

SENATE CONSERVATION COMMITTEE SUBSTITUTE FOR  
SENATE BILL 484

46TH LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2003

AN ACT

RELATING TO WATER; PROVIDING FOR THE MANAGEMENT OF DOMESTIC  
WELLS; PROVIDING FOR A PENALTY.

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

Section 1. Section 72-12-1 NMSA 1978 (being Laws 1931,  
Chapter 131, Section 1, as amended) is amended to read:

"72-12-1. UNDERGROUND WATERS DECLARED TO BE PUBLIC--  
APPLICATIONS FOR [~~USE TO STATE ENGINEER--HEARINGS~~] LIVESTOCK  
WATERING, DOMESTIC AND TEMPORARY USES OF WATER. --The water of  
underground streams, channels, artesian basins, reservoirs or  
lakes, having reasonably ascertainable boundaries, [~~are~~  
~~declared to be public waters and to belong~~] belongs to the  
public and [~~to be~~] is subject to appropriation for beneficial  
use. By reason of the varying amounts and time such water is  
used and the relatively small amounts of water consumed in the

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1 watering of livestock; ~~[in irrigation of not to exceed one acre~~  
2 ~~of noncommercial trees, lawn or garden]~~ in household or other  
3 domestic use; and in prospecting, mining or construction of  
4 public works, highways and roads or drilling operations  
5 designed to discover or develop the natural resources of the  
6 state, application for any such use shall be governed by the  
7 ~~[following]~~ provisions of Sections 72-12-1.1 through 72-12-1.3  
8 NMSA 1978.

9 ~~[A. A person, firm or corporation desiring to use~~  
10 ~~public waters described in this section for watering livestock,~~  
11 ~~for irrigation of not to exceed one acre of noncommercial~~  
12 ~~trees, lawn or garden or for household or other domestic use~~  
13 ~~shall make application to the state engineer on a form to be~~  
14 ~~prescribed by him. Upon the filing of each application~~  
15 ~~describing the use applied for, the state engineer shall issue~~  
16 ~~a permit to the applicant to so use the waters applied for~~  
17 ~~provided that permits for domestic water use within~~  
18 ~~municipalities shall be conditioned to require the permittee to~~  
19 ~~comply with all applicable municipal ordinances enacted~~  
20 ~~pursuant to Chapter 3, Article 53 NMSA 1978; and provided that~~  
21 ~~as part of an application for livestock watering use on state~~  
22 ~~or federal land, the applicant shall submit proof that he:~~

- 23 (1) ~~is legally entitled to place his livestock~~  
24 ~~on the state or federal land where the water is to be used; and~~  
25 (2) ~~has been granted access to the drilling~~

~~site and has permission to occupy the portion of the state or federal land as is necessary to drill and operate the well; and~~

~~B. Whenever a person, firm or corporation or the state desires to use not to exceed three acre feet of public water described in this section for a definite period of not to exceed one year in prospecting, mining or construction of public works, highways and roads or drilling operations designed to discover or develop the natural mineral resources of the state, only the application referred to in Section 72-12-3 NMSA 1978 shall be required. Separate application shall be made for each proposed use, whether in the same or in different basins. Upon the filing of an application, the state engineer shall make an examination of the facts and, if he finds that the proposed use will not permanently impair any existing rights of others, he shall grant the application. If he finds that the proposed use sought will permanently impair such rights, then there shall be advertisement and hearing as provided in the case of applications made under Section 72-12-3 NMSA 1978.] "~~

Section 2. A new Section 72-12-1.1 NMSA 1978 is enacted to read:

"72-12-1.1. [NEW MATERIAL] UNDERGROUND PUBLIC WATERS-- DOMESTIC WELL PERMITS. --

A. As used in this section:

(1) "domestic well" means a household well or

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1 shared household well;

2 (2) "household well" means a well used to  
3 provide water for use inside a single family residence and for  
4 use outside that residence for ordinary purposes related to the  
5 enjoyment of the residence, including landscaping, lawn and  
6 garden uses totaling no more than one acre in size;

7 (3) "limited use area" means a bounded area  
8 that requires heightened protection because water resources may  
9 be inadequate to sustain well production as evidenced by:

10 (a) excessive drawdown rates; or

11 (b) reduced aquifer thickness such that  
12 new depletions are in an amount sufficient to impair the rights  
13 of existing water users; and

14 (4) "shared household well" means a well  
15 shared by more than one single family residence for uses  
16 allowed for a household well.

17 B. The state engineer may declare a limited use  
18 area in specific areas in the same manner as special orders  
19 made pursuant to Section 72-2-8 NMSA 1978. Additionally,  
20 declaration of a limited use area shall require that the state  
21 engineer mail by certified mail, return postage pre-paid,  
22 written notice to all property owners of record in the legal  
23 description of the area covered by the limited use area at  
24 least thirty days, and not more than forty-five days, prior to  
25 the hearing. The state engineer shall also mail written notice

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1 to all other persons claiming an interest in any property in  
 2 the proposed limited use area who have filed a written request  
 3 for a copy of a notice within six months preceding the date of  
 4 the hearing. The state engineer shall execute an affidavit of  
 5 mailing, state the date of mailing and the names and addresses  
 6 of the persons to whom the notices and copies of the notices  
 7 were mailed. A limited use area designation is subject to  
 8 future revision upon petition from a political subdivision of  
 9 the state filed with the state engineer. The petition shall be  
 10 considered in the same manner as special orders made pursuant  
 11 to Section 72-2-8 NMSA 1978.

