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HOUSE BILL 15

49TH LEGISLATURE - STATE OF NEW MEXICO - SECOND SESSION, 2010

INTRODUCED BY

Anna M. Crook

FOR THE WATER AND NATURAL RESOURCES COMMITTEE

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,

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

7 (3) a water utility authority is necessary in
8 eastern New Mexico to provide an organized structure to work
9 with state, local and federal agencies to complete a water
10 delivery system from the Ute Reservoir to local governments.

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

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

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

25 Section 3. DEFINITIONS.--As used in the Eastern New

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1 Mexico Water Utility Authority Act:

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

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

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

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

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

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

24 A. The board shall consist of seven members, each
25 of whom shall reside within the boundaries of the authority,

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1 appointed as follows:

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

6 (2) two board members appointed by the
7 Portales city council for a term of two years; provided,
8 however, that one of the initial members shall be appointed for
9 a term of one year for the purpose of having a staggered board;

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

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

14 (a) the Texico city council;

15 (b) the Melrose village council;

16 (c) the Elida village council; and

17 (d) the Grady village council.

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

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

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

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1 exception of the following powers:

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

4 (2) ratification of acquisition of property;

5 (3) initiation or continuation of legal
6 action, except that initiation and filing of liens for unpaid
7 rates and charges and suits for payment thereof and
8 discontinuance of service for failure to pay such rates and
9 charges may be delegated;

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

12 (5) issuance of revenue bonds.

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

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

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

3 E. A member of the board having a financial
4 interest or possible interest in the outcome of any policy,
5 decision or determination before the board shall be
6 disqualified from voting on the issue. A member's status as a
7 ratepayer or customer of the authority shall not be deemed to
8 constitute a financial interest or possible interest for the
9 purposes of this section.

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

- 12 (1) adopt bylaws;
- 13 (2) fix the time and place of meetings and the
14 method of providing notice of the meetings in accordance with
15 the Open Meetings Act;
- 16 (3) promulgate orders, resolutions, policies
17 and rules necessary for the governance and management of the
18 affairs of the authority and the execution of the powers vested
19 in the authority;
- 20 (4) maintain offices at a place as the board
21 may designate;
- 22 (5) employ a director who may employ and
23 retain necessary staff;
- 24 (6) establish user classifications; and
- 25 (7) fix and from time to time increase or

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1 decrease water rates, fees or other charges for water delivery
2 or other related services or facilities operated or made
3 available by the authority, subject to the following
4 conditions:

5 (a) the rates, tolls or charges shall be
6 uniform for all counties and municipalities that have the power
7 to appoint a member to the board;

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

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

19 (d) after giving reasonable notice, the
20 board shall shut off or discontinue service for unauthorized
21 connections, illegal connections or connections for which
22 rates, tolls or other charges are delinquent in payment. The
23 board may file suit in a court of competent jurisdiction to
24 recover costs associated with an unauthorized, illegal or
25 delinquent connection, including the cost of water delivered,

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1 charges for connection and disconnection, damages and attorney
2 fees; and

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

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

9 The authority may:

- 10 A. sue and be sued;
- 11 B. enter into contracts;
- 12 C. borrow money and issue revenue bonds;
- 13 D. acquire, dispose of or encumber real and
14 personal property and any interest in them, including leases,
15 easements and water rights;
- 16 E. design, develop, construct, operate, maintain,
17 purchase or contract for water systems and pipelines to connect
18 systems and sources with the authority's customers;
- 19 F. undertake regional water planning, alone or with
20 other water service providers and develop water plans pursuant
21 to Section 72-1-9 NMSA 1978;
- 22 G. have and exercise the power of eminent domain
23 for the limited purpose of this subsection, within the
24 boundaries of the authority and in Quay county and in the
25 manner provided by law for the condemnation of private property

