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**SENATE BILL 393**

**45TH LEGISLATURE - STATE OF NEW MEXICO - SECOND SESSION, 2002**

**INTRODUCED BY**

**Timothy Z. Jennings**

**AN ACT**

**RELATING TO WATER; CREATING THE LOWER PECOS BASIN WATER PRESERVATION DISTRICT; LEVYING AN AD VALOREM ASSESSMENT ON CERTAIN PROPERTY IN THE DISTRICT; IMPOSING THE LOWER PECOS BASIN WATER PRESERVATION GROSS RECEIPTS TAX; AUTHORIZING THE NEW MEXICO FINANCE AUTHORITY TO ISSUE LOWER PECOS BASIN WATER PRESERVATION REVENUE BONDS FOR PROJECTS TO CONSERVE WATER AND TO PROTECT AND RETIRE WATER RIGHTS IN THE BASIN; MAKING AN APPROPRIATION.**

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

**Section 1. [NEW MATERIAL] SHORT TITLE. -- Sections 1 through 20 of this act may be cited as the "Lower Pecos Basin Water Preservation District Act".**

**Section 2. [NEW MATERIAL] FINDINGS AND PURPOSE. --**

**A. The legislature finds that:**

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1 (1) a severe imbalance exists among water  
2 right holders, New Mexico obligations under the Pecos River  
3 Compact and water supply in the lower Pecos river basin of New  
4 Mexico;

5 (2) the imbalance is threatening the economic  
6 well-being of the state and the four counties comprising the  
7 lower Pecos basin and is causing undue hardship to the state  
8 and for all residents in the four counties;

9 (3) a mechanism needs to be in place to  
10 protect water rights, retire water rights and conserve water  
11 so that a balance will be restored between all water uses and  
12 water supply in the lower Pecos river basin;

13 (4) the costs for correcting the imbalance,  
14 protecting the water rights and conserving the water should be  
15 borne, in part, by the persons who will most benefit;

16 (5) the creation of the special district and  
17 the assessments and taxes imposed pursuant to the Lower Pecos  
18 Basin Water Preservation District Act will serve a public use  
19 and will promote the health, safety, prosperity, security and  
20 general welfare of the inhabitants of the district and of the  
21 state;

22 (6) the provisions of the Lower Pecos Basin  
23 Water Preservation District Act and the actions authorized by  
24 that act will be a special benefit to the residents of the  
25 district and the property within the boundaries of the

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1 district; and

2 (7) a general law cannot be made applicable  
3 to the lower Pecos basin because of the number of atypical and  
4 special conditions and problems associated with it.

5 B. The purpose of the Lower Pecos Basin Water  
6 Preservation District Act is to create a special district in  
7 which ad valorem assessments and gross receipts taxes are  
8 levied to provide a funding source so that the economic  
9 viability of the district and its residents can be restored,  
10 protected and strengthened.

11 Section 3. [NEW MATERIAL] DEFINITIONS. --As used in the  
12 Lower Pecos Basin Water Preservation District Act:

13 A. "authority" means the New Mexico finance  
14 authority;

15 B. "board" means the board of directors of the  
16 lower Pecos basin water preservation district;

17 C. "department" means the taxation and revenue  
18 department; and

19 D. "district" means the lower Pecos basin water  
20 preservation district.

21 Section 4. [NEW MATERIAL] WATER PRESERVATION DISTRICT  
22 CREATED-- BOARD OF DIRECTORS-- APPOINTMENT-- DUTIES. --

23 A. The "lower Pecos basin water preservation  
24 district" is created. The district is comprised of the area  
25 encompassing Eddy, Chaves, Lincoln and De Baca counties.

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B. The district shall be governed by a board of directors consisting of:

(1) one member appointed by the board of county commissioners of each county included in the district, who shall be a resident of that county;

(2) one member appointed by the governing body of each irrigation district, each conservancy district and each artesian conservancy district wholly or partly located in the lower Pecos basin water preservation district; and

(3) the state engineer or his designee.

C. Members shall be appointed for terms of three years, except that the initial appointed members from Lincoln and De Baca counties shall be appointed for a one-year term.

