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## **ARTICLE 5**

### **Appropriation and Use of Surface Water**

#### **72-5-1. Application for permit; rules; surveys, etc.**

Any person, association or corporation, public or private, the state of New Mexico or the United States of America, except as provided in Section 15 [72-5-33 NMSA 1978] of this act, hereafter intending to acquire the right to the beneficial use of any waters, shall, before commencing any construction for such purposes, make an application to the state engineer for a permit to appropriate, in the form required by the rules and regulations established by him. Such rules and regulations, shall, in addition to providing the form and manner of preparing and presenting the application, require the applicant to state the amount of water and period or periods of annual use, and all other data necessary for the proper description and limitation of the right applied for, together with such information, maps, field notes, plans and specifications as may be necessary to show the method of practicability of the construction and the ability of the applicant to complete the same. The state engineer may require additional information not provided for in the general rules and regulations, in any case involving the diversion of five hundred cubic feet of water per second, or more, or in the construction of a dam more than thirty feet high from the foundation. All such maps, field notes, plans and specifications, shall be made from actual surveys and measurements, and shall be duly filed in the office of the state engineer at the time of filing of formal application for permit to appropriate; provided, that upon the filing in the office of the state engineer of a notice of intention to make formal application for a permit to appropriate certain public waters the state engineer may allow a reasonable time, to be specified by him and noted upon his records, for making the surveys, measurements, maps, plans and specifications hereinbefore provided and required for a formal application, and if applicant shall file such formal application and map, plans and specifications and other necessary data within the time so specified, his priority of application shall date from the time of filing such notice of intention.

**History:** Laws 1907, ch. 49, § 24; 1913, ch. 62, § 2; Code 1915, § 5678; C.S. 1929, § 151-129; Laws 1941, ch. 126, § 6; 1941 Comp., § 77-501; 1953 Comp., § 75-5-1.

## **72-5-5. Objections to applications; filing of protests; definition of standing.**

A. If objection or protest to the application is timely filed, the state engineer shall advise interested parties, and a hearing shall be held as otherwise provided by statute.

B. Any person, firm or corporation or other entity objecting that the granting of the application will be detrimental to 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 of New Mexico 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.

**History:** 1953 Comp., § 75-5-4.1, enacted by Laws 1965, ch. 285, § 6; 1985, ch. 201, § 2; 2019, ch. 88, § 3.

### **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.

**History:** Laws 1985, ch. 201, § 1.

## **72-5-6. Hearing; approval; permit.**

Upon the receipt of the proofs of publication, accompanied by any statutory fees required at this time, the state engineer shall determine, from the evidence presented by the parties interested, from such surveys of the water supply as may be available and from the records, whether there is unappropriated water available for the benefit of the applicant. If so, and if the proposed appropriation is not contrary to the conservation of water within the state and is not detrimental to the public welfare of the state, the state engineer shall endorse his approval on the application, which shall become a permit to appropriate water, and shall state in such approval the time within which the construction shall be completed and the time within which water shall be applied to a beneficial use; provided that the state engineer may, in his discretion, approve any application for a less amount of water or may vary the periods of annual use, and the permit to appropriate water shall be regarded as limited accordingly. The time allowed by the state engineer for completion of works or application of water to beneficial use shall be governed by the size and complexity of the project, but in no case shall

exceed five years from the date of approval within which to complete construction, and four years in addition thereto within which to apply water to a beneficial use; provided that the state engineer shall have the power to grant extensions of time for completion of works or application of water to beneficial use as provided in Section **72-5-14** NMSA 1978.

**History:** Laws 1907, ch. 49, § 27; Code 1915, § 5682; C.S. 1929, § 151-133; Laws 1941, ch. 126, § 9; 1941 Comp., § 77-505; 1953 Comp., § 75-5-5; Laws 1985, ch. 201, § 3.

## **72-5-7. Application; rejection; noncompliance with rules; conservation and public welfare.**

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.

**History:** Laws 1907, ch. 49, § 28; Code 1915, § 5683; C.S. 1929, § 151-134; Laws 1941, ch. 126, § 10; 1941 Comp., § 77-506; 1953 Comp., § 75-5-6; Laws 1985, ch. 201, § 4.

