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FISCAL IMPACT REPORT

SPONSOR Martinez DATE TYPED 3/10/05 HB _____

SHORT TITLE Impounding Of Surface Water For Livestock SB 900/aSCONC

ANALYST Aguilar

APPROPRIATION

Appropriation Contained		Estimated Additional Impact		Recurring or Non-Rec	Fund Affected
FY05	FY06	FY05	FY06		
	NFI				

(Parenthesis () Indicate Expenditure Decreases)

Duplicates HB 1014

SOURCES OF INFORMATION

LFC Files

Responses Received From

Office of the State Engineer (OSE)

New Mexico Environment Department (NMED)

New Mexico Livestock Board (NMLB)

SUMMARY

Synopsis of SCONC Amendment

The Senate Conservation Committee amendment to Senate Bill 900 includes additional language providing that the provisions of the bill shall not apply to stockmen or livestock owners who may build or construct water tanks or ponds with a capacity of ten acre feet or less on a dry water course for the purpose of watering livestock.

SB 900/aSCONC further requires the state engineer to issue a permit to impound and use waters for applications on a perennial stream if the capacity of the impoundment is ten acre feet or less and will not impair senior or acequia water rights.

The amendment allows for the impoundment of water for use by wild animals used for human consumption and provides that the section does not apply to impoundments used **exclusively** for fish, fish propagation, recreation or aesthetic purposes.

Significant Issues

The amendment pertaining to exclusive use appears to remove provisions implemented by the 2004 legislature to control water use for uses other than for watering livestock.

The state engineer notes uncontrolled uses, including domestic wells, livestock water impoundments, recreational and aesthetic uses and the impacts of livestock surface water impoundments and domestic wells on the flows of New Mexico's interstate streams have been the focus of considerable attention in recent years. The authority of the state engineer to administer all uses of the waters of the state is imperative to the successful management of the resource.

Synopsis of Original Bill

Senate Bill 900 removes the 10-foot height requirement for all dams that the state engineer reviews to ensure the design is safe. This bill places design review and approval requirements only on dams that exceed 10 acre-feet of storage, regardless of height.

SB 900 conditions the requirement to apply to the state engineer for water impoundments to those desiring to impound **perennial** surface waters. In the event the proposed impoundment is not from perennial waters and 10 acre feet or less, state engineer approval is not required.

SB 900 removes factors the state engineer may consider in the permitting process.

Significant Issues

As provided in SB 900, the state engineer would no longer have approval responsibility over proposed dams based on height, only on the volume of impoundments.

SB 900 requires a state engineer permit for watering of livestock only if the proposed impoundment would impound perennial surface waters of the state. Under the current statute, a state engineer permit is required to impound any surface water for stock watering purposes, whether the stream to be impounded is perennial or intermittent, though an expedited permitting process must be followed for proposed impoundments of ten acre-feet or less that are not on perennial streams. This expedited permitting process is simple and not burdensome on stock owners.

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The state engineer further reports adjudication of water rights in the State of New Mexico is a time consuming and costly process. Without records of all water uses, the time and monetary expense of each adjudication rises. Without a permitting process for all livestock water impoundments, the state engineer is forced to use other more costly measures to delineate those uses during the adjudication process. Lack of permitting requirements in areas administered via a priority call, requires additional time and resources.

SB 900 removes language by which the state engineer determines the maximum amount of water required per livestock unit and takes into account regional and climatic conditions. The state engineer reports removing this language in a worst case scenario would allow the construction of

a livestock water impoundment that could hold ten acre-feet of water for the purposes of watering one animal.

TECHNICAL ISSUES

Page 2, line 18 adds “perennial” to the impoundment of surface waters. This causes the subsection to conflict with subsection “B” which provides the state engineer shall issue a permit for those applications where impoundments are not on a perennial stream.

Removing the height restriction results in the exception provided for erosion control structures in Section 72-5-32 NMSA 1972 being irrelevant.

OTHER SUBSTANTIVE ISSUES

The state engineer notes sections 72-5-32 and 72-9-3 NMSA 1972 were amended in 2004 to follow the recommendations of a task force established through HJM-4 (2004) that included representation from the office of the state engineer, NMSU, the New Mexico Cattle Growers Association, the New Mexico Farm Bureau, the Northern New Mexico Stockman’s Association, New Mexico Acequia Association, and the New Mexico Soil and Water Conservation Districts. The primary objective of this task force was to protect both the acequias of New Mexico, the needs of stock growers to impound surface water for stock production, and the flows of New Mexico’s interstate streams.

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