

## **Opinion 05-04**

August 24, 2005

### **OPINION OF: PATRICIA A. MADRID** Attorney General

**BY:** Stephen R. Farris, Director, Water, Environment & Utilities Division; David M. Pato, Assistant Attorney General, Water, Environment & Utilities Division

**TO:** The Honorable Joseph Cervantes, State Representative, 2610 S. Espina, Las Cruces, NM 88001; The Honorable Richard Cheney, State Representative, P.O. Box 15044, Farmington, NM 87401

**RE:** WATER PROJECT FUND

### **QUESTIONS:**

1. Must the legislature also have amended NMSA 1978, § 7-27-10.1 (2003) for the directive in 2005 N.M. Laws, ch. 293 to be effective?

2. After enactment of 2005 N.M. Laws, ch. 293, must ten percent of all funds in the water project fund established by NMSA 1978, § 72-4A-9 (2005) be dedicated to water rights adjudications?

### **CONCLUSIONS:**

1. No. The directive in 2005 N.M. Laws, ch. 293 is effective even though the Legislature did not also expressly amend NMSA 1978, § 7-27-10.1 (2003).

2. Yes. The Legislature's amendment of NMSA 1978, § 72-4A-9 is sufficient to direct that "[t]en percent of all water project funds," including severance tax bond proceeds appropriated in Section 7-27-10.1, "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."

### **BACKGROUND:**

In 2001, the Legislature established the water project fund and directed that money in the water project fund be "used to make loans or grants to qualified entities for any project approved by the Legislature." NMSA 1978, § 72-4A-9(A) (2001). The water project fund was to 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," 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," and of "[i]ncome from investment of the water project fund." NMSA 1978, § 72-4A-9(A)

(2001). Additionally, the Legislature authorized the New Mexico Finance Authority 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.” NMSA 1978, § 72-4A-9(C) (2001).

In 2003, in a separate section of law, the Legislature directed that the Board of Finance Division of the Department of Finance and Administration “estimate the amount of bonding capacity available for severance tax bonds to be authorized by the legislature,” directed that the Division “authorize ten percent of the estimated bonding capacity each year,” and authorized the State Board of Finance to “issue severance tax bonds in the annually deducted amount for use by the water trust board to fund water projects statewide.” NMSA 1978, § 7-27-10.1 (A) (2003). The Legislature further directed in 2003 that the “water trust board . . . certify to the state board of finance the need for issuance of bonds for water projects,” and directed that “[p]roceeds from the sale of the bonds [be] appropriated to the water project fund in the New Mexico finance authority for the purposes certified by the water trust board to the state board of finance.” NMSA 1978, § 7-27-10.1 (B) (2003). The Legislature also then defined “water project” as a “capital outlay project for. . . (1) the storage, conveyance or delivery of water to end users; (2) the implementation of federal Endangered Species Act of 1973 collaborative programs; (3) the restoration and management of watersheds; (4) flood prevention; or (5) conservation, recycling, treatment or reuse of water.” NMSA 1978, § 7-27-10.1 (D) (2003). Water rights adjudications can directly affect any or all of these water projects.

In 2005, the Legislature amended the original law enacted in 2001, NMSA 1978, § 72-4A-9 (2001), requiring that “[t]en percent of all water project funds [] be dedicated to the state engineer for water rights adjudications, and twenty percent of the money dedicated for water rights adjudications [] be allocated to the administrative office of the courts for the courts’ costs associated with those adjudications.” 2005 N.M. Laws, ch. 293, § 1(A). Additionally, the Legislature authorized “money in the water project fund [to] be used to make loans or grants to qualified entities for any project approved by the legislature and for water rights adjudications.” 2005 N.M. Laws, ch. 293, § 1(B).

