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SENATE BILL 512

44TH LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 1999

INTRODUCED BY

Sue Wilson

AN ACT

RELATING TO WATER RIGHTS; ENACTING THE NEW MEXICO WATER BANKING ACT AND AMENDING SECTIONS OF THE NMSA 1978 TO REGULATE WATER BANKING OF CONSERVED AND SURPLUS WATER AND TO ESTABLISH A FUND; MAKING AN APPROPRIATION.

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

Section 1. [NEW MATERIAL] SHORT TITLE.--Sections 1 through 11 of this act may be cited as the "New Mexico Water Banking Act".

Section 2. [NEW MATERIAL] LEGISLATIVE PURPOSE.--The legislature finds that a reliable and sustainable water supply for current and future needs is imperative for the state's economic growth and prosperity and may be enhanced through water banking. The purposes of the New Mexico Water Banking Act are to:

A. achieve a reliable and sustainable water supply by making better and more extensive use of water resources in the state;

B. develop and apply innovative technologies and management strategies for water conservation, storage, meeting demands and marketing;

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1 C. encourage the conservation of water and ensure that conserved and surplus
2 water is available for other uses and users through transfers administered by the interstate
3 stream commission;

4 D. permit greater access to known resources of available water to water users
5 who need additional supply;

6 E. amend water forfeiture statutes to delay their application to water rights
7 deposited in the water bank for use by others who have current needs for water resources;

8 F. facilitate voluntary transactions that would release water from low-value
9 uses and direct them toward high-value applications and sharing profits from these
10 arrangements with water depositors;

11 G. provide legal mechanisms for conserving and salvaging water that is
12 otherwise surplus to customary agricultural and other beneficial uses, if any, while preserving
13 the rightful possession of a water right, permit or license;

14 H. permit public uses of unused, conserved or surplus water rights for the
15 benefit of the public interest;

16 I. provide a market conduit for unused, conserved or surplus water rights and
17 resources;

18 J. provide an alternative to forfeiture of water rights by permitting transfers
19 administered by the interstate stream commission; and

20 K. promote economic development in the state by providing alternative water
21 availability solutions for agricultural, environmental, municipal, industrial, commercial,
22 recreational and residential interests in the state.

23 Section 3. [NEW MATERIAL] DEFINITIONS.--As used in the New Mexico Water
24 Banking Act:

25 A. "commission" means the interstate stream commission;

B. "deposit" means the placement of a water right or portion of a water right in

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1 the water bank for transfer;

2 C. "depositor" means the owner of a water right who deposits the water right
3 or a portion of the water right in the water bank;

4 D. "transfer" means the conveyance of a water right or a portion of a water
5 right by sale or lease;

6 E. "water bank" means the New Mexico water bank;

7 F. "water right" means a right acquired or authorized pursuant to the laws of
8 this state to impound, divert or use surface water or ground water to the extent authorized by
9 law; and

10 G. "withdrawal" means the removal of a deposit in the water bank by the
11 depositor.

12 Section 4. [NEW MATERIAL] INTERSTATE STREAM

13 COMMISSION--ADDITIONAL POWERS AND DUTIES.--The commission shall:

14 A. administer, implement and enforce the New Mexico Water Banking Act;

15 B. administer, operate and regulate the water bank;

16 C. appoint and fix the salary of a full-time water banking director who shall
17 serve at the pleasure of the commission, and pursuant to the direction of the commission, the
18 director shall employ such employees as are proper and necessary and prescribe their duties and
19 compensation;

20 D. encourage water rights owners to implement water conservation practices;

21 E. educate the public, including political subdivisions of the state, about the
22 water bank and the benefits of depositing water in the water bank;

23 F. establish requirements for a deposit of a water right or portion of a water
24 right into the water bank, including:

25 (1) terms and conditions for deposit and withdrawal, including the
procedure and penalties for early withdrawal;

- 1 (2) the procedure for determining eligibility of water rights for deposit;
- 2 (3) the procedure and formula to quantify water rights to be
- 3 deposited;
- 4 (4) the eligibility of water rights for deposit, considering legal
- 5 entitlement, ownership, validity, recent historical use and absence of legal restrictions;
- 6 (5) the priority order, if any, of water rights to be leased or sold by the
- 7 water bank; and
- 8 (6) monitoring to determine and penalties for improper use of
- 9 deposited or transferred water;
- 10 G. administer the transfers of water rights from the water bank, including:
- 11 (1) making annual determinations of available deposited water to be
- 12 transferred;
- 13 (2) making annual determinations of the fees for transfer of deposited
- 14 water;
- 15 (3) establishing the formula to calculate the annual pro rata interest of
- 16 each depositor in transfers made during the previous year and computing each depositor's
- 17 entitlement of proceeds;
- 18 (4) negotiating the terms of a transfer;
- 19 (5) maintaining a registry of deposits and persons who have registered
- 20 with the water bank and identifying a beneficial use for additional water supplies; and
- 21 (6) informing persons listed on its registry about water rights available
- 22 from the water bank;
- 23 H. purchase, hold and sell water rights in its own name;
- 24 I. negotiate and contract for or acquire the use of surface facilities or
- 25 reservoirs or underground aquifers to store deposited water not transferred during any year of
its term of deposit;

