

SENATE CONSERVATION COMMITTEE SUBSTITUTE FOR
SENATE BILLS 455 & 542

52ND LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2015

AN ACT

RELATING TO WATER; SPECIFYING THE PROCESS FOR APPROVING
ENCUMBRANCES AND EXPENDITURES FROM THE NEW MEXICO UNIT FUND;
CONDITIONING ACTIONS OF THE INTERSTATE STREAM COMMISSION WHEN
ACTING AS THE STATE OF NEW MEXICO; REQUIRING A REPORT ON THE
FINANCIAL VIABILITY AND PARTICULARS OF THE NEW MEXICO UNIT
BEFORE EXECUTION OF THE NEW MEXICO UNIT AGREEMENT WITH THE
UNITED STATES SECRETARY OF THE INTERIOR.

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

SECTION 1. Section 72-14-45 NMSA 1978 (being Laws 2011,
Chapter 99, Section 1) is amended to read:

"72-14-45. NEW MEXICO UNIT FUND--PURPOSE--
APPROPRIATION.--

A. The "New Mexico unit fund" is created in the
state treasury. The fund [~~shall consist~~] consists of money

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underscored material = new
[bracketed material] = delete

1 distributed to the state pursuant to Paragraphs (2)(D)(i) and
2 (ii) of Section 403(f) of the federal Colorado River Basin
3 Project Act of 1968, as amended by Section 107(a) of the
4 federal Arizona Water Settlements Act, Public Law 108-451,
5 December 10, 2004; other money made available to the fund
6 pursuant to Section 212 of the federal Arizona Water
7 Settlements Act, Public Law 108-451, December 10, 2004;
8 appropriations; grants; and donations or bequests to the fund.

9 B. Income from the fund shall be credited to the
10 fund. Any unexpended or unencumbered balance remaining in the
11 fund at the end of a fiscal year shall not revert to the
12 general fund. Money in the fund shall not be transferred,
13 other than through an intra-agency transfer, to any other fund.

14 C. Money in the fund shall be administered by the
15 interstate stream commission and is appropriated to the
16 [~~interstate stream~~] commission for expenditure in fiscal year
17 2012 and subsequent fiscal years to comply with the provisions
18 of the federal laws cited in Subsection A of this section.
19 Those provisions of federal law establish that the purpose of
20 money in the fund is to pay the costs of the New Mexico unit or
21 other water utilization alternatives to meet water supply
22 demands in the southwest water planning region of New Mexico,
23 as determined by the [~~interstate stream~~] commission in
24 consultation with the Gila-San Francisco water commission as
25 the successor to the southwest New Mexico water study group [or

1 ~~its successor~~], including costs associated with planning and
 2 environmental compliance activities and environmental
 3 mitigation and restoration. Money in the fund shall not be
 4 expended for any purpose other than the purpose provided in
 5 this section. The interstate stream commission may adopt rules
 6 it deems necessary to carry out the purpose of this section.

7 D. On or before November 15 of each year, the
 8 interstate stream commission shall report to the appropriate
 9 legislative interim committee dealing with water and natural
 10 resources and to the legislative finance committee on:

11 (1) the status of the New Mexico unit fund;

12 [~~(2) the distribution of money from the New~~
 13 ~~Mexico unit fund to implement the purpose of the fund pursuant~~
 14 ~~to Subsection C of this section; and~~

15 ~~(3) proposed uses and levels of funding~~
 16 ~~projected for the following fiscal year]~~

17 (2) the purposes and amounts of expenditures
 18 from the New Mexico unit fund in the prior fiscal year and in
 19 summary form for all prior fiscal years to implement the
 20 purpose of the fund pursuant to Subsection C of this section;

21 (3) the purposes and amounts of each of the
 22 commission's planned expenditures or encumbrances during the
 23 current fiscal year and next fiscal year exceeding fifty
 24 thousand dollars (\$50,000); and

25 (4) the subjects, conclusions and commission

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1 decisions of the consultation for the current fiscal year
2 pursuant to Paragraph (2) of Subsection F of this section.

3 E. Expenditures from the fund shall be made on
4 warrants signed by the secretary of finance and administration
5 pursuant to vouchers signed by the director of the interstate
6 stream commission upon the delegation of authority by the
7 interstate stream commission.

8 F. The interstate stream commission shall:

9 (1) recognize the Gila-San Francisco water
10 commission as the successor organization to the southwest New
11 Mexico water study group; and

12 (2) conduct annual consultations by designated
13 representatives of the commission and the Gila-San Francisco
14 water commission at its normal meeting location concluding
15 three months prior to each fiscal year and addressing each
16 proposed expenditure of the New Mexico unit fund exceeding
17 fifty thousand dollars (\$50,000):

18 (a) with advance notice and audio- and
19 video-recording streamed over the internet and made publicly
20 available during and after the consultation;

21 (b) with opportunities for public
22 comment; and

23 (c) with written minutes summarizing
24 discussions, decisions and public comments.

