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## FISCAL IMPACT REPORT

ORIGINAL DATE 1/31/2007  
 LAST UPDATED 3/10/2007 HB 579/a HAGC

SPONSOR Cervantes

SHORT TITLE Appointment of Water Masters by Majority SB \_\_\_\_\_

ANALYST Woods

### APPROPRIATION (dollars in thousands)

Appropriation		Recurring or Non-Rec	Fund Affected
FY07	FY08		
NFI	NFI		

(Parenthesis ( ) Indicate Expenditure Decreases)

### ESTIMATED ADDITIONAL OPERATING BUDGET IMPACT (dollars in thousands)

	FY07	FY08	FY09	3 Year Total Cost	Recurring or Non- Rec	Fund Affected
<b>Total</b>		Indeterminate*	Indeterminate *	Indeterminate *	Recurring	General

(Parenthesis ( ) Indicate Expenditure Decreases)

\*See OSE comments below

### SOURCES OF INFORMATION

LFC Files

#### Responses Received From

Office of the State Engineer (OSE)

### SUMMARY

#### Synopsis of HAGC Amendment

House Agriculture and Water Resources Committee amendment to House Bill 579 amends the language as follows:

- (1) Return to NMSA 1978, §72-3-2 language that HB579 as introduced struck out (page 2, lines 4-8) that allows the State Engineer to appoint a water master if in his opinion the public safety or the interests of water right owners in any district require appointment of a water master;

(2) Provide that where the State Engineer makes such an appointment of a water master, the salary and costs of the water master may not be passed on to water right owners through the county or counties in which the water master's duties are to be performed pursuant to NMSA 1978, §72-3-4; and

(3) Strike all references in Section 72-3-2 to "water users" and replace them with "water rights owners".

OSE notes that the amendment provides that where the State Engineer makes such an appointment of a water master, the salary and costs of the water master may not be passed on to water right owners through the county or counties in which the water master's duties are to be performed pursuant to NMSA 1978, Section 72-3-4.

OSE states that funding for water masters appointed by the State Engineer could no longer be funded through county tax assessments. As a result any additional water masters required in the future for the implementation of the State Engineer's Active Water Resources Management ("AWRM") initiative would have to be funded through either additional appropriations or the existing budget of the Office of the State Engineer.

OSE lists the following significant issues:

The HAGC amendments restore to §72-3-2 the State Engineer's authority to appoint water masters according to his own best professional judgment. This authority is essential to the State Engineer's ability to implement water rights administration under his AWRM initiative under which regulations are currently being written and will be promulgated to fulfill the legislative mandate embodied in NMSA 1978, §72-2-9.1 (2003) to administer water rights.

Nonetheless, OSE opines, HB 579 as amended by HAGC would still hamper the State Engineer's ability to implement AWRM because the amended bill would prohibit the State Engineer, where he has appointed a water master in his discretion, from utilizing the authority granted in existing §72-3-4 to pass on to water rights owners the costs of the salary and expenses of the water master.

### Synopsis of Original Bill

House Bill 579 seeks to amend Section 72-3-2 NMSA 1978 (being Laws 1907, Chapter 49, Section 14, as amended) to read as follows:

72-3-2. WATER MASTERS--APPOINTMENT--REMOVAL--DUTIES.--The state engineer shall, upon the written application of a majority of the water users of any district in this state, appoint a water master for such district in the state, who may, for cause, be removed by the state engineer and shall be removed upon a petition of a majority of the water users of the district. The water master shall have immediate charge of the apportionment of waters in the water master's district under the general supervision of the state engineer, and the water master shall so appropriate, regulate and control the waters of the district as will prevent waste.

The bill seeks to remove the following language from 72-3-2 NMSA 1978 (being Laws 1907, Chapter 49, Section 14, as amended)

The state engineer may, if in his opinion the public safety or interests of water users in any district in the state require it, appoint such water master for temporary or permanent service in such district in the absence of the application above provided for in this article.

There is no appropriation attached to this legislation.

### **SIGNIFICANT ISSUES**

OSE indicates that this bill, would completely remove the State Engineer's power, on the books since enacted in 1907, to appoint water masters for the administration of water rights when he determines it is necessary for the public safety or the interests of water right owners in a water master district. The bill would make it virtually impossible for the State Engineer to implement water rights administration under his Active Water Resource Administration ("AWRM") initiative, under which regulations are currently being written and will be promulgated in several critical basins statewide to administer water rights. These regulations are being promulgated to fulfill the legislature's 2003 directive to the State Engineer, NMSA 1978, § 72-2-9.1 (2003), to administer water rights.

OSE opines that Section 72-2-9.1 recognizes that "the adjudication process is slow, the need for water administration is urgent, compliance with interstate compacts is imperative and the state engineer has authority to administer water allocations in accordance with the water right priorities recorded with or declared or otherwise available to the state engineer." Section 72-2-9.1 mandates that the State Engineer adopt regulations for priority administration. Section 72-3-2 has been the law since the water code was enacted in 1907.

OSE notes that it is crucial to retain the State Engineer's authority to appoint water masters based upon his best professional judgment. This authority is the primary tool the State Engineer has at his disposal to comply with the mandate of Section 72-2-9.1 to prevent illegal diversions, over diversions, and waste of water. The water master works on the ground to administer against illegal diversions and over diversions, prevent the waste of water, and distribute the available water supply based upon the priority dates of all water rights or based upon any shortage sharing agreements that may exist. Amending Section 72-3-2 to eliminate the State Engineer's independent authority to appoint water masters would significantly undermine the State Engineer's ability to carry out the mandate of Section 72-2-9.1 which requires that the State Engineer administer water rights in the state.

Further, the bill, if enacted, would also remove the State Engineer's ability to conduct, through his water masters, water rights administration as necessary in a number of critical basins affected by interstate compacts and state line delivery obligations. It therefore would directly affect the state's ability to meet its interstate compact delivery obligations and would increase the state's risk of exposure to interstate compact litigation in the United States Supreme Court. It would also negatively impact implementation of large-scale, critically important settlements, including Indian water rights settlements, and other important issues affecting the public welfare of the state.

### **PERFORMANCE IMPLICATIONS:**

OSE suggests that the State Engineer would not be able to fully implement water rights administration under the AWRM initiative presently underway and planned for future

management of the States' water resources. This would remove the State Engineer's ability to respond to immediate concerns or needs to administer water rights in critical basins, to deal with water shortages, to meet the state's interstate compact obligations, and to implement large-scale, critically important settlements.

**ADMINISTRATIVE IMPLICATIONS:**

OSE states that the State Engineer will not be able to effectively discharge his statutory duties, especially in the AWRM critical basins, to administer water rights in critical basins, to deal with water shortages, to meet the state's interstate compact obligations, and to implement large-scale, critically important settlements.

**OTHER SUBSTANTIVE ISSUES:**

OSE indicates that this bill when read with the amendment proposed by SB461 lays the foundation for replicating on our other compacted interstate rivers the Pecos River problem of claims that depletions increased and because the State was without proper monitoring to make the case that there were in fact no new net increase in depletions over those allowed under the compact.

**ALTERNATIVES:**

OSE suggests that Section 72-3-2 remain as currently written.

**WHAT WILL BE THE CONSEQUENCES OF NOT ENACTING THIS BILL**

OSE states that, "The State Engineer will continue to fulfill his duties as required by the statutes governing him and as contemplated by the citizens of New Mexico in the State Water Plan and in Section 72-2-9.1 to administer water rights through pursuit of his Active Water Resource Management initiative and to put in place the necessary tools and processes to effectively manage the water resources of the State."

BFW/mt