

# SANTA FE COUNTY

## Resolution No. 2006 - 6

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### A Resolution Supporting Legislation for Enacting the Land, Wildlife and Clean Energy Act During the 2006 Legislative Session

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**WHEREAS**, Santa Fe County has a strong interest in the preservation of open space and natural areas within the County; and

**WHEREAS**, developing a coordinated open space program positively impacts the health of County residents; and

**WHEREAS**, the natural environment will protect and enhance the quality of life for County residents and provide opportunities for economic development; and

**WHEREAS**, Santa Fe County has demonstrated support for other efforts to protect and preserve natural areas through the initiation of the Open Space and Trails Program in 1998 with support from the public to create a network of cultural, historical, recreational and natural open spaces and trails throughout the County; and

**WHEREAS**, the Santa Fe County Open Space and Trails Program focuses on achieving the goals outlined in the Open Land and Trails Plan to benefit current and future generations by preserving historic and natural areas, mountains and foothills, arroyos and river parkways, sacred sites, agricultural land, trails, desert habitats and neighborhood parks; and

**WHEREAS**, the State of New Mexico is anticipating an increase of nearly \$1 Billion in oil royalty payments which would normally be available for appropriation by the Legislature during the 2006 legislative session; and

**WHEREAS**, House Bill 188, titled the Land, Wildlife and Clean Energy Act, sponsored by Representative Ken Martinez has been introduced in the 2006 legislative session; and

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A Resolution Supporting Legislation for Enacting the Land, Wildlife and Clean Energy Act During the 2006 Legislative Session

WHEREAS, the Land, Wildlife and Clean Energy Act would establish a dedicated, annual state revenue source for conservation programs to which counties may apply for grants in order to conserve and acquire land, water and water rights to treat, preserve, restore or enhance wildlife habitat, natural areas, outdoor recreation areas and trails, forests or working farms and ranches;

NOW THEREFORE BE IT RESOLVED, that the Board of County Commissioners of Santa Fe County adopts the following:

The Santa Fe Board of County Commissioners endorses HB 188 titled "The Land, Wildlife, and Clean Energy Act" introduced during the 2006 state legislative session; and

The Santa Fe Board of County Commissioners hereby authorizes County staff to do all acts necessary to support the legislation including submitting a letter endorsing the legislation to the Governor and the New Mexico Association of Counties, and to include this bill on the County's legislative agenda for the 2006 session.

PASSED, APPROVED and ADOPTED this 31<sup>th</sup> DAY OF JANUARY, 2006.

BOARD OF COUNTY COMMISSIONERS

*[Signature]*  
\_\_\_\_\_  
Harry B. Montoya, Chairman



ATTEST:  
*[Signature]*  
\_\_\_\_\_  
Valerie Espinoza, Santa Fe County Clerk

APPROVED AS TO FORM:

*[Signature]*  
\_\_\_\_\_  
Stephen C. Ross, Santa Fe County Attorney

COUNTY OF SANTA FE )  
STATE OF NEW MEXICO ) ss  
BCC RESOLUTIONS  
PAGES: 17  
I Hereby Certify That This Instrument Was Filed for  
Record On The 6TH Day Of February, A.D. , 2006 at 09 02  
And Was Duly Recorded as Instrument # 1418957  
Of The Records Of Santa Fe County  
Witness My Hand And Seal Of Office  
Valerie Espinoza  
County Clerk, Santa Fe, NM  
*[Signature]*  
Deputy

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HOUSE BILL 188

47TH LEGISLATURE - STATE OF NEW MEXICO - SECOND SESSION, 2006

INTRODUCED BY

W. Ken Martinez

AN ACT

RELATING TO CONSERVATION; ENACTING THE LAND, WILDLIFE AND CLEAN ENERGY ACT; PROVIDING FOR DISTRIBUTION OF PROCEEDS FROM THE OIL AND GAS CONSERVATION TAX; CREATING A BOARD; CREATING FUNDS; AUTHORIZING THE ISSUANCE OF BONDS; MAKING AN APPROPRIATION.

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

Section 1. [NEW MATERIAL] SHORT TITLE.--Sections 1 through 10 of this act may cited as the "Land, Wildlife and Clean Energy Act".

