



Albuquerque Bernalillo County Water Authority

Albuquerque/Bernalillo
County
Government Center
One Civic Plaza
Albuquerque, NM 87102

Legislation Text

File #: R-14-10, Version: 2

ALBUQUERQUE BERNALILLO COUNTY WATER UTILITY AUTHORITY

BILL NO. **F/S R-14-10**

RESOLUTION

Approving the Sale of Albuquerque Bernalillo County Water Utility Authority (the "Water Authority") Senior Lien Joint Water and Sewer System Refunding Revenue Bonds, Series 2014A in the Aggregate Principal Amount of \$98,420,000 (the "Series 2014A Bonds"); Approving the Sale of the Water Authority Subordinate Lien Joint Water and Sewer System Refunding Revenue Bonds, Series 2014B in the Aggregate Principal Amount of \$88,585,000 (the "Series 2014B Bonds", and Together With the Series 2014A Bonds, (the "Bonds"); Establishing Certain Details of the Bonds; Providing for the Payment of the Costs of Issuance of the Bonds; Approving Disclosure and Other Documents Relating to the Bonds; and Ratifying Action Previously Taken in Connection Therewith.

WHEREAS, unless otherwise defined in Section 1 of this Confirming Resolution or the context requires otherwise, capitalized terms in the Confirming Resolution have the same meaning assigned to those terms in Section 1 of Ordinance No. O-14-2 (the "Bond Ordinance") adopted by the Board of the Water Authority (the "Board") on August 20, 2014; and

WHEREAS, the Confirming Resolution is adopted pursuant to the Bond Ordinance in order to amend or supplement certain matters in the Bond Ordinance and to approve the terms, sale price, maximum interest rates and other matters with respect to the Bonds; and

WHEREAS, the Board has adopted the Bond Ordinance which authorized the issuance of the Bonds and provides for the adoption of a Confirming Resolution by the Board to approve terms and documents relating to the issuance, delivery, sale, and administration of the Bonds, and the Confirming Resolution is adopted by the Board for those purposes; and

WHEREAS, the Water Authority adopts this resolution pursuant to the authority granted to it in the Bond Legislation and the Act; and

WHEREAS, it is in the best interests of the Water Authority to sell the Bonds to the Purchaser upon the terms as set forth in the Bond Legislation and the Bond Purchase Agreement; and

WHEREAS, the Preliminary Official Statement, the proposed form of Official Statement, the form of Continuing Disclosure Undertaking, the form of the Escrow Agreement, and the Bond Purchase Agreement are on deposit with the Water Authority and are presented to the Board; and

WHEREAS, the Water Authority wishes to explicitly assume all obligations associated with certain bonds or notes issued prior to the date hereof; and

WHEREAS, all required authorizations, consents and approvals of any governmental body, agency or authority in connection with the authorization, execution and delivery of the Bonds, which are required to have been obtained by the date on which the Confirming Resolution is adopted or which will be required to be obtained prior to the date of issuance of the Bonds have been or will have been obtained by such dates;

BE IT RESOLVED BY THE BOARD, THE GOVERNING BODY OF ALBUQUERQUE BERNALILLO COUNTY WATER UTILITY AUTHORITY:

SECTION 1. DEFINITIONS.

PURCHASER. J.P. Morgan Securities LLC, Robert W. Baird & Co., Incorporated, Stifel, Nicolaus & Company, Incorporated, and Piper Jaffray & Co., collectively, as the original purchasers of the Bonds.

SERIES 2014A BONDS. The Albuquerque Bernalillo County Water Utility Authority Senior Lien Joint Water and Sewer System Refunding Revenue Bonds, Series 2014A, authorized by the Bond Legislation.

SERIES 2014B BONDS. The Albuquerque Bernalillo County Water Utility Authority Subordinate Lien Joint Water and Sewer System Refunding Revenue Bonds, Series 2014B, authorized by the Bond Legislation.

CONFIRMING RESOLUTION. This resolution, being Water Authority Resolution No. R-14-10.

