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Water Trust Board

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Water Trust Board

Background

In 2001, the New Mexico legislature passed the Water Project Finance Act and made the following findings:

- New Mexico is in a desert where water is a scarce resource;
- The economy depends on reasonable and fair allocation of water for all purposes;
- The public welfare depends on efficient use and conservation of water;
- New Mexico must comply with its delivery obligations under interstate compacts; and
- Public confidence and support for water use efficiency and conservation are based on a reasonable balance of investments in water infrastructure and management.

The stated purpose of the Water Project Finance Act is to provide a financing mechanism to promote water use efficiency, water resource conservation and protection, and fair distribution and allocation of water to all users.

The Water Trust Board was created in the Act. Its purpose is to: 1) oversee and administer the Water Trust Fund and Water Project Fund; 2) review and recommend funding for qualifying water projects to the legislature; and 3) pursue additional funding opportunities. The Water Trust Board was also tasked, in collaboration with the Office of the State Engineer and the Interstate Stream Commission, with preparing and implementing a comprehensive State Water Plan.

“The creation of a Water Trust Fund and Board in New Mexico is in no small part due to the early planning and fact finding efforts on [the Ute pipeline] project back in 2000/2001.”

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Membership of the Board

The Board is composed of fifteen members, over half of whom are officials of the State of New Mexico. The state officials or their designees are as follows:

- State Engineer
- Executive Director of the N.M. Finance Authority
- Secretary of Environment
- Secretary of Energy, Minerals and Natural Resources
- Director of the Department of Game and Fish
- Executive Director of the N.M. Municipal League
- Executive Director of the N.M. Association of Counties
- President of the Navajo Nation
- Director of the Department of Agriculture

The six members of the public represent the following stakeholders and are appointed by the governor and confirmed by the state senate:

- the environmental community;
- an irrigation or conservancy district that uses surface water;
- an irrigation or conservancy district that uses groundwater;
- acequia water users;
- soil and water conservation districts; and
- one public member appointed by the Commission on Indian Affairs.

Type of Projects Funded

By statute, the Water Trust Board may fund five types of projects:

1. Storage, conveyance, and delivery of water
2. Implementation of the Endangered Species Act collaborative programs
3. Restoration and management of watersheds
4. Flood prevention
5. Conservation, recycling, treatment, or reuse

Prioritization

The Water Trust Board is charged with prioritizing projects for recommendation to the legislature for financing from the Water Project Fund (WPF) and the Water Trust Fund (WTF). It adopts rules and regulations governing the terms and conditions of grants or loans made from the Water Project Fund. The Board’s prioritization criteria include: projects that have urgent needs, regional projects and projects that share services to achieve operating efficiencies, and projects that have greater contributions of local funding.

Projects with urgent needs are those that address public health threats, Safe Drinking Water Act compliance, dam safety, and wild-fire public safety. The Water Trust Board may accept lesser levels of organization readiness or other standards if the project is determined to be urgent.

The Water Trust Board distributes funds each year based on the relative merits of applications received with a goal of considering geographic balance and balance between rural and urban projects.

General guidelines for distributing funds among the categories of water projects are: water conveyance 60 to 75 percent, conservation 15 to 30 percent, watershed management 5 to 15 percent and Endangered Species Act and flood prevention up to 10 percent each. The exact amount of funding

The Water Trust Board is charged with prioritizing projects for recommendation to the legislature for financing from the Water Project Fund and the Water Trust Fund.

that is distributed to each project category is determined based on the applications received that year as well as available funding levels. Within each category, priority is given to those projects that are ready to put “the shovel in the ground” with all water rights, funding, and design requirements in place at the time of award. However, in some cases funding may be provided for some planning activities for projects that are not yet ready for construction. Matching contributions from federal or local funding sources are required for all projects. These criteria are designed to insure the implementation of a sustainable infrastructure for the water structures of New Mexico.

New Mexico Finance Authority’s Role

The New Mexico Finance Authority (NMFA) makes loans or grants to qualifying entities for qualifying projects authorized by the legislature. The NMFA serves as staff for the WTB, assists in the process for applications and multi-agency technical review, and suggests the financing structure for qualifying water projects.

