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SENATE BILL 243

54TH LEGISLATURE - STATE OF NEW MEXICO - SECOND SESSION, 2020

INTRODUCED BY

Gabriel Ramos and John Arthur Smith

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; MAKING AN APPROPRIATION.

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
federal Colorado River Basin Project Act as amended by Section
212(d)(1) of the federal 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. "joint powers agreement" means the agreement
6 that was entered into between the interstate stream commission,
7 Upper Gila irrigation association, Fort West irrigation
8 association, Gila Farm irrigation association, Gila Hot Springs
9 irrigation association, Catron county, Grant county, Luna
10 county, village of Santa Clara, Hidalgo soil and water
11 conservation district, Hidalgo county, city of Deming, San
12 Francisco soil and water conservation district and city of
13 Lordsburg and went into effect on July 27, 2015, as
14 subsequently amended, to create the New Mexico central Arizona
15 project entity to implement the New Mexico unit agreement;

16 E. "New Mexico unit" means the unit or units of the
17 central Arizona project to be designed, constructed, operated
18 and maintained in New Mexico to consumptively use water from
19 the Gila and San Francisco rivers pursuant to Section 301(a)(4)
20 and 304 of the federal Colorado River Basin Project Act and
21 Section 212 of the federal Arizona Water Settlements Act;

22 F. "New Mexico unit agreement" means the agreement
23 entered into on November 23, 2015 by and between the secretary
24 and the New Mexico central Arizona project entity created by
25 the joint powers agreement to effectuate the terms of the

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1 federal Arizona Water Settlements Act and the New Mexico
2 Consumptive Use and Forbearance Agreement ratified by the
3 federal Arizona Water Settlements Act; and

4 G. "secretary" means the secretary of the United
5 States department of the interior.

6 SECTION 3. [NEW MATERIAL] NEW MEXICO CENTRAL ARIZONA
7 PROJECT ENTITY--CREATED.--

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

11 (1) plan, design, build, operate and maintain
12 the New Mexico unit; provided that:

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

18 (b) the secretary shall remain
19 responsible to the parties to the New Mexico Consumptive Use
20 and Forbearance Agreement for the entity's compliance with the
21 terms and conditions of the New Mexico Consumptive Use and
22 Forbearance Agreement;

23 (2) supply Arizona Water Settlements Act water
24 for agricultural, municipal, commercial, industrial, mining,
25 recreational or environmental purposes or any combination of

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1 these purposes within the boundaries of the entity;

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

5 (4) plan and develop water utilization
6 projects to meet water supply demands in the southwestern
7 planning region of New Mexico and to provide for the planning
8 and development of water utilization or delivery enhancement
9 projects that will improve quality of life and encourage
10 economic development in an efficient and cost-effective manner.

11 B. The entity shall be the successor in interest
12 to, and assume all rights and responsibilities of, the New
13 Mexico central Arizona project entity that was created by the
14 joint powers agreement.

15 SECTION 4. [NEW MATERIAL] MEMBERS--BOARD--APPOINTMENT--
16 TERMS.--

17 A. The initial members of the entity are the
18 following political subdivisions:

- 19 (1) Upper Gila irrigation association;
- 20 (2) Fort West irrigation association;
- 21 (3) Gila Farm irrigation association;
- 22 (4) Gila Hot Springs irrigation association;
- 23 (5) Catron county;
- 24 (6) Grant county;
- 25 (7) Luna county;

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

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

19 C. Each member of the entity shall appoint one
20 representative to the board. Appointed representatives shall
21 be members of the governing body of the political subdivision,
22 public employees or residents or members of the political
23 subdivision appointed in writing by the political subdivision.
24 A representative shall serve a three-year term and may be
25 reappointed after an initial term of service. A representative

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1 shall not represent more than one political subdivision.

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

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

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

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

23 A. The entity is a body politic and corporate and a
24 political subdivision of the state.

25 B. The entity shall:

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

3 (2) be responsible for the planning and design
4 of the New Mexico unit;

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

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

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

12 (6) comply with the provisions of the New
13 Mexico Consumptive Use and Forbearance Agreement and the New
14 Mexico unit agreement; and

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

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

22 (1) assessment of membership dues;

23 (2) assessment of user fees;

24 (3) management of revenues to pay the
25 reasonable expenses of operation of the New Mexico unit and

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1 other expenses;

2 (4) establishment of a revolving fund for the
3 purpose of defraying the costs and expenses of the entity;

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

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

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

14 (8) borrowing money and issuing revenue bonds.

