



# City of Santa Fe, New Mexico

## LEGISLATIVE SUMMARY

Resolution No. 2015-\_\_

Water Wells, Leases, Hearings & Abandonment – SB 665

**SPONSOR(S):** Councilors Maestas and Ives

**SUMMARY:** The proposed resolution supports state legislation, Senate Bill 665 (“SB 665”), relating to water wells, leases, hearings and abandonment.

**PREPARED BY:** Rebecca Seligman, Legislative Liaison Assistant

**FISCAL IMPACT:** No

**DATE:** March 3, 2015

**ATTACHMENTS:** Resolution  
FIR  
Senate Bill 665

1 CITY OF SANTA FE, NEW MEXICO

2 RESOLUTION NO. 2015-\_\_\_\_

3 INTRODUCED BY:

4  
5 Councilor Joseph Maestas

6 Councilor Peter Ives

7  
8  
9  
10 A RESOLUTION

11 SUPPORTING PROPOSED STATE LEGISLATION, SENATE BILL 665 (“SB 665”),  
12 RELATING TO WATER WELLS, LEASES, HEARINGS AND ABANDONMENT.

13  
14 WHEREAS, the 60 day session of the 2015 Legislative Session began on January 20, 2015;  
15 and

16 WHEREAS, SB 665, has been introduced for consideration by the 52<sup>nd</sup> Legislature - State of  
17 New Mexico - First Session, 2015; and

18 WHEREAS, SB 665 would allow the use of a leased water right during the pendency of the  
19 hearing process for a limited period and limited amount of water; and

20 WHEREAS, SB 665 would allow drilling of supplemental or replacement wells for the  
21 amount of water originally permitted to or declared by the water right owner regardless of the amount  
22 of historic beneficial use of the water; and

23 WHEREAS, SB 665 would require filing of certain evidence by protestants to determine  
24 standing in administrative hearings on water right issues; and

25 WHEREAS, SB 665 would provide that the non-use of water does not automatically result in

1 the loss of water rights in certain instances.

2 **NOW, THEREFORE, BE IT RESOLVED BY THE GOVERNING BODY OF THE**  
3 **CITY OF SANTA FE** that the Governing Body hereby supports SB 665, relating to water wells,  
4 leases, hearings and abandonment as it relates to municipal, county, and member-owned community  
5 water systems.

6 **BE IT FURTHER RESOLVED** that the City Clerk is directed to forward a copy of this  
7 resolution to the City of Santa Fe lobbyist and the City of Santa Fe State Legislative Delegation.

8 PASSED, APPROVED, and ADOPTED this \_\_\_\_ day of \_\_\_\_\_, 2015.

9  
10  
11 ATTEST:

\_\_\_\_\_  
JAVIER M. GONZALES, MAYOR

12  
13  
\_\_\_\_\_  
14 YOLANDA Y. VIGIL, CITY CLERK

15 APPROVED AS TO FORM:

16   
17 \_\_\_\_\_  
18 KELLEY BRENNAN, CITY ATTORNEY

### City of Santa Fe Fiscal Impact Report (FIR)

This Fiscal Impact Report (FIR) shall be completed for each proposed bill or resolution as to its direct impact upon the City's operating budget and is intended for use by any of the standing committees of and the Governing Body of the City of Santa Fe. Bills or resolutions with no fiscal impact still require a completed FIR. Bills or resolutions with a fiscal impact must be reviewed by the Finance Committee. Bills or resolutions without a fiscal impact generally do not require review by the Finance Committee unless the subject of the bill or resolution is financial in nature.

**Section A. General Information**

(Check) Bill: \_\_\_\_\_ Resolution:  X

(A single FIR may be used for related bills and/or resolutions)

Short Title(s):  A RESOLUTION SUPPORTING PROPOSED STATE LEGISLATION, SENATE BILL 665 ("SB 665"), RELATING TO WATER WELLS, LEASES, HEARINGS AND ABANDONMENT.

