

New Mexico Interstate Stream Commission

Draft New Mexico Unit Fund Pilot Cycle II Policy Arizona Water Settlements Act (AWSA) – New Mexico Unit Fund Act

Introduction

The New Mexico Interstate Stream Commission (NMISC or Commission) is authorized “to investigate, protect, conserve, and develop New Mexico’s waters including both interstate and intrastate stream systems.”¹ In accordance with these authorizations, the NMISC administers the New Mexico Unit Fund (Unit Fund) under the Arizona Water Settlements Act (AWSA)² and the New Mexico Unit Fund Act.³

This document establishes the policy and processes the NMISC will use to identify and fund projects from the Unit Fund. While the NMISC has funded projects from the Unit Fund in the past, statutory changes to the New Mexico Unit Fund Act in 2021 generated a need for the NMISC to jointly develop a process for funding in coordination with the Water Trust Board (WTB). In 2024 and 2025, the Commission and the WTB jointly developed and implemented the first New Mexico Unit Fund Pilot Cycle to fund planning and design projects (Pilot Cycle I). Pilot Cycle I efforts were intended to enable the NMISC and the WTB to “learn by doing” and consider lessons-learned to adapt future processes and inform future policies. The NMISC and WTB have decided to continue this learning and testing process by implementing a second pilot cycle: the New Mexico Unit Fund Pilot Cycle II (Pilot Cycle II). Pilot Cycle II seeks to fund the next cycle of projects, including construction projects, while integrating lessons-learned and improving upon the application and implementation process from Pilot Cycle I.

As part of the NMISC’s and the WTB’s iterative process, Pilot Cycle II includes updating the fund vision, project goals, and evaluation criteria, adding construction projects as an eligible project type, refining Applicant eligibility, implementing a funding limit for this funding cycle, and establishing “special eligibility categories” to promote fairness in competition.

Section 1: Unit Fund Purpose and Policy Considerations

The purpose of the Unit Fund⁴ is to “pay the costs of water utilization projects to meet water supply demands in the southwest planning region of New Mexico that encompasses Catron, Grant, Hidalgo and Luna counties.”⁵ Within this purpose and geographic focus, the Unit Fund will provide funding for water utilization projects and may do more to help address critical gaps and challenges common when securing other funding sources. Based on the NMISC’s experience, a deliberate positioning of the Unit Fund to complement and enhance other funding sources through matching funds, leverage, and the strategic use of existing funding may strengthen the Unit Fund’s impact while stretching limited resources further and longer. In practice, this approach could allow for the support of a broad range of water utilization project types, accommodating a range of project timelines, and providing availability for co-funding in a variety of circumstances.

¹ NMSA 1978, § 72-14-3, available at <https://nmonesource.com/nmos/nmsa/en/item/4402/index.do#72-14-3>.

² Arizona Water Settlements Act (Pub. L. No. 108–451, 118 Stat. 3478 (2004)).

³ New Mexico Unit Fund Act (NMSA 1978, § 72-14-45 (2021)), available at <https://nmonesource.com/nmos/nmsa/en/item/4402/index.do#72-14-45>.

⁴ The AWSA allocated funds for the purposes of either a New Mexico Unit or water utilization alternatives. (Arizona Water Settlements Act, Pub. L. No. 108–451, 118 Stat. 3478 (2004)). The New Mexico Unit Fund Act narrows the application of those funds, such that the Unit Fund may only be used for water utilization projects and not the New Mexico Unit. (NMSA 1978, § 72-14-45 (2021)).

⁵ The southwest planning region of New Mexico that encompasses Catron, Grant, Hidalgo and Luna counties is referred to as the “Southwest Region.”

Pilot Cycle II will add construction projects as an eligible project type. The addition of construction projects has the potential to significantly increase Unit Fund expenditure in Pilot Cycle II. Therefore, to make a significant amount of funding available while ensuring the Unit Fund is not exhausted prior to the development of a long-term Unit Fund management strategy, Pilot Cycle II will limit the total value of all awards in this Pilot Cycle to no more than 20% of the current Unit Fund balance, equal to \$26 million⁶.