15 D. The entity may:

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

18 (2) enter into contracts;

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

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

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

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1 (6) hold water rights based on a water
2 development plan submitted to and approved by the state
3 engineer, the implementation of which shall not exceed forty
4 years;

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

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

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

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

21 B. The board shall:

22 (1) manage and conduct the affairs and
23 business of the entity;

24 (2) make and execute all necessary contracts
25 and other instruments, which shall be signed by the chair or,

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1 in the chair's absence, by another member of the board
2 designated for that purpose;

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

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

9 (5) annually adopt an operating budget; and

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

13 C. The board may by a simple majority:

14 (1) maintain offices at a place as the board
15 may designate;

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

18 (3) employ a director, who may employ and
19 retain necessary staff;

20 (4) acquire real or personal property in
21 amounts no greater than two thousand dollars (\$2,000); and

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

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1 D. The following actions by the board shall only be
2 effective upon resolution passed by a two-thirds' majority
3 approval of the members:

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

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

10 (3) issuance of revenue or refunding bonds;
11 and

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

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

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1 in the membership of the board shall not impair the right of a
2 quorum to exercise all rights and perform all duties of the
3 board.

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

11 SECTION 7. [NEW MATERIAL] TRANSFER OF ASSETS TO ENTITY.--
12 Within ninety days of the effective date of the New Mexico
13 Central Arizona Project Entity Act:

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

18 B. the city of Deming 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 created by the joint
23 powers agreement or any other debt assumed on behalf of the New
24 Mexico central Arizona project entity created by the joint
25 powers agreement by a party to the joint powers agreement,

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1 shall be transferred to the entity.

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

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

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

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

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

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

24 (2) may be subject to a prior redemption at
25 the entity's option at a time and upon terms and conditions,

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1 with or without the payment of a premium, as determined by the
2 board;

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

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

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

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

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

16 (1) declares the necessity for issuing revenue
17 bonds;

18 (2) authorizes the issuance of revenue bonds
19 by an affirmative vote of two-thirds' majority approval of the
20 members; and

21 (3) designates the sources of revenues to be
22 pledged to the repayment of the revenue bonds.

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

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

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1 of outstanding bonds for the:

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

8 (2) purpose of reducing interest costs or
9 effecting other economies; or

10 (3) purpose of modifying or eliminating
11 restrictive contractual limitations:

12 (a) pertaining to the issuance of
13 additional bonds; or

14 (b) concerning the outstanding bonds or
15 facilities relating to the outstanding bonds.

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

20 C. Refunding bonds may be issued separately or in
21 combination in one series or more.

22 D. Refunding bonds shall be authorized by
23 resolution. Bonds that are refunded shall be paid at maturity
24 or on any permitted prior redemption date in the amounts, at
25 the time and places and, if called prior to maturity, in

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1 accordance with any applicable notice provisions, all as
2 provided in the proceedings authorizing the issuance of the
3 refunded bonds or otherwise appertaining thereto, except for
4 any such bond that is voluntarily surrendered for exchange or
5 payment by the holder or owner.

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

11 F. The proceeds of refunding bonds, including
12 accrued interest and premiums appertaining to the sale of
13 refunding bonds, shall be immediately applied to the retirement
14 of the bonds being refunded or placed in escrow in a commercial
15 bank or trust company that possesses and exercises trust powers
16 and that is a member of the federal deposit insurance
17 corporation. The proceeds shall be applied to the principal
18 of, interest on and any prior redemption premium due in
19 connection with the bonds being refunded; provided that the
20 refunding bond proceeds, including accrued interest and
21 premiums appertaining to a sale of refunding bonds, may be
22 applied to the establishment and maintenance of a reserve fund
23 and to the payment of expenses incidental to the refunding and
24 the issuance of the refunding bonds, the interest on those
25 bonds and the principal of those bonds, or both interest and

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

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1 in connection with which the board shall exercise a prior
2 redemption option. A purchaser of a refunding bond issued is
3 not responsible for the application of the proceeds by the
4 entity or any of its officers, agents or employees.

5 G. Refunding bonds may bear additional terms and
6 provisions as determined by the entity subject to the
7 limitations in Section 8 of the New Mexico Central Arizona
8 Project Entity Act relating to original bond issues.

9 H. Entity refunding bonds:

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

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

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

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

25 I. At a regular or special meeting, the board may

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1 adopt a resolution by a two-thirds' majority approval of the
2 members to authorize the issuance of the refunding bonds.

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

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

19 SECTION 12. APPROPRIATION.--Five hundred thousand dollars
20 (\$500,000) is appropriated from the New Mexico unit fund to the
21 interstate stream commission for expenditure in fiscal years
22 2020 and 2021 for the operating costs of the New Mexico central
23 Arizona project entity. Any unexpended or unencumbered balance
24 remaining at the end of fiscal year 2021 shall revert to the
25 New Mexico unit fund.

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