

**REVIEW OF STATUTES AUTHORIZING WATER OR WASTEWATER SYSTEMS IN NEW MEXICO  
GENERAL POWERS AND AUTHORITIES**

Type of entity	Authorizing legislation	Water –related Purpose	Public or private entity	Political subdivision of state?	Formation of entity	Power to define exclusive service area	Power to prevent encroachment and overlap	Power of eminent domain	Compel connection within service area; prohibit domestic well drilling	Provide source water protection	Water conservation measures required	Provide fire protection
Water and Sanitation Districts	§§ 73-21-1 to 73-21-55	Water and/or wastewater service	Public	Yes	District court holds hearing, requests opinions from OSE and NMED, decides boundaries, calls an election.	Likely, yes	Likely, yes	Yes	May compel connection to <i>sewer system</i> if line within 400 feet of dwelling	-- <sup>1</sup>	--	--
Mutual Domestic Water Consumer Associations under Sanitary Projects Act	§§ 3-29-1 to 3-29-20	Water and/or wastewater service	--	--	Members of community file articles of incorporation with PRC; <sup>2</sup> limit on new ass'ns on municipal boundaries	--	PRC may resolve conflicts as among MDWCAs and public utilities	Yes, with NMED's approval	--	No septic tanks within 150 feet of source of water supply	--	--
Water and Natural Gas Associations	§§ 3-28-1 to 3-28-22	Water service	--	--	County and municipality within it appoint commissioners who execute certificate of association	--	--	Yes but cannot acquire plant/system that received CCN from PRC or FERC	--	--	--	--
Water Users' Associations	§§ 73-5-1 to 73-5-9	Irrigation <sup>3</sup>	--	--	Local land owners file certificate of incorporation with PRC	--	--	Yes	--	--	--	--
Municipal Water and Sewer Utilities	§§ 3-23-1 to 3-23-10; 3-26-1 to 3-26-3; 3-27-1 to 3-27-8; 3-53-1 to 3-53-5, NM Const Art 9, §6	Water and/or wastewater service	Public	Yes, as part of municipality	Water: Governing body of municipality submits question to voters; acquisition of utility with revenue bonds subject to PRC approval for municipalities under 25,000	Yes, with some limits	Yes	Yes	May compel connection to sewer. May restrict well drilling by ordinance if water utility within 300 feet. § 3-53.1.1	May adopt ordinance or regs	Shall consider ordinances/codes to encourage water conservation and drought management. May regulate/restrict water use to prevent waste/conserv	--
County Water and Sewer Utilities	§§ 72-4-1 to 72-4-12; 4-36-8, 4-36-10; 4-37-1; 4-49-1 to 4-49-2; 4-62-1 to 4-62-10	Water and/or wastewater service	Public	Yes, as part of county	Decision of board of county commissioners	Yes, with some limits	Yes	Yes	May compel connection to sewer. May restrict well drilling by ordinance if water utility within 300 feet.	May adopt ordinance or regs	Shall consider ordinances/codes to encourage water conservation and drought management. May regulate/restrict water use to prevent waste/conserv	--
Metropolitan Water Boards	§§ 3-61-1 to 3-61-4	Water service	Public	--	County and municipality within county create through identical ordinances	--	--	<i>Not</i> permitted to condemn primary private utility serving area	--	--	--	--
ABQ Bernalillo County Water Authority	§ 72-1-10	Water and wastewater service	Public	Yes	City utility existed. Statute provides for joint authority	Likely, through city and county	Likely, through city and county	Yes	City/county may restrict well drilling by ordinance if water utility w/in 300 ft	--	--	--
Municipal Improvement Districts	§§ 3-33-1 to 3-33-43	To construct, acquire, repair, or maintain utility project providing water service; water and sanitary sewer projects	Public	--	Formed by municipal governing body after hearing or on petition of owners of 2/3 of assessed value of property to be benefited	--	--	--	--	--	--	--
County Improvement Districts	§§ 4-55A-1 to 4-55A-43	To construct, acquire, repair, or maintain utility project for providing water service; water and sanitary sewer projects	Public	--	Formed by municipal governing body after hearing or on petition of owners of 2/3 of assessed value of property to be benefited	--	--	--	--	--	--	--

<sup>1</sup> Dashes indicate that the legislation in question does not address the matter. While other laws may (or may not) apply, these charts are an effort to compile and compare the statutes that authorize water and wastewater systems.

