CHAPTER 72
Water Law

ARTICLE 1
Water Rights in General

72-1-1. Natural waters; public.

All natural waters flowing in streams and watercourses, whether such be perennial, or torrential, within the limits of the state of New Mexico, belong to the public and are subject to appropriation for beneficial use. A watercourse is hereby defined to be any river, creek, arroyo, canyon, draw or wash, or any other channel having definite banks and bed with visible evidence of the occasional flow of water.

History: Laws 1907, ch. 49, § 1; Code 1915, § 5654; C.S. 1929, § 151-101; Laws 1941, ch. 126, § 1; 1941 Comp., § 77-101; 1953 Comp., § 75-1-1.

ANNOTATIONS

Cross references. — For appropriation of water, see N.M. Const., art. XVI, § 2.

Purpose of Water Code. — Water Code of 1907 had for its purpose the conservation, protection and development of public waters of state and their application to beneficial uses. State ex rel. Red River Valley Co. v. District Court, 39 N.M. 523, 51 P.2d 239 (1935).

Water Code of 1907 was merely declaratory of law as it had already been established in this jurisdiction by repeated judicial decisions, except that by those decisions the time within which the application was to be made was not any definite period, but a reasonable time, depending, to some extent, on the circumstances of the particular case. Hagerman Irrigation Co. v. McMurry, 16 N.M. 172, 113 P. 823 (1911).

Section was merely declaratory of existing law. Yeo v. Tweedy, 34 N.M. 611, 286 P. 970 (1929).

New Mexico has comprehensive system for adjudication of water rights. United States ex rel. Acoma & Laguna Indian Pueblos v. Bluewater-Toltec Irrigation Dist., 580 F. Supp. 1434 (D.N.M. 1984), aff'd, 806 F.2d 986 (10th Cir. 1986).

Arid-region doctrine, regarding appropriation of water, was modified by Water Code of 1907, so that here the right to use of water, both as to volume and periods of annual use, was regulated either by permit of state engineer or decrees of the courts. Harkey v. Smith, 31 N.M. 521, 247 P. 550 (1926).

Waters affected. — This section expressly limits the operation of chapter 49, Laws 1907, to natural public waters within the territory which are flowing in streams and watercourses; it excludes seepage water. Vanderwork v. Hewes, 15 N.M. 439, 110 P. 567 (1910).

State controls water use because it does not part with ownership; it only allows a usufructuary right to water. Jicarilla Apache Tribe v. United States, 657 F.2d 1126 (10th Cir. 1981).

"Public waters". — Natural waters flowing in streams and watercourses in New Mexico are public waters subject to adjudication and waters flowing into New Mexico via interstate streams and diverted in New Mexico are public waters of this state. State ex rel. Reynolds v. Luna Irrigation Co., 80 N.M. 515, 458 P.2d 590 (1969).

Surface waters entering New Mexico after impoundment and subsequent release by Arizona irrigation company were public waters. State ex rel. Reynolds v. Luna Irrigation Co., 80 N.M. 515, 458 P.2d 590 (1969).

Seasonal flow through ravine. — Where surface water in hilly region or high bluffs seeks outlet through gorge or ravine during rainy season, and by its flow assumes definite and natural channel, such accustomed channel through which water flows possesses attributes of natural watercourse; flow of water need not be continuous, and size of stream is immaterial. Jaquez Ditch Co. v. Garcia, 17 N.M. 160, 124 P. 891 (1912).

Applicability of adjudication provisions to other waters. — Other waters than those mentioned in this section may be and are public waters, and rights not brought immediately within the administrative provisions of this Water Code may still be subject to its adjudication provisions. El Paso & R.I. Ry. v. District Court, 36 N.M. 94, 8 P.2d 1064 (1931).

Artificial waters are not subject to appropriation. Hagerman Irrigation Co. v. East Grand Plains Drainage Dist., 25 N.M. 649, 187 P. 555 (1920).

Act does not regulate community acequias constructed prior to passage thereof, as to right to change point of diversion from stream into acequias. Pueblo of Isleta v. Tondre, 18 N.M. 388, 137 P. 86 (1913).

Interstate irrigation project. — Irrigation project upon waters of natural stream running from Colorado into New Mexico, when point of diversion, head gate and about six miles of irrigation ditch were in Colorado, was not within jurisdiction of territorial engineer of New Mexico. Turley v. Furman, 16 N.M. 253, 114 P. 278 (1911).

Right to take water in individual user. — Right of water user to take water from public stream is a several right owned and possessed by the individual user, although ditch

may have been constructed by joint labor. Snow v. Abalos, 18 N.M. 681, 140 P. 1044 (1914).

Property right. — Water right is property and held to be real property by most authorities, and ten-year statute of limitations controls actions regarding such right. New Mexico Prods. Co. v. New Mexico Power Co., 42 N.M. 311, 77 P.2d 634 (1937).

Stream and underground water rights identical. — Legislature has provided somewhat different administrative procedure for securing appropriator's rights to stream water and underground water, but substantive rights, when obtained, are identical. City of Albuquerque v. Reynolds, 71 N.M. 428, 379 P.2d 73 (1962).

Claim under Water Code. — Right of one claiming right to use of water for irrigation purposes under Water Code of 1907 does not relate back to earlier date than filing of application, as required by said act. Farmers Dev. Co. v. Rayado Land & Irrigation Co., 28 N.M. 357, 213 P. 202 (1923).

Initiation of rights prior to passage of Water Code. — Where individual had initiated rights under general law and was prosecuting the same with diligence when the 1907 law went into effect, such right was recognized by and excluded from operation of the 1907 act. Farmers Dev. Co. v. Rayado Land & Irrigation Co., 28 N.M. 357, 213 P. 202 (1923).

Actual appropriation as better right. — Prior actual appropriation of water to beneficial use, open and visible, will give better right to the water than could be obtained under approved application to state engineer for right to appropriate. 1914 Op. Att'y Gen. 14-1271.

Determination of beneficial use is a question of fact. Jicarilla Apache Tribe v. United States, 657 F.2d 1126 (10th Cir. 1981).

Beneficial uses may include recreation, fish and wildlife purposes. — The holding of Jicarilla Apache Tribe v. United States, 657 F.2d 1126 (10th Cir. 1981), does not broadly stand for the proposition that using San Juan-Chama Project water for recreation, fish and wildlife purposes is not “beneficial” under federal and state law. Rio Grande Silvery Minnow v. Keys, 333 F.3d 1109 (10th Cir. 2003).

Protection of endangered species is a beneficial use. — Diverting San Juan-Chama Project water to prevent jeopardy to an endangered species of minnow is a “beneficial” use under New Mexico law. Rio Grande Silvery Minnow v. Keys, 333 F.3d 1109 (10th Cir. 2003).

Equitable apportionment is the doctrine of federal common law that governs disputes between states concerning their rights to use the water of an interstate stream. When both states recognize the doctrine of prior appropriation, priority becomes the "guiding principle" in an allocation between competing states, but state law is not

controlling. Colorado v. New Mexico, 459 U.S. 176, 103 S. Ct. 539, 74 L. Ed. 2d 348 (1982), reh'g denied, 459 U.S. 1229, 103 S. Ct. 1418, 75 L. Ed. 2d 471 (1983).

In the determination of an equitable apportionment of the water of the Vermejo river between Colorado and New Mexico the rule of priority is not the sole criterion. While the equities supporting the protection of established, senior uses are substantial, it is also appropriate to consider additional factors relevant to a just apportionment, such as the conservation measures available to both states and the balance of harm and benefit that might result from a diversion sought by Colorado. Colorado v. New Mexico, 459 U.S. 176, 103 S. Ct. 539, 74 L. Ed. 2d 348 (1982), reh'g denied, 459 U.S. 1229, 103 S. Ct. 1418, 75 L. Ed. 2d 471 (1983).

Equitable apportionment applies to claim of diversion for future uses. — The flexible doctrine of equitable apportionment clearly extends to a state's claim to divert water for future uses. Whether such a diversion should be permitted will turn on an examination of all factors relevant to a just apportionment. Colorado v. New Mexico, 459 U.S. 176, 103 S. Ct. 539, 74 L. Ed. 2d 348 (1982), reh'g denied, 459 U.S. 1229, 103 S. Ct. 1418, 75 L. Ed. 2d 471 (1983).

Pueblo Rights Doctrine. — The "pueblo rights doctrine," providing that any municipality tracing its origins to a Spanish or Mexican pueblo grant, particularly after 1789, has a prior and paramount right to all waters of nonnavigable streams flowing through or by the pueblo to the extent necessary to serve its future growth, is invalid and *Cartwright v. Public Service Co.*, 66 N.M. 64, 343 P.2d 654 (1958) is overruled. State ex rel. Martinez v. City of Las Vegas, 118 N.M. 257, 880 P.2d 868 (Ct. App. 1994).

What law governs water rights. — Provisions of New Mexico constitution, statutory law of New Mexico and case law of federal, territorial and state courts govern acquisition of water rights of all parties including federal government, state game commission and individual defendants. United States v. Ballard, 184 F. Supp. 1 (D.N.M. 1960).

Jurisdiction of suit. — Where water rights of stream system had not been adjudicated under Water Code of 1907, but were more than twenty years old when code was enacted, district court had jurisdiction of suit for obstruction of flow and appropriation of waters of creek. New Mexico Prods. Co. v. New Mexico Power Co., 42 N.M. 311, 77 P.2d 634 (1937).

Trial court erred in dismissing suit for failure to exhaust administrative remedies, where parties sought adjudication of their respectively claimed rights to use of waters of a draw; fact that neither party had secured a permit from state to beneficially use the waters did not necessarily prevent acquisition by either or both of rights to beneficial use by appropriation, nor did it necessarily prevent acquisition of rights to use of these waters by either as against the other. If claimed rights were acquired pursuant to common-law appropriations prior to the enactment of state's first water code, those

rights were in no way dependent on existence of application to or permit from state engineer. May v. Torres, 86 N.M. 62, 519 P.2d 298 (1974).

Taking of sand. — If state or its contractor takes sand from sand bar in middle of Chama River near highway project, it should obtain consent of abutting property owners. 1937-38 Op. Att'y Gen. 38-1902.

Effect of former law. — General law for appropriation of water for the arid states was not affected by the enactment of Laws 1905, chs. 102 and 104 (now repealed and superseded). Farmers Dev. Co. v. Rayado Land & Irrigation Co., 28 N.M. 357, 213 P. 202 (1923).

Laws 1905, ch. 104 (now superseded) was permissive in character, applying only to such claims to the right of use of water as were initiated under it; it was not exclusive and did not preclude a claim under the general law, nor deprive a claimant of the doctrine of relation. Farmers Dev. Co. v. Rayado Land & Irrigation Co., 28 N.M. 357, 213 P. 202 (1923), explained State ex rel. Reynolds v. Mendenhall, 68 N.M. 467, 362 P.2d 998 (1961).

Law reviews. — For article, "Water Rights Problems in the Upper Rio Grande Watershed and Adjoining Areas," see 11 Nat. Resources J. 48 (1971).

For comment on *State ex rel. Reynolds v. Miranda,* 83 N.M. 443, 493 P.2d 409 (1972), see 13 Nat. Resources J. 170 (1973).

For comment, "Wrestling with Water Quantification in Western States," see 14 Nat. Resources J. 423 (1974).

For note, "Appropriation by the State of Minimum Flows in New Mexico Streams," see 15 Nat. Resources J. 809 (1975).

For note, "New Mexico's National Forests and the Implied Reservation Doctrine," see 16 Nat. Resources J. 975 (1976).

For note, *"Brantley v. Carlsbad Irrigation District:* Limits of the Templeton Doctrine Affirmed," see 19 Nat. Resources J. 669 (1979).

For note, "Access to Sunlight: New Mexico's Solar Rights Act," see 19 Nat. Resources J. 957 (1979).

For note, "Access to Sunlight: New Mexico's Solar Rights Act," see 10 N.M.L. Rev. 169 (1979-80).

For comment, "Protection of the Means of Groundwater Diversion," see 20 Nat. Resources J. 625 (1980).

For comment, "Do State Water Anti-Exportation Statutes Violate the Commerce Clause? or Will New Mexico's Embargo Law Hold Water?" see 21 Nat. Resources J. 617 (1981).

For article, "New Mexico Water Law: An Overview and Discussion of Current Issues," see 22 Nat. Resources J. 1045 (1982).

For note, "Ninth Circuit Rules That Disclaimer States Lack Jurisdiction Over Indian Water Rights Under the McCarran Amendment," see 23 Nat. Resources J. 255 (1983).

For article, "The Impact of Recent Court Decisions Concerning Water and Interstate Commerce on Water Resources of the State of New Mexico," see 24 Nat. Resources J. 689 (1984).

For note, "Water Law - Public Trust Doctrine," see 24 Nat. Resources J. 809 (1984).

For article, "Managing River Systems: Centralization Versus Decentralization," see 24 Nat. Resources J. 1043 (1984).

For book review, "Water in the Hispanic Southwest: A Social and Legal History, 1550-1850," see 25 Nat. Resources J. 551 (1985).

For article, "Patterns of Cooperation in International Water Law: Principles and Institutions," see 25 Nat. Resources J. 563 (1985).

For comment, "Is There a Future for Proposed Water Uses in Equitable Apportionment Suits?", see 25 Nat. Resources J. 791 (1985).

For note, "Indian Water Law: The Continuing Jurisdictional Nightmare," see 25 Nat. Resources J. 841 (1985).

For note, "Transboundary Liability Goes with the Flow? *Gasser v. United States:* The Use and Misuse of a Treaty," see 30 Nat. Resources J. 955 (1990).

For article, "The Public Trust Doctrine and Community Values in Water," see 32 Nat. Resources J. 515 (1992).

For article, "The Forest Service, Water Yield and Community Stability: Defining the Contours of an Agency Commitment to Include Land Grant Communities in the Timber Management Process," see 39 Nat. Resources J. 819 (1999).

For article, “'Whisky’s fer Drinkin’; Water’s fer Fightin’!’ Is it? Resolving a Collective Action Dilemma in New Mexico,” see 43 Nat. Resources J. 185 (2003).

Am. Jur. 2d, A.L.R. and C.J.S. references. — 78 Am. Jur. 2d Waters § 49.

Title to beds of natural lakes or ponds, 23 A.L.R. 757, 112 A.L.R. 1108.

93 C.J.S. Waters §§ 3, 157.

72-1-2. [Water rights; appurtenant to land; priorities.]

Beneficial use shall be the basis, the measure and the limit of the right to the use of water, and all waters appropriated for irrigation purposes, except as otherwise provided by written contract between the owner of the land and the owner of any ditch, reservoir or other works for the storage or conveyance of water, shall be appurtenant to specified lands owned by the person, firm or corporation having the right to use the water, so long as the water can be beneficially used thereon, or until the severance of such right from the land in the manner hereinafter provided in this article. Priority in time shall give the better right. In all cases of claims to the use of water initiated prior to March 19, 1907, the right shall relate back to the initiation of the claim, upon the diligent prosecution to completion of the necessary surveys and construction for the application of the water to a beneficial use. All claims to the use of water initiated thereafter shall relate back to the date of the receipt of an application therefor in the office of the territorial or state engineer, subject to compliance with the provisions of this article, and the rules and regulations established thereunder.

History: Laws 1907, ch. 49, § 2; Code 1915, § 5655; C.S. 1929, § 151-102; 1941 Comp., § 77-102; 1953 Comp., § 75-1-2.

ANNOTATIONS

Cross references. — For severing of water rights from land, *see* 72-5-23 NMSA 1978.

For beneficial use of water in streams, *see* N.M. Const., art. XVI, §§ 1 to 3.

Meaning of "this article". — The term "this article," as used by the 1915 Code compilers, presumably refers to Code 1915, ch. 114, art. I, the provisions of which are presently compiled as 19-7-26, 72-1-1, 72-1-2, 72-1-5, 72-2-1 to 72-2-7, 72-2-9, 72-2-10, 72-3-1 to 72-3-5, 72-4-1, 72-4-13, 72-4-15, 72-4-17 to 72-4-19, 72-5-1 to 72-5-4, 72-5-6 to 72-5-24, 72-5-26 to 72-5-31, 72-5-33, 72-7-1 to 72-7-3, 72-8-1 to 72-8-6 and 72-9-1 to 72-9-3 NMSA 1978.

Effect of state engineer's denial of protest. — Service of decision denying protest on attorney rather than on protestant, where protestant's well was mentioned in application to change use of existing rights, did not adjudicate protestant's rights to the well. Garbagni v. Metropolitan Inv., Inc., 110 N.M. 436, 796 P.2d 1132 (Ct. App. 1990).

Section incorporated doctrine of relation into statutory law affecting surface waters. State ex rel. Reynolds v. Mendenhall, 68 N.M. 467, 362 P.2d 998 (1961).

State controls water use because it does not part with ownership; it only allows a usufructuary right to water. Jicarilla Apache Tribe v. United States, 657 F.2d 1126 (10th Cir. 1981).

New Mexico has not recognized inchoate water rights granted by Mexico or Spain. State v. City of Las Vegas, 2004-NMSC-009, 135 N.M. 375, 89 P.3d 47.

Water rights for irrigation remain appurtenant to land until severed. Turner v. Bassett, 2005-NMSC-009, 137 N.M. 381, 111 P.3d 701.

Exception to ownership rule. — This section and 72-5-22 NMSA 1978 evince an intent to create a limited statutory exception to the general rule that water rights and land ownership are distinct property rights. The statutory exception links ownership of the land with water rights, but only if the water is beneficially used on that land for irrigation purposes. KRM, Inc. v. Caviness, 1996-NMCA-103, 122 N.M. 389, 925 P.2d 9.

No administrable water right unless determination of acreage to which right appurtenant. — There cannot exist an administrable water right for 90 acres of a 224-acre tract unless there is first a determination of the acreage to which the right is appurtenant. State ex rel. Reynolds v. Holguin, 95 N.M. 15, 618 P.2d 359 (1980).

"Beneficial use". — Use of water for domestic purposes, including stock watering, is a "beneficial use" of water. First State Bank v. McNew, 33 N.M. 414, 269 P. 56 (1928).

Attainment of state conservation purposes by the state game commission constitutes a useful or beneficial application of waters of New Mexico. United States v. Ballard, 184 F. Supp. 1 (D.N.M. 1960).

No right to receive water for nonbeneficial use. — No one is entitled to receive water for a use not recognized as beneficial. Jicarilla Apache Tribe v. United States, 657 F.2d 1126 (10th Cir. 1981).

Determination of beneficial use is a question of fact. Jicarilla Apache Tribe v. United States, 657 F.2d 1126 (10th Cir. 1981).

Maximum utilization is fundamental requisite. — Because water conservation and preservation is of utmost importance, maximum utilization is a fundamental requisite of "beneficial use." Jicarilla Apache Tribe v. United States, 657 F.2d 1126 (10th Cir. 1981).

Excessive diversion not beneficial use. — No matter how early a person's priority of appropriation may be, he is not entitled to receive more water than is necessary for his actual use. An excessive diversion of water, through waste, cannot be regarded as a diversion to beneficial use. Jicarilla Apache Tribe v. United States, 657 F.2d 1126 (10th Cir. 1981).

Capacity of reservoir. — Private power and water company lost rights to unsold capacity of reservoir, not put to beneficial use because not appurtenant to land, upon tax sale. San Luis Power & Water Co. v. State, 57 N.M. 734, 263 P.2d 398 (1953).

Public land subject to water rights. — One who makes a filing on unoccupied public land takes it subject to any vested and accrued water right for domestic, mining, agricultural, manufacturing or other purposes, which are recognized by the local laws, customs and decisions of courts. First State Bank v. McNew, 33 N.M. 414, 269 P. 56 (1928).

Water rights transferred or moved under a permit become appurtenant only when final proofs and surveys are filed. Sun Vineyards, Inc. v. Luna County Wine Dev. Corp., 107 N.M. 524, 760 P.2d 1290 (1988).

Transfer of possessor and water rights. — One holding possessory right to public land for grazing purposes by virtue of an implied license from federal and state laws, and the ownership of sufficient living permanent water for cattle, intending to make a permanent water right incident to the public land, may sell and verbally transfer such water rights with such possessory right in the land. First State Bank v. McNew, 33 N.M. 414, 269 P. 56 (1928).

Water rights not included in "improvements". — Judicial announcement that purchaser of government public land is entitled to improvements on premises when taking possession does not apply to water rights. First State Bank v. McNew, 33 N.M. 414, 269 P. 56 (1928).

Priority in underground water rights. — Landowner who lawfully began developing underground water right and completed it with reasonable diligence acquired a water right with priority date as the initiation of his work even though the lands involved were placed within declared artesian basin before work was finished and water put to beneficial use. State ex rel. Reynolds v. Mendenhall, 68 N.M. 467, 362 P.2d 998 (1961).

To establish agricultural water right a man-made diversion was needed; turning of cattle into natural wash for grazing, or cutting of grass, was insufficient. State ex rel. Reynolds v. Miranda, 83 N.M. 443, 493 P.2d 409 (1972).

Templeton doctrine. — Core requirements for a successful Templeton supplemental well include a valid surface water right, surface water fed in part by groundwater, junior appropriators intercepting that groundwater by pumping, and a proposed well that taps the same groundwater that was the source of the applicant's original appropriation. Herrington v. State of N.M. ex rel. Office of the State Engineer, 2006-NMSC-014, 139 N.M. 368, 133 P.3d 258.

Downstream supplemental well. – A Templeton supplemental well need not, in all cases, be positioned upstream of a surface point of diversion. Herrington v. State of

N.M. ex rel. Office of the State Engineer, 2006-NMSC-014, 139 N.M. 368, 133 P.3d 258.

Claim under act. — Right of one who claims right to use of water for irrigation purposes under this act does not relate back to date earlier than his application. Farmers Dev. Co. v. Rayado Land & Irrigation Co., 28 N.M. 357, 213 P. 202 (1923).

Claim prior to act. — Where individual initiated rights under general law and was prosecuting the same with diligence when the 1907 law went into effect, such right was recognized by and excluded from operation of the 1907 act. Farmers Dev. Co. v. Rayado Land & Irrigation Co., 28 N.M. 357, 213 P. 202 (1923).

Water rights not appurtenant. — The water rights did not pass to the buyer since the water had never been used for irrigation on the land the seller sold to the buyer, and since there were no allegations that the continued commercial use of the water rights was indispensable to the continued enjoyment of the land sold to the buyer. KRM, Inc. v. Caviness, 1996-NMCA-103, 122 N.M. 389, 925 P.2d 9.

Pueblo Rights Doctrine. — Defendant water company and intervenor town of Las Vegas had a priority in Gallinas River waters' use, over users who had brought suit, under Pueblo Rights Doctrine. Cartwright v. Public Serv. Co., 66 N.M. 64, 343 P.2d 654 (1958).

There was no Spanish grant of pueblo rights whereby city of Santa Fe could claim superior rights to use water from Santa Fe creek or river. New Mexico Prods. Co. v. New Mexico Power Co., 42 N.M. 311, 77 P.2d 634 (1937), distinguished Cartwright v. Public Serv. Co., 66 N.M. 64, 343 P.2d 654 (1958).

Pueblo water rights doctrine. — Application of the pueblo water rights doctrine, without consideration of the underlying facts, is insufficient to support a grant of summary judgment. City of Las Vegas v. Oman, 110 N.M. 425, 796 P.2d 1121 (Ct. App. 1990), cert. denied, 110 N.M. 282, 795 P.2d 87 (1990) (containing discussion of pueblo water rights doctrine and history of Gallinas River water rights).

Owner of water right has duty to comply with law. State ex rel. Reynolds v. South Springs Co., 80 N.M. 144, 452 P.2d 478 (1969).

State engineer. — After original approved application for water, it is within discretion of state engineer to order commencement of work and to grant extensions of time. 1914 Op. Att'y Gen. 56.

Section 72-2-1 NMSA 1978 makes the director of the water resources division of the natural resources department the "state engineer."

Beneficial use of water is determined by ultimate use to which the water is put rather than by distribution of the water among the people. 1974 Op. Att'y Gen. No. 74-23.

Law reviews. — For article, "Water Rights Problems in the Upper Rio Grande Watershed and Adjoining Areas," see 11 Nat. Resources J. 48 (1971).

For note, "New Mexico's National Forests and the Implied Reservation Doctrine," see 16 Nat. Resources J. 975 (1976).

For article, "The Law of Prior Appropriation: Possible Lessons for Hawaii," see 25 Nat. Resources J. 911 (1985).

For note, "Recent Developments in the El Paso/New Mexico Interstate Groundwater Controversy - The Constitutionality of New Mexico's New Municipality Water Planning Statute," see 29 Nat. Resources J. 223 (1989).

For note, "Contract for Nonbeneficial Use: New Mexico Water Law Is Drowned Out by Contract," see 32 Nat. Resources J. 149 (1992).

Am. Jur. 2d, A.L.R. and C.J.S. references. — 78 Am. Jur. 2d Waters § 230.

Trespass, injunction against repeated or continuing trespasses in cases involving water rights, 60 A.L.R.2d 310.

Liability of person obstructing stream, ravine or similar area by debris or waste, for damages caused by flooding or the like, 29 A.L.R.2d 447.

Construction or maintenance of sewers, water pipes or the like by public authorities in roadway, street or alley as indicating dedication or acceptance thereof, 52 A.L.R.2d 263.

Implied covenant or obligation of lessor to furnish water or water supply for business needs of the lessee, 65 A.L.R.2d 1313.

Way by necessity where property is accessible by navigable waters, 9 A.L.R.3d 600.

Liability for diversion of surface water by raising surface level of land, 88 A.L.R.4th 891.

93 C.J.S. Waters §§ 182 to 185.

72-1-2.1. Water rights; change in ownership; filing and recording; constructive notice.

In the event of any changes of ownership of a water right, whether by sale, gift or any other type of conveyance, affecting the title to a water right that has been permitted

or licensed by the state engineer, has been declared with the state engineer or has been adjudicated and is evidenced by a subfile order, partial final decree, final decree or any other court order, the new owner of the water right shall file a change of ownership form with the state engineer. The form shall include all information conforming with water rights of record filed with the state engineer and shall be accompanied by a copy of a warranty deed or other instrument of conveyance. The new owner shall record a copy of the change of ownership form filed with the state engineer with the clerk of the county in which the water right will be located. The filing shall be public notice of the existence and contents of the instruments so recorded from the time of recording with the county clerk.

History: Laws 1991, ch. 34, § 1; 1996, ch. 32, § 1.

ANNOTATIONS

Cross references. — For pre-1907 vested surface water rights, see 72-1-3 NMSA 1978.

For recording of permits, decrees, and documents affecting water rights and admissibility in evidence of certified copies, see 72-5-21 NMSA 1978.

For transfer of surface water rights, see 72-5-22 NMSA 1978.

For declaration of beneficial use, verification, and recording of groundwater rights, see 72-12-5 NMSA 1978.

For recording of deeds, mortgages, and patents, see 14-9-1 NMSA 1978.

The 1996 amendment, in the first sentence, substituted "engineer" for "engineer's office" twice and substituted "with the state engineer" for "state engineer" at the end of that sentence; added the second sentence; and in the third sentence, added "The new owner shall record a copy of the change of ownership form filled with the state engineer" at the beginning, deleted "or counties" following "county", substituted "will be located" for "is located", and deleted "and the clerk shall forward an endorsed copy to the state engineer's office for filing in its records" from the end. Laws 1996, ch. 32 contains no effective date provision, but, pursuant to N.M. Const., art. IV, § 23, is effective May 15, 1996, 90 days after adjournment of the legislature. See Volume 14 NMSA 1978 for "Adjournment Dates of Sessions of Legislature" table.

Slander of title. — In a water rights dispute, a court properly granted summary judgment to land owners where a change of ownership properly reflected ownership of 519 acres of the 655 acres of land appurtenant to a water rights license, and therefore, the information contained in the change of ownership form was correct and there was no published matter which was untrue and disparaging to the opponent's water rights. Village of Wagon Mound v. Mora Trust, 2003-NMCA-035, 133 N.M. 373, 62 P.3d 1255, cert. denied, 133 N.M. 413, 63 P.3d 516 (2003).

72-1-2.2. Legislative findings; declaration of purpose.

A. The legislature hereby finds and declares that there exists a potential water shortage crisis in the Pecos River basin as a result of the requirements and obligations of the Pecos River Compact and the United States supreme court's amended decree in Texas v. New Mexico, No. 65 original as well as the recent droughts and the demands on this water system.

B. The legislature hereby finds and declares that this shortage of water and the state's obligation to Texas pursuant to the compact and the decree is a statewide problem affecting all the citizens of the state. The state is obligated under the terms of the decree to fulfill an obligation to repay Texas in water for any shortages of water owed to Texas by the state of New Mexico.

C. The legislature hereby finds and declares that the state's obligations extend not only to Texas but also to the citizens of New Mexico and their future generations to ensure adequate water supply. If unfulfilled, the obligations of the state to Texas could cost the state millions of dollars in lost revenues, employment and economic productivity.

D. The legislature further finds and declares that to avoid the catastrophic consequences of failing to address immediately the problem of the Pecos river water shortage, the interstate stream commission is to purchase, and retire and place in a state water conservation program administered by the interstate stream commission, adequate water rights over a period of years to increase the flow of water in the Pecos River and diminish the impact of man-made depletions of the stream flow and therefore meet the state's future obligations under the Pecos River Compact and the United States supreme court's amended decree in Texas v. New Mexico, No. 65 original, pursuant to the appropriation and the conditions set forth in Section 2 of this act.

History: Laws 1991, ch. 99, § 1.

ANNOTATIONS

Cross references. — For wetlands area restoration, see 75-8-2 NMSA 1978.

Appropriations. — Laws 1991, ch. 99, § 2, effective April 2, 1991, as amended by Laws 1993, ch. 97, § 1, effective June 18, 1993, appropriates $1,000,000 from the New Mexico irrigation works construction fund to the interstate stream commission for expenditure in the eighty-first fiscal year for purchasing water rights along the Pecos River basin for compliance with Pecos River Compact and United States supreme court's decree; appropriates $2,000,000 from the New Mexico irrigation works construction fund to the interstate stream commission in each of the eighty-second through eighty-sixth fiscal years for expenditure in each of the eighty-second through eighty-sixth fiscal years for retiring water rights along the Pecos River basin for

compliance with the Compact and court decree; and states the conditions under which the interstate stream commission shall administer the appropriations.

"Section 2 of this act". — The phrase "Section 2 of this act", referred to in Subsection D, means Laws 1991, ch. 99, § 2. For subject matter of that section, see the appropriations note above.

Pueblo rights doctrine unduly interferes with the state's regulation of water rights. State v. City of Las Vegas, 2004-NMSC-009, 135 N.M. 375, 89 P.3d 47.

72-1-2.3. Lower Pecos river basin below Sumner lake water bank; acequia and community ditch water banks; interstate stream commission.

A. The interstate stream commission may recognize a water bank established by an irrigation district, a conservancy district, an artesian conservancy district, a community ditch, an acequia or a water users association in the lower Pecos river basin below Sumner lake for purposes of compliance with the Pecos River Compact [72-15-19 NMSA 1978].

B. The interstate stream commission shall propose and recommend to the state engineer for adoption rules for recognition of a water bank that include:

(1) criteria, terms and conditions for deposit of a water right in the bank;

(2) terms and conditions for the accrual, pooling, exchange, assignment and conditions of the deposit of a water right;

(3) procedures for recording and annual reporting of all transactions to the interstate stream commission and the state engineer; and

(4) procedures for the water bank to temporarily transfer deposited water to new purposes and places of use and points of diversion without formal proceedings before the state engineer.

C. A lower Pecos river basin below Sumner lake water bank may contract with a person to accrue, pool, exchange, assign or lease water rights to facilitate compliance with the Pecos River Compact [72-15-19 NMSA 1978]. A transaction and transfer of water by a water bank in the Pecos river basin shall:

(1) not impair other water rights;

(2) not deplete water in the system above that level that would have occurred in the absence of the transaction;

(3) comply with state law; and

(4) be within the same stream system or underground water source.

History: Laws 2002, ch. 77, § 1; 2003, ch. 54, § 2; 2003, ch. 132, § 2.

ANNOTATIONS

Cross references. — For additional enactment concerning water banking, see 73-2-55.1 NMSA 1978.

2003 amendments. — Identical amendments to this section were enacted by Laws 2003, ch. 54, § 2 and Laws 2003, ch. 132, § 2, effective June 20, 2003, substituting "a water users" for "water user's" following "ditch, and acequia or" in Subsection A; deleting former Subsection C pertaining to an acequia or community ditch establishing a water bank for temporarily reallocating water; redesignating Subsection D as present Subsection C; and deleting Subsection E which read: "All authorities provided by this act shall terminate on December 31, 2005". This section is set out as amended by Laws 2003, ch. 132, § 2. See 12-1-8 NMSA 1978.

Compiler's notes. — Laws 2005, ch. 165, § 1 repeals Laws 2003, ch. 54, § 3 and Laws 2003, ch. 132, § 3, which would have repealed this section effective December 31, 2005.

Remedying past failures to perform. — There is nothing in the nature of compacts generally or of this Compact in particular that counsels against rectifying a failure to perform in the past as well as ordering future performance called for by the Compact. Texas v. New Mexico, 482 U.S. 124, 107 S. Ct. 2279, 96 L. Ed. 2d 105 (1987).

The matter of remedying past water shortages caused by New Mexico's underdeliveries was returned to a special master for such further proceedings as he deemed necessary and for his ensuing recommendation as to whether New Mexico should be allowed to elect a monetary remedy and, if so, to suggest the size of the payment and other terms that the state must satisfy. Texas v. New Mexico, 482 U.S. 124, 107 S. Ct. 2279, 96 L. Ed. 2d 105 (1987).

Decree ordering state to comply with compact and appointing river master. — See Texas v. New Mexico, 485 U.S. 388, 108 S. Ct. 1201, 99 L. Ed. 2d 450 (1988).

72-1-2.4. Pecos river; purpose; conditions for expenditures.

A. The purpose of this section is to achieve compliance with the Pecos River Compact [72-15-19 NMSA 1978], establish a base flow of the Pecos river of fifty cubic feet per second at the Artesia bridge and provide a reliable annual irrigation supply of ninety thousand acre-feet of water for delivery of three acre-feet per acre of irrigated land in the Carlsbad irrigation district and for adequate water to fulfill delivery requirements to the Texas state line pursuant to the Pecos River Compact.

B. The interstate stream commission shall determine the need for projects to be funded with the appropriations for compliance with the Pecos River Compact and may expend funds for the purchase of land with appurtenant water rights or rights to the delivery of water and to take other appropriate actions that would effectively aid New Mexico in compliance with the United States supreme court amended decree in *Texas v. New Mexico*, No. 65 original.

C. The interstate stream commission shall not expend any funds for the purchase of land with appurtenant water rights or rights to the delivery of water unless the commission has entered into contracts with the governing bodies of the Carlsbad irrigation district, the Pecos valley artesian conservancy district and the Fort Sumner irrigation district that specify the actions the parties agree will be taken or avoided to ensure that the expenditures will be effective toward permanent compliance with New Mexico's obligations under the Pecos River Compact [72-15-19 NMSA 1978] and amended decree.

D. Expenditures for the purchase of land with valid appurtenant water rights or rights to the delivery of water shall be made only from willing sellers within the lower Pecos river basin downstream from Sumner reservoir for projects that comply with the following criteria:

(1) land with appurtenant water rights or with rights to the delivery of water shall be purchased in each of the following areas of the lower Pecos river basin:

(a) from Sumner reservoir to Acme, to the extent that willing sellers elect to participate and any affected irrigation district agrees to change its operations, as necessary, so the acquired rights effectively increase downstream flows of the Pecos river;

(b) from Acme to Brantley dam; and

(c) with first priority placed in the area from Brantley dam to the state line contingent upon the adjudication or settlement of the surface water claims by or within the Carlsbad irrigation district;

(2) the interstate stream commission shall purchase with the first available funding six thousand acres of land having rights to the delivery of water by the [Carlsbad irrigation] district or valid appurtenant water rights in approximately equal purchase increments from:

(a) assessed land within the Carlsbad irrigation district; and

(b) irrigated land located between Brantley dam and Sumner reservoir; and

(3) subsequent to the purchase of the first six thousand acres of land, the interstate stream commission shall use all future appropriations that are available for the

purchase of land with appurtenant water rights or rights to the delivery of water such that no more than one acre of land within the Carlsbad irrigation district may be purchased for every three acres of land purchased between Brantley dam and Sumner reservoir.

E. The interstate stream commission shall prepare a comprehensive request for bids from owners of land with appurtenant water rights or rights to the delivery of water, shall evaluate and compare the bids and shall make offers to contract in response to the bids. The request for bids shall:

(1) provide for competition among the owners of land from whom bids are requested to sell their land with appurtenant water rights or rights to the delivery of water;

(2) contain criteria to address the priority of the purchases based on the effectiveness of the purchased land with appurtenant water rights or rights to the delivery of water in increasing the flows of the Pecos river and to address the different value of water rights associated with the degree of seniority of the water rights;

(3) provide for the purchase of up to six thousand acres of land assessed by the Carlsbad irrigation district having rights for the delivery of water; and

(4) provide for the purchase of land upstream from the Carlsbad irrigation district in amounts necessary to comply with the requirements of this section.

F. The interstate stream commission shall evaluate all bids and shall offer to contract with all sellers whose offers to sell comply with the criteria required by this section, comply with the bid conditions and are determined by the interstate stream commission to be most advantageous to increase the flows of the Pecos river and comply with the Pecos River Compact [72-15-19 NMSA 1978] and amended decree.

G. Contracts shall be contingent upon the interstate stream commission receiving sufficient appropriations to close the purchases.

H. In the event the interstate stream commission determines that the total Pecos river rights it has purchased with appropriations made by the legislature for that purpose are in excess of those rights permanently needed for compliance with New Mexico's obligations under the Pecos River Compact, then the commission shall offer the excess land with appurtenant water rights or rights to the delivery of water first to the original owner at the original point of diversion and for the original place and purpose of use. Lands shall be offered for sale in the order in which they were acquired by:

(1) sending a written offer to sell to the last known address of the owner by certified mail, which offer shall remain open for at least sixty days from the date of the mailing;

(2) including in the offer to sell a notice that if the offer is not accepted by the original owner within a stated time pursuant to this subsection, the offer will be deemed rejected and automatically withdrawn and made available for purchase at the current market price; and

(3) depositing the revenue from sales into the New Mexico irrigation works construction fund.

History: Laws 2002, ch. 94, § 2.

ANNOTATIONS

Cross references. — For New Mexico irrigation works construction fund, see 72-14-23 NMSA 1978.

Bracketed material. — The bracketed material in Subsection D(2) was inserted by the compiler: it was not enacted by the legislature, and is not part of the law.

Effective dates. — Laws 2002, ch. 94 contains no effective date provision, but, pursuant to N.M. Const., art. IV, § 23, is effective May 15, 2002, 90 days after adjournment of the legislature.

Remedying past failures to perform. — There is nothing in the nature of compacts generally or of this Compact in particular that counsels against rectifying a failure to perform in the past as well as ordering future performance called for by the Compact. Texas v. New Mexico, 482 U.S. 124, 107 S. Ct. 2279, 96 L. Ed. 2d 105 (1987).

The matter of remedying past water shortages caused by New Mexico's underdeliveries was returned to a special master for such further proceedings as he deemed necessary and for his ensuing recommendation as to whether New Mexico should be allowed to elect a monetary remedy and, if so, to suggest the size of the payment and other terms that the state must satisfy. Texas v. New Mexico, 482 U.S. 124, 107 S. Ct. 2279, 96 L. Ed. 2d 105 (1987).

Decree ordering state to comply with compact and appointing river master. — See Texas v. New Mexico, 485 U.S. 388, 108 S. Ct. 1201, 99 L. Ed. 2d 450 (1988).

72-1-2.5. Pecos river basin land management fund.

The "Pecos river basin land management fund" is created in the state treasury. The fund shall consist of appropriations, grants, donations or bequests to the fund, all revenues from land purchased pursuant to Section 72-1-2.4 NMSA 1978 and income from investment of the fund or money otherwise accruing to the fund. Money in the fund shall be invested pursuant to Chapter 6, Article 10 NMSA 1978. The interstate stream commission shall adopt rules for managing the land, for depositing revenues from the land and to administer the fund, and money in the fund is appropriated to the

commission to manage the land purchases pursuant to Section 72-1-2.4 NMSA 1978 and to manage augmentation well fields in the lower Pecos river basin. Money in the fund shall not revert to any other fund at the end of a fiscal year. Money in the fund shall be disbursed on warrants signed by the secretary of finance and administration pursuant to vouchers signed by the director of the interstate stream commission or the director's authorized representative.

History: Laws 2006, ch. 77, § 1.

ANNOTATIONS

Effective dates. — Laws 2006, ch. 77 contains no effective date provision, but, pursuant to N.M. Const., art. IV, § 23, is effective May 17, 2006, 90 days after adjournment of the legislature.

72-1-3. Declaration of water rights vested prior to 1907; form; contents; verification; filing; recording; presumption.

Any person, firm or corporation claiming to be an owner of a water right which was vested prior to the passage of Chapter 49, Laws 1907, from any surface water source by the applications of water therefrom to beneficial use, may make and file in the office of the state engineer a declaration in a form to be prescribed by the state engineer setting forth the beneficial use to which said water has been applied, the date of first application to beneficial use, the continuity thereof, the location of the source of said water and if such water has been used for irrigation purposes, the description of the land upon which such water has been so used and the name of the owner thereof. Such declaration shall be verified but if the declarant cannot verify the same of his own personal knowledge he may do so on information and belief. Such declarations so filed shall be recorded at length in the office of the state engineer and may also be recorded in the office of the county clerk of the county wherein the diversion works therein described are located. Such records or copies thereof officially certified shall be prima facie evidence of the truth of their contents.

History: 1953 Comp., § 75-1-2.1, enacted by Laws 1959, ch. 222, § 1; 1961, ch. 250, § 1.

ANNOTATIONS

Cross references. — For filing and recording of changes of ownership in water rights, see 72-1-2.1 NMSA 1978.

Compiler's notes. — The provisions of Laws 1907, ch. 49, are presently compiled as 19-7-26, 72-1-1, 72-1-2, 72-1-5, 72-2-1 to 72-2-7, 72-2-9, 72-2-10, 72-3-1 to 72-3-5, 72-4-1, 72-4-13, 72-4-15, 72-4-17 to 72-4-19, 72-5-1, 72-5-3, 72-5-4, 72-5-6 to 72-5-24, 72-5-26 to 72-5-28, 72-5-33, 72-7-1 to 72-7-3, 72-8-1 to 72-8-6, 72-9-1 to 72-9-3 NMSA 1978.

State engineer. — See 72-2-1 NMSA 1978.

Effect of declarations. — Admission of the declarations called for by this section would at most satisfy the burden of going forward; it would satisfy the burden of proof only if not rebutted by the state. Because these declarations go to the flood flows, and groundwater is not a source of flood flow, there can be no relation back on such flood flow. State ex rel. Martinez v. Lewis, 118 N.M. 446, 882 P.2d 37 (Ct. App. 1994).

Community ditch commissioners do not condemn land by filing declaration of water rights hereunder. 1969 Op. Att'y Gen. No. 69-96.

Law reviews. — For article, "Water Rights Problems in the Upper Rio Grande Watershed and Adjoining Areas," see 11 Nat. Resources J. 48 (1971).

For note, "New Mexico's National Forests and the Implied Reservation Doctrine," see 16 Nat. Resources J. 975 (1976).

For article, "Prior Appropriation, Impairment, Replacements, Models and Markets," see 23 Nat. Resources J. 25 (1983).

Am. Jur. 2d, A.L.R. and C.J.S. references. — 93 C.J.S. Waters § 184.

72-1-4. [Declaration of water rights vested prior to 1907; force and effect of prior declarations.]

Declarations heretofore filed in substantial compliance with Section 1 [72-1-3 NMSA 1978] hereof shall be recognized as of the same force and effect as if filed after the taking effect of this act [72-1-3, 72-1-4 NMSA 1978].

History: 1953 Comp., § 75-1-2.2, enacted by Laws 1959, ch. 222, § 2.

ANNOTATIONS

Law reviews. — For article, "Water Rights Problems in the Upper Rio Grande Watershed and Adjoining Areas," see 11 Nat. Resources J. 48 (1971).

Am. Jur. 2d, A.L.R. and C.J.S. references. — 93 C.J.S. Waters § 184.

72-1-5. Eminent domain; entry on property.

The United States, the state or any person, firm, association or corporation may exercise the right of eminent domain, to take and acquire property [and] right-of-way [rights-of-way] for the construction, maintenance and operation of reservoirs, canals, ditches, flumes, aqueducts, pipelines or other works for the storage or conveyance of water for beneficial uses, including the right to enlarge existing structures, and to use the same in common with the former owner; any such right-of-way for canal, ditch,

pipeline or other means for the conveyance of water shall in all cases be so located as to do the least damage to private or public property consistent with proper use and economical construction. Such property and right-of-way shall be acquired in the manner provided by the Eminent Domain Code [42A-1-1 to 42A-1-33 NMSA 1978]. Subject to the provisions of Sections 42A-1-8 through 42A-1-12 NMSA 1978, the engineers and surveyors of the United States, the state and of any person, firm or corporation shall have the right to enter upon the lands and waters of the state and of private persons and of private and public corporations, for the purpose of making hydrographic surveys and examinations and surveys necessary for selecting and locating suitable sites and routes for reservoirs, canals, pipelines and other waterworks.

History: Laws 1907, ch. 49, § 3; Code 1915, § 5656; C.S. 1929, § 151-103; 1941 Comp., § 77-103; 1953 Comp., § 75-1-3; Laws 1981, ch. 125, § 54.

ANNOTATIONS

Cross references. — For constitutional provision relating to eminent domain, see N.M. Const., art. II, § 20.

For eminent domain procedure, see Chapter 42A, Article 1 NMSA 1978.

For appraisal of land taken upon reconstruction of ditch, see 73-2-57 to 73-2-62 NMSA 1978.

Constitutionality. — Beneficial use of water is a public use, and condemnation of a right-of-way to make such beneficial use possible does not violate N.M. Const., art. II, § 20. Kaiser Steel Corp. v. W.S. Ranch Co., 81 N.M. 414, 467 P.2d 986 (1970).

Water is placed in unique category in state constitution. Kaiser Steel Corp. v. W.S. Ranch Co., 81 N.M. 414, 467 P.2d 986 (1970).

Question of "public interest" is judicial one, presumption being that a use is public if the legislature has declared it to be such. Kaiser Steel Corp. v. W.S. Ranch Co., 81 N.M. 414, 467 P.2d 986 (1970).

Legislature in this section has impliedly declared the conveying of water for beneficial uses to be a "public use." Kaiser Steel Corp. v. W.S. Ranch Co., 81 N.M. 414, 467 P.2d 986 (1970).

Scope of right. — Terms of this section and 72-5-15 NMSA 1978 are broad, and include every person having a water right, and there is nothing in terms of either section restricting class of persons entitled to enjoy right of condemnation to those persons who are seeking either to initiate a right, or whose rights are regulated by terms of the act. Pueblo of Isleta v. Tondre, 18 N.M. 388, 137 P. 86 (1913).

Community ditches. — Since community ditches are political subdivisions of the state under the power of eminent domain they may condemn land for the construction of ditches. 1969 Op. Att'y Gen. No. 69-96.

Section does not specifically authorize condemnation of public property. 1969 Op. Att'y Gen. No. 69-96.

Specific statutes on condemnation of ditch control over more general condemnation statute for water facilities found in this section. 1969 Op. Att'y Gen. No. 69-96.

Private property cannot be taken for ditch without payment of just compensation. 1969 Op. Att'y Gen. No. 69-96.

Fact that ditch commissioners are given right to alter, change location of, enlarge, extend or reconstruct ditch under conditions set forth in 73-2-56 NMSA 1978 cannot be construed as giving them authority to take private property for such uses without just compensation, contrary to N.M. Const., art. II, § 20, and without regard to statutory procedures. Marjon v. Quintana, 82 N.M. 496, 484 P.2d 338 (1971).

Inverse condemnation. — If ditch commissioners take land without initiating condemnation proceedings, landowner may institute his own suit for inverse condemnation and receive just compensation for the taking. 1969 Op. Att'y Gen. No. 69-96.

Recovery of damages was property owner's exclusive remedy where corporation appropriated private property to provide right-of-way for beneficial use of water prior to condemnation proceeding. Kaiser Steel Corp. v. W.S. Ranch Co., 81 N.M. 414, 467 P.2d 986 (1970).

Irrigation right-of-way. — Individual with only a permissive license to use an old highway borrow ditch had no right to have irrigation ditch constructed and relocated at public expense on private lands of another upon the widening of the road; if he wanted an irrigation right-of-way he could seek acquisition thereof by condemnation pursuant to this section and 73-2-1 NMSA 1978 et seq. Board of County Comm'rs v. Sykes, 74 N.M. 435, 394 P.2d 278 (1964).

Dam and reservoir. — Interstate stream commission was entitled to institute proceedings in name of state for condemnation of land for erecting a dam and reservoir to impound and conserve water. State ex rel. Red River Valley Co. v. District Court, 39 N.M. 523, 51 P.2d 239 (1935).

Appropriation of unused waters. — Under N.M. Const. and this section, company operating ditch or canal for irrigation purposes under Laws 1887, ch. 12 (62-2-1 NMSA 1978 et seq.), cannot prevent another from exercising right of eminent domain to

enlarge the existing structure so that he may have beneficial use of waters not appropriated by prior claimant. 1915-16 Op. Att'y Gen. 15-1508.

Municipality may not condemn operating acequia to build public street in its place, since ditch is already serving public purpose. City of Albuquerque v. Garcia, 17 N.M. 445, 130 P. 118 (1913); City of Raton v. Pollard, 270 F. 5 (8th Cir. 1920)distinguished.

Removal of ditch to widen highway. — Where a privately owned irrigation ditch or a community acequia or ditch interferes with widening of public highway, there being no other means of providing safe and convenient travel on the right-of-way, state highway commission [state transportation commission] could require removal of ditch or acequia under eminent domain, as rule that property devoted to one public use cannot be condemned for another public use has no application against the sovereign. 1951-52 Op. Att'y Gen. No. 5624.

Court of appeals erred in refusing to stay federal court action in diversity suit alleging that individual who claimed authority under this section to use water rights granted by state was guilty of trespass, until state law issues could be settled in a declaratory judgment suit then pending in state court. Kaiser Steel Corp. v. W.S. Ranch Co., 391 U.S. 593, 88 S. Ct. 1753, 20 L. Ed. 2d 835 (1968).

Law reviews. — For article, "Water Rights Problems in the Upper Rio Grande Watershed and Adjoining Areas," see 11 Nat. Resources J. 48 (1971).

For comment, "New Mexico's Mine Dewatering Act: The Search for Rehoboth," see 20 Nat. Resources J. 653 (1980).

Am. Jur. 2d, A.L.R. and C.J.S. references. — 26 Am. Jur. 2d Eminent Domain § 202 et seq.

Private owner, exercise of eminent domain for purpose of irrigating land of, 9 A.L.R. 583, 27 A.L.R. 519.

Pollution of water of well as result of flooding of property under right of eminent domain, 106 A.L.R. 989.

Obstruction or diversion of, or other interference with, flow of surface water as taking or damaging property within constitutional provision against taking or damaging without compensation, 128 A.L.R. 1195.

Highway officers' personal liability for interference with water rights, in construction or maintenance of highway, 27 A.L.R.3d 794.

29A C.J.S. Eminent Domain § 38.

72-1-6. [Traveler's use of water.]

All currents and sources of water, such as springs, rivers, ditches and currents of water flowing from natural sources in the state of New Mexico, shall be and they are declared free; in order that all persons traveling in this state shall have the right to take water therefrom for their own use, and that of the animals under their charge: provided, that the word traveler, shall not in any manner extend to persons who travel with a large number of animals; for in that case they shall not use the water of any spring belonging to any individual, without having first obtained the express consent of the owner. And it is further understood, that if any person in transit or traveling, at the time of using any of the water mentioned, shall cause any injury to the fields, planted lands or private property of any person, he shall pay to the party injured all damages that may have been done: provided, further, that this article shall in no manner apply to wells in this state: provided, further, that this article shall not be applicable to ponds or reservoirs of water, that persons may construct for their own proper use and benefit, and no person under pretext of title to said sources, springs, rivers or ditches, shall have the right to embarrass and hinder, or molest any transient person or traveler in or at the time of taking the water for his proper use and giving water to his animals.

History: Laws 1876, ch. 41, § 1; C.L. 1884, § 49; C.L. 1897, § 52; Code 1915, § 5812; C.S. 1929, § 151-1001; 1941 Comp., § 77-104; 1953 Comp., § 75-1-4.

ANNOTATIONS

Cross references. — For use of public land for range without owning water right, see 19-3-13 to 19-3-15 NMSA 1978.

Meaning of "this article". — The 1915 Code compilers substituted "this article" for "this act," presumably referring to Code 1915, ch. 114, art. VII, the provisions of which are presently compiled as 72-1-6, 72-1-7 NMSA 1978.

Private ownership of water in public streams was prohibited by this section, and a right to use of such waters for beneficial purposes was given to those who appropriated and applied them to such uses. Millheiser v. Long, 10 N.M. 99, 61 P. 111 (1900).

Am. Jur. 2d, A.L.R. and C.J.S. references. — 78 Am. Jur. 2d Waters §§ 87 to 89.

72-1-7. [Interfering with traveler's use of water; penalty.]

Hereafter, if any person or persons, shall embarrass, hinder and molest any person or persons at the time they may wish to take the water for their animals, and shall claim or demand of the traveler any compensation for the use of the water, such person or persons on conviction thereof, before the court of a justice of the peace [magistrate] or district judge, shall be fined in a sum not less than twenty-five dollars [($25.00)], nor more than fifty dollars [($50.00)], and shall be liable to pay all the damages caused thereby to the person so hindered.

History: Laws 1876, ch. 41, § 2; C.L. 1884, § 50; C.L. 1897, § 53; Code 1915, § 5813; C.S. 1929, § 151-1002; 1941 Comp., § 77-105; 1953 Comp., § 75-1-5.

ANNOTATIONS

Bracketed material. — The office of justice of the peace has been abolished, and the powers and duties thereof transferred to the magistrate court. See 35-1-38 NMSA 1978. The bracketed material was not enacted by the legislature and is not a part of the law.

72-1-8. Camping, trailer, recreational or motor vehicle parking prohibited.

It is unlawful for a person to camp, or to park a trailer, recreational vehicle or motor vehicle within three hundred yards of a manmade water hole, a water well or a watering tank used by wildlife or domestic stock, without the prior consent of the owner of the land, the person in lawful possession of the land or the authorized representatives of either. Any person violating the provisions of this section is guilty of a misdemeanor and upon conviction shall be fined in an amount not to exceed one hundred dollars ($100).

History: 1953 Comp., § 75-1-6, enacted by Laws 1965, ch. 36, § 1; 1975, ch. 47, § 1; 1979, ch. 151, § 1.

ANNOTATIONS

Cross references. — As to authority of conservation officers to enforce these provisions under emergency circumstances, see 17-2-19 NMSA 1978.

72-1-9. Municipal, county, member-owned community water systems, school district 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, school districts, 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, school districts, 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, school

districts, 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, school district, member-owned community water system or state university water supply for reasonably projected additional needs within forty years.

History: 1978 Comp., § 72-1-9, enacted by Laws 1985, ch. 198, § 1; 1990, ch. 40, § 1; 1999, ch. 40, § 3; 2000, ch. 73, § 2; 2003, ch. 369, § 1; 2006, ch. 45, § 1.

ANNOTATIONS

Cross references. — For the state engineer, see 72-2-1 NMSA 1978.

1990 amendments. — Identical amendments to this section were enacted by Laws 1990, ch. 11, § 1, approved and effective February 22, 1990, and Laws 1990, ch. 40, § 1, approved and effective February 28, 1990, which inserted the references to "state university" and "state universities" in the catchline and throughout the section and made minor stylistic changes. The section is set out as amended by Laws 1990, ch. 40, § 1. See 12-1-8 NMSA 1978.

The 1999 amendment, effective June 18, 1999, inserted "member-owned community water systems" in the catchline and throughout the section, and deleted "and recognizes that this administrative policy was incorporated into law by Chapter 2 of Laws 1983" at the end of Subsection A.

The 2000 amendment, effective March 6, 2000, inserted "municipal water users' associations" in Subsections A and B.

The 2003 amendment, effective July 1, 2003, substituted "special" for "municipal" throughout the section.

The 2006 amendment, effective May 17, 2006, provides in Subsection A that it promotes the public welfare and conservation of water for school districts to plan for development and use of water resources and provides in Subsection B that school districts shall be allowed a water use planning period and water rights based on a development plan not to exceed forty years.

Applicability. — Laws 1985, ch. 198, § 3 makes the provisions of the act applicable to all applications pending before the state engineer.

Laws 1990, ch. 40, § 2, effective February 28, 1990, makes the provisions of the act applicable to all applications pending before the state engineer.

Pueblo rights doctrine is incompatible with New Mexico water law. State v. City of Las Vegas, 2004-NMSC-009, 135 N.M. 375, 89 P.3d 47.

And doctrine interferes with the necessity of utilizing water for the maximum benefits. State v. City of Las Vegas, 2004-NMSC-009, 135 N.M. 375, 89 P.3d 47.

"Reasonable time". — A municipality may be given a more substantial "reasonable time" for its population growth than a typical water user would have to complete an appropriation. State v. City of Las Vegas, 2004-NMSC-009, 135 N.M. 375, 89 P.3d 47.

Law reviews. — For comment, "The Federal Power Act and Western Water Law - Can States Maintain Their Own Water Use Priorities?", see 27 Nat. Resources J. 218 (1987).

For note, "Recent Developments in the El Paso/New Mexico Interstate Groundwater Controversy - The Constitutionality of New Mexico's New Municipality Water Planning Statute," see 29 Nat. Resources J. 223 (1989).

Am. Jur. 2d, A.L.R. and C.J.S. references. — 78 Am. Jur. 2d Waterworks and Water Companies §§ 23 to 25.

94 C.J.S. Waters §§ 228 to 230.

72-1-10. Water utility authority; created; membership; administration of utility.

A. The "Albuquerque-Bernalillo county water utility authority" is created. The membership of the board of directors of the authority shall consist of seven members. The municipal members shall be the mayor and three city councilors appointed by the Albuquerque city council. The county members shall be three county commissioners appointed by the Bernalillo county board of county commissioners. A city councilor member shall designate another city councilor to serve in the member's absence. A county commissioner member shall designate another county commissioner to serve in the member's absence. The mayor shall designate the chief executive officer of the municipality, a city councilor or a county commissioner to serve in the mayor's absence. City councilors shall serve one-year terms at the city council president's discretion. County commissioners shall serve one-year terms at the county commission chairman's discretion. The authority is subject to the state Procurement Code and other applicable state laws. The authority is a public body politic and corporate, separate and apart from the city of Albuquerque and Bernalillo county. The authority is a political subdivision of the state.

B. The authority:

(1) shall set policy and regulate, supervise and administer the water and wastewater utility of Albuquerque and Bernalillo county, including the determination and imposition of rates for services;

(2) is granted all powers necessary and appropriate to carry out and effectuate its public and corporate purposes, including the authority to adopt procedural rules; and

(3) is authorized to use city or county procurement processes or to contract with the city or county to further its public and corporate purposes.

C. The authority may acquire, maintain, contract for, condemn or protect water and wastewater facilities. The city of Albuquerque and Bernalillo county may delegate any additional power or duty conferred by Sections 3-27-2 and 3-27-3 NMSA 1978 to the authority to exercise and administer.

D. In exercising its power to acquire, maintain, contract for or condemn water and wastewater facilities, the authority shall not act so as to physically isolate and make nonviable any portion of the water or wastewater facilities, within or outside of Bernalillo county.

E. The authority may adopt resolutions and rules necessary to exert the power conferred by this section.

F. For the purposes of acquiring, maintaining, contracting for, condemning or protecting water and wastewater facilities, the jurisdiction of the authority extends within and outside of the boundaries of Bernalillo county to the territory physically occupied by the water and wastewater facilities and to privately owned water and wastewater facilities interconnected to the utility system. The authority may:

(1) acquire, maintain, contract for or condemn facilities for the collection, treatment and disposal of wastewater;

(2) condemn private property for the construction, maintenance and operation of wastewater facilities; and

(3) acquire, maintain, contract for or condemn for use as part of the utility system privately owned water and wastewater facilities used for the collection, treatment and disposal of wastewater of the authority or its customers.

G. The authority is subject to:

(1) the limitations imposed by Section 72-1-9 NMSA 1978 regarding water rights obtained or water rights condemned pursuant to a water development plan;

(2) the provisions of the Eminent Domain Code [42A-1-1 NMSA 1978]; and

(3) the provisions of Chapter 72 NMSA 1978 regarding any change to the point of diversion or the place or purpose of use of any water right to any place selected by the authority in order to make the water available to the authority.

H. The authority is liable to the condemnee pursuant to the provisions of the Eminent Domain Code for the value of a water right as well as the market value of real property to which the water right is appurtenant if:

(1) the authority condemns water rights, either within or outside of the boundaries of Bernalillo county that are appurtenant to real property that has been in active agricultural operation; and

(2) the condemnation of the water right by the authority requires the permanent retirement from agricultural operation of some or all of the real property to which the water rights are appurtenant.

I. The authority is not subject to the jurisdiction of or approval from the public regulation commission. The authority is not subject to the provisions of the Public Utility Act [62-13-1 NMSA 1978]. The authority is granted a water use planning period not to exceed forty years as set forth in Section 72-1-9 NMSA 1978.

J. The city of Albuquerque or Bernalillo county may, by ordinance or resolution, grant the authority a franchise for the operation, construction and maintenance of the utility system and for the use and rental of rights of way in exchange for consideration.

K. The authority may issue utility system revenue bonds and obligations pursuant to the Public Securities Short-Term Interest Rate Act [6-18-1 NMSA 1978] for acquiring real and personal property needed for the utility system and for extending, enlarging, renovating, repairing or otherwise improving water facilities and wastewater facilities or for any combination of these purposes. The authority may issue revenue anticipation notes with maturities not exceeding thirteen months upon terms approved by the board of directors. The authority may pledge irrevocably net revenues from the operation of the utility system for payment of the principal, premiums and interest on the revenue bonds or other obligations. It is unlawful to divert, use or expend money received from the issuance of utility system revenue bonds for any purpose other than the purpose for which the utility system revenue bonds were issued. Obligations, including bond anticipation notes, issued pursuant to the Public Securities Short-Term Interest Rate Act shall be sold pursuant to the terms of that act. Utility system revenue bonds:

(1) may have interest, appreciated principal value or any part thereof payable at intervals or at maturity as the authority determines;

(2) may be subject to prior redemption at the authority's option at such time and upon such terms and conditions with or without the payment of a premium as determined by the authority;

(3) may mature at any time not exceeding fifty years after the date of issuance;

(4) may be serial in form and maturity or may consist of one bond payable at one time or in installments or may be in another form as determined by the authority;

(5) shall be sold for cash at above or below par and at a price that results in a net effective interest rate that does not exceed the maximum permitted by the Public Securities Act [6-14-1 NMSA 1978]; and

(6) may be sold at a public or negotiated sale.

L. The bonds authorized by the authority and their income shall be exempt from all taxation by the state or its political subdivisions.

M. The members of the board of directors of the authority may adopt a resolution declaring the necessity for the issuance of utility system revenue bonds or other obligations and may authorize the issuance of utility system revenue bonds or other obligations by an affirmative vote of a majority of all members of the board of directors of the authority. Utility revenue bonds and the resolution authorizing their issuance shall not be subject to the approval of the public regulation commission pursuant to Section 3-23-3 NMSA 1978 or subject to voter approval pursuant to Section 3-23-2 NMSA 1978.

N. Except for the purpose of refunding previous utility system revenue bond issues, the authority may not sell utility system revenue bonds payable from pledged revenues after the expiration of three years from the date of the resolution authorizing their issuance. Any period of time during which a utility system revenue bond is in litigation shall not count toward the determination of the expiration date of that issue.

History: Laws 2003, ch. 437, § 1; 2005, ch. 345, § 1.

ANNOTATIONS

The 2005 amendment, effective June 17, 2005, provides in Subsection A that the membership of the board shall consist of seven members including the mayor and city councilors appointed by the Albuquerque city council, that the county members shall be appointed by the Bernalillo county commissioners, that a city councilor member shall designate another city councilor to serve in the member's absence, that a county commissioner shall designate another commissioner to serve in the member's absence, that the mayor shall designate the chief executive officer of the municipality, a city councilor or a county commissioner to serve in the mayor's absence, that city councilors shall serve one-year terms at the city council president's discretion, that county commissioners shall serve one-year terms at the county commission chairman's discretion, that the authority is a public body politic and corporate, separate from and apart from the city of Albuquerque and Bernalillo county, and that the authority is a political subdivision of the state; provides in Subsection B(1) that the authority shall set

policy and regulate and supervise the utility; adds Subsection B(2) to provide that the authority is granted all powers necessary and appropriate to carry out and effectuate its purposes; and adds Subsection B(3) to provide that the authority is authorized to use city or county procurement processes or to contract with the city or county to further its purposes; deletes former Subsection C which provided for separate accounts for money received by the authority; deletes former Subsection B, which provided for the transfer of the Albuquerque utility to the authority, assumption of debts, rights of bondholders, refunding of bonds, assumption of contracts and the audit of the Albuquerque utility prior to transfer to the authority; adds Subsection C to provide that the authority may acquire, maintain, contract for, condemn or protect water and wastewater facilities and that Albuquerque and Bernalillo county may delegate additional powers and duties to the authority; adds Subsection D to provide that the authority shall not act so as to physically isolate and make nonviable any portion of the facilities; adds Subsection E to provide that the authority may adopt rules and regulations; adds Subsection F to provide that the jurisdiction of the authority extends within and without the boundaries of Bernalillo county to the territory occupied by the facilities and to privately owned facilities connected to the utility system and to provide powers of the authority; adds Subsection G to provide limitations on the authority; adds Subsection H to provide for the liability of the authority to a condemnee for the value of water rights and property to which the water right is appurtenant; adds Subsection I to provide that the authority is not subject to the jurisdiction or approval of the public regulation commission or the Public Utility Act; adds Subsection J to provide for a franchise for the utility system in Albuquerque and Bernalillo county; adds Subsection K to provide for the issuance of revenue bonds and obligations by the authority; adds Subsection L to provide for the tax exempt status of bonds issued by the authority; adds Subsection M to provide for the emergency issuance of revenue bonds or other obligations; and adds Subsection N to provide limitations on the sale of revenue bonds payable form pledged revenues.

Temporary division. — Laws 2005, ch. 345, § 2 provides that all functions, appropriations, money, records, equipment and other real and personal property pertaining to the Albuquerque water and wastewater utility not transferred pursuant to Section 72-1-10 NMSA 1978 prior to the effective date of this act shall be transferred to the Albuquerque-Bernalillo county water utility authority.

72-1-11. Indian water rights settlements; approval of settlements; reports.

A. Upon congressional authorization of funding of the federal government's portion of the costs of an Indian water rights settlement, the state engineer shall notify the legislature of the amount of the state's portion of the costs necessary to implement the settlement. Upon joint resolution of the legislature, the interstate stream commission may expend money in the Indian water rights settlement fund to implement the terms of the approved settlement.

B. On or before November 15 of each year, the state engineer and the interstate stream commission shall report to the appropriate legislative interim committee dealing with Indian affairs and to the legislative finance committee on:

(1) the status of proposed Indian water rights settlements requiring state financing;

(2) the distribution of funds from the Indian water rights settlement fund to implement approved settlements; and

(3) recommendations on the level of funding for the Indian water rights settlement fund necessary to timely implement Indian water rights settlements.

C. As used in Sections 1 and 2 of this act:

(1) "Indian water rights settlement" means an agreement between the state and a tribe, but not exclusive of any other party as appropriate, that resolves all of the tribe's water rights claims and that has been approved by the United States congress; and

(2) "tribe" means a federally recognized Indian nation, tribe or pueblo.

History: Laws 2005, ch. 172, § 1.

ANNOTATIONS

Effective dates. — Laws 2005, ch. 172, § 3 makes the act effective July 1, 2005.

72-1-12. Indian water rights settlement fund.

The "Indian water rights settlement fund" is created in the state treasury to facilitate the implementation of the state's portion of Indian water rights settlements. The fund consists of appropriations, gifts, grants, donations, income from investment of the fund and money otherwise accruing to the fund. Money in the fund shall not revert to any other fund at the end of a fiscal year. Money in the Indian water rights settlement fund shall be used to pay the state's portion of the costs necessary to implement Indian water rights settlements approved by the legislature and the United States congress. The interstate stream commission shall administer the fund and money in the fund is appropriated to the commission to carry out the purposes of the fund. Money in the fund shall be disbursed on warrants of the secretary of finance and administration pursuant to vouchers signed by an authorized representative of the interstate stream commission.

History: Laws 2005, ch. 172, § 2.

ANNOTATIONS

Effective dates. — Laws 2005, ch. 172, § 3 makes the act effective July 1, 2005.

ARTICLE 2
State Engineer

72-2-1. Appointment; removal; qualifications; duties; office; private practice prohibited.

There shall be a "state engineer" who shall be a technically qualified and registered professional engineer under the Engineering and Land Surveying Practice Act [Chapter 61, Article 23 NMSA 1978] and shall be appointed by the governor and confirmed by the senate. He shall hold office for the term of two years or until his successor has been appointed and has qualified. He is subject to removal only for cause. He has general supervision of waters of the state and of the measurement, appropriation, distribution thereof and such other duties as required. The salary of the state engineer shall be set by the governor, and he shall receive necessary traveling expenses while away from his office in the discharge of official duties pursuant to the provisions of the Per Diem and Mileage Act [10-8-1 to 10-8-8 NMSA 1978]. The office of the state engineer shall be located at the seat of government. He shall not engage in any private practice.

History: Laws 1907, ch. 49, § 4; Code 1915, § 5657; Laws 1919, ch. 46, § 1; C.S. 1929, § 151-104; Laws 1937, ch. 178, § 1; 1947, ch. 142, § 1; 1941 Comp., § 77-201; 1953 Comp., § 75-2-1; Laws 1971, ch. 234, § 10; 1977, ch. 254, § 92; 1982, ch. 10, § 3.

ANNOTATIONS

Cross references. — For right of state engineer to enter private property, see 72-8-1 NMSA 1978.

For investigation of water supply for state lands, see 19-5-4 NMSA 1978.

For reports from electrical irrigation districts, see 73-12-12 NMSA 1978.

Appropriations. — Laws 1995, ch. 222, § 38, effective April 7, 1995, appropriates $25,000 from the general fund to the state engineer for fiscal years 1995 through 1999 for acequia improvements for the west Puerto de Luna ditch in Guadalupe county.

Laws 1996 (1st S.S), ch. 11, § 3, effective March 29, 1996, appropriates $400,000 from the subsequent injury fund to the office of the state engineer for expenditure in fiscal year 1997 for the purpose of making repairs to the Ute dam.

Laws 2000 (2nd S.S.), ch. 23, § 43 appropriates from the general fund to the office of the state engineer $50,000 to make improvements to the east Puerto de Luna acequia in Guadalupe county and $95,000 for equipment replacement in Arch Hurley

conservancy district in Quay county. Any unexpended balance remaining at the end of fiscal year 2005 or other specified expenditure period shall revert to the general fund.

Laws 2001, ch. 159, § 1, effective June 15, 2001, appropriates $2,065,200 from the general fund to the office of the state engineer for expenditure in fiscal years 2002 through 2005 to pay for expenses associated with litigation and negotiations over Pecos River and Rio Grande management pursuant to natural resource policies. No money in this appropriation may be used in water rights adjudications involving political subdivisions of the state. Any unexpended or unencumbered balance remaining at the end of fiscal year 2005 shall revert to the general fund.

Laws 2001, ch. 344, § 3, Subsection G, effective June 15, 2001, appropriates $1,500,000 from the general fund for expenditure in fiscal 2001 and 2002 to the office of the state engineer for regional water planning.

Laws 2002, ch. 110, § 53, effective March 6, 2002, appropriates $3,500,000 from the capital projects fund to the office of the state engineer for expenditure in fiscal years 2002 through 2007 for dam rehabilitation for Eagle Nest lake.

Laws 2002, ch. 110, § 54, effective March 6, 2002, appropriates $2,500,000 from the capital projects fund to the office of the state engineer for expenditure in fiscal years 2002 through 2007 to rehabilitate the dame at Eagle Nest Lake contingent on the state obtaining long-term use of the lake.

Laws 2002, ch. 110, § 60, effective March 6, 2002, appropriates $1,456,200 from the New Mexico irrigation works construction fund to the office of state engineer in the fiscal years 2002 through 2007 for various water projects.

Laws 2003, ch. 385, § 6, effective April 8, 2003, appropriates $100,000 from the general fund to the office of the state engineer for reconstruction of a power dam in Santa Rosa and for a water survey in Santa Fe and Bernalillo counties.

Laws 2006, ch. 111, § 42, effective March 8, 2006, makes general fund appropriations to the state engineer for water projects throughout the state.

Effective dates. — Laws 2005, ch. 114 contains no effective date provision, but, pursuant to N.M. Const., art. IV, § 23, is effective June 17, 2005, 90 days after adjournment of the legislature.

Reversion of appropriations. — Laws 2005, ch. 114, § 1, effective June 17, 2005, provides that the $100,000 appropriated in Item (75) of Section 5 of Chapter 114 of Laws 2004 from the game protection fund to the state engineer for administration of Eagle Nest lake and reservoir shall not be expended for that purpose but shall revert to the game protection fund.

Imposition of conditions for grant lawful. — Adoption by state engineer of the only known plan to avoid impairment of existing rights by requiring that surface rights be retired to the extent necessary to protect prior stream appropriators as a condition of the granting city's application to appropriate underground water from the Rio Grande basin, was within his lawful power and authority, and was not an attempt to exercise jurisdiction over Rio Grande stream water. City of Albuquerque v. Reynolds, 71 N.M. 428, 379 P.2d 73 (1962).

Declaration of underground waters as public. — Once state engineer determines that waters mentioned in 72-12-1 NMSA 1978 have reasonably ascertainable boundaries he may declare by rule that same are public waters subject to administrative jurisdiction of his office. 1949-50 Op. Att'y Gen. No. 5185.

Ordering distribution by mayordomo. — Under this section the state engineer has authority to order any mayordomo who is not fairly and equitably distributing purchased water to desist from doing so and, if necessary, to go into court to force him to do so in case the user cannot afford to take such legal action. 1953-54 Op. Att'y Gen. No. 5734.

Engineer's jurisdiction does not extend to seepage water from unknown sources. Vanderwork v. Hewes, 15 N.M. 439, 110 P. 567 (1910).

Engineer's action presumed correct. — On appeal supreme court would presume state engineer's action in declaring Rio Grande valley from Colorado line to Elephant Butte Dam and underground water basin was correct. State v. Myers, 64 N.M. 186, 326 P.2d 1075 (1958).

Courts not ousted of jurisdiction. — State statutes which confer upon state engineer general supervision over state waters and their appropriation and distribution do not oust courts of jurisdiction to protect individual rights in use of water; hence, court retained jurisdiction of suit by irrigation district for injunction against unlawful appropriation of water by riparian owners above district's works and reservoirs. Carlsbad Irrigation Dist. v. Ford, 46 N.M. 335, 128 P.2d 1047 (1942).

Adjudication suit to determine all claims to water's use in given stream system. — The object of an adjudication suit is to determine all claims to the use of the water in a given stream system in order to facilitate the administration of unappropriated waters and to aid in the distribution of waters already appropriated. State ex rel. Reynolds v. Pecos Valley Artesian Conservancy Dist., 99 N.M. 699, 663 P.2d 358 (1983).

Decree not erroneous. — Where decree enjoined riparian owners from appropriating waters above irrigation district's reservoirs and works but also provided that nothing should prevent such owners from applying to state engineer for water rights, it indicated sufficiently that upon a proper showing owners' application for modification of the decree would be heard by the court, and was not erroneous under contention that it prevented any use of flood waters. Carlsbad Irrigation Dist. v. Ford, 46 N.M. 335, 128 P.2d 1047 (1942).

Law reviews. — For comment on *Mathers v. Texaco, Inc.,* 77 N.M. 239, 421 P.2d 771 (1966), see 7 Nat. Resources J. 433 (1967).

For article, "Constitutional Limitations on the Exercise of Judicial Functions by Administrative Agencies," see 7 Nat. Resources J. 599 (1967).

For article, "An Administrative Procedure Act for New Mexico," see 8 Nat. Resources J. 114 (1968).

For article, "Existing Legislation and Proposed Model Flood Plain Ordinance for New Mexico Municipalities," see 9 Nat. Resources J. 629 (1969).

For note, "Needed: A Ground-Water Treaty Between the United States and Mexico," see 15 Nat. Resources J. 385 (1975).

For note, "New Mexico's National Forests and the Implied Reservation Doctrine," see 16 Nat. Resources J. 975 (1976).

For article, "New Mexico Water Law: An Overview and Discussion of Current Issues," see 22 Nat. Resources J. 1045 (1982).

For note, "Recent Developments in the El Paso/New Mexico Interstate Groundwater Controversy - The Constitutionality of New Mexico's New Municipality Water Planning Statute," see 29 Nat. Resources J. 223 (1989).

For article, "Steve Reynolds - Portrait of a State Engineer as a Young Artist," see 38 Nat. Resources J. 537 (1998).

Am. Jur. 2d, A.L.R. and C.J.S. references. — 63A Am. Jur. 2d Public Officers and Employees §§ 106 to 109.

81A C.J.S. States §§ 84 to 86, 98, 123.

72-2-2. Assistants; salary.

The state engineer may employ assistants and purchase materials and supplies for the proper conduct and maintenance of his office in pursuance of appropriations as made from time to time for such purposes. The salaries and expenses of the office of the state engineer shall be paid at the same time and in the same manner as those of other officers of the state.

History: Laws 1907, ch. 49, § 5; Code 1915, § 5658; C.S. 1929, § 151-105; 1941 Comp., § 77-202; 1953 Comp., § 75-2-2; Laws 1982, ch. 10, § 4.

ANNOTATIONS

Division. — The "state engineer" heads a division of the natural resources department, namely, the water resources division. See 72-2-1 NMSA 1978.

Quasi-judicial duties not delegable. — State engineer is authorized to employ assistants for the proper conduct and maintenance of his office and department; however, he may not delegate his quasi-judicial authority and duties to anyone else. 1953-54 Op. Att'y Gen. No. 5786.

Am. Jur. 2d, A.L.R. and C.J.S. references. — 63A Am. Jur. 2d Public Officers and Employees § 300.

81A C.J.S. States §§ 80, 92.

72-2-3. [Oath of office; bond.]

Before entering upon the duties of his office the state engineer shall take the oath as prescribed by law for state officials. He shall file with the secretary of the state, a bond, in the penal sum of ten thousand ($10,000) dollars, to be approved by the attorney general, and conditioned upon the faithful discharge of his duties and for delivery to his successor of all property belonging to the public then in his possession or control.

History: Laws 1907, ch. 49, § 6; Code 1915, § 5659; C.S. 1929, § 151-106; 1941 Comp., § 77-203; 1953 Comp., § 75-2-3.

ANNOTATIONS

Cross references. — For oath of office, see N.M. Const., art. XX, § 1.

Am. Jur. 2d, A.L.R. and C.J.S. references. — 63A Am. Jur. 2d Public Officers and Employees §§ 131, 132.

Constitutional, statutory or charter provision as to time of taking oath of office and giving official bond as mandatory or directory, 158 A.L.R. 639.

Validity of governmental requirement of oath of allegiance or loyalty, 18 A.L.R.2d 268.

81A C.J.S. States § 91.

72-2-4. Payment of accounts.

All claims for services rendered, expenses incurred or materials or supplies furnished under the direction of the state engineer and which are payable from the funds appropriated for the prosecution of the work under his direction and supervision, shall be approved by the state engineer and properly vouchered and filed with the secretary of finance and administration, who shall, if he finds the same to have been

incurred in accordance with law, audit and allow such claims and issue his warrant on the treasurer in payment thereof.

History: Laws 1907, ch. 49, § 7; Code 1915, § 5660; C.S. 1929, § 151-107; 1941 Comp., § 77-204; 1953 Comp., § 75-2-4; 1977, ch. 247, § 196.

ANNOTATIONS

Am. Jur. 2d, A.L.R. and C.J.S. references. — 63A Am. Jur. 2d Public Officers and Employees § 353.

81A C.J.S. States § 229.

72-2-5. Annual report.

The state engineer shall prepare and deliver to the governor, on or before November 30 of each year, a full report of the work of his office, including a detailed statement of expenditures thereof to and including June 30 of that year, with such recommendations for legislation and appropriation as he deems advisable. He shall also prepare and submit special reports on the work and expenditures of his office at all other times when required by the governor.

History: Laws 1907, ch. 49, § 8; Code 1915, § 5661; C.S. 1929, § 151-108; Laws 1941, ch. 126, § 2; 1941 Comp., § 77-205; 1953 Comp., § 75-2-5; Laws 1977, ch. 254, § 93; 1982, ch. 10, § 5.

ANNOTATIONS

Am. Jur. 2d, A.L.R. and C.J.S. references. — 63A Am. Jur. 2d Public Officers and Employees § 354.

81A C.J.S. States § 229.

72-2-6. Fees; amount; disposition.

The state engineer shall receive the following fees to be paid by him into the general fund:

A. for filing notice of intention to make formal application for permit to appropriate surface water, twenty-five dollars ($25.00), which shall be paid at the time of filing notice of intention;

B. for filing a formal application for permit to appropriate water where the project is chiefly for diversion and direct use of the water, twenty-five dollars ($25.00) if the amount claimed does not exceed five cubic feet of water per second, and five dollars ($5.00) for each cubic foot per second in excess of five; or, if the project is

chiefly for storage of excess and flood waters, ten dollars ($10.00) for each one thousand acre-feet or fraction thereof of storage capacity; or, if the project is for power purposes only, in which the water is returned to the river bed in substantially undiminished quantity, twenty-five dollars ($25.00), if the amount claimed does not exceed five cubic feet of water per second, and one dollar ($1.00) for each cubic foot per second of time in excess of five; provided, however, that if application for permit is preceded by a notice of intention, the fee accompanying the notice of intention shall be applied on the subsequent fees. Fees included under this subsection, which shall be paid to the state engineer at the time of filing formal application for permit, shall include the filing of maps, plans, specifications, field notes, proof of publication and all other papers relating to the application, up to the issuing of the permit to appropriate water, and shall include the examination and study of all data therein with the exception of plans and specifications, for the examination and study of which additional fees shall be collected as prescribed in this section;

C. for examining in connection with any water right application the plans and specifications for a dam, two dollars ($2.00) for each one thousand dollars ($1,000) or fraction thereof of the estimated cost of such dam; for examining the plans and specifications for canal or other water conduit, twenty-five dollars ($25.00), where the capacity does not exceed fifty cubic feet of water per second, and ten dollars ($10.00) for each additional fifty cubic feet per second or fraction thereof. The fees shall be paid to the state engineer before he issues the permit to appropriate water; provided that no fee shall be paid for examining plans and specifications submitted by the United States or any agency or department of the United States;

D. for issuing any certificate of construction or license to appropriate, twenty-five dollars ($25.00);

E. for issuing a permit for an extension of time, fifty dollars ($50.00);

F. for issuing any miscellaneous water right instrument or copy of any water right document filed in his office, one dollar ($1.00) for the first page thereof, and fifteen cents ($.15) for each additional page thereof;

G. for filing any other paper necessarily forming a part of the permanent record of the water right application, permit or license, one dollar ($1.00);

H. for a contact reproduction of any map or plan sheet accompanying an application for permit to appropriate water, three dollars ($3.00) for each sheet; for a negative of any map or plan sheet suitable to reproduce copies thereof, five dollars ($5.00) for each sheet;

I. for inspecting damsites, dams, irrigation systems or other construction work as required by law, one hundred dollars ($100) per day and actual and necessary traveling expenses. Fees for any inspection deemed necessary by the state engineer and not paid on demand shall be a lien on any land or other property of the owner of the

works and may be recovered by the state engineer in any court of competent jurisdiction; and

J. for such other work as may be required of his office, such reasonable fees as in the judgment of the state engineer the character and extent of the work justifies.

History: Laws 1907, ch. 49, § 9; 1913, ch. 62, § 1; Code 1915, § 5662; Laws 1921, ch. 55, § 1; C.S. 1929, § 151-109; Laws 1937, ch. 178, § 2; 1941, ch. 126, § 3; 1941 Comp., § 77-206; 1953 Comp., § 75-2-6; Laws 1965, ch. 124, § 1; 1987, ch. 215, § 1.

ANNOTATIONS

The 1987 amendment, effective June 19, 1987, in Subsection A, substituted "twenty-five dollars ($25.00)" for "ten dollars ($10.00)" and deleted "such" following "of filing"; in Subsection B, substituted "twenty-five dollars ($25.00)" for "ten dollars ($10.00)" twice, "five dollars ($5.00)" for "one dollar ($1.00)" and "one dollar ($1.00)" for "twenty-five cents ($.25)", all in the first sentence, and "this subsection" for "B" and "prescribed in this section" for "hereinafter prescribed" in the second sentence; in Subsection C, divided the formerly undivided language into two sentences and substituted "a dam, two dollars ($2.00)" for "dam, one dollar ($1.00)" and twenty-five dollars ($25.00)" for "ten dollars ($10.00)" in the first sentence and "The fees shall be paid to the state engineer before he issues" for "such fees shall be paid to the state engineer before he shall issue" and "of the United States" for "thereof" in the second sentence; substituted "twenty-five dollars ($25.00)" for "five dollars ($5.00)" in Subsection D, fifty dollars ($50.00)" for "ten dollars ($10.00)" in Subsection E, and "first page thereof" for "first one hundred words or fraction thereof" and "additional page thereof" for "additional hundred words or fraction thereof" in Subsection F; in Subsection H, deleted "blueprint or other" preceding "contact" and substituted "three dollars ($3.00)" for "one dollar ($1.00)" and "five dollars ($5.00)" for "two dollars ($2.00)"; and substituted "one hundred dollars ($100.00)" for "ten dollars ($10.00)" in the first sentence in Subsection I and "justifies" for "shall justify" in Subsection J.

Am. Jur. 2d, A.L.R. and C.J.S. references. — 63A Am. Jur. 2d Public Officers and Employees §§ 351, 352.

81A C.J.S. States § 224.

72-2-7. [Records to be public; certified copies as evidence.]

The records of the office of the state engineer are public records, shall remain on file in his office and shall be open to the inspection of the public at all times during business hours. Such records shall show all applications filed, with date of filing, and shall show in full all permits, certificates of completion of construction and licenses issued, together with all action thereon, and all action or decisions of the state engineer affecting any rights or claims to appropriate water. Certified copies of any records or papers on file in

the office of the state engineer shall be evidence equally with the originals thereof; and when introduced as evidence shall be held as of the same validity as the originals.

History: Laws 1907, ch. 49, § 10; Code 1915, § 5663; C.S. 1929, § 151-110; 1941 Comp., § 77-207; 1953 Comp., § 75-2-7.

ANNOTATIONS

Cross references. — For self-authentication of certified copies of public records, see Paragraph D of Rule 11-902 NMRA.

For proof of official records, see Rule 11-1005 NMRA.

72-2-8. Administrative regulations, codes, instructions, orders; presumption of correctness.

A. The state engineer may adopt regulations and codes to implement and enforce any provision of any law administered by him and may issue orders necessary to implement his decisions and to aid him in the accomplishment of his duties. In order to accomplish its purpose, this provision is to be liberally construed.

B. Directives issued by the state engineer shall be in form substantially as follows:

(1) regulations are written statements of the state engineer of general application to the public, implementing statutes, prescribing procedures and interpreting and exemplifying the statutes to which they relate;

(2) codes are written standards and specifications governing design and construction of dams;

(3) orders are written statements of the state engineer to implement his decision;

(4) special orders are written statements defining the declared boundaries of underground streams, channels, artesian basins, reservoirs or lakes.

C. To be effective, a regulation, code or special order issued by the state engineer shall be reviewed by the attorney general or other legal counsel of the state engineer's office prior to being filed as required by law and the fact of his review shall be indicated thereon.

D. To be effective, a regulation or code shall first be issued as a proposed regulation or proposed code and filed for public inspection in the office of the state engineer along with the findings of fact that in the opinion of the state engineer justify the regulation or code. Distribution shall also be made to each district and field office for public inspection and to each of the persons on the file of interested persons hereinafter

mentioned. After the proposed regulation or code has been on file for one month, he shall publish it, or if it is lengthy, a resume of it, in not less than five newspapers of general circulation in the state, once a week for two consecutive weeks, with the statement that there will be a hearing on the proposed regulation or code on a day set in the publication, which shall be not more than thirty days nor less than twenty days after the last publication. The hearing shall be held in Santa Fe, and any person who is or may be affected by the proposed regulation or code may appear and testify.

E. Special orders may be promulgated without prior notice and hearing, but the state engineer shall, within ten days of promulgation of a special order, set a date for a hearing on the special order, and publish notice of the public hearing in the same manner required above.

F. In addition to filing copies of regulations as required by law, the state engineer shall maintain in his office duplicate official sets of current regulations, codes and special orders, which sets shall be available for inspection by the public.

G. The state engineer shall develop and maintain a file of names and addresses of individuals, professional, agricultural and other groups having an interest in the promulgation of new, revised or proposed regulations and shall at convenient times distribute to these persons all such regulations, making such charges therefor as will defray the expense incurred in their physical preparation and mailing.

H. Any regulation, code or order issued by the state engineer is presumed to be in proper implementation of the provisions of the water laws administered by him.

I. The state engineer shall state the extent to which regulations, codes and orders will have retroactive effect and, if no such statement is made, they will be applied prospectively only.

History: 1953 Comp., § 75-2-8, enacted by Laws 1967, ch. 246, § 1.

ANNOTATIONS

Cross references. — For attorney general and district attorneys being legal advisers of state engineer, see 72-2-10 NMSA 1978.

For State Rules Act, see Chapter 14, Article 4 NMSA 1978.

Repeals and reenactments. — Laws 1967, ch. 246, § 1, repeals former 75-2-8, 1953 Comp., relating to rules and regulations, and enacts the above section.

Authority of state engineer. — The legislature granted the state engineer broad powers to implement and enforce the water laws administered by him. State ex rel S.E. Reynolds v. Aamodt, 111 N.M. 4, 800 P.2d 1061 (1990).

Conditioned approval. — State engineer had authority to approve part of city's application for well location change and water use, subject to conditions relating to retirement of specified acre-feet of rights, and to specify how the conditions he imposed were to be met. City of Roswell v. Berry, 80 N.M. 110, 452 P.2d 179 (1969).

Bond requirement. — Territorial engineer and board of water commissioners (now abolished) may, by rule, require applicants for permits to appropriate water, to give bond that they will complete their projects if the permits are granted. 1909-12 Op. Att'y Gen. 133.

Passing upon appropriation applications. — With respect to protest to applications to appropriate water, required by regulations of state engineer, no distinction should be made between the government reclamation service and other persons in the practice as to passing upon such applications. 1915-16 Op. Att'y Gen. 90.

The failure to file an application for extension of time to place water to beneficial use prior to the expiration of the last extension granted does not automatically terminate water permits. Retroactive approval by the state engineer of applications for extension of time is permissible. State ex rel S.E. Reynolds v. Aamodt, 111 N.M. 4, 800 P.2d 1061 (1990).

Law reviews. — For note, "New Mexico's National Forests and the Implied Reservation Doctrine," see 16 Nat. Resources J. 975 (1976).

Am. Jur. 2d, A.L.R. and C.J.S. references. — 63A Am. Jur. 2d Public Officers and Employees § 300.

Power of state to exact fee or require license for taking water from stream, 19 A.L.R. 649, 29 A.L.R. 1478.

Presumption that public officers have properly performed their duty, as evidence, 141 A.L.R. 1037.

81A C.J.S. States § 120.

72-2-9. [Supervising apportionment of waters.]

The state engineer shall have the supervision of the apportionment of water in this state according to the licenses issued by him and his predecessors and the adjudications of the courts.

History: Laws 1907, ch. 49, § 12; Code 1915, § 5665; C.S. 1929, § 151-112; 1941 Comp., § 77-209; 1953 Comp., § 75-2-9.

ANNOTATIONS

Section applicable to public or unappropriated waters. — This section cannot be held to relate to waters held in private ownership or by prior appropriation, but must be held to relate to public and unappropriated waters within the territory. Vanderwork v. Hewes, 15 N.M. 439, 110 P. 567 (1910).

"Licenses" must be legal licenses. McBee v. Reynolds, 74 N.M. 783, 399 P.2d 110 (1965).

Section would seem to limit jurisdiction of engineer to such water rights as had been acquired under licenses issued by him or his predecessors. Pueblo of Isleta v. Tondre, 18 N.M. 388, 137 P. 86 (1913).

Engineer's jurisdiction does not extend to seepage water from unknown sources. Vanderwork v. Hewes, 15 N.M. 439, 110 P. 567 (1910).

Territorial engineer was without authority to issue permit for project to irrigate lands in New Mexico from waters of natural stream running from Colorado into the territory, with head gate and part of ditch in Colorado. Turley v. Furman, 16 N.M. 253, 114 P. 278 (1911).

Demand required. — Upstream junior appropriators were not liable for downstream senior appropriator's shortage of water where downstream senior appropriator had not demanded of state engineer that water to the extent of his needs and within his senior appropriation be allowed to reach his diversion point. Worley v. United States Borax & Chem. Corp., 78 N.M. 112, 428 P.2d 651 (1967).

Adjudication suit to determine all claims to water's use in given stream system. — The object of an adjudication suit is to determine all claims to the use of the water in a given stream system in order to facilitate the administration of unappropriated waters and to aid in the distribution of waters already appropriated. State ex rel. Reynolds v. Pecos Valley Artesian Conservancy Dist., 99 N.M. 699, 663 P.2d 358 (1983).

Approval of change in acequia necessary once water rights adjudicated. — If the water rights of an acequia have been adjudicated, then the state engineer must approve any change in amount or location of diversion, regardless of whether or not it is a community acequia. Honey Boy Haven, Inc. v. Roybal, 92 N.M. 603, 592 P.2d 959 (1978).

Waters cannot be apportioned according to conflicting decrees or decrees covering less than all claims. El Paso & R.I. Ry. v. District Court, 36 N.M. 94, 8 P.2d 1064 (1931).

Parties to adjudication. — This section does not authorize state engineer, either in exercise of state's police power or as representative of other water users, to seek adjudication of water rights of one making bona fide claim thereto which would affect

rights of others, without joinder of those persons whose rights may be affected. State ex rel. Reynolds v. W.S. Ranch Co., 69 N.M. 169, 364 P.2d 1036 (1961).

Law reviews. — For note, "Subdivision Planning Through Water Regulation in New Mexico," see 12 Nat. Resources J. 286 (1972).

For note, "New Mexico's National Forests and the Implied Reservation Doctrine," see 16 Nat. Resources J. 975 (1976).

For article, "New Mexico Water Law: An Overview and Discussion of Current Issues," see 22 Nat. Resources J. 1045 (1982).

72-2-9.1. Priority administration; expedited water marketing and leasing; state engineer.

A. The legislature recognizes that the adjudication process is slow, the need for water administration is urgent, compliance with interstate compacts is imperative and the state engineer has authority to administer water allocations in accordance with the water right priorities recorded with or declared or otherwise available to the state engineer.

B. The state engineer shall adopt rules for priority administration to ensure that authority is exercised:

(1) so as not to interfere with a future or pending adjudication;

(2) so as to create no impairment of water rights, other than what is required to enforce priorities; and

(3) so as to create no increased depletions.

C. The state engineer shall adopt rules based on the appropriate hydrologic models to promote expedited marketing and leasing of water in those areas affected by priority administration. The rules shall be consistent with the rights, remedies and criteria established by law for proceedings for water use leasing and for changes in point of diversion, place of use and purpose of use of water rights. The rules shall not apply to acequias or community ditches or to water rights served by an acequia or community ditch.

D. Nothing in this section shall affect the partial final decree and settlement agreement as may be entered in the Carlsbad irrigation district project offer phase of *State of New Mexico ex rel. State Engineer v. Lewis, et al.*, Nos. 20294 and 22600 (N.M. 5th Jud. Dist.).

History: Laws 2003, ch. 63, § 1.

ANNOTATIONS

Effective dates. — Laws 2003, ch. 63 contains no effective date provision, but, pursuant to N.M. Const., art. IV, § 23, is effective on June 20, 2003, 90 days after adjournment of the legislature.

72-2-9.2. Office of the state engineer; devices to measure river water.

The office of the state engineer shall purchase, install and study prototypes of alternative devices that accurately measure the flow of river water on a real-time basis. In carrying out the purpose of this section, the office of the state engineer shall consult with and utilize the services of the Los Alamos national laboratory, the Sandia national laboratories and the United States geological survey.

History: Laws 2003, ch. 209, § 1.

ANNOTATIONS

Effective dates. — Laws 2003, ch. 209 contains no effective date provision, but, pursuant to N.M. Const., art. IV, § 23, is effective June 20, 2003, 90 days after adjournment of the legislature.

72-2-10. [Legal advisers; duties.]

The attorney general and the district attorney of the county in which legal questions arise, shall be the legal advisers of the state engineer, and shall perform any and all legal duties necessary in connection with his work, without other compensation than their salaries as fixed by law, except when otherwise provided.

History: Laws 1907, ch. 49, § 38; Code 1915, § 5697; C.S. 1929, § 151-150; 1941 Comp., § 77-210; 1953 Comp., § 75-2-10.

ANNOTATIONS

Cross references. — For review of state engineer's regulation, code or special order, prior to filing, by attorney general and district attorney, see 72-2-8 NMSA 1978.

Section makes district attorney more than mere adviser since it requires him to "perform any and all legal duties necessary in connection with his work." 1964 Op. Att'y Gen. No. 64-127.

District attorney may not represent applicant before state engineer on water and water right matters that arise in any of the counties within his jurisdiction as state has an interest in matters involving public water. 1964 Op. Att'y Gen. No. 64-127. (See also,

36-1-4 NMSA 1978, prohibiting private practice by district attorneys after January 1, 1977.)

Am. Jur. 2d, A.L.R. and C.J.S. references. — Counsel, power of water commissioners to employ, 2 A.L.R. 1212.

7A C.J.S. Attorney General § 7; 27 C.J.S. District and Prosecuting Attorneys § 10.

72-2-11. [Board of water commissioners abolished; pending appeals.]

That the board of water commissioners be and the same is hereby abolished, and that any and all records of said board shall, when this act becomes effective, be placed for safekeeping into the custody of the state engineer, provided that appeals pending before said board, together with all papers and records of same shall be transferred to the district court of the county wherein the work or point of desired appropriation, referred to in any such pending appeal or appeals, is situated, to be considered and disposed of by such district court as an appeal, as hereinbefore provided for.

History: Laws 1923, ch. 28, § 4; C.S. 1929, § 151-176; 1941 Comp., § 77-211; 1953 Comp., § 75-2-11.

ANNOTATIONS

Am. Jur. 2d, A.L.R. and C.J.S. references. — 2 Am. Jur. 2d Administrative Law § 24 et seq.

Incompatibility of offices of colonel and water commissioner, 26 A.L.R. 144, 132 A.L.R. 254, 147 A.L.R. 1419, 148 A.L.R. 1399, 150 A.L.R. 1444.

81A C.J.S. States § 141.

72-2-12. Hearing examiners.

In addition to the powers and authority, either express or implied, granted to the state engineer by other statutes of the state of New Mexico, the state engineer is hereby given the authority and power in formulating rules and regulations, subject to the provisions of Section 5 [72-2-17 NMSA 1978], in connection with hearings, or other proceedings before him to provide for the appointment of one or more examiners to conduct hearings with respect to matters properly coming before the state engineer and to make reports and recommendations with respect thereto. The state engineer, subject to the provisions of Section 5, shall promulgate, print and make available in the state engineer's office rules and regulations with regard to hearings to be conducted before examiners and the powers and duties of the examiners in any particular case may be limited by order of the state engineer to particular issues or to the performance of particular actions. In the absence of any limiting order, an examiner appointed to hear

any particular case shall have the power to regulate all proceedings before him and to perform acts and to take all measures necessary or proper for the efficient and orderly conduct of such hearing, including the swearing of witnesses, receiving of testimony and exhibits offered in evidence subject to such objections as may be imposed, and shall cause a complete record of the proceedings to be made and shall make his report and recommendations in connection therewith to the state engineer. The state engineer shall base his decision rendered in any matter heard by an examiner upon the record made by or under the supervision of the examiner in connection with such proceeding and the report and recommendation of the examiner; and his decision shall have the same force and effect as if said hearing had been conducted by the state engineer. Persons appointed by the state engineer as hearing examiners shall be knowledgeable in the water laws of this state, water engineering and administrative hearing procedures.

History: 1953 Comp., § 75-2-12, enacted by Laws 1965, ch. 285, § 1.

ANNOTATIONS

Cross references. — For State Rules Act, see Chapter 14, Article 4 NMSA 1978.

Only courts have power and authority to adjudicate water rights. State ex rel. Reynolds v. Lewis, 84 N.M. 768, 508 P.2d 577 (1973).

Am. Jur. 2d, A.L.R. and C.J.S. references. — 2 Am. Jur. 2d Administrative Law § 308 et seq.

81A C.J.S. States § 80.

72-2-13. Depositions, written interrogatories and administrative conferences.

A. In matters pertaining to the public waters of this state which are pending before the state engineer for administrative action, a party may take the testimony, by deposition on oral examination or written interrogatories, of any person including a party and any personnel of the state engineer's office, except the state engineer or his designated hearing examiner, and may request that the pending matter be set for an administrative conference before the state engineer in the manner and for the purposes established for discovery and for pretrial conferences by the Rules of Civil Procedure for the district courts of New Mexico.

B. As used in this section, "party" means the applicant, the protestant and the state.

History: 1953 Comp., § 75-2-12.1, enacted by Laws 1969, ch. 250, § 1.

ANNOTATIONS

Cross references. — For rule relating to pretrial conference, see Rule 1-016 NMRA.

For depositions and discovery, see Rules 1-026 to 1-037 NMRA.

Am. Jur. 2d, A.L.R. and C.J.S. references. — 2 Am. Jur. 2d Administrative Law § 327 et seq.

72-2-14. Subpoena power.

The state engineer or any examiner appointed by the state engineer to conduct hearings is hereby empowered to subpoena witnesses, to require their attendance and giving of testimony and to require the production of books, papers and records in any proceeding before the state engineer.

History: 1953 Comp., § 75-2-13, enacted by Laws 1965, ch. 285, § 2.

ANNOTATIONS

Cross references. — For rule relating to subpoenas, see Rule 1-045 NMRA.

Law reviews. — For note, "On Building Better Laws for New Mexico's Environment," see 4 N.M. L. Rev. 105 (1973).

Am. Jur. 2d, A.L.R. and C.J.S. references. — 2 Am. Jur. 2d Administrative Law § 122 et seq.

Power of administrative agency, in investigation of nonjudicial nature to issue subpoenas against persons not subject to agency's regulatory jurisdiction, 27 A.L.R.2d 1208.

81A C.J.S. States § 120.

72-2-15. Failure or refusal to comply with subpoena; refusal to testify; body attachment; contempt.

In case of failure or refusal on the part of any person to comply with any subpoena issued by said state engineer or his appointed examiner, or on the refusal of any witnesses to testify or to answer as to any matters regarding which he may be lawfully interogated [interrogated], the judge of any district court in this state, on application of the state engineer, may issue an attachment for such person and compel him to comply with such subpoena and to attend before the state engineer or his appointed examiner and produce such documents, and give his testimony upon such matters as may be lawfully required, and the judge shall have the power to punish for contempt as in the case of disobedience of a like subpoena issued by or from a district court or a refusal to testify therein.

History: 1953 Comp., § 75-2-14, enacted by Laws 1965, ch. 285, § 3.

ANNOTATIONS

Adjudication suit to determine all claims to water's use in given stream system. — The object of an adjudication suit is to determine all claims to the use of the water in a given stream system in order to facilitate the administration of unappropriated waters and to aid in the distribution of waters already appropriated. State ex rel. Reynolds v. Pecos Valley Artesian Conservancy Dist., 99 N.M. 699, 663 P.2d 358 (1983).

Am. Jur. 2d, A.L.R. and C.J.S. references. — 2 Am. Jur. 2d Administrative Law § 146 et seq.

72-2-16. Hearings required before appeal.

The state engineer may order that a hearing be held before he enters a decision, acts or refuses to act. If, without holding a hearing, the state engineer enters a decision, acts or refuses to act, any person aggrieved by the decision, act or refusal to act, is entitled to a hearing, if a request for a hearing is made in writing within thirty days after receipt by certified mail of notice of the decision, act or refusal to act. Hearings shall be held before the state engineer or his appointed examiner. A record shall be made of all hearings. No appeal shall be taken to the district court until the state engineer has held a hearing and entered his decision in the hearing.

History: 1953 Comp., § 75-2-15, enacted by Laws 1965, ch. 285, § 4; 1967, ch. 308, § 1; 1971, ch. 134, § 1; 1973, ch. 207, § 1.

ANNOTATIONS

Cross references. — For appeal de novo from decision, act or refusal to act of state executive officer or body in matters relating to water rights, see N.M. Const., art. XVI, § 5.

Constitutionality. — Proviso added by 1967 amendment to this section (since rewritten), stating that section was to have no application to hearings relating to underground waters required to be held in district court, was unconstitutional as a violation of separation of powers doctrine of state constitution; nor was it validated by subsequent adoption of N.M. Const., art. XVI, § 5, relating to appeals in matters concerning water rights, since hearings contemplated by the proviso were original proceedings in district court. Fellows v. Shultz, 81 N.M. 496, 469 P.2d 141 (1970).

Aggrieved party's right to a post-decision hearing. — The state engineer was required to grant property owner's request for a post-decision hearing because no pre-decision hearing had been held. Derringer v. Turney, 2001-NMCA-075, 131 N.M. 40, 33 P.3d 40, cert. denied, 131 N.M. 64 , 33 P.3d 284 (2001).

Nature of state engineer's findings. — Even though state engineer is required under legislative mandate to determine facts to which law, as set forth by legislature, is to be

applied, in so doing he is nevertheless acting in an administrative capacity, and his findings are not judicial determinations. Fellows v. Shultz, 81 N.M. 496, 469 P.2d 141 (1970).

State engineer's decision does not bar subsequent litigation. — While the decision of the state engineer in granting a permit has the force and effect of a judicial judgment, where the depth of an applicant's well and the diameter of the pipe and the amount of water are not in issue and not essential to a prior decision, the state engineer's determination does not bar subsequent litigation of those issues. State ex rel. Reynolds v. Rio Rancho Estates, Inc., 95 N.M. 560, 624 P.2d 502 (1981).

Court erred in permitting introduction of new or additional evidence on appeal from state engineer's decision denying application for permit to change partial point of diversion. Derrick v. Reynolds, 74 N.M. 181, 392 P.2d 13 (1964).

Only courts have power and authority to adjudicate water rights. State ex rel. Reynolds v. Lewis, 84 N.M. 768, 508 P.2d 577 (1973).

Law reviews. — For note, "New Mexico State Engineer Issues Orders on Mine Dewatering," see 20 Nat. Resources J. 359 (1980).

Am. Jur. 2d, A.L.R. and C.J.S. references. — 2 Am. Jur. 2d Administrative Law § 294 et seq.

72-2-17. Hearing; notice; conduct; record.

A. After a written request for hearing has been filed, the state engineer shall notify the requestor, and all interested parties, by registered or certified mail, return receipt requested, of the hearing. The notice shall include:

(1) the time, place, date and nature of the hearing, which time shall be not less than five nor more than sixty days from the date of filing of the request for hearing, provided that the state engineer may for good cause or upon stipulation of the parties set the hearing for a later date; and

(2) the legal authority and jurisdiction under which the hearing will be held.

B. In the conduct of the hearing:

(1) opportunity shall be afforded all parties to appear and present evidence and argument on all issues involved;

(2) irrelevant, immaterial or unduly repetitious evidence shall be excluded. The rules of evidence as applied in nonjury civil cases in the district courts of this state shall be generally followed; however, when it is necessary to ascertain facts not reasonably susceptible of proof under these rules, evidence not admissible thereunder

may be admitted if it is of a type commonly relied upon by reasonably prudent men in the conduct of their affairs. Objections to evidentiary offers may be made and shall be noted in the record. Subject to these requirements, when a hearing will be expedited and interests of the parties will not be prejudiced substantially, any part of the evidence may be received in written form;

(3) a party may have and be represented by counsel and may conduct cross-examinations required for a full and true disclosure of the facts;

(4) notice may be taken of judicially cognizable facts. In addition, notice may be taken of generally recognized technical or scientific facts within the state engineer's specialized knowledge;

(5) oral proceedings or any part thereof shall be transcribed on request of any party; and

(6) findings of fact shall be based exclusively on the evidence and on matters officially noticed.

C. The state engineer or his appointed hearing examiner shall make a record of the hearing, which shall include:

(1) all pleadings, motions, intermediate rulings;

(2) evidence received or considered;

(3) a statement of the matters officially noticed;

(4) questions and offers of proof, objections and rulings thereon;

(5) any proposed findings submitted; and

(6) any decision, opinion or report by the state engineer or hearing examiner conducting the hearing.

History: 1953 Comp., § 75-2-16, enacted by Laws 1965, ch. 285, § 5.

ANNOTATIONS

Am. Jur. 2d, A.L.R. and C.J.S. references. — 2 Am. Jur. 2d Administrative Law § 261 et seq.

72-2-18. State engineer; enforcement; compliance orders; penalty.

A. When a person, pursuant to a finding of fact, violates a requirement or prohibition of Chapter 72 NMSA 1978, a rule adopted by the state engineer pursuant to those laws,

a condition of a permit or license issued by the state engineer pursuant to those laws or an order entered by a court adjudicating a water right, the state engineer may, in addition to any other remedies available under law, issue a compliance order stating with reasonable specificity the nature of the violation and requiring compliance within a specified time period.

B. This section shall not be construed to affect or interfere with the jurisdiction of an irrigation district, a federal court or an Indian nation, tribe or pueblo to enforce its orders and decrees pertaining to water rights.

C. A compliance order may include an order to cease the violation of a permit or license or portion of a permit or license issued by the state engineer. A compliance order issued for overdiversion or illegal diversion of water may require repayment of water in an amount up to double the amount of the overdiversion or illegal diversion and installation of a measuring device prior to any future diversion of water. In determining the amount of repayment of water, the state engineer shall take into account the seriousness of the violation, any good faith efforts to comply with the applicable requirements and other relevant factors.

D. The state engineer shall provide for the person named in the compliance order an opportunity to contest informally the alleged violation with the office of the state engineer and a public hearing pursuant to Sections 72-2-16 and 72-2-17 NMSA 1978. If the person wants a public hearing, he shall submit a written request no later than thirty days after issuance of a compliance order by certified mail, return receipt requested, or serve a notice of appeal upon the state engineer, in accordance with Section 72-7-1 NMSA 1978, within thirty days after receipt of a compliance order. A compliance order is final upon action by the state engineer within thirty days after a public hearing or within thirty days of an appeal pursuant to Section 72-7-1 NMSA 1978.

E. The state engineer shall not seek enforcement of a compliance order until it is final. Any appeal to district court shall be conducted pursuant to Chapter 72, Article 7 NMSA 1978.

F. The state engineer may assess a civil penalty of up to one hundred dollars ($100) per day for violation of a final compliance order.

G. If a final compliance order is issued and the person does not comply, the state engineer may file a civil action to enforce the compliance order and receive any of the remedies provided in this section, including injunctive relief.

History: Laws 2001, ch. 143, § 1.

ANNOTATIONS

Effective dates. — Laws 2001, ch. 143 contains no effective date provision, but, pursuant to N.M. Const., art. IV, § 23, is effective June 15, 2001, 90 days after adjournment of the legislature.

ARTICLE 3
Water Districts and Water Masters

72-3-1. [Water districts; creation; change; subdistricts.]

The state engineer shall, from time to time, as may be necessary for the economical and satisfactory apportionment of water, divide the state in conformity with the drainage areas into water districts to be designated by names, and to comprise as far as possible one or more distinct stream systems in each district. Districts may be changed from time to time as may, in his opinion, be necessary for the economical and satisfactory apportionment of water. Provided, that the state engineer may, when in his opinion it shall be for the best interests of the state and the owners of water rights upon any stream system within the state of New Mexico, divide said stream system into subdistricts, each of which said subdistricts shall be designated by a distinct name.

History: Laws 1907, ch. 49, § 13; Code 1915, § 5666; Laws 1919, ch. 131, § 2; C.S. 1929, § 151-113; 1941 Comp., § 77-301; 1953 Comp., § 75-3-1.

ANNOTATIONS

State engineer. — See 72-2-1 NMSA 1978.

Section speaks to future. — This section, prior to amendment, and 72-3-2 NMSA 1978, would seem in no way to refer to old established water rights or community acequias, but to speak to the future and to provide for a condition of affairs to be brought about by districting of state under supervision of engineer. Pueblo of Isleta v. Tondre, 18 N.M. 388, 137 P. 86 (1913).

Am. Jur. 2d, A.L.R. and C.J.S. references. — 25 Am. Jur. 2d Drains and Drainage Districts §§ 3, 4, 6 et seq.

94 C.J.S. Waters § 243(1).

72-3-2. [District water masters; appointment; removal; duties.]

The state engineer shall upon the written application of a majority of the water users of any district in this state, appoint a water master for such district in the state, who may, for cause, be removed by the state engineer, and shall be removed upon a petition of a majority of the water users of said district. The water master shall have immediate charge of the apportionment of waters in his district under the general supervision of the state engineer, and he shall so appropriate, regulate and control the waters of the

district as will prevent waste. The state engineer may, if in his opinion the public safety or interests of water users in any district in the state require it, appoint such water master for temporary or permanent service in such district, in the absence of the application above provided for in this article.

History: Laws 1907, ch. 49, § 14; Code 1915, § 5667; C.S. 1929, § 151-114; 1941 Comp., § 77-302; 1953 Comp., § 75-3-2.

ANNOTATIONS

Cross references. — For right of state engineer to enter private property, see 72-8-1 NMSA 1978.

State engineer. — See 72-2-1 NMSA 1978.

Meaning of "this article". — The 1915 Code compilers added the phrase "in this article" to the final sentence of this section, presumably referring to Code 1915, ch. 114, art. I, the provisions of which are presently compiled as 19-7-26, 72-1-1, 72-1-2, 72-1-5, 72-2-1 to 72-2-7, 72-2-9, 72-2-10, 72-3-1 to 72-3-5, 72-4-1, 72-4-13, 72-4-15, 72-4-17 to 72-4-19, 72-5-1 to 72-5-4, 72-5-6 to 72-5-24, 72-5-26 to 72-5-31, 72-5-33, 72-7-1 to 72-7-3, 72-8-1 to 72-8-6 and 72-9-1 to 72-9-3 NMSA 1978.

Section speaks to future. — This section and 72-3-1 NMSA 1978 (prior to amendment) would seem in no way to refer to old established water rights or community acequias, but to speak to future and to provide for condition of affairs to be brought about by districting of state under supervision of engineer. Pueblo of Isleta v. Tondre, 18 N.M. 388, 137 P. 86 (1913).

Removal of water master. — Water master appointed by state engineer in absence of petition by water users may be removed by state engineer only for cause or where, in his opinion, public safety or interests of water users in district no longer require services of water master. 1953-54 Op. Att'y Gen. No. 6036.

Law reviews. — For article, "New Mexico Water Law: An Overview and Discussion of Current Issues," see 22 Nat. Resources J. 1045 (1982).

Am. Jur. 2d, A.L.R. and C.J.S. references. — 25 Am. Jur. 2d Drains and Drainage Districts §§ 6, 11, 12, 19.

Incompatibility of offices of colonel and water superintendent, 26 A.L.R. 144, 132 A.L.R. 254, 147 A.L.R. 1419, 148 A.L.R. 1399, 150 A.L.R. 1444.

94 C.J.S. Waters § 243(4).

72-3-3. [Appeal from water master to state engineer authorized.]

Any person may appeal from the acts or decisions of the water master to the state engineer, who shall promptly and at a stated time and place to be fixed by him, upon due notice to the parties, hear and determine the matter in dispute, and his decision shall be final, unless an appeal is taken to the district court of the county, wherein the irrigation works or the irrigated lands involved in such dispute are situated, in conformity with the provisions of Sections 72-7-1 and 72-7-2 NMSA 1978.

History: Laws 1907, ch. 49, § 15; Code 1915, § 5668; C.S. 1929, § 151-115; Laws 1935, ch. 78, § 1; 1941 Comp., § 77-303; 1953 Comp., § 75-3-3.

ANNOTATIONS

State engineer. — See 72-2-1 NMSA 1978.

Law reviews. — For comment on Kelley v. Carlsbad Irrigation Dist., 71 N.M. 464, 379 P.2d 763 (1963), see 3 Nat. Resources J. 340 (1963).

72-3-4. Compensation of water master; assistants; budget; tax; administration fund.

The state engineer may employ such assistants to any water master by him appointed as he may deem necessary, and each water master and each assistant so employed shall be paid a compensation to be fixed by the state engineer and also such of his actual and necessary expenses incurred in the performance of his duties as shall be approved in writing by the state engineer. Provided, that such employment of assistants shall be only in cases of emergency and such employment shall continue only during the existence of such emergency.

As soon as possible after the appointment of any water master, the state engineer shall prepare a budget of estimated amounts required to pay the compensation and expenses of the water master and his assistants to the end of the then current fiscal year, and shall certify the same to the board of county commissioners of the county wherein the duties of the water master are to be performed, which budget shall specify the distribution of the amounts to be charged against and allotted to each water user or ditch owner, and which respective amounts shall be based upon the quantity of water received or to be received by each in proportion to the total quantities of water delivered or to be delivered under the water rights of all.

Thereafter, before the beginning of each succeeding fiscal year, the state engineer shall likewise prepare a similar budget for the ensuing fiscal year and shall likewise certify the same to the proper board of county commissioners.

If a water district for which a water master is appointed lies within more than one county, the budget shall be certified to the board of county commissioners of each county within which any portion of such district is situated, and shall set out the proportionate amount of the budget total to be paid by each county respectively.

When such budgets are received by the board of county commissioners, it shall immediately cause the county treasurer to extend upon the tax rolls of the county for the year contemplated in the budget, the amounts therein required to be raised and in accordance with the budget distribution thereof, and such respective amounts so distributed and entered upon said tax rolls shall be payable and shall be collected at the times and in the manner provided by law for the payment and collection of other taxes, and shall be a lien upon the property of the respective water users or ditch owners to the same extent other taxes levied are a lien thereon. When collected, the county treasurer shall place such monies into a special fund to be designated as "water masters administration fund for the district of . . . . . (name of district)" and such fund shall be expended only for the purposes set out in said budget.

The salary and expenses of the water master and of his assistants shall be paid monthly by the board of county commissioners out of said special fund so created only upon the itemized voucher of the state engineer.

If for any reason there shall be a temporary insufficiency of moneys in said special fund for the payment of the accrued salaries and expenses of the water master and his assistants, the board of county commissioners may pay the same out of any available moneys in the general county fund, or the state engineer may pay the same out of any general fund money appropriated for the operation of his office; but in either event the general county fund or the state general fund, as the case may be, shall be reimbursed the amounts expended therefrom for such purposes, as soon as there may be moneys available therefor in the water masters administration fund hereinabove designated.

History: Laws 1907, ch. 49, § 16; Code 1915, § 5669; C.S. 1929, § 151-116; Laws 1935, ch. 78, § 2; 1941 Comp., § 77-304; 1953 Comp., § 75-3-4; Laws 1965, ch. 124, § 2.

ANNOTATIONS

State engineer. — See 72-2-1 NMSA 1978.

Ministerial duty. — County commissioners, having received certified budget, were bound to comply with this section, which imposed upon them a ministerial duty in which there was no discretion and for which mandamus would lie. State ex rel. Reynolds v. Board of County Comm'rs, 71 N.M. 194, 376 P.2d 976 (1962); see also, State ex rel. Reynolds v. Zamora, 76 N.M. 145, 412 P.2d 568 (1966), making permanent the alternative writ of prohibition enjoining and prohibiting interference with duty of county commissioners to cause taxes in question to be entered on tax rolls.

Charge not "tax". — This law provides, in effect, method for charging individual landowners or water users for special services rendered; however, no tax in the constitutional sense nor legislative enactment on real, personal or intangible property, is imposed by this section. 1957-58 Op. Att'y Gen. No. 58-77.

Remedy for delinquency. — Tax deed could not be executed and forwarded to former state tax commission by county treasurer as means of collecting delinquent water master assessment; foreclosure suit must be instituted. 1957-58 Op. Att'y Gen. No. 58-77.

Federal agencies to pay for services. — Agency of United States government, classed as water user, is under same obligation as any other water user for payment for services. 1953-54 Op. Att'y Gen. No. 5675.

Living quarters for water master. — Where services of a water master are necessary in utilizing and conserving certain stored water and it is necessary to provide, by purchase or otherwise, necessary living quarters for water master, use of trust fund for such purchase would not be violation of the trust under Enabling Act. 1953-54 Op. Att'y Gen. No. 5682.

Am. Jur. 2d, A.L.R. and C.J.S. references. — 25 Am. Jur. 2d Drains and Drainage Districts § 34.

81A C.J.S. States § 105.

72-3-5. [Reports by water master to state engineer.]

Each water master shall report to the state engineer, as often as may be deemed necessary by the engineer as to the amount of water needed to supply the requirements of his districts, the amount available, the works which are without their proper supply, the supply required during the period preceding his next regular report and such other information as the engineer may require. These reports shall, at the end of each irrigation season, be filed in the office of the state engineer. The state engineer shall give directions for correcting any errors of apportionments that may be shown by such reports.

History: Laws 1907, ch. 49, § 17; Code 1915, § 5670; C.S. 1929, § 151-117; 1941 Comp., § 77-305; 1953 Comp., § 75-3-5.

ANNOTATIONS

State engineer. — See 72-2-1 NMSA 1978.

ARTICLE 4
Surveys, Investigations and Adjudication of Rights

72-4-1. County drains; duty of state engineer; preliminary surveys; eminent domain; surveys on private property; damage.

When requested by any of the boards of county commissioners of any of the counties of the state, it is the duty of the state engineer, either himself or by an authorized assistant engineer, to cooperate with the county commissioners in the engineering work required to lay out, establish and construct any drain to be used by any county or counties or portions of the same, for the purpose of diverting flood waters, lakes, watercourses, and in general to aid and assist the counties of this state or their authorized officers in making preliminary surveys and establishing systems of drainage or any other engineering work; and whenever the board of county commissioners of any county shall by order determine to lay out, establish and construct any drain to be used by any county or counties or portions of the same, for the purpose of diverting flood waters, lakes or watercourses or to establish systems of drainage, which shall require that private property be taken or damaged, the county may exercise the right of eminent domain to take and acquire real or personal property, right-of-way and privilege within or without its corporate limits, necessary for its corporate purposes, in the manner provided by the Eminent Domain Code [42A-1-1 to 42A-1-33 NMSA 1978]. Subject to the provisions of Sections 42A-1-8 through 42A-1-12 NMSA 1978, the engineers and surveyors of the state and of the county shall have the right to enter upon the property of private persons and of private and public corporations for the purpose of making hydrographic surveys and examinations and surveys necessary for selecting and locating suitable sites and routes for any drain or drainage system.

History: Laws 1907, ch. 49, § 18; 1909, ch. 129, § 1; Code 1915, § 5672; C.S. 1929, § 151-119; 1941 Comp., § 77-401; 1953 Comp., § 75-4-1; Laws 1981, ch. 125, § 55.

ANNOTATIONS

Cross references. — For exercise of eminent domain to obtain beneficial use of water, see 72-1-5 NMSA 1978.

For engineer's right to enter private property, see 72-8-1 NMSA 1978.

For constitutional provision relating to eminent domain, see N.M. Const., art. II, § 20.

For injuries by county surveyor, see 4-42-2 NMSA 1978.

For penalty for interference with county surveyor, see 4-42-6 NMSA 1978.

For county flood control, see Chapter 4, Article 50 NMSA 1978.

For eminent domain procedure, see Chapter 42A, Article 1 NMSA 1978.

For surveyor's right to enter private and public lands, and responsibility incident thereto, see 61-23-30 NMSA 1978.

For drainage districts, see Chapter 73, Article 6 NMSA 1978.

State engineer. — See 72-2-1 NMSA 1978.

Effect of federal court decree. — Where bill and decree in suit brought in federal court indicate that suit was brought to adjudicate rights (if any) of all parties thereto to use of water flowing in stream system, federal court decree was res judicata as between parties to federal suit and their privies, despite fact that stipulation between certain parties and plaintiff's predecessor in title had not been signed by defendants or their predecessors. Bounds v. Carner, 53 N.M. 234, 205 P.2d 216 (1949), distinguished, Cartwright v. Public Serv. Co., 66 N.M. 64, 343 P.2d 654 (1958).

Defendant public service company and intervener town of Las Vegas were not barred from pleading as a defense the doctrine of Pueblo Rights, in suit by Galinas River water users seeking damages and injunction against company's use of water, and apportionment thereof, by alleged res judicata effect of previous decree in federal court, where that court had specifically provided that its decree would affect only the property and rights of those specifically named in the decree. Cartwright v. Public Serv. Co., 66 N.M. 64, 343 P.2d 654 (1958).

Am. Jur. 2d, A.L.R. and C.J.S. references. — 25 Am. Jur. 2d Drains and Drainage Districts § 7.

Right of owner of land not originally taken or purchased as part of adjacent project to recover, on enlargement of project to include adjacent land, enhanced value of property by reason of proximity to original land, 95 A.L.R.3d 752.

94 C.J.S. Waters § 234.

72-4-2. [Authority to acquire water rights for development of county water supply system.]

Each board of county commissioners of any of the several counties of the state, in addition to all other powers vested in it, is empowered to acquire, by purchase or exchange upon such terms and conditions and in such manner as a commission may deem proper and to acquire by condemnation in accordance with and subject to the provisions of any and all existing laws applicable to the condemnation of property for public use any water rights or any portion thereof within its county limits deemed necessary or proper for public use for the development of a county water supply system. Title to property so acquired or condemned shall be taken in the name of the county.

History: 1953 Comp., § 75-4-1.1, enacted by Laws 1959, ch. 286, § 1.

ANNOTATIONS

Condemnation power of board limited. — Power granted boards of county commissioners under this section to condemn property for county water systems is

subject to statutory limitations which grant counties the power to condemn property for the use of the county; therefore, counties cannot condemn property on behalf of mutual domestic water and/or sewage associations organized under 3-29-1 to 3-29-19 NMSA 1978. 1967 Op. Att'y Gen. No. 67-50.

Law reviews. — For article, "The Law of Prior Appropriation: Possible Lessons for Hawaii," see 25 Nat. Resources J. 911 (1985).

Am. Jur. 2d, A.L.R. and C.J.S. references. — 25 Am. Jur. 2d Drains and Drainage Districts § 7.

Right of owner of land not originally taken or purchased as part of adjacent project to recover, on enlargement of project to include adjacent land, enhanced value of property by reason of proximity to original land, 95 A.L.R.3d 752.

94 C.J.S. Waters § 234.

72-4-3. [Authority to establish county water supply system; purpose.]

The board of county commissioners of any county may under the provisions of this 1959 act [72-4-2 to 72-4-12 NMSA 1978], establish a county water supply system, which shall be located within this state and within the county, for the purpose of supplying water to the inhabitants of unincorporated communities of the county for domestic and sanitary purposes.

History: 1953 Comp., § 75-4-1.2, enacted by Laws 1959, ch. 286, § 2.

ANNOTATIONS

Am. Jur. 2d, A.L.R. and C.J.S. references. — 25 Am. Jur. 2d Drains and Drainage Districts § 7.

94 C.J.S. Waters § 234.

72-4-4. Water revenue bonds; limitations; conditions of issuance.

The board of county commissioners in each county within the state is authorized to issue water revenue bonds of the county for the purpose of paying the cost of property acquired under the provisions of Sections 72-4-2 through 72-4-12 NMSA 1978 and for the construction of a water supply system. Bonds issued by a county under the authority of Sections 72-4-2 through 72-4-12 NMSA 1978 shall not be a general obligation of the county under the meaning of Article 9, Section 13 of the constitution of New Mexico. The bonds shall be payable solely out of the revenues derived from the projects financed by the bonds which are issued. Bond [Bonds] and coupons, if any, issued under the authority of Sections 72-4-2 through 72-4-12 NMSA 1978 shall never

constitute an indebtedness of the county within the meaning of any state constitutional provision or statutory limitation and shall never constitute or give rise to a pecuniary liability of the county or a charge against its general credit or taxing powers, and that fact shall be plainly stated on the face of each bond. The bonds may be executed and delivered at any time and from time to time, may be in the form and denominations, may be of the tenor, may be in registered or bearer form either as to principal or principal and interest, may be payable in installments and at the time or times not exceeding thirty years from their date, may be payable at the place or places, may bear interest at the rate or rates payable at the place or places, and evidenced in the manner, and may contain the provisions not inconsistent therewith, all as shall be provided in the resolution and proceedings of the board of county commissioners whereunder the bonds are authorized to be issued. Any bonds issued under the authority of Sections 72-4-2 through 72-4-12 NMSA 1978 may be sold at public or private sale in the manner and from time to time as may be determined by the board of county commissioners to be most advantageous, and the county may pay all expenses, attorneys and engineering fees, premiums and commissions which the board of county commissioners may deem necessary or advantageous in connection with the authorization, sale and issuance thereof. All bonds issued under the authority of Sections 72-4-2 through 72-4-12 NMSA 1978 and all interest coupons, if any, applicable thereto shall be construed to be negotiable.

History: 1953 Comp., § 75-4-1.3, enacted by Laws 1959, ch. 286, § 3; 1983, ch. 265, § 48.

ANNOTATIONS

Am. Jur. 2d, A.L.R. and C.J.S. references. — 25 Am. Jur. 2d Drains and Drainage Districts §§ 19, 36.

20 C.J.S. Counties § 220.

72-4-5. [Water revenue bonds; security; restrictions and limitations.]

The principal of and interest on any bonds issued under the authority of this 1959 act [72-4-2 to 72-4-12 NMSA 1978] shall be secured by a pledge of the revenues out of which such bonds shall be made payable, and may be secured by a mortgage covering all or any part of the system from which the revenues so pledged may be derived.

The resolution and proceedings under which such bonds are authorized to be issued or any such mortgage may contain any agreement and provisions customarily contained in instruments securing bonds, including, without limiting the generality of the foregoing, provisions respecting the fixing and collection of all revenues from any system covered by such proceedings or mortgage, the maintenance and insurance of such system, the creation and maintenance of special funds from the revenues from such system, and the rights and remedies available in event of default to the bondholders or to the trustee

under a mortgage, all as the board of county commissioners shall deem advisable and as shall not be in conflict with the provisions of this 1959 act; provided, however, that in making any such agreements or provisions a county shall not have the power to obligate itself except with respect to the project and the application of the revenues therefrom, and shall not have the power to incur a pecuniary liability or a charge upon its general credit or against its taxing powers. The proceedings authorizing any bonds hereunder and any mortgage securing such bonds may provide the procedure and remedies in the event of default in payment of the principal of or the interest on such bonds or in the performance of any agreement. No breach of any such agreement shall impose any pecuniary liability upon a county or any charge upon its general credit or against its taxing powers.

History: 1953 Comp., § 75-4-1.4, enacted by Laws 1959, ch. 286, § 4.

ANNOTATIONS

Am. Jur. 2d, A.L.R. and C.J.S. references. — 25 Am. Jur. 2d Drains and Drainage Districts § 36.

94 C.J.S. Waters § 234.

72-4-6. [Determinations and findings prior to supplying water.]

Prior to supplying any water, the board of county commissioners must determine and find the following: the amount necessary in each year to pay the principal of and the interest on the water revenue bonds proposed to be issued to finance such system; the amount necessary to be paid each year into any reserve funds which the board of county commissioners may deem it advisable to establish in connection with the retirement of the proposed water revenue bonds and the maintenance of the system. The determinations and findings of the board of county commissioners required to be made in the preceding sentence shall be set forth in the proceedings under which the proposed water revenue bonds are to be issued and such findings shall be the basis for determining the cost of the water to the inhabitant consumers.

History: 1953 Comp., § 75-4-1.5, enacted by Laws 1959, ch. 286, § 5.

ANNOTATIONS

Am. Jur. 2d, A.L.R. and C.J.S. references. — 94 C.J.S. Waters § 234.

72-4-7. [Sale of water revenue bonds; application of proceeds; cost of acquiring system.]

The proceeds from the sale of any water revenue bonds issued under authority of this 1959 act [72-4-2 to 72-4-12 NMSA 1978] shall be applied only for the purpose for which the bonds were issued; provided, however, that any accrued interest and

premiums received in any such sale shall be applied to the payment of the principal of or the interest on the water revenue bonds sold; and provided, further, that if for any reason any portion of such proceeds shall not be needed for the purpose for which the water revenue bonds were issued, then such balance of said proceeds shall be applied to the payment of the principal of or the interest on said water revenue bonds and provided further, that any portion of the proceeds from the sale of the water revenue bonds or any accrued interest and premium received in any such sale, may, in the event the money will not be needed, or cannot be effectively used to the advantage of the county for the purposes herein provided, be invested in short term, interest-bearing securities if such investment will not interfere with the use of such funds for the primary purpose as herein provided. The cost of acquiring any system shall be deemed to include the following: the actual cost of the construction of any part of a system which may be constructed, including attorney's and engineer's fees; the purchase price of any part of a system that may be acquired by purchase or condemnation; and the interest on such bonds for a reasonable time prior to construction, during construction, and for not exceeding six months after completion of construction.

History: 1953 Comp., § 75-4-1.6, enacted by Laws 1959, ch. 286, § 6.

ANNOTATIONS

Am. Jur. 2d, A.L.R. and C.J.S. references. — 25 Am. Jur. 2d Drains and Drainage Districts § 34.

94 C.J.S. Waters § 243(6).

72-4-8. Water system cost paid from bond proceeds only.

No county that undertakes to acquire or establish a water supply system under the authority of Sections 72-4-2 through 72-4-12 NMSA 1978 shall have the power to pay out of its general funds or otherwise contribute any part of the costs of acquiring a water supply system. The entire cost of acquiring the system shall be paid out of the proceeds from the sale of water revenue bonds issued under the authority of Sections 72-4-2 through 72-4-12 NMSA 1978.

History: 1953 Comp., § 75-4-1.7, enacted by Laws 1959, ch. 286, § 7; 1993, ch. 308, § 5.

ANNOTATIONS

The 1993 amendment, effective April 8, 1993, added the section heading, inserted the language beginning "that undertakes" and ending "72-4-12 NMSA 1978" in the first sentence, and substituted "the system shall" for "any system must" and "Sections 72-4-2 through 72-4-12 NMSA 1978" for "this 1959 act" in the second sentence.

Funding for acquiring water rights not restricted. — This section applies only to the funding of water systems, and it does not restrict the funding for the acquisition of water rights in the same manner, such that a county may use ad valorem taxes to fund water contracts. San Juan Water Comm'n v. Taxpayers & Water Users, 116 N.M. 106, 860 P.2d 748 (1993).

72-4-9. [Water revenue bonds shall be legal investments.]

Water revenue bonds issued under the provisions of this 1959 act [72-4-2 to 72-4-12 NMSA 1978] shall be legal investments for savings banks and insurance companies organized under the laws of this state.

History: 1953 Comp., § 75-4-1.8, enacted by Laws 1959, ch. 286, § 8.

72-4-10. [Water revenue bonds, income, security instruments, agreements and revenue exempt from taxation.]

The water revenue bonds authorized by this 1959 act [72-4-2 to 72-4-12 NMSA 1978] and the income from the water revenue bonds, all mortgages or other security instrument executed as security for the water revenue bonds, all agreements made pursuant to the provisions hereof and revenue derived therefrom by the county shall be exempt from all taxation by the state of New Mexico, or any subdivision thereof.

History: 1953 Comp., § 75-4-1.9, enacted by Laws 1959, ch. 286, § 9.

72-4-11. [Election by voters prior to issuance of bonds not required.]

This 1959 act [72-4-2 to 72-4-12 NMSA 1978] shall not be construed as requiring an election by the voters of a county prior to the issuance of water revenue bonds hereunder by such county.

History: 1953 Comp., § 75-4-1.10, enacted by Laws 1959, ch. 286, § 10.

ANNOTATIONS

Effect of county-called referendum absent proper authority. — In the absence of a constitutional reservation of the right of the people to hold referendum on county ordinances, and in the absence of a specific statutory authority requiring a referendum on ordinances, there is no authority for a county to call a voluntary referendum. Should such a referendum be held, it would not, regardless of its outcome, affect the adoption or validity of the ordinance. 1979 Op. Att'y Gen. No. 79-35.

72-4-12. [Notice, consent or approval by governmental body or public officer not required prior to issuance of bonds.]

No notice, consent or approval by any governmental body or public officer shall be required as a prerequisite to the sale or issuance of any water revenue bonds or the making of a mortgage under the authority of this 1959 act [72-4-2 to 72-4-12 NMSA 1978], except as provided in this 1959 act.

History: 1953 Comp., § 75-4-1.11, enacted by Laws 1959, ch. 286, § 11.

72-4-13. Hydrographic survey of state stream systems; duty of state engineer; dam and reservoir sites; cooperation with United States.

The state engineer shall make hydrographic surveys and investigations of each stream system and source of water supply in the state, beginning with those most used for irrigation, and obtaining and recording all available data for the determination, development and adjudication of water supply of the state including the location and survey of suitable sites for dams and reservoirs and the determination of the approximate water supply, capacity and cost of each. He is authorized to cooperate with the agencies of the United States engaged in similar surveys and investigations and in the construction of works for the development and use of the water supply of the state, expending for such purposes any money available for the work of his office, and may accept and use in connection with the operations of his office the results of the agencies of the United States.

