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FISCAL IMPACT REPORT

SPONSOR Sedillo Lopez ORIGINAL DATE 02/27/19
 LAST UPDATED _____ HB _____

SHORT TITLE Middle Rio Grande Water Management SB 558

ANALYST Hanika-Ortiz

APPROPRIATION (dollars in thousands)

Appropriation		Recurring or Nonrecurring	Fund Affected
FY19	FY20		
	\$500.0	Recurring	General Fund
	\$3,500.0	Recurring	General Fund

(Parenthesis () Indicate Expenditure Decreases)

SOURCES OF INFORMATION

LFC Files

Responses Received From

New Mexico Attorney General (NMAG)
 Office of the State Engineer (OSE)
 State Land Office (SLO)

SUMMARY

Synopsis of Bill

SB558 creates a new section under Chapter 72, Article 2, NMSA 1978 directing the State Engineer and Interstate Stream Commission (ISC) to take actions within their respective authorities to achieve the following purposes for active water management in the Middle Rio Grande (MRG):

1. Maintain compliance with the Rio Grande Compact to deliver water through the MRG to the compact delivery point at Elephant Butte Dam;
2. Provide increased certainty for MRG water users by complying with Compact delivery requirements through the MRG;
3. Prevent the difficulty and problems of a possible future requirement to implement strict priority enforcement of all water rights and permits within the MRG; and
4. Facilitate creation of an MRG region water plan that demonstrates with specificity how these purposes may be achieved.

SB558 requires the State Engineer to

1. Make a determination regarding the MRG Conservancy District's (MRGCD) 2018 application for proof of beneficial use pertaining to OSE Permits 0620 and 1690 in the MRG;
2. Assist the MRGCD to expedite declarations of all remaining undeclared pre-1907 water rights in the MRG and determine their validity;
3. Determine the quantity and ownership of all remaining undeclared pre-1907 water rights in the MRG;
4. Promulgate rules for expedited marketing and leasing of water and water banking in the MRG; and
5. Encourage development by water rights owners of voluntary alternative approaches to continue New Mexico's compliance with Compact delivery requirements so as to make strict priority administration of MRG water rights unnecessary for Compact compliance.

Furthermore, SB558 requires ISC to

1. Seek federal grants to fund infrastructure, management improvements and other activities to assist New Mexico in continuing compliance with its Compact delivery obligations, to assist the MRG to adapt to reduced amounts of surface water and to mitigate impacts;
2. Participate actively in the Rio Grande-New Mexico Basin Study led by the U.S. Bureau of Reclamation and sponsored by the MRGCD and encourage all water purveyors in the MRG to participate;
3. Convene a MRG region water users' workshop to determine the means of utilizing the Rio Grande-New Mexico Basin Study as a basin for a comprehensive MRG region water plan that would (a) maintain New Mexico's compliance with Compact delivery obligations, (b) comply with the MRG 2016 biological opinion issued by United States fish and wildlife service, (c) support the ecological values of the MRG, and (d) implement a system for expedited marketing and leasing or water banking within the MRG;
4. Create and convene a MRG region water planning entity to create a region water plan and in cooperation with that entity, create and maintain a publicly facing web page; and
5. For the entity, facilitate the participation of water professionals and the public, develop water resources simulation models, publish a water budget, develop options that support ecological values within the MRG, evaluate alternatives for the expedited marketing and leasing of water and water banking, and complete the MRG region water plan and present it to an interim committee by 2024 to include recommendations to address problems noted.

FISCAL IMPLICATIONS

The total appropriation of \$4 million in this bill is a recurring expense to the general fund. Any unexpended or unencumbered balances at the end of FY23 shall revert to the general fund.

OSE suggested the bill will likely require resources beyond the \$4 million appropriated in total from the general fund, otherwise, it might not be possible to accomplish the requirements by 2023.

According to NMAG and OSE, this bill could lead to an expansion of Rio Grande Compact litigation. To date, the state has appropriated over \$20 million from the general fund for interstate stream litigation, and these two agencies have requested an additional \$6.5 million for FY20.

SIGNIFICANT ISSUES

OSE provided the following comments

1. Texas v. NM: At present, the State of New Mexico is being sued by the State of Texas in the United States Supreme Court for alleged violations of the Rio Grande Compact. New Mexico's position in this litigation is that New Mexico is in full compliance with the terms of the Compact. SB 585 appears to assume or even concede that various measures such as priority administration, or other alternative approaches such as water banking or expedited water marketing and leasing, may be necessary to achieve continued compliance with the interstate Compact, and requires a public process for discussing alternatives. If enacted, this bill could possibly be used by the State of Texas to undermine New Mexico's position that it is in full compliance with the Rio Grande Compact.