<sup>2</sup> The Public Regulation Commission (PRC) is the successor to the Corporation Commission as well as the Public Utility Commission.

<sup>3</sup> Some domestic water supply systems are operated by water users' associations, although the statute refers only to irrigation.

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Public Improvement Districts	§§ 5-11-1 to 5-11-27	Water and/or wastewater service	Public	Yes	Petition signed by owners of 25% of property by value; election by ¾ majority, final approval by city or county	--	--	--	--	--	--	PIDs can be used for water systems for this purpose
Investor-owned Waterworks under 1887 Act	§§ 62-2-1 to 6-29-22; §§ 62-3-1 to 62-13-14	Water service	Private	No	Five persons file articles of incorporation with PRC <sup>1</sup>	Likely, yes, through PRC <sup>2</sup>	PRC may resolve conflicts as among MDWCAs and public utilities, and between cities over 200,000 and public utilities. § 62-9-1.1	Yes	--	--	--	--
Other Investor-owned Utilities	§§ 53-11-1 to 53-18-12; §§ 62-3-1 to 62-13-14	Water and/or wastewater service	Private	No	Incorporators file with PRC	Likely, yes, through PRC, if a public utility (see Footnote 2)	PRC may resolve conflicts as among MDWCAs and public utilities, and between cities over 200,000 and public utilities. § 62-9-1.1	--	--	--	--	--
Co-operative Associations (Coops)	§§ 53-4-1 to 53-4-45	Water and/or wastewater service	Private	No	5 or more persons or 2 or more ass'ns file with PRC articles of incorporation as coop	--	--	--	--	--	--	--
Non-profit Corporations	§§ 53-8-1 to 53-8-99	Water and/or wastewater service	Private	No	One or more persons, incl corporations, file articles of incorp. with PRC	Through PRC, if public utility	Through PRC, if public utility	--	--	--	--	--
Partnerships	§§ 54-1A-101 to 54-1A-1206	Water and/or wastewater service	Private	No	Two or more persons associate to carry on business as co-owners	Through PRC, if public utility	Through PRC, if public utility	--	--	--	--	--
Unincorporated Associations (or Clubs)	§§ 53-10-1 to 53-10-8	Water and/or wastewater service	Private	No	Persons wanting to form a club or association file info with county clerk	--	--	--	--	--	--	--
Subdivisions <sup>3</sup>	§§ 3-20-1 to 3-20-16; 47-6-1 to 47-7-29											
Condominiums <sup>4</sup>	§§ 47-7A-1 to 47-7D-20											
Mobile Home <sup>5</sup> Parks	§§ 47-10-1 to 47-10-23						--	--	--	--	--	--

<sup>1</sup> The Public Regulation Commission (PRC) is the successor to the Corporation Commission and hence regulates corporations. The PRC is also the successor to the Public Utility Commission and regulates public utilities. The import of a reference to the PRC depends on the context.

<sup>2</sup> With limited exceptions, an entity is a *public utility* if it owns, operates, leases or controls a plant, property or facility for supplying water or sanitary sewer service *to the public*. Coops providing service to their members would not be providing service to the public.

<sup>3</sup> The subdivision laws do not themselves create entities to provide water and sewer. Service could be provided by a range of entities, including the municipality, the county, an investor-owned utility, or a homeowners association organized as a coop, a non-profit corporation or an unincorporated association. Powers and authorities will depend on the type of entity providing the service.

<sup>4</sup> As with subdivisions, water or wastewater service to a condominium complex could be provided by a range of entities. It is possible that the association of unit owners would operate a water or wastewater system for the complex, in which case the information for a non-profit corporation or coop would be most applicable.

