

2019



NEW MEXICO UNIT FUND

Annual Report to the New Mexico
Legislative Finance Committee and Interim
Water and Natural Resources Committee



New Mexico Interstate
Stream Commission

November 2019

New Mexico Unit Fund: Annual Report to the
New Mexico Legislative Finance Committee and
Interim Water and Natural Resources Committee

New Mexico Interstate Stream Commission

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ABBREVIATIONS AND ACRONYMS

AWSA	Arizona Water Settlements Act of 2004
CAP	Central Arizona Project
CUFA	New Mexico Consumptive Use and Forbearance Agreement
EIS	Environmental Impact Statement
IWNRC	Interim Water and Natural Resources Committee
JPA	Joint Powers Agreement
LCRBDF	Lower Colorado River Basin Development Fund
LFC	Legislative Finance Committee
MOU	Memorandum of Understanding
NEPA	National Environmental Policy Act
NMISC	New Mexico Interstate Stream Commission

EXECUTIVE SUMMARY

In the Arizona Water Settlements Act of 2004 (“AWSA”), the United States Congress (“Congress”) amended the Colorado River Basin Project Act of 1968, and provided New Mexico with up to an annual average of 14,000 acre-feet of water from the Gila River, its tributaries including the San Francisco River, and underground sources in New Mexico (“AWSA water”).¹ In addition, Congress provided several separate tiers of funding to New Mexico in the AWSA. The first tier of the AWSA funding, \$66 million (adjusted to \$90.4 million) is being distributed to the New Mexico Interstate Stream Commission (“NMISC” or “Commission”) to pay costs for the New Mexico Unit of the Central Arizona Project (“NM Unit”),² and other water utilization alternatives to meet water supply demands in Southwestern New Mexico (“Non-NM Unit projects”). This funding is deposited in a fund in the New Mexico State Treasury called the New Mexico Unit Fund (“Unit Fund”), and is administered by the NMISC, pursuant to the New Mexico Unit Fund Act, NMSA 1978, § 72-14-45, enacted by the New Mexico Legislature in 2011. Access to other tiers of the AWSA funding is dependent on several factors outlined in the AWSA.

The New Mexico Unit Fund Act requires that the NMISC report to the Legislative Finance Committee (“LFC”) and the Interim Water and Natural Resources Committee (“IWNRC”) every year by November 15 on the following three items:

- 1) status of the Unit Fund
- 2) distribution of money from the Unit Fund to implement the purpose of the Unit Fund
- 3) proposed uses and levels of funding projected for the current and upcoming fiscal years

As of September 30, 2019, the balance in the Unit Fund is \$59.89 million, with \$18.08 million to be deposited in the future. A total of \$13.92 million and \$6.17 million have been expended for the NM Unit and the Non-NM Unit projects, respectively. The approved FY2020 budget and the projected FY2021 budget are summarized in Table 1.

Table 1. Summary of the FY2020-21 budgets

Distribution of Money from the Unit Fund	Approved FY2020 Budget	Projected FY2021 Budget
NMISC’s operating budget for its AWSA program (NM Unit and Non-NM Unit)	\$315,000	\$315,000
NMISC’s contractual budget for its AWSA program (NM Unit and Non-NM Unit)	\$325,000	\$300,000*
NMISC’s grants to sixteen Non-NM Unit projects	\$9,100,000 obligated	
U.S. Bureau of Reclamation’s National Environmental Policy Act budget related to NM Unit	\$948,000	\$174,000*
New Mexico CAP Entity’s operating budget related to NM Unit	\$791,800	\$381,800

* Current estimate; may be updated in late spring 2020; subject to the Commission approval

¹ The AWSA water is in addition to the amounts decreed to New Mexico by the U.S. District Court in *United States of America v. Gila Valley Irrigation District*, Globe Equity Decree No. 59 (1935), and by the U.S. Supreme Court in *Arizona v. California*, 376 U.S. 340 (1964).

