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HOUSE BILL 117

50TH LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2011

INTRODUCED BY

Miguel P. Garcia

AN ACT

RELATING TO SPECIAL DISTRICTS; CLARIFYING THE POWERS OF CERTAIN
CONSERVANCY DISTRICTS OVER ACEQUIAS AND COMMUNITY DITCHES.

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

SECTION 1. Section 73-14-39 NMSA 1978 (being Laws 1927,
Chapter 45, Section 308) is amended to read:

"73-14-39. GENERAL POWERS.--

~~[(1)]~~ A. Except as provided in Subsection D of this section, in order to protect life and property within the district, and to protect or relieve land subject to overflow or washing or which is menaced or threatened by the normal flow of flood or surplus or overflow waters of any natural water course, stream, canyon, arroyo or wash, whether perennial, intermittent or flood, and in order to effect the protection of life, land and other property in the district, and to

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1 accomplish all other purposes of the district, the board is
2 authorized and empowered:

3 (1) to clean out, straighten, widen, alter,
4 deepen or change the course or terminus of any ditch, community
5 ditch or acequia, drain, sewer, flume, river, water course,
6 pond, lake, creek, arroyo or natural or artificial stream in or
7 out of [~~said~~] the district; to fill up any abandoned or altered
8 ditch, community ditch or acequia, drain, sewer, river, flume,
9 water course, pond, lake, creek, arroyo or natural or
10 artificial stream, and to concentrate, divert or divide the
11 flow of water in or out of [~~said~~] the district; and to
12 construct and maintain main and lateral ditches, community
13 ditches or acequias, sewers, canals, flumes, levees, dikes,
14 dams, sluices, revetments, reservoirs or retarding basins,
15 floodways, wells, pumping stations and [~~siphons~~] siphons and
16 any other works and improvements deemed necessary to construct,
17 preserve, operate or maintain the works in or out of [~~said~~] the
18 district;

19 (2) to construct, reconstruct or enlarge or
20 cause to be constructed, reconstructed or enlarged any and all
21 bridges that may be needed in or out of [~~said~~] the district;

22 (3) to construct, reconstruct or elevate
23 highways and streets;

24 (4) to construct or reconstruct any and all of
25 [~~said~~] the works and improvements along, across, through or

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1 over any public highway, canal, railroad right of way, track,
2 grade, fill or cut, in or out of [~~said~~] the district; to remove
3 or change the location of any fence, building, railroad, canal
4 or other improvements in or out of [~~said~~] the district; and
5 [~~shall have the right~~] to acquire by donation, purchase or
6 condemnation, to construct, own, lease, use and sell and to
7 hold, encumber, control and maintain any easement, water right,
8 acequias, well, railroad right of way, canal, sluice, flume,
9 reservoir site, reservoir or retarding basin, mill dam, water
10 power, franchise, park, cemetery or any other public way or
11 place or any real or personal property, public or private, in
12 or out of [~~said~~] the district, for rights of way and such other
13 things or for materials of construction or for any other use
14 not inconsistent with the purposes of [~~this~~] the Conservancy
15 Act of New Mexico; and

16 (5) to replot or subdivide land, to open new
17 roads, highways, parks, streets and alleys, or to change the
18 location of existing ones [~~and provided, further, that~~].

19 B. In [~~case~~] the event that the construction
20 provided by the official plan interferes with an irrigation
21 ditch, community ditch or acequia or other works used for
22 applying water to beneficial use, the district shall make
23 equivalent provision by means of ditches or works constructed
24 by the district at its expense for supplying [~~such~~] the water
25 to [~~such~~] the water users to the extent that [~~the same~~] it was

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1 being lawfully obtained and used through such ditches or works.

2 C. The district shall have the right to increase at
3 its expense the storage capacity of any reservoirs and to store
4 ~~[therein]~~ in them or release ~~[therefrom]~~ from them water in
5 excess of the capacity of ~~[such]~~ the reservoirs as developed by
6 any person; but ~~[such]~~ the additional storage so created by the
7 district shall not interfere with the storage and regulation of
8 flow of water as developed by ~~[such]~~ that person prior to
9 ~~[such]~~ the increased storage capacity being added by the
10 district ~~[and, that]~~. In ~~[case]~~ the event that the district
11 ~~[shall increase]~~ increases the storage capacity of any ~~[such]~~
12 reservoir, either by adding to the dam, dams or other
13 structures built, or by removing ~~[such]~~ the dam, dams or other
14 structures and rebuilding ~~[same]~~ them, the damages, if any, to
15 ~~[such]~~ the person for the property so utilized or removed shall
16 be ascertained and paid as provided in the case of property
17 taken by the district by right of eminent domain.

18 D. Any lawfully organized acequia or community
19 ditch that is located within a conservancy district that
20 includes within its boundaries a class A county that has a
21 population greater than five hundred thousand according to the
22 most recent federal decennial census and which acequia or ditch
23 is located within that class A county shall have the right to
24 distribute water to its members after the conservancy district
25 has distributed the water to the acequia or community ditch

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1 headgate. An acequia or community ditch shall also have the
2 right, but not the obligation, to enter into a contract with
3 the conservancy district for the operation and maintenance of
4 the acequia or community ditch. Nothing in this subsection
5 modifies any provision relating to the powers, duties and
6 authority of a conservancy district as provided for in the
7 Conservancy Act of New Mexico, or modifies or abrogates the
8 rights of any individuals to all rights of use and ownership of
9 vested water rights."

10 SECTION 2. EFFECTIVE DATE.--The effective date of the
11 provisions of this act is January 1, 2012.

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