F I S C A L I M P A C T R E P O R T

SPONSOR Rodefer **ORIGINAL DATE** 01/30/09 **LAST UPDATED** 02/16/09 **HJM** 11

SHORT TITLE Study Public Drinking Water Buffer Zones **SB**

ANALYST Woods

APPROPRIATION (dollars in thousands)

Appropriation		Recurring or Non-Rec	Fund Affected
FY09	**FY10**		
NFI	NFI		

(Parenthesis ( ) Indicate Expenditure Decreases)

ESTIMATED ADDITIONAL OPERATING BUDGET IMPACT (dollars in thousands)

	FY09	FY10	FY11	3 Year Total Cost	Recurring or Non-Rec	Fund Affected
Total			$0.1 See Narrative		Non-Recurring	General Fund

(Parenthesis ( ) Indicate Expenditure Decreases)

Duplicates, Relates to, Conflicts with, Companion to HJM 4.

SOURCES OF INFORMATION
LFC Files

Responses Received From
Energy, Minerals and Natural Resources Department (EMNRD)
Office of the State Engineer (OSE)
Department of Health (DOH)
New Mexico Environment Department (NMED)

SUMMARY

Synopsis of Bill

House Joint Memorial 11 (HJM 11) requests that the Department of the Environment and the Interstate Stream Commission prepare an analysis of the feasibility and desirability of establishing buffer areas around critical surface water resources that are part of the public drinking water supply. The analysis is to consider the following issues:

- Which critical surface water resources need to be protected by a buffer area;
- Whether buffer areas should have a fixed width or a width determined by the topology of the area;

- How buffer areas should be established and the applicable process;
- What activities would be prohibited within such buffer areas; and
- The relationship between buffer areas designed to protect water resources and the protection of wildlife corridors.

The analysis is due by the end of November 2009, and there is no appropriation attached to the legislation.

FISCAL IMPLICATIONS

NMED indicates that no funding is provided to undertake the activities required in HJM 11. Those activities would require staff and financial resources that are currently not available within the Environment Department. The Department estimates that an additional scientist with expertise in surface water hydrology would be needed to conduct a feasibility study. Additional funding would be needed for travel and consulting assistance.

There are no immediate fiscal implications for the EMNRD; however OSE states that since the bill appropriates no funding to accomplish the requested study, staff resources would have to be diverted from other tasks to conduct the study.

SIGNIFICANT ISSUES

NMED states that the analysis required in HJM 11 is a significant undertaking. That analysis must consider which critical surface water resources need to be protected by a buffer area; whether buffer areas should have a fixed width or have a width that is determined by the topology of the areas bordering the critical surface water resource; how buffer areas should be established and what the process would be, including provisions for public notice and public comment; what activities would be prohibited within such buffer areas; and what the relationship is between buffer areas designed to protect water resources and the protection of wildlife corridors. NMED further notes:

> HJM 11 states that New Mexico has no legislation expressly prohibiting nonpoint source pollution that might impact critical surface water resources (see technical issues below). New Mexico's program to address nonpoint sources of pollution is voluntary in nature and utilizes a best management practice approach. Any shift toward a regulatory program for nonpoint source discharges must include extensive stakeholder input.
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> The Environment Department currently has authority to designate "Outstanding National Resource Waters" (ONRWs) under provisions of the Water Quality Act and surface water quality standards. That designation provides the highest level of water quality protection for the state's most special waters. Rather than undertake an entirely new classification of waters, ONRW provisions could be expanded to incorporate the concept of critical water resources.
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> Additionally, the Environment Department already implements a federally funded source water protection program that is intended to protect public drinking water supplies.