History: Laws 1907, ch. 49, § 19; Code 1915, § 5671; C.S. 1929, § 151-118; 1941 Comp., § 77-402; 1953 Comp., § 75-4-2; Laws 1977, ch. 254, § 94; 1982, ch. 10, § 6.

ANNOTATIONS

State engineer. — See 72-2-1 NMSA 1978.

Section speaks of future. — This section and 72-4-1 NMSA 1978 (prior to 1909 amendment) speak of future and have no application to water rights acquired prior to passage of act. Pueblo of Isleta v. Tondre, 18 N.M. 388, 137 P. 86 (1913).

Hydrographic surveys prepared by United States. — The state engineer may make use of all or part of a hydrographic survey prepared by the United States, but even if he does not accept the United States survey, it still may be offered into evidence at a state court trial involving the general adjudication of water rights. United States ex rel. Acoma & Laguna Indian Pueblos v. Bluewater-Toltec Irrigation Dist., 580 F. Supp. 1434 (D.N.M. 1984), aff'd, 806 F.2d 986 (10th Cir. 1986).

Law reviews. — For article, "Water Rights Problems in the Upper Rio Grande Watershed and Adjoining Areas," see 11 Nat. Resources J. 48 (1971).

Am. Jur. 2d, A.L.R. and C.J.S. references. — 25 Am. Jur. 2d Drains and Drainage Districts §§ 22, 36.

72-4-14. [Cooperation with federal reclamation service; federal projects.]

The state engineer is hereby authorized and empowered to cooperate with the federal reclamation service or any other federal agency, in the making of hydrographic surveys upon any stream system which includes a federal irrigation or drainage project.

History: Laws 1919, ch. 131, § 4; C.S. 1929, § 151-123; 1941 Comp., § 77-403; 1953 Comp., § 75-4-3.

ANNOTATIONS

State engineer. — See 72-2-1 NMSA 1978.

Am. Jur. 2d, A.L.R. and C.J.S. references. — 94 C.J.S. Waters § 333.

72-4-15. [Determination of water rights; copies of hydrographic surveys; suits to determine right of appropriation.]

Upon the completion of the hydrographic survey of any stream system, the state engineer shall deliver a copy of so much thereof as may be necessary for the determination of all rights to the use of the waters of such system together with all other data in his possession necessary for such determination, to the attorney general of the state who shall, at the request of the state engineer, enter suit on behalf of the state for the determination of all rights to the use of such water, in order that the amount of unappropriated water subject to disposition by the state under the terms of this chapter may become known, and shall diligently prosecute the same to a final adjudication: provided, that if suit for the adjudication of such rights shall have been begun by private parties, the attorney general shall not be required to bring suit: provided, however, that the attorney general shall intervene in any suit for the adjudication of rights to the use of water, on behalf of the state, if notified by the state engineer that in his opinion the public interest requires such action.

History: Laws 1907, ch. 49, § 20; Code 1915, § 5673; C.S. 1929, § 151-120; 1941 Comp., § 77-404; 1953 Comp., § 75-4-4.

ANNOTATIONS

Cross references. — For duty of state engineer to make hydrographic surveys of state stream systems, see 72-4-13 NMSA 1978.

Meaning of "this chapter". — The term "this chapter" was substituted for "this act" in the 1915 Code. "This act" referred to Laws 1907, ch. 49, the provisions of which are presently compiled as 19-7-26, 72-1-1, 72-1-2, 72-1-5, 72-2-1 to 72-2-7, 72-2-9, 72-2-10, 72-3-1 to 72-3-5, 72-4-1, 72-4-13, 72-4-15, 72-4-17 to 72-4-19, 72-5-1, 72-5-3, 72-5-

4, 72-5-6 to 72-5-24, 72-5-26 to 72-5-28, 72-5-33, 72-7-1 to 72-7-3, 72-8-1 to 72-8-6, 72-9-1 to 72-9-3 NMSA 1978. The term "this chapter" had reference to the 1915 Code, ch. 114 (§§ 5654 to 5814), which sections are now compiled in articles 1 to 5 and 7 to 11 of chapter 72 and articles 2, 3 and 4 of chapter 73 NMSA 1978.

State engineer. — See 72-2-1 NMSA 1978.

Purpose. — It was evident design of legislature, by this act, to have adjudicated and settled by judicial decree, all water rights in state and to have determined amount of water to which each water user was entitled, so that distribution of water could be facilitated and unappropriated water be determined, in order that it might be utilized. Snow v. Abalos, 18 N.M. 681, 140 P. 1044 (1914).

Use of water regulated. — Right to use of water, both as to volume and periods of annual use, is regulated either by permit of state engineer or decrees of courts. Harkey v. Smith, 31 N.M. 521, 247 P. 550 (1926).

Only courts have power and authority to adjudicate water rights. State ex rel. Reynolds v. Lewis, 84 N.M. 768, 508 P.2d 577 (1973).

Hearing required. — Nothing less than hearing where evidence could be offered and received to establish claims concerning conflicting priority dates of rights found to exist would comply with requirements of due process. State ex rel. Reynolds v. Allman, 78 N.M. 1, 427 P.2d 886 (1967).

Denial of due process. — Since former action against owners of water rights had been consolidated with later action against canal company, and water rights of owners in prior case carried priority date as of commencement of well while well rights adjudicated to canal company carried priority date from formation of ditch, denying right to owners, at hearing, to establish applicability of doctrine of relation back in showing priority date to be that of original appropriation of water from same source constituted denial of due process. State ex rel. Reynolds v. Allman, 78 N.M. 1, 427 P.2d 886 (1967).

Requirements for entrance of decree. — No decree as required by 72-4-19 NMSA 1978, declaring priority, amount, purpose, periods and place of use, and specific tracts of land to which water right is appurtenant, together with other necessary conditions, can be entered until hydrographic surveys have been completed and all parties impleaded, at which time further hearing to determine relative rights of parties, toward each other, will be held. State ex rel. Reynolds v. Sharp, 66 N.M. 192, 344 P.2d 943 (1959).

Step by step procedure encompassing entire basin and all matters required to be decreed by 72-4-19 NMSA 1978 is substantial compliance with requirements of adjudication statutes, and reasonable and practical way to accomplish desired purposes. State ex rel. Reynolds v. Sharp, 66 N.M. 192, 344 P.2d 943 (1959).

Priority of right to underground water. — Landowner who lawfully began developing underground water right and completed it with reasonable diligence acquired water right with priority date as initiation of his work even though lands involved were placed within declared artesian basin before work was finished and water put to beneficial use. State ex rel. Reynolds v. Mendenhall, 68 N.M. 467, 362 P.2d 998 (1961).

Use of water limited. — The United States, in setting the Gila national forest aside from other public lands, reserved the use of such water as may be necessary for the purposes for which the land was withdrawn, but these purposes did not include recreation, aesthetics, wildlife preservation, or cattle grazing. United States v. New Mexico, 438 U.S. 696, 98 S. Ct. 3012, 57 L. Ed. 2d 1052 (1978).

Jurisdiction to adjudicate water rights. — Statutory suit to adjudicate water rights of stream system is all embracing, and includes claimed rights of appropriators from artesian basin within system; and jurisdiction of district court, in suit pending, excluded jurisdiction of another court as to claimants not impleaded, and as to appropriators from artesian basin. Unknown claimants could be impleaded. El Paso & R.I. Ry. v. District Court, 36 N.M. 94, 8 P.2d 1064 (1931).

Damage suit in district court. — Suit for damages for obstruction of flow and appropriation of waters of creek was properly brought in district court, although rights to use of waters of creek had not been adjudicated under this act, as plaintiff had had use of the water for more than twenty years before this act was enacted. New Mexico Prods. Co. v. New Mexico Power Co., 42 N.M. 311, 77 P.2d 634 (1937).

Law reviews. — For comment, "Indian Pueblo Water Rights Not Subject to State Law Prior Appropriation," see 17 Nat. Resources J. 341 (1977).

For note, "Reserved Water Rights and Our National Forests," see 19 Nat. Resources J. 433 (1979).

For article, “The Administration of the Middle Rio Grande Basin: 1956-2002,” see 42 Nat. Resources J. 939 (2002).

Am. Jur. 2d, A.L.R. and C.J.S. references. — 78 Am. Jur. 2d Waters § 258.

93 C.J.S. Waters §§ 194 to 205.

72-4-16. [Reports of hydrographic surveys; filing with state engineer; copies as evidence.]

All reports of hydrographic surveys of the waters of any stream system, or parts thereof, and other surveys heretofore or hereafter made by the state engineer, or under his authority, or by any engineer of the United States, or any other engineer, in the opinion of the state engineer qualified to make the same, may, when made in writing and signed by the party making the same, be filed in the office of such state engineer,

and the originals or certified copies thereof, made by such state engineer, shall be received and considered in evidence in the trial of all causes involving the data shown in such survey, the same as though testified to by the person making the same, subject to rebuttal, the same as in ordinary cases.

History: Laws 1919, ch. 124, § 1; C.S. 1929, § 151-121; 1941 Comp., § 77-405; 1953 Comp., § 75-4-5.

ANNOTATIONS

State engineer. — See 72-2-1 NMSA 1978.

Hydrographic surveys prepared by United States. — The state engineer may make use of all or part of a hydrographic survey prepared by the United States, but even if he does not accept the United States survey, it still may be offered into evidence at a state court trial involving the general adjudication of water rights. United States ex rel. Acoma & Laguna Indian Pueblos v. Bluewater-Toltec Irrigation Dist., 580 F. Supp. 1434 (D.N.M. 1984), aff'd, 806 F.2d 986 (10th Cir. 1986).

Law reviews. — For comment, "Indian Pueblo Water Rights Not Subject to State Law Prior Appropriation," see 17 Nat. Resources J. 341 (1977).

72-4-17. Suits for determination of water rights; parties; hydrographic survey; jurisdiction; unknown claimants.

In any suit for the determination of a right to use the waters of any stream system, all those whose claim to the use of such waters are of record and all other claimants, so far as they can be ascertained, with reasonable diligence, shall be made parties. When any such suit has been filed the court shall, by its order duly entered, direct the state engineer to make or furnish a complete hydrographic survey of such stream system as hereinbefore provided in this article, in order to obtain all data necessary to the determination of the rights involved. Money heretofore spent on hydrographic surveys by the state engineer, but not assessed against the water users on the effective date of this act, shall not be assessed against the water users. The court in which any suit involving the adjudication of water rights may be properly brought shall have exclusive jurisdiction to hear and determine all questions necessary for the adjudication of all water rights within the stream system involved; and may submit any question of fact arising therein to a jury or to one or more referees, at its discretion; and the attorney general may bring suit as provided in Section 72-4-15 NMSA 1978 in any court having jurisdiction over any part of the stream system, which shall likewise have exclusive jurisdiction for such purposes, and all unknown persons who may claim any interest or right to the use of the waters of any such system, and the unknown heirs of any deceased person who made claim of any right or interest to the waters of such stream system in his lifetime, may be made parties in such suit by their names as near as the same can be ascertained, such unknown heirs by the style of unknown heirs of such deceased person and said unknown persons by the name and style of unknown

claimants of interest to water in such stream system, and service of process on, and notice of such suit, against such parties may be made as in other cases by publication.

History: Laws 1907, ch. 49, § 21; Code 1915, § 5674; Laws 1917, ch. 31, § 1; 1919, ch. 131, § 3; C.S. 1929, § 151-122; 1941 Comp., § 77-406; 1953 Comp., § 75-4-6; Laws 1965, ch. 124, § 3.

ANNOTATIONS

Cross references. — For service of process, including service by publication, see Rule 1-004 NMRA.

For joinder of parties, see Rules 1-019 and 1-020 NMRA.

State engineer. — See 72-2-1 NMSA 1978.

Meaning of "this article". — The words "in this article" following "hereinbefore provided" were inserted by the compilers of the 1915 Code, and refer to Code 1915, ch. 114, art. I (§§ 5654 to 5730) presently compiled as 19-7-26, 72-1-1, 72-1-2, 72-1-5, 72-2-1 to 72-2-7, 72-2-9, 72-2-10, 72-3-1 to 72-3-5, 72-4-1, 72-4-13, 72-4-15, 72-4-17 to 72-4-19, 72-5-1 to 72-5-4, 72-5-6 to 72-5-24, 72-5-26 to 72-5-31, 72-5-33, 72-7-1 to 72-7-3, 72-8-1 to 72-8-6 and 72-9-1 to 72-9-3 NMSA 1978.

Only courts have power and authority to adjudicate water rights. State ex rel. Reynolds v. Lewis, 84 N.M. 768, 508 P.2d 577 (1973).

This section does not preclude trespass actions between individual water users under certain circumstances. State v. City of Las Vegas, 2004-NMSC-009, 135 N.M. 375, 89 P.3d 47.

But a simple trespass claim cannot be initiated while general stream adjudication is pending and cannot be used to challenge the results of a general stream adjudication in which the litigants to the trespass action had participated as parties. State v. City of Las Vegas, 2004-NMSC-009, 135 N.M. 375, 89 P.3d 47.

Proposed legislation unconstitutional. — Where exclusive jurisdiction has been given to judiciary to determine water rights, separation of powers doctrine forbids legislature from granting any such rights; therefore, proposed legislation attempting to grant water right of two acre inches per acre-foot to those holding water rights in artesian basin would be unconstitutional. 1971 Op. Att'y Gen. No. 71-23.

When statutes provide for judicial determination of water rights, legislative act enlarging water rights of one group might be treated as a taking of property of another group without due process of law. 1971 Op. Att'y Gen. No. 71-23.

Procedure all-embracing. — Procedure for adjudication of water rights provided for in Laws 1907, ch. 49, is all-embracing (including alleged rights of appropriation from artesian basin in stream system). State ex rel. Reynolds v. Sharp, 66 N.M. 192, 344 P.2d 943 (1959).

United States may be sued in water rights adjudication matters. — Merely because a water rights adjudication will proceed over time and will join necessary defendants does not mean that the adjudication is not within the scope of the McCarran Amendment, 43 U.S.C. § 666, which allows the United States to be sued in water rights adjudication matters. United States ex rel. Acoma & Laguna Indian Pueblos v. Bluewater-Toltec Irrigation Dist., 580 F. Supp. 1434 (D.N.M. 1984), aff'd, 806 F.2d 986 (10th Cir. 1986).

Scope of adjudication. — For purposes of determining the geographical scope of the adjudication under this section, if the adjudication satifies the requirements of the McCarran Amendment, 43 U.S.C. § 666, it will satisfy this section because both statutes are intended to avoid piecemeal litigation by including all claimants to the water source. Elephant Butte Irrigation Dist. v. Regents of N.M. State Univ., 115 N.M. 229, 849 P.2d 372 (Ct. App. 1993).

"Stream system." — Although adjudication of only a segment of a main stem of the Rio Grande would not satisfy the requirements of the McCarran Act, 43 U.S.C. § 666, and this section, which require joinder of the United States as a defendant, since separate water was required to be delivered to this same segment of the river under the Rio Grande Compact this segment could be considered a "separate stream system" for purposes of satisfying this section. Elephant Butte Irrigation Dist. v. Regents of N.M. State Univ., 115 N.M. 229, 849 P.2d 372 (Ct. App. 1993).

Requirements for decree. — No decree as required by 72-4-19 NMSA 1978, declaring priority, amount, purpose, periods and place of use, and specific tracts of land to which right is appurtenant, together with other necessary conditions, can be entered until hydrographic surveys have been completed and all parties impleaded, at which time further hearing to determine relative rights of parties, toward each other, will be held. State ex rel. Reynolds v. Sharp, 66 N.M. 192, 344 P.2d 943 (1959).

Step by step procedure encompassing entire basin and all matters required to be decreed by 72-4-19 NMSA 1978 is substantial compliance with the requirements of adjudication statutes, and reasonable and practical way to accomplish desired purposes. State ex rel. Reynolds v. Sharp, 66 N.M. 192, 344 P.2d 943 (1959).

Hearing necessary. — Nothing less than hearing where evidence could be offered and received to establish claims concerning conflicting priority dates of rights found to exist would comply with the requirements of due process. State ex rel. Reynolds v. Allman, 78 N.M. 1, 427 P.2d 886 (1967).

Joinder of users required. — All water users whose rights may be affected must be joined in an adjudication. State v. City of Las Vegas, 2004-NMSC-009, 135 N.M. 375, 89 P.3d 47.

In order to avoid a conflict with this section and to protect the legislative purpose of comprehensive stream adjudication, a trespass claim should not be entertained if it necessarily requires the determination of the rights of other water users who are not joined in the action. State v. City of Las Vegas, 2004-NMSC-009, 135 N.M. 375, 89 P.3d 47.

Denial of due process. — Where former action against owners of water rights had been consolidated with later action against canal company, and water rights of owners in prior case carried priority date as of commencement of well while well rights adjudicated to canal company carried priority date from formation of ditch, denying right to owners, at hearing, to establish applicability of doctrine of relation back in showing priority date to be that of original appropriation of water from same source constituted denial of due process. State ex rel. Reynolds v. Allman, 78 N.M. 1, 427 P.2d 886 (1967).

Venue. — Venue for a suit governing the adjudication of water rights was properly brought in the county having jurisdiction over the stream system pursuant to 38-3-1(D)(1) NMSA 1978 as opposed to the county wherein the state engineer had his offices pursuant to 38-3-1(G) NMSA 1978. Because the county district court wherein the stream system was located properly had venue over the water rights adjudication pursuant to 38-3-1(D)(1) NMSA 1978, this section required that that court have exclusive jurisdiction over all questions relating to the water rights involved, including those against the state engineer. Elephant Butte Irrigation Dist. v. Regents of N.M. State Univ., 115 N.M. 229, 849 P.2d 372 (Ct. App. 1993).

Party was not deprived of relief because of laches where, though knowing of operation of pumping plants by riparian owners it did not know these were being so operated without permits until advised thereof by state engineer within two years of time suit was filed. Carlsbad Irrigation Dist. v. Ford, 46 N.M. 335, 128 P.2d 1047 (1942).

No continuing jurisdiction. — Water adjudication statutes do not make provision for reservation or exercise of continuing jurisdiction after decree adjudicating waters has been entered. 1939-40 Op. Att'y Gen. 107.

New action required. — District court was without jurisdiction to entertain petition in statutory proceeding to adjudicate water rights over which it had expressly surrendered further jurisdiction, and under circumstances it must be made subject of new and independent action. Village of Springer v. Springer Ditch Co., 47 N.M. 456, 144 P.2d 165 (1943).

Res judicata. — Even though all of numerous water right owners were not made parties, decree of federal court which adjudicated water rights was res judicata in view

of provision of statute which provided for eventuality that some persons might not be made parties to such suit. Bounds v. Carner, 53 N.M. 234, 205 P.2d 216 (1949). But see Cartwright v. Public Serv. Co., 66 N.M. 64, 343 P.2d 654 (1958).

State Engineer has regulatory interest in adjudication litigation. State v. City of Las Vegas, 2004-NMSC-009, 135 N.M. 375, 89 P.3d 47.

Trespass actions. — A trespass action by a community ditch association against a ski company did not require that the association seek a full-stream adjudication and join other water users as defendants. La Madera Community Ditch Ass'n v. Sandia Peak Ski Co., 119 N.M. 591, 893 P.2d 487 (Ct. App. 1995).

Pueblo water rights doctrine. — Application of the pueblo water rights doctrine, without consideration of the underlying facts, is insufficient to support a grant of summary judgment. City of Las Vegas v. Oman, 110 N.M. 425, 796 P.2d 1121 (Ct. App. 1990), cert. denied, 110 N.M. 282, 795 P.2d 87 (1990) (containing discussion of pueblo water rights doctrine and history of Gallinas River water rights).

Water uses by Pueblo Indians are not controlled by state water law or prior appropriation. New Mexico v. Aamodt, 537 F.2d 1102 (10th Cir. 1976), cert. denied New Mexico v. United States, 429 U.S. 1121, 97 S. Ct. 1157, 51 L. Ed. 2d 572 (1977).

State's constitutional disclaimer of all right and title to Indian lands applies only to a proprietary interest in such lands and does not apply to a nonproprietary intent in subjecting the United States to a state action involving a general water right adjudication. Jicarilla Apache Tribe v. United States, 601 F.2d 1116 (10th Cir.), cert. denied, 444 U.S. 995, 100 S. Ct. 530, 62 L. Ed. 2d 426 (1979).

Subject matter jurisdiction of state courts in water rights adjudications. — Subject matter jurisdiction governing general water rights adjudication, including that of federally reserved water rights, involving the joinder of the United States as proper party defendant to represent the interests of the reserved water rights, is allowable in state courts, there being implicit modification of the Enabling Act, § 2, to that extent, as necessary. Jicarilla Apache Tribe v. United States, 601 F.2d 1116 (10th Cir.), cert. denied, 444 U.S. 995, 100 S. Ct. 530, 62 L. Ed. 2d 426 (1979).

United States is the proper party defendant in any general water rights adjudication proceeding, whether brought in federal court or state court, relating to federally created water rights, including those reserved for use by Indian tribes. Indian tribes using the reserved waters are granted the right of intervention in any such adjudication, to be represented by private counsel independent of any possible conflict of interest. Jicarilla Apache Tribe v. United States, 601 F.2d 1116 (10th Cir.), cert. denied, 444 U.S. 995, 100 S. Ct. 530, 62 L. Ed. 2d 426 (1979).

Federal law governs adjudication of federal water rights. — Where the general water rights of the San Juan river and its tributaries in New Mexico sought to be

adjudicated include those which are federally owned and established, federal law governs in determining the extent and status of such rights. Jicarilla Apache Tribe v. United States, 601 F.2d 1116 (10th Cir.), cert. denied, 444 U.S. 995, 100 S. Ct. 530, 62 L. Ed. 2d 426 (1979).

Exclusive jurisdiction may not be avoided by another district court. — Once an adjudication of water rights by one district court has been made, a separate district court may not subsequently impose a trust on the water rights granting rights not recognized by the original court, and thereby deprive the original court of its exclusive jurisdiction. Ulibarri v. Hagan, 98 N.M. 676, 652 P.2d 226 (1982).

Finding required to dismiss for lack of exclusive jurisdiction. — Before the district court can dismiss an action seeking an adjudication of water rights in a spring on the basis that another district court has exclusive jurisdiction, it must be satisfied that a prior order actually was entered declaring that the spring is part of the stream system involved in the prior action. Ulibarri v. Hagan, 98 N.M. 676, 652 P.2d 226 (1982).

Priority of right to underground water. — Landowner who lawfully began developing underground water right and completed it with reasonable diligence acquired water right with priority date as initiation of his work even though lands involved were placed within declared artesian basin before work was finished and water put to beneficial use. State ex rel. Reynolds v. Mendenhall, 68 N.M. 467, 362 P.2d 998 (1961).

Law reviews. — For comment, "Indian Pueblo Water Rights Not Subject to State Law Prior Appropriation," see 17 Nat. Resources J. 341 (1977).

Am. Jur. 2d, A.L.R. and C.J.S. references. — 78 Am. Jur. 2d Waters § 258.

93 C.J.S. Waters §§ 194, 195, 199.

72-4-18. [Suits concerning water rights; submission of facts to jury or referee.]

In any suit concerning water rights, or in any suit or appeal provided for in this article, the court may in its discretion submit any question of fact arising therein to a jury, or may appoint a referee or referees to take testimony and report upon the rights of the parties.

History: Laws 1907, ch. 49, § 37; Code 1915, § 5696; C.S. 1929, § 151-149; 1941 Comp., § 77-407; 1953 Comp., § 75-4-7.

ANNOTATIONS

Cross references. — For use of advisory jury, see Paragraph B of Rule 1-039 NMRA.

For appointment of masters and referees, see Rule 1-053 NMRA.

Meaning of "this article". — The 1915 Code substituted "this article" for "this act." For meaning of "this article," see note to 72-4-17 NMSA 1978. For meaning of "this act," see note heading "Meaning of 'this chapter'," in notes to 72-4-15 NMSA 1978.

Law reviews. — For comment, "Indian Pueblo Water Rights Not Subject to State Law Prior Appropriation," see 17 Nat. Resources J. 341 (1977).

Am. Jur. 2d, A.L.R. and C.J.S. references. — 93 C.J.S. Waters § 203.

72-4-19. [Adjudication of rights; decree filed with state engineer; contents of decree.]

Upon the adjudication of the rights to the use of the waters of a stream system, a certified copy of the decree shall be prepared and filed in the office of the state engineer by the clerk of the court, at the cost of the parties. Such decree shall in every case declare, as to the water right adjudged to each party, the priority, amount, purpose, periods and place of use, and as to water used for irrigation, except as otherwise provided in this article, the specific tracts of land to which it shall be appurtenant, together with such other conditions as may be necessary to define the right and its priority.

History: Laws 1907, ch. 49, § 23; Code 1915, § 5677; C.S. 1929, § 151-128; 1941 Comp., § 77-408; 1953 Comp., § 75-4-8.

ANNOTATIONS

State engineer. — See 72-2-1 NMSA 1978.

Meaning of "this article". — The 1915 Code substituted "this article" for "this act." For meaning of "this article," see note to 72-4-17 NMSA 1978. For meaning of "this act," see note heading "Meaning of 'this chapter'," in notes to 72-4-15 NMSA 1978.

Only courts have power and authority to adjudicate water rights. State ex rel. Reynolds v. Lewis, 84 N.M. 768, 508 P.2d 577 (1973).

Service of decision denying protest upon attorney rather than on protestant, where protestant's well was mentioned in application to change use of existing rights, did not adjudicate protestant's rights to the well. Garbagni v. Metropolitan Inv., Inc., 110 N.M. 436, 796 P.2d 1132 (Ct. App. 1990).

Requirements for decree. — No decree as required by this section, declaring priority, amount, purpose, periods and place of use, and specific tracts of land to which right is appurtenant, together with other necessary conditions can be entered until hydrographic surveys have been completed and all parties impleaded, at which time further hearing to determine relative rights of parties, toward each other, will be held. State ex rel. Reynolds v. Sharp, 66 N.M. 192, 344 P.2d 943 (1959).

Step by step procedure encompassing entire basin and all matters required to be decreed by this section is substantial compliance with requirements of adjudication statutes, and reasonable and practical way to accomplish desired purposes. State ex rel. Reynolds v. Sharp, 66 N.M. 192, 344 P.2d 943 (1959).

Single, final hearing and comprehensive decree not needed for administration of water rights. — There can be no administration of junior water rights as against senior water rights until the parties have had an opportunity to contest priorities inter se. Such an administration, however, need not wait until the court holds a single, final hearing and enters a comprehensive decree fixing all the conflicting priorities. State ex rel. Reynolds v. Pecos Valley Artesian Conservancy Dist., 99 N.M. 699, 663 P.2d 358 (1983).

Interim administration of junior water uses of stream system constitutional. — In a suit to adjudicate rights to the surface and ground waters of an entire stream system, an order permitting the court to enjoin junior water users to show cause in individual proceedings why their uses should not be enjoined pursuant to N.M. Const., art. XVI, § 2, such injunctions being subject to the right of each user to contest inter se the rights adjudicated for use through and by means of a senior irrigation project, and also subject to the right of each user to establish that his use of the public waters of the stream system should not be terminated to satisfy the senior rights adjudicated for use through the project, and appointing the state engineer as an interim watermaster to administer such orders of injunction as may be entered by the court in the proceedings which will be held pursuant to the order, does not violate rights to due process. State ex rel. Reynolds v. Pecos Valley Artesian Conservancy Dist., 99 N.M. 699, 663 P.2d 358 (1983).

Decree conforming to statute. — Despite allegations that trial court improperly adjudicated city's rights according to well capacity and rights of adverse party according to amount of water applied to beneficial use, where maximum amount of water which could be withdrawn from basin was fixed by decree as was purpose, period and place of use, rights decreed conformed with requirements of this section. State ex rel. State Eng'r v. Crider, 78 N.M. 312, 431 P.2d 45 (1967).

Effect of federal decree. — Where bill and decree in suit brought in federal court indicated that suit was brought to adjudicate rights (if any) of all parties thereto to use of water flowing in Pecos river stream system, federal court decree was res judicata as between parties to federal suit and their privies, despite fact that stipulation between certain parties and plaintiff's predecessor in title had not been signed by defendants or their predecessors. Bounds v. Carner, 53 N.M. 234, 205 P.2d 216 (1949), distinguished, Cartwright v. Public Serv. Co., 66 N.M. 64, 343 P.2d 654 (1958).

Defendant public service company and intervener town of Las Vegas were not barred from pleading as a defense the doctrine of Pueblo Rights, in suit by Galinas River water users seeking damages and injunction against company's use of water, and apportionment thereof, by alleged res judicata effect of previous decree in federal court,

where that court had specifically provided that its decree would affect only the property and rights of those specifically named in the decree. Cartwright v. Public Serv. Co., 66 N.M. 64, 343 P.2d 654 (1958).

Priority in underground water right. — Landowner who lawfully began developing underground water right and completed it with reasonable diligence acquired water right with priority date as initiation of his work even though lands involved were placed within declared artesian basin before work was finished and water put to beneficial use. State ex rel. Reynolds v. Mendenhall, 68 N.M. 467, 362 P.2d 998 (1961).

Law reviews. — For article, "Water Rights Problems in the Upper Rio Grande Watershed and Adjoining Areas," see 11 Nat. Resources J. 48 (1971).

For comment, "Indian Pueblo Water Rights Not Subject to State Law Prior Appropriation," see 17 Nat. Resources J. 341 (1977).

Am. Jur. 2d, A.L.R. and C.J.S. references. — 78 Am. Jur. 2d Waters § 258.

93 C.J.S. Waters § 203.

72-4-20. [Water rights on interstate streams in litigation; duty of state engineer; exception.]

In all cases where the rights of owners of land in this state to which water rights on interstate streams are appurtenant have been the subject of litigation in the state or federal courts of an adjoining state, it shall be the duty of the state engineer to assume control of all or any part of such interstate stream and of the diversion and distribution of the waters thereof and to administer the same in the public interest; provided, however, that this section shall not apply to conservancy districts, irrigation districts or federal reclamation projects in this state.

History: Laws 1941, ch. 126, § 26; 1941 Comp., § 77-411; 1953 Comp., § 75-4-11.

ANNOTATIONS

State engineer. — See 72-2-1 NMSA 1978.

Right to change diversion and storage points. — Since water statutes of Colorado and New Mexico have no extraterritorial effect, water company had right to change places of diversion and storage of water rights adjudicated to certain reservoirs from points in Colorado to points in New Mexico, provided such changes could be effected without injuriously affecting rights of other water users, and it was not necessary to obtain approval of such changes by New Mexico state engineer or Colorado court which entered decree of adjudication. Lindsey v. McClure, 136 F.2d 65 (10th Cir. 1943).

Authority of state engineer limited. — Section negatives any authority in state engineer to exercise control over diversion and storage of water in New Mexico for beneficial use on land situated in Colorado. Lindsey v. McClure, 136 F.2d 65 (10th Cir. 1943).

Injunction against enforcement of order. — Owner of water rights in interstate stream was entitled to injunction against enforcement of state engineer's order made without notice and hearing, which order forbade use of excess storage space of New Mexico reservoir, constructed primarily for storing unappropriated water to irrigate New Mexico land, for initial storage of water attributable to Colorado reservoirs with prior water rights, and to use New Mexico ditch to carry water to Colorado reservoirs, where such use would not affect other water users adversely. Lindsey v. McClure, 136 F.2d 65 (10th Cir. 1943).

Law reviews. — For article, "Water Rights Problems in the Upper Rio Grande Watershed and Adjoining Areas," see 11 Nat. Resources J. 48 (1971).

Am. Jur. 2d, A.L.R. and C.J.S. references. — 78 Am. Jur. 2d Waters § 340.

ARTICLE 4A
Water Project Finance

72-4A-1. Short title.

This act [72-4A-1 to 72-4A-10 NMSA 1978] may be cited as the "Water Project Finance Act".

History: Laws 2001, ch. 164, § 1.

ANNOTATIONS

Emergency clauses. — Laws 2001, ch. 164, § 11 makes the Water Project Finance Act effective immediately. Approved April 3, 2001.

72-4A-2. Findings and purpose.

A. The legislature finds that:

(1) New Mexico is in a desert where water is a scarce resource;

(2) the economy depends on reasonable and fair allocation of water for all purposes;

(3) the public welfare depends on efficient use and conservation of water;

(4) New Mexico must comply with its delivery obligations under interstate compacts; and

(5) public confidence and support for water use efficiency and conservation is based on a reasonable balance of investments in water infrastructure and management.

B. The purpose of the Water Project Finance Act [72-4A-1 NMSA 1978] is to provide for water use efficiency, resource conservation and protection and fair distribution and allocation of New Mexico's scarce water resources for beneficial purposes of use within the state.

History: Laws 2001, ch. 164, § 2; 2003, ch. 139, § 1.

ANNOTATIONS

The 2003 amendment, effective April 3, 2003, in Subsection B substituted "New Mexico's" for "the" following "allocation of" near the end, and substituted "water resources for beneficial purposes of use within the state" for "resource to all users" at the end.

Emergency clauses. — Laws 2001, ch. 164, § 11 makes the Water Project Finance Act effective immediately. Approved April 3, 2001.

72-4A-3. Definitions.

As used in the Water Project Finance Act [Chapter 72, Article 4A NMSA 1978]:

A. "authority" means the New Mexico finance authority;

B. "board" means the water trust board;

C. "political subdivision" means a municipality, county, irrigation district, conservancy district, special district, acequia, soil and water conservation district, water and sanitation district or an association organized and existing pursuant to the Sanitary Projects Act [3-29-1 NMSA 1978];

D. "qualifying water project" means a project recommended by the board for funding by the legislature; and

E. "qualifying entity" means a state agency, a political subdivision of the state or a recognized Indian nation, tribe or pueblo, the boundaries of which are located wholly or partially in New Mexico.

History: Laws 2001, ch. 164, § 3; 2003, ch. 139, § 2.

ANNOTATIONS

The 2003 amendment, effective April 3, 2003, added "water and sanitation district or an association organized and existing pursuant to the Sanitary Projects Act" at the end of Subsection C; and added Subsection E.

Emergency clauses. — Laws 2001, ch. 164, § 11 makes the Water Project Finance Act effective immediately. Approved April 3, 2001.

72-4A-4. Water trust board created.

A. The "water trust board" is created. The board is composed of the following fifteen members:

(1) the state engineer or his designee, who shall be the chairman of the board;

(2) the executive director of the New Mexico finance authority;

(3) the secretary of environment or his designee;

(4) the secretary of energy, minerals and natural resources or his designee;

(5) the director of the department of game and fish or his designee;

(6) the director of the New Mexico department of agriculture or his designee;

(7) the executive director of the New Mexico municipal league or his designee;

(8) the executive director of the New Mexico association of counties or his designee;

(9) five public members appointed by the governor and confirmed by the senate and who represent:

(a) the environmental community;

(b) an irrigation or conservancy district that uses surface water;

(c) an irrigation or conservancy district that uses ground water;

(d) acequia water users; and

(e) soil and water conservation districts;

(10) one public member appointed by the commission on Indian affairs; and

(11) the president of the Navajo Nation or his designee.

B. The board shall meet at the call of the chairman or whenever three members submit a request in writing to the chairman, but not less often than once each calendar year. A majority of members constitutes a quorum for the transaction of business. The affirmative vote of at least a majority of a quorum present shall be necessary for an action to be taken by the board.

C. Each public member of the board appointed by the governor shall be appointed to a four-year term. To provide for staggered terms, two of the initially governor-appointed public members shall be appointed for terms of two years and three members for terms of four years. Thereafter, all governor-appointed members shall be appointed for four-year terms. Vacancies shall be filled by appointment by the governor for the remainder of the unexpired term.

D. Public members of the board shall be reimbursed for attending meetings of the board as provided for nonsalaried public officers in the Per Diem and Mileage Act [10-8-1 NMSA 1978] and shall receive no other compensation, perquisite or allowance.

E. Public members of the board are appointed public officials of the state while carrying out their duties and activities under the Water Project Finance Act [72-4A-1 NMSA 1978].

History: Laws 2001, ch. 164, § 4.

ANNOTATIONS

Emergency clauses. — Laws 2001, ch. 164, § 11 makes the Water Project Finance Act effective immediately. Approved April 3, 2001.

72-4A-5. Board; duties.

The board shall:

A. adopt rules governing terms and conditions of grants or loans recommended by the board for appropriation by the legislature from the water project fund, giving priority to projects that have urgent needs, that have been identified for implementation of a completed regional water plan that is accepted by the interstate stream commission and that have matching contributions from federal or local funding sources;

B. authorize qualifying water projects to the authority that are for:

(1) storage, conveyance or delivery of water to end users;

(2) implementation of federal Endangered Species Act of 1973 collaborative programs;

(3) restoration and management of watersheds;

(4) flood prevention; or

(5) water conservation; and

C. create a drought strike team to coordinate responses to emergency water shortages caused by drought conditions.

History: Laws 2001, ch. 164, § 5; 2003, ch. 139, § 3; 2003, ch. 365, § 1.

ANNOTATIONS

2003 amendments. — Laws 2003, ch. 365, § 1, effective June 20, 2003, adding Paragraph B(5) and Subsection C, was approved April 8, 2003.

This section was also amended by Laws 2003, ch. 139, § 3, effective April 3, 2003, as follows: in Subsection A deleted "that have urgent needs, that have been" following "projects" near the middle, substituted "as being urgent to meet the needs of a regional water planning area that has had" for "for implementation of" following "identified" near the middle, and added "available, and that has obtained all requisite state and federal permits and authorization necessary to initiate the project; and" at the end; in Subsection B(2) inserted "federal" preceding "Endangered" and inserted "of 1973" following "Species Act"; and added Paragraph B(5) providing for the board to authorize qualifying water projects to the authority that are for "conservation, recycling, treatment or reuse of water as provided by law".

This section is set out as amended by Laws 2003 ch. 365, § 1. See 12-1-8 NMSA 1978.

Emergency clauses. — Laws 2001, ch. 164, § 11 makes the Water Project Finance Act effective immediately. Approved April 3, 2001.

Endangered Species Act. — The federal Endangered Species Act of 1973, referred to in Subsection B(2), principally appears as 16 U.S.C.S. § 1531 et seq.

72-4A-5.1. Implementation of state water plan.

A. The board, in conformance with the state water plan and pursuant to the provisions of the Water Project Finance Act [72-4A-1 NMSA 1978], shall prioritize the planning and financing of water projects required to implement the plan.

B. The board shall identify opportunities to leverage federal and other funding.

C. The board shall utilize the resources of its member agencies and entities whenever possible in implementing the state water plan.

History: Laws 2003, ch. 131, § 2; 2003, ch. 137, § 2.

ANNOTATIONS

Duplicate laws. — Laws 2003, ch. 131, § 2 and Laws 2003, ch. 137, § 2 enact identical new sections, effective June 20, 2003. Both have been compiled as 72-4A-5.1 NMSA 1978. See 12-1-8 NMSA 1978.

72-4A-6. Authority; duties.

The authority shall:

A. provide staff support for the board;

B. develop application procedures and forms for qualifying entities to apply for grants and loans from the water project fund; and

C. make loans or grants to qualifying entities for qualifying water projects authorized by the legislature; provided that the service area for the project is wholly within the boundaries of the state or the project is an interstate project that directly benefits New Mexico.

History: Laws 2001, ch. 164, § 6; 2003, ch. 139, § 4; 2006, ch. 42, § 1.

ANNOTATIONS

The 2003 amendment, effective April 3, 2003, substituted "qualifying entities" for "political subdivisions" once in Subsection B and once in Subsection C; and substituted "provided that the service area for the project is wholly within the boundaries of the state" for "authorized by the legislature" at the end of Subsection C.

The 2006 amendment, effective May 17, 2006, provides in Subsection C that the authority may make loans or grants for interstate projects that directly benefit New Mexico.

Emergency clauses. — Laws 2001, ch. 164, § 11 makes the Water Project Finance Act effective immediately. Approved April 3, 2001.

72-4A-7. Conditions for grants and loans.

A. Grants and loans shall be made only to state agencies or to political subdivisions that:

(1) agree to operate and maintain the water project so that it will function properly over the structural and material design life, which shall not be less than twenty years;

(2) require the contractor of the construction project to post a performance and payment bond in accordance with the requirements of Section 13-4-18 NMSA 1978;

(3) provide written assurance signed by an attorney or provide a title insurance policy that the political subdivision has proper title, easements and rights of way to the property upon or through which the water project proposed for funding is to be constructed or extended;

(4) meet the requirements of the financial capability set by the board to ensure sufficient revenues to operate and maintain the water project for its useful life and to repay the loan;

(5) agree to properly maintain financial records and to conduct an audit of the project's financial records; and

(6) agree to pay costs of originating grants and loans as determined by rules adopted by the board.

B. Plans and specifications for a water project shall be approved by the authority before grant or loan disbursements to pay for construction costs are made to a state agency or political subdivision. Plans and specifications for a water project shall incorporate available technologies and operational design for water use efficiency.

C. Grants and loans shall be made only for eligible items, which include:

(1) to match federal and local cost shares;

(2) engineering feasibility reports;

(3) contracted engineering design;

(4) inspection of construction;

(5) special engineering services;

(6) environmental or archaeological surveys;

(7) construction;

(8) land acquisition;

(9) easements and rights of way; and

(10) legal costs and fiscal agent fees.

History: Laws 2001, ch. 164, § 7; 2003, ch. 138, § 5; 2003, ch. 139, § 5; 2003, ch. 365, § 2.

ANNOTATIONS

2003 amendments. — Laws 2003, ch. 365, § 2, effective June 20, 2003, adding the second sentence in Subsection B, was approved April 8, 2003.

This section was also amended by Laws 2003, ch. 138, § 5, effective June 20, 2003, and by Laws 2003, ch. 139, § 5, effective April 3, 2003.

Laws 2003, ch. 138, § 5, added A(7) as follows: "except in case of an emergency, submit a water conservation plan with its application if required to do so and one is not on file with the state engineer, pursuant to Section 3 of this 2003 act."

Laws 2003, ch. 139, § 5: substituted "qualifying entities" for "state agencies or to political subdivisions" near the end of Subsection A; substituted "qualifying entity" for "political subdivision" following "insurance policy that the" near the middle of Subsection A(3); in Subsection B, inserted "after review and upon the recommendation of the state engineer and department of environment" following "by the authority" near the middle and substituted "qualifying entity" for "political subdivision" at the end.

This section is set out as amended by Laws 2003, ch. 365, § 2. See 12-1-8 NMSA 1978.

Emergency clauses. — Laws 2001, ch. 164, § 11 makes the Water Project Finance Act effective immediately. Approved April 3, 2001.

72-4A-8. Water trust fund; created; investment; distribution.

A. The "water trust fund" is created in the state treasury. The fund shall consist of money appropriated, donated or otherwise accrued to the fund. Money in the fund shall be invested by the state investment officer as land grant permanent funds are invested pursuant to Chapter 6, Article 8 NMSA 1978. Earnings from investment of the fund shall be credited to the fund. Money in the fund shall not be expended for any purpose, but an annual distribution shall be made to the water project fund in accordance with Subsection B of this section.

B. On July 1 of fiscal year 2003 and on July 1 of each fiscal year thereafter, an annual distribution shall be made from the water trust fund to the water project fund in the amount of four million dollars ($4,000,000) until that amount is less than an amount equal to four and seven-tenths percent of the average of the year-end market values of

the water trust fund for the immediately preceding five calendar years. Thereafter, the amount of the annual distribution shall be four and seven-tenths percent of the average of the year-end market values of the water trust fund for the immediately preceding five calendar years.

History: Laws 2001, ch. 164, § 8.

ANNOTATIONS

Emergency clauses. — Laws 2001, ch. 164, § 11 makes the Water Project Finance Act effective immediately. Approved April 3, 2001.

72-4A-9. Water project fund; created; purpose.

A. The "water project fund" is created in the New Mexico finance authority and shall consist of distributions made to the fund from the water trust fund and payments of principal of and interest on loans for approved water projects. The fund shall also consist of any other money appropriated, distributed or otherwise allocated to the fund for the purpose of supporting water projects pursuant to provisions of the Water Project Finance Act [72-4A-1 NMSA 1978]. The fund shall be administered by the authority. Income from investment of the water project fund shall be credited to the fund. Balances in the fund at the end of any fiscal year shall not revert to the general fund. The water project fund may consist of such subaccounts as the authority deems necessary to carry out the purposes of the fund. The authority may establish procedures and adopt rules as required to administer the fund and to recover from the fund costs of administering the fund and originating grants and loans. Ten percent of all water project funds shall be dedicated to the state engineer for water rights adjudications, and twenty percent of the money dedicated for water rights adjudications shall be allocated to the administrative office of the courts for the courts' costs associated with those adjudications.

B. Money in the water project fund may be used to make loans or grants to qualified entities for any project approved by the legislature and for water rights adjudications.

C. The authority is authorized to issue revenue bonds payable from the proceeds of loan repayments made into the water project fund upon a determination by the authority that issuance of the bonds is necessary to replenish the principal balance of the fund. The net proceeds from the sale of the bonds shall be deposited in the water project fund. The bonds shall be authorized and issued by the authority in accordance with the provisions of the New Mexico Finance Authority Act [6-21-1 NMSA 1978].

History: Laws 2001, ch. 164, § 9; 2005, ch. 293, § 1.

ANNOTATIONS

Cross references. — For the New Mexico finance authority, *see* 6-21-4 NMSA 1978.

Appropriations. — Laws 2002, ch. 110, § 47, effective March 6, 2002, appropriates $10,000,000 from the capital projects fund to the water project fund for expenditure in fiscal years 2002 through 2007 to carry out provisions of the Water Project Finance Act (72-4A-1 NMSA 1978 et seq.).

Laws 2002, ch. 110, § 55, effective March 6, 2002, appropriates $7,500,000 from the capital projects fund to the water project fund for various projects in fiscal years 2002 through 2007.

Laws 2005, ch. 287, § 1, effective April 7, 2005, authorizes the New Mexico finance authority to make loans or grants from the water project fund to specified qualified entities for specified qualifying water projects on terms and conditions established by the water trust board and the New Mexico finance authority.

Laws 2006, ch. 41, § 1, effective March 2, 2006, authorizes the New Mexico finance authority to make loans or grants from the water project fund to specified qualified entities for specified qualifying water projects on terms and conditions established by the water trust board and the New Mexico finance authority.

The 2005 amendment, effective June 17, 2005, provides in Subsection A that ten percent of all water project funds shall be dedicated to the state engineer for water rights adjudications and twenty percent of the money dedicated for water rights adjudications shall be allocated to the administrative office of the courts for the courts' costs associated with those adjudications and provides in Subsection B that money in the fund for water rights adjudications.

Compiler's notes. — Laws 2003, ch. 140, § 1, effective April 3, 2003, authorizes the water trust board to make loans or grants from the water project fund to various political subdivisions.

72-4A-9.1. Acequia project fund.

The "acequia project fund" is created in the state treasury. The fund shall consist of money appropriated, donated or otherwise accrued to the fund. The fund shall be administered by the authority. Income from investment of money in the acequia project fund shall be credited to the fund. Balances in the fund at the end of any fiscal year shall not revert to the general fund. The acequia project fund may consist of such subaccounts as the authority deems necessary to carry out the purposes of the fund. The authority may establish procedures and adopt rules as required to administer the fund and to recover from the fund costs of administering the fund. Money in the acequia project fund may be used to make grants to acequias for any project approved by the legislature.

History: Laws 2004, ch. 85, § 1.

ANNOTATIONS

Effective dates. — Laws 2004, ch. 85 contains no effective date provision, but, pursuant to N.M. Const., art. IV, § 23, is effective May 19, 2004, 90 days after adjournment of the legislature.

72-4A-10. Report to legislature.

The board shall report to the legislature no later than October 1 of each calender year the total expenditures from the water project fund, their purposes, an analysis of the accomplishments of the expenditures and recommendations for legislative action.

History: Laws 2001, ch. 164, § 10.

ANNOTATIONS

Emergency clauses. — Laws 2001, ch. 164, § 11 makes the Water Project Finance Act effective immediately. Approved April 3, 2001.

ARTICLE 5
Appropriation and Use of Surface Water

72-5-1. Application for permit; rules; surveys, etc.

Any person, association or corporation, public or private, the state of New Mexico or the United States of America, except as provided in Section 15 [72-5-33 NMSA 1978] of this act, hereafter intending to acquire the right to the beneficial use of any waters, shall, before commencing any construction for such purposes, make an application to the state engineer for a permit to appropriate, in the form required by the rules and regulations established by him. Such rules and regulations, shall, in addition to providing the form and manner of preparing and presenting the application, require the applicant to state the amount of water and period or periods of annual use, and all other data necessary for the proper description and limitation of the right applied for, together with such information, maps, field notes, plans and specifications as may be necessary to show the method of practicability of the construction and the ability of the applicant to complete the same. The state engineer may require additional information not provided for in the general rules and regulations, in any case involving the diversion of five hundred cubic feet of water per second, or more, or in the construction of a dam more than thirty feet high from the foundation. All such maps, field notes, plans and specifications, shall be made from actual surveys and measurements, and shall be duly filed in the office of the state engineer at the time of filing of formal application for permit to appropriate; provided, that upon the filing in the office of the state engineer of a notice of intention to make formal application for a permit to appropriate certain public waters the state engineer may allow a reasonable time, to be specified by him and noted upon his records, for making the surveys, measurements, maps, plans and specifications hereinbefore provided and required for a formal application, and if applicant shall file such formal application and map, plans and specifications and other necessary data

within the time so specified, his priority of application shall date from the time of filing such notice of intention.

History: Laws 1907, ch. 49, § 24; 1913, ch. 62, § 2; Code 1915, § 5678; C.S. 1929, § 151-129; Laws 1941, ch. 126, § 6; 1941 Comp., § 77-501; 1953 Comp., § 75-5-1.

ANNOTATIONS

Cross references. — For prohibition against constructing works without permit, see 72-8-4 NMSA 1978.

For applications for the transportation and use of public waters outside the state, see 72-12B-1 NMSA 1978.

State engineer. — See 72-2-1 NMSA 1978.

Stream and underground water rights identical. — Although appropriators' rights regarding streams and underground waters may be secured under different administrative procedures, substantive rights obtained are identical; likewise, jurisdiction and duties of state engineer relating to streams and underground waters are the same. City of Albuquerque v. Reynolds, 71 N.M. 428, 379 P.2d 73 (1962).

Exception to permit requirement. — The provisions of 72-5-32 NMSA 1978 expressly enumerating the dams and resulting ponds which require permits exempt those dams not mentioned from the general permit requirement. State ex rel. State Eng'r v. Lewis, 1996-NMCA-019, 121 N.M. 323, 910 P.2d 957.

Permit requirements applicable to United States. — Unless state requirements regarding distribution of water are inconsistent with applicable federal law, the United States is subject to those requirements such that it would have to apply for a permit under this section. Jicarilla Apache Tribe v. United States, 657 F.2d 1126 (10th Cir. 1981).

Tort liability. — Defendant, who built a dam without obtaining the permit required hereunder, and negligently maintained same, was liable for damage caused by such negligence, despite fact that negligence of one of plaintiffs was also a proximate cause of the damage. Little v. Price, 74 N.M. 626, 397 P.2d 15 (1964).

Reasonable charge dependent on costs. — What is reasonable charge for water in any case must depend largely on cost of constructing and operating the irrigating works. Young v. Hinderlider, 15 N.M. 666, 110 P. 1045 (1910).

Community acequias. — This act (Laws 1907, ch. 49) does not regulate community acequias constructed prior to passage thereof as to right to change point of diversion from stream into such acequias, but under it, condemnation proceedings to enlarge old

community acequia are authorized. Pueblo of Isleta v. Tondre, 18 N.M. 388, 137 P. 86 (1913).

Effect of application. — Mere application for permit to appropriate waters establishes no right to the use thereof. Carlsbad Irrigation Dist. v. Ford, 46 N.M. 335, 128 P.2d 1047 (1942).

Water belongs to state. — All water within the state, whether above or beneath the surface of the ground, belongs to the state, which authorizes its use; there is no ownership in the corpus of the water, but the use thereof may be acquired, and the basis of such acquisition is beneficial use. State ex rel. Erickson v. McLean, 62 N.M. 264, 308 P.2d 983 (1957).

State engineer has power to make rules and regulations which may affect bureau of reclamation when it has reserved unappropriated waters, and state engineer may require it to file proofs of completion of works and meet any other reasonable requirements provided by rule and regulation. 1951-52 Op. Att'y Gen. No. 5559.

Appropriation procedure unlawful. — The state engineer's water rights dedication practice and procedure imposing a condition on the groundwater permit requiring that at some future time the applicant acquire and retire a specified amount of surface water rights in the related stream system is unlawful because it precludes full consideration of public welfare and water conservation resulting in an impairment of existing water rights at the time the new conditional water right is approved, since the rights are not identified until the permit is issued, preventing public notice and comment. 1994 Op. Att'y Gen. No. 94-07.

Extension rejected. — Extension of time for filing application for water is properly rejected if no proper showing has been made of ability to proceed with the work. 1914 Op. Att'y Gen. 222.

Law reviews. — For comment on *Kelley v. Carlsbad Irrigation Dist.,* 71 N.M. 464, 379 P.2d 763 (1963), see 3 Nat. Resources J. 340 (1963).

For comment on *Mathers v. Texaco, Inc.,* 77 N.M. 239, 421 P.2d 771 (1966), see 7 Nat. Resources J. 433 (1967).

For article, "Constitutional Limitations on the Exercise of Judicial Functions by Administrative Agencies," see 7 Nat. Resources J. 599 (1967).

For note, "Appropriation By the State of Minimum Flows in New Mexico Streams," see 15 Nat. Resources J. 809 (1975).

For comment on geothermal energy and water law, see 19 Nat. Resources J. 445 (1979).

For note, "Access to Sunlight: New Mexico's Solar Rights Act," see 19 Nat. Resources J. 957 (1979); 10 N.M.L. Rev. 169 (1979-80).

For article, "New Mexico Water Law: An Overview and Discussion of Current Issues," see 22 Nat. Resources J. 1045 (1982).

For article, "Legislation on Domestic and Industrial Uses of Water: A Comparative Review," see 24 Nat. Resources J. 143 (1984).

For article, "The Impact of Recent Court Decisions Concerning Water and Interstate Commerce on Water Resources of the State of New Mexico," see 24 Nat. Resources J. 689 (1984).

For article, "The Law of Prior Appropriation: Possible Lessons for Hawaii," see 25 Nat. Resources J. 911 (1985).

For note, "Recent Developments in the El Paso/New Mexico Interstate Groundwater Controversy - The Constitutionality of New Mexico's New Municipality Water Planning Statute," see 29 Nat. Resources J. 223 (1989).

Am. Jur. 2d, A.L.R. and C.J.S. references. — 78 Am. Jur. 2d Waters § 246.

Constitutionality of statutes relating to surface waters, 85 A.L.R. 465.

93 C.J.S. Waters § 180.

72-5-2. Existing community ditches.

None of the provisions of the preceding section [72-5-1 NMSA 1978] or Section 72-2-6 NMSA 1978 shall apply to community ditches which are already constructed.

History: Laws 1913, ch. 62, § 3; Code 1915, § 5679; C.S. 1929, § 151-130; 1941 Comp., § 77-502; 1953 Comp., § 75-5-2.

72-5-3. Application; amendment; refiling.

The date of receipt of such formal application in the state engineer's office shall be endorsed thereon and noted in his record. If the application is defective as to form, or unsatisfactory as to feasibility or safety of plan, or as to the showing of ability of the applicant to carry the construction to completion, it shall be returned with a statement of the corrections, amendments or changes required, within thirty days after its receipt, and sixty days shall be allowed for the refiling thereof. If refiled, corrected as required within such time, the application shall, upon being accepted, take priority as of date of its original filing, subject to compliance with the further provisions of the law and the regulations thereunder. Any corrected application filed after the time allowed [shall] be treated in all respects, except as to filing fees, as an original application received on the

date of its refiling; provided, that the plans of the construction may be amended at any time upon the approval of the state engineer, except that a change in the proposed point of diversion of water from a stream or watercourse shall be subject to the provisions of Section 72-5-24 NMSA 1978 as amended and the rules and regulations of the state engineer.

History: Laws 1907, ch. 49, § 25; Code 1915, § 5680; C.S. 1929, § 151-131; Laws 1941, ch. 126, § 7; 1941 Comp., § 77-503; 1953 Comp., § 75-5-3.

ANNOTATIONS

Cross references. — For application for permit, see 72-5-1 NMSA 1978.

For changing point of diversion of community ditches, see 73-2-63 NMSA 1978.

State engineer. — See 72-2-1 NMSA 1978.

Interstate irrigation project. — Project to irrigate lands in New Mexico from waters of natural stream running from Colorado into New Mexico, when point of diversion, headgate and about six miles of irrigation ditch were in Colorado, was not within jurisdiction of territorial engineer of New Mexico, and he was without authority to issue permit for such project. Turley v. Furman, 16 N.M. 253, 114 P. 278 (1911).

Amended filing required. — Since diversion dam and canals were different from work contemplated in original application, amended filing under this section was necessary. 1919-20 Op. Att'y Gen. 92.

Am. Jur. 2d, A.L.R. and C.J.S. references. — 78 Am. Jur. 2d Waters § 21.

93 C.J.S. Waters § 180.

72-5-4. Notice; publication.

Upon the filing of an application that complies with the provisions of this article and the rules established thereunder, accompanied by the proper fees, the state engineer shall instruct the applicant to publish notice thereof, in a form and in a newspaper prescribed by the state engineer, in some newspaper that is published and distributed in each county affected by the diversion and in each county where the water will be or has been put to beneficial use, or if there is no such newspaper, then in some newspaper of general circulation in the stream system, once a week for three consecutive weeks. The notice shall give all essential facts as to the proposed appropriation; among them, the places of appropriation and of use, amount of water, the purpose for which it is to be used, name and address of applicant and the time when the application shall be taken up by the state engineer for consideration. Proof of publication as required shall be filed with the state engineer within sixty days of his instructions to make publication. In case of failure to file satisfactory proof of publication in accordance with the rules within the

time required, the application shall be treated as an original application filed on the date of receipt of proofs of publication in proper form.

History: Laws 1907, ch. 49, § 26; Code 1915, § 5681; C.S. 1929, § 151-132; Laws 1941, ch. 126, § 8; 1941 Comp., § 77-504; 1953 Comp., § 75-5-4; 2001, ch. 26, § 1.

ANNOTATIONS

Cross references. — For publication of legal notice, see Chapter 14, Article 11 NMSA 1978.

The 2001 amendment, effective June 15, 2001, inserted "and in a newspaper" preceding "prescribed by"; inserted the language beginning "that is published and distributed" and ending "then in some newspaper"; and made stylistic changes throughout the section.

Meaning of "this article". — The 1915 Code compilers substituted "this article" for "this act," presumably thereby extending the reference to include all the provisions of Code 1915, ch. 114, art. I, not solely those derived from Laws 1907, ch. 49. The provisions of said art. I are compiled as 19-7-26, 72-1-1, 72-1-2, 72-1-5, 72-2-1 to 72-2-7, 72-2-9, 72-2-10, 72-3-1 to 72-3-5, 72-4-1, 72-4-13, 72-4-15, 72-4-17 to 72-4-19, 72-5-1 to 72-5-4, 72-5-6 to 72-5-24, 72-5-26 to 72-5-31, 72-5-33, 72-7-1 to 72-7-3, 72-8-1 to 72-8-6 and 72-9-1 to 72-9-3 NMSA 1978.

State engineer. — See 72-2-1 NMSA 1978.

Appropriation procedure unlawful. — The state engineer's water rights dedication practice and procedure imposing a condition on the groundwater permit requiring that at some future time the applicant acquire and retire a specified amount of surface water rights in the related stream system is unlawful because it precludes full consideration of public welfare and water conservation resulting in an impairment of existing water rights at the time the new conditional water right is approved, since the rights are not identified until the permit is issued, preventing public notice and comment. 1994 Op. Att'y Gen. No. 94-07.

Refusal to order publication. — Under Laws 1907, ch. 49, §§ 24 to 28 (72-5-1, 72-5-3, 72-5-4, 72-5-6, 72-5-7 NMSA 1978), territorial engineer would not be justified in refusing to order publication of notice of application for appropriation of water, merely because he had been informed unofficially that the water was owned by person other than applicant. 1909-12 Op. Att'y Gen. 212.

Am. Jur. 2d, A.L.R. and C.J.S. references. — 78 Am. Jur. 2d Waters § 322.

93 C.J.S. Waters § 180.

72-5-5. Objections to applications; publication of notice; filing of protests; definition of standing.

A. Whenever an application is filed which requires advertisement by virtue of the provisions of Chapter 72, Article 5 NMSA 1978, the advertisement shall state that objections or protests to the granting of the application may be filed with the state engineer within ten days after the last publication of the notice. If objection or protest is timely filed, the state engineer shall advise interested parties, and a hearing shall be held as otherwise provided by statute.

B. Any person, firm or corporation or other entity objecting that the granting of the application will be detrimental to the objector's water right shall have standing to file objections or protests. Any person, firm or corporation or other entity objecting that the granting of the application will be contrary to the conservation of water within the state or detrimental to the public welfare of the state and showing that the objector will be substantially and specifically affected by the granting of the application shall have standing to file objections or protests. Provided, however, that the state of New Mexico or any of its branches, agencies, departments, boards, instrumentalities or institutions, and all political subdivisions of the state and their agencies, instrumentalities and institutions shall have standing to file objections or protests.

History: 1953 Comp., § 75-5-4.1, enacted by Laws 1965, ch. 285, § 6; 1985, ch. 201, § 2.

ANNOTATIONS

Cross references. — For the state engineer, see 72-2-1 NMSA 1978.

The 1985 amendment added "definition of standing" in the section heading, designated the formerly undesignated paragraph as Subsection A, substituted "Chapter 72, Article 5 NMSA 1978" for "Article 5, Chapter 75, New Mexico Statutes Annotated, 1953 Compilation, as amended" near the beginning, "the application" for "said application" and "the notice" for "said notice" near the end of the first sentence of subsection A, deleted "thereof" following "interested parties" near the middle of the second sentence of Subsection A, and added Subsection B.

Applicability. — Laws 1985, ch. 201, § 10 provides that the provisions of the act shall apply to all applications before the state engineer filed after January 1, 1985.

State engineer. — See 72-2-1 NMSA 1978.

Law reviews. — For note, "Appropriation By the State of Minimum Flows in New Mexico Streams," see 15 Nat. Resources J. 809 (1975).

Am. Jur. 2d, A.L.R. and C.J.S. references. — 78 Am. Jur. 2d Waters § 302.

93 C.J.S. Waters § 180.

72-5-5.1. Purposes.

The state of New Mexico recognizes the importance of public welfare and conservation of water in administering its public waters. This act affords standing for those asserting legitimate concerns involving public welfare and conservation of water in a manner which avoids unduly burdening the administrative and judicial processes.

History: Laws 1985, ch. 201, § 1.

ANNOTATIONS

Meaning of "this act". — The term "this act," referred to at the beginning of the second sentence, means Laws 1985, ch. 201, which is compiled as 72-5-5, 72-5-5.1, 72-5-6, 72-5-7, 72-5-23, 72-5-24, 72-12-3, 72-12-7 and 72-12B-1 NMSA 1978.

Pueblo rights doctrine unduly interferes with the state's regulation of water rights. State v. City of Las Vegas, 2004-NMSC-009, 135 N.M. 375, 89 P.3d 47.

Am. Jur. 2d, A.L.R. and C.J.S. references. — Liability for diversion of surface water by raising surface level of land, 88 A.L.R.4th 891.

72-5-6. Hearing; approval; permit.

Upon the receipt of the proofs of publication, accompanied by any statutory fees required at this time, the state engineer shall determine, from the evidence presented by the parties interested, from such surveys of the water supply as may be available and from the records, whether there is unappropriated water available for the benefit of the applicant. If so, and if the proposed appropriation is not contrary to the conservation of water within the state and is not detrimental to the public welfare of the state, the state engineer shall endorse his approval on the application, which shall become a permit to appropriate water, and shall state in such approval the time within which the construction shall be completed and the time within which water shall be applied to a beneficial use; provided that the state engineer may, in his discretion, approve any application for a less amount of water or may vary the periods of annual use, and the permit to appropriate water shall be regarded as limited accordingly. The time allowed by the state engineer for completion of works or application of water to beneficial use shall be governed by the size and complexity of the project, but in no case shall exceed five years from the date of approval within which to complete construction, and four years in addition thereto within which to apply water to a beneficial use; provided that the state engineer shall have the power to grant extensions of time for completion of works or application of water to beneficial use as provided in Section 72-5-14 NMSA 1978.

History: Laws 1907, ch. 49, § 27; Code 1915, § 5682; C.S. 1929, § 151-133; Laws 1941, ch. 126, § 9; 1941 Comp., § 77-505; 1953 Comp., § 75-5-5; Laws 1985, ch. 201, § 3.

ANNOTATIONS

Cross references. — For state engineer, *see* 72-2-1 NMSA 1978.

The 1985 amendment substituted "and if the proposed appropriation is not contrary to the conservation of water within the state and is not detrimental to the public welfare of the state, the state engineer" for "he" and deleted "thereupon" preceding "become a permit" near the beginning of the second sentence and substituted "Section 72-5-14 NMSA 1978" for "Section 13 of this act" at the end of the section.

Power of state engineer in this section is discretionary. Herrington v. Office of State Engineer, 2004-NMCA-062, 135 N.M. 585, 92 P.3d 31, cert. granted, 2004-NMCERT-005, 135 N.M. 565, 92 P.3d 11.

New appropriation of surface water requires finding of unappropriated water. Montgomery v. State Engineer, 2005-NMCA-071, 137 N.M. 659, 114 P.3d 339, cert. granted, 2005-NMCERT-006, 137 N.M. 767, 115 P.3d 230.

State engineer is authorized to hold hearing for purpose of determining whether there is unappropriated water available for benefit of applicant, and if permit should be issued. 1933-34 Op. Att'y Gen. 42.

State engineer may afford legal protection for instream flows for recreational, etc., purposes. — Neither the New Mexico constitution nor statutes governing appropriation and use of surface water prohibit the state engineer from affording legal protection for instream flows for recreational, fish or wildlife, or ecological purposes, by conditioning approval of a transfer of an existing water right to an instream use on installation of gauging devices. 1998 Op. Att'y Gen. No. 98-01.

Passing on application. — For purpose of passing upon application for appropriation of water initiated after 1907, territorial irrigation engineer was required to decide whether rights initiated by protesting company before 1907 were valid and still controlled the water. 1909-12 Op. Att'y Gen. 59.

Conditions to prevent impairment. — The state engineer may impose conditions on an application to prevent impairment. Herrington v. Office of State Engineer, 2004-NMCA-062, 135 N.M. 585, 92 P.3d 31, cert. granted, 2004-NMCERT-005, 135 N.M. 565, 92 P.3d 11.

No conditions to make well permissible. — The state engineer is not required to impose conditions to make a well permissible. Herrington v. Office of State Engineer,

2004-NMCA-062, 135 N.M. 585, 92 P.3d 31, cert. granted, 2004-NMCERT-005, 135 N.M. 565, 92 P.3d 11.

Reasonable time for development of water use relates back to the date of showing an intent to appropriate by acquiring a permit. Jicarilla Apache Tribe v. United States, 657 F.2d 1126 (10th Cir. 1981).

Injunction not appropriate. — Relator seeking to have records of his water rights restored after attempted cancellation cannot secure mandatory injunction, when rights are not described or properly designated; nor can he enjoin state engineer from dispensing information questioning such rights or title. Turley v. State Eng'r, 39 N.M. 472, 49 P.2d 1135 (1935).

Law reviews. — For comment on *Mathers v. Texaco, Inc.,* 77 N.M. 239, 421 P.2d 771 (1966), see 7 Nat. Resources J. 433 (1967).

For article, "Constitutional Limitations on the Exercise of Judicial Functions by Administrative Agencies," see 7 Nat. Resources J. 599 (1967).

For comment on *State ex rel. Reynolds v. Miranda,* 83 N.M. 443, 493 P.2d 409 (1972), see 13 Nat. Resources J. 170 (1973).

For note, "Appropriation By the State of Minimum Flows in New Mexico Streams," see 15 Nat. Resources J. 809 (1975).

For note, "Recent Developments in the El Paso/New Mexico Interstate Groundwater Controversy - The Constitutionality of New Mexico's New Municipality Water Planning Statute," see 29 Nat. Resources J. 223 (1989).

For article, “The Administration of the Middle Rio Grande Basin: 1956-2002,” see 42 Nat. Resources J. 939 (2002).

Am. Jur. 2d, A.L.R. and C.J.S. references. — Power of state to exact fee or require license for taking water from stream, 19 A.L.R. 649, 29 A.L.R. 1478.

93 C.J.S. Waters § 180.

72-5-7. Application; rejection; noncompliance with rules; conservation and public welfare.

If, in the opinion of the state engineer, there is no unappropriated water available, he shall reject such application. He shall decline to order the publication of notice of any application which does not comply with the requirements of the law and rules and regulations. He may also refuse to consider or approve any application or notice of intention to make application or to order the publication of notice of any application if, in

his opinion, approval would be contrary to the conservation of water within the state or detrimental to the public welfare of the state.

History: Laws 1907, ch. 49, § 28; Code 1915, § 5683; C.S. 1929, § 151-134; Laws 1941, ch. 126, § 10; 1941 Comp., § 77-506; 1953 Comp., § 75-5-6; Laws 1985, ch. 201, § 4.

ANNOTATIONS

Cross references. — For state engineer, *see* 72-2-1 NMSA 1978.

The 1985 amendment added "Application" and substituted "conservation and public welfare" for "public interest" in the section heading, deleted "the" preceding, and "thereunder" following, "rules and regulations" near the end of the second sentence, and substituted "approval would be contrary to the conservation of water within the state or detrimental to the public welfare of the state" for "approval thereof would be contrary to public interest" at the end of the section.

Contrary to public interest. — To be contrary to public interest, project need not be menace to public health or safety; project requiring water in excess of amount unappropriated in stream is contrary to public interest. Young v. Hinderlider, 15 N.M. 666, 110 P. 1045 (1910).

Point of diversion change. — Transfer of water rights from one county to another and change of purpose does not constitute a new appropriation of surface water. Montgomery v. State Engineer, 2005-NMCA-071, 137 N.M. 659, 114 P.3d 339, cert. granted, 2005-NMCERT-006, 137 N.M. 767, 115 P.3d 230.

Waters already appropriated. — This section applied only to applications to appropriate previously unappropriated surface water, and not to transfers of rights to waters already appropriated. Ensenada Land & Water Ass'n v. Sleeper, 107 N.M. 494, 760 P.2d 787 (Ct. App. 1988).

Cost. — Mere fact that irrigation under one proposed project would cost more per acre than under subsequently proposed project was not conclusive that former project should be rejected. Young v. Hinderlider, 15 N.M. 666, 110 P. 1045 (1910).

Refusal to order publication. — Under Laws 1907, ch. 49, §§ 24 to 28 (72-5-1, 72-5-3, 72-5-4, 72-5-6, 72-5-7 NMSA 1978), territorial engineer would not be justified in refusing to order publication of notice of application for appropriation of water, merely because he had been informed unofficially that the water was owned by person other than applicant. 1909-12 Op. Att'y Gen. 212.

Passing on application. — For purpose of passing upon application for appropriation of water initiated after 1907, territorial irrigation engineer was required to decide whether

rights initiated by protesting company prior to 1907 were valid and still controlled the water. 1909-12 Op. Att'y Gen. 59.

Territorial irrigation engineer should not forestall decision of court by acting on matters already subject to litigation. 1909-12 Op. Att'y Gen. 60.

Law reviews. — For comment, "Water Rights - Failure to Use - Forfeiture," see 6 Nat. Resources J. 127 (1966).

For article, "Constitutional Limitations on the Exercise of Judicial Functions by Administrative Agencies," see 7 Nat. Resources J. 599 (1967).

For comment on *State ex rel. Reynolds v. Miranda,* 83 N.M. 443, 493 P.2d 409 (1972), see 13 Nat. Resources J. 170 (1973).

For note, "Common Law Remedies for Salt Pollution," see 15 Nat. Resources J. 353 (1975).

For note, "Appropriation By the State of Minimum Flows in New Mexico Streams," see 15 Nat. Resources J. 809 (1975).

For comment, "Protection of the Means of Groundwater Diversion," see 20 Nat. Resources J. 625 (1980).

For article, "Adapting to the Changing Demand for Water Use Through Continued Refinement of the Prior Appropriation Doctrine: An Alternative Approach to Wholesale Reallocation," see 29 Nat. Resources J. 435 (1989).

For note, "The Milagro Beanfield War Revisited in Ensenada Land & Water Ass'n v. Sleeper: Public Welfare Defies Transfer of Water Rights," see 29 Nat. Resources J. 861 (1989).

For article, “The Administration of the Middle Rio Grande Basin: 1956-2002,” see 42 Nat. Resources J. 939 (2002).

Am. Jur. 2d, A.L.R. and C.J.S. references. — 78 Am. Jur. 2d Waters § 324.

93 C.J.S. Waters § 180.

72-5-8. Construction of works; additional time.

Construction of works shall be diligently prosecuted in order that the project may be completed within the time limit set by the state engineer in the permit, provided that the state engineer may upon the request of the applicant allow additional time for the completion of works equal to the time during which work was prevented by acts of God, operation of law or other causes beyond the control of the applicant.

History: Laws 1907, ch. 49, § 29; Code 1915, § 5687; C.S. 1929, § 151-138; Laws 1941, ch. 126, § 11; 1941 Comp., § 77-507; 1953 Comp., § 75-5-7.

ANNOTATIONS

Cross references. — For extension of time for construction, see 72-5-14 NMSA 1978.

State engineer. — See 72-2-1 NMSA 1978.

Financial problems. — Financial inability to prosecute work required, under permit to appropriate water, does not justify extension of time by territorial engineer, for completion of the work. Rio Puerco Irrigation Co. v. Jastro, 19 N.M. 149, 141 P. 874 (1914).

Length of extension. — There is no authority for extending time of completion of construction eleven years. 1919-20 Op. Att'y Gen. 112, 113.

Law reviews. — For note, "Appropriation By the State of Minimum Flows in New Mexico Streams," see 15 Nat. Resources J. 809 (1975).

Am. Jur. 2d, A.L.R. and C.J.S. references. — 78 Am. Jur. 2d Waters § 393.

93 C.J.S. Waters § 180.

72-5-9. Supervision; inspection; completion of works; alterations.

For the supervision of the construction of works for the storage, diversion or carriage of water there shall be in charge a registered professional engineer, whose qualifications have been approved by the state engineer. This engineer shall have full authority to carry out such inspections and instructions that are deemed necessary by the state engineer. On the date set for the completion of the work, or prior thereto, upon notice from the owner that the work has been completed, the state engineer shall cause the work to be inspected, after due notice to the owner of the permit. Such inspection shall be thorough and complete, in order to determine the actual capacity of the works, their safety and efficiency. If not properly and safely constructed, as plans approved, the state engineer may require the necessary changes to be made within a reasonable time, to be fixed by him and shall not issue his certificate of completion until such changes are made. If at or before the expiration of said time, good cause is shown why said change could not be made within said time, then additional time may be allowed in which to make said change. Failure to make such changes shall cause the postponement of the priority under the permit for such time as may elapse from the date for completing such changes until made to the satisfaction of the state engineer, and applications subsequent in time shall have the benefit of such postponement of priority: the state engineer, if he deems it necessary to the public safety, may bring in consulting engineers, geologists or other expert consultants, compensation for which will be paid for by the owner of the permit; provided, that for works involving the diversion of not

exceeding twenty cubic feet of water per second or a dam not exceeding ten feet in height from the lowest natural ground surface elevation the state engineer may, in his discretion, waive the above provisions and accept the report of the inspection by a registered professional engineer.

History: Laws 1907, ch. 49, § 30; Code 1915, § 5688; C.S. 1929, § 151-139; Laws 1937, ch. 178, § 4; 1941, ch. 126, § 12; 1941 Comp., § 77-508; 1953 Comp., § 75-5-8.

ANNOTATIONS

State engineer. — See 72-2-1 NMSA 1978.

Am. Jur. 2d, A.L.R. and C.J.S. references. — 78 Am. Jur. 2d Waterworks and Water Companies § 63.

Covenant to maintain or repair dam as running with land, 41 A.L.R. 1366, 102 A.L.R. 781, 118 A.L.R. 982.

93 C.J.S. Waters § 147.

72-5-10. [State engineer's certificate of construction.]

When the works are found in satisfactory condition, after inspection, the state engineer shall issue his certificate of construction, setting forth the actual capacity of the works and such limitations on the water right as shall be warranted by the condition of the works, but in no manner extending the rights described in the permit.

History: Laws 1907, ch. 49, § 31; Code 1915, § 5689; C.S. 1929, § 151-140; 1941 Comp., § 77-509; 1953 Comp., § 75-5-9.

ANNOTATIONS

State engineer. — See 72-2-1 NMSA 1978.

Law reviews. — For comment on *Kelley v. Carlsbad Irrigation Dist.,* 71 N.M. 464, 379 P.2d 763 (1963), see 3 Nat. Resources J. 340 (1963).

Am. Jur. 2d, A.L.R. and C.J.S. references. — 93 C.J.S. Waters § 180.

72-5-11. Inspection and correction of unsafe works.

If the state engineer shall in the course of his duties find that any works constructed for the storage, diversion or carriage of water are unsafe and a menace to life or property, he shall at once notify the owner or agent, specifying the changes necessary and allowing a reasonable time for putting the works in safe condition. Upon the request of any party, accompanied by the estimated cost of inspection, the state engineer shall

cause any alleged unsafe works to be inspected. If they shall be found unsafe by the state engineer, the money deposited by such party shall be refunded, and the fees for inspection shall be paid by the owner of such works; and, if not paid by him within thirty days after the decision of the state engineer, shall be a lien against the property of such owner, to be recovered by suit instituted by the district attorney of the county at the request of the state engineer. The state engineer may, when in his opinion necessary, inspect any works under construction for the storage, diversion or carriage of water and may require any changes necessary to secure their safety; and the fees for such inspection shall be a lien on any property of the owner and shall be subject to collection as provided herein; provided that nothing contained in this section shall be construed to make works being constructed or owned by the United States while under supervision of officers of the United States subject to inspection by the state engineer.

Nothing contained in this section and no action or failure to act under this section shall be construed:

A. to create any liability in the state or its officers or employees for the recovery of damages caused by such action or failure to act; or

B. to relieve the owner or operator of water impoundment works of the legal duties, obligations or liabilities incident to the ownership or operation of water impoundment works.

History: Laws 1907, ch. 49, § 32; Code 1915, § 5690; C.S. 1929, § 151-141; 1941 Comp., § 77-510; 1953 Comp., § 75-5-10; Laws 1979, ch. 314, § 1.

ANNOTATIONS

Cross references. — For priority of liens, see 72-5-16 NMSA 1978.

State engineer. — See 72-2-1 NMSA 1978.

Cost of inspection. — Cost of inspection of dam by state engineer cannot be cast upon owner, but must be paid by one requesting it (unless found unsafe, as provided in this section). 1912-13 Op. Att'y Gen. 90.

Property outside of New Mexico is not subject to lien under this section. Turley v. Furman, 16 N.M. 253, 114 P. 278 (1911).

Territorial engineer could appoint assistant to inspect irrigation projects in process of construction, provided arrangements could be so made that no increased expense was put upon the territory. 1909-12 Op. Att'y Gen. 184.

Am. Jur. 2d, A.L.R. and C.J.S. references. — 78 Am. Jur. 2d Waterworks and Water Companies § 63.

93 C.J.S. Waters § 180.

72-5-12. Failure to comply with state engineer order; penalty.

Any owner of works for the diversion, storage, carriage or impoundment of water, his agent or employees, who, following notice to place such works in a safe condition as provided in Section 72-5-11 NMSA 1978, fails to take action specified by the state engineer within the time allowed, shall be guilty of a misdemeanor. Any violation of this section shall be punishable by a fine of not more than two hundred fifty dollars ($250) for each offense or by imprisonment for a definite term not to exceed six months, or both. It is the duty of the state engineer to give prompt notice to the district attorney of the county in which the works are located in case of such violation. The district attorney shall at once proceed against the owner and all parties responsible therefor.

History: Laws 1907, ch. 49, § 33; Code 1915, § 5691; C.S. 1929, § 151-142; 1941 Comp., § 77-511; 1953 Comp., § 75-5-11; Laws 1979, ch. 314, § 2.

ANNOTATIONS

Cross references. — For penalty for violation of this section, see 72-8-6 NMSA 1978.

State engineer. — See 72-2-1 NMSA 1978.

Community acequias. — Laws 1907, ch. 49 does not regulate community acequias constructed prior to passage thereof as to right to change point of diversion from stream into such acequias. Pueblo of Isleta v. Tondre, 18 N.M. 388, 137 P. 86 (1913).

Am. Jur. 2d, A.L.R. and C.J.S. references. — 78 Am. Jur. 2d Waters § 116.

72-5-13. [Issuance of license to appropriate water.]

On or before the date set for the application of the water to a beneficial use, the state engineer shall cause the works to be inspected, after due notice to the owner of the permit. Upon the completion of such inspection, the state engineer shall issue a license to appropriate water to the extent and under the condition of the actual application thereof to beneficial use, but in no manner extending the rights described in the permit: provided, that the inspection to determine the amount of water applied to beneficial use shall be made at the same time as that of the constructed work, if requested by the owner, and if such action is deemed proper by the state engineer.

History: Laws 1907, ch. 49, § 34; Code 1915, § 5692; C.S. 1929, § 151-143; 1941 Comp., 77-512; 1953 Comp., § 75-5-12.

ANNOTATIONS

State engineer. — See 72-2-1 NMSA 1978.

State engineer may afford legal protection for instream flows for recreational, etc., purposes. — Neither the New Mexico constitution nor statutes governing appropriation and use of surface water prohibit the state engineer from affording legal protection for instream flows for recreational, fish or wildlife, or ecological purposes, by conditioning approval of a transfer of an existing water right to an instream use on installation of gauging devices. 1998 Op. Att'y Gen. No. 98-01.

Law reviews. — For comment on *Kelley v. Carlsbad Irrigation Dist.,* 71 N.M. 464, 379 P.2d 763 (1963), see 3 Nat. Resources J. 340 (1963).

For article, "Legislation on Domestic and Industrial Uses of Water: A Comparative Review," see 24 Nat. Resources J. 143 (1984).

Am. Jur. 2d, A.L.R. and C.J.S. references. — 78 Am. Jur. 2d Waters § 249.

93 C.J.S. Waters § 219.

72-5-14. Time for construction; extension.

The state engineer shall have the power to grant extensions of time in which to complete construction of works, to apply water to beneficial use and for such other reasonable purpose as may in his opinion appear, under any water right application on file in his office, upon proper showing by the applicant of due diligence or reasonable cause for delay. Extensions of time not exceeding five years beyond the time for construction allowed in the original permit, and in no case exceeding a total of ten years after the date of approval of the application, may be granted by the state engineer for construction of works and application of water to beneficial use; provided, that if it shall be made to appear to the state engineer by affidavit of the applicant, his successors or assigns, or by any person for or on behalf of such applicant, and by such other evidence as the state engineer may require, that at least one-fourth of the actual construction work has been completed within such period as extended, the state engineer may, if he is satisfied of the good faith of the applicant and that the project will be to the interest of the development of the state, extend the time for completion of works and application of water to beneficial use for any additional periods he may deem necessary, but not exceeding two years for any one extension, upon such reasonable terms and conditions as he may prescribe; and at the time of granting such extension shall endorse his approval thereon and shall make the proper entry in his records.

History: Laws 1907, ch. 49, § 35; 1913, ch. 43, § 1; Code 1915, § 5693; Laws 1917, ch. 95, § 1; C.S. 1929, § 151-144; Laws 1933, ch. 66, § 1; Laws 1941, ch. 126, § 13; 1941 Comp., § 77-513; 1953 Comp., § 75-5-13.

ANNOTATIONS

Cross references. — For allowance of additional time for completion of works delayed for causes beyond applicant's control, see 72-5-8 NMSA 1978.

Compiler's notes. — Laws 1933, ch. 66, § 1, amended this section as it had appeared in C.S. 1929. However, the section was again amended by Laws 1941, ch. 126, § 13, without indication of the 1933 amendment, but § 28 of the latter act repealed the former amendatory act without reservation.

Laws 1909, ch. 130, § 1 (Code 1915, § 5694; C.S. 1929, § 151-147), dealing with rights relative to systems under construction prior to 1907, provided that any person, firm or corporation claiming such rights or priorities, initiated prior to the approval of Laws 1907, ch. 49 (approved March 19, 1907), who had prior thereto filed the sworn statement required by C.L. 1897, § 493, and whose work of perfecting said rights or priorities was in progress prior thereto and who had also prior to said date, acquired by purchase the rights of any person or corporation that had expended more than forty thousand dollars in necessary surveys and construction of irrigation works within the same drainage area, would have a reasonable time as determined by the state engineer within which to complete all necessary surveys, maps, plans, drawings and specifications, and after approval thereof by the state engineer, would have the benefit of extensions of time provided for in this article in which to complete construction and apply the water to beneficial use. Laws 1909, ch. 130, § 2, made the act effective from its passage. Approved March 18, 1909.

State engineer. — See 72-2-1 NMSA 1978.

Law reviews. — For comment on *Kelley v. Carlsbad Irrigation Dist.,* 71 N.M. 464, 379 P.2d 763 (1963), see 3 Nat. Resources J. 340 (1963).

Am. Jur. 2d, A.L.R. and C.J.S. references. — 93 C.J.S. Waters § 180.

72-5-15. [Common use; enlargement and maintenance of works; lien for costs.]

Whenever in accordance with the provisions of this article, any person, firm, association or corporation shall enlarge an existing canal, acequia, reservoir or other works, in order to use the same in common with the former owner, such person, firm, association or corporation, shall have and enjoy the right to the use and benefit of the quantity of water added to the capacity of such structure or work by such enlargement. Where two or more owners are using or have the right to use the same canal, acequia, reservoir or other waterworks, and one or more of such owners shall fail or neglect to do his or their proper share of the work or to furnish and pay for his or their proper share of the materials necessary for the maintenance, repair and operation thereof, any one or more of such owners may, after ten days' notice, proceed to perform such work, and furnish such materials, and may recover from each delinquent owner his proportionate share of the cost of such work and materials by a suit in any court of competent jurisdiction, and shall have a lien therefor upon such delinquent owner's share in said canal, acequia, reservoir or other works enforceable in the same manner as provided by law for the enforcement of mechanic's liens.

History: Laws 1907, ch. 49, § 61; Code 1915, § 5719; C.S. 1929, § 151-172; 1941 Comp., § 77-514; 1953 Comp., § 75-5-14.

ANNOTATIONS

Cross references. — For mechanic's liens, see Chapter 48, Article 2 NMSA 1978.

For conservancy districts, see Chapter 73, Article 14 NMSA 1978.

Meaning of "this article". — The 1915 Code compilers substituted "this article" for "this act," presumably thereby extending the reference to include all the provisions of Code 1915, ch. 114, art. I, not solely those derived from Laws 1907, ch. 49. The provisions of said art. I are compiled as 19-7-26, 72-1-1, 72-1-2, 72-1-5, 72-2-1 to 72-2-7, 72-2-9, 72-2-10, 72-3-1 to 72-3-5, 72-4-1, 72-4-13, 72-4-15, 72-4-17 to 72-4-19, 72-5-1 to 72-5-4, 72-5-6 to 72-5-24, 72-5-26 to 72-5-31, 72-5-33, 72-7-1 to 72-7-3, 72-8-1 to 72-8-6 and 72-9-1 to 72-9-3 NMSA 1978.

Am. Jur. 2d, A.L.R. and C.J.S. references. — 93 C.J.S. Waters § 188.

72-5-16. [Priority of liens.]

All liens on land, provided for in this article shall be superior in right to all mortgages or other encumbrances placed upon the land and the water appurtenant thereto or used in connection therewith.

History: Laws 1907, ch. 49, § 52; Code 1915, § 5711; C.S. 1929, § 151-164; 1941 Comp., § 77-515; 1953 Comp., § 75-5-15.

ANNOTATIONS

Meaning of "this article". — The 1915 Code compilers substituted "this article" for "this act," presumably thereby extending the reference to include all the provisions of Code 1915, ch. 114, art. I, not solely those derived from Laws 1907, ch. 49. The provisions of said art. I are compiled as 19-7-26, 72-1-1, 72-1-2, 72-1-5, 72-2-1 to 72-2-7, 72-2-9, 72-2-10, 72-3-1 to 72-3-5, 72-4-1, 72-4-13, 72-4-15, 72-4-17 to 72-4-19, 72-5-1 to 72-5-4, 72-5-6 to 72-5-24, 72-5-26 to 72-5-31, 72-5-33, 72-7-1 to 72-7-3, 72-8-1 to 72-8-6 and 72-9-1 to 72-9-3 NMSA 1978.

72-5-17. Excess waters; sale.

The owner or owners of any works for the storage, diversion or carriage of water who may make application to store or carry water in excess of their needs for irrigation or other beneficial use, shall be required, as trustee of such right, to deliver such surplus at reasonable and uniform rates to parties entitled to use the same under like conditions and circumstances.

History: Laws 1907, ch. 49, § 39; Code 1915, § 5698; C.S. 1929, § 151-151; Laws 1941, ch. 126, § 14; 1941 Comp., § 77-516; 1953 Comp. § 75-5-16.

ANNOTATIONS

Cross references. — For provision making willful waste of water unlawful, see 72-8-4 NMSA 1978.

For conservancy districts, see Chapter 73, Article 14 NMSA 1978.

Appropriator may use water for lands in addition to those specified in original application. 1909-12 Op. Att'y Gen. 19.

Am. Jur. 2d, A.L.R. and C.J.S. references. — 78 Am. Jur. 2d Waters § 328.

93 C.J.S. Waters § 186.

72-5-18. Water allowance.

In the issuance of permits to appropriate water for irrigation or in the adjudication of the rights to the use of water for that purpose, the amount allowed shall be based upon beneficial use and in accordance with good agricultural practices and the amount allowed shall not exceed such amount. The state engineer shall permit the amount allowed to be diverted at a rate consistent with good agricultural practices and that will result in the most effective use of available water in order to prevent waste. Improved irrigation methods resulting in the conservation of water shall not affect an owner's water rights.

History: Laws 1907, ch. 49, § 43; Code 1915, § 5702; C.S. 1929, § 151-155; 1941 Comp., § 77-517; 1953 Comp., § 75-5-17; Laws 1955, ch. 91, § 1; 1969, ch. 254, § 1; 2003, ch. 67, § 1.

ANNOTATIONS

The 2003 amendment, effective June 20, 2003, substituted "that purpose" for "such purposes" preceding "the amount allowed" and added the last sentence.

State engineer. — See 72-2-1 NMSA 1978.

Measure of right to appropriate water is actual beneficial use, that is, amount of water necessary for effective use for purpose to which it is put under particular circumstances of soil conditions, method of conveyance, topography and climate. State ex rel. Reynolds v. Mears, 86 N.M. 510, 525 P.2d 870 (1974).

Calculating duty. — Calculus of duty, that is, amount of water necessary for successful cultivation of land, includes these essential factors: (1) amount of water diverted; (2)

place of diversion as related to use; (3) amount necessary for particular crop or land; (4) season of the year; and (5) general irrigation or water-using practices followed in area. State ex rel. Reynolds v. Mears, 86 N.M. 510, 525 P.2d 870 (1974).

Law reviews. — For article, "Legislation on Domestic and Industrial Uses of Water: A Comparative Review," see 24 Nat. Resources J. 143 (1984).

For article, "The Law of Prior Appropriation: Possible Lessons for Hawaii," see 25 Nat. Resources J. 911 (1985).

Am. Jur. 2d, A.L.R. and C.J.S. references. — 78 Am. Jur. 2d Waters §§ 324 to 326.

Modern status of rules governing interference with drainage of surface waters, 93 A.L.R.3d 1193.

93 C.J.S. Waters § 186.

72-5-19. [Standards for measuring flow and volume of water.]

The standard of measurement of the flow of water shall be the cubic foot per second of time; the standard of measurement of the volume of water shall be the acre-foot, being the amount of water upon an acre covered one foot deep, equivalent to forty-three thousand five hundred and sixty cubic feet. The miner's inch shall be regarded as one-fiftieth of a cubic foot per second in all cases, except when some other equivalent of the cubic foot per second has been specifically stated by contract, or has been established by actual measurement or use.

History: Laws 1907, ch. 49, § 41; Code 1915, § 5700; C.S. 1929, § 151-153; 1941 Comp., § 77-518; 1953 Comp., § 75-5-18.

ANNOTATIONS

Am. Jur. 2d, A.L.R. and C.J.S. references. — 78 Am. Jur. 2d Waters § 4.

93 C.J.S. Waters § 186.

72-5-20. Headgates and measuring devices.

Every ditch owner shall, when requested to do so by the state engineer, construct and maintain a substantial headgate at the point where the water is diverted, and shall construct a measuring device, of a design approved by the state engineer, at the most practical point or points for measuring and apportioning the water as determined by the state engineer. The state engineer may order the construction of such device by the ditch owner and, if not completed within twenty days thereafter, refuse to deliver water to such owner. The taking of the water by such ditch owner, after refusal by the state engineer to deliver water to him until the construction of such device and the approval

thereof by the state engineer, shall be a misdemeanor. Such devices shall be so arranged that they can be locked in place, and when locked by the state engineer or his authorized agent, for the measurement or apportionment of water, it shall be a misdemeanor for any unauthorized person to interfere with, disturb or change the same.

History: Laws 1907, ch. 49, § 46; Code 1915, § 5705; C.S. 1929, § 151-158; Laws 1941, ch. 126, § 19; 1941 Comp., § 77-519; 1953 Comp., § 75-5-19.

ANNOTATIONS

Cross references. — For penalty for violation of this section, see 72-8-6 NMSA 1978.

State engineer. — See 72-2-1 NMSA 1978.

Rights and priorities to be adjudicated. — For purpose of apportionment of water, engineer has no jurisdiction over any old ditch system, until rights and priorities of owners of such system have been adjudicated in accord with terms of the act. Pueblo of Isleta v. Tondre, 18 N.M. 388, 137 P. 86 (1913).

Interstate irrigation project. — Irrigation project upon waters of natural stream running from Colorado into New Mexico, when point of diversion, headgate and about six miles of irrigation ditch are in Colorado, is not in jurisdiction of territorial engineer of New Mexico. Turley v. Furman, 16 N.M. 253, 114 P. 278 (1911).

Law reviews. — For article, "New Mexico Water Law: An Overview and Discussion of Current Issues," see 22 Nat. Resources J. 1045 (1982).

Am. Jur. 2d, A.L.R. and C.J.S. references. — 93 C.J.S. Waters § 186.

72-5-21. [Recording of permits, decrees and documents; certified copies.]

All permits, decrees and documents granting, defining or limiting water rights and rights of owners of canals, reservoirs and works for conducting, storing or appropriating water in this state shall be recorded in the office of the county clerk of the county in which the property, canal, reservoir or work is situated. When so recorded, copies of such permits, decrees and documents certified by the county clerk shall be admitted in evidence in any court of the state as of equal validity with the original.

History: Laws 1907, ch. 49, § 71; Code 1915, § 5728; C.S. 1929, § 151-177; 1941 Comp., § 77-520; 1953 Comp., § 75-5-20.

ANNOTATIONS

Cross references. — For filing and recording of changes of ownership in water rights, see 72-1-2.1 NMSA 1978.

For self-authentication of certified copies of public records, see Paragraph D of Rule 11-902 NMRA.

For proof of official records, see Rule 11-1005 NMRA.

Am. Jur. 2d, A.L.R. and C.J.S. references. — 93 C.J.S. Waters § 176.

72-5-22. [Transfer of water rights.]

Any permit or license to appropriate water may be assigned, but no such assignment shall be binding, except upon the parties thereto, unless filed for record in the office of the state engineer. The evidence of the right to use water from any works constructed by the United States, or its duly authorized agencies, shall in like manner be filed in the office of the state engineer, upon assignment; provided, that no right to appropriate water, except water for storage reservoirs, for irrigation purposes shall be assigned, or the ownership thereof in anywise transformed, apart from the land to which it is appurtenant, except in the manner specially provided by law: provided, further, that the transfer of title of land in any manner whatsoever shall carry with it all rights to the use of water appurtenant thereto for irrigation purposes, unless previously alienated in the manner provided by law.

History: Laws 1907, ch. 49, § 36; Code 1915, § 5695; C.S. 1929, § 151-148; 1941 Comp., § 77-521; 1953 Comp., § 75-5-21.

ANNOTATIONS

Cross references. — For filing and recording of changes of ownership in water rights, see 72-1-2.1 NMSA 1978.

State engineer. — See 72-2-1 NMSA 1978.

Exception to ownership rule. — This section and 72-1-2 NMSA 1978 evince an intent to create a limited statutory exception to the general rule that water rights and land ownership are distinct property rights. The statutory exception links ownership of the land with water rights, but only if the water is beneficially used on that land for irrigation purposes. KRM, Inc. v. Caviness, 1996-NMCA-103, 122 N.M. 389, 925 P.2d 9.

Intent to transfer water rights. — In absence of valid intention of owner of water rights, used in connection with and incident to possessory rights in public land, to transfer such rights to homestead entryman of said land, there is no transfer of water right. First State Bank v. McNew, 33 N.M. 414, 269 P. 56 (1928).

Water rights not appurtenant. — The water rights did not pass to the buyer since the water had never been used for irrigation on the land the seller sold to the buyer, and since there were no allegations that the continued commercial use of the water rights

was indispensable to the continued enjoyment of the land sold to the buyer. KRM, Inc. v. Caviness, 1996-NMCA-103, 122 N.M. 389, 925 P.2d 9.

Law reviews. — For comment on *Mathers v. Texaco, Inc.,* 77 N.M. 239, 421 P.2d 771 (1966), see 7 Nat. Resources J. 433 (1967).

For note, "New Mexico's National Forests and the Implied Reservation Doctrine," see 16 Nat. Resources J. 975 (1976).

For article, "New Mexico Water Law: An Overview and Discussion of Current Issues," see 22 Nat. Resources J. 1045 (1982).

Am. Jur. 2d, A.L.R. and C.J.S. references. — 78 Am. Jur. 2d Waters §§ 241 to 245.

93 C.J.S. Waters § 190.

72-5-23. Water appurtenant to land; change of place of use.

All water used in this state for irrigation purposes, except as otherwise provided in this article, shall be considered appurtenant to the land upon which it is used, and the right to use it upon the land shall never be severed from the land without the consent of the owner of the land, but, by and with the consent of the owner of the land, all or any part of the right may be severed from the land, simultaneously transferred and become appurtenant to other land, or may be transferred for other purposes, without losing priority of right theretofore established, if such changes can be made without detriment to existing water rights and are not contrary to conservation of water within the state and not detrimental to the public welfare of the state, on the approval of an application of the owner by the state engineer. Publication of notice of application, opportunity for the filing of objections or protests and a hearing on the application shall be provided as required by Sections 72-5-4 and 72-5-5 NMSA 1978.

History: Laws 1907, ch. 49, § 44; Code 1915, § 5703; C.S. 1929, § 151-156; Laws 1941, ch. 126, § 17; 1941 Comp., § 77-522; 1953 Comp., § 75-5-22; Laws 1985, ch. 201, § 5.

ANNOTATIONS

Cross references. — For appropriation of natural waters, *see* 72-1-1 NMSA 1978.

For publication of legal notice, *see* Chapter 14, Article 11 NMSA 1978.

For state engineer, *see* 72-2-1 NMSA 1978.

The 1985 amendment substituted "right to use it upon the land" for "right to use the same upon said land" near the beginning, "part of the right may be severed from the land, simultaneously transferred" for "part of said right may be severed from said land,

and simultaneously transferred" near the middle, inserted "water" preceding, and "and are not contrary to conservation of water within the state and not detrimental to the public welfare of the state" following, "rights" near the end of the first sentence, deleted the former second sentence which read, "Before the approval of such application, the applicant must give notice thereof by publication, in the form required by the state engineer, once a week for three consecutive weeks in a newspaper of general circulation in the stream system in which the tract or tracts of land may be situated", and added the present second sentence.

Meaning of "this article". — The 1915 Code compilers substituted "this article" for "this act," presumably thereby extending the reference to include all the provisions of Code 1915, ch. 114, art. I, not solely those derived from Laws 1907, ch. 49. The provisions of said art. I are compiled as 19-7-26, 72-1-1, 72-1-2, 72-1-5, 72-2-1 to 72-2-7, 72-2-9, 72-2-10, 72-3-1 to 72-3-5, 72-4-1, 72-4-13, 72-4-15, 72-4-17 to 72-4-19, 72-5-1 to 72-5-4, 72-5-6 to 72-5-24, 72-5-26 to 72-5-31, 72-5-33, 72-7-1 to 72-7-3, 72-8-1 to 72-8-6 and 72-9-1 to 72-9-3 NMSA 1978.

Tempelton doctrine source requirements do not apply to statutory transfers. Templeton supplementary wells service the original parcel, while statutory transfers may apply to new uses for the water over significant distances. A Templeton supplemental well need not, in all cases, be positioned upstream of a surface point of diversion. Herrington v. State of N.M. ex rel. Office of the State Engineer, 2006-NMSC-014, 139 N.M. 368, 133 P.3d 258.

Section was recognition of law relative to waters used for irrigation, established by general custom; a water right could not be owned in common with other water users. Snow v. Abalos, 18 N.M. 681, 140 P. 1044 (1914).

Right severable and transferable. — This section and 72-5-24 NMSA 1978 expressly recognize that right to use water upon certain lands may be severed from such lands and become appurtenant to other lands, or may be transferred for other purposes and other uses. Mathers v. Texaco, Inc., 77 N.M. 239, 421 P.2d 771 (1966).

Considerations in transfer applications. — General public interest is not a proper consideration in transfer applications. Once there has been proper application to the state engineer, detriment to existing water rights is the only basis on which an application can lawfully be denied. Ensenada Land & Water Ass'n v. Sleeper, 107 N.M. 494, 760 P.2d 787 (Ct. App. 1988).

Severance. — Section 72-5-23 NMSA 1978 requires consent of landowner and approval of state engineer to sever water rights. Turner v. Bassett, 2005-NMSC-009, 137 N.M. 381, 111 P.3d 701.

Findings required for transfer. — A transfer of water rights only requires the state engineer to make a finding of the three factors in this section. Montgomery v. State

Engineer, 2005-NMCA-071, 137 N.M. 659, 114 P.3d 339, cert. granted, 2005-NMCERT-006, 137 N.M. 767, 115 P.3d 230.

New depletion of surface water at move-to site in a fully appropriated stream system is not per se impairment. Montgomery v. State Engineer, 2005-NMCA-071, 137 N.M. 659, 114 P.3d 339, cert. granted, 2005-NMCERT-006, 137 N.M. 767, 115 P.3d 230.

Right to particular silt content. — An owner of surface water rights does not have a right to receive a particular silt content that has existed historically. Ensenada Land & Water Ass'n v. Sleeper, 107 N.M. 494, 760 P.2d 787 (Ct. App. 1988).

Water rights transferred or moved under a permit become appurtenant only when final proofs and surveys are filed. Sun Vineyards, Inc. v. Luna County Wine Dev. Corp., 107 N.M. 524, 760 P.2d 1290 (1988).

Consent of remaindermen. — Election in writing of remaindermen to permit removal of water right was tantamount to consent of fee simple owners to severance of water right from land, within meaning of this section. Lowe v. Adams, 77 N.M. 111, 419 P.2d 764 (1966).

Adjudication decree. — In determination of petition to change purpose and point of diversion of certain adjudicated water rights, state engineer was required to accept court's decree as to nature and extent of rights sought to be transferred; and petitioner was not required to offer proof of nature and extent of rights sought to be transferred other than as specified by adjudication decree. W.S. Ranch Co. v. Kaiser Steel Corp., 79 N.M. 65, 439 P.2d 714 (1968).

Since water rights had been adjudicated by prior decree, purchaser of certain water rights who petitioned state engineer to change point of diversion was only entitled to amount of water that was available at former point of diversion. W.S. Ranch Co. v. Kaiser Steel Corp., 79 N.M. 65, 439 P.2d 714 (1968).

No administrable water right unless determination of acreage to which right appurtenant. — There cannot exist an administrable water right for 90 acres of a 224-acre tract unless there is first a determination of the acreage to which the right is appurtenant. State ex rel. Reynolds v. Holguin, 95 N.M. 15, 618 P.2d 359 (1980).

Law reviews. — For comment on *Kelley v. Carlsbad Irrigation Dist.,* 71 N.M. 464, 379 P.2d 763 (1963), see 3 Nat. Resources J. 340 (1963).

For comment on *Mathers v. Texaco, Inc.,* 77 N.M. 239, 421 P.2d 771 (1966), see 7 Nat. Resources J. 433 (1967).

For note, "Common Law Remedies for Salt Pollution," see 15 Nat. Resources J. 353 (1975).

For article, "New Mexico Water Law: An Overview and Discussion of Current Issues," see 22 Nat. Resources J. 1045 (1982).

For article, "The Political Economy of Institutional Change: A Distribution Criterion for Acceptance of Groundwater Rules," see 25 Nat. Resources J. 867 (1985).

For article, "The Law of Prior Appropriation: Possible Lessons for Hawaii," see 25 Nat. Resources J. 911 (1985).

For article, "Adapting to the Changing Demand for Water Use Through Continued Refinement of the Prior Appropriation Doctrine: An Alternative Approach to Wholesale Reallocation," see 29 Nat. Resources J. 435 (1989).

For article, "Transfer of Water Rights," see 29 Nat. Resources J. 457 (1989).

For note, "The Milagro Beanfield War Revisited in *Ensenada Land & Water Ass'n v. Sleeper:* Public Welfare Defies Transfer of Water Rights," see 29 Nat. Resources J. 861 (1989).

Am. Jur. 2d, A.L.R. and C.J.S. references. — 78 Am. Jur. 2d Waters §§ 233, 243, 244.

93 C.J.S. Waters § 188.

72-5-24. Change of purpose; change of point of diversion.

An appropriator of water may, with the approval of the state engineer, use the same for other than the purpose for which it was appropriated or may change the place of diversion, storage or use in the manner and under the conditions prescribed in Sections 72-5-3 and 72-5-23 NMSA 1978.

History: Laws 1907, ch. 49, § 45; Code 1915, § 5704; C.S. 1929, § 151-157; Laws 1941, ch. 126, § 18; 1941 Comp., § 77-523; 1953 Comp., § 75-5-23; Laws 1985, ch. 201, § 6.

ANNOTATIONS

Cross references. — For changing point of diversion of community ditches, see 73-2-63 NMSA 1978.

For state engineer, *see* 72-2-1 NMSA 1978.

The 1985 amendment substituted "Sections 72-5-3 and 72-5-23 NMSA 1978" for "Sections 151-131 and 151-156 as amended herein provided that no such change shall be allowed to the detriment of the rights of others having valid and existing rights to the use of the waters of said stream system" at the end of the section.

Tempelton doctrine source requirements do not apply to statutory transfers. Templeton supplementary wells service the original parcel, while statutory transfers may apply to new uses for the water over significant distances. A Templeton supplemental well need not, in all cases, be positioned upstream of a surface point of diversion. Herrington v. State of N.M. ex rel. Office of the State Engineer, 2006-NMSC-014, 139 N.M. 368, 133 P.3d 258.

Effect of statutes. — Statutes governing change in point of diversion or change in well location do not grant but rather restrict right of appropriator to change point of diversion or well location. Public Serv. Co. v. Reynolds, 68 N.M. 54, 358 P.2d 621 (1960).

Section does not purport to modify terms of 72-5-3 NMSA 1978. Pueblo of Isleta v. Tondre, 18 N.M. 388, 137 P. 86 (1913).

Federal reclamation projects exempt from requirements of this section by the terms of 72-9-4 NMSA 1978. City of Raton v. Vermejo Conservancy Dist., 101 N.M. 95, 678 P.2d 1170 (1984).

Rights incident to ownership. — Water right is property right and inherent therein is right to change place of diversion, storage or use of water if rights or other water users will not be injured thereby. Clodfelter v. Reynolds, 68 N.M. 61, 358 P.2d 626 (1961).

Water right severable and transferable. — This section and 72-5-23 NMSA 1978 expressly recognize that right to use water upon certain lands may be severed from such lands and become appurtenant to other lands, or may be transferred for other purposes and other uses. Mathers v. Texaco, Inc., 77 N.M. 239, 421 P.2d 771 (1966).

Surface water reaching underground reservoir. — Section only authorizes change of place of diversion, storage or use; there is nothing in language hereof indicating intention of legislature to permit diversion under surface water right of water which has reached underground reservoir and lost identity as surface water. Kelley v. Carlsbad Irrigation Dist., 76 N.M. 466, 415 P.2d 849 (1966).

The transfer of surface right to water which has lost its identity as surface water on reaching underground reservoir, would not be change in point of diversion, but would constitute new appropriation in underground reservoir. Kelley v. Carlsbad Irrigation Dist., 76 N.M. 466, 415 P.2d 849 (1966).

Change of diversion and storage locations. — Since water statutes of Colorado and New Mexico have no extraterritorial effect, water company had right to change places of diversion and storage of water rights adjudicated to certain reservoirs from points in Colorado to points in New Mexico, provided such changes could be effected without injuriously affecting rights of other water users, and it was not necessary for it to obtain approval of such changes by New Mexico state engineer or Colorado court which entered decree of adjudication. Lindsey v. McClure, 136 F.2d 65 (10th Cir. 1943).

Middle Rio Grande Administrative Area. — Where the guidelines administering groundwater applications within the Middle Rio Grande Administrative Area require a transfer to sufficient surface water rights prior to granting a permit for new groundwater use, because of this requirement, the state engineer handles applications for a new use of groundwater within the MRGAA as an application to change the point of diversion and purpose of use of the existing water rights. Montgomery v. State Engineer, 2005-NMCA-071, 137 N.M. 659, 114 P.3d 339, cert. granted, 2005-NMCERT-006, 137 N.M. 767, 115 P.3d 230.

Change in vehicle of transport of water. — Even if the lateral diversionary ditch did not exist when the state engineer issued the license to the downstream user's predecessor for use of water through the existing irrigation ditch, a change in the vehicle of transport of water for a particular use does not constitute a change in the use of water requiring state-approval within the meaning of this section, at least in the absence of a provision in a decree or license mandating a specific means of transport. Thus, use of the lateral ditch did not change the water use. Deaf Smith County Grain Processors, Inc. v. Dixon, 116 N.M. 523, 864 P.2d 812 (Ct. App. 1993).

Adjudication of water rights. — In determination of petition to change purpose and point of diversion of certain adjudicated water rights, state engineer was required to accept court's decree as to nature and extent of rights sought to be transferred. W.S. Ranch Co. v. Kaiser Steel Corp., 79 N.M. 65, 439 P.2d 714 (1968).

Where water rights had been adjudicated by prior decree, purchaser of certain water rights who petitioned state engineer to change point of diversion was only entitled to amount of water that was available at former point of diversion. W.S. Ranch Co. v. Kaiser Steel Corp., 79 N.M. 65, 439 P.2d 714 (1968).

No authority in state engineer to adjudicate. — In holding that total amount of water appropriated in any year under all public service company's claims of right should not exceed 5040 acre-feet, state engineer in effect adjudicated or attempted to adjudicate company's claimed water rights, and this the state engineer had no authority to do. Public Serv. Co. v. Reynolds, 68 N.M. 54, 358 P.2d 621 (1960).

Injunction against enforcement of order. — Owner of water rights in interstate stream was entitled to injuction against enforcement of state engineer's order, made without notice and hearing, which forbade use of excess storage space of New Mexico reservoir, constructed primarily for storing unappropriated water to irrigate New Mexico land, for initial storage of water attributable to Colorado reservoirs with prior water rights, and to use New Mexico ditch to carry water to Colorado reservoirs, where such use would not affect other water users adversely. Lindsey v. McClure, 136 F.2d 65 (10th Cir. 1943).

Law reviews. — For comment on *Kelley v. Carlsbad Irrigation Dist.,* 71 N.M. 464, 379 P.2d 763 (1963), see 3 Nat. Resources J. 340 (1963).

For comment on *Mathers v. Texaco, Inc.,* 77 N.M. 239, 421 P.2d 771 (1966), see 7 Nat. Resources J. 433 (1967).

For note, "Common Law Remedies for Salt Pollution," see 15 Nat. Resources J. 353 (1975).

For note, "Appropriation By the State of Minimum Flows in New Mexico Streams," see 15 Nat. Resources J. 809 (1975).

For article, "New Mexico Water Law: An Overview and Discussion of Current Issues," see 22 Nat. Resources J. 1045 (1982).

For article, "Prior Appropriation, Impairment, Replacements, Models and Markets," see 23 Nat. Resources J. 25 (1983).

For article, "Do Water Market Prices Appropriately Measure Water Values?," see 27 Nat. Resources J. 617 (1987).

For article, "Adapting to the Changing Demand for Water Use Through Continued Refinement of the Prior Appropriation Doctrine: An Alternative Approach to Wholesale Reallocation," see 29 Nat. Resources J. 435 (1989).

For note, "The Milagro Beanfield War Revisited in *Ensenada Land & Water Ass'n v. Sleeper:* Public Welfare Defies Transfer of Water Rights," see 29 Nat. Resources J. 861 (1989).

Am. Jur. 2d, A.L.R. and C.J.S. references. — 78 Am. Jur. 2d Waters §§ 289, 332.

Modern status of rules governing interference with drainage of surface waters, 93 A.L.R.3d 1193.

Liability for diversion of surface water by raising surface level of land, 88 A.L.R.4th 891.

93 C.J.S. Waters § 188.

72-5-24.1. Acequias and community ditches; changes in point of diversion or place or purpose of use.

A. The state engineer shall not approve an application for a change, including an emergency change, in point of diversion or place or purpose of use of a water right into or out of an acequia or community ditch if the applicant has not complied with the applicable requirement adopted by an acequia or community ditch pursuant to Subsection E of Section 73-2-21 or Section 73-3-4.1 NMSA 1978.

B. The applicant for a change described in Subsection A of this section shall submit with the application to the state engineer documentary evidence provided by the

commissioners of the acequia or community ditch of the applicant's compliance with any applicable requirement for the change adopted by the acequia or community ditch pursuant to Subsection E of Section 73-2-21 or Section 73-3-4.1 NMSA 1978.

C. If an acequia or community ditch has not adopted an applicable requirement, the applicant shall submit to the state engineer along with the application an affidavit provided by the commissioners of the acequia or community ditch stating this fact.

D. If an acequia fails to make a decision within one hundred twenty days in response to an applicant's request for approval pursuant to a [an] applicable requirement, the acequia or community ditch shall be deemed to have approved the applicant's request for approval and the state engineer shall proceed on the application as if the applicant had complied with any applicable acequia or community ditch requirement. The applicant's request shall be in writing and delivered by certified mail to the commissioners of the acequia or community ditch.

E. The provisions of this section do not apply to water rights or lands owned by or reserved for an Indian pueblo.

History: Laws 2003, ch. 82, § 1; 2003, ch. 135, § 1.

ANNOTATIONS

Effective dates. — Laws 2003 ch. 135 § 4 makes the act effective March 1, 2004.

Duplicate laws. — Laws 2003, ch. 82, § 1 and Laws 2003, ch. 135, § 1 enact identical new sections, effective March 1, 2004. Both have been compiled as 72-5-24.1 NMSA 1978. See 12-1-8 NMSA 1978.

72-5-25. Emergency; change of point of diversion; procedure.

A. An appropriator of water may change the place of diversion, storage or use of water upon application to and approval of the state engineer without following the requirements of Section 72-5-23 NMSA 1978 relating to publication of notice if an emergency exists in which the delay caused by following the provisions of Section 72-5-23 NMSA 1978 would result in crop loss or other serious economic loss to the appropriator and if the state engineer determines that no foreseeable detriment exists to rights of others having valid and existing rights to the use of the waters of the stream system. An application under this section shall be in the form and manner prescribed by the state engineer and shall contain specific facts supporting the existence of the emergency.

B. An applicant for approval of a change of place of diversion, storage or use of water under this section shall, within thirty days of an approval granted under this section by the state engineer, comply with the requirements of Section 72-5-23 NMSA 1978.

C. The emergency approval provided under this section shall continue in effect only until the state engineer enters his final decision in accordance with Section 72-5-24 NMSA 1978.

History: 1953 Comp., § 75-5-23.1, enacted by Laws 1971, ch. 162, § 1.

ANNOTATIONS

State engineer. — See 72-2-1 NMSA 1978.

Law reviews. — For article, "New Mexico Water Law: An Overview and Discussion of Current Issues," see 22 Nat. Resources J. 1045 (1982).

For article, "Prior Appropriation, Impairment, Replacements, Models and Markets," see 23 Nat. Resources J. 25 (1983).

72-5-26. [Diversion from watershed or into another stream.]

Whenever the owner of a ditch, canal, pipeline, reservoir or other works shall turn or deliver water from one stream or drainage into another stream or drainage, such owner may take and use the same quantity of water, less a reasonable deduction for evaporation and seepage to be determined by the state engineer, and such owner may be required by the state engineer to construct and maintain suitable measuring flumes or devices at the point or points where said water leaves its natural stream or watershed, or is turned into another stream or watershed. Where the rights of others are not injured thereby, it shall be lawful for the owner of any reservoir, canal or other work, to deliver water into any ditch, stream or watercourse, to supply, appropriations therefrom and to take in exchange therefor, either above or below such point of delivery, a quantity of water equivalent to that so delivered, less a proper deduction for evaporation and seepage to be determined by the state engineer; provided, such owner shall, under the direction of the state engineer, construct and maintain suitable measuring devices at the points of delivery and diversion.

History: Laws 1907, ch. 49, § 60; Code 1915, § 5718; C.S. 1929, § 151-171; 1941 Comp., § 77-524; 1953 Comp., § 75-5-24.

ANNOTATIONS

Cross references. — For penalty for diversion of water to other valleys, see 72-8-5 NMSA 1978.

State engineer. — See 72-2-1 NMSA 1978.

Diversion into ditch. — Where appropriation is made by any means, owner may divert water into any existing ditch, and can take it out, less loss by seepage and evaporation,

either above or below point of delivery into existing ditch, to supply his appropriation. Miller v. Hagerman Irrigation Co., 20 N.M. 604, 151 P. 763 (1915).

Application for appropriation would be granted, since applicant proposed to return amount of drainage water, equal to amount of water appropriated, to underground basin; under this plan basin waters would not be depleted, nor would rights of existing appropriators be impaired. Reynolds v. Wiggins, 74 N.M. 670, 397 P.2d 469 (1964).

Am. Jur. 2d, A.L.R. and C.J.S. references. — 78 Am. Jur. 2d Waters §§ 11, 228, 281.

Joint liability for diversion caused by acts of independent tortfeasors, 9 A.L.R. 947, 35 A.L.R. 409, 91 A.L.R. 759, 35 A.L.R. 412, 91 A.L.R. 759, 91 A.L.R. 763.

Liability of one who diverts stream into new channel for overflow, 12 A.L.R. 187.

De minimis non curat lex as applied to diversion of water, 44 A.L.R. 191.

Liability for cutting off flow of water to spring, 55 A.L.R. 1412, 109 A.L.R. 395, 109 A.L.R. 404.

Covenant against encumbrances, easement of right to dam water as breach of, 64 A.L.R. 1496.

Estoppel to complain of diversion, 74 A.L.R. 1129.

Right of appropriator of water to recapture water which has escaped or is otherwise no longer within his immediate possession, 89 A.L.R. 210.

Diversion of water from subterranean stream for public supply, 109 A.L.R. 416.

Method or means of diversion, appropriation of water as creating right to continue, as against subsequent appropriator, 121 A.L.R. 1044.

Liability for obstruction or diversion of subterranean waters in use of land, 29 A.L.R.2d 1354.

Modern status of rules governing interference with drainage of surface waters, 93 A.L.R.3d 1193.

Extinguishment by prescription of natural servitude for drainage of surface waters, 42 A.L.R.4th 462.

93 C.J.S. Waters § 181.

72-5-27. Artificial water; no right of continuance of supply.

Artificial surface waters, as distinguished from natural surface waters, are hereby defined for the purpose of this act as waters whose appearance or accumulation is due to escape, seepage, loss, waste, drainage or percolation from constructed works, either directly or indirectly, and which depend for their continuance upon the acts of man. Such artificial waters are primarily private and subject to beneficial use by the owner or developer thereof; provided, that when such waters pass unused beyond the domain of the owner or developer and are deposited in a natural stream or watercourse and have not been applied to beneficial use by said owner or developer for a period of four years from the first appearance thereof, they shall be subject to appropriation and use; provided, that no appropriator can acquire a right, excepting by contract, grant, dedication or condemnation, as against the owner or developer compelling him to continue such water supply.

History: Laws 1907, ch. 49, § 53; Code 1915, § 5712; C.S. 1929, § 151-165; Laws 1941, ch. 126, § 21; 1941 Comp., § 77-525; 1953 Comp., § 75-5-25.

ANNOTATIONS

Meaning of "this act". — The term "this act" refers to Laws 1941, ch. 126, the provisions of which are presently compiled as 19-7-26, 72-1-1, 72-2-5, 72-2-6, 72-4-20, 72-5-1, 72-5-3, 72-5-4, 72-5-6 to 72-5-9, 72-5-14, 72-5-17, 72-5-20, 72-5-23, 72-5-24, 72-5-27, 72-5-28, 72-5-32, 72-5-33, 72-8-4, 72-9-1, 72-9-3 and 72-9-4 NMSA 1978.

State engineer. — See 72-2-1 NMSA 1978.

"Constructed works". — "Constructed works," as used in this section, refers to constructed reservoirs and ditches. Vanderwork v. Hewes, 15 N.M. 439, 110 P. 567 (1910).

Artesian well is not "constructed works" within meaning of this section. Vanderwork v. Hewes, 15 N.M. 439, 110 P. 567 (1910).

Drainage waters are private and not subject to appropriation. In re Langenegger, 64 N.M. 218, 326 P.2d 1098 (1958).

Ownership of percolating water. — When small quantity of water percolates to surface and forms small basin, and comes from source unknown, it belongs to owner of land from which it percolates and forms basin, and such landowner could appropriate it to own use without application to territorial engineer. Vanderwork v. Hewes, 15 N.M. 439, 110 P. 567 (1910).

Engineer's jurisdiction does not extend to seepage water from unknown sources. Vanderwork v. Hewes, 15 N.M. 439, 110 P. 567 (1910).

Treated sewage effluent is in the same category as water which has drained or seeped or percolated from a treatment plant and which depends for its continuance upon the acts of man. Reynolds v. City of Roswell, 99 N.M. 84, 654 P.2d 537 (1982).

Once sewage effluent actually reaches a water course or underground reservoir, a city has lost control over the water and cannot recapture it. Reynolds v. City of Roswell, 99 N.M. 84, 654 P.2d 537 (1982).

Law reviews. — For comment on geothermal energy and water law, see 19 Nat. Resources J. 445 (1979).

For article, "New Mexico Water Law: An Overview and Discussion of Current Issues," see 22 Nat. Resources J. 1045 (1982).

For article, "Prior Appropriation, Impairment, Replacements, Models and Markets," see 23 Nat. Resources J. 25 (1983).

Am. Jur. 2d, A.L.R. and C.J.S. references. — 78 Am. Jur. 2d Waters § 234.

Grantor of railroad right-of-way, or his privy, right of to recover damages for interference with surface water by construction of road, 19 A.L.R. 487.

Surface water, right to drain into natural watercourse, 28 A.L.R. 1262.

What constitutes natural drainway or watercourse for flow of surface water, 81 A.L.R. 262.

Surface water, constitutionality of statute relating to, 85 A.L.R. 465.

Overflow or escape of water from reservoir, ditch or artificial pond, liability for, 169 A.L.R. 517.

Loss of private easement by nonuser or adverse possession, 25 A.L.R.2d 1265.

Liability for diversion of surface water by raising surface level of land, 88 A.L.R.4th 891.

93 C.J.S. Waters § 129.

72-5-28. Failure to use water; forfeiture.

A. When the party entitled to the use of water fails to beneficially use all or any part of the water claimed by him, for which a right of use has vested for the purpose for which it was appropriated or adjudicated, except the waters for storage reservoirs, for a period of four years, such unused water shall, if the failure to beneficially use the water persists one year after notice and declaration of nonuser given by the state engineer, revert to the public and shall be regarded as unappropriated public water; provided,

however, that forfeiture shall not necessarily occur if circumstances beyond the control of the owner have caused nonuse, such that the water could not be placed to beneficial use by diligent efforts of the owner; and provided that periods of nonuse when irrigated farm lands are placed under the acreage reserve program or conservation reserve program provided by the federal Food Security Act of 1985, P.L. 99-198, shall not be computed as part of the four-year forfeiture period; and provided, further, that the condition of notice and declaration of nonuser shall not apply to water that has reverted to the public by operation of law prior to June 1, 1965.

B. Upon application to the state engineer at any time and a proper showing of reasonable cause for delay or for nonuse or upon the state engineer finding that it is in the public interest, the state engineer may grant extensions of time, for a period not to exceed three years for each extension, in which to apply to beneficial use the water for which a permit to appropriate has been issued or a water right has vested, was appropriated or has been adjudicated.

C. Periods of nonuse when water rights are acquired by incorporated municipalities or counties for implementation of their water development plans or for preservation of municipal or county water supplies shall not be computed as part of the four-year forfeiture statute.

D. A lawful exemption from the requirements of beneficial use, either by an extension of time or other statutory exemption, stops the running of the four-year period for the period of the exemption, and the period of exemption shall not be included in computing the four-year period.

E. Periods of nonuse when the nonuser of acquired water rights is on active duty as a member of the armed forces of this country shall not be included in computing the four-year period.

F. The owner or holder of a valid water right or permit to appropriate waters for agricultural purposes appurtenant to designated or specified lands may apply the full amount of water covered by or included in the water right or permit to any part of the designated or specified tract without penalty or forfeiture.

G. Periods of nonuse when water rights are acquired and placed in a state engineer-approved water conservation program, by an individual or entity that owns water rights, a conservancy district organized pursuant to Chapter 73, Articles 14 through 19 NMSA 1978, a soil and water conservation district organized pursuant to Chapter 73, Article 20 NMSA 1978, an acequia or community ditch association organized pursuant to Chapter 73, Article 2 or 3 NMSA 1978, an irrigation district organized pursuant to Chapter 73, Articles 9 through 13 NMSA 1978 or the interstate stream commission shall not be computed as part of the four-year forfeiture period.

H. Water deposited in a lower Pecos river basin below Sumner lake water bank approved by the interstate stream commission or an acequia or community ditch water bank shall not be computed as part of the four-year forfeiture period.

History: Laws 1907, ch. 49, § 42; Code 1915, § 5701; C.S. 1929, § 151-154; Laws 1941, ch. 126, § 16; 1941 Comp., § 77-526; 1953 Comp., § 75-5-26; Laws 1957, ch. 91, § 1; 1965, ch. 250, § 1; 1967, ch. 182, § 1; 1978, ch. 153, § 1; 1987, ch. 113, § 1; 1991, ch. 102, § 1; 1996, ch. 36, § 1; 1997, ch. 134, § 1; 1998, ch. 37, § 1; 2002, ch. 77, § 2.

ANNOTATIONS

Cross references. — For exemption of state water rights held for highway and airport purposes from risk of forfeiture for failure to beneficially use same, see 72-5-38 NMSA 1978.

For provision that conservancy district rights are not lost by prescription, adverse possession or nonuse, see 73-17-21 NMSA 1978.

The 1987 amendment, effective June 19, 1987, in Subsection A substituted "reserved progam provided by the Food Security Act of 1985, P.L. 99-198" for "program provided by the Soil Bank Act" and made a minor language change in Subsection F.

The 1991 amendment, effective June 14, 1991, added Subsection G.

The 1996 amendment, substituted "for a period not to exceed three years for each extension" for "not to exceed a term of one year for each extension" in Subsection B. Laws 1996, ch. 36 contains no effective date provision, but, pursuant to N.M. Const., art. IV, § 23, is effective May 15, 1996, 90 days after adjournment of the legislature. See Volume 14 NMSA 1978 for "Adjournment Dates of Sessions of Legislature" table.

The 1997 amendment made a stylistic change in Subsection F and rewrote Subsection G. Laws 1997, ch. 134 contains no effective date provision, but, pursuant to N.M. Const., art. IV, § 23, is effective June 20, 1997, 90 days after adjournment of the legislature. See Volume 14 NMSA 1978 for "Adjournment Dates of Sessions of Legislature" table.

The 1998 amendment, in Subsection F, substituted "the" for "such" and inserted "an individual or entity that owns water rights,"; and, in Subsection G, inserted "a soil and water conservation district organized pursuant to Chapter 73, Article 20 NMSA 1978". Laws 1998, ch. 37, contains no effective date provision, but, pursuant to N.M. Const. art. IV, § 23, is effective on May 20, 1998, 90 days after adjournment of the legislature. See Volume 14 NMSA 1978 for "Adjournment Dates of Sessions of Legislature" table.

The 2002 amendment, effective May 15, 2002, added Subsection H.

Food Security Act of 1985. — The Food Security Act of 1985, P.L. 99-198, referred to in Subsection A, appears primarily as various sections in Titles 7, 15 and 16 of the United States Code.

State engineer. — See 72-2-1 NMSA 1978.

Section was merely declaratory of law as it had already been established by judicial decisions, the time for the application to be a reasonable time. Hagerman Irrigation Co. v. McMurry, 16 N.M. 172, 113 P. 823 (1911).

Section must be considered as statute of limitations, and period of four years considered as beginning with date of passage thereof. 1909-12 Op. Att'y Gen. 108.

Effect on earlier statute of limitations. — As Laws 1905, ch. 102, § 5, containing limitation under which failure to use water for period of four years caused unused water to revert to public, was repealed by Laws 1907, ch. 49 (72-1-1 NMSA 1978, et seq.), but without any saving clause as to running of earlier statute, two years between 1905 and 1907 could not be considered as any part of time mentioned in 1907 statute. 1909-12 Op. Att'y Gen. 108.

Section is forfeiture statute for nonuse of water rights under certain circumstances. Jones v. Anderson, 81 N.M. 423, 467 P.2d 995 (1970).

Continual use as basis of title to water rights. — Continuance of title to water right is based upon continuing beneficial use, and where right is not exercised for four years, statute declares that right to unused portion is forfeited. State ex rel. Reynolds v. South Springs Co., 80 N.M. 144, 452 P.2d 478 (1969).

Nonuse for four years constitutes abandonment. Yeo v. Tweedy, 34 N.M. 611, 286 P. 970 (1929).

Intention not required. — Element of intention is required in doctrine of abandonment; this is not so in forfeiture. State ex rel. Reynolds v. South Springs Co., 80 N.M. 144, 452 P.2d 478 (1969).

Unused water reverts to public. — The failure to use water right for unreasonable time is evidence of intention to abandon it; if nothing is done to utilize water rights within four year period of limitations, such unused water is reverted to the public and shall be regarded as unappropriated public water. State ex rel. Reynolds v. South Springs Co., 80 N.M. 144, 452 P.2d 478 (1969).

Pueblo rights doctrine is incompatible with New Mexico water law. State v. City of Las Vegas, 2004-NMSC-009, 135 N.M. 375, 89 P.3d 47.

And doctrine interferes with the necessity of utilizing water for the maximum benefits. State v. City of Las Vegas, 2004-NMSC-009, 135 N.M. 375, 89 P.3d 47.

“Reasonable time”. — A municipality may be given a more substantial “reasonable time” for its population growth than a typical water user would have to complete an appropriation. State v. City of Las Vegas, 2004-NMSC-009, 135 N.M. 375, 89 P.3d 47.

Reasonable time for development of water use relates back to the date of showing an intent to appropriate by acquiring a permit. Jicarilla Apache Tribe v. United States, 657 F.2d 1126 (10th Cir. 1981).

Water rights of owner in community ditch are subject to forfeiture provisions of this section; failure to use water because of failure to pay assessment would not constitute circumstances beyond control of water right owner. 1967 Op. Att'y Gen. No. 67-47.

Nonuser resulting from drought. — When suit was brought to enjoin another from using water from river through certain ditch because of nonuser, evidence that nonuser resulted from droughts sufficiently established that forfeiture should not be decreed. Chavez v. Gutierrez, 54 N.M. 76, 213 P.2d 597 (1950).

Since there was no showing of abandonment or forfeiture, nor was any particular reason given why existing water right should have been considered to be impaired, and year or years in question were particularly dry ones, and there was no water available, owner of water right would not be penalized. W.S. Ranch Co. v. Kaiser Steel Corp., 79 N.M. 65, 439 P.2d 714 (1968).

Or failure to reach diversion point. — When water fails to reach point of diversion without fault of appropriator, and he is at all times ready and willing to put water to usual beneficial use, there is no forfeiture of his right for nonuser. New Mexico Prods. Co. v. New Mexico Power Co., 42 N.M. 311, 77 P.2d 634 (1937).

Federal water right. — Abandonment and waste by federal park service of right to use water from certain spring, which right was purchased by United States in 1934, is controlled by congress as this right is property of the United States, and property of the United States may not be lost through laches or neglect of its officers and employees. United States v. Ballard, 184 F. Supp. 1 (D.N.M. 1960).

Injunction not appropriate. — Waste, nonuser and abandonment were not bars to United States' cause of action against individual landowners seeking injunction enjoining them from using wells so as to deprive United States of flow of certain spring, but should be considered with granting of equitable relief; since there was no threat of loss of available water to any party at present or in foreseeable future, there was not sufficient showing of great and irreparable damage so as to justify injunctive relief. United States v. Ballard, 184 F. Supp. 1 (D.N.M. 1960).

Engineer's authority. — Since an engineer has no authority to cancel alleged water rights, he has no authority to compel respondent to restore undescribed entries in records canceled by his predecessor. Turley v. State Eng'r, 39 N.M. 472, 49 P.2d 1135 (1935).

Law reviews. — For comment, "Water Rights-Failure to Use-Forfeiture," see 6 Nat. Resources J. 127 (1966).

For note, "Appropriation By the State of Minimum Flows in New Mexico Streams," see 15 Nat. Resources J. 809 (1975).

For note, "New Mexico's National Forests and the Implied Reservation Doctrine," see 16 Nat. Resources J. 975 (1976).

For article, "New Mexico Water Law: An Overview and Discussion of Current Issues," see 22 Nat. Resources J. 1045 (1982).

For note, "Recent Developments in the El Paso/New Mexico Interstate Groundwater Controversy - The Constitutionality of New Mexico's New Municipality Water Planning Statute," see 29 Nat. Resources J. 223 (1989).

For article, "Possible Solutions: Policy Tools to Achieve Flexibility to Meet New Conditions, Preliminary Thoughts for Coping with Future Droughts," see 39 Nat. Resources J. 175 (1999).

Am. Jur. 2d, A.L.R. and C.J.S. references. — 78 Am. Jur. 2d Waters § 334.

Discontinuance of use of water, rights of user to, 112 A.L.R. 230.

93 C.J.S. Waters § 193.

72-5-29. [Rights of residents of upper valleys of stream systems.]

To the end that the waters of the several stream systems of the state may be conserved and utilized so as to prevent erosion, waste and damage caused by torrential floods, and in order that the benefits of the use of such waters may be distributed among the inhabitants and landowners of the country along said streams as equitably as possible without interfering with vested rights, the natural right of the people living in the upper valleys of the several stream systems to impound and utilize a reasonable share of the waters which are precipitated upon and have their source in such valleys and superadjacent mountains, is hereby recognized, the exercise of such right, however, to be subject to the provisions of this article.

History: Laws 1909, ch. 128, § 1; Code 1915, § 5684; C.S. 1929, § 151-135; 1941 Comp., § 77-527; 1953 Comp., § 75-5-27.

ANNOTATIONS

Meaning of "this article." — The compilers of the 1915 Code substituted "this article" for "Chapter 49 of the acts of the Thirty-seventh Legislative Assembly of New Mexico," presumably extending the reference to include all the provisions of Code 1915, ch. 114,

art. I, not solely those derived from Laws 1907, ch. 49. The provisions of said art. I are presently compiled as 19-7-26, 72-1-1, 72-1-2, 72-1-5, 72-2-1 to 72-2-7, 72-2-9, 72-2-10, 72-3-1 to 72-3-5, 72-4-1, 72-4-13, 72-4-15, 72-4-17 to 72-4-19, 72-5-1 to 72-5-4, 72-5-6 to 72-5-24, 72-5-26 to 72-5-31, 72-5-33, 72-7-1 to 72-7-3, 72-8-1 to 72-8-6 and 72-9-1 to 72-9-3 NMSA 1978.

Law reviews. — For article, "Water Rights Problems in the Upper Rio Grande Watershed and Adjoining Areas," see 11 Nat. Resources J. 48 (1971).

Am. Jur. 2d, A.L.R. and C.J.S. references. — 78 Am. Jur. 2d Waters § 351.

Right to hasten the flow and increase the volume of water in a stream by alterations or improvements in the bed, 9 A.L.R. 1211.

Exclusion of general public by use made by owner of upland, not connected with navigation, of the shore between high and low water mark, 10 A.L.R. 1053, 107 A.L.R. 1347.

Flowage of streams, prescriptive right of lower as against upper owner to, 53 A.L.R. 201.

Liability for damages from obstruction of stream by debris or waste, 29 A.L.R.2d 447.

Apportionment and division of area of river as between riparian tracts fronting on same bank, in absence of agreement or specification, 65 A.L.R.2d 143.

Liability for diversion of surface water by raising surface level of land, 88 A.L.R.4th 891.

93 C.J.S. Waters § 186.

72-5-30. [Effect of return flow above diversion or storage works of other appropriators.]

In cases of applications for permits to impound and utilize waters of any stream of flood waters under conditions which would cause or permit a considerable return flow of such waters into their natural channel above the diversion or storage works of other appropriators or of others using or who have acquired the right to use water from said stream or stream system, the state engineer is authorized to approve such applications whenever such storage or use of water by the upper owner or owners would not result in depriving such lower users or appropriators of water to the extent of their reasonable requirements.

