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FISCAL IMPACT REPORT

SPONSOR: Stell DATE TYPED: 02/08/02 HB 418/aHAGC
 SHORT TITLE: Pecos River Water Rights & Conservation SB _____
 ANALYST: Chabot

APPROPRIATION

Appropriation Contained		Estimated Additional Impact		Recurring or Non-Rec	Fund Affected
FY02	FY03	FY04			
\$16,000.0	\$16,000.0	\$16,000.0		Recurring	STB

(Parenthesis () Indicate Expenditure Decreases)

Relates to SB 267, SB 271, and HB 225

SOURCES OF INFORMATION

LFC Files
 New Mexico Acequia Association (NMAA)
 New Mexico Department of Agriculture
 New Mexico Environment Department
 Office of the State Engineer (OSE)
 State Investment Council

No Response
 Department of Finance and Administration (DFA)

SUMMARY

Synopsis of HAGC Amendment

The committee changed “conservancy district” to “conservation districts” on page 3, line 17. The amendment provides the correct name for conservation districts. The result is that the Interstate Stream Commission must also consult with the governing board of each conservation district in the lower Pecos basin before determining the need for projects to be funded from revenue from severance tax bonds.

Synopsis of Original Bill

Senate Bill 267 appropriates up to \$48,000.0 at the rate of \$16,000.0 for fiscal years 2002, 2003 and 2004 from severance tax bonds in accordance with the Severance Tax Bonding Act to the State

House Bill 418/aHAGC -- Page 2

Board of Finance for the sale of bonds from which the proceeds are appropriated to the Interstate Stream Commission for projects on the Pecos River downstream from the Sumner Dam. The proceeds will be use for the purpose of protecting and retiring water rights or other measures to correct the imbalances between water right holders, obligations under the Pecos River compact and water supply of the lower Pecos River Basin, and water conservation projects including restoration of native vegetation and water supply enhancement measures. The ISC will not certify any projects without entering into contracts with the governing bodies of the Carlsbad Irrigation District and the Pecos Valley Artesian Conservancy District and consulted with the governing boards of each irrigation district, conservancy district and artesian conservancy district in the lower Pecos River Basin. Purchases in the Pecos river basin may only be for projects that meet the following criteria:

1. water rights shall be purchased from willing sellers in an equal percentage, within a two-point range, of the total irrigated acreage in each of the following areas of the Pecos river:
 - (a) from Santa Rosa to Macho draw;
 - (b) from Macho draw to McMillan delta; and
 - (c) from McMillan delta to the Texas state line.
2. the offer for settlement of the Carlsbad irrigation district water rights adjudication shall be based upon the full project water or assessment roles of twenty-five thousand fifty-five acres; and
3. purchases of water rights shall include the appurtenant land.

If the ISC determines that excess water rights have been acquired, they can offer the rights for sale and the proceeds will be deposited in the Irrigation Works Construction Fund.

Significant Issues

The state is obligated to meet compact water delivery requirements to Texas and is under a United States Supreme Court (USSC) decree since 1988 to do so. The state has been able to meet these requirements; however, it has been barely able to do. The USSC appointed River Master will issue an accounting by May 2002 for calendar year 2001. OSE expects the State will meet the requirement but will have used all accumulated credits in doing so. OSE states that water depletions in the Pecos river basin must be reduced or water flow increased in order to meet the compact requirements. If the state defaults in its compact delivery requirements, OSE will be obligated to manage the river through priority administration as provided for in the New Mexico Constitution and required by the USSC decree. This will cause a major economic impact on southeastern New Mexico. A 1993 study estimated that impact to be approximately \$236 million.

This bill will provide up to \$48,000.0 to the Interstate Stream Commission (ISC) for restoring balance to the Pecos River system by reducing use from Fort Sumner Dam south to the state line with Texas. The funds will be used to retire water rights to reduce water use in order to protect the water rights of the other holders, and to increase water flow through conservation efforts. This bill would allow the ISC and OSE to implement plans identified by the Ad Hoc Pecos River Basin Committee commissioned by the ISC to develop alternatives for reducing water use.

OSE states for the program envisioned by this bill to work, the Carlsbad Irrigation District, the Pecos Valley Artesian Conservancy District, other water districts and users and the ISC must agree on actions to be taken to achieve compliance with New Mexico's obligations. If the parties elected to take independent action, especially through the legal process, it could delay and jeopardize the

State's ability to meet compact delivery obligations.

OSE is also concerned that the bill required them to recognize the Carlsbad Irrigation District (CID) claim of having 25,055 acres of irrigated land without finalizing adjudications. In addition, they state that having specified areas for purchase may contribute to an imbalance by purchasing insufficient rights in one area and more than needed in another. Lastly, the purchases of appurtenance of

land is only appropriate in CID where water rights are tied to the land. In other areas water rights are not tied to the land.

The capital outlay coordinator states that this bill will obligate approximately 25 percent of the available STBs available for the next three years reducing the capacity to fund other local projects statewide.

NMAA is concerned that the provision that allows the ISC to sell any "excess" water rights purchased makes the ISC a de facto water bank. They express that this should be accomplished to other legislation.

FISCAL IMPLICATIONS

The appropriation of \$48,000.0 contained in this bill is a recurring expense to severance tax bonds at a rate of \$16,000.0 per year for 2002, 2003, and 2004. Any unexpended or unencumbered balance remaining at the end of fiscal year 2006 shall revert to the severance tax bonding fund. These efforts to be funded by the severance tax bonding fund are part of a larger program that will cost approximately \$69 million in total to implement. (This total includes the \$48 million)

ADMINISTRATIVE IMPLICATIONS

ISC will need to develop Requests for Proposals for purchase of water rights that conform to the requirements of Section 1.D. of the bill.

RELATIONSHIP

House Bill 418 relates to HB 141, HB 225, HB274, SB 271, SB 341, SB 343 and SB 393.

POSSIBLE QUESTIONS

1. What assurances exist that the parties on the Pecos River will work cooperatively to restore the balance to the river ?
2. Are there sufficient water rights for purchase and retirement to increase river flows sufficiently to meet the interstate compact delivery requirements with Texas ?
3. If the purchase and retirement of water rights do not resolve compact delivery shortfalls, how will OSE implement priority administration ?
4. How will the recognition of 25,050 irrigated acres in the Carlsbad Irrigation District affect the adjudication efforts in the lower Pecos River Basin ?

GAC/njw:ar