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## FISCAL IMPACT REPORT

**SPONSOR** SFC **ORIGINAL DATE** 01/27/14  
**LAST UPDATED** 02/21/14 **HB** CS/CS/112  
**SHORT TITLE** Water Project Fund Projects **SB** /aSFI#1/aHAFC  
**ANALYST** Kehoe

### APPROPRIATION (dollars in thousands)

Appropriation		Recurring or Nonrecurring	Fund Affected
FY14	FY15		
(\$28,500.0)	(\$30,200.0)	Recurring	Severance Tax Bond Capacity
(\$4,000.0)	(\$4,000.0)	Recurring	Water Trust Permanent Fund

(Parenthesis ( ) Indicate Expenditure Decreases)

### REVENUE (dollars in thousands)

Estimated Revenue			Recurring or Nonrecurring	Fund Affected
FY14	FY15	FY16		
\$28,500.0	\$30,200.0	\$28,000.0	Recurring	Water Project Fund
\$4,000.0	\$4,000.0	\$4,000.0	Recurring	Water Project Fund

(Parenthesis ( ) Indicate Revenue Decreases)

Relates to HB 55, HB 146, HB 299, SB 20, SB 42, SB 65, SB 198, SB 295 and SB 324

### SOURCES OF INFORMATION

LFC Files

#### Responses Received From

New Mexico Finance Committee (NMFA)

### SUMMARY

#### Synopsis of HAFC Amendment

The House Appropriation & Finance Committee amendment authorizes the NMFA to make grants or loans from the water project fund to two additional eligible entities: 1) to the City of Gallup in McKinley County for a water storage, conveyance and delivery project, and 2) to Eastern New Mexico Water Utility Authority in Curry, Quay and Roosevelt Counties for a water storage, conveyance and delivery project.

Synopsis of SFI#1

The Senate Floor Amendment #1 to Senate Finance Committee Substitute for Senate Conservation Committee Substitute for Senate Bill 112 requires that the head of a statewide association representing a statewide association or the association's designee serve on the Water Trust Board (WTB) as a public member rather than an acequia water user. The amendment further requires that the head of a statewide association representing soil and water conservation districts or the designee shall serve on the WTB.

Synopsis of Original Bill

The Senate Finance Committee Substitute for Senate Conservation Committee Substitute for Senate Bill 112 authorizes the NMFA to make loans or grants for 62 projects from the water project fund, authorizes the Authority to make grants to five qualified entities from the acequia project fund, and amends the composition of the Water Trust Board (WTB), including the appointing authority.

Further, if a project was authorized in a legislative session prior to the most recent regular legislative session, but was not already funded by the WTB, it shall not be eligible for funding from the water project fund (WPF), provided that such projects previously authorized by the Legislature may be authorized again. The bill contains an emergency clause.

**FISCAL IMPLICATIONS**

Laws 2003 (Chapter 134) requires the Board of Finance to authorize and issue bonds for 10 percent of the severance tax bond (STB) capacity each year for deposit in the water project fund. The 10 percent set-aside of STB capacity for FY14 will provide approximately \$28.5 million to the water project fund for eligible water projects. Revenue estimates indicate approximately \$30.2 million will be available in FY15 and \$28 million in FY16. The value of the 10 percent of severance tax bond capacity can change from year to year depending on oil and gas revenues.

Severance tax bonds may not be used to pay indirect project costs, and any unexpended balance from proceeds of severance tax bonds issued for a water project shall revert to the severance tax bonding fund within six months of completion of the water project.

Laws 2005 (Chapter 293) provides that 10 percent of all funds in the water project fund (approximately \$3.2 million in FY 14) may be allocated to the OSE to be used for adjudication. Of the OSE allocation, 20 percent (approximately \$650,000) will transfer to the Administrative Office of the Courts for adjudication purposes.

Laws 2006 (Chapter 109) transferred \$40 million from the general fund to the water trust fund, and Laws 2007 (Chapter 28) transferred \$15 million from the general fund to the water trust fund for the purposes of carrying out the Water Finance Act. Section 72-4A-8 of the Water Finance Act provides that on July 1 of each fiscal year, an annual distribution will be made from the water trust fund to the water project fund in the amount of \$4 million until the amount is less than an amount equal to 4.7 percent of the average of the year-end market values of the water trust fund for the immediate preceding five calendar years. According to the State Investment Council (SIC), as of September 19, 2013, the value of the water trust fund was \$43.9 million.

Regulations and policies established by the WTB require a minimum contribution from all applicants in the form of matching funds. The loan component ranges from between 10 percent to a 40 percent maximum. The remainder of the award is in the form of a grant. Certain projects such as tribal, watersheds, and endangered species are able to substitute other matching funds in place of the loan component. The interest rate of the loan is zero percent, and the annual principal payment includes a .025 percent administrative fee.

Pursuant to the Water Project Finance Act, the WTB implemented the statutory guidance within the Act through separately adopted policies and rules to establish the acequia project fund. The fund was capitalized by a private donor for \$200,000. According to the NMFA, the balance in the acequia fund is approximately \$90,000. The eligible acequias authorized to seek funds from the acequia fund include the following five (5) acequias: Las Vegas Acequia Madre in San Miguel County, Acequia del Medio in Rio Arriba County, Rio Arriba Chili Ditch Association in Rio Arriba County, Santa Fe Acequia Barranco Blanco in Santa Fe County, and Ensenada Acequia in Rio Arriba County.

