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FISCAL IMPACT REPORT

ORIGINAL DATE 2/8/06

SPONSOR Lujan, B. LAST UPDATED _____ HB 755

SHORT TITLE Aamodt Water Rights Settlement Funding SB _____

ANALYST Hoffmann

APPROPRIATION (dollars in thousands)

Appropriation		Recurring or Non-Rec	Fund Affected
FY06	FY07		
	\$20,000.0	Non-recurring	General Fund

(Parenthesis () Indicate Expenditure Decreases)

Relates to Senate Bill 377 and House Bill 121 (duplicates).
Relates to House Memorial 3.

SOURCES OF INFORMATION

LFC Files

Responses Received From

Attorney General's Office (AGO)
Office of the State Engineer (OSE)

SUMMARY

Synopsis of Bill

House Bill 755 appropriates \$20,000,000 from the general fund to the Indian water rights settlement fund for expenditure in fiscal year 2007 and subsequent fiscal years to implement the state's portion of the settlement agreement in State v. Aamodt, (Nambe-Pojoaque-Tesuque stream system), 66cv6639 (DNM 1966).

FISCAL IMPLICATIONS

The appropriation of \$20,000,000 contained in this bill is a non-recurring expense to the general fund. Any unexpended or unencumbered balance remaining at the end of any fiscal shall not revert to the general fund.

SIGNIFICANT ISSUES

The following information was provided by the Attorney General's Office. This information was accompanied by the following disclaimer: "This analysis is neither a formal Attorney General's Opinion nor an Attorney General's Advisory Opinion letter. This is a staff analysis in response to the agency's, committee's, or legislator's request."

In 1966 the State of New Mexico filed suit to adjudicate the water rights in the Nambe-Pojoaque-Tesuque stream system ("N-P-T) in United States District Court for the District of New Mexico, characterized as State of New Mexico ex rel. State Engineer v. R. Lee Aamodt, et al. ("Aamodt"). Forty years later, the lawsuit is still pending and it is the longest pending lawsuit in the federal court system. The lawsuit has resulted in the adjudication of a significant number of water rights on the stream system, both Pueblo and non-Pueblo. Of those, the Pueblos' rights are superior rights. The Aamodt court has ruled that the four Pueblos located in the N-P-T are entitled to significant amounts of water with the earliest priority date in the stream system, meaning that if these rights are exercised to their fullest it will largely preclude, and in some cases, totally preclude, non-Pueblo irrigators' ability to take water.

Since 2000, the parties to the Aamodt suit have been involved in settlement negotiations before a court-appointed mediator. Parties to the mediation include the State, the United States, the Pueblos of Nambe, Tesuque, Pojoaque and San Ildefonso, the City of Santa Fe, the County of Santa Fe, and attorneys representing more than 1,000 non-Indian water right owners.

On February 5, 2004, a proposed draft Aamodt Settlement Agreement was made public and a Congressional study pegged the total cost of the Aamodt Settlement at \$285,000,000. Of that figure, cost sharing negotiations contemplate that the United States would fund \$215,000,000 with the remainder coming from State and local contributions. In response to public comment on the draft Settlement Agreement, the Aamodt parties returned to the negotiating table and have been revising the Settlement Agreement. If a Settlement Agreement is finalized and approved by all parties and the federal government, the State of New Mexico must pay a portion of the costs necessary to implement the settlement and this amount could easily be \$20,000,000.

The Office of the State Engineer provided the following additional information.

A settlement of the Aamodt case will not be possible without a significant state contribution. The proposed Settlement Agreement provides that state monies, along with other local contributions and contributed federal funds, would be utilized for the construction of a pipeline and regional water system.

The proposed Settlement Agreement also provides that state monies would be made available to support two funds which would be established under the settlement: one would subsidize the cost for individuals to hook up to the regional water system; and the other would compensate non-Pueblo well owners, in some circumstances, for impairment to their wells resulting from future Pueblo water use.

The allocation of a state contribution to those three elements of the settlement - the hookup

fund, the impairment fund and hard project costs - has yet to be determined. Negotiations continue with regard to a cost sharing agreement which will speak to funding with greater specificity.

For some years a state contribution of \$17 million dollars has been estimated as being consistent with the hard project costs and the two funds discussed above. Recent increases in energy and material costs, as well as inflation, suggest that \$20 million dollars is a more accurate figure.

The chief benefits of settling the Aamodt case are that the lawsuit would be brought to a conclusion and the problems of water use in the stream system would be resolved for the foreseeable future.

CONFLICT, DUPLICATION, COMPANIONSHIP, RELATIONSHIP

House Memorial 3 requests that the Governor of New Mexico and the United States Congress provide adequate funding for proposed Native American Water Rights Settlements, including the Aamodt settlement.

Senate Bill 377 proposes to appropriate \$75,000,000 for Indian water rights and regional community settlements, including the Navajo, Taos and Aamodt settlements. House Bill 121 is a duplicate of Senate Bill 377.

ALTERNATIVES

According to the Office of the State Engineer, the state has the option of providing for state funding of the Aamodt settlement at a later time, or rejecting the Aamodt settlement and continuing with litigation to the conclusion of the case.

CH/nt