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FISCAL IMPACT REPORT

ORIGINAL DATE 3/05/2007

SPONSOR House Floor LAST UPDATED 3/12/2007 HB 580/HFLS/a SCONC

SHORT TITLE State Engineer Compliance Order Enforcement SB _____

ANALYST Schuss

APPROPRIATION (dollars in thousands)

Appropriation		Recurring or Non-Rec	Fund Affected
FY07	FY08		
	NFI		

(Parenthesis () Indicate Expenditure Decreases)

SOURCES OF INFORMATION

LFC Files

Responses Received From

Office of the State Engineer (OSE)

SUMMARY

Synopsis of SCONC Amendment

The Senate Conservation Committee amendment changes Subsection B of Section 1 to read:

This Section shall not be construed to affect or interfere with any jurisdiction of an irrigation district, *conservancy district*, a state court, a federal court or an Indian Nation, tribe or pueblo to enforce its orders and decrees pertaining to water rights.

Synopsis of Original Bill

The House Floor substitute to House Bill 580 would amend Section 72-2-18 NMSA 1978, which governs the issuance of compliance orders by the State Engineer in response to alleged violations of the water code, conditions of permits and licenses issued by the State Engineer, and court orders adjudicating water rights.

SIGNIFICANT ISSUES

OSE has included the following in their analysis:

The Interim Water and Natural Resources Committee endorsed this bill on November 30, 2006. The amendments to § 72-2-18 set out in the House floor substitute for HB 580 are based

upon the State Engineer's six years of experience in implementing the compliance order statute since it was enacted in 2001. The amendments to § 72-2-18 are intended to: 1) clarify the scope of compliance orders, 2) clarify and streamline the procedures for issuing and challenging compliance orders, and 3) bring § 72-2-18 into conformance with other provisions of the water code. The amendments also make some technical changes and reorganize the statute so that it is easier to read and follow. The amendments make the following substantive changes to the existing statute:

Subsection (B) of § 72-2-18 is amended to add a reference to state courts to make clear that § 72-2-18 is not intended to interfere with any jurisdiction of an irrigation district, a state or federal court, or an Indian nation, tribe, or pueblo to enforce its orders and decrees pertaining to water rights.

Subsection (C) of § 72-2-18 currently names certain types of enforcement actions that the State Engineer may prosecute, while omitting others. This creates the potential for confusion in the issuance of a compliance order and for those receiving a compliance order. The amendment to subsection (C) removes any uncertainty by comprehensively stating the scope of orders that may be included in compliance orders. The amendment also states clearly that the scope of a compliance order may include violations of the water code, any condition of permits or licenses issued by the State Engineer, and a court order adjudicating a water right.

The other substantive changes to the provisions of § 72-2-18 set out in House floor substitute for HB 580 clarify and streamline the procedures relating to compliance orders. Currently, § 72-2-18 does not clearly express when a compliance order becomes final, how the pursuit of an informal resolution of a compliance order affects the procedural requirements of challenging a compliance order, or the process that respondents must follow in order to challenge the order. The amendments to § 72-2-18 clarify these three issues.

First, subsection (D) is amended to clarify that a compliance order is final thirty days after receipt of notice of the order by certified mail, unless the person named in the order requests a hearing before the State Engineer. The House floor substitute for HB 580 also amends subsections (D) and (E) to make clear that a compliance order is not enforceable until it becomes final, and amends subsection (G) to clarify that civil monetary penalties assessed by the State Engineer for violation of a compliance order may be assessed only after the compliance order becomes final.

Second, the House floor substitute provides in subsection (D) for informal resolution of a compliance order only after a timely request for hearing has been made.

Third, the House floor substitute clearly sets forth in subsection (D) the procedures for the recipient of a compliance order to request a hearing before the State Engineer. The amendments to subsection (D) also make § 72-2-18 consistent with § 72-2-16 NMSA 1978, which provides that "[n]o appeal shall be taken to the district court until the state engineer has held a hearing and entered his decision in the hearing." The House floor substitute also clarifies in subsection (F) that any appeal of a compliance order to district court shall not operate to stay enforcement of the compliance order, but that the district court may order a stay.

PERFORMANCE IMPLICATIONS

OSE states that this bill would improve their performance in administering the waters of the State of New Mexico.

BS/mt