

## 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 create basic reform essential for us to live within our means in a rapidly changing environment. Each bill has its own appropriation. **The total to start protecting our water is \$15.5 million to be spent over four years**, only about 1.4% of this year's one-time revenue surplus.

### What Are We Risking ? Substantial costs !

- Unforeseen reductions in 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
- Failure to prevent middle Rio Grande or settle lower Rio Grande interstate litigation resulting in new federal controls
- Climate change reductions in water supplies with no plans to adapt and mitigate
- Unexpected depletion of ground water supplies due to inadequate monitoring
- Water shortfalls in the Lower Rio Grande due to Middle Rio Grande under-delivery
- The benefits of functional water banks and fully adjudicated water rights



Rio Grande South of Socorro

### What Do These Bills Do?

Provide resources and statutory guidance to rebuild New Mexico's weakened water agencies and direct them to address high priority issues and problems.

HB174 directs the State Engineer, the Interstate Stream Commission and the MRGCD together with stakeholders to build on the federal Rio Grande-New Mexico Basin Study to **prepare a detailed plan** to assure compliance with the Rio Grande Compact and **encourage local water sharing agreements and water banking**.

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 the University of New Mexico to evaluate and recommend changes in **certain water law topics** -- besides water planning -- that are holding us back. These include adjudication processes, water resource agencies organization, preserving water supplies for future generations, providing 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 directs the State Engineer and the Interstate Stream Commission to actively participate in and support water resource planning by stakeholders in the Middle Rio Grande region to continue New Mexico's continuous compliance with its Rio Grande Compact obligations to deliver water through the Middle Rio Grande to Elephant Butte without strict priority administration.

The ISC is directed to create and convene a Middle Rio Grande region water planning entity to create the water plan by 2024. The Middle Rio Grande Region Water Plan will leverage the results of an intensive federal study of the Rio Grande basin in New Mexico between the Colorado border and Elephant Butte Dam that is now getting underway.

The bill establishes goals for the Middle Rio Grande Region Water Plan including:

- recognize and address climate change impacts on Rio Grande flows,
- develop a set of actions that will maintain New Mexico's continuous compliance with the middle Rio Grande's delivery obligations, without resorting to strict priority administration,
- provide a water future with increased certainty for middle Rio Grande water users by preventing the consequences of failing to continuously comply with Rio Grande Compact delivery obligations through the middle Rio Grande, and
- prevent the difficulty and problems of a possible future requirement to implement strict priority enforcement of all water rights and permits within the middle Rio Grande,
- create a workable system and rules for water banking that will allow for rapid administrative approval of water banking transactions that do not increase net depletions of water.

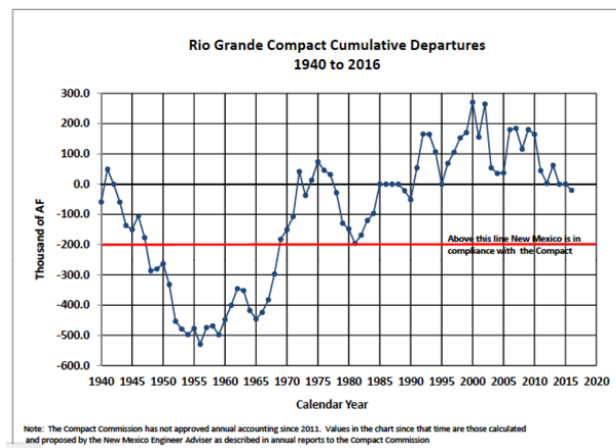
### Why is this bill needed?

A failure by New Mexico to continue to comply with the Rio Grande Compact requirements for delivery of water to Elephant Butte will cause the US Supreme Court lawsuit to expand. Such failure also will deprive New Mexico, Texas, and federal water users located downstream of Elephant Butte of their legally entitled water supply.

Legally sufficient water for release to users below Elephant Butte Reservoir depends on New Mexico's compliance with its obligations to deliver most middle Rio Grande inflows to Elephant Butte. The risk of delivering less water than the compact requires will be exacerbated by increases in temperatures, water uses and evaporation. Our current and seemingly tenuous system of ad hoc coordination between agencies to make annual deliveries through the Middle Rio Grande of the Lower Rio Grande's water entitlement seems unwise.

The ISC's efforts to limit natural depletions of water and achieve efficient transportation of water through the Middle Rio Grande to Elephant Butte has been successful for the last three decades. Those efforts must continue but will not be sufficient to assure continuous future compliance.

