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F I S C A L I M P A C T R E P O R T

SPONSOR: Cervantes DATE TYPED: 02/19/03 HB 739

SHORT TITLE: Establish Water Courts SB

ANALYST: Hayes

APPROPRIATION

Appropriation Contained		Estimated Additional Impact		Recurring or Non-Rec	Fund Affected
FY03	FY04	FY03	FY04		
	\$2,400.0			Recurring	General Fund

(Parenthesis () Indicate Expenditure Decreases)

Relates to SB 145

Conflicts with HB 127, HB 204, SB 39, SB 78, SB 143

SOURCES OF INFORMATION

No Responses Received From

Administrative Office of the Courts (AOC)

State Engineer

SUMMARY

Synopsis of Bill

House Bill 739 appropriates \$2.4 million from the general fund to the 1st, 3rd, 5th and 11th Judicial District Courts at \$600,000 each in order to create and fund water court divisions within those courts to adjudicate water rights disputes.

- Section 1, New Material, WATER COURTS ESTABLISHED, designates one district judge to sit as “water judge” in each of the four district courts noted above and establishes jurisdiction over proceedings regarding water rights matters. Section 1 also indicates that the Supreme Court shall adopt rules of procedure for the water courts.
- Section 2, New Material, WATER JUDGES—JURISDICITON—DUTIES include adopting comprehensive orders to expedite the hearing and disposition of water rights claims in stream systems, subject to the approval of the Supreme Court. Services rendered as a “water judge” shall be in addition to the regular duties of a district judge but

shall have priority. The schedule of the judges in the district shall be arranged so that the water judge is free to hear water matters as necessary.

- Section 3, New Material, SPECIAL WATER MASTER—APPOINTMENT—DUTIES allows a water judge to appoint a special master to expedite water rights claims in the adjudication of the stream system as long as the special master is licensed to practice law in New Mexico and is already experienced in New Mexico water law and trial procedure.

Within 60 days, the special master must file a report containing recommended findings of fact and conclusions of law based upon the evidence presented during the case hearing.

A case management clerk and a law clerk must be provided to the water judge by the district court for stream adjudications. In addition, the district courts must provide court-rooms and other necessary facilities for the water judges and special masters hearing cases.

- Sections 4 through7 of House Bill 739 amends various sub-sections of 34-6 NMSA 1978 to increase the number of judges in the 1st Judicial District Court from seven to eight; to increase the number of judges in the 3rd Judicial District Court from six to seven; to increase the number of judges in the 5th Judicial District Court from eight to nine; and to increase the number of judges in the 11th Judicial District Court from six to seven.
- Section 8 of House Bill 739 amends Section 38-3-1 NMSA 1978 and adds a sub-section (H) that indicates which district court a lawsuit must be brought depending on the stream system.

Significant Issues

1. At the August 21, 2002 meeting of the Judicial Systems Study Committee, a special hearing was conducted to specifically discuss water issues and the notion of “water courts.” At that hearing, the judiciary stated that they were not in favor of creating water court divisions in the district courts.
2. Judges attending this hearing were favorable to the idea of having a few judges develop expertise on water issues; however, they stated they were not in favor of creating judgeships specifically for water courts.
3. Other concerns voiced at the hearing included doubts whether there would be enough work for the water court divisions. The general opinion expressed in testimony was that there would not be enough cases to substantiate water courts or judgeships created solely for this purpose.
4. Judges at the hearing stated that the Supreme Court was studying the idea of water courts and that the Supreme Court would present a report before the end of FY03 discussing whether they thought it was feasible idea and how water courts would affect the judiciary.

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5. Other issues regarding House Bill 739:

- a) If a Special Master will be hearing most of the cases and making recommendations after review of the evidence, why is there a need for separate “water judges” too?
- b) Because many courts are requesting new judgeships (see SB 143), the request for separate water court judgeships is viewed by some in the judiciary as a conflict. In addition, such specialty positions may cause an inequity in workload and caseload among judges.
- c) Three out of four of the district courts named in this bill do not have enough space or offices for their current needs. How are these courts going to “provide court-rooms and other necessary facilities for the waters judges and special masters...” as outlined in the bill?
- d) Section 3 of HB 739 requires district courts to provide law clerks and case management clerks to the water judge. Are these current staff positions which will be diverted from their current court assignments to water court? Or is part of the \$600,000 funded to each district court to be used to hire such staff?
- e) Apart from the judgeship positions, what else does the \$600,000 fund? How many staff FTEs? Is a portion of this funding for capital items such as furniture, computers and equipment? If so, a portion of the funding should be designated as non-recurring according to DFA regulations.
- f) Since the funding is divided evenly among the 1st, 3rd, 5th and 11th districts, is the caseload anticipated to be the same in each district?

FISCAL IMPLICATIONS

The appropriation of \$2,400.0 contained in this bill is a recurring expense to the general fund. Any unexpended or unencumbered balance remaining at the end of FY04 shall revert to the general fund.

RELATIONSHIP/CONFLICT

SB 145 proposes funding a court facilities improvement study for district courts to identify renovations needed, space needs, safety and security factors, etc.

Conflicts with:

HB 127 and SB 78 propose creating a 14th Judicial District Court which would split the 11th district, thereby affecting the water court proposed for the 11th district by this bill.

HB 204 proposes using alternative dispute resolution (ADR) processes for water rights adjudications.

SB 39 creates and funds a new judgeship for the 3rd Judicial District Court in Las Cruces

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based on the judiciary's Weighted Caseload Study. The request does not account for a water court judgeship or a water court division.

SB143 is referred to as the "judgeship bill." It requests judgeships statewide based on the Weighted Caseload Study. It does not contain judgeships for the 1st or 5th Judicial District Courts since their current caseload does not warrant additional judges.

OTHER SUBSTANTIVE ISSUES

The courts are implementing performance-based budgeting (PPB) in FY04. The Supreme Court directed the judiciary to create a single program for each court in order to exercise "flexibility." As a result, all FTE and funding sources for regular court functions, drug court, teen court, domestic violence, mediation, federal grants, HSD transfers for child support hearing officers, etc., are combined into a single program. It is a concern to both DFA and LFC how the courts will maintain separate, proper accounting records for all of these activities which formerly functioned as separate divisions. In regards to water courts, the "water court division" proposed in this legislation will not exist *as such* under the PPB model; its funding and employees will be combined with all other court activity into a single program.

CMH/yr