

AN ACT

RELATING TO MUNICIPALITIES; PROHIBITING, IN CERTAIN CASES, THE POWERS OF MUNICIPALITIES TO CONDEMN WATER AND WATER RIGHTS.

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

Section 1. Section 3-27-1 NMSA 1978 (being Laws 1965, Chapter 300, Section 14-26-1) is amended to read:

"3-27-1. POTABLE--AUTHORITY TO ACQUIRE AND OPERATE WATER FACILITIES.--

A. A municipality, within and without the municipal boundary, may:

(1) acquire water facilities that may include but are not limited to:

- (a) wells, cisterns and reservoirs;
- (b) distribution pipes and ditches;
- (c) pumps;
- (d) rights of way;
- (e) water treatment plants; and
- (f) their necessary appurtenances; and

(2) use and supply water for:

- (a) sewer purposes;
- (b) private use; and
- (c) public use.

B. In acquiring private property pursuant to this section, a municipality may exercise the power of eminent

domain pursuant to procedures of the Eminent Domain Code and subject to any applicable provisions of Section 3-27-2 NMSA 1978."

Section 2. Section 3-27-2 NMSA 1978 (being Laws 1965, Chapter 300, Section 14-26-2, as amended) is amended to read:

"3-27-2. POTABLE--METHODS OF ACQUISITION--CONDEMNATION CONVEYANCES AUTHORIZED--LAND FOR APPURTENANCES--PUBLIC AND PRIVATE USE--COMPENSATION.--

A. Subject to the provisions of this section, municipalities within and without the municipal boundary may:

(1) acquire, contract for or condemn:

(a) springs;

(b) wells;

(c) water rights;

(d) other water supplies; and

(e) rights of way or other necessary

ownership for the acquisition of water facilities;

(2) acquire, maintain, contract for or condemn for use as a municipal utility privately owned water facilities used or to be used for the furnishing and supply of water to the municipality or its inhabitants; and

(3) change the place of diversion of any water to any place selected by the municipality in order to make the water available to the municipality.

B. Municipalities shall not condemn water sources

used by, water stored for use by or water rights owned or served by an acequia, community ditch, irrigation district, conservancy district or political subdivision of the state. The provisions of this subsection apply only to an acequia or community ditch formed before July 1, 2009.

C. For the purposes stated in Section 3-27-3 NMSA 1978, a municipality may take water from any stream, gulch or spring. If the taking of the water materially interferes with or impairs the vested right of any person to the creek, gulch or stream or to any milling or manufacturing on the creek, gulch or stream, the municipality shall obtain the consent of the person with the vested right or acquire the vested right by condemnation and make full compensation or satisfaction for all damages occasioned to the person, subject to the provisions set forth in Subsection B of this section.

D. Any person may lawfully convey to any municipality any water, water right and ditch right or any interest in any water, water right and ditch right held or claimed by the grantor. No change or use of the:

- (1) water;
- (2) water right;
- (3) place of diversion; or
- (4) purpose for which the water or water

right was originally acquired by the grantor, shall invalidate the right of the municipality to use the water or water right.

E. Proceedings to obtain any condemnation authorized in this section shall be in the manner provided by law.

F. At any time before or after commencement of a condemnation action authorized by Chapter 3, Article 27 NMSA 1978 to condemn any well, cistern, reservoir, distribution pipe or ditch, spring, stream, water or water right, the parties may agree to and carry out a compromise or settlement as to any matter. Within twenty days following the filing of the petition, the condemnee may elect to proceed through an arbitration process pursuant to the Uniform Arbitration Act by filing a written notice with the condemnor. The arbitrators may award an amount they find to be just compensation for the condemnation of the water or water rights. The arbitrators may decide that the interests of justice are not served by permitting the taking of the condemnee's water or water rights and may order that the arbitration be dismissed and that the property not be taken by the municipality. If the award of the arbitrators exceeds the amount offered by the condemnor pursuant to this subsection by more than one hundred fifteen percent, or if the arbitrators decide that no taking shall occur as permitted in this subsection, or if the arbitration is abandoned by the condemnor, then the arbitrators shall award reasonable and necessary arbitration expenses, including attorney fees, to the condemnee.

G. In any condemnation proceeding pursuant to this section, the entity shall have reasonably satisfied the following criteria prior to commencing any such proceeding:

(1) the entity has a requirement for water or water rights for public health or safety purposes; or

(2) the entity has a requirement for water or water rights for other purposes and:

(a) suitable water rights are unavailable for voluntary sale at up to one hundred twenty-five percent of appraised value;

(b) suitable water rights in the public domain are unavailable for purchase at up to one hundred twenty-five percent of appraised value;

(c) the entity has implemented a water conservation plan; and

(d) the acquisition and purpose is consistent with the regional water plan."

Section 3. Section 3-27-3 NMSA 1978 (being Laws 1965, Chapter 300, Section 14-26-3, as amended) is amended to read:

"3-27-3. POTABLE--JURISDICTION OVER WATER FACILITIES AND SOURCE.--

A. For the purpose of acquiring, maintaining, contracting for, condemning or protecting its water facilities and water from pollution, the jurisdiction of the municipality extends within and without its boundary to:

(1) all territory occupied by the water facilities;

(2) all reservoirs, streams and other sources supplying the reservoirs and streams; and

(3) five miles above the point from which the water is taken.

B. In exercising its jurisdiction to acquire, maintain, contract for or condemn and protect the water facilities, the municipality shall not act so as to physically isolate and make nonviable any portion of the water facilities, within or without the municipality. The municipality may adopt any ordinance and regulation necessary to carry out the power conferred by this section."