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SENATE BILL 373

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

INTRODUCED BY

Mary Kay Papen

FOR THE WATER AND NATURAL RESOURCES COMMITTEE

AN ACT

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 [~~of New Mexico~~]

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1 that it promotes the public welfare and the conservation of  
2 water within the state for municipalities, counties, state  
3 universities, member-owned community water systems, [~~municipal~~]  
4 special water users' associations and public utilities  
5 supplying water to municipalities or counties to plan for the  
6 reasonable development and use of water resources. The state  
7 further recognizes the state engineer's administrative policy  
8 of not allowing municipalities, member-owned community water  
9 systems, counties and state universities to acquire and hold  
10 unused water rights in an amount greater than their reasonable  
11 needs within forty years.

12 B. Municipalities, counties, state universities,  
13 member-owned community water systems, [~~municipal~~] special water  
14 users' associations and public utilities supplying water to  
15 municipalities or counties shall be allowed a water use  
16 planning period not to exceed forty years, and water rights for  
17 municipalities, counties, state universities, member-owned  
18 community water systems, [~~municipal~~] special water users'  
19 associations and public utilities supplying water to such  
20 municipalities or counties shall be based upon a water  
21 development plan the implementation of which shall not exceed a  
22 forty-year period from the date of the application for an  
23 appropriation or a change of place or purpose of use pursuant  
24 to a water development plan or for preservation of a municipal,  
25 county, member-owned community water system or state university

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1 water supply for reasonably projected additional needs within  
2 forty years. "

3 Section 2. Section 72-2-16 NMSA 1978 (being Laws 1965,  
4 Chapter 285, Section 4, as amended) is amended to read:

5 "72-2-16. HEARINGS REQUIRED BEFORE APPEAL. -- The state  
6 engineer may order that a hearing be held before he enters a  
7 decision, acts or refuses to act. If, without holding a  
8 hearing, the state engineer enters a decision, acts or refuses  
9 to act, any person aggrieved by the decision, act or refusal to  
10 act, except as provided in Section 73-10-48 NMSA 1978, is  
11 entitled to a hearing if a request for a hearing is made in  
12 writing within thirty days after receipt by certified mail of  
13 notice of the decision, act or refusal to act. Hearings shall  
14 be held before the state engineer or his appointed examiner. A  
15 record shall be made of all hearings. [~~No~~] Except as provided  
16 in Section 73-10-48 NMSA 1978, an appeal shall not be taken to  
17 the district court until the state engineer has held a hearing  
18 and entered his decision in the hearing. "

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

21 "72-6-3. OWNER MAY LEASE USE OF WATER. --

22 A. [~~Any~~] An owner may lease to any person all or  
23 any part of the water use due him under his water right, and  
24 the owner's water right shall not be affected by the lease of  
25 the use. The use to which the owner is entitled under his

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1 right shall, during the exercise of the lease, be reduced by  
2 the amount of water so leased. Upon termination of the lease,  
3 the water use and location of use subject to the lease shall  
4 revert to the owner's original use and location of use.

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

18 C. A water use may be leased for forty years by  
19 municipalities, counties, state universities, special water  
20 users' associations, public utilities supplying water to  
21 municipalities or counties and member-owned community water  
22 systems as lessee and shall be entitled to the protection of  
23 the forty-year water use planning period as provided in Section  
24 72-1-9 NMSA 1978. A water use deriving from an acequia or  
25 community ditch organized pursuant to Chapter 73, Article 2 or

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1 3 NMSA 1978, whether owned by a water right owner under the  
2 acequia or community ditch or by the acequia or community ditch  
3 may be leased for a term not to exceed ten years. "

4 Section 4. Section 72-6-5 NMSA 1978 (being Laws 1967,  
5 Chapter 100, Section 5, as amended) is amended to read:

6 "72-6-5. APPROVAL. --

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

10 [~~A.-~~] (1) will not impair any existing right to  
11 a greater degree than such right is, or would be, impaired by  
12 the continued use and location of use by the owner; and

13 [~~B.-~~] (2) will not be contrary to the  
14 conservation of water within the state or detrimental to the  
15 public welfare of the state.

