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FISCAL IMPACT REPORT

SPONSOR Wirth ORIGINAL DATE 3/10/17
LAST UPDATED _____ HB _____

SHORT TITLE No Use of Water Rights Before Approval SB 435/ec

ANALYST Armstrong

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

Responses Received From

Office of the State Engineer (OSE)

Office of the Attorney General (OAG)

Department of Transportation (NMDOT)

SUMMARY

Synopsis of Bill

Senate Bill 435 (SB435) amends the Water-Use Leasing Act to provide that a permit to lease shall not become effective until after notice and opportunity for hearing on the application has been provided and the application has been granted. This bill includes an emergency clause.

FISCAL IMPLICATIONS

None.

SIGNIFICANT ISSUES

SB435 removes the state engineer's authority to approve an application filed pursuant to the Water-Use Leasing Act to use water under a water use lease prior to providing public notice and an opportunity for protests. Currently, OSE may allow an applicant to immediately use leased water before publication and hearing if the applicant has shown that the proposed temporary use is beneficial and will not impair an existing right to a greater degree than current use or be contrary to conservation of water or the public welfare. However, the final "granting" of an application to use leased water does require publication and hearing.

OSE provided the following:

SB435 would eliminate the only tool available to the state engineer to meet a wide variety of temporary non-emergency water demands through an expedited process while also protecting the due process rights of other water rights owners to file protests, have a hearing, and obtain a final decision from the State Engineer. If SB435 were enacted there would no longer be any mechanism in the water code to allow for the expedited change in place/purpose of use of a groundwater right. Additionally, there would no longer exist a mechanism in the surface water code to allow for an expedited process for non-emergency surface water leases for circumstances like a planned spring pulse of water to improve habitat for endangered species.

However, other statutory provisions allow the state engineer to provide preliminary approval for an emergency change in point of diversion of a water right if the wait for a hearing would result in crop loss or other serious economic loss to the applicant. Section 72-5-25 NMSA 1978. OSE anticipates that eliminating preliminary approval for non-emergency temporary uses of water would lead to an increase in applications for emergency permits and an increase in challenges to the claimed emergency.

JA/jle