Legislative History

Water Trust Fund: The 2001 Act established the Water Trust Fund in the state treasury. It is invested by the State investment officer as land grant permanent funds. The WTF is designed to receive appropriations, donations, or money that would be calculated in the annual distribution to the Water Project Fund. The WTF was to be funded at a \$100 million level, but that has not yet occurred. In 2006, the WTF received its first appropriation of \$40 million. In addition, the voters passed a constitutional amendment to make the WTF a dedicated fund. By making the WTF a constitutionally created fund, like the Severance Tax Fund, the fund cannot be raided for other uses in periods of state budgetary crises or shortfalls. Currently the State has four permanent funds.

Water Project Fund: The Water Project Fund is funded through a distribution of not less

The WPF may be used for loans and grants to qualified entities and projects approved by the legislature.

than \$4 million per year from the Water Trust Fund and 10 percent of the severance tax bond proceeds distributed annually. The money in this fund does not revert to the general fund at the end of any given fiscal year, but guidelines establish a three-year expenditure term.

In 2005, the Act was amended to specify that 10 percent of the funds in the Water Project Fund shall be dedicated to the State Engineer for water adjudications and 20 percent of the money dedicated for water rights adjudications shall be allocated to the Administrative Office of the Courts to pay for the courts’ costs of these adjudications.

The WPF may be used for loans and grants to qualified entities and projects approved by the legislature. The Act authorizes the N.M. Finance Authority to issue revenue bonds payable from the proceeds of loan repayments into the WPF if the NMFA deems it necessary to replenish the principal balance of the fund.

In 2007, the process for planning, funding, and monitoring water and wastewater infrastructure in New Mexico was scrutinized. This review led to new policies from the governor’s office, which were set forth in an Executive Order dated November 2, 2007. The Executive Order created a Water Cabinet consisting of the heads of eight state government departments, including the Office of the State Engineer/Interstate Stream Commission and the Office of the Governor. Estevan López, Director of the Interstate Stream Commission, was appointed as the first chair. In 2013, Scott Verhines, State Engineer, served as the chair.

The Water Cabinet is responsible for aligning the State Water Plan with other state activities and promoting interagency coordination on water and wastewater issues. A new division, the Water and Wastewater

Entities applying must submit information about their organizational structure, rates, and other water system information, in addition to the project specific information and budget.

Infrastructure Development Division (WWIDD) was created within the N.M. Environment Department. The Drinking Water Bureau and Construction Bureau of NMED are located in the new division. This new division was created to lead an interagency effort to bring consistency and coordination to the process of funding water and wastewater infrastructure. Another goal of the WWIDD was to create a uniform application for communities seeking state or federal funding. The Water Trust Board adopted new policies and criteria implementing these new policies on November 7, 2007, and began using the new Uniform Funding Application in 2008.

Application Process

The Water Trust Board funding process requires completion of a Uniform Funding Application as well as completion of a specific WTB application for the appropriate project category. Both of these are submitted online.

Entities applying must submit information about their organizational structure, rates, and other water system information, in addition to the project-specific information and budget. The Uniform Funding Application requires information on the population served by project, regional partners, whether the applicant has an asset management plan, whether the applicant has secured water rights, as well as information on rate ordinances and water and wastewater rates.

The WTB application also requires current financial information including lists of all debt, the three most recent fiscal-year audit reports, and sources of local funding. The application requires information on secured water rights, metering and measuring, billing policies, rate structures, and water conservation for water conveyance and storage

projects. Other specific information is required for projects in other categories. For example, if projects in the watershed category are claiming to provide improvements to water yield, the methods for measuring water yield must be specified. All applications require a resolution of the governing body authorizing the submission of an application to the Water Trust Board.

In 2012, the WTB Chair appointed a policy task force to find ways to streamline the application process, to provide clarity for applicants and the legislature, to recognize the value of the planning steps, and to better utilize available fiscal resources. The Board accepted the recommendations of the task force including making the application a two-step process. In the fall of each year, the application includes basic applicant and project information, which is used to create a list of eligible projects for the legislature's consideration in the following January. The spring application contains more project information and verification of compliance with applicable laws. The recommendations are being implanted in the 2014 funding cycle.