Section 2. [NEW MATERIAL] DEFINITIONS.--As used in the Land, Wildlife and Clean Energy Act:

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

B. "board" means the land, wildlife and clean energy board;

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1 C. "clean energy development project" means a  
2 project that increases:

- 3 (1) energy efficiency;  
4 (2) the conservation of energy; or  
5 (3) the production of energy using biomass,  
6 geothermal, hydrogen, solar or wind power;

7 D. "conservation project" means acquisition of  
8 land, water and water rights, or interests in land, water and  
9 water rights to treat, preserve, restore or enhance wildlife  
10 habitat, natural areas, outdoor recreation areas and trails,  
11 forests or working farms and ranches; "conservation project"  
12 also means a wildlife management project;

13 E. "department" means the energy, minerals and  
14 natural resources department;

15 F. "director" means the director of the board;

16 G. "public or private conservation agency" means a  
17 governmental body or a private not-for-profit charitable  
18 corporation or trust authorized to do business in New Mexico  
19 that is organized and operated for natural resources or land  
20 conservation purposes and that has tax-exempt status as a  
21 public charity under the federal Internal Revenue Code of 1986,  
22 and the power to acquire, hold or maintain land or interests in  
23 land;

24 H. "public or private clean energy agency" means a  
25 governmental body or a private not-for-profit charitable

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1 corporation or trust authorized to do business in New Mexico  
2 that is organized and operated to promote clean energy  
3 development and that has tax-exempt status under the federal  
4 Internal Revenue Code of 1986; and

5 I. "qualified entity" means a state agency,  
6 political subdivision of the state, federally recognized Indian  
7 nation, tribe or pueblo, or a consortium of Indian nations,  
8 tribes or pueblos, located wholly or partially within New  
9 Mexico, school district, state educational institution named in  
10 Article 12, Section 11 of the constitution of New Mexico and a  
11 public or private conservation or clean energy development  
12 agency.

13 Section 3. [NEW MATERIAL] LAND, WILDLIFE AND CLEAN ENERGY  
14 BOARD CREATED--APPOINTMENTS--TERMS.--

15 A. The "land, wildlife and clean energy board" is  
16 created and is administratively attached to the department.

17 B. The board consists of nine members as follows:

18 (1) the secretary of energy, minerals and  
19 natural resources or the secretary's designee;

20 (2) the director of the New Mexico department  
21 of agriculture or the director's representative;

22 (3) the director of the department of game and  
23 fish or the director's designee; and

24 (4) six public members appointed by the  
25 governor with the advice and consent of the senate, with one

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1 representative each having expertise in the following:

- 2 (a) wind and solar energy;
- 3 (b) energy conservation and efficiency;
- 4 (c) agriculture and ranching;
- 5 (d) municipalities and counties;
- 6 (e) natural area protection; and
- 7 (f) wildlife management and

8 conservation.

9 C. Appointed members of the board shall serve  
10 staggered terms of four years; provided that at the time of  
11 making the first appointments, the governor shall designate  
12 one-half of the appointed board members' first terms as being  
13 two years and one-half of the members' first terms as being for  
14 four years so that the term of no more than three appointed  
15 members' terms will expire at the same time. The governor  
16 shall appoint the chair of the board. A vacancy on the board  
17 shall be filled for the remainder of the term of that  
18 appointee. Appointed members of the board shall receive  
19 reimbursement for expenses incurred in the performance of their  
20 duties pursuant to the Per Diem and Mileage Act and shall  
21 receive no other compensation, perquisite or allowance.

22 Section 4. [NEW MATERIAL] LAND, WILDLIFE AND CLEAN ENERGY  
23 BOARD--POWERS--DUTIES.--

24 A. The board shall employ a director, who shall  
25 hire personnel and contract for services necessary to carry out

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1 the purposes of the Land, Wildlife and Clean Energy Act. The  
2 director shall develop and implement plans and a budget as  
3 directed by the board. The department shall be reimbursed for  
4 costs incurred for any administrative support provided to the  
5 board and the director. The board shall have an independent  
6 audit of the board's finances conducted annually.

7 B. The board shall promulgate rules for  
8 environmental assessment and certification of eligible projects  
9 to be funded pursuant to the Land, Wildlife and Clean Energy  
10 Act.

