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FISCAL IMPACT REPORT

SPONSOR Madalena DATE TYPED 2/10/04 HB 519

SHORT TITLE Water Conservation & Minnow Protection SB _____

ANALYST Dunbar

APPROPRIATION

Appropriation Contained		Estimated Additional Impact		Recurring or Non-Rec	Fund Affected
FY04	FY05	FY04	FY05		
	\$3,000.0			Recurring	General Fund

SOURCES OF INFORMATION

LFC Files

Responses Received From

NM Environment Department (NMED)
 Energy and Minerals and Natural Resources (EMNRD)
 Office of the State Engineer (OSE)

SUMMARY

Synopsis of Bill

House Bill 519 appropriates \$3 million from the General Fund to the New Mexico Office of Indian Affairs for expenditure in FY05 to designate natural habitat and to conserve water to prevent the extinction of the silvery minnow in the Rio Grande from Cochiti Dam to Elephant Butte.

The money would be available for use by the Pueblo of Sandia, Pueblo of Isleta and the Middle Rio Grande Conservancy District.

Significant Issues

The Silvery Minnow was listed as a federally protected endangered species in 1994. The Middle Rio Grande Endangered Species Act Workgroup was formed in 2000 with the purpose of developing a collaborative solution which protects and aids recovery of the Rio Grande Silvery Minnow and Southwestern Willow Flycatcher, while at the same time protecting current and future water users.

According to the Office of the State Engineer, a number of state agencies are already funding this type of work and adding another state agency to the mix will increase the cost to the state and reduce the effectiveness of expenditure of state funds. The New Mexico Interstate Stream Commission, Office of the Attorney General, the Department of Game and Fish, the Department of Agriculture and the Environment Department initiated the Middle Rio Grande Endangered Species Act Collaborative Program (Program) with the goals of aiding in recovery of the Rio Grande silvery minnow while protecting the state's water users. MRGCD and the Pueblo of Isleta are Program signatories. The Program has been successful in receiving over \$20 million of federal money at a 75% federal: 25% non-federal cost share. State funds are used, in part, to help maintain the 2003 Middle Rio Grande Biological Opinion for water operations such that water is not taken from valid water rights holders.

In addition, the Interstate Stream Commission (ISC) has been heavily involved in evaluating and determining the types of projects that might benefit the silvery minnow and worked with the Program to complete a report that priorities habitat restoration projects for the silvery minnow from Velarde to Elephant Butte Reservoir.

FISCAL IMPLICATIONS

The appropriation of \$3,000.0 contained in this bill is a recurring expense to the General Fund. Any unexpended or unencumbered balance remaining at the end of FY 05 shall revert to the General Fund.

State funding to the Middle Rio Grande Endangered Species Act Collaborative Program has come from the Interstate Stream Commission (ISC) and Water Trust Board using various legislative appropriations. These funds have been used to construct facilities such as the silvery minnow naturalized refugia and develop a habitat restoration plan for the silvery minnow. Other beneficial projects have been identified but sufficient state funding has not.

Potential exists for federal matching. Reference is made to "significant issues" above

ADMINISTRATIVE IMPLICATIONS

OSE notes that the addition of another player will increase State of New Mexico administrative costs for addressing silvery minnow and water conservation issues by giving another state agency besides the ISC responsibility and authority for these type projects. Given the specialized education and training needed for agencies or individuals to come up to speed on these types of issues, the funding and administration of these projects would be best left with ISC.

TECHNICAL ISSUES

Under the Endangered Species Act, the designation of critical habitat is performed by the Department of the Interior and the Fish and Wildlife Service, and under the New Mexico Wildlife Conservation Act, habitat protection is conducted by the State Game Commission. The NMED point out the Office of Indian Affairs has no statutory authority to perform these activities.

Any project to develop natural habitat (the bill says designate) and conserve water would likely require longer term maintenance and monitoring and there is no provision for those things in this appropriation.

The term “designate” may need defining. The purpose of the funding should be to implement the requirements of the biological opinion.

It is unclear from reading the bill how or why the MRGCD, a conservancy district of the state and not a Tribe or Pueblo, should receive funding from the New Mexico Office of Indian Affairs.

OTHER SUBSTANTIVE ISSUES

One issue is the practical application of the MRGCD's ability to actually leave water in the river channel while still meeting the needs of their irrigators.

With an eye on a continuing severe drought in New Mexico, U.S. Senator Pete Domenici has signaled his intent push for the creation north of Albuquerque of near-natural sanctuaries adjacent and connected to the Rio Grande to support the endangered Rio Grande silvery minnow.

Senator Domenici met with Sandia Pueblo Governor Stewart Piasano to discuss the concept, which would serve to advance the recovery of the minnow and balance the needs of others who rely on the Rio Grande—particularly if ongoing drought conditions make it likely that water availability will be limited for all users in the future.

The following quote is from Senator Domenici:

“I’ve said for years that we simply cannot bring enough water to the fish, especially in times of severe, prolonged drought. This is why I believe it is time to move forward with my idea to bring the fish to the water. We are optimistic that we can develop self-sustaining populations of minnows in sanctuaries that use river water and natural flows. They would not consume any water, just take advantage of reaches of the river that flow throughout the year.”

AMENDMENTS

The following amendments were suggested by OSE.

- ❑ p. 1, delete lines 11 through 14 and insert in lieu thereof: Making an appropriation to the Inter-state Stream Commission for water conservation and for the protection of silvery minnow in the Rio Grande from Velarde to Elephant Butte Reservoir.
- ❑ p. 1, delete lines 16-25 and insert in lieu thereof: Three million dollars (\$3,000,000) is appropriated from the general fund to the New Mexico Interstate Stream Commission for expenditure in fiscal years 2005 and 2006 for use by the state of New Mexico as non-federal matching funds for the Middle Rio Grande Endangered Species Act Collaborative Program to plan, design and construct silvery minnow habitat and to conserve water to prevent the extinction of the silver minnow in the Rio Grande from Velarde to Elephant Butte Reservoir. Any unexpended or unencumbered balance remaining at the end of fiscal year 2006 shall revert to the general fund.

BD/dm:lg