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FISCAL IMPACT REPORT

SPONSOR: Jennings DATE TYPED: 02/05/02 HB _____
 SHORT TITLE: Purchase Pecos River Water Rights SB 343
 ANALYST: Chabot

APPROPRIATION

Appropriation Contained		Estimated Additional Impact		Recurring or Non-Rec	Fund Affected
FY02	FY03	FY02	FY03		
\$24,000.0				Non-Recurring	General Fund

Relates to SB 107, SB 267, SB 291, SB 341, HB 20, HB 140, HB 225 and HB274

SOURCES OF INFORMATION

LFC Files
 New Mexico Finance Authority
 Office of the State Engineer (OSE)
 State Investment Council

SUMMARY

Synopsis of Bill

Senate Bill 343 appropriates \$24,000.0 from the general fund to Interstate Stream Commission (ISC) for the purpose of retiring water rights along the Pecos river basin and taking other actions that would effectively aid New Mexico in compliance with the United States Supreme Court amended decree in *Texas v. New Mexico*. In addition, the bill extends the time period to spend \$12,000.0 appropriated in 1998 from the Irrigation Works Construction Fund (IWCF) for purchase of water rights along the Pecos and \$500.0 also appropriated in 1998 from IWCF for preparing a long-term strategy for the state's permanent compliance with the Pecos River Compact until the end of fiscal year 2004.

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 1.

The ISC convened an ad hoc committee of local representatives from the lower Pecos valley irrigation districts, municipalities, and industries for the purpose of developing a plan to restore balance to the river and ensure that New Mexico can meet its interstate compact delivery requirements to Texas. On January 16, 2002, the committee issued a resolution outlining their plan that addressed both the immediate needs to meet state line flows and the long term need to bring the river into balance. Part of that plan was for OSE and ISC to protect water rights, purchase water rights and take other measures to reduce use or increase wet water in the river. This bill would implement the purchase of water rights.

FISCAL IMPLICATIONS

The appropriation of \$24,000.0 contained in this bill is a non-recurring expense to the general fund. Any unexpended or unencumbered balance remaining at the end of fiscal year 2003 shall revert to the general fund. The 1998 appropriation to the Interstate Stream Commission from the Irrigation Works Construction is extended until the end of fiscal year 2004. Approximately \$4 million is remaining in this appropriation.

ADMINISTRATIVE IMPLICATIONS

OSE states that implementation of large scale purchases required by Section 2 will increase the workload of the ISC considerably requiring an additional, temporary FTE and retaining a contractor to facilitate the water rights purchases.

OTHER SUBSTANTIVE ISSUES

The New Mexico Constitution provides for priority administration on New Mexico waters; however, the ad hoc Pecos River Basin Committee states that this would have unacceptable consequences and would be inefficient. This has resulted in eight bills being introduced to find and fund alternative solutions to meeting Pecos River Interstate Compact delivery requirements. The Legislature should consider convening a committee in the interim to address water law in New Mexico and make recommendations for changes if necessary.

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 ?

Attachment

Pecos River Compact

GAC/njw

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.

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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.

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