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1 for public use with just compensation. The authority shall not
2 take any property unless it is necessary for rights of way and
3 easements and for the use and placement of facilities and
4 infrastructure elements, including pipelines, structures, pump
5 stations and related appurtenances;

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

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

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

22 Section 8. ACCEPTANCE OF ASSETS AND LIABILITIES OF
23 EXISTING WATER SERVICE PROVIDERS.--

24 A. The authority may accept a transfer of assets
25 and liabilities upon the request, and following the legal

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1 dissolution, of an entity that is listed below or formed
2 pursuant to one of the following statutes and that provides
3 water service, subject to any other statutory requirements for
4 such dissolution and transfer:

5 (1) the Water and Sanitation District Act;

6 (2) a water and natural gas association formed
7 pursuant to Sections 3-28-1 through 3-28-22 NMSA 1978;

8 (3) a water users' association formed pursuant
9 to Sections 73-5-1 through 73-5-9 NMSA 1978;

10 (4) the Nonprofit Corporation Act;

11 (5) the Public Improvement District Act;

12 (6) a corporation formed pursuant to Sections
13 62-2-1 through 62-2-22 NMSA 1978, the Business Corporation Act
14 or the Cooperative Association Act; or

15 (7) an association or mutual domestic water
16 consumers association organized pursuant to Laws 1947, Chapter
17 206, Laws 1949, Chapter 79 or Laws 1951, Chapter 52, as well as
18 any association organized under the provisions of the Sanitary
19 Projects Act.

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

25 Section 9. REVENUE BONDS--AUTHORITY TO ISSUE--PLEDGE OF

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1 REVENUES--LIMITATION ON TIME OF ISSUANCE.--

2 A. Revenue bonds may be issued by the authority:

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

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

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

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

12 (5) to refund revenue bonds; or

13 (6) for any combination of those purposes.

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

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

24 D. The authority shall not impair the rights of any
25 holders of bonds or other obligations payable from the net

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1 revenues of the water system previously issued or incurred by
2 the authority.

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

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

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

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

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

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

25 D. may be serial in form and maturity or may

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1 consist of one bond payable at one time or in installments or
2 may be in such other form as may be determined by the
3 authority;

4 E. shall be sold for cash at above or below par and
5 at a price that results in a net effective interest rate that
6 does not exceed the maximum permitted by the Public Securities
7 Act; and

8 F. may be sold at public or negotiated sale.

9 Section 12. EXEMPTION FROM TAXATION.--The bonds
10 authorized by the Eastern New Mexico Water Utility Authority
11 Act and the income from the bonds shall be exempt from all
12 taxation by the state or any political subdivision of the
13 state.

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

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

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

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

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

7 B. The bonds shall be executed by the chairperson
8 of the board and may be authenticated by the secretary of the
9 board or any public or private transfer agent or registrar or
10 its successor that shall be named or otherwise designated by
11 the board. The bonds may be executed as provided under the
12 Uniform Facsimile Signature of Public Officials Act.

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

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

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

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

24 (3) provide a sinking fund adequate to
25 discharge the revenue bonds as they mature.

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

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

18 Section 16. BONDS--REFUNDING AUTHORIZATION.--

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

23 B. The authority may issue refunding bonds for the
24 purpose of refinancing, paying and discharging all or any part
25 of outstanding bonds or other obligations payable from the net

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1 revenues of the water system previously issued or incurred by
2 the authority.

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

6 D. Bonds for refunding and bonds for any purpose
7 permitted by the Eastern New Mexico Water Utility Authority Act
8 may be issued separately or issued in combination in one series
9 or more.

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

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

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

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

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

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

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1 public or negotiated sale at, above or below par and at a price
2 that results in a net effective interest rate that does not
3 exceed the maximum permitted by the Public Securities Act.

