

A Sustainable Water Supply is an Economic and Social Imperative Three Bills Can Start the Needed Reform

NEW MEXICO IS FACED WITH, BUT HAS NOT FACED UP TO, IMPORTANT WATER RESOURCE LIMITATIONS. Enacting three related bills will help us protect our water supplies and put New Mexico on a path to a more sustainable water future. The bills will set the stage for an enduring society of New Mexicans that have learned to live within their means in a rapidly changing environment. Each bill has its own appropriation. **The total to start protecting our water is \$18.5 million to be spent over four years**, only about 1.7% of this year's one-time revenue surplus.

What Are We Risking ? Substantial costs !

- Unexpected depletion of ground water supplies
- Shortfalls of compact water in Elephant Butte Reservoir due to overuse in the Middle Rio Grande
- Failure to avoid or settle Rio Grande interstate litigation; new federal controls
- Climate change reductions in water supplies with no plans to adapt and mitigate
- Reduced agricultural and urban diversions costing farmers, jobs, public water supplies, public funds, and the state's economy
- Economic stagnation due to uncertainty of supplies for high value uses that depend on junior water rights
- Foregoing all the benefits of functional water banks and fully adjudicated water rights



What Do These Bills Do?

HB174 directs the State Engineer and the Interstate Stream Commission to prepare to administer water rights and water use by priority as provided by law to assure compliance with the Rio Grande Compact and encourage local water sharing agreements.

HB186 amends existing ISC statutes to require addressing hydrologic reality - unsustainable water use, watershed health, water conservation needs and climate change impacts through a science-based state and regional water planning program.

HB187 directs the Utton Transboundary Resources Center at UNM to recommend reform of important water law issues that remain unresolved. These include adjudication processes, water resource agencies organization, water supplies for future generations, sustainable revenue for water resources management and administration, and utilizing federal financial assistance to address the state's water resource management issues, including Rio Grande Compact compliance, climate change and aridification.

HB174: Rio Grande Compact Compliance Preparations Summary of the Bill

What does this bill do?

This bill requires the State Engineer and the Interstate Stream Commission to prepare to administer water rights and water use as required for compliance with Rio Grande Compact. Particularly:

- The State Engineer must take all steps necessary to prepare for priority administration in accordance with the general rules promulgated by the State Engineer in 2004 and upheld by the NM Supreme Court in 2012.
- The ISC must develop and approve a set of models and underlying data. These will serve as the fact and science foundation for water administration, water banking, and alternative administration, broadly defined as voluntary alternatives to priority administration that the state does not have authority to require. The ISC also must facilitate and encourage preparation of alternative administration plans by the Lower and Middle Rio Grande regions so that compliance need not be based only on strict priority administration.
- A four-year appropriation of \$7 million would require the State Engineer and ISC to complete these requirements within three years from enactment for the Lower Rio Grande and within four years for the Middle Rio Grande.

Why is this bill needed?

Failure to meet the requirements of the Rio Grande Compact risks huge financial costs to the State of New Mexico.

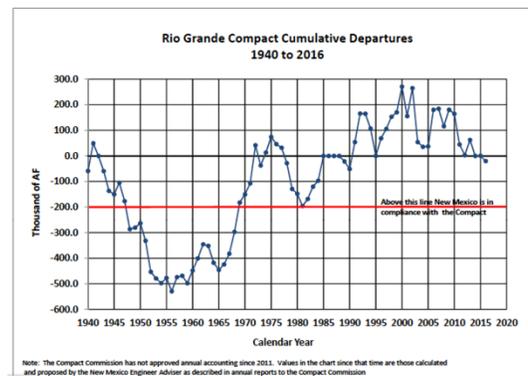
The United States sued New Mexico in 1997 claiming ownership of all Rio Grande water below Elephant Butte Dam. In the aftermath, the State Engineer and the Attorney General obtained passage of NMSA Section 72-2-9.1 in 2003. This statute says “the adjudication process is slow, the need for water administration is urgent, compliance with interstate compacts is imperative and the state engineer has authority to administer water allocations...” 72-2-9.1 requires the State Engineer to adopt rules for “priority administration to ensure that authority is exercised” and “expedited marketing and leasing of water rights in areas affected by priority administration.”

The State Engineer promulgated framework rules for priority administration in 2004. The NM Supreme Court upheld the law and the rules in 2012. Along the Rio Grande, no publicly visible progress to apply these tools for the 72-2-9.1 purposes has been made since.

In the Lower Rio Grande, having a system of water use administration in place will increase the credibility of New Mexico’s settlement negotiation positions. Regardless of the litigation outcome, New Mexico soon will be required to administer water uses and will require this preparation.

Legally sufficient water to release from Elephant Butte Reservoir depends on New Mexico’s Rio Grande Compact compliance through the Middle Rio Grande.

