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LOWER RIO GRANDE

Public Water Works Authority

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2017 Proposed Revisions to NMSA 1978 73-26-1 – Draft Bill

- ✚ The bill will make two changes to the Lower Rio Grande Public Water Works Authority's founding legislation:
 1. Changes the requirement to combine & commingle water rights with merging entities from always mandatory to required only when the service area of the merging entity is contiguous with the LRGPWW's service area.
 2. Import a section from the Municipal Code to provide a procedure to follow when exercising the existing power to implement liens for unpaid water bills.
- ✚ The NM Office of the State Engineer provided the amendment language for the section pertaining to combine and commingle of water rights.
- ✚ The NM Administrative Office of the Courts has stated that the amendment pertaining to liens improves the existing statute, which is vague about placing and enforcing a lien.
- ✚ AOC also notes that these provisions do not enlarge the power of the LRGPWWA, but are consistent with lien authority granted to other incorporated water associations under the Municipal Code.
- ✚ The LRGPWWA is an independent public body and a political subdivision with no taxing authority. Revenue from water and wastewater service operations is its sole source of income.
- ✚ Included in this hand-out is a draft of the bill and the 2016 FIR (the bill was introduced, but not heard in 2016)

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1 DISCUSSION DRAFT FOR INTERIM COMMITTEE REVIEW

3 AN ACT

4 RELATING TO SPECIAL DISTRICTS; AMENDING A SECTION OF THE NMSA 1978;
5 PROVIDING THAT WATER RIGHTS MAY BE COMBINED OR COMMINGLED AMONG
6 MERGING COMPONENTS OF THE LOWER RIO GRANDE PUBLIC WATER WORKS
7 AUTHORITY; PROVIDING FOR UTILITY CHARGES OF THE LOWER RIO GRANDE PUBLIC
8 WATER WORKS AUTHORITY AS A LIEN AGAINST PROPERTY SERVED.

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

11 SECTION 1. Section 73-26-1 NMSA 1978 (being Laws 2009, Chapter 100, Section 1) is amended
12 to read:

13 "73-26-1. LOWER RIO GRANDE PUBLIC WATER WORKS AUTHORITY.--

14 A. The "Lower Rio Grande public water works authority" is created. The authority is a political
15 subdivision of the state and shall be an independent public body. The authority is composed of Berino
16 mutual domestic water consumers and mutual sewage works association, Desert Sands mutual domestic
17 water consumers association, La Mesa mutual domestic water consumers association, Mesquite mutual
18 domestic water consumers and mutual sewage works association and Vado mutual domestic water
19 consumers association, all serving unincorporated communities within Dona Ana county. The voting
20 community membership of the five founding entities have approved by resolution the development of the
21 authority.

22 B. The authority may adopt rules and resolutions, governance policies and procedures necessary
23 to exercise the powers conferred pursuant to this section.

24 C. All functions, appropriations, money, records and equipment and all personal property and real
25 property, including water rights, easements, permits and infrastructure, as well as all encumbrances, debts
26 and liabilities pertaining to or owned by the founding entities shall be transferred to the authority.

1 D. The authority's service area shall consist of the founding entities' existing place of use on file
2 with and approved by the state engineer and shall be filed in the public records of Dona Ana county. An
3 application shall be filed with the state engineer to combine and commingle water rights and to combine
4 the existing entities' place of use into the authority's service area. In the event that another entity elects to

5 merge into the authority, ~~the merger shall include the combining and commingling of water rights with~~
6 ~~the authority, and~~ the authority's service area shall be amended to include that entity's place of use and

7 shall be filed with the state engineer. The authority's initial service area and any subsequent amendments

8 to its service area shall be designated in a plat filed in the public records of Dona Ana county. If the
9 service area of the merging entity is contiguous with the service area of the authority, an application shall
10 be filed with the State Engineer to combine and commingle the water rights of the merging entity with the
11 water rights of the authority.

12 E. The authority may provide for water and wastewater services, road improvements for the
13 protection of the authority's infrastructure or renewable energy projects that are integral to the operation
14 and maintenance of the authority's facilities or any combination or parts thereof.

