

Water and Natural Resources Committee

Water System Governance and Reform

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BACKGROUND PRINCIPLES OF WATER RIGHTS IN NEW MEXICO

- Water belongs to the public and is subject to appropriation by beneficial use. N.M. Const. Art. 16, § 2.
- Beneficial use is the basis, the measure, and the limit of a water right. N.M. Const. Art. 16, § 3.
- Priority of appropriation shall be given the better right. N.M. Const. Art. 16, § 2.
- Elements of a Water Right:
 - Priority
 - Quantity
 - Point of Diversion
 - Place of Use
 - Purpose of Use
 - Source



SURFACE RIGHTS: PRE- AND POST-1907

The Water Code gave the State Engineer jurisdiction over all new surface water appropriations in 1907. After that date, no one can appropriate surface water except by application to the State Engineer.

Pre-1907 water rights that were already established by beneficial use were protected under the Water Code.

How to systematically identify and account for pre-1907 water rights?

- By having water rights owners file “declarations” with the OSE if they want to change the water rights.
- By conducting comprehensive water rights adjudications in each stream system.

GROUNDWATER RIGHTS: BASIN DECLARATIONS

The Water Code provides that the State Engineer can assert jurisdiction over any groundwater basin in the State by issuing a basin declaration.

“Pre-basin” groundwater rights are like “pre-1907” surface rights – they can be created by simply drilling a well and putting water to beneficial use.

Once a basin is declared, new appropriations must be by application to the State Engineer.

All groundwater in New Mexico (absent some non-potable aquifers) is now part of a declared basin.

ACTIVE WATER RESOURCES MANAGEMENT ("AWRM")

NMSA 1978, section 72-2-9.1 was enacted in 2003 to authorize the administration of water rights even in the absence of completed adjudications. This statute was upheld by the Supreme Court in *Tri-State v. D'Antonio*, 2012-NMSC-039.

- The AWRM statute allows the State Engineer to promulgate district-specific regulations ("DSRs") governing priority administration
 - based on appropriate hydrologic models
 - promote expedited marketing and leasing of water rights in areas affected by priority administration.
- AWRM framework regulations (19.25.13.1 - .50 NMAC) set forth general framework for administration statewide.
 - Allow for approval of replacement plans for out-of-priority users to acquire in-priority water rights
 - Encourage "alternative administration" arrangements, including shortage sharing agreements between water users.

CHALLENGES, CONSTRAINTS AND SOLUTIONS

- Case law and NM statutes have further formed the basis for water rights administration that guides the OSE in determining the legal use of a water right, impairment to other rights, conservation of water and the public welfare.
- SB12 (72-2-20) increased the required notice provisions from 30 to 70 days and publication notice procedures present challenges for processing applications in a timely manner. Exclusively web-based notices may be an answer?
- Current water leasing provisions need review for short-term leases to assist water users in meeting drought driven shortages. One to three year farm to farm, farm to river leases would benefit users during shortages.
- Active Water Resource Management (AWRM) provides for water user driven agreements in sub basins as an alternative to strict priority administration.

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Water Resource Allocation Program