History: Laws 1909, ch. 128, § 2; Code 1915, § 5685; C.S. 1929, § 151-136; 1941 Comp., § 77-528; 1953 Comp., § 75-5-28.

ANNOTATIONS

State engineer. — See 72-2-1 NMSA 1978.

Am. Jur. 2d, A.L.R. and C.J.S. references. — 78 Am. Jur. 2d Waters §§ 128, 129.

Modern status of rules governing interference with drainage of surface waters, 93 A.L.R.3d 1193.

93 C.J.S. Waters § 181.

72-5-31. [Appeal; prior rights not impaired.]

There shall be the same right of appeal from the action of the state engineer in approving or rejecting any such application as is provided in this article, Section 72-7-1 NMSA 1978, and nothing in this article shall be construed to impair prior vested rights or the rights of prior appropriators of public waters of this state, or the rights of those who have filed or may file applications to appropriate public waters in compliance with existing laws of the state of New Mexico.

History: Laws 1909, ch. 128, § 3; Code 1915, § 5686; C.S. 1929, § 151-137; 1941 Comp., § 77-529; 1953 Comp., § 75-5-29.

ANNOTATIONS

Cross references. — For appeal de novo from decision, act or refusal to act of state executive officer or body in matters relating to water rights, see N.M. Const., art. XVI, § 5.

State engineer. — See 72-2-1 NMSA 1978.

Meaning of "this article". — The compilers of the 1915 Code substituted the references to "this article" and the specific section therein, for references to Laws 1907, ch. 49. For presently compiled provisions of the article, see note to 72-5-29 NMSA 1978.

Am. Jur. 2d, A.L.R. and C.J.S. references. — 93 C.J.S. Waters § 204.

72-5-32. Construction of dams exceeding ten feet in height.

Any person, association or corporation, public or private, the state or the United States hereafter intending to construct a dam shall meet the requirements of filing applications for appropriations and use of water pursuant to Section 72-5-1, 72-5-22, 72-5-23 or 72-5-24 NMSA 1978. Any person, association or corporation, public or private, the state or the United States intending to construct a dam that exceeds ten feet in height from the lowest natural ground surface elevation to the crest of the dam or impounds more than ten acre-feet of water shall submit on a form prescribed by the state engineer detailed plans to the state engineer for approval before construction. If

the state engineer finds that the dam design is safe, he shall approve the plans; provided that this section shall not apply to erosion control structures whose maximum storage capacity does not exceed ten acre-feet and are constructed for the sole purpose of sediment control. An erosion control structure shall not impound surface water in any amount for fishing, fish propagation, recreation or aesthetic purposes, which shall require a permit pursuant to Section 72-5-1 NMSA 1978.

History: Laws 1941, ch. 126, § 25; 1941 Comp., § 77-530; 1953 Comp., § 75-5-30; Laws 1979, ch. 114, § 1; 1997, ch. 66, § 1; 2004, ch. 86, § 1.

ANNOTATIONS

Cross references. — For definition of "acre-foot," see 72-5-19 NMSA 1978.

For provisions on state engineer, see 72-2-1 NMSA 1978.

The 1997 amendment rewrote the section to such an extent that a detailed comparison would be impracticable. Laws 1997, ch. 66 contains no effective date provision, but, pursuant to N.M. Const., art. IV, § 23, is effective June 20, 1997, 90 days after adjournment of the legislature. See Volume 14 NMSA 1978 for "Adjournment Dates of Sessions of Legislature" table.

The 2004 amendments, effective May 19, 2004, amended this section to delete the "supervision of the United States army corps of engineers" and to add the last sentence as follows: "An erosion control structure shall not impound surface water in any amount for fishing, fish propagation, recreation or aesthetic purposes, which shall require a permit pursuant to Section 72-5-1 NMSA 1978."

Construction. — Section recognizes three exceptions to requirement that application must be made for use of public waters: (1) when dam is 10 feet or less in height from lowest natural ground surface elevation; (2) when dam is stock dam having storage capacity of 10 acre-feet or less even though dam itself exceeds 10 feet; and (3) when construction is solely to retain silt and impounds no water for beneficial use though dam exceeds 10 feet in height. 1947-48 Op. Att'y Gen. No. 4976.

Exception to permit requirement. — The provisions of this section expressly enumerating the dams and resulting ponds which require permits exempt those dams not mentioned from the general permit requirement. State ex rel. State Eng'r v. Lewis, 1996-NMCA-019, 121 N.M. 323, 910 P.2d 957.

Law reviews. — For article, "New Mexico Water Law: An Overview and Discussion of Current Issues," see 22 Nat. Resources J. 1045 (1982).

Am. Jur. 2d, A.L.R. and C.J.S. references. — 78 Am. Jur. 2d Waters § 393.

93 C.J.S. Waters § 147.

72-5-34. State transportation commission; change of water use; application, notice and hearing.

Whenever the state transportation commission makes application to the state engineer for a change of location of use, a change of method of use, change of point of diversion, advance withdrawals or withdrawals of accrued unused waters of any water right, whether such water right be for surface, subsurface, artesian or underground waters and whether or not either the location of the changed use or the location of the point of diversion or both be within or without the boundaries of any declared underground water basin or irrigation or conservancy district, and whatever the manner of acquisition of such water right, and such water right is to be used for the construction, reconstruction, maintenance or repair of public roads, streets, highways and airports, the state engineer may authorize such change of location of use, change of method of use, change of point of diversion, advance withdrawals or withdrawals of accrued unused water after publication and hearing as provided in Section 72-12-3 NMSA 1978, when in the opinion of the state engineer such change of location of use, method of use, point of diversion, advance withdrawals or withdrawals of accrued unused water will not be detrimental to the other holders of valid water rights.

History: 1953 Comp., § 75-5-32, enacted by Laws 1959, ch. 191, § 1; 2003, ch. 142, § 91.

ANNOTATIONS

The 2003 amendment, effective July 1, 2003, added the section heading; substituted "state transportation commission" for "state highway commission" near the beginning of the section; and updated the statutory reference near the end of the section.

State engineer. — See 72-2-1 NMSA 1978.

Law reviews. — For comment on *Kelley v. Carlsbad Irrigation Dist.,* 71 N.M. 464, 379 P.2d 763 (1963), see 3 Nat. Resources J. 340 (1963).

Am. Jur. 2d, A.L.R. and C.J.S. references. — 78 Am. Jur. 2d Waters § 273.

Right to hasten by improvement of street or highway the flow of surface water along natural drainways, 5 A.L.R. 1530, 36 A.L.R. 1463.

72-5-35. State transportation commission; advance water withdrawal.

The state engineer may authorize the state transportation commission, holding any artesian or underground water right for the construction, reconstruction, maintenance or repair of public roads, streets, highways and airports, to make withdrawals of water in advance of the accrual of such water in such amounts as the state engineer may

determine will not be detrimental to the other holders of valid water rights, but in no case shall such advance withdrawals exceed an amount equal to five times the annual amount of the water right actually held by the withdrawing holder.

History: 1953 Comp., § 75-5-33, enacted by Laws 1959, ch. 191, § 2; 2003, ch. 142, § 92.

ANNOTATIONS

The 2003 amendment, effective July 1, 2003, added the section heading; and substituted "state transportation commission" for "state highway commission".

State engineer. — See 72-2-1 NMSA 1978.

72-5-36. State transportation commission; unused water accrual; withdrawal rate; accounting.

The state engineer may permit the state transportation commission, when it is engaged in the construction, reconstruction, maintenance or repair of public roads, streets, highways and airports, to accrue unused water under one or more artesian or underground water rights for such length of time not to exceed five years as he may deem reasonable and permit the state transportation commission to withdraw such accrued water within such period of time as it may be required, but not at a rate that will be detrimental to the holders of other valid water rights. The state engineer shall require the state transportation commission holding any water right and desirous of proceeding under the authorization of Sections 72-5-34 through 72-5-38 NMSA 1978 to file periodic accountings of accruals and withdrawals by basins or districts in such form, on such dates and at such intervals as the state engineer shall designate.

History: 1953 Comp., § 75-5-34, enacted by Laws 1959, ch. 191, § 3; 2003, ch. 142, § 93.

ANNOTATIONS

The 2003 amendment, effective July 1, 2003, added the section heading; substituted "state transportation commission" for "state highway commission" in three places; and substituted "Sections 72-5-34 through 72-5-38 NMSA 1978" for "this act" in the last sentence.

State engineer. — See 72-2-1 NMSA 1978.

72-5-37. State transportation commission; transfer of water rights to unused water; reversion.

If the state transportation commission, holding any water rights to be used for the construction, reconstruction, maintenance or repair of public roads, streets, highways and airports, transfers ownership of all of its water rights in one basin under which there has been an accrual of unused water, any accrued unused water shall lapse and revert to unappropriated water and the right to such water shall not pass on such transfer. If a partial water right or one of several water rights within a declared underground basin or irrigation or conservancy district is transferred, the accrued unused water, if any, shall not pass to the transferee but may be moved in accordance with the provisions of Section 72-5-34 NMSA 1978 to the point of diversion of a water right retained by the state transportation commission within the same basin but not to exceed five times the annual amount of the water right retained.

History: 1953 Comp., § 75-5-35, enacted by Laws 1959, ch. 191, § 4; 2003, ch. 142, § 94.

ANNOTATIONS

The 2003 amendment, effective July 1, 2003, added the section heading; substituted "state transportation commission" for "state highway commission" in two places; and substituted "Section 72-5-34 NMSA 1978" for "Section 1 hereof" near the end of the section.

72-5-38. [State water rights for highway purposes and airports; nonforfeiture for failure to use.]

Neither the state nor any agency, department, bureau or commission thereof holding any water rights to be used for the construction, reconstruction, maintenance or repair of public roads, streets, highways and airports, whether surface, subsurface, artesian or underground and whatever the manner of acquisition, shall lose or forfeit such water right for failure to beneficially use all or any part of such water right.

History: 1953 Comp., § 75-5-36, enacted by Laws 1959, ch. 191, § 5.

72-5-39. Illegal application of water; injunction or other relief.

No person shall use the public waters of the state of New Mexico except in accordance with the laws of the state of New Mexico. No person shall divert water or apply water to land without having a valid water right to do so, or apply it to purposes for which no valid water right exists. The state engineer may apply for and obtain an injunction in the district court of any county in which water is being diverted or the land affected is located, against any person, firm or corporation who shall divert water or commence the construction of works by which to divert water, in violation of statute, or who shall cause or permit the application of said water upon lands or to purposes for which no valid water right exists. This provision shall in no way be construed to affect the existing right of a court of equity in the exercise of its general equity powers to grant relief to the state of New Mexico by injunction or otherwise. This section shall not apply

to waters within the benefited areas of a conservancy district unless the district refuses or fails to stop or correct the illegal use of water after notification by the state engineer.

History: 1953 Comp., § 75-5-37, enacted by Laws 1965, ch. 285, § 7.

ANNOTATIONS

Cross references. — For injunctions, see Rules 1-065 and 1-066 NMRA.

State engineer. — See 72-2-1 NMSA 1978.

Law reviews. — For comment on *State ex rel. Reynolds v. Miranda,* 83 N.M. 443, 493 P.2d 409 (1972), see 13 Nat. Resources J. 170 (1973).

Am. Jur. 2d, A.L.R. and C.J.S. references. — 78 Am. Jur. 2d Waters § 259.

93 C.J.S. Waters §§ 33, 34.

ARTICLE 5A
Ground Water Storage and Recovery

72-5A-1. Short title.

This act [72-5A-1 to 72-5A-17 NMSA 1978] may be cited as the "Ground Water Storage and Recovery Act".

History: Laws 1999, ch. 285, § 1.

ANNOTATIONS

Effective dates. — Laws 1999, ch. 285 contains no effective date provision, but, pursuant to N.M. Const., art. IV, § 23, is effective on June 18, 1999, 90 days after adjournment of the legislature. See Volume 14 NMSA 1978 for "Adjournment Dates of Sessions of Legislature" table.

72-5A-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 have the potential to:

(1) offer savings in the costs of capital investment, operation and maintenance and flood control and 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.

History: Laws 1999, ch. 285, § 2.

ANNOTATIONS

Effective dates. — Laws 1999, ch. 285 contains no effective date provision, but, pursuant to N.M. Const., art. IV, § 23, is effective on June 18, 1999, 90 days after adjournment of the legislature. See Volume 14 NMSA 1978 for "Adjournment Dates of Sessions of Legislature" table.

72-5A-3. Definitions.

As used in the Ground Water Storage and Recovery Act [72-5A-1 NMSA 1978]:

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. "governmental entity" means the interstate stream commission, an Indian nation, tribe or pueblo or state political subdivision, including a municipality, county, acequia, irrigation district or conservancy district;

D. "project" means a permitted, engineered facility designed specifically, constructed and operated pursuant to the Ground Water Storage and Recovery Act [72-5A-1 NMSA 1978], 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 but shall not include in situ leach mining operations or water flood operations for petroleum recovery that require approval by the state engineer outside the Ground Water Storage and Recovery Act; and

E. "stored water" means water that has been stored underground for the purpose of recovery and permitted pursuant to the Ground Water Storage and Recovery Act [72-5A-1 NMSA 1978].

History: Laws 1999, ch. 285, § 3; 2003, ch. 206, § 1.

ANNOTATIONS

The 2003 amendment, effective June 20, 2003, in Subsection C, inserted "the interstate stream commission" near the beginning.

Effective dates. — Laws 1999, ch. 285 contains no effective date provision, but, pursuant to N.M. Const., art. IV, § 23, is effective on June 18, 1999, 90 days after adjournment of the legislature. See Volume 14 NMSA 1978 for "Adjournment Dates of Sessions of Legislature" table.

72-5A-4. Permit required.

A. No governmental entity may construct and operate a storage and recovery project in a declared ground water basin without a permit from the state engineer and other permits that may be required.

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

(1) an application fee in the amount of five thousand dollars ($5,000) plus five dollars ($5.00) per acre-foot of the annual capacity of the proposed storage and recovery project, not to exceed fifty thousand dollars ($50,000); an annual fee of fifty cents ($.50) per acre-foot of water stored, payable upon submission of the annual report required by the Ground Water Storage and Recovery Act [72-5A-1 NMSA 1978];

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

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

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

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

(6) evidence of financial and technical capability;

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

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

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

(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;

(11) a project plan that:

(a) shows that the project will not cause harm to users of land and water within the area of hydrologic effect;

(b) demonstrates that the project is hydrologically feasible;

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

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

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

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

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

(14) the proposed duration of the permit; and

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

History: Laws 1999, ch. 285, § 4.

ANNOTATIONS

Bracketed material. — The bracketed material in this section was inserted by the compiler. It was not enacted by the legislature and is not part of the law.

Effective dates. — Laws 1999, ch. 285 contains no effective date provision, but, pursuant to N.M. Const., art. IV, § 23, is effective on June 18, 1999, 90 days after adjournment of the legislature. See Volume 14 NMSA 1978 for "Adjournment Dates of Sessions of Legislature" table.

Compiler's notes. — As referenced in Subparagraph B(10)(d), 43 U.S.C.S. 620 et seq. is the codification of the Colorado River Storage Project Act.

72-5A-5. Notice; protests; hearings; determinations; judicial review.

A. Upon receipt of an application for a permit to construct and operate a project, the state engineer shall endorse on the application the date it was received and shall keep a record of the application. The state engineer shall conduct an initial review of the application within sixty days of receipt. If the state engineer determines in the initial review that the application is incomplete, the state engineer shall notify the applicant of the application's deficiencies. The application shall remain incomplete until the applicant provides all information required by the Ground Water Storage and Recovery Act [72-5A-1 NMSA 1978]. The state engineer may request additional information from the applicant and shall conduct an investigation of the project.

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

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

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

(3) the name of the applicant;

(4) the date of the last publication;

(5) the requirements for an objection; and

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

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

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

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

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

History: Laws 1999, ch. 285, § 5.

ANNOTATIONS

Effective dates. — Laws 1999, ch. 285 contains no effective date provision, but, pursuant to N.M. Const., art. IV, § 23, is effective on June 18, 1999, 90 days after adjournment of the legislature. See Volume 14 NMSA 1978 for "Adjournment Dates of Sessions of Legislature" table.

72-5A-6. State engineer; powers and duties; permit; monitoring requirements.

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

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

(2) the project is hydrologically feasible;

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

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

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

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

(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

(8) that [sic] the project will not cause harm to users of land and water within the area of hydrologic effect;

B. A permit for a project shall include:

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

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

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

(4) any monitoring program required;

(5) all conditions required by or regulations adopted pursuant to the Ground Water Storage and Recovery Act [72-5A-1 NMSA 1978]; and

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

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

D. The state engineer shall adopt regulations to carry out the provisions of the Ground Water Storage and Recovery Act, including monitoring the operation of projects and their effects on other water users in the area of hydrologic effect, including an Indian nation, tribe or pueblo. In determining monitoring requirements, the state engineer shall cooperate with all government entities that regulate and monitor the quality of water, including the department of environment.

History: Laws 1999, ch. 285, § 6.

ANNOTATIONS

Bracketed material. — The bracketed word "sic" in Subsection A(8) was inserted by the compiler. It was not enacted by the legislature and is not part of the law.

Effective dates. — Laws 1999, ch. 285 contains no effective date provision, but, pursuant to N.M. Const., art. IV, § 23, is effective on June 18, 1999, 90 days after adjournment of the legislature. See Volume 14 NMSA 1978 for "Adjournment Dates of Sessions of Legislature" table.

Compiler's notes. — As referenced in Subparagraph A(7)(d), 43 U.S.C.S. 620 et seq. is the codification of the Colorado River Storage Project Act.

72-5A-7. Modification and assignment of project permit.

A. The state engineer may modify the conditions of a permit if he finds that modifications are necessary and will not impair existing water rights or the water quality of the aquifer. The applicant shall provide notice of any proposed modifications as required by the Ground Water Storage and Recovery Act [72-5A-1 NMSA 1978] for new applications. Objections may be filed in the manner of objections to new applications.

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

History: Laws 1999, ch. 285, § 7.

ANNOTATIONS

Effective dates. — Laws 1999, ch. 285 contains no effective date provision, but, pursuant to N.M. Const., art. IV, § 23, is effective on June 18, 1999, 90 days after adjournment of the legislature. See Volume 14 NMSA 1978 for "Adjournment Dates of Sessions of Legislature" table.

72-5A-8. Stored water not public; stored water not subject to forfeiture; use or exchange of recovered water.

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

B. A permittee may use water recovered only for the same purposes for which the water was authorized before it was stored, unless an application for a change in the purpose of use, place of use or point of diversion is filed and approved pursuant to Section 72-5-23, 72-5-24 or 72-12-7 NMSA 1978, as applicable.

History: Laws 1999, ch. 285, § 8.

ANNOTATIONS

Effective dates. — Laws 1999, ch. 285 contains no effective date provision, but, pursuant to N.M. Const., art. IV, § 23, is effective on June 18, 1999, 90 days after adjournment of the legislature. See Volume 14 NMSA 1978 for "Adjournment Dates of Sessions of Legislature" table.

72-5A-9. Storage account to be established; limit on amount of water recovered.

The state engineer shall establish a storage account for each project. If the project has stored water from more than one source, he shall establish subaccounts for each source of water. A permittee may recover only the recoverable amount of stored water from a well. For purposes of this section, "recoverable amount" means that amount of water, as determined by the state engineer, that has reached the aquifer, remained within the area of hydrologic effect and is conducive to recovery without impairment to existing uses.

History: Laws 1999, ch. 285, § 9.

ANNOTATIONS

Effective dates. — Laws 1999, ch. 285 contains no effective date provision, but, pursuant to N.M. Const., art. IV, § 23, is effective on June 18, 1999, 90 days after adjournment of the legislature. See Volume 14 NMSA 1978 for "Adjournment Dates of Sessions of Legislature" table.

72-5A-10. Annual report to state engineer; penalty for failure to file.

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

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

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

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

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

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

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

History: Laws 1999, ch. 285, § 10.

ANNOTATIONS

Effective dates. — Laws 1999, ch. 285 contains no effective date provision, but, pursuant to N.M. Const., art. IV, § 23, is effective on June 18, 1999, 90 days after adjournment of the legislature. See Volume 14 NMSA 1978 for "Adjournment Dates of Sessions of Legislature" table.

72-5A-11. Revocation or suspension of permits; orders to cease and desist; injunction.

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

B. Except as otherwise provided in this section, if the state engineer has reason to believe that a person or governmental entity has violated a provision of the Ground Water Storage and Recovery Act [72-5A-1 NMSA 1978] or a permit issued or regulation adopted pursuant to that act, the state engineer may issue a written notice that the person or governmental entity appear and show cause, at a hearing before the state engineer not less than fifteen days after the receipt of the notice, why the person or governmental entity should not be ordered to cease and desist from the violation. The notice shall inform the person or governmental entity of the date, time and place of the

hearing and the consequences of the person's or governmental entity's failure to appear.

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

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

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

History: Laws 1999, ch. 285, § 11.

ANNOTATIONS

Effective dates. — Laws 1999, ch. 285 contains no effective date provision, but, pursuant to N.M. Const., art. IV, § 23, is effective on June 18, 1999, 90 days after adjournment of the legislature. See Volume 14 NMSA 1978 for "Adjournment Dates of Sessions of Legislature" table.

72-5A-12. Penalties.

A. A person who or governmental entity that is determined to be in violation of the Ground Water Storage and Recovery Act [72-5A-1 NMSA 1978] or a permit issued or rules adopted pursuant to the act may be assessed a civil penalty in an amount not exceeding:

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

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

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

History: Laws 1999, ch. 285, § 12.

ANNOTATIONS

Effective dates. — Laws 1999, ch. 285 contains no effective date provision, but, pursuant to N.M. Const., art. IV, § 23, is effective on June 18, 1999, 90 days after adjournment of the legislature. See Volume 14 NMSA 1978 for "Adjournment Dates of Sessions of Legislature" table.

72-5A-13. Conservation fee exemptions.

Conservation fees collected pursuant to Section 74-1-13 NMSA 1978 shall be charged only on water that is treated and stored underground and not on the same water subsequently recovered.

History: Laws 1999, ch. 285, § 13.

ANNOTATIONS

Effective dates. — Laws 1999, ch. 285 contains no effective date provision, but, pursuant to N.M. Const., art. IV, § 23, is effective on June 18, 1999, 90 days after adjournment of the legislature. See Volume 14 NMSA 1978 for "Adjournment Dates of Sessions of Legislature" table.

72-5A-14. Obligations to Indian nations, tribes or pueblos.

Nothing in the Ground Water Storage and Recovery Act [72-5A-1 NMSA 1978] 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.

History: Laws 1999, ch. 285, § 14.

ANNOTATIONS

Effective dates. — Laws 1999, ch. 285 contains no effective date provision, but, pursuant to N.M. Const., art. IV, § 23, is effective on June 18, 1999, 90 days after adjournment of the legislature. See Volume 14 NMSA 1978 for "Adjournment Dates of Sessions of Legislature" table.

72-5A-15. Non-exemption from prior appropriation doctrine.

Unless required by interstate obligations, nothing in the Ground Water Storage and Recovery Act [72-5A-1 NMSA 1978] 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.

History: Laws 1999, ch. 285, § 15.

ANNOTATIONS

Effective dates. — Laws 1999, ch. 285 contains no effective date provision, but, pursuant to N.M. Const., art. IV, § 23, is effective on June 18, 1999, 90 days after adjournment of the legislature. See Volume 14 NMSA 1978 for "Adjournment Dates of Sessions of Legislature" table.

72-5A-16. Limitation of determination.

Any determination made by the state engineer for purposes of the Ground Water Storage and Recovery Act [72-5A-1 NMSA 1978] is not binding in any other proceeding.

History: Laws 1999, ch. 285, § 16.

ANNOTATIONS

Effective dates. — Laws 1999, ch. 285 contains no effective date provision, but, pursuant to N.M. Const., art. IV, § 23, is effective on June 18, 1999, 90 days after adjournment of the legislature. See Volume 14 NMSA 1978 for "Adjournment Dates of Sessions of Legislature" table.

72-5A-17. Delayed implementation.

A governmental entity shall not submit an application pursuant to the Ground Water Storage and Recovery Act [72-5A-1 NMSA 1978] 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.

History: Laws 1999, ch. 285, § 17.

ANNOTATIONS

Effective dates. — Laws 1999, ch. 285 contains no effective date provision, but, pursuant to N.M. Const., art. IV, § 23, is effective on June 18, 1999, 90 days after adjournment of the legislature. See Volume 14 NMSA 1978 for "Adjournment Dates of Sessions of Legislature" table.

ARTICLE 6
Water-Use Leasing

72-6-1. Short title.

This act [72-6-1 to 72-6-7 NMSA 1978] may be cited as the "Water-Use Leasing Act."

History: 1953 Comp., § 75-40-1, enacted by Laws 1967, ch. 100, § 1.

ANNOTATIONS

Law reviews. — For article, "The Model Water Code, the Wise Administrator and the Goddam Bureaucrat," see 14 Nat. Resources J. 207 (1974).

For article, "Transfer of Water Rights," see 29 Nat. Resources J. 457 (1989).

72-6-2. Definitions.

As used in the Water-Use Leasing Act [72-6-1 to 72-6-7 NMSA 1978]:

A. "owner" means a person who owns a valid water right;

B. "lessee" means a person who leases the use of water from an owner;

C. "person" means the state or any agency, institution or political subdivision thereof, any public or private corporation, individual, partnership, association or other entity, and includes any officer or governing or managing body of any political subdivision or public or private corporation; and

D. "engineer" means the state engineer as appointed in Section 72-2-1 NMSA 1978.

History: 1953 Comp., § 75-40-2, enacted by Laws 1967, ch. 100, § 2.

ANNOTATIONS

State liable for injuries in recreational park. — Sovereign immunity was waived since the plaintiff was injured by diving off a raft in a lake at a park, even though the original purpose of the lake may have been for storage and diversion of water. Under the lease between the stream commission (owner) and the recreation division (lessee), the park was to be used "for recreational purposes and for no other purpose," and the park was not used for diversion or storage of water at the time of the accident, but was in fact used only for swimming, diving, boating, fishing, and other recreational activities. Bell v.

New Mexico Interstate Stream Comm'n, 117 N.M. 71, 868 P.2d 1296 (Ct. App. 1993), cert. denied, 117 N.M. 121, 869 P.2d 820 (1994).

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.

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.

History: 1953 Comp., § 75-40-3, enacted by Laws 1967, ch. 100, § 3; 1999, ch. 40, § 1; 2003, ch. 369, § 2.

ANNOTATIONS

The 1999 amendment, effective June 18, 1999, added the Subsection A and B designations; substituted "exercise" for "term" in the second sentence of Subsection A; updated statutory references in the next-to-last sentence of Subsection B; added Subsection C; and made minor stylistic changes.

The 2003 amendment, effective July 1, 2003, inserted "except as provided in Subsection C of this section" at the end of the last sentence in Subsection B; and inserted "special water users' associations" near the beginning of Subsection C.

State engineer. — See 72-2-1 NMSA 1978.

Am. Jur. 2d, A.L.R. and C.J.S. references. — 78 Am. Jur. 2d Waters § 247.

93 C.J.S. Waters § 224.

72-6-4. Lessee's application.

Prior to his use of such water, the lessee shall apply to the state engineer requesting approval for the use and location of use to which such water will be put. The engineer shall prescribe the form of such application and may require any information pertinent to the matter.

History: 1953 Comp., § 75-40-4, enacted by Laws 1967, ch. 100, § 4.

ANNOTATIONS

State engineer. — See 72-2-1 NMSA 1978.

Am. Jur. 2d, A.L.R. and C.J.S. references. — 93 C.J.S. Waters § 180.

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.

History: 1953 Comp., § 75-40-5, enacted by Laws 1967, ch. 100, § 5; 1999, ch. 40, § 2; 2003, ch. 369, § 3.

ANNOTATIONS

The 1999 amendment, effective June 18, 1999, inserted "state" in the introductory language, added the Subsection A designation, and added Subsection B.

The 2003 amendment, effective July 1, 2003, inserted the designations in Subsection A and added Subsection B.

State engineer. — See 72-2-1 NMSA 1978.

Am. Jur. 2d, A.L.R. and C.J.S. references. — 2 Am. Jur. 2d Administrative Law § 261 et seq.

93 C.J.S. Waters § 180.

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.

History: 1953 Comp., § 75-40-6, enacted by Laws 1967, ch. 100, § 6; 2003, ch. 369, § 4.

ANNOTATIONS

Cross references. — For publication of legal notice, see Chapter 14, Article 11 NMSA 1978.

The 2003 amendment, effective July 1, 2003, inserted the subsection designations and added Subsection G.

State engineer. — See 72-2-1 NMSA 1978.

Am. Jur. 2d, A.L.R. and C.J.S. references. — 2 Am. Jur. 2d Administrative Law § 261 et seq.

93 C.J.S. Waters § 180.

72-6-7. Appeal.

The final ruling of the engineer on such hearing may be appealed by either the applicant or a protestant. Such appeal shall be governed by the provisions of Section 72-7-1 through Section 72-7-3 NMSA 1978.

History: 1953 Comp., § 75-40-7, enacted by Laws 1967, ch. 100, § 7.

ANNOTATIONS

Cross references. — For appeal de novo from decision, act or refusal to act of state executive officer or body in matters relating to water rights, see N.M. Const., art. XVI, § 5.

State engineer. — See 72-2-1 NMSA 1978.

Am. Jur. 2d, A.L.R. and C.J.S. references. — 2 Am. Jur. 2d Administrative Law § 415 et seq.

94 C.J.S. Waters § 229.

ARTICLE 7
Appeals from State Engineer

72-7-1. Appeal to district court; procedure.

A. Any applicant or other party dissatisfied with any decision, act or refusal to act of the state engineer may appeal to the district court of the county in which the work or point of desired appropriation is situated.

B. Appeals to the district court shall be taken by serving a notice of appeal upon the state engineer and all parties interested within thirty days after receipt by certified mail

of notice of the decision, act or refusal to act. If an appeal is not timely taken, the action of the state engineer is conclusive.

C. The notice of appeal may be served in the same manner as a summons in civil actions brought before the district court or by publication is [in] some newspaper printed in the county or water district in which the work or point of desired appropriation is situated, once a week for four consecutive weeks. The last publication shall be at least twenty days prior to the date the appeal may be heard. Proof of service of the notice of appeal shall be made in the same manner as in actions brought in the district court and shall be filed in the district court within thirty days after service is complete. At the time of filing the proof of service and upon payment by the appellant of the civil docket fee, the clerk of the district court shall docket the appeal.

D. Costs shall be taxed in the same manner as in cases brought in the district court and bond for costs may be required upon proper application.

E. The proceeding upon appeal shall be de novo as cases originally docketed in the district court. Evidence taken in a hearing before the state engineer may be considered as original evidence subject to legal objection, the same as if the evidence was originally offered in the district court. The court shall allow all amendments which may be necessary in furtherance of justice and may submit any question of fact arising therein to a jury or to one or more referees at its discretion.

History: Laws 1907, ch. 49, § 63; Code 1915, § 5721; Laws 1923, ch. 28, § 1; C.S. 1929, § 151-173; 1941 Comp., § 77-601; 1953 Comp., § 75-6-1; Laws 1971, ch. 134, § 2.

ANNOTATIONS

Cross references. — For constitutional provision providing for appeal de novo, as in cases originally docketed in district courts, in matters relating to water rights, see N.M. Const., art. XVI, § 5.

For publication of legal notice, see 14-11-1 NMSA 1978.

For rule relating to service of process, see Rule 1-004 NMRA.

For procedures governing administrative appeals to the district court, see Rule 1-074 NMRA.

For state engineer see 72-2-1 NMSA 1978.

Bracketed material. — The bracketed material in Subsection C was inserted by the compiler as the apparently intended term; it was not enacted by the legislature and is not a part of the law.

Compiler's notes. — For scope of review of the district court, see *Zamora v. Village of Ruidoso Downs,* 120 N.M. 778, 907 P.2d 182 (1995).

Service of decision upon parties. — The state engineer is not required to serve a copy of his decision sustaining or denying a protest against an application for water use upon a party of record, where a copy of the decision has been sent by certified mail to a party's attorney of record. Garbagni v. Metropolitan Inv., Inc., 110 N.M. 436, 796 P.2d 1132 (Ct. App. 1990).

"Decision, act or refusal to act". — Form letter sent by state engineer to all applicants for permits to appropriate water, indicating intention to deny the applications, did not constitute an appealable "decision, act or refusal to act," where it was clear that final action on the application depended on further study by the engineer. State ex rel. Bliss v. Alexander, 59 N.M. 478, 286 P.2d 322 (1955).

No formal application to district court is required in taking an appeal from decision of state engineer; appeal is taken simply by serving state engineer and interested parties with notice of appeal, filing notice with proof of service and paying required docket fee. Plummer v. Johnson, 61 N.M. 423, 301 P.2d 529 (1956).

Service on state engineer. — Notice of appeal is served upon state engineer when it is delivered to such official and filed in his office (case decided prior to amendment of this section). Orosco v. Gonzales, 19 N.M. 130, 141 P. 617 (1914).

Service by publication. — Paragraph C permits service by publication as a means of obtaining service on the state engineer. El Dorado Utils., Inc. v. Galisteo Domestic Water Users Ass'n, 120 N.M. 165, 899 P.2d 608 (Ct. App. 1995).

On appeal from an adverse decision in a proceeding before the state engineer, since the corporation published the notice in compliance with Subsection C, it was not required to serve the attorney general pursuant to 38-1-17 NMSA 1978 and Rule 1-004 NMRA, and the district court thus had jurisdiction. El Dorado Utils., Inc. v. Galisteo Domestic Water Users Ass'n, 120 N.M. 165, 899 P.2d 608 (Ct. App. 1995).

Service by publication must be complete prior to the expiration of the thirty-day period. Anthony Water & San. Dist. v. Turney, 2002-NMCA-095, 132 N.M. 683, 54 P.3d 87, cert. denied, 132 N.M. 674, 54 P.3d 78 (2002).

State engineer as party to appeal. — On appeals under this section, state engineer is proper, if not indispensable, party, because he is given general supervision over measurement, appropriation and use of public waters and any decisions entered by district court are binding upon him. City of Albuquerque v. Reynolds, 71 N.M. 428, 379 P.2d 73 (1962); see also, Plummer v. Johnson, 61 N.M. 423, 301 P.2d 529 (1956).

State engineer may properly be called to testify in de novo proceedings under this section; his expertise should ordinarily be made available to fact finder in appeals from

his orders. Fort Sumner Irrigation Dist. v. Carlsbad Irrigation Dist., 87 N.M. 149, 530 P.2d 943 (1974).

Burden of proof. — Applicant has burden of proving that granting its application would not impair existing rights of others. In re City of Roswell, 86 N.M. 249, 522 P.2d 796 (1974).

Authority of court. — When state engineer denies application for change of point of diversion the district court has authority and jurisdiction to determine whether state engineer correctly applied the law. Clements v. Carlsbad Irrigation Dist., 74 N.M. 373, 394 P.2d 139 (1964).

Independent claim for relief. — An appellant under this section with an independent claim for relief under Rule 1-008 NMRA, could also pursue that claim under the court's original jurisdiction. Town of Silver City v. Scartaccini, 2006-NMCA-009, 138 N.M. 813, 126 P.3d 1177.

Conditional approval. — State engineer initially, and district court on the appeal de novo, had authority to approve appellant's application subject to conditions necessary to prevent impairment of existing rights. In re City of Roswell, 86 N.M. 249, 522 P.2d 796 (1974).

Courts not limited. — No limitations have been placed by law upon power of district courts in these appeals to find facts, make conclusions of law and enter such judgments, orders and decrees as are proper to dispose of the issues. Fort Sumner Irrigation Dist. v. Carlsbad Irrigation Dist., 87 N.M. 149, 530 P.2d 943 (1974).

Rendering of court's judgment. — In proceedings under this section, district court had no duty to conclude one way or the other as to whether state engineer acted fraudulently, arbitrarily or capriciously in rendering his decision, since these were not issues in the de novo proceedings; court could and should have recited substance of its judgment, rather than merely affirming findings and decision of the engineer. However, neither of these facts deprived appellant of a trial de novo. Fort Sumner Irrigation Dist. v. Carlsbad Irrigation Dist., 87 N.M. 149, 530 P.2d 943 (1974).

Conservancy district not entitled to court appeal. — Conservancy district, having failed to meet the jurisdictional requirements of its appeal from the decision of the state engineer, was not entitled to have its appeal issues, challenging the decision of the state engineer, heard in district court. Hope Community Ditch Ass'n v. New Mexico State Engineer, 2005-NMCA-002, 136 N.M. 761, 105 P.3d 314, cert. denied, 2004-NMCERT-012, 136 N.M. 665, 103 P.3d 1097.

De novo proceedings adequate. — Where irrigation district appealed state engineer's findings and order approving transfer of certain water storage rights, and at trial in district court evidence adduced at hearing before engineer was considered along with all additional relevant evidence desired by parties, so that no party was in any way

foreclosed or limited in presentation of evidence, proceedings conformed to trial de novo mandated by N.M. Const., art. XVI, § 5 and Subsection E of this section. Fort Sumner Irrigation Dist. v. Carlsbad Irrigation Dist., 87 N.M. 149, 530 P.2d 943 (1974).

There is no requirement of finality in appealing under this section. Angel Fire Corp. v. C.S. Cattle Co., 96 N.M. 651, 634 P.2d 202 (1981).

Service of notice of appeal on parties required. — A party dissatisfied with a decision of the state engineer who wishes to appeal to the district court must serve a notice of appeal upon all interested parties within 30 days. Service upon the parties' counsel will not suffice. Angel Fire Corp. v. C.S. Cattle Co., 96 N.M. 651, 634 P.2d 202 (1981).

When a protestant timely served notice of appeal upon the state engineer, but the record was devoid of any evidence indicating that timely service of the notice of appeal was obtained upon applicant, the trial court properly dismissed the appeal. Garbagni v. Metropolitan Inv., Inc., 110 N.M. 436, 796 P.2d 1132 (Ct. App. 1990).

The theory behind the jurisdictional nature of the requirement of properly serving all parties to a de novo appeal from the state engineer is that the legislature has, by statute, set forth the steps necessary to transfer the authority over a case from an administrative agency to the judicial branch. Hope Community Ditch Ass'n v. New Mexico State Engineer, 2005-NMCA-002, 136 N.M. 761, 105 P.3d 314, cert. denied, 2004-NMCERT-012, 136 N.M. 665, 103 P.3d 1097.

Former limitations on court review. — Prior to November, 1967, adoption of N.M. Const., art. XVI, § 5 and 1971 amendment of this section, district court, in reviewing a decision of the state engineer, could not hear new or additional evidence, review by the court being limited to questions of law and restricted to whether, based upon legal evidence produced at the hearing before the state engineer, he had acted fraudulently, arbitrarily or capriciously, whether his action was substantially supported by the evidence and whether his action was within the scope of his authority or was based upon an error of law. Kelley v. Carlsbad Irrigation Dist., 71 N.M. 464, 379 P.2d 763 (1963), appeal following remand, 76 N.M. 466, 415 P.2d 849 (1966). See also, Durand v. Reynolds, 75 N.M. 497, 406 P.2d 817 (1965); McGee v. State ex rel. Reynolds, 72 N.M. 48, 380 P.2d 195 (1963); Cross v. Erickson, 72 N.M. 73, 380 P.2d 520 (1963); Ingram v. Malone Farms, Inc., 72 N.M. 256, 382 P.2d 981 (1963).

No continuing jurisdiction. — Water adjudication statutes do not provide for reservation or exercise of continuing jurisdiction after decree adjudicating waters has been entered. 1939-40 Op. Att'y Gen. 107.

Court retains jurisdiction despite untimely filing of proof of service. — District court has subject matter jurisdiction, under this section, to hear an appeal de novo from an administrative decision of the state engineer, where service of the notice of appeal

was timely and properly served but proof of service was not filed in a timely manner. Sleeper v. Ensenada Land & Water Ass'n, 101 N.M. 579, 686 P.2d 269 (Ct. App. 1984).

Retention of jurisdiction improper. — District court's attempt following a remand to the state engineer to retain jurisdiction to hear a subsequent appeal from the engineer's reconsideration of the issuance of a permit for a well location change exceeded the court's jurisdiction in view of the statutory requirements for appeal from the decision of the state engineer. Eldorado at Santa Fe, Inc. v. Cook, 113 N.M. 33, 822 P.2d 672 (Ct. App. 1991).

Engineer not required to act. — Where city owned absolute and unconditional right to divert and use water for which it made appropriation applications, there was nothing before state engineer requiring action on his part. City of Albuquerque v. Reynolds, 71 N.M. 428, 379 P.2d 73 (1962).

Law reviews. — For comment on *Continental Oil Co. v. Oil Conservation Comm'n,* 70 N.M. 310, 373 P.2d 809 (1962), see 3 Nat. Resources J. 178 (1963).

For comment on *Kelley v. Carlsbad Irrigation Dist.,* 71 N.M. 464, 379 P.2d 763 (1963), see 3 Nat. Resources J. 340 (1963).

For article, "An Administrative Procedure Act For New Mexico," see 8 Nat. Resources J. 114 (1968).

For note, "New Mexico State Engineer Issues Orders on Mine Dewatering," see 20 Nat. Resources J. 359 (1980).

For note, "Ninth Circuit Rules That Disclaimer States Lack Jurisdiction Over Indian Water Rights Under the McCarran Amendment," see 23 Nat. Resources J. 255 (1983).

Am. Jur. 2d, A.L.R. and C.J.S. references. — 2 Am. Jur. 2d Administrative Law § 415 et seq.

93 C.J.S. Waters § 204.

72-7-2. [Duty of state engineer to produce papers and data in case; certified copies.]

It shall be the duty of the state engineer, upon being served with notice of appeal as aforesaid, to forthwith transmit or produce before the district court to which appeal may be taken the papers, maps, plats, field notes and other data in his possession affecting the matter in controversy, or certified copies thereof, which copies shall be admitted in evidence as of equal validity with the originals.

History: Laws 1907, ch. 49, § 64; Code 1915, § 5722; Laws 1923, ch. 28, § 2; C.S. 1929, § 151-174; 1941 Comp., § 77-602; 1953 Comp., § 75-6-2.

ANNOTATIONS

Cross references. — For self-authentication of certified copies of public records, see Paragraph D of Rule 11-902 NMRA.

For proof of official records, see Rule 11-1005 NMRA.

State engineer. — See 72-2-1 NMSA 1978.

Section is not jurisdictional. — The procedures found in this section in no way help to take an administrative case out of the administrative framework; rather, they direct the action of the state engineer after jurisdiction with the district court has already been established. United Nuclear Corp. v. State ex rel. Martinez, 117 N.M. 232, 870 P.2d 1390 (Ct. App. 1994).

Law reviews. — For comment on *Kelley v. Carlsbad Irrigation Dist.,* 71 N.M. 464, 379 P.2d 763 (1963), see 3 Nat. Resources J. 340 (1963).

Am. Jur. 2d, A.L.R. and C.J.S. references. — 2 Am. Jur. 2d Administrative Law § 327 et seq.

72-7-3. [Decision of district court; compliance by state engineer; return of papers and data.]

The decision of the district court shall be binding on the state engineer who shall thereafter act in accordance with such decision unless within sixty days after the entry of such decision or judgment of the district court, an appeal shall be taken from the decision of the said district court. Appeals so taken shall be governed by the provisions of Chapter 43 of the Session Laws of 1917 relating to appeals taken from final judgments of the district court. A certified copy of the decision of the court, together with all original papers, maps, plats, field notes and other data transmitted by the state engineer to such court after the final determination of said cause shall be forthwith returned to said state engineer.

History: Laws 1907, ch. 49, § 65; Code 1915, § 5723; Laws 1923, ch. 28, § 3; C.S. 1929, § 151-175; 1941 Comp., § 77-603; 1953 Comp., § 75-6-3.

ANNOTATIONS

Compiler's notes. — Laws 1917, ch. 43, referred to in this section, is deemed superseded by the Rules of Appellate Procedure. See Rule 12-101 NMRA et seq.

State engineer. — See 72-2-1 NMSA 1978.

Time of filing notice of appeal. — Although a notice of appeal by the state engineer was filed within the time provided in this section, it was not filed within the time provided

by the Rules of Appellate Procedure. The appeal was therefor untimely and the court was without jurisdiction to hear it. However, having jurisdiction of an appeal filed by other parties, and there being no prejudice to the parties, the state engineer's motion to be added as a party appellant was granted. Ensenada Land & Water Ass'n v. Sleeper, 107 N.M. 494, 760 P.2d 787 (Ct. App. 1988).

Service of notice, formerly. — Prior to 1923 amendment, notice of filing of petition for removal of appeal pending before commissioners, upon failure to act within ninety days, and application for certiorari, did not have to be served upon interested parties prior to issuance of writ, but only twenty days before pleading required, where service was made in county in which cause was pending. Orosco v. Gonzales, 19 N.M. 130, 141 P. 617 (1914).

Appeals from district court. — Appeals from the district court arising out of objection to a state engineer permit to transfer water rights under 72-7-3 NMSA 1978 are governed by Rule 12-201 NMRA rather than this rule. Town of Silver City v. Scartaccini, 2006-NMCA-009, 138 N.M. 813, 126 P.3d 1177.

Am. Jur. 2d, A.L.R. and C.J.S. references. — 2 Am. Jur. 2d Administrative Law § 629 et seq.

Right of public officer or board to appeal from a judicial decision affecting his or its order or decision, 117 A.L.R. 216.

93 C.J.S. Waters § 203.

ARTICLE 8
Offenses and Penalties Under Water Act of 1907

72-8-1. [Injuring works; interference; misdemeanor; liability for damages; arrest; state engineer and water masters; right to enter private property.]

Any person, association or corporation interfering with or injuring or destroying any dam, headgate, weir, benchmark or other appliance for the diversion, carriage, storage, apportionment or measurement of water, or for any hydrographic surveys, or who shall interfere with any person or persons engaged in the discharge of duties connected therewith, shall be guilty of a misdemeanor, and shall also be liable for the injury or damage resulting from such unlawful act. The state engineer or any authorized assistant shall have power to arrest any person offending against the provisions of this section, and deliver him to the nearest peace officer of the county. It shall be the duty of the person making the arrest to make complaint at once before the court having jurisdiction thereof. The state engineer, the water masters and their authorized assistants, and agents may enter upon private property for the performance of their respective duties, doing no unnecessary injury thereto.

History: Laws 1907, ch. 49, § 47; Code 1915, § 5706; C.S. 1929, § 151-159; 1941 Comp., § 77-701; 1953 Comp., § 75-7-1.

ANNOTATIONS

Cross references. — For penalty for violation of this section, see 72-8-6 NMSA 1978.

For entry on property while making hydrographic surveys, see 72-4-1 NMSA 1978.

State engineer. — See 72-2-1 NMSA 1978.

Am. Jur. 2d, A.L.R. and C.J.S. references. — 78 Am. Jur. 2d Waters § 204.

Modern status of rules governing interference with drainage of surface waters, 93 A.L.R.3d 1193.

93 C.J.S. Waters § 150.

72-8-2. [Construction of bridges over ditches; failure of ditch owner to construct; misdemeanor; construction by county commissioners; liability of ditch owner; repair of ditches.]

The owner or owners of any ditch, canal or other structure for carrying or storing water, shall construct a substantial bridge where the same crosses any public road, with a passageway not less than fourteen feet wide; or reconstruct the road in a substantial manner and in a convenient location for public travel. Any violation of the provisions of this section shall be a misdemeanor. The county commissioners shall be authorized to construct such bridge or road, if not built by the owner of the work within three days after the obstruction of the road, and may recover the expense thereof and costs in a civil suit, unless the same shall be paid by the owner of the works within ten days after demand therefor. The county commissioners may make reasonable requirements as to the size and character of such bridges along public highways, or for the necessary reconstruction of roads, and upon failure to comply therewith, may do the necessary work and collect the expense thereof and costs as hereinbefore provided. After the construction of such bridge or road as part of a public highway, the same shall be maintained by the county commissioners. The owner or owners of any ditch, canal or other structure for carrying or storing water shall keep the same in good repair at the crossing of any highway or publicly traveled road or at other places where the water therefrom may flow over or in anywise injure any road or highway; and the commissioners shall require necessary repairs for the protection of the roads to be made or shall make them at the expense of the owners of such works and collect the expense thereof and costs as herein provided.

History: Laws 1907, ch. 49, § 49; Code 1915, § 5708; C.S. 1929, § 151-161; 1941 Comp., § 77-702; 1953 Comp., § 75-7-2.

ANNOTATIONS

Cross references. — For penalty for violation of this section, see 72-8-6 NMSA 1978.

For penalty for flooding highway, see 67-7-6, 67-7-7 NMSA 1978.

For construction of bridges by mayordomo, see 67-7-8, 73-2-43 NMSA 1978.

For liability for failure to construct good bridge at highway, see 67-7-9 NMSA 1978.

For obstruction of drainage district ditches, see 73-7-55 NMSA 1978.

For penalty for injuring conservancy district works, see 73-17-6 NMSA 1978.

It is duty of acequia owners to build bridges, and of county commissioners to maintain them. 1917-18 Op. Att'y Gen. 66.

Maintenance or reconstruction. — When owner of ditch or canal crossing highway has once constructed substantial bridge meeting requirements of county commissioners, maintenance thereafter or reconstructing devolves on commissioners. 1929-30 Op. Att'y Gen. 141.

Am. Jur. 2d, A.L.R. and C.J.S. references. — 78 Am. Jur. 2d Waters § 76.

93 C.J.S. Waters § 186.

72-8-3. [Interference with use of works; misdemeanor.]

Whenever any appropriator of water has the right-of-way for the storage, diversion or carriage of water, it shall be unlawful to place or maintain any obstruction that shall interfere with the use of the works, or prevent convenient access thereto. Any violations of this section shall be a misdemeanor.

History: Laws 1907, ch. 49, § 50; Code 1915, § 5709; C.S. 1929, § 151-162; 1941 Comp., § 77-703; 1953 Comp., § 75-7-3.

ANNOTATIONS

Cross references. — For penalty for violation of this section, see 72-8-6 NMSA 1978.

For penalty for interference with community ditch, see 73-2-64 NMSA 1978.

Am. Jur. 2d, A.L.R. and C.J.S. references. — 78 Am. Jur. 2d Waters § 359.

Debris or waste, liability for damages from obstruction of stream by, 29 A.L.R.2d 447.

Liability for obstruction or diversion of subterranean waters in use of land, 29 A.L.R.2d 1354.

Liability of landowner for damages caused by overflow, seepage or the like resulting from defect in artificial underground drain, conduit or pipe, 44 A.L.R.2d 960.

Municipality's liability for damage resulting from obstruction or clogging of drains or sewers, 59 A.L.R.2d 281.

Modern status of rules governing interference with drainage of surface waters, 93 A.L.R.3d 1193.

93 C.J.S. Waters § 135.

72-8-4. Unauthorized use or waste of water; constructing works without permit.

The unauthorized use of water to which another person is entitled, or the willful waste of surface or underground water to the detriment of another or the public, shall be a misdemeanor. It shall also be a misdemeanor to begin to carry on any construction of works for storing or carrying water until after the issuance of permit to appropriate such waters provided that management of water for beneficial use shall not be considered waste.

History: Laws 1907, ch. 49, § 48; Code 1915, § 5707; C.S. 1929, § 151-160; Laws 1941, ch. 126, § 20; 1941 Comp., § 77-704; 1953 Comp., § 75-7-4; Laws 1973, ch. 283, § 1.

ANNOTATIONS

Cross references. — For penalty for violation of this section, see 72-8-6 NMSA 1978.

Jurisdiction in suit for injunction. — Statutes which confer upon state engineer general supervision over state waters and appropriation and distribution thereof do not oust courts of jurisdiction to protect individual rights in use of water, so that court retained jurisdiction of suit by irrigation district for injunction against unlawful appropriation of water by riparian owners above district's works and reservoirs. Carlsbad Irrigation Dist. v. Ford, 46 N.M. 335, 128 P.2d 1047 (1942).

Joinder of riparian owners diverting water. — Where an irrigation district sought to enjoin alleged unlawful appropriation of water by riparian owners whose lands were located above district's reservoirs and works, it could properly join as defendants several riparian owners who made diversion even though there was no concert or unity of design between them. Carlsbad Irrigation Dist. v. Ford, 46 N.M. 335, 128 P.2d 1047 (1942).

Decree proper. — Since decree enjoined riparian owners from appropriating waters above irrigation district's reservoirs and works, but also provided that nothing should prevent such owners from applying to state engineer for water rights, it indicated sufficiently that upon proper showing owners' application for modification of decree would be heard by court, and was not erroneous under contention that it prevented any use of flood waters. Carlsbad Irrigation Dist. v. Ford, 46 N.M. 335, 128 P.2d 1047 (1942).

Venue not proven. — Absent evidence of county in which defendant committed acts of unauthorized use of water charged, his conviction would be reversed for failure to prove venue. State v. Glasscock, 76 N.M. 367, 415 P.2d 56 (1966), overruled to the extent case suggests that venue is not waivable State v. Lopez, 84 N.M. 805, 508 P.2d 1292 (1973).

Am. Jur. 2d, A.L.R. and C.J.S. references. — 78 Am. Jur. 2d Waters § 326.

Exploitation or waste of water, constitutionality of statute limiting or controlling, 24 A.L.R. 307, 78 A.L.R. 834.

Waste, statutory regulations to prevent, 55 A.L.R. 1483, 109 A.L.R. 395, 109 A.L.R. 412.

94 C.J.S. Waters § 313.

72-8-5. [Diversion of water to other valleys; penalty.]

It shall be unlawful for any person, company or corporation to divert the waters of any public stream in New Mexico for use for reservoirs or other purposes in a valley other than that of any such stream, to the impairment of valid and subsisting prior appropriations of such waters.

Any violator of this section, shall upon conviction be punished by a fine of not less than one hundred dollars ($100) nor more than five hundred dollars ($500) or imprisonment in the county jail for not less than one month nor more than three months, or both, in the discretion of the court.

History: Laws 1907, ch. 49, § 72; Code 1915, § 5729; C.S. 1929, § 151-178; 1941 Comp., § 77-705; 1953 Comp., § 75-7-5.

ANNOTATIONS

Cross references. — For diversion of water from one stream or drainage to another stream or drainage, see 72-5-26 NMSA 1978.

Am. Jur. 2d, A.L.R. and C.J.S. references. — 78 Am. Jur. 2d Waters § 294.

94 C.J.S. Waters § 313.

72-8-6. [General penalty.]

All violations of the provisions of this article, declared to be misdemeanors, shall be punished by a fine not exceeding one hundred dollars ($100.00) nor less than ten dollars ($10.00), or by imprisonment in the county jail not exceeding six months, or by both such fine and imprisonment, and any justice [magistrate] court of the county in which such misdemeanor has been committed shall have jurisdiction thereof.

History: Laws 1907, ch. 49, § 51; Code 1915, § 5710; C.S. 1929, § 151-163; 1941 Comp., § 77-706; 1953 Comp., § 75-7-6.

ANNOTATIONS

Bracketed material. — The office of justice of the peace has been abolished, and the jurisdiction, powers and duties thereof transferred to the magistrate courts. See 35-1-38 NMSA 1978. The bracketed material was not enacted by the legislature and is not a part of the law.

Meaning of "this article". — The 1915 Code compilers substituted the term "this article" for "this act." "This act" would refer to Laws 1907, ch. 49, compiled as 19-7-26, 72-1-1, 72-1-2, 72-1-5, 72-2-1 to 72-2-7, 72-2-9, 72-2-10, 72-3-1 to 72-3-5, 72-4-1, 72-4-13, 72-4-15, 72-4-17 to 72-4-19, 72-5-1, 72-5-3, 72-5-4, 72-5-6 to 72-5-24, 72-5-26 to 72-5-28, 72-5-33, 72-7-1 to 72-7-3, 72-8-1 to 72-8-6, 72-9-1 to 72-9-3 NMSA 1978. "This article" would refer to the same sections and, in addition, to 72-5-2, 72-5-29 to 72-5-31 NMSA 1978.

Am. Jur. 2d, A.L.R. and C.J.S. references. — 94 C.J.S. Waters § 313.

ARTICLE 9
Application of Water Act of 1907

72-9-1. Vested and existing rights; protection.

Nothing contained in this article shall be construed to impair existing vested rights or the rights and priority of any person, firm, corporation or association, who may have commenced the construction of reservoirs, canals, pipelines or other works, or who have filed affidavits, applications or notices thereof for the purpose of appropriating for beneficial use, any waters as defined in Section 72-1-1 NMSA 1978, in accordance with the laws of the territory of New Mexico, prior to March 19, 1907; provided, however, that all such reservoirs, canals, pipelines or other works and the rights of the owners thereof shall be subject to regulation, adjudication and forfeiture for nonuse as provided in this article.

History: Laws 1907, ch. 49, § 59; Code 1915, § 5717; C.S. 1929, § 151-170; Laws 1941, ch. 126, § 23; 1941 Comp., § 77-801; 1953 Comp., § 75-8-1.

ANNOTATIONS

Meaning of "this article". — The 1915 Code compilers substituted the term "this article" for "this act." "This act" would refer to Laws 1907, ch. 49, the provisions of which are presently compiled as 19-7-26, 72-1-1, 72-1-2, 72-1-5, 72-2-1 to 72-2-7, 72-2-9, 72-2-10, 72-3-1 to 72-3-5, 72-4-1, 72-4-13, 72-4-15, 72-4-17 to 72-4-19, 72-5-1, 72-5-3, 72-5-4, 72-5-6 to 72-5-24, 72-5-26 to 72-5-28, 72-5-33, 72-7-1 to 72-7-3, 72-8-1 to 72-8-6, 72-9-1 to 72-9-3 NMSA 1978. "This article" would refer to the same sections and, in addition, to 72-5-2, 72-5-29 to 72-5-31 NMSA 1978.

"Beneficial use." — "Beneficial use" is measure and limit of right to use of waters covered by this act. State ex rel. Reynolds v. Mendenhall, 68 N.M. 467, 362 P.2d 998 (1961).

Applicability. — Class or kinds of work referred to in this section do not include small community ditches or acequias, which involve no danger to life or property, and which are of comparatively insignificant cost. Pueblo of Isleta v. Tondre, 18 N.M. 388, 137 P. 86 (1913).

Sections compared. — Substance and intent of 72-12-4 NMSA 1978 and this section are the same. State ex rel. Reynolds v. Mendenhall, 68 N.M. 467, 362 P.2d 998 (1961).

New Mexico has not recognized inchoate water rights granted by Mexico or Spain. State v. City of Las Vegas, 2004-NMSC-009, 135 N.M. 375, 89 P.3d 47.

Section protects rights initiated before enactment of act. City of Albuquerque v. Reynolds, 71 N.M. 428, 379 P.2d 73 (1962).

Validity of prior rights to be decided. — For purpose of passing upon application for appropriation of surplus water initiated after 1907, engineer was required to decide whether rights initiated by protesting company before 1907 were valid and still controlled water. 1909-12 Op. Att'y Gen. 59.

Relation back of prior claim. — If claim to water was actually initiated prior to March 19, 1907, then right to appropriate would relate back to initiation of claim upon diligent prosecution to completion of necessary surveys and construction for application of water to beneficial use. Farmers Dev. Co. v. Rayado Land & Irrigation Co., 28 N.M. 357, 213 P. 202 (1923), explained, State ex rel. Reynolds v. Mendenhall, 68 N.M. 467, 362 P.2d 998 (1961).

Landowner was entitled to take water for irrigation where water right relied upon was initiated in 1903 by filing of affidavit with county clerk, prior to enactment of the Water Code of 1907. State ex rel. Bliss v. Davis, 63 N.M. 322, 319 P.2d 207 (1957).

Priority in underground water right. — Landowner who lawfully began developing underground water right and completed it with reasonable diligence acquired water right with priority date as initiation of his work even though lands involved were placed within declared artesian basin before work was finished and water put to beneficial use. State ex rel. Reynolds v. Mendenhall, 68 N.M. 467, 362 P.2d 998 (1961).

Dismissal of action improper. — Where neither party had filed application to appropriate water prior to plaintiff's bringing of suit to enforce appropriation rights, trial court should not have dismissed action for plaintiff's failure to exhaust administrative remedies; failure to obtain permit would not necessarily affect acquisition of water rights by appropriation. May v. Torres, 86 N.M. 62, 519 P.2d 298 (1974).

Law reviews. — For article, "Water Rights Problems in the Upper Rio Grande Watershed and Adjoining Areas," see 11 Nat. Resources J. 48 (1971).

For article, "The Impact of Recent Court Decisions Concerning Water and Interstate Commerce on Water Resources of the State of New Mexico," see 24 Nat. Resources J. 689 (1984).

Am. Jur. 2d, A.L.R. and C.J.S. references. — 78 Am. Jur. 2d Waters §§ 121, 130.

Implied easement or servitude of flowage on severance of tract, 16 A.L.R. 1074.

Rights and privileges in land bordering on navigable water, of grantee or licensee of public, 53 A.L.R. 1191.

Extinguishment of implied or prescriptive easement in respect of water by sale of servient estate of purchaser without notice, 174 A.L.R. 1241.

Remedy of tenant against stranger for wrongfully interfering with his possession, 12 A.L.R.2d 1192.

Loss of private easement by nonuser or adverse possession, 25 A.L.R.2d 1265.

Relative riparian or littoral rights respecting the removal of water from a natural, private, nonnavigable lake, 54 A.L.R.2d 1450.

Easement by prescription in artificial drains, pipes or sewers, 55 A.L.R.2d 1144.

Public right to use share of inland navigable lakes between high and low water mark, 40 A.L.R.3d 776.

Loss of private easement by nonuse, 62 A.L.R.5th 219.

93 C.J.S. Waters § 157.

72-9-2. [Local or community rules and customs unaffected; authority of state engineer.]

In all cases where local or community customs, rules and regulations have been adopted and are in force and in all cases where such rules and regulations may be adopted from time to time by the majority of the users from a common canal, lateral or irrigation system, and have for their object the economical use of water and are not detrimental to the public welfare, such rules and regulations shall govern the distribution of water from such ditches, laterals and irrigation systems to the persons entitled to water therefrom, and such customs, rules and regulations shall not be molested or changed, unless so desired by the persons interested and using said custom or customs, but nothing in this section shall be taken to impair the authority of the state engineer and water master to regulate the distribution of water from the various stream systems of the state to the ditches and irrigation systems entitled to water therefrom under the provisions of this article.

History: Laws 1907, ch. 49, § 57; Code 1915, § 5715; C.S. 1929, § 151-168; 1941 Comp., § 77-802; 1953 Comp., § 75-8-2.

ANNOTATIONS

State engineer. — See 72-2-1 NMSA 1978.

Meaning of "this article". — The 1915 Code compilers substituted the term "this article" for "this act." "This act" would refer to Laws 1907, ch. 49, the provisions of which are presently compiled as 19-7-26, 72-1-1, 72-1-2, 72-1-5, 72-2-1 to 72-2-7, 72-2-9, 72-2-10, 72-3-1 to 72-3-5, 72-4-1, 72-4-13, 72-4-15, 72-4-17 to 72-4-19, 72-5-1, 72-5-3, 72-5-4, 72-5-6 to 72-5-24, 72-5-26 to 72-5-28, 72-5-33, 72-7-1 to 72-7-3, 72-8-1 to 72-8-6, 72-9-1 to 72-9-3 NMSA 1978. "This article" would refer to the same sections and, in addition, to 72-5-2, 72-5-29 to 72-5-31 NMSA 1978.

Authority not impaired. — Nothing in this section shall be taken to impair authority of state engineer and watermaster to regulate distribution of water from various stream systems of state to ditches and irrigation systems entitled to water therefrom. 1953-54 Op. Att'y Gen. No. 5734.

Law reviews. — For article, "Water Rights Problems in the Upper Rio Grande Watershed and Adjoining Areas," see 11 Nat. Resources J. 48 (1971).

Am. Jur. 2d, A.L.R. and C.J.S. references. — 78 Am. Jur. 2d Waters § 283.

93 C.J.S. Waters § 11.

72-9-3. Stock water.

A. Any stockmen or stock owners desiring to impound any of the surface waters of the state for watering of livestock shall apply to the state engineer on a form prescribed by the state engineer. If the capacity of the proposed impoundment is ten acre-feet or less, the applicant shall meet the requirements of this section. If the capacity of the proposed impoundment exceeds ten acre-feet, the applicant shall meet the requirements of filing applications for the appropriation and use of water pursuant to Section 72-5-1, 72-5-22, 72-5-23 or 72-5-24 NMSA 1978.

B. Upon the filing of an application pursuant to this section, if the state engineer finds that the capacity of the proposed impoundment is ten acre-feet or less, will not be on a perennial stream and will be used for watering of livestock as defined in Subsection D of this section, the state engineer shall issue a permit to the applicant to impound and use the waters applied for; provided that as part of an application for an impoundment on state or federal land, the applicant submits proof that the applicant is legally entitled to place livestock on the state or federal land where the water is to be impounded and has been granted access to the site and has permission to occupy the portion of the state or federal land as is necessary for the impoundment.

C. This section shall only apply to impoundments constructed for the watering of livestock after the effective date of this 2004 act.

D. As used in this section, "livestock" means "livestock" as defined in Section 77-2-1.1 NMSA 1978 and this section applies only to the impoundment of surface water for the purpose of watering livestock. Watering of livestock does not include an impoundment of surface or ground water in any amount for fishing, fish propagation, recreation or aesthetic purposes, which shall require a permit pursuant to Section 72-5-1 NMSA 1978. In determining whether an impoundment will be used for the watering of livestock, the state engineer may consider the maximum amount of water required per livestock unit and shall take into account regional and climatic conditions that affect consumption.

History: Laws 1907, ch. 49, § 74, enacted by Laws 1909, ch. 54, § 1; Code 1915, § 5730; C.S. 1929, § 151-179; Laws 1941, ch. 126, § 24; 1941 Comp., § 77-803; 1953 Comp., § 75-8-3; 2004, ch. 86, § 2.

ANNOTATIONS

Cross references. — For definition of acre-foot, see 72-5-19 NMSA 1978.

Meaning of "this article". — The 1915 Code compilers substituted the term "this article" for "this act." "This act" would refer to Laws 1907, ch. 49, the provisions of which are presently compiled as 19-7-26, 72-1-1, 72-1-2, 72-1-5, 72-2-1 to 72-2-7, 72-2-9, 72-2-10, 72-3-1 to 72-3-5, 72-4-1, 72-4-13, 72-4-15, 72-4-17 to 72-4-19, 72-5-1, 72-5-3, 72-5-4, 72-5-6 to 72-5-24, 72-5-26 to 72-5-28, 72-5-33, 72-7-1 to 72-7-3, 72-8-1 to 72-8-6, 72-9-1 to 72-9-3 NMSA 1978. "This article" would refer to the same sections and, in addition, to 72-5-2, 72-5-29 to 72-5-31 NMSA 1978.

The 2004 amendments, effective May 19, 2004, added Subsections A through D. Prior to the 2004 amendments, this section read: "This article shall not be construed to apply to stockmen or stock owners who may build or construct water tanks or ponds for the purpose of watering stock, which have a capacity of ten acre-feet of water or less".

Use of water for watering stock is "beneficial use." First State Bank v. McNew, 33 N.M. 414, 269 P. 56 (1928).

Wrongful removal of water from stock tanks. — Trial court's submission to jury of question of damages based upon market value of water taken and damage to appellee's stock-raising activities, in action for wrongful removal of water from stock tanks, was not error. Frank Bond & Son v. Reserve Minerals Corp., 65 N.M. 257, 335 P.2d 858 (1959).

Am. Jur. 2d, A.L.R. and C.J.S. references. — 93 C.J.S. Waters §§ 60, 61.

72-9-4. [Federal reclamation projects unaffected.]

Except as provided in Sections 15 and 22 [72-5-33 and 19-7-26 NMSA 1978] of this act nothing herein shall be construed as applying to or in any way affecting any federal reclamation project heretofore or hereafter constructed pursuant to the act of congress approved June 17, 1902, known as the Federal Reclamation Act, or acts amendatory thereof or supplementary thereto.

History: Laws 1941, ch. 126, § 27; 1941 Comp., § 77-804; 1953 Comp., § 75-8-4.

ANNOTATIONS

Compiler's notes. — Laws 1941, ch. 126, § 27 of which enacted this section, was principally amendatory of Article 1 of Chapter 151 of the 1929 Compilation, and therefore this section may have application to the entire article, which is compiled in 19-7-26, 72-1-1, 72-1-2, 72-1-5, 72-2-1 to 72-2-7, 72-2-9 to 72-2-11, 72-3-1 to 72-3-5, 72-4-1, 72-4-13 to 72-4-19, 72-5-1 to 72-5-4, 72-5-6 to 72-5-24, 72-5-26 to 72-5-31, 72-5-33, 72-7-1 to 72-7-3, 72-8-1 to 72-8-6, 72-9-1 to 72-9-3 NMSA 1978. If its application is to be restricted to the 1941 act, it would apply only to 19-7-26, 72-1-1, 72-2-5, 72-2-6, 72-4-20, 72-5-1, 72-5-3, 72-5-4, 72-5-6 to 72-5-9, 72-5-14, 72-5-17, 72-5-20, 72-5-23, 72-5-24, 72-5-27, 72-5-28, 72-5-32, 72-5-33, 72-8-4, 72-9-1, 72-9-3, 72-9-4 NMSA 1978.

Federal Reclamation Act. — The act of congress approved June 17, 1902, and referred to in this section, is compiled as 43 U.S.C. §§ 372, 373, 381, 383, 391, 392, 411, 416, 419, 421, 431, 432, 434, 439, 461, 491, 498. The reclamation law which includes the Act of June 17, 1902 and all acts amendatory thereof and supplemental thereto is compiled as 43 U.S.C. § 371 et seq.

Section does not deny equal protection. — The legislature's distinction between federal reclamation projects and other areas of water use is not unreasonable or

arbitrary and thus this section does not deny equal protection. City of Raton v. Vermejo Conservancy Dist., 101 N.M. 95, 678 P.2d 1170 (1984).

Am. Jur. 2d, A.L.R. and C.J.S. references. — 78 Am. Jur. 2d Waters § 82.

94 C.J.S. Waters § 333.

ARTICLE 10
Community Uses

72-10-1. [Community springs or tanks; election of commissioners; duties.]

In all cases where there are springs or tanks of water in this state which are the property of any community, and from which such community obtains water for the use of such community or any of the members thereof, it shall be lawful for the members of such community at such time and place and in such manner as acequia commissioners are elected in this state to elect three commissioners who shall be members of such community and partitioners of such water, whose duty it shall be to protect such springs and tanks and to provide for suitable dams and breakwaters for the same.

History: Laws 1889, ch. 14, § 1; C.L. 1897, § 59; Code 1915, § 5802; C.S. 1929, § 151-701; 1941 Comp., § 77-901; 1953 Comp., § 75-9-1.

ANNOTATIONS

Cross references. — For election of acequia officers, see 73-2-12 NMSA 1978.

Am. Jur. 2d, A.L.R. and C.J.S. references. — 78 Am. Jur. 2d Waters § 184.

Wells, rights in, 55 A.L.R. 1536, 109 A.L.R. 395, 109 A.L.R. 419.

Municipal water supply, statutes and ordinances for protection of, 72 A.L.R. 673.

94 C.J.S. Waters § 226.

72-10-2. [Injuries or obstructions; powers of commissioners; penalty; civil liability.]

The said commissioner [commissioners] shall have lawful power and authority to prevent any and all persons from placing any obstruction whatsoever in any of such community springs and from in any manner injuring or destroying any dam, breakwater or tank connected therewith, and shall have authority to enter complaint against any person who shall wilfully injure, break or obstruct any such spring, dam or breakwater,

before any justice of the peace [magistrate] having jurisdiction and any person so accused upon conviction thereof before any justice of the peace [magistrate] having jurisdiction shall be fined in any sum not less than five dollars [($5.00)] nor more than twenty-five dollars [($25.00)], and shall also be liable to the community in a civil suit for damages to be brought by the said commissioners in the name and for the use of such community.

History: Laws 1889, ch. 14, § 2; C.L. 1897, § 60; Code 1915, § 5803; C.S. 1929, § 151-702; 1941 Comp., § 77-902; 1953 Comp., § 75-9-2.

ANNOTATIONS

Cross references. — For provision making injuring of or interfering with works a misdemeanor, see 72-8-1, 72-8-3 NMSA 1978.

For injunction against use of community waters in community land grant, see 49-1-16, 49-2-15 NMSA 1978.

Bracketed material. — The bracketed material in this section was inserted by the compiler for purposes of clarity, and also pursuant to 35-1-38 NMSA 1978 which abolished the justice of the peace courts. The bracketed material was not enacted by the legislature and is not a part of the law.

Am. Jur. 2d, A.L.R. and C.J.S. references. — 78 Am. Jur. 2d Waters §§ 32 to 42.

94 C.J.S. Waters § 233.

72-10-3. [Laws applicable to community springs and tanks.]

All general laws and parts of such laws respecting the construction and management of public acequias shall be in force and applicable to the community springs and tanks mentioned in this article, and the commissioners provided for in this article shall have the same authority with reference to such springs as is conferred upon acequia commissioners by the laws of this state.

History: Laws 1889, ch. 14, § 3; C.L. 1897, § 61; Code 1915, § 5804; C.S. 1929, § 151-703; 1941 Comp., § 77-903; 1953 Comp., § 75-9-3.

ANNOTATIONS

Cross references. — For public ditches and acequias, see 73-2-1 NMSA 1978 et seq.

Meaning of "this article". — The 1915 Code compilers substituted "this article" for "this act," presumably referring to Code 1915, ch. 114, art. V, the provisions of which are presently compiled as 72-10-1 to 72-10-3 NMSA 1978.

72-10-4. [Reservoirs; building authorized.]

The inhabitants of the different precincts in this state are hereby authorized to build reservoirs at such places where needed to deposit the water that shall run through tubes, so that the masses of the people may use the same for the use of families.

History: Laws 1891, ch. 54, § 1; C.L. 1897, § 700; Code 1915, § 5805; C.S. 1929, § 151-801; 1941 Comp., § 77-904; 1953 Comp., § 75-9-4.

ANNOTATIONS

Cross references. — For incorporation and powers of waterworks, see 62-2-1 NMSA 1978.

Am. Jur. 2d, A.L.R. and C.J.S. references. — 78 Am. Jur. 2d Waters § 200.

93 C.J.S. Waters § 221.

72-10-5. [Petition to county commissioners to build reservoirs; corporation.]

Whenever said inhabitants shall have necessity to build such reservoirs or ponds of water they shall make a petition to the county commissioners of their county, with no less than one hundred signatures, which shall be constituted into a corporation to build such reservoir or pond.

History: Laws 1891, ch. 54, § 2; C.L. 1897, § 701; Code 1915, § 5806; C.S. 1929, § 151-802; 1941 Comp., § 77-905; 1953 Comp., § 75-9-5.

72-10-6. [County to furnish tools; rock and mortar.]

Said commissioners, in view of said petition, shall allow said reservoir to be made, and shall furnish, at the expense of the county, the necessary tools to do the work, which shall consist of rock and mortar.

History: Laws 1891, ch. 54, § 3; C.L. 1897, § 702; Code 1915, § 5807; C.S. 1929, § 151-803; 1941 Comp., § 77-906; 1953 Comp., § 75-9-6.

72-10-7. [Work to be done by petitioners.]

Every petitioner shall have to work on said reservoirs or ponds until the work is completed.

History: Laws 1891, ch. 54, § 4; C.L. 1897, § 703; Code 1915, § 5808; C.S. 1929, § 151-804; 1941 Comp., § 77-907; 1953 Comp., § 75-9-7.

72-10-8. [Completion of reservoir; contract with county.]

When said reservoirs or ponds shall have been completed, the county commissioners shall enter into an annual contract with the owners of said water tubes for the permanent having of the water in said reservoirs.

History: Laws 1891, ch. 54, § 5; C.L. 1897, § 704; Code 1915, § 5809; C.S. 1929, § 151-805; 1941 Comp., § 77-908; 1953 Comp., § 75-9-8.

ANNOTATIONS

Am. Jur. 2d, A.L.R. and C.J.S. references. — 94 C.J.S. Waters § 228.

72-10-9. [Term of contract.]

The said water company shall contract with the said commissioners, which contract shall be for the term of two years from the date of the contract, thus continuing from period to period, until this article is repealed.

History: Laws 1891, ch. 54, § 6; C.L. 1897, § 705; Code 1915, § 5810; C.S. 1929, § 151-806; 1941 Comp., § 77-909; 1953 Comp., § 75-9-9.

ANNOTATIONS

Meaning of "this article". — The 1915 Code compilers substituted the term "this article" for "the present law," presumably referring to Code 1915, ch. 114, art. VI, the provisions of which are presently compiled as 72-10-4 to 72-10-10 NMSA 1978.

72-10-10. [Warrants for payments under contract.]

By virtue of said contract the commissioners shall issue warrants for the payment of the sum necessary to pay equitably, upon the county treasurer where said contract shall be made; and the treasurer shall pay from the funds of said county not appropriated for other purposes.

History: Laws 1891, ch. 54, § 7; C.L. 1897, § 706; Code 1915, § 5811; C.S. 1929, § 151-807; 1941 Comp., § 77-910; 1953 Comp., § 75-9-10.

ANNOTATIONS

Am. Jur. 2d, A.L.R. and C.J.S. references. — 94 C.J.S. Waters § 330.

ARTICLE 11
Salt Lakes

72-11-1. [Salt lakes free to citizens; interference with gathering of salt; penalty.]

All the salt lakes within this state, and the salt which has, or may accumulate on the shores thereof, is, and shall be free to the citizens, and each one shall have power to collect salt on any occasion free from molestation or disturbance. If any person or persons shall prevent any other person or persons, or shall attempt to prevent them from gathering salt, or going for, or returning with it, or shall arm or embody themselves for any or either of the above purposes, or shall molest or disturb, hinder or annoy any person or persons gathering salt, or going to, or returning from any salt lakes, or shall interfere with the salt gathered, or the animals, carts or wagons, or any other mode of conveyance or transportation, shall be deemed guilty of felony, and punished by confinement in the penitentiary, not less than two nor more than seven years, or by fine of not less than one thousand dollars [($1,000)].

History: Laws 1853-1854, p. 20, §§ 1, 2; C.L. 1865, ch. 98, §§ 1, 2; C.L. 1884, § 53; C.L. 1897, § 58; Code 1915, § 5814; C.S. 1929, § 151-1101; 1941 Comp., § 77-1001; 1953 Comp., § 75-10-1.

ANNOTATIONS

Bracketed material. — The bracketed material was inserted by the compiler for purposes of clarity; it was not enacted by the legislature and is not a part of the law.

Preamble. — Laws 1853-1854, p. 20 contained a preamble reciting that by the laws of Spain and Mexico, free and common use was granted to the people of New Mexico and of all the states and provinces of said republic, of all salt lakes within their respective limits, that the same right has been guaranteed by the treaty between the United States and Mexico, that one James Magoffin of Texas had set up a fictitious claim to the San Andres salt lakes and attempted forcibly to prevent citizens of the territory from taking salt from the same, and committed acts of wrong and outrage against them and that it was the duty of the legislative assembly of the territory, by proper laws to protect its citizens in their just rights of property and person.

The first sentence of the present section constituted C.L. 1865, ch. 98, § 1, and the remainder appeared as § 2 thereof.

ARTICLE 12
Underground Waters

72-12-1. Underground waters declared to be public; applications for livestock watering, domestic and temporary uses of water.

The water of underground streams, channels, artesian basins, reservoirs or lakes, having reasonably ascertainable boundaries, is declared to belong to the public and is subject to appropriation for beneficial use. By reason of the varying amounts and time such water is used and the relatively small amounts of water consumed in the watering of livestock; in irrigation of not to exceed one acre of noncommercial trees, lawn or garden; in household or other domestic use; and in prospecting, mining or construction of public works, highways and roads or drilling operations designed to discover or develop the natural resources of the state, application for any such use shall be governed by the provisions of Sections 72-12-1.1 through 72-12-1.3 NMSA 1978.

History: Laws 1931, ch. 131, § 1; 1941 Comp., § 77-1101; 1953, ch. 61, § 1; 1953 Comp., § 75-11-1; Laws 1959, ch. 193, § 1; 1998, ch. 50, § 1; 2001, ch. 207, § 2; 2003, ch. 298, § 1.

ANNOTATIONS

Cross references. — For definition of "acre-foot," see 72-5-19 NMSA 1978.

For appeal de novo from decision, act or refusal to act of state executive officer or body in matters relating to water rights, see N.M. Const., art. XVI, § 5.

The 1998 amendment rewrote the section to the extent that a detailed comparison would be impracticable. Laws 1998, ch. 50 contains no effective date provision, but, pursuant to N.M. Const. art. IV, § 23, is effective May 20, 1998, 90 days after adjournment of the legislature. See Volume 14 NMSA 1978 for "Adjournment Dates of Sessions of Legislature" table.

The 2001 amendment, effective June 15, 2001, inserted "provided that permits for domestic water use within municipalities shall be conditioned to require the permitee to comply with all applicable municipal ordinances enacted pursuant to Chapter 3, Article 53 NMSA 1978; and" in Subsection A.

The 2003 amendment, effective June 20, 2003, substituted "livestock watering, domestic and temporary uses of water" for "use to state engineer; hearings" in the section heading and rewrote the section substituting the statutory references at the end of the section for former Subsections A and B.

State engineer. — See 72-2-1 NMSA 1978.

Meaning of "this act". — The references to "this act" properly refer to Laws 1953, ch. 61, compiled as this section, which added all of the section following the first sentence. It is probable, however, that reference to Laws 1931, ch. 131 the provisions of which are presently compiled as 72-12-1 to 72-12-10 NMSA 1978, was intended.

Section is not void for vagueness and uncertainty. State ex rel. Bliss v. Dority, 55 N.M. 12, 225 P.2d 1007 (1950), appeal dismissed, 341 U.S. 924, 71 S. Ct. 798, 95 L. Ed. 1356 (1951).

Act is merely declaratory of law already existing, in its classification of underground streams, artesian basins and reservoirs with reasonably certain boundaries as public and subject to appropriation. Pecos Valley Artesian Conservancy Dist. v. Peters, 50 N.M. 165, 173 P.2d 490 (1945), appeal after remand, 52 N.M. 148, 193 P.2d 418 (1948).

Laws 1927, ch. 182, § 1 (now repealed), declaring underground waters, boundaries of which may be reasonably ascertained, to belong to the public, and to be subject to appropriation for beneficial use, was not subversive of vested rights of owners of lands overlying such waters, since it was declaratory of existing law. Yeo v. Tweedy, 34 N.M. 611, 286 P. 970 (1929).

Stream and underground water rights identical. — Although appropriators' rights regarding streams and underground waters may be secured under different administrative procedures, substantive rights obtained are identical; likewise, jurisdiction and duties of state engineer relating to streams and underground waters are the same. City of Albuquerque v. Reynolds, 71 N.M. 428, 379 P.2d 73 (1962).

All water owned by state. — All water within state, whether above or beneath surface, belongs to state, which authorizes its use; there is no ownership in corpus of water, but use thereof may be acquired, basis of such acquisition being beneficial use. State ex rel. Erickson v. McLean, 62 N.M. 264, 308 P.2d 983 (1957).

Waters reaching underground basin public. — When artificial or natural flow of surface water, through percolation, seepage or otherwise, reaches underground reservoir and thereby loses its identity as surface water, such waters become public under provisions of this section and are subject to appropriation in accordance with applicable statutes. Kelley v. Carlsbad Irrigation Dist., 76 N.M. 466, 415 P.2d 849 (1966).

There is no law permitting storing of private waters in established underground water basins; when waters, either artificial surface waters or natural surface waters, reach established underground water basin by percolation, seepage or otherwise, they become public waters. State ex rel. Reynolds v. King, 63 N.M. 425, 321 P.2d 200 (1958).

Prior to statutes, well-defined and constant stream in subterranean channel was protected to the owner as much as though it ran through natural channel on surface. Keeney v. Carillo, 2 N.M. 480 (1883).

Waters in underground basin not transferable. — One having water right in surface flow, which has been lost to underground reservoir, can neither transfer his surface right

nor change his point of diversion to underground reservoir. Kelley v. Carlsbad Irrigation Dist., 76 N.M. 466, 415 P.2d 849 (1966).

Total ban on interstate transportation of ground water cannot be supported. — Taken as a whole, New Mexico's scheme of water regulation demonstrates a genuine effort to promote optimum utilization of its diminishing water resources. This effort, which is unquestionably legitimate and highly important, may justify limited, nondiscriminatory burdens on interstate commerce, but cannot support a total ban on the interstate transportation of ground water. City of El Paso ex rel. Pub. Serv. Bd. v. Reynolds, 563 F. Supp. 379 (D.N.M. 1983).

Beneficial uses may include recreation, fish and wildlife purposes. — The holding of Jicarilla Apache Tribe v. United States, 657 F.2d 1126 (10th Cir. 1981), does not broadly stand for the proposition that using San Juan-Chama Project water for recreation, fish and wildlife purposes is not “beneficial” under federal and state law. Rio Grande Silvery Minnow v. Keys, 333 F.3d 1109 (10th Cir. 2003).

Protection of endangered species is a beneficial use. — Diverting San Juan-Chama Project water to prevent jeopardy to an endangered species of minnow is a “beneficial” use under New Mexico law. Rio Grande Silvery Minnow v. Keys, 333 F.3d 1109 (10th Cir. 2003).

Valley fill as reservoir. — Valley fill from which billions of gallons of water are pumped annually for irrigation is container of water which was aptly called reservoir or lake by legislature. State ex rel. Bliss v. Dority, 55 N.M. 12, 225 P.2d 1007 (1950), appeal dismissed, 341 U.S. 924, 71 S. Ct. 798, 95 L. Ed. 1356 (1951).

Nonrechargeable basins. — New Mexico's water laws, although primarily designed for application to waters whose supply is constantly being renewed, is applicable to nonrechargeable basins, such as the Lea county underground water basin. Mathers v. Texaco, Inc., 77 N.M. 239, 421 P.2d 771 (1966).

It would be impossible for state engineer to perform duties imposed upon him by law, without attempting to determine and fix a time estimated as economic life of nonrechargeable basin, and fact that determined and fixed time is less than perpetuity, did not take away powers imposed upon state engineer by law to supervise the basin. Mathers v. Texaco, Inc., 77 N.M. 239, 421 P.2d 771 (1966).

"Reasonably". — Qualifying word "reasonably" is used in this section in the sense of "sufficiently." State ex rel. Bliss v. Dority, 55 N.M. 12, 225 P.2d 1007 (1950), appeal dismissed, 341 U.S. 924, 71 S. Ct. 798, 95 L. Ed. 1356 (1951).

"Reasonably ascertainable boundaries". — This law requiring a permit to take water from a stream only applies to water lying within reasonably ascertainable boundaries and reducing stream flow or taking water from it. 1935-36 Op. Att'y Gen. 131.

Once the state engineer had ascertained that waters mentioned in this section had boundaries which were reasonably ascertainable, he could under rule-making power conferred by former 75-11-11, 1953 Comp., declare them to be public waters so that thereafter they would be within his administrative jurisdiction. 1949-50 Op. Att'y Gen. No. 5185.

Ascertainable boundaries prerequisite to jurisdiction. — Before jurisdiction of state engineer attaches he must make a finding that basin in question has reasonable ascertainable boundaries; absent such finding waters would not be under control or supervision of state engineer. State ex rel. Reynolds v. Mendenhall, 68 N.M. 467, 362 P.2d 998 (1961).

Prior appropriation doctrine applies to waters in artesian basins. State ex rel. Reynolds v. Mendenhall, 68 N.M. 467, 362 P.2d 998 (1961).

Priority in underground water right. — Landowner who lawfully began developing underground water right and completed it with reasonable diligence acquired a water right with priority date as the initiation of his work even though the lands involved were placed within declared artesian basin before work was finished and water put to beneficial use. State ex rel. Reynolds v. Mendenhall, 68 N.M. 467, 362 P.2d 998 (1961).

Relation back of rights. — Rights of appropriator of water do not become absolute until appropriation is completed by actual application of water to use designed; but where he has pursued appropriation with due diligence, and brought it to completion within reasonable time, as against other appropriators, his rights will relate back to time of commencement of work. State ex rel. Reynolds v. Mendenhall, 68 N.M. 467, 362 P.2d 998 (1961).

Water rights of patent holder. — Since lands were patented after date of Desert Land Act (43 U.S.C. § 321, et seq.), but waters were reserved in or before date of said act to state of New Mexico as trustee for the public, and subject to its use by the public at any time thereafter, patents to such land carried no right to use of water, except as to that actually applied to reclaiming land under the Desert Land Act, and not thereafter abandoned. State ex rel. Bliss v. Dority, 55 N.M. 12, 225 P.2d 1007 (1950), appeal dismissed, 341 U.S. 924, 71 S. Ct. 798, 95 L. Ed. 1356 (1951).

Water right affirmed. — Since defendant produced witnesses who farmed tract in question, as well as neighbors who saw the land being worked and certain crops growing thereon, aerial photograph showed ditches from which tract could have been irrigated, and tract was in a depression or old lake bed so that at least before completion of certain leveling and grading work, water ran on it from surrounding land, trial court's finding that tract had valid water right would be affirmed. State ex rel. Bliss v. Potter Co., 63 N.M. 101, 314 P.2d 390 (1957).

Finding of water right erroneous. — Trial court erred in finding that certain tract had a valid water right, where two hydrographic surveys and one aerial photographic survey,

made in different years, showed the tract to be unirrigated salt grass land, and evidence showed that former owners had acquiesced in restricted permit and license for a new well. State ex rel. Bliss v. Potter Co., 63 N.M. 101, 314 P.2d 390 (1957).

Engineer's jurisdiction statutory. — State engineer's jurisdiction over waters of underground streams, channels, artesian basins, reservoirs and lakes is statutory and no provision in law requires adjudication in court to define or determine area of any of described waters. State ex rel. Bliss v. Dority, 55 N.M. 12, 225 P.2d 1007 (1950), appeal dismissed, 341 U.S. 924, 71 S. Ct. 798, 95 L. Ed. 1356 (1951).

State engineer exercises administrative control over particular groundwater basin by declaring it and defining its boundaries. Hanson v. Turney, 2004-NMCA-069, 136 N.M. 1, 94 P.3d 1.

Statutory procedure exclusive. — Waters in controversy being public waters, statutory manner of acquiring rights thereto is exclusive. State ex rel. Reynolds v. King, 63 N.M. 425, 321 P.2d 200 (1958).

Illegal use of public waters does not create any right to continued use since statutory manner for securing right to use public waters is exclusive. State ex rel. Bliss v. Dority, 55 N.M. 12, 225 P.2d 1007 (1950), appeal dismissed, 341 U.S. 924, 71 S. Ct. 798, 95 L. Ed. 1356 (1951).

Burden on applicant to show nonimpairment. — Under statute regulating appropriation of water of underground basin reservoirs, burden is on the applicant to show that there will be no impairment of existing rights. Mathers v. Texaco, Inc., 77 N.M. 239, 421 P.2d 771 (1966).

Impairment dependent on facts. — The question of "impairment of existing rights" under statute regulating appropriation of water of underground basin reservoirs is one which must generally be decided upon the facts in each case. Mathers v. Texaco, Inc., 77 N.M. 239, 421 P.2d 771 (1966).

Amount of impairment not at issue. — State engineer, having performed his positive duty of determining whether or not existing rights would be impaired, did not have duty to further determine degree or amount of impairment. Mathers v. Texaco, Inc., 77 N.M. 239, 421 P.2d 771 (1966).

Return of water negatives impairment of rights. — Appropriation application would be granted where applicant proposed to return amount of drainage water equal to that appropriated to underground basin, as prior rights would not be impaired thereby nor would basin waters be depleted. Reynolds v. Wiggins, 74 N.M. 670, 397 P.2d 469 (1964).

Conditional approval. — In order to prevent an impairment of rights, state engineer has authority to approve an application subject to conditions. City of Roswell v. Berry, 80 N.M. 110, 452 P.2d 179 (1969).

State engineer was not attempting to exercise jurisdiction over Rio Grande stream water in requiring applicant city to retire surface rights so as to protect prior stream appropriators as condition of granting applications to appropriate underground water from Rio Grande basin, but was merely exercising duties under 72-2-1 and 72-12-3 NMSA 1978. City of Albuquerque v. Reynolds, 71 N.M. 428, 379 P.2d 73 (1962).

Appropriation procedure unlawful. — The state engineer's water rights dedication practice and procedure imposing a condition on the groundwater permit requiring that at some future time the applicant acquire and retire a specified amount of surface water rights in the related stream system is unlawful because it precludes full consideration of public welfare and water conservation resulting in an impairment of existing water rights at the time the new conditional water right is approved, since the rights are not identified until the permit is issued, preventing public notice and comment. 1994 Op. Att'y Gen. No. 94-07.

Right to seek injunction. — Even though well was lawfully drilled without permit outside of artesian conservancy district, district could maintain suit to enjoin use of water from such well which was located on land outside territorially defined boundaries of the basin as well as outside district boundaries. Pecos Valley Artesian Conservancy Dist. v. Peters, 50 N.M. 165, 173 P.2d 490 (1945), appeal after remand, 52 N.M. 148, 193 P.2d 418 (1948).

Though an artesian conservancy district owned no land serviced by waters of an artesian basin and no water rights, it constituted proper party plaintiff for maintaining suit to enjoin use of water from unlawfully drilled well. Pecos Valley Artesian Conservancy Dist. v. Peters, 50 N.M. 165, 173 P.2d 490 (1945), appeal after remand, 52 N.M. 148, 193 P.2d 418 (1948).

Burden to establish amount of appropriated water. — Burden was on conservancy district seeking injunction to establish amount of water which owners of wells existing at time defendant's well tapped basin were legally entitled to use and if that had been done defendant would have been burdened with proving that there was unappropriated water to which he was entitled; however, as the district failed to make out a prima facie case, trial court did not err in dismissing the bill. Pecos Valley Artesian Conservancy Dist. v. Peters, 52 N.M. 148, 193 P.2d 418 (1948).

Appealability. — Letter received from state engineer by applicant for appropriation, which letter declared intention to deny the application, but made reference to later "final action" not yet taken, was not an appealable "decision, act or refusal to act." State v. Alexander, 59 N.M. 478, 286 P.2d 322 (1955).

No "water right" arises from private property pond. — Nowhere in Chapter 72, Article 12, is there any indication that a "water right" subject to impairment, and which provides standing to protest another's application for a permit, arises from the mere existence of a pond on private property. Town of Silver City v. Scartaccini, 2006-NMCA-009, 138 N.M. 813, 126 P.3d 1177.

Source of pond water. — Unless shown otherwise by the person claiming some sort of a private right, the source of pond water, if no surface source is shown, is presumed to be underground water that is shared by other members of the public within the hydrologic model boundary. Town of Silver City v. Scartaccini, 2006-NMCA-009, 138 N.M. 813, 126 P.3d 1177.

Law reviews. — For comment on *Kelley v. Carlsbad Irrigation Dist.,* 71 N.M. 464, 379 P.2d 763 (1963), see 3 Nat. Resources J. 340 (1963).

For article, "Constitutional Limitations on the Exercise of Judicial Functions by Administrative Agencies," see 7 Nat. Resources J. 599 (1967).

For student symposium, "Constitutional Revision - Water Rights," see 9 Nat. Resources J. 471 (1969).

For article, "Water Rights Problems in the Upper Rio Grande Watershed and Adjoining Areas," see 11 Nat. Resources J. 48 (1971).

For note, "Subdivision Planning Through Water Regulation in New Mexico," see 12 Nat. Resources J. 286 (1972).

For article, "Institutional Alternatives for Mexico-U.S. Groundwater Management," see 18 Nat. Resources J. 201 (1978).

For note, *"Brantley v. Carlsbad Irrigation District:* Limits of the Templeton Doctrine Affirmed," see 19 Nat. Resources J. 669 (1979).

For note, "New Mexico State Engineer Issues Orders on Mine Dewatering," see 20 Nat. Resources J. 359 (1980).

For comment, "Protection of the Means of Groundwater Diversion," see 20 Nat. Resources J. 625 (1980).

For comment, "New Mexico's Mine Dewatering Act: The Search for Rehoboth," see 20 Nat. Resources J. 653 (1980).

For article, "Reasonable Groundwater Levels Under the Appropriation Doctrine: The Law and Underlying Economic Goals," see 21 Nat. Resources J. 1 (1981).

For comment, "Do State Water Anti-Exportation Statutes Violate the Commerce Clause? or Will New Mexico's Embargo Law Hold Water?" see 21 Nat. Resources J. 617 (1981).

For article, "New Mexico Water Law: An Overview and Discussion of Current Issues," see 22 Nat. Resources J. 1045 (1982).

For article, "Centralized Decisionmaking in the Administration of Groundwater Rights: The Experience of Arizona, California and New Mexico and Suggestions for the Future," see 24 Nat. Resources J. 641 (1984).

For article, "The Impact of Recent Court Decisions Concerning Water and Interstate Commerce on Water Resources of the State of New Mexico," see 24 Nat. Resources J. 689 (1984).

For article, "The Ixtapa Draft Agreement Relating to the Use of Transboundary Groundwaters," see 25 Nat. Resources J. 713 (1985).

For note, "Recent Developments in the El Paso/New Mexico Interstate Groundwater Controversy - The Constitutionality of New Mexico's New Municipality Water Planning Statute," see 29 Nat. Resources J. 223 (1989).

For article, "A Survey of the Evolution of Western Water Law in Response to Changing Economic and Public Interest Demands," see 29 Nat. Resources J. 347 (1989).

For article, “The Administration of the Middle Rio Grande Basin: 1956-2002,” see 42 Nat. Resources J. 939 (2002).

Am. Jur. 2d, A.L.R. and C.J.S. references. — 78 Am. Jur. 2d Waters § 146.

Railroad company's rights in respect of springs on its right-of-way, 21 A.L.R. 1138.

Ponded water, injury by percolation or seepage from, 38 A.L.R. 1244.

Mining operations interfering with percolating waters, 39 A.L.R. 895, 55 A.L.R. 1425, 109 A.L.R. 395, 109 A.L.R. 405.

Subterranean and percolating waters, springs, wells, 55 A.L.R. 1385, 109 A.L.R. 395.

Liability for injury to property occasioned by oil, water, or the like flowing from well, 19 A.L.R.2d 1025.

Liability for obstruction or diversion of subterranean waters in use of land, 29 A.L.R.2d 1354.

Well-drilling under contract, 90 A.L.R.2d 1346.

Liability of landowner withdrawing groundwater from own land for subsidence of adjoining owner's land, 5 A.L.R.4th 614.

Measure and elements of damages for pollution of well or spring, 76 A.L.R.4th 629.

93 C.J.S. Waters § 88.

72-12-1.1. Underground waters; domestic use; permit.

A person, firm or corporation desiring to use public underground waters described in this section for irrigation of not to exceed one acre of noncommercial trees, lawn or garden or for household or other domestic use shall make application to the state engineer for a well on a form to be prescribed by the state engineer. Upon the filing of each application describing the use applied for, the state engineer shall issue a permit to the applicant to use the underground waters applied for; provided that permits for domestic water use within municipalities shall be conditioned to require the permittee to comply with all applicable municipal ordinances enacted pursuant to Chapter 3, Article 53 NMSA 1978.

History: 1978 Comp., § 72-12-1.1, enacted by Laws 2003, ch. 298, § 2.

ANNOTATIONS

Effective dates. — Laws 2003, ch. 298 contains no effective date provision, but, pursuant to N.M. Const., art. IV, § 23, is effective June 20, 2003, 90 days after adjournment of the legislature.

72-12-1.2. Underground public waters; livestock well permits.

A person, firm or corporation desiring to use public underground waters for watering livestock shall make an application to the state engineer on a form prescribed by the state engineer for a livestock well permit. Upon filing of the application, the state engineer shall issue a livestock well permit for the use of water for watering livestock to the applicant, provided that as part of an application for livestock watering use on state or federal land, the applicant submits proof that the applicant:

A. is legally entitled to place livestock on the state or federal land where the water is to be used; and

B. has been granted access to the drilling site and has permission to occupy the portion of the state or federal land as is necessary to drill and operate the well.

History: 1978 Comp., § 72-12-1.2, enacted by Laws 2003, ch. 298, § 3.

ANNOTATIONS

Effective dates. — Laws 2003, ch. 298 contains no effective date provision, but, pursuant to N.M. Const., art. IV, § 23, is effective June 20, 2003, 90 days after adjournment of the legislature.

72-12-1.3. Underground public waters; temporary uses.

If a person, firm, corporation or the state desires to use underground public water in an amount not to exceed three acre-feet for a definite period of not to exceed one year in prospecting, mining or construction of public works, highways and roads or drilling operations designed to discover or develop the natural mineral resources of the state, only the application referred to in Section 72-12-3 NMSA 1978 shall be required. Separate application shall be made for each proposed use, whether in the same or in different basins. Upon the filing of an application, the state engineer shall make an examination of the facts and, if the proposed use will not permanently impair any existing rights of others, the state engineer shall grant the application. If the state engineer finds that the proposed use sought will permanently impair such rights, there shall be advertisement and hearing as provided in the case of applications made under Section 72-12-3 NMSA 1978.

History: 1978 Comp., § 72-12-1.3, enacted by Laws 2003, ch. 298, § 4.

ANNOTATIONS

Effective dates. — Laws 2003, ch. 298 contains no effective date provision, but, pursuant to N.M. Const., art. IV, § 23, is effective June 20, 2003, 90 days after adjournment of the legislature.

72-12-2. [Right to use waters.]

Beneficial use is the basis, the measure and the limit to the right to the use of the waters described in this act [72-12-1 to 72-12-10 NMSA 1978].

History: Laws 1931, ch. 131, § 2; 1941 Comp., § 77-1102; 1953 Comp., § 75-11-2.

ANNOTATIONS

Compiler's notes. — For cases dealing with water rights and use thereof, see also notes to 72-12-1 NMSA 1978.

Appropriation measured by beneficial use. — Amount of water which has been applied to beneficial use is measure of quantity of appropriation. State ex rel. Erickson v. McLean, 62 N.M. 264, 308 P.2d 983 (1957).

Entitlement only to water needed. — No matter how early person's priority of appropriation may be, he is not entitled to receive more water than is necessary for his actual use; excessive diversion of water, through waste, cannot be regarded as

diversion to beneficial use, within meaning of N.M. Const., art. XVI, §§ 1 to 3. State ex rel. Erickson v. McLean, 62 N.M. 264, 308 P.2d 983 (1957).

Waste not countenanced. — Law will not countenance diversion of volume of water from artesian well which, by reason of waste resulting from permitting it to run uncontrolled for 24 hours a day over grazing lands without irrigation system, or through pipes to water troughs fitted with float feeds or other means of control to prevent waste therefrom, is many times that which is actually consumed for useful or beneficial use. State ex rel. Erickson v. McLean, 62 N.M. 264, 308 P.2d 983 (1957).

Use of water must be beneficial to lands of appropriator, and must also be reasonable. State ex rel. Erickson v. McLean, 62 N.M. 264, 308 P.2d 983 (1957).

Forfeiture of unused rights. — Rights to water not used for four years, absent extenuating circumstances, are forfeited, policy of this section being to foster greatest good for greatest number. State ex rel. Reynolds v. South Springs Co., 80 N.M. 144, 452 P.2d 478 (1969).

Right to prescribe use. — State as owner of water has right to prescribe how it may be used. State ex rel. Erickson v. McLean, 62 N.M. 264, 308 P.2d 983 (1957).

Total ban on interstate transportation of ground water cannot be supported. — Taken as a whole, New Mexico's scheme of water regulation demonstrates a genuine effort to promote optimum utilization of its diminishing water resources. This effort, which is unquestionably legitimate and highly important, may justify limited, nondiscriminatory burdens on interstate commerce, but cannot support a total ban on the interstate transportation of ground water. City of El Paso ex rel. Pub. Serv. Bd. v. Reynolds, 563 F. Supp. 379 (D.N.M. 1983).

Priority of underground water right. — Landowner who lawfully began developing underground water right and completed it with reasonable diligence acquired water right with priority date as initiation of his work even though lands involved were placed within declared artesian basin before work was finished and water put to beneficial use. State ex rel. Reynolds v. Mendenhall, 68 N.M. 467, 362 P.2d 998 (1961).

No "water right" arises from private property pond. — Nowhere in Chapter 72, Article 12, is there any indication that a "water right" subject to impairment, and which provides standing to protest another's application for a permit, arises from the mere existence of a pond on private property. Town of Silver City v. Scartaccini, 2006-NMCA-009, 138 N.M. 813, 126 P.3d 1177.

Source of pond water. — Unless shown otherwise by the person claiming some sort of a private right, the source of pond water, if no surface source is shown, is presumed to be underground water that is shared by other members of the public within the hydrologic model boundary. Town of Silver City v. Scartaccini, 2006-NMCA-009, 138 N.M. 813, 126 P.3d 1177.

Law reviews. — For note, "New Mexico State Engineer Issues Orders on Mine Dewatering," see 20 Nat. Resources J. 359 (1980).

For comment, "Protection of the Means of Groundwater Diversion," see 20 Nat. Resources J. 625 (1980).

For comment, "New Mexico's Mine Dewatering Act: The Search for Rehoboth," see 20 Nat. Resources J. 653 (1980).

Am. Jur. 2d, A.L.R. and C.J.S. references. — 78 Am. Jur. 2d Waters § 152.

Liability of landowner withdrawing groundwater from own land for subsidence of adjoining owner's land, 5 A.L.R.4th 614.

93 C.J.S. Waters § 93.

72-12-3. Application for use of underground water; publication of notice; permit.

A. Any person, firm or corporation or any other entity desiring to appropriate for beneficial use any of the waters described in Chapter 72, Article 12 NMSA 1978 shall apply to the state engineer in a form prescribed by him. In the application, the applicant shall designate:

(1) the particular underground stream, channel, artesian basin, reservoir or lake from which water will be appropriated;

(2) the beneficial use to which the water will be applied;

(3) the location of the proposed well;

(4) the name of the owner of the land on which the well will be located;

(5) the amount of water applied for;

(6) the place of the use for which the water is desired; and

(7) if the use is for irrigation, the description of the land to be irrigated and the name of the owner of the land.

B. If the well will be located on privately owned land and the applicant is not the owner of the land or the owner or the lessee of the mineral or oil and gas rights under the land, the application shall be accompanied by an acknowledged statement executed by the owner of the land that the applicant is granted access across the owner's land to the drilling site and has permission to occupy such portion of the owner's land as is necessary to drill and operate the well. This subsection does not apply to the state or

any of its political subdivisions. If the application is approved, the applicant shall have the permit and statement, executed by the owner of the land, recorded in the office of the county clerk of the county in which the land is located.

C. No application shall be accepted by the state engineer unless it is accompanied by all the information required by Subsections A and B of this section.

D. Upon the filing of an application, the state engineer shall cause to be published in a newspaper that is published and distributed in the county where the well will be located and in each county where the water will be or has been put to beneficial use or where other water rights may be affected, or if there is no such newspaper, then in some newspaper of general circulation in the county in which the well will be located, at least once a week for three consecutive weeks, a notice that the application has been filed and that objections to the granting of the application may be filed within ten days after the last publication of the notice. Any person, firm or corporation or other entity objecting that the granting of the application will impair the objector's water right shall have standing to file objections or protests. Any person, firm or corporation or other entity objecting that the granting of the application will be contrary to the conservation of water within the state or detrimental to the public welfare of the state and showing that the objector will be substantially and specifically affected by the granting of the application shall have standing to file objections or protests; provided, however, that the state of New Mexico or any of its branches, agencies, departments, boards, instrumentalities or institutions, and all political subdivisions of the state and their agencies, instrumentalities and institutions shall have standing to file objections or protests.

E. After the expiration of the time for filing objections, if no objections have been filed, the state engineer shall, if he finds that there are in the underground stream, channel, artesian basin, reservoir or lake unappropriated waters or that the proposed appropriation would not impair existing water rights from the source, is not contrary to conservation of water within the state and is not detrimental to the public welfare of the state, grant the application and issue a permit to the applicant to appropriate all or a part of the waters applied for, subject to the rights of all prior appropriators from the source.

F. If objections or protests have been filed within the time prescribed in the notice or if the state engineer is of the opinion that the permit should not be issued, the state engineer may deny the application without a hearing or, before he acts on the application, may order that a hearing be held. He shall notify the applicant of his action by certified mail sent to the address shown in the application.

History: Laws 1931, ch. 131, § 3; 1941 Comp., § 77-1103; Laws 1943, ch. 70, § 1; 1953 Comp., § 75-11-3; Laws 1967, ch. 308, § 2; 1971, ch. 134, § 3; 1983, ch. 2, § 2; 1985, ch. 201, § 7; 2001, ch. 26, § 2.

ANNOTATIONS

Cross references. — For penalty for using or appropriating water without permit required hereunder, see 72-12-11 NMSA 1978.

For replacement wells, see 72-12-22, 72-12-23 NMSA 1978.

For supplemental wells, see 72-12-24 NMSA 1978.

For applications for the transportation and use of public waters outside the state, see 72-12B-1 NMSA 1978.

For appeal de novo from decision, act or refusal to act of state executive officer or body in matters relating to water rights, see N.M. Const., art. XVI, § 5.

For publication of legal notice, see 14-11-1 NMSA 1978.

The 1985 amendment inserted "or any other entity" preceding "desiring to appropriate for" and substituted "beneficial use" for "irrigation or industrial uses" in the first sentence of the introductory paragraph in Subsection A, inserted "place of the" preceding "use for which" in Subsection A(6), and added the second, third and fourth sentences in Subsection D.

The 2001 amendment, effective June 15, 2001, inserted the proviso in Subsection D that requires public notification of a water appropriation in the county of that appropriation.

Applicability. — Laws 1985, ch. 201, § 10 provides that the provisions of the act shall apply to all applications before the state engineer filed after January 1, 1985.

Compiler's notes. — For cases dealing with applications for use of underground water, see also notes to 72-12-1 NMSA 1978.

State engineer. — See 72-2-1 NMSA 1978.

Constitutionality. — Amendment requiring landowner's permission to use land to operate well was constitutional and valid. City of Hobbs v. State ex rel. Reynolds, 82 N.M. 102, 476 P.2d 500 (1970).

The 1967 amendment which permitted removal of proceeding for application for use of underground water from jurisdiction of state engineer and placing of such proceeding within original jurisdiction of the courts (since deleted by 1971 rewriting of this section) was unconstitutional as violative of separation of powers doctrine of N.M. Const., art. III, § 1; it was not validated by subsequent constitutional amendment which neither expressly nor impliedly ratified it, nor was it passed in anticipation of the subsequent constitutional amendment. City of Hobbs v. State ex rel. Reynolds, 82 N.M. 102, 476 P.2d 500 (1970); Fellows v. Shultz, 81 N.M. 496, 469 P.2d 141 (1970).

Laws 1927, ch. 182, § 5 (now repealed), providing for administration of act as to any underground waters upon petition signed by ten percent of users of such waters, did not delegate legislative power to petitioners in violation of N.M. Const., art. IV, § 1. Yeo v. Tweedy, 34 N.M. 611, 286 P. 970 (1929).

Interstate usage of water can be controlled to same extent as intrastate usage. City of El Paso ex rel. Pub. Serv. Bd. v. Reynolds, 563 F. Supp. 379 (D.N.M. 1983).

Total ban on interstate transportation of ground water cannot be supported. — Taken as a whole, New Mexico's scheme of water regulation demonstrates a genuine effort to promote optimum utilization of its diminishing water resources. This effort, which is unquestionably legitimate and highly important, may justify limited, nondiscriminatory burdens on interstate commerce, but cannot support a total ban on the interstate transportation of ground water. City of El Paso ex rel. Pub. Serv. Bd. v. Reynolds, 563 F. Supp. 379 (D.N.M. 1983).

Municipal corporations are embraced in term "any corporation." City of Albuquerque v. Reynolds, 71 N.M. 428, 379 P.2d 73 (1962).

"Description" of land contemplated by section is legal description and survey would be necessary. 1957-58 Op. Att'y Gen. No. 58-95.

Purpose of notice. — Principle underlying statutory requirement of application, notice and hearing is to insure that change proposed in application will not impair rights of other appropriators. City of Roswell v. Berry, 80 N.M. 110, 452 P.2d 179 (1969).

Intention of this law is to give interested persons ten days after publication of notice in which to file protests to filed applications. 1937-38 Op. Att'y Gen. 127.

Application not required for slight variation in place of use. — State engineer need not require application and publication of notice of change of place of use of underground waters when description of land actually irrigated varies only slightly from that shown on original application; however, should there be substantial variation or should acreage irrigated be noncontiguous to that shown on original application, then another application should be required. 1961-62 Op. Att'y Gen. No. 61-73.

Determination of substantiality of variation. — Duty of state engineer to enforce statutes carries with it responsibility to determine whether variation is substantial enough to require new application; in exercise of this responsibility, state engineer must use reasonable discretion. 1961-62 Op. Att'y Gen. No. 61-73.

Authority of state engineer is limited to public water, and so far as his denial of an application was based upon finding of impairment of rights of Pecos river appropriators or other (privately owned) drain rights, his action was founded upon an error of law. Reynolds v. Wiggins, 74 N.M. 670, 397 P.2d 469 (1964).

Jurisdiction and duties of state engineer with reference to streams and underground waters relates to public waters, subject to use by prior appropriators. City of Albuquerque v. Reynolds, 71 N.M. 428, 379 P.2d 73 (1962).

Water not already appropriated. — State engineer can only grant permits to appropriate waters which are not already appropriated. Templeton v. Pecos Valley Artesian Conservancy Dist., 65 N.M. 59, 332 P.2d 465 (1958).

In determining whether to issue permit, the state engineer considers the applicant's application and grants it if there are unappropriated waters or if the proposed appropriation would not impair existing water rights from the source, is not contrary to the conservation of water within the state, and is not detrimental to the public welfare of the state. Hanson v. Turney, 2004-NMCA-069, 136 N.M. 1, 94 P.3d 1.

Claim outside jurisdiction of state engineer. — Claim of city that it owned appropriative right of such nature that it did not legally require the very permit for which application was made, is not contemplated by this section and for this reason alone could not lawfully have been considered by state engineer. City of Albuquerque v. Reynolds, 71 N.M. 428, 379 P.2d 73 (1962).

State engineer has authority to approve application subject to conditions. City of Roswell v. Berry, 80 N.M. 110, 452 P.2d 179 (1969).

Power to impose suitable conditions is inherent in broader power to prohibit and may also be expressly covered by portion of this section providing that, under conditions set out, state engineer shall grant application and issue permit to applicant to appropriate "all or a part of the waters applied for." City of Albuquerque v. Reynolds, 71 N.M. 428, 379 P.2d 73 (1962).

Authority to specify method of meeting conditions. — Having authority to condition approval, state engineer has authority to specify how condition is to be met under statute then in force. City of Roswell v. Berry, 80 N.M. 110, 452 P.2d 179 (1969).

Appropriation determined case by case. — There is no statutory authority for state engineer to "declare" that no unappropriated water exists in an underground basin; under present law, the engineer must, and does, determine whether unappropriated water exists on a case by case basis. 1973 Op. Att'y Gen. No. 73-23.

Consideration of prior appropriations. — Although state engineer cannot conduct proceeding to adjudicate priorities of water rights, each time a permit is granted, he must consider all prior appropriations to determine whether or not there are any unappropriated waters; to that extent, he is required to consider prior appropriations. Templeton v. Pecos Valley Artesian Conservancy Dist., 65 N.M. 59, 332 P.2d 465 (1958).

Each time application for permit to appropriate underground water is lodged before state engineer, he has duty to consider all prior appropriations to determine whether or not there are unappropriated waters. 1973 Op. Att'y Gen. No. 73-23.

Duty to determine question of impairment. — In reaching decision in connection with application, state engineer has positive duty to determine whether existing rights would be impaired. City of Roswell v. Berry, 80 N.M. 110, 452 P.2d 179 (1969).

Impairment dependent on facts. — Whether there is an impairment of existing water rights depends upon the facts of each case. City of Roswell v. Berry, 80 N.M. 110, 452 P.2d 179 (1969).

No "water right" arises from private property pond. — Nowhere in Chapter 72, Article 12, is there any indication that a "water right" subject to impairment, and which provides standing to protest another's application for a permit, arises from the mere existence of a pond on private property. Town of Silver City v. Scartaccini, 2006-NMCA-009, 138 N.M. 813, 126 P.3d 1177.

Source of pond water. — Unless shown otherwise by the person claiming some sort of a private right, the source of pond water, if no surface source is shown, is presumed to be underground water that is shared by other members of the public within the hydrologic model boundary. Town of Silver City v. Scartaccini, 2006-NMCA-009, 138 N.M. 813, 126 P.3d 1177.

Applicants for use of underground water have burden of proving that unappropriated water is available and that granting of their applications will not impair existing rights. McBee v. Reynolds, 74 N.M. 783, 399 P.2d 110 (1965).

City as applicant for appropriation has burden of proving that its proposed well field would not impair existing rights. City of Roswell v. Berry, 80 N.M. 110, 452 P.2d 179 (1969).

Burden is upon applicant to demonstrate that unappropriated water exists or that no impairment of existing rights would be caused. 1973 Op. Att'y Gen. No. 73-23.

Lowering of wells not necessarily impairment. — Finding that lowering of wells as result of city's appropriation of water would be of "negligible effect" on surrounding artesian wells did not require determination, as matter of law, that chemical quality of water in protestant's artesian wells would be impaired by lowering of water level in those wells by less than 0.16 feet. City of Roswell v. Berry, 80 N.M. 110, 452 P.2d 179 (1969).

Appropriation procedure unlawful. — The state engineer's water rights dedication practice and procedure imposing a condition on the groundwater permit requiring that at some future time the applicant acquire and retire a specified amount of surface water rights in the related stream system is unlawful because it precludes full consideration of public welfare and water conservation resulting in an impairment of existing water rights

at the time the new conditional water right is approved, since the rights are not identified until the permit is issued, preventing public notice and comment. 1994 Op. Att'y Gen. No. 94-07.

Nonconsumptive appropriation to be approved. — Even if no unappropriated water exists in an underground reservoir, an application for a new appropriation must nevertheless be approved, provided that it involves a nonconsumptive use of water, i.e., one that causes no net depletion of water in the reservoir and, therefore, does not impair existing rights. 1973 Op. Att'y Gen. No. 73-23.

Name on application. — Application for permit to appropriate public waters need not be in name of particular person or names of all standing to benefit from beneficial use of such waters. Mathers v. Texaco, Inc., 77 N.M. 239, 421 P.2d 771 (1966).

Priority of right. — Landowner who lawfully began developing underground water right and completed it with reasonable diligence acquired a water right with priority date as the initiation of his work even though the lands involved were placed within declared artesian basin before work was finished and water put to beneficial use. State ex rel. Reynolds v. Mendenhall, 68 N.M. 467, 362 P.2d 998 (1961).

Damage suit. — Water right owner is not restricted to hearing before the state engineer and appeal therefrom as exclusive remedy against impairment of his right by another; he has legal right to seek protection of or redress, including damages, for impairment of his water rights by another without first exhausting all administrative procedures available to him. Tevis v. McCrary, 72 N.M. 134, 381 P.2d 208 (1963), appeal after remand, 75 N.M. 165, 402 P.2d 150 (1965).

Water rights separate property of wife. — Evidence in divorce action supported conclusion that certain property, including water rights stemming from permits issued by state engineer to appropriate underground water, perfected by the drilling of wells, were separate property of the wife and not community property. Paschall v. Paschall, 79 N.M. 257, 442 P.2d 569 (1968).

Estancia Basin. — Because the Estancia Basin is a declared basin, applicant, who wished to appropriate water from the basin, had to apply for a permit to appropriate water. Hanson v. Turney, 2004-NMCA-069, 136 N.M. 1, 94 P.3d 1.

Law reviews. — For comment on *Kelley v. Carlsbad Irrigation Dist.,* 71 N.M. 464, 379 P.2d 763 (1963), see 3 Nat. Resources J. 340 (1963).

For article, "Constitutional Limitations on the Exercise of Judicial Functions by Administrative Agencies," see 7 Nat. Resources J. 599 (1967).

For comment on geothermal energy and water law, see 19 Nat. Resources J. 445 (1979).

For note, "New Mexico State Engineer Issues Orders on Mine Dewatering," see 20 Nat. Resources J. 359 (1980).

For comment, "Protection of the Means of Groundwater Diversion," see 20 Nat. Resources J. 625 (1980).

For comment, "New Mexico's Mine Dewatering Act: The Search for Rehoboth," see 20 Nat. Resources J. 653 (1980).

For article, "Reasonable Groundwater Levels Under the Appropriation Doctrine: The Law and Underlying Economic Goals," see 21 Nat. Resources J. 1 (1981).

For article, "New Mexico Water Law: An Overview and Discussion of Current Issues," see 22 Nat. Resources J. 1045 (1982).

For article, "Centralized Decisionmaking in the Administration of Groundwater Rights: The Experience of Arizona, California and New Mexico and Suggestions for the Future," see 24 Nat. Resources J. 641 (1984).

For article, "The Law of Prior Appropriation: Possible Lessons for Hawaii," see 25 Nat. Resources J. 911 (1985).

For note, "Recent Developments in the El Paso/New Mexico Interstate Groundwater Controversy - The Constitutionality of New Mexico's New Municipality Water Planning Statute," see 29 Nat. Resources J. 223 (1989).

For article, "A Survey of the Evolution of Western Water Law in Response to Changing Economic and Public Interest Demands," see 29 Nat. Resources J. 347 (1989).

For note, "The Milagro Beanfield War Revisited in *Ensenada Land & Water Ass'n v. Sleeper:* Public Welfare Defies Transfer of Water Rights," see 29 Nat. Resources J. 861 (1989).

For article, “The Administration of the Middle Rio Grande Basin: 1956-2002,” see 42 Nat. Resources J. 939 (2002).

Am. Jur. 2d, A.L.R. and C.J.S. references. — 78 Am. Jur. 2d Waters §§ 152, 153.

93 C.J.S. Waters § 180.

72-12-3.1. Certain ground water; finding; grant of permits; stay; exceptions.

A. The state of New Mexico recognizes that with respect to ground water hydrologically related to the Rio Grande at or below Elephant Butte dam there is a deficiency of hydrologic information, the amount sought to be appropriated in pending

applications far exceeds available supplies and the allocation of surface water between the states of New Mexico and Texas needs further clarification.

B. In the interest of ensuring competent administration of the ground water hydrologically related to the Rio Grande at or below Elephant Butte dam, a stay is declared on the granting of permits with respect to all pending and future applications to appropriate unappropriated ground water from aquifers hydrologically related to the Rio Grande at or below Elephant Butte dam. The stay shall be for a period of two years commencing on the effective date of this act.

C. Nothing in this section shall preclude the granting of permits:

(1) to appropriate unappropriated ground water for public health emergencies;

(2) to appropriate unappropriated ground water for domestic, stock water and other uses pursuant to Section 72-12-1 NMSA 1978; or

(3) to replace or change the location of existing wells.

History: Laws 1984, ch. 113, § 1.

ANNOTATIONS

Stay in grant of ground water appropriation held unconstitutional. — Two-year stay in the granting of new appropriations of ground water hydrologically related to the Rio Grande at or below Elephant Butte, i.e., the Hueco and Mesilla Basins, has an illegitimate protectionist purpose and is facially unconstitutional as impermissibly burdening interstate commerce. City of El Paso ex rel. Pub. Serv. Bd. v. Reynolds, 597 F. Supp. 694 (D.N.M. 1984).

72-12-4. [Existing water rights recognized.]

Existing water rights based upon application to beneficial use are hereby recognized. Nothing herein contained is intended to impair the same or to disturb the priorities thereof.

History: Laws 1931, ch. 131, § 4; 1941 Comp., § 77-1104; 1953 Comp., § 75-11-4.

ANNOTATIONS

"Based upon". — Term "based upon" includes entire procedure necessary to accomplish beneficial use of water, initiation of right to final act of irrigating land. State ex rel. Reynolds v. Mendenhall, 68 N.M. 467, 362 P.2d 998 (1961).

"Beneficial use" is measure and limit to right to use of waters covered by this act. State ex rel. Reynolds v. Mendenhall, 68 N.M. 467, 362 P.2d 998 (1961).

Section protects rights which were initiated before enactment thereof. City of Albuquerque v. Reynolds, 71 N.M. 428, 379 P.2d 73 (1962).

Rights recognized. — Section is not limited to recognition of rights to water which had previously been put to beneficial use; it also recognizes rights "based upon application to beneficial use." State ex rel. Reynolds v. Mendenhall, 68 N.M. 467, 362 P.2d 998 (1961).

Sections compared. — Substance and intent of this section and 72-9-1 NMSA 1978 is the same. State ex rel. Reynolds v. Mendenhall, 68 N.M. 467, 362 P.2d 998 (1961).

Only unappropriated waters subject to appropriation. — State engineer can only grant permits to appropriate waters which are not already appropriated. Templeton v. Pecos Valley Artesian Conservancy Dist., 65 N.M. 59, 332 P.2d 465 (1958).

Test for establishing water rights under this section requires the developer to: (1) legally commence drilling a well prior to declaration of the basin; (2) proceed diligently to develop the water pursuant to a plan; and (3) apply the water to beneficial use. State ex rel. Reynolds v. Rio Rancho Estates, Inc., 95 N.M. 560, 624 P.2d 502 (1981).

Priority of right. — Landowner who lawfully began developing underground water right and completed it with reasonable diligence acquired water right with priority date as initiation of his work even though lands involved were placed within declared artesian basin before work was finished and water put to beneficial use. State ex rel. Reynolds v. Mendenhall, 68 N.M. 467, 362 P.2d 998 (1961).

Am. Jur. 2d, A.L.R. and C.J.S. references. — 78 Am. Jur. 2d Waters § 261.

93 C.J.S. Waters §§ 183, 184.

72-12-5. [Declaration of beneficial use; verification; recording.]

Any person, firm or corporation claiming to be the owner of a vested water right from any of the underground sources in this act [72-12-1 to 72-12-10 NMSA 1978] described, by application of waters therefrom to beneficial use, may make and file in the office of the state engineer a declaration in a form to be prescribed by the state engineer setting forth the beneficial use to which said water has been applied, the date of first application to beneficial use, the continuity thereof, the location of the well and if such water has been used for irrigation purposes, the description of the land upon which such water has been so used and the name of the owner thereof. Such declaration shall be verified but if the declarant cannot verify the same of his own personal knowledge he may do so on information and belief. Such declarations so filed shall be recorded at length in the office of the state engineer and may also be recorded in the office of the county clerk of the county wherein the well therein described is located. Such records or copies thereof officially certified shall be prima facie evidence of the truth of their contents.

History: Laws 1931, ch. 131, § 5; 1941 Comp., § 77-1105; 1953 Comp., § 75-11-5.

ANNOTATIONS

Cross references. — For filing and recording of changes of ownership in water rights, see 72-1-2.1.

For self-authentication of certified copies of public records, see Paragraph D of Rule 11-902 NMRA.

For proof of official records, see Rule 11-1005 NMRA.

For state engineer, *see* 72-2-1 NMSA 1978.

Refusal to accept amended declarations. — The state engineer has the discretion to refuse to accept amended declarations of non-vested water rights. Eldorado Utilities, Inc. v. State, 2005-NMCA-041, 137 N.M. 268, 110 P.3d 76, cert. denied, 2005-NMCERT-004, 137 N.M. 454, 112 P.3d 1111.

Drainage waters are private and not subject to appropriation. In re Langenegger, 64 N.M. 218, 326 P.2d 1098 (1958).

Use of drainage water not basis for appropriation. — Use of drainage water for irrigation of lands by applicant and his predecessors may not be made basis for right to appropriate public waters of this state, although drainage waters are depleted. In re Langenegger, 64 N.M. 218, 326 P.2d 1098 (1958).

Priority date. — Landowner who lawfully began developing underground water right and completed it with reasonable diligence acquired water right with priority date as initiation of his work even though lands involved were placed within declared artesian basin before work was finished and water put to beneficial use. State ex rel. Reynolds v. Mendenhall, 68 N.M. 467, 362 P.2d 998 (1961).

Refusal not adjudication. — The state engineer's refusal to accept amended declarations was not an adjudication of utility's water rights. Eldorado Utilities, Inc. v. State, 2005-NMCA-041, 137 N.M. 268, 110 P.3d 76, cert. denied, 2005-NMCERT-004, 137 N.M. 454, 112 P.3d 1111.

Prima facie evidence of claim. — This section has the purpose and effect of making the declaration of beneficial use of ground water prima facie evidence of the claim. Eldorado Utilities, Inc. v. State, 2005-NMCA-041, 137 N.M. 268, 110 P.3d 76, cert. denied, 2005-NMCERT-004, 137 N.M. 454, 112 P.3d 1111.

Am. Jur. 2d, A.L.R. and C.J.S. references. — 93 C.J.S. Waters § 176.

72-12-6. [Former declarations valid.]

Declarations heretofore filed in substantial compliance with Section 5 [72-12-5 NMSA 1978] hereof shall be recognized as of the same force and effect as if filed after the taking effect of this act [72-12-1 to 72-12-10 NMSA 1978].

History: Laws 1931, ch. 131, § 6; 1941 Comp., § 77-1106; 1953 Comp., § 75-11-6.

72-12-7. Change of location of well; change in use on application; temporary change.

A. The owner of a water right may change the location of his well or change the use of the water, but only upon application to the state engineer and upon showing that the change will not impair existing rights and will not be contrary to the conservation of water within the state and will not be detrimental to the public welfare of the state. The application may be granted only after such advertisement and hearing as are prescribed in the case of original applications.

B. When the owner of a water right applies for a temporary change of not to exceed one year for not more than three acre-feet of water to a different location or to a different use, or both, the state engineer shall make an investigation and, if the change does not permanently impair any vested rights of others, he shall enter an order authorizing the change. If he finds that the change sought might impair vested rights, he shall order advertisement and hearing as in other cases.

C. If objections or protests have been filed within the time prescribed in the notice or if the state engineer is of the opinion that the permit should not be issued, the state engineer may deny the application or, before he acts on the application, may order that a hearing be held. He shall notify the applicant of his action by certified mail sent to the address shown in the application.

History: Laws 1931, ch. 131, § 7; 1941 Comp., § 77-1107; Laws 1953, ch. 60, § 1; 1953 Comp., § 75-11-7; Laws 1967, ch. 308, § 3; 1971, ch. 134, § 4; 1985, ch. 201, § 8.

ANNOTATIONS

Cross references. — For requirements of original appropriation applications, see 72-12-3 NMSA 1978.

For penalty for unauthorized change of well location, see 72-12-11 NMSA 1978.

For authorization of drilling of replacement well or supplemental well prior to application and/or publication and hearing under certain emergency situations, see 72-12-22 to 72-12-24 NMSA 1978.

For appeal de novo from decision, act or refusal to act of state executive officer or body in matters relating to water rights, see N.M. Const., art. XVI, § 5.

The 1985 amendment added "and will not be contrary to the conservation of water within the state and will not be detrimental to the public welfare of the state" at the end of the first sentence in Subsection A.

Saving clauses. — Laws 1971, ch. 134, § 5 provides that the act does not apply to any matter pending before the district court prior to the effective date thereof.

Severability clauses. — Laws 1971, ch. 134, § 6, provides for the severability of the act if any part of application thereof is held invalid.

State engineer. — See 72-2-1 NMSA 1978.

Constitutionality. — The 1967 amendment to this section (deleted by the 1971 amendment) providing for district court de novo review of state engineer's decision, was unconstitutional in that it violated separation of powers doctrine of N.M. Const., art. III, § 1, and was not validated by subsequent adoption of N.M. Const., art. XVI, § 5. Fellows v. Shultz, 81 N.M. 496, 469 P.2d 141 (1970).

Section not confiscatory. — Reasonable limitations on well location changes imposed by this section do not have effect of confiscating vested rights. State ex rel. Reynolds v. Fanning, 68 N.M. 313, 361 P.2d 721 (1961); State ex rel. Reynolds v. Mitchell, 66 N.M. 212, 345 P.2d 744 (1959).

Legislative presumption in enacting Subsection A. — It is presumed that the legislature was aware of the state's significant body of water law when it enacted Subsection A of this section. Hanson v. Turney, 2004-NMCA-069, 136 N.M. 1, 94 P.3d 1.

Waters of declared underground water basin belong to public of state of New Mexico, are subject to appropriation for beneficial use in accordance with applicable law and may be available to supplement established rights to waters of basin under proper circumstances and through following established procedures. Coldwater Cattle Co. v. Portales Valley Project, Inc., 78 N.M. 41, 428 P.2d 15 (1967).

Term "water right" is ambiguous. Hanson v. Turney, 2004-NMCA-069, 136 N.M. 1, 94 P.3d 1.

And it is presumed that legislature intended term "water right" should be construed consistently with the state's significant body of law, and if the legislature had intended a different interpretation of "water right" the legislature would have clearly expressed it. Hanson v. Turney, 2004-NMCA-069, 136 N.M. 1, 94 P.3d 1.

Water right is property right and inherent therein is right to change place of diversion, storage or use of the water, if rights of other water users will not be injured thereby. Clodfelter v. Reynolds, 68 N.M. 61, 358 P.2d 626 (1961).

Right subject to conditions. — Although right to change point of diversion or place of use is inherent property right incident to ownership of water rights, it is a right subject to conditions; it cannot impair other existing rights and it may be enjoyed only in accordance with statutory procedure. Durand v. Reynolds, 75 N.M. 497, 406 P.2d 817 (1965).

Effect of statutes restrictive. — Statutes governing change in point of diversion or change in well location do not grant, but rather, restrict right of appropriator to change point of diversion or well location. Public Serv. Co. v. Reynolds, 68 N.M. 54, 358 P.2d 621 (1960); In re Brown, 65 N.M. 74, 332 P.2d 475 (1958).

Appropriation of unappropriated waters is not involved in approval or rejection of application filed pursuant to this section. Mathers v. Texaco, Inc., 77 N.M. 239, 421 P.2d 771 (1966).

Purpose of requirements. — Principle underlying statutory requirements of application, notice and hearing is to insure that change proposed in application will not impair rights of other appropriators. City of Roswell v. Berry, 80 N.M. 110, 452 P.2d 179 (1969); In re Brown, 65 N.M. 74, 332 P.2d 475 (1958).

Issue of impairment. — Issue in proceedings hereunder is whether approval of application would impair existing rights, which issue state engineer has positive duty to determine. City of Roswell v. Berry, 80 N.M. 110, 452 P.2d 179 (1969).

The question of impairment of existing rights is a matter which must generally depend upon each application, and to attempt to define the same would lead to severe complications. United States v. Plains Elec. Generation & Transmission Coop., 106 N.M. 775, 750 P.2d 475 (Ct. App. 1988).

Legislature did not intend to qualify term "impairment" by adding "substantial" thereto. Heine v. Reynolds, 69 N.M. 398, 367 P.2d 708 (1962).

Impairment dependent on facts. — Whether there is an impairment of existing water rights depends upon facts of each case. City of Roswell v. Berry, 80 N.M. 110, 452 P.2d 179 (1969).

Distinction between holders and owners. — The legislature was aware of the distinction between holders of permits and owners of water rights. Hanson v. Turney, 2004-NMCA-069, 136 N.M. 1, 94 P.3d 1.

The absence of any reference to permit holders in Subsection A of this section is compelling evidence that the legislature did not intend to allow permit holders who had not yet applied any water to beneficial use to be considered owners of a water right. Hanson v. Turney, 2004-NMCA-069, 136 N.M. 1, 94 P.3d 1.

Where plaintiff took the initial step to obtain a water right, and had a right to appropriate water, her permits alone do not establish that she is the owner of a "water right" as that term is used in Subsection A of this section. Hanson v. Turney, 2004-NMCA-069, 136 N.M. 1, 94 P.3d 1.

Burden on applicant to prove negative impairment. — Applicant has burden of proving that granting of its application would not impair existing rights of others. In re City of Roswell, 86 N.M. 249, 522 P.2d 796 (1974); Spencer v. Bliss, 60 N.M. 16, 287 P.2d 221 (1955); In re Hobson, 64 N.M. 462, 330 P.2d 547 (1958); Heine v. Reynolds, 69 N.M. 398, 367 P.2d 708 (1962); Durand v. Reynolds, 75 N.M. 497, 406 P.2d 817 (1965); City of Roswell v. Berry, 80 N.M. 110, 452 P.2d 179 (1969).

Engineer's duty to determine issue. — State engineer had positive duty to determine if existing rights would be impaired; and having found that they would be, there was no necessity under this section to further determine degree or amount of impairment. Durand v. Reynolds, 75 N.M. 497, 406 P.2d 817 (1965); Heine v. Reynolds, 69 N.M. 398, 367 P.2d 708 (1962).

Public policy strongly discourages application of estoppel against state engineer where the waters of the State are involved. Hanson v. Turney, 2004-NMCA-069, 136 N.M. 1, 94 P.3d 1.

Delay alone would not constitute due process violation. — Where plaintiff complains that it took five years for the state engineer to deny her applications, and another three years for the district court to decide her appeal, delay alone would not constitute a due process violation entitling her to have her applications granted. Hanson v. Turney, 2004-NMCA-069, 136 N.M. 1, 94 P.3d 1.

Degree of impairment immaterial. — District court was under no duty to find degree of impairment which would result if application were granted as once it determined that applicant had failed to prove there would be no impairment to existing rights, it had duty to deny application. In re City of Roswell, 86 N.M. 249, 522 P.2d 796 (1974).

Change in water class creates inference of impairment. — Although it is clear that all factors must be considered on a case-by-case basis, a change in water quality from Dregne and Maker class 1 to class 2 (or from class 2 to class 3) that would result from the granting of a permit creates a strong inference of impairment. Stokes v. Morgan, 101 N.M. 195, 680 P.2d 335 (1984).

Minimal increase in salinity not necessarily impairment. — New withdrawals which cause a minimal acceleration in the rate of saltwater intrusion or a minimal increase in salinity do not constitute impairment as a matter of law. Stokes v. Morgan, 101 N.M. 195, 680 P.2d 335 (1984).

