

# New Mexico Water Governance Reform is Essential to Increase Water Sustainability and Reduce Future Water Insecurity

*Presented to the New Mexico Legislature's Water and Natural Resources Committee 7/26/2022  
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## **New Mexico's existing water governance is not working and is wrong for the 21<sup>st</sup> century**

What is wrong? What must be fixed to adapt to New Mexico's increasing aridity and best meet New Mexico's extraordinary water challenges? What can the Legislature do to transition to proactive water management and stewardship for our future with much less water?

New Mexico's water management for the future requires **new laws and policies**. New Mexico's water management agencies need the **capacity** to implement existing statutes and new ones. They need **practical enforcement authority** to stop illegal water use. They need to actively manage water deliveries to comply with Rio Grande Compact requirements. Agency staff could be much more productive if the agencies were reorganized with **new statutory focus** and investment in **modern business practices** and **modern information systems**.

The Middle Rio Grande Water Advocates call these changes water governance reform. The changes are essential to reduce climate change water insecurity in most regions of New Mexico.

## **Facts we must face**

To reduce current and future water insecurity, we must face these facts:

- New Mexico is the driest of the 50 states and is becoming more arid,
- New Mexico will have 30% less surface water and aquifer recharge in the future,
- Water is life, our being, our cultures, and our economy require water,
- Current uses of water cannot be sustained in most regions of New Mexico,
- New Mexico is dangerously close to violating the Rio Grande Compact due to depletion within the Middle Rio Grande of water that is legally apportioned for use below Elephant Butte Dam,
- Large areas of New Mexico have almost exhausted their groundwater and other areas are on that trajectory,
- In many areas of New Mexico where groundwater is the only water source, we don't know how much groundwater remains after a century of pumping,
- New Mexico needs and demands more from its state water management agencies than the agencies have the capacity or structure to provide,
- Important statutory authorizations and policy direction of the Legislature cannot be implemented because the Legislature has not provided water agencies with the capacity required for implementation, and

- Agency productivity could be substantially improved by modernizing legacy business practices, legacy information systems, and paper-based processes and records.

## **Water governance reform objectives and required actions**

- To preserve groundwater for the future and to comply with surface water sharing commitments, **we must reduce water demand** to better match the water supply.
- To avoid another US Supreme Court lawsuit focusing on the Middle Rio Grande, **the state must take emergency and continuing actions to stop overuse of water in the Middle Rio Grande.**
- To improve water supply and water user resilience throughout the New Mexico, **the state must actively help communities design and implement water resilience infrastructure projects.**
- To manage water demand and make reliable data available to agency staff, **New Mexico's state water agencies must be funded and staffed to implement Active Water Resources Management and the 2019 Water Data Act.**
- To determine required actions and projects for an equitable transition to a much drier New Mexico, **the state must substantially invest in robust, collaborative regional and community water planning.**
- To implement improved water resilience, **New Mexico must build state and local government capacity to plan, design, and construct water resilience infrastructure projects.**
- To settle questions and assertions of water rights priorities and amounts, **the Legislature must prioritize and provide resources to complete long-overdue adjudications and negotiate water rights settlements.**
- To provide a reliable, scientific basis for balancing groundwater budgets in all regions of the state, **the Legislature must invest in aquifer geohydrologic investigations, groundwater monitoring, and groundwater models.**

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## **New Mexico needs to begin Water Governance Reform**

The Middle Rio Grande Water Advocates ask the Water and Natural Resources Committee to initiate Water Governance Reform by drafting and considering four bills. The bills would:

- Create the New Mexico Water Resources Department, establish expected outcomes, and provide the necessary staff and funding to accomplish those outcomes, and provide for increased accountability.
- Amend the regional water planning statute compiled at NMSA Sections 72-14-43 and 72-14-44 with statutory criteria and direction for climate change resilience water planning.
- Establish a \$1 billion Water Resilience Fund, and

- Require and provide for New Mexico’s compliance with the requirements of the Rio Grande Compact to deliver, which means not deplete, the Lower Rio Grande’s share of Rio Grande inflows through the Middle Rio Grande.

## **Bill concepts**

These four bills would begin New Mexico’s transition to become a proactive steward of its precious, sparse, and declining water resources.

**Bill A. Administer water in a modernized way.** The Legislature should create a cabinet-level New Mexico Water Resources Department with the capacity to:

- modernize water management business practices and information systems,
- actively manage water demands that outstrip water supplies and threaten New Mexico’s future,
- complete adjudications and settlements of water rights, including tribal and pueblo rights,
- determine how much groundwater we have left,
- plan so that water will remain available for New Mexico’s equitable, cultural, and economic future,
- help regions and communities across the state plan to equitably increase their water supply resilience, and
- actively support the planning, design, and construction of water projects.

The bill would specify the new Water Resources Department’s operating and support divisions, define missions and expected outcomes for all divisions, provide staff and funding resources, and provide for increased accountability for achieving water governance outcomes defined by the Legislature or the department.

