

SENATE JUDICIARY COMMITTEE SUBSTITUTE FOR
SENATE CONSERVATION COMMITTEE SUBSTITUTE FOR
SENATE BILL 12

54TH LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2019

AN ACT

RELATING TO WATER RIGHTS NOTIFICATIONS; PRESCRIBING A STANDARD
PROCEDURE FOR PROVIDING NOTICE OF WATER APPLICATIONS; REQUIRING
THE STATE ENGINEER TO POST NOTICES ONLINE.

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

SECTION 1. A new section of Chapter 72, Article 2 NMSA
1978 is enacted to read:

"[NEW MATERIAL] NOTICE OF APPLICATIONS--ONLINE POSTING--
NOTICE BY PUBLICATION--OBJECTIONS.--When notice of an
application is required to be provided pursuant to Section
72-5-4, 72-5A-5, 72-6-6, 72-12-3 or 72-12B-1 NMSA 1978:

A. if the state engineer determines that notice of
an application shall be published, the state engineer shall
post electronically on the state engineer's website a notice
that contains the essential facts of the application, the name

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underscored material = new
[bracketed material] = delete

1 of the newspaper in which the applicant will be required to
2 publish notice, the contact information for the state engineer
3 district office where the application and supporting
4 documentation are located and the date by which objections may
5 be filed, which shall be seventy days after the date of
6 electronic posting on the state engineer's website;

7 B. within five days of posting electronic notice on
8 the state engineer's website, the state engineer shall issue
9 instructions to the applicant to publish notice of the
10 application in a form and in the newspaper prescribed by the
11 state engineer once a week for three consecutive weeks and
12 requiring that the last date of publication shall be no less
13 than ten days prior to the date by which objections may be
14 filed with the state engineer. The newspaper shall be one that
15 is published and distributed in each county affected by the
16 diversion and in each county where the water will be or has
17 been put to beneficial use, or if there is no such newspaper,
18 then the newspaper shall be one of general circulation in the
19 stream system;

20 C. the applicant shall file with the state engineer
21 proof of publication as required within twenty days after the
22 date of the last publication. In case of failure to file
23 satisfactory proof of publication within the time required, the
24 date of the application shall be the date of receipt of proofs
25 of publication in proper form; and

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1 D. if the last of the three consecutive weekly
 2 publications does not occur within sixty days of the date the
 3 state engineer electronically posts the notice on the state
 4 engineer's website, the applicant shall request that the state
 5 engineer prepare a new notice and electronically post the
 6 notice as prescribed in Subsection A of this section and issue
 7 new instructions for newspaper publication as prescribed in
 8 Subsection B of this section."

9 **SECTION 2.** Section 72-5-4 NMSA 1978 (being Laws 1907,
 10 Chapter 49, Section 26, as amended) is amended to read:

11 "72-5-4. NOTICE--PUBLICATION.--Upon the filing of an
 12 application that complies with the provisions of this article
 13 and the rules established [~~thereunder~~] pursuant to this
 14 article, accompanied by the proper fees, the state engineer
 15 shall [~~instruct the applicant to publish notice thereof in a~~
 16 ~~form and in a newspaper prescribed by the state engineer, in~~
 17 ~~some newspaper that is published and distributed in each county~~
 18 ~~affected by the diversion and in each county where the water~~
 19 ~~will be or has been put to beneficial use, or if there is no~~
 20 ~~such newspaper, then in some newspaper of general circulation~~
 21 ~~in the stream system, once a week for three consecutive weeks]~~
 22 proceed in accordance with the provisions of Section 1 of this
 23 2019 act regarding notice of the application. The notice shall
 24 give all essential facts as to the proposed appropriation;
 25 among them, the places of appropriation and of use, amount of

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1 water, the purpose for which it is to be used, name and address
2 of applicant and the time when the application shall be taken
3 up by the state engineer for consideration. [~~Proof of~~
4 ~~publication as required shall be filed with the state engineer~~
5 ~~within sixty days of his instructions to make publication. In~~
6 ~~case of failure to file satisfactory proof of publication in~~
7 ~~accordance with the rules within the time required, the~~
8 ~~application shall be treated as an original application filed~~
9 ~~on the date of receipt of proofs of publication in proper~~
10 ~~form.]"~~

11 SECTION 3. Section 72-5-5 NMSA 1978 (being Laws 1965,
12 Chapter 285, Section 6, as amended) is amended to read:

13 "72-5-5. OBJECTIONS TO APPLICATIONS--~~[PUBLICATION OF~~
14 ~~NOTICE]~~ FILING OF PROTESTS--DEFINITION OF STANDING.--

15 A. [~~Whenever an application is filed which requires~~
16 ~~advertisement by virtue of the provisions of Chapter 72,~~
17 ~~Article 5 NMSA 1978, the advertisement shall state that~~
18 ~~objections or protests to the granting of the application may~~
19 ~~be filed with the state engineer within ten days after the last~~
20 ~~publication of the notice.] If objection or protest to the
21 application is timely filed, the state engineer shall advise
22 interested parties, and a hearing shall be held as otherwise
23 provided by statute.~~

