

Active Water Resource Management Act

72-2-9.1. **Priority administration**; expedited water marketing and leasing; state engineer

A. The legislature recognizes that the adjudication process is slow, the need for water administration is urgent, compliance with interstate compacts is imperative and the state engineer has authority to administer water allocations in accordance with the water right priorities recorded with or declared or otherwise available to the state engineer.

B. The state engineer shall adopt rules for priority administration to ensure that authority is exercised:

(1) so as not to interfere with a future or pending adjudication;

(2) so as to create no impairment of water rights, other than what is required to enforce priorities; and

(3) so as to create no increased depletions.

C. The state engineer shall adopt rules based on the appropriate hydrologic models to promote expedited marketing and leasing of water in those areas affected by priority administration. The rules shall be consistent with the rights, remedies and criteria established by law for proceedings for water use leasing and for changes in point of diversion, place of use and purpose of use of water rights. The rules shall not apply to acequias or community ditches or to water rights served by an acequia or community ditch.

D. Nothing in this section shall affect the partial final decree and settlement agreement as may be entered in the Carlsbad irrigation district project offer phase of State of New Mexico ex rel. State Engineer v. Lewis, et al., Nos. 20294 and 22600 (N.M. 5th Jud. Dist.).

Legislative intent; other sttes

72-1-2.2. Legislative findings; declaration of purpose

A. The legislature hereby finds and declares that *there exists a potential water shortage crisis in the Pecos River basin as a result of the requirements and obligations of the Pecos River Compact and the United States supreme court's amended decree in Texas v. New Mexico*, No. 65 original as well as the recent droughts and the demands on this water system.

B. The legislature hereby finds and *declares that this shortage of water and the state's obligation to Texas pursuant to the compact and the decree is a statewide problem affecting all the citizens of the state*. The state is obligated under the terms of the decree to fulfill an obligation to repay Texas in water for any shortages of water owed to Texas by the state of New Mexico.

The statute giving the state engineer general supervision of state waters and of appropriation and distribution thereof was not intended to oust the courts of jurisdiction to protect persons entitled to use the water, and hence jurisdiction of irrigation district's suit to enjoin alleged unlawful appropriation of water by riparian owners above district's reservoirs and works remained with the courts and was not within the jurisdiction of the state engineer. Carlsbad Irr. Dist. v. Ford, 1942, 46 N.M. 335, 128 P.2d 1047.

Conservation

72-5-5.1. Purposes

The state of New Mexico recognizes the importance of public welfare and *conservation* of water in administering its public waters. This act affords standing for those asserting legitimate concerns involving public welfare and *conservation of water* in a manner which avoids unduly burdening the administrative and judicial processes.

N.M. Stat. Ann. § 72-14-3 (West) **General powers of commission; interstate compacts; employees; attorney general's duties**

That said commission [Interstate Stream Commission] is hereby authorized to negotiate compacts with other states to settle interstate controversies or looking toward an equitable distribution and division of waters in interstate stream systems, subject, in all cases, to final approval by the legislature of New Mexico; to match appropriations made by the congress of the United States for investigations looking to the development of interstate streams originating in or flowing through the state of New Mexico; *to investigate water supply, to develop, to conserve, to protect and to do any and all other things necessary to protect, conserve and develop the waters and stream systems of this state, interstate or otherwise*; to institute or cause to be instituted in the name of the state of New Mexico any and all negotiations and/or legal proceedings as in its judgment are necessary to carry out the provisions of this act; to do all other things necessary to carry out the provisions of this act; to employ such attorneys, engineers and clerical help as, in its judgment, may be necessary to carry out the provisions of this act, and to fix their compensation and expenses; together with such other powers and duties, as may, from time to time, be given said commission by the legislature of New Mexico; the attorney general shall be the legal adviser of such commission and attorneys employed as above shall be subject to his approval and supervision and be designated as "special assistant attorneys general."

72-5-7. Application; rejection; noncompliance with rules; conservation and public welfare [Under Article 5; Appropriation and Use of Surface Water]

If, in the opinion of the state engineer, there is no unappropriated water available, he shall reject such application. He shall decline to order the publication of notice of any application which does not comply with the requirements of the law and rules and regulations. **He may also refuse to consider or approve any application or notice of intention to make application or to order the publication of notice of any application if, in his opinion, approval would be contrary to the conservation of water within the state or detrimental to the public welfare of the state.**

72-5A-2. Legislative findings

[Article 5a; Under Ground Water Storage and Recovery Act]

The legislature finds that:

A. conjunctive use and administration of both surface and ground waters are essential to the effective and efficient use of the state's *limited water supplies*; and

B. ground water recharge, storage and recovery have the potential to:

(1) offer savings in the costs of capital investment, operation and maintenance and flood control and may improve water and environmental quality;

(2) *reduce the rate at which ground water levels will decline and may prevent overstressing or*

dewatering aquifer systems;

(3) promote conservation of water within the state;

(4) serve the public welfare of the state; and

(5) may lead to more effective use of the state's water resources.

