

Update from the Water Trust Board

Presentation to the
New Mexico Finance Authority
Oversight Committee

John R. D'Antonio, Jr., P.E., State Engineer, Water Trust Board Chair
Priscilla Lucero, Executive Director, Southwest NM Council of Governments
Marquita Russel, Chief Executive Officer, NMFA

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The Water Project Finance Act

The 2001 Legislature enacted the Water Project Finance Act (the "Act") which created the Water Trust Board ("WTB"), a 16-member board representing a diverse set of water interests.

The statutory purpose of the Act is to provide for water use efficiency, resource conservation and protection and fair distribution and allocation of New Mexico's scarce water resources for beneficial purposes of use within the state.

The Act created the **Water Trust Fund** and the **Water Project Fund** to provide the necessary financial support for the five categories of water projects authorized under the Act.

Pursuant to the Act, NMFA may make grants or loans to projects recommended by the WTB and authorized by the legislature.



Water Trust Board Members

John D'Antonio, Jr., *Chair*

New Mexico State Engineer

Steve Kopelman

New Mexico Counties

A.J. Forte, *Vice-Chair*

New Mexico Municipal League

Timothy McGinn

Irrigation or Conservancy District – Ground Water

Michael Sloane, *Secretary*

NM Dept of Game and Fish

Jonathan Nez

President, Navajo Nation

Brent Van Dyke, *Treasurer*

Soil and Water Conservation Districts

Sarah Cottrell Propst

Energy, Minerals & Natural Resources Dept

Greg Alpers

Irrigation or Conservancy District – Surface Water

Debbie Romero

Dept. of Finance and Administration

Robert Baracker

Acequia Water Users

Marquita Russel

New Mexico Finance Authority

Priscilla Lucero

Environmental Community

Mark Thompson

NM Indian Affairs Department Appointee

James Kenney

NM Environment Department

Jeff Witte

Department of Agriculture



Water Trust Board Duties

Authorize **qualifying water projects** to the authority that are for:

- (1) storage, conveyance or delivery of water to end users;
- (2) implementation of federal Endangered Species Act of 1973 collaborative programs;
- (3) restoration and management of watersheds;
- (4) flood prevention; or
- (5) water conservation or recycling, treatment or reuse of water as provided by law;

As part of the 2021 Legislative Session, HB200 added another WTB duty: "Evaluate projects, including their environmental impacts, and recommend projects to the interstate stream commission pursuant to the provisions of Section 72-14-45"



NMFA Duties

NMFA provides staff support to the WTB and develops application procedures and forms for qualifying entities to apply for grants and loans from the Water Project Fund (the "Fund")

The NMFA heads up a seven-agency review team that evaluates project applications and makes recommendations to the Water Trust Board and its committee.

NMFA is the administrator of the Fund, which is held at the NMFA, and makes grants and loans to authorized projects. Pursuant to a Memorandum of Agreement, the Construction Programs Bureau of the NM Environment Department provides engineering and construction oversight of WTB projects for a fee that is paid by the Fund.



WTB Evaluation Criteria

- ▶ Pursuant to the Act, the WTB adopted rules that give priority to projects that have:
 - been identified as being urgent to meet the needs of a regional water planning area that has a completed regional water plan that has been accepted by the interstate stream commission;
 - matching contributions from federal or local funding sources;
 - obtained all requisite state and federal permits and authorizations necessary to initiate the project
- ▶ Additionally, the WTB established policies and evaluation criteria that give priority to projects that
 - cure health and safety issues
 - address existing or imminent emergency conditions
 - that have been properly planned



2022 Application Cycle

- ▶ For the 2022 Application cycle,
- ▶ Applications are submitted on-line and must be accompanied by evidence of additional funding and mandatory planning documents. The project application closed on October 8th
- ▶ Using the evaluation criteria set forth in the WTB Project Management Policies, a Project Management Team comprised of staff from seven agencies and the Legislative Finance Committee will evaluate the applications and provide its recommendations to the WTB on November 23rd