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- 1 J. determine compliance with the necessary standards for stored water,
2 considering the obligations of the commission pursuant to surface storage reservoir contracts
3 and applicable interstate compacts, if any;
- 4 K. establish ground water storage and recovery standards, in conjunction with
5 other state agencies having authority regarding water injection schemes or water quality, for
6 deposited water not including oil and gas water to be injected through direct surface or direct
7 subsurface methods into underground aquifers;
- 8 L. subject to Sections 10 and 11 of the New Mexico Water Banking Act,
9 establish fees to be paid to the water bank fund for transfers and the administrative and
10 operational costs of the water bank and the commission;
- 11 M. establish procedures for making, transferring or withdrawing a deposit;
12 determining the priority of transfers, the reports and records of a transfer and the fees associated
13 with transfers; and other actions;
- 14 N. report annually to the legislature regarding deposits, withdrawals and
15 transfers made, identifying the number of persons and water rights involved in all deposits,
16 withdrawals and transfers; existing and anticipated future storage needs of the water bank; and
17 other operations of the water bank and the commission;
- 18 O. promulgate rules to implement the New Mexico Water Banking Act and to
19 administer, operate and regulate the water bank;
- 20 P. contract with any person to achieve or further the purposes of the New
21 Mexico Water Banking Act;
- 22 Q. file suit in its own name and be sued; and
- 23 R. take all other actions necessary or advisable to facilitate deposits and
24 transfers and to achieve or further the purposes of the New Mexico Water Banking Act.

25 Section 5. [NEW MATERIAL] NEW MEXICO WATER BANKING ACT
EXCLUSIVE.--Water rights shall not be banked or eligible for storage in either surface

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[bracketed material] = delete

1 facilities or reservoirs or underground aquifers in this state, except in accordance with the New
2 Mexico Water Banking Act, authorizations of law and contracts of the state valid on the
3 effective date of the New Mexico Water Banking Act and compacts valid on or after the
4 effective date of that act; provided that the water bank may accept water rights of Indian
5 nations, tribes or pueblos for banking and storage in accordance with the terms of that act.

6 Section 6. [NEW MATERIAL] DEPOSITED WATER RIGHTS-- USES--PUBLIC
7 INTEREST USE.--

8 A. In accordance with rules promulgated by the commission, a water right or
9 portion of a water right deposited in the water bank during the term of the deposit may:

10 (1) not be used by the depositor, his heirs, successors or assignees;

11 (2) be transferred, stored or used for public interest uses by the water
12 bank in accordance with the New Mexico Water Banking Act, rules of the commission and as
13 otherwise permitted by law; or

14 (3) be withdrawn by the depositor in accordance with the New Mexico
15 Water Banking Act, the rules of the commission and the terms of the deposit.

16 B. During the term of the deposit, water that is neither transferred nor stored
17 during any year may be used for in-stream environmental, recreational, flushing or other public
18 interest uses, as determined by the commission; provided that the public interest use shall not
19 interfere with any obligation, compact or other interest of the state.

20 Section 7. [NEW MATERIAL] STORAGE IN SURFACE FACILITIES AND
21 RESERVOIRS AND UNDERGROUND AQUIFERS--RECOVERY OF DEPOSITED
22 WATER.--The commission may store deposited water in surface facilities or reservoirs or
23 underground aquifers in the state during the term of the deposit subject to law and interstate
24 compacts. The commission may promulgate rules to implement storage and recovery of
25 deposited water in and from surface facilities and reservoirs and underground reservoirs.

Section 8. [NEW MATERIAL] PRESUMPTION OF NON-IMPAIRMENT.--A

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[bracketed material] = delete

1 transfer by the commission of a deposited water right for any year, during the term of the
2 deposit, shall create a rebuttable presumption that the transfer does not impair existing water
3 rights and is neither contrary to the conservation of water within the state nor detrimental to the
4 public welfare of the state. Unless the state engineer objects to the transfer within thirty days of
5 written notice of the intended transfer by the commission to the state engineer, the transfer is
6 deemed approved by the state engineer and the transfer may occur, subject only to objection by
7 an objector substantially and specifically affected by the one-year transfer of the deposited
8 water right. Upon any objection, the transfer shall be reviewed by the state engineer, who shall
9 provide his findings to the commission about the transfer and the objection. If the state engineer
10 objects to the transfer or determines that the transfer may adversely affect the objector, the
11 commission shall rescind or modify the transfer to avoid any adverse effect on the objector's
12 water right.

13 Section 9. [NEW MATERIAL] DEPOSITS--EXEMPT FROM FORFEITURE.--A
14 water right, eligible for deposit as determined by commission rule, may be deposited in the
15 water bank for a term of up to ten years and may be transferred annually during the deposit
16 term, pursuant to the terms of the New Mexico Water Banking Act and rules promulgated
17 pursuant to that act. During the deposit term, a deposited water right is exempt from forfeiture
18 pursuant to Sections 72-5-28, 72-6-3 and 72-12-8 NMSA 1978.

19 Section 10. [NEW MATERIAL] FEES AND REPORTS.--

20 A. Fees shall be imposed on each transfer of water rights on deposit with the
21 water bank and for administration and operation of the water bank.

