

HOUSE BILL 373

54TH LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2019

INTRODUCED BY

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AN ACT

RELATING TO WATER; CREATING THE NEW MEXICO CENTRAL ARIZONA
PROJECT ENTITY AS A POLITICAL SUBDIVISION OF THE STATE;
PROVIDING POWERS AND DUTIES; PROVIDING BONDING AUTHORITY;
REQUIRING THE TRANSFER OF ASSETS RELATING TO THE NEW MEXICO
UNIT.

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

SECTION 1. [NEW MATERIAL] SHORT TITLE.--This act may be
cited as the "New Mexico Central Arizona Project Entity Act".

SECTION 2. [NEW MATERIAL] DEFINITIONS.--As used in the
New Mexico Central Arizona Project Entity Act:

A. "Arizona Water Settlements Act water" means the
water made available pursuant to Section 304(f)(1) of the
Colorado River Basin Project Act as amended by Section
212(d)(1) of the Arizona Water Settlements Act;

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1 B. "board" means the governing board of the entity;

2 C. "entity" means the New Mexico central Arizona
3 project entity created pursuant to the New Mexico Central
4 Arizona Project Entity Act;

5 D. "New Mexico unit" means the unit or units of the
6 central Arizona project to be designed, constructed, operated
7 and maintained in New Mexico to consumptively use water from
8 the Gila and San Francisco rivers pursuant to Section 301(a)(4)
9 and 304 of the Colorado River Basin Project Act and Section 212
10 of the Arizona Water Settlements Act;

11 E. "New Mexico unit agreement" means the agreement
12 entered into on November 23, 2015 by and between the secretary
13 and the New Mexico central Arizona project entity that was
14 created by the joint powers agreement on July 27, 2015 to
15 effectuate the terms of the Arizona Water Settlements Act and
16 the New Mexico Consumptive Use and Forbearance Agreement
17 ratified by the Arizona Water Settlements Act; and

18 F. "secretary" means the secretary of the United
19 States department of the interior.

20 SECTION 3. [NEW MATERIAL] NEW MEXICO CENTRAL ARIZONA
21 PROJECT ENTITY--CREATED.--

22 A. The "New Mexico central Arizona project entity"
23 is created coextensive with the boundaries of Catron, Hidalgo,
24 Luna and Grant counties to:

25 (1) plan, design, build, operate and maintain

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1 the New Mexico unit of the central Arizona project; provided
2 that:

3 (a) as set out in Section 212(c)(3) and
4 (4) of the Arizona Water Settlements Act and in the New Mexico
5 Consumptive Use and Forbearance Agreement, the secretary shall
6 not transfer to the entity the authority to divert water; and

7 (b) the secretary shall remain
8 responsible to the parties to the New Mexico Consumptive Use
9 and Forbearance Agreement for the entity's compliance with the
10 terms and conditions of the New Mexico Consumptive Use and
11 Forbearance Agreement;

12 (2) supply Arizona Water Settlements Act water
13 for agricultural, municipal, commercial, industrial, mining,
14 recreational or environmental purposes or any combination of
15 these purposes within the boundaries of the entity;

16 (3) acquire, develop and provide
17 infrastructure and other water rights determined by the board
18 to be consistent with the purposes of the entity; and

19 (4) plan and develop water utilization
20 projects to meet water supply demands in the southwestern
21 planning region of New Mexico and to provide for the planning
22 and development of water utilization or delivery enhancement
23 projects that will improve quality of life and encourage
24 economic development in an efficient and cost-effective manner.

25 B. The entity shall be the successor in interest

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1 to, and assume all rights and responsibilities of, the New
2 Mexico central Arizona project entity, formed pursuant to the
3 joint powers agreement that was entered into between the
4 interstate stream commission, Upper Gila irrigation
5 association, Fort West irrigation association, Gila Farm
6 irrigation association, Gila Hotsprings irrigation association,
7 Catron county, Grant county, Luna county, village of Santa
8 Clara, Hidalgo soil and water conservation district, Hidalgo
9 county, city of Deming, San Francisco soil and water
10 conservation district and city of Lordsburg and went into
11 effect on July 27, 2015 and as further amended.