SECTION 2. RATIFICATION OF PRIOR ACTIONS TOWARD ISSUANCE OF THE

BONDS; ASSUMPTION OF PRIOR OBLIGATIONS. All action previously taken (not inconsistent with the provisions of the Bond Legislation) by the Board and the officers of the Water Authority, directed toward the authorization, pledge, collection, and distribution of the Net Revenues and the authorization, issuance and sale of the Bonds is ratified, approved, and confirmed. The Water Authority hereby assumes all liabilities and obligations with respect to all outstanding bonds and other obligations issued by the Water Authority pursuant to the Act, the Bond Legislation and Joint Powers Agreement dated December 19, 2003 among the City, the County and the Water Authority.

SECTION 3. FINDINGS. The Board declares that it has considered all relevant information and data and makes the following findings:

A. The issuance of the Series 2014A Bonds in the principal amount of \$98,420,000 plus a premium of \$_____ under the Act will provide funds for (i) the advance refunding of the Public Project Revolving Fund Loan Agreement (2005) maturing on and after May 1, 2016, (ii) the advance refunding of the Series 2006A Bonds maturing on and after July 1, 2017, and (iii) the payment of Expenses, with proceeds of the Series 2014A Bonds and other money of the Water Authority legally available for the purpose (collectively, the "Series 2014A Refunding Project").

B. The issuance of the Series 2014B Bonds in the principal amount of \$88,585,000 plus a premium of \$_____ under the Act will provide funds for (i) the advance refunding of the Series 2005 Bonds maturing on and after July 1, 2016, (ii) the current refunding of the outstanding EID Loan, and (iii) the payment of Expenses related to the issuance of the Series 2014B Bonds, with proceeds of the Series 2014B Bonds and other money of the Water Authority legally available for the purposes (collectively, "the Series 2014B Refunding Project").

B. The Series 2014A Refunding Project and the Series 2014B Refunding Project are necessary and in the interest of the public health, safety, and welfare of the residents of the geographic area served by the Water Authority for the purpose of achieving debt service savings and restructuring the Water Authority's outstanding System Obligations.

C. The interest rates set forth in Section 4, the net effective interest rate of _____% per annum, and the underwriters' discount of \$_____ for the sale of the Series 2014A Bonds are reasonable under existing and anticipated bond market conditions and are necessary and advisable for the marketing and sale of the Series 2014A Bonds. The interest rates set forth in Section 4, the net effective interest rate of _____% per annum, and the underwriters' discount of \$_____ for the sale of the Series 2014B Bonds are reasonable under existing and anticipated bond market conditions and are necessary and advisable for the marketing

and sale of the Series 2014B Bonds.

D. The Water Authority will complete the Series 2014A Refunding Project with the proceeds of the Series 2014A Bonds together with other funds of the Water Authority, if any. The Water Authority will complete the Series 2014B Refunding Project with the proceeds of the Series 2014B Bonds together with other funds of the Water Authority, if any.

SECTION 4. DETAILS OF SERIES 2014A BONDS.

A. PRINCIPAL AMOUNT. The Series 2014A Bonds shall be issued in one or more series in the aggregate principal amount of \$_____, shall be designated the Albuquerque Bernalillo County Water Utility Authority Senior Lien Joint Water and Sewer System Refunding Revenue Bonds, Series 2014A. The Series 2014A Bonds shall be issued to provide funds, together with other available funds of the Water Authority, if any, to finance the completion of the Series 2014A Refunding Project and to pay Expenses relating to the issuance of the Series 2014A Bonds.

B. SERIES DATE; REGISTRATION. The Series 2014A Bonds shall be dated the date of issuance of the Series 2014A Bonds (the "Series Date"), and shall be issued in fully registered form only, without coupons, and when issued will be registered in the name of Cede & Co., as nominee of The Depository Trust Company ("DTC"), New York, New York, as registered owner of the Series 2014A Bonds, all as provided in the Bond Ordinance.