22 B. By rule, the commission shall set:

23 (1) the administration and operation fees to be charged to and paid by
24 the transferee of each deposited water right to the water bank;

25 (2) annually, the transfer fees to be paid by the transferee to the water
bank, considering the type and duration of the transfer and the amount, quality and intended use

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[bracketed material] = delete

1 of the deposited water rights to be transferred; and

2 (3) the percentage of the transfer fee to be paid to the depositor for the
3 transfer made and the percentage of the transfer fee retained by the water bank for making the
4 transfer.

5 C. By rule, the commission shall establish the procedures for setting the fees
6 imposed by this section and procedures for the calculation and payment of the percentage of the
7 transfer fee to be paid to the depositor.

8 D. Fees may be imposed or paid for public interest uses of deposited water
9 rights made pursuant to Subsection B of Section 6 of the New Mexico Water Banking Act.

10 Section 11. [NEW MATERIAL] WATER BANK FUND CREATED--

11 FUNDING.--There is created in the state treasury the "water bank fund" to be used solely for
12 the administration and operation of the water bank by the commission. The water bank fund is
13 to be financed by appropriations from the general fund to the commission, fees assessed and
14 collected by the commission in administering the New Mexico Water Banking Act and such
15 other financing as is permitted by law. Income or interest earned on the investment of the fund
16 shall remain in the fund. Money in the water bank fund is appropriated to the interstate stream
17 commission for the purpose of carrying out the provisions of the New Mexico Water Banking
18 Act. Money shall be expended pursuant to warrant issued by the department of finance and
19 administration pursuant to vouchers signed by the water banking director of the commission.
20 Any unexpended or unencumbered balance of the water bank fund shall not revert to the general
21 fund but shall remain on deposit in the fund for administrative and operating costs of the water
22 bank.

23 Section 12. [NEW MATERIAL] OTHER TRANSFERS.--Nothing in the New Mexico
24 Water Banking Act shall prevent the sale or purchase of water or water rights by or through
25 persons other than the commission to the extent permitted by and in accordance with law.

Section 13. [NEW MATERIAL] CONSERVATION OF WATER RIGHTS.--Subject

underscored material = new
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1 to Section 5 of the New Mexico Water Banking Act, the amount of water rights conserved by a
2 water right owner may be deposited in the water bank in the amount conserved, subject further
3 to commission rule establishing eligibility terms for the conserved water deposit and the
4 calculation of the water conserved.

5 Section 14. Section 72-5-28 NMSA 1978 (being Laws 1907, Chapter 49, Section 42,
6 as amended) is amended to read:

7 "72-5-28. FAILURE TO USE WATER--FORFEITURE.--

8 A. When the party entitled to the use of water fails to beneficially use all or
9 any part of the water claimed by him, for which a right of use has vested for the purpose for
10 which it was appropriated or adjudicated, except the waters for storage reservoirs, for a period
11 of four years, such unused water shall, if the failure to beneficially use the water persists one
12 year after notice and declaration of nonuser given by the state engineer, revert to the public and
13 shall be regarded as unappropriated public water; provided, however, that forfeiture shall not
14 necessarily occur if circumstances beyond the control of the owner have caused nonuse, such
15 that the water could not be placed to beneficial use by diligent efforts of the owner; and
16 provided that periods of nonuse when irrigated farm lands are placed under the acreage reserve
17 program or conservation reserve program provided by the federal Food Security Act of 1985,
18 P.L. 99-198, shall not be computed as part of the four-year forfeiture period; and provided,
19 further, that the condition of notice and declaration of nonuser shall not apply to water [which]
20 that has reverted to the public by operation of law prior to June 1, 1965.

21 B. Upon application to the state engineer at any time and a proper showing of
22 reasonable cause for delay or for nonuse or upon the state engineer finding that it is in the public
23 interest, the state engineer may grant extensions of time, for a period not to exceed three years
24 for each extension, in which to apply to beneficial use the water for which a permit to
25 appropriate has been issued or a water right has vested, was appropriated or has been
adjudicated.

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1 C. Periods of nonuse when water rights are acquired by incorporated
2 municipalities or counties for implementation of their water development plans or for
3 preservation of municipal or county water supplies shall not be computed as part of the four-
4 year forfeiture statute.

5 D. A lawful exemption from the requirements of beneficial use, either by an
6 extension of time or other statutory exemption, stops the running of the four-year period for the
7 period of the exemption, and the period of exemption shall not be included in computing the
8 four-year period.

9 E. Periods of nonuse when the nonuser of acquired water rights is on active
10 duty as a member of the armed forces of this country shall not be included in computing the
11 four-year period.

12 F. The owner or holder of a valid water right or permit to appropriate waters
13 for agricultural purposes appurtenant to designated or specified lands may apply the full amount
14 of water covered by or included in the water right or permit to any part of the designated or
15 specified tract without penalty or forfeiture.

16 G. Periods of nonuse when water rights are acquired and placed in a state
17 engineer-approved water conservation program, by an individual or entity that owns water
18 rights, a conservancy district organized pursuant to Chapter 73, Articles 14 through 19 NMSA
19 1978, a soil and water conservation district organized pursuant to Chapter 73, Article 20
20 NMSA 1978, an acequia or community ditch association organized pursuant to Chapter 73,
21 Article 2 or 3 NMSA 1978, an irrigation district organized pursuant to Chapter 73, Articles 9
22 through 13 NMSA 1978 or the interstate stream commission shall not be computed as part of
23 the four-year forfeiture period.