² The project that would divert, convey and store AWSA water for consumptive use in Southwestern New Mexico

I. BACKGROUND

Pursuant to the AWSA, Congress authorized the U.S. Secretary of the Interior (“Secretary”)³, to design, build, operate, and maintain the NM Unit to develop AWSA water. In addition, Congress provided several separate tiers of funding to New Mexico in the AWSA:

1. \$66 million, adjusted for inflation in 2012 to \$90.4 million, and disbursed in ten annual payments to the NMISC. This funding is administered by the NMISC in the Unit Fund. Withdrawals from the Unit Fund are for the purpose of paying costs for the NM Unit or Non-NM Unit projects in Southwestern New Mexico (counties of Catron, Grant, Hidalgo, and Luna) as determined by the NMISC in consultation with the Southwest New Mexico Water Study Group or its successor.⁴ Such costs include, but are not limited to, planning, environmental compliance, and environmental mitigation and restoration.
2. An additional \$62 million, indexed to 2004 dollars, solely for construction of the NM Unit, which could be available only if certain conditions in the AWSA are met. This additional funding resides in the federal Lower Colorado River Basin Development Fund (“LCRBDF”), and is administered by the U.S. Bureau of Reclamation (“Reclamation”).
3. Up to \$500,000 to pay costs for installation of gages on the Gila River and its tributaries for purposes of the New Mexico Consumptive Use and Forbearance Agreement (“CUFA”) as part of the construction and operation of a NM Unit. This additional funding resides in the LCRBDF, and is administered by Reclamation.

During the 2011 Legislative Session, the New Mexico Legislature passed H.B. 301 (“the New Mexico Unit Fund Act”) creating the Unit Fund in the New Mexico State Treasury. The New Mexico Unit Fund Act is codified as 2011 NM Laws, Ch. 99, NMSA 1978, § 72-14-45 (2011).

Pursuant to the New Mexico Unit Fund Act, the first tier of the AWSA funding, deposited in the Unit Fund, is administered by and appropriated to the NMISC. The Unit Fund can also receive appropriations, grants, and donations or bequests. Income from the Unit Fund is credited back to the Unit Fund. Balances do not revert to the general fund.

The New Mexico Unit Fund Act requires the NMISC to submit an annual Unit Fund report to two New Mexico Legislative committees (the LFC and the IWNRC) by November 15. The 2019 Unit Fund report covers the three elements as required by the New Mexico Unit Fund Act: 1) status of the Unit Fund, 2) distribution of money to implement the purpose of the Unit Fund, and 3) proposed uses and levels of funding projected in the current and upcoming fiscal years. This report also provides a general description of activities related to the AWSA and its implementation in New Mexico.

³ through the U.S. Bureau of Reclamation

⁴ This group was succeeded by the Gila-San Francisco Water Commission. The New Mexico CAP Entity is the successor to the Gila-San Francisco Water Commission.

II. NMISC DECISIONS AND ADMINISTRATION

Congress authorized the State of New Mexico, through the NMISC, to fulfill certain roles and take certain actions in the AWSA. The NMISC's major roles/decisions pursuant to the AWSA are described in this report under three major topics: 1) NM Unit, 2) Non-NM Unit, and 3) the Unit Fund. The first two topics are provided in this section, and the third topic is described in Section III of this report.

NM Unit

Pursuant to the AWSA, the State of New Mexico, through the NMISC, had to report to the Secretary by December 31, 2014 as to whether New Mexico wanted to pursue construction of a NM Unit. In November 2014, the Commission voted to send a written notice to the Secretary that New Mexico intended to build a NM Unit.

Congress also tasked the State of New Mexico, through the NMISC, to form or designate a local entity called the New Mexico CAP Entity ("CAP Entity"), which has certain authorities and responsibilities related to the NM Unit, pursuant to the AWSA. Those responsibilities include:

1. Shall own and hold title to all portions of the NM Unit
2. Assume responsibilities to design, build, operate, and maintain the NM Unit, upon request to the Secretary⁵
3. Enter into the NM Unit Agreement with the Secretary⁶
4. Following construction of the NM Unit, the CAP Entity will be responsible for purchasing credits from the Secretary for operation, maintenance, and repair costs attendant to delivery of CAP water⁷ to downstream Gila River water users in Arizona, in exchange for consumptive use of AWSA water in Southwestern New Mexico
5. Participate as a member in the CUFA Technical Committee (to be formed in the future)

The CAP Entity was formed in July 2015 under a Joint Powers Agreement ("JPA"), which has been amended twice since then. The CAP Entity is currently composed of fourteen local governments from Southwest New Mexico:

1. Catron County
2. Grant County
3. Luna County
4. Hidalgo County
5. San Francisco Soil and Water Conservation District
6. Grant Soil and Water Conservation District
7. Hidalgo Soil and Water Conservation District
8. City of Deming
9. City of Lordsburg
10. Village of Santa Clara

⁵ In April 2016, the CAP Entity requested that the Secretary transfer the NM Unit design responsibility to the Entity. The transfer took place in May 2016. In August 2018, the CAP Entity requested the additional responsibilities for construction, operation, and maintenance of the NM Unit. This request is still pending.

