

LFC Requester:**Austin Davidson****AGENCY BILL ANALYSIS - 2025 REGULAR SESSION****WITHIN 24 HOURS OF BILL POSTING, UPLOAD ANALYSIS TO****AgencyAnalysis.nmlegis.gov and email to billanalysis@dfa.nm.gov****(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:** 1/31/25*Check all that apply:***Bill Number:** SB 37Original Correction Amendment Substitute **Sponsor:** Sen. Elizabeth "Liz" Stefanics Rep.
Meredith A. Dixon
Rep. Matthew McQueen
Sen. Peter Wirth**Agency Name
and Code**Office of the State Engineer**Number:**550**Person Writing****Analysis:**Lisa Henne**Email****Short****Title:** Strategic Water Reserve Fund**Phone:** 505-487-0781 :Lisa.henne@ose.nm.gov**SECTION II: FISCAL IMPACT****APPROPRIATION (dollars in thousands)**

Appropriation		Recurring or Nonrecurring	Fund Affected
FY25	FY26		
N/A	N/A	Non-reverting	Strategic Water Reserve Fund created

(Parenthesis () indicate expenditure decreases)

REVENUE (dollars in thousands)

Estimated Revenue			Recurring or Nonrecurring	Fund Affected
FY25	FY26	FY27		
N/A	N/A	N/A	N/A	NA

(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	N/A	75	75	150	Recurring	GF
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(Parenthesis () Indicate Expenditure Decreases)

Duplicates/Conflicts with/Companion to/Relates to: None

Duplicates/Relates to Appropriation in the General Appropriation Act: None

SECTION III: NARRATIVE

BILL SUMMARY

Synopsis:

Senate Bill 37 would create a Strategic Water Reserve (Reserve) Fund to be administered by the Interstate Stream Commission. The fund is non-reverting but any funding in excess of \$15 million will revert at the end of the fiscal year.

The bill would also add another specific use of the Reserve in addition to the current two uses already in statute, which are to 1) assist in compact compliance, or 2) support programs for threatened or endangered species, or to prevent additional listings of species. The new use, in addition to the two listed above, is to assist the state or water users with water management to support aquifer recharge in order to promote stream flow or other environmental benefits. The bill states that surface water acquired for the reserve cannot be converted to groundwater via any methods other than natural, passive infiltration through the streambed.

The bill also has language regarding establishing priorities for acquisition of water or water rights. The ISC shall consider whether the acquisition will provide supplementary benefits such as supporting traditional and cultural practices, habitat improvement, or recreational opportunities.

FISCAL IMPLICATIONS

Establishment of a Strategic Water Reserve Fund will help support further implementation of this program, which may become increasingly important for New Mexico in the face of drought and increasing water scarcity. Currently the Reserve has been hindered by insufficient and sporadic funding. Water rights acquisitions, and the necessary due diligence, often take significant time to complete. A longer-term funding source will support more robust implementation of the program.

As written, the bill would impose significant administrative requirements on the agency for each potential acquisition. As this is not likely to have been the intent of the bill, the ISC is proposing language in the “Amendments” section below to address this issue. However, as drafted, the ISC anticipates that the bill would require a review of potential additional benefits for each acquisition into the Reserve. The ISC estimates that this additional review would require an additional 0.5 FTE, which would cost approximately \$75,000 per year. Again, if the amendment proposed below were included in the bill, this additional burden would not be present.

Note: While the title of the bill states that it is making an appropriation, there is no appropriation in the bill.

SIGNIFICANT ISSUES

The proposed new paragraph 2.B(3) states as a new purpose of the Strategic Water Reserve that

water or water rights could be used to “assist the state or water users with water management and water conservation efforts designed to support aquifer recharge or reduce ground water depletion in order to promote stream flow or other environmental benefits.” It is unclear whether the qualifying phrase “in order to promote stream flow or other environmental benefits” applies only to the use of water or water rights to reduce groundwater depletion, or also to the use of water or water rights to support aquifer recharge. That is, it is not clear whether water or water rights in the Strategic Water Reserve could be used to support aquifer recharge even if the aquifer recharge would not promote stream flow or other environmental benefits. In addition, it is not clear what is meant by the term “other environmental benefits,” and whether those benefits must be tied to surface water.

The proposed new language in 2.B(3) that limits the way that surface water could be used for aquifer recharge to “natural, passive infiltration through the streambed” is inconsistent with how aquifer recharge projects are often designed and implemented. The practical effect of this stipulation would be to reduce opportunities to use surface water in the Reserve for aquifer recharge, regardless of the merits of the project.

PERFORMANCE IMPLICATIONS

None

ADMINISTRATIVE IMPLICATIONS

Section 2.E would require the ISC, when establishing priorities for acquisition of water or water rights and storage rights for the Strategic Water Reserve, to consider whether an acquisition will provide supplementary benefits, such as supporting traditional and cultural practices, habitat improvement, or recreational opportunities within the affected reach or ground water basin. If the ISC needed to do this analysis for every single potential transaction, this requirement would add a significant administrative burden to the agency to implement, including developing a framework to identify and evaluate supplementary benefits and a process to ensure that stakeholders are provided fair opportunities to engage. However, if this analysis were to be done on a programmatic level through the ISC’s existing prioritization process, it would be significantly easier to fold into existing ISC processes. The “Amendments” section below contains suggested language for this change.

CONFLICT, DUPLICATION, COMPANIONSHIP, RELATIONSHIP

None

TECHNICAL ISSUES

The term “converted to groundwater” in the proposed new paragraph 2(B)(3) is an ambiguous term. If the purpose of the provision is to prohibit active aquifer recharge through the physical placement of water underground, there is suggested language in the “Amendments” section below that would make that clearer. Otherwise, the phrase “converted” could be interpreted to be referring to administrative or regulatory treatment of the water.

OTHER SUBSTANTIVE ISSUES

None

ALTERNATIVES

None

WHAT WILL BE THE CONSEQUENCES OF NOT ENACTING THIS BILL

The original purposes of the Strategic Water Reserve will still be in effect. Existing funding mechanisms will continue but be less likely to provide sustained support for the Strategic Water Reserve in the absence of an establish and non-reverting fund.

AMENDMENTS

On page 5, line 6, strike through “converted to ground water” and replace with “placed underground”.

On page 6, lines 8-9, strike through “whether the acquisition will provide” and replace with “potential”.