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FISCAL IMPACT REPORT

SPONSOR Stewart DATE TYPED 1/30/04 HB 289
 SHORT TITLE Water Resource Fee Act SB _____
 ANALYST Maloy

REVENUE

Estimated Revenue		Subsequent Years Impact	Recurring or Non-Rec	Fund Affected
FY04	FY05			
	Significant	On-going	Recurring	Water Trust Fund

SOURCES OF INFORMATION

LFC Files

Response Received From
 Energy, Minerals and Natural Resources

No Responses Received From
 Office of the State Engineer
 Environment Department
 Natural Resources Trustee

SUMMARY

Synopsis of Bill

- House Bill 289 creates the Water Resource Fee Act, which imposes water resource fees for the diversion or withdrawal of public waters of the state. The bill outlines what the water resource fees are and to which entities or individuals the fee applies, including:
 - Irrigation districts, conservancy districts and artesian conservation districts organized pursuant to Chapter 73, Articles 1, 9, 10 or 14, NMSA 1978 shall pay \$2.00 per square acre-foot per year.
 - Persons, other than an acequia association (defined as “an association of landowners along a community ditch or acequia that is recognized under Chapter 73, Article 2, NMSA 1978, not subject to assessments by any irrigation, conservancy or artesian conservancy district), supplying water for

agricultural uses shall pay \$2.000 per acre-foot per year.

- Persons operating a public water supply system shall pay \$25.00 per acre-foot per year.
- Persons supplying water for a commercial, industrial, mining or utility concern shall pay \$25.00 per acre-foot per year.
- Persons owning a domestic well shall pay \$25.00 per well per year.
- The bill provides an exception for domestic wells that are assessed a fixed annual fee, and states the water resource fee shall be based on the actual diversion or withdrawal, if measured by a metering system approved by the Office of the State Engineer. If not measured by an approved meter, the fee shall be based on the amount of the permitted, declared or adjudicated water right.
- The bill exempts the following users and uses for the Water Resource Act:
 - Water diverted or withdrawn by the interstate stream commission, state parks division of the energy, mineral and natural resources department, and the game and fish department for public use or benefit.
 - Water diverted or withdrawn for agricultural use by a member of an acequia association on the member's land.
 - Water diverted or withdrawn from a livestock well;
 - Water diverted or withdrawn by an Indian nation, tribe or pueblo.
- **The bill expressly states that payment of a fee imposed under the Act is no evidence of any right to appropriate the public waters of the state.**
- With regard to domestic wells:
 - The bill provides that the county assessor shall collect the water resource fee imposed under the Act. The fee shall be assessed with the property tax bill for the property on which the domestic well is located.
 - The bill states the county assessor shall remit all fess collected to the New Mexico taxation and revenue department within 30 days of collection.
 - The office of the state engineer shall provide each county with the addresses of owners and locations of domestic wells.
- The bill states the taxation and revenue department shall issue regulations for the manner and form of collection of water resource fees, and shall provide the office of the state engineer with an annual report on the amount of fess collected for each type of user.

- The bill also requires the office of the state engineer, department of the environment, and public regulatory commission to provide the taxation and revenue department with information and records necessary to assess an appropriate fee under the Act.
- The bill provides revenue appropriated to the office of the state engineer pursuant to the provisions of this Act shall be used for water conservation, active rights administration, rights adjudications, up-dating and maintaining the state engineer's WATERS database, and providing information to local entities and taxation and revenue department for the collection of fees.
- The bill distinguishes between revenues directed to the state engineer and the interstate stream commission. In making this distinction, the bill directs that revenue appropriated to the commission shall be used to administer the irrigation works construction fund and manage water rights acquired by state agencies, including for compliance with interstate compact requirements, recreation purposes, stream ecosystem restoration, and enhancement of fish and wildlife populations and habitats.
- The bill states the department shall withhold an administrative fee of five percent of the receipts collected under the Act.

NOTE: Initially, the bill is unclear as to what "department" is being referenced with regard to the administrative fee. However, as the bill shifts to enforcement and administration, it becomes apparent that the "department" is the taxation and revenue department.

- The bill divides the receipts among the various involved entities as follows:
 - the office of the state engineer receives 8 % of the receipts;
 - the interstate stream commission receives 2 % of the receipts;
 - the water project fund receives 60% of the receipts;
 - the New Mexico irrigation works construction receives 30% of the receipts;

NOTE: The bill is unclear as to whether this is after the 5% administrative fee is withheld from the receipts. Seemingly, this would be the case.

Following outlining the content of the newly created Water Resource Fee Act, the bill addresses the Tax Administration Act, ensuring the new fee is included therein.

Then, the bill shifts to address the statutory duties of the water trust board. In doing so, the bill notes:

- Revenue in the water trust fund may be directed by the board as necessary to meet the needs of regional water planning, providing all local and federal funding sources have are appropriately "matched" and all state and federal permits and authorizations necessary are obtained.

- The board may authorize projects to the state finance authority involving acquisition or lease of water rights from voluntary sellers or lessors for public use and benefit, or involving recycling, treatment or reuse of water in accordance with applicable laws.

Thereafter, the bill addresses the existing statute creating the water trust fund. With regard to the fund, the bill states:

- 50% of the amount distributed in the fund as a result of the Water Resource Fee Act shall be used only for water conservation projects benefiting the public water systems that have paid the water resource fees.
- The other 50% distributed into the fund pursuant to the Act shall be expended for water conservation projects, restoration and management of watersheds, and the acquisition or lease from voluntary sellers or lessors of water rights for public use and benefit, including compliance with interstate compacts, recreation purposes, stream ecosystem restoration and the enhancement of fish and wildlife populations and habitats.

Finally, the bill addresses the existing statute creating the irrigation works construction fund to make the language of that statute consistent with the proposed water resource fees and their management and use (as outlined above).

Significant Issues

- New Mexico's drought is worsening every year. Proactive steps to protect the state's water resources should have been undertaken more than twenty years ago. Now, time is of the essence, as is serious commitment.
- The finance authority has estimated New Mexico's water needs at \$4.8 billion. This bill will aid, though minimally, in meeting these needs. The Office of the State Engineer did not provide an analysis of this bill. It is unknown how much the Office would estimate the fees / tax would generate to the water trust fund.

FISCAL IMPLICATIONS

This bill does not contain an appropriation. This bill proposes to generate recurring revenue to the water trust fund. Unexpended or unencumbered balances at the end of a fiscal year shall not revert to the general fund.

SJM/lg:yr