

# ARTICLE 4A

## Water Project Finance

### 72-4A-1. Short title.

Chapter 72, Article 4A NMSA 1978 may be cited as the "Water Project Finance Act".

**History:** Laws 2001, ch. 164, § 1; 2011, ch. 64, § 1.

#### ANNOTATIONS

The 2011 amendment, effective June 17, 2011, changed the statutory reference.

### 72-4A-2. Findings and purpose.

A. The legislature finds that:

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

B. The purpose of the Water Project Finance Act is to provide for water use efficiency, resource conservation and protection and fair distribution and allocation of New Mexico's scarce water resources for beneficial purposes of use within the state.

**History:** Laws 2001, ch. 164, § 2; 2003, ch. 139, § 1.

#### ANNOTATIONS

The 2003 amendment, effective April 3, 2003, in Subsection B substituted "New Mexico's" for "the" following "allocation of" near the end, and substituted "water resources for beneficial purposes of use within the state" for "resource to all users" at the end.

### 72-4A-3. Definitions.

As used in the Water Project Finance Act:

- A. "authority" means the New Mexico finance authority;
- B. "board" means the water trust board;

C. "political subdivision" means a municipality, county, land grant-merced controlled and governed pursuant to Sections 49-1-1 through 49-1-18 or 49-4-1 through 49-4-21 NMSA 1978, regional or local public water utility authority created by statute, irrigation district, conservancy district, special district, acequia, soil and water conservation district, water and sanitation district or an association organized and existing pursuant to the Sanitary Projects Act [Chapter 3, Article 29 NMSA 1978];

D. "qualifying water project" means a water project recommended by the board for funding by the legislature; and

E. "qualifying entity" means a state agency, a political subdivision of the state, an intercommunity water or natural gas supply association or corporation organized under Chapter 3, Article 28 NMSA 1978, a recognized Indian nation, tribe or pueblo, the boundaries of which are located wholly or partially in New Mexico or an association of such entities created pursuant to the Joint Powers Agreements Act [11-1-1 to 11-1-7 NMSA 1978] or other authorizing legislation for the exercise of their common powers.

**History:** Laws 2001, ch. 164, § 3; 2003, ch. 139, § 2; 2011, ch. 64, § 2.

### ANNOTATIONS

**The 2011 amendment**, effective June 17, 2011, broadened the scope of the act by designating land grant-merced and regional and local water utility authorities as political subdivisions, and by designating intercommunity water and gas supply associations and corporations and associations created pursuant to the Joint Powers Act as qualified entities.

**The 2003 amendment**, effective April 3, 2003, added "water and sanitation district or an association organized and existing pursuant to the Sanitary Projects Act" at the end of Subsection C; and added Subsection E.

### 72-4A-4. Water trust board created.

A. The "water trust board" is created. The board is composed of the following sixteen members:

- (1) the state engineer or the state engineer's designee;
- (2) the secretary of finance and administration or the secretary's designee;
- (3) the executive director of the New Mexico finance authority or the executive director's designee;
- (4) the secretary of environment or the secretary's designee;
- (5) the secretary of energy, minerals and natural resources or the secretary's designee;
- (6) the director of the department of game and fish or the director's designee;
- (7) the director of the New Mexico department of agriculture or the director's designee;
- (8) the executive director of the New Mexico municipal league or the executive director's designee;
- (9) the executive director of the New Mexico association of counties or the executive director's designee;
- (10) five public members appointed by the governor and confirmed by the senate and who represent:
  - (a) the environmental community;
  - (b) an irrigation or conservancy district that uses surface water;
  - (c) an irrigation or conservancy district that uses ground water;
  - (d) acequia water users; and

- (e) soil and water conservation districts;
- (11) one public member appointed by the Indian affairs commission; and
- (12) the president of the Navajo Nation or the president's designee.

B. The chair of the board shall be elected by a quorum of the board members. The board shall meet at the call of the chair or whenever three members submit a request in writing to the chair, but not less often than once each calendar year. A majority of members constitutes a quorum for the transaction of business. The affirmative vote of at least a majority of a quorum present shall be necessary for an action to be taken by the board.

C. Each public member of the board appointed by the governor shall be appointed to a four-year term. To provide for staggered terms, two of the initially governor-appointed public members shall be appointed for terms of two years and three members for terms of four years. Thereafter, all governor-appointed members shall be appointed for four-year terms. Vacancies shall be filled by appointment by the governor for the remainder of the unexpired term.

D. Public members of the board shall be reimbursed for attending meetings of the board as provided for nonsalaried public officers in the Per Diem and Mileage Act [10-8-1 to 10-8-8 NMSA 1978] and shall receive no other compensation, perquisite or allowance.