⁶ The NM Unit Agreement was executed on November 23, 2015. The NMISC is not a signatory to this agreement.

⁷ Colorado River water made available through the Central Arizona Project ("CAP") Canal in Arizona

11. Upper Gila Irrigation Association
12. Fort West Irrigation Association
13. Gila Farm Irrigation Association
14. Gila Hot Springs Irrigation Association

Because the CAP Entity is formed under a JPA, it does not have all powers of a local government, and therefore it needs fiscal agent(s). The NMISC is the CAP Entity's first fiscal agent and a non-voting member of the CAP Entity. The City of Deming ("Deming") serves as the CAP Entity's second fiscal agent and is a voting member of the CAP Entity. Pursuant to the CAP Entity JPA, the NMISC considers, approves, and processes the CAP Entity's annual operating budget, which includes salary and benefits for 1 FTE (the CAP Entity's executive director), administrative costs, and contractual services, all of which are administered through Deming. About \$2.1 million has been requested by Deming for the CAP Entity's operating expenses, since its creation in July 2015.

Prior to final design and construction of a NM Unit, an Environmental Impact Statement ("EIS") had to be prepared, in accordance with the National Environmental Policy Act ("NEPA") and the AWSA. The AWSA designated Reclamation as the lead federal agency for environmental compliance activities related to the NM Unit, while providing for the State of New Mexico, through the NMISC, to be designated as the joint lead upon request to the Secretary. In February 2015, the NMISC formally requested to be joint lead.

Therefore, Reclamation and the NMISC are joint leads ("Joint Leads") for all environmental compliance activities for the NM Unit. The CAP Entity is the NM Unit project proponent in the NEPA process. In November 2016, the Commission approved a Memorandum of Understanding ("MOU") between the Joint Leads that outlines both agencies' duties and responsibilities. The Commission also approved a Funding Agreement among the NMISC, Reclamation, and the CAP Entity. Pursuant to this Funding Agreement, the NMISC considers, approves and processes Reclamation's NM Unit NEPA budget, which includes Reclamation's staff hours and its contractors hired for the environmental compliance activities and preparation of the NM Unit EIS. About \$5.1 million has been advanced to Reclamation for the NM Unit NEPA process since the execution of the Funding Agreement in November 2016. As of September 30, 2019, Reclamation has expended about 63% of those advances.

In June 2018, Reclamation published in the Federal Register a Notice of Intent to prepare an EIS for the NM Unit. This was the formal initiation of the NEPA process. After the public scoping period, the Joint Leads started incorporating details of the CAP Entity's proposed NM Unit project ("Proposed Action") into the EIS, developing alternatives, and working with the Cooperating Agencies. The NEPA contractor provided the Joint Leads with a Preliminary Draft EIS in January 2019 for their review. Based on the Joint Leads' input, the NEPA contractor prepared a revised version in June 2019. The Joint Leads are currently refining the Draft EIS based on a variety of new information, including but not limited to more accurate data related to the baseline conditions, further information received from the CAP Entity for its Proposed Action, better defined data for the alternatives, and comments from the Cooperating Agencies. The Draft EIS will fully analyze the Proposed Action and alternatives and their impacts on various resource topics, including hydrology, biology, cultural resources, and socioeconomics, compared to the No-Action alternative. The Draft EIS is scheduled to be published and available to the public in December 2019.

Non-NM Unit

As noted earlier, Congress authorized the NMISC to fund the NM Unit or Non-NM Unit projects in the four-county region. Between November 2014 and December 2016, the Commission allocated \$9.1 million to sixteen Non-NM Unit projects, based on a multi-year vetting process. Those sixteen projects range from acequia improvement and effluent reuse, to water meter replacement and aquifer storage and recovery. These sixteen projects and their respective grants as approved by the Commission are listed in Table 2.