24 H. Periods when water rights are deposited in the New Mexico water bank
25 pursuant to the New Mexico Water Banking Act shall not be computed as part of the four-year
forfeiture period."

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1 Section 15. Section 72-12-8 NMSA 1978 (being Laws 1931, Chapter 131, Section 8,
2 as amended) is amended to read:

3 "72-12-8. WATER RIGHT FORFEITURE.--

4 A. When for a period of four years the owner of a water right in any of the
5 waters described in Sections 72-12-1 through 72-12-28 NMSA 1978 or the holder of a permit
6 from the state engineer to appropriate any such waters has failed to apply them to the use for
7 which the permit was granted or the right has vested, was appropriated or has been adjudicated,
8 the water rights shall be, if the failure to beneficially use the water persists one year after notice
9 and declaration of nonuser given by the state engineer, forfeited and the water so unused shall
10 revert to the public and be subject to further appropriation; provided that the condition of notice
11 and declaration of nonuser shall not apply to water [~~which~~] that has reverted to the public by
12 operation of law prior to June 1, 1965.

13 B. Upon application to the state engineer at any time and a proper showing of
14 reasonable cause for delay or for nonuse or upon the state engineer finding that it is in the public
15 interest, the state engineer may grant extensions of time, for a period not to exceed three years
16 for each extension, in which to apply to beneficial use the water for which a permit to
17 appropriate has been issued or a water right has vested, was appropriated or has been
18 adjudicated.

19 C. Periods of nonuse when irrigated farm lands are placed under the acreage
20 reserve program or conservation reserve program provided by the federal Food Security Act of
21 1985, P.L. 99-198, shall not be computed as part of the four-year forfeiture period.

22 D. Periods of nonuse when water rights are acquired and placed in a state
23 engineer-approved water conservation program by an individual or entity that owns water
24 rights, an artesian conservancy district, a conservancy district, a soil and water conservation
25 district organized pursuant to Chapter 73, Article 20 NMSA 1978, an acequia or community
ditch association organized pursuant to Chapter 73, Article 2 or 3 NMSA 1978, an irrigation

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1 district organized pursuant to Chapter 73, Articles 9 through 13 NMSA 1978 or the interstate
2 stream commission shall not be computed as part of the four-year forfeiture statute.

3 E. A lawful exemption from the requirements of beneficial use, either by an
4 extension of time or other statutory exemption, stops the running of the four-year period for the
5 period of the exemption, and the period of exemption shall not be included in computing the
6 four-year period.

7 F. Periods of nonuse when water rights are acquired by incorporated
8 municipalities or counties for implementation of their water development plans or for
9 preservation of municipal or county water supplies shall not be computed as part of the four-
10 year forfeiture statute.

11 G. Periods of nonuse when the nonuser of acquired water rights is on active
12 duty as a member of the armed forces of this country shall not be included in computing the
13 four-year period.

14 H. The owner or holder of a valid water right or permit to appropriate waters
15 for agricultural purposes appurtenant to designated or specified lands may apply the full amount
16 of water covered by or included in that water right or permit to any part of the designated or
17 specified tract without penalty or forfeiture.

18 I. Periods when water rights are deposited in the New Mexico water bank
19 pursuant to the New Mexico Water Banking Act shall not be computed as part of the four-year
20 forfeiture period."

21 Section 16. APPROPRIATION.--Two hundred fifty thousand dollars (\$250,000) is
22 appropriated from the general fund to the water bank fund for expenditure in fiscal year 2000
23 and subsequent fiscal years by the interstate stream commission for the purpose of carrying out
24 the provisions of the New Mexico Water Banking Act. Any unexpended or unencumbered
25 balance remaining at the end of any fiscal year shall not revert to the general fund.

1 **FORTY-FOURTH LEGISLATURE**

2 **FIRST SESSION, 1999**

3
4
5
6 March 4, 1999

7
8 Mr. President:

9
10 Your **CONSERVATION COMMITTEE**, to whom has been referred

11
12 **SENATE BILL 512**

13
14 has had it under consideration and reports same with recommendation that it **DO NOT PASS**,

15
16 out that

17
18 **SENATE CONSERVATION COMMITTEE SUBSTITUTE FOR**

19 **SENATE BILL 512**

20
21 is reported **WITHOUT RECOMMENDATION**, and thence referred to the

22 **FINANCE COMMITTEE.**

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24 Respectfully submitted,

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.126787.2

Fernando R. Macias, Chairman

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Adopted _____ Not Adopted _____

(Chief Clerk)

(Chief Clerk)

Date _____

The roll call vote was 6 For 2 Against

Yes: 6

No: Griego, Leavell

Excused: Sanchez, Rodarte

Absent: None

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[bracketed material] = delete

SENATE CONSERVATION COMMITTEE SUBSTITUTE FOR
SENATE BILL 512

44TH LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 1999

AN ACT

RELATING TO WATER RIGHTS; ENACTING THE NEW MEXICO WATER BANKING
ACT AND AMENDING SECTIONS OF THE NMSA 1978 TO REGULATE WATER
BANKING OF CONSERVED AND SURPLUS WATER AND TO ESTABLISH A FUND;
MAKING AN APPROPRIATION.

