

AN ACT

RELATING TO WATER; ENACTING THE WATER PROJECT FINANCE ACT;  
PROVIDING FOR THE FUNDING OF WATER PROJECTS; CREATING A  
BOARD; CREATING THE WATER TRUST FUND AND THE WATER PROJECT  
FUND; DECLARING AN EMERGENCY.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF NEW MEXICO:

Section 1. SHORT TITLE. -- This act may be cited as the  
"Water Project Finance Act".

Section 2. FINDINGS AND PURPOSE. --

A. The legislature finds that:

(1) New Mexico is in a desert where water  
is a scarce resource;

(2) the economy depends on reasonable and  
fair allocation of water for all purposes;

(3) the public welfare depends on efficient  
use and conservation of water;

(4) New Mexico must comply with its  
delivery obligations under interstate compacts; and

(5) public confidence and support for water  
use efficiency and conservation is based on a reasonable  
balance of investments in water infrastructure and  
management.

B. The purpose of the Water Project Finance Act  
is to provide for water use efficiency, resource  
conservation and protection and fair distribution and

allocation of the scarce resource to all users.

Section 3. DEFINITIONS. -- As used in the Water Project Finance Act:

- A. "authority" means the New Mexico finance authority;
- B. "board" means the water trust board;
- C. "political subdivision" means a municipality, county, irrigation district, conservancy district, special district, acequia or soil and water conservation district; and
- D. "qualifying water project" means a project recommended by the board for funding by the legislature.

Section 4. WATER TRUST BOARD CREATED. --

A. The "water trust board" is created. The board is composed of the following fifteen members:

- (1) the state engineer or his designee, who shall be the chairman of the board;
- (2) the executive director of the New Mexico finance authority;
- (3) the secretary of environment or his designee;
- (4) the secretary of energy, minerals and natural resources or his designee;
- (5) the director of the department of game and fish or his designee;
- (6) the director of the New Mexico

department of agriculture or his designee;

(7) the executive director of the New Mexico municipal league or his designee;

(8) the executive director of the New Mexico association of counties or his designee;

(9) five public members appointed by the governor and confirmed by the senate and who represent:

(a) the environmental community;

(b) an irrigation or conservancy district that uses surface water;

(c) an irrigation or conservancy district that uses ground water;

(d) acequia water users; and

(e) soil and water conservation districts;

(10) one public member appointed by the commission on Indian affairs; and

(11) the president of the Navajo Nation or his designee.

B. The board shall meet at the call of the chairman or whenever three members submit a request in writing to the chairman, but not less often than once each calendar year. A majority of members constitutes a quorum for the transaction of business. The affirmative vote of at least a majority of a quorum present shall be necessary for an action to be taken by the board.

C. Each public member of the board appointed by the governor shall be appointed to a four-year term. To provide for staggered terms, two of the initially governor-appointed public members shall be appointed for terms of two years and three members for terms of four years. Thereafter, all governor-appointed members shall be appointed for four-year terms. Vacancies shall be filled by appointment by the governor for the remainder of the unexpired term.

D. Public members of the board shall be reimbursed for attending meetings of the board as provided for nonsalaried public officers in the Per Diem and Mileage Act and shall receive no other compensation, perquisite or allowance.

E. Public members of the board are appointed public officials of the state while carrying out their duties and activities under the Water Project Finance Act.

Section 5. BOARD--DUTIES.--The board shall:

A. adopt rules governing terms and conditions of grants or loans recommended by the board for appropriation by the legislature from the water project fund, giving priority to projects that have urgent needs, that have been identified for implementation of a completed regional water plan that is accepted by the interstate stream commission and that have matching contributions from federal or local funding sources;

B. authorize qualifying water projects to the authority that are for:

(1) storage, conveyance or delivery of water to end users;

(2) implementation of Endangered Species Act collaborative programs;

(3) restoration and management of watersheds; or

(4) flood prevention.

