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## FISCAL IMPACT REPORT

SPONSOR: Stell DATE TYPED: 02/21/01 HB HJM 42  
 SHORT TITLE: Resolution of Endangered Species Litigation SB \_\_\_\_\_  
 ANALYST: Dotson

### APPROPRIATION

Appropriation Contained		Estimated Additional Impact		Recurring or Non-Rec	Fund Affected
FY01	FY02	FY01	FY02		
		See Narrative		Recurring	GF/OSF/Fed

(Parenthesis ( ) Indicate Expenditure Decreases)

### SOURCES OF INFORMATION

Office of the State Engineer, Attorney General, Game and Fish Department and the Energy, Mineral and Natural Resources Department.

### SUMMARY

#### Synopsis of Bill

HJM 42 would resolve that the U.S. Secretary of the Interior and the U.S. Attorney General be requested to direct their agencies to recognize that continuous flow requirements for endangered species is not realistic. Solutions to the conservation of endangered species requires collaborative data and analysis. Short-term actions must respect and protect property rights, be accomplished within state water law, and not impair New Mexico's interstate compact delivery obligations.

#### Significant Issues

The State of New Mexico faces multitude of problems in complying with the Endangered Species Act as it is currently administered by the United States' agencies. The memorial summarizes New Mexico's efforts, through litigation and collaboration, to resolve these problems. For example, the operation of the Elephant Butte and Brantley Reservoirs and other water management activities are being modified to meet perceived habitat needs of the endangered fish species. This activity threatens established water rights. Reoperation of federal facilities on the Pecos River also jeopardizes New Mexico's ability to meet its delivery obligation under the U.S. Supreme Court's 1988 Amended Decree in Texas v. New Mexico.

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This memorial also requests that the federal agencies and their administrative bodies understand the limitations of the water resources in the State of New Mexico and the realities surrounding the use of that water along with the impacts if the use of the water is shifted for other purposes

According to the State Engineer, federal, state and local representatives have begun efforts to work together in a cooperative program to develop a long-term solution to meeting the recovery needs of the silvery minnow in the middle Rio Grande consistent with the Endangered Species Act while protecting water uses and property rights; but, no such effort is underway yet for the Pecos River Basin.

According to the Department of Energy, Minerals and Natural Resources, the drop in water levels in the state's reservoirs in dry years to support continuous flows for endangered species in rivers such as the Rio Grande significantly affects the State Parks that are operated through agreements with agencies such as the Bureau of Reclamation because these Parks focus on water-based recreation.

### **PERFORMANCE IMPLICATIONS**

According to the State Engineer, the memorial would assist the Interstate Stream Commission in its efforts to ensure that federal actions comply with federal and state law and that balanced alternatives are made available for compliance with the Endangered Species Act while protecting New Mexico waters and water rights. Specifically, the memorial should assist the Commission by minimizing litigation that might be required to resolve endangered species issues and in finding water management solutions that maximize the use of water within New Mexico while meeting the State's delivery requirements under the Rio Grande and Pecos River compacts. New Mexico currently participates in a similar cooperative program to recover endangered fish in the San Juan River Basin while proceeding with water development in the basin, and the program has been effective in obtaining Endangered Species Act compliance for several federal water projects benefitting water users in New Mexico.

### **FISCAL IMPLICATIONS**

The memorial does not include any appropriations. However, future expenditures would arise from the development of solutions.

According to the State Engineer, funding will be needed to implement recovery actions for the endangered fish, including water management actions for fish recovery and for maintenance and protection of existing water uses and property rights.

According to the Attorney General, the joint memorial expresses New Mexico's commitment to collaborative solutions. These solutions are very expensive and will require the federal government to take on the majority cost-share of implementing these solutions.

According to the Department of Game and Fish, there would be some both short and long term fiscal impacts. The Department could absorb the fiscal impact of development of the collaborative program but would likely require additional funding depending on actions required by the Department during implementation of the program. Actions such as those being proposed on the Rio Grande would require additional fiscal resources. A portion of this could potentially be covered by federal aid reimbursements.

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According to the Department of Energy, Minerals and Natural Resources, the State Parks Division's revenues and the enjoyment of the visitors are impacted when water is released and water levels in the reservoirs drop.

### **ADMINISTRATIVE IMPLICATIONS**

According to the State Engineer, the Interstate Stream Commission would be able to fully participate in collaborative programs for addressing Endangered Species Act compliance issues in the middle Rio Grande and the Pecos River using existing staff, current contractual services agreements and the resources that are requested in the Governor's budget for fiscal year 2002, including term positions. Current staff and contractors are already fully engaged in existing activities related to such issues, some activities of which can be anticipated to be incorporated into the collaborative programs. As the collaborative programs identify research needs and evaluate possible solutions to problems, future needs may arise for additional staff or contractual resources. However, alternative litigation between the State of New Mexico, federal agencies and other parties would require extensive additional technical and legal contractual resources and possibly also additional staff resources.

According to the Department of Game and Fish, the development and implementation of an ESA collaborative program similar to the one being developed on the Rio Grande would require both additional short and long term administrative obligations. Short term obligations, although significant, could most likely be absorbed by the Department. Long-term commitments may vary depending on actions designated by the program that would be administered by the Department. Implementation of a program that required significant amount of actions to be conducted by the Department would likely require additional FTE's. It is difficult to predict any additional FTE requirements without an idea of expectations that will be generated in the program if this memorial was passed and conditions were followed in the development of a PECS River ESA collaborative Program.

### **TECHNICAL ISSUES**

According to the State Engineer, the memorial at page 2, lines 20-24, is inaccurate. The amount of supplemental water provided for the silvery minnow in August and September 2000 nearly equaled the entire amount of direct native flow of the Rio Grande at the head of the middle Rio Grande valley.

The State Engineer suggests:

Page 2, line 21. Replace "exceeded" with "nearly equaled".

Page 2, line 22. Insert "amount of" following "entire".

### **OTHER SUBSTANTIVE ISSUES**

According to the State Engineer, the Commission will litigate matters as needed to protect the water resources interests of the State and its citizens, collaborative solutions, if obtainable, are more desirable than litigated solutions and are often more efficient. Passage of the memorial would indicate to the federal agencies strong State of New Mexico support for collaborative problem solving within the bounds of sound and realistic science and state water law. If the memorial is not passed, the message from the Interstate Stream Commission to the federal agencies would be somewhat weaker.

According to the Attorney General, the United States' agencies have, at times, been less helpful and less forthcoming than they should have been when dealing with the state and other interested parties.

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Hopefully, this joint memorial will bring these unnecessary obstructions to the attention of the Secretary of Interior and Attorney General and help resolve the issues without litigation.

According to the Department of Game and Fish, collaboration is currently happening at some levels. There needs to be improvement in the State's ability to be involved in decisions that have significant impact to our authorities, resources and ability to meet obligations.

PD/prr