

AN ACT
RELATING TO WATER; ENACTING THE GROUND WATER STORAGE AND
RECOVERY ACT; PROVIDING PENALTIES.

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

Section 1. SHORT TITLE.--This act may be cited as the
"Ground Water Storage and Recovery Act".

Section 2. LEGISLATIVE FINDINGS.--The legislature
finds that:

A. conjunctive use and administration of both
surface and ground waters are essential to the effective and
efficient use of the state's limited water supplies; and

B. ground water recharge, storage and recovery
have the potential to:

(1) offer savings in the costs of capital
investment, operation and maintenance and flood control and
may improve water and environmental quality;

(2) reduce the rate at which ground water
levels will decline and may prevent overstressing or
dewatering aquifer systems;

(3) promote conservation of water within
the state;

(4) serve the public welfare of the state;
and

(5) may lead to more effective use of the
state's water resources.

Section 3. DEFINITIONS.--As used in the Ground Water
Storage and Recovery Act:

A. "aquifer" means a geologic formation that
contains sufficient saturated material to be capable of

storing and transmitting water in usable quantities to a well;

B. "area of hydrologic effect" means the underground area where the water is stored and located, hydrologically connected surface waters, adjacent underground areas in which water rights exist that may be impaired, the land surface above the underground areas and any additional land surface used for seepage or infiltration;

C. "governmental entity" means Indian nation, tribe or pueblo or state political subdivision, including municipality, county, acequia, irrigation district or conservancy district.

D. "project" means a permitted, engineered facility designed specifically, constructed and operated, pursuant to the Ground Water Storage and Recovery Act, to add measured volumes of water by injection or infiltration to an aquifer or system of aquifers, to store the water underground and to recover it for beneficial use pursuant to the Ground Water Storage and Recovery Act but shall not include in situ leach mining operations or water flood operations for petroleum recovery that require approval by the state engineer outside the Ground Water Storage and Recovery Act; and

E. "stored water" means water that has been stored underground for the purpose of recovery and permitted pursuant to the Ground Water Storage and Recovery Act.

Section 4. PERMIT REQUIRED.--

A. No governmental entity may construct and operate a storage and recovery project in a declared ground

water basin without a permit from the state engineer and other permits that may be required.

B. The state engineer shall prescribe application forms for a permit. The application shall include:

(1) an application fee in the amount of five thousand dollars (\$5,000) plus five dollars (\$5.00) per acre-foot of the annual capacity of the proposed storage and recovery project, not to exceed fifty thousand dollars (\$50,000); an annual fee of fifty cents (\$.50) per acre-foot of water stored, payable upon submission of the annual report required by the Ground Water Storage and Recovery Act;

(2) the name and mailing address of the applicant;

(3) the name and mailing address of the owner of the land on which the applicant proposes to operate the project;

(4) the name of the declared underground water basin in which the applicant proposes to operate the project;

(5) the legal description of the location of the proposed project;

(6) evidence of financial and technical capability;

(7) the source, annual quantity and quality of water proposed to be injected and the quality of water in the receiving aquifer;

(8) the identification, characteristics, capacity and location of each recharge and recovery well, including existing pre-basin wells, existing permitted wells

and new wells sought to be drilled for recharge or recovery pursuant to the application and the identification of existing permitted and declared wells in the underground area effected by storage and recovery operations;

(9) a description of the proposed project, including its capacity, plan of operation and percentage of anticipated recoverable water;

(10) evidence that the applicant has a valid water right quantified by one of the following legal processes:

(a) a water rights adjudication;

(b) a consent decree;

(c) an act of congress, including a negotiated settlement ratified by congress;

(d) a contract pursuant to 43 USC 620 et. seq.; or

(e) an agreement with an owner who has a valid water right subject to an application for a change in purpose, place of use or point of diversion;

(11) a project plan that:

(a) shows that the project will not cause harm to users of land and water within the area of hydrologic effect;

(b) demonstrates that the project is hydrologically feasible;

(c) demonstrates that the project will not impair existing water rights or the state's interstate obligations;

(d) demonstrates that the project will not be contrary to the conservation of water within the

state; and

(e) demonstrates that the project will not be detrimental to the public welfare of the state;

(12) a sworn statement executed by the owner of the land that the applicant is granted an easement and authorization to construct and operate the project on the site, if project facilities are located on land not owned by the applicant;

(13) copies of completed applications for all other permits required under state and federal law;

(14) the proposed duration of the permit;
and

(15) any additional information required by the state engineer.

Section 5. NOTICE--PROTESTS--HEARINGS--DETERMINATIONS--
-JUDICIAL REVIEW.--

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

B. Within thirty days after determining that an

application is complete, unless an extension is requested by the applicant, the applicant shall publish a notice of the application in a newspaper of general circulation in the county in which persons reside who could reasonably be expected to be affected by the project. The notice shall be given once a week for three consecutive weeks and shall contain:

- (1) the legal description of the location of the proposed project;
- (2) a brief description of the proposed project, including its capacity;
- (3) the name of the applicant;
- (4) the date of the last publication;
- (5) the requirements for an objection; and
- (6) disclosure that objections to the application shall be filed within ten days after the last publication of the notice.

