

AN ACT
RELATING TO WATER; PROVIDING FOR CHANGE IN POINT OF DIVERSION
FOR APPROPRIATIONS.

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

Section 1. FINDINGS--PURPOSE--CHANGE OF POINT OF
DIVERSION.--

A. The legislature finds that:

(1) the entire watershed is the generating
source from which the water of a river comes or accumulates
in its channel;

(2) precipitation falling on the watershed
sinks into the soil and finds its way by surface or
underground flow or percolation through the sloping strata
down to the central channel;

(3) the water of the watershed constitutes
the stream, and it does not cease to be such in its
centripetal movement to the channel;

(4) appropriators are entitled to the
underground waters or to the stream waters pursuant to their
appropriation and are entitled to a change of point of
diversion; provided that it does not impair other existing
rights;

(5) an application for a change in point of
diversion by an appropriator by means of wells is not an

application for a new appropriation in the underground water basin, but merely a request to follow the source of the original appropriation for restoration of appropriators' water; and

(6) if a water source is the same and will not impair existing rights, an application for a well permit to restore the flow of water to an amount previously appropriated is a change of place of diversion.

B. The purpose of this section is to ensure that:

(1) an appropriator of water from the central channel is entitled to depend upon all the sources that feed the main stream above his own diversion point, clear back to the farthest limits of the watershed; and

(2) an appropriation follows the water to its original source, and water appropriated from the natural flow of a river includes waters in an underground water supply that naturally reaches the river.

C. The state engineer shall approve an application for a well permit as a change in the point of diversion of an existing surface right, not to exceed the vested right, if:

(1) the natural flow of the stream and the underground water supply are hydrologically connected as demonstrated by the applicant and the water at the new point of diversion is water from the same source of the

applicant's surface diversion except for a change in the geomorphology of the streambed above the original point of diversion; and

(2) an application is submitted in a form approved by the state engineer and filed pursuant to Chapter 72, Article 2 NMSA 1978. _____