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SENATE BILL 396

43RD LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 1997

INTRODUCED BY

CARLOS R. CISNEROS

AN ACT

RELATING TO WATER LAW; REQUIRING PERSONAL NOTICE, CERTIFIED MAIL OR POSTING TO ADJOINING LANDOWNERS AND AFFECTED ACEQUIA OR COMMUNITY DITCH ASSOCIATIONS WHEN APPLYING FOR ACQUISITION OF SURFACE OR UNDERGROUND WATER RIGHTS.

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.-- Upon the filing of an application [~~which~~] that complies with the provisions of this article and the rules and regulations established thereunder, accompanied by the proper fees, the state engineer shall instruct the applicant to publish notice thereof, in a form prescribed by [~~him~~] the state engineer, in some newspaper of general circulation in the stream system, once

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1 a week for three consecutive weeks, and to notify in person, by
2 certified mail or by posting to all adjoining landowners and
3 affected acequia or community ditch associations. [~~Such~~] The
4 notice shall give all essential facts as to the proposed
5 appropriation; among them, the places of appropriation and of
6 use, amount of water, the purpose for which it is to be used,
7 name and address of applicant and the time when the application
8 shall be taken up by the state engineer for consideration. Proof
9 of publication as required shall be filed with the state
10 engineer within sixty days of his instructions to make
11 publication. In case of failure to file satisfactory proof of
12 publication in accordance with the rules and regulations
13 [~~applicable thereto~~] within the time required, the application
14 shall [~~thereafter~~] be treated as an original application filed
15 on the date of receipt of proofs of publication in proper form. "

16 Section 2. Section 72-12-3 NMSA 1978 (being Laws 1931,
17 Chapter 131, Section 3, as amended) is amended to read:

18 "72-12-3. APPLICATION FOR USE OF UNDERGROUND WATER--
19 PUBLICATION OF NOTICE--PERMIT.--

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

25 (1) the particular underground stream, channel,

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1 artesian basin, reservoir or lake from which water will be
2 appropriated;

3 (2) the beneficial use to which the water will
4 be applied;

5 (3) the location of the proposed well;

6 (4) the name of the owner of the land on which
7 the well will be located;

8 (5) the amount of water applied for;

9 (6) the place of the use for which the water is
10 desired; and

11 (7) if the use is for irrigation, the
12 description of the land to be irrigated and the name of the
13 owner of the land.

14 B. If the well will be located on privately owned
15 land and the applicant is not the owner of the land or the owner
16 or the lessee of the mineral or oil and gas rights under the
17 land, the application shall be accompanied by an acknowledged
18 statement executed by the owner of the land that the applicant
19 is granted access across the owner's land to the drilling site
20 and has permission to occupy such portion of the owner's land as
21 is necessary to drill and operate the well. This subsection
22 does not apply to the state or any of its political
23 subdivisions. If the application is approved, the applicant
24 shall have the permit and statement, executed by the owner of
25 the land, recorded in the office of the county clerk of the

. 115234. 1

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1 county in which the land is located.

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

5 D. Upon the filing of an application, the state
6 engineer shall cause to be published in a newspaper of general
7 circulation in the county in which the well will be located, at
8 least once a week for three consecutive weeks, and to be given
9 in person, by certified mail or by posting to all adjoining
10 landowners and affected acequia or community ditch associations
11 a notice that the application has been filed and that objections
12 to the granting of the application may be filed within ten days
13 after the last publication of the notice. Any person, firm or
14 corporation or other entity objecting that the granting of the
15 application will impair the objector's water right shall have
16 standing to file objections or protests. Any person, firm or
17 corporation or other entity objecting that the granting of the
18 application will be contrary to the conservation of water within
19 the state or detrimental to the public welfare of the state and
20 showing that the objector will be substantially and specifically
21 affected by the granting of the application shall have standing
22 to file objections or protests. Provided, however, that the
23 state of New Mexico or any of its branches, agencies,
24 departments, boards, instrumentalities or institutions, and all
25 political subdivisions of the state and their agencies,

. 115234. 1

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1 instrumentalities and institutions shall have standing to file
2 objections or protests.