Appropriations and Funding

In 2002, the State appropriated \$10 million from the capital projects fund to the Water Project Fund for expenditure in fiscal years 2002 through 2007. In 2007, the State also appropriated another \$7.5 million from the Capital Projects Fund for authorized water projects for expenditure in fiscal years 2002 through 2007. In 2003, the legislature passed HB 882 which dedicated 10 percent of the Severance Tax Bond proceeds to the Water Project Fund.

The Board produces an annual report to the legislature, no later than the first of October in each calendar year, outlining the total expenditures from the WPF, their purposes, and an analysis of the accomplishments of the expenditures.

The state funding through the Water Project Fund has continued to leverage more than \$50 million of local and or federal funding. In addition to the 10 percent severance tax

bond distribution, the WPF receives an annual distribution from the Water Trust Fund as prescribed by law. NMSA 1978, § 72-4A-8B. The Water Trust Fund was endowed with \$40 million in 2006. A constitutional amendment to “Article 16 - Irrigation and Water Rights” was approved on November 7, 2011, to make the Water Trust Fund a permanent fund.

Since its inception the WTB has awarded approximately \$322 million for projects statewide:

Year	Recommended Award Amounts
2002.....	\$ 7.5 million
2003.....	\$ 10 million
2004.....	\$ 12.5 million
2005.....	\$ 17.7 million
2006.....	\$ 23.4 million
2007.....	\$ 39 million
2008.....	\$ 32.6 million
2009.....	\$ 38.5 million
2010.....	\$ 31.4 million
2011.....	\$ 27.9 million
2012	\$ 35 million
2013	\$ 26.9 million
2014	\$ 33 million

Estimates for water project needs in the next several decades range between \$2 and \$5 billion. The WTB conducts a year-long application cycle and meets mid-December to determine which projects will move forward for legislative authorization.

By Joanne Hilton, Hydrologist (2009)

Latest Update by
Darcy S. Bushnell, Esq. (2014)