Sponsor(s):  Councilors Maestas and Ives   
Reviewing Department(s):  City Attorney's Office / Water Division, Public Utilities Department   
Persons Completing FIR:  Rebecca Seligman / Rick Carpenter  Date:  3/4/15  Phone:  955-6501 / 955-4206

Reviewed by City Attorney:    Date:  03/05/2015   
(Signature)

Reviewed by Finance Director:    Date:  3-06-2015   
(Signature)

**Section B. Summary**

Briefly explain the purpose and major provisions of the bill/resolution:

The resolution supports proposed state legislation of Senate Bill 66 ("SB 665"), which would allow the use of a leased water right during the pendency of the hearing process for a limited period and limited amount of water; would allow drilling of supplemental or replacement wells for the amount of water originally permitted to or declared by the water right owner regardless of the amount of historic beneficial use of the water; would require filing of certain evidence by protestants to determine standing in administrative hearings on water right issues; and it would provide that the non-use of water does not automatically result in the loss of water rights in certain instances.

**Section C. Fiscal Impact**

Note: Financial information on this FIR does not directly translate into a City of Santa Fe budget increase. For a budget increase, the following are required:

- a. The item must be on the agenda at the Finance Committee and City Council as a "Request for Approval of a City of Santa Fe Budget Increase" with a definitive funding source (could be same item and same time as bill/resolution)
- b. Detailed budget information must be attached as to fund, business units, and line item, amounts, and explanations (similar to annual requests for budget)
- c. Detailed personnel forms must be attached as to range, salary, and benefit allocation and signed by Human Resource Department for each new position(s) requested (prorated for period to be employed by fiscal year)\*

**1. Projected Expenditures:**

- a. Indicate Fiscal Year(s) affected – usually current fiscal year and following fiscal year (i.e., FY 03/04 and FY 04/05)
- b. Indicate: "A" if current budget and level of staffing will absorb the costs  
"N" if new, additional, or increased budget or staffing will be required
- c. Indicate: "R" – if recurring annual costs  
"NR" if one-time, non-recurring costs, such as start-up, contract or equipment costs
- d. Attach additional projection schedules if two years does not adequately project revenue and cost patterns
- e. Costs may be netted or shown as an offset if some cost savings are projected (explain in Section 3 Narrative)

Finance Director: \_\_\_\_\_

X  Check here if no fiscal impact

Column #:	1	2	3	4	5	6	7	8
	Expenditure Classification	FY _____	"A" Costs Absorbed or "N" New Budget Required	"R" Costs Recurring or "NR" Non-recurring	FY _____	"A" Costs Absorbed or "N" New Budget Required	"R" Costs -- Recurring or "NR" Non-recurring	Fund Affected

Personnel*	\$ _____	_____	_____	\$ _____	_____	_____	_____	_____
Fringe**	\$ _____	_____	_____	\$ _____	_____	_____	_____	_____
Capital Outlay	\$ _____	_____	_____	\$ _____	_____	_____	_____	_____
Land/ Building	\$ _____	_____	_____	\$ _____	_____	_____	_____	_____
Professional Services	\$ _____	_____	_____	\$ _____	_____	_____	_____	_____
All Other Operating Costs	\$ _____	_____	_____	\$ _____	_____	_____	_____	_____
Total:	\$ _____	_____	_____	\$ _____	_____	_____	_____	_____

\* Any indication that additional staffing would be required must be reviewed and approved in advance by the City Manager by attached memo before release of FIR to committees. \*\*For fringe benefits contact the Finance Dept.

**2. Revenue Sources:**

- a. To indicate new revenues and/or
- b. Required for costs for which new expenditure budget is proposed above in item 1.

