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FISCAL IMPACT REPORT

SPONSOR: Stewart DATE TYPED: 02/04/03 HB 6/aHGUAC

SHORT TITLE: Game & Fish Appropriation Act SB _____

ANALYST: Valenzuela

APPROPRIATION

Appropriation Contained		Estimated Additional Impact		Recurring or Non-Rec	Fund Affected
FY03	FY04	FY03	FY04		
	\$124.8			Recurring	General Fund
	\$8,118.0			Recurring	Federal Funds
	\$18,898.5			Recurring	Game Protection Fund

(Parenthesis () Indicate Expenditure Decreases)

Duplicates Appropriation in the General Appropriation Act, Section 4 for the Department of Game and Fish

SOURCES OF INFORMATION

Report of the Legislative Finance Committee to the Forty-sixth Legislature, First Session, January 2003 for Fiscal Year 2003 – 2004, pp. 390 – 401.

Responses Received From
Department of Game and Fish

SUMMARY

Synopsis of the HGUAC Amendment

The House Government and Urban Affairs Committee amendment to House Bill 6 increases the other cost category by \$250.0 from the Game Protection Fund. The increases would support basic operating costs such as utility costs, field supplies and vehicle replacements. The increases by program are detailed below:

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Sport Hunting and Fishing Program	\$ 75.0
Conservation Services Program	\$ 150.0
Administration Program	\$ 25.0

Synopsis of Original Bill

House Bill 6 appropriates \$27,141.3 from the general fund, game protection fund and federal funds to the Department of Game and Fish (DGF) for its FY04 operating budget. The bill reflects the Legislative Finance Committee (LFC) budget recommendation for the department. HB6 includes performance measures and targets.

Significant Issues

The LFC recommends a 4.2 percent decrease in the base budget. This recommendation is 1.6 percent over the FY02 actual expenditures. This recommendation is sensitive to the available cash in the game protection fund, which has been reduced by the purchase of Eagle Nest Lake and appears to have been impacted by severe drought conditions in New Mexico over the past two years.

FISCAL IMPLICATIONS

This bill appropriates \$27,141.3 for the FY04 operating budget: \$124.8 in general fund, \$8,118.0 in federal funds and \$18,898.5 from the game protection fund. The following information is relevant to a discussion of this bill.

Cash Balances of Game Protection Fund. For the past few years, cash balances in the game protection fund were substantial, providing opportunities for the department to accomplish several projects, such as construction of its headquarters building, management of whirling disease and construction of fish hatcheries, and purchase of Eagle Nest Lake. Estimates show the cash balances will remain strong, in the range of \$14 million through FY03 and into FY04. The drought has had an impact, however, on revenues. Revenue from license sales dropped more than \$800.0 for the 2002 summer as compared to 2001. Several items are looming that could impact the cash balance: growth in the depredation program, liabilities associated with reclamation of the State Game Commission-owned Terrero property, liabilities with the dam at Eagle Nest Lake, and the potential outbreak of chronic wasting disease. The agency will seek a fee increase within the next two legislative sessions to ensure its cash balance is sufficient to cover its needs.

Game Protection Fund	FY01 Actuals	FY02 Actuals	FY03 OPBUD (est)	FY04 Estimate
Beginning cash balance	\$ 22,896,746	\$ 23,217,692	\$ 25,246,982	\$ 13,878,908
Revenues	25,799,606	26,708,419	24,792,700	24,723,100
Expenditures	(22,104,075)	(21,807,693)	(22,020,163)	(21,029,255)
Other items impacting cash	(2,449,585)	(2,871,436)	(3,290,611)	(3,142,533)

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Ending cash balance	\$ 24,142,692	\$ 25,246,982	\$ 24,728,908	\$ 14,430,220
Cash restrictions and obligations	(925,000)		(2,350,000)	
Eagle Nest Lake purchase			(8,500,000)	
Unobligated cash	\$ 23,217,692	\$ 25,246,982	\$ 13,878,908	\$ 14,430,220

Fiscal Impact of Depredation Complaints. The Wildlife Depredation and Nuisance Program is growing, 64.3 percent since FY02, as a result of the department’s effort to mitigate the increasing number of the depredation complaints. The department notes that in the first quarter of FY03, it has resolved 59 percent of the landowner complaints of 258 complaints logged in this timeframe.

