

AN ACT

RELATING TO SPECIAL DISTRICTS; CREATING THE EASTERN NEW MEXICO WATER UTILITY AUTHORITY; ESTABLISHING POWERS AND DUTIES; PROVIDING FOR BONDING AUTHORITY; TRANSFERRING THE ASSETS AND LIABILITIES OF THE EASTERN NEW MEXICO RURAL WATER AUTHORITY.

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

Section 1. SHORT TITLE.--This act may be cited as the "Eastern New Mexico Water Utility Authority Act".

Section 2. FINDINGS AND PURPOSE.--

A. The legislature finds that:

(1) consistent with the goals of the statewide water plan, water systems should be planned for and constructed on a regional basis, in that regional water systems are able to take advantage of economies of scale;

(2) the costs of designing, purchasing, constructing, rehabilitating, renovating, improving, equipping, furnishing, operating and maintaining regional water systems have increased to a level that local financial resources are inadequate to meet all of the costs and that federal funding is crucial to complete a large scale water supply project in eastern new Mexico; and

(3) a water utility authority is necessary in eastern New Mexico to provide an organized structure to work with state, local and federal agencies to complete a

water delivery system from the Ute Reservoir to local governments.

B. The purposes of the Eastern New Mexico Water Utility Authority Act are:

(1) to create a water utility authority to develop and construct a water delivery system based on a funding formula whereby up to seventy-five percent of the overall capital cost of the system is to be paid for by the federal government, fifteen percent is to be paid for by the state of New Mexico and ten percent is to be paid for by the local governments that have the power to appoint members to the board of the authority; and

(2) to create an authority that will deliver water to the local governments within the boundaries of the authority but that will not compete with local governments for rights to deliver water to ultimate end-users.

Section 3. DEFINITIONS.--As used in the Eastern New Mexico Water Utility Authority Act:

A. "authority" means the eastern New Mexico water utility authority; and

B. "board" means the board of directors of the authority.

Section 4. EASTERN NEW MEXICO WATER UTILITY AUTHORITY--CREATED.--

A. The "eastern New Mexico water utility

authority" is created coextensive with the boundaries of Curry and Roosevelt counties and the territory physically occupied by the water facilities of the authority to plan, design, develop, purchase, acquire, own, operate, establish, construct and maintain the eastern New Mexico rural water system pipelines and waterworks to supply water for domestic, commercial, non-irrigated agricultural and industrial purposes by any available means to persons within and without the boundaries of the authority.

B. The eastern New Mexico water utility authority is created for the benefit of the seven members of the eastern New Mexico rural water authority, including Curry county, the city of Clovis, the city of Portales, the city of Texico, the town of Melrose, the town of Elida and the village of Grady.

Section 5. BOARD--APPOINTMENT--TERMS.--

A. The board shall consist of seven members, each of whom shall reside within the boundaries of the authority, appointed as follows:

(1) three board members appointed by the Clovis city commission for a term of two years; provided, however, that two of the initial members shall be appointed for a term of one year for the purpose of having a staggered board;

(2) two board members appointed by the Portales city council for a term of two years; provided,

however, that one of the initial members shall be appointed for a term of one year for the purpose of having a staggered board;

(3) one board member appointed for a term of two years by the Curry county commission; and

(4) one board member appointed for a term of one year on a rotating basis and in the following order by:

(a) the Texico city council;

(b) the Melrose village council;

(c) the Elida village council; and

(d) the Grady village council.

B. A vacancy occurring by other than expiration of a term shall be filled in the same manner as the original appointment, but only for the unexpired term.

Section 6. BOARD--POWERS--DUTIES.--

A. All powers, privileges and duties vested in or imposed upon the authority shall be exercised and performed by the board; provided that the board may delegate its powers by resolution to an officer or agent of the board, with the exception of the following powers:

(1) adoption of board rules, policies and procedures;

(2) ratification of acquisition of property;

(3) initiation or continuation of legal

action, except that initiation and filing of liens for unpaid

rates and charges and suits for payment thereof and discontinuance of service for failure to pay such rates and charges may be delegated;

(4) establishment of fees, tolls, rates or charges; and

(5) issuance of revenue bonds.