C. INTEREST PAYMENT DATE; INTEREST RATES; MATURITIES.
The Series 2014A Bonds shall bear interest payable on each Interest Payment Date, beginning on January 1, 2015, at the rates per annum, maturing in the years and amounts, set forth below:

<u>Principal Amount</u>	<u>Maturity (July 1)</u>	<u>Interest Rate</u>
\$	2015	%
\$	2016	%
\$	2017	%
\$	2018	%
\$	2019	%
\$	2020	%
\$	2021	%
\$	2022	%
\$	2023	%
\$	2024	%

\$	2025	%
\$	2026*	%

***Term Bonds subject to mandatory sinking fund redemption**

D. OPTIONAL REDEMPTION. The Series 2014A Bonds maturing on and after July 1, ____, shall be subject to redemption prior to their respective maturities, at the option of the Water Authority in any order of maturity as determined by the Water Authority in whole or in part at any time, on or after July 1, ____, at a redemption price equal to 100% of the principal amount of the Series 2014A Bonds to be redeemed, plus accrued interest to the date of redemption.

E. MANDATORY SINKING FUND REDEMPTION. The Series 2014A Bonds maturing on July 1, ____ are subject to mandatory sinking fund redemption at a redemption price equal to 100% of the principal amount thereof plus accrued interest to the redemption date on July 1 in the years and in the principal amounts stated below:

<u>Year</u>	<u>Amount</u>
*	

***Maturity Date**

As and for a sinking fund for the redemption of a series of Series 2014A Bonds subject to mandatory sinking fund redemption, on or before July 1 in each of the years and in the principal amounts stated above, the Water Authority shall transfer Net Revenues into the Series 2014A Debt Service Account so that there is on deposit on the required redemption date in the Series 2014A Debt Service Account amounts sufficient to redeem the Series 2014A Bonds called for redemption (after credit as provided below). Subject to the following paragraph, Series 2014A Bonds which are term bonds shall be subject to mandatory sinking fund redemption at a redemption price equal to 100% of the principal amount thereof plus accrued interest to the redemption date on July 1 in the years and in the principal amounts stated above.

At its option, to be exercised on or before the 45th day next preceding any July 1 mandatory sinking fund redemption date, the Water Authority may irrevocably elect to (i) deliver to the Paying Agent for cancellation Series 2014A Bonds of the same series and Maturity Date in any aggregate principal amount and/or (ii) receive a credit in respect of its sinking fund redemption obligation for any Series 2014A Bonds of the same series and Maturity Date which, prior to such date, have been redeemed (otherwise than through the operation of the sinking fund) and canceled by the Paying Agent and not theretofore applied

as a credit against any sinking fund redemption obligation. Each Series 2014A Bond so delivered or previously redeemed shall be credited by the Paying Agent at the principal amount thereof against the amounts required to be paid by the Water Authority on the respective July 1 mandatory sinking fund redemption date or dates designated by the Water Authority and the principal amount of Series 2014A Bonds to be redeemed by operation of such sinking fund on such date shall be accordingly reduced.

SECTION 5. DETAILS OF SERIES 2014B BONDS.

A. PRINCIPAL AMOUNT. The Series 2014B Bonds shall be issued in one or more series in the aggregate principal amount of \$_____, shall be designated the Albuquerque Bernalillo County Water Utility Authority Subordinate Lien Joint Water and Sewer System Refunding Revenue Bonds, Series 2014B. The Series 2014B Bonds shall be issued to provide funds, together with other available funds of the Water Authority, if any, to finance the completion of the Series 2014B Refunding Project and to pay Expenses relating to the issuance of the Series 2014B Bonds.

B. SERIES DATE; REGISTRATION. The Series 2014B Bonds shall be dated the date of issuance of the Series 2014B Bonds (the "Series Date"), and shall be issued in fully registered form only, without coupons, and when issued will be registered in the name of Cede & Co., as nominee of The Depository Trust Company ("DTC"), New York, New York, as registered owner of the Series 2014B Bonds, all as provided in the Bond Ordinance.

C. INTEREST PAYMENT DATE; INTEREST RATES; MATURITIES.

The Series 2014B Bonds shall bear interest payable on each Interest Payment Date, beginning on January 1, 2015, at the rates per annum, maturing in the years and amounts, set forth below:

<u>Principal Amount</u>	<u>Maturity (July 1)</u>	<u>Interest Rate</u>
\$	2015	%
\$	2016	%
\$	2017	%
\$	2018	%
\$	2019	%
\$	2020	%
\$	2021	%
\$	2022	%

\$	2023	%
\$	2024	%
\$	2025	%
\$	2026*	%

***Term Bonds subject to mandatory sinking fund redemption**

D. OPTIONAL REDEMPTION. The Series 2014B Bonds maturing on and after July 1, ____, shall be subject to redemption prior to their respective maturities, at the option of the Water Authority in any order of maturity as determined by the Water Authority in whole or in part at any time, on or after July 1, ____, at a redemption price equal to 100% of the principal amount of the Bonds to be redeemed, plus accrued interest to the date of redemption.

