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## FISCAL IMPACT REPORT

ORIGINAL DATE 01/25/10  
 LAST UPDATED 01/31/10    **HB** 15/aHAWRC

**SPONSOR** Crook

**SHORT TITLE** Create Eastern NM Water Utility Authority    **SB** \_\_\_\_\_

**ANALYST** Aubel

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

	FY10	FY11	FY12	3 Year Total Cost	Recurring or Non-Rec	Fund Affected
<b>Total</b>		NFI*				

(Parenthesis ( ) Indicate Expenditure Decreases)

\*No fiscal impact noted by agencies.

House Bill 15 relates to Executive Message #54.

House Bill 15 is sponsored by the Water and Natural Resources committee.

### SOURCES OF INFORMATION

LFC Files

#### Responses Received From

Department of Finance and Administration (DFA) (Original bill)

New Mexico Environment Department (NMED) (Original bill)

Office of State Engineer/Interstate Stream Commission (OSE) (Amendment)

New Mexico Finance Authority (NMFA) (Amendment)

### SUMMARY

#### Synopsis of HAWRC Amendment

The House Agriculture and Water Resources Committee made 12 amendments to the bill. The substantive changes include the following:

- Requires the new Authority to adopt an operating budget based on an asset management plan and a rate-setting analysis, which is subject to approval by the Department of Finance and Administration;
- Allows a water use planning period not to exceed forty years and allows the Authority to hold water rights based on a water development plan approved by the Office of the State Engineer (OSE), the implementation of which shall not exceed forty years from the date of application to change the place or purpose of use of an acquired water right;
- Limits the condemnation of private property “as the last resort”;
- Denies the Authority the ability to acquire water rights through the power of eminent domain;

- Directs the Authority to submit a change of ownership form and an application to the OSE for combining or commingling water rights when either acquiring water rights or accepting assets from water providers transferring water rights pursuant to the bill;
- Requires the Authority to provide a capital fund for system improvements and replacements; and
- Clarifies that the Authority is subject to the rules and regulations of the state engineer and the applicable water code.

### Synopsis of Original Bill

House Bill 15 creates a regional water utility district in Eastern New Mexico within Curry County and Roosevelt County boundaries for the benefit of Curry County, the cities of Clovis, Portales, and Texico, the towns of Melrose and Elida, and the Village of Grady. The new Eastern New Mexico Water Utility Authority (Authority) would be a political subdivision of the state for water systems and have the power of eminent domain, the ability to establish rates, and issue revenue bonds. The Authority could shut off service and undertake regional water and wastewater planning. A seven-member board is created to administer the Authority, and the powers and duties of the board are established. Bonds authorized by the board are exempt from all state taxation, and revenue bonds may be issued by a supermajority of five members of the board without a popular vote. The bill sets out bond requirements, including the stipulation that the bonds shall not represent general obligations of the state or other political subdivisions of the state. Refunding bonds may also be issued subject to the requirements stipulating issuance, terms, escrow, and repayments.

The bill exempts the Authority from oversight of the Public Regulation Commission (PRC) and from the provisions of the Public Utility Act (PUA) except if the board adopts a resolution to become subject to the jurisdiction of the PRC and terms of the PUA. However, the bill specifies that under no condition shall Sections 62-9-1 through 62-9-7 NMSA 1978 apply to the authority.

A temporary section of the bill transfers all functions, appropriations, money, records, contracts, equipment and other real and personal property of the Eastern New Mexico Rural Water Authority to the new Eastern New Mexico Water Utility Authority.

The effective date is July 1, 2010.

### **FISCAL IMPLICATIONS**

No fiscal implications were noted in agency analyses.

The Authority is being created to meet water needs on a regional basis. While economies of scale may materialize, it is also possible that full cost pricing for adequate asset management and capital improvements might raise rates for consumers.