15 F. The authority shall exercise all powers allowed pursuant to law, including:

16 (1) regulating, supervising and operating the authority's facilities;

17 (2) establishing rates and imposing assessments, fees and charges and taking action
18 necessary for the enforcement thereof;

19 (3) assessing a standby charge for the privilege of connection into the authority's service
20 at some date in the future if the property line is within three hundred feet of the authority's service lines
21 and the property line is located within the boundaries of the authority. This section applies to new
22 connections after the enactment of this act;

23 (4) acquiring, from a willing seller only holding and using water rights in an amount
24 necessary to meet its reasonable needs not to exceed forty years pursuant to Section 72-1-9 NMSA 1978;

25 (5) shutting off, after notice, unauthorized connections, illegal connections or a
26 connection for which charges are delinquent in payment;

1 (6) entering into contracts for services with private entities, the state, municipalities,
2 counties and the federal government and other public bodies to further its public purposes;
3 (7) entering into joint powers agreements with other governmental entities;
4 (8) acquiring and disposing of real property, personal property and rights of way;
5 (9) condemning property pursuant to the Eminent Domain Code as the last resort and
6 only for the purposes of construction, maintenance and operations of the authority's infrastructure;
7 (10) hiring and retaining agents, employees and consultants, as needed; (11) adopting and
8 using a governmental seal;
9 (12) placing a lien on property for unpaid assessments, charges and fees and enforcing
10 the lien in a manner pursuant to [law] this section;
11 (13) suing and being sued and being a party to suits, actions and proceedings; and
12 (14) having and exercising all rights and powers necessary, incidental to or implied from
13 the specific powers granted in this section.

14 G. As a political subdivision of the state and a member-owned community water system, the
15 authority shall be subject to the:

16 (1) applicable rules and regulations of the department of environment, and in its
17 discretion the department may:

18 (a) conduct periodic reviews of the operation of the authority;
19 (b) require the authority to submit information to the department;
20 (c) upon department of environment discretion or upon a petition of twenty-five
21 percent of the members of the authority, conduct an investigation as it deems necessary to ensure the
22 authority's compliance with all applicable statutes, rules, regulations and reporting requirements; and
23 (d) after a hearing, set and collect rates and fees and use the same for the proper
24 operation and management of the authority;

25 (2) applicable rules and regulations of the department of finance and administration, local
26 government division and budget and finance bureau;

- (3) Open Meetings Act;
- (4) Inspection of Public Records Act;
- (5) Audit Act;
- (6) Procurement Code;
- (7) Governmental Conduct Act;
- (8) special election procedures pursuant to Chapter 1, Article 24 NMSA 1978;
- (9) Chapter 72 NMSA 1978; and
- (10) applicable rules and regulations of the state engineer.

H. The authority is a political subdivision of the state and a member-owned community water system and shall not be subject to the jurisdiction of the public regulation commission or the provisions of the Public Utility Act.

I. The authority may issue utility system revenue bonds and obligations for acquiring real and personal property needed for the utility system and for extending, enlarging, renovating, repairing or otherwise improving its facilities. The authority may issue revenue anticipation notes with maturities and terms to be approved by the board of directors of the authority. The authority may pledge irrevocably net revenues from the operation of the utility system for payment of the principal, premiums and interest on the bonds. The 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 forty years after the date of issuance;

(4) may be serial in form and maturity, 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; and

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

2 J. The authority's board of directors may adopt a resolution declaring the necessity for the
3 issuance of utility system revenue bonds or other obligations and may authorize the issuance of utility
4 system revenue bonds or other obligations by an affirmative vote of a majority of all members of the
5 authority's board of directors. Utility revenue bonds and the resolution authorizing their issuance shall be
6 subject to voter approval with oversight from the department of finance and administration and the New
7 Mexico finance authority. The bonds authorized by the authority and their income shall be exempt from
8 taxation by the state and its political subdivisions.

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

14 L. The authority shall be governed by a board of directors. The directors of the initial board shall
15 consist of five directors representing each of the founding entities. The directors of the initial board shall
16 serve until their successors are elected. After the terms of the initial directors are completed, the
17 succeeding board of directors shall be elected by districts from a minimum of five and a maximum of
18 seven electoral districts. Each director, at the time of election, shall reside within the electoral district of
19 the authority from which that member is elected. The boundaries and the number of electoral districts
20 shall be established by the initial board within two years of the creation of the authority. The board may in
21 its governance document provide for redistricting upon any change in the authority's boundary. The
22 elected board of directors shall serve staggered terms to be established in the governance document
23 developed by the initial board. Elections shall be conducted in accordance with the special election
24 procedures pursuant to Chapter 1, Article 24 NMSA 1978 and may be conducted by the Dona Ana county
25 elections bureau.

