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HOUSE BILL 482

43RD LEGISLATURE - STATE OF NEW MEXICO - SECOND SESSION, 1998

INTRODUCED BY

STEVEN E. PEARCE

FOR THE WATER, UTILITIES AND NATURAL RESOURCES COMMITTEE

AN ACT

RELATING TO WATER; REQUIRING NOTICE TO MUNICIPALITIES AND
COUNTIES WITH JURISDICTION IN THE LOCATIONS OF PROPOSED WATER
RIGHTS DIVERSIONS AND TRANSFERS; AMENDING CERTAIN SECTIONS OF
THE NMSA 1978.

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

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

"72-5-4. [~~151-132. Id.~~] NOTICE [~~PUBLICATION~~]. --

A. Upon the filing of an application [~~which~~] that
complies with the provisions of this article and [~~the~~] rules
[~~and regulations~~] established [~~thereunder~~] by the state
engineer, accompanied by the proper fees, the state engineer
shall instruct the applicant to:

- (1) publish notice [~~thereof, in a form~~]

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1 ~~prescribed by him~~ of the application in ~~[some newspaper]~~ two
2 newspapers of general circulation in the ~~[stream system]~~
3 county where the requested appropriation is to be located once
4 a week for three consecutive weeks ~~[Such notice shall give all~~
5 ~~essential facts as to the proposed appropriation; among them,~~
6 ~~the places of appropriation and of use, amount of water, the~~
7 ~~purpose for which it is to be used, name and address of~~
8 ~~applicant and the time when the application shall be taken up~~
9 ~~by the state engineer for consideration. Proof];~~

10 (2) provide written notice of the application
11 to each municipality and county having jurisdiction in the
12 county where the requested appropriation is to be located, by
13 certified, return receipt requested mail, addressed to the
14 clerk of each municipality or county provided notice; and

15 (3) provide written notice of the application
16 to a political subdivision of the state within the county
17 where the requested appropriation is to be located that has
18 registered with the state engineer to receive notice, by
19 certified, return receipt requested mail.

20 B. The notice of the application shall state the
21 facts of the proposed application, including the places of
22 appropriation, the use of the appropriation proposed, the
23 amount of water proposed to be appropriated and the name and
24 address of the applicant. The notice shall state that
25 objections or protests to the granting of the application may

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1 be filed within ten days after the date of the last
2 publication of the notice or after the date of the written
3 notice provided, whichever is later.

4 C. Proofs of publication [as required] and mailed
5 written notice shall be filed with the state engineer within
6 sixty days of his instructions to the applicant to make
7 publication. [~~In case of~~] Failure to timely file satisfactory
8 proof of publication [~~in accordance with the rules and~~
9 ~~regulations applicable thereto, within the time required~~]
10 shall cause the application [~~shall thereafter~~] to be treated
11 as [~~an original application~~] filed on the date of actual
12 receipt by the state engineer of proofs of publication and
13 notice in proper form.

14 D. The state engineer may post notice of the
15 application on the internet.

16 E. The state engineer shall promulgate rules to
17 implement the provisions of this section providing for
18 publication and written mailed notice. "

19 Section 2. Section 72-5-5 NMSA 1978 (being Laws 1965,
20 Chapter 285, Section 6, as amended) is amended to read:

21 "72-5-5. OBJECTIONS TO APPLICATIONS-- [~~PUBLICATION OF~~
22 ~~NOTICE~~] FILING OF PROTESTS-- DEFINITION OF STANDING. --

23 A. [~~Whenever an application is filed which~~
24 ~~requires advertisement by virtue of the provisions of Chapter~~
25 ~~72, Article 5 NMSA 1978, the advertisement shall state that~~

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1 ~~objections or protests to the granting of the application may~~
2 ~~be filed with the state engineer within ten days after the~~
3 ~~last publication of the notice.]~~ If an objection or protest to
4 an application filed pursuant to Chapter 72, Article 5 NMSA
5 1978 is timely filed, the state engineer shall advise
6 interested parties, and a hearing shall be held as otherwise
7 provided by statute.

8 B. Any person, firm or corporation or other entity
9 objecting that the granting of the application will be
10 detrimental to the objector's water right shall have standing
11 to file objections or protests. Any person, firm or
12 corporation or other entity objecting that the granting of the
13 application will be contrary to the conservation of water
14 within the state or detrimental to the public welfare of the
15 state and showing that the objector will be substantially and
16 specifically affected by the granting of the application shall
17 have standing to file objections or protests. Provided,
18 however, that the state of New Mexico or any of its branches,
19 agencies, departments, boards, instrumentalities or
20 institutions and all political subdivisions of the state and
21 their agencies, instrumentalities and institutions shall have
22 standing to file objections or protests. "

