

AN ACT

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RELATING TO WATER; ALLOWING THE CREATION OF SPECIAL WATER USERS' ASSOCIATIONS; AUTHORIZING LEASING OF ALLOTMENTS OF WATER FROM IRRIGATION DISTRICTS ORGANIZED PURSUANT TO CHAPTER 73, ARTICLE 10 NMSA 1978; ALTERING PROCEDURES FOR CHANGES OF PLACE AND PURPOSE OF USE OF LEASED WATER; AMENDING, REPEALING AND ENACTING SECTIONS OF THE NMSA 1978.

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

Section 1. Section 72-1-9 NMSA 1978 (being Laws 1985, Chapter 198, Section 1, as amended) is amended to read:

"72-1-9. MUNICIPAL, COUNTY, MEMBER-OWNED COMMUNITY WATER SYSTEMS AND STATE UNIVERSITY WATER DEVELOPMENT PLANS-- PRESERVATION OF MUNICIPAL, COUNTY AND STATE UNIVERSITY WATER SUPPLIES.--

A. It is recognized by the state that it promotes the public welfare and the conservation of water within the state for municipalities, counties, state universities, member-owned community water systems, special water users' associations and public utilities supplying water to municipalities or counties to plan for the reasonable development and use of water resources. The state further recognizes the state engineer's administrative policy of not allowing municipalities, member-owned community water systems, counties and state universities to acquire and hold unused water rights in an amount greater than their reasonable needs within forty years.

B. Municipalities, counties, state universities, member-owned

community water systems, special water users' associations and public utilities
supplying water to municipalities or counties shall be allowed a water use planning
period not to exceed forty years, and water rights for municipalities, counties, state
universities, member-owned community water systems, special water users'
associations and public utilities supplying water to such municipalities or counties shall
be based upon a water development plan the implementation of which shall not exceed
a forty-year period from the date of the application for an appropriation or a change of
place or purpose of use pursuant to a water development plan or for preservation of a
municipal, county, member-owned community water system or state university water
supply for reasonably projected additional needs within forty years."

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

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

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

B. The lease may be effective for immediate use of water or may be
effective for future use of the water covered by the lease; however, the lease shall not
be effective to cumulate water from year to year or to substantially enlarge the use of
the water in such manner that it would injure other water users. The lease shall not toll
any forfeiture of water rights for nonuse, and the owner shall not, by reason of the

lease, escape the forfeiture for nonuse prescribed by law; provided, however, that the state engineer shall notify both the owner and the lessee of declaration of nonuser as provided in Sections 72-5-28 and 72-12-8 NMSA 1978. The initial or any renewal term of a lease of water use shall not exceed ten years, except as provided in Subsection C of this section.

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C. A water use may be leased for forty years by municipalities, counties, state universities, special water users' associations, public utilities supplying water to municipalities or counties and member-owned community water systems as lessee and shall be entitled to the protection of the forty-year water use planning period as provided in Section 72-1-9 NMSA 1978. A water use deriving from an acequia or community ditch organized pursuant to Chapter 73, Article 2 or 3 NMSA 1978, whether owned by a water right owner under the acequia or community ditch or by the acequia or community ditch may be leased for a term not to exceed ten years."

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Section 3. Section 72-6-5 NMSA 1978 (being Laws 1967, Chapter 100, Section 5, as amended) is amended to read:

"72-6-5. APPROVAL.--

A. The state engineer shall approve the application if the applicant has reasonably shown that his proposed use and location of use is a beneficial use and:

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

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

B. In the case of annual allotments of project water leased to a special

water users' association from an irrigation district organized pursuant to Chapter 73,
Article 10 NMSA 1978, if the state engineer determines that the proposed changes in
place and purpose of use and point of diversion comply with the rules established
pursuant to Subsection G of Section 73-10-48 NMSA 1978, the board of directors of
the irrigation district may approve the application in accordance with the provisions of
Section
73-10-48 NMSA 1978."

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Section 4. Section 72-6-6 NMSA 1978 (being Laws 1967, Chapter 100,
Section 6) is amended to read:

"72-6-6. APPLICATION--NOTICE--PROTEST--HEARING.--

A. Upon the filing of an application by a lessee, the state engineer shall
cause a notice of the filing to be published once a week for three consecutive weeks in
a newspaper of general circulation in the county in which the water right is situated.