Proof of no impairment. — A showing of no impairment may be founded on two separate bases: (1) the proposed increase in pumping will not significantly accelerate

the rate of intrusion of poor quality water, or (2) the quality of intruding water is still good enough to be used for existing purposes. Stokes v. Morgan, 101 N.M. 195, 680 P.2d 335 (1984).

Lowering of wells. — Finding that lowering of wells as result of city's appropriation of water would be of "negligible effect" did not require determination, as matter of law, that chemical quality of water in protestant's artesian wells would be impaired by lowering of water level in those wells by less than 0.16 feet. City of Roswell v. Berry, 80 N.M. 110, 452 P.2d 179 (1969).

Lowering of water table. — Lowering of water table does not necessarily constitute impairment of water rights of adjoining appropriators, as whether there is impairment depends upon facts of each case. In re City of Roswell, 86 N.M. 249, 522 P.2d 796 (1974).

Denial justified on finding of impairment. — Where finding of impairment of existing rights was supported by substantial evidence, state engineer was justified in denying applicants' applications. Durand v. Reynolds, 75 N.M. 497, 406 P.2d 817 (1965).

Procedure requisite for well location change. — Owner cannot change location of well used to irrigate tract with vested right without following statutory procedure. State ex rel. Reynolds v. Mitchell, 66 N.M. 212, 345 P.2d 744 (1959).

State engineer may not allow replacement well to be drilled within 200 feet of original well without following notice procedure as set forth in this section. 1959-60 Op. Att'y Gen. No. 59-5.

Commingling of waters. — In order to commingle waters, applicant would have to file application for change of place of use of both artesian well and shallow well; state engineer could approve applications subject to such conditions as reasonably were necessary to insure that there would not be increased use of water from either aquifer. 1959-60 Op. Att'y Gen. No. 59-60.

No authority to condition change of place of use of private water. — The state engineer, in granting a permit for a change of place of use, and after determining that the change of place of use will not impair existing rights, may not apply conditions which require that sewage effluent resulting from the use of the water must be returned to a natural water course, because the effluent is private water. Reynolds v. City of Roswell, 99 N.M. 84, 654 P.2d 537 (1982).

Application to change use properly denied. — Where person had two permits to appropriate water but never put the water to beneficial use, and then filed applications to change the use from irrigation to subdivision use, the state engineer properly denied her requests, reasoning the failure to put the water to beneficial use meant that there was no “water right” to be changed. Hanson v. Turney, 2004-NMCA-069, 136 N.M. 1, 94 P.3d 1.

Emergency permit not authorized. — State engineer has neither express nor implied authority to issue emergency permit for change in well location. In re Brown, 65 N.M. 74, 332 P.2d 475 (1958).

Prior hearing contemplated. — Section contemplates application, notice, hearing and approval prior to change in well location. In re Brown, 65 N.M. 74, 332 P.2d 475 (1958).

Unauthorized change misdemeanor. — Where appropriator changes well location prior to application, publication and hearing he is liable to prosecution under 72-12-11 NMSA 1978, whether or not such change in location is subsequently approved by state engineer. In re Brown, 65 N.M. 74, 332 P.2d 475 (1958).

Water right forfeited after illegal change in well location. — Unauthorized change in well location is a misdemeanor and if owner of vested water right changed location of his well after August 21, 1931, without following statutory procedure, and thereafter irrigated from new well for four consecutive years, it resulted in legal forfeiture of his water right. State ex rel. Reynolds v. Fanning, 68 N.M. 313, 361 P.2d 721 (1961).

Unauthorized change in well location is a misdemeanor and where owner of 40-acre vested water right changed location of his well after date basin was declared, without following statutory procedure, and thereafter irrigated from new well for four consecutive years, it resulted in legal forfeiture of his water right. State ex rel. Reynolds v. Mitchell, 66 N.M. 212, 345 P.2d 744 (1959).

Subsequent approval cures defect. — When appropriator has unlawfully changed well location without following statutory procedure, subsequent determination by state engineer, after notice and hearing, that rights of other water users will not be impaired, cures original defect in procedure. In re Brown, 65 N.M. 74, 332 P.2d 475 (1958).

State engineer has authority to approve application subject to conditions. City of Roswell v. Berry, 80 N.M. 110, 452 P.2d 179 (1969).

State engineer initially, and district court on appeal de novo, had authority to approve the appellant's application subject to conditions necessary to prevent impairment of existing rights. In re City of Roswell, 86 N.M. 249, 522 P.2d 796 (1974).

State engineer has authority to specify how conditions he imposes are to be met. City of Roswell v. Berry, 80 N.M. 110, 452 P.2d 179 (1969).

Ownership of proposed location. — This section and 72-12-24 NMSA 1978 do not intimate that ownership of land to which point of diversion is to be changed is condition precedent to right to apply for authority to effect such change. Coldwater Cattle Co. v. Portales Valley Project, Inc., 78 N.M. 41, 428 P.2d 15 (1967).

Application filed by nonprofit corporation which limited membership to property owners residing within boundaries of underground water basin who owned valid water rights

therein for supplementation of such water rights as well as partial change of point of diversion on land not owned by the members was not constructive trespass, nor did such filing cast any cloud on title to land upon which supplemental wells were to be drilled. Coldwater Cattle Co. v. Portales Valley Project, Inc., 78 N.M. 41, 428 P.2d 15 (1967).

Right of entry required for construction. — Filing of application for drilling wells did not authorize applicant to enter upon land of another to sink wells or to construct canals or ditches; such right could not be exercised without lawful right of entry. Coldwater Cattle Co. v. Portales Valley Project, Inc., 78 N.M. 41, 428 P.2d 15 (1967).

Agent for owners. — Fact that nonprofit corporation, membership in which was limited to property owners residing within boundaries of underground water basin who owned valid water rights therein, did not own any water rights, did not affect corporation's capacity to act as agent in behalf of member owners. Coldwater Cattle Co. v. Portales Valley Project, Inc., 78 N.M. 41, 428 P.2d 15 (1967).

Law reviews. — For comment on *Kelley v. Carlsbad Irrigation Dist.,* 71 N.M. 464, 379 P.2d 763 (1963), see 3 Nat. Resources J. 340 (1963).

For comment on *Mathers v. Texaco, Inc.,* 77 N.M. 239, 421 P.2d 771 (1966), see 7 Nat. Resources J. 433 (1967).

For note, "Common Law Remedies for Salt Pollution," see 15 Nat. Resources J. 353 (1975).

For comment, "Protection of the Means of Groundwater Diversion," see 20 Nat. Resources J. 625 (1980).

For comment, "New Mexico's Mine Dewatering Act: The Search for Rehoboth," see 20 Nat. Resources J. 653 (1980).

For article, "New Mexico Water Law: An Overview and Discussion of Current Issues," see 22 Nat. Resources J. 1045 (1982).

For article, "The Political Economy of Institutional Change: A Distribution Criterion for Acceptance of Groundwater Rules," see 25 Nat. Resources J. 867 (1985).

For article, "The Law of Prior Appropriation: Possible Lessons for Hawaii," see 25 Nat. Resources J. 911 (1985).

For article, "Transfer of Water Rights," see 29 Nat. Resources J. 457 (1989).

For note, "The Milagro Beanfield War Revisited in *Ensenada Land & Water Ass'n v. Sleeper:* Public Welfare Defies Transfer of Water Rights," see 29 Nat. Resources J. 861 (1989).

Am. Jur. 2d, A.L.R. and C.J.S. references. — 78 Am. Jur. 2d Waters § 332.

93 C.J.S. Waters § 188.

72-12-8. Water right forfeiture.

A. When for a period of four years the owner of a water right in any of the waters described in Sections 72-12-1 through 72-12-28 NMSA 1978 or the holder of a permit from the state engineer to appropriate any such waters has failed to apply them to the use for which the permit was granted or the right has vested, was appropriated or has been adjudicated, the water rights shall be, if the failure to beneficially use the water persists one year after notice and declaration of nonuser given by the state engineer, forfeited and the water so unused shall revert to the public and be subject to further appropriation; provided that the condition of notice and declaration of nonuser shall not apply to water that has reverted to the public by operation of law prior to June 1, 1965.

B. Upon application to the state engineer at any time and a proper showing of reasonable cause for delay or for nonuse or upon the state engineer finding that it is in the public interest, the state engineer may grant extensions of time, for a period not to exceed three years for each extension, in which to apply to beneficial use the water for which a permit to appropriate has been issued or a water right has vested, was appropriated or has been adjudicated.

C. Periods of nonuse when irrigated farm lands are placed under the acreage reserve program or conservation reserve program provided by the federal Food Security Act of 1985, P.L. 99-198, shall not be computed as part of the four-year forfeiture period.

D. Periods of nonuse when water rights are acquired and placed in a state engineer-approved water conservation program by an individual or entity that owns water rights, an artesian conservancy district, a conservancy district, a soil and water conservation district organized pursuant to Chapter 73, Article 20 NMSA 1978, an acequia or community ditch association organized pursuant to Chapter 73, Article 2 or 3 NMSA 1978, an irrigation district organized pursuant to Chapter 73, Articles 9 through 13 NMSA 1978 or the interstate stream commission shall not be computed as part of the four-year forfeiture statute.

E. A lawful exemption from the requirements of beneficial use, either by an extension of time or other statutory exemption, stops the running of the four-year period for the period of the exemption, and the period of exemption shall not be included in computing the four-year period.

F. Periods of nonuse when water rights are acquired by incorporated municipalities or counties for implementation of their water development plans or for preservation of municipal or county water supplies shall not be computed as part of the four-year forfeiture statute.

G. Periods of nonuse when the nonuser of acquired water rights is on active duty as a member of the armed forces of this country shall not be included in computing the four-year period.

H. The owner or holder of a valid water right or permit to appropriate waters for agricultural purposes appurtenant to designated or specified lands may apply the full amount of water covered by or included in that water right or permit to any part of the designated or specified tract without penalty or forfeiture.

I. Water deposited in a lower Pecos river basin below Sumner lake water bank approved by the interstate stream commission or an acequia or community ditch water bank shall not be computed as part of the four-year forfeiture period.

History: Laws 1931, ch. 131, § 8; 1941 Comp., § 77-1108; 1953 Comp., § 75-11-8; Laws 1957, ch. 118, § 1; 1959, ch. 7, § 1; 1961, ch. 32, § 1; 1963, ch. 195, § 1; 1965, ch. 250, § 2; 1967, ch. 182, § 2; 1978, ch. 153, § 2; 1983, ch. 2, § 3; 1985, ch. 198, § 2; 1987, ch. 113, § 2; 1991, ch. 102, § 2; 1996, ch. 36, § 2; 1997, ch. 134, § 2; 1998, ch. 37, § 2; 2002, ch. 77, § 3.

ANNOTATIONS

Cross references. — For penalty for appropriation of forfeited water or water rights without permit, see 72-12-11 NMSA 1978.

For state engineer, see 72-2-1 NMSA 1978.

For comparable forfeiture provision relating to surface waters, see 72-5-28 NMSA 1978.

For water conservation program, see 73-1-20 NMSA 1978.

The 1985 amendment substituted "Sections 72-12-1 through 72-12-28 NMSA 1978" for "Sections 72-12-1 through 72-12-10 NMSA 1978" near the beginning of Subsection A and deleted the last sentence in Subsection F, relating to a water development plan for incorporated municipalities or counties.

The 1987 amendment, effective June 19, 1987, in Subsection C substituted "reserve program provided by the Food Security Act of 1985 (P.L. 99-198)" for "program provided by the Soil Bank Act (Public Law 540, 84th Congress)".

The 1991 amendment, effective June 14, 1991, inserted "conservancy district or the interstate stream commission" in Subsection D.

The 1996 amendment, substituted "for a period not to exceed three years for each extension" for "not to exceed a term of one year for each extension" in Subsection B. Laws 1996, ch. 36 contains no effective date provision, but, pursuant to N.M. Const.,

art. IV, § 23, is effective May 15, 1996, 90 days after adjournment of the legislature. See Volume 14 NMSA 1978 for "Adjournment Dates of Sessions of Legislature" table.

The 1997 amendment rewrote Subsection D. Laws 1997, ch. 134 contains no effective date provision, but, pursuant to N.M. Const., art. IV, § 23, is effective June 20, 1997, 90 days after adjournment of the legislature. See Volume 14 NMSA 1978 for "Adjournment Dates of Sessions of Legislature" table.

The 1998 amendment, in Subsection D, inserted "an individual or entity that owns water rights," and "a soil and water conservation district organized pursuant to Chapter 73, Article 20 NMSA 1978". Laws 1998, ch. 37, contains no effective date provision, but, pursuant to N.M. Const. art. IV, § 23, is effective on May 20, 1998, 90 days after adjournment of the legislature. See Volume 14 NMSA 1978 for "Adjournment Dates of Sessions of Legislature" table.

The 2002 amendment, effective May 15, 2002, added Subsection I.

Applicability. — Laws 1985, ch. 198, § 3 makes the provisions of the act applicable to all applications pending before the state engineer.

Severability clauses. — Laws 1965, ch. 250, § 3, provides for the severability of the act if any part or application thereof is held invalid.

Laws 1967, ch. 182, § 3, provides for the severability of the act if any part or application thereof is held invalid.

Food Security Act of 1985. — The Food Security Act of 1985, P.L. 99-198, referred to in Subsection C, appears primarily as various sections in Titles 7, 15 and 16 of the United States Code.

Distinction between holders and owners. — The legislature was aware of the distinction between holders of permits and owners of water rights. Hanson v. Turney, 2004-NMCA-069, 136 N.M. 1, 94 P.3d 1.

Appropriative right to water is lost by nonbeneficial user thereof for period of four years. State ex rel. Erickson v. McLean, 62 N.M. 264, 308 P.2d 983 (1957).

Irrigation district. — Length of time that irrigation district may hold right without putting water of that right to beneficial use is limited to four years, although, in discretion of state engineer, extensions of time may be granted beyond four-year period. 1964 Op. Att'y Gen. No. 64-1.

The failure to file an application for extension of time to place water to beneficial use prior to the expiration of the last extension granted does not automatically terminate water permits. Retroactive approval by the state engineer of applications for extension

of time is permissible. State ex rel S.E. Reynolds v. Aamodt, 111 N.M. 4, 800 P.2d 1061 (1990).

Issue of pro tanto forfeiture was not properly before court, as notice requirements of this section were not complied with; the only issues properly before court were existence of water right owned by defendants, and whether same had been lost by nonuse, forfeiture or abandonment. State ex rel. Reynolds v. Mears, 86 N.M. 510, 525 P.2d 870 (1974).

Law reviews. — For comment, "Water Rights - Failure to Use - Forfeiture," see 6 Nat. Resources J. 127 (1966).

For note, "Recent Developments in the El Paso/New Mexico Interstate Groundwater Controversy - The Constitutionality of New Mexico's New Municipality Water Planning Statute," see 29 Nat. Resources J. 223 (1989).

Am. Jur. 2d, A.L.R. and C.J.S. references. — 78 Am. Jur. 2d Waters § 334.

93 C.J.S. Waters § 193.

72-12-9. Fees and costs.

The state engineer shall, by regulations, establish the fees to be paid by applicants and declarants, which fees shall not exceed the reasonable cost of the service to be performed by the state engineer, and the applicant shall pay to the publisher the cost of the necessary advertising.

History: Laws 1931, ch. 131, § 9; 1933, ch. 122, § 1; 1941 Comp., § 77-1109; 1953 Comp., § 75-11-9; Laws 1965, ch. 124, § 4; 1967, ch. 308, § 4.

ANNOTATIONS

State engineer. — See 72-2-1 NMSA 1978.

"Reasonable cost." — Reasonable cost of services to be performed by state engineer involves cost of printing forms, cost of preparing rules and regulations, stenographic work necessary for processing of applications and other instruments, engineering investigations necessary for processing of various applications and instruments and cost of administering rules and regulations formulated for purpose of carrying out provisions of underground water law. 1955-56 Op. Att'y Gen. No. 6090.

Expenditure of fees. — Fees for service rendered under this law cannot be used to pay costs of its administration, such as inspections, records and materials. 1931-32 Op. Att'y Gen. 96.

Reversion. — Creation by this section as it read prior to 1967 amendment of special fund plus requirement that fees be deposited therein and be employed for specific purpose, without limitation in point of time, would be negated by reversion into general fund. 1957-58 Op. Att'y Gen. No. 58-134.

Am. Jur. 2d, A.L.R. and C.J.S. references. — 94 C.J.S. Waters § 297.

72-12-10. [Appeal to district court.]

The decision of the state engineer shall be final in all cases unless appeal be taken to the district court within thirty days after his decision as provided by Section 72-7-1 NMSA 1978.

History: Laws 1931, ch. 131, § 10; 1941 Comp., § 77-1110; 1953 Comp., § 75-11-10.

ANNOTATIONS

Cross references. — For appeal de novo from decision, act or refusal to act of state executive officer or body in matters relating to water rights, see N.M. Const., art. XVI, § 5.

For procedures governing administrative appeals to the district court, see Rule 1-074 NMRA.

Compiler's notes. — For scope of review of the district court, see *Zamora v. Village of Ruidoso Downs,* 120 N.M. 778, 907 P.2d 182 (1995).

Remedy not exclusive. — Water right owner is not restricted to hearing before state engineer under 72-12-3 NMSA 1978 and appeal therefrom under this section as his exclusive remedy against impairment of his right by another; such person has legal right to seek protection of or redress for impairment of his water rights by another without first exhausting all administrative procedures available to him. Tevis v. McCrary, 72 N.M. 134, 381 P.2d 208 (1963), appeal after remand, 75 N.M. 165, 402 P.2d 150 (1965).

Appealability. — Form letter, sent by state engineer to all applicants for permits to appropriate water, indicating intention to deny application, did not constitute appealable "decision, act or refusal to act," where it was clear that final action on application depended on further study by engineer. State ex rel. Bliss v. Alexander, 59 N.M. 478, 286 P.2d 322 (1955).

Manner of appeal. — Appeal to district court from ultimate decision of state engineer must be taken in manner provided by this section and 72-7-1 NMSA 1978. City of Hobbs v. State ex rel. Reynolds, 82 N.M. 102, 476 P.2d 500 (1970).

Jurisdiction after remand. — District court's attempt following a remand to the state engineer to retain jurisdiction to hear a subsequent appeal from the engineer's

reconsideration of the issuance of a permit for a well location change exceeded the court's jurisdiction in view of the stautory requirements for appeal from the decision of the state engineer. Eldorado at Santa Fe, Inc. v. Cook, 113 N.M. 33, 822 P.2d 672 (Ct. App. 1991).

No formal application to district court is required in taking appeal from decision of state engineer; appeal is taken simply by serving state engineer and interested parties with notice of appeal, filing notice with proof of service in district court and paying required docket fee. Plummer v. Johnson, 61 N.M. 423, 301 P.2d 529 (1956).

State engineer as proper party. — On appeal from his decision, state engineer becomes proper, if not indispensable, party. Plummer v. Johnson, 61 N.M. 423, 301 P.2d 529 (1956).

Declaratory judgment suit premature. — Unless and until state engineer approved municipality's applications in whole or in part, in administrative proceeding pending before him, possible impairment of rights of others was speculative; hence, district court's determination of real party in interest in declaratory judgment action brought concerning state engineer's jurisdiction was premature. City of Hobbs v. State ex rel. Reynolds, 82 N.M. 102, 476 P.2d 500 (1970).

Standing to seek injunction. — Though artesian conservancy district owned no land serviced by waters of an artesian basin and no water rights, it constituted proper party plaintiff for maintaining suit to enjoin use of water from unauthorized well. Pecos Valley Artesian Conservancy Dist. v. Peters, 50 N.M. 165, 173 P.2d 490 (1945), appeal after remand, 52 N.M. 148, 193 P.2d 418 (1948).

Law reviews. — For comment on *Kelley v. Carlsbad Irrigation Dist.,* 71 N.M. 464, 379 P.2d 763 (1963), see 3 Nat. Resources J. 340 (1963).

For comment, "Protection of the Means of Groundwater Diversion," see 20 Nat. Resources J. 625 (1980).

Am. Jur. 2d, A.L.R. and C.J.S. references. — 2 Am. Jur. 2d Administrative Law § 415 et seq.

93 C.J.S. Waters § 203.

72-12-11. [Violations declared misdemeanors; penalty.]

That any person using or appropriating water without a permit, contrary to the provisions of Section 1 of Chapter 70, of the New Mexico Session Laws of 1943, designated as Section 72-12-3 NMSA 1978; or who changes the location of his well or use of the water except as provided and permitted by Section 72-12-7 NMSA 1978; or who appropriates to his own use without a permit from the state engineer forfeited water or water rights under the provisions of Section 72-12-8 NMSA 1978, shall be guilty of a

misdemeanor and, on conviction thereof in any court of competent jurisdiction, shall be punished by a fine in a sum of not less than twenty-five dollars ($25.00) nor more than two hundred and fifty dollars ($250.00), for each offense; and each day of continued violation shall constitute a separate offense.

History: 1941 Comp., § 77-1112, enacted by Laws 1943, ch. 70, § 2; 1947, ch. 21, § 1; 1953 Comp., § 75-11-12.

ANNOTATIONS

State engineer. — See 72-2-1 NMSA 1978.

After-the-fact approval by state engineer does not nullify provisions of this section. In re Brown, 65 N.M. 74, 332 P.2d 475 (1958).

When appropriator changes his well location prior to application, publication and hearing, he is guilty of a misdemeanor and liable to prosecution hereunder, regardless of whether such change in location is subsequently approved by state engineer. In re Brown, 65 N.M. 74, 332 P.2d 475 (1958).

Am. Jur. 2d, A.L.R. and C.J.S. references. — 94 C.J.S. Waters § 313.

72-12-12. License required to drill water well from "underground source.".

It shall be unlawful for any person, firm or corporation to drill or to begin the drilling of a well for water from an underground stream, channel, artesian basin, reservoir or lake (hereinafter referred to as "underground source") the boundaries of which have been determined and proclaimed by the state engineer of New Mexico to be reasonably ascertainable, without a valid, existing license for the drilling of such wells issued by the state engineer of New Mexico in accordance with the provisions of this act [72-12-12 to 72-12-17 NMSA 1978], and the rules and regulations promulgated by him in pursuance hereof. Such licenses shall not be required for the construction of a driven well; provided, that the casing for such well shall not exceed two and three-eighths inches outside diameter.

History: 1941 Comp., § 77-1116, enacted by Laws 1949, ch. 178, § 1; 1953 Comp., § 75-11-13; Laws 1957, ch. 144, § 1.

ANNOTATIONS

Cross references. — For provision making certain indemnity agreements contained in or affecting agreements pertaining to wells, void, see 56-7-2 NMSA 1978.

State engineer. — See 72-2-1 NMSA 1978.

Section is legitimate exercise of police power of state. State v. Myers, 64 N.M. 186, 326 P.2d 1075 (1958).

State may in exercise of police power require license of any person drilling a well in any area determined by state engineer to be an underground source, boundaries of which have been determined to be reasonably ascertainable. State v. Myers, 64 N.M. 186, 326 P.2d 1075 (1958).

Law reviews. — For note, "Recent Developments in the El Paso/New Mexico Interstate Groundwater Controversy - The Constitutionality of New Mexico's New Municipality Water Planning Statute," see 29 Nat. Resources J. 223 (1989).

Am. Jur. 2d, A.L.R. and C.J.S. references. — 78 Am. Jur. 2d Waters §§ 149, 150.

72-12-13. Application; information required; fee; surety bond for drilling operation.

Any person desiring to engage in the drilling of one or more wells for underground water within the boundaries of any underground source, as hereinabove defined, shall file an application with the state engineer for a driller's license, setting out his qualifications therefor, the equipment proposed to be used in the drilling of the wells and other information as may be required by the state engineer. A reasonable fee, not to exceed twenty-five dollars ($25.00) shall be imposed by the state engineer. All fees collected under the provisions of this section shall be deposited with the state treasurer, and placed in the general fund. A license shall be issued by the state engineer to any applicant who, in the opinion of the state engineer, having due regard for the interest of the state in the protection of its public waters, is qualified to conduct such drilling operations, but not otherwise. The state engineer shall require a bond in form and with adequate surety to be approved by him in the penal sum of five thousand dollars ($5,000) conditioned that the applicant will comply with the laws of New Mexico in the drilling of all wells to such underground sources, will comply with the rules and regulations of the state engineer and any requirements that may be made by him in connection with the drilling of any individual well for water from such sources.

History: 1941 Comp., § 77-1117, enacted by Laws 1949, ch. 178, § 2; 1953 Comp., § 75-11-14; Laws 1965, ch. 124, § 5.

ANNOTATIONS

State engineer. — See 72-2-1 NMSA 1978.

Law reviews. — For comment on *Kelley v. Carlsbad Irrigation Dist.,* 71 N.M. 464, 379 P.2d 763 (1963), see 3 Nat. Resources J. 340 (1963).

For comment on geothermal energy and water law, see 19 Nat. Resources J. 445 (1979).

72-12-14. [Suspension or revocation of license; appeal; damage suits.]

Any license issued under the provisions of this act [72-12-12 to 72-12-17 NMSA 1978] may be suspended or revoked by the state engineer upon notice and hearing, in the event that the license shall have violated any condition of the bond maintained by him as a prerequisite for such license. Appeals from the decision of the state engineer may be taken to the district courts of the state in the same manner and with like effect as now provided for other appeals from action of the state engineer. In the event of such breach, the state engineer, on behalf of the state of New Mexico, and any other person injured thereby, is authorized to recover in a civil suit in the district court of the county where the well involved is located, judgment for such damages as may have been sustained by reason thereof. In addition, the state engineer is authorized to recover on behalf of the state of New Mexico a civil penalty in an amount to be determined by the district court in which the action is tried not to exceed $1,000 and judgment for both damages and penalty shall be against the principal and sureties upon said bond.

History: 1941 Comp., § 77-1118, enacted by Laws 1949, ch. 178, § 3; 1953 Comp., § 75-11-15.

ANNOTATIONS

Cross references. — For appeal de novo from decision, act or refusal to act of state executive officer or body in matters relating to water rights, see N.M. Const., art. XVI, § 5.

State engineer. — See 72-2-1 NMSA 1978.

Interstate usage of water can be controlled to same extent as intrastate usage. City of El Paso ex rel. Pub. Serv. Bd. v. Reynolds, 563 F. Supp. 379 (D.N.M. 1983).

Law reviews. — For comment on *Kelley v. Carlsbad Irrigation Dist.,* 71 N.M. 464, 379 P.2d 763 (1963), see 3 Nat. Resources J. 340 (1963).

Am. Jur. 2d, A.L.R. and C.J.S. references. — 78 Am. Jur. 2d Waters § 247.

72-12-15. [Unauthorized drilling; illegal application of water; injunction or other relief.]

No person owning or controlling lands shall permit the drilling of a well thereon for water from an underground source, as herein defined, by any person other than a driller licensed under the provisions of this act [72-12-12 to 72-12-17 NMSA 1978]. No person shall produce water from an underground source through any well drilled in violation of this act. No person shall apply water from such underground source to land having no valid water right for the purpose to which applied. The state engineer may apply for and

obtain an injunction, in the district court of the county in which any well or land affected is situated, against any person, firm or corporation who shall drill or begin the drilling of a well in violation of the provisions of this act, or who shall cause, allow or permit the drilling of a well by a person other than a licensed driller upon land owned or controlled by him, or who shall produce water from any well drilled in violation of this act, or who shall apply water from an underground source, as hereinabove defined, to lands having no valid water right for the purpose to which applied. This provision shall in no wise be construed to affect the existing right of a court of equity in the exercise of its general equity powers to grant relief to the state of New Mexico by injunction or otherwise.

History: 1941 Comp., § 77-1119, enacted by Laws 1949, ch. 178, § 4; 1953 Comp., § 75-11-16.

ANNOTATIONS

Cross references. — For injunctions, see Rules 1-065 and 1-066 NMRA.

State engineer. — See 72-2-1 NMSA 1978.

Section is legitimate exercise of police power of state State v. Myers, 64 N.M. 186, 326 P.2d 1075 (1958); Thompson Drilling, Inc. v. Romig, 105 N.M. 701, 736 P.2d 979 (1987).

State authorized to sue. — Public waters of this state are owned by state as trustee for the people, and it is authorized to institute suits to protect public waters against unlawful use, or to bring any other action required by its pecuniary interests or for general public welfare. State ex rel. Reynolds v. Mears, 86 N.M. 510, 525 P.2d 870 (1974).

Authority to seek injunction. — Fact that wells drilled prior to effective date of such act exempt from provisions thereof, does not withdraw or destroy authority conferred upon state engineer to seek injunctive relief to protect or conserve public waters of state; such authority exists independently of any statute. State ex rel. Reynolds v. Mears, 86 N.M. 510, 525 P.2d 870 (1974).

72-12-16. [Violation of act or rules and regulations; penalty.]

Any person violating any provision of this act [72-12-12 to 72-12-17 NMSA 1978] or of the rules and regulations of the state engineer promulgated in pursuance hereof, shall be guilty of a misdemeanor, and upon conviction, shall be fined in a sum of not less than $25.00 nor more than $250.00 for each offense. Each and every day that any such violation shall continue, shall be construed a separate offense for the purpose of this section.

History: 1941 Comp., § 77-1120, enacted by Laws 1949, ch. 178, § 5; 1953 Comp., § 75-11-17.

ANNOTATIONS

State engineer. — See 72-2-1 NMSA 1978.

No authority to issue emergency permits. — Authority to issue emergency permits for changes in well locations does not exist under general rule-making power delegated to state engineer in former 75-11-11, 1953 Comp., and this section. In re Brown, 65 N.M. 74, 332 P.2d 475 (1958).

Am. Jur. 2d, A.L.R. and C.J.S. references. — 94 C.J.S. Waters § 313.

72-12-17. [Repealing and saving clause; bond; maximum.]

Chapter 149 of the 1947 New Mexico Session Laws, and all other acts and parts of acts in conflict herewith are hereby repealed; provided, however, that nothing, in this act [72-12-12 to 72-12-17 NMSA 1978] contained, shall be construed as changing or affecting, or intending to change or affect the right of the state engineer to require full compliance with the provisions of Section 72-13-4 NMSA 1978; and provided further, that in all cases where the application is for the purpose of drilling an artesian well, or to drill a well upon land where an artesian well is situated, the state engineer may elect to require the owner of the land or the driller of such well, as the case may be, to either comply with the provisions of this act, or the provisions of Section 72-13-4 NMSA 1978, as the best interest of the state of New Mexico may require, but in no event shall such owner of the land or the driller of such well, as the case may be, be required to give more than one $5,000 bond.

History: 1941 Comp., § 77-1121, enacted by Laws 1949, ch. 178, § 6; 1953 Comp., § 75-11-18.

ANNOTATIONS

State engineer. — See 72-2-1 NMSA 1978.

Severability clauses. — Laws 1949, ch. 178, § 7, provides for the severability of the act if any part or application thereof is held invalid.

Temporary provisions. — Laws 1949, ch. 178, § 8, provides that the provisions of the act shall not apply to wells commenced or drilled prior to the effective date thereof, and shall not affect jurisdiction, rights or liabilities, civil or criminal, in pending cases.

72-12-18. Underground waters declared to be public.

For the purposes of Sections 72-12-18 through 72-12-21 NMSA 1978, all underground waters of the state of New Mexico are hereby declared to be public waters and to belong to the public of the state of New Mexico and to be subject to appropriation

for beneficial use. All existing rights to the beneficial use of such waters are hereby recognized.

History: 1941 Comp., § 77-1122, enacted by Laws 1953, ch. 64, § 1; 1953 Comp., § 75-11-19; 1983, ch. 2, § 4.

ANNOTATIONS

Cross references. — For substantially similar provision, see 72-12-1 NMSA 1978.

Compiler's notes. — Sections 72-12-19 and 72-12-21, referred to in this section, were repealed by Laws 1983, ch. 2, § 7. For present provisions, see 72-12B-1 and 72-12B-2 NMSA 1978.

Underground waters public. — Laws 1953, ch. 64, declares all underground waters to be public waters subject to appropriation for beneficial use. State ex rel. Reynolds v. Mendenhall, 68 N.M. 467, 362 P.2d 998 (1961).

Law reviews. — For student symposium, "Constitutional Revision - Water Rights," see 9 Nat. Resources J. 471 (1969).

For comment on geothermal energy and water law, see 19 Nat. Resources J. 445 (1979).

For comment, "Protection of the Means of Groundwater Diversion," see 20 Nat. Resources J. 625 (1980).

For article, "New Mexico Water Law: An Overview and Discussion of Current Issues," see 22 Nat. Resources J. 1045 (1982).

Am. Jur. 2d, A.L.R. and C.J.S. references. — 78 Am. Jur. 2d Waters § 148.

93 C.J.S. Waters § 169.

72-12-19. Repealed.

ANNOTATIONS

Repeals. — Laws 1983, ch. 2, § 7, repeals 72-12-19 NMSA 1978, relating to the removal of underground waters from the state, effective February 22, 1983. For present provisions, see 72-12B-1 and 72-12B-2 NMSA 1978.

72-12-20. When appropriation without permit allowed.

No permit and license to appropriate underground waters for in-state use shall be required except in basins declared by the state engineer to have reasonably ascertainable boundaries.

History: 1941 Comp., § 75-1121, enacted by Laws 1953, ch. 64, § 3; 1953 Comp., § 75-11-21; 1983, ch. 2, § 5.

ANNOTATIONS

Cross references. — For appropriation of underground waters with reasonably ascertainable boundaries, see also 72-12-1 NMSA 1978.

State engineer. — See 72-2-1 NMSA 1978.

Declaration of basin. — Until a basin is declared by state engineer, he cannot exercise jurisdiction in connection with its underground waters. McBee v. Reynolds, 74 N.M. 783, 399 P.2d 110 (1965).

Law reviews. — For comment on geothermal energy and water law, see 19 Nat. Resources J. 445 (1979).

For note, "New Mexico State Engineer Issues Orders on Mine Dewatering," see 20 Nat. Resources J. 359 (1980).

For comment, "Protection of the Means of Groundwater Diversion," see 20 Nat. Resources J. 625 (1980).

For article, "Reasonable Groundwater Levels Under the Appropriation Doctrine: The Law and Underlying Economic Goals," see 21 Nat. Resources J. 1 (1981).

For article, "New Mexico Water Law: An Overview and Discussion of Current Issues," see 22 Nat. Resources J. 1045 (1982).

For note, "Recent Developments in the El Paso/New Mexico Interstate Groundwater Controversy - The Constitutionality of New Mexico's New Municipality Water Planning Statute," see 29 Nat. Resources J. 223 (1989).

Am. Jur. 2d, A.L.R. and C.J.S. references. — 78 Am. Jur. 2d Waters § 327.

93 C.J.S. Waters § 170.

72-12-21. Repealed.

ANNOTATIONS

Repeals. — Laws 1983, ch. 2, § 7, repeals 72-12-21 NMSA 1978, relating to the enforcement of 72-12-18 to 72-12-21 NMSA 1978, effective February 22, 1983. For present provisions, see 72-12B-1 and 72-12B-2 NMSA 1978.

72-12-22. Replacement well within one hundred feet.

A. The owner of a water right may drill and use a replacement well drilled within one hundred feet of the original well, prior to application to the state engineer, and the publication and hearing set out in Section 72-12-3 NMSA 1978, if:

(1) the well is drilled into the same and only the same underground stream, channel, artesian basin, reservoir or lake as the original well; and

(2) the appropriation is of the same amount of water allowed by his water right in the original well; and

(3) an emergency situation exists in which the delay caused by application, publication and hearing would result in crop loss or other serious economic loss; and

(4) he files application, or notifies the state engineer office of these facts and the location of the proposed replacement well by registered letter, prior to drilling; provided that he shall file application for a permit within thirty days after drilling begins.

B. The owners of other water rights who claim to be injured by the drilling of a replacement well under these circumstances, may not enjoin the drilling of such a well or the use of the water from the well, but are limited to an action at law to recover damages, and to their right to protest the granting of a permit.

History: 1953 Comp., § 75-11-23, enacted by Laws 1959, ch. 41, § 1.

ANNOTATIONS

Cross references. — For change of well location, generally, see 72-12-7 NMSA 1978.

State engineer. — See 72-2-1 NMSA 1978.

Law reviews. — For comment on *Kelley v. Carlsbad Irrigation Dist.,* 71 N.M. 464, 379 P.2d 763 (1963), see 3 Nat. Resources J. 340 (1963).

Am. Jur. 2d, A.L.R. and C.J.S. references. — 93 C.J.S. Waters § 90.

72-12-23. Replacement well over one hundred feet from original well.

A. The owner of a water right may drill and use a replacement well drilled over one hundred feet from his original well upon making application but without waiting for the completion of the publication and hearing set out in Section 72-12-3 NMSA 1978 if:

(1) the well is drilled into the same and only the same underground stream, channel, artesian basin, reservoir or lake as the original well; and

(2) the appropriation is of the same amount of water allowed by his water right in the original well; and

(3) an emergency situation exists in which the delay caused by publication and hearing would result in crop loss or other serious economic loss; and

(4) the state engineer, after a preliminary investigation, finds the change does not impair existing water rights, and grants him a permit authorizing the drilling and use of the replacement well prior to the publication and hearing.

B. When the preliminary investigation by the state engineer causes him to reasonably believe that the drilling and use of a replacement well may impair existing rights, then no permit shall be issued until after publication and hearing.

History: 1953 Comp., § 75-11-24, enacted by Laws 1959, ch. 41, § 2.

ANNOTATIONS

State engineer. — See 72-2-1 NMSA 1978.

Law reviews. — For comment on *Kelley v. Carlsbad Irrigation Dist.,* 71 N.M. 464, 379 P.2d 763 (1963), see 3 Nat. Resources J. 340 (1963).

72-12-24. Supplemental well.

A. The owner of a water right may drill and use a supplemental well upon making application but prior to the publication and hearing set out in Section 72-12-3 NMSA 1978, if:

(1) the supplemental well is drilled into the same and only the same underground stream, channel, artesian basin, reservoir or lake as the well being supplemented; and

(2) the supplemental well does not increase the appropriation of water to an amount above the existing water rights; and

(3) an emergency situation exists in which the delay caused by publication and hearing would result in crop loss or other serious economic loss; and

(4) the state engineer, after a preliminary investigation, finds that the supplemental well does not impair existing water rights, and grants him a permit authorizing the drilling and use of the supplemental well prior to publication and hearing.

B. If the preliminary investigation by the state engineer causes him to reasonably believe that the drilling and use of a supplemental well may impair existing rights, then no permit shall be issued until after publication and hearing.

History: 1953 Comp., § 75-11-25, enacted by Laws 1959, ch. 41, § 3.

ANNOTATIONS

State engineer. — See 72-2-1 NMSA 1978.

Filing by agent. — Intent of this section is to provide procedure for determining whether proposed changes injuriously affect rights of others rather than to limit right of owners of water right seeking to change point of diversion to act only in person and not through a designated agency. Coldwater Cattle Co. v. Portales Valley Project, Inc., 78 N.M. 41, 428 P.2d 15 (1967).

Application, filed by nonprofit corporation which limited membership to property owners residing within boundaries of underground water basin who owned valid water rights therein, for supplementation of such water rights as well as partial change of point of diversion, was neither inoperative nor invalid, nor did application cast any cloud on title to lands upon which supplemental wells were to be drilled. Coldwater Cattle Co. v. Portales Valley Project, Inc., 78 N.M. 41, 428 P.2d 15 (1967).

Ownership of location of proposed change not required. — Ownership of land to which point of diversion is to be changed is not condition precedent to right to apply for authority to effect such change. Coldwater Cattle Co. v. Portales Valley Project, Inc., 78 N.M. 41, 428 P.2d 15 (1967).

Right of entry necessary for drilling. — Under statutory procedure for filing applications before state engineer for change of point of diversion and supplementation of existing water rights, filing did not authorize applicant to enter upon land of another to sink wells or to construct canals or ditches; such right could not be exercised without lawful right of entry. Coldwater Cattle Co. v. Portales Valley Project, Inc., 78 N.M. 41, 428 P.2d 15 (1967).

Law reviews. — For comment on *Kelley v. Carlsbad Irrigation Dist.,* 71 N.M. 464, 379 P.2d 763 (1963), see 3 Nat. Resources J. 340 (1963).

Am. Jur. 2d, A.L.R. and C.J.S. references. — 93 C.J.S. Waters § 90.

72-12-25. [Aquifer containing nonpotable water at a depth of twenty-five hundred feet or more excluded from underground basin.]

No past or future order of the state engineer declaring an underground water basin having reasonably ascertainable boundaries shall include water in an aquifer, the top of which aquifer is at a depth of twenty-five hundred feet or more below the ground surface at any location at which a well is drilled and which aquifer contains nonpotable water.

"Nonpotable water," for the purpose of this act [72-12-25 to 72-12-28 NMSA 1978], means water containing not less than one thousand parts per million of dissolved solids.

History: 1953 Comp., § 75-11-37, enacted by Laws 1967, ch. 86, § 1.

ANNOTATIONS

State engineer. — See 72-2-1 NMSA 1978.

Law reviews. — For comment on geothermal energy and water law, see 19 Nat. Resources J. 445 (1979).

For article, "Centralized Decisionmaking in the Administration of Groundwater Rights: The Experience of Arizona, California and New Mexico and Suggestions for the Future," see 24 Nat. Resources J. 641 (1984).

72-12-26. [Proposal to drill wells or recomplete existing wells; notice; depth and location.]

Any person proposing to drill wells or recomplete existing wells to appropriate waters referred to in Section 1 [72-12-25 NMSA 1978] of this act shall file a notice of intention to drill or recomplete with the office of the state engineer in such form as the engineer shall prescribe, and shall publish a notice in a newspaper of general circulation in the county in which the proposed wells will be located, once a week for three consecutive weeks, stating the location and the proposed depth of such wells, the purpose for which the water shall be used and an estimate of the volume of water to be used. Said wells shall not be drilled or recompleted prior to ten days after the last publication of such notice.

History: 1953 Comp., § 75-11-38, enacted by Laws 1967, ch. 86, § 2.

ANNOTATIONS

Cross references. — For publication of legal notice, see 14-11-1 NMSA 1978.

State engineer. — See 72-2-1 NMSA 1978.

Law reviews. — For article, "Centralized Decisionmaking in the Administration of Groundwater Rights: The Experience of Arizona, California and New Mexico and Suggestions for the Future," see 24 Nat. Resources J. 641 (1984).

Am. Jur. 2d, A.L.R. and C.J.S. references. — 94 C.J.S. Waters § 345.

72-12-27. [Information required by state engineer; metering of water produced; quarterly analysis.]

The state engineer may require pertinent data to be filed with respect to each well, and may require water produced therefrom to be metered and the volume thereof reported, together with quarterly reports reflecting an analysis of the water so produced.

History: 1953 Comp., § 75-11-39, enacted by Laws 1967, ch. 86, § 3.

ANNOTATIONS

State engineer. — See 72-2-1 NMSA 1978.

Law reviews. — For comment on geothermal energy and water law, see 19 Nat. Resources J. 445 (1979).

Am. Jur. 2d, A.L.R. and C.J.S. references. — 78 Am. Jur. 2d Waters § 4.

93 C.J.S. Waters § 186.

72-12-28. [Relief from impairment of existing water rights due to nonpotable water; parties to action.]

Any person may bring an action in the district court of the county in which any such well is situated for damages or for injunctive relief with respect to any claimed impairment of existing water rights due to an appropriation of nonpotable water under this act [72-12-25 to 72-12-28 NMSA 1978].

When such suit has been filed, the court shall order the joinder of the state engineer as a party thereto on the motion of any party, and if so joined the court shall direct the state engineer to present such evidence bearing upon the issues of the case as is reasonably available to him.

History: 1953 Comp., § 75-11-40, enacted by Laws 1967, ch. 86, § 4.

ANNOTATIONS

Cross references. — For provision excluding aquifer containing nonpotable water at depth of 2500 feet or more from underground water basins, see 72-12-25 NMSA 1978.

Severability clauses. — Laws 1967, ch. 86, § 5, provides for the severability of the act if any part or application thereof is held invalid.

Am. Jur. 2d, A.L.R. and C.J.S. references. — 78 Am. Jur. 2d Waters § 256.

Measure of damages for interference with percolating waters, 35 A.L.R. 1222, 55 A.L.R. 1385, 109 A.L.R. 395.

Measure and element of damages for pollution of well or spring, 76 A.L.R.4th 629.

93 C.J.S. Waters § 169.

ARTICLE 12A
Mine Dewatering

72-12A-1. Short title.

This act [72-12A-1 to 72-12A-13 NMSA 1978] may be cited as the "Mine Dewatering Act."

History: Laws 1980, ch. 148, § 1.

ANNOTATIONS

Law reviews. — For comment, "New Mexico's Mine Dewatering Act: The Search for Rehoboth," see 20 Nat. Resources J. 653 (1980).

For article, "Prior Appropriation, Impairment, Replacements, Models and Markets," see 23 Nat. Resources J. 25 (1983).

For article, "Groundwater Rights: Definition and Transfer," see 27 Nat. Resources J. 653 (1987).

Am. Jur. 2d, A.L.R. and C.J.S. references. — 53A Am. Jur. 2d Mines and Minerals § 357 et seq.

93 C.J.S. Waters § 47.

72-12A-2. Purpose of act.

A. The legislature hereby determines that:

(1) the production of minerals in New Mexico at times requires the diversion and associated treatment of large quantities of water;

(2) the diversion of water to permit mineral production is affected with a public interest;

(3) existing principles of prior appropriation, beneficial use and impairment of water rights, when applied to the diversion of water to permit mineral production, may cause severe economic hardship and impact to persons engaged in mineral production, to the owners of water rights and to the citizens of New Mexico;

(4) such hardship and impact are threats to the public health, safety and welfare and can be averted or minimized through the operation of the Mine Dewatering Act [72-12A-1 to 72-12A-13 NMSA 1978]; and

(5) state regulation in matters relating to the diversion of water to implement mineral production is necessary to avert or minimize such threats to the public health, safety and welfare.

B. The purpose of the Mine Dewatering Act is to promote maximum economic development of mineral resources while ensuring that such development does not impair existing water rights.

History: Laws 1980, ch. 148, § 2.

ANNOTATIONS

Law reviews. — For comment, "New Mexico's Mine Dewatering Act: The Search for Rehoboth," see 20 Nat. Resources J. 653 (1980).

For article, "Prior Appropriation, Impairment, Replacements, Models and Markets," see 23 Nat. Resources J. 25 (1983).

72-12A-3. Definitions.

As used in the Mine Dewatering Act [72-12A-1 to 72-12A-13 NMSA 1978]:

A. "declared underground basin" means an underground stream, channel, artesian basin, reservoir or lake, the boundaries of which have been determined and proclaimed by the state engineer to be reasonably ascertainable;

B. "mine dewatering" means the diversion and discharge of ground water developed by mining activities by means of depressurizing wells, mine shaft pumping or by other means necessary to displace water from an area of mining operations or proposed mining operations, but does not include in situ leaching;

C. "plan of replacement" means a detailed plan for the replacement of water;

D. "replacement of water" means the furnishing of a substitute water supply, the modification of existing water supply facilities, the drilling of replacement wells, the assumption of additional operating costs, the procurement of documentation establishing a waiver of protection by owners of affected water rights, artificial recharge or any other reasonable means to avoid impairment of water rights; and

E. "substitute water supply" means a supply of water adequate in quality and made available at a point of diversion or use in a sufficient quantity to prevent impairment of an affected water right and may include water produced by mine dewatering.

History: Laws 1980, ch. 148, § 3.

ANNOTATIONS

Law reviews. — For comment, "New Mexico's Mine Dewatering Act: The Search for Rehoboth," see 20 Nat. Resources J. 653 (1980).

For article, "Prior Appropriation, Impairment, Replacements, Models and Markets," see 23 Nat. Resources J. 25 (1983).

72-12A-4. Right of replacement.

In all cases involving an appropriation of water for beneficial use or mine dewatering, the right of replacement is granted to any person whose appropriation or mine dewatering would otherwise impair existing water rights. Application for replacement of water shall be made to the state engineer. In all cases, replacement of water shall be at the sole expense of the applicant and subject to such rules, regulations and conditions as the state engineer may reasonably prescribe.

History: Laws 1980, ch. 148, § 4.

ANNOTATIONS

Law reviews. — For comment, "New Mexico's Mine Dewatering Act: The Search for Rehoboth," see 20 Nat. Resources J. 653 (1980).

For article, "Prior Appropriation, Impairment, Replacements, Models and Markets," see 23 Nat. Resources J. 25 (1983).

72-12A-5. Mine dewatering; jurisdiction of the state engineer.

A. Mine dewatering is neither an appropriation of water nor waste, but is governed by the provisions of the Mine Dewatering Act [72-12A-1 to 72-12A-13 NMSA 1978]. No water rights may be established solely by mine dewatering.

B. The provisions of Sections 6 through 10 [72-12A-6 to 72-12A-10 NMSA 1978] of the Mine Dewatering Act shall not apply to mine dewatering initiated prior to the effective date of that act nor to dewatering occurring after the effective date of that act from a mine whose shaft construction was initiated prior to the effective date of that act with the intent to penetrate the aquifer from which the water is withdrawn.

C. Nothing in the Mine Dewatering Act shall prevent emergency mine dewatering necessary to avert or mitigate flooding situations.

History: Laws 1980, ch. 148, § 5.

ANNOTATIONS

Law reviews. — For comment, "New Mexico's Mine Dewatering Act: The Search for Rehoboth," see 20 Nat. Resources J. 653 (1980).

For article, "Prior Appropriation, Impairment, Replacements, Models and Markets," see 23 Nat. Resources J. 25 (1983).

72-12A-6. Mine dewatering prohibited; exceptions.

No person shall engage in mine dewatering in a declared underground basin without a valid, existing mine dewatering permit issued by the state engineer in accordance with the provisions of the Mine Dewatering Act [72-12A-1 to 72-12A-13 NMSA 1978] and the rules and regulations that may be promulgated by him in pursuance hereof.

History: Laws 1980, ch. 148, § 6.

ANNOTATIONS

Law reviews. — For comment, "New Mexico's Mine Dewatering Act: The Search for Rehoboth," see 20 Nat. Resources J. 653 (1980).

For article, "Prior Appropriation, Impairment, Replacements, Models and Markets," see 23 Nat. Resources J. 25 (1983).

72-12A-7. Application for permit; plan of replacement; approval.

A. Any person desiring to engage in mine dewatering in a declared underground basin shall apply to the state engineer for a permit on forms prescribed by him.

B. The state engineer shall require notice of the application and shall thereafter proceed to consider the application in accordance with existing administrative law and procedure governing the appropriation of ground water.

C. The state engineer shall, if he finds that the mine dewatering would not impair existing water rights, grant the application and issue a mine dewatering permit.

D. If the state engineer finds that the mine dewatering would impair existing water rights, he shall notify the applicant of the impaired right or rights. The applicant may appeal such determination or proceed to file a plan of replacement. If appeal results in a judicial determination of impairment, the applicant may thereafter proceed to file a plan of replacement.

E. The applicant may submit a plan of replacement to the state engineer upon application for a mine dewatering permit or at any time thereafter.

F. Upon submission of a plan of replacement, the state engineer shall require notice of the plan and shall thereafter proceed to consider the application in accordance with existing administrative law and procedure governing the appropriation of ground water. If the state engineer finds that the plan of replacement prevents impairment of affected water rights, he shall grant the application and issue a mine dewatering permit contingent upon implementation and maintenance of the plan of replacement provided that implementation and maintenance of the plan of replacement to provide a substitute water supply to the owner of land not subject to condemnation pursuant to Section 12 [72-12A-12 NMSA 1978] of the Mine Dewatering Act shall be required only insofar as permitted by the owner.

G. The approval of the plan of replacement may authorize the use of water produced by mine dewatering as a substitute water supply and, if so authorized, the applicant shall possess a water right in the amount and for the use specified. No additional permit shall be required for such use.

H. In the event the applicant fails to submit a plan of replacement after notification of impairment or if the state engineer finds that the plan of replacement does not provide protection against impairment of existing water rights, he shall deny the application without prejudicing the rights of the applicant to amend or supplement the plan of replacement.

I. The filing for or issuance of a mine dewatering permit shall not preclude the filing for or issuance of a permit to appropriate water.

History: Laws 1980, ch. 148, § 7.

ANNOTATIONS

Law reviews. — For comment, "New Mexico's Mine Dewatering Act: The Search for Rehoboth," see 20 Nat. Resources J. 653 (1980).

For article, "Prior Appropriation, Impairment, Replacements, Models and Markets," see 23 Nat. Resources J. 25 (1983).

72-12A-8. Plan of replacement; standards for approval.

A. In reviewing a proposed plan of replacement and in considering terms and conditions which may be necessary to avoid impairment, the state engineer shall consider the characteristics of the aquifer in question, known withdrawals and their effects on water levels and water quality, the duration, quantity and area of impact of the proposed mine dewatering, the present and future discharge from, recharge to and storage of water in the aquifer, any artificial recharge to the aquifer and all other relevant facts.

B. The state engineer may adopt rules and regulations to implement and enforce the Mine Dewatering Act [72-12A-1 to 72-12A-13 NMSA 1978].

History: Laws 1980, ch. 148, § 8.

ANNOTATIONS

Law reviews. — For comment, "New Mexico's Mine Dewatering Act: The Search for Rehoboth," see 20 Nat. Resources J. 653 (1980).

For article, "Prior Appropriation, Impairment, Replacements, Models and Markets," see 23 Nat. Resources J. 25 (1983).

72-12A-9. Plan of replacement; implementation and maintenance; amendment.

A. Upon approval of replacement, the permittee shall implement the plan with all deliberate speed and within such time as will prevent impairment of existing water rights.

B. If the owner of a water right protected by a plan of replacement asserts that the permittee has failed or refused to implement or maintain the plan, such owner shall file a written notice with the state engineer specifying the manner or method by which the permittee has failed or refused to implement or maintain the plan. Upon the filing of such notice, the state engineer may require the permittee to show cause why the permit should not be suspended or terminated.

C. If the owner of a prior water right not previously protected by a plan of replacement asserts that his water right is or may be impaired by the permittee's mine dewatering, such owner shall file a written notice with the state engineer specifying the manner or method by which the permittee's mine dewatering is or may impair his water right. Upon the filing of such notice, the state engineer may require the permittee to show cause why the permit should not be suspended or terminated pending submission or amendment of a plan of replacement to provide protection against the claimed impairment.

History: Laws 1980, ch. 148, § 9.

ANNOTATIONS

Law reviews. — For comment, "New Mexico's Mine Dewatering Act: The Search for Rehoboth," see 20 Nat. Resources J. 653 (1980).

For article, "Prior Appropriation, Impairment, Replacements, Models and Markets," see 23 Nat. Resources J. 25 (1983).

72-12A-10. Appeal to the district court; procedure.

The decision, act or refusal to act of the state engineer shall be final in all cases unless appeal is taken to the district court within thirty days as provided by Section 72-7-1 NMSA 1978. In the event of appeal of a decision approving the application, no stay order shall issue; provided however, the court may, upon proper showing, require the giving of security by the applicant, in such sum as the court deems proper for the payment of such costs and damages as may be incurred or suffered by any person affected by the order, provided further, that for good cause shown to be recited in the order made, the court or judge may waive the furnishing of security.

History: Laws 1980, ch. 148, § 10.

ANNOTATIONS

Cross references. — For procedures governing administrative appeals to the district court, see Rule 1-074 NMRA.

Compiler's notes. — For scope of review of the district court, see *Zamora v. Village of Ruidoso Downs,* 120 N.M. 778, 907 P.2d 182 (1995).

72-12A-11. Remedies.

A. The state engineer, when he has reasonable cause to believe that mine dewatering is being or may be conducted contrary to the provisions of the Mine Dewatering Act [72-12A-1 to 72-12A-13 NMSA 1978], may seek injunctive relief to decrease or terminate such activity which relief may be granted or denied in accordance with existing legal and equitable principles.

B. No private cause of action for a temporary restraining order or preliminary or permanent injunction shall be available to any person whose water rights are affected or may be affected by mine dewatering conducted by persons subject to the provisions of Sections 6 through 10 [72-12A-6 to 72-12A-10 NMSA 1978] of this act. The procedures and remedies in the Mine Dewatering Act are exclusive for all such persons.

History: Laws 1980, ch. 148, § 11.

ANNOTATIONS

Law reviews. — For comment, "New Mexico's Mine Dewatering Act: The Search for Rehoboth," see 20 Nat. Resources J. 653 (1980).

For article, "Prior Appropriation, Impairment, Replacements, Models and Markets," see 23 Nat. Resources J. 25 (1983).

72-12A-12. Eminent domain; entry on lands; purpose.

A. The United States, the state of New Mexico or any person, firm, association or corporation, may exercise the right of eminent domain to take and acquire land and right-of-way for the construction, maintenance and operation of water wells, reservoirs, canals, ditches, flumes, aqueducts, pipelines or other works necessary for the replacement of water; any such right-of-way for canal, ditch, pipeline or other means for the conveyance of water shall in all cases be so located as to do the least damage to private or public property consistent with proper use and economical construction. Such land and right-of-way shall be acquired in the manner provided by law for the condemnation and taking of private property in the state of New Mexico for railroad, telegraph, telephone and other public uses and purposes. The engineers and surveyors of the United States, the state and any person, firm or corporation shall have the right to enter upon the lands and waters of the state and of private persons and of public and private and public corporations, for the purpose of making hydrographic surveys and examinations and surveys necessary for selecting and locating suitable sites and routes for reservoirs, canals, pipelines and other waterworks, subject to responsibility for any damage done to such property, in making such surveys.

B. The power of eminent domain for the replacement of water is necessary to accomplish maximum beneficial use of the waters of this state.

C. Nothing in this section shall be construed to authorize the taking of any state or federal land including land held in trust, except as may be provided by law.

History: Laws 1980, ch. 148, § 12.

72-12A-13. Existing water rights recognized.

Existing water rights based upon application to beneficial use are hereby recognized. Nothing herein contained is intended to impair the same or to disturb the priorities thereof. Nothing in the Mine Dewatering Act [72-12A-1 to 72-12A-13 NMSA 1978] shall be construed to permit condemnation of water rights and the owner of a water right shall not be considered to have forfeited or abandoned his rights under that act.

History: Laws 1980, ch. 148, § 13.

ANNOTATIONS

Nonseverability and severability clauses. — Laws 1980, ch. 148, § 14, provides for the severability of the act if any part other than § 12 is held invalid. If any part of § 12 is held invalid, the remainder of the act is to also be invalid and without legal force and effect.

Law reviews. — For comment, "New Mexico's Mine Dewatering Act: The Search for Rehoboth," see 20 Nat. Resources J. 653 (1980).

For article, "Prior Appropriation, Impairment, Replacements, Models and Markets," see 23 Nat. Resources J. 25 (1983).

ARTICLE 12B
Use of Waters Outside the State

72-12B-1. Applications for the transportation and use of public waters outside the state.

A. The state of New Mexico has long recognized the importance of the conservation of its public waters and the necessity to maintain adequate water supplies for the state's water requirements. The state of New Mexico also recognizes that under appropriate conditions the out-of-state transportation and use of its public waters is not in conflict with the public welfare of its citizens or the conservation of its waters.

B. Any person, firm or corporation or any other entity intending to withdraw water from any surface or underground water source in the state of New Mexico and transport it for use outside the state or to change the place or purpose of use of a water right from a place in New Mexico to a place out of that state shall apply to the state engineer for a permit to do so. Upon the filing of an application, the state engineer shall cause to be published in a newspaper of general circulation in the county in which the well will be located or the stream system from which surface water will be taken, at least once a week for three consecutive weeks, a notice that the application has been filed and that objections to the granting of the application may be filed within ten days after the last publication of the notice. Any person, firm or corporation or other entity objecting that the granting of the application would impair or be detrimental to the objector's water right shall have standing to file objections or protests. Any person, firm or corporation or other entity objecting that the granting of the application will be contrary to the conservation of water within the state or detrimental to the public welfare of the state and showing that the objector will be substantially and specifically affected by the granting of the application shall have standing to file objections or protests. Provided, however, that the state of New Mexico or any of its branches, agencies, departments, boards, instrumentalities or institutions, and all political subdivisions of the state and their agencies, instrumentalities and institutions shall have standing to file objections or protests. The state engineer shall accept for filing and act upon all applications filed

under this section in accordance with the provisions of this section. The state engineer shall require notice of the application and shall thereafter proceed to consider the application in accordance with existing administrative law and procedure governing the appropriation of surface or ground water.

C. In order to approve an application under this act, the state engineer must find that the applicant's withdrawal and transportation of water for use outside the state would not impair existing water rights, is not contrary to the conservation of water within the state and is not otherwise detrimental to the public welfare of the citizens of New Mexico.

D. In acting upon an application under this act, the state engineer shall consider, but not be limited to, the following factors:

(1) the supply of water available to the state of New Mexico;

(2) water demands of the state of New Mexico;

(3) whether there are water shortages within the state of New Mexico;

(4) whether the water that is the subject of the application could feasibly be transported to alleviate water shortages in the state of New Mexico;

(5) the supply and sources of water available to the applicant in the state where the applicant intends to use the water; and

(6) the demands placed on the applicant's supply in the state where the applicant intends to use the water.

E. By filing an application to withdraw and transport waters for use outside the state, the applicant shall submit to and comply with the laws of the state of New Mexico governing the appropriation and use of water.

F. The state engineer is empowered to condition the permit to insure that the use of water in another state is subject to the same regulations and restrictions that may be imposed upon water use in the state of New Mexico.

G. Upon approval of the application, the applicant shall designate an agent in New Mexico for reception of service of process and other legal notices.

History: Laws 1983, ch. 2, § 1; 1985, ch. 201, § 9.

ANNOTATIONS

Cross references. — For state engineer, see 72-2-1 NMSA 1978.

For applications for permits to use surface water, see 72-5-1 NMSA 1978.

For applications for use of underground water, see 72-12-3 NMSA 1978.

The 1985 amendment inserted "or to change the place or purpose of use of a water right from a place in New Mexico to a place out of that state" near the end of the first sentence, added the second, third, fourth and fifth sentences, and substituted "this section" for "this act" at the end of the sixth sentence in Subsection B.

Applicability. — Laws 1985, ch. 201, § 10 provides that the provisions of the act shall apply to all applications before the state engineer filed after January 1, 1985.

Severability clauses. — Laws 1985, ch. 201, § 11 provides for the severability of the act if any part or application thereof is held invalid.

Meaning of "this act". — The term "this act", referred to near the beginning of Subsections C and D, refers to Laws 1983, ch. 2, which is presently compiled as 72-12-3, 72-12-8, 72-12-18, 72-12-20, 72-12B-1, and 72-12B-2 NMSA 1978.

Limitation on exports in Subsection C not facially unconstitutional. — The limitation of water exports to those which are "not contrary to the conservation of water within the state and are not otherwise detrimental to the public welfare of the citizens of New Mexico" does not render Subsection C facially unconstitutional. City of El Paso ex rel. Pub. Serv. Bd. v. Reynolds, 597 F. Supp. 694 (D.N.M. 1984).

Disparate treatment given out-of-state applications is facially unconstitutional. — The utilization of the conservation and public welfare criteria and the six factors listed at Subsection D to evaluate applications for domestic wells and transfers of existing rights where the water is to be used outside the state creates an unconstitutional burden on interstate commerce. City of El Paso ex rel. Pub. Serv. Bd. v. Reynolds, 597 F. Supp. 694 (D.N.M. 1984).

Water treated as natural resource for commerce clause analysis purposes. — For purposes of constitutional analysis under the commerce clause, water is to be treated the same as other natural resources. City of El Paso ex rel. Pub. Serv. Bd. v. Reynolds, 563 F. Supp. 379 (D.N.M. 1983).

Interstate water usage can be controlled to same extent as intrastate usage. City of El Paso ex rel. Pub. Serv. Bd. v. Reynolds, 563 F. Supp. 379 (D.N.M. 1983).

Prohibition of out-of-state export of ground water unconstitutional. — New Mexico's prohibition of the out-of-state export of ground water, derived from N.M. Const., art. XVI, §§ 2 and 3, and former 72-12-19 NMSA 1978, which statute, with minor exceptions, expressly prohibited the transport of ground water from New Mexico for use in another state, is unconstitutional, as such an embargo violates the commerce clause

of U.S. Const., art. I. City of El Paso ex rel. Pub. Serv. Bd. v. Reynolds, 563 F. Supp. 379 (D.N.M. 1983).

State may not limit water exports merely to protect local economic interests. City of El Paso ex rel. Pub. Serv. Bd. v. Reynolds, 597 F. Supp. 694 (D.N.M. 1984).

"Water within the state" construed. — The phrase "water within the state" defines the water which is to be conserved; it does not dictate that all the state's waters must be retained within its borders. City of El Paso ex rel. Pub. Serv. Bd. v. Reynolds, 597 F. Supp. 694 (D.N.M. 1984).

Law reviews. — For comment, "The El Paso Case: Reconciling Sporhase and Vermejo," see 23 Nat. Resources J. ix (1983).

For article, "The Requirement of Beneficial Use as a Cause of Waste in Water Resource Development," see 23 Nat. Resources J. 7 (1983).

For note on *Sporhase v. Nebraska,* 458 U.S. 941, 102 S. Ct. 3456, 73 L. Ed. 2d 1254 (1982), see 23 Nat. Resources J. 923 (1983).

For article, "Mixing Water and the Commerce Clause: The Problems of Practice, Precedent, and Policy in Sporhase v. Nebraska," see 24 Nat. Resources J. 161 (1984).

For note, "Commerce Clause Curbs State Control of Interstate Use of Ground Water: *City of El Paso v. Reynolds,"* see 24 Nat. Resources J. 213 (1984).

For note, "New Mexico's Water Exportation Statute: Will It Float?," see 24 Nat. Resources J. 471 (1984).

For article, "The Ixtapa Draft Agreement Relating to the Use of Transboundary Groundwaters," see 25 Nat. Resources J. 713 (1985).

For note, "Recent Developments in the El Paso/New Mexico Interstate Groundwater Controversy - The Constitutionality of New Mexico's New Municipality Water Planning Statute," see 29 Nat. Resources J. 223 (1989).

For article, "A Survey of the Evolution of Western Water Law in Response to Changing Economic and Public Interest Demands," see 29 Nat. Resources J. 347 (1989).

For article, "To Market or Not to Market: Allocation of Interstate Waters," see 29 Nat. Resources J. 529 (1989).

For article, "To Market or Not to Market: Allocating Water Rights in New Mexico," see 29 Nat. Resources J. 629 (1989).

For note, "The Milagro Beanfield War Revisited in *Ensenada Land & Water Ass'n v. Sleeper:* Public Welfare Defies Transfer of Water Rights," see 29 Nat. Resources J. 861 (1989).

Am. Jur. 2d, A.L.R. and C.J.S. references. — 78 Am. Jur. 2d Waters §§ 309 to 315.

93 C.J.S. Waters § 170.

72-12B-2. Applicability.

The provisions of this act shall apply to applications pending before the state engineer under the surface water and ground water codes.

History: Laws 1983, ch. 2, § 6.

ANNOTATIONS

Severability clauses. — Laws 1983, ch. 2, § 8, provides for the severability of the act if any part or application thereof is held invalid.

Meaning of "this act". — The term "this act," referred to in this section, means Laws 1983, ch. 2, which is compiled as 72-12-3, 72-12-8, 72-12-18, 72-12-20, 72-12B-1 and 72-12B-2 NMSA 1978.

State engineer. — See 72-2-1 NMSA 1978.

ARTICLE 13
Artesian Wells

72-13-1. Definition of artesian well.

An artesian well for the purposes of this act [72-13-1 to 72-13-12 NMSA 1978] is hereby defined to be an artificial well which derives its water supply from any artesian stratum or basin.

History: Laws 1935, ch. 43, § 1; 1941 Comp., § 77-1201; 1953 Comp., § 75-12-1.

ANNOTATIONS

Purpose. — The 1935 statute relating to artesian wells and basins was passed to tighten state engineer's control over such waters which were not already under control of conservancy district, and where under district control, to give state engineer concurrent jurisdiction to enforce regulatory provisions of act or to intervene in any suit by or against district in interest of protecting or adjudicating rights to public water. Pecos Valley Artesian Conservancy Dist. v. Peters, 50 N.M. 165, 173 P.2d 490 (1945).

Permit required. — When well taps water of underground stream, artesian basin or reservoir having reasonably ascertainable boundaries it may be drilled only upon permit from state engineer. Pecos Valley Artesian Conservancy Dist. v. Peters, 50 N.M. 165, 173 P.2d 490 (1945).

Standing to sue. — Though artesian conservancy district owned no land serviced by waters of artesian basin and no water rights, it constituted proper party plaintiff for maintaining suit to enjoin use of water from unauthorized well. Pecos Valley Artesian Conservancy Dist. v. Peters, 50 N.M. 165, 173 P.2d 490 (1945), appeal after remand, 52 N.M. 148, 193 P.2d 418 (1948).

Law reviews. — For article, "Centralized Decisionmaking in the Administration of Groundwater Rights: The Experience of Arizona, California and New Mexico and Suggestions for the Future," see 24 Nat. Resources J. 641 (1984).

Am. Jur. 2d, A.L.R. and C.J.S. references. — 78 Am. Jur. 2d Waters § 155.

72-13-2. Supervision of artesian waters.

All artesian waters which have been declared to be public waters shall be under the supervision and control of the state engineer, as provided by this act [72-13-1 to 72-13-12 NMSA 1978], but where artesian conservancy districts have been duly organized pursuant to Chapter 97 of the New Mexico Session Laws of 1931 [73-1-1 to 73-1-13, 73-1-16 to 73-1-23 NMSA 1978] and acts amendatory thereof, such districts shall have concurrent power and authority with the state engineer to enforce the regulatory provisions, as herein provided, insofar as the waters to be conserved and controlled by the respective districts are affected.

This act shall not be construed to affect the provisions of Chapter 131 of the New Mexico Session Laws of 1931 [72-12-1 to 72-12-10 NMSA 1978], being "An act relating to underground waters, declaring certain underground waters to be public waters and relating to the beneficial appropriation thereof and repealing Article 2 of Chapter 151 of the New Mexico Statutes Annotated, 1929 Compilation," and the state engineer may intervene on behalf of the state in any proceeding brought by or against any artesian conservancy district where it is necessary for the proper protection or adjudication of rights to the public waters of the state.

History: Laws 1935, ch. 43, § 2; 1941 Comp., § 77-1202; 1953 Comp., § 75-12-2.

ANNOTATIONS

State engineer. — See 72-2-1 NMSA 1978.

Am. Jur. 2d, A.L.R. and C.J.S. references. — 78 Am. Jur. 2d Waters § 148.

Right to conduct and use artesian water out of artesian basin, 31 A.L.R. 906.

Artesian wells, statutory regulations as to, 55 A.L.R. 1451, 109 A.L.R. 395.

93 C.J.S. Waters § 92.

72-13-3. Artesian well supervisor.

The county commissioners of any county wherein an artesian basin is situated and wherein an artesian conservancy district has not been organized may employ with the consent and approval of the state engineer an artesian well supervisor and any assistants deemed necessary, who shall be under the supervision of the state engineer, and it shall be the duty of such well supervisor and his assistants, to enforce the regulatory provisions of Sections 72-13-1 through 72-13-12 NMSA 1978 and the rules and regulations promulgated by the state engineer pursuant hereto. The salaries of such well supervisor and his assistants shall be fixed by the board of county commissioners, who shall levy a special tax for such purpose upon all taxable property situated within the county wherein such artesian basin is situated, which levy shall be exclusive of the limit now provided by law; provided, however, that at no time shall such tax levy produce a revenue in any one year of more than seven thousand five hundred dollars ($7,500). All funds derived from such tax levies shall be transmitted by the county treasurer to the state treasurer on or before the last day of March, June, September and December of each year. The state treasurer shall deposit such funds to the credit of the artesian well fund of the county providing the same and shall disburse the same for expenses incurred by said county relative to the administration of the provisions of this section upon warrants of the secretary of finance and administration supported by proper itemized vouchers approved by the state engineer.

History: Laws 1935, ch. 43, § 3; 1941 Comp., § 77-1203; 1953 Comp., § 75-12-3; Laws 1977, ch. 247, § 197.

ANNOTATIONS

State engineer. — See 72-2-1 NMSA 1978.

Am. Jur. 2d, A.L.R. and C.J.S. references. — 78 Am. Jur. 2d Waters § 148.

72-13-4. Rules and regulations.

The state engineer shall prescribe and enforce reasonable rules and regulations consistent with the terms of this act [72-13-1 to 72-13-12 NMSA 1978] governing the drilling, casing, repairing, plugging and abandonment of artesian wells, and, where necessary, may vary such rules and regulations with the varying conditions in the different artesian basins; provided, however, that the state engineer shall first consult with the board of directors of the artesian conservancy district in any such artesian basin to the end that such rules and regulations shall properly meet the requirements of such artesian basin.

The owner of the lands upon which any artesian well is situated or is to be drilled or his or its agent or attorney shall make application to the state engineer for permit to drill, repair, plug or abandon an artesian well, setting forth the plan of operations to be performed, which shall conform with the provisions of this act and the rules and regulations promulgated pursuant thereto, and said application shall be approved by the state engineer before work thereon can proceed.

Before proceeding with any such work, the state engineer shall require, either of the owner of the land upon which the work is to be performed or of the contractor who is to perform the same, a bond approved by the state engineer in the sum of not to exceed five thousand ($5,000) dollars, conditioned upon the proper compliance with the provisions of this act and all rules and regulations promulgated pursuant thereto. Such bond shall be made payable to the state of New Mexico for the use and benefit of the state engineer. In the event of the breach of the conditions of the bond and upon the failure or refusal of the principal to comply with the provisions thereof, it shall be the duty of the state engineer to condition said artesian well to conform with the provisions of this act and the rules and regulations pursuant thereto and to recover on account of said bond the expense of such work, excepting that in no case shall the sum recovered exceed the amount of the bond. The state engineer and those authorized by him may go upon the land where the well is situated to perform such work as he shall deem necessary and the owner thereof shall be deemed to have consented thereto by his act of filing the application for permit to perform the work as above provided. The well shall be inspected by the state engineer or his representatives as soon as practicable and within ninety days after the receipt of notice that the work has been completed, and upon written acceptance of such work by the state engineer, said bond shall thereupon be of no further force or effect, and the bondsmen shall be relieved from further liability thereunder.

History: Laws 1935, ch. 43, § 4; 1941 Comp., § 77-1204; 1953 Comp., § 75-12-4.

ANNOTATIONS

Cross references. — For penalty for violation of this section, see 72-13-12 NMSA 1978.

State engineer. — See 72-2-1 NMSA 1978.

Suit for injunction. — Even though well is lawfully drilled without permit outside of artesian conservancy district, district could maintain suit to enjoin use of water from such well which is located on land outside territorially defined boundaries of basin as well as outside district boundaries. Pecos Valley Artesian Conservancy Dist. v. Peters, 50 N.M. 165, 173 P.2d 490 (1945), appeal after remand, 52 N.M. 148, 193 P.2d 418 (1948).

Law reviews. — For comment on *Kelley v. Carlsbad Irrigation Dist.,* 71 N.M. 464, 379 P.2d 763 (1963), see 3 Nat. Resources J. 340 (1963).

For article, "Centralized Decisionmaking in the Administration of Groundwater Rights: The Experience of Arizona, California and New Mexico and Suggestions for the Future," see 24 Nat. Resources J. 641 (1984).

Am. Jur. 2d, A.L.R. and C.J.S. references. — 78 Am. Jur. 2d Waters § 148.

94 C.J.S. Waters § 234.

72-13-5. Drilling record.

Any contractor drilling a well within any artesian basin where such well is drilled down to or through any artesian stratum shall keep a complete record and log of the well, recording the depth, thickness and character of the different strata penetrated, together with the dates when the work was begun and completed, and the amount, weight and size of casing set, and number of inches of flow from such well above the casing, all of which he shall verify under oath, and when the well is completed shall file the same with the state engineer or artesian well supervisor, and a duplicate thereof, if the well is situated within any artesian conservancy district, with the officials of such district.

History: Laws 1935, ch. 43, § 5; 1941 Comp., § 77-1205; 1953 Comp., § 75-12-5.

ANNOTATIONS

Cross references. — For penalty for violation of this section, see 72-13-12 NMSA 1978.

For provision making certain indemnity agreements contained in or affecting agreements pertaining to wells, void, see 56-7-2 NMSA 1978.

State engineer. — See 72-2-1 NMSA 1978.

72-13-6. Definition of waste.

For the purposes of this act [72-13-1 to 72-13-12 NMSA 1978], waste is defined as causing, suffering or permitting any artesian water to reach any pervious stratum above the artesian strata before coming to the surface of the earth, or causing, suffering or permitting any artesian well to discharge unnecessarily upon the surface of the ground, unless said waters are to be placed to a beneficial use under the constant supervision of the person using such water, or his employee, and through a constructed irrigation system: provided, however, that nothing herein contained shall be construed to prevent the use of such waters for ornamental ponds or fountains.

History: Laws 1935, ch. 43, § 6; 1937, ch. 122, § 1; 1941 Comp., § 77-1206; 1953 Comp., § 75-12-6.

ANNOTATIONS

Purpose. — Legislature, in passing this section and 72-13-12 NMSA 1978, was not attempting to prevent use of water, but to prevent waste of water. State ex rel. Erickson v. McLean, 62 N.M. 264, 308 P.2d 983 (1957).

Am. Jur. 2d, A.L.R. and C.J.S. references. — 78 Am. Jur. 2d Waters § 161.

Waste, statutory regulations to prevent, 55 A.L.R. 1483, 109 A.L.R. 395, 109 A.L.R. 412.

93 C.J.S. Waters § 95.

72-13-7. Abandoned wells wasting water declared to be a public nuisance.

Any artesian well which has been abandoned for more than four years, from which the right to the use of the waters has reverted to the state, and which is found to be wasting the waters from any artesian basin, is hereby declared to be a public nuisance, and the state engineer, his representatives or the artesian conservancy district in which the well is located, may abate such nuisance in a summary manner, without notice to the owner, by plugging or otherwise controlling the same.

History: Laws 1935, ch. 43, § 7; 1941 Comp., § 77-1207; 1953 Comp., § 75-12-7.

ANNOTATIONS

Cross references. — For abatement of waste of artesian well waters on surface, see 72-13-8 NMSA 1978.

For public nuisances, generally, see 30-8-1 NMSA 1978.

For abatement of same, see 30-8-8 NMSA 1978.

State engineer. — See 72-2-1 NMSA 1978.

Am. Jur. 2d, A.L.R. and C.J.S. references. — 78 Am. Jur. 2d Waters § 148.

72-13-8. Waste of water on surface.

The owner of any artesian well which is being beneficially used or which under existing water rights may be beneficially used, who causes, suffers or permits the waters therefrom after coming to the surface of the earth to waste as herein defined, shall be guilty of a misdemeanor. Such waste is also hereby declared to be a public nuisance, and in the event of the failure or refusal of the owner of the well to abate the same, within ten (10) days from receipt of notice by registered mail, return receipt

requested, from the state engineer, artesian well supervisor or artesian conservancy district, if the well is situated therein, such officials having jurisdiction may abate such nuisance in a summary manner without further notice by properly fitting the well with necessary valves or other devices or or [by] doing whatever shall be necessary to control the flow of water therefrom and prevent such waste, and the cost thereof shall be a lien against the land upon which the well is situated, as well as any land the owner or owners of which have a legal right to the use thereon of all or a part of the water from such well insofar as the interests of the several owners may appear, together with all improvements thereon from the time the work is begun or labor and materials necessary to abate the nuisance are furnished, subject only to regularly assessed taxes and liens of record prior to the time of the commencement of the work; provided, however, a claim of lien therefor under oath of the state engineer, artesian well supervisor or an officer of an artesian conservancy district, as the case may be, is filed in the office of the county clerk of the county wherein such well is situated, within five days from the time of the completion of the work, said claim of lien to be addressed to the owner or owners of the land upon which the well is situated, and to whom it may concern, giving a description of the land to be charged with the lien, the nature of the work, the time commenced and the time completed, together with the cost thereof. Said lien may be foreclosed in the same manner as provided by law for the foreclosure of mortgages at any time after one year but not more than three years from the date of filing the same. The county clerk shall make no charge for filing the claim of lien, and no costs shall be taxed against the plaintiff in any foreclosure proceeding on account thereof.

History: Laws 1935, ch. 43, § 8; 1941 Comp., § 77-1208; 1953 Comp., § 75-12-8.

ANNOTATIONS

Cross references. — For abatement of public nuisance constituted by abandoned artesian wells, see 72-13-7 NMSA 1978.

For penalty for violation of this section, see 72-13-12 NMSA 1978.

For public nuisances, generally, see 30-8-1 NMSA 1978.

For abatement of nuisances, see 30-8-8 NMSA 1978.

For foreclosure of mortgages, see Chapter 39, Article 5 NMSA 1978.

"Beneficial use". — Beneficial use is use of such water as may be necessary for some useful and beneficial purpose in connection with land from which it is taken. State ex rel. Erickson v. McLean, 62 N.M. 264, 308 P.2d 983 (1957).

Excess use. — When landowner exceeds beneficial use, he is appropriating to himself that which belongs to others who are entitled to like use, and to that extent is obstructing necessary use of water so as to interfere with its beneficial use, which is

declared to be a public nuisance. State ex rel. Erickson v. McLean, 62 N.M. 264, 308 P.2d 983 (1957).

No surface owner possesses right to extract subterranean water in excess of quantity necessary to supply beneficial uses to which it has been appropriated by him. State ex rel. Erickson v. McLean, 62 N.M. 264, 308 P.2d 983 (1957).

Waste beyond district boundaries. — Section does not permit artesian conservancy district to summarily abate waste of waters from artesian basin where well is situated beyond territorial boundaries of district. Pecos Valley Artesian Conservancy Dist. v. Peters, 50 N.M. 165, 173 P.2d 490 (1945), appeal after remand, 52 N.M. 148, 193 P.2d 418 (1948).

Lien priorities. — Lien for expenses incurred for work and repairs upon artesian well under Laws 1912, ch. 81 (since superseded) to prevent waste of water did not take precedence over prior recorded mortgage; such lien was not tax lien, but was referable to police power. Eccles v. Will, 23 N.M. 623, 170 P. 748 (1918).

Law reviews. — For article, "Centralized Decisionmaking in the Administration of Groundwater Rights: The Experience of Arizona, California and New Mexico and Suggestions for the Future," see 24 Nat. Resources J. 641 (1984).

Am. Jur. 2d, A.L.R. and C.J.S. references. — 78 Am. Jur. 2d Waters § 148.

94 C.J.S. Waters § 313.

72-13-9. Conducting water so as to prevent waste.

It is unlawful for any owner, person or corporation using the waters from any artesian well to conduct the same through any ditch, channel or conduit such that more than twenty percent of the waters are lost between the point of appropriation and the point of beneficial use.

History: Laws 1935, ch. 43, § 9; 1941 Comp., § 77-1209; 1953 Comp., § 75-12-9; Laws 1971, ch. 47, § 1.

ANNOTATIONS

Cross references. — For penalty for violation of this section, see 72-13-12 NMSA 1978.

Am. Jur. 2d, A.L.R. and C.J.S. references. — 78 Am. Jur. 2d Waters § 148.

94 C.J.S. Waters § 313.

72-13-10. Reservoirs.

When reservoirs are constructed to be used for storage of water from artesian wells the capacity shall not be greater than that sufficient to hold the continuous maximum flow of the water from such wells for a period of more than forty-eight (48) hours, excepting that where the maximum discharge of such wells is less than three hundred (300) gallons per minute such reservoirs may be of sufficient capacity to hold the maximum continuous flow thereof for a period of ninety-six (96) hours. Such reservoirs shall be constructed and used only for irrigation purposes. It shall be the duty of the artesian well supervisor and officials of any artesian conservancy district or agents or employees designated for that purpose to inspect all reservoirs and main ditches and laterals connected therewith as to construction, both as to workmanship and materials used, and to determine the losses therefrom by seepage and evaporation. If any reservoir and distribution system shall show a loss of more than twenty (20) percent of the water from the artesian well to the place of beneficial use, the investigating official shall notify the owner thereof, or his agent or person using the same, that such reservoir and distributing system are in defective condition and that it shall be unlawful to make further use of the same until they are repaired or reconditioned so as to lose by reason of seepage and evaporation not more than twenty (20) percent of the waters appropriated. The use of such reservoir for storage purposes after the owner, his agent or the person using the same has received notice, shall be deemed a misdemeanor, punishable as provided in this act [72-13-1 to 72-13-12 NMSA 1978], and also a public nuisance, and the state engineer, artesian well supervisor or artesian conservancy district having jurisdiction, may abate such nuisance in a summary manner and claim a lien for the actual costs thereof as provided in Section 8 [72-13-8 NMSA 1978]. After repairs have been made pursuant to such notice, it shall again be inspected by such official and if found to be so repaired or reconstructed so as to conserve the waters therein, as herein provided, the official inspecting the same shall issue to the owner, or his agent or the person using the same, his written approval thereof.

History: Laws 1935, ch. 43, § 10; 1941 Comp., § 77-1210; 1953 Comp., § 75-12-10.

ANNOTATIONS

Cross references. — For penalty for violation of this section, see 72-13-12 NMSA 1978.

For public nuisances, generally, see 30-8-1 NMSA 1978.

For abatement of nuisances, see 30-8-8 NMSA 1978.

State engineer. — See 72-2-1 NMSA 1978.

Am. Jur. 2d, A.L.R. and C.J.S. references. — 78 Am. Jur. 2d Waters §§ 200, 201.

93 C.J.S. Waters § 89.

72-13-11. Using water for stock purposes.

It shall be unlawful to use water from any artesian well for the purpose of watering stock, except where such water shall be carried through pipes to watering troughs fitted with float feeds or other means of control to prevent waste therefrom.

History: Laws 1935, ch. 43, § 11; 1941 Comp., § 77-1211; 1953 Comp., § 75-12-11.

ANNOTATIONS

Cross references. — For penalty for violation of this section, see 72-13-12 NMSA 1978.

Am. Jur. 2d, A.L.R. and C.J.S. references. — 94 C.J.S. Waters § 313.

72-13-12. Violations made misdemeanors.

Any person or corporation violating any of the provisions of Section [Sections] 4, 5, 8, 9, 10 and 11 [72-13-4, 72-13-5, 72-13-8 to 72-13-11 NMSA 1978] of this act or any of the rules and regulations promulgated by the state engineer in conformity therewith, and each day such violation shall continue shall constitute a separate offense, and upon conviction thereof, shall pay a fine of not less than twenty-five ($25.00) dollars nor more than two hundred fifty ($250) dollars for each offense. The state engineer, artesian well supervisor or any director of an artesian conservancy district or other officer charged with the enforcement of this act [72-13-1 to 72-13-12 NMSA 1978], may file a complaint with the proper official against anyone for the violation of any of the provisions hereof.

History: Laws 1935, ch. 43, § 12; 1941 Comp., § 77-1212; 1953 Comp., § 75-12-12.

ANNOTATIONS

State engineer. — See 72-2-1 NMSA 1978.

Purpose. — Legislature, in passing this section, was not attempting to prevent use of water, but to prevent waste of water. State ex rel. Erickson v. McLean, 62 N.M. 264, 308 P.2d 983 (1957).

Am. Jur. 2d, A.L.R. and C.J.S. references. — 94 C.J.S. Waters § 313.

ARTICLE 14
Interstate Stream Commission; Protection of Interstate Streams

72-14-1. Interstate stream commission; creation; membership; organization.

There is created the "interstate stream commission" consisting of nine members, eight appointed by the governor for a term of six years and the ninth member to be the state engineer. The members appointed by the governor shall be representative of major irrigation districts or sections, and no two members shall be appointed from the same irrigation district or section. The governor shall appoint at least one member of a New Mexico Indian tribe or pueblo to the commission. The commission shall elect a chairman, and the state engineer shall be the secretary.

History: Laws 1935, ch. 25, § 1; 1939, ch. 35, § 1; 1941, ch. 111, § 1; 1941 Comp., § 77-3301; Laws 1943, ch. 26, § 1; 1953 Comp., § 75-34-1; Laws 1963, ch. 14, § 1; 1977, ch. 254, § 95; 1982, ch. 10, § 7; 2003, ch. 165, § 1.

ANNOTATIONS

Cross references. — For powers and duties under Water Research, Conservation and Development Act, see 75-2-4, 75-2-5 NMSA 1978.

The 1982 amendment deleted the former last sentence, which read "The commission shall, for purposes of administration, execute all functions vested in it within the division of water resources."

The 2003 amendment, effective July 1, 2003, inserted the third sentence.

Appropriations. — Laws 1997, ch. 241, § 15A, and Laws 1997, ch. 246, § 15A appropriate $1,000,000 from the irrigation works construction fund to the interstate stream commission for expenditure in fiscal years 1998 and 1999 for the purpose of conducting hydrographic surveys. Any unexpended or unemcumbered balance remaining at the end of fiscal year 1999 shall revert to the irrigation works construction fund.

Laws 1997, ch. 241, § 15B, and Laws 1997, ch. 246, § 15B appropriate $500,000 from the improvement of the Rio Grande income fund to the interstate stream commission for expenditure in fiscal years 1998 and 1999 for the purpose of conducting hydrographic surveys. Any unexpended or unencumbered balance remaining at the end of fiscal year 1999 shall revert to the improvement of the Rio Grande income fund.

Laws 2006, ch. 111, § 43, effective March 8, 2006, appropriates general funds to the interstate stream commission for acequia projects throughout the state.

Laws 2006, ch. 111, § 78, effective March 8, 2006, makes two $4,500,000 contingent appropriations to the interstate stream commission for specific land and water rights purchases.

Construction in pari materia. — This section creates an agency with authority to institute, in the name of the state, legal proceedings invoking state's power of eminent domain for conservation, protection and development of public waters of the state, and

their application to beneficial uses and because the Water Code (72-1-1 NMSA 1978 et seq.) had the latter purposes, the statutes must be deemed in pari materia. State ex rel. Red River Valley Co. v. District Court, 39 N.M. 523, 51 P.2d 239 (1935).

Public use of private property. — Taking private property by commission for impounding waters of river by dam or reservoir is for public use. State ex rel. Red River Valley Co. v. District Court, 39 N.M. 523, 51 P.2d 239 (1935).

Remedying past failures to perform. — There is nothing in the nature of compacts generally or of this Compact in particular that counsels against rectifying a failure to perform in the past as well as ordering future performance called for by the Compact. Texas v. New Mexico, 482 U.S. 124, 107 S. Ct. 2279, 96 L. Ed. 2d 105 (1987).

The matter of remedying past water shortages caused by New Mexico's underdeliveries was returned to a special master for such further proceedings as he deemed necessary and for his ensuing recommendation as to whether New Mexico should be allowed to elect a monetary remedy and, if so, to suggest the size of the payment and other terms that the state must satisfy. Texas v. New Mexico, 482 U.S. 124, 107 S. Ct. 2279, 96 L. Ed. 2d 105 (1987).

Good faith belief in compliance. — New Mexico's good faith belief that it was complying with this Compact would not permit the state to escape liability for what had been adjudicated to be past failures to perform its duties under the Compact. Texas v. New Mexico, 482 U.S. 124, 107 S. Ct. 2279, 96 L. Ed. 2d 105 (1987).

Commission is empowered to take over and maintain Conchas Dam project. 1935-36 Op. Att'y Gen. 111.

Law reviews. — For article, "New Mexico Water Law: An Overview and Discussion of Current Issues," see 22 Nat. Resources J. 1045 (1982).

For article, "'Whisky's fer Drinkin'; Water's fer Fightin'!' Is it? Resolving a Collective Action Dilemma in New Mexico," see 43 Nat. Resources J. 185 (2003).

Am. Jur. 2d, A.L.R. and C.J.S. references. — 78 Am. Jur. 2d Waters §§ 3, 309 to 315.

93 C.J.S. Waters § 170; 94 C.J.S. Waters § 315.

72-14-2. Expenses.

The members of the commission shall serve without compensation, but shall receive necessary and actual expenses for sustenance, lodging and travel while actually engaged in the performance of their duties.

History: Laws 1935, ch. 25, § 2; 1941, ch. 99, § 1; 1941 Comp., § 77-3302; 1953 Comp., § 75-34-2; Laws 1971, ch. 234, § 11.

72-14-3. [General powers of commission; interstate compacts; employees; attorney general's duties.]

That said commission is hereby authorized to negotiate compacts with other states to settle interstate controversies or looking toward an equitable distribution and division of waters in interstate stream systems, subject, in all cases, to final approval by the legislature of New Mexico; to match appropriations made by the congress of the United States for investigations looking to the development of interstate streams originating in or flowing through the state of New Mexico; to investigate water supply, to develop, to conserve, to protect and to do any and all other things necessary to protect, conserve and develop the waters and stream systems of this state, interstate or otherwise; to institute or cause to be instituted in the name of the state of New Mexico any and all negotiations and/or legal proceedings as in its judgment are necessary to carry out the provisions of this act [72-14-1 to 72-14-3 NMSA 1978]; to do all other things necessary to carry out the provisions of this act; to employ such attorneys, engineers and clerical help as, in its judgment, may be necessary to carry out the provisions of this act, and to fix their compensation and expenses; together with such other powers and duties, as may, from time to time, be given said commission by the legislature of New Mexico; the attorney general shall be the legal adviser of such commission and attorneys employed as above shall be subject to his approval and supervision and be designated as "special assistant attorneys general."

History: Laws 1935, ch. 25, § 3; 1941 Comp., § 77-3303; 1953 Comp., § 75-34-3.

ANNOTATIONS

This section gives extremely broad powers to commission to carry out programs designed to meet the purposes of developing, conserving or protecting water and stream systems of this state. 1959-60 Op. Att'y Gen. No. 60-184.

Powers of eminent domain. — Commission is entitled to institute proceedings in the name of the state for condemnation of land for dam or reservoir. State ex rel. Red River Valley Co. v. District Court, 39 N.M. 523, 51 P.2d 239 (1935).

Authority of commission and use of funds appropriated to it. — Laws 1959, ch. 349, appropriates to the commission a sum of money for, among other things, acquisition of rights-of-way to carry out programs for alleviation of salinity conditions prevailing in the Pecos river, authorized by the congress of United States to be carried out by the secretary of the interior. Part of this legislation was that New Mexico must provide rights-of-way needed for carrying out the work proposed. It must be assumed that the legislature knew the purpose and effect of the federal legislation and with such knowledge authorized expending sums necessary within available appropriations for acquisition of needed rights-of-way. Commission has authority to enter into an agreement with the state of Texas or its agency, looking toward repayment to commission of a part or all of the costs of such rights-of-way. Upon receipt of such repayment, however, under existing legislation, funds received must be deposited in the

general fund. Commission may accept funds from either the state of Texas or a subordinate agency or instrumentality thereof for the purpose of acquisition of rights-of-way, but such funds would be in the nature of advance reimbursement; that is to say, such funds would have to be deposited in the general fund and the appropriated funds available to commission actually used for the purchase. 1959-60 Op. Att'y Gen. No. 60-184.

Purchase of building for state engineer. — Where contemplated purchase will house entire state engineer's office in Roswell and will result in administrative benefits directly to state engineer's office, proposal to purchase building for the state engineer's office would be diverting funds, at least in part, for purposes other than those for which the grant was originally made. 1957-58 Op. Att'y Gen. No. 58-112.

Cross references. — For authority of the interstate stream commission to issue special water revenue bonds in anticipation of severance tax proceeds for dams on the Canadian river, see 72-14-36 to 72-14-42 NMSA 1978.

Appointment of legislator denied. — Position of commissioner on Pecos river compact commission is civil office within terms of state constitution and, therefore, legislator may not be appointed to that office during term of his legislative position. 1969 Op. Att'y Gen. No. 69-49.

Law reviews. — For comment on *Cartwright v. Public Serv. Co.,* 66 N.M. 64, 343 P.2d 654 (1959), see 8 Nat. Resources J. 727 (1968).

For article, "Water Rights Problems in the Upper Rio Grande Watershed and Adjoining Areas," see 11 Nat. Resources J. 48 (1971).

For article, "The Development of the Rio Grande Compact of 1938," see 14 Nat. Resources J. 163 (1974).

For article, "Water Deliveries Under the Rio Grande Compact," see 14 Nat. Resources J. 201 (1974).

For article, "Politics in the United States and the Salinity Problem of the Colorado River," see 15 Nat. Resources J. 113 (1975).

For article, "Water Availability in the New Mexico Upper Rio Grande Basin to the Year 2000," see 22 Nat. Resources J. 855 (1982).

For article, "Centralized Decisionmaking in the Administration of Groundwater Rights: The Experience of Arizona, California and New Mexico and Suggestions for the Future," see 24 Nat. Resources J. 641 (1984).

For article, "The Impact of Recent Court Decisions Concerning Water and Interstate Commerce on Water Resources of the State of New Mexico," see 24 Nat. Resources J. 689 (1984).

For note, "Recent Developments in the El Paso/New Mexico Interstate Groundwater Controversy - The Constitutionality of New Mexico's New Municipality Water Planning Statute," see 29 Nat. Resources J. 223 (1989).

Am. Jur. 2d, A.L.R. and C.J.S. references. — 78 Am. Jur. 2d Waters § 310.

94 C.J.S. Waters § 315.

72-14-3.1. State water plan; purpose; contents.

A. It is the intent of the legislature that the interstate stream commission, in collaboration with the office of the state engineer and the water trust board, prepare and implement a comprehensive state water plan.

B. The state water plan shall be a strategic management tool for the purposes of:

(1) promoting stewardship of the state's water resources;

(2) protecting and maintaining water rights and their priority status;

(3) protecting the diverse customs, culture, environment and economic stability of the state;

(4) protecting both the water supply and water quality;

(5) promoting cooperative strategies, based on concern for meeting the basic needs of all New Mexicans;

(6) meeting the state's interstate compact obligations;

(7) providing a basis for prioritizing infrastructure investment; and

(8) providing statewide continuity of policy and management relative to our water resources.

C. The interstate stream commission in collaboration with the office of the state engineer and in consultation with other government agencies as appropriate, shall develop a comprehensive, coordinated state water plan that shall:

(1) identify and reflect the common priorities, goals and objectives that will have a positive impact on the public welfare of the state;

(2) establish a clear vision and policy direction for active management of the state's waters;

(3) include an inventory of the quantity and quality of the state's water resources, population projections and other water resource demands under a range of conditions;

(4) include water budgets for the state and for all major river basins and aquifer systems in the state;

(5) develop water conservation strategies and policies; to maximize beneficial use, including reuse and recycling by conjunctive management of water resources and by doing so to promote nonforfeiture of water rights;

(6) include a drought management plan designed to address drought emergencies, promote strategies for prevention of drought-related emergencies in the future and coordinate drought planning statewide;

(7) recognize the relationship between water availability and land-use decisions;

(8) promote river riparian and watershed restoration that focuses on protecting the water supply, improving water quality and complying with federal Endangered Species Act of 1973 [16 U.S.C. § 1531 et seq.] mandates;

(9) consider water rights transfer policies that balance the need to protect the customs, culture, environment and economic health and stability of the state's diverse communities while providing for timely and efficient transfers of water between uses to meet both short-term shortages and long-term economic development needs;

(10) promote strategies and mechanisms for achieving coordination with all levels of government;

(11) integrate regional water plans into the state water plan as appropriate and consistent with state water plan policies and strategies;

(12) integrate plans of water supply purveyors, including those of local governments, privately owned public utilities, associations, cooperatives, irrigation districts and acequias as appropriate and consistent with state water plan policies and strategies, as those plans are completed and submitted to the office of the state engineer;

(13) identify water-related infrastructure and management investment needs and opportunities to leverage federal and other funding; and

(14) promote collaboration with and strategic focusing of the research and development of the state's national laboratories and research institutions to address the state's water challenges and to bring to the state demonstration projects in desalination, conservation, watershed restoration, weather modification and other technological approaches to enhancing water supply and management.

D. Recognizing that complete water rights adjudication, measurement, well inventories and adequate databases are essential elements of an effective water management plan, and further recognizing that completion of these work elements will require substantial time and resources until such time as these elements are complete, the state water plan shall include work plans and strategies for:

(1) completion of water rights adjudications, with required supporting documentation, including hydrographic surveys, aquifer mapping and aerial mapping of irrigated land;

(2) creation and completion of a comprehensive database and an electronically accessible information system on the state's water resources and water rights, including file abstraction and imaging of paper files as well as information on pending adjudications;

(3) measuring of surface and ground water uses in the state as necessary for management of the state's water resources; and

(4) taking inventory of existing water wells and determining appropriate disposition of unused wells.

E. The interstate stream commission and the office of the state engineer shall consult directly with the governments of Indian nations, tribes and pueblos to formulate a statement of policy and process to guide:

(1) coordination or integration of the water plans of Indian nations, tribes and pueblos located wholly or partially within New Mexico with the state water plan; and

(2) final adjudication or settlement of all water rights claims by Indian nations, tribes and pueblos located wholly or partially within New Mexico.

F. The interstate stream commission shall ensure that public participation and public input are integrated throughout the planning process. The interstate stream commission shall convene water planners and stakeholders from diverse constituencies to advise it and the office of the state engineer on the state water plan, including statewide policies, priorities, goals and objectives for the plan, issues of statewide concern and strategies for implementation of the plan. The interstate stream commission shall also ensure that representatives of the stakeholder groups affected by various plan components will participate in the development of those plan components.

Members of the interstate stream commission and water trust board shall be notified of and are welcome to participate in all aspects of the planning process.

G. After public review and comment, the state water plan developed in conformance with this section is subject to adoption by the interstate stream commission. Following its adoption, the state water plan shall be presented to the interim legislative committee that studies water and natural resources.

H. The state water plan shall be periodically reviewed, updated and amended in response to changing conditions. At a minimum a review shall be undertaken every five years.

I. Nothing in the state water plan shall be construed to permit the granting or the condemnation of water rights.

J. Nothing in the state water plan shall be construed to determine, abridge or affect the water rights of Indian nations, tribes or pueblos.

History: Laws 2003, ch. 131, § 1; 2003, ch. 137, § 1.

ANNOTATIONS

Duplicate laws. — Laws 2003, ch. 131, § 1 and Laws 2003, ch. 137, § 1 enact identical new sections, effective June 20, 2003. Both have been compiled as 72-14-3.1 NMSA 1978. See 12-1-8 NMSA 1978.

Pueblo rights doctrine unduly interferes with the state's regulation of water rights. State v. City of Las Vegas, 2004-NMSC-009, 135 N.M. 375, 89 P.3d 47.

72-14-3.2. Water conservation plans; municipalities, counties and water suppliers.

A. As used in this section, "covered entity" means municipalities, counties and any other person that supplies, distributes or otherwise provides at least five hundred acre-feet of water annually for domestic, commercial, industrial or government customers for other than agricultural purposes, but does not include Indian tribes, pueblos, nations, chapters or any entity of a tribe, pueblo, nation or chapter.

B. A covered entity may develop, adopt and submit to the state engineer by December 31, 2005 a comprehensive water conservation plan, including a drought management plan.

C. The manner in which the covered entity develops, adopts and implements a comprehensive water conservation plan shall be determined by the covered entity. The plan shall be accompanied by a program for its implementation.

D. In developing a water conservation plan pursuant to this section:

(1) municipalities and counties shall consider ordinances and codes to encourage conservation measures; covered entities without ordinance or code enforcement ability shall consider incentives to encourage voluntary compliance with a set of conservation guidelines. Covered entities shall identify and implement best practices in their operations to improve conservation of the resources; and

(2) the covered entity shall consider, and incorporate into its plan if appropriate, at least the following:

(a) water-efficient fixtures and appliances, including toilets, urinals, showerheads and faucets;

(b) low-water-use landscaping and efficient irrigation;

(c) water-efficient commercial and industrial water-use processes;

(d) water reuse systems for both potable and nonpotable water;

(e) distribution system leak repair;

(f) dissemination of information regarding water-use efficiency measures, including public education programs and demonstrations of water-saving techniques;

(g) water rate structures designed to encourage water-use efficiency and reuse in a fiscally responsible manner; and

(h) incentives to implement water-use efficiency techniques, including rebates to customers or others, to encourage the installation of water-use efficiency and reuse measures.

E. The water conservation plan shall contain a section that references the regional water plans in the area that have been accepted by the interstate stream commission. The section shall cite conservation guidelines mentioned in the regional plan that have been adopted into the covered entity's water conservation plan.

F. A covered entity may at any time adopt changes to its water conservation plan and shall submit changes to the state engineer.

G. After December 31, 2005, neither the water trust board nor the New Mexico finance authority shall accept an application from a covered entity for financial assistance in the construction of any water diversion, storage, conveyance, water treatment or wastewater treatment facility unless the covered entity includes a copy of its water conservation plan.

History: Laws 2003, ch. 138, § 3.

ANNOTATIONS

Effective dates. — Laws 2003, ch. 138 contains no effective date provision, but, pursuant to N.M. Const., art. IV, § 23, is effective June 20, 2003, 90 days after adjournment of the legislature.

72-14-3.3. Interstate stream commission; additional powers; strategic water reserve.

A. The interstate stream commission shall establish a strategic water reserve and may purchase or lease from willing sellers or lessors or receive through donation surface water or water rights or storage rights to compose the reserve. The commission may also purchase or lease from willing sellers or lessors or receive by donation underground water or water rights for the strategic water reserve for cessation of pumping or limited short-term stream augmentation. At no time shall the use of water or water rights held by the strategic water reserve result in an increase in net depletions in any basin. The commission shall pay no more than the appraised market value to purchase or lease water or water rights and storage rights for the strategic water reserve. The commission may accept money or grants from federal or other governmental entities or other persons to purchase or lease water or water rights for the strategic water reserve and to pay administrative costs. The commission shall not acquire water or water rights that are served by or owned by an acequia or community ditch established pursuant to Chapter 73, Articles 2 and 3 NMSA 1978 for inclusion in the strategic water reserve. The commission shall not acquire water or water rights that are served by an irrigation district established pursuant to Chapter 73, Article 10 NMSA 1978, except through contractual arrangement with the district board of directors or as a special water users association established pursuant to Chapter 73, Article 10 NMSA 1978, but nothing in this section shall be construed to authorize the interstate stream commission to acquire water rights contrary to Section 72-1-2.4 NMSA 1978. The commission shall acquire only water rights that have sufficient seniority and consistent, historic beneficial use to effectively contribute to the purpose of the strategic water reserve. The commission shall not acquire water or water rights for the strategic water reserve by condemnation. Water in the strategic water reserve shall not be subject to forfeiture pursuant to Chapter 72 NMSA 1978. Water or water rights shall only be acquired with the explicit approval of the commission.

B. Water and water rights in the strategic water reserve shall be used to:

(1) assist the state in complying with interstate stream compacts and court decrees; or

(2) assist the state and water users in water management efforts for the benefit of threatened or endangered species or in a program intended to avoid additional listings of species. Management of water pursuant to this subsection shall be

done in conjunction with collaborative programs or processes where they exist. Use of the strategic water reserve pursuant to this paragraph shall be limited to aquatic or obligate riparian species.

C. The interstate stream commission shall develop river reach or ground water basin priorities for the acquisition of water or water rights and storage rights for the strategic water reserve in consultation with the New Mexico interstate stream compact commissioners, the office of the state engineer and the attorney general's office. For each river reach or ground water basin, additional prioritization shall be developed in coordination with the governing bodies of the following organizations within the affected river reach or ground water basin:

(1) Indian nations, tribes and pueblos;

(2) boards of county commissioners;

(3) municipalities;

(4) special districts established pursuant to Chapter 73 NMSA 1978;

(5) soil and water conservation districts;

(6) water authorities; and

(7) water planning regions. Nothing in this section shall modify or repeal any authority currently vested in any organization described in this subsection.

D. The interstate stream commission may sell or lease water or water rights from the strategic water reserve at no less than the appraised market value. The commission may sell water rights only if the rights are no longer necessary for the purposes for which they were acquired for the reserve; provided that water rights in the reserve shall not be sold to the United States. Pursuant to a sale of water rights from the strategic water reserve by the interstate stream commission, the commission shall first make the offer of sale for the original purpose of use. Proceeds of any sale are appropriated to the office of the state engineer to adjudicate water rights. Proceeds of any leases are appropriated to the interstate stream commission for carrying out the purposes of the strategic water reserve.

E. Water or water rights acquired for the strategic water reserve or water or water rights sold or leased from the reserve shall remain in their river reach or ground water basin of origin.

F. Transactions with members of an irrigation or conservancy district established pursuant to Chapter 73 NMSA 1978 shall provide for the strategic water reserve to pay the annual assessment to the district that would accrue to the district absent the transaction.

G. Cumulative impacts of the strategic water reserve acquisitions and uses shall not adversely affect existing water users or delivery systems.

H. The interstate stream commission shall adopt rules consistent with the terms of this section, including rules to ensure:

(1) that water and water rights acquired for the strategic water reserve are used only for the purposes of the reserve;

(2) adequate public notice in each affected area for the acquisition or disposal of water rights; and

(3) that the office of the state engineer transfer procedures shall be followed.

I. The interstate stream commission shall annually report to the appropriate committee of the legislature on the status of the strategic water reserve.

History: Laws 2005, ch. 175, § 1 and Laws 2005, ch. 182, § 1.

ANNOTATIONS

Effective dates. — Laws 2005, ch. 175, § 1 and Laws 2005, ch. 182, § 1, effective June 17, 2005, enact identical new sections. Both have been compiled as 72-14-3.3 NMSA 1978.

72-14-4. Budget and plan submitted to governor annually.

The interstate stream commission shall annually prepare and submit a budget together with a complete and detailed plan looking toward the improvement of the Rio Grande in this state, and increasing the surface flow of water in the river, during the ensuing fiscal year. The plan and budget shall be submitted annually in accordance with the provisions of Sections 6-3-1 through 6-3-22 NMSA 1978.

History: Laws 1935, ch. 24, § 1; 1941 Comp., § 77-3304; Laws 1947, ch. 131, § 1; 1953 Comp., § 75-34-4; Laws 1973, ch. 201, § 1; 1997, ch. 241, § 1; 1997, ch. 246, § 1.

ANNOTATIONS

The 1997 amendments. — Identical amendments to this section, enacted by Laws 1997, ch. 241, § 1 and Laws 1997, ch. 246, § 1, in the first sentence, deleted "of the channel" following "improvement" and inserted "and increasing the surface flow of water in the river", in the second sentence substituted "6-3-1 through 6-3-22 NMSA 1978" for "11-4-1.1 through 11-4-7.8 NMSA 1953", and made a minor stylistic change. Laws 1997, ch. 241 and Laws 1997, ch. 246 contain no effective date provision, but, pursuant to N.M. Const., art. IV, § 23, are effective on June 20, 1997, 90 days after adjournment

of the legislature. See Volume 14 NMSA 1978 for "Adjournment Dates of Sessions of Legislature" table.

72-14-5. Annual expenditures made under budget and plan.

The interstate stream commission shall annually expend from the money appropriated, within the money actually available and within the budget submitted and approved, in accordance with the provisions of Sections 6-3-1 through 6-3-22 NMSA 1978, such sum as may be necessary for the improvement of the Rio Grande in this state, and increasing the surface flow of water in the river, and in accordance with the plan submitted by the commission.

History: Laws 1935, ch. 24, § 2; 1941 Comp., § 77-3305; Laws 1947, ch. 131, § 2; 1953 Comp., § 75-34-5; Laws 1973, ch. 201, § 2; 1997, ch. 241, § 2; 1997, ch. 246, § 2.

ANNOTATIONS

The 1997 amendments. — Identical amendments to this section, enacted by Laws 1997, ch. 241, § 2 and Laws 1997, ch. 246, § 2, substituted "6-3-1 through 6-3-22 NMSA 1978" for "11-4-1.1 NMSA 1953", deleted "of the channel" following "improvement", inserted "and increasing the surface flow of water in the river", and made stylistic changes throughout the section. Laws 1997, ch. 241 and Laws 1997, ch. 246 contain no effective date provision, but, pursuant to N.M. Const., art. IV, § 23, are effective on June 20, 1997, 90 days after adjournment of the legislature. See Volume 14 NMSA 1978 for "Adjournment Dates of Sessions of Legislature" table.

Power of eminent domain. — Commission is entitled to institute proceedings in the name of the state for condemnation of land for erecting a dam and reservoir to impound and conserve water. State ex rel. Red River Valley Co. v. District Court, 39 N.M. 523, 51 P.2d 239 (1935).

72-14-6. Appropriation; how disbursements are to be made.

There is appropriated annually all money in the improvement of the Rio Grande income fund or as much thereof as may be necessary for the purpose of complying with Sections 72-14-4 through 72-14-6 and 72-14-9 through 72-14-28 NMSA 1978 and to fulfill and carry out their purposes and intentions. The appropriations authorized shall be paid, from time to time as may be necessary, upon vouchers approved by the interstate stream commission.

History: Laws 1935, ch. 24, § 3; 1941 Comp., § 77-3306; Laws 1947, ch. 131, § 3; 1953 Comp., § 75-34-6; Laws 1973, ch. 201, § 3; 1997, ch. 241, § 3; 1997, ch. 246, § 3.

ANNOTATIONS

The 1997 amendments. Identical amendments to this section, enacted by Laws 1997, ch. 241, § 3 and Laws 1997, ch. 246, § 3, substituted "72-14-4 through 72-14-6 and 72-14-9 through 72-14-28 NMSA 1978" for "75-34-4 through 75-34-6 NMSA 1953" in the first sentence and made minor stylistic changes throughout the section. Laws 1997, ch. 241 and Laws 1997, ch. 246 contain no effective date provision, but, pursuant to N.M. Const., art. IV, § 23, are effective on June 20, 1997, 90 days after adjournment of the legislature. See Volume 14 NMSA 1978 for "Adjournment Dates of Sessions of Legislature" table.

Appropriations. — Laws 1997, ch. 241, § 15B, and Laws 1997, ch. 246, § 15B appropriate $500,000 from the improvement of the Rio Grande income fund to the interstate stream commission for expenditure in fiscal years 1998 and 1999 for the purpose of conducting hydrographic surveys. Any unexpended or unencumbered balance remaining at the end of fiscal year 1999 shall revert to the improvement of the Rio Grande income fund.

72-14-7. [Governor authorized to protect water rights in interstate streams.]

That the governor of the state of New Mexico is hereby authorized to take such steps, make such investigations and institute or cause to be instituted in the name of the state, such proceedings as in his judgment may be necessary for the protection of the rights to the waters of any and all the interstate streams of the state.

History: Laws 1927, ch. 120, § 1; 1941 Comp., § 77-3307; 1953 Comp., § 75-34-7.

ANNOTATIONS

Law reviews. — For article, "Water Rights Problems in the Upper Rio Grande Watershed and Adjoining Areas," see 11 Nat. Resources J. 48 (1971).

72-14-8. [Governor may employ persons and fix their compensation.]

That the governor of New Mexico is authorized to employ such engineers, employees and attorneys as in his judgment may be necessary for the provisions of this act [72-14-7, 72-14-8 NMSA 1978], and to fix the compensation therefor.

History: Laws 1927, ch. 120, § 2; 1941 Comp., § 77-3308; 1953 Comp., § 75-34-8.

72-14-9. Definitions.

As used in Sections 72-14-9 through 72-14-28 NMSA 1978:

A. "engineer" or "state engineer" means the state engineer of New Mexico;

B. "commission" means the interstate stream commission or other department or agency which may be created and charged with the duties and functions of the commission;

C. "works" includes all property, rights, easements and franchises relating thereto and deemed necessary or convenient for their operation, and all water rights acquired or exercised by the commission in connection with such works, and shall embrace all means of conserving and distributing water, including, without limiting the generality of the foregoing, reservoirs, dams, diversion canals, distributing canals, lateral ditches, pumping units, wells, mains, pipelines and waterworks systems and shall include all such works for the conservation, development, storage, distribution and utilization of water, including, without limiting the generality of the foregoing, works for the purpose of irrigation, development of power, watering of stock, supplying of water for public, domestic, industrial and other uses, for fire protection and for the purpose of obtaining hydrographic surveys used by the state engineer for determining water rights;

D. "cost of works" includes the cost of construction; the cost of all lands, property, rights, easements and franchises acquired which are deemed necessary for such construction; the cost of all water rights acquired or exercised by the commission in connection with a project; the cost of all machinery and equipment, financing charges, interest prior to and during construction and for a period not exceeding three years after the completion of construction; the cost of engineering and legal expenses, plans, specifications, surveys, estimates of cost and other expenses necessary or incident to determining the feasibility or practicability of any project; and administrative expense and such other expenses as may be necessary or incident to the financing and the completion of a project and the placing of the project in operation;

E. "owner" includes all individuals, irrigation districts, incorporated companies, societies or associations having any title or interest in any properties, rights, easements or franchises to be acquired; and

F. "project" means any one of the works defined in this section or any combination of such works which are jointly managed and operated as a single unit.

History: 1953 Comp., § 75-34-9, enacted by Laws 1955, ch. 266, § 1; 1997, ch. 241, § 4; 1997, ch. 246, § 4.

ANNOTATIONS

The 1997 amendments. — Identical amendments to this section, enacted by Laws 1997, ch. 241, § 4 and Laws 1997, ch. 246, § 4, added the section heading, substituted "Sections 72-14-9 through 72-14-28 NMSA 1978" for "this act, the following words and terms shall have the following meanings" in the introductory language, added "and for the purpose of obtaining hydrographic surveys used by the state engineer for determining water rights" at the end of Subsection C, inserted "in this section" following "defined" and deleted "physically connected or" following "which are" in Subsection F;

and made stylistic changes throughout the section. Laws 1997, ch. 241 and Laws 1997, ch. 246 contain no effective date provision, but, pursuant to N.M. Const., art. IV, § 23, are effective on June 20, 1997, 90 days after adjournment of the legislature. See Volume 14 NMSA 1978 for "Adjournment Dates of Sessions of Legislature" table.

72-14-10. [Power to purchase, exchange and condemn property.]

The interstate stream commission, in addition to all other powers now vested in it, shall have power to acquire, by purchase, or exchange upon such terms and conditions and in such manner as it may deem proper, and to acquire by condemnation in accordance with and subject to the provisions of any and all existing laws applicable to the condemnation of property for public use, any land, rights, water rights, easements, franchises and other property deemed necessary or proper for the construction, operation and maintenance of such works. Title to property purchased or condemned shall be taken in the name of the commission. The commission shall be under no obligation to accept and pay for any property condemned under this act [72-14-9 to 72-14-23, 72-14-25 to 72-14-28 NMSA 1978] except from the funds provided by this act, and in any proceedings to condemn, such orders may be made by the court having jurisdiction of the suit, action or proceedings as may be warranted by law and the facts.

The taking possession of the property sought to be condemned shall not be delayed by reason of any dispute between rival claimants or the failure to join any of them as a party to said proceedings in condemnation.

History: 1953 Comp., § 75-34-10, enacted by Laws 1955, ch. 266, § 2.

ANNOTATIONS

Am. Jur. 2d, A.L.R. and C.J.S. references. — 78 Am. Jur. 2d Waters §§ 21, 55.

Acquisition by adverse possession or use of public property held by governmental unit, 55 A.L.R.2d 554.

93 C.J.S. Waters § 7; 94 C.J.S. Waters § 236.

72-14-11. Projects using revenue bond proceeds authorized.

A. The commission is authorized to conduct, whenever it deems such project expedient, any project, the cost of which is to be paid wholly by means of or with the proceeds of revenue bonds authorized, or in connection with a grant to aid in financing such project from the United States or any instrumentality or agency thereof, or with other funds provided under the authority of Sections 72-14-9 through 72-14-28 NMSA 1978. If revenues from the project are intended to pay the cost of maintaining, repairing and operating the project and to pay the principal and interest of revenue bonds that may be issued for the cost of the project, before conducting any project, the commission shall make estimates of the cost of the project, of the cost of maintaining, repairing and

operating the project and of the revenues to be derived from the project, and no such project shall be conducted unless, according to the estimates, the revenues to be derived will be sufficient to pay the cost of maintaining, repairing and operating the project and, if no other revenues are to be pledged to repayment of bonds that may be issued for the cost of the project, to pay the principal and interest of revenue bonds which may be issued for the cost of such project; provided, however, that in connection with the issuance of any of the bonds, the failure of the commission to make the estimates required by this section or to make the estimates in proper form shall in no way affect the validity or enforceability of any such bonds or of the trust indenture, resolution or other security for the bonds.

B. The purpose of Sections 72-14-9 through 72-14-28 NMSA 1978 is to meet a statewide need for the conservation and use of water through projects designed or intended for such purposes. The commission is empowered to make such investigations as may be necessary to plan and carry out a comprehensive statewide program of water conservation; provided, however, that those sections shall not be construed to repeal or amend by implication or otherwise the provisions of law enacted with respect to permits for the acquisition of water rights, permits for the change in place or method of use of water or permits for the construction of works. The projects to be finally conducted shall qualify as parts of such statewide program and, if applicable shall be approved by the commission upon the showing of their prospective ability to meet, through the sale of water or other services, the cost of operation, maintenance and repair and the amortization of the cost of the project; provided, however, that the failure of the commission to determine such prospective ability of a project shall in no way affect the validity or enforceability of any such bonds.

History: 1953 Comp., § 75-34-11, enacted by Laws 1955, ch. 266, § 3; 1997, ch. 241, § 5; 1997, ch. 246, § 5.

ANNOTATIONS

The 1997 amendments. — Identical amendments to this section, enacted by Laws 1997, ch. 241, § 5 and Laws 1997, ch. 246, § 5, added the section heading, substituted "Sections 72-14-9 through 72-14-28 NMSA 1978" for "this act" twice in the section; in Subsection A, added the language beginning "If revenues from" and ending "cost of the project" at the beginning of the second sentence, substituted "conducting" for "constructing" and "conducted" for "constructed", and inserted "if no other revenues are to be pledged to repayment of bonds that may be issued for the cost of the project" near the middle of the subsection; in Subsection B, deleted "so far as possible" following "to meet" and "the construction and operation of" following "water through" in the first sentence, in the second sentence deleted the language at the end referring to notice, publication and hearing for appropriation of water in declared underground water basins, in the last sentence substituted "conducted" for "constructed" and "project" for "construction" and inserted "if applicable" preceding "shall be approved"; and made stylistic changes throughout the section. Laws 1997, ch. 241 and Laws 1997, ch. 246 contain no effective date provision, but, pursuant to N.M. Const., art. IV, § 23, are

effective on June 20, 1997, 90 days after adjournment of the legislature. See Volume 14 NMSA 1978 for "Adjournment Dates of Sessions of Legislature" table.

Payment for feasibility study. — If commission proposes to enter into agreement with certain irrigation companies whereby commission agrees to conduct a "feasibility study" regarding rehabilitation and repair of Cabresto dam for a consideration of $2,000, and if the project is not economically feasible, companies are not liable to reimburse commission's irrigation works construction fund for any amount of costs of the study, commission may expend the $2,000 even if the project should be determined not to be economically feasible. 1957-58 Op. Att'y Gen. No. 58-92.

Am. Jur. 2d, A.L.R. and C.J.S. references. — 78 Am. Jur. 2d Waterworks and Water Companies § 3.

93 C.J.S. Waters § 195; 94 C.J.S. Waters §§ 321, 365.

72-14-12. [Power to cross watercourses and avenues of transportation.]

The interstate stream commission of the state of New Mexico shall have the power to construct irrigation works across any stream of water, watercourse, streets, avenues, highways, railways, canals, ditches or flumes which the route of said canal or canals may intersect or cross, in such manner as to afford security to life and property; but the board shall restore the same, when so crossed or intersected, to its former state, as near as may be, so as not to destroy its usefulness; and every company whose railroads shall be intersected or crossed by said works shall unite with said commission in forming said intersection and crossing; and if such railroad company and said commission, or the owners and controllers of said property, thing, or franchise so to be crossed cannot agree upon the amount to be paid therefor, on the points or the manner of said crossing of intersections, the same shall be ascertained and determined in all respects as herein provided in respect to taking of land for public use.

But nothing herein contained shall require the payment to the state or any subdivision thereof, of any sum for the right to cross any public highway with any such works. The right-of-way is hereby given, dedicated and set apart to locate, construct and maintain said works over and through any of the lands which are now or hereafter may be the property of this state.

History: 1953 Comp., § 75-34-12, enacted by Laws 1955, ch. 266, § 4.

ANNOTATIONS

Am. Jur. 2d, A.L.R. and C.J.S. references. — 78 Am. Jur. 2d Waters § 332.

What constitutes natural drainway or watercourse for flow of surface water, 81 A.L.R. 262.

Modern status of rules governing interference with drainage of surface waters, 93 A.L.R.3d 1193.

94 C.J.S. Waters §§ 349, 350.

72-14-13. Water conservation revenue bonds authorized; extent of state obligation.

A. The commission, with the approval of the state board of finance and in accordance with the state board of finance's adopted policies and procedures on financing approvals, is authorized to provide by resolution for the issuance of water conservation revenue bonds of the state for the purpose of paying the cost, as defined in Section 72-14-9 NMSA 1978, of any one or more projects subject to the conditions provided for in Subsection F of this section. The principal of and interest on revenue bonds shall be payable solely from the special fund to be provided for such payment. Revenue bonds shall mature at such time, not more than fifty years from their date, as may be fixed by the resolution, but may be made redeemable before maturity at the option of the state, to be exercised by the commission, at such price and under such terms and conditions as may be fixed by the commission prior to the issuance of the bonds. The commission shall determine the rate of interest not in excess of the maximum net effective interest rate permitted by the Public Securities Act [6-14-1 to 6-14-3 NMSA 1978] or the Public Securities Short-Term Interest Rate Act [6-18-1 to 6-18-16 NMSA 1978] on such bonds, the time of payment of such interest, the form of the bonds and the manner of executing the bonds, and shall fix the denomination of the bonds and the place of payment of principal and interest thereof.

B. All bonds issued under Sections 72-14-9 through 72-14-28 NMSA 1978 shall contain a statement on their faces that the state shall not be obligated to pay the bonds or the interest on the bonds except from the "debt service fund" hereinafter set forth. In case any of the officers whose signatures appear on the bonds cease to be officers before the delivery of the bonds, the signatures shall nevertheless be valid and sufficient for all purposes, as if the officers had remained in office until delivery. All the bonds are declared to have all the qualities and incidents of negotiable instruments. The bonds shall not constitute or be a debt, liability or obligation of the state, and shall be secured only by the revenues of such works and the funds received from the sale or disposal of water and from the operation, lease, sale or other disposition of the works, property and facilities to be acquired out of the proceeds of such bonds and, if so pledged by the commission, from income credited to the permanent reservoirs for irrigation purposes income fund and the improvement of Rio Grande income fund.

C. Provisions may be made for the registration of any of the bonds in the resolution authorizing the bonds. The bonds authorized under the provisions of Sections 72-14-9 through 72-14-28 NMSA 1978 may be issued and sold from time to time at a public or private sale to any purchaser, including the New Mexico finance authority, and in such amounts as may be determined by the commission, and the commission may sell the bonds in such manner and for such price as it may determine to be for the best interests

of the state. The state investment officer is authorized to invest the permanent funds of the state in the bonds. The proceeds of such bonds shall be used solely for the payment of the cost of a project and shall be used in such manner and under such restrictions, if any, as the commission may provide.

D. If the proceeds of the bonds, by error of calculation or otherwise, are less than the cost of the project, additional bonds may in like manner be issued to provide the amount of such deficit and, unless otherwise provided in the resolution authorizing the bonds, shall be deemed to be of the same issue and shall be entitled to payment from the same fund without preference or priority of the bonds first issued for the same project. If the proceeds of bonds issued for any such project exceed the cost of the project, the surplus shall be paid into the debt service fund provided for the payment of principal and interest of such bonds. Prior to the preparation of definitive bonds, the commission may issue temporary bonds exchangeable for definitive bonds when such bonds have been executed and are available for delivery. Such bonds may be issued without any other proceedings or the happening of any other conditions or things than those proceedings, conditions and things which are specified and required by Sections 72-14-9 through 72-14-28 NMSA 1978 or by the constitution of New Mexico.

E. Each resolution providing for the issuance of bonds shall set forth a project for which the bonds are to be issued, and the bonds authorized by each such resolution shall constitute a separate series. The bonds of each series shall be identified by a series number or letter and may be sold and delivered at one time or from time to time.

F. Revenue bonds issued by the commission for obtaining hydrographic surveys used by the state engineer shall mature not later than ten years from their date of issuance. The commission shall issue bonds for hydrographic surveys in a total amount not exceeding four million dollars ($4,000,000) and in amounts not to exceed two million dollars ($2,000,000) in any fiscal year commencing July 1, 1998.

History: 1953 Comp., § 75-34-13, enacted by Laws 1955, ch. 266, § 5; 1957, ch. 63, § 1; 1997, ch. 241, § 6; 1997, ch. 246, § 6.

ANNOTATIONS

The 1997 amendments. — Identical amendments to this section, enacted by Laws 1997, ch. 241, § 6 and Laws 1997, ch. 246, § 6, rewrote this section to the extent that a detailed comparison is impracticable. Laws 1997, ch. 241 and Laws 1997, ch. 246 contain no effective date provision, but, pursuant to N.M. Const., art. IV, § 23, are effective on June 20, 1997, 90 days after adjournment of the legislature. See Volume 14 NMSA 1978 for "Adjournment Dates of Sessions of Legislature" table.

Am. Jur. 2d, A.L.R. and C.J.S. references. — 64 Am. Jur. 2d Public Securities and Obligations § 180.

Right to drain surface water into natural watercourse, 28 A.L.R. 1262.

94 C.J.S. Waters § 234.

72-14-14. Revenues from bonds to be applied to cost of projects and associated expenses.

All money received from any bonds issued pursuant to Sections 72-14-9 through 72-14-28 NMSA 1978 shall be applied solely to the payment of the cost of the project or to the appurtenant debt service fund, and there is created and granted a lien upon such money until so applied in favor of the holders of the bonds or the trustee provided for in respect of such bonds.

History: 1953 Comp., § 75-34-14, enacted by Laws 1955, ch. 266, § 6; 1997, ch. 241, § 7; 1997, ch. 246, § 7.

ANNOTATIONS

The 1997 amendments. — Identical amendments to this section, enacted by Laws 1997, ch. 241, § 7 and Laws 1997, ch. 246, § 7, added the section heading, substituted "Sections 72-14-9 through 72-14-28 NMSA 1978" for "this act", "project" for "works" and "debt service" for "sinking", deleted "and to the administration fund as hereinafter provided" following "fund" and "shall be and hereby" following "there" in the middle of the section, and made minor stylistic changes. Laws 1997, ch. 241 and Laws 1997, ch. 246 contain no effective date provision, but, pursuant to N.M. Const., art. IV, § 23, are effective on June 20, 1997, 90 days after adjournment of the legislature. See Volume 14 NMSA 1978 for "Adjournment Dates of Sessions of Legislature" table.

72-14-15. Funds established.

The commission shall create three separate funds in respect of the bonds of each series: one fund to be known as the "project fund, series _____"; another fund to be known as the "income fund, series _____"; and another fund to be known as the "debt service fund, series _____"; each fund to be identified by the same series number or letter as the bonds of such series. The money in each fund shall be deposited in such depository and secured in such manner as may be determined by the commission. It is lawful for any bank or trust company incorporated under the laws of this state or of the United States to act as such depository and to furnish such indemnifying bonds or to pledge such securities as may be required by the commission. A separate account shall be kept in each project fund and in each income fund for each project. All expenditures not properly chargeable to the project fund account

or to the income fund account of any one project shall be charged by the commission in such proportions as it determines to the project fund accounts or to the income fund accounts, as the case may be, of the projects in respect of which such expenditures were incurred.

History: 1953 Comp., § 75-34-15, enacted by Laws 1955, ch. 266, § 7; 1997, ch. 241, § 8; 1997, ch. 246, § 8.

ANNOTATIONS

The 1997 amendments. — Identical amendments to this section, enacted by Laws 1997, ch. 241, § 8 and Laws 1997, ch. 246, § 8, added the section heading; in the first sentence, deleted "create a fund to be known as 'administration fund' and shall also" following "shall" at the beginning, inserted "debt service" near the middle and substituted "commission" for "board" at the end; and substituted "project" for "construction" and "income" for "water" throughout the section. Laws 1997, ch. 241 and Laws 1997, ch. 246 contain no effective date provision, but, pursuant to N.M. Const., art. IV, § 23, are effective on June 20, 1997, 90 days after adjournment of the legislature. See Volume 14 NMSA 1978 for "Adjournment Dates of Sessions of Legislature" table.

Am. Jur. 2d, A.L.R. and C.J.S. references. — 94 C.J.S. Waters § 241.

72-14-16. Bond proceeds to be appropriately credited.

The proceeds of the bonds of each series issued under the provisions of Sections 72-14-9 through 72-14-28 NMSA 1978 shall be placed to the credit of the appropriate project fund, which fund shall be kept segregated and set apart from all other funds. There shall be credited to the appropriate debt service fund all accrued interest received upon sale of the bonds and there shall also be credited to the appropriate project fund the interest received upon the deposits of money in the project fund and money received by way of grant from the United States or from any other source for the project. The money in each project fund shall be paid out or disbursed in such manner as may be determined by the commission, subject to the provisions of those sections, to pay the cost of the project and there is hereby appropriated annually the money in each project fund for the purposes intended by the commission.

History: 1953 Comp., § 75-34-16, enacted by Laws 1955, ch. 266, § 8; 1997, ch. 241, § 9; 1997, ch. 246, § 9.

ANNOTATIONS

The 1997 amendments. — Identical amendments to this section, enacted by Laws 1997, ch. 241, § 9 and Laws 1997, ch. 246, § 9, added the section heading, in the first sentence, substituted "Sections 72-14-9 through 72-14-28 NMSA" for "this act" and

deleted "at all times" following "fund shall", in the second sentence, inserted the language beginning "shall be credited to" and ending "bonds and there" at the beginning, deleted "all accrued interest upon the bonds and" following "the project fund", and deleted "works as hereinabove defined" at the end, rewrote the last sentence, substituted "project" for "construction" throughout the section and made minor stylistic changes. Laws 1997, ch. 241 and Laws 1997, ch. 246 contain no effective date provision, but, pursuant to N.M. Const., art. IV, § 23, are effective on June 20, 1997, 90 days after adjournment of the legislature. See Volume 14 NMSA 1978 for "Adjournment Dates of Sessions of Legislature" table.

Am. Jur. 2d, A.L.R. and C.J.S. references. — 94 C.J.S. Waters § 241.

72-14-17. Commission to set prices, rates or charges; contracts; disposition of property.

A. The commission is authorized, subject to the provisions of Sections 72-14-9 through 72-14-28 NMSA 1978, to fix and establish the prices, rates and charges at which the resources and facilities made available under the provisions of those sections shall be sold and disposed of; to enter into contracts and agreements, and to do things which in its judgment are necessary, convenient or expedient for the accomplishment of the purposes and objects of those sections, under such general regulations and upon such terms, limitations and conditions as it shall prescribe. If no other revenues are pledged to repay the bonds, it is the duty of the commission to enter into such contracts and fix and establish such prices, rates and charges so as to provide funds that will be sufficient to pay costs of operation and maintenance of the works authorized by those sections, together with necessary repairs thereto, and that will provide sufficient funds to meet and pay the principal and interest of all bonds as they severally become due and payable; provided that nothing contained in Sections 72-14-9 through 72-14-28 NMSA 1978 shall authorize any change, alteration or revision of any such rates, prices or charges as established by any contract entered into under authority of those sections except as provided by any such contract.

B. Every contract made by the commission for the sale of water, use of water, water storage or other service or for the sale of any property or facilities shall provide that in the event of failure or default in the payment of money specified in the contract to be paid to the commission, the commission may, upon such notice as shall be prescribed in the contract, terminate the contract and all obligations under it. The act of the commission in ceasing on any default to furnish or deliver water, use of water, water storage or other service under the contract shall not deprive the commission of or limit any remedy provided by such contract or by law for the recovery of money due or which may become due under the contract.

C. The commission is empowered to sell or otherwise dispose of any rights of way, easements or property when it determines that the same is no longer needed for the purposes of Sections 72-14-9 through 72-14-28 NMSA 1978, or to lease or rent the same or to otherwise take and receive the income or profit and revenue therefrom. All

income or profit and revenue of the works and all money received from the sale or disposal of water, use of water, water storage or other service and from the operation, lease, sale or other disposition of the works, property and facilities acquired under the provisions of those sections shall be paid to the credit of the appropriate income fund.

History: 1953 Comp., § 75-34-17, enacted by Laws 1955, ch. 266, § 9; 1997, ch. 241, § 10; 1997, ch. 246, § 10.

ANNOTATIONS

The 1997 amendments. — Identical amendments to this section, enacted by Laws 1997, ch. 241, § 10 and Laws 1997, ch. 246, § 10, added the section heading and the subsection designations, inserted "If no other revenues are pledged to repay the bonds" at the beginning of the last sentence in Subsection A, substituted "Sections 72-14-9 through 74-14-28 NMSA 1978" for "this act" three times in the section, and made minor stylistic changes throughout the section. Laws 1997, ch. 241 and Laws 1997, ch. 246 contain no effective date provision, but, pursuant to N.M. Const., art. IV, § 23, are effective on June 20, 1997, 90 days after adjournment of the legislature. See Volume 14 NMSA 1978 for "Adjournment Dates of Sessions of Legislature" table.

Am. Jur. 2d, A.L.R. and C.J.S. references. — 78 Am. Jur. 2d Waters §§ 246 to 252.

Right to cut off water supply because of nonpayment of water bill or charges for connections, etc., 28 A.L.R. 472.

Discrimination between property within and that outside municipality or other governmental district as to rates, 4 A.L.R.2d 595.

Making payment for water or light a charge upon the property or against the present owner or occupant, irrespective of person who enjoyed service, 19 A.L.R.3d 1227.

What constitutes unity of title or ownership sufficient for creation of an easement by implication or way of necessity, 94 A.L.R.3d 502.

94 C.J.S. Waters §§ 284 to 308.

72-14-18. Debt service fund; payments into fund; fund pledged for payment of interest, fiscal charges and repayment of principal.

