

Response to Linebery Policy Center for Natural Resource Management Analysis of HB 332

Prepared by Western Landowners Alliance
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LINEBERY ANALYSIS:

SECTION 1. Section 7-36-20 NMSA 1978 (being Laws 1973, Chapter 258, Section 21, as amended) States that "The value of land ... determined on the basis of the land's capacity to produce agricultural products." Where are the agricultural products that these additions will produce? If land is valued on it's capacity to produce ag products, what is the product that Section 1. J.2.e. produces? These lands have special valuation because they produce a product and contribute to the State GDP.

WLA RESPONSE:

The bill does not change the capacity of the land to produce an agricultural product. Grazing land still has the capacity to produce livestock. Forested land still has the capacity to produce forest products. What the bill does is enable landowners to implement appropriate management of those lands in a way that supports both agriculture and natural resource values. The management activities associated with approved land use plans also support economic activity as demonstrated in the economic analysis provided by agricultural economists at Colorado State University and Lake Forest College. In addition, the management actions are intended to support continued agriculture in the state by conserving and enhancing critical resource values like agricultural water supplies.

LINEBERY ANALYSIS:

Moving Section 1.B. to Section 1. J. making it look like it is new text, when it is identical.

WLA RESPONSE:

The bill drafters try to create consistency within statutes. In this case, the drafter noticed that the definitions preceded the rest of this particular statute, which is different than with other statutes. For this reason, she took the opportunity in crafting this legislation simply to move the definitions to the bottom for consistency with other statutes. It was not at our request.

LINEBERRY ANALYSIS:

Section 1.D. What specific conservation and management practices are appropriate to “preserve and maintain unimproved land”? Is farm land unimproved land, it has likely been leveled and improvement made to allow irrigation?

WLA RESPONSE:

“Unimproved” means undeveloped, lacking permanent structures. The specific conservation and management practices are those designed to achieve the resource priorities identified by the department, including those listed in Section 1.J.2.e. For an example, the New Mexico State Water Plan identifies the following practices as important to meeting the state’s water resource management objectives:

1. Using best management practices, modify the structure of forests to allow the natural process of ground fires to maintain a more resilient forest.
2. Increase ground cover, such as grasses and permeable pavement, bioretention basins, rain gardens, vegetated swales, and depressions and infiltration trenches, as appropriate to impede the intensity of runoff and promote infiltration.
3. Increase a mosaic of native vegetation and habitat types along riparian corridors to improve habitat for wildlife and aquatic species and stabilize river banks with vegetation.
4. Improve rangeland health and resilience through practices that increase soil organic matter, reduce erosion, and increase the resilience of the landscape during drought and flood events.
5. Restore, enhance, and expand wetlands to improve water storage, water quality, and flood attenuation, particularly in areas vulnerable to catastrophic wildfires, while minimizing increases in water consumption.
6. Support habitat for threatened and endangered species.

LINEBERRY ANALYSIS:

Section 1.J.2.e. is new and hasn't been part of the discussion with stakeholders. Doesn't qualify under Section 1 A and has the greatest likelihood of impacting counties and agriculture.

WLA RESPONSE:

This was, in fact, part of the discussion with stakeholders. Lineberry was not present in any of the stakeholder meetings. This statement reflects influence of others rather than an objective analysis of the bill. In the stakeholder meetings (at which Lineberry was not present) participants expressed interest in providing an option in which agriculture and natural resource management could be integrated, and which is generally considered to be a best management approach.

Section 1.J.2.e also should have the least impact on counties and agriculture. The desired outcome in this paragraph is that landowners have the opportunity, with the explicit approval of the state under specific circumstances, to integrate priority resource management objectives within an agricultural operation. The tax on these parcels would not change and therefore there is no impact to county tax revenues. The alternative to this option is to continue to deny landowners the flexibility and option of making appropriate resource management decisions.

LINEBERY ANALYSIS:

This paragraph requires a management plan...that will achieve agriculture and natural resource management priorities identified by that department. Using "and" between agriculture and natural resources could be interpreted that the management plan must include agricultural priorities and not just natural resources.

