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HOUSE BILL 726

48TH LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2007

INTRODUCED BY

Luciano "Lucky" Varela

AN ACT

RELATING TO WATER; PROVIDING FOR THE ISSUANCE OF PERMITS FOR THE USE OF WATER FROM WELLS FOR DOMESTIC, LIVESTOCK AND TEMPORARY USES; PROVIDING FOR CRITICAL AND LOW-IMPACT MANAGEMENT AREAS; AMENDING, REPEALING AND ENACTING SECTIONS OF CHAPTER 72 NMSA 1978; DECLARING AN EMERGENCY.

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

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

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

A. The state engineer may adopt regulations and codes to implement and enforce any provision of any law administered by ~~[him]~~ the state engineer and may issue orders necessary to implement ~~[his]~~ decisions and to aid ~~[him]~~ in the

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1 accomplishment of [~~his~~] the state engineer's duties. In order
2 to accomplish its purpose, this provision is to be liberally
3 construed.

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

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

10 (2) codes are written standards and
11 specifications governing design and construction of dams;

12 (3) orders are written statements of the state
13 engineer to implement [~~his decision~~] the state engineer's
14 decisions; and

15 (4) special orders are written statements
16 defining the declared boundaries of underground streams,
17 channels, artesian basins, reservoirs, [~~or~~] lakes or critical
18 or low-impact management areas.

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

25 D. To be effective, a regulation or code shall

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

18 E. Special orders may be promulgated without prior
19 notice and hearing, but the state engineer shall, within ten
20 days of promulgation of a special order, set a date for a
21 hearing on the special order and publish notice of the public
22 hearing in the same manner required ~~[above]~~ in Subsection D of
23 this section. When a special order proposes to designate a
24 critical or low-impact management area, the order shall not
25 become effective until after notice and hearing. Hearings on

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1 special orders to create a critical or low-impact management
2 area shall be held within the proposed critical or low-impact
3 management area or as close as practicable to the area.

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

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

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

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

24 Section 2. Section 72-12-1 NMSA 1978 (being Laws 1931,
25 Chapter 131, Section 1, as amended) is amended to read:

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1 "72-12-1. UNDERGROUND WATERS DECLARED TO BE PUBLIC--
2 ~~[APPLICATIONS FOR LIVESTOCK WATERING, DOMESTIC AND TEMPORARY~~
3 ~~USES OF WATER].--~~The water of underground streams, channels,
4 artesian basins, reservoirs or lakes, having reasonably
5 ascertainable boundaries, is declared to belong to the public
6 and is subject to appropriation for beneficial use. ~~[By reason~~
7 ~~of the varying amounts and time such water is used and the~~
8 ~~relatively small amounts of water consumed in the watering of~~
9 ~~livestock; in irrigation of not to exceed one acre of~~
10 ~~noncommercial trees, lawn or garden; in household or other~~
11 ~~domestic use; and in prospecting, mining or construction of~~
12 ~~public works, highways and roads or drilling operations~~
13 ~~designed to discover or develop the natural resources of the~~
14 ~~state, application for any such use shall be governed by the~~
15 ~~provisions of Sections 72-12-1.1 through 72-12-1.3 NMSA 1978.]"~~

16 Section 3. A new section of Chapter 72, Article 12 NMSA
17 1978 is enacted to read:

18 "[NEW MATERIAL] UNDERGROUND WATERS--DOMESTIC, LIVESTOCK
19 AND TEMPORARY USES.--

20 A. The state engineer shall issue permits for small
21 amounts of water consumed for domestic household use, the
22 watering of livestock and for the temporary use of water for
23 prospecting, mining or construction of public works, highways
24 and roads or drilling operations designed to discover or
25 develop the natural resources of the state, subject to the

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1 following conditions:

2 (1) the state engineer has determined that the
3 new well will not cause impairment to existing water rights
4 users; and

5 (2) if the application is for domestic
6 household use, the use does not exceed one-fourth acre-foot per
7 year plus one-half acre-foot per year for irrigation of one
8 acre of land for noncommercial uses for trees, garden or
9 pasture; provided that the applicant makes a showing that an
10 amount up to one-half acre-foot per year for irrigation will be
11 put to a beneficial use, and the well will be located at least
12 one-fourth mile from the nearest existing well; or

13 (3) if the application is for watering
14 livestock, the well is at least one-half mile from the nearest
15 well outside the boundary of the applicant's property and at
16 least five miles from a river or stream, serves more than one
17 acre of land and does not exceed three acre-feet per year; or

18 (4) if the application is for a temporary use
19 of water, the use does not exceed one acre-foot per year for
20 longer than one year and the well will be located at least one-
21 fourth mile from the nearest existing well.

22 B. An application for a livestock watering well
23 permit shall be on a form prescribed by the state engineer and,
24 if the use is on state or federal land, provide such proof as
25 the state engineer requires that the applicant is legally

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1 entitled to place livestock on the state or federal land where
2 the water is to be used and has been granted access to the
3 drilling site and has permission to occupy the portion of the
4 state or federal land as necessary to drill and operate the
5 well.

6 C. A permit for one well may include uses for a
7 single household, one acre of irrigated land for trees, garden
8 or pasture and multiple acres for watering livestock; provided
9 that the total permit does not exceed two and one-fourth acre-
10 feet per year and the well is located at least one-fourth mile
11 from the nearest existing well.

