

Equitably apportioning limited water is increasingly complex, and vacancies constrain the Office of the State Engineer's (OSE) progress on some key measures. Ongoing interstate stream conflicts not only consume time and resources but also threaten the state's sovereign authority to manage its waters and may place restrictions on water use. The most significant of these conflicts is Texas' claim in the U.S. Supreme Court that pumping by New Mexicans from groundwater wells downstream of Elephant Butte Reservoir reduced the amount of water delivered to Texas by the Rio Grande Project. The federal government joined the suit, claiming New Mexico harmed its ability to deliver water as required under its international treaty with Mexico. The Interstate Stream Commission and the Litigation and Adjudication Program generally met targets, but the Water Resource Allocation Program has backlogs and difficulty meeting some targets due to vacancies and increasing workload.

As required by the 2019 General Appropriation Act, OSE submitted a five-year plan for reducing operating expenditures from its trust funds. The General Appropriation Act of 2020 includes a general fund increase of \$500 thousand in Program Support and a corresponding decrease in expenditures from the trust funds.

OSE received a special appropriation of \$7 million to be spent in fiscal years 2020 through 2023 on development and implementation of a water conservation and management pilot program for the lower Rio Grande. The agency is working on developing hydrological studies to evaluate how effectively different management actions can reduce consumption, promote aquifer health, and improve surface water deliveries. Staff will also explore best practices in water conservation governance and operations with a focus on groundwater conservation and work to establish an entity to manage a longer-term program.

Water Resource Allocation

The Water Resource Allocation Program (WRAP) has an informal target to keep the number of backlogged water rights applications under 500, which it did not meet in FY20. The program also did not meet the target for water rights applications processed per month, reportedly due to 35 vacant positions in the Water Rights Division and the need to investigate complaints of illegal water use that are higher due to limited water resources. WRAP staff made efforts in FY20 to increase the number of transactions abstracted in the water administration resource system and are on track to meet the target.

Given ongoing concern about statewide dam safety, OSE should consider revising the performance measure related to dam deficiencies. The current measure reports the number of notices for deficient dams issued each quarter, but this does not provide information on the actual number of dams with deficiencies or what proportion of all dams in the state that number represents. The ten dams shown on the right are currently undergoing rehabilitation work, and FY20 state capital outlay funds are being used for four.

ACTION PLAN

Submitted by agency?	No
Timeline assigned?	No
Responsibility assigned?	No

The Dam Safety Bureau of the Office of the State Engineer (OSE) keeps a list of publicly owned dams in need of rehabilitation, ranked in priority order based on several factors. The list consists of 66 dams that are publicly owned, are of sufficient size to be regulated by OSE, are considered high-hazard potential dams, have auxiliary spillway capacity that is less than 70 percent of the regulatory requirement, and are deficient based on safety criteria with a condition rating of unsatisfactory, poor, or fair.

Publicly Owned Dams in Need of Rehabilitation: 10 Highest Priority Dams

Dam Name	Purpose	Estimated Rehab Cost
Santa Cruz Site 1	Flood Control	\$6M or more
Lake Maloya Dam	Water Supply	over \$30M
Bear Canyon Dam	Irrigation, Recreation	\$6M or more
San Mateo Dam	Irrigation	\$3M or more
Nichols Dam	Water Supply	\$3M
McClure Dam	Water Supply	\$3M
Lower Vallecito Dam	Irrigation	\$7M-\$8M
Bonito Lake	Water Supply	\$10M or more
Alto Lake Dam	Water Supply	\$10M or more
Cimarroncito Dam	Water Supply	\$10M or more

Source: OSE

Budget: \$14,650.9 FTE: 182

	FY18 Actual	FY19 Actual	FY20 Target	FY20 Actual	Rating
Unprotested and unaggrieved water rights applications backlogged*	451	547	N/A	502	Y
Unprotested water rights applications processed, per month	27	30	50	39	R
Transactions abstracted annually into the water administration resource system database	15,612	24,946	20,000	20,432	G
Notices issued to owners of publicly-owned dams notifying them of deficiencies or issues	NEW	84	45	58	G
Program Rating	Y	Y			Y

*Measure is classified as explanatory and does not have a target.

Interstate Stream Commission

New Mexico's cumulative Pecos River compact credit continues to be positive. The U.S. Supreme Court's Pecos River Master issued his report for Water Year 2019 on June 24, 2020. The report included an annual debit to New Mexico of 9,800 acre-feet, resulting in a cumulative Pecos River compact credit of 166,300 acre-feet.

