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## FISCAL IMPACT REPORT

**SPONSOR** Cervantes                      **DATE TYPED** 2/9/04                      **HB** 101/aHENRC

**SHORT TITLE** State Engineer Water Adjudication Support                      **SB** \_\_\_\_\_

\_\_\_\_\_  
**ANALYST** Maloy/Koplik

### APPROPRIATION

<b>Appropriation Contained</b>		<b>Estimated Additional Impact</b>		<b>Recurring or Non-Rec</b>	<b>Fund Affected</b>
<b>FY04</b>	<b>FY05</b>	<b>FY04</b>	<b>FY05</b>		
\$1,767.2				Recurring	General Fund

(Parenthesis ( ) Indicate Expenditure Decreases)

Duplicates SB 200.  
Relates to HB 2.

### SOURCES OF INFORMATION

LFC Files

#### Responses Received From

Office of the State Engineer

Administrative Office of the Court (via telephone and presentation documentation)

### SUMMARY

#### HENRC Amendment

The House Energy and Natural Resources Committee amendment to House Bill 101 adds a second appropriation of \$443.2 thousand from the general fund to the Administrative Offices of the Courts for FY05.

This second appropriation (in addition to a \$1.3 million appropriation to the Office of the State Engineer in the original bill) is to support personnel, hardware, software, equipment, office space, administrative support, and the like, to consolidate stand-alone databases (within the courts and the Office of the State Engineer) and to coordinate data exchange. The appropriation is also intended to support creation of a web-based water resource for specific water cases.

Any unexpended or unencumbered balances at the end of FY05 shall revert to the general fund.

Significant Issues

- The Office of the State Engineer has yet to create a comprehensive database within its Office. Its ability to communicate electronically to outside agencies is currently questionable.
- The Administrative Office of the Courts is seeking this appropriation outside of the FY05 request to the LFC and the Executive. This request is in addition to the Information Technology (IT) requests submitted in September 2003.

Currently, the HAFC recommendation for the Administrative Offices of the Court includes:

\$600.0 in the IT base budget, and  
\$214.3 in special appropriations for IT.

This \$443.2 thousand will be in addition to these recommendations.

The justification for the \$600.0 in the base budget and \$214.3 in a special appropriation is every computer in the judiciary system is four years old or older, and the warranties have expired. This \$814.3 is intended for replacement computers.

Synopsis of Original Bill

House Bill 101 appropriates \$1.32 million to the Office of the State Engineer from the general fund for expenditure in FY04 and subsequent years for personnel, hardware, software, equipment, office space and administrative support to accelerate hydrographic survey, fieldwork and mapping, and to expand the information interaction of the state engineer's staff with water rights claimants in order to decrease the amount of formal mediation and litigation.

This bill contains an emergency clause.

Significant Issues

1. For the past several years, nearly one-third of the Office of the State Engineer has been funded through special appropriation. This one-third performs core, on-going functions for the office, and is made up of approximately 133 term FTE.

Among the core functions being performed are adjudication functions, and ultimately litigation.

2. The LFC recommends finding recurring revenue to fund these recurring costs.
3. Concern is also raised over the fact that income fund revenue from the Improvement to the Rio Grande and Irrigation Works Improvement Funds are dwindling.

**The Office of the State Engineer states:**

“Expeditious and comprehensive adjudication of water rights in New Mexico is the foundation for active water management in the state, strengthening the State's ability to com-

ply with its obligations under interstate compacts and allowing water right owners to establish and protect their property rights to the beneficial use of water. Final adjudication occurs through court action, but preparatory work, including hydrographic surveys and discussions with claimants, is required by the OSE before the courts can make a final determination.

Much of the contentiousness of stream adjudications is the result of lack of understanding of the law and the adjudication process by the claimant, some of which can be resolved by the facilitation of informal interaction between the water rights claimants and the OSE as proposed to be funded through this legislation. Coupled with inadequate resources in the OSE that prevent staff from engaging claimants in time-consuming informal discussions about technical survey results and complex legal issues, this lack of information being disseminated to the water rights claimants can exacerbate the confusion and misunderstandings that often lead the parties to court. This legislation provides for an appropriation to fund processes within the OSE that is designed to expedite resolution of water right claims. This legislation is consistent with and complements the judicial establishment of Water Court Divisions within the present structure of the court system.

Funding to the OSE will fund technical staff required to perform hydrographic survey work that provides the technical and engineering foundation for all adjudications of water rights under New Mexico law. These surveys, including updating and upgrading the older surveys for adjudications in northern New Mexico and other areas of the state, require demanding and time-consuming field work and mapping and are the starting point for any adjudication. Many of the positions in the OSE Hydrographic Survey Bureau are dedicated by special legislative appropriations to particular adjudications. A general funding appropriation will provide additional positions to the State Engineer. This will enable the State Engineer to manage technical staff resources more flexibly to allow for systematic completion of adjudications designated as “high priority” in response to the demands of interstate compacts, the federal government, and the federal Endangered Species Act. It will also allow the State to be more proactive in reaching informal settlements with water right claimants than current staffing levels allow. Experience in the Lower Rio Grande, the Pecos and the Rio Chama adjudications has demonstrated that proactively engaging water rights claimants in on-site review of their irrigated acreage, hydrographic surveys and mapping, coupled with informal negotiations for settlement of their claims, have contributed significantly to public comfort with the adjudication process, thereby reducing the overall amount of formal mediation and litigation required for settlement of contested claims, and thus reducing the likelihood of protracted and lengthy litigation.

This appropriation is an important step toward reducing the overall amount of formal mediation and litigation required for settlement of contested water right claims. It helps to reduce, therefore, the likelihood of protracted litigation and it increases the likelihood of more rapid completion of the adjudication process.

The failure to pass this appropriation will result in the continued adjudication of water rights in the state at the current rate. With the prospects of a prolonged drought looming, continuing to conduct adjudications at the current rate will result in increased uncertainty of water supply and prevent effective administration of water rights.”

## FISCAL IMPLICATIONS

The appropriation of \$1.32 million contained in this bill is a recurring expense to the general fund. Any unexpended or unencumbered balance remaining at the end of a fiscal year shall not revert to the general fund.

## OTHER SUBSTANTIVE ISSUES

1. There is concern regarding the efficiency and effectiveness in the Office of the State Engineer. The Office has returned repeatedly seeking project funds with commitments that the requested amount will sustain the project through completion. The completion commitments have not been met.
2. There is also concern regarding the large number of contractors on record with the Office that receive high compensation (considerably higher than comparable state employees' compensation). There has been concern regarding who is receiving these contracts and whether there is adequate contractor accountability and quality controls.

It has been recommended that a contractor performance audit be undertaken, seeking to determine how long individuals have been on contract and whether the contract purpose(s) have been timely achieved.

SJM/prr:yr