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FISCAL IMPACT REPORT

ORIGINAL DATE

SPONSOR Rawson **LAST UPDATED** 2-3-06 **HB** _____

SHORT TITLE Rio Grande and Colorado River Management Issues **SB** 402

ANALYST Woods

APPROPRIATION (dollars in thousands)

Appropriation		Recurring or Non-Rec	Fund Affected
FY06	FY07		
NFI	\$3,000.0	Non-Recurring	General Fund

(Parenthesis () Indicate Expenditure Decreases)

SOURCES OF INFORMATION

LFC Files

Responses Received From

Office of the State Engineer-Interstate Stream Commission (OSE)

Department of Finance and Administration (DFA)

Office of the Attorney General (OAG)

SUMMARY

Synopsis of Bill

Senate Bill 402 makes an appropriation to address surface water and ground water management issues in the Lower Rio Grande Basin and to protect New Mexico's entitlement to waters under the Colorado River Compact and the Rio Grande Compact.

Specifically, the legislation seeks to appropriate \$500,000 from the general fund to the Interstate Stream Commission for expenditure in fiscal year 2007 and subsequent fiscal years to address surface water and ground water management issues in the lower Rio Grande basin and to protect the state's entitlement to waters under the Colorado River Compact and the Rio Grande Compact in the following amounts for the following purposes:

- \$950,000 to drill and equip wells to monitor the effects in New Mexico of ground water pumping on the Mexican side of the border;
- \$700,000 to drill and equip monitoring wells and to perform computer modeling of ground water flow to quantify depletion of the New Mexico aquifer from pumping at the Canutillo well field;

- \$850,000 to provide technical and legal work that will lead to an interstate-international salinity control forum and discussions of the interception and treatment of saline water; and
- \$500,000 to provide technical and legal work to assist the state and lower Rio Grande water users in administering water usage in the lower Rio Grande basin.

Any unexpended or unencumbered balance remaining at the end of a fiscal year shall not revert to the general fund.

SIGNIFICANT ISSUES

The Office of the State Engineer-Interstate Stream Commission (OSE) notes that water issues in the Lower Rio Grande Basin in New Mexico have been, and continue to be, an area of contention with the State of Texas. Rapid population growth in the region, particularly in Texas and Mexico, has put ever-increasing demand on the area's limited water resources; a problem that has been exacerbated by several years of ongoing drought. Further, that Texas has for the past several years threatened New Mexico with litigation over the quality and quantities of its Rio Grande water deliveries, claiming it is not receiving its share of Rio Grande Project water. In response, The NMAGO, NM State Engineer, NMISC, and NMED are working cooperatively to fully develop all defenses to ensure the best possible outcome, and minimize the potential (very large) economic liability to New Mexico. The agencies have worked to protect New Mexico's water entitlement by pro-actively engaging Lower Rio Grande and Texas water management officials, gaining a better understanding of the physical system, and putting the tools in place to quantify and administer water use in the Basin. Much of this effort has been funded through a 2003 special appropriation by the legislature (N.M. Laws 2002, First Extraordinary Session, Ch. 4, §5 (9)).

OSE adds that the Lower Rio Grande is a top-priority basin for implementing the State Engineer's Active Water Resource Management, and draft regulations are in the process of being drafted. All of these efforts are intended to minimize the likelihood of New Mexico ending up in Supreme Court litigation as occurred on the Pecos River. Such litigation is extremely costly and results in the state's loss of control over its water resource management decisions. OSE suggests that specific technical projects have been scoped that would improve New Mexico's water management capability in the Lower Rio Grande. The projects include drilling and equipping wells and perform computer modeling to monitor the effects in New Mexico of ground water pumping on the Mexican side of the border and from Texas pumping at the Canutillo well field; to provide technical and legal work that will lead to an interstate-international salinity control forum and discussions of the interception and treatment of saline water; and to provide technical and legal work to assist the state and lower Rio Grande water users in administering water usage in the lower Rio Grande basin. This legislation, OSE suggests, will facilitate solutions to all the issues addressed above.