The River Master's 2020 calculation of New Mexico's cumulative compact credit includes credit to New Mexico of approximately 16,600 acre-feet associated with evaporation from water held for Texas in Brantley Reservoir between September 2014 and September 2015. That credit is currently disputed in the U.S. Supreme Court, which was scheduled to hear oral arguments on April 21, 2020. Arguments have been postponed to October 5, 2020, due to the COVID-19 pandemic.

Consensus on the accounting of the Bureau of Reclamation's unilateral release of credit water from Elephant Butte Reservoir in 2011 is part of the U.S. Supreme Court Rio Grande litigation. The New Mexico Engineer Adviser's accounting of New Mexico's Compact status for calendar year 2020 was an accrued credit of 38,800 acre-feet. The above-average snowmelt runoff for 2019, river sediment plugs that blocked the river channel after the runoff, and the associated very high delivery obligations under the Compact made it more challenging for New Mexico to make compact deliveries. The state is required to retain Rio Grande water in storage at all times to the extent of its accrued debit. Consequently, significantly less storage water will be available for release to meet middle Rio Grande demands this summer compared to other dry years.

Article VII storage restrictions went into effect in June 2020 and Interstate Stream Commission (ISC) staff anticipate they will remain in effect through the 2021 snowmelt runoff. With extreme drought conditions persisting, ISC staff project New Mexico will have significant under-deliveries through 2020. The Rio Grande Compact Commission came to an agreement that approximately 38,800 acre-feet of accrued debit water being retained in El Vado Reservoir could be released on an emergency basis to provide flows in the middle valley to support endangered species and agricultural supply.

Budget: \$13,563.5 FTE: 46

	FY18 Actual	FY19 Actual	FY20 Target	FY20 Actual	Rating
Cumulative state-line delivery credit per the Pecos River Compact, in thousand acre-feet	137.9	170.8	> 0	166.3	G
Cumulative delivery credit per the Rio Grande Compact, in thousand acre feet	-0.7	5.4	> 0	-38.8	R

Reservoir Capacity New Mexico Statewide

Reservoir	2018	2019	2020 YTD (as of Aug. 1)
Abiquiu Reservoir	10%	6%	5%
Bluewater Lake	15%	11%	11%
Brantley Lake	3%	3%	2%
Caballo Reservoir	14%	8%	18%
Cochiti Lake	10%	9%	
Conchas Lake	79%	51%	
Costilla Reservoir	78%	23%	21%
Eagle Nest Lake	54%	43%	
El Vado Reservoir	43%	8%	23%
Elephant Butte Reservoir	18%	8%	8%
Heron Reservoir	38%	14%	27%
Lake Avalon	65%	33%	
Lake Sumner	28%	33%	11%
Navajo Reservoir	72%	51%	76%
Santa Rosa Reservoir	21%	12%	

Note: Annual reservoir capacity is reported as of December 31 each year.

Source: Natural Resources Conservation Service

Cumulative New Mexico unit fund expenditures, in millions*

	\$9.02	\$14.83	N/A	\$20.1	
Program Rating	G	G			G

Litigation and Adjudication

These two measures track progress toward the completion of the adjudication of all water rights in New Mexico. The number of offers to defendants in adjudications for FY20 reflects subfile activity in the Lower Rio Grande and Animas water rights adjudications. The percentage of water rights that have judicial interpretations represents the percentage of water rights adjudicated in open, active streams and basins. It does not reflect the total number of adjudicable water right subfiles in New Mexico, as that number cannot be accurately ascertained before the entire state is adjudicated. This measure is therefore affected not only by new judicial determinations, but also the closure of completed streams and basins and opening of new adjudications. Such a change in the number of open, active streams and basins was the cause of the increase from 67 percent in FY18 to 75 percent in FY19. For FY20, the program included water rights with judicial determinations in both closed and active adjudications to provide more meaningful data on the cumulative effect of adjudications.

Budget: \$6,931.9 **FTE:** 66

	FY18 Actual	FY19 Actual	FY20 Target	FY20 Actual	Rating
Offers to defendants in adjudications	298	456	250	444	G
Water rights that have judicial determinations	67%	75%	70%	76%	G
Program Rating	G	G			G

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