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economic growth and prosperity and may be enhanced through water banking. The purposes of
the New Mexico Water Banking Act are to:

A. achieve a reliable and sustainable water supply by making better and more
extensive use of water resources in the state;

B. develop and apply innovative technologies and management strategies for
water conservation, storage, meeting demands and marketing;

1 C. encourage the conservation of water and ensure that conserved and surplus
2 water is available for other beneficial uses and users through transfers administered by the state
3 engineer;

4 D. permit greater access to known resources of available water to water users
5 who need additional supply;

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7 deposited in the water bank for use by others who have current needs for water resources;

8 F. facilitate voluntary transactions that would release water from low-value uses
9 and direct them toward high-value applications from these arrangements with water depositors;

10 G. provide legal mechanisms for conserving and salvaging water that is otherwise
11 surplus to customary agricultural and other beneficial uses, if any, while preserving the rightful
12 possession of a water right, permit or license;

13 H. permit public uses of unused, conserved or surplus water rights for the benefit
14 of the public interest;

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25 B. "deposit" means the placement of a water right or portion of a water right in
the water bank for transfer;

1 C. "depositor" means the owner of a water right who deposits the water right or a
 2 portion of the water right in the water bank;

3 D. "local water bank" means a water bank of a political subdivision of the state
 4 currently in operation, or that is established after the effective date of the New Mexico Water
 5 Banking Act, that is established as a regional water bank distinct from the New Mexico water
 6 bank and that shall be operated in conformity with standards and guidelines established by rule
 7 of the commission;

8 E. "transfer" means the temporary conveyance of a right to use water from a
 9 water right deposited in the water bank;

10 F. "water bank" means the New Mexico water bank;

11 G. "water right" means a right acquired or authorized pursuant to the laws of this
 12 state to impound, divert or use surface water or ground water to the extent authorized by law;
 13 and

14 H. "withdrawal" means the removal of a deposit in the water bank by the
 15 depositor.

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20 C. appoint and fix the salary of a full-time water banking director who shall serve
 21 at the pleasure of the commission, and pursuant to the direction of the commission, the director
 22 shall employ such employees as are proper and necessary and prescribe their duties and
 23 compensation;

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25 E. educate the public, including political subdivisions of the state, about the water
 bank and the benefits of depositing water in the water bank;

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1 F. establish requirements for a deposit of a water right or portion of a water right
2 into the water bank, including:

3 (1) terms and conditions for deposit and withdrawal, including the
4 procedure and penalties for early withdrawal;

5 (2) the procedure for determining eligibility of water rights for deposit;

6 (3) the procedure and formula to quantify water rights to be deposited;

7 (4) the eligibility of water rights for deposit, considering legal entitlement,
8 ownership, validity, recent historical use and absence of legal restrictions;

9 (5) the priority order, if any, of water rights to be leased or sold by the
10 water bank; and

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

13 G. administer the transfers of water rights from the water bank as authorized by
14 the state engineer, including:

15 (1) making annual determinations of available deposited water to be
16 transferred;

17 (2) making annual determinations of the fees for transfer of deposited
18 water;

19 (3) establishing the formula to calculate the annual pro rata interest of
20 each depositor in transfers made during the previous year and computing each depositor's
21 entitlement of proceeds;

22 (4) negotiating the terms of a transfer;

23 (5) maintaining a registry of deposits and persons who have registered with
24 the water bank and identifying a beneficial use for additional water supplies; and

25 (6) informing persons listed on its registry about water rights available
from the water bank;

- 1 H. purchase, hold and sell water rights in its own name;
- 2 I. negotiate and contract for or acquire the use of surface facilities or reservoirs
- 3 or underground aquifers to store deposited water not transferred during any year of its term of
- 4 deposit;
- 5 J. determine compliance with the necessary standards for stored water,
- 6 considering the obligations of the commission pursuant to surface storage reservoir contracts
- 7 and applicable interstate compacts, if any;
- 8 K. in conjunction with the state engineer and other state agencies having authority
- 9 regarding water injection schemes or water quality, establish ground water storage and recovery
- 10 standards for deposited water not including oil and gas water to be injected through direct
- 11 surface or direct subsurface methods into underground aquifers;
- 12 L. subject to Sections 10 and 11 of the New Mexico Water Banking Act,
- 13 establish fees to be paid to the water bank fund for transfers and the administrative and
- 14 operational costs of the water bank;
- 15 M. establish procedures for making, transferring or withdrawing a deposit;
- 16 determining the priority of transfers, the reports and records of a transfer and the fees associated
- 17 with transfers; and other actions;
- 18 N. report annually to the legislature regarding deposits, withdrawals and transfers
- 19 made, identifying the number of persons and water rights involved in all deposits, withdrawals
- 20 and transfers; existing and anticipated future storage needs of the water bank; and other
- 21 operations of the water bank and the commission;
- 22 O. promulgate rules to implement the New Mexico Water Banking Act,
- 23 administer, operate and regulate the water bank, establish qualification criteria for a water bank
- 24 administrator, establish standards for water bank administration and establish standards and
- 25 guidelines applicable to local water banks that shall, to the maximum extent possible, take into
- account the unique regional characteristics of local water banks;

underscored material = new
 [bracketed material] = delete

1 P. contract with any person to achieve or further the purposes of the New Mexico
2 Water Banking Act;

3 Q. file suit in its own name and be sued; and

4 R. take all other actions necessary or advisable to facilitate deposits and transfers
5 and to achieve or further the purposes of the New Mexico Water Banking Act.