2014 Water Project Fund Awards As Approved by Water Trust Board June 9, 2014

App ID#	Entity	County	Project	Recommended WTB Funding	Recommended Scope Of Work
Endangered Species Act Collaborative Program					
542	Office of the State Engineer/ Interstate Stream Commission	Bernalillo, Socorro, Valencia, Sandoval	Middle Rio Grande ESA Habitat Restoration and Captive Propagation Facility Improvements	\$450,000	Plan, Design, Construct
Flood Prevention Projects					
624	Grants, City of	Cibola	Second Street Flood Control Improvements	\$700,000	Construction
587	Middle Rio Grande Conservation Dist.	Socorro	San Acacia Levee Project-Phase II	\$1,500,000	Construction
542	Office of the State Engineer/ Interstate Stream Commission	Bernalillo, Socorro, Valencia, Sandoval	Middle Rio Grande ESA Habitat Restoration and Captive Propagation Facility Improvements	\$450,000	Plan, Design, Construct
Watershed Restoration And Management Projects					
612	Claunch-Pinto SWCD	Bernalillo, Santa Fe, Tarrant	Estancia Basin Watershed Health, Restoration and Monitoring Project	\$600,000	Plan, Design, Construct
578	Canadian River SWCD	Quay	Riparian Restoration	\$600,000	Plan, Design, Construct
588	Ute Creek SWCD	Harding	Riparian Restoration	\$400,000	Plan, Design, Construct
618	Claunch-Pinto SWCD	Bernalillo, Rio Arriba, Santa Fe, Valencia	Riparian Restoration Project through the Greater Rio Grande Watershed Alliance	\$600,000	Plan, Design, Construct
Water Conservation Or Recycling, Treatment, Or Reuse Projects					
582	Clovis, City of	Curry	Reuse Pipeline Construction	\$3,200,000	Construction
548	Hobbs, City of	Lea	Effluent Reuse Project Phase II	\$3,200,000	Construction
546	Los Alamos County	Los Alamos	Non-Potable Water System Priority 1 Phase 2 Projects Construction	\$1,406,000	Construction
572	Deming, City of	Luna	Effluent Reuse Expansion Project	\$800,356	Design, Construction
646	Chama, Village of	Rio Arriba	Chama Water Treatment Plant Improvements	\$980,000	Design, Construction
Water Storage, Conveyance Or Delivery Projects					
566	ENMWUA	Curry, Quay, Roosevelt	Eastern NM Rural Water System	\$3,200,000	Plan, Design, Construct
1	Las Vegas, City of	San Miguel	Bradner Enlargement	\$4,000,000	Construction
554	El Creston MDWCA	San Miguel	Distribution Lines Design/Construct	\$ 701,895	Plan, Design, Construct
540	Alto Lakes WSD	Lincoln	Replacement of Distribution Lines	\$1,502,000	Design and Construct
561	Ruidoso, Village of	Lincoln	Grindstone Reservoir Dam Liner	\$3,157,600	Design and Construct
543	Cuatro Villas MDWUA	Santa Fe	Regional Water System Phase IV	\$1,156,000	Plan, Design, Construct
581	Ancones MDWCA	Rio Arriba	Ancones Water System Phase I	\$ 174,074	Plan and Design
571	Eldorado Area Water & Sanitation Dist.	Santa Fe	Regional Water Supply Interconnection	\$ 399,200	Plan, Design, Construct
623	Deming, City of	Luna	Water Distribution Improvements-Pear Street Revitalization Improvements Phase III	\$1,017,705	Construction
592	Carlsbad, City of	Eddy	Double Eagle Water Wells	\$1,500,000	Construction
566	ENMWUA	Curry, Quay, Roosevelt	Eastern NM Rural Water System	\$3,200,000	Plan, Design, Construct
1	Las Vegas, City of	San Miguel	Bradner Enlargement	\$4,000,000	Construction
554	El Creston MDWCA	San Miguel	Distribution Lines Design/Construct	\$701,895	Plan, Design, Construct
540	Alto Lakes WSD	Lincoln	Replacement of Distribution Lines	\$1,502,000	Design and Construct
561	Ruidoso, Village of	Lincoln	Grindstone Reservoir Dam Liner	\$3,157,600	Design and Construct
543	Cuatro Villas MDWUA	Santa Fe	Regional Water System Phase IV	\$1,156,000	Plan, Design, Construct
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571	Eldorado Area Water & Sanitation Dist.	Santa Fe	Regional Water Supply Interconnection	\$ 399,200	Plan, Design, Construct
623	Deming, City of	Luna	Water Distribution Improvements-Pear Street Revitalization Improvements Phase III	\$1,017,705	Construction
592	Carlsbad, City of	Eddy	Double Eagle Water Wells	\$1,500,000	Construction
642	Tijeras, Village of	Bernalillo	Village of Tijeras Water System	\$603,500	Construction

Sources and Contributors

Statutes

NMSA 1978,

§§ 72-1-2.2 through 2.5,
Pecos River Basin Compliance
with Pecos River Compact.

§§ 72-4A-1 through 10,
Water Project Finance Act.

Safe Drinking Water Act of 1974, Pub. L.
93-522, 88 Stat. 1660, as amended.

Other

N.M. Environment Department,
Constructions Bureau, <http://www.nmenv.state.nm.us/cpb/cbptop.html>

N.M. Finance Authority,
www.nmfa.net/funding/wtb

Water Project Fund, <http://www.nmfa.net/financing/water-programs/water-project-fund/>

N.M. Legislature Interim Water and Natural
Resources Committee, *Report* (2004).

N.M. Office of the State Engineer/Interstate
Stream Commission,

*Reports to the Interim Legislative Water
and Natural Resources Committee* (2003–
2013), http://www.nmlegis.gov/lcs/committee_detail.aspx?CommitteeCode=WNR

State Water Plan (2003), http://www.ose.state.nm.us/publications_state_water_plans.html

N.M. Water Trust Board, Water Project
Fund, Project Management Policies, Nov.
2007.

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Jana Amacher, N.M. Finance Authority

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