

1 SENATE BILL 86

2 **53RD LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2017**

3 INTRODUCED BY

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10 AN ACT

11 RELATING TO WATER RIGHTS NOTIFICATIONS; REQUIRING THE OFFICE OF
12 THE STATE ENGINEER TO POST NOTICES ONLINE.

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

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

17 "72-5-4. NOTICE--PUBLICATION.--

18 A. Upon the filing of an application that complies
19 with the provisions of this article and the rules established
20 [~~thereunder~~] pursuant to this article, accompanied by the
21 proper fees, the state engineer shall instruct the applicant to
22 publish notice [~~thereof~~] of the application, in a form and in a
23 newspaper prescribed by the state engineer, in some newspaper
24 that is published and distributed in each county affected by
25 the diversion and in each county where the water will be or has

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1 been put to beneficial use, or if there is no such newspaper,
2 then in some newspaper of general circulation in the stream
3 system, once a week for three consecutive weeks. The notice
4 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.
9 Proof of publication as required shall be filed with the state
10 engineer within sixty days of ~~[his]~~ the state engineer's
11 instructions to make publication. In case of failure to file
12 satisfactory proof of publication in accordance with the rules
13 within the time required, the application shall be treated as
14 an original application filed on the date of receipt of proofs
15 of publication in proper form.

16 B. At least one week prior to publication, the
17 applicant shall provide an electronic copy of the notice
18 required in Subsection A of this section to the state engineer.

19 C. Concurrent with the dates of publication for the
20 notice required in Subsection A of this section, the state
21 engineer shall post on the office of the state engineer's
22 website:

23 (1) the notice required in Subsection A of
24 this section;

25 (2) a copy of the application and supporting

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1 documentation; and

2 (3) the last date for the filing of objections
3 to the application in a prominent display."

4 SECTION 2. Section 72-5A-5 NMSA 1978 (being Laws 1999,
5 Chapter 285, Section 5) is amended to read:

6 "72-5A-5. NOTICE--PROTESTS--HEARINGS--DETERMINATIONS--
7 JUDICIAL REVIEW.--

8 A. Upon receipt of an application for a permit to
9 construct and operate a project, the state engineer shall
10 endorse on the application the date it was received and shall
11 keep a record of the application. The state engineer shall
12 conduct an initial review of the application within sixty days
13 of receipt. If the state engineer determines in the initial
14 review that the application is incomplete, the state engineer
15 shall notify the applicant of the application's deficiencies.
16 The application shall remain incomplete until the applicant
17 provides all information required by the Ground Water Storage
18 and Recovery Act. The state engineer may request additional
19 information from the applicant and shall conduct an
20 investigation of the project.

21 B. Within thirty days after determining that an
22 application is complete, unless an extension is requested by
23 the applicant, the applicant shall publish a notice of the
24 application in a newspaper of general circulation in the county
25 in which persons reside who could reasonably be expected to be

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1 affected by the project. The notice shall be given once a week
2 for three consecutive weeks and shall contain:

3 (1) the legal description of the location of
4 the proposed project;

5 (2) a brief description of the proposed
6 project, including its capacity;

7 (3) the name of the applicant;

8 (4) the date of the last publication;

9 (5) the requirements for an objection; and

10 (6) disclosure that objections to the
11 application shall be filed within ten days after the last
12 publication of the notice.

13 C. At least one week prior to publication, the
14 applicant shall provide an electronic copy of the notice
15 required in Subsection B of this section to the state engineer.

16 D. Concurrent with the dates of publication for the
17 notice required in Subsection B of this section, the state
18 engineer shall post on the office of the state engineer's
19 website:

20 (1) the notice required in Subsection B of
21 this subsection;

22 (2) a copy of the application and supporting
23 documentation; and

24 (3) the last date for the filing of objections
25 to the application in a prominent display.

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1 ~~[G-]~~ E. A person objecting that the granting of the
2 application will impair the objector's water right, will be
3 contrary to the conservation of water or will be detrimental to
4 the public welfare and showing that the objector will be
5 substantially and specifically affected by the granting of the
6 application shall have standing to file objections or protests;
7 provided, however, that the state or any of its branches,
8 agencies, departments, boards, instrumentalities or
9 institutions and all political subdivisions of the state and
10 their agencies, instrumentalities and institutions shall have
11 standing to file objections or protests.

