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FISCAL IMPACT REPORT

SPONSOR SCONC ORIGINAL DATE 02/21/19
 LAST UPDATED 03/11/19 HB _____

SHORT TITLE Acequia & Community Ditch Infrastructure Fund SB CS/438/aSFC/aSFI#1

ANALYST Hanika-Ortiz

APPROPRIATION (dollars in thousands)

Appropriation		Recurring or Nonrecurring	Fund Affected
FY20	FY21		
	\$2,500.0	Recurring	New Mexico Irrigation Works Construction Fund

(Parenthesis () Indicate Expenditure Decreases)

REVENUE (dollars in thousands)

Estimated Revenue			Recurring or Nonrecurring	Fund Affected
FY19	FY20	FY21		
		\$2,500.0	Recurring	Proposed Acequia and Community Ditch Infrastructure Fund

(Parenthesis () Indicate Revenue Decreases)

Conflicts with House Bill 266 and duplicates House Bill 517/HAFCS
 Relates to general authorizing language in the General Appropriation Act.

SOURCES OF INFORMATION

LFC Files

Responses Received From

Office of the State Engineer/ (OSE)
 New Mexico Acequia Association (NMAA)

SUMMARY

Synopsis of SFI#1 Amendment

The Senate Floor #1 Amendment to the Senate Conservation Committee Substitute for Senate Bill 438 as amended adds a July 1, 2020 effective date for this legislation. The bill as amended now duplicates the House Appropriations and Committee Substitute for House Bill 517.

Synopsis of SFC Amendment

The Senate Finance Committee Amendment to the Senate Conservation Committee Substitute for Senate Bill 438 replaces specific language relating to acequia matching funding requirements and caps on funding and instead provides that money in the fund is appropriated to ISC "... to support the planning, engineering design or construction of irrigation works of acequias or community ditches ... for the purposes of restoration, repair, improvement of irrigation efficiency or protection from floods."

Under the substitute bill as amended, it is assumed OSE will work out the details with acequias with regards to local matching funding requirements based on available fund balances.

Synopsis of Original Bill

The Senate Conservation Committee Substitute for Senate Bill 438 now twice amended enacts a new section of Chapter 72 (Water Law) Article 14 (Interstate Stream Commission), NMSA 1978 that would establish the "acequia and community ditch infrastructure fund" to be administered by the Interstate Stream Commission (ISC) at the Office of the State Engineer (OSE).

Section 1 provides that the fund will consist of \$2.5 million annually transferred from the New Mexico irrigation works construction fund (IWCF) and interest accruing to the fund, to provide funding for the planning, engineering design or construction of irrigation works of acequias or community ditches, including dams, reservoirs, diversions, ditches, flumes or other appurtenances, for the purposes of restoration, repair, improvement of irrigation efficiency or protection from floods. Section 1 concludes by requiring ISC in consultation with the Acequia Commission and NMAA, to develop guidelines and criteria for program eligibility, selection and application requirements, prioritize funding based on project readiness, review acequia and community ditch plans and inspect completed projects, and report biannually to the Acequia Commission on the progress of projects funded from the fund and expenditures from the fund.

FISCAL IMPLICATIONS

The appropriation of \$2.5 million contained in Section 2 to the proposed acequia and community ditch infrastructure fund at ISC is a recurring expense to the IWCF. Any unexpended or unencumbered balances remaining at the end of any fiscal year shall revert to the IWCF.

This bill creates a new fund and provides for continuing appropriations from the IWCF. LFC has concerns with including continuing appropriation language in statutory provisions for newly created funds, as earmarking reduces the ability of the legislature to establish spending priorities. However, this issue could be resolved with an amendment – see technical issues section below.

The General Appropriations Act typically appropriates \$1.9 million from the IWCF for acequia and community ditch infrastructure projects. This is done through an appropriation and language in the OSE budget. This bill would add a mandatory annual distribution of \$2.5 million from the IWCF starting in FY21, a \$600 thousand increase, which could have a significant impact on the fund if revenue from oil and gas activities were to decline or stop growing at the current rate.

SIGNIFICANT ISSUES

The primary difference between Senate Bill 438 as introduced and the SCONC substitute is the lack of specific language relating to requirements for matching funding and caps on funding and instead allows ISC to work out those details regarding guidelines and criteria with acequias. In addition, the substitute bill as amended delays the effective date of the fund transfer to FY21.

