

1 AN ACT
2 RELATING TO WATER; ENACTING THE STRATEGIC WATER SUPPLY ACT;
3 CREATING THE STRATEGIC WATER SUPPLY PROGRAM; AUTHORIZING THE
4 DEPARTMENT OF ENVIRONMENT AND THE OFFICE OF THE STATE
5 ENGINEER TO ENTER INTO CONTRACTS AND AWARD GRANTS FOR
6 PROJECTS INVOLVING BRACKISH WATER THAT ENHANCE THE STATE'S
7 FRESH WATER RESOURCES; CREATING THE STRATEGIC WATER SUPPLY
8 PROGRAM FUND; PROVIDING REQUIREMENTS BEFORE A PERSON DRILLS
9 WELLS OR RECOMPLETES EXISTING WELLS TO APPROPRIATE WATERS;
10 MAKING AN APPROPRIATION.

11
12 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF NEW MEXICO:

13 SECTION 1. SHORT TITLE.--Sections 1 through 4 of this
14 act may be cited as the "Strategic Water Supply Act".

15 SECTION 2. DEFINITIONS.--As used in the Strategic Water
16 Supply Act:

17 A. "brackish water" means water that is sourced
18 from an underground stream, channel, artesian basin,
19 reservoir or lake, having reasonably ascertainable
20 boundaries, that contains not less than one thousand parts
21 per million of dissolved solids and is not produced water;

22 B. "produced water" means a fluid that is an
23 incidental byproduct from drilling for or the production of
24 oil and gas;

25 C. "public entity" means a county, municipality,

1 political subdivision, state agency or state institution of
2 higher education; and

3 D. "treated brackish water" means brackish water
4 that has undergone a process to remove or eliminate
5 contaminants to meet applicable standards for water quality
6 established pursuant to the Water Quality Act by the water
7 quality control commission.

8 SECTION 3. STRATEGIC WATER SUPPLY PROGRAM.--

9 A. The "strategic water supply program" is
10 created. Subject to the availability of funds and a project
11 that meets all eligibility requirements, the department of
12 environment and the office of the state engineer may each
13 enter into contracts or award grants for eligible projects
14 involving treated brackish water for the purposes of
15 enhancing the state's fresh water resources.

16 B. A contract entered into pursuant to this
17 section shall be in accordance with the Procurement Code,
18 except that the contract duration shall not exceed twenty
19 years in length, including extensions and renewals.

20 C. To be eligible for a strategic water supply
21 program contract, a project shall:

22 (1) comply with all applicable state,
23 federal, tribal and local governmental standards, permit
24 requirements and other provisions of law, including public
25 notice, public hearing processes and all other associated

1 requirements related to public involvement, to protect
2 existing water rights, conservation of water within the
3 state, public welfare, public health and the environment;

4 (2) furnish financial assurance, other than
5 third party guarantees, to the department of environment in
6 accordance with rules promulgated by the water quality
7 control commission, running to the benefit of the state and
8 with any forfeitures deposited in the state treasury in the
9 strategic water supply program fund;

10 (3) clearly demonstrate how the project will
11 advance state, tribal or local government economic
12 development goals in accordance with the purposes of
13 enhancing the state's fresh water resources; and

14 (4) submit a specific, actionable and
15 measurable community benefits plan that includes a process
16 for community engagement and is designed to provide broadly
17 shared benefits to members of the public who are or may be
18 impacted by the strategic water supply program contract.

19 D. To be eligible for a strategic water supply
20 program grant, the grant recipient shall be a public entity
21 or federally recognized Indian nation, tribe or pueblo
22 located wholly or partially in New Mexico and the grant
23 project shall:

24 (1) be approved by the state engineer as
25 advancing the exploration, production or treatment of

1 brackish water in New Mexico;

2 (2) comply with applicable state, federal,
3 tribal and local governmental standards and permit
4 requirements and other provisions of law, including public
5 notice, public hearing processes and all other associated
6 requirements related to public involvement, to protect
7 existing water rights, conservation of water within the
8 state, public welfare, public health and the environment; and

9 (3) clearly demonstrate how the project will
10 advance state, tribal or local government economic
11 development goals in accordance with the purposes of
12 enhancing the state's fresh water resources.

13 E. The agency awarding a strategic water supply
14 contract shall publish the community benefits plan to the
15 agency's website.

16 F. When preparing a request for proposals pursuant
17 to Subsection C of this section or a grant solicitation
18 pursuant to Subsection D of this section, the agency shall:

19 (1) do so in accordance with the
20 State-Tribal Collaboration Act, where applicable; and

21 (2) consult with the secretary of economic
22 development.

23 G. The department of environment or the office of
24 the state engineer shall notify the state investment council
25 about new strategic water supply program contracts or grants

1 and any opportunities for public input associated with the
2 strategic water supply program within two business days of
3 the date the agency publishes the new grant, contract or
4 public input opportunity to the general public.

5 H. When evaluating contract or grant proposals for
6 compliance with Subsection C or D of this section, the agency
7 shall evaluate how the projects in the proposal will limit
8 greenhouse gas emissions.

9 I. In connection with any strategic water supply
10 program contract or grant that is subject to the notice of
11 intention filing requirements pursuant to Section 72-12-26
12 NMSA 1978, the office of the state engineer shall provide an
13 opportunity for a federally recognized Indian nation, tribe
14 or pueblo located wholly or partially in New Mexico, a
15 person, a firm, a corporation or other entity to file an
16 objection or protest through a process consistent with the
17 provisions of Section 72-12-3 NMSA 1978 regarding a
18 determination by the state engineer made pursuant to Section
19 72-12-26 NMSA 1978.

20 SECTION 4. STRATEGIC WATER SUPPLY PROGRAM FUND.--

21 A. The "strategic water supply program fund" is
22 created as a nonreverting fund in the state treasury and
23 shall be administered by the department of environment. The
24 fund consists of distributions, appropriations, gifts,
25 grants, donations, income from investment of the fund and

1 fees collected pursuant to Section 70-13-6 NMSA 1978.

2 B. Money in the fund is appropriated to the
3 department of environment and the office of the state
4 engineer for the purpose of administering the strategic water
5 supply program pursuant to Section 3 of the Strategic Water
6 Supply Act.

7 C. Expenditures from the fund shall be to the
8 department of environment or the office of the state engineer
9 by warrant of the secretary of finance and administration
10 pursuant to vouchers signed by both the secretary of
11 environment or the secretary's authorized representative and
12 the state engineer or the state engineer's authorized
13 representative.

14 SECTION 5. Section 72-12-26 NMSA 1978 (being Laws 1967,
15 Chapter 86, Section 2) is amended to read:

16 "72-12-26. NOTICE OF DRILLING--DEPTH AND LOCATION.--Any
17 person proposing to drill wells or recomplete existing wells
18 to appropriate waters referred to in Section 72-12-25 NMSA
19 1978 shall file a notice of intention to drill or recomplete
20 with the office of the state engineer in such form as the
21 state engineer shall prescribe and shall publish a notice, in
22 a newspaper of general circulation in the county in which the
23 proposed wells will be located once a week for three
24 consecutive weeks, stating the location and the proposed depth
25 of such wells, the purpose for which the water shall be used

1 and an estimate of the volume of water to be used. The wells
2 shall not be drilled or recompleted prior to thirty days after
3 the last publication of the notice and until the state
4 engineer has determined that the use of water stated in the
5 notice will not impair existing water rights, be contrary to
6 the conservation of water within the state or be detrimental
7 to the public welfare of the state."