ADMINISTRATIVE IMPLICATIONS

The Office of the Attorney General (OAG) notes that in contrast to N.M. Laws 2002 (1st E.S.), Ch. 4, §5 (8) & (9) – which appropriated money to the Attorney General and directed the AGO

to enter into cooperative agreements with the OSE, ISC, and NMED – this legislation appropriates money solely to the ISC and makes no reference to the other state agencies that have worked collaboratively under the 2002 appropriation. As the State’s chief legal officer, the Attorney General indicates that it possesses exclusive authority to represent the State of New Mexico and its agencies in legal proceedings. *See* NMSA 1978, §8-5-2. This means the Attorney General has exclusive power to determine litigation strategy for the State and its agencies. For this reason, the Attorney General believes the appropriation under S.B. 402 should be structured like the earlier appropriation under N.M. Laws 2002 (1st E.S.), Ch. 4, §5 (8) & (9). The money should be appropriated to the Office of the Attorney General, with the proviso that the AGO will enter into cooperative agreements with the OSE, ISC, and NMED in expending the money. As reflected in the amendments section (see below), this modification will ensure that the Attorney General can effectively carry out her statutory responsibility for supervising litigation strategy for the State and its agencies.

CONFLICT, DUPLICATION, COMPANIONSHIP, RELATIONSHIP

The Office of the Attorney General notes that SB 402 relates to HB 7 (Section 5, paragraph 4, page 213). HB 7 extends the appropriation under N.M. Laws 2002 (1st E.S.), Ch. 4, §5 (8) & (9) for fiscal year 2007, allowing ongoing legal and technical work in the lower Rio Grande to continue. SB 402 provides funding to address emerging issues that have resulted from ongoing work, such as salinity control and the potential effects of Mexican groundwater pumping.

TECHNICAL ISSUES

The OAG observes that the title of SB 402 and Section A refer to the Colorado River Compact. However, this bill addresses the Rio Grande Basin. SB 403 addresses the Colorado River Basin.

OTHER SUBSTANTIVE ISSUES

As background, the Office of the Attorney General (OAG) notes that the Lower Rio Grande Basin extends south from Elephant Butte Reservoir to the Texas state line. Water issues in the Basin have been contentious, with both the State of Texas and the City of El Paso suing the State of New Mexico at different times over the last 75 years. Rapid population growth in the region, particularly in Texas and Mexico, is putting increased demand on the area’s limited water resources and that problem has been greatly exacerbated by several years of ongoing drought.

From a legal perspective, the OAG observes that since 2001, the Texas Legislature has authorized a standing appropriation of \$10.35 million dollars to the Texas Attorney General to “vigorously represent the State of Texas in all litigation involving water rights disputes with the State of New Mexico, including but not limited to issues relating to the Elephant Butte Reservoir.” Texas has threatened litigation over the quality and quantities of its Rio Grande water deliveries, claiming it is not receiving its share of Rio Grande Project water. In response, New Mexico has worked to protect its water entitlement by gaining a better understanding of the Basin’s hydrology and putting the tools in place to quantify and administer water use in the Basin. Much of this effort has been funded through a 2003 special appropriation by the legislature (N.M. Laws 2002, First Extraordinary Session, Ch. 4, §5 (8) and (9)). That legislation directed the Office of the Attorney General (AGO) to enter into cooperative agreements with the Office of the State Engineer (OSE), the Interstate Stream Commission (ISC) and the Environment Department

(NMED) for conducting the work necessary to defend New Mexico against the Texas litigation threat. Through that appropriation the AGO, OSE, ISC and NMED and have taken a proactive approach to the problem. Working together, the agencies have established a multi-agency, interdisciplinary effort aimed at understanding and addressing the legal and technical issues confronting New Mexico.

All of these efforts are intended to minimize the likelihood of New Mexico ending up in interstate litigation in the U.S. Supreme Court as happened in the Pecos River dispute. Such litigation is extremely costly and could result in a loss of state sovereignty over its water resources and resource management decisions. The technical tasks described in SB402 have been identified by the State agencies as areas of uncertainty that could affect whether Texas decides to litigate.

In addition, the Lower Rio Grande is a top-priority basin for implementing the State Engineer's Active Water Resource Management (AWRM), and the State Engineer is in the process of drafting AWRM regulations for the Lower Rio Grande Basin. There are significant technical and legal challenges to implementing effective water administration in the Basin. To be successful the State agencies must work cooperatively with Lower Rio Grande water users to ensure that solutions will be workable. Legal challenges cannot be ruled out and it is necessary for the AGO, the OSE, ISC and NMED to continue their close collaboration on these various intra-state and interstate issues.

AMENDMENTS

The Office of Attorney General suggests the following language:

Page 1, line 19, replace “interstate stream commission” with “the office of the attorney general”.

Page 1, line 13 and 14, delete “THE COLORADO RIVER COMPACT AND”.

Page 1, line 23 and 24, delete “the Colorado River Compact and”.

Page 2, line 21 insert a new paragraph, Paragraph C, which shall read: “The office of the attorney general is directed to enter into cooperative agreements with the state engineer, interstate stream commission and New Mexico department of environment in implementing this Act.”

BW/yr