A Water Resources Department conceptual organization chart, prepared for purposes of discussion, is attached.

For the Water Resources Department to succeed, the Legislature should:

- Create the Water Resources Department in 2023 with a three-year period for full implementation,
- Specify outcomes the department is to achieve,
- Provide funding and authorize staff positions so that operating and support divisions can be managed, staffed, and funded to accomplish outcomes specified by the Legislature,
- Provide for leadership and staff capacity to defend New Mexico in high-stakes litigation with Texas, while also focusing on other crucial water governance priorities and essential outcomes,
- Provide for successful recruitment of STEM professional and technical staff,
- Provide for recruitment of an inspired leadership team of division directors and managers,

- Provide for modernization of business processes and information systems to increase agency productivity, quality, and transparency, and
- Measure progress by achievement of specified outcomes, not agency outputs.

**Bill B. Begin robust regional water planning.** The Legislature should amend the existing water planning statutes compiled at NMSA sections 72-14-43 and 72-14-44. The amendments would define criteria for collaborative regional water planning, establish the respective roles and responsibilities of state agencies and the state’s water resource regions for the preparation and approval of implementable plans, and commit the state to provide matching funding for and actively support the implementation of approved regional water plans. Plans are needed for major aquifer systems, river basin segments, and communities with unsustainable water supplies.

The amendments would remedy problems that have caused past regional water plans to be ineffective. The existing statutes were a reaction to El Paso’s attempt to drill many water supplies wells in the Mesilla Valley in New Mexico. Because the State Engineer has not declared his jurisdiction over well drilling in the Lower Rio Grande, El Paso didn’t need permits to drill these wells. New Mexico defeated that attempt to export New Mexico groundwater to Texas. The existing regional water planning statute did little more than ask self-defined regions to show a need for the water resources available to the region. The resulting plans became “shelf reports” because the statutes didn’t require anything else. These plans have been “accepted” by the Interstate Stream Commission after a cursory presentation and without agency review.

The existing statutes don’t provide criteria for planning, such as “balance the long-term water budget.” They don’t address approval of completed plans or contemplate implementation. They don’t provide for participation by stakeholders. Some plans were prepared with an inadequate or unreliable factual foundation. Some lack scientific integrity.

Amendments would cure these deficiencies. They would provide for the distinct hydrologic regions of New Mexico to develop robust regional water plans with proposed solutions for improved resilience of both water supplies and water users, based on adequate data. They would require regions to balance their water budgets or show why that can’t be accomplished.

The amendments would:

- Create or authorize entities at state, regional and community levels to conduct ongoing water planning.
- Authorize regional and community plans preparation with state funding and active state agency support.
- Establish the respective roles and responsibilities of state agencies and the planning regions to help assure the state receives value for the water plans it funds.
- Provide for state review and approval of completed regional water plans considering policy and technical adequacy and conformance to statutory planning criteria.
- Commit prioritized state implementation support for resilience or sustainability projects justified in approved regional water plans, and in community water plans made a part of approved regional water plans.

- Require that all new regional and community water plans are based on adequate data.
- Require the state to cooperate with federal water agencies to collect new water data in regions of the state with uncertain information regarding how much groundwater is left.

**Bill C. Create a Water Resilience Fund.** The Legislature should create a Water Resilience Fund, using current windfall revenues, that would provide state matching funding to implement projects set forth in approved regional water plans. Regions need an incentive to do the hard work of water planning. A state commitment to support implementation and provide matching funding implement approved plans would provide that incentive.

**Bill D. Manage water debt.** New Mexico's accrued water delivery debt owed the Lower Rio Grande is out-of-control. New Mexico is on a roll toward an explicit violation of the Rio Grande Compact water debt limit of 200,000 acre-feet. Such a violation surely will be litigated in another expensive and demanding *Texas v New Mexico* case before the U. S. Supreme Court. New Mexico must ensure the Lower Rio Grande receives its legally apportioned annual share of inflows to the Middle Rio Grande by reducing depletions of water in the Middle Rio Grande to prevent this compact violation and pay back New Mexico's accrued water debt. Note that New Mexicans below Elephant Butte Dam are entitled to receive 57% of the Lower Rio Grande's surface water.

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**Incorporated in 1998,** the [Middle Rio Grande Water Advocates](#) is an all-volunteer non-profit organization devoted to improving New Mexico's and the Middle Rio Grande's water future. It prepared the 2004 regional water plan for the Albuquerque-and-vicinity reach of the Middle Rio Grande.

Vision: New Mexico must equitably and effectively adapt to climate change and to sustain what we value: our diverse cultures, our people and economy, food production, and riverine and riparian ecosystems. New Mexicans must act now to secure New Mexico's water future. The Middle Rio Grande Water Advocates will support equitable, evidence-based water planning, management, and stewardship.

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