

HOUSE APPROPRIATIONS AND FINANCE COMMITTEE SUBSTITUTE FOR
HOUSE BILLS 417 & 225

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

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

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underscored material = new
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1 Mexico in compliance with the United States supreme court
2 amended decree in *Texas v. New Mexico*, No. 65 original:

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

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

10 (3) Laws 1999 (1st S.S.), Chapter 2, Section
11 84 for the purchase of water rights along the Pecos river;

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

15 (5) Laws 2000 (2nd S.S.), Chapter 23, Section
16 95.

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

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

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

3 "[NEW MATERIAL] PECOS RIVER--PURPOSE--CONDITIONS FOR
4 EXPENDITURES.--

5 A. The purpose of this section is to achieve
6 compliance with the Pecos River Compact, establish a base flow
7 of the Pecos river of fifty cubic feet per second at the
8 Artesia bridge and provide a reliable annual irrigation supply
9 of ninety thousand acre feet of water for delivery of three
10 acre-feet per acre of irrigated land in the Carlsbad
11 irrigation district and for adequate water to fulfill delivery
12 requirements to the Texas state line pursuant to the Pecos
13 River Compact.

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

22 C. The interstate stream commission shall not
23 expend any funds for the purchase of land with appurtenant
24 water rights or rights to the delivery of water unless the
25 commission has entered into contracts with the governing

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1 bodies of the Carlsbad irrigation district, the Pecos valley
2 artesian conservancy district and the Fort Sumner irrigation
3 district that specify the actions the parties agree will be
4 taken or avoided to ensure that the expenditures will be
5 effective toward permanent compliance with New Mexico's
6 obligations under the Pecos River Compact and amended decree.

7 D. Expenditures for the purchase of land with
8 valid appurtenant water rights or rights to the delivery of
9 water shall be made only from willing sellers within the lower
10 Pecos river basin downstream from Sumner reservoir for
11 projects that comply with the following criteria:

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

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

20 (b) from Acme to Brantley dam; and

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

25 (2) the interstate stream commission shall

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1 purchase with the first available funding six thousand acres
2 of land having rights to the delivery of water by the district
3 or valid appurtenant water rights in approximately equal
4 purchase increments from:

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

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

9 (3) subsequent to the purchase of the first
10 six thousand acres of land, the interstate stream commission
11 shall use all future appropriations that are available for the
12 purchase of land with appurtenant water rights or rights to
13 the delivery of water such that no more than one acre of land
14 within the Carlsbad irrigation district may be purchased for
15 every three acres of land purchased between Brantley Dam and
16 Sumner reservoir.

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

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

25 (2) contain criteria to address the priority

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1 of the purchases based on the effectiveness of the purchased
2 land with appurtenant water rights or rights to the delivery
3 of water in increasing the flows of the Pecos river and to
4 address the different value of water rights associated with
5 the degree of seniority of the water rights;

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

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

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

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

22 H. In the event the interstate stream commission
23 determines that the total Pecos river rights it has purchased
24 with appropriations made by the legislature for that purpose
25 are in excess of those rights permanently needed for

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1 compliance with New Mexico's obligations under the Pecos River
2 Compact, then the commission shall offer the excess land with
3 appurtenant water rights or rights to the delivery of water
4 first to the original owner at the original point of diversion
5 and for the original place and purpose of use at the original
6 purchase price. Lands shall be offered for sale in the order
7 in which they were acquired by:

8 (1) sending a written offer to sell to the
9 last known address of the owner by certified mail, which offer
10 shall remain open for at least sixty days from the date of the
11 mailing;

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

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