Priority administration of the water rights in the middle Rio Grande to maintain New Mexico's water deliveries to Elephant Butte would be very difficult and contentious. We must arrange through formal planning that New Mexico will meet its Rio Grande Compact delivery obligations and that Middle Rio Grande water uses will continue to be met within the Rio Grande supply legally apportioned for use in 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,
- Recognizes that effective water planning must be regional and based on hydrologic reality,
- 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 regional solutions to the gaps between the regional demand for water and the water supply and other specific regional water problems,
- Amends the 2003 State Water Plan Act to increase the clarity of the statutory requirements, and
- Appropriates \$10 million to implement the Act and obtain the benefits that we need and should expect of sound state-funded water planning programs.

### **It addresses these problems:**

- The State's regional and state water planning programs to date have not met our needs:
  - Regional water planning has been inconsistently funded since it began in 1987, and particularly poorly in the most recent iteration,
  - The recently completed second round of regional water planning was not based on reliable data and scientific hydrology,
  - Water planning has not addressed groundwater pumping limits required to preserve water for future generations or defined the expected lifetime of groundwater aquifers being depleted,
  - Regional water planning has not addressed keeping Rio Grande water uses within applicable legal limits, and
  - The 2003 State Water Plan Act requires a plan for compact compliance that no State Water Plan or update has considered.
- Some regional planning area geographic boundaries are not congruent with the hydrology and solutions to problems that water users face together.
- Water planning has not been designed to help find solutions to our pressing water problems. Instead, the recent objective seems to have been to produce documents entitled 'water plan.'

### **With these requirements:**

- Planning will focus on resolving regional and local water uses that cannot be sustained.
- Planning will be based on adequate data. *In many regions, water planning must begin with collection of better data and development of better water models.*
- Water planning objectives will include development of negotiated and workable solutions to real problems: unsustainable water use, climate change impacts, and watershed health.
- New Mexico will plan to adapt to less surface water and more extreme weather and will plan to mitigate climate change impacts on its people and economy.
- Planning will include representatives of all significant stakeholder interests, who will negotiate shared goals and strategies based on adequate data and sound science.
- Water planning recommendations will be approved or not, and implemented if approved.
- Regional water planning entities will identify and seek to resolve conflicts among local water plans that depend on common water supplies.

## **HB187: An Act for Evaluation of Water Law Changes**

### **Summary of the Bill**

#### **What does this bill do?**

This bill funds the Utton Center to conduct a detailed evaluation of five specific aspects of New Mexico water law and recommend specific changes to state water law.

The Utton Center will assemble and manage 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 will assemble a water law review panel of New Mexico citizens to provide a detailed review of the outside experts' review topics and their recommendations and conclusions.

The bill requires the Utton Center to recommend draft bills for the legislature on how New Mexico water law and processes should be amended, if at all, to:

- 1) Reform general stream adjudications of water rights,
- 2) Evaluate the organization of NM's water administration and funding agencies,
- 3) Protect water supplies for use by future generations,
- 4) Prepare for a future with changes in water supplies and water demands caused by higher temperatures and reduced snow melt runoff,
- 5) Create sustainable funding sources for necessary water resources administration

#### **Why this bill is needed:**

New Mexico water rights adjudications concerns are one of the five topics to be evaluated. New Mexico courts, hundreds of thousands of frustrated New Mexicans, and the Office of the State Engineer have spent decades in general stream adjudications to quantify New Mexico water rights. Progress has been unnecessarily adversarial, very expensive to all parties, and frustratingly slow. Reasons for the glacial pace include the laws, procedural rules and regulations governing general stream adjudications.

Previous efforts have resulted in recognition of opportunities for improvement, but not change. The Administrative Office of the Courts in a 2007 memorandum<sup>1</sup> 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 work plan focused on adjudication reform, but no specific reform measures were considered. A 2009 effort by the New Mexico Institute of Public Law<sup>2</sup> provided more information but did not result in any changes.

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.

Funding for water planning and water administration has been ad hoc and woefully inadequate, resulting in the agencies' inability to effectively address our water problems and future water risks. Being fundamental to life and our economies, water should be respected with a dedicated ongoing funding stream.

Changes in law need to be considered to address other deficiencies - including preserving water for future generations, organization of water resources agencies, and addressing climate change impact.

---

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

<sup>2</sup> Institute of Public Law, *Assessing Potential Changes to the New Mexico Water Rights Adjudication Process*, prepared pursuant to Senate Joint Memorial 3 (2009), August 20, 2009, 48 pages