11 C. The board may fund projects that:

12 (1) maintain an appropriate balance in the  
13 funding of conservation projects and clean energy development  
14 projects over time;

15 (2) directly protect or conserve land or  
16 wildlife or increase clean energy development;

17 (3) support the maintenance of private  
18 ownership of working farms and ranches;

19 (4) assist private landowners in conservation  
20 of land and wildlife;

21 (5) will directly receive financial or in-kind  
22 support from existing or new programs to protect open space and  
23 habitat, provide for recreational opportunities or increase  
24 clean energy development;

25 (6) conserve land and water in association

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1 with ecosystem or natural area protection or habitat  
2 enhancement;

3 (7) leverage other public or private  
4 investment in land, wildlife and clean energy development  
5 projects, including allowing local governments to match funding  
6 by adopting open space and agriculture protection policies;

7 (8) improve public access to land, water,  
8 wildlife and open space and recreation opportunities; or

9 (9) are carried out through the acquisition of  
10 land or water as necessary to comply with the law, but with a  
11 preference for leaving land and water in private ownership  
12 subject to easements that will ensure proper project management  
13 or public use while protecting private property rights.

14 D. The board may:

15 (1) administer the land, wildlife and clean  
16 energy fund and make grants and loans from the fund for the  
17 purposes authorized by the Land, Wildlife and Clean Energy Act;

18 (2) acquire and manage, or assign management  
19 of, whole or partial interests in land and water, including  
20 easements;

21 (3) make grants or loans to or otherwise  
22 contract with qualified entities for qualified conservation  
23 projects and clean energy development projects;

24 (4) fund wildlife management projects;

25 (5) promulgate rules for the management of

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1 programs and projects;

2 (6) request the authority to issue  
3 conservation bonds or clean energy bonds to finance eligible  
4 conservation projects or clean energy development projects;

5 (7) pledge to the conservation and clean  
6 energy bonding fund revenue from the oil and gas conservation  
7 tax distributed to the land, wildlife and clean energy fund  
8 pursuant to Section 7-1-6.21 NMSA 1978 as necessary;

9 (8) apply for, accept and expend funds from  
10 private and public sources; and

11 (9) enter into contracts or agreements with  
12 qualified entities as necessary to achieve the purposes of the  
13 Land, Wildlife and Clean Energy Act.

14 E. The board shall meet at least quarterly, review  
15 proposed conservation projects and clean energy development  
16 projects and, in consultation with the director, select those  
17 projects to be financed with money from the land, wildlife and  
18 clean energy fund or with the proceeds of bonds issued by the  
19 authority for those purposes.

20 F. The board shall issue an annual report to the  
21 legislature and the governor that includes:

22 (1) a list and description of each project  
23 funded that year and the status of any other ongoing projects;

24 (2) a summary of the board's revenues and  
25 expenses, including a combined balance sheet and statement of

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1 revenue, expenditures and changes in fund balances;

2 (3) the independent auditor's report or  
3 letter;

4 (4) a summary of the board's five-year  
5 strategy for carrying out the purposes of the Land, Wildlife  
6 and Clean Energy Act; and

7 (5) information on how qualified entities may  
8 apply for funding of eligible projects.

9 Section 5. [NEW MATERIAL] CONSERVATION PROJECTS--  
10 LIMITATIONS.--

11 A. Land, water or water rights shall not be  
12 acquired with money from the land, wildlife and clean energy  
13 fund or proceeds from bonds issued pursuant to the Land,  
14 Wildlife and Clean Energy Act through condemnation or the  
15 exercise of the power of eminent domain.

