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FISCAL IMPACT REPORT

ORIGINAL DATE 2/18/19

SPONSOR Bandy/ Neville LAST UPDATED _____ HB 451

SHORT TITLE District Water Courts SB _____

ANALYST Torres

APPROPRIATION (dollars in thousands)

Appropriation		Recurring or Nonrecurring	Fund Affected
FY20	FY21		
\$700.0	\$700.0	Recurring	General Fund

(Parenthesis () Indicate Expenditure Decreases)

ESTIMATED ADDITIONAL OPERATING BUDGET IMPACT (dollars in thousands)

	FY19	FY20	FY21	3 Year Total Cost	Recurring or Nonrecurring	Fund Affected
Total	NFI	\$744.4	\$700.4	\$1,444.8	Recurring	General Fund

(Parenthesis () Indicate Expenditure Decreases)

SOURCES OF INFORMATION

LFC Files

Responses Received From

Administrative Office of the Courts (AOC)

Office of the State Engineer (OSE)

SUMMARY

Synopsis of Bill

HB451 adds a new section to Chapter 34, Article 6 to establish two water courts. HB 451 also amends Chapter 34, Article 6 to create two additional judgeships, one judgeship is created in Third Judicial District, and a second judgeship is created in the Eleventh Judicial District. The additional judgeships are to be filled by appointment of the Governor. The two new water courts include:

- 1) Lower Rio Grande district water court, Third Judicial District, in Dona Ana County; and
- 2) San Juan district water court in the Eleventh Judicial District, in San Juan County

Section 4(B) also provides that additional water courts may be established at the direction of the

Supreme Court to facilitate the hearing of water cases.

The new section provides that the district water judge shall give water cases priority, and that the water judge shall hear other civil cases in addition to water cases. The district water judges are subject to the same nomination and election requirements as other judges, and must develop substantial expertise in the areas of water law and western water issues. In addition, the new section states that the district water judge shall not permit *ex parte* communications, shall not be disqualified due to ownership of water rights or an interest in water rights, and may appoint a special master or other judge to hear a matter in the case of a substantial conflict of interest.

HB451 amends Section 38-3-9 to add a paragraph stating that the district water court judges are not subject to peremptory challenges when presiding over water cases.

HB451 provides an appropriation of \$700 thousand for adding the two new judgeships.

FISCAL IMPLICATIONS

The bill contains a total appropriation of \$700 thousand for the two new judgeships: \$450 thousand for the Third Judicial District Court and \$250 thousand for the Eleventh Judicial District Court. AOC estimates that an appropriation of \$350.2 thousand plus approximately \$22 thousand in nonrecurring costs is needed to support a judgeship in each district, and that recurring costs of \$700.4 thousand are needed to support both judges including the judge, bailiff, court monitor or judicial specialist, and trial court administrative assistant.

SIGNIFICANT ISSUES

The Administrative Office of the Courts notes the following concerns:

Judiciary's Judgeship Requests as Part of the Court's Unified Budget

This year the Judiciary's Unified Budget includes no requests for judgeships. The determination that no district court judgeships are needed at this time resulted from a full evaluation by the Judicial Budget Committee of all requests from courts statewide, and a subsequent review by the Chief Judges' Council and the state Supreme Court.

The New Mexico Supreme Court Has Implemented a District Water Court Structure and Designated a Statewide Water Adjudication Judge

District Water Courts Established in 2004: The New Mexico Supreme Court has adopted a proactive approach to efficiently manage and resolve water cases. In 2004, the Supreme Court created a water court structure consisting of a designated water judge in each judicial district. The water judges are civil judges that hear civil cases in addition to water cases. The water judges are required to receive ongoing education regarding water law and regional water issues to ensure that they develop expertise.

Statewide Adjudication Judge: In 2009 the Supreme Court designated a statewide water rights adjudication judge to preside over the adjudications in state court. Unlike local water cases that arise in particular judicial districts, adjudications extend geographically to hydrologic boundaries and therefore generally occur in more than one judicial district. The Supreme Court determined that the unique issues presented by

adjudications, including the exceptionally large number of claimants, the long duration of the cases, the essential function of court record tracking and analysis, and effecting meaningful notice and case procedures for all claimants, including unrepresented claimants, are most effectively addressed by a single adjudication judge.

The statewide adjudication judge provides centralized case management and refers specific matters to a special master as appropriate. This practice promotes efficiency because case activity is highly variable, and the adjudication judge can rely upon special masters when warranted by the case activity. This structure has promoted implementation of uniform procedures in all state adjudications, improved claimants' access to information, improved case efficiency, and has ensured consistent judicial decisions in the water rights adjudications. At present, the water caseloads do not warrant additional judgeships.

The AOC recommends that the statewide adjudication judge continue to preside over all adjudications and the currently designated water judge in individual districts continue to hear other water cases that arise.

The Office of the State Engineer adds:

HB 451 partially duplicates the NM Supreme Court's existing structure of water court divisions and water judges in each judicial district. In 2004, the Supreme Court ordered the establishment of Water Court Divisions in all 13 judicial districts, and in 2005 designated one sitting district court judge in each judicial district to hear all water cases. The water judges do not preside over water rights adjudication suits but over other water-related cases such as appeals from State Engineer decisions and enforcement actions. The water-related caseloads of the existing water judges in the 3rd and 11th judicial districts are light and would seem to be far from the volume that would justify the creation of any additional judgeships in those districts.

OTHER SUBSTANTIVE ISSUES

The provision in Section 3(B) providing that water court judges are not subject to preemptory challenge when presiding over water cases is similar to Rule 1-071.5 promulgated by the Supreme Court, which applies Rule 1-088(E) to exclude water judges from preemptory excusal. Judges can still be excused for cause or recuse themselves.

Section 4(G), providing that water court judges' shall not be disqualified due to their ownership of water rights or other property, could be interpreted to attempt to create a statutory exception to Article 6, Section 18 of the NM Constitution, which prohibits judges from sitting in a cause in which they have an interest.

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