

REPORT OUT

From the **Aguas del Norte Alliance Meeting #7** on Friday 27 September 2024

Prepared by

The Southwest Environmental Finance Center
Center for Water and the Environment
at The University of New Mexico

4 November 2024

Contributors

Regional Resiliency Team
New Mexico Environment Department
Drinking Water Bureau

RCAC / Community & Environmental Services

Introduction

Thank you, all, for joining us for the Aguas del Norte Alliance meeting #7 on Friday 27 September 2024. We appreciate the use of the Chamita Community Center and the yummy snacks and beverages! 17 people attended the meeting on 27 September. Thank you, everyone who was able to attend, for making the time to join us. For those of you who could not attend, please read through this report for key takeaways, and information about the next meeting (Friday 15 November 2024).

This report is meant to present to all Aguas del Norte Alliance members the main takeaways from the meeting on the 27th of September. This report is comprised on the following:

1. Meeting #7 agenda
2. Notes, re: Proof you are a mutual domestic
3. Summary of Resilience exercise
4. MOU: Example MOU [Melanie, NMED]
5. Creating an 'Alliance'? [Ramon, RCAC]
6. Next meeting flyer
7. Shared materials from the meeting/ATTACHMENTS

Please let me know if you have any questions!

Best,



joni m palmer, Ph.D.

e: palmerjonim@unm.edu | c: (505) 228-1886

[Center for Water & the Environment](#), University of New Mexico

Project Director, [Southwest Environmental Finance Center](#)

Office: Centennial Engineering Center, Room 2041B



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Mailing Address: Centennial Engineering Center – Suite 3020

Department of Civil Engineering MSC01 1070

1 University of New Mexico, ABQ, NM 87131

[Water, Wastewater, and Stormwater Assistance Program: Helping Systems and Tribes Access BIL Funding in Region 6](#)

[Aguas del Norte Water Alliance](#) If you have any questions, please contact me!

1. AGENDA

Aguas del Norte Water Alliance

Meeting #7: WHAT'S NEXT for Aguas del Norte Alliance: Building Resilience into the Future!

Friday 27 September 2024 | 10 am – 1 pm

Location: Chamita Community Center County Road 56A #42 Chamita, NM.

AGENDA

- | | | |
|--|--------------------------|------------|
| 1. Welcome
Where do we go from here? | Melanie, joni | 20 minutes |
| 2. Question/Discussion:
What does resilience mean to you? | joni | 20 minutes |
| 3. Here's an option we would
like to talk about ... an MOU.
What and Why an MOU? | Melanie | 30 minutes |
| BREAK | | 15 minutes |
| 4. Create an alliance? | joni, Ramon | 45 minutes |
| 5. Wrap-up/Next Steps | joni, Melanie, and Ramon | 20 minutes |

2. NOTES, RE: PROOF YOU ARE A MUTUAL DOMESTIC

Willy and several other systems received a letter asking for proof that they are actually a mutual domestic and shouldn't have to pay property taxes. He went to the County Assessor with lots of documents to find out what kind of proof is needed. The best option is the system's articles of incorporation or anything from the secretary of state.

From: Jeanne Archuleta

El Rito Regional Water & Wastewater Association

Date: Email 3 October 2024

I went to the county assessor's office this morning and I took our tax bill and the Attorney General opinion. I was told that the only other document needed is the Letter of Incorporation from the Secretary of State. I know someone mentioned this at our last meeting so wanted to let everyone know what was required.

3. SUMMARY OF RESILIENCE EXERCISE

Partnership Bingo

Do you have generators? Are they portable? Do you share with some? Make a note if you share with someone.

Do you have an accountant or bookkeeper?

- This started a conversation about certified vs not certified
- An accountant doesn't always present the information in the way you need it. Systems rarely require a CPA.
- Funding is usually the only thing that requires an audit
- Ramon suggested holding a training for proper accounting and bookkeeping since most systems have someone in the community doing their books
- DFA changed their software, and the systems didn't know how to use it to input their financial data.

How important is it to having your own backhoe?

- One system got an equipment grant for a backhoe and it has been very helpful
- There is some maintenance required
- The state through the grant usually wants you to buy a new backhoe versus a used. However, often the grant isn't close to the amount of money required to purchase a backhoe. They will allow you to buy a used one through a dealer that is certified and approved by the state.

Meters - can you read them? What was the process to get them?

- Systems may want to share information about the new radio meters because some systems that recently installed them are experiencing issues.
- There is a cost to updating the software of these meters. That update can cost thousands of dollars. Could folks share a software if they have the same meters?
- Are water systems buying stuff that they need off state contracts? Joseph thinks there is opportunity to save a lot of money by buying them through state contracts. Have to follow the procurement code but through that there are state contracts with certain companies (state purchasing contract so you don't have to go through the procurement code). All the meters - badgers, nexus, baker- are already vendors. There is a long list of services under the state contract.

Do you have an engineer you work with regularly and trust?

- Some have liked NV5 - Arvin Petal
- Most systems were unhappy with the engineers they've worked with in the past.

4. MOU: Example MOU [Melanie, NMED]

The attached, see section 7 of this report, includes the example MOU, which is an example for us to continue to discuss.

5. CREATING AN 'ALLIANCE'? [Ramon, RCAC]

Formalizing an Alliance

- Chamita is interested in a regional authority because the county hasn't shared an emergency response plan with them even though the system has shared theirs
- Over time we have become isolated unlike the old agrarian society
- A lot is changing, new reporting, PFAS, online requirements and reporting and that requires more time and effort from small systems
- How do we build local capacity? What are the building blocks? One is the memorandum of understanding. It is more specialized to your group than WARN. We recognize all of us have the same challenges. An MOU is a nonbinding agreement. The MOU is just one of the building blocks.
- El Valle just started with mapping some asset for Tierra Amarilla to see what they had. Now they have three committees, and one tackles compliance challenges of the region. Another committee is funding and looking at needs and then looking at funding applications - building local capacity
- Sometimes on a board you feel lonely with what you do but now you have a team
- [Water Regionalization Resiliency Act](#) - the bill provides a framework for communities to come together - you bring all of your resources into one spot (technical resources, admin resources)
- The changes around us are happening really fast and if we don't have capacity we can't keep up.
- You typically think of resiliency from a water standpoint but it's also managerial resiliency etc.
- The state doesn't respond to emergencies fast enough so we can respond to emergency we have ourselves
- More people come to participate in an organization that is thriving and vital. History communities would solve their own problems at the local level
- Grandparents generation - it was all solved in the community
- Create a website for them?
- MOU is an exploration
- More of you becomes collective authority

Ideas for the future

- Get a list together of equipment
- Field trips to each system

Ideas for Collaboration

- Emergency Response- systems helping each other

- Forming a Water Authority
- Share knowledge-communicate, ask questions, solve things (problems, challenges, issues, etc.) through a formalized network, an *Alliance* – a forum of experts!
 - Advocacy
 - Build political capital
 - Create parity with other local governments/ agencies.
 - Collective authority
 - Do our own sustaining and resiliency
 - [Water can't wait](https://watercantwait.org) URL: <https://watercantwait.org>
 -

Our Mission

- Providing life source,
- safe drinking water.
- Easy and convenience of water availability from the faucet.
- What we want to do differently

Support Services/ Tools

- Water can't wait campaign
- Resiliency staff at NMED
- Environmental Justice at NMED
- Technical Assistance Program (TAP) at NMFA-Water Trust Board
- Assistance Providers: SWEFC, NMRW, RCAC, COG's

Local Resources

- Schools

6. NEXT MEETING FLYER

Meeting #8 flyer → please help us spread the word!