The commission shall provide, in the proceedings authorizing the issuance of each series of bonds, for the paying into the appropriate debt service funds at stated intervals money from other revenues pledged to repay the bonds or all money then remaining in the income fund, after paying all cost of operation, maintenance and repairs of the works. All money in each debt service fund shall be pledged for the payment of and used only for the purpose of paying:

A. interest upon the bonds as such interest falls due;

B. the necessary fiscal agency charges for paying bonds and interest;

C. the principal of the bonds as they fall due; and

D. any premiums upon bonds retired by call or purchase as herein provided.

Prior to the issuance of the bonds of each series, the commission may provide by resolution for using the debt service fund or any part thereof in the purchase of any of the outstanding bonds payable therefrom at the market price thereof. The money in each debt service fund, less such reserve as may be provided for in the resolution authorizing the bonds for the payment of interest, principal, or both, if not used within a reasonable time for the purchase of bonds as provided in this section, shall be applied to the redemption of bonds then subject to redemption at the redemption price then applicable.

History: 1953 Comp., § 75-34-18, enacted by Laws 1955, ch. 266, § 10; 1997, ch. 241, § 11; 1997, ch. 246, § 11.

ANNOTATIONS

The 1997 amendments. — Identical amendments to this section, enacted by Laws 1997, ch. 241, § 11 and Laws 1997, ch. 246, § 11, added the section heading, inserted "money from other revenues pledged to repay the bonds or" in the introductory paragraph, deleted "but not exceeding the price, if any, at which the same shall, at the next interest date, be payable or redeemable, and all bonds redeemed or purchased shall forthwith be cancelled and no bonds shall be issued in place thereof" at the end of the first sentence of the second paragraph, inserted "or both" and "in this", and deleted "for cancellation" following "purchase of bonds" in the last sentence of that paragraph, substituted "debt service" for "sinking" throughout the section, and made minor stylistic changes. Laws 1997, ch. 241 and Laws 1997, ch. 246 contain no effective date provision, but, pursuant to N.M. Const., art. IV, § 23, are effective on June 20, 1997, 90 days after adjournment of the legislature. See Volume 14 NMSA 1978 for "Adjournment Dates of Sessions of Legislature" table.

Am. Jur. 2d, A.L.R. and C.J.S. references. — 64 Am. Jur. 2d Public Securities and Obligations § 58.

94 C.J.S. Waters § 243.

72-14-19. Permanent reservoirs for irrigation purposes income fund; Rio Grande income fund; appropriation.

Each year's income credited to the permanent reservoirs for irrigation purposes income fund and the improvement of Rio Grande income fund may be pledged

irrevocably to the payment of the principal of and interest on revenue bonds by the commission with the approval of the state board of finance, and there are irrevocably appropriated to the commission amounts from the funds for such purposes. The commission shall provide in the proceedings authorizing the issuance of each series of bonds for the paying into the appropriate income and debt service funds all money received pursuant to this section.

History: 1953 Comp., § 75-34-19, enacted by Laws 1955, ch. 266, § 11; 1997, ch. 241, § 12; 1997, ch. 246, § 12.

ANNOTATIONS

The 1997 amendments. — Identical amendments to this section, enacted by Laws 1997, ch. 241, § 12 and Laws 1997, ch. 246, § 12, added the section heading, deleted "in addition so much of" following "income fund", substituted "and the improvement of the Rio Grande income fund" for "as shall be necessary for the purposes hereinabove enumerated" and inserted "to the payment of the principal of and interest on revenue bonds" in the first sentence, substituted "income and debt service funds" for "sinking fund" in the last sentence, and made minor stylistic changes throughout the section. Laws 1997, ch. 241 and Laws 1997, ch. 246 contain no effective date provision, but, pursuant to N.M. Const., art. IV, § 23, are effective on June 20, 1997, 90 days after adjournment of the legislature. See Volume 14 NMSA 1978 for "Adjournment Dates of Sessions of Legislature" table.

Am. Jur. 2d, A.L.R. and C.J.S. references. — 64 Am. Jur. 2d Public Securities and Obligations § 44.

94 C.J.S. Waters §§ 234, 321.

72-14-20. [Contracts and leases with agencies of United States authorized.]

Notwithstanding any provisions of this act [72-14-9 to 72-14-23, 72-14-25 to 72-14-28 NMSA 1978] to the contrary, the commission is empowered to enter into contracts and leases with the United States of America, its instrumentalities or agencies, or any thereof, for the purpose of financing the construction of any works authorized by this act, and may in such contracts or leases authorize the United States, its instrumentalities or agencies, to supervise and approve the construction, maintenance and operation of such works, or any project or portion thereof, until such times as any money expended, advanced or loaned by said United States, its instrumentalities or agencies and agreed to be repaid thereto by said commission, shall have been fully repaid. It is the purpose and intent of this act that the commission shall be authorized, and is hereby authorized and empowered, to accept cooperation from the United States of America, its instrumentalities and agencies, in the construction, maintenance and operation and in financing the construction, of any works authorized by this act, and the commission shall have full power to do any and all things necessary in order to avail

itself of such aid, assistance and cooperation under federal legislation now or hereafter enacted by congress.

History: 1953 Comp., § 75-34-20, enacted by Laws 1955, ch. 266, § 12.

ANNOTATIONS

Am. Jur. 2d, A.L.R. and C.J.S. references. — 78 Am. Jur. 2d Waterworks and Water Companies § 8.

94 C.J.S. Waters § 228.

72-14-21. [Accounts pertaining to works required; control of construction; collection of revenues; sale of water; suits.]

The commission shall keep full and complete accounts concerning all matters and things relating to the works and annually shall prepare balance sheets and income and profit and loss statements showing the financial condition of each project, and file copies thereof with the secretary of state. All books and papers pertaining to all matters provided for in this act [72-14-9 to 72-14-23, 72-14-25 to 72-14-28 NMSA 1978] shall at all reasonable times be open to the inspection of any party interested or any citizen of the state. Except as otherwise provided in this act, the commission shall have full charge and control of the construction, operation and maintenance of the works and the collection of all rates, charges and revenues of whatsoever character therefrom. The commission shall proceed immediately with the construction of the works upon funds being made available therefor and shall prosecute such works to completion as rapidly as possible. The commission shall have power to sell, lease and otherwise dispose of all waters which may be impounded under the provisions of this act, and such water may be sold for the purpose of irrigation, development of power, watering of stock or any other purpose. To the extent that it may be necessary to carry out the provisions of this act, and subject to a compliance with the other provisions of this act, the board may take full control of all the water of the state not under the exclusive control of the United States and not vested in private ownership, and it shall be its duty to take such steps as may be necessary to appropriate and conserve the same for the use of the people.

The commission shall have power to institute in any of the courts of this state, or in any other state, or in any of the federal courts of this state or any other state, any actions, suits and special proceedings necessary to enable it to acquire, own and hold title to lands for dam sites, reservoir sites, water rights, rights-of-way for diversion and distributing canals, and lateral ditches and other means of distribution of water, and may also in all said courts institute, maintain and prosecute to final determination any and all actions, suits and special proceedings necessary to have the water rights adjudicated upon any stream or source of water supply from which is derived the water for such reservoir, diversion and distributing canals, lateral ditches and other means of distribution of the water; and said commission may join any and all owners of waters heretofore appropriated by any person, association or corporation from any of the

streams of the state of New Mexico so that adjudication may be had of all surplus water upon all the streams and sources of water supply of any project so constructed by said commission. All costs and expenses of such actions, suits or special proceedings shall be paid by said commission out of funds provided under the authority of this act.

History: 1953 Comp., § 75-34-21, enacted by Laws 1955, ch. 266, § 13.

ANNOTATIONS

Public inspection of records and papers. — Records and papers of commission are decreed to be subject to free public inspection at all reasonable times. 1961-62 Op. Att'y Gen. No. 62-80.

Construction of public works project. — Section 10-1-6 NMSA 1978, when read together with provisions of 10-1-7 and 10-1-8 NMSA 1978, would have specific application to construction of the public works project contemplated by commission, and would have to be considered by the commission in carrying out of construction work. 1961-62 Op. Att'y Gen. No. 62-80.

Am. Jur. 2d, A.L.R. and C.J.S. references. — 78 Am. Jur. 2d Waterworks and Water Companies §§ 6, 27 to 30.

93 C.J.S. Waters § 91.

72-14-22. Rights of bondholders; enforcement.

Any holder of any bonds issued under the provisions of Sections 72-14-9 through 72-14-28 NMSA 1978 except to the extent the rights herein given may be restricted by resolution passed before the issuance of the bonds, may, either at law or in equity, by suit, action, mandamus or other proceeding, protect and enforce any rights granted hereunder or under such resolution and may enforce and compel performance of all duties required by those sections or by such resolution to be performed by the commission. The state pledges and agrees that while any bonds issued by the commission remain outstanding, the powers, duties or existence of the commission or any official or agency of the state and the distribution of revenues pledged to payment of the bonds to the commission shall not be diminished or impaired in any manner that will affect adversely the interests and rights of the holders of such bonds. The commission is authorized to include this pledge and agreement of the state in any agreement with the holders of the bonds.

History: 1953 Comp., § 75-34-22, enacted by Laws 1955, ch. 266, § 14; 1997, ch. 241, § 13; 1997, ch. 246, § 13.

ANNOTATIONS

The 1997 amendments. — Identical amendments to this section, enacted by Laws 1997, ch. 241, § 13 and Laws 1997, ch. 246, § 13, added the section heading, substituted "Sections 72-14-9 through 72-14-28 NMSA 1978" for "this act or any of the coupons attached thereto", in the first sentence, in the second sentence inserted "The state pledges and agrees that" at the beginning, and "and the distribution of revenues pledged to payment of the bonds to the commission" near the middle, added the last sentence, and made minor stylistic changes. Laws 1997, ch. 241 and Laws 1997, ch. 246 contain no effective date provision, but, pursuant to N.M. Const., art. IV, § 23, are effective on June 20, 1997, 90 days after adjournment of the legislature. See Volume 14 NMSA 1978 for "Adjournment Dates of Sessions of Legislature" table.

Am. Jur. 2d, A.L.R. and C.J.S. references. — 64 Am. Jur. 2d Public Securities and Obligations §§ 330 to 340.

94 C.J.S. Waters § 259.

72-14-23. New Mexico irrigation works construction fund created; limitation of liability under act; reparation of damages caused in carrying out powers granted; authority of commission to receive contributions.

There is (hereby) created a fund to be known as the "New Mexico irrigation works construction fund," which shall consist of the income creditable to the permanent reservoirs for irrigation purposes income fund not otherwise pledged under Section 72-14-19 NMSA 1978 (being Laws 1955, Chapter 266, Section 11) and all other moneys which may be appropriated by the state legislature to said construction fund. Such fund shall be a continuing fund and shall not revert to the general fund of the state or to any other fund of the state at the end of any biennium.

The cost of investigations and construction as authorized in Section 72-14-11 NMSA 1978 (being Laws 1955, Chapter 266, Section 3) shall be paid from said New Mexico irrigation works construction fund and also the cost of all preliminary work on any project and all expenses directly chargeable to such project, prior to the receipt of the proceeds of bonds, shall be paid from the construction fund. The amount of all such expenses on account of any project or projects and such part of the general administrative expenses of the commission and the cost of investigation or investigations as shall be properly chargeable, in the opinion of the commission, to such project or projects, shall be reimbursed to the construction fund upon the receipt of the proceeds of bonds issued for such project or projects. No liability or obligation shall be incurred under the provisions of Sections 72-14-9 to 72-14-23, 72-14-25 to 72-14-28 NMSA 1978 (being Laws 1955, Chapter 266, Sections 1 to 19) beyond the extent to which money shall have been provided under the authority of this act [72-14-9 to 72-14-23, 72-14-25 to 72-14-28 NMSA 1978]. All public and private property damaged or destroyed in carrying out the powers granted under this act shall be restored or repaired and placed in their [its] original condition, as nearly as practicable, or adequate compensation made therefor out of funds provided by this act.

The commission shall also have authority to pay the cost of such investigations and construction on any project from said construction fund when contracts in form satisfactory to it shall have been entered into whereby title to works shall have been mortgaged, deeded, assigned or transferred by the owner thereof to the commission, and a program for reimbursement of all amounts expended together with operation and maintenance charges shall have been agreed upon. Provided that no construction contract shall be entered into without the prior approval of the state board of finance. The commission shall also have authority to receive and accept appropriations and contributions from any source of either money or property or other things of value, to be held, used and applied for the purposes in this act provided.

History: 1953 Comp., § 75-34-23, enacted by Laws 1955, ch. 266, § 15; 1957, ch. 63, § 2; 1959, ch. 276, § 1.

ANNOTATIONS

Appropriations. — Laws 1995, ch. 222, § 45, effective April 7, 1995, appropriates $350,000 from the New Mexico irrigation works construction fund for expenditure by the state engineer in fiscal years 1995 through 1997 for an irrigation pipeline for the Bluewater Toltec irrigation system in Bluewater village.

Laws 1997, ch. 241, § 15A and Laws 1997, ch. 246, § 15A appropriate $1,000,000 from the irrigation works construction fund to the interstate stream commission for expenditure in fiscal years 1998 and 1999 for the purpose of conducting hydrographic surveys. Any unexpended or unencumbered balance remaining at the end of fiscal year 1999 shall revert to the irrigation works construction fund.

Laws 1998, ch. 81, § 2, effective May 20, 1998, appropriates $2,000,000 from the irrigation works construction fund to the interstate stream commission in each of fiscal years 1999 through 2001, subject to certain conditions, for expenditure in any of the fiscal years for the purpose of retiring water rights along the Pecos River basin and taking other appropriate actions that would effectively aid New Mexico in compliance with the United States supreme court amended decree in *Texas v. New Mexico*, No. 65 original. Any unexpended or unencumbered balance remaining at the end of fiscal year 2001 shall revert to the irrigation works construction fund.

Laws 1998, ch. 81, § 3, effective May 20, 1998, appropriates $12,000,000 from the irrigation works construction fund to the interstate stream commission for expenditure in fiscal years 1998 and 1999 for the purchase of water rights along the Pecos River basin or water rights with appurtenant land in the Pecos River basin that would effectively aid the state in complying with the Pecos River Compact and the United States supreme court amended decree in *Texas v. New Mexico*, No. 65 original. The interstate stream commission shall obtain professionally prepared market or economic valuations or appraisals along with other relevant considerations which shall be the basis for any purchase. Any unexpended or unencumbered balance remaining at the end of fiscal year 2001 shall revert to the irrigation works construction fund.

Laws 1998, ch. 81, § 4, effective May 20, 1998, appropriates $500,000 from the irrigation works construction fund to the interstate stream commission for expenditure in fiscal years 1998 through 2000 for the purpose of preparing a long-term strategy for the state's permanent compliance with the Pecos River Compact and the United States supreme court amended decree in *Texas v. New Mexico*, No. 65 original, and a short-term action plan for responding to a net shortfall in New Mexico's deliveries to Texas as required by the court decree. The long-term strategy and short-term action plan shall be completed and submitted for consideration to the second session of the forty-fourth legislature, with periodic progress reports to the appropriate permanent or interim legislative committees and an analysis of how they could adversely affect surrounding aquifers, specifically nonreplenishable aquifers such as the Ogallala. Any unexpended or unencumbered balance remaining at the end of fiscal year 2000 shall revert to the general fund.

Laws 2002, ch. 99, § 18 amends Laws 1998, ch. 81, §§ 2, 3 (as amended by Laws 1999 (1st S.S.), ch. 2, § 84 and Laws 2000 (2nd S.S.), ch. 23, § 95) and 4 by extending the period of time in which the New Mexico irrigation works construction fund appropriations may be expended through fiscal year 2006. Any unexpended or unencumbered balance remaining at the end of fiscal year 2006 shall revert to the irrigation works construction fund.

Laws 2000 (2nd S.S.), ch. 23, § 28 appropriates $24,000 from the irrigation works construction fund to the office of the state engineer to replace surface water measuring devices on the Gila river in Catron county. The amount is for expenditure in fiscal years 2000 to 2004 and the unexpended balance shall revert to the New Mexico irrigation works construction fund.

Laws 2002, ch. 88, § 1, appropriates $25,000 from the New Mexico irrigation works construction fund to the local government division of the department of finance and administration for expenditure in fiscal years 2003 and 2004 to fund a model water rights protection project, including the identification and acquisition of available water rights, at acequia de Alcalde. Any unexpended or unencumbered balance remaining at the end of fiscal year 2004 shall revert to the irrigation works fund. A report on the benefits and results of this appropriation will be provided to the 2005 legislature.

Construction of "reservoir," "establishment". — Irrigating lands of New Mexico is the prime objective. To this end, establishment of artificial reservoirs and utilization of water stored naturally is necessary. The grant was not intended to restrict word "establish" to construction of reservoirs or to qualify word "reservoirs" by adjective "artificial" as opposed to the utilization of waters stored naturally. There is no reason for distinguishing between waters stored naturally and waters taken directly from their natural source. A reasonable meaning of the restriction in the grant is that it is to provide funds for establishment of permanent sources of water for irrigation purposes. The term "establishment" as used in the Ferguson Act of June 21, 1898, 30 Stat. 434, includes permanent regulation of use of water stored naturally or coming directly from natural

sources, as well as establishment of other permanent reservoirs. State ex rel. Interstate Stream Comm'n v. Reynolds, 71 N.M. 389, 378 P.2d 622 (1963).

Irrigation funds. — Under 19-1-17 and 19-1-18 NMSA 1978, there were established permanent reservoirs for irrigation purposes, permanent fund, and permanent reservoirs for irrigation purposes, income fund. Subsequently, this section establishes the New Mexico irrigation works construction fund, to consist of the income creditable to the income fund above noted and such other moneys as may be appropriated thereto by the state legislature. State ex rel. Interstate Stream Comm'n v. Reynolds, 71 N.M. 389, 378 P.2d 622 (1963).

Loan to an artesian conservancy district of funds which would in turn be loaned to landowners for water conservation work within district is authorized under this act. 1957-58 Op. Att'y Gen. No. 58-169.

Appropriations out of trust lands income fund. — Appropriations made to state engineer from irrigation works construction fund which consisted solely of moneys from the permanent reservoirs for irrigation purposes income fund accruing from the trust lands set aside by congress under the Ferguson Act of June 21, 1898, 30 Stat. 434, are within fundamental purpose and reasonable meaning of the trust grant "for the establishment of permanent water reservoirs for irrigation purposes." State ex rel. Interstate Stream Comm'n v. Reynolds, 71 N.M. 389, 378 P.2d 622 (1963).

Use of underground water for irrigation. — Congress has expressed no preference for surface reservoir as against one underground. If underground water can, by pumping or by utilizing artesian pressure, be made to serve the ends of irrigation, such water comes within the language of the trust as the waters of surface streams. If it were proposed to construct a huge surface reservoir, to be supplied wholly by pumping from underground sources, the practicability of the scheme might be doubted; but it would be difficult to show its illegality - the only respect in which it may be questioned. To discover and make available an underground basin serves the same purpose, is practicable and is well within the broad meaning of establishment. The same practical methods of making available waters of the Pecos river to serve the ends of irrigation apply as well to the utilization of surface waters from their sources and come within the broad meaning of establishment. State ex rel. Interstate Stream Comm'n v. Reynolds, 71 N.M. 389, 378 P.2d 622 (1963).

Am. Jur. 2d, A.L.R. and C.J.S. references. — 78 Am. Jur. 2d Waterworks and Water Companies §§ 2 to 4.

94 C.J.S. Waters §§ 22, 59.

72-14-24. Purpose of act.

This amendatory act [72-14-23, 72-14-24 NMSA 1978] is passed by the legislature knowing that the powers its [it] confers on the interstate stream commission are broad. It

is therefore in order that the legislature declare that its policy is not that the state interstate stream commission should construct or repair irrigation works now owned or which will revert to private individuals or corporations, under the powers granted by this amendment, unless the individuals or stockholders of such corporations are also all owners of land under the irrigation works and users of water supplied by it for agricultural or domestic uses, and the works will result in a substantial conservation of water.

History: 1953 Comp., § 75-34-23.1, enacted by Laws 1959, ch. 276, § 2.

ANNOTATIONS

Bracketed material. — The bracketed material in this section was inserted by the compiler for purposes of clarity; it was not enacted by the legislature and is not a part of the law.

72-14-25. [Adjustment of plans and operations to facilitate federal aid to project.]

For the purpose of obtaining financial aid from the United States of America, the commission may adjust the plans and operation of any project, created under this act [72-14-9 to 72-14-23, 72-14-25 to 72-14-28 NMSA 1978], to conform to the laws and regulations of the federal government and the supervision of any board, bureau or commission constituted under such authority, and may exercise such powers whenever conferred.

History: 1953 Comp., § 75-34-24, enacted by Laws 1955, ch. 266, § 16.

ANNOTATIONS

Am. Jur. 2d, A.L.R. and C.J.S. references. — 78 Am. Jur. 2d Waters § 415.

93 C.J.S. Waters § 169.

72-14-26. Disposition of water for public, domestic, industrial and other uses; reconveyance to grantors.

In addition to the powers conferred upon the commission to sell, lease and otherwise dispose of waters for the purpose of irrigation, development of power, watering of stock or other purposes, the commission shall have power to sell, lease and otherwise dispose of waters from its waterworks systems for public, domestic, industrial and other uses and for fire protection. The commission, after the discharge of all of the bonds issued by the commission to finance the construction or acquisition of any works, except for hydrographic surveys used by the state engineer for determining water rights, and of all interest thereon and costs and expenses incurred in connection with any action or

proceeding by or on behalf of the holders of such bonds, shall reconvey the same to the grantors thereof.

History: 1953 Comp., § 75-34-25, enacted by Laws 1955, ch. 266, § 17; 1997, ch. 241, § 14; 1997, ch. 246, § 14.

ANNOTATIONS

The 1997 amendments. — Identical amendments to this section, enacted by Laws 1997, ch. 241, § 14 and Laws 1997, ch. 246, § 14, added the section heading, substituted "protection" for "prevention" at the end of the first sentence, and made a minor stylistic change. Laws 1997, ch. 241 and Laws 1997, ch. 246 contain no effective date provision, but, pursuant to N.M. Const., art. IV, § 23, are effective on June 20, 1997, 90 days after adjournment of the legislature. See Volume 14 NMSA 1978 for "Adjournment Dates of Sessions of Legislature" table.

Am. Jur. 2d, A.L.R. and C.J.S. references. — 78 Am. Jur. 2d Waterworks and Water Companies § 4.

93 C.J.S. Waters § 38.

72-14-27. [Liberal construction of act.]

This act [72-14-9 to 72-14-23, 72-14-25 to 72-14-28 NMSA 1978], being necessary for the welfare of the state and its citizens, shall be liberally construed to effect the purposes hereof.

History: 1953 Comp., § 75-34-26, enacted by Laws 1955, ch. 266, § 18.

ANNOTATIONS

Loan to an artesian conservancy district of funds which would in turn be loaned to landowners for water conservation work within the district is authorized under this act. 1957-58 Op. Att'y Gen. No. 58-169.

72-14-28. [Powers of state agencies and subdivisions to contract with federal government respecting water projects.]

In addition to powers now vested by law in them, conservancy districts, water and sanitation districts, irrigation districts, departmental agencies or political subdivisions of the state, drainage districts and similar organizations, organized under the laws of New Mexico, are authorized to enter into agreements with the president of the United States, any department, board or agency thereof as may be prescribed and to accept grants for projects; execute and deliver such instruments in writing, to undertake a program of works which may include among other things the following:

A. drilling of wells, construction of reservoirs, irrigation and drainage systems or projects and flood control and waterworks projects and works;

B. the construction, maintenance and/or operation of any projects of any character eligible for loans under the provisions of the Acts of Congress, not otherwise provided with satisfactory agencies for cooperation with the federal government in such work;

C. to acquire land, construct, maintain and operate works and systems for the conservation and development of water resources;

D. to accept from any federal agency grants for and in aid of the carrying out of the purposes of this act [72-14-9 to 72-14-23, 72-14-25 to 72-14-28 NMSA 1978] and of any acts of congress;

E. to make contracts and execute instruments containing such terms, provisions and conditions as in the discretion of the governing board may be necessary, proper or advisable for the purpose of obtaining grants or loans, or both, from any federal agency pursuant to or by virtue of any and all acts of congress; to make all other contracts and execute all other instruments necessary, proper or advisable in or for the furtherance of any projects or works and to carry out and perform the terms and conditions of all such contracts or instruments;

F. to subscribe to and comply with any and all applicable acts of congress and regulations made by any federal agency with regard to any grants or loans, or both, from any federal agency;

G. to perform any acts authorized under this act through, or by means of its own officers, agents and employees, or by contracts with corporations, firms or individuals;

H. to construct any projects or works by contract or otherwise as prescribed by act of congress or by any rules or regulations thereunder;

I. to sell bonds at private sale to any federal agency or to the state of New Mexico without any public advertisement;

J. to issue interim receipts, certificates or other temporary obligations, in such form and containing such terms, conditions and provisions as the board may determine, pending the preparation or execution of definitive bonds for the purpose of financing the construction of projects provided by any of the acts of congress;

K. to issue bonds bearing the signatures of officers in office on the date of signing such bonds, notwithstanding that before delivery thereof any or all the persons whose signatures appear thereon shall have ceased to be the officers of the board;

L. to include in the cost of any project:

(1) all organization costs;

(2) engineering, plans, specifications, surveys, estimates of costs, inspection, accounting, fiscal and legal expense;

(3) the cost of issuance of the bonds, including engraving, printing, advertising and other similar expenses;

(4) any interest costs during the period of construction of projects, and for not exceeding three years thereafter on money borrowed or estimated to be borrowed;

(5) the proper proportionate amount of administrative costs of the board as may be determined;

M. to exercise any power conferred by this act for the purpose of obtaining grants or loans, or both, from any federal agency pursuant to or by virtue of any and all acts of congress, independently or in conjunction with any other power or powers conferred by this act or heretofore or hereafter conferred by any other law;

N. to contract debts for the construction and operation of any system or project, to borrow money and to issue its revenue bonds to finance such construction, and to provide for the rights of the holders of the bonds and to secure the bonds as herein provided;

O. to accept from private owners deeds or other instruments of trust relating to land and to subdivide, improve and sell such lands;

P. to investigate and select for settlement suitable areas of undeveloped lands in this state suitable for settlement;

Q. to make on any lands such improvements as may be necessary to render the same habitable and productive;

R. to purchase and acquire lands in cooperation with the United States under such conditions as may be deemed advisable for the purpose of this act, and to convey the same under such conditions, terms and restrictions as may be approved by the board and the federal government or any of its authorized agencies;

S. to purchase rights-of-way and pay construction costs in connection with any projects contemplated by this act either from its own funds or cooperatively with the federal government;

T. to make investigations and surveys of water resources and of opportunities for the conservation and development and pay the costs of the same either from its own funds or cooperatively with the federal government;

U. to fix, maintain and collect fees, rents, tolls and other charges for service rendered;

V. to appoint and fix salaries and duties of officers, experts, agents and employees as it deems necessary, to hold office during the pleasure of the board, as it may require;

W. to perform any and all of the foregoing acts and to do any and all of the foregoing things under, through or by means of its own officers, agents and employees or by contract with any person, federal agency or municipal political subdivision of this state;

X. to delegate to one or more of its members or its agents and employees such powers and duties as it may deem proper;

Y. to do any and all acts and things herein authorized or necessary to carry out the powers expressly given in this act, independently or in conjunction with any other power or powers conferred by this act or heretofore or hereafter conferred by any other law.

History: 1953 Comp., § 75-34-27, enacted by Laws 1955, ch. 266, § 19.

ANNOTATIONS

Joint Powers Agreement Act. — Members of water commission had authority under the Joint Powers Agreement Act to form the commission and contract with the United States Bureau of Reclaimation for the acquisition of a water supply; the members' "common authority" existed under this section. San Juan Water Comm'n v. Taxpayers & Water Users, 116 N.M. 106, 860 P.2d 748 (1993).

Loan to an artesian conservancy district of funds which would in turn be loaned to landowners for water conservation work within the district is authorized under this act. 1957-58 Op. Att'y Gen. No. 58-169.

Issuance of bonds by irrigation district. — This section provides authority for construction of almost any type of work which might benefit conservation of water in the state. While it was primarily designed for use in conjunction with federal aid funds it is not limited to that purpose; it provides broad authority for issuance of bonds by irrigation districts and other like organizations. An irrigation district, under authority of this act, may issue its general obligation bonds to finance the construction of facilities to supply domestic and industrial water, as well as irrigation water, for its members. 1955-56 Op. Att'y Gen. No. 6362.

Am. Jur. 2d, A.L.R. and C.J.S. references. — 78 Am. Jur. 2d Waterworks and Water Companies §§ 2 to 4.

94 C.J.S. Waters § 228.

72-14-29. Loans from New Mexico irrigation works construction fund.

The interstate stream commission is authorized to make loans, on such terms and for such length of time not exceeding fifty years as it shall deem proper, to irrigation and similar districts organized under the laws of the state, to acequia and community ditch associations and to municipalities and other political subdivisions of the state, out of any unpledged funds in the New Mexico irrigation works construction fund for any of the following purposes:

A. doing all engineering and design work necessary for a project;

B. construction of a project; or

C. rehabilitation of any existing project.

History: 1953 Comp., § 75-34-28, enacted by Laws 1957, ch. 80, § 1; 2001, ch. 221, § 1.

ANNOTATIONS

The 2001 amendment, effective June 15, 2001, added the section heading; and in the introductory paragraph, inserted "to acequia and community ditch associations"; and inserted "other" preceding "political subdivisions".

Loan to acequia permitted. — Since an acequia is a political subdivision of the state, this section expressly approves lending of funds to it, provided that the acequia conforms in all necessary respects with the statutory scheme governing it, and that the purpose of the loan is one permitted by the section. 1964 Op. Att'y Gen. No. 64-95 (promulgated prior to 2001 amendment).

Power of acequias to borrow from commission is established both by necessary implication from power of the commission to lend to them, and from general power of political subdivisions of the state to incur indebtedness necessarily or reasonably related to their statutory powers and functions (opinion promulgated prior to adoption of 73-2-22 NMSA 1978 and prior to the 2001 amendment of this section). 1964 Op. Att'y Gen. No. 64-95.

Commission may make loan to municipal corporation for purposes described in the act, pursuant to contract guaranteeing repayment of loan to be entered into by the commission and municipal corporation either with or without issuance of revenue bonds

by municipal corporation to guarantee the loan so long as trust funds are not involved. 1957-58 Op. Att'y Gen. No. 58-169.

Loan to municipal corporation to be used to repay moneys already received from state board of finance and expended in rehabilitation of an existing project as defined in the act would be a loan authorized under the act so long as trust funds are not involved. 1957-58 Op. Att'y Gen. No. 58-169.

Loan to irrigation district for use in establishing a water storage reservoir is authorized under this act. 1957-58 Op. Att'y Gen. No. 58-169.

Commission is authorized by this section to lend money from the irrigation works construction fund to a soil and water conservation district for water conservation purposes. 1972 Op. Att'y Gen. No. 72-54.

Evaluation of loan applicants. — In addition to conditions precedent to such loans as are stated in this section, it is apparent that the commission must exercise banker's judgment in evaluating necessity of specific loans and repayment ability of applicants. 1964 Op. Att'y Gen. No. 64-95.

Investment of income fund limited. — Treasurer can invest only that part of income fund which is not currently needed to carry out lawful trust purposes, and before investments of income funds are made, treasurer should determine that such moneys will not be needed for period of proposed investment. 1957-58 Op. Att'y Gen. No. 58-207.

Use of funds for commercial irrigation. — Proposal of an acequia to employ funds borrowed from commission for improvement of commercial irrigation was consistent with this section. 1964 Op. Att'y Gen. No. 64-95 (promulgated prior to 2001 amendment).

Am. Jur. 2d, A.L.R. and C.J.S. references. — 45 Am. Jur. 2d Irrigation §§ 80 to 87.

93 C.J.S. Waters § 190.

72-14-30. [Expenditure of funds for feasibility studies.]

The interstate stream commission is authorized to spend out of any unpledged funds in [the] New Mexico irrigation works construction fund such sums as needed in order to have feasibility studies made regarding any project.

History: 1953 Comp., § 75-34-29, enacted by Laws 1957, ch. 80, § 2.

72-14-31. [Loans to include sums for feasibility study.]

Any loan made for any project as provided shall include any sums which have been spent out of unpledged funds in the New Mexico irrigation works construction fund for a feasibility study on such project under the provisions of Section 2 [72-14-30 NMSA 1978].

History: 1953 Comp., § 75-34-30, enacted by Laws 1957, ch. 80, § 3.

72-14-32. [Loans to supplement federal funds authorized.]

Any loan made as provided may be used to supplement amounts granted or borrowed from the United States of America or any instrumentality, or agency thereof, or amounts granted or expended under the authority of Sections 72-14-9 to 72-14-28 NMSA 1978.

History: 1953 Comp., § 75-34-31, enacted by Laws 1957, ch. 80, § 4.

ANNOTATIONS

Am. Jur. 2d, A.L.R. and C.J.S. references. — 93 C.J.S. Waters § 190.

72-14-33. ["Project" defined.]

"Project" is defined to include and embrace all means of conserving and distributing water, including, without limiting the generality of the foregoing, reservoirs, dams, diversion canals, distributing canals, lateral ditches, pumping units, wells, mains, pipelines and waterworks systems and shall include all such works for the conservation, development, storage, distribution and utilization of water including, without limiting the generality of the foregoing projects for the purpose of irrigation, development of power, watering of stock, supplying of water for public, domestic, industrial and other uses and for fire protection.

History: 1953 Comp., § 75-34-32, enacted by Laws 1957, ch. 80, § 5.

72-14-34. Budgets required.

The interstate stream commission shall annually prepare and submit a budget in accordance with the provisions of Sections 6-3-1 through 6-3-22 NMSA 1978 covering all funds created or held under the provisions of Sections 72-14-9 through 72-14-33 NMSA 1978.

History: 1953 Comp., § 75-34-32.1, enacted by Laws 1973, ch. 201, § 4.

72-14-35. [Exemption from Bateman Act.]

The provisions of the Bateman Act [6-6-11 and 6-6-13 to 6-6-18 NMSA 1978] shall not apply to loans authorized herein.

History: 1953 Comp., § 75-34-33, enacted by Laws 1957, ch. 80, § 6.

72-14-36. [Special water revenue bonds of interstate stream commission; purpose.]

A. For the purpose of building, operating and maintaining dams on the Canadian river or its tributaries between Conchas dam and the Texas border, the interstate stream commission of the state is hereby authorized to anticipate the proceeds of the collection of taxes imposed upon natural resources by Chapter 103, New Mexico Session Laws of 1937, as amended, to the extent hereinafter authorized by the issuance and sale of bonds not exceeding the aggregate of five million dollars ($5,000,000) at such time and bearing such rate or rates of interest, not exceeding six percent a year as the interstate stream commission may determine.

B. The interstate stream commission of the state shall not allow construction to commence until it has reasonable assurance that this project will produce sufficient income with which to pay the cost of operation and maintenance of the dams constructed.

History: 1953 Comp., § 75-34-34, enacted by Laws 1957, ch. 190, § 1; 1959, ch. 69, § 1.

ANNOTATIONS

Cross references. — For transfer of interstate stream commission authority to state board of finance, see 7-27-12 NMSA 1978.

Compiler's notes. — Laws 1937, ch. 103, relating to severance taxes, was repealed by Laws 1959, ch. 52, § 29, Laws 1971, ch. 65, § 7 and Laws 1977, ch. 102, §§ 4 and 6. For the present provisions of the Severance Tax Act, see 7-26-1 to 7-26-8 NMSA 1978.

72-14-37. [Special water revenue bonds of interstate stream commission; anticipation of tax proceeds.]

In the event House Bill No. 117 of the twenty-fourth legislature becomes law, the taxes collected, the proceeds of which are hereinafter anticipated, shall be those levied by that 1959 act.

History: 1953 Comp., § 75-34-34.1, enacted by Laws 1959, ch. 69, § 2.

ANNOTATIONS

Compiler's notes. — House Bill No. 117 refers to Laws 1959, ch. 52, the present operative provisions of which are currently compiled as 7-29-1, 7-29-2, and 7-29-5 to 7-29-8 NMSA 1978.

72-14-38. Terms and conditions of bonds.

The terms and conditions of the bonds including but not limited to: date of issue; maturities; coupon rate or rates; call features; call premiums; refundability; and other covenants covering the general and technical aspects of the bond issue, including provision for additional bonds if and as necessary, shall be as determined in the discretion of the interstate stream commission.

History: 1953 Comp., § 75-34-35, enacted by Laws 1957, ch. 190, § 2.

72-14-39. Funding.

All revenue from sale of water shall go into a general fund from which the commission is authorized to transfer operating requirements, principal and interest requirements and such other funds as are practical in the sound financing of the dam.

History: 1953 Comp., § 75-34-36, enacted by Laws 1957, ch. 190, § 3.

72-14-40. Sale of bonds.

The bonds provided for by this act [72-14-36, 72-14-38 to 72-14-42 NMSA 1978] may be sold at public or private sale, in the discretion of the commission, provided, however, that no sale may be made for less than the par value of the bonds, plus accrued interest from the date of issue to the date of delivery of the bonds.

The state treasurer may, with the approval of the state board of finance and any other officials whose approval may be required by law for the investment of public funds, purchase such bonds at par value, plus accrued interest to the date of delivery, or subsequently, in the open market, at a price not to exceed the call price, plus accrued interest. Such bonds shall be accepted at their par value by all public officials in this state as security for the repayment of all deposits of public money of this state, or of any county, municipality or public institution thereof, and as security for the faithful performance of any obligations or duty to guarantee the performance of which such officials are now authorized by law to accept a deposit of the bonds of this state or of the United States of America.

History: 1953 Comp., § 75-34-37, enacted by Laws 1957, ch. 190, § 4.

72-14-41. Guarantee by severance tax funds.

After the appropriations made for payment of the bonds authorized by the following acts:

Laws 1951, Chapter 24; Laws 1947, Chapter 46; Laws 1949, Chapter 111; Laws 1953, Chapter 99; Laws 1953, Chapter 149; Laws 1953, Chapter 169; Laws 1953, Chapter 170; Laws 1955, Chapter 122; Laws 1955, Chapter 123; Laws 1955, Chapter 124; Laws 1955, Chapter 125; Laws 1955, Chapter 203 there is hereby appropriated out of the proceeds from all taxes collected under the provisions of Laws 1937, Chapter 103, as amended, a sufficient amount of money each year to pay any interest and to retire the maturing principal of bonds issued under this act [72-14-36, 72-14-38 to 72-14-42 NMSA 1978] to the extent that water revenues are not sufficient to meet the interest and principal payments. In the event water revenues are not sufficient to meet the interest and principal payments, the severance taxes are used for that purpose, and thereafter water revenues are in excess of the amounts required to meet current liabilities, the excess water revenues shall be used to repay the amount of severance taxes used.

History: 1953 Comp., § 75-34-38, enacted by Laws 1957, ch. 190, § 5.

ANNOTATIONS

Compiler's notes. — Laws 1951, ch. 24, relating to severance taxes, was repealed by Laws 1971, ch. 65, § 7 and Laws 1977, ch. 102, §§ 4 and 6. For the present provisions of the Severance Tax Act, see Chapter 7, Article 26 NMSA 1978.

Laws 1947, ch. 46, Laws 1949, ch. 111, Laws 1953, ch. 169 and Laws 1955, ch. 124, relate to insane asylum bonds.

Laws 1953, ch. 149 and Laws 1955, ch. 122, relate to penitentiary bonds.

Laws 1953, ch. 170, relates to mental hospital bonds.

Laws 1955, ch. 203, relates to building and institution severance tax bonds.

Laws 1937, ch. 103, relating to severance taxes, was repealed by Laws 1959, ch. 52, § 29, Laws 1971, ch. 65, § 7, and Laws 1977, ch. 102, §§ 4 and 6.

72-14-42. Approval of issue.

No bonds shall be finally issued and sold under this act [72-14-36, 72-14-38 to 72-14-42 NMSA 1978] until the issue shall have been approved by a majority of the state board of finance in a regular or called meeting.

History: 1953 Comp., § 75-34-39, enacted by Laws 1957, ch. 190, § 6.

72-14-43. Legislative findings; state appropriation of unappropriated water.

Based upon the findings and recommendations of the report from New Mexico state university and the university of New Mexico on state appropriation of unappropriated water, the legislature finds that:

A. the future water needs of New Mexico can best be met by allowing each region of the state to plan for its water future;

B. the state can assist the regions in planning future water use by implementing a state appropriation program to ensure an adequate supply of water for each region, as reflected in each region's water use plan; and

C. the interstate stream commission is the appropriate agency to implement such a program.

History: Laws 1987, ch. 182, § 1.

ANNOTATIONS

Law reviews. — For article, “The Administration of the Middle Rio Grande Basin: 1956-2002,” see 42 Nat. Resources J. 939 (2002).

72-14-44. Interstate stream commission; groundwater appropriation; water rights purchase; water planning funding.

A. The interstate stream commission is authorized to appropriate groundwater or purchase water rights on behalf of any of the various regions of the state.

B. Nothing in this section shall be construed as permitting the condemnation of water rights or as determining, abridging or affecting in any way the water rights of Indian tribes.

C. The interstate stream commission is authorized to make grants or loans of funds for the purpose of regional water planning. Prior to approval of any proposal by a region for planning funds under this section, the commission shall develop criteria for evaluating such proposals. These criteria at a minimum shall provide for:

(1) identification of the region requesting planning funds and why it is hydrologically and politically an appropriate applicant;

(2) use of an appropriate planning process including opportunities for participation by those Indian tribes located within the various regions of the state;

(3) reasonable proposed costs and time tables for completion of the planning process;

(4) appropriate provisions for notice, review and comment where applicable;

(5) adequate review of potential conflict with laws relating to impact on existing water rights;

(6) adequate review of water conservation and the effect on the public welfare; and

(7) identification of sources other than the interstate stream commission for funding of the proposed regional planning process.

D. A water planning region eligible for funding under this section is an area within the state that contains sufficient hydrological and political interests in common to make water planning feasible. The state as a whole shall not be considered a water planning region for purposes of this section.

E. No entity shall be made a part of a proposal for planning funds under this section without its consent.

F. No funds shall be granted under this act to any party or parties that are not within a water planning region. Whether a proposal for funding falls within a water planning region shall be determined on a case by case basis by the interstate stream commission after consultation with the state engineer and consideration of the following:

(1) whether the source of water and the potential place of use of the water are located within the same hydrologic basin; and

(2) if there is more than one party and the parties are requesting funds on a joint basis, whether the parties have demonstrated political and economic interests in common by entering into a binding intergovernmental agreement for carrying out the planning process.

History: Laws 1987, ch. 182, § 2.

ARTICLE 15
Interstate Compacts

72-15-1. [Animas-La Plata Project Compact.]

The state of New Mexico does hereby ratify, approve and adopt the Animas-La Plata Project Compact, which is a [as] follows:

ANIMAS-LA PLATA PROJECT COMPACT

The state of Colorado and the state of New Mexico, in order to implement the operation of the Animas-La Plata federal reclamation project, Colorado-New Mexico, a proposed participating project under the Colorado River Storage Project Act (70 Stat. 105), and being moved by considerations of interstate comity, have resolved to conclude a compact for these purposes and have agreed upon the following articles:

ARTICLE I

A. The right to store and divert water in Colorado and New Mexico from the La Plata and Animas river systems, including return flow to the La Plata river from Animas river diversions, for uses in New Mexico under the Animas-La Plata federal reclamation project shall be valid and of equal priority with those rights granted by degree [decree] of the Colorado state courts for the uses of water in Colorado for that project, providing such uses in New Mexico are within the allocation of water made to that state by Articles III and XIV of the Upper Colorado River Basin Compact (63 Stat. 31).

B. The restrictions of the last sentence of Section (a) of Article IX of the Upper Colorado River Basin Compact shall not be construed to vitiate Paragraph A of this article.

ARTICLE II

This compact shall become binding and obligatory when it shall have been ratified by the legislatures of each of the signatory states.

History: 1978 Comp., § 72-15-1, enacted by Laws 1969, ch. 57, § 1.

ANNOTATIONS

Federal acts. — Both P.L. 90-537, by which the congress of the United States approved this compact, and the Colorado River Storage Project Act (70 Stat. 105) appear as 43 U.S.C. 620 et seq.

63 Stat. 31 is codified as 43 U.S.C. 617l.

Law reviews. — For article, "Native American Water Rights: Efficiency and Fairness," see 29 Nat. Resources J. 763 (1989).

Am. Jur. 2d, A.L.R. and C.J.S. references. — 78 Am. Jur. 2d Waters § 310.

Constitutionality, construction and application of compacts and statutes involving cooperation between states, 134 A.L.R. 1412.

93 C.J.S. Waters §§ 170, 183, 188.

72-15-2. [Canadian River Compact.]

The state of New Mexico does hereby ratify, approve and adopt the compact aforesaid, which is as follows:

CANADIAN RIVER COMPACT

The state of New Mexico, the state of Texas, and the state of Oklahoma, acting through their commissioners, John H. Bliss, for the state of New Mexico, E. V. Spence for the state of Texas, and Clarence Burch for the state of Oklahoma, after negotiations participated in by Berkeley Johnson, appointed by the president as the representative of the United States of America, have agreed respecting Canadian river as follows:

ARTICLE I

The major purposes of this compact [this section] are to promote interstate comity; to remove causes of present and future controversy; to make secure and protect present developments within the states; and to provide for the construction of additional works for the conservation of the waters of Canadian river.

ARTICLE II

As used in this compact:

(a) the term "Canadian river" means the tributary of Arkansas river which rises in northeastern New Mexico and flows in an easterly direction through New Mexico, Texas and Oklahoma and includes North Canadian river and all other tributaries of said Canadian river;

(b) the term "North Canadian river" means that major tributary of Canadian river officially known as North Canadian river from its source to its junction with Canadian river and includes all tributaries of North Canadian river;

(c) the term "commission" means the agency created by this compact for the administration thereof;

(d) the term "conservation storage" means that portion of the capacity of reservoirs available for the storage of water for subsequent release for domestic, municipal, irrigation and industrial uses, or any of them, and it excludes any portion of the capacity of reservoirs allocated solely to flood control, power production and sediment control, or any of them.

ARTICLE III

All rights to any of the waters of Canadian river which have been perfected by beneficial use are hereby recognized and affirmed.

ARTICLE IV

(a) New Mexico shall have free and unrestricted use of all waters originating in the drainage basin of Canadian river above Conchas dam.

(b) New Mexico shall have free and unrestricted use of all waters originating in the drainage basin of Canadian river in New Mexico below Conchas dam, provided that the amount of conservation storage in New Mexico available for impounding these waters which originate in the drainage basin of Canadian river below Conchas dam shall be limited to an aggregate of 200,000 acre-feet.

(c) The right of New Mexico to provide conservation storage in the drainage basin of North Canadian river shall be limited to the storage of such water as at the time may be unappropriated under the laws of New Mexico and of Oklahoma.

ARTICLE V

Texas shall have free and unrestricted use of all waters of Canadian river in Texas, subject to the limitations upon storage of water set forth below:

(a) the right of Texas to impound any of the waters of North Canadian river shall be limited to storage on tributaries of said river in Texas for municipal uses, for household and domestic uses, livestock watering, and the irrigation of lands which are cultivated solely for the purpose of providing food and feed for the householders and domestic livestock actually living or kept on the property;

(b) until more than 300,000 acre-feet of conservation storage shall be provided in Oklahoma, exclusive of reservoirs in the drainage basin of North Canadian river and exclusive of reservoirs in the drainage basin of Canadian river east of the 97th meridian, the right of Texas to retain water in conservation storage, exclusive of waters of North Canadian river, shall be limited to 500,000 acre-feet; thereafter the right of Texas to impound and retain such waters in storage shall be limited to an aggregate quantity equal to 200,000 acre-feet plus whatever amount of water shall be at the same time in conservation storage in reservoirs in the drainage basin of Canadian river in Oklahoma, exclusive of reservoirs in the drainage basin of North Canadian river and exclusive of reservoirs east of the 97th meridian; and for the purpose of determining the amount of water in conservation storage, the maximum quantity of water in storage following each flood or series of floods shall be used; provided, that the right of Texas to retain and use any quantity of water previously impounded shall not be reduced by any subsequent application of the provisions of this Paragraph (b);

(c) should Texas for any reason impound any amount of water greater than the aggregate quantity specified in Paragraph (b) of this article, such excess shall

be retained in storage until under the provisions of said paragraph Texas shall become entitled to its use; provided, that, in event of spill from conservation storage, any such excess shall be reduced by the amount of such spill from the most easterly reservoir on Canadian river in Texas; provided further, that all such excess quantities in storage shall be reduced monthly to compensate for reservoir losses in proportion to the total amount of water in the reservoir or reservoirs in which such excess water is being held; and provided further that on demand by the commissioner for Oklahoma the remainder of any such excess quantity of water in storage shall be released into the channel of Canadian river at the greatest rate practicable.

ARTICLE VI

Oklahoma shall have free and unrestricted use of all waters of Canadian river in Oklahoma.

ARTICLE VII

The commission may permit New Mexico to impound more water than the amount set forth in Article IV and may permit Texas to impound more water than the amount set forth in Article V; provided, that no state shall thereby be deprived of water needed for beneficial use; provided further that each such permission shall be for a limited period not exceeding twelve months; and provided further that no state or user of water within any state shall thereby acquire any right to the continued use of any such quantity of water so permitted to be impounded.

ARTICLE VIII

Each state shall furnish to the commission at intervals designated by the commission accurate records of the quantities of water stored in reservoirs pertinent to the administration of this compact [this section].

ARTICLE IX

(a) There is hereby created an interstate administrative agency to be known as the "Canadian river commission." The commission shall be composed of three commissioners, one from each of the signatory states, designated or appointed in accordance with the laws of each such state, and if designated by the president an additional commissioner representing the United States. The president is hereby requested to designate such a commissioner. If so designated, the commissioner representing the United States shall be the presiding officer of the commission, but shall not have the right to vote in any of the deliberations of the commission. All members of the commission must be present to constitute a quorum. A unanimous vote of the commissioners for the three signatory states shall be necessary to all actions taken by the commission.

(b) The salaries and personal expenses of each commissioner shall be paid by the government which he represents. All other expenses which are incurred by the commission incident to the administration of this compact and which are not paid by the United States shall be borne equally by the three states and be paid by the commission out of a revolving fund hereby created to be known as the "Canadian river revolving fund." Such fund shall be initiated and maintained by equal payments of each state into the fund in such amounts as will be necessary for administration of this compact. Disbursements shall be made from said fund in such manner as may be authorized by the commission. Said fund shall not be subject to the audit and accounting procedures of the states. However, all receipts and disbursements of funds handled by the commission shall be audited by a qualified independent public accountant at regular intervals and the report of the audit shall be included in and become a part of the annual report of the commission.

(c) The commission may:

(1) employ such engineering, legal, clerical and other personnel as in its judgment may be necessary for the performance of its functions under this compact;

(2) enter into contracts with appropriate federal agencies for the collection, correlation and presentation of factual data, for the maintenance of records, and for the preparation of reports;

(3) perform all functions required of it by this compact and do all things necessary, proper or convenient in the performance of its duties hereunder, independently or in cooperation with appropriate governmental agencies.

(d) The commission shall:

(1) cause to be established, maintained and operated such stream and other gaging stations and evaporation stations as may from time to time be necessary for proper administration of the compact, independently or in cooperation with appropriate governmental agencies;

(2) make and transmit to the governors of the signatory states on or before the last day of March of each year, a report covering the activities of the commission for the preceding year;

(3) make available to the governor of any signatory state, on his request, any information within its possession at any time, and shall always provide access to its records by the governors of the states, or their representatives, or by authorized representatives of the United States.

ARTICLE X

Nothing in this compact shall be construed as:

(a) affecting the obligations of the United States to the Indian tribes;

(b) subjecting any property of the United States, its agencies or instrumentalities, to taxation by any state or subdivision thereof, or creating any obligation on the part of the United States, its agencies or instrumentalities, by reason of the acquisition, construction or operation of any property or works of whatever kind, to make any payment to any state or political subdivision thereof, state agency, municipality or entity whatsoever, in reimbursement for the loss of taxes;

(c) subjecting any property of the United States, its agencies or instrumentalities, to the laws of any state to an extent other than the extent to which such laws would apply without regard to this compact;

(d) applying to, or interfering with, the right or power of any signatory state to regulate within its boundaries the appropriation, use and control of water, not inconsistent with its obligations under this compact;

(e) establishing any general principle or precedent applicable to other interstate streams.

ARTICLE XI

This compact shall become binding and obligatory when it shall have been ratified by the legislature of each state and approved by the congress of the United States. Notice of ratification by the legislature of each state shall be given by the governor of that state to the governors of the other states and to the president of the United States. The president is hereby requested to give notice to the governor of each state of approval by the congress of the United States.

In witness whereof, the commissioners have executed four counterparts hereof, each of which shall be and constitute an original, one of which shall be deposited in the archives of the department of state of the United States, and one of which shall be forwarded to the governor of each state.

Done at the city of Santa Fe, state of New Mexico, this 6th day of December, 1950.

/s/ JOHN H. BLISS
John H. Bliss
Commissioner for the state of
New Mexico

/s/ E. V. SPENCE
E. V. Spence

Commissioner for the state of

Texas

/s/ CLARENCE BURCH

Clarence Burch

Commissioner for the state of

Oklahoma

APPROVED:

/s/ BERKELEY JOHNSON

Berkeley Johnson

Representative of the United

States of America

History: 1978 Comp., § 72-15-2, enacted by Laws 1951, ch. 4, § 1.

ANNOTATIONS

Compiler's notes. — The first Canadian River Compact, which included the state of Arkansas, was ratified by Laws 1927, ch. 40, but was subsequently repealed by Laws 1937, ch. 32.

Article IV(b) limitation on stored water. — The Article IV(b) limitation on "conservation storage" applies to stored water, not physical reservoir capacity. Oklahoma v. New Mexico, 501 U.S. 221, 111 S. Ct. 2281, 115 L. Ed. 2d 207 (1991).

Waters originating in the Canadian River Basin above Conchas Dam, but reaching the mainstream of the Canadian River below Conchas Dam as a result of spills or releases from Conchas Dam or seepage and return flow from the Tucumcari Project, are subject to the Article IV(b) limitation on stored water. Oklahoma v. New Mexico, 501 U.S. 221, 111 S. Ct. 2281, 115 L. Ed. 2d 207 (1991).

It does not necessarily follow that New Mexico's entitlement under Article IV(a) to all of the Canadian River water it can use from Conchas Reservoir gives New Mexico the unrestricted right to store that water at any point downstream from Conchas Dam. Any right New Mexico has to water spilling over Conchas Dam arises by virtue of Article IV(b) under which New Mexico may store for its use 200,000 acre-feet of water originating below Conchas Dam. Oklahoma v. New Mexico, 501 U.S. 221, 111 S. Ct. 2281, 115 L. Ed. 2d 207 (1991).

The question whether certain water stored in Ute Reservoir, water which New Mexico has designated a "desilting pool", is exempt from Article IV(b) limitation on New Mexico's conservation storage, because it allegedly serves a "sediment control" purpose within the meaning of Article II(d), was remanded to a special master for further proceedings and a recommendation on the merits. Oklahoma v. New Mexico, 501 U.S. 221, 111 S. Ct. 2281, 115 L. Ed. 2d 207 (1991).

Adequacy of water storage rights. — The central purpose of the compact was to settle the respective rights of the states to Canadian River water, and the compact and its negotiating history plainly show that the parties agreed that no more than 200,000 acre-feet of storage rights would satisfy all of New Mexico's future needs for water below Conchas Dam. Oklahoma v. New Mexico, 501 U.S. 221, 111 S. Ct. 2281, 115 L. Ed. 2d 207 (1991).

Law reviews. — For article, "A Survey of the Evolution of Western Water Law in Response to Changing Economic and Public Interest Demands," see 29 Nat. Resources J. 347 (1989).

For article, "Equitable Apportionment After *Vermejo:* The Demise of a Doctrine," see 29 Nat. Resources J. 565 (1989).

For note, *"Oklahoma and Texas v. New Mexico:* A Hastily Negotiated River Compact Leads to Problems in Equitable Apportionment of the Canadian River," see 32 Nat. Resources J. 705 (1992).

Am. Jur. 2d, A.L.R. and C.J.S. references. — 78 Am. Jur. 2d Waters §§ 87, 310.

93 C.J.S. Waters §§ 170, 183, 188.

72-15-3. [Notice of approval.]

Notice of approval of said compact shall be given by the governor of New Mexico to the governor of Texas and to the governor of Oklahoma and to the president of the United States, as provided in Article XI of said compact.

History: 1978 Comp., § 72-15-3, enacted by Laws 1951, ch. 4, § 2.

72-15-4. [Ratification and approval.]

The ratification and approval of said compact by this state shall not be binding or obligatory until it shall have been likewise approved by the legislature of the state of Texas and the legislature of the state of Oklahoma and consented to by the congress of the United States of America.

History: 1978 Comp., § 72-15-4, enacted by Laws 1951, ch. 4, § 3.

72-15-5. [Colorado River Compact.]

The state of New Mexico does hereby ratify, approve and adopt the compact aforesaid, which is as follows:

COLORADO RIVER COMPACT

Signed at Santa Fe, New Mexico, November 24, 1922.

_____

COLORADO RIVER COMMISSION,

Herbert Hoover, chairman.

W. S. Norveil, commissioner for the state of Arizona.

W. F. McClure, commissioner for the state of California.

Delph E. Carpenter, commissioner for the state of Colorado.

J. G. Scrugham, commissioner for the state of Nevada.

Stephen B. Davis, Jr., commissioner for the state of New Mexico.

R. E. Caldwell, commissioner for the state of Utah.

Frank C. Emerson, commissioner for the state of Wyoming.

Clarence C. Stetson, executive secretary, department of commerce, Washington, D. C.

_____

COLORADO RIVER COMPACT

The states of Arizona, California, Colorado, Nevada, New Mexico, Utah and Wyoming, having resolved to enter into a compact under the act of the congress of the United States of America, approved August 19, 1921 (42 Statutes at Large, page 171) and the acts of legislatures of the said states, have, through their governors, appointed as their commissioners:

W. S. Norveil for the state of Arizona,

W. F. McClure for the state of California,

Delph E. Carpenter for the state of Colorado,

J. G. Scrugham for the state of Nevada,

Stephen B. Davis, Jr., for the state of New Mexico,

R. E. Caldwell for the state of Utah,

Frank C. Emerson for the state of Wyoming,

who, after negotiations participated in by Herbert Hoover, appointed by the president as the representative of the United States of America, have agreed upon the following articles:

ARTICLE I

The major purposes of this compact [this section] are to provide for the equitable division and apportionment of the use of the waters of the Colorado river system; to establish the relative importance of different beneficial uses of water; to promote interstate comity; to remove causes of present and future controversies; and to secure the expeditious agricultural and industrial development of the Colorado river basin, the storage of its waters and the protection of life and property from floods. To these ends the Colorado river basin is divided into two basins, and an apportionment of the use of part of the water of the Colorado river system is made to each of them with the provision that further equitable apportionments may be made.

ARTICLE II

As used in this compact:

(a) the term "Colorado river system" means that portion of the Colorado river and its tributaries within the United States of America;

(b) the term "Colorado river basin" means all of the drainage area of the Colorado river system, and all other territory within the United States of America to which the waters of the Colorado river system shall be beneficially applied;

(c) the term "states of the upper division" means the states of Colorado, New Mexico, Utah and Wyoming;

(d) the term "states of the lower division" means the states of Arizona, California and Nevada;

(e) the term "Lee Ferry" means a point in the main stream of Colorado river one mile below the mouth of the Paria river;

(f) the term "upper basin" means those parts of the states of Arizona, Colorado, New Mexico, Utah and Wyoming within and from which waters naturally drain into the Colorado river system above Lee Ferry, and also all parts of said states located without the drainage area of the Colorado river system which are now or shall hereafter be beneficially served by waters diverted from the system above Lee Ferry;

(g) the term "lower basin" means those parts of the states of Arizona, California, Nevada, New Mexico and Utah within and from which waters naturally drain into the Colorado river system below Lee Ferry, and also all parts of said states located without the drainage area of the Colorado river system which are now or shall hereafter be beneficially served by waters diverted from the system below Lee Ferry;

(h) the term "domestic use" shall include the use of water for household, stock, municipal, mining, milling, industrial and other like purposes, but shall exclude the generation of electrical power.

ARTICLE III

(a) There is hereby apportioned from the Colorado river system in perpetuity to the upper basin and to the lower basin, respectively, the exclusive beneficial consumptive use of 7,500,000 acre-feet of water per annum, which shall include all water necessary for the supply of any rights which may now exist.

(b) In addition to the apportionment in Paragraph (a), the lower basin is hereby given the right to increase its beneficial consumptive use of such waters by one million acre-feet per annum.

(c) If, as a matter of international comity, the United States of America shall hereafter recognize in the United States of Mexico any right to the use of any waters of the Colorado river system, such waters shall be supplied first from the waters which are surplus over and above the aggregate of the quantities specified in Paragraphs (a) and (b); and if such surplus shall prove insufficient for this purpose, then, the burden of such deficiency shall be equally borne by the upper basin and the lower basin, and whenever necessary the states of the upper division shall deliver at Lee Ferry water to supply one-half of the deficiency so recognized in addition to that provided in Paragraph (d).

(d) The states of the upper division will not cause the flow of the river at Lee Ferry to be depleted below an aggregate of 75,000,000 acre-feet for any period of ten consecutive years reckoned in continuing progressive series, beginning with the first day of October next succeeding the ratification of this compact.

(e) The states of the upper division shall not withhold water, and the states of the lower division shall not require the delivery of water, which cannot reasonably be applied to domestic and agricultural uses.

(f) Further equitable apportionment of the beneficial uses of the waters of the Colorado river system unapportioned by Paragraphs (a), (b) and (c) may be made in the manner provided in Paragraph (g) at any time after October first, 1963, if and when either basin shall have reached its total beneficial consumptive use as set out in Paragraphs (a) and (b).

(g) In any event of a desire for a further apportionment as provided in Paragraph (f) any two signatory states, acting through their governors, may give joint notice of such desire to the governors of the other signatory states and to the president of the United States of America, and it shall be the duty of the governors of the signatory states and of the president of the United States of America forthwith to appoint representatives, whose duty it shall be to divide and apportion equitably between the upper basin and lower basin the beneficial use of the unapportioned water of the Colorado river system as mentioned in Paragraph (f), subject to the legislative ratification of the signatory states and the congress of the United States of America.

ARTICLE IV

(a) Inasmuch as the Colorado river has ceased to be navigable for commerce and the reservation of its waters for navigation would seriously limit the development of its basin, the use of its waters for purposes of navigation shall be subservient to the uses of such waters for domestic, agricultural and power purposes. If the congress shall not consent to this paragraph, the other provisions of this compact shall nevertheless remain binding.

(b) Subject to the provisions of this compact, water of the Colorado river system may be impounded and used for the generation of electrical power, but such impounding and use shall be subservient to the use and consumption of such water for agricultural and domestic purposes and shall not interfere with or prevent use for such dominant purposes.

(c) The provisions of this article shall not apply to or interfere with the regulation and control by any state within its boundaries of the appropriation, use and distribution of water.

ARTICLE V

The chief official of each signatory state charged with the administration of water rights, together with the director of the United States reclamation service and the director of the United States geological survey shall cooperate, ex officio:

(a) to promote the systematic determination and coordination of the facts as to flow, appropriation, consumption and use of water in the Colorado river basin, and the interchange of available information in such matters;

(b) to secure the ascertainment and publication of the annual flow of the Colorado river at Lee Ferry;

(c) to perform such other duties as may be assigned by mutual consent of the signatories from time to time.

ARTICLE VI

Should any claim or controversy arise between any two or more of the signatory states:

(a) with respect to the waters of the Colorado river system not covered by the terms of this compact [this section];

(b) over the meaning or performance of any of the terms of this compact;

(c) as to the allocation of the burdens incident to the performance of any article of this compact or the delivery of waters as herein provided;

(d) as to the construction or operation of works within the Colorado river basin to be situated in two or more states, or to be constructed in one state for the benefit of another state; or

(e) as to the diversion of water in one state for the benefit of another state;

the governors of the states affected, upon the request of one of them, shall forthwith appoint commissioners with power to consider and adjust such claim or controversy, subject to ratification by the legislatures of the states so affected.

Nothing herein contained shall prevent the adjustment of any such claim or controversy by any present method or by direct future legislative action of the interested states.

ARTICLE VII

Nothing in this compact shall be construed as affecting the obligations of the United States of America to Indian tribes.

ARTICLE VIII

Present perfected rights to the beneficial use of waters of the Colorado river system are unimpaired by this compact. Whenever storage capacity of 5,000,000 acre-feet shall have been provided on the main Colorado river within or for the benefit of the lower basin, then claims of such rights, if any, by appropriators or users of water in the lower

basin against appropriators or users of water in the upper basin shall attach to and be satisfied from water that may be stored not in conflict with Article III.

All other rights to beneficial use of waters of the Colorado river system shall be satisfied solely from the water apportioned to that basin in which they are situate.

ARTICLE IX

Nothing in this compact shall be construed to limit or prevent any state from instituting or maintaining any action or proceeding, legal or equitable, for the protection of any right under this compact or the enforcement of any of its provisions.

ARTICLE X

This compact may be terminated at any time by the unanimous agreement of the signatory states. In the event of such termination all rights established under it shall continue unimpaired.

ARTICLE XI

This compact shall become binding and obligatory when it shall have been approved by the legislatures of each of the signatory states and by the congress of the United States. Notice of approval by the legislatures shall be given by the governor of each signatory state to the governors of the other signatory states and to the president of the United States, and the president of the United States is requested to give notice to the governors of the signatory states of approval by the congress of the United States.

In witness whereof, the commissioners have signed this compact in a single original, which shall be deposited in the archives of the department of state of the United States of America and of which a duly certified copy shall be forwarded to the governor of each of the signatory states.

Done at the city of Santa Fe, New Mexico, this twenty-fourth day of November, A. D. one thousand nine hundred and twenty-two.

W. S. NORVEIL.
W. F. McCLURE.
DELPH E. CARPENTER.
J. G. SCRUGHAM.
STEPHEN B. DAVIS, JR.
R. E. CALDWELL.
FRANK C. EMERSON.

Approved:

HERBERT HOOVER.

History: 1978 Comp., § 72-15-5, enacted by Laws 1923, ch. 6, § 1.

ANNOTATIONS

Cross references. — For Colorado River Compact modified, see 72-15-8, 72-15-9 NMSA 1978.

Compiler's notes. — Laws 1921, ch. 221, §§ 1 to 8, provides for the appointment of a New Mexico representative on the joint commission for negotiation of a compact and agreement on the distribution of waters of the Colorado river between the states of Arizona, California, Colorado, Nevada, New Mexico, Utah and Wyoming. The executed Colorado River Compact, dated November 24, 1922, was ratified by New Mexico in Laws 1923, ch. 6, §§ 1 to 4; the text of the compact is set forth in § 1. The state of Arizona failed to ratify the compact and provisions as to ratification and approval contained in the original compact were required to be waived by the other signatory states. See Laws 1925, ch. 78, §§ 1 to 3. The Colorado River Compact was finally proclaimed effective by the president of the United States, June 25, 1929.

Arizona ratified in 1944.

Relation between Boulder Canyon Project and compact. — Boulder Canyon Project Act, 43 U.S.C. 617, by referring to the Colorado River Compact in several places, does make the compact relevant to a limited extent. The act explicitly approves the compact and thereby fixes a division of the waters between the basins which must be respected. The act also refers to terms contained in the compact. For example, § 12 of the act adopts the compact definition of "domestic," and § 6 requires satisfaction of "present perfected rights" as used in the compact. Therefore, those particular terms, though originally formulated only for the compact's allocation of water between basins, are incorporated into the act and are made applicable to the project act's allocation among lower basin states. Arizona v. California, 373 U.S. 546, 83 S. Ct. 1468, 10 L. Ed. 2d 542, reh'g denied, 375 U.S. 892, 84 S. Ct. 144, 11 L. Ed. 2d 122 (1963).

Authority conferred in the Boulder Canyon Project Act is stated to be "subject to the Colorado River Compact," and that instrument makes improvement of navigation subservient to all other purposes. But specific statement of primary purpose in the act governs the general references to the compact. Arizona v. California, 283 U.S. 423, 51 S. Ct. 522, 75 L. Ed. 1154 (1931).

Boulder Canyon Project Act also declares that secretary of interior and United States in construction, operation and maintenance of dam and other works and in the making of contracts shall be subject to and controlled by the compact. Such references, unlike explicit adoption of terms, were used only to show that the act and its provisions were in

no way to upset, alter or affect compact's congressionally approved division of water between basins. They were not intended to make the compact and its provisions control or affect the act's allocation among and distribution of water within the states of the lower basin. Arizona v. California, 373 U.S. 546, 83 S. Ct. 1468, 10 L. Ed. 2d 542, reh'g denied, 375 U.S. 892, 84 S. Ct. 144, 11 L. Ed. 2d 122 (1963).

By the Boulder Canyon Project Act, secretary of interior was authorized, subject to terms of the compact, to construct, operate and maintain a dam and incidental works at the present site of Boulder dam, with appurtenant hydro-electric plant, and to use and dispose of water stored above the dam for irrigation and for development of power. Arizona v. California, 298 U.S. 558, 56 S. Ct. 848, 80 L. Ed. 1331 (1936).

Secretary of interior and his permittees, licensees and contractees are subject to the compact, § 8(a), and therefore can do nothing to upset or encroach upon the compact's allocation of Colorado river water between the upper and lower basins. Arizona v. California, 373 U.S. 546, 83 S. Ct. 1468, 10 L. Ed. 2d 542, reh'g denied, 375 U.S. 892, 84 S. Ct. 144, 11 L. Ed. 2d 122 (1963).

Arizona does not show that Article III(b) of the compact is relevant to an interpretation of § 4(a) of the Boulder Canyon Project Act, upon which she bases her claim of right. The act does not purport to apportion among states of the lower basin the waters to which the lower basin is entitled under the compact. The act merely places limits on California's use of waters under Article III(a) and of surplus waters; and it is "such" uses which are "subject to the terms of said compact." Arizona v. California, 292 U.S. 341, 54 S. Ct. 735, 78 L. Ed. 1298 (1934).

There can be no claim that Article III(b) of the compact is relevant in defining surplus waters under § 4(a) of the Boulder Canyon Project Act, for both Arizona and California apparently consider the waters under Article III(b) as apportioned. Arizona v. California, 292 U.S. 341, 54 S. Ct. 735, 78 L. Ed. 1298 (1934).

Compact immaterial to contemplated litigation. — The meaning of the compact, considered merely as a contract, can never be material in contemplated litigation, since Arizona refused to ratify the compact. Arizona rests her rights wholly upon the acts of congress and of California. Although Arizona claims that California's construction of § 4(a) of the Boulder Canyon Project Act, 45 Stat. 1057, would allow the latter state water which under the compact has been assigned to Arizona, and that a conflict is thus raised between statute and compact which the suggested testimony is competent to resolve, resolution of this alleged conflict can never be material to any case based on the compact considered as contract, since Arizona neither has nor claims any contractual right. Arizona v. California, 292 U.S. 341, 54 S. Ct. 735, 78 L. Ed. 1298 (1934).

Apportionment of river between upper and lower basins. — By the compact entered into by defendant states and approved by congress, but to which Arizona is not a party, undepleted flow of water of Colorado river is apportioned between the upper basin and

the lower basin of the river valley, the point of division being Lee ferry, 23 miles below the southern boundary of Utah. To each basin there is apportioned 7,500,000 acre feet per annum and lower basin has additional right to increase its "beneficial consumptive use" of water by 1,000,000 feet per annum. Arizona v. California, 298 U.S. 558, 56 S. Ct. 848, 80 L. Ed. 1331 (1936).

Paragraph (a) of Article III of the compact apportions waters "from the Colorado river system," i.e., the Colorado and its tributaries, and (b) permits additional use "of such waters." The compact makes an apportionment only between the upper and lower basin, apportionment among states in each basin being left to later agreement. Arizona v. California, 292 U.S. 341, 54 S. Ct. 735, 78 L. Ed. 1298 (1934).

Provision of Article III(b) of the compact, like that of Article III(a) thereof, is entirely referable to the main intent of the compact, which was to apportion the waters as between the upper and lower basins. The effect of Article III(b) (at least in the event that the lower basin puts the 8,500,000 acre-feet of water to beneficial uses) is to preclude any claim by the upper basin that any part of the 7,500,000 acre-feet released at Lee ferry to the lower basin may be considered as "surplus" because of Arizona waters which are available to the lower basin alone. Arizona v. California, 292 U.S. 341, 54 S. Ct. 735, 78 L. Ed. 1298 (1934).

Apportionment among states in lower basin. — Fact that waters are solely useful to Arizona, or fact that they have been appropriated by her, does not contradict intent clearly expressed in Paragraph (b) of Article III of the compact (nor the rational character thereof) to apportion 1,000,000 acre-feet to states of the lower basin and not specifically to Arizona alone. Arizona v. California, 292 U.S. 341, 54 S. Ct. 735, 78 L. Ed. 1298 (1934).

Congress apparently expected that a complete apportionment of the waters among states of the lower basin would be made by the sub-compact it authorized Arizona, California and Nevada to make. Arizona v. California, 292 U.S. 341, 54 S. Ct. 735, 78 L. Ed. 1298 (1934).

Apportionment of the lower basin waters of the Colorado river is not controlled by either doctrine of equitable apportionment or by the compact. Arizona v. California, 373 U.S. 546, 83 S. Ct. 1468, 10 L. Ed. 2d 542, reh'g denied, 375 U.S. 892, 84 S. Ct. 144, 11 L. Ed. 2d 122 (1963).

Congress has provided its own method for allocating among lower basin states the mainstream water to which they are entitled under the compact. Where congress has so exercised its constitutional power over waters, courts have no power to substitute their own notions of "equitable apportionment" for apportionment chosen by congress. Arizona v. California, 373 U.S. 546, 83 S. Ct. 1468, 10 L. Ed. 2d 542, reh'g denied, 375 U.S. 892, 84 S. Ct. 144, 11 L. Ed. 2d 122 (1963).

Nothing in the compact purports to divide water among lower basin states nor in any way to affect or control any future apportionment among those states or any distribution of water within a state. Arizona v. California, 373 U.S. 546, 83 S. Ct. 1468, 10 L. Ed. 2d 542, reh'g denied, 375 U.S. 892, 84 S. Ct. 144, 11 L. Ed. 2d 122 (1963).

In Boulder Canyon Project Act, congress provides for apportionment among lower basin states of water allocated to that basin by the compact. Arizona v. California, 373 U.S. 546, 83 S. Ct. 1468, 10 L. Ed. 2d 542, reh'g denied, 375 U.S. 892, 84 S. Ct. 144, 11 L. Ed. 2d 122 (1963).

Arizona's ownership rights of portion of river. — On stretch of Colorado between Arizona and California, Arizona owns part of river bed that is east of the thread of the stream. Her jurisdiction in respect of apportionment, use and distribution of equitable share of waters flowing therein is unaffected by the compact or federal reclamation law. But title of the state is held subject to power granted to congress by the commerce clause, and under that clause congress has power to cause to be built a dam across the river in aid of navigation. United States v. Arizona, 295 U.S. 174, 55 S. Ct. 666, 79 L. Ed. 1371 (1935).

Law reviews. — For article, "A Survey of the Evolution of Western Water Law in Response to Changing Economic and Public Interest Demands," see 29 Nat. Resources J. 347 (1989).

For article, "Native American Water Rights: Efficiency and Fairness," see 29 Nat. Resources J. 763 (1989).

Am. Jur. 2d, A.L.R. and C.J.S. references. — 78 Am. Jur. 2d Waters §§ 87, 310.

93 C.J.S. Waters §§ 170, 183, 188.

72-15-6. [Notice of approval.]

Notice of the approval of said compact shall be given by the governor of New Mexico to the governors of each of the other signatory states and to the president of the United States, as provided in Article II (11) [Article XI] of said compact.

History: 1978 Comp., § 72-15-6, enacted by Laws 1923, ch. 6, § 2.

72-15-7. [Ratification and approval.]

The ratification and approval of said compact by this state shall not be binding or obligatory until it shall have been likewise approved by the legislatures of the other signatory states and by the congress of the United States.

History: 1978 Comp., § 72-15-7, enacted by Laws 1923, ch. 6, § 3.

72-15-8. [Colorado River Compact; modified.]

That the provisions of the first paragraph of Article XI of the Colorado River Compact [72-15-5 NMSA 1978], making said compact effective when it shall have been approved by the legislature of each of the signatory states, are hereby waived and said compact shall become binding and obligatory upon the state of New Mexico and upon the other signatory states, which have ratified or may hereafter ratify it, whenever at least six of the signatory states shall have consented thereto and the congress of the United States shall have given its consent and approval, provided, however, that this act [72-15-8, 72-15-9 NMSA 1978] shall be of no force or effect until a similar act or resolution shall have been passed or adopted by the legislature [legislatures] of the states of California, Nevada, Colorado, Utah and Wyoming.

History: 1978 Comp., § 72-15-8, enacted by Laws 1925, ch. 78, § 1.

ANNOTATIONS

Am. Jur. 2d, A.L.R. and C.J.S. references. — 93 C.J.S. Waters §§ 170, 183, 188.

72-15-9. [Certified copies.]

That certified copies of this act [72-15-8, 72-15-9 NMSA 1978] be forwarded by the governor of the state of New Mexico to the president of the United States, the secretary of state of the United States, and the governors of the states of Arizona, California, Nevada, Colorado, Utah and Wyoming.

History: 1978 Comp., § 72-15-9, enacted by Laws 1925, ch. 78, § 2.

72-15-10. [Costilla Creek Compact.]

The state of New Mexico does hereby ratify, approve and adopt the compact aforesaid, which is as follows:

COSTILLA CREEK COMPACT

Signed at Santa Fe, New Mexico, September 30, 1944

The state of Colorado and the state of New Mexico, parties signatory to this compact (hereinafter referred to as "Colorado" and "New Mexico," respectively, or individually as a "state," or collectively as the "states,") having resolved to conclude a compact with respect to the waters of Costilla creek, an interstate stream, having designated, pursuant to the acts of their respective legislatures and appointment by their respective governors, as their commissioners:

Clifford H. Stone, for Colorado

Thomas M. McClure, for New Mexico

who, after negotiations, have agreed upon these articles:

ARTICLE I

The major purposes of this compact [this section] are to provide for the equitable division and apportionment of the use of the waters of Costilla creek; to promote interstate comity; to remove causes of present and future interstate controversies; to assure the most efficient utilization of the waters of Costilla creek; to provide for the integrated operation of existing and prospective irrigation facilities on the stream in the two states; to adjust the conflicting jurisdictions of the two states over irrigation works and facilities diverting and storing water in one state for use in both states; to equalize the benefits of water from Costilla creek, used for the irrigation of contiguous lands lying on either side of the boundary, between the citizens and water users of one state and those of the other; and to place the beneficial application of water diverted from Costilla creek for irrigation by the water users of the two states on a common basis.

The physical and other conditions peculiar to the Costilla creek and its basin, and the nature and location of the irrigation development and the facilities in connection therewith, constitute the basis for this compact; and neither of the states hereby, nor the congress of the United States by its consent, concedes that this compact establishes any general principle or precedent with respect to any other interstate stream.

ARTICLE II

As used in this compact, the following names, terms and expressions are described, defined, applied and taken to mean as in this article set forth:

(a) "Costilla creek" is a tributary of the Rio Grande which rises on the west slope of the Sangre de Cristo range in the extreme southeastern corner of Costilla county in Colorado and flows in a general westerly direction crossing the boundary three times above its confluence with the Rio Grande in New Mexico;

(b) the "canyon mouth" is that point on Costilla creek in New Mexico where the stream leaves the mountains and emerges into the San Luis valley;

(c) the "Amalia area" is that irrigated area in New Mexico above the canyon mouth and below the Costilla reservoir which is served by decreed direct flow water rights;

(d) the "Costilla-Garcia area" is that area extending from the canyon mouth in New Mexico to a point in Colorado about four miles downstream from the boundary, being a compact body of irrigated land on either side of Costilla creek served by decreed direct flow water rights;

(e) the "Eastdale reservoir no. 1" is that off-channel reservoir located in Colorado in sections 7, 8 and 18, township 1 north, range 73 west, and sections 12 and 13, township 1 north, range 74 west of the Costilla Estates survey, with a nominal capacity of three thousand four hundred sixty-eight (3,468) acre-feet and a present usable capacity of two thousand (2,000) acre-feet;

(f) the "Eastdale reservoir no. 2" is that off-channel reservoir located in Colorado in sections 3, 4, 9 and 10, township 1 north, range 73 west, of the Costilla Estates survey, with a nominal capacity of three thousand forty-one (3,041) acre-feet;

(g) the "Costilla reservoir" is that channel reservoir, having a nominal capacity of fifteen thousand seven hundred (15,700) acre-feet, located in New Mexico near the headwaters of Costilla creek. The present usable capacity of the reservoir is eleven thousand (11,000) acre-feet, subject to future adjustment by the state engineer of New Mexico. The condition of Costilla dam may be such that the state engineer of New Mexico will not permit storage above a determined stage except for short periods of time;

(h) the "Cerro canal" is that irrigation canal which diverts water from the left bank of Costilla creek in New Mexico near the southwest corner of section 12, township 1 south, range 73 west, of the Costilla Estates survey, and runs in a northwesterly direction to the boundary near boundary monument no. 140;

(i) the "boundary" is the term used herein to describe the common boundary line between Colorado and New Mexico;

(j) the term "Costilla reservoir system" means and includes the Costilla reservoir and the Cerro canal, the permits for the storage of water in Costilla reservoir, the twenty-four and fifty-two hundredths (24.52) cubic feet per second of time of direct flow water rights transferred to the Cerro canal, and the permits for the diversion of direct flow water by the Cerro canal as adjusted herein to seventy-five and forty-eight hundredths (75.48) cubic feet per second of time;

(k) the term "Costilla reservoir system safe yield" means that quantity of usable water made available each year by the Costilla reservoir system. The safe yield represents the most beneficial operation of the Costilla reservoir system through the use, first, of the total usable portion of the yield of the twenty-four and fifty-two hundredths (24.52) cubic feet per second of time of direct flow rights transferred to the Cerro canal, second, of the total usable portion of the yield of the direct flow Cerro canal permits, and third, of that portion of the water stored in Costilla reservoir required to complete such safe yield;

(l) the term "usable capacity" is defined and means that capacity of Costilla reservoir at the stage above which the state engineer of New Mexico will not permit storage except for short periods of time;

(m) the term "temporary storage" is defined and means the water permitted by the state engineer of New Mexico to be stored in Costilla reservoir for short periods of time above the usable capacity of that reservoir;

(n) the term "additional storage facilities" is defined and means storage capacity which may be provided in either state to impound waters of Costilla creek and its tributaries in addition to the nominal capacity of Costilla reservoir and the Costilla creek complement of the Eastdale reservoir no. 1 capacity;

(o) the term "duty of water" is defined as the rate in cubic feet per second of time at which water may be diverted at the headgate to irrigate a specified acreage of land during the period of maximum requirement;

(p) the term "surplus water" is defined and means water which cannot be stored in operating reservoirs during the storage season or water during the irrigation season which cannot be stored in operating reservoirs and which is in excess of the aggregate direct flow rights and permits recognized by this compact;

(q) the term "irrigation season" is defined and means that period of each calendar year from May 16 to September 30, inclusive;

(r) the term "storage season" is defined and means that period of time extending from October 1 of one year to May 15 of the succeeding year, inclusive;

(s) the term "points of interstate delivery" means and includes:

(1) the Acequia Madre where it crosses the boundary;

(2) the Costilla creek where it crosses the boundary;

(3) the Cerro canal where it reaches the boundary; and

(4) any other interstate canals which might be constructed with the approval of the commission at the point or points where they cross the boundary;

(t) the term "water company" means the San Luis Power and Water Company, a Colorado corporation, or its successor;

(u) the word "commission" means the Costilla Creek Compact commission created by Article VIII of this compact for the administration thereof.

ARTICLE III

1. To accomplish the purposes of this compact, as set forth in Article I, the following adjustments in the operation of irrigation facilities on Costilla creek, and in the use of water diverted, stored and regulated thereby, are made:

(a) the quantity of water delivered for use in the two states by direct flow ditches in the Costilla-Garcia area and by the Cerro canal is based on a duty of water of one cubic foot per second of time for each eighty (80) acres, to be applied in the order of priority; provided, however, that this adjustment in each instance is based on the acreage as determined by the court in decreeing the water rights for the Costilla-Garcia area, and in the case of the Cerro canal such basis shall apply to eight thousand (8,000) acres of land; and provided further that, in order to maintain a usable head, any ditch supplying water for the Costilla-Garcia area in Colorado shall be permitted to divert for beneficial consumptive use not less than one cubic foot per second of time under its water right;

(b) there is transferred from certain ditches in the Costilla-Garcia area twenty-four and fifty-two hundredths (24.52) cubic feet per second of time of direct flow water rights, which rights of use are held by the water company or its successors in title, to the headgate of the Cerro canal. The twenty-four and fifty-two hundredths (24.52) cubic feet of water per second of time hereby transferred represents an evaluation of these rights after adjustment in the duty of water, pursuant to Subsection (a) of this article, and includes a reduction thereof to compensate for increased use of direct flow water which otherwise would have been possible under these rights by this transfer;

(c) except for the rights to store water from Costilla creek in Eastdale reservoir no. 1 as hereinafter provided, all diversion and storage rights from Costilla creek for Eastdale reservoirs no. 1 and no. 2 are relinquished and the water decreed thereunder is returned to the creek for use in accordance with the plan of integrated operation effectuated by this compact;

(d) the Cerro canal direct flow permit shall be seventy-five and forty-eight hundredths (75.48) cubic feet per second of time;

(e) there is transferred to and made available for the irrigation of lands in Colorado a portion of the Costilla reservoir complement of the Costilla reservoir system safe yield in order that the storage of water in that reservoir may be made for the benefit of water users in both Colorado and New Mexico under the provisions of this compact for the allocations of water and the operation of facilities.

2. Each state grants for the benefit of the other and its water users the rights to change the points of diversion of water from Costilla creek, to divert water from the stream in one state for use in the other and to store water in one state for the irrigation of lands in the other, insofar as the exercise of such rights may be necessary to effectuate the provisions of this article and to comply with the terms of this compact.

3. The water company has consented to and approved the adjustments contained in this article; and such consent and approval shall be evidenced in writing and filed with the commission.

ARTICLE IV

The apportionment and allocation of the use of Costilla creek water shall be as follows:

(a) there is allocated for diversion from the natural flow of Costilla creek and its tributaries sufficient water for beneficial use on meadow and pasture lands above Costilla reservoir in New Mexico to the extent and in the manner now prevailing in that area;

(b) there is allocated for diversion from the natural flow of Costilla creek and its tributaries thirteen and forty-two hundredths (13.42) cubic feet of water per second of time for beneficial use on lands in the Amalia area in New Mexico;

(c) in addition to allocations made in Subsections (c) [e], (f) and (g) of this article, there is allocated for diversion from the natural flow of Costilla creek fifty-one and forty-two hundredths (51.42) cubic feet of water per second of time for Colorado and eighty-eight and twenty-eight hundredths (88.28) cubic feet of water per second of time for New Mexico, subject to adjustment as provided in Article V (e), and such water shall be delivered for beneficial use in the two states in accordance with the schedules and under the conditions set forth in Article V;

(d) there is allocated for diversion from the natural flow of Costilla creek sufficient water to provide each year one thousand (1,000) acre-feet of stored water in Eastdale reservoir no. 1, such water to be delivered as provided in Article V;

(e) there is allocated for diversion to Colorado thirty-six and five-tenths percent (36.5%) and to New Mexico sixty-three and five-tenths percent (63.5%) of the water stored by Costilla reservoir for release therefrom for irrigation purposes each year, subject to adjustment as provided in Article V (e) and such water shall be delivered for beneficial use in the two states on a parity basis in accordance with the provisions of Article V. By "parity basis" is meant that neither state shall enjoy a priority of right of use;

(f) there is allocated for beneficial use in each of the states of Colorado and New Mexico one-half of the surplus water, as defined in Article II (p), to be delivered as provided in Article V;

(g) there is allocated for beneficial use in each of the states of Colorado and New Mexico one-half of any water made available and usable by additional storage facilities which may be constructed in the future.

ARTICLE V

The operation of the facilities of Costilla creek and the delivery of water for the irrigation of land in Colorado and New Mexico, in accordance with the allocations made in Article IV, shall be as follows:

(a) diversions of water for use on lands in the Amalia area shall be made as set forth in Article IV (b) in the order of decreed priorities in New Mexico and of relative priority dates in the two states, subject to the right of New Mexico to change the points of diversion and places of use of any of such water to other points of diversion and places of use; provided, however, that the rights so transferred shall be limited in each instance to the quantity of water actually consumed on the lands from which the right is transferred;

(b) deliveries to Colorado of direct flow water below the canyon mouth shall be made by New Mexico in accordance with the following schedule:

DELIVERIES OF DIRECT FLOW TO COLORADO DURING IRRIGATION SEASON

Usable discharge of creek at canyon mouth gaging station (C. F. S.)	Incremental allocations to Colorado (C. F. S.)		Point of interstate delivery	Cumulative allocations to Colorado (C. F. S.)	Remarks
(1)	(2a)	(2b)	(3)	(4)	(5)
25.00	6.55		Acequia Madre		When the usable discharge of the creek is less than 25.00 C. F. S., deliver to Colorado 26.20 percent of usable discharge adjusted for transmission losses.
	2.53		Cerro canal	9.08	When the usable discharge of the creek is less than 25.00 C. F. S.,

deliver to Colorado				
				10.13
percent of usable				
				discharge
adjusted for				
				transmissi
on losses.				
36.88	.38	Acequia Madre		When the
usable				
				discharge
of the creek				
				is in
excess of 25.38 C.				
				F. S. and
less than				
				36.88 C.
F. S., deliver				
				to
Colorado 3.26 percent				
				of usable
discharge				
				adjusted
for				
				transmissi
on losses.				
	4.04	Cerro canal	13.50	When the
usable				
				discharge
of the creek				
				is in
excess of 25.38 C.				
				F. S. and
less than				
				36.88 C.
F. S., deliver				
				to
Colorado 35.11				
				percent of
usable				
				discharge
adjusted for				
				transmissi
on losses.				
38.62	1.00	Creek	14.50	When the
usable				
				discharge
of the creek				

				is in excess of 37.62 C. less than F. S., deliver Colorado all of discharge for on losses.
44.91	2.24	Cerro canal	16.74	When the usable of the creek excess of 38.62 C. less than F. S., deliver Colorado 36.5 percent discharge for on losses.
50.91	6.00	Creek	22.74	When the usable of the creek excess of 44.91 C. less than F. S., deliver Colorado all of

is in F. S. and 38.62 C. to usable adjusted transmissi

discharge is in F. S. and 44.76 C. to of usable adjusted transmissi

discharge is in F. S. and 50.91 C. to usable

discharge adjusted for transmissi
on losses.
56.48 .13 Cerro canal 22.87 When the usable discharge of the creek is in excess of 55.35 C. F. S. and less than 56.48 C. F. S., deliver to Colorado 11.18 percent of usable discharge adjusted for transmissi
on losses.
61.48 1.00 Creek 23.87 When the usable discharge of the creek is in excess of 60.48 C. F. S. and less than 61.48 C. F. S., deliver to Colorado all of usable discharge adjusted for transmissi
on losses.
64.22 At usable creek discharge of 64.22 C. F. S. the Cerro canal

				direct flow permit
				becomes operative after
				1,000 acre-feet has been
				stored in Eastdale
				reservoir no. 1.
139.70	27.55	Cerro canal	51.42	When the usable
				discharge of the creek
				is in excess of 64.22 C.
				F. S. and less than
				139.70 C. F. S., deliver
				to Colorado 36.5 percent
				of usable discharge
				adjusted for
				transmissi on losses.

The actual discharges of Costilla creek at the canyon mouth gaging station at which the various blocks of direct flow water become effective shall equal the flows set forth in column (1) increased by the transmission losses necessary to deliver those flows to the headgates of the respective direct flow ditches.

The delivery of ditch water at the boundary shall equal the allocation set forth in column (2a) reduced by the transmission losses between the headgate of the ditch and the point where the ditch crosses the boundary. The allocations to be delivered to Colorado through the Cerro canal represent in each and all cases 36.5 percent of those blocks of direct flow water of the Costilla reservoir system which are subject to adjustment as provided in Subsection (e) of this article.

The delivery of water in the creek at the boundary shall equal the allocation set forth in column (2b) increased by the transmission losses between the boundary and the headgate of the Colorado ditch which is to receive the water.

The above table is compiled on the basis of the delivery to Colorado at the boundary of thirty-six and five-tenths percent (36.5%) of all direct flow water of the Costilla

reservoir system diverted by the Cerro canal and the delivery at the boundary of all other direct flow water allocated to Colorado, in the order of priority, all such deliveries to be adjusted for transmission losses. In the event of change in the usable capacity of the Costilla reservoir, Colorado's share of Cerro canal diversions, to be delivered at the boundary and adjusted for transmission losses, shall be determined by the percentages set forth in column (4) of the table which appears in Subsection (e) of this article;

(c) during the storage season, no water shall be diverted under direct flow rights unless there is water in excess of the demand of all operating reservoirs for water from Costilla creek for storage;

(d) in order to assure the most efficient utilization of the available water supply, the filling of Eastdale reservoir no. 1 from Costilla creek shall be commenced as early in the spring as possible and shall be completed as soon thereafter as possible. The Cerro canal or any other ditch which may be provided for that purpose shall be used, insofar as practicable, to convey the water from the canyon mouth to Eastdale reservoir no. 1. During any season when the commission determines that there will be no surplus water, any diversions, waste or spill from any canal or canals supplying Eastdale reservoir no. 1 will be charged to the quantity of water diverted for delivery to said reservoir;

(e) the commission shall estimate each year the safe yield of Costilla reservoir system and its component parts as far in advance of the irrigation season as possible, and shall review and revise such estimates from time to time as may be necessary.

In the event the usable capacity of the Costilla reservoir changes, the average safe yield and the equitable division thereof between the states shall be determined in accordance with the following table:

Usable capacity of Costilla reservoir (acre-feet)	Average annual safe yield (acre-feet)	Division of Safe Yield			
		Colorado		New Mexico	
		(acre-feet)	(percent)	(acre-feet)	(percent)
(1)	(2)	(3)	(4)	(5)	(6)
1,000	3,400	2,000	58.8	1,400	41.2
2,000	4,900	2,450	50.0	2,450	50.0
3,000	6,400	2,910	45.5	3,490	

54.5				
4,000	7,900	3,370	42.7	4,530
57.3				
5,000	9,300	3,800	40.9	5,500
59.1				
6,000	10,700	4,220	39.4	6,480
60.6				
7,000	12,000	4,620	38.5	7,380
61.5				
8,000	13,200	4,990	37.8	8,210
62.2				
9,000	14,300	5,320	37.2	8,980
62.8				
10,000	15,200	5,600	36.8	9,600
63.2				
11,000	16,000	5,840	36.5	10,160
63.5				
12,000	16,600	6,020	36.3	10,580
63.7				
13,000	17,000	6,140	36.1	10,860
63.9				
14,000	17,400	6,270	36.0	11,130
64.0				
15,000	17,700	6,360	35.9	11,340
64.1				
15,700	17,900	6,420	35.9	11,480
64.1				

Intermediate quantities shall be computed by proportionate parts.

In the event of change in the usable capacity of the Costilla reservoir, the Costilla reservoir complement of the Costilla reservoir system safe yield shall be divided between Colorado and New Mexico in accordance with the percentages given in columns 4 and 6, respectively, of the above table.

Each state may draw from the reservoir in accordance with the allocations made herein, up to its proportion of the Costilla reservoir complement of the Costilla reservoir system safe yield and its proportion of temporary storage and no more. Colorado may call for the delivery of its share thereof at any of the specified points of interstate delivery.

Deliveries of water from Costilla reservoir to the canyon mouth shall be adjusted for transmission losses, if any, between the two points. Deliveries to Colorado at the boundary shall be further adjusted for transmission losses from the canyon mouth to the respective points of interstate delivery.

Water stored in Costilla reservoir and not released during the current season shall not be held over to the credit of either state but shall be apportioned when the safe yield is subsequently determined;

(f) the Colorado apportionment of surplus water, as allocated in Article IV (f), shall be delivered by New Mexico at such points of interstate delivery and in the respective quantities, subject to transmission losses, requested by the Colorado member of the commission;

(g) in the event that additional water becomes usable by the construction of additional storage facilities, such water shall be made available to each state in accordance with rules and regulations to be prescribed by the commission;

(h) when it appears to the commission that any part of the water allocated to one state for use in a particular year will not be used by that state, the commission may permit its use by the other state during that year, provided that a permanent right to the use of such water shall not thereby be established.

ARTICLE VI

The desirability of consolidating various of the direct flow ditches serving the Costilla-Garcia area, which are now or which would become interstate in character by consolidation, and diverting the water available to such ditches through a common headgate is recognized. Should the owners of any of such ditches, or a combination of them, desire to effectuate a consolidation and provide for a common headgate diversion, application therefor shall be made to the commission which, after review of the plans submitted, may grant permission to make such consolidation.

ARTICLE VII

The commission shall cause to be maintained and operated a stream-gaging station, equipped with an automatic water-stage recorder, at each of the following points, to wit:

(a) on Costilla creek immediately below Costilla reservoir;

(b) on Costilla creek at or near the canyon mouth above the headgate of Cerro canal and below the Amalia area;

(c) on Costilla creek at or near the boundary;

(d) on the Cerro canal immediately below its headgate;

(e) on the Cerro canal at or near the boundary;

(f) on the intake from Costilla creek to the Eastdale reservoir no. 1, immediately above the point where the intake discharges into the reservoir;

(g) on the Acequia Madre immediately below its headgate;

(h) on the Acequia Madre at the boundary;

(i) similar gaging stations shall be maintained and operated at such other points as may be necessary in the discretion of the commission for the securing of records required for the carrying out of the provisions of the compact.

Such gaging stations shall be equipped, maintained and operated by the commission directly or in cooperation with an appropriate federal or state agency, and the equipment, method and frequency of measurement at such stations shall be such as to produce reliable records at all times.

ARTICLE VIII

The two states shall administer this compact [this section] through the official in each state who is now or may hereafter be charged with the duty of administering the public water supplies, and such officials shall constitute the Costilla Creek Compact commission. In addition to the powers and duties hereinbefore specifically conferred upon such commission, the commission shall collect and correlate factual data and maintain records having a bearing upon the administration of this compact. In connection therewith, the commission may employ such engineering and other assistance as may be reasonably necessary within the limits of funds provided for that purpose by the states. The commission may, by unanimous action, adopt rules and regulations consistent with the provisions of this compact to govern its proceedings. The salaries and expenses of the members of the commission shall be paid by their respective states. Other expenses incident to the administration of the compact, including the employment of engineering or other assistance and the establishment and maintenance of compact gaging stations, not borne by the United States shall be assumed equally by the two states and paid directly to the commission upon vouchers submitted for that purpose.

The United States geological survey, or whatever federal agency may succeed to the functions and duties of that agency, shall collaborate with the commission in the correlation and publication of water facts necessary for the proper administration of this compact.

ARTICLE IX

This compact shall become operative when ratified by the legislatures of each of the signatory states and consented to by the congress of the United States.

In witness whereof, the commissioners have signed this compact in triplicate original, one copy of which shall be deposited in the archives of the department of state of the United States of America, and one copy of which shall be forwarded to the governor of each of the signatory states.

Done in the city of Santa Fe, New Mexico, on the 30th day of September, in the year of Our Lord, one thousand nine hundred and forty-four.

CLIFFORD H. STONE, Commissioner for Colorado

THOMAS M. McCLURE, Commissioner for New Mexico

History: 1978 Comp., § 72-15-10, enacted by Laws 1945, ch. 51, § 1.

ANNOTATIONS

Cross references. — For amended Costilla Creek Compact, see 72-15-13 NMSA 1978 et seq.

Compiler's notes. — The Costilla Creek Compact was ratified by Colorado by Laws 1945, ch. 104, and was approved by congress by Act of June 11, 1946, ch. 328, 60 Stat. 246.

Indispensable parties to injunction. — New Mexico claimants of water rights below Costilla reservoir were necessary and indispensable parties to action by state engineer to enjoin New Mexico defendant from diversion or use of water of Costilla creek in Taos county for irrigation and other purposes, but state of Colorado or water users in Colorado were not indispensable parties. State ex rel. Reynolds v. W.S. Ranch Co., 69 N.M. 169, 364 P.2d 1036 (1961).

Am. Jur. 2d, A.L.R. and C.J.S. references. — 78 Am. Jur. 2d Waters §§ 87, 310.

93 C.J.S. Waters §§ 170, 183, 188.

72-15-11. [Notice of approval.]

Notice of approval of said compact shall be given by the governor of New Mexico to the governor of Colorado as provided in Article IX of said compact.

History: 1978 Comp., § 72-15-11, enacted by Laws 1945, ch. 51, § 2.

72-15-12. [Ratification and approval.]

The ratification and approval of said compact by this state shall not be binding or obligatory until it shall have been likewise approved by the legislature of the state of Colorado and by the congress of the United States.

History: 1978 Comp., § 72-15-12, enacted by Laws 1945, ch. 51, § 3.

ANNOTATIONS

Date of ratification. — Costilla Creek Water Compact between New Mexico and Colorado, of which the supreme court takes notice, was duly entered into and ratified by the two states and approved by the congress of the United States on July 11, 1946. State ex rel. Reynolds v. W.S. Ranch Co., 69 N.M. 169, 364 P.2d 1036 (1961).

72-15-13. [Amended Costilla Creek Compact.]

The state of New Mexico does hereby ratify, approve and adopt the Amended Costilla Creek Compact, amending the Costilla Creek Compact ratified and approved by this legislature by the Laws of 1945, Chapter 51, which is as follows:

AMENDED COSTILLA CREEK COMPACT

The state of Colorado and the state of New Mexico, parties signatory to this compact (hereinafter referred to as "Colorado" and "New Mexico," respectively, or individually as a "state," or collectively as the "states"), having on September 30, 1944, concluded, through their duly authorized commissioners, to wit: Clifford H. Stone for Colorado and Thomas M. McClure for New Mexico, a compact with respect to the waters of Costilla creek, an interstate stream, which compact was ratified by the states in 1945 and was approved by the congress of the United States in 1946; and

The states, having resolved to conclude an amended compact with respect to the waters of Costilla creek, have designated, pursuant to the acts of their respective legislatures and through their appropriate executive agencies, as their commissioners:

J. E. Whitten, for Colorado

S. E. Reynolds, for New Mexico

who, after negotiations, have agreed upon these articles:

ARTICLE I

The major purposes of this compact [this section] are to provide for the equitable division and apportionment of the use of the waters of Costilla creek; to promote interstate comity; to remove causes of present and future interstate controversies; to assure the most efficient utilization of the waters of Costilla creek; to provide for the integrated operation of existing and prospective irrigation facilities on the stream in the two states; to adjust the conflicting jurisdictions of the two states over irrigation works and facilities diverting and storing water in one state for use in both states; to equalize the benefits of water from Costilla creek, used for the irrigation of contiguous lands lying on either side of the boundary, between the citizens and water users of one state and

those of the other; and to place the beneficial application of water diverted from Costilla creek for irrigation by the water users of the two states on a common basis.

The physical and other conditions peculiar to the Costilla creek and its basin, and the nature and location of the irrigation development and the facilities in connection therewith, constitute the basis for this compact; and neither of the states hereby, nor the congress of the United States by its consent, concedes that this compact establishes any general principle or precedent with respect to any other interstate stream.

ARTICLE II

As used in this compact, the following names, terms and expressions are described, defined, applied and taken to mean as in this article set forth:

(a) "Costilla creek" is a tributary of the Rio Grande which rises on the west slope of the Sangre de Cristo range in the extreme southeastern corner of Costilla county in Colorado and flows in a general westerly direction crossing the boundary three times above its confluence with the Rio Grande in New Mexico;

(b) the "canyon mouth" is that point on Costilla creek in New Mexico where the stream leaves the mountains and emerges into the San Luis valley;

(c) the "Amalia area" is that irrigated area in New Mexico above the canyon mouth and below the Costilla reservoir which is served by decreed direct flow water rights;

(d) the "Costilla-Garcia area" is that area extending from the canyon mouth in New Mexico to a point in Colorado about four miles downstream from the boundary, being a compact body of irrigated land on either side of Costilla creek served by decreed direct flow water rights;

(e) the "Eastdale reservoir no. 1" is that off-channel reservoir located in Colorado in sections 7, 8 and 18, township 1 north, range 73 west, and sections 12 and 13, township 1 north, range 74 west, of the Costilla Estates survey, with a nominal capacity of three thousand four hundred sixty-eight (3,468) acre-feet and a present usable capacity of two thousand (2,000) acre-feet;

(f) the "Eastdale reservoir no. 2" is that off-channel reservoir located in Colorado in sections 3, 4, 9 and 10, township 1 north, range 73 west, of the Costilla Estates survey, with a nominal capacity of three thousand forty-one (3,041) acre-feet;

(g) the "Costilla reservoir" is that channel reservoir, having a nominal capacity of fifteen thousand seven hundred (15,700) acre-feet, locatted [located] in New Mexico near the headwaters of Costilla creek. The present usable capacity of the reservoir is eleven thousand (11,000) acre-feet, subject to future adjustment by the state engineer of New Mexico. The condition of Costilla dam may be such that the state

engineer of New Mexico will not permit storage above a determined stage except for short periods of time;

(h) the "Cerro canal" is that irrigation canal which diverts water from the left bank of Costilla creek in New Mexico near the southwest corner of section 12, township 1 south, range 73 west, of the Costilla Estates survey, and runs in a northwesterly direction to the boundary near boundary monument no. 140;

(i) the "boundary" is the term used herein to describe the common boundary line between Colorado and New Mexico;

(j) the term "Costilla reservoir system" means and includes the Costilla reservoir and the Cerro canal, the permits for the storage of water in Costilla reservoir, the twenty-four and fifty-two hundredths (24.52) cubic feet per second of time of direct flow water rights transferred to the Cerro canal, and the permits for the diversion of direct flow water by the Cerro canal as adjusted herein to seventy-five and forty-eight hundredths (75.48) cubic feet per second of time;

(k) the term "Costilla reservoir system safe yield" means that quantity of usable water made available each year by the Costilla reservoir system. The safe yield represents the most beneficial operation of the Costilla reservoir system through the use, first, of the total usable portion of the yield of the twenty-four and fifty-two hundredths (24.52) cubic feet per second of time of direct flow rights transferred to the Cerro canal, second, of the total usable portion of the yield of the direct flow Cerro canal permits, and third, of that portion of the water stored in Costilla reservoir required to complete such safe yield;

(l) the term "usable capacity" is defined and means that capacity of Costilla reservoir at the stage above which the state engineer of New Mexico will not permit storage except for short periods of time;

(m) the term "temporary storage" is defined and means the water permitted by the state engineer of New Mexico to be stored in Costilla reservoir for short periods of time above the usable capacity of that reservoir;

(n) the term "additional storage facilities" is defined and means storage capacity which may be provided in either state to impound waters of Costilla creek and its tributaries in addition to the nominal capacity of Costilla reservoir and the Costilla creek complement of the Eastdale reservoir no. 1 capacity;

(o) the term "duty of water" is defined as the rate in cubic feet per second of time at which water may be diverted at the headgate to irrigate a specified acreage of land during the period of maximum requirement;

(p) the term "surplus water" is defined and means water which cannot be stored in operating reservoirs during the storage season or water during the irrigation

season which cannot be stored in operating reservoirs and which is in excess of the aggregate direct flow rights and permits recognized by this compact;

(q) the term "irrigation season" is defined and means that period of each calendar year from May 16 to September 30, inclusive;

(r) the term "storage season" is defined and means that period of time extending from October 1 of one year to May 15 of the succeeding year, inclusive;

(s) the term "points of interstate delivery" means and includes:

(1) the Acequia Madre where it crosses the boundary;

(2) the Costilla creek where it crosses the boundary;

(3) the Cerro canal where it reaches the boundary; and

(4) any other interstate canals which might be constructed with the approval of the commission at the point or points where they cross the boundary;

(t) the term "water company" means the San Luis Power and Water Company, a Colorado corporation, or its successor;

(u) the word "commission" means the Costilla Creek Compact commission created by Article VIII of this compact for the administration thereof.

ARTICLE III

1. To accomplish the purposes of this compact, as set forth in Article I, the following adjustments in the operation of irrigation facilities on Costilla creek, and in the use of water diverted, stored and regulated thereby, are made:

(a) the quantity of water delivered for use in the two states by direct flow ditches in the Costilla-Garcia area and by the Cerro canal is based on a duty of water of one cubic foot per second of time for each eighty (80) acres, to be applied in the order of priority; provided, however, that this adjustment in each instance is based on the acreage as determined by the court in decreeing the water rights for the Costilla-Garcia area, and in the case of Cerro canal such basis shall apply to eight thousand (8,000) acres of land. In order to better maintain a usable head for the diversion of water for beneficial consumptive use the adjusted maximum diversion rate under the water right of each of the ditches supplying water for the Costilla-Garcia area in Colorado is not less than one cubic foot per second of time;

(b) there is transferred from certain ditches in the Costilla-Garcia area twenty-four and fifty-two hundredths (24.52) cubic feet per second of time of direct flow water rights, which rights of use are held by the water company or its successors in title,

to the headgate of the Cerro canal. The twenty-four and fifty-two hundredths (24.52) cubic feet of water per second of time hereby transferred represents an evaluation of these rights after adjustment in the duty of water, pursuant to Subsection (a) of this article, and includes a reduction thereof to compensate for increased use of direct flow water which otherwise would have been possible under these rights by this transfer;

(c) except for the rights to store water from Costilla creek in Eastdale reservoir no. 1 as hereinafter provided, all diversion and storage rights from Costilla creek for Eastdale reservoirs no. 1 and no. 2 are relinquished and the water decreed thereunder is returned to the creek for use in accordance with the plan of integrated operation effectuated by this compact;

(d) the Cerro canal direct flow permit shall be seventy-five and forty-eight hundredths (75.48) cubic feet per second of time;

(e) there is transferred to and made available for the irrigation of lands in Colorado a portion of the Costilla reservoir complement of the Costilla reservoir system safe yield in order that the storage of water in that reservoir may be made for the benefit of water users in both Colorado and New Mexico under the provisions of this compact for the allocations of water and the operation of facilities.

2. Each state grants for the benefit of the other and its water users the rights to change the points of diversion of water from Costilla creek, to divert water from the stream in one state for use in the other and to store water in one state for the irrigation of lands in the other, insofar as the exercise of such rights may be necessary to effectuate the provisions of this article and to comply with the terms of this compact.

3. The water company has consented to and approved the adjustments contained in this article; and such consent and approval shall be evidenced in writing and filed with the commission.

ARTICLE IV

The apportionment and allocation of the use of Costilla creek water shall be as follows:

(a) there is allocated for diversion from the natural flow of Costilla creek and its tributaries sufficient water for beneficial use on meadow and pasture lands above Costilla reservoir in New Mexico to the extent and in the manner now prevailing in that area;

(b) there is allocated for diversion from the natural flow of Costilla creek and its tributaries thirteen and forty-two hundredths (13.42) cubic feet of water per second of time for beneficial use on lands in the Amalia area in New Mexico;

(c) in addition to allocations made in Subsections (e), (f) and (g) of this article, there is allocated for diversion from the natural flow of Costilla creek fifty and sixty-two hundredths (50.62) cubic feet of water per second of time for Colorado and eighty-nine and eight hundredths (89.08) cubic feet of water per second of time for New Mexico, subject to adjustment as provided in Article V (e), and such water shall be delivered for beneficial use in the two states in accordance with the schedules and under the conditions set forth in Article V;

(d) there is allocated for diversion from the natural flow of Costilla creek sufficient water to provide each year one thousand (1,000) acre-feet of stored water in Eastdale reservoir no. 1, such water to be delivered as provided in Article V;

(e) there is allocated for diversion to Colorado thirty-six and five-tenths percent (36.5%) and to New Mexico sixty-three and five-tenths percent (63.5%) of the water stored by Costilla reservoir for release therefrom for irrigation purposes each year, subject to adjustment as provided in Article V (e) and such water shall be delivered for beneficial use in the two states on a parity basis in accordance with the provisions of Article V. By "parity basis" is meant that neither state shall enjoy a priority of right of use;

(f) there is allocated for beneficial use in each of the states of Colorado and New Mexico one-half of the surplus water, as defined in Article II (p), to be delivered as provided in Article V;

(g) there is allocated for beneficial use in each of the states of Colorado and New Mexico one-half of any water made available and usable by additional storage facilities which may be constructed in the future.

ARTICLE V

The operation of the facilities of Costilla creek and the delivery of water for the irrigation of land in Colorado and New Mexico, in accordance with the allocations made in Article IV, shall be as follows:

(a) diversions of water for use on lands in the Amalia area shall be made as set forth in Article IV (b) in the order of decreed priorities in New Mexico and of relative priority dates in the two states, subject to the right of New Mexico to change the points of diversion and places of use of any of such water to other points of diversion and places of use; provided, however, that the rights so transferred shall be limited in each instance to the quantity of water actually consumed on the lands from which the right is transferred;

(b) deliveries to Colorado of direct flow water below the canyon mouth shall be made by New Mexico in acocrdance [accordance] with the following schedule:

DELIVERIES OF DIRECT FLOW TO COLORADO DURING IRRIGATION SEASON

Usable discharge of creek at canyon mouth gaging station (C. F. S.)	Incremental allocations to Colorado (C. F. S.)	Point of interstate delivery	Cumulative allocations to Colorado (C. F. S.)	Remarks
(1)	(2a) (2b)	(3)	(4)	(5)
25.00	1.05	Acequia Madre		Incremental allocation is 4.2% of the usable discharge when usable discharge is less than 25.00 C.F.S.
	2.53	Cerro canal		Incremental allocation is 10.13% of the usable discharge when usable discharge is less than 25.00 C.F.S.
	4.70	Cerro canal	8.28	This 4.70 C.F.S. is not a part of the Colorado allocation of the direct flow water of the Costilla reservoir system and is not

adjustment in			subject to
of a change in			the event
capacity of			the usable
reservoir.			Costilla
l allocation			Incrementa
of the usable			is 18.8%
when usable			discharge
is less than			discharge
C.F.S. This 4.70			25.00
allocated to			C.F.S.
for delivery			Colorado
the Cerro canal			through
C.F.S. of the			is 5.50
6.55 C.F.S.			original
[allocated] to			allcoated
for delivery			Colorado
the Acequia			through
0.8 C.F.S.			Madre less
for losses.			correction
36.88	.38	Cerro canal	This 0.38
C.F.S. is not			
the Colorado			a part of
of the direct			allocation
of the			flow water
			Costilla

reservoir
system
[and is not
subject to
adjustment in
the event]
of a change
in the
usable capacity
of
Costilla reservoir.
Incrementa
l allocation
is 3.26%
of the usable
discharge
in excess of
25.38
C.F.S. and less
than 36.88
C.F.S.
4.04 Cerro canal 12.70
Incremental allocation
is 35.11%
of the usable
discharge
in excess of
25.38
C.F.S. and less
than 36.88
C.F.S.
38.62 1.00 Creek 13.70
Incremental allocation
is 100% of
the usable
discharge
in excess of
37.62
C.F.S. and less
than 38.62
C.F.S.

44.76 2.24 Cerro canal 15.94
Incremental allocation
is 36.5%
of the usable

discharge in excess of 38.62 C.F.S. and less than 44.76 C.F.S.

50.91 6.00 Creek 21.94 Incremental allocation is 100% of the usable discharge in excess of 44.91 C.F.S. and less than 50.91 C.F.S.

56.48 .13 Cerro canal 22.07 Incremental allocation is 11.18% of the usable discharge in excess of 55.35 C.F.S. and less than 56.48 C.F.S.

61.48 1.00 Creek 23.07 Incremental allocation is 100% of the usable discharge in excess of 60.48 C.F.S. and less than 61.48 C.F.S.

64.22 At usable creek discharge of 64.22 C.F.S. the Cerro canal direct flow permit becomes operative after 1,000

acre-feet has been stored in Eastdale reservoir no. 1.				
139.70	27.55	Cerro canal	50.62	Incremental allocation is 36.5% of the usable discharge in excess of 64.22 C.F.S. and less than 139.70 C.F.S.

The actual discharges of Costilla creek at the canyon mouth gaging station at which the various blocks of direct flow water become effective shall equal the flow set forth in column (1) increased by the transmission losses necessary to deliver those flows to the headgates of the respective direct flow ditches diverting in New Mexico.

The delivery of ditch water at the boundary shall equal the allocation set forth in columns (2A) and (2B) reduced by the transmission losses between the headgate of the ditch and the point where the ditch crosses the boundary. The allocations to be delivered to Colorado through the Cerro canal represent, except as otherwise indicated in column (5) of the table above, 36.5 percent of those blocks of direct flow water of the Costilla reservoir system which are subject to adjustment as provided in Subsection (e) of this article.

The provisions of Article III 1.(a) shall not be applicable to the Colorado allocation of 5.08 C.F.S. which is transferred from the Acequia Madre to the Cerro canal by this amendment to the Costilla Creek Compact and shall not be applicable to the 0.8 C.F.S. which is transferred from Colorado to New Mexico by this amendment to the Costilla Creek Compact.

The above table is compiled on the basis of the delivery to Colorado at the boundary of thirty-six and five-tenths percent (36.5%) of all direct flow water of the Costilla reservoir system diverted by the Cerro canal and the delivery at the boundary of all other direct flow water allocated to Colorado, in the order of priority, all such deliveries to be adjusted for transmission losses. In the event of change in the usable capacity of the Costilla reservoir, Colorado's share of all direct flow water of the Costilla reservoir system diverted by the Cerro canal, to be delivered at the boundary and adjusted for transmission losses, shall be determined by the percentages set forth in column (4) of the table which appears in Subsection (e) of this article;

(c) during the storage season, no water shall be diverted under direct flow rights unless there is water in excess of the demand of all operating reservoirs for water from Costilla creek for storage;

(d) in order to assure the most efficient utilization of the available water supply, the filling of Eastdale reservoir no. 1 from Costilla creek shall be commenced as early in the spring as possible and shall be completed as soon thereafter as possible. The Cerro canal or any other ditch which may be provided for that purpose shall be used, insofar as practicable, to convey the water from the canyon mouth to Eastdale reservoir no. 1. During any season when the commission determines that there will be no surplus water, any diversions, waste or spill from any canal or canals supplying Eastdale reservoir no. 1 will be charged to the quantity of water diverted for delivery to said reservoir;

(e) the commission shall estimate each year the safe yield of Costilla reservoir system and its component parts as far in advance of the irrigation season as possible, and shall review and revise such estimates from time to time as may be necessary.

In the event the usable capacity of the Costilla reservoir changes, the average safe yield and the equitable division thereof between the states shall be determined in accordance with the following table:

Usable capacity of Costilla reservoir (acre-feet)	Average annual safe yield (acre-feet)	Division of Safe Yield			
		Colorado		New Mexico	
		(acre-feet)	(percent)	(acre-feet)	(percent)
(1)	(2)	(3)	(4)	(5)	(6)
0	1,800	1,510	83.9	290	16.1
1,000	3,400	2,000	58.8	1,400	41.2
2,000	4,900	2,450	50.0	2,450	50.0
3,000	6,400	2,910	45.5	3,490	54.5
4,000	7,900	3,370	42.7	4,530	57.3
5,000	9,300	3,800	40.9	5,500	59.1

6,000	10,700	4,220	39.4	6,480
60.6				
7,000	12,000	4,620	38.5	7,380
61.5				
8,000	13,200	4,990	37.8	8,210
62.2				
9,000	14,300	5,320	37.2	8,980
62.8				
10,000	15,200	5,600	36.8	9,600
63.2				
11,000	16,000	5,840	36.5	10,160
63.5				
12,000	16,600	6,020	36.3	10,580
63.7				
13,000	17,000	6,140	36.1	10,860
63.9				
14,000	17,400	6,270	36.0	11,130
64.0				
15,000	17,700	6,360	35.9	11,340
64.1				
15,700	17,900	6,420	35.9	11,480
64.1				

Intermediate quantities shall be computed by proportionate parts.

In the event of change in the usable capacity of the Costilla reservoir, the Costilla reservoir complement of the Costilla reservoir system safe yield shall be divided between Colorado and New Mexico in accordance with the percentages given in columns 4 and 6, respectively, of the above table.

Each state may draw from the reservoir in accordance with the allocations made herein, up to its proportion of the Costilla reservoir complement of the Costilla reservoir system safe yield and its proportion of temporary storage and no more. Colorado may call for the delivery of its share thereof at any of the specified points of interstate delivery.

Deliveries of water from Costilla reservoir to the canyon mouth shall be adjusted for transmission losses, if any, between the two points. Deliveries to Colorado at the boundary shall be further adjusted for transmission losses from the canyon mouth to the respective points of interstate delivery.

Water stored in Costilla reservoir and not released during the current season shall not be held over to the credit of either state but shall be apportioned when the safe yield is subsequently determined;

(f) the Colorado apportionment of surplus water, as allocated in Article IV (f), shall be delivered by New Mexico at such points of interstate delivery and in the

respective quantities, subject to transmission losses, requested by the Colorado member of the commission;

(g) in the event that additional water becomes usable by the construction of additional storage facilities, such water shall be made available to each state in accordance with rules and regulations to be prescribed by the commission;

(h) when it appears to the commission that any part of the water allocated to one state for use in a particular year will not be used by that state, the commission may permit its use by the other state during that year, provided that a permanent right to the use of such water shall not thereby be established.

ARTICLE VI

The desirability of consolidating various of the direct flow ditches serving the Costilla-Garcia area, which are now or which would become interstate in character by consolidation, and diverting the water available to such ditches through a common headgate is recognized. Should the owners of any of such ditches, or a combination of them, desire to effectuate a consolidation and provide for a common headgate diversion, application therefor shall be made to the commission which, after review of the plans submitted, may grant permission to make such consolidation.

ARTICLE VII

The commission shall cause to be maintained and operated a stream-gaging station, equipped with an automatic water-stage recorder, at each of the following points, to wit:

(a) on Costilla creek immediately below Costilla reservoir;

(b) on Costilla creek at or near the canyon mouth above the headgate of Cerro canal and below the Amalia area;

(c) on Costilla creek at or near the boundary;

(d) on the Cerro canal immediately below its headgate;

(e) on the Cerro canal at or near the boundary;

(f) on the intake from Costilla creek to the Eastdale reservoir no. 1, immediately above the point where the intake discharges into the reservoir;

(g) on the Acequia Madre immediately below its headgate;

(h) on the Acequia Madre at the boundary;

(i) similar gaging stations shall be maintained and operated at such other points as may be necessary in the discretion of the commission for the securing of records required for the carrying out of the provisions of the compact.

Such gaging stations shall be equipped, maintained and operated by the commission directly or in cooperation with an appropriate federal or state agency, and the equipment, method and frequency of measurement at such stations shall be such as to produce reliable records at all times.

ARTICLE VIII

The two states shall administer this compact [this section] through the official in each state who is now or may hereafter be charged with the duty of administering the public water supplies, and such officials shall constitute the Costilla Creek Compact commission. In addition to the powers and duties hereinbefore specifically conferred upon such commission, the commission shall collect and correlate factual data and maintain records having a bearing upon the administration of this compact. In connection therewith, the commission may employ such engineering and other assistance as may be reasonably necessary within the limits of funds provided for that purpose by the states. The commission may, by unanimous action, adopt rules and regulations consistent with the provisions of this compact to govern its proceedings. The salaries and expenses of the members of the commission shall be paid by their respective states. Other expenses incident to the administration of the compact, including the employment of engineering or other assistance and the establishment and maintenance of compact gaging stations, not borne by the United States shall be assumed equally by the two states and paid directly to the commission upon vouchers submitted for that purpose.

The United States geological survey, or whatever federal agency may succeed to the functions and duties of that agency, shall collaborate with the commission in the correlation and publication of water facts necessary for the proper administration of this compact.

ARTICLE IX

This amended compact shall become operative when ratified by the legislatures of the signatory states and consented to by the congress of the United States; provided, that, except as changed herein, the provisions, terms, conditions and obligations of the Costilla Creek Compact executed on September 30, 1944, continue in full force and effect.

In witness whereof, the commissioners have signed this compact in triplicate original, one copy of which shall be deposited in the archives of the department of state of the United States of America, and one copy of which shall be forwarded to the governor of each of the signatory states.

Done in the city of Santa Fe, New Mexico, on the 7th day of February, in the year of our Lord, one thousand nine hundred and sixty-three.

J. E. Whitten Commissioner for Colorado

S. E. Reynolds Commissioner for New Mexico

History: 1978 Comp., § 72-15-13, enacted by Laws 1963, ch. 256, § 1.

ANNOTATIONS

Compiler's notes. — Congress approved the Amended Costilla Creek Compact by Act of December 12, 1963, P.L. 88-198, 77 Stat. 350.

Am. Jur. 2d, A.L.R. and C.J.S. references. — 78 Am. Jur. 2d Waters §§ 87, 310.

93 C.J.S. Waters §§ 170, 183, 188.

72-15-14. [Notice of approval.]

Notice of approval of the Amended Costilla Creek Compact shall be given by the governor of New Mexico to the governor of Colorado and to the president of the United States of America.

History: 1978 Comp., § 72-15-14, enacted by Laws 1963, ch. 256, § 2.

72-15-15. [Ratification and approval.]

The ratification, approval and adoption of the Amended Costilla Creek Compact by this state shall not be binding or obligatory until it shall be likewise approved by the legislature of the state of Colorado and by the congress of the United States.

History: 1978 Comp., § 72-15-15, enacted by Laws 1963, ch. 256, § 3.

72-15-16. [La Plata River Compact.]

The state of New Mexico does hereby ratify, approve and adopt the compact aforesaid which is as follows:

LA PLATA RIVER COMPACT

The state of Colorado and the state of New Mexico, desiring to provide for the equitable distribution of the waters of the La Plata river, and to remove all causes of present and future controversy between them with respect thereto and being moved by considerations of interstate comity, pursuant to acts of their respective legislatures, have resolved to conclude a compact for these purposes and have named as their commissioners:

Delph E. Carpenter, for the state of Colorado; and

Stephen B. Davis, Jr., for the state of New Mexico;

who have agreed upon the following articles:

ARTICLE I

The state of Colorado, at its own expense, shall establish and maintain two permanent stream-gaging stations upon the La Plata river for the purpose of measuring and recording its flow, which shall be known as the Hesperus station and the Interstate station, respectively.

The Hesperus station shall be located at some convenient place near the village of Hesperus, Colorado. Suitable devices for ascertaining and recording the volume of all diversions from the river above Hesperus station, shall be established and maintained (without expense to the state of New Mexico), and whenever in this compact [this section] reference is made to the flow of the river at Hesperus station, it shall be construed to include the amount of the concurrent diversions above said station.

The Interstate station shall be located at some convenient place within one mile of, and above or below, the interstate line. Suitable devices for ascertaining and recording the volume of water diverted by the Enterprise and Pioneer canals, now serving approximately equal areas in both states, shall be established and maintained (without expense to the state of New Mexico), and whenever in this compact reference is made to the flow of the river at the Interstate station, it shall be construed to include one-half the volume of the concurrent diversions by such canals, and also the volume of any other water which may hereafter be diverted from said river in Colorado for use in New Mexico.

Each of said stations shall be equipped with suitable devices for recording the flow of water in said river at all times between the 15th day of February and the 1st day of December of each year. The state engineers of the signatory states shall make provision for cooperative gaging at the two stations, for the details of the operation, exchange of records and data, and publication of the facts.

ARTICLE II

The waters of the La Plata river are hereby equitably apportioned between the signatory states, including the citizens thereof, as follows:

1. at all times between the 1st day of December and the 15th day of the succeeding February, each state shall have the unrestricted right to the use of all water which may flow within its boundaries;

2. by reason of the usual annual rise and fall, the flow of said river between the 15th day of February and the 1st day of December of each year, shall be apportioned between the states in the following manner:

(a) each state shall have the unrestricted right to use all the waters within its boundaries on each day when the mean daily flow at the Interstate station is one hundred cubic feet per second, or more;

(b) on all other days the state of Colorado shall deliver at the Interstate station a quantity of water equivalent to one-half of the mean flow at the Hesperus station for the preceding day, but not to exceed one hundred cubic feet per second;

3. whenever the flow of the river is so low that in the judgment of the state engineers of the states, the greatest beneficial use of its waters may be secured by distributing all of its waters successively to the lands in each state in alternating periods, in lieu of delivery of water as provided in the second paragraph of this article, the use of the waters may be so rotated between the two states in such manner, for such periods, and to continue for such time as the state engineers may jointly determine;

4. the state of New Mexico shall not at any time be entitled to receive nor shall the state of Colorado be required to deliver any water not then necessary for beneficial use in the state of New Mexico;

5. a substantial delivery of water under the terms of this article shall be deemed a compliance with its provisions and minor and compensating irregularities in flow or delivery shall be disregarded.

ARTICLE III

The state engineers of the states by agreements, from time to time, may formulate rules and regulations for carrying out the provisions of this compact, which, when signed and promulgated by them, shall be binding until amended by agreement between them or until terminated by written notice from one to the other.

ARTICLE IV

Whenever any official of either state is designated to perform any duty under this compact [this section], such designation shall be interpreted to include the state official or officials upon whom the duties now performed by such official may hereafter devolve.

ARTICLE V

The physical and other conditions peculiar to the La Plata river and the territory drained and served thereby constitute the basis for this compact, and neither of the signatory states concedes the establishment of any general principle or precedent by the concluding of this compact.

ARTICLE VI

This compact may be modified or terminated at any time by mutual consent of the signatory states and upon such termination all rights then established hereunder shall continue unimpaired.

ARTICLE VII

This compact shall become operative when approved by the legislature of each of the signatory states and by the congress of the United States. Notice of approval by the legislatures shall be given by the governor of each state to the governor of the other state and the president of the United States is requested to give notice to governors of the signatory states of approval by the congress of the United States.

In witness whereof, the commissioners have signed this compact in duplicate originals, one of which shall be deposited with the secretary of state of each of the signatory states.

Done at the city of Santa Fe, in the state of New Mexico, this twenty-seventh day of November, in the year of our Lord, one thousand nine hundred twenty-two.

DELPH E. CARPENTER
STEPHEN B. DAVIS, JR.

History: 1978 Comp., § 72-15-16, enacted by Laws 1923, ch. 7, § 1.

ANNOTATIONS

Compiler's notes. — The La Plata River Compact was ratified by Colorado by Laws 1923, ch. 191, approved April 13, 1923; it was subsequently approved by congress by Act of January 29, 1925, 43 Stat. 796.

Validity of compact. — Judicial or quasi-judicial decision of controverted claims is not essential to validity of compact adjusting them. Hinderlider v. La Plata River & Cherry Creek Ditch Co., 304 U.S. 92, 58 S. Ct. 803, 82 L. Ed. 1202 (1938).

Right of upper state to control of interstate stream denied. — Claim that on interstate streams upper state has such ownership or control of whole stream as entitles it to divert all water, regardless of injury or prejudice to lower state, has been consistently denied by supreme court. Hinderlider v. La Plata River & Cherry Creek Ditch Co., 304 U.S. 92, 58 S. Ct. 803, 82 L. Ed. 1202 (1938).

Equitable apportionment between states required. — As La Plata river flows from Colorado into New Mexico and in each state the water is used beneficially, it must be equitably apportioned between the two. Hinderlider v. La Plata River & Cherry Creek Ditch Co., 304 U.S. 92, 58 S. Ct. 803, 82 L. Ed. 1202 (1938).

Compact's apportionment binding on citizens of states party to compact. — Whether apportionment of water of interstate stream be made by compact between upper and lower states with consent of congress or by decree of supreme court, apportionment is binding upon citizens of each state and all water claimants, even where the state had granted water rights before it entered into the compact. Hinderlider v. La Plata River & Cherry Creek Ditch Co., 304 U.S. 92, 58 S. Ct. 803, 82 L. Ed. 1202 (1938).

Colorado decree could not confer rights in excess of Colorado's share of water of the stream, which share was only an equitable portion thereof. Hinderlider v. La Plata River & Cherry Creek Ditch Co., 304 U.S. 92, 58 S. Ct. 803, 82 L. Ed. 1202 (1938).

Compact not considered United States treaty or statute. — Assent of congress to compact between Colorado and New Mexico does not make it a "treaty or statute of the United States" within meaning of § 237(a) of Judicial Code [28 U.S.C. 1257(1)]. Hinderlider v. La Plata River & Cherry Creek Ditch Co., 304 U.S. 92, 58 S. Ct. 803, 82 L. Ed. 1202 (1938).

Federal common law to govern interstate stream apportionment. — Whether water of interstate stream must be apportioned between two states is question of "federal common law" upon which neither statute nor decisions of either state can be conclusive. Hinderlider v. La Plata River & Cherry Creek Ditch Co., 304 U.S. 92, 58 S. Ct. 803, 82 L. Ed. 1202 (1938).

United States supreme court's jurisdiction. — In holding that state engineer and his subordinates should be enjoined from taking action required by compact, Colorado court denied an important claim under the constitution which may be reviewed on certiorari by supreme court under § 237(b) [28 U.S.C. 1257(3)]. Hinderlider v. La Plata River & Cherry Creek Ditch Co., 304 U.S. 92, 58 S. Ct. 803, 82 L. Ed. 1202 (1938).

Jurisdiction over controversies concerning rights in interstate streams is not different from those concerning boundaries, which have been recognized as presenting federal questions. Hinderlider v. La Plata River & Cherry Creek Ditch Co., 304 U.S. 92, 58 S. Ct. 803, 82 L. Ed. 1202 (1938).

Law reviews. — For article, "A Survey of the Evolution of Western Water Law in Response to Changing Economic and Public Interest Demands," see 29 Nat. Resources J. 347 (1989).

Am. Jur. 2d, A.L.R. and C.J.S. references. — 78 Am. Jur. 2d Waters §§ 87, 310.

93 C.J.S. Waters §§ 170, 183, 188.

72-15-17. [Notice of approval.]

Notice of the approval of said compact shall be given by the governor of New Mexico to the governor of Colorado, as provided in Article VII of said compact.

History: 1978 Comp., § 72-15-17, enacted by Laws 1923, ch. 7, § 2.

72-15-18. [Ratification and approval.]

The ratification and approval of said compact by this state shall not be binding or obligatory until it shall have been likewise approved by the legislature of the state of Colorado and by the congress of the United States.

History: 1978 Comp., § 72-15-18, enacted by Laws 1923, ch. 7, § 3.

72-15-19. [Pecos River Compact.]

That the state of New Mexico does hereby ratify, approve and adopt the compact aforesaid, which is as follows:

PECOS RIVER COMPACT

The state of New Mexico and the state of Texas, acting through their commissioners,

John H. Bliss for the state of New Mexico and

Charles H. Miller for the state of Texas,

after negotiations participated in by Berkeley Johnson, appointed by the president as the representative of the United States of America, have agreed respecting the uses, apportionment and deliveries of the water of the Pecos river as follows:

ARTICLE I

The major purposes of this compact [this section] are to provide for the equitable division and apportionment of the use of the waters of the Pecos river; to promote interstate comity; to remove causes of present and future controversies; to make secure

and protect present development within the states; to facilitate the construction of works for:

(a) the salvage of water;

(b) the more efficient use of water; and

(c) the protection of life and property from floods.

ARTICLE II

As used in this compact:

(a) the term "Pecos river" means the tributary of the Rio Grande which rises in north-central New Mexico and flows in a southerly direction through New Mexico and Texas and joins the Rio Grande near the town of Langtry, Texas, and includes all tributaries of said Pecos river;

(b) the term "Pecos river basin" means all of the contributing drainage area of the Pecos river and its tributaries above its mouth near Langtry, Texas;

(c) "New Mexico" and "Texas" means the state of New Mexico and the state of Texas, respectively; "United States" means the United States of America;

(d) the term "commission" means the agency created by this compact for the administration thereof;

(e) the term "deplete by man's activities" means to diminish the stream flow of the Pecos river at any given point as a result of beneficial consumptive uses of water within the Pecos river basin above such point. For the purposes of this compact it does not include the diminution of such flow by encroachment of salt cedars or other like growth, or by deterioration of the channel of the stream;

(f) the term "report of the engineering advisory committee" means that certain report of the engineering advisory committee dated January, 1948, and all appendices thereto; including, basic data, processes and analyses utilized in preparing that report, all of which were reviewed, approved and adopted by the commissioners signing this compact at a meeting held in Santa Fe, New Mexico, on December 3, 1948, and which are included in the minutes of that meeting;

(g) the term "1947 condition" means that situation in the Pecos river basin as described and defined in the report of the engineering advisory committee. In determining any question of fact hereafter arising as to such situation, reference shall be made to, and decisions shall be based on, such report;

(h) the term "water salvaged" means that quantity of water which may be recovered and made available for beneficial use and which quantity of water under the 1947 condition was nonbeneficially consumed by natural processes;

(i) the term "unappropriated floodwaters" means water originating in the Pecos river basin above Red Bluff dam in Texas, the impoundment of which will not deplete the water usable by the storage and diversion facilities existing in either state under the 1947 condition and which if not impounded will flow past Girvin, Texas.

ARTICLE III

(a) Except as stated in Paragraph (f) of this article, New Mexico shall not deplete by man's activities the flow of the Pecos river at the New Mexico-Texas state line below an amount which will give to Texas a quantity of water equivalent to that available to Texas under the 1947 condition.

(b) Except as to the unappropriated floodwaters thereof, the apportionment of which is included in and provided for by Paragraph (f) of this article, the beneficial consumptive use of the waters of the Delaware river is hereby apportioned to Texas, and the quantity of such beneficial consumptive use shall be included in determining waters received under the provisions of Paragraph (a) of this article.

