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FISCAL IMPACT REPORT

SPONSOR Cervantes **DATE TYPED** 02-15-05 **HB** 299

SHORT TITLE UNM Office of Water Rights Ombudsman **SB** _____

ANALYST Woods

APPROPRIATION

Appropriation Contained		Estimated Additional Impact		Recurring or Non-Rec	Fund Affected
FY05	FY06	FY05	FY06		
	\$332.4			Recurring	General Fund

(Parenthesis () Indicate Expenditure Decreases)

Relates to the appropriation for the University of New Mexico in the General Appropriations Act.

SOURCES OF INFORMATION

LFC Files

Responses Received From

New Mexico Office of the State Engineer (OSE)

New Mexico Department of Agriculture (NMDA)

Judge Presiding over the Lower Rio Grande Basin Adjudication, and Chair, Supreme Court Ad Hoc Committee Regarding Stream Adjudication Procedure and Rules

No Responses Received From

Commission on Higher Education (CHE)

SUMMARY

Synopsis of Bill

House Bill 299 – Making an Appropriation to the Utton Transboundary Resources Center at the University of New Mexico for an Office of water Rights Ombudsman – appropriates \$332,400 from the general fund to the Board of Regents of the University of New Mexico for expenditure in FY06 for personnel, equipment, office space and administrative overhead to establish an Office of Water Rights Ombudsman at the Utton Transboundary Resources Center to provide public education statewide on water rights and to assist water rights claimants and the courts in adjudication of water rights. Any unexpended or unencumbered balance remaining at the end of FY06 shall revert to the general fund.

Significant Issues

Named after Professor Albert E. Utton – co-founder of The International Transboundary Resources Center (CIRT) and the Natural Resources Center (NRC) at the University of New Mexico (UNM) School of Law – the Utton Transboundary Resources Center is housed in the UNM School of Law and works closely with the UNM Water Resources Program as well as with scholars and practitioners from across the United States and Mexico.

The center’s mission is to promote equitable and sustainable management and utilization of trans-boundary resources through impartial expertise, multi-disciplinary scholarship, and preventive diplomacy. It brings together lawyers and scientists to support fact-based decision making for sustainable resource management, and its trans-boundary resources focus is inclusive of all inter-jurisdictional boundaries such as state vs. state, city vs. county, state vs. Indian tribe, country vs. country.

OSE indicates that funding provided by this bill would be used to disseminate information to the public about water rights and to assist water rights claimants in understanding and maneuvering through the adjudication process. Water rights claimants frequently have little understanding of the adjudication process, which can result in reluctance on the part of claimants to accept an offer of judgment from the State for their water rights claims. An unbiased source of assistance, such as an ombudsman, would serve as a resource for water users that could resolve many differences with the OSE, or at least clarify material issues in law or fact.

OSE additionally notes that the program could also organize periodic public information programs, particularly in areas with active adjudications, to disseminate accurate information to citizens, governmental organizations, and non-governmental organizations. This could alleviate the anxiety caused by uncertainty and misunderstanding of the adjudication process. The program could also assist individuals in discussions with OSE or the courts as a “third party” to provide a comfort level for settlement discussions. Also, the bill helps promote a component of the governor’s water court vision.

This program was not included in the CHE’s *2005-2006 Higher Education Funding Recommendation*.

FISCAL IMPLICATIONS

The appropriation of \$332,400 contained in this bill is a recurring expense to the general fund. Any unexpended or unencumbered balance remaining at the end of FY06 shall revert to the general fund.

ADMINISTRATIVE IMPLICATIONS

The University of New Mexico will retain oversight of this program.

CONFLICT, DUPLICATION, COMPANIONSHIP, RELATIONSHIP

Relates to the appropriation for the University of New Mexico in the General Appropriations Act.

TECHNICAL ISSUES

NMDA notes that not many of the ground or surface water basins in the state have been adjudicated, nor will those adjudications be completed within the timeframe of this appropriation. Further, that the lower portion of the Rio Grande adjudication involves New Mexico's largest irrigation district, Elephant Butte Irrigation District, the City of Las Cruces, New Mexico State University, and numerous groundwater claimants, not to mention the southern portion of the Pecos adjudication which includes Carlsbad Irrigation District and the Pecos Settlement Agreement.

NMDA poses the question: "Shouldn't there be a water rights ombudsman or similar office located in the southern portion of the state?"

The Judge Presiding over the Lower Rio Grande Basin Adjudication, and Chair, Supreme Court Ad Hoc Committee Regarding Stream Adjudication Procedure and Rules (hereinafter cited as *Presiding Judge*) offers the following observations with respect to this legislation:

One of the principal causes of delay in stream adjudications is the lack of understanding of water law by water right claimants who are not represented by attorneys. Unrepresented water right claimants can number into the thousands. Adjudications, particularly during periods of drought, can result in a highly charged adversarial climate, even if the Office of the State Engineer strives to prosecute the adjudications fairly. Water law can be arcane and confusing, and the adjudication process can be intimidating to a typical water right claimant. This results in substantially reducing amicable settlements and causing an inordinate amount of unnecessary legal process.

Our rules committee is nearing completion of a draft of Stream Adjudication Rules. When the Committee finishes a final draft they will be submitted to the Supreme Court for their consideration. To enable unrepresented claimants to have active and knowledgeable participation, they must have a basic understanding of water law and their rights. The Office of the Ombudsman can provide this information, and offer a very real opportunity to materially expedite state stream adjudications.

With respect to NMDA's question: "Shouldn't there be a water right ombudsman or similar office located in the southern portion of the state?" the Presiding Judge notes:

The demand for Ombudsman services varies greatly with the actions of the Office of the State Engineer and the hearing dates set by the court. The Utton Center contemplates that the Office of the Ombudsman would have a local office in each city where a stream adjudication is pending. The office would be manned as necessary when activity warrants. Specific times and dates would be set to meet the demand for services.

WHAT WILL BE THE CONSEQUENCES OF NOT ENACTING THIS BILL?

NMDA suggests that there will be no educational program or assistance program for water rights claimants and the courts in adjudication of water rights in New Mexico.

The Presiding Judge observes that if the bill is not enacted there will be a continued delay in the completion of stream system adjudications.

BFW/yr