### **DISCUSSION:**

Article IV, Section 18 of the New Mexico Constitution provides that “[n]o law shall be revised or amended, or the provisions thereof extended by reference to its title only; but each section thereof as revised, amended or extended shall be set out in full.” From this directive, Courts have developed a maxim that amendments by implication are not favored. *See, e.g., Johnston v. Bd. of Ed. of Portales*, 65 N.M. 147, 158, 333 P.2d 1051, 1058 (1958). The New Mexico Supreme Court, however, has also long espoused the view that “the fact that an act may amend certain provisions of other statutes by implication, does not in and of itself violate Section 18 [of the New Mexico Constitution].” *U.S. Brewers Ass’n v. NM Dep’t of Alcoholic Beverage Control*, 101 N.M. 216, 219, 668 P.2d 1093, 1096 (1983). Indeed, the Courts recognize that the purpose of Section 18’s directive is to guard against the “hodge-podge or log-rolling legislation, surprise or fraud

on the legislature, or not fairly apprising the people of the subjects of legislation so that they would have no opportunity to be heard on the subject." U.S. Brewers, 101 N.M. at 219, 668 P.2d at 1096 (quoting Martinez v. Jaramillo, 86 N.M. 506, 508, 525 P.2d 866, 868 (1974)) (internal quotation marks omitted). In applying this test, the Courts recognize that each case must be decided on its own facts and circumstances, and "indulge every presumption in favor of the legislation's validity." U.S. Brewers, 101 N.M. at 219, 668 P.2d at 1096.

Article IV, Section 18 of the New Mexico Constitution does not prohibit the application of 2005 N.M. Laws, ch. 293. The 2005 amendment of the 2001 law, NMSA 1978, § 72-4A-9 (2001), provides funding for not only projects previously approved by the Legislature but also for important water rights adjudications, and directs that "ten percent of all water project funds [] be dedicated to the state engineer for water rights adjudications, and twenty percent of the money dedicated for water rights adjudications [] be allocated to the administrative office of the courts for the courts' costs associated with those adjudications." These amendments, clearly set forth in the 2005 bill, did not result from 'surprise or fraud' on the Legislature or generate hodge-podge or log-rolling legislation.

In interpreting 2005 N.M. Laws, ch. 293, we begin with a presumption that "the Legislature acts with full knowledge of, and consistent with, existing legislation." Jicarilla Apache Nation v. Rodarte, 2004-NMSC-035, ¶ 15, 136 N.M. 630, 103 P.3d 554; see Bettini v. City of Las Cruces, 82 N.M. 633, 635, 485 P.2d 967, 969 (1971) (noting that the state of the law at the time the statute was enacted must be examined to determine what was intended as a substitute). "Thus, two statutes covering the same subject matter should be harmonized and construed together when possible, in a way that facilitates their operation and the achievement of their goals." Jicarilla Apache Nation, 2004-NMSC-035, ¶ 15; State v. Smith, 2004-NMSC-032, ¶ 13, 136 N.M. 372, 98 P.3d 102 (recognizing that when presented with a potential conflict, it is our task to "construe statutes in harmony whenever possible"). "Our goal is to ascertain legislative intent, which is primarily indicated by the plain language of the statute." In re Salopek, 2005-NMCA-016, ¶ 4, 137 N.M. 47, 107 P.3d 1; Crutchfield v. N.M. Dep't of Taxation and Revenue, 2005-NMCA-022, ¶ 22, 137 N.M. 26, 106 P.3d 1273 (repeating oft-cited principle that the courts seek to give effect to the Legislature's intent when interpreting statutes and instructing that "[i]n ascertaining Legislative intent, the provisions of a statute must be read together with other statutes in pari materia and under the presumption that the legislature acted with full knowledge of relevant statutory and common law").

The Legislature has set forth a framework for interpreting state statutes. First, the text of a statute must be considered in light of Sections 2 through 7 and Sections 18 and 19 of the Uniform Statutes and Rules Construction Act, the context in which the statute is applied, and the aids to construction provided in Subsections A and B of Section 20 of the Uniform Statutes and Rules Construction Act. NMSA 1978, § 12-2A-20(C) (1997). If the meaning of the text or its application is uncertain, the circumstances that prompted the enactment or adoption of the statute or rule, the purpose of a statute or rule as determined from the legislative or administrative history of the statute or rule and the

history of other legislation on the same subject may be considered in ascertaining the meaning of the text of the statute. NMSA 1978, § 12-2A-20(C) (1997).

