

HOUSE AGRICULTURE AND WATER RESOURCES COMMITTEE SUBSTITUTE FOR  
HOUSE ENERGY AND NATURAL RESOURCES COMMITTEE SUBSTITUTE FOR  
HOUSE BILL 312

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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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

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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."