Generally, the mitigation efforts consist of two remedies: build a fence to protect property or enter into a forage lease to compensate the landowner for property loss. Sportsmen, though supportive conceptually of the program, have questioned the costs. For instance, in FY02, the first year of the program, the department entered into only one forage lease, totaling \$53.3 for 180 acres. The cost per acre was \$296 dollars. For fencing projects, the department estimates a cost per mile of \$30.4, almost 10 times the amount of the cost to build a standard ranch fence. Ranchers estimate cost for building fences at \$3.0/mile. Sportsmen have questioned the State Game Commission about the cost threshold for these projects.

Multimillion Dollar Liability at Terrero Mine. Reclamation of the Superfund-like Terrero mine waste site or “mine” near Pecos, is a shared responsibility of the state and the mining company, Phelps Dodge Corp. In 1992, the state Department of Environment, Office of the Natural Resource Trustee, DGF and State Highway and Transportation Division (SHTD) and Cyprus Amax Mining Company signed an administrative order on consent to prevent the U.S. Environmental Protection Agency (EPA) from listing the site on the national priorities list. (Phelps Dodge purchased Cyprus Amax in 1999 and assumed the reclamation liability.) The share of the responsibility is detailed below by each of the five distinct sites:

<u>Site Name</u>	<u>Estimated Cost</u>	<u>State Share</u>	<u>Phelps Dodge Share</u>
Pecos Mine	\$ 17,500.0	20%	80%
El Molino mill site	20,900.0	20%	80%
Sections of Highway 63	463.0	100%	-
Lisboa Springs Fish Hatchery	895.0	100%	-
Campgrounds in the Pecos River valley	200.0	100%	-

Because the property, purchased in 1950, is owned by the State Game Commission, the state is liable for 20 percent of the project cost at the mine and mill site. The commission is wholly liable for reclamation of the remaining three units because DGF and SHTD used mine waste as fill material for construction of these three sites. Acidic seepage from the mine waste, carried by rain and snow-melt exceeds water quality standards for heavy metals. This seepage was responsible for fish kills in the Pecos River and Lisboa Springs Fish Hatchery.

In 1993, the Legislature appropriated \$5,180.0 (\$3,180.0 from the corrective action fund and \$2 million from the state road fund) to cover the state’s 20 percent liability. The project has not been completed and requires additional funding. The executive will seek an additional \$2,800.0 of state funding to complete the project. DGF has not contributed to the reclamation cost despite being a responsible party. Cash balances

remaining in the game protection fund represent the opportunity to complete this project without the use of a general fund appropriation. Though not a specifically authorized use of the fund, a \$1,600.0 unobligated cash balance in the corrective action fund remains available as another funding alternative.

OTHER SUBSTANTIVE ISSUES

Road Closures and Status of UU-BAR Ranch Litigation. A state district court ruled in favor of the UU-BAR Ranch in *State of New Mexico and State Game Commission v. UUBar Limited Partnership, et al.* This case, brought by the Attorney General's Office in 1998 and later joined by the State Game Commission, involves disputed ownership of a former state road that gives the public access to approximately 45,000 acres of state trust land located in Colfax County. The UU-BAR ranch, the adjacent landowner, blocked the road. The road was once a part of the historic Santa Fe Trail and was once NM 21/199 but the State Highway Commission deeded it to the State Game Commission. The district court's decision gave control of the road to the UU-BAR ranch, citing difficulties in the transfer of the property by the two state agencies. The Attorney General's Office is appealing this decision.

Owners of another ranch, the Stanley Ranch, have threatened to close off southern access to the state trust lands in the same area of the state.

State Ownership of Eagle Nest Lake. In addition to the veto override of the state budget, the Legislature, during the 2002 extraordinary session passed a bill for the purchase of Eagle Nest Lake. The governor signed the bill. The bill appropriated only a portion of the financing package, the remainder of which was previously appropriated. The final financing package, totaling \$20 million, is detailed below:

General fund appropriation	\$9,600.0
Game protection fund	8,500.0
Game and Fish bond retirement fund	500.0
Severance tax bonds	<u>1,400.0</u>
Total	\$20,000.0

Prior to the 2002 extraordinary session, the Legislature in 2001 appropriated \$4 million from the game protection fund for the lease and purchase of Eagle Nest Lake. The legislation also authorized the department to pursue acquisition on behalf of the state. The following year, the Legislature appropriated \$17 million to complete the purchase but that amount was in the capital appropriations bill vetoed by the governor. In the 2002 legislative session, \$15 million from the general fund appropriated for the purchase was redirected to statewide water projects. Appropriations of \$2 million from the game protection fund and \$6 million from the general fund for rehabilitation of the lake dam remained in the bill, but the lake deal was, for all intents and purposes, dead. When the governor vetoed the state budget, he created a window of opportunity for legislators to take action during the 2002 extraordinary session.

