

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

SENATE BILL 209

46TH LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2003

INTRODUCED BY

Timothy Z. Jennings

AN ACT

RELATING TO THE NATIONAL FORESTS; DECLARING A STATE OF
EMERGENCY WITHIN THE NATIONAL FORESTS OF NEW MEXICO; REQUIRING
THE GOVERNOR AND THE ATTORNEY GENERAL TO TAKE CERTAIN ACTIONS
TO ELIMINATE THE EMERGENCY; DECLARING AN EMERGENCY.

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

Section 1. FINDINGS--DECLARATION OF EMERGENCY--GOVERNOR--
ATTORNEY GENERAL--ADDITIONAL DUTIES.--

A. The legislature finds that:

(1) a state of emergency exists in New Mexico
due to a shortage, and ever diminishing total supply, of water
available to its citizens, communities, livestock, wildlife and
wildlife habitats;

(2) New Mexico communities that have been
seriously threatened or impacted by a shortage of available

underscored material = new
[bracketed material] = del ete

1 water within the last calendar year include Albuquerque, Santa
2 Fe, Las Vegas, Farmington, Bloomfield, Aztec, Rio Rancho,
3 Bernalillo, Edgewood, Alamogordo, Ruidoso, Roswell and
4 Carri zozo;

5 (3) New Mexico waterways that have experienced
6 a significant depletion of available water include the Rio
7 Grande and the Pecos, Gila and Animas rivers, as well as the
8 streams and tributaries that contribute water to those rivers;

9 (4) New Mexico livestock and wildlife that are
10 now or are likely to be directly or indirectly seriously
11 imperiled by a shortage of available water include cattle,
12 sheep, elk, deer, antelope, black bears, spotted owls, shiners,
13 trout and silvery minnows;

14 (5) because of the state of emergency, it is
15 imperative that New Mexico promptly take actions necessary to
16 restore and increase the total supply of water available within
17 the state;

18 (6) the state's total supply of water is
19 significantly dependent upon watersheds located on national
20 forest lands. To achieve an increase in the total supply of
21 water in New Mexico, it is imperative for the state to take all
22 necessary actions that may be available to remedy the current
23 deteriorated conditions of these watersheds;

24 (7) Section 4-36-11 NMSA 1978, enacted in
25 2001, acknowledges the deteriorating conditions of New Mexico's

. 142919. 2

underscored material = new
[bracketed material] = delete

1 federal forests;

2 (8) numerous state and local New Mexico
3 elected officials and other citizens have repeatedly petitioned
4 the United States forest service over the last several years to
5 take actions needed to remove or eliminate the excessive forest
6 overgrowth conditions that exist on watersheds on the national
7 forest lands within the state; however, all of the petitions
8 have been effectively ignored by the United States secretary of
9 agriculture and other officers within the federal government,
10 reflecting what can only be characterized as their utter
11 disregard for the needs of both New Mexico citizens and
12 wildlife;

13 (9) the United States congress expressly
14 provided in 16 USCA 475 that "No national forest shall be
15 established, except to improve and protect the forest within
16 the boundaries, or for the purpose of securing favorable
17 conditions of waterflows" and reaffirmed this directive in the
18 Multiple Use Sustained Yield Act of 1960 when it provided that
19 the national forests "shall be administered for watershed
20 purposes";

21 (10) the United States supreme court, in
22 *United States v. New Mexico*, 438 U.S. 696 (1978), stated
23 "Congress has evidenced its continuing concern with enhancing
24 the water supply for non-forest use by specifically authorizing
25 the president to set aside and protect national forest lands

. 142919. 2

1 needed as sources of municipal water supplies." In that same
2 case, the supreme court also stated that it was the belief of
3 congress that "the states had exclusive control of the
4 distribution of water on public lands and reservations";

5 (11) New Mexico's watersheds located on
6 federal lands currently contain at least one billion excess
7 junipers and conifers, each of which consumes at least ten
8 gallons of water each day, which results in, at a minimum, ten
9 billion gallons of water consumed every day;

10 (12) the continued existence of the overgrowth
11 serves no legitimate federal or state purpose and poses a
12 present unreasonable risk to the lives and property of New
13 Mexico citizens;

