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SENATE BILL 448

45TH LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2001

INTRODUCED BY

Don Kidd

AN ACT

RELATING TO WATER; PROVIDING LIMITS ON ADJUDICATION PROCEDURES OF THE STATE ENGINEER; AMENDING SECTIONS OF THE NMSA 1978.

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

Section 1. Section 72-4-17 NMSA 1978 (being Laws 1907, Chapter 49, Section 21, as amended) is amended to read:

"72-4-17. SUITS FOR DETERMINATION OF WATER RIGHTS-- PARTIES-- HYDROGRAPHIC SURVEY-- JURISDICTION-- UNKNOWN CLAIMANTS. --

A. In any suit for the determination of a right to use the waters of any stream system, all those whose claim to the use of ~~[such]~~ the waters are of record and all other claimants, so far as they can be ascertained with reasonable diligence, shall be made parties. When any such suit has been filed, the court shall, by its order duly entered, direct the

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1 state engineer to make or furnish a complete hydrographic
2 survey of [~~such~~] the stream system [~~as hereinbefore provided~~
3 ~~in this article~~] in order to obtain all data necessary to the
4 determination of the rights involved. Money [~~heretofore~~]
5 spent on hydrographic surveys by the state engineer, but not
6 assessed against the water users on [~~the effective date of~~
7 ~~this act~~] July 1, 1965, shall not be assessed against the
8 water users. The court in which any suit involving the
9 adjudication of water rights may be properly brought shall
10 have exclusive jurisdiction to hear and determine all
11 questions necessary for the adjudication of all water rights
12 within the stream system involved and may submit any question
13 of fact arising [~~therein~~] in the suit to a jury or to one or
14 more referees, at its discretion [~~and~~]. The attorney general
15 may bring suit as provided in Section [~~75-4-4 New Mexico~~
16 ~~Statutes Annotated, 1953 Compilation~~] 72-4-15 NMSA 1978 in any
17 court having jurisdiction over any part of the stream system,
18 which shall likewise have exclusive jurisdiction for such
19 purposes, and all unknown persons who may claim any interest
20 or right to the use of the waters of any such system, and the
21 unknown heirs of any deceased person who made claim of any
22 right or interest to the waters of [~~such~~] the stream system in
23 his lifetime, may be made parties in [~~such~~] the suit by their
24 names as near as the same can be ascertained, such unknown
25 heirs by the style of unknown heirs of [~~such~~] the deceased

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1 person and [~~said~~] unknown persons by the name and style of
2 unknown claimants of interest to water in [~~such~~] the stream
3 system, and service of process on, and notice of [~~such~~] the
4 suit, against such parties may be made as in other cases by
5 publication.

6 B. Nothing in this section shall be construed to
7 allow the adjudication of water rights on a tract-by-tract
8 basis for shareholders within irrigation districts organized
9 pursuant to Chapter 73, Articles 10 and 11 NMSA 1978, and
10 adjudication of those water rights shall be on a project
11 basis.

12 C. In all cases in which the state challenges the
13 claims of a water right claimant and is not successful, the
14 state shall be liable for all costs and attorney fees incurred
15 by the water right claimant."

16 Section 2. Section 72-4-19 NMSA 1978 (being Laws 1907,
17 Chapter 49, Section 23, as amended) is amended to read:

18 "72-4-19. ADJUDICATION OF WATER RIGHTS--DECREE. -- [~~Sec-~~
19 ~~24.~~]

20 A. Upon the adjudication of the rights to the use
21 of the waters of a stream system, a certified copy of the
22 decree shall be prepared and filed in the office of the state
23 engineer by the clerk of the court at the cost of the parties.
24 Such decree shall in every case declare, as to the water right
25 adjudged to each party, the priority, amount, purpose, periods

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1 and place of use, and as to water used for irrigation, except
2 as otherwise provided in this article, the specific tracts of
3 land to which it shall be appurtenant, together with such
4 other conditions as may be necessary to define the right and
5 its priority.

6 B. Nothing in this section shall be construed to
7 allow the adjudication of water rights on a tract-by-tract
8 basis for shareholders within irrigation districts organized
9 pursuant to Chapter 73, Articles 10 and 11 NMSA 1978, and
10 adjudication of those water rights shall be on a project
11 basis. "