24 B. Any person, firm or corporation or other entity
25 objecting that the granting of the application will be

1 detrimental to the objector's water right shall have standing
 2 to file objections or protests. Any person, firm or
 3 corporation or other entity objecting that the granting of the
 4 application will be contrary to the conservation of water
 5 within the state or detrimental to the public welfare of the
 6 state and showing that the objector will be substantially and
 7 specifically affected by the granting of the application shall
 8 have standing to file objections or protests. Provided,
 9 however, that the state of New Mexico or any of its branches,
 10 agencies, departments, boards, instrumentalities or
 11 institutions and all political subdivisions of the state and
 12 their agencies, instrumentalities and institutions shall have
 13 standing to file objections or protests."

14 SECTION 4. Section 72-5A-5 NMSA 1978 (being Laws 1999,
 15 Chapter 285, Section 5) is amended to read:

16 "72-5A-5. NOTICE--PROTESTS--HEARINGS--DETERMINATIONS--
 17 JUDICIAL REVIEW.--

18 A. Upon receipt of an application for a permit to
 19 construct and operate a project, the state engineer shall
 20 endorse on the application the date it was received and shall
 21 keep a record of the application. The state engineer shall
 22 conduct an initial review of the application within sixty days
 23 of receipt. If the state engineer determines in the initial
 24 review that the application is incomplete, the state engineer
 25 shall notify the applicant of the application's deficiencies.

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1 The application shall remain incomplete until the applicant
2 provides all information required by the Ground Water Storage
3 and Recovery Act. The state engineer may request additional
4 information from the applicant and shall conduct an
5 investigation of the project.

6 B. Within thirty days after determining that an
7 application is complete, unless an extension is requested by
8 the applicant, ~~[the applicant shall publish a notice of the~~
9 ~~application in a newspaper of general circulation in the county~~
10 ~~in which persons reside who could reasonably be expected to be~~
11 ~~affected by the project]~~ the state engineer shall proceed in
12 accordance with the provisions of Section 1 of this 2019 act
13 regarding notice of the application. The notice ~~[shall be~~
14 ~~given once a week for three consecutive weeks and]~~ shall
15 contain:

16 (1) the legal description of the location of
17 the proposed project;

18 (2) a brief description of the proposed
19 project, including its capacity;

20 (3) the name of the applicant;

21 (4) the date of the last publication; and

22 (5) the requirements for an objection ~~[and~~

23 ~~(6) disclosure that objections to the~~
24 ~~application shall be filed within ten days after the last~~
25 ~~publication of the notice].~~

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1 C. A person objecting that the granting of the
2 application will impair the objector's water right, will be
3 contrary to the conservation of water or will be detrimental to
4 the public welfare and showing that the objector will be
5 substantially and specifically affected by the granting of the
6 application shall have standing to file objections or protests;
7 provided, however, that the state or any of its branches,
8 agencies, departments, boards, instrumentalities or
9 institutions, and all political subdivisions of the state and
10 their agencies, instrumentalities and institutions shall have
11 standing to file objections or protests.

12 D. An objection shall be filed in writing, include
13 the name and mailing address of the objector, identify the
14 grounds for the objection and include the signature of the
15 objector or [~~his~~] the objector's legal representative. The
16 state engineer shall schedule a hearing on the application and
17 provide at least thirty days' notice of the hearing, by
18 certified mail, to the applicant and any objector.

19 E. After the expiration of the time for filing
20 objections, if no objections have been filed, the state
21 engineer shall, if [~~he~~] the state engineer finds that the
22 application meets the requirements of the Ground Water Storage
23 and Recovery Act, issue a permit to the applicant to construct
24 the project to store and recover all or a part of the waters
25 applied for, as conditioned by the state engineer.

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1 F. A person or governmental entity aggrieved by any
2 decision of the state engineer may appeal that decision to the
3 district court pursuant to Section 72-7-1 NMSA 1978."

4 SECTION 5. Section 72-6-6 NMSA 1978 (being Laws 1967,
5 Chapter 100, Section 6, as amended) is amended to read:

6 "72-6-6. APPLICATION--NOTICE--PROTEST--HEARING.--

7 A. Upon the filing of an application by a lessee,
8 the state engineer shall ~~[cause a notice of the filing to be~~
9 ~~published once a week for three consecutive weeks in a~~
10 ~~newspaper of general circulation in the county in which the~~
11 ~~water right is situated]~~ proceed in accordance with the
12 provisions of Section 1 of this 2019 act regarding notice of
13 the application.

