

1 HOUSE BILL 374

2 **54TH LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2019**

3 INTRODUCED BY

4 Gail Armstrong

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10 AN ACT

11 RELATING TO WATER; REQUIRING THE IDENTIFICATION OF END USERS IN
12 APPLICATIONS FOR THE APPROPRIATION OF UNDERGROUND WATER;
13 ESTABLISHING PRIOR DECISIONS AS LEGAL PRECEDENT IF NOT CLEARLY
14 INCORRECT OR DISTINGUISHED; PROVIDING GROUNDS TO REJECT AN
15 APPLICATION.

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

18 SECTION 1. Section 72-12-3 NMSA 1978 (being Laws 1931,
19 Chapter 131, Section 3, as amended) is amended to read:

20 "72-12-3. APPLICATION FOR USE OF UNDERGROUND WATER--
21 PUBLICATION OF NOTICE--PERMIT.--

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

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1 state engineer. In the application, the applicant shall
2 designate:

3 (1) the particular underground stream,
4 channel, artesian basin, reservoir or lake from which water
5 will be appropriated;

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

8 (3) the location of the proposed well;

9 (4) the name of the owner of the land on which
10 the well will be located;

11 (5) the amount of water applied for;

12 (6) the place of the use for which the water
13 is desired; and

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

17 B. If the end user of all or part of the water
18 applied for is not the applicant itself, the application shall
19 identify all actual end users, including an entity subject to
20 Section 72-1-9 NMSA 1978, or another entity that provides water
21 service to identifiable customers within reasonably limited and
22 readily ascertainable service areas, such as existing
23 subdivisions. The application shall include documentary
24 evidence showing that the end user is contractually obligated
25 to take and beneficially use all of the water applied for

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1 within a reasonable time. If there will be multiple end users,
2 the amount each end user will apply to beneficial use shall be
3 identified. The requirements of this subsection shall not
4 apply to an applicant that is subject to Section 72-1-9 NMSA
5 1978, to an entity that provides water service to identifiable
6 customers within reasonably limited and readily ascertainable
7 service areas or to a developer who seeks water for a
8 development.

9 ~~[B-]~~ C. If the well will be located on privately
10 owned land and the applicant is not the owner of the land or
11 the owner or the lessee of the mineral or oil and gas rights
12 under the land, the application shall be accompanied by an
13 acknowledged statement executed by the owner of the land that
14 the applicant is granted access across the owner's land to the
15 drilling site and has permission to occupy such portion of the
16 owner's land as is necessary to drill and operate the well.

17 This subsection does not apply to the state or any of its
18 political subdivisions. If the application is approved, the
19 applicant shall have the permit and statement, executed by the
20 owner of the land, recorded in the office of the county clerk
21 of the county in which the land is located.

22 ~~[G-]~~ D. No application shall be accepted by the
23 state engineer unless it is accompanied by all the information
24 required by Subsections A, ~~[and]~~ B and C of this section.

25 ~~[D-]~~ E. The prior decisions of the state engineer

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1 shall constitute legal precedent, which shall be binding on the
2 state engineer in subsequent cases unless the prior decision
3 was demonstrably incorrect or clearly distinguished on the
4 basis of law or fact. In reaching a decision that reverses or
5 is otherwise inconsistent with a prior decision regarding an
6 appropriation from the same source or a hydrologically
7 connected source, the state engineer shall make specific
8 findings of fact and conclusions of law explaining why the
9 prior decision was incorrect or distinguished.

10 F. Upon the filing of an application, the state
11 engineer shall cause to be published in a newspaper that is
12 published and distributed in the county where the well will be
13 located and in each county where the water will be or has been
14 put to beneficial use or where other water rights may be
15 affected, or if there is no such newspaper, then in some
16 newspaper of general circulation in the county in which the
17 well will be located, at least once a week for three
18 consecutive weeks, a notice that the application has been filed
19 and that objections to the granting of the application may be
20 filed within ten days after the last publication of the notice.
21 Any person, firm or corporation or other entity objecting that
22 the granting of the application will impair the objector's
23 water right shall have standing to file objections or protests.
24 Any person, firm or corporation or other entity objecting that
25 the granting of the application will be contrary to the

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1 conservation of water within the state or detrimental to the
2 public welfare of the state and showing that the objector will
3 be substantially and specifically affected by the granting of
4 the application shall have standing to file objections or
5 protests; provided, however, that the state [~~of New Mexico~~] or
6 any of its branches, agencies, departments, boards,
7 instrumentalities or institutions, and all political
8 subdivisions of the state and their agencies, instrumentalities
9 and institutions shall have standing to file objections or
10 protests.

11 ~~[E.]~~ G. After the expiration of the time for filing
12 objections, if no objections have been filed, the state
13 engineer shall, if [~~he~~] the state engineer finds that there are
14 in the underground stream, channel, artesian basin, reservoir
15 or lake unappropriated waters or that the proposed
16 appropriation would not impair existing water rights from the
17 source, is not contrary to conservation of water within the
18 state and is not detrimental to the public welfare of the
19 state, grant the application and issue a permit to the
20 applicant to appropriate all or a part of the waters applied
21 for, subject to the rights of all prior appropriators from the
22 source. The state engineer shall reject an application as
23 detrimental to the public welfare if the state engineer finds
24 that the applicant's intention is to sell any permit the
25 applicant may obtain without appropriating the water.

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