E. Public members of the board are appointed public officials of the state while carrying out their duties and activities under the Water Project Finance Act.

**History:** Laws 2001, ch. 164, § 4; 2007, ch. 7, § 1.

#### ANNOTATIONS

**The 2007 amendment**, effective June 15, 2007, changed the number of members from fifteen to sixteen in Subsection A; deleted the former provision in Paragraph (1) of Subsection A that the state engineer is the chairman of the board; added the secretary of finance and administration or the secretary's designee as a member in Paragraph (2) of Subsection A; added the provision in Paragraph (3) of Subsection A that the designee of the executive director of the New Mexico finance authority may be a member; and provided in Subsection B that the chair of the board shall be elected by a quorum of the board members.

#### 72-4A-5. Board; duties.

The board shall:

A. adopt rules governing terms and conditions of grants or loans recommended by the board for appropriation by the legislature from the water project fund, giving priority to projects that have been identified by the board as being urgent to address public health and safety issues; that have matching contributions from federal or local funding sources available; and that have obtained all requisite state and federal permits and authorizations necessary to initiate the project;

B. authorize qualifying water projects to the authority that are for:

- (1) storage, conveyance or delivery of water to end users;
- (2) implementation of federal Endangered Species Act of 1973 collaborative programs;
- (3) wastewater conveyance and treatment;
- (4) restoration and management of watersheds;
- (5) flood prevention; or
- (6) water conservation or recycling, treatment or reuse of water as provided by law; and

C. evaluate projects, including their environmental impacts, and recommend projects to the interstate stream commission pursuant to the provisions of Section 72-14-45 NMSA 1978.

**History:** Laws 2001, ch. 164, § 5; 2003, ch. 139, § 3; 2003, ch. 365, § 1; 2011, ch. 64, § 3; 2021, ch. 64, § 2; 2024, ch. 9, § 1.

## ANNOTATIONS

**Cross references.** — For the federal Endangered Species Act of 1973, see 16 U.S.C.S. § 1531 et seq.

**The 2024 amendment,** effective May 15, 2024, revised the duties of the water trust board; in Subsection A, after "identified" added "by the board", and after "being urgent to" deleted "meet the needs of a regional water planning area that has a completed regional water plan that has been accepted by the interstate stream commission" and added "address public health and safety issues"; in Subsection B, added a new Paragraph B(3) and redesignated former Paragraphs B(3) through B(5) as Paragraphs B(4) through B(6), respectively; deleted former Subsection C, which required the board to create a drought strike team to coordinate responses to emergency water shortages caused by drought conditions; and redesignated former Subsection D as Subsection C.

**The 2021 amendment,** effective June 18, 2021, added Subsection D.

**The 2011 amendment,** effective June 17, 2011, made stylistic changes.

**The 2003 amendment,** effective June 20, 2003, added Paragraph B(5) and Subsection C.

### 72-4A-5.1. Implementation of state water plan.

A. The board, in conformance with the state water plan and pursuant to the provisions of the Water Project Finance Act, shall prioritize the planning and financing of water projects required to implement the plan.

B. The board shall identify opportunities to leverage federal and other funding.

C. The board shall utilize the resources of its member agencies and entities whenever possible in implementing the state water plan.

**History:** Laws 2003, ch. 131, § 2 and Laws 2003, ch. 137, § 2.

## ANNOTATIONS

**Duplicate laws.** — Laws 2003, ch. 131, § 2 and Laws 2003, ch. 137, § 2, both effective June 20, 2003, enacted identical new sections.

### 72-4A-6. Authority; duties.

The authority shall:

A. provide staff support for the board;

B. develop application procedures and forms for qualifying entities to apply for grants and loans from the water project fund; and

C. make loans or grants to qualifying entities for qualifying water projects authorized by the legislature; provided that the service area for the project is wholly within the boundaries of the state or the project is an interstate project that directly benefits New Mexico.

**History:** Laws 2001, ch. 164, § 6; 2003, ch. 139, § 4; 2006, ch. 42, § 1.

## ANNOTATIONS

**The 2006 amendment**, effective May 17, 2006, provided in Subsection C that the authority may make loans or grants for interstate projects that directly benefit New Mexico.

**The 2003 amendment**, effective April 3, 2003, substituted "qualifying entities" for "political subdivisions" once in Subsection B and once in Subsection C; and substituted "provided that the service area for the project is wholly within the boundaries of the state" for "authorized by the legislature" at the end of Subsection C.

