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FISCAL IMPACT REPORT

ORIGINAL DATE 1-30-07
 LAST UPDATED 2-13-07 HB _____

SPONSOR SJC

SHORT TITLE Water Conservation and Allowances SB 461/SJCS

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	\$560.0	\$560.0	\$560.0	\$1,680.0	Recurring	General Fund

(Parenthesis () Indicate Expenditure Decreases)

Relates to SB461

SOURCES OF INFORMATION

LFC Files

Responses Received From

Office of the State Engineer (OSE)

SUMMARY

Synopsis of SJC Amendment

Senate Judiciary Committee Substitute 461 seeks to amend a section of Chapter 72 NMSA 1978 to clarify a water allowance upon the conservation of water. Specifically, the bill reflects the following language:

Section 1. Section 72-5-18 NMSA 1978 (being Laws 1907, Chapter 49, Section 43, as amended) is amended to read:

72-5-18. Water Allowance.

A. In the issuance of permits to appropriate water for irrigation or in the adjudication of the rights to the use of water for that purpose, the amount allowed shall be based upon beneficial use and in accordance with good agricultural practices and the amount allowed shall not exceed such amount. The state engineer shall permit the amount allowed to be diverted at a rate that is consistent with good agricultural practices and that will result in the most effective use of available water in order to prevent waste.

B. Improved irrigation methods or changes in agriculture practices resulting in conservation of water shall not diminish beneficial use or otherwise affect an owner's water rights or quantity of appurtenant acreage.

C. Any water rights owner who demonstrates that improved irrigation or changes in agricultural practices have resulted in the conservation of water shall be able to make an application to the state engineer for a change in the point of diversion or place or purpose of use of the quantity of conserved water, provided that:

(1) conservation of 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.

There is no appropriation attached to this legislation.

It is noted that the Office of the State Engineer (OSE) offered comments on a related bill, Senate Bill 461, Water Conservation and Allowances, upon its introduction. The original OSE comments are included below as background information. Observation and suggestions proffered by OSE apply to the SJC substitute.

SIGNIFICANT ISSUES:

Senate Bill 461 sought to amend a section of Chapter 72 NMSA 1978 in order to clarify a water allowance upon conservation of water. Specifically, the bill sought to amend Section B to read as follows:

B. Improved irrigation methods or agricultural 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.

Further, language in Section C is proposed to read:

C. Any water rights owner who demonstrates that improved irrigation or agricultural practices have resulted in the conservation of water shall be able to make a change in the point of diversion or place or purpose of use of the quantity of conserved water, provided:

- (1) conservation of water shall not result in impairment or diminishment of other water rights;
- (2) conservation shall not result in increased net depletions; and
- (3) priority and quality of right shall be assessed under the same standards as apply to transfers."

FISCAL IMPLICATIONS:

With respect to Senate Bill 461 OSE noted that, if this bill is enacted, it will require the state engineer to establish a procedure by which the agricultural practices be evaluated to determine the amount of water conserved. At a minimum, each of the office of the state engineer's six districts will require an FTE, the OSE Water Use Bureau will require an FTE for a total of 7 FTEs and associated operation costs, projected to be \$560.0 per year.

SIGNIFICANT ISSUES:

With respect to Senate Bill 461 OSE indicated that this bill sought to substantially amend Section 72-5-18 NMSA 1978. 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 directed the state engineer to issue permit in a manner consistent with the above so as to prevent waste. Finally, the statute provided that improved irrigation methods resulting in the conservation of water shall not affect an owner's water rights.

The first new paragraph added three parts to existing language. First, it added agricultural practices as an activity to be considered as potentially resulting in the conservation of water. The second addition provided that conserved water is defined as a beneficial use. The third addition was a statement adding that a quantity of appurtenant acreage should not be affected by the aforementioned activities.

The second new paragraph essentially stated 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. As proposed in the bill, it conditions these transfers as follows:

1. The conserved water shall not result in impairment or diminishment of other water rights.
2. Conservation shall not result in increased net depletions; and

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

OSE added 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.” This proposal means 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 allowed for the transfer of the conserved water.

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, and 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 are 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. It is impractical at this time to administer on a farm-by-farm basis as is contemplated by the amendment.

ADMINISTRATIVE IMPLICATIONS:

With respect to Senate Bill 461 OSE indicated 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.

OSE stated that this bill, in connection with HB579, which eliminates water masters, would make it “...highly probable that depletions would increase creating the potential for replicating the Pecos River problem on most of our compacted rivers.”

CONFLICT, DUPLICATION, COMPANIONSHIP, RELATIONSHIP:

With respect to Senate Bill 461, duplicate to HB 443

TECHNICAL ISSUES:

With respect to Senate Bill 461 OSE noted the following:

P.2, line 5; the bill proposes to include a new provision, “conservation of water...shall not affect an owner’s.... quantity of appurtenant acreage,” which appears superfluous, if having any meaning as used.

OTHER SUBSTANTIVE ISSUES:

With respect to Senate Bill 461 OSE concluded 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. However, it has long been understood that these advances generally result in either (1) the same consumption use; or (2) an increase in consumptive use if a crop had otherwise been deficit irrigated. Further that drip irrigation has long held the promise of providing increased yields without an associated increase in water consumption. However, these saving are currently impossible to quantify with certainty. Therefore, providing for the ability of a water right holder to transfer these potential savings cannot adequately address potential impairment of other water rights holders.

BFW/mt