

STATE OF NEW MEXICO  
COUNTY OF SANTA FE  
FIRST JUDICIAL DISTRICT COURT

CAUSE NO.                     D-101-CV-2015-00295                    

NORTHERN NEW MEXICANS PROTECTING  
LAND, WATER, AND RIGHTS

Plaintiff,

-vs-

POJOAQUE VALLEY IRRIGATION DISTRICT,

Defendant.

**VERIFIED COMPLAINT FOR DECLARATORY JUDGMENT; FOR VIOLATION OF NMSA §§ 14-2-1 et seq., ORDERING PRODUCTION OF CERTAIN RECORDS AND INFORMATION; FOR DECLARATORY JUDGEMENT THAT SPECIAL DISTRICT ELECTION HELD IN VIOLATION NMSA §§ 73-9-1 et seq., TO BE DECLARED NULL AND VOID; AND PETITION FOR MANDAMUS RELIEF ORDERING THAT A NEW ELECTION BE HELD PURSUANT TO NMSA §§ 73-9-1 et seq.,**

COMES NOW Plaintiff Northern New Mexicans Protecting Land, Water, and Rights (“NNMPLWR”) by and through its undersigned attorneys, WARBA, LLP, A. Blair Dunn, Esq., and for its reasons states:

**GENERAL ALLEGATIONS**

1. Plaintiff, NNMPLWR, is a not for profit corporation residing in New Mexico.
2. Defendant, Pojoaque Valley Irrigation District (“PVID”), is a governmental agency or municipal corporation established through New Mexico statute, is situated in Santa Fe County, New Mexico.
3. This action is brought by NNMPLWR as a resident, New Mexico, against the PVID, in its capacity as a public agency in New Mexico to enforce the provisions of the

New Mexico Inspection of Public Records Act, NMSA 1978 §§ 14-2-1, *et seq.* ("IPRA") and to Declare that Election of December 2, 2014 was held in violation of NMSA §§ 73-9-1 *et seq.* which as such should be Declared Null and Void. This action also seeks to compel through Mandamus under NMSA §§ 44-2-1 *et seq.*, to have PVID fulfill its nondiscretionary responsibility to conduct a proper election of board members.

4. The IPRA reflects the New Mexico Legislature's recognition "that a representative government is dependent upon an informed electorate" and embodies the Legislature's intention that "that all persons are entitled to the greatest possible information regarding the affairs of the government and the official acts of public officers and employees." *Id.* at § 14-2-5.

5. The IPRA provides that, with only certain, specified limitations, "Every person has a right to inspect public records of the state." *Id.* at § 14-2-1A.

6. By an email dated December 8, 2014, (See Attachment A), NNMPLWR requested the opportunity to inspect, examine, or be provided the following documents:

This is a request pursuant to the New Mexico Inspection of Public Records Act, NMSA 1978, §§ 14-2-1 *et seq.* ("IPRA"), on behalf of Northern New Mexicans Protecting Land, Water, and Rights.

We would like to inspect a copy of the following record(s):

- 1.) Copy of the bylaws of the PVID.**
- 2.) Copy of the rules and/or regulations that the board operates under.**
- 3.) Minutes of PVID board meeting for the past 3 years.**
- 4.) Current list of delinquent dues/accounts to the PVID.**

**5.) Financials for PVID for past 4 years.**

**6.) Ballots and registration sheet from election dated December 2, 2014.**

7. To date, well over 30 days have passed and the Defendant has not provided all of the public documents in its possession that are responsive to Plaintiff's requests.

8. By correspondence dated December 12, 2014 (See Exhibit B) the Defendant stated that they have processed the request and that ultimately they denied the portion of the request for examination of the ballots and registration cast in the election as well the documents evidencing the tallying and canvassing of the same. Ultimately the PVID has failed in its responsibility to supply the records within the time prescribed by NMSA 1978§ 14-2-11 and pursuant to the law is deemed to have improperly denied the request.

9. On December 2, 2014 Defendant conduct an election of its board for one member whose term was up. It purported to do so pursuant to NMSA §§ 73-9-1 *et seq.*, however, upon information and belief, upon the completion of the balloting Mr. J. David Ortiz acting as the agent of the Board of Directors for Defendant took it upon himself to canvass the election and instead of tally each vote equally gave more weight to certain votes cast in violation of the statute resulting in an invalid result. PVID then declared improper election results as presented by Mr. Ortiz as canvassed and certified the winner of the election improperly.

