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FISCAL IMPACT REPORT

SPONSOR Chandler/Wirth ORIGINAL DATE 1/23/19
LAST UPDATED 3/01/19 HB 17/ec/aHAWC

SHORT TITLE Water Leases and Use of Leased Water SB _____

ANALYST Hanika-Ortiz

ESTIMATED ADDITIONAL OPERATING BUDGET IMPACT (dollars in thousands)

	FY19	FY20	FY21	3 Year Total Cost	Recurring or Nonrecurring	Fund Affected
Total			No Fiscal Impact			

(Parenthesis () Indicate Expenditure Decreases)

SOURCES OF INFORMATION

LFC Files

Responses Received From

Office of the State Engineer (OSE)

New Mexico Acequia Association (NMAA)

SUMMARY

Synopsis of HAWC Amendment

The House Agriculture and Water Resources Committee Amendment to House Bill 17 makes the bill only applicable to water right leases served by an acequia or community ditch, and further provides that such water use be subject to approval by the acequia or community ditch in accordance with statutory procedures for approval of changes in point of diversion, place or use.

Synopsis of Original Bill

House Bill 17 amends Section 72-6-3 NMSA 1978 by requiring that a water use lease permit may only be granted after OSE has heard objections to and approved the application.

The bill carries an emergency clause.

FISCAL IMPLICATIONS

No fiscal implications.

SIGNIFICANT ISSUES

New Mexico water law requires that certain changes in water use have to first be approved by OSE, after consideration of other water rights, water conservation and public welfare. HB 17 attempts to curtail an administrative practice of approving water use lease applications that, in NMAA’s opinion, is in contradiction with Section 72-6-6 which states “If a protest is filed, the state engineer shall hold a hearing on the granting of the application, and the applicant and protestants shall be notified by the state engineer as to the date and place of the hearing. . . If no objections are filed, the state engineer may grant the application without hearing...”. NMAA believes this language allows OSE to grant the application only *after* a hearing if there are objections filed. Yet, according to NMAA, OSE has been approving water lease applications for “immediate use” while protests have been pending and before protestants have had a hearing. In NMAA’s opinion, this alleged “circumvention” of the protest process is a violation of due process.

OSE reports HB 17 would remove its authority to preliminarily approve (prior to publication and opportunity to file protests) an application to temporarily use water under a water use lease. Further, OSE believes Section 72-6-5 allows preliminarily approval in a non-emergency situation if the applicant has shown that the temporary use is beneficial and will not impair an existing right, be contrary to conservation of water in the State, or detrimental to the public welfare of the State.

OSE believes eliminating preliminary approval for water use leases would leave OSE unable to address non-emergency needs timely for water of the oil and gas industry, major construction projects such as Spaceport America or the Santa Teresa Intermodal Ramp. The preliminary approval provision has also been used for temporary environmental remediation projects. In addition, there would no longer be a mechanism to allow for the expedited change in place/purpose of use of a groundwater right or expedited process for non-emergency surface water leases for circumstances like a planned spring pulse of water to improve habitat for endangered species.

PERFORMANCE IMPLICATIONS

Another provision in the water code, Section 72-5-25, also allows the State Engineer to provide preliminary approval for an emergency change in point of diversion of a water right, but that section only allows preliminary approval where the applicant has shown an emergency exists such that the wait for a hearing would result in crop loss or other serious economic loss to the applicant.

ADMINISTRATIVE IMPLICATIONS

OSE noted the majority of its Water Rights Division’s application backlog received preliminary approval pursuant to the Water-Use Leasing Act or emergency approval pursuant to Sections 72-5-25 and 72-12-24. Applicants who received preliminary approval are able to divert and use water in the interim. However, under HB 17, future applicants for non-emergency temporary leases of water would not be able to divert and use water until OSE issues a final decision, a process that in some cases can take years. OSE also noted elimination of preliminary approval for non-emergency temporary uses of water could also lead to an increase in applications for emergency permits.

OTHER SUBSTANTIVE ISSUES

NMAA reports OSE recently granted a permit to lease water to the oil and gas industry while protests by the Carlsbad Irrigation District and Interstate Stream Commission were pending, raising concerns the water use could impact deliveries to Texas under the Pecos River Compact.

WHAT WILL BE THE CONSEQUENCES OF NOT ENACTING THIS BILL

OSE would continue to provide preliminary approval of non-emergency applications to temporarily lease water, in some instances, before a public hearing on any objections filed.

AHO/sb/al