D. A public member of the board shall be reimbursed by the county or district that he represents at rates provided in the Per Diem and Mileage Act and shall receive no other compensation, perquisite or allowance.

E. The board shall elect a chair and such other officers as necessary to perform its duties.

F. The board shall meet at the call of the chair, except that:

(1) the board shall hold its initial meeting prior to September 1, 2002; and

(2) the board shall meet not less than once

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1 each fiscal year.

2 G. The board shall:

3 (1) review projects, proposed by the state  
4 engineer, to be funded by proceeds from the issuance of lower  
5 Pecos basin water preservation revenue bonds and recommend any  
6 additions, deletions and other changes to the proposal;

7 (2) review the status of projects being  
8 completed with expenditures of the bond proceeds;

9 (3) advise the state engineer on the need for  
10 future projects funded by proceeds from the issuance of lower  
11 Pecos basin water preservation revenue bonds and the need for  
12 continuing assessments and taxes imposed pursuant to the Lower  
13 Pecos Basin Water Preservation District Act; and

14 (4) by resolution, issue guidelines for the  
15 assessment and collection of the lower Pecos basin water  
16 preservation gross receipts tax.

17 H. The exercise of any power or duty granted to  
18 the district or board shall not duplicate or infringe upon any  
19 power or duty of any irrigation district, conservancy district  
20 or artesian conservancy district wholly or partly located in  
21 the lower Pecos basin water preservation district.

22 Section 5. [NEW MATERIAL] PROPERTY ASSESSMENT--  
23 TERMINATION. --

24 A. There is hereby levied an ad valorem assessment  
25 on all irrigated farmland in the district. The rate of the

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1 assessment shall be one dollar (\$1.00) per one thousand  
2 dollars (\$1,000) of net taxable value unless a lower amount is  
3 required by operation of the rate limitation provisions of  
4 Section 7-37-7.1 NMSA 1978. All statutes relating to the levy  
5 and collection of property taxes, including the collection of  
6 delinquent taxes and sale of property for nonpayment of taxes,  
7 apply to the assessment, and it is the duty of all tax  
8 officials and authorities to cause the assessment to be  
9 assessed and collected. Upon the collection of the  
10 assessment, each county treasurer shall pay the amount  
11 attributable to the assessment to the authority for deposit  
12 into the lower Pecos basin water preservation bonding fund.

13 B. The assessment levied pursuant to Subsection A  
14 of this section shall apply to tax years beginning on or after  
15 the effective date of the Lower Pecos Basin Water Preservation  
16 District Act, except that the assessment shall terminate at  
17 the end of a tax year if, prior to July 1 of that tax year,  
18 each county treasurer is notified that the authority has made  
19 a determination pursuant to Section 13 of that act that future  
20 expenditures from the lower Pecos basin water preservation  
21 bonding fund are not needed.

22 Section 6. [NEW MATERIAL] LOWER PECOS BASIN WATER  
23 PRESERVATION GROSS RECEIPTS TAX--IMPOSITION--RATE. --For the  
24 privilege of engaging in business in the district, there is  
25 imposed an excise tax on any person engaging in business in

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1 the district. The rate of the tax shall equal one-fourth of  
2 one percent of the gross receipts of a person engaging in  
3 business in the district. The tax shall be known as the  
4 "lower Pecos basin water preservation gross receipts tax".

5 Section 7. [NEW MATERIAL] LOWER PECOS BASIN WATER  
6 PRESERVATION GROSS RECEIPTS TAX--GUIDELINES--EFFECTIVE DATE OF  
7 RESOLUTION--COMPLIANCE WITH GROSS RECEIPTS AND COMPENSATING  
8 TAX ACT AND REQUIREMENTS OF DEPARTMENT--SUBMISSION OF COPY TO  
9 DEPARTMENT.--

10 A. At the initial meeting of the board, the board  
11 shall, by resolution, establish guidelines for the assessment  
12 and collection of the lower Pecos basin water preservation  
13 gross receipts tax. The lower Pecos basin water preservation  
14 gross receipts tax shall be effective on July 1 or January 1,  
15 whichever date occurs first, after the expiration of at least  
16 three months from the date the adopted resolution is mailed or  
17 delivered to the department. The resolution shall include the  
18 effective date.

