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### FISCAL IMPACT REPORT

SPONSOR:	Wilson	DATE TYPED:	02/06/00	HB	
SHORT TITLE:	State Regional Water Banks			SB	323
				ANALYST:	Pickering

### APPROPRIATION

Appropriation Contained		Estimated Additional Impact		Recurring or Non-Rec	Fund Affected
FY00	FY01	FY00	FY01		
NFI	\$ 0.0	NFI	Indeterminate	Recurring	General

Duplicates HB420 and Relates to HB421 and HJM8.

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### SOURCES OF INFORMATION

New Mexico Department of Agriculture (NMDA)

Office of the State Engineer / Interstate Stream Commission (OSE/ISC)

## **SUMMARY**

### Synopsis of Bill

Section 1A of SB323 would enact a new section of Chapter 72 NMSA 1978 granting the state engineer additional powers and responsibilities to establish a system of state regional water banks. The banks would be utilized to deposit and lease conserved water, surplus water and water currently put to the beneficial use that an owner agrees not to use for the term of the deposit. Additionally, the banks would serve as a clearinghouse for temporary transfers of water and as depositories for state purchased water, conserved water, and surplus water stored in reservoirs or pursuant to the Ground Water Storage and Recovery Act.

Section 1B of SB323 states that the engineer could acquire from willing sellers or lessors water stored in water banks to satisfy interstate compact obligations, environmental purposes or to mitigate water shortages and drought. Section 1C of the bill authorizes the engineer to conduct hearings and adopt rules for administration of state regional water banks. Although the bill does not carry an appropriation, Section 1D calls for the engineer to hire a full-time water bank director to administer and operate the regional water banks. The director would administer water bank transfers, annually determine water transfer fees and amounts, have authority to purchase, lease and hold water rights in the state's name, arrange for reservoir or underground storage of banked waters and determine compliance with rules for stored water.

Section 2 of SB323 would authorize irrigation districts, conservancy districts and acequias to establish water banks to serve their members. These entities could set eligibility and deposit requirements for their members. The entities could also temporarily transfer banked water to new places without formal proceedings before the state engineer provided that, 1) transfers take place within the same stream system, 2) the water is used for the same purpose allowed under a state engineer permit, 3) the transfer takes place within the political and hydrological boundaries of the local water bank and, 4) the transfer does not change the surface/ground water nature of the diversion.

### Significant Issues

SB323 essentially allows for the creation of many different water bank systems around the state with

different administrators and rules. OSE believes that due to the complex nature of New Mexico's interstate compact water delivery obligations, it would be difficult to determine if SB323 could resolve those obligations through water banking. NMDA questions whether Section 1A of the bill, expands the engineer's authority in terms of acquiring stored water for environmental purposes. Also, NMDA believes it would be in the best interest of the agriculture community for the water rights adjudicatory process to be nearer to completion before SB323 is

enacted.

## **FISCAL IMPLICATIONS**

Although SB323 does not contain an appropriation, its companion bill, HB421 appropriates \$100.0 in general fund for establishing and administering a state water banking program. Additionally, OSE reported this amount to be insufficient for the operation of a state water bank program pursuant to SB323.

## **ADMINISTRATIVE IMPLICATIONS**

According to OSE, SB323 would add considerable duties to the existing responsibilities of the state engineer. New rules and regulations would have to be created and adopted for a state regional water bank system, as well as some oversight for local water banks administered by irrigation districts and acequias. Consequently, OSE believes the engineer and water bank director would receive numerous applications for consideration and evaluation required by the new banking system.

## **CONFLICT/DUPLICATION/COMPANIONSHIP/RELATIONSHIP**

OSE noted that SB323 could conflict with local water banking rules and regulations now in existence or which might be enacted in the future. In addition, the bill could also conflict with existing state statutes. Also, SB323 relates to HJM8 which calls for setting aside funds for future state water projects for capital costs associated with storage, distribution, and treatment systems, excluding dam construction.

## **TECHNICAL ISSUES**

In its analysis, OSE reported that water banking as a concept, should be approached cautiously as New Mexico should try and learn from states such as Arizona and Washington in their attempts to establish such a

system. For example, the agency stated that Washington's program decentralized water allocation from the state to eight local conservancy boards. After three years, the results appeared to be mixed as the local boards have not fully considered prior appropriation hierarchy and there have been increased costs to the public and to applicants.

Hence, provisions in SB323 which give full regional authority to a local bank may result in problems similar to Washington.

## **SUBSTANTIVE ISSUES**

As NMDA explained in its bill analysis, water banking already occurs in New Mexico for irrigation and conservancy districts, so the consequences of not enacting the bill would have little impact upon these existing conditions. However, the agency did offer an alternative which is for the state to remove the legal impediments to water conservation. Rather than enact this bill, NMDA recommends that the legislature propose an amendment to the forfeiture laws regarding water and its non-use. In this manner, a market based approach could be adopted allowing market forces to facilitate water conservation and water transfers with some oversight by OSE.

RP/prr