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FISCAL IMPACT REPORT

 SPONSOR
 HAWC
 ORIGINAL DATE
 3/10/17

 LAST UPDATED
 HB
 472/HAWCS

SHORT TITLE Water Right Administration Changes

ANALYST Armstrong

SB

ESTIMATED ADDITIONAL OPERATING BUDGET IMPACT (dollars in thousands)

	FY17	FY18	FY19	3 Year Total Cost	Recurring or Nonrecurring	Fund Affected
Total			None			

(Parenthesis () Indicate Expenditure Decreases)

SOURCES OF INFORMATION

LFC Files

<u>Response Received From</u> Office of the State Engineer (OSE) Office of the Attorney General (OAG)

SUMMARY

Synopsis of Bill

The House Agriculture and Water Resources Committee Substitute for House Bill 472 (HB472) enacts a new section of water law. The bill prohibits the state engineer from enforcing or administering any requirement of partial or full transfer of title of water rights to the U.S. Forest Service (USFS) or Bureau of Land Management (BLM), excluding contracts of sale or lease. HB472 also prevents the state engineer from enforcing restrictions on the use, exercise, or alienability of water rights as a condition to a right of way, special use permit, or other authorization by USFS or BLM to use land managed by those agencies. The bill provides it should not be construed to alter the state engineer's existing administration and enforcement authority or alter the land use permitting or regulatory authority of state or local governments.

The bill amends existing statute to declare that permitted beneficial users have a right of access to the land where a livestock water impoundment is located to develop and maintain the impoundment and beneficial use on the land. Finally, the bill exempts livestock surface water rights on leased or permitted land from statutory forfeiture for the duration of the lease or permit. The bill's effective date is July 1, 2017.

FISCAL IMPLICATIONS

None.

SIGNIFICANT ISSUES

According to OSE analysis, this bill attempts to clarify that conditions or restrictions imposed by USFS and BLM cannot create administrative requirements for the state engineer. The bill would solidify the state engineer's current practice of exercising exclusive authority over water rights in the state, independent of federal land management policies.

However, OAG analysis raised the following concern:

Changes in the substitute raise a significant constitutional issue. At page 1, lines 21-23, the Substitute provides that "The state engineer shall not enforce or administer efforts by the United States forest service or bureau of land management that [contain certain requirements or restrictions relating to water rights]." The language of the original bill was not specific to federal agencies, stating: "The state engineer shall not enforce or administer a condition placed on permitted land that [contain the same requirements or restrictions]." The substitute bill thus singles out federal agencies for disparate treatment. This may violate the Supremacy Clause of the U.S. Constitution. The U.S. Supreme Court has explained that: "State law may run afoul of the Supremacy Clause in two distinct ways: The law may regulate the Government directly or discriminate against it. North Dakota v. United States, 495 U.S. 423, 434 (1990). The test of whether a state law discriminates against the Federal Government is whether "it treats someone else better than it treats" the Government. Id. at 438. To the extent HB472 would deny federal agencies the rights and protections under New Mexico water law that are available to other persons, it may be unconstitutional. In addition, the word "efforts" (in the phrase "efforts by the United States forest service or bureau of land management") is ambiguous, because an "effort" is not a particular instrument that can be enforced or administered.

JA/jle