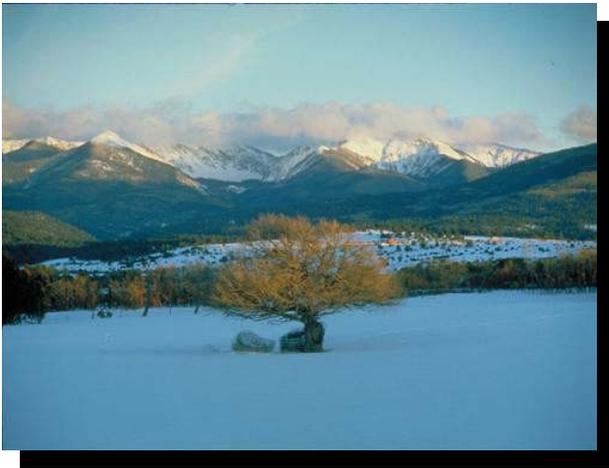


Coping with the Urgent Shortfall Reality

Proposed Active Water Resources Management Regulations and Proposed New Surface Water Administration Rules and Regulations – Paul Saavedra, Water Rights Division, Office of the State Engineer



John D'Antonio the State Engineer sends his apologies for not being here today. I'm your substitute, Paul Saavedra. I have been with the OSE twenty-six years. I am the old man of the office. I've been involved with the nuts and bolts--dams, ditches water rights. I'm deeply involved with individual controversies but not so much with the big controversies. What I'm going to talk about today is not necessarily focused on the Middle Rio Grande but on statewide issues.



Truchas Peak

We had a great spring--late snows, good wet snows--and it helped us. It revitalized the winter snowpack, which was a little low. However, we're way down. This was Elephant Butte back in February of 2004. Due to the snowpack, we got a little more runoff into the Butte, however by the end of the year with all the irrigation, we're going to be back. All of the other reservoirs in the state are very low, too. It's probably going to take a good four or five years of good snowpack to get those things going again.

We are in a drought and it's been a tremendous challenge. We're concerned that we may be approaching the drought of the fifties, as Mr. Wessley's graph showed. Scientists have associated drought with climates in the oceans. The newspapers yesterday were talking five hundred years.



Elephant Butte

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Active Water Resource Management (AWRM)

So what is Active Water Resource Management?

It's essentially administration--transfers, monitoring and metering diversions, limiting diversions of water in the amount authorized. We administer as much water as we possibly can in this state, however active administration of all the water is still a long way off. We're trying to get to that.

The Doctrine of Prior Appropriation as you know is associated with senior water rights, and those get the water first. In this state, the most senior rights right now are the pueblos and other Native Americans, agriculture, and livestock. Unfortunately, junior water rights are essentially recreation, municipalities, and industry.

The basis for water law in the State of New Mexico...is the Doctrine of Prior Appropriation.

That means...that senior water rights...or the first water users to "put the water to beneficial use" in our state...have priority...over more junior water users.

Under the state constitution...the senior water right holders have priority.



Senior Water Rights

In times of shortage in New Mexico...the more senior water rights can be served by the available water supply...first.

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Junior Water Rights



Junior water right holders....typically include: Industrial or commercial water users...municipalities....residential water users...and recreational water users.

