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FISCAL IMPACT REPORT

SPONSOR HTRC DATE TYPED 2/16/04 HB CS/CS/312/HTRCS
 SHORT TITLE Strategic Water Reserve SB _____
 ANALYST Maloy

APPROPRIATION

Appropriation Contained		Estimated Additional Impact		Recurring or Non-Rec	Fund Affected
FY04	FY05	FY04	FY05		
	See Narrative			Recurring	Strategic Water Reserve

(Parenthesis () Indicate Expenditure Decreases)

REVENUE

Estimated Revenue		Subsequent Years Impact	Recurring or Non-Rec	Fund Affected
FY04	FY05			
	(Unknown) See Narrative		Recurring	Severance Tax Fund

(Parenthesis () Indicate Revenue Decreases)

Relates to: HB 313, SB 362. and SB 360 / SCONCS.

SOURCES OF INFORMATION

LFC Files

Response Received From

*Energy, Minerals and Natural Resources Department

*Response received to original HB 312 still applicable to CS/HTRCS.

No Response Received From

Office of the State Engineer / Interstate Stream Commission

SUMMARY

Synopsis of Bill

The bill establishes the Strategic Water Reserve and authorizes the State Board of Finance to issue severance tax bonds annually in an amount that equals 3% of the state's estimated bonding capacity, as determined by the Department of Finance and Administration.

With regard to the Reserve, the bill specifies the following restrictions and allowances:

- The Reserve is to be comprised of surface and underground water rights purchased or leased from willing sellers, or donated by willing grantors.
- Underground water or rights received by the Reserve are to be used for cessation of pumping or limited short-term stream augmentation.
- At no time may the rights held in the water Reserve result in an increase in net depletions in any basin.
- The Interstate Stream Commission may not pay more than the appraised market value for rights.
- The Commission is prohibited from acquiring rights served by an irrigation district established pursuant to Chapter 73, Article 10, NMSA 1978, except through contractual arrangement with the district's board of directors.
- Nothing in the bill is to be construed to limit or prohibit the Commission's acquisition of water rights necessary to complete full implementation of the Pecos River Carlsbad Irrigation District Settlement.
- The Commission may only acquired water rights recognized by the State engineer to have sufficient seniority and consistent, historic beneficial use.
- The Commission is prohibited from acquiring rights for the Reserve through condemnation or forfeiture.
- Water rights in the Reserve shall be used to:
 - Assist the state in complying with interstate stream compacts and court decrees; and
 - Assist the state and water users in complying with the federal Endangered Species Act.
- The Interstate Stream Commission shall work with the Office of the State Engineer and the Attorney General to prioritize possible acquisitions. Prioritization shall be coordinated with local soil and water conservation districts, water authorities, and water planning regions.
- Further coordination shall be undertaken with the following organizations within affected river reach or ground water basins:
 - Indian nations, tribes and pueblos;
 - Boards of county commissioners
 - Special districts established pursuant to Chapter 73, NMSA 1978;
 - Soil and water conservation districts;
 - Water authorities; and
 - Water planning regions.

- The Interstate Stream Commission may only sell or lease rights from the Reserve if they are sold at market value and are no longer necessary for the purpose for which they were originally acquired, provided that no rights shall be sold to the United States.
- Also, the Commission must first make the offer of sale for the original purpose of use.
- Proceeds from the sale or rights in the Reserve are appropriated to the Office of the State Engineer and Commission for the purpose of the Reserve.
- Water rights sold or leased from the Reserve shall remain in their river reach or ground basin or origin.
- Transactions with members of an irrigation or conservancy district shall provide for the Reserve to pay the annual assessment to the district that would accrue to the district absent the transaction.
- Cumulative impacts of Reserve acquisitions shall not adversely affect existing water users or delivery systems.

With regard to the Commission, the bill requires:

- adopt rules to operate the Reserve; and
- make a report to the appropriate committees of the legislature annually.

With regard to the issuance of severance tax bonds to support the Reserve, the bill states:

- By January 15th of each year, the Board of Finance shall estimate the state's bonding capacity for severance tax bonds.
- Beginning in FY05, and ending in FY25, 3% of the estimated bonding capacity shall be directed to the Interstate stream Commission for acquisition and leasing of water rights and storage.
- Any unexpended balance from the proceeds of severance tax bonds issued for the Strategic Water Reserve shall revert to the severance tax bonding fund as of the first day after the end of the tenth fiscal year.

Significant Issues

- Finding creative mechanisms to fund the purchase / lease of water rights in order to address the state's drought conditions and interstate obligations is critical to the future of the state. The New Mexico Finance Authority has estimated New Mexico's statewide water needs in excess of \$4.8 billion. This need alone is in excess of the state's annual budget.
- What can be done to ensure property owners and/or rights holders do not take advantage of the state? When owners and rights holders discovered the state needed to purchase water rights along the Pecos to maintain its delivery obligations to Texas, property and water rights costs doubled, and in some instances tripled. Will these inflated prices be considered "market

value”?

The Energy, Minerals and Natural Resources Department offers:

- Such legislation will provide the ISC with a continued source of funding in the form of severance tax bond proceeds to fund acquisition of water rights for the Reserve. Acquisition of water rights to meet downstream compact obligations in the Pecos River System is viewed as critical by the ISC to meet the injunction of the U.S. Supreme Court in *Texas v. New Mexico*.
- Additionally, as drought conditions persist in New Mexico and ground water pumping increases along the Rio Grande, meeting compact delivery obligations under the Rio Grande Compact could become more difficult. This bill is intended to provide the ISC with funding to acquire water rights to help fulfill such obligations.
- Until the State Engineer can enforce priority and shut off junior users in the event of water shortages, acquisition of existing water rights has been the only alternative employed by the ISC to assure compliance with interstate stream compact obligations. Unfortunately, the bill provides no mechanism to assure that water from the Reserve that is introduced into river stretches will not be diverted by downstream in-state users, thereby diminishing the contributions intended by the Reserve.
- The recommendations of the Water Trust Board as to purpose and place of use of water rights needed for the Reserve will be critical in assuring that those water rights result in meaningful contributions to stream flow for compact purposes and to assist water users in complying with the Endangered Species Act.

FISCAL IMPLICATIONS

Beginning in FY 2005, and ending in FY 2025, 3% of the state’s estimated severance bond capacity is certified to the Strategic Water Reserve to support the purchase of lease of water rights. Any unexpended balance from proceeds of severance tax bonds issued for the Strategic Water Reserve shall revert to the Severance Tax Bonding Fund as of the first day after the end of the tenth fiscal year following the fiscal year in which the severance tax bonds were issued.

ADMINISTRATIVE IMPLICATIONS

- Though New Mexico needs to find creative funding mechanisms, such as this, to support the purchase or lease of water rights and address both the state’s drought conditions and interstate delivery obligations, the Office of the State Engineer and Interstate Stream Commission may find the purchase / leasing of rights impaired by the backlog of rights adjudications. The state needs to be able to identify what rights exist and which rights are senior before it can start purchasing them. A failure to have this basic information could result in additional legal liability for the state in the water area.
- Concerns have been raised regarding the Office of the State Engineer, Interstate Stream Commission’s management of funds appropriated to the office for the purchase of water rights in the past.