

AN ACT

RELATING TO WATER; CHANGING THE PURPOSE OF AND EXTENDING THE EXPENDITURE PERIOD FOR CERTAIN APPROPRIATIONS FROM THE NEW MEXICO IRRIGATION WORKS CONSTRUCTION FUND TO PURCHASE WATER RIGHTS IN THE PECOS RIVER BASIN FOR COMPLIANCE WITH THE PECOS RIVER COMPACT; PROVIDING CONDITIONS FOR EXPENDITURES.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF NEW MEXICO:

Section 1. PECOS RIVER WATER RIGHTS--CHANGE IN PURPOSE AND EXTENSION OF EXPENDITURE PERIOD. --

A. The period of time for expending the balances in the following appropriations from the New Mexico irrigation works construction fund to the interstate stream commission may be extended through fiscal year 2005 for the purpose of retiring water rights along the Pecos river basin and taking other appropriate actions that would effectively aid New Mexico in compliance with the United States supreme court amended decree in *Texas v. New Mexico*, No. 65 original:

(1) Laws 1998, Chapter 81, Section 2 for retiring water rights along the Pecos river basin and taking other appropriate actions that would effectively aid New Mexico in compliance with the United States supreme court amended decree in *Texas v. New Mexico*, No. 65 original;

(2) Laws 1998, Chapter 81, Section 3 for the purchase of water rights along the Pecos river basin;

(3) Laws 1999 (1st S.S.), Chapter 2, Section 84 for the purchase of water rights along the Pecos river;

(4) Laws 1998, Chapter 81, Section 4 for preparing a long-term strategy for the state's compliance with the Pecos River Compact and other matters; and

(5) Laws 2000 (2nd S.S.), Chapter 23, Section 95.

B. Any unexpended or unencumbered balance remaining at the end of fiscal year 2005 shall revert to the New Mexico irrigation works construction fund.

C. The interstate stream commission shall, before any purchase of water rights is made using the money appropriated, obtain professionally prepared market or economic valuations or appraisals. The valuations or appraisals along with other relevant considerations shall be the basis for any purchase.

Section 2. A new section of Chapter 72, Article 1 NMSA 1978 is enacted to read:

"PECOS RIVER--PURPOSE--CONDITIONS FOR EXPENDITURES.--

A. The purpose of this section is to achieve compliance with the Pecos River Compact, establish a base flow of the Pecos river of fifty cubic feet per second at the Artesia bridge and provide a reliable annual irrigation supply of ninety thousand acre feet of water for delivery of

three acre-feet per acre of irrigated land in the Carlsbad irrigation district and for adequate water to fulfill delivery requirements to the Texas state line pursuant to the Pecos River Compact.

B. The interstate stream commission shall determine the need for projects to be funded with the appropriations for compliance with the Pecos River Compact and may expend funds for the purchase of land with appurtenant water rights or rights to the delivery of water and to take other appropriate actions that would effectively aid New Mexico in compliance with the United States supreme court amended decree in *Texas v. New Mexico*, No. 65 original.

C. The interstate stream commission shall not expend any funds for the purchase of land with appurtenant water rights or rights to the delivery of water unless the commission has entered into contracts with the governing bodies of the Carlsbad irrigation district, the Pecos valley artesian conservancy district and the Fort Sumner irrigation district that specify the actions the parties agree will be taken or avoided to ensure that the expenditures will be effective toward permanent compliance with New Mexico's obligations under the Pecos River Compact and amended decree.

D. Expenditures for the purchase of land with valid appurtenant water rights or rights to the delivery of water shall be made only from willing sellers within the

lower Pecos river basin downstream from Sumner reservoir for projects that comply with the following criteria:

(1) land with appurtenant water rights or with rights to the delivery of water shall be purchased in each of the following areas of the lower Pecos river basin:

(a) from Sumner reservoir to Acme, to the extent that willing sellers elect to participate and any affected irrigation district agrees to change its operations, as necessary, so the acquired rights effectively increase downstream flows of the Pecos river;

(b) from Acme to Brantley dam; and

(c) with first priority placed in the area from Brantley dam to the state line contingent upon the adjudication or settlement of the surface water claims by or within the Carlsbad irrigation district;

(2) the interstate stream commission shall purchase with the first available funding six thousand acres of land having rights to the delivery of water by the district or valid appurtenant water rights in approximately equal purchase increments from:

(a) assessed land within the Carlsbad irrigation district; and

(b) irrigated land located between Brantley dam and Sumner reservoir; and

(3) subsequent to the purchase of the first

six thousand acres of land, the interstate stream commission shall use all future appropriations that are available for the purchase of land with appurtenant water rights or rights to the delivery of water such that no more than one acre of land within the Carlsbad irrigation district may be purchased for every three acres of land purchased between Brantley Dam and Summer reservoir.

E. The interstate stream commission shall prepare a comprehensive request for bids from owners of land with appurtenant water rights or rights to the delivery of water, shall evaluate and compare the bids and shall make offers to contract in response to the bids. The request for bids shall:

(1) provide for competition among the owners of land from whom bids are requested to sell their land with appurtenant water rights or rights to the delivery of water;

(2) contain criteria to address the priority of the purchases based on the effectiveness of the purchased land with appurtenant water rights or rights to the delivery of water in increasing the flows of the Pecos river and to address the different value of water rights associated with the degree of seniority of the water rights;

(3) provide for the purchase of up to six thousand acres of land assessed by the Carlsbad irrigation district having rights for the delivery of water; and

(4) provide for the purchase of land upstream from the Carlsbad irrigation district in amounts necessary to comply with the requirements of this section.

F. The interstate stream commission shall evaluate all bids and shall offer to contract with all sellers whose offers to sell comply with the criteria required by this section, comply with the bid conditions and are determined by the interstate stream commission to be most advantageous to increase the flows of the Pecos river and comply with the Pecos River Compact and amended decree.

G. Contracts shall be contingent upon the interstate stream commission receiving sufficient appropriations to close the purchases.

H. In the event the interstate stream commission determines that the total Pecos river rights it has purchased with appropriations made by the legislature for that purpose are in excess of those rights permanently needed for compliance with New Mexico's obligations under the Pecos River Compact, then the commission shall offer the excess land with appurtenant water rights or rights to the delivery of water first to the original owner at the original point of diversion and for the original place and purpose of use. Lands shall be offered for sale in the order in which they were acquired by:

(1) sending a written offer to sell to the

last known address of the owner by certified mail, which offer shall remain open for at least sixty days from the date of the mailing;

(2) including in the offer to sell a notice that if the offer is not accepted by the original owner within a stated time pursuant to this subsection, the offer will be deemed rejected and automatically withdrawn and made available for purchase at the current market price; and

(3) depositing the revenue from sales into the New Mexico irrigation works construction fund. "                     

HAFC/HB417&22

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Page 7