6
7 Section 5. [NEW MATERIAL] NEW MEXICO WATER BANKING ACT--
8 LIMITED AND EXCLUSIVE--OPERATION BY QUALIFIED ADMINISTRATORS.--

9 A. The water bank shall only operate in an area of the state within a declared
10 ground water basin or specific stream system where all documentation describing water rights
11 exists in digital formats available in a database system in the office of the state engineer and on
12 the internet.

13 B. Except in accordance with the New Mexico Water Banking Act,
14 authorizations of law and contracts of the state valid on the effective date of the New Mexico
15 Water Banking Act and compacts valid on or after the effective date of that act, water rights
16 shall not be banked nor shall water associated with deposited water rights be stored in either
17 surface facilities or reservoirs or underground aquifers in this state; provided that the water
18 bank may accept water rights of Indian nations, tribes or pueblos for banking and storage in
19 accordance with the terms of that act.

20 C. A local water bank in existence on the effective date of the New Mexico
21 Water Banking Act and established by an irrigation or conservancy district that provides for the
22 banking and transfer of water between irrigation uses solely within the district and as authorized
23 by Chapters 72 and 73 NMSA 1978 shall have the right to continue to operate as a water bank
24 for those purposes if the local water bank continues to comply with the requirements of those
25 chapters and if the local water bank timely registers with the commission as may be required by
rule of the commission.

1 D. A local water bank, operated for purposes other than those described in
 2 Subsection C of this section, regardless of its date of initiation or creation, shall be subject to
 3 the New Mexico Water Banking Act and shall be operated in accordance with standards and
 4 guidelines established by rule of the commission.

5 Section 6. [NEW MATERIAL] DEPOSITED WATER RIGHTS-- USES--PUBLIC
 6 INTEREST USE.--

7 A. In accordance with rules promulgated by the commission, a water right or
 8 portion of a water right deposited in the water bank during the term of the deposit may:

- 9 (1) not be used by the depositor, his heirs, successors or assignees;
- 10 (2) be transferred, stored or used for beneficial uses by the water bank
 11 in accordance with the New Mexico Water Banking Act, rules of the commission and as
 12 otherwise permitted by law; or

- 13 (3) be withdrawn by the depositor in accordance with the New Mexico
 14 Water Banking Act, the rules of the commission and the terms of the deposit.

15 B. During the term of the deposit, water that is neither transferred, stored nor
 16 used for other beneficial uses during any year may be used for in-stream environmental,
 17 recreational, flushing or other public interest uses, as determined by the commission, in
 18 conjunction with the state engineer; provided that the public interest use shall not interfere with
 19 any obligation, compact or other interest of the state; and, provided further that the entity that
 20 has requested the public interest use shall be deemed to have made a withdrawal or transfer of
 21 water from the bank pursuant to the New Mexico Water Banking Act for the public interest use.

22 Section 7. [NEW MATERIAL] STORAGE IN SURFACE FACILITIES AND
 23 RESERVOIRS AND UNDERGROUND AQUIFERS--RECOVERY OF DEPOSITED
 24 WATER.--Subject to law and interstate compact limitations, the water bank or a local water
 25 bank may store deposited water in surface facilities or reservoirs or underground aquifers in the
 state during the term of the deposit subject to law and interstate compacts. The commission

underscored material = new
 [bracketed material] = delete

1 may promulgate rules to implement storage and recovery of deposited water in and from surface
2 facilities and reservoirs and underground reservoirs.

3 Section 8. [NEW MATERIAL] PRESUMPTION OF NON-IMPAIRMENT.--

4 A. The commission shall determine whether a transfer of a specific deposited
5 water right to a specific use in a specific location for one year will increase depletions to the
6 extent that the transfer would interfere with downstream water supply, including interstate
7 compact deliveries. If the commission determines that the transfer analyzed is acceptable, its
8 supporting analysis shall be provided to the state engineer.

9 B. A transfer deemed acceptable by the commission of a deposited water right
10 for any year, during the term of the deposit, shall create a rebuttable presumption that the
11 transfer does not impair existing water rights and is neither contrary to the conservation of
12 water within the state nor detrimental to the public welfare of the state. Pursuant to rule of the
13 commission, public notice shall be given of the commission's determination deeming the transfer
14 acceptable.

15 C. Upon objection by the state engineer or a person substantially and
16 specifically affected by the one-year transfer, the rebuttable presumption stated in Subsection B
17 of this section is deemed rebutted. Any objection shall be considered at a public hearing to be
18 held in accordance with rules of the commission where the objector may present testimony and
19 evidence in support of the objection. The rules shall provide that the state engineer, or a hearing
20 examiner appointed by the state engineer, shall conduct the hearing.