PLEASE JOIN US FOR THE:
Aguas del Norte Water Alliance Meeting #7
Friday, Sept. 27th from 10 am - 2 pm
**WHAT'S NEXT for Aguas del Norte
Alliance: Building Resilience into the
Future!**

AGENDA

1. Welcome & Where do we go from here?
2. Discussion: What does resilience mean to you?
3. Here's an option we would like to talk about: An MOU*
4. BREAK: snacks and coffee will be provided
5. Do you want to create an alliance?
6. Wrap up & Next Steps

**MOU: Memorandum of Understanding*

Location: Chamita Community Center, 42 Co Rd
56A, Ohkay Owingeh, NM 87566

Please Let Us Know If You Will be Joining Us!

And, let us know if you have any questions.

joni m palmer: palmerjonim@unm.edu | cell: (505) 228-1886



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This work is partly funded by EPA EPC BIL Region 6.

7. SHARED MATERIALS FROM THE MEETING / ATTACHMENTS

- 27 September Meeting Flyer
- Sign-in Sheet/Attendance
- Resilience BINGO (blank)
- Example MOU [Melanie, NMED]
- Mission Statement PPT [Ramon]
- Blanca's PostItNotes
- Rio Arriba County Sanitary Projects Act

PLEASE JOIN US FOR THE:
Aguas del Norte Water Alliance Meeting #8

Friday, Nov. 15th from 10 am - 12 pm

**NEXT STEPS: Defining
Aguas del Norte Alliance**

AGENDA

1. Welcome
2. Define Who is "Aguas del Norte Alliance"
3. Develop Recruitment Process
4. Creating a Mission Statement that defines us
5. Wrap up & Next Steps

Location: Chamita Community Center, 42 Co Rd
56A, Ohkay Owingeh, NM 87566

Please Let Us Know If You Will be Joining Us!

And, let us know if you have any questions.

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This work is partly funded by EPA EFC BIL Region 6.

	Name	Water System	Email	Phone	Operator Certification #
1	WILHE PICARO	EL BARRANCO MDWCA	EL BARRANCO MDWCA @GMAIL.COM	505 685-4352	
2	JEANNE ARCHULETA	EL RITO Regional Water & WW Assoc	elrito42@gmail.com	(575)581-0063	
3	Christine Romms	Lumberton CMDWCA	lumbertonwater@gmail.com	575-209-0603	
4	Lorena Salazar-Garcia	CMDWCA	salazargarcialorena500@gmail.com	505-692-9821	
5	Delvin Garcia	Abiquiu MWC	delvinlogarcia@gmail	505-929-1129	
6	Jose Velarde	Ojo Sarco MDWCA	velardejose68@gmail.com	505.927.7687	
7	Michael Roberts	UMFURI @ Highlands	michaelroberts@nmhu.edu	505-850-701	
8	Blanca Surgeon	RCAC	bsurgeon@rcac.org	505 577 6917	
9	Jennifer D Viereck	Abiquiu MDWCA	jennifer joviereck@gmail.com	505-685-0591	
10	Randy Vigil	CUNDIYO MDWCA	ERVigil68@gmail.com	505-490-3092	
11	Chris Vigil	Cundiyo MDWCA	KundiyoKid@gmail.com	505-920-0653	
12	Margaret Trujillo	Vista Redonda	trujillom31@gmail.com	505-412-2117	
13	Michael Vigil	Vista Redonda	lijd.dlt1@gmail.com	505-412-2117	
14	Gloria Menting	San Antonio de Clavetas	Morieza55@gmail.com	505 920-6735	
15	Rita Larra	Mora Water Alliance	all-larra@yahoo.com	505-205-8581	
16	Linda Sanderson	Mora County Water Alliance	LindaSanderson1212@gmail.com	505-429-6501	

Name	System	Email	Phone	Operator / Education #
Terence Martinez	Rio Embudo MPWLA DURANOS Y BAULAN	twmartinez79@gmail.com	505-579-4493	14053
Ramon S Blasco	RCAC			
Joseph Valdez	RCAC			
Melanie	JAMES			
Sonja				
Joni	SWEET			
Hayley				

RESILIENCE BINGO

Is your Water System Resilient? Your goal is to cover 5 of these squares in a vertical, horizontal, or diagonal row. Use any mark you choose. When you get 5 in a row, you've got BINGO!

Effective Partnerships	Backhoe	Up-to-date Water Meters	Treatment Plant	Accountant/Bookkeeper
Full and Active Board	Compliance	Financial Security	Water Security	Emergency Preparedness
Asset Management Plan	Strategic Planning		Stable and Consistent Service	Cost Efficiency
Grant Writer(s)/Ability to Write Successful Grants	Generators	Ability to Implement Medium-Large Improvement Projects	Redundancy in our System	Ability to Manage Grants & Loans
Water Operator	Storage Tank	Communication & Education/ Outreach	Engineer You Trust and Can Work With	Younger Generations Involved

MEMORANDUM OF UNDERSTANDING (MOU)
Regarding
Collaboration for Building Water Systems Resiliency
Between Invited Parties to Include

1. *Tres Piedras Mutual Domestic Water Consumers Association*; Incorporated July 19, 1951
2. *Llano Quemado Mutual Domestic Water Consumers Association*; Incorporated August 13, 1952
3. *Talpa Mutual Domestic Water Consumers Association*; Incorporated July 13, 1954
4. *Arroyo Seco Mutual Domestic Water Consumers Association*; Incorporated October 29, 1956
5. *Ranchos de Taos Mutual Domestic Water Consumers Association*; Incorporated November 1, 1956, and reinstated 6/12/2009.
6. *Valdez Mutual Domestic Water Consumers' and Mutual Sewage Works Association*; Incorporated March 13, 1959
7. *Upper Des Montes Mutual Domestic Water Consumers Association*; Incorporated May 5, 1959
8. *Upper Arroyo Hondo Mutual Domestic Water Consumers Association*: Incorporated June 2, 1961, and reinstated 11/20/2012.
9. *Lower Des Montes Mutual Domestic Water Consumers' and Mutual Sewage Works Association*; Incorporated April 6, 1967 & reinstated 4/26/2012.
10. *San Cristobal Mutual Domestic Water Consumers and Mutual Sewage Works Association*; Incorporated June 13, 1968
11. *Lower Arroyo Hondo Mutual Domestic Water Consumers and Mutual Sewage Works Association*; Incorporated June 18, 1968
12. *El Salto Mutual Domestic Water Consumers' and Mutual Sewage Works Association*; Incorporated February 15, 1973
13. *El Valle de Los Ranchos*; Incorporated in 1979
14. *La Lama Mutual Domestic Water Consumers Association*; Incorporated September 6, 1996
15. *Taos Ski Valley*; Incorporated in 1996.
16. *El Prado Water and Sanitation District*; Incorporated in August 12, 1981
17. *West Rim Mutual Domestic Water Users Association*; Incorporated June 21, 2002

This Memorandum of Understanding regarding collaboration for safe drinking water within the service area of the signatory parties is entered into on the dates as set forth among the Parties, referred to in total as the "Parties." All located in Taos County, New Mexico.

