PRESENTATION TO THE

NEW MEXICO INTERIM WATER AND NATURAL RESOURCES

DROUGHT SUBCOMMITEE

July 24, 2013

BY

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THE NEW MEXICO OFFICE OF THE STATE ENGINEER

INTERSTATE STREAM COMMISSION

Legislative summaries on Strategic Water Reserve, State Water Plan and Regional Water Planning as they Pertain to Drought for July 24, 2013 Drought Subcommittee of the IWNR Committee of the NM Legislature.

Strategic Water Reserve

In 2005, the legislature passed the Strategic Water Reserve, § 72-14-3.3 NMSA. The statute authorizes the Interstate Stream Commission ("ISC") to establish a Reserve using leased, purchased or donated water, water rights and storage rights. Use of the water for the Reserve is limited to two purposes: to assist the state in complying with interstate stream compacts, and to benefit threatened or endangered species through water management efforts. The Reserve has been successfully implemented in the Pecos River Basin and on the Middle Rio Grande, two priority basins for the Reserve since the statute was enacted.

The scarce and highly variable nature of New Mexico's water resources presents a continual challenge for the state to ensure that our interstate delivery obligations are met while satisfying federal Endangered Species Act requirements. In times of drought, the Reserve provides a tool to meet these challenges with water the ISC has acquired for the Reserve while protecting New Mexico water users whose rights may be vulnerable if compact obligations and ESA requirements are unmet.

State Water Plan

Pursuant to § 72-14-3.1 NMSA, the legislature directed the ISC, in collaboration with the Office of the State Engineer and the Water Trust Board, to prepare and implement a comprehensive state water plan. The first State Water Plan was published in 2003, just one year after the statute's passage. The Plan is a comprehensive and coordinated management tool that "establish[es] a clear vision and policy direction for active management of the state's waters." § 72-14-3.1 (C) (2). The ISC and the other state agencies are currently updating the State Water Plan to include an overview of water supply and demand challenges and opportunities in the state's major river and groundwater basins, climate variability, conservation efforts and federal, state and local collaborative opportunities on water issues, including infrastructure needs.

Among the many requirements of the statute are two relating to drought. The first, §72-14-3.1 C (6), states that the water plan "shall include a drought management plan designed to address drought emergencies, promote strategies for prevention of drought-related emergencies in the future and coordinate drought planning statewide." The state implemented this provision by forming the Drought Task Force in 2003, which has been reactivated in the past two years, as New Mexico has earned "Exceptional" Drought status according to the US Drought Monitor (http://droughtmonitor.unl.edu/monitor.html). The Drought Task Force meets regularly and maintains the website http://www.nmdrought.state.nm.us/dtf_workgroup.html.

The second requirement related to drought is contained in 72-14-3.1 C (14) and requires the state to "promote collaboration with and strategic focusing of the research and development of the state's national laboratories and research institutions to address the state's water challenges and to bring to the state demonstration projects in desalination, conservation, watershed restoration, weather modification, and other technological approaches to enhancing water supply and management."

With respect to OSE/ISC's implementation of drought planning, the encouragement of voluntary water sharing agreements is a preferred way of respecting senior water rights and preserving the customs of traditional communities during drought. OSE and ISC also encourage local governments to develop and implement comprehensive conservation and drought management plans. Additional implementation strategies include OSE/ISC dissemination of drought-related educational materials through an active OSE program as well as through water providers.

Regional Water Planning

The original impetus for regional water planning came in 1983, when a federal court ruled that New Mexico's prohibition against out-of-state transfers of New Mexico's groundwater was unconstitutional. See *City of El Paso v. Reynolds*, 563 F. Supp. 379 (D.N.M. 1983). As a result of this ruling, it became evident that New Mexico must actively plan for its water future by demonstrating a need for its water supplies. The Regional Water Planning Statute, 72-14-43 NMSA 1978, was passed and signed into law in 1987 and sets out general criteria for developing regional water plans and addressing future water supply needs. All 16 water planning regions have developed water plans that address the following three questions: what is a region's available water supply; what is the region's future water demand; and, how will the region undertake to close the gap between supply and demand? The guidelines for regional water plans (Regional Water Planning Handbook NMISC 1994) include a requirement for drought considerations within emergency contingency plans and water conservation measures. Many of the regional water plans included drought considerations; however, other plans do not address drought or contain conservation measures.

1999 GroundWater Storage and Recovery Act (GSR)

A. Purpose of the Act was to allow for underground storage of surface water during times of surplus to be available during shortages or drought.

1. Goal is to reduce the draft on groundwater aquifers and to enhance the conjunctive use and management of surface and ground water resources.
2. Only available to government entities.
3. Permit from State Engineer required.
4. The "lore "of the office is that this Act was an Albuquerque initiative.

B. State Engineer promulgated GSR rules in 2001. (see, 19.25.8 NMAC for rules)

1. State Engineer found that GSR projects have the potential to:
    - Offer savings in capital investment,
    - Mitigate the rate at which groundwater levels decline,
    - Promote conservation, and
    - Serve the public welfare.

