

1 SENATE BILL 274

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

3 INTRODUCED BY

4 Phil A. Griego

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10 AN ACT

11 RELATING TO SPECIAL DISTRICTS; ENACTING A SECTION OF THE NMSA
12 1978 TO PROVIDE FOR THE CREATION OF THE UPPER PECOS RIVER
13 PUBLIC WATER WORKS AUTHORITY; PROVIDING FOR POWERS AND DUTIES
14 OF THE AUTHORITY.

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

17 SECTION 1. A new section of Chapter 73 NMSA 1978 is
18 enacted to read:

19 "[NEW MATERIAL] UPPER PECOS RIVER PUBLIC WATER WORKS
20 AUTHORITY.--

21 A. The "upper Pecos river public water works
22 authority" is created. The authority is a political
23 subdivision of the state and shall be an independent public
24 body. The authority is composed of El Valle water alliance,
25 which is initially composed of the communities of Lower

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1 Colonias, San Juan, El Coruco, San Miguel del Bado, La Sacatosa
2 and Villanueva, all within San Miguel county.

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

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

12 D. The authority's service area shall consist of
13 the founding entities' existing places of use on file with and
14 approved by the state engineer and shall be filed in the public
15 records of San Miguel county. An application may be filed with
16 the state engineer to combine and commingle water rights and to
17 combine the existing entities' places of use into the
18 authority's service area. In the event that another entity
19 elects to merge into the authority, the merger may include the
20 combining and commingling of water rights with the authority,
21 and the authority's service area shall be amended to include
22 that entity's place of use and shall be filed with the state
23 engineer. The authority's initial service area and any
24 subsequent amendments to its service area shall be designated
25 in a plat filed in the public records of San Miguel county.

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1 E. The authority may provide for water and
2 wastewater services, for the protection of the authority's
3 infrastructure and for renewable energy projects that are
4 integral to the operation and maintenance of the authority's
5 facilities or any combination or parts thereof.

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

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

10 (2) establishing rates and imposing
11 assessments, fees and charges and taking action necessary for
12 the enforcement thereof;

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

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

24 (5) shutting off, after notice, unauthorized
25 connections, illegal connections or a connection for which

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1 charges are delinquent in payment;

2 (6) entering into contracts for services with
3 private entities, the state, municipalities, counties and the
4 federal government and other public bodies to further its
5 public purposes;

6 (7) entering into joint powers agreements with
7 other governmental entities;

8 (8) acquiring and disposing of real property,
9 personal property and rights of way;

10 (9) condemning property pursuant to the
11 Eminent Domain Code as the last resort and only for the
12 purposes of construction, maintenance and operations of the
13 authority's infrastructure;

14 (10) hiring and retaining agents, employees
15 and consultants, as needed;

16 (11) adopting and using a governmental seal;

17 (12) placing a lien on property for unpaid
18 assessments, charges and fees and enforcing the lien pursuant
19 to this section;

20 (13) suing and being sued and being a party to
21 suits, actions and proceedings; and

22 (14) having and exercising all rights and
23 powers necessary, incidental to or implied from the specific
24 powers granted in this subsection.

25 G. As a political subdivision of the state and a

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1 member-owned community water system, the authority shall be
2 subject to the:

3 (1) applicable rules and regulations of the
4 department of environment. The department may:

5 (a) conduct periodic reviews of the
6 operation of the authority;

7 (b) require the authority to submit
8 information to the department;

9 (c) upon its discretion or upon a
10 petition of twenty-five percent of the members of the
11 authority, conduct an investigation as it deems necessary to
12 ensure the authority's compliance with all applicable statutes,
13 rules, regulations and reporting requirements; and

14 (d) after a hearing, set and collect
15 rates and fees and use the same for the proper operation and
16 management of the authority;

17 (2) applicable rules and regulations of the
18 department of finance and administration and its local
19 government division, state budget division and board of finance
20 division;

21 (3) Open Meetings Act;

22 (4) Inspection of Public Records Act;

23 (5) Audit Act;

24 (6) Procurement Code;

25 (7) Governmental Conduct Act;

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1 (8) special election procedures pursuant to
2 Chapter 1, Article 24 NMSA 1978;

3 (9) Chapter 72 NMSA 1978; and

4 (10) applicable rules and regulations of the
5 state engineer.