21 The transfer shall be approved if the state engineer finds that the transfer will not impair
22 existing water rights, will not be contrary to the conservation of water within the state and will
23 not be detrimental to the public welfare of the state. Any depositor, transferee or objector, or
24 the commission, dissatisfied with the state engineer's decision may appeal pursuant to Section
25 72-7-1 NMSA 1978.

Section 9. [NEW MATERIAL] DEPOSITS--EXEMPT FROM FORFEITURE.--A

1 water right, eligible for deposit as determined by commission rule, may be deposited in the
 2 water bank for a term of up to ten years and may be transferred annually during the deposit
 3 term, pursuant to the terms of the New Mexico Water Banking Act and rules promulgated
 4 pursuant to that act. During the deposit term, a deposited water right is exempt from forfeiture
 5 pursuant to Sections 72-5-28, 72-6-3 and 72-12-8 NMSA 1978.

6 Section 10. [NEW MATERIAL] FEES AND REPORTS.--

7 A. Fees shall be imposed on each transfer of water rights on deposit with the
 8 water bank and for administration and operation of the water bank.

9 B. By rule, the commission shall set:

10 (1) the administration and operation fees to be charged to and paid by
 11 the transferee of each deposited water right to the water bank;

12 (2) annually, the transfer fees to be paid by the transferee to the water
 13 bank, considering the type and duration of the transfer and the amount, quality and intended use
 14 of the deposited water rights to be transferred; and

15 (3) the percentage of the transfer fee to be paid to the depositor for the
 16 transfer made and the percentage of the transfer fee retained by the water bank for making the
 17 transfer.

18 C. By rule, the commission shall establish the procedures for setting the fees
 19 imposed by this section and procedures for the calculation and payment of the percentage of the
 20 transfer fee to be paid to the depositor.

21 D. Fees shall be imposed or paid for public interest uses of deposited water
 22 rights made pursuant to Subsection B of Section 6 of the New Mexico Water Banking Act.

23 E. The fees prescribed in this section shall not apply to local water banks.

24 F. Leases between persons authorized pursuant to the Water-Use Leasing Act
 25 are not subject to the provisions of the New Mexico Water Banking Act.

Section 11. [NEW MATERIAL] WATER BANK FUND CREATED--

underscored material = new
 [bracketed material] = delete

1 FUNDING.--There is created in the state treasury the "water bank fund" to be used solely for
2 the administration and operation of the water bank by the commission. The water bank fund is
3 to be financed by appropriations from the general fund to the commission, fees assessed and
4 collected by the commission in administering the New Mexico Water Banking Act and such
5 other financing as is permitted by law. Income or interest earned on the investment of the fund
6 shall remain in the fund. Money in the water bank fund is appropriated to the interstate stream
7 commission for the purpose of carrying out the provisions of the New Mexico Water Banking
8 Act. Money shall be expended pursuant to warrant issued by the department of finance and
9 administration pursuant to vouchers signed by the water banking director of the commission.
10 Any unexpended or unencumbered balance of the water bank fund shall not revert to the general
11 fund but shall remain on deposit in the fund for administrative and operating costs of the water
12 bank.

13 Section 12. [NEW MATERIAL] OTHER TRANSFERS.--Nothing in the New Mexico
14 Water Banking Act shall prevent the sale, lease or purchase of water or water rights by or
15 through persons other than the commission to the extent permitted by and in accordance with
16 law.

17 Section 13. [NEW MATERIAL] CONSERVATION OF WATER RIGHTS.--Subject
18 to Section 5 of the New Mexico Water Banking Act, the amount of water rights conserved by a
19 water right owner may be deposited in the water bank in the amount conserved, subject to
20 commission rule establishing eligibility terms for the conserved water deposit and the
21 calculation of the water conserved, which rule shall provide that no net increase in depletions
22 shall occur as a result of the conservation.

23 Section 14. Section 72-5-28 NMSA 1978 (being Laws 1907, Chapter 49, Section 42,
24 as amended) is amended to read:

25 "72-5-28. FAILURE TO USE WATER--FORFEITURE.--

A. When the party entitled to the use of water fails to beneficially use all or

1 any part of the water claimed by him, for which a right of use has vested for the purpose for
2 which it was appropriated or adjudicated, except the waters for storage reservoirs, for a period
3 of four years, such unused water shall, if the failure to beneficially use the water persists one
4 year after notice and declaration of nonuser given by the state engineer, revert to the public and
5 shall be regarded as unappropriated public water; provided, however, that forfeiture shall not
6 necessarily occur if circumstances beyond the control of the owner have caused nonuse, such
7 that the water could not be placed to beneficial use by diligent efforts of the owner; and
8 provided that periods of nonuse when irrigated farm lands are placed under the acreage reserve
9 program or conservation reserve program provided by the federal Food Security Act of 1985,
10 P.L. 99-198, shall not be computed as part of the four-year forfeiture period; and provided,
11 further, that the condition of notice and declaration of nonuser shall not apply to water [~~which~~
12 that has reverted to the public by operation of law prior to June 1, 1965.

13 B. Upon application to the state engineer at any time and a proper showing of
14 reasonable cause for delay or for nonuse or upon the state engineer finding that it is in the public
15 interest, the state engineer may grant extensions of time, for a period not to exceed three years
16 for each extension, in which to apply to beneficial use the water for which a permit to
17 appropriate has been issued or a water right has vested, was appropriated or has been
18 adjudicated.

