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HOUSE BILL 420

**44TH LEGISLATURE - STATE OF NEW MEXICO - SECOND SESSION,
2000**

INTRODUCED BY

Pauline K. Gubbels

AN ACT

RELATING TO WATER; PROVIDING FOR STATE REGIONAL WATER BANKS;
AMENDING AND ENACTING SECTIONS OF THE NMSA 1978.

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

Section 1. A new section of Chapter 72 NMSA 1978 is
enacted to read:

"[NEW MATERIAL] STATE ENGINEER--ADDITIONAL POWERS--
ESTABLISHMENT OF STATE REGIONAL WATER BANKS.--

A. State regional water banks may be established
on a regional basis by authority of the state engineer for
the deposit and lease of conserved water, surplus water and
water currently put to beneficial use that an owner agrees
not to use for the term of the deposit. The banks shall
function as a clearinghouse for temporary transfers of water
and as depositories for state purchased water, conserved
water and surplus water stored in designated reservoirs or

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1 pursuant to the Ground Water Storage and Recovery Act.

2 B. The state engineer may acquire from willing
3 sellers or lessors water stored in the state regional water
4 banks to fulfill interstate compact obligations or for
5 environmental purposes or to provide for water shortage and
6 drought mitigation.

7 C. The state engineer shall conduct hearings and
8 adopt rules for administration of state regional water banks.
9 The rules shall include:

10 (1) terms and conditions for deposit and
11 withdrawal of water;

12 (2) the procedure and formula to determine
13 the validity of water rights for purposes of determining
14 eligibility of water for deposit;

15 (3) the priority order, if any, of water
16 rights to be leased or sold by the state regional water
17 banks;

18 (4) monitoring to determine and penalties
19 for improper use of deposited or transferred water; and

20 (5) criteria for the temporary transfer of
21 water used for irrigation to another beneficial use.

22 D. The state engineer shall appoint and fix the
23 salary of a full-time water bank director who shall:

24 (1) serve at the pleasure of the state
25 engineer pursuant to the direction of the state engineer;

(2) administer and operate the state
regional water banks and:

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1 (a) administer the transfers of water
2 from the state regional water banks, including: 1) making
3 annual determinations of available deposited water to be
4 transferred; 2) making annual determinations of the fees for
5 transfer of deposited water; 3) maintaining a registry of
6 deposits and persons who have registered with the state
7 regional water banks and identifying a beneficial use for
8 additional water supplies; and 4) informing persons listed on
9 its registry about water rights available from the state
10 regional water banks;

11 (b) have authority to purchase, hold,
12 lease and sell water rights in the state's name;

13 (c) negotiate and contract for or
14 acquire the use of surface facilities or reservoirs or
15 underground aquifers to store deposited water; and

16 (d) determine compliance with the rules
17 and standards for stored water, considering the obligations
18 of the interstate stream commission pursuant to surface
19 storage reservoir contracts and applicable interstate
20 compacts, if any;

21 (3) establish fees for transfers and the
22 administrative and operational costs of the state regional
23 water banks; and

24 (4) take all other actions necessary or
25 advisable to facilitate deposits and transfers."

Section 2. A new section of Chapter 72 NMSA 1978 is
enacted to read:

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1 " [NEW MATERIAL] ADMINISTRATION OF WATER BY IRRIGATION
2 AND CONSERVANCY DISTRICTS AND ACEQUIAS--LOCAL WATER BANKS.--

3 A. Irrigation districts, conservancy districts and
4 acequias may provide for the transfer of water pursuant to
5 the provisions of Chapter 72 and 73 NMSA 1978 and may
6 establish local water banks to serve their members.

7 B. An entity authorized to maintain a local water
8 bank may establish requirements for a deposit of a water use
9 into a local water bank, including:

10 (1) terms and conditions for deposit and
11 withdrawal and procedures and penalties for early withdrawal;

12 (2) procedures for determining the
13 eligibility for deposits;

14 (3) the priority order of deposits to be
15 leased; and

16 (4) monitoring procedures for determining
17 breach of leases or agreements with the local water bank.

18 C. An entity authorized to maintain a local water
19 bank may establish fees for transfers and the administrative
20 and operational costs of the bank and issue rules for
21 administering transfers of deposits.

22 D. An entity authorized to maintain a local water
23 bank shall have the power to temporarily transfer banked
24 water to new places of use without formal proceedings before
25 the state engineer, provided that:

 (1) the transfer takes place within the same
stream system;

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1 (2) the water is used for the same purpose
2 allowed under a state engineer permit;

3 (3) the transfer takes place within the
4 political and hydrologic boundaries of the local water bank;

5 (4) the transfer does not change the
6 diversion to a ground water diversion or does not change the
7 method of diversion from a ground water diversion to surface
8 water diversion; and

9 (5) records of all transfers be provided
10 annually to the state engineer.

11 E. A local water bank shall not allow the transfer
12 of water used for irrigation to another purpose of use except
13 in accordance with state engineer rules."

