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FISCAL IMPACT REPORT

SPONSOR Trujillo, CA / Bandy ORIGINAL DATE 2/8/16
LAST UPDATED _____ HM 56
SHORT TITLE Water Adjudication Mailing Lists SB _____
ANALYST Armstrong

ESTIMATED ADDITIONAL OPERATING BUDGET IMPACT (dollars in thousands)

	FY16	FY17	FY18	3 Year Total Cost	Recurring or Nonrecurring	Fund Affected
Total		\$0.0	\$0.0	\$0.0		

(Parenthesis () Indicate Expenditure Decreases)

SOURCES OF INFORMATION

LFC Files

Responses Received From

Administrative Office of the Courts (AOC)

Office of the State Engineer (OSE)

SUMMARY

Synopsis of Bill

House Memorial 56 requests that the Office of the State Engineer (OSE) and the state's courts use multiple data sources when locating and giving notice to water rights owners affected by proceedings in "water proceedings." The memorial seeks to affirm that constitutional guarantees of due process require both the courts and state agencies to make every reasonable effort to provide proper notice when a water right may be affected by court or agency action.

FISCAL IMPLICATIONS

No fiscal impact to either OSE or the courts.

SIGNIFICANT ISSUES

According to analysis from the Administrative Office of the Courts (AOC), the judiciary provides notice of water rights proceedings through adjudication websites and monthly adjudication reports to water rights claimants. AOC notes that regular, easily accessible, and low-cost or free access to adjudication activity is an ongoing priority as cases progress.

The memorial declares that OSE and the courts should look to records on file with OSE, county clerks and assessors, acequias, and community ditch associations when determining which water rights holders should be given notice. AOC analysis notes that, in water rights adjudications, New Mexico’s Rules of Civil Procedure require notice to “all claimants, regardless of whether they have been served and joined as defendants, claiming water rights with the section or sections of the stream system identified by the court.”

The rules further provide that notice is first to be given by mail to all claimants “whose names and addresses are reasonably ascertainable.” The rules also require consultation of hydrographic surveys (which include real property records on file with county clerks), other OSE records, county assessor records, and records of water users associations or commissions (e.g. irrigation districts and acequias). If mail is returned as undeliverable, the state renews efforts to locate the current owner/claimant. If no one can be found, then the state provides notice by publication in a newspaper of record.

According to OSE analysis, this memorial overlooks the statutory obligation of water right owners to notify the agency of changes in ownership and reflects a misperception regarding undeliverable mail. Under existing statute, in the event of any change in ownership of a water right the new owner is required to file a change of ownership form with OSE. Additional requirements may also exist, like in the lower Rio Grande stream adjudication where the court ordered that claimants notify the court and the state of all ownership changes. Even with such statutory and court-imposed obligations on water right owners, the state still makes additional efforts to locate a new owner when mail is returned as undeliverable in adjudications. Once a water right has been adjudicated, however, returned mail is not necessarily an indication that the correct owner is unknown. Under the Rules of Civil Procedure, the State must continue to serve a party to an adjudication until the party is formally substituted out. Where the state learns of a new owner it will enter the new owner in its records and serve the new owner, but, until the parties have filed a motion for substitution, the state must continue to serve both the new owner and a former owner who may long ago have moved away.

TECHNICAL ISSUES

OSE analysis noted that although the memorial’s title references water rights adjudications, the text of the memorial does not clarify what is meant by “water proceedings.” This broad term could encompass several different types of proceedings:

- water rights adjudications, which are special statutory proceedings conducted in the district courts in which New Mexico is the plaintiff and all individual water rights owners in a given stream system are joined as defendants;
- administrative appeals from State Engineer decisions, which are conducted by State Engineer Hearing Examiners and in which the permit applicant, any protestants, and the Water Rights Division of the Office of the State Engineer are all parties; or
- appeals to district court from State Engineer decisions, which are conducted by district judges and in which the permit applicant, any protestants, and the State Engineer are all parties.

The latter two types of proceedings require only service lists comprised solely of parties to the proceeding; they do not require a separate “mailing list.” Mailing lists are used only in certain circumstances during water rights adjudications.