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HOUSE BILL 95

55TH LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2021

INTRODUCED BY

Andrea Romero

AN ACT

RELATING TO WATER; PROVIDING FACTORS FOR THE STATE ENGINEER TO CONSIDER IN ASSESSING WHETHER A WATER USE WILL BE CONTRARY TO THE CONSERVATION OF WATER OR DETRIMENTAL TO THE PUBLIC WELFARE; ALLOWING CITIZEN STANDING TO CHALLENGE AN APPLICATION BEFORE THE STATE ENGINEER; REQUIRING THE STATE ENGINEER TO PUBLISH FINDINGS IN SUPPORT OF APPROVING OR DENYING AN APPLICATION AND TO BE BOUND BY THE RATIONALE IN FUTURE DECISIONS; DIRECTING THE STATE WATER PLAN, WATER CONSERVATION PLANS AND REGIONAL WATER PLANNING TO INCLUDE CONSIDERATION OF CLIMATE CHANGE IMPACTS ON WATER SUPPLY AND DEMAND OVER A FORTY-YEAR PERIOD; DIRECTING THE STATE ENGINEER TO ADOPT RULES TO ADDRESS THE IMPACT OF CLIMATE CHANGE ON THE STATE'S WATERS.

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

SECTION 1. Section 72-5-5 NMSA 1978 (being Laws 1965,

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1 Chapter 285, Section 6, as amended) is amended to read:

2 "72-5-5. OBJECTIONS TO APPLICATIONS--FILING OF PROTESTS--
3 DEFINITION OF STANDING.--

4 A. If objection or protest to the application is
5 timely filed, the state engineer shall advise interested
6 parties, and a hearing shall be held as otherwise provided by
7 statute.

8 B. ~~Any~~ A person, firm or corporation or other
9 entity objecting that the granting of the application will be
10 detrimental to the objector's water right shall have standing
11 to file objections or protests. ~~Any~~ A person, firm or
12 corporation or other entity objecting that the granting of the
13 application will be contrary to the conservation of water
14 within the state or detrimental to the public welfare of the
15 state ~~[and showing that the objector will be substantially and~~
16 ~~specifically affected by the granting of the application]~~ shall
17 have standing to file objections or protests. ~~[Provided,~~
18 ~~however, that]~~ The state of New Mexico or any of its branches,
19 agencies, departments, boards, instrumentalities or
20 institutions and all political subdivisions of the state and
21 their agencies, instrumentalities and institutions shall have
22 standing to file objections or protests."

23 SECTION 2. Section 72-5-6 NMSA 1978 (being Laws 1907,
24 Chapter 49, Section 27, as amended) is amended to read:

25 "72-5-6. HEARING--APPROVAL--PERMIT.--

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1 A. Upon the receipt of the proofs of publication,
2 accompanied by any statutory fees required at this time, the
3 state engineer shall determine, from the evidence presented by
4 the parties interested, from such surveys of the water supply
5 as may be available and from the records, whether there is
6 unappropriated water available for the benefit of the
7 applicant. [~~if so~~]

8 B. If there is unappropriated water available for
9 the benefit of the applicant and if the proposed appropriation
10 is not contrary to the conservation of water within the state
11 and is not detrimental to the public welfare of the state, the
12 state engineer shall endorse [~~his~~] approval on the application,
13 which shall become a permit to appropriate water, and shall
14 state in [~~such~~] the approval the time within which the
15 construction shall be completed and the time within which water
16 shall be applied to a beneficial use; provided that the state
17 engineer may, in [~~his~~] the state engineer's discretion, approve
18 [~~any~~] an application for a less amount of water or may vary the
19 periods of annual use, and the permit to appropriate water
20 shall be regarded as limited accordingly. The time allowed by
21 the state engineer for completion of works or application of
22 water to beneficial use shall be governed by the size and
23 complexity of the project, but in no case shall exceed five
24 years from the date of approval within which to complete
25 construction, and four years in addition thereto within which

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1 to apply water to a beneficial use; provided that the state
2 engineer shall have the power to grant extensions of time for
3 completion of works or application of water to beneficial use
4 as provided in Section 72-5-14 NMSA 1978.

5 C. The state engineer shall publish specific
6 findings to support the state engineer's approval or denial of
7 an application, which shall include the factual and legal
8 rationale for the state engineer's decision. The rationale
9 used in approving or denying an application shall be precedent
10 for the state engineer's consideration of subsequent
11 applications, unless the factual or legal basis for approval or
12 denial of a subsequent application is clearly distinguished."

