

**REVIEW OF STATUTES AUTHORIZING WATER OR WASTEWATER SYSTEMS IN NEW MEXICO
GENERAL POWERS AND AUTHORITIES**

Type of entity	Authorizing legislation	Water-related Purpose	Public or private entity	Political subdivision of state?	Formation of entity	Power to define exclusive service area	Power to prevent encroachment and overlap	Power of eminent domain	Compel connection within service area prohibit domestic well drilling	Provide source water protection	Water conservation measures required	Provide fire protection
Water and Sanitation Districts	§§ 73-21-1 to 73-21-55	Water and/or wastewater service	Public	Yes	District court holds hearing, requests opinions from OSE and NMED, decides boundaries, calls an election.	Likely, yes	Likely, yes	Yes	May compel connection to sewer system if line within 400 feet of dwelling	-- ¹	--	--
Mutual Domestic Water Consumer Associations under Sanitary Projects Act	§§ 3-29-1 to 3-29-20	Water and/or wastewater service	--	--	Members of community file articles of incorporation with PRC; ² limit on new ass'ns on municipal boundaries	--	PRC may resolve conflicts as among MDWCAs and public utilities	Yes, with NMED's approval	--	No septic tanks within 150 feet of source of water supply	--	--
Water and Natural Gas Associations	§§ 3-28-1 to 3-28-22	Water service	--	--	County and municipality within it appoint commissioners who execute certificate of association	--	--	Yes but cannot acquire plant/system that received CCN from PRC or FERC	--	--	--	--
Water Users' Associations	§§ 73-5-1 to 73-5-9	Irrigation ³	--	--	Local land owners file certificate of incorporation with PRC	--	--	Yes	--	--	--	--
Municipal Water and Sewer Utilities	§§ 3-23-1 to 3-23-10; 3-26-1 to 3-26-3; 3-27-1 to 3-27-8; 3-53-1 to 3-53-5, NM Const Art 9, §6	Water and/or wastewater service	Public	Yes, as part of municipality	Water: Governing body of municipality submits question to voters; acquisition of utility with revenue bonds subject to PRC approval for municipalities under 25,000	Yes, with some limits	Yes	Yes	May compel connection to sewer. May restrict well drilling by ordinance if water utility within 300 feet. § 3-53.1.1	May adopt ordinance or regs	Shall consider ordinances/codes to encourage water conservation and drought management. May regulate/restrict water use to prevent waste/conserv	--
County Water and Sewer Utilities	§§ 72-4-1 to 72-4-12; 4-36-8, 4-36-10; 4-37-1; 4-49-1 to 4-49-2; 4-62-1 to 4-62-10	Water and/or wastewater service	Public	Yes, as part of county	Decision of board of county commissioners	Yes, with some limits	Yes	Yes	May compel connection to sewer. May restrict well drilling by ordinance if water utility within 300 feet.	May adopt ordinance or regs	Shall consider ordinances/codes to encourage water conservation and drought management. May regulate/restrict water use to prevent waste/conserv	--
Metropolitan Water Boards	§§ 3-61-1 to 3-61-4	Water service	Public	--	County and municipality within county create through identical ordinances	--	--	Not permitted to condemn primary private utility serving area	--	--	--	--
ABQ Bernalillo County Water Authority	§ 72-1-10	Water and wastewater service	Public	Yes	City utility existed. Statute provides for joint authority	Likely, through city and county	Likely, through city and county	Yes	City/county may restrict well drilling by ordinance if water utility w/in 300 ft	--	--	--
Municipal Improvement Districts	§§ 3-33-1 to 3-33-43	To construct, acquire, repair, or maintain utility project providing water service; water and sanitary sewer projects	Public	--	Formed by municipal governing body after hearing or on petition of owners of 2/3 of assessed value of property to be benefited	--	--	--	--	--	--	--
County Improvement Districts	§§ 4-55A-1 to 4-55A-43	To construct, acquire, repair, or maintain utility project for providing water service; water and sanitary sewer projects	Public	--	Formed by municipal governing body after hearing or on petition of owners of 2/3 of assessed value of property to be benefited	--	--	--	--	--	--	--

¹ Dashes indicate that the legislation in question does not address the matter. While other laws may (or may not) apply, these charts are an effort to compile and compare the statutes that authorize water and wastewater systems.

