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FISCAL IMPACT REPORT

ORIGINAL DATE 2-17-07

SPONSOR Gardner LAST UPDATED _____ HB 853

SHORT TITLE Changes to Adjudicated Water Rights SB _____

ANALYST Woods

APPROPRIATION (dollars in thousands)

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

(Parenthesis () Indicate Expenditure Decreases)

SOURCES OF INFORMATION

LFC Files

Responses Received From

Office of the State Engineer (OSE)

Attorney General's Office (AGO)

SUMMARY

Synopsis of Bill

House Bill 853 seeks to amend NMSA 1978, § 72-4-19 (1907), the statute that provides for the adjudication of water rights by court decree. This bill would add a sentence which reads, "The elements of a water right that is declared and adjudicated shall not be altered or modified except as provided by statute or by order of the court."

There is no appropriation attached to this legislation.

SIGNIFICANT ISSUES

AGO indicates that it is unclear what this amendment would accomplish since it describes the law as it currently exists under § 72-4-19. Under existing law, the only way that the elements of an adjudicated water right can be altered or modified is by application to the state engineer, pursuant to statute, and the state engineer's decision is subject to review by the courts. Because the proposed language does not alter existing law, it is unclear why the amendment is deemed necessary or desirable.

OSE notes that, as drafted, this amendment to § 72-4-19 is a simple restatement of the law as it currently exists. The state engineer is unaware of any reason such an amendment is needed or desirable. If the intent of the sponsor is to change some aspect of water law, whether statutory or common law, it is not evident from the bill. Further, that the only existing procedure for transferring or changing any element of an adjudicated water right as set forth in a final decree is by application to the state engineer whose decision is subject to review by the courts. During the course of an adjudication, including *inter se*, water rights elements are subject to being altered or modified prior to the courts' final decree.

WHAT WILL BE THE CONSEQUENCES OF NOT ENACTING THIS BILL

Both OSE and AGO agree that there will be no consequences, as whether this bill is enacted or not, the courts' ability to decree and adjudicate water rights and the statutory authority of the state engineer to administer and act on applications to transfer water rights and modify or alter only those elements related to amending purpose and place of use, or point of diversion (but not priority date or source and the amount of water) of adjudicated water rights in accordance with the constitutional requirement of beneficial use will remain unchanged.

BFW/csd