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## FISCAL IMPACT REPORT

SPONSOR: Jennings DATE TYPED: 02/06/02 HB \_\_\_\_\_

SHORT TITLE: Lower Pecos Basin Water Preservation District SB 341

ANALYST: Chabot

### APPROPRIATION

Appropriation Contained		Estimated Additional Impact		Recurring or Non-Rec	Fund Affected
FY02	FY03	FY04	FY05		
	\$8,000.0	\$8,000.0	\$8,000.0	Recurring	STB
	\$1,500.0			Recurring	County/Lower Pecos Compact Compliance Fund-New Fund
	\$140.0			Recurring	OSF/TRD GRT Fund

(Parenthesis ( ) Indicate Expenditure Decreases)

### REVENUE

Estimated Revenue		Subsequent Years Impact	Recurring or Non-Rec	Fund Affected
FY02	FY03			
	TBD	TBD	Recurring	Local/Surcharge on Water Users
	\$4,000.0*	\$4,500.0 (plus economic growth)	Recurring	County/Lower Pecos Basin Water Preservation Bonding Fund-New Fund
	(\$1,500.0)	(\$1,500.0 (plus economic growth)	Recurring	County/Lower Pecos Basin Water Preservation Bonding Fund
	(\$140.0)	(\$140.0)	Recurring	County/Lower Pecos Basin Water Preservation Bonding Fund
	(\$8,000.0)	(\$16,000.0)	Recurring	STB

(Parenthesis ( ) Indicate Revenue Decreases)

\* If approved by the Water Preservation District Board of Directors and the Voters of the District

Relates to SB 267, SB 271, SB 393, HB 225 and HB 274.

## **SOURCES OF INFORMATION**

LFC Files  
Municipal League  
New Mexico Acequia Association (NMAA)  
New Mexico Environment Department  
New Mexico Finance Authority (NMFA)  
Office of the State Engineer (OSE)  
Secretary of State  
State Investment Council  
Taxation and Revenue Department (TRD)

## **SUMMARY**

### Synopsis of Bill

Senate Bill 341 is to be known as the “Lower Pecos Basin Water Preservation District Act.” The bill creates the Lower Pecos Basin Water Preservation District comprised of the area encompassing Eddy, Chaves, Lincoln and De Baca counties, except that the portion of Lincoln County that lies within an incorporated municipality and outside of the Pecos river drainage shall be excluded from the district. The bill creates a governing board consisting of a representative of each county appointed by the respective county commission, one member appointed by the governing body of each irrigation district, conservancy district and artesian conservancy district wholly or partly within the Lower Pecos Basin Water Preservation District and the State Engineer or his representative. The board shall meet at the call of the chair but the initial meeting must be before July 1, 2002 and must meet at least once each fiscal year

The board may propose the Lower Pecos Basin Preservation Gross Receipts Tax of three-sixteenths of one percent that would go into effect after an election and approval by a simple majority of the voters. Election costs will be paid by the Irrigation Works Construction Fund (IWCF). If the tax is not approved, it may not be resubmitted to the voters for one year from the date of the election. Exemptions from the gross receipts tax are provided for transportation services originating within the district to locations outside the district and for direct satellite broadcasting and items exempted by federal law. The tax shall terminate three months from the date that the Lower Pecos Basin Water Preservation District determines that the revenue is no longer required. Up to three percent may be used for administrative costs in collection of the revenue.

The Lower Pecos Basin Water Preservation Bonding Fund is created with revenue from the gross receipts tax revenues and is to be used for debt service. The board may issue revenue bonds for funding projects from downstream of Sumner dam to the state line that protect water rights, retire water rights or other measures designed to correct the imbalances of the river and projects designed for water conservation. The Interstate Stream Commission (ISC) will certify the need to issue bonds. The bonding fund will be a special fund of NMFA. Upon termination of the gross receipts tax, the Lower Pecos Basin Water Preservation Bonding Fund will be dissolved and the remaining balance deposited in to the Pecos River Compact Compliance Fund.

Excess revenues from the bonding fund, surcharges imposed and other appropriations will be deposited in the Pecos River Compact Compliance Fund to be created in the State Treasury. The fund is appropriated for the purpose of carrying out the provision of the Lower Pecos Basin Water Preservation District Act. \$1,500.0 is appropriated from the fund each fiscal year from 2003 to 2012 for the purpose of contracting with New Mexico State University to conduct a program of watershed restoration, non-native phreatophyte removal and water salvage activities in the lower Pecos River basin. Except for this recurring appropriation, the fund is appropriated to ISC for the purpose of carrying out the provision of the act.

After January 1, 2003, OSE may impose and collect an annual surcharge on "additional net depletions of Pecos River system irrigation water in the Pecos River surface water drainage downstream of Sumner dam." The surcharge may not exceed \$200 per acre-foot. "Additional net depletions" are depletions above those taken in calendar year 1990 and do not result from valid water rights and are not approved by OSE or ISC. It is not possible to estimate what revenue would be provided from this assessment until the OSE determines the acre-feet of water that could be assessed.

The State Board of Finance may issue and sell severance tax bonds in fiscal years 2003 through 2005 in an amount not exceed \$8 million each year for a total of not more than \$24 million from severance tax bonds in compliance with the Severance Tax Bonding Act. The proceeds from the sale of the bonds are appropriated to the Interstate Stream Commission for financing projects meeting the provisions of the Lower Pecos Basin Water Preservation District Act. The proceeds of the severance tax bonds could only be spent if the voters approve the new local option gross receipts tax.

The bill requires ISC to resell water rights that it acquires if it determines that it holds water rights in excess of that required to maintain compliance with the Pecos River Interstate Compact.