14 B. Any owner who believes [~~his~~] the owner's water
15 rights will be adversely affected by the granting of the
16 application may file a protest. The protest shall be specific
17 as to how the granting of the application will adversely affect
18 [~~his~~] the owner's water rights. The protest shall be filed in
19 writing with the state engineer and a copy sent to the
20 applicant by certified mail [~~within ten days after the last~~
21 ~~publication of notice of application~~].

22 C. If a protest is timely filed, the state engineer
23 shall hold a hearing on the granting of the application, and
24 the applicant and protestants shall be notified by the state
25 engineer as to the date and place of the hearing.

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1 D. If no objections are filed, the state engineer
2 may grant the application without hearing. If no objections
3 are filed and the state engineer denies the application, the
4 state engineer shall hold a hearing if requested to do so by
5 the applicant. The request shall be filed with the state
6 engineer within ten days after the denial of the application.

7 E. If the state engineer grants the application but
8 allows the applicant to use less water than the amount of water
9 the owner would be allowed to use, the state engineer shall
10 hold a hearing on the matter if requested to do so by the
11 applicant. The request shall be filed with the state engineer
12 within ten days after the granting of the application.

13 F. In a hearing before the state engineer, a full
14 record and transcript of the proceeding shall be kept by ~~him~~
15 the state engineer.

16 G. The provisions of this section do not apply to
17 leases approved pursuant to Section 73-10-48 NMSA 1978."

18 **SECTION 6.** Section 72-12-3 NMSA 1978 (being Laws 1931,
19 Chapter 131, Section 3, as amended) is amended to read:

20 "72-12-3. APPLICATION FOR USE OF UNDERGROUND WATER--
21 PUBLICATION OF NOTICE--PERMIT.--

22 A. Any person, firm or corporation or any other
23 entity desiring to appropriate for beneficial use any of the
24 waters described in Chapter 72, Article 12 NMSA 1978 shall
25 apply to the state engineer in a form prescribed by ~~him~~ the

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1 state engineer. In the application, the applicant shall
2 designate:

3 (1) the particular underground stream,
4 channel, artesian basin, reservoir or lake from which water
5 will be appropriated;

6 (2) the beneficial use to which the water will
7 be applied;

8 (3) the location of the proposed well;

9 (4) the name of the owner of the land on which
10 the well will be located;

11 (5) the amount of water applied for;

12 (6) the place of the use for which the water
13 is desired; and

14 (7) if the use is for irrigation, the
15 description of the land to be irrigated and the name of the
16 owner of the land.

17 B. If the well will be located on privately owned
18 land and the applicant is not the owner of the land or the
19 owner or the lessee of the mineral or oil and gas rights under
20 the land, the application shall be accompanied by an
21 acknowledged statement executed by the owner of the land that
22 the applicant is granted access across the owner's land to the
23 drilling site and has permission to occupy such portion of the
24 owner's land as is necessary to drill and operate the well.

25 This subsection does not apply to the state or any of its

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1 political subdivisions. If the application is approved, the
2 applicant shall have the permit and statement, executed by the
3 owner of the land, recorded in the office of the county clerk
4 of the county in which the land is located.

5 C. No application shall be accepted by the state
6 engineer unless it is accompanied by all the information
7 required by Subsections A and B of this section.

8 D. Upon the filing of an application, the state
9 engineer shall ~~[cause to be published in a newspaper that is
10 published and distributed in the county where the well will be
11 located and in each county where the water will be or has been
12 put to beneficial use or where other water rights may be
13 affected, or if there is no such newspaper, then in some
14 newspaper of general circulation in the county in which the
15 well will be located at least once a week for three consecutive
16 weeks, a notice that the application has been filed and that
17 objections to the granting of the application may be filed
18 within ten days after the last publication of the notice]~~
19 proceed in accordance with the provisions of Section 1 of this
20 2019 act regarding notice of the application. Any person, firm
21 or corporation or other entity objecting that the granting of
22 the application will impair the objector's water right shall
23 have standing to file objections or protests. Any person, firm
24 or corporation or other entity objecting that the granting of
25 the application will be contrary to the conservation of water

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1 within the state or detrimental to the public welfare of the
2 state and showing that the objector will be substantially and
3 specifically affected by the granting of the application shall
4 have standing to file objections or protests; provided,
5 however, that the state [~~of New Mexico~~] or any of its branches,
6 agencies, departments, boards, instrumentalities or
7 institutions, and all political subdivisions of the state and
8 their agencies, instrumentalities and institutions shall have
9 standing to file objections or protests.