- Authorized FTE 171
- Vacant Authorized 30
- Percent Vacant 17.54%

Program Support

- Authorized FTE 41
- Vacant Authorized 8
- Percent Vacant 19.51%

Interstate Stream Commission

- Authorized FTE 43
- Vacant Authorized 5
- Percent Vacant 11.63%

Litigation Adjudication Program

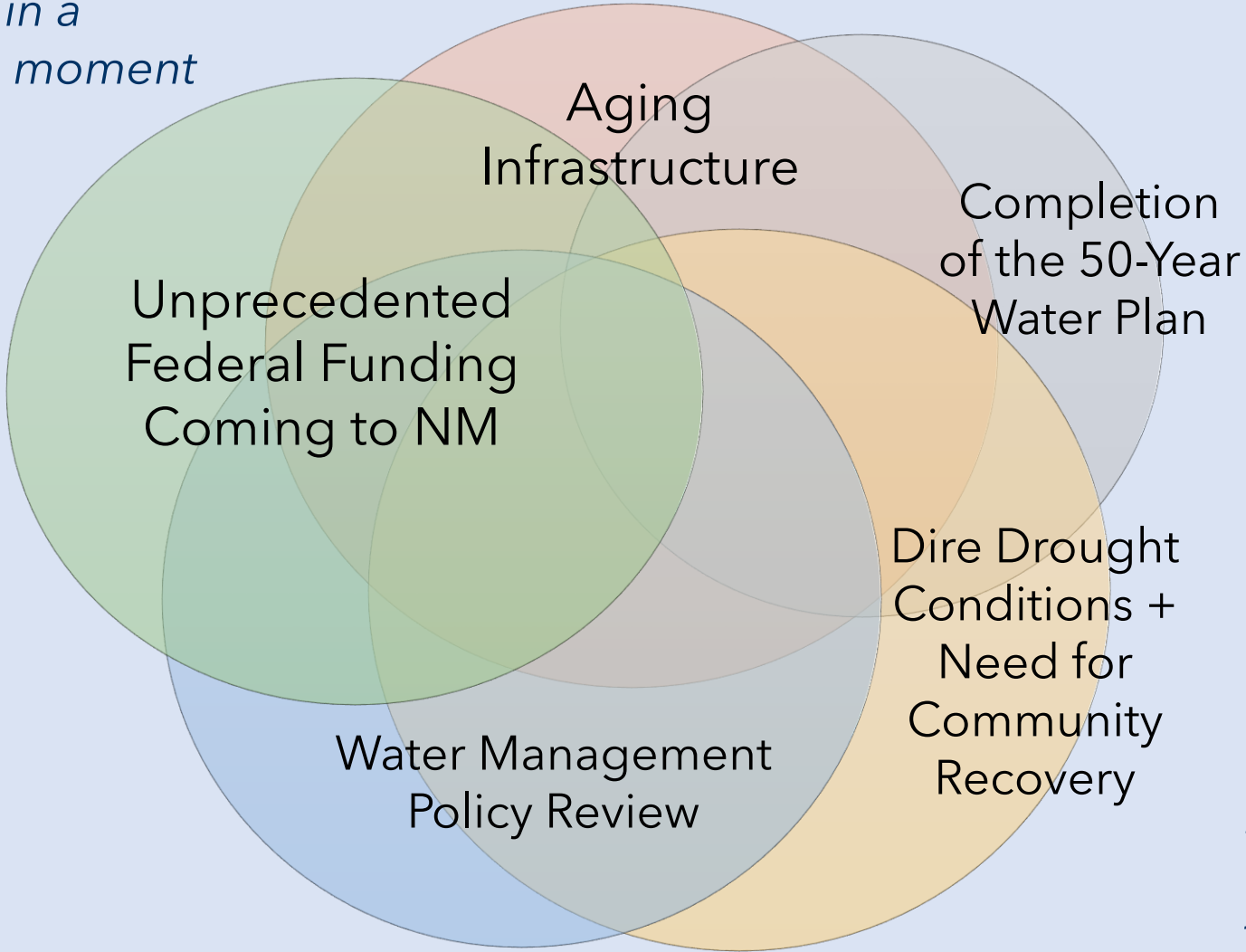
- Authorized FTE 59
- Vacant Authorized 18
- Percent Vacant 17.54%

Agency Total (July 2022)

- Authorized FTE 314
- Vacant Authorized 61
- Percent Vacant 19.43%

WATER POLICY AND INFRASTRUCTURE TASK FORCE

*A once in a
lifetime moment*



*Is there a
willingness
to act?*

WATER POLICY AND INFRASTRUCTURE TASK FORCE

GOAL » Bring expertise from every water use sector to the table to craft recommendations for action related to:

1) Preparing for Continued Drought and Climate Change Impacts to Water Resources
= Input to the 50-Year Water Plan

Summer 2022

2) Review Current Water Policies to Address Both Regional and Statewide Water Management Goals » Recommended Legislation

3) Funding Mechanisms Reform Related to Water Infrastructure

4) Capacity Development on Multiple Levels
= Report to the Legislature

Fall 2022

CAPACITY DEVELOPMENT

- Communities Across the State
- State Agencies
 - Internal Capacity for State Funding Management and Distribution
- Private Sector
 - Engineering Services, Construction Contracting, etc.
- Program / Project Management
- Funding Mechanisms Reform as Identified in the June 2021 LFC Report
- Long-Term Sustainability for Rural and Agricultural Communities and Small Domestic Water Systems



OTHER CHALLENGES, ISSUES AND MILESTONES

- TX v NM/CO in Supreme Court Case 141
- New Mexico Debit Status under the Rio Grande Compact
- Potential for Priority Call on the Pecos River
- Implementation of Indian Water Rights Settlements
 - Navajo Nation San Juan Basin
 - Taos Pueblo
 - Aamodt Settlement for four Pueblos in the Pojoaque Basin
- IWRS – two new settlements just signed by the Governor
 - Rio Jemez involving the Jemez and Zia Pueblos
 - Rio San Jose for the Acoma and Laguna Pueblos
 - Three pending negotiations: Ohkay Owingeh, Santa Clara, other Navajo claims
- Several large water supply projects
 - Navajo/Gallup
 - Eastern NM
 - Pojoaque Valley