### Significant Issues

The state is obligated to meet compact water delivery requirements to Texas and is under a United States Supreme Court decree since 1988 to do so. The state has been able to meet these requirements; however, it has been barely able to do. The River Master will issue an accounting by May 2002 for calendar year 2001. The state expects that they will meet the requirement but will have used all reserves 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 management the river through priority administration causing 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 2.

OSE states that this bill provides a comprehensive approach to bring the Pecos River into balance with both short-term and long-term solutions. ISC would work with the Carlsbad Irrigation District, Pecos Valley Artesian Conservancy District and the other conservancy districts and water users on the river to achieve compliance with New Mexico's obligations for water delivery to Texas. However, the OSE legal services division's opinion is that IWCF cannot be used to fund the special election.

TRD provides the current gross receipts tax by county:

1. Chaves
  - a. Dexter 6.3125%
  - b. Hagerman 6.5000%
  - c. Lake Arthur 5.8125%
  - d. Roswell 6.5000%
  - e. Remainder of County 5.9375%
2. De Baca
  - a. Fort Sumner 6.1875%
  - b. Remainder of County 5.6250%
3. Eddy
  - a. Artesia 6.3125%
  - b. Carlsbad 6.3125%
  - c. Hope 6.1250%
  - d. Loving 6.3125%
  - e. Remainder of County 5.7500%
4. Lincoln
  - a. Remainder of County 5.3750%

LFC files included the following: the new gross receipts tax would be difficult to administer, especially in Lincoln County, because of variable tax rates depending on whether the business was in or outside the drainage area declared by OSE; to date, no special district has been given gross receipts taxing authority and this authority has been reserved to municipalities and counties; and questions whether the IWCF can be used to pay for election costs.

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 through other legislation. In addition, they are opposed to the purchase of any acequia water rights on the Pecos in northern New Mexico without the participation of the acequia district boards.

### **FISCAL IMPLICATIONS**

The appropriation of \$24,000.0 contained in this bill is a non-recurring expense to the Severance Tax Bond Fund. Any unexpended or unencumbered balance remaining at the end of fiscal year 2007 shall revert to the Severance Tax Bonding Fund. The appropriation of \$1,500.0 to New Mexico State University is a recurring expense to the Pecos River Compact Compliance Fund for the fiscal years 2003 through 2012.

TRD estimates the tax will generate \$4 million. Using the figures provided by TRD, revenues can be estimated at \$4,500.0 for fiscal year 2003 and the revenue will grow as the economy of the four counties grows. In addition, the estimate would be adjusted based upon what part of Lincoln County is identified by OSE as required to pay the additional tax. (See Attachment 1) TRD is authorized to use up to three percent of the collected revenues for administrative expenses. At \$3.8 million, this would equal \$140.0.

## ADMINISTRATIVE IMPLICATIONS

Implementation of this program will take a cooperative effort by OSE, ISC, the Lower Pecos Basin Water Preservation District, Pecos River conservancy and irrigation districts and other water users of the river basin.

## POSSIBLE QUESTIONS

1. Has the ad hoc Pecos River Basin Committee identified potential water rights available for purchase ?
2. If water rights are not available for purchase, what other alternative exist for reducing water use from the river ?
3. The alternative to purchasing water rights would be for OSE to administer the river by priority, does OSE have a workable plan to do so ?
4. Does a cooperative spirit exist within all participants affected by the Lower Pecos Basin Water Preservation District Act ?
5. Can the Irrigation Construction Works Fund be used to pay expenses for an election establishing a gross receipts tax ?
6. Should the Lower Pecos Basin Water Preservation District have the authority to propose a gross receipts tax ?

### Attachments

Proposed New Gross Receipt Tax Revenues  
Pecos Water Issues

GAC/njw:ar

**Proposed New Gross Receipts Tax at 3/16% for the Lower Pecos Basin Water Preservation District**

Primary Counties	Base, FY00*	Rate (3/16%)	Revenue	Base, FY01*	Rate (3/16%)	Revenue
Chaves, remainder	89,776,314					
Dexter	12,055,247					
Hagerman	8,399,016					
Lake Arthur	1,832,215					
Roswell	652,958,856					
<b>County Total</b>	<b>765,021,648</b>	<b>0.001875</b>	<b>1,434,416</b>	<b>796,680,337</b>	<b>0.001875</b>	<b>1,493,776</b>
DeBaca, remainder	10,263,483					
Fort Sumner	13,595,408					
<b>County Total**</b>	<b>23,858,891</b>	<b>0.001875</b>	<b>44,735</b>	<b>24,813,247</b>	<b>0.001875</b>	<b>46,525</b>
Eddy, remainder	366,312,886					
Artesia	206,837,857					
Carlsbad	404,843,508					
Hope	304,625					
Loving	3,876,347					
<b>County Total</b>	<b>982,175,223</b>	<b>0.001875</b>	<b>1,841,579</b>	<b>1,220,359,924</b>	<b>0.001875</b>	<b>2,288,175</b>
Lincoln, remainder	76,281,132					
Capitan	10,254,045					
Carrizozo	0					
Corona	0					
Ruidoso	195,296,218					
Ruidoso Downs	76,298,575					
<b>County Total</b>	<b>358,129,970</b>	<b>0.001875</b>	<b>671,494</b>	<b>372,455,169</b>	<b>0.001875</b>	<b>698,353</b>
<b>Total</b>	<b>2,129,185,732</b>		<b>3,992,223</b>	<b>2,414,308,676</b>		<b>4,526,829</b>

\* This reflects taxable gross receipts base for four quarters ending June 30, 2001 as reported by the Taxation and Revenue Department and provided to Legislative Council Service

\*\*FY01 revenues for De Baca county were adjusted to a 4% from the TRD estimate which represented a 59% growth rate.