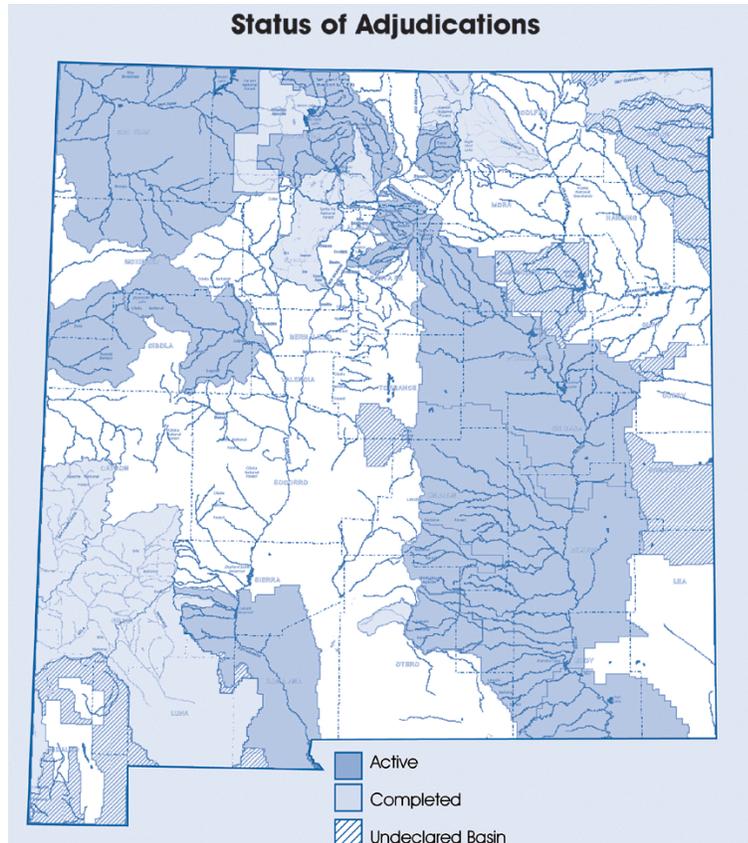
BUT...it is important that ALL WATER USERS become actively involved in the problem-solving process during periods of shortages...and to identify other options in response to drought.

In order to do priority administration, we need to adjudicate water rights. Right now we're fully adjudicated in probably 20% of the state, and we're trying to adjudicate around 60%. We have active adjudications in the Lower Rio Grande, which is a bear, and the Upper Rio Chama, and various other smaller basins in the state. You will notice on this map that the Middle Rio Grande is at present not being adjudicated.

What we're trying right now are other options [for administering surface water]: shortage sharing, rotation, and water banking. The Doctrine of Prior Appropriation is the law in the state, priority administration is the law in the state, and for a somewhat hypocritical state, we do everything we can not to be that. As someone said about water compacts, it is rather draconian; in priority administration, you cut people off. It hurts and it hurts the economy.

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All water users are encouraged by the State Engineer to become actively involved...in the problem solving process to find a way to SHARE in the SHORTAGES...and to discover other options during this time of drought...

So requiring the state Engineer to make a "priority call" would be a measure of last resort.

Other options to priority administration include:

...voluntary shortage sharing...

...voluntary rotation...

...even the concept of water banking...could be explored in times of drought.

Critical Situation



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Because of the drought we are in a critical situation as far as the State Engineer Office goes. We've never been faced with such a dilemma before, with trying to get water to all these people. There is increasing population, increasing water use, no new super projects like San Juan-Chama on the horizon, limited water resources, and limited funding from the legislature. It conflicts directly with economic growth, and it has been a tremendous challenge.

Administrative Dilemma

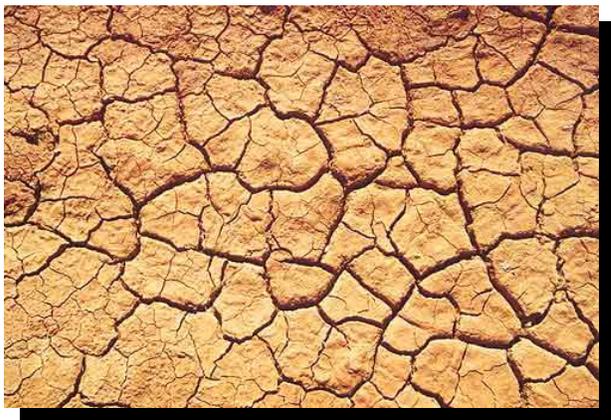
What we're doing right now is what we call Active Water Resource Management. We organized some of our staff into teams on specific rivers--a project manager, attorney, hydrologist and water rights expert--with the major goal of creating rules and regulations for each of these rivers, and most importantly, to hire water masters for each critical basin. We want somebody out on these rivers physically administering the water--turning diversion gates on and off as we need. We need to train our water masters in implementation schedules, and to set short and long term goals.

