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## FISCAL IMPACT REPORT

SPONSOR	Garcia, M.P.	ORIGINAL DATE	02/22/11	LAST UPDATED		HB	258
SHORT TITLE	Lower Assessments For Non-Irrigators					SB	
						ANALYST	Kleats

### REVENUE (dollars in thousands)

Estimated Revenue			Recurring or Non-Rec	Fund Affected
FY11	FY12	FY13		
	(\$3,000.0 – 3,500.0)	(\$3,000.0 – 3,500.0)	Recurring	Other Local Funds

(Parenthesis ( ) Indicate Revenue Decreases)

### ESTIMATED ADDITIONAL OPERATING BUDGET IMPACT (dollars in thousands)

	FY11	FY12	FY13	3 Year Total Cost	Recurring or Non-Rec	Fund Affected
Total		***	***	***	Recurring	Other Local Funds

(Parenthesis ( ) Indicate Expenditure Decreases)

\*\*\*See Fiscal Implications

### SOURCES OF INFORMATION

LFC Files

#### Responses Received From

Attorney General's Office (AGO)

New Mexico Department of Agriculture (NMDA)

Office of the State Engineer/Interstate Stream Commission (OSE/ISC)

#### Responses Not Received From

Taxation and Revenue Department (TRD)

### SUMMARY

#### Synopsis of Bill

House Bill 258 (HB 258) enacts a new section of 73-16 NMSA 1978 requiring the Middle Rio Grande Conservancy District (MRGCD) assess non-irrigators at least one mill less than irrigators.

## FISCAL IMPLICATIONS

MRGCD levies its assessments against two classes of property, Residential/Agricultural and Non-residential/Commercial at mill rates of 3.97 and 4.96 respectively. An important assumption of this analysis is that 3.97 would remain the relevant mill rate facing irrigators and consequently, both residential and non-residential non-irrigators will face a mill rate of at most 2.97. The analysis also assumes non-irrigating property accounts for 90% of total residential/agricultural valuation.

Revenue Impact of HB 258 on MRGCD  
(dollars in thousands)

	<b>FY2010</b>	<b>FY2011</b>
<b>Property Valuation</b>		
Non-residential/Commercial	\$642,876	\$764,012
Total Residential/Agricultural	\$2,037,718	\$2,166,386
- Non-irrigating	\$1,833,946	\$1,949,747
- Irrigating	\$203,772	\$216,639
<b>Actual Tax Revenue</b>		
Non-residential/Commercial	\$3,189	\$3,789
Total Residential/Agricultural	\$8,090	\$8,601
- Non-irrigating	\$7,281	\$7,740
- Irrigating	\$809	\$860
Grand Total	\$11,278	\$12,390
<b>Projected Tax Revenue</b>		
Non-residential/Commercial	\$1,909	\$2,269
Total Residential/Agricultural	\$6,256	\$6,651
- Non-irrigating	\$5,447	\$5,791
- Irrigating	\$809	\$860
Grand Total	\$8,165	\$8,920
<b>Effect of HB 258 on Net Revenue</b>	(\$3,113)	(\$3,470)

(Parenthesis ( ) Indicate Revenue Decreases)

The above table shows the calculation of ad valorem levies by MRGCD for FY2010 and FY2011. The first set of figures shows the assessed property values with inferred values for irrigating and non-irrigating property. The actual tax revenue figures use the current mill rates and match estimates provided in MRGCD's budget filed with DFA's Local Government Division. The projected tax revenue figures use the mill rates assumed from HB 258.

Altering mill rates as proposed within HB 258 could decrease revenue to MRGCD between \$3 and \$3.5 million based on property values from the last two fiscal years, a decrease of over 25%. Such a drastic change in revenues could significantly impair MRGCD's operational ability, but it is difficult to quantify the resulting operating impact.

It is the understanding of both the LFC and DFA Local Government Division that assessments levied by MRGCD are not subject to yield control provisions. This is an important assumption when analyzing changes in the property tax base within the district.

