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FISCAL IMPACT REPORT

ORIGINAL DATE 3/18/15

SPONSOR Bandy LAST UPDATED _____ HJM 21

SHORT TITLE Pursue Pollutant Discharge Primacy SB _____

ANALYST Armstrong

ESTIMATED ADDITIONAL OPERATING BUDGET IMPACT (dollars in thousands)

	FY15	FY16	FY17	3 Year Total Cost	Recurring or Nonrecurring	Fund Affected
Total		≥\$157.4	≥\$157.4	≥\$314.8	Recurring	NMED Operating Budget

(Parenthesis () Indicate Expenditure Decreases)

SOURCES OF INFORMATION

LFC Files

Responses Not Received From

New Mexico Environment Department (NMED)

Attorney General's Office (AGO)

SUMMARY

Synopsis of Joint Memorial

House Joint Memorial 21 requests that NMED pursue approval from the federal Environmental Protection Agency (EPA) to implement and administer the National Pollutant Discharge Elimination System Permit (NPDES) Program of the federal Clean Water Act.

FISCAL IMPLICATIONS

This memorial would likely lead to increased operating costs for NMED for both pursuing EPA approval and implementing and administering the NPDES program in future years. As of 2008, at least two NMED staff were assigned to the NPDES State Program Authorization Project. Based on NMED's average FTE cost of \$78.7 thousand, this would carry a recurring appropriation of \$157.4 thousand to pursue approval. The extent of other costs with such efforts, and those associated with carrying out the program if approved, is unclear.

SIGNIFICANT ISSUES

NMED had previously begun the process for taking control of the permitting responsibilities of the NPDES program from the EPA, but the most recent publicly available update is that the

agency decided not to pursue legislative authorization during the 2007 session.

The NPDES permit program is responsible for the protection of surface water quality by regulating point source discharges of pollutants to surface watercourses. Since the program's inception, EPA has administered the program in New Mexico with assistance and oversight by the state. The Clean Water Act provides encouraged the states to develop and implement the program and provides a process for doing so. This process is often referred to as "state authorization" or "program primacy." Nationwide, most states have primacy for the NPDES permit program.

States seeking to be authorized to administer the NPDES program must submit a letter from the governor requesting review and approval to EPA, a memorandum of agreement, a program description, a statement of legal authority from the attorney general, and the underlying state laws and regulations providing authority to implement the program. EPA determines whether the package is complete within 30 days of receipt and renders a decision to approve or disapprove the program within 90 days. The time for review may be extended by agreement.

A state may receive authorization for one or more of the NPDES Program components which include authority over municipal and industrial facilities, federal facilities, general permitting, pretreatment programs, and biosolids. For example, if the state had not received authorization for federal facilities, EPA would continue to issue permits to military bases, national parks, federal lands, and other federal operations.

The process of authorization includes a public review and comment period, and a public hearing. If EPA disapproves the program, EPA remains the permitting authority for that state, tribe, or territory.

If EPA approves the program, the state assumes permitting authority in lieu of EPA. All new permit applications would then be submitted to the state agency for NPDES permit issuance. Certain permits issued prior to authorization may continue under EPA administration as set in the agreement with the state. Even after a state receives NPDES authorization, EPA continues to issue NPDES permits on tribal lands (if the tribe is not administering its own approved NPDES program).

JA/je