

1 SENATE BILL 648

2 **52ND LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2015**

3 INTRODUCED BY

4 Joseph Cervantes

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9  
10 AN ACT

11 RELATING TO WATER; AMENDING SECTIONS OF CHAPTER 72 NMSA 1978 TO  
12 ENSURE ADMINISTRATION OF THE PRIOR APPROPRIATION DOCTRINE OF  
13 THE CONSTITUTION OF NEW MEXICO; CHANGING THE POWERS AND DUTIES  
14 OF THE STATE ENGINEER.

15  
16 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF NEW MEXICO:

17 SECTION 1. Section 72-2-1 NMSA 1978 (being Laws 1907,  
18 Chapter 49, Section 4, as amended) is amended to read:

19 "72-2-1. APPOINTMENT--REMOVAL--QUALIFICATIONS--DUTIES--  
20 OFFICE--PRIVATE PRACTICE PROHIBITED.--

21 A. There shall be a "state engineer", who shall be  
22 a technically qualified and registered professional engineer  
23 under the Engineering and ~~Land~~ Surveying Practice Act and  
24 shall be appointed by the governor and confirmed by the senate.

25 ~~[He]~~ The state engineer shall hold office for the term of two

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1 years or until [~~his~~] a successor has been appointed and has  
2 qualified. [~~He~~] The state engineer is subject to removal only  
3 for cause. [~~He~~] The state engineer has general supervision of  
4 waters of the state and of the measurement, appropriation,  
5 distribution thereof and such other duties as required.

6 B. The state engineer shall only have the authority  
7 to administer water that is either the subject of permits and  
8 licenses issued by the office of the state engineer or  
9 adjudicated by a court in a manner consistent with the doctrine  
10 of prior appropriation under the constitution of New Mexico.  
11 The state engineer shall have no adjudicatory authority to  
12 determine or alter the legal elements of a water right. The  
13 state engineer shall not use the state engineer's authority to  
14 extinguish a water right except through the appropriate  
15 abandonment or forfeiture proceedings. The state engineer and  
16 the employees of the office of the state engineer shall only  
17 provide technical support in disputes concerning or  
18 adjudicating the waters of the state.

19 C. The salary of the state engineer shall be set by  
20 the governor, and [~~he~~] the state engineer shall receive  
21 necessary traveling expenses while away from [~~his~~] the office  
22 of the state engineer in the discharge of official duties  
23 pursuant to the provisions of the Per Diem and Mileage Act.  
24 The "office of the state engineer" shall be located at the seat  
25 of government. [~~He~~] The state engineer shall not engage in any

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1 private practice."

2 SECTION 2. Section 72-2-9.1 NMSA 1978 (being Laws 2003,  
3 Chapter 63, Section 1) is amended to read:

4 "72-2-9.1. PRIORITY ADMINISTRATION--EXPEDITED WATER  
5 MARKETING AND LEASING--STATE ENGINEER.--

6 A. The legislature recognizes that the adjudication  
7 process is slow, the need for water administration is urgent,  
8 compliance with interstate compacts is imperative and the state  
9 engineer [~~has authority to~~] shall administer water  
10 [~~allocations~~] rights in accordance with the water right  
11 priorities [~~recorded with or~~] adjudicated, licensed, permitted,  
12 declared or as otherwise may be made available to the state  
13 engineer.

14 B. The state engineer shall adopt rules for  
15 priority administration to ensure that authority is exercised:

16 (1) so as not to interfere with a future or  
17 pending adjudication;

18 (2) so as to create no [~~impairment~~]  
19 diminishment of water rights, other than what is required to  
20 [~~enforce priorities~~] deliver according to priority date; and

21 (3) so as to create no increased net  
22 depletions.

23 C. The state engineer shall adopt rules based on  
24 the appropriate hydrologic models to promote expedited  
25 marketing and leasing of water in [~~those areas affected by~~]

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1 accordance with priority administration and adjudication. The  
2 rules shall be consistent with the rights, remedies and  
3 criteria established by law for proceedings for water use  
4 leasing and for changes in point of diversion, place of use and  
5 purpose of use of water rights. The rules shall not apply to  
6 acequias or community ditches or to water rights served by an  
7 acequia or community ditch.

8 D. Nothing in this section shall affect the  
9 partial final decree and settlement agreement as may be  
10 entered in the Carlsbad irrigation district project offer  
11 phase of *State of New Mexico ex rel. State Engineer v. Lewis,*  
12 *et al.*, Nos. 20294 and 22600 (N.M. 5th Jud. Dist.)."