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FISCAL IMPACT REPORT

SPONSOR Stell DATE TYPED 2/2/04 HB 313

SHORT TITLE Strategic Water Reserve Donation Tax Credit SB _____

ANALYST Maloy

REVENUE

Estimated Revenue		Subsequent Years Impact	Recurring or Non-Rec	Fund Affected
FY04	FY05			
	(1,000.0)	Increasing	Recurring	General Fund

(Parenthesis () Indicate Revenue Decreases)

HB 313 is a companion to HB 312.

Relates to SB 360 and its companion SB 362 that are nearly identical to HB 313 and HB 312.

Relates to: HB-276 (Tax Credit for Produced Water), HB-153 (Permission for Produced Water Disposal, Corporate Income Tax Credit), HB-48 and SB-12 (Credits for Agricultural Water Conservation Expenses).

SOURCES OF INFORMATION

LFC Files

Responses Received From

Taxation and Revenue Department
Office of the State Engineer
New Mexico State Department of Agriculture
Energy, Minerals and Natural Resources Department

SUMMARY

Synopsis of Bill

HB 313 provides an income tax credit to individuals and corporations in the amount of \$1,000 per acre-foot of water rights (not to exceed \$100,000 per year) donated during the taxable year to the Interstate Stream Commission's Strategic Water Reserve.

HB 313 is a companion to HB 312. Because HB 312 provides for creation of the Strategic Water

Reserve, HB 313 conditions the tax credit upon enactment into law of HB 312.

The tax credit may only be deducted from income tax liability for the taxable year, but any unused portion of the tax credit may be carried forward for three consecutive taxable years.

Significant Issues:

- The New Mexico Finance Authority has estimated the state's current water needs at \$4.8 billion.
- The state has appropriated in excess of \$40 million for the purchase of water rights on the Pecos River. Originally, this amount was to fully fund all needed right to maintain compliance with New Mexico's interstate delivery obligations. However, the Office of the State Engineer is now asserting an additional \$50 + million will be needed to purchase the needed rights.

The Energy, Minerals and Natural Resources Department notes:

- HB 313 will provide an incentive to individuals and corporations to donate their water rights to a Strategic Water Reserve.

The Environment Department notes:

- A strategic water reserve will allow the state to more effectively manage its limited water supplies and interstate stream compact obligations.

The New Mexico Department of Agriculture notes:

- There is no provision for co-owners to receive a pro-rata share of the tax credit based on ownership interest in the corporation or land appurtenant to water rights.
- This is not well defined if the tax credit would apply to someone donating an annual use of water rights but not wishing to grant ownership of the water right to the strategic water reserve.
- New Mexico agriculture has been severely impacted by the drought. Small and medium agricultural producers may not qualify for the credit due to insufficient net farm income

FISCAL IMPLICATIONS

According to the Taxation and Revenue Department, this bill will result in an estimated \$1 million revenue loss to the general fund for FY05. This revenue loss will likely increase in the future. Further, if this appropriation is approved, and the ISC is able to purchase significant amounts of water rights, the proposed tax credits could become significant.

COMPANIONSHIP & RELATIONSHIP

HB 313 is a companion to HB 312. HB 313 is a companion to HB 312. Because HB 312 provides for creation of the Strategic Water Reserve, HB 313 conditions the tax credit upon enactment into law of HB 312.

The bill also relates to SB 360 and its companion SB 362 that are nearly identical to HB 313 and HB 312.

Relates to: HB-276 (Tax Credit for Produced Water), HB-153 (Permission for Produced Water Disposal, Corporate Income Tax Credit), HB-48 and SB-12 (Credits for Agricultural Water Conservation Expenses).

TECHNICAL ISSUES

The Taxation and Revenue Department states:

- The bill should be clarified as to whether the \$100 thousand cap on credits is applied to each taxpayer or to the program as a whole.
- Language in Sections 1(C) and 2(B) of the bill should be clarified as to whether unused credits may be carried forward.

The Office of the State Engineer notes:

- There appears to be a conflict between the sentence that begins on Page 2, line 6 and the following sentence that begins on Page 2, line 8. It appears that the language in this paragraph is intended to mirror the language in Section 2, Paragraph B at Page 3, line 5.

The Energy, Minerals and Natural Resources Department states:

- Although it is assumed the term “donated” would require the donor to part with ownership of water rights to be eligible for a tax credit, HB 312 allows the Interstate Stream Commission to accept water rights under lease to contribute to the Strategic Water Reserve. In fact, the Commission has for years routinely entered into leases with members of Irrigation Districts for the delivery of water to meet downstream compact obligations. To clarify that the intent of the bill is to allow tax credits only in the event that the ownership of the water right is transferred to the Commission, an amendment could be made to Sections 1 and 2 to so clarify by adding the words “owned and” before the word “donated” as it appears on page 1, line 22 and on page 3, line 1.

OTHER SUBSTANTIVE ISSUES

The New Mexico Department of Agriculture offers:

- The bill needs a provision added to allow co-owners of land the opportunity to claim a

pro-rata share of the tax credit.

- Would someone who chooses to donate a one-time use of their water right (s), either because of conservation or land fallowing, be able to donate and still maintain their existing water right except in that year, and still claim the tax credit for that year or carry over the credit for use in a later year not to exceed three consecutive years? If this is allowed, would a person who donated conserved water have the ability to also take an agriculture water conservation tax credit as well if provisions of SB 012 or HB 048 were met?

SJM/yr