16 B. Money in the land, wildlife and clean energy  
17 fund shall not be used to acquire water or water rights that:

18 (1) are served by or owned by an acequia or  
19 community ditch established pursuant to Chapter 73, Article 2  
20 or 3 NMSA 1978;

21 (2) are served by an irrigation district  
22 established pursuant to Chapter 73, Article 10 NMSA 1978,  
23 except through contractual arrangement with the district board  
24 of directors or as a special water users association  
25 established pursuant to Chapter 73, Article 10 NMSA 1978;

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1 (3) are not purchased or leased from willing  
2 sellers or lessors;

3 (4) will result in an increase in net  
4 depletions in the affected river reach or that will create  
5 cumulative adverse impacts on existing water users or delivery  
6 systems;

7 (5) cost more than the appraised market value  
8 to purchase or lease based upon the best available information  
9 and considering the seniority and the consistent, historic  
10 beneficial use of the water or water rights;

11 (6) do not have sufficient seniority and  
12 consistent, historic beneficial use to effectively contribute  
13 to the purposes of the Land, Wildlife and Clean Energy Act;

14 (7) have not been subject to approval by the  
15 state engineer or do not comply with all state engineer rules  
16 governing surface and ground water transfer applications; and

17 (8) will not remain in their river reach or  
18 ground water basin of origin.

19 C. A conservation project that includes the  
20 purchase of land or an interest in land with a public or  
21 private conservation agency shall require that title to the  
22 land or interest in land be held by the state or by the public  
23 or private conservation agency and the state as cotenants with  
24 an undivided interest in the land or interest in the land. If  
25 the public or private conservation agency fails to perform its

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1 management, monitoring or enforcement duties as they relate to  
2 a conservation project, the ownership interest of any land or  
3 interest in land purchased with state funds for that project  
4 shall revert to the state.

5 Section 6. [NEW MATERIAL] LAND, WILDLIFE AND CLEAN ENERGY  
6 FUND--CREATION--USE.--

7 A. The "land, wildlife and clean energy fund" is  
8 created in the state treasury and shall consist of oil and gas  
9 conservation tax revenues distributed to the fund by law;  
10 appropriations made to the fund; gifts, grants and donations;  
11 other revenue credited to the fund; and income from investment  
12 of the fund. Balances in the fund at the end of any fiscal  
13 year shall not revert to the general fund. The fund shall be  
14 administered by the board.

15 B. Money in the land, wildlife and clean energy  
16 fund, except for money from the oil and gas conservation tax  
17 distributed to the fund pursuant to Section 7-1-6.21 NMSA 1978  
18 that is pledged to the conservation and clean energy bonding  
19 fund for the retirement of conservation bonds or clean energy  
20 bonds, is appropriated to the board to make loans or grants to,  
21 or otherwise contract with, qualified entities for conservation  
22 projects and clean energy development projects as authorized by  
23 the Land, Wildlife and Clean Energy Act and to carry out the  
24 purposes of that act.

25 Section 7. [NEW MATERIAL] CONSERVATION AND CLEAN ENERGY  
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1 BONDING FUND--CREATED--PLEDGE OF MONEY IN THE FUND.--

2 A. The "conservation and clean energy bonding fund"  
3 is created as a special fund within the authority. The fund  
4 shall be administered by the authority as a special account.  
5 Earnings of the fund shall be credited to the fund. Any  
6 unexpended or unencumbered balance in the fund at the end of a  
7 fiscal year shall remain in the fund.

8 B. Money in the conservation and clean energy  
9 bonding fund shall be pledged irrevocably by the authority for  
10 the payment of principal and interest on conservation bonds and  
11 clean energy bonds issued pursuant to the Land, Wildlife and  
12 Clean Energy Act. Money in the fund is appropriated to the  
13 authority for the purpose of paying debt service, including  
14 redemption premiums, on the bonds and the expenses incurred in  
15 the issuance, payment and administration of the bonds.

16 C. On the last day of January and July of each  
17 year, the authority shall estimate the amount needed to make  
18 debt service payments on the bonds issued pursuant to the Land,  
19 Wildlife and Clean Energy Act plus the amount that may be  
20 needed for any required reserves, administrative expenses or  
21 the obligations coming due during the next twelve months from  
22 the conservation and clean energy bonding fund.

23 D. The bonds issued pursuant to the Land, Wildlife  
24 and Clean Energy Act shall be payable solely from the  
25 conservation and clean energy bonding fund or such other

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1 special funds as may be provided by law and do not create an  
2 obligation or indebtedness of the state within the meaning of  
3 any constitutional provision. A breach of any contractual  
4 obligation incurred pursuant to the Land, Wildlife and Clean  
5 Energy Act shall not impose a pecuniary liability or a charge  
6 upon the general credit or taxing power of the state, and the  
7 bonds are not general obligations for which the state's full  
8 faith and credit is pledged.

