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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:

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

B. within five days of posting electronic notice  
on the state engineer's website, the state engineer shall

1 issue instructions to the applicant to publish notice of the  
2 application in a form and in the newspaper prescribed by the  
3 state engineer once a week for three consecutive weeks and  
4 requiring that the last date of publication shall be no less  
5 than ten days prior to the date by which objections may be  
6 filed with the state engineer. The newspaper shall be one  
7 that is published and distributed in each county affected by  
8 the diversion and in each county where the water will be or  
9 has been put to beneficial use, or if there is no such  
10 newspaper, then the newspaper shall be one of general  
11 circulation in the stream system;

12 C. the applicant shall file with the state  
13 engineer proof of publication as required within twenty days  
14 after the date of the last publication. In case of failure  
15 to file satisfactory proof of publication within the time  
16 required, the date of the application shall be the date of  
17 receipt of proofs of publication in proper form; and

18 D. if the last of the three consecutive weekly  
19 publications does not occur within sixty days of the date the  
20 state engineer electronically posts the notice on the state  
21 engineer's website, the applicant shall request that the  
22 state engineer prepare a new notice and electronically post  
23 the notice as prescribed in Subsection A of this section and  
24 issue new instructions for newspaper publication as  
25 prescribed in Subsection B of this section."

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

3 "72-5-4. NOTICE--PUBLICATION.--Upon the filing of an  
4 application that complies with the provisions of this article  
5 and the rules established pursuant to this article,  
6 accompanied by the proper fees, the state engineer shall  
7 proceed in accordance with the provisions of Section 1 of  
8 this 2019 act regarding notice of the application. The  
9 notice shall give all essential facts as to the proposed  
10 appropriation; among them, the places of appropriation and of  
11 use, amount of water, the purpose for which it is to be used,  
12 name and address of applicant and the time when the  
13 application shall be taken up by the state engineer for  
14 consideration."

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

17 "72-5-5. OBJECTIONS TO APPLICATIONS--FILING OF  
18 PROTESTS--DEFINITION OF STANDING.--

19 A. If objection or protest to the application is  
20 timely filed, the state engineer shall advise interested  
21 parties, and a hearing shall be held as otherwise provided by  
22 statute.

23 B. Any person, firm or corporation or other entity  
24 objecting that the granting of the application will be  
25 detrimental to the objector's water right shall have standing

1 to file objections or protests. Any person, firm or  
2 corporation or other entity objecting that the granting of  
3 the application will be contrary to the conservation of water  
4 within the state or detrimental to the public welfare of the  
5 state and showing that the objector will be substantially and  
6 specifically affected by the granting of the application  
7 shall have standing to file objections or protests.

8 Provided, however, that the state of New Mexico or any of its  
9 branches, agencies, departments, boards, instrumentalities or  
10 institutions and all political subdivisions of the state and  
11 their agencies, instrumentalities and institutions shall have  
12 standing to file objections or protests."

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

15 "72-5A-5. NOTICE--PROTESTS--HEARINGS--DETERMINATIONS--  
16 JUDICIAL REVIEW.--

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

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

5 B. Within thirty days after determining that an  
6 application is complete, unless an extension is requested by  
7 the applicant, the state engineer shall proceed in accordance  
8 with the provisions of Section 1 of this 2019 act regarding  
9 notice of the application. The notice shall contain:

10 (1) the legal description of the location of  
11 the proposed project;

12 (2) a brief description of the proposed  
13 project, including its capacity;

14 (3) the name of the applicant;

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

16 (5) the requirements for an objection.

17 C. A person objecting that the granting of the  
18 application will impair the objector's water right, will be  
19 contrary to the conservation of water or will be detrimental  
20 to the public welfare and showing that the objector will be  
21 substantially and specifically affected by the granting of  
22 the application shall have standing to file objections or  
23 protests; provided, however, that the state or any of its  
24 branches, agencies, departments, boards, instrumentalities or  
25 institutions, and all political subdivisions of the state and

1 their agencies, instrumentalities and institutions shall have  
2 standing to file objections or protests.

3 D. An objection shall be filed in writing, include  
4 the name and mailing address of the objector, identify the  
5 grounds for the objection and include the signature of the  
6 objector or the objector's legal representative. The state  
7 engineer shall schedule a hearing on the application and  
8 provide at least thirty days' notice of the hearing, by  
9 certified mail, to the applicant and any objector.

10 E. After the expiration of the time for filing  
11 objections, if no objections have been filed, the state  
12 engineer shall, if the state engineer finds that the  
13 application meets the requirements of the Ground Water  
14 Storage and Recovery Act, issue a permit to the applicant to  
15 construct the project to store and recover all or a part of  
16 the waters applied for, as conditioned by the state engineer.

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

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

22 "72-6-6. APPLICATION--NOTICE--PROTEST--HEARING.--

23 A. Upon the filing of an application by a lessee,  
24 the state engineer shall proceed in accordance with the  
25 provisions of Section 1 of this 2019 act regarding notice of

1 the application.

2 B. Any owner who believes the owner's water rights  
3 will be adversely affected by the granting of the application  
4 may file a protest. The protest shall be specific as to how  
5 the granting of the application will adversely affect the  
6 owner's water rights. The protest shall be filed in writing  
7 with the state engineer and a copy sent to the applicant by  
8 certified mail.

