

1 SENATE BILL 458

2 **56TH LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2023**

3 INTRODUCED BY

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10 AN ACT

11 RELATING TO WATER; ELIMINATING FORFEITURE OF WATER RIGHTS FOR  
12 NONUSE; REDUCING THE PERIOD OF TIME THAT MUNICIPALITIES,  
13 COUNTIES, STATE UNIVERSITIES AND SPECIAL WATER USERS'  
14 ASSOCIATIONS MAY LEASE WATER TO TEN YEARS; ELIMINATING THE USE  
15 OF WATER IN THE STRATEGIC WATER RESERVE FOR CERTAIN THREATENED  
16 OR ENDANGERED SPECIES; REMOVING CERTAIN RESTRICTIONS ON THE  
17 INTERSTATE STREAM COMMISSION'S SALE OR LEASE OF WATER OR WATER  
18 RIGHTS FROM THE STRATEGIC WATER RESERVE; REPEALING SECTIONS  
19 72-5-28 AND 72-12-8 NMSA 1978 (BEING LAWS 1907, CHAPTER 49,  
20 SECTION 42 AND LAWS 1931, CHAPTER 131, SECTION 8, AS AMENDED).  
21

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

23 SECTION 1. Section 72-5A-8 NMSA 1978 (being Laws 1999,  
24 Chapter 285, Section 8) is amended to read:

25 "72-5A-8. STORED WATER NOT PUBLIC--~~[STORED WATER NOT~~

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1 ~~SUBJECT TO FORFEITURE]~~ USE OR EXCHANGE OF RECOVERED WATER.--

2           A. Water added to an aquifer or system of aquifers  
3 to be stored for subsequent diversion and application to  
4 beneficial use pursuant to a project permit is not public water  
5 ~~[and is not subject to forfeiture pursuant to Section 72-5-28~~  
6 ~~or 72-12-8 NMSA 1978]~~.

7           B. A permittee may use water recovered only for the  
8 same purposes for which the water was authorized before it was  
9 stored, unless an application for a change in the purpose of  
10 use, place of use or point of diversion is filed and approved  
11 pursuant to Section 72-5-23, 72-5-24 or 72-12-7 NMSA 1978, as  
12 applicable."

13           SECTION 2. Section 72-6-3 NMSA 1978 (being Laws 1967,  
14 Chapter 100, Section 3, as amended) is amended to read:

15           "72-6-3. OWNER MAY LEASE USE OF WATER.--

16           A. An owner may lease to any person all or any part  
17 of the water use due the owner under the owner's water right,  
18 and the owner's water right shall not be affected by the lease  
19 of the use. The use to which the owner is entitled under the  
20 owner's right shall, during the exercise of the lease, be  
21 reduced by the amount of water so leased. Upon termination of  
22 the lease, the water use and location of use subject to the  
23 lease shall revert to the owner's original use and location of  
24 use.

25           B. The lease may be effective for immediate use of

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1 water or may be effective for future use of the water covered  
2 by the lease; however, the lease shall not be effective to  
3 cumulate water from year to year or to substantially enlarge  
4 the use of the water in such manner that it would injure other  
5 water users. ~~[The lease shall not toll any forfeiture of water~~  
6 ~~rights for nonuse, and the owner shall not, by reason of the~~  
7 ~~lease, escape the forfeiture for nonuse prescribed by law;~~  
8 ~~provided, however, that the state engineer shall notify both~~  
9 ~~the owner and the lessee of declaration of nonuser as provided~~  
10 ~~in Sections 72-5-28 and 72-12-8 NMSA 1978]~~ The initial or any  
11 renewal term of a lease of water use shall not exceed ten  
12 years, except as provided in Subsections C and D of this  
13 section.

14 C. A water use may be leased for ~~[forty]~~ ten years  
15 by municipalities, counties, state universities, special water  
16 users' associations, public utilities supplying water to  
17 municipalities or counties and member-owned community water  
18 systems as lessee and shall be entitled to the protection of  
19 the forty-year water use planning period as provided in Section  
20 72-1-9 NMSA 1978.

