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SENATE BILL 84

44TH LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 1999

INTRODUCED BY

Dede Feldman

FOR THE WATER AND NATURAL RESOURCES COMMITTEE

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:

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

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

4 (3) promote conservation of water within the
5 state;

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

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

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

12 A. "aquifer" means a geologic formation that
13 contains sufficient saturated material to be capable of
14 storing and transmitting water in usable quantities to a well;

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

21 C. "person" means any legal entity, including
22 irrigation districts;

23 D. "project" means a permitted, engineered
24 facility designed, constructed and operated to add water by
25 injection or infiltration to an aquifer or system of aquifers,

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1 to store the water underground and to recover it for
2 beneficial use pursuant to the Ground Water Storage and
3 Recovery Act; and

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

7 Section 4. PERMIT REQUIRED. --

8 A. No person may construct and operate a storage
9 and recovery project in a declared ground water basin without
10 a permit from the state engineer.

11 B. The state engineer shall furnish application
12 forms for a permit. The application shall include:

13 (1) an application fee in the amount of five
14 thousand dollars (\$5,000) plus five dollars (\$5.00) per acre-
15 foot of the capacity of the proposed storage and recovery
16 project, not to exceed fifty thousand dollars (\$50,000); an
17 annual fee of fifty cents (\$.50) per acre-foot of water
18 stored, payable upon submission of the annual report required
19 by the Ground Water Storage and Recovery Act; application and
20 annual fees are other state funds appropriated to the state
21 engineer's office and shall not revert to the general fund at
22 the end of any fiscal year;

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

25 (3) the name and mailing address of the owner

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1 of the land on which the applicant proposes to operate the
2 project;

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

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

8 (6) evidence of financial and technical
9 capability;

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

13 (8) the identification, characteristics,
14 capacity and location of each recharge and recovery well,
15 including existing pre-basin wells, existing permitted wells
16 and new wells sought to be drilled for recharge or recovery
17 pursuant to the application;

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

21 (10) a project plan that:

22 (a) shows the area of hydrologic effect
23 of the project;

24 (b) demonstrates that the project is
25 hydrologically feasible;

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1 (c) demonstrates that the project will
2 not impair existing water rights within the area of hydrologic
3 effect or rights in hydrologically connected surface waters;

4 (d) demonstrates that the project will
5 not be contrary to the conservation of water; and

6 (e) demonstrates that the project will
7 not be detrimental to the public welfare;

8 (11) the proposed duration of the permit; and

9 (12) any additional information required by
10 the state engineer.

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

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

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1 B. Within thirty days after determining that an
2 application is complete, unless an extension is requested by
3 the applicant, the state engineer shall publish a notice of
4 the application in a newspaper of general circulation in the
5 county in which persons reside who could reasonably be
6 expected to be affected by the project. The notice shall be
7 given once a week for three consecutive weeks and shall
8 contain:

9 (1) the legal description of the location of
10 the proposed project;

11 (2) a brief description of the proposed
12 project, including its capacity;

13 (3) the name of the applicant;

14 (4) the date of the last publication;

15 (5) the requirements for an objection; and

16 (6) disclosure that objections to the
17 application may be filed within ten days after the last
18 publication of the notice.

19 C. Any person who demonstrates that his water
20 rights may be impaired, that he may be substantively and
21 specifically affected by the proposed project or that the
22 project will be contrary to the conservation of water or
23 detrimental to the public welfare shall have standing to file
24 an objection.

25 D. An objection shall be filed in writing, include

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1 the name and mailing address of the objector, identify the
2 grounds for the objection and include the signature of the
3 objector or his legal representative. The state engineer
4 shall advise the applicant, by certified mail, that an
5 objection has been filed. The state engineer shall schedule a
6 hearing on the application and provide at least thirty days'
7 notice of the hearing, by certified mail, to the applicant and
8 any objector.

