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FISCAL IMPACT REPORT

SPONSOR: Nunez DATE TYPED: 2/28/03 HB 403/aHJC

SHORT TITLE: Create Special Water Users' Associations SB _____

ANALYST: Wilson

APPROPRIATION

Appropriation Contained		Estimated Additional Impact		Recurring or Non-Rec	Fund Affected
FY03	FY04	FY03	FY04		
	NFI				

Duplicates SB 373

SOURCES OF INFORMATION

Responses Received From
 Office of the State Engineer (OSE)
 Department of Agriculture (DA)
 Public Regulation Commission (PRC)
 Environment Department (ED)

SUMMARY

Synopsis of HJC Amendment

The House Judiciary Committee Amendment to House Bill 403 deletes the requirement that the state engineer must hold a hearing before an aggrieved person can take an appeal to district court.

The HJC amendment clarifies that any entity establishing a “special waters users’ association must be within New Mexico. Other changes to this bill clarify wording and procedural issues. This amendment also adds a severability clause.

Synopsis of Original Bill

House Bill 403 establishes a process for the leasing of water from irrigation projects to municipalities and other public and semi-public entities, in a manner which provides for less oversight by the Office of the State Engineer than applies to other changes in the use of water rights, and

which requires approval by the project board of directors.

HB 403 amends the State water code, Section 73-10-48, and sets forth in detail the procedures for addressing changes in water use that are associated with a lease of water rights by a municipality or other public or semi-public entity from an irrigation district. Special users associations may be established by the interstate stream commission with the approval of the irrigation district, and the association may lease the use of an annual allotment of project water directly from a member of the district or through the district. The association will be responsible for assessments and other obligations of a water-rights owner. The district may take actions appropriate to its responsibilities in the leasing program. Leases are identified as having the particular purposes of supplying water to a water treatment plant that serves municipal and industrial uses, or of meeting interstate delivery requirements of project water to Texas.

The OSE must adopt rules that establish criteria governing water rights changes associated with these leases. Specific changes will be processed in conformance with these rules, and the OSE's determination will be set forth by public notice. A procedure is established for persons who own rights within the irrigation district and who object to the OSE's determination. Once the OSE's decision is final, the irrigation district may then proceed through its approval process, which also involves a notice and protest procedure for members of the district. This Section also provides for required filings with the state engineer by the organizers of a special water users' association, and sets forth provisions relating to the organization of such associations.

Additional components of HB 403 include: the special water users associations among the public and semi-public water supply entities whose water rights are afforded 40-year protection afforded by Section 72-1-9; exempt leases to special water users associations from the provision by which a person aggrieved by an action of the OSE (or refusal to act) may request a hearing to review said action, and cannot undertake a de novo appeal to the District Court without having requested a hearing; and establishes a new Section B in 72-6-5 which gives the Board of Directors of an irrigation project authority to approve a lease of water from the project if the lease is determined by the State Engineer to conform to rules established under HB 403.

Significant Issues

The intent of this legislation is to provide a means by which water rights in an irrigation project, especially the Elephant Butte Irrigation District, can be made available to municipal-type uses, such as the City of Las Cruces and Dona Ana County, or to satisfy delivery requirements to Texas. Historically, such rights have not been available due to policies of the District and uncertainties about various legal issues, including, for example, who has responsibilities for compliance with District assessments and other regulations. HB 403 has been crafted to satisfy concerns of both the Districts and municipalities. With the proposed statutory changes, the use of EBID rights to support a municipal water supply project in Dona Ana County will be made feasible.

To accomplish these objectives, the conventional jurisdiction of the OSE has been restricted. Rather than review each lease on its specific terms, as would be done in other circumstances, the OSE is to establish criteria for such reviews through a rule-making procedure, and to then apply these criteria to specific transactions such that a transaction that meets the criteria will be approved. While any member of the public may participate in the rule making, only irrigation district members will have standing to object to the OSE's interpretation of the rules with respect to

a particular change in water rights, and then only with specified limits as to the grounds for an objection. In effect, then, once the OSE 's rules are set forth, all transactions that fit the template of the approved criteria will be subject to the authority of the irrigation project board of directors. The concept of using predetermined criteria for approval or disapproval of a water rights change is not new, but has not been done in the context of an irrigation project.

FISCAL IMPLICATIONS

There will be costs associated with the Engineer's rule-making procedures, but once the rules are in place, the SEO's responsibilities will be substantially less extensive than would otherwise be the case.

ADMINISTRATIVE IMPLICATIONS

The SEO can comply with the requirements of HB 403 with existing staff resources.

DUPLICATION

HB 403 is a duplicate of SB 373

TECHNICAL ISSUES

The PRC notes that the definition of a “public utility” found on page 8 of HB 403 can be confused with the “public utility” that is regulated by the PRC. If the “public utility” referred to in SB 373 is not intended to be regulated by the PRC, this should be clarified.

DW/lb/njw