19 B. The resolution establishing guidelines for the  
20 lower Pecos basin water preservation gross receipts tax shall  
21 adopt by reference the same definitions and the same  
22 provisions relating to exemptions and deductions as are  
23 contained in the Gross Receipts and Compensating Tax Act then  
24 in effect and as it may be amended from time to time.

25 C. The board, when establishing the guidelines for

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1 the lower Pecos basin water preservation gross receipts tax,  
2 shall adopt the model resolution with respect to the tax  
3 furnished to the board by the department.

4 D. A certified copy of the resolution establishing  
5 the guidelines for the lower Pecos basin water preservation  
6 gross receipts tax shall be mailed or delivered to the  
7 department within five days after the resolution is adopted.

8 Section 8. [NEW MATERIAL] LOWER PECOS BASIN WATER  
9 PRESERVATION GROSS RECEIPTS TAX--SPECIFIC EXEMPTIONS. -- The  
10 lower Pecos basin water preservation gross receipts tax is not  
11 imposed on the gross receipts arising from transporting for  
12 hire persons or property by railroad, motor vehicle, air  
13 transportation or any other means from one point within the  
14 district to another point outside the district, nor is the tax  
15 imposed on direct satellite broadcasting or on gross receipts  
16 that are exempt by federal law.

17 Section 9. [NEW MATERIAL] LOWER PECOS BASIN WATER  
18 PRESERVATION GROSS RECEIPTS TAX--COLLECTION BY DEPARTMENT--  
19 TRANSFER OF PROCEEDS--DEDUCTION. --

20 A. The department shall collect the lower Pecos  
21 basin water preservation gross receipts tax in the same manner  
22 and at the same time as it collects the state gross receipts  
23 tax.

24 B. The department may deduct an amount not to  
25 exceed three percent of the lower Pecos basin water



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1 preservation gross receipts tax as a charge for the  
2 administrative costs of collection.

3 C. The department shall transfer to the lower  
4 Pecos basin water preservation bonding fund the amount  
5 collected from the lower Pecos basin water preservation gross  
6 receipts tax, less any disbursement for administrative charges  
7 made pursuant to Subsection B of this section, tax credits,  
8 refunds and the payment of interest applicable to the tax.  
9 The transfer to the fund shall be made within the month  
10 following the month in which the tax is collected.

11 Section 10. [NEW MATERIAL] LOWER PECOS BASIN WATER  
12 PRESERVATION GROSS RECEIPTS TAX--ADMINISTRATION AND  
13 ENFORCEMENT OF ACT.--

14 A. The department shall interpret the provisions  
15 of the Lower Pecos Basin Water Preservation District Act with  
16 respect to the lower Pecos basin water preservation gross  
17 receipts tax imposed under that act.

18 B. The department shall administer and enforce the  
19 collection of the lower Pecos basin water preservation gross  
20 receipts tax, and the Tax Administration Act applies to the  
21 administration and enforcement of the lower Pecos basin water  
22 preservation gross receipts tax.

23 Section 11. [NEW MATERIAL] LOWER PECOS BASIN WATER  
24 PRESERVATION GROSS RECEIPTS TAX--TERMINATION.--The lower Pecos  
25 basin water preservation gross receipts tax shall terminate on  
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1 the July 1 or January 1 occurring after three months from the  
2 date that the department is notified that the authority has  
3 made a determination pursuant to Section 13 of the Lower Pecos  
4 Basin Water Preservation District Act that future expenditures  
5 from the lower Pecos basin water preservation bonding fund are  
6 not needed.

