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FISCAL IMPACT REPORT

SPONSOR McQueen/Stewart/ Small/Hemphill **ORIGINAL DATE** 2/12/21
LAST UPDATED _____ **HB** 200
SHORT TITLE Water Trust Board Projects & NM Unit Fund **SB** _____
ANALYST Wan

ESTIMATED ADDITIONAL OPERATING BUDGET IMPACT (dollars in thousands)

	FY21	FY22	FY23	3 Year Total Cost	Recurring or Nonrecurring	Fund Affected
Total	NFI	\$0-\$253.7	\$0-\$253.7	\$0-\$507.4	Recurring	General Fund

(Parenthesis () Indicate Expenditure Decreases)

SOURCES OF INFORMATION

LFC Files

Amended Joint Powers Agreement: New Mexico CAP Entity (June 3, 2017)

Minutes of the Interstate Stream Commission Meeting on June 18, 2020

Responses Received From

New Mexico Finance Authority (NMFA)

Office of the State Engineer (OSE)

SUMMARY

Synopsis of Bill

House Bill 200 amends Section 72-14-45 NMSA 1978 to alter the allowable expenditures from the New Mexico Unit fund and establish the Water Trust Board (WTB) as the successor to the Southwest New Mexico Water Study Group.

The bill changes the statutory purpose of the unit fund such that it no longer references the federal Arizona Water Settlements Act (AWSA) or the New Mexico Unit (the project that would divert, convey, and store AWSA water for consumptive use in southwestern New Mexico). Instead, HB200 requires the unit fund to be used for the costs of water utilization projects, explicitly excluding the New Mexico Unit, to meet water supply demands in the southwest water planning region of New Mexico that encompasses Catron, Grant, Hidalgo, and Luna counties.

HB200 requires the Interstate Stream Commission (ISC) to consult with the WTB in determining which projects will receive funding. Existing statute requires ISC to consult with the Southwest New Mexico Water Study Group “or its successor.” The successor to that group is the New Mexico Central Arizona Project (CAP) Entity; therefore, HB200 would replace the CAP Entity with the WTB. The bill also specifies that the WTB shall evaluate projects, and their environmental

impacts, proposed within the southwest water planning region and recommend projects to the ISC, which will have final decision-making authority over project funding.

HB200 also amends Section 72-4A-5 NMSA 1978 to add evaluation of the aforementioned projects and their environmental impacts and the subsequent recommendation of projects to the ISC pursuant to Section 72-14-45 NMSA 1978.

There is no effective date of this bill. It is assumed the effective date is 90 days following adjournment of the Legislature.

FISCAL IMPLICATIONS

The New Mexico Finance Authority (NMFA) administers all activities of the WTB and would be responsible for the development of criteria used by WTB to evaluate potential projects for recommendation to ISC. NMFA reports the fiscal implications of carrying out the new responsibilities assigned by HB200 are unknown because the agency does not know how much funding is available from the unit fund for projects, how many projects in the southwest water planning region might qualify for funding, or the frequency of the WTB's recommendations to the ISC, and, therefore, how much additional work would be required.

However, the ISC program in the Office of the State Engineer (OSE) currently receives an appropriation from the unit fund and distributes a portion to the CAP Entity for its operating budget, including salary and benefits of CAP Entity members. ISC approves an amount to provide to the CAP Entity and includes it in its budget request to the Legislature. ISC requested \$253.7 thousand for FY22. The administrative and analytical work required of WTB under the provisions of HB200 would likely be similar to that of the CAP Entity, but the cost of CAP Entity salaries and benefits would be eliminated because WTB and related NMFA staff already exist.

Depending on NMFA's capacity, additional personnel may be required to administer the provisions of HB200 but not at the current cost of CAP Entity members' salaries and benefits. Therefore, it is reasonable to assume the operating budget impact to NMFA would be no more than the current operating budget of the CAP Entity. Importantly, though, HB200 strikes language allowing unit fund monies to support "costs associated with planning and environmental compliance activities," which seems to indicate expenditures from the unit fund for operating expenses associated with WTB's new duties would not be permitted, requiring an alternate funding source. Therefore, a potential operating budget impact of up to \$253.7 thousand to the general fund is estimated.

SIGNIFICANT ISSUES

OSE expressed three primary concerns with HB200. First, the bill would prevent use of the New Mexico unit fund for diversion of the 14 thousand acre-feet per year of Gila River water the state is entitled to under the AWSA (a project called the New Mexico Unit). ISC voted in 2020 to not proceed with the National Environmental Policy Act (NEPA) process for the New Mexico Unit proposed by the CAP Entity, effectively ending the state's pursuit of the project (known as the Gila diversion). That decision does not alter New Mexico's entitlement to AWSA water, and analysis from the agency now says several ISC commissioners are still interested in accessing some of that water in the future. Additionally, OSE believes this prohibition of New Mexico Unit expenditures is in conflict with the AWSA, specifically the provision that "withdrawals from the

New Mexico unit fund shall be for the purpose of paying costs of the New Mexico Unit or other water utilization alternatives to meet water supply demands in the Southwest Water Planning Region of New Mexico.” OSE warns of a possible legal challenge to HB200. However, the AWSA allows for unit fund support of the New Mexico Unit “or” other alternatives, seemingly not explicitly requiring New Mexico to spend these funds on any one project or preventing the Legislature from limiting the possible uses of the funds.

OSE’s second concern is HB200’s designation of WTB as the successor to the Southwest New Mexico Water Study Group. OSE claims the CAP Entity has documentation designating it as the successor. OSE pointed out the CAP Entity includes representatives from the southwest water planning region while WTB does not have a regional focus.

Third, OSE states ISC staff are currently working with the CAP Entity to identify non-New Mexico Unit water utilization projects in the region. The agency posits enactment of HB200 would halt progress on these efforts and then require ISC to develop and implement a new process with WTB, thus delaying new water utilization projects.

Two organizations opposed to the Gila diversion project submitted an analysis expressing doubts regarding the CAP Entity’s ability to work with ISC on non-New Mexico Unit projects under the existing terms of the joint powers agreement (JPA) between the two. Interpretations of the JPA terms vary – members of the CAP Entity and those less critical of it argue the JPA includes language addressing alternative water utilization projects, while the opponents to the diversion maintain the JPA only gives the CAP Entity authority to pursue a New Mexico Unit.

In June 2020, ISC tabled a vote on whether ISC staff should work with the CAP Entity on modifying the JPA to refocus efforts on non-unit projects and formulating a process for consideration of other potential water utilization projects in the southwest region. ISC directed staff to refocus efforts on non-unit projects and engage the CAP Entity in discussions on how to optimize its ability to carry out such projects. However, without a vote or any changes to the JPA, questions remain about the CAP Entity’s willingness and obligation to pursue alternatives to the New Mexico Unit.

POSSIBLE QUESTIONS

OSE raised a question of HB200 conflicting with appropriation language directing funding to the CAP Entity. There is no such language in the General Appropriation Act of 2020 or in LFC’s FY22 budget recommendation for OSE, which was adopted by the House Appropriations and Finance Committee.

CW/sb