### **SIGNIFICANT ISSUES**

The projects authorized in this bill all meet the eligibility criteria as set forth in the Water Project Finance Act. Eligible water projects pursuant to the Water Project Finance Act are defined as those involving: 1) the storage, conveyance or delivery of water to end-users; 2) the implementation of federal Endangered Species Act collaborative programs; 3) the restoration of watersheds; 4) flood prevention; 5) conservation; or 6) for recycling, treatment or reuse of water.

The bill reduces the membership of the Water Trust Board from sixteen members to fifteen members. The executive director of the NMFA and the director of the Department of Game and Fish are removed from serving on the board. The bill increases the public members from five to six members to include a representative of the water associations organized under the Sanitary Project Act. The representatives of an irrigation or conservancy district are not limited to those districts that use surface or ground water, and one member shall represent the agricultural community. The president of the Navajo Nation shall appoint a representative of the Navajo Nation who lives in New Mexico to serve on the board.

The bill provides that the six public members of the Water Trust Board shall be appointed by the New Mexico Legislative Council rather than the governor and removes requiring Senate confirmation for public members.

Public members serving on July 1, 2014, shall complete the term for which they were appointed, but if a public member vacancy occurs during their term, the vacancy shall be filled by the New Mexico Legislative Council for the remainder of the term.

Finally, the bill requires the Water Trust Board to report to the Legislature no later than October 1 of each year the total expenditures from the water project fund and the acequia project fund.

### **ADMINISTRATIVE IMPLICATIONS**

The staffs of the NMED and OSE/ISC provide technical assistance in reviewing water system projects. The NMFA makes grants and loans from the water project funds as per the recommendation of the WTB and the authorization of the Legislature. The NMFA is responsible for administering the projects and is responsible for monitoring and ensuring proper reversions.

## **RELATIONSHIP**

House Bill 55 authorizes approximately \$112.4 million from severance tax bond capacity, and approximately \$64 million from other state funds for the purpose of funding various capital outlay projects, including water projects, statewide.

House Bill 146 makes several changes to the Severance Tax Bonding Act that would reduce capacity for severance tax bonds while increasing the amount of severance tax revenue that flows to the Severance Tax Permanent Fund.

House Bill 299 amends the Water Finance Act to provide that at least 10 percent of funds transferred to the water project fund for water projects each year be expended to benefit water supply associations subject to the Sanitary Projects Act and acequia associations.

Senate Bill 20 creates the Capital Outlay Planning and Monitoring Act for the purpose of increasing fiscal and programmatic scrutiny of capital outlay projects and expenditures.

Senate Bill 42 appropriates \$18 million from the general fund to the water trust fund for the purpose of carrying out the purpose of the fund.

Senate Bill 65 proposes that the chair of the Water Trust Board be a public member elected by a quorum of the Water Trust Board.

Senate Bill 198 appropriates \$750 thousand from the general fund to the Office of the State Engineer for the purpose of creating a new Water Trust Office, as an adjunct agency. The new office is to be overseen and directed by the WTB.

Senate Bill 324 amends the Water Project Finance Act to eliminate the annual set-aside of 10 percent of all water project fund dollars dedicated to the Office of the State Engineer, of which 20 percent is allocated to the administrative office of the courts for adjudication purposes. Instead, the 10 percent is transferred to the natural heritage conservation fund for forest and watershed restoration projects.

Senate Bill 295 duplicates Senate Bill 324 in its entirety.

## **OTHER SUBSTANTIVE ISSUES**

The OSE/ISC and EMNRD both expressed concerns regarding the removal of the Department of Agriculture and the Department of Game & Fish from board membership. The agencies indicate the Department of Agriculture has been a critical participant in the evaluation of watershed projects. Similarly, the Department of Game and Fish provides the board with expertise in evaluating Endangered Species Act compliance projects and associated environmental activities.

According to NMFA, in September 2013, the WTB received 124 applications for review and consideration by the WTB for financial assistance from the WPF. After determining that the applications were submitted by qualified entities for qualified projects, the WTB recommended 120 qualified entities contained in the original bill. The projects submitted to the water trust board for consideration of financial assistance from the water project fund is approximately \$139.5 million.

According to a recent evaluation of the water trust fund and WPF, “New Mexico provides mostly grant funds for water projects, while the majority of states provide self sustaining, revolving loan funds. Second only to Kentucky for providing grant funding for water projects, New Mexico has seven water-related infrastructure programs, although they are fragmented and lack coordination. Programs operate independently of each other and no one agency is held accountable for this much-needed coordination.

New Mexico law requires the WTB to prioritize the planning and financing of water projects to implement the state water plan. The state water plan names the WTB to coordinate with state agencies to establish a centralized process for funding water projects.

Although challenges exist for the fair administration of the WPF, the WTB is correctly funding projects according to policy, including more funding for regional projects that increase the delivery of water. These projects include the three largest diversion projects in the state, the San Juan-Chama, the Navajo-Gallup, and the Ute Lake diversion projects. With many of the state’s community water systems lacking basic utility management tools, the WTB has increased eligibility requirements to improve financial, managerial, and technical capacities. To comply with these new requirements, communities will be challenged with adopting best management practices and comply with state and federal laws. These best management practices include financial audits and the use of asset management plans. With many rural water utilities managed by volunteer boards, this challenge will require cooperation and support by the state and the WTB.”

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