7 Section 12. [NEW MATERIAL] AUTHORITY MAY ISSUE LOWER  
8 PECOS BASIN WATER PRESERVATION REVENUE BONDS-- APPROPRIATION OF  
9 PROCEEDS. --

10 A. The authority is authorized to issue and sell  
11 revenue bonds, known as "lower Pecos basin water preservation  
12 revenue bonds", payable solely from the lower Pecos basin  
13 water preservation bonding fund, in compliance with the Lower  
14 Pecos Basin Water Preservation District Act for the purpose of  
15 funding projects pursuant to Subsection B of this section when  
16 the state engineer certifies the need for the issuance of the  
17 bonds. The authority shall schedule the issuance and sale of  
18 the bonds in the most expeditious and economical manner  
19 possible upon a finding by the authority that the projects can  
20 proceed within a reasonable time. The authority shall further  
21 take the appropriate steps necessary to comply with the  
22 Internal Revenue Code of 1986, as amended. Proceeds from the  
23 sale of the bonds are appropriated to the state engineer for  
24 expenditure in fiscal year 2003 and subsequent fiscal years  
25 for the purpose of completing projects pursuant to Subsection

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1 B of this section.

2 B. The state engineer, after consultation with the  
3 board, shall determine the projects to be funded with proceeds  
4 from lower Pecos basin water preservation revenue bonds and  
5 make the certification pursuant to Subsection A of this  
6 section that revenue from the bonds is needed. Expenditure of  
7 the proceeds shall be made only within the district for  
8 projects that:

9 (1) protect water rights, retire water rights  
10 or include other measures designed to correct the imbalances  
11 among water right holders, New Mexico obligations under the  
12 Pecos River Compact and water supply of the lower Pecos river  
13 basin; or

14 (2) are designed for water conservation,  
15 including restoration of native vegetation and other water  
16 supply enhancement measures.

17 Section 13. [NEW MATERIAL] LOWER PECOS BASIN WATER  
18 PRESERVATION BONDING FUND CREATED--MONEY IN THE FUND  
19 PLEDGED. --

20 A. The "lower Pecos basin water preservation  
21 bonding fund" is created as a special fund within the  
22 authority. The fund shall be administered by the authority as  
23 a special account. The fund shall consist of money  
24 appropriated to the fund, revenues from property assessments  
25 transferred to the fund and gross receipts tax revenues

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1 distributed to the fund by law. Earnings of the fund shall be  
2 credited to the fund. Balances in the fund at the end of any  
3 fiscal year shall remain in the fund, except as provided in  
4 this section.

5 B. Money in the lower Pecos basin water  
6 preservation bonding fund is pledged for the payment of  
7 principal and interest on all lower Pecos basin water  
8 preservation revenue bonds issued pursuant to the Lower Pecos  
9 Basin Water Preservation District Act. Money in the fund is  
10 appropriated to the authority for the purpose of paying debt  
11 service, including redemption premiums, on the lower Pecos  
12 basin water preservation revenue bonds and the expenses  
13 incurred in the issuance, payment and administration of the  
14 bonds.

15 C. Upon a determination by the state engineer  
16 pursuant to Section 20 of the Lower Pecos Basin Water  
17 Preservation District Act that expenditures from the proceeds  
18 of lower Pecos basin water preservation revenue bonds are no  
19 longer needed and upon the certification by the authority that  
20 all lower Pecos basin water preservation revenue bonds issued  
21 pursuant to the Lower Pecos Basin Water Preservation District  
22 Act have been retired, that no additional obligations of the  
23 lower Pecos basin water preservation bonding fund exist and  
24 that no additional expenditures from the fund are necessary,  
25 the state engineer shall notify, in writing, the board, the

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1 board of county commissioners and the county treasurer of each  
2 county within the district, the state treasurer and the  
3 department. Upon the termination and final distribution of  
4 revenues from the property assessment and the lower Pecos  
5 basin water preservation gross receipts tax imposed pursuant  
6 to the Lower Pecos Basin Water Preservation District Act, the  
7 lower Pecos basin water preservation bonding fund shall be  
8 dissolved and any remaining balance in the fund shall be  
9 transferred to the general funds of the four counties  
10 comprising the district. The amount transferred to each  
11 county shall be as proportional as possible to the amount  
12 received from the residents and property within that county as  
13 determined by the board.

