

NEW MEXICO INTERSTATE STREAM COMMISSION

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March 15, 2011

HAND DELIVERED

The Honorable Representative James Roger Madalena
Chairman, House Agricultural and Water Resources Committee
411 State Capitol, Room 310
Santa Fe, NM 87501

The Honorable Representative Brian F. Egolf, Jr.
Chairman, House Energy and Natural Resources Committee
411 State Capitol, Room 315
Santa Fe, NM 87501

The Honorable Senator Bernadette M. Sanchez
Chairman, Senate Conservation Committee
411 State Capitol, Room 311
Santa Fe, NM 87501

Re: Interstate Stream Commission's Annual Legislative Report for 2010 for the Strategic Water Reserve

Dear Senator Sanchez, Representatives Madalena and Egolf:

In 2005, the legislature passed the Strategic Water Reserve Act, § 72-14-3.3 NMSA. The Act authorizes the Interstate Stream Commission (ISC) to establish a Reserve using leased, purchased or donated water, water rights and storage rights. Use of the water for the Reserve is limited to two purposes: to assist the state in complying with interstate stream compacts, and to benefit threatened or endangered species through water management efforts. Pursuant to § 72-14-3.3(J) of the Act, the ISC must report annually to the appropriate committee of the legislature on the status of the Strategic Water Reserve. This letter will provide the report for calendar year 2010.

The Strategic Water Reserve Act requires the ISC to determine river reach or ground water basin priorities for the acquisition of water and storage rights for the Reserve in consultation with the state engineer, the attorney general and the New Mexico interstate stream compact commissioners. In 2010, the ISC, after the foregoing consultation, designated the Middle Rio Grande Basin, the Lower Rio Grande Basin and the Pecos River Basins as priority river reaches.

Middle Rio Grande

The Middle Rio Grande Basin has been a priority basin each of the six years since passage of the Act and the basin continues to be of critical importance to the ISC in its implementation of the Strategic Water Reserve. In 2010, the ISC focused its Reserve efforts on the following: negotiating a water rights agreement with Intel Corporation; acquiring water rights to offset depletions related to habitat restoration; and, negotiating a water rights lease agreement with the Village of Los Lunas.

In 2010, the Middle Rio Grande Bureau devoted significant staff time and resources working on two significant water rights acquisitions for the Reserve. The first proposed acquisition was between the ISC and Intel Corporation (Intel). The agreement, in relevant part, proposed that Intel transfer to the ISC 740.9 acre-feet per year of senior surface water rights and \$10 million dollars for use for the Middle Rio Grande Reserve. Unfortunately, the agreement was not consummated.

The second water rights acquisition involves a water rights lease agreement between the ISC and the Village of Los Lunas (Village). This agreement provides for the ISC to lease from the Village 1,000 acre-feet of pre-1907 Rio Grande surface water rights that had previously been transferred to the Village but are not currently needed by it. The ISC will make initial payment to the Village of \$80.00 per acre-foot for use of that portion of the water rights accepted by the State Engineer for transfer. Subsequent payments will be adjusted for inflation. The initial term of the Agreement is ten years with the option to extend for two additional ten year terms subject to certain conditions. The transfer of all water rights subject of this agreement is expressly conditioned upon approval by the New Mexico State Engineer.

In addition, in 2010 the ISC attempted to initiate a program for leasing of pre-1907 agricultural water rights in the Middle Rio Grande from individual farmers. However, due to the complexity of the issue and the reduction in ISC staff, the agency has postponed the effort until staffing levels rise.

The ISC will continue to use water it has acquired or is available to it for Reserve initiatives within the Middle Rio Grande. For example, the State Engineer has approved the transfer of water rights previously leased from the General Services Department to the ISC into the Reserve to offset depletions associated with its Atrisco Habitat Restoration Project.

Lower Rio Grande

The ISC did not pursue water rights acquisitions work in the Lower Rio Grande Basin in 2010 due to staffing reductions. However, the ISC continues to work with New Mexico State Parks and others at Broad Canyon Ranch to construct habitat for the endangered Southwestern Willow flycatcher and to ultimately acquire water rights, transfer them to the Reserve and use them on State Parks Land for Reserve purposes.

Pecos River Basin

As with the Rio Grande, the Pecos River Basin has also been a priority each year since the passage of the Act. The many issues supporting its continued designation remain of critical importance to the ISC in its implementation of the Strategic Water Reserve. In particular, the ISC continues to be very active in the search for long term solutions that support the Pecos River Compact, Amended United States Supreme Court Decree, 2003 Pecos Settlement Agreement and Endangered Species Act compliance.

In 2010, the ISC continued its third year of operation of the Vaughan Conservation Pipeline Project, in accordance with the Strategic Water Reserve Act, for the purpose of augmenting Pecos River flows for the benefit of the threatened Pecos bluntnose shiner (shiner), while also protecting existing water rights owners. The Conservation Pipeline is capable of delivering approximately 1,500 acre-feet of water to the Bureau of Reclamation (Reclamation), pursuant to a contract, at a point in the Pecos River just above the "critical habitat" for the shiner. Due to the availability of stored water at Sumner Reservoir in 2010, Reclamation decided to forgo using a significant amount of Vaughan water in order to avoid maintenance and utility costs. Thus, a total of only 24 acre-feet of Vaughan water was delivered to the Pecos River in 2010. The ISC will receive payments of \$174,260 from Reclamation for project operations in 2010 related to water that was set aside for Strategic Water Reserve purposes pursuant to §72-14-3.3(E).

Also in 2010, two projects were initiated to benefit Reserve objectives in the basin. First, an effort began to transfer into the Reserve 1,097 acres of water rights associated with the north tract of the Bitter Lake National Wildlife Refuge. The United States Fish and Wildlife Service and the ISC have negotiated an agreement for use of those rights and anticipate consummation of the agreement in Spring of 2011. Second, a water right owner on the Black River approached the ISC with a water rights lease proposal that would help prevent additional listings of threatened and endangered species and provide additional water to the state line to assist in Pecos Compact delivery obligations. The ISC is currently conducting preliminary due diligence on this proposed lease agreement.

Funding


Regarding funding for the Strategic Water Reserve, in 2005, the legislature appropriated \$2.8 million. In 2006, the legislature appropriated an additional \$2 million, and in 2007, the legislature appropriated \$500,000. In 2008, the legislature did not appropriate any funds for the Strategic Water Reserve. During the 2009 regular legislative session, approximately \$1.4 million of a total of \$2 million previously appropriated to the reserve and unexpended was de-authorized. In October 2009, the remaining balance of \$600,000.00 was frozen pursuant to Governor Richardson's Executive Order. In 2010 the \$600,000 previously frozen pursuant to Executive Order was de-authorized.

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Page 4 of 4
March 15, 2011

To date, the ISC has expended \$3,247,513 of the appropriations it has received for the Strategic Water Reserve. There were no new State appropriations for the Strategic Water Reserve in 2010.

Should you have any questions regarding this report, or the Strategic Water Reserve generally, please contact me.

Sincerely,

A handwritten signature in black ink, appearing to read "Estevan R. López". The signature is fluid and cursive, with the first name "Estevan" and the last name "López" clearly distinguishable.

Estevan R. López, P.E., Director
New Mexico Interstate Stream Commission

ERL/Imt