19 C. Periods of nonuse when water rights are acquired by incorporated
20 municipalities or counties for implementation of their water development plans or for
21 preservation of municipal or county water supplies shall not be computed as part of the four-
22 year forfeiture statute.

23 D. A lawful exemption from the requirements of beneficial use, either by an
24 extension of time or other statutory exemption, stops the running of the four-year period for the
25 period of the exemption, and the period of exemption shall not be included in computing the
four-year period.

1 E. Periods of nonuse when the nonuser of acquired water rights is on active
2 duty as a member of the armed forces of this country shall not be included in computing the
3 four-year period.

4 F. The owner or holder of a valid water right or permit to appropriate waters
5 for agricultural purposes appurtenant to designated or specified lands may apply the full amount
6 of water covered by or included in the water right or permit to any part of the designated or
7 specified tract without penalty or forfeiture.

8 G. Periods of nonuse when water rights are acquired and placed in a state
9 engineer-approved water conservation program, by an individual or entity that owns water
10 rights, a conservancy district organized pursuant to Chapter 73, Articles 14 through 19 NMSA
11 1978, a soil and water conservation district organized pursuant to Chapter 73, Article 20
12 NMSA 1978, an acequia or community ditch association organized pursuant to Chapter 73,
13 Article 2 or 3 NMSA 1978, an irrigation district organized pursuant to Chapter 73, Articles 9
14 through 13 NMSA 1978 or the interstate stream commission shall not be computed as part of
15 the four-year forfeiture period.

16 H. Periods when water rights are deposited in the New Mexico water bank
17 pursuant to the New Mexico Water Banking Act shall not be computed as part of the four-year
18 forfeiture period."

19 Section 15. Section 72-12-8 NMSA 1978 (being Laws 1931, Chapter 131, Section 8,
20 as amended) is amended to read:

21 "72-12-8. WATER RIGHT FORFEITURE.--

22 A. When for a period of four years the owner of a water right in any of the
23 waters described in Sections 72-12-1 through 72-12-28 NMSA 1978 or the holder of a permit
24 from the state engineer to appropriate any such waters has failed to apply them to the use for
25 which the permit was granted or the right has vested, was appropriated or has been adjudicated,
the water rights shall be, if the failure to beneficially use the water persists one year after notice

1 and declaration of nonuser given by the state engineer, forfeited and the water so unused shall
2 revert to the public and be subject to further appropriation; provided that the condition of notice
3 and declaration of nonuser shall not apply to water ~~[which]~~ that has reverted to the public by
4 operation of law prior to June 1, 1965.

5 B. Upon application to the state engineer at any time and a proper showing of
6 reasonable cause for delay or for nonuse or upon the state engineer finding that it is in the public
7 interest, the state engineer may grant extensions of time, for a period not to exceed three years
8 for each extension, in which to apply to beneficial use the water for which a permit to
9 appropriate has been issued or a water right has vested, was appropriated or has been
10 adjudicated.

11 C. Periods of nonuse when irrigated farm lands are placed under the acreage
12 reserve program or conservation reserve program provided by the federal Food Security Act of
13 1985, P.L. 99-198, shall not be computed as part of the four-year forfeiture period.

14 D. Periods of nonuse when water rights are acquired and placed in a state
15 engineer-approved water conservation program by an individual or entity that owns water
16 rights, an artesian conservancy district, a conservancy district, a soil and water conservation
17 district organized pursuant to Chapter 73, Article 20 NMSA 1978, an acequia or community
18 ditch association organized pursuant to Chapter 73, Article 2 or 3 NMSA 1978, an irrigation
19 district organized pursuant to Chapter 73, Articles 9 through 13 NMSA 1978 or the interstate
20 stream commission shall not be computed as part of the four-year forfeiture statute.

21 E. A lawful exemption from the requirements of beneficial use, either by an
22 extension of time or other statutory exemption, stops the running of the four-year period for the
23 period of the exemption, and the period of exemption shall not be included in computing the
24 four-year period.

25 F. Periods of nonuse when water rights are acquired by incorporated
municipalities or counties for implementation of their water development plans or for

1 preservation of municipal or county water supplies shall not be computed as part of the four-
2 year forfeiture statute.

3 G. Periods of nonuse when the nonuser of acquired water rights is on active
4 duty as a member of the armed forces of this country shall not be included in computing the
5 four-year period.

6 H. The owner or holder of a valid water right or permit to appropriate waters
7 for agricultural purposes appurtenant to designated or specified lands may apply the full amount
8 of water covered by or included in that water right or permit to any part of the designated or
9 specified tract without penalty or forfeiture.

10 I. Periods when water rights are deposited in the New Mexico water bank
11 pursuant to the New Mexico Water Banking Act shall not be computed as part of the four-year
12 forfeiture period."

13 Section 16. APPROPRIATION.--Two hundred fifty thousand dollars (\$250,000) is
14 appropriated from the general fund to the water bank fund for expenditure in fiscal year 2000
15 and subsequent fiscal years by the interstate stream commission for the purpose of carrying out
16 the provisions of the New Mexico Water Banking Act. Any unexpended or unencumbered
17 balance remaining at the end of any fiscal year shall not revert to the general fund.