1 M. If the authority places a lien on property for nonpayment of money owed, the authority shall
2 file in the office of the county clerk a notice of lien, which shall include:

- 3 (1) identification of the outstanding debt to the authority;
4 (2) the fact that a lien is established;
5 (3) the general purpose of the lien;
6 (4) the name of the owner of the property against which the lien is established as
7 determined from the records of the county assessor;
8 (5) a description of the property against which the lien is established;
9 (6) the amount of the lien; and
10 (7) if the lien is for more than one period of time, the date for which the lien is
11 established.

12 N. A lien for multiple charges or assessments on a property owner may be included in the same
13 notice of lien, and it shall not be necessary to file separate liens against the separate properties. The lien
14 shall be attested in the name of the authority. The principal amount of any lien imposed for a charge or
15 assessment shall bear interest at the rate of twelve percent per year from the date of filing the notice of
16 lien unless otherwise provided by law.

17 O. After the filing of the notice of lien in the office of the county clerk, the authority shall have a
18 lien upon the property described in the notice of lien. The filing of the notice of lien shall be notice to all
19 the world of the existence of the lien and of the contents of the notice of lien. No such lien shall affect the
20 title or rights to or in any real estate, of any purchaser, mortgagee in good faith or judgment lien creditor,
21 without knowledge of the existence of such lien, unless the notice of lien is filed in accordance with this
22 section in the office of the county clerk of the county in which the real estate is situated. All authority
23 liens shall be first and prior liens on the property subject only to the lien of federal, state and county taxes.
24 The authority may release a lien against any specific property by:

- 25 (1) entering and signing a receipt of payment upon the notice of lien filed in the office of
26 the county clerk; or

1 (2) issuing a separate receipt that recites that payment of the lien with any accrued
2 interest and penalty has been made.

3 P. The authority may, in a single suit, foreclose the liens against all persons named in the notice
4 of liens or against the property if the owners are unknown. The complaint filed shall:

5 (1) expressly name each defendant, if known;

6 (2) describe the property against which the lien is established; and

7 (3) set forth the amount of the lien.

8 Q. The judgment or decree rendered in said cause shall be several against the named defendants
9 and against the several properties for the amounts decreed to be due by each. A lien against real estate
10 may be foreclosed in the same manner that mortgages or other liens against real estate are foreclosed with
11 like rights of redemption. In the foreclosure of any lien created by the authority, reasonable attorney fees
12 may be taxed by the court as part of the costs in favor of the prevailing party.

13 R. The authority shall prepare and sign a notice of foreclosure, which shall also bear the signature
14 and mailing address of an attorney representing the authority. The proceeds of the sale of the property by
15 the authority pursuant to a foreclosure sale on a lien shall be applied as follows:

16 (1) first, to the payment of costs in giving notice of the sale and of conducting the sale;

17 (2) second, to the indebtedness claimed under the lien and thence to ad valorem taxes and
18 other special assessments having a lien of the property that are coequal with the lien; and

19 (3) third, after all such costs, liens, assessments and taxes are paid, to the former owner,
20 mortgage holder or other parties having an interest in the tract or parcel, upon such person providing
21 satisfactory proof to the court of such interest and upon approval of the court.

22 ~~[M.]~~ S. As used in this section, "public water works authority" means a utility organized as a
23 political subdivision of the state for the purposes of constructing infrastructure and furnishing water and
24 wastewater services for domestic, commercial or industrial uses, road improvements for the protection of
25 the authority's infrastructure and renewable energy projects; and entering into agreements with other

- 1 entities for the provision of other services, including but not limited to water conservation and
- 2 reclamation, source water protection, drainage, flood control, solid waste, planning and zoning."

Fiscal impact reports (FIRs) are prepared by the Legislative Finance Committee (LFC) for standing finance committees of the NM Legislature. The LFC does not assume responsibility for the accuracy of these reports if they are used for other purposes.

Current and previously issued FIRs are available on the NM Legislative Website (www.nmlegis.gov) and may also be obtained from the LFC in Suite 101 of the State Capitol Building North.