2. Under the Act only governmental entities, defined as Indian nations, tribes or pueblos, or state political subdivisions, can make application to the State Engineer and develop GSR projects.

3. A pilot or demonstration project is required as a prerequisite to a full scale project to evaluate the long term feasibility of the project.

4. The rule making process was lengthy with much input from the public. In fact, several important changes were made during the public hearing held as the final step in their promulgation. Significantly, the provisions allowing pilot or demonstration projects, completed upon the effect date of the Act, to be grandfathered, if approved by the State Engineer, and allowing for variances from the rules to be requested and granted, were adopted.

C. To date, only Alamogordo and Albuquerque are pursuing GSR projects.

Active Water Resource Management (AWRM)

Active Water Resource Management is finally available after eight years of litigation. The New Mexico Supreme Court, by holding that AWRM does NOT violate constitutional separation of powers limitations, does NOT violate due process, and is NOT unconstitutionally vague.

AWRM Status:

In 2003, the New Mexico Legislature recognized:

- Adjudication process is slow;
- Need for water administration is urgent; and
- Interstate compact compliance is imperative.

The New Mexico Legislature also recognized the State Engineer had the authority to administer water allocations in accordance with water right priorities recorded with or declared or otherwise available to the State Engineer.

Therefore, through 72-2-9.1 C, the New Mexico Legislature ordered the State Engineer to adopt rules based on the appropriate hydrologic models to promote expedited marketing and leasing of water.

AWRM is an initiative implemented by the Office of the State Engineer (OSE) in 2004 in response to legislation adopted in 2003 by the Legislature realizing that there is a need to administer water in areas where adjudications were not yet complete or even started. The initiative was also driven by drought and the need to respond to the needs of water users.

AWRM refers to a broad range of activities, which emphasize permitting transfers, monitoring and metering of Surface and Groundwater diversions, and limiting diversions of water to the amount authorized by existing water rights all within the prior appropriation system.

The AWRM initiative puts the tools in place so that the OSE can effectively manage and administer NM's water resources, protect senior water right users, and meet stateline deliveries to downstream users.

AWRM tools include measuring and metering, implementing district-specific rules and regulations, creating water master districts and appointing water masters. AWRM tools also include shortage sharing agreements.

AWRM is currently being instituted in seven critical river basins statewide. They are the San Juan Basin, Chama Basin, Nambe-Pojoaque -Tesuque Basin, Gallinas Basin, Mimbres Basin, Lower Rio Grande Basin and the Lower Pecos Basin.

Currently, the Office of the State Engineer is at 97 percent readiness to implement AWRM statewide.

The New Mexico Supreme Court ruled that AWRM does not violate constitutional separation of powers, due process and is not unconstitutionally vague. After eight years of litigation, AWRM is finally available to New Mexicans.

UPDATES:

- Sandia National Laboratories has completed a water markets study on the Mimbres River. They developed a virtual water leasing market in which decision makers and stakeholders can explore alternative institutional and regulatory frameworks for governing the market.

- The State Engineer has determined the following are 2013 Priority Basins:
    - Lower Rio Grande;
    - Lower Pecos;
    - Mimbres.

- Metering Orders are in place in the following regions:
    - Carlsbad Irrigation District;
    - Capitan;
    - Roswell Artesian Underground Basin;
    - Lower Rio Grande;
    - Hot Springs;
    - Las Animas Creek;
    - Gila;
    - Mimbres;
    - MB Ditch in Upper Chama; and most recently,
    - Fort Sumner Underground Water Basin.