WHEREAS water systems are governed and, in most cases, also manned by volunteer boards, and

WHEREAS the growing demands of health standards, environmental concerns, and regulatory requirements have stretched the capacity of many of the volunteer boards, and

WHEREAS the parties individually do not have the resources to adequately prepare for climate change resiliency, respond to increasing natural disasters or major emergencies which could severely damage our water infrastructure, and

WHEREAS our communities individually do not have all the resources to mobilize the planning, engineering, legal research, and action needed to secure funding and to plan effectively for our water future, having shovel ready projects, and up to date and adequate infrastructure, and

WHEREAS the parties seek to secure to our rural communities the same benefits of ample safe drinking and household water that other New Mexicans enjoy, and

WHEREAS collaboration between the University of New Mexico Taos Campus and water utilities can contribute to the advancement of knowledge and education, workforce development, the improvement of water management practices, and building a more sustainable and resilient water community in our region.

WHEREAS the Parties signing this MOU have the capacity and leadership necessary to address these concerns collaboratively, and

WHEREAS other community water systems within Taos County may have similar needs and concerns and may join this MOU coalition in the future.

THEREFORE, the parties enter into the Memorandum of Understanding as follows:

1. Regional Collaboration. The Parties agree to collaborate with the purpose of building water resilience in the area.
2. Organization: An informal organization is being created and named the "Greater Valle de Taos Water and Wastewater Alliance" comprised of all signatories and Parties to this MOU.
3. Methods of Collaboration: The Parties agree to work together through meetings, sharing information, discussion and developing agreements as needed by mutual consent.
4. Legal Authority of this MOU: this Memorandum of Understanding does not change the legal status of the Parties. No organization, committee or group formed pursuant to this MOU has authority beyond that specified in MOU nor is this MOU an expansion of the Parties existing authority.
5. Termination: Each party may discontinue its involvement in this MOU for any reason. In order not to cause any disruption of ongoing efforts, the Parties agree to provide at least 30 days' notice of their intention to discontinue in the stated goals and agreements of this MOU.

Name: _____

Signed on this _____ day of _____ 20__.

By _____ Title: _____
Signature of

Attest:

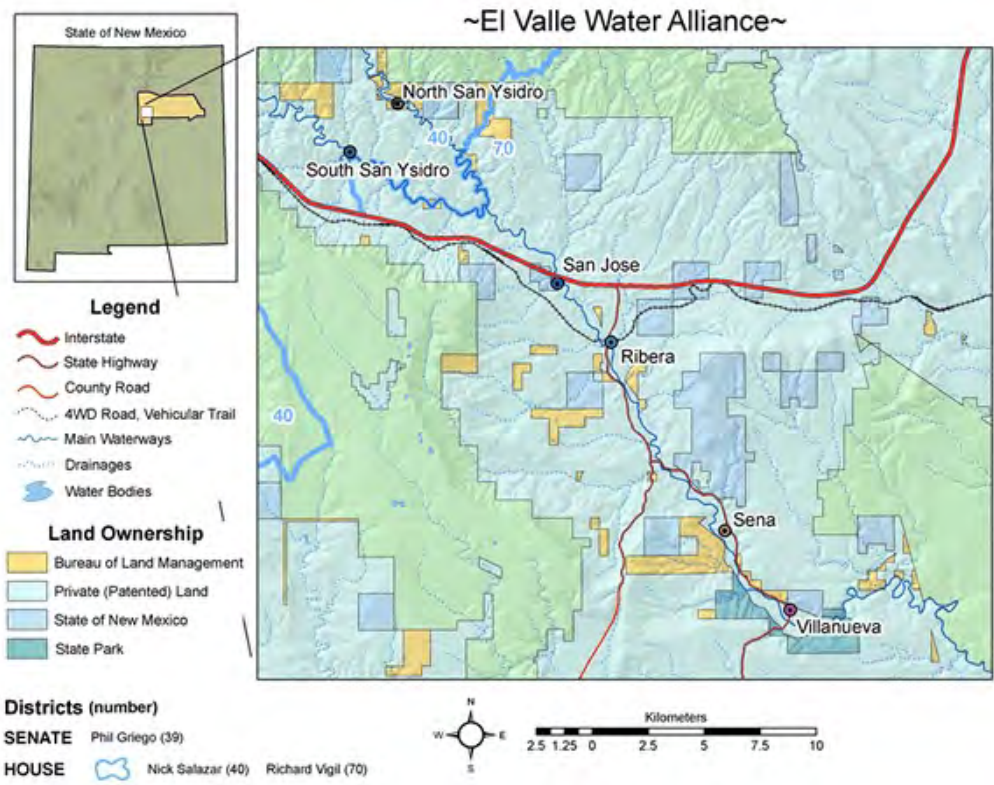
By _____ Title: _____
Signature of

MISSION STATEMENTS AND IMAGES

- **Starbucks:** Inspire and nurture the human spirit – one person, one cup and one neighborhood at a time.
- **Patagonia:** We're in business to save our home planet
- **Target:** Help all families discover the joy of everyday life
- **Microsoft:** To empower every person and every organization on the planet to achieve more

MISSION STATEMENTS AND IMAGES

- **Nike:** Bring inspiration and innovation to every athlete in the world. If you have a body, you are an athlete
- **Google:** Organize the world's information and make it universally accessible and useful
- **Harley Davidson:** More than building machines, we stand for the timeless pursuit of adventure. Freedom for the soul
- **Microsoft:** To empower every person and every organization on the planet to achieve more



An Alliance of independent and autonomous mutual domestic water consumer's associations who seek to develop a management structure and the necessary infrastructure improvements to sustain the health of our communities, water table, and water shed for current and future generations.



MORA COUNTY WATER ALLIANCE

- **Our vision** is to be a collaborative entity that offers sustainable support services for water systems within our County.
- **The mission** of the Mora County Water Alliance is to develop a management support structure and the necessary infrastructure improvements for our water systems to sustain the health of our communities, water table, and watershed for current and future generations. We aim to provide reliable, high quality, affordable and sustainable services to our collaborative efforts

AGUAS DEL NORTE ALLIANCE

- Water Can't Campaign
- Trust
- Sharing Knowledge
- Sustainability (Self-sufficiency)
- Political Capital
- Tradition and Culture
- Safe Drinking Water
- Rural Water
- Watershed
- Never be without water

AGUAS DEL NORTE ALLIANCE

- An Alliance of independent and autonomous mutual domestic water consumer's associations who seek to develop a collaborative network structure and the necessary infrastructure improvements to sustain the health of our communities, water table, and water shed for current and future generations.