13 SECTION 3. Section 72-5-7 NMSA 1978 (being Laws 1907,
14 Chapter 49, Section 28, as amended) is amended to read:

15 "72-5-7. APPLICATION--REJECTION--NONCOMPLIANCE WITH
16 RULES--CONSERVATION AND PUBLIC WELFARE.--

17 A. If, in the opinion of the state engineer, there
18 is no unappropriated water available, [~~he~~] the state engineer
19 shall reject [~~such~~] an application. [~~He~~]

20 B. The state engineer shall decline to order the
21 publication of notice of [~~any~~] an application [~~which~~] that does
22 not comply with the requirements of the law and rules. [~~and~~
23 ~~regulations.~~ ~~He~~]

24 C. The state engineer may also refuse to consider
25 or approve [~~any~~] an application or notice of intention to make

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1 application or to order the publication of notice of [~~any~~] an
2 application if, in [~~his~~] the state engineer's opinion, approval
3 would be contrary to the conservation of water within the state
4 or detrimental to the public welfare of the state. In
5 determining if the approval would be:

6 (1) contrary to the conservation of water
7 within the state, the state engineer shall make written
8 findings based on reliable scientific projections of the
9 impacts of climate change over a forty-year period on the
10 sustainability or depletion of the water source; and

11 (2) detrimental to the public welfare of the
12 state, the state engineer shall make written findings on
13 whether the proposed beneficial use of the water is
14 economically viable over a forty-year period."

15 SECTION 4. Section 72-5-23 NMSA 1978 (being Laws 1907,
16 Chapter 49, Section 44, as amended) is amended to read:

17 "72-5-23. WATER APPURTENANT TO LAND--CHANGE OF PLACE OF
18 USE.--

19 A. All water used in this state for irrigation
20 purposes, except as otherwise provided in this article, shall
21 be considered appurtenant to the land upon which it is used,
22 and the right to use it upon the land shall never be severed
23 from the land without the consent of the owner of the land,
24 but, by and with the consent of the owner of the land, all or
25 any part of the right may be severed from the land,

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1 simultaneously transferred and become appurtenant to other
2 land, or may be transferred for other purposes, without losing
3 priority of right theretofore established, if such changes can
4 be made without detriment to existing water rights and are not
5 contrary to conservation of water within the state and not
6 detrimental to the public welfare of the state, on the approval
7 of an application of the owner by the state engineer.

8 B. Publication of notice of application,
9 opportunity for the filing of objections or protests and a
10 hearing on the application shall be provided as required by
11 Sections 72-5-4 and 72-5-5 NMSA 1978.

12 C. In determining if the approval would be:

13 (1) contrary to the conservation of water
14 within the state, the state engineer shall make written
15 findings based on reliable scientific projections of the
16 impacts of climate change over a forty-year period on the
17 sustainability or depletion of the water source; and

18 (2) detrimental to the public welfare of the
19 state, the state engineer shall make written findings on
20 whether the proposed beneficial use of the water is
21 economically viable over a forty-year period."

22 SECTION 5. Section 72-5A-5 NMSA 1978 (being Laws 1999,
23 Chapter 285, Section 5, as amended) is amended to read:

24 "72-5A-5. NOTICE--PROTESTS--HEARINGS--DETERMINATIONS--
25 JUDICIAL REVIEW.--

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1 A. Upon receipt of an application for a permit to
2 construct and operate a project, the state engineer shall
3 endorse on the application the date it was received and shall
4 keep a record of the application. The state engineer shall
5 conduct an initial review of the application within sixty days
6 of receipt. If the state engineer determines in the initial
7 review that the application is incomplete, the state engineer
8 shall notify the applicant of the application's deficiencies.
9 The application shall remain incomplete until the applicant
10 provides all information required by the Ground Water Storage
11 and Recovery Act. The state engineer may request additional
12 information from the applicant and shall conduct an
13 investigation of the project.

14 B. Within thirty days after determining that an
15 application is complete, unless an extension is requested by
16 the applicant, the state engineer shall proceed in accordance
17 with the provisions of Section [~~1 of this 2019 act~~] 72-2-20
18 NMSA 1978 regarding notice of the application. The notice
19 shall contain:

20 (1) the legal description of the location of
21 the proposed project;

22 (2) a brief description of the proposed
23 project, including its capacity;

24 (3) the name of the applicant;

25 (4) the date of the last publication; and

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1 (5) the requirements for an objection.

