

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

(1) to clean out, straighten, widen, alter, deepen or change the course or terminus of any ditch, community ditch or acequia, drain,

sewer, flume, river, water course, pond, lake, creek, arroyo or natural or artificial stream in or out of [~~said~~] the district; to fill up any abandoned or altered ditch, community ditch or acequia, drain, sewer, river, flume, water course, pond, lake, creek, arroyo or natural or artificial stream, and to concentrate, divert or divide the flow of water in or out of [~~said~~] the district; and to construct and maintain main and lateral ditches, community ditches or acequias, sewers, canals, flumes, levees, dikes, dams, sluices, revetments, reservoirs or retarding basins, floodways, wells, pumping stations and [~~siphons~~] siphons and any other works and improvements deemed necessary to construct, preserve, operate or maintain the works in or out of [~~said~~] the district;

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

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

(4) to construct or reconstruct any and all of [~~said~~] the works and improvements along, across, through or over any public highway, canal, railroad right of way, track, grade, fill or cut, in or out of [~~said~~] the district; to remove or change the location of any fence, building, railroad, canal or other improvements in or out of [~~said~~] the district; and [~~shall have the right~~] to acquire by donation, purchase or condemnation, to construct, own, lease, use and sell and to hold, encumber, control and maintain any easement, water right, acequias, well, railroad right of way, canal, sluice, flume, reservoir site, reservoir or retarding basin, mill dam, water power, franchise, park, cemetery or any other public way or place or any real or personal property, public or private, in or out of [~~said~~] the district, for rights of way and such other things or for materials of

construction or for any other use not inconsistent with the purposes of
[~~this~~] the Conservancy Act of New Mexico; and

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

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

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

D. Any lawfully organized acequia or community ditch that is
located within a conservancy district that includes within its boundaries a

class A county that has a population greater than five hundred thousand according to the most recent federal decennial census and which acequia or ditch is located within that class A county shall have the right to distribute water to its members after the conservancy district has distributed the water to the acequia or community ditch headgate. An acequia or community ditch shall also have the right, but not the obligation, to enter into a contract with the conservancy district for the operation and maintenance of the acequia or community ditch. Nothing in this subsection modifies any provision relating to the powers, duties and authority of a conservancy district as provided for in the Conservancy Act of New Mexico, or modifies or abrogates the rights of any individuals to all rights of use and ownership of vested water rights."

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