Ideas for Collaboration

- Emergency Response - help each other.
- Forming a Water Authority
- Share Knowledge - communicate To ask questions, solve things through a Formalized Network
an Alliance - a forum of experts
 - advocacy -
 - Build political capital
 - create parity w/ other local governments / agencies
 - collective Authority
 - do our own sustaining and Resiliency
 - WATER can't wait

Our Mission

What we do now

Providing life source, safe drinking water, we make it easy to open a faucet that is convenient,

What we want to do differently

Support Services / Tools

- o Water ~~contaminant~~ campaign
- o Resiliency Staff at NMED
- o Environmental Justice at NMED
- o Technical Assistance Program (TAP)
at NMFA - WATER Trust Board
- * Assistance Providers: SWEFC,
NMRW, RCAC, COGs,
Local Resources

▣ Schools - for logo, Flyers,



*Rio Arriba County
Assessor*

*Joaquin Valdez
County Assessor
Tierra Amarilla/Espanola*

*Donald Valdez
Deputy Assessor
Tierra Amarilla/Espanola*

September 6, 2024

R045907 1030134451430
EL BARRANCO MUTUAL DOMESTIC WATER COSUMERS' ASS'N
P.O. BOX 4
ABIQUIU, NM 87510

Re: **Request for information: MDWCA's organized pursuant to Sanitary Projects Act
EL BARRANCO MUTUAL DOMESTIC WATER COSUMERS' ASS'N**

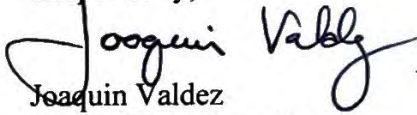
To Whom it May Concern,

We are aware of the Attorney General's Opinion No. 2024-06 regarding the Mutual Domestic Water Consumer's Association (MDWCA) and their taxable status for property taxation purposes. We have attached a copy for your reference if you have not had access to the written opinion. The purpose for this letter is to **request some pertinent information** which will assist us in correctly assessing the property of the MDWA's for property taxation purposes.

The aforementioned Property Owner described above has been identified as a water association within the jurisdiction of Rio Arriba County. Please provide any and all documentation identifying and specifying *EL BARRANCO MUTUAL DOMESTIC WATER COSUMERS' ASS'N* is a *Mutual Domestic Water Consumers Association (MDWCA)* and organized pursuant to the **Sanitary Projects Act (SPA), NMSA 1978, ss 3-29-1 (1965, as amended through 2013)**. Documentation shall be submitted to the Rio Arriba County Assessor's Office by **Friday, September 20, 2024** in order to make the necessary changes for **Tax Year 2024**.

If you have any questions or concerns, please contact us at (575) 588-7726 or (505) 753-7019. You may also visit us at the Rio Arriba County Office in Espanola at the annex building located at 1122 Industrial Park Rd, Espanola, NM 87532 or in Tierra Amarilla, NM.

Respectfully,


Joaquin Valdez
Rio Arriba County Assessor

Cc: File

Encl: AG Opinion 2024-06
3-26-6 NMSA 1978

*P.O. Box 277 • Tierra Amarilla, New Mexico 87575 * Phone (575) 588-7726 * Fax (575) 588-7374
Espanola Annex • 1122 Industrial Park Road • Espanola, New Mexico 87532 • Phone (505) 753-7019 • Fax (505) 753-3760*

purposes, all property used for educational or charitable purposes, all cemeteries not used or held for private or corporate profit and all bonds of the state of New Mexico, and of the counties, municipalities and districts thereof[.]

N.M. Const. art. VIII, § 3.

Our analysis depends on whether MDWCAs fall within the category of “other municipal corporations” the property of which is exempt under Article VIII, Section 3. Several decades ago, this office analyzed the law in existence at the time and concluded that MDWCAs were not exempt from property taxation. *see* N.M. Att’y Gen., No. 68-38 (Apr. 9, 1968). However, subsequent changes in the law—including significant amendments to the SPA—mandate a different result today. Under current law, MDWCAs are municipal corporations, and the property of MDWCAs is therefore constitutionally exempt from property taxation.

MDWCAs, widespread throughout New Mexico, are community water systems that predominantly serve rural communities. “The purpose, membership, and activities of an [MDWCA] are carefully circumscribed by state law.” *Moongate Water Co. v. Doña Ana Mut. Domestic Water Consumers Ass’n*, 2008-NMCA-143, ¶ 12, 145 N.M. 140, 194 P.3d 755. MDWCAs are created under the SPA, an Act located within the State’s Municipal Code. The express purpose of the SPA

is to improve the public health of rural communities in New Mexico by providing for the establishment and maintenance of a political subdivision of the state that is empowered by the state to receive public funds for acquisition, construction and improvement of water supply, reuse, storm drainage and wastewater facilities in communities, and to operate and maintain such facilities for the public good.

Section 3-29-3; *see also* *Moongate Water Co.*, 2008-NMCA-143, ¶ 15 (“[T]he purpose of the SPA is to improve the public health of the people of New Mexico by establishing sanitary domestic water facilities to supply water to rural unincorporated communities, which otherwise would likely have no means to procure usable water.” (internal quotations and citation omitted)).

“By enacting the SPA, . . . the [L]egislature has provided a governmental solution for a particular problem: water supply in the rural communities in New Mexico.” *Id.* ¶ 12. The SPA enumerates a litany of powers possessed by MDWCAs that clearly give them self-governing authority for the specific purposes for which such MDWCAs exist. *See, e.g.*, §§ 3-29-6 (outlining various powers of MDWCAs, including the ability to impose fees, prescribe and enforce rules, and exercise the power of eminent domain), -15 (providing that MDWCAs “constitute a public body corporate” and “may sue and be sued, have capacity to make contracts, acquire, hold, enjoy, dispose of and convey property real and personal, accept grants and donations, borrow money, incur indebtedness, impose fees and assessments and do any other act or thing necessary or proper for carrying out the purposes of their organization”).



April 12, 2024

OPINION
OF
RAÚL TORREZ
Attorney General

Opinion No. 2024-06

By: Ellen Venegas
Assistant Solicitor General

To: Senator Jeff Steinborn
New Mexico Senate

Re: Opinion Request – Property Taxation of Mutual Domestic Water Consumers Associations

Question: Is a mutual domestic water consumers association (MDWCA) organized pursuant to the Sanitary Projects Act (SPA), NMSA 1978, §§ 3-29-1 to -21 (1965, as amended through 2013), exempt from valuation for property taxation purposes, either pursuant to NMSA 1978, Section 7-36-28(G) (2009), or a constitutionally authorized exemption from property taxation?

Answer: MDWCAs are exempt from property taxes.

Analysis

In answering a question about the application of property taxes, we are guided by the general principle that “[a]ll tangible property in New Mexico is subject to taxation . . . and should be taxed, unless specifically exempted by the constitution or by its authority.” *Sims v. Vosburg*, 1939-NMSC-026, ¶ 4, 43 N.M. 255, 91 P.2d 434. The New Mexico Constitution exempts the following from property taxation:

[t]he property of the United States, the state and all counties, towns, cities and school districts and other municipal corporations, public libraries, community ditches and all laterals thereof, all church property not used for commercial

New Mexico Department of Justice

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for sale to the consuming public, excluding general buildings and improvements[.]” Section 7-36-28(B)(1).

“Article VIII, Section 3 operates as a limit on the Legislature’s power to redefine categories of property which will be exempt from taxation.” *El Castillo Ret. Residences*, 2017-NMSC-026, ¶ 29. Accordingly, Section 7-36-28(G) “may not be interpreted or applied to grant exemptions that are not authorized by Article VIII, Section 3.” *Id.* ¶ 30.

Beyond the constitutional property tax exemptions addressed above, Article VIII, Section 3 additionally provides that “[e]xemptions of personal property from ad valorem taxation may be provided by law if approved by a three-fourths majority vote of all the members elected to each house of the legislature.” N.M. Const. art. VIII, § 3; *cf. El Castillo Ret. Residences*, 2017-NMSC-026, ¶ 30 (explaining that New Mexico voters enacted this provision in 1972, “to give a supermajority of the Legislature the limited authority to exempt personal property from taxation”).

