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FISCAL IMPACT REPORT

ORIGINAL DATE 03/07/19

SPONSOR HAWC LAST UPDATED _____ HB 374/HAWCS

SHORT TITLE Underground Water End User Identification SB _____

ANALYST Hanika-Ortiz

ESTIMATED ADDITIONAL OPERATING BUDGET IMPACT (dollars in thousands)

	FY19	FY20	FY21	3 Year Total Cost	Recurring or Nonrecurring	Fund Affected
Total		Minimal				Various

(Parenthesis () Indicate Expenditure Decreases)

Conflicts with House Bill 576 and Senate Bill 435

SOURCES OF INFORMATION

LFC Files

Responses Received From

Office of the State Engineer (OSE)
New Mexico Attorney General (NMAG)
State Land Office (SLO)

SUMMARY

Synopsis of Bill

The House Agriculture and Water Resources Committee Substitute for House Bill 374 adds two new sections to Chapter 72 (Water Code) Article 12 to include additional requirements for an applicant desiring to supply water to an entity with a forty-year water use planning period, and further requires the state engineer to apply existing law to the specific facts raised by the application. Lastly, the bill amends Section 72-12-3 (Application for Use of Underground Water; Publication of Notice; Permit) to make clear third-party applicants desiring to appropriate water to an entity described above must also comply with the additional application requirements.

The additional application requirements include the plan to divert, control and deliver a specific quantity of water by the entity, and evidence of a commitment to purchase and deliver the water. In addition, an applicant must show in a hearing before the state engineer that its water plan is reasonably consistent with its water needs over a forty-year time period and the applicant can and will complete the appropriation and put the water to beneficial use within a reasonable time.

FISCAL IMPLICATIONS

OSE did not report any substantial additional operating budget impact.

SLO noted that any associated revenue impact on the State Land Office related to additional constraints on water appropriations cannot be determined at this point.

SIGNIFICANT ISSUES

According to the NMAG, the bill would preclude water appropriation without clearly defined end users or beneficial use, otherwise, the state engineer must deny the application.

According to OSE, the substitute adds a new requirement for applicants who seek to appropriate groundwater to supply water to municipalities or other entities subject to Section 72-1-9 NMSA 1978, i.e. counties, school districts, state universities, member-owned community water systems, special water users' associations and public utilities supplying water to municipalities or counties. Such third party applicants would be required, when making an application, to (1) provide a specific plan to divert, control and deliver a specific quantity of water for a specific beneficial use, and (2) provide either (a) evidence of a firm contractual commitment for purchase, delivery, and specific beneficial use of such water, or (b) evidence that the applied-for water is specifically included in a water development plan approved by the State Engineer. The new requirements would not apply to applications by Section 72-1-9 entities for their own use.

The substitute further requires that such an application cannot be approved before a third party applicant shows in a hearing before the state engineer that (1) the plan to divert, control and deliver a specific quantity of water for a specific beneficial use is consistent with reasonably projected water needs within forty years, and (2) the applicant can and will complete the appropriation with diligence, placing the water to beneficial use within a reasonable time frame.

SUBSTANTIVE ISSUES

According to the NMAG, Section 1(F) states that any water appropriation under the section “shall be included in and subject to that entity’s allowable forty-year water use planning period.” For clarity, the bill should reference Section 72-1-9 as the legal source of the planning period.

CONFLICT, DUPLICATION, COMPANIONSHIP, RELATIONSHIP

Conflicts with House Bill 576 and Senate Bill 435

WHAT WILL BE THE CONSEQUENCES OF NOT ENACTING THIS BILL

OSE will continue to evaluate water permit applications based on existing statutory criteria.

AHO/sb