3 E. After the expiration of the time for filing
4 objections, if no objections have been filed, the state engineer
5 shall, if he finds that there are in the underground stream,
6 channel, artesian basin, reservoir or lake unappropriated waters
7 or that the proposed appropriation would not impair existing
8 water rights from the source, is not contrary to conservation of
9 water within the state and is not detrimental to the public
10 welfare of the state, grant the application and issue a permit
11 to the applicant to appropriate all or a part of the waters
12 applied for, subject to the rights of all prior appropriators
13 from the source.

14 F. If objections or protests have been filed within
15 the time prescribed in the notice or if the state engineer is of
16 the opinion that the permit should not be issued, the state
17 engineer may deny the application without a hearing or, before
18 he acts on the application, may order that a hearing be held.
19 He shall notify the applicant of his action by certified mail
20 sent to the address shown in the application."

1 FORTY-THIRD LEGISLATURE
2 FIRST SESSION, 1997
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6 March 4, 1997
7

8 Mr. President:
9

10 Your CONSERVATION COMMITTEE, to whom has been referred
11

12 SENATE BILL 396
13

14 has had it under consideration and reports same with
15 recommendation that it DO NOT PASS, but that
16

17
18 SENATE CONSERVATION COMMITTEE SUBSTITUTE FOR
19 SENATE BILL 396
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21 DO PASS, and thence referred to the FINANCE COMMITTEE.
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24 Respectfully submitted,
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Michael S. Sanchez, Chairman

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Adopted _____ Not Adopted _____
(Chief Clerk) (Chief Clerk)

Date _____

The roll call vote was 5 For 4 Against

Yes: 5
No: Davis, Kysar, Lyons, Payne
Excused: Griego
Absent: None

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SENATE CONSERVATION COMMITTEE SUBSTITUTE FOR
SENATE BILL 396

43RD LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 1997

AN ACT

RELATING TO WATER RIGHTS; PROVIDING FOR ADDITIONAL NOTICE
REQUIREMENTS WHEN APPLYING FOR SURFACE AND UNDERGROUND WATER
RIGHTS.

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~~] pursuant to this article, accompanied by the proper fees, the state engineer shall instruct the applicant to publish notice thereof, in a form prescribed by [~~him~~] the state engineer, in [~~some~~] the newspaper [~~of general~~] with the largest circulation [~~in the stream system~~]

. 116796. 4

Underscored material = new
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1 in the county within which the proposed point of diversion would
2 be located, once a week for three consecutive weeks. [~~Such~~] The
3 notice shall give all essential facts as to the proposed
4 appropriation; among them, the places of appropriation and of
5 use, amount of water, the purpose for which it is to be used,
6 name and address of the applicant and the time when the
7 application shall be taken up by the state engineer for
8 consideration. Additionally, the applicant shall, within three
9 working days after the first publication, mail a copy of the
10 published notice by certified mail to:

11 (1) the owner of the nearest surface water right
12 of record in the office of the state engineer located downstream
13 from the applicant's proposed place of use, not including the
14 applicant; and

15 (2) the chairmen, as reflected in the files of
16 the office of the state engineer, of the two nearest water
17 distribution entities that:

18 (a) divert or control the diversion of water
19 at the same point of diversion as the applicant's proposed
20 diversion; or

21 (b) divert or control the diversion of water
22 from the nearest downstream point or points of diversion.

23 B. The applicant is presumed to have complied with
24 this section if he mails the notices required by this section to
25 the names and addresses obtained from or provided by the office
of the state engineer. If a water distribution entity entitled
to notice by mail does not have any name and address information
in the records of the office of the state engineer, the

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1 applicant shall not be responsible for any failure to notify that
2 entity. The recipient of the notice shall be bound by the time
3 limits prescribed in the published notice.

