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FISCAL IMPACT REPORT

ORIGINAL DATE 1-21-06
 SPONSOR Stewart LAST UPDATED 1-31-06 HB 121/aHAGC/aHENRC
 SHORT TITLE Statewide Water Projects SB _____
 ANALYST Woods

APPROPRIATION (dollars in thousands)

Appropriation		Recurring or Non-Rec	Fund Affected
FY06	FY07		
\$280,000.0		Non-Recurring	General Fund

(Parenthesis () Indicate Expenditure Decreases)

SOURCES OF INFORMATION

LFC Files

Responses Received From

Office of the State Engineer-Interstate Stream Commission (OSE)
 Department of Finance and Administration (DFA)

SUMMARY

Synopsis of HENR Amendment

House Energy and Natural Resources Committee amendment to HB121/a HAGC amends the legislation as follows:

1. Strike House Agriculture and Water Resources Committee Amendment.
2. On pages 1 and 2, strike Subsection A in its entirety and insert in lieu thereof the following new Subsection A to read:

"A. Two hundred eighty million dollars (\$280,000,000) is appropriated from the general fund to the funds and agencies identified below in the following amounts for expenditure in fiscal year 2006 and subsequent fiscal years for the following purposes:

- (1) seventy-five million dollars (\$75,000,000) to the Indian water rights settlement fund to pay the state's portion of the costs necessary to implement Indian water rights settlements approved by the legislature and the United States congress;
- (2) a final forty-eight million dollars (\$48,000,000) to the interstate stream commis-

sion to complete the Pecos River Compact settlement;

(3) thirty million dollars (\$30,000,000) to the improvement of Rio Grande income fund for the middle Rio Grande Endangered Species Act collaborative program;

(4) seven million dollars (\$7,000,000) to the interstate stream commission for the Gila river settlement in the federal Arizona Water Settlements Act, to be used to conduct a full and inclusive process of public involvement, complete a thorough scientific assessment of ecological conditions in the Gila river basin and a full analysis of all water needs and supply alternatives in the southwestern water-planning region;

(5) seventy million dollars (\$70,000,000) to the water project fund for the Ute pipeline project;

(6) forty-four million dollars (\$44,000,000) to the New Mexico irrigation works construction fund for acequia and dam safety improvements statewide; and

(7) six million dollars (\$6,000,000) to the water project fund for La Plata conservancy district's cost share of the Animas-La Plata project.".,

House Energy and Natural Resources Committee amendment to HB121/a HAGC attaches no additional appropriation to the legislation.

Synopsis of HAGC Amendment

House Agriculture and Water Resources Committee amendment to HB121 amends the legislation as follows:

1. On pages 1 and 2, strike Subsection A in its entirety and insert in lieu thereof the following new Subsection A to read:

"A. Two hundred eighty million dollars (\$280,000,000) is appropriated from the general fund to the funds and agencies identified below in the following amounts for expenditure in fiscal year 2006 and subsequent fiscal years for the following purposes:

(1) seventy-five million dollars (\$75,000,000) to the Indian water rights settlement fund to pay the state's portion of the costs necessary to implement Indian water rights settlements approved by the legislature and the United States congress;

(2) a final forty-eight million dollars (\$48,000,000) to the interstate stream commission to complete the Pecos River Compact settlement;

(3) thirty million dollars (\$30,000,000) to the water project fund for the middle Rio Grande collaborative program;

(4) seven million dollars (\$7,000,000) to the interstate stream commission in connection with the Gila river settlement for compliance with federal environmental mandates, scientific studies, public outreach and education, cost benefit analyses and other studies and efforts or evaluations necessary to determine the best use of New

Mexico's benefits under the 2004 Arizona Water Settlements Act; provided that no amount of this appropriation shall be used for construction of any actual project;

(5) seventy million dollars (\$70,000,000) to the water project fund for the Ute pipeline project; and

(6) fifty million dollars (\$50,000,000) to the New Mexico irrigation works construction fund for acequia and dam safety improvements statewide."

2. On page 2, line 10, after "of" insert "a", strike "2007" and after "shall", insert "not".,

House Agriculture and Water Resources Committee amendment to HB121 attaches no additional appropriation to the legislation.

Synopsis of Original Bill

House Bill 121 – Making an Appropriation for Water Projects of Statewide Significance; Declaring and Emergency – seeks to appropriate \$280,000,000 from the general fund to the Office of the State Engineer for expenditure in fiscal years 2006 and 2007 to initiate, plan and implement the following projects in the following amounts:

- \$75,000,000 for Indian water rights and regional community settlements, including the Navajo, Taos and Aamodt settlements;
- \$48,000,000 for the Pecos river settlement;
- \$30,000,000 for the middle Rio Grande collaborative program;
- \$7,000,000 for the Gila river settlement;
- \$70,000,000 for the Ute pipeline project; and
- \$50,000,000 for acequia and dam safety improvements statewide.

Any unexpended or unencumbered balance remaining at the end of fiscal year 2007 shall revert to the general fund.

This legislation carries emergency language.

SIGNIFICANT ISSUES

The Office of the State Engineer-Interstate Stream Commission (OSE) suggests that this funding level is appropriate and is required to accomplish the projects described in the bill, but this sum could not be expended within two years, because many of the projects will take years to develop and complete. Therefore, the money should not revert to the general fund at the end of fiscal year 2007, but should instead remain available for a longer time to accomplish the projects. Accordingly, OSE additionally proposes an amendment to the legislation [See Amendments Section Below] to address two areas of concern:

- to allow the funds appropriated for certain projects to revert to the general fund after a longer period of time. For other projects, the money should not revert at all, but should instead remain in specific existing funds indefinitely, namely the water trust fund, the Indian water rights settlement fund, and the irrigation works construction fund; and

- see that the monies the proposed amendment would appropriate to the water trust fund would generate distributions to the water project fund pursuant to NMSA 1978, §§ 72-4A-8 and –9 (2001). The Water Trust Board and the New Mexico Finance Authority then could issue bonds against these distributions from the water trust fund to finance the Ute pipeline project and projects related to the middle Rio Grande collaborative program. It does not appear that the Water Project Finance Act (NMSA 1978, §§ 72-4A-1 through –10 (2001 and 2003)) would preclude the Water Trust Board and the New Mexico Finance Authority from issuing such bonds. To the extent, however, that specific language authorizing such bonding authority is needed, it should be included.