9 E. The state pledges that the conservation and  
10 clean energy bonding fund shall be used only for the purposes  
11 specified in this section and shall first be pledged to pay the  
12 debt service on the bonds issued pursuant to the Land, Wildlife  
13 and Clean Energy Act. The state further pledges that any law  
14 authorizing the distribution of taxes or other revenues to the  
15 fund or authorizing expenditures from the fund shall not be  
16 amended or repealed or otherwise modified so as to impair the  
17 bonds to which the fund is dedicated as provided in this  
18 section.

19 Section 8. [NEW MATERIAL] CONSERVATION BONDS AND CLEAN  
20 ENERGY BONDS AUTHORIZED.--

21 A. The authority is authorized to issue and sell  
22 from time to time bonds, known as "conservation bonds" or  
23 "clean energy bonds" in compliance with the Land, Wildlife and  
24 Clean Energy Act and the New Mexico Finance Authority Act for  
25 the purpose of financing conservation projects or clean energy

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1 development projects when the board has certified the need for  
2 the bonds.

3 B. The net proceeds from the bonds are appropriated  
4 to the board for the purpose of financing conservation projects  
5 and clean energy development projects authorized pursuant to  
6 the Land, Wildlife and Clean Energy Act.

7 C. Each series of bonds shall be issued pursuant to  
8 the provisions of the New Mexico Finance Authority Act, except  
9 as otherwise provided in the Land, Wildlife and Clean Energy  
10 Act.

11 Section 9. [NEW MATERIAL] LAND, WILDLIFE AND CLEAN ENERGY  
12 ACT IS FULL AUTHORITY FOR ISSUANCE OF BONDS--BONDS ARE LEGAL  
13 INVESTMENTS.--

14 A. The Land, Wildlife and Clean Energy Act and the  
15 New Mexico Finance Authority Act shall, without reference to  
16 any other act of the legislature, be full authority for the  
17 issuance and sale of conservation bonds and clean energy bonds,  
18 which bonds shall have all the qualities of investment  
19 securities under the Uniform Commercial Code and shall not be  
20 invalid for any irregularity or defect or be contestable in the  
21 hands of bona fide purchasers or holders thereof for value.

22 B. Conservation bonds and clean energy bonds are  
23 legal investments for any person or board charged with the  
24 investment of any public funds and are acceptable as security  
25 for any deposit of public money.

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1           Section 10. [NEW MATERIAL] BONDS TAX-EXEMPT.--All  
2 conservation bonds and clean energy bonds shall be exempt from  
3 taxation by the state or any of its political subdivisions.

4           Section 11. Section 7-1-6.21 NMSA 1978 (being Laws 1985,  
5 Chapter 65, Section 7, as amended) is amended to read:

6           "7-1-6.21. DISTRIBUTION TO OIL AND GAS RECLAMATION FUND  
7 AND LAND, WILDLIFE AND CLEAN ENERGY FUND.--

8           A. With respect to any period for which the rate of  
9 the tax imposed by Section 7-30-4 NMSA 1978 is nineteen-  
10 hundredths percent, a distribution pursuant to Section 7-1-6.20  
11 NMSA 1978 shall be made to the oil and gas reclamation fund in  
12 the amount equal to two-nineteenths of the net receipts  
13 attributable to the tax imposed under the Oil and Gas  
14 Conservation Tax Act.

15           B. With respect to any period for which the rate of  
16 the tax imposed by Section 7-30-4 NMSA 1978 is eighteen-  
17 hundredths percent, a distribution pursuant to Section 7-1-6.20  
18 NMSA 1978 shall be made to the oil and gas reclamation fund in  
19 the amount equal to one-eighteenth of the net receipts  
20 attributable to the tax imposed under the Oil and Gas  
21 Conservation Tax Act.

22           C. A distribution pursuant to Section 7-1-6.20 NMSA  
23 1978 shall be made to the land, wildlife and clean energy fund  
24 in an amount equal to ten-nineteenths of the net receipts  
25 attributable to the tax imposed by the Oil and Gas Conservation

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Tax Act."

Section 12. EFFECTIVE DATE.--The effective date of the provisions of this act is July 1, 2006.

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