4 C. Proof of publication and mailing as required shall
5 be filed with the state engineer within sixty days of his
6 instructions to make publication. In case of failure to file
7 satisfactory proof of publication and mailing in accordance with
8 the rules and regulations [~~applicable thereto~~], within the time
9 required, the application shall [~~thereafter~~] be treated as an
10 original application filed on the date of receipt of proofs of
11 publication and mailing in proper form.

12 D. For purposes of this section, "water distribution
13 entity" means a community acequia or ditch, irrigation district,
14 conservancy district, artesian conservancy district or private
15 corporate ditch of record in the office of the state engineer
16 located in the state. "

17 Section 2. Section 72-5-23 NMSA 1978 (being Laws 1907,
18 Chapter 49, Section 44, as amended) is amended to read:

19 "72-5-23. WATER APPURTENANT TO LAND--CHANGE OF PLACE OF USE. -
20 -All water used in this state for irrigation purposes, except as
21 otherwise provided in this article, shall be considered appurtenant
22 to the land upon which it is used, and the right to use it upon the
23 land shall never be severed from the land without the consent of
24 the owner of the land, but, by and with the consent of the owner of
25 the land, all or any part of the right may be severed from the

. 116796. 4

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1 land, simultaneously transferred and become appurtenant to other
 2 land, or may be transferred for other purposes, without losing
 3 priority of right theretofore established, if such changes can be
 4 made without detriment to existing water rights and are not
 5 contrary to conservation of water within the state and not
 6 detrimental to the public welfare of the state, on the approval of
 7 an application of the owner by the state engineer. Publication of
 8 notice of application, mailing, opportunity for the filing of
 9 objections or protests and a hearing on the application shall be
 10 provided as required by Sections 72-5-4 and 72-5-5 NMSA 1978;
 11 provided that water distribution entities entitled to notice by
 12 certified mail shall additionally include the water distribution
 13 entities, if any, that divert or control the diversion of water at
 14 the proposed former place of use."

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

17 "72-12-3. APPLICATION FOR USE OF UNDERGROUND WATER--
 18 PUBLICATION OF NOTICE--PERMIT.--

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

24 (1) the particular underground stream, channel,
 25 artesian basin, reservoir or lake from which water will be

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Underscored material = new
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1 appropriated;

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

4 (3) the location of the proposed well;

5 (4) the name of the owner of the land on which the
6 well will be located;

7 (5) the amount of water applied for;

8 (6) the place of the use for which the water is de-
9 sired; and

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

12 B. If the well will be located on privately owned land
13 and the applicant is not the owner of the land or the owner or the
14 lessee of the mineral or oil and gas rights under the land, the
15 application shall be accompanied by an acknowledged statement
16 executed by the owner of the land that the applicant is granted
17 access across the owner's land to the drilling site and has
18 permission to occupy such portion of the owner's land as is
19 necessary to drill and operate the well. This subsection does not
20 apply to the state or any of its political subdivisions. If the
21 application is approved, the applicant shall have the permit and
22 statement, executed by the owner of the land, recorded in the
23 office of the county clerk of the county in which the land is
24 located.

25 C. No application shall be accepted by the state engineer

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1 unless it is accompanied by all the information required by
 2 Subsections A and B of this section.

3 D. Upon the filing of an application, the state engineer
 4 shall cause to be published in [a] the newspaper [of general] with
 5 the largest circulation in the county in which the well will be
 6 located, at least once a week for three consecutive weeks, a notice
 7 that the application has been filed and that objections to the
 8 granting of the application may be filed within ten days after the
 9 last publication of the notice. Additionally, the applicant shall,
 10 within three working days after the first publication, mail a copy
 11 of the published notice by certified mail to:

12 (1) the owner of the nearest underground water right
 13 of record in the office of the state engineer to the proposed point
 14 of diversion, diverting from the same underground source as set
 15 forth in the application, not including the applicant;

16 (2) the owner of the nearest surface water right of
 17 record in the office of the state engineer diverting down gradient
 18 from the proposed point of diversion, not including the applicant;
 19 and

20 (3) the chairmen, as reflected in the files of the
 21 office of the state engineer, of the two nearest water distribution
 22 entities that:

23 (a) divert or control the diversion of water
 24 from the same point of diversion as the applicant's proposed
 25 diversion;

. 116796. 4

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1 (b) divert or control the diversion of
2 underground water from the same underground source as set forth in
3 the application; or

4 (c) divert or control the diversion of surface
5 water down gradient from the proposed point of diversion.