12 SECTION 4. [NEW MATERIAL] MEMBERS--BOARD--APPOINTMENT--
13 TERMS.--

14 A. The initial members of the entity are the
15 following political subdivisions:

- 16 (1) Upper Gila irrigation association;
- 17 (2) Fort West irrigation association;
- 18 (3) Gila Farm irrigation association;
- 19 (4) Gila Hotsprings irrigation association;
- 20 (5) Catron county;
- 21 (6) Grant county;
- 22 (7) Luna county;
- 23 (8) village of Santa Clara;
- 24 (9) Hidalgo soil and water conservation
25 district;

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- 1 (10) Hidalgo county;
2 (11) city of Deming;
3 (12) San Francisco soil and water conservation
4 district;
5 (13) city of Lordsburg;
6 (14) Grant soil and water conservation
7 district; and
8 (15) the interstate stream commission, as a
9 nonvoting member.

10 B. Members of the entity shall be limited to
11 political subdivisions located entirely within Catron, Hidalgo,
12 Luna or Grant county with the power to levy taxes or
13 assessments. Each member shall have one vote, except the
14 interstate stream commission, which shall be a nonvoting
15 member.

16 C. Each member of the entity shall appoint one
17 representative to the board. Appointed representatives shall
18 be members of the governing body of the political subdivision,
19 public employees or residents or members of the political
20 subdivision appointed in writing by the political subdivision.
21 A representative shall serve a three-year term and may be
22 reappointed after an initial term of service. A representative
23 shall not represent more than one political subdivision.

24 D. Each political subdivision may appoint an
25 alternate representative, who shall be a member of the

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1 governing body of the political subdivision, a public employee
2 or a resident or member of the political subdivision and
3 appointed in the same manner as the primary representative. An
4 alternate representative may attend meetings of the board along
5 with the primary representative, but shall not vote if the
6 primary representative is present and able to vote. If a
7 political subdivision's primary representative is absent or
8 unable to vote, the alternate representative may vote on behalf
9 of the political subdivision the alternate representative
10 represents.

11 E. New members may be added to the entity by a
12 two-thirds' majority vote of the board following a written
13 request of a political subdivision to become a member of the
14 entity.

15 F. At the first meeting after enactment of the New
16 Mexico Central Arizona Project Entity Act, the board shall
17 select a chair, vice chair and secretary who shall serve for
18 one year or until successors are elected and qualified.

19 SECTION 5. [NEW MATERIAL] ENTITY--POWERS--DUTIES.--

20 A. The entity is a body politic and corporate and a
21 political subdivision of the state.

22 B. The entity shall:

23 (1) own and hold title to all portions of the
24 New Mexico unit;

25 (2) be responsible for the planning and design

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1 of the New Mexico unit;

2 (3) upon transfer from the secretary, be
3 responsible for the construction, operation, maintenance and
4 replacement of the New Mexico unit;

5 (4) facilitate New Mexico users contracting
6 with the secretary for Arizona Water Settlements Act water;

7 (5) provide for the management of the New
8 Mexico unit for the benefit of the entity's members;

9 (6) comply with the provisions of the New
10 Mexico Consumptive Use and Forbearance Agreement and the New
11 Mexico unit agreement; and

12 (7) as the successor in interest to the New
13 Mexico central Arizona project entity created by the joint
14 powers agreement on July 27, 2015, comply with the provisions
15 of contracts entered into by its predecessor in interest prior
16 to the enactment of the New Mexico Central Arizona Project
17 Entity Act.

18 C. The entity shall take all necessary steps to
19 ensure the entity's financial viability, which may include:

20 (1) assessment of membership dues;

21 (2) assessment of user fees;

22 (3) management of revenues to pay the
23 reasonable expenses of operation of the New Mexico unit and
24 other expenses;

25 (4) establishment of a revolving fund for the

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1 purpose of defraying the costs and expenses of the entity;

2 (5) establishment of a capital fund for system
3 improvements and replacements;

4 (6) application for grants, matching funds and
5 other money that may be expended for any purpose consistent
6 with the provisions of the New Mexico Central Arizona Project
7 Entity Act;

8 (7) acceptance of grants, gifts or donations
9 of money or other property from any source that may be expended
10 for any purpose consistent with the provisions of the New
11 Mexico Central Arizona Project Entity Act; and

12 (8) borrowing money and issuing revenue bonds.

