

Gila diversion group asserts primacy as legislation threatens

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With a proposal in Santa Fe threatening its very existence, the New Mexico Entity of the Central Arizona Project — the group that was formed in 2015 to build the ultimately unsuccessful Gila diversion project — is having to defend the role it could play when it comes to administering the more than \$80 million in the N.M. Unit Fund.

The massive pot of money is destined to be spent, per the 2004 federal Arizona Water Settlements Act, either on a "New Mexico Unit," i.e., a surface water diversion, or on other water utilization alternatives to meet water supply demands in the Southwest Water Planning Region of New Mexico."

Since the Entity's diversion project was put down last summer, the second option is now on the table, and the diversion group wants a say in who and what gets funded.

Ultimately, how that \$80 million is spent — and it may only be spent on projects within the counties of Luna, Hidalgo, Catron and Grant — is determined by the New Mexico

Interstate Stream Commission in consultation with the Southwest New Mexico Water Study Group or its successor," according to the 2004 law. But whether the N.M. CAP Entity is the true "successor" to the original study group is debatable, according to the Entity's opponents.

The argument in favor

Rolf Schmidt-Petersen, executive director of the ISC, has repeatedly stated that the Entity is the successor organization, and should be considered the "consultant group" that will help vet water projects for future funding.

"The New Mexico CAP Entity has documentation designating it as the successor to the Southwest New Mexico Water Study Group," Schmidt-Petersen wrote in a Feb. 3 analysis of HB 200 that was requested by Legislative Finance Committee Fiscal Analyst Caitlyn Wan. "Further, the New Mexico CAP Entity has been receiving funding from the NMISC, in part, as the successor to the Southwest New Mexico Water Study Group."

The Entity's executive director, Anthony Gutierrez, told the Daily Press that, in addition to state and federal law, the Entity's "documentation" consists of "the records from the past 17 years of the succession from the original group."

Schmidt-Petersen has argued that the Entity is an ideal foundation on which to build a four-county stakeholder group — something like the Eastern New Mexico Water Authority, the board of which is composed of representatives from two counties, several municipalities and Cannon Air Force Base, and which oversees the Eastern New Mexico Rural Water System. In his vision, Schmidt-Petersen sees the Entity as nearly tailor-made to identify important water projects in the four counties.

※Its members are representatives from the four-county region of southwest New Mexico," Schmidt-Petersen noted in his analysis: ※That is, designated representatives from Catron, Grant, Hidalgo, and Luna counties; the cities of Deming and Lordsburg; [the] village of Santa Clara" — although Lordsburg's representative hasn't attended a meeting in months, and Santa Clara's representative hasn't attended a meeting in years — the ※Hidalgo Soil and Water Conservation District, San Francisco Soil and Water Conservation District, Grant Soil and Water Conservation District; and Fort West Irrigation Association, Gila Farm Irrigation Association, Gila Hot Springs Irrigation Association, and Upper Gila Irrigation Association all sit on the N.M. CAP Entity Board."

The ISC itself sits on the Entity's board as a nonvoting member, but ultimately the state agency approves any Unit

Fund allocations. Whether any other stakeholders will eventually join — the town of Silver City is conspicuous in its absence — remains to be seen.

The argument against

New Mexico is divided into 16 water planning regions. Does the N.M. CAP Entity best represent the four-county area that makes up the Southwest Planning Region?

The Entity's critics say no, and argue that the agriculture-centric membership of the Entity also lacks the expertise and motivation to serve as a water planning group for the region.

※Although the state ended diversion planning last June, the Entity continues to prioritize development of a Gila diversion," Allyson Siwik, executive director for the Gila Conservation Coalition, said in a statement.

The Center for Biological Diversity's Todd Schulke told the Daily Press that, without a diversion to build, the Entity's mission is forfeit, according to his group's legal interpretation, because the 2004 federal law only mentions the N.M. CAP Entity in relation to building a diversion to capture surface water allocated to New Mexico in the settlement — not as having any role in determining how settlement money might be spent on ※non-unit" projects.

