

HB-472 - Relating to water rights administration:
SIGNIFICANT ISSUES – Legislative Staff Assessment

According to OSE analysis, prohibiting federal land management agencies from owning surface water rights for livestock watering could have significant negative unintended consequences. Since the U.S. Supreme Court's 1978 decision in *U.S. v. New Mexico*, limiting the nature and scope of reserved water rights the U.S. Forest Service can claim under federal law, state engineers have consistently and successfully required the Forest Service, the Bureau of Land Management, and other federal land management agencies to follow state law to establish and maintain water rights for stockwatering purposes. Changing state law to prohibit these federal agencies from acquiring water rights for stockwatering purposes could encourage the agencies to disregard state water law and attempt to divert and use the state's waters without being subject to the state engineer's statutory authority. Additionally, private parties who lease their lands for stockraising would be prohibited from acquiring water rights for stockwatering purposes.

OSE also raised concerns regarding the bill's exemption of leased or permitted surface water rights from the forfeiture statute: Surface water rights for livestock watering on leased or permitted land would be protected by a blanket exemption from statutory forfeiture for the duration of the lease or permit. The reference to leased land would mean that this protection from forfeiture would apply not just to stockwatering water rights established on public lands, but to stockwatering water rights on private lands as well. The water code does not provide such broad protection from forfeiture to any other category of water rights.