FISCAL IMPACT REPORT

SPONSOR Cervantes **ORIGINAL DATE** 02/09/16 **LAST UPDATED** _____ **HB** _____

SHORT TITLE Lower Rio Grande Water Works Rights & Liens **SB** 120

ANALYST Daly

ESTIMATED ADDITIONAL OPERATING BUDGET IMPACT (dollars in thousands)

	FY16	FY17	FY18	3 Year Total Cost	Recurring or Nonrecurring	Fund Affected
Total		NFI				

(Parenthesis () Indicate Expenditure Decreases)

Duplicates HB 151.

SOURCES OF INFORMATION

LFC Files

Responses Received From

Office of the State Engineer (OSE)
Administrative Office of the Courts (AOC)
Attorney General's Office (AGO)
New Mexico Department of Agriculture (NMDA)

SUMMARY

Synopsis of Bill

Senate Bill 120 amends the statute that creates the Lower Rio Grande Public Water Authority (Authority) to:

- Clarify that only an entity merging with the Authority whose service area is contiguous with that of the Authority must combine and commingle its water rights with those of the Authority; and
- Establish a procedure for the filing and enforcement of liens for nonpayment of money owed which the Authority must follow, including provisions that:
 - Allow multiple charges or assessments against one property owner to be included in the same lien;
 - Declare authority liens to be first and prior liens on the property subject only to general state and county tax liens;
 - Provide methods for releasing a lien;

- Set out procedures for foreclosing on liens, including the right of redemption;
- Allow reasonable attorneys fees to be awarded to the prevailing party as part of the costs; and
- Prescribe the order of distribution of the proceeds of any foreclosure sale.

FISCAL IMPLICATIONS

No fiscal impact.

SIGNIFICANT ISSUES

SB 120 would change existing statute to clearly provide that the combining and commingling of water rights is required only when the service area of the merging entity is contiguous with the service area of the Authority. According to OSE, this change continues to allow the benefits of economies of scale and greater efficiencies for mergers even if the merging entity is not contiguous to the original Authority's service area (as with a noncontiguous entity whose water rights are in a different administrative basin and cannot be combined or commingled). Further, as OSE notes, these new provisions do not prohibit a non-contiguous merging entity and the Authority from applying to combine and commingle their water rights if both feel it is advantageous. OSE proposes an amendment (see below) to clarify that any combining and commingling of water rights can be accomplished only by application to and a permit issued by the State Engineer.

As to the provisions concerning the filing and enforcement of liens, AOC believes they improve the existing statute, which is vague about placing and enforcing a lien since it simply provides that the Authority has the right to place and enforce a lien "in a manner pursuant to law." It points out there are a number of ways to place and enforce a lien pursuant to law, such as for mechanic's liens, materialmen's liens, tax liens, and attorney charging liens, and that this bill clarifies the specific procedures for placing and foreclosing an Authority lien. These provisions do not enlarge the power of the Authority, but are consistent with lien authority granted to other incorporated water associations under the Municipal Code. See, for example, Section 3-28-16, NMSA 1978.

DUPLICATION

This bill duplicates HB 151.

OTHER SUBSTANTIVE ISSUES

AOC notes there is no impact on the water source (Mesilla Valley Basin and Lower Rio Grande), at least as to those provisions which establish procedures for collecting charges and assessments by the Authority. The Authority serves unincorporated communities (Berino, Desert Sands, La Mesa, Mesquite and Vado), located in largely rural areas in the southern part of Dona Ana county. This is an area that is largely agricultural: alfalfa, cotton, pecans, chile and other crops. The communities are small, usually between 200 to 1,200 residents. The water is used primarily for agriculture in this area.

AMENDMENTS

OSE recommends this amendment to clarify that any combining and commingling of water rights requires application to and a permit from the State Engineer:

On page 3, strike line 9 after the comma and strike lines 10 and 11 in their entirety and insert in lieu thereof “an application shall be filed with the State Engineer to combine and commingle the water rights of the merging entity with the water rights of the authority.”

WHAT WILL BE THE CONSEQUENCES OF NOT ENACTING THIS BILL

An entity that elects to merge with the Authority will continue to be required to combine and commingle its water rights with those of the Authority regardless of whether its service area is contiguous with the service area of the Authority.

MD/jle