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FISCAL IMPACT REPORT

SPONSOR: Begaye DATE TYPED: 2/21/30 HB 786

SHORT TITLE: Limit New Water Appropriations and Changes SB _____

ANALYST: Chabot

APPROPRIATION

Appropriation Contained		Estimated Additional Impact		Recurring or Non-Rec	Fund Affected
FY03	FY04	FY03	FY04		
	NFI				

(Parenthesis () Indicate Expenditure Decreases)

SOURCES OF INFORMATION

LFC Files

Responses Received From

- Attorney General (AG)
- Energy, Minerals and Natural Resources Department (EMNRD)
- Department of Game and Fish (DGF)
- Office of Indian Affairs (OIA)
- Office of the State Engineer (OSE)
- State Land Office (SLO)

SUMMARY

Synopsis of Bill

House Bill 786 limits the State Engineer’s power to approve new water appropriations or changes in place or purpose of use. The State Engineer would have to ensure the following new requirements for administering water: there are no water rights in the system held by an Indian nation, tribe or pueblo; the water rights held by an Indian nation, tribe or pueblo have been quantified by adjudication; and, a monitoring system is in place and the stream system is actively administered by priority.

Significant Issues

This bill may have far-reaching implications. It may lead to pressures to complete adjudications on the Rio Grande and San Juan Rivers and to adjudicate Native American water rights claims in

an expedited manner. Since these water rights need to be adjudicated with claims of all other users, it may lead to negotiated settlements so that water right owners can use these rights without restrictions.

OSE states “water right application processing would come to a halt in New Mexico primarily in the San Juan River and Rio Grande basins. All other stream systems in New Mexico could potentially suffer the same consequences. The new law would effectively nullify movement of water for endangered species, acequia water banks, ISC water bank (unless priority administration was implemented), compact delivery requirements, municipal, community, mutual domestic water consumer association transfers, and domestic well permitting....If passed, the bill would require the OSE to dedicate the majority of its time and energy to the quantification and adjudication of Indigenous or Aboriginal (Indian Nation, Pueblo and Tribal) water rights on streams in the state and initiate priority administration where these water rights have already been adjudicated. The new law would bind OSE actions concerning endangered species, compact delivery requirements and water banking. No applications for water right transfers could occur.”

OSE states there is no basis for this bill since the Indian nations, tribes and pueblos have the opportunity to protest any applications which may affect their water rights.

AG concludes if the bill is enacted, it “would effectively shut down development and transfer of water rights in most places in New Mexico.” In addition, the agency states “the bill may unconstitutionally restrain the sale of water rights by the owners and by not allowing further appropriations, may be unconstitutional because unappropriated waters are subject to appropriation.”

EMNRD reports that this bill would shutdown water right applications and transfers on all stream systems that have Indian entity claims. It further states “a moratorium on transfers would freeze economic development and would deny cities the ability to acquire water rights to meet growing needs.” It continues “if the State Parks Division were unable to apply to the State Engineer for approval to change the place and purpose of use of its water rights in conjunction with the operation of any of those parks, its ability to respond to ever changing needs and urgent demands for water (such as for fire protection and health and sanitary uses) and for the thousands of visitors who come to state parks each year expecting an adequate water supply would be completely denied, and could result in parks being closed to public access indefinitely.”

DGF states that the State Game Commission is a land and water rights owner and this bill could restrict the commission in using these rights.

SLO opines the bill is unconstitutional because it stops new appropriations of unappropriated water and may conflict with the United States Constitution equal protection clauses.

FISCAL IMPLICATIONS

There is no direct fiscal impact to the governing entities. The State Engineer will need to complete adjudications but this cost is not caused by this bill. However, it may require moving forward anticipated expenditures for the out-years. There maybe costs to water right owners who will be prevented in selling or leasing land and appurtenant water rights until adjudications are completed.

CONFLICT

OSE states that this bill conflicts with the New Mexico Constitution and Sections 72-5-6, 72-5-7, 72-5-24, 72-5-25, 72-12-1, 72,12-3, 72-12-3.1, 72-12-7, 72-12-22, 72-12-34 and 72-12-24 NMSA.

SLO concludes the bill conflicts with Article XVI, Section 2 of the New Mexico Constitution.

TECHNICAL ISSUES

The term “stream system” is not defined and it is unclear if it includes associated groundwater. The bill also does not define “fully monitored” and “actively administered”.

OTHER SUBSTANTIVE ISSUES

SLO recommends adopting a joint memorial that recognizes the need to resolve Indian water rights issues and require OSE expedite the adjudication.

POSSIBLE QUESTIONS

1. How should “there are no water rights in that stream system held by an Indian nation, tribe or pueblo” be interpreted? Does that include claimed rights not filed with the State Engineer but claimed by an Indian entity?
2. Does the term “stream system” include ground water from within the basin?
3. Does “monitored” imply metered to measure use?
4. Would this bill apply to the Gila River where there are no Indian claims in New Mexico but there are in Arizona?

GAC/lis