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

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

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

- 21 A. The state engineer shall issue a permit to
22 construct and operate a project if:
- 23 (1) the applicant has the technical and
 - 24 financial capability to construct and operate the project;
 - 25 (2) the project is hydrologically feasible;

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1 (3) the project will not impair existing
2 water rights within the area of hydrologic effect or rights in
3 hydrologically connected surface waters;

4 (4) the project will not be contrary to the
5 conservation of water within the state; and

6 (5) the project will not be detrimental to
7 the public welfare of the state.

8 B. A permit for a project shall include:

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

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

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

15 (4) any monitoring program required; and

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

18 C. The state engineer shall adopt regulations to
19 carry out the provisions of the Ground Water Storage and
20 Recovery Act, including monitoring the operation of projects
21 and their effects on other water users in the area of
22 hydrologic effect. In determining monitoring requirements,
23 the state engineer shall cooperate with all government
24 entities that regulate and monitor the quality of water,
25 including the department of environment.

1 Section 7. MODIFICATION AND ASSIGNMENT OF PROJECT

2 PERMIT. --

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

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

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

17 A. Water added to an aquifer or system of aquifers
18 to be stored for subsequent diversion and application to
19 beneficial use pursuant to a project permit is not public
20 water and is not subject to forfeiture pursuant to Section
21 72-5-28 or 72-12-8 NMSA 1978.

22 B. A permittee may use water recovered only for
23 the same purposes as the water was used before it was stored,
24 unless a change of application is filed and approved pursuant
25 to Section 72-5-23, 72-5-24 or 72-12-7 NMSA 1978, as

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1 applicable.

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

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

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

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

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

21 (3) an affidavit attesting to the
22 truthfulness and accuracy of the report's data; and

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

25 B. The annual report shall be maintained on a

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1 calendar year basis and shall be filed with the state engineer
2 no later than March 31 for the preceding year. If a person
3 required to file an annual report fails to do so when due, the
4 state engineer may assess and impose a penalty of five hundred
5 dollars (\$500) for each month or portion of a month that the
6 report is not filed. The total penalty assessed pursuant to
7 this subsection shall not exceed five thousand dollars
8 (\$5,000).

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

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

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

23 B. Except as otherwise provided in this section,
24 if the state engineer has reason to believe that a person has
25 violated a provision of the Ground Water Storage and Recovery

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1 Act or a permit issued or regulation adopted pursuant to that
2 act, the state engineer may issue a written notice that the
3 person appear and show cause, at a hearing before the state
4 engineer not less than fifteen days after the receipt of the
5 notice, why the person should not be ordered to cease and
6 desist from the violation. The notice shall inform the person
7 of the date, time and place of the hearing and the
8 consequences of the person's failure to appear.

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

20 D. After a hearing pursuant to this section, or
21 after the expiration of the time to appear, the state engineer
22 shall issue a decision and order. The decision and order
23 shall be in a form as the state engineer determines to be
24 reasonable and appropriate and may include a determination of
25 violation, an order to cease and desist, the recommendation of

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1 a civil penalty and an order directing that positive steps be
2 taken to abate or ameliorate any harm or damage arising from
3 the violation. Any person affected may appeal the decision to
4 the district court pursuant to Section 72-7-1 NMSA 1978.

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

12 Section 12. PENALTIES. --

13 A. A person who is determined to be in violation
14 of the Ground Water Storage and Recovery Act may be assessed a
15 civil penalty in an amount not exceeding:

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

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

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

1 FORTY-FOURTH LEGISLATURE

2 FIRST SESSION, 1999

3
4
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6 February 2, 1999

7
8 Mr. President:

9
10 Your CONSERVATION COMMITTEE, to whom has been referred

11
12 SENATE BILL 84

13
14 has had it under consideration and reports same with
15 recommendation that it DO NOT PASS, but that

16
17
18 SENATE CONSERVATION COMMITTEE SUBSTITUTE FOR

19 SENATE BILL 84

20
21 DO PASS, and thence referred to the JUDICIARY COMMITTEE.