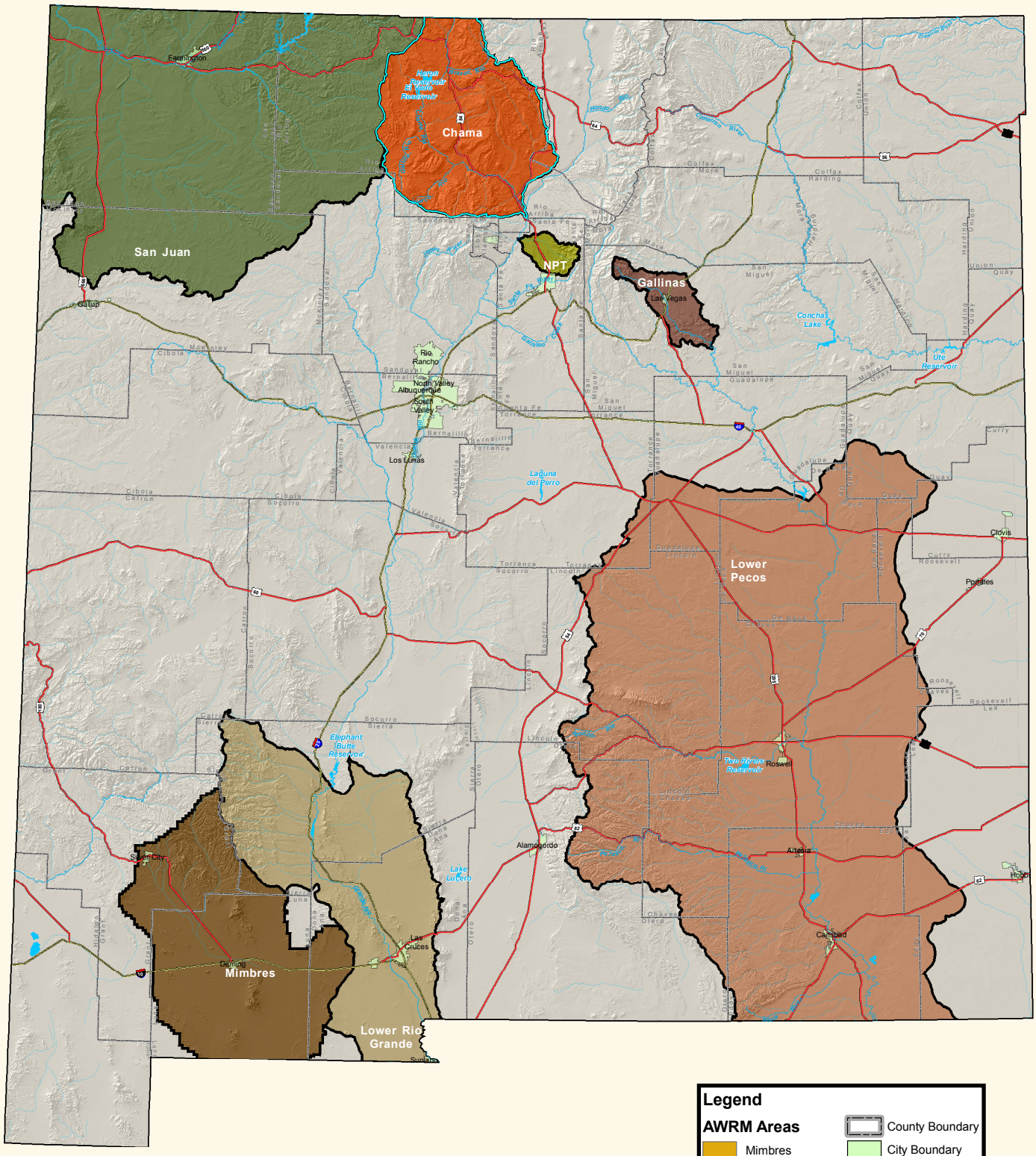
- Water Masters are active in all of the New Mexico Office of the State Engineer districts.

- Metering efforts in the Lower Rio Grande have been successful with 97 percent of all well owners reporting meter reading to the NMOSE.

- Metering efforts in the seven priority basins is at 97 percent.

- Carlsbad Irrigation District funding for statewide metering efforts has been received by the NMOSE in the amount of $1million. This funding will complete the metering efforts in the seven critical river basins.

Active Water Resource Management in New Mexico



Legend

AWRM Areas

- Mimbres
- Chama Watershed
- Gallinas
- Lower Pecos
- Lower Rio Grande
- Mimbres
- NPT
- San Juan

- County Boundary
- City Boundary
- US Highway
- Interstate
- Lakes
- Streams

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Note:
Map produced by S.Roybal,
Hydrology Bureau; July 2005
File Directory:
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Office of the State Engineer
Interstate Stream Commission

Water Trust Board Basics

Before the New Mexico
Water and Natural Resource Committee
And Drought Subcommittee

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Water Project Finance Act

- Authorizing Legislation: §72-4A-1 to 72-4A-10 NMSA 1978.
- **Qualifying Entity**: state agency; political subdivision (municipality, county, land grant, water authority, irrigation district, conservancy district, special district, acequia, soil & water district, water & sanitation district, or mutual domestic association); water or natural gas association; or Indian nation, tribe, or pueblo.

Water Project Finance Act (con't)

- Qualifying Project:
  - 1) storage, conveyance or delivery of water to end users (typically 60% - 75% of funding);
  - 2) implementation of federal Endangered Species Act programs (typically < 10% of funding);
  - 3) restoration and management of watersheds (typically 5% - 15% of funding);
  - 4) flood prevention (typically < 10% of funding); or
  - 5) water conservation or recycling, treatment or reuse of water (typically 15% - 30% of funding)

Water Project Funding Sources

- Water Trust Fund – annual distribution of $4M from the Trust to the Water Project Fund.
- Water Project Fund:
  - Annual WTF distribution
  - Annual STB distribution, 10% of STBs less 10% to OSE
  - Loan repayments + interest
  - About $37M in 2013 funded 35 projects

Funding Criteria

- 10%, 15%, or 20% local match for funding of <$500K, <$1M, or >$1M project
- 10% to 40% zero percent loan depending on debt capacity + .25% Admin fee
- No single applicant receives more than 15% of available funds in any given funding cycle
- No new money awarded if >2% of old money not spent (Continuation Policy)

Funding Application Process - 2014

- Solicit applications August – September 2013
- Prepare “Eligibility List” for presentation to the WTB in October and NMFA Oversight Committee in November 2013
- Solicit “Funding Applications” in November 2013 with closing date in March 2014
- Screen Eligibility List against “Tier 1” criteria
- Score Funding List for award of funds in June