

Strategic Water Reserve

Introduction

As pressures upon New Mexico's valuable water resources have mounted over the years, specifically by the silvery minnow litigation in the middle Rio Grande and the U.S. Supreme Court Decree in the Pecos River Basin, the concept of a strategic water reserve emerged within the water community. In 2003, *Think New Mexico* issued a policy report entitled, *Rio Vivo! The Need for a Strategic River Reserve in New Mexico* and became the leader of an initiative to create a publicly held water reserve. *Think New Mexico* modeled the proposed legislation on the federal Strategic Petroleum Reserve created by Congress in 1975 in response to the oil embargo of 1973–74, and on the negotiations taking place concerning the Pecos River Compact, which resulted in a water banking plan to meet the compact needs on the Pecos River.

The Strategic Water Reserve (Reserve) established in 2005 transforms New Mexico's policies regarding river management. The Reserve is a pool of publicly held water rights dedicated to keeping New Mexico's rivers flowing to meet the needs of river-dependent endangered species and to fulfill our water delivery obligations to other states. It is a tool for New Mexico to achieve sensible and sustainable water policies by balancing water use between cities, industry, agriculture, and the rivers of the state.

History of Legislation and Funding

Representative Joe Stell (retired) and Senator Carlos Cisneros introduced legislation to create a Strategic River Reserve in the 2004 legislative session, where it was expanded to include groundwater and renamed the Strategic Water Reserve. This bill passed in the House but ran out of time as it awaited a hearing on the Senate floor in the final hours of the session. In 2005, the sponsors brought the legislation back with the unanimous endorsement of the Interim Water and Natural Resources Committee. This time, the Strategic Water Reserve legislation passed the House 58–9; the Senate 40–0. The State appropriated \$2.8 million to the Reserve in 2005, \$2 million in 2006, \$500,000 in 2007, and \$0 in 2008. In 2009, due to the state's

“This project will make water available to the Bureau of Reclamation for environmental purposes while protecting other water rights and still allowing us to meet our compact obligations.”

Estevan López, Director,
Interstate Stream Commission
(discussing the Lower
Pecos River, 2007)

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budget crisis the legislature de-authorized nearly \$1.5 million in Reserve funding and froze approximately \$600,000 of remaining funding. In 2010, the previously frozen \$600,000 was de-authorized and there were no new state appropriations. There have been no state appropriations to the Reserve since 2007.

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What Does the Strategic Water Reserve Do?

The Reserve legislation is found in NMSA 1978, § 72-14-3.3. It allows the Interstate Stream Commission (ISC), on behalf of the State of New Mexico, to purchase or lease water or water rights from willing sellers or lessors. Water or water rights may also be received by donation of surface and underground water rights. This statute has some important provisions:

- The ISC must purchase rights that have sufficient seniority and consistent, historic beneficial use to contribute effectively to the purpose of the Reserve.
- The ISC may not acquire or sell the water or water rights at more than the appraised market value.
- The ISC may not acquire these rights from an acequia or ditch association nor from an irrigation district established under Section 73, Article 10 NMSA 1978, except through contractual agreement with the board of directors or the establishment of a special water users association.
- The ISC shall not acquire water or water rights by condemnation.
- The sale, lease, or donation of underground water rights for the SWR may only be used for the purposes of

cessation of pumping or for limited short-term stream augmentation.

- Water and water rights in the Reserve shall remain within the river reach or groundwater basin of origin and cannot result in any net depletions to that basin.
- The acquisition of water or water rights for the Reserve cannot interfere with the ISC’s obligation to implement the Pecos River Carlsbad Project Settlement Agreement.
- The ISC must pay the annual assessments due to conservation and irrigation districts in connection with the lease, sale, or donation of water rights to the Reserve.
- The ISC may not sell the water or water rights to the United States.

The list above captures some, but not all, of the provisions of the Strategic Water Reserve Act.