Pilot Cycle II will also align with best practices in funding stewardship and project implementation, including aligning with best practices in effectiveness, efficiency, sustainability, and compliance with statutory and regulatory requirements.

To support these approaches, Pilot Cycle II's goals for projects are to:

1. **Ensure activities are strategic within the local context;**
2. **Focus resources on creating an impact;**
3. **Support an approach that sustains benefits;**
4. **Ensure there is a readiness to proceed;**
5. **Leverage other resources; and**
6. **Represent good value for money.**

Section 2: Pilot Cycle II Process

Pilot Cycle II has three stages: (1) the Application Stage, (2) the Pre-Agreement Stage, and (3) the Implementation Stage.



Figure 1: Summary of Pilot Cycle II Application, Pre-Agreement, and Implementation Stages

The NMISC and the WTB have jointly developed and will coordinate Pilot Cycle II application process. Through this process, the WTB evaluates projects, including the project's environmental impacts, and recommends projects to the Commission. The Commission has "final decision-making authority over which projects are funded."⁷ Under this final decision-making authority, the Commission may opt to fully fund, partially fund, conditionally fund, or not fund a project recommended by the WTB. The NMISC will also provide support to potential Applicants during the application phase in

⁶ The total expenditure from the Unit Fund for Pilot Cycle II projects will not exceed \$26 million (20% of the current Unit Fund balance of \$130 million). Funds are not encumbered until the time of execution of each project funding agreement, which can take up to 12 months from the time of approval by of each project by the Commission.

⁷ New Mexico Unit Fund Act (NMSA 1978, § 72-14-45(c)).

the form of printed and online materials, workshops, or other appropriate support. The steps below provide additional detail on the respective roles of the Commission, NMISC staff, and the WTB in the application evaluation and approval process.

1. The Commission and the WTB develop Pilot Cycle II application materials and call for applications.
2. Applicants submit application forms to the WTB.
3. The WTB evaluates submitted application forms to determine whether each application is complete and meets eligibility requirements.
4. The WTB scores complete and eligible applications against the evaluation criteria.
5. The WTB makes its recommendations, scoring, and copies of each application available to the public.
6. The WTB presents its recommended applications to the Commission at a Commission meeting and reports on the scoring of all applications received.
7. The NMISC staff review the WTB recommendations and applications based on the evaluation criteria.
8. The Commission considers the WTB's project recommendations, NMISC staff recommendations, and any public comment.
9. The Commission decides which projects will be fully, partially, and conditionally funded.
10. The Commission notifies all Applicants and the WTB within 30 days of the Commission's decision regarding each application and provides information to Recipient on next steps.

Section 3: Eligibility

Eligible Applicants:

Eligible Applicants are federally recognized Indian nations, tribes or pueblos and political subdivisions of the state authorized to receive public funds located in the Southwest Region including:

- Counties, cities, towns, and villages;
- Acequias and community ditches in compliance with New Mexico state law (NMSA 1978, Chapter 73, Articles 2 and 3);
- Soil and water conservation districts, conservancy districts, and irrigation districts;
- Mutual domestic water consumer associations organized and existing under the Sanitary Projects Act (NMSA 1978, Sections 3-29-1 to 3-29-21);
- Land grant-merced controlled and governed pursuant to New Mexico state law (NMSA 1978, Sections 49-1-1 through 49-1-18 or 49-4-1 through 49-4-21);
- An association of political subdivisions of the state created pursuant to the New Mexico Joint Powers Agreements Act or other authorizing legislation for the exercise of their common powers.

Additionally, New Mexico public institutions of higher education are eligible Applicants when partnered with a federally recognized Indian tribe, nation, or pueblo or a political subdivision of the state located in the Southwest Region. These Applicants must submit a letter signed by both the public institution of higher education and the entity stating that they are acting in partnership, both agree with the submittal and content of the application, describe how both intend to participate, and identify which party would directly receive funds under a funding agreement.

Eligible Projects:

Funding is available for the planning, design, or construction of water utilization projects to meet water supply demands in the southwest planning region of New Mexico in the following topic areas:

- Conservation and efficient use of water;

- Construction, repair, or protection of water infrastructure; and
- Watershed health such as the restoration of riparian ecosystems, water quality improvement, or mitigation of damage to water resources from wildfire.