WLA RESPONSE:

Ideally, and in most cases, land management plans will meet both agricultural and natural resource priorities. For example, thinning overgrown forests helps increase state water supplies, increases forage production, reduces the risks of fire and protects commercial timber supplies. Similarly, riparian restoration helps slow flooding and increases water infiltration, improving agricultural water supplies.

LINEBERY ANALYSIS:

It states that the "department" will identify the priorities (assume on and (sic) individual by individual basis), but then identifies the priorities to include 5 specific priorities. Once again the use of the term "and" in the 5 priorities could mean that all 5 priorities must be met, not just one of them. Which would mean that this "agricultural use" must include forest management, soil health, agricultural productivity, water conservation, wildlife habitat, and sensitive lands. Would these uses have to be on the entire geographic area or only represented within the geographic area?

WLA RESPONSE:

The assumption by Lindbery that the department will identify priorities on an individual basis is incorrect. It is the intent of the bill that the department will identify statewide resource management priorities, including those listed in the bill. The various natural resource agencies of the state have already identified priorities in their management plans. The NM Energy, Minerals and Natural Resource Department (EMNRD) can readily consult the agencies on existing state plans to identify priorities which may be considered eligible for the purposes of this bill. A good example of this is the New Mexico State Water Plan. The priorities for that plan include:

1. Reduce the risk of catastrophic wildfire.
2. Reduce intensity of runoff from flood flows.
3. Reduce erosion and stream incision; protect adjacent groundwater.
4. Restore or maintain hydrology to enhance floodplain connection and dissipation of flood energy associated with overbank flows and improve ecosystem benefits such as instream flows.
5. Restore or maintain riparian areas and wetlands to more effectively filter pollutants and provide water during dry seasons and prolonged drought.
6. Enhance the economic benefits of healthy river systems, such as fishing and recreational boating.
7. Protect wildlife habitat.
8. Protect or improve endangered species habitat and ecosystem health.
9. Protect human health and natural resources.
10. Protect or improve water quality.

In most cases, landowners can achieve these priorities within a fully qualifying agricultural operation and therefore would not require an approved management plan by the state. For those parcels, this legislation would not be relevant. However, in certain circumstances, where the management for these priorities conflicts with agricultural production, the landowner can request approval from the state for a land management plan demonstrating the need for the proposed management actions.

The “and” about which Linebery purports concern is used in the bill to describe commonly known resource priorities the department will include in its consideration. The department has the option to include additional resource priorities and to more specifically define the priorities listed. Land management plans would be designed to achieve any one or more of these objectives. The specific enumeration of priorities in the bill is in direct response to stakeholder requests so that the purpose and scope of the bill are clear.

LINEBERY ANALYSIS:

Priority 2 is restoration of agricultural productivity which is the purpose of J.2.b &c. This will allow vacant lands, not previously in agriculture and anywhere in the state, to be taxed at a lower rate (without penalty when developed) than it currently is and therefore will increase other property taxes. This is not a revenue neutral bill.

WLA RESPONSE:

Sections J.2.b&c refer specifically to lands enrolled in the federal Conservation Reserve Program and to the option of resting land for up to three years, respectively. Most lands in the state are not eligible for the federal Conservation Reserve Program and are therefore excluded from eligibility in this section. The resting of land for three years has little relevance to the management of forested parcels, restoration and long-term management of riparian areas or priority wildlife habitat, particularly for threatened or endangered species.

Contrary to Linebery’s statement, the bill will not allow vacant lands anywhere in the state to be taxed at the lower rate. Only lands for which the state approves a management plan to achieve specific state interests will be able to qualify. Many states around the nation have successfully implemented similar provisions and for the same reasons. Federal, state and local governments routinely appeal to private landowners to assist in meeting resource needs for public benefit. As with this bill, these programs are set up so that landowners are not penalized for cooperation and appropriate resource management.

