

SENATE CONSERVATION COMMITTEE SUBSTITUTE FOR
SENATE BILL 360

46TH LEGISLATURE - STATE OF NEW MEXICO - SECOND SESSION, 2004

AN ACT

RELATING TO WATER; PROVIDING FOR A STRATEGIC WATER RESERVE;
PROVIDING FOR ADDITIONAL POWERS AND DUTIES OF THE INTERSTATE
STREAM COMMISSION; AUTHORIZING THE ISSUANCE OF SEVERANCE TAX
BONDS FOR THE ACQUISITION OF WATER RIGHTS FOR THE STRATEGIC
WATER RESERVE; MAKING AN APPROPRIATION.

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

Section 1. A new section of Chapter 72, Article 14 NMSA
1978 is enacted to read:

"NEW MATERIAL INTERSTATE STREAM COMMISSION--ADDITIONAL
POWERS--STRATEGIC WATER RESERVE.--

A. The interstate stream commission shall establish
a strategic water reserve and may purchase from willing sellers
or lease or receive through donation surface water rights to
comprise the reserve. The commission may also purchase or

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underscoring material = new
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1 lease from willing sellers or lessors or receive by donation
2 underground water rights for the strategic water reserve for
3 cessation of pumping or limited short-term stream augmentation.
4 At no time shall the use of water rights held by the strategic
5 water reserve result in an increase in net depletions in any
6 basin. The commission shall pay no more than the appraised
7 market value to purchase or lease water rights and storage
8 rights for the strategic water reserve. The commission may
9 accept money or grants from federal or other governmental
10 entities or other persons to purchase or lease water rights for
11 the strategic water reserve and to pay administrative costs.
12 The commission shall not acquire water rights that are served
13 by or owned by an acequia or community ditch established
14 pursuant to Chapter 73, Articles 2 and 3 NMSA 1978 for
15 inclusion in the strategic water reserve. The commission shall
16 acquire only water rights recognized by the state engineer to
17 have sufficient seniority and consistent, historic beneficial
18 use to effectively contribute to the purpose of the strategic
19 water reserve. The commission shall not acquire water rights
20 for the strategic water reserve by condemnation. Water rights
21 in the strategic water reserve shall not be subject to
22 forfeiture pursuant to Chapter 72 NMSA 1978. Water rights
23 shall only be acquired with the explicit approval of the
24 commission.

25 B. Water rights in the strategic water reserve

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1 shall be used to:

2 (1) assist the state in complying with
 3 interstate stream compacts and court decrees, except where it
 4 would conflict with a special water users association
 5 established pursuant to Chapter 73, Article 10 NMSA 1978 or
 6 conflict with the Pecos river settlement or other state law; or

7 (2) assist the state and water users in
 8 complying with the federal Endangered Species Act of 1973 as
 9 part of a collaboratively developed compliance program
 10 involving state and federal agencies and water users or in a
 11 program intended to avoid additional listings of species.

12 C. The interstate stream commission shall develop
 13 priorities for the acquisition of water rights for the
 14 strategic water reserve in consultation with the New Mexico
 15 interstate stream compact commissioners, the office of the
 16 state engineer and the attorney general's office. This
 17 prioritization shall be developed in coordination with the
 18 boards of the following organizations within the affected local
 19 area:

- 20 (1) special districts established pursuant to
- 21 Chapter 73 NMSA 1978;
- 22 (2) soil and water conservation districts;
- 23 (3) water authorities; and
- 24 (4) water planning regions.

25 D. The interstate stream commission may sell or

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1 lease water rights from the strategic water reserve at no less
2 than the appraised market value only if the rights are no
3 longer necessary for the purposes for which they were acquired
4 for the reserve; provided that water rights in the reserve
5 shall not be sold to the United States. Proceeds of any sale
6 are appropriated to the office of the state engineer to
7 adjudicate water rights. Proceeds of any leases are
8 appropriated to the interstate stream commission for carrying
9 out the purposes of the strategic water reserve.

10 E. Water rights acquired for the strategic water
11 reserve or water rights sold or leased from the reserve shall
12 remain in their river reach or ground water basin of origin.

13 F. Transactions with members of an irrigation or
14 conservancy district established pursuant to Chapter 73 NMSA
15 1978 shall provide for the strategic water reserve to pay the
16 annual assessment to the district that would accrue to the
17 district absent the transaction.

18 G. Cumulative impacts of the strategic water
19 reserve acquisitions and uses shall not adversely affect
20 existing water users or delivery systems.

21 H. The interstate stream commission shall adopt
22 rules consistent with the terms of this section, including
23 rules to ensure:

24 (1) that water acquired for the strategic
25 water reserve is used only for the purposes of the reserve; and

1 (2) adequate public notice in each affected
2 area.

3 I. The interstate stream commission shall annually
4 report to the appropriate committee of the legislature on the
5 status of the strategic water reserve."

6 Section 2. A new section of the Severance Tax Bonding Act
7 is enacted to read:

8 "[NEW MATERIAL] BONDING CAPACITY--AUTHORIZING ISSUANCE OF
9 SEVERANCE TAX BONDS FOR THE STRATEGIC WATER RESERVE.--

10 A. By January 15 of each year, the board of finance
11 division of the department of finance and administration shall
12 estimate the amount of bonding capacity available for severance
13 tax bonds to be authorized by the legislature. The division
14 shall authorize ten percent of the estimated bonding capacity
15 each year beginning in fiscal year 2005 and ending in fiscal
16 year 2025, and the legislature authorizes the state board of
17 finance to issue severance tax bonds in the annually deducted
18 amount for use by the interstate stream commission for the
19 acquisition and leasing of water rights and storage rights for
20 the strategic water reserve and its administrative costs.

21 B. The interstate stream commission shall certify
22 to the state board of finance the need for issuance of bonds
23 for acquisition of water rights for the strategic water
24 reserve. The state board of finance may issue and sell the
25 bonds in the same manner as other severance tax bonds in an

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1 amount not to exceed the authorized amount provided for in this
2 section. If necessary, the state board of finance shall take
3 the appropriate steps to comply with the federal Internal
4 Revenue Code of 1986. Proceeds from the sale of the bonds are
5 appropriated to the interstate stream commission to acquire and
6 lease water and storage rights for the strategic water reserve
7 and its administrative costs.

8 C. Any unexpended balance from proceeds of
9 severance tax bonds issued for the strategic water reserve
10 shall revert to the severance tax bonding fund as of the first
11 day after the end of the tenth fiscal year following the fiscal
12 year in which the severance tax bonds were issued, after
13 reserving for unpaid costs and expenses covered by binding
14 written obligations to third parties."

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