Column #:	1	2	3	4	5	6
	Type of Revenue	FY _____	"R" Costs Recurring or "NR" Non-recurring	FY _____	"R" Costs -- Recurring or "NR" Non-recurring	Fund Affected

_____	\$ _____	_____	\$ _____	_____	_____	_____
_____	\$ _____	_____	\$ _____	_____	_____	_____
_____	\$ _____	_____	\$ _____	_____	_____	_____
Total:	\$ _____	_____	\$ _____	_____	_____	_____

**3. Expenditure/Revenue Narrative:**

Explain revenue source(s). Include revenue calculations, grant(s) available, anticipated date of receipt of revenues/grants, etc. Explain expenditures, grant match(s), justify personnel increase(s), detail capital and operating uses, etc. (Attach supplemental page, if necessary.)

N/A

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**Section D. General Narrative**

**1. Conflicts:** Does this proposed bill/resolution duplicate/conflict with/companion to/relate to any City code, approved ordinance or resolution, other adopted policies or proposed legislation? Include details of city adopted laws/ordinance/resolutions and dates. Summarize the relationships, conflicts or overlaps.

None staff is aware of

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**2. Consequences of Not Enacting This Bill/Resolution:**

Are there consequences of not enacting this bill/resolution? If so, describe.

If this resolution is not enacted, the City of Santa Fe would not show its support for Senate Bill 66 ("SB 665"), relating to water wells, leases, hearings and abandonment.

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**3. Technical Issues:**

Are there incorrect citations of law, drafting errors or other problems? Are there any amendments that should be considered? Are there any other alternatives which should be considered? If so, describe.

No

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**4. Community Impact:**

Briefly describe the major positive or negative effects the Bill/Resolution might have on the community including, but not limited to, businesses, neighborhoods, families, children and youth, social service providers and other institutions such as schools, churches, etc.

Supporting the proposed SB 665, if passed, would make it easier for the City of Santa Fe to fully develop its water rights portfolio for that portion of its water rights that have not yet been put to historical beneficial use (i.e., City wells and Buckman wells).

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1 SENATE BILL 665

2 52ND LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2015

3 INTRODUCED BY

4 Ron Griggs

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9  
10 AN ACT

11 RELATING TO WATER; ALLOWING THE USE OF A LEASED WATER RIGHT  
12 DURING THE PENDENCY OF THE HEARING PROCESS FOR A LIMITED PERIOD  
13 AND LIMITED AMOUNT OF WATER; ALLOWING THE DRILLING OF  
14 SUPPLEMENTAL OR REPLACEMENT WELLS FOR THE AMOUNT OF WATER  
15 ORIGINALLY PERMITTED TO OR DECLARED BY THE WATER RIGHT OWNER  
16 REGARDLESS OF THE AMOUNT OF HISTORIC BENEFICIAL USE OF THE  
17 WATER; REQUIRING THE FILING OF CERTAIN EVIDENCE BY PROTESTANTS  
18 TO DETERMINE STANDING IN ADMINISTRATIVE HEARINGS ON WATER  
19 RIGHTS ISSUES; PROVIDING THAT THE NON-USE OF WATER DOES NOT  
20 AUTOMATICALLY RESULT IN THE LOSS OF WATER RIGHTS IN CERTAIN  
21 INSTANCES.

22  
23 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF NEW MEXICO:

24 SECTION 1. Section 72-1-9 NMSA 1978 (being Laws 1985,  
25 Chapter 198, Section 1, as amended) is amended to read:

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1 "72-1-9. MUNICIPAL, COUNTY, MEMBER-OWNED COMMUNITY WATER  
2 SYSTEMS, SCHOOL DISTRICT AND STATE UNIVERSITY WATER DEVELOPMENT  
3 PLANS--PRESERVATION OF MUNICIPAL, COUNTY AND STATE UNIVERSITY  
4 WATER SUPPLIES.--

5 A. It is recognized by the state that it promotes  
6 the public welfare and the conservation of water within the  
7 state for municipalities, counties, school districts, state  
8 universities, member-owned community water systems, special  
9 water users' associations, water and sanitation districts and  
10 public utilities supplying water to municipalities or counties  
11 to plan for the reasonable development and use of water  
12 resources. The state further recognizes the state engineer's  
13 administrative policy of not allowing municipalities, member-  
14 owned community water systems, water and sanitation districts,  
15 counties and state universities to acquire and hold unused  
16 water rights in an amount greater than their reasonable needs  
17 within forty years.