In recent years, annual funding from the IWCF to make grants and loans for acequia and community ditch infrastructure projects has exceeded requests from the fund. This funding has supported a cost-share/low interest loan program that has improved irrigation efficiency and water conservation for many acequias and community ditches throughout the state. Annually, the IWCF receives \$6 million to \$8 million in revenue from the land grant permanent fund in addition to leasing and investment income and because of recent increased oil and gas activities, has accumulated significant fund balances. Since 2009, due to solvency issues, the Legislature has also tapped the fund to offset increased general fund appropriations to OSE for its operations.

ADMINISTRATIVE IMPLICATIONS

SB438 may require at least one additional FTE to manage the increased workload for ISC.

CONFLICT, DUPLICATION, COMPANIONSHIP, RELATIONSHIP

Relates to general authorizing language in the General Appropriation Act for funding from the IWCF to ISC for acequia and community ditch infrastructure projects.

Conflicts with HB266 which would mandate an annual distribution of \$1 million from the IWCF to the forest land protection revolving fund administered by EMRND. If this bill and HB266 are enacted, it would overspend projected revenue from the fund by \$400 thousand (see Table 1).

Duplicates the HAFC Substitute for House Bill 517.

OTHER SUBSTANTIVE ISSUES

In the past three years, NMAA reports over 70 acequias have completed Infrastructure Capital Improvement Plans and over 130 acequia infrastructure projects are in some phase of planning, design, or construction. As interest in irrigation efficiency grows along with the demand for locally grown food, New Mexico can anticipate more requests for acequia infrastructure in the coming years. The current list of acequia capital outlay requests exceeds \$8 million.

According to NMAA, the existing ISC acequia program has a long track record of successful completion of projects. Since the late 1980s, the ISC has administered acequia project by ensuring that such projects have an engineering design, where needed, or design specifications prior to approving a project to proceed with construction. Currently, the program is staffed by two specialized engineers who review engineering designs and assist acequias in managing their projects. The ISC also assists with inspections of construction during and after construction.

NMAA notes the ISC acequia program is a good complement to federal funding that is sometimes available as a cost share and good alternative or complement to capital outlay funding because it provides a more reliable stream of funding that is available for acequia projects.

The ISC program is part of several partnerships to leverage state and federal funding as well as technical assistance resources. The ISC partners with the New Mexico Association of Conservation Districts in addition to the NMAA to conduct outreach to acequias and to assist acequias with infrastructure planning, applying for funding, and completing projects.

TECHNICAL ISSUES

As noted above, this bill provides for a continuing appropriation. This issue could be resolved by amending Page 2, line 9 by striking “appropriated” and inserting in lieu thereof “subject to appropriation by the legislature” and on Page 5, line 5, after “Annually,” insert “subject to appropriation by the legislature, up to” two million five hundred thousand dollars (\$2,500,000)...

WHAT WILL BE THE CONSEQUENCES OF NOT ENACTING THIS BILL

Acequia funding will continue to be subject to the annual appropriation process in the General Appropriation Act for the acequia and community ditch infrastructure program at ISC.

AHO/sb

Table 1. Irrigation Works Construction Fund Projected Expenditures

IRRIGATION WORKS CONSTRUCTION FUND (326)						
	ACTUAL	PRE-AUDIT	PROJECTED			
	FY17	FY18	FY19	FY20	HAFC*	FY20
BEGINNING BALANCE	\$13,509,420	\$15,418,005	\$15,517,048	\$13,622,296		\$13,622,296
REVENUE						
Permanent Fund	\$6,320,881	\$6,664,822	\$7,229,000	\$7,750,000		\$7,750,000
Interest/Loans	\$36,108	\$23,397	\$20,000	\$20,000		\$20,000
Lease Income	\$2,968,259	\$1,639,998	\$1,350,000	\$1,350,000		\$1,350,000
Investment Income (Loss)	\$1,787,009	\$1,430,320	\$1,550,000	\$1,550,000		\$1,550,000
TOTAL REVENUE	\$11,112,257	\$9,758,537	\$10,149,000	\$10,670,000		\$10,670,000
EXPENDITURES						
Operating Budget	\$9,203,672	\$9,659,494	\$12,043,752	\$12,284,627		\$12,284,627
Specials & BAR Authority					\$1,200,000	\$1,200,000
Proposed SB 438CSaa					\$600,000	\$600,000
TOTAL EXPENDITURES	\$9,203,672	\$9,659,494	\$12,043,752	\$12,284,627		\$14,084,627
ADJUSTED BALANCE	\$15,418,005	\$15,517,048	\$13,622,296	\$12,007,669	\$1,800,000	\$10,207,669

*Contingent on passage of HB 266 for forest and watershed restoration.

Source: Office of the State Engineer and LFC Files