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23 Respectfully submitted,

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Fernando R. Macias, Chairman

Adopted _____ Not Adopted _____
(Chief Clerk) (Chief Clerk)

Date _____

The roll call vote was 8 For 0 Against
Yes: 8
No: None
Excused: Sanchez, Vernon
Absent: None

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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. "person" means any legal entity;

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; and

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

4 Section 4. PERMIT REQUIRED. --

5 A. No person may construct and operate a storage and
6 recovery project in a declared ground water basin without a
7 permit from the state engineer and other permits that may be
8 required.

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

11 (1) an application fee in the amount of five
12 thousand dollars (\$5,000) plus five dollars (\$5.00) per acre-foot
13 of the annual capacity of the proposed storage and recovery
14 project, not to exceed fifty thousand dollars (\$50,000); an
15 annual fee of fifty cents (\$.50) per acre-foot of water stored,
16 payable upon submission of the annual report required by the
17 Ground Water Storage and Recovery Act; application and annual
18 fees are other state funds appropriated to the state engineer's
19 office and shall not revert to the general fund at the end of any
20 fiscal year;

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

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

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

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

3 (6) evidence of financial and technical
4 capability;

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

8 (8) the identification, characteristics, capacity
9 and location of each recharge and recovery well, including
10 existing pre-basin wells, existing permitted wells and new wells
11 sought to be drilled for recharge or recovery pursuant to the
12 application and the identification of existing permitted and
13 declared wells in the underground area effected by storage and
14 recovery operations;

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

18 (10) evidence of the specific legal basis for
19 acquiring and using the water proposed to be injected. The legal
20 basis shall include demonstration that the applicant has a valid
21 water right or contract right for the depletion, recognizing
22 return flows, of the water to be stored underground;

23 (11) a project plan that:

24 (a) shows the area of hydrologic effect of the
25 project;

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1 (b) demonstrates that the project is
2 hydrologically feasible;

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

6 (d) demonstrates that the project will not be
7 contrary to the conservation of water within the state; and

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

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

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

17 (14) the proposed duration of the permit; and

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

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

22 A. Upon receipt of an application for a permit to
23 construct and operate a project, the state engineer shall endorse
24 on the application the date it was received and shall keep a
25 record of the application. The state engineer shall conduct an

1 initial review of the application within sixty days of receipt.
2 If the state engineer determines in the initial review that the
3 application is incomplete, the state engineer shall notify the
4 applicant of the application's deficiencies. The application
5 shall remain incomplete until the applicant provides all
6 information required by the Ground Water Storage and Recovery
7 Act. The state engineer may request additional information from
8 the applicant and shall conduct an investigation of the project.

9 B. Within thirty days after determining that an
10 application is complete, unless an extension is requested by the
11 applicant, the applicant shall publish a notice of the
12 application in a newspaper of general circulation in the county
13 in which persons reside who could reasonably be expected to be
14 affected by the project. The notice shall be given once a week
15 for three consecutive weeks and shall contain:

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

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

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

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

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

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

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

9 (1) the applicant has the technical and financial
10 capability to construct and operate the project;

11 (2) the project is hydrologically feasible;

12 (3) the project will not impair existing water
13 rights or the state's interstate obligations;

14 (4) the project will not be contrary to the
15 conservation of water within the state;

16 (5) the project will not be detrimental to the
17 public welfare of the state;

18 (6) the applicant has completed applications for
19 all permits required by state and federal law; and

20 (7) the applicant has a valid water right or
21 contract right for the depletion, recognizing return flow, of the
22 water proposed to be stored underground, or an agreement with an
23 owner who has a water right subject to an application to a change
24 in the purpose or place of use or place of diversion.

25 B. A permit for a project shall include:

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

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

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

7 (4) any monitoring program required;

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

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

13 C. The permit shall not become effective until the
14 applicant obtains all other required state and federal permits.

15 D. The state engineer may adopt regulations to carry
16 out the provisions of the Ground Water Storage and Recovery Act,
17 including monitoring the operation of projects and their effects
18 on other water users in the area of hydrologic effect. In
19 determining monitoring requirements, the state engineer shall
20 cooperate with all government entities that regulate and monitor
21 the quality of water, including the department of environment.