14 D. The lower Pecos basin water preservation  
15 revenue bonds issued pursuant to the Lower Pecos Basin Water  
16 Preservation District Act shall be payable solely from the  
17 lower Pecos basin water preservation bonding fund or, with the  
18 approval of the bondholders, such other special funds as may  
19 be provided by law and do not create an obligation or  
20 indebtedness of the state or any of its political subdivisions  
21 within the meaning of any constitutional provision. No breach  
22 of any contractual obligation incurred pursuant to that act  
23 shall impose a pecuniary liability or a charge upon the  
24 general credit or taxing power of the state or its political  
25 subdivisions, and the bonds are not general obligations for

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1 which the state's or its political subdivisions' full faith  
2 and credit are pledged.

3 E. The state does hereby pledge that the lower  
4 Pecos basin water preservation bonding fund shall be used only  
5 for the purposes specified in this section and pledged first  
6 to pay the debt service on the lower Pecos basin water  
7 preservation revenue bonds issued pursuant to the Lower Pecos  
8 Basin Water Preservation District Act. The state further  
9 pledges that any law imposing or authorizing an assessment or  
10 tax, the revenue from which is pledged to retire the lower  
11 Pecos basin water preservation revenue bonds or any law  
12 authorizing the distribution of taxes or other revenues to the  
13 lower Pecos basin water preservation bonding fund or  
14 authorizing expenditures from the fund shall not be amended or  
15 repealed or otherwise modified so as to impair the bonds to  
16 which the lower Pecos basin water preservation bonding fund is  
17 dedicated as provided in this section.

18 Section 14. [NEW MATERIAL] AUTHORITY TO REFUND BONDS. --

19 The authority may issue and sell at public or private sale  
20 lower Pecos basin water preservation revenue bonds to refund  
21 outstanding lower Pecos basin water preservation revenue bonds  
22 by exchange, immediate or prospective redemption, cancellation  
23 or escrow, including the escrow of debt service funds  
24 accumulated for payment of outstanding bonds, or any  
25 combination thereof when, in its opinion, such action will be

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1 beneficial to the state.

2 Section 15. [NEW MATERIAL] LOWER PECOS BASIN WATER  
3 PRESERVATION REVENUE BONDS--FORM-EXECUTION.--

4 A. The authority, except as otherwise specifically  
5 provided in the Lower Pecos Basin Water Preservation District  
6 Act, shall determine at its discretion the terms, covenants  
7 and conditions of lower Pecos basin water preservation revenue  
8 bonds, including, but not limited to, date of issue,  
9 denominations, maturities, rate or rates of interest, call  
10 features, call premiums, registration, refundability and other  
11 covenants covering the general and technical aspects of the  
12 issuance of the bonds.

13 B. Lower Pecos basin water preservation revenue  
14 bonds shall be in such form as the authority may determine,  
15 and successive issues shall be identified by alphabetical,  
16 numerical or other proper series designation.

17 C. Lower Pecos basin water preservation revenue  
18 bonds shall be signed and attested by the secretary of the  
19 authority and shall be executed with the facsimile signature  
20 of the chairman of the authority and the facsimile seal of the  
21 authority, except for bonds issued in book entry or similar  
22 form without the delivery of physical securities. Any  
23 interest coupons attached to the bonds shall bear the  
24 facsimile signature of the secretary of the authority, which  
25 officer, by the execution of the bonds, shall adopt as his own

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1 signature the facsimile thereof appearing on the coupons.  
2 Except for bonds issued in book entry or similar form without  
3 the delivery of physical securities, the Uniform Facsimile  
4 Signature of Public Officials Act shall apply, and the  
5 authority shall determine the manual signature to be affixed  
6 on the bonds.

7 Section 16. [NEW MATERIAL] PROCEDURE FOR SALE OF  
8 BONDS. --

9 A. Lower Pecos basin water preservation revenue  
10 bonds shall be sold by the authority at such times and in such  
11 manner as the authority may elect, consistent with the need of  
12 the state engineer, either at private sale for a negotiated  
13 price or to the highest bidder at public sale for cash at not  
14 less than par and accrued interest.

