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FISCAL IMPACT REPORT

	ORIGINAL DATE 3-8-07		
SPONSOR	<u>SCONC</u>	LAST UPDATED	<u>3-9-07</u> HB
	PUBLIC PEACE, HEALTH, SAFETY & WELFARE		
SHORT TITLE	<u>Declaration of Water From Deep Aquifer</u>	SB	<u>1219/SCONCS</u>
		ANALYST	<u>Woods</u>

APPROPRIATION (dollars in thousands)

Appropriation		Recurring or Non-Rec	Fund Affected
FY07	FY08		
NFI	NFI		

(Parenthesis () Indicate Expenditure Decreases)

Duplicates SB 1169; Conflicts with HB 1122

SOURCES OF INFORMATION

LFC Files

Responses Received From

Office of the State Engineer (OSE)

Energy, Minerals and Natural Resource Department (EMNRD)

No Responses Received From (requested 3-8-07)

Attorney General Office (AGO)

SUMMARY

Synopsis of Bill

Senate Conservation Committee Finance Committee Substitute to Senate Bill 1219 seeks to change the provisions barring the state engineer from declaring an underground water basin that includes non-potable water from deep aquifers; and allowing for the declaration of underground water basins that include non-potable water from deep aquifers.

This legislation carries no appropriation; but does include emergency language.

SIGNIFICANT ISSUES

The Office of the State Engineer (OSE) states, "This bill amends 72-12-25, 26, & 28 and limits their applicability to use only in connection with oil and gas exploration and protection. These

are the main existing purposes for which these statutes have been utilized.” OSE indicates no fiscal implications.

The Energy, Minerals and Natural Resource Department (EMNRD) indicates that, “The proposed substitute bill would reverse the effect of sections of the Water Code enacted in 1967 [Sections 72-12-25, 72-12-26 and 72-12-28, NMSA 1978] that exclude from the jurisdiction of the State Engineer (OSE) aquifers the top of which is at a depth of 2,500 feet or more below the surface, and which contain non-potable water. The bill would expressly include such waters in OSE jurisdiction, except for diversions for “use in connection with oil and gas exploration and production.” EMNRD indicates no fiscal implications.

EMNRD notes that adoption of this bill could add confusion to the law governing "produced water" (water produced in connection with oil and gas operations). Most produced water is produced from aquifers below 2,500 feet and is non-potable. Although the exclusion for appropriations for use in connection with oil and gas exploration and production may be intended to avoid confusing, the produced water issue, it will actually further complicate the issue. It could be argued that production of water with oil and gas is "appropriation [of the water] for use in connection with oil and gas production," thus requiring publication of notice under the bill's provisions for any oil or gas well. Furthermore, since the bill excludes only appropriations for use in oil and gas exploration and production, and does not exclude use of produced water (produced in connection with oil and gas production) for other purposes, it conflicts with the existing statutory authority of the Oil Conservations Division (OCD) of EMNRD over produced water. EMNRD states:

Water produced from these deep aquifers is generally so high in both mineral and hydrocarbon content that it cannot be economically treated for beneficial use, even when the water is already at the surface due to production from oil and gas wells. The oil and gas operators must dispose of these waters by injection or evaporation to prevent environmental damage. Improving technology will likely render some produced water usable in the not too distant future. However, there is no immediate prospect that the water in these deep water aquifers will become sufficiently valuable that people will want to sustain the substantial cost of drilling wells to such depths in order to appropriate the waters for use.

EMNRD adds that OCD has statutory responsibility under the Oil and Gas Act [Section 70-2-12.B(15)] to supervise the disposition of produced water. In 2003, the Legislature amended this provision of the Oil and Gas Act, and enacted Section 70-2-12.1, to clarify that OCD jurisdiction over the disposition of produced water is exclusive of OSE jurisdiction.

Although Section 70-2-12.1 would preclude OSE jurisdiction over disposition and use of produced water, the bill, by allowing OSE to assume jurisdiction over the aquifers where most produced water is found, would raise questions, which the bill does not resolve, about whether OSE would have any authority or duty to supervise the withdrawal of water from these aquifers in connection with oil and gas operations, and how that authority would interface with OCD's authority under the Oil and Gas Act. It is also unclear how OSE could effectively administer water from these deep aquifers in view of the limitations on its authority to permit use provided in Section 70-2-12.1, and in provisions of the bill excluding jurisdiction over withdrawals for use in oil and gas operations.

Furthermore, OCD's statutory duty to regulate the disposition of produced water involves the authority to authorize re-injection of such water into the same or another aquifer. At the present time, and for the immediate future, the preferred method of disposition of produced water is injection. The authority of OCD to authorize injection into deep aquifers could interfere with OSE supervision of such aquifers, and OSE jurisdiction over such aquifers could impair the ability of OCD to provide for disposition of produced water by injection.

PERFORMANCE IMPLICATIONS

EMNRD suggests that the bill would blur the lines between the respective responsibilities of OSE and OCD, which could impair the effectiveness of both agencies in performing their respective functions.

CONFLICT, DUPLICATION, COMPANIONSHIP, RELATIONSHIP

EMNRD states:

The bill more or less duplicates SB 1169 which was defeated in the Senate earlier in this session.

The bill conflicts with HB 1122 which provides tax credits for delivery of treated produced water to the Pecos River. That bill limits the water eligible for the credit to water produced from below 2,500 feet, reflecting the understanding that withdrawal of water from those depths would not require an OSE permit.

WHAT WILL BE THE CONSEQUENCES OF NOT ENACTING THIS BILL

EMNRD suggests that aquifers the tops of which are at or below 2,500 feet beneath the surface, and in which the water is non-potable, will continue to be excluded from OSE jurisdiction. Since most, if not all, withdrawals from these deep aquifers are incidental to oil and gas operations, they will continue to be regulated by OCD pursuant to its authority under the Oil and Gas Act to regulate the disposition of produced water.

BFW/nt