2 C. A person objecting that the granting of the
3 application will impair the objector's water right, will be
4 contrary to the conservation of water or will be detrimental to
5 the public welfare [~~and showing that the objector will be~~
6 ~~substantially and specifically affected by the granting of the~~
7 ~~application~~] shall have standing to file objections or
8 protests. [~~provided, however, that~~] The state or any of its
9 branches, agencies, departments, boards, instrumentalities or
10 institutions, and all political subdivisions of the state and
11 their agencies, instrumentalities and institutions, shall have
12 standing to file objections or protests.

13 D. An objection shall be filed in writing, include
14 the name and mailing address of the objector, identify the
15 grounds for the objection and include the signature of the
16 objector or the objector's legal representative. The state
17 engineer shall schedule a hearing on the application and
18 provide at least thirty days' notice of the hearing, by
19 certified mail, to the applicant and any objector.

20 E. After the expiration of the time for filing
21 objections, if no objections have been filed, the state
22 engineer shall, if the state engineer finds that the
23 application meets the requirements of the Ground Water Storage
24 and Recovery Act, issue a permit to the applicant to construct
25 the project to store and recover all or a part of the waters

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1 applied for, as conditioned by the state engineer.

2 F. The state engineer shall publish specific
3 findings to support the state engineer's approval or denial of
4 an application, which shall include the factual and legal
5 rationale for the state engineer's decision. The rationale
6 used in approving or denying an application shall be precedent
7 for the state engineer's consideration of subsequent
8 applications, unless the factual or legal basis for approval or
9 denial of a subsequent application is clearly distinguished.

10 [~~F.~~] G. A person or governmental entity aggrieved
11 by any decision of the state engineer may appeal that decision
12 to the district court pursuant to Section 72-7-1 NMSA 1978."

13 SECTION 6. Section 72-6-5 NMSA 1978 (being Laws 1967,
14 Chapter 100, Section 5, as amended) is amended to read:

15 "72-6-5. APPROVAL.--

16 A. The state engineer shall approve the application
17 if the applicant has reasonably shown that [~~his~~] the
18 applicant's proposed use and location of use is a beneficial
19 use and:

20 (1) will not impair any existing right to a
21 greater degree than [~~such~~] the right is, or would be, impaired
22 by the continued use and location of use by the owner; and

23 (2) will not be contrary to the conservation
24 of water within the state or detrimental to the public welfare
25 of the state.

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1 B. In the case of annual allotments of project
2 water leased to a special water users' association from an
3 irrigation district organized pursuant to Chapter 73, Article
4 10 NMSA 1978, if the state engineer determines that the
5 proposed changes in place and purpose of use and point of
6 diversion comply with the rules established pursuant to
7 Subsection G of Section 73-10-48 NMSA 1978, the board of
8 directors of the irrigation district may approve the
9 application in accordance with the provisions of Section
10 73-10-48 NMSA 1978.

11 C. In determining if the approval would be:

12 (1) contrary to the conservation of water
13 within the state, the state engineer shall make written
14 findings based on reliable scientific projections of the
15 impacts of climate change over a forty-year period on the
16 sustainability or depletion of the water source; and

17 (2) detrimental to the public welfare of the
18 state, the state engineer shall make written findings on
19 whether the proposed beneficial use of the water is
20 economically viable over a forty-year period.

21 D. The state engineer shall publish specific
22 findings to support the state engineer's approval or denial of
23 an application, which shall include the factual and legal
24 rationale for the state engineer's decision. The rationale
25 used in approving or denying an application shall be precedent

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1 for the state engineer's consideration of subsequent
2 applications, unless the factual or legal basis for approval or
3 denial of a subsequent application is clearly distinguished."

