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FISCAL IMPACT REPORT

ORIGINAL DATE 01/23/12

SPONSOR Tripp LAST UPDATED _____ HB 73

SHORT TITLE Stock Water Rights on Federal Lands SB _____

ANALYST van Moorsel

APPROPRIATION (dollars in thousands)

Appropriation		Recurring or Nonrecurring	Fund Affected
FY12	FY13		
\$350.0		Nonrecurring	General Fund

(Parenthesis () Indicate Expenditure Decreases)

SOURCES OF INFORMATION

LFC Files

Responses Received From

Office of the State Engineer (OSE)

SUMMARY

Synopsis of Bill

House Bill 73 appropriates \$350,000 from the general fund to the Office of the State Engineer (OSE) for expenditure in FY 12 and FY13 for use in its Deming office to support identification and quantification of stock water rights on federal lands within the Gila and San Francisco river basins.

FISCAL IMPLICATIONS

The appropriation of \$350,000 contained in this bill is a nonrecurring expense to the general fund. Any unexpended or unencumbered balance remaining at the end of FY13 shall revert to the general fund.

SIGNIFICANT ISSUES

The OSE notes that in the 1960's the State of New Mexico, was drawn into a United States Supreme Court (USSC) Equitable apportionment of the waters of the Colorado River as an unwilling participant. As part of the battle between Arizona and California, the USSC limited New Mexico's uses on the Gila and San Francisco rivers, tributaries to the Colorado River. One of the questions that arose during the case was who was entitled to the right to waters developed on United States Forest Service (USFS) lands. The USSC did not answer this question as part of

the case, and as such, certain uses were not addressed by the 6th Judicial District Court as part of the required adjudication of rights in New Mexico, which immediately followed the USSC's decision in AZ v. CA. The District Court completed its adjudication in 1967, leaving the ownership of water rights established within a National Forest open for litigation.

The 6th Judicial District Court took up the USFS water right ownership issue in the Mimbres adjudication, during which the State of NM asserted that the USFS had no reserved right for stock watering purposes within the Gila National Forest. The USSC confirmed this decision in its 1993 decision in United States v. New Mexico, which paved the way for identification and quantification of stock water rights within national forests and ownership of water rights.

The Deming Office (District 3) of the State Engineer throughout the years has worked to identify these rights. A vital effort for New Mexico, this remains a significant and demanding task for the OSE due to the vast size of the forest and the available resources of the District Office.

The OSE adds that New Mexico is required by Supreme Court order to report annually all of the uses of water from the Gila River system. New Mexico has annually reported 1072 stock water uses on USFS maintained lands as private uses, but these uses have never been identified and quantified.

ADMINISTRATIVE IMPLICATIONS

The OSE reports that the funds would be expended contracts for the purpose of conducting the required hydrographic survey of stock watering rights within the Gila National Forest.

PvM/svb