

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 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 com-

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. 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. The bill includes an emergency clause.

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. A more in-depth discussion of Pecos River Compact issues is found at attachment 1.

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.

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 for fiscal years 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 a total of \$69 million to implement. (This includes the \$48,000.0).

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

Senate Bill 267 relates to SB 271, SB 341, SB 343, SB 393, HB 20, HB 141, HB 225 and duplicates HB 274 except SB 267 includes an emergency clause.

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 ?

GAC/prr

Attachment—Pecos River Compact

ATTACHMENT

Pecos River Compact. The Pecos River compact was created in 1948 between New Mexico and Texas and approved by Congress in 1949. As such, it has the status of federal law and state law in each of the states. It cannot be changed without the consent of Congress. The ISC is responsible for all New Mexico actions under the compact which requires that New Mexico “not deplete by man’s activities the flow of the Pecos River at the New Mexico-Texas state line below an amount which will give Texas a quantity of water equivalent to that available to Texas under the 1947 condition.” The compact does not contain an explicit water delivery amount and it is calculated by the river master using a complicated formula. New Mexico’s annual delivery obligations are approximately one-half of Sumner Dam releases and approximately one-half of flood inflows from Sumner Dam to the state line.

In 1956, adjudication of the Pecos River stream system began with the filing of State of New Mexico ex re. State Engineer v. Lewis. The objective at that time was to adjudicate all groundwater rights in the Roswell Artesian Basin. Over time, the adjudication was expanded to include the Hondo Basin, Carlsbad Irrigation District, Carlsbad Underground Basin, Black River and Gallinas Basin. By 1976, the adjudication encompassed the entire Pecos River stream system. The adjudication is still on-going and SEO estimates that it could take up to 20 years or more to complete. Adjudications would legally determine application date, ownership, point of use and amount of water that can be put to beneficial use.

In 1974, Texas sued New Mexico in the United States Supreme Court (USSC) for under-deliveries of water required by the compact. The USSC has exclusive authority under the United States Constitution for resolving conflicts between states. The issue was over the interpretation of the “1947 condition.” In 1988, USSC found that New Mexico had under-delivered annually an average of 10,000 acre-feet for the previous 34 years. As a result, USSC ordered New Mexico to pay to Texas \$14 million for economic loss caused by the under-deliveries. In addition, New Mexico was ordered to meet its future water delivery obligations using a water accounting system proposed by Texas. Deliveries to Texas are to be considered the senior water right on the river. New Mexico can accumulate delivery credits but cannot maintain a deficit delivery position.

As a result of the USSC decree, the Legislature approved and began funding a program to acquire and retire enough water rights to increase the state line flow by 15,000 acre-feet per year at an estimated cost of \$60 million. Funding was primarily from the Irrigation Works Construction Fund and Severance Tax Bonds. In addition, water rights were leased, primarily from the Carlsbad Irrigation District (CID), to increase state line flows. To date, approximately \$30 million has been expended. These efforts resulted in reversing the deficit position as depicted in the chart below taken from a report to the Legislative Council Service by John E. Thorson.

Accumulated Shortfall or Overage As of June 25, 2001		
Pecos River Compact		
Water Year Jan 1-Dec 31	Annual Overage or Shortfall (acre-feet)	Accumulated Overage or Shortfall (acre-feet)
1987	15,400	15,400
1988	23,600	39,000
1989	2,700	41,700
1990	(14,100)	27,600
1991	(16,500)	11,100
1992	10,900	22,000
1993	6,600	28,600
1994	5,900	34,500
1995	(14,100)	20,400
1996	(6,700)	13,700
1997	6,100	19,800
1998	1,700	21,500
1999	1,400	22,900
2000	(12,300)	10,600

However, last year, New Mexico under-delivered to Texas and the accumulated credit was reduced to approximately 10,600 acre-feet. In testimony before the interim legislative Water and Natural Resource Committee, the director of the ISC stated that the deficit in CY2001 would be approximately 3,000 acre-feet unless there is a large rainfall in the Carlsbad area before the end of the year. He estimated that 9,000 additional acre-feet would be needed to avoid the deficit because the annual calculation is based upon a three-year average. To restore a reasonable credit, ISC is attempting to increase flows by 15,000 acre-feet which is three percent of the uses along the river.

To forestall a deficit, ISC has commissioned an ad hoc Pecos River Basin Committee to investigate voluntary measures to reduce use and increase river flows. The committee consists of members representing critical interests of the river system. There are 16 members on the committee, two are SEO employees. The members have agreed that a consensus plan must include sufficient elements of priority administration and beneficial use limitation such that state funding will not be required continuously to buy the water necessary for compliance. SE has advised the ad hoc committee that if it develops an acceptable plan to ensure deliveries to Texas, the plan will become the basis for the

state response if a deficit occurs. SEO is developing a separate plan based upon prior appropriation if consensus is not reached by the ad hoc committee. The ad hoc committee will present its recommendations to ISC at the December 11, 2001 meeting.

If the deliveries go into a deficit for CY2001, the river master will issue a preliminary report by May 15, 2002 stating the cumulative delivery status. Both New Mexico and Texas have the opportunity to review and comment. A final report is due from the river master by July 1, 2002. If there is a deficit, New Mexico must submit a proposed plan by August 1, 2002 "for verifiable action" that will increase water deliveries to Texas. After Texas has had a chance to comment, the river master will issue an approved plan directing New Mexico's actions to meet delivery requirements.