13 D. The entity may:

14 (1) sue and be sued within the constraints of
15 existing state and federal law;

16 (2) enter into contracts;

17 (3) contract with political subdivisions in
18 the four southwest New Mexico counties for the operation and
19 maintenance of portions of the New Mexico unit;

20 (4) acquire, dispose of or encumber real or
21 personal property or any interest in them;

22 (5) be allowed a water use planning period not
23 to exceed forty years;

24 (6) hold water rights based on a water
25 development plan submitted to and approved by the state

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1 engineer, the implementation of which shall not exceed forty
2 years;

3 (7) have and exercise the power of eminent
4 domain in the manner provided by law for the condemnation of
5 private property as the last resort for public use with just
6 compensation. The entity shall not acquire water rights
7 through eminent domain and shall not take any property unless
8 it is necessary for rights of way, easements or the use or
9 placement of facilities and infrastructure elements, including
10 storage facilities, pipelines, structures, pump stations or
11 related appurtenances; and

12 (8) have and exercise all rights and powers
13 necessary or incidental to or implied from the specific powers
14 granted in the New Mexico Central Arizona Project Entity Act.

15 SECTION 6. [NEW MATERIAL] BOARD--POWERS--DUTIES.--

16 A. All powers, privileges and duties vested in or
17 imposed upon the entity shall be exercised and performed by the
18 board.

19 B. The board shall:

20 (1) manage and conduct the affairs and
21 business of the entity;

22 (2) make and execute all necessary contracts
23 and other instruments, which shall be signed by the chair or,
24 in the chair's absence, by another member of the board
25 designated for that purpose;

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1 (3) promulgate orders, resolutions, policies
2 and rules necessary for the governance of the affairs of the
3 entity and the execution of the powers vested in the entity;

4 (4) fix the time and place of meetings and the
5 method of providing notice of the meetings in accordance with
6 the Open Meetings Act;

7 (5) annually adopt an operating budget; and

8 (6) perform all acts necessary to carry out
9 the purposes of the New Mexico Central Arizona Project Entity
10 Act.

11 C. The board may by a simple majority:

12 (1) maintain offices at a place as the board
13 may designate;

14 (2) delegate its powers by resolution to an
15 officer or agent of the board;

16 (3) employ a director who may employ and
17 retain necessary staff;

18 (4) acquire real or personal property in
19 amounts less than two thousand dollars (\$2,000); and

20 (5) take all other actions as authorized by
21 the rights and powers necessary or incidental to or implied
22 from the specific powers granted in the New Mexico Central
23 Arizona Project Entity Act.

24 D. The following actions by the board shall only be
25 effective upon resolution passed by a two-thirds' majority

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1 approval of the members:

2 (1) establishment and collection of charges
3 for water consistent with federal reclamation law and contracts
4 entered into between the entity and the secretary pursuant to
5 the New Mexico unit agreement;

6 (2) acquisition of real or personal property
7 in excess of two thousand dollars (\$2,000);

8 (3) issuance of revenue or refunding bonds;
9 and

10 (4) initiation or continuation of legal
11 action, except that initiation and filing of liens for unpaid
12 rates and charges and suits for payment of unpaid rates and
13 charges and discontinuance of service for failure to pay rates
14 and charges may be delegated by a simple majority.

15 E. Meetings of the board shall be held on a
16 regularly established schedule, or at the call of the chair or
17 whenever six members shall so request in writing. The board
18 shall not meet unless a quorum of the representatives is
19 present. A majority of representatives then serving
20 constitutes a quorum for the transaction of any business.
21 Except as provided in Subsection D of this section, the
22 affirmative vote of at least a majority of a quorum present is
23 necessary for any action to be taken by the board. A vacancy
24 in the membership of the board shall not impair the right of a
25 quorum to exercise all rights and perform all duties of the

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1 board.

2 F. A representative having a financial interest or
3 possible interest in the outcome of any policy, decision or
4 determination before the board shall be disqualified from
5 voting on the issue. A representative's or member's status as
6 a customer of the entity shall not be deemed to constitute a
7 financial interest or possible interest for the purposes of the
8 New Mexico Central Arizona Project Entity Act.