## **SIGNIFICANT ISSUES**

Property values contain within them the price of any water or ditch rights associated with that property. Thus, MRGC already assesses irrigators more than non-irrigators because of the higher property values associated with water or ditch rights. The issue, then, might revolve around owners who choose not to irrigate even though their property has ditch access and associated water rights.

The market value of such property would still reflect all associated water rights, and it must be assumed the owner values the property at or above the price currently available at market, otherwise he/she would sell; perhaps the owner values the agrarian surroundings or views the unused water rights as a future investment. In any case, the market value of the property remains accurate, and assessments based on that value will be equitable compared to assessments on agricultural and other residential property.

MRGCD interprets current statutory requirements as having been created to avoid conflict between irrigators and non-irrigators removing the old “Class A/Class B” distinction and adding a water service charge for using irrigation water. According to MRGCD, HB 258 might recreate conflict between irrigators and non-irrigators.

## **ADMINISTRATIVE IMPLICATIONS**

HB 258 is difficult, if not impossible, to administer. The ad valorem assessments for MRGCD are collected by the treasurers of the respective Counties, who lack the record system necessary to identify irrigators and non-irrigators. Moreover, irrigation of agricultural property can change from year to year depending on fallowing. MRGCD notes the high likelihood of litigation if it assesses potential irrigators the higher, irrigator rate in a year in which they are not actually irrigating.

The County treasurers could not be reached to provide estimates on the cost of implementing such a record system.

The fiscal analysis assumed MRGCD would lower rates to comply with HB 258. It is possible MRGCD would raise mill rates for agricultural property resulting in a sudden and dramatic increase on the tax burden to irrigators without deriving additional benefit. The resulting mill rate faced by agricultural property would be around the statutory cap of 6 mills.

In this case, the board of MRGCD would be unable to raise mill rates while still complying with all statutory requirements. Commercial rates would effectively be capped at 5 mills and residential non-irrigator rates at 4 mills. MRGCD revenues would experience an increase of around \$500 thousand, but the board would lose any flexibility to raise rates if additional revenue were needed.

## **CONFLICT, DUPLICATION, COMPANIONSHIP, RELATIONSHIP**

HB 258 relates to and conflicts with House Bills 442 and 443.

HB 442 introduces a new section to 73-16 NMSA 1978 to limit total annual assessments of the MRGCD to no more than 110% of its budgeted annual expenditures.

HB 443 introduces a new section to 73-16 NMSA 1978 requiring that MRGCD not increase the total assessments to be collected in FY2011 for any purpose before January 1, 2014.

HBs 258, 442 and 443 create conflict between each other by proposing the same title for each distinct section.

## **TECHNICAL ISSUES**

HB 258 could potentially violate the State Constitution with regards to equal protection under current property tax law. HB 258 would effectively create two tiers for taxation within the specific class of residential/agricultural property allowing for discrimination of property tax rates based upon the activity of irrigation. A constitutional amendment may be better suited to create irrigator and non-irrigator subclasses for residential/agricultural property.

HB 258 conflicts with current statute, specifically Section 73-18-8.1(B). That section provides: “In levying ad valorem assessments on benefited property, the board of the district shall set non-residential assessments at least twenty-five percent higher than residential and agricultural assessments and any ad valorem assessments shall be levied against all benefited real property, including improvements”. HB 258, however, would require agricultural properties to be assessed one mill higher than non-residential/commercial properties.

## **OTHER SUBSTANTIVE ISSUES**

MRGCD reaffirms its budget process is open and transparent, and the constituents of the district are free to attend its meetings. The budget is subject to approval by the DFA, and MRGCD is subject to the State Audit Act, the Open Meetings Act and the Inspection of Public Records Act.

## **ALTERNATIVES**

Consider proposing a property tax credit for non-irrigators to achieve the same intent as HB 258. A tax credit circumvents the constitutional concerns surrounding the administration of two different rates for qualitatively identical properties of the same class.

Consider replacing “non-irrigators” on Page 1 Lines 22-23 with “residential non-irrigators.” This would remove conflict with Section 73-18-8.1(B) by allowing commercial properties, which are by definition non-irrigators, to be assessed more than agricultural properties.