Management of Lake Facilities. Three state agencies (DGF, the State Engineer and the State Parks Division) are negotiating a joint powers agreement for several matters related to managing Eagle Nest Lake. One new initiative will be development of a new state park, for which the State Parks Division will request a supplemental appropriation for \$652.0 from the general fund for startup of the park. Originally, the State Parks Division had dedicated a portion of its annual appropriation from the Land and Water Conservation Fund for capital improvements at the park. In addition, the physical integrity of the dam remains a concern. Estimates prepared pursuant to the purchase agreement suggest the dam requires \$6 million of rehabilitation work. The Interstate Stream Commission has made a request to pay for this work out of the game protection fund and to pay for the operation and maintenance of the dam water-release gates. DGF strongly opposes the Interstate Stream Commission's request. The state agencies appear to be reaching a stalemate. Until the JPA is formalized, DGF intends to operate the facility in a similar manner as it did before the state owned it: it will continue to stock the lake and provide access for fishermen, and it will honor agreements for water rights supported by proper legal documentation.

Water Rights Dispute at Eagle Nest Lake. Not only did the state take ownership of the lake but it also became responsible for managing flows in and out of the lake to water-rights owners. Several concerns

have been raised by water-rights owners, who allege that some owners have been under-allocated, while others have been over-allocated. Adding to these concerns is that the department has contracted with CS Cattle Co, former lake owners, to deliver water from the lake to downstream users. Normally, the Office of the State Engineer would manage this responsibility; however, the roles and responsibilities among state agencies, with regard to management of the lake have not been formalized. Therefore, the State Engineer has been reluctant to get involved in these water rights disputes. This void in oversight is the source of the water-rights owners concern.

Status of Whirling Disease at State Hatcheries. Department efforts to detect and contain whirling disease in wild- and hatchery-produced fish populations continue. Five of the six New Mexico state hatcheries are now free of whirling disease. The department, with the aid of its new laboratory, continues to monitor all hatchery populations and require testing of all fish scheduled for stocking or transfer between hatcheries within 60 days of the impending stocking or transfer. Surveys of wild fish populations have detected a relatively limited incidence of whirling disease in four of the 13 river drainages in the state.

Sources of spring water for the Parkview Hatchery in Raton have been covered to exclude tubifex worms, the intermediate host of whirling disease. The Lisboa Springs hatchery in Pecos is partially online and appears to be whirling-disease free. More data regarding the effectiveness of the filtration and ultraviolet light system at this hatchery will be available in fall 2003. The Seven Springs hatchery in the Jemez Mountains reopened this fall following \$2,700.00 in renovation to rid the facility of whirling disease. The hatchery is now running at 70 percent of capacity and holds about 70,000 rare Rio Grande cutthroat trout. This production has been credited with keeping the Rio Grande cutthroat off the federal endangered species list. The last facility, the Red River Hatchery north of Taos, should be whirling disease free in 2003.

Chronic Wasting Disease. Last summer, chronic wasting disease was discovered on game ranches in Colorado that exported elk to New Mexico game ranches. To combat potential spread of the disease, the department promulgated strict rules impacting game parks and prohibited their owners from importing elk into New Mexico. It also reimbursed the New Mexico rancher \$37.5 for the 15 elk it had to eradicate. The situation highlighted a weakness in the statute, which was silent on the issue of paying producers for eliminating a portion of their herd for the protection of wildlife and, potentially, public health.

The Legislature in 2002 addressed this void. Senate Bill 151, which was enacted directed the department to promulgate rules for controlling or eradicating the spread of contagious disease in game animals. The bill gave the department the authority, in collaboration with the state veterinarian, to mitigate any problem through quarantine, treatment or destruction of the animals. Senate Bill 151 also allowed DGF to use the game protection fund to purchase the diseased animals and disinfect the premises of the game parks where the animals had been housed. Enactment of Senate Bill 151 could have a substantial impact on the game protection fund. DGF reports New Mexico is home to 19 Class A game parks and estimates an average elk population of 108 per park. Based on an estimated average cost per elk of \$4.0, the impact could be \$8,200.0 if an outbreak occurred requiring the department to destroy the entire game park population.

Since enactment of Senate Bill 151, chronic wasting disease was found in a small population of mule deer located on the White Sands Missile Range. The case has challenged wildlife specialists because the location is far from the endemic areas of Colorado and Wyoming. In response, the department will test hunter-harvested deer and elk at check stations throughout the state, at an estimated cost of \$20.0 for FY03.

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