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FISCAL IMPACT REPORT

SPONSOR Campos DATE TYPED 2/20/05 HB 711

SHORT TITLE Strictness of Water Quality Standards SB _____

ANALYST Aguilar

APPROPRIATION (in \$000s)

Appropriation Contained		Estimated Additional Impact		Recurring or Non-Rec	Fund Affected
FY05	FY06	FY05	FY06		
	NFI		indeterminate	Recurring	General Fund

(Parenthesis () Indicate Expenditure Decreases)

Duplicates SB583

SOURCES OF INFORMATION

LFC Files

Responses Received From

Office of the State Engineer (OSE)

Energy, Minerals, and Natural Resources Department (EMNRD)

Department of Environment (NMED)

SUMMARY

Synopsis of Bill

House Bill 711 would prohibit the Water Quality Control Commission (WQCC) from adopting or enforcing surface water quality standards more stringent than those required by the federal act and regulations pertaining to surface water quality standards.

Significant Issues

According to the Energy, Minerals and Natural Resources Department (EMNRD), WQCC standards now apply to "waters of the state" or bodies of water that do not flow across state boundaries. Under New Mexico law, "waters of the state" include waters in playa lakes and their tributaries that have no surface connection to any navigable stream system. By contrast, the federal Clean Water Act is restricted to "waters of the United States." The phrase "waters of the United States" has been the subject of many decisions by federal appellate courts, and its meaning is far

from clear. A recent article in United States Law Week analyzing this issue [72 U.S.L.W. No.43, at 2683] described this issue as a "quagmire" due to conflicting decisions of circuit courts and failure of the U.S. Supreme Court to resolve these issues. It is presently unclear whether waters in playa lakes and their tributaries or other closed basins are, or are not, "waters of the United States." Thus the bill might divest the WQCC of regulatory power over the quality of intrastate waters. EMNRD noted that the bill would limit WQCC jurisdiction to "waters of the United States" and preclude it from applying standards and regulations to any surface waters of the State that may be held not to meet that definition.

NMED was concerned that HB711 is a direct attempt to undo a recent unanimous decision by the WQCC to delink the state's protection of its surface waters from decisions made by the federal government. The commission's decision was made based on testimony provided by multiple parties in a two week hearing in which all parties were able to present scientific evidence, and cross examine all parties. The WQCC includes diverse representatives from government agencies, industry, agriculture, municipalities, tribal and environmental interests.

NMED noted that HB711 contradicts the position taken by the Governor in a communication to the New Mexico congressional delegation in which he urged the restoration of protections afforded by the federal Clean Water Act and stated that federal legal rulings have "put many of New Mexico's cherished rivers, lakes and streams, from the eastern playas to the Mimbres and Tularosa river basins in the south and west, in jeopardy".

By means of background, NMED noted that, in a 2001 Supreme Court decision, *Solid Waste Agency of Northern Cook County v. U.S. Army Corps of Engineers*, the Court questioned federal jurisdiction of some intrastate waters. In the wake of this decision, the federal courts and federal agencies (EPA and the Corps) continue to issue conflicting opinions regarding the scope of Clean Water Act jurisdiction over intrastate waters. A significant number of New Mexico's waters, such as ephemeral waters, closed basins, and playa lakes, are affected by this uncertainty, and may have lost or may lose their Clean Water Act protection. For example, waters in the Mimbres, Tularosa, Sacramento, and San Augustine Basins would no longer be protected, allowing unlimited degradation that could result in adverse impacts to human health, economic vitality and the existing diverse population of fish and other native wildlife.

PERFORMANCE IMPLICATIONS

NMED indicated that HB711 would significantly constrain the department's ability to pursue its mission of protecting public health and ensuring the quality of the state's environment.

EMNRD noted that the regulatory framework for surface water protection in New Mexico is based on WQCC standards. To the extent these standards are undermined, other agencies with responsibility for protection of waters, including EMNRD, cannot implement or enforce effective water protection rules.

FISCAL IMPLICATIONS

HB711 would reduce NMED administrative costs by narrowing the agency's regulatory mandate. If reduced regulation of surface water results in degradation of water quality, these savings might be offset by additional drinking water treatment costs for New Mexico local governments.

CONFLICT, DUPLICATION, COMPANIONSHIP, RELATIONSHIP

Duplicates SB583.

WHAT WILL BE THE CONSEQUENCES OF NOT ENACTING THIS BILL?

The WQCC will retain authority to adopt water quality standards more stringent than applicable federal standards and to regulate the quality intrastate waters that may not be regulated under federal law at this time.

PA/yr