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

23 A. The state engineer may modify the conditions of a
24 permit if he finds that modifications are necessary and will not
25 impair existing water rights or the water quality of the aquifer.

1 The applicant shall provide notice of any proposed modifications
 2 as required by the Ground Water Storage and Recovery Act for new
 3 applications. Objections may be filed in the manner of
 4 objections to new applications.

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

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

12 A. Water added to an aquifer or system of aquifers to
 13 be stored for subsequent diversion and application to beneficial
 14 use pursuant to a project permit is not public water and is not
 15 subject to forfeiture pursuant to Section 72-5-28 or 72-12-8 NMSA
 16 1978.

17 B. A permittee may use water recovered only for the
 18 same purposes as the water was used before it was stored, unless
 19 a change of application is filed and approved pursuant to Section
 20 72-5-23, 72-5-24 or 72-12-7 NMSA 1978, as applicable.

21 Section 9. STORAGE ACCOUNT TO BE ESTABLISHED--LIMIT ON
 22 AMOUNT OF WATER RECOVERED.--The state engineer shall establish a
 23 storage account for each project. If the project has stored
 24 water from more than one source, he shall establish subaccounts
 25 for each source of water. A permittee may recover only the

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1 recoverable amount of stored water from a well. For purposes of
2 this section, "recoverable amount" means that amount of water, as
3 determined by the state engineer, that has reached the aquifer,
4 remained within the area of hydrologic effect and is conducive to
5 recovery without impairment to existing uses.

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

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

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

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

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

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

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

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

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

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

15 B. Except as otherwise provided in this section, if the
 16 state engineer has reason to believe that a person has violated a
 17 provision of the Ground Water Storage and Recovery Act or a
 18 permit issued or regulation adopted pursuant to that act, the
 19 state engineer may issue a written notice that the person appear
 20 and show cause, at a hearing before the state engineer not less
 21 than fifteen days after the receipt of the notice, why the person
 22 should not be ordered to cease and desist from the violation.
 23 The notice shall inform the person of the date, time and place of
 24 the hearing and the consequences of the person's failure to
 25 appear.

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

12 D. After a hearing pursuant to this section, or after
13 the expiration of the time to appear, the state engineer shall
14 issue a decision and order. The decision and order shall be in a
15 form as the state engineer determines to be reasonable and
16 appropriate and may include a determination of violation, an
17 order to cease and desist, the recommendation of a civil penalty
18 and an order directing that positive steps be taken to abate or
19 ameliorate any harm or damage arising from the violation. Any
20 person affected may appeal the decision to the district court
21 pursuant to Section 72-7-1 NMSA 1978.

22 E. If a person continues a violation after the state
23 engineer has issued a decision and order pursuant to this section
24 or a temporary order pursuant to this section, the state engineer
25 may apply for a temporary restraining order or a preliminary or

1 permanent injunction from the district court. A decision to seek
2 injunctive relief does not preclude other forms of relief or
3 enforcement against a violator.

4 Section 12. PENALTIES. --

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

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

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

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

18 Section 13. CONSERVATION FEE EXEMPTIONS. -- Conservation fees
19 collected pursuant to Section 74-1-14 NMSA 1978 shall be charged
20 only on water that is treated and stored underground and not on
21 the same water subsequently recovered.

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SCONC/SB 84

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FORTY- FOURTH LEGI SLATURE
FI RST SESSI ON, 1999

February 15, 1999

Mr. Presi dent:

Your JUDI CI ARY COMMI TTEE, to whom has been referred

SENATE CONSERVATION COMMI TTEE SUBSTI TUTE FOR
SENATE BI LL 84

has had it under consideration and reports same with
recomm~~endation~~ that it DO PASS.

