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FISCAL IMPACT REPORT

ORIGINAL DATE 1-19-2008

SPONSOR Papen/Cervantes LAST UPDATED _____ HB _____

SHORT TITLE Water Rights Adjudication Settlement Offers SB 92

ANALYST Woods

APPROPRIATION (dollars in thousands)

Appropriation		Recurring or Non-Rec	Fund Affected
FY08	FY09		
	\$10,000.0	Recurring	General

(Parenthesis () Indicate Expenditure Decreases)

SOURCES OF INFORMATION

LFC Files

Responses Received From

Office of the State Engineer (OSE)

Administrative Office of the Courts (AOC)

SUMMARY

Synopsis of Bill:

Senate Bill 92 seeks to appropriate \$10,000,000 from the general fund to the office of the state engineer for expenditure in fiscal year 2009 and subsequent fiscal years to continue the lower Rio Grande water rights adjudications by making offers of settlement and taking related actions necessary to complete the adjudications. Any unexpended or unencumbered balance remaining at the end of a fiscal year shall not revert to the general fund.

SIGNIFICANT ISSUES

AOC advises that, currently, all water rights claimants are scheduled to be joined in the case by March 31, 2008. Following the completion of the joinder phase of the adjudication, staff from the Office of the State Engineer will prepare Offers of Judgment for claimants, which present the claimants with the State Engineer's assessment of their water right. With the current staff levels dedicated to the Lower Rio Grande adjudication, the Office of the State Engineer has indicated they will not be able to prepare all outstanding Offers of Judgment within the time constraints currently contemplated by the Court's Fourth Amended Order Regarding Stream Adjudication Procedures. In order to expedite the preparation of Offers of Judgment, the Office of the State Engineer must not only acquire new staff, but also train new staff over a period of several

months. The Office of the State Engineer must also secure working sites and equipment for new staff, and ensure that adequate technical staff is in place to support the work of the adjudication staff. The funds requested in this appropriation would address these staffing and technical needs.

OSE notes that the \$10 million the legislation would appropriate for the Lower Rio Grande stream adjudication is consistent with the projected costs and resources that counsel for the State estimate would be required in order to comply with the adjudication court's newly adopted scheduling order for service of settlement offers. The court entered the new scheduling order without prior consultation with the State. Counsel for the State informed the court that, in their view, it would be impossible to comply with the court's schedule. The court subsequently directed counsel for the State to submit a written estimate of the number of additional workers and additional funding required to comply with the court's order.

PERFORMANCE IMPLICATIONS

OSE indicates that the additional funding would enable the OSE's Litigation and Adjudication Program (LAP) "to hire additional staff or contractors to accelerate the pace at which the LRG stream adjudication is able to proceed and, ultimately, be completed."

ADMINISTRATIVE IMPLICATIONS

OSE indicates that "new staff or contractors who would be hired with funds made available by the appropriation would place an additional administrative burden on the Office of the State Engineer."

TECHNICAL ISSUES

OSE notes that, as drafted, SB 92 refers to "the lower Rio Grande water rights adjudications." This is not accurate. There is a single Lower Rio Grande stream adjudication, State of New Mexico *ex rel.* Office of the State Engineer v. EBID, et al., No. CV 96-888, filed pursuant to NMSA 1978, Sections 72-4-15 through 72-4-19, the subject matter of which is the determination of all claims to the use of water in the Lower Rio Grande Stream System. Language in SB 92 referencing "the lower Rio Grande water rights adjudications," and "adjudications," should therefore be revised to refer to the "Lower Rio Grande stream adjudication."

OTHER SUBSTANTIVE ISSUES

AOC suggests that additional funding for the Lower Rio Grande adjudication is likely to result in a higher volume of transactions with the Court. The Court may therefore apply additional resources to efficiently process the Offers of Judgment and resolve associated disputes. Current funding of stream adjudications through the water project fund is anticipated to be adequate to cover any needed additional funding for FY09.

WHAT WILL BE THE CONSEQUENCES OF NOT ENACTING THIS BILL

The additional funding that SB 92 would provide for the Lower Rio Grande stream adjudication would not be available.

AMENDMENTS

OSE suggests the following language: P.1. LL. 12, 14, 21, and 23: strike all occurrences of the word “adjudications” and insert in lieu thereof “adjudication”.

BFW/mt