<sup>5</sup> As with subdivisions and condos, service could be provided to mobile home parks by a range of entities. If the owner of the park operated the system and just provided service to the tenants, the owner may be a public water supply system but not a public utility.

**REVIEW OF STATUTES AUTHORIZING WATER OR WASTEWATER SYSTEMS IN NEW MEXICO  
STATUTORY PROVISIONS FOR GOVERNANCE**

**Governing Structure**

**Mechanisms to Permit Change**

Type of entity	Governing body	Odd number of directors, staggered terms, regular elections	Regular meetings required	Board training required	Surety bonds required for board members? If so, amount required	Provisions for changing organizational structure	Provisions for merger	Provisions for dissolution, sale of assets	Provisions for two or more entities co-owning water rights	Provisions for two entities managing systems jointly
Water and Sanitation Districts	Board of directors	<ul style="list-style-type: none"> <li>• 3 or 5 directors</li> <li>• Staggered terms</li> <li>• Regular elections by taxpayer-electors</li> </ul>	Monthly meetings required	--	Yes, \$1,000 each.	--	--	District may sell all or part of water or sewer facilities, with authorization from board. No election necessary.	--	--
Mutual Domestic Water Consumer Association under the Sanitary Projects Act	Board of directors	<ul style="list-style-type: none"> <li>• 5 members</li> <li>• Staggered 4 year terms</li> <li>• Biennial elections</li> </ul>	--	--	--	--	--	--	--	--
Water and Natural Gas Associations	Board of directors	Per certificate of association	--	--	--	--	--	--	--	--
Water Users' Associations	Depends on certificate of incorporation	Per certificate of incorporation	--	--	--	--	--	--	--	--
Municipal Water and Sewer Utilities	Governing body of municipality, although it may appoint board to manage and operate	--	--	--	--	--	--	--	Two or more municipalities may jointly contract for water supply	--
County Water and Sewer Utilities	Board of county commissioners for county	--	--	--	--	--	--	--	--	-
Metropolitan Water Boards	Board appointed by county and municipality within county	<ul style="list-style-type: none"> <li>• 9 members (7 elected; 2 appointed)</li> <li>• Per ordinances</li> <li>• Per ordinances</li> </ul>						Governing bodies may repeal ordinances creating board		This board is itself a joint management structure.
ABQ Bernalillo County Water Authority	Board of directors	<ul style="list-style-type: none"> <li>• 7 members – mayor, 3 city councilors and 3 county commissioners</li> <li>• One year terms</li> <li>• Appointed to board</li> </ul>	--	--	--	--	--	--	--	This authority is itself a joint management structure.
Municipal Improvement Districts	Governing body of municipality	--	--	--	--	--	--	--	--	--
County Improvement Districts	Board of county commissioners	--	--	--	--	--	--	--	--	--

