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## FISCAL IMPACT REPORT

ORIGINAL DATE 2/5/06

SPONSOR Cervantes LAST UPDATED \_\_\_\_\_ HB 740

SHORT TITLE Interstate Water Conflict Legal Expenses SB \_\_\_\_\_

ANALYST Medina

### APPROPRIATION (dollars in thousands)

Appropriation		Recurring or Non-Rec	Fund Affected
FY06	FY07		
	\$4,000.0	Recurring	General Fund

(Parenthesis ( ) Indicate Expenditure Decreases)

Duplicates SB 586

Conflicts with SB 402 and SB 403

Relates to Reauthorizations for expenditure in the General Appropriation Act

### SOURCES OF INFORMATION

LFC Files

#### Responses Received From

Office of the State Engineer (OSE)

Office of the Attorney General (AGO)

Environment Department (NMED)

### SUMMARY

#### Synopsis of Bill

House Bill 740 appropriates \$4,000.0 from the general fund to the Office of the Attorney General to facilitate cooperative agreements involving the Office of the State Engineer, the Interstate Stream Commission or the Department of Environment, and for legal and technical expenses related to interstate water conflicts pursuant to the Río Grande Compact and the Colorado River Compact.

### FISCAL IMPLICATIONS

The appropriation of \$4,000.0 contained in this bill is a recurring expense to the general fund. Any unexpended or unencumbered balance remaining at the end of fiscal year 2007 shall not revert to the general fund.

## SIGNIFICANT ISSUES

According to NMED, the agency is conducting, through a Joint Powers Agreement (JPA) with the Office of the Attorney General, water quality evaluations for both ground water and surface water along the Lower Río Grande, including the assemblage of historical water-quality data and implementation of a water quality sampling program. The JPA currently funds 3.25 FTEs and contractual services to operate the program.

The General Appropriation Act of 2006 (HAFC Substitute for House Bill 2) provides for extension of the initial lower Río Grande appropriation to continue data collection and analysis activities, while HB 740 provides funding to address emerging issues that have been identified by those studies, such as the need for salinity controls. (See Relationship)

The Office of the Attorney General presents the following significant issues:

**Colorado River Compact:** Over the last year tensions and overt threats of litigation have greatly increased between the seven states along the Colorado River basin—Colorado, New Mexico, Wyoming, Utah, California, Arizona, and Nevada. The crisis has developed because of increased water usage by the Lower Basin states—California, Nevada and Arizona—and the aggressive actions taken by those states to force the Upper Basin states, including New Mexico, to deliver more water to the Lower Basin states. These actions potentially threaten San Juan River water users in New Mexico, San Juan-Chama water users on the Río Grande, and the State of New Mexico’s water rights settlement with the Navajo Nation. If litigation ensues, the State of New Mexico will need to respond immediately and strongly. The AGO, the ISC and the OSE have been involved in negotiations with representatives of the six other basin states in an effort to avoid litigation. However, it is unclear whether a negotiated settlement will be possible.

**Río Grande Compact:** The Lower Río Grande Basin extends from Elephant Butte Reservoir to the Texas state line. Water issues in the Basin have been contentious, with both the State of Texas and the City of El Paso suing the State of New Mexico at different times over the last 75 years. Rapid population growth in the region, particularly in Texas and Mexico, is increasing the demand on the area’s limited water resources, a problem that has been greatly exacerbated by several years of ongoing drought.

Since 2001, the Texas Legislature has authorized a standing appropriation of \$10.35 million dollars to the Texas Attorney General to “vigorously represent the State of Texas in all litigation involving water rights disputes with the State of New Mexico, including but not limited to issues relating to the Elephant Butte Reservoir.” Texas has threatened litigation over the quality and quantities of its Río Grande water deliveries, claiming it is not receiving its share of Río Grande Project water. In response, New Mexico has worked to protect its water entitlement by gaining a better understanding of the Basin’s hydrology and putting the tools in place to quantify and administer water use in the Basin. Much of this effort has been funded through a special appropriation by the legislature (See Relationship). That legislation directed the Office of the Attorney General (AGO) to enter into cooperative agreements with the Office of the State Engineer (OSE), the Interstate Stream Commission (ISC) and the Environment Department (NMED) for preparing to defend New Mexico against the Texas litigation threat. With that appropriation the AGO, OSE, ISC and NMED and have taken a proactive approach to the problem. Work-

ing together, the agencies have established a multi-agency, inter-disciplinary effort aimed at understanding and addressing the legal and technical issues confronting New Mexico.

