

NOTE: As provided in LFC policy, this report is intended for use by the standing finance committees of the legislature. The Legislative Finance Committee does not assume responsibility for the accuracy of the information in this report when used in any other situation.

Only the most recent FIR version, excluding attachments, is available on the Intranet. Previously issued FIRs and attachments may be obtained from the LFC office in Suite 101 of the State Capitol Building North.

FISCAL IMPACT REPORT

SPONSOR: Sanchez, M DATE TYPED: 03/04/01 HB _____
 SHORT TITLE: Resolution of Endangered Species Litigation SB SJM - 46
 _____ ANALYST: Dotson

APPROPRIATION

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

(Parenthesis () Indicate Expenditure Decreases)

Duplicates/Relates to Appropriation in The General Appropriation Act Relates to HJM 33

SOURCES OF INFORMATION

Office of the State Engineer, Environment Department and the Game and Fish Department.

SUMMARY

Synopsis of Bill

The Memorial would resolve that the Secretary of the Interior and the Attorney General direct their agencies to make all their scientific data on endangered species in New Mexico streams available for review by interested parties and that the federal agencies allow opportunities for New Mexico and other parties to participate in data collection and analysis efforts. In addition, the Memorial would resolve that the Secretary of the Interior and the Attorney General commit to cooperative processes as the only vehicle capable of achieving a workable long-term solution to conservation of endangered fish in the middle Rio Grande and the Pecos River.

Significant Issues

SJM 46 identifies the following concerns:

- Continuous flow requirements for endangered species are not realistic hydrologically in the desert streams of New Mexico.
- Solutions to the conservation of endangered species require collaborative processes based on sound scientific data and analysis.
- Solutions must respect and protect property rights, be accomplished within state water law and water rights administration, and not impair New Mexico's interstate compact delivery obligations.

Collaborative efforts are currently happening at some levels, however 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.

Senate Joint Memorial -- Page 2

According to the State Engineer, Federal agencies operate major reservoirs on both rivers for water supply and flood control; however, the operation of the reservoirs and other water management activities, including irrigation diversions and federal projects, are being modified to meet perceived habitat needs of the endangered fish species so as to comply with the agencies' responsibilities under the Endangered Species Act. Water availability under established water rights and New Mexico's ability to meet its delivery obligation under the U.S. Supreme Court's 1988 Amended Decree in *Texas v. New Mexico* is threatened.

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 pursued. 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

SJM contains no appropriation however, with successful resolution of litigation, the several governmental entities along the Rio Grande and Pecos River could enjoy significant budgetary savings which would otherwise be spent in such litigation efforts.

Collaborative programs could require state and local cost-share funding, in addition to federal appropriations.

ADMINISTRATIVE IMPLICATIONS

According to the Office of 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. 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.

TECHNICAL ISSUES

According to the Office of 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.

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

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

PD/njw