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**Governing Structure**

**Mechanisms to Permit Change**

Type of entity	Governing body	Odd number of directors, staggered terms, regular elections	Regular meetings required	Board training required	Surety bonds required for board members? If so, amount required	Provisions for changing organizational structure	Provisions for merger	Provisions for dissolution, sale of assets	Provisions for two or more entities co-owning water rights	Provisions for two entities managing systems jointly
Public Improvement Districts	Governing body of municipality or county, or an elected board	If separate board: <ul style="list-style-type: none"> <li>• 5 members</li> <li>• Staggered terms</li> <li>• Elected by district residents</li> </ul>	--	--	--	--	--	Dissolution by resolution of board permitted if improvements conveyed to municipality or county and bonds paid or assumed	--	Joint powers agreements (JPAs) permitted
Investor-owned Waterworks under 1887 Act	Board of directors	<ul style="list-style-type: none"> <li>• At least 3 directors, who must be stockholders</li> <li>• Terms not staggered</li> <li>• Annual elections</li> </ul>	--	--	--	--	--	May be reincorporated by 2/3 vote of stockholders; court enters order dissolving corporation	--	--
Other Investor – owned Utilities	Board of directors	Per articles of incorporation	--	--	--	--	--	--	--	--
Cooperative Associations (Coops)	Membership based, managed by board of directors	<ul style="list-style-type: none"> <li>• At least 5 directors</li> <li>• Terms per bylaws</li> <li>• Elections per bylaws</li> </ul>	Board meets per bylaws but membership meets at least once a year	--	--	Sanitary Projects Act provides that coops may reorganize under that Act upon approval by 2/3 vote of directors of coop. § 3-29-20	--	May dissolve by vote of 2/3 of membership	--	--
Nonprofit corporations	Board of directors	<ul style="list-style-type: none"> <li>• At least 3 directors</li> <li>• Appointed or elected per articles or bylaws</li> </ul>	Annual meeting of members must be held.	--	--	Sanitary Projects Act provides that non-profits may reorganize under that Act upon approval by 2/3 vote of directors of nonprofit.	Any two or more corporations may merge per merger plan adopted by each.	Yes, by resolution of board of directors and vote of members, if any. District courts may also liquidate.	--	--
Partnerships	Partners	--	--	--	--	--	Partnerships may merge under merger plan approved by partnerships.	--	--	--
Unincorporated Associations (or Clubs)	Determined by majority of members	Per association's rules and regulations	--	--	--	--	--	--	--	--
Subdivisions	Depends on service provider; see Footnote 3 under Powers and Authorities							--	--	--
Condominium	Depends on service provider; see Footnote 4 under Powers and Authorities							--	--	--
Mobile Home Park	Depends on service provider; see Footnote 5 under Powers and Authorities							--	--	--

**REVIEW OF STATUTES AUTHORIZING WATER OR WASTEWATER SYSTEMS IN NEW MEXICO  
FINANCIAL POWERS AND AUTHORITIES**

Type of entity	May levy taxes or assessments	Place lien on property and foreclose for nonpayment of taxes or assessments	Issue general obligation bonds (election required)	Issue revenue bonds	Eligible for public grant and/or loan funds	Required to maintain reserve funds	Required to set rates, charges, fees	Required to tier rates for conservation	May disconnect for nonpayment	Ratepayer has recourse if rates too high
Water and Sanitation Districts	Yes, ad valorem (property) taxes	Yes	Yes	Yes	Generally yes. <i>See</i> funding chart.	Discretionary	Yes	--	Yes	If 5% or 25 taxpayer-electors protest rate change, PRC will hold hearing on proposed change
Mutual Domestic Water Consumer Associations under the Sanitary Projects Act	No	--	No	Yes, subject to NMED and DFA approval	Generally yes. <i>See</i> funding chart.	--	Yes	--	--	--
Water and Natural Gas Associations	No taxes but yes, assessments.	Yes, for nonpayment of any rate or charge	No	Yes	Depends on loan or grant program. <i>See</i> funding chart.	Discretionary	Yes, so long as bonds are outstanding	--	--	--
Water Users' Associations	Certificate of incorporation specifies means of acquiring funds (stock, membership, other)	--	--	--	Depends on loan or grant program. <i>See</i> funding chart.	--	Certificate of incorporation specifies means of acquiring funds for expenses	--	--	--
Municipal Water and Sewer Utilities	Municipality may levy certain taxes	Tax liens	Yes	Yes	Generally yes. <i>See</i> funding chart.	Depends on ordinance authorizing bonds	Must establish rates sufficient to pay expenses of operation, pay interest on bonds and provide sinking fund to discharge bonds	--	--	--
County Water and Sewer Utilities	County may levy certain taxes	Tax liens	Yes	Yes	Generally yes. <i>See</i> funding chart	Depends on ordinance authorizing bonds	Must establish rates sufficient to pay expenses of operation, pay interest on bonds and provide sinking fund to discharge bonds	--	--	If county utility is regulated by PRC, ratepayers have recourse in rate case
Metropolitan Water Boards	These boards are deemed <i>municipal water utilities</i> for operational purposes, <b>see above.</b>	Yes	--	Yes	Depends on loan or grant program. <i>See</i> funding chart.	Depends on ordinance authorizing bonds	Must establish rates sufficient to pay expenses of operation, pay interest on bonds and provide sinking fund to discharge bonds	--	--	--
ABQ Bernalillo County Water Authority	Unclear, city and county can.	Unclear, city and county can.	Unclear, city and county can.	Yes	Depends on loan or grant program <i>See</i> funding chart.	--	Yes	--	--	--
Municipal Improvement Districts	Yes, assessments. Yes, district property tax if GO bonds used to pay for improvements	Yes	Yes, to be paid from district property tax	Yes, to be paid from assessments	--	--	--	--	--	--
County Improvement Districts	Yes, assessments. Yes, district property tax if GO bonds used to pay for improvements	Yes	Yes, to be paid from district property tax	Yes, to be paid from assessments	--	--	--	--	--	--