Section 2 of the Uniform Statutes and Rules Construction Act mandates that “[u]nless a word or phrase is defined in the statute or rule being construed, its meaning is determined by its context, the rules of grammar and common usage.” NMSA 1978, § 12-2A-2 (1997). Section 2 further directs that “[a] word or phrase that has acquired a technical or particular meaning in a particular context has that meaning if it is used in that context.” NMSA 1978, § 12-2A-2 (1997). Section 4 defines “shall” as “a duty, obligation, requirement or condition precedent.” NMSA 1978, § 12-2A-4(A) (1997). Section 18 provides, in pertinent part, that “[a] statute or rule is construed, if possible, to: (1) give effect to its objective and purpose; (2) give effect to its entire text; and (3) avoid an unconstitutional, absurd or unachievable result.” NMSA 1978, § 12-2A-18(A) (1997). The Legislature further directed that “[t]he text of a statute or rule is the primary, essential source of its meaning.” NMSA 1978, § 12-2A-19 (1997).

Here, the Legislature directed that “[t]en 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.” 2005 N.M. Laws, ch. 293, § 1(A). Reading this provision in accordance with the rules of statutory construction set forth in Section 4 of the Uniform Statute and Rule Construction Act, the Legislature has made clear that the New Mexico Finance Authority has “a duty, obligation, [or] requirement” to dedicate ten percent of all water project funds to the state engineer for water rights adjudications, and that the state engineer has “a duty, obligation, [or] requirement” to allocate twenty percent of the money allocated for water rights adjudications to the administrative office of the courts for the court’s costs associated with those adjudications.

Moreover, the Legislature has directed that “[t]he text of a statute or rule is the primary, essential source of its meaning.” NMSA 1978, § 12-2A-19 (1997). The text of 2005 N.M. Laws, ch. 293, § 1(A), and of NMSA 1978, 7-27-10.1 (2003), provides a sufficient source for the meanings of these sections. The Legislature made funds available for water rights adjudications, based on a percentage of the amount certified by the water trust board to the state board of finance for water projects. See NMSA 1978, 7-27-10.1 (2003); 2005 N.M. Laws, ch. 293, § 1(A). The Legislature further specified that, among other things, the money in the water project fund should be used for water rights adjudications. 2005 N.M. Laws, ch. 293, § 1(B). From the text of these sections, the essential source of their meanings is clear – the Legislature directed that a portion of the water project fund be used to fund water rights adjudications.

Furthermore, a harmonious reading of these provisions reveals that the Legislature removed discretion from the Water Trust Board with respect to ten percent of the funds certified to the State Board of Finance for water projects, and mandated that these funds “be dedicated to the state engineer for water rights adjudications, and [that] twenty percent of the money dedicated for water rights adjudications [] be allocated to

the administrative office of the courts for the courts' costs associated with those adjudications." 2005 N.M. Laws, ch. 293, § 1(A). As becomes evident by reading 2005 N.M. Laws, ch. 293, § 1(B) in conjunction with the 2003 enacted NMSA 1978, section 7-27-10.1 (D), the Legislature viewed a project and water rights adjudications as two distinct matters deserving of funding, as is clear by its use of the conjunction "and" in 2005 N.M. Laws, ch. 293, § 1(A), and it expressed its objective that the costs of water adjudications be apportioned as a percentage of the amount certified by the water trust board to the state board of finance for water projects. See 2005 N.M. Laws, ch. 293, § 1(A) ("Money in the water project fund may be used to make loans or grants to qualified entities for any project approved by the legislature and for water rights adjudications.") (emphasis added). Accordingly, the recent amendment makes plain that the Legislature funded not only water projects, but also adjudications. This interpretation of 2005 N.M. Laws, ch. 293, is consistent with the plain language of the amendment, facilitates the operation of the amendment, and achieves the purpose of the amendment.