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## FISCAL IMPACT REPORT

ORIGINAL DATE 03/05/13  
 SPONSOR Cote LAST UPDATED 03/14/13 HM 85  
 SHORT TITLE 40-Year Water Planning Recommendations SB \_\_\_\_\_  
 ANALYST McCoy

### APPROPRIATION (dollars in thousands)

Appropriation		Recurring or Nonrecurring	Fund Affected
FY13	FY14		
NFI	NFI	N/A	N/A

(Parenthesis ( ) Indicate Expenditure Decreases)

### SOURCES OF INFORMATION

LFC Files

### SUMMARY

#### Synopsis of Bill

House Memorial 85 (HM 85) requests the New Mexico Legislative Council Service to direct the appropriate interim committee to hear testimony from the Office of the State Engineer, the Public Regulation Commission, Public Utilities and the New Mexico Municipal League regarding the effect of Section 72-1-9 NMSA 1978, whether this statute has been erroneously interpreted to exclude public utilities that do not sell water to municipal or county governments from having a forty-year exemption from forfeiture or abandonment of their water rights for a planning period and whether there is any significant potential that the proposed clarification would increase water speculation. The memorial also requests the appropriate interim committee also hear testimony in consideration of whether Section 72-1-9 NMSA 1978 shall be amended report its findings and proposed legislation by December 1, 2013.

### FISCAL IMPLICATIONS

No Fiscal Impact.

### SIGNIFICANT ISSUES

The New Mexico Department of Agriculture (NMDA) notes, the current drought conditions have placed additional strain on local and regional water supplies. Understanding regional water planning efforts and concerns with respect to available water supply and demand is crucial to water management regimes across the state.

The Office of the State Engineer/Interstate Stream Commission (OSE/ISC) notes the agency previously reviewed these issues in 2007, 2008, and 2009 pursuant to HM 42 (Stewart) passed in 2007. The OSE/ISC reported to the Legislature that the result was Section 72-1-9 had been properly interpreted, limited and applied and therefore no changes were recommended. This memorial would have the OSE once again expend resources to prepare testimony and attend meetings of the interim committee, where the likely outcome again would be that the State Engineer has properly applied Section 72-1-9 as evidenced by the fact that for the last 38 years it has given it the same interpretation and no court has found otherwise. The OSE/ISC reports forty year plans are highly technical and require hundreds of staff hours to review, broadening the application of Section 72-1-9 would increase the OSE staff workload twofold for an already overburdened staff. The OSE notes resources would be over-extended by creating additional administrative proceedings necessary if forty-year water use plans were to be available to all public utilities.

The OSE/ISC also notes the following:

Page 1, line 17 – the quote “the state’s forty-year water planning statute,” is unsubstantiated. §72-1-9 is a statute related to the application of for new appropriations, or for change of purpose or place of use for certain covered entities for situations where the entities may not put the water to beneficial use for a period not to exceed a 40-year planning period. Water planning is a more comprehensive exercise that is not contemplated in §72-1-9 but in §72-14-3.1 and 3.2.

Page 1, starting on line 24 – the quote “without actually using their water and still retain their water rights;” This is incorrect. Section 72-5-28 only exempts periods of nonuse when water rights are acquired by incorporated municipalities or counties for implementation of their water development plans or for preservation of municipal or county water supplies shall not be computed as part of the four-year forfeiture statute. Other listed entities are still required to put water to beneficial use in accordance with the conditions of their permit but a 40 year period in which to place water to beneficial use will be allowed with an approved plan.

Page 2, starting with line 2 – This Whereas is incorrect. The legislature did not provide its rationale in §72-1-9. The original law only included public utilities that provided water to municipalities, not their individual capacities, and as stated above, public utilities are not immune from forfeiture.

Page 2, starting with line 11 – This Whereas that House Bill 94 would exclude public utilities from abandonment or forfeiture is not accurate since House Bill 94 doesn’t address the forfeiture statute.

## **PERFORMANCE IMPLICATIONS**

The OSE/ISC notes, effective water plans that can be implemented must be kept current to reflect changing conditions.

The New Mexico State University (NMSU) notes, the benefits of regional water planning to the state encompass every sector of the economy including agriculture, energy, business, municipal, industrial, and educational sectors. Every person in New Mexico relies on a safe, reliable source of water. Water planning is a necessary part of providing accurate information for sound policy making.

**RELATIONSHIP**

HM 85 relates to HB 94, which would modify the phrase “public utilities supplying water to municipalities or counties” in three places within Section 72-1-9 NMSA 1978 by inserting the phrase “customers within” before “municipalities or counties.” The OSE notes, HB 94 would expand the number of “public utilities” that are entitled to use the forty-year water use planning period provided in Subsection B of Section 72-1-9 NMSA 0978. Currently, under the existing statutory provision, only public utilities that supply water directly to municipalities or counties are entitled to a forty-year planning period. Since every New Mexico water utility serves customers within at least one of New Mexico’s counties, this bill would change Section 72-1-9 NMSA1978 to authorize all public utilities to utilize a forty-year water use planning period, even water utilities that do not provide water directly to municipalities or counties. According to the OSE, this change would provide a benefit to privately owned water utility companies which was originally intended only for public entities like municipalities and counties.

MTM/blm:svb