## **72-5-22. [Transfer of water rights.]**

Any permit or license to appropriate water may be assigned, but no such assignment shall be binding, except upon the parties thereto, unless filed for record in the office of the state engineer. The evidence of the right to use water from any works constructed by the United States, or its duly authorized agencies, shall in like manner be filed in the office of the state engineer, upon assignment; provided, that no right to appropriate water, except water for storage reservoirs, for irrigation purposes shall be assigned, or the ownership thereof in anywise transformed, apart from the land to which it is appurtenant, except in the manner specially provided by law: provided, further, that the transfer of title of land in any manner whatsoever shall carry with it all rights to the use of water appurtenant thereto for irrigation purposes, unless previously alienated in the manner provided by law.

**History:** Laws 1907, ch. 49, § 36; Code 1915, § 5695; C.S. 1929, § 151-148; 1941 Comp., § 77-521; 1953 Comp., § 75-5-21.

## **72-5-23. Water appurtenant to land; change of place of use.**

All water used in this state for irrigation purposes, except as otherwise provided in this article, shall be considered appurtenant to the land upon which it is used, and the right to use it upon the land shall never be severed from the land without the consent of the owner of the land, but, by and with the consent of the owner

of the land, all or any part of the right may be severed from the land, simultaneously transferred and become appurtenant to other land, or may be transferred for other purposes, without losing priority of right theretofore established, if such changes can be made without detriment to existing water rights and are not contrary to conservation of water within the state and not detrimental to the public welfare of the state, on the approval of an application of the owner by the state engineer. Publication of notice of application, opportunity for the filing of objections or protests and a hearing on the application shall be provided as required by Sections 72-5-4 and 72-5-5 NMSA 1978.

**History:** Laws 1907, ch. 49, § 44; Code 1915, § 5703; C.S. 1929, § 151-156; Laws 1941, ch. 126, § 17; 1941 Comp., § 77-522; 1953 Comp., § 75-5-22; Laws 1985, ch. 201, § 5.

## 72-5-24. Change of purpose; change of point of diversion.

An appropriator of water may, with the approval of the state engineer, use the same for other than the purpose for which it was appropriated or may change the place of diversion, storage or use in the manner and under the conditions prescribed in Sections 72-5-3 and 72-5-23 NMSA 1978.

**History:** Laws 1907, ch. 49, § 45; Code 1915, § 5704; C.S. 1929, § 151-157; Laws 1941, ch. 126, § 18; 1941 Comp., § 77-523; 1953 Comp., § 75-5-23; Laws 1985, ch. 201, § 6.

## 72-6-3. Owner may lease use of water.

A. An owner may lease to any person all or any part of the water use due the owner under the owner's water right, and the owner's water right shall not be affected by the lease of the use. The use to which the owner is entitled under the owner's right shall, during the exercise of the lease, be reduced by the amount of water so leased. Upon termination of the lease, the water use and location of use subject to the lease shall revert to the owner's original use and location of use.

B. The lease may be effective for immediate use of water or may be effective for future use of the water covered by the lease; however, the lease shall not be effective to cumulate water from year to year or to substantially enlarge the use of the water in such manner that it would injure other water users. The lease shall not toll any forfeiture of water rights for nonuse, and the owner shall not, by reason of the lease, escape the forfeiture for nonuse prescribed by law; provided, however, that the state engineer shall notify both the owner and the lessee of declaration of nonuser as provided in Sections 72-5-28 and 72-12-8 NMSA 1978. The initial or any renewal term of a lease of water use shall not exceed ten years, except as provided in Subsections C and D of this section.

C. A water use may be leased for forty years by municipalities, counties, state universities, special water users' associations, public utilities supplying water to municipalities or counties and member-owned community water systems as lessee and shall be entitled to the protection of the forty-year water use planning period as provided in Section 72-1-9 NMSA 1978.

