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FISCAL IMPACT REPORT

ORIGINAL DATE 2-22-07

SPONSOR Campos LAST UPDATED _____ HB _____

SHORT TITLE State Engineer Review of Ground Water Exports SB SJM 30

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

Response Received From
Office of the State Engineer (OSE)

SUMMARY

Synopsis of Bill

Senate Joint Memorial 30 requests that the state engineer consider the availability of water supplies within a basin to which water is proposed to be exported from a mined ground water basin, when evaluating the applications to export ground water out of it's basin of origin.

There is no appropriation attached to this legislation.

SIGNIFICANT ISSUES:

OSE notes that, in New Mexico, water rights are established by the amount of water placed to beneficial use and are property rights that may be sold by the owner. While ground water rights cannot be transferred from one underground basin to another, the ground water itself can be diverted and physically transported from one basin to another by permit issued by the state engineer. Pursuant to state statutes, the state engineer regulates the use of water in the state – the place and purpose of use, etc. – through the permit process. To change any element of a water right, including place of use (such as from one basin to another), requires application to the state engineer and public notice in accordance with § 72-12-3 NMSA 1978 so water rights owners

may exercise their right to file objections. If objections are filed, the state engineer must hold a Quasi- judicial hearing. Whether objections are filed or not the application can be approved only if the state engineer finds that issuing the permit will not impair existing valid water rights, is not contrary to conservation of water within the state, and is not detrimental to the public welfare of the state.

OSE additionally notes that the joint memorial recitals address the concepts of “public welfare” and “conservation of water” in the evaluation of water rights applications to divert groundwater in one basin for beneficial use in another or different groundwater basin or stream system. In acting on such applications this memorial recommends that there should be three additional criteria, to public welfare and conservation of water requirements: 1) consistency with regional planning objectives; 2) proof of need for the water in the other basin; 3) proof of no alternatives for water within the other basin. For water rights applications evaluations, these new criteria, if adopted into law at some future point, would subvert the duty of the state engineer to consider the welfare of the people of the entire state – not one area of the state versus another area of the state, as proposed by this memorial.

OTHER SUBSTANTIVE ISSUES:

OSE suggests that the diversion of surface water from one basin into another has been a long accepted practice prior to and since statehood. Examples of existing transbasin diversions are: 1) from the Jemez River into the Rio Nacimiento ; 2) from the Rio en Medio into the Rio Chupadero; 3) from the Rio Quemado into the Rio Truchas; 4) from the Rio Hondo into the La Luz Creek; and 5) from the San Juan River into the Rio Grande. There are also plans to divert from the San Juan River in to the Little Colorado River drainage; and to divert from the Canadian River into the Ogallala under-ground water basin. Additionally, the potential for a pipeline from the Salt basin to other basins is being discussed.

Further, OSE opines that, although this memorial does not have the force of law and as well intentioned as it maybe, the legislature should consider the fact that the water supplies that support the state’s largest population and economic centers are fully utilized and their futures might well depend on the ability to pursue innovative solutions to the state’s water supply problems. The state’s two overly simplified choices are to either bring the water to the people or move the people to the water as this memorial appears to promote.

AMENDMENTS:

OSE proposes the following:

Page 3 line 14 – strike, “and”.

Page 4 line 8 – strike, “alternative” and insert in lieu thereof “alternatives”.

BFW/mt