**REVIEW OF STATUTES AUTHORIZING WATER OR WASTEWATER SYSTEMS IN NEW MEXICO  
FINANCIAL POWERS AND AUTHORITIES**

Type of entity	May levy taxes or assessments	Place lien on property and foreclose for nonpayment of taxes or assessments	Issue general obligation bonds (election required)	Issue revenue bonds	Eligible for public grant and/or loan funds	Required to maintain reserve funds	Required to set rates, charges, fees	Required to tier rates for conservation	May disconnect for nonpayment	Ratepayer has recourse if rates too high
Public Improvement Districts	Yes, property taxes and special levies	Yes	Yes	Yes	Depends on loan or grant program. <i>See</i> funding chart.	Discretionary	Yes, if revenue bonds issued	--	--	--
Investor-owned Waterworks Under 1887 Act	--	--	No	Yes, subject to NMED and DFA approval	Depends on loan or grant program. <i>See</i> funding chart.	--	Yes	--	Yes	PRC proceeding
Other Investor-owned Utilities	--	--	No	Yes	Depends on loan or grant program. <i>See</i> funding chart.	--	Yes, so long as bonds are outstanding	--	Yes	PRC proceeding
Cooperative Associations (Coops)	Certificate of incorporation specifies means of acquiring funds (stocks, memberships, other)	--	--	--	Depends on loan or grant program. <i>See</i> funding chart.	--	Certificate of incorporation specifies means of acquiring funds for expenses	--	--	--
Non-profit Corporations	If homeowners or unit owners ass'n, power to assess depends on covenants, articles of incorporation, and bylaws. No taxes.	--	No	No	Depends on loan or grant program. <i>See</i> funding chart.	--	Likely, yes, if self-supporting	--	--	PRC proceeding if a public utility
Partnerships	No.	No.	No	No	Depends on loan or grant program. <i>See</i> funding chart	--	Likely, yes, if self-supporting	--	--	No, unless regulated by PRC
Unincorporated Associations (or Clubs)	Same as non-profits.	--	No	No	Depends on loan or grant program. <i>See</i> funding chart.	--	Likely, yes, if self-supporting	--	--	--
Subdivisions	Depends on service provider; see Footnote 3 under Powers and Authorities.									
Condominiums	Depends on service provider; see Footnote 4 under Powers and Authorities									
Mobile Home Parks	Depends on service provider; see Footnote 5 under Powers and Authorities									

