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FISCAL IMPACT REPORT

SPONSOR: SPAC DATE TYPED: 3/20/03 HB _____

SHORT TITLE: State of Emergency in New Mexico Forests SB CS/CS/209/aHENRC

ANALYST: Maloy

APPROPRIATION

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

(Parenthesis () Indicate Expenditure Decreases)

SOURCES OF INFORMATION

Responses Received From
 Energy, Minerals and Natural Resources Department
 State Land Office
 Environment Department
 Interstate Stream Commission
 Office of the Attorney General

SUMMARY

Synopsis of HENRC Amendment

The House Energy and Natural Resources Committee has amended the Senate Public Affairs Committee Substitute for the Senate Conservation Committee Substitute for Senate Bill 209 as follows:

1. Eliminates those provisions relating to possible inaction on the part of the United States secretaries of agriculture and the interior, and the allowance that the governor may seek primacy for jurisdiction for enforcement and administration of the federal watersheds in New Mexico;
2. Eliminates those provisions relating to the governor seeking sufficient federal funds to enable the state to perform the actions needed to mitigate or eliminate the state of emergency; and

3. Eliminates those provisions authorizing the Office of the Attorney General to initiate a legal action against the federal government in the event that the governor's request is left significantly unanswered after 90 days.

As amended, the bill no longer seeks to have jurisdiction over federal watersheds transferred to New Mexico. Therefore, New Mexico is not assuming the costs associated with administering the watersheds. Rather, as amended, the bill now simply directs the governor to request the secretaries for agriculture and the interior to take “any actions necessary for New Mexico to restore its watershed to a condition of health, increase the waterflows and end the state of emergency created by the damage...”

Synopsis of Original Bill

The Senate Public Affairs Committee Substitute for the Senate Conservation Committee Substitute for Senate Bill 209 asserts the following regarding the history of New Mexico's watersheds and federal forests:

1. New Mexico's watersheds located on federal lands currently contain excess junipers, conifers, salt cedar and other woody vegetation.
2. The continued overgrowth serves no legitimate federal or state purpose and poses a present unreasonable risk to the lives and property of New Mexicans.
3. The failure to remove excess tree overgrowth from the watersheds prevents downstream flow to New Mexico. This is in violation of the state's legal entitlement to the diverted waters under both state and federal law.
4. The federal Water Resources Planning Act directs the federal land management agencies to collaborate with the states, to assess adequacies of water supplies in each resource region of the country and to coordinate development and conservation of water and related land resources.
5. In the federal Watershed Protection and Flood Prevention Act, congress recognized that watershed damages have threatened the national welfare.
6. The federal Organic Administration Act of 1897 found that “no national forest shall be established except to improve and protect the forest . . . or for the purpose of securing favorable conditions of waterflows”. This Act also recognized the “preeminence of state water law”.
7. At 16 U.S.C. 1001, the Watershed Protection and Flood Prevention Act, Congress found that “erosion, floodwater and sediment damages in the watersheds of US rivers and streams cause loss of life and damage to property, threatening the national welfare.
8. The sense of Congress is that the federal government should cooperate with states and political subdivisions, soil and conservation districts, flood prevention or control districts, flood prevention or control districts and other local public agencies to prevent this damage and also promote further conservation and use of land. According to

Congress, the goal is to “preserve, protect and improve United States land and water resources and quality of the environment”

The bill declares:

9. A state of emergency exists in New Mexico due to a shortage and ever diminishing total supply of water available to its citizens, communities, livestock, wildlife and habitats.
10. Because of this state of emergency, New Mexico must act promptly to restore its watersheds and increase the total water available within the state.
11. New Mexico’s total water supply is significantly dependant upon watersheds located in federal lands.
12. The excessive overgrowth on the watersheds located on federal lands is depriving the state of favorable conditions of waterflow in direct violation of the federal government and courts.
13. To remedy the state of emergency in New Mexico, the state should assert the supremacy of its right to the ownership and use of water that is currently being diverted to supply the demands of forest overgrowth.
14. To remedy the state of emergency, it may be necessary for New Mexico to obtain a transfer of limited jurisdiction over federal lands as may be necessary to enable the state to restore the watersheds to a condition of health and to maximize waterflows in New Mexico.

