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## FISCAL IMPACT REPORT

ORIGINAL DATE 03/13/15

SPONSOR HAWC LAST UPDATED \_\_\_\_\_ HB 413/HAWCS

SHORT TITLE Lower Rio Grande Water Works Rights & Liens SB \_\_\_\_\_

ANALYST Daly

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

	FY15	FY16	FY17	3 Year Total Cost	Recurring or Nonrecurring	Fund Affected
<b>Total</b>		NFI	NFI			

(Parenthesis ( ) Indicate Expenditure Decreases)

Conflicts with SB 392 and relates to SB 550.

### SOURCES OF INFORMATION

LFC Files

#### Responses Received From

Office of the State Engineer (OSE)  
 Administrative Office of the Courts (AOC)  
 Attorney General's Office (AGO)  
 New Mexico Department of Agriculture (NMDA)

### SUMMARY

#### Synopsis of Bill

The House Agriculture, Water and Wildlife Committee substitute for House Bill 413 amends the statute that creates the Lower Rio Grande Public Water Authority (Authority) to:

- Require an entity merging with the Authority whose service area is contiguous with that of the Authority to combine and commingle its water rights with those of the Authority; and
- Establish a procedure for the filing and enforcement of liens for nonpayment of money owed which the Authority must follow, including provisions that:
  - Allow multiple charges or assessments against one property owner to be included in the same lien;
  - Declare authority liens to be first and prior liens on the property subject only to general state and county tax liens;
  - Provide methods for releasing a lien;

- Reference procedures for foreclosing on liens, including the right of redemption;
- Allow reasonable attorneys fees to be awarded to the prevailing party as part of the costs; and
- Prescribe the order of distribution of the proceeds of a foreclosure sale.

## **FISCAL IMPLICATIONS**

No fiscal impact.

## **SIGNIFICANT ISSUES**

NMDA provides these comments on the requirement that a merging entity's water rights be combined and commingled with the Authority, which it asserts:

may further complicate matters as to what "contiguous" might mean as it relates to any entity that might want to join the authority. In other words, if an entity that is not contiguous to the area served by the authority wanted to join the authority, but was not contiguous, then it would not be compelled to combine and commingle water rights. However, if an entity would then join the authority contiguous to an entity that did not combine and commingle its water rights, would the first entity then have to combine and commingle its water rights? Also, under what circumstances would an entity seek to join the authority and not add its water rights to the authority's water rights if the purpose would be to connect users to the water system?

However, AGO suggests this language resolves any potential conflict with the current administrative practice of the state engineer for mergers. As OSE advises:

CS/HB 413 clearly provides that an application to combine and commingle is required only when the service area of the merging entity is contiguous with the service area of the Authority. This continues to allow the benefits of economies of scale and greater efficiencies for mergers even if the merging entity is not contiguous to the original Authority's service area.

Further, AGO notes that the substitute allows the Authority to merge with a noncontiguous entity whose water rights are in a different administrative basin and cannot be combined or commingled.

As to the provisions concerning the filing and enforcement of liens, AOC in its analysis of the earlier version of this bill stated that it believed they improve the existing statute, which is vague about placing and enforcing a lien as it simply provides that the Authority has the right to place and enforce a lien "in a manner pursuant to law." It pointed out there are a number of ways to place and enforce a lien pursuant to law, such as for mechanic's liens, materialmen's liens, tax liens, and attorney charging liens, and commented that similar provisions in the earlier bill clarified the specific procedures for placing and foreclosing this type of lien. It advised that provisions such as these do not enlarge the power of the Authority, but are consistent with lien authority granted to other incorporated water associations under the Municipal Code. See, for example, Section 3-28-16, NMSA 1978.

The provisions governing the priority of liens for taxes that are due and owing, however, appear

to conflict. First, in Subsection O on page 10, at line 24, “general state and county taxes” are given priority over authority liens. It is not clear which taxes are included, although it is assumed that includes property taxes (as well as federal taxes). Any millage rates imposed by the authority as a political subdivision would also be included as part of any property tax lien. Second, language directing the distribution of foreclosure sale proceeds in Subsection (R)(2), although the same as that used in the Municipal Code for this same type of distribution, appears to place the authority’s lien before property taxes, which is inconsistent with the language in Subsection O, as well as existing law. Further, the language assigning other special assessments “that are coequal with the lien” to what appears to be third position (after the authority lien and ad valorem taxes, which as already discussed should be first) is confusing—if those liens are “coequal” to the authority’s lien, why are they satisfied only after the authority’s lien?

### **CONFLICT, RELATIONSHIP**

This bill conflicts with SB 392, which duplicates this bill except for the provisions regarding the distribution of sale proceeds following foreclosure of an authority lien which are contained in subsection (R); the distribution provisions in SB 392 address the issue regarding distribution raised in Significant issues above. This bill relates to SB 550, which allows creation of a Regional Water Utility Authority (and contains provisions governing the distribution of sale proceeds like those in this bill).

### **OTHER SUBSTANTIVE ISSUES**

AOC noted there is no impact on the water source (Mesilla Valley Basin and Lower Rio Grande), since the amendment only clarifies the procedures for collecting charges and assessments by the Authority, which serves unincorporated communities (Berino, Desert Sands, La Mesa, Mesquite and Vado), located in largely rural areas in the southern part of Dona Ana county. This is an area that is largely agricultural: alfalfa, cotton, pecans, chile and other crops. The communities are small, usually between 200 to 1,200 residents. The water source is used primarily for agriculture in this area.

### **AMENDMENTS**

Language such as that contained in Subsections (O) and (R) of CS/HB 392 clarifying the taxes being referred to in line 24 on page 10 and reordering the payment of liens from foreclosure sale proceeds on page 12, lines 6 through 9 might be helpful.

MD/je