E. MANDATORY SINKING FUND REDEMPTION. The Series 2014B Bonds maturing on July 1, ____ are subject to mandatory sinking fund redemption at a redemption price equal to 100% of the principal amount thereof plus accrued interest to the redemption date on July 1 in the years and in the principal amounts stated below:

<u>Year</u>	<u>Amount</u>
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***Maturity Date**

As and for a sinking fund for the redemption of a series of Series 2014B Bonds subject to mandatory sinking fund redemption, on or before July 1 in each of the years and in the principal amounts stated above, the Water Authority shall transfer Net Revenues into the Series 2014B Debt Service Account so that there is on deposit on the required redemption date in the Series 2014B Debt Service Account amounts sufficient to redeem the Series 2014B Bonds called for redemption (after credit as provided below). Subject to the following paragraph, Series 2014B Bonds which are term bonds shall be subject to mandatory sinking fund redemption at a redemption price equal to 100% of the principal amount thereof plus accrued interest to the redemption date on July 1 in the years and in the principal amounts stated above.

At its option, to be exercised on or before the 45th day next preceding any July 1 mandatory sinking fund redemption date, the Water Authority may irrevocably elect to (i) deliver to the Paying Agent for cancellation Series 2014B Bonds of the same series and Maturity Date in any aggregate principal amount and/or (ii) receive a credit in respect of its sinking fund redemption obligation for any Series 2014B Bonds of the same series and

Maturity Date which, prior to such date, have been redeemed (otherwise than through the operation of the sinking fund) and canceled by the Paying Agent and not theretofore applied as a credit against any sinking fund redemption obligation. Each Series 2014B Bond so delivered or previously redeemed shall be credited by the Paying Agent at the principal amount thereof against the amounts required to be paid by the Water Authority on the respective July 1 mandatory sinking fund redemption date or dates designated by the Water Authority and the principal amount of Series 2014B Bonds to be redeemed by operation of such sinking fund on such date shall be accordingly reduced.

SECTION 6. PARAMETERS OF ORDINANCE. The net effective interest rate on each series of Series 2014A Bonds is less than 12% per annum. The maturities of the Series 2014A Bonds do not exceed the remaining useful life of the projects financed with the proceeds of the Series 2014A Refunded Obligations. The net effective interest rate on the Series 2014B Bonds is less than 12% per annum. The maturities of the Series 2014B Bonds do not exceed the remaining useful life of the projects financed with the proceeds of the Series 2014B Refunded Obligations. All other terms and conditions relating to the Bonds and the sale of the Bonds to the Purchaser as set forth in the Confirming Resolution and the Bond Purchase Agreement are within the parameters established by the Bond Ordinance.

SECTION 7. ACCOUNTS AND FUNDS. The Water Authority shall establish the Series 2014A Debt Service Account and the Series 2014B Debt Service Account as a separate accounts of the Debt Service Fund and shall establish any other accounts required by the Bond Ordinance.

SECTION 8. SALE OF THE BONDS. The sale of the Series 2014A Bonds in a negotiated sale to the Purchaser for the principal amount of \$_____, plus a net premium of \$_____, less an underwriter's discount of \$_____, is approved. The sale of the Series 2014B Bonds in a negotiated sale to the Purchaser for the principal amount of \$_____, plus a net premium of \$_____, less an underwriter's discount of _____, is approved.

SECTION 9. USE OF PROCEEDS; REFUNDING PROJECT COMPLETION; PURCHASER NOT RESPONSIBLE.

