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## FISCAL IMPACT REPORT

ORIGINAL DATE 2-20-07

SPONSOR Martinez LAST UPDATED 2-22-07 HB \_\_\_\_\_

SHORT TITLE Impoundment of Water for Livestock SB 1187

ANALYST Woods

### APPROPRIATION (dollars in thousands)

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

(Parenthesis ( ) Indicate Expenditure Decreases)

Duplicate of HB1282

### SOURCES OF INFORMATION

LFC Files

#### Responses Received From

New Mexico Livestock Board (NMLB)<sup>1</sup>  
Office of the State Engineer (OSE)

### SUMMARY

#### Synopsis of Bill

Senate Bill 1187 seeks to amend Section 72-9-3 NMSA 1978 (being Laws 1907, Chapter 49, Section 74, as amended) to read as follows:

"72-9-3. STOCK WATER.--

A. Any stockmen or stock owners desiring to impound any of the public surface waters of the state for watering of livestock shall meet the requirements of filing applications for the appropriation and use of water pursuant to Section 72-5-1, 72-5-22, 72-5-23 or 72-5-24 NMSA 1978, except as provided in Subsection B of this section.

B. If the capacity of the proposed impoundment of public surface water is ten acre-feet or less and there is no perennial or intermittent flow in the watercourse between the proposed impoundment and the nearest downstream surface water diversion, and if the

<sup>1</sup> The 2-21-07 response from the New Mexico Livestock Board contained no comments other than that the legislation would have no financial impact.

proposed impoundment will be used for watering of livestock as defined in Subsection D of this section, the stockman or stock owner is exempt from the application and permit requirements; provided that for an impoundment on state or federal land, the stockman or stock owner submits proof to the state engineer that the stockman or stock owner is legally entitled to place livestock on the state or federal land where the water is to be impounded and has been granted access to the site and has permission to occupy the portion of the state or federal land as is necessary for the impoundment.

C. This section shall only apply to impoundments constructed for the watering of livestock after July 1, 2007.

D. As used in this section, "livestock" means "livestock" as defined in Section 77-2-1.1 NMSA 1978 and this section applies only to the impoundment of surface water for the purpose of watering livestock. Watering of livestock does not include an impoundment of surface water or ground water in any amount for fishing, fish propagation, recreation or aesthetic purposes, which shall require a permit pursuant to Section 72-5-1 NMSA 1978. In determining whether an impoundment will be used for the watering of livestock, the state engineer may consider the maximum amount of water required per livestock unit and shall take into account regional and climatic conditions that affect consumption."

Section 2. EFFECTIVE DATE.--The effective date of the provisions of this act is July 1, 2007.

There is no appropriation attached to this legislation.

#### **FISCAL IMPLICATIONS:**

OSE indicates that there is some potential for fiscal impact on the Office of the State Engineer in that the proposed changes would allow individuals to self-determine if a stream is perennial or intermittent in flow and also if their proposed use would impact existing downstream uses. New uses put into place under the proposed amendment could lead to requirements for the agency to invest significant amounts of time in addressing compliance issues related to stream flows and priority uses, as was the case prior to the 2004 amendment (i.e. Grey Wolf Ranch in Mora County). Additionally, the adjudication process in new areas would be slowed by the need for the state engineer to delineate these uses, as no permit would exist and the agency would need to find and quantify these structures prior to adjudication.

