

1 SENATE BILL 542

2 **52ND LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2015**

3 INTRODUCED BY

4 Sander Rue

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10 AN ACT

11 RELATING TO WATER; SPECIFYING THE PROCESS FOR APPROVING  
12 ENCUMBRANCES AND EXPENDITURES FROM THE NEW MEXICO UNIT FUND;  
13 CONDITIONING ACTIONS OF THE INTERSTATE STREAM COMMISSION WHEN  
14 ACTING AS THE STATE OF NEW MEXICO.

15  
16 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF NEW MEXICO:

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

19 "72-14-45. NEW MEXICO UNIT FUND--PURPOSE--  
20 APPROPRIATION.--

21 A. The "New Mexico unit fund" is created in the  
22 state treasury. The fund [~~shall consist~~] consists of money  
23 distributed to the state pursuant to Paragraphs (2)(D)(i) and  
24 (ii) of Section 403(f) of the federal Colorado River Basin  
25 Project Act of 1968, as amended by Section 107(a) of the

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1 federal Arizona Water Settlements Act, Public Law 108-451,  
2 December 10, 2004; other money made available to the fund  
3 pursuant to Section 212 of the federal Arizona Water  
4 Settlements Act, Public Law 108-451, December 10, 2004;  
5 appropriations; grants; and donations or bequests to the fund.

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

11 C. Money in the fund shall be administered by the  
12 interstate stream commission and is appropriated to the  
13 [~~interstate stream~~] commission for expenditure in fiscal year  
14 2012 and subsequent fiscal years to comply with the provisions  
15 of the federal laws cited in Subsection A of this section.  
16 Those provisions of federal law establish that the purpose of  
17 money in the fund is to pay the costs of the New Mexico unit or  
18 other water utilization alternatives to meet water supply  
19 demands in the southwest water planning region of New Mexico,  
20 as determined by the [~~interstate stream~~] commission in  
21 consultation with the southwest New Mexico water study group or  
22 its successor, including costs associated with planning and  
23 environmental compliance activities and environmental  
24 mitigation and restoration. Money in the fund shall not be  
25 expended for any purpose other than the purpose provided in

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1 this section. [~~The interstate stream commission may adopt~~  
2 ~~rules it deems necessary to carry out the purpose of this~~  
3 ~~section.~~]

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

8 (1) the status of the New Mexico unit fund;  
9 (2) the distribution of money from the New  
10 Mexico unit fund to implement the purpose of the fund pursuant  
11 to Subsection C of this section; and

12 (3) proposed uses and levels of funding  
13 projected for the following fiscal year.

14 E. Expenditures from the fund shall be made on  
15 warrants signed by the secretary of finance and administration  
16 pursuant to vouchers signed by the director of the interstate  
17 stream commission upon the delegation of authority by the  
18 interstate stream commission.

19 F. The interstate stream commission shall complete  
20 the following actions prior to taking any action that if  
21 completed would result in a cumulative total of five million  
22 dollars (\$5,000,000) or more expended from the New Mexico unit  
23 fund:

24 (1) recognize any successor organization to  
25 the southwest New Mexico water study group;

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1                   (2) adopt rules establishing minimum  
2 requirements for the consultation with the successor to the  
3 southwest New Mexico water study group pursuant to the federal  
4 Arizona Water Settlements Act of 2004 as a condition precedent  
5 to each encumbrance or associated group of encumbrances  
6 committing money from the New Mexico unit fund, including  
7 conducting all consultations with the successor to the  
8 southwest New Mexico water study group publicly by the  
9 delegated representatives of the commission and the successor  
10 of the southwest New Mexico water study group as follows:

11                   (a) with advance notice and audio- and  
12 video-recording streamed over the internet and made publicly  
13 available during and after the consultation;

14                   (b) with opportunities for public  
15 comment; and

16                   (c) with written minutes summarizing the  
17 proposal, points of discussion and comments, and conclusions;

18                   (3) adopt rules establishing minimum  
19 requirements for the commission to consider and to take action  
20 to approve or disapprove each binding commitment of money from  
21 the New Mexico unit fund in an open public meeting conducted in  
22 accordance with the Open Meetings Act. The rules shall  
23 establish the procedures to receive, consider and respond to  
24 the written record of each consultation, associated public  
25 comments and the recommendations of the secretary of the

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1 commission prior to any action to approve or disapprove each  
2 proposed encumbrance of fifty thousand dollars (\$50,000) or  
3 more from the New Mexico unit fund; and

4 (4) adopt rules establishing commission  
5 procedures to provide substantive and timely public notice of  
6 expenditures of less than fifty thousand dollars (\$50,000) and  
7 the specific purpose, relevance and expected time of  
8 completion.