OSE also observes that funds appropriated for the Gila river settlement should be dedicated to funding the extensive planning, compliance, and scientific and public involvement effort necessary to ensure New Mexico can make an informed and considered decision on how to best utilize the \$66 to 128 Million of federal funds available and the 14,000 acre-feet (average) of additional water that New Mexico is entitled to develop under the Gila Settlement ratified by Congress in the 2004 Arizona Water Settlements Act. Because these funds will not be used for construction of an actual project, the bill should be modified to so reflect, which is included in the proposed amendment below.

The Department of Finance and Administration (DFA) raises a number of comments with respect to this legislation. While DFA recognizes that the appropriation would fund several broadly-defined OSE efforts – most of which are currently underway – because of the lack of specificity it is difficult to note specific outcomes outside of noting that these funds would further and/or expedite completion of the named efforts.

DFA additionally remarks that, depending upon which projects within these initiatives OSE elects to pursue, some activities may not be able to use millions of dollars of appropriations within less than two years. Further, that although in some instances federal matching funds might be leveraged by the proposed expenditures, the amount of potential federal funds is unknown, and it is unlikely OSE could administer or utilize the entire appropriation – whatever the federal-state funding relationships might be – within the appropriation period even if the appropriation was spread among a number of efforts and utilized contractual services where appropriate.

DFA suggests that certain initiatives or aspects of initiatives are not able to absorb large amounts of funds or are not able to be expedited beyond a certain level. Those instances include: activities that need to be done in house; activities for which there exist a limited number of qualified contractors (e.g. lawyers with New Mexico water law experience); activities for which the timeline is dictated by the seasons, an outside entity or a court; or activities that are construction oriented capital improvements that would tend to have substantial planning, design and RFP phases that would have to occur prior to construction. In some cases, as in the Ute pipeline project, the appropriation may not be sufficient to complete the project and use of funds provided in this appropriation may be delayed until sufficient funds to finish the project are amassed.

DFA concludes with the observation that this proposed appropriation is not consistent in the Executive recommendation, and further that consideration might be given to funding, where appropriate, the selected activities through multi-year capital appropriations for capital-oriented projects.

AMENDMENTS

OSE suggests the following amendment to the legislation:

On page 1, line 15, through page 2, line 13, strike Section 1 in its entirety and insert in lieu thereof:

“Section 1. APPROPRIATION

A. Two hundred eighty million dollars (\$280,000,000) is appropriated from the general fund to the funds identified below in the following amounts and for the following purposes:

(1) seventy-five million dollars (\$75,000,000) is appropriated from the general fund to the Indian water rights settlement fund, created pursuant to Section 72-1-12 NMSA 1978 (being Laws 2005, Chapter 172, Section 2) for expenditure in fiscal year 2007 and subsequent fiscal years to pay the state's portion of the costs necessary to implement Indian water rights settlements approved by the legislature and the United States congress. Any unexpended or unencumbered balance remaining at the end of a fiscal year shall not revert to the general fund;

(2) forty-eight million dollars (\$48,000,000) is appropriated from the general fund to the interstate stream commission for expenditure in fiscal years 2007 through 2010 to implement the Pecos river settlement. Any unexpended or unencumbered balance remaining at the end of fiscal year 2010 shall revert to the general fund;

(3) thirty million (\$30,000,000) is appropriated from the general fund to the water trust fund, created pursuant to Section 72-4A-8 NMSA 1978 (being Laws 2001, Chapter 164, Section 8), for expenditure in fiscal year 2007 and subsequent fiscal years for the middle Rio Grande collaborative program. Any unexpended or unencumbered balance remaining at the end of a fiscal year shall not revert to the general fund;

(4) seven million dollars (\$7,000,000) is appropriated to the interstate stream commission, in connection with the Gila river settlement, for expenditure in fiscal years 2007 through 2014 for compliance with federal environmental mandates, scientific studies, public outreach and education, cost benefit analyses, and other studies, efforts, or evaluations necessary to determine the best use of New Mexico's benefits under the 2004 Arizona Water Settlements Act, provided that no amount of this appropriation shall be used for construction of any actual project, and any unexpended or unencumbered balance remaining at the end of fiscal year 2014 shall revert to the general fund;

(5) seventy million dollars (\$70,000,000) is appropriated from the general fund to the water trust fund, created pursuant to Section 72-4A-8 NMSA 1978 (being Laws 2001, Chapter 164, Section 8), for expenditure in fiscal year 2007 and subsequent fiscal years for the Ute pipeline project. Any unexpended or unencumbered balance remaining at the end of a fiscal year shall not revert to the general fund; and

(6) fifty million dollars (\$50,000,000) is appropriated from the general fund to the irrigation works construction fund, created pursuant to Section 72-14-23 NMSA 1978 (being Laws 1955, Chapter 266, Section 15, as amended), for expenditure in fiscal year 2007 and subsequent fiscal years for acequia and dam safety improvements statewide. Any unexpended or unencumbered balance remaining at the end of a fiscal year shall not revert to the general fund.”

BW/nt