9 SECTION 7. [NEW MATERIAL] TRANSFER OF ASSETS TO
10 ENTITY.--Within ninety days of the enactment of the New Mexico
11 Central Arizona Project Entity Act:

12 A. the interstate stream commission, upon approval
13 by the department of finance and administration, shall transfer
14 to the entity title to any assets it may own related to the New
15 Mexico unit;

16 B. the city of Deming, as second fiscal agent to
17 the New Mexico central Arizona project entity created pursuant
18 to the joint powers agreement, shall transfer to the entity
19 title to any assets it may own related to the New Mexico unit;
20 and

21 C. any bonds that were issued on behalf of the New
22 Mexico central Arizona project entity or any other debt assumed
23 on behalf of the New Mexico central Arizona project entity by a
24 party to the joint powers agreement, shall transfer from the
25 debt holder to the entity.

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1 SECTION 8. [NEW MATERIAL] BONDING AUTHORITY.--

2 A. The entity may issue revenue bonds, the pledged
3 revenue for which shall be the net revenues of the water
4 system, for any one or more of the purposes authorized by the
5 New Mexico Central Arizona Project Entity Act.

6 B. The entity may pledge irrevocably any or all of
7 the revenue received by the entity to the payment of the
8 interest on and principal of revenue bonds for any of the
9 purposes authorized in the New Mexico Central Arizona Project
10 Entity Act.

11 C. Revenues in excess of the annual principal and
12 interest due on revenue bonds secured by a pledge revenue may
13 be accumulated in a debt service reserve account. The entity
14 may appoint a commercial bank trust department to act as paying
15 agent or trustee of the revenues and to administer the payment
16 of principal of and interest on the bonds.

17 D. Except as otherwise provided in the New Mexico
18 Central Arizona Project Entity Act, revenue bonds:

19 (1) may have interest, principal value or any
20 part thereof payable at intervals or at maturity as may be
21 determined by the board;

22 (2) may be subject to a prior redemption at
23 the entity's option at a time and upon terms and conditions,
24 with or without the payment of a premium, as determined by the
25 board;

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

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

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

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

12 E. At a regular or special meeting, the board may
13 adopt a resolution that:

14 (1) declares the necessity for issuing revenue
15 bonds;

16 (2) authorizes the issuance of revenue bonds
17 by an affirmative vote of two-thirds of all of the members of
18 the board; and

19 (3) designates the sources of revenues to be
20 pledged to the repayment of the revenue bonds.

21 SECTION 9. [NEW MATERIAL] REFUNDING BONDS.--

22 A. The entity may issue refunding bonds for the
23 purpose of refinancing, paying and discharging all or any part
24 of outstanding bonds for the:

25 (1) acceleration, deceleration or other

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1 modification of the payment of the outstanding bonds,
2 including, without limitation, any capitalization of any
3 interest thereon in arrears or about to become due for any
4 period not exceeding two years from the date of the refunding
5 bonds;

6 (2) purpose of reducing interest costs or
7 effecting other economies; or

8 (3) purpose of modifying or eliminating
9 restrictive contractual limitations:

10 (a) pertaining to the issuance of
11 additional bonds; or

12 (b) concerning the outstanding bonds or
13 facilities relating to the outstanding bonds.

14 B. The entity may pledge irrevocably for the
15 payment of interest, principal and premium, if any, on
16 refunding bonds the appropriate pledged revenues, which may be
17 pledged to an original issue of bonds.

18 C. Refunding bonds may be issued separately or in
19 combination in one series or more.

20 D. Refunding bonds shall be authorized by
21 resolution. Bonds that are refunded shall be paid at maturity
22 or on any permitted prior redemption date in the amounts, at
23 the time and places and, if called prior to maturity, in
24 accordance with any applicable notice provisions, all as
25 provided in the proceedings authorizing the issuance of the

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1 refunded bonds or otherwise appertaining thereto, except for
2 any such bond that is voluntarily surrendered for exchange or
3 payment by the holder or owner.

4 E. The principal amount of the refunding bonds may
5 exceed the principal amount of the refunded bonds and may also
6 be less than or the same as the principal amount of the bonds
7 being refunded if provision is duly and sufficiently made for
8 the payment of the refunded bonds.