10. Notices of the election were not posted in three different locations in violation NMSA § 73-9-10.

11. The one notice that was posted on the office of the Defendant's building, did not have a Spanish translated version in violation of NMSA § 73-10-4.
12. Prior to the posting of the one notice, the PVID failed to appoint a board of election clerk from the electors in violation of NMSA § 73-9-10.
13. Defendant failed to meet the first Monday following the election in violation of NMSA § 73-9-19.
14. In violation of NMSA § 73-9-9 and NMSA § 73-9-12, the day after the election poll was closed, the PVID President adjusted the vote tally and declared the District One incumbent winner of the election.
15. During the meeting to canvass and approve the election, the incumbent winner of the election was allow to second the motion to approve the election results designating him the winner.

### **JURISDICTION AND PARTIES**

16. This action is brought pursuant to this Court's original jurisdiction under Article VI, Section 13 of the New Mexico Constitution, NMSA 1978 § 14-2-12, NMSA , and NMSA
17. Plaintiff NNMPLWR, as a resident New Mexico, is a proper party to bring this action under NMSA 1978 § 14-2-12A(2), because they are a "person whose written [IPRA] request has been denied" and is the proper person to seek the mandamus relief sought pursuant to NMSA §§ 44-2-1 *et seq.*,
18. Defendant PVID is a public agency created pursuant to statute that qualifies as a "public body" as defined by NMSA 1978 § 14-2-6.

19. The documents requested pertain to records about the business of the PVID and are therefore public business records and documents subject to production under IPRA.

**COUNT I  
VIOLATION OF THE NEW MEXICO  
INSPECTION OF PUBLIC RECORDS ACT**

20. Plaintiff incorporates by reference the claims, facts, and allegations set forth in the above paragraphs.

21. Defendant has violated the New Mexico Inspection of Public Records Act by failing to produce the public records properly requested by the Plaintiff as required by the IPRA.

22. Pursuant to NMSA 1978 § 14-2-11 (C) and NMSA 1978 § 14-2-12(D), plaintiff is entitled to damages, costs and reasonable attorneys' fees.

**COUNT II  
DECLARATORY AND INJUNCTIVE RELIEF  
FOR IPRA VIOLATIONS**

23. Plaintiff incorporates by reference the claims, facts, and allegations set forth in the above paragraphs.

24. As demonstrated above in the preceding paragraphs, Defendant has violated the provisions of the New Mexico Inspection of Public Records Act by withholding from inspection the public records Plaintiff requested. As such, Plaintiff is entitled to declaratory relief that Defendants have violated the IPRA.

25. The New Mexico IPRA provides that "(a)n action to enforce the IPRA may be brought by ... a person whose written request has been denied" and that "a district court

may issue a writ of mandamus or order an injunction or other appropriate remedy to enforce the provisions of the IPRA." NMSA 1978 § 14-2-12.

26. Because Defendant has violated the IPRA by denying Plaintiff the public records he requested by Plaintiff without justification under the law, Plaintiff are entitled to an injunction ordering the Defendant to produce all relevant documents in the Defendant's possession.

**COUNT II  
DECLARATORY AND INJUNCTIVE RELIEF  
FOR ELECTION VIOLATIONS**

27. Plaintiff incorporates by reference the claims, facts, and allegations set forth in the above paragraphs.

28. As demonstrated above in the preceding paragraphs, Defendant has violated the provisions of NMSA §§ 73-9-1 *et seq.*, by conducting and certifying an election that violates NMSA §§ 73-9-1 *et seq.* As such, Plaintiff is entitled to declaratory relief that election of December 2 2014 violates NMSA §§ 73-9-1 *et seq.*, and is declared to be null and void.

29. Because Defendant has violated the NMSA §§ 73-9-1 *et seq.* by conducting an election in violation of the same, Plaintiff are entitled pursuant to NMSA §§ 44-2-1 *et seq.*, to seek mandamus relief ordering the Defendant to hold an election pursuant to the NMSA §§ 73-9-1 *et seq.*, and count each vote equally and to canvass the results of such an election in accordance with the laws of New Mexico in order to replace the improper previous election.

## **REQUESTED RELIEF**

**WHEREFORE**, Plaintiff respectfully requests that this Court exercise its jurisdiction and enter, pursuant to this Court's original jurisdiction, and the New Mexico Inspection of Public Records Act:

- A. A declaratory judgment adjudicating that the denial of the public records requested by Plaintiff is in violation of the New Mexico Inspection of Public Records Act or, if necessary, a writ of mandamus requiring the Defendant to produce the requested records;
- B. Judgment in favor of Plaintiff on Defendant's violation(s) of the Inspection of Public Records Act;
- C. An injunction to enforce the provisions of the New Mexico Inspection of Public Records Act;
- D. A declaratory judgment adjudicating that election held on December is in violation of the NMSA and, if necessary, issue a writ of mandamus requiring the Defendant to conduct a proper election pursuant to the law and certify the results accordingly;
- D. An Order awarding Plaintiff damages for violations of the Inspection of Public Records Act;
- E. An Order awarding Plaintiff their costs and reasonable attorney's fees as provided by law;
- F. Such other and further relief as the Court deems just.

