F I S C A L I M P A C T R E P O R T

SPONSOR HAGC **ORIGINAL DATE** 3-6-07 **LAST UPDATED** **HB** 443/HAGCS

SHORT TITLE Water Conservation and Allowances **SB**

ANALYST Woods

APPROPRIATION (dollars in thousands)

Appropriation		Recurring or Non-Rec	Fund Affected
FY07	**FY08**		
NFI	NFI		

(Parenthesis ( ) Indicate Expenditure Decreases)

ESTIMATED ADDITIONAL OPERATING BUDGET IMPACT (dollars in thousands)*

	FY07	FY08	FY09	3 Year Total Cost	Recurring or Non-Rec	Fund Affected
Total	$0	$560.0	$560.0	$1,120.0	Recurring	General Fund

(Parenthesis ( ) Indicate Expenditure Decreases)

*Office of the State Engineer estimates

Duplicate to SBCS461

SOURCES OF INFORMATION
LFC Files

Responses Received From
Office of the State Engineer (OSE)

SUMMARY

Synopsis of Bill

House Agriculture and Water Resources Committee substitute for House Bill 443 seeks to amend Section 72-5-18 NMSA 1978.
The Office of the State Engineer (OSE) indicates that the statute currently directs that, in the issuance of permits to appropriate water or in the adjudication of the rights to use of water for

that purpose, the amount allowed shall be based on beneficial use and in accord with good agricultural practices. Additionally, it directs the state engineer to issue permit in a manner consistent with the above so as to prevent waste. Finally, the statute provides that improved irrigation methods resulting in the conservation of water shall not affect an owner's water rights. Specifically, OSE notes:

- The first new paragraph adds three parts to existing language. First, it adds agricultural practices as an activity to be considered as potentially resulting in the conservation of water. The second addition provides that conserved water shall not diminish the beneficial use or other wise affect the owner's water right. The third addition is a statement adding that a quantity of appurtenant acreage should not be affected by the aforementioned activities.

- The second new paragraph essentially states that by demonstrating improved irrigation or agricultural practices that result in the conservation of water, that such water may be transferred to a new point of diversion, place, or purpose of use. It conditions these transfers as follows:

  1. The conserved water shall not result in impairment or diminishment of other water rights; and

  2. Priority and quality of right shall be assessed under the same standards as apply to transfers.

FISCAL IMPLICATIONS:

OSE anticipates that, if enacted, the state engineer will be required to establish a procedure by which the agricultural practices be evaluated to determine the amount of water conserved. Further, at a minimum, each of the OSE's six districts will require an FTE, and the OSE's water use bureau will require an FTE, "for a total of 7 FTEs and associated operation costs ($560.0/Year)."

SIGNIFICANT ISSUES:

OSE notes that the bill proposes: "Improved irrigation methods or agriculture practices resulting in the conservation of water, which is a beneficial use, shall not affect an owner's water rights or quantity of appurtenant acreage." OSE interprets this to mean that if a farmer changes their on-farm irrigation or agriculture practice, which results in a water savings; the saved water is defined as a "beneficial use". This is contrary to the intention of the original statute, the associated definition of beneficial use and constitutes a new appropriation of water. The bill also allows for the transfer of the conserved water. OSE also adds the following observations:

- The "beneficial use" of a water right is determined by calculating the water necessary to grow a crop, less effective precipitation, and is generally referred to as consumptive use.

- Agricultural practices are evaluated to estimate the on-farm efficiency. On-farm efficiency is dependent on the type of irrigation method and other factors.

- The water allowance is then calculated by dividing the consumptive use by the on-farm efficiency.

- Consumptive use and on-farm efficiency are based on local area conditions and is not established farm-by-farm. A local cropping pattern is evaluated to establish the consumptive use and local irrigation practices are reviewed to determine on-farm efficiency. This broad approach has been supported by the courts and is necessary for the practical administration of water rights.

OSE concludes that, should this bill be enacted into law, the OSE will have a new administration requirement when these applications are submitted for review. Additional personnel will be required to ensure that these applications and subsequent monitoring demands are met. Further that this will increase the number of water right applications that will need to be processed by the OSE thereby affecting this agency's ability to meet its water rights processing performance measures.

OSE believes that it would be required to administer water rights on a farm-by-farm basis. This new task would increase the already over burdened water rights administration process. Additionally, the office of the state engineer would need to make farm-by-farm determinations to ensure that any practices resulting in "saved water" do not change. This monitoring function is not currently in existence in the office of the state engineer and will require new personnel.

CONFLICT, DUPLICATION, COMPANIONSHIP, RELATIONSHIP:

Duplicate to SBCS461

OTHER SUBSTANTIVE ISSUES:

OSE indicates that agriculture conservation has long been practiced in the State of New Mexico. Modern advances in irrigation technology have provided significant improvements in the efficiency of the transport of water from the point of diversion to meet the consumptive use of the crop. It will take OSE resources to ensure that these new applications are appropriately handled to ensure that these activities do not increase depletions within administrative basins.

BFW/nt