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FISCAL IMPACT REPORT

SPONSOR Morales ORIGINAL DATE 2/24/15
LAST UPDATED _____ HB _____
SHORT TITLE New Mexico Unit Fund for Certain Projects SB 461
ANALYST Armstrong

ESTIMATED ADDITIONAL OPERATING BUDGET IMPACT (dollars in thousands)

	FY15	FY16	FY17	3 Year Total Cost	Recurring or Nonrecurring	Fund Affected
Total		\$430.0	\$430.0	\$860.0	Recurring	TBD

(Parenthesis () Indicate Expenditure Decreases)

Relates to SB 455, SB 542

SOURCES OF INFORMATION

LFC Files

Responses Received From

Attorney General's Office (AGO)

Office of the State Engineer (OSE)

SUMMARY

Synopsis of Bill

Senate Bill 461 requires the Interstate Stream Commission (ISC) to pay \$77 million from the New Mexico Unit Fund for the 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 of the Central Arizona Project, including: projects for forest and watershed restoration and improvement; municipal conservation; agricultural conservation; infrastructure improvements; effluent reuse; and sustainable ground water use.

FISCAL IMPLICATIONS

ISC's operating budget includes revenue from the New Mexico Unit Fund, established by state law pursuant to the AWSA, to support recurring operating costs associated with the AWSA. House Bill 2, as passed by the House of Representatives, includes \$425 thousand for this purpose in FY16. ISC analysis raises concern that SB 461 would require the agency to identify a new funding source for 3.5 FTE at a cost of \$430 thousand annually.

SIGNIFICANT ISSUES

Under the Arizona Water Settlement Act (AWSA), \$66 million, indexed to 2004 dollars, will be deposited in the New Mexico Unit Fund payable in ten equal installments. These disbursements began in 2012 and are scheduled to continue yearly until 2022. According to OSE, the balance of the New Mexico Unit Fund is currently less than \$33 million. This amount is for the development of an additional 14 thousand acre-feet of water for use in the southwestern region of the state or other water utilization alternatives that meet a water supply demand in the same region. Under the AWSA, New Mexico may receive up to \$62 million in addition to the \$66 million if it elects to construct a diversion and storage project (also referred to as a New Mexico Unit of the Central Arizona Project). This additional money will materialize only when a New Mexico Unit is ready for construction.

The 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 ISC. This bill requires ISC spend \$77 million of the available funding for nondiversion water utilization alternatives.

ISC contends this requirement contradicts the mechanism set out in the AWSA authorizing the agency to decide how to allocate the New Mexico Unit Fund, leading to the possibility that a court could invalidate the requirements of SB 461 on the grounds that the bill is preempted by federal law. Moreover, ISC analysis states:

SB 461 would largely invalidate the November 2014 decision of the New Mexico Interstate Stream Commission, the executive commission that is charged by the AWSA with determining funding priorities for AWSA funds. Consequently, SB461 violates the separation of powers doctrine by seeking to invalidate a decision made by an executive commission by restraining funding necessary to implement that decision.

SB461 mandates the allocation of federal funds to specific nondiversion water utilization alternatives and earmarks approximately 75 percent of the available federal funds for these water utilization alternatives. The AWSA requires no such allocation. The effect of the SB 461 mandate would be to preclude the use of these funds on a New Mexico Unit, effectively amending the federal legislation which expressly contemplates use of these funds for either a New Mexico Unit or a water utilization alternative.

AGO analysis echoes ISC's concerns that SB 461 unconstitutionally conflicts with and would be preempted by federal law.

RELATIONSHIP

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 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 report adequately addresses ten separate detailed requirements.

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/bb