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FISCAL IMPACT REPORT

ORIGINAL DATE 2/7/2007

SPONSOR Larranaga LAST UPDATED 3/6/2007 HB 680/aHENRC

SHORT TITLE Transportation Commission Water Notices SB _____

ANALYST Schuss

APPROPRIATION (dollars in thousands)

Appropriation		Recurring or Non-Rec	Fund Affected
FY07	FY08		
	NFI		

(Parenthesis () Indicate Expenditure Decreases)

SOURCES OF INFORMATION

LFC Files

Responses Received From

Office of the State Engineer (OSE)
 NM Department of Transportation (NMDOT)

SUMMARY

Synopsis of HENRC Amendment

The amendment proposed by the House Energy and Natural Resources Committee adds a qualification regarding a water right to be changed that is owned or served by an acequia or community ditch. This addition states that:

"...will not be detrimental to the other holders of valid water rights; provided, however, that if the water right to be changed is owned or served by an acequia or community ditch organized pursuant to Chapter 73, Article 2 or 3 NMSA 1978, the applicant shall also comply with any applicable requirement adopted by the acequia or community ditch pursuant to Subsection E of Section 73-2-21 NMSA 1978 or Section 73-3-4.1 NMSA 1978".

OSE has included the following in their analysis of the amendment:

The amendment adds language to the effect that acequias or community ditches organized pursuant to Chapter 73, Article 2 or 3, NMSA 1978 have the right to adopt by-laws for approval or denial changes in a point of diversion or place or purpose of use of a water right served by the acequia or community ditch. The change may be denied only if the

commissioners determine that it would be detrimental to the acequia or community ditch or its members. This approval / denial right is provided under Articles 73-2-21(E) and 73-3-4.1, NMSA 1978. If an applicant is aggrieved by the decision of the acequia commissioners, he may appeal the decision to district court.

Synopsis of Original Bill

House Bill 680 exempts the State Transportation Commission and its contractors from the requirement of publication and hearing for water rights applications to temporarily change the location of use, method of use or point of diversion of water rights for projects involving the construction, reconstruction, maintenance or repair of public roads, streets, highways and airports – when, in the opinion of the state engineer, the temporary change will not be detrimental to existing, valid water rights.

SIGNIFICANT ISSUES

NMDOT states that the provisions of HB 680 include limiting the use of water for temporary changes to two years. This could potentially cause NMDOT problems on road projects in the instances when the timelines for those projects exceed the two year period.

HB 680 also eliminates that ability to obtain temporary two year permits for advance withdrawals of water which could also negatively affect NMDOT's projects.

ADMINISTRATIVE IMPLICATIONS

OSE states that they will continue to evaluate these types of water rights applications (temporary uses for road construction) for impairment, public welfare, and conservation of water even though the applications will not be subject to publication of notice and hearing. The state engineer will approve temporary changes for road construction projects - if there is no impairment to existing, valid water rights and if it is in the public welfare of the state.

Passage of this bill will result in an expedited process for evaluating and acting on temporary changes of water rights in support of New Mexico road construction projects. Passage of this bill will also result in fewer cases going to hearing – the resources of the office of the state engineer will be able to better address more significant water rights changes and will be able to act on all types of water rights applications in a more efficient manner.

DUPLICATION

Duplicates SB 900

OTHER SUBSTANTIVE ISSUES

OSE notes the following issues:

This bill will allow temporary use of water for construction, maintenance and repair of the state's highway and road system in a timely manner. Contractors are responsible for obtaining water for their projects but cannot begin the formal part of this process (water rights application process) until they are awarded a contract. The present process requires

advertisement of a notice in local newspapers once per week for three consecutive weeks and allows a period for receipt of protests after the last date of publication. Occasionally, there are protests to the application, which must be settled in a formal hearing procedure prior to use of the water. This process is time consuming and often delays the construction project.

Many highway construction projects within the state are in sparsely populated, rural areas with no easy access to sources of water for construction purposes – such as concrete batching, hotmix batching, dust control, compaction, etc. Present statutes allow for use of 3.0 acre-feet per annum under a temporary permit but 3.0 acre-feet is usually not enough. The amount authorized for use in construction, maintenance or repair of the state's roads and streets should be increased to more nearly provide for the needs of the construction industry. This amount of water is not likely to impair existing water rights over the long term and will allow for more timely and efficient road construction contracts. The state engineer will evaluate all applications for impairment, for conservation of water and for public welfare considerations.

BS/sb:csd