23 Section 3. Section 72-5-23 NMSA 1978 (being Laws 1907,
24 Chapter 49, Section 44, as amended) is amended to read:

25 "72-5-23. WATER APPURTENANT TO LAND--CHANGE OF PLACE OF

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1 USE-- PUBLICATION AND WRITTEN NOTICE OF APPLICATION. --

2 A. All water used in this state for irrigation
3 purposes, except as otherwise provided in this article, shall
4 be considered appurtenant to the land upon which it is used,
5 and the right to use it upon the land shall never be severed
6 from the land without the consent of the owner of the land,
7 but, by and with the consent of the owner of the land, all or
8 any part of the right may be severed from the land,
9 simultaneously transferred and become appurtenant to other
10 land, or may be transferred for other purposes, without losing
11 priority of right theretofore established, if such changes can
12 be made without detriment to existing water rights and are not
13 contrary to conservation of water within the state and not
14 detrimental to the public welfare of the state, on the
15 approval of an application of the owner by the state engineer.

16 [~~Publication of~~]

17 B. Notice of the application, by both publication
18 and written notice, opportunity for the filing of objections
19 or protests and a hearing on the application shall be provided
20 as required by Sections 72-5-4 and 72-5-5 NMSA 1978 for both
21 the move-from location and the move-to location of the
22 transfer if those locations are in different counties."

23 Section 4. Section 72-12-3 NMSA 1978 (being Laws 1931,
24 Chapter 131, Section 3, as amended) is amended to read:

25 "72-12-3. APPLICATION FOR USE OF UNDERGROUND WATER--

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1 PUBLICATION OF NOTICE-- PERMIT. --

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

7 (1) the particular underground stream,
8 channel, artesian basin, reservoir or lake from which water
9 will be appropriated;

10 (2) the beneficial use to which the water
11 will be applied;

12 (3) the location of the proposed well;

13 (4) the name of the owner of the land on
14 which the well will be located;

15 (5) the amount of water applied for;

16 (6) the place of the use for which the water
17 is desired; and

18 (7) if the use is for irrigation, the
19 description of the land to be irrigated and the name of the
20 owner of the land.

21 B. If the well will be located on privately owned
22 land and the applicant is not the owner of the land or the
23 owner or the lessee of the mineral or oil and gas rights under
24 the land, the application shall be accompanied by an
25 acknowledged statement executed by the owner of the land that

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1 the applicant is granted access across the owner's land to the
2 drilling site and has permission to occupy such portion of the
3 owner's land as is necessary to drill and operate the well.

4 This subsection does not apply to the state or any of its
5 political subdivisions. If the application is approved, the
6 applicant shall have the permit and statement, executed by the
7 owner of the land, recorded in the office of the county clerk
8 of the county in which the land is located.

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

12 D. Upon the filing of an application, the state
13 engineer shall ~~[cause to be published in a newspaper]~~ instruct
14 the applicant to:

15 (1) publish notice of the application in two
16 newspapers of general circulation in the county in which the
17 well will be located, at least once a week for three
18 consecutive weeks ~~[a notice that the application has been~~
19 ~~filed and that objections to the granting of the application~~
20 ~~may be filed within ten days after the last publication of the~~
21 ~~notice];~~

22 (2) provide written notice of the application
23 to each municipality and county having jurisdiction in the
24 county where the requested appropriation is to be located, by
25 certified, return receipt requested mail, addressed to the

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1 clerk of each municipality or county provided notice; and
2 (3) provide written notice of the application
3 to a political subdivision of the state within the county
4 where the requested appropriation is to be located that has
5 registered with the state engineer to receive notice by
6 certified, return receipt requested mail.

7 E. The notice of the application shall state the
8 facts of the proposed application, including the diversion
9 locations of the appropriation, the use of the appropriation
10 proposed, the amount of water proposed to be appropriated and
11 the name and address of the applicant. The notice shall state
12 that objections or protests to the granting of the application
13 may be filed within ten days after the date of the last
14 publication of the notice or after the date of the written
15 notice provided, whichever is later.

16 F. The state engineer may post notice of the
17 application on the internet.

18 G. The state engineer shall promulgate rules to
19 implement the provisions of this section providing for
20 publication and written mailed notice.

21 H. Any person, firm or corporation or other entity
22 objecting that the granting of the application will impair the
23 objector's water right shall have standing to file objections
24 or protests. Any person, firm or corporation or other entity
25 objecting that the granting of the application will be

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

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

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

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

5 Section 5. Section 72-12-7 NMSA 1978 (being Laws 1931,
6 Chapter 131, Section 7, as amended) is amended to read:

7 "72-12-7. CHANGE OF LOCATION OF WELL--CHANGE IN USE ON
8 APPLICATION--TEMPORARY CHANGE. --

9 A. The owner of a water right may change the
10 location of his well or change the use of the water, but only
11 upon application to the state engineer and upon showing that
12 the change will not impair existing rights and will not be
13 contrary to the conservation of water within the state and
14 will not be detrimental to the public welfare of the state.
15 The application may be granted only after such [advertisement]
16 notices for both the move-from location and the move-to
17 location of the transfer, if those locations are in different
18 counties, and hearing as are prescribed in the case of
19 original applications.