12 D. Permits for the small amounts of water provided
13 for in this section shall be deemed consistent with the
14 conservation of water and the public welfare of the state. The
15 state engineer shall summarize the basis for the determination
16 and make the determination available on the office of the state
17 engineer web site within one week of the final decision.

18 E. If an applicant seeks to change the purpose or
19 place of use of a legal water right used for consumptive
20 purposes for three acre feet per year of water or less to a
21 well for a domestic household, livestock or temporary uses in
22 the same ground water basin, the application shall be made
23 pursuant to Sections 72-5-4, 72-5-5 and 72-12-3 NMSA 1978 and
24 shall be subject to the provisions of Section 72-5-24.1 NMSA
25 1978; provided that the state engineer shall deny the

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1 application if the proposed use will impair existing senior
2 water rights; will increase depletions within five miles of the
3 permitted well; or will reduce flows in streams subject to
4 interstate stream compacts. Water rights obtained pursuant to
5 this section shall retain the priority date of the transferred
6 water right and may be transferred to a new location or purpose
7 of use subject to the provisions of Chapter 72 NMSA 1978.
8 Changes pursuant to this section are deemed to further
9 conservation and the public welfare of the state."

10 Section 4. A new section of Chapter 72, Article 12 NMSA
11 1978 is enacted to read:

12 "[NEW MATERIAL] UNDERGROUND WATERS--LOW-IMPACT MANAGEMENT
13 AREA--DOMESTIC, LIVESTOCK AND TEMPORARY USES.--

14 A. In those areas of the state where the state
15 engineer finds that water resources have not been fully
16 appropriated and the issuance of permits for small amounts of
17 water will not impair the rights of existing users or reduce
18 flows in streams subject to interstate stream compacts, the
19 state engineer may declare a low-impact management area through
20 a special order promulgated pursuant to Section 72-2-8 NMSA
21 1978. When the state engineer declares a low-impact management
22 area, the final order shall include findings of fact and shall
23 be made available to the public.

24 B. A low-impact management area must be a bounded
25 area, specifically described by section, township and range, or

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1 by other land survey descriptions.

2 C. In a low-impact management area, upon the filing
3 of an application for domestic household use, watering of
4 livestock or temporary uses, the state engineer shall issue a
5 permit to the applicant to use the underground waters applied
6 for in accordance with the provisions of Subsections D, E and F
7 of this section if:

8 (1) the permit is for up to one-fourth acre-
9 foot per year for household use and up to one-half acre-foot
10 per year to water one acre of land for noncommercial uses for
11 trees, garden or pasture; provided that the applicant makes a
12 showing that the one-half acre-foot per year for irrigation
13 will be put to a beneficial use;

14 (2) the permit for watering livestock serves
15 more than one acre and does not exceed three acre-feet per
16 year; or

17 (3) the permit for a well for a temporary use
18 is for no more than three acre-feet per year and terminates one
19 year from the first use of the well.

20 D. A permit for a single well may include uses for
21 a single household, one acre of irrigated land for trees,
22 garden or pasture and multiple acres for watering livestock if
23 the total permit does not exceed two and one-fourth acre-feet
24 per year subject to the limitations in Subsection C of this
25 section.

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1 E. An application for a livestock watering well
2 permit shall be on a form prescribed by the state engineer and,
3 if the use is on state or federal land, provide such proof as
4 the state engineer requires that the applicant is legally
5 entitled to place livestock on the state or federal land where
6 the water is to be used, has been granted access to the
7 drilling site and has permission to occupy the portion of the
8 state or federal land as necessary to drill and operate the
9 well.

10 F. A well for domestic household or temporary
11 purposes shall be located at least one-fourth mile from an
12 existing well. A well for livestock watering shall be at least
13 one-half mile from the nearest well outside the boundary of the
14 applicant's property and at least five miles from a river or
15 stream.

16 G. No less than every five years, upon petition by
17 a water rights holder within the management area or within five
18 miles of the management area boundary, or upon petition of the
19 interstate stream commission, the state engineer shall review
20 low-impact management area designations to determine if the
21 low-impact management area or a part of the area has become
22 fully appropriated or that new uses will impair existing
23 surface or ground water rights or reduce flows in streams
24 subject to interstate stream compacts within the next three
25 years. The state engineer shall modify or terminate a low-

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1 impact management area through a special order promulgated
2 pursuant to Section 72-2-8 NMSA 1978."

3 Section 5. A new section of Chapter 72, Article 12 NMSA
4 1978 is enacted to read:

5 "[NEW MATERIAL] MUNICIPAL DOMESTIC HOUSEHOLD WATER USE
6 PERMITS--CONDITIONS.--Permits for domestic household water use
7 within municipalities shall be conditioned to require the
8 permittee to comply with all applicable municipal ordinances
9 enacted pursuant to Chapter 3, Article 53 NMSA 1978."

10 Section 6. REPEAL.--Sections 72-12-1.1 through 72-12-1.3
11 and 72-12-3.1 NMSA 1978 (being Laws 2003, Chapter 298, Sections
12 2 through 4 and Laws 1984, Chapter 113, Section 1) are
13 repealed.

14 Section 7. EMERGENCY.--It is necessary for the public
15 peace, health and safety that this act take effect immediately.