

Fiscal impact reports (FIRs) are prepared by the Legislative Finance Committee (LFC) for standing finance committees of the NM Legislature. The LFC does not assume responsibility for the accuracy of these reports if they are used for other purposes.

Current FIRs (in HTML & Adobe PDF formats) are available on the NM Legislative Website (legis.state.nm.us). Adobe PDF versions include all attachments, whereas HTML versions may not. Previously issued FIRs and attachments may be obtained from the LFC in Suite 101 of the State Capitol Building North.

## FISCAL IMPACT REPORT

ORIGINAL DATE 2-16-09

SPONSOR Rodella LAST UPDATED \_\_\_\_\_ HJM 49

SHORT TITLE No Outstanding Resource Waters Designation SB \_\_\_\_\_

ANALYST Woods

### APPROPRIATION (dollars in thousands)

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

(Parenthesis ( ) Indicate Expenditure Decreases)

Duplicates, Relates to, Conflicts with, Companion to N/A

### SOURCES OF INFORMATION

LFC Files

#### Responses Received From

Energy, Minerals and Natural Resources Department (EMNRD)

New Mexico Environment Department (NMED)

### SUMMARY

#### Synopsis of Bill

House Joint Memorial 49 (HJM 49) requests that Governor Richardson cancel or suspend the outstanding national resource waters (ONRW) designation process and instead direct the Governor's administration engage the residents of the state in evaluating, planning and implementing cooperative approaches to improve the state's watersheds, forests and grazing lands and thereby the utility of these areas for recreational and agricultural uses and for the protection of domestic and municipal water sources.

### FISCAL IMPLICATIONS

NMED indicates that ONRWs are one tool in the state's antidegradation procedures for the protection of surface water quality. Effective programs for preventing degradation are critical because the cost of restoring watersheds and water quality is far higher than the costs of implementing effective best management practices to prevent pollution. The state spends millions of dollars each year to restore watersheds and aquatic ecosystems but focuses few resources on state programs to prevent surface water pollution and maintain healthy watersheds.

## SIGNIFICANT ISSUES

As background, NMED states that the ONRW designation provides the highest level of water quality protection for state waters. ONRW designation benefits all users of the water, including current users of the designated waters and any downstream users, by protecting against water quality degradation. ONRWs are often headwater streams that ultimately feed municipal drinking water systems and irrigation uses. Additionally, wildlife and aquatic species benefit from ONRW designation because headwater streams provide irreplaceable habitat. If watershed conditions along the ONRW need improvement, designation can help in the prioritization of restoration efforts and associated funding requests. Waters eligible for ONRW designation include those that are part of a national or state park, wildlife refuge or wilderness areas, special trout waters, waters designated as wild rivers under the federal Wild and Scenic Rivers Act, waters with exceptional recreational or ecological significance, and high quality waters that have not been significantly modified by human activities. In April 2008 Governor Bill Richardson announced the state's intention to seek ONRW designation for surface waters within national forest wilderness and inventoried roadless areas in New Mexico. If successful, this will be the third ONRW designation for New Mexico. NMED further indicates that:

In 2005 and 2006, the Water Quality Control Commission (WQCC) designated New Mexico's first ONRWs. The designated waters are the Rio Santa Barbara (west, middle and east forks) within the Pecos Wilderness; and surface waters within the U.S. Forest Service Valle Vidal Special Management Unit.

The state has held 11 public meetings and additional one-on-one meetings with stakeholders on the wilderness and roadless area ONRW initiative. Public meetings were held in Taos, Las Vegas, El Rito, Silver City, Socorro, Ruidoso, Pecos, Abiquiu, Alcalde, Cuba and Albuquerque.

ONRW designations are approved by the WQCC as an amendment to the state's surface water quality standards. The approval process includes widely circulated notice to the public and an opportunity for the public to participate in the process in a full public hearing before the WQCC. Stakeholders can present their views orally or in writing. After the hearing, the WQCC makes a determination on the ONRW designation.

EMNRD advises that this Memorial relates to a Governor's initiative that is being undertaken to provide the highest level of water quality protection for state waters. The initiative is also designed to protect the ONRW's associated ecosystems, which include forested watersheds and wildlife habitat. The Governor's lead agency in this effort is the Environment Department. EMNRD further states:

In 2008, the Energy, Minerals and Natural Resources Department (EMNRD) and the New Mexico Department of Game and Fish created a Public Discussion Document Supporting Nomination of Waters in Inventoried Roadless Areas and Wilderness Areas in New Mexico as ONRWs (Discussion Document). This Discussion Document laid out a plan to pursue protection for all surface waters within national forest wilderness and inventoried roadless areas in New Mexico. By seeking designation for those waters as ONRWs, the plan indicated that vital headwater streams will remain pristine and protected far into the future.

ONRW designation is meant to compliment other state efforts to protect water quality, which include the establishment of the Water Cabinet, management of Clean Water Act grant programs, implementation of the Forest and Watershed Health Plan, and creation of the River Ecosystem Restoration Initiative. Two ONRWs have already been designated in New Mexico. They are the Rio Santa Barbara within the Pecos Wilderness and surface waters within the U.S. Forest Service Valle Vidal Special Management Unit.

