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FISCAL IMPACT REPORT

SPONSOR: Lujan DATE TYPED: 03/06/01 HB 156/aHJC/aSJC
 SHORT TITLE: Additional Notice of Water Rights SB _____
 ANALYST: Dotson

APPROPRIATION

Appropriation Contained		Estimated Additional Impact		Recurring or Non-Rec	Fund Affected
FY01	FY02	FY01	FY02		
	None				

(Parenthesis () Indicate Expenditure Decreases)

Duplicates/Relates to Appropriation in The General Appropriation Act Duplicates SB 118, related to SB 24 and HB 237.

SOURCES OF INFORMATION

Office of the State Engineer, New Mexico Ditch Association and the Association of Counties.

SUMMARY

Synopsis of SJC Amendments

The Senate Judiciary Committee amendments require that notice be “published and distributed in each county affected by the diversion and in each county where the water will be or has been put to beneficial use”. The amendments also clarify that notice should be, at a minimum, in “some newspaper of general circulation in the county within which the proposed point of diversion would be located”.

Synopsis of HJC Amendments

The House Judiciary Committee amendments require the Office of the State Engineer develop and maintain a registry to which an applicant shall mail notice.

Synopsis of Bill of Original Bill

HB 156 outlines the additional notification requirements whenever a water rights transfer application is filed. These notifications include publishing notices in the newspaper of largest circulation and then notifications by certified mail to various water managing subdivisions and associations located in the county within which the point of diversion is located.

Significant Issues of SJC Amendments

The Senate Judiciary Committee amend the number of notifications by newspaper and mailings significantly. A diversion theoretically would effect all water managing political subdivisions downstream. Thus, notice would have to be in all newspapers in all the counties downstream from the diversion and all water managing political subdivisions downstream would have to be notified by mail. This would place an extreme burden on an applicant.

Significant Issues of HJC Amendments

Requires the Office of the State engineer to develop and maintain a registry of individuals which could be effected by an application for water rights. This registry would be a complete listing of all water managing political subdivisions in the state.

Significant Issues of Original Bill

The burden on the applicant to follow the notification requirements may be overwhelming. Streamlining the process may place an undo record keeping burden on the Office of the State Engineer.

According to the State Engineer, the number of entities an applicant would be required to provide with direct notice under the proposed bill would in many cases run into the hundreds. Because no register or single source for the identification of these entities or their addresses presently exists, the burden on the applicant and the Office of the State Engineer to comply with the notice provision would be formidable. It is doubtful if any applicant in many parts of the state could actually comply with its terms, and the most predictable result would be increased litigation. Under present case law, non-compliance with notice provisions renders an approved application null and void. Assuming the proposed requirements were adopted any asserted non-compliance might be raised years after the fact, and given the difficulty of actual compliance almost any approved application would be vulnerable to attack.

A change in the requirement for publication in a newspaper of “general circulation” to the newspaper with the “largest circulation” in the specified area will also lead to increased litigation. There is no definition of the newspaper of the “largest circulation” provided. It is unclear if this would include unpaid circulation, or whether newspapers were to be compared on the basis of daily, weekly or Sunday circulation. Also, a mandate to use the newspaper of the “largest circulation” will lead to complaints (and perhaps litigation) that certain statewide newspapers have been granted a monopoly for the publication of certain legal notices.

This bill along with related bills such as HB 237, have the cumulative effect of denying individuals the reasonable right to benefit from market opportunities.

This bill along with others is clarifying the role of individual property rights with the rights of a community based irrigation system.

PERFORMANCE IMPLICATIONS

According to the State Engineer, it is assumed that the Office of State Engineer would supply the applicant with the list of the public entities that have their names and address information “in the records” of the agency. This information is not compiled in any way that makes the information reasonably subject to search.

FISCAL IMPLICATIONS

Fiscal Implications HJC Amendments

The House Judiciary Committee amendments creates an administrative record keeping burden on the Office of the State Engineer. The Office of the State Engineer may currently have this data however, it may not be in a accessible data base. Once the registry is developed, maintaining the record would be minimal.

Fiscal Implications of Original Bill

According to the State Engineer, there would be significant fiscal implications on the Office of the State Engineer if this bill were enacted. One could anticipate both increased litigation concerning compliance, and additional staff necessary to compile the information required.

CONFLICT/DUPLICATION/COMPANIONSHIP/RELATIONSHIP

According to the State Engineer, this bill in part duplicates SB 24 which provides for direct notice to a particular affected acequia when a member of that acequia seeks to transfer his or her water rights to a new place of use.

PD/njw