### **SIGNIFICANT ISSUES**

The northeastern portion of New Mexico obtains its drinking water from the Ogallala Aquifer. The internet site *Water Encyclopedia* provides the following background information:

*The Ogallala Aquifer occupies the High Plains of the United States, extending northward from western Texas to South Dakota. The Ogallala is the leading geologic formation in what is known as the High Plains Aquifer System. The entire system underlies about 450,000 square kilometers (174,000 square miles) of eight states...The Ogallala Aquifer*

*(shaded area) is in a state of overdraft owing to the current rate of water use. If withdrawals continue unabated, the aquifer could be depleted in only a few decades.*



Read more: [Ogallala Aquifer - depth, important, system, source http://www.waterencyclopedia.com/Oc-Po/Ogallala-Aquifer.html#ixzz0devhHP7j](http://www.waterencyclopedia.com/Oc-Po/Ogallala-Aquifer.html#ixzz0devhHP7j)

NMED states that in order to meet the future demand for water in the face of the diminishing supply, “Eastern New Mexico communities have banded together to find a long term source of water that will rely on the Ute Reservoir, a surface water source. The creation of a water authority, as proposed in HB 15, would provide for regional governance across county and municipal boundaries for more effective management and recognition of economies of scale.”

As a political subdivision of the state, DFA notes that the Authority would be able “to sue and be sued, enter into contracts, borrow money and issue revenue bonds, acquire, dispose of or encumber real and personal property, create and maintain necessary infrastructure to transmit water to its customers, engage in regional planning, exercise eminent domain for a limited purpose of necessary infrastructure, construct and maintain facilities along a public street, highway, water or watercourse.”

The board for the Authority would consist of three members from Clovis, two members from Portales, one member from Curry County and one member -- on rotating basis -- from Texico, Melrose, Eldia, or Grady. Revenue bonds can be sold without a popular vote, but by a super majority of the board consisting of five of the seven board members. NMED points out that Clovis and Portales will have a total of five votes.

## **PERFORMANCE IMPLICATIONS**

NMED states that elements in the bill directly support the agency’s goals, including undertaking regional water planning.

## **ADMINISTRATIVE IMPLICATIONS**

Both NMED and DFA note a concern regarding oversight of the Authority. While the Authority may be subject to Local Government provisions at DFA, NMED suggests that the bill could be amended “to specifically provide for oversight of the budget and stipulate the budget be established by a rate setting analysis to ensure full cost pricing through asset management and capital improvement accounts.” The agency provides the following amendments to carry out this suggestion:

Amend Section 6.F (7), page 6, Line 25, to read:

(7) fix and from time to time increase or decrease water rates, fees or other charges for water delivery or other related services or facilities operated or made available by the authority and adopt an operating budget that totally supports the full cost of operation, maintenance and replacement as established by an asset management plan and a rate setting analysis subject to the following conditions:

Add a new Subsection (b) to Section 6.F (7) on Page 7, Line 8, to read:

(b) the operating budget of the authority shall be subject to the approval of the New Mexico department of finance and administration as required by Section 6-6-2 et seq., NMSA 1978, as enacted or amended.

Re-number the remaining Subsections of Section 6.F (7).

Add a new Subsection 4 to Section 15.A, on Page 14, Line 25, to read

(4) provide a capital fund for system improvements and replacements.

## **WHAT WILL BE THE CONSEQUENCES OF NOT ENACTING THIS BILL**

NMED notes that “if HB 15 is not passed, the Ute Reservoir Commission and the Eastern New Mexico Rural Water Authority will continue to operate as they have in the past and the stronger, multi-jurisdictional Authority proposed in this legislation will not exist.”

## **POSSIBLE QUESTIONS**

1. How will the Authority ensure sufficient water supply in the face of the depletion of the Ogallala Aquifer?
2. How long would the Authority have to implement new water infrastructure before the depletion of the Aquifer?
3. How will the Ute Reservoir surface water be added to the inventory of water for the Authority?
4. What is the cost of any pipeline?
5. What is the project plan and funding status for the Ute Pipeline?
6. How will current infrastructure be tied into any new infrastructure?
7. How will rate increases be allocated across the affected population?
8. What will happen if the Ute Reservoir surface water is not accessed?
9. Would the Authority be subject to oversight by the Department of Finance and Administration Local Government Division as the bill is currently written?