10 E. After the expiration of the time for filing
11 objections, if no objections have been filed, the state
12 engineer shall, if [~~he~~] the state engineer finds that there are
13 in the underground stream, channel, artesian basin, reservoir
14 or lake unappropriated waters [~~or~~] and that the proposed
15 appropriation would not impair existing water rights from the
16 source, is not contrary to conservation of water within the
17 state and is not detrimental to the public welfare of the
18 state, grant the application and issue a permit to the
19 applicant to appropriate all or a part of the waters applied
20 for, subject to the rights of all prior appropriators from the
21 source.

22 F. If objections or protests have been filed within
23 the time prescribed in the notice or if the state engineer is
24 of the opinion that the permit should not be issued, the state
25 engineer may deny the application without a hearing or, before

1 [he] the state engineer acts on the application, may order that
 2 a hearing be held. [He] The state engineer shall notify the
 3 applicant of [his] the action by certified mail sent to the
 4 address shown in the application."

5 SECTION 7. Section 72-12B-1 NMSA 1978 (being Laws 1983,
 6 Chapter 2, Section 1, as amended) is amended to read:

7 "72-12B-1. APPLICATIONS FOR THE TRANSPORTATION AND USE OF
 8 PUBLIC WATERS OUTSIDE THE STATE.--

9 A. The state of New Mexico has long recognized the
 10 importance of the conservation of its public waters and the
 11 necessity to maintain adequate water supplies for the state's
 12 water requirements. The state of New Mexico also recognizes
 13 that under appropriate conditions the out-of-state
 14 transportation and use of its public waters is not in conflict
 15 with the public welfare of its citizens or the conservation of
 16 its waters.

17 B. Any person, firm or corporation or any other
 18 entity intending to withdraw water from any surface or
 19 underground water source in the state of New Mexico and
 20 transport it for use outside the state or to change the place
 21 or purpose of use of a water right from a place in New Mexico
 22 to a place out of that state shall apply to the state engineer
 23 for a permit to do so. Upon the filing of an application, the
 24 state engineer shall ~~[cause to be published in a newspaper of~~
 25 ~~general circulation in the county in which the well will be~~

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1 ~~located or the stream system from which surface water will be~~
2 ~~taken at least once a week for three consecutive weeks, a~~
3 ~~notice that the application has been filed and that objections~~
4 ~~to the granting of the application may be filed within ten days~~
5 ~~after the last publication of the notice] proceed in accordance~~
6 with the provisions of Section 1 of this 2019 act regarding
7 notice of the application. Any person, firm or corporation or
8 other entity objecting that the granting of the application
9 would impair or be detrimental to the objector's water right
10 shall have standing to file objections or protests. Any
11 person, firm or corporation or other entity objecting that the
12 granting of the application will be contrary to the
13 conservation of water within the state or detrimental to the
14 public welfare of the state and showing that the objector will
15 be substantially and specifically affected by the granting of
16 the application shall have standing to file objections or
17 protests. Provided, however, that the state of New Mexico or
18 any of its branches, agencies, departments, boards,
19 instrumentalities or institutions, and all political
20 subdivisions of the state and their agencies, instrumentalities
21 and institutions shall have standing to file objections or
22 protests. The state engineer shall accept for filing and act
23 upon all applications filed under this section in accordance
24 with the provisions of this section. The state engineer shall
25 require notice of the application and shall thereafter proceed

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1 to consider the application in accordance with existing
2 administrative law and procedure governing the appropriation of
3 surface or ground water.

4 C. In order to approve an application under this
5 act, the state engineer must find that the applicant's
6 withdrawal and transportation of water for use outside the
7 state would not impair existing water rights, is not contrary
8 to the conservation of water within the state and is not
9 otherwise detrimental to the public welfare of the citizens of
10 New Mexico.

11 D. In acting upon an application under this act,
12 the state engineer shall consider, but not be limited to, the
13 following factors:

14 (1) the supply of water available to the state
15 of New Mexico;

16 (2) water demands of the state of New Mexico;

17 (3) whether there are water shortages within
18 the state of New Mexico;

19 (4) whether the water that is the subject of
20 the application could feasibly be transported to alleviate
21 water shortages in the state of New Mexico;

22 (5) the supply and sources of water available
23 to the applicant in the state where the applicant intends to
24 use the water; and

25 (6) the demands placed on the applicant's

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1 supply in the state where the applicant intends to use the
2 water.

3 E. By filing an application to withdraw and
4 transport waters for use outside the state, the applicant shall
5 submit to and comply with the laws of the state of New Mexico
6 governing the appropriation and use of water.

7 F. The state engineer is empowered to condition the
8 permit to insure that the use of water in another state is
9 subject to the same regulations and restrictions that may be
10 imposed upon water use in the state of New Mexico.

11 G. Upon approval of the application, the applicant
12 shall designate an agent in New Mexico for reception of service
13 of process and other legal notices."

14 **SECTION 8. EFFECTIVE DATE.**--The effective date of the
15 provisions of this act is July 1, 2019.