B. Meetings of the board shall be held at the call of the chair or whenever three members shall so request in writing. A majority of members then serving constitutes a quorum for the transaction of any business. Except as provided in Subsection C of this section, the affirmative vote of at least a majority of a quorum present shall be necessary for any action to be taken by the board. A vacancy in the membership of the board shall not impair the right of a quorum to exercise all rights and perform all duties of the board.

C. The non-delegable powers and duties provided in Subsection A of this section shall only be effective upon resolution passed by a supermajority of five members of the board.

D. The board shall promulgate and adhere to rules, policies and procedures that govern its conduct.

E. A member of the board having a financial interest or possible interest in the outcome of any policy, decision or determination before the board shall be disqualified from voting on the issue. A member's status as a

ratepayer or customer of the authority shall not be deemed to constitute a financial interest or possible interest for the purposes of this section.

F. Subject to Subsections B through D of this section, the board may:

- (1) adopt bylaws;
- (2) fix the time and place of meetings and the method of providing notice of the meetings in accordance with the Open Meetings Act;
- (3) promulgate orders, resolutions, policies and rules necessary for the governance and management of the affairs of the authority and the execution of the powers vested in the authority;
- (4) maintain offices at a place as the board may designate;
- (5) employ a director who may employ and retain necessary staff;
- (6) establish user classifications;
- (7) fix and from time to time increase or decrease water rates, fees or other charges for water delivery or other related services or facilities operated or made available by the authority, subject to the following conditions:

(a) the rates, tolls or charges shall be uniform for all counties and municipalities that have the

power to appoint a member to the board;

(b) until paid, all rates, tolls or charges constitute a perpetual lien on and against the property served, and any such lien may be foreclosed in the same manner as provided by the laws of New Mexico for the foreclosure of real estate mortgages and shall not be subject to any limitations period, statutory or otherwise;

(c) the board shall prescribe and enforce rules by which properties shall be connected with and disconnected from the facilities of the authority, including payment plans to avoid discontinuing service to delinquent accounts;

(d) after giving reasonable notice, the board shall shut off or discontinue service for unauthorized connections, illegal connections or connections for which rates, tolls or other charges are delinquent in payment. The board may file suit in a court of competent jurisdiction to recover costs associated with an unauthorized, illegal or delinquent connection, including the cost of water delivered, charges for connection and disconnection, damages and attorney fees; and

(e) the provisions of Subparagraphs (b) and (c) of this paragraph are not applicable to counties and municipalities that have the power to appoint a member to the board; and

(8) adopt an operating budget that supports the full cost of operation, maintenance and replacement as established by an asset management plan and a rate-setting analysis. The operating budget shall be subject to the approval of the department of finance and administration.

Section 7. AUTHORITY--POWERS.--The authority is a body politic and corporate and a political subdivision of the state. The authority may:

- A. sue and be sued;
- B. enter into contracts;
- C. borrow money and issue revenue bonds;
- D. acquire, dispose of or encumber real and personal property and any interest in them, including leases, easements and water rights from a willing seller only;
- E. design, develop, construct, operate, maintain, purchase or contract for water systems and pipelines to connect systems and sources with the authority's customers;
- F. be allowed a water use planning period not to exceed forty years and may hold water rights based on a water development plan submitted to and approved by the state engineer the implementation of which shall not exceed forty years from the date of the application to change the place or purpose of use of an acquired water right;
- G. have and exercise the power of eminent domain for the limited purpose of this subsection, within the

boundaries of the authority and in Quay county and in the manner provided by law for the condemnation of private property as the last resort for public use with just compensation. The authority shall not acquire water rights through eminent domain. The authority shall not take any property unless it is necessary for rights of way and easements and for the use and placement of facilities and infrastructure elements, including pipelines, structures, pump stations and related appurtenances;

H. construct and maintain works and establish and maintain facilities across or along any public street or highway and through any vacant public lands that are the property of the state and construct works and establish and maintain facilities across any stream of water or watercourse, all in accordance with applicable state and federal permitting authority;

I. have and exercise all rights and powers necessary or incidental to or implied from the specific powers granted in this section. Such specific powers shall not be considered as a limitation upon any power necessary or appropriate to carry out the purposes and intent of the Eastern New Mexico Water Utility Authority Act; and

J. not have power or rights over any property, infrastructure or operations of a county or municipality that has the power to appoint a member to the board.