4 SECTION 7. Section 72-12-3 NMSA 1978 (being Laws 1931,
5 Chapter 131, Section 3, as amended) is amended to read:

6 "72-12-3. APPLICATION FOR USE OF UNDERGROUND WATER--
7 PUBLICATION OF NOTICE--PERMIT.--

8 A. ~~Any~~ A person, firm or corporation or any other
9 entity desiring to appropriate for beneficial use any of the
10 waters described in Chapter 72, Article 12 NMSA 1978 shall
11 apply to the state engineer in a form prescribed by the state
12 engineer. In the application, the applicant shall designate:

- 13 (1) the particular underground stream,
14 channel, artesian basin, reservoir or lake from which water
15 will be appropriated;
- 16 (2) the beneficial use to which the water will
17 be applied;
- 18 (3) the location of the proposed well;
- 19 (4) the name of the owner of the land on which
20 the well will be located;
- 21 (5) the amount of water applied for;
- 22 (6) the place of the use for which the water
23 is desired; and
- 24 (7) if the use is for irrigation, the
25 description of the land to be irrigated and the name of the

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1 owner of the land.

2 B. If the well will be located on privately owned
3 land and the applicant is not the owner of the land or the
4 owner or the lessee of the mineral or oil and gas rights under
5 the land, the application shall be accompanied by an
6 acknowledged statement executed by the owner of the land that
7 the applicant is granted access across the owner's land to the
8 drilling site and has permission to occupy such portion of the
9 owner's land as is necessary to drill and operate the well.
10 This subsection does not apply to the state or any of its
11 political subdivisions. If the application is approved, the
12 applicant shall have the permit and statement, executed by the
13 owner of the land, recorded in the office of the county clerk
14 of the county in which the land is located.

15 C. No application shall be accepted by the state
16 engineer unless it is accompanied by all the information
17 required by Subsections A and B of this section.

18 D. Upon the filing of an application, the state
19 engineer shall proceed in accordance with the provisions of
20 Section [~~1 of this 2019 act~~] 72-2-20 NMSA 1978 regarding notice
21 of the application. [~~Any~~] A person, firm or corporation or
22 other entity objecting that the granting of the application
23 will impair the objector's water right shall have standing to
24 file objections or protests. [~~Any~~] A person, firm or
25 corporation or other entity objecting that the granting of the

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1 application will be contrary to the conservation of water
2 within the state or detrimental to the public welfare of the
3 state [~~and showing that the objector will be substantially and~~
4 ~~specifically affected by the granting of the application~~] shall
5 have standing to file objections or protests. [~~provided,~~
6 ~~however, that~~] The state or any of its branches, agencies,
7 departments, boards, instrumentalities or institutions, and all
8 political subdivisions of the state and their agencies,
9 instrumentalities and institutions, shall have standing to file
10 objections or protests.

11 E. After the expiration of the time for filing
12 objections, if no objections have been filed, the state
13 engineer shall, if the state engineer finds that there are in
14 the underground stream, channel, artesian basin, reservoir or
15 lake unappropriated waters and that the proposed appropriation
16 would not impair existing water rights from the source, is not
17 contrary to conservation of water within the state and is not
18 detrimental to the public welfare of the state, grant the
19 application and issue a permit to the applicant to appropriate
20 all or a part of the waters applied for, subject to the rights
21 of all prior appropriators from the source.

22 F. If objections or protests have been filed within
23 the time prescribed in the notice or if the state engineer is
24 of the opinion that the permit should not be issued, the state
25 engineer may deny the application without a hearing or, before

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1 the state engineer acts on the application, may order that a
2 hearing be held. The state engineer shall notify the applicant
3 of the action by certified mail sent to the address shown in
4 the application.

5 G. In determining if the approval would be:

6 (1) contrary to the conservation of water
7 within the state, the state engineer shall make written
8 findings based on reliable scientific projections of the
9 impacts of climate change over a forty-year period on the
10 sustainability or depletion of the water source; and

11 (2) detrimental to the public welfare of the
12 state, the state engineer shall make written findings on
13 whether the proposed beneficial use of the water is
14 economically viable over a forty-year period.

15 H. The state engineer shall publish specific
16 findings to support the state engineer's approval or denial of
17 an application, which shall include the factual and legal
18 rationale for the state engineer's decision. The rationale
19 used in approving or denying an application shall be precedent
20 for the state engineer's consideration of subsequent
21 applications, unless the factual or legal basis for approval or
22 denial of a subsequent application is clearly distinguished."

