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FISCAL IMPACT REPORT

	ORIGINAL DATE 2-4-06		
SPONSOR	Hanosh	LAST UPDATED	HB 710
	SAN RAFAEL WATER DISTRICT RIGHTS		
SHORT TITLE	ACQUISITION	SB	
		ANALYST	Hadwiger

APPROPRIATION (dollars in thousands)

Appropriation		Recurring or Non-Rec	Fund Affected
FY06	FY07		
	\$250.0	Non-Rec	General Fund

(Parenthesis () Indicate Expenditure Decreases)

SOURCES OF INFORMATION

LFC Files

Responses Received From

Department of Finance and Administration (DFA)

Office of the State Engineer (OSE)

New Mexico Department of Environment (NMED)

SUMMARY

Synopsis of Bill

House Bill 710 appropriates \$250 thousand from the general fund to the Local Government Division (LGD) of the Department of Finance and Administration (DFA) in FY07 to acquire water rights for the San Rafael water and sanitation district.

FISCAL IMPLICATIONS

The appropriation of \$250 thousand contained in this bill is a non-recurring expense to the general fund. Any unexpended or unencumbered balance remaining at the end of FY07 would revert to the general fund.

SIGNIFICANT ISSUES

The Office of the State Engineer (OSE) offered the following information. The San Rafael Water and Sanitation District (District) has a total of 108.42 acre-feet per annum of declared and permitted water rights. The District over-diverted a total of 52.76 acre-feet of water between the

years 1996 and 2004. The total diversion for the year 2005 is incomplete so it was not included in the over diversion calculation. The OSE requires that past over-diversions be paid back. The District will not be in compliance with the conditions of their permit until they pay back past over diversions. The District may lease water rights for year to pay back past over diversion. The District acquired an additional 10 acre-feet of water rights in 2002, which increased their diversion amount from 98.42 acre-feet per year to 108.42 acre-feet per year. Even so, their diversions have exceeded their permitted right to divert water every year since 1996. Diversions amounts during this time period have ranged from a low of 91.08 acre-feet (1999) to a high of 116.107 acre-feet (2001). The diversion amount has fluctuated in the last few years so it is difficult to establish a clear trend. However, the average annual diversion during the last 5 years is ~114 acre-feet per year. Based on this average, the District needs to purchase at least 6 acre-feet of water rights. The District did file Return Flow Plan for considerations by the State Engineer on June of 2001. This plan was reviewed and denied by the OSE Hydrology Bureau in 2002. Given the above circumstances, the District needs to pay back past over diversions and provide a long-term solution to chronic annual over diversions of water by purchasing water rights. If the District acquires more water rights than they currently need, they are eligible to file a 40-year water plan – Section 72-1-9, NMAC.

OSE noted that proper acquisition of water rights in the San Rafael area can be a complex issue. To ensure valid and properly usable rights are obtained, San Rafael LGD/DFA should coordinate any water right purchase with the OSE.

DFA noted the District currently serves a community of 10,000 people, with 323 active hook-ups. They have an active waiting list of ten additional families. Construction in a nearby subdivision has been halted due to lack of available water to sustain the community. The community has room to grow but lacks the water rights to serve new members.

ADMINISTRATIVE IMPLICATIONS

DFA indicated that agency does not have experience in purchasing water rights. The Interstate Stream Commission has more expertise in this area. It may be difficult to locate and acquire \$250,000 worth of water rights within the appropriation period stated in the bill.

TECHNICAL ISSUES

DFA suggested that extension of the appropriation period may be necessary as it may take time to identify and purchase the available water rights.

NMED indicated capital outlay requests for water right purchases have been assigned to the Office of the State Engineer in the past. The OSE is responsible for water rights adjudication, permitting, and approval and would be the more appropriate administrator of the funds.

DH/nt