Steps to AWRM

- To organize selected staff members into teams in each of the critical basins
 - project manager familiar with the area
 - attorney familiar with water law in the area
 - hydrologist
 - water rights expert
- To develop and implement a schedule for creating water master rules and regulations
- To create and hire a water master for each critical basin
- To train water masters and other personnel
- To administer water in each critical basin
- To set feasible short-term and long-term objectives

Priority Stream Systems

What are the priorities around the state? I'm not going to focus on the Middle Rio Grande but this does affect the Rio Grande. We've set priorities with the limited resources we have and we're looking at the Rio Gallinas, San Juan River, Rio Pojoaque and the Rio Chama. We hope with resources in the future to look at the Lower Rio Grande a little better, the Pecos, the Mimbres, the Rio Peñasco and the Rio Hondo.



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The Rio Gallinas flows through the city of Las Vegas. The area is highly surface-water-dependant. If you don't get snow, you don't have water; if you don't get rain, you don't have water. There are no high producing wells. For the last hundred years we've had controversies—discussions--between the three main entities on the Rio Gallinas: the city of Las Vegas, the Storrie Water Users Association (there's a lake over there, Storrie Lake), and the acequias. We've been in court recently on what we call pueblo water rights. The city of Las Vegas is claiming pueblo water rights, which would allow them access to as much water from the river as they wanted. It came to a head this year. This is a small river, but it kind of started our Active Water Resource Management Program. We put our team in there, came up with administrative rules and regulations, hired a water master, and he's right in the middle of all the controversy. The best thing that's happened is that someone is out there making decisions on the river, and standing between all the arguing parties. We've still got a long way to go, but we have plans for trying to rotate irrigation and share the water without having to shut people down.

On the San Juan, we do have a shortage sharing agreement that we've negotiated in the last few years. We've installed meters on every ditch in the San Juan and Animas-La Plata area. It has been a shock to the irrigators; in the last hundred years, they've taken as much [as they wanted] whenever they wanted. There is an adjudication going on up there right now, too, so they are being [reviewed?]

In Pojoaque, the Aamondt lawsuit has been going on since the 1960s. It involves four or five pueblos on the mainstem and the tributaries of Nambe and Tesuque. The controversy that's been going on is because the federal judge ordered mediations. Unfortunately she ordered closed-door mediations. At least they've come up with an agreement to supply water to the pueblos and non-Indian water users. It was very controversial. I believe Councilor Armijo was talking about domestic wells in the south valley; this agreement number one requires around \$210 million in federal money to build pipelines, treatment plants and diversion structures, but it also called for the plugging of domestic wells in the Nambe-Pojoaque-Tesuque area. Because the agreement was done behind closed doors, when we brought it out to the people, they would have no part of it. Domestic wells are a very, very touchy issue in the state of New Mexico. This agreement would also require a water master to measure surface and groundwater diversion. Agreement or no agreement, we hired a water master around three weeks ago. He's just getting on the ground now. That's our training: we just put them out in the field.

The Rio Chama directly affects the Middle Rio Grande. Right now we administer the Rio Chama acequias below Abiquiu Dam. We have a water master for the Rio Chama below Abiquiu who ensures that San Juan Chama water flows out of Abiquiu Dam "untaken" and gets to the Rio Grande. We've had a water master there since the '70s. In the last thirty years we haven't done a whole lot of administration; in the last ten years we've probably had to administer water five or six times. It's a shock to the ditches below Abiquiu when there's a lot of water in the river but it's all San Juan-Chama water and the actual flow of the Chama is negligible or real low. The water master's job is to make sure that those ditches do not take that water out of the river that's not theirs. Right now we're moving into the upper Chama, above Abiquiu, El Vado and Heron. We're installing a water master up there, and there's also an adjudication going on.

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What is a "water master?"

A water master is a negotiator and our sheriff out in the field. It's a very tough job. We instigated this program to hire water masters and we've had a dilemma: we don't have the money. Instead we've used a statute that's been on the books for a long time but is little used (Section 72-3) which gives the State Engineer the authority to create special water districts and appoint water masters. It also gives us the authority to charge the counties for the water masters. This is also a big shock to a lot of people. We charge the counties for the salary and operating costs of the water master, and the counties in turn tax the people.

