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## FISCAL IMPACT REPORT

ORIGINAL DATE 2/07/2007

SPONSOR Griego LAST UPDATED \_\_\_\_\_ HB \_\_\_\_\_

SHORT TITLE Transportation Commission Water Diversions SB 900

ANALYST Schuss

### APPROPRIATION (dollars in thousands)

Appropriation		Recurring or Non-Rec	Fund Affected
FY07	FY08		
	NFI		

(Parenthesis ( ) Indicate Expenditure Decreases)

Duplicates HB 680

### SOURCES OF INFORMATION

LFC Files

#### Responses Received From

Office of the State Engineer (OSE)  
NM Department of Transportation (NMDOT)

### SUMMARY

#### Synopsis of Bill

Senate Bill 900 exempts the State Transportation Commission and its contractors from the requirement of publication and hearing for water rights applications to temporarily change the location of use, method of use or point of diversion of water rights for projects involving the construction, reconstruction, maintenance or repair of public roads, streets, highways and airports – when, in the opinion of the state engineer, the temporary change will not be detrimental to existing, valid water rights.

### SIGNIFICANT ISSUES

NMDOT states that the provisions of SB 900 include limiting the use of water for temporary changes to two years. This could potentially cause NMDOT problems on road projects in the instances when the timelines for those projects exceed the two year period.

SB 900 also eliminates that ability to obtain temporary two year permits for advance withdrawals of water which could also negatively affect NMDOT's projects.

### **ADMINISTRATIVE IMPLICATIONS**

OSE states that they will continue to evaluate these types of water rights applications (temporary uses for road construction) for impairment, public welfare, and conservation of water even though the applications will not be subject to publication of notice and hearing. The state engineer will approve temporary changes for road construction projects - if there is no impairment to existing, valid water rights and if it is in the public welfare of the state.

Passage of this bill will result in an expedited process for evaluating and acting on temporary changes of water rights in support of New Mexico road construction projects. Passage of this bill will also result in fewer cases going to hearing – the resources of the office of the state engineer will be able to better address more significant water rights changes and will be able to act on all types of water rights applications in a more efficient manner.

### **DUPLICATION**

Duplicates HB 680

### **OTHER SUBSTANTIVE ISSUES**

OSE notes the following issues:

This bill will allow temporary use of water for construction, maintenance and repair of the state's highway and road system in a timely manner. Contractors are responsible for obtaining water for their projects but cannot begin the formal part of this process (water rights application process) until they are awarded a contract. The present process requires advertisement of a notice in local newspapers once per week for three consecutive weeks and allows a period for receipt of protests after the last date of publication. Occasionally, there are protests to the application, which must be settled in a formal hearing procedure prior to use of the water. This process is time consuming and often delays the construction project.

Many highway construction projects within the state are in sparsely populated, rural areas with no easy access to sources of water for construction purposes – such as concrete batching, hotmix batching, dust control, compaction, etc. Present statutes allow for use of 3.0 acre-feet per annum under a temporary permit but 3.0 acre-feet is usually not enough. The amount authorized for use in construction, maintenance or repair of the state's roads and streets should be increased to more nearly provide for the needs of the construction industry. This amount of water is not likely to impair existing water rights over the long term and will allow for more timely and efficient road construction contracts. The state engineer will evaluate all applications for impairment, for conservation of water and for public welfare considerations.

BS/csd