Table 2. Non-NM Unit projects and their NMISC grants

	Project	NMISC Grant (\$)
1	Town of Hurley Regional Water Supply Project (<i>Phase 1</i>)	2,100,000
2	Gila Basin Irrigation Commission Diversion Structure	1,250,000
3	1892 Luna Irrigation Ditch Association Diversion Structure	100,000
4	Pleasanton East-Side Ditch Improvement	200,000
5	New Mexico New Model Canal Improvement	200,000
6	Kiehne Ditch Improvement	500,000
7	City of Deming Effluent Reuse	1,750,000
8	City of Deming Effluent Reuse (<i>2nd grant</i>)	596,000
9	City of Bayard Effluent Reuse	1,171,048
10	City of Lordsburg New Meters	242,950
11	Rodeo Mutual Domestic Association New Meters	14,000
12	Village of Santa Clara Effluent Reuse (<i>30% design only</i>)	100,000
13	Town of Silver City Park Irrigation Upgrade	18,157
14	Town of Silver City Meter Replacement	500,000
15	City of Bayard/Cobre Schools Effluent Reuse	176,295
16	Town of Hurley New Meters	181,550
	Total	9,100,000

The Commission allowed the Non-NM Unit grantees to use part of their grants for design and engineering. For construction, the Commission required up to 10% match for certain projects; in-kind work was also accepted. The Commission made a policy decision to enter into construction funding agreements with the grantees only after the grantees secured all additional funding necessary to complete a fully functional project, or a fully functional phase of a project. As of September 30, 2019, about 52% of the total \$9.1 million has been requested by the Non-NM Unit grantees.⁸ Seven projects are currently operational; the rest are in various stages of feasibility, design and construction. This slow pace of progress is due to an array of technical, legal and procurement issues. At the current pace, it is anticipated that the \$9.1 million allocated by the Commission to these Non-NM Unit projects would be fully spent by the end of calendar year 2022.

⁸ The Non-NM Unit projects expenses occur only when the NMISC receives requests for payment from the Non-NM Unit grantees, based on progress made on their projects.

III. REPORTING ON THE NEW MEXICO UNIT FUND

1) STATUS OF THE UNIT FUND

Status (or balance) of the Unit Fund is calculated by the sum of the total deposits and the total increase in the market value of investments, minus the total cumulative expenditures since FY2012. Those three elements (Deposits, Investments, and Expenditures) are described below. The balance of the Unit Fund as of September 30, 2019 is \$59.89 million.

Deposits

The first tier of the AWSA funding is being deposited in the Unit Fund in ten annual payments of \$9.04 million each, beginning in calendar year 2012. The eighth annual deposit occurred in January 2019, with two additional annual deposits scheduled for January 2020 and January 2021.

- Total deposited since January 2012: \$72.32 million

Investments

In January 2016, the NMISC hired a financial adviser to determine an appropriate asset allocation strategy for investment of the Unit Fund monies in the pooled funds offered by the New Mexico State Investment Council (“Council”). In June 2016, the Commission approved the Unit Fund asset allocation, thresholds and targets, based on the investment adviser’s recommendations. In August 2016, the Commission adopted the approved asset allocations and targets as an investment policy. These are listed in Table 3.

Table 3. Asset allocation, thresholds and targets

Asset Class	Implementation Choice ⁹	Minimum Threshold	Target	Maximum Threshold
Large Cap U.S. Equity	Passive	22%	25%	28%
Small/Mid Cap U.S. Equity	Active	6.5%	8%	9.5%
Non-U.S. Developed Equity	Passive	15%	17%	19%
Non-U.S. Emerging Markets Equity	Active	4%	5%	6%
Core (Plus) Fixed Income Bonds	Active	40%	45%	50%

⁹ The two implementation choices are actively or passively managed investment pools. Actively-managed strategies strive to outperform a relevant broad market benchmark, albeit at higher fees, whereas passively-managed strategies seek to meet the return of the relevant broad-market benchmark at substantially lower fees.

The NMISC entered into a Joint Powers Agreement with the Council in September 2016. A total of \$37 million has been invested since November 2016.¹⁰ There are no direct costs associated with the investments.¹¹ The average annual rate of return has been more than 6%. Figure 1 shows the cumulative market value since the investment started.