(c) The beneficial consumptive use of water salvaged in New Mexico through the construction and operation of a project or projects by the United States or by joint undertakings of Texas and New Mexico, is hereby apportioned forty-three percent (43%) to Texas and fifty-seven percent (57%) to New Mexico.

(d) Except as to water salvaged, apportioned in Paragraph (c) of this article, the beneficial consumptive use of water which shall be nonbeneficially consumed, and which is recovered, is hereby apportioned to New Mexico but not to have the effect of diminishing the quantity of water available to Texas under the 1947 condition.

(e) Any water salvaged in Texas is hereby apportioned to Texas.

(f) Beneficial consumptive use of unappropriated flood waters is hereby apportioned fifty percent (50%) to Texas and fifty percent (50%) to New Mexico.

ARTICLE IV

(a) New Mexico and Texas shall cooperate to support legislation for the authorization and construction of projects to eliminate nonbeneficial consumption of water.

(b) New Mexico and Texas shall cooperate with agencies of the United States to devise and effectuate means of alleviating the salinity conditions of the Pecos river.

(c) New Mexico and Texas each may:

(i) construct additional reservoir capacity to replace reservoir capacity made unusuable [unusable] by any cause;

(ii) construct additional reservoir capacity for utilization of water salvaged and appropriated floodwater apportioned by this compact to such state;

(iii) construct additional reservoir capacity for the purpose of making more efficient use of water apportioned by this compact to such state.

(d) Neither New Mexico nor Texas will oppose the construction of any facilities permitted by this compact, and New Mexico and Texas will cooperate to obtain the construction of facilities that will be of joint benefit to the two states.

(e) The commission may determine the conditions under which Texas may store water in works constructed in and operated by New Mexico.

(f) No reservoir shall be constructed and operated in New Mexico above Avalon dam for the sole benefit of Texas unless the commission shall so determine.

(g) New Mexico and Texas each has the right to construct and operate works for the purpose of preventing flood damage.

(h) All facilities shall be operated in such manner as to carry out the terms of this compact.

ARTICLE V

(a) There is hereby created an interstate administrative agency to be known as the "Pecos river commission." The commission shall be composed of one commissioner representing each of the states of New Mexico and Texas, designated or appointed in accordance with the laws of each such state, and, if designated by the president, one commissioner representing the United States. The president is hereby requested to designate such a commissioner. If so designated, the commissioner representing the United States shall be the presiding officer of the commission, but shall not have the right to vote in any of the deliberations of the commission. All members of the commission must be present to constitute a quorum.

(b) The salaries and personal expenses of each commissioner shall be paid by the government which he represents. All other expenses which are incurred by

the commission incident to the administration of this compact and which are not paid by the United States shall be borne equally by the two states. On or before November 1 of each even-numbered year the commission shall adopt and transmit to the governors of the two states and to the president a budget covering an estimate of its expenses for the following two years. The payment of the expenses of the commission and of its employees shall not be subject to the audit and accounting procedures of either of the two states. However, all receipts and disbursements of funds handled by the commission shall be audited yearly by a qualified independent public accountant and the report of the audit shall be included in, and become a part of, the annual report of the commission.

(c) The commission may appoint a secretary who, while so acting, shall not be an employee of either state. He shall serve for such term, receive such salary and perform such duties as the commission may direct. The commission may employ such engineering, legal, clerical and other personnel as in its judgment may be necessary for the performance of its functions under this compact. In the hiring of employees the commission shall not be bound by the civil service laws of either state.

(d) The commission, so far as consistent with this compact, shall have power to:

1. adopt rules and regulations;

2. locate, establish, construct, operate, maintain and abandon water-gaging stations, independently or in cooperation with appropriate governmental agencies;

3. engage in studies of water supplies of the Pecos river and its tributaries, independently or in cooperation with appropriate governmental agencies;

4. collect, analyze, correlate, preserve and report on data as to the stream flows, storage, diversions, salvage and use of the waters of the Pecos river and its tributaries, independently or in cooperation with appropriate governmental agencies;

5. make findings as to any change in depletion by man's activities in New Mexico, and on the Delaware river in Texas;

6. make findings as to the deliveries of water at the New Mexico-Texas state line;

7. make findings as to the quantities of water salvaged and the amount thereof delivered at the New Mexico-Texas state line;

8. make findings as to quantities of water nonbeneficially consumed in New Mexico;

9. make findings as to quantities of unappropriated flood waters;

10. make findings as to the quantities of reservoir losses from reservoirs constructed in New Mexico which may be used for the benefit of both states, and as to the share thereof charged under Article VI hereof to each of the states;

11. acquire and hold such personal and real property as may be necessary for the performance of its duties hereunder and to dispose of the same when no longer required;

12. perform all functions required of it by this compact and do all things necessary, proper or convenient in the performance of its duties hereunder, independently or in cooperation with appropriate governmental agencies;

13. make and transmit annually to the governors of the signatory states and to the president of the United States on or before the last day of February of each year, a report covering the activities of the commission for the preceding year.

(e) The commission shall make available to the governor of each of the signatory states any information within its possession at any time, and shall always provide free access to its records by the governors of each of the states, or their representatives, or authorized representatives of the United States.

(f) Findings of fact made by the commission shall not be conclusive in any court, or before any agency or tribunal, but shall constitute prima facie evidence of the facts found.

(g) The organization meeting of the commission shall be held within four months from the effective date of this compact.

ARTICLE VI

The following principles shall govern in regard to the apportionment made by Article III of this compact:

(a) the report of the engineering advisory committee, supplemented by additional data hereafter accumulated, shall be used by the commission in making administrative determinations;

(b) unless otherwise determined by the commission, depletions by man's activities, state-line flows, quantities of water salvaged and quantities of unappropriated floodwaters shall be determined on the basis of three-year periods reckoned in continuing progressive series beginning with the first day of January next succeeding the ratification of this compact;

(c) unless and until a more feasible method is devised and adopted by the commission the inflow-outflow method, as described in the report of the engineering advisory committee, shall be used to:

(i) determine the effect of the state-line flow of any change in depletions by man's activities or otherwise, of the waters of the Pecos river in New Mexico;

(ii) measure at or near the Avalon dam in New Mexico the quantities of waters salvaged;

(iii) measure at or near the state line any water released from storage for the benefit of Texas as provided for in Subparagraph (d) of this article;

(iv) measure the quantities of unappropriated floodwaters apportioned to Texas which have not been stored and regulated by reservoirs in New Mexico;

(v) measure any other quantities of water required to be measured under the terms of this compact which are susceptible of being measured by the inflow-outflow method;

(d) if unappropriated flood waters apportioned to Texas are stored in facilities constructed in New Mexico, the following principles shall apply:

(i) in case of spill from a reservoir constructed in and operated by New Mexico, the water stored to the credit of Texas will be considered as the first water to spill;

(ii) in case of spill from a reservoir jointly constructed and operated, the water stored to the credit of either state shall not be affected;

(iii) reservoir losses shall be charged to each state in proportion to the quantity of water belonging to that state in storage at the time the losses occur;

(iv) the water impounded to the credit of Texas shall be released by New Mexico on the demand of Texas;

(e) water salvaged shall be measured at or near the Avalon dam in New Mexico and to the quantity thereof shall be added a quantity equal to the quantity of salvaged water depleted by man's activities above Avalon dam. The quantity of water salvaged that is apportioned to Texas shall be delivered by New Mexico at the New Mexico-Texas state line. The quantity of unappropriated floodwaters impounded under Paragraph (d) of this article, when released shall be delivered by New Mexico at the New Mexico-Texas state line in the quantity released less channel losses. The unappropriated floodwaters apportioned to Texas by this compact that are not impounded in reservoirs in New Mexico shall be measured and delivered at the New Mexico-Texas state line;

(f) beneficial use shall be the basis, the measure and the limit of the right to use water.

ARTICLE VII

In the event of importation of water by man's activities to the Pecos river basin from any other river basin the state making the importation shall have the exclusive use of such imported water.

ARTICLE VIII

The provisions of this compact [this section] shall not apply to, or interfere with, the right or power of either signatory state to regulate within its boundaries the appropriation, use and control of water, not inconsistent with its obligations under this compact.

ARTICLE IX

In maintaining the flows at the New Mexico-Texas state line required by this compact, New Mexico shall in all instances apply the principle of prior appropriation within New Mexico.

ARTICLE X

The failure of either state to use the water, or any part thereof, the use of which is apportioned to it under the terms of this compact, shall not constitute a relinquishment of the right to such use, nor shall it constitute a forfeiture or abandonment of the right to such use.

ARTICLE XI

Nothing in this compact shall be construed as:

(a) affecting the obligations of the United States under the treaty with the United Mexican States (treaty series 994);

(b) affecting any rights or powers of the United States, its agencies or instrumentalities, in or to the waters of the Pecos river, or its capacity to acquire rights in and to the use of said waters;

(c) subjecting any property of the United States, its agencies or instrumentalities, to taxation by any state or subdivision thereof, or creating any obligation on the part of the United States, its agencies or instrumentalities, by reason of the acquisition, construction or operation of any property or works of whatever kind, to make any payment to any state or political subdivision thereof, state agency, municipality or entity whatsoever, in reimbursement for the loss of taxes;

(d) subjecting any property of the United States, its agencies or instrumentalities, to the laws of any state to an extent other than the extent to which such laws would apply without regard to this compact.

ARTICLE XII

The consumptive use of water by the United States or any of its agencies, instrumentalities or wards shall be charged as a use by the state in which the use is made; provided, that such consumptive use incident to the diversion, impounding or conveyance of water in one state for use in the other state shall be charged to such latter state.

ARTICLE XIII

This compact shall not be construed as establishing any general principle or precedent applicable to other interstate streams.

ARTICLE XIV

This compact may be terminated at any time by appropriate action of the legislatures of both of the signatory states. In the event of such termination, all rights established under it shall continue unimpaired.

ARTICLE XV

This compact shall become binding and obligatory when it shall have been ratified by the legislature of each state and approved by the congress of the United States. Notice of ratification by the legislature of each state shall be given by the governor of that state to the governor of the other state and to the president of the United States, and the president is hereby requested to give notice to the governor of each state of approval by the congress of the United States.

In witness whereof, the commissioners have executed three counterparts hereof each of which shall be and constitute an original, one of which shall be deposited in the archives of the department of state of the United States, and one of which shall be forwarded to the governor of each state.

Done at the city of Santa Fe, state of New Mexico, this 3rd day of December, 1948.

.....

JOHN H. BLISS
Commissioner for the state of

New Mexico

.....

CHARLES H. MILLER
Commissioner for the state of Texas

APPROVED

.....

BERKELEY JOHNSON
Representative of the United States of America

History: 1978 Comp., § 72-15-19, enacted by Laws 1949, ch. 6, § 1.

ANNOTATIONS

Compiler's notes. — The first Pecos River Compact was ratified and approved, with reservations, by Laws 1933, ch. 166.

In Subparagraph (ii) of Paragraph (c) of Article IV of this compact, the words " . . . water salvaged and appropriated floodwater . . . ' do not conform to the printed session laws of 1949. However, an error was made in the printing of the 1949 session laws. The word "appropriated" appears in the enrolled and engrossed bill which ratified this compact and should have appeared in the printed session laws instead of "unappropriated." Thus, the language appearing in this section is correct.

Supreme court's jurisdiction to resolve controversies between two states, U.S. Const., art. III, § 2, cl. 1, extends to a properly framed suit to apportion the waters of an interstate stream between states through which it flows, to a suit to enforce a prior apportionment, and to a suit by one state to enforce its compact with another state or to declare rights under a compact, such as the Pecos River Compact. Texas v. New Mexico, 462 U.S. 554, 103 S. Ct. 2558, 77 L. Ed. 2d 1 (1983).

Reformation of compact is not within supreme court's equitable powers: It cannot appoint a tie-breaker or master to control the diversion of interstate waters on a day-to-day basis, even with the consent of the states involved. Texas v. New Mexico, 462 U.S. 554, 103 S. Ct. 2558, 77 L. Ed. 2d 1 (1983).

Remedying past failures to perform. — There is nothing in the nature of compacts generally or of this Compact in particular that counsels against rectifying a failure to perform in the past as well as ordering future performance called for by the Compact. Texas v. New Mexico, 482 U.S. 124, 107 S. Ct. 2279, 96 L. Ed. 2d 105 (1987).

The matter of remedying past water shortages caused by New Mexico's underdeliveries was returned to a special master for such further proceedings as he deemed necessary and for his ensuing recommendation as to whether New Mexico should be allowed to elect a monetary remedy and, if so, to suggest the size of the payment and other terms

that the state must satisfy. Texas v. New Mexico, 482 U.S. 124, 107 S. Ct. 2279, 96 L. Ed. 2d 105 (1987).

Good faith belief in compliance. — New Mexico's good faith belief that it was complying with this Compact would not permit the state to escape liability for what had been adjudicated to be past failures to perform its duties under the Compact. Texas v. New Mexico, 482 U.S. 124, 107 S. Ct. 2279, 96 L. Ed. 2d 105 (1987).

Decree ordering state to comply with compact and appointing river master. — See Texas v. New Mexico, 485 U.S. 388, 108 S. Ct. 1201, 99 L. Ed. 2d 450 (1988).

Law reviews. — For article, "A Survey of the Evolution of Western Water Law in Response to Changing Economic and Public Interest Demands," see 29 Nat. Resources J. 347 (1989).

For article, "Equitable Apportionment After *Vermejo:* The Demise of a Doctrine," see 29 Nat. Resources J. 565 (1989).

Am. Jur. 2d, A.L.R. and C.J.S. references. — 78 Am. Jur. 2d Waters §§ 87, 310.

93 C.J.S. Waters §§ 170, 183, 188.

72-15-20. [Notice of approval.]

Notice of approval of said compact shall be given by the governor of New Mexico to the governor of Texas and to the president of the United States as provided in Article XV of said compact.

History: 1978 Comp., § 72-15-20, enacted by Laws 1949, ch. 6, § 2.

72-15-21. [Ratification and approval.]

The ratification and approval of said compact by this state shall not be binding or obligatory until it shall have been likewise approved by the legislature of the state of Texas and consented to by the congress of the United States of America.

History: 1978 Comp., § 72-15-21, enacted by Laws 1949, ch. 6, § 3.

72-15-22. [Commissioner.]

The governor shall, within thirty days after this act [this section] becomes effective, appoint a commissioner who shall represent the state of New Mexico on the commission provided for by Article 5 of the Pecos River Compact [72-15-19 NMSA 1978] between the states of New Mexico and Texas. Such commissioner shall be charged with the administration of the provisions of said compact and shall have the power to discharge the duties prescribed by the terms of said compact. Such

commissioner shall serve for a term of two years from and after the date of his appointment and until a successor, who shall serve for a like term, is appointed and qualified. Until otherwise provided by law, he shall receive a salary of $300.00 each month. He shall be allowed his actual expenses when travelling in the discharge of his duties. He shall have authority to meet and confer with the Texas member of the commission at such points within the states of New Mexico and Texas or elsewhere as the commission may see fit. He may make such investigations and appoint such engineering, legal and clerical aid as may be necessary to protect the state of New Mexico and to carry out and enforce the terms of said compact and may fix their salaries and necessary expenses. He may incur necessary office expenses and other expenses incident to the proper performance of his duties and the proper administration of the Pecos River Compact. Such commissioner shall not incur any financial obligation on behalf of the state of New Mexico until the legislature shall have provided and appropriated money therefor. The salary of the commissioner and all expenses incurred by him in the performance of his official duties including the salaries and expenses of the commission employees shall be paid by the state treasurer on vouchers submitted by the commissioner out of moneys appropriated for such purposes by the legislature.

History: 1978 Comp., § 72-15-22, enacted by Laws 1949, ch. 128, § 1.

ANNOTATIONS

Am. Jur. 2d, A.L.R. and C.J.S. references. — 78 Am. Jur. 2d Waterworks and Water Companies § 4.

94 C.J.S. Waters § 315.

72-15-23. [Rio Grande Compact.]

The state of New Mexico does hereby ratify, approve and adopt the compact aforesaid, which is as follows:

RIO GRANDE COMPACT

Signed at Santa Fe, New Mexico, March 18, 1938.

The state of Colorado, the state of New Mexico and the state of Texas, desiring to remove all causes of present and future controversy among these states and between citizens of one of these states and citizens of another state with respect to the use of the waters of the Rio Grande above Fort Quitman, Texas, and being moved by considerations of interstate comity, and for the purpose of effecting an equitable apportionment of such waters, have resolved to conclude a compact for the attainment of these purposes, and to that end, through their respective governors, have named as their respective commissioners:

for the state of Colorado - M. C. Hinderlider

for the state of New Mexico - Thomas M. McClure

for the state of Texas - Frank B. Clayton

who, after negotiations participated in by S. O. Harper, appointed by the president as the representative of the United States of America, have agreed upon the following articles, to wit:

ARTICLE I

(a) The state of Colorado, the state of New Mexico, the state of Texas and the United States of America, are hereinafter designated "Colorado," "New Mexico," "Texas" and the "United States," respectively.

(b) "The commission" means the agency created by this compact [this section] for the administration thereof.

(c) The term "Rio Grande basin" means all of the territory drained by the Rio Grande and its tributaries in Colorado, in New Mexico and in Texas above Fort Quitman, including the closed basin in Colorado.

(d) The "closed basin" means that part of the Rio Grande basin in Colorado where the streams drain into the San Luis lakes and adjacent territory, and do not normally contribute to the flow of the Rio Grande.

(e) The term "tributary" means any stream which naturally contributes to the flow of the Rio Grande.

(f) "Transmountain diversion" is water imported into the drainage basin of the Rio Grande from any stream system outside of the Rio Grande basin, exclusive of the closed basin.

(g) "Annual debits" are the amounts by which actual deliveries in any calendar year fall below scheduled deliveries.

(h) "Annual credits" are the amounts by which actual deliveries in any calendar year exceed scheduled deliveries.

(i) "Accrued debits" are the amounts by which the sum of all annual debits exceeds the sum of all annual credits over any common period of time.

(j) "Accrued credits" are the amounts by which the sum of all annual credits exceeds the sum of all annual debits over any common period of time.

(k) "Project storage" is the combined capacity of Elephant Butte reservoir and all other reservoirs actually available for the storage of usable water below

Elephant Butte and above the first diversion to lands of the Rio Grande project, but not more than a total of 2,638,860 acre-feet.

(l) "Usable water" is all water, exclusive of credit water, which is in project storage and which is available for release in accordance with irrigation demands, including deliveries in Mexico.

(m) "Credit water" is that amount of water in project storage which is equal to the accrued credit of Colorado, or New Mexico, or both.

(n) "Unfilled capacity" is the difference between the total physical capacity of project storage and the amount of usable water then in storage.

(o) "Actual release" is the amount of usable water released in any calendar year from the lowest reservoir comprising project storage.

(p) "Actual spill" is all water which is actually spilled from Elephant Butte reservoir, or is released therefrom for flood control, in excess of the current demand on project storage and which does not become usable water by storage in another reservoir; provided, that actual spill of usable water cannot occur until all credit water shall have been spilled.

(q) "Hypothetical spill" is the time in any year at which usable water would have spilled from project storage if 790,000 acre-feet had been released therefrom at rates proportional to the actual release in every year from the starting date to the end of the year in which hypothetical spill occurs; in computing hypothetical spill the initial condition shall be the amount of usable water in project storage at the beginning of the calendar year following the effective date of this compact, and thereafter the initial condition shall be the amount of usable water in project storage at the beginning of the calendar year following each actual spill.

ARTICLE II

The commission shall cause to be maintained and operated a stream-gaging station equipped with an automatic water-stage recorder at each of the following points, to wit:

(a) on the Rio Grande near Del Norte above the principal points of diversion to the San Luis valley;

(b) on the Conejos river near Mogote;

(c) on the Los Pinos river near Ortiz;

(d) on the San Antonio river at Ortiz;

(e) on the Conejos river at its mouth near Los Sauces;

(f) on the Rio Grande near Lobatos;

(g) on the Rio Chama below El Vado reservoir;

(h) on the Rio Grande at Otowi bridge near San Ildefonso;

(i) on the Rio Grande near San Acacio;

(j) on the Rio Grande at San Marcial;

(k) on the Rio Grande below Elephant Butte reservoir;

(l) on the Rio Grande below Caballo reservoir.

Similar gaging stations shall be maintained and operated below any other reservoir constructed after 1929, and at such other points as may be necessary for the securing of records required for the carrying out of the compact; and automatic water-stage recorders shall be maintained and operated on each of the reservoirs mentioned, and on all others constructed after 1929.

Such gaging stations shall be equipped, maintained and operated by the commission directly or in cooperation with an appropriate federal or state agency, and the equipment, method and frequency of measurement at such stations shall be such as to produce reliable records at all times.

ARTICLE III

The obligation of Colorado to deliver water in the Rio Grande at the Colorado-New Mexico state line, measured at or near Lobatos, in each calendar year, shall be ten thousand acre-feet less than the sum of those quantities set forth in the two following tabulations of relationship, which correspond to the quantities at the upper index stations:

DISCHARGE OF CONEJOS RIVER

Quantities in thousands of acre-feet

Conejos index supply (1)	Conejos river at mouths (2)
100	
0	
150	
20	

200	
45	
250	
75	
300	
109	
350	
147	
400	
188	
450	
232	
500	
278	
550	
326	
600	
376	
650	
426	
700	
476	

Intermediate quantities shall be computed by proportional parts.

(1) Conejos index supply is the natural flow of Conejos river at the U.S.G.S. gaging station near Mogote during the calendar year, plus the natural flow of Los Pinos river at the U.S.G.S. gaging station near Ortiz and the natural flow of San Antonio river at the U.S.G.S. gaging station at Ortiz, both during the months of April to October, inclusive.

(2) Conejos river at mouths is the combined discharge of branches of this river at the U.S.G.S. gaging stations near Los Sauces during the calendar year.

DISCHARGE OF RIO GRANDE EXCLUSIVE OF CONEJOS RIVER

Quantities in thousands of acre-feet

Rio Grande at Lobatos	
Rio Grande at Del Norte (3)	Less Conejos at mouths (4)
200	
60	

250	
	65
300	
	75
350	
	86
400	
	98
450	
	112
500	
	127
550	
	144
600	
	162
650	
	182
700	
	204
750	
	229
800	
	257
850	
	292
900	
	335
950	
	380
1,000	
	430
1,100	
	540
1,200	
	640
1,300	
	740
1,400	
	840

Intermediate quantities shall be computed by proportional parts.

(3) Rio Grande at Del Norte is the recorded flow of the Rio Grande at the U.S.G.S. gaging station near Del Norte during the calendar year (measured above all principal points of diversion to San Luis valley) corrected for the operation of reservoirs constructed after 1937.

(4) Rio Grande at Lobatos less Conejos at mouths is the total flow of the Rio Grande at the U.S.G.S. gaging station near Lobatos, less the discharge of Conejos river at its mouths, during the calendar year.

The application of these schedules shall be subject to the provisions hereinafter set forth and appropriate adjustments shall be made for (a) any change in location of gaging stations; (b) any new or increased depletion of the runoff above inflow index gaging stations; and (c) any transmountain diversions into the drainage basin of the Rio Grande above Lobatos.

In event any works are constructed after 1937 for the purpose of delivering water into the Rio Grande from the closed basin, Colorado shall not be credited with the amount of such water delivered, unless the proportion of sodium ions shall be less than forty-five percent of the total positive ions in that water when the total dissolved solids in such water exceeds three hundred fifty parts per million.

ARTICLE IV

The obligation of New Mexico to deliver water in the Rio Grande at San Marcial, during each calendar year, exclusive of the months of July, August and September shall be that quantity set forth in the following tabulation of relationship, which corresponds to the quantity at the upper index station:

DISCHARGE OF RIO GRANDE AT OTOWI BRIDGE AND AT SAN MARCIAL

EXCLUSIVE OF JULY, AUGUST AND SEPTEMBER

Quantities in thousands of acre-feet

Otowi index supply (5)	San Marcial index supply (6)
100	0
200	65
300	141
400	219
500	300
600	383
700	

469	
	800
557	
	900
648	
	1,000
742	
	1,100
839	
	1,200
939	
	1,300
1,042	
	1,400
1,148	
	1,500
1,257	
	1,600
1,370	
	1,700
1,489	
	1,800
1,608	
	1,900
1,730	
	2,000
1,856	
	2,100
1,985	
	2,200
2,117	
	2,300
2,253	

Intermediate quantities shall be computed by proportional parts.

(5) The Otowi index supply is the recorded flow of the Rio Grande at the U.S.G.S. gaging station at Otowi bridge near San Ildefonso (formerly station near Buckman) during the calendar year, exclusive of the flow during the months of July, August and September, corrected for the operation of reservoirs constructed after 1929 in the drainage basin of the Rio Grande between Lobatos and Otowi bridge.

(6) San Marcial index supply is the recorded flow of the Rio Grande at the gaging station at San Marcial during the calendar year exclusive of the flow during the months of July, August and September.

The application of this schedule shall be subject to the provisions hereinafter set forth and appropriate adjustments shall be made for (a) any change in location of gaging stations; (b) depletion after 1929 in New Mexico at any time of the year of the natural runoff at Otowi bridge; (c) depletion of the runoff during July, August and September of tributaries between Otowi bridge and San Marcial, by works constructed after 1937; and (d) any transmountain diversions into the Rio Grande between Lobatos and San Marcial.

Concurrent records shall be kept of the flow of the Rio Grande at San Marcial, near San Acacio, and of the release from Elephant Butte reservoir, to the end that the records at these three stations may be correlated.

ARTICLE V

If at any time it should be the unanimous finding and determination of the commission that because of changed physical conditions, or for any other reasons, reliable records are not obtainable, or cannot be obtained, at any of the stream-gaging stations herein referred to, such stations may, with the unanimous approval of the commission, be abandoned, and with such approval another station, or other stations, shall be established and new measurements shall be substituted which, in the unanimous opinion of the commission, will result in substantially the same results, so far as the rights and obligations to deliver water are concerned, as would have existed if such substitution of stations and measurements had not been so made.

ARTICLE VI

Commencing with the year following the effective date of this compact, all credits and debits of Colorado and New Mexico shall be computed for each calendar year; provided, that in a year of actual spill no annual credits nor annual debits shall be computed for that year.

In the case of Colorado, no annual debit nor accrued debit shall exceed 100,000 acre-feet, except as either or both may be caused by holdover storage of water in reservoirs constructed after 1937 in the drainage basin of the Rio Grande above Lobatos. Within the physical limitations of storage capacity in such reservoirs, Colorado shall retain water in storage at all times to the extent of its accrued debit.

In the case of New Mexico, the accrued debit shall not exceed 200,000 acre-feet at any time, except as such debit may be caused by holdover storage of water in reservoirs constructed after 1929 in the drainage basin of the Rio Grande between Lobatos and San Marcial. Within the physical limitations of storage capacity in such reservoirs, New Mexico shall retain water in storage at all times to the extent of its accrued debit. In computing the magnitude of accrued credits or debits, New Mexico shall not be charged with any greater debit in any one year than the sum of 150,000 acre-feet and all gains in the quantity of water in storage in such year.

The commission by unanimous action may authorize the release from storage of any amount of water which is then being held in storage by reason of accrued debits of Colorado or New Mexico; provided, that such water shall be replaced at the first opportunity thereafter.

In computing the amount of accrued credits and accrued debits of Colorado or New Mexico, any annual credits in excess of 150,000 acre-feet shall be taken as equal to that amount.

In any year in which actual spill occurs, the accrued credits of Colorado, or New Mexico, or both, at the beginning of the year shall be reduced in proportion to their respective credits by the amount of such actual spill; provided, that the amount of actual spill shall be deemed to be increased by the aggregate gain in the amount of water in storage, prior to the time of spill, in reservoirs above San Marcial constructed after 1929; provided, further, that if the commissioners for the states having accrued credits authorized the release of part, or all, of such credits in advance of spill, the amount so released shall be deemed to constitute actual spill.

In any year in which there is actual spill of usable water, or at the time of hypothetical spill thereof, all accrued debits of Colorado, or New Mexico, or both, at the beginning of the year shall be canceled.

In any year in which the aggregate of accrued debits of Colorado and New Mexico exceeds the minimum unfilled capacity of project storage, such debits shall be reduced proportionally to an aggregate amount equal to such minimum unfilled capacity.

To the extent that accrued credits are impounded in reservoirs between San Marcial and Courchesne, and to the extent that accrued debits are impounded in reservoirs above San Marcial, such credits and debits shall be reduced annually to compensate for evaporation losses in the proportion that such credits or debits bore to the total amount of water in such reservoirs during the year.

ARTICLE VII

Neither Colorado nor New Mexico shall increase the amount of water in storage in reservoirs constructed after 1929 whenever there is less than 400,000 acre-feet of usable water in project storage; provided, that if the actual releases of usable water from the beginning of the calendar year following the effective date of this compact, or from the beginning of the calendar year following actual spill, have aggregated more than an average of 790,000 acre-feet per annum, the time at which such minimum stage is reached shall be adjusted to compensate for the difference between the total actual release and releases at such average rate; provided, further, that Colorado or New Mexico, or both, may relinquish accrued credits at any time, and Texas may accept such relinquished water, and in such event the state, or states, so relinquishing shall be entitled to store water in the amount of the water so relinquished.

ARTICLE VIII

During the month of January of any year the commissioner for Texas may demand of Colorado and New Mexico, and the commissioner for New Mexico may demand of Colorado, the release of water from storage reservoirs constructed after 1929 to the amount of the accrued debits of Colorado and New Mexico, respectively, and such releases shall be made by each at the greatest rate practicable under the conditions then prevailing, and in proportion to the total debit of each, and in amounts, limited by their accrued debits, sufficient to bring the quantity of usable water in project storage to 600,000 acre-feet by March first and to maintain this quantity in storage until April thirtieth, to the end that a normal release of 790,000 acre-feet may be made from project storage in that year.

ARTICLE IX

Colorado agrees with New Mexico that in event the United States or the state of New Mexico decides to construct the necessary works for diverting the waters of the San Juan river, or any of its tributaries, into the Rio Grande, Colorado hereby consents to the construction of said works and the diversion of waters from the San Juan river, or the tributaries thereof, into the Rio Grande in New Mexico, provided the present and prospective uses of water in Colorado by other diversions from the San Juan river, or its tributaries, are protected.

ARTICLE X

In the event water from another drainage basin shall be imported into the Rio Grande basin by the United States or Colorado or New Mexico, or any of them jointly, the state having the right to the use of such water shall be given proper credit therefor in the application of the schedules.

ARTICLE XI

New Mexico and Texas agree that upon the effective date of this compact [this section] all controversies between said states relative to the quantity or quality of the water of the Rio Grande are composed and settled; however, nothing herein shall be interpreted to prevent recourse by a signatory state to the supreme court of the United States for redress should the character or quality of the water, at the point of delivery, be changed hereafter by one signatory state to the injury of another. Nothing herein shall be construed as an admission by any signatory state that the use of water for irrigation causes increase of salinity for which the user is responsible in law.

ARTICLE XII

To administer the provisions of this compact there shall be constituted a commission composed of one representative from each state, to be known as the Rio Grande Compact commission. The state engineer of Colorado shall be ex-officio the Rio Grande

Compact commissioner for Colorado. The state engineer of New Mexico shall be ex-officio the Rio Grande Compact commissioner for New Mexico. The Rio Grande Compact commissioner for Texas shall be appointed by the governor of Texas. The president of the United States shall be requested to designate a representative of the United States to sit with such commission, and such representative of the United States, if so designated by the president, shall act as chairman of the commission without vote.

The salaries and personal expenses of the Rio Grande Compact commissioners for the three states shall be paid by their respective states, and all other expenses incident to the administration of this compact, not borne by the United States, shall be borne equally by the three states.

There shall be established and maintained a fund, to be known as the Rio Grande Compact fund, and all expenses incident to the administration of the compact, other than the salaries and personal expenses of the commissioners, shall be paid out of this fund on order of the commission. Each of the three states shall deposit the sum of five thousand ($5,000.00) dollars in the Rio Grande Compact fund and each state shall reimburse this fund quarterly upon presentation of claims by the commission setting forth in reasonable detail the expenses paid by the commission from this fund.

In addition to the powers and duties hereinbefore specifically conferred upon such commission, and the members thereof, the jurisdiction of such commission shall extend only to the collection, correlation and presentation of factual data and the maintenance of records having a bearing upon the administration of this compact, and, by unanimous action, to the making of recommendations to the respective states upon matters connected with the administration of this compact. In connection therewith, the commission may employ such engineering and clerical aid as may be reasonably necessary within the limit of funds provided for that purpose by the respective states. Annual reports compiled for each calendar year shall be made by the commission and transmitted to the governors of the signatory states on or before March first following the year covered by the report. The commission may, by unanimous action, adopt rules and regulations consistent with the provisions of this compact to govern their proceedings.

The findings of the commission shall not be conclusive in any court or tribunal which may be called upon to interpret or enforce this compact.

ARTICLE XIII

At the expiration of every five-year period after the effective date of this compact, the commission may, by unanimous consent, review any provisions hereof which are not substantive in character and which do not affect the basic principles upon which the compact is founded, and shall meet for the consideration of such questions on the request of any member of the commission; provided, however, that the provisions hereof shall remain in full force and effect until changed and amended within the intent of the compact by unanimous action of the commissioners, and until any changes in this compact are ratified by the legislatures of the respective states and consented to by the

congress, in the same manner as this compact is required to be ratified to become effective.

ARTICLE XIV

The schedules herein contained and the quantities of water herein allocated shall never be increased nor diminished by reason of any increase or diminution in the delivery or loss of water to Mexico.

ARTICLE XV

The physical and other conditions characteristic of the Rio Grande and peculiar to the territory drained and served thereby, and to the development thereof, have actuated this compact and none of the signatory states admits that any provisions herein contained establishes any general principle or precedent applicable to other interstate streams.

ARTICLE XVI

Nothing in this compact shall be construed as affecting the obligations of the United States of America to Mexico under existing treaties, or to the Indian tribes, or as impairing the rights of the Indian tribes.

ARTICLE XVII

This compact shall become effective when ratified by the legislatures of each of the signatory states and consented to by the congress of the United States. Notice of ratification shall be given by the governor of each state to the governors of the other states and to the president of the United States, and the president of the United States is requested to give notice to the governors of each of the signatory states of the consent of the congress of the United States.

In witness whereof, the commissioners have signed this compact in quadruplicate original, one of which shall be deposited in the archives of the department of state of the United States of America and shall be deemed the authoritative original, and of which a duly certified copy shall be forwarded to the governor of each of the signatory states.

Done at the city of Santa Fe, in the state of New Mexico, on the 18th day of March, in the year of Our Lord, one thousand nine hundred and thirty-eight.

(Sgd.) M. C. Hinderlider.
(Sgd.) Thomas M. McClure.
(Sgd.) Frank B. Clayton.

APPROVED:

(Sgd.) S. O. Harper.

History: 1978 Comp., § 72-15-23, enacted by Laws 1939, ch. 33, § 1; 1945, ch. 60, § 1.

ANNOTATIONS

Compiler's notes. — The third paragraph of Article XII of this compact, establishing the Rio Grande Compact fund, was added to the compact by Laws 1945, ch. 60, § 1. Neither of the other two member-states approved amendments of the compact similar to Laws 1945, ch. 60, and that amendment was not consented to by the United States congress. In light of these developments, the amendment of Article XII is of no force and effect.

The following resolution, adopted by the Rio Grande compact commission at its February 14-16, 1949, meeting revised the measurement of deliveries by New Mexico and the schedule shown in Article IV of the compact:

"RESOLUTION

"Whereas, at the Annual Meeting of the Rio Grande Compact Commission in the year 1945, the question was raised as to whether or not a schedule for delivery of water by New Mexico during the entire year could be worked out, and

"Whereas, at said meeting the question was referred to the Engineering Advisers for their study, recommendations and report, and

"Whereas, said Engineering Advisers have met, studied the problems and under date of February 24, 1947, did submit their Report, which said Report contains the findings of said Engineering Advisers and their recommendations, and

"Whereas, the Compact Commission has examined said Report and finds that the matters and things therein found and recommended are proper and within the terms of the Rio Grande Compact, and

"Whereas, the Commission has considered said Engineering Advisers' Report and all available evidence, information and material and is fully advised:

"Now, Therefore, Be it Resolved:

"The Commission finds as follows:

"(a) That because of change of physical conditions, reliable records of the amount of water passing San Marcial are no longer obtainable at the stream gaging station at San Marcial and that the same should be abandoned for Compact purposes.

"(b) That the need for concurrent records at San Marcial and San Acacia no longer exists and that the gaging station at San Acacia should be abandoned for Compact purposes.

"(c) That it is desirable and necessary that the obligations of New Mexico under the Compact to deliver water in the months of July, August, September, should be scheduled.

(d) That the change in gaging stations and substitution of the new measurements as hereinafter set forth will result in substantially the same results so far as the rights and obligations to deliver water are concerned, and would have existed if such substitution of stations and measurements had not been so made.

"Be it Further Resolved:

"That the following measurements and schedule thereof shall be substituted for the measurements and schedule thereof as now set forth in Article IV of the Compact:

" 'The obligation of New Mexico to deliver water in the Rio Grande into Elephant Butte Reservoir during each calendar year shall be measured by that quantity set forth in the following tabulation of relationship which corresponds to the quantity at the upper index station:

'DISCHARGE OF RIO GRANDE AT OTOWI BRIDGE AND ELEPHANT BUTTE EFFECTIVE SUPPLY

" 'Quantities in thousands of acre-feet

Otowi index supply (5)	Elephant Butte Effective Index Supply (6)
" '100	57
200	114
300	171
400	228
500	286
600	345
700	406
800	471
900	542
1,000	621
1,100	707
1,200	800
1,300	897
1,400	996

1,500 1,095
1,600 1,195
1,700 1,295
1,800 1,395
1,900 1,495
2,000 1,595
2,100 1,695
2,200 1,795
2,300 1,895
2,400 1,995
2,500 2,095
2,600 2,195
2,700 2,295
2,800 2,395
2,900 2,495
3,000 2,595

" 'Intermediate quantities shall be computed by proportional parts.

" '(5) The Otowi Index Supply is the recorded flow of the Rio Grande at the U.S.G.S. gaging station at Otowi Bridge near San Ildefonso (formerly station near Buckman) during the calendar year, corrected for the operation of reservoirs constructed after 1929 in the drainage basin of the Rio Grande between Lobatos and Otowi Bridge.

" '(6) Elephant Butte Effective Index Supply is the recorded flow of the Rio Grande at the gaging station below Elephant Butte Dam during the calendar year plus the net gain in storage in Elephant Butte Reservoir during the same year or minus the net loss in storage in said reservoir, as the case may be.

" 'The application of this schedule shall be subject to the provisions hereinafter set forth and appropriate adjustments shall be made for (a) any change in location of gaging stations; (b) depletion after 1929 in New Mexico of the natural runoff at Otowi Bridge; and (c) any transmountain diversions into the Rio Grande between Lobatos and Elephant Butte Reservoir.'

"Be it Further Resolved:

"That the gaging stations at San Acacia and San Marcial be, and the same are hereby abandoned for Compact purposes.

"Be it Further Resolved:

"That this Resolution has been passed unanimously and shall be effective January 1, 1949, if within 120 days from this date the Commissioner for each State shall have received from the Attorney General of the State represented by him, an opinion

approving this Resolution, and shall have so advised the Chairman of the Commission, otherwise, to be of no force and effect."

(Note: The following paragraph appears in the Minutes of the Annual Meeting of the Commission held at Denver, Colorado, February 14-16, 1949:

"The Chairman announced that he had received, pursuant to the Resolution adopted by the Commission at the Ninth Annual Meeting on February 24, 1948, opinions from the Attorneys General of Colorado, New Mexico and Texas that the substitution of stations and measurements of deliveries by New Mexico set forth in said resolution was within the powers of the Commission.")

ANNOTATION

Compact is binding on Texas and defendant city and, for that matter, is binding on the inhabitants and citizens of Texas. El Paso County Water Imp. Dist. No. 1 v. City of El Paso, 133 F. Supp. 894 (W.D. Texas 1955), aff'd in part rev'd in part, 243 F.2d 927 (5th Cir.), cert. denied, 355 U.S. 820, 78 S. Ct. 26, 2 L. Ed. 2d 36 (1957).

All appropriative water rights advanced by the city are either without substance or else must yield to the paramount disposition made by the Rio Grande Compact. El Paso County Water Imp. Dist. No. 1 v. City of El Paso, 133 F. Supp. 894 (W.D. Texas 1955), aff'd in part rev'd in part, 243 F.2d 927 (5th Cir.), cert. denied, 355 U.S. 820, 78 S. Ct. 26, 2 L. Ed. 2d 36 (1957).

River's water below Elephant Butte reservoir not apportioned by compact. — Neither the history of the compact negotiations nor the ultimate terms of the compact support the conclusion that the parties to the agreement intended it to apportion either the surface water of the river or the related hydrologically connected ground water below Elephant Butte reservoir between New Mexico and Texas. City of El Paso ex rel. Pub. Serv. Bd. v. Reynolds, 563 F. Supp. 379 (D.N.M. 1983).

Law reviews. — For article, "New Mexico Water Law: An Overview and Discussion of Current Issues," see 22 Nat. Resources J. 1045 (1982).

For comment, "The *El Paso Case:* Reconciling *Sporhase* and *Vermejo,*" see 23 Nat. Resources J. ix (1983).

For article, "A Survey of the Evolution of Western Water Law in Response to Changing Economic and Public Interest Demands," see 29 Nat. Resources J. 347 (1989).

For article, "The Strengths and Weaknesses of Water Markets as They Affect Water Scarcity and Sovereignty Interests in the West," see 29 Nat. Resources J. 489 (1989).

For article, "Middle Rio Grande Regional Water Resource Planning: The Pitfalls and the Promises," see 40 Nat. Resources J. 533 (2000).

Am. Jur. 2d, A.L.R. and C.J.S. references. — 78 Am. Jur. 2d Waters §§ 87, 310.

93 C.J.S. Waters §§ 170, 183, 188.

72-15-24. [Notice of approval.]

Notice of the approval of said compact shall be given by the governor of New Mexico to the governors of Colorado and Texas, as provided in Article XVIII [XVII] of said compact.

History: 1978 Comp., § 72-15-24, enacted by Laws 1939, ch. 33, § 2.

72-15-25. [Ratification and approval.]

The ratification and approval of said compact by this state shall not be binding or obligatory until it shall have been likewise approved by the legislature of the state of Colorado and by the legislature of the state of Texas and by the congress of the United States.

History: 1978 Comp., § 72-15-25, enacted by Laws 1939, ch. 33, § 3.

72-15-26. [Upper Colorado River Basin Compact.]

That the state of New Mexico does hereby ratify, approve and adopt the compact aforesaid, which is as follows:

UPPER COLORADO RIVER BASIN COMPACT

The state of Arizona, the state of Colorado, the state of New Mexico, the state of Utah and the state of Wyoming, acting through their commissioners,

Charles A. Carson for the state of Arizona,

Clifford H. Stone for the state of Colorado,

Fred. E. Wilson for the state of New Mexico,

Edward H. Watson for the state of Utah and

L. C. Bishop for the state of Wyoming,

after negotiations participated in by Harry W. Bashore, appointed by the president as the representative of the United States of America, have agreed, subject to the provisions of the Colorado River Compact [72-15-5 to 72-15-9 NMSA 1978], to determine the rights and obligations of each signatory state respecting the uses and deliveries of the water of the upper basin of the Colorado river, as follows:

ARTICLE I

(a) The major purposes of this compact [this section] are to provide for the equitable division and apportionment of the use of the waters of the Colorado river system, the use of which was apportioned in perpetuity to the upper basin by the Colorado River Compact; to establish the obligations of each state of the upper division with respect to the deliveries of water required to be made at Lee Ferry by the Colorado River Compact; to promote interstate comity; to remove causes of present and future controversies; to secure the expeditious agricultural and industrial development of the upper basin, the storage of water and to protect life and property from floods.

(b) It is recognized that the Colorado River Compact is in full force and effect and all of the provisions hereof are subject thereto.

ARTICLE II

As used in this compact:

(a) the term "Colorado river system" means that portion of the Colorado river and its tributaries within the United States of America;

(b) the term "Colorado river basin" means all of the drainage area of the Colorado river system and all other territory within the United States of America to which the waters of the Colorado river system shall be beneficially applied;

(c) the term "states of the upper division" means the states of Colorado, New Mexico, Utah and Wyoming;

(d) the term "states of the lower division" means the states of Arizona, California and Nevada;

(e) the term "Lee Ferry" means a point in the main stream of the Colorado river one mile below the mouth of the Paria river;

(f) the term "upper basin" means those parts of the states of Arizona, Colorado, New Mexico, Utah and Wyoming within and from which waters naturally drain into the Colorado river system above Lee Ferry, and also all parts of said states located without the drainage area of the Colorado river system which are now or shall hereafter be beneficially served by waters diverted from the Colorado river system above Lee Ferry;

(g) the term "lower basin" means those parts of the states of Arizona, California, Nevada, New Mexico and Utah within and from which waters naturally drain into the Colorado river system below Lee Ferry and also all parts of said states located without the drainage area of the Colorado river system which are now or shall hereafter

be beneficially served by waters diverted from the Colorado river system below Lee Ferry;

(h) the term "Colorado River Compact" means the agreement concerning the apportionment of the use of the waters of the Colorado river system dated November 24, 1922, executed by commissioners for the states of Arizona, California, Colorado, Nevada, New Mexico, Utah and Wyoming, approved by Herbert Hoover, representative of the United States of America, and proclaimed effective by the president of the United States of America, June 25, 1929;

(i) the term "upper Colorado river system" means that portion of the Colorado river system above Lee Ferry;

(j) the term "commission" means the administrative agency created by Article VIII of this compact;

(k) the term "water year" means that period of twelve months ending September 30 of each year;

(l) the term "acre-foot" means the quantity of water required to cover an acre to the depth of one foot and is equivalent to 43,560 cubic feet;

(m) the term "domestic use" shall include the use of water for household, stock, municipal, mining, milling, industrial and other like purposes, but shall exclude the generation of electrical power;

(n) the term "virgin flow" means the flow of any stream undepleted by the activities of man.

ARTICLE III

(a) Subject to the provisions and limitations contained in the Colorado River Compact and in this compact, there is hereby apportioned from the upper Colorado river system in perpetuity to the states of Arizona, Colorado, New Mexico, Utah and Wyoming, respectively, the consumptive use of water as follows:

(1) to the state of Arizona the consumptive use of 50,000 acre-feet of water per annum;

(2) to the states of Colorado, New Mexico, Utah and Wyoming, respectively, the consumptive use per annum of the quantities resulting from the application of the following percentages to the total quantity of consumptive use per annum apportioned in perpetuity to and available for use each year by upper basin under the Colorado River Compact and remaining after the deduction of the use, not to exceed 50,000 acre-feet per

annum, made in the state of Arizona.

state of Colorado ..... 51.75 percent.

state of New Mexico ..... 11.25 percent.

state of Utah ..... 23.00 percent.

state of Wyoming ..... 14.00 percent.

(b) The apportionment made to the respective states by Paragraph (a) of this article is based upon, and shall be applied in conformity with, the following principles and each of them:

(1) the apportionment is of any and all man-made depletions;

(2) beneficial use is the basis, the measure and the limit of the right to use;

(3) no state shall exceed its apportioned use in any water year when the effect of such excess use, as determined by the commission, is to deprive another signatory state of its apportioned use during that water year; provided, that this Subparagraph (b) (3) shall not be construed as:

(i) altering the apportionment of use, or obligations to make deliveries as provided in Article XI, XII, XIII or XIV of this compact;

(ii) purporting to apportion among the signatory states such uses of water as the upper basin may be entitled to under Paragraphs (f) and (g) of Article III of the Colorado River Compact; or

(iii) countenancing average uses by any signatory state in excess of its apportionment;

(4) the apportionment to each state includes all water necessary for the supply of any rights which now exist.

(c) No apportionment is hereby made, or intended to be made, of such uses of water as the upper basin may be entitled to under Paragraphs (f) and (g) of Article III of the Colorado River Compact.

(d) The apportionment made by this article shall not be taken as any basis for the allocation among the signatory states of any benefits resulting from the generation of power.

ARTICLE IV

In the event curtailment of use of water by the states of the upper division at any time shall become necessary in order that the flow at Lee Ferry shall not be depleted below that required by Article III of the Colorado River Compact, the extent of curtailment by each state of the consumptive use of water apportioned to it by Article III of this compact shall be in such quantities and at such times as shall be determined by the commission upon the application of the following principles:

(a) the extent and times of curtailment shall be such as to assure full compliance with Article III of the Colorado River Compact;

(b) if any state or states of the upper division, in the ten years immediately preceding the water year in which curtailment is necessary, shall have consumptively used more water than it was or they were, as the case may be, entitled to use under the apportionment made by Article III of this compact, such state or states shall be required to supply at Lee Ferry a quantity of water equal to its, or the aggregate of their, overdraft or the proportionate part of such overdraft, as may be necessary to assure compliance with Article III of the Colorado River Compact, before demand is made on any other state of the upper division;

(c) except as provided in Subparagraph (b) of this article, the extent of curtailment by each state of the upper division of the consumptive use of water apportioned to it by Article III of this compact shall be such as to result in the delivery at Lee Ferry of a quantity of water which bears the same relation to the total required curtailment of use by the states of the upper division as the consumptive use of upper Colorado river system water which was made by each such state during the water year immediately preceding the year in which the curtailment becomes necessary bears to the total consumptive use of such water in the states of the upper division during the same water year; provided, that in determining such relation the uses of water under rights perfected prior to November 24, 1922, shall be excluded.

ARTICLE V

(a) All losses of water occurring from or as the result of the storage of water in reservoirs constructed prior to the signing of this compact shall be charged to the state in which such reservoir or reservoirs are located. Water stored in reservoirs

covered by this Paragraph (a) shall be for the exclusive use of and shall be charged to the state in which the reservoir or reservoirs are located.

(b) All losses of water occurring from or as the result of the storage of water in reservoirs constructed after the signing of this compact shall be charged as follows:

(1) if the commission finds that the reservoir is used, in whole or in part, to assist the states of the upper division in meeting their obligations to deliver water at Lee Ferry imposed by Article III of the Colorado River Compact, the commission shall make findings, which in no event shall be contrary to the laws of the United States of America under which any reservoir is constructed, as to the reservoir capacity allocated for that purpose. The whole or that proportion, as the case may be, of reservoir losses as found by the commission to be reasonably and properly chargeable to the reservoir or reservoir capacity utilized to assure deliveries at Lee Ferry shall be charged to the states of the upper division in the proportion which the consumptive use of water in each state of the upper division during the water year in which the charge is made bears to the total consumptive use of water in all states of the upper division during the same water year. Water stored in reservoirs or in reservoir capacity covered by this Subparagraph (b) (1) shall be for the common benefit of all of the states of the upper division;

(2) if the commission finds that the reservoir is used, in whole or in part, to supply water for use in a state of the upper division, the commission shall make findings, which in no event shall be contrary to the laws of the United States of America under which any reservoir is constructed, as to the reservoir or reservoir capacity utilized to supply water for use and the state in which such water will be used. The whole or that proportion, as the case may be, of reservoir losses as found by the commission to be reasonably and properly chargeable to the state in which such water will be used shall be borne by that state. As determined by the commission, water stored in reservoirs covered by this Subparagraph (b) (2) shall be earmarked for and charged to the state in which the water will be used.

(c) In the event the commission finds that a reservoir site is available both to assure deliveries at Lee Ferry and to store water for consumptive use in a state of the upper division, the storage of water for consumptive use shall be given preference. Any reservoir or reservoir capacity hereafter used to assure deliveries at Lee Ferry shall by order of the commission be used to store water for consumptive use in a state, provided the commission finds that such storage is reasonably necessary to permit such state to make the use of the water apportioned to it by this compact.

ARTICLE VI

The commission shall determine the quantity of the consumptive use of water, which use is apportioned by Article III hereof, for the upper basin and for each state of the upper basin by the inflow-outflow method in terms of man-made depletions of the virgin

flow at Lee Ferry, unless the commission, by unanimous action, shall adopt a different method of determination.

ARTICLE VII

The consumptive use of water by the United States of America or any of its agencies, instrumentalities or wards shall be charged as a use by the state in which the use is made; provided, that such consumptive use incident to the diversion, impounding or conveyance of water in one state for use in another shall be charged to such latter state.

ARTICLE VIII

(a) There is hereby created an interstate administrative agency to be known as the "upper Colorado river commission." The commission shall be composed of one commissioner representing each of the states of the upper division, namely, the states of Colorado, New Mexico, Utah and Wyoming, designated or appointed in accordance with the laws of each state and, if designated by the president, one commissioner representing the United States of America. The president is hereby requested to designate a commissioner. If so designated the commissioner representing the United States of America shall be the presiding officer of the commission and shall be entitled to the same powers and rights as the commissioner of any state. Any four members of the commission shall constitute a quorum.

(b) The salaries and personal expenses of each commissioner shall be paid by the government which he represents. All other expenses which are incurred by the commission incident to the administration of this compact, and which are not paid by the United States of America, shall be borne by the four states according to the percentage of consumptive use apportioned to each. On or before December 1 of each year, the commission shall adopt and transmit to the governors of the four states and to the president a budget covering an estimate of its expenses for the following year, and of the amount payable by each state. Each state shall pay the amount due by it to the commission on or before April 1 of the year following. The payment of the expenses of the commission and of its employees shall not be subject to the audit and accounting procedures of any of the four states; however, all receipts and disbursement of funds handled by the commission shall be audited yearly by a qualified independent public accountant and the report of the audit shall be included in and become a part of the annual report of the commission.

(c) The commission shall appoint a secretary, who shall not be a member of the commission, or an employee of any signatory state or of the United States of America while so acting. He shall serve for such term and receive such salary and perform such duties as the commission may direct. The commission may employ such engineering, legal, clerical and other personnel as, in its judgment, may be necessary for the performance of its functions under this compact. In the hiring of employees, the commission shall not be bound by the civil service laws of any state.

(d) The commission, so far as consistent with this compact, shall have the power to:

(1) adopt rules and regulations;

(2) locate, establish, construct, abandon, operate and maintain water-gaging stations;

(3) make estimates to forecast water run-off on the Colorado river and any of its tributaries;

(4) engage in cooperative studies of water supplies of the Colorado river and its tributaries;

(5) collect, analyze, correlate, preserve and report on data as to the stream flows, storage, diversions and use of the waters of the Colorado river, and any of its tributaries;

(6) make findings as to the quantity of water of the upper Colorado river system used each year in the upper Colorado river basin and in each state thereof;

(7) make findings as to the quantity of water deliveries at Lee Ferry during each water year;

(8) make findings as to the necessity for and the extent of the curtailment of use, required, if any, pursuant to Article IV hereof;

(9) make findings as to the quantity of reservoir losses and as to the share thereof chargeable under Article V hereof to each of the states;

(10) make findings of fact in the event of the occurrence of extraordinary drought or serious accident to the irrigation system in the upper basin, whereby deliveries by the upper basin of water which it may be required to deliver in order to aid in fulfilling obligations of the United States of America to the United Mexican States arising under the treaty between the United States of America and the United Mexican States, dated February 3, 1944 (treaty series 994) become difficult, and report such findings to the governors of the upper basin states, the president of the United States of America, the United States section of the international boundary and water commission, and such other federal officials and agencies as it may deem appropriate to the end that the water allotted to Mexico under Division III of such treaty may be reduced in accordance with the terms of such treaty;

(11) acquire and hold such personal and real property as may be necessary for the performance of its duties hereunder and to dispose of the same when no longer required;

(12) perform all functions required of it by this compact and do all things necessary, proper or convenient in the performance of its duties hereunder, either independently or in cooperation with any state or federal agency;

(13) make and transmit annually to the governors of the signatory states and the president of the United States of America, with the estimated budget, a report covering the activities of the commission for the preceding water year.

(e) Except as otherwise provided in this compact, the concurrence of four members of the commission shall be required in any action taken by it.

(f) The commission and its secretary shall make available to the governor of each of the signatory states any information within its possession at any time, and shall always provide free access to its records by the governors of each of the states, or their representatives, or authorized representatives of the United States of America.

(g) Findings of fact made by the commission shall not be conclusive in any court, or before any agency or tribunal, but shall constitute prima facie evidence of the facts found.

(h) The organization meetings of the commission shall be held within four months from the effective date of this compact.

ARTICLE IX

(a) No state shall deny the right of the United States of America and, subject to the conditions hereinafter contained, no state shall deny the right of another signatory state, any person or entity of any signatory state to acquire rights to the use of water, or to construct or participate in the construction and use of diversion works and storage reservoirs with appurtenant works, canals and conduits in one state for the purpose of diverting, conveying, storing, regulating and releasing water to satisfy the provisions of the Colorado River Compact relating to the obligation of the states of the upper division to make deliveries of water at Lee Ferry, or for the purpose of diverting, conveying, storing or regulating water in an upper signatory state for consumptive use in a lower signatory state, when such use is within the apportionment to such lower state made by this compact. Such rights shall be subject to the rights of water users, in a state in which such reservoir or works are located, to receive and use water, the use of which is within the apportionment to such state by this compact.

(b) Any signatory state, any person or any entity of any signatory state shall have the right to acquire such property rights as are necessary to the use of water in conformity with this compact in any other signatory state by donation, purchase or through the exercise of the power of eminent domain. Any signatory state, upon the written request of the governor of any other signatory state, for the benefit of whose water users property is to be acquired in the state to which such written request is

made, shall proceed expeditiously to acquire the desired property either by purchase at a price satisfactory to the requesting state, or, if such purchase cannot be made, then through the exercise of its power of eminent domain and shall convey such property to the requesting state or such entity as may be designated by the requesting state; provided, that all costs of acquisition and expenses of every kind and nature whatsoever incurred in obtaining the requested property shall be paid by the requesting state at the time and in the manner prescribed by the state requested to acquire the property.

(c) Should any facility be constructed in a signatory state by and for the benefit of another signatory state or states or the water users thereof, as above provided, the construction, repair, replacement, maintenance and operation of such facility shall be subject to the laws of the state in which the facility is located, except that, in the case of a reservoir constructed in one state for the benefit of another state or states, the water administration officials of the state in which the facility is located shall permit the storage and release of any water which, as determined by findings of the commission, falls within the apportionment of the state or states for whose benefit the facility is constructed. In the case of a regulating reservoir for the joint benefit of all states in making Lee Ferry deliveries, the water administration officials of the state in which the facility is located, in permitting the storage and release of water, shall comply with the findings and orders of the commission.

(d) In the event property is acquired by a signatory state in another signatory state for the use and benefit of the former, the users of water made available by such facilities, as a condition precedent to the use thereof, shall pay to the political subdivisions of the state in which such works are located, each and every year during which such rights are enjoyed for such purposes, a sum of money equivalent to the average annual amount of taxes levied and assessed against the land and improvements thereon during the ten years preceding the acquisition of such land. Said payments shall be in full reimbursement for the loss of taxes in such political subdivisions of the state, and in lieu of any and all taxes on said property, improvements and rights. The signatory states recommended [recommend] to the president and the congress that, in the event the United States of America shall acquire property in one of the signatory states for the benefit of another signatory state, or its water users, provision be made for like payment in reimbursement of loss of taxes.

ARTICLE X

(a) The signatory states recognize La Plata River Compact [72-15-16 to 72-15-18 NMSA 1978] entered into between the states of Colorado and New Mexico, dated November 27, 1922, approved by the congress on January 29, 1925 (43 Stat. 796), and this compact [this section] shall not affect the apportionment therein made.

(b) All consumptive use of water of La Plata river and its tributaries shall be charged under the apportionment of Article III hereof to the state in which the use is made; provided, that consumptive use incident to the diversion, impounding or conveyance of water in one state for use in the other shall be charged to the latter state.

ARTICLE XI

Subject to the provisions of this compact, the consumptive use of the water of the Little Snake river and its tributaries is hereby apportioned between the states of Colorado and Wyoming in such quantities as shall result from the application of the following principles and procedures:

(a) water used under rights existing prior to the signing of this compact:

(1) water diverted from any tributary of the Little Snake river or from the main stem of the Little Snake river above a point one hundred feet below the confluence of Savery creek and the Little Snake river shall be administered without regard to rights covering the diversion of water from any downstream points;

(2) water diverted from the main stem of the Little Snake river below a point of one hundred feet below the confluence of Savery creek and the Little Snake river shall be administered on the basis of an interstate priority schedule prepared by the commission in conformity with priority dates established by laws of the respective states;

(b) water used under rights initiated subsequent to the signing of this compact:

(1) direct flow diversions shall be so administered that, in time of shortage, the curtailment of use on each acre of land irrigated thereunder shall be as nearly equal as may be possible in both of the states;

(2) the storage of water by projects located in either state, whether of supplemental supply or of water used to irrigate land not irrigated at the date of the signing of this compact, shall be so administered that in times of water shortage the curtailment of storage of water available for each acre of land irrigated thereunder shall be as nearly equal as may be possible in both states;

(c) water uses under the apportionment made by this article shall be in accordance with the principle that beneficial use shall be the basis, measure and limit of the right to use;

(d) the states of Colorado and Wyoming each assent to diversions and storage of water in one state for use in the other state, subject to compliance with Article IX of this compact;

(e) in the event of the importation of water to the Little Snake river basin from any other river basin, the state making the importation shall have the exclusive use of such imported water unless by written agreement, made by the representatives of the states of Colorado and Wyoming on the commission, it is otherwise provided;

(f) water use projects initiated after the signing of this compact, to the greatest extent possible, shall permit the full use within the basin in the most feasible manner of the waters of the Little Snake river and its tributaries, without regard to the state line; and, so far as is practicable, shall result in an equal division between the states of the use of water not used under rights existing prior to the signing of this compact;

(g) all consumptive use of the waters of the Little Snake river and its tributaries shall be charged under the apportionment of Article III hereof to the state in which the use is made; provided, that consumptive use incident to the diversion, impounding or conveyance of water in one state for use in the other shall be charged to the latter state.

ARTICLE XII

Subject to the provisions of this compact, the consumptive use of the waters of Henry's Fork, a tributary of Green river originating in the state of Utah and flowing into the state of Wyoming and thence into the Green river in the state of Utah; Beaver creek, originating in the state of Utah and flowing into Henry's Fork in the state of Wyoming; Burnt Fork, a tributary of Henry's Fork, originating in the state of Utah and flowing into Henry's Fork in the state of Wyoming; Birch creek, a tributary of Henry's Fork, originating in the state of Utah and flowing into Henry's Fork in the state of Wyoming; and Sheep creek, a tributary of Green river in the state of Utah, and their tributaries, are hereby apportioned between the states of Utah and Wyoming in such quantities as will result from the application of the following principles and procedures:

(a) waters used under rights existing prior to the signing of this compact:

waters diverted from Henry's Fork, Beaver creek, Burnt Fork, Birch creek and their tributaries, shall be administered without regard to the state line on the basis of an interstate priority schedule to be prepared by the states affected and approved by the commission in conformity with the actual priority of right of use, the water requirements of the land irrigated and the acreage irrigated in connection therewith;

(b) waters used under rights from Henry's Fork, Beaver creek, Burnt Fork, Birch creek and their tributaries, initiated after the signing of this compact shall be divided fifty percent to the state of Wyoming and fifty percent to the state of Utah and each state may use said waters as and where it deems advisable;

(c) the state of Wyoming assents to the exclusive use by the state of Utah of the water of Sheep creek, except that the lands, if any, presently irrigated in the state of Wyoming from the water of Sheep creek shall be supplied with water from Sheep creek in order of priority and in such quantities as are in conformity with the laws of the state of Utah;

(d) in the event of the importation of water to Henry's Fork, or any of its tributaries, from any other river basin, the state making the importation shall have the exclusive use of such imported water unless by written agreement made by the representatives of the states of Utah and Wyoming on the commission, it is otherwise provided;

(e) all consumptive use of waters of Henry's Fork, Beaver creek, Burnt Fork, Birch creek, Sheep creek, and their tributaries shall be charged under the apportionment of Article III hereof to the state in which the use is made; provided, that consumptive use incident to the diversion, impounding or conveyance of water in one state for use in the other shall be charged to the latter state;

(f) the states of Utah and Wyoming each assent to the diversion and storage of water in one state for use in the other state, subject to compliance with Article IX of this compact. It shall be the duty of the water administrative officials of the state where the water is stored to release said stored water to the other state upon demand. If either the state of Utah or the state of Wyoming shall construct a reservoir in the other state for use in its own state, the water users of the state in which said facilities are constructed may purchase at a cost a portion of the capacity of said reservoir sufficient for the irrigation of their lands thereunder;

(g) in order to measure the flow of water diverted, each state shall cause suitable measuring devices to be constructed, maintained and operated at or near the point of diversion into each ditch;

(h) the state engineers of the two states jointly shall appoint a special water commissioner who shall have authority to administer the water in both states in accordance with the terms of this article. The salary and expenses of such special water commissioner shall be paid, thirty percent by the state of Utah and seventy percent by the state of Wyoming.

ARTICLE XIII

Subject to the provisions of this compact, the rights to the consumptive use of the water of the Yampa river, a tributary entering the Green river in the state of Colorado, are hereby apportioned between the states of Colorado and Utah in accordance with the following principles:

(a) the state of Colorado will not cause the flow of the Yampa river at the Maybell gaging station to be depleted below an aggregate of 5,000,000 acre-feet for any period of ten consecutive years reckoned in continuing progressive series beginning with the first day of October next succeeding the ratification and approval of this compact. In the event any diversion is made from the Yampa river or from tributaries entering the Yampa river above the Maybell gaging station for the benefit of any water use project in the state of Utah, then the gross amount of all such diversions for use in the state of Utah, less any returns from such diversions to the river above

Maybell, shall be added to the actual flow at the Maybell gaging station to determine the total flow at the Maybell gaging station;

(b) all consumptive use of the waters of the Yampa river and its tributaries shall be charged under the apportionment of Article III hereof to the state in which the use is made; provided, that consumptive use incident to the diversion, impounding or conveyance of water in one state for use in the other shall be charged to the latter state.

ARTICLE XIV

Subject to the provisions of this compact, the consumptive use of the waters of the San Juan river and its tributaries is hereby apportioned between the states of Colorado and New Mexico as follows:

The state of Colorado agrees to deliver to the state of New Mexico from the San Juan river and its tributaries which rise in the state of Colorado a quantity of water which shall be sufficient, together with water originating in the San Juan basin in the state of New Mexico, to enable the state of New Mexico to make full use of the water apportioned to the state of New Mexico by Article III of this compact, subject, however, to the following:

(a) a first and prior right shall be recognized as to:

(1) all uses of water made in either state at the time of the signing of this compact; and

(2) all uses of water contemplated by projects authorized, at the time of the signing of this compact, under the laws of the United States of America whether or not such projects are eventually constructed by the United States of America or by some other entity;

(b) the state of Colorado assents to diversions and storage of water in the state of Colorado for use in the state of New Mexico, subject to compliance with Article IX of this compact;

(c) the uses of the waters of the San Juan river and any of its tributaries within either state which are dependent upon a common source of water and which are not covered by (a) hereof, shall in times of water shortages be reduced in such quantity that the resulting consumptive use in each state will bear the same proportionate relation to the consumptive use made in each state during times of average water supply as determined by the commission; provided, that any preferential uses of water to which Indians are entitled under Article XIX shall be excluded in determining the amount of curtailment to be made under this paragraph;

(d) the curtailment of water use by either state in order to make deliveries at Lee Ferry as required by Article IV of this compact shall be independent of any and all conditions imposed by this article and shall be made by each state, as and when required, without regard to any provision of this article;

(e) all consumptive use of the waters of the San Juan river and its tributaries shall be charged under the apportionment of Article III hereof to the state in which the use is made; provided that consumptive use incident to the diversion, impounding or conveyance of water in one state for use in the other shall be charged to the latter state.

ARTICLE XV

(a) Subject to the provisions of the Colorado River Compact and of this compact, water of the upper Colorado river system may be impounded and used for the generation of electrical power, but such impounding and use shall be subservient to the use and consumption of such water for agricultural and domestic purposes and shall not interfere with or prevent use for such dominant purposes.

(b) The provisions of this compact shall not apply to or interfere with the right or power of any signatory state to regulate within its boundaries the appropriation, use and control of water, the consumptive use of which is apportioned and available to such state by this compact.

ARTICLE XVI

The failure of any state to use the water, or any part thereof, the use of which is apportioned to it under the terms of this compact, shall not constitute a relinquishment of the right to such use to the lower basin or to any other state, nor shall it constitute a forfeiture or abandonment of the right to such use.

ARTICLE XVII

The use of any water now or hereafter imported into the natural drainage basin of the upper Colorado river system shall not be charged to any state under the apportionment of consumptive use made by this compact.

ARTICLE XVIII

(a) The state of Arizona reserves its rights and interests under the Colorado River Compact as a state of the lower division and as a state of the lower basin.

(b) The state of New Mexico and the state of Utah reserve their respective rights and interests under the Colorado River Compact as states of the lower basin.

ARTICLE XIX

Nothing in this compact shall be construed as:

(a) affecting the obligations of the United States of America to Indian tribes;

(b) affecting the obligations of the United States of America under the treaty with the United Mexican States (treaty series 994);

(c) affecting any rights or powers of the United States of America, its agencies or instrumentalities, in or to the waters of the upper Colorado river system, or its capacity to acquire rights in and to the use of said waters;

(d) subjecting any property of the United States of America, its agencies or instrumentalities, to taxation by any state or subdivision thereof, or creating any obligation on the part of the United States of America, its agencies or instrumentalities, by reason of the acquisition, construction or operation of any property or works of whatever kind, to make any payment to any state or political subdivision thereof, state agency, municipality or entity whatsoever, in reimbursement for the loss of taxes;

(e) subjecting any property of the United States of America, its agencies or instrumentalities, to the laws of any state to an extent other than the extent to which such laws would apply without regard to this compact.

ARTICLE XX

This compact may be terminated at any time by the unanimous agreement of the signatory states. In the event of such termination, all rights established under it shall continue unimpaired.

ARTICLE XXI

This compact shall become binding and obligatory when it shall have been ratified by the legislatures of each of the signatory states and approved by the congress of the United States of America. Notice of ratification by the legislatures of the signatory states shall be given by the governor of each signatory state to the governor of each of the other signatory states and to the president of the United States of America, and the president is hereby requested to give notice to the governor of each of the signatory states of approval by the congress of the United States of America.

In witness whereof, the commissioners have executed six counterparts hereof each of which shall be and constitute an original, one of which shall be deposited in the archives of the department of state of the United States of America, and one of which shall be forwarded to the governor of each of the signatory states.

Done at the city of Santa Fe, state of New Mexico, this 11th day of October, 1948.

(s) CHARLES A. CARSON
Charles A. Carson
Commissioner for the state of Arizona.
(s) CLIFFORD H. STONE
Clifford H. Stone
Commissioner for the state of Colorado.
(s) FRED E. WILSON
Fred E. Wilson
Commissioner for the state of New Mexico.
(s) EDWARD H. WATSON
Edward H. Watson
Commissioner for the state of Utah.
(s) L. C. BISHOP
L. C. Bishop
Commissioner for the state of Wyoming.
(s) GROVER A. GILES
Grover A. Giles, Secretary.

APPROVED:

(s) HARRY W. BASHORE

Harry W. Bashore

Representative of the United States of America.

History: 1978 Comp., § 72-15-26, enacted by Laws 1949, ch. 5, § 1.

ANNOTATIONS

Compiler's notes. — Congress gave its consent to the Upper Colorado River Compact by Act of April 6, 1949, ch. 48, 63 Stat. 31.

Law reviews. — For article, "A Survey of the Evolution of Western Water Law in Response to Changing Economic and Public Interest Demands," see 29 Nat. Resources J. 347 (1989).

Am. Jur. 2d, A.L.R. and C.J.S. references. — 78 Am. Jur. 2d Waters §§ 87, 310.

93 C.J.S. Waters §§ 170, 183, 188.

72-15-27. [Notice of approval.]

Notice of approval of said compact shall be given by the governor of New Mexico to the governors of Arizona, Colorado, Utah and Wyoming, and to the president of the United States of America, as provided in Article XXI of said compact.

History: 1978 Comp., § 72-15-27, enacted by Laws 1949, ch. 5, § 2.

72-15-28. [Ratification and approval.]

The ratification and approval of said compact by this state shall not be binding or obligatory until it shall have been likewise approved by the legislatures of the states of Arizona, Colorado, Utah and Wyoming, and approved by the congress of the United States of America.

History: 1978 Comp., § 72-15-28, enacted by Laws 1949, ch. 5, § 3.

ARTICLE 16
Albuquerque Metropolitan Arroyo Flood Control

72-16-1. Short title.

This act [72-16-1 to 72-16-103 NMSA 1978] may be cited as the "Arroyo Flood Control Act."

History: 1953 Comp., § 75-36-1, enacted by Laws 1963, ch. 311, § 1.

ANNOTATIONS

Cross references. — For municipalities, authority to protect against flood, see Chapter 3, Article 41 NMSA 1978.

For flood control generally, see Chapter 4, Article 50 NMSA 1978.

For applicability of conservancy districts act, see 73-14-2 NMSA 1978.

This act does not deprive owners of their property without due process of law, nor does it deny them the equal protection of the law. Albuquerque Metropolitan Arroyo Flood Control Auth. v. Swinburne, 74 N.M. 487, 394 P.2d 998 (1964).

Boundaries of flood control authority were not arbitrarily and capriciously fixed by the legislature nor does this act contravene the due process clause. Albuquerque Metropolitan Arroyo Flood Control Auth. v. Swinburne, 74 N.M. 487, 394 P.2d 998 (1964).

Fact some residents receive more benefit than others. — Under this section, the fact that there may be residents or property owners in some portions of the area who receive a greater benefit than others, or that some actually receive no benefit from the improvements and are in no apparent danger of damage from floods, cannot stand in the way of a general governmental policy declared by the legislature in the interest of the public welfare and benefit. Albuquerque Metropolitan Arroyo Flood Control Auth. v. Swinburne, 74 N.M. 487, 394 P.2d 998 (1964).

Law reviews. — For article, "Existing Legislation and Proposed Model Flood Plain Ordinance For New Mexico Municipalities," see 9 Nat. Resources J. 629 (1969).

Am. Jur. 2d, A.L.R. and C.J.S. references. — 50 Am. Jur. 2d Levees and Flood Control §§ 1, 2.

72-16-2. Legislative declaration.

It is hereby declared as a matter of legislative determination:

A. that the organization of the authority hereby created having the purposes, powers, duties, privileges, immunities, rights, liabilities and disabilities provided in this act [72-16-1 to 72-16-103 NMSA 1978] will serve a public use and will promote the health, safety, prosperity, security and general welfare of the inhabitants thereof and of the state of New Mexico;

B. that the acquisition, improvement, maintenance and operation of any project authorized in this act is in the public interest and constitutes a part of the established and permanent policy of the state;

C. that the authority hereby organized shall be a body corporate and politic, a quasi-municipal corporation, and a political subdivision of the state;

D. that the flood control system hereby authorized and directed to be acquired will be of special benefit to the property within the boundaries of the authority hereinafter organized and created;

E. that the notice provided for in this act for each hearing and action to be taken is reasonably calculated to inform any person of interest in any proceedings hereunder which may directly and adversely affect his legally protected interests;

F. that a general law cannot be made applicable to the designated flood control system and the provisions herein appertaining thereto because of a number of atypical and special conditions concerning them;

G. that for the accomplishment of these purposes, the provisions of this act shall be broadly construed.

History: 1953 Comp., § 75-36-2, enacted by Laws 1963, ch. 311, § 2.

ANNOTATIONS

Act designed to benefit Albuquerque flood control authority. — The Arroyo Flood Control Act was designed to directly benefit only the land included within the Albuquerque flood control authority. 1964 Op. Att'y Gen. No. 64-90.

72-16-3. Decision of board or governing body final.

The action and decision of the board as to all matters passed upon by it in relation to any action, matter or thing provided herein shall be final and conclusive unless arbitrary, capricious or fraudulent.

History: 1953 Comp., § 75-36-3, enacted by Laws 1963, ch. 311, § 3.

72-16-4. Definitions.

Except where the context otherwise requires, the definitions in this section govern the construction hereof:

A. "act" means this Arroyo Flood Control Act [72-16-1 to 72-16-103 NMSA 1978];

B. "acquisition" or "acquire" means the opening, laying out, establishment, purchase, construction, securing, installation, reconstruction, lease, gift, grant from the federal government, any public body or person, endowment, bequest, devise, condemnation, transfer, assignment, option to purchase, other contract, or other acquirement (or any combination thereof) of facilities, other property, any project or an interest therein, herein authorized;

C. "authority" means the Albuquerque metropolitan arroyo flood control authority hereby created;

D. "board" means the board of directors of the Albuquerque metropolitan arroyo flood control authority;

E. "chairman" means the chairman of the board and president of the authority;

F. "condemnation" or "condemn" means the acquisition by the exercise of the power of eminent domain of property for any facilities, other property, project, or an interest therein, herein authorized. The authority may exercise in the state the power of eminent domain, either within or without the authority, and in the manner provided by law for the condemnation of private property for public use, may take any property necessary to carry out any of the objects or purposes hereof. In the event the

construction of any facility or project herein authorized, or any part thereof, shall make necessary the removal and relocation of any public utilities, whether on private or public right-of-way, the authority shall reimburse the owner of such public utility facility for the expense of such removal and relocation, including the cost of any necessary land or rights in land;

G. "cost" or "cost of the project," or words of similar import, means all or any part designated by the board of the cost of any facilities, project, or interest therein, being acquired, and of all or any property, rights, easements, privileges, agreements and franchises deemed by the authority to be necessary or useful and convenient thereof or in connection therewith, which cost, at the option of the board, may include all or any part of the incidental costs pertaining to the project, including, without limiting the generality of the foregoing, preliminary expenses advanced by any municipality from funds available for use therefor in the making of surveys, preliminary plans, estimates of cost, other preliminaries, the costs of appraising, printing, employing engineers, architects, fiscal agents, attorneys at law, clerical help, other agents or employees, the costs of capitalizing interest or any discount on securities, of inspection, of any administrative, operating and other expenses of the authority prior to the levy and collection of taxes, and of reserves for working capital, operation, maintenance or replacement expenses or for payment or security of principal of or interest on any securities, the costs of making, publishing, posting, mailing and otherwise giving any notice in connection with the project, the taking of options, the issuance of securities, the filing or recordation of instruments, the levy and collection of taxes and installments thereof, the costs of reimbursements by the authority to any public body, the federal government or any person of any moneys theretofore expended for or in connection with any facility or project, and all other expenses necessary or desirable and appertaining to any project, as estimated or otherwise ascertained by the board;

H. "director" means a member of the board;

I. "disposal" or "dispose" means the sale, destruction, razing, loan, lease, gift, grant, transfer, assignment, mortgage, option to sell, other contract or other disposition (or any combination thereof) of facilities, other property, any project or an interest therein, herein authorized;

J. "engineer" means any engineer in the permanent employ of the authority or any independent competent engineer or firm of such engineers employed by the authority in connection with any facility, property, project or power herein authorized;

K. "equipment" or "equip" means the furnishing of all necessary or desirable, related or appurtenant, facilities or any combination thereof, appertaining to any facilities, property, project or interest therein, herein authorized;

L. "facility" means any of the water facilities, sewer facilities or other property appertaining to the flood control system of the authority;

M. "federal government" means the United States of America or any agency, instrumentality or corporation thereof;

N. "federal securities" means the bills, certificates of indebtedness, notes or bonds which are direct obligations of, or the principal and interest of which obligations are unconditionally guaranteed by, the United States of America;

O. "governing body" means the city council, city commission, board of commissioners, board of trustees, board of directors or other legislative body of the public body proceeding hereunder in which body the legislative powers of the public body are vested;

P. "hereby," "herein," "hereinabove," "hereinafter," "hereinbefore," "hereof," "hereto" and "hereunder" refer to this act and not solely to the particular portion thereof in which such word is used;

Q. "improvement" or "improve" means the extension, widening, lengthening, betterment, alteration, reconstruction, repair or other improvement (or any combination thereof) of facilities, other property, project or any interest therein, herein authorized;

R. "mailed notice" or notice by "mail" means the giving by the engineer, secretary, or any deputy thereof, as determined by the board, of any designated written or printed notice addressed to the last-known owner or owners of each tract of real property in question or other designated person at his or their last-known address or addresses, by deposit, at least ten days prior to the designated hearing or other time or event, in the United States mails, postage prepaid, as first-class mail. In the absence of fraud, the failure to mail any such notice shall not invalidate any proceedings hereunder. The names and addresses of such property owners shall be obtained from the records of the county assessor or from such other source or sources as the secretary or the engineer deem reliable. Any list of such names and addresses may be revised from time to time, but such a list need not be revised more frequently than at twelve-month intervals. Any mailing of any notice herein required shall be verified by the affidavit or certificate of the engineer, secretary, the deputy or other person mailing the notice, which verification shall be retained in the records of the authority at least until all taxes and securities appertaining thereto have been paid in full, or any claim is barred by a statute of limitations;

S. "may" is permissive;

T. "municipality" means the city of Albuquerque, or any other incorporated city, town or village in the state, whether incorporated or governed under a general act, special legislative act or special charter of any type. "Municipal" pertains thereto;

U. "person" means any human being, association, partnership, firm or corporation, excluding a public body and excluding the federal government;

V. "president" means the president of the authority and the chairman of the board;

W. "project" means any structure, facility, undertaking or system which the authority is herein authorized to acquire, improve, equip, maintain or operate. A project may consist of all kinds of personal and real property. A project shall appertain to the flood control system which the authority is hereby authorized and directed to provide within and without the authority's boundaries;

X. "property" means real property and personal property;

Y. "publication" or "publish" means publication in at least the one newspaper designated as the authority's official newspaper and published in the authority in the English language at least once a week and of general circulation in the authority. Except as herein otherwise specifically provided or necessarily implied, "publication" or "publish" also means publication for at least once a week for three consecutive weeks by three weekly insertions, the first publication being at least fifteen days prior to the designated time or event, unless otherwise so stated. It is not necessary that publication be made on the same day of the week in each of the three calendar weeks, but not less than fourteen days shall intervene between the first publication and the last publication, and publication shall be complete on the day of the last publication. Any publication herein required shall be verified by the affidavit of the publisher and filed with the secretary;

Z. "public body" means the state of New Mexico or any agency, instrumentality or corporation thereof, or any municipality, school district, other type district or any other political subdivision of the state, excluding the authority and excluding the federal government;

AA. "qualified elector" means a person qualified to vote in general elections in the state of New Mexico, who is a resident of the authority at the time of any election held under the provisions of this act or at any other time in reference to which the term "qualified elector" is used;

BB. "real property" means:

(1) land, including land under water;

(2) buildings, structures, fixtures and improvements on land;

(3) any property appurtenant to or used in connection with land;

(4) every estate, interest, privilege, easement, franchise and right in land, legal or equitable, including without limiting the generality of the foregoing, rights-of-way, terms for years, and liens, charges or encumbrances by way of judgment, mortgage or otherwise, and the indebtedness secured by such liens;

CC. "secretary" means the secretary of the authority;

DD. "secretary of state" means the secretary of the state of New Mexico;

EE. "securities" means any notes, warrants, bonds, temporary bonds or interim debentures or other obligations of the authority or any public body appertaining to any project or interest therein, herein authorized;

FF. "sewer facilities" means any one or more of the various devices used in the collection, channelling, impounding or disposition of storm, flood or surface drainage waters, including al [all] inlets, collection, drainage or disposal lines, canals, intercepting sewers, outfall sewers, all pumping, power and other equipment and appurtenances, all extensions, improvements, remodeling, additions and alterations thereof, and any and all rights or interest in such sewer facilities;

GG. "sewer improvement" or "improve any sewer" means the acquisition, reacquisition, improvement, reimprovement, or repair of any storm sewer, or combination storm and sanitary sewer, including but not limited to collecting and intercepting sewer lines or mains, submains, trunks, laterals, outlets, ditches, ventilation stations, pumping facilities, ejector stations, and all other appurtenances and machinery necessary, useful or convenient for the collection, transportation and disposal of storm water;

HH. "shall" is mandatory;

II. "state" means the state of New Mexico, or any agency, instrumentality, or corporation thereof;

JJ. "street" means any street, avenue, boulevard, alley, highway or other public right-of-way used for any vehicular traffic;

KK. "taxes" means general (ad valorem) taxes pertaining to any project herein authorized;

LL. "taxpaying elector" means a qualified elector of the authority who is an owner of real or personal property within the boundaries of the authority, which property is subject to general (ad valorem) taxation at the time of any election held under the provisions of this act or at any other time in reference to which the term "taxpaying elector" is used. A person who is obligated to pay general (ad valorem) taxes under a contract to purchase real property in the authority shall be considered as such an owner. The ownership of any property subject to the payment of a specific ownership tax on a motor vehicle or trailer or of any other excise or property tax other than such general (ad valorem) taxes shall not constitute the ownership of property subject to taxation as herein provided;

MM. "treasurer" means the treasurer of the authority.

History: 1953 Comp., § 75-36-4, enacted by Laws 1963, ch. 311, § 4.

ANNOTATIONS

Common-law sovereign immunity was applicable to claim against authority. — Common-law sovereign immunity, as it existed in New Mexico prior to the decision in Hicks v. State, 88 N.M. 588, 544 P.2d 1153 (1975), was applicable to plaintiff's claim against the Albuquerque metropolitan arroyo flood control authority for an accident which took place in June, 1974. Gallagher v. Albuquerque Metro. Arroyo Flood Control Auth., 90 N.M. 309, 563 P.2d 103 (Ct. App.), cert. denied, 90 N.M. 636, 567 P.2d 485 (1977).

72-16-5. Creation of authority.

There is hereby created a flood control authority to be known and designated as the Albuquerque metropolitan arroyo flood control authority.

History: 1953 Comp., § 75-36-5, enacted by Laws 1963, ch. 311, § 5.

ANNOTATIONS

Common-law sovereign immunity was applicable to claim against authority. — Common-law sovereign immunity, as it existed in New Mexico prior to the decision in Hicks v. State, 88 N.M. 588, 544 P.2d 1153 (1975), was applicable to plaintiff's claim against the Albuquerque metropolitan arroyo flood control authority for an accident which took place in June, 1974. Gallagher v. Albuquerque Metro. Arroyo Flood Control Auth., 90 N.M. 309, 563 P.2d 103 (Ct. App.), cert. denied, 90 N.M. 636, 567 P.2d 485 (1977).

Sovereign immunity no defense since maintenance of flood control system proprietary. — The Albuquerque metropolitan arroyo flood control authority does not act for the public benefit generally, as distinguished from acting for its immediate benefit and its private good since it operates and maintains a flood control system for the benefit of the authority and the inhabitants thereof. Thus, AMAFCA's maintenance of its flood control system was not a governmental activity, but was proprietary, and AMAFCA could not interpose the defense of sovereign immunity to avoid liability for negligent acts in connection with the activity. Gallagher v. Albuquerque Metro. Arroyo Flood Control Auth., 90 N.M. 309, 563 P.2d 103 (Ct. App.), cert. denied, 90 N.M. 636, 567 P.2d 485 (1977).

Authority has two roles. — The Albuquerque metropolitan arroyo flood control authority is a body corporate and politic, a quasi-municipal corporation and a political subdivision of the state, and thus it has two roles - that of political subdivision and that of a quasi-municipality. Gallagher v. Albuquerque Metro. Arroyo Flood Control Auth., 90 N.M. 309, 563 P.2d 103 (Ct. App.), cert. denied, 90 N.M. 636, 567 P.2d 485 (1977).

Role of body politic, political subdivision of state, is the role of an instrumentality of state government, and as a state instrumentality, the Albuquerque metropolitan arroyo flood control authority would have been immune from tort liability for a tort committed in June, 1974. Gallagher v. Albuquerque Metro. Arroyo Flood Control Auth., 90 N.M. 309, 563 P.2d 103 (Ct. App.), cert. denied, 90 N.M. 636, 567 P.2d 485 (1977).

Immunity by virtue of governmental activity. — Since its duties are ordinarily wholly governmental the quasi-municipal corporation has been accorded immunity under the common law, and in such a case the immunity would exist by virtue of the governmental activity, regardless of whether the label was municipal, quasi-municipal or state instrumentality. Gallagher v. Albuquerque Metro. Arroyo Flood Control Auth., 90 N.M. 309, 563 P.2d 103 (Ct. App.), cert. denied, 90 N.M. 636, 567 P.2d 485 (1977).

Immunity same as immunity of municipality. — Immunity for municipalities in New Mexico has depended on whether the function involved was governmental or proprietary; this distinction has also been applied to counties which are considered to be quasi-municipal corporations, and the immunity of a flood control authority should be considered in the same manner as the immunity of a municipality or a county. Gallagher v. Albuquerque Metro. Arroyo Flood Control Auth., 90 N.M. 309, 563 P.2d 103 (Ct. App.), cert. denied, 90 N.M. 639, 597 P.2d 485 (1977).

Quasi-municipality label not determinant. — The fact that the Albuquerque metropolitan arroyo flood control authority has the label of quasi-municipality does not determine whether it is immune from liability for its torts. Its immunity depends on whether its activity was governmental or proprietary. Nor does it necessarily follow that all of AMAFCA's activities would be proprietary if flood control activities were held to be proprietary. Gallagher v. Albuquerque Metro. Arroyo Flood Control Auth., 90 N.M. 309, 563 P.2d 103 (Ct. App.), cert. denied, 90 N.M. 636, 567 P.2d 485 (1977).

Categorization of activity as governmental or proprietary. — Whether the Albuquerque metropolitan arroyo flood control authority's flood control activities were governmental or proprietary was an appropriate consideration in a suit charging the authority with the negligent placing of a steel cable across a service road. Categorization of the activity or function involved is an approach followed in New Mexico decisions. Gallagher v. Albuquerque Metro. Arroyo Flood Control Auth., 90 N.M. 309, 563 P.2d 103 (Ct. App.), cert. denied, 90 N.M. 636, 567 P.2d 485 (1977).

Placing obstruction in service road as proprietary activity. — Placing a steel cable across a service road to prevent public travel on the road is more than the governmental activity of regulating the use of the road through traffic control devices; it is the placing of an obstruction in the service road, a proprietary activity for which Albuquerque metropolitan arroyo flood control authority was liable because a municipality is liable for the negligent failure to keep its streets in a reasonably safe condition. Gallagher v. Albuquerque Metro. Arroyo Flood Control Auth., 90 N.M. 309, 563 P.2d 103 (Ct. App.), cert. denied, 90 N.M. 636, 567 P.2d 485 (1977).

Indebtedness proposed by flood control authority is not one contracted by either a county, city, town or village or school district, but is one imposed by a special quasi-municipal corporation under legislative authority. Albuquerque Metropolitan Arroyo Flood Control Auth. v. Swinburne, 74 N.M. 487, 394 P.2d 998 (1964).

Am. Jur. 2d, A.L.R. and C.J.S. references. — 52A C.J.S. Levees and Flood Control § 21.

72-16-6. Boundaries of authority.

The boundaries of the authority are:

A portion of Bernalillo county bounded on the north by the Sandoval county line and the Sandia pueblo grant boundary, on the east by the Cibola national forest boundary, on the south by the Isleta Indian pueblo grant and land boundary, and on the west by the approximate location of the drainage divide between the Rio Grande and the Rio Puerco watersheds, which is more particularly described as follows:

Beginning at the northwest corner of the authority, which is the point of intersection of the boundary line common to Bernalillo and Sandoval counties and the west boundary of the town of Alameda grant; thence, in an easterly direction along the boundary line common to Bernalillo and Sandoval counties for a distance of approximately 15.0 miles to the point of intersection of this line with the east boundary of the town of Alameda grant, which is a point on the north boundary of the authority; thence, in a southwesterly direction along the east boundary of the town of Alameda grant for a distance of approximately 1.0 mile to its intersection with the south boundary of the Sandia pueblo grant, which is a point on the north boundary of the authority; thence, in a southeasterly direction along the south boundary of the Sandia pueblo grant for a distance of approximately 7.5 miles to the point of intersection of this line with the line common to the boundaries of the Cibola national forest and the Elena Gallegos grant, which point is on the north boundary of the authority; thence, in a southeasterly direction along the boundary line common to the Cibola national forest and the Elena Gallegos grant for a distance of approximately 3.2 miles to the northeast corner of the authority; thence, in a southerly direction along the boundary common to the Cibola national forest and the Elena Gallegos grant for a distance of approximately 3.3 miles to a point on the east boundary of the authority; thence, in a westerly direction along the boundary line common to the Cibola national forest and the Elena Gallegos grant for a distance of approximately 3.3 miles to the point of intersection of the west boundary line of the Cibola national forest and the south boundary line of the Elena Gallegos grant, which point is on the east boundary of the authority; thence, in a southerly direction along the west boundary of the Cibola national forest for a distance of approximately 13.4 miles to a point on the east boundary of the authority; thence, in a southerly direction along the boundary line dividing range 4 east and range 5 east, New Mexico principal meridian, for a distance of approximately 0.5 mile to the point of intersection of this line with the north boundary of the Isleta pueblo grant, which point is the southeast corner of the authority; thence, in a westerly direction along the north

boundary of the Isleta pueblo grant for a distance of approximately 16.1 miles to its intersection with the boundary line common to sections 4 and 5, township 8 north, range 2 east, New Mexico principal meridian, which point is on the south boundary of the authority; thence, in a northerly direction along the boundary line common to sections 4 and 5, township 8 north, range 2 east, New Mexico principal meridian, for a distance of approximately 0.2 mile to the west quarter corner of section 4, township 8 north, range 2 east, New Mexico principal meridian, which point is on the south boundary of the authority; thence, in an easterly direction along the east-west center lines of sections 3 and 4, township 8 north, range 2 east, New Mexico principal meridian, for a distance of approximately 1.5 miles to the center of section 3, township 8 north, range 2 east, New Mexico principal meridian, which point is on the south boundary of the authority; thence, in a northerly direction along the north-south center line of section 3, township 8 north, range 2 east, New Mexico principal meridian, for a distance of 0.5 mile to the north quarter corner of section 3, township 8 north, range 2 east, New Mexico principal meridian, which is a point on the south boundary of the Pajarito grant and which point is on the south boundary of the authority; thence, in a westerly direction along the south boundary of the Pajarito grant for a distance of approximately 8.5 miles to a point 1800 feet east of mile post 4 on the Pajarito grant boundary, which point is the southwest corner of the authority; thence, bearing due north for a distance of 13.7 miles to the point of intersection with the north boundary of the town of Atrisco grant, which is a point on the west boundary of the authority; thence, in a northeasterly direction for a distance of approximately 1.6 miles to the southwest corner of the town of Alameda grant, which is a point on the west boundary of the authority; thence, in a northeasterly direction along the west boundary of the town of Alameda grant for a distance of 2.8 miles to its intersection with the boundary line common to Bernalillo and Sandoval counties, which point is the northwest corner and point of beginning of the authority; excepting therefrom, all lands owned by the United States and all pueblo lands included within these boundaries.

History: 1953 Comp., § 75-36-6, enacted by Laws 1963, ch. 311, § 6; 1985, ch. 190, § 1.

ANNOTATIONS

The 1985 amendment substituted "lands owned by the United States and all pueblo" for "military reservation" near the end of the section and made minor grammatical changes.

Am. Jur. 2d, A.L.R. and C.J.S. references. — 52A C.J.S. Levees and Flood Control § 17.

72-16-7. Provision for remonstrances.

Within sixty days from the time this act goes into effect, a written, signed and acknowledged remonstrance against the acquiring of the flood control system provided for in Section 19 [72-16-19 NMSA 1978] herein may be filed with the board hereinafter

created by the owners of property of the value of at least thirty percent of the value of the property herein provided to be taxed, based upon the assessed valuation of said property for general taxes for the year preceding the year of making such remonstrance. If there is real estate in the authority that has not been separately assessed by the taxing authorities, the board shall value such real estate for the purpose of such remonstrance on the same basis of valuation as other real estate similarly situated that has been separately assessed. The board shall, as soon as possible, examine such remonstrance, if made, and canvass and pass upon and determine its sufficiency, and its action thereon shall be final. If the petition is found to contain the names of the owners of property of fifty percent of the total valuation of said real estate in the authority and is found to be sufficient, then the flood control system herein provided for shall not be acquired; provided, that no action under the terms of this act [72-16-1 to 72-16-103 NMSA 1978] shall be delayed during the period of sixty days, except that no bonds shall be issued during said time.

History: 1953 Comp., § 75-36-7, enacted by Laws 1963, ch. 311, § 7.

ANNOTATIONS

Am. Jur. 2d, A.L.R. and C.J.S. references. — 52A C.J.S. Levees and Flood Control § 18.

72-16-8. Board of directors.

The governing body of the authority hereby created is a board of directors consisting of five qualified electors of the authority. All powers, rights, privileges and duties vested in or imposed upon the authority are exercised and performed by and through the board of directors; provided, that the exercise of any and all executive, administrative and ministerial powers may be, by the board, delegated and redelegated to officers and employees of the authority. Except for the first directors appointed as hereinafter provided and except for any director chosen to fill an unexpired term, the term of each director commences on the first day of January next following a general election in the state and runs for six years. Each director, subject to said exceptions, shall serve such a six-year term ending on the first day of January next following a general election; and each director shall serve until his successor has been duly chosen and qualified.

History: 1953 Comp., § 75-36-8, enacted by Laws 1963, ch. 311, § 8.

ANNOTATIONS

Am. Jur. 2d, A.L.R. and C.J.S. references. — 52A C.J.S. Levees and Flood Control § 21.

72-16-9. Appointment of first board.

When this act goes into effect, the governor shall forthwith appoint five qualified electors of the authority as the directors comprising the first board. They shall serve until their successors have been elected and qualified. Immediately upon their appointment the five directors shall meet, qualify and choose officers, as provided for organizational meetings thereafter in Section 13 [72-16-13 NMSA 1978] hereof.

History: 1953 Comp., § 75-36-9, enacted by Laws 1963, ch. 311, § 9.

ANNOTATIONS

Am. Jur. 2d, A.L.R. and C.J.S. references. — 52A C.J.S. Levees and Flood Control § 22.

72-16-10. Election of directors.

A. At each general election, directors shall be elected from single-member districts in which they reside. The board shall ensure that the districts remain contiguous, compact and as equal in population as is practicable, assessing the existing districts following each federal decennial census to accomplish that objective. A redistricting shall be effective at the following regular board election. Incumbent board members whose residences are redistricted out of their districts may serve out their term of office.

B. The qualified electors of the authority shall elect similarly one or two qualified electors as directors to serve six-year terms as directors and as successors to the directors whose terms end on the first day of January next following each election. Nothing herein may be construed as preventing a qualified elector of the authority from any single-member district from being elected or reelected as a director to succeed himself.

History: 1953 Comp., § 75-36-10, enacted by Laws 1963, ch. 311, § 10; 2001, ch. 19, § 1.

ANNOTATIONS

The 2001 amendment, effective June 15, 2001, deleted the first three sentences of the section, which were outdated provisions for electing board members; inserted a new Subsection A and redesignated the remaining material as Subsection B; in Subsection B, inserted "any single-member district from" and deleted the former last two sentences of the Subsection, which explained how to choose a director in the event that there were one or two or more vacancies on the board.

Compiler's notes. — Laws 1963, ch. 311, § 105, makes the Arroyo Flood Control Act effective March 26, 1963.

Am. Jur. 2d, A.L.R. and C.J.S. references. — 52A C.J.S. Levees and Flood Control § 22.

72-16-11. Nomination of directors.

Not later than forty-five days before a proposal to incur debt is first submitted to the taxpaying electors or at the first general election next following the effective date of the Arroyo Flood Control Act [72-16-1 NMSA 1978], whichever occurs first, written nominations of any candidate as director may be filed with the secretary of the board. Each nomination of any candidate shall be signed by not less than fifty taxpaying electors who reside within the district for which the candidate has been nominated, shall designate therein the name of the candidates thereby nominated and shall recite that the subscribers are taxpaying electors of the district for which the candidate is nominated and that the candidate or candidates designated therein are qualified electors of the authority and reside within the district for which they are nominated. No taxpaying elector may nominate more than one candidate for any vacancy. If a candidate does not withdraw his name before the time established by the county for purposes of absentee ballots or as set forth in the Election Code, whichever is earlier, his name shall be placed on the ballot. For any election held after November 6, 1984, nominations shall be made by qualified electors in accordance with the procedures and limitations of this section, except that such nominations shall be filed with the secretary of the board not later than the fourth Tuesday in June preceding the general election.

History: 1953 Comp., § 75-36-11, enacted by Laws 1963, ch. 311, § 11; 1985, ch. 190, § 2; 2001, ch. 19, § 2.

ANNOTATIONS

The 1985 amendment substituted "is first submitted to" for "shall be first submitted to" near the beginning of the section and added the last sentence.

The 2001 amendment, effective June 15, 2001, in the second sentence, substituted "who reside within the district for which the candidate has been nominated" for "regardless of whether or not nominated therein", inserted "of the district for which the candidate is nominated" following "are taxpaying electors", and inserted "and reside within the district for which they are nominated"; deleted the former third sentence, which read "No written nomination may designate more qualified electors as candidates than there are vacancies"; and changed the deadline for candidates to withdraw his or her name from the ballot from "first publication of the notice of election".

Effective date of the Arroyo Flood Control Act. — The effective date of the Arroyo Flood Control Act, referred to in the first sentence, is March 26, 1963.

72-16-12. Filling vacancies on board.

Upon a vacancy occurring in the board by reason of death, change of residence, resignation or for any other reason, the governor shall appoint a qualified elector of the authority who resides within the district where the vacancy exists as successor to serve the unexpired term.

History: 1953 Comp., § 75-36-12, enacted by Laws 1963, ch. 311, § 12; 2001, ch. 19, § 3.

ANNOTATIONS

The 2001 amendment, effective June 15, 2001, inserted "who resides within the district where the vacancy exists".

72-16-13. Organizational meetings.

Except for the first board, each board shall meet on the first business day next following the first day of January in each odd-numbered year, at the office of the board within the authority. Each member of the board, before entering upon his official duties, shall take and subscribe an oath that he will support the constitution of the United States and the constitution and laws of New Mexico, and that he will faithfully and impartially discharge the duties of his office to the best of his ability, which oath shall be filed in the office of the secretary of state. Each director shall, before entering upon his official duties, give a bond to the authority in the sum of ten thousand dollars [($10,000)] with good and sufficient surety, conditioned for the faithful performance of each and all of the duties of his office, without fraud, deceit or oppression, and the accounting for all moneys and property coming into his hands, and the prompt and faithful payment of all moneys and the delivering of all property coming into his custody or control belonging to the authority to his successors in office. Premiums on all bonds provided for in this section shall be paid by the authority, and all such bonds shall be kept on file in the office of the secretary of state.

History: 1953 Comp., § 75-36-13, enacted by Laws 1963, ch. 311, § 13.

72-16-14. Board's administrative powers.

The board may exercise the following powers:

A. fix the time and place, at which its regular meetings will be held within the authority and provide for the calling and holding of special meetings;

B. adopt and amend or otherwise modify bylaws and rules for procedure;

C. select one director as chairman of the board and president of the authority, and another director as chairman pro tem of the board and president pro tem of the authority, and choose a secretary and a treasurer of the board and authority, each of which two positions may be filled by a person who is, or is not, a director, and both of which positions may or may not, be filled by one person;

D. prescribe by resolution a system of business administration and create all necessary offices, and establish and reestablish the powers, duties, and compensation of all officers and employees;

E. require and fix the amount of all official bonds necessary or desirable and convenient in the opinion of the board for the protection of the funds and property of the authority, subject to the provisions of Section 13 [72-16-13 NMSA 1978] hereof;

F. prescribe a method of auditing and allowing or rejecting claims and demands;

G. provide a method for the letting of contracts on a fair and competitive basis for the construction of works, any facility, or any project, or any interest therein, or the performance or furnishing of labor, materials or supplies as required herein;

H. designate an official newspaper published in the authority in the English language and direct additional publication in any newspaper where it deems that the public necessity may so require;

I. make and pass resolutions and orders on behalf of the authority not repugnant to the provisions of this act [72-16-1 to 72-16-103 NMSA 1978], necessary or proper for the government and management of the affairs of the authority, for the execution of the powers vested in the authority, and for carrying into effect the provisions of this act.

History: 1953 Comp., § 75-36-14, enacted by Laws 1963, ch. 311, § 14.

ANNOTATIONS

Am. Jur. 2d, A.L.R. and C.J.S. references. — 52A C.J.S. Levees and Flood Control § 24.

72-16-15. Records of board.

On all resolutions and orders, the roll shall be called, and the ayes and noes shall be recorded. All resolutions and orders, as soon as may be after their passage, shall be recorded in a book kept for that purpose and be authenticated by the signature of the presiding officer of the board and the secretary. Every legislative act of the board of a general or permanent nature shall be by resolution. The book of resolutions and orders is a public record. A record shall also be made of all other proceedings of the board, minutes of all meetings, certificates, contracts, bonds given by officers, employees, and any other agents of the authority, and all corporate acts, which record is also a public record. The treasurer shall keep strict and accurate accounts of all moneys received by and disbursed for and on behalf of the authority, in a permanent record, which is also a public record. Any permanent record of the authority shall be open for inspection by any qualified elector thereof, by any other interested person, or by any representative of the federal government or any public body. All records are subject to audit as provided by law for political subdivisions.

History: 1953 Comp., § 75-36-15, enacted by Laws 1963, ch. 311, § 15.

72-16-16. Meetings of board.

All meetings of the board shall be held within the authority and shall be open to the public. No business of the board shall be transacted except at a regular or special meeting at which a quorum consisting of at least three-fifths of the total membership of the board is present. Any action of the board requires the affirmative vote of a majority of the directors present and voting. A smaller number of directors than a quorum may adjourn from time to time and may compel the attendance of absent members in such manner and under such penalties as the board may provide.

History: 1953 Comp., § 75-36-16, enacted by Laws 1963, ch. 311, § 16.

ANNOTATIONS

Cross references. — For flood control generally, see Chapter 4, Article 50 NMSA 1978.

72-16-16.1. Joint powers agreement authorized.

A. The boundary of the authority shall be amended upon the signing of a binding joint powers agreement among the authority, the Sandia pueblo, the bureau of Indian affairs of the United States department of the interior, the United States department of the interior, if applicable, the state highway and transportation department and any other necessary entities which provides for a plan for one hundred year flood protection for the area described. The agreement shall address ingress and access to Sandia pueblo lands, responsibilities for study, planning, design, construction, operation, maintenance, repair and other project-related considerations, obligations for funding, legal and liability questions and other elements as may be appropriate.

B. Upon approval of the joint powers agreement described in Subsection A of this section, the authority boundaries shall be changed to include privately owned land within the Sandia pueblo along Edith boulevard north of Roy avenue, more specifically described as an irregular shaped tract of land beginning at Roy avenue and the Atchison, Topeka and Santa Fe railroad right-of-way extending along the railroad tracks in a northeast direction approximately one-half mile to the Sandia pueblo grant line, then along that grant line in a southeast direction approximately one-quarter mile to Edith boulevard, then in a southeasterly direction along the Sandia pueblo grant line to Roy avenue and then west along Roy avenue to the point of beginning at the railroad right-of-way.

History: 1978 Comp., § 72-16-16.1, enacted by Laws 1989, ch. 361, § 1.

72-16-17. Compensation of directors.

Directors shall receive no compensation for their services as a director, officer, engineer, attorney, employee or other agent of the authority. Directors may be

reimbursed for expenses incurred by them on authority business with approval of the board.

History: 1953 Comp., § 75-36-17, enacted by Laws 1963, ch. 311, § 17.

72-16-18. Interest in contracts and property disqualifications.

No director nor officer, employee or agent of the authority may be interested in any contract or transaction with the authority except in his official representative capacity or as provided, except for any contract of employment with the authority. Neither the holding of any office or employment in the government of any public body or the federal government nor the owning of any property within the state, within or without the authority, may be deemed a disqualification for membership on the board or employment by the authority, nor a disqualification for compensation for services as an officer, employee or agent of the authority, except as provided in Section 17 [72-16-17 NMSA 1978] hereof.

History: 1953 Comp., § 75-36-18, enacted by Laws 1963, ch. 311, § 18.

72-16-19. Flood control system; hearings thereon.

The authority is hereby authorized, empowered and directed, subject to the provisions of Section 7 [72-16-7 NMSA 1978] hereof, to acquire, equip, maintain and operate a flood control system for the benefit of the authority and the inhabitants thereof, after the board has made such preliminary studies and otherwise taken such action as it determines to be necessary or desirable as preliminaries thereto. The flood control system consists of such facilities as the board may determine. When a comprehensive program for the acquisition of the flood control system satisfactory to the board is available, it shall be tentatively adopted. The program need only describe the proposed flood control system in general terms and not in detail. A public hearing on the proposed program shall be scheduled, and notice of the hearing shall be given by publication. After the hearing and any adjournments thereof which may be ordered, the board may either require changes to be made in the program as the board may consider desirable, or the board may approve the program as prepared. If any substantial changes to the program are ordered at any time, a further hearing shall be held pursuant to notice which shall be given by publication.

History: 1953 Comp., § 75-36-19, enacted by Laws 1963, ch. 311, § 19.

ANNOTATIONS

Maintenance of flood control system as proprietary activity. — The Albuquerque metropolitan arroyo flood control authority does not act for the public benefit generally, as distinguished from acting for its immediate benefit and its private good since it operates and maintains a flood control system for the benefit of the authority and the inhabitants thereof. Thus, AMAFCA's maintenance of its flood control system was not a

governmental activity, but was proprietary, and AMAFCA could not interpose the defense of sovereign immunity to avoid liability for negligent acts in connection with the activity. Gallagher v. Albuquerque Metro. Arroyo Flood Control Auth., 90 N.M. 309, 563 P.2d 103 (Ct. App.), cert. denied, 90 N.M. 636, 567 P.2d 485 (1977).

Am. Jur. 2d, A.L.R. and C.J.S. references. — 52A C.J.S. Levees and Flood Control § 24.

72-16-20. Implementing powers.

The board may:

A. acquire, improve, equip, maintain and operate any project or facility for the control of flood and storm waters of the authority and the flood and storm waters of streams which have their sources outside of the authority but which streams and the flood waters thereof flow into the authority;

B. protect from such floods or storm waters the watercourses, watersheds, public highways, life and property in the authority;

C. exercise the right of eminent domain, either within or without the authority, in the manner provided by law for the condemnation of private property for public use.

History: 1953 Comp., § 75-36-20, enacted by Laws 1963, ch. 311, § 20.

ANNOTATIONS

Am. Jur. 2d, A.L.R. and C.J.S. references. — 52A C.J.S. Levees and Flood Control § 24.

72-16-21. Protection of property rights.

It is hereby declared that the use of the property, lands, rights-of-way, easements or materials which may be condemned, taken or appropriated under the provisions of this act [72-16-1 to 72-16-103 NMSA 1978] is a public use subject to the regulation and control of the state in the manner prescribed by law; but nothing herein shall be deemed to authorize the authority or public body or person to divert the waters of any river, creek, stream, irrigation system, canal or ditch from its channel to the detriment of any person, any public body or the federal government having any interest in such river, creek, stream, irrigation system, canal or ditch, or the waters thereof or therein, unless compensation is ascertained and paid therefor under the laws authorizing the taking of private property for public use.

History: 1953 Comp., § 75-36-21, enacted by Laws 1963, ch. 311, § 21.

ANNOTATIONS

Am. Jur. 2d, A.L.R. and C.J.S. references. — 50 Am. Jur. 2d Levees and Flood Control §§ 7 to 11.

72-16-22. Additional powers of the authority.

The authority may exercise the following duties, privileges, immunities, rights, liabilities and disabilities appertaining to a public body politic and corporate and constituting a quasi-municipal corporation and political subdivision of the state established as an instrumentality exercising public and essential governmental and proprietary functions to provide for the public health, safety and general welfare:

A. perpetual existence and succession;

B. adopt, have and use a corporate seal and alter the same at pleasure;

C. sue and be sued and be a party to suits, actions and proceedings;

D. commence, maintain, intervene in, defend, compromise, terminate by settlement or otherwise, and otherwise participate in, and assume the cost and expense of, any and all actions and proceedings now or hereafter begun and appertaining to the authority, its board, its officers, agents or employees, or any of the authority's duties, privileges, immunities, rights, liabilities and disabilities, or the authority's flood control system, other property of the authority or any project;

E. enter into contracts and agreements, including but not limited to contracts with the federal government, the state and any other public body;

F. borrow money and issue securities evidencing any loan to or amount due by the authority, provide for and secure the payment of any securities and the rights of the holders thereof, and purchase, hold and dispose of securities, as hereinafter provided;

G. refund any loan or obligation of the authority and issue refunding securities to evidence such loan or obligation without any election;

H. purchase, trade, exchange, encumber and otherwise acquire, maintain and dispose of property and interests therein;

I. levy and cause to be collected general (ad valorem) taxes on all property subject to property taxation within the authority; provided that the total tax levy, excluding any levy for the payment of any debt of the authority authorized pursuant to the Arroyo Flood Control Act [72-16-1 to 72-16-103 NMSA 1978], for any fiscal year shall not exceed an aggregate total of fifty cents ($.50), or any lower amount required by operation of the rate limitation provisions of Section 7-37-7.1 NMSA 1978 upon this tax levy, for each one thousand dollars ($1,000) of net taxable value, as that term is defined in the Property Tax Code [Chapter 7, Articles 35 through 38 NMSA 1978], by certifying,

on or before the fifteenth day of July in each year in which the board determines to levy a tax, to the board of county commissioners of Bernalillo county, or by such other date as the laws of the state may prescribe to such other body having authority to levy taxes within each county wherein the authority has any territory, the rate so fixed, with directions that, at the time and in the manner required by law for levying taxes for other purposes, such body having authority to levy taxes shall levy the tax upon the net taxable value of all property subject to property taxation within the authority, in addition to such other taxes as may be levied by such body, as provided in Sections 72-16-23 through 72-16-27 NMSA 1978. No taxes may be levied and collected for any purpose, or any contract made, until a bond issue has been submitted to and approved by the taxpaying electors as hereinafter provided;

J. hire and retain officers, agents, employees, engineers, attorneys and any other persons, permanent or temporary, necessary or desirable to effect the purposes hereof, defray any expenses incurred thereby in connection with the authority, and acquire office space, equipment, services, supplies, fire and extended coverage insurance, use and occupancy insurance, workmen's compensation insurance, property damage insurance, public liability insurance for the authority and its officers, agents and employees, and other types of insurance, as the board may determine; provided, however, that no provision herein authorizing the acquisition of insurance shall be construed as waiving any immunity of the authority or any director, officer or agent thereof and otherwise existing under the laws of the state;

K. condemn property for public use;

L. acquire, improve, equip, hold, operate, maintain and dispose of a flood control system, storm sewer facilities, project and appurtenant works, or any interest therein, wholly within the authority, or partially within and partially without the authority, and wholly within, wholly without or partially within and partially without any public body all or any part of the area of which is situated within the authority;

M. pay or otherwise defray the cost of any project;

N. pay or otherwise defray and contract so to pay or defray, for any term not exceeding fifty years, without an election, except as hereinafter otherwise provided, the principal of, any interest on, and any other charges appertaining to, any securities or other obligations of the federal government, any public body or person incurred in connection with any such property so acquired by the authority;

O. establish and maintain facilities within or without the authority, across or along any public street, highway, bridge, viaduct or other public right-of-way, or in, upon, under or over any vacant public lands, which public lands are now, or may become, the property of the state, or across any stream of water or water course, without first obtaining a franchise from the municipality, county or other public body having jurisdiction over the same; provided that the authority shall cooperate with any public body having such jurisdiction, shall promptly restore any such street, highway, bridge,

viaduct or other public right-of-way to its former state of usefulness as nearly as may be and shall not use the same in such manner as to impair completely or unnecessarily the usefulness thereof;

P. deposit any money of the authority, subject to the limitations in Article 8, Section 4 of the constitution of New Mexico, in any banking institution within or without the state and secured in such manner and subject to such terms and conditions as the board may determine, with or without the payment of any interest on any such deposit;

Q. invest any surplus money in the authority treasury, including such money in any sinking or reserve fund established for the purpose of retiring any securities of the authority, not required for the immediate necessities of the authority, in its own securities or in federal securities, by direct purchase of any issue of such securities, or part thereof, at the original sale of the same, or by the subsequent purchase of such securities;

R. sell any such securities thus purchased and held, from time to time;

S. reinvest the proceeds of any such sale in other securities of the authority or in federal securities, as provided in Subsection Q of this section;

T. sell in season from time to time such securities thus purchased and held, so that the proceeds may be applied to the purposes for which the money with which such securities were originally purchased was placed in the treasury of the authority;

U. accept contributions or loans from the federal government for the purpose of financing the planning, acquisition, improvement, equipment, maintenance and operation of any enterprise in which the authority is authorized to engage, and enter into contracts and cooperate with, and accept cooperation and participation from, the federal government for these purposes;

V. enter, without any election, into joint operating or service contracts and agreements, acquisition, improvement, equipment or disposal contracts or other arrangements, for any term not exceeding fifty years, with the federal government, any public body or any person concerning storm sewer facilities, or any project, whether acquired by the authority or by the federal government, any public body or any person, and accept grants and contributions from the federal government, any public body or any person in connection therewith;

W. enter into and perform, without any election, when determined by the board to be in the public interest and necessary for the protection of the public health, contracts and agreements, for any term not exceeding fifty years, with the federal government, any public body or any person for the provision and operation by the authority of storm sewer facilities;

X. enter into and perform, without any election, contracts and agreements with the federal government, any public body or any person for or concerning the planning, construction, lease or other acquisition, improvement, equipment, operation, maintenance, disposal, and the financing of any project, including but not necessarily limited to any contract or agreement for any term not exceeding fifty years;

Y. enter upon any land, make surveys, borings, soundings and examinations for the purposes of the authority, and locate the necessary works of any project and roadways and other rights-of-way appertaining to any project herein authorized; acquire all property necessary or convenient for the acquisition, improvement or equipment of such works;

Z. cooperate with and act in conjunction with the state, or any of its engineers, officers, boards, commissions or departments, or with the federal government or any of its engineers, officers, boards, commissions or departments, or with any other public body or any person in the acquisition, improvement or equipment of any project for the controlling of flood or storm waters of the authority, or for the protection of life or property therein, or for any other works, acts or purposes provided for herein, and adopt and carry out any definite plan or system of work for any such purpose;

AA. cooperate with the federal government or any public body by an agreement therewith by which the authority may:

(1) acquire and provide, without cost to the operating entity, the land, easements and rights-of-way necessary for the acquisition, improvement or equipment of the flood control system or any project;

(2) hold and save harmless the cooperating entity free from any claim for damages arising from the acquisition, improvement, equipment, maintenance and operation of the flood control system or any project;

(3) maintain and operate any project in accordance with regulations prescribed by the cooperating entity; and

(4) establish and enforce flood channel limits and regulations, if any, satisfactory to the cooperating entity;

BB. carry on technical and other investigations of all kinds, make measurements, collect data and make analyses, studies and inspections pertaining to control of floods, sewer facilities, and any project, both within and without the authority, and for this purpose the authority has the right of access through its authorized representative to all lands and premises within the state;

CC. have the right to provide from revenues or other available funds an adequate fund for the improvement and equipment of the authority's flood control system or of any parts of the works and properties of the authority;

DD. prescribe and enforce reasonable rules and regulations for the prevention of further encroachment upon existing defined waterways, by their enlargement or other modification, for additional waterway facilities to prevent flooding;

EE. require any person desiring to make a connection to any storm water drain or flood control facility of the authority or to cause storm waters to be emptied into any ditch, drain, canal, floodway or other appurtenant structure of the authority firstly to make application to the board to make the connection, to require the connection to be made in such manner as the board may direct;

FF. refuse, if reasonably justified by the circumstances, permission to make any connection designated in Subsection DD or Subsection EE of this section;

GG. make and keep records in connection with any project or otherwise concerning the authority;

HH. arbitrate any differences arising in connection with any project or otherwise concerning the authority;

II. have the management, control and supervision of all the business and affairs appertaining to any project herein authorized, or otherwise concerning the authority, and of the acquisition, improvement, equipment, operation and maintenance of any such project;

JJ. prescribe the duties of officers, agents, employees and other persons and fix their compensation; provided that the compensation of employees and officers shall be established at prevailing rates of pay for equivalent work;

KK. enter into contracts of indemnity and guaranty, in such form as may be approved by the board, relating to or connected with the performance of any contract or agreement which the authority is empowered to enter into under the provisions hereof or of any other law of the state;

LL. provide, by any contract for any term not exceeding fifty years, or otherwise, without an election:

(1) for the joint use of personnel, equipment and facilities of the authority and any public body, including without limitation public buildings constructed by or under the supervision of the board of the authority or the governing body of the public body concerned, upon such terms and agreements and within such areas within the authority as may be determined, for the promotion and protection of health, comfort, safety, life, welfare and property of the inhabitants of the authority and any such public body; and

(2) for the joint employment of clerks, stenographers and other employees appertaining to any project, now existing or hereafter established in the authority, upon such terms and conditions as may be determined for the equitable apportionment of the expenses therefrom resulting;

MM. obtain financial statements, appraisals, economic feasibility reports and valuations of any type appertaining to any project or any property pertaining thereto;

NN. adopt any resolution authorizing a project or the issuance of securities, or both, or otherwise appertaining thereto, or otherwise concerning the authority;

OO. make and execute a mortgage, deed of trust, indenture or other trust instrument appertaining to a project or to any securities herein authorized, or to both, except as provided in Subsection PPof this section and in Section 72-16-54 NMSA 1978;

PP. make all contracts, execute all instruments and do all things necessary or convenient in the exercise of the powers granted herein, or in the performance of the authority's covenants or duties, or in order to secure the payment of its securities; provided, no encumbrance, mortgage or other pledge of property, excluding any money, of the authority is created thereby and provided no property, excluding money, of the authority is liable to be forfeited or taken in payment of such securities;

QQ. have and exercise all rights and powers necessary or incidental to or implied from the specific powers granted herein, which specific powers shall not be considered as a limitation upon any power necessary or appropriate to carry out the purposes and intent hereof; and

RR. exercise all or any part or combination of the powers herein granted.

History: 1953 Comp., § 75-36-22, enacted by Laws 1963, ch. 311, § 22; 1985, ch. 190, § 3; 1986, ch. 32, § 30.

ANNOTATIONS

The 1985 amendment combined the former introductory paragraph and Subsection A, deleting "powers" preceding "duties, privileges", redesignated former Subsections B through SS as present Subsections A through RR, substituted "pursuant to the Arroyo Flood Control Act" for "by the taxpaying electors of the authority" near the beginning, "Sections 72-16-23 through 72-16-27 NMSA 1978" for "Sections 23 to 27 both inclusive, hereof", and "or any contract made" for "nor any contract made" and deleted "and after" preceding "a bond issue has been submitted to" in Subsection I, inserted "storm" preceding "sewer facilities" near the beginning of Subsection L, substituted "money" for "moneys" near the beginning of Subsection P, substituted "Subsection Q of this section" for "Subsection R hereof" at the end of Subsection S, inserted "storm" preceding "sewer facilities" near the middle of Subsection V and near the end of Subsection W,

substituted "such works" for "said works" at the end of Subsection Y, substituted "Subsection DD or Subsection EE of this section" for "Subsection EE or Subsection FF of this section 22 hereof" at the end of Subsection FF, substituted "provided in Subsection PP of this section and in Section 72-16-54 NMSA 1978" for "provided herein in Subsection QQ of this section 22 and in Section 54 hereof" at the end of Subsection OO, and substituted "authority" for "district" and "such securities" for "said securities" near the end of Subsection PP.

The 1986 amendment, in Subsection I, substituted "property subject to property taxation" for "taxable property," inserted "excluding any levy for the payment of debt of the authority authorized pursuant to the Arroyo Flood Control Act", substituted "fifty cents ($.50), or any lower amount required by operation of the rate limitation provisions of Section 7-37-7.1 NMSA 1978 upon this tax levy, for each one thousand dollars ($1,000) of net taxable value, as that term is defined in the Property Tax Code" for "one-half of one mill, excluding any levy for the payment of any debt of the authority authorized pursuant to the Arroyo Flood Control Act", "fifteenth day of July" for "first Monday in September," and "the tax upon the net taxable value of all property subject to property taxation" for "such tax upon the assessed valuation of all taxable property"; and made minor stylistic changes.

Authorized tax in reality assessment. — The tax authorized by Subsection J (now Subsection I) of this section is in reality an assessment because it is levied solely for the purpose of operating the flood control system which enhances the value of, protects, improves and otherwise specially benefits only that portion of land included within the Albuquerque flood control authority. 1964 Op. Att'y Gen. No. 64-90 (rendered under prior law).

While this provision denominates the levy a "tax," it actually is not. It is a special assessment. 1965 Op. Att'y Gen. No. 65-182 (rendered under prior law).

Tax not subject to constitutional limitation. — The "1/2 of one mill" property tax (now $.50 for each $1,000 of net taxable value) which the Albuquerque flood control authority may levy pursuant to Subsection J (now Subsection I) of this section is not a general tax, but a benefit assessment, and hence is not subject to the 20 mill limitation of N.M. Const., art. VIII, § 2. 1964 Op. Att'y Gen. No. 64-90 (rendered under prior law).

Am. Jur. 2d, A.L.R. and C.J.S. references. — 52A C.J.S. Levees and Flood Control § 24.

72-16-23. Levy and collection of taxes.

To levy and collect taxes, the board shall determine in each year the amount of money necessary to be raised by taxation, taking into consideration other sources of revenue of the authority, and shall fix a rate of levy, without limitation as to rate or amount, except for the limitation in Subsection I of Section 72-16-22 NMSA 1978 and for any constitutional limitation, which, when levied upon the net taxable value, as that

term is defined in the Property Tax Code [Chapter 7, Articles 35 through 38 NMSA 1978], of all property subject to property taxation within the authority, and together with other revenues, will raise the amount required by the authority annually to supply funds for paying expenses of organization and the costs of acquiring, improving, equipping, operating and maintaining any project or facility of the authority, and promptly to pay in full, when due, all interest on and principal of bonds and other securities of the authority, and in the event of accruing defaults or deficiencies, an additional levy may be made as provided in Section 72-16-24 NMSA 1978.

History: 1953 Comp., § 75-36-23, enacted by Laws 1963, ch. 311, § 23; 1985, ch. 190, § 4; 1986, ch. 32, § 31.

ANNOTATIONS

Cross references. — For constitutional property tax limits and exceptions, see N.M. Const., art. VIII, § 2.

The 1985 amendment substituted "Subsection I of Section 72-16-22 NMSA 1978" for "Subsection J of Section 22 hereof" near the beginning and "Section 72-16-24 NMSA 1978" for "Section 24 hereof" at the end of the section.

The 1986 amendment substituted "the net taxable value, as that term is defined in the Property Tax Code, of all property subject to property taxation" for "every dollar of assessed valuation of taxable property".

Am. Jur. 2d, A.L.R. and C.J.S. references. — 52A C.J.S. Levees and Flood Control §§ 28 to 33.

72-16-24. Levies to cover deficiencies.

The board, in certifying annual levies, shall take into account the maturing indebtedness for the ensuing year as provided in its contracts, maturing securities and interest on securities, and deficiencies and defaults of prior years and shall make ample provision for the payment thereof. In case the money produced from such levies, together with other revenues of the authority, is not sufficient punctually to pay the annual installments of its contracts or securities, and interest thereon, and to pay defaults and deficiencies, the board shall make such additional levies of taxes as may be necessary for such purposes, and notwithstanding any limitations, except the limitation in Subsection I of Section 72-16-22 NMSA 1978, and any constitutional limitation, such taxes shall be made and continue to be levied until the indebtedness of the authority is fully paid.

History: 1953 Comp., § 75-36-24, enacted by Laws 1963, ch. 311, § 24; 1986, ch. 32, § 32.

ANNOTATIONS

The 1986 amendment substituted "Subsection I of Section 72-16-22 NMSA 1978" for "Subsection J of Section 22 hereof" and made minor stylistic changes.

72-16-25. Sinking fund.

Whenever any indebtedness has been incurred by the authority, it shall be lawful for the board to levy taxes and to collect revenue for the purpose of creating a reserve fund in such amount as the board may determine, which may be used to meet the obligations of the authority, for maintenance and operating charges and depreciation, and to provide improvements for the authority.

History: 1953 Comp., § 75-36-25, enacted by Laws 1963, ch. 311, § 25.

72-16-26. Manner of levying and collecting taxes.

It is the duty of the body having authority to levy taxes within each county to levy the taxes provided in Subsection I of Section 72-16-22 NMSA 1978, and elsewhere in the Arroyo Flood Control Act [72-16-1 to 72-16-103 NMSA 1978]. It is the duty of all officials charged with collecting taxes to collect such taxes at the time and in the form and manner and with like interest and penalties as other general (ad valorem) taxes are collected, and when collected, to pay the same to the authority. The payment of such collection shall be made monthly to the treasurer of the authority and paid into the depository thereof to the credit of the authority. All general (ad valorem) taxes levied under that act, together with interest thereon and penalties for default in payment thereof, and all costs of collecting the same constitute until paid a perpetual lien on and against the property taxed, and such lien is on a parity with the tax lien of other general (ad valorem) taxes.

History: 1953 Comp., § 75-36-26, enacted by Laws 1963, ch. 311, § 26; 1985, ch. 190, § 5.

ANNOTATIONS

The 1985 amendment substituted "Subsection I of Section 72-16-22 NMSA 1978, and elsewhere in the Arroyo Flood Control Act" for "Subsection J, Section 22, hereof, and elsewhere in this act" near the end of the first sentence and "that act" for "this act" near the beginning of the fourth sentence.

Effective dates. — Laws 1985, ch. 190 contains no effective date provision, but, pursuant to N.M. Const., art. IV, § 23, is effective on June 14, 1985.

Am. Jur. 2d, A.L.R. and C.J.S. references. — 52A C.J.S. Levees and Flood Control § 33.

72-16-27. Delinquent taxes.

If the general (ad valorem) taxes levied are not paid, then delinquent real property shall be sold at the regular tax sale for the payment of said taxes, interest and penalties, in the manner provided by the statutes of the state for selling real property for the nonpayment of general taxes. If there are no bids at said tax sale for the property so offered, said property shall be struck off to the county, and the county shall account to the authority in the same manner as provided by law for accounting for school, town and city taxes. Delinquent personal property shall be distrained and sold as provided by law.

History: 1953 Comp., § 75-36-27, enacted by Laws 1963, ch. 311, § 27.

ANNOTATIONS

Cross references. — For sale of real property for payment of property taxes, see 7-38-65 NMSA 1978 et seq.

Am. Jur. 2d, A.L.R. and C.J.S. references. — 52A C.J.S. Levees and Flood Control § 38.

72-16-28. Elections.

Each biennial election of directors, each election proposition to issue bonds and all other elections shall be conducted at the time of the general election under the direction of the Bernalillo county clerk and in accordance with the election laws of New Mexico.

History: 1953 Comp., § 75-36-28, enacted by Laws 1963, ch. 311, § 28; 1985, ch. 190, § 6.

ANNOTATIONS

The 1985 amendment deleted the former introductory paragraph and former Subsections A and B, relating to the election of the qualified electors or taxpaying electors of the authority, and added the present section.

72-16-29. Election resolution.

The board shall call any election by resolution adopted at least one hundred eighty days prior to the election. Such resolution shall recite the objects and purposes of the election and the date upon which such election shall be held.

History: 1953 Comp., § 75-36-29, enacted by Laws 1963, ch. 311, § 29; 1985, ch. 190, § 7.

ANNOTATIONS

The 1985 amendment substituted "one hundred eighty days" for "sixty days" in the first sentence, inserted "and" following "purposes of the election" and deleted "and the form

of the ballot" at the end of the second sentence, and deleted the former third, fourth, fifth, sixth, and seventh sentences, relating to elections not held concurrently with primary or general elections and the judges role when elections are held concurrently with primary or general elections.

72-16-30. Conduct of election.

An election held pursuant hereto shall be conducted in the manner provided by the laws of the state for the conduct of general elections.

History: 1953 Comp., § 75-36-30, enacted by Laws 1963, ch. 311, § 30; 1985, ch. 190, § 8.

ANNOTATIONS

Cross references. — For general election law, see Chapter 1 NMSA 1978.

The 1985 amendment deleted "Except as provided in this act" at the beginning of the section and deleted the former second and third sentences which read, "Registration pursuant to the general election or any other statutes is not required. Absentee voting shall not be permitted for any election held hereunder".

72-16-31. Notice of election.

Notice of such election shall be given by publication. No other notice of an election held hereunder need be given unless otherwise provided by the board.

History: 1953 Comp., § 75-36-31, enacted by Laws 1963, ch. 311, § 31.

72-16-32. Polling places.

All polling places shall be within the area included within the authority.

History: 1953 Comp., § 75-36-32, enacted by Laws 1963, ch. 311, § 32; 1985, ch. 190, § 9.

ANNOTATIONS

The 1985 amendment deleted "designated by the election resolution" following "All polling places" near the beginning and "and if the election shall not be held concurrently with a primary or general election held under the laws of the state, there shall be one polling place in each of the election precincts which are used in the primary and general elections or in each of the consolidated election precincts fixed by the board" following "authority" at the end of the section.

72-16-33. Election supplies.

The secretary of the authority shall provide to the Bernalillo county clerk such supplies and assistance as necessary to conduct elections authorized by the Arroyo Flood Control Act [72-16-1 to 72-16-103 NMSA 1978].

History: 1953 Comp., § 75-36-33, enacted by Laws 1963, ch. 311, § 33; 1985, ch. 190, § 10.

ANNOTATIONS

The 1985 amendment rewrote the section.

72-16-34. Election returns.

In those polling places where the county precincts coincide with the boundaries of the authority, the regular general election precinct board shall certify the results of the authority election to the county canvassing board. The county canvassing board shall certify directly to the secretary of the authority that portion of the returns pertaining to the authority election. In those polling places where the precincts are partly within and partly without the authority's district, the authority shall appoint a separate authority precinct board at the authority's expense, which shall be provided space in the polling places where the general election is being conducted. Paper ballots shall be used in the conduct of the election, and the authority precinct board shall conduct the election as provided in the Election Code [Chapter 1 NMSA 1978] where paper ballots are used. The separate authority precinct board shall certify the results of the election in that precinct to the secretary of the authority within twelve hours after the close of the polls. The secretary of the authority shall canvass the results of the authority election as certified by the county canvassing board and as certified by each of the separate authority precinct boards and shall declare the results of the election at any regular or special meeting held not less than five days following the date of the election. Except as herein otherwise provided, any proposal submitted at any election hereunder shall not carry unless the proposal has been approved by a majority of the qualified electors of the district voting thereon.

History: 1953 Comp., § 75-36-34, enacted by Laws 1963, ch. 311, § 34; 1985, ch. 190, § 11.

ANNOTATIONS

Cross references. — For county canvassing board, see 1-13-1 NMSA 1978.

The 1985 amendment rewrote the section.

72-16-35. Dissolution of authority.

If a remonstrance is received pursuant to Section 72-16-7 NMSA 1978 denying the board the power to acquire a flood control system or if the first proposal for the issuance of bonds fails to receive a favorable vote by a majority of the qualified electors voting thereon, the board shall proceed to dissolve the authority.

History: 1953 Comp., § 75-36-35, enacted by Laws 1963, ch. 311, § 35; 1985, ch. 190, § 12.

ANNOTATIONS

The 1985 amendment substituted "remonstrance is received" for "remonstrance be received" and "Section 72-16-7 NMSA 1978" for "Section 7 hereof" near the beginning and "or" for "of" following "flood control system" and "fails to receive" for "shall have failed to receive" near the middle of the section.

72-16-36. Filing of dissolution resolution.

Within thirty days after the effective date of any resolution dissolving the authority, the secretary shall file a copy of the resolution in the office of the county clerk and shall cause to be filed an additional copy of the resolution in the office of the secretary of state, which filings shall be without fee and be otherwise in the same manner as articles of incorporation are required to be filed under the laws of the state.

History: 1953 Comp., § 75-36-36, enacted by Laws 1963, ch. 311, § 36.

72-16-37. Disposition of property, funds and taxes of authority.

All property and all funds remaining in the treasury of the authority so dissolved shall be surrendered and transferred to the county in which the authority is located and shall become a part of the general fund of the county.

History: 1953 Comp., § 75-36-37, enacted by Laws 1963, ch. 311, § 37.

72-16-38. Powers of public bodies.

The governing body of any municipality, federally authorized Indian pueblo or tribe or other public body, upon its behalf and in its name, for the purpose of aiding and cooperating in the determination of any authority boundary or any project herein authorized, upon the terms and with or without consideration and with or without an election, as the governing body determines, may exercise the following powers:

A. sell, lease, loan, donate, grant, convey, assign, transfer and otherwise dispose to the authority, sewer facilities or any other property, or any interest therein, appertaining to a flood control system;

B. make available for temporary use or otherwise dispose to the authority of any machinery, equipment, facilities and other property, and any agents, employees, persons with professional training, and any other persons, to effect the purposes hereof. Any such property and persons owned or in the employ of any public body while engaged in performing for the authority any service, activity or undertaking herein authorized, pursuant to contract or otherwise, shall have and retain all of the powers, privileges, immunities, rights and duties of, and shall be deemed to be engaged in the service and employment of such public body, notwithstanding such service, activity or undertaking is being performed in or for the authority;

C. enter into any agreement or joint agreement between or among the federal government, the authority and any other public body, or any combination thereof, extending over any period not exceeding fifty years, which is mutually agreed [to] thereby, notwithstanding any law to the contrary, respecting action or proceedings appertaining to any power herein granted, and the use or joint use of any facilities, project or other property herein authorized;

D. sell, lease, loan, donate, grant, convey, assign, transfer or pay over to the authority any facilities or any project herein authorized, or any part thereof, or any interest in real or personal property, or any funds available for acquisition, improvement or equipment purposes, including the proceeds of any securities previously or hereafter issued for acquisition, improvement or equipment purposes which may be used by the authority in the acquisition, improvement, equipment, maintenance or operation of any facilities or project herein authorized;

E. transfer, grant, convey or assign and set over to the authority any contracts which may have been awarded by the public body for the acquisition, improvement or equipment of any project not begun or if begun, not completed;

F. budget and appropriate, and each municipality or other public body is hereby required and directed to budget and appropriate, from time to time, general (ad valorem) tax proceeds, and other revenues legally available therefor to pay all obligations arising from the exercise of any powers herein granted as such obligations shall accrue and become due;

G. provide for an agency, by any agreement herein authorized, to administer or execute that or any collateral agreement, which agency may be one of the parties to the agreement, or a commission or board constituted pursuant to the agreement;

H. provide that any such agency shall possess the common power specified in the agreement, and may exercise it in the manner or according to the method provided in the agreement. Such power is subject to the restrictions upon the manner of exercising the power of any one of the contracting parties, which party shall be designated by the agreement; and

I. continue any agreement herein authorized for a definite term not exceeding fifty years, or until rescinded or terminated, which agreement may provide for the method by which it may be rescinded or terminated by any party.

