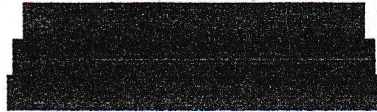


White Paper
on
Timberon Water and Sanitation District Rates, Tolls, Changes and Taxes

Prepared By:



This white paper is presented to provide an analysis of the legitimacy, under New Mexico statutes, of the Timberon Water and Sanitation District's Facility and Services (F&S) Fee .

ISSUES. There appears to be two issue related to the F&S fee within the community. The first issue is whether the Timberon Water and Sanitation District rates, tolls, charges and taxes can be used for purposes other than providing water and sanitation (sewer and trash) services. The second issue is whether the F&S Fee itself is legitimate under New Mexico Statues.

RELEVANT STATUES. There are two New Mexico Statues that relate directly on these two issues. These are:

- New Mexico Statutes, Chapter 73 - Special Districts, Article 21 – Water and Sanitation Districts
- New Mexico Statutes, Chapter 4 – Counties, Article 54 - Community Service Districts, Section 4-54-4 - Tax Limitation

PURPOSES OF A WATER AND SANITATION DISTRICT.

It is clear, under Article 21 of Chapter 73, that a Water and Sanitation District may provide facilities and services beyond water, sewer and other sanitation. Article 21, paragraphs C, D, E and F state, in part:

73-21-3. Purpose of water and sanitation districts. (2005)
Water and sanitation districts may be created for the purpose of

...

C. purchasing, acquiring, establishing or constructing streets and street improvements, including without limitation grades, regrades, gravel, oiling, surfacing, macadamizing, paving, crosswalks, sidewalks, driveway approaches, curbs, gutters, culverts, drains, sewers, manholes, inlets, outlets, retaining walls, bridges, overpasses, tunnels, underpasses, approaches, artificial lights and lighting equipment, parkways, grade separators, traffic separators and traffic-control equipment and all appurtenances and incidentals or any combination of them, including real and other property for them;

D. establishing or constructing park and recreational improvements;

E. purchasing, acquiring, establishing, constructing or operating other public facilities or economic development projects; or

F. all of the improvements in Subsections A through E of this section or any combination of them within or without the district.

These provisions clearly provide a water and sanitation district with the authority to establish and maintain roads, parks, recreational improvements and other public facilities or economic development projects.

TYPES OF OPERATING REVENUES.

New Mexico Statue § 73-21-16 provides four sources of revenue to support the facilities and services that water and sanitation districts provide. These are **rates**, **tolls**, **charges** and **taxes**. It is useful to define each of these terms as used in this white paper.

- **Rates** are funds received based on the amount of a good or service used by a customer (such as so many dollars per so many gallons of water consumed).
- **Tolls** are funds received based on actual use of a particular facility or service on an as-used basis (like toll roads). In the context of a water and sanitation district, tolls can be "entrance fees" for a public pool or daily rental of a recreation hall and the like.
- **Charges** are funds received to support common use facilities or services **not** based on the assessed value of personal property (or the volume or frequency of use of a good or service).
- **Taxes** are funds received based on the value of property or goods such as sales or property taxes. In this context, this refers to *ad valorem* taxes based on the assessed value of real property within a district.

For the purposes of this white paper (as it relates to "F&S Fees"), it is important not to confuse these various sources of revenue.

STATUTORY AUTHORITY FOR SOURCES OF REVENUE.

A water and sanitation district's authority to collect **rates**, **tolls** and **charges** comes from New Mexico Statue 73-21-16, paragraph L which states the water and sanitation district board has the power:

*L. to fix and from time to time to increase or decrease water and sewer **rates**, **tolls** or **charges** for services or facilities furnished or made available by the district, including, without limiting the generality of the foregoing, standby charges for both water and sewers, and to pledge that revenue for the payment of any indebtedness of the district.*

Separately, a water and sanitation district's authority to collect **taxes** is provided by New Mexico Statue 73-21-17 which states in part:

*NM Stat § 73-21-17. In addition to the other means of providing revenue for such districts as herein provided, the board shall have power and authority to levy and collect **ad valorem taxes** on and against all taxable property within the district.*

LIMIT ON AD VALOREM TAXES.

The amount any community service district in New Mexico can levy in *ad valorem taxes* is limited by New Mexico Statue 4-54-4. Tax limitation, which states in part:

The aggregate total of all **taxes** levied by a community service district for all purposes shall not exceed a rate of ten dollars (\$10.00), or any lower maximum amount required by operation of the rate limitation provisions of Section 7-37-7.1 NMSA 1978 upon **taxes** levied pursuant to the Community Service District Act, on each one thousand dollars (\$1,000) of net taxable value, as that term is defined in the Property Tax Code [Chapter 7, Articles 35 through 38 NMSA 1978], of taxable property within this community service district.

As a reminder, this provision refers to "*ad valorem taxes*" that vary based on the assessed value of real property (i.e., property taxes) and is only one of four sources of revenue authorized for use by water and sanitation districts--the other three sources being **rates, tolls, charges**.

RELEVANCE TO TIMBERON WATER AND SANITATION DISTRICT FACILITY AND SERVICE (F&S) FEE.

The relevant question is, "Is the Timberon F&S Fee a **rate, toll, charge** or *ad valorem tax*?"

- It is not a **rate** based on the amount of a good or service used--like water rates.
- It is not an as-used **toll** based on actual use of a facility or service--like pool entrance fees.
- Most saliently, it is not an *ad valorem tax* based on the assessed value of a taxpayer's property (and therefore is not affected by the 10 mil limit of New Mexico Statue 4-54-4).
- Clearly, the F&S fee is a flat rate **charge** assessed equally on each landowner within the district for provision of common use facilities and services.

SUMMARY & CONCLUSION.

The Timberon Water and Sanitation District's Facilities and Services (F&S) Fee is a flat rate **charge** assessed equally on each landowner within the district for funding common use facilities and services. It is one of four sources of revenue authorized for use by water and sanitation districts by New Mexico Statues § 73-21-16 and § 73-21-17--the others being **rates, tolls** and *ad valorem taxes*. The provisions of New Mexico Statue 4-54-4 that limits *ad valorem taxes* to \$10 for each \$1,000 of assessed value (10 mils) does not apply to the F&S Fee since it is a **charge**, not an *ad valorem tax*.