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FISCAL IMPACT REPORT

SPONSOR:	Gubbels	DATE TYPED:	01/26/00	HB	167
SHORT TITLE:	Forfeiture for Conserved Water Exemption			SB	
				ANALYST:	Pickering

APPROPRIATION

Appropriation Contained		Estimated Additional Impact		Recurring or Non-Rec	Fund Affected
FY00	FY01	FY00	FY01		
		NFI			

(Parenthesis () Indicate Expenditure Decreases)

Duplicates/Conflicts with/Companion to/Relates to

SOURCES OF INFORMATION

Energy, Minerals and Natural Resources Department (EMNRD)

Office of the State Engineer/Interstate Stream Commission (OSE/ISC)

SUMMARY

Synopsis of Bill

HB167 amends Section 72-5-28 and Section 72-12-8 NMSA 1978 to include an exemption from forfeiture of water rights for conserved water. Specifically, Section 72-5-28 titled "Failure to Use Water-Forfeiture," is amended to add a new section which states "conserved water resulting from a state engineer approved conservation practice is exempt from forfeiture. The bill defines *conservation practice* as a reasonable and quantifiable reduction of the water diverted and consumptively used in the exercise of a valid or adjudicated water right." Section 72-8-12 titled "Water Right Forfeiture," is amended in the same manner.

Significant Issues

Section 72 NMSA 1978 requires water right owners to exercise that right by putting the water to beneficial use. Failure to do so over a four-year period subjects that water to permanent forfeiture. Currently, Section 72-12-8 NMSA 1978 includes specific exceptions from this beneficial use requirement for certain conditions and for limited time periods. HB167 would exempt conserved water from forfeiture permanently.

SUBSTANTIVE ISSUES

HB167 creates permanent exemptions instead of three year extensions. While not specified, the only way OSE could approve a water conservation practice as exempt and quantify the amount of water diverted and consumptively used would be through investigation or issuance of a permit. According to EMNRD, it is unclear if the state engineer would be capable of protecting conserved water rights from future use in the event the water conservation practice is not maintained or fails to perform. The engineer's burden could increase in his attempt to avoid over-allocation of adjudicated water.

The consequence of not enacting this bill is that water right permit holders would be required to petition the engineer for three year extensions when water conservation practices result in avoidance in exercising

beneficial water use. Additionally, there would still exist a likelihood that the engineer could deny extensions and water rights could be forfeited. Overall, water conservation efforts would not be enhanced.

RP/njw:gm