

HOUSE AGRICULTURE AND WATER RESOURCES COMMITTEE SUBSTITUTE FOR
HOUSE BILL 201

51ST LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2013

AN ACT

RELATING TO WATER; PROVIDING FOR DIRECT APPEAL TO THE DISTRICT
COURT FOR CERTAIN DECISIONS OR ACTIONS BY THE STATE ENGINEER.

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

SECTION 1. Section 72-2-16 NMSA 1978 (being Laws 1965,
Chapter 285, Section 4, as amended) is amended to read:

"72-2-16. HEARINGS REQUIRED BEFORE APPEAL.--

A. The state engineer may order that a hearing be
held before ~~[he]~~ the state engineer enters a decision, acts or
refuses to act.

B. If, without holding a hearing, the state
engineer enters a decision, acts or refuses to act ~~[any person]~~
on an application that has not been protested, the applicant,
if aggrieved by the decision, act or refusal to act:

(1) is entitled to a hearing if a request for

1 a hearing is made in writing within thirty days after receipt
2 by certified mail of notice of the decision, act or refusal to
3 act; or

4 (2) may request that the state engineer
5 authorize an appeal of the decision, act or refusal to act
6 directly to district court by submitting a written request to
7 the state engineer within thirty days after receipt by
8 certified mail of notice of the decision, act or refusal to
9 act. If the state engineer determines that an immediate appeal
10 to district court from the decision, act or refusal to act
11 would materially advance the ultimate termination of the
12 proceeding, the state engineer shall so state in a written
13 order, which order shall also specify the issue or issues to be
14 addressed on appeal. The applicant shall take the appeal to
15 the district court by serving a notice of appeal as required by
16 Subsection B of Section 72-7-1 NMSA 1978 within thirty days
17 after receipt by certified mail of notice of the state
18 engineer's order authorizing the appeal. If in response to a
19 request, the state engineer does not authorize a direct appeal
20 to district court, then the matter shall be set for hearing
21 pursuant to Paragraph (1) of this subsection.

22 C. An order by the state engineer to hold a
23 hearing in accordance with the provisions of Subsection A of
24 this section, the state engineer's referral of the matter to
25 mediation or alternative dispute resolution or the state

.193070.1

1 engineer's decision in accordance with Paragraph (2) of
2 Subsection B of this section not to authorize a direct appeal
3 to district court shall not constitute a decision, act or
4 refusal to act by the state engineer under Subsection B of this
5 section.

6 D. Hearings shall be held before the state engineer
7 or [~~his~~] the state engineer's appointed examiner. A record
8 shall be made of all hearings. [~~No~~] Except as provided for in
9 Paragraph (2) of Subsection B of this section, an appeal shall
10 not be taken to the district court until the state engineer has
11 held a hearing and entered [~~his~~] a decision in the hearing."

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underscoring material = new
[bracketed material] = delete