We’ve been using one-time dumps from now dry reservoirs, leaving that compliance tenuous, at best. Preparation for priority administration and effective water banking are essential so that Middle Rio Grande water uses will continue to be met within the Rio Grande supply legally apportioned to the Middle Rio Grande.



HB186: Making Water Planning Effective Summary of the Bill

What does this bill do?

Amendments to existing ISC statutes are essential to make water planning effective. The draft bill does the following:

- Modernizes ISC's 1935 origin statute so that the ISC's statutory purposes include fact and science-based water planning to reduce the gaps between water supply and water demand,
- Sets forth a proposed Regional Water Planning Act to redirect regional water planning from its 1987 origins (protect New Mexico groundwater from appropriation by out-of-state entities) to a planning program involving negotiation of solutions to the gaps between the demand for water and the water supply and other specific regional water problems.
- Amends the 2003 State Water Plan Act, to firm up the statutory requirements, which have not been met to date, and
- Appropriates \$10 million to implement the Act and obtain the benefits that should be expected of sound state-funded water planning programs.

Why is this bill needed?

- The State's regional and state water planning programs since the 1987 statutory establishment of regional water planning have neither identified nor adopted programs to reduce or adapt to the gap between water supply and water demand.
- Recent regional water planning has not been based on facts and science that are needed for compliance with compact limits and improved sustainability of groundwater supplies.
- Regional geographic boundaries have been mostly political, not congruent with the problems and hydrological realities that the region's inhabitants face together.
- Completion of documents entitled 'water plan' was the apparent primary objective of the most recent regional and state water planning cycle. Instead, the objectives should be to develop negotiated and workable solutions to identified problems – unsustainable water use, climate change impacts, watershed health, and water conservation opportunities
- It is imperative that New Mexico plan for variable and declining water supplies so as to minimize the impact of climate change and build resilience.
- Preparation for droughts and extreme precipitation events must be planned to minimize their adverse social and economic impacts.
- All significant stakeholder interests must be adequately represented and have their voices heard. Shared goals and strategies for meeting the interests must be negotiated.
- Approved planning recommendations must be respected and implemented.
- Solving problems where inhabitants share a common source of water requires regional coordination of local water plans to identify and seek to resolve conflicts.
- To be effective, state and local water management and planning need sufficient funding

HB187: An Act for Evaluation of Water Law Changes Summary of the Bill

What does this bill do?

This bill would fund the Utton Center to conduct a detailed evaluation of five specific aspects of New Mexico water law. The Utton Center would produce draft bills that would implement recommended changes to state water law, if any.

The Utton Center would assemble a group of recognized experts in western states' water law and water administration--who have no vested interests or New Mexico water rights clients—to conduct an in-depth evaluation. The Utton Center also would assemble a group of New Mexico citizens provide a detailed review of the Utton Center recommendations and conclusions prior to finalizing for the consideration of the Legislature.

The bill would require the Utton Center to recommend how New Mexico water law and processes should be amended , if at all, to:

- 1) Reform general stream adjudications of water rights
- 2) Protect water supplies for use by future generations
- 3) Prepare for a future with changes in water supplies and water demands caused by higher temperatures and climate change
- 4) Create sustainable funding sources for necessary water resources administration
- 5) Address other questions proposed by the New Mexico citizens review panel

Why this bill is needed:

New Mexico courts, hundreds of thousands of frustrated New Mexicans, and the Office of the State Engineer have spent unproductive decades in general stream adjudications to quantify New Mexico water rights. Progress has been unnecessarily adversarial, very expensive to all parties, and frustratingly slow and unproductive.

The Lower Rio Grande provides a prime example. The United States sued in 1997 claiming federal ownership of all the water, ground and surface, in the Lower Rio Grande. As a result, New Mexico initiated the Lower Rio Grande general stream adjudication and the federal “quiet title” lawsuit was placed in abeyance. Despite large expenditures and major efforts over more than 20 years, the process is far from complete. Reasons for the glacial pace are many and valid given the laws and processes governing general stream adjudications.

The Administrative Office of the Courts in a 2007 memorandum¹ to the Legislature described the less adversarial and more productive adjudication laws and processes of three other western states. The 2008 Water and Natural Resources Committee workplan focused on adjudication reform, but no specific reform measures were taken up during the legislative session.

Obtaining legal determination of the amounts and priorities of water rights in the Middle Rio Grande seems essential and has been discussed over decades, including by the Legislature. The seemingly intractable barriers established by law and process have prevented progress.

Other deficiencies may need changes in law to fix. These include preserving water for future generations, organization of New Mexico's water resources agencies, addressing climate change impacts, and providing a sustainable source of funding for water resources administration.

¹ Administrative Office of the Courts, *Water Rights Adjudication* Memorandum to David Abbey, Director, Legislative Finance Committee, September 13, 2007, 13 pages