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FISCAL IMPACT REPORT

ORIGINAL DATE 03/10/13
 SPONSOR Smith LAST UPDATED 03/14/13 HB _____
 SHORT TITLE Rio Grande Water Rights Claimants List SM 90
 ANALYST Daly

ESTIMATED ADDITIONAL OPERATING BUDGET IMPACT (dollars in thousands)

	FY13	FY14	FY15	3 Year Total Cost	Recurring or Nonrecurring	Fund Affected
Total	NFI	NFI				

(Parenthesis () Indicate Expenditure Decreases)

SOURCES OF INFORMATION

LFC Files

Responses Received From

Office of the State Engineer (OSE)

SUMMARY

Synopsis of Bill

Senate Memorial 90 (SM 90) requests the State Engineer (SE) to create a list of major rights claimants in the upper, middle and lower reaches of the Rio Grande, with the most junior water rights claimants listed first. The Office of the State Engineer (OSE) is to report its findings to the appropriate legislative interim committee by November 1, 2013.

FISCAL IMPLICATIONS

No fiscal impact on the State is anticipated.

SIGNIFICANT ISSUES

The OSE states that ambiguities in the language of SM 90 make it difficult to assess the work that would be required to comply with the directives of the memorial. For example, SM 90 does not define a threshold for what constitutes a “major” water rights claimant. In addition, the memorial does not specify whether claimants to water rights located on tributaries of the Rio Grande are to be included in the lists to be developed. Given these uncertainties, the memorial’s performance implications for the OSE are unclear. The OSE will be required to perform considerably more work if the memorial requires the agency to generate or develop data and information regarding water right claimants beyond the data currently available on the WATERS database.

PERFORMANCE IMPLICATIONS

The OSE advises that it already has significant resources dedicated to updating and developing the data contained in the WATERS database, and staff would need to be reallocated to complete the objective of this Memorial.

RELATIONSHIP

Relates to SM 83, SM 89, HM 85 and SJM 55.

OTHER SUBSTANTIVE ISSUES

The OSE also provides these comments:

The memorial asserts on page 2, lines 10-11, that all municipalities are junior water rights claimants. This is not the case in every instance. Many, if not most, municipalities in New Mexico have acquired senior water rights and therefore are likely to be both junior and senior water rights owners. See proposed amendments below.

The memorial refers only to water rights claimants. A water rights claimant is an individual or entity asserting an ownership right to the use of the public waters. A water rights owner has a legally recognized right to the use of the waters, established through beneficial use. A priority call would include claimants and owners.

To the extent the memorial implies that a priority call could be made on the entire length of the river, from the Texas to the Colorado state lines, this is not accurate. Under applicable authority of the New Mexico appellate courts and the U.S. Supreme Court, the priorities of individual water rights cannot be enforced across the Rio Grande compact boundary at Elephant Butte Reservoir.

AMENDMENTS

The OSE recommends these amendments:

1. On page 2, line 10, strike “all” and insert in lieu thereof “many, but not all, water rights held by”.
2. On page 2, line 10, strike “junior water rights” and insert in lieu thereof “relatively junior in priority,”.
3. On page 2, line 11, strike “claimants,”.

MD/blm