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HOUSE BILL 521

49TH LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2009

INTRODUCED BY

Luciano "Lucky" Varela

AN ACT

RELATING TO WATER; PROVIDING STATE ENGINEER AUTHORITY TO ESTABLISH PROCEDURES AND CONDITIONS FOR THE PERMITTING OF DOMESTIC WELLS TO PROTECT EXISTING USES OF WATER.

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

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1 construed.

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

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

8 (2) codes are written standards and
9 specifications governing design and construction of dams;

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

13 (4) special orders are written statements
14 defining the declared boundaries of underground streams,
15 channels, artesian basins, reservoirs, management areas or
16 lakes.

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

24 D. To be effective, a regulation or code shall
25 first be issued as a proposed regulation or proposed code and

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

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1 a management area shall be held within the proposed management
2 area or as close as practicable to the area.

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

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

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

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

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

25 "72-12-1.1. UNDERGROUND WATERS--DOMESTIC USE--PERMIT.--
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1 A. A person, firm or corporation desiring to use
2 public underground waters described in this section for
3 ~~[irrigation of not to exceed one acre of noncommercial trees,~~
4 ~~lawn or garden or for]~~ household or other domestic use shall
5 make application to the state engineer for a well on a form to
6 be prescribed by the state engineer. Upon the filing of each
7 application describing the use applied for, the state engineer
8 ~~[shall]~~ may issue a permit to the applicant to use the
9 underground waters applied for ~~[provided that]~~ as provided for
10 in this section.

11 B. Permits for domestic water use within
12 municipalities shall be conditioned to require the permittee to
13 comply with all applicable municipal ordinances enacted
14 pursuant to Chapter 3, Article 53 NMSA 1978.

15 C. In all areas of the state other than those
16 specified in Subsections B and F of this section or an area
17 subject to management pursuant to court order, the state
18 engineer shall issue a permit for a well for domestic purposes
19 if the well is located at least one-fourth mile from the
20 nearest existing well and five miles from a river or stream for
21 up to one-fourth acre-foot per year of water consumed for
22 domestic purposes.

23 D. In those areas of the state where the state
24 engineer finds that water resources have not been fully
25 appropriated and the issuance of permits for small amounts of

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1 water will not impair the rights of existing users or reduce
2 flows in streams subject to interstate stream compacts, the
3 state engineer may declare a low impact management area through
4 a special order promulgated pursuant to Section 72-2-8 NMSA
5 1978, subject to the following conditions:

6 (1) a low-impact area must be a bounded area,
7 specifically described by section, township and range or by
8 other land survey descriptions;

9 (2) when the state engineer declares a low-
10 impact area, the final order shall include findings of fact and
11 shall be made available to the public;

12 (3) the state engineer shall approve all
13 applications for wells for domestic water use for an amount not
14 to exceed one-half acre-foot per year within the boundaries of
15 an approved low-impact management area;

16 (4) no less than every five years, upon
17 petition by the water rights holder within the management area
18 or within five miles of the low-impact management area
19 boundary, or upon petition of the interstate stream commission,
20 the state engineer shall review the low-impact management area
21 designations to determine if the area or a part of the area has
22 become fully appropriated and if 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; and

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1 (5) the state engineer may modify or terminate
2 a low-impact management area through a special order
3 promulgated pursuant to Section 72-2-8 NMSA 1978.

4 E. For an area other than a low-impact management
5 area, or a well not meeting the criteria provided for in
6 Subsection A of this section, a domestic well permit shall be
7 issued only if an applicant changes the purpose or place of use
8 of an existing water right for up to one acre-foot per year for
9 use for domestic purposes at the new location, or obtains a
10 permit for a new appropriation for up to one acre-foot per year
11 for domestic purposes in accordance with the applicable notice
12 and hearing procedures governing changes of purpose or place of
13 use of water or applications for new appropriations as provided
14 in Chapter 72, Article 5 or 12 NMSA 1978, subject to the
15 following modifications:

16 (1) the state engineer shall accept a protest
17 only if the protestant provides prima facie evidence that there
18 will be impairment to existing users. The state engineer shall
19 include the prima facie evidence in the state engineer's
20 consideration of impairment. Applications for the small
21 amounts of water provided for in this section shall be deemed
22 consistent with the conservation of water and the public
23 welfare of the state;

24 (2) the state engineer shall approve the
25 application unless the proposed use will impair existing users

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1 or reduce flows in streams subject to interstate stream
2 compacts;

3 (3) the state engineer shall summarize the
4 basis for the determination and make the determination
5 available on the office of the state engineer web site within
6 one week of the final decision; and

7 (4) water rights that have been transferred to
8 a new purpose or place of use pursuant to this section shall
9 retain the priority date of the transferred water right and may
10 be transferred to a new place or purpose of use subject to the
11 provisions of Chapter 72 NMSA 1978 at a future date.

12 F. In a closed ground water basin for which the
13 state engineer has established management criteria and
14 allowable withdrawal amounts, the state engineer shall approve
15 an application for a well for domestic purposes for an amount
16 not to exceed one-fourth acre-foot per year, provided that the
17 use is consistent with the management criteria for that basin."