16 B. In the case of annual allotments of project  
17 water leased to a special water users' association from an  
18 irrigation district organized pursuant to Chapter 73, Article  
19 10 NMSA 1978, if the state engineer determines that the  
20 proposed changes in place and purpose of use and point of  
21 diversion comply with the rules established pursuant to  
22 Subsection G of Section 73-10-48 NMSA 1978, the board of  
23 directors of the irrigation district may approve the  
24 application in accordance with the provisions of Section  
25 73-10-48 NMSA 1978. "

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

3 "72-6-6. APPLICATION--NOTICE--PROTEST--HEARING. --

4 A. Upon the filing of an application by a lessee,  
5 the state engineer shall cause a notice of [~~such~~] the filing to  
6 be published once a week for three consecutive weeks in a  
7 newspaper of general circulation in the county [~~wherein~~] in  
8 which the water right is situated.

9 B. Any owner who believes his water rights will be  
10 adversely affected by the granting of the application may file  
11 a protest. [~~Such~~] The protest shall be specific as to how the  
12 granting of the application will adversely affect his water  
13 rights. [~~Such~~] The protest [~~must~~] shall be filed in writing  
14 with the state engineer and a copy [~~thereof~~] sent to the  
15 applicant by certified mail within ten days after the last  
16 publication of notice of application.

17 C. If a protest is filed, the state engineer shall  
18 hold a hearing on the granting of the application, and the  
19 applicant and protestants shall be notified by the state  
20 engineer as to the date and place of [~~such~~] the hearing.

21 D. If no objections are filed, the state engineer  
22 may grant the application without hearing. If no objections  
23 are filed and the state engineer denies the application, the  
24 state engineer shall hold a hearing if requested to do so by  
25 the applicant. [~~Such~~] The request [~~must~~] shall be filed with

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1 the state engineer within ten days after the denial of the  
2 application.

3 E. If the state engineer grants the application but  
4 allows the applicant to use less water than the amount of water  
5 the owner would be allowed to use, the state engineer shall  
6 hold a hearing on the matter if requested to do so by the  
7 applicant. [~~Such~~] The request [~~must~~] shall be filed with the  
8 state engineer within ten days after the granting of the  
9 application.

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

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

14 Section 6. Section 73-10-48 NMSA 1978 (being Laws 2000,  
15 Chapter 73, Section 1) is repealed and a new Section 73-10-48  
16 NMSA 1978 is enacted to read:

17 "73-10-48. [NEW MATERIAL] SPECIAL WATER USERS'  
18 ASSOCIATIONS--LEASE OF ALLOTMENTS OF IRRIGATION DISTRICT  
19 WATER--CHANGE OF PLACE AND PURPOSE OF USE OF LEASED WATER  
20 RIGHTS--CHANGE OF POINT OF DIVERSION OF WATER RIGHTS--APPROVAL  
21 PROCESS.--

22 A. As used in this section:

23 (1) "annual allotment of project water" means  
24 that portion of the pro rata share of water, determined by the  
25 irrigation district to be available to assessed acreage within

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1 the district each year, for which an adjudication subfile order  
2 has been entered or an offer of judgment has been irrevocably  
3 accepted by the landowner and the state;

4 (2) "irrigation district" means an irrigation  
5 district organized pursuant to Chapter 73, Article 10 NMSA  
6 1978; and

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

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

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

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

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

23 D. A special water users' association may lease the  
24 use of the annual allotment of project water directly from a  
25 member of the irrigation district or through the irrigation



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1 district. The association shall be considered the owner of  
2 record of lands from which water is leased during the term of  
3 the lease and shall appear as record owner on the irrigation  
4 district's assessment roles. Irrigation district annual  
5 assessments, levies, tolls, charges and other fees for annual  
6 allotments of project water leased by the association shall be  
7 paid by the association to the irrigation district during the  
8 term of the lease.

9 E. The irrigation district may:

- 10 (1) consolidate assessments of district  
11 members leasing to a special water users' association and  
12 assess the association for the total assessed acreage of those  
13 district members;
- 14 (2) coordinate the delivery of leased annual  
15 allotments of project water to the association;
- 16 (3) make assessments and levies on lands with  
17 appurtenant water rights within the association;
- 18 (4) charge reasonable administrative fees to  
19 the association; and
- 20 (5) adopt rules to carry out the provisions of  
21 this section.