C. A person objecting that the granting of the application will impair the objector's water right, will be contrary to the conservation of water or will be detrimental to the public welfare and showing that the objector will be substantially and specifically affected by the granting of the application shall have standing to file objections or protests; provided, however, that the state or any of its branches, agencies, departments, boards, instrumentalities or institutions, and all political subdivisions of the state and their agencies, instrumentalities and institutions shall have standing to file objections or protests.

D. An objection shall be filed in writing, include the name and mailing address of the objector,

identify the grounds for the objection and include the signature of the objector or his legal representative. The state engineer shall schedule a hearing on the application and provide at least thirty days' notice of the hearing, by certified mail, to the applicant and any objector.

E. After the expiration of the time for filing objections, if no objections have been filed, the state engineer shall, if he finds that the application meets the requirements of the Ground Water Storage and Recovery Act, issue a permit to the applicant to construct the project to store and recover all or a part of the waters applied for, as conditioned by the state engineer.

F. A person or governmental entity aggrieved by any decision of the state engineer may appeal that decision to the district court pursuant to Section 72-7-1 NMSA 1978.

Section 6. STATE ENGINEER--POWERS AND DUTIES--PERMIT--MONITORING REQUIREMENTS.--

A. The state engineer shall issue a permit to construct and operate a project if the applicant has provided a reasonable demonstration that:

- (1) the applicant has the technical and financial capability to construct and operate the project;
- (2) the project is hydrologically feasible;
- (3) the project will not impair existing water rights or the state's interstate obligations;
- (4) the project will not be contrary to the conservation of water within the state;
- (5) the project will not be detrimental to the public welfare of the state;
- (6) the applicant has completed

applications for all permits required by state and federal law;

(7) the applicant has a valid water right quantified by one of the following legal processes:

(a) a water rights adjudication;

(b) a consent decree;

(c) an act of congress, including a negotiated settlement ratified by congress;

(d) a contract pursuant to 43 USC 620 et. seq.; or

(e) an agreement with an owner who has a valid water right subject to an application for a change in purpose, place of use or point of diversion; and

(8) that the project will not cause harm to users of land and water within the area of hydrologic effect;

B. A permit for a project shall include:

(1) the name and mailing address of the person to whom the permit is issued;

(2) the name of the declared underground water basin in which the project will be located;

(3) the capacity and plan of operation of the project;

(4) any monitoring program required;

(5) all conditions required by or regulations adopted pursuant to the Ground Water Storage and Recovery Act; and

(6) other information the state engineer determines to be necessary.

C. The permit shall not become effective until

the applicant obtains all other required state and federal permits.

D. The state engineer shall adopt regulations to carry out the provisions of the Ground Water Storage and Recovery Act, including monitoring the operation of projects and their effects on other water users in the area of hydrologic effect, including an Indian nation, tribe or pueblo. In determining monitoring requirements, the state engineer shall cooperate with all government entities that regulate and monitor the quality of water, including the department of environment.

Section 7. MODIFICATION AND ASSIGNMENT OF PROJECT PERMIT.--

A. The state engineer may modify the conditions of a permit if he finds that modifications are necessary and will not impair existing water rights or the water quality of the aquifer. The applicant shall provide notice of any proposed modifications as required by the Ground Water Storage and Recovery Act for new applications. Objections may be filed in the manner of objections to new applications.

B. The permittee may apply to the state engineer for approval to assign a permit to another person. The state engineer shall approve the assignment if the state engineer determines that all provisions of the Ground Water Storage and Recovery Act will be met.

Section 8. STORED WATER NOT PUBLIC--STORED WATER NOT SUBJECT TO FORFEITURE--USE OR EXCHANGE OF RECOVERED WATER.--

A. Water added to an aquifer or system of aquifers to be stored for subsequent diversion and

application to beneficial use pursuant to a project permit is not public water and is not subject to forfeiture pursuant to Section 72-5-28 or 72-12-8 NMSA 1978.

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

Section 9. STORAGE ACCOUNT TO BE ESTABLISHED--LIMIT ON AMOUNT OF WATER RECOVERED.--The state engineer shall establish a storage account for each project. If the project has stored water from more than one source, he shall establish subaccounts for each source of water. A permittee may recover only the recoverable amount of stored water from a well. For purposes of this section, "recoverable amount" means that amount of water, as determined by the state engineer, that has reached the aquifer, remained within the area of hydrologic effect and is conducive to recovery without impairment to existing uses.

Section 10. ANNUAL REPORT TO STATE ENGINEER--PENALTY FOR FAILURE TO FILE.--

A. Each permittee shall file an annual report with the state engineer that includes:

(1) the total quantity of stored water and recovered water;

(2) the water quality of the stored water, the receiving aquifer and the recovered water;

(3) a sworn affidavit attesting to the truthfulness and accuracy of the report's data; and

(4) a measurement of the static level of the water table.

