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FISCAL IMPACT REPORT

ORIGINAL DATE 02/21/13

SPONSOR Garcia, R. LAST UPDATED _____ HB 576

SHORT TITLE Return Water Flows During Irrigation Season SB _____

ANALYST Weber

ESTIMATED ADDITIONAL OPERATING BUDGET IMPACT (dollars in thousands)

	FY13	FY14	FY15	3 Year Total Cost	Recurring or Nonrecurring	Fund Affected
Total		NFI				

(Parenthesis () Indicate Expenditure Decreases)

SOURCES OF INFORMATION

LFC Files

Responses Received From

Administrative Office of the Courts (AOC)

Office of the State Engineer (OSE)

SUMMARY

Synopsis of Bill

House Bill 576 requires that when the flow of natural surface waters is fully diverted from a stream for a beneficial use and can be recycled by the appropriator, the appropriator must return flow to the stream as treated effluent and recycled water during the growing seasons in May, June, July, August and September. This is to avoid disruption of use by acequias and livestock and the flow of domestic springs and sumps and to avoid harm to the natural riparian habitat and native wildlife.

The State Engineer must include conditions on return flow permits to ensure compliance with provisions of Subsection A of this section as provided by rule."

FISCAL IMPLICATIONS

No fiscal implications identified.

SIGNIFICANT ISSUES

The AOC notes:

Currently, appropriators are limited to the water that they beneficially use and must allow return flow to continue its course downstream for other appropriators. Surface water

appropriations are typically for irrigation uses, which involve a consumptive use component, generally evapotranspiration. The water consumed by the crops is not available for recycling or return flows. However appropriators are prohibited from storing or preventing the return of carriage flows or excess water from returning to the system and becoming available for other downstream appropriators. As stated by the New Mexico Supreme Court in *Herrington v. State of N.M. ex rel Office of the State Engineer*, 2006-NMSC-014, ¶ 44, 139 N.M. 368, 133 P.3d 258, “The Court in Roswell properly stated that an appropriator may not move a well to capture seepage lost along a conveyance canal. If it were otherwise, every irrigator with surface rights could drill supplemental wells seeking to capture their own irrigation water return flow, upon which downstream surface appropriators rely.” (Internal citations omitted.)

The directive that return flows be treated, however, does create a new requirement that most surface water appropriators are not equipped to meet. Municipalities that divert surface water treat the sewage generated by the municipality prior to returning flows to the river. Irrigators, however, are not required to obtain a discharge permit under regulations adopted pursuant to the Water Quality Act, Sections 74-6-1 through 74-6-17. 20.6.2.3105(C) NMAC. Irrigators generally do not treat excess flows that are returning to the surface stream. The treatment requirement is likely to be a prohibitively expensive burden.

The OSE adds:

If enacted this bill will require the State Engineer to limit the flexibility of return flow permittees the discretion over their most efficient use of water. The effect will be to limit the reuse for watering golf courses or parks or other beneficial uses during the same months that it could be placed to its best beneficial use.

TECHNICAL ISSUES

The OSE is concerned the bill is vague and ambiguous and it could be read to require water treatment by essentially all future water rights permittees, so long as the water “can be” recycled. It can be interpreted to apply to every surface water owner who diverts water from a natural stream pursuant to the issuance of permits in the future. Therefore, the bill can be interpreted to include conservancy districts, acequias, individual farmers and all municipalities in the state that divert surface water.

Under such a broad interpretation, it will place the greatest burden on irrigators (small and large), such as acequias and conservancy districts, that, unlike municipalities and sanitation districts, are not currently required to treat “effluent” or return flows. Constructing and operating water treatment systems, along with sampling and testing requirements, would be cost-prohibitive for most small water users.

MW/svb