12 ~~[D-]~~ F. An objection shall be filed in writing,
13 include the name and mailing address of the objector, identify
14 the grounds for the objection and include the signature of the
15 objector or ~~[his]~~ the objector's legal representative. The
16 state engineer shall schedule a hearing on the application and
17 provide at least thirty days' notice of the hearing, by
18 certified mail, to the applicant and any objector.

19 ~~[E-]~~ G. After the expiration of the time for filing
20 objections, if no objections have been filed, the state
21 engineer shall, if ~~[he]~~ the state engineer finds that the
22 application meets the requirements of the Ground Water Storage
23 and Recovery Act, issue a permit to the applicant to construct
24 the project to store and recover all or a part of the waters
25 applied for, as conditioned by the state engineer.

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1 [F-] H. A person or governmental entity aggrieved
2 by any decision of the state engineer may appeal that decision
3 to the district court pursuant to Section 72-7-1 NMSA 1978."

4 **SECTION 3.** Section 72-6-6 NMSA 1978 (being Laws 1967,
5 Chapter 100, Section 6, as amended) is amended to read:

6 "72-6-6. APPLICATION--NOTICE--PROTEST--HEARING.--

7 A. Upon the filing of an application by a lessee,
8 the state engineer shall:

9 (1) cause a notice of the filing to be
10 published once a week for three consecutive weeks in a
11 newspaper of general circulation in the county in which the
12 water right is situated; and

13 (2) concurrent with the dates of publication
14 for the notice for the filing, post on the office of the state
15 engineer's website:

16 (a) a copy of the notice for the filing;

17 (b) a copy of the application and
18 supporting documentation; and

19 (c) the last date for the filing of
20 objections to the application in a prominent display.

21 B. Any owner who believes [~~his~~] the owner's water
22 rights will be adversely affected by the granting of the
23 application may file a protest. The protest shall be specific
24 as to how the granting of the application will adversely affect
25 [~~his~~] the owner's water rights. The protest shall be filed in

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1 writing with the state engineer and a copy sent to the
2 applicant by certified mail within ten days after the last
3 publication of notice of application.

4 C. If a protest is filed, the state engineer shall
5 hold a hearing on the granting of the application, and the
6 applicant and protestants shall be notified by the state
7 engineer as to the date and place of the hearing.

8 D. If no objections are filed, the state engineer
9 may grant the application without hearing. If no objections
10 are filed and the state engineer denies the application, the
11 state engineer shall hold a hearing if requested to do so by
12 the applicant. The request shall be filed with the state
13 engineer within ten days after the denial of the application.

14 E. If the state engineer grants the application but
15 allows the applicant to use less water than the amount of water
16 the owner would be allowed to use, the state engineer shall
17 hold a hearing on the matter if requested to do so by the
18 applicant. The request shall be filed with the state engineer
19 within ten days after the granting of the application.

20 F. In a hearing before the state engineer, a full
21 record and transcript of the proceeding shall be kept by ~~him~~
22 the state engineer.

23 G. The provisions of this section do not apply to
24 leases approved pursuant to Section 73-10-48 NMSA 1978."

25 SECTION 4. Section 72-12-3 NMSA 1978 (being Laws 1931,

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1 Chapter 131, Section 3, as amended) is amended to read:

2 "72-12-3. APPLICATION FOR USE OF UNDERGROUND WATER--
3 PUBLICATION OF NOTICE--PERMIT.--

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

10 (1) the particular underground stream,
11 channel, artesian basin, reservoir or lake from which water
12 will be appropriated;

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

15 (3) the location of the proposed well;

16 (4) the name of the owner of the land on which
17 the well will be located;

18 (5) the amount of water applied for;

19 (6) the place of the use for which the water
20 is desired; and

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

24 B. If the well will be located on privately owned
25 land and the applicant is not the owner of the land or the

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1 owner or the lessee of the mineral or oil and gas rights under
2 the land, the application shall be accompanied by an
3 acknowledged statement executed by the owner of the land that
4 the applicant is granted access across the owner's land to the
5 drilling site and has permission to occupy such portion of the
6 owner's land as is necessary to drill and operate the well.

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

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

15 D. Upon the filing of an application, the state
16 engineer shall:

17 (1) cause to be published in a newspaper that
18 is published and distributed in the county where the well will
19 be located and in each county where the water will be or has
20 been put to beneficial use or where other water rights may be
21 affected, or if there is no such newspaper, then in some
22 newspaper of general circulation in the county in which the
23 well will be located, at least once a week for three
24 consecutive weeks, a notice that the application has been filed
25 and that objections to the granting of the application may be

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1 filed within ten days after the last publication of the notice;
2 and

3 (2) concurrent with the dates of publication
4 for the notice required in Paragraph (1) of this subsection,
5 post on the office of the state engineer's website:

6 (a) the notice required in Paragraph (1)
7 of this subsection;

8 (b) a copy of the application and
9 supporting documentation; and

10 (c) the last date for the filing of
11 objections to the application in a prominent display.

