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FISCAL IMPACT REPORT

SPONSOR Trujillo DATE TYPED 02/09/04 HB HJM 55/aHAGC
 SHORT TITLE Aqua Fria Village Water Rights Status SB _____
 ANALYST Maloy

APPROPRIATION

Appropriation Contained		Estimated Additional Impact		Recurring or Non-Rec	Fund Affected
FY04	FY05	FY04	FY05		
			See Narrative	Recurring	General Fund

(Parenthesis () Indicate Expenditure Decreases)

SOURCE INFORMATION

LFC Files

Response Received From
Office of the State Engineer

SUMMARY

Synopsis of HAGC Amendment

The House Agriculture and Water Resources Committee Amendment to House Joint Memorial 55 provides:

- “Clean-up” language to better define “taken” or “transferred” water as “water used elsewhere” (without the consent of the water rights owner);
- “Clean-up” language noting that the State Engineer would not “conduct” a report, but would “prepare” a report; and
- A change in the date a report of the State Engineer’s findings would be presented to the appropriate legislative interim committee from November 1, 2005, to November 1, 2004.

Synopsis of Original Bill

House Joint Memorial 55 states:

- The Village of Agua Fria was settled in the seventeenth century;
- The lands in and around the village were farmed and irrigated over 300 years;
- It is estimated that as much as 80% of the water rights attached to those lands have been lost or otherwise taken;
- Many of these rights have been lost or taken without due process; and
- Current land owners of the lands have not received an adequate explanation of how those rights have been lost or taken.

On these premises, House Joint Memorial 55 resolves:

- The State Engineer conduct a study and report on the history and water rights of lands in the vicinity of Agua Fria; and
- The State Engineer makes this report to the appropriate legislative interim committee by November 1, 2005.

Significant Issues

- Much of the state is in a similar situation as Agua Fria.
- The State Engineer has estimated it would take in excess of another 8 years to adjudicate the water of the state.
- Conceivably, Agua Fria is a small enough area that it could be made a priority and the rights determinations made in accordance with the deadline set by the memorial without a need for significant additional resources within the Office of the State Engineer. The Office has personnel with expertise and responsibilities in just such areas.
- Should areas be prioritized for the adjudication process according to need and subsequent effects on other right holders and interstate delivery obligations?

FISCAL IMPLICATIONS

The Joint Memorial does not contain an appropriation. There may be some administrative implications for the Office of the State Engineer, but those costs should be readily absorbable into existing adjudication resources. The Office has been given a lump-sum appropriation for the Adjudication and Litigation Program, based on the additional revenue anticipated to the Office's Income Funds as a result of the Constitutional Amendment.

The Office of the State Engineer, however, does not agree, stating:

- HJM 55 appropriates no funds to hire an historian or additional staff to perform the necessary research and provide the requested report. To accomplish this task the cost to the Office of the State Engineer would be approximately \$10,000 for staff and \$15,000 to hire a historian.
- The Office of the State Engineer does not currently have the staff to perform the necessary research and write the requested report. A part time term position should be created to accomplish this additional task; alternatively, it could be provided by an outside contractor.

OTHER SUBSTANTIVE ISSUES

The Office of the State Engineer notes:

- The Village of Agua Fria falls within the boundaries of the Santa Fe Adjudication and such a study may be a duplication of effort.
- The state has always required that these studies be performed by the applicants or interested parties. It would open a floodgate of requests for state funding if this study is funded, requiring significant state funds for contract studies as well as additional OSE staff to administer those contracts.

With regard to this statement, it is unclear how the Office distinguishes between adjudication efforts that are undertaken by the Office with state funds and those that are reportedly undertaken independently, as suggested above, by the applicant or interested parties.

ALTERNATIVES

The Office of the State Engineer offers:

- The Village of Agua Fria can hire a private consultant and an historian to conduct such a study.
- The Village of Agua Fria falls within the boundaries of the Santa Fe Adjudication and such a study may be a duplication of effort.

POSSIBLE QUESTIONS

Is it the statutory responsibility of the Office of the State Engineer to perform the adjudication activities requested in this memorial, or is the Office right in proposing the Village or other interested party should undertake a private study and assume the costs?

SJM/njw:dm