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SENATE BILL 455

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

INTRODUCED BY

Joseph Cervantes

AN ACT

RELATING TO WATER; REQUIRING A REPORT TO THE LEGISLATIVE
FINANCE COMMITTEE ON THE FINANCIAL VIABILITY AND PARTICULARS OF
THE NEW MEXICO UNIT BEFORE EXECUTION OF THE NEW MEXICO UNIT
AGREEMENT WITH THE SECRETARY OF THE UNITED STATES DEPARTMENT OF
THE INTERIOR.

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

SECTION 1. TEMPORARY PROVISION--NEW MEXICO UNIT
AGREEMENT--REPORT TO LEGISLATURE.--

A. The New Mexico CAP entity shall not enter into a
contract or other agreement with the secretary of the United
States department of the interior, or the secretary's duly
authorized representative, to construct or develop on the Gila
river a New Mexico unit of the central Arizona project until
the interstate stream commission has presented a written report

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1 signed by the state engineer to the legislative finance
2 committee and the committee has notified the New Mexico CAP
3 entity that the committee finds that the report adequately
4 addresses the requirements of Subsection B of this section.

5 B. The report required by Subsection A of this
6 section shall be submitted to the legislative finance committee
7 by November 1, 2015 and shall contain the following:

8 (1) a statement of the need for and purpose of
9 the New Mexico unit;

10 (2) the proposed scope of design, locations
11 and total estimated costs of designing, constructing, operating
12 and maintaining the New Mexico unit;

13 (3) an accurate calculation using the best
14 available engineering, hydrologic and geologic information of
15 the average annual safe yield of water produced by the New
16 Mexico unit, based on a fifty-year planning period, the cost
17 per acre-foot of the water produced, and the estimated number
18 of years when the project will produce little or no water;

19 (4) the identity of proposed end-users, the
20 projected amount of water each end-user will reliably receive
21 annually and the share of proposed construction and annual
22 costs each end-user will be required to pay;

23 (5) the identity and composition of the
24 proposed New Mexico CAP entity, a clear statement of the New
25 Mexico CAP entity's duties, legal responsibilities and

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1 liabilities and a demonstration of the entity's technical
2 capacity to execute these duties and responsibilities based
3 upon factors such as having a certified project manager,
4 ownership accountability, staffing and organization, revenue
5 sufficiency, creditworthiness and fiscal management;

6 (6) the New Mexico CAP entity's plan for
7 securing the financing necessary to complete the New Mexico
8 unit, identifying all funding sources to be relied upon. This
9 plan shall utilize the most recent yield and project cost
10 calculations, consistent with requirements of the federal
11 Arizona Water Settlements Act, Public Law 108-451, December 10,
12 2004, and should include, if applicable, financing methods for
13 proposals to build the New Mexico unit in phases;

14 (7) a demonstration of the financial
15 capability of the New Mexico CAP entity to pay the costs to
16 design, build, operate and maintain the New Mexico unit, based
17 upon standard financial metrics, such as the entity's bond
18 rating or credit rating and debt service coverage ratio. The
19 demonstration should include a detailed appraisal of the legal
20 and financial rights, responsibilities and liabilities that
21 will be incurred by the entity and each of its members,
22 including revenue generation through any levy authority;

23 (8) a demonstration of the affordability of
24 the water supplied by the New Mexico unit to end water users,
25 including an analysis of projected water rate increases, rate

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1 comparisons to other water supply alternatives, including non-
2 diversion proposals, and socioeconomic indicators for end-
3 users;

4 (9) a statement of the role that the
5 interstate stream commission will play, if any, in the design,
6 construction, operation, financing and environmental analysis
7 activities and oversight of the New Mexico unit and associated
8 costs to carry out these functions; and

9 (10) a demonstration of adequate public
10 participation in the federal Arizona Water Settlements Act
11 planning process, including New Mexico unit engineering design,
12 National-Environmental-Protection-Act-related studies and
13 decisions relevant to signing the New Mexico unit agreement.

14 C. For the purposes of this section:

15 (1) "affordability" means the ability of water
16 users to bear the costs of water supplied by the New Mexico
17 unit without undue hardship;

18 (2) "average annual safe yield" means the
19 annual mean of the minimum amount of water that can be produced
20 by the New Mexico unit over the fifty-year planning period of
21 the project;

22 (3) "financial capability" means the ability
23 of the New Mexico CAP entity to pay the construction and annual
24 costs of the New Mexico unit, using standard analytical
25 methods, such as the United States bureau of reclamation's

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1 Title XVI financial capability determination process;

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

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

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