20 B. When the owner of a water right applies for a
21 temporary change of not to exceed one year for not more than
22 three acre-feet of water to a different location or to a
23 different use, or both, the state engineer shall make an
24 investigation and, if the change does not permanently impair
25 any vested rights of others, he shall enter an order

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1 authorizing the change. If he finds that the change sought
2 might impair vested rights, he shall order [~~advertisement~~
3 notices for both the move-from location and the move-to
4 location of the transfer, if those locations are in different
5 counties, and hearing as in other cases.

6 C. If objections or protests have been filed
7 within the time prescribed in the [~~notice~~] notices or if the
8 state engineer is of the opinion that the permit should not be
9 issued, the state engineer may deny the application or, before
10 he acts on the application, may order that a hearing be held.
11 He shall notify the applicant of his action by certified mail
12 sent to the address shown in the application. "

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

15 "72-12B-1. APPLICATIONS FOR THE TRANSPORTATION AND USE
16 OF PUBLIC WATERS OUTSIDE THE STATE. --

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

25 B. Any person, firm or corporation or any other

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1 entity intending to withdraw water from any surface or
2 underground water source in the state of New Mexico and
3 transport it for use outside the state or to change the place
4 or purpose of use of a water right from a place in New Mexico
5 to a place out of that state shall apply to the state engineer
6 for a permit to do so. Upon the filing of an application, the
7 state engineer shall cause to be published in [~~a newspaper~~]
8 two newspapers of general circulation in the county in which
9 the well will be located or [~~the stream system~~] from [~~which~~]
10 where surface water will be taken, at least once a week for
11 three consecutive weeks, a notice that the application has
12 been filed and that objections to the granting of the
13 application may be filed within ten days after the last
14 publication of the notice. The state engineer shall require
15 the applicant to provide written notice of the application to
16 a political subdivision of the state within the county where
17 the requested appropriation is to be located that has
18 registered with the state engineer to receive notice, by
19 certified, return receipt requested mail; and to each
20 municipality and county having jurisdiction in the county
21 where the requested appropriation is to be located, by
22 certified, return receipt requested mail, addressed to the
23 clerk of each municipality or county provided notice. The
24 state engineer may post notice of the application on the
25 internet. Any person, firm or corporation or other entity

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

22 C. In order to approve an application under this
23 act, the state engineer must find that the applicant's
24 withdrawal and transportation of water for use outside the
25 state would not impair existing water rights, is not contrary

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1 to the conservation of water within the state and is not
2 otherwise detrimental to the public welfare of the citizens of
3 New Mexico.

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

7 (1) the supply of water available to the
8 state of New Mexico;

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

10 (3) whether there are water shortages within
11 the state of New Mexico;

12 (4) whether the water that is the subject of
13 the application could feasibly be transported to alleviate
14 water shortages in the state of New Mexico;

15 (5) the supply and sources of water available
16 to the applicant in the state where the applicant intends to
17 use the water; and

18 (6) the demands placed on the applicant's
19 supply in the state where the applicant intends to use the
20 water.

21 E. By filing an application to withdraw and
22 transport waters for use outside the state, the applicant
23 shall submit to and comply with the laws of the state of New
24 Mexico governing the appropriation and use of water.

25 F. The state engineer is empowered to condition

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the permit to [~~insure~~] ensure that the use of water in another state is subject to the same regulations and restrictions that may be imposed upon water use in the state of New Mexico.

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

1 FORTY-THIRD LEGISLATURE
2 SECOND SESSION, 1998
3
4
5

6 February 12, 1998
7

8 Mr. Speaker:
9

10 Your AGRICULTURE AND WATER RESOURCES COMMITTEE,
11 to whom has been referred
12

13 HOUSE BILL 482
14

15 has had it under consideration and reports same with
16 recommendation that it DO PASS, amended as follows:

- 17 1. On page 2, line 25, strike "may" and insert "shall".
18
19 2. On page 3, lines 23, 24 and 25, strike the brackets
20 and line through.
21
22 3. On page 4, line 1, strike the line-through up to the
23 word "may", strike "may" and insert in lieu thereof "shall", and
24 on lines 2 and 3, strike the line through the bracket.
25
4. On page 8, line 13, strike "may" and insert "shall".,

1 FORTY-THIRD LEGISLATURE
2 SECOND SESSION, 1998

3 HAGC\HB 482

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4 and thence referred to the JUDICIARY COMMITTEE.
5

6 Respectfully submitted,
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10 _____
11 G. X. McSherry, Chairman
12

13 Adopted _____
14 (Chief Clerk)

Not Adopted _____
(Chief Clerk)

15
16 Date _____

17 The roll call vote was 7 For 0 Against

18 Yes: 7

19 Excused: Abeyta, Porter

20 Absent: None
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