Water Trust Board

Background

In 2001, the Legislature passed the Water Project Finance Act. The Legislature 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.”

Water Matters!, Utton Transboundary Resources Center (2007 edition)
Membership of the Board

The Board is composed of fifteen members, over half of whom are State officials. The official members are listed below (current as of November 2009):

**Officials**
- Secretary Katherine Miller  
  Dept. of Finance and Administration
- John R. D’Antonio, Jr., P.E.  
  New Mexico State Engineer
- William F. Fulginiti  
  New Mexico Municipal League
- Tod Stevenson  
  Department of Game and Fish
- Paul Gutierrez  
  NM Association of Counties
- William C. Sisneros  
  New Mexico Finance Authority
- Secretary Joanna Prukop  
  Energy, Minerals, & Natural Resources
- Dr. Joe Shirley, Jr.  
  Navajo Nation
- I. Miley Gonzalez  
  Department of Agriculture
- Secretary Ron Curry  
  Department of Environment

Six members of the public represent various stakeholder groups and are appointed by the Governor and confirmed by the Senate. These representatives are listed below (current as of November 2009):

**Stakeholder Representatives**
- Trudy Healy  
  Representative, Irrigation or Conservancy  
  District Surface Water
- Professor Denise Fort  
  Representative, Environmental  
  Community
- Preston Stone  
  Representative, Soil & Water Conservation Districts
- S. Thomas Overstreet  
  Representative, Irrigation or Conservancy  
  District Ground Water
- Richard Luarkie  
  NM Indian Affairs Commission
- Joseph David Ortiz  
  Representative, Acequia Water Users

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; and
5. Conservation, recycling, treatment or reuse.

The Legislature stated that the purpose of the 2001 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.
Prioritization

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. 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 wildfire 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 60-75%, conservation 15-30%, watershed management 5-15%, and endangered species act and flood prevention up to 10% each. The exact amount of funding 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 which 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.

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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 anticipated 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 structured to consist of the distribution from the Water Trust Fund (a minimum of $4 million per year) and 10% 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% of the funds in the Water Project Fund shall be dedicated to the State Engineer for water adjudications and 20% 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.

Estimates for water projects in the next several decades range between $2 and $5 billion.

The WPF may be used for loans and grants to qualified entities and projects approved by the Legislature. The Act authorizes the New Mexico 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, leading 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 Governor’s Office. Estevan López, Director of the Interstate Stream Commission was appointed to be 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 Infrastructure Development Division (WWIDD) was created within the New Mexico 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 and to create a uniform application to streamline the process 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 application process requires completion of a Uniform Funding Application as well completion of a specific Water Trust Board application for the appropriate project category. Both applications 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 or not the applicant has an asset management plan, whether or not the applicant has secured water rights, and information on rate ordinances and water and wastewater rates. The current Water Trust Board application requires current financial information including lists of all debt, the three most recent fiscal year audit reports, and sources of local funding. The Water Trust Board application also requires information on secured water rights, on 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.
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. It also appropriated another $7.5 million from the capital projects fund for authorized water projects for expenditure in fiscal years 2002 through 2007. In 2004, an amendment to the Act created the Acequia Project Fund in the State treasury, which the NMFA will administer. 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% severance tax bond distribution the WPF has received the $4 million Water Trust Fund in recent years. Since its inception the WTB has awarded approximately $181 million for projects statewide:

<table>
<thead>
<tr>
<th>Year</th>
<th>Amount Awarded</th>
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<tbody>
<tr>
<td>2002</td>
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<tr>
<td>2003</td>
<td>$10 million</td>
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<td>2004</td>
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<td>2008</td>
<td>$32.6 million</td>
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<td>2009</td>
<td>$38.5 million</td>
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As of this date (November 2009) the Water Trust Board awaits notification from the State Board of Finance on the estimated severance tax bond distribution. Estimates for water project needs in the next several decades range between $2 and $5 billion.

By Brigette Buynak (Updated by Joanne Hilton with current information from NMFA, November 2009)
Sources Consulted and Other Contributors

N.M.S.A. 1978 §§ 72-1-2.2 - 2.5. Pecos River basin compliance with Pecos River Compact.


NEW MEXICO FINANCE AUTHORITY WEB SITE, available at www.nmfa.net/funding/wtb.

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NEW MEXICO STATE WATER PLAN (2003).

NEW MEXICO WATER TRUST BOARD, WATER PROJECT FUND, PROJECT MANAGEMENT POLICIES, November 2007.

Bill Richardson, New Mexico Governor, Executive Order, November 2, 2007.

Stefanie Beninato, Ph.D., J.D.