15 B. In connection with any public sale of lower  
16 Pecos basin water preservation revenue bonds, the authority  
17 shall publish a notice of the time and place of sale in a  
18 newspaper of general circulation in the state and also in a  
19 recognized financial journal outside the state. Such  
20 publication shall be made once each week for two consecutive  
21 weeks prior to the date fixed for such sale, the last  
22 publication to be two business days prior to the date of sale.  
23 Such notice shall specify the amount, denomination, maturity  
24 and description of the bonds to be offered for sale and the  
25 place, day and hour at which sealed bids therefor shall be

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1 received. All bids, except that of the state, shall be  
2 accompanied by a deposit of two percent of the principal  
3 amount of the bonds. Deposits of unsuccessful bidders shall  
4 be returned upon rejection of the bid. At the time and place  
5 specified in such notice, the authority shall open the bids in  
6 public and shall award the bonds, or any part thereof, to the  
7 bidder or bidders offering the best price. The authority may  
8 reject any or all bids and readvertise.

9 C. The authority may sell a lower Pecos basin  
10 water preservation revenue bond issue, or any part thereof, to  
11 the state or to one or more investment bankers or  
12 institutional investors at private sale.

13 Section 17. [NEW MATERIAL] LOWER PECOS BASIN WATER  
14 PRESERVATION DISTRICT ACT IS FULL AUTHORITY FOR ISSUANCE OF  
15 BONDS-- BONDS ARE LEGAL INVESTMENTS. --

16 A. The Lower Pecos Basin Water Preservation  
17 District Act shall, without reference to any other act of the  
18 legislature, be full authority for the issuance and sale of  
19 lower Pecos basin water preservation revenue bonds, which  
20 bonds shall have all the qualities of investment securities  
21 under the Uniform Commercial Code and shall not be invalid for  
22 any irregularity or defect or be contestable in the hands of  
23 bona fide purchasers or holders thereof for value.

24 B. Lower Pecos basin water preservation revenue  
25 bonds are legal investments for any person or board charged

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1 with the investment of any public funds and are acceptable as  
2 security for any deposit of public money.

3 Section 18. [NEW MATERIAL] SUIT MAY BE BROUGHT TO COMPEL  
4 PERFORMANCE OF OFFICERS. -- Any holder of lower Pecos basin  
5 water preservation revenue bonds or any person or officer  
6 being a party in interest may sue to enforce and compel the  
7 performance of the provisions of the Lower Pecos Basin Water  
8 Preservation District Act.

9 Section 19. [NEW MATERIAL] BONDS TAX EXEMPT. -- All lower  
10 Pecos basin water preservation revenue bonds shall be exempt  
11 from taxation by the state or any of its political  
12 subdivisions.

13 Section 20. [NEW MATERIAL] DETERMINATION OF SUFFICIENT  
14 EXPENDITURES-- NOTIFICATION. -- The state engineer, after  
15 consulting with the board, may determine that the water rights  
16 within the lower Pecos river basin are no longer out of  
17 balance, that no further water conservation projects are  
18 needed within the district and that no further expenditures  
19 are needed from the proceeds of lower Pecos basin water  
20 preservation revenue bonds. Upon such a determination, the  
21 engineer shall notify the authority pursuant to Section 13 of  
22 the Lower Pecos Basin Water Preservation District Act.

23 Section 21. A new section of the Tax Administration Act  
24 is enacted to read:

25 "[NEW MATERIAL] DISTRIBUTION-- LOWER PECOS BASIN WATER

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1     **PRESERVATION GROSS RECEIPTS TAX.** -- A distribution pursuant to  
2     Section 7-1-6.1 NMSA 1978 shall be made to the lower Pecos  
3     basin water preservation bonding fund in the amount equal to  
4     the net receipts attributable to the lower Pecos basin water  
5     preservation gross receipts tax imposed by the Lower Pecos  
6     Basin Water Preservation District Act. "

7             Section 22.   **SEVERABILITY.** -- If any part of application of  
8     the Lower Pecos Basin Water Preservation District Act is held  
9     invalid, the remainder or its application to other situations  
10    or persons shall not be affected.