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FISCAL IMPACT REPORT

ORIGINAL DATE 2/27/07

SPONSOR Madalena LAST UPDATED _____ HB HJM 27

SHORT TITLE Protection of Native American Waters SB _____

ANALYST Weber

APPROPRIATION (dollars in thousands)

Appropriation		Recurring or Non-Rec	Fund Affected
FY07	FY08		
	NFI		

(Parenthesis () Indicate Expenditure Decreases)

SOURCES OF INFORMATION

LFC Files

SUMMARY

Synopsis of Bill

House Joint Memorial 27 (“HJM 27”) resolves that the senior water rights of the New Mexico Native American Nations, Pueblos and Tribes be acknowledged and protected during efforts to reach a comprehensive water use plan for the entire state of New Mexico, and that copies of HJM 27 be transmitted to the Governor of New Mexico and the State Engineer.

FISCAL IMPLICATIONS

No fiscal impacts identified.

SIGNIFICANT ISSUES

The State Engineer provides the following background on water rights.

The joint memorial is inaccurate when it declares that the water rights of New Mexico’s Native American nations, tribes, and pueblos have water rights that are senior to all other water rights in the state. While it is true that Native American pueblos in New Mexico claim surface water rights with the senior priorities in the stream systems where they are located, Native American nations and tribes within the state either claim or have had adjudicated surface water rights under the *Winters* doctrine that are among the most senior but are not always the most senior water rights in the stream systems where they are located. For example, because the priority for

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Winters rights is based upon the date of the reservation of land by the federal government for the nation or tribe, in some cases the priorities claimed or adjudicated for tribal *Winters* rights are junior to the priorities established by water right owners before the date the United States established the reservation.

For this reason, as well as the fact that some tribes and pueblos have established water rights under state law, the joint memorial also is potentially misleading when it sweepingly characterizes all of the water rights of the nations, tribes, and pueblos as “superior rights” without defining the term.

One of the initiatives of the State Engineer for the implementation of the state water plan is the Active Water Resource Management (AWRM) plan. The primary focus of this initiative is to protect senior water rights – including those owned or held by the state’s Native American nations, tribes, and pueblos.

MW/mt