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FISCAL IMPACT REPORT

ORIGINAL DATE 1-24-06

SPONSOR Papen LAST UPDATED _____ HB _____

SHORT TITLE Water Rights Adjudications SB 80

ANALYST Woods

APPROPRIATION (dollars in thousands)

Appropriation		Recurring or Non-Rec	Fund Affected
FY06	FY07		
\$100,000.0		Non-Recurring	General Fund

(Parenthesis () Indicate Expenditure Decreases)

SOURCES OF INFORMATION

LFC Files

Responses Received From

Office of the State Engineer- Interstate Stream Commission (OSE)
Department of Finance and Administration (DFA)

SUMMARY

Synopsis of Bill

Senate Bill 80, which makes an appropriation for water rights adjudications, seeks to appropriate \$100,000,000 from the general fund to the Office of the State Engineer for expenditure in fiscal years 2006 and 2007 to pay the costs of water rights adjudications. Any unexpended or unencumbered balance remaining at the end of fiscal year 2007 shall revert to the general fund. This legislation includes emergency language.

SIGNIFICANT ISSUES

OSE indicates that the only significant issue with SB80 is that it provides for reversion of any remaining unencumbered or unexpended balance of the appropriated funds after only two years. Two years is not enough time to responsibly expend \$100,000,000.00. Accordingly, OSE suggests the bill be amended to distribute the appropriated money into two existing funds, and should not revert after any fiscal year. The proposed OSE amendment is included below [See Amendments Section].

DFA notes that OSE is the lead agency in a number of adjudications regarding water rights from interstate disputes to intrastate water right determination challenges between parties ranging

from individual water right claimants to the Indian nations and agencies of the federal government. Further, that this appropriation would appear to allow the agency to allocate these funds toward any of these efforts. Combined, DFA observes, the water adjudication efforts that the agency is involved in are expected to require hundreds of millions of dollars to complete.

ADMINISTRATIVE IMPLICATIONS

OSE indicates that the current operating budget in the state engineer's litigation and adjudication program is \$6,713,000 for recurring expenses in adjudicating water rights in New Mexico. In order to spend the appropriation of this bill in two years, the program will have to expand its expenditures by a factor of 8 for each year. Since it is very unlikely that even after this massive expenditure all the state's water rights will have been completely adjudicated by the end of a two year period, the state engineer would then have to scale back adjudication operations from the level supported by the \$100 million to the level supported by the current operating budget.

DFA observes that, depending upon the adjudication activities selected to be funded, some activities may not be able to use millions of dollars of appropriations within two years. It is questionable as to whether OSE could administer or utilize one hundred million dollars within the appropriation period even if the appropriation was spread among a number of efforts and utilized contractual services where appropriate. Further, because of the length of time involved in many of OSE's adjudications, OSE has in the past had to extend special appropriations of several million dollars for several consecutive years.

DFA further suggests that, although the \$100,000,000 is a non-recurring general fund appropriation, depending on which adjudication activities this appropriation were to fund, it is possible that it may attract federal matching funds

AMENDMENTS

OSE suggests the following amendment:

Section 1. APPROPRIATION. — One hundred million dollars (\$100,000,000) is appropriated from the general fund to the funds identified below in the following amounts for expenditure by the state engineer to support the state's prosecution of stream system adjudications and completion of hydrographic surveys, consistent with the purposes of the funds identified below:

A. Fifty million dollars (\$50,000,000) is appropriated from the general fund to irrigation works construction fund, established pursuant to NMSA 1978, § 72-14-23 (1959), and any unexpended or unencumbered balance remaining at the end of a fiscal year shall not revert to the general fund; and

B. Fifty million dollars (\$50,000,000) is appropriated from the general fund to the improvement of Rio Grande income fund, established pursuant to NMSA 1978, § 19-1-17(B)(36) (2005), and any unexpended or unencumbered balance remaining at the end of a fiscal year shall not revert to the general fund.