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FISCAL IMPACT REPORT

SPONSOR: Stell DATE TYPED: 3/13/03 HB 604/aSCONC

SHORT TITLE: State Engineer Authority SB _____

ANALYST: Chabot

APPROPRIATION

Appropriation Contained		Estimated Additional Impact		Recurring or Non-Rec	Fund Affected
FY03	FY04	FY03	FY04		
	\$.01 (see Narrative)			Recurring	General Fund

(Parenthesis () Indicate Expenditure Decreases)

Duplicates SB 551

SOURCES OF INFORMATION

LFC Files

Responses Received From

Department of Game and Fish (DGF)
 Energy, Minerals and Natural Resources Department (EMNRD)
 New Mexico Environment Department (NMED)
 Office of the State Engineer (OSE)

SUMMARY

Synopsis of SCONC Amendment

The Senate Conservation Committee amendment to House Bill 604 is to make the bill a duplicate of Senate Bill 551. The amendment strikes subsection C of the bill and inserts a new subsection C requiring the State Engineer to adopt rules based on appropriate hydrologic models to expedite leasing of water in areas under priority administration consistent with state law. These rules shall not apply to acequias or community ditches.

Synopsis of Original Bill

House Bill 604 enacts new statute in Chapter 72 NMSA 1978 for the purpose of recognizing the State Engineer's authority to administer water allocations in accordance with water rights priorities and expediting water marketing and leasing by the State Engineer. OSE must adopt rules to

ensure his actions do not interfere with a future pending adjudication, do not impair water rights and do not increase depletions. Rules adopted shall be based on appropriate hydrologic models and nothing in the new section shall affect the partial final decree and settlement agreement entered in the Carlsbad irrigation district project.

Significant Issues

OSE states that this bill makes explicit the State Engineer's authority to administer water rights based upon priority dates of permit applications. Enactment of this bill is favored to remove any ambiguity that might lead to challenges to the State Engineer's authority. Using hydrologic models to promote expedited marketing and leasing of water is being contemplated for future rules and regulations. Enacting this bill will provide a further incentive to establish water banks. Lastly, the provision that the act will not affect the final decree and settlement in *State of New Mexico ex rel. State Engineer v. Lewis, et al.* will allow that adjudication to proceed on its current course.

EMNRD states it operates state parks along rivers and streams and maybe impacted by the State Engineer's decision curtailing water use in a priority call. The agency emphasizes that water users must have an adequate opportunity to fully participate in and contest the State Engineer's proposed priority administration for curtailing their water uses. Changing from a legal proceeding to a rulemaking process may reduce the ability of water users to challenge the curtailment of their water uses.

FISCAL IMPLICATIONS

House Bill 604 contains no appropriation; however, OSE states it will need additional administrative and legal staff to carry out the requirements of this bill.

ADMINISTRATIVE IMPLICATIONS

OSE will need to develop rules and regulations to implement provisions of this bill. Hydrologic models may have to be completed for some of the water basins; however OSE does not provide an estimate of the number or the cost. OSE states that "many water rights claimants have not filed declarations covering their water rights claims...The claimants will have to file declarations in order to protect their claimed priority dates." This will have workload impact on the water rights and legal staffs.

TECHNICAL ISSUES

EMNRD states the term "impairment" in page 2 line 5 is misused and should be change to "curtailment". The LFC analyst assesses that the text in the bill is correct.

POSSIBLE QUESTIONS

1. Are there other adjudication efforts in process that need to be exempted if this bill is enacted?