

Water Governance Imperatives and Solutions

September 8, 2021 Interim Water and Natural Resources Committee

Near term solutions discussed with this panel:

1. Build funding to New Mexico's agencies working on water to grow a work force with diverse and skilled professionals to develop modern solutions to New Mexico's water challenges.
2. Amend or revise water administration and planning statutes to guide next steps in water administration and planning, with a goal of being more adaptive with less water to increase community water resilience. Statutory changes need to provide direction to agencies to implement regional or state water plans which will be followed and upheld by water agencies and authorities.
3. Set aside significant surplus revenue this year to fund the future of water in this state. Consider rebuilding water trust funds at OSE/ISC, fund agencies working on goals of the Water Data Act, and build a new water and adaptation resilience fund.

Summary of comments from panel members found on following pages.

Paul Hultin, Water Lawyer, Santa Fe

1. New Mexico is in a profound water crisis; we are running out of water. Extraordinary drought is the new normal. The Office of the State Engineer (OSE) is dysfunctional, nontransparent, and understaffed. Our water statutes are antiquated and do not address climate change. State Government must immediately make major structural changes in water administration and planning and dramatically increase water funding.
2. Like the air we breathe, water is an existential resource, not a commodity. The public waters of New Mexico are owned by the state as trustee for the people. *State ex rel. Bliss v. Dority*, 55 N.M. 12, 225 P.2d 1007 (1950). New Mexico recognizes that common law public trust principles apply in the context of public waters. *Sanders-Reed ex rel. Sanders-Reed v. Martinez*, 360 P.3d 1221 NMCA-2015. Water is New Mexico's most precious resource and State Government is not fulfilling its fiduciary duty to the people to competently manage and protect New Mexico's water.
3. Current law provides that all administrative actions taken by OSE require a finding that the action "is not detrimental to the public welfare of the state". Public welfare of the state is not defined by statute and OSE has opposed any legislative definition of public welfare. OSE simply makes conclusory findings that all its administrative orders are not detrimental to the public welfare of the state on an ad hoc basis. How water is administered for the public welfare of the state is an important public policy question that must be defined by the Legislature.
4. OSE has no policy regarding water speculation. Water is commonly leased to water brokers and publically owned "water sourcing" companies for commercial sales. OSE routinely approves these applications as being not detrimental to the public interest often with no information about to whom the water will be sold to or where it will be used. Like public welfare, water speculation is addressed (or not addressed) by OSE on an ad hoc basis with no standards. Financial speculation in New Mexico's most precious resource is not a beneficial use and the Legislature must declare it illegal.
5. The Water Code does not contain the words "climate change". OSE does not consider or apply climate science in any way in its administration of New Mexico's water. The legislature must create and fund an Office of Climate Science and require that climate science be made an integral part of water policy, administration, and planning.
6. OSE administration of NM's water lacks adequate data, systems and tools and important data is not publicly available. This lacks transparency and makes rational policy-making and scientific analysis of water management actions impossible.

Kyle Harwood, Lawyer and Water Resource Professional

Reflection – The Governor’s Water Policy agenda contained the following and the Legislature must support the Governor’s goals as stated in “Managing and Conserving our Water to Preserve our Culture, Communities and Future Generations of New Mexicans”:

“Strengthen our state water agencies. Dysfunction, political infighting, a staffing exodus and budget cuts all have undermined the mission of the Interstate Stream Commission (ISC) and the Office of the State Engineer (OSE). Staff morale is low. ISC commissioners have resigned in protest. Remaining staff are stretched too thin. Money from programs like the Irrigation Works Construction Fund is being used to pay for operating expenses instead of infrastructure. This has to stop. We need to revitalize these essential water offices. As governor, I will:

- *Appoint strong leaders and managers who will work well together, collaborate with local, tribal and federal authorities and put science before politics.*
- *Expand and diversify the staff with professionals who have the experience and skills necessary to address the challenges we face.*
- *Restore adequate funding so the OSE/ISC can operate without raiding water trust funds.”*

Imperative – Agency Funding Goal

- Recommendation: Fund the OSE/ISC agencies – **accelerate the implementation of the Legislated 5 Year Plan to Reduce OSE use of Trust Funds** (2019 General Appropriations Act).
 - ‘Reduce’ should be defined as elimination of Trust Funds for OSE operations and replacing it with General Fund revenue.
 - The recruitment of a diverse and professional workforce for the OSE and ISC agencies of the future requires a sustainable funding source for the recruitment and retention of agency staff.
- Recommendation: “Baseline” funding **this coming Session to add 40 FTE** over coming 2 years
 - Return to OSE/ISC staffing levels of a decade ago – the urgency is greater and the staffing is functionally less than years ago.
- Recommendation: “Surge” funding **this coming Session to refill the two Trust Funds**
 - Irrigation Works Construction Fund
 - Improvement of Rio Grande Income Fund

Imperative – Agency Funding Process

- Recommendation: The WNRC Interim Committee convene LFC staff, DFA, and OSE/ISC to **resolve the funding** for staffing and surge funding described above.
 - The Committee nominate several Legislators from the Committee to host this Funding Process meeting and identify specific steps to eliminate any barriers to this crucial funding.
- Recommendation: **The WNRC Interim Committee 2022 workplan specifically analyze and propose recommendations for water agency funding legislation reform.** We have ‘old plumbing’ and ‘new plumbing’ with respect to water agency funding, and we need a ‘remodel’.

