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FISCAL IMPACT REPORT

SPONSOR Williams, WC DATE TYPED 02/09/04 HB 344
 SHORT TITLE Landowner Notification of Water Appropriation SB _____
 ANALYST Maloy

APPROPRIATION

Appropriation Contained		Estimated Additional Impact		Recurring or Non-Rec	Fund Affected
FY04	FY05	FY04	FY05		
			See Narrative	Recurring	General Fund

(Parenthesis () Indicate Expenditure Decreases)

SOURCES OF INFORMATION

LFC Files

Responses Received From

Energy, Minerals and Natural Resources Department
 Office of the State Engineer

SUMMARY

Synopsis of Bill

House Bill 344 requires that, in addition to the existing requirement of publication in newspapers of general circulation, anyone requesting to appropriate surface waters of the state shall notify all contiguous landowners through certified mail of the application.

Significant Issues

The Energy, Minerals and Natural Resources Department notes:

This requirement could prove extremely burdensome for some landowners in determining place of use and point of diversion of surface water. For instance, if the New Mexico State Parks Division were to apply for the appropriation of surface water at Elephant Butte State Park, the extremely large, continuous property could mean that several hundred contiguous landowners might need to be identified and notified. It is unclear whether in determining the point of diversion and place of use, the move from or move to location must be considered. Similar to this requirement, the New Mexico Environment Department (NMED) requires the notification of adjacent landowners *or* property owners within a ½ mile radius (in lieu of adjacent landowners) of any proposed wastewater discharge permit application. As opposed to the requirement for notification of adjacent or contiguous landowners, requiring that landowners within a certain radius be notified might seem more reasonable and similarly effective.

The Office of the State Engineer argues:

Enactment of HB 344 would introduce more uncertainty and cost into the surface water rights permitting process.

First, there is no definition of “contiguous” lands or of “place” of diversion and use, and this may cause substantial ambiguity. For example, in the case of individual surface water rights applications, the point of diversion and place of use are often completely contained within the boundaries of the individual’s tract of land, and therefore, strictly speaking, that tract would be the only land “contiguous to the place of diversion and to the place of use.”

On the other extreme, the proposed “place of use” for a municipal applicant may be the entire municipal boundaries and beyond, thus making potentially 1000s of acres of land “contiguous” to the proposed place of use.

Second, in most cases the applicant will have to rely on county property records to identify the owners of contiguous lands, and such records are not up to date or are otherwise inaccurate. If the applicant, despite a good faith effort, fails to correctly identify and mail notice to some landowners, will those landowners be able to claim lack of notice and thus be able to challenge a water rights permit or license months or years after issuance, despite the publication of notice? This ambiguity and uncertainty will lead to increased costs, uncertainty, and possible litigation for the applicant and the State Engineer. Applicants for surface water rights might arguably have grounds to challenge HB 344 as unconstitutional, since they appear to be the only class affected by the new requirements.

FISCAL IMPLICATIONS

House Bill 344 does not contain an appropriation. There will, however, be an administrative impact to the Office of the State Engineer and other entities that participate in the water rights adjudication process. This impact may take the form of higher postage costs, slower permitting processes due to disputes, and legal action.

The Office of the State Engineer notes:

Enactment of HB 344 would be detrimental to the State Engineer’s surface water permitting process, first by slowing that process with a new notice requirement, and secondly, by entangling the State Engineer in litigation brought by owners of contiguous land that allege they did not receive direct notice of the permit proceedings by certified mail.

The State Parks Division of Energy, Minerals and Natural Resources notes:

Due to the size of many New Mexico State Parks Division (SPD) operated facilities, the notification of adjacent property owners may be extremely burdensome.