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## FISCAL IMPACT REPORT

ORIGINAL DATE 02/09/11

SPONSOR Papen LAST UPDATED \_\_\_\_\_ HB \_\_\_\_\_

SHORT TITLE Single Duty of Water Within One District SB 366

ANALYST Hoffmann

### APPROPRIATION (dollars in thousands)

Appropriation		Recurring or Non-Rec	Fund Affected
FY11	FY12		
NFI	NFI		

(Parenthesis ( ) Indicate Expenditure Decreases)

Duplicates HB 279

### SOURCES OF INFORMATION

LFC Files

Responses Received From  
Office of the State Engineer (OSE)

### SUMMARY

#### Synopsis of Bill

Senate Bill 366 would amend Section 72-4-19 NMSA 1978 by adding a new subsection requiring that stream adjudication decrees specify a single duty of water for all irrigated crops within established irrigation or conservancy districts. In areas outside of and adjacent to established irrigation or conservancy districts, the duty would be required to conform to the duty within the district. In other areas within the stream system, the amendment would require the duty of water to be based upon hydrographic survey findings.

### FISCAL IMPLICATIONS

Senate Bill 366 makes no appropriation.

### SIGNIFICANT ISSUES

The following concerns were presented by the OSE.

Article 4, § 34 of the state constitution provides that “[n]o act of the legislature shall affect the right or remedy of either party, or change the rules of evidence or procedure, in any pending

case.” In 2008 the State entered into a settlement agreement in the pending Lower Rio Grande stream adjudication providing for adjudication of separate duties of water for mature pecan orchards and for other crop types. That agreement is subject to approval by the adjudication court. Trial on the question of irrigation water requirements, including whether the settlement agreement should be adopted by the court, is scheduled to be held in June of this year. Additionally, there are 12 other adjudications and a number of other settlements pending. Because of the constitutional prohibition against changing rights or remedies in pending cases, if enacted, the amendment contained in Senate Bill 366 would not apply to the Lower Rio Grande stream adjudication or to other pending settlement and stream adjudications in New Mexico. On the other hand, it would apply to future adjudications not yet filed.

Article 16, § 3 of the state constitution provides that beneficial use shall be the basis, the measure, and the limit of the right to the use of water. In quantifying beneficial use of water used for irrigation, stream adjudication decrees generally take locally derived climatic and other conditions into account. In the pending adjudications of the Pecos and Chama rivers, for example, the decreed duty of water varies based on changes in elevation of irrigated lands throughout the stream system. Similarly, in the 1929 Cimarron River adjudication decree, the court adjudicated separate duties of water for irrigated pasture and for other irrigated lands. The 1948 Echo Ditch Decree for the San Juan River assigns separate duties of water for individual ditches. And, as noted, in 2008 the State entered into a settlement agreement in the pending Lower Rio Grande stream adjudication, providing for adjudication of separate duties of water for irrigation of mature pecan orchards and for other crops. By requiring a single duty of water within irrigation or conservancy districts, Senate Bill 366 could inhibit the ability of adjudication courts to take local conditions into account in determining the amount of water placed to beneficial use for irrigation of crops in future adjudications.

The amendment contained in Senate Bill 366 pertains only to the decree of a duty of water. “Duty of water” generally is understood to refer to the farm delivery requirement - - the amount of water to be received at the farm headgate, which includes [consumptive use](#), [evaporation](#) and seepage from on-farm ditches, and water that eventually is returned to the system by [percolation](#) and [surface runoff](#). The duty of water is only one of the multiple components that define the amount of water used in irrigation, which are referred to as irrigation water requirements. In addition to the farm delivery requirement, stream adjudication decrees for irrigation water rights typically include the amount of water consumed in the irrigation of crops, referred to as the consumptive irrigation requirement, and can also include the amount of water required to be diverted at the source of water for conveyance to irrigated lands, referred to as the project delivery requirement. In limiting its scope to the duty of water, Senate Bill 366 does not account for all components of the amount of water for irrigation water rights that are subject to adjudication decrees.

Senate Bill 366 provides that the duty of water “in areas outside of and adjacent to established irrigation or conservancy districts shall conform to the duty within the district.” The extent of “areas outside and adjacent to established irrigation or conservancy districts” is not defined. Although it would not appear to be the intent of the bill, such areas might include lands with differing irrigation water requirements located some distance away from an irrigation or conservancy district within the same stream system. The bill also could require irrigation water rights in a stream system that are not necessarily based upon beneficial use of water, such as the rights of Native American tribes, to conform to the single duty of water decreed within an irrigation or conservancy district.

**CONFLICT, DUPLICATION, COMPANIONSHIP, RELATIONSHIP**

Senate Bill 366 is a duplicate of House Bill 279.

**TECHNICAL ISSUES**

The OSE notes that in other areas within a stream system that are not outside of and adjacent to established irrigation or conservancy districts, Senate Bill 366 provides that “the duty shall be based upon hydrographic survey findings.” Sections 72-4-13 through 16 of NMSA 1978 pertain to hydrographic surveys made, or accepted for filing, by the state engineer and Section 72-4-17 requires adjudication courts to direct the state engineer to make or furnish such hydrographic surveys in order to obtain all data necessary to the determination of the rights involved. For purposes of clarity and consistency, Senate Bill 366 should specify that the duty of water shall be based upon the findings of the hydrographic survey made or furnished to the adjudication court by the state engineer pursuant to Section 72-4-17 NMSA 1978.

**WHAT WILL BE THE CONSEQUENCES OF NOT ENACTING THIS BILL**

The OSE states that decrees of the duty of water for irrigated crops within established irrigation or conservancy districts will continue to be determined based on beneficial use of water pursuant to existing adjudication statutes.

JCH/svb