23 **SECTION 8.** Section 72-12B-1 NMSA 1978 (being Laws 1983,
24 Chapter 2, Section 1, as amended) is amended to read:

25 "72-12B-1. APPLICATIONS FOR THE TRANSPORTATION AND USE OF

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1 PUBLIC WATERS OUTSIDE THE STATE.--

2 A. The state of New Mexico has long recognized the
3 importance of the conservation of its public waters and the
4 necessity to maintain adequate water supplies for the state's
5 water requirements. The state of New Mexico also recognizes
6 that under appropriate conditions, the out-of-state
7 transportation and use of its public waters is not in conflict
8 with the public welfare of its citizens or the conservation of
9 its waters.

10 B. ~~Any~~ A person, firm or corporation or any other
11 entity intending to withdraw water from any surface or
12 underground water source in the state of New Mexico and
13 transport it for use outside the state or to change the place
14 or purpose of use of a water right from a place in New Mexico
15 to a place out of that state shall apply to the state engineer
16 for a permit to do so. Upon the filing of an application, the
17 state engineer shall proceed in accordance with the provisions
18 of Section [~~1 of this 2019 act~~] 72-2-20 NMSA 1978 regarding
19 notice of the application. Any person, firm or corporation or
20 other entity objecting that the granting of the application
21 would impair or be detrimental to the objector's water right
22 shall have standing to file objections or protests. ~~Any~~ A
23 person, firm or corporation or other entity objecting that the
24 granting of the application will be contrary to the
25 conservation of water within the state or detrimental to the

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1 public welfare of the state [~~and showing that the objector will~~
2 ~~be substantially and specifically affected by the granting of~~
3 ~~the application~~] shall have standing to file objections or
4 protests. [~~Provided, however, that~~] The state of New Mexico or
5 any of its branches, agencies, departments, boards,
6 instrumentalities or institutions, and all political
7 subdivisions of the state and their agencies, instrumentalities
8 and institutions, shall have standing to file objections or
9 protests. The state engineer shall accept for filing and act
10 upon all applications filed under this section in accordance
11 with the provisions of this section. The state engineer shall
12 require notice of the application and shall thereafter proceed
13 to consider the application in accordance with existing
14 administrative law and procedure governing the appropriation of
15 surface or ground water.

16 C. In order to approve an application under this
17 act, the state engineer must find that the applicant's
18 withdrawal and transportation of water for use outside the
19 state would not impair existing water rights, is not contrary
20 to the conservation of water within the state and is not
21 otherwise detrimental to the public welfare of the citizens of
22 New Mexico.

23 D. In acting upon an application under this act,
24 the state engineer shall consider [~~but not be limited to~~] the
25 following factors:

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1 (1) the supply of water available to the state
2 of New Mexico;

3 (2) water demands of the state of New Mexico;

4 (3) whether there are water shortages within
5 the state of New Mexico;

6 (4) whether the water that is the subject of
7 the application could feasibly be transported to alleviate
8 water shortages in the state of New Mexico;

9 (5) the supply and sources of water available
10 to the applicant in the state where the applicant intends to
11 use the water; ~~and~~

12 (6) the demands placed on the applicant's
13 supply in the state where the applicant intends to use the
14 water;

15 (7) reliable scientific projections of the
16 impacts of climate change over a forty-year period on the
17 sustainability or depletion of the water source; and

18 (8) whether the proposed beneficial use of the
19 water is economically viable over a forty-year period.

20 E. By filing an application to withdraw and
21 transport waters for use outside the state, the applicant shall
22 submit to and comply with the laws of the state of New Mexico
23 governing the appropriation and use of water.

24 F. The state engineer is empowered to condition the
25 permit to insure that the use of water in another state is

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1 subject to the same regulations and restrictions that may be
2 imposed upon water use in the state of New Mexico.

3 G. Upon approval of the application, the applicant
4 shall designate an agent in New Mexico for reception of service
5 of process and other legal notices.

6 H. The state engineer shall publish specific
7 findings to support the state engineer's approval or denial of
8 an application, which shall include the factual and legal
9 rationale for the state engineer's decision. The rationale
10 used in approving or denying an application shall be precedent
11 for the state engineer's consideration of subsequent
12 applications, unless the factual or legal basis for approval or
13 denial of a subsequent application are clearly distinguished."

14 SECTION 9. Section 72-14-3.1 NMSA 1978 (being Laws 2003,
15 Chapter 131, Section 1 and Laws 2003, Chapter 137, Section 1)
16 is amended to read:

17 "72-14-3.1. STATE WATER PLAN--PURPOSE--CONTENTS.--

18 A. It is the intent of the legislature that the
19 interstate stream commission, in collaboration with the office
20 of the state engineer and the water trust board, prepare and
21 implement a comprehensive state water plan.