B. Any owner who believes his water rights will be adversely affected
by the granting of the application may file a protest. The protest shall be specific as to
how the granting of the application will adversely affect his water rights. The protest
shall be filed in writing with the state engineer and a copy sent to the applicant by
certified mail within ten days after the last publication of notice of application.

C. If a protest is filed, the state engineer shall hold a hearing on the
granting of the application, and the applicant and protestants shall be notified by the
state engineer as to the date and place of the hearing.

D. If no objections are filed, the state engineer may grant the
application without hearing. If no objections are filed and the state engineer denies the
application, the state engineer shall hold a hearing if requested to do so by the

applicant. The request shall be filed with the state engineer within ten days after the denial of the application.

E. If the state engineer grants the application but allows the applicant to use less water than the amount of water the owner would be allowed to use, the state engineer shall hold a hearing on the matter if requested to do so by the applicant. The request shall be filed with the state engineer within ten days after the granting of the application.

F. In a hearing before the state engineer, a full record and transcript of the proceeding shall be kept by him.

G. The provisions of this section do not apply to leases approved pursuant to Section 73-10-48 NMSA 1978."

Section 5. Section 73-10-48 NMSA 1978 (being Laws 2000, Chapter 73, Section 1) is repealed and a new Section 73-10-48 NMSA 1978 is enacted to read:

"73-10-48. SPECIAL WATER USERS' ASSOCIATIONS--LEASE OF ALLOTMENTS OF IRRIGATION DISTRICT WATER--CHANGE OF PLACE AND PURPOSE OF USE OF LEASED WATER RIGHTS--CHANGE OF POINT OF DIVERSION OF WATER RIGHTS--APPROVAL PROCESS.--

A. As used in this section:

(1) "annual allotment of project water" means that portion of the pro rata share of water, determined by the irrigation district to be available to assessed acreage within the district each year, for which an adjudication subfile order has been entered or an offer of judgment has been irrevocably accepted by the landowner and the state;

(2) "irrigation district" means an irrigation district organized

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pursuant to Chapter 73, Article 10 NMSA 1978; and

(3) "public utility" means a utility that supplies water to municipalities or counties.

B. A municipality, county, state university, member-owned community water system or public utility within New Mexico may establish a "special water users' association" to lease the use of water from landowners in an irrigation district if:

(1) the municipality, county, state university, member-owned community water system or public utility supplies or proposes to supply water for municipal and industrial uses, at least a portion of which is supplied to persons within the boundaries of an irrigation district; and

(2) the irrigation district and the state engineer approve of the establishment of the association.

C. The interstate stream commission may establish a special water users' association with the approval of the irrigation district.

D. A special water users' association may lease the use of the annual allotment of project water directly from a member of the irrigation district or through the irrigation district. The association shall appear as record owner of lands from which water is leased during the term of the lease on the irrigation district's assessment rolls for the purpose of irrigation district annual assessments, levies, tolls, charges and other fees for annual allotments of project water leased by the association, which shall be paid by the association to the irrigation district during the term of the lease.

E. The irrigation district may:

(1) consolidate assessments of district members leasing to a special water users' association and assess the association for the total assessed

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acreage of those district members;

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(2) coordinate the delivery of leased annual allotments of project water to the association;

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(3) make assessments and levies on lands with appurtenant water rights within the association;

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(4) charge reasonable administrative fees to the association;

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and

(5) adopt rules to carry out the provisions of this section.

F. An irrigation district may approve a lease of an annual allotment of project water by a special water users' association for:

(1) a change in the place of use or point of diversion of the leased water within or without the boundaries of the district; or

(2) a change in the purpose of use of the leased water within or without the boundaries of the district for:

(a) a water treatment plant to supply water for municipal and industrial uses; or

(b) the purpose of meeting interstate compact delivery requirements of project water to Texas.

G. The state engineer shall adopt rules establishing criteria governing changes in place or purpose of use or point of diversion of annual allotments of project water for determining the areas of use and purposes of use of water leased by a special water users' association. The rules shall ensure that the proposed changes will be a beneficial use, will not result in an increase in net depletions of water, will not impair existing water rights, are not contrary to the conservation of water within the

state and are not detrimental to the public welfare of the state.

