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FISCAL IMPACT REPORT

SPONSOR Jennings DATE TYPED 03/09/05 HB _____

SHORT TITLE Tax Credit Definition of Produced Water SB 706

ANALYST Padilla-Jackson

REVENUE

Estimated Revenue		Subsequent Years Impact	Recurring or Non-Rec	Fund Affected
FY05	FY06			
Insignificant	Insignificant			

(Parenthesis () Indicate Revenue Decreases)

SOURCES OF INFORMATION

LFC Files

Responses Received From

Environment, Minerals & Natural Resources (EMNRD)

New Mexico Environment Department (NMED)

Taxation and Revenue Department (TRD)

The Office of the State Engineer (OSE)

SUMMARY

Synopsis of Bill

Senate Bill 706 makes a minor technical correction to existing statutes related to the provision of tax credits for produced water. The bill adds one word to the definition of “produced water”, which does not change the meaning, but merely corrects the grammar of the definition. Currently, there is an allowed tax credit (either for income tax or corporate income tax) equal to \$1,000 per acre-foot of produced water not to exceed four hundred thousand dollars if certain conditions are met. The bill defines “produced water” to mean water produced from oil or gas drilling and production from a depth of two thousand five hundred feet or more below the surface or from refining crude oil or processing natural gas, adding the word “from” in front of the word “refining” in the last sentence.

The bill would also extend the date of a delayed repeal from January 1, 2006 to January 1, 2009.

Significant Issues

The OSE has indicated that, in its opinion, amending the existing statute to insert the word "from" at page 2, line 25, and page 4, line 13, would allow the statute to be interpreted to allow water diverted and used pursuant to a State Engineer permit to qualify for the tax credit. Under the existing statute, the OSE contends that water diverted pursuant to a State Engineer permit cannot qualify for the credit. Unlike the TRD, the OSE is of the opinion that without the amendment, the definition only includes water extracted from the ground and then separated from the hydrocarbons during refining or processing. OSE cautions that adding the term "from" could potentially create an ambiguity with respect to whether "makeup water" would be eligible for the credit. Makeup water is water used in the subsequent refining or processing that originates from another source, typically a water well licensed or permitted by the State Engineer for beneficial use.

If this amendment did indeed expand eligibility, as described above, it could potentially increase the tax credits claimed. TRD, believes that if this were the case, the tax credits may go up marginally, but did not provide a specific fiscal estimate for this scenario.

PERFORMANCE IMPLICATIONS

NMED notes that produced water is high in total dissolved solids and often contains other contaminants that could be detrimental to the state's aquatic ecosystems. They note that delivery of produced water to perennial rivers in New Mexico requires a federal Clean Water Act NPDES permit which includes New Mexico Environment Department certification that the discharge will not cause impairment to the state's water quality.

FISCAL IMPLICATIONS

TRD has reportedly approved a total of \$300.00 in claims for the credits since the credits were allowed by statute in 2002. According to TRD, extending the delayed repeal provisions as proposed would also be expected to produce insignificant fiscal impacts.

OPJ/yr:rs