### 72-4A-7. Conditions for grants and loans.

A. Grants and loans shall be made only to qualifying entities that:

- (1) agree to operate and maintain a water project so that it will function properly over the structural and material design life;
- (2) require the contractor of a construction project to post a performance and payment bond in accordance with the requirements of Section 13-4-18 NMSA 1978;
- (3) provide written assurance signed by an attorney or provide a title insurance policy that the qualifying entity has proper title, easements and rights of way to the property upon or through which a water project proposed for funding is to be constructed or extended;
- (4) meet the requirements of the financial capability set by the authority to ensure sufficient revenues to operate and maintain a water project for its useful life and to repay the loan;
- (5) agree to properly maintain financial records in accordance with all applicable laws; and
- (6) agree to pay costs of originating grants and loans as determined by rules adopted by the authority.

B. Plans and specifications for a water project shall be approved by the authority after review and upon the recommendation of the state engineer and the department of environment before grant or loan disbursements to pay for construction costs are made to a qualifying entity. Plans and specifications for a water project shall incorporate available technologies and operational design for water use efficiency.

C. Grants and loans shall be made only for eligible items, which include:

- (1) to match federal and local cost shares;
- (2) engineering feasibility reports;
- (3) contracted engineering design;
- (4) inspection of construction;
- (5) special engineering services;
- (6) environmental or archaeological surveys;
- (7) construction;
- (8) land acquisition;
- (9) easements and rights of way; and

(10) legal costs.

**History:** [Laws 2001, ch. 164, § 7](#); [2003, ch. 138, § 5](#); [2003, ch. 139, § 5](#); [2003, ch. 365, § 2](#); [2011, ch. 64, § 4](#); [2024, ch. 9, § 2](#).

#### ANNOTATIONS

**The 2024 amendment**, effective May 15, 2024, revised the conditions for grants and loans to qualifying entities for qualifying water projects; deleted "board" and added "authority" throughout the section; in Subsection A, Paragraph A(1), after "structural and material design life" deleted "which shall not be less than twenty years", in Paragraph A(5), after "financial records" deleted "and to conduct an audit of a project's financial records" and added "in accordance with all applicable laws; and", deleted former Paragraph A(7), which provided "except in the case of an emergency, submit a water conservation plan with its application if required to do so and one is not on file with the state engineer, pursuant to Section [72-14-3.2](#) NMSA 1978"; and in Subsection C, Paragraph C(10), after "legal costs" deleted "and fiscal agent fees".

**The 2011 amendment**, effective June 17, 2011, made stylistic changes.

**The 2003 amendment**, effective June 20, 2003, added the second sentence in Subsection B.

### 72-4A-8. Water trust fund; created; investment; distribution.

A. The "water trust fund" is created in the state treasury. The fund shall consist of money appropriated, donated or otherwise accrued to the fund. Money in the fund shall be invested by the state investment officer as land grant permanent funds are invested pursuant to Chapter 6, Article 8 NMSA 1978. Earnings from investment of the fund shall be credited to the fund. Money in the fund shall not be expended for any purpose, but an annual distribution shall be made to the water project fund in accordance with Subsection B of this section.

B. On July 1 of fiscal year 2003 and on July 1 of each fiscal year thereafter, an annual distribution shall be made from the water trust fund to the water project fund in the amount of four million dollars (\$4,000,000) until that amount is less than an amount equal to four and seven-tenths percent of the average of the year-end market values of the water trust fund for the immediately preceding five calendar years. Thereafter, the amount of the annual distribution shall be four and seven-tenths percent of the average of the year-end market values of the water trust fund for the immediately preceding five calendar years.

**History:** [Laws 2001, ch. 164, § 8](#).

#### ANNOTATIONS

**Emergency clauses.** — [Laws 2001, ch. 164, § 11](#) contained an emergency clause and was approved April 3, 2001.

**Cross references.** — For the water trust fund, see [N.M. const. art. XVI, § 6](#).

### 72-4A-9. Water project fund; created; purpose.

A. The "water project fund" is created in the authority and shall consist of distributions made to the fund from the water trust fund and payments of principal of and interest on loans for approved water projects. The fund shall also consist of any other money appropriated, distributed or otherwise allocated to the fund for the purpose of supporting water projects pursuant to provisions of the Water Project Finance Act. The fund shall be administered by the authority. Income from investment of the water project fund shall be credited to the fund. Balances in the fund at the end of any fiscal year shall not revert to the general fund. The water project fund may consist of such subaccounts as the authority deems necessary to carry out the purposes of the fund. The authority may establish procedures and adopt rules as required to administer

the fund and to recover from the fund costs of administering the fund and originating grants and loans. Ten percent of all water project funds shall be dedicated to the state engineer for water rights adjudications, and twenty percent of the money dedicated for water rights adjudications shall be allocated to the administrative office of the courts for the courts' costs associated with water rights adjudications; provided that from July 1, 2024 through June 30, 2029, the lesser of four million dollars (\$4,000,000) or eight percent of all water project funds shall be dedicated to the state engineer for water rights adjudications and two percent of all water project funds shall be dedicated to the administrative office of the courts for the courts' costs associated with water rights adjudications.