Non-eligible topic areas include flood and drainage mitigation or control and wastewater services unless the project directly supports water use or reuse to meet a water supply demand and it is clearly described in the Application.

Projects that were not funded under previous New Mexico Unit Fund cycles are eligible for resubmission when they have been improved and follow Pilot Cycle II policy.

All projects must be environmentally, socially, technically, and financially sustainable and meet state and federal statutory and regulatory requirements.

Projects are not required to be independent, complete projects or phases (standalone projects) and may be co-funded with other sources. However, Applicants must identify which elements of the project will be paid for by Unit Fund and which elements will be funded using other sources. Leveraging of any other funding sources is highly encouraged including both actual funds (real dollars expended) and in-kind (labor and/or equipment) contributions.

Eligible planning, design, or construction projects in Pilot Cycle II include the following:

1. Planning Projects (implementation for a maximum of 24 months):
 - a. Applicants may apply for funds to support the development of planning documents and reports for water utilization projects. Such development may include technical feasibility investigation including long-term compliance, long-term operation, maintenance, and repair needs, and cost-benefit analysis.
 - i. Technical Plans may include Professional Engineering Reports (PER), Water Conservation Plans, Tank Inspection Reports, or other technical plans up to 30% design completed and with a cost-benefit analysis including environmental impacts and compliance.
 - b. Applicants may apply for funds to develop System Documents that will support planning efforts that contribute to local capacity.
 - i. System Documents may include, but are not limited to, Asset Management Plans, System Assessments, Water Conservation Plans, 40-Year Water Plans, Hydrogeology Assessments, and federal environmental compliance documents related to water utilization projects.
 - ii. Each Applicant may apply for funds to collect water data to support an Applicant's planning project, which will also be made accessible to comply with modern water data standards and best practices identified by the agencies collaborating on the New Mexico Water Data Act implementation.
2. Design Projects (implementation for a maximum of 24 months):
 - a. Applicants may apply for funds to support the development of plans and specifications for projects that have completed the planning phase, as demonstrated with a PER or acceptable technical memoranda that must include consideration of environmental impacts and compliance of the project along with mitigated or ameliorated effects.
 - i. Design-advancing activities may include full design from 60% - 100% completed with specifications, cost estimates, and the preparation of bid documents.
 - ii. Each Applicant may apply for funds to collect water data to support an Applicant's design project, which will also be made accessible to comply with modern water data standards and best practices identified by the agencies collaborating on the New Mexico Water Data Act.
3. Construction Projects (implementation for a maximum of 48 months, projects proposed over \$10 million must also have an implementation schedule between 24-48 months):

- a. Applicants may apply for funds to support construction activities for a project that have completed the planning and design phases, as demonstrated by complete design specifications and the following requirements:
 - i. Completed 90% - 100% of the design;
 - ii. Complete specifications prepared and stamped by a New Mexico licensed engineer, as well as cost estimates, and draft bid documents (cost estimates and draft bid documents that require updating by the applicant may still be accepted);
 - iii. Complete Operation and Maintenance Plan that clearly identifies ownership and life of the assets, responsibility for conducting and paying for operation and maintenance, estimated maintenance schedule;
 - iv. Screened for and defined all environmental impacts and appropriate mitigation actions, especially those considered high-risk, and identified all necessary permitting requirements.

Special Eligibility Categories

Pilot Cycle II seeks to promote fairness in competition between large and small Applicants and between project types by establishing two special eligibility categories in the amount of \$2 million each: small entities, and planning and design projects. Applicants must elect to be considered for a special eligibility category in their application. Applicants may elect to be considered for both special eligibility categories, if applicable, but approved projects will only be funded from one category. If a special eligibility category funding ceiling is not met, the remaining funds will be available for the general application pool. Special Eligibility Categories include:

- **Small entities** – For entities defined by an annual revenue less than \$50,000, calculated on a cash basis of accounting. This calculation does not include capital outlay funds or federal or private grants;⁸ and
- **Planning and design projects** – For planning and design projects, as defined in Section 3.

