

SENATE FINANCE COMMITTEE SUBSTITUTE FOR
SENATE BILL 123

47TH LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2005

AN ACT

RELATING TO WATER; PROVIDING FOR A STRATEGIC WATER RESERVE;
PROVIDING FOR ADDITIONAL POWERS AND DUTIES OF THE INTERSTATE
STREAM COMMISSION.

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 or lease from
willing sellers or lessors or receive through donation surface
water or water rights or storage rights to compose the reserve.
The commission may also purchase or lease from willing sellers
or lessors or receive by donation underground water or water

1 rights for the strategic water reserve for cessation of pumping
2 or limited short-term stream augmentation. At no time shall
3 the use of water or water rights held by the strategic water
4 reserve result in an increase in net depletions in any basin.
5 The commission shall pay no more than the appraised market
6 value to purchase or lease water or water rights and storage
7 rights for the strategic water reserve. The commission may
8 accept money or grants from federal or other governmental
9 entities or other persons to purchase or lease water or water
10 rights for the strategic water reserve and to pay
11 administrative costs. The commission shall not acquire water
12 or water rights that are served by or owned by an acequia or
13 community ditch established pursuant to Chapter 73, Articles 2
14 and 3 NMSA 1978 for inclusion in the strategic water reserve.
15 The commission shall not acquire water or water rights that are
16 served by an irrigation district established pursuant to
17 Chapter 73, Article 10 NMSA 1978, except through contractual
18 arrangement with the district board of directors or as a
19 special water users association established pursuant to Chapter
20 73, Article 10 NMSA 1978, but nothing in this section shall be
21 construed to authorize the interstate stream commission to
22 acquire water rights contrary to Section 72-1-2.4 NMSA 1978.
23 The commission shall acquire only water rights that have
24 sufficient seniority and consistent, historic beneficial use to
25 effectively contribute to the purpose of the strategic water

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1 reserve. The commission shall not acquire water or water
2 rights for the strategic water reserve by condemnation. Water
3 in the strategic water reserve shall not be subject to
4 forfeiture pursuant to Chapter 72 NMSA 1978. Water or water
5 rights shall only be acquired with the explicit approval of the
6 commission.

B. Water and water rights in the
7 strategic water reserve shall be used to:

8 (1) assist the state in complying with
9 interstate stream compacts and court decrees; or

10 (2) assist the state and water users in water
11 management efforts for the benefit of threatened or endangered
12 species or in a program intended to avoid additional listings
13 of species. Management of water pursuant to this subsection
14 shall be done in conjunction with collaborative programs or
15 processes where they exist. Use of the strategic water reserve
16 pursuant to this paragraph shall be limited to aquatic or
17 obligate riparian species.

18 C. The interstate stream commission shall develop
19 river reach or ground water basin priorities for the
20 acquisition of water or water rights and storage rights for the
21 strategic water reserve in consultation with the New Mexico
22 interstate stream compact commissioners, the office of the
23 state engineer and the attorney general's office. For each
24 river reach or ground water basin, additional prioritization
25 shall be developed in coordination with the governing bodies of

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1 the following organizations within the affected river reach or
2 ground water basin:

- 3 (1) Indian nations, tribes and pueblos;
- 4 (2) boards of county commissioners;
- 5 (3) municipalities;
- 6 (4) special districts established pursuant to
7 Chapter 73 NMSA 1978;
- 8 (5) soil and water conservation districts;
- 9 (6) water authorities; and
- 10 (7) water planning regions.

11 Nothing in this section shall modify or repeal any authority
12 currently vested in any organization described in this
13 subsection.

14 D. The interstate stream commission may sell or
15 lease water or water rights from the strategic water reserve at
16 no less than the appraised market value. The commission may
17 sell water rights only if the rights are no longer necessary
18 for the purposes for which they were acquired for the reserve;
19 provided that water rights in the reserve shall not be sold to
20 the United States. Pursuant to a sale of water rights from the
21 strategic water reserve by the interstate stream commission,
22 the commission shall first make the offer of sale for the
23 original purpose of use. Proceeds of any sale are appropriated
24 to the office of the state engineer to adjudicate water rights.
25 Proceeds of any leases are appropriated to the interstate

1 stream commission for carrying out the purposes of the
2 strategic water reserve.

3 E. Water or water rights acquired for the strategic
4 water reserve or water or water rights sold or leased from the
5 reserve shall remain in their river reach or ground water basin
6 of origin.

7 F. Transactions with members of an irrigation or
8 conservancy district established pursuant to Chapter 73 NMSA
9 1978 shall provide for the strategic water reserve to pay the
10 annual assessment to the district that would accrue to the
11 district absent the transaction.

12 G. Cumulative impacts of the strategic water
13 reserve acquisitions and uses shall not adversely affect
14 existing water users or delivery systems.

15 H. The interstate stream commission shall adopt
16 rules consistent with the terms of this section, including
17 rules to ensure:

18 (1) that water and water rights acquired for
19 the strategic water reserve are used only for the purposes of
20 the reserve;

21 (2) adequate public notice in each affected
22 area for the acquisition or disposal of water rights; and

23 (3) that the office of the state engineer
24 transfer procedures shall be followed.

25 I. The interstate stream commission shall annually

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1 report to the appropriate committee of the legislature on the
2 status of the strategic water reserve. "

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