Respectfully submi tted,

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Cisco McSorley, Vice Chairman

Adopted _____ Not Adopted _____
(Chief Clerk) (Chief Clerk)

Date _____

The roll call vote was 6 For 0 Against

Yes: 6

No: None

Excused: Aragon, Tsosie

Absent: None

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1
2 **SCONC/SB 84**

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4 **FORTY- FOURTH LEGISLATURE**
5 **FIRST SESSION, 1999**
6

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9 **March 3, 1999**

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11
12 **Mr. Speaker:**

13 **Your ENERGY AND NATURAL RESOURCES COMMITTEE, to**
14 **whom has been referred**

15
16 **SENATE CONSERVATION COMMITTEE SUBSTITUTE FOR**
17 **SENATE BILL 84**

18
19 **has had it under consideration and reports same with**
20 **recommendation that it DO PASS, amended as follows:**

21 **1. On page 1, line 12, after "PENALTIES" insert**
22 **"; MAKING AN APPROPRIATION".**

23
24 **2. On page 2, strike line 22 in its entirety, and insert**
25 **in lieu thereof "C. "governmental entity" means Indian nation,**
tribe or pueblo or state political subdivision, including

FORTY-FOURTH LEGISLATURE
FIRST SESSION, 1999

3 HENRC/SCONCS/SB 84

Page 33

5 municipality, county, acequia, irrigation district or
6 conservancy district".

7
8 3. On page 3, line 9, strike "person" and insert in lieu
9 thereof "governmental entity".

10 4. On page 5, strike lines 5 and 6 in their entirety and
11 insert in lieu thereof "(a) shows that the project will not
12 cause harm to users of land and water within the area of
13 hydrologic effect;"

14
15 5. On page 8, line 7, after "person" insert "or
16 governmental entity".

17 6. On page 8, line 25, after the semicolon strike "and".

18
19 7. On page 9, line 1, after "right" insert ", a federal
20 reserved water right accepted by the state engineer".

21
22 8. On page 9, line 5, strike the period and insert in
23 lieu thereof "; and".

24 9. On page 9, line 6, insert "(8) that the project will
25 not cause harm to users of land and water within the area of
hydrologic effect;"

FORTY-FOURTH LEGISLATURE
FIRST SESSION, 1999

SCONC/SB 84

HENRC/SCONCS/SB 84

Page 34

10. On page 9, line 21, strike "may" and insert in lieu thereof "shall".

11. On page 9, line 24, after "effect" insert ", including federal reserved water rights accepted by the state engineer as they are quantified".

12. On page 12, line 2, strike "person" and insert in lieu thereof "governmental entity".

13. On page 12, line 23, strike "person" and insert in lieu thereof "governmental entity".

14. On page 13, line 1, strike "person" and insert in lieu thereof "governmental entity".

15. On page 13, line 4, strike "person" and insert in lieu thereof "governmental entity".

16. On page 13, line 5, strike "person" and insert in lieu thereof "governmental entity".

FORTY-FOURTH LEGISLATURE
FIRST SESSION, 1999

HENRC/SCONCS/SB 84

Page 35

17. On page 13, line 6, strike "person's" and insert in lieu thereof "governmental entity's".

18. On page 13, line 8, strike "person" and insert in lieu thereof "governmental entity".

19. On page 13, line 11, strike "person" and insert in lieu thereof "governmental entity".

20. On page 13, line 14, strike "person" and insert in lieu thereof "governmental entity".

21. On page 13, line 15, strike "person" and insert in lieu thereof "governmental entity".

22. On page 14, line 2, strike "person" and insert in lieu thereof "governmental entity".

23. On page 14, line 4, strike "person" and insert in lieu thereof "governmental entity".

24. On page 14, line 12, strike "person who" and insert in lieu thereof "governmental entity that".

FORTY-FOURTH LEGISLATURE
FIRST SESSION, 1999

SCONC/SB 84

HENRC/SCONCS/SB 84

Page 36

25. On page 15, between lines 3 and 4, insert the following new sections:

"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. -- 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.

