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FISCAL IMPACT REPORT

ORIGINAL DATE 1/23/08
LAST UPDATED 2/13/08 HB _____

SPONSOR Griego

SHORT TITLE Pecos River Settlement Water Rights SB 227/aHJC

ANALYST Woods

APPROPRIATION (dollars in thousands)

Appropriation		Recurring or Non-Rec	Fund Affected
FY08	FY09		
NFI	NFI		

(Parenthesis () Indicate Expenditure Decreases)

SOURCES OF INFORMATION

LFC Files

Responses Received From

Office of the State Engineer (OSE)

Attorney General (AGO)

Energy, Minerals and Natural Resources Department (EMNRD)

SUMMARY

Synopsis of HJC Amendment

House Judiciary amendment to Senate Bill 227 clarifies language as follows:

1. On page 3, lines 2 through 7, strike "the purchase of water rights or rights to the delivery of water authorized by this section and the subsequent use of the land to which the rights are appurtenant comply with the provisions of Section 5D (1) and (2) of the settlement agreement dated March 25, 2003 entered in *State v. Lewis*" and insert in lieu thereof:

"land from which water rights or the rights to the delivery of water are severed shall be subject to deed restrictions to ensure that no new water development or use, including the drilling of domestic wells pursuant to Sections 72-12-1.1, 72-12-1.2 and 72-12-1.3 NMSA 1978, occurs on the land without transfer of valid, existing water rights and that notice of such deed restrictions shall be recorded in the real property records of the county in which the land is located and provided to the state engineer".

2. On page 3, line 18, after the first occurrence of "sale", insert ", in accordance with state law".

3. On page 4, line 2, after the period, insert:

"Land sold pursuant to this section shall be subject to deed restrictions to ensure that no new water development or use, including the drilling of domestic wells pursuant to Sections 72-12-1.1, 72-12-1.2 and 72-12-1.3 NMSA 1978, occurs on the land without transfer of valid, existing water rights and that notice of such deed restrictions shall be recorded in the real property records of the county in which the land is located and provided to the state engineer."

The amendment adds no appropriation to the legislation.

Synopsis of Original Bill:

Senate Bill 227 seeks to establish an additional method for the acquisition of water rights to assist New Mexico in continuing to meet its delivery obligations under the U.S. Supreme Court amended decree in Texas v. New Mexico by creating a new section in Ch. 72, Art. 1, to allow the Interstate Stream Commission (ISC) to buy water rights without also buying the land to which those water rights are appurtenant.

This legislation carries emergency language.

FISCAL IMPLICATIONS

OSE indicates that the legislation will benefit the ISC because it is estimated that one full time employee will be needed to manage the lands acquired by the interstate stream commission. By not having to own the lands, the interstate stream commission will save valuable staff time. Further, that the bill reduces the amount of land the commission may need to own and increases the amount of funding the Pecos River Basin Land Management Fund may receive.

OSE advises that the cost of land management and maintenance will vary from parcel to parcel depending on the original condition of the land and also based on rainfall conditions from year to year. If the original condition is poor enough that it requires seeding and irrigation, the costs will be higher. The annual land maintenance costs will be high if it is a wet year with frequent and large rainfall that results in heavy weed growth. A rough estimate of the current costs is that it will take about \$20 per acre per year to maintain the land the commission is required to purchase. If the interstate stream commission acquires all of the 18,000 acres needed to fully implement the Pecos Settlement, the annual land management costs are projected to be about \$360,000 per year. Assuming that about 50 percent of the lands are leased, the projected annual maintenance costs would be about \$180,000.

Both the AGO and EMNRD appear to support the conclusion that the legislation will favorably impact costs associated with the Pecos Settlement:

EMNRD states, "This would expand opportunities for ISC to acquire water rights and would eliminate the ISC from having to be the owner of lands and from the responsibility of maintaining those lands."

AGO concludes that, "By no longer requiring the ISC to purchase *both* water rights and surface land, the proposed amendment should reduce the cost of the Pecos water-rights

acquisition program.” Further, that: “If existing law is not modified, the ISC will continue to be required by statute to purchase both water rights and surface land. In addition, the ISC will continue to be saddled with permanent financial responsibility and legal liability for the surface lands acquired to date under NMSA 1978, §72-1-2.4.”

SIGNIFICANT ISSUES

As background, OSE further advises that the existing statute, 72-1-2.4 NMSA 1978, requires the interstate stream commission to purchase land to which the water rights are appurtenant or the land that has the right to the delivery of water when purchasing water rights to satisfy the Pecos Settlement. This bill allows the ISC to purchase water rights without purchasing the land to which the water rights are appurtenant or the land that has the right to the delivery of water. OSE notes that this is consistent with the Pecos Settlement Agreement and is acceptable to the other settlement parties including the Pecos Valley Artesian Conservancy District, the Carlsbad Irrigation District Project, and relevant federal agencies. This bill will also allow the interstate stream commission to offer the lands it has so far acquired for sale if the interstate stream commission determines that ownership of all or any part of the surface of land is not necessary or desirable, first to its original owner and if the original owner is not interested, then to a third party in accordance with state law.

OSE adds that the legislation would also amend 72-1-2.5 NMSA 1978 that established the Pecos River Basin Land Management Fund, to allow for income from water rights purchased pursuant to Chapter 72, Article 1 NMSA 1978, and revenue from land sold pursuant to Chapter 72, Article 1 NMSA 1978 to go to this fund in addition to other sources of income already designated to this fund.

PERFORMANCE IMPLICATIONS

OSE indicates that the ISC has been unable to find adequate amount of land and appurtenant water rights available for purchase in the Roswell Basin. This is delaying the implementation of the Pecos Settlement. Some prospective sellers of water rights are hesitant to sell their land along with the water rights for various reasons. Enabling the interstate stream commission to acquire water rights only is likely to motivate such potential sellers to come forward. This is critical for the implementation of the Pecos Settlement. Further, because the settlement agreement provides that water cannot be applied to “dried up acreage” unless allowed by law by subsequent transfer to the lands, and no wells pursuant to 72-12-1 NMSA can be drilled, overall water depletions in the Pecos River Basin will not be increased. The ISC will ensure that the contracts it enters into will prohibit drilling domestic wells on those properties in the future and compliance with the other settlement requirements regarding water use.

OTHER SUBSTANTIVE ISSUES

EMNRD suggests that the state parks program has sold land and appurtenant water rights to ISC. Under SB 227, ISC would be allowed to dispose of land acquired from Parks by first offering it back to Parks. Because the lands no longer have associated water rights, their use as park lands would be limited. Therefore, Parks would likely decline to reacquire them and ISC would need to find other buyers.

BFW/bb