The bill proposes the following course of action be taken by New Mexico:

15. Upon enactment of this bill, the governor shall request the US forest service and the bureau of land management to reconcile their ten-year plans to the state and regional water plans, and the county comprehensive plans every 5 years.
16. The governor shall also seek assistance from the secretaries of agriculture and of the interior to achieve consistency between federal projects and plans and New Mexico water laws, policies and plans to restore and maintain water delivery from the watersheds. The governor shall request that these secretaries take any actions necessary to restore New Mexico’s watersheds to a condition of health, to increase the waterflows and to end New Mexico’s state of emergency being created by the damage to New Mexico’s watersheds.
17. If within 90 days after these requests are made, the secretaries of agriculture and of the interior have not taken significant actions toward compliance with the request, the governor may request that jurisdiction over lands under the control of these federal offices be relinquished to the state.
18. If the Governor seeks such a transfer, he shall also seek that the transfer be condi-

tioned on receiving sufficient federal funds to enable the state to end the state of emergency created by the federal government's impairment of New Mexico's watersheds.

19. If, after another 90 days, there is no significant action from the federal government to comply with this request, the attorney general shall prepare, file and pursue a lawsuit on behalf of New Mexico.
20. The bill contains an emergency clause to enable immediate implementation of this course of action.

Significant Issues

1. The bill recognizes the need to manage vegetation for the purpose of enhancing water flows and availability. Management of naturally occurring vegetation in watersheds could result in increased water yield and reduced susceptibility to catastrophic wildfire events. Watersheds in New Mexico are critical to the water supply of many communities in the state. By managing the vegetation to create a healthy, diverse forest canopy, snowmelt and runoff may be improved under certain conditions. The current overcrowding in the forest stands makes watersheds susceptible to catastrophic, high intensity wildfires and insect and disease epidemics. Wildfires in many watersheds may also threaten private property and public safety in local communities. Ash and sediment resulting from large wildfires could also create a significant impact to water treatment systems that supply water. Major wildfires have a negative economic effect on associated communities and are costly to suppress.
2. The Forestry Division has been working with the United States Forest Service and Interior Department agencies to establish and prioritize vulnerable areas and initiate projects to protect communities that are at risk from wildfire in New Mexico. Some Forest Service projects have been delayed due to litigation. If limited jurisdiction of federal land in these areas is transferred to the state, similar delays are likely because environmental laws will continue to apply. The bill does not address the fact that opponents of tree thinning to reduce fire hazards may continue to appeal projects and sue land management agencies regardless of the jurisdiction or land status. The bill does not address how the State would develop manpower and administrative systems required to manage the significant inflow of federal funds and responsibilities.
3. The bill does not establish a standard by which the Attorney General would determine the federal agencies' compliance with the requested limited jurisdiction transfer.

FISCAL IMPLICATIONS

According to the Energy, Minerals and Natural Resources Department, New Mexico should accept the transfer of limited jurisdiction of these areas *if sufficient funds are allocated*. Because the limited jurisdiction is unspecified, the fiscal implications are indeterminate, but would appear to be immense.

ADMINISTRATIVE IMPLICATIONS

The bill does not direct a specific state agency to be responsible for administering the limited jurisdiction over federal lands, and carrying out the restoration. Therefore, the administrative implications are indeterminate. However, regardless of which agency is designated the responsible party, the administrative implications in FTE time and expertise, together with fiscal needs, would appear to be immense.

OTHER SUBSTANTIVE ISSUES

Federal laws *may* preempt the actions authorized by this bill. The bill would likely result in conflicts with federal laws and rules such as the National Environmental Planning Act, Federal Land Policy and Management Act, Endangered Species Act and the Clean Water Act.

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