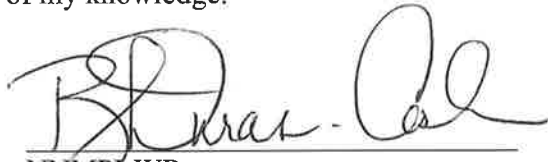
Respectfully submitted,  
WARBA, LLP

By: /s/ A. Blair Dunn  
A. Blair Dunn, Esq.  
6605 Uptown Blvd. NE Ste. 280  
Albuquerque, NM 87110  
505-881-5155 Fax: 505-881-5356



**VERIFICATION**

I, Beverly Duran-Cash, President, NNMPLWR, hereby swear and affirm that the foregoing is true and correct to the best of my knowledge.

  
\_\_\_\_\_  
NNMPLWR

SUBSCRIBED AND SWORN TO me by Beverly Duran-Cash, in her official capacity this 26<sup>th</sup> day of January 2015.

  
\_\_\_\_\_  
Notary Public

My Commission expires: 4/17/18



**From:** NNM Protects <nnmprotects@gmail.com>  
**Sent:** Friday, December 12, 2014 5:51 PM  
**To:** ortiznambe@msn.com  
**Cc:** A. Blair Dunn; Carl Trujillo #144; Sen Carlos Cisneros; Dave and Cris Neal #236  
**Subject:** Re: IPRA Request

## **EXHIBIT A**

Mr. Ortiz,

Thank you very much for allowing me to comment at your PVID Board meeting held at the El Rancho Community Center today, in which the public was asked to submit a written comment in order to be allowed to speak with a 3 minute limit per written comment form. As I stated, the New Mexico Inspection of Public Records Act states that a reply of acknowledgement for an IPRA request must be received by the requester within 3 business days. To date, I have not received a response as required. Therefore, I will assume that my request is not overboard nor burdensome. I provided you and the board with a copy of the New Mexico Inspection of Public Records Act and highlighted that the documents requested are due within 15 business days of my request.

I appreciate your attention to this matter and expect the documents on or before December 31, 2014.

Respectfully,  
Beverly Duran-Cash

On Mon, Dec 8, 2014 at 11:22 AM, NNM Protects <[nnmprotects@gmail.com](mailto:nnmprotects@gmail.com)> wrote:  
Mr. David Ortiz  
President  
Pojoaque Valley Irrigation District (PVID)

Mr. Ortiz,

This is a request pursuant to the New Mexico Inspection of Public Records Act, NMSA 1978, §§ 14-2-1 et seq. ("IPRA"), on behalf of Northern New Mexicans Protecting Land, Water, and Rights.

We would like to inspect a copy of the following record(s):

- 1.) Copy of the bylaws of the PVID.**
- 2.) Copy of the rules and/or regulations that the board operates under.**
- 3.) Minutes of PVID board meeting for the past 3 years.**
- 4.) Current list of delinquent dues/accounts to the PVID.**
- 5.) Financials for PVID for past 4 years.**
- 6.) Ballots and registration sheet from election dated December 2, 2014.**

If you do not have these public record(s), please let me know. If this request needs to go to someone other than you, please forward to the appropriate records custodian or person.

We agree to pay applicable fees for transmitting and/or copying. If amount is in excess of \$100.00, please let me know beforehand. We will gladly pay in advance if needed.

Please contact me to acknowledge receipt of this request and feel free to contact me with any questions.

Sincerely,  
Beverly Duran-Cash  
President  
NNM Protecting Land, Water, and Rights

# EXHIBIT B

POJOAQUE VALLEY IRRIGATION DISTRICT  
9 CITIES OF GOLD RD.  
SANTA FE, NM 87506  
Phone: (505) 455-2693

December 12, 2014

Beverly Duran-Cash  
NNM Protecting Land, Water, and Rights  
24-A CR 84B  
Santa Fe, NM 87506

Dear Beverly,

As per your request for PVID records, we will have the records you requested by December 24, 2014, provided that you provide us with a check made out to Pojoaque Valley Irrigation District in the amount of \$100.00. We will refund you any amount if the cost is less than \$100.00 and will inform you if the cost exceeds \$100.00.

We cannot provide you with the ballots of the election, but we will provide you with the results and a list of voters.

Sincerely,



Patsy Sandoval  
Office Manager  
PVID