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FISCAL IMPACT REPORT

SPONSOR SFI	ORIGINAL DATE 02/12/09	LAST UPDATED 03/19/09	HB _____
SHORT TITLE <u>Conservancy District Power over Acequias</u>	SB <u>486/SFIS/aSFL#1</u>	ANALYST <u>Hoffmann/Wilson</u>	

APPROPRIATION (dollars in thousands)

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

(Parenthesis () Indicate Expenditure Decreases)

Relates to House Bill 40 and House Bill 307. See the “RELATIONSHIP” section.

SOURCES OF INFORMATION

LFC Files

Responses Received From

New Mexico Acequia Association

No Response

Department of Finance and Administration (DFA)

SUMMARY

Synopsis of SFI#1 Amendment

Senate Floor Amendment #1 adds “that is” to the specification of the location of an acequia or community ditch within a conservancy district. The amendment also appears to add duplicate language to the same paragraph regarding the population description of the most recent decennial census.

Synopsis of Original Bill

The Senate Floor substitute bill for Senate Bill 486 amends Sections 73-14-39, NMSA 1978 to limit the jurisdiction of conservancy districts over local Acequia or ditch associations. It applies only to conservancy district that include within their boundaries a class A county with a population greater than 500,000 according to the most recent federal decennial census. This bill specifies that certain conservancy districts do not have power, jurisdiction or control over acequias within their district boundaries. Given the description of the applicable conservancy districts, the only conservancy district that would be affected by this bill would be Middle Rio

Grande Conservancy District (MRGCD) and the acequias therein.

The bill also makes technical and editorial corrections in Section 73-14-39 NMSA 1978.

FISCAL IMPLICATIONS

Senate Bill 486 makes no appropriations.

SIGNIFICANT ISSUES

The New Mexico Acequia Association reports that acequias in the Middle Rio Grande Valley, within the external boundaries of MRGCD, have sought to obtain capital outlay funds from the Legislature. This has raised questions about the acequias' status, with regard to the MRGCD, and whether their ability to receive funds and assert other powers of acequias under state law has been affected by the formation of MRGCD. In New Mexico, acequias are political subdivisions of the state and may receive state funds for improving ditch infrastructure without violating the anti-donation clause of the state constitution. Acequias in the Middle Rio Grande Valley have also sought to have more direct water management control over pre-1907 water rights. The MRGCD is concerned primarily with managing water rights permitted to the District by the State Engineer in the 1920s.

In exempting acequias from MRGCD's power, jurisdiction and control, this bill would overrule in part a 1940 decision by the State Supreme Court in *Middle Rio Grande Conservancy Dist. v. Chavez*, 44 N.M. 240, 101 P.2d 190 (1940), to the extent that Chavez interpreted the Conservancy Act of 1923 (as amended in 1927), as limiting the water distribution powers of the acequias named in or located within the MRGCD District Plan, giving MRGCD the exclusive power of distribution over the acequias it condemned in the court-approved Plan. Senate Bill 486 would restore the powers that the Conservancy District Act and the Chavez case took away, as to those acequias actually named in or located within the District Plan.

If Senate Bill 486 passes, the MRGCD would have no power, jurisdiction or control over acequias operating within the MRGCD as of 2010. This bill seeks to restore to these acequias the powers of distribution for those acequias that were part of the MRGCD Plan. It is not clear how this bill affects ditches that were in operation at the time of MRGCD creation and not part of the MRGCD Plan.

RELATIONSHIP

House Bill 40 is related to Senate Bill 486, which proposes to prohibit, in certain cases, the power of a municipality to condemn wells, cisterns, reservoirs, distribution pipes and ditches, springs, streams, water or water rights outside the boundaries of the municipality.

House Bill 40 is related to House Bill 307, which proposes to appropriate \$575.0 to the from the general fund to the Acequia and Community Ditch fund to carry out the purposes of the Acequia and Community Ditch Act. Some of this funding could allow acequia associations to obtain legal representation and professional technical support on issues common to the majority of acequias within ongoing water rights adjudications.

WHAT WILL BE THE CONSEQUENCES OF NOT ENACTING THIS BILL

The New Mexico Acequia Association claims that if Senate Bill 486 is not enacted, the acequias in the Middle Valley would remain in a state of limbo in terms of their status and power vis-à-vis MRGCD. The acequias named in or located within the District Plan would continue to have no power to distribute water internally and would have to defer to the authority of MRGCD in that regard. However, there would continue to be a lack of clarity regarding which other statutory acequia powers were retained by the acequias located within MRGCD and were unaffected by the formation of MRGCD.

CH/DW/mt:svb