

SIGNIFICANT ISSUES

The Public Education Department (PED) notes that pursuant to section 72-1-1, NMSA 1978 all natural waters within the State of New Mexico belong to the public and are subject to appropriation for beneficial use. Further, that the future water needs of the state can be met by allowing each region of the state to plan for its future water. The state can also assist regions in planning future water use by implementing a state appropriation program as reflected in each region's water use plan. The legislation, PED suggests, will allow school districts to implement a water development plan for an appropriation or change of place or purpose of use pursuant to the plan. PED additionally indicates that, pursuant to section 22-24-5 section 9d NMSA 1978, a school district must submit a five-year facilities master plan before grant assistance shall be approved by the Public School Capital Outlay Council, and that a school district may acquire additional costs in order to implement a water development plan.

Office of the State Engineer-Interstate Stream Commission (OSE) offers a number of observations, including:

- It is the OSE's estimate that there are over 100 school districts that may be affected by this change. It is unclear how many of these districts currently hold water rights unused.
- It is not uncommon for school districts to obtain their potable water from municipal systems (covered entities). The school districts will provide water rights to supply the outdoor water needs for aesthetic purposes and athletic fields. This would potentially complicate the 40-year analysis to appropriately separate the potable component from the outdoor component.
- The initial intent of the 72-1-9 statute was to ensure adequate water resources for "municipal" needs (including domestic, institutional, commercial and industrial uses). While it is not entirely inconsistent, the proposed amendment seems to stretch the intent of the statute. Since a large portion of the water needs are for landscaping and athletic fields, these needs can be greatly reduced through appropriate planning. Low water use landscape principles can provide aesthetically pleasing landscapes, while greatly reducing the need for outdoor water compared to traditional lawns. Also, the advent of high tech artificial turf for athletic fields, natural grass is less critical than in the recent past.
- Some proponents of this bill have argued that public school districts are similar to Universities. They conclude that since Universities are covered by the 72-1-9 statute, school districts should enjoy the same status. For the purpose of this statute, this analogy is not correct. Universities are institutions with different obligations and missions. For example, they are large campuses that provide year round living amenities, attracting people from all parts of the state. To plan for growth within these systems is akin to municipal and counties and other covered entities in terms of size and scope. Contrast this with most school districts that only need to provide basic facilities for sanitary, cafeteria, and (potentially) locker rooms and outdoor water use. The potential future water demands between the two systems are great.

- In addition to amending § 72-1-9 to add school districts as entities covered by that statute, SB 61 also adds public utilities supplying water to schools as covered entities. See page 2, lines 3, 13, and 18. These provisions of SB 61 appear to go beyond the intent advocated by the bill’s proponents of assisting schools and school districts that themselves hold water rights. OSE suggests an amendment [included below] to address this concern.

OSE concludes by suggesting that “this legislation does not provide a substitute solution for the real problem, which is school districts must, like all other entities, acquire water rights in the market place because, in general, there is no unappropriated water available for new appropriations.”

AMENDMENTS

OSE suggests the following amendments to the legislation:

1. On page 2, line 3, after the word “municipalities, delete the word “schools”.
2. On page 2, line 13, after the word “municipalities,” delete the word “schools”.
3. On page 2, line 18, after the word “municipalities,” delete the word “schools”.

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