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H. The special water users' association shall submit to the state engineer on a form prescribed by the state engineer all information required to determine whether the association and its proposed changes in place and purpose of use and point of diversion of water are in compliance with the state engineer's rules. If the state engineer determines that the proposed changes are in conformity with the rules, the association shall be notified and the state engineer shall publish, in a newspaper of general circulation in the county in which the changes are located at least once a week for three consecutive weeks, the application and notice that the proposed changes in place and purpose of use and point of diversion conform to the state engineer's rules. Objections by a person owning water rights within the district's boundaries and whose water rights may be impaired by the state engineer's decision may be filed with the state engineer and served by certified mail within ten days after the last publication of the notice. The state engineer shall issue a decision in answer to an objection within thirty days of the filing of the objection. The protestant may appeal that decision directly to the district court within thirty days of notice by certified mail of the state engineer's decision. Appeals to the district court shall be limited to review of whether the state engineer's decision was made in accordance with the rules, and a jury trial shall not be allowed. Once the state engineer's approval of the application is final, the irrigation district may then approve the changes authorized in Subsection F of this section pursuant to the irrigation district approval process described in Subsection I of this section.

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I. The board of directors of the irrigation district shall publish notice at least once a week for three consecutive weeks, in a newspaper of general circulation

published within the county where the office of the irrigation district is located, of the board's intention to consider a resolution to allow the lease of the use of annual allotments of project water. The notice shall indicate the owners and location of lands from which annual allotments of project water will be leased and any change in point of diversion, place or purpose of use of that water and the period of the lease. The board may approve the lease if it finds it to be in the best interest of the district. Members of the district whose water rights may be affected by the lease may protest at the meeting at which the resolution is being considered. The board shall take formal action upon the resolution and shall give notice to all protestants of the board's decision. A protestant may appeal to the district court from any action taken by the board upon the resolution. An appeal shall be filed with the court and notice served on the parties within ten days of receipt of notice of the board's adoption or rejection of the resolution. The appeal shall be on the record of the hearing before the irrigation district board and a right of trial by jury shall not be allowed."

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Section 6. A new section of Chapter 73, Article 10 NMSA 1978 is enacted to read:

"SPECIAL WATER USERS' ASSOCIATION--CERTIFICATE OF ORGANIZATION.--The organizers of a special water users' association shall execute and file with the state engineer a certificate setting forth:

- A. the name of the association; provided that a name shall not be assumed that is in use by another association or corporation in this state, or that is so nearly similar as to lead to uncertainty or confusion;
- B. the names of the entities forming the association;
- C. the location of the association's principal office in this state, the

name and address of its registered agent, the county or counties in which it will operate and a general description of the areas it will serve;

D. the purposes of the association and the purposes of the use of water leased by the association;

E. the plan for providing funds or means for the acquisition, construction, improvement and maintenance of its works and for its necessary expenses;

F. the period of duration of the association;

G. the number of and manner of selecting the board of directors, trustees or governing board of the association, and the name of the persons who shall serve as such until their successors are selected;

H. the name of the irrigation district from which the association will be leasing the use of water; and

I. any provision, not inconsistent with the laws of this state, that the organizers may choose to insert for the regulation and conduct of the business and affairs of the association, for enlarging or changing the scope of its operations, for collecting the necessary funds for expenses and purposes of the association, for defining or limiting its powers and for its dissolution and the distribution or other disposition of its property."

Section 7. A new section of Chapter 73, Article 10 NMSA 1978 is enacted to read:

"SPECIAL WATER USERS' ASSOCIATION--ORGANIZATIONAL STATUS--OFFICERS.--

A. Upon the filing of the certificate of organization, by duly adopted

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resolution, with the state engineer and a copy with the county clerk of the county or city, as appropriate, where the special water users' association is formed, the entities so associating shall constitute a body corporate by the name set forth in the certificate and by that name may sue and be sued and shall have the capacity to make contracts; acquire, hold, enjoy, dispose of and convey property real and personal; and do any other act or thing necessary or proper for carrying out the purposes of the association.

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B. An association may have officers or agents chosen or appointed in a manner and for terms as may be provided by the bylaws. Vacancies occurring among officers or among the board of directors, trustees or governing board shall be filled as provided by the bylaws or, in the absence of such provision, by the directors, trustees or governing board."

Section 8. SEVERABILITY.--If any part or application of a provision of this act is held invalid, the remainder or its application to other situations or persons shall not be affected.

Section 9. TEMPORARY PROVISION.--A lease of project water by a municipal water users' association existing on the effective date of this act may be transferred to a special water users' association if the lease is in accordance with, or is amended to accord with, the provisions of this act.

Section 10. EFFECTIVE DATE.--The effective date of the provisions of this act is July 1, 2008.