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

10 I. The authority may issue utility system revenue
11 bonds and obligations for acquiring real and personal property
12 needed for the utility system and for extending, enlarging,
13 renovating, repairing or otherwise improving its facilities.
14 The authority may issue revenue anticipation notes with
15 maturities and terms to be approved by the board of directors
16 of the authority. The authority may pledge irrevocably net
17 revenues from the operation of the utility system for payment
18 of the principal, premiums and interest on the bonds. The
19 utility system revenue bonds:

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

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

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1 determined by the authority;

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

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

7 (5) shall be sold for cash at, above or below
8 par and at a price that results in a net effective interest
9 rate that does not exceed the maximum permitted by the Public
10 Securities Act; and

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

13 J. The authority's board of directors may adopt a
14 resolution declaring the necessity for the issuance of utility
15 system revenue bonds or other obligations and may authorize the
16 issuance of utility system revenue bonds or other obligations
17 by an affirmative vote of a majority of all members of the
18 authority's board of directors. Utility system revenue bonds
19 and the resolution authorizing their issuance shall be subject
20 to voter approval with oversight from the department of finance
21 and administration and the New Mexico finance authority. The
22 bonds authorized by the authority and their income shall be
23 exempt from taxation by the state and its political
24 subdivisions.

25 K. Except for the purpose of refunding previous

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1 utility system revenue bond issues, the authority shall not
2 sell utility system revenue bonds payable from pledged revenues
3 after the expiration of three years from the date of the
4 resolution authorizing their issuance. Any period of time
5 during which a utility system revenue bond is in litigation
6 shall not count toward the determination of the expiration date
7 of that issue.

8 L. The authority shall be governed by a board of
9 five directors. The directors of the initial board shall serve
10 until their successors are elected. After the terms of the
11 initial directors are completed, the succeeding board of
12 directors shall be elected by the inhabitants of the
13 communities that comprise the upper Pecos river public water
14 works authority. Each director, at the time of election, shall
15 reside within the authority. The elected board of directors
16 shall serve staggered terms to be established in the governance
17 document developed by the initial board. Elections shall be
18 conducted in accordance with the special election procedures
19 pursuant to Chapter 1, Article 24 NMSA 1978 and may be
20 conducted by the San Miguel county elections bureau.

21 M. If the authority places a lien on property for
22 nonpayment of money owed, the authority shall file in the
23 office of the county clerk a notice of lien that shall include:

24 (1) identification of the outstanding debt to
25 the authority;

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

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

19 O. After the filing of the notice of lien in the
20 office of the county clerk, the authority shall have a lien
21 upon the property described in the notice of lien. The filing
22 of the notice of lien shall be notice to all the world of the
23 existence of the lien and of the contents of the notice of
24 lien. No such lien shall affect the title or rights to or in
25 any real estate of any purchaser, mortgagee in good faith or

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1 judgment lien creditor, without knowledge of the existence of
2 such lien, unless the notice of lien is filed in accordance
3 with this section in the office of the county clerk of the
4 county in which the real estate is situated. All authority
5 liens shall be first and prior liens on the property subject
6 only to the lien of general state and county taxes. The
7 authority may release a lien against any specific property by:

8 (1) entering and signing a receipt of payment
9 upon the notice of lien filed in the office of the county
10 clerk; or

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

14 P. The authority may, in a single suit, foreclose
15 the liens against all persons named in the notice of liens or
16 against the property if the owners are unknown. The complaint
17 filed by the authority in the fourth judicial district court
18 shall:

- 19 (1) expressly name each defendant, if known;
20 (2) describe the property against which the
21 lien is established; and
22 (3) set forth the amount of the lien.

23 Q. The judgment or decree rendered in said cause
24 shall be several against the named defendants and against the
25 several properties for the amounts decreed to be due by each.

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1 A lien against real estate may be foreclosed in the same manner
2 that mortgages or other liens against real estate are
3 foreclosed with like rights of redemption. At the trial of any
4 case foreclosing any lien, the recitals of the lien or other
5 evidence of indebtedness shall be received in evidence as prima
6 facie true. In the foreclosure of any lien created by the
7 authority, reasonable attorney fees shall be taxed by the court
8 as part of the costs.

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

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

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

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

25 S. As used in this section, "public water works

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1 authority" means a utility organized as a political subdivision
2 of the state for the purposes of constructing infrastructure
3 and furnishing water and wastewater services for domestic,
4 commercial or industrial uses, for the protection of the
5 authority's infrastructure, for renewable energy projects and
6 for entering into agreements with other entities for the
7 provision of other services, including water conservation and
8 reclamation, source water protection, planning and zoning."

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