Section 8. ACCEPTANCE OF ASSETS AND LIABILITIES OF
EXISTING WATER SERVICE PROVIDERS--ACQUISITION OF WATER
RIGHTS.--

A. The authority may accept a transfer of assets and liabilities upon the request, and following the legal dissolution, of an entity that is listed below or formed pursuant to one of the following statutes and that provides water service, subject to any other statutory requirements for such dissolution and transfer:

- (1) the Water and Sanitation District Act;
- (2) a water and natural gas association formed pursuant to Sections 3-28-1 through 3-28-22 NMSA 1978;
- (3) a water users' association formed pursuant to Sections 73-5-1 through 73-5-9 NMSA 1978;
- (4) the Nonprofit Corporation Act;
- (5) the Public Improvement District Act;
- (6) a corporation formed pursuant to Sections 62-2-1 through 62-2-22 NMSA 1978, the Business Corporation Act or the Cooperative Association Act; or
- (7) an association or mutual domestic water consumers association organized pursuant to Laws 1947, Chapter 206, Laws 1949, Chapter 79 or Laws 1951, Chapter 52, as well as any association organized under the provisions of the Sanitary Projects Act.

B. Upon the transfer of the assets and liabilities HB 15
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of an entity listed in Subsection A of this section to the authority, the area within the boundaries of the authority serviced by the dissolved entity shall become part of the authority's service area.

C. When a water right is included in the assets and liabilities of an entity listed in Subsection A of this section that are transferred to the authority, or upon the acquisition of a water right by the authority, the authority shall file a change of ownership form with the state engineer and shall apply to the state engineer to combine and commingle the transferred or acquired water right with the authority's existing water rights and contract rights to water.

Section 9. REVENUE BONDS--AUTHORITY TO ISSUE--PLEDGE OF REVENUES--LIMITATION ON TIME OF ISSUANCE.--

A. Revenue bonds may be issued by the authority:

(1) for acquiring real and personal property needed for an authority project, including the purchase of water rights;

(2) for constructing, extending, enlarging, bettering, repairing, equipping or otherwise improving a water project;

(3) for establishing or increasing reasonable reserve or sinking funds to secure the payment of the bonds;

(4) to pay costs of issuance of the bonds;

(5) to refund revenue bonds; or

(6) for any combination of those purposes.

B. The authority may pledge irrevocably any or all of the net revenues from the operation of its water system for payment of the interest on and principal of the revenue bonds.

C. Except for the purpose of refunding previous revenue bond issues, the authority shall not sell revenue bonds payable from pledged revenues after the expiration of two years from the date of the resolution authorizing the issuance of the bonds. However, any period of time during which a particular revenue bond issue is in litigation shall not be counted in determining the expiration date of that issue.

D. The authority shall not impair the rights of any holders of bonds or other obligations payable from the net revenues of the water system previously issued or incurred by the authority.

E. If required by the terms, covenants and provisions of revenue bonds or other obligations previously issued by the authority, all additional bonds or other obligations issued or incurred by the authority pursuant to the Eastern New Mexico Water Utility Authority Act shall contain any required terms, covenants or provisions necessary to avoid impairment of the previously issued or incurred bonds or other obligations.

Section 10. USE OF PROCEEDS OF REVENUE BOND ISSUE.--It is unlawful to divert, use or expend any money received from the issuance of revenue bonds for any purpose other than the purpose for which the revenue bonds were issued.

Section 11. REVENUE BONDS--TERMS.--Revenue bonds:

A. may have interest, appreciated principal value or any part thereof payable at intervals or at maturity as may be determined by the authority;

B. may be subject to prior redemption at the authority's option at such time or times and upon such terms and conditions with or without the payment of such premium or premiums as may be determined by the authority;

C. may mature at any time or times not exceeding forty years after the date of issuance;

D. may be serial in form and maturity or may consist of one bond payable at one time or in installments or may be in such other form as may be determined by the authority;

E. 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

F. may be sold at public or negotiated sale.

Section 12. EXEMPTION FROM TAXATION.--The bonds authorized by the Eastern New Mexico Water Utility Authority

Act and the income from the bonds shall be exempt from all taxation by the state or any political subdivision of the state.

