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FISCAL IMPACT REPORT

SPONSOR McQueen/Wirth LAST UPDATED _____
ORIGINAL DATE 02/13/23
BILL
SHORT TITLE 10-Year Water Rights Forfeiture Period NUMBER House Bill 346
ANALYST Sanchez

ESTIMATED ADDITIONAL OPERATING BUDGET IMPACT* (dollars in thousands)

	FY23	FY24	FY25	3 Year Total Cost	Recurring or Nonrecurring	Fund Affected
	No fiscal impact	No fiscal impact	No fiscal impact			

Parentheses () indicate expenditure decreases.

*Amounts reflect most recent analysis of this legislation.

Sources of Information

LFC Files

Responses Received From

Office of the State Engineer (OSE)

Office of the Attorney General (NMAG)

SUMMARY

Synopsis of House Bill 346

House Bill 346 proposes to amend three sections of Section 72-5 NMSA 1978 (the state water code) to allow forfeiture of a water right not put to beneficial use within 10 years of the effective date of said water rights. The portions of the water code amended in this bill include Section 72-5-28 NMSA 1978 (the surface water forfeiture statute), Section 72-6-3 NMSA 1978 (the water-use leasing act), and Section 72-12-8 NMSA 1978 (the groundwater forfeiture statute).

New Mexico has, since 1965, been a “notice and cure” state. This means if the State Engineer becomes aware of a water right sitting dormant and unused, it must first notify the party believed to hold said water right and allow for a period of one year to rectify the non-use.

The effective date of this bill is July 1, 2023.

FISCAL IMPLICATIONS

Neither the Office of the State Engineer nor the Office of the Attorney General estimate any fiscal impact from the adoption of House Bill 346.

SIGNIFICANT ISSUES

In most cases, once a water rights holder becomes aware of forfeiture proceedings by the Office of the State Engineer (OSE), owners find a way, even if only on paper, to put the water to beneficial use before the period for curing nonuse expires. Despite language in the statute allowing for water rights to be forfeited after four years of nonuse, the notice and cure approach effectively prevented the adjudication of water rights after the 1965 changes to the forfeiture statutes.

House Bill 346 only adds language, creating what the State Engineer’s analysis calls a “bright line” rule beginning on July 1, 2033. The rule would also allow the State Engineer to consider water rights forfeited even without notification if water is not put to beneficial use after 10 years. This change would make it easier for the agency to pursue the forfeiture of dormant water rights

Additionally, the bill clarifies the exception to the forfeiture statutes for “circumstances beyond the control of the owner” and instead states, “Forfeiture shall not necessarily occur if circumstances beyond the control of the owner have caused nonuse, such that the water could not be placed to beneficial use by diligent efforts of the owner.” The agency’s analysis states that current statutes are ambiguous and invite legal disputes. The changes proposed in House Bill 346 do not remove the exception but add the “diligent efforts of the owner” clause, which OSE believes will allow for better management of water resources.

OSE’s analysis states that House Bill 346 will make managing water resources easier, especially in future years of reduced supply. The number of dormant water rights makes active management of water resources difficult and unpredictable. House Bill 346 will assist in reducing the number of dormant water rights “on the books” at OSE.

SS/rl/ne