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FISCAL IMPACT REPORT

SPONSOR Cervantes DATE TYPED 03/05/05 HB 1070

SHORT TITLE Public Utility Ground Water Storage SB _____

ANALYST Ford

APPROPRIATION

Appropriation Contained		Estimated Additional Impact		Recurring or Non-Rec	Fund Affected
FY05	FY06	FY05	FY06		
			Minimal – See Narrative		

(Parenthesis () Indicate Expenditure Decreases)

SOURCES OF INFORMATION

LFC Files

Responses Received From

Environment Department (NMED)
Office of the State Engineer (OSE)
Public Regulation Commission (PRC)

SUMMARY

Synopsis of Bill

House Bill 1070 amends the Ground Water Storage and Recovery Act to include public utilities, defined as an entity that may construct and operate a ground water storage and recovery project pursuant to a permit from the State Engineer.

Significant Issues

For purposes of the bill, public utility is defined as a person not engaged solely in interstate business that owns, operates, leases or controls a facility for storing or distributing to the public water for manufacturing, municipal, domestic or other uses except agricultural irrigation, or a facility for providing public sanitation sewer services.

The OSE writes: “Section 72-5A-3 NMSA 1978 was passed in 1999 and allowed governmental entities to store surplus supplies of water underground and to recover it at a later date for the governmental entity’s use. Governmental entities were defined as the interstate stream commis-

sion, an Indian nation, tribe or pueblo, or a state political subdivision, including a municipality, county, acequia, irrigation district, or conservation district. HB 1070 will allow entities, other than governmental entities, that fall within the definition of public utilities to be eligible for GWSR...

“...The number of applicants for GWSR projects would likely increase if the proposed language is added. To date, no application has been filed with the Office of the State Engineer, although a few municipalities have expressed interest and meetings have been held to discuss the application and permitting process.”

Both the NMED and the OSE raise concerns about the inclusion of sanitary sewer facilities in the Act. OSE notes that governmental entities and public utility water supply companies are expected to own and/or have water rights; however, the owner of a sanitary sewer facility would not. The OSE writes that it is unaware of any demand that warrants inclusion of these facilities in as GWSR entities.

NMED raises environmental concerns regarding the inclusion of sanitary sewer facilities, writing:

“The application of the Act to wastewater treatment plants substantially expands the scope of the Act into activities administered by the NMED under the Water Quality Act. Discharges from sewage wastewater treatment plants are discharges of water contaminants that have the potential to pollute ground water. Discharges permits for these activities are required and issued pursuant to the Water Quality Act for the protection of ground water quality and public health. This bill creates potential conflicts with the Water Quality Act.

“Injection of wastes underground is also subject to the federal Underground Injection Control (UIC) Program under the federal Safe Drinking Water Act. The state of New Mexico has primacy for the UIC Program from the federal government for implementation of this program due to the ground water protection rules issued by the state under the Water Quality Act and the Oil and Gas Act. Any injection of such waste into underground aquifers would also need to apply to all UIC regulations or the state primacy for this federal program could be jeopardized.”

FISCAL IMPLICATIONS

The bill may result in cost increases to the OSE to review additional applications for groundwater storage projects. OSE is unable to predict at this time whether it could absorb this increase with existing staff or if additional FTEs may be necessary.

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