

The Carrots and Sticks for Achieving Interstate Compact Compliance

July 18, 2024

Nat Chakeres, General Counsel

Tanya Trujillo, Deputy State Engineer

Office of the State Engineer



Background on the Office of the State Engineer

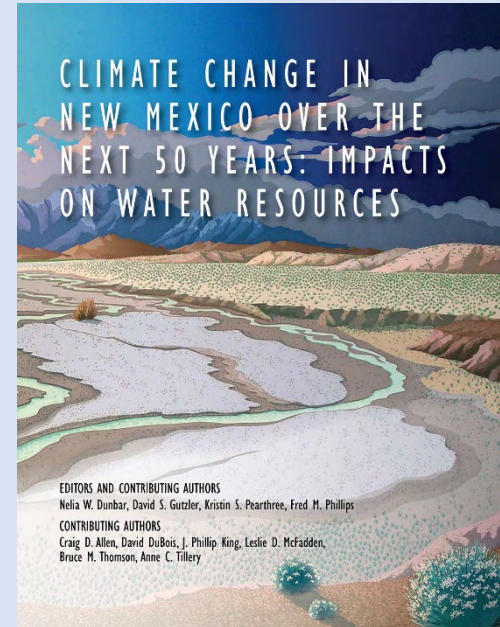
- The State Engineer has the “general supervision of waters of the state and of the measurement, appropriation, distribution thereof and such other duties as required.” NMSA 1978, § 72-2-1.
- The State Engineer has supervision over water masters, § 72-3-2. These are the officials who can apportion, regulate, and control the waters.
- The Interstate Stream Commission can negotiate compacts and can also investigate water supply, develop, conserve, protect, and do any and all other things necessary to protect, conserve and develop the waters and stream systems of the state. § 72-14-3.

Administration of Water Rights – the “Stick”

- The New Mexico Constitution states that beneficial use is the “basis, the measure, and the limit” of water rights in New Mexico. Art. XVI, § 3.
- Water rights must be administered in priority, i.e. the most senior user has the “better right.” N.M. Const. Art. XVI, § 2.
- The State Engineer may administer water rights even in the absence of an adjudication decree. NMSA 1978, § 72-2-9.1 (2003).
- Even if water users are in priority, the State Engineer may still curtail them to comply with an interstate compact. *Hinderlider v. La Plata River & Cherry Creek Ditch Co.*, 304 U.S. 92, 107 (1938).

Water Use in NM Now and in the Future

50 year leap-ahead analysis
of water supply in NM
(available at engagenmwater.org)



Current water use in NM – Water Use by
Categories Report
(available at ose.state.nm.us)

Water Use in NM Now and in the Future



Revived Regional Water Planning – Get involved at **mainstreamnm.org** !

Water Use in NM Now and in the Future – Cont'd

Despite uncertainty about the pace of carbon emission reductions, and the inherent year-on-year variability of precipitation, we are confident that the following trends will occur:

- Significantly less snowpack (along with significant stress to mountain forests)
- More violent rainstorms at lower elevations
- More evapotranspiration due to higher temperatures