# REVIEW OF STATUTES AUTHORIZING WATER OR WASTEWATER SYSTEMS IN NEW MEXICO

## STATUTORY PLANNING REQUIREMENTS

Type of entity	Required System Planning			Required Area-wide Planning		
	Planning for repair and replacement	Asset management plan	Planning for conservation and efficiency, including drought management	Planning for capacity to meet future needs <sup>1</sup>	Planning for short and long term source protection <sup>2</sup>	Regional collaboration or shared planning
Water and Sanitation Districts	--	--	After Dec 2005, anyone providing at least 500 acre feet of water a year must have a comprehensive water conservation plan to be eligible for financial assistance from Water Trust Board or NMFA. § 72-14-3.2	--	--	--
Mutual Domestic Water Users Association under the Sanitary Projects Act	--	--	After Dec 2005, anyone providing at least 500 acre feet of water a year must have a comprehensive water conservation plan to be eligible for financial assistance from Water Trust Board or NMFA. § 72-14-3.2	Member-owned community water systems may have water use planning period up to 40 years. Water rights are supposed to be based on a water development plan. § 72-1-9	--	--
Water and Natural Gas Associations	--	--	After Dec 2005, anyone providing at least 500 acre feet of water a year must have a comprehensive water conservation plan to be eligible for financial assistance from Water Trust Board or NMFA. § 72-14-3.2	--	--	--
Water Users' Associations	--	--	Agriculture excluded from planning requirement.	--	--	--
Municipal Water and Sewer Utilities	--	--	After Dec 2005, anyone providing at least 500 acre feet of water a year must have a comprehensive water conservation plan to be eligible for financial assistance from Water Trust Board or NMFA. § 72-14-3.2 Also, municipalities <i>shall</i> consider ordinances/codes to encourage water conservation and drought management. § 3-17-7.	Municipalities may have a water use planning period up to 40 years. Water rights are supposed to be based on a water development plan. § 72-1-9	--	--
County Water and Sewer Utilities	--	--	After Dec 2005, anyone providing at least 500 acre feet of water a year must have a comprehensive water conservation plan to be eligible for financial assistance from Water Trust Board or NMFA. § 72-14-3.2. Also, counties <i>shall</i> consider ordinances/codes to encourage water conservation and drought management. <sup>3</sup> § 4-37-9.1	Counties may have a water use planning period up to 40 years. Water rights are supposed to be based on a water development plan. § 72-1-9	--	--
Metropolitan Water Boards	--	--	After Dec 2005, anyone providing at least 500 acre feet of water a year must have a comprehensive water conservation plan to be eligible for financial assistance from Water Trust Board or NMFA. § 72-14-3.2	--	--	--
ABQ Bernalillo County Water Authority	--	--	After Dec 2005, anyone providing at least 500 acre feet of water a year must have a comprehensive water conservation plan to be eligible for financial assistance from Water Trust Board or NMFA. § 72-14-3.2	Utility eligible for 40 year water use planning period. §72-1-10	--	--
Municipal Improvement Districts	--	--	After Dec 2005, anyone providing at least 500 acre feet of water a year must have a comprehensive water conservation plan to be eligible for financial assistance from Water Trust Board or NMFA. § 72-14-3.2	Municipalities may have a water use planning period up to 40 years. Water rights are supposed to be based on a water development plan. § 72-1-9	--	--
County Improvement Districts	--	--	After Dec 2005, anyone providing at least 500 acre feet of water a year must have a comprehensive water conservation plan to be eligible for financial assistance from Water Trust Board or NMFA. § 72-14-3.2	Counties may have a water use planning period up to 40 years. Water rights are supposed to be based on a water development plan. § 72-1-9	--	--

<sup>1</sup> Under § 72-1-9, municipalities, counties, state universities, member-owned community water systems, special water users' associations, and public utilities supplying water to municipalities and counties may have a water use planning period not to exceed 40 years. .

<sup>2</sup> Regulations under the state Environmental Improvement Act and the Water Quality Act impose source protection requirements that affect most areas of the state and the water supply systems in them. This chart reflects the fact that the statutes authorizing the systems or the organizations operating them do not explicitly require short or long term source protection. Source water protection is

<sup>3</sup> If a county were to adopt an ordinance or code to encourage or require conservation or drought management, that ordinance or code would likely apply to all entities in the unincorporated areas. (County ordinances do not apply within the boundaries of a municipality.)