- Increase in market value of investments as of September 30, 2019: \$7.66 million

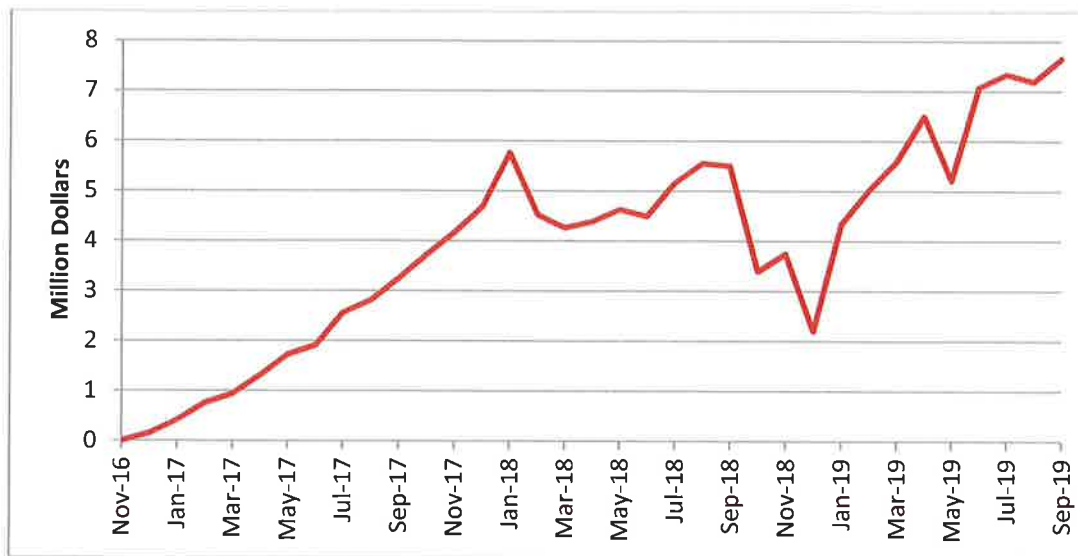


Figure 1 – Cumulative market value of the Unit Fund investments

Expenditures

The NMISC’s AWSA program consists of: 1) NM Unit, and 2) Non-NM Unit, both of which are funded by the Unit Fund.

- Total expended for NM Unit as of September 30, 2019: \$13.92 million
- Total expended for Non-NM Unit as of September 30, 2019: \$6.17 million

A breakdown of the cumulative expenditures is provided in Table 4.

¹⁰ An additional \$12 million has been approved by the NMISC to be invested in the upcoming months.

¹¹ A total of \$190,782 has been charged in investment costs as of September 30, 2019. However, those costs for managing the pool are charged to each investment pool. Costs are allocated to each investor as a percentage of their ownership of units in the pool, and make up part of the market value of investments at the end of each month.

2) DISTRIBUTION OF MONEY TO IMPLEMENT THE PURPOSES OF THE UNIT FUND

The cumulative expenditures from the Unit Fund since FY2012 have been for the purposes of paying for activities related to the NM Unit and Non-NM Unit projects. Those activities include, but are not limited to, planning and environmental activities for the NM Unit project, funding the Non-NM Unit projects, and administration. The following budgets capture those activities:

- 1) NMISC's annual operating budget for administration of its AWSA program (i.e., NM Unit and Non-NM Unit)
- 2) NMISC's annual contractual budget for its AWSA program, such as technical and legal services related to the NM Unit and Non-NM Unit projects, as necessary
- 3) NMISC's sixteen Non-NM Unit grants
- 4) Reclamation's NM Unit NEPA budget
- 5) CAP Entity's annual operating budget related to the NM Unit

The breakdown of the cumulative expenditures since FY2012 is listed in Table 4.

Table 4. Breakdown of the cumulative expenditures as of September 30, 2019

	NM Unit	Non-NM Unit
NMISC administration	\$1,021,006	\$968,620
NMISC contractual expenses for its AWSA program	technical vetting and studies¹²	\$4,936,111 ¹³
	legal/litigation costs	\$686,020
	public outreach costs¹⁴	\$64,509
NMISC sixteen Non-NM Unit projects expenses (paid out of the \$9.1 million allocated by the Commission)	N/A	\$4,752,635
Advances to Reclamation for NM Unit NEPA (since November 2016)	\$5,121,209 ¹⁵	N/A
CAP Entity operating expenses (since July 2015)	\$2,089,804	-
Total	\$13,918,659	\$6,171,738

¹² Available at: http://www.ose.state.nm.us/Basins/Colorado/isc_AWSA.php

¹³ includes NM Unit conceptual engineering and water operations modeling on behalf of the CAP Entity from April 2016 to September 2018

¹⁴ includes public meetings facilitation, website development and maintenance from July 2012 to December 2017

¹⁵ Reclamation uses part of the advances to obligate its third party contract amounts, before fully spending them. As of September 30, 2019, Reclamation has expended about 63% of the advances.