Water Use in NM Now and in the Future – Cont'd

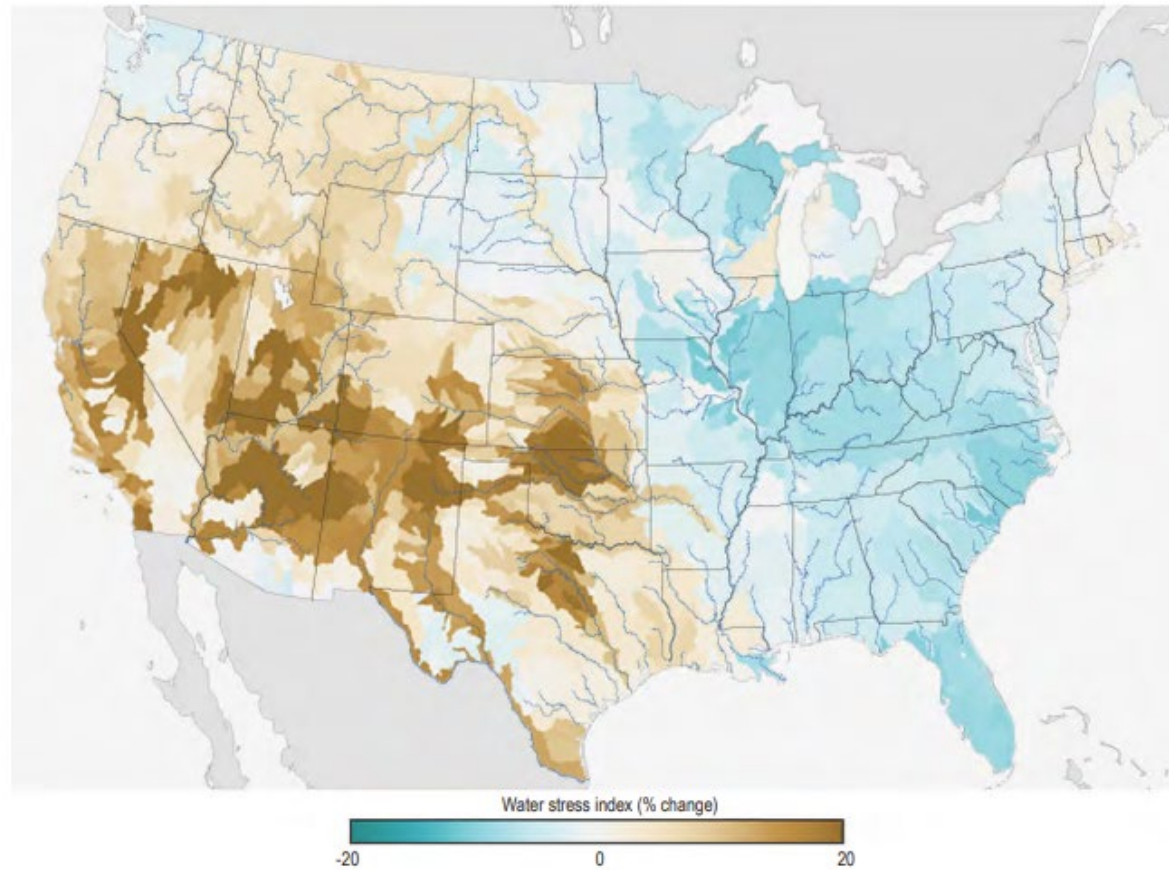


Figure 7.1. Projected change in water stress by mid-century (2040–2061) compared to historical average (1900–1970). Lindsey (2013).

Source: Climate Change in New Mexico Over the Next 50 Years: Impacts on Water Resources (2022)

Water Use in NM Now and in the Future – Cont'd

Surface water supplies should drop by 3-5% per decade, on average. New Mexico already uses all of the surface water available to it under its interstate compacts, so we will have to make significant reductions to human water usage.

The only formal tool for the State Engineer to enforce reductions is priority administration.

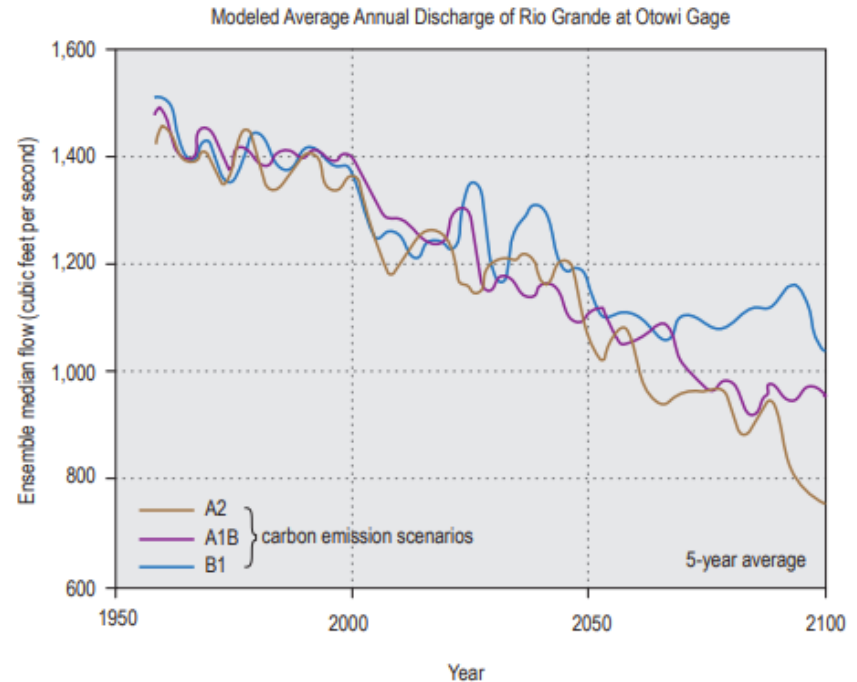


Figure 3.3. Modeled 5-year average discharge of the Rio Grande at the Otowi gage, in cubic feet per second, from 1950 to 2100 (Llewellyn and Vaddey, 2013). A2 represents high, A1B represents moderate, and B1 represents low carbon emission scenarios.

Source: Climate Change in New Mexico Over the Next 50 Years: Impacts on Water Resources (2022)

Water Use in NM Now and in the Future – Cont'd

- No one solution will solve everything - we need an all of the above approach.
- Priority administration is harsh. We do it on some smaller stream systems around the state, but we've never had to do it to a large municipality, for example.
- Compensated buyouts of water rights are part of the solution, but they have externalities and high costs.
- Infrastructure projects and additional supplies will help, but more will be needed than just these approaches.
- **One of the best solutions - negotiated shortage sharing agreements where major water users agree to proportionate reductions in water use.**
- But: this only works if everyone thinks that, in the alternative, there are rules that would be enforced.

Questions?

Nat Chakeres

(505) 231-4459

Nathaniel.chakeres@ose.nm.gov