



Protect Water, Acequias, Rivers, and Aquifers

Support HB 121 - Due Process Protections in Water Leases

The purpose of this bill is to ensure fairness and due process in water lease applications to the State Engineer.

HB 121 expressly clarifies that the State Engineer can approve a permit for a water use lease **only after** he has adhered to requirements for public notice, opportunity to protest, and mandatory public hearings on protested applications. It seeks to prevent the OSE from granting use of water before public notice and protest requirements have been met.

Why this bill is needed...

It is vital to protect due process and transparency in any proposed changes to water rights that could affect existing and senior water rights, as well as our rivers and aquifers.

“Preliminary approval” is an unlawful administrative practice in which the State Engineer grants approval of water leases before communities have their legal opportunity to review and gather community input, putting acequias, agriculture, rivers, and aquifers at risk.

We have already seen damaging examples of this practice, such as the leasing of 5,000 acre feet of water on the Lower Pecos River (Intrepid Potash, Inc.) without proper notice or public hearings for impacted communities, such as Carlsbad Irrigation District. Additionally, acequias in Lincoln County were impacted by unlawful ‘preliminary approval’ leases to Ruidoso.

With increasing water scarcity and development pressures, it is vital that HB 121 is passed and legal due process requirements for existing water rights are strengthened and upheld.

Public Notice and Opportunity for Public Hearings are Required in Water Lease Applications

- New Mexico water law requires that changes in point of diversion, place of use or purpose of use for water rights must be approved by the State Engineer only after consideration of impairment of existing water rights, conservation of water, and public welfare.
- Any application before the State Engineer is subject to protest on these issues, a public hearing, and appeal. These existing due process protections apply to water transfers (Sections 72-5-23 and -24 NMSA 1978) and temporary water leases (Sections 72-6-2 through 72-6-6 NMSA 1978).

A District Court Held in 2020 that “Preliminary Authorization” is Unlawful

In the decision, Judge Romero states, “The State Engineer has no authority under the Water Use Lease Act to grant the applicants ‘Preliminary Authorization’ to change the use and location of leased water” and goes on to deem that the permits granted by the State Engineer were illegal and constituted “unauthorized permits.” *Carlsbad Irrigation District and Otis Mutual Domestic Water Consumers & Sewage Works Association v. John D’Antonio, State Engineer* (April 1, 2020)



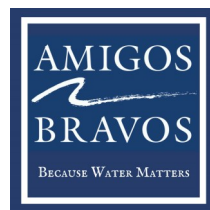
Without HB 121, the practice of “preliminary approval” will likely continue and communities, acequias, rivers, and aquifers will be at risk. The following organizations urge the State Legislature to add clarifying language to the Water Use Lease Act to protect existing and senior water rights.

EL AGUA ES VIDA! WATER IS LIFE!



NEW MEXICO
ACEQUIA COMMISSION

NEW MEXICO
Food & Agriculture
POLICY COUNCIL



Interfaith Power & Light
New Mexico & El Paso Region
www.nm-ipl.org

Farm
to Table