9 C. If a protest is timely filed, the state  
10 engineer shall hold a hearing on the granting of the  
11 application, and the applicant and protestants shall be  
12 notified by the state engineer as to the date and place of  
13 the hearing.

14 D. If no objections are filed, the state engineer  
15 may grant the application without hearing. If no objections  
16 are filed and the state engineer denies the application, the  
17 state engineer shall hold a hearing if requested to do so by  
18 the applicant. The request shall be filed with the state  
19 engineer within ten days after the denial of the application.

20 E. If the state engineer grants the application  
21 but allows the applicant to use less water than the amount of  
22 water the owner would be allowed to use, the state engineer  
23 shall hold a hearing on the matter if requested to do so by  
24 the applicant. The request shall be filed with the state  
25 engineer within ten days after the granting of the

1 application.

2 F. In a hearing before the state engineer, a full  
3 record and transcript of the proceeding shall be kept by the  
4 state engineer.

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

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

9 "72-12-3. APPLICATION FOR USE OF UNDERGROUND WATER--  
10 PUBLICATION OF NOTICE--PERMIT.--

11 A. Any person, firm or corporation or any other  
12 entity desiring to appropriate for beneficial use any of the  
13 waters described in Chapter 72, Article 12 NMSA 1978 shall  
14 apply to the state engineer in a form prescribed by the state  
15 engineer. In the application, the applicant shall designate:

16 (1) the particular underground stream,  
17 channel, artesian basin, reservoir or lake from which water  
18 will be appropriated;

19 (2) the beneficial use to which the water  
20 will be applied;

21 (3) the location of the proposed well;

22 (4) the name of the owner of the land on  
23 which the well will be located;

24 (5) the amount of water applied for;

25 (6) the place of the use for which the water

1 is desired; and

2 (7) if the use is for irrigation, the  
3 description of the land to be irrigated and the name of the  
4 owner of the land.

5 B. If the well will be located on privately owned  
6 land and the applicant is not the owner of the land or the  
7 owner or the lessee of the mineral or oil and gas rights  
8 under the land, the application shall be accompanied by an  
9 acknowledged statement executed by the owner of the land that  
10 the applicant is granted access across the owner's land to  
11 the drilling site and has permission to occupy such portion  
12 of the owner's land as is necessary to drill and operate the  
13 well. This subsection does not apply to the state or any of  
14 its political subdivisions. If the application is approved,  
15 the applicant shall have the permit and statement, executed  
16 by the owner of the land, recorded in the office of the  
17 county clerk of the county in which the land is located.

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

21 D. Upon the filing of an application, the state  
22 engineer shall proceed in accordance with the provisions of  
23 Section 1 of this 2019 act regarding notice of the  
24 application. Any person, firm or corporation or other entity  
25 objecting that the granting of the application will impair

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

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

1           F. If objections or protests have been filed  
2 within the time prescribed in the notice or if the state  
3 engineer is of the opinion that the permit should not be  
4 issued, the state engineer may deny the application without a  
5 hearing or, before the state engineer acts on the  
6 application, may order that a hearing be held. The state  
7 engineer shall notify the applicant of the action by  
8 certified mail sent to the address shown in the application."

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

11           "72-12B-1. APPLICATIONS FOR THE TRANSPORTATION AND USE  
12 OF PUBLIC WATERS OUTSIDE THE STATE.--

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

21           B. Any person, firm or corporation or any other  
22 entity intending to withdraw water from any surface or  
23 underground water source in the state of New Mexico and  
24 transport it for use outside the state or to change the place  
25 or purpose of use of a water right from a place in New Mexico

1 to a place out of that state shall apply to the state  
2 engineer for a permit to do so. Upon the filing of an  
3 application, the state engineer shall proceed in accordance  
4 with the provisions of Section 1 of this 2019 act regarding  
5 notice of the application. Any person, firm or corporation  
6 or other entity objecting that the granting of the  
7 application would impair or be detrimental to the objector's  
8 water right shall have standing to file objections or  
9 protests. Any person, firm or corporation or other entity  
10 objecting that the granting of the application will be  
11 contrary to the conservation of water within the state or  
12 detrimental to the public welfare of the state and showing  
13 that the objector will be substantially and specifically  
14 affected by the granting of the application shall have  
15 standing to file objections or protests. Provided, however,  
16 that the state of New Mexico or any of its branches,  
17 agencies, departments, boards, instrumentalities or  
18 institutions, and all political subdivisions of the state and  
19 their agencies, instrumentalities and institutions shall have  
20 standing to file objections or protests. The state engineer  
21 shall accept for filing and act upon all applications filed  
22 under this section in accordance with the provisions of this  
23 section. The state engineer shall require notice of the  
24 application and shall thereafter proceed to consider the  
25 application in accordance with existing administrative law

1 and procedure governing the appropriation of surface or  
2 ground water.

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

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

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

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

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

19 (4) whether the water that is the subject  
20 of 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  
23 available to the applicant in the state where the applicant  
24 intends to use the water; and

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

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  
5 shall submit to and comply with the laws of the state of  
6 New Mexico governing the appropriation and use of water.

7 F. The state engineer is empowered to condition  
8 the permit to insure that the use of water in another state  
9 is subject to the same regulations and restrictions that may  
10 be 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  
13 service 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. \_\_\_\_\_

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