A. PROCEEDS AND OTHER FUNDS; APPROPRIATIONS.

(1) The Board, having been informed of and having considered all pertinent facts and circumstances, does hereby find and determine and declare that proceeds from the sale of the Series 2014A Bonds shall be appropriated and deposited as follows:

(a) \$_____ of proceeds of the Series 2014A Bonds will be

deposited into the Expense Account to pay Expenses associated with the Series 2014A Bonds, with any amounts not expended within ninety (90) days to be deposited into the Series 2014A Debt Service Account.

(b) \$_____ of proceeds of the Series 2014A Bonds will be deposited in the Escrow Accounts for the Series 2014A Refunded Obligations, and, together with interest earnings thereon, used, and is appropriated for the payment of the redemption price (including principal and accrued interest) of the Series 2014A Refunded Obligations pursuant to the Escrow Agreement.

(c) \$_____ of proceeds of the Series 2014A Bonds shall be used to pay, and is appropriated to reimburse the Water Authority for the payment of the underwriters' discount paid by the Water Authority.

(d) \$_____, of the proceeds of the Series 2014A Bonds, shall be deposited to the Series 2014A Debt Service Account.

(2) The Board, having been informed of and having considered all pertinent facts and circumstances, does hereby find and determine and declare that proceeds from the sale of the Series 2014B Bonds shall be appropriated and deposited as follows:

(a) \$_____ of proceeds of the Series 2014B Bonds will be deposited into the Expense Account to pay Expenses associated with the Series 2014B Bonds, with any amounts not expended within ninety (90) days to be deposited into the Series 2014B Debt Service Account.

(b) \$_____ of proceeds of the Series 2014B Bonds will be deposited in the Escrow Account for the Series 2005 Refunded Bonds, and, together with interest earnings thereon, used, and is appropriated for the payment of the redemption price (including principal and accrued interest) of the Refunded Obligations pursuant to the Escrow Agreement.

(c) \$_____ of the proceeds of the Series 2014B Bonds will be applied to the prepayment of the EID Loan on the Closing Date of the Bonds.

(d) \$_____ of proceeds of the Series 2014B Bonds shall be used to pay, and is appropriated to reimburse the Water Authority for the payment of the underwriters' discount paid by the Water Authority.

(e) \$_____, of the proceeds of the Series 2014B Bonds, shall be deposited to the Series 2014B Debt Service Account.

B. COMPLETION. As soon as practicable, and in any event not more than 60 days after the Completion Date of the Refunding Project, any balance remaining in the Escrow Funds shall be used by the Water Authority for the payment of the principal of or interest next coming due on the Bonds.

C. PURCHASER NOT RESPONSIBLE. The Purchaser shall not be responsible for the application or use by the Water Authority of the proceeds of Bonds.

SECTION 10. PRIOR REDEMPTION AND NOTICE WITH RESPECT TO REFUNDED OBLIGATIONS; ESCROW AGENT; SUFFICIENCY OF ESCROW FUND; INVESTMENTS.

The Water Authority has elected and does hereby declare its intent to exercise on behalf and in the name of the Water Authority its option to redeem the Refunded Obligations at a redemption price equal to the principal amount of the Refunded Obligations to be redeemed plus accrued interest to the respective dates of redemption. The Water Authority is hereby obligated to exercise such option, which option shall be deemed to have been exercised irrevocably upon delivery of the Series 2014A Bonds. Notices of optional redemption of the Refunded Obligations shall be mailed or delivered as provided by the Refunded Obligations and the Escrow Agreement.

The initial Escrow Agent shall be BOKF, N.A. dba Bank of Albuquerque. The Escrow Agent shall invest the monies on deposit in the Escrow Accounts only in Government Obligations as defined in the Series 2014A Refunded Obligations and Series 2014B Refunded Obligations. All such Government Obligations shall mature at such times as provided in the Escrow Agreement.

SECTION 11. APPROVAL AND USE OF DOCUMENTS. The forms, terms, and provisions of the Preliminary Official Statement, the proposed form of the Official Statement, the Bond Purchase Agreement, the form of the Escrow Agreement, and the form of Continuing Disclosure Undertaking on file with the Water Authority and presented to the Board are ratified and approved. The Chair of the Water Authority or the Executive Director are hereby authorized to execute the Escrow Agreement. The use by the Purchaser, in connection with the offering and sale of the Bonds, of the Preliminary Official Statement and the Official Statement (with terms which are not inconsistent with the Bond Legislation) is ratified and approved.