Section 7-36-28(G), enacted by HB 297 (2009), passed the Legislature with unanimous consent,¹ thereby adhering to the supermajority requirement in the Constitution. Accordingly, insofar as the statutory exemption is understood to exempt personal property from taxation, the exemption complies with the Constitution. *See El Castillo Ret. Residences*, 2017-NMSC-026, ¶ 30 (affirming the Legislature’s authority to exempt personal property from taxation but noting that “no constitutional authority has been granted for the Legislature to exempt real property by statute”).

Lastly, we observe that a Taxation and Revenue Department regulation opines that the property of MDWCAs is not exempt from property taxes. 3.6.5.15(I) NMAC. Because 3.6.5.15 NMAC was last revised in 2001, we do not understand it to consider subsequent, significant amendments to the SPA or Section 7-36-28(G). *Cf. Jones v. Emp. Servs. Div. of Hum. Servs. Dep’t*, 1980-NMSC-120, ¶ 3, 95 N.M. 97, 619 P.2d 542 (“If there is a conflict or inconsistency between statutes and regulations promulgated by an agency, the language of the statutes shall prevail.”).

Conclusion

It is the opinion of the New Mexico Department of Justice that the property of Mutual Domestic Water Consumers Associations is exempt from property taxation, pursuant to Article VIII, Section 3 of the New Mexico Constitution and Section 7-36-28(G).

You have requested an opinion on this question presented to our office. The request and the opinion provided herein will be published on our website and made available to the general public. If you

¹<https://www.nmlegis.gov/Legislation/Legislation?Chamber=H&LegType=B&LegNo=297&x=ea>
1-09

As local political entities created pursuant to statute and authorized to manage community water systems, MDWCAs have “the autonomous authority to administer the state’s local affairs . . . and [are] endowed with political powers to be exercised for the public good in the administration of local civil government.” *Einer v. Rivera*, 2015-NMCA-045, ¶ 24, 346 P.3d 1197 (internal quotation marks and citation omitted) (defining municipal corporation). In total, MDWCAs possess the attributes municipal corporations are commonly understood to have. *See id.* ¶ 26 (describing characteristics of municipal corporations); *Moongate Water Co.*, 2008-NMCA-143, ¶ 12 (discussing nature of MDWCAs as public corporations established under state law); Eugene McQuillin, *The Law of Municipal Corporations* § 2:9 (3d ed.) (explaining that “a test as to whether an organization is a municipal corporation, using the term in its strict sense, is whether it has the power of local government”).

Our conclusion that MDWCAs are exempt from property tax is further supported by our previous determination that water and sanitation districts—entities that share many similarities with MDWCAs—are constitutionally exempt from property tax. *See* Letter from Patrick T. Simpson, Assistant Att’y Gen., to Sen. Mary K. Papen, N.M. State Senate, 2002 WL 32082312 (Apr. 15, 2002) (“We therefore conclude that water and sanitation districts, being political subdivisions of the state or a county, and public or quasi-municipal corporations, should most reasonably be included within the constitutional exemption from taxation.”); *Moongate Water Co.*, 2008-NMCA-143, ¶¶ 14-20 (discussing the significant similarities between MDWCAs and water and sanitation districts).

The powers of MDWCAs under current law distinguish them from the ones at issue in the previous Attorney General opinion on this subject. In 1968, our opinion concluded that MDWCAs “are neither ‘bodies politic’ nor ‘instrumentalities, nor agencies of the state government’ as used in *State v. Board of Trustees of Town of Las Vegas*,” 1922-NMSC-029, 28 N.M. 237, 210 P. 101, N.M. Att’y Gen., No. 68-38 (Apr. 9, 1968). However, in 2006, the Legislature substantially revised the SPA, unequivocally establishing MDWCAs as public bodies and political subdivisions of the State. *See* 2006 N.M. Laws ch. 60, §§ 2, 6 (designating MDWCAs as political subdivisions of the state and expanding their powers). These amendments expressly recognized that MDWCAs possess the precise characteristics of a municipal corporation our previous opinion found lacking.

You additionally asked about the Legislature’s power to exempt property from valuation for property tax purposes, in particular the exemption in Section 7-36-28(G). “The Legislature’s inherent authority and discretion to exercise the State’s power of taxation is plenary except in so far as limited by the Constitution.” *El Castillo Ret. Residences v. Martinez*, 2017-NMSC-026, ¶ 26, 401 P.3d 751 (internal quotation marks and citation omitted).

Pursuant to NMSA 1978, Section 7-36-28(G) (2009), “[c]ommercial water property owned or sold by a nonprofit mutual domestic water association is exempt from valuation for property taxation purposes.” Commercial water property is defined as “privately owned pipelines, tanks, meters, plants, hydrants, materials and supplies, whether in service, in stock or under construction, owned and operated as a utility for the purpose of transmitting, storing, measuring or distributing water

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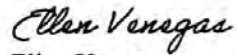
Senator Jeff Steinborn

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have any questions regarding this matter, or if our office may be of further assistance, please let us know.

RAÚL TORREZ

ATTORNEY GENERAL



Ellen Venegas

Assistant Solicitor General

ARTICLE 29 Sanitary Projects

3-29-1. Sanitary Projects Act; short title.

Chapter 3, Article 29 NMSA 1978 may be cited as the "Sanitary Projects Act".

3-29-2. Definitions.

As used in the Sanitary Projects Act:

A. "community" means a rural unincorporated community and includes a combination of two or more rural unincorporated communities when they have been combined for the purposes set forth in the Sanitary Projects Act;

B. "association" includes an association or mutual domestic water consumers association organized under Laws 1947, Chapter 206, Laws 1949, Chapter 79 or Laws 1951, Chapter 52, as well as any association organized under the provisions of the Sanitary Projects Act;

C. "department" means the department of environment;

D. "member" or "membership" means a person who has paid the appropriate fees and has been issued a certificate as required by association bylaws;

E. "person" means a single residence or property owner, as determined by the rules adopted by the association's board of directors; and

F. "project" means a water supply or reuse, storm drainage or wastewater facility owned, constructed or operated by an association.

3-29-3. Purpose of act.

The purpose of the Sanitary Projects Act is to improve the public health of rural communities in New Mexico by providing for the establishment and maintenance of a political subdivision of the state that is empowered by the state to receive public funds for acquisition, construction and improvement of water supply, reuse, storm drainage and wastewater facilities in communities, and to operate and maintain such facilities for the public good.

3-29-4. Projects.

Plans, specifications and contracts for each project, as appropriate, shall be prepared by a practicing professional engineer licensed under the Engineering and Surveying Practice Act [Chapter 61, Article 23 NMSA 1978] and selected by the association in accordance with the provisions of the Procurement Code [13-1-28 to 13-1-199 NMSA 1978].

3-29-5. Restrictions on forming an association.

A. A new association shall not be formed under the Sanitary Projects Act by original incorporation after January 1, 2000, and a new association shall not be formed by reorganization after January 1, 2000, unless the preceding entity was in existence on January 1, 2000, if the service area of either association includes property contiguous to an incorporated municipality or an unincorporated area currently served by a municipality or by a water and sanitation district. The restrictions on forming an association set forth in this subsection shall not apply if the contiguous incorporated municipality or water and sanitation district does not provide the services or cannot provide the services to be provided by the association at or below the cost proposed by the association.

