

2/9/19

This proposed committee substitute was drafted by members of the House Memorial 1 Working Group in collaboration with the Middle Rio Grande Conservancy District. The changes focus on preparation of a detailed Middle Rio Grande Region Water Plan focusing on Rio Grande Compact compliance in the Middle Rio Grande without priority administration. The changes also eliminate a requirement that the State Engineer complete all preparations for priority administration.

This unofficial draft was completed 2/7/19. It has been submitted to the Legislative Council Service. Their official draft will be posted here as soon as it is available.

PROPOSED HOUSE AGRICULTURE AND WATER RESOURCES COMMITTEE SUBSTITUTE

FOR HOUSE BILL 174

54TH LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2019

DISCUSSION DRAFT

AN ACT

RELATING TO WATER; PROVIDING DIRECTION TO THE OFFICE OF THE STATE ENGINEER AND THE INTERSTATE STREAM COMMISSION; PROVIDING FOR THE CREATION OF A MIDDLE RIO GRANDE REGION WATER PLAN TO MAINTAIN CONTINUED COMPLIANCE WITH THE RIO GRANDE COMPACT AND ASSURE A WATER FUTURE WITH GREATER CERTAINTY FOR THE MIDDLE RIO GRANDE REGION; MAKING AN APPROPRIATION.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF NEW