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HOUSE BILL 1298

43RD LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 1997

INTRODUCED BY

GARY K. KING

AN ACT

RELATING TO WATER; PROVIDING FOR PROTECTION OF SURFACE WATERS;
DESIGNATING CERTAIN SURFACE WATERS AS UNIQUE WATERS.

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

Section 1. A new section of the Water Quality Act is
enacted to read:

"[NEW MATERIAL] WATER QUALITY--PROTECTION AGAINST
DEGRADATION. --

A. The department of environment shall determine
whether there is any degradation of water quality in a surface
water on a pollutant-by-pollutant basis.

B. The level of water quality necessary to protect
existing uses shall be maintained and protected. No degradation
of existing water quality is permitted in a surface water where
the existing water quality does not meet applicable state water

1 quality standards.

2 C. Where existing water quality in a surface water
3 exceeds the applicable water quality standard, that quality
4 shall be maintained and protected. The department of
5 environment may allow limited degradation of existing water
6 quality in the surface water, provided that the department first
7 conducts a public hearing on whether degradation should be
8 allowed and the department finds that:

9 (1) the level of water quality necessary to
10 protect existing uses is fully protected;

11 (2) the highest statutory and regulatory
12 requirements for all new and existing point sources as set forth
13 in the Clean Water Act are achieved;

14 (3) all cost-effective and reasonable best
15 management practices for non-point source control are
16 implemented; and

17 (4) allowing lower water quality is necessary
18 to accommodate important economic or social development in the
19 area in which the surface water is located.

20 D. Existing water quality shall be maintained and
21 protected in those waters that have been classified as a unique
22 water or that have been proposed by the department for
23 classification as a unique water pursuant to Section 2 of this
24 act.

25 E. In those cases where potential water quality

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1 impairment associated with a thermal discharge is involved, the
2 antidegradation policy and implementing method shall be
3 consistent with Section 1316 of the federal Water Pollution Act.

4 Section 2. A new section of the Water Quality Act is
5 enacted to read:

6 "[NEW MATERIAL] UNIQUE WATERS--DESIGNATION. --

7 A. The department of environment shall, by rule,
8 classify a surface water as a unique water.

9 B. The director may adopt, by rule, site specific
10 water quality standards to maintain and protect existing water
11 quality in a unique water.

12 C. Any person may nominate a surface water for
13 classification as a unique water by filing a petition for rule
14 adoption with department. A petition for rule adoption to
15 classify a surface water as a unique water shall include:

16 (1) a map and a description of the surface
17 water;

18 (2) a written statement in support of the
19 nomination, including specific reference to the applicable
20 criteria for unique water classification;

21 (3) supporting evidence demonstrating that one
22 or more of the applicable unique water criteria prescribed in
23 Subsection D of this section has been met; and

24 (4) available water quality data relevant to
25 establishing baseline water quality of the proposed unique

1 water.

2 D. The department of environment may classify a
3 surface water as a unique water upon finding that the surface
4 water is an outstanding state resource water based upon one of
5 the following criteria:

6 (1) the surface water is of exceptional
7 recreational or ecological significance because of its unique
8 attributes, including but not limited to attributes related to
9 the geology, flora, fauna, water quality, aesthetic values or
10 the wilderness characteristics of the surface water; or

11 (2) threatened or endangered species are known
12 to be associated with the surface water and the existing water
13 quality is essential to the maintenance and propagation of
14 threatened or endangered species or the surface water provides
15 critical habitat for a threatened or endangered species.

16 E. The following surface waters are designated as
17 unique waters:

18 (1) Tesuque creek from the headwaters to the
19 Santa Fe national forest boundary;

20 (2) Santa Fe river from the headwaters to
21 McClure reservoir;

22 (3) Rio Frijoles from the headwaters to the
23 confluence with the Rio Grande;

24 (4) East Fork of the Jemez from the Santa Fe
25 national forest boundary downstream to the confluence with the

1 Jemez river;

2 (5) the Rio Grande from the Colorado and New
3 Mexico state line downstream to the Rio Arriba and Taos county
4 line;

5 (6) Rio Embudo from the Picuris pueblo boundary
6 downstream approximately four and one-half miles to where the
7 river enters private land;

8 (7) West Fork of the Gila river from its
9 headwaters to the confluence with the Middle Fork of the Gila
10 river;

11 (8) Rio Bonito including the South Fork Rio
12 Bonito and the Little Rio Bonito from their headwaters to the
13 Lincoln national forest boundary;

14 (9) Three Rivers from its headwaters to the
15 Lincoln national forest boundary; and

16 (10) Las Huertas creek from the headwaters to
17 the Cibola national forest boundary.

18 F. Where necessary, the department shall establish
19 specific water quality standards appropriate for each water body
20 designated as a unique water. "