22 B. The state water plan shall be a strategic
23 management tool for the purposes of:

24 (1) promoting stewardship of the state's water
25 resources;

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1 (2) protecting and maintaining water rights
2 and their priority status;

3 (3) protecting the diverse customs, culture,
4 environment and economic stability of the state;

5 (4) protecting both the water supply and water
6 quality;

7 (5) promoting cooperative strategies, based on
8 concern for meeting the basic needs of all New Mexicans;

9 (6) meeting the state's interstate compact
10 obligations;

11 (7) providing a basis for prioritizing
12 infrastructure investment; and

13 (8) providing statewide continuity of policy
14 and management relative to our water resources.

15 C. The interstate stream commission in
16 collaboration with the office of the state engineer and in
17 consultation with other government agencies as appropriate
18 shall develop a comprehensive, coordinated state water plan
19 that shall:

20 (1) identify and reflect the common
21 priorities, goals and objectives that will have a positive
22 impact on the public welfare of the state;

23 (2) establish a clear vision and policy
24 direction for active management of the state's waters;

25 (3) identify and use reliable scientific

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1 projections of the impacts of climate change for future water
2 demand, supply and storage of the surface and ground waters of
3 New Mexico over a forty-year period;

4 [~~3~~] (4) include an inventory of the quantity
5 and quality of the state's water resources, population
6 projections and other water resource demands under a range of
7 conditions, including reliable scientific projections of the
8 impacts of climate change on the waters of New Mexico over a
9 forty-year period;

10 [~~4~~] (5) include water budgets for the state
11 and for all major river basins and aquifer systems in the
12 state;

13 [~~5~~] (6) develop water conservation
14 strategies and policies to maximize beneficial use, including
15 reuse and recycling by conjunctive management of water
16 resources and by doing so to promote nonforfeiture of water
17 rights;

18 [~~6~~] (7) include a drought management plan
19 designed to address drought emergencies, promote strategies for
20 prevention of drought-related emergencies in the future and
21 coordinate drought planning statewide;

22 [~~7~~] (8) recognize the relationship between
23 water availability and land-use decisions;

24 [~~8~~] (9) promote river riparian and watershed
25 restoration that focuses on protecting the water supply,

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1 improving water quality and complying with federal Endangered
2 Species Act of 1973 mandates;

3 ~~(9)~~ (10) consider water rights transfer
4 policies that balance the need to protect the customs, culture,
5 environment and economic health and stability of the state's
6 diverse communities while providing for timely and efficient
7 transfers of water between uses to meet both short-term
8 shortages and long-term economic development needs;

9 ~~(10)~~ (11) promote strategies and mechanisms
10 for achieving coordination with all levels of government;

11 ~~(11)~~ (12) integrate regional water plans
12 into the state water plan as appropriate and consistent with
13 state water plan policies and strategies;

14 ~~(12)~~ (13) integrate plans of water supply
15 purveyors, including those of local governments, privately
16 owned public utilities, associations, cooperatives, irrigation
17 districts and acequias as appropriate and consistent with state
18 water plan policies and strategies, as those plans are
19 completed and submitted to the office of the state engineer;

20 ~~(13)~~ (14) identify water-related
21 infrastructure and management investment needs and
22 opportunities to leverage federal and other funding; and

23 ~~(14)~~ (15) promote collaboration with and
24 strategic focusing of the research and development of the
25 state's national laboratories and research institutions to

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1 address the state's water challenges and to bring to the state
2 demonstration projects in desalination, conservation, watershed
3 restoration, weather modification and other technological
4 approaches to enhancing water supply and management.

5 D. Recognizing that complete water rights
6 adjudication, measurement, well inventories and adequate
7 databases are essential elements of an effective water
8 management plan, and further recognizing that completion of
9 these work elements will require substantial time and resources
10 until such time as these elements are complete, the state water
11 plan shall include work plans and strategies for:

12 (1) completion of water rights adjudications,
13 with required supporting documentation, including hydrographic
14 surveys, aquifer mapping and aerial mapping of irrigated land;

15 (2) creation and completion of a comprehensive
16 database and an electronically accessible information system on
17 the state's water resources and water rights, including file
18 abstraction and imaging of paper files as well as information
19 on pending adjudications;

20 (3) measuring of surface and ground water uses
21 in the state as necessary for management of the state's water
22 resources; and

23 (4) taking inventory of existing water wells
24 and determining appropriate disposition of unused wells.