² The Public Regulation Commission (PRC) is the successor to the Corporation Commission as well as the Public Utility Commission.

³ Some domestic water supply systems are operated by water users' associations, although the statute refers only to irrigation.

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Public Improvement Districts	§§ 5-11-1 to 5-11-27	Water and/or wastewater service	Public	Yes	Petition signed by owners of 25% of property by value; election by ¾ majority, final approval by city or county	--	--	--	--	--	--	PIDs can be used for water systems for this purpose
Investor-owned Waterworks under 1887 Act	§§ 62-2-1 to 6-29-22; §§ 62-3-1 to 62-13-14	Water service	Private	No	Five persons file articles of incorporation with PRC ¹	Likely, yes, through PRC ²	PRC may resolve conflicts as among MDWCAs and public utilities, and between cities over 200,000 and public utilities. § 62-9-1.1	Yes	--	--	--	--
Other Investor-owned Utilities	§§ 53-11-1 to 53-18-12; §§ 62-3-1 to 62-13-14	Water and/or wastewater service	Private	No	Incorporators file with PRC	Likely, yes, through PRC, if a public utility (see Footnote 2)	PRC may resolve conflicts as among MDWCAs and public utilities, and between cities over 200,000 and public utilities. § 62-9-1.1	--	--	--	--	--
Co-operative Associations (Coops)	§§ 53-4-1 to 53-4-45	Water and/or wastewater service	Private	No	5 or more persons or 2 or more ass'ns file with PRC articles of incorporation as coop	--	--	--	--	--	--	--
Non-profit Corporations	§§ 53-8-1 to 53-8-99	Water and/or wastewater service	Private	No	One or more persons, incl corporations, file articles of incorp. with PRC	Through PRC, if public utility	Through PRC, if public utility	--	--	--	--	--
Partnerships	§§ 54-1A-101 to 54-1A-1206	Water and/or wastewater service	Private	No	Two or more persons associate to carry on business as co-owners	Through PRC, if public utility	Through PRC, if public utility	--	--	--	--	--
Unincorporated Associations (or Clubs)	§§ 53-10-1 to 53-10-8	Water and/or wastewater service	Private	No	Persons wanting to form a club or association file info with county clerk	--	--	--	--	--	--	--
Subdivisions ³	§§ 3-20-1 to 3-20-16; 47-6-1 to 47-7-29											
Condominiums ⁴	§§ 47-7A-1 to 47-7D-20											
Mobile Home ⁵ Parks	§§ 47-10-1 to 47-10-23											

¹ The Public Regulation Commission (PRC) is the successor to the Corporation Commission and hence regulates corporations. The PRC is also the successor to the Public Utility Commission and regulates public utilities. The import of a reference to the PRC depends on the context.

² With limited exceptions, an entity is a *public utility* if it owns, operates, leases or controls a plant, property or facility for supplying water or sanitary sewer service to the public. Coops providing service to their members would not be providing service to the public.

³ The subdivision laws do not themselves create entities to provide water and sewer. Service could be provided by a range of entities, including the municipality, the county, an investor-owned utility, or a homeowners association organized as a coop, a non-profit corporation or an unincorporated association. Powers and authorities will depend on the type of entity providing the service.

⁴ As with subdivisions, water or wastewater service to a condominium complex could be provided by a range of entities. It is possible that the association of unit owners would operate a water or wastewater system for the complex, in which case the information for a non-profit corporation or coop would be most applicable.

⁵ As with subdivisions and condos, service could be provided to mobile home parks by a range of entities. If the owner of the park operated the system and just provided service to the tenants, the owner may be a public water supply system but not a public utility.