SECTION 12. CONFIRMING RESOLUTION IRREPEALABLE. After any Bonds are issued, the Confirming Resolution shall be and remain irrevocable until the principal of and interest on the Bonds are fully paid and the Bonds are cancelled or there has been defeasance of the Bonds as provided in the Bond Legislation.

SECTION 13. REPEALER CLAUSE. All bylaws, orders, and resolutions, or parts thereof, inconsistent with the Confirming Resolution are repealed to the extent of such inconsistency. This repealer shall not be construed to revive any bylaw, order, or resolution, or part thereof, previously repealed.

SECTION 14. SEVERABILITY. If any section, paragraph, clause or provision of the Confirming Resolution shall for any reason be held to be invalid or unenforceable, the invalidity or unenforceability of such section, paragraph, clause or provision shall not affect any of the remaining provisions of the Confirming Resolution.

SECTION 15. EFFECTIVE DATE. The Confirming Resolution shall be in full force and effect immediately upon adoption.

SECTION 16. PUBLICATION OF NOTICE OF ADOPTION. Pursuant to the general laws of the State, the title and general summary of the subject matter contained in the Confirming Resolution shall be published in substantially the following form:

ALBUQUERQUE BERNALILLO COUNTY WATER UTILITY AUTHORITY
LEGAL NOTICE

Notice is hereby given that the Board of Directors of Albuquerque Bernalillo County Water Utility Authority did on the 20th day of August, 2014, adopt a resolution entitled:

APPROVING THE SALE OF ALBUQUERQUE BERNALILLO COUNTY WATER UTILITY AUTHORITY (THE "WATER AUTHORITY") SENIOR LIEN JOINT WATER AND SEWER SYSTEM REFUNDING REVENUE BONDS, SERIES 2014A IN THE AGGREGATE PRINCIPAL AMOUNT OF \$98,420,000 (THE "SERIES 2014A BONDS"); APPROVING THE SALE OF THE WATER AUTHORITY SUBORDINATE LIEN JOINT WATER AND SEWER SYSTEM REFUNDING REVENUE BONDS, SERIES 2014B IN THE AGGREGATE PRINCIPAL AMOUNT OF \$88,585,000 (THE "SERIES 2014B BONDS", AND TOGETHER WITH THE SERIES 2014A BONDS, THE "BONDS"); ESTABLISHING CERTAIN DETAILS OF THE BONDS; PROVIDING FOR THE PAYMENT OF THE COSTS OF ISSUANCE OF THE BONDS; APPROVING DISCLOSURE AND OTHER DOCUMENTS RELATING TO THE BONDS; AND RATIFYING ACTION PREVIOUSLY TAKEN IN CONNECTION THEREWITH.

The Confirming Resolution authorizes the issuance of the Albuquerque Bernalillo County Water Utility Authority Senior Lien Joint Water and Sewer System Refunding Revenue

Bonds, Series 2014A, in the aggregate principal amount of \$98,420,000 (the "Series 2014A Bonds") and authorizes the issuance of the Albuquerque Bernalillo County Water Utility Authority Subordinate Lien Joint Water and Sewer System Refunding Revenue Bonds, Series 2014B, in the aggregate principal amount of \$88,585,000 (the "Series 2014B Bonds") to J.P. Morgan Securities LLC, Robert W. Baird & Co., Incorporated, Stifel, Nicolaus & Company, Incorporated and Piper Jaffray & Co.; establishes the interest rates and maturity schedule for the Series 2014A Bonds and the Series 2014B Bonds; makes certain appropriations of the proceeds of the Bonds; and provides other details concerning the Bonds. Complete copies of the Confirming Resolution are available for public inspection during normal and regular business hours at the offices of the Water Authority, One Civic Plaza, NW, Albuquerque, New Mexico.

Dated this 20th day of August, 2014.

PASSED AND ADOPTED THIS 20TH DAY OF AUGUST, 2014. BY A VOTE OF _____ FOR
AND _____ AGAINST.

CHAIR

ATTEST:

SECRETARY

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