2022 Application Cycle

- ▶ 52 Notices of Intent to file an application totaling more than \$81.4 million were received
- ▶ 36 applications were filed by the October 8th deadline
- ▶ The Project Management Team will conduct its technical evaluation of the applications from October 13th to November 10th
- ▶ The Water Trust Board will consider any policy waiver requests, including preliminary spend down targets, at its meeting on October 27th
- ▶ The Water Trust Board will approve projects recommended for legislative authorization at its meeting on November 23rd



Expected Funding for 2022

- ▶ The recommended project list will be sized to the amount of funds expected in 2022, with some additional projects in case any of the higher rated projects are by-passed for compliance issues (e.g., water rights, state drinking water regulations, etc.)
- ▶ The Water Project Fund annually receives 9% of the Senior Severance Tax Bond proceeds and a distribution from the Water Trust Fund, less funds directed to the Office of the State Engineer for adjudication
 - Expected Severance Tax Bonds \$48,200,000
 - 2022 Water Trust Fund Distribution 4,000,000
 - Sub-Total 52,200,000
 - Less 10% to OSE/AOC for Adjudication (5,220,000)
 - **Maximum Funding Expected for 2022** **\$46,980,000**



Next Steps

- ▶ Projects recommended to the Legislature are invited to submit a Readiness Application that gauges policy and regulatory compliance
- ▶ Readiness applications are evaluated on a pass/fail basis – those not meeting requirements are provided an opportunity to request a waiver from the WTB, with input from relevant agencies
- ▶ Applicants submitting Readiness Applications are analyzed for debt capacity (most awards have a loan component of 10%-40%)
- ▶ Funding is awarded to projects in the order in which they are prioritized. Awards are sized to an amount that can be expended within two years. Projects will be by-passed if the applicant is not compliant with certain readiness or regulatory requirements
- ▶ The WTB is expected to recommend a final list of projects, including specific amounts of funding, to the NMFA in May 2022. NMFA expects to approve the awards at its May meeting. Awards are subject to terms and conditions established by NMFA



House Bill 200

- ▶ House Bill 200:
 - names the WTB as the successor to the Southwest New Mexico Water Study Group
 - directs the WTB to evaluate water utilization projects, including their environmental impacts, proposed within the Southwest Water Planning Region of New Mexico (Catron, Grant, Hidalgo and Luna Counties), and
 - recommend projects to the Interstate Stream Commission (“ISC”) for funding from the NM Unit Fund
- ▶ The NMFA will not make grants and loans from the NM Unit Fund, nor will NMED oversee the projects funded
- ▶ The ISC has final decision-making authority over which water utilization projects are funded



House Bill 200 Implementation

- ▶ Following the passage of HB 200, the WTB Chair appointed a Task Force consisting of several members of the WTB to make recommendations on the implementation of House Bill 200
- ▶ At the WTB meeting on August 25th, 2021, the Task Force recommended that the WTB solicit input on the implementation of House Bill 200 through an online 45-day public comment period. The WTB unanimously approved the recommendation
- ▶ The online 45-day public comment period opened on September 8th and closes on October 23rd
- ▶ Specifically, the WTB is seeking public input on evaluation and prioritization criteria, and the process by which the WTB should make recommendations for funding from the NM Unit Fund



House Bill 200 Implementation

- ▶ To date, 38 public comments have been submitted, almost all of which come from residents of Catron, Grant, Hidalgo, and Luna counties
- ▶ Common themes among comments received thus far are:
 - any proposed water utilization projects should directly benefit residents in the Southwest Planning Region
 - the application process should be easy to navigate, and
 - concerns that smaller entities may not necessarily have the technical capacity to successfully engage in this process
- ▶ Commenters have an interest in water projects that are sustainable, address health and safety issues, provide adequate water storage, and do not have negative impacts on the environment.



House Bill 200 Implementation

- ▶ Sentiment amongst some commenters is that HB 200:
 - has taken away local control of critical water issues in the Southwest and given that responsibility to the State,
 - violates Federal law and therefore any evaluation process adopted by the WTB would be illegitimate
- ▶ For anyone interested in commenting on the implementation of HB 200, please use the form at the link found at:
<https://www.nmfinance.com/water-project-fund/>

**Public Comment Period:
September 8, 2021 - October 23, 2021**

