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## FISCAL IMPACT REPORT

ORIGINAL DATE 1/31/08  
 SPONSOR     Martinez     LAST UPDATED     2/4/08     HB     520/aHENRC      
 SHORT TITLE     Indian Water Rights Settlement Fund     SB                                       
 ANALYST     Woods    

### APPROPRIATION (dollars in thousands)

| Appropriation |          | Recurring<br>or Non-Rec | Fund<br>Affected |
|---------------|----------|-------------------------|------------------|
| FY08          | FY09     |                         |                  |
|               | 10,000.0 | Non-Recurring           | General          |

(Parenthesis ( ) Indicate Expenditure Decreases)

### SOURCES OF INFORMATION

LFC Files

Responses Received From

Office of the State Engineer (OSE)

### SUMMARY

#### Synopsis of HENRC Amendment

House Energy and Natural Resources Committee amendment to House Bill 520 authorizes expenditure of the appropriation for FY09 “and subsequent fiscal years.” It additionally removes the original – *at the end of fiscal year 2009* – reversion language.

#### Synopsis of Original Bill

House Bill 520 seeks to appropriate \$10,000,000 from the general fund to the Indian water rights settlement fund for expenditure in fiscal year 2009 to pay for water projects pursuant to Indian water rights settlements. Any unexpended or unencumbered balance remaining at the end of fiscal year 2009 shall revert to the general fund.

### SIGNIFICANT ISSUES

OSE advises that, in the November 6, 2007 Indian Water Rights Settlement Fund Report, Governor Richardson, the State Engineer, and the Interstate Stream Commission (ISC) recommended that the 2008 legislature continue to support the long-term funding plan initiated in 2007 for New Mexico’s three pending Indian water rights settlements. These settlements are the three separate agreements reached with the Navajo Nation, with Taos Pueblo, and with the

four Pueblos in the *Aamodt* adjudication (Nambé, Pojoaque, Tesuque, and San Ildefonso). To continue the long-term funding plan for these three settlements, the 2007 Indian Water Rights Settlement Fund Report recommended that the 2008 legislature appropriate a total of \$13.07 million to the Indian water rights settlement fund. The \$10 million appropriation in HB 520 is consistent with this recommendation.

### **TECHNICAL ISSUES**

OSE indicates that the legislation directs that the \$10 million appropriated is to be expended in FY2009, and requires that any unexpended or unencumbered balance remaining at the end of FY2009 shall revert to the general fund; further that:

This conflicts with the requirements of the law creating the Indian Water Rights Settlement Fund, Laws 2005, ch. 172, § 2, NMSA 1978, § 72-1-12, which provides that “[m]oney in the fund shall not revert to any other fund at the end of a fiscal year.”

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

OSE advises that Congress is expected during calendar year 2008 to consider legislation to approve and provide federal funding for New Mexico’s three pending Indian water rights settlements. In the current tight federal fiscal climate, it is important for New Mexico to demonstrate the state’s continued commitment to fund these settlements. Further:

If New Mexico does not continue the appropriations to the Indian Water Rights Settlement Fund begun in 2007, this may undermine the ability of New Mexico’s congressional delegation to get federal settlement legislation passed. Opponents of the three pending settlements likely will argue to Congress that the New Mexico legislature’s failure in 2008 to appropriate money shows that New Mexico is not committed to paying its share of those settlements, and that the federal government therefore need not provide funding either.

### **AMENDMENTS**

OSE suggests, consistent with “Technical Issues” as identified above, the following:

p.1, ll.20-21: strike the entire wording beginning with “remaining” ending with “fund” and substitute in lieu thereof “in the fund shall not revert to any other fund at the end of a fiscal year.”

BFW/mt