SENATE BILL 323

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

INTRODUCED BY

Sue F. Wilson

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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pursuant to the Ground Water Storage and Recovery Act.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(2) procedures for determining the eligibility for deposits;

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

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

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

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

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

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

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

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

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

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

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

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

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

B. "area of hydrologic effect" means the underground area where the water is stored and located, hydrologically connected surface waters, adjacent underground 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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C. "governmental entity" means an Indian nation, tribe or pueblo or the state or a state political subdivision, including a municipality, county, acequia, irrigation district or conservancy district;

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

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

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

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

A. No governmental entity may construct and operate a storage and recovery project in a declared ground water basin without a permit from the state engineer and 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) an application fee in the amount of five thousand dollars ($5,000) plus five dollars ($5.00) per acre-foot of the annual capacity of the proposed storage and recovery project, not to exceed fifty thousand dollars ($50,000); an annual fee of fifty cents ($.50) per acre-foot of water stored, payable upon submission of the annual report required by the Ground Water Storage and Recovery Act;

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

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

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

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

(6) evidence of financial and technical capability;

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

(8) the identification, characteristics, capacity and location of each recharge and recovery well, 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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existing permitted and declared wells in the underground area [~~effected~~] affected by storage and recovery operations;

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

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

(a) a water rights adjudication;

(b) a consent decree;

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

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

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

(11) a project plan that:

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

(b) demonstrates that the project is hydrologically feasible;

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

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

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

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

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

(14) the proposed duration of the permit; and

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

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

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

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

(1) the applicant has the technical and 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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water rights or the state's interstate obligations;

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

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

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

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

(a) a water rights adjudication;

(b) a consent decree;

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

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

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

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

B. A permit for a project shall include:

(1) the name and mailing address of the 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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(3) the capacity and plan of operation of the project;

(4) any monitoring program required;

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

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

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

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

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

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

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

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

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

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

A. [~~Any~~] An owner may deposit in an approved state water bank or lease to any person all or any part of the water use due him under his water right, and the owner's water right shall not be affected by the deposit or lease of the use. The use to which the owner is entitled under his right shall, during the term of the deposit or exercise of the lease, be reduced by the amount of water so deposited or leased. Upon withdrawal by the owner from the bank or 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~~] A lease may be effective for immediate use of water or may be effective for future use of the water

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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.

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

[~~C.~~] D. A water use may be leased for forty years by municipalities, counties, state universities, 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. A water use deriving from an acequia or community ditch

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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."