B. The annual report shall be maintained on a calendar year basis and shall be filed with the state engineer no later than March 31 for the preceding year. If a governmental entity required to file an annual report fails to do so when due, the state engineer may assess and impose a penalty of five hundred dollars (\$500) for each month or portion of a month that the report is not filed. The total penalty assessed annually pursuant to this subsection shall not exceed five thousand dollars (\$5,000).

C. All records and reports required to be maintained and filed pursuant to this section shall be in a form prescribed by the state engineer.

Section 11. REVOCATION OR SUSPENSION OF PERMITS--
ORDERS TO CEASE AND DESIST--INJUNCTION.--

A. The state engineer may periodically review a project to determine if the permittee is complying with the terms and conditions of the permit. The state engineer may permanently revoke or temporarily suspend a permit for good cause after an investigation and a hearing before the state engineer or a hearing officer appointed by him. Notice shall be sent, by certified mail, to the permittee at least thirty days before any hearing on a revocation or suspension disclosing the permittee's alleged failure to comply with the permit's terms and conditions.

B. Except as otherwise provided in this section, if the state engineer has reason to believe that a person or governmental entity has violated a provision of the Ground Water Storage and Recovery Act or a permit issued or

regulation adopted pursuant to that act, the state engineer may issue a written notice that the person or governmental entity appear and show cause, at a hearing before the state engineer not less than fifteen days after the receipt of the notice, why the person or governmental entity should not be ordered to cease and desist from the violation. The notice shall inform the person or governmental entity of the date, time and place of the hearing and the consequences of the person's or governmental entity's failure to appear.

C. If the state engineer finds that a person or governmental entity is constructing or operating a project in violation of the Ground Water Storage and Recovery Act, the state engineer may issue a temporary order for the person or governmental entity to cease and desist the construction or operation pending final action by the state engineer pursuant to this section. The order shall include written notice to the person or governmental entity of the date, time and place where the person or governmental entity shall appear at a hearing before the state engineer to show cause why the temporary order should be vacated. The hearing shall be held not less than fifteen days after the date of the order.

D. After a hearing pursuant to this section, or after the expiration of the time to appear, the state engineer shall issue a decision and order. The decision and order shall be in a form as the state engineer determines to be reasonable and appropriate and may include a determination of violation, an order to cease and desist, the recommendation of a civil penalty and an order directing that positive steps be taken to abate or ameliorate any harm

or damage arising from the violation. Any person or governmental entity affected may appeal the decision to the district court pursuant to Section 72-7-1 NMSA 1978.

E. If a person or governmental entity continues a violation after the state engineer has issued a decision and order pursuant to this section or a temporary order pursuant to this section, the state engineer may apply for a temporary restraining order or a preliminary or permanent injunction from the district court. A decision to seek injunctive relief does not preclude other forms of relief or enforcement against a violator.

Section 12. PENALTIES.--

A. A person who or governmental entity that is determined to be in violation of the Ground Water Storage and Recovery Act or a permit issued or rules adopted pursuant to the act may be assessed a civil penalty in an amount not exceeding:

(1) one hundred dollars (\$100) per day of violation not directly related to the illegal recovery or use of stored water; or

(2) ten thousand dollars (\$10,000) per day of violation directly related to the illegal recovery or use of stored water.

B. An action to recover penalties pursuant to this section shall be brought by the state engineer in the district court in which the violation occurred.

Section 13. CONSERVATION FEE EXEMPTIONS.--Conservation fees collected pursuant to Section 74-1-13 NMSA 1978 shall be charged only on water that is treated and stored underground and not on the same water subsequently

recovered.

Section 14. OBLIGATIONS TO INDIAN NATIONS, TRIBES OR PUEBLOS.--Nothing in the Ground Water Storage and Recovery Act shall be construed to affect the obligations of the United States to Indian nations, tribes or pueblos or to impair the rights of Indian nations, tribes or pueblos.

Section 15. NON-EXEMPTION FROM PRIOR APPROPRIATION DOCTRINE.--Unless required by interstate obligations, nothing in the Ground Water Storage and Recovery Act shall be construed to exempt stored water from the provision that priority in time shall give the better right pursuant to Chapter 72 NMSA 1978 or priority of appropriation shall give the better right pursuant to Article 16, Section 2 of the constitution of New Mexico.

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Section 16. LIMITATION OF DETERMINATION.--Any determination made by the state engineer for purposes of the Ground Water Storage and Recovery Act is not binding in any other proceeding.

Section 17. DELAYED IMPLEMENTATION.--A governmental entity shall not submit an application pursuant to the Ground Water Storage and Recovery Act and the state engineer shall not process an application, issue a regulation pursuant to that act or implement any part of that act unless the state engineer has been appropriated enough money or has sufficient resources to carry out the provisions of that act. _____