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## FISCAL IMPACT REPORT

<b>SPONSOR</b> <u>HAFC</u>	<b>LAST UPDATED</b> _____ <b>ORIGINAL DATE</b> <u>3/7/23</u>
<b>SHORT TITLE</b> <u>Acequia Ditch Fund Changes</u>	<b>BILL NUMBER</b> <u>CS/House Bill 545/HAFCS</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
	No fiscal impact	Indeterminate but minimal	Indeterminate but minimal	Indeterminate but minimal		Office of the State Engineer

Parentheses ( ) indicate expenditure decreases.  
 \*Amounts reflect most recent analysis of this legislation.

Relates to Senate Bill 176

### Sources of Information

LFC Files

#### No Response Received\*

Office of the State Engineer (OSE)  
 Office of the Attorney General (NMAG)

\*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 of HAFC Committee Substitute for House Bill 545

The House Appropriations and Finance Committee Substitute for House Bill 545 proposes to amend Section 72-14-24.1, NMSA 1978 which relates to the acequia and community ditch infrastructure Fund (ACDIF). The bill would add language allowing for the use of these funds for disaster response, recovery, and hazard mitigation. The bill would also add language allowing funding from the ACDIF to be used for matching or to meet cost-share requirements for other state and federal funding programs. Finally, the bill adds language encouraging the selection of projects with an eye towards prioritization on project readiness and need.

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

## FISCAL IMPLICATIONS

The acequia and community ditch infrastructure fund receives a \$2.5 million annual appropriation from the irrigation works construction fund, which is administered by the Office of the State Engineer (OSE). OSE 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 of Senate Bill 176 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 percent stocks and 45 percent bonds were hit particularly hard, losing 23 percent 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.”

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 a problem that would not be improved by increasing the options for utilization of the ACDIF for purposes outside of its current allowable scope. However, it is clear that the need for additional funding for acequia construction, repair, and maintenance is going to present a challenge for smaller communities, and the actions proposed by this bill are in line with the intended use of these funds, arguably more so than the operation budget reliance of OSE.

## 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 of Senate Bill 176 said the group believed it 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 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 of a similar bill (Senate Bill 176) 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.

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