LINEBERRY ANALYSIS:

The purpose of Section 2 is unclear, is this the method of valuation for lands under Section 1.J.2.e? It doesn't appear to be related to Section 1.J.2.e., because it requires the lands meet qualified guidelines and not an approved management plan. However, the guidelines are very similar to the priorities under Section 1.J.2.e., but there is no reference to the previous section that identifies the purpose of Section 2 as the method for valuation Section 1.J.2.e.

Section 2 doesn't require a management plan, only meeting guidelines and also has no penalty for developing the land at any time.

WLA RESPONSE:

Section 1.J.2.e is intended to enable integrated agriculture and natural resource management under a qualified state plan. Section 2, in direct response to stakeholders, provides an affordable tax option for parcels between 10 – 160 acres that are transitioning out of agricultural production. This is particularly important in conserving New Mexico's productive land and traditional communities as aging farmers retire and as subsistence agriculture becomes less feasible. Under Section 2, these parcels would be maintained in open space in accordance with guidelines provided by the department. A prior version of the bill required a management plan. However, many stakeholders objected to the requirement for a formal plan on smaller parcels and underscored the hardship this may create for the elderly, for those with limited access to the internet and for those with limited financial resources. It also created an administrative burden for the state. Instead, the bill provides a requirement that lands be managed in accordance with state guidelines. Lands found to be out of compliance with the guidelines will no longer be eligible for the special tax rate. Prior versions of the bill included a rollback penalty if land is developed. However, virtually all stakeholders involved in the bill, including assessors, objected to the rollback and it has therefore been removed from this version.

LINEBERRY ANALYSIS:

If Section 2 is not related to the additions in the previous sections then it appears to completely be unnecessary because it is more restrictive (5 previous years in agriculture and acreage limitations) and taxes would be higher than under the Agricultural Special Method of Valuation.

WLA RESPONSE:

Section 2 is intentionally more restrictive as it relates to land no longer in agriculture. (Section 1.J.2.e is intended to enable integrated land and natural resource management under an approved management plan.) The requirement in Section 2 that land have been qualified as agriculture for the preceding five years is to ensure the option is not available to any vacant parcel in the state. This means that all parcels enrolled in the program will be taxed at a higher rate than they were previously, ensuring that tax revenues will increase, benefitting counties and other taxpayers.

LINEBERRY ANALYSIS:

It looks like Section 1 changes don't require that the land was in agriculture prior to changing to the agricultural special valuation. This change in definition of agricultural use would allow vacant lands, with no limitation on acreage or prior use, to change to agricultural special valuation. Causing a decrease in the taxes the county would collect. There is no penalty if the lands are developed, which was a purpose of the tax change to protect open spaces. This would be a great benefit to land speculators across the state cheaper taxes, no costs, no production, and no penalties.

WLA RESPONSE:

As stated above, lands eligible under Section 1 would need the approval from the state for land management designed to achieve specific resource objectives of clear benefit to the public. It does not, therefore, allow any vacant land to qualify and will not be a benefit to land speculators any more than the existing special method of valuation for agriculture is a benefit to speculators. There is currently no penalty if agricultural lands in the state are developed and this bill does not seek to impose such a penalty on agricultural lands. The penalty originally in the bill for the development of lands transitioning out of agriculture was removed at the near unanimous request of diverse stakeholders. The bill still achieves its primary purpose of conserving open space by keeping taxes more affordable so that people are not forced to sell their land.

Land speculators can already take advantage of the agricultural special method of valuation. Agricultural valuation under current statute does not require a land management plan, does not have a penalty for development, and has the lowest taxes in the state. Under the proposed bill, integrated resource management requires an approved plan by the state. In addition, small parcels transitioning out of agriculture must have been in agriculture for the preceding five years, be managed in accordance with state requirements, and are taxed at a significantly higher rate than when they were in agriculture. The proposed bill does much more to deter land speculation than the current statute.

For additional information regarding WLA's responses, please contact jessica@westernlandowners.org.

Western Landowners Alliance advances policies and practices that sustain working lands, connected landscapes and native species. Learn more at www.westernlandowners.org.