14 Section 3. Section 72-5A-3 NMSA 1978 (being Laws 1999,
15 Chapter 285, Section 3) is amended to read:

16 "72-5A-3. DEFINITIONS.--As used in the Ground Water
17 Storage and Recovery Act:

18 A. "aquifer" means a geologic formation that
19 contains sufficient saturated material to be capable of
20 storing and transmitting water in usable quantities to a
21 well;

22 B. "area of hydrologic effect" means the
23 underground area where the water is stored and located,
24 hydrologically connected surface waters, adjacent underground
25 areas in which water rights exist that may be impaired, the
land surface above the underground areas and any additional
land surface used for seepage or infiltration;

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1 C. "governmental entity" means an Indian nation,
2 tribe or pueblo or the state or a state political
3 subdivision, including a municipality, county, acequia,
4 irrigation district or conservancy district;

5 D. "project" means a permitted, engineered
6 facility designed specifically, constructed and operated
7 pursuant to the Ground Water Storage and Recovery Act, to add
8 measured volumes of water by injection or infiltration to an
9 aquifer or system of aquifers, to store the water underground
10 and to recover it for beneficial use pursuant to the Ground
11 Water Storage and Recovery Act but shall not include in situ
12 leach mining operations or water flood operations for
13 petroleum recovery that require approval by the state
14 engineer outside the Ground Water Storage and Recovery Act;
15 and

16 E. "stored water" means water that has been stored
17 underground for the purpose of recovery and permitted
18 pursuant to the Ground Water Storage and Recovery Act."

19 Section 4. Section 72-5A-4 NMSA 1978 (being Laws 1999,
20 Chapter 285, Section 4) is amended to read:

21 "72-5A-4. PERMIT REQUIRED.--

22 A. No governmental entity may construct and
23 operate a storage and recovery project in a declared ground
24 water basin without a permit from the state engineer and
25 other permits that may be required.

 B. The state engineer shall prescribe application
forms for a permit. The application shall include:

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1 (1) an application fee in the amount of five
2 thousand dollars (\$5,000) plus five dollars (\$5.00) per acre-
3 foot of the annual capacity of the proposed storage and
4 recovery project, not to exceed fifty thousand dollars
5 (\$50,000); an annual fee of fifty cents (\$.50) per acre-foot
6 of water stored, payable upon submission of the annual report
7 required by the Ground Water Storage and Recovery Act;

8 (2) the name and mailing address of the
9 applicant;

10 (3) the name and mailing address of the
11 owner of the land on which the applicant proposes to operate
12 the project;

13 (4) the name of the declared underground
14 water basin in which the applicant proposes to operate the
15 project;

16 (5) the legal description of the location of
17 the proposed project;

18 (6) evidence of financial and technical
19 capability;

20 (7) the source, annual quantity and quality
21 of water proposed to be injected and the quality of water in
22 the receiving aquifer;

23 (8) the identification, characteristics,
24 capacity and location of each recharge and recovery well,
25 including existing pre-basin wells, existing permitted wells
and new wells sought to be drilled for recharge or recovery
pursuant to the application and the identification of

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1 existing permitted and declared wells in the underground area
2 [~~effected~~] affected by storage and recovery operations;

3 (9) a description of the proposed project,
4 including its capacity, plan of operation and percentage of
5 anticipated recoverable water;

6 (10) evidence that the applicant is the
7 water bank director in the office of the state engineer or
8 has a valid water right quantified by one of the following
9 legal processes:

10 (a) a water rights adjudication;

11 (b) a consent decree;

12 (c) an act of congress, including a
13 negotiated settlement ratified by congress;

14 (d) a contract pursuant to 43 U.S.C.
15 620 et seq.; or

16 (e) an agreement with an owner who has
17 a valid water right subject to an application for a change in
18 purpose, place of use or point of diversion;

19 (11) a project plan that:

20 (a) shows that the project will not
21 cause harm to users of land and water within the area of
22 hydrologic effect;

23 (b) demonstrates that the project is
24 hydrologically feasible;

25 (c) demonstrates that the project will
not impair existing water rights or the state's interstate
obligations;

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1 (d) demonstrates that the project will
2 not be contrary to the conservation of water within the
3 state; and

4 (e) demonstrates that the project will
5 not be detrimental to the public welfare of the state;

6 (12) a sworn statement executed by the owner
7 of the land that the applicant is granted an easement and
8 authorization to construct and operate the project on the
9 site, if project facilities are located on land not owned by
10 the applicant;

11 (13) copies of completed applications for
12 all other permits required under state and federal law;

13 (14) the proposed duration of the permit;
14 and

15 (15) any additional information required by
16 the state engineer."