Section 13. RESOLUTION AUTHORIZING REVENUE BONDS.--At a regular or special meeting called for the purpose of issuing revenue bonds, the board may, by an affirmative vote of a supermajority of five members of the board, adopt a resolution that authorizes the issuance of revenue bonds.

Section 14. REVENUE BONDS NOT GENERAL OBLIGATIONS-- AUTHENTICATION.--

A. Revenue bonds or refunding revenue bonds issued as authorized in the Eastern New Mexico Water Utility Authority Act are:

(1) not general obligations of the state or other political subdivision of the state; and

(2) collectible only from the pledged net revenues of the water system, and each bond shall state that it is payable solely from the pledged net revenues of the water system and that the bondholders shall not look to any other fund of the state or political subdivision of the state for the payment of the interest and principal of the bond.

B. The bonds shall be executed by the chairperson of the board and may be authenticated by the secretary of the board or any public or private transfer agent or registrar or its successor that shall be named or otherwise designated by

the board. The bonds may be executed as provided under the Uniform Facsimile Signature of Public Officials Act.

Section 15. REVENUE BONDS--MANDATORY RATES FOR THE WATER SYSTEM--MANDAMUS--IMPAIRMENT OF PAYMENT.--

A. The authority shall establish rates for services rendered by the water system to provide revenue sufficient to meet the following requirements, and such rates shall remain in effect until the bond issue is liquidated. Revenue shall be sufficient to:

(1) pay all reasonable expenses of operation of the water system;

(2) pay all interest on the water system revenue bonds as it comes due;

(3) provide a sinking fund adequate to discharge the revenue bonds as they mature; and

(4) provide a capital fund for system improvements and replacements.

B. In the event the authority fails or refuses to establish rates for the water system as required in this section, any bondholder may apply to the district court or courts within which jurisdiction the system is located for a mandatory order requiring the authority to establish rates that will provide revenues adequate to meet the requirements of this section.

C. Any law that authorizes the pledge of any or

all of the pledged water system net revenues to the payment of any revenue bonds issued pursuant to the Eastern New Mexico Water Utility Authority Act or that affects the pledged net revenues of the water system, or any law supplemental to or otherwise appertaining to that act, shall not be repealed or amended or otherwise directly or indirectly modified in such a manner as to impair adversely any such outstanding revenue bonds, unless the outstanding revenue bonds have been discharged in full or provision has been fully made for payment of the bonds.

Section 16. BONDS--REFUNDING AUTHORIZATION.--

A. At any regular or special meeting called for the purpose of issuing refunding bonds, the board by a supermajority of five members of the board may adopt a resolution authorizing the issuance of the refunding bonds.

B. The authority may issue refunding bonds for the purpose of refinancing, paying and discharging all or any part of outstanding bonds or other obligations payable from the net revenues of the water system previously issued or incurred by the authority.

C. The authority may pledge irrevocably for the payment of interest and principal on refunding bonds the pledged net revenues of the water system.

D. Bonds for refunding and bonds for any purpose permitted by the Eastern New Mexico Water Utility Authority

Act may be issued separately or issued in combination in one series or more.

Section 17. REFUNDING BONDS--TERMS.--Refunding bonds:

A. may have interest, appreciated principal value or any part thereof payable at intervals or at maturity as may be determined by the authority;

B. may be subject to prior redemption at the authority's option at such time or times and upon such terms and conditions with or without the payment of premium or premiums as may be determined by the authority;

C. may mature at any time or times not exceeding forty years after the date of issuance;

D. may be serial in form and maturity or may consist of a single bond payable in one or more installments or may be in such other form as may be determined by the authority; and

E. shall be exchanged for the bonds and any matured unpaid interest being refunded at not less than par or sold at public or negotiated sale 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.