River Reach/Groundwater Basins

The ISC, in consultation with its commissioners, the Office of the State Engineer (OSE), and the Attorney General’s Office, determines river reach or groundwater basin priorities. The Middle Rio Grande and the Pecos River Basin have been determined priority reach/basins every year, beginning in 2006. The Lower Pecos River was a priority reach/basin in the years of 2006, 2007, 2009 and 2013. The Lower Rio Grande was a priority reach/basin in 2008, and the Canadian River below Ute Lake was a priority reach/basin in 2006. Starting in 2011, the whole Canadian River Basin was designated as a priority basin. In 2010, the ISC—without consultation—designated the Middle Rio Grande Basin, the Lower Rio Grande Basin, and the Pecos River Basins priority river reaches.

Acquisition Status

In the Pecos Basin, the ISC has completed two water rights purchase transactions in the Fort Sumner area and has the right to consumptively use over 1,500 acre-feet of

water rights for river augmentation, that is, instream flow purposes. Consistent with the intent of the Reserve legislation, the ISC sells the water to the U.S. Bureau of Reclamation (Reclamation) for the below-described purpose. In 2010, the ISC did not pursue any acquisitions for the Pecos Basin due to staff shortages and it has not pursued any acquisitions since that time due to lack of interest from water rights owners.

In 2008, the ISC advertised to purchasing water rights in the Middle Rio Grande and received several offers from people interested in selling water rights to the ISC; however, due to the reduction of Reserve funding the ISC must scale back that effort. ISC is taking other steps to evaluate Strategic Water Reserve implementation alternatives in the Middle Rio Grande and has examined water acquisition programs initiated in other western states. In 2010, the Middle Rio Grande Bureau worked on two significant acquisitions for the Reserve. The first proposed acquisition would have involved a transfer from the Intel Corporation, a computer chip manufacturer in Rio Rancho, of 740.9 acre-feet of senior surface-water rights and \$10 million dollars for use by the Reserve. This acquisition was not completed. The second acquisition involved an agreement with the village of Los Lunas for the ISC to lease 1,000 acre-feet of water rights. The ISC will initially pay \$80 per acre-foot of water. The OSE approved the transfer in the summer of 2012. The lease agreement is for 10 years with an option to extend for two additional 10-year terms.

Projects

On July 25, 2007, the ISC completed a conservation pipeline project in the Fort Sumner area of the Lower Pecos River Basin. The two-mile long pipeline delivers up to 12 cubic feet per second of water acquired for the Reserve to the Pecos River. The project adds a valuable water management option by enabling water managers to temporarily increase river flows directly above a stretch of the Pecos River that has been designated as critical habitat for the “threatened” Pecos

Bluntnose Shiner pursuant to the Endangered Species Act. In addition, the water will benefit New Mexico’s compact status and will satisfy elements of the Settlement Agreement in the Pecos adjudication suit. In 2012, the Pecos River Basin initiated contact with federal agencies to transfer water rights that aren’t currently in use. The projects resulting from the collaboration are not yet finalized.

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On the Rio Grande, the ISC entered into a lease agreement to lease approximately 32 acre-feet of water for the Silvery Minnow refugium (Refugium) that ISC has constructed in Los Lunas and for additional Strategic Water Reserve users in the Middle Rio Grande. In 2008, the ISC filed an application with the OSE to transfer water rights leased from the New Mexico General Services Department into the Reserve to offset depletions associated with ISC’s Atrisco Habitat Restoration Project and for other Strategic Water Reserve initiatives in the Middle Rio Grande. Also in 2008, the ISC conducted listening sessions in the Middle Rio Grande to develop strategies for collaboration with stakeholders on successful implementation of the Reserve. Challenges were identified, including the expense and scarcity of water rights available for acquisition. In 2011, the ISC entered into a Memorandum of Agreement with the U.S. Army Corps of Engineers to offset depletions associated with the Refugium. In 2012, the ISC entered into an agreement with the New Mexico State Land Office to provide water for habitat restoration on Albuquerque’s South Valley Rio Grande Bosque. Also in

2012, the ISC entered into an agreement with Reclamation for habitat restoration within the city of Rio Rancho for Open Space lands.

The Strategic Water Reserve is a significant tool in the active management of New Mexico's water. Ultimately, the water acquisitions will give New Mexico increased ability to balance water use between cities, industry, agriculture, and our rivers.

By Brigitte Buynak, Esq. (2007)

Latest Update by Stefanie Tsoie, University of New Mexico School of Law, Class of 2015 (Oct. 2013)

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