14 (13) the federal government's persistent
15 failure to remove the excess tree overgrowth from New Mexico's
16 watersheds prevents downstream flow to New Mexico in violation
17 of the state's legal entitlement to the diverted waters under
18 both state and federal law;

19 (14) New Mexico has a legal entitlement to the
20 waterflows that are or may be derived from federal lands within
21 the state;

22 (15) the excessive overgrowth on the
23 watersheds is depriving the state of its legal entitlement to
24 water in direct violation of the mandates of the United States
25 congress and the rulings of the United States supreme court;

1 and

2 (16) to abate the illicit diversion of New
3 Mexico's water, to increase the total supply of water available
4 in New Mexico in the future and to remedy the state of
5 emergency, New Mexico should affirm and assert the supremacy of
6 its right over that of the federal government to the ownership
7 and use of the water that is currently being unlawfully
8 diverted by the federal government without justification to
9 supply the demands of the needless federal forest overgrowth on
10 New Mexico's watersheds.

11 B. The legislature declares that:

12 (1) a state of emergency exists due to a
13 shortage of available water, caused in significant part by the
14 deteriorating conditions of the state's watersheds located on
15 national forest lands;

16 (2) the deteriorating conditions are due to
17 unnecessary and unjustifiable excessive forest overgrowth that
18 is unlawfully diverting New Mexico's waterflows and depleting
19 New Mexico's total supply of water available to its citizens,
20 communities, livestock, wildlife and wildlife habitats;

21 (3) the continued existence of the state of
22 emergency poses a direct threat to the health, safety, well-
23 being and economic viability of New Mexico's citizens and to
24 the continued health and viability of its communities,
25 livestock, wildlife and wildlife habitats; and

. 142919. 2

underscored material = new
[bracketed material] = delete

1 (4) it is imperative that New Mexico take such
2 actions as may be necessary and appropriate to mitigate or
3 eliminate the deteriorating conditions of the state's
4 watersheds, including:

5 (a) obtaining a transfer to the state of
6 such limited jurisdiction over federal lands as may be
7 necessary to enable the state to restore the watersheds to a
8 condition of health and to maximize waterflows within New
9 Mexico; and

10 (b) upon the transfer of the limited
11 jurisdiction, utilizing the police powers of the state to the
12 extent necessary to garner the public and private resources and
13 services needed to mitigate and ultimately eliminate the state
14 of emergency.

15 C. No later than October 1, 2003, the governor
16 shall, pursuant to the provisions of Section 19-2-2 NMSA 1978,
17 7 USCA 2268 and any other state or federal law that may be
18 determined relevant by the attorney general, request from the
19 United States secretary of agriculture the transfer of such
20 limited jurisdiction over relevant national forest lands as may
21 be necessary for New Mexico to restore its watersheds to a
22 condition of health and thereby increase the waterflows that
23 may be derived from the watersheds. The request to the United
24 States secretary of agriculture for the transfer of the limited
25 jurisdiction shall include an express provision that an

. 142919. 2

1 acceptance of the limited jurisdiction by New Mexico is
2 conditioned on New Mexico's receipt of sufficient federal funds
3 determined by New Mexico to be necessary to enable the state to
4 perform the actions needed to eliminate the state of emergency
5 created by the federal government's impairment of New Mexico's
6 watersheds, waterflows and total water supply.

7 D. If, within ninety days after the request made
8 pursuant to Subsection C of this section, the United States
9 secretary of agriculture has not taken significant actions
10 toward compliance with the request, the attorney general shall
11 prepare and pursue a lawsuit on behalf of New Mexico to:

12 (1) obtain a judicial declaration of New
13 Mexico's right to the waterflows originating from watersheds
14 located on national forest lands;

15 (2) obtain a judicial declaration of the
16 impairment of the state's rights to waterflows originating on
17 national forest lands as a foreseeable consequence of excessive
18 and unjustifiable forest overgrowth; and

19 (3) compel the United States secretary of
20 agriculture and the United States forest service to take such
21 actions as may be determined by the court to be necessary to
22 eliminate the state of emergency.

23 Section 2. EMERGENCY.--It is necessary for the public
24 peace, health and safety that this act take effect immediately.