Section 18. REFUNDING BONDS--ESCROW.--

A. Refunding bonds issued pursuant to the Eastern New Mexico Water Utility Authority Act shall be authorized by

resolution of the authority. Any bonds that are refunded under the provisions of this section shall be paid at maturity or on any permitted prior redemption date in the amounts, at the time and places and, if called prior to maturity, in accordance with any applicable notice provisions, all as provided in the proceedings authorizing the issuance of the refunded bonds or otherwise pertaining thereto, except for any such bond that is voluntarily surrendered for exchange or payment by the holder or owner.

B. Provision shall be made for paying the bonds refunded at the time provided in this section. The principal amount of the refunding bonds may exceed the principal amount of the refunded bonds and may also be less than or the same as the principal amount of the bonds being refunded; provided that provision is duly and sufficiently made for payment of the refunded bonds.

C. The proceeds of refunding bonds, including any accrued interest and premium pertaining to the sale of refunding bonds, shall either be immediately applied to the retirement of the bonds being refunded or be placed in escrow in a commercial bank or trust company that possesses and is exercising trust powers and that is a member of the federal deposit insurance corporation, to be applied to the payment of the principal of, interest on and any prior redemption premium due in connection with the bonds being refunded; provided that

such refunding bond proceeds, including any accrued interest and any premium pertaining to a sale of refunding bonds, may be applied to the establishment and maintenance of a reserve fund and to the payment of expenses incidental to the refunding and the issuance of the refunding bonds, the interest thereon, the principal thereof or both interest and principal as the authority may determine. Nothing in this section requires the establishment of an escrow if the refunded bonds become due and payable within one year from the date of the refunding bonds and if the amounts necessary to retire the refunded bonds within that time are deposited with the paying agent for the refunded bonds. Any such escrow shall not necessarily be limited to proceeds of refunding bonds but may include other money available for its purpose. Any proceeds in escrow pending such use may be invested or reinvested in bills, certificates of indebtedness, notes or bonds that are direct obligations of or the principal and interest of which obligations are unconditionally guaranteed by the United States or in certificates of deposit of banks that are members of the federal deposit insurance corporation. Such proceeds and investments in escrow, together with any interest or other income to be derived from any such investment, shall be in an amount at all times sufficient as to principal, interest, any prior redemption premium due and any charges of the escrow agent payable to pay the bonds being

refunded as they become due at their respective maturities or due at any designated prior redemption date in connection with which the authority shall exercise a prior redemption option. Any purchaser of any refunding bond issued under the Eastern New Mexico Water Utility Authority Act is in no manner responsible for the application of the proceeds by the authority or any of its officers, agents or employees.

D. Refunding bonds may bear such additional terms and provisions as may be determined by the authority subject to the limitations in this section.

Section 19. PUBLIC REGULATION COMMISSION AND STATE ENGINEER JURISDICTION.--

A. The authority is not subject to the jurisdiction of the public regulation commission or the terms and provisions of the Public Utility Act except as provided in Subsection B of this section.

B. The authority may elect by resolution adopted by its board to become subject to the jurisdiction of the public regulation commission and to the terms and provisions of the Public Utility Act; provided, however, that in no event shall Sections 62-9-1 through 62-9-7 NMSA 1978 apply to the authority when making such an election.

C. The authority shall be subject to the rules and regulations of the state engineer and the applicable articles of Chapter 72 NMSA 1978.

Section 20. TEMPORARY PROVISION.--All functions, appropriations, money, records, contracts, equipment and other real and personal property pertaining to the eastern New Mexico rural water authority shall be transferred to the eastern New Mexico water utility authority. Debts of the eastern New Mexico rural water authority shall be debts of the eastern New Mexico water utility authority. The eastern New Mexico water utility authority shall not impair the rights of any bondholders of outstanding bonds of the eastern New Mexico rural water authority. All contractual obligations of the eastern New Mexico rural water authority and the counties and municipalities that have the power to appoint a member to the board of directors of the eastern New Mexico water utility authority shall be binding on the eastern New Mexico water utility authority. The public regulation commission shall audit the eastern New Mexico rural water authority prior to the transfer of money, assets and debts to the eastern New Mexico water utility authority.

Section 21. EFFECTIVE DATE.--The effective date of the provisions of this act is July 1, 2010. _____