2. Unnecessary and detrimental to administration of the MRG: The bill is unnecessary for administration of the middle Rio Grande and Compact compliance and directs the State Engineer to undertake work that is not necessary in the MRG.

SB 558 would require the State Engineer to dedicate significant resources to make determinations regarding all undeclared pre-1907 water rights in the middle Rio Grande in order to prepare for strict priority administration. Simultaneously, the bill would require the OSE to allocate resources to draft and promulgate AWRM district specific rules for the MRG, including encouraging voluntary alternative approaches to strict priority administration. The bill could tie up the OSE's resources for years and lead to protracted litigation in an area where a determination of undeclared pre-1907 water rights is not necessary for administration or Compact compliance.

Surface Water in the MRG is allocated by the Middle Rio Grande Conservancy District (MRGCD). The MRGCD does not allocate water based on priority. Determination by the State Engineer of the quantity and ownership of all remaining pre-1907 water rights in the MRG is not necessary for the MRGCD to allocate water within the District.

The OSE has adopted MRG Administrative Area Guidelines and a hydrologic model to support the best possible administrative actions for the conjunctive management of surface and groundwater in the MRG, and to guide the evaluation of applications to transfer water rights in the MRG. New Mexico is the national leader in the practice of conjunctive management and has been for some time. The OSE has been working with the major water right owning entities in the MRG to update the administrative guidelines to incorporate new data, modeling information and other administrative concerns that have arisen since the issuance of the guidelines in 2000. In terms of existing metering, the OSE now requires meter installations on all changes to non-domestic groundwater diversions and some types of domestic well permits. Imposing strict priority is not necessary, would have minimal effect, and would be a drastic change that would likely

result in lengthy litigation.

This bill would also impose priorities and requirements that could conflict with how the MRG is currently managed to comply with the Rio Grande Compact. In the MRG, the Rio Grande river and reservoir system is already intensely managed and New Mexico is in compliance with its interstate delivery obligations under the Rio Grande Compact. MRG water managers work together closely to ensure that New Mexico continues to comply with the Compact's requirements. These efforts include working with the major stakeholders to manage storage, flows, and deliveries, managing non-human depletions, and maintaining an efficient river floodway. Putting in place the AWRM components identified in SB 585 could take away from existing water management efforts.

PERFORMANCE IMPLICATIONS

NMAG voiced the same concerns as OSE that the inclusion of the Middle Rio Grande in this legislation may negatively impact the defense of *Texas v. New Mexico*. NMAG also agreed with OSE there has been no allegation in *Texas v. New Mexico* that New Mexico has failed to make required compact deliveries of water to Elephant Butte Reservoir or is otherwise allowing water uses in the Middle Rio Grande that violate, or threaten to violate, the compact.

From NMAG:

This legislation will signal to Texas and/or the United States that New Mexico may have committed Compact violations upstream of Elephant Butte Dam, and that this could lead to an expansion of the litigation.

Because *Texas v. New Mexico* is still pending, the standard for Compact compliance in this area is still unknown. Therefore, it will be impossible for New Mexico to know exactly how it must administer water in the Lower Rio Grande until the case is resolved.

NMSA 1978, Section 72-1-2 states that with respect to water rights, “[p]riority in time shall give the better right.” Section 1(J) provides that the bill “shall not affect or impair” existing water rights. A conflict could emerge if water rights adjudicated through this bill’s directives are determined to be senior to previously known water rights; the newly determined, senior water rights could usurp the previously known but junior water rights if the State Engineer reverts to priority administration (for example, as provided in Section 1(F)).

CONFLICT, DUPLICATION, COMPANIONSHIP, RELATIONSHIP

House Bill 174 may duplicate or conflict with this bill, because it directs OSE to prepare for priority water administration and engage in water planning for the middle and lower Rio Grande basins.

Senate Bill 560 may duplicate or conflict with this bill because it provides for “Regional water plans for the middle Rio Grande region, between Elephant Butte dam and the Otowi gage...”.

OTHER SUBSTANTIVE ISSUES

SLO noted it is unable to determine any impact for state trust land with appurtenant surface water rights within the planning area defined by SB 558. However, SLO further noted it generally supports the development of locally-driven, voluntary agreements for water administration.

AHO/sb