Imperative – The Governor’s priority for a 50 Year Water Plan is crucial and critical, and it is essential that the last step in the Water Planning process is review and revisions to the State’s water planning statute.

- The water planning statute has been a fine statute, however it needs to be revised to adapt to what we have learned in the current 50 Year Water Plan.
- The current regional water planning statute was developed in a different time and for a different problem, and we need a new statute to address our current needs.

Stacy Timmons, Associate Director for Hydrogeology at NM Bureau of Geology and Mineral Resources, New Mexico Institute of Mining and Technology, Socorro, NM geoinfo.nmt.edu – newmexicowaterdata.org

Background on NM Water Data Act 2021: Implementation of the Water Data Act continues to make progress while working on a very small budget to build an online open data platform, grow new inter-agency collaborations, build data sharing infrastructure, and set New Mexico as a visionary leader for modern water data services. One of the largest benefits of the Water Data Act for New Mexico is that by taking steps to modernize our data management and improve how agencies share and utilize data, there will be improvements in transparency, efficiency of state agencies, and, ultimately, our water management efforts. Water is a limiting resource for New Mexico's economic and social prosperity. It requires a thoughtful approach to manage it and plan for an adaptable and resilient future for our people, land, and natural resources.

This project is convened by the New Mexico Bureau of Geology and Mineral Resources, which is one of the directing agencies with the New Mexico Office of the State Engineer; Interstate Stream Commission; New Mexico Environment Department; and New Mexico Energy, Minerals and Natural Resources Department.

1. Build funding at agencies charged with monitoring, managing or evaluating our water resources.
 - Support, request, or provide targeted budget increases to state agencies working on water, especially toward agencies ability to respond to data collection, data management and data sharing (i.e. NM Water Data Act 2019, and Environmental Database Act 2021).
 - See 2021 Water Data Plan pages 13-15 for budget needs in Water Data Act Directing Agencies (OSE, ISC, NMED, EMNRD, and NMBGMR)
2. Improve monitoring programs to quantify, measure, and meter water uses. Open water data will enable more creative, resilient, and equitable solutions to water resource limitations. (See maps handout)
 - Build a program for state funds to match with federal funds/ programs to help rebuild and improve water data collection and monitoring programs (groundwater, surface water, water use, and climate data).
 - Build a comprehensive groundwater monitoring program for New Mexico with multiple collaborating agencies. The largest data gaps we have are in New Mexico's groundwater data where we lack sufficient data collection frequency, data quality, and spatial coverage. Statewide, groundwater remains largely unquantified, minimally characterized, and insufficiently monitored. As surface water resources are further challenged, groundwater resources are more likely to be explored (such as brackish water), developed, or exploited. We will need far more data to describe water quantity, water quality, and aquifer characteristics to make good decisions for resource use or conservation.
3. Build knowledge and awareness of priority water issues.
 - Create a project or program to provide an objective review of water management agencies, policies and statutes. This should include careful review of what is working and what is not and how New Mexico compares with what other states are doing – with a goal of repairing what's not working to improve efficiency and coordination.
 - Enable communities to find their own solutions, such as through regional water planning. Evaluate and update regional water planning statute to fit current and future water challenges, supported by data and science.



Theresa Cardenas

Civic Engagement and Policy Manager, Natural Resources and Agricultural Resilience

Summary

All agencies that protect our water and land are dealing with a great deal of uncertainty both from a regulatory and water supply delivery standpoint.

Since 1988 NM First has conducted many nonpartisan townhalls and other convenings about water. Thousands of people throughout the state have participated over the years. Many of their recommendations and strategies ask for systems change or funding for projects to help communities be more resilient. Many are waiting and ready to be acted on, NOW!!!

Who's most impacted?

The stakes in New Mexico are incredibly high for farmers and ranchers as they look to mitigate losses. Not just loss of water supply but land and their livelihood.

- We have about 25,044 farms and ranches in NM ¹
- Total impact is \$3.38 B ¹
- \$3,400,000,000 production value ¹
- 93% are family-owned ranches ¹

How can we capitalize on the many recommendations and strategies that already exist? How do we mitigate the losses? What's needed?

This is what we ask of you.

- Create a \$500 million **Water Adaption and Resilience Fund** to provide money to implement the many strategies in the NM Agriculture Resilience Plan and other current and future approved regional and state water planning recommendations and strategies to help increase resilience.
- Recognize the current statutes are harming, not serving New Mexican's as we face a difficult water future. Current water plans are not implemented and not effective.
- Ask the governor to provide resources for water agencies to fulfill their obligations.

Help us make this happen legislators!!!! We need leadership, and we need the governor to stand behind the Water Adaption and Resilience Fund to secure our Agriculture and People of NM!

¹ New Mexico Farm and Livestock Bureau <https://www.nmflb.org/policy-action>