18 B. Municipalities, counties, school districts,  
19 state universities, member-owned community water systems,  
20 special water users' associations, water and sanitation  
21 districts and public utilities supplying water to  
22 municipalities or counties shall be allowed a water use  
23 planning period not to exceed forty years, and water rights  
24 for municipalities, counties, school districts, state  
25 universities, water and sanitation districts, member-owned

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1 community water systems, special water users' associations  
2 and public utilities supplying water to such municipalities  
3 or counties shall be based upon a water development plan the  
4 implementation of which shall not exceed a forty-year period  
5 from the date of the application for an appropriation or a  
6 change of place or purpose of use pursuant to a water  
7 development plan or for preservation of a municipal, county,  
8 school district, member-owned community water system, water  
9 and sanitation district or state university water supply for  
10 reasonably projected additional needs within forty years.

11 C. A water right acquired and held unused  
12 pursuant to the provisions of this section shall not be  
13 automatically lost after forty years, except by statutory  
14 forfeiture or judicial proceedings to prove abandonment."

15 SECTION 2. Section 72-6-4 NMSA 1978 (being Laws 1967,  
16 Chapter 100, Section 4) is amended to read:

17 "72-6-4. LESSEE'S APPLICATION--USE BEFORE APPROVAL---

18 A. Prior to ~~[his]~~ the use of ~~[such]~~ the water,  
19 the lessee shall apply to the state engineer requesting  
20 approval for the use and location of use to which ~~[such]~~ the  
21 water will be put. The state engineer shall prescribe the  
22 form of ~~[such]~~ the application and may require any  
23 information pertinent to the matter.

24 B. Notwithstanding the provisions of Section  
25 72-6-6 NMSA 1978, the state engineer may approve a lessee's

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1 use of water during the pendency of the hearing process for  
2 leases of less than three years for less than two hundred  
3 acre-feet per year."

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

6 "72-12-3. APPLICATION FOR USE OF UNDERGROUND WATER--  
7 PUBLICATION OF NOTICE--PERMIT--STANDING OF PROTESTANTS.--

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

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

17 (2) the beneficial use to which the water  
18 will be applied;

19 (3) the location of the proposed well;

20 (4) the name of the owner of the land on  
21 which the well will be located;

22 (5) the amount of water applied for;

23 (6) the place of the use for which the water  
24 is desired; and

25 (7) if the use is for irrigation, the

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1 description of the land to be irrigated and the name of the  
2 owner of the land.

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

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

19 D. Upon the filing of an application, the state  
20 engineer shall cause to be published in a newspaper that is  
21 published and distributed in the county where the well will  
22 be located and in each county where the water will be or has  
23 been put to beneficial use or where other water rights may be  
24 affected, or if there is no such newspaper, then in some  
25 newspaper of general circulation in the county in which the

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1 well will be located, at least once a week for three  
2 consecutive weeks, a notice that the application has been  
3 filed and that objections to the granting of the application  
4 may be filed within ten days after the last publication of  
5 the notice. Any person, firm or corporation or other entity  
6 objecting that the granting of the application will impair  
7 the objector's water right shall have standing to file  
8 objections or protests. Any person, firm or corporation or  
9 other entity objecting that the granting of the application  
10 will be contrary to the conservation of water within the  
11 state or detrimental to the public welfare of the state and  
12 showing that the objector will be substantially and  
13 specifically affected by the granting of the application  
14 shall have standing to file objections or protests; provided,  
15 however, that the state [~~of New Mexico~~] or any of its  
16 branches, agencies, departments, boards, instrumentalities or  
17 institutions, and all political subdivisions of the state and  
18 their agencies, instrumentalities and institutions shall have  
19 standing to file objections or protests.

