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FISCAL IMPACT REPORT

ORIGINAL DATE 2-10-06
 SPONSOR Lujan, B. LAST UPDATED 2-12-06 HJM 65/aHAGC
 SHORT TITLE Importance of Acequia Culture 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

Office of the State Engineer – Interstate Stream Commission (OSE)
 New Mexico Public Education Department (PED)

SUMMARY

Synopsis of HAGC Amendment

House Agriculture and Water Resources Committee amendment to HJM65 amends the legislation as follows:

1. On page 3, strike lines 8 through 11 in their entirety, deleting language that encouraged state agencies to grant their employees administrative leave so they could participate in the annual “Limpiada”

House Agriculture and Water Resources Committee amendment to HJM65 adds no appropriation to the legislation.

Synopsis of Original House Joint Memorial 65

House Joint Memorial 65 recognizes the importance of acequia culture within the state of New Mexico and recommends that an acequia holiday be declared the third Friday of every April.

Specifically the memorial notes that:

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- the historic role of acequias in New Mexico has been significant and impressive, and the acequia can be accurately described as the birthplace of a community; and
- after more than four centuries, the acequias have withstood the test of time, making them the oldest water management institutions in the United States, with strong historical ties to the even more ancient systems of medieval Europe and northern Africa; and
- currently, over one thousand acequias imprinting the rural landscapes of New Mexico have survived virtually intact through a succession of political, legal and administrative changes during Spanish, Mexican, territorial and statehood periods, and the acequia has been the main force establishing the distinct place and boundaries of communities; and
- acequias are self-governing institutions and have continuously performed essential services for the communities that they founded, enabling agricultural production, sustaining popular participation, promoting income distribution and equity and protecting watershed resources; and
- technological, economic, demographic and social changes have produced pressures and uncertainties beyond the acequias' control; and
- the traditional system of common property placed a value on a set of communal rights and responsibilities that has been challenged by another value system that views acequia water rights as a commodity, putting at risk the acequias both as physical watercourses and as democratic institutions for local water management; and
- the annual cleaning of the acequia was and still is one of the most important events in New Mexico communities, and the cleaning of the acequia not only marks the beginning of the agricultural season, it is also an occasion for the vecinos to address other local issues, reconfirming the sense of tradition that undergirds the social and political life of the community; and
- at the time of this annual ritual, parciantes renew their strong attachment to the locality, assuring the continuance of a place for yet another cycle of irrigation.

The memorial resolves that the third Friday of every April be set aside to recognize the contributions of acequia culture to New Mexico; and that counties, municipalities and state agencies that employ acequia parciantes be encouraged to grant paid administrative leave to these employees so that they may participate in their annual limpieza.

The memorial further resolves that copies of this memorial be transmitted to the governor and the acequia commission for appropriate distribution.

There is no appropriation attached to this legislation.

SIGNIFICANT ISSUES

The Office of the State Engineer – Interstate Stream Commission (OSE) indicates that water rights in New Mexico are individual property rights and therefore may be sold by the owner. While the state engineer does not allow transfer of groundwater rights from one underground basin to another, the water itself can be physically exported – if the exportation is done pursuant to a permit issued by the state engineer and in accordance with rules and regulations of the state engineer and state statutes. The state engineer regulates the use of water in the state – the place and purpose of use, etc. - through the permit process. To change any element of a water right including place of use (such as from one basin to another), the public must be given notice of the proposed change in accordance with §72-12-3 NMSA 1978 and be afforded the right to file objections with the state engineer regarding the proposed change on the bases of impairment, conservation of water within the state, or public welfare. After the expiration of the time for filing objections, if no objections have been filed, the state engineer shall, if he finds that proposed appropriation would not impair existing water rights from the source, is not contrary to conservation of water within the state, and is not detrimental to the public welfare of the state, grant the application and issue a permit to the applicant to appropriate all or a part of the waters applied for, subject to the rights of all prior appropriators from the source.

ADMINISTRATIVE IMPLICATIONS

OSE suggests that this joint memorial, if passed, contemplates that the State Engineer would verify that the application to export water is supported by “proof” of a need in the basin to which groundwater is to be imported for water from the basin from which the groundwater is to be exported. The applicant also would have to show “proof” that there are no alternative in-basin water sources available. The memorial is not clear as to what is to be done if the proof is not adequate or what type of proof is required.

OTHER SUBSTANTIVE ISSUES

OSE notes that this joint memorial addresses the concept of “public welfare”. The joint memorial discusses public welfare in the evaluation of water rights applications only in regards to the source of the water. It does not address public welfare in regards to the proposed place(s) of use of the water. The water statutes use the term “public welfare” but do not provide a specific definition. For water rights applications evaluations, the state engineer must consider the welfare of the people of the entire state – not one area of the state versus another area of the state.

BW/nt