We have several other water masters. The Cimarron is the only place in the state where we are actively doing priority administration. We've cut off people on the Cimarron.

On the Rio Costilla we have an interstate compact. The Costilla is right at the Colorado border on the Rio Grande. It flows from Colorado into New Mexico, back into Colorado and then into the Rio Grande, so we've had to employ a water master there.

So we've made a little progress in active water resource management. We've hired a water master on the Rio Gallinas, the Pojoaque-Tesuque, the Rio Chama, and about a month ago, we hired another one for the San Juan to measure ditches and administer the shortage sharing agreement.

We've come up with rules and regulations for each of these rivers individually, but we've also come up with rules and regulations statewide. You can access them on our website (www.ose.state.nm.us). They've been out for over a month. We've advertised them in the newspapers in accordance with state statutes for promulgating rules and regulations, and there will be a hearing in Santa Fe on the 28th of June.

We are also promulgating surface water rules and regulations under Section 72-1-1. We have general supervision of water in the state. The surface water regulations will establish standards and procedures implementing duties of the State Engineer as set forth in these statutes.

Right now we have surface water regulations, but the date on them is 1953 so we are trying to modernize those rules and regulations. The hearing for those regulations (they're on the same website as above) begins June 21 in Santa Fe. I don't think these have changed all that much—mostly they're being revised to fit the New Mexico administrative code. The biggest controversy is over livestock dams. We used to allow livestock dams but this changed during the last legislature.

We also have proposed dam rules and regulations, which apply to the construction and jurisdiction of dams. These are also on the website and the hearing for these will begin Thursday June 24.

I did not focus directly on the Rio Grande because we have statewide problems. The Middle Rio Grande is the big gorilla and its day will come.

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Question: How many years until we see a water master in the MRG?

Saavedra: Adjudication will be a bear. It will take tremendous amounts of money and work, and it could take years. With Active Water Resource Administration we can install a water master, and actively administer rivers according to what we think the water rights are. We would use permits and our records and that could instigate an adjudication. I think the Rio Grande Compact and delivery to Texas is very well managed. We're not in a deficit, and we're not looking at putting a water master in to start cutting people off. I think there are other compact issues, like water quality, that are foremost, but quantity is pretty well administered. I don't foresee a water master in the near future. The Middle Rio Grande Conservancy District has their ditchriders, and they administer the ditches right now.

Question: One of the greatest water losses that nobody can use is the evaporation from Elephant Butte. Apparently there are compacts, rights, laws, and God knows what else, to prevent us from storing that water elsewhere, keeping Elephant Butte at a minimum, and getting that water into a useable stream. What is it that prevents all this?

Saavedra: That evaporation was accounted for in the compact. It's accounted for in what Elephant Butte Irrigation District uses. There are tremendous roadblocks to all of that. Elephant Butte was built under the Rio Grande Project and EBID would have a big say-so if you didn't let them fill up that reservoir. It's primarily used for irrigation. There was an application filed this year to use evaporation off Elephant Butte; it also called for getting rid of Elephant Butte Dam. We subsequently denied that application. You're right. Evaporation is a big issue, it's hot at the reservoir pool, but right now that evaporation is accounted for. To move [the water] somewhere else--there's lots of road blocks.

Question: Talking about evaporation, how are things going with the State Engineer's groundwater recharge regulations? Do you envision a recharge or aquifer storage program in the future? How are we doing on that? Has there been a successful application yet at all?

Saavedra: There was a law passed by the legislature three or four years ago that allows for aquifer storage and recovery. It was really pushed by the cities of Alamogordo, Albuquerque to have this law on the books. Everybody's always in a big hurry to get these laws passed, so we did and nothing's happened since. The only one I know right now that is actively pursuing aquifer storage and recovery is the City of Alamogordo. We've had feelers from quite a few other places, Albuquerque and Santa Fe, but that's all they've been--feelers. The City of Alamogordo is trying to do a pilot project with some injection of water into their aquifer. There's not been a whole lot of movement, but the rules and regulations are established.