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HOUSE BILL 40

49TH LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2009

INTRODUCED BY

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FOR THE WATER AND NATURAL RESOURCES COMMITTEE

AN ACT

RELATING TO MUNICIPALITIES; PROHIBITING, IN CERTAIN CASES, THE
POWERS OF MUNICIPALITIES TO CONDEMN PROPERTY OUTSIDE MUNICIPAL
BOUNDARIES; LIMITING MUNICIPAL JURISDICTION IN CERTAIN
SITUATIONS; CHANGING ANNEXATION PROCEDURES FOR CERTAIN
MUNICIPALITIES.

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

Section 1. Section 3-7-17 NMSA 1978 (being Laws 1965,
Chapter 300, Section 14-7-17, as amended) is amended to read:

"3-7-17. ANNEXATION--PETITION BY OWNERS OF CONTIGUOUS
TERRITORY--DUTY OF GOVERNING BODY--ORDINANCE--APPEAL.--

A. Except as provided in Sections 3-7-17.1 and
3-57-4 NMSA 1978, whenever a petition:

(1) seeks the annexation of territory
contiguous to a municipality;

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1 (2) is signed by the owners of a majority of
2 the number of acres in the contiguous territory;

3 (3) is signed by a majority of the owners of
4 land in the contiguous territory;

5 [~~(3)~~] (4) is accompanied by a map that shows
6 the external boundary of the territory proposed to be annexed
7 and the relationship of the territory proposed to be annexed to
8 the existing boundary of the municipality; and

9 [~~(4)~~] (5) is presented to the governing body,
10 the governing body shall by ordinance express its consent or
11 rejection to the annexation of such contiguous territory.

12 B. If the ordinance consents to the annexation of
13 the contiguous territory, a copy of the ordinance, with a copy
14 of the plat of the territory so annexed, shall be filed in the
15 office of the county clerk. After the filing, the contiguous
16 territory is part of the municipality. The clerk of the
17 municipality shall also send copies of the ordinance annexing
18 the territory and of the plat of the territory so annexed to
19 the secretary of finance and administration and to the
20 secretary of taxation and revenue.

21 C. Within thirty days after the filing of the copy
22 of the ordinance in the office of the county clerk, any person
23 owning land within the territory annexed to the municipality
24 may appeal to the district court questioning the validity of
25 the annexation proceedings. If no appeal to the district court

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1 is filed within thirty days after the filing of the ordinance
2 in the office of the county clerk or if the court renders
3 judgment in favor of the municipality, the annexation shall be
4 deemed complete."

5 Section 2. Section 3-27-1 NMSA 1978 (being Laws 1965,
6 Chapter 300, Section 14-26-1) is amended to read:

7 "3-27-1. POTABLE--AUTHORITY TO ACQUIRE AND OPERATE WATER
8 FACILITIES.--

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

11 [~~A.~~] (1) acquire water facilities [~~which~~] that
12 may include but are not limited to:

13 [~~(1)~~] (a) wells, cisterns and
14 reservoirs;

15 [~~(2)~~] (b) distribution pipes and
16 ditches;

17 [~~(3)~~] (c) pumps;

18 [~~(4) right~~] (d) rights of way;

19 [~~(5)~~] (e) water treatment [~~plant~~]
20 plants; and

21 [~~(6)~~] (f) their necessary appurtenances;

22 and

23 [~~B.~~] (2) use and supply water for:

24 [~~(1)~~] (a) sewer purposes;

25 [~~(2)~~] (b) private use; and

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1 [~~(3)~~] (c) public use.

2 B. In acquiring private property pursuant to this
3 section, a municipality may exercise the power of eminent
4 domain pursuant to the procedures of the Eminent Domain Code,
5 but nothing in this section gives a municipality the right to
6 condemn wells, cisterns, reservoirs, distribution pipes and
7 ditches, springs, streams, water or water rights outside the
8 boundaries of the municipality."

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

11 "3-27-2. POTABLE--METHODS OF ACQUISITION--CONDEMNATION
12 CONVEYANCES AUTHORIZED--LAND FOR APPURTENANCES--PUBLIC AND
13 PRIVATE USE--COMPENSATION.--

14 A. Municipalities [~~within and without the municipal~~
15 ~~boundary~~] may:

16 (1) within the municipal boundary, acquire,
17 contract for or condemn:

- 18 (a) springs;
19 (b) wells;
20 (c) water rights;
21 (d) other water supplies; and
22 (e) [~~right-of-way~~] rights of way or
23 other necessary ownership for the acquisition of water
24 facilities; and

25 (2) within and without the municipal boundary,

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1 acquire, maintain, contract for or condemn for use [~~as~~] by a
2 municipal utility [~~privately owned water facilities used or to~~
3 ~~be used~~] property and rights of way for the construction,
4 maintenance and operation of reservoirs, canals, ditches,
5 flumes, aqueducts, pipelines or other works for the storage or
6 conveyance of water for the furnishing and supply of water to
7 the municipality or its inhabitants [~~and~~

8 ~~(3)~~] or change the place of diversion of any
9 water to any place selected by the municipality in order to
10 make the water available to the municipality.

11 B. For the purposes stated in Section 3-27-3 NMSA
12 1978, a municipality may take water from any stream, gulch or
13 spring. If the taking of the water materially interferes with
14 or impairs the vested right of any person [~~who resides upon~~] to
15 the creek, gulch or stream or [~~does~~] to any milling or
16 manufacturing on the creek, gulch or stream, the municipality
17 shall obtain the consent of the person with the vested right
18 or, if the affected vested right is entirely within the
19 boundaries of the municipality, acquire the vested right by
20 condemnation and make full compensation or satisfaction for all
21 damages occasioned to the person.

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

- 1 (1) water;
- 2 (2) water right;
- 3 (3) place of diversion; or
- 4 (4) purpose for which the water or water right
- 5 was originally acquired by the grantor, shall invalidate the
- 6 right of the municipality to use the water or water right.

7 D. Proceedings to obtain any condemnation
8 authorized in this section shall be in the manner provided by
9 law."

10 Section 4. Section 3-27-3 NMSA 1978 (being Laws 1965,
11 Chapter 300, Section 14-26-3, as amended) is amended to read:

12 "3-27-3. POTABLE--JURISDICTION OVER WATER FACILITIES AND
13 SOURCE.--For the purpose of [~~acquiring~~] maintaining
14 [~~contracting for, condemning~~] or protecting its water
15 facilities and water from pollution, the jurisdiction of the
16 municipality extends within and without its boundary to:

17 A. all territory occupied by the water facilities;
18 and

19 B. all reservoirs, streams and other sources
20 supplying the reservoirs and streams [~~and~~

21 ~~C. five miles above the point from which the water~~
22 ~~is taken]~~ within its planning and platting jurisdiction.

23 In exercising its jurisdiction to [~~acquire~~] maintain
24 [~~contract for or condemn~~] and protect the water facilities, the
25 municipality shall not act so as to physically isolate and make

1 nonviable any portion of the water facilities, within or
2 without the municipality. The municipality may adopt any
3 ordinance and regulation necessary to carry out the power
4 conferred by this section."

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