20 E. If alleging impairment to the protestant's  
21 water right, the protestant shall provide evidence of a valid  
22 existing water right, which shall include:

23 (1) the protestant's state engineer water  
24 right file number; or

25 (2) if there is no state engineer file

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1 number, a description of the affected water rights that  
2 specifies the place and purpose of use, amount of beneficial  
3 use, point of diversion, name of water source, whether  
4 aquifer or stream, and priority date of the water right; and

5 (3) such other evidence that the state  
6 engineer may require.

7 F. If the protestant is alleging that granting an  
8 application will be contrary to the conservation of water  
9 within the state or detrimental to the public welfare of the  
10 state, the protestant shall provide evidence that the  
11 protestant will be substantially and specifically affected by  
12 the granting of the application. Alleged impairment to the  
13 protestant's water right cannot also be the basis to claim  
14 the protestant is substantially and specifically affected by  
15 the granting of the application.

16 G. Evidence of a protestant's standing shall be  
17 included in the written protest filed within ten days after  
18 the last publication of the notice required by Subsection D  
19 of this section. No late or amended protests shall be  
20 allowed. A protestant's participation in a state engineer  
21 administrative hearing shall be limited to those issues  
22 contained in the written protest. An applicant may seek to  
23 recover attorney fees and costs for a frivolous protest.

24 [E.] H. After the expiration of the time for  
25 filing objections, if no objections have been filed, the

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1 state engineer shall, if [~~he~~] the state engineer finds that  
2 there are in the underground stream, channel, artesian basin,  
3 reservoir or lake unappropriated waters or that the proposed  
4 appropriation would not impair existing water rights from the  
5 source, is not contrary to conservation of water within the  
6 state and is not detrimental to the public welfare of the  
7 state, grant the application and issue a permit to the  
8 applicant to appropriate all or a part of the waters applied  
9 for, subject to the rights of all prior appropriators from  
10 the source.

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

20 SECTION 4. Section 72-12-22 NMSA 1978 (being Laws 1959,  
21 Chapter 41, Section 1) is amended to read:

22 "72-12-22. REPLACEMENT WELL WITHIN ONE HUNDRED FEET.--

23 A. The owner of a water right may drill and use a  
24 replacement well drilled within one hundred feet of the  
25 original well prior to application to the state engineer and

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1 the publication and hearing set out in Section [~~75-11-3 New~~  
2 ~~Mexico Statutes Annotated, 1953 Compilation~~] 72-12-3 NMSA  
3 1978 if:

4 (1) the well is drilled into the same [~~and~~  
5 ~~only the same~~] underground stream, channel, artesian basin,  
6 reservoir or lake as the original well; [~~and~~

7 (2) the appropriation is of the same amount  
8 of water allowed by [~~his~~] the owner's water right in the  
9 original well; [~~and~~

10 (3) an emergency situation exists in which  
11 the delay caused by application, publication and hearing  
12 would result in crop loss or other serious economic loss; and

13 (4) [~~he~~] the owner files an application or  
14 notifies the office of the state engineer [~~office~~] of these  
15 facts and the location of the proposed replacement well by  
16 registered letter, prior to drilling; provided that [~~he~~] the  
17 owner shall file application for a permit within [~~30~~] thirty  
18 days after drilling begins.

19 B. The owners of other water rights, who claim to  
20 be injured by the drilling of a replacement well under these  
21 circumstances, may not enjoin the drilling of such a well or  
22 the use of the water from the well, but are limited to an  
23 action at law to recover damages and to their right to  
24 protest the granting of a permit.

25 C. For the purposes of this section, the amount

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1 of water available for appropriation is the greater of the  
2 amount of water put to full beneficial use by the water  
3 right's owner, the amount of the owner's permitted water  
4 right or the amount of the owner's declared water right;  
5 provided that at least some portion of the owner's permitted  
6 or declared water right previously has been put to beneficial  
7 use."

