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## FISCAL IMPACT REPORT

**ORIGINAL DATE** 02/13/14  
**SPONSOR** Pinto **LAST UPDATED** \_\_\_\_\_ **HB** \_\_\_\_\_

**SHORT TITLE** Forest & Watershed Restoration Project Funds **SB** 295

**ANALYST** Kehoe

### APPROPRIATION (dollars in thousands)

Appropriation		Recurring or Nonrecurring	Fund Affected
FY14	FY15		
(\$3,200.0)	(\$3,000.0)	Recurring	Water Project Fund

(Parenthesis ( ) Indicate Expenditure Decreases)

### REVENUE (dollars in thousands)

Estimated Revenue			Recurring or Nonrecurring	Fund Affected
FY14	FY15	FY16		
\$3,200.0	\$3,000.0	\$2,800.0	Recurring	Natural Heritage Conservation Fund

(Parenthesis ( ) Indicate Revenue Decreases)

Relates to HB 55, HB 146, HB 299, SB 42, SB 112, SB 198, and SB 324

### SOURCES OF INFORMATION

LFC Files

#### Responses Received From

Energy, Minerals & Natural Resources Department (EMNRD)  
 New Mexico Finance Authority (NMFA)  
 Office of the State Engineer/Interstate Stream Commission (OSE/ISC)  
 New Mexico State Land Office (SLO)

### SUMMARY

#### Synopsis of Bill

Senate Bill 295 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. The bill allows for loans or grants to qualified entities from the water project fund, but disallows the use of water project fund dollars for water rights adjudications.

## **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.

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 Office of State Engineer (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.

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.

## **SIGNIFICANT ISSUES**

The natural heritage conservation fund was created within the Natural Heritage Conservation Act in 2010. The Energy, Minerals & Natural Resources Department currently administers the natural heritage conservation fund under the purview of the department's State Forest Division. The purpose of the Act is to protect the state's natural heritage, culture, and customs through financial support of conservation and agricultural easements and by funding land restoration to protect the land and water available for forests and watersheds, natural areas, wildlife and wildlife habitat, agricultural production on working farms and ranches, outdoor recreation, and trails and land and habitat restoration and management.

**It is important to note the EMNRD does not support this legislation and expresses the following concerns:** “Currently, EMNRD's State Forestry Division has long-established application and priority ranking procedures in place for watershed health projects with federal, state and local agencies. Further, these protocols have served the programs well over the years and incorporate trained staff that are fully cognizant the interagency rules, policies and procedures. This cooperation and critical to watershed projects involve the management of forest vegetation, including forest thinning to prevent potential wildfires.

This legislation seeks to pursue unnecessary modifications to the existing process – as well as an unsolicited funding stream – without seeking prior counsel from State Forestry Division, or even more to the point, any acknowledgement that such legislation, if passed, could conceivably diminish or eliminate federal funding and/or program support for critical watershed restoration and protection initiatives.

From EMNRD’s perspective, this appears to be the definitive illustration of a “solution in quest of a problem” and wholly counter to State Forestry’s Division’s sound watershed management protocols.

A second equally, if not more, troubling aspect of the proposed legislation, is the striking of the existing language, “shall be dedicated to the state engineer for water rights adjudications, and twenty percent of the money dedicated for water rights adjudications shall be allocated to the administrative office of the courts for the courts' costs associated with those adjudications.”