Section 6. AUTHORITY--DUTIES.--The authority shall:

A. provide staff support for the board;

B. develop application procedures and forms for political subdivisions to apply for grants and loans from the water project fund; and

C. make loans or grants to political subdivisions for qualifying water projects authorized by the legislature.

Section 7. CONDITIONS FOR GRANTS AND LOANS.--

A. Grants and loans shall be made only to state agencies or to political subdivisions that:

(1) agree to operate and maintain the water project so that it will function properly over the structural and material design life, which shall not be less than twenty years;

(2) require the contractor of the construction project to post a performance and payment bond in accordance with the requirements of Section 13-4-18 NMSA

1978;

(3) provide written assurance signed by an attorney or provide a title insurance policy that the political subdivision has proper title, easements and rights of way to the property upon or through which the water project proposed for funding is to be constructed or extended;

(4) meet the requirements of the financial capability set by the board to ensure sufficient revenues to operate and maintain the water project for its useful life and to repay the loan;

(5) agree to properly maintain financial records and to conduct an audit of the project's financial records; and

(6) agree to pay costs of originating grants and loans as determined by rules adopted by the board.

B. Plans and specifications for a water project shall be approved by the authority before grant or loan disbursements to pay for construction costs are made to a state agency or political subdivision.

C. Grants and loans shall be made only for eligible items, which include:

- (1) to match federal and local cost shares;
- (2) engineering feasibility reports;
- (3) contracted engineering design;

- (4) inspection of construction;
- (5) special engineering services;
- (6) environmental or archaeological surveys;
- (7) construction;
- (8) land acquisition;
- (9) easements and rights of way; and
- (10) legal costs and fiscal agent fees.

**Section 8. WATER TRUST FUND--CREATED--INVESTMENT--DISTRIBUTION.--**

A. The "water trust fund" is created in the state treasury. The fund shall consist of money appropriated, donated or otherwise accrued to the fund. Money in the fund shall be invested by the state investment officer as land grant permanent funds are invested pursuant to Chapter 6, Article 8 NMSA 1978. Earnings from investment of the fund shall be credited to the fund. Money in the fund shall not be expended for any purpose, but an annual distribution shall be made to the water project fund in accordance with Subsection B of this section.

B. On July 1 of fiscal year 2003 and on July 1 of each fiscal year thereafter, an annual distribution shall be made from the water trust fund to the water project fund in the amount of four million dollars (\$4,000,000) until that amount is less than an amount equal to four and seven-tenths percent of the average of the year-end market values of the

water trust fund for the immediately preceding five calendar years. Thereafter, the amount of the annual distribution shall be four and seven-tenths percent of the average of the year-end market values of the water trust fund for the immediately preceding five calendar years.

Section 9. WATER PROJECT FUND--CREATED--PURPOSE.--

A. The "water project fund" is created in the New Mexico finance authority and shall consist of distributions made to the fund from the water trust fund and payments of principal of and interest on loans for approved water projects. The fund shall also consist of any other money appropriated, distributed or otherwise allocated to the fund for the purpose of supporting water projects pursuant to provisions of the Water Project Finance Act. The fund shall be administered by the authority. Income from investment of the water project fund shall be credited to the fund. Balances in the fund at the end of any fiscal year shall not revert to the general fund. The water project fund may consist of such sub-accounts as the authority deems necessary to carry out the purposes of the fund. The authority may establish procedures and adopt rules as required to administer the fund and to recover from the fund costs of administering the fund and originating grants and loans.

B. Money in the water project fund may be used to make loans or grants to qualified entities for any project



approved by the legislature.

C. The authority is authorized to issue revenue bonds payable from the proceeds of loan repayments made into the water project fund upon a determination by the authority that issuance of the bonds is necessary to replenish the principal balance of the fund. The net proceeds from the sale of the bonds shall be deposited in the water project fund. The bonds shall be authorized and issued by the authority in accordance with the provisions of the New Mexico Finance Authority Act.

Section 10. REPORT TO LEGISLATURE.--The board shall report to the legislature no later than October 1 of each calender year the total expenditures from the water project fund, their purposes, an analysis of the accomplishments of the expenditures and recommendations for legislative action.

Section 11. EMERGENCY.--It is necessary for the public peace, health and safety that this act take effect immediately. \_\_\_\_\_