D. A water use deriving from an acequia or community ditch organized pursuant to Chapter 73, Article 2 or 3 NMSA 1978, whether owned by a water right owner under the acequia or community ditch or by the acequia or community ditch, may be leased for a term not to exceed ten years; provided that pursuant to the rules or

bylaws duly adopted by its members, an acequia or community ditch may require that any water use lease of a water right served by the acequia or community ditch, or any water use lease in which a water right is moved into and then served by the acequia or community ditch, shall be subject to approval by the commissioners of the acequia or community ditch in accordance with the procedures for approval of changes in point of diversion or place or purpose of use as provided in Subsection E of Section 73-2-21 NMSA 1978 and Sections 72-5-24.1 and 73-3-4.1 NMSA 1978.

E. A water use due under an adjudicated water right secured to a pueblo pursuant to the settlement agreements approved in Title 5 and Title 6 of the federal Claims Resolution Act of 2010, P.L. No. 111-291, Sections 501-626, or in the partial final judgments and decrees entered pursuant to those settlement agreements, may be leased for a term, including all renewals, not to exceed the term specifically authorized in that act; provided that this subsection shall not apply to any water use due under any state-law based water rights acquired by a pueblo or by the United States on behalf of a pueblo.

**History:** 1953 Comp., § 75-40-3, enacted by Laws 1967, ch. 100, § 3; 1999, ch. 40, § 1; 2003, ch. 369, § 2; 2014, ch. 45, § 2; 2014, ch. 48, § 2; 2019, ch. 121, § 1.

## 72-6-5. Approval.

A. The state engineer shall approve the application if the applicant has reasonably shown that his proposed use and location of use is a beneficial use and:

- (1) will not impair any existing right to a greater degree than such right is, or would be, impaired by the continued use and location of use by the owner; and
- (2) will not be contrary to the conservation of water within the state or detrimental to the public welfare of the state.

B. In the case of annual allotments of project water leased to a special water users' association from an irrigation district organized pursuant to Chapter 73, Article 10 NMSA 1978, if the state engineer determines that the proposed changes in place and purpose of use and point of diversion comply with the rules established pursuant to Subsection G of Section 73-10-48 NMSA 1978, the board of directors of the irrigation district may approve the application in accordance with the provisions of Section 73-10-48 NMSA 1978.

**History:** 1953 Comp., § 75-40-5, enacted by Laws 1967, ch. 100, § 5; 1999, ch. 40, § 2; 2003, ch. 369, § 3.

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

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

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

- (2) the beneficial use to which the water will be applied;
- (3) the location of the proposed well;
- (4) the name of the owner of the land on which the well will be located;
- (5) the amount of water applied for;
- (6) the place of the use for which the water is desired; and
- (7) if the use is for irrigation, the description of the land to be irrigated and the name of the owner of the land.

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

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

D. Upon the filing of an application, the state engineer shall proceed in accordance with the provisions of Section 1 [72-2-20 NMSA1978] 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.

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

F. 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 the state engineer acts on the application, may order that a hearing be held. The state engineer shall notify the applicant of the action by certified mail sent to the address shown in the application.

**History:** Laws 1931, ch. 131, § 3; 1941 Comp., § 77-1103; Laws 1943, ch. 70, § 1; 1953 Comp., § 75-11-3; Laws 1967, ch. 308, § 2; 1971, ch. 134, § 3; 1983, ch. 2, § 2; 1985, ch. 201, § 7; 2001, ch. 26, § 2; 2019, ch. 88, § 6.

## **72-12-7. Change of location of well; change in use on application; temporary change.**

A. The owner of a water right may change the location of his well or change the use of the water, but only upon application to the state engineer and upon showing that the change will not impair existing rights and will not be contrary to the conservation of water within the state and will not be detrimental to the public welfare of the state. The application may be granted only after such advertisement and hearing as are prescribed in the case of original applications.

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

C. 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 or, before he acts on the application, may order that a hearing be held. He shall notify the applicant of his action by certified mail sent to the address shown in the application.

**History:** Laws 1931, ch. 131, § 7; 1941 Comp., § 77-1107; Laws 1953, ch. 60, § 1; 1953 Comp., § 75-11-7; Laws 1967, ch. 308, § 3; 1971, ch. 134, § 4; 1985, ch. 201, § 8.