

HOUSE BILL 499

**56TH LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2023**

INTRODUCED BY

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AN ACT

RELATING TO WATER; AMENDING SECTIONS OF CHAPTER 72 NMSA 1978 TO ENSURE ADMINISTRATION OF THE PRIOR APPROPRIATION DOCTRINE OF THE CONSTITUTION OF NEW MEXICO.

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

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

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

A. There shall be a "state engineer", who shall be a technically qualified and registered professional engineer under the Engineering and ~~Land~~ Surveying Practice Act and shall be appointed by the governor and confirmed by the senate. ~~[He]~~ The state engineer shall hold office for the term of two years or until ~~[his]~~ a successor has been appointed and has

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1 qualified. [He] The state engineer is subject to removal only  
2 for cause. [He] The state engineer has general supervision of  
3 waters of the state and of the measurement, appropriation,  
4 distribution thereof and such other duties as required.

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

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

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

3           "72-2-9.1. PRIORITY ADMINISTRATION--EXPEDITED WATER  
4 MARKETING AND LEASING--STATE ENGINEER.--

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

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

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

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

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

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

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

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