Section 4: Pilot Cycle II Application Requirements

Applicants may submit more than one application, but awards will be limited to one project per Applicant. The following items are required to be included in each application, at a minimum, to be considered for funding:

1. A project title and the total amount of funds being requested from the Unit Fund, including funds for project management assistance and disclosure of matching funding;
2. Information demonstrating that the Applicant is an Eligible Applicant under this policy;
3. Identification of the project type and whether the Applicant is applying for one or more special eligibility categories;
4. A description of the relevant project context and the water use problem the project will address;
5. A description of the project activities, implementation timeline, intended number of beneficiaries, and how it aligns with State water regional plan's strategy;
6. A description of the expected outcomes and benefits of the project activities;
7. Planning that ensures the systems and/or processes are in place to move forward, reliably operate, and/or maintain the project outputs over the project output's intended life or purpose that includes operating costs and staffing requirements;
8. A summary of the project's environmental impacts and a plan to mitigate them, as appropriate.
9. As applicable, identification and information for the land and water rights associated with the project;

⁸ This definition is derived from the financial reporting thresholds in the New Mexico Audit Act (NMSA 1978, § 12-6-3(B)(3)).

- a. The Applicant must identify the specific property parcel numbers (available via county assessor) and ownership information of the property that the project will impact. If the Applicant does not own the land or have an easement for the land that will be impacted by the project, the Applicant must provide letters of support from the land owner(s);
- b. The Applicant must identify the water rights number(s) and ownership information for water rights that will be utilized by the project. If the water rights are not in good standing, the Applicant should include an explanation of steps the Applicant intends to take to remedy any permit requirements;
10. A resolution authorizing the Applicant to submit an application with a brief description of the project. The resolution must be enacted at a public meeting held in accordance with the Open Meetings Act and the provisions of the Applicant's bylaws or other organizing document(s), as applicable;
11. Applicants must demonstrate that they have adequate governance in place and sufficient fiscal, managerial and operational capacity to manage the project over the long term, as appropriate for the type of project proposed including:
 - a. Fully functioning governing body, capable of managing, directing and overseeing the proposed project and ensuring that the Applicant and its project meet all applicable state laws and regulations, including as applicable:
 - i. Up-to-date articles, by-laws and other governance documents that have been filed with appropriate regulatory agencies;
 - ii. Adequate legal representation for the proposed project;
 - iii. Regular board meetings of the governing body that are held in compliance with the Open Meetings Act, the Inspection of Public Records Act, and other applicable laws or policies; and
 - iv. Selection of members of the governing body by election or other procedures applicable to the governing body and evidence of competent management to oversee the project.
 - b. Adequate and applicable business management tools for ongoing financial planning, water accounting, and asset management, that have been established and are reviewed and updated regularly;
 - c. Personnel policies and procedures are in place;
 - d. Audit requirements pursuant to the New Mexico Audit Act and Public Finance Accountability Act have been met; and
 - e. Policies and procedures are in place to assure successful fiscal and operational management including internal controls (dual check signatory authority; budget adoption procedures, expenditure decisions; audits);

If applying for a construction project, Applicants must also include:

7. Final plan and specifications, stamped and signed by a New Mexico licensed professional engineer. The final plan must include an engineer's estimate of the costs that is less than one year old. If the plans and specifications are over one year old, the Applicant's engineer must provide a sworn statement that the engineer verified the validity of the site conditions, design, and cost estimates within the last year.
8. If the construction project impacts a utility system, the Applicant must also demonstrate that
 1. Appropriately certified system operator(s) are employed or contracted;
 2. Policies and procedures are in place to assure successful fiscal and operational management such as:
 1. Billing, new service connection charges, and failure to pay policy;
 2. Regular rate assessments or evaluations; and
 3. Where a utility system is being developed, adequate fees will be charged to any users of the system.

9. In addition to the land and water rights information listed above, a map of the project location, including access areas, and a copy of the validly executed and recorded deed(s) identifying the Applicant as the current property owner for the lands impacted by the project (e.g. project location and access areas). If the Project is situated on any land or crosses any land that belongs to anyone other than the Applicant, the Applicant must submit documentation showing that the Applicant has a permanent easement on the lands where the Project is situated or crosses.