21 D. A water use deriving from an acequia or  
22 community ditch organized pursuant to Chapter 73, Article 2 or  
23 3 NMSA 1978, whether owned by a water right owner under the  
24 acequia or community ditch or by the acequia or community  
25 ditch, may be leased for a term not to exceed ten years;

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1 provided that pursuant to the rules or bylaws duly adopted by  
2 its members, an acequia or community ditch may require that any  
3 water use lease of a water right served by the acequia or  
4 community ditch, or any water use lease in which a water right  
5 is moved into and then served by the acequia or community  
6 ditch, shall be subject to approval by the commissioners of the  
7 acequia or community ditch in accordance with the procedures  
8 for approval of changes in point of diversion or place or  
9 purpose of use as provided in Subsection E of Section 73-2-21  
10 NMSA 1978 and Sections 72-5-24.1 and 73-3-4.1 NMSA 1978.

11 E. A water use due under an adjudicated water right  
12 secured to a pueblo pursuant to the settlement agreements  
13 approved in Title 5 and Title 6 of the federal Claims  
14 Resolution Act of 2010, P.L. No. 111-291, Sections 501-626, or  
15 in the partial final judgments and decrees entered pursuant to  
16 those settlement agreements, may be leased for a term,  
17 including all renewals, not to exceed the term specifically  
18 authorized in that act; provided that this subsection shall not  
19 apply to any water use due under any state-law based water  
20 rights acquired by a pueblo or by the United States on behalf  
21 of a pueblo."

22 SECTION 3. Section 72-9-1 NMSA 1978 (being Laws 1907,  
23 Chapter 49, Section 59, as amended) is amended to read:

24 "72-9-1. VESTED AND EXISTING RIGHTS--PROTECTION.--Nothing  
25 contained in this article shall be construed to impair existing  
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1 vested rights or the rights and priorities of any person, firm,  
2 corporation or association who may have commenced the  
3 construction of reservoirs, canals, pipelines or other works or  
4 who have filed affidavits, applications or notices thereof for  
5 the purpose of appropriating for beneficial use any waters as  
6 defined in Section ~~[151-101]~~ 72-1-1 NMSA 1978, in accordance  
7 with the laws ~~[of the territory]~~ of New Mexico prior to March  
8 19, 1907; provided, however, that all such reservoirs, canals,  
9 pipelines or other works and the rights of the owners thereof  
10 shall be subject to regulation and adjudication ~~[and forfeiture~~  
11 ~~for nonuse]~~ as provided in this article."

12 SECTION 4. Section 72-14-3.3 NMSA 1978 (being Laws 2005,  
13 Chapter 175, Section 1 and Laws 2005, Chapter 182, Section 1,  
14 as amended) is amended to read:

15 "72-14-3.3. INTERSTATE STREAM COMMISSION--ADDITIONAL  
16 POWERS--STRATEGIC WATER RESERVE.--

17 A. The interstate stream commission shall establish  
18 a strategic water reserve and may purchase or lease from  
19 willing sellers or lessors or receive through donation surface  
20 water or water rights or storage rights to compose the reserve.  
21 The commission may also purchase or lease from willing sellers  
22 or lessors or receive by donation underground water or water  
23 rights for the strategic water reserve for cessation of pumping  
24 or limited short-term stream augmentation. At no time shall  
25 the use of water or water rights held by the strategic water

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

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1 strategic water reserve by condemnation and may only condemn  
2 real property when that property is needed for infrastructure  
3 related to the conveyance of water. [~~Water in the strategic~~  
4 ~~water reserve shall not be subject to forfeiture pursuant to~~  
5 ~~Chapter 72 NMSA 1978]~~ Water or water rights shall only be  
6 acquired with the explicit approval of the commission.

7 B. Water and water rights in the strategic water  
8 reserve shall be used to [~~(1)~~] assist the state in complying  
9 with 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 D. Nothing in this section shall modify or repeal  
12 any authority currently vested in any organization described in  
13 Subsection C of this section.

14 ~~[E. 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~~

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

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

7 ~~[G.]~~ F. Transactions with members of an irrigation  
8 or 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 ~~[H.]~~ G. Cumulative impacts of the strategic water  
13 reserve acquisitions and uses shall not adversely affect  
14 existing water users or delivery systems.

15 ~~[I.]~~ H. The interstate stream commission shall  
16 adopt rules consistent with the terms of this section,  
17 including 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 ~~[J.]~~ I. The interstate stream commission shall

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

3 SECTION 5. REPEAL.--Sections 72-5-28 and 72-12-8 NMSA  
4 1978 (being Laws 1907, Chapter 49, Section 42 and Laws 1931,  
5 Chapter 131, Section 8, as amended) are repealed.