B. An association shall not construct with state funds a project required in order to allow creation of a subdivision under the provisions of the Land Subdivision Act [47-5-1 to 47-5-8 NMSA 1978], the New Mexico Subdivision Act [Chapter 47, Article 6 NMSA 1978] or Section 47-5-9 NMSA 1978; however, an association may construct a project serving a previously approved subdivision in the service area of the association.

C. After July 1, 2006, a new association shall not be formed as a capital stock corporation.

D. A new association shall not be formed under the Sanitary Projects Act after July 1, 2017 unless the association will service at least fifteen connections or a population of at least twenty-five people for at least six months of the year.

3-29-6. Board of directors; powers and duties.

A. The board of directors of each association shall be responsible for the acquisition or purchase of all property, rights of way, equipment and materials as may be necessary for the completion of a project. The directors shall act on behalf of the association and as its agents. The association, acting through its board of directors, may exercise the right of eminent domain to take and acquire the necessary property or rights of way for the construction, maintenance and operation of water and sewer lines and related facilities, but such property and rights of way shall in all cases be so located as to do the least damage to private and public property consistent with proper use and economical construction. Such property or rights of way shall be acquired in the manner provided by the Eminent Domain Code [42A-1-1 to 42A-1-33 NMSA 1978]. In accordance with

Sections 42A-1-8 through 42A-1-12 NMSA 1978, engineers, surveyors and other persons under contract with the board for the purposes of the project shall have the right to enter upon property of the state, its political subdivisions, private persons and private and public corporations for the purpose of making necessary surveys and examinations for selecting and locating suitable routes for water and sewer lines and facilities.

B. The board of directors of the association may set and, from time to time, increase or adjust assessments, water and sewer rates, tolls or charges for services or facilities furnished or made available by the association. The assessments, tolls and charges may include:

- (1) membership fees;
- (2) a base monthly service fee for each active connection delivering water;
- (3) a base monthly service fee for each inactive connection;
- (4) a standby charge for the privilege of connecting into the association's water service at some date in the future;
- (5) assessments based on the volume of water delivered;
- (6) a connection charge; and
- (7) an assessment necessary to cover the cost of extending either water or sewer service.

C. The board of directors of the association may place a lien on property to which services have been extended in the amount of all outstanding assessments, charges and fees associated with the services. The board of directors may enforce the lien in a manner provided by the laws of the state. In the event the board of directors is forced to enforce the lien in a court of competent jurisdiction in New Mexico, the board of directors shall be entitled to recover all costs and attorney fees.

D. After notice is given, the board of directors of the association shall shut off unauthorized connections, illegal connections or a connection for which charges are delinquent in payment. The board of directors may file suit in a court of competent jurisdiction to recover costs associated with an unauthorized or illegal connection or delinquent connection, including the cost of water delivered, charges for facility connection and disconnection, damages and attorney fees.

E. The board of directors of the association shall prescribe and enforce rules for the connection to and disconnection from properties of facilities of the association.

F. Each member of the board of directors of the association shall complete training, as determined by rules of the department.

3-29-7. Department powers.

A. Insofar as the department deems it necessary for the purpose of the Sanitary Projects Act, the department may recommend agreements, covenants or rules in regard to operation, maintenance and permanent use of water supply, reclamation, storm drainage and wastewater facilities.

B. The department may:

- (1) conduct periodic reviews of the operation of the association;
- (2) require the association to submit information to the department;
- (3) require submittal of financial reports required pursuant to the Audit Act [12-6-1 to 12-6-14 NMSA 1978];
- (4) review and require changes to the rate-setting analysis described in Section 3-29-12 NMSA 1978;
- (5) after a hearing, intervene in the operation and management with full powers, including the power to set and collect assessments from members of the association, to set and collect service charges and use the same for the proper operation and management of the association; and
- (6) appoint and delegate authority to a representative to oversee operation of the association for a specified period.

C. The department may in its discretion or shall, upon a petition of twenty-five percent of the members of the association, conduct investigations as it deems necessary to determine if the association is being operated and managed in the best interests of all the members of the association.

D. Whenever the department determines that an association violated or is violating the Sanitary Projects Act or a rule adopted pursuant to that act, the department may:

- (1) issue a compliance order requiring compliance immediately or within a specified time period, or both; or
- (2) commence a civil action in district court for appropriate relief, including injunctive relief.

E. A compliance order shall state with reasonable specificity the nature of the violation.

F. If an association fails to take corrective actions within the time specified in a compliance order, the department may assess a civil penalty of not more than two hundred fifty dollars (\$250) for each day of continued noncompliance with the compliance order.

G. Any compliance order issued by the department pursuant to this section shall become final unless, no later than thirty days after the compliance order is served, any association named in the compliance order submits a written request to the department for a public hearing. The department shall conduct a public hearing within ninety days after receipt of a request.

H. The department may appoint an independent hearing officer to preside over any public hearing held pursuant to Subsection G of this section. The hearing officer shall:

- (1) make and preserve a complete record of the proceedings; and
- (2) forward to the department a report that includes recommendations, if recommendations are requested by the department.

I. The department shall consider the findings of the independent hearing officer and, based on the evidence presented at the hearing, the department shall make a final decision regarding the compliance order.

J. In connection with any proceeding under this section, the department may:

- (1) adopt rules for discovery and hearing procedures; and
- (2) issue subpoenas for the attendance and testimony of witnesses and for relevant papers, books and documents.

K. Penalties collected pursuant to this section shall be deposited in the general fund.

3-29-9. Rules.

For the purposes of the Sanitary Projects Act, the department may perform such acts and prescribe such rules as are deemed necessary to carry out its provisions. Rules shall be drafted in consultation with representatives of the associations.

3-29-11. Membership.

All persons within a community who participate or desire to participate in any project may become members of an association upon complying with the rules and regulations prescribed by the board of directors of the association, such rules and regulations to meet with the approval of the department. Any person or persons who did not participate in an original project shall be admitted to membership in an association upon payment to the association of a reasonable fee as determined by the board of directors and the department.

3-29-12. Local administration of association; board of directors.

A. The local administration of the association and the operation and maintenance of the project shall be carried out in each community by a board of directors composed of an odd number of at least three members. Members of the board of directors shall:

- (1) be elected annually or as specified in the bylaws of the association;
- (2) be members in good standing of the association; and
- (3) serve staggered terms of up to four years to ensure that terms will end in different election years.

B. The board of directors shall choose among its members a president, a vice president and a secretary-treasurer or a secretary and a treasurer.

C. Funds sufficient to provide for proper operation and maintenance of the association shall be identified through a rate-setting analysis that will ensure enough revenue to cover yearly expenses and emergencies, a reserve fund for non-major capital items and equitable pay for staff. The rate-setting analysis may be reviewed and changed if necessary on a yearly basis, and the funds shall be obtained by the association by a monthly assessment against the users of the facilities, the assessment to be determined by the board of directors.

D. The board of directors of the association shall have power to do all things necessary in the local administration of any project subject to the provisions of the Sanitary Projects Act.

3-29-13. Existing associations.

Associations organized under the provisions of Laws 1947, Chapter 206, Laws 1949, Chapter 79 or Laws 1951, Chapter 52 shall have the same powers and duties as associations organized under the provisions of the Sanitary Projects Act; provided that the articles of incorporation shall be amended in accordance with the provisions of Section 3-29-19 NMSA 1978.

