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## FISCAL IMPACT REPORT

SPONSOR Cisneros DATE TYPED 2-3-04 HB

SHORT TITLE Strategic Water Reserve Donation Credit SB 362

ANALYST Neel

### 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)

*\* Based on TRD's analysis for similar bill HB 313*

Duplicates:

HB 326, Strategic Water Reserve Donation Tax Credit

Relates to:

HB 313, Strategic Water Reserve Donation Tax Credit

HB 312, Strategic Water Reserve

SB 362, Strategic Water Reserve Donation Tax Credit

SB 360, Strategic Water Reserve

### SOURCES OF INFORMATION

LFC Files

#### Responses Received From

Energy, Minerals and Natural Resources Department (EMNRD)

Office of the State Engineer (OSE)

New Mexico Environment Department (NMED)

New Mexico Department of Agriculture (NMDA)

## SUMMARY

### Synopsis of Bill

Senate Bill 362 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. Because HB 312 provides for creation of the Strategic Water Reserve, SB 362 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.

SB 362 also requires the taxpayer to first obtain a "certification of eligibility" from the Interstate Stream Commission determining the sufficiency of the taxpayer's water rights to meet the criteria of the Strategic Water Reserve. To claim the tax credit, the taxpayer must present the Interstate Stream Commission approved certificate to the Taxation and Revenue Department, together with any other information that the Department may require to determine the amount of the tax credit.

### Significant Issues

The AG has the following concerns regarding the definition of "water rights":

"Water right" is defined by the statute to mean either (1) title to use water as decreed by a state district court pursuant to a water rights adjudication; or (2) a water right recognized by the state engineer as having "sufficient seniority and consistent historic beneficial use to effectively contribute to the purpose of the strategic water reserve." In the first category, it should be noted that water rights are decreed in New Mexico by federal as well as state district courts. In the second category the standard seems too subjective to be practical. For example, are only the most senior water rights acceptable or are water rights with middle priorities acceptable? Where do you draw the line? The intent of the second category appears to be to insure that river flows will increase because water rights that would otherwise deplete the river are not diverted from the river. In other words, the intent is to keep "wet" water in the river. The first category, however, does not show that same intent. Conceivably, a decreed water right, although perfectly valid and legal, can have a very junior priority such that, in most years, it will not add a drop of "wet" water to the river.

## FISCAL IMPLICATIONS

TRD cites the following fiscal impact for similar legislation (HB 313):

The fiscal impacts depend on the passage of HB-312 and the implementation of the policies authorized in that bill. HB-312 authorizes 10 percent of annual severance tax bond authority to be appropriated to the Interstate Stream Commission for the purpose of purchasing water rights for the strategic water reserve. If this appropriation is approved, and the ISC is able to purchase significant amounts of water rights, the proposed tax credits could become significant.

**RELATIONSHIP**

Companion to HB 312 – Strategic Water Reserve. This bill is only effective contingent upon enactment of a bill that creates a strategic water reserve administered by the interstate stream commission

**TECHNICAL ISSUES**

Language in Sections 1(E) and 2(D) of the bill should be clarified as to whether unused credits may be carried forward

**SN/lg**