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## FISCAL IMPACT REPORT

SPONSOR Altamirano DATE TYPED 02/14/04 HB \_\_\_\_\_  
 SHORT TITLE Livestock Water Tank Regulation SB 301 /aSFC  
 ANALYST Maloy

### APPROPRIATION

Appropriation Contained		Estimated Additional Impact		Recurring or Non-Rec	Fund Affected
FY04	FY05	FY04	FY05		
			See Narrative	Recurring	General Fund

(Parenthesis ( ) Indicate Expenditure Decreases)

Relates to HB 325/aHGAC.

### SOURCES OF INFORMATION

LFC Files

#### Responses Received From

New Mexico Department of Agriculture  
 Office of the State Engineer  
 Environment Department

### SUMMARY

#### Synopsis of SFC Amendment

The Senate Finance Committee amendment to Senate Bill 301 clarifies an erosion control structure shall not impound surface water in any amount for fishing, fish propagation, recreation or aesthetic purposes, and that water impounded for such purposes shall require a permit.

The amendment also simplifies language by directly referencing “stock owners”.

The amendment modifies the “permission clause” relating to applicants seeking to impound water on land not owned by the applicant, whether government owned or private. The amended provision relates only to Federal and state lands, and provides the applicant must demonstrate he is legally entitled to place livestock on the government land.

Finally, the amendment adds that, in determining whether an impoundment will be used to water livestock, the state engineer may consider regional and climatic conditions that affect consumption.

Synopsis of Original Bill

Senate Bill 301 amends existing law (Section 72-5-32, NNMSA 1978) to remove reference to stock dams and flood control dams. The bill inserts sediment dams designed and approved by a United States Department of Agriculture, Natural Resources Conservation Service conservation plan.

The bill provides an entity or person must apply for a permit from the Office of the State Engineer if intending to impound surface water. If the Office of the State Engineer finds the proposed impoundment is ten acre-feet or less, will not be on an perennial stream, and will be used for water livestock, the Office shall issue the permit, *provided* if the impoundment will be located on private, state or federal land not owned by the applicant, the application shall be accompanied by an acknowledgement statement executed by the owner.

If the proposed impoundment exceeds ten acre-feet, the applicant is required to meet the filing requirements in existing law, found at Sections 72-5-1, 22, 23 & 27, NMSA 1978.

The bill defines “livestock”. In doing so, the bill references the existing definition at Section 77-2-1.1, NMSA 1978. The bill expressly notes that livestock does not include:

- impoundment of surface or ground water in any amount for fishing, or fish propagation, recreation or aesthetic purpose.

Finally, the bill states the Office of the State Engineer may consider the maximum amount of water required per “livestock unit” when determining whether the requested impoundment will be used for water livestock.

The bill contains an emergency clause.

Significant Issues

The New Mexico State Department of Agriculture states:

Federal NPDES permits issued pursuant Section 402 of the Clean Water Act often require storm water pollution prevention plans that may include the construction of erosion control structures that impound 10 acre-feet of water or less and are primarily designed for sediment control. Pursuant to HB325, these erosion control structures would have to be approved by U.S. Department of Agriculture’s Natural Resource Conservation Service. However, in many cases the erosion control structures required under federal NPDES permits are for municipal projects or other non-agricultural projects such as the construction of highways. USDA NRCS may not have the authority or resources to approve these municipal and non-agricultural projects.

**FISCAL IMPLICATIONS**

This bill does not contain an appropriation. However, if enacted, the bill will result in some administrative costs to the Office of the State Engineer.

The Office of the State Engineer notes:

The Office of the State Engineer is already charged with the regulation and control of surface waters. The Bill would create additional workload, but such additional workload is necessary to efficiently and equitably administer water rights throughout the state.

**POSSIBLE ALTERNATIVES**

The Office of the State Engineer proposes:

- Remove all exemptions in 72-5-32 NMSA 1978 and 72-9-3 NMSA and require the retirement of existing rights to offset effects of all new livestock water tanks.
- Provide definitions within existing statutes for legitimate livestock uses with specific penalties for illegal uses.
- Leave current exemptions in statutes and provide for the state engineer to adopt and administer those uses with Rules and Regulations to be established by him.

**SJM/yr**