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## FISCAL IMPACT REPORT

**SPONSOR** Wirth **ORIGINAL DATE** 02/12/14  
**LAST UPDATED** \_\_\_\_\_ **HB** \_\_\_\_\_

**SHORT TITLE** Full Funds For NM Unit Projects Before Notice **SB** 90

**ANALYST** McCoy

### REVENUE (dollars in thousands)

Estimated Revenue			Recurring or Nonrecurring	Fund Affected
FY14	FY15	FY16		
	TBD		Nonrecurring	New Mexico Unit Fund

(Parenthesis ( ) Indicate Revenue Decreases)

See discussion under Significant Issues.

Relates to SB 89

### SOURCES OF INFORMATION

LFC Files

#### Responses Received From

Office of the State Engineer/Interstate Stream Commission (OSE/ISC)

### SUMMARY

#### Synopsis of Bill

Senate Bill 90 prohibits the Interstate Stream Commission (ISC) or any other agent of the State of New Mexico from given written notice to the Secretary of the federal Department of the Interior that the state intends to build the New Mexico Unit until all funding necessary for completion of the New Mexico unit has been secured and guaranteed by the beneficiaries of the project.

### FISCAL IMPLICATIONS

The OSE/ISC notes, per the federal Arizona Water Settlements Act (AWSA) New Mexico must provide written notice to the Secretary of the U.S. Department of Interior of its intent to build the New Mexico Unit no later than December 31, 2014 in order to receive between \$34 million and \$62 million of additional funding for a New Mexico Unit of the Central Arizona Project. The agency notes if the state fails to provide such notice by the deadline, New Mexico will forfeit the

additional funding.

## **SIGNIFICANT ISSUES**

The AWSA provides New Mexico with up to \$128 million in non-reimbursable funding. The funds are deposited by the Bureau of Reclamation (BOR) into the New Mexico Unit Fund, created in the state treasury in Laws 2011, Chapter 99 (House Bill 301). The ISC administers the nonreverting fund, and federal law restricts use of the funds to southwestern New Mexico and to the implementation of AWSA.

The state will receive \$66 million, guaranteed and adjusted to reflect changes in the construction cost indices since 2004, in federal funds to construct the New Mexico Unit of the Central Arizona Project (CAP) or a water utilization alternative to meet water supply demands in Catron, Grant, Hidalgo and Luna counties. The project(s) will be determined by the ISC in consultation with the Southwest New Mexico Water Study Group or its successor, including costs associated with planning and environmental compliance activities and environmental mitigation and restoration. The funds may be used to cover costs of an actual water supply project, planning, environmental mitigation, or restoration activities associated with or necessary for the project. The water supply project can be something other than a dam or diversion from a stream system as long as it develops water to meet a water supply demand. BOR reports, three of the ten required payments totaling over \$27 million (indexed for inflation) have been deposited in the New Mexico Unit Fund. According to the BOR, these payments will continue under the AWSA through 2021, with the total amount likely in the \$90 million range. (See attachment 1)

In addition to the guaranteed amount stated above, if the state elects to construct a New Mexico Unit of the CAP, the Act makes up to \$62 million in additional funding available for that purpose. Per the AWSA, New Mexico is only eligible for the additional \$62 million if it elects to build a project that would use any of the additional 14,000 acre-feet of Gila River water, and that would result in downstream users exchanging their Gila River water for CAP water. The BOR also notes \$28 million of the \$62 million is tied to return investments of the Lower Colorado River Basin Development Fund. The BOR reports the following:

The investment return on the Development Fund must average over 4 percent between December 10, 2004, and date of start of construction of a New Mexico Unit. To date, the earnings in the fund have been far less than 4 percent annually. At this point in time, it is highly unlikely that any of these funds would be available unless a dramatic and sustained turnaround in the interest rates occurs.

In that scenario, only \$34 million, indexed for inflation, of the additional \$62 million would be made available for construction of the New Mexico Unit.

According to the OSE/ISC:

SB 90 is preempted by the federal Arizona Water Settlements Act of 2004 and is therefore unconstitutional as it contravenes the Supremacy Clause of the United States Constitution. Contrary to SB 90, the federal Act does not make notification of the Secretary of Interior by New Mexico that the state intends to build a New Mexico Unit contingent upon securing and/or guaranteeing "all funding necessary for completion of

the New Mexico unit." In fact, any of the additional \$62 million for the New Mexico Unit will only be available to the state upon its notification to the Secretary of the Interior that it indeed intends to construct a New Mexico Unit. Thus, SB 90 contravenes the federal Arizona Water Settlements Act by attempting to rewrite its funding allocation criteria.