Section 5: Evaluation of Pilot Cycle II Applications

The WTB will evaluate project applications using its established evaluation process, or similar, including their environmental impacts and will recommend projects to the Commission. Applicants must demonstrate that the proposed project is a water utilization project that meets water supply demands in the Southwest Region, in accordance with Section 212(i) of the AWSA and New Mexico Unit Fund Act. In addition to the considerations above, the NMISC will consider applications based on the following criteria and weighting:

No	Funding Goal	Funding Criteria	Contribution to Overall Score
1	Ensure activities are strategic within the local context	Application describes a well-defined water use need and its strategic solution or defines a step(s) toward a strategic solution aligned with the most recent State Regional Water Plan	20%
2	Focus resources on creating impact	Application describes clear and measurable benefits in water use and health, economy, or environment	20%
3	Support an approach that sustains benefits	Application describes the systems that are in place to move forward, operate, and/or maintain the project outputs (technical, financial, human resources) and the consideration of environmental impacts	20%
4	Ensure there is a readiness to proceed	Applicants have necessary prerequisites for implementation in place or define the plan for how they will be secured (compliance, permits, land and water rights, additional financing)	15%
5	Leverage other resources	The ratio of the sum of all other funds for the project to Unit Fund	15%
6	Represent good value for money	The project costs are reasonable and are a good value per beneficiary	10%

Explanation of goals and evaluation criteria:

1. Ensure activities are strategic within the local context:

Projects activities should be clearly described and derived from a well-defined water use need and a strategic solution or defined step(s) toward a strategic solution that is of great importance and improves effectiveness and/or efficiency within the local context. The proposed solution should also align with the most recent State Regional Water Plan such that the project or its elements are either specifically mentioned in the most recent State Regional Plan or are in harmony with Regional Water Plan's stated goals and objectives.

2. Focus resources on creating impact:

Applications should define a measurable benefit of a new or improved water use that is the realistic effect of the proposed project activities. The application should also define how the success of the project will be measured by

describing the measure(s) (indicator(s)) that will be collected as part of the project to demonstrate achievement of the project objectives. For example, a project that adds a well could measure the delivered volume of water once completed. A project that repairs a water canal or pipeline could measure the reduction in transit losses within the system.

3. Support an approach that sustains benefits:

Sustainability of benefits requires that there are systems in place to ensure the project outputs (e.g. planning or design documents, equipment, or infrastructure), are used, operated, and maintained into the future. These systems refer to any collection of people, equipment, and facilities that together perform one or more of those vital functions. For example, a system would ensure there are skilled staff or volunteers who are in place to use, implement or operate, and maintain the project outputs, and ensure there are necessary financial resources available for operation and maintenance of fully functional infrastructure. Assessment of environmental impacts is also critical to sustainability, especially in infrastructure construction. Projects must identify and assess environmental impacts, their risk, and plans to mitigate any adverse impacts.

4. Ensure there is a readiness to proceed:

Applications should identify all necessary prerequisites for implementation and ensure they are secured or provide a plan for how they will be secured by the time of implementation. This includes all prerequisites such as compliance; federal, state, and local permits; applicable land and water rights ownership; and additional financing described under Criteria #5 (Leverage Other Resources).

5. Leverage other resources:

Use of the Unit Fund resources to leverage other resources is highly encouraged, although not required for funding consideration. This leveraging can take the form of complementing other resources by co-funding, matching or being matched. Resources may be secured or proposed in the form of actual funds and/or in-kind contributions. Leverage ratio is calculated by dividing the total leveraged funds into the total Unit Fund funds requested in the application. For instance, if the total project cost is \$15 million and the application requests \$5 million from the Unit Fund while leveraging \$8 million from the Colonias Infrastructure Fund and \$2 million of local government funds, then the leverage ratio is 2:1 (\$10 million:\$5 million) or 200% (\$10 million/\$5 million*100%) for the Unit Fund.

6. Represent good value for money:

Value for money is one way to estimate the reasonableness and the efficiency of use of the funds. Proposed uses of funds must be reasonable, at fair market value, and not appear excessive or extreme. Value for money is calculated by dividing the total estimated project cost (funds requested in the application plus all leveraged funds) by total direct beneficiaries of the project. Direct beneficiaries are those that will directly receive the project benefits, the benefits defined under Criteria #2 (Focus Resources on Creating Impact). For example, the new direct users of an improved well or the additional customers connecting to water services with the addition of a new pipeline are direct beneficiaries. Indirect beneficiaries in these examples would include the existing users of the well, existing customers in the water service area, or the entire population of village served by the water utility. Indirect beneficiaries are not included in the value for money calculation.