History: 1953 Comp., § 75-36-38, enacted by Laws 1963, ch. 311, § 38; 1989, ch. 361, § 2.

ANNOTATIONS

The 1989 amendment, effective June 16, 1989, in the introductory paragraph, inserted "federally authorized Indian pueblo or tribe" and "the determination of any authority boundary or" and, in Subsection H, made a minor stylistic change.

72-16-39. Effect of extraterritorial functions.

All of the powers, privileges, immunities and rights, exemptions from laws, ordinances and rules, all pension, relief, disability, workmen's compensation, and other benefits which apply to the activity of officers, agents or employees of the authority or any such public body when performing their respective functions within the territorial limits of the respective public agencies apply to them to the same degree and extent while engaged in the performance of any of their functions and duties extraterritorially hereunder.

History: 1953 Comp., § 75-36-39, enacted by Laws 1963, ch. 311, § 39.

72-16-40. Forms of borrowing.

Upon the conditions and under the circumstances set forth in this act [72-16-1 to 72-16-103 NMSA 1978], the authority, to carry out the purposes hereof, from time to time may borrow money to defray the cost of any project, or any part thereof, as the board may determine, and issue the following securities to evidence such borrowing:

A. notes;

B. warrants;

C. bonds;

D. temporary bonds; and

E. interim debentures.

History: 1953 Comp., § 75-36-40, enacted by Laws 1963, ch. 311, § 40.

ANNOTATIONS

Indebtedness proposed by flood control authority is not one contracted by either a county, city, town or village or school district, but is one imposed by a special quasi-municipal corporation under legislative authority. Albuquerque Metropolitan Arroyo Flood Control Auth. v. Swinburne, 74 N.M. 487, 394 P.2d 998 (1964).

Am. Jur. 2d, A.L.R. and C.J.S. references. — 64 Am. Jur. 2d Public Securities and Obligations §§ 9 to 23.

94 C.J.S. Waters §§ 322 to 331.

72-16-41. Issuance of notes.

The authority is authorized to borrow money without an election in anticipation of taxes or other revenues, or both, and to issue notes to evidence the amount so borrowed.

History: 1953 Comp., § 75-36-41, enacted by Laws 1963, ch. 311, § 41.

ANNOTATIONS

Am. Jur. 2d, A.L.R. and C.J.S. references. — 64 Am. Jur. 2d Public Securities and Obligations § 24.

64 C.J.S. Municipal Corporations § 1905.

72-16-42. Issuance of warrants.

The authority is authorized to defray the cost of any services, or supplies, equipment or other materials furnished to or for the benefit of the authority by the issuance of warrants to evidence the amount due therefor, without an election, in anticipation of taxes or other revenues, or both.

History: 1953 Comp., § 75-36-42, enacted by Laws 1963, ch. 311, § 42.

ANNOTATIONS

Am. Jur. 2d, A.L.R. and C.J.S. references. — 64 Am. Jur. 2d Public Securities and Obligations § 24.

64 C.J.S. Municipal Corporations § 1905.

72-16-43. Maturities of notes and warrants.

Notes and warrants may mature at such time or times not exceeding one year from the respective dates of their issuance as the board may determine. They shall not be

extended or funded except by the issuance of bonds or interim debentures in compliance with Sections 44 or 46 [72-16-44 or 72-16-46 NMSA 1978] hereof.

History: 1953 Comp., § 75-36-43, enacted by Laws 1963, ch. 311, § 43.

72-16-44. Issuance of bonds and incurrence of debt.

The authority is authorized to borrow money in anticipation of taxes or other revenues, or both, and to issue bonds to evidence the amount so borrowed. No bonded indebtedness or any other indebtedness not payable in full within one year, except for interim debentures as provided in Sections 72-16-46 and 72-16-89 through 72-16-91 NMSA 1978, shall be created by the authority without first submitting a proposition of issuing such bonds to the qualified electors of the authority and being approved by a majority of such electors voting thereon at an election held for that purpose in accordance with Sections 72-16-28 through 72-16-34 NMSA 1978 and all laws amendatory thereof and supplemental thereto. Bonds so authorized may be issued in one series or more and may mature at such time or times not exceeding forty years from their issuance as the board may determine. The total of all outstanding indebtedness at any one time shall not exceed forty million dollars ($40,000,000) without prior approval of the state legislature.

History: 1953 Comp., § 75-36-44, enacted by Laws 1963, ch. 311, § 44; 1973, ch. 171, § 1; 1985, ch. 190, § 13; 1997, ch. 87, § 1.

ANNOTATIONS

The 1985 amendment substituted "or any other indebtedness" for "nor any other indebtedness" and "Sections 72-16-46 and 72-16-89 through 72-16-91 NMSA 1978" for "Sections 46, 89, 90 and 91 hereof" near the beginning, "qualified electors" for "taxpaying electors" near the middle, and "Sections 72-16-28 through 72-16-34 NMSA 1978" for "Sections 28 to 34, both inclusive of this act" near the end of the second sentence.

The 1997 amendment substituted "forty million dollars ($40,000,000)" for "twenty million dollars ($20,000,000)" in the last sentence. Laws 1997, ch. 87 contains no effective date provision, but, pursuant to N.M. Const., art. IV, § 23, is effective on June 20, 1997, 90 days after adjournment of the legislature. See Volume 14 NMSA 1978 for "Adjournment Dates of Sessions of Legislature" table.

Am. Jur. 2d, A.L.R. and C.J.S. references. — 64 Am. Jur. 2d Public Securities and Obligations § 24.

72-16-45. Issuance of temporary bonds.

The authority is authorized to issue temporary bonds, pending preparation of definitive bond or bonds and exchangeable for the definitive bond or bonds when

prepared, as the board may determine. Each temporary bond shall set forth substantially the same conditions, terms and provisions as the definitive bond for which it is exchanged. Each holder of any such temporary security shall have all the rights and remedies which he would have as a holder of the definitive bond or bonds.

History: 1953 Comp., § 75-36-45, enacted by Laws 1963, ch. 311, § 45.

72-16-46. Issuance of interim debentures.

The authority is authorized to borrow money and to issue interim debentures evidencing "construction" or short-term loans for the acquisition or improvement and equipment of the flood control system or any project in supplementation of long term financing and the issuance of bonds, as provided in Sections 89, 90, and 91 [72-16-89 to 72-16-91 NMSA 1978] hereof.

History: 1953 Comp., § 75-36-46, enacted by Laws 1963, ch. 311, § 46.

72-16-47. Payment of securities.

All securities issued by the authority shall be authorized by resolution. The authority may pledge its full faith and credit for the payment of any securities herein authorized, the interest thereon, any prior redemption premium or premiums, and any charges appertaining thereto. Securities may constitute the direct and general obligations of the authority. Their payment may be secured by a specific pledge of tax proceeds and other revenues of the authority (in this act [72-16-1 to 72-16-103 NMSA 1978] sometimes referred to as "revenues" of the authority) as the board may determine.

History: 1953 Comp., § 75-36-47, enacted by Laws 1963, ch. 311, § 47.

ANNOTATIONS

Am. Jur. 2d, A.L.R. and C.J.S. references. — 64 Am. Jur. 2d Public Securities and Obligations § 24.

72-16-48. Additionally secured securities.

The board, in connection with such additionally secured securities, in the resolution authorizing their issuance or other instrument appertaining thereto, may pledge all or a portion of such revenues (subject to any prior pledges) as additional security for such payment of said securities, and at its option may deposit such revenues in a fund created to pay the securities or created to secure additionally their payment.

History: 1953 Comp., § 75-36-48, enacted by Laws 1963, ch. 311, § 48.

72-16-49. Pledge of revenues.

Any such revenues pledged directly or as additional security for the payment of securities of any one issue or series which revenues are not exclusively pledged therefor, may subsequently be pledged directly or as additional security for the payment of the securities of one or more issue or series subsequently authorized.

History: 1953 Comp., § 75-36-49, enacted by Laws 1963, ch. 311, § 49.

72-16-50. Ranking among different issues.

All securities of the same issue or series shall, subject to the prior and superior rights of outstanding securities, claims and other obligations, have a prior, paramount and superior lien on the revenues pledged for the payment of the securities over and ahead of any lien thereagainst subsequently incurred of any other securities; provided, however, the resolution authorizing, or other instrument appertaining to, the issuance of any securities may provide for the subsequent authorization of bonds or other securities the lien for the payment of which on such revenues is on a parity with the lien thereon of the subject securities upon such conditions and subject to such limitations as said resolution or other instrument may provide.

History: 1953 Comp., § 75-36-50, enacted by Laws 1963, ch. 311, § 50.

72-16-51. Ranking among securities of same issue.

All securities of the same issue or series shall be equally and ratably secured without priority by reason of number, date of maturity, date of securities, of sale, of execution, or of delivery, by a lien on said revenues in accordance with the provisions of this act [72-16-1 to 72-16-103 NMSA 1978] and the resolution authorizing, or other instrument appertaining to, said securities, except to the extent such resolution or other instrument shall otherwise expressly provide.

History: 1953 Comp., § 75-36-51, enacted by Laws 1963, ch. 311, § 51.

72-16-52. Payment recital in securities.

Each security issued hereunder shall recite in substance that the security and the interest thereon are payable solely from the revenues or other moneys pledged to the payment thereof. Securities specifically pledging the full faith and credit of the authority for their payment shall so state.

History: 1953 Comp., § 75-36-52, enacted by Laws 1963, ch. 311, § 52.

72-16-53. Incontestable recital in securities.

Any resolution authorizing, or other instrument appertaining to, any securities hereunder may provide that each security therein authorized shall recite that it is issued

under authority hereof. Such recital shall conclusively impart full compliance with all of the provisions hereof, and all securities issued containing such recital shall be incontestable for any cause whatsoever after their delivery for value.

History: 1953 Comp., § 75-36-53, enacted by Laws 1963, ch. 311, § 53.

ANNOTATIONS

Am. Jur. 2d, A.L.R. and C.J.S. references. — 64 C.J.S. Municipal Corporations §§ 1967, 1968.

72-16-54. Limitations upon payment of securities.

The payment of securities shall not be secured by an encumbrance, mortgage, or other pledge of property of the authority, except for revenues, income, tax proceeds and other moneys pledged for the payment of securities. No property of the authority, subject to said exception, shall be liable to be forfeited or taken in payment of the securities.

History: 1953 Comp., § 75-36-54, enacted by Laws 1963, ch. 311, § 54.

ANNOTATIONS

Am. Jur. 2d, A.L.R. and C.J.S. references. — 64 Am. Jur. 2d Public Securities and Obligations § 199.

72-16-55. Limitations upon incurring any debt.

Nothing in this act [72-16-1 to 72-16-103 NMSA 1978] contained shall be construed as creating or authorizing the creation of an indebtedness on the part of any municipality or other public body included in the authority, or elsewhere located.

History: 1953 Comp., § 75-36-55, enacted by Laws 1963, ch. 311, § 55.

72-16-56. Security details.

Any securities herein authorized to be issued shall bear the date or dates, shall be in the denomination or denominations, shall mature at the time or times but in no event exceeding forty years from their date or any shorter limitation herein provided, shall bear interest which may be evidenced by one or two sets of coupons, payable annually or semiannually, except that the first coupon or coupons, if any, appertaining to any security may represent interest for any period not in excess of one year, as may be prescribed by resolution or other instrument; and the securities and any coupons shall be payable in the medium of payment at any banking institution or other place or places within or without the state, including but not limited to the office of the treasurer of the county in which the authority is located wholly or in part, as determined by the board,

and the securities at the option of the board may be in one or more series, may be made subject to prior redemption in advance of maturity in the order or by lot or otherwise at the time or times without or with the payment of the premium or premiums not exceeding six percent of the principal amount of each security so redeemed, as determined by the board.

History: 1953 Comp., § 75-36-56, enacted by Laws 1963, ch. 311, § 56; 1983, ch. 265, § 49.

ANNOTATIONS

The 1983 amendment substituted "interest which may" for "interest at a rate or rates not exceeding six percent per annum, which interest" and inserted "if any."

72-16-57. Capitalization of costs.

Any resolution authorizing the issuance of securities or other instrument appertaining thereto may capitalize interest on any securities during any period of construction or other acquisition estimated by the board and one year thereafter and any other cost of any project, by providing for the payment of the amount capitalized from the proceeds of the securities.

History: 1953 Comp., § 75-36-57, enacted by Laws 1963, ch. 311, § 57.

72-16-58. Other security details.

Securities may be issued in such manner, in such form, with such recitals, terms, covenants and conditions and with such other details as may be provided by the board in the resolution authorizing the securities, or other instrument appertaining thereto, except as herein otherwise provided.

History: 1953 Comp., § 75-36-58, enacted by Laws 1963, ch. 311, § 58; 1983, ch. 265, § 50.

ANNOTATIONS

The 1983 amendment rewrote the section.

72-16-59. Reissuance of securities.

Any resolution authorizing the issuance of securities or any other instrument appertaining thereto may provide for their reissuance in other denominations in negotiable or nonnegotiable form and otherwise in such manner and form as the board may determine.

History: 1953 Comp., § 75-36-59, enacted by Laws 1963, ch. 311, § 59.

72-16-60. Negotiability.

Subject to the payment provisions herein specifically provided, said notes, warrants, bonds, any interest coupons thereto attached, temporary bonds, and interim debentures shall be fully negotiable within the meaning of and for all the purposes of the Uniform Commercial Code [Chapter 55 NMSA 1978], except as the board may otherwise provide; and each holder of such security, or of any coupon appertaining thereto, by accepting such security or coupon shall be conclusively deemed to have agreed that such security or coupon (except as otherwise provided) is and shall be fully negotiable within the meaning and for all purposes of said code.

History: 1953 Comp., § 75-36-60, enacted by Laws 1963, ch. 311, § 60.

ANNOTATIONS

Am. Jur. 2d, A.L.R. and C.J.S. references. — 64 Am. Jur. 2d Public Securities and Obligations §§ 23, 33.

11 C.J.S. Bonds § 65 et seq.; 64 C.J.S. Municipal Corporations §§ 1950 to 1952.

72-16-61. Single bonds.

Notwithstanding any other provision of law, the board in any proceedings authorizing securities hereunder:

A. may provide for the initial issuance of one or more securities (in this Section 61 called "bond") aggregating the amount of the entire issue, or a designated portion thereof;

B. may make such provisions for installment payments of the principal amount of any such bond as it may consider desirable;

C. may provide for the making of any such bond payable to bearer or otherwise, registrable as to principal or as to both principal and interest, and where interest accruing thereon is not represented by interest coupons, for the endorsing of payments of interest on such bonds;

D. may further make provision in any such proceedings for the manner and circumstances in and under which any such bond may in the future, at the request of the holder thereof, be converted into securities of smaller denominations, which securities of smaller denominations may in turn be either coupon bonds or bonds registrable as to principal, or principal and interest, or both.

History: 1953 Comp., § 75-36-61, enacted by Laws 1963, ch. 311, § 61.

72-16-62. Lost or destroyed securities.

If lost or completely destroyed, any security may be reissued in the form and tenor of the lost or destroyed security upon the owner furnishing, to the satisfaction of the board:

A. proof of ownership;

B. proof of loss or destruction;

C. a surety bond in twice the face amount of the security and any coupons; and

D. payment of the cost of preparing and issuing the new security.

History: 1953 Comp., § 75-36-62, enacted by Laws 1963, ch. 311, § 62.

ANNOTATIONS

Am. Jur. 2d, A.L.R. and C.J.S. references. — 64 Am. Jur. 2d Public Securities and Obligations § 298.

72-16-63. Execution of securities.

Any security shall be executed in the name of and on behalf of the authority and signed by the chairman of the board, with the seal of the authority affixed thereto and attested by the secretary of the authority, except for securities issued in book entry or similar form without the delivery of physical securities.

History: 1953 Comp., § 75-36-63, enacted by Laws 1963, ch. 311, § 63; 1983, ch. 265, § 51.

ANNOTATIONS

The 1983 amendment added the language at the end of the section beginning with "except for securities."

Am. Jur. 2d, A.L.R. and C.J.S. references. — 64 Am. Jur. 2d Public Securities and Obligations §§ 186 to 189.

11 C.J.S. Bonds § 14.

72-16-64. Interest coupons.

Except for any bonds which are registrable for payment of interest, interest coupons payable to bearer and appertaining to the bonds shall be issued and shall bear the original or facsimile signature of the chairman of the board.

History: 1953 Comp., § 75-36-64, enacted by Laws 1963, ch. 311, § 64.

ANNOTATIONS

Am. Jur. 2d, A.L.R. and C.J.S. references. — 64 Am. Jur. 2d Public Securities and Obligations § 444.

72-16-65. Facsimile signatures.

Any of said officers, after filing with the secretary of state his manual signature certified by him under oath, may execute or cause to be executed with a facsimile signature in lieu of his manual signature any security herein authorized; provided, that such a filing is not a condition of execution with a facsimile signature of any interest coupon and provided that at least one signature required or permitted to be placed on each such security (excluding any interest coupon) shall be manually subscribed. An officer's facsimile signature has the same legal effect as his manual signature.

History: 1953 Comp., § 75-36-65, enacted by Laws 1963, ch. 311, § 65.

ANNOTATIONS

Cross references. — For Uniform Facsimile Signature of Public Officials Act, see Chapter 6, Article 9 NMSA 1978.

72-16-66. Facsimile seal.

The secretary of the authority may cause the seal of the district to be printed, engraved, stamped or otherwise placed in facsimile on any security. The facsimile seal has the same legal effect as the impression of the seal.

History: 1953 Comp., § 75-36-66, enacted by Laws 1963, ch. 311, § 66.

72-16-67. Signatures of predecessors in office.

The securities and any coupons bearing the signatures of the officers in office at the time of the signing thereof shall be the valid and binding obligations of the authority, notwithstanding that before the delivery thereof and payment therefor, any or all of the persons whose signatures appear thereon shall have ceased to fill their respective offices.

History: 1953 Comp., § 75-36-67, enacted by Laws 1963, ch. 311, § 67.

ANNOTATIONS

Am. Jur. 2d, A.L.R. and C.J.S. references. — 64 Am. Jur. 2d Public Securities and Obligations § 190.

72-16-68. Facsimile signatures of predecessors.

Any officer herein authorized or permitted to sign any security or interest coupon, at the time of its execution and of the execution of a signature certificate, may adopt as and for his own facsimile signature the facsimile signature of his predecessor in office in the event that such facsimile signature appears upon the security or coupons appertaining thereto, or upon both the ecurity [security] and such coupons.

History: 1953 Comp., § 75-36-68, enacted by Laws 1963, ch. 311, § 68.

ANNOTATIONS

Bracketed material. — The bracketed material in this section was inserted by the compiler to correct an obvious error; it was not enacted by the legislature and is not a part of the law.

72-16-69. Repurchase of securities.

The securities may be repurchased by the authority out of any funds available for such purpose from the project to which they pertain at a price of not more than the principal amount thereof and accrued interest, plus the amount of the premium, if any, which might on the next redemption date of such securities be paid to the holders thereof if such securities should be called for redemption on such date pursuant to their terms, and all securities so repurchased shall be cancelled.

History: 1953 Comp., § 75-36-69, enacted by Laws 1963, ch. 311, § 69.

ANNOTATIONS

Am. Jur. 2d, A.L.R. and C.J.S. references. — 64 Am. Jur. 2d Public Securities and Obligations § 251.

11 C.J.S. Bonds § 54; 64 C.J.S. Municipal Corporations § 1954.

72-16-70. Customary provisions.

The resolution authorizing the securities or other instrument appertaining thereto may contain any agreement or provision customarily contained in instruments securing securities, including without limiting the generality of the foregoing, covenants designated in Section 76 [72-16-76 NMSA 1978] hereof.

History: 1953 Comp., § 75-36-70, enacted by Laws 1963, ch. 311, § 70.

72-16-71. Sale of securities.

Any securities herein authorized, except for warrants not issued for cash and except for temporary bonds issued pending preparation of definitive bond or bonds, shall be sold at public or private sale at, above or below par at a net effective interest rate not exceeding the maximum net effective interest rate permitted by the Public Securities Act [6-14-1 to 6-14-3 NMSA 1978], as hereafter amended and supplemented.

History: 1953 Comp., § 75-36-71, enacted by Laws 1963, ch. 311, § 71; 1983, ch. 265, § 52.

ANNOTATIONS

The 1983 amendment rewrote the section.

Am. Jur. 2d, A.L.R. and C.J.S. references. — 64 Am. Jur. 2d Public Securities and Obligations §§ 218, 228.

64 C.J.S. Municipal Corporations § 1930.

72-16-72. Sale discount or commission prohibited.

No discount (except as hereinabove provided) or commission shall be allowed or paid on or for any security sale to any purchaser or bidder, directly or indirectly; but nothing herein contained shall be construed as prohibiting the board from employing legal, fiscal, engineering and other expert services in connection with any project or facilities herein authorized and with the authorization, issuance and sale of securities.

History: 1953 Comp., § 75-36-72, enacted by Laws 1963, ch. 311, § 72.

ANNOTATIONS

Am. Jur. 2d, A.L.R. and C.J.S. references. — 64 Am. Jur. 2d Public Securities and Obligations §§ 230, 235.

64 C.J.S. Municipal Corporations § 1932.

72-16-73. Application of proceeds.

All moneys received from the issuance of any securities herein authorized shall be used solely for the purpose (or purposes) for which issued and the cost of any project thereby delineated. Any accrued interest and any premium shall be applied to the payment of the interest on or the principal of the securities, or both interest and principal, or shall be deposited in a reserve therefor, as the board may determine.

History: 1953 Comp., § 75-36-73, enacted by Laws 1963, ch. 311, § 73.

72-16-74. Use of unexpended proceeds.

Any unexpended balance of such security proceeds remaining after the completion of the acquisition or improvement and equipment of the project or the completion of the purpose or purposes for which such securities were issued shall be paid immediately into the fund created for the payment of the principal of said securities and shall be used therefor, subject to the provisions as to the times and methods for their payment as stated in the securities and the proceedings authorizing or otherwise appertaining to their issuance, or so paid into a reserve therefor.

History: 1953 Comp., § 75-36-74, enacted by Laws 1963, ch. 311, § 74.

72-16-75. Validity unaffected by use of proceeds.

The validity of said securities shall not be dependent on nor affected by the validity or regularity of any proceedings relating to the acquisition or improvement and equipment of the project or the proper competion [completion] of any project for which the securities are issued. The purchaser or purchasers of the securities shall in no manner be responsible for the application of the proceeds of the securities by the authority or any of its officers, agents and employees.

History: 1953 Comp., § 75-36-75, enacted by Laws 1963, ch. 311, § 75.

ANNOTATIONS

Bracketed material. — The bracketed material in this section was inserted by the compiler as the apparently intended term; it was not enacted by the legislature and is not a part of the law.

72-16-76. Covenants in security proceedings.

Any resolution or trust indenture authorizing the issuance of securitiees [securities] or any other instrument appertaining thereto may contain covenants and other provisions (notwithstanding such covenants and provisions may limit the exercise of powers conferred hereby), in order to secure the payment of such securities, in agreement with the holders and owners of such securities, as the board may determine, including without limiting the generality of the foregoing, all such acts and things as may be necessary or convenient or desirable in order to secure the authority's securities, or in the discretion of the board tend to make the securities more marketable, notwithstanding that such covenant, act or thing may not be enumerated herein, it being the intention hereof to give the authority power to do all things in the issuance of securities and for their security except as herein specifically limited.

History: 1953 Comp., § 75-36-76, enacted by Laws 1963, ch. 311, § 76.

ANNOTATIONS

Am. Jur. 2d, A.L.R. and C.J.S. references. — 64 Am. Jur. 2d Public Securities and Obligations § 199.

72-16-77. Remedies of security holders.

Subject to any contractual limitations binding upon the holders of any issue or series of securities, or trustee therefor, including but not limited to the restriction of the exercise of any remedy to a specified proportion, percentage or number of such holders, and subject to any prior or superior rights of others, any holder of securities, or trustee therefor, shall have the right and power, for the equal benefit and protection of all holders of securities similarly situated:

A. by mandamus or other suit, action or proceeding at law or in equity to enforce his rights against the authority and its board and any of its officers, agents and employees, and to require and compel the authority or its board or any such officers, agents or employees to perform and carry out its and their duties, obligations or other commitments hereunder and its and their covenants and agreements with the holder of any security;

B. by action or suit in equity to require the authority and its board to account as if they were the trustee of an express trust;

C. by action or suit in equity to have appointed a receiver, which receiver may enter and take possession of any system, or project or services revenues from which are pledged for the payment of the securities, prescribe sufficient fees derived from the operation thereof, and collect, receive and apply all revenues or other moneys pledged for the payment of the securities in the same manner as the authority itself might do in accordance with the obligations of the authority;

D. by action or suit in equity to enjoin any acts or things which may be unlawful or in violation of the rights of the holder of any security and to bring suit thereupon.

History: 1953 Comp., § 75-36-77, enacted by Laws 1963, ch. 311, § 77.

ANNOTATIONS

Cross references. — For one form of action known as "civil action," see Rule 1-002 NMRA.

Am. Jur. 2d, A.L.R. and C.J.S. references. — 64 Am. Jur. 2d Public Securities and Obligations §§ 485 to 491.

64 C.J.S. Municipal Corporations §§ 1956, 1972.

72-16-78. Limitations upon liabilities.

Neither the directors nor any person executing securities issued hereunder shall be liable personally on the securities by reason of the issuance thereof. Securities issued pursuant to this act [72-16-1 to 72-16-103 NMSA 1978] shall not be in any way a debt or liability of the state or of any municipality or other public body and shall not create or constitute any indebtedness, liability or obligation of the state or of any such municipality or other public body, either legal, moral or otherwise, and nothing in this act contained shall be construed to authorize the authority to incur any indebtedness on behalf of or in any way to obligate the state or any municipality or other public body, except the authority and except as herein otherwise expressly stated or necessarily implied.

History: 1953 Comp., § 75-36-78, enacted by Laws 1963, ch. 311, § 78.

ANNOTATIONS

Am. Jur. 2d, A.L.R. and C.J.S. references. — Personal liability of public officers to holders of invalid public money obligations, 87 A.L.R. 273.

94 C.J.S. Waters § 331.

72-16-79. Cancellation of paid securities.

Whenever the treasurer of the authority shall redeem and pay any of the securities issued under the provisions hereof, he shall cancel the same by writing across the face thereof or stamping thereon the word "paid," together with the date of its payment, sign his name thereto, and transmit the same to the secretary of the authority, taking his receipt therefor, which receipt shall be filed in the records of the authority. The secretary shall credit the treasurer on his books for the amount so paid.

History: 1953 Comp., § 75-36-79, enacted by Laws 1963, ch. 311, § 79.

ANNOTATIONS

Am. Jur. 2d, A.L.R. and C.J.S. references. — 94 C.J.S. Waters § 330.

72-16-80. Interest after maturity.

No interest shall accrue on any security herein authorized after it becomes due and payable, provided funds for the payment of the principal of and the interest on the security and any prior redemption premium due are available to the paying agent for such payment without default.

History: 1953 Comp., § 75-36-80, enacted by Laws 1963, ch. 311, § 80.

72-16-81. Refunding bonds.

Any bonds issued hereunder may be refunded, without an election, but subject to provisions concerning their payment and to any other contractual limitations in the proceedings authorizing their issuance or otherwise oppertaining [appertaining] thereto, pursuant to a resolution or resolutions to be adopted by the board in the manner herein provided for the issuance of other securities, to refund, pay or discharge all or any part of the authority's outstanding bonds, heretofore or hereafter issued, including any interest thereon in arrears or about to become due, or for the purpose of reducing interest costs or effecting other economies or of modifying or eliminating restrictive contractual limitations appertaining to the issuance of additional bonds or any project (or any combination thereof).

History: 1953 Comp., § 75-36-81, enacted by Laws 1963, ch. 311, § 81.

ANNOTATIONS

Bracketed material. — The bracketed material in this section was inserted by the compiler as the apparently intended term; it was not enacted by the legislature and is not a part of the law.

Am. Jur. 2d, A.L.R. and C.J.S. references. — 64 Am. Jur. 2d Public Securities and Obligations §§ 261, 262.

64 C.J.S. Municipal Corporations § 1910.

72-16-82. Method of issuance.

Any bonds issued for refunding purposes may either be delivered in exchange for the outstanding bonds authorized to be refunded or may be sold as provided in this act [72-16-1 to 72-16-103 NMSA 1978] for the sale of other bonds.

History: 1953 Comp., § 75-36-82, enacted by Laws 1963, ch. 311, § 82.

72-16-83. Limitations upon issuance.

No bonds may be refunded hereunder unless the holders thereof voluntarily surrender them for exchange or payment, or unless they either mature or are callable for prior redemption under their terms within ten years from the date of issuance of the refunding bonds. Provision shall be made for paying the bonds within that period of time. No maturity of any bonds refunded may be extended over fifteen years nor may any interest thereon be increased to any coupon rate exceeding the maximum net effective interest rate permitted by the Public Securities Act [6-14-1 to 6-14-3 NMSA 1978]. The principal amount of the refunding bonds may exceed the principal amount of the refunded bonds if the aggregate principal and interest costs of the refunding bonds do not exceed such unaccrued costs of the bonds refunded. The principal amount of the refunding bonds may also be less than or the same as the principal amount of the bonds refunded so long as provision is duly and sufficiently made for their payment.

History: 1953 Comp., § 75-36-83, enacted by Laws 1963, ch. 311, § 83; 1985, ch. 190, § 14.

ANNOTATIONS

The 1985 amendment deleted "(10)" following "ten" near the end of the first sentence, substituted "that period of time" for "said period of time" at the end of the second sentence, inserted "coupon" preceding "rate" near the middle and substituted "the maximum net effective interest rate permitted by the Public Securities Act" for "six percent per annum" at the end of the third sentence.

72-16-84. Use of refunding bond proceeds.

The proceeds of refunding bonds shall either be immediately applied to the retirement of the bonds to be refunded or be placed in escrow to be applied to the payment of the bonds upon their presentation therefor; provided, however, any accrued interest and any premium appertaining to a sale of refunding bonds may be applied to the payment of the interest thereon and the principal thereof or both interest and principal or may be deposited in a reserve therefor as the board may determine. The escrow shall not necessarily be limited to refunding bond proceeds but may include other money made available for such purpose. Any escrowed proceeds pending such use may be invested or reinvested in federal securities. Such escrowed proceeds and investments, together with any interest to be derived from any such investment, shall be in an amount at all times sufficient as to principal, interest, any prior redemption premium due and any charges of the escrow agent payable therefrom to pay the bonds refunded as they become due at their respective maturities or due at designated prior redemption date or dates upon which the board shall exercise a prior redemption option. Upon establishment of such escrow in accordance with this section, the refunded bonds payable therefrom no longer shall constitute outstanding indebtedness of the authority.

History: 1953 Comp., § 75-36-84, enacted by Laws 1963, ch. 311, § 84; 1985, ch. 190, § 15.

ANNOTATIONS

The 1985 amendment substituted "money" for "moneys" and "such purpose" for "said purpose" near the end of the second sentence, and added the last sentence.

72-16-85. Payment of refunding bonds.

Refunding revenue bonds may be made payable from any revenues derived from the operation of the flood control system or any project, notwithstanding the pledge of such revenues for the payment of the outstanding bonds issued by the authority which are to be refunded is thereby modified. Any refunding revenue bonds shall not be made payable from taxes unless the bonds thereby refunded are payable from taxes.

History: 1953 Comp., § 75-36-85, enacted by Laws 1963, ch. 311, § 85.

72-16-86. Combination of refunding and other bonds.

Bonds for refunding and bonds for any other purpose or purposes herein authorized may be issued separately or issued in combination in one series or more.

History: 1953 Comp., § 75-36-86, enacted by Laws 1963, ch. 311, § 86.

72-16-87. Supplemental provisions.

Except as in this act [72-16-1 to 72-16-103 NMSA 1978] specifically provided or necessarily implied, the relevant provisions herein pertaining to bonds generally shall be equally applicable in the authorization and issuance of refunding bonds, including their terms and security, the bond resolution, trust indenture, taxes and service charges, and other aspects of the bonds.

History: 1953 Comp., § 75-36-87, enacted by Laws 1963, ch. 311, § 87.

72-16-88. Board's determination final.

The determination of the board that the limitations hereunder imposed upon the issuance of refunding bonds have been met shall be conclusive in the absence of fraud or arbitrary and gross abuse of discretion.

History: 1953 Comp., § 75-36-88, enacted by Laws 1963, ch. 311, § 88.

72-16-89. Issuance of interim debentures and pledge of bonds as collateral security.

Notwithstanding any limitation or other provision herein, whenever a majority of the taxpaying electors of the authority voting on a proposal to issue bonds has authorized the authority to issue bonds for any purpose herein authorized, the authority is authorized to borrow money without any other election in anticipation of taxes, the proceeds of said bonds or any other revenues of the authority, or any combination thereof, and to issue interim debentures to evidence the amount so borrowed. Interim debentures may mature at such time or times not exceeding a period of time equal to the estimated time needed to effect the purpose or purposes for which the bonds are so authorized to be issued, plus two years, as the board may determine. Except as otherwise provided in this Section 89 and in Sections 90 and 91 [72-16-90 and 72-16-91 NMSA 1978] hereof, interim debentures shall be issued as provided herein for securities in Sections 47 to 80 [72-16-47 to 72-16-80 NMSA 1978], both inclusive. Taxes, other revenues of the authority, including without limiting the generality of the foregoing, proceeds of bonds to be thereafter issued or reissued, or bonds issued for the purpose of securing the payment of interim debenture [debentures], may be pledged for the

purpose of securing the payment of the interim debentures. Any bonds pledged as collateral security for the payment of any interim debentures shall mature at such time or times as the board may determine, but in no event exceeding forty years from the date of either any of such bonds or any of such interim debentures, whichever date be the earlier. Any such bonds pledged as collateral security shall not be issued in an aggregate principal amount exceeding the aggregate principal amount of the interim debenture or interim debentures secured by a pledge of such bonds, nor shall they bear interest at any time which with any interest accruing at the same time on the interim debenture or interim debentures so secured exceeds six percent per annum.

History: 1953 Comp., § 75-36-89, enacted by Laws 1963, ch. 311, § 89.

72-16-90. Interim debentures not to be extended.

No interim debenture issued pursuant to the provisions of Section 89 [72-16-89 NMSA 1978] hereof shall be extended or funded except by the issuance or reissuance of a bond or bonds in compliance with Section 91 [72-16-91 NMSA 1978] hereof.

History: 1953 Comp., § 75-36-90, enacted by Laws 1963, ch. 311, § 90.

72-16-91. Funding.

For the purpose of funding any interim debenture or interim debentures, any bond or bonds pledged as collateral security to secure the payment of such interim debenture or interim debentures may be reissued without an election, and any bonds not previously issued but authorized to be issued at an election for a purpose the same as or encompassing the purpose for which the interim debentures were issued may be issued for such a funding. Any such bonds shall mature at such time or times as the board may determine, but in no event exceeding forty years from the date of either any of the interim debentures so funded or any of the bonds so pledged as collateral security, whichever date be the earlier. Bonds for funding (including but not necessarily limited to any such reissued bonds) and bonds for any other purpose or purposes herein authorized may be issued separately or issued in combination in one series or more. Except as herein otherwise provided in Sections 89 and 90 [72-16-89, 72-16-90 NMSA 1978] and in this Section 91, any such funding bonds shall be issued as is provided herein for refunding bonds in Sections 81, 82, 84, 85, 87, and 88 [72-16-81, 72-16-82, 72-16-84, 72-16-85, 72-16-87 and 72-16-88 NMSA 1978] hereof, and provided herein for securities in Sections 47 to 80 [72-16-47 to 72-16-80 NMSA 1978], both inclusive.

History: 1953 Comp., § 75-36-91, enacted by Laws 1963, ch. 311, § 91.

72-16-92. Publication of resolution or proceedings.

In its discretion the board may provide for the publication once in full of either any resolution or other proceedings adopted by the board ordering the issuance of any securities or, in the alternative, of notice thereof, which resolution, other proceedings or

notice so published shall state the fact and date of such adoption and the place where such resolution or other proceedings has been filed for public inspection and also the date of the first publication of such resolution, other proceedings or notice, and also state that any action or proceeding of any kind or nature in any court questioning the validity of the creation and establishment of the authority, or the validity or proper authorization of securities provided for by the resolution or other proceedings, or the validity of any covenants, agreements or contracts provided for by the resolution or other proceedings, shall be commenced within twenty days after the first publication of such resolution, other proceedings or notice.

History: 1953 Comp., § 75-36-92, enacted by Laws 1963, ch. 311, § 92.

ANNOTATIONS

Am. Jur. 2d, A.L.R. and C.J.S. references. — 64 Am. Jur. 2d Public Securities and Obligations §§ 477 to 484.

72-16-93. Failure to contest legality constitutes bar.

If no such action or proceedings shall be commenced or instituted within twenty days after the first publication of such resolution, other proceedings or notice, then all residents and taxpayers and owners of property in the authority and all public bodies and all other persons whatsoever shall be forever barred and foreclosed from instituting or commencing any action or proceeding in any court or from pleading any defense to any action or proceedings questioning the validity of the creation and establishment of the authority, the validity or proper authorization of such securities, or the validity of any such covenants, agreements or contracts; and said securities, covenants, agreements and contracts shall be conclusively deemed to be valid and binding obligations in accordance with their terms and tenor.

History: 1953 Comp., § 75-36-93, enacted by Laws 1963, ch. 311, § 93.

ANNOTATIONS

Am. Jur. 2d, A.L.R. and C.J.S. references. — 64 Am. Jur. 2d Public Securities and Obligations §§ 500 to 505.

72-16-94. Confirmation of contract proceedings.

In its discretion the board may file a petition at any time in the district court in and for any county in which the authority is located wholly or in part, praying a judicial examination and determination of any power conferred or of any tax or rates or charges levied or of any act, proceeding or contract of the authority, whether or not said contract shall have been executed, including proposed contracts for the acquisition, improvement, equipment, maintenance, operation or disposal of any project for the authority. Such petition shall set forth the facts whereon the validity of such power,

assessment, act, proceeding or contract is founded and shall be verified by the chairman of the board. Such action shall be in the nature of a proceeding in rem, and jurisdiction of all parties interested may be had by publication and posting, as hereinafter provided. Notice of the filing of said petition shall be given by the clerk of the court, under the seal thereof, stating in brief outline the contents of the petition and showing where a full copy of any contract therein mentioned may be examined. The notice shall be served by publication in at least five consecutive issues of a weekly newspaper of general circulation published in the county in which the principal office of the authority is located, and by posting the same in the office of the authority at least thirty days prior to the date fixed in said notice for the hearing on said petition. Jurisdiction shall be complete after such publication and posting. Any owner of property in the authority or person interested in the contract or proposed contract or in the premises may appear and move to dismiss or answer said petition at any time prior to the date fixed for said hearing or within such further time as may be allowed by the court; and the petition shall be taken as confessed by all persons who fail so to appear.

History: 1953 Comp., § 75-36-94, enacted by Laws 1963, ch. 311, § 94.

72-16-95. Review and judgment of court.

The petition and notice shall be sufficient to give the court jurisdiction, and upon hearing the court shall examine into and determine all matters and things affecting the question submitted, shall make such findings with reference thereto and render such judgment and decree thereon as the case warrants. Costs may be divided or apportioned among any contesting parties in the discretion of the trial court. Review of the judgment of the court may be had as in other similar cases, except that such review must be applied for within thirty days after the time of the rendition of such judgment or within such additional time as may be allowed by the court within thirty days. The Rules of Civil Procedure shall govern in matters of pleading and practice where not otherwise specified herein. The court shall disregard any error, irregularity or omission which does not affect the substantial rights of the parties.

History: 1953 Comp., § 75-36-95, enacted by Laws 1963, ch. 311, § 95.

72-16-96. Purpose of tax exemptions.

The effectuation of the powers herein authorized shall and will be in all respects for the benefit of the people of the state, including but not necessarily limited to those residing in the authority exercising any power hereunder, for the improvement of their health and living conditions and for the increase of their commerce and prosperity.

History: 1953 Comp., § 75-36-96, enacted by Laws 1963, ch. 311, § 96.

72-16-97. Property exempt from general taxes.

Thus, the authority shall not be required to pay any general (ad valorem) taxes upon any property appertaining to any project herein authorized and acquired within the state, nor the authority's interest therein.

History: 1953 Comp., § 75-36-97, enacted by Laws 1963, ch. 311, § 97.

72-16-98. Securities and income therefrom exempt.

Securities issued hereunder and the income therefrom shall forever be and remain free and exempt from taxation by the state, the authority and any other public body, except transfer, inheritance and estate taxes.

History: 1953 Comp., § 75-36-98, enacted by Laws 1963, ch. 311, § 98.

72-16-99. Freedom from judicial process.

Execution or other judicial process shall not issue against any property herein authorized of the authority, nor shall any judgment against the authority be a charge or lien upon its property.

History: 1953 Comp., § 75-36-99, enacted by Laws 1963, ch. 311, § 99.

72-16-100. Resort to judicial process.

Section 99 [72-16-99 NMSA 1978] hereof does not apply to or limit the right of the holder of any security, his trustee, or any assignee of all or part of his interest, the federal government when it is a party to any contract with the authority, and any other obligee hereunder to foreclose, otherwise to enforce, and to pursue any remedies for the enforcement of any pledge or lien given by the authority on the proceeds of taxes, service charges or other revenues.

History: 1953 Comp., § 75-36-100, enacted by Laws 1963, ch. 311, § 100.

72-16-101. Legal investments in securities.

It shall be legal for the state and any of its agencies, departments, instrumentalities, corporations, or political subdivisions, or any political or public corporation, any bank, trust company, banker, savings bank, or institution, any building and loan association, savings and loan association, investment company and any other person carrying on a banking or investment business, any insurance company, insurance association, or any other person carrying on an insurance business, and any executor, administrator, curator, trustee or any other fiduciary, to invest funds or moneys in their custody in any of the securities authorized to be issued pursuant to the provisions hereof. Such securities shall be authorized security for all public deposits. Nothing contained in this

Section 101 with regard to legal investments shall be construed as relieving any public body or other person of any duty of exercising reasonable care in selecting securities.

History: 1953 Comp., § 75-36-101, enacted by Laws 1963, ch. 311, § 101.

72-16-102. Civil rights.

The authority damaged by any such act may also bring a civil action for damages sustained by any such act, and in such proceeding the prevailing party shall also be entitled to reasonable attorneys' fees and costs of court.

History: 1953 Comp., § 75-36-102, enacted by Laws 1963, ch. 311, § 102.

72-16-103. Liberal construction.

This act [72-16-1 to 72-16-103 NMSA 1978] being necessary to secure and preserve the public health, safety and general welfare, the rule of strict construction shall have no application hereto, but it shall be liberally construed to effect the purposes and objects for which this act is intended.

History: 1953 Comp., § 75-36-103, enacted by Laws 1963, ch. 311, § 103.

ANNOTATIONS

Severability clauses. — Laws 1963, ch. 311, § 104, provides for the severability of the act if any part or application thereof is held invalid.

ARTICLE 17
Las Cruces Metropolitan Arroyo Flood Control

72-17-1. Short title.

This act [72-17-1 to 72-17-103 NMSA 1978] may be cited as the "Las Cruces Arroyo Flood Control Act."

History: 1953 Comp., § 75-38-1, enacted by Laws 1967, ch. 156, § 1.

ANNOTATIONS

Cross references. — For flood control generally, see Chapter 4, Article 50 NMSA 1978.

Am. Jur. 2d, A.L.R. and C.J.S. references. — 50 Am. Jur. 2d Levees and Flood Control §§ 1, 2.

72-17-2. Legislative declaration.

It is hereby declared as a matter of legislative determination:

A. that the organization of the authority hereby created having the purposes, powers, duties, privileges, immunities, rights, liabilities and disabilities provided in this act [72-17-1 to 72-17-103 NMSA 1978] will serve a public use and will promote the health, safety, prosperity, security and general welfare of the inhabitants thereof and of the state of New Mexico;

B. that the acquisition, improvement, maintenance and operation of any project authorized in this act is in the public interest and constitutes a part of the established and permanent policy of the state;

C. that the authority hereby organized shall be a body corporate and politic, a quasi-municipal corporation, and a political subdivision of the state;

D. that the flood control system hereby authorized and directed to be acquired will be of special benefit to the property within the boundaries of the authority hereinafter organized and created;

E. that the notice provided for in this act for each hearing and action to be taken is reasonably calculated to inform any person of interest in any proceedings hereunder which may directly and adversely affect his legally protected interests;

F. that a general law cannot be made applicable to the designated flood control system and the provisions herein appertaining thereto because of a number of typical and special conditions concerning them;

G. that for the accomplishment of these purposes, the provisions of this act shall be broadly construed.

History: 1953 Comp., § 75-38-2, enacted by Laws 1967, ch. 156, § 2.

72-17-3. Decision of board or governing body final.

The action and decision of the board as to all matters passed upon by it in relation to any action, matter or thing provided herein shall be final and conclusive unless arbitrary, capricious or fraudulent.

History: 1953 Comp., § 75-38-3, enacted by Laws 1967, ch. 156, § 3.

72-17-4. Definitions.

Except where the context otherwise requires, the definitions in this section govern the construction hereof:

A. "act" means the Las Cruces Arroyo Flood Control Act [72-17-1 to 72-17-103 NMSA 1978];

B. "acquisition" or "acquire" means the opening, laying out, establishment, purchase, construction, securing, installation, reconstruction, lease, gift, grant from the federal government, any public body or person, endowment, bequest, devise, condemnation, transfer, assignment, option to purchase, other contract, or other acquirement, or any combination thereof, of facilities, other property, any project, or an interest therein, herein authorized;

C. "authority" means the Las Cruces metropolitan arroyo flood control authority hereby created;

D. "board" means the board of directors of the Las Cruces metropolitan arroyo flood control authority;

E. "chairman" means the chairman of the board and president of the authority;

F. "condemnation" or "condemn" means the acquisition by the exercise of the power of eminent domain of property for any facilities, other property, project, or an interest therein, herein authorized. The authority may exercise in the state the power of eminent domain, either within or without the authority, and in the manner provided by law for the condemnation of private property for public use, may take any property necessary to carry out any of the objects or purposes hereof. In the event the construction of any facility or project herein authorized, or any part thereof, shall make necessary the removal and relocation of any public utilities, whether on private or public right-of-way, the authority shall reimburse the owner of such public utility facility for the expense of such removal and relocation, including the cost of any necessary land or rights in land;

G. "cost," or "cost of the project," or words of similar import, means all or any part designated by the board of the cost of any facilities, project, or interest therein, being acquired, and all or any property, rights, easements, privileges, agreements and franchises deemed by the authority to be necessary or useful and convenient thereof or in connection therewith, which cost, at the option of the board, may include all or any part of the incidental costs pertaining to the project, including, without limiting the generality of the foregoing, preliminary expenses advanced by any municipality from funds available for use therefor in the making of surveys, preliminary plans, estimates of cost, other preliminaries, the costs of appraising, printing, employing engineers, architects, fiscal agents, attorneys at law, clerical help, other agents or employees, the costs of capitalizing interest or any discount on securities, of inspection, of any administrative, operating and other expenses of the authority prior to the levy and collection of taxes, and of reserves for working capital, operation, maintenance or replacement expenses or for payment or security of principal of or interest on any securities, the costs of making, publishing, posting, mailing and otherwise giving any

notice in connection with the project, the taking of options, the issuance of securities, the filing or recordation of instruments, the levy and collection of taxes and installments thereof, the costs of reimbursements by the authority to any public body, the federal government or any person of any moneys theretofore expended for or in connection with any facility or project, and all other expenses necessary or desirable and appertaining to any project, as estimated or otherwise ascertained by the board;

H. "director" means a member of the board;

I. "disposal" or "dispose" means the sale, destruction, razing, loan, lease, gift, grant, transfer, assignment, mortgage, option to sell, other contract or other disposition (or any combination thereof) of facilities, other property, any project, or an interest therein, herein authorized;

J. "engineer" means any engineer in the permanent employ of the authority or any independent competent engineer or firm of such engineers employed by the authority in connection with any facility, property, project or power herein authorized;

K. "equipment" or "equip" means the furnishing of all necessary or desirable, related or appurtenant, facilities, or any combination thereof, appertaining to any facilities, property, project, or interest therein, herein authorized;

L. "facility" means any of the water facilities, sewer facilities, or other property appertaining to the flood control system of the authority;

M. "federal government" means the United States of America, or any agency, instrumentality, or corporation thereof;

N. "federal securities" means the bills, certificates of indebtedness, notes or bonds which are direct obligations of, or the principal and interest of which obligations are unconditionally guaranteed by, the United States of America;

O. "governing body" means the city council, city commission, board of commissioners, board of trustees, board of directors, or other legislative body of the public body proceeding hereunder in which body the legislative powers of the public body are vested;

P. "hereby," "herein," "hereinabove," "hereinafter," "hereinbefore," "hereof," "hereto," and "hereunder" refer to this act and not solely to the particular portion thereof in which such word is used;

Q. "improvement" or "improve" means the extension, widening, lengthening, betterment, alteration, reconstruction, repair or other improvement (or any combination thereof) of facilities, other property, project, or any interest therein, herein authorized;

R. "mailed notice" or notice by "mail" means the giving by the engineer, secretary, or any deputy thereof, as determined by the board, of any designated written or printed notice addressed to the last known owner or owners of each tract of real property in question or other designated person at his or their last known address or addresses, by deposit, at least ten days prior to the designated hearing or other time or event, in the United States mails, postage prepaid, as first class mail. In the absence of fraud, the failure to mail any such notice shall not invalidate any proceedings hereunder. The names and addresses of such property owners shall be obtained from the records of the county assessor or from such other source or sources as the secretary or the engineer deem reliable. Any list of such names and addresses may be revised from time to time, but such a list need not be revised more frequently than at twelve-month intervals. Any mailing of any notice herein required shall be verified by the affidavit or certificate of the engineer, secretary, the deputy, or other person mailing the notice, which verification shall be retained in the records of the authority at least until all taxes and securities appertaining thereto have been paid in full, or any claim is barred by a statute of limitations;

S. "may" is permissive;

T. "municipality" means the city of Las Cruces or any other incorporated city, town or village in the state, whether incorporated or governed under a general act, special legislative act or special charter of any type. "Municipal" pertains thereto;

U. "person" means any human being, association, partnership, firm or corporation, excluding a public body and excluding the federal government;

V. "president" means the president of the authority and the chairman of the board;

W. "project" means any structure, facility, undertaking or system which the authority is herein authorized to acquire, improve, equip, maintain or operate. A project may consist of all kinds of personal and real property. A project shall appertain to the flood control system which the authority is hereby authorized and directed to provide within and without the authority's boundaries;

X. "property" means real property and personal property;

Y. "publication" or "publish" means publication in at least the one newspaper designated as the authority's official newspaper and published in the authority in the English language at least once a week and of general circulation in the authority. Except as herein otherwise specifically provided or necessarily implied, "publication" or "publish" also means publication for at least once a week for three consecutive weeks by three weekly insertions, the first publication being at least fifteen days prior to the designated time or event, unless otherwise so stated. It is not necessary that publication be made on the same day of the week in each of the three calendar weeks, but not less than fourteen days shall intervene between the first publication and the last publication,

and publication shall be complete on the day of the last publication. Any publication herein required shall be verified by the affidavit of the publisher and filed with the secretary;

Z. "public body" means the state of New Mexico or any agency, instrumentality, or corporation thereof, or any municipality, school district, other type district, or any other political subdivision of the state, excluding the authority and excluding the federal government;

AA. "qualified elector" means a person qualified to vote in general elections in the state of New Mexico, who is a resident of the authority at the time of any election held under the provisions of this act or at any other time in reference to which the term "qualified elector" is used;

BB. "real property" means:

(1) land, including land under water;

(2) buildings, structures, fixtures and improvements on land;

(3) any property appurtenant to or used in connection with land;

(4) every estate, interest, privilege, easement, franchise and right in land, legal or equitable, including without limiting the generality of the foregoing, rights-of-way, terms for years, and liens, charges or encumbrances by way of judgment, mortgage or otherwise, and the indebtedness secured by such liens;

CC. "secretary" means the secretary of the authority;

DD. "secretary of state" means the secretary of the state of New Mexico;

EE. "securities" means any notes, warrants, bonds, temporary bonds, or interim debentures or other obligations of the authority or any public body appertaining to any project, or interest therein, herein authorized;

FF. "sewer facilities" means any one or more of the various devices used in the collection, channelling, impounding or disposition of storm, flood, or surface drainage waters, including all inlets, collection, drainage or disposal lines, canals, intercepting sewers, outfall sewers, all pumping, power and other equipment and appurtenances, all extensions, improvements, remodeling, additions, and alterations thereof, and any and all rights or interest in such sewer facilities;

GG. "sewer improvement" or "improve any sewer" means the acquisition, reacquisition, improvement, reimprovement, or repair of any storm sewer, or combination storm and sanitary sewer, including but not limited to collecting and intercepting sewer lines or mains, submains, trunks, laterals, outlets, ditches, ventilation

stations, pumping facilities, ejector stations, and all other appurtenances and machinery necessary, useful or convenient for the collection, transportation and disposal of storm water;

HH. "shall" is mandatory;

II. "state" means the state of New Mexico, or any agency, instrumentality, or corporation thereof;

JJ. "street" means any street, avenue, boulevard, alley, highway or other public right-of-way used for any vehicular traffic;

KK. "taxes" means general (ad valorem) taxes pertaining to any project herein authorized;

LL. "taxpaying elector" means a qualified elector of the authority who is an owner of real or personal property within the boundaries of the authority, which property is subject to general (ad valorem) taxation at the time of any election held under the provisions of this act or at any other time in reference to which the term "taxpaying elector" is used. A person who is obligated to pay general (ad valorem) taxes under a contract to purchase real property in the authority shall be considered as such an owner. The ownership of any property subject to the payment of a specific ownership tax on a motor vehicle or trailer or of any other excise or property tax other than such general (ad valorem) taxes shall not constitute the ownership of property subject to taxation as herein provided;

MM. "treasurer" means the treasurer of the authority.

History: 1953 Comp., § 75-38-4, enacted by Laws 1967, ch. 156, § 4.

72-17-5. Creation of authority.

There is hereby created a flood control authority to be known and designated as the "Las Cruces metropolitan arroyo flood control authority."

History: 1953 Comp., § 75-38-5, enacted by Laws 1967, ch. 156, § 5.

ANNOTATIONS

Am. Jur. 2d, A.L.R. and C.J.S. references. — 52A C.J.S. Levees and Flood Control § 21.

72-17-6. Boundaries of authority.

The boundaries of the authority are:

A combination of watersheds generally described as the combined watersheds of the four unnamed arroyos south of the Dona Ana arroyo and north of the Sand Hill arroyo, the Sand Hill arroyo, Alameda arroyo, Las Cruces arroyo and the Tortugas arroyo, all located in Dona Ana county, and being those arroyos that drain into the most northerly, central and southerly portions of the city of Las Cruces and adjacent areas from the east side of the Rio Grande river on the west, northwesterly to the headwaters of these arroyos on the east and more particularly described as follows:

Beginning at the NE corner section 15, T22S, R2E, NMPM as established by department of the interior, general land office survey, then by courses and distances in accordance with the survey of the department of interior, general land office, thence:

S 89° 30' E, 5268.12' to the NE corner Sec. 14, T22S, R2E, thence N 89° 40' E, 5244.36' to the NE corner Sec. 13, T22S, R2E, thence S 0° 16' E, 2652.52' to the East 1/4 cor. Sec. 13, T22S, R2E, thence S 89° 06' E, 5359.53' to the East 1/4 cor. Sec. 18, T22S, R3E, thence S 89° 38' E, 5265.48' to the East 1/4 cor. Sec. 17, T22S, R3E, thence S 0° 07' E, 2638.68' to the NE cor. Sec. 20, T22S, R3E, thence S 89° 42' E, 5311.68' to the NE cor. Sec. 21, T22S, R3E, thence S 0° 05' E, 5286.60' to the SE cor. Sec. 21, T22S, R3E, thence S 89° 41' E, 5286.60' to the NE cor. Sec. 27, T22S, R3E, thence S 0° 04' E, 5281.32' to the SE cor. Sec. 27, T22S, R3E, thence N 89° 54' E, 2642.64' to the N 1/4 cor. Sec. 35, T22S, R3E, thence east 2658.48' to the NE cor. Sec. 35, T22S, R3E, thence S 0° 01' W, 2646.60' to the E 1/4 cor. Sec. 35, T22S, R3E, thence N 89° 51' E, 5266.47' to the E 1/4 cor. Sec. 36, T22S, R3E, thence east 5247.00' to the E 1/4 cor. Sec. 31, T22S, R4E, thence south 2640.00' to the SE cor. Sec. 31, T22S, R4E, thence east 5280.00' to the SE cor. Sec. 32, T22S, R4E, thence south 7939.8' to the E 1/4 cor. Sec. 8, T23S, R4E, thence N 89° 55' W, 2637.36' to the center Sec. 8, T23S, R4E, thence south 2640.00' to the S 1/4 cor. Sec. 8, T23S, R4E, thence N 89° 54' W, 2635.38' to the SE cor. Sec. 7, T23S, R4E, thence N 89° 54' W, 5214.0' to the SW cor. Sec. 7, T23S, R4E, thence S 89° 26' W, 5252.28' to the SW cor. Sec. 12, T23S, R3E, thence N 88° 42' W, 2678.94' to the N 1/4 cor. Sec. 14, T23S, R3E, thence N 89° 08' W, 2641.98' to the NW cor. Sec. 14, T23S, R3E, thence S 0° 24' E, 2634.06' to the E 1/4 cor. Sec. 15, T23S, R3E, thence N 89° 47' W, 2663.10' to the center Sec. 15, T23S, R3E, thence S 0° 08' E, 2647.26' to the S 1/4 cor. Sec. 15, T23S, R3E, thence N 89° 53' W, 2676.96' to the SW cor. Sec. 15, T23S, R3E, thence S 89° 34' W, 5322.24' to the SW cor. Sec. 16, T23S, R3E, thence S 89° 23' W, 5295.84' to the SW cor. Sec. 17, T23S, R3E, thence S 89° 41' W, 2690.82' to the N 1/4 cor. Sec. 19, T23S, R3E, thence S 0° 12' E, 2648.25' to the center of Sec. 19, T23S, R3E, thence N 89° 47' W, 2607.00' to the W 1/4 cor. Sec. 19, T23S, R3E, thence S 0° 10' W, 2641.98' to a point, said point being the SW cor. Sec. 19, T23S, R3E NMPM, thence S 52° 15' W, approximately 7.33 miles to the eastern boundary of the Rio Grande river, thence northerly along the east bank of the Rio Grande river a distance of approximately 11.4 miles to the southern boundary of wasteway no. 5 of the Elephant Butte irrigation district, thence easterly a distance of approximately 1.16 miles to the intersection of county road D-028 (Dona Ana road) and county road D-041 (Dona Ana school road), thence easterly along county road D-041 (Dona Ana school road) a distance of approximately 2400 feet to the intersection of county road D-041 (Dona Ana school

road) and county road C-075 (El Camino Real), thence easterly along county road D-108 (continuation of Dona Ana school road) a distance of approximately 3150 feet to the intersection of county road D-108 (Dona Ana school road) and county road D-23 (Elks drive), thence easterly a distance of approximately 5.27 miles to the NE corner Sec. 15, T22S and R2E to the point of beginning.

History: 1953 Comp., § 75-38-6, enacted by Laws 1967, ch. 156, § 6; 1990, ch. 44, § 1.

ANNOTATIONS

The 1990 amendment, effective May 16, 1990, in the first sentence, inserted "the four unnamed arroyos south of the Dona Ana arroyo and north of the Sand Hill arroyo, the", substituted "the east side of the Rio Grande river on the west, northwesterly" for "state roads 28 and 292 on the west, northeasterly" and made stylistic changes and substituted the language "7.33 miles to the eastern boundary of the Rio Grande river" for "5.3 miles to a point on the center line of New Mexico state road 28, thence northwesterly along the center line of state road 28 approximately 3.6 miles to the intersection of state road 28 and state road 292, thence northwesterly along the center line of state road 292 approximately 2.8 miles to the intersection of state road 292 and U.S. highway 70-80 (Picacho Ave.), thence north approximately 3 miles to the center line of U.S. highway 85 (old), thence N 61° 10' E approximately 6.5 miles to the point of beginning".

Am. Jur. 2d, A.L.R. and C.J.S. references. — 52A C.J.S. Levees and Flood Control § 17.

72-17-7. Provision for remonstrances.

Within sixty days from the time this act [72-17-1 to 72-17-103 NMSA 1978] goes into effect, a written, signed and acknowledged remonstrance against the acquiring of the flood control system provided for in Section 19 [72-17-19 NMSA 1978] herein may be filed with the board hereinafter created by the owners of property of the value of at least thirty percent of the value of the property herein provided to be taxed, based upon the assessed valuation of said property for general taxes for the year preceding the year of making such remonstrance. If there is real estate in the authority that has not been separately assessed by the taxing authorities, the board shall value such real estate for the purpose of such remonstrance on the same basis of valuation as other real estate similarly situated that has been separately assessed. The board shall, as soon as possible, examine such remonstrance, if made, and canvass and pass upon and determine its sufficiency, and its action thereon shall be final. If the petition is found to contain the names of the owners of property of fifty percent of the total valuation of said real estate in the authority and is found to be sufficient, then the flood control system herein provided for shall not be acquired; provided, that no action under the terms of this act shall be delayed during the period of sixty days, except that no bonds shall be issued during said time.

History: 1953 Comp., § 75-38-7, enacted by Laws 1967, ch. 156, § 7.

ANNOTATIONS

Am. Jur. 2d, A.L.R. and C.J.S. references. — 52A C.J.S. Levees and Flood Control § 18.

72-17-8. Board of directors.

The governing body of the authority hereby created is a board of directors consisting of five qualified electors of the authority. All powers, rights, privileges and duties vested in or imposed upon the authority are exercised and performed by and through the board of directors; provided, that the exercise of any and all executive, administrative and ministerial powers may be, by the board, delegated and redelegated to officers and employees of the authority. Except for the first directors appointed as hereinafter provided and except for any director chosen to fill an unexpired term the term of each director commences on the first day of January next following a general election in the state and runs for six years. Each director, subject to said exceptions, shall serve such a six-year term ending on the first day of January next following a general election; and each director shall serve until his successor has been duly chosen and qualified.

History: 1953 Comp., § 75-38-8, enacted by Laws 1967, ch. 156, § 8.

ANNOTATIONS

Am. Jur. 2d, A.L.R. and C.J.S. references. — 52A C.J.S. Levees and Flood Control § 21.

72-17-9. Appointment of first board.

When this act [72-17-1 to 72-17-103 NMSA 1978] goes into effect, the governor shall forthwith appoint five qualified electors of the authority as the directors comprising the first board. They shall serve until their successors have been elected and qualified. Immediately upon their appointment the five directors shall meet, qualify and choose officers, as provided for organizational meetings thereafter in Section 13 [72-17-13 NMSA 1978] hereof.

History: 1953 Comp., § 75-38-9, enacted by Laws 1967, ch. 156, § 9.

ANNOTATIONS

Am. Jur. 2d, A.L.R. and C.J.S. references. — 52A C.J.S. Levees and Flood Control § 22.

72-17-10. Election of directors.

At the time that a proposal to incur debt shall be first submitted to the taxpaying electors or at the first general election next following the effective date of the Las Cruces Arroyo Flood Control Act [72-17-1 to 72-17-103 NMSA 1978], whichever occurs first, the qualified electors of the authority shall elect five qualified directors, two to serve a term ending January 1, 1969, two to serve a term ending January 1, 1971, and one to serve a term ending January 1, 1973. At the first election, the five candidates receiving the highest number of votes shall be elected as directors. The terms of the directors shall be determined by lot at their organizational meeting. At each general election thereafter, the qualified electors of the authority shall elect similarly one or two qualified electors as directors to serve six-year terms as directors and as successors to the directors whose terms end on the first day of January next following each such election. Nothing herein may be construed as preventing a qualified elector of the authority from being elected or reelected as a director to succeed himself. If there be only one vacancy on the board, the candidate receiving the highest number of votes shall be elected as director. If there be two vacancies on the board, the candidate receiving the highest number of votes and the candidate receiving the next highest number of votes shall be elected as directors.

History: 1953 Comp., § 75-38-10, enacted by Laws 1967, ch. 156, § 10.

ANNOTATIONS

Am. Jur. 2d, A.L.R. and C.J.S. references. — 52A C.J.S. Levees and Flood Control § 22.

72-17-11. Nomination of directors.

Not later than forty-five days before a proposal to incur debt shall be first submitted to the taxpaying electors or at the first general election next following the effective date of the Las Cruces Arroyo Flood Control Act [72-17-1 to 72-17-103 NMSA 1978], whichever occurs first, written nominations of any candidate as director may be filed with the secretary of the board. Each nomination of any candidate shall be signed by not less than fifty taxpaying electors regardless of whether or not nominated therein; shall designate therein the name of the candidates thereby nominated, and shall recite that the subscribers thereto are taxpaying electors and that the candidate or candidates designated therein are qualified electors of the authority. No written nomination may designate more qualified electors as candidates, than there are vacancies. No taxpaying elector may nominate more than one candidate for any vacancy. If a candidate does not withdraw his name before the first publication of the notice of election, his name shall be placed on the ballot.

History: 1953 Comp., § 75-38-11, enacted by Laws 1967, ch. 156, § 11.

72-17-12. Filling vacancies on board.

Upon a vacancy occurring in the board by reason of death, change of residence, resignation, or for any other reason, the governor shall appoint a qualified elector of the authority, as successor to serve the unexpired term.

History: 1953 Comp., § 75-38-12, enacted by Laws 1967, ch. 156, § 12.

72-17-13. Organizational meetings.

Except for the first board, each board shall meet on the first business day next following the first day of January in each odd-numbered year, at the office of the board within the authority. Each member of the board, before entering upon his official duties, shall take and subscribe an oath that he will support the constitution of the United States and the constitution and laws of New Mexico, and that he will faithfully and impartially discharge the duties of his office to the best of his ability, which oath shall be filed in the office of the secretary of state. Each director shall, before entering upon his official duties, give a bond to the authority in the sum of ten thousand dollars [($10,000)] with good and sufficient surety, conditioned for the faithful performance of each and all of the duties of his office, without fraud, deceit or oppression, and the accounting for all moneys and property coming into his hands, and the prompt and faithful payment of all moneys and the delivering of all property coming into his custody or control belonging to the authority of his successors in office. Premiums on all bonds provided for in this section shall be paid by the authority, and all such bonds shall be kept on file in the office of the secretary of state.

History: 1953 Comp., § 75-38-13, enacted by Laws 1967, ch. 156, § 13.

72-17-14. Board's administrative powers.

The board may exercise the following powers:

A. fix the time and place, at which its regular meetings will be held within the authority and provide for the calling and holding of special meetings;

B. adopt and amend or otherwise modify bylaws and rules for procedure;

C. select one director as chairman of the board and president of the authority, and another director as chairman pro tem of the board and president pro tem of the authority, and choose a secretary and a treasurer of the board and authority, each of which two positions may be filled by a person who is, or is not, a director, and both of which positions may, or may not, be filled by one person;

D. prescribe by resolution a system of business administration and create all necessary offices, and establish and reestablish the powers, duties, and compensation of all officers and employees;

E. require and fix the amount of all official bonds necessary or desirable and convenient in the opinion of the board for the protection of the funds and property of the authority, subject to the provisions of Section 13 [72-17-13 NMSA 1978] hereof;

F. prescribe a method of auditing and allowing or rejecting claims and demands;

G. provide a method for the letting of contracts on a fair and competitive basis for the construction of works, any facility, or any project, or any interest therein, or the performance or furnishing of labor, materials or supplies as required herein;

H. designate an official newspaper published in the authority in the English language and direct additional publication in any newspaper where it deems that the public necessity may so require;

I. make and pass resolutions and orders on behalf of the authority not repugnant to the provisions of this act [72-17-1 to 72-17-103 NMSA 1978], necessary or proper for the government and management of the affairs of the authority, for the execution of the powers vested in the authority, and for carrying into effect the provisions of this act.

History: 1953 Comp., § 75-38-14, enacted by Laws 1967, ch. 156, § 14.

ANNOTATIONS

Am. Jur. 2d, A.L.R. and C.J.S. references. — 52A C.J.S. Levees and Flood Control § 24.

72-17-15. Records of board.

On all resolutions and orders, the roll shall be called, and the ayes and noes shall be recorded. All resolutions and orders, as soon as may be after their passage, shall be recorded in a book kept for that purpose and be authenticated by the signature of the presiding officer of the board and the secretary. Every legislative act of the board of a general or permanent nature shall be by resolution. The book of resolutions and orders is a public record. A record shall also be made of all other proceedings of the board, minutes of all meetings, certificates, contracts, bonds given by officers, employees, and any other agents of the authority, and all corporate acts, which record is also a public record. The treasurer shall keep strict and accurate accounts of all moneys received by and disbursed for and on behalf of the authority, in a permanent record, which is also a public record. Any permanent record of the authority shall be open for inspection by any qualified elector thereof, by any other interested person, or by any representative of the federal government or any public body. All records are subject to audit as provided by law for political subdivisions.

History: 1953 Comp., § 75-38-15, enacted by Laws 1967, ch. 156, § 15.

72-17-16. Meetings of board.

All meetings of the board shall be held within the authority and shall be open to the public. No business of the board shall be transacted except at a regular or special meeting at which a quorum consisting of at least three-fifths of the total membership of the board is present. Any action of the board requires the affirmative vote of a majority of the directors present and voting. A smaller number of directors than a quorum may adjourn from time to time and may compel the attendance of absent members in such manner and under such penalties as the board may provide.

History: 1953 Comp., § 75-38-16, enacted by Laws 1967, ch. 156, § 16.

72-17-17. Compensation of directors.

Directors shall receive no compensation for their services as a director, office: [officer,] engineer, attorney, employee or other agent of the authority. Directors may be reimbursed for expenses incurred by them on authority business with approval of the board.

History: 1953 Comp., § 75-38-17, enacted by Laws 1967, ch. 156, § 17.

ANNOTATIONS

Bracketed material. — The bracketed material in this section was inserted by the compiler as the apparently intended term; it was not enacted by the legislature and is not a part of the law.

72-17-18. Interest in contracts and property disqualifications.

No director nor officer, employee or agent of the authority may be interested in any contract or transaction with the authority except in his official representative capacity, or as provided, except for any contract of employment with the authority. Neither the holding of any office or employment in the government of any public body or the federal government nor the owning of any property within the state, within or without the authority, may be deemed a disqualification for membership on the board or employment by the authority, nor a disqualification for compensation for services as an officer, employee or agent of the authority, except as provided in Section 17 [72-17-17 NMSA 1978] hereof.

History: 1953 Comp., § 75-38-18, enacted by Laws 1967, ch. 156, § 18.

72-17-19. Flood control system; hearings thereon.

The authority is hereby authorized, empowered and directed, subject to the provisions of Section 7 [72-17-7 NMSA 1978] hereof, to acquire, equip, maintain and

operate a flood control system for the benefit of the authority and the inhabitants thereof, after the board has made such preliminary studies and otherwise taken such action as it determines to be necessary or desirable as preliminaries thereto. The flood control system consists of such facilities as the board may determine. When a comprehensive program for the acquisition of the flood control system satisfactory to the board is available, it shall be tentatively adopted. The program need only describe the proposed flood control system in general terms and not in detail. A public hearing on the proposed program shall be scheduled, and notice of the hearing shall be given by publication. After the hearing and any adjournments thereof which may be ordered, the board may either require changes to be made in the program as the board may consider desirable, or the board may approve the program as prepared. If any substantial changes to the program are ordered at any time, a further hearing shall be held pursuant to notice which shall be given by publication.

History: 1953 Comp., § 75-38-19, enacted by Laws 1967, ch. 156, § 19.

ANNOTATIONS

Am. Jur. 2d, A.L.R. and C.J.S. references. — 52A C.J.S. Levees and Flood Control § 24.

72-17-20. Implementing powers.

The board may:

A. acquire, improve, equip, maintain and operate any project or facility for the control of flood and storm waters of the authority and the flood and storm waters of streams which have their sources outside of the authority but which streams and the flood waters thereof flow into the authority;

B. protect from such floods or storm waters the watercourses, watersheds, public highways, life and property in the authority;

C. exercise the right of eminent domain, either within or without the authority, in the manner provided by law for the condemnation of private property for public use.

History: 1953 Comp., § 75-38-20, enacted by Laws 1967, ch. 156, § 20.

ANNOTATIONS

Am. Jur. 2d, A.L.R. and C.J.S. references. — 52A C.J.S. Levees and Flood Control § 24.

72-17-21. Protection of property rights.

It is hereby declared that the use of the property, lands, rights-of-way, easements or materials which may be condemned, taken or appropriated under the provisions of this act [72-17-1 to 72-17-103 NMSA 1978] is a public use subject to the regulation and control of the state in the manner prescribed by law; but nothing herein shall be deemed to authorize the authority or public body or person to divert the waters of any river, creek, stream, irrigation system, canal or ditch from its channel to the detriment of any person, any public body or the federal government having any interest in such river, creek, stream, irrigation system, canal or ditch, or the waters thereof or therein, unless compensation is ascertained and paid therefor under the laws authorizing the taking of private property for public use.

History: 1953 Comp., § 75-38-21, enacted by Laws 1967, ch. 156, § 21.

ANNOTATIONS

Am. Jur. 2d, A.L.R. and C.J.S. references. — 50 Am. Jur. 2d Levees and Flood Control §§ 7 to 11.

72-17-22. Additional powers of authority.

The authority may exercise the following powers:

A. duties, privileges, immunities, rights, liabilities and disabilities appertaining to a public body politic and corporate and constituting a quasi-municipal corporation and political subdivision of the state established as an instrumentality exercising public and essential governmental and proprietary functions to provide for the public health, safety and general welfare;

B. perpetual existence and succession;

C. adopt, have and use a corporate seal and alter the same at pleasure;

D. sue and be sued and be a party to suits, actions and proceedings;

E. commence, maintain, intervene in, defend, compromise, terminate by settlement or otherwise and otherwise participate in and assume the cost and expense of any actions and proceedings now or hereafter begun and appertaining to the authority, its board, its officers, agents or employees or any of the authority's duties, privileges, immunities, rights, liabilities and disabilities or the authority's flood control system, other property of the authority or any project;

F. enter into contracts and agreements, including but not limited to contracts with the federal government, the state and any other public body;

G. borrow money and issue securities evidencing any loan to or amount due by the authority, provide for and secure the payment of any securities and the rights of

the holders thereof and purchase, hold and dispose of securities as hereinafter provided;

H. refund any loan or obligation of the authority and issue refunding securities to evidence such loan or obligation without any election;

I. purchase, trade, exchange, encumber and otherwise acquire, maintain and dispose of property and interests therein;

J. levy and cause to be collected general (ad valorem) taxes on all property subject to property taxation within the authority; provided that the total tax levy, excluding any levy for the payment of any debt of the authority authorized by the taxpaying electors of the authority, for any fiscal year shall not exceed an aggregate total of fifty cents ($.50), or any lower maximum amount required by operation of the rate limitation provisions of Section 7-37-7.1 NMSA 1978 upon this tax lexy, on each one thousand dollars ($1,000) of net taxable value, as that term is defined in the Property Tax Code [Chapter 7, Articles 35 through 38 NMSA 1978], by certifying, on or before July 15 of each year in which the board determines to levy a tax, to the board of county commissioners of Dona Ana county, or by such other date as the laws of the state may prescribe to such other body having authority to levy taxes within each county wherein the authority has any territory, the rate so fixed, with directions that, at the time and in the manner required by law for levying taxes for other purposes, such body having authority to levy taxes shall levy such tax upon the net taxable value of all property subject to property taxation within the authority, in addition to such other taxes as may be levied by such body as provided in Sections 72-17-23 through 72-17-27 NMSA 1978. No taxes may be levied and collected for any purpose and no contract may be made until a bond issue has been submitted to and approved by the taxpaying electors as hereinafter provided;

K. hire and retain officers, agents, employees, engineers, attorneys and any other persons, permanent or temporary, necessary or desirable to effect the purposes hereof, defray any expenses incurred thereby in connection with the authority and acquire office space, equipment, services, supplies, fire and extended coverage insurance, use and occupancy insurance, workmen's compensation insurance, property damage insurance, public liability insurance for the authority and its officers, agents and employees and other types of insurance as the board may determine; provided, however, that no provision herein authorizing the acquisition of insurance shall be construed as waiving any immunity of the authority or any director, officer or agent thereof and otherwise existing under the laws of the state;

L. condemn property for public use;

M. acquire, improve, equip, hold, operate, maintain and dispose of a flood control system, sewer facilities, project and appurtenant works or any interest therein wholly within the authority, or partially within and partially without the authority, and

wholly within, wholly without or partially within and partially without any public body all or any part of the area of which is situated within the authority;

N. pay or otherwise defray the cost of any project;

O. pay or otherwise defray and contract so to pay or defray for any term not exceeding fifty years, without an election, except as hereinafter otherwise provided, the principal of, any interest on and any other charges appertaining to any securities or other obligations of the federal government, any public body or person incurred in connection with any such property so acquired by the authority;

P. establish and maintain facilities within or without the authority, across or along any public street, highway, bridge, viaduct or other public right-of-way or in, upon, under or over any vacant public lands, which public lands are now or may become the property of the state, or across any stream of water or water course, without first obtaining a franchise from the municipality, county or other public body having jurisdiction over the same; provided that the authority shall cooperate with any public body having such jurisdiction, shall promptly restore any such street, highway, bridge, viaduct or other public right-of-way to its former state of usefulness as nearly as may be and shall not use the same in such manner as to impair completely or unnecessarily the usefulness thereof;

Q. deposit any money of the authority, subject to the limitations in Article 8, Section 4 of the constitution of New Mexico, in any banking institution within or without the state and secured in such manner and subject to such terms and conditions as the board may determine, with or without the payment of any interest on any such deposit;

R. invest any surplus money in the authority treasury, including such money in any sinking or reserve fund established for the purpose of retiring any securities of the authority, not required for the immediate necessities of the authority, in its own securities or in federal securities, by direct purchase of any issue of such securities, or part thereof, at the original sale of the same or by the subsequent purchase of such securities;

S. sell any such securities thus purchased and held from time to time;

T. reinvest the proceeds of any such sale in other securities of the authority or in federal securities, as provided in Subsection R of this section;

U. sell in season from time to time such securities thus purchased and held, so that the proceeds may be applied to the purpose for which the money with which such securities were originally purchased was placed in the treasury of the authority;

V. accept contributions or loans from the federal government for the purpose of financing the planning, acquisition, improvement, equipment, maintenance and operation of any enterprise in which the authority is authorized to engage and enter into

contracts and cooperate with, and accept cooperation and participation from, the federal government for these purposes;

W. enter, without any election, into joint operating or service contracts and agreements, acquisition, improvement, equipment or disposal contracts or other arrangements for any term not exceeding fifty years with the federal government, any public body or any person concerning sewer facilities, or any project, whether acquired by the authority or by the federal government, any public body or any person and accept grants and contributions from the federal government, any public body or any person in connection herewith;

X. enter into and perform, without any election, when determined by the board to be in the public interest and necessary for the protection of the public health, contracts and agreements for any term not exceeding fifty years with the federal government, any public body or any person for the provision and operation by the authority of sewer facilities;

Y. enter into and perform, without any election, contracts and agreements with the federal government, any public body and any person for or concerning the planning, construction, lease or other acquisition, improvement, equipment, operation, maintenance, disposal and the financing of any project, including but not necessarily limited to any contract or agreement for any term not exceeding fifty years;

Z. enter upon any land, make surveys, borings, soundings and examinations for the purposes of the authority and locate the necessary works of any project and roadways and other rights-of-way appertaining to any project herein authorized and acquire all property necessary or convenient for the acquisition, improvement or equipment of such works;

AA. cooperate with and act in conjunction with the state or any of its engineers, officers, boards, commissions or departments or with the federal government or any of its engineers, officers, boards, commissions or departments or with any other public body or any person in the acquisition, improvement or equipment of any project for the controlling of flood or storm waters of the authority or for the protection of life or property therein or for any other works, acts or purposes provided for herein and adopt and carry out any definite plan or system of work for any such purpose;

BB. cooperate with the federal government or any public body by an agreement therewith by which the authority may:

(1) acquire and provide, without cost to the operating entity, the land, easements and rights-of-way necessary for the acquisition, improvement or equipment of the flood control system or any project;

(2) hold and save harmless the cooperating entity free from any claim for damages arising from the acquisition, improvement, equipment, maintenance and operation of the flood control system or any project;

(3) maintain and operate any project in accordance with regulations prescribed by the cooperating entity; and

(4) establish and enforce flood channel limits and regulations, if any, satisfactory to the cooperating entity;

CC. carry on technical and other investigations of all kinds, make measurements, collect data and make analyses, studies and inspections pertaining to control of floods, sewer facilities and any project, both within and without the authority, and for this purpose the authority has the right of access through its authorized representative to all lands and premises within the state;

DD. have the right to provide from revenues or other available funds an adequate fund for the improvement and equipment of the authority's flood control system or of any parts of the works and properties of the authority;

EE. prescribe and enforce reasonable rules and regulations for the prevention of further encroachment upon existing defined waterways, by their enlargement or other modification, for additional waterway facilities to prevent flooding;

FF. require any person desiring to make a connection to any storm water drain or flood control facility of the authority or to cause storm waters to be emptied into any ditch, drain, canal, floodway or other appurtenant structure of the authority firstly to make application to the board to make the connection, to require the connection to be made in such manner as the board may direct;

GG. refuse, if reasonably justified by the circumstances, permission to make any connection designated in Subsection EE or Subsection FF of this section;

HH. make and keep records in connection with any project or otherwise concerning the authority;

II. arbitrate any differences arising in connection with any project and otherwise concerning the authority;

JJ. have the management, control and supervision of all the business and affairs appertaining to any project herein authorized, or otherwise concerning the authority, and of the acquisition, improvement, equipment, operation and maintenance of any such project;

KK. prescribe the duties of officers, agents, employees and other persons and fix their compensation; provided that the compensation of employees and officers shall be established at prevailing rates of pay for equivalent work;

LL. enter into contracts of indemnity and guaranty in such form as may be approved by the board relating to or connected with the performance of any contract or agreement which the authority is empowered to enter into under the provisions hereof or of any other law of the state;

MM. provide, by any contract for any term not exceeding fifty years, or otherwise, without an election:

(1) for the joint use of personnel, equipment and facilities of the authority and any public body, including without limitation public buildings constructed by or under the supervision of the board of the authority or the governing body of the public body concerned, upon such terms and agreements and within such areas within the authority as may be determined, for the promotion and protection of health, comfort, safety, life, welfare and property of the inhabitants of the authority and any such public body; and

(2) for the joint employment of clerks, stenographers and other employees appertaining to any project, now existing or hereafter established in the authority, upon such terms and conditions as may be determined for the equitable apportionment of the expenses therefrom resulting;

NN. obtain financial statements, appraisals, economic feasibility reports and valuations of any type appertaining to any project or any property pertaining thereto;

OO. adopt any resolution authorizing a project or the issuance of securities, or both, or otherwise appertaining thereto, or otherwise concerning the authority;

PP. make and execute a mortgage, deed of trust, indenture or other trust instrument appertaining to a project or to any securities herein authorized, or to both, except as provided in Subsection QQ of this section and in Section 72-17-54 NMSA 1978;

QQ. make all contracts, execute all instruments and do all things necessary or convenient in the exercise of the powers granted herein or in the performance of the authority's covenants or duties or in order to secure the payment of its securities; provided, no encumbrance, mortgage or other pledge of property, excluding any money, of the authority is created thereby and provided no property, excluding money, of the district is liable to be forfeited or taken in payment of such securities;

RR. have and exercise all rights and powers necessary or incidental to or implied from the specific powers granted herein, which specific powers shall not be considered as a limitation upon any power necessary or appropriate to carry out the purposes and intent hereof; and

SS. exercise all or any part or combination of the powers herein granted.

History: 1953 Comp., § 75-38-22, enacted by Laws 1967, ch. 156, § 22; 1986, ch. 32, § 33.

ANNOTATIONS

The 1986 amendment rewrote Subsection J and made minor stylistic changes throughout the section.

Am. Jur. 2d, A.L.R. and C.J.S. references. — 52A C.J.S. Levees and Flood Control § 24.

72-17-23. Levy and collection of taxes.

To levy and collect taxes, the board shall determine, in each year, the amount of money necessary to be raised by taxation, taking into consideration other sources of revenue of the authority, and shall fix a rate of levy, without limitation as to rate or amount, except for the limitation in Subsection J of Section 22 [72-17-22 NMSA 1978] hereof and for any constitutional limitation, which, when levied upon every dollar of assessed valuation of taxable property within the authority, and together with other revenues, will raise the amount required by the authority annually to supply funds for paying expenses of organization and the costs of acquiring, improving, equipping, operating and maintaining any project or facility of the authority, and promptly to pay in full, when due, all interest on and principal of bonds and other securities of the authority; and in the event of accruing defaults or deficiencies, an additional levy may be made as provided in Section 24 [72-17-24 NMSA 1978] hereof.

History: 1953 Comp., § 75-38-23, enacted by Laws 1967, ch. 156, § 23.

ANNOTATIONS

Cross references. — For constitutional property tax limits and exceptions, see N.M. Const., art. VIII, § 2.

Am. Jur. 2d, A.L.R. and C.J.S. references. — 52A C.J.S. Levees and Flood Control §§ 28 to 33.

72-17-24. Levies to cover deficiencies.

The board, in certifying annual levies, shall take into account the maturing indebtedness for the ensuing year as provided in its contracts, maturing securities and interest on securities, and deficiencies and defaults of prior years, and shall make ample provision for the payment thereof. In case the moneys produced from such levies, together with other revenues of the authority, are not sufficient punctually to pay the annual installments of its contracts or securities, and interest thereon, and to pay

defaults and deficiencies, the board shall make such additional levies of taxes as may be necessary for such purposes, and notwithstanding any limitations, except the limitation in Subsection J of Section 22 [72-17-22 NMSA 1978] hereof, and any constitutional limitation, such taxes shall be made and continue to be levied until the indebtedness of the authority shall be fully paid.

History: 1953 Comp., § 75-38-24, enacted by Laws 1967, ch. 156, § 24.

72-17-25. Sinking fund.

Whenever any indebtedness has been incurred by the authority, it shall be lawful for the board to levy taxes and to collect revenue for the purpose of creating a reserve fund in such amount as the board may determine, which may be used to meet the obligations of the authority, for maintenance and operating charges and depreciation, and to provide improvements for the authority.

History: 1953 Comp., § 75-38-25, enacted by Laws 1967, ch. 156, § 25.

72-17-26. Manner of levying and collecting taxes.

It is the duty of the body having authority to levy taxes within each county to levy the taxes provided in Subsection J [of] Section 22 [72-17-22 NMSA 1978], hereof, and elsewhere in this act [72-17-1 to 72-17-103 NMSA 1978]. It is the duty of all officials charged with collecting taxes to collect such taxes at the time and in the form and manner and with like interest and penalties as other general ad valorem taxes are collected, and when collected, to pay the same to the authority. The payment of such collection shall be made monthly to the treasurer of the authority and paid into the depository thereof to the credit of the authority. All general ad valorem taxes levied under this act, together with interest thereon and penalties for default in payment thereof, and all costs of collecting the same, constitute, until paid, a perpetual lien on and against the property taxed, and such lien is on a parity with the tax lien of other general ad valorem taxes.

History: 1953 Comp., § 75-38-26, enacted by Laws 1967, ch. 156, § 26.

ANNOTATIONS

Am. Jur. 2d, A.L.R. and C.J.S. references. — 52A C.J.S. Levees and Flood Control § 33.

72-17-27. Delinquent taxes.

If the general ad valorem taxes levied are not paid, then delinquent real property shall be sold at the regular tax sale for the payment of said taxes, interest and penalties, in the manner provided by the statutes of the state for selling real property for the nonpayment of general taxes. If there are no bids at said tax sale for the property so

offered, said property shall be struck off to the county, and the county shall account to the authority in the same manner as provided by law for accounting for school, town and city taxes. Delinquent personal property shall be distrained and sold as provided by law.

History: 1953 Comp., § 75-38-27, enacted by Laws 1967, ch. 156, § 27.

ANNOTATIONS

Cross references. — For sale of real property for payment of property taxes, see 7-38-65 NMSA 1978 et seq.

Am. Jur. 2d, A.L.R. and C.J.S. references. — 52A C.J.S. Levees and Flood Control § 38.

72-17-28. Elections.

Wherever in this act [72-17-1 to 72-17-103 NMSA 1978] an election of the qualified electors or taxpaying electors of the authority is permitted or required, said election may be held separately at a special election or may be held concurrently with any primary or general election held under the laws of the state; provided, however:

A. each biennial election of directors shall be held concurrently with the general election in the state;

B. no election shall be held at the same time as any regular election of a municipality or school district any part of the area of which is located within the boundaries of the authority.

History: 1953 Comp., § 75-38-28, enacted by Laws 1967, ch. 156, § 28.

72-17-29. Election resolution.

The board shall call any election by resolution adopted at least sixty days prior to the election. Such resolution shall recite the objects and purposes of the election, the date upon which such election shall be held and the form of the ballot. In the case of any election not to be held concurrently with a primary or general election, the board shall provide in said election resolution or by supplemental resolution for the appointment of sufficient judges and clerks of the election, who shall be qualified electors of the authority, and in such event shall set their compensation. The election resolution shall also then designate the precints [precincts] and polling places. The description of precincts may be made by reference to any order of the governing body of any county, municipality, or other public body in which the authority or any part thereof is situated, or by reference to any previous order or by other instrument of such a governing body, or by detailed description of such precincts, or by other sufficient description. Precincts established by any such governing body may be consolidated in the election resolution by the board for any election not to be held concurrently with a primary or general

election. If the election shall be held concurrently with a primary or general election held under the laws of the state, the judges of election for such primary or general election shall be designated as the judges of election for the election held pursuant to this act [72-17-1 to 72-17-103 NMSA 1978], and they shall receive such additional compensation, if any, as the board shall set by the election resolution.

History: 1953 Comp., § 75-38-29, enacted by Laws 1967, ch. 156, § 29.

72-17-30. Conduct of election.

Except as provided in this act [72-17-1 to 72-17-103 NMSA 1978], an election held pursuant hereto shall be conducted in the manner provided by the laws of the state for the conduct of general elections. Registration pursuant to the general election or any other statutes is not required. Absentee voting shall not be permitted for any election held hereunder.

History: 1953 Comp., § 75-38-30, enacted by Laws 1967, ch. 156, § 30.

ANNOTATIONS

Cross references. — For election laws generally, see Chapter 1 NMSA 1978.

72-17-31. Notice of election.

Notice of such election shall be given by publication. No other notice of an election held hereunder need be given unless otherwise provided by the board.

History: 1953 Comp., § 75-38-31, enacted by Laws 1967, ch. 156, § 31.

72-17-32. Polling places.

All polling places designated by the election resolution shall be within the area included within the authority, and if the election shall not be held concurrently with a primary or general election held under the laws of the state, there shall be one polling place in each of the election precincts which are used in the primary and general elections or in each of the consolidated election precincts fixed by the board.

History: 1953 Comp., § 75-38-32, enacted by Laws 1967, ch. 156, § 32.

72-17-33. Election supplies.

The secretary of the authority shall have provided at each polling place ballots or ballot labels, or both, ballot boxes or voting machines, or both, instructions, elector's affidavits and other material and supplies required for an election by law. Election officials may require the execution of an affidavit by any person desiring to vote at any

election of the authority to evidence his qualifications as a qualified elector or a taxpaying elector, which affidavit shall be prima facie evidence of the facts stated therein.

History: 1953 Comp., § 75-38-33, enacted by Laws 1967, ch. 156, § 33.

72-17-34. Election returns.

In the case of any election held hereunder which is not held concurrently with a primary or general election, the election officials shall make their returns directly to the secretary of the authority for the board. In the case of any election held hereunder which is consolidated with any primary or general election, the returns thereof shall be made and canvassed at the time and in the manner provided by law for the canvass of the returns of such primary or general election. It shall be the duty of such canvassing body to certify promptly and to transmit to the secretary of the authority for the board a statement of the result of the vote upon any candidates or any proposition submitted hereunder. Upon receipt of election returns from election officials or upon receipt of such certificate from any such canvassing body, it shall be the duty of the board to tabulate and declare the results of the election held hereunder at any regular or special meeting held not earlier than five days following the date of the election. Except as herein otherwise provided, any proposal submitted at any election hereunder shall not have carried unless the proposal shall have been approved by a majority of the qualified electors of the taxpaying electors of the district voting thereon, as the case may be.

History: 1953 Comp., § 75-38-34, enacted by Laws 1967, ch. 156, § 34.

72-17-35. Dissolution of authority.

If a remonstrance be received pursuant to Section 7 [72-17-7 NMSA 1978] hereof denying the board the power to acquire a flood control system, or the first proposal for the issuance of bonds shall have failed to receive a favorable vote by a majority of the qualified electors voting thereon, the board shall proceed to dissolve the authority.

History: 1953 Comp., § 75-38-35, enacted by Laws 1967, ch. 156, § 35.

72-17-36. Filing of dissolution resolution.

Within thirty days after the effective date of any resolution dissolving the authority, the secretary shall file a copy of the resolution in the office of the county clerk and shall cause to be filed an additional copy of the resolution in the office of the secretary of state, which filings shall be without fee and be otherwise in the same manner as articles of incorporation are required to be filed under the laws of the state.

History: 1953 Comp., § 75-38-36, enacted by Laws 1967, ch. 156, § 36.

72-17-37. Disposition of property, funds and taxes of authority.

All property and all funds remaining in the treasury of the authority so dissolved shall be surrendered and transferred to the county in which the authority is located and shall become a part of the general fund of the county.

History: 1953 Comp., § 75-38-37, enacted by Laws 1967, ch. 156, § 37.

72-17-38. Powers of public bodies.

The governing body of any municipality or other public body, upon its behalf and in its name, for the purpose of aiding and cooperating in any project herein authorized, upon the terms and with or without consideration and with or without an election, as the governing body determines, may exercise the following powers:

A. sell, lease, loan, donate, grant, convey, assign, transfer and otherwise dispose to the authority, sewer facilities or any other property or any interest therein, appertaining to a flood control system;

B. make available for temporary use or otherwise dispose to the authority any machinery, equipment, facilities and other property, and any agents, employees, persons with professional training, and any other persons, to effect the purposes hereof. Any such property and persons owned or in the employ of any public body while engaged in performing for the authority any service, activity or undertaking herein authorized, pursuant to contract or otherwise, shall have and retain all of the powers, privileges, immunities, rights and duties of, and shall be deemed to be engaged in the service and employment of such public body, notwithstanding such service, activity or undertaking is being performed in or for the authority;

C. enter into any agreement or joint agreement between or among the federal government, the authority, and any other public body, or any combination thereof, extending over any period not exceeding fifty years, which is mutually agreed thereby, notwithstanding any law to the contrary, respecting action or proceedings appertaining to any power herein granted, and the use or joint use of any facilities, project or other property herein authorized;

D. sell, lease, loan, donate, grant, convey, assign, transfer, or pay over to the authority any facilities or any project herein authorized, or any part thereof, or any interest in real or personal property, or any funds available for acquisition, improvement or equipment purposes, including the proceeds of any securities previously or hereafter issued for acquisition, improvement or equipment purposes which may be used by the authority in the acquisition, improvement, equipment, maintenance or operation of any facilities or project herein authorized;

E. transfer, grant, convey or assign and set over to the authority any contracts which may have been awarded by the public body for the acquisition, improvement or equipment of any project not begun or if begun, not completed;

F. budget and appropriate, and each municipality or other public body is hereby required and directed to budget and appropriate, from time to time, general ad valorem tax proceeds, and other revenues legally available therefor to pay all obligations arising from the exercise of any powers herein granted as such obligations shall accrue and become due;

G. provide for an agency, by any agreement herein authorized, to administer or execute that or any collateral agreement, which agency may be one of the parties to the agreement, or a commission or board constituted pursuant to the agreement;

H. provide that any such agency shall possess the common power specified in the agreement, and may exercise it in the manner or according to the method provided in the agreement. Such power is subject to the restrictions upon the manner of exercising the power of any one of the contracting parties, which party shall be designated by the agreement;

I. continue any agreement herein authorized for a definite term not exceeding fifty years, or until rescinded or terminated, which agreement may provide for method by which it may be rescinded or terminated by any part.

History: 1953 Comp., § 75-38-38, enacted by Laws 1967, ch. 156, § 38.

72-17-39. Effect of extraterritorial functions.

All of the powers, privileges, immunities and rights, exemptions from laws, ordinances and rules, all pension, relief, disability, workmen's compensation and other benefits which apply to the activity of officers, agents or employees of the authority or any such public body when performing their respective functions within the territorial limits of the respective public agencies apply to them to the same degree and extent while engaged in the performance of any of their functions and duties extraterritorially hereunder.

History: 1953 Comp., § 75-38-39, enacted by Laws 1967, ch. 156, § 39.

72-17-40. Forms of borrowing.

Upon the conditions and under the circumstances set forth in this act [72-17-1 to 72-17-103 NMSA 1978], the authority, to carry out the purposes hereof, from time to time may borrow money to defray the cost of any project, or any part thereof, as the board may determine, and issue the following securities to evidence such borrowing:

A. notes;

B. warrants;

C. bonds;

D. temporary bonds; and

E. interim debentures.

History: 1953 Comp., § 75-38-40, enacted by Laws 1967, ch. 156, § 40.

ANNOTATIONS

Am. Jur. 2d, A.L.R. and C.J.S. references. — 64 Am. Jur. 2d Public Securities and Obligations §§ 9 to 23.

11 C.J.S. Bonds § 2 et seq.; 64 C.J.S. Municipal Corporations §§ 1902 to 1904; 94 C.J.S. Waters §§ 322 to 331.

72-17-41. Issuance of notes.

The authority is authorized to borrow money without an election in anticipation of taxes or other revenues, or both, and to issue notes to evidence the amount so borrowed.

History: 1953 Comp., § 75-38-41, enacted by Laws 1967, ch. 156, § 41.

ANNOTATIONS

Am. Jur. 2d, A.L.R. and C.J.S. references. — 64 Am. Jur. 2d Public Securities and Obligations § 24.

64 C.J.S. Municipal Corporations § 1905.

72-17-42. Issuance of warrants.

The authority is authorized to defray the cost of any services, or supplies, equipment or other materials furnished to or for the benefit of the authority by the issuance of warrants to evidence the amount due therefor, without an election, in anticipation of taxes or other revenues, or both.

History: 1953 Comp., § 75-38-42, enacted by Laws 1967, ch. 156, § 42.

ANNOTATIONS

Am. Jur. 2d, A.L.R. and C.J.S. references. — 64 Am. Jur. 2d Public Securities and Obligations § 24.

64 C.J.S. Municipal Corporations § 1905.

72-17-43. Maturities of notes and warrants.

Notes and warrants may mature at such time or times not exceeding one year from the respective dates of their issuance as the board may determine. They shall not be extended or funded except by the issuance of bonds or interim debentures in compliance with Sections 44 and 46 [72-17-44 and 72-17-46 NMSA 1978] hereof.

History: 1953 Comp., § 75-38-43, enacted by Laws 1967, ch. 156, § 43.

72-17-44. Issuance of bonds and incurrence of debt.

The authority is authorized to borrow money in anticipation of taxes or other revenues, or both, and to issue bonds to evidence the amount so borrowed. No bonded indebtedness nor any other indebtedness not payable in full within one year, except for interim debentures as provided in Sections 46, 89, 90, and 91 [72-17-46, 72-17-89 to 72-17-91 NMSA 1978] hereof, shall be created by the authority without first submitting a proposition of issuing such bonds to the taxpaying electors of the authority and being approved by a majority of such electors voting thereon at an election held for that purpose in accordance with Sections 28 to 34 [72-17-28 to 72-17-34 NMSA 1978], both inclusive, of this act, and all laws amendatory thereof and supplemental thereto. Bonds so authorized may be issued in one series or more and may mature at such time or times not exceeding forty years from their issuance as the board may determine. The total of all outstanding indebtedness at any one time shall not exceed twelve million five hundred thousand dollars ($12,500,000), without prior approval of the state legislature.

History: 1953 Comp., § 75-38-44, enacted by Laws 1967, ch. 156, § 44.

ANNOTATIONS

Am. Jur. 2d, A.L.R. and C.J.S. references. — 64 Am. Jur. 2d Public Securities and Obligations § 24.

72-17-45. Issuance of temporary bonds.

The authority is authorized to issue temporary bonds, pending preparation of definitive bond or bonds and exchangeable for the definitive bond or bonds when prepared, as the board may determine. Each temporary bond shall set forth substantially the same conditions, terms and provisions as the definitive bond for which it is exchanged. Each holder of any such temporary security shall have all the rights and remedies which he would have as a holder of the definitive bond or bonds.

History: 1953 Comp., § 75-38-45, enacted by Laws 1967, ch. 156, § 45.

72-17-46. Issuance of interim debentures.

The authority is authorized to borrow money and to issue interim debentures evidencing "construction" or short-term loans for the acquisition or improvement and equipment of the flood control system or any project in supplementation of long term financing and the issuance of bonds, as provided in Sections 89, 90 and 91 [72-17-89 to 72-17-91 NMSA 1978] hereof.

History: 1953 Comp., § 75-38-46, enacted by Laws 1967, ch. 156, § 46.

72-17-47. Payment of securities.

All securities issued by the authority shall be authorized by resolution. The authority may pledge its full faith and credit for the payment of any securities herein authorized, the interest thereon, any prior redemption premium or premiums, and any charges appertaining thereto. Securities may constitute the direct and general obligations of the authority. Their payment may be secured by a specific pledge of tax proceeds and other revenues of the authority, in this act [72-17-1 to 72-17-103 NMSA 1978] sometimes referred to as "revenues" of the authority, as the board may determine.

History: 1953 Comp., § 75-38-47, enacted by Laws 1967, ch. 156, § 47.

ANNOTATIONS

Am. Jur. 2d, A.L.R. and C.J.S. references. — 64 Am. Jur. 2d Public Securities and Obligations § 24.

72-17-48. Additionally secured securities.

The board, in connection with such additionally secured securities, in the resolution authorizing their issuance or other instrument appertaining thereto, may pledge all or a portion of such revenues, subject to any prior pledges, as additional security for such payment of said securities, and at its option may deposit such revenues in a fund created to pay the securities or created to secure additionally their payment.

History: 1953 Comp., § 75-38-48, enacted by Laws 1967, ch. 156, § 48.

72-17-49. Pledge of revenues.

Any such revenues pledged directly or as additional security for the payment of securities of any one issue or series which revenues are not exclusively pledged therefor, may subsequently be pledged directly or as additional security for the payment of the securities of one or more issue or series subsequently authorized.

History: 1953 Comp., § 75-38-49, enacted by Laws 1967, ch. 156, § 49.

72-17-50. Ranking among different issues.

All securities of the same issue or series shall, subject to the prior and superior rights of outstanding securities, claims and other obligations, have a prior, paramount and superior lien on the revenues pledged for the payment of the securities over and ahead of any lien thereagainst subsequently incurred of any other securities; provided, however, the resolution authorizing, or other instrument appertaining to, the issuance of any securities may provide for the subsequent authorization of bonds or other securities the lien for the payment of which on such revenues is on a parity with the lien thereon of the subject securities upon such conditions and subject to such limitations as said resolution or other instrument may provide.

History: 1953 Comp., § 75-38-50, enacted by Laws 1967, ch. 156, § 50.

72-17-51. Ranking among securities of same issue.

All securities of the same issue or series shall be equally and ratably secured without priority by reason of number, date of maturity, date of securities, of sale, of execution, or of delivery, by a lien on said revenues in accordance with the provisions of this act [72-17-1 to 72-17-103 NMSA 1978] and the resolution authorizing, or other instrument appertaining to, said securities, except to the extent such resolution or other instrument shall otherwise expressly provided [provide].

History: 1953 Comp., § 75-38-51, enacted by Laws 1967, ch. 156, § 51.

ANNOTATIONS

Bracketed material. — The bracketed word "provide" was inserted by the compiler as the apparently intended term; it was not enacted by the legislature and is not a part of the law.

72-17-52. Payment recital in securities.

Each security issued hereunder shall recite in substance that the security and the interest thereon are payable solely from the revenues or other moneys pledged to the payment thereof. Securities specifically pledging the full faith and credit of the authority for their payment shall so state.

History: 1953 Comp., § 75-38-52, enacted by Laws 1967, ch. 156, § 52.

72-17-53. Incontestable recital in securities.

Any resolution authorizing, or other instrument appertaining to, any securities hereunder may provide that each security therein authorized shall recite that it is issued under authority hereof. Such recital shall conclusively impart full compliance with all of

the provisions hereof, and all securities issued containing such recital shall be incontestable for any cause whatsoever after their delivery for value.

History: 1953 Comp., § 75-38-53, enacted by Laws 1967, ch. 156, § 53.

ANNOTATIONS

Am. Jur. 2d, A.L.R. and C.J.S. references. — 64 C.J.S. Municipal Corporations §§ 1967, 1968.

72-17-54. Limitations upon payment of securities.

The payment of securities shall not be secured by an encumbrance, mortgage or other pledge of property of the authority, except for revenues, income, tax proceeds and other moneys pledged for the payment of securities. No property of the authority, subject to said exception, shall be liable to be forfeited or taken in payment of the securities.

History: 1953 Comp., § 75-38-54, enacted by Laws 1967, ch. 156, § 54.

ANNOTATIONS

Am. Jur. 2d, A.L.R. and C.J.S. references. — 64 Am. Jur. 2d Public Securities and Obligations § 199.

72-17-55. Limitations upon incurring any debt.

Nothing in this act [72-17-1 to 72-17-103 NMSA 1978] contained shall be construed as creating or authorizing the creation of an indebtedness on the part of any municipality or other public body included in the authority or elsewhere located.

History: 1953 Comp., § 75-38-55, enacted by Laws 1967, ch. 156, § 55.

72-17-56. Security details.

Any securities herein authorized to be issued shall bear such date or dates, shall be in such denomination or denominations, shall mature at such time or times but in no event exceeding forty years from their date or any shorter limitation herein provided, shall bear interest at a rate or rates not exceeding six percent per annum, which interest may be evidenced by one or two sets of coupons payable annually or semiannually, except that the first coupon or coupons appertaining to any security may represent interest for any period not in excess of one year, as may be prescribed by resolution or other instrument; and the securities and any coupons shall be payable in such medium of payment at any banking institution or such other place or places within or without the state, including but not limited to the office of the treasurer of the county in which the authority is located wholly or in part, as determined by the board, and the securities at

the option of the board may be in one or more series, may be made subject to prior redemption in advance of maturity in such order or by lot or otherwise at such time or times without or with the payment of such premium or premiums not exceeding six percent of the principal amount of each security so redeemed, as determined by the board.

History: 1953 Comp., § 75-38-56, enacted by Laws 1967, ch. 156, § 56.

72-17-57. Capitalization of costs.

Any resolution authorizing the issuance of securities or other instrument appertaining thereto may capitalize interest on any securities during any period of construction or other acquisition estimated by the board and one year thereafter and any other cost of any project, by providing for the payment of the amount capitalized from the proceeds of the securities.

History: 1953 Comp., § 75-38-57, enacted by Laws 1967, ch. 156, § 57.

72-17-58. Other security details.

Securities may be issued with privileges for conversion or registration, or both, for payment as to principal or interest, or both; and where interest accruing on the securities is not represented by interest coupons, the securities may provide for the endorsing of payments of interest thereof; and the securities generally shall be issued in such manner, in such form, either coupon or registered, with such recitals, terms, covenants and conditions, and with such other details, as may be provided by the board in the resolution authorizing the securities, or other instrument appertaining thereto, except as herein otherwise provided.

History: 1953 Comp., § 75-38-58, enacted by Laws 1967, ch. 156, § 58.

72-17-59. Reissuance of securities.

Any resolution authorizing the issuance of securities or any other instrument appertaining thereto may provide for their reissuance in other denominations in negotiable or nonnegotiable form and otherwise in such manner and form as the board may determine.

History: 1953 Comp., § 75-38-59, enacted by Laws 1967, ch. 156, § 59.

72-17-60. Negotiability.

Subject to the payment provisions herein specifically provided, said notes, warrants, bonds, any interest coupons thereto attached, temporary bonds, and interim debentures shall be fully negotiable within the meaning of and for all the purposes of the Uniform

Commercial Code [Chapter 55 NMSA 1978], except as the board may otherwise provide; and each holder of such security, or of any coupon appertaining thereto, by accepting such security or coupon shall be conclusively deemed to have agreed that such security or coupon, except as otherwise provided, is and shall be fully negotiable within the meaning and for all purposes of said code.

History: 1953 Comp., § 75-38-60, enacted by Laws 1967, ch. 156, § 60.

ANNOTATIONS

Am. Jur. 2d, A.L.R. and C.J.S. references. — 64 Am. Jur. 2d Public Securities and Obligations §§ 23, 33.

64 C.J.S. Municipal Corporations §§ 1950 to 1952.

72-17-61. Single bonds.

Notwithstanding any other provision of law, the board in any proceedings authorizing securities hereunder:

A. may provide for the initial issuance of one or more securities, in this section called "bond," aggregating the amount of the entire issue, or a designated portion thereof;

B. may make such provision for installment payments of the principal amount of any such bond as it may consider desirable;

C. may provide for the making of any such bond payable to bearer or otherwise, registrable as to principal or as to both principal and interest, and where interest accruing thereon is not represented by interest coupons, for the endorsing of payments of interest on such bonds;

D. may further make provision in any such proceedings for the manner and circumstances in and under which any such bond may in the future, at the request of the holder thereof, be converted into securities of smaller denominations, which securities of smaller denominations may in turn be either coupon bonds or bonds registrable as to principal, or principal and interest, or both.

History: 1953 Comp., § 75-38-61, enacted by Laws 1967, ch. 156, § 61.

72-17-62. Lost or destroyed securities.

If lost or completely destroyed, any security may be reissued in the form and tenor of the lost or destroyed security upon the owner furnishing, to the satisfaction of the board:

A. proof of ownership;

B. proof of loss or destruction;

C. a surety bond in twice the face amount of the security and any coupons; and

D. payment of the cost of preparing and issuing the new security.

History: 1953 Comp., § 75-38-62, enacted by Laws 1967, ch. 156, § 62.

ANNOTATIONS

Am. Jur. 2d, A.L.R. and C.J.S. references. — 64 Am. Jur. 2d Public Securities and Obligations § 298.

72-17-63. Execution of securities.

Any security shall be executed in the name of and on behalf of the authority and signed by the chairman of the board, with the seal of the authority affixed thereto and attested by the secretary of the authority.

History: 1953 Comp., § 75-38-63, enacted by Laws 1967, ch. 156, § 63.

ANNOTATIONS

Am. Jur. 2d, A.L.R. and C.J.S. references. — 64 Am. Jur. 2d Public Securities and Obligations §§ 186 to 189.

11 C.J.S. Bonds § 14.

72-17-64. Interest coupons.

Except for any bonds which are registrable for payment of interest, interest coupons payable to bearer and appertaining to the bonds shall be issued and shall bear the original or facsimile signature of the chairman of the board.

History: 1953 Comp., § 75-38-64, enacted by Laws 1967, ch. 156, § 64.

ANNOTATIONS

Am. Jur. 2d, A.L.R. and C.J.S. references. — 64 Am. Jur. 2d Public Securities and Obligations § 444.

72-17-65. Facsimile signatures.

Any of said officers, after filing with the secretary of state his manual signature certified by him under oath, may execute or cause to be executed with a facsimile

signature in lieu of his manual signature any security herein authorized; provided, that such a filing is not a condition of execution with a facsimile signature of any interest coupon and provided that at least one signature required or permitted to be placed on each such security, excluding any interest coupon, shall be manually subscribed. An officer's facsimile signature has the same legal effect as his manual signature.

History: 1953 Comp., § 75-38-65, enacted by Laws 1967, ch. 156, § 65.

ANNOTATIONS

Cross references. — For Uniform Facsimile Signature of Public Officials Act, see Chapter 6, Article 9 NMSA 1978.

72-17-66. Facsimile seal.

The secretary of the authority may cause the seal of the district to be printed, engraved, stamped or otherwise placed in facsimile on any security. The facsimile seal has the same legal effect as the impression of the seal.

History: 1953 Comp., § 75-38-66, enacted by Laws 1967, ch. 156, § 66.

72-17-67. Signatures of predecessors in office.

The securities and any coupons bearing the signatures of the officers in office at the time of the signing thereof shall be valid and binding obligations of the authority, notwithstanding that before the delivery thereof and payment therefor, any or all of the persons whose signatures appear thereon shall have ceased to fill their respective offices.

History: 1953 Comp., § 75-38-67, enacted by Laws 1967, ch. 156, § 67.

ANNOTATIONS

Am. Jur. 2d, A.L.R. and C.J.S. references. — 64 Am. Jur. 2d Public Securities and Obligations § 190.

72-17-68. Facsimile signatures of predecessors.

Any officer herein authorized or permitted to sign any security or interest coupon, at the time of its execution and of the execution of a signature certificate, may adopt as and for his own facsimile signature the facsimile signature of his predecessor in office in the event that such facsimile signature appears upon the security or coupons appertaining thereto, or upon both the security and such coupons.

History: 1953 Comp., § 75-38-68, enacted by Laws 1967, ch. 156, § 68.

72-17-69. Repurchase of securities.

The securities may be repurchased by the authority out of any funds available for such purpose from the project to which they pertain at a price of not more than the principal amount thereof and accrued interest, plus the amount of the premium, if any, which might on the next redemption date of such securities be paid to the holders thereof if such securities should be called for redemption on such date pursuant to their terms, and all securities so purchased shall be cancelled.

History: 1953 Comp., § 75-38-69, enacted by Laws 1967, ch. 156, § 69.

ANNOTATIONS

Am. Jur. 2d, A.L.R. and C.J.S. references. — 64 Am. Jur. 2d Public Securities and Obligations § 251.

11 C.J.S. Bonds § 54; 64 C.J.S. Municipal Corporations § 1954.

72-17-70. Customary provisions.

The resolution authorizing the securities or other instrument appertaining thereto may contain any agreement or provision customarily contained in instruments securing securities, including without limiting the generality of the foregoing, covenants designated in Section 76 [72-17-76 NMSA 1978] hereof.

History: 1953 Comp., § 75-38-70, enacted by Laws 1967, ch. 156, § 70.

72-17-71. Sale of securities.

Any securities herein authorized, except for warrants not issued for cash, and except for temporary bonds issued pending preparation of definitive bond or bonds, shall be sold at public or private sale for not less than the principal amount thereof and accrued interest, or at the board's option, below par at a discount not exceeding five percent of the principal amount thereof and at a price which will not result in a net interest cost to the authority of more than six percent per annum computed to maturity according to standard tables of bond values.

History: 1953 Comp., § 75-38-71, enacted by Laws 1967, ch. 156, § 71.

ANNOTATIONS

Am. Jur. 2d, A.L.R. and C.J.S. references. — 64 Am. Jur. 2d Public Securities and Obligations §§ 218, 228.

64 C.J.S. Municipal Corporations § 1930.

72-17-72. Sale discount or commission prohibited.

No discount, except as hereinabove provided, or commission shall be allowed or paid on or for any security sale to any purchaser or bidder, directly or indirectly; but nothing herein contained shall be construed as prohibiting the board from employing legal, fiscal, engineering and other expert services in connection with any project or facilities herein authorized and with the authorization, issuance and sale of securities.

History: 1953 Comp., § 75-38-72, enacted by Laws 1967, ch. 156, § 72.

ANNOTATIONS

Am. Jur. 2d, A.L.R. and C.J.S. references. — 64 Am. Jur. 2d Public Securities and Obligations §§ 230, 235.

64 C.J.S. Municipal Corporations § 1932.

72-17-73. Application of proceeds.

All moneys received from the issuance of any securities herein authorized shall be used solely for the purpose or purposes for which issued and the cost of any project thereby delineated. Any accrued interest and any premium shall be applied to the payment of the interest on or the principal of the securities, or both interest and principal, or shall be deposited in a reserve therefor, as the board may determine.

History: 1953 Comp., § 75-38-73, enacted by Laws 1967, ch. 156, § 73.

72-17-74. Use of unexpended proceeds.

Any unexpended balance of such security proceeds remaining after the completion of the acquisition or improvement and equipment of the project or the completion of the purpose or purposes for which such securities were issued shall be paid immediately into the fund created for the payment of the principal of said securities and shall be used therefor, subject to the provisions as to the times and methods for their payment as stated in the securities and the proceedings authorizing or otherwise appertaining to their issuance, or so paid into a reserve therefor.

History: 1953 Comp., § 75-38-74, enacted by Laws 1967, ch. 156, § 74.

72-17-75. Validity unaffected by use of proceeds.

The validity of said securities shall not be dependent [on] nor affected by the validity or regularity of any proceedings relating to the acquisition or improvement and equipment of the project or the proper completion of any project for which the securities are issued. The purchaser or purchasers of the securities shall in no manner be

responsible for the application of the proceeds of the securities by the authority or any of its officers, agents and employees.

History: 1953 Comp., § 75-38-75, enacted by Laws 1967, ch. 156, § 75.

ANNOTATIONS

Bracketed material. — The bracketed word "on" was inserted by the compiler for purposes of clarity; it was not enacted by the legislature and is not a part of the law.

72-17-76. Covenants in security proceedings.

Any resolution or trust indenture authorizing the issuance of securities or any other instrument appertaining thereto may contain covenants and other provisions notwithstanding such covenants and provisions may limit the exercise of powers conferred hereby, in order to secure the payment of such securities, in agreement with the holders and owners of such securities, as the board may determine, including without limiting the generality of the foregoing, all such acts and things as may be necessary or convenient or desirable in order to secure the authority's securities, or in the discretion of the board tend to make the securities more marketable, notwithstanding that such covenant, act or thing may not be enumerated herein, it being the intention hereof to give the authority power to do all things in the issuance of securities and for their security except as herein specifically limited.

History: 1953 Comp., § 75-38-76, enacted by Laws 1967, ch. 156, § 76.

ANNOTATIONS

Am. Jur. 2d, A.L.R. and C.J.S. references. — 64 Am. Jur. 2d Public Securities and Obligations § 199.

72-17-77. Remedies of security holders.

Subject to any contractual limitation binding upon the holders of any issue or series of securities, or trustee therefor, including but not limited to the restriction of the exercise of any remedy to a specified proportion, percentage or number of such holders, and subject to any prior or superior rights of others, any holder of securities, or trustee therefor, shall have the right and power, for the equal benefit and protection of all holders of securities similarly situated:

A. by mandamus or other suit, action or proceeding at law or in equity to enforce his rights against the authority and its board and any of its officers, agents, and employees, and to require and compel the authority or its board or any such officers, agents or employees to perform and carry out its and their duties, obligations or other commitments hereunder and its and their covenants and agreements with the holder of any security;

B. by action or suit in equity to require the authority and its board to account as if they were the trustee of an express trust;

C. by action or suit in equity to have appointed a receiver, which receiver may enter and take possession of any system, or project or services, revenues from which are pledged for the payment of the securities; prescribe sufficient fees derived from the operation thereof; and collect, receive and apply all revenues or other moneys pledged for the payment of the securities in the same manner as the authority itself might do in accordance with the obligations of the authority;

D. by action or suit in equity to enjoin any acts or things which may be unlawful or in violation of the rights of the holder of any security and to bring suit thereupon.

History: 1953 Comp., § 75-38-77, enacted by Laws 1967, ch. 156, § 77.

ANNOTATIONS

Cross references. — For one form of action known as "civil action," see Rule 1-002 NMRA.

Am. Jur. 2d, A.L.R. and C.J.S. references. — 64 Am. Jur. 2d Public Securities and Obligations §§ 485 to 491.

64 C.J.S. Municipal Corporations §§ 1956, 1972.

72-17-78. Limitations upon liabilities.

Neither the directors nor any person executing securities issued hereunder shall be liable personally on the securities by reason of the issuance thereof. Securities issued pursuant to this act [72-17-1 to 72-17-103 NMSA 1978] shall not be in any way a debt or liability of the state or of any municipality or other public body and shall not create or constitute any indebtedness, liability or obligation of the state or of any such municipality or other public body, either legal, moral or otherwise, and nothing in this act contained shall be construed to authorize the authority to incur any indebtedness on behalf of or in any way to obligate the state or any municipality or other public body, except the authority and except as herein otherwise expressly stated or necessarily implied.

History: 1953 Comp., § 75-38-78, enacted by Laws 1967, ch. 156, § 78.

ANNOTATIONS

Am. Jur. 2d, A.L.R. and C.J.S. references. — Personal liability of public officers to holders of invalid public money obligations, 87 A.L.R. 273.

94 C.J.S. Waters § 331.

72-17-79. Cancellation of paid securities.

Whenever the treasurer of the authority shall redeem and pay any of the securities issued under the provisions hereof, he shall cancel the same by writing across the face thereof or stamping thereon the word "paid," together with the date of its payment, sign his name thereto, and transmit the same to the secretary of the authority, taking his receipt therefor, which receipt shall be filed in the records of the authority. The secretary shall credit the treasurer on his books for the amount so paid.

History: 1953 Comp., § 75-38-79, enacted by Laws 1967, ch. 156, § 79.

ANNOTATIONS

Am. Jur. 2d, A.L.R. and C.J.S. references. — 94 C.J.S. Waters § 330.

72-17-80. Interest after maturity.

No interest shall accrue on any security herein authorized after it becomes due and payable, provided funds for the payment of the principal of and the interest on the security and any prior redemption premium due are available to the paying agent for such payment without default.

History: 1953 Comp., § 75-38-80, enacted by Laws 1967, ch. 156, § 80.

72-17-81. Refunding bonds.

Any bonds issued hereunder may be refunded, without an election, but subject to provisions concerning their payment and to any other contractual limitations in the proceedings authorizing their issuance or otherwise appertaining thereto, pursuant to a resolution or resolutions to be adopted by the board in the manner herein provided for the issuance of other securities, to refund, pay or discharge all or any part of the authority's outstanding bonds, heretofore or hereafter issued, including any interest thereon in arrears or about to become due, or for the purpose of reducing interest costs or effecting other economies or of modifying or eliminating restrictive contractual limitations appertaining to the issuance of additional bonds or any project or any combination thereof.

History: 1953 Comp., § 75-38-81, enacted by Laws 1967, ch. 156, § 81.

ANNOTATIONS

Am. Jur. 2d, A.L.R. and C.J.S. references. — 64 Am. Jur. 2d Public Securities and Obligations §§ 261, 262.

64 C.J.S. Municipal Corporations § 1910.

72-17-82. Method of issuance.

Any bonds issued for refunding purposes may either be delivered in exchange for the outstanding bonds authorized to be refunded or may be sold as provided in this act [72-17-1 to 72-17-103 NMSA 1978] for the sale of other bonds.

History: 1953 Comp., § 75-38-82, enacted by Laws 1967, ch. 156, § 82.

72-17-83. Limitations upon issuance.

No bonds may be refunded hereunder unless the holders thereof voluntarily surrender them for exchange or payment, or unless they either mature or are callable for prior redemption under their terms within ten years from the date of issuance of the refunding bonds. Provision shall be made for paying the bonds within said period of time. No maturity of any bonds refunded may be extended over fifteen years, nor may any interest thereon be increased to any rate exceeding six percent per annum. The principal amount of the refunding bonds may exceed the principal amount of the refunded bonds if the aggregate principal and interest costs of the refunding bonds do not exceed such unaccrued costs of the bonds refunded. The principal amount of the refunding bonds may also be less than or the same as the principal amount of the bonds refunded so long as provision is duly and sufficiently made for their payment.

History: 1953 Comp., § 75-38-83, enacted by Laws 1967, ch. 156, § 83.

72-17-84. Use of refunding bond proceeds.

The proceeds of refunding bonds shall either be immediately applied to the retirement of the bonds to be refunded or be placed in escrow to be applied to the payment of the bonds upon their presentation therefor; provided, however, any accrued interest and any premium appertaining to a sale of refunding bonds may be applied to the payment of the interest theron [thereon] and the principal thereof, or both interest and principal, or may be deposited in a reserve therefor, as the board may determine. The escrow shall not necessarily be limited to refunding bond proceeds but may include other moneys made available for said purpose. Any escrowed proceeds pending such use, may be invested or reinvested in federal securities. Such escrowed proceeds and investments, together with any interest to be derived from any such investment, shall be in an amount at all times sufficient as to principal, interest, any prior redemption premium due, and any charges of the escrow agent payable therefrom, to pay the bonds refunded as they become due at their respective maturities or due at designated prior redemption date or dates upon which the board shall exercise a prior redemption option.

History: 1953 Comp., § 75-38-84, enacted by Laws 1967, ch. 156, § 84.

72-17-85. Payment of refunding bonds.

Refunding revenue bonds may be made payable from any revenues derived from the operation of the flood control system or any project, notwithstanding the pledge of such revenues for the payment of the outstanding bonds issued by the authority which are to be refunded is thereby modified. Any refunding revenue bonds shall not be made payable from taxes unless the bonds thereby refunded are payable from taxes.

History: 1953 Comp., § 75-38-85, enacted by Laws 1967, ch. 156, § 85.

72-17-86. Combination of refunding and other bonds.

Bonds for refunding and bonds for any other purpose or purposes herein authorized may be issued separately or issued in combination in one series or more.

History: 1953 Comp., § 75-38-86, enacted by Laws 1967, ch. 156, § 86.

72-17-87. Supplemental provisions.

Except as in this act [72-17-1 to 72-17-103 NMSA 1978] specifically provided or necessarily implied, the relevant provisions herein pertaining to bonds generally shall be equally applicable in the authorization and issuance of refunding bonds, including their terms and security, the bond resolution, trust indenture, taxes and service charges, and other aspect [aspects] of the bonds.

History: 1953 Comp., § 75-38-87, enacted by Laws 1967, ch. 156, § 87.

ANNOTATIONS

Bracketed material. — The bracketed material in this section was inserted by the compiler for purposes of clarity; it was not enacted by the legislature and is not a part of the law.

72-17-88. Board's determination final.

The determination of the board that the limitations hereunder imposed upon the issuance of refunding bonds have been met shall be conclusive in the absence of fraud or arbitrary and gross abuse of discretion.

History: 1953 Comp., § 75-38-88, enacted by Laws 1967, ch. 156, § 88.

72-17-89. Issuance of interim debentures and pledge of bonds as collateral security.

Notwithstanding any limitation or other provision herein, whenever a majority of the taxpaying electors of the authority voting on a proposal to issue bonds has authorized the authority to issue bonds for any purpose herein authorized, the authority is

authorized to borrow money without any other election in anticipation of taxes, the proceeds of said bonds or any other revenues of the authority or any combination thereof, and to issue interim debentures to evidence the amount so borrowed. Interim debentures may mature at such time or times not exceeding a period of time equal to the estimated time needed to effect the purpose or purposes for which the bonds are so authorized to be issued, plus two years, as the board may determine. Except as otherwise provided in this section and in Sections 90 and 91 [72-17-90 and 72-17-91 NMSA 1978] hereof, interim debentures shall be issued as provided herein for securities in Sections 47 to 80 [72-17-47 to 72-17-80 NMSA 1978], both inclusive. Taxes, other revenues of the authority, including without limiting the generality of the foregoing, proceeds of bonds to be thereafter issued or reissued, or bonds issued for the purpose of securing the payment of interim debenture [debentures], may be pledged for the purpose of securing the payment of the interim debentures. Any bonds pledged as collateral security for the payment of any interim debentures shall mature at such time or times as the board may determine, but in no event exceeding forty years from the date of either any of such bonds or any of such interim debentures, whichever date be the earlier. Any such bonds pledged as collateral security shall not be issued in an aggregate principal amount exceeding the aggregate principal amount of the interim debenture or interim debentures secured by a pledge of such bonds, nor shall they bear interest at any time which with any interest accruing at the same time on the interim debenture or interim debentures so secured exceeds six percent per annum.

History: 1953 Comp., § 75-38-89, enacted by Laws 1967, ch. 156, § 89.

72-17-90. Interim debentures not to be extended.

No interim debenture issued pursuant to the provisions of Section 89 [72-17-89 NMSA 1978] hereof shall be extended or funded except by the issuance or reissuance of a bond or bonds in compliance with Section 91 [72-17-91 NMSA 1978] hereof.

History: 1953 Comp., § 75-38-90, enacted by Laws 1967, ch. 156, § 90.

72-17-91. Funding.

For the purpose of funding any interim debenture or interim debentures, any bond or bonds pledged as collateral security to secure the payment of such interim debenture or interim debentures may be reissued without an election, and any bonds not previously issued but authorized to be issued at an election for a purpose the same as or encompassing the purpose for which the interim debentures were issued may be issued for such a funding. Any such bonds shall mature at such time or times as the board may determine, but in no event exceeding forty years from the date of either any of the interim debentures so funded or any of the bonds so pledged as collateral security, whichever date be the earlier. Bonds for funding, including but not necessarily limited to any such reissued bonds, and bonds for any other purpose or purposes herein authorized may be issued separately or issued in combination in one series or more. Except as herein otherwise provided in Sections 89 and 90 [72-17-89 and 72-17-90

NMSA 1978] and in this section, any such funding bonds shall be issued as is provided herein for refunding bonds in Sections 81, 82, 84, 85, 87, and 88 [72-17-81, 72-17-82, 72-17-84, 72-17-85, 72-17-87, 72-17-88 NMSA 1978] hereof, and provided herein for securities in Sections 47 to 80 [72-17-47 to 72-17-80 NMSA 1978], both inclusive.

History: 1953 Comp., § 75-38-91, enacted by Laws 1967, ch. 156, § 91.

72-17-92. Publication of resolution or proceedings.

In its discretion the board may provide for the publication once in full of either any resolution or other proceedings adopted by the board ordering the issuance of any securities or, in the alternative of notice thereof, which resolution, other proceedings or notice so published shall state the fact and date of such adoption and the place where such resolution or other proceedings has been filed for public inspection and also the date of the first publication of such resolution, other proceedings or notice, and also state that any action or proceeding of any kind or nature in any court questioning the validity of the creation and establishment of the authority, or the validity or proper authorization of securities provided for by the resolution or other proceedings, or the validity of any covenants, agreements or contracts provided for by the resolution or other proceedings, shall be commenced within twenty days after the first publication of such resolution, other proceedings or notice.

History: 1953 Comp., § 75-38-92, enacted by Laws 1967, ch. 156, § 92.

ANNOTATIONS

Am. Jur. 2d, A.L.R. and C.J.S. references. — 64 Am. Jur. 2d Public Securities and Obligations §§ 477 to 484.

72-17-93. Failure to contest legality constitutes bar.

If no such action or proceedings shall be commenced or instituted within twenty days after the first publication of such resolution, other proceedings or notice, then all residents and taxpayers and owners of property in the authority and all public bodies and all other persons whatsoever shall be forever barred and foreclosed from instituting or commencing any action or proceeding in any court or from pleading any defense to any action or proceedings questioning the validity of the creation and establishment of the authority, the validity or proper authorization of such securities, or the validity of any such covenants, agreements or contracts; and said securities, covenants, agreements and contracts shall be conclusively deemed to be valid and binding obligations in accordance with their terms and tenor.

History: 1953 Comp., § 75-38-93, enacted by Laws 1967, ch. 156, § 93.

ANNOTATIONS

Am. Jur. 2d, A.L.R. and C.J.S. references. — 64 Am. Jur. 2d Public Securities and Obligations §§ 500 to 505.

72-17-94. Confirmation of contract proceedings.

In its discretion the board may file a petition at any time in the district court in and for any county in which the authority is located wholly or in part, praying a judicial examination and determination of any power conferred or of any tax or rates or charges levied or of any act, proceeding or contract of the authority, whether or not said contract shall have been executed, including proposed contracts for the acquisition, improvement, equipment, maintenance, operation or disposal of any project for the authority. Such petition shall set forth the facts whereon the validity of such power, assessment, act, proceeding or contract is founded and shall be verified by the chairman of the board. Such action shall be in the nature of a proceeding in rem, and jurisdiction of all parties interested may be had by publication and posting, as hereinafter provided. Notice of the filing of said petition shall be given by the clerk of the court, under the seal thereof, stating in brief outline the contents of the petition and showing where a full copy of any contract therein mentioned may be examined. The notice shall be served by publication in at least five consecutive issues of a weekly newspaper of general circulation published in the county in which the principal office of the authority is located, and by posting the same in the office of the authority at least thirty days prior to the date fixed in said notice for the hearing on said petition. Jurisdiction shall be complete after such publication and posting. Any owner of property in the authority or person interested in the contract or proposed contract or in the premises may appear and move to dismiss or answer said petition at any time prior to the date fixed for said hearing or within such further time as may be allowed by the court; and the petition shall be taken as confessed by all persons who fail so to appear.

History: 1953 Comp., § 75-38-94, enacted by Laws 1967, ch. 156, § 94.

72-17-95. Review and judgment of court.

The petition and notice shall be sufficient to give the court jurisdiction, and upon hearing the court shall examine into and determine all matters and things affecting the question submitted, shall make such findings with reference thereto and render such judgment and decree thereon as the case warrants. Costs may be divided or apportioned among any contesting parties in the discretion of the trial court. Review of the judgment of the court may be had as in other similar cases, except that such review must be applied for within thirty days after the time of the rendition of such judgment or within such additional time as may be allowed by the court within thirty days. The rules of civil procedure shall govern in matters of pleading and practice where not otherwise specified herein. The court shall disregard any error, irregularity or omission which does not affect the substantial rights of the parties.

History: 1953 Comp., § 75-38-95, enacted by Laws 1967, ch. 156, § 95.

72-17-96. Purpose of tax exemptions.

The effectuation of the powers herein authorized shall and will be in all respects for the benefit of the people of the state, including but not necessarily limited to those residing in the authority exercising any power hereunder, for the improvement of their health and living conditions and for the increase of their commerce and prosperity.

History: 1953 Comp., § 75-38-96, enacted by Laws 1967, ch. 156, § 96.

72-17-97. Property exempt from general taxes.

Thus, the authority shall not be required to pay any general ad valorem taxes upon any property appertaining to any project herein authorized and acquired within the state, nor the authority's interest therein.

History: 1953 Comp., § 75-38-97, enacted by Laws 1967, ch. 156, § 97.

72-17-98. Securities and income therefrom exempt.

Securities issued hereunder and the income therefrom shall forever be and remain free and exempt from taxation by the state, the authority and any other public body, except transfer, inheritance and estate taxes.

History: 1953 Comp., § 75-38-98, enacted by Laws 1967, ch. 156, § 98.

72-17-99. Freedom from judicial process.

Execution or other judicial process shall not issue against any property herein authorized of the authority, nor shall any judgment against the authority be a charge or lien upon its property.

History: 1953 Comp., § 75-38-99, enacted by Laws 1967, ch. 156, § 99.

72-17-100. Resort to judicial process.

Section 99 [72-17-99 NMSA 1978] hereof does not apply to or limit the right of the holder of any security, his trustee, or any assignee of all or part of his interest, the federal government when it is a party to any contract with the authority, and any other obligee hereunder to foreclose, otherwise to enforce, and to pursue any remedies for the enforcement of any pledge or lien given by the authority on the proceeds of taxes, service charges or other revenues.

History: 1953 Comp., § 75-38-100, enacted by Laws 1967, ch. 156, § 100.

72-17-101. Legal investments in securities.

It shall be legal for the state and any of its agencies, departments, instrumentalities, corporations, or political subdivisions, or any political or public corporation, any bank, trust company, banker, savings bank or institution, any building and loan association, savings and loan association, investment company and any other person carrying on a banking or investment business, any insurance company, insurance association, or any other person carrying on an insurance business and any executor, administrator, curator, trustee or any other fiduciary, to invest funds or moneys in their custody in any of the securities authorized to be issued pursuant to the provisions hereof. Such securities shall be authorized security for all public deposits. Nothing contained in this section with regard to legal investments shall be construed as relieving any public body or other person of any duty of exercising reasonable care in selecting securities.

History: 1953 Comp., § 75-38-101, enacted by Laws 1967, ch. 156, § 101.

72-17-102. Civil rights.

The authority damaged by any such act may also bring a civil action for damages sustained by any such act, and in such proceeding the prevailing party shall also be entitled to reasonable attorneys' fees and costs of court.

History: 1953 Comp., § 75-38-102, enacted by Laws 1967, ch. 156, § 102.

72-17-103. Liberal construction.

This act [72-17-1 to 72-17-103 NMSA 1978] being necessary to secure and preserve the public health, safety and general welfare, the rule of strict construction shall have no application hereto, but it shall be liberally construed to effect the purposes and objects for which this act is intended.

History: 1953 Comp., § 75-38-103, enacted by Laws 1967, ch. 156, § 103.

ANNOTATIONS

Severability clauses. — Laws 1967, ch. 156, § 104, provides for the severability of the act if any part or application thereof is held invalid.

ARTICLE 18
Flood Control Districts

72-18-1. Short title.

This act [72-18-1 to 72-18-70 NMSA 1978] may be cited as the "Flood Control District Act."

