

LFC Requester:	Helen Gaussoin
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**AGENCY BILL ANALYSIS
2024 REGULAR SESSION**

WITHIN 24 HOURS OF BILL POSTING, UPLOAD ANALYSIS TO:

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{Analysis must be uploaded as a PDF}

SECTION I: GENERAL INFORMATION

{Indicate if analysis is on an original bill, amendment, substitute or a correction of a previous bill}

Check all that apply:

Original **Amendment**
Correction **Substitute**

Date 2/2/24
Bill No: HB 301

Sponsor: Representatives: William "Bill" R. Rehm, Mark Duncan, Dayan Hochman-Vigil, Patricia A. Lundstrom, & Anthony Allison
Future Water Trust Fund

Agency Name and Code Office of the State Engineer
Number: 550

Person Writing Nat Chakeres
Email Nathaniel.chakeres@se.nm.gov

Short Title: _____ **Phone:** 505 231-4459 :

SECTION II: FISCAL IMPACT

APPROPRIATION (dollars in thousands)

Appropriation		Recurring or Nonrecurring	Fund Affected
FY24	FY25		
N/A	N/A	N/A	N/A

(Parenthesis () Indicate Expenditure Decreases)

REVENUE (dollars in thousands)

Estimated Revenue			Recurring or Nonrecurring	Fund Affected
FY24	FY25	FY26		
N/A	N/A	N/A	N/A	N/A

(Parenthesis () Indicate Expenditure Decreases)

ESTIMATED ADDITIONAL OPERATING BUDGET IMPACT (dollars in thousands)

	FY24	FY25	FY26	3 Year Total Cost	Recurring or Nonrecurring	Fund Affected
Total	N/A	N/A	N/A	N/A	N/A	N/A

(Parenthesis () Indicate Expenditure Decreases)

Duplicates/Conflicts with/Companion to/Relates to: None
Duplicates/Relates to Appropriation in the General Appropriation Act None

SECTION III: NARRATIVE

BILL SUMMARY

This bill would add an additional permanent fund, Future Water Trust Fund, to NMSA 1978, § 6-8-1.

Section 2 of the bill would create a new section of Chapter 75, Article 12 labeled “Future Water Trust Fund--Created--Investment—Distribution.” Section 2 subsection A establishes how the new fund would be administered and how the fund would be capitalized. how funds would be raised, and who will oversee investment of the funds. Subsection B states the money in the trust fund and investments would be used in the future water project fund.

Section 3 would create a new section of Chapter 75, Article 12 labeled “Future Water Project Fund--Created--Purpose.” Subsection B would task the Office of the State Engineer (“OSE”) with administering the fund and automatically appropriates the money in the fund to the OSE. Subsection B(1) would task the OSE with buying out-of-state water rights. Subsection B(2) would task the OSE with conducting studies and advocating for projects that deliver water from out-of-state to New Mexico. Subsection B(3) would allow for the funding of projects in New Mexico which take delivery of out-of-state water. Subsection C describes the mechanism by which funds would be distributed.

FISCAL IMPLICATIONS

There is no direct fiscal implication in enacting this bill, because while it would create two funds, it does not actually capitalize them.

SIGNIFICANT ISSUES

This bill raises several issues. The overarching purpose of the bill is to create a mechanism by which the OSE could acquire out-of-state water rights and bring them in to New Mexico. While there is no harm in creating a set of funds that would give NM the option to pursue this strategy, it is not currently the highest priority strategy that the OSE and the New Mexico Interstate Stream Commission (“ISC”) are pursuing in order to address New Mexico’s water needs. The OSE and ISC have presented their preferred strategies for augmenting New Mexico’s supplies to the Legislature, and those strategies are also set forth in the Governor’s recently released 50 Year Water Action Plan.

Interstate transfers of water are extremely rare, expensive, technically challenging, and controversial. Currently, New Mexico is party to two significant interstate water transfer projects: the San Juan-Chama Project and the Animas-La Plata Project. Both of these projects were decades in the making, negotiated in relevant Interstate Compacts, and involved major federal investment. A third project, the Gila diversion related to the Arizona Water Settlements Act, was authorized by Congress but has been affirmatively rejected by the ISC due to concerns over costs and environmental impacts.

There are no additional projects for the interstate transfer of water that appear feasible in the near future. All of New Mexico's neighbors are facing the same climate-related water challenges as New Mexico, and they are likely to strongly resist any efforts to export water to New Mexico. They cannot stop New Mexico from purchasing water rights in their states, and they cannot outright prohibit transfers of those water rights outside the state, but in practice they can use all the legal and regulatory levers at their disposal to hinder such transfers.

Even states that seemingly have an excess of water are, today, extraordinarily protective of their water resources against perceived encroachment by other states. Mississippi and Tennessee recently engaged in years of expensive litigation over groundwater pumping by the City of Memphis. Georgia and Florida, likewise, had a lengthy legal battle over the use of the waters of the Chattahoochee/Flint/Apalachicola River system. Both of those disputes wound up in the United States Supreme Court.

Aside from the political and legal obstacles, there are major engineering/technical obstacles to transporting water significant distances, especially to a high-elevation state like New Mexico. The costs of these projects make them significantly more expensive than other water supply strategies. If federal funds are used for such projects, they generally require a NEPA process as well.

For these reasons, pursuing out-of-state water rights is not a high priority for the OSE or ISC.

PERFORMANCE IMPLICATIONS

None

ADMINISTRATIVE IMPLICATIONS

Additional staffing would be required for administration of the fund, conducting studies, purchasing water rights, and advocating for projects.

CONFLICT, DUPLICATION, COMPANIONSHIP, RELATIONSHIP

None

TECHNICAL ISSUES

None

OTHER SUBSTANTIVE ISSUES

None

ALTERNATIVES

None

WHAT WILL BE THE CONSEQUENCES OF NOT ENACTING THIS BILL

If this bill is not passed, there will be no change to current operations.

AMENDMENTS

None