72-5A-6. State engineer; powers and duties; permit; monitoring requirements

A. The state engineer shall issue a permit to construct and operate a project if the applicant has provided a reasonable demonstration that:

(1) the applicant has the technical and financial capability to construct and operate the project;

(2) the project is hydrologically feasible;

(3) the project will not impair existing water rights or the state's interstate obligations;

(4) the project will not be contrary to the conservation of water within the state;

(5) the project will not be detrimental to the public welfare of the state;

...

(8) that1 the project will not cause harm to users of land and water within the area of hydrologic effect;

B. A permit for a project shall include:

(4) any monitoring program required;

(5) all conditions required by or regulations adopted pursuant to the Ground Water Storage and Recovery Act; and

(6) other information the state engineer determines to be necessary.

Definitions:

D. "project" means a permitted, engineered facility designed specifically, constructed and operated pursuant to the Ground Water Storage and Recovery Act, to add measured volumes of water by injection or infiltration to an aquifer or system of aquifers, to store the water underground and to recover it for beneficial use pursuant to the Ground Water Storage and Recovery Act

Underground waters:

72-12-1. Underground waters declared to be public; applications for livestock watering, domestic and temporary uses of water

By reason of the varying amounts and time such water is used and the relatively small amounts of water consumed in the watering of livestock; *in irrigation of not to exceed one acre of noncommercial trees, lawn or garden; in household or other domestic use;* and in prospecting, mining or construction of public works, highways and roads or drilling operations designed to discover or develop the natural resources of the state, application for any such use shall be governed by the provisions of Sections 72-12-1.1 through 72-12-1.3 NMSA 1978.

72-12-1.1. Underground waters; **domestic use**; permit

A person, firm or corporation desiring to use public underground waters described in this section for irrigation of *not to exceed one acre of noncommercial trees, lawn or garden* **or** for household

or other domestic use shall make application to the state engineer for a well on a form to be prescribed by the state engineer. Upon the filing of each application describing the use applied for, the state engineer shall issue a permit to the applicant to use the underground waters applied for; provided that permits for domestic water use within municipalities shall be conditioned to require the permittee to comply with all applicable municipal ordinances enacted pursuant to Chapter 3, Article 53 NMSA 1978.

72-12-3. Application for use of underground water; publication of notice; permit

D. Upon the filing of an application, the state engineer shall proceed in accordance with the provisions of Section 1 of this 2019 act regarding notice of the application. Any person, firm or corporation or other entity objecting that the granting of the application will impair the objector's water right shall have standing to file objections or protests. **Any person, firm or corporation or other entity objecting that the granting of the application will be contrary to the conservation of water within the state or detrimental to the public welfare of the state and showing that the objector will be substantially and specifically affected by the granting of the application shall have standing to file objections or protests;** provided, however, that the state or any of its branches, agencies, departments, boards, instrumentalities or institutions, and all political subdivisions of the state and their agencies, instrumentalities and institutions shall have standing to file objections or protests.

Cases:

A municipal corporation is "any corporation" within statute permitting any corporation to make application to state engineer for underground water. 1953 Comp. § 75-11-3. *City of Albuquerque v. Reynolds*, 1962, 71 N.M. 428, 379 P.2d 73.

Under statute regulating appropriation of water of underground basin and reservoirs, the state engineer, having performed his positive duty of determining whether or not existing rights would be impaired, does not have the duty to further determine the degree or amount of impairment, if he should find existing rights would be impaired; this in no way requires finding of impairment of existing rights merely because of a decline in the water level. 1953 Comp. § 75-11-1. *Mathers v. Texaco, Inc.*, 1966, 77 N.M. 239, 421 P.2d 771.

State engineer has authority to approve application to appropriate underground water subject to conditions. 1953 Comp. §§ 75-2-8, 75-11-3, 75-11-7. *City of Roswell v. Berry*, 1969, 80 N.M. 110, 452 P.2d 179

the engineer's requirement that surface rights be retired to extent necessary to protect prior stream appropriators was a reasonable condition. 1953 Comp. § 75-11-3. *City of Albuquerque v. Reynolds*, 1962, 71 N.M. 428, 379 P.2d 73.

As to underground waters, until a basin was declared by state engineer, he could not exercise jurisdiction in connection therewith. 1953 Comp. §§ 75-11-26 to 75-11-36. *McBee v. Reynolds*, 1965, 74 N.M. 783, 399 P.2d 110. The state engineer had no jurisdiction to consider applications for underground water or protests filed before the basin was declared, nor to give priority to such applications over those filed after declaration of the basin.