3) PROPOSED USES AND LEVELS OF FUNDING PROJECTED

The breakdown of the approved FY2020 budget and the projected FY2021 budget is provided below. It should be noted that the Non-NM Unit grants have already been obligated, and therefore are not included in the budgets below.

Current Fiscal Year (FY2020)

- A. NMISC's Operating Budget: The NMISC's appropriated FY2020 operating budget from the Unit Fund is \$315,000, which includes 3 FTEs and support costs for the NMISC's AWSA program. This amount is the same as FY2019.
- B. NMISC's Contractual Budget: At its June 20, 2019 meeting, the Commission approved the NMISC's FY2020 Gila/AWSA Work Plan¹⁶ in the amount of \$325,000, primarily for potential technical and legal services to support the NMISC's role as the NEPA joint lead. This amount is budgeted, but may not be fully expended.
- C. Reclamation's NEPA Budget: At its May 18, 2018 meeting, the Commission approved Reclamation's FY2020 NM Unit NEPA budget in the amount of \$948,000.
- D. CAP Entity's Operating Budget: The CAP Entity's approved FY2020 budget is \$791,800.

Upcoming Fiscal Year (FY2021)

- A. NMISC's Operating Budget: The NMISC's FY2021 appropriation request from the Unit Fund for operating budget related to its AWSA program is \$315,000. This amount is the same as FY2020.
- B. NMISC's Contractual Budget: The NMISC's FY2021 contractual budget is currently estimated at \$300,000, to obtain technical and legal services as necessary. The specifics and the exact amount will be determined based on the NMISC's NEPA joint lead work activity needs, and will be provided in the FY2021 Gila/AWSA Work Plan. This budget will be presented for the Commission approval in late spring 2020.
- C. Reclamation's NEPA Budget: Reclamation currently estimates its FY2021 budget to be \$174,000. Reclamation will submit its updated budget for the Commission approval in late spring 2020. The NMISC has communicated to Reclamation that the Commission will not approve additional funding until the Commission has reviewed the Draft EIS.
- D. CAP Entity's Operating Budget: The budget requested for the CAP Entity for FY2021 is \$381,800.

¹⁶ This Work Plan does not include elements that were separately considered and approved by the NMISC, i.e. NMISC's Non-NM Unit grants, Reclamation's NEPA budget, and CAP Entity's operating budget.

IV. CONCLUSION

The balance of the Unit Fund as of September 30, 2019 is \$59.89 million. The NMISC's expenditures from the Unit Fund are \$13.92 million for NM Unit activities and \$6.17 million for Non-NM Unit activities. The NMISC will receive two additional \$9.04 million payments towards the first tier of AWSA funding: one in January 2020 and the last in January 2021. The NMISC has invested \$37 million of the Unit Fund in pooled funds with the Council in an effort to increase market value over time. Given the upcoming annual payments to the NMISC and planned expenditures from the Unit Fund, the NMISC will invest additional funds in the next two fiscal years in accordance with the Joint Powers Agreement between the NMISC and Council.

In addition to applicable state and federal laws, the NMISC is specifically bound to the following:

- The AWSA, and all documents incorporated into the AWSA by reference
- The New Mexico Unit Fund statute
- The 2016 MOU between the NEPA Joint Leads
- The 2016 Funding Agreement between the Joint Leads and the CAP Entity
- The CAP Entity JPA, entered into in 2015 and amended twice since then
- The MOU with Deming, entered into in 2015 and amended twice since then
- Various funding agreements with the Non-NM Unit grantees

The NMISC anticipates expenditures in FY2020-21 to include NMISC's administration for the entire Program, obtaining technical and legal services for the NMISC as necessary, CAP Entity operating expenses, and additional NEPA expenses for Reclamation if approved by the NMISC after review of the draft EIS.

NEW MEXICO INTERSTATE STREAM COMMISSION



Rolf Schmidt-Petersen, Director