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FISCAL IMPACT REPORT

ORIGINAL DATE 2/26/09

SPONSOR SCONC LAST UPDATED _____ HB _____

SHORT TITLE Use of Conserved Water from Tax Credit SB CS/601/SCONC

ANALYST Francis

REVENUE (dollars in thousands)

Estimated Revenue			Recurring or Non-Rec	Fund Affected
FY09	FY10	FY11		
	NFI			

(Parenthesis () Indicate Revenue Decreases)

SOURCES OF INFORMATION

LFC Files

Responses Received From

Taxation and Revenue Department (TRD)

NM Dept of Agriculture (NMAG)

Attorney General (AG)

State Engineer/Interstate Stream Commission (OSE/ISC)

SUMMARY

Synopsis of SCONC Substitute

The Senate Conservation Committee substitute for Senate Bill 601 allows water conserved due to efforts that qualify for the agricultural water conservation tax credit to be put to consumptive use if the state engineer allows it pursuant to the section of water law statutes that governs water allowance [Section 72-5-18 NMSA 1978].

FISCAL IMPLICATIONS

Nothing about SB601 changes the credit or the types of qualified investments and so there is no fiscal impact.

NMAG reports there have been no claims for the credit to date though tax year 2008 was the first year credit. NMAG believes that this change will likely increase the applications for the credit which will reduce general fund revenues.

SIGNIFICANT ISSUES

AGO:

The Substitute will likely limit or eliminate the vulnerability to legal challenge created by the original version of this legislation. It makes clear that the State Engineer must ensure, pursuant to its existing authority under 72-5-18(C), that those agricultural water users who wish to make consumptive beneficial use of water that may have been conserved as a result of measures used to qualify for the tax credit have actually conserved a sufficient quantity of water to accommodate the increased consumptive use. This is important because a taxpayer may qualify for the water conservation tax credit based on the implementation of irrigation improvements even though those improvements do not actually reduce the taxpayer's consumptive use of water.

Note that because 72-5-18(C) applies already to any water user who wishes to increase consumptive use as a result of conservation gains from improvements to irrigation or agricultural practices, there is a legal argument that the changes proposed appear to be redundant and do not serve any substantive legal function. Still, it may serve an important function insofar as, by cross-referencing 72-5-18(C) in the tax code, it signals to agricultural taxpayers who conserve water that they may pursue permission to put that water to consumptive beneficial use.

OSE:

The Office of the State Engineer (OSE) applauds all efforts at encouraging conservation of New Mexico's water. Affording tax breaks provides a valuable incentive, as long as efforts for which the tax credit is provided do actually result in conservation. Therefore, we need to be certain that those efforts do result in the conservation of water, that is, that they result in a reduction of depletions. Otherwise, attempts at "conserving" water may actually result in harm to senior right owners. This occurs where "conserved" water does not result in a reduction in the amount diverted by or delivered to the farmer and it is applied to increase production which increases the amount depleted, thereby reducing return flow to the stream or no reduction in the amount of groundwater pumped.

Recent studies conducted by NMSU have demonstrated the difficulties associated with actually implementing more efficient irrigation systems designed to conserve water, noting that all too often, those "improvements" actually result in increased depletions.

The Legislative Finance Committee has adopted the following principles to guide responsible and effective tax policy decisions:

- 1. Adequacy:*** revenue should be adequate to fund government services.
- 2. Efficiency:*** tax base should be as broad as possible to minimize rates and the structure should minimize economic distortion and avoid excessive reliance on any single tax.
- 3. Equity:*** taxes should be fairly applied across similarly situated taxpayers and across taxpayers with different income levels.
- 4. Simplicity:*** taxes should be as simple as possible to encourage compliance and minimize administrative and audit costs.
- 5. Accountability/Transparency:*** Deductions, credits and exemptions should be easy to monitor and evaluate and be subject to periodic review.

More information about the LFC tax policy principles will soon be available on the LFC website at www.nmlegis.gov/lcs/lfc

We are concerned that such "improvements" might actually harm senior water right owners, contrary to New Mexico policy and our Constitution.

That said, the OSE recognizes the need to encourage innovative thinking to conserve New Mexico's most valuable resource, and welcome all efforts to encourage New Mexico users to do so. The State Engineer is charged with protecting senior water right holders in the state, therefore, we need to be certain that such efforts do not result in a contrary result.

The OSE is currently developing guidelines to implement 72-5-18, and those guidelines may well assist the other agencies in implementing this proposed section. The OSE suggests that the committee substitute bill provides appropriate language to ensure that any conserved water that is put to beneficial use will be in accord with 72-5-18. This will provide better protection for senior water right owners from potential negative impacts from well-intentioned efforts to conserve water that may result in increased water depletions.

ADMINISTRATIVE IMPLICATIONS

NMAG reports that soil and water conservation districts may face additional administrative costs if applications increase.

WHAT WILL BE THE CONSEQUENCES OF NOT ENACTING THIS BILL

Conserved water will remain in or continue to flow to the water system.

NF/mt:mc