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

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1 protests.

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

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

22 SECTION 5. Section 72-12B-1 NMSA 1978 (being Laws 1983,
23 Chapter 2, Section 1, as amended) is amended to read:

24 "72-12B-1. APPLICATIONS FOR THE TRANSPORTATION AND USE OF
25 PUBLIC WATERS OUTSIDE THE STATE.--

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1 A. The state of New Mexico has long recognized the
2 importance of the conservation of its public waters and the
3 necessity to maintain adequate water supplies for the state's
4 water requirements. The state of New Mexico also recognizes
5 that under appropriate conditions the out-of-state
6 transportation and use of its public waters is not in conflict
7 with the public welfare of its citizens or the conservation of
8 its waters.

9 B. Any person, firm or corporation or any other
10 entity intending to withdraw water from any surface or
11 underground water source in the state of New Mexico and
12 transport it for use outside the state or to change the place
13 or purpose of use of a water right from a place in New Mexico
14 to a place out of that state shall apply to the state engineer
15 for a permit to do so. Upon the filing of an application, the
16 state engineer shall:

17 (1) cause to be published in a newspaper of
18 general circulation in the county in which the well will be
19 located or the stream system from which surface water will be
20 taken, at least once a week for three consecutive weeks, a
21 notice that the application has been filed and that objections
22 to the granting of the application may be filed within ten days
23 after the last publication of the notice; and

24 (2) concurrent with the dates of publication
25 for the notice required in Paragraph (1) of this subsection,

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1 post on the office of the state engineer's website:

2 (a) the notice required in Paragraph (l)
3 of this subsection;

4 (b) a copy of the application and
5 supporting documentation; and

6 (c) the last date for the filing of
7 objections to the application in a prominent display.

8 C. Any person, firm or corporation or other entity
9 objecting that the granting of ~~[the]~~ an application filed under
10 this section would impair or be detrimental to the objector's
11 water right shall have standing to file objections or protests.
12 Any person, firm or corporation or other entity objecting that
13 the granting of the application will be contrary to the
14 conservation of water within the state or detrimental to the
15 public welfare of the state and showing that the objector will
16 be substantially and specifically affected by the granting of
17 the application shall have standing to file objections or
18 protests; provided, however, that the state of New Mexico or
19 any of its branches, agencies, departments, boards,
20 instrumentalities or institutions and all political
21 subdivisions of the state and their agencies, instrumentalities
22 and institutions shall have standing to file objections or
23 protests. The state engineer shall accept for filing and act
24 upon all applications filed under this section in accordance
25 with the provisions of this section. The state engineer shall

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1 require notice of the application and shall thereafter proceed
2 to consider the application in accordance with existing
3 administrative law and procedure governing the appropriation of
4 surface or ground water.

5 ~~[G.]~~ D. In order to approve an application under
6 this act, the state engineer must find that the applicant's
7 withdrawal and transportation of water for use outside the
8 state would not impair existing water rights, is not contrary
9 to the conservation of water within the state and is not
10 otherwise detrimental to the public welfare of the citizens of
11 New Mexico.

12 ~~[D.]~~ E. In acting upon an application under this
13 act, the state engineer shall consider, but not be limited to,
14 the following factors:

15 (1) the supply of water available to the state
16 of New Mexico;

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

18 (3) whether there are water shortages within
19 the state of New Mexico;

20 (4) whether the water that is the subject of
21 the application could feasibly be transported to alleviate
22 water shortages in the state of New Mexico;

23 (5) the supply and sources of water available
24 to the applicant in the state where the applicant intends to
25 use the water; and

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

~~[E.]~~ F. By filing an application to withdraw and transport waters for use outside the state, the applicant shall submit to and comply with the laws of the state of New Mexico governing the appropriation and use of water.

~~[F.]~~ G. The state engineer is empowered to condition 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.]~~ H. Upon approval of the application, the applicant shall designate an agent in New Mexico for reception of service of process and other legal notices."

SECTION 6. EFFECTIVE DATE.--The effective date of the provisions of this act is July 1, 2017.