. Notice shall
10 be sent, by certified mail, to the permittee at least thirty
11 days before any hearing on a revocation or suspension
12 disclosing the permittee's alleged failure to comply with the
13 permit's terms and conditions.

14 B. Except as otherwise provided in this section,
15 if the state engineer has reason to believe that a person,
16 public utility or governmental entity has violated a
17 provision of the Ground Water Storage and Recovery Act or a
18 permit issued or [~~regulation~~] rule adopted pursuant to that
19 act, the state engineer may issue a written notice that the
20 person, public utility or governmental entity appear and show
21 cause, at a hearing before the state engineer not less than
22 fifteen days after the receipt of the notice, why the person,
23 public utility or governmental entity should not be ordered
24 to cease and desist from the violation. The notice shall
25 inform the person, public utility or governmental entity of

.155209.1

underscoring material = new
~~[bracketed material] = delete~~

1 the date, time and place of the hearing and the consequences
2 of the person's, public utility's or governmental entity's
3 failure to appear.

4 C. If the state engineer finds that a person,
5 public utility or governmental entity is constructing or
6 operating a project in violation of the Ground Water Storage
7 and Recovery Act, the state engineer may issue a temporary
8 order for the person, public utility or governmental entity
9 to cease and desist the construction or operation pending
10 final action by the state engineer pursuant to this section.
11 The order shall include written notice to the person, public
12 utility or governmental entity of the date, time and place
13 where the person, public utility or governmental entity shall
14 appear at a hearing before the state engineer to show cause
15 why the temporary order should be vacated. The hearing shall
16 be held not less than fifteen days after the date of the
17 order.

18 D. After a hearing pursuant to this section, or
19 after the expiration of the time to appear, the state
20 engineer shall issue a decision and order. The decision and
21 order shall be in a form as the state engineer determines to
22 be reasonable and appropriate and may include a determination
23 of violation, an order to cease and desist, the
24 recommendation of a civil penalty and an order directing that
25 positive steps be taken to abate or ameliorate any harm or

.155209.1

underscored material = new
[bracketed material] = delete

1 damage arising from the violation. Any person, public
2 utility or governmental entity affected may appeal the
3 decision to the district court pursuant to Section 72-7-1
4 NMSA 1978.

5 E. If a person, public utility or governmental
6 entity continues a violation after the state engineer has
7 issued a decision and order pursuant to this section or a
8 temporary order pursuant to this section, the state engineer
9 may apply for a temporary restraining order or a preliminary
10 or permanent injunction from the district court. A decision
11 to seek injunctive relief does not preclude other forms of
12 relief or enforcement against a violator."

13 Section 6. Section 72-5A-12 NMSA 1978 (being Laws 1999,
14 Chapter 285, Section 12) is amended to read:

15 "72-5A-12. PENALTIES.--

16 A. A person who or governmental entity or public
17 utility that is determined to be in violation of the Ground
18 Water Storage and Recovery Act or a permit issued or rules
19 adopted pursuant to the act may be assessed a civil penalty
20 in an amount not exceeding:

21 (1) one hundred dollars (\$100) per day of
22 violation not directly related to the illegal recovery or use
23 of stored water; or

24 (2) ten thousand dollars (\$10,000) per day
25 of violation directly related to the illegal recovery or use

.155209.1

underscored material = new
[bracketed material] = delete

1 of stored water.

2 B. An action to recover penalties pursuant to
3 this section shall be brought by the state engineer in the
4 district court in which the violation occurred."

5 Section 7. Section 72-5A-17 NMSA 1978 (being Laws 1999,
6 Chapter 285, Section 17) is amended to read:

7 "72-5A-17. DELAYED IMPLEMENTATION.--A public utility or
8 governmental entity shall not submit an application pursuant
9 to the Ground Water Storage and Recovery Act, and the state
10 engineer shall not process an application, issue a
11 [~~regulation~~] rule pursuant to that act or implement any part
12 of that act unless the state engineer has been appropriated
13 enough money or has sufficient resources to carry out the
14 provisions of that act."

15 - 13 -