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FISCAL IMPACT REPORT

SPONSOR Lujan, B DATE TYPED 03/04/05 HB 1084

SHORT TITLE Pecos River Compact Obligations SB _____

ANALYST Ford

APPROPRIATION

| Appropriation Contained | | Estimated Additional Impact | | Recurring or Non-Rec | Fund Affected |
|-------------------------|------|-----------------------------|------|----------------------|---------------|
| FY05 | FY06 | FY05 | FY06 | | |
| \$12,000.0 | | | | Non-recurring | General Fund |

(Parenthesis () Indicate Expenditure Decreases)

Relates to HCO 437, SCO 834

SOURCES OF INFORMATION

LFC Files

Responses Received From

Office of the State Engineer (OSE)

SUMMARY

Synopsis of Bill

House Bill 1084 appropriates \$12 million from the general fund to the interstate stream commission for the purpose of complying with New Mexico's obligations under the Pecos River Compact. The appropriation is contingent upon a determination that local governments have appropriated or otherwise committed \$60 million for the same purpose. The appropriations is also contingent on the approval by the state board of finance (after review by the water trust board) of a plan prepared and adopted by the interstate stream commission describing the proposed expenditures.

The appropriation is for expenditure in FY 05 through 07.

Significant Issues

The OSE provides helpful background on this issue:

“The U.S. Supreme Court, in *Texas v. New Mexico*, found New Mexico to be in non-compliance with the Pecos River Compact and levied a \$14 million fine to address historic non-compliance through under-delivery of approximately 10,000 acre-feet per year from 1950 through 1983. The court further mandated that New Mexico take necessary measures to comply with the compact in the future. The consequences to New Mexico of non-compliance in the future can be severe and can include involuntary curtailment of water uses in the Pecos River Basin as a result of strict priority administration or the United States Supreme Court river master taking over the administration of the Pecos River.

“Since the U.S. Supreme Court Decree in 1988, New Mexico has expended nearly \$35 million for acquisition of water and water rights to stay in compliance with the compact.

“In 2002, the interstate stream commission working with local water users developed a consensus plan for long-term compliance with the compact. The 2002 legislature concurred with the plan, appropriated \$36.5 million and included a restriction that the funds can be expended only after an agreement was reached regarding the adjudication of the Carlsbad Project water rights. A settlement was reached regarding the Carlsbad Project water rights in March 2003.

“Since then, the interstate stream commission has been implementing the consensus plan as required by the settlement. The implementation of the long-term plan will not only help New Mexico comply with the compact on a permanent basis but also will resolve a long-standing water rights adjudication dispute between Pecos Valley Artesian Water Conservancy District and Carlsbad Irrigation District, will increase water supply to Carlsbad Irrigation District and will drastically reduce the likelihood of a priority call that shuts off water uses.

“The approximate cost of fully implementing the consensus plan is about \$90 million. Considering the previous appropriation of \$36.5 million, an additional \$53.5 million is required to complete the implementation of the consensus plan and effectuate the settlement. The appropriations under this bill and in other requests made by the agency will contribute toward settlement implementation.”

FISCAL IMPLICATIONS

The appropriation of \$12 million contained in this bill is a non-recurring expense to the general fund. Any unexpended or unencumbered balance remaining at the end of FY 07 shall revert to the general fund.

ADMINISTRATIVE IMPLICATIONS

OSE indicates that it will be able to administer the funding with its existing staff resources.

CONFLICT, DUPLICATION, COMPANIONSHIP, RELATIONSHIP

House Capital Outlay Request 437 request would appropriate \$10 million for the same purpose. Senate Capital Outlay Request 834 requests a \$10 million appropriation and a \$30 million appropriation for this purpose.

TECHNICAL ISSUES

The bill calls for expenditure of funds in FY 05 but there is no emergency clause in the bill. An emergency measure would allow the appropriation to be made earlier in FY 05.

OTHER SUBSTANTIVE ISSUES

The OSE writes: "The settlement implementation deadline has been extended until August 2006. The interstate stream commission needs \$30 million in FY06 to effectuate the settlement. If the interstate stream commission cannot make that commitment, the settlement may fail. At this point, there is no agreement or assurance from the local governments that they will commit \$60 million as required under this bill. In fact, even if the local governments are willing to make such a commitment, it is very unlikely that they would be able to appropriate or otherwise commit the funding by August 2006. Therefore, funding from this bill will not be available before the settlement deadline of August 2006. Additionally, as of July 1, 2004, the pending land and water rights offers received in response to the interstate stream commission's request for bids are no longer binding on potential sellers. Therefore, if potential sellers withdraw their offers, the minimum acreages necessary to effectuate the settlement may no longer be available at the current price levels."

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