9 G. In advance of the interstate stream commission's  
10 consideration of each commitment of money of fifty thousand  
11 dollars (\$50,000) or more from the New Mexico unit fund, the  
12 secretary of the commission shall provide to the commission the  
13 secretary's recommendations based on the consultation in  
14 Paragraph (3) of Subsection F of this section, which shall  
15 describe:

16 (1) the specific deliverable product resulting  
17 from the expenditure;

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

20 (3) the secretary's determination that the  
21 expenditure of money will yield results that are achievable,  
22 relevant and timely, determined through the valid and adequate  
23 application of scientific or engineering principles, and will  
24 meet or are required to meet a specified water supply demand in  
25 the southwest water planning region of New Mexico or another

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1 specified water planning region of New Mexico."

2 SECTION 2. A new section of Chapter 72, Article 14 NMSA  
3 1978 is enacted to read:

4 "[NEW MATERIAL] CONDITIONS FOR COMMISSION ACTING AS THE  
5 STATE TO IMPLEMENT THE ARIZONA WATER SETTLEMENTS ACT OF 2004.--

6 A. Interstate stream commission actions set forth  
7 in the federal Arizona Water Settlements Act of 2004 as actions  
8 of the state of New Mexico shall be preceded by the  
9 commission's substantive consideration and deliberations  
10 conducted in full compliance with the state policy stated in  
11 Subsection A of Section 10-15-1 NMSA 1978 of pertinent facts  
12 presented in public hearings and the recommendations of its  
13 hearing officer as approved by its director and secretary:

14 (1) the commission's designation of the New  
15 Mexico CAP entity or recommendation to the United States  
16 secretary of the interior to delegate authorities to the New  
17 Mexico CAP entity shall be preceded by the commission's  
18 approval of a written assessment of the financial,  
19 administrative and technical capability and capacity to fulfill  
20 the New Mexico CAP entity's responsibilities as set forth in a  
21 joint powers agreement between the commission and the New  
22 Mexico CAP entity and the commission's consideration of public  
23 comments and the associated recommendations of the hearing  
24 examiner; and

25 (2) the commission's authorization of the New

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1 Mexico CAP entity to assume responsibility for the design,  
2 construction, operation, maintenance or replacement of all or  
3 any combination of these functions of a New Mexico unit of the  
4 central Arizona project pursuant to the federal Arizona Water  
5 Settlements Act of 2004 shall include the commission's specific  
6 and complete definition of all major components of the New  
7 Mexico unit, the commission's findings with supporting  
8 rationale that it expects the proposed configuration of the New  
9 Mexico unit is technically and financially feasible and will  
10 provide specified volumes of water to meet specified water  
11 supply needs within specified time frames at specified annual  
12 cash flows and maximum costs planned to be paid by the state of  
13 New Mexico, New Mexico water users or taxpayers, and all other  
14 planned sources of funding, and the commission's consideration  
15 of public comments.

16 B. The secretary of the interstate stream  
17 commission shall determine the probability of receiving any  
18 funds up to the maximum of twenty-eight million dollars  
19 (\$28,000,000) pursuant to Section 212(k) of the Arizona Water  
20 Settlements Act of 2004 prior to the commission's assessment of  
21 financial feasibility.

22 C. The interstate stream commission shall obtain  
23 and respond to public comment prior to its approval of the  
24 United States secretary of the interior's contracts with water  
25 users for water from the New Mexico unit and shall encourage

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1 the secretary of the interior to provide for public observation  
2 of the negotiation of these contracts.

3 D. As used in this section:

4 (1) "New Mexico CAP entity" means the entity  
5 or entities to be formed or designated by New Mexico to enter  
6 into the New Mexico unit agreement for the design, construction  
7 or development, operation and maintenance of the New Mexico  
8 unit;

9 (2) "New Mexico unit" means the facilities  
10 constructed or developed to consumptively use water from the  
11 Gila river or San Francisco river and that are identified as a  
12 unit of the central Arizona project authorized by Sections  
13 301(a) (4) and 304 of the federal Colorado River Basin Project  
14 Act of 1968, as amended by Section 212 of the federal Arizona  
15 Water Settlements Act, Public Law 108-451, December 10, 2004;  
16 and

17 (3) "New Mexico unit agreement" means the  
18 agreement between the New Mexico CAP entity and the United  
19 States secretary of the interior governing construction,  
20 ownership and operation of the New Mexico unit and related  
21 terms and conditions that the secretary is required to enter  
22 into at the request of the New Mexico CAP entity."