

## Whose water is it?

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When you apply for a water right or a permit for a well from the State of New Mexico, it is assumed that there is water available for diversion. If there are no other wells or surface diversions in your vicinity then there will not be a likelihood of a protest. However, if there are other diversions close to your proposed diversion, those diversions would have prior existing rights over your application. You would have to state how you are going to put this water to a beneficial use. The State Engineer would then evaluate your application to see if it meets the required standards for a permit to drill.

If you knew that the existing wells in your area were shallow and you wanted to put in a deeper well to ensure that you got all the water that was granted under your application, the neighboring well owners could challenge your application stating that you would be impairing their water right of prior appropriation and the fact that you could be over drafting the common aquifer and cause their well or wells to go dry. The State Engineer could respond, 'that their wells are not going to be impaired and that those wells could always be drilled deeper'. This concept is a result of the Tom Morrison paper "Guidelines for the Assessment of Drawdown Estimates" Feb. 2006. Of course this could be a remedy; if it did not create a financial burden on the owners of the prior existing water rights. What if the existing wells were only about 200 feet deep and your well is 2,000 feet deep? Would a 1,500 foot difference in depths be considered impairment? This is a major difference and could cost the original water right holders many hundreds of thousands of dollars to just compete with your well. Isn't this also considered a type of impairment "financial in nature"?

The problem is that water generally flows down gradient, so that the water you are pumping that lies under your property; when pumped long enough and at much lower depth will cause the adjacent landowners water to flow toward your well over time. This gradient flow is the result of the cone of depression created at your well point. The bottom line is that you are mining your neighbor's water. If this occurred in the oil patch, a law suit would follow claiming a taking and you

would have to pay for the oil you should not have pumped along with damages. It is too bad that this does not apply to water, a taking is a taking. So the question arises as to whose water is it?

In New Mexico the water belongs to the state and you have permission under the permit system to only pump what you have been allocated under that permit. If you do not use the water that has been allocated the state can reduce your allocation to reflect what you are actually using. This practice is very common when a watershed or an area under goes adjudication. Adjudication is where all the water users in an area undergoing adjudication have their water use history researched and if the people cannot verify their water use they may wind up having their amount of water use reduced. This may seem harsh but once the water has been adjudicated the amount of water granted is yours in perpetuity.

So if the water in the state is the state's water do whatever they wish with it; except where there are water compacts with other state's that they otherwise obligated to comply with. Can the state just give it away to the highest bidder or to people that know how to play the political game of saying that the water is to be used for the greater good of the state's residents. This is the case where there are winners and there are losers. In most cases the losers are residents in the rural areas of the state. This is the case where a major development in the Albuquerque area (Santolina Project) that is proposed but not yet approved, is trying to get water from the San Augustin Plains at the expense of the residents that live there.

Well again I come back to whose water is it? If you remember that, "water is life, if you control the one you control the other." So water is a political pawn that is played with by the rich and influential to their financial gain and the end user is non-consequential.

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