**REVIEW OF STATUTES AUTHORIZING WATER OR WASTEWATER SYSTEMS IN NEW MEXICO  
STATUTORY PLANNING REQUIREMENTS**

**Required System Planning**

**Required Area-Wide Planning**

Type of entity	Planning for repair and replacement	Asset management plan	Planning for conservation and efficiency and drought management <sup>1</sup>	Planning for capacity to meet future needs	Planning for short and long term source protection	Participation in regional water planning
Public Improvement Districts	--	--	After Dec 2005, municipalities, counties and any other person providing at least 500 acre feet of water a year must have a comprehensive water conservation plan to be eligible for financial assistance from Water Trust Board or NMFA. § 72-14-3.2	--	--	--
Investor-owned Waterworks under 1887 Act	No, unless required by PRC	No, unless required by PRC	After Dec 2005, anyone providing at least 500 acre feet of water a year must have a comprehensive water conservation plan to be eligible for financial assistance from Water Trust Board or NMFA. § 72-14-3.2	40 year water use planning period available for public utilities serving municipalities and counties. § 72-1-9	--	--
Other Investor-owned Utilities	No, unless required by PRC.	No, unless required by PRC	After Dec 2005, anyone providing at least 500 acre feet of water a year must develop a comprehensive water conservation plan to be eligible for Water Trust Board or NMFA financing. § 72-14-3.2	40 year water use planning period available for public utilities serving municipalities and counties. § 72-1-9	--	--
Co-operative Associations (Coops)	--	--	After Dec 2005, anyone providing at least 500 acre feet of water a year must have a comprehensive water conservation plan to be eligible for financial assistance from Water Trust Board or NMFA. § 72-14-3.2	40 year water use planning period available to member-owned community water systems. §72-1-9	--	--
Non-profit corporations	No	No	After Dec 2005, anyone providing at least 500 acre feet of water a year must develop a comprehensive water conservation plan to be eligible for Water Trust Board or NMFA financing. § 72-14-3.2	No	No	No
Partnerships	No	No	After Dec 2005, anyone providing at least 500 acre feet of water a year must develop a comprehensive water conservation plan to be eligible for Water Trust Board or NMFA financing. § 72-14-3.2	No	No	No
Unincorporated Associations	No	No	After Dec 2005, anyone providing at least 500 acre feet of water a year must develop a comprehensive water conservation plan to be eligible for Water Trust Board or NMFA financing. § 72-14-3.2	No	No	No
Subdivisions	Depends on service provider; see Footnote 3 under Powers and Authorities					
Condominiums	Depends on service provider; see Footnote 4 under Powers and Authorities					
Mobile Home Parks	Depends on service provider; see Footnote 5 under Powers and Authorities					

<sup>1</sup> Counties must consider ordinances and codes to encourage water conservation and drought management. If a county were to adopt an ordinance or code, it may apply to any of these entities, if located within the unincorporated area of the county.

**REVIEW OF STATUTES AUTHORIZING WATER OR WASTEWATER SYSTEMS IN NEW MEXICO  
REGULATORY OVERSIGHT AND OPEN GOVERNMENT REQUIREMENTS**

Regulatory Oversight Over Entity			Open Government Policies **				
Type of entity	Regulation of drinking water quality <sup>1</sup>	Supervision of rates and service by PRC <sup>2</sup>	Subject to Open Meetings Act **	Subject to Inspection of Public Records Act **	Subject to Procurement Code **	Budgets and financial statements subject to approval by DFA **	Subject to state Audit Act **
Water and Sanitation Districts	--	<ul style="list-style-type: none"> <li>• General supervision only if district so elects</li> <li>• All rates must be filed and are subject to hearing and approval if 5% or 25 taxpayer-electors protest the rate change</li> </ul>	--	--	--	W&S district to submit budget annually for approval.	--
Mutual Domestic Water Consumer Associations under the Sanitary Projects Act	--	No	--	--	--	--	--
Water and Natural Gas Associations	--	Only if association so elects; if association resolves to be subject to PRC regulation, limits on eminent domain do not apply. See page 1 of chart.	--	--	--	--	--
Water User Associations	--	No	--	--	--	--	--
Municipal Water and Sewer Utilities	--	Municipality's rates and service are regulated by PRC only if the municipality elects PRC regulation	--	--	--	--	--
County Water and Sewer Utilities	--	May vary on class of county	--	--	--	--	--
Metropolitan Water Boards	--	Treated as municipality for this purpose; not subject to PRC regulation unless it so elects	--	--	--	Budget included in budget of municipality and county and subject to DFA approval	--
ABQ Bernalillo County Water Authority	--	No	--	--	--	--	--
Municipal Improvement Districts	--	--	--	--	Partially exempt	--	--
County Improvement Districts	--	--	--	--	Partially exempt	--	--