3-29-14. Existing water systems or water rights unaffected.

The provisions of the Sanitary Projects Act shall not in any way affect any water systems or water rights under existing law.

3-29-15. Association constitutes a public body corporate.

Upon the filing of each certificate and copy thereof as provided in Section 3-29-17 NMSA 1978, the persons so associating, their successors and those who may thereafter become members of the association constitute a public body corporate by the name set forth in the certificate and by such name may sue and be sued, have

capacity to make contracts, acquire, hold, enjoy, dispose of and convey property real and personal, accept grants and donations, borrow money, incur indebtedness, impose fees and assessments and do any other act or thing necessary or proper for carrying out the purposes of their organization.

3-29-16. Certificate of association.

- A. The members of an association shall execute a certificate setting forth:
- (1) the name of the association;
 - (2) the name of the individuals organizing the association;
 - (3) the location of the principal office of the association in this state;
 - (4) the objects and purposes of the association;
 - (5) the address of the initial registered office of the association and the name of the initial registered agent at that address;
 - (6) the plan and manner of acquiring membership and of providing funds or means for the acquisition, construction, improvement and maintenance of its work and for its necessary expenses;
 - (7) the duration of existence of the association, which may be perpetual;
 - (8) the number and manner of electing the board of directors of the association and the length of the terms that the directors will serve;
 - (9) the definition of a member of the association and the voting rights associated with the membership;
- and
- (10) the manner of dissolution of the association as a public body.

B. Pursuant to the registered agent requirement of Paragraph (5) of Subsection A of this section, there shall be attached to the certificate a statement executed by the registered agent in which the agent acknowledges acceptance of the appointment by the filing association, if the agent is an individual, or a statement executed by an authorized officer of a corporation in which the officer acknowledges the corporation's acceptance of the appointment by the filing association as its registered agent, if the agent is a corporation.

C. The certificate or any amendment thereof made as provided in Section 3-29-19 NMSA 1978 may also contain provisions not inconsistent with the Sanitary Projects Act or other law of this state that the organizers may choose to insert for the regulation and conduct of the business and affairs of the association. There shall accompany each certificate a list to show the total number of members of the association and the total number of dwelling units served by the association at the time of filing.

3-29-17. Filing of certificate and bylaws.

The certificate of association and bylaws shall be acknowledged as required for deeds of real estate and shall be filed in the office of the secretary of state. A copy of the certificate, duly certified by the secretary of state or county clerk, shall be evidence in all courts and places.

3-29-17.1. Registered office and registered agent.

An association shall have and continuously maintain in the state:

- A. a registered office, which may be the same as its principal office; and
- B. a registered agent that may be:
 - (1) an individual resident in the state whose business office is identical with the registered office of the association;
 - (2) a for-profit or not-for-profit domestic corporation having an office identical with the registered office of the association; or
 - (3) a for-profit or not-for-profit foreign corporation authorized to transact business or conduct affairs in New Mexico and having an office identical with the registered office of the corporation.

3-29-17.2. Change of registered office or registered agent.

A. An association may change its registered office or its registered agent, or both, by filing in the office of the secretary of state a statement that includes:

- (1) the name of the association;
- (2) the address of its registered office;
- (3) if the address of the association's registered office is changed, the address to which the registered office is changed;
- (4) the name of its registered agent;
- (5) if the association's registered agent is changed:
 - (a) the name of its successor registered agent; and

(b) if the successor registered agent is an individual, a statement executed by the successor registered agent acknowledging acceptance of the appointment by the filing association as its registered agent; or

(c) if the successor registered agent is a corporation, an affidavit executed by the president or vice president of the corporation in which the officer acknowledges the corporation's acceptance of the appointment by the filing association as its registered agent;

(6) a statement that the address of the association's registered office and the address of the office of its registered agent, as changed, will be identical; and

(7) a statement that the change was authorized by resolution duly adopted by its board of directors.

B. The statement made pursuant to the provisions of Subsection A of this section shall be executed by the association by any two members and delivered to the secretary of state. If the secretary of state finds that the statement conforms to the provisions of the Sanitary Projects Act, it shall file the statement in the office of the secretary of state. The change of address of the registered office, or the appointment of a new registered agent, or both, shall become effective upon filing of the statement required by this section.

C. A registered agent of an association may resign as agent upon filing a written notice thereof, executed in duplicate, with the secretary of state. The secretary of state shall mail a copy immediately to the association in care of an officer, who is not the resigning registered agent, at the address of the officer as shown by the most recent annual report of the association. The appointment of the agent shall terminate upon the expiration of thirty days after receipt of the notice by the secretary of state.

3-29-17.3. Service of process on association.

The registered agent appointed by an association shall be an agent of the association upon whom any process, notice or demand required or permitted by law to be served upon the association may be served. Nothing in this section limits or affects the right for process, notice or demand to be served upon an association in any other manner permitted by law.

3-29-17.4. Annual report.

A. An association shall file, within the time prescribed by the Sanitary Projects Act, on forms prescribed and furnished by the secretary of state to the association not less than thirty days prior to the date the report is due, an annual report setting forth:

(1) the name of the association;

(2) the address of the registered office of the association in the state and the name of its registered agent in this state at that address;

(3) a brief statement of the character of the affairs that the association is actually conducting; and

(4) the names and respective addresses of the directors and officers of the association.

B. The report shall be signed and sworn to by two of the members of the association. If the association is in the hands of a receiver or trustee, the report shall be executed on behalf of the association by the receiver or trustee. A copy of the report shall be maintained at the association's principal place of business as contained in the report and shall be made available to the general public for inspection during regular business hours.

3-29-17.5. Filing of annual report; supplemental report; extension of time; penalty.

A. The annual report of the association shall be delivered to the public regulation commission on or before the fifteenth day of the fifth month following the end of its fiscal year.

B. A supplemental report shall be filed by the association with the public regulation commission, if, within thirty days after the filing of the annual report required under the Sanitary Projects Act, a change is made in:

(1) the name of the association;

(2) the mailing address, street address or the geographical location of the association's registered office in this state and the name of the agent upon whom process against the association may be served; or

(3) the character of the association's business and its principal place of business within the state.

C. Proof to the satisfaction of the public regulation commission that, prior to the due date of a report required by this section, the report was deposited in the United States mail in a sealed envelope, properly addressed, with postage prepaid, shall be deemed compliance with the requirements of this section. If the commission finds that the report conforms to the requirements of the Sanitary Projects Act, it shall file the report. If the commission finds that it does not conform, it shall promptly return the report to the association for necessary corrections. The penalties prescribed for failure to file the report within the time provided shall not apply if the report is corrected to conform to the requirements of the Sanitary Projects Act and returned to the commission within thirty days from the date on which it was mailed to the association by the commission.

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D. The public regulation commission may, upon application by the association and for good cause shown, extend, for no more than a total of twelve months, the date on which an annual report required by the provisions of the Sanitary Projects Act must be filed or the date on which the payment of a fee is required. The commission shall, when an extension of time has been granted an association under the federal Internal Revenue Code of 1986 for the time in which to file a return, grant the association the same extension of time to file the required annual report and to pay the required fees, provided that a copy of the approved federal extension of time is attached to the association's report, and provided further that no such extension shall prevent the accrual of interest as otherwise provided by law.

E. Nothing contained in this section prevents the collection of a fee or penalty due upon the failure of an association to submit the required report.

