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FISCAL IMPACT REPORT

ORIGINAL DATE 02/21/11

SPONSOR Gentry LAST UPDATED _____ HB 578

SHORT TITLE Adjudicated Water Right Use without Diversion SB _____

ANALYST Hoffmann

ESTIMATED ADDITIONAL OPERATING BUDGET IMPACT (dollars in thousands)

	FY11	FY12	FY13	3 Year Total Cost	Recurring or Non-Rec	Fund Affected
Total	None	\$400.0	\$400.0	\$800.0	Recurring	General Fund

(Parenthesis () Indicate Expenditure Decreases)

SOURCES OF INFORMATION

LFC Files

Responses Received From

Department of Game and Fish(DGF)

Energy, Minerals and Natural Resources Department (EMNRD)

Office of the State Engineer (OSE)

SUMMARY

Synopsis of Bill

House Bill 578 would create a new section in Chapter 72, Article 5 NMSA 1978 to allow the state engineer to authorize the use of adjudicated water rights without diversion.

An owner of an adjudicated water right would be able file an application for a change in point of diversion, purpose or place of use of a water right. This action is often referred to as in-stream flow.

An adjudicated water right could then be used for recreational, fish or wildlife or other ecological purposes without diversion if its use will not impair the use of other water right holders and is not contrary to water conservation or the public welfare. The bill would also allow the State Engineer to place conditions on the permit and to require metering or measuring. The bill would codify a water use policy that has been approved by the New Mexico Attorney General as reflective of New Mexico law as well as be consistent with the laws and policies of other western states.

FISCAL IMPLICATIONS

House Bill 578 does not make an appropriation.

The OSE states additional Watermasters will be needed for areas that do not have Watermasters so they can administer these permits and the water associated to them. It is anticipated that 5 additional Watermasters will be needed at a minimum to administer these permits statewide.

Because of the potential fiscal impact, the OSE recommends an amendment. On page 2, line 6, beginning of sentence insert the following: Any costs associated with the administration of the water under this section by the Office of the State Engineer, including the installation of real-time gauging stations and hiring of Watermasters shall be borne by the permittee.

SIGNIFICANT ISSUES

The OSE provided the following discussion.

The most significant issue is the protection of the water that is transferred to an in-stream flow use from diversion by water right owners downstream. NM Water Law allows the diversion of water in stream channels to be diverted and used by priority. Any water in a water course is subject to diversion and use.

Many of New Mexico's rivers and streams are un-gauged and/or un-metered. If this bill is passed, water allowed to remain within a stream channel could not be quantified without a significant investment in real-time measurement structures. OSE Watermasters would have to be employed to administer adjudicated water rights and allocate water on all the perennial streams in the state in order to be able to protect in-stream flows from diversion by downstream water users. The costs associated with metering / measuring stream flows and administering this water with Watermasters could be significant especially when we consider the areas that still need to be adjudicated such as the Middle Rio Grande Valley. Without metering and measurement of this water, there is no way to determine whether the water is placed to beneficial use.

No other beneficial use of water is specifically defined in New Mexico by statute as is proposed here.

The EMNRD reports that HB 578 will allow parties interested in using water for recreational or ecological purposes to apply water rights for such a purpose. Currently, these purposes for usage of water are not recognized in statute. This change in statute will place these uses on an equal footing with agriculture and industry, allowing the owner of water rights to apply them for ecological or recreational purposes.

From the perspective of the DGF, the bill addresses the significant issues by requiring that any change in point or place of use not impact other water right holders, water conservation, and/or the public welfare. Additionally, the bill gives the State Engineer the flexibility to address any site specific issues through conditioning of the permit. The bill seems to be protective of current uses while adding a new use that could result in positive benefits.

PERFORMANCE IMPLICATIONS

HB 578 may assist the State Parks Division with maintaining environmental restoration projects, maintaining minimum pools of water in recreational water bodies, and assist other state agencies with maintaining minimum flows in creeks, streams, and rivers.

The DGF reports that permitting use of water without diversion would likely result in improved habitat for wildlife and fish as well as enhanced recreational opportunities for the citizenry. Enhanced recreation could have positive economic impacts to New Mexico communities. All of these benefits would have positive implications for the performance measures that the Department of Game and Fish is directed to achieve.

ADMINISTRATIVE IMPLICATIONS

If this bill is passed, the OSE will have to oversee installation of required water measurement devices / gauging stations in affected streams throughout the state and will most likely be called upon to resolve increased disputes between water users.

OTHER SUBSTANTIVE ISSUES

Historically, according to the OSE, in-stream flow has not been recognized as a beneficial use in New Mexico by statute. This bill could cause the use of this water to be recognized higher than other uses.

ALTERNATIVES

The OSE states the same results can currently be achieved by surface water rights owners by:

- Continuing to place surface water rights in an approved State Engineer Conservation Program; or
- Continuing to place surface water rights in an approved Water Bank where appropriate.

WHAT WILL BE THE CONSEQUENCES OF NOT ENACTING THIS BILL

According to the DGF, water will continue to have to be diverted to be considered as being placed to beneficial use. Potential wildlife, recreational, and economic benefits of non-diversion would be forgone.

JCH/bym:mew