8 SECTION 5. Section 72-12-23 NMSA 1978 (being Laws 1959,  
9 Chapter 41, Section 2) is amended to read:

10 "72-12-23. REPLACEMENT WELL OVER ONE HUNDRED FEET FROM  
11 ORIGINAL WELL.--

12 A. The owner of a water right may drill and use a  
13 replacement well drilled over one hundred feet from ~~[his]~~ the  
14 owner's original well upon making application but without  
15 waiting for the completion of the publication and hearing set  
16 out in Section ~~[75-11-3 New Mexico Statutes Annotated, 1953~~  
17 ~~Compilation]~~ 72-12-3 NMSA 1978 if:

18 (1) the well is drilled into the same ~~[and~~  
19 ~~only the same]~~ underground stream, channel, artesian basin,  
20 reservoir or lake as the original well; ~~[and]~~

21 (2) the appropriation is of the same amount  
22 of water allowed by ~~[his]~~ the owner's water right in the  
23 original well; ~~[and]~~

24 (3) an emergency situation exists in which  
25 the delay caused by publication and hearing would result in

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1 crop loss or other serious economic loss; and

2 (4) the state engineer, after a preliminary  
3 investigation, finds the change does not impair existing  
4 water rights and grants ~~[him]~~ a permit authorizing the  
5 drilling and use of the replacement well prior to the  
6 publication and hearing.

7 B. When the preliminary investigation by the  
8 state engineer causes ~~[him]~~ the state engineer to reasonably  
9 believe that the drilling and use of a replacement well may  
10 impair existing rights, then no permit shall be issued until  
11 after publication and hearing.

12 C. For the purposes of this section, the amount  
13 of water available for appropriation is the greater of the  
14 amount of water put to full beneficial use by the water  
15 right's owner, the amount of the owner's permitted water  
16 right or the amount of the owner's declared water right;  
17 provided that at least some portion of the owner's permitted  
18 or declared water right previously has been put to beneficial  
19 use."

20 SECTION 6. Section 72-12-24 NMSA 1978 (being Laws 1959,  
21 Chapter 41, Section 3) is amended to read:

22 "72-12-24. SUPPLEMENTAL WELL.--

23 A. The owner of a water right may drill and use a  
24 supplemental well upon making application but prior to the  
25 publication and hearing set out in Section ~~[75-11-3 New~~

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1 ~~Mexico Statutes Annotated, 1953 Compilation~~ 72-12-3 NMSA  
2 1978 if:

3 (1) the supplemental well is drilled into  
4 the same ~~[and only the same]~~ underground stream, channel,  
5 artesian basin, reservoir or lake as the well being  
6 supplemented; ~~[and]~~

7 (2) the supplemental well does not increase  
8 the appropriation of water to an amount above the existing  
9 water right; ~~[and]~~

10 (3) an emergency situation exists in which  
11 the delay caused by publication and hearing would result in  
12 crop loss or other serious economic loss; and

13 (4) the state engineer, after a preliminary  
14 investigation, finds that the supplemental well does not  
15 impair existing water rights and grants ~~[him]~~ a permit  
16 authorizing the drilling and use of the supplemental well  
17 prior to publication and hearing.

18 B. If the preliminary investigation by the state  
19 engineer causes ~~[him]~~ the state engineer to reasonably  
20 believe that the drilling and use of a supplemental well may  
21 impair existing rights, then no permit shall be issued until  
22 after publication and hearing.

23 C. For the purposes of this section, the amount  
24 of water available for appropriation is the greater of the  
25 amount of water put to full beneficial use by the water

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1 right's owner, the amount of the owner's permitted water  
2 right or the amount of the owner's declared water right;  
3 provided that at least some portion of the owner's permitted  
4 or declared water right previously has been put to beneficial  
5 use."

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