If New Mexico were to be required to secure all funding for a New Mexico Unit prior providing notice to the Secretary of Interior by December 31, 2014 of the same, the likelihood that the state could demonstrate the "availability of all necessary funding for completion of the [New Mexico Unit] has been secured and guaranteed" is non-existent. Therefore, if the state determines that it will construct a New Mexico Unit, SB 90 would result in the forfeiture by the state of between \$34 million to \$62 million under the Act and would preclude any possibility that New Mexico could develop the additional annual average of up to 14,000 acre-feet of water it is entitled to under the federal Act.

### **RELATIONSHIP**

SB 90 is related to SB 89 in that both bills relate to provisions of the federal Colorado River Basin Project Act, as amended by the federal Arizona Water Settlements Act.

### **WHAT WILL BE THE CONSEQUENCES OF NOT ENACTING THIS BILL**

According to the OSE/ISC, the consequence of not enacting this bill is that:

1) New Mexico would continue thorough evaluations of all stakeholder proposals, including those that contemplate a New Mexico Unit, 2) it would preserve the possibility that New Mexico will be able to develop some or all of the additional annual average of 14,000 acre-feet of water provided to New Mexico under the Arizona Water Settlements Act, 3) New Mexico would not forfeit \$34 million to \$62 million of the additional funding authorized by the Arizona Water Settlements Act, 4) the additional water would be utilized in New Mexico rather than in Arizona, and 5) New Mexico would avoid a potential legal challenge based upon the constitutionality of this bill.

MTM/ds



# United States Department of the Interior

BUREAU OF RECLAMATION  
Lower Colorado Region  
Phoenix Area Office  
6150 West Thunderbird Road  
Glendale, AZ 85306-4001

FEB 11 2014

IN REPLY REFER TO:  
PXAO-7000  
PRJ-28.00

Honorable Peter Wirth  
New Mexico Senate  
Santa Fe, NM 87501-1923

Dear Senator Wirth:

Thank you for your February 5, 2014, inquiry to Commissioner Connor regarding the amount of funding available under the Arizona Water Settlements Act (AWSA) for construction of a New Mexico Unit. Commissioner Connor has asked me to respond on his behalf due to the short response time requested.

You are correct that the AWSA provides New Mexico the potential for three separate funding components depending on whether or not New Mexico chooses to build the New Mexico Unit. A New Mexico Unit for this purpose consists of infrastructure diverting waters from the Gila River, its tributaries or underground water sources in New Mexico, in exchange for the delivery of Colorado River water to downstream Gila River users in Arizona.

The first funding component authorized in Section 107 of the AWSA consists of \$66 million to be paid in 10 equal annual amounts into the State of New Mexico's New Mexico Unit Fund beginning in 2012. This total amount is to be adjusted to reflect changes since January 1, 2004, in the construction cost indices applicable to the types of construction involved in construction of the New Mexico Unit. The difficulty of making 10 equal payments without a known project to index was overcome through discussions with the New Mexico Interstate Stream Commission and the Bureau of Reclamation where it was agreed that payments would be at \$9.04 million per year, but would be subject to further adjustments when a project was identified or not. You are correct that these funds can be used for 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.

The second funding component consists of \$34 million and is only available if New Mexico chooses to build a New Mexico Unit, which also is subject to indexing for the type of construction involved. In this case, the funds would be paid as needed for construction and indexed based on the construction project selected.

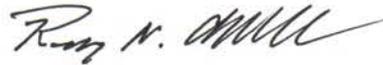
The third and final funding component authorized in Section 212 of the AWSA provides the potential opportunity for an additional amount up to \$28 million if New Mexico chooses to build a New Mexico Unit, which again is subject to indexing. This potential funding component is tied to return investments of the Lower Colorado River Basin Development Fund (Development Fund).

The investment return on the Development Fund must average over 4 percent between December 10, 2004, and date of start of construction of a New Mexico Unit. You are correct that to date, the earnings in the Development Fund have been far less than 4 percent annually. At this point in time, it is highly unlikely that any of these funds would be available unless a dramatic and sustained turnaround in interest rates occurs.

In summary, Reclamation has made 3 of the 10 required payments for a total of just over \$27 million. We plan to continue making these payments as required under the AWSA through 2021. The total amount will most likely be in the \$90 million range. The additional \$34 million indexed would be made available if and when actually needed for construction purposes. Any additional funds are unlikely at this time, but will be evaluated under the criteria of the AWSA prior to the beginning of construction.

We hope this information is helpful in clarifying the funding requirements language of the AWSA with respect to New Mexico. If you have any additional questions or concerns, please contact me at 623-773-6215.

Sincerely,

A handwritten signature in black ink, appearing to read "Randy N. Chandler". The signature is fluid and cursive, with a long horizontal stroke at the end.

Randy N. Chandler  
Area Manager