Eleven public meetings on the proposed ONRW designation have been held to date. Concern, expressed by some stakeholders, has centered on the potential for unintended impacts to traditional uses and local economies associated with those uses. Currently there is only one NPDES permit throughout the ONRW designated areas and non point source discharges regarding cattle grazing are managed by the existing Best Management Practices (BMPs) Draft changes to the Water Quality Control Act intended to alleviate those concerns have been prepared for submission to the WQCC and the ONRW petition itself has been amended to further reflect the concerns expressed at the public meetings.

### **PERFORMANCE IMPLICATIONS**

NMED states, “HJM 49 could negatively impact the Environment Department’s performance goal of improving New Mexico’s watersheds by restoring native species, habitat and stream flows.”

### **ADMINISTRATIVE IMPLICATIONS**

NMED states, “State programs that restore water quality and watershed health will continue to be under-resourced and overextended.”

### **CONFLICT, DUPLICATION, COMPANIONSHIP, RELATIONSHIP**

None identified.

### **TECHNICAL ISSUES**

None identified.

### **OTHER SUBSTANTIVE ISSUES**

NMED states, “The Environment Department has addressed concerns raised by stakeholders in its draft ONRW proposal as follows:

#### *Concerns about designation of non-perennial waters*

- ONRW designation protects no perennial waters that are tributaries to perennial waters.
- Efforts to protect perennial waters cannot be effective if tributaries to those waters continue to be degraded and receive pollutants that can be transported downstream during storm events.

Concern about impacts on preexisting activities, including grazing activities

- Preexisting nonpoint source discharges satisfy antidegradation requirements for ONRWs so long as best management practices are used. The USFS currently requires all grazing permittees to implement best management practices. Therefore, grazing activities should not be affected or hurt by the designation.
- No water quality monitoring is required for pre-existing nonpoint source discharges.

Concern about protecting watershed improvement and forest management activities in ONRWs

- Watershed improvement and forest management projects are encouraged in ONRW designated areas.
- Temporary degradation associated with watershed improvement / forest management activities is allowed.
- Watershed improvement / forest management activities include controlled burns, forest thinning, reestablishing native vegetation, improving habitat for aquatic species, and restoring native fish populations.
- Completion timeframes for watershed improvement / forest management projects are dictated by environmental conditions that are beyond human control and arbitrary completion timeframes will not be imposed.

Temporary degradation

- Temporary degradation resulting from implementation of forest management plans, watershed restoration action strategies, the non-native phreatophyte action strategy, river ecosystem restoration work plans, or other watershed improvement plans is allowed.
- Temporary degradation resulting from acequia maintenance, repair and improvements is exempt from ONRW requirements.
- Temporary degradation that results from flooding or other natural disasters is not subject to ONRW requirements.
- Temporary degradation lasting six months or less does not require activity-specific monitoring.

Upstream and downstream discharges outside of the designated area

- Upstream point source discharges will be evaluated during NPDES permit issuance to ensure that the discharge does not cause or contribute to degradation of downstream ONRW designated waters.
- For upstream nonpoint source discharges, NMED will encourage voluntary implementation of best management practices.
- There is no impact on downstream waters except the potential for better water quality.

Land grant infringement

- ONRW designation does not alter property rights and therefore does not infringe upon treaty rights.

- ONRW designation cannot address long-standing disputes between traditional forest users and USFS.”

EMNRD’s State Parks Division notes that, “HJM 49 identifies a lack of credible scientific data as the only tangible problem in the current ONRW evaluation process, but it does not call for gathering of such data for that purpose. Instead, HJM 49 proposes that the current public engagement process be replaced. The current process has included 11 public informational meetings hosted in a broad spectrum of affected communities since April 2008 when the Governor announced his initiative. The ONRW process will also include a public hearing to be held by the WQCC. WQCC has the authority to adopt or to reject ONRW proposals. The WQCC will widely circulate a notice to the public and offer opportunity for the public to participate in a full public hearing where stakeholders can present their views orally or in writing. HJM 49 offers no criticism of this ongoing extensive public engagement process, so it is unclear what would be gained by replacing it with some other unspecified approach.”

### **ALTERNATIVES**

NMED states, “HJM 49 is written broadly to request suspension of all ONRW designations. However, HJM 49 appears to express concern about one specific ONRW designation, the statewide wilderness and roadless area designation. If this is the case, the memorial should be revised to address only the wilderness and roadless area proposed designation.”

### **WHAT WILL BE THE CONSEQUENCES OF NOT ENACTING THIS BILL**

NMED suggests, “Approval of the proposed ONRW designation will be decided by the Water Quality Control Commission in a full public hearing in which all stakeholders can present their views orally or in writing in accordance with the legislative requirements in the Water Quality Act and the procedures in the WQCC’s regulations.”

EMNRD adds, “The approval of proposed ONRW designations will continue as planned. The WQCC will evaluate and act on the current proposal after a public hearing process is conducted.”

### **AMENDMENTS**

None proposed by respondents.

BW/mc