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FISCAL IMPACT REPORT

ORIGINAL DATE 03/08/13
 SPONSOR Wirth LAST UPDATED 03/11/13 HB _____
 SHORT TITLE Domestic Well Impact Areas SM 83
 ANALYST Wojahn

ESTIMATED ADDITIONAL OPERATING BUDGET IMPACT (dollars in thousands)

| | FY13 | FY14 | FY15 | 3 Year Total Cost | Recurring or Nonrecurring | Fund Affected |
|--------------|------|-----------------------------|------|----------------------|------------------------------|------------------|
| Total | | *see Fiscal Implications | | | | |

(Parenthesis () Indicate Expenditure Decreases)

SOURCES OF INFORMATION

LFC Files

Response Received From

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

SUMMARY

Synopsis of Bill

Senate Memorial 83 (SM 83) requests the Office of the State Engineer to designate Domestic Well Management Areas (DWMAs) in areas of the state where the cumulative impact of domestic wells is most likely to impair the rights of existing water users.

FISCAL IMPLICATIONS

According to the OSE, the task of designating DWMA will be resource-intensive for staff from the Water Rights Division and the Hydrology Bureau. After identifying areas in the state where the cumulative impact of domestic wells is most likely to impair the rights of existing users, the regulations require the OSE to develop guidelines for each area and hold public meetings before adopting the guidelines. In addition to the district water rights staff, the OSE would need to engage the Hydrology Bureau to use their ground water models to assess potential impacts, as well as legal and public information staff. A course estimate of staff required over the seven district offices and other supporting staff is 5 FTEs. Using a round, fully burdened cost per FTE of \$100,000, the estimated need would be \$500,000.

SIGNIFICANT ISSUES

SM 83 states that the state engineer adopted domestic wells rules and regulations (19.27.5 NMAC) in 2006 to limit the impacts of uncontrolled wells in vulnerable areas denominated as “domestic well management areas” but has yet to designate any area of the state as such.

OSE analysis indicated what needs to happen to designate DWMA:

A statewide inventory of water rights and domestic wells in stream-connected aquifers would be required. Criteria would need to be developed and applied to the inventory to determine areas for more focused assessment as potential DWMA. After potential areas for DWMA declaration are identified, each area would need to be analyzed using hydraulic modeling techniques to quantify impacts of domestic wells on surface water supply, and an evaluation conducted of the magnitude of that impact in relation to the likelihood of impairment of existing surface water rights. Areas determined appropriate for DWMA declaration would need to be defined geographically. Criteria specific to each potential DWMA would need to be developed regarding what might constitute “likely to impair” surface water rights due to the cumulative impact of domestic well diversions, and draft guidelines for administration of the DWMA would need to be developed incorporating those criteria. These guidelines would need to include designation of the following:

- The maximum diversion amount allowed for new domestic wells in the DWMA (0.25 AFY per household served or less);
- Whether the transfer of valid existing consumptive use water rights to proposed new domestic wells would be required;
- Any other restrictions or conditions deemed appropriate for the particular DWMA.

The OSE would need to provide public notice and hold public meetings depending on the location within the state and the size of the DWMA. The State Engineer would also be required to take public comment for any area proposed for designation as a DWMA prior to declaring the DWMA and adopting the draft guidelines.

ADMINISTRATIVE IMPLICATIONS

The OSE indicated creation and designation of a DWMA by their agency requires careful consideration of the impacts that could occur to all the water users in an area, the science of the area that is driving the designation and the administrative workload on the agency in creating the DWMA and ultimately the enforcement of the DWMA designation into the future.

The Gila-San Francisco basin in the southwest part of the state is already administered like a de facto DWMA, with domestic well limits and requiring the transfer in of valid water rights. This area provides a model for what DWMA administration might look like in other areas in terms of agency resource commitment.

TECHNICAL ISSUES

The OSE explained that upon filing of an application for a well for certain uses defined in statute (72-12-1.1 NMSA), such as household or other domestic use (domestic well), the State Engineer shall issue a permit.

The term “domestic well management area” is defined in 19.27.5.7.F NMAC as “[a] bounded

area overlying a stream-connected aquifer, specifically described by section, township and range, or by other land survey descriptions, that requires special water resource protection as determined by the state engineer.”

The process for declaring a DWMA is outlined in 19.27.5.14 NMAC. This regulation enables the state engineer to declare all or part of a stream-connected aquifer as a DWMA to prevent impairment to valid, existing surface water rights. The regulations require the state engineer to develop guidelines for the administration of a DWMA based on hydrologic conditions and existing water rights (19.27.5.14.A NMAC).

- Public notice and a public meeting must be held for any proposed DWMA, for the purpose of taking public comment (19.27.5.14.B NMAC).
- The maximum diversion amount allowed for new domestic wells is 0.25 acre-feet per year (AFY) or less (19.27.5.14.C.1 NMAC), unless the well serves multiple households, in which case the maximum diversion amount is limited to 0.25 AFY multiplied by the number of households served (19.27.5.14.C.2 NMAC).
- No domestic well permits for drinking and sanitary uses within a DWMA shall be issued unless the applicant can demonstrate no alternative supply is reasonably accessible or available (19.27.5.14.C.3 NMAC).
- Applicants within a DWMA may apply to transfer valid, existing consumptive use water rights to a proposed domestic well (19.27.5.14.D NMAC). The state engineer may also require that an applicant transfer such water rights to a proposed domestic well (19.27.5.14.E NMAC). In either case the water right proposed for transfer must originate from within the DWMA, and the transfer would occur in accordance with 19.27.5.10 NMAC, which limits total diversion to 3 AFY.
- The DWMA guidelines would include any additional restrictions to be placed on domestic wells. These restrictions would apply only to new domestic well permits in the DWMA.

OTHER SUBSTANTIVE ISSUES

The OSE/ISC noted the New Mexico Supreme Court is currently considering the *Bounds* case, the issue is the constitutionality of the Domestic Well Statute, Section 72-12-1.1, NMSA 1978. The OSE suggests that for an assessment of the magnitude contemplated by SM 83, the state should wait for that ruling to occur before significant resources are diverted from existing critical activities.

MEW:blm