

1 SENATE BILL 77

2 **51ST LEGISLATURE - STATE OF NEW MEXICO - SECOND SESSION, 2014**

3 INTRODUCED BY

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10 AN ACT

11 RELATING TO WATER; REQUIRING ADDITIONAL PROCEDURES IN THE
12 APPLICATION PROCESS FOR THE DIVERSION AND USE OF WATER FROM THE
13 BASIN OF ORIGIN FOR USE OUTSIDE THE BASIN OF ORIGIN; PROVIDING
14 FOR EXCEPTIONS.

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

17 SECTION 1. [NEW MATERIAL] APPLICATION FOR INTER-BASIN
18 TRANSFER OF WATER.--

19 A. Any person or other entity intending to withdraw
20 water from any surface or underground water source and
21 transport it for use outside the basin of origin shall apply to
22 the state engineer for a permit to do so in addition to
23 fulfilling all other permit application requirements of
24 Articles 5 and 12 of Chapter 72 NMSA 1978.

25 B. Before approving an application submitted

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1 pursuant to the provisions of Subsection A of this section, the
2 state engineer shall conduct a comprehensive review of the
3 information required by Subsection C of this section, at the
4 applicant's expense, and find that the applicant's proposed use
5 of water outside the basin of origin will not impair existing
6 water rights in either the basin of origin or the receiving
7 basin, is not contrary to the conservation of water within the
8 state and is not otherwise detrimental to the public welfare of
9 the state.

10 C. In acting upon an application submitted pursuant
11 to the provisions of Subsection A of this section, the state
12 engineer shall consider, but not be limited to, the following
13 factors:

14 (1) the amount of water in the basin of origin
15 available for future appropriation;

16 (2) present and reasonably foreseeable
17 projected future needs for water in the basin of origin and the
18 receiving basin;

19 (3) benefits presently and prospectively
20 derived from the return flow of water used within the basin of
21 origin that will be eliminated by the proposed out-of-basin
22 use;

23 (4) the correlation between surface water and
24 ground water in the basin of origin, and whether the proposed
25 use will be harmful to the supply of either;

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1 (5) interference with planned uses or
2 developments within the basin of origin for which a permit has
3 been issued or for which an application is pending;

4 (6) whether the proposed use will adversely
5 affect the quantity or quality of water available for domestic,
6 agricultural, environmental, public recreational or municipal
7 uses within either the basin of origin or the receiving basin;

8 (7) whether the proposed transfer will unduly
9 limit the future growth and development in the basin from which
10 the water is exported;

11 (8) the practicable availability of
12 alternative sources of water for the proposed use that would
13 not rely on transfer of water out of its basin of origin;

14 (9) whether the entity in the receiving basin
15 has prepared and implemented a drought contingency plan and an
16 approved water conservation plan;

17 (10) whether all funding necessary for the
18 withdrawal and transportation of water to the receiving basin
19 has been secured and guaranteed by the applicant; and

20 (11) whether the source of supply can reliably
21 sustain the diversion's anticipated firm yield considering the
22 predicted effects of climate change on precipitation patterns
23 and temperature in the basin of origin.

24 D. This section shall apply only to an application
25 filed on or after July 1, 2014.

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1 E. This section shall not apply to an application
2 for the inter-basin transfer of less than one thousand acre-
3 feet of water per year.

4 F. Diversions in excess of seven thousand acre-feet
5 per year shall require the express consent of the legislature.
6 The legislature may require such terms, conditions, exceptions,
7 reservations, restrictions and provisions in an inter-basin
8 permit as is reasonable to protect the natural resources in the
9 basin of origin and the health and welfare of the present and
10 future residents of the basin of origin.

11 G. This section shall not apply to:

12 (1) an appropriation or diversion by a
13 municipality to facilitate regional municipal water service if
14 the municipality has historically transported water between the
15 basin of origin and the proposed receiving basin identified in
16 the application; or

17 (2) an inter-basin diversion project that is
18 authorized and approved and for which construction began or was
19 completed on or before January 1, 2014.