25 E. The interstate stream commission and the office

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1 of the state engineer shall consult directly with the
2 governments of Indian nations, tribes and pueblos to formulate
3 a statement of policy and process to guide:

4 (1) coordination or integration of the water
5 plans of Indian nations, tribes and pueblos located wholly or
6 partially within New Mexico with the state water plan; and

7 (2) final adjudication or settlement of all
8 water rights claims by Indian nations, tribes and pueblos
9 located wholly or partially within New Mexico.

10 F. The interstate stream commission shall ensure
11 that public participation and public input are integrated
12 throughout the planning process. The interstate stream
13 commission shall convene water planners and stakeholders from
14 diverse constituencies to advise it and the office of the state
15 engineer on the state water plan, including statewide policies,
16 priorities, goals and objectives for the plan, issues of
17 statewide concern and strategies for implementation of the
18 plan. The interstate stream commission shall also ensure that
19 representatives of the stakeholder groups affected by various
20 plan components will participate in the development of those
21 plan components. Members of the interstate stream commission
22 and water trust board shall be notified of and are welcome to
23 participate in all aspects of the planning process.

24 G. After public review and comment, the state water
25 plan developed in conformance with this section is subject to

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1 adoption by the interstate stream commission. Following its
2 adoption, the state water plan shall be presented to the
3 interim legislative committee that studies water and natural
4 resources.

5 H. The state water plan shall be periodically
6 reviewed, updated and amended in response to changing
7 conditions. At a minimum a review shall be undertaken every
8 five years; provided that a water budget analysis for the state
9 and for all major river basins and aquifer systems shall be
10 undertaken and published every two years.

11 I. Nothing in the state water plan shall be
12 construed to permit the granting or the condemnation of water
13 rights.

14 J. Nothing in the state water plan shall be
15 construed to determine, abridge or affect the water rights of
16 Indian nations, tribes or pueblos."

17 SECTION 10. Section 72-14-3.2 NMSA 1978 (being Laws 2003,
18 Chapter 138, Section 3) is amended to read:

19 "72-14-3.2. WATER CONSERVATION PLANS--MUNICIPALITIES,
20 COUNTIES AND WATER SUPPLIERS.--

21 A. As used in this section, "covered entity" means
22 municipalities, counties [~~and~~] or any other person that
23 supplies, distributes or otherwise provides at least five
24 hundred acre-feet of water annually for domestic, commercial,
25 industrial or government customers for other than agricultural

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1 purposes, but does not include Indian tribes, pueblos, nations,
2 chapters or any entity of a tribe, pueblo, nation or chapter.

3 B. A covered entity may develop, adopt and submit
4 to the state engineer [~~by December 31, 2005~~] a comprehensive
5 water conservation plan, including a drought management plan.
6 In developing a water conservation plan, a covered entity shall
7 use reliable scientific projections of the impacts of climate
8 change over a forty-year period on projections for future water
9 demand and supply and the water sources used by the covered
10 entity.

11 C. The manner in which the covered entity develops,
12 adopts and implements a comprehensive water conservation plan
13 shall be determined by the covered entity. The plan shall be
14 accompanied by a program for its implementation.

15 D. In developing a water conservation plan pursuant
16 to this section:

17 (1) municipalities and counties shall consider
18 ordinances and codes to encourage conservation measures;
19 covered entities without ordinance or code enforcement ability
20 shall consider incentives to encourage voluntary compliance
21 with a set of conservation guidelines. Covered entities shall
22 identify and implement best practices in their operations to
23 improve conservation of the resources; and

24 (2) the covered entity shall consider, and
25 incorporate into its plan if appropriate, at least the

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1 following:

2 (a) water-efficient fixtures and
3 appliances, including toilets, urinals, showerheads and
4 faucets;

5 (b) low-water-use landscaping and
6 efficient irrigation;

7 (c) water-efficient commercial and
8 industrial water-use processes;

9 (d) water reuse systems for both potable
10 and nonpotable water;

11 (e) distribution system leak repair;

12 (f) dissemination of information
13 regarding water-use efficiency measures, including public
14 education programs and demonstrations of water-saving
15 techniques;

16 (g) water rate structures designed to
17 encourage water-use efficiency and reuse in a fiscally
18 responsible manner; and

19 (h) incentives to implement water-use
20 efficiency techniques, including rebates to customers or
21 others, to encourage the installation of water-use efficiency
22 and reuse measures.

