LFC Requester:	Davidson

AGENCY BILL ANALYSIS - 2025 REGULAR SESSION

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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}

Date Prepared: *Jan 22, 2025*
Bill Number: *HB 137*

Check all that apply:
Original X __ Correction __
Amendment __ Substitute __

Sponsor: Rep. Herrera

Agency Name and Code Number: NMED-667

Person Writing Jonas Armstrong

Short Title: Strategic Water Supply Act

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SECTION II: FISCAL IMPACT

APPROPRIATION (dollars in thousands)

Appropriation		Recurring or Nonrecurring	Fund Affected
FY25	**FY26**		
	107,750.0	Nonrecurring	General Fund

(Parenthesis ( ) indicate expenditure decreases)

REVENUE (dollars in thousands)

Estimated Revenue			Recurring or Nonrecurring	Fund Affected
FY25	**FY26**	**FY27**		
	$34,000.0	$68,000.0	Recurring	Strategic Water Supply Program Fund

(Parenthesis ( ) indicate revenue decreases)

ESTIMATED ADDITIONAL OPERATING BUDGET IMPACT (dollars in thousands)

	FY25	FY26	FY27	3 Year Total Cost	Recurring or Nonrecurring	Fund Affected
Total		$420.0	$420.0	$840.0	Recurring	Strategic Water Supply Program Fund

(Parenthesis ( ) Indicate Expenditure Decreases)

Duplicates/Conflicts with/Companion to/Relates to:
Duplicates/Relates to Appropriation in the General Appropriation Act

SECTION III: NARRATIVE

BILL SUMMARY

Synopsis: House Bill 137 (HB137) creates the Strategic Water Supply Program, which would provide funds for the state to safely and effectively develop treated brackish and treated produced water for some of the state's most critical water needs.

Section 1: This section of the bill contains the short title of the Strategic Water Supply Act.

Section 2: This section contains the definitions of the Strategic Water Supply Act. The definition of "brackish water" tracks with the definition of non-potable deep aquifers under NMSA 1978, § 72-12-25. This is water that is sourced from an aquifer that is deeper than 2,500 feet and has no less than 1,000 parts per million total dissolved solids (TDS). This ensures that brackish water for the Strategic Water Supply Program will not come from existing water rights and will be a new source of water to augment New Mexico's water supply needs.

Section 3: This section clarifies that the Strategic Water Supply Program applies only to brackish water as defined in the statute and produced water under the jurisdiction of the Water Quality Control Commission.

Section 4: Creates the Strategic Water Supply Program, authorizing the Energy, Minerals and Natural Resources Department (EMNRD), the Office of the State Engineer (OSE), and the New Mexico Environment Department (NMED) to enter into grants or contracts for eligible projects involving treated brackish or treated produced water

Projects seeking either grant or contract funds must (1) comply with state, federal, tribal, and local standards and permit requirements to protect public and environmental health, and (2) demonstrate how they will provide economic development in accordance with the program goals of reducing freshwater reliance or expanding water reuse opportunities. When EMNRD, OSE, or NMED evaluates a project proposal, they must do so in accordance with the State-Tribal Consultation Act (where applicable), consult with the Economic Development Department, and evaluate how the proposals will limit greenhouse gas emissions.

Grants are only available to public entities (potentially in partnership with private entities) for treated brackish water projects and must receive OSE approval that the project will advance exploration, production, or treatment of brackish water in New Mexico.

Contracts are available more broadly and are bound by the Procurement Code with the exception that the contracts can extend for 20 years. Projects seeking contract funding must provide financial assurance to EMNRD's Oil Conservation Division and a specific, actionable and measurable community benefits plan, including a process for community engagement. All contracts must comply with New Mexico's Water Quality Act and Water Quality Control Commission regulations regarding reuse of treated produced water.

Section 5: Creates the Strategic Water Supply Program Fund. NMED is tasked with administering the fund, which is available to support Strategic Water Supply grants and contracts through EMNRD, OSE, and NMED. Agency heads from all three agencies must sign off on all expenditures from the fund and must coordinate with the Economic Development Department regarding project selections.

Section 6: Amends Section 7-1-2 of the Tax Administration Act to specify that the produced water fee imposed under the Strategic Water Supply Program would be collected and administered by the Taxation and Revenue Department.

Section 7: Authorizes taxation and revenue department staff to disclose confidential return information to the energy, minerals and natural resources department for the purpose of identifying delinquent or noncompliant with the fee requirements of the Strategic Water Supply Act.

Section 8: This section amends the Oil Conservation Division's enumeration of powers to include requiring reporting of produced water and the assessment of a fee.

Section 9: This section updates the title of the Produced Water Act to reflect its codification.

Section 10: This section creates a $.05/barrel (bbl) fee on water produced from oil and gas operations, to be assessed on operators. A barrel equals 42 gallons. Volumes of water used that are recycled or reused in operations are not subject to the fee. The fee is certified by the Oil Conservation Division and collected by the Taxation and Revenue Department. The Oil Conservation Division is required to promulgate rules to clarify the new water reporting procedures.

Section 11: This section amends the Water Code to make clear that, for applications to drill wells to appropriate water from non-potable deep aquifers (which is defined as brackish water under the Strategic Water Supply Program) will be reviewed by the Office of the State Engineer to ensure that the use of water stated in the notice will not impair existing water rights, be contrary to the conservation of water within the state or be detrimental to the public welfare of the state. The Office of the State Engineer already conducts such a review for these applications, but this provision will ensure that that review and determination are enshrined in law.

