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## FISCAL IMPACT REPORT

ORIGINAL DATE 2/18/07

SPONSOR Ulibarri LAST UPDATED \_\_\_\_\_ HB \_\_\_\_\_

SHORT TITLE CIBOLA COUNTY WATER RIGHTS PURCHASE SB 1069

ANALYST Propst

### APPROPRIATION (dollars in thousands)

Appropriation		Recurring or Non-Rec	Fund Affected
FY07	FY08		
	\$6,675.0	Recurring	General Fund

(Parenthesis ( ) Indicate Expenditure Decreases)

### SOURCES OF INFORMATION

LFC Files

#### Responses Received From

Department of Finance and Administration (DFA)

Office of the State Engineer (OSE)

### SUMMARY

#### Synopsis of Bill

Senate Bill 1069 appropriates \$6,675.0 from the General Fund to the Local Government Division of the Department of Finance and Administration to purchase water rights for Cibola County for distribution to surrounding communities and for the development of an industrial park.

### FISCAL IMPLICATIONS

The appropriation of \$6,675.0 contained in this bill is a recurring expense to the General Fund. Any unexpended or unencumbered balance remaining at the end of FY08 shall revert to the General Fund.

### SIGNIFICANT ISSUES

DFA notes that Cibola County, along with most of McKinley County is designated as Region 6 for water planning purposes. All New Mexico communities have been tasked with creating a realistic plan for water use over the next 40 years, per state statute 72-1-9 NMA 1978. Water users in this region have traditionally been dependent on finite ground water supplies and then need to find

ways to extend the life of those supplies or acquire new sources of supply, for long-term stability. According to their water plan, Region 6 has never had sufficient surface water resources to meet its municipal and industrial demands on a sustainable basis. Many communities in Cibola County do not share one main or centralized water supply system. For future sustainability, a centralized water system will assist communities by reducing the number of individual wells that are drilled in the region. The issue of well contamination is also of high concern in this region.

The County may need to acquire sufficient water rights in order to begin development of a centralized water system for its residents. As part of the Region 6 water plan the City of Grants intends to review their current water rights and research the purchase of additional water rights. The County of Cibola intends to participate in regional small systems development, water rights and adjudication efforts along with drought and conservation planning. However, to date there are no applications to purchase water rights on file with the Office of the State Engineer from Cibola County. As per the State Engineer's Office, it appears that the communities of Grants and Blue Water currently hold sufficient water rights for their communities needs. Also, it is possible that unappropriated waters are available and therefore the County would not need to purchase water rights.

The law does allow for counties to hold water rights for up to 40 years, but the County must show a specific need for these held water rights.

## **OTHER SUBSTANTIVE ISSUES**

The Office of the State Engineer reports that water rights in New Mexico are appropriated to specific places of use and purposes of use. Beneficial uses for permitted purposes are the basis, the measure and the limit of a water right. In other words water has to be put to beneficial use for the right to its use to remain valid. Article 72-1-9, NMSA grants to municipalities, counties, school districts, state universities, member-owned community water systems, special water users' associations and public utilities supplying water the right to acquire and hold unused water rights in an amount to meet reasonable needs within forty years. Cibola County needs, if they haven't already, to assess its water needs over a 40-year planning period and submit a plan for state engineer review along with an application to transfer the water rights in question to the appropriate places and purpose of use identified in the plan. No funds should be expended prior to that process being completed. It may be determined that the water rights sought to be transferred are not valid water rights – this determination is made during evaluation of an application for permit to transfer. Also, the application is likely to be protested, which will lengthen the state engineer evaluation process due to the requirement for an administrative hearing. If protests are received, it is very likely the funds cannot be expended within one fiscal year due to the time it takes to conclude a hearing.

If the water rights being sought to be transferred are identified as being valid, an application for permit to change place and purpose of use should be filed and acted upon by the state engineer prior to obligating any funds to the seller of those rights. As part of the application process, the state engineer will evaluate the validity of the water rights and we will evaluate for impairment, Conservation and public welfare of the state of New Mexico.

**POSSIBLE QUESTIONS**

1. Has the County completed an assessment over a 40 year planning period and submitted that plan to the State Engineer along with an application to transfer water rights?

WEP/mt