17 Section 5. Section 72-5A-6 NMSA 1978 (being Laws 1999,
18 Chapter 285, Section 6) is amended to read:

19 "72-5A-6. STATE ENGINEER--POWERS AND DUTIES--PERMIT--
20 MONITORING REQUIREMENTS.--

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

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

(2) the project is hydrologically feasible;

(3) the project will not impair existing

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1 water rights or the state's interstate obligations;

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

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

6 (6) the applicant has completed applications
7 for all permits required by state and federal law;

8 (7) the applicant is the water bank director
9 or has a valid water right quantified by one of the following
10 legal processes:

11 (a) a water rights adjudication;

12 (b) a consent decree;

13 (c) an act of congress, including a
14 negotiated settlement ratified by congress;

15 (d) a contract pursuant to 43 U.S.C.
16 620 et seq.; or

17 (e) an agreement with an owner who has
18 a valid water right subject to an application for a change in
19 purpose, place of use or point of diversion; and

20 (8) ~~[that]~~ the project will not cause harm
21 to users of land and water within the area of hydrologic
22 effect.

23 B. A permit for a project shall include:

24 (1) the name and mailing address of the
25 person to whom the permit is issued;

(2) the name of the declared underground
water basin in which the project will be located;

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1 (3) the capacity and plan of operation of
2 the project;

3 (4) any monitoring program required;

4 (5) all conditions required by or
5 ~~[regulations]~~ rules adopted pursuant to the Ground Water
6 Storage and Recovery Act; and

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

9 C. The permit shall not become effective until the
10 applicant obtains all other required state and federal
11 permits.

12 D. The state engineer shall adopt ~~[regulations]~~
13 rules to carry out the provisions of the Ground Water Storage
14 and Recovery Act, including monitoring the operation of
15 projects and their effects on other water users in the area
16 of hydrologic effect, including an Indian nation, tribe or
17 pueblo. In determining monitoring requirements, the state
18 engineer shall cooperate with all government entities that
19 regulate and monitor the quality of water, including the
20 department of environment."

21 Section 6. Section 72-5A-8 NMSA 1978 (being Laws 1999,
22 Chapter 285, Section 8) is amended to read:

23 "72-5A-8. STORED WATER NOT PUBLIC--STORED WATER NOT
24 SUBJECT TO FORFEITURE--USE OR EXCHANGE OF RECOVERED WATER.--

25 A. Water added to an aquifer or system of aquifers
to be stored for subsequent diversion and application to
beneficial use pursuant to a project permit is not public

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1 water and is not subject to forfeiture pursuant to Section
2 72-5-28 or 72-12-8 NMSA 1978.

3 B. A permittee may use water recovered only for
4 the same purposes for which the water was authorized before
5 it was stored, unless an application for a change in the
6 purpose of use, place of use or point of diversion is filed
7 and approved pursuant to Section 72-5-23, 72-5-24 or 72-12-7
8 NMSA 1978, as applicable; provided that the water bank
9 director may lease stored water pursuant to Chapter 72,
10 Article 6 NMSA 1978."

11 Section 7. Section 72-6-3 NMSA 1978 (being Laws 1967,
12 Chapter 100, Section 3, as amended) is amended to read:

13 "72-6-3. OWNER MAY LEASE USE OF WATER OR DEPOSIT IN
14 STATE WATER BANK.--

15 A. [~~Any~~] An owner may deposit in an approved state
16 water bank or lease to any person all or any part of the
17 water use due him under his water right, and the owner's
18 water right shall not be affected by the deposit or lease of
19 the use. The use to which the owner is entitled under his
20 right shall, during the term of the deposit or exercise of
21 the lease, be reduced by the amount of water so deposited or
22 leased. Upon withdrawal by the owner from the bank or
23 termination of the lease, the water use and location of use
24 subject to the lease shall revert to the owner's original use
25 and location of use.

B. [~~The~~] A lease may be effective for immediate
use of water or may be effective for future use of the water

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1 covered by the lease; however, the lease shall not be
2 effective to cumulate water from year to year or to
3 substantially enlarge the use of the water in such manner
4 that it would injure other water users. The lease shall not
5 toll any forfeiture of water rights for nonuse, and the owner
6 shall not, by reason of the lease, escape the forfeiture for
7 nonuse prescribed by law; provided, however, that the state
8 engineer shall notify both the owner and the lessee of
9 declaration of nonuser as provided in Sections 72-5-28 and
10 72-12-8 NMSA 1978. The initial or any renewal term of a
11 lease of water use shall not exceed ten years.

12 C. A deposit of a water use in a state regional
13 water bank may be leased for immediate use of water or may be
14 reserved for future use of the water. The initial or any
15 renewal term of a lease of a deposited water use shall not
16 exceed ten years. Water reserved for future use that is
17 stored water shall not be subject to forfeiture while
18 deposited in the bank and may accumulate yearly, subject to
19 offset for storage losses as determined by state engineer
20 rule.

21 ~~[E.]~~ D. A water use may be leased for forty years
22 by municipalities, counties, state universities, public
23 utilities supplying water to municipalities or counties and
24 member-owned community water systems as lessee and shall be
25 entitled to the protection of the forty-year water use
planning period as provided in Section 72-1-9 NMSA 1978. A
water use deriving from an acequia or community ditch

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1 organized pursuant to Chapter 73, Article 2 or 3 NMSA 1978,
2 whether owned by a water right owner under the acequia or
3 community ditch or by the acequia or community ditch may be
4 leased for a term not to exceed ten years."

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