

underscored material = new  
[bracketed material] = delete

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25

HOUSE BILL 197

**55TH LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2021**

INTRODUCED BY

Derrick J. Lente

AN ACT

RELATING TO WATER; CLARIFYING THAT LITIGATION COSTS CANNOT BE AWARDED AGAINST THE STATE ENGINEER IN AN APPEAL CHALLENGING A DECISION OF THE STATE ENGINEER.

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

SECTION 1. Section 72-7-1 NMSA 1978 (being Laws 1907, Chapter 49, Section 63, as amended) is amended to read:

"72-7-1. APPEAL TO DISTRICT COURT--PROCEDURE.--

A. Any applicant or other party dissatisfied with any decision, act or refusal to act of the state engineer may appeal to the district court of the county in which the work or point of desired appropriation is situated.

B. Appeals to the district court shall be taken by serving a notice of appeal upon the state engineer and all parties interested within thirty days after receipt by

underscored material = new  
[bracketed material] = delete

1 certified mail of notice of the decision, act or refusal to  
2 act. If an appeal is not timely taken, the action of the state  
3 engineer is conclusive.

4 C. The notice of appeal may be served in the same  
5 manner as a summons in civil actions brought before the  
6 district court or by publication [~~is some~~] in a newspaper  
7 printed in the county or water district in which the work or  
8 point of desired appropriation is situated, once a week for  
9 four consecutive weeks. The last publication shall be at least  
10 twenty days prior to the date the appeal may be heard. Proof  
11 of service of the notice of appeal shall be made in the same  
12 manner as in actions brought in the district court and shall be  
13 filed in the district court within thirty days after service is  
14 complete. At the time of filing the proof of service and upon  
15 payment by the appellant of the civil docket fee, the clerk of  
16 the district court shall docket the appeal.

17 D. Costs shall be taxed in the same manner as in  
18 cases brought in the district court, and bond for costs may be  
19 required upon proper application; provided that costs shall not  
20 be taxed against the state engineer, nor shall any bond for  
21 costs be required from the state engineer.

22 E. The proceeding upon appeal shall be de novo as  
23 cases originally docketed in the district court. Evidence  
24 taken in a hearing before the state engineer may be considered  
25 as original evidence subject to legal objection, the same as if

underscoring material = new  
~~[bracketed material] = delete~~

1 the evidence was originally offered in the district court. The  
2 court shall allow all amendments [~~which~~] that may be necessary  
3 in furtherance of justice and may submit any question of fact  
4 arising therein to a jury or to one or more referees at its  
5 discretion."

6 - 3 -  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25