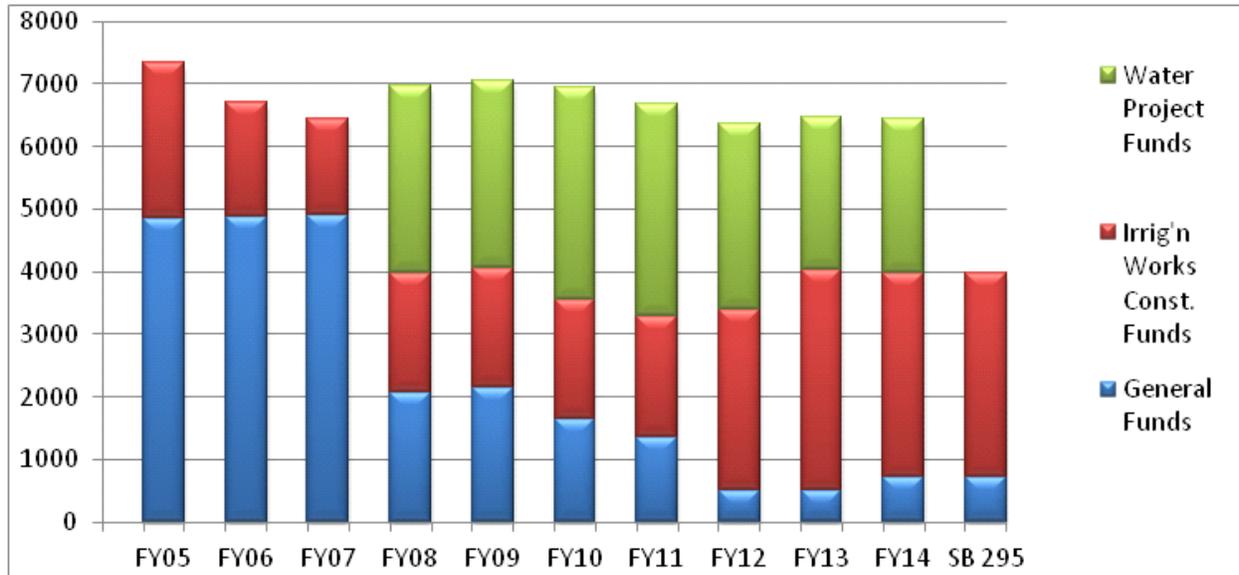
As detailed by Romero-Wirth and Kelly (The Utton Center, 2013), in 2003, the state Legislature passed and the Governor signed, Senate Bill 551, a duplicate or mirror bill of House Bill 604 enacting Section 72-2-9.1 NMSA 1978 entitled “Priority Administration, Expedited Water Marketing and Leasing; State Engineer.” The Legislature recognized in the statute that “the adjudication process is slow, the need for water administration is urgent, compliance with interstate compacts is imperative and the state engineer has authority (emphasis added) to administer water allocations in accordance with the water rights priorities recorded with or declared or otherwise available to the state engineer.” The law requires the State Engineer to adopt rules for “priority administration to ensure that authority is exercised: (1) so as not to interfere with a future or pending adjudication; (2) so as to create no impairment of water rights, other than what is required to enforce priorities; and, (3) so as to create no increased depletions.”

The State Engineer is also directed to adopt models to promote expedited marketing and leasing of water in those areas affected by priority administration.” Further, the rules are to be consistent with “the rights, remedies and criteria established by law for proceedings for water use leasing and for changes in point of diversion, place of use and purpose of use of water rights.” Both bills passed the Legislature with unanimous votes — no legislator registered a vote against the measures although some were excused or absent at the vote. Senate Bill 551 passed the Senate (33-0) and the House (63-0). House Bill 604 passed the House (63-0) and the Senate (30-0). The bills moved forward in the process with “due pass” recommendations from the House Energy and Natural Resources Committee, the House Agriculture and Water Resources Committee, the Senate Conservation Committee and the Senate Corporation and Transportation Committee.

In December 2004, the State Engineer promulgated regulations in accordance with the statute. Active Water Resource Management was born. (NMAC Section 19.25.13) AWRM has been the subject of litigation over its constitutionality and the Legislature’s intent over the past eight years, moving from the state district court, to the state court of appeals, to the state Supreme Court. The primary question for the courts has been whether the Legislature properly delegated authority to the State Engineer, and whether the authority granted constituted new authority or whether it was confirming the State Engineer’s existing authority in statute to administratively manage water. A decision from the New Mexico Supreme Court was issued in November of 2012, and provides the definitive word from the judiciary about the constitutionality of the statute and the regulations.

Against this background – and the above detailed interest of the both the courts and legislature – it would seem that, similar to the deleterious impact of the proposed legislation on the State Forestry Division, SB 295 would also (1) sever a critical funding stream to both the Office of the State Engineer *and* the Administrative Office of the Courts; (2) disregard the intent of both the courts and legislature; and (3) cripple the state’s water rights adjudication processes.”

The OSE/ISC indicates that since 2005 when funds were dedication to the agency for adjudication, the Litigation and Adjudication Program budget has experienced a reduction in general fund appropriations. As demonstrated below, the OSE has become “nearly totally dependent on appropriations from the water project fund and the irrigation works construction fund to operate.



The OSE indicates the loss of adjudication funding would have a “devastating” impact on the Litigation and Adjudication Program and its ability to meet its performance goals and water rights adjudication in general, unless funding is restored through other means.

While there is no direct impact to the State Land Office, this bill would allow the agency to submit applications to the Water Trust Board for such projects as restoration, conservation, and agricultural easements for funding consideration.

**DUPLICATION, COMPANIONSHIP, 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 statewide.

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

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 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 112, for the New Mexico Finance Authority Oversight Committee, authorizes the

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NMFA to make loans or grants for 120 projects from the water project fund and to make grants to five acequia projects from the acequia project fund. The loans or grants are based on terms and conditions established by the Water Trust Board (WTB) and the NMFA in accordance with the Water Finance Act.

Senate Bill 324 is a duplicate of Senate Bill 295 in its entirety.

**TECHNICAL ISSUES**

According to EMNRD, “projects funded through the Water Project Finance Act are required to be selected and allocated by the Water Trust Board. Administration of the natural heritage conservation act conflicts with this as EMNRD would be required to administer those funds. The rest of the Act does not include the mechanism that this cooperation would need in order to take place.

LMK/ds