History: Laws 1981, ch. 377, § 1.

ANNOTATIONS

Cross references. — For flood control generally, see 4-50-1 NMSA 1978 et seq.

Am. Jur. 2d, A.L.R. and C.J.S. references. — 50 Am. Jur. 2d Levees and Flood Control §§ 1, 2, 6.

52A C.J.S. Levees and Flood Control §§ 13 to 26.

72-18-2. Legislative declaration.

It is hereby declared as a matter of legislative determination that:

A. the organization of the districts authorized to be created pursuant to the Flood Control District Act [72-18-1 to 72-18-70 NMSA 1978] having the purposes, powers, duties, privileges, immunities, rights, liabilities and disabilities provided in that act will serve a public use and public purpose and will promote the health, safety, prosperity, security and general welfare of the inhabitants of the districts and of the state;

B. the acquisition, improvement, equipment, maintenance and operation of any project authorized in the Flood Control District Act is in the public interest and constitutes a part of the established and permanent policy of the state; and

C. any district authorized by the Flood Control District Act to be organized shall be a political subdivision of the state.

History: Laws 1981, ch. 377, § 2.

72-18-3. Definitions.

As used in the Flood Control District Act [72-18-1 to 72-18-70 NMSA 1978]:

A. "acquisition" or "acquire" includes the opening, laying out, establishment, purchase, construction, securing, installation, reconstruction, lease, gift, [or] grant from the federal government, any public body or person, [or any] endowment, bequest, devise, condemnation, transfer, assignment, option to purchase, other contract or other acquirement of facilities, other property, any project or an interest therein authorized by the Flood Control District Act;

B. "board" means the board of directors of a district, which shall consist of five directors;

C. "chairman" means the chairman of the board and president of a district;

D. "cost" or "cost of the project" means all or any part of the cost designated by the board of any facilities, project or interest therein being acquired, and of all or any property, rights, easements, privileges, agreements and franchises deemed by the district to be necessary or useful and convenient in connection therewith, which cost, at the option of the board, may include all or any part of the incidental costs pertaining to the project and all other expenses necessary or desirable and appertaining to any project, as estimated by the board;

E. "director" means a member of the board of a district;

F. "disposal" or "dispose" includes the sale, destruction, razing, loan, lease, gift, grant, transfer, assignment, mortgage, option to sell, other contract or other disposition of facilities, other property, any project or an interest therein authorized by the Flood Control District Act;

G. "district" means a flood control district created pursuant to the Flood Control District Act;

H. "equipment" or "equip" includes the furnishing of all necessary or desirable, related or appurtenant, facilities appertaining to any facilities, property, project or interest therein authorized by the Flood Control District Act;

I. "facility" includes any of the sewer facilities or other property appertaining to the flood control system of any district;

J. "federal government" means the United States of America or any agency, instrumentality or corporation thereof;

K. "federal securities" means bills, certificates of indebtedness, notes, bonds or other obligations which are direct obligations of, or the principal and interest of which obligations are unconditionally guaranteed by, the United States of America;

L. "improvement" or "improve" means the extension, widening, lengthening, betterment, alteration, reconstruction, repair or other improvement of facilities, other property, any project or any interest therein authorized by the Flood Control District Act;

M. "person" means an individual, association, partnership, firm or corporation, excluding a public body and excluding the federal government;

N. "president" means the president of a district and the chairman of the board of the district;

O. "project" includes any structure, facility or system relating to the flood control system which a district is authorized by the Flood Control District Act to acquire, improve, equip, maintain or operate, which may be located within and without the district's boundaries;

P. "publication" or "publish" means publication in at least one newspaper, published in the district or proposed district in the English language at least once a week and of general circulation in the district or proposed district, or if no such newspaper is published in the district or proposed district, then in a newspaper published in the state in the English language at least once a week and of general circulation in the district or proposed district, which publication shall be at least once a week for three consecutive weeks by three weekly insertions. It is not necessary that publication be made on the same day of the week in each of the three calendar weeks, but not less than fourteen days shall intervene between the first publication and the last publication;

Q. "public body" means the state or any agency, instrumentality or corporation thereof or any political subdivision of the state, excluding districts and excluding the federal government;

R. "qualified registered elector" means any person who at the designated time or event is qualified to vote under the provisions of the constitution of New Mexico and the constitution of the United States, who is registered to vote under the provisions of the Election Code [Chapter 1 NMSA 1978] in and resides in the district or proposed district;

S. "revenues" means income, other than tax proceeds, of a district;

T. "secretary" means the secretary of a district;

U. "securities" means any notes, warrants, bonds or interim debentures or other obligations of a district authorized by the Flood Control District Act;

V. "sewer facilities" includes any one or more of the various devices used in the collection, channeling, impounding or disposition of storm, flood or surface drainage waters, including all inlets, collection, drainage or disposal lines, canals, intercepting sewers, outfall sewers, all pumping, power and other equipment and appurtenances, all extensions, improvements, remodeling, additions and alterations thereof, and any and all rights or interest in such sewer facilities; and

W. "treasurer" means the treasurer of a district.

History: Laws 1981, ch. 377, § 3.

72-18-4. Organization of district; jurisdiction.

The district court for any county in the state may establish districts which may be entirely within or partly within and partly without the county in which the court is located; provided, any parts or parcel of the district lying in two or more counties shall be contiguous with one another.

History: Laws 1981, ch. 377, § 4.

72-18-5. Petition.

A. The organization of a district shall be initiated by a petition filed in the office of the clerk of the district court in a county in which all or a part of the real property in the proposed district is located. The petition shall be signed by qualified registered electors of the proposed district numbering not less than ten percent of those voting in the preceding general election in the state in voting precincts partially or wholly included in the area of the proposed district. The petition and all other instruments relating to the formation of the district shall be filed with the county clerk of the county in which there is the court which accepted the petition. Any municipality or county in which all or a portion of the proposed district is located may, upon proper action of its governing body alone, file the petition required by this section.

B. The petition shall set forth:

(1) the name of the proposed district consisting of a chosen name preceding the words "flood control district";

(2) a general description of the facilities to be acquired or improved within and for the district;

(3) a general description of the boundaries of the district, with such certainty as to enable a property owner to determine whether his property is within the proposed district; and

(4) a prayer for the organization of the district.

C. No petition with the requisite number of valid signatures shall be declared void on account of alleged defects, but the court may at any time permit the petition to be amended to conform to the facts by correcting any errors in the description of the territory or in any other particular. Similar petitions or duplicate copies of the same petition for the organization of the same district may be filed and shall together be regarded as one petition. All such petitions filed before the hearing on the first petition filed shall be considered by the court the same as though filed with the first petition.

History: Laws 1981, ch. 377, § 5.

72-18-6. Bond of petitioners.

At the time of filing the petition, or at any later time before the time of the hearing on the petition, a bond shall be filed with security approved by the court sufficient to pay all the expenses connected with the proceedings in case the organization of the district is not effected. If at any time during the proceeding the court is satisfied that the bond first executed is not sufficient, it may require the execution of an additional bond within a

time to be fixed, which shall not be less than ten days from the date of the order. Upon failure of the petitioners to execute the additional bond, the petition shall be dismissed.

History: Laws 1981, ch. 377, § 6.

72-18-7. Notice of hearing on petition.

A. Immediately after the filing of the petition, the court shall by order fix a place and time for hearing not less than sixty days after the petition is filed, and the clerk of the court shall cause notice by publication to be made of the pendency of the petition and of the time and place of the hearing.

B. The notice shall state:

(1) in what court the petition is filed;

(2) a general description of the facilities to be acquired or improved within and for the district;

(3) a general description of the boundaries of the proposed district, with such certainty as to enable a property owner to determine whether or not his property is within the proposed district;

(4) the name proposed for the district; and

(5) the time and place fixed by the court for the hearing on the petition.

History: Laws 1981, ch. 377, § 7.

72-18-8. Hearing.

A. Upon the hearing, if the court finds that no petition has been signed and presented in conformity with the Flood Control District Act [72-18-1 to 72-18-70 NMSA 1978], or that the material facts are not as set forth in the petition filed, it shall dismiss the proceedings and adjudge the costs against the signers of the petition in the proportion as it deems just and equitable.

B. Upon the hearing, if it appears that a valid petition for the organization of the district has been signed and presented in conformity with the requirements of the Flood Control District Act and that the allegations of the petition are true, the court shall order that the question of the organization of the district be submitted to the qualified registered electors of the proposed district at an election to be held for that purpose. The order shall designate one or more polling places within the district, and for each polling place so designated shall appoint three qualified registered electors of the district as judges of the election and two qualified registered electors of the district as clerks of the election. The order shall also designate the clerk of the court or a qualified

registered elector of the proposed district to receive applications for and to disburse and collect absentee ballots.

History: Laws 1981, ch. 377, § 8.

72-18-9. Nominations for initial board.

A nomination for director may be made by petition signed by not less than five qualified registered electors and filed with the district court having jurisdiction not less than twenty-five days before the date of the organizational election. Any petition so filed shall designate the name of each nominee and shall state that the petitioners and the nominee or nominees designated in the petition are qualified registered electors of the proposed district. No qualified registered elector shall nominate more than one person for director. The name of each nominee so designated shall appear on the organizational ballot.

History: Laws 1981, ch. 377, § 9.

72-18-10. Organizational election.

A. The clerk of the court shall give notice by publication of the date, time and polling places of the election, the boundaries or other description of the election precincts, the names of the nominees for director and the place where absentee ballots can be obtained. The election shall be held not less than forty-five days after the first publication of the notice.

B. At the election the qualified registered electors may vote for or against the organization of the district and for up to five qualified registered electors of the district who shall constitute the board of directors of the district.

C. The judges of election shall certify the returns of the election to the district court having jurisdiction. If a majority of the votes cast at the election are in favor of the organization, the district court shall declare the district organized and give it a corporate name by which in all proceedings it shall thereafter be known, and shall designate the first board of directors elected, and thereupon the district shall be a political subdivision of the state. The certificate shall be conclusively presumed correct as to the facts stated therein.

History: Laws 1981, ch. 377, § 10.

72-18-11. Filing decree.

Within thirty days after the district has been declared a corporation by the court, the clerk of the court shall file the certificate in the same manner as articles of incorporation are required to be filed under the general laws concerning corporations.

History: Laws 1981, ch. 377, § 11.

72-18-12. Board of directors; qualification; bond.

Whenever a district has been declared duly organized, the members of the board shall qualify by filing with the clerk of the court their oaths of office, and corporate surety bonds at the expense of the district in an amount not to exceed one thousand dollars ($1,000) each, the form to be fixed and approved by the court and conditioned for the faithful performance of their duties as directors.

History: Laws 1981, ch. 377, § 12.

72-18-13. Organization of board; initial terms of directors.

A. After taking oath and filing bonds, the board shall choose one of its members as chairman of the board and shall choose a secretary and a treasurer of the board and of the district. The secretary and treasurer may be one person.

B. The terms of the members of the initial board of directors shall be determined by lot at their organizational meeting. Two members shall serve until January 1 following the first general election in the state following organization of the district, two members shall serve until January 1 following the second general election in the state following organization of the district and one member shall serve until January 1 following the third general election in the state following organization of the district.

History: Laws 1981, ch. 377, § 13.

72-18-14. Election of directors; nominations.

A. At each general election in the state after organization of the district, there shall be elected by the qualified registered electors of the district one or two members of the board to serve for a term of six years. Except for the initial board of directors and except for any director chosen to fill an unexpired term, the term of each director commences on January 1 following the general election in the state and runs for six years. Each director, subject to such exceptions, shall serve a six-year term ending on January 1, next following a general election. Each director shall serve until his successor has been duly chosen and qualified.

B. Not later than thirty days before any election, nominations may be filed with the secretary, and, if a nominee does not withdraw his name before the first publication of the notice of election, his name shall be placed on the ballot.

History: Laws 1981, ch. 377, § 14.

72-18-15. Vacancies on the board.

Any vacancy on the board shall be filled by appointment by a majority of the remaining members of the board. The appointee shall serve until the next general election when the vacancy shall be filled by election. If the board fails to fill any vacancy within thirty days after it occurs, the court declaring the organization of the district shall fill the vacancy.

History: Laws 1981, ch. 377, § 15.

72-18-16. Meetings of board.

All meetings of the board shall be held within the district. No business of the board shall be transacted except at a regular or special meeting at which at least three directors are present. Any action of the board requires the affirmative vote of a majority of the directors present and voting.

History: Laws 1981, ch. 377, § 16.

72-18-17. Compensation of directors.

Directors shall receive no compensation for their services as a director, officer, engineer, attorney, employee or other agent of the district. Directors may be reimbursed for expenses incurred by them on district business with approval of the board.

History: Laws 1981, ch. 377, § 17.

72-18-18. Interest in contracts and property disqualifications.

No director or officer, employee or agent of the district may be interested in any contract or transaction with the district except in his official representative capacity and except for any contract of employment with the district.

History: Laws 1981, ch. 377, § 18.

72-18-19. Board's administrative powers.

The board of the district may exercise the following administrative powers:

A. fix the time and place at which its regular meetings will be held within the district and provide for the calling and holding of special meetings;

B. adopt and amend or otherwise modify bylaws and rules for procedure;

C. prescribe by resolution a system of business administration and create all necessary offices and establish and reestablish the powers, duties and compensation of all officers and employees;

D. require and fix the amount of all official bonds necessary or desirable and convenient in the opinion of the board for the protection of the funds and property of the district, subject to the provisions of Section 12 [72-18-12 NMSA 1978] of the Flood Control District Act;

E. prescribe a method of auditing and allowing or rejecting claims and demands; and

F. make and pass resolutions and orders on behalf of the district pursuant to the provisions of the Flood Control District Act [72-18-1 to 72-18-70 NMSA 1978] which are necessary or useful for the government and management of the affairs of the district, for the execution of the powers vested in the district and for carrying into effect the provisions of that act.

History: Laws 1981, ch. 377, § 19.

72-18-20. Additional powers.

The board of the district may:

A. adopt, have and use a corporate seal and alter the same at pleasure;

B. sue and be sued and be a party to suits, actions and proceedings;

C. acquire, improve, equip, maintain and operate any project or facility;

D. protect the watercourses, watersheds, public highways, life and property in the district from floods or storm waters;

E. exercise the right of eminent domain within the district as provided in the Eminent Domain Code [42A-1-1 to 42A-1-33 NMSA 1978] and take any property necessary to carry out any of the objects or purposes of the Flood Control District Act [72-18-1 to 72-18-70 NMSA 1978];

F. commence, maintain, intervene in, defend, compromise, terminate by settlement or otherwise and otherwise participate in and assume the cost and expense of any and all actions and proceedings appertaining to the district, its board, its officers, agents or employees; or any of the district's duties, privileges, immunities, rights, liabilities and disabilities; or the district's flood control system, other property of the district or any project;

G. enter into contracts and agreements, including but not limited to contracts with the federal government and any public body;

H. borrow money and issue securities evidencing any loan to or amount due by the district, provide for and secure the payment of any securities and the rights of the holders thereof and purchase, hold and dispose of securities;

I. refund any loan or obligation of the district and issue refunding securities to evidence such loan or obligation without an election;

J. purchase, trade, exchange, encumber and otherwise acquire, maintain and dispose of real and personal property and interests therein;

K. levy and cause to be collected a property tax on all property subject to property taxation within the district. The total tax levy for any fiscal year for general purposes shall not exceed an aggregate total of fifty cents ($.50), or any lower maximum amount required by operation of the rate limitation provisions of Section 7-37-7.1 NMSA 1978 upon this tax levy, on each one thousand dollars ($1,000) of net taxable value, as that term is defined in the Property Tax Code [Chapter 7, Articles 35 to 38, NMSA 1978], unless the qualified registered electors approve a greater tax not to exceed two dollars ($2.00) on each one thousand dollars ($1,000) of net taxable value, provided that any tax levy approved in excess of fifty cents ($.50) on each one thousand dollars ($1,000) of net taxable value shall be subject to the rate limitation provisions of Section 7-37-7.1 NMSA 1978. The rate of levy for the payment of any debt of the district authorized by the qualified registered electors of the district shall be without limitation as to rate or amount. The board shall certify on or before July 15 of each year in which the board determines to levy a tax, to the board of county commissioners of each county wherein the district has any territory, the rate so fixed, with directions that at the time and in the manner required by law for levying taxes for other purposes, the board of county commissioners shall levy a tax upon the net taxable value of all property subject to property taxation within the district;

L. hire and retain officers, agents, employees, engineers, attorneys and any other persons, permanent or temporary, necessary or desirable to effect the purposes of the Flood Control District Act; defray any expenses incurred thereby in connection with the district; and acquire office space, equipment, services, supplies, fire and extended coverage insurance, use and occupancy insurance, workmen's compensation insurance, property damage insurance, public liability insurance for the district and its officers, agents and employees and other types of insurance as the board may determine. Provided, however, that no provision authorizing the acquisition of insurance shall be construed as waiving any immunity of the district or any director, officer or agent of the district otherwise existing under the laws of the state;

M. acquire, improve, equip, hold, operate, maintain and dispose of a flood control system, project and appurtenant works;

N. pay or otherwise defray the cost of any project;

O. deposit any money of the district in any banking institution within or without the state and secured in such manner and subject to such terms and conditions as the board may determine;

P. invest any surplus money in the district treasury, including money in any sinking or reserve fund established for the purpose of retiring any securities of the district, which is not required for the immediate necessities of the district in its own securities or in federal securities, by direct purchase of any issue of such securities, or part thereof, at the original sale of the same or by the subsequent purchase of such securities;

Q. sell any securities purchased and held pursuant to Subsection P of this section;

R. accept contributions or loans from the federal government for the purpose of financing the planning, acquisition, improvement, equipment, maintenance and operation of any enterprise in which the district is authorized to engage, and enter into contracts and cooperate with, and accept cooperation and participation from, the federal government for these purposes;

S. enter, without an election, into joint operating or service contracts and agreements, acquisition, improvement, equipment or disposal contracts or other arrangements, for any term not exceeding fifty years, with the federal government, any public body or any person concerning sewer facilities or any project, whether acquired by the district or by the federal government, any public body or any person, and accept grants and contributions from the federal government, any public body or any person in connection therewith;

T. cooperate and act in conjunction with a public body, the federal government or any person in the acquisition, improvement or equipment of any project for the controlling of flood or storm waters of the district, or for the protection of life or property therein, or for any other works, acts or purposes provided for in the Flood Control District Act, and adopt and carry out any definite plan or system of work for any such purpose; and

U. make all contracts, execute all instruments and do all things necessary or convenient in the exercise of the powers granted by the Flood Control District Act, or in the performance of the district's covenants or duties, or in order to secure the payment of its securities; provided no encumbrance, mortgage or other pledge of property, excluding any money, of the district is created thereby and provided no property, excluding money, of the district is liable to be forfeited or taken in payment of the securities.

History: Laws 1981, ch. 377, § 20; 1986, ch. 32, § 34.

ANNOTATIONS

The 1986 amendment rewrote Subsection K.

Am. Jur. 2d, A.L.R. and C.J.S. references. — Local use zoning of wetlands or flood plain as taking without compensation, 19 A.L.R.4th 756.

72-18-21. Levy and collection of taxes.

To levy and collect property taxes as provided in Section 20 [72-18-20 NMSA 1978] of the Flood Control District Act, the board shall determine each year the amount of money necessary to be raised by taxation, taking into consideration other sources of revenue of the district. The board shall fix a rate of levy, which, when levied upon every dollar of assessed valuation of taxable property within the district, together with other revenues, shall raise the amount required by the district annually to supply funds for paying expenses of organization and the costs of acquiring, improving, equipping, operating and maintaining any project or facility of the district, and promptly to pay in full, when due, all interest on and principal of bonds and other securities of the district. This tax shall be assessed and collected in the same manner, at the same time and with the same penalties as other property taxes.

History: Laws 1981, ch. 377, § 21.

ANNOTATIONS

Am. Jur. 2d, A.L.R. and C.J.S. references. — 52A C.J.S. Levees and Flood Control §§ 28 to 39.

72-18-22. Reserve fund.

It shall be lawful for the board to assess benefit assessments and to collect revenue for the purpose of creating a reserve fund in such amount as the board may determine which may be used to meet the obligations of the district, for maintenance and operating charges and to provide improvements for the district.

History: Laws 1981, ch. 377, § 22.

72-18-23. Delinquent taxes.

If the property tax is not paid, then delinquent real property shall be sold at the regular tax sale for the payment of the tax, interest and penalties in the manner provided by law for selling property for the nonpayment of general taxes. The board may purchase in the name of the district any property which may be sold for delinquent taxes within the boundaries of the district and the board may take title to the lands in the name of the district and sell and convey the lands at a price not less than the tax, penalties and interest accrued thereon. Delinquent personal property shall be distrained and sold as provided by law.

History: Laws 1981, ch. 377, § 23.

72-18-24. Inclusion of additional property.

The boundaries of any district organized under the provisions of the Flood Control District Act [72-18-1 to 72-18-70 NMSA 1978] may be changed in the manner prescribed in this section and Section 25 [72-18-25 NMSA 1978] of that act but the change of boundaries of the district shall not impair or affect its organization or its rights in or to property or any of its rights or privileges, nor shall it affect or impair or discharge any contract, obligation, lien or charge for or upon which it might be liable or chargeable had any such change of boundaries not been made. The owners of real property may file with the board a petition, in writing, praying that such real property be included in the district. The petition shall prescribe the property owned by the petitioners, and the petition shall be deemed to give assent of the petitioners to the inclusion in the district of the property described in the petition. The petition shall be acknowledged in the same manner that conveyances of land are required to be acknowledged. The secretary shall cause notice of filing of the petition to be given and published in the county in which the property or the major portion thereof is located, which notice shall state the filing of the petition, the names of the petitioners, descriptions of lands mentioned, the prayer of the petitioners and that all persons interested may appear at the office of the board at the time stated in the notice and show cause in writing why the petition should not be granted. The board shall, at the time and place mentioned or at such time or times at which the hearing may be adjourned, proceed to hear the petition and all objections presented in writing by any person showing cause why the petition should not be granted. The failure of any interested person to show cause in writing shall be deemed and held as an assent on his part to the inclusion of the lands in the district as prayed for in the petition. If the petition is granted, the board shall make an order to that effect and file it with the clerk of the court declaring the organization of the district, and upon order of the court the property shall be included in the district.

History: Laws 1981, ch. 377, § 24.

72-18-25. Exclusion from district.

The owners of real property constituting a portion of any district may file with the board a petition praying that such real property be excluded and taken from the district. The petition shall describe the property which the petitioners desire to have excluded. The petition shall be acknowledged in the same manner that conveyances of land are required to be acknowledged and be accompanied by a deposit of money sufficient to pay all costs of the exclusion proceedings. The secretary shall publish notice of filing of the petition, which notice shall state the filing of the petition, the prayer of the petitioners and that all interested persons may appear at the office of the board at the time stated in the notice and show cause in writing why the petition should not be granted. The board shall, at the time and place mentioned in the notice or at the time or times at which the hearing may be adjourned, proceed to hear the petition and all objections presented in writing by any person showing cause why the prayer of the petition should

not be granted. The filing of the petition shall be deemed and held as an assent by each petitioner to the exclusion from the district of the property mentioned in the petition, or any part thereof. If it deems it not for the best interests of the district that the property mentioned in the petition, or portion thereof, be excluded from the district, the board shall order that the petition be denied; but if it deems it for the best interests of the district that the property mentioned in the petition, or some portion thereof, be excluded from the district, then the board may order the property mentioned in the petition, or some portion thereof, excluded from the district. Upon allowance of the petition, the board shall file a certified copy of the order of the board with the clerk of the court, and upon order of the court the property shall be excluded from the district.

History: Laws 1981, ch. 377, § 25.

72-18-25.1. Exclusion from district; boundary adjustments.

Upon a finding by the secretary of the district that the boundaries of a district established pursuant to the Flood Control District Act [72-18-1 to 72-18-70 NMSA 1978] incorporate an area of less than thirty-five percent of the area of an existing voting precinct lying along such boundaries, or which minor area appears not to benefit or feasibly expect to benefit from the district, or which may not be of sufficient valuation to the extent that its exclusion from the district would materially impair the district, then the secretary shall file his findings with the board with his recommendation that the minor area be excluded from the district in order that the voting precincts for the district shall become coterminous with the voting district for the county.

If the board determines that it is in the best interests of the district that such area be excluded from the district, the board shall order that the area be excluded and that the secretary shall notify the county commission, county assessor and county clerk that the district boundary and the voting precinct boundary shall thenceforth be coterminous.

History: 1978 Comp., § 72-18-25.1, enacted by Laws 1985, ch. 177, § 1.

72-18-26. Liability of property included or excluded.

All taxable property annexed to a district shall thereafter be subject to the levy of taxes for the payment of any indebtedness of the district outstanding at the time of the annexation. Property excluded from a district shall thereafter be subject to the levy of taxes for the payment of any indebtedness of the district outstanding at the time of its exclusion in the same manner and to the same extent as if the property had not been excluded from the district.

History: Laws 1981, ch. 377, § 26.

72-18-27. Dissolution; petition for election; application.

Whenever the majority of the directors of the board of a district deem it to be in the best interests of the district that it be dissolved, the board shall file an application for dissolution in the district court for the county in which the petition for organization of the district was originally filed.

History: Laws 1981, ch. 377, § 27.

72-18-28. Dissolution; requirements for application.

A. The application shall generally describe the boundaries of the district, have a map showing the district, a current financial statement of the district, a plan for final disposition of the assets of the district and for payment of the securities and other financial obligations of the district and shall state whether or not the functions of the district are to be continued and, if so, by what means.

B. The application shall include:

(1) a certificate that the district has no outstanding securities; or

(2) a statement that securities are outstanding but that funds or federal securities will be placed in escrow before dissolution in a state or national bank within the state which has trust powers and which is a member of the federal deposit insurance corporation, and that such funds or federal securities will be sufficient for the payment of the securities outstanding and all expenses relating thereto, including charges of any escrow agent; or

(3) when there are securities outstanding and no escrow plan, a plan for dissolution specifically providing that the district will continue in existence to such extent as is necessary to adequately provide for the payment of the securities and for the continuing of functions, if the functions are to be continued.

C. When the functions of a district are to be continued, any plan for dissolution shall be accompanied by a copy of an agreement with one or more public bodies, whereby responsibility for all functions currently performed by the district shall be assumed by such public bodies. In the event a portion of a district is located within the boundaries of a municipality and a dissolution proceeding has been initiated to permit the municipality to enter into an agreement to perform the functions of the district, the board shall provide an opportunity for residents in the unincorporated area of the district to express their views concerning the provision of services to the unincorporated portions of the district at the time of negotiation of the agreement or any modification thereof.

History: Laws 1981, ch. 377, § 28.

72-18-29. Dissolution; notice of filing application.

A. Upon presentation of the application, the court shall publish a notice reciting the fact that an application for dissolution has been filed and that the district has no outstanding securities, or that funds or federal securities will be placed in escrow for the payment of outstanding securities, or that a plan for dissolution has been filed providing for eventual payment in full of all securities and for continuation of functions, if the functions are to be continued.

B. The notice shall specify the time and place of a hearing to be held within sixty days after filing of the application, and shall provide that any interested party may appear and be heard on the sufficiency of the application for dissolution or on the adequacy of the plan for payment of all of the district's securities.

History: Laws 1981, ch. 377, § 29.

72-18-30. Dissolution; hearings; court powers.

A. No application shall be declared void on account of alleged defects, but the court may at any time permit the petition to be amended to conform to the facts by correcting any errors in the description of the territory or in any other particular.

B. The court shall order an election in the district on the question of dissolution if it finds the application for dissolution to be in order and finds that the district has no outstanding securities or other financial obligations or that the district's securities and other financial obligations will be adequately provided for before dissolution by means of escrow funds or federal securities to secure payment thereof.

C. If the district has outstanding securities or other financial obligations and no escrow plan, the court shall determine whether the continuation of functions provided for in the plan for dissolution adequately provides for payment of the securities and other financial obligations of the district. If the court determines that the application and the plan for dissolution are sufficient and that an agreement exists for continuation of functions, the court shall order an election of the qualified registered electors of the district on the question of dissolving the district or, if there is a plan for dissolution, on the question of dissolving the district in accordance with the plan for dissolution. If, at any time after the filing of an application for dissolution, the court determines that no agreement can be reached concerning the plan for dissolution or that the other requirements of Section 28 [72-18-28 NMSA 1978] of the Flood Control District Act cannot be met, it shall dismiss the dissolution proceedings.

History: Laws 1981, ch. 377, § 30.

72-18-31. Dissolution; election notice.

If an election is ordered by the court, the court shall publish a notice of the election. The notice shall include the plan for dissolution or a summary. If the notice includes a summary of the plan for dissolution, provisions shall be made for public inspection of the

complete dissolution plan. The notice shall set an election date which shall not be less than twenty nor more than forty days after the first publication of the election notice.

History: Laws 1981, ch. 377, § 31.

72-18-32. Dissolution; limitation on elections.

The question of dissolution of a district may be resubmitted to the qualified registered electors of the district after the same or similar question has previously been rejected by the electors, but no such question shall be submitted at any election held less than twelve months after a previous submission of such question.

History: Laws 1981, ch. 377, § 32.

72-18-33. Dissolution; order entered; conditions attached.

A. In the event the vote results in approval of the dissolution, the court shall enter an order dissolving the district for all purposes or for all purposes except those reserved in the plan, if any. The order shall state that there are no outstanding securities or other financial obligations or that any such securities or other financial obligations are adequately secured by escrow funds or federal securities, or, if the district has outstanding securities or other obligations, such order shall incorporate the provisions of the court's findings accepting the plan for dissolution, including the provisions relating to protection of creditors by means of the agreement as specified in Section 30 [72-18-30 NMSA 1978] of the Flood Control District Act.

B. Whenever the functions of the district are to be continued, the court may provide that all or certain members of the board shall remain in office, subject to appointment by the court to fill vacancies, for performance of duties under Subsections C and D of this section.

C. If the board is continued in existence for the purpose of the payment of securities or other financial obligations, the order for dissolution shall provide that the board shall be responsible for certifying to the board of county commissioners the amount of revenue to be raised by the annual mill levy of the district necessary for payment of the district's obligations.

D. In any case in which an agreement has been made for continuation of the functions of the district, the court may authorize the board to continue in existence for the purpose of seeing to the performance of the agreement, including negotiations relating to any future modifications, procedures for which are provided for in the original agreement. The court's order may in such case specify that its jurisdiction over the dissolution continues for the purpose of considering any future modifications or other questions concerned with performance of the agreement.

History: Laws 1981, ch. 377, § 33.

72-18-34. Dissolution; disposition of remaining funds.

If the functions of a dissolved district are not continued, all funds remaining in the treasury of the district in excess of indebtedness, upon completion of the requirements for dissolution, and all taxes paid after dissolution, shall be divided among the municipalities and counties in which the district exists, pro rata, as the latest confirmed assessed value of the taxable property in the parts of the district lying in each municipality and each unincorporated portion of each county bear [bears] to the total latest confirmed assessed value of the taxable property in the district.

History: Laws 1981, ch. 377, § 34.

ANNOTATIONS

Bracketed material. — The bracketed material in this section was inserted by the compiler for purposes of clarity; it was not enacted by the legislature and is not a part of the law.

72-18-35. Election.

Wherever in the Flood Control District Act [72-18-1 to 72-18-70 NMSA 1978] an election of the qualified registered electors of a district is permitted or required, the election may be held separately at a special election or may be held concurrently with any primary or general election held under the laws of the state; provided, however:

A. each biennial election of directors shall be held concurrently with the general election in the state; and

B. no election shall be held at the same time as any regular election of a municipality or school district any part of the area of which is located within the boundaries of the district.

History: Laws 1981, ch. 377, § 35.

72-18-35.1. Election of directors; established district.

In a district established pursuant to the Flood Control District Act [72-18-1 to 72-18-70 NMSA 1978] whose boundaries are coterminous with the voting precincts of the county, the election of directors shall be conducted by the county clerk in the same manner and at the same time as the general election in the state and the same election officials shall preside. The returns of the election shall be filed with the county clerk who shall submit them to the board of the district for the purposes of canvassing the election of the district. The nominees for offices of directors shall be determined in accordance with the resolution of the board calling for the election, which shall provide that nominees shall file for the office of director in the same manner and form as for municipal offices; and a list of the nominees shall be provided to the county clerk not

later than three days following the primary election. All costs for materials and supplies incurred by the county clerk on behalf of the district shall be paid by the district to the clerk's office.

The district may provide for the cost of one additional clerk of election to assist the county clerk specifically in the conduct of the district election.

History: 1978 Comp., § 72-18-35.1, enacted by Laws 1985, ch. 177, § 2.

72-18-36. Election resolution.

The board shall call any election by resolution adopted at least sixty days before the election. The resolution shall recite the objects and purposes of the election, the date on which the election shall be held and the form of the ballot. In the case of any election not held concurrently with a primary or general election, the board shall provide in the election resolution or by supplemental resolution for the appointment of sufficient judges and clerks of the election who shall be qualified registered electors of the district and shall set their compensation. In a special election, the election resolution shall also designate the precincts and polling places. The description of precincts may be made by reference to any order of the governing body of any county, municipality or other public body in which the district or any part thereof is situated, by reference to any previous order or by other instrument of such governing body, by detailed description of the precincts or by other sufficient description. Precincts established by a governing body may be consolidated in the election resolution by the board for any election not to be held concurrently with a primary or general election. If the election is held concurrently with a primary or general election under the laws of the state, the judges of election for the election shall be designated as the judges of election held pursuant to the Flood Control District Act [72-18-1 to 72-18-70 NMSA 1978], and they shall receive such additional compensation, if any, as the board shall set by the election resolution.

History: Laws 1981, ch. 377, § 36.

72-18-37. Conduct of election.

An election held pursuant to the Flood Control District Act [72-18-1 to 72-18-70 NMSA 1978] shall be conducted in the manner provided by the laws of the state for the conduct of general elections. In an election held pursuant to the Flood Control District Act, a qualified registered elector shall be entitled to vote by absentee ballot in the manner provided by the Absent Voter Act [1-6-1 to 1-6-18 NMSA 1978], except that the functions of the county clerk pursuant to that act shall be performed by a person designated by the board.

History: Laws 1981, ch. 377, § 37.

72-18-38. Notice of election.

Notice of the election shall be given by publication, and shall include the date, time and polling places of the election, the boundaries of the election precincts, the offices and questions to be voted on, the names of all nominees for director and the place where absentee ballots can be obtained. No other notice of an election held under the Flood Control District Act [72-18-1 to 72-18-70 NMSA 1978] need be given unless otherwise provided by the board.

History: Laws 1981, ch. 377, § 38.

72-18-39. Precincts and polling places.

The area of a district or proposed district shall be a single precinct, and the board or the district court having jurisdiction, as the case may be, may consolidate any or all general election precincts for purposes of any election of a district or proposed district. All polling places designated by an election resolution shall be within the area included within the district. If the election is not held concurrently with a primary or general election under the laws of the state, there shall be one polling place in each of the election precincts which are used in general elections or in each of the consolidated election precincts fixed by the board.

History: Laws 1981, ch. 377, § 39.

72-18-40. Election supplies.

The secretary shall provide at each polling place ballot labels, voting machines, instructions, elector's affidavits and other material and supplies required for an election by any law.

History: Laws 1981, ch. 377, § 40.

72-18-41. Election returns.

In the case of an election held under the Flood Control District Act [72-18-1 to 72-18-70 NMSA 1978] which is not held concurrently with a primary or general election, the election officials shall make their returns directly to the secretary. In the case of any election held under that act which is consolidated with any primary or general election, the returns shall be made and canvassed at the time and in the manner provided by law for the canvass of the returns of the general election. It shall be the duty of the canvassing body to certify promptly and to transmit to the secretary a statement of the result of the vote upon any candidates or any proposition submitted under that act. Upon receipt of election returns from election officials or upon receipt of the certificate of election from the canvassing body, it shall be the duty of the board to tabulate and declare the results of the election at any regular or special meeting held not later than ten days following the date of the election. Any proposal submitted at any election under the Flood Control District Act shall not have carried unless the proposal has been

approved by a majority of the qualified registered electors of the district voting on the proposal.

History: Laws 1981, ch. 377, § 41.

72-18-42. Powers of public bodies.

The governing body of any municipality or other public body, upon its behalf and in its name, for the purpose of aiding and cooperating in any project, upon the terms and with or without consideration and with or without an election, as the governing body determines, may exercise the following powers:

A. make available for temporary use or otherwise dispose [dispense] to any district any machinery, equipment, facilities and other property, any agents, employees, persons with professional training and any other persons to effect the purposes of the Flood Control District Act [72-18-1 to 72-18-70 NMSA 1978]. Any property owned and persons in the employ of any public body while engaged in performing for the district any authorized service, activity or undertaking, pursuant to contract or otherwise, shall have and retain all of the powers, privileges, immunities, rights and duties of, and shall be deemed to be engaged in the service and employment of, the public body, notwithstanding that such service, activity or undertaking is being performed in or for the district;

B. enter into any agreement or joint agreement between or among the federal government, any district and any public body extending over any period not exceeding fifty years, which is mutually agreed to, respecting action or proceedings appertaining to any power granted by the Flood Control District Act and the use or joint use of any facilities, project or other property;

C. sell, lease, loan, donate, grant, convey, assign, transfer or pay over to any district any facilities or any project, or any part thereof, or any interest in real or personal property or any funds available for acquisition, improvement, equipment, operation or maintenance purposes, including the proceeds of any securities issued for acquisition, improvement, equipment, operation or maintenance purposes which may be used by the district in the acquisition, improvement, equipment, maintenance or operation of any facilities or project; and

D. transfer, grant, convey or assign and set over to any district any contracts which may have been awarded by the public body for the acquisition, improvement or equipment of any project not begun or, if begun, not completed.

History: Laws 1981, ch. 377, § 42.

72-18-43. Effect of extraterritorial functions.

All of the powers, privileges, immunities and rights, exemptions from laws, ordinances and rules, all pension, relief, disability, workmen's compensation and other benefits which apply to the activity of officers, agents or employees of a district or any such public body when performing their respective functions within the territorial limits of the respective public agencies apply to them to the same degree and extent while engaged in the performance of any of their functions and duties extraterritorially.

History: Laws 1981, ch. 377, § 43.

72-18-44. Forms of borrowing.

Upon the conditions and circumstances set forth in the Flood Control District Act [72-18-1 to 72-18-70 NMSA 1978], any district from time to time may borrow money to defray the cost of acquiring, improving or equipping any project, or any part thereof, as the board may determine, and issue the following securities to evidence such borrowing:

A. notes;

B. warrants;

C. bonds; and

D. interim debentures.

History: Laws 1981, ch. 377, § 44.

ANNOTATIONS

Am. Jur. 2d, A.L.R. and C.J.S. references. — 52A C.J.S. Levees and Flood Control § 40.

72-18-45. Issuance of notes.

Any district is authorized to borrow money without an election in anticipation of taxes or other revenues and to issue notes to evidence the amount so borrowed.

History: Laws 1981, ch. 377, § 45.

72-18-46. Issuance of warrants.

A district is authorized to defray the cost of any services or supplies, equipment or other materials furnished to or for the benefit of the district by the issuance of warrants to evidence the amount due without an election in anticipation of taxes or other revenues.

History: Laws 1981, ch. 377, § 46.

72-18-47. Maturities of notes and warrants.

Notes and warrants may mature at such time or times not exceeding one year from the respective dates of their issuance as the board may determine. They shall not be extended or funded except by the issuance of bonds or interim debentures in compliance with Section 48 or 49 [72-18-48 or 72-18-49 NMSA 1978] of the Flood Control District Act.

History: Laws 1981, ch. 377, § 47.

72-18-48. Issuance of bonds and incurrence of debt.

A district is authorized to borrow money in anticipation of taxes or other revenues and to issue bonds to evidence the amount so borrowed. No bonded indebtedness nor any other indebtedness not payable in full within one year, except for interim debentures as provided in Sections 49 and 63 through 65 [72-18-49 and 72-18-63 to 72-18-65 NMSA 1978] of the Flood Control District Act, shall be created by the district without first submitting the proposition of issuing the bonds to the qualified registered electors of the district, which proposition shall be approved by a majority of the qualified registered electors voting at an election held for that purpose in accordance with Sections 35 through 40 [72-18-35 to 72-18-40 NMSA 1978] of that act. Bonds so authorized may be issued in one series or more and may mature at such time or times not exceeding forty years from their issuance as the board may determine. The total of all outstanding indebtedness at any one time shall not exceed four percent of the value of the taxable property in the district as shown by the last preceding assessment for county taxes for each county in which the district is located.

History: Laws 1981, ch. 377, § 48.

72-18-49. Issuance of interim debentures.

A district is authorized to borrow money and to issue interim debentures evidencing construction or short-term loans for the acquisition or improvement and equipment of the flood control system or any project in supplementation of long-term financing and the issuance of bonds, as provided in Sections 62 through 65 [72-18-62 to 72-18-65 NMSA 1978] of the Flood Control District Act.

History: Laws 1981, ch. 377, § 49.

72-18-50. Payment of securities.

All securities issued by any district shall be authorized by resolution. The district may pledge its full faith and credit for the payment of any securities, the interest thereon, any

prior redemption premium or premiums and any charges appertaining thereto. Securities may constitute the direct and general obligations of the district. Their payment may be secured by a specific pledge of tax proceeds and other revenues of the district as the board may determine.

History: Laws 1981, ch. 377, § 50.

72-18-51. Additionally secured securities.

The board, in connection with such additionally secured securities, in the resolution authorizing their issuance or other instrument appertaining thereto, may pledge all or a portion of the revenues, subject to any prior pledges, as additional security for payment of the securities, and at its option may deposit the revenues in a fund created to pay the securities or created to additionally secure their payment.

History: Laws 1981, ch. 377, § 51.

72-18-52. Pledge of revenues.

Any revenues pledged directly or as additional security for the payment of securities of any one issue or series, which revenues are not exclusively pledged therefor, may subsequently be pledged directly or as additional security for the payment of the securities of one or more issue or series subsequently authorized.

History: Laws 1981, ch. 377, § 52.

72-18-53. Payment recital in securities.

Each security issued under the Flood Control District Act [72-18-1 to 72-18-70 NMSA 1978] shall recite in substance that the security and the interest thereon are payable solely from the revenues or other money pledged to the payment thereof. Securities specifically pledging the full faith and credit of the district for their payment shall so state.

History: Laws 1981, ch. 377, § 53.

72-18-54. Limitations upon payment of securities.

The payment of securities shall not be secured by an encumbrance, mortgage or other pledge of property of the district, except for revenues, tax proceeds and other money pledged for the payment of securities. Subject to those exceptions, no property of the district shall be liable to be forfeited or taken in payment of the securities.

History: Laws 1981, ch. 377, § 54.

72-18-55. Security details.

Any securities authorized to be issued by the Flood Control District Act [72-18-1 to 72-18-70 NMSA 1978] shall bear such date or dates, shall be in such denomination or denominations, shall mature at such time or times not exceeding forty years from their date and shall bear interest at a rate or rates which shall be determined by the board.

History: Laws 1981, ch. 377, § 55.

72-18-56. Capitalization of costs.

Any resolution authorizing the issuance of securities or other instrument appertaining thereto may capitalize interest on any securities during any period of construction or other acquisition estimated by the board and one year thereafter and may capitalize any other cost of any project, by providing for the payment of the amount capitalized from the proceeds of the securities.

History: Laws 1981, ch. 377, § 56.

72-18-57. Execution of securities and interest coupons.

Except for securities issued in book entry or similar form without the delivery of physical securities, securities shall be executed and signed by the chairman, with the seal of the district affixed thereto and attested by the secretary. Except for any bonds which are registrable for payment of interest, interest coupons payable to bearer and appertaining to the bonds shall be issued and shall bear the original or facsimile signature of the chairman.

History: Laws 1981, ch. 377, § 57; 1983, ch. 265, § 53.

ANNOTATIONS

The 1983 amendment added "Except for securities issued in book entry or similar form without the delivery of physical securities" at the beginning of the first sentence and deleted "in the name and on behalf of the district issuing the securities" following "shall be executed" in the first sentence.

72-18-58. Signatures of predecessors in office.

The securities and any coupons bearing the signatures of the officers in office at the time of the signing thereof shall be the valid and binding obligations of the district, notwithstanding that before the delivery thereof and payment therefor, any or all of the persons whose signatures appear thereon shall have ceased to fill their respective offices. Any officer authorized to sign any security or interest coupon, at the time of its execution and of the execution of a signature certificate, may adopt as and for his own

facsimile signature the facsimile signature of his predecessor in office in the event that such facsimile signature appears on the security or coupons, or both, appertaining thereto.

History: Laws 1981, ch. 377, § 58.

72-18-59. Repurchase of securities.

Securities may be repurchased by the district out of any funds available for such purpose from the project to which they pertain, and all securities so repurchased shall be canceled.

History: Laws 1981, ch. 377, § 59.

72-18-60. Limitations on liabilities.

Neither the directors nor any person executing securities issued under the Flood Control District Act [72-18-1 to 72-18-70 NMSA 1978] shall be liable personally on the securities by reason of the issuance thereof. Securities issued pursuant to the Flood Control District Act shall not in any way be a debt or liability of any public body and shall not create or constitute an indebtedness, liability or obligation of any body, and nothing in the Flood Control District Act shall be construed to authorize a district to incur any indebtedness on behalf of or in any way to obligate any public body.

History: Laws 1981, ch. 377, § 60.

72-18-61. Interest after maturity.

No interest shall accrue on any security after it becomes due and payable, provided funds for the payment of the principal of and the interest on the security and any prior redemption premium due are available to the paying agent for payment without default.

History: Laws 1981, ch. 377, § 61.

72-18-62. Refunding bonds.

Any bonds issued under the Flood Control District Act [72-18-1 to 72-18-70 NMSA 1978] may be refunded, without an election, subject to provisions concerning their payment and to any other contractual limitations in the proceedings authorizing their issuance or otherwise appertaining thereto, pursuant to a resolution to be adopted by the board in the manner provided for the issuance of other securities, to refund, pay or discharge all or any part of the district's outstanding bonds, including any interest thereon in arrears or to become due within three years from the date of the refunding bonds, for the purpose of reducing interest costs or effecting other economies, of accelerating, decelerating or otherwise modifying the payment of such bonds or of

modifying or eliminating restrictive contractual limitations appertaining to the issuance of additional bonds or [for] any project.

History: Laws 1981, ch. 377, § 62.

ANNOTATIONS

Bracketed material. — The bracketed material in this section was inserted by the compiler as the apparently intended term; it was not enacted by the legislature and is not a part of the law.

72-18-63. Issuance of interim debentures and pledge of bonds as collateral security.

Whenever a majority of the qualified registered electors of a district voting on a proposal to issue bonds has authorized the district to issue bonds for an authorized purpose, the district may borrow money without any other election in anticipation of taxes, the proceeds of the bonds or any other revenues of the district, and may issue interim debentures to evidence the amount so borrowed. Interim debentures may mature at such time or times not exceeding a period of time equal to the estimated time needed to effect the purpose for which the bonds are so authorized to be issued, plus two years, as the board may determine. Except as otherwise provided in this section and in Sections 64 and 65 [72-18-64 and 72-18-65 NMSA 1978] of the Flood Control District Act, interim debentures shall be issued as provided for securities in Sections 49 through 61 [72-18-49 to 72-18-61 NMSA 1978] of that act. Taxes, other revenues of the district, including without limiting the generality of the foregoing proceeds of bonds to be thereafter issued or reissued or bonds issued for the purpose of securing the payment of interim debentures, may be pledged for the purpose of securing the payment of the interim debentures. Bonds pledged as collateral security for the payment of any interim debentures shall mature at such time or times as the board may determine, not exceeding forty years from the date of either any of such bonds or any such interim debentures, whichever date is earlier. Any such bonds pledged as collateral security shall not be issued in an aggregate principal amount exceeding the aggregate principal amount of the interim debentures secured by a pledge of such bonds.

History: Laws 1981, ch. 377, § 63.

72-18-64. Interim debentures not to be extended.

No interim debenture issued pursuant to the provisions of Section 63 [72-18-63 NMSA 1978] of the Flood Control District Act shall be extended or funded except by the issuance or reissuance of a bond or bonds in compliance with Section 65 [72-18-65 NMSA 1978] of that act.

History: Laws 1981, ch. 377, § 64.

72-18-65. Funding.

For the purpose of funding any interim debentures, any bond or bonds pledged as collateral security to secure the payment of the interim debentures may be reissued without an election, and any bonds not previously issued but authorized to be issued at an election for a purpose the same as or encompassing the purpose for which the interim debentures were issued may be issued for such a funding. The bonds shall mature at such time or times as the board may determine, but in no event exceeding forty years from the date of either any of the interim debentures so funded or any of the bonds so pledged as collateral security, whichever date is earlier. Bonds for funding, including but not necessarily limited to any such reissued bonds, and bonds for any other purpose authorized by the Flood Control District Act [72-18-1 to 72-18-70 NMSA 1978] may be issued separately or issued in combination in one series or more. Except as otherwise provided in Sections 63 and 64 [72-18-63 and 72-18-64 NMSA 1978] of that act and in this section, any such funding bonds shall be issued as is provided for refunding bonds in Section 62 [72-18-62 NMSA 1978] of that act and for securities in Sections 49 through 61 [72-18-49 to 72-18-61 NMSA 1978] of that act.

History: Laws 1981, ch. 377, § 65.

72-18-66. Publication or resolution of proceedings; actions.

The board shall provide for the publication once in full of either any resolution or other proceedings adopted by the board ordering the issuance of any securities or of notice thereof, which resolution, other proceedings or notice shall state the fact and date of adoption and the place where the resolution or other proceedings has been filed for public inspection and also the date of the single or first publication of the resolution, other proceedings or notice, and also state that any action or proceeding of any kind or nature in any court questioning the validity of the creation and establishment of the district, or the validity or proper authorization of securities provided for by the resolution or other proceedings, or the validity of any covenants, agreements or contracts provided for by the resolution or other proceedings, shall be commenced within twenty days after the single or first publication of the resolution, other proceedings or notice. Any action not commenced within such period shall be barred.

History: Laws 1981, ch. 377, § 66.

72-18-67. Property exempt from general taxes.

The effectuation of the powers authorized by the Flood Control District Act [72-18-1 to 72-18-70 NMSA 1978] shall be in all respects for the benefit of the people of the state, including but not necessarily limited to those residing in any district exercising any power under that act, for the improvement of their health and living conditions and for the increase of their commerce and prosperity. Thus, no district shall be required to pay any general (ad valorem) taxes upon any property appertaining to any project

authorized by the Flood Control District Act and acquired within the state, or the district's interest therein.

History: Laws 1981, ch. 377, § 67.

72-18-68. Securities and income exempt.

Securities issued under the Flood Control District Act [72-18-1 to 72-18-70 NMSA 1978] and the income therefrom are exempt from taxation by the district and any public body, except transfer, inheritance and estate taxes.

History: Laws 1981, ch. 377, § 68.

72-18-69. Freedom from judicial process.

Execution or other judicial process shall not issue against any property of the district, nor shall any judgment against the district be a charge or lien upon its property; provided, however, that nothing in this section shall be deemed to apply to or limit the right of the holder of any security, his trustee or any assignee of all or part of his interest, the federal government when it is a party to any contract with the district, and any other obligee to foreclose, otherwise to enforce and to pursue any remedies for the enforcement of any pledge or lien given by the district on the proceeds of taxes, service charges or other revenues.

History: Laws 1981, ch. 377, § 69.

72-18-70. Legal investments in securities.

It shall be legal for the state and any of its agencies, departments, instrumentalities, corporations or political subdivisions or any political or public corporation, any bank, trust company, banker, savings bank or institution, any building and loan association, savings and loan association, investment company and any other person carrying on a banking or investment business, any insurance company, insurance association or any other person carrying on an insurance business, and any executor, administrator, curator, trustee or any other fiduciary, to invest money in their custody in any of the securities authorized to be issued pursuant to the provisions of the Flood Control District Act [72-18-1 to 72-18-70 NMSA 1978]. Such securities shall be authorized security for all public deposits. Nothing contained in this section with regard to legal investments shall be construed as relieving any public body or other person of any duty of exercising reasonable care in selecting securities.

History: Laws 1981, ch. 377, § 70.

ANNOTATIONS

Severability clauses. — Laws 1981, ch. 377, § 71, provides for the severability of the Flood Control District Act if any part or application thereof is held invalid.

ARTICLE 19
Southern Sandoval County Flood Control

72-19-1. Short title.

This act [72-19-1 to 72-19-103 NMSA 1978] may be cited as the "Southern Sandoval County Arroyo Flood Control Act".

History: Laws 1990, ch. 14, § 1.

ANNOTATIONS

Cross references. — For flood control generally, see 4-50-1 NMSA 1978 et seq.

72-19-2. Legislative declaration.

It is declared as a matter of legislative determination that:

A. the organization of the authority hereby created having the purposes, powers, duties, privileges, immunities, rights, liabilities and disabilities provided in the Southern Sandoval County Arroyo Flood Control Act [72-19-1 to 72-19-103 NMSA 1978] will serve a public use and will promote the health, safety, prosperity, security and general welfare of the inhabitants thereof and of the state;

B. the acquisition, improvement, maintenance and operation of any project authorized in that act is in the public interest and constitutes a part of the established and permanent policy of the state;

C. the authority hereby organized shall be a body corporate and politic, a quasi-municipal corporation and a political subdivision of the state;

D. the flood control system hereby authorized and directed to be acquired will be of special benefit to the property within the boundaries of the authority organized and created in the Southern Sandoval County Arroyo Flood Control Act;

E. the notice provided for in the Southern Sandoval County Arroyo Flood Control Act for each hearing and action to be taken is reasonably calculated to inform any person of interest in any proceedings under that act which may directly and adversely affect his legally protected interests;

F. a general law cannot be made applicable to the designated flood control system and the provisions appertaining thereto in the Southern Sandoval County Arroyo

Flood Control Act because of a number of atypical and special conditions concerning them; and

G. for the accomplishment of these purposes, the provisions of that act shall be broadly construed.

History: Laws 1990, ch. 14, § 2.

72-19-3. Decision of board or governing body final.

The action and decision of the board as to all matters passed upon by it in relation to any action, matter or thing provided in the Southern Sandoval County Arroyo Flood Control Act [72-19-1 to 72-19-103 NMSA 1978] shall be final and conclusive unless arbitrary, capricious or fraudulent.

History: Laws 1990, ch. 14, § 3.

72-19-4. Definitions.

Except where the context otherwise requires, as used in the Southern Sandoval County Arroyo Flood Control Act [72-19-1 to 72-19-103 NMSA 1978]:

A. "acquisition" or "acquire" means the opening, laying out, establishment, purchase, construction, securing, installation, reconstruction, lease, gift, grant from the federal government, any public body or person, endowment, bequest, devise, condemnation, transfer, assignment, option to purchase, other contract or other acquirement, or any combination thereof, of facilities, other property, any project or an interest therein authorized by the Southern Sandoval County Arroyo Flood Control Act;

B. "authority" means the southern Sandoval county arroyo flood control authority;

C. "board" means the board of directors of the authority;

D. "chairman" means the chairman of the board and president of the authority;

E. "condemnation" or "condemn" means the acquisition by the exercise of the power of eminent domain of property for any facilities, other property, project or an interest therein authorized by the Southern Sandoval County Arroyo Flood Control Act. The authority may exercise in the state the power of eminent domain, either within or without the authority and, in the manner provided by law for the condemnation of private property for public use, may take any property necessary to carry out any of the objects or purposes of that act. In the event the construction of any facility or project authorized by that act, or any part thereof, makes necessary the removal and relocation of any public utilities, whether on private or public right-of-way, the authority shall reimburse

the owner of the public utility facility for the expense of removal and relocation, including the cost of any necessary land or rights in land;

F. "cost" or "cost of the project", or words of similar import, means all, or any part designated by the board, of the cost of any facilities, project or interest therein being acquired and of all or any property, rights, easements, privileges, agreements and franchises deemed by the authority to be necessary or useful and convenient therefor or in connection therewith, which cost, at the option of the board, may include all or any part of the incidental costs pertaining to the project, including without limiting the generality of the foregoing, preliminary expenses advanced by any municipality or other public body from funds available for use therefor in the making of surveys, preliminary plans, estimates of cost, other preliminaries, the costs of appraising, printing, employing engineers, architects, fiscal agents, attorneys at law, clerical help, other agents or employees, the costs of capitalizing interest or any discount on securities, of inspection, of any administrative, operating and other expenses of the authority prior to the levy and collection of taxes, and of reserves for working capital, operation, maintenance or replacement expenses or for payment or security of principal of or interest on any securities, the costs of making, publishing, posting, mailing and otherwise giving any notice in connection with the project, the taking of options, the issuance of securities, the filing or recordation of instruments, the levy and collection of taxes and installments thereof, the costs of reimbursements by the authority to any public body, the federal government or any person of any money theretofore expended for or in connection with any facility or project and all other expenses necessary or desirable and appertaining to any project, as estimated or otherwise ascertained by the board;

G. "director" means a member of the board;

H. "disposal" or "dispose" means the sale, destruction, razing, loan, lease, gift, grant, transfer, assignment, mortgage, option to sell, other contract or other disposition, or any combination thereof, of facilities, other property, any project or an interest therein authorized by the Southern Sandoval County Arroyo Flood Control Act;

I. "engineer" means any engineer in the permanent employ of the authority or any independent competent engineer or firm of such engineers employed by the authority in connection with any facility, property, project or power authorized by the Southern Sandoval County Arroyo Flood Control Act;

J. "equipment" or "equip" means the furnishing of all necessary or desirable, related or appurtenant, facilities, or any combination thereof, appertaining to any facilities, property, project or interest therein authorized by the Southern Sandoval County Arroyo Flood Control Act;

K. "facility" means any of the water facilities, sewer facilities or other property appertaining to the flood control system of the authority;

L. "federal government" means the United States or any agency, instrumentality or corporation thereof;

M. "federal securities" means the bills, certificates of indebtedness, notes or bonds that are direct obligations of, or the principal and interest of which obligations are unconditionally guaranteed by, the United States;

N. "governing body" means the city council, city commission, board of commissioners, board of trustees, board of directors or other legislative body of the public body proceeding under the Southern Sandoval County Arroyo Flood Control Act, in which body the legislative powers of the public body are vested;

O. "improvement" or "improve" means the extension, widening, lengthening, betterment, alteration, reconstruction, repair or other improvement, or any combination thereof of facilities, other property, project or any interest therein authorized by the Southern Sandoval County Arroyo Flood Control Act;

P. "mailed notice" or notice by "mail" means the giving by the engineer, secretary or any deputy thereof, as determined by the board, of any designated written or printed notice addressed to the last known owner of each tract of real property in question or other designated person at his last known address, by deposit, at least ten days prior to the designated hearing or other time or event, in the United States mails, postage prepaid, as first-class mail. In the absence of fraud, the failure to mail any such notice shall not invalidate any proceedings under the Southern Sandoval County Arroyo Flood Control Act. The names and addresses of those property owners shall be obtained from the records of the county assessor or from such other source as the secretary or the engineer deems reliable. Any list of such names and addresses may be revised from time to time, but such a list need not be revised more frequently than at twelve-month intervals. Any mailing of any notice required shall be verified by the affidavit or certificate of the engineer, secretary, deputy or other person mailing the notice, which verification shall be retained in the records of the authority at least until all taxes and securities appertaining thereto have been paid in full or any claim is barred by a statute of limitations;

Q. "municipality" means any incorporated city, town or village in the state, whether incorporated or governed under a general act, special legislative act or special charter of any type. "Municipal" pertains to municipality;

R. "person" means any human being, association, partnership, firm or corporation, excluding a public body and excluding the federal government;

S. "president" means the president of the authority and the chairman of the board;

T. "project" means any structure, facility, undertaking or system that the authority is authorized to acquire, improve, equip, maintain or operate. A project may

consist of all kinds of personal and real property. A project shall appertain to the flood control system that the authority is authorized and directed to provide within and without the authority's boundaries;

U. "property" means real property and personal property;

V. "publication" or "publish" means publication in at least the one newspaper designated as the authority's official newspaper and published in the authority in the English language at least once a week and of general circulation in the authority. Except as otherwise specifically provided or necessarily implied, "publication" or "publish" also means publication for at least once a week for three consecutive weeks by three weekly insertions, the first publication being at least fifteen days prior to the designated time or event, unless otherwise so stated. It is not necessary that publication be made on the same day of the week in each of the three calendar weeks, but not less than fourteen days shall intervene between the first publication and the last publication, and publication shall be complete on the day of the last publication. Any publication required shall be verified by the affidavit of the publisher and filed with the secretary;

W. "public body" means the state or any agency, instrumentality or corporation thereof or any municipality, school district, other type district or any other political subdivision of the state, excluding the authority and excluding the federal government;

X. "qualified elector" means a person qualified to vote in general elections in the state, who is a resident of the authority at the time of any election held under the provisions of the Southern Sandoval County Arroyo Flood Control Act or at any other time in reference to which the term "qualified elector" is used;

Y. "real property" means:

(1) land, including land under water;

(2) buildings, structures, fixtures and improvements on land;

(3) any property appurtenant to or used in connection with land; and

(4) every estate, interest, privilege, easement, franchise and right in land, legal or equitable, including without limiting the generality of the foregoing, rights-of-way, terms for years and liens, charges or encumbrances by way of judgment, mortgage or otherwise and the indebtedness secured by such liens;

Z. "secretary" means the secretary of the authority;

AA. "secretary of state" means the secretary of the state of New Mexico;

BB. "securities" means any notes, warrants, bonds, temporary bonds or interim debentures or other obligations of the authority or any public body appertaining to any project or interest therein authorized by the Southern Sandoval County Arroyo Flood Control Act;

CC. "sewer facilities" means any one or more of the various devices used in the collection, channeling, impounding or disposition of storm, flood or surface drainage waters, including all inlets, collection, drainage or disposal lines, canals, intercepting sewers, outfall sewers, all pumping, power and other equipment and appurtenances, all extensions, improvements, remodeling, additions and alterations thereof and any rights or interest in such sewer facilities;

DD. "sewer improvement" or "improve any sewer" means the acquisition, reacquisition, improvement, reimprovement or repair of any storm sewer or combination storm and sanitary sewer, including but not limited to collecting and intercepting sewer lines or mains, submains, trunks, laterals, outlets, ditches, ventilation stations, pumping facilities, ejector stations and all other appurtenances and machinery necessary, useful or convenient for the collection, transportation and disposal of storm water;

EE. "state" means the state of New Mexico or any agency, instrumentality or corporation thereof;

FF. "street" means any street, avenue, boulevard, alley, highway or other public right-of-way used for any vehicular traffic;

GG. "taxes" means general (ad valorem) taxes pertaining to any project authorized by the Southern Sandoval County Arroyo Flood Control Act; and

HH. "treasurer" means the treasurer of the authority.

History: Laws 1990, ch. 14, § 4; 1991, ch. 60, § 1.

ANNOTATIONS

The 1991 amendment, effective June 14, 1991, in Subsections M and T substituted "that" for "which"; deleted former Subsection HH pertaining to the definition of taxpaying elector; and redesignated former Subsection II as Subsection HH.

72-19-5. Creation of authority.

There is created a flood control authority to be known and designated as the "southern Sandoval county arroyo flood control authority".

History: Laws 1990, ch. 14, § 5.

72-19-6. Boundaries of authority.

The boundaries of the authority are as follows: a portion of southern Sandoval county bounded on the east by the Rio Grande, on the south by the Bernalillo and Sandoval county lines, on the west by the top of the Rio Puerco drainage and on the north by the top of the drainage that lies on the southern boundary of the Zia Indian reservation, the Santa Ana Indian reservation and state highway 550. The boundary of the authority is more particularly described as follows: beginning at the intersection of the west bank of the Rio Grande and the Sandoval county line in projected section 8, township 11 north, range 3 east, that point also being the southeast corner of herein described boundary; thence proceeding in a northeasterly and westerly direction along the Sandoval county line for approximately fourteen and one-half miles to the top of the Rio Puerco drainage in section 32, township 12 north, range 1 east; thence, in a northerly direction along the top of the Rio Puerco drainage for approximately fourteen miles to a point in the southwest corner of section 21, township 14 north, range 1 east; thence, in an easterly direction along the top of the Rio Puerco drainage and the Zia Indian reservation boundary to a point in the southeast corner of section 21, township 14 north, range 1 east; thence, south for approximately one mile along the west boundary of the Zia Indian reservation to a point in the southeast corner of section 28, township 14 north, range 1 east; thence, in an easterly direction along the southern boundary of the Zia Indian reservation for approximately six miles to a point in the southeast corner of section 33, township 14 north, range 2 east; thence, in an easterly direction for approximately three miles to a point in the northeast corner of section 1, township 13 north, range 2 east; thence, south for approximately one mile to a point on the northeast corner of section 12, township 13 north, range 2 east; thence, east for approximately two miles to the south side of state highway 550 in section 9, township 13 north, range 3 east; thence, in a southeasterly direction along the south side of state highway 550, not including Pueblo of Santa Ana reservation, for approximately six miles to a point on the west bank of the Rio Grande in section 30, township 13 north, range 4 east; thence, in a southwesterly direction along the west bank of the Rio Grande for a distance of approximately ten miles to a point in section 8, township 11 north, range 3 east, which point is the southeast corner and point of beginning of the authority.

History: Laws 1990, ch. 14, § 6; 2005, ch. 73, § 1.

ANNOTATIONS

The 2005 amendment, effective June 17, 2005, adds the southern boundary of the Santa Ana Indian reservation and state highway 550 as part of the north boundary of the authority and makes changes in the particular description of the boundary of the authority.

ANNOTATIONS

Temporary provision. — Laws 2005, ch. 73, § 2, provides that nothing in the boundary revisions of Section 1 of this 2005 act shall be construed to release a citizen or property subject to indebtedness owned on the effective date of this act to a political subdivision

of the state from the obligation to continue to pay the existing indebtedness until it is paid and collected in full by the political subdivision.

72-19-7. Provision for remonstrances.

Within one hundred eighty days from the time the Southern Sandoval County Arroyo Flood Control Act [72-19-1 to 72-19-103 NMSA 1978] goes into effect, a written, signed and acknowledged remonstrance against the acquiring of the flood control system provided for in Section 19 [72-19-19 NMSA 1978] of that act may be filed with the board by the owners of property of the value of at least thirty percent of the value of the property provided to be taxed in that act, based upon the assessed valuation of that property for general taxes for the year preceding the year of making such remonstrance. If there is real estate in the authority that has not been separately assessed by the taxing authorities, the board shall value such real estate for the purpose of such remonstrance on the same basis of valuation as other real estate similarly situated that has been separately assessed. The board shall, as soon as possible, examine such remonstrance, if made, and canvass and pass upon and determine its sufficiency, and its action shall be final. If the petition is found to contain the names of the owners of property of thirty percent of the total valuation of the property to be taxed under the Southern Sandoval County Arroyo Flood Control Act and is found to be sufficient, then the flood control system shall not be acquired; provided that no action under the terms of that act shall be delayed during the period of one hundred eighty days, except that no bonds shall be issued during that time.

History: Laws 1990, ch. 14, § 7.

72-19-8. Board of directors.

The governing body of the authority is a board of directors consisting of five qualified electors of the authority. All powers, rights, privileges and duties vested in or imposed upon the authority are exercised and performed by and through the board of directors; provided that the exercise of any executive, administrative and ministerial powers may be, by the board, delegated and redelegated to officers and employees of the authority. Except for the first directors appointed as provided for in Section 72-19-9 NMSA 1978 or elected as provided in Section 72-19-10 NMSA 1978 and except for any director chosen to fill an unexpired term, the term of each director commences on the first day of January next following a general election in the state and runs for six years. Each director, subject to such exceptions, shall serve a six-year term ending on the first day of January next following a general election, and each director shall serve until his successor has been duly chosen and qualified.

History: Laws 1990, ch. 14, § 8; 1991, ch. 60, § 2.

ANNOTATIONS

The 1991 amendment, effective June 14, 1991, in the third sentence substituted "Section 72-19-9 NMSA 1978 or elected as provided in Section 72-19-10 NMSA 1978" for "Section 9 of the Southern Sandoval County Arroyo Flood Control Act".

72-19-9. Appointment of first board.

When the Southern Sandoval County Arroyo Flood Control Act [72-19-1 to 72-19-103 NMSA 1978] goes into effect, the governor shall forthwith appoint five qualified electors of the authority as the directors comprising the first board. They shall serve until their successors have been elected and qualified. Immediately upon their appointment, the five directors shall meet, qualify and choose officers, as provided for organizational meetings in Section 13 [72-19-13 NMSA 1978] of that act.

History: Laws 1990, ch. 14, § 9.

72-19-10. Election of directors.

At the time that a proposal to incur debt is first submitted to the qualified electors or at the first general election next following the effective date of the Southern Sandoval County Arroyo Flood Control Act [72-19-1 to 72-19-103 NMSA 1978], whichever occurs first, the qualified electors of the authority shall elect five qualified directors, two to serve a term ending January 1, 1993, two to serve a term ending January 1, 1995 and one to serve a term ending January 1, 1997. At the first election, the five candidates receiving the highest number of votes shall be elected as directors. The terms of the directors shall be determined by lot at their organizational meeting. At each general election thereafter, the qualified electors of the authority shall elect similarly one or two qualified electors as directors to serve six-year terms as directors and as successors to the directors whose terms end on the first day of January next following each such election. Nothing in the Southern Sandoval County Arroyo Flood Control Act shall be construed as preventing a qualified elector of the authority from being elected or reelected as a director to succeed himself. If there is only one vacancy on the board, the candidate receiving the highest number of votes shall be elected as director. If there are two vacancies on the board, the candidate receiving the highest number of votes and the candidate receiving the next highest number of votes shall be elected as directors.

History: Laws 1990, ch. 14, § 10; 1991, ch. 60, § 3.

ANNOTATIONS

The 1991 amendment, effective June 14, 1991, in the first sentence substituted "qualified electors" for "taxpaying electors".

72-19-11. Nomination of directors.

Not later than forty-five days before a proposal to incur debt is first submitted to the qualified electors or at the first general election next following the effective date of the

Southern Sandoval County Arroyo Flood Control Act [72-19-1 to 72-19-103 NMSA 1978], whichever occurs first, written nominations of any candidate as director may be filed with the secretary of the board. Each nomination of any candidate shall be signed by not less than fifty qualified electors, regardless of whether or not nominated therein, shall designate therein the name of the candidates thereby nominated and shall recite that the subscribers thereto are qualified electors and that the candidate or candidates designated therein are qualified electors of the authority. No written nomination may designate more qualified electors as candidates than there are vacancies. No qualified elector may nominate more than one candidate for any vacancy. If a candidate does not withdraw his name before the first publication of the notice of election, his name shall be placed on the ballot. For any election held after November 1990, nominations shall be made by qualified electors in accordance with the procedures and limitations of this section, except that such nominations shall be filed with the secretary of the board not later than the fourth Tuesday in June preceding the general election.

History: Laws 1990, ch. 14, § 11; 1991, ch. 60, § 4.

ANNOTATIONS

The 1991 amendment, effective June 14, 1991, substituted "qualified electors" for "taxpaying electors" throughout the section.

72-19-12. Filling vacancies on board.

Upon a vacancy occurring in the board by reason of death, change of residence, resignation or for any other reason, the governor shall appoint a qualified elector of the authority as successor to serve the unexpired term.

History: Laws 1990, ch. 14, § 12.

72-19-13. Organizational meetings.

Except for the first board, each board shall meet on the first business day next following the first day of January in each odd-numbered year, at the office of the board within the authority. Each member of the board, before entering upon his official duties, shall take and subscribe on oath that he will support the constitution of the United States and the constitution and laws of New Mexico and that he will faithfully and impartially discharge the duties of his office to the best of his ability, which oath shall be filed in the office of the secretary of state. Each director shall, before entering upon his official duties, give a bond to the authority in the sum of ten thousand dollars ($10,000) with good and sufficient surety, conditioned for the faithful performance of all of the duties of his office, without fraud, deceit or oppression, and the accounting for all money and property coming into his hands and the prompt and faithful payment of all money and the delivering of all property coming into his custody or control belonging to the authority to his successors in office. Premiums on all bonds provided for in this section

shall be paid by the authority and all such bonds shall be kept on file in the office of the secretary of state.

History: Laws 1990, ch. 14, § 13.

72-19-14. Board's administrative powers.

The board may exercise the following powers:

A. fix the time and place at which its regular meetings will be held within the authority and provide for the calling and holding of special meetings;

B. adopt and amend or otherwise modify bylaws and rules for procedure;

C. select one director as chairman of the board and president of the authority, and another director as chairman pro tem of the board and president pro tem of the authority, and choose a secretary and a treasurer of the board and authority, each of which two positions may be filled by a person who is, or is not, a director, and both of which positions may, or may not, be filled by one person;

D. prescribe by resolution a system of business administration and create all necessary offices and establish and re-establish the powers, duties and compensation of all officers and employees;

E. require and fix the amount of all official bonds necessary or desirable and convenient in the opinion of the board for the protection of the funds and property of the authority, subject to the provisions of Section 13 [72-19-13 NMSA 1978] of the Southern Sandoval County Arroyo Flood Control Act;

F. prescribe a method of auditing and allowing or rejecting claims and demands;

G. provide a method for the letting of contracts on a fair and competitive basis for the construction of works, any facility or any project or any interest therein or the performance or furnishing of labor, materials or supplies as required in that act;

H. designate an official newspaper published in the authority in the English language and direct additional publication in any newspaper where it deems that the public necessity may so require; and

I. make and pass resolutions and orders on behalf of the authority not repugnant to the provisions of the Southern Sandoval County Arroyo Flood Control Act [72-19-1 to 72-19-103 NMSA 1978], necessary or proper for the government and management of the affairs of the authority, for the execution of the powers vested in the authority and for carrying into effect the provisions of that act.

History: Laws 1990, ch. 14, § 14.

72-19-15. Records of board.

On all resolutions and orders, the roll shall be called, and the ayes and nays shall be recorded. All resolutions and orders, as soon as may be after their passage, shall be recorded in a book kept for that purpose and be authenticated by the signature of the presiding officer of the board and the secretary. Every legislative act of the board of a general or permanent nature shall be by resolution. The book of resolutions and orders is a public record. A record shall also be made of all other proceedings of the board, minutes of all meetings, certificates, contracts, bonds given by officers, employees and any other agents of the authority, and all corporate acts, which record is also a public record. The treasurer shall keep strict and accurate accounts of all money received by and disbursed for and on behalf of the authority in a permanent record, which is also a public record. Any permanent record of the authority shall be open for inspection by any qualified elector thereof, by any other interested person or by any representative of the federal government or any public body. All records are subject to audit as provided by law for political subdivisions.

History: Laws 1990, ch. 14, § 15.

72-19-16. Meetings of board.

All meetings of the board shall be held within the authority and shall be open to the public. No business of the board shall be transacted except at a regular or special meeting at which a quorum consisting of at least three-fifths of the total membership of the board is present. Any action of the board requires the affirmative vote of a majority of the directors present and voting. A smaller number of directors than a quorum may adjourn from time to time and may compel the attendance of absent members in the manner and under such penalties as the board may provide.

History: Laws 1990, ch. 14, § 16.

72-19-17. Compensation of directors.

Directors shall receive no compensation for their services as a director, officer, engineer, attorney, employee or other agent of the authority. Directors may be reimbursed for expenses incurred by them on authority business with approval of the board.

History: Laws 1990, ch. 14, § 17.

72-19-18. Interest in contracts and property disqualifications.

No director or officer, employee or agent of the authority may be interested in any contract or transaction with the authority except in his official representative capacity or as provided, except for any contract of employment with the authority. Neither the holding of any office nor employment in the government of any public body or the federal government nor the owning of any property within the state, within or without the authority, may be deemed a disqualification for membership on the board or employment by the authority, or a disqualification for compensation for services as an officer, employee or agent of the authority, except as provided in Section 17 [72-19-17 NMSA 1978] of the Southern Sandoval County Arroyo Flood Control Act.

History: Laws 1990, ch. 14, § 18.

72-19-19. Flood control system; hearings.

The authority is authorized, empowered and directed, subject to the provisions of Section 7 [72-19-7 NMSA 1978] of the Southern Sandoval County Arroyo Flood Control Act, to acquire, equip, maintain and operate a flood control system for the benefit of the authority and the inhabitants thereof, after the board has made such preliminary studies and otherwise taken such action as it determines to be necessary or desirable as preliminaries. The flood control system consists of such facilities as the board may determine. When a comprehensive program for the acquisition of the flood control system satisfactory to the board is available, it shall be tentatively adopted. The program need only describe the proposed flood control system in general terms and not in detail. A public hearing on the proposed program shall be scheduled, and notice of the hearing shall be given by publication. After the hearing and any adjournments of that hearing which may be ordered, the board may either require changes to be made in the program as the board may consider desirable or the board may approve the program as prepared. If any substantial changes to the program are ordered at any time, a further hearing shall be held pursuant to notice which shall be given by publication.

History: Laws 1990, ch. 14, § 19.

72-19-20. Implementing powers.

The board may:

A. acquire, improve, equip, maintain and operate any project or facility for the control of flood and storm waters of the authority and the flood and storm waters of streams which have their sources outside of the authority but which streams and the flood waters thereof flow into the authority;

B. protect from such floods or storm waters the water courses, watersheds, public highways, life and property in the authority; and

C. exercise the right of eminent domain, either within or without the authority, in the manner provided by law for the condemnation of private property for public use.

History: Laws 1990, ch. 14, § 20.

72-19-21. Protection of property rights.

It is declared that the use of the property, lands, rights-of-way, easements or materials which may be condemned, taken or appropriated under the provisions of the Southern Sandoval County Arroyo Flood Control Act [72-19-1 to 72-19-103 NMSA 1978] is a public use subject to the regulation and control of the state in the manner prescribed by law; but nothing in that act shall be deemed to authorize the authority or public body or person to divert the waters of any river, creek, stream, arroyo, irrigation system, canal or ditch from its channel to the detriment of any person, any public body or the federal government having any interest in such river, creek, stream, arroyo, irrigation system, canal or ditch, or the waters thereof or therein, unless compensation is ascertained and paid therefor under the laws authorizing the taking of private property for public use.

History: Laws 1990, ch. 14, § 21.

72-19-22. Additional powers of the authority.

The authority may exercise the following duties, privileges, immunities, rights, liabilities and disabilities appertaining to a public body politic and corporate and constituting a quasi-municipal corporation and political subdivision of the state established as an instrumentality exercising public and essential governmental and proprietary functions to provide for the public health, safety and general welfare:

A. perpetual existence and succession;

B. adopt, have and use a corporate seal and alter the same at pleasure;

C. sue and be sued and be a party to suits, actions and proceedings;

D. commence, maintain, intervene in, defend, compromise, terminate by settlement or otherwise and otherwise participate in and assume the cost and expense of any and all actions and proceedings now or hereafter begun and appertaining to the authority, its board, its officers, agents or employees, or any of the authority's duties, privileges, immunities, rights, liabilities and disabilities, or the authority's flood control system, other property of the authority or any project;

E. enter into contracts and agreements, including but not limited to contracts with the federal government, the state and any other public body;

F. borrow money and issue securities evidencing any loan to or amount due by the authority, provide for and secure the payment of any securities and the rights of the holders of those securities and purchase, hold and dispose of securities as provided

in the Southern Sandoval County Arroyo Flood Control Act [72-19-1 to 72-19-103 NMSA 1978];

G. refund any loan or obligation of the authority and issue refunding securities to evidence such loan or obligation without any election;

H. purchase, trade, exchange, encumber and otherwise acquire, maintain and dispose of property and interests in that property;

I. levy and cause to be collected general ad valorem taxes on all property subject to property taxation within the authority; provided that the total tax levy, excluding any levy for the payment of any debt of the authority authorized pursuant to the Southern Sandoval County Arroyo Flood Control Act, for any fiscal year shall not exceed an aggregate total of one dollar ($1.00), or any lower amount required by operation of the rate limitation provisions of Section 7-37-7.1 NMSA 1978 upon this tax levy, for each one thousand dollars ($1,000) of net taxable value, as that term is defined in the Property Tax Code [Articles 35 to 38 of Chapter 7 NMSA 1978], by certifying, on or before the fifteenth day of July in each year in which the board determines to levy a tax, to the board of county commissioners of Sandoval county, or by such other date as the laws of the state may prescribe to such other body having authority to levy taxes within each county wherein the authority has any territory, the rate so fixed, with directions that, at the time and in the manner required by law for levying taxes for other purposes, such body having authority to levy taxes shall levy the tax upon the net taxable value of all property subject to property taxation within the authority, in addition to such other taxes as may be levied by such body, as provided in Sections 72-19-23 through 72-19-27 NMSA 1978. No taxes may be levied and collected for any purpose, or any contract made, until a bond issue has been submitted to and approved by the qualified electors as provided in the Southern Sandoval County Arroyo Flood Control Act;

J. hire and retain officers, agents, employees, engineers, attorneys and any other persons, permanent or temporary, necessary or desirable to effect the purposes of the Southern Sandoval County Arroyo Flood Control Act, defray any expenses incurred thereby in connection with the authority and acquire office space, equipment, services, supplies, fire and extended coverage insurance, use and occupancy insurance, workers' compensation insurance, property damage insurance, public liability insurance for the authority and its officers, agents and employees and other types of insurance, as the board may determine; provided, however, that no provision in that act authorizing the acquisition of insurance shall be construed as waiving any immunity of the authority or any director, officer or agent thereof and otherwise existing under the laws of the state;

K. condemn property for public use;

L. acquire, improve, equip, hold, operate, maintain and dispose of a flood control system, storm sewer facilities, project and appurtenant works, or any interest

therein, wholly within the authority, or partially within and partially without the authority, and wholly within, wholly without or partially within and partially without any public body all or any part of the area of which is situated within the authority;

M. pay or otherwise defray the cost of any project;

N. pay or otherwise defray and contract so to pay or defray, for any term not exceeding fifty years, without an election, except as otherwise provided in the Southern Sandoval County Arroyo Flood Control Act, the principal of, any interest on and any other charges appertaining to, any securities or other obligations of the federal government, any public body or person incurred in connection with any such property so acquired by the authority;

O. establish and maintain facilities within or without the authority, across or along any public street, highway, bridge, viaduct or other public right-of-way or in, upon, under or over any vacant public lands, which public lands are now or may become the property of the state, or across any stream of water or water course, without first obtaining a franchise from the municipality, county or other public body having jurisdiction over the same; provided that the authority shall cooperate with any public body having such jurisdiction, shall promptly restore any such street, highway, bridge, viaduct or other public right-of-way to its former state of usefulness as nearly as may be and shall not use the same in such manner as to impair completely or unnecessarily the usefulness thereof;

P. deposit any money of the authority, subject to the limitations in Article 8, Section 4 of the constitution of New Mexico, in any banking institution within or without the state and secured in such manner and subject to such terms and conditions as the board may determine, with or without the payment of any interest on any such deposit;

Q. invest any surplus money in the authority treasury, including such money in any sinking or reserve fund established for the purpose of retiring any securities of the authority, not required for the immediate necessities of the authority, in its own securities or in federal securities, by direct purchase of any issue of such securities, or part thereof, at the original sale of the same, or by the subsequent purchase of such securities;

R. sell any such securities thus purchased and held, from time to time;

S. reinvest the proceeds of any such sale in other securities of the authority or in federal securities, as provided in Subsection Q of this section;

T. sell in season from time to time such securities thus purchased and held, so that the proceeds may be applied to the purposes for which the money with which such securities were originally purchased was placed in the treasury of the authority;

U. accept contributions or loans from the federal government for the purpose of financing the planning, acquisition, improvement, equipment, maintenance and operation of any enterprise in which the authority is authorized to engage and enter into contracts and cooperate with and accept cooperation and participation from the federal government for these purposes;

V. enter, without any election, into joint operating or service contracts and agreements, acquisition, improvement, equipment or disposal contracts or other arrangements, for any term not exceeding fifty years, with the federal government, any public body or any person concerning storm sewer facilities, or any project, whether acquired by the authority or by the federal government, any public body or any person, and accept grants and contributions from the federal government, any public body or any person in connection therewith;

W. enter into and perform, without any election, when determined by the board to be in the public interest and necessary for the protection of the public health, contracts and agreements, for any term not exceeding fifty years, with the federal government, any public body or any person for the provision and operation by the authority of storm sewer facilities;

X. enter into and perform, without any election, contracts and agreements with the federal government, any public body or any person for or concerning the planning, construction, lease or other acquisition, improvement, equipment, operation, maintenance, disposal, and the financing of any project, including but not necessarily limited to any contract or agreement for any term not exceeding fifty years;

Y. enter upon any land, make surveys, borings, soundings and examinations for the purposes of the authority, locate the necessary works of any project and roadways and other rights-of-way appertaining to any project authorized in the Southern Sandoval County Arroyo Flood Control Act; and acquire all property necessary or convenient for the acquisition, improvement or equipment of such works;

Z. cooperate with and act in conjunction with the state, or any of its engineers, officers, boards, commissions or departments, or with the federal government or any of its engineers, officers, boards, commissions or departments, or with any other public body or any person in the acquisition, improvement or equipment of any project for the controlling of flood or storm waters of the authority, or for the protection of life or property therein, or for any other works, acts or purposes provided for in the Southern Sandoval County Arroyo Flood Control Act, and adopt and carry out any definite plan or system of work for any such purpose;

AA. cooperate with the federal government or any public body by an agreement therewith by which the authority may:

(1) acquire and provide, without cost to the cooperating entity, the land, easements and rights-of-way necessary for the acquisition, improvement or equipment of the flood control system or any project;

(2) hold and save harmless the cooperating entity free from any claim for damages arising from the acquisition, improvement, equipment, maintenance and operation of the flood control system or any project;

(3) maintain and operate any project in accordance with regulations prescribed by the cooperating entity; and

(4) establish and enforce flood channel limits and regulations, if any, satisfactory to the cooperating entity;

BB. carry on technical and other investigations of all kinds, make measurements, collect data and make analyses, studies and inspections pertaining to control of floods, sewer facilities, and any project, both within and without the authority, and for this purpose the authority has the right of access through its authorized representative to all lands and premises within the state;

CC. have the right to provide from revenues or other available funds an adequate fund for the improvement and equipment of the authority's flood control system or of any parts of the works and properties of the authority;

DD. prescribe and enforce reasonable rules and regulations for the prevention of further encroachment upon existing defined waterways, by their enlargement or other modification, for additional waterway facilities to prevent flooding;

EE. require any person desiring to make a connection to any storm water drain or flood control facility of the authority or to cause storm waters to be emptied into any ditch, drain, canal, floodway or other appurtenant structure of the authority firstly to make application to the board to make the connection, to require the connection to be made in such manner as the board may direct;

FF. refuse, if reasonably justified by the circumstances, permission to make any connection designated in Subsection DD or Subsection EE of this section;

GG. make and keep records in connection with any project or otherwise concerning the authority;

HH. arbitrate any differences arising in connection with any project or otherwise concerning the authority;

II. have the management, control and supervision of all the business and affairs appertaining to any project herein authorized, or otherwise concerning the

authority, and of the acquisition, improvement, equipment, operation and maintenance of any such project;

JJ. prescribe the duties of officers, agents, employees and other persons and fix their compensation; provided that the compensation of employees and officers shall be established at prevailing rates of pay for equivalent work;

KK. enter into contracts of indemnity and guaranty, in such form as may be approved by the board, relating to or connected with the performance of any contract or agreement which the authority is empowered to enter into under the provisions of the Southern Sandoval County Arroyo Flood Control Act or of any other law of the state;

LL. provide, by any contract for any term not exceeding fifty years, or otherwise, without an election:

(1) for the joint use of personnel, equipment and facilities of the authority and any public body, including without limitation public buildings constructed by or under the supervision of the board of the authority or the governing body of the public body concerned, upon such terms and agreements and within such areas within the authority as may be determined, for the promotion and protection of health, comfort, safety, life, welfare and property of the inhabitants of the authority and any such public body; and

(2) for the joint employment of clerks, stenographers and other employees appertaining to any project, now existing or hereafter established in the authority, upon such terms and conditions as may be determined for the equitable apportionment of the expenses therefrom resulting;

MM. obtain financial statements, appraisals, economic feasibility reports and valuations of any type appertaining to any project or any property pertaining thereto;

NN. adopt any resolution authorizing a project or the issuance of securities, or both, or otherwise appertaining thereto, or otherwise concerning the authority;

OO. make and execute a mortgage, deed of trust, indenture or other trust instrument appertaining to a project or to any securities authorized in the Southern Sandoval County Arroyo Flood Control Act, or to both, except as provided in Subsection PPof this section and in Section 72-19-54 NMSA 1978;

PP. make all contracts, execute all instruments and do all things necessary or convenient in the exercise of the powers granted in the Southern Sandoval County Arroyo Flood Control Act, or in the performance of the authority's covenants or duties, or in order to secure the payment of its securities; provided, no encumbrance, mortgage or other pledge of property, excluding any money, of the authority is created thereby and provided no property, excluding money, of the authority is liable to be forfeited or taken in payment of such securities;

QQ. have and exercise all rights and powers necessary or incidental to or implied from the specific powers granted in the Southern Sandoval County Arroyo Flood Control Act, which specific powers shall not be considered as a limitation upon any power necessary or appropriate to carry out the purposes and intent of that act; and

RR. exercise all or any part or combination of the powers granted in the Southern Sandoval County Arroyo Flood Control Act.

History: Laws 1990, ch. 14, § 22; 1991, ch. 60, § 5; 1993, ch. 324, § 1.

ANNOTATIONS

The 1991 amendment, effective June 14, 1991, in Subsection I, substituted "Sections 72-19-23 through 72-19-27 NMSA 1978" for "Sections 23 through 27 of the Southern Sandoval County Arroyo Flood Control Act" in the first sentence and, in the second sentence, substituted "qualified electors as provided in the Southern Sandoval County Arroyo Flood Control Act" for "taxpaying electors as hereinafter provided"; in Subsections J, N, Z, KK, and RR, substituted "the Southern Sandoval County Arroyo Flood Control Act" for "that Act"; in Subsection OO, substituted "Section 72-19-54 NMSA 1978" for "Section 54 of that act"; and, in Subsection PP, substituted "in the Southern Sandoval County Arroyo Flood Control Act" for "herein".

The 1993 amendment, effective June 18, 1993, substituted "one dollar ($1.00)" for "fifty cents ($.50)" in Subsection I.

72-19-23. Levy and collection of taxes.

To levy and collect taxes, the board shall determine in each year the amount of money necessary to be raised by taxation, taking into consideration other sources of revenue of the authority, and shall fix a rate of levy, without limitation as to rate or amount, except for the limitation in Subsection I of Section 22 [72-19-22 NMSA 1978] of the Southern Sandoval County Arroyo Flood Control Act and for any constitutional limitation, which, when levied upon the net taxable value, as that term is defined in the Property Tax Code [Articles 35 to 38 of Chapter 7 NMSA 1978], of all property subject to property taxation within the authority, and together with other revenues, will raise the amount required by the authority annually to supply funds for paying expenses of organization and the costs of acquiring, improving, equipping, operating and maintaining any project or facility of the authority, and promptly to pay in full, when due, all interest on and principal of bonds and other securities of the authority, and in the event of accruing defaults or deficiencies, an additional levy may be made as provided in Section 24 [72-19-24 NMSA 1978] of the Southern Sandoval County Arroyo Flood Control Act.

History: Laws 1990, ch. 14, § 23.

72-19-24. Levies to cover deficiencies.

The board, in certifying annual levies, shall take into account the maturing indebtedness for the ensuing year as provided in its contracts, maturing securities and interest on securities, and deficiencies and defaults of prior years and shall make ample provision for the payment thereof. In case the money produced from such levies, together with other revenues of the authority, is not sufficient punctually to pay the annual installments of its contracts or securities, and interest thereon, and to pay defaults and deficiencies, the board shall make such additional levies of taxes as may be necessary for such purposes, and notwithstanding any limitations, except the limitation in Subsection I of Section 22 [72-19-22 NMSA 1978] of the Southern Sandoval County Arroyo Flood Control Act, and any constitutional limitation, such taxes shall be made and continue to be levied until the indebtedness of the authority is fully paid.

History: Laws 1990, ch. 14, § 24.

72-19-25. Sinking fund.

Whenever any indebtedness has been incurred by the authority, it is lawful for the board to levy taxes and to collect revenue for the purpose of creating a reserve fund in such amount as the board may determine, which may be used to meet the obligations of the authority, for maintenance and operating charges and depreciation, and to provide improvements for the authority.

History: Laws 1990, ch. 14, § 25.

72-19-26. Manner of levying and collecting taxes.

It is the duty of the body having authority to levy taxes within each county to levy the taxes provided in Subsection I of Section 22 [72-19-22 NMSA 1978] of the Southern Sandoval County Arroyo Flood Control Act, and elsewhere in that act. It is the duty of all officials charged with collecting taxes to collect such taxes at the time and in the form and manner and with like interest and penalties as other general (ad valorem) taxes are collected, and when collected, to pay the same to the authority. The payment of such collection shall be made monthly to the treasurer of the authority and paid into the depository thereof to the credit of the authority. All general (ad valorem) taxes levied under that act, together with interest thereon and penalties for default in payment thereof, and all costs of collecting the same constitute until paid a perpetual lien on and against the property taxed, and such lien is on a parity with the tax lien of other general (ad valorem) taxes.

History: Laws 1990, ch. 14, § 26.

72-19-27. Delinquent taxes.

If the general (ad valorem) taxes levied are not paid, then delinquent real property shall be sold at the regular tax sale for the payment of such taxes, interest and penalties, in the manner provided by the statutes of the state for selling real property for

the nonpayment of general taxes. If there are no bids at the tax sale for the property so offered, the property shall be struck off to the county, and the county shall account to the authority in the same manner as provided by law for accounting for school, town and city taxes. Delinquent personal property shall be distrained and sold as provided by law.

History: Laws 1990, ch. 14, § 27.

72-19-28. Elections.

Each biennial election of directors shall be conducted at the time of the general election under the direction of the Sandoval county clerk and in accordance with the election laws of New Mexico. Any other election of the authority, including an election to seek approval for the issuance of bonds, shall be conducted at any time approved by the board in accordance with the election laws of New Mexico. Elections for the issuance of bonds may be by mail-in ballot pursuant to the procedures set forth in the Mail Ballot Election Act [1-23-1 NMSA 1978].

History: Laws 1990, ch. 14, § 28; 1991, ch. 60, § 6; 2003, ch. 119, § 1.

ANNOTATIONS

The 1991 amendment, effective June 14, 1991, in the first sentence deleted "each election proposition to issue bonds and all other elections" following "election of directors" and added the second sentence.

The 2003 amendment, effective June 20, 2003, added the last sentence.

72-19-29. Election resolution.

The board shall call any election by resolution adopted at least fifty days prior to the election. The resolution shall recite the objects and purposes of the election and the date upon which the election shall be held.

History: Laws 1990, ch. 14, § 29; 2003, ch. 128, § 1.

ANNOTATIONS

The 2003 amendment, effective June 20, 2003, substituted "fifty days" for "one hundred eighty days" near the beginning of the section.

72-19-30. Conduct of election.

An election held pursuant to the Southern Sandoval County Arroyo Flood Control Act [72-19-1 to 72-19-103 NMSA 1978] shall be conducted in the manner provided by the laws of the state for the conduct of general elections.

History: Laws 1990, ch. 14, § 30.

72-19-31. Notice of election.

Notice of such election shall be given by publication. No other notice of an election held under the Southern Sandoval County Arroyo Flood Control Act [72-19-1 to 72-19-103 NMSA 1978] need be given unless otherwise provided by the board.

History: Laws 1990, ch. 14, § 31.

72-19-32. Polling places.

All polling places shall be within the area included within the authority. The authority may consolidate the precincts for any election of the authority not conducted at the time of the general election. If precincts are consolidated, the notice of the election shall state which precincts have been consolidated and the designation of the polling place.

History: Laws 1990, ch. 14, § 32; 1993, ch. 324, § 2.

ANNOTATIONS

The 1993 amendment, effective June 18, 1993, added the last two sentences.

72-19-33. Election supplies.

The secretary shall provide to the Sandoval county clerk such supplies and assistance as necessary to conduct elections authorized by the Southern Sandoval County Arroyo Flood Control Act [72-19-1 to 72-19-103 NMSA 1978].

History: Laws 1990, ch. 14, § 33.

72-19-34. Election returns.

For authority elections held at the time of the general election, the regular general election precinct board shall certify the results of the authority election to the county canvassing board. The county canvassing board shall certify directly to the secretary of the authority that portion of the returns pertaining to the authority election. Electronic voting machines shall be used in the conduct of any authority election. For authority elections held at a different time than the general election, the authority shall appoint an authority precinct board at the authority's expense for each polling place. The authority precinct board shall conduct the election as provided in the Election Code [Chapter 1 NMSA 1978]. The separate authority precinct board shall certify the results of the election in that precinct to the secretary within twelve hours after the close of the polls. The secretary shall canvass the results of the authority election as certified by each of the separate authority precinct boards and shall declare the results of the election at

any regular or special meeting held not less than five days following the date of the election. Except as otherwise provided, any proposal submitted at any election held pursuant to the Southern Sandoval County Arroyo Flood Control Act [72-19-1 to 72-19-103 NMSA 1978] shall not carry unless the proposal has been approved by a majority of the qualified electors of the district voting on the proposal.

History: Laws 1990, ch. 14, § 34; 1991, ch. 60, § 7; 1993, ch. 324, § 3.

ANNOTATIONS

The 1991 amendment, effective June 14, 1991, deleted the former first and second sentences pertaining to certifying results of elections; divided the former third sentence into the present first and second sentences; in the first sentence, substituted "an authority" for "a seperate authority" and "for each polling place." for "which"; in the second sentence, inserted "For authority elections held at the time of the general election, the authority"; in the third sentence, substituted "any authority election" for "the election", in the fifth sentence, deleted "as certified by the county canvassing board and" following "authority election".

The 1993 amendment, effective June 18, 1993, deleted the former first sentence, which read "The authority shall appoint an authority precinct board at the authority's expense for each polling place"; substituted "the regular general election precinct board shall certify the results of the authority election to the county canvassing board", the second sentence, and "Electronic voting machines" for "the authority shall be provided space in the polling places where the general election is being conducted. Paper ballots"; and deleted "where paper ballots are used" at the end of the fifth sentence.

72-19-35. Dissolution of authority.

If a remonstrance is received pursuant to Section 7 [72-19-7 NMSA 1978] of the Southern Sandoval County Arroyo Flood Control Act denying the board the power to acquire a flood control system or if the first proposal for the issuance of bonds fails to receive a favorable vote by a majority of the qualified electors voting on the proposal, the board shall proceed to dissolve the authority.

History: Laws 1990, ch. 14, § 35.

72-19-36. Filing of dissolution resolution.

Within thirty days after the effective date of any resolution dissolving the authority, the secretary shall file a copy of the resolution in the office of the county clerk and shall file an additional copy of the resolution in the office of the secretary of state, which filings shall be without fee and be otherwise in the same manner as articles of incorporation are required to be filed under the laws of the state.

History: Laws 1990, ch. 14, § 36.

72-19-37. Disposition of property, funds and taxes of authority.

All property and all funds remaining in the treasury of the authority so dissolved shall be surrendered and transferred to the county in which the authority is located and shall become a part of the general fund of the county.

History: Laws 1990, ch. 14, § 37.

72-19-38. Powers of public bodies.

The governing body of any municipality, federally authorized Indian pueblo or tribe or other public body, upon its behalf and in its name, for the purpose of aiding and cooperating in the determination of any authority boundary or any project authorized in the Southern Sandoval County Arroyo Flood Control Act [72-19-1 to 72-19-103 NMSA 1978], upon the terms and with or without consideration and with or without an election, as the governing body determines, may exercise the following powers:

A. sell, lease, loan, donate, grant, convey, assign, transfer and otherwise dispose to the authority, sewer facilities or any other property, or any interest therein, appertaining to a flood control system;

B. make available for temporary use or otherwise dispose to the authority of any machinery, equipment, facilities and other property, and any agents, employees, persons with professional training, and any other persons, to effect the purposes of that act. Any such property and persons owned or in the employ of any public body while engaged in performing for the authority any service, activity or undertaking authorized in that act, pursuant to contract or otherwise, shall have and retain all of the powers, privileges, immunities, rights and duties of and shall be deemed to be engaged in the service and employment of such public body, notwithstanding such service, activity or undertaking is being performed in or for the authority;

C. enter into any agreement or joint agreement between or among the federal government, the authority and any other public body, or any combination thereof, extending over any period not exceeding fifty years, which is mutually agreed thereby, notwithstanding any law to the contrary, respecting action or proceedings appertaining to any power granted in that act, and the use or joint use of any facilities, project or other property authorized in that act;

D. sell, lease, loan, donate, grant, convey, assign, transfer or pay over to the authority any facilities or any project authorized in that act, or any part thereof, or any interest in real or personal property, or any funds available for acquisition, improvement or equipment purposes, including the proceeds of any securities previously or hereafter issued for acquisition, improvement or equipment purposes which may be used by the authority in the acquisition, improvement, equipment, maintenance or operation of any facilities or project authorized in that act;

E. transfer, grant, convey or assign and set over to the authority any contracts which may have been awarded by the public body for the acquisition, improvement or equipment of any project not begun or if begun, not completed;

F. budget and appropriate, and each municipality or other public body is hereby required and directed to budget and appropriate, from time to time, general (ad valorem) tax proceeds, and other revenues legally available therefor to pay all obligations arising from the exercise of any powers granted in the Southern Sandoval County Arroyo Flood Control Act as such obligations shall accrue and become due;

G. provide for an agency, by any agreement authorized in that act, to administer or execute that or any collateral agreement, which agency may be one of the parties to the agreement, or a commission or board constituted pursuant to the agreement;

H. provide that any such agency shall possess the common power specified in the agreement, and may exercise it in the manner or according to the method provided in the agreement. Such power is subject to the restrictions upon the manner of exercising the power of any one of the contracting parties, which party shall be designated by the agreement; and

I. continue any agreement authorized in the Southern Sandoval County Arroyo Flood Control Act for a definite term not exceeding fifty years, or until rescinded or terminated, which agreement may provide for the method by which it may be rescinded or terminated by any party.

History: Laws 1990, ch. 14, § 38.

72-19-39. Effect of extraterritorial functions.

All of the powers, privileges, immunities and rights, exemptions from laws, ordinances and rules, all pension, relief, disability, workers' compensation and other benefits which apply to the activity of officers, agents or employees of the authority or any such public body when performing their respective functions within the territorial limits of the respective public agencies apply to them to the same degree and extent while engaged in the performance of any of their functions and duties extraterritorially under the Southern Sandoval County Arroyo Flood Control Act [72-19-1 to 72-19-103 NMSA 1978].

History: Laws 1990, ch. 14, § 39.

72-19-40. Forms of borrowing.

Upon the conditions and under the circumstances set forth in the Southern Sandoval County Arroyo Flood Control Act [72-19-1 to 72-19-103 NMSA 1978], the authority, to carry out the purposes of that act, from time to time may borrow money to defray the

cost of any project, or any part thereof, as the board may determine and issue the following securities to evidence such borrowing:

A. notes;

B. warrants;

C. bonds;

D. temporary bonds; and

E. interim debentures.

History: Laws 1990, ch. 14, § 40.

72-19-41. Issuance of notes.

The authority is authorized to borrow money without an election in anticipation of taxes or other revenues, or both, and to issue notes to evidence the amount so borrowed.

History: Laws 1990, ch. 14, § 41.

72-19-42. Issuance of warrants.

The authority is authorized to defray the cost of any services, supplies, equipment or other materials furnished to or for the benefit of the authority by the issuance of warrants to evidence the amount due therefor, without an election, in anticipation of taxes or other revenues, or both.

History: Laws 1990, ch. 14, § 42.

72-19-43. Maturities of notes and warrants.

Notes and warrants may mature at such time not exceeding one year from the respective dates of their issuance as the board may determine. They shall not be extended or funded except by the issuance of bonds or interim debentures in compliance with Section 44 or 46 [72-19-44 or 72-19-46 NMSA 1978] of the Southern Sandoval County Arroyo Flood Control Act.

History: Laws 1990, ch. 14, § 43.

72-19-44. Issuance of bonds and incurrence of debt.

The authority is authorized to borrow money in anticipation of taxes or other revenues, or both, and to issue bonds to evidence the amount so borrowed. No bonded indebtedness or any other indebtedness not payable in full within one year, except for interim debentures as provided in Sections 46 and 89 through 91 [72-19-46 and 72-19-89 to 72-19-91 NMSA 1978] of the Southern Sandoval County Arroyo Flood Control Act, shall be created by the authority without first submitting a proposition of issuing such bonds to the qualified electors of the authority and being approved by a majority of such electors voting thereon at an election held for that purpose in accordance with Sections 28 through 34 [72-19-28 to 72-19-34 NMSA 1978] of that act and all laws amendatory thereof and supplemental thereto. Bonds so authorized may be issued in one series or more and may mature at such time or times not exceeding forty years from their issuance as the board may determine. The total of all outstanding indebtedness at any one time shall not exceed thirty million dollars ($30,000,000) without prior approval of the state legislature.

History: Laws 1990, ch. 14, § 44.

72-19-45. Issuance of temporary bonds.

The authority is authorized to issue temporary bonds, pending preparation of definitive bond or bonds and exchangeable for the definitive bond or bonds when prepared, as the board may determine. Each temporary bond shall set forth substantially the same conditions, terms and provisions as the definitive bond for which it is exchanged. Each holder of any such temporary security shall have all the rights and remedies which he would have as a holder of the definitive bond or bonds.

History: Laws 1990, ch. 14, § 45.

72-19-46. Issuance of interim debentures.

The authority is authorized to borrow money and to issue interim debentures evidencing "construction" or short-term loans for the acquisition or improvement and equipment of the flood control system or any project in supplementation of long-term financing and the issuance of bonds as provided in Sections 89 through 91 [72-19-89 to 72-19-91 NMSA 1978] of the Southern Sandoval County Arroyo Flood Control Act.

History: Laws 1990, ch. 14, § 46.

72-19-47. Payment of securities.

All securities issued by the authority shall be authorized by resolution. The authority may pledge its full faith and credit for the payment of any securities authorized in the Southern Sandoval County Arroyo Flood Control Act [72-19-1 to 72-19-103 NMSA 1978], the interest thereon, any prior redemption premium or premiums and any charges appertaining thereto. Securities may constitute the direct and general

obligations of the authority. Their payment may be secured by a specific pledge of tax proceeds and other revenues of the authority as the board may determine.

History: Laws 1990, ch. 14, § 47.

72-19-48. Additionally secured securities.

The board, in connection with such additionally secured securities, in the resolution authorizing their issuance or other instrument appertaining thereto, may pledge all or a portion of such revenues, subject to any prior pledges, as additional security for such payment of such securities, and at its option may deposit such revenues in a fund created to pay the securities or created to secure additionally their payment.

History: Laws 1990, ch. 14, § 48.

72-19-49. Pledge of revenues.

Any such revenues pledged directly or as additional security for the payment of securities of any one issue or series, which revenues are not exclusively pledged therefor, may subsequently be pledged directly or as additional security for the payment of the securities of one or more issue or series subsequently authorized.

History: Laws 1990, ch. 14, § 49.

72-19-50. Ranking among different issues.

All securities of the same issue or series shall, subject to the prior and superior rights of outstanding securities, claims and other obligations, have a prior, paramount and superior lien on the revenues pledged for the payment of the securities over and ahead of any lien thereagainst subsequently incurred of any other securities; provided, however, the resolution authorizing, or other instrument appertaining to, the issuance of any securities may provide for the subsequent authorization of bonds or other securities the lien for the payment of which on such revenues is on a parity with the lien thereon of the subject securities upon such conditions and subject to such limitations as the resolution or other instrument may provide.

History: Laws 1990, ch. 14, § 50.

72-19-51. Ranking among securities of same issue.

All securities of the same issue or series shall be equally and ratably secured without priority by reason of number, date of maturity, date of securities, of sale, of execution or of delivery, by a lien on such revenues in accordance with the provisions of the Southern Sandoval County Arroyo Flood Control Act [72-19-1 to 72-19-103 NMSA 1978] and the resolution authorizing, or other instrument appertaining to, such

securities, except to the extent such resolution or other instrument otherwise expressly provides.

History: Laws 1990, ch. 14, § 51.

72-19-52. Payment recital in securities.

Each security issued under the Southern Sandoval County Arroyo Flood Control Act [72-19-1 to 72-19-103 NMSA 1978] shall recite in substance that the security and the interest on that security are payable solely from the revenues or other money pledged to the payment of those revenues. Securities specifically pledging the full faith and credit of the authority for their payment shall so state.

History: Laws 1990, ch. 14, § 52.

72-19-53. Incontestable recital in securities.

Any resolution authorizing, or other instrument appertaining to, any securities under the Southern Sandoval County Arroyo Flood Control Act [72-19-1 to 72-19-103 NMSA 1978] may provide that each security authorized by such a resolution shall recite that it is issued under authority of that act. Such recital shall conclusively impart full compliance with all of the provisions of that act, and all securities issued containing such recital shall be incontestable for any cause whatsoever after their delivery for value.

History: Laws 1990, ch. 14, § 53.

72-19-54. Limitations upon payment of securities.

The payment of securities shall not be secured by an encumbrance, mortgage or other pledge of property of the authority, except for revenues, income, tax proceeds and other money pledged for the payment of securities. No property of the authority, subject to such exception, shall be liable to be forfeited or taken in payment of the securities.

History: Laws 1990, ch. 14, § 54.

72-19-55. Limitations upon incurring any debt.

Nothing in the Southern Sandoval County Arroyo Flood Control Act [72-19-1 to 72-19-103 NMSA 1978] shall be construed as creating or authorizing the creation of an indebtedness on the part of any municipality or other public body included in the authority or elsewhere located.

History: Laws 1990, ch. 14, § 55.

72-19-56. Security details.

Any securities authorized to be issued in the Southern Sandoval County Arroyo Flood Control Act [72-19-1 to 72-19-103 NMSA 1978] shall bear the date or dates, shall be in the denomination or denominations, shall mature at the time or times but in no event exceeding forty years from their date or any shorter limitation provided in that act, shall bear interest which may be evidenced by one or two sets of coupons, payable annually or semiannually, except that the first coupon or coupons, if any, appertaining to any security may represent interest for any period not in excess of one year, as may be prescribed by resolution or other instrument; and the securities and any coupons shall be payable in the medium of payment at any banking institution or other place or places within or without the state, including but not limited to the office of the treasurer of the county in which the authority is located wholly or in part, as determined by the board, and the securities at the option of the board may be in one or more series, may be made subject to prior redemption in advance of maturity in the order or by lot or otherwise at the time or times without or with the payment of the premium or premiums not exceeding six percent of the principal amount of each security so redeemed, as determined by the board.

History: Laws 1990, ch. 14, § 56.

72-19-57. Capitalization of costs.

Any resolution authorizing the issuance of securities or other instrument appertaining thereto may capitalize interest on any securities during any period of construction or other acquisition estimated by the board and one year thereafter and any other cost of any project by providing for the payment of the amount capitalized from the proceeds of the securities.

History: Laws 1990, ch. 14, § 57.

72-19-58. Other security details.

Securities may be issued in such manner, in such form, with such recitals, terms, covenants and conditions and with such other details as may be provided by the board in the resolution authorizing the securities, or other instrument appertaining thereto, except as otherwise provided in the Southern Sandoval County Arroyo Flood Control Act [72-19-1 to 72-19-103 NMSA 1978].

History: Laws 1990, ch. 14, § 58.

72-19-59. Reissuance of securities.

Any resolution authorizing the issuance of securities or any other instrument appertaining thereto may provide for their reissuance in other denominations in

negotiable or nonnegotiable form and otherwise in such manner and form as the board may determine.

History: Laws 1990, ch. 14, § 59.

72-19-60. Negotiability.

Subject to the payment provisions specifically provided in the Southern Sandoval County Arroyo Flood Control Act [72-19-1 to 72-19-103 NMSA 1978], the notes, warrants, bonds, any interest coupons thereto attached, temporary bonds and interim debentures shall be fully negotiable within the meaning of and for all the purposes of the Uniform Commercial Code [Chapter 55 NMSA 1978], except as the board may otherwise provide. Each holder of such security, or of any coupon appertaining thereto, by accepting such security or coupon shall be conclusively deemed to have agreed that such security or coupon, except as otherwise provided, is and shall be fully negotiable within the meaning and for all purposes of that code.

History: Laws 1990, ch. 14, § 60.

72-19-61. Single bonds.

Notwithstanding any other provision of law, the board in any proceedings authorizing securities under the Southern Sandoval County Arroyo Flood Control Act [72-19-1 to 72-19-103 NMSA 1978]:

A. may provide for the initial issuance of one or more securities, in this section called "bond", aggregating the amount of the entire issue or a designated portion thereof;

B. may make such provision for installment payments of the principal amount of any such bond as it may consider desirable;

C. may provide for the making of any such bond payable to bearer or otherwise, registrable as to principal or as to both principal and interest, and where interest accruing thereon is not represented by interest coupons, for the endorsing of payments of interest on such bonds; and

D. may further make provision in any such proceedings for the manner and circumstances in and under which any such bond may in the future, at the request of the holder thereof, be converted into securities of smaller denominations, which securities of smaller denominations may in turn be either coupon bonds or bonds registrable as to principal or principal and interest or both.

History: Laws 1990, ch. 14, § 61.

72-19-62. Lost or destroyed securities.

If lost or completely destroyed, any security may be reissued in the form and tenor of the lost or destroyed security upon the owner furnishing to the satisfaction of the board:

A. proof of ownership;

B. proof of loss or destruction;

C. a surety bond in twice the face amount of the security and any coupons; and

D. payment of the cost of preparing and issuing the new security.

History: Laws 1990, ch. 14, § 62.

72-19-63. Execution of securities.

Any security shall be executed in the name of and on behalf of the authority and signed by the chairman, with the seal of the authority affixed thereto and attested by the secretary, except for securities issued in book entry or similar form without the delivery of physical securities.

History: Laws 1990, ch. 14, § 63.

72-19-64. Interest coupons.

Except for any bonds which are registrable for payment of interest, interest coupons payable to bearer and appertaining to the bonds shall be issued and shall bear the original or facsimile signature of the chairman.

History: Laws 1990, ch. 14, § 64.

72-19-65. Facsimile signatures.

Any of the officers, after filing with the secretary of state his manual signature certified by him under oath, may execute or cause to be executed with a facsimile signature in lieu of his manual signature any security authorized in the Southern Sandoval County Arroyo Flood Control Act [72-19-1 to 72-19-103 NMSA 1978]; provided that such a filing is not a condition of execution with a facsimile signature of any interest coupon, and provided that at least one signature required or permitted to be placed on each such security, excluding any interest coupon, shall be manually subscribed. An officer's facsimile signature has the same legal effect as his manual signature.

History: Laws 1990, ch. 14, § 65.

72-19-66. Facsimile seal.

The secretary may cause the seal of the district to be printed, engraved, stamped or otherwise placed in facsimile on any security. The facsimile seal has the same legal effect as the impression of the seal.

History: Laws 1990, ch. 14, § 66.

72-19-67. Signatures of predecessors in office.

The securities and any coupons bearing the signatures of the officers in office at the time of the signing shall be the valid and binding obligations of the authority, notwithstanding that before the delivery thereof and payment therefor, any or all of the persons whose signatures appear on those securities or coupons shall have ceased to fill their respective offices.

History: Laws 1990, ch. 14, § 67.

72-19-68. Facsimile signatures of predecessors.

Any officer authorized or permitted in the Southern Sandoval County Arroyo Flood Control Act [72-19-1 to 72-19-103 NMSA 1978] to sign any security or interest coupon, at the time of its execution and of the execution of a signature certificate, may adopt as and for his own facsimile signature the facsimile signature of his predecessor in office in the event that such facsimile signature appears upon the security or coupons appertaining thereto, or upon both the security and such coupons.

History: Laws 1990, ch. 14, § 68.

72-19-69. Repurchase of securities.

The securities may be repurchased by the authority out of any funds available for such purpose from the project to which they pertain at a price of not more than the principal amount thereof and accrued interest, plus the amount of the premium, if any, which might, on the next redemption date of such securities, be paid to the holders thereof if such securities should be called for redemption on such date pursuant to their terms, and all securities so repurchased shall be canceled.

History: Laws 1990, ch. 14, § 69.

72-19-70. Customary provisions.

The resolution authorizing the securities or other instrument appertaining thereto may contain any agreement or provision customarily contained in instruments securing securities, including without limiting the generality of the foregoing, covenants

designated in Section 76 [72-19-76 NMSA 1978] of the Southern Sandoval County Arroyo Flood Control Act.

History: Laws 1990, ch. 14, § 70.

72-19-71. Sale of securities.

Any securities authorized in the Southern Sandoval County Arroyo Flood Control Act [72-19-1 to 72-19-103 NMSA 1978], except for warrants not issued for cash and except for temporary bonds issued pending preparation of definitive bond or bonds, shall be sold at public or private sale at, above or below par at a net effective interest rate not exceeding the maximum net effective interest rate permitted by the Public Securities Act [6-14-1 to 6-14-3 NMSA 1978], as amended and supplemented by the Southern Sandoval County Arroyo Flood Control Act.

History: Laws 1990, ch. 14, § 71.

72-19-72. Sale discount or commission prohibited.

No discount, except as provided by the Southern Sandoval County Arroyo Flood Control Act [72-19-1 to 72-19-103 NMSA 1978], or commission shall be allowed or paid on or for any security sale to any purchaser or bidder, directly or indirectly, but nothing contained in that act shall be construed as prohibiting the board from employing legal, fiscal, engineering and other expert services in connection with any project or facilities authorized in that act and with the authorization, issuance and sale of securities.

History: Laws 1990, ch. 14, § 72.

72-19-73. Application of proceeds.

All money received from the issuance of any securities authorized in the Southern Sandoval County Arroyo Flood Control Act [72-19-1 to 72-19-103 NMSA 1978] shall be used solely for the purpose for which issued and the cost of any project thereby delineated. Any accrued interest and any premium shall be applied to the payment of the interest on, or the principal of, the securities, or both interest and principal, or shall be deposited in a reserve therefor, as the board may determine.

History: Laws 1990, ch. 14, § 73.

72-19-74. Use of unexpended proceeds.

Any unexpended balance of such security proceeds remaining after the completion of the acquisition or improvement and equipment of the project or the completion of the purpose for which such securities were issued shall be paid immediately into the fund created for the payment of the principal of such securities and shall be used therefor,

subject to the provisions as to the times and methods for their payment as stated in the securities and the proceedings authorizing or otherwise appertaining to their issuance, or so paid into a reserve therefor.

History: Laws 1990, ch. 14, § 74.

72-19-75. Validity unaffected by use of proceeds.

The validity of such securities shall not be dependent on nor affected by the validity or regularity of any proceedings relating to the acquisition or improvement and equipment of the project or the proper completion of any project for which the securities are issued. The purchaser or purchasers of the securities shall in no manner be responsible for the application of the proceeds of the securities by the authority or any of its officers, agents and employees.

History: Laws 1990, ch. 14, § 75.

72-19-76. Covenants in security proceedings.

Any resolution or trust indenture authorizing the issuance of securities or any other instrument appertaining thereto may contain covenants and other provisions (notwithstanding such covenants and provisions may limit the exercise of powers conferred by the Southern Sandoval County Arroyo Flood Control Act [72-19-1 to 72-19-103 NMSA 1978]) in order to secure the payment of such securities in agreement with the holders and owners of such securities, as the board may determine, including without limiting the generality of the foregoing, all such acts and things as may be necessary or convenient or desirable in order to secure the authority's securities, or in the discretion of the board tend to make the securities more marketable, notwithstanding that such covenant, act or thing may not be enumerated in that act, it being the intention of that act to give the authority power to do all things in the issuance of securities and for their security except as specifically limited in that act.

History: Laws 1990, ch. 14, § 76.

72-19-77. Remedies of security holders.

Subject to any contractual limitations binding upon the holders of any issue or series of securities, or trustee therefor, including but not limited to the restriction of the exercise of any remedy to a specified proportion, percentage or number of such holders, and subject to any prior or superior rights of others, any holder of securities, or trustee therefor, shall have the right and power for the equal benefit and protection of all holders of securities similarly situated:

A. by mandamus or other suit, action or proceeding at law or in equity to enforce his rights against the authority and the board and any of its officers, agents and employees, and to require and compel the authority or the board or any such officers,

agents or employees to perform and carry out its and their duties, obligations or other commitments under the Southern Sandoval County Arroyo Flood Control Act [72-19-1 to 72-19-103 NMSA 1978] and its and their covenants and agreements with the holder of any security;

B. by action or suit in equity to require the authority and the board to account as if they were the trustee of an express trust;

C. by action or suit in equity to have appointed a receiver, which receiver may enter and take possession of any system or project or services revenues from which are pledged for the payment of the securities, prescribe sufficient fees derived from the operation thereof, and collect, receive and apply all revenues or other money pledged for the payment of the securities in the same manner as the authority itself might do in accordance with the obligations of the authority; and

D. by action or suit in equity to enjoin any acts or things which may be unlawful or in violation of the rights of the holder of any security and to bring suit thereupon.

History: Laws 1990, ch. 14, § 77.

72-19-78. Limitations upon liabilities.

Neither the directors nor any person executing securities issued under the Southern Sandoval County Arroyo Flood Control Act [72-19-1 to 72-19-103 NMSA 1978] shall be liable personally on the securities by reason of the issuance thereof. Securities issued pursuant to that act shall not be in any way a debt or liability of the state or of any municipality or other public body and shall not create or constitute any indebtedness, liability or obligation of the state or of any such municipality or other public body, either legal, moral or otherwise, and nothing contained in that act shall be construed to authorize the authority to incur any indebtedness on behalf of or in any way to obligate the state or any municipality or other public body, except the authority and except as otherwise expressly stated or necessarily implied in that act.

History: Laws 1990, ch. 14, § 78.

72-19-79. Cancellation of paid securities.

Whenever the treasurer shall redeem and pay any of the securities issued under the provisions of the Southern Sandoval County Arroyo Flood Control Act [72-19-1 to 72-19-103 NMSA 1978], he shall cancel the same by writing across the face thereof or stamping thereon the word "paid", together with the date of its payment, sign his name thereto and transmit the same to the secretary, taking his receipt therefor, which receipt shall be filed in the records of the authority. The secretary shall credit the treasurer on his books for the amount so paid.

History: Laws 1990, ch. 14, § 79.

72-19-80. Interest after maturity.

No interest shall accrue on any security in the Southern Sandoval County Arroyo Flood Control Act [72-19-1 to 72-19-103 NMSA 1978] authorized after it becomes due and payable; provided funds for the payment of the principal of and the interest on the security and any prior redemption premium due are available to the paying agent for such payment without default.

History: Laws 1990, ch. 14, § 80.

72-19-81. Refunding bonds.

Any bonds issued under the Southern Sandoval County Arroyo Flood Control Act [72-19-1 to 72-19-103 NMSA 1978] may be refunded, without an election, but subject to provisions concerning their payment and to any other contractual limitations in the proceedings authorizing their issuance or otherwise appertaining thereto, pursuant to a resolution or resolutions to be adopted by the board in the manner provided in that act for the issuance of other securities, to refund, pay or discharge all or any part of the authority's outstanding bonds, heretofore or hereafter issued, including any interest thereon in arrears or about to become due, or for the purpose of reducing interest costs or effecting other economies or of modifying or eliminating restrictive contractual limitations appertaining to the issuance of additional bonds or any project, or any combination thereof.

History: Laws 1990, ch. 14, § 81.

72-19-82. Method of issuance.

Any bonds issued for refunding purposes may either be delivered in exchange for the outstanding bonds authorized to be refunded or may be sold as provided in the Southern Sandoval County Arroyo Flood Control Act [72-19-1 to 72-19-103 NMSA 1978] for the sale of other bonds.

History: Laws 1990, ch. 14, § 82.

72-19-83. Limitations upon issuance.

No bonds may be refunded under the Southern Sandoval County Arroyo Flood Control Act [72-19-1 to 72-19-103 NMSA 1978] unless the holders of the bonds voluntarily surrender them for exchange or payment or unless they either mature or are callable for prior redemption under their terms within ten years from the date of issuance of the refunding bonds. Provision shall be made for paying the bonds within that period of time. No maturity of any bonds refunded may be extended over fifteen years nor may

any interest on the bonds be increased to any coupon rate exceeding the maximum net effective interest rate permitted by the Public Securities Act [6-14-1 to 6-14-3 NMSA 1978]. The principal amount of the refunding bonds may exceed the principal amount of the refunded bonds if the aggregate principal and interest costs of the refunding bonds do not exceed such unaccrued costs of the bonds refunded. The principal amount of the refunding bonds may also be less than or the same as the principal amount of the bonds refunded so long as provision is duly and sufficiently made for their payment.

History: Laws 1990, ch. 14, § 83.

72-19-84. Use of refunding bond proceeds.

The proceeds of refunding bonds shall either be immediately applied to the retirement of the bonds to be refunded or be placed in escrow to be applied to the payment of the bonds upon their presentation; provided, however, any accrued interest and any premium appertaining to a sale of refunding bonds may be applied to the payment of the interest or the principal or both interest and principal or may be deposited in a reserve therefor as the board may determine. The escrow shall not necessarily be limited to refunding bond proceeds but may include other money made available for such purpose. Any escrowed proceeds pending such use may be invested or reinvested in federal securities. Escrowed proceeds and investments, together with any interest to be derived from any such investment, shall be in an amount at all times sufficient as to principal, interest, any prior redemption premium due and any charges of the escrow agent payable therefrom to pay the bonds refunded as they become due at their respective maturities or due at designated prior redemption date or dates upon which the board shall exercise a prior redemption option. Upon establishment of an escrow in accordance with this section, the refunded bonds payable therefrom no longer constitute outstanding indebtedness of the authority.

History: Laws 1990, ch. 14, § 84.

72-19-85. Payment of refunding bonds.

Refunding revenue bonds may be made payable from any revenues derived from the operation of the flood control system or any project, notwithstanding the pledge of such revenues for the payment of the outstanding bonds issued by the authority which are to be refunded is thereby modified. Any refunding revenue bonds shall not be made payable from taxes unless the bonds thereby refunded are payable from taxes.

History: Laws 1990, ch. 14, § 85.

72-19-86. Combination of refunding and other bonds.

Bonds for refunding and bonds for any other purpose or purposes authorized in the Southern Sandoval County Arroyo Flood Control Act [72-19-1 to 72-19-103 NMSA 1978] may be issued separately or issued in combination in one series or more.

History: Laws 1990, ch. 14, § 86.

72-19-87. Supplemental provisions.

Except as specifically provided or necessarily implied in the Southern Sandoval County Arroyo Flood Control Act [72-19-1 to 72-19-103 NMSA 1978], the relevant provisions of that act pertaining to bonds generally shall be equally applicable in the authorization and issuance of refunding bonds, including their terms and security, the bond resolution, trust indenture, taxes and service charges and other aspects of the bonds.

History: Laws 1990, ch. 14, § 87.

72-19-88. Board's determination final.

The determination of the board that the limitations imposed upon the issuance of refunding bonds under the Southern Sandoval County Arroyo Flood Control Act [72-19-1 to 72-19-103 NMSA 1978] have been met shall be conclusive in the absence of fraud or arbitrary and gross abuse of discretion.

History: Laws 1990, ch. 14, § 88.

72-19-89. Issuance of interim debentures and pledge of bonds as collateral security.

Notwithstanding any limitation or other provision in the Southern Sandoval County Arroyo Flood Control Act [72-19-1 to 72-19-103 NMSA 1978], whenever a majority of the qualified electors of the authority voting on a proposal to issue bonds has authorized the authority to issue bonds for any purpose authorized in that act, the authority is authorized to borrow money without any other election in anticipation of taxes, the proceeds of the bonds or any other revenues of the authority, or any combination thereof, and to issue interim debentures to evidence the amount so borrowed. Interim debentures may mature at such time not exceeding a period of time equal to the estimated time needed to effect the purpose for which the bonds are so authorized to be issued, plus two years, as the board may determine. Except as otherwise provided in this section and in Sections 72-19-90 and 72-19-91 NMSA 1978, interim debentures shall be issued as provided in that act for securities in Sections 72-19-47 through 72-19-80 NMSA 1978. Taxes, other revenues of the authority, including without limiting the generality of the foregoing proceeds of bonds to be thereafter issued or reissued or bonds issued for the purpose of securing the payment of interim debentures may be pledged for the purpose of securing the payment of the interim debentures. Any bonds pledged as collateral security for the payment of any interim debentures shall mature at such time as the board may determine, but in no event exceeding forty years from the date of either any of such bonds or any of such interim debentures, whichever date is the earlier. Any such bonds pledged as collateral security shall not be issued in an aggregate principal amount exceeding the aggregate principal amount of the interim

debenture secured by a pledge of such bonds nor shall they bear interest at any time which with any interest accruing at the same time on the interim debenture so secured exceeds six percent per year.

History: Laws 1990, ch. 14, § 89; 1991, ch. 60, § 8.

ANNOTATIONS

The 1991 amendment, effective June 14, 1991, in the first sentence, substituted "the qualified electors" for "the taxpaying electors" and, in the third sentence, substituted "Sections 72-19-90 and 72-19-91 NMSA 1978" for "Sections 90 and 91 of the Southern Sandoval County Arroyo Flood Control Act" and "Sections 72-19-47 through 72-19-80 NMSA 1978" for "Sections 47 through 80 of that act".

72-19-90. Interim debentures not to be extended.

No interim debenture issued pursuant to the provisions of Section 89 [72-19-89 NMSA 1978] of the Southern Sandoval County Arroyo Flood Control Act shall be extended or funded except by the issuance or reissuance of a bond or bonds in compliance with Section 91 [72-19-91 NMSA 1978] of that act.

History: Laws 1990, ch. 14, § 90.

72-19-91. Funding.

For the purpose of funding any interim debenture or interim debentures, any bond or bonds pledged as collateral security to secure the payment of such interim debenture or interim debentures may be reissued without an election, and any bonds not previously issued but authorized to be issued at an election for a purpose the same as or encompassing the purpose for which the interim debentures were issued may be issued for such a funding. Any such bonds shall mature at such time as the board may determine, but in no event exceeding forty years from the date of either any of the interim debentures so funded or any of the bonds so pledged as collateral security, whichever date is the earlier. Bonds for funding, including but not necessarily limited to any such reissued bonds, and bonds for any other purpose or purposes authorized in the Southern Sandoval County Arroyo Flood Control Act [72-19-1 to 72-19-103 NMSA 1978] may be issued separately or issued in combination in one series or more. Except as otherwise provided in Sections 89 and 90 [72-19-89 and 72-19-90 NMSA 1978] of that act and in this section, any such funding bonds shall be issued as is provided for refunding bonds in Sections 81, 82, 84, 85, 87 and 88 [72-19-81, 72-19-82, 72-19-84, 72-19-85, 72-19-87 and 72-19-88 NMSA 1978] and provided for securities in Sections 47 through 80 [72-19-47 to 72-19-80 NMSA 1978] of that act.

History: Laws 1990, ch. 14, § 91.

72-19-92. Publication of resolution or proceedings.

In its discretion, the board may provide for the publication once in full of either any resolution or other proceedings adopted by the board ordering the issuance of any securities or, in the alternative, of notice thereof, which resolution, other proceedings or notice so published shall state the fact and date of such adoption and the place where such resolution or other proceedings have been filed for public inspection and also the date of the first publication of such resolution, other proceedings or notice and also state that any action or proceeding of any kind or nature in any court questioning the validity of the creation and establishment of the authority, or the validity or proper authorization of securities provided for by the resolution or other proceedings, or the validity of any covenants, agreements or contracts provided for by the resolution or other proceedings, shall be commenced within twenty days after the first publication of such resolution, other proceedings or notice.

History: Laws 1990, ch. 14, § 92.

72-19-93. Failure to contest legality constitutes bar.

If no such action or proceedings are commenced or instituted within twenty days after the first publication of such resolution, other proceedings or notice, then all residents and taxpayers and owners of property in the authority and all public bodies and all other persons whatsoever shall be forever barred and foreclosed from instituting or commencing any action or proceeding in any court or from pleading any defense to any action or proceedings questioning the validity of the creation and establishment of the authority, the validity or proper authorization of such securities or the validity of any such covenants, agreements or contracts. The securities, covenants, agreements and contracts shall be conclusively deemed to be valid and binding obligations in accordance with their terms and tenor.

History: Laws 1990, ch. 14, § 93.

72-19-94. Confirmation of contract proceedings.

In its discretion, the board may file a petition at any time in the district court in and for any county in which the authority is located wholly or in part, praying a judicial examination and determination of any power conferred or of any tax or rates or charges levied or of any act, proceeding or contract of the authority, whether or not the contract has been executed, including proposed contracts for the acquisition, improvement, equipment, maintenance, operation or disposal of any project for the authority. Such petition shall set forth the facts whereon the validity of such power, assessment, act, proceeding or contract is founded and shall be verified by the chairman of the board. Such action shall be in the nature of a proceeding in rem, and jurisdiction of all parties interested may be had by publication and posting as provided in the Southern Sandoval County Arroyo Flood Control Act [72-19-1 to 72-19-103 NMSA 1978]. Notice of the filing of the petition shall be given by the clerk of the court, under the seal thereof, stating in brief outline the contents of the petition and showing where a full copy of any contract therein mentioned may be examined. The notice shall be served by publication in at

least five consecutive issues of a weekly newspaper of general circulation published in the county in which the principal office of the authority is located, and by posting the same in the office of the authority at least thirty days prior to the date fixed in the notice for the hearing on the petition. Jurisdiction shall be complete after such publication and posting. Any owner of property in the authority or person interested in the contract or proposed contract or in the premises may appear and move to dismiss or answer the petition at any time prior to the date fixed for the hearing or within such further time as may be allowed by the court, and the petition shall be taken as confessed by all persons who fail so to appear.

History: Laws 1990, ch. 14, § 94.

72-19-95. Review and judgment of court.

The petition and notice shall be sufficient to give the court jurisdiction, and upon hearing the court shall examine into and determine all matters and things affecting the question submitted, shall make such findings with reference thereto and render such judgment and decree thereon as the case warrants. Costs may be divided or apportioned among any contesting parties in the discretion of the trial court. Review of the judgment of the court may be had as in other similar cases, except that such review shall be applied for within thirty days after the time of the rendition of such judgment or within such additional time as may be allowed by the court within thirty days. The rules of civil procedure shall govern in matters of pleading and practice where not otherwise specified in the Southern Sandoval County Arroyo Flood Control Act [72-19-1 to 72-19-103 NMSA 1978]. The court shall disregard any error, irregularity or omission which does not affect the substantial rights of the parties.

History: Laws 1990, ch. 14, § 95.

72-19-96. Purpose of tax exemptions.

The effectuation of the powers authorized in the Southern Sandoval County Arroyo Flood Control Act [72-19-1 to 72-19-103 NMSA 1978] shall and will be in all respects for the benefit of the people of the state, including but not necessarily limited to those residing in the authority exercising any power under that act, for the improvement of their health and living conditions and for the increase of their commerce and prosperity.

History: Laws 1990, ch. 14, § 96.

72-19-97. Property exempt from general taxes.

The authority shall not be required to pay any general (ad valorem) taxes upon any property appertaining to any project authorized in the Southern Sandoval County Arroyo Flood Control Act [72-19-1 to 72-19-103 NMSA 1978] and acquired within the state nor the authority's interest therein.

History: Laws 1990, ch. 14, § 97.

72-19-98. Securities and income therefrom exempt.

Securities issued under the Southern Sandoval County Arroyo Flood Control Act [72-19-1 to 72-19-103 NMSA 1978] and the income therefrom shall forever be and remain free and exempt from taxation by the state, the authority and any other public body, except transfer, inheritance and estate taxes.

History: Laws 1990, ch. 14, § 98.

72-19-99. Freedom from judicial process.

Execution or other judicial process shall not issue against any property of the authority authorized in the Southern Sandoval County Arroyo Flood Control Act [72-19-1 to 72-19-103 NMSA 1978], nor shall any judgment against the authority be a charge or lien upon its property.

History: Laws 1990, ch. 14, § 99.

72-19-100. Resort to judicial process.

Section 99 [72-19-99 NMSA 1978] of the Southern Sandoval County Arroyo Flood Control Act does not apply to or limit the right of the holder of any security, his trustee or any assignee of all or part of his interest, the federal government when it is a party to any contract with the authority, and any other obligee under that act to foreclose, otherwise to enforce, and to pursue any remedies for the enforcement of any pledge or lien given by the authority on the proceeds of taxes, service charges or other revenues.

History: Laws 1990, ch. 14, § 100.

72-19-101. Legal investments in securities.

It shall be legal for the state and any of its agencies, departments, instrumentalities, corporations or political subdivisions or any political or public corporation, any bank, trust company, banker, savings bank or institution, any building and loan association, savings and loan association, investment company and any other person carrying on a banking or investment business, any insurance company, insurance association or any other person carrying on an insurance business and any executor, administrator, curator, trustee or any other fiduciary to invest funds or money in their custody in any of the securities authorized to be issued pursuant to the provisions of the Southern Sandoval County Arroyo Flood Control Act [72-19-1 to 72-19-103 NMSA 1978]. Such securities shall be authorized security for all public deposits. Nothing contained in this section with regard to legal investments shall be construed as relieving any public body or other person of any duty of exercising reasonable care in selecting securities.

History: Laws 1990, ch. 14, § 101.

72-19-102. Civil rights.

The authority damaged by any such act may also bring a civil action for damages sustained by any such act, and in such proceeding the prevailing party shall also be entitled to reasonable attorneys' fees and costs of court.

History: Laws 1990, ch. 14, § 102.

72-19-103. Liberal construction.

The Southern Sandoval County Arroyo Flood Control Act [72-19-1 to 72-19-103 NMSA 1978], being necessary to secure and preserve the public health, safety and general welfare, the rule of strict consideration shall have no application to that act, but it shall be liberally construed to effect the purposes and objects for which that act is intended.

History: Laws 1990, ch. 14, § 103.