“Worse than silent, the New Mexico CAP Entity is mentioned elsewhere in the AWSA [only] in conjunction with N.M. Unit provisions,” Schulke said. ✖That Congress did not specify the N.M. CAP Entity in Section 212(i) when it specified the N.M. CAP Entity in many other places demonstrates that Congress didn’t presume the N.M. CAP Entity would be the ‘successor’” to the Southwest New Mexico Water Study Group.

In the AWSA, the N.M. CAP Entity is defined as “the entity or entities that the state of New Mexico may authorize to assume responsibility for the design, construction, operation, maintenance, and replacement of the New Mexico Unit.”

Beyond Thunderdome

A bill now pending in the state Legislature, HB 200, titled ✖Water Trust Board Projects and N.M. Unit Fund,” goes even further and, in a move that has the Entity’s members crying foul, proposes canceling the diversion group’s role entirely by striking it from the state statute governing the N.M. Unit Fund and handing over the ✖successor role” to the New Mexico Water Trust Board — an entity that has no representation from the four-county region, but has had plenty of experience vetting water projects for funding since it was created in 2001.

The bill now has three co-sponsors in addition to District 50 Rep. Matthew McQueen, who originally introduced the legislation: District 17 senator and Senate President Pro Tem Mimi Stewart, District 36 Rep. Nathan Small and District 28 Sen. Siah Correa Hemphill.

Were HB 200 to be signed into law, the ISC would still retain authority over which projects are ultimately funded.

In a resolution adopted during its special meeting Wednesday, the Entity took its stance in opposition to the legislation:

✧Whereas the New Mexico CAP Entity is the Successor to the Southwest New Mexico Water Study group named in the Arizona Water Settlement Act as the regional entity authorized to consult with the New Mexico Interstate Stream Commission on withdrawals from the New Mexico Unit Fund section 212(i), which states that 'withdrawals from the New Mexico Unit Fund shall be for the purpose of paying costs of the New Mexico Unit or other water utilization alternatives to meet water supply demands in the Southwest Water Planning Region of New Mexico, as determined by the New Mexico Interstate Stream Commission in consultation with the Southwest New Mexico Water Study Group or its successor, including costs associated with planning and environmental compliance activities and environmental mitigation and restoration'; and

whereas HB200 would violate the provisions of the AWSA by replacing the regional authority given to the Southwest New Mexico Study Group with that of the Water Trust Board as the consulting agency, thereby violating the US Constitution Supremacy Clause; and whereas, the Southwest Region does not have any representation on the Water Trust Board thereby removing the original intent of the AWSA and the New Mexico Unit Fund Act on having the Southwest New Mexico Region participate in the decision-making process; and whereas, this change in authority could also place additional burdens on the rural communities and association by having to meet the criteria and policies of the Water Trust Board; and whereas, HB200 would also violate the language in the AWSA by removing provisions of federal law for usage of the NM Unit Fund for the development of New Mexico water through the AWSA and limiting the uses of these funds for water utilization projects, therefore, be it resolved that the New Mexico CAP Entity opposes New Mexico House Bill 200 for violating the regional decision-making language and intent of the AWSA."

At Wednesday's special meeting, Howard Hutchinson, who represents the San Francisco Soil and Water Conservation District on the Entity, and who will testify when the House Agriculture and Water Resources Committee meets to discuss the bill Saturday, went further still, arguing that "the whole purpose" of the 1968 Colorado River Basin

Project Act and the subsequent 2004 Arizona Water Settlements Act is diversion and storage for New Mexico water users."

✧"Let's quit talking about the AWSA," he said, addressing Schmidt-Petersen, who was a guest at Wednesday's meeting, held remotely due to the pandemic. ✧"What we're really talking about is the Colorado River Basin Project Act. The AWSA is merely an amendment to the Colorado River Basin Project Act. The whole purpose is to restore future water uses that stemmed out of the Arizona versus California litigation in the U.S. Supreme Court.

✧"The AWSA put in some confusion as to the beneficiaries of the Colorado River Basin Project Act," Hutchinson continued, adding that both the water and the money awarded by federal statute were intended to benefit those who live and work along the Gila and San Francisco rivers.

✧"The beneficiaries were supposed to be the water users on the Gila and the San Francisco — period," Hutchinson said.

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