6 E. The applicant is presumed to have complied with this
7 section if he mails the notices required by this section to the
8 names and addresses obtained from or provided by the office of the
9 state engineer. If an owner or a water distribution entity
10 entitled to notice by mail does not have any name and address
11 information in the records of the office of the state engineer, the
12 applicant shall not be responsible for any failure to notify that
13 entity. The recipient of the notice shall be bound by the time
14 limits prescribed in the published notice. Any person, firm or
15 corporation or other entity objecting that the granting of the
16 application will impair the objector's water right shall have
17 standing to file objections or protests. Any person, firm or
18 corporation or other entity objecting that the granting of the
19 application will be contrary to the conservation of water within
20 the state or detrimental to the public welfare of the state and
21 showing that the objector will be substantially and specifically
22 affected by the granting of the application shall have standing to
23 file objections or protests. Provided, however, that the state of
24 New Mexico or any of its branches, agencies, departments, boards,
25 instrumentalities or institutions, and all political subdivisions

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1 of the state and their agencies, instrumentalities and institutions
2 shall have standing to file objections or protests.

3 ~~[E.]~~ F. After the expiration of the time for filing
4 objections, if no objections have been filed, the state engineer
5 shall, if he finds that there are in the underground stream,
6 channel, artesian basin, reservoir or lake unappropriated waters or
7 that the proposed appropriation would not impair existing water
8 rights from the source, is not contrary to conservation of water
9 within the state and is not detrimental to the public welfare of
10 the state, grant the application and issue a permit to the
11 applicant to appropriate all or a part of the waters applied for,
12 subject to the rights of all prior appropriators from the source.

13 ~~[F.]~~ G. If objections or protests have been filed within
14 the time prescribed in the notice or if the state engineer is of
15 the opinion that the permit should not be issued, the state
16 engineer may deny the application without a hearing or, before he
17 acts on the application, may order that a hearing be held. He
18 shall notify the applicant of his action by certified mail sent to
19 the address shown in the application.

20 H. For purposes of this section, "water distribution
21 entity" means a community acequia or community ditch, irrigation
22 district, conservancy district, artesian conservancy district or
23 private corporate ditch of record in the office of the state
24 engineer located in the state."

25 Section 4. Section 72-12-7 NMSA 1978 (being Laws 1931,
. 116796. 4

1 Chapter 131, Section 7, as amended) is amended to read:

2 "72-12-7. CHANGE OF LOCATION OF WELL--CHANGE IN USE ON
3 APPLICATION--TEMPORARY CHANGE. --

4 A. The owner of a water right may change the location of
5 his well or change the use of the water, but only upon application
6 to the state engineer and upon showing that the change will not
7 impair existing rights and will not be contrary to the conservation
8 of water within the state and will not be detrimental to the public
9 welfare of the state. The application may be granted only after
10 such advertisement, mailing and hearing as are prescribed in the
11 case of original applications; provided that the water distribution
12 entities entitled to notice by certified mail shall additionally
13 include the water distribution entities, if any, that divert or
14 control the diversion of water at the proposed former place of use.

15 B. When the owner of a water right applies for a
16 temporary change of not to exceed one year for not more than three
17 acre-feet of water to a different location or to a different use,
18 or both, the state engineer shall make an investigation and, if the
19 change does not permanently impair any vested rights of others, he
20 shall enter an order authorizing the change. If he finds that the
21 change sought might impair vested rights, he shall order
22 advertisement and hearing as in other cases.

23 C. If objections or protests have been filed within the
24 time prescribed in the notice or if the state engineer is of the
25 opinion that the permit should not be issued, the state engineer

. 116796. 4

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1 may deny the application or, before he acts on the application, may
2 order that 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. "

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