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

1 FORTY-FOURTH LEGISLATURE
2 FIRST SESSION, 1999

3 HENRC/SCONCS/SB 84

Page 37

4
5 Respectfully submitted,
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9 _____
10 James Roger Madalena, Chair man
11

12 Adopted _____ Not Adopted _____
13 (Chief Clerk) (Chief Clerk)

14
15 Date _____
16

17 The roll call vote was 7 For 3 Against

18 Yes: 7

19 No: Kissner, Parsons, Roberts

20 Excused: None

21 Absent: None
22

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24 J: \99BillSWP\S0084
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1
2 **SCONC/SB 84**

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4 **FORTY- FOURTH LEGISLATURE**
5 **FIRST SESSION, 1999**
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7
8 **March 12, 1999**

9
10 **Mr. Speaker:**

11
12 **Your APPROPRIATIONS AND FINANCE COMMITTEE, to whom**
13 **has been referred**

14
15 **SENATE CONSERVATION COMMITTEE SUBSTITUTE FOR**
16 **SENATE BILL 84, as amended**

17 **has had it under consideration and reports same with**
18 **recommendation that it DO PASS, amended as follows:**

19
20 **1. Strike House Energy and Natural Resources Committee**
21 **Amendments 1, 7, 11 and 13 through 25.**

22
23 **2. On page 3, line 4, after "Act" insert "but shall not**
24 **include in situ leach mining operations or water flood operations**
25 **for petroleum recovery that require approval by the state engineer**
outside the Ground Water Storage and Recovery Act".

FORTY-FOURTH LEGISLATURE
FIRST SESSION, 1999

HARC/SCONCS/SB 84

Page 39

3. On page 3, line 21, after "act" insert a period, strike the remainder of the line and strike lines 22 through 24 in their entirety.

4. On page 4, strike lines 24 and 25 in their entirety.

5. On page 5, strike lines 1 through 3 in their entirety and insert in lieu thereof:

"(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;".

FORTY-FOURTH LEGISLATURE
FIRST SESSION, 1999

SCONC/SB 84

HARC/SCONCS/SB 84

Page 40

6. On page 9, strike lines 1 through 5 in their entirety and insert in lieu thereof:

"(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".

7. On page 9, line 24, after "effect" insert ", including an Indian nation, tribe or pueblo".

8. On page 10, line 25, strike "as the water was used" and insert in lieu thereof "for which the water was authorized".

underscored material = new
[bracketed material] = delete

FORTY-FOURTH LEGISLATURE
FIRST SESSION, 1999

HARC/SCONCS/SB 84

Page 41

9. On page 11, line 1, strike "a change of" and insert in lieu thereof "an" and after "application" insert "for a change in the purpose of use, place of use or point of diversion".

10. On page 12, line 23, after "person" insert "or governmental entity".

11. On page 13, line 1, after "person" insert "or governmental entity".

12. On page 13, line 4, after "person" insert "or governmental entity".

13. On page 13, line 5, after "person" insert "or governmental entity".

14. On page 13, line 6, after "person's" insert "or governmental entity's".

15. On page 13, line 8, after "person" insert "or governmental entity".

16. On page 13, line 11, after "person" insert "or governmental entity".

underscored material = new
[bracketed material] = delete

FORTY-FOURTH LEGISLATURE
FIRST SESSION, 1999

SCONC/SB 84

HARC/SCONCS/SB 84

Page 42

17. On page 13, line 14, after "person" insert "or governmental entity".

18. On page 13, line 15, after "person" insert "or governmental entity".

19. On page 14, line 2, after "person" insert "or governmental entity".

20. On page 14, line 4, after "person" insert "or governmental entity".

21. On page 14, line 12, after "person who" insert "or governmental entity that".

22. On page 15, line 1, strike "74-1-14" and insert in lieu thereof "74-1-13".

23. On page 15, after line 3, insert the following new sections:

"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

FORTY-FOURTH LEGISLATURE
FIRST SESSION, 1999

HARC/SCONCS/SB 84

Page 43

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.

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. "

FORTY-FOURTH LEGISLATURE
FIRST SESSION, 1999

SCONC/SB 84

HARC/SCONCS/SB 84

Page 44

Respectfully submitted,

Max Coll, Chairman

Adopted _____ Not Adopted _____
(Chief Clerk) (Chief Clerk)

Date _____

The roll call vote was 16 For 0 Against

Yes: 16

Excused: Watchman

Absent: None

128724.8

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