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FISCAL IMPACT REPORT

ORIGINAL DATE 2/11/08
 SPONSOR Ben Lujan LAST UPDATED 2/13/08 HM 68/aHAWRC
 SHORT TITLE Spring Ditch Water Rights Impairment SM _____
 ANALYST Woods

APPROPRIATION (dollars in thousands)

Appropriation		Recurring or Non-Rec	Fund Affected
FY08	FY09		
NFI	NFI		

(Parenthesis () Indicate Expenditure Decreases)

Duplicates SM64.

SOURCES OF INFORMATION

LFC Files

Response Received From
 Office of the State Engineer (OSE)

SUMMARY

Synopsis of HAWRC Amendment

As included on page 1, lines 16 through 20, House Agriculture and Water Resources Committee Amendment to House Memorial 68 clarifies language. Specifically, the amended section now reads:

WHEREAS, the town of Taos has approved developments that have resulted in construction on the Spring ditch's water source and the point of diversion, thereby impairing delivery of water to rightful water rights owners and parciantes on the Spring ditch; and

The amendment adds no appropriation to the legislation.

Synopsis of Original Bill

House Memorial 68 states that the town of Taos has approved developments that have resulted in construction on the town's water source and the point of diversion, thereby impairing delivery of water to rightful water rights owners on Spring ditch. The legislation further indicates that the

course of an ancient acequia has been altered by the town of Taos and that permits have been issued allowing construction on lateral ditches.

The memorial resolves that the state engineer be requested to investigate impairment of historical water rights of the Spring ditch by the town of Taos and take any appropriate action to guarantee delivery of water to ditch parciantes. The memorial further resolves that that the state engineer report the results of the investigation and actions taken to remedy the impairment to the appropriate committee of the legislature by August 1, 2008, and that a copy of the memorial be transmitted to the state engineer.

There is no appropriation attached to the legislation.

SIGNIFICANT ISSUES

OSE indicates that the memorial states that the town of Taos has approved developments that have resulted in construction that impaired delivery of water to rightful water rights owners on the Spring Ditch; but that the, “Memorial does not state that part of the said construction is over 12-years old and the Office of the State Engineer (OSE) received no complaint on this matter until just recently - October 2007.”

OSE advises that the Acequia statutes, NMSA 1978, Sections 73-2-4 and 73-2-5, et seq., provide community ditches and acequias with both criminal and civil remedies in the courts for unlawful interference with an easement or access to a ditch. In addition, Articles 72-8-1 thru 72-8-6, also provides for criminal and civil liability for injury and damages resulting from any unlawful interference or injury from the type of situation presented by the Memorial. Article 72-8-6 states, “All violations of the provisions of this article, declared to be misdemeanors, shall be punished by a fine not exceeding one hundred dollars (\$100.00) nor less than ten dollars (\$10.00), or by imprisonment in the county jail not exceeding six months, or by both such fine and imprisonment, and any justice [magistrate] court of the county in which such misdemeanor has been committed shall have jurisdiction thereof”. OSE adds that, “Complaints such as the one presented by this Memorial are fairly commonplace and are dealt with by the OSE routinely. OSE staff is involved in this issue already and were involved prior to the legislative session. Staff is meeting with the parties involved in the issue and is attempting to help resolve differences, however, legal remedy to the dispute is through the courts.”

ADMINISTRATIVE IMPLICATIONS

OSE notes that it receives numerous complaints similar to the one addressed by this Memorial. Resolution of disputes is a priority and staff routinely meets with parties to help resolve differences: “Most of the disputes are not elevated to the level of a legislative Memorial and this dispute does not require legislative attention.”

CONFLICT, DUPLICATION, COMPANIONSHIP, RELATIONSHIP

This legislation duplicates SM64.

OTHER SUBSTANTIVE ISSUES

OSE advises that, “Existing Statutes (as cited above) provide a venue for legal resolution of these types of disputes. This Memorial is not required as the jurisdiction of the OSE is limited to meeting with the parties to the dispute and helping to resolve their differences. The relevant facts are still in question and OSE staff is currently researching the situation.”

WHAT WILL BE THE CONSEQUENCES OF NOT ENACTING THIS BILL

PSE states that, “The OSE will continue to address the issues and the disputes involved with this complaint. If all else fails, the water rights owners and paricantes of the Spring Ditch in Taos, NM can pursue remedy through the courts – where jurisdiction for this type of dispute properly resides.”

BFW/bb