F. An annual or supplemental report required to be filed under this section shall not be deemed to have been filed if the fees accompanying the report have been paid by check and the check is dishonored upon presentation.

G. An association that fails or refuses to file a report for a year within the time prescribed by the Sanitary Projects Act is subject to a penalty of ten dollars (\$10.00) to be assessed by the public regulation commission.

H. An association shall file with the department a member accountability report that shall include:

- (1) a financial statement prepared in accordance with generally accepted accounting principles; and
- (2) a copy of the Open Meetings Act [Chapter 10, Article 15 NMSA 1978] resolution stating what notice for a public meeting is reasonable. The report shall be signed and sworn to as to accuracy and completeness by all members of the board of directors of the association. A statement shall be included in the consumer confidence report required for water systems that the member accountability report is available to the public upon request. The member accountability report shall be filed with the department with the consumer confidence report no later than July 1 of each year.

3-29-19. Amendment of certificate of association and bylaws; method.

Every association may make such amendment, change or alteration to its certificate of association or bylaws as may be desired not inconsistent with the Sanitary Projects Act or other law of this state by a resolution adopted by a vote of a majority of the members present at any regular or special meeting duly held upon such notice as the bylaws provide. A certified copy of such resolution with the affidavit of the president and secretary that the resolution was duly adopted by a majority vote of the members at a meeting held in accordance with the provisions of this section shall be filed and recorded as provided for filing and recording the original certificate of association and bylaws, and thereupon the certificate of association and bylaws shall be deemed to be amended accordingly, and a copy of such certificate of amendment certified by the secretary of state or the county clerk shall be accepted as evidence of each change or amendment in all courts and places.

3-29-19.1. Bylaws.

A. Members shall adopt bylaws by no less than a majority vote of a quorum of the membership of the association setting forth:

- (1) the name of the association;
- (2) the requirement of an association seal;
- (3) the fiscal year of the association;
- (4) guidelines for membership, which shall include the sentence "Membership shall not be denied because of the applicant's race, color, creed, national origin or sex.";
- (5) guidelines for meetings of the membership, which shall include the date or time period of a membership meeting, required notice of a meeting, establishment of a quorum and the order of business to be conducted at a meeting of the membership;
- (6) the functions of the board of directors, including a conflict of interest policy for the board;
- (7) the duties of officers of the board of directors; and
- (8) provisions for the board of directors to establish rules to govern the day-to-day operations of the project, including a code of conduct for staff and provisions to establish an annual budget, rate structure, assessments and reserve funds.

B. The bylaws, or any amendment thereof made as provided in Section 3-29-19 NMSA 1978, may also contain provisions not inconsistent with the Sanitary Projects Act or other law of this state that the organizers may choose to insert for the regulation and conduct of the business and affairs of the association.

C. The department may prescribe by rule guidelines for bylaws and rules of an association.

(b) if the successor registered agent is an individual, a statement executed by the successor registered agent acknowledging acceptance of the appointment by the filing association as its agent.

3-29-20. Reorganization of cooperative associations and nonprofit corporations pursuant to the Sanitary Projects Act.

A. Cooperative associations formed pursuant to Sections 53-4-1 through 53-4-45 NMSA 1978 and nonprofit corporations formed under the Nonprofit Corporation Act [Chapter 53, Article 8 NMSA 1978] may reorganize under the Sanitary Projects Act upon approval of the reorganization by a majority vote of a quorum of the members of a cooperative association or nonprofit corporation. Notice of the meeting to consider the reorganization and a copy of the proposed certificate of association shall be sent at least fifteen days prior to such meeting by the cooperative association to each member at the member's last known address and by the nonprofit corporation to each member, if any, at the member's last known address. Upon approval of the reorganization by the majority vote of a quorum of the members, the cooperative association or the nonprofit corporation shall execute a certificate of association pursuant to Sections 3-29-16 and 3-29-17 NMSA 1978. The certificate of association shall state that it supersedes the articles of incorporation and all amendments to the articles of incorporation of the cooperative association or the nonprofit corporation.

B. Duplicate originals of the certificate of association shall be filed with the secretary of state. One duplicate original of the certificate of association shall be returned to the association.

C. The certificate of association is effective upon filing and supersedes the articles of incorporation and all amendments to the articles of incorporation of the prior cooperative association or nonprofit corporation. The association shall:

(1) be the surviving entity, and the separate existence of the prior cooperative association or nonprofit corporation shall cease;

(2) have all of the rights, privileges, immunities and powers and shall be subject to all the duties and liabilities of an association organized pursuant to the Sanitary Projects Act;

(3) possess all the rights, privileges, immunities and franchises of the prior cooperative association or nonprofit corporation. All property, real, personal and mixed; all debts due on whatever account; all other choses in action; and all and every other interest of or belonging to or due to the prior cooperative association or nonprofit corporation shall be taken and deemed to be transferred to and vested in the association without further act or deed. The title to any real estate, or any interest therein, vested in the prior cooperative association or nonprofit corporation shall not revert or be in any way impaired by reason of the reorganization; and

(4) be liable for all the liabilities and obligations of the prior cooperative association or nonprofit corporation, and any claim existing or action or proceeding pending by or against the cooperative association or nonprofit corporation may be prosecuted as if the reorganization had not taken place or the new association may be substituted in its place. Neither the rights of creditors nor any liens upon the property of the cooperative association or nonprofit corporation shall be impaired by the reorganization.

D. A cooperative association formed pursuant to the Cooperative Association Act [Chapter 53, Article 4 NMSA 1978] or nonprofit corporation formed pursuant to the Nonprofit Corporation Act that reorganized under Subsection A of this section prior to June 30, 2006 may, within three years of the effective date of this 2006 act, reorganize pursuant to the act under which it had previously been organized upon approval of the reorganization by a two-thirds' vote of the directors of the association or corporation. Notice of the meeting to consider the reorganization and a copy of the proposed articles of incorporation shall be sent by the association or the corporation at least fifteen days prior to the meeting to each member at the member's last known address. Upon approval of the reorganization, the association or corporation shall execute articles of incorporation pursuant to Sections 53-4-5 and 53-4-6 or 53-8-31 and 53-8-32 NMSA 1978. The articles of incorporation shall state that they supersede the certificate of association or incorporation and all amendments thereto of the association or corporation and shall follow the filing procedures of Subsections B and C of this section.

3-29-20.1. Merger of two or more associations into one association.

Upon approval by vote of a majority of a quorum of each membership, two or more associations may merge into one association pursuant to a plan of merger approved in the manner provided by this section. The board of directors of each association shall, by resolution adopted by each board, approve a plan of merger setting forth:

A. the names of the associations proposing to merge, and the association into which they propose to merge, which is hereinafter designated as the "surviving association";

B. the terms and conditions of the proposed merger, including transfer of assets and liabilities;

C. the manner and basis of converting each association's obligations or other securities into the surviving association;

D. a statement of any changes in the certificate of association of the surviving association to be affected by the merger; and

E. other provisions with respect to the proposed merger as deemed necessary or desirable.

3-29-21. Exemptions from Special District Procedures Act provisions.

An association formed pursuant to the provisions of the Sanitary Projects Act may be formed exclusively as provided in that act, and formation of the association shall be exempt from all review and requirements set forth in the Special District Procedures Act [[4-53-1](#) to [4-53-11](#) NMSA 1978].