23 E. The water conservation plan shall contain a
24 section that references the regional water plans in the area
25 that have been accepted by the interstate stream commission.

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1 The section shall cite conservation guidelines mentioned in the
2 regional plan that have been adopted into the covered entity's
3 water conservation plan.

4 F. A covered entity may at any time adopt changes
5 to its water conservation plan and shall submit changes to the
6 state engineer.

7 G. [~~After December 31, 2005~~] Neither the water
8 trust board nor the New Mexico finance authority shall accept
9 an application from a covered entity for financial assistance
10 in the construction of any water diversion, storage,
11 conveyance, water treatment or wastewater treatment facility
12 unless the covered entity includes a copy of its water
13 conservation plan."

14 SECTION 11. Section 72-14-44 NMSA 1978 (being Laws 1987,
15 Chapter 182, Section 2) is amended to read:

16 "72-14-44. INTERSTATE STREAM COMMISSION--~~[GROUNDWATER]~~
17 GROUND WATER APPROPRIATION--WATER RIGHTS PURCHASE--WATER
18 PLANNING FUNDING.--

19 A. The interstate stream commission is authorized
20 to appropriate [~~groundwater~~] ground water or purchase water
21 rights on behalf of any of the various regions of the state.

22 B. Nothing in this section shall be construed as
23 permitting the condemnation of water rights or as determining,
24 abridging or affecting in any way the water rights of Indian
25 nations, tribes or pueblos.

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1 C. The interstate stream commission is authorized
2 to make grants or loans of funds for the purpose of regional
3 water planning. Prior to approval of any proposal by a region
4 for planning funds under this section, the commission shall
5 develop criteria for evaluating such proposals. These criteria
6 at a minimum shall provide for:

7 (1) identification of the region requesting
8 planning funds and why it is hydrologically and politically an
9 appropriate applicant;

10 (2) use of an appropriate planning process,
11 including opportunities for participation by those Indian
12 nations, tribes or pueblos located within the various regions
13 of the state;

14 (3) reasonable proposed costs and timetables
15 for completion of the planning process;

16 (4) appropriate provisions for notice, review
17 and comment where applicable;

18 (5) adequate review of potential conflict with
19 laws relating to impact on existing water rights;

20 (6) adequate review of water conservation and
21 the effect on the public welfare; ~~and~~

22 (7) adequate review of reliable scientific
23 projections of the impacts of climate change over a forty-year
24 period on projections for future water demand and supply and
25 the water sources used by the water planning region; and

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1 [~~7~~] (8) identification of sources other than
2 the interstate stream commission for funding of the proposed
3 regional planning process.

4 D. A water planning region eligible for funding
5 under this section is an area within the state that contains
6 sufficient hydrological and political interests in common to
7 make water planning feasible. The state as a whole shall not
8 be considered a water planning region for purposes of this
9 section.

10 E. No entity shall be made a part of a proposal for
11 planning funds under this section without its consent.

12 F. No funds shall be granted under this [~~act~~]
13 section to any party [~~or parties~~] that [~~are~~] is not within a
14 water planning region. Whether a proposal for funding falls
15 within a water planning region shall be determined on a case-
16 by-case basis by the interstate stream commission after
17 consultation with the state engineer and consideration of the
18 following:

19 (1) whether the source of water and the
20 potential place of use of the water are located within the same
21 hydrologic basin; and

22 (2) if there is more than one party and the
23 parties are requesting funds on a joint basis, whether the
24 parties have demonstrated political and economic interests in
25 common by entering into a binding intergovernmental agreement

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1 for carrying out the planning process."

2 SECTION 12. A new section of Chapter 72 NMSA 1978 is
3 enacted to read:

4 "[NEW MATERIAL] RULEMAKING--CLIMATE CHANGE IMPACTS.--No
5 later than July 1, 2023, the state engineer shall adopt rules
6 to identify and assess the impacts of climate change on the
7 surface and ground waters of New Mexico. The rules shall be
8 based on reliable scientific projections and data and shall be
9 used by the state engineer in administration of the state's
10 water laws."

11 SECTION 13. EFFECTIVE DATE.--The effective date of the
12 provisions of this act is July 1, 2021.