Section 12: This section contains the appropriations for the Strategic Water Supply Program. It contains a $75 million appropriation for the Strategic Water Supply Program Fund, a $28.75 million appropriation for New Mexico Tech to perform aquifer monitoring and improved ground water characterization in FY26 through FY28, and a $4 million appropriation for NMSU for innovation, research, monitoring, support and development of technology associated with potential projects for a Strategic Water Supply Program grant or contract in FY26 through FY28.

FISCAL IMPLICATIONS

HB137 appropriates a total of $107.75 million from the General Fund, including $75 million to the SWS Program Fund to support SWS projects, $28.75 million to the New Mexico Institute of Mining and Technology for aquifer monitoring and improved ground water characterization, and $4 million to New Mexico State University for innovation, research, monitoring, support, and

development of technology associated with potential projects for a SWS grant or contract.

Depending on the number of grants and contracts awarded, NMED may need to add an estimated 3 FTEs to support Strategic Water Supply work, including engineering, contractual and regulatory activities. Because of the ability of administering agencies to draw funds from the SWS Fund to cover administrative costs associated with the program, NMED does not anticipate requiring any additional recurring general funds to administer this program.

The revenue projections for the assessment of the fee are based on approximating taxable volumes of produced water from the 2023 production year (1.36 billion bbl) and applying the per bbl fee to that volume. Year over year revenues from the fee are difficult to project precisely due to fluctuations in production and the possible maturation of a recycled/reused water market, discussed more below. The FY26 revenue is halved to reflect the commencement of collection of the fee by TRD on January 1, 2026.

SIGNIFICANT ISSUES

The OSE, NMISC, NMED, EMNRD, and NMDA are actively carrying out the administration's 50-Year Water Action Plan, which provides a roadmap for actions to ensure that New Mexico prepares for a future with up to 25% less water given the realities of climate change.

At the same time, there are numerous economic development opportunities that need access to water. For example, renewable energy projects and cutting-edge manufacturing facilities need assurance that they will have reliable water supplies. In order to meet these opportunities, securing additional water supplies is critical. Treated brackish water and treated produced water could be additional sources of supply, protecting existing fresh water sources and ensuring that New Mexico's communities do not miss out on economic development opportunities even in the face of reduced water supplies. The bill also contains an appropriation for aquifer characterization for New Mexico Tech. As set forth in Action B3 of the 50-Year Water Action Plan, fully characterizing our aquifers is an absolutely critical component to support the SWS program.

A key element of New Mexico's transition to zero emissions and renewable energy sources involves attracting industries that specialize in the production of key renewable energy components to New Mexico. We have seen this process begin already as the state has seen production for wind turbine towers, solar panels, and solar tracking systems either locate or expand in New Mexico. These sorts of industrial processes require water. Providing an alternate avenue for these companies to acquire the water they need to operate can take them out of competition with agricultural and residential consumers for the state's increasingly scarce freshwater supplies. Delivering companies water in this way can also provide the sort of long-term operational certainty that makes it easier to sign long term leases, delivery contracts, and attract financing. Stabilizing water supplies for the private companies that are making New Mexico's energy transition possible will help ensure the durability of that energy transition and the ability of New Mexico to continue to take advantage of its world class renewable energy resources.

Increasingly, the ability to manage and dispose of produced water is one of the primary constraints on production in Permian basin in Southeastern New Mexico. The industry currently

generates over 2 billion barrels of produced water per year. The practice of recycling this water for use inside the oil field has been on the uptick in recent years but recycled or reused produced water still only accounts for approximately 60% of the water utilized in oil and gas operations. The bill proposes to authorize contracts (not grants) for produced water projects that will treat water for uses off the oilfield, as authorized by NMED pursuant to the Water Quality Act and Water Quality Control Commission regulations, some of which are currently under review by the Commission. While it's unlikely that the fund itself can sponsor enough projects to make a significant dent in the produced water takeaway issue in the Permian, it has great value as a proof of concept that can kickstart a broader produced water treatment and deployment industry in accordance with science-based regulations that protect the environment and public health.

While it may slightly impact some of the revenue projections, the presence of the fee may have a secondary effect of incentivizing reuse of produced water in oilfield operations. OCD has explored several options to attempt to shift more of the industry's water use to recycled water, and the fee may have the effect of producing some meaningful market pressure to build out additional tools to incentivize investments in water reuse infrastructure.

PERFORMANCE IMPLICATIONS

ADMINISTRATIVE IMPLICATIONS

CONFLICT, DUPLICATION, COMPANIONSHIP, RELATIONSHIP

TECHNICAL ISSUES

OTHER SUBSTANTIVE ISSUES

HB137 defines "brackish water" based on depth (2500 feet or more) and salinity (1000 mg/L of total dissolved solids (TDS) or more). The HB137 definition aligns with long-standing New Mexico water law, which provides that water at or greater than such depth and salinity are not subject to appropriation. The Water Quality Act provides that water less than 10,000 mg/L TDS is protectable water and falls under regulation of constituent agencies (i.e., NMED and OCD). HB137 would not change or limit the scope of the Water Quality Act and implementing regulations to protect water that meets the definition of "brackish water" under HB137 but is less than 10,000 mg/L TDS.

ALTERNATIVES

WHAT WILL BE THE CONSEQUENCES OF NOT ENACTING THIS BILL

New Mexico will not have access to a fund to incentivize the treatment and reuse of brackish and produced water. Opportunities to advance treated brackish water and treated produced water to meet economic development demands without depleting freshwater resources will move more slowly and development of these new sources of water may not be targeted to state, tribal and local economic development priorities, including efforts to further the clean energy transition in New Mexico.

AMENDMENTS

None.