4 Section 18. REFUNDING BONDS--ESCROW.--

5 A. Refunding bonds issued pursuant to the Eastern
6 New Mexico Water Utility Authority Act shall be authorized by
7 resolution of the authority. Any bonds that are refunded under
8 the provisions of this section shall be paid at maturity or on
9 any permitted prior redemption date in the amounts, at the time
10 and places and, if called prior to maturity, in accordance with
11 any applicable notice provisions, all as provided in the
12 proceedings authorizing the issuance of the refunded bonds or
13 otherwise pertaining thereto, except for any such bond that is
14 voluntarily surrendered for exchange or payment by the holder
15 or owner.

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

23 C. The proceeds of refunding bonds, including any
24 accrued interest and premium pertaining to the sale of
25 refunding bonds, shall either be immediately applied to the

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1 retirement of the bonds being refunded or be placed in escrow
2 in a commercial bank or trust company that possesses and is
3 exercising trust powers and that is a member of the federal
4 deposit insurance corporation, to be applied to the payment of
5 the principal of, interest on and any prior redemption premium
6 due in connection with the bonds being refunded; provided that
7 such refunding bond proceeds, including any accrued interest
8 and any premium pertaining to a sale of refunding bonds, may be
9 applied to the establishment and maintenance of a reserve fund
10 and to the payment of expenses incidental to the refunding and
11 the issuance of the refunding bonds, the interest thereon, the
12 principal thereof or both interest and principal as the
13 authority may determine. Nothing in this section requires the
14 establishment of an escrow if the refunded bonds become due and
15 payable within one year from the date of the refunding bonds
16 and if the amounts necessary to retire the refunded bonds
17 within that time are deposited with the paying agent for the
18 refunded bonds. Any such escrow shall not necessarily be
19 limited to proceeds of refunding bonds but may include other
20 money available for its purpose. Any proceeds in escrow
21 pending such use may be invested or reinvested in bills,
22 certificates of indebtedness, notes or bonds that are direct
23 obligations of or the principal and interest of which
24 obligations are unconditionally guaranteed by the United States
25 or in certificates of deposit of banks that are members of the

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1 federal deposit insurance corporation. Such proceeds and
2 investments in escrow, together with any interest or other
3 income to be derived from any such investment, shall be in an
4 amount at all times sufficient as to principal, interest, any
5 prior redemption premium due and any charges of the escrow
6 agent payable to pay the bonds being refunded as they become
7 due at their respective maturities or due at any designated
8 prior redemption date in connection with which the authority
9 shall exercise a prior redemption option. Any purchaser of any
10 refunding bond issued under the Eastern New Mexico Water
11 Utility Authority Act is in no manner responsible for the
12 application of the proceeds by the authority or any of its
13 officers, agents or employees.

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

17 Section 19. PUBLIC REGULATION COMMISSION JURISDICTION.--

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

22 B. The authority may elect by resolution adopted by
23 its board to become subject to the jurisdiction of the public
24 regulation commission and to the terms and provisions of the
25 Public Utility Act; provided, however, that in no event shall

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1 Sections 62-9-1 through 62-9-7 NMSA 1978 apply to the authority
2 when making such an election.

3 Section 20. TEMPORARY PROVISION.--All functions,
4 appropriations, money, records, contracts, equipment and other
5 real and personal property pertaining to the eastern New Mexico
6 rural water authority shall be transferred to the eastern New
7 Mexico water utility authority. Debts of the eastern New
8 Mexico rural water authority shall be debts of the eastern New
9 Mexico water utility authority. The eastern New Mexico water
10 utility authority shall not impair the rights of any
11 bondholders of outstanding bonds of the eastern New Mexico
12 rural water authority. All contractual obligations of the
13 eastern New Mexico rural water authority and the counties and
14 municipalities that have the power to appoint a member to the
15 board of directors of the eastern New Mexico water utility
16 authority shall be binding on the eastern New Mexico water
17 utility authority. The public regulation commission shall
18 audit the eastern New Mexico rural water authority prior to the
19 transfer of money, assets and debts to the eastern New Mexico
20 water utility authority.

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