25 G. In advance of the interstate stream commission's

1 consideration of each encumbrance or expenditure of one hundred
2 thousand dollars (\$100,000) or more from the New Mexico unit
3 fund for purchase of planning, design or legal services prior
4 to the acquisition of all federal and state permits to
5 construct the New Mexico unit or alternatives, the secretary of
6 the commission shall provide to the commission the secretary's
7 recommendation for approval, which shall describe:

8 (1) the specific intended results and benefits
9 that will inform the commission's decision-making;

10 (2) the commission's plan to measure contract
11 compliance and work quality; and

12 (3) the secretary's determination that the
13 expenditure of money will:

14 (a) yield results that are achievable,
15 relevant and timely;

16 (b) be determined through the valid and
17 adequate application of scientific or engineering principles;
18 and

19 (c) meet or be required to meet a
20 specified water supply demand in the southwest water planning
21 region of New Mexico."

22 SECTION 2. A new section of Chapter 72, Article 14 NMSA
23 1978 is enacted to read:

24 "[NEW MATERIAL] CONDITIONS FOR INTERSTATE STREAM
25 COMMISSION ACTING AS THE STATE TO IMPLEMENT THE ARIZONA WATER

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1 SETTLEMENTS ACT OF 2004.--

2 A. The interstate stream commission shall designate
3 the Gila-San Francisco water commission as the New Mexico CAP
4 entity for the purpose of signing the New Mexico unit
5 agreement.

6 B. The interstate stream commission shall provide
7 an initial grant of not less than one hundred thousand dollars
8 (\$100,000) from the New Mexico unit fund to the New Mexico CAP
9 entity to develop the capability and capacity of the New Mexico
10 CAP entity to fulfill its responsibilities as set forth in a
11 joint powers agreement between the commission and the New
12 Mexico CAP entity.

13 C. The interstate stream commission and the New
14 Mexico CAP entity shall release a draft report by August 15,
15 2015 containing:

16 (1) a definition of all major components of
17 the New Mexico unit;

18 (2) the expected schedule for design and
19 construction of each phase of implementation of the New Mexico
20 unit;

21 (3) the interstate stream commission's
22 findings that the New Mexico unit is technically and
23 financially feasible, including the estimate of total and unit
24 costs and of the amount and reliability of the water supply to
25 be produced by the New Mexico unit;

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1 (4) the plan for transparency and public
2 involvement;

3 (5) the conceptual plan to finance each phase
4 of the New Mexico unit;

5 (6) the specific uses identified for the water
6 supply resulting from each phase of the New Mexico unit;

7 (7) the affordability to end users of water
8 produced by each phase of a New Mexico unit with estimated
9 implementation costs exceeding one hundred million dollars
10 (\$100,000,000); and

11 (8) the summary of the interstate stream
12 commission's calculations prepared using the best available
13 engineering, hydrologic and geologic information of the average
14 annual safe yield of usable water, the cost per acre-foot and
15 the reliability of the usable water supply produced by each
16 phase of a New Mexico unit with estimated implementation costs
17 exceeding one hundred million dollars (\$100,000,000).

18 D. The interstate stream commission and the New
19 Mexico CAP entity shall report to the legislative finance
20 committee and to any other interim legislative committee that
21 studies water and natural resources. The commission and the
22 New Mexico CAP entity shall consider the legislative committee
23 discussions and any recommendations of the legislative
24 committees and may make changes to the report based on those
25 recommendations. After the report has been presented to the

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1 legislative committees and published, the New Mexico CAP entity
2 may sign the New Mexico unit agreement if it finds the
3 agreement is in the best interest of the state.

4 E. All other interstate stream commission actions
5 set forth in the federal Arizona Water Settlements Act of 2004
6 as actions of the state of New Mexico shall be preceded by the
7 commission's substantive consideration and deliberations of
8 pertinent facts and alternative actions presented in open
9 public meetings. All discussions and deliberations between
10 members of the interstate stream commission pertaining to
11 implementation of the Arizona Water Settlements Act shall be
12 conducted in open public meetings and in full compliance with
13 the state policy stated in Subsection A of Section 10-15-1 NMSA
14 1978.

15 F. As used in this section:

16 (1) "average annual safe yield of usable
17 water" means the new annual amount of usable water projected to
18 be produced every year by the New Mexico unit over a fifty-year
19 planning period;

20 (2) "New Mexico CAP entity" means the entity
21 or entities to be formed or designated by New Mexico to enter
22 into the New Mexico unit agreement for the design, construction
23 or development, operation and maintenance of the New Mexico
24 unit;

25 (3) "New Mexico unit" means the facilities

1 constructed or developed to consumptively use water from the
2 Gila river or San Francisco river and that are identified as a
3 unit of the central Arizona project authorized by Sections
4 301(a) (4) and 304 of the federal Colorado River Basin Project
5 Act of 1968, as amended by Section 212 of the federal Arizona
6 Water Settlements Act, Public Law 108-451, December 10, 2004;
7 and

8 (4) "New Mexico unit agreement" means the
9 agreement between the New Mexico CAP entity and the United
10 States secretary of the interior governing construction,
11 ownership and operation of the New Mexico unit and related
12 terms and conditions that the secretary is required to enter
13 into at the request of the New Mexico CAP entity."