All of these efforts are intended to minimize the likelihood of New Mexico ending up in interstate litigation in the U.S. Supreme Court, as occurred on the Pecos River. Such litigation is extremely costly and could result in a loss of sovereignty over the State's water and its water management decisions.

This bill will provide funding to address issues that have emerged as a result of the ongoing work funded under N.M. Laws 2002, 1<sup>st</sup> E.S., Ch. 4 §5(8). For instance, if a recently-proposed Mexican water well field is developed, it will likely reduce both the quantity and quality of water that is available to New Mexico to meet its compact delivery obligation to Texas. New Mexico needs to drill and equip monitor wells so that it can attribute the reduced quantities and qualities of water to the Mexican pumping, rather than to New Mexico's actions. Also, because Texas has threatened to sue New Mexico over water quality, New Mexico need to promote the creation of an interstate-international salinity control forum, patterned after the successful Colorado River Salinity Control Forum, which was established to address similar salinity problems on the Colorado River.

Given the continued drought, it is imperative that the AGO, the OSE, ISC and NMED continue their close collaboration on these very critical interstate water issues.

## **RELATIONSHIP**

The following reauthorizations for expenditure of funds by the Attorney General for Texas water litigation are included in the 2006 General Appropriation Act:

- The period of time for expending the four million nine hundred ninety thousand dollars (\$4,990,000) appropriated from the general fund in Subsection 8 of Section 5 of Chapter 4 of Laws 2002 (1st E.S.) for the attorney general to enter into cooperative agreements with the state engineer, interstate stream commission and New Mexico department of environment in preparing for potential litigation with Texas on water issues is extended through fiscal year 2007, for the same purpose.
- The period of time for expending the three million dollars (\$3,000,000) appropriated from the general fund operating reserve in Subsection 9 of Section 5 of Chapter 4 of Laws 2002 (1st E.S.) contingent on certification by the attorney general to the state board of finance that the appropriation made in Subsection 8 of Section 5 of Chapter 4 of Laws 2002 (1st E.S.) has been expended and additional funds are required to prepare for potential litigation with Texas on water issues contingent on the state board of finance certifying the need is extended through fiscal year 2007, for the same purpose.

## **CONFLICT**

This bill conflicts with Senate Bills 402 and 403, which provide funding to address emerging issues in the Lower Río Grande. Senate Bill 402 and this bill both provide funding to address emerging issues in the Lower Río Grande. Senate Bill 402 provides funding to the Interstate Stream Commission (ISC) for specific technical work, including salinity control and potential effects of Mexican groundwater pumping. However, in contrast to the related extension con-

tained in the General Appropriation Act (HAFC Substitute for House Bill 2), which appropriates money to the AGO and directs the AGO to enter into cooperative agreements with the OSE, ISC, and NMED, Senate Bill 402 appropriates money solely to the ISC and makes no reference to the other state agencies that have worked collaboratively under the 2002 appropriation and are essential to the ongoing effort.

Senate Bill 403 provides \$1 million “to prepare (for) litigation on disputes over the Colorado river and the Colorado River Compact.”

**WHAT WILL BE THE CONSEQUENCES OF NOT ENACTING THIS BILL**

According to the AGO, OSE and NMED, if this bill is not enacted and litigation is commenced this year under either the Colorado River Compact or the Río Grande Compact, the State of New Mexico will not have the necessary resources to defend the interests of the state and its water users in the litigation. Furthermore, New Mexico will lack the capacity to develop an interstate/international salinity control forum on the Lower Río Grande Basin, and it will have limited resources for administering its water resources in the Lower Río Grande Basin and the Colorado River Basin.

DXM/yr