OSE indicates that impacts to water supplies for drinking water resources and the potential for introduction of pollutants increase as changes in the frequency and location of human-caused activities occur. Impacts are bound to occur in areas of urban expansion as population increases. These impacts also could be generated from long-standing beneficial uses of water such as farming or other agricultural water uses. Other beneficial water uses from commercial and industrial activities may also contribute to pollutant introduction into water supplies. The bill would seek to determine the desirability and feasibility of creating buffer zones around water resources used for drinking water supplies. If such a study were to be conducted, it should include an estimate of economic impact to existing or future beneficial water use activities so as to find a balance between competing water uses where urban areas expand into areas formerly dominated by agricultural or industrial activities. Study results could be useful in determining funding and regulatory needs to protect public water supplies while balancing the need for jobs and income derived from industrial, commercial, and agricultural beneficial uses of water as permitted under state law. EMNRD adds that an analysis on the use of buffer zones to protect surface water resources could be used in lawmaking and in rulemaking by state agencies.

PERFORMANCE IMPLICATIONS

While EMNRD indicates no performance implications, OSE states, "Personnel would have to be diverted from other statutory duties to accomplish this study." NMED adds, "Undertaking the analysis requested in HJM 11 will divert the agency's limited staff resources from tasks that are required by current performance measures and federal grants."

ADMINISTRATIVE IMPLICATIONS

NMED indicates that HJM 11 requires a significant study with detailed deliverables to be completed by November 2009. Even if funding were available to hire a scientist to complete this analysis, it could take several months to hire that employee because the Department would have to advertise and conduct interviews to fill that vacancy. That would leave insufficient time for stakeholder input and a comprehensive analysis to be completed. A program already exists under the Safe Drinking Water Act to provide for source water protection for drinking water systems. That source water protection program already accomplishes many of the goals of the proposed study. The benefits of the proposed study could be accomplished by enacting legislation that would place the force of law behind the existing source water protection programs.

EMNRD suggests that HJM11 may want to request that other agencies participate in preparation of the analysis. In particular, the Department of Game and Fish could contribute on issues related to wildlife corridors, and the Office of the State Engineer may have useful hydrology information.

CONFLICT, DUPLICATION, COMPANIONSHIP, RELATIONSHIP

EMNRD indicates that HJM 11 relates to HJM 4, Wildlife Corridor Information Sharing, which requests that state agencies work together and with other agencies, Indian nations, tribes and pueblos, and private groups, to share information about key wildlife corridors. The workshop is to be led by EMNRD, and is to identify and map wildlife corridors and crucial habitats, identify funding needs and future data and mapping needs. HJM 4 does not specifically address the relationship between protecting wildlife corridors and buffer zones designed to protect drinking water. However, the information obtained as a result of HJM 4 could be useful to the analysis to be performed under HJM 11.

TECHNICAL ISSUES

NMED advises that, "The first statement in HJM 11 that there is no legislation prohibiting nonpoint source pollution that might impact critical surface waters is not entirely correct. The New Mexico Water Quality Act at NMSA 1978, §74.6.10.A provides enforcement ability in instances where violations of surface water quality standards occur. (*See also* significant issues above.) Enforcement could occur in the instance of nonpoint as well as point source pollution."

ALTERNATIVES

NMED states, "Direct the Water Quality Control Commission to expand the criteria for ONRW designation in 20.6.4 NMAC to include critical surface and ground water resources."

OSE advises that existing state and federal regulations, such as the federal Clean Water Act, concerning discharges of water or disturbance of water courses may already exist within the statutory duties of the Environment Department, particularly in relation to protection of water resources. The state is already active and progressing in the establishment of total maximum daily load (TMDL) capacities for surface water stream systems. The study could possibly be oriented toward the prioritization of needs for establishing TMDLs for the New Mexico's surface waters.

WHAT WILL BE THE CONSEQUENCES OF NOT ENACTING THIS BILL

NMED states, "Discharges to surface water and groundwater will continue to be regulated pursuant to existing state and federal programs. Nonpoint source discharges will continue to be managed using voluntary best management practices. Drinking water suppliers will continue to implement source water protection programs and work with local authorities to pass laws to support those programs."

EMNRD indicates that there will be no consolidated effort, at the state-wide level, to look at the usefulness of establishing buffer zones to protect surface waters. Decisions on such issues will be left to individual state agencies. OSE adds, that existing water quality standards and regulatory processes will continue to address the needs for control of surface water pollutants.

AMENDMENTS

None suggested by respondents.

BW/svb