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FISCAL IMPACT REPORT

ORIGINAL DATE 2-10-06

SPONSOR Cervantes LAST UPDATED _____ HB 816

SHORT TITLE Aquifer Conservation Re-Injection Permits SB _____

ANALYST Woods

APPROPRIATION (dollars in thousands)

Appropriation		Recurring or Non-Rec	Fund Affected
FY06	FY07		
NFI	NFI		

(Parenthesis () Indicate Expenditure Decreases)

SOURCES OF INFORMATION

LFC Files

Responses Received From

Energy, Minerals and Natural Resources Department (EMNRD)
New Mexico Environment Department (NMED)

SUMMARY

Synopsis of Bill

House Bill 816 amends the Ground Water Storage and Recovery Act to provide a mechanism for entities to receive permits for an “aquifer conservation re-injection project.” The legislation also provides for a prohibition on re-injecting water into an aquifer without appropriate permits, sets out the State Engineer permitting requirements for aquifer conservation re-injection projects, requires that injected water be potable, and allows the State Engineer to charge a fee for aquifer conservation re-injection projects.

There is no appropriation attached to this legislation.

SIGNIFICANT ISSUES

The Energy, Minerals and Natural Resources Department (EMNRD) notes that, unlike the ground water storage and recovery projects currently authorized, the water user undertaking an aquifer conservation re-injection project would not have the right subsequently to withdraw water from the aquifer in addition to its water right by reason of having injected water pursuant to the project.

Presumably the purpose of the project would be to provide a means by which a water user could mitigate adverse effects on other water users that might otherwise constitute an impairment of their water rights.

EMNRD additionally indicates that HB 816 prohibits re-injection of water into an aquifer without a permit from the State Engineer. [Page 6, Lines 4 through 6] The applicable definition of the term, "aquifer" [Page 1, Lines 20 through 22] is not limited in any way. Accordingly, an unintended consequence of the bill would be to require a State Engineer permit for injection of produced water from oil and gas operations into deep reservoirs for purposes of secondary recovery or disposal, an activity regulated by the Oil Conservation Division (OCD) of the Energy, Minerals and Natural Resources Department (EMNRD). This unintended consequence could be forestalled by an amendment stating that the requirement for a State Engineer permit would not apply to injection conducted pursuant to an OCD permit. With respect to injection permitted by OCD, environmental concerns about injection into a freshwater aquifer are currently addressed by OCD rules that generally prohibit injection into any aquifer where the native water contains less than 10,000 ppm of total dissolved solids unless the injected water is of higher quality than the native water. 19.15.9.701 NMAC.

EMNRD adds that the Environment Department (NMED) permits underground injection wells not associated with oil and gas operations. Like the OCD, the ED exercises this permitting authority pursuant to the Underground Injection Control (UIC) program authorized by the federal Safe Drinking Water Act, and must address environmental concerns. HB 816 should also exclude from the requirement for a State Engineer permit injection pursuant to a permit issued by NMED unless undertaken for the specific purpose of conducting an aquifer conservation project.

NMED notes that the Ground Water Storage and Recovery Act allows governmental entities, defined as Indian nations, tribes or pueblos or state political subdivisions, including a municipalities, counties, acequias, irrigation districts or conservancy districts, to construct, and operate projects for the storage and recovery of ground water. HB816 would create a new category of projects called "aquifer conservation re-injection projects," defined as projects where a water user re-injects potable water into an aquifer to reduce effects of the user's aquifer withdrawals and reduce effects on other water users from the user's withdrawals. A permit for an aquifer conservation re-injection project would not allow the recovery of the injected water and once the water has been re-injected into the aquifer it becomes public water available for beneficial use. If the water re-injected is treated wastewater, the permitting requirements would allow applicants for aquifer conservation re-injection projects to reduce their consumptive water rights usage from the aquifer.

NMED further notes that HB816 uses the term "potable" and "potability" when referring to the quality of water that may be re-injected. "Potable" and "potability" do not have regulatory definitions pursuant to the New Mexico Water Supply Regulations or the New Mexico Water Quality Control Commission (WQCC) Regulations. It could therefore be subject to differing regulatory interpretations, making regulation of aquifer re-injection difficult. [See Technical Issues]

TECHNICAL ISSUES

NMED notes that on page 1 line 25, HB816 defines aquifer conservation re-injection projects as projects where the water user re-injects "potable water" into an aquifer. On page 6 line 16, HB816 also establishes a permitting requirement that the water to be injected meets all standards

for “potability” pursuant to laws and regulation. There is no definition of potability. This requirement would conflict with WQCC Regulations adopted pursuant to the Water Quality Act. WQCC regulations require a permit for all discharges that may cause an exceedance of the WQCC ground water standards. Potability is not a defined ground water standard of the WQCC. The WQCC has ground water standards for the protection of human health, other standards for domestic water supplies, and standards for irrigation use. All of these standards must be protected in WQCC permits for discharges of wastewaters. In addition, New Mexico’s Water Supply Regulations specify the properties of waters that may be provided to customers for human consumption. Potability is not one of these properties. Therefore, HB816’s potability re-injection requirements are inconsistent with other state permits required by law, which is also a requirement of HB816 in 72-5A-4.C on page 6 lines 4-6.

NMED suggests that proposed language for 72-5A-4.D on page 6 lines 12-13 states: “no aquifer conservation re-injection permit may allow the recovery of injected water.” However, 72-5A-4.D(2) on page 6 lines 17-19 states: “once the water has been re-injected into the aquifer it becomes public water available for appropriation for beneficial use.” Injected water becomes ground water in the aquifer and will be later recovered or withdrawn for beneficial use. It appears that the intent of this language is that the entity re-injecting the water does not get the direct benefit of later recovering the water. Therefore, these two statements need to be clarified.

AMENDMENTS

EMNRD proposes the following amendment in order to avoid the presumably unintended consequence of requiring State Engineer permits for injection projects currently permitted by OCD and other agencies that are not related to the objectives of the bill:

On Page 7, at the end of Line 6, strike the period, insert a semi-colon, and add the following: "provided that no permit from the State Engineer shall be required for any injection activity that is permitted by the Oil Conservation Division of the Energy, Minerals and Natural Resources Department, or by the Environment Department, pursuant to the Underground Injection Control program authorized by the federal Safe Drinking Water Act, and is not related to an aquifer conservation re-injection project."

BW/nt