<sup>1</sup> *Public water supply systems* are regulated under the federal Safe Drinking Water Act and the New Mexico Drinking Water Regulations, adopted under the state Environmental Improvement Act. The term *public water supply system* means a system for the provision to the public of water for human consumption through pipes or other constructed conveyances, if the system has at least 15 service connections or regularly serves an average of 25 individuals at least 60 days out of the year. Hence, all water systems meeting this definition are public water supply systems, whether publicly or privately owned. Systems too small to meet this definition are not regulated for drinking water quality under federal and state law.

<sup>2</sup> Public utilities are regulated by the state Public Regulation Commission. A "public utility" includes any person not engaged solely in interstate business that owns, operates, leases or controls any plant, property or facility for the purpose of supplying and furnishing water or sewer service to the public. There are certain exceptions, as for municipal and county-owned utilities that do not opt for regulation. It is important to note that *public utilities* are typically *private* entities and also that a public water supply system is not necessarily a public utility. The former is a term used in water quality regulation while the latter is a concept in utility regulation.

\*\* \*\* Statutes authorizing water systems rarely indicate whether the various laws on open government apply, hence the use of dashes. **However, they generally apply to most public entities. Systems owned by private entities are generally not subject to them.** However, utilities subject to PRC regulation may have audit requirements, etc. imposed by PRC rule or order; these are not spelled out in the Public Utility Act.

# REVIEW OF STATUTES AUTHORIZING WATER OR WASTEWATER SYSTEMS IN NEW MEXICO REGULATORY OVERSIGHT AND OPEN GOVERNMENT REQUIREMENTS

Regulatory Oversight Over Entity				Open Government Policies**			
Type of entity	Regulation of drinking water quality <sup>1</sup>	Supervision of rates and service by PRC <sup>2</sup>	Subject to Open Meetings Act **	Subject to Inspection of Public Records Act **	Subject to Procurement Code **	Budgets and financial statements subject to approval by DFA **	Subject to state Audit Act **
Public Improvement Districts	--	--	--	System records open to public.	No	--	--
Investor-owned Waterworks Under 1887 Act	--	Yes	--	--	--	--	--
Other Investor-owned Utilities	--	Yes	--	--	--	--	--
Cooperative Associations (Coops)	--	-- <sup>3</sup>	--	--	--	Financial report filed annually with PRC (as successor to Corp Com'n)	--
Non-profit corporations	--	If provides service to public, yes	--	--	--	--	--
Partnerships	--	If provides service to public, yes	--	--	--	--	--
Unincorporated Associations (or Clubs)	--	If provides service to public, yes. If a club providing service to members, no. See Footnote 3 below.	--	--	--	--	--
Subdivisions	Depends on the service provider; see Footnote 3 under Powers and Authorities						
Condominiums	Depends on the service provider; see Footnote 4 under Powers and Authorities.						
Mobile Home Parks	Depends on the service provider; see Footnote 5 under Powers and Authorities.						

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<sup>2</sup> *Public utilities* are regulated by the state Public Regulation Commission. A *public utility* includes any person not engaged solely in interstate business that owns, operates, leases or controls any plant, property or facility for the purpose of supplying and furnishing water or sewer service *to the public*. There are certain exceptions, as for municipal and county-owned utilities that do not opt for regulation. It is important to note that *public utilities* are typically *private* entities and also that a public water supply system is not necessarily a public utility. The former is a term used in water quality regulation while the latter is a concept in utility regulation.

<sup>3</sup> Coops providing water or wastewater service *to their members* are not public utilities subject to PRC regulation because they do not provide service to the public.

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