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

- 25 (1) a change in the place of use or point of

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1 diversion of the leased water within or without the boundaries  
2 of the district; or

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

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

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

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

20 H. The special water users' association shall  
21 submit to the state engineer on a form prescribed by the state  
22 engineer all information required to determine whether the  
23 association and its proposed changes in place and purpose of  
24 use and point of diversion of water are in compliance with the  
25 state engineer's rules. If the state engineer determines that

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1 the proposed changes are in conformity with the rules, the  
2 association shall be notified and the state engineer shall  
3 publish, in a newspaper of general circulation in the county in  
4 which the changes are located at least once a week for three  
5 consecutive weeks, the application and notice that the proposed  
6 changes in place and purpose of use and point of diversion  
7 conform to the state engineer's rules. Objections by a person  
8 owning water rights within the district's boundaries and whose  
9 water rights may be impaired by the state engineer's decision  
10 may be filed and served by certified mail within ten days after  
11 the last publication of the notice. The state engineer shall  
12 issue a decision in answer to an objection within thirty days  
13 of the filing of the objection. The protestant may appeal that  
14 decision directly to the district court within thirty days of  
15 notice by certified mail of the state engineer's decision.  
16 Appeals to the district court shall be limited to review of  
17 whether the state engineer's decision was made in accordance  
18 with the rules, and a jury trial shall not be allowed. Once  
19 the state engineer's approval of the application is final, the  
20 irrigation district may then approve the changes authorized in  
21 Subsection F of this section pursuant to the irrigation  
22 district approval process described in Subsection I of this  
23 section.

24 I. The board of directors of the irrigation  
25 district shall publish notice at least once a week for three

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1 consecutive weeks, in a newspaper of general circulation  
2 published within the county where the office of the irrigation  
3 district is located, of the board's intention to consider a  
4 resolution to allow the lease of the use of annual allotments  
5 of project water. The notice shall indicate the owners and  
6 location of lands from which annual allotments of project water  
7 will be leased and any change in point of diversion, place or  
8 purpose of use of that water and the period of the lease. The  
9 board may approve the lease if it finds it to be in the best  
10 interest of the district. Members of the district whose water  
11 rights may be affected by the lease may protest at the meeting  
12 at which the resolution is being considered. The board shall  
13 take formal action upon the resolution and shall give notice to  
14 all protestants of the board's decision. A protestant may  
15 appeal to the district court from any action taken by the board  
16 upon the resolution. An appeal shall be filed and notice  
17 served within ten days of receipt of notice of the board's  
18 adoption or rejection of the resolution. The appeal shall be  
19 on the record of the hearing before the irrigation district  
20 board and a right of trial by jury shall not be allowed."

21 Section 7. A new section of Chapter 73, Article 10 NMSA  
22 1978 is enacted to read:

23 "[NEW MATERIAL] SPECIAL WATER USERS' ASSOCIATION--  
24 CERTIFICATE OF ORGANIZATION.--The organizers of a special water  
25 users' association shall execute and file with the state

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1 engineer a certificate setting forth:

2 A. the name of the association; provided that a  
3 name shall not be assumed that is in use by another association  
4 or corporation in this state, or that is so nearly similar as  
5 to lead to uncertainty or confusion;

6 B. the names of the entities forming the  
7 association;

8 C. the location of the association's principal  
9 office in this state, the name and address of its registered  
10 agent, the county or counties in which it will operate and a  
11 general description of the areas it will serve;

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

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

17 F. the period of duration of the association;

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

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

24 I. any provision, not inconsistent with the laws of  
25 this state, that the organizers may choose to insert for the

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1 regulation and conduct of the business and affairs of the  
2 association, for enlarging or changing the scope of its  
3 operations, for collecting the necessary funds for expenses and  
4 purposes of the association, for defining or limiting its  
5 powers and for its dissolution and the distribution or other  
6 disposition of its property. "

7 Section 8. A new section of Chapter 73, Article 10 NMSA  
8 1978 is enacted to read:

9 "[NEW MATERIAL] SPECIAL WATER USERS' ASSOCIATION--  
10 ORGANIZATIONAL STATUS-- OFFICERS. --

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

22 B. An association may have officers or agents  
23 chosen or appointed in a manner and for terms as may be  
24 provided by the bylaws. Vacancies occurring among officers or  
25 among the board of directors, trustees or governing board shall

1 be filled as provided by the bylaws or, in the absence of such  
2 provision, by the directors, trustees or governing board. "

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

8 Section 10. EFFECTIVE DATE. --The effective date of the  
9 provisions of this act is July 1, 2003.

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