Section 6: Pilot Cycle II Pre-Agreement

After the Commission approves a funding allocation, the NMISC will work to develop a funding agreement with the Recipient. The Recipient should expect to provide additional information to the NMISC to supplement their application within 120 days of notice of Commission approval. Such supplemental information may relate to ownership of land and water rights implicated by the project; financial information; environmental permits and/or design specifications

if applicable, and additional project scope information. The sufficiency of such information will be in the NMISC's sole discretion. The Recipient will be required to develop a detailed scope of work for the project and pass a local willingness to proceed resolution at a duly held meeting of the Recipient's governing body to authorize the Recipient to sign the funding agreement and proceed with the project.

Funding agreements will require the Recipient to confirm financial compliance including confirming Public Finance and Accountability Act (PFAA) compliance. If the Recipient cannot demonstrate compliance with financial and audit requirements, the NMISC may determine it is necessary for the Recipient to retain a fiscal agent/fiscal administrator. The Unit Fund may not be used to pay any costs related to the use of a fiscal agent or fiscal administrator.

Applicant and Project-Specific Funding Conditions:

- **Public Institutions of Higher Education:** No more than 10% of the total project costs paid from the Unit Fund may be used for university indirect (overhead) costs.
- **Element-based Projects:** Projects are not required to be "standalone" projects. However, if the project represents an element of a larger project or project phase, reimbursements from the Unit Fund will be contingent upon the Recipient demonstrating that sufficient progress on the larger project is being made during the implementation Stage.
- **Leveraged Funds-based Projects:** Leveraging other funding sources (both actual funds and in-kind contributions) is highly encouraged. If the Unit Fund is providing matching or contributing funds for a project, the development of a funding agreement and availability of reimbursements will be contingent upon the status and progress made under other leveraged funding source(s). Reimbursements from the Unit Fund will be the last funding source to be spent on a project that utilizes other funding sources.

Section 7: Pilot Cycle II Implementation

Once a funding agreement is fully signed by all parties, the NMISC will issue a Notice to Proceed ("NTP") to the Recipient and the Recipient may begin implementation of the project. Project funding will be provided on a reimbursement basis directly to the Recipient for costs incurred. The NMISC is unable to make payments directly to contractors. Reimbursements require submitting a Request for Reimbursement to the NMISC. All expenditures made under a funding agreement must comply with the New Mexico Procurement Code and the New Mexico Constitution Anti-Donation clause.

Funding agreements will also specify the following records and reporting requirements for Recipients during implementation:

1. Submit periodic reports every quarter (template will be provided);
2. Submit a final report once the project is completed (template will be provided); and
3. Maintain appropriate records and be responsive to requests for information from the NMISC, e.g. comply with the New Mexico Water Data Act provisions; respond to requests for public records; cooperate with the NMISC on data requests; and on the documentation and verification of project implementation, accomplishments, impacts.

Statutory References: Arizona Water Settlements Act (Pub. L. No. 108-451, § 212(i), 118 Stat. 3478 (2004)); New Mexico Unit Fund Act (NMSA 1978, § 72-14-45); New Mexico Water Data Act (NMSA 1978, §§ 72-4B-1 to 72-4B-4); Public Finance Accountability Act (NMSA 1978, §§ 6-3B-1 to 6-3B-6); New Mexico Audit Act (NMSA 1978, § 12-6-3(B)(3)); Sanitary Projects Act (NMSA 1978, §§ 3-29-1 to 3-29-21); Joint Powers Agreements Act (NMSA 1978, §§ 11-1-1 to 11-1-7); and various New Mexico statutes, including those regarding the Commission's general powers (NMSA 1978,

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§ 72-14-3), ditches and acequias (NMSA 1978, Chapter 73, Art. 2 & 3), and land grants-merced (NMSA 1978, §§ 49-1-1 to 49-1-18; 49-4-1 to 49-4-21).

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