#### **SIGNIFICANT ISSUES:**

OSE additionally notes that the proposed amendment would allow the stockman or stock owners the ability to theoretically locate an impoundment on a perennial stream so long as there is not a perennial or intermittent flow between the impoundment and the nearest surface water diversion and the capacity of the impoundment is less than ten acre-feet without having to apply to the State Engineer. Further, that

1. The legislation proposes to remove the requirement for all impoundments to be reviewed and permitted by the state engineer and, as previously suggested, the bill proposes to allow citizens themselves to determine if a watercourse is perennial or intermittent in flow and to self analyze the characteristics of surface water flow between their proposed use and the nearest downstream appropriator; and

2. “Uncontrolled uses”, including domestic wells and livestock water impoundments have been an area of major contention in discussions with neighboring states over interstate compact deliveries. The ability of the state engineer to administer the use of all of the waters of the State of New Mexico is imperative to successful management of the resource. The adjudication of water rights in the State of New Mexico is a time consuming and costly process. Without records of all water uses, the time and monetary expense of each adjudication rises. Without a permitting process for all livestock water impoundments, the state engineer is forced to use other more costly measures to delineate those uses during the adjudication process. Lack of permitting requirements in areas administered via a priority call, requires additional time and resources.

**PERFORMANCE IMPLICATIONS:**

OSE suggests that proposed amendments to Section §72-9-3 will result in minimal reduction in daily performance of water rights application processing because the state engineer will no longer review applications for stock ponds with a storage capacity of 10 acre-feet or less. However, the proposed amendments will significantly affect the performance of the agency related to adjudication of rights and priority administration, reducing the state engineers ability to account for all water uses within the state.

**ADMINISTRATIVE IMPLICATIONS:**

OSE indicates that the proposed changes to Section §72-9-3 would severely limit the administrative authority of the state engineer over the surface waters of the state. By removing the requirements as amended in 2004, an applicant would be allowed to construct a livestock water impoundment that could hold ten acre-feet of water for the purposes of watering one horse, in an active water resource management area with existing priority delivery issues. Moreover, the expertise of the State Engineer in administering the waters of the State of New Mexico is abrogated by the Applicant/stockman and the proposed amendment allows the Applicant to independently determine if the mentioned conditions are met. The amendments would allow the Applicant/Stockman to independently evaluate whether their impoundment of ten acre-feet or less is exempt from application / permit process.

**CONFLICT, DUPLICATION, COMPANIONSHIP, RELATIONSHIP:**

Duplicate to HB-1282

**TECHNICAL ISSUES:**

OSE indicates that the proposed amendments to Section §72-9-3 would increase technical issues for administrative procedures in basins with interstate streams and compact delivery requirements. The amount of unquantified uses in these areas can have potentially significant affects on required deliveries.

**OTHER SUBSTANTIVE ISSUES:**

As background, OSE advises that §72-9-3 NMSA (amended 2004) provides definitions, guidelines and administrative oversight to the state engineer for the impoundment and use of surface waters for livestock purposes, and removed loopholes and exclusions that previously

inhibited the state engineer from effectively controlling their use. Changes to NMSA §72-9-3 provided a method for defining and permitting legitimate uses and controlling non-livestock, recreational and aesthetic uses. Further, recently adopted rules and regulations for surface water in New Mexico include rules that further define the construction of livestock water impoundments and the subsequent use of these waters. This statute was amended in 2004 in concurrence with recommendations of a task force established through HJM#4 (2004) that included representation from the OSE, NMSU, Acequia's, the New Mexico Cattle Growers Association, The New Mexico Farm Bureau, the Northern New Mexico Stockman's Association and the New Mexico Soil and Water Conservation Districts. The primary objective of this task force was to protect both the acequias of New Mexico, the stock growers needs for the use of surface water for stock production and New Mexico's position in interstate stream negotiations and deliveries.

**ALTERNATIVES:**

OSE indicates either do not enact this bill; or Remove all current exemptions in NMSA §72-9-3 and require the retirement of existing rights to offset effects of all new livestock water impoundments.

**WHAT WILL BE THE CONSEQUENCES OF NOT ENACTING THIS BILL:**

OSE states: "There will be no negative consequences of not enacting this Bill. There is a potential for negative consequences if the Bill is enacted."

**AMENDMENTS:**

OSE suggests the following language: On page 1, line 20 after the word "shall" insert, "file a notice of intent to construct a stock dam with the state engineer on a form prescribed by the state engineer and"

BFW/mt