

HOUSE ENERGY, ENVIRONMENT AND NATURAL RESOURCES
COMMITTEE SUBSTITUTE FOR HOUSE AGRICULTURAL AND WATER RESOURCES
COMMITTEE SUBSTITUTE FOR
HOUSE BILL 418

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

53RD LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2017

AN ACT

RELATING TO WATER; REQUIRING ADDITIONAL REQUIREMENTS FOR
APPROVAL OF PERMITS FOR THE DIVERSION AND USE OF GROUND WATER
FOR USE OUTSIDE THE AREA OF ORIGIN.

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

SECTION 1. A new section of Chapter 72, Article 12 NMSA
1978 is enacted to read:

"[NEW MATERIAL] APPLICATION FOR USE OF GROUND WATER OUT OF
AREA OF ORIGIN.--

A. Any person intending to withdraw water from an
underground water source and transport it for use outside the
area of origin shall apply to the state engineer for a permit
to divert and use the water out of the area of origin, in
addition to fulfilling all other permit application
requirements of Chapter 72, Article 12 NMSA 1978.

1 B. Before approving an application submitted
2 pursuant to the provisions of Subsection A of this section, the
3 state engineer shall, at minimum, consider the following
4 factors:

5 (1) whether the proposed diversion and use are
6 consistent with regional water plans of the area of origin and
7 of the area of proposed use;

8 (2) whether the source of supply can reliably
9 sustain the diversion's anticipated firm yield and whether the
10 diversion will exceed the recharge rate of the ground water
11 aquifer in the area of origin; provided that if there is not
12 enough information to establish the aquifer's firm yield,
13 recharge rate, volume of water or quality of that volume of
14 water, the state engineer shall not approve the application
15 until sufficient information is provided;

16 (3) whether the board of county commissioners
17 of the county out of which the water is proposed to be diverted
18 has adopted a resolution declaring that it is or is not in the
19 public interest for the application to be granted;

20 (4) whether the governing body of any acequia
21 or community ditch located in the area of origin has adopted a
22 resolution declaring that it would or would not be detrimental
23 to the acequia or community ditch or its members for the
24 application to be granted;

25 (5) the amount of potable water in the area of

1 origin available for future appropriation; and

2 (6) the availability of alternative sources of
3 water for the proposed use that would not rely on the diversion
4 of ground water out of its area of origin.

5 C. This section shall not apply to one or more
6 applications by a single applicant for the diversion of less
7 than five hundred acre-feet of water per year.

8 D. This section shall not apply to:

9 (1) an appropriation or diversion by a
10 municipality to facilitate regional municipal water service if
11 the municipality has historically transported water between the
12 area of origin and the proposed receiving area identified in
13 the application;

14 (2) a diversion project that transports water
15 out of the area of origin that is authorized and approved and
16 for which construction began or was completed on or before July
17 1, 2017;

18 (3) temporary diversions of no longer than two
19 years; or

20 (4) diversions of nonpotable water containing
21 not less than one thousand parts per million of dissolved
22 solids for oil and gas exploration or production, prospecting,
23 mining, road construction, agriculture, generation of
24 electricity, use in an industrial process or geothermal use.

25 E. For the purposes of this section "area of

.207445.5

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

1 origin" means the physical location of a ground water aquifer,
2 the boundaries of which are reasonably ascertainable and which
3 may or may not coincide with the administrative boundaries of
4 ground water or river basins established by the state
5 engineer."