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FISCAL IMPACT REPORT

ORIGINAL DATE 2-14-07

SPONSOR Cisneros LAST UPDATED _____ HB _____

SHORT TITLE State Engineer Compliance Order Enforcement SB 847

ANALYST Woods

APPROPRIATION (dollars in thousands)

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

(Parenthesis () Indicate Expenditure Decreases)

Duplicates HB580

SOURCES OF INFORMATION

LFC Files

Responses Received From

Office of the State Engineer (OSE)

SUMMARY

Synopsis of Bill

Senate Bill 847 seeks to amend § 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. The amendments in SB 847 clarify the language and intent of the statute and establish clear procedures for issuing and challenging compliance orders. The substantive changes are discussed below.

There is no appropriation attached to this legislation.

FISCAL IMPLICATIONS

OSE indicates that the provisions articulated under § 72-2-18 (G) allow, but do not require, the assessment of civil penalties of up to \$100 per day for violation of a compliance order, which may be assessed and deposited into the general operating fund. Civil penalties, which are rarely assessed, are anticipated to produce minimal revenue.

SIGNIFICANT ISSUES

OSE advises that House bill 580 was endorsed by the Interim Water and Natural Resources Committee on November 30, 2006. The amendments to § 72-2-18 set out in this bill are based upon the State Engineer's five years of experience in implementing the compliance order statute since it was enacted in 2001. The amendments to § 72-2-18 are intended to clarify the scope of compliance orders, clarify and streamline the procedures for issuing and challenging compliance orders, and 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:

- Amended § 72-2-18(B) would remove a reference to irrigation districts, while continuing to specify that this section shall not interfere with the jurisdiction of a federal court or an Indian nation, tribe or pueblo to enforce its orders and decrees pertaining to water rights.
- Amended § 72-2-18(C) currently names certain types of enforcement actions that the State Engineer may prosecute, while omitting others. This creates confusion in the issuance of a compliance order and for those receiving a compliance order. The amendment 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.

OSE notes that the other substantive changes to the provisions of § 72-2-18 relate to clarifying procedures. 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 issues. The revised language makes it clear 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 revised language also provides for informal resolution of the order only after a timely request for hearing has been made and it clearly sets forth the procedures for requesting a hearing before the State Engineer.

OSE concludes that the final substantive change made by the amendments to § 72-2-18 is to make this section consistent with § 72-2-16, 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."

PERFORMANCE IMPLICATIONS

OSE suggests that this bill would improve the State Engineer's performance in administering the waters of the State of New Mexico, and would enhance the quick resolution of alleged violations of the state water code, which would also benefit persons named in compliance orders.

WHAT WILL BE THE CONSEQUENCES OF NOT ENACTING THIS BILL

OSE opines that ambiguities concerning the scope of orders, the appeals process and the finality of compliance orders will continue to hinder the administration of the waters of the state and the enforcement of compliance orders by the state engineer. Substantial amounts of time will be required for the resolution of matters concerning compliance of the state water code and the appellate procedures will remain uncertain.

BFW/mt