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FISCAL IMPACT REPORT

SPONSOR Cervantes **ORIGINAL DATE** 2/24/15
LAST UPDATED _____ **HB** _____

SHORT TITLE New Mexico Unit Reports to Legislature **SB** 455

ANALYST Armstrong

APPROPRIATION (dollars in thousands)

Appropriation		Recurring or Nonrecurring	Fund Affected
FY15	FY16		
	NFI		

(Parenthesis () Indicate Expenditure Decreases)

Relates to SB 461, SB 542

SOURCES OF INFORMATION

LFC Files

Responses Received From

Office of the State Engineer (OSE)

SUMMARY

Synopsis of Bill

Senate Bill 455 prohibits the New Mexico Central Arizona Project entity from entering into any agreement with the federal secretary of the interior to construct or develop a New Mexico unit of the Central Arizona Project on the Gila River until the Interstate Stream Commission (ISC) has presented a written report signed by the state engineer to the legislative finance committee and the committee has notified the New Mexico CAP entity that the committee finds the report adequately addresses ten separate detailed requirements.

FISCAL IMPLICATIONS

No fiscal impact.

SIGNIFICANT ISSUES

The Arizona Water Settlement Act (AWSA) provides that New Mexico, acting through the ISC, shall designate the New Mexico CAP Entity. Under the AWSA, the NM CAP Entity and the federal secretary of interior shall execute the New Mexico Unit Agreement, subject to the

approval of the state, acting through the Interstate Stream Commission. This bill would require an additional approval by the New Mexico Legislature.

ISC contends this requirement contradicts the mechanism set out in the AWSA, leading to the possibility that a court could invalidate the requirements of SB 455 on the grounds that the bill is preempted by federal law. Moreover, ISC analysis states:

SB 455's requirements would prevent New Mexico from complying with the requirements of federal law. The AWSA provides that the New Mexico CAP Entity and the Secretary shall enter into the New Mexico Unit Agreement within one year of notice to the Secretary that New Mexico intends to pursue a New Mexico Unit of the CAP. Such notice was sent to the Secretary on November 24, 2014, thus setting the deadline to enter into the New Mexico Unit Agreement as November 24, 2015. The terms of the New Mexico Unit Agreement, the parties to the agreement, and the deadline for signing the agreement have all been long-defined in the federal AWSA.

While AGO did not provide analysis of SB 455, the agency's analysis of another bill limiting ISC's discretion under the AWSA (Senate Bill 461) echoes ISC's concerns that doing so would unconstitutionally conflict with and be preempted by the federal law.

ISC's operating budget includes revenue from the New Mexico Unit Fund, established pursuant to the AWSA, to support recurring operating costs associated with the AWSA. The current version of House Bill 2 includes \$425 thousand for this purpose in FY16. Additionally, ISC uses the budget adjustment process to use the fund to cover non-recurring costs associated with the AWSA, including planning and consulting contracts. In FY14, ISC transferred \$125 thousand from the fund for such expenses.

RELATIONSHIP

Senate Bill 461 requires ISC to use the New Mexico Unit Fund to cover costs of implementing water utilization alternatives to meet water supply demands in the southwest water planning region of New Mexico that are categorized as non-diversion alternatives to the development or construction of a New Mexico unit and also requires ISC to spend no less than \$77 million, indexed to 2014 dollars, on such non-diversion alternatives.

Senate Bill 542 repeals ISC's existing rulemaking authority and provides more specific authority, including requiring ISC to meet certain conditions prior to taking an action that would spend \$5 million or more from the New Mexico Unit Fund.

JA/je