B. Money in the water project fund may be used by the authority to:

- (1) make loans or grants to qualified entities for projects and water rights adjudications; provided that projects shall require legislative approval; and
- (2) hire contractors to provide financial and administrative capacity development and direct technical assistance on water projects.

C. The authority is authorized to issue revenue bonds payable from the proceeds of loan repayments made into the water project fund upon a determination by the authority that issuance of the bonds is necessary to replenish the principal balance of the fund. The net proceeds from the sale of the bonds shall be deposited in the water project fund. The bonds shall be authorized and issued by the authority in accordance with the provisions of the New Mexico Finance Authority Act [Chapter 6, Article 21 NMSA 1978].

**History:** [Laws 2001, ch. 164, § 9](#); [2005, ch. 293, § 1](#); [2024, ch. 9, § 3](#).

## ANNOTATIONS

**Cross references.** — For the New Mexico finance authority, see [6-21-4 NMSA 1978](#).

For the water trust fund and water project fund, see [N.M. const. art. XVI, § 6](#).

**The 2024 amendment**, effective May 15, 2024, changed the amount of water project funds that must be distributed to the state engineer for water rights adjudications and to the administrative office of the courts for the courts' costs associated with water rights adjudications for the next five years; added "provided that from July 1, 2024 through June 30, 2029, the lesser of four million dollars (\$4,000,000) or eight percent of all water project funds shall be dedicated to the state engineer for water rights adjudications and two percent of all water project funds shall be dedicated to the administrative office of the courts for the courts' costs associated with water rights adjudications"; and in Subsection B, in the introductory clause, after "may be used" added "by the authority", in Paragraph B(1), after "qualified entities for" deleted "any project approved by the legislature and for" and added "projects and", and added "provided that projects shall require legislative approval; and", and added Paragraph B(2).

**The 2005 amendment**, effective June 17, 2005, provided in Subsection A that ten percent of all water project funds shall be dedicated to the state engineer for water rights adjudications and twenty percent of the money dedicated for water rights adjudications shall be allocated to the administrative office of the courts for the courts' costs associated with those adjudications and provided in Subsection B that money in the fund for water rights adjudications.

**Intent to fund two purposes.** — The 2005 amendment to Section [72-4A-9 NMSA 1978](#) makes plain that the legislature funded not only water projects, but also water rights adjudications and the legislature did not have to amend Section [7-27-10.1 NMSA 1978](#) for the directive that ten percent of all funds in the water project fund be dedicated to water rights adjudications to be effective. 2005 Op. Att'y Gen. No. [05-04](#).

### 72-4A-9.1. Acequia project fund.

The "acequia project fund" is created in the state treasury. The fund shall consist of money appropriated, donated or otherwise accrued to the fund. The fund shall be administered by the authority. Income from investment of money in the acequia project fund shall be credited to the fund. Balances in the fund at the end of any fiscal year shall not revert to the general fund. The acequia project fund may consist of such subaccounts as the authority deems necessary to carry out

the purposes of the fund. The authority may establish procedures and adopt rules as required to administer the fund and to recover from the fund costs of administering the fund. Money in the acequia project fund may be used to make grants to acequias for any project approved by the legislature.

**History:** [Laws 2004, ch. 85, § 1.](#)

#### ANNOTATIONS

**Effective dates.** — Laws 2004, ch. 85 contained no effective date provision, but pursuant to [N.M. Const., art. IV, § 23](#), was effective May 19, 2004, 90 days after adjournment of the legislature.

### 72-4A-10. Report to legislature.

The board shall report to the legislature no later than December 1 of each calendar year the total expenditures from the water project fund, their purposes, an analysis of the accomplishments of the expenditures and recommendations for legislative action.

**History:** [Laws 2001, ch. 164, § 10](#); [2024, ch. 9, § 4.](#)

#### ANNOTATIONS

**The 2024 amendment**, effective May 15, 2024, changed the water trust board's deadline for submitting a report to the legislature regarding expenditures from the water project fund; after "no later than," changed "October" to "December".

### 72-4A-11. Voiding of authorization.

The legislative authorization for a qualifying entity to receive a grant or loan from the water project fund for a project is void three years after that authorization is given, but this provision does not prohibit the legislature from authorizing a project that was previously authorized.

**History:** [Laws 2015, ch. 88, § 2.](#)

#### ANNOTATIONS

**Emergency clauses.** — [Laws 2015, ch. 88, § 3](#) contained an emergency clause and was approved April 8, 2015.