

LFC Requester:	Jonas Armstrong
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**AGENCY BILL ANALYSIS
2015 REGULAR SESSION**

WITHIN 24 HOURS OF BILL POSTING, EMAIL ANALYSIS TO:

LFC@NMLEGIS.GOV

and

DFA@STATE.NM.US

{Include the bill no. in the email subject line, e.g., HB2, and only attach one bill analysis and related documentation per email message}

SECTION I: GENERAL INFORMATION

{Indicate if analysis is on an original bill, amendment, substitute or a correction of a previous bill}

Check all that apply:

Original	<input checked="" type="checkbox"/>	Amendment	<input type="checkbox"/>	Date	<u>Feb. 12, 2015</u>
Correction	<input type="checkbox"/>	Substitute	<input type="checkbox"/>	Bill No:	<u>HB 413</u>

Sponsor:	<u>Representative Gallegos</u>	Agency Code:	<u>Attorney General's Office</u>
Short Title:	<u>Lower Rio Grande Water Works Rights & Liens</u>	Person Writing	<u>Sarah Bond</u>
		Phone:	<u>827-7481</u>
		Email	<u>sbond@nmag.gov</u>

SECTION II: FISCAL IMPACT

APPROPRIATION (dollars in thousands)

Appropriation		Recurring or Nonrecurring	Fund Affected
FY15	FY16		

(Parenthesis () Indicate Expenditure Decreases)

REVENUE (dollars in thousands)

Estimated Revenue			Recurring or Nonrecurring	Fund Affected
FY15	FY16	FY17		

(Parenthesis () Indicate Expenditure Decreases)

ESTIMATED ADDITIONAL OPERATING BUDGET IMPACT (dollars in thousands)

	FY15	FY16	FY17	3 Year Total Cost	Recurring or Nonrecurring	Fund Affected
Total						

(Parenthesis () Indicate Expenditure Decreases)

Duplicates: SB 392

SECTION III: NARRATIVE

This analysis is neither a formal Attorney General’s Opinion nor an Attorney General’s Advisory Letter. This is a staff analysis in response to an agency’s, committee’s, or legislator’s request.

BILL SUMMARY

Synopsis:

Section 1.D. changes “shall” to “may” in referring to a merging entity combining and commingling its water rights with the authority.

Section 1.M. The Bill amends existing statutes relating to the Lower Rio Grande Public Water Authority, NMSA 73-26-1 (1978) to require the Authority to file a notice of lien in the office of the county clerk when it files a lien on property for nonpayment of money owed.

The notice is required to contain the customary information regarding the facts and circumstances of the lien.

Section 1.N allows a lien to include multiple charges or assessments in the same notice, and bears interest at 12% per year unless otherwise provided by law.

Section 1.O. provides that such liens are first in priority subject only to the prior liens of the state and county for taxes; and provides procedures for releasing the lien.

Section 1.P, Q, and R. provide procedures for judicial foreclosure of the liens, including provision for award of attorneys’ fees, enforcement of liens, and application of proceeds of liens to costs, indebtedness, and to the former owner of the property foreclosed upon.

FISCAL IMPLICATIONS

None:

SIGNIFICANT ISSUES

This Bill creates an internal inconsistency in the administration of water rights of mutual domestics that in the future merge with the named entities in the Authority. Current law provides that merged entities *shall* commingle their water rights with the Authorities, and that the services area of the newly merged entity *shall* be amended to include the entire Authority. The purpose of a mutual domestic is to provide water to a service area, so the mandatory provisions make sense. Changing the “shall” to “may” in the provision about water rights but not the service area, would mean that a new entity merging without a obtaining approval from the State Engineer for a combine/comingle application of their water rights, would only be able to distribute their water through their prior wells and within their prior service area. This defeats the purpose of merging. Current State Engineer administration provides a process to approve the commingling for these water rights to allow what merging intends: the inclusion of the newly merged entity’s water rights with the Authority’s, and the amendment of the place of use and if needed, points of

diversion elements of the water right to include the entire service area and Authority infrastructure. Put another way, Section 1.D, line 1 p.3 changes “shall” to “may” but then line 3 of that page provides that the merged entity’s service area “shall” be amended to include the entity’s place of use. The OSE can’t amend (or change) the broader Authority’s place of use, however, without following NMSA Section 72-12-3 (1978) because place of use is an element of the water right that would be changing (and more than likely wells will be shared, so points of diversion would change and amount of water could change as well). Points of diversion and places of use are all elements of a water right and would require permitting from the State Engineer to take effect. This Amendment should be eliminated from the Bill to avoid conflict with well-established New Mexico water law. As written, the merged entity still cannot serve the entire area until they combine/commingle their right with the Authority’s through the approval process of the State Engineer.

In 2014 the Authority finalized the merger of five mutual domestics and obtained its permit from the state engineer to combine and commingle those water rights under the Authority within their recorded service area. (OSE Permit to Combine and Commingle Underground Water Rights LRG-3338.) This bill would have no effect on those rights.

PERFORMANCE IMPLICATIONS

Section 1.D conflicts with current New Mexico water law and administrative practice and should be eliminated to avoid effectively voiding the purpose of a merger of a new entity with the existing Authority.

ADMINISTRATIVE IMPLICATIONS

Current State Engineer administration of change applications adequately accounts for mergers under the existing law. Unless the amendment in Section 1.D is removed, administration of mergers will be hampered.

CONFLICT, DUPLICATION, COMPANIONSHIP, RELATIONSHIP

None.

TECHNICAL ISSUES

OTHER SUBSTANTIVE ISSUES

ALTERNATIVES

WHAT WILL BE THE CONSEQUENCES OF NOT ENACTING THIS BILL

Current law and administrative practice will remain in effect.

AMENDMENTS

The amendment regarding merger of water rights should be eliminated to avoid conflict with existing practice and thwarting the purpose of a merger.

