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## FISCAL IMPACT REPORT

<b>SPONSOR</b> <u>Campos/Jaramillo/Stefanics/Correa</u> <u>Hemphill/Castellano</u>	<b>LAST UPDATED</b> <u>03/07/2023</u>
	<b>ORIGINAL DATE</b> <u>02/08/2023</u>
<b>SHORT TITLE</b> <u>Acequia Fund for Disaster Response</u>	<b>BILL NUMBER</b> <u>Senate Bill 176/aSFC</u>
	<b>ANALYST</b> <u>Sanchez</u>

### ESTIMATED ADDITIONAL OPERATING BUDGET IMPACT\*

(dollars in thousands)

	FY23	FY24	FY25	3 Year Total Cost	Recurring or Nonrecurring	Fund Affected
	\$100.0	\$200.0	\$200.0	\$500.0	Recurring	Interstate Stream Commission Operating Budget

Parentheses ( ) indicate expenditure decreases.

\*Amounts reflect most recent analysis of this legislation.

### Sources of Information

LFC Files

#### Responses to Original Bill Received From\*

Office of the State Engineer (OSE)  
New Mexico Acequia Association (NMAA)  
State Investment Council (SIC)

\*Because of the short timeframe between the introduction of this bill and its first hearing, LFC has yet to receive analysis from state, education, or judicial agencies. This analysis could be updated if that analysis is received.

## SUMMARY

### Synopsis SFC Amendment to Senate Bill 176

The Senate Finance Committee amendments to Senate Bill 176 remove the appropriation from the bill and the language increasing the amount to be distributed from the irrigation works construction fund to the acequia and community ditch infrastructure fund. The SFC amendments also rework the changes proposed in Section 1 of the original bill to make clearer the intention to allow infrastructure projects as an acceptable use of funds from the acequia and community ditch infrastructure fund. The effect of these amendments will be to leave the annual appropriation from the irrigation works construction fund (IWCF) to the acequia and community ditch infrastructure fund (ACDIF) at \$2.5 million instead of the \$5 million proposed in the original bill.

## Synopsis of Original Bill

Senate Bill 176 proposes to amend Section 72-14-24.1 NMSA 1978, the acequia and community ditch infrastructure fund, to increase the amount of funding dispensed to the acequia and community ditch infrastructure fund (ACDIF) from the irrigation works construction fund (IWCF) from \$2.5 million annually to \$5 million annually. The bill also adds language allowing money from the ACDIF to be used for disaster response, recovery, and hazard mitigation and for matching or meeting funding available from other state and federal programs. Finally, the bill adds additional language eliminating the local cost-share requirement for acequias and community ditches.

Senate Bill 176 appropriates \$5 million from the irrigation works construction fund to the acequia and community ditch infrastructure 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, disaster response, recovery and hazard mitigation, improvement of irrigation efficiency or protection from floods and infrastructure projects and to match or meet cost share requirements of other state and federal funding programs.

The effective date of this bill is July 1, 2023.

## FISCAL IMPLICATIONS

The Office of the State Engineer has been working to reduce its reliance on trust fund balances for several years. The irrigation works construction fund, a beneficiary of the state land trust, has provided an average of \$8.1 million dollars to the agency's operating budget over the last four fiscal years. The agency's continued reliance on fund balance, in addition to reduced revenue and a \$1 million annual appropriation to the forest land protection fund at the State Forestry Division beginning in FY21, have continued to reduce the overall fund balance.

Further, the fund has seen reduced revenue in the last three fiscal years, reaching an all-time low in FY22. The State Investment Council's (SIC) analysis explains:

2022 marked only the second year that both stocks and bonds lost money since 1957, given that typically fixed income and equities have negative correlations...The IWCF, which is target-allocated to a fairly typical "simple" allocation of 55% stocks and 45% bonds were hit particularly hard, losing 23% through the year ending 9/30/22. While the final quarter of 2022 did see some modest recovery, the market correction resulted in unrealized losses of ~\$6.7 million.

The unpredictable performance of the fund, combined with continued reliance by the State Engineer on it for operating expenses, leaves the long-term sustainability of the irrigation works construction fund in question. This will continue to be an issue regardless of increases or decreases in appropriations from the fund until such time as the Office of the State Engineer can find other revenues to replace these funds in their operating budget.

The original version of Senate Bill 176 would have doubled the funding available for acequias and community ditches, which the Interstate Stream Commission stated would increase the workload of current staff handling the program. The proposed increases would have required, according to OSE's analysis, "at a minimum, the addition of 2 FTEs." The SFC amendment's

removal of the appropriation increasing disbursements from the irrigation works construction fund means that the bill will likely have no fiscal impact. However, because of the short timeframe between the amendments to this bill and its scheduled floor hearing, LFC has yet to receive analysis from state agencies. This analysis could be updated if that analysis is received.

## SIGNIFICANT ISSUES

The acequia and community ditch infrastructure fund (ACDIF) is currently administered by the Interstate Stream Commission on an annual grant cycle. Awards are given for planning, engineering design, or construction of improvements to qualifying acequias or community ditches. The program's current structure is meant to incentivize planning. However, the cost share requirements are sometimes cited as a barrier for smaller acequias or community ditches, which often lack adequate revenue to meet these requirements.

The annual grant cycle structure is also not designed to be responsive to disasters. The New Mexico Acequia Association's (NMAA) analysis states it believes Senate Bill 176 would allow the ACDIF to be responsive to the needs of acequias and community ditches affected by disasters. NMAA's analysis further states:

Generally, for a federal disaster declaration, acequias have access to the FEMA Public Assistance Program. However, FEMA requires a 75/25 cost share. Similarly, the DHSEM Disaster Assistance Program requires a 75/25 cost share. Also, by adding disaster recovery to the purpose of the fund, the ISC may have more flexibility in the timeline for access and use of funds by acequias affected by disasters.

The tension created by this bill lies mainly between the need to respond to the historic wildfire season of 2022 and the need to ensure the viability of the irrigation works construction fund in future fiscal years. While the changes offered in SB176 will not lead to the depletion of the fund in FY24, continued reliance on the fund for operating costs at the Office of the State Engineer, combined with the less predictable financial performance of the fund, may lead to insolvency on a shorter timeline than current projections forecast.

Additionally, the elimination of the cost share requirement for acequias and community ditches concerns the Interstate Stream Commission (NMISC), whose analysis states:

NMISC would be supportive of this no local cost-share requirement for the "disaster response, recovery and hazard mitigation" portion of the scope of work that is proposed to be added... [However, t]he NMISC has always had a local cost-share requirement for acequias and community ditches so that the local entities have some interest and participate in the construction of their project to manage costs of the overall project. This helps keep construction costs down as local entities have a say in the work performed and take interest in overseeing the construction phase to ensure that a quality project is constructed in a timely and cost effective manner. The current cost-share requirement is associated only with the construction phase funding at this time and the NMISC offers low-interest loans to provide an option to acequias and community ditches by helping spread that cost-share burden over time. Therefore, the NMISC recommends that a cost share requirement be maintained to manage construction costs.