12 C. A person desiring to use the underground public  
 13 waters of the state for domestic purposes shall make an  
 14 application to the state engineer on a form prescribed by the  
 15 state engineer for a domestic well permit. Upon filing of the  
 16 application, the state engineer shall issue a domestic well  
 17 permit for the use of water for domestic purposes to the  
 18 applicant, provided that:

19 (1) permits for domestic water use within  
 20 municipalities shall be conditioned to require the permittee to  
 21 comply with all applicable municipal ordinances enacted  
 22 pursuant to Chapter 3, Article 53 NMSA 1978;

23 (2) a household well shall be limited to a  
 24 maximum water withdrawal of one acre-foot per year and only one  
 25 single family household may be served by the well. Except as

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1 provided in Subsection E of this section, the permit holder  
2 shall be required to install a meter and file periodic reports  
3 of water use with the state engineer;

4 (3) a shared household well shall be limited  
5 to a maximum water withdrawal of three acre-feet per year,  
6 regardless of the number of households sharing the well. The  
7 permit holder shall be required to install a meter, and he or  
8 his agent shall report to the state engineer those households  
9 that are being served by the well along with periodic reports  
10 of water use;

11 (4) a permit for a household well located in a  
12 limited use area shall be limited to a diversion amount not to  
13 exceed one-half acre-foot per year. Except as provided in  
14 Subsection E of this section, the permit holder shall be  
15 required to install a meter and file periodic reports of water  
16 use with the state engineer; and

17 (5) a permit for a shared household well that  
18 is located in a limited use area shall be limited to a maximum  
19 water withdrawal of three acre-feet per year. Except as  
20 provided in Subsection E of this section, the permit holder  
21 shall be required to install a meter, and he or his agent shall  
22 report to the state engineer those households that are being  
23 served by the well along with periodic reports of water use.

24 D. The state engineer shall adopt reporting  
25 requirements, filing intervals and verification of usage

1 procedures for household wells and shared household wells.

2 E. Persons issued permits for single household uses  
3 prior to July 1, 2003 shall be allowed to use an amount of  
4 water not to exceed three acre-feet per year and shall not be  
5 required to meter their wells, except as required by local or  
6 county ordinance.

7 F. If the state engineer determines that a  
8 household well permitted after July 1, 2003 is exceeding its  
9 permitted water usage, he shall assess the permittee a fine of  
10 one thousand dollars (\$1,000) per acre-foot or an alternate  
11 equivalent amount, plus any administrative costs, for the  
12 amount in excess of permitted usage. A fine shall be assessed  
13 in writing within twenty-four months of the excess usage and if  
14 not paid, the state engineer may establish a lien against all  
15 properties served or benefited by the well's water at the time  
16 of excess usage. "

17 Section 3. A new Section 72-12-1.2 NMSA 1978 is enacted  
18 to read:

19 "72-12-1.2. [NEW MATERIAL] UNDERGROUND PUBLIC WATERS--  
20 LIVESTOCK WELL PERMITS.--A person, firm or corporation desiring  
21 to use public underground waters for watering livestock shall  
22 make an application to the state engineer on a form prescribed  
23 by the state engineer for a livestock well permit. Upon filing  
24 of the application, the state engineer shall issue a livestock  
25 well permit for the use of water for watering livestock to the

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1 applicant, provided that as part of an application for  
2 livestock watering use on state or federal land, the applicant  
3 submits proof that the applicant:

4 A. is legally entitled to place livestock on the  
5 state or federal land where the water is to be used; and

6 B. has been granted access to the drilling site and  
7 has permission to occupy the portion of the state or federal  
8 land as is necessary to drill and operate the well. "

9 Section 4. A new Section 72-12-1.3 NMSA 1978 is enacted  
10 to read:

11 "72-12-1.3. [NEW MATERIAL] UNDERGROUND PUBLIC WATERS--  
12 TEMPORARY USES.--If a person, firm, corporation or the state  
13 desires to use underground public water in an amount not to  
14 exceed three acre-feet for a definite period of not to exceed  
15 one year in prospecting, mining or construction of public  
16 works, highways and roads or drilling operations designed to  
17 discover or develop the natural mineral resources of the state,  
18 only the application referred to in Section 72-12-3 NMSA 1978  
19 shall be required. Separate application shall be made for each  
20 proposed use, whether in the same or in different basins. Upon  
21 the filing of an application, the state engineer shall make an  
22 examination of the facts and, if he finds that the proposed  
23 use will not permanently impair any existing rights of others,  
24 he shall grant the application. If he finds that the proposed  
25 use sought will permanently impair such rights, then there

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1 shall be advertisement and hearing as provided in the case of  
2 applications made under Section 72-12-3 NMSA 1978. "

3 Section 5. EFFECTIVE DATE. --The effective date of the  
4 provisions of this act is July 1, 2003.

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