9 F. The proceeds of refunding bonds, including
10 accrued interest and premiums appertaining to the sale of
11 refunding bonds, shall be immediately applied to the retirement
12 of the bonds being refunded or placed in escrow in a commercial
13 bank or trust company that possesses and exercises trust powers
14 and that is a member of the federal deposit insurance
15 corporation. The proceeds shall be applied to the principal
16 of, interest on and any prior redemption premium due in
17 connection with the bonds being refunded; provided that the
18 refunding bond proceeds, including accrued interest and
19 premiums appertaining to a sale of refunding bonds, may be
20 applied to the establishment and maintenance of a reserve fund
21 and to the payment of expenses incidental to the refunding and
22 the issuance of the refunding bonds, the interest on those
23 bonds and the principal of those bonds, or both interest and
24 principal as the board determines. This section does not
25 require the establishment of an escrow if the refunded bonds

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1 and the amounts necessary to retire the refunded bonds within
2 that time are deposited with the paying agent for the refunded
3 bonds. Any such escrow shall not necessarily be limited to
4 proceeds of refunding bonds but may include other money
5 available for its purpose. Proceeds in escrow pending such use
6 may be invested or reinvested in bills, certificates of
7 indebtedness, notes or bonds that are direct obligations of, or
8 the principal and interest of which obligations are
9 unconditionally guaranteed by, the United States or in
10 certificates of deposit of banks that are members of the
11 federal deposit insurance corporation; provided that the par
12 value of the certificates of deposit is collateralized by a
13 pledge of obligations or by a pledge of payment that is
14 unconditionally guaranteed by the United States; and further
15 provided that the par value of those obligations is at least
16 seventy-five percent of the par value of the certificates of
17 deposit. Such proceeds and investments in escrow, together
18 with any interest or other income to be derived from any such
19 investment, shall be in an amount at all times sufficient as to
20 principal, interest, any prior redemption premium due and any
21 charges of the escrow agent payable therefrom to pay the bonds
22 being refunded as they become due at their respective
23 maturities or at any designated prior redemption date or dates
24 in connection with which the board shall exercise a prior
25 redemption option. A purchaser of a refunding bond issued is

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1 not responsible for the application of the proceeds by the
2 entity or any of its officers, agents or employees.

3 G. Refunding bonds may bear additional terms and
4 provisions as determined by the entity subject to the
5 limitations in this section relating to original bond issues.
6 Refunding bonds are not subject to the provisions of any other
7 statute.

8 H. Entity refunding bonds:

9 (1) may have interest, principal value or any
10 part thereof payable at intervals or at maturity, as determined
11 by the board;

12 (2) may be subject to prior redemption at the
13 entity's option at a time or times and upon terms and
14 conditions with or without payment of premium or premiums, as
15 determined by the board;

16 (3) may be serial in form and maturity or may
17 consist of a single bond payable in one or more installments or
18 may be in another form, as determined by the board; and

19 (4) shall be exchanged for the bonds and any
20 matured unpaid interest being refunded at not less than par or
21 sold at public or negotiated sale at, above or below par and at
22 a price that results in a net effective interest rate that does
23 not exceed the maximum permitted by the Public Securities Act.

24 I. At a regular or special meeting, the board may
25 adopt a resolution by a two-thirds' vote to authorize the

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1 issuance of the refunding bonds.

2 SECTION 10. [NEW MATERIAL] EXEMPTION FROM TAXATION.--The
3 bonds authorized by the New Mexico Central Arizona Project
4 Entity Act and the income from the bonds shall be exempt from
5 all taxation by the state or any political subdivision of the
6 state.

7 SECTION 11. [NEW MATERIAL] BONDS NOT OBLIGATION OF THE
8 STATE.--Except as otherwise provided in the New Mexico Central
9 Arizona Project Entity Act, all bonds or other obligations
10 issued pursuant to that act are payable solely from the
11 revenues of the entity that may be pledged to the payment of
12 such obligations, and the bonds or other obligations shall not
13 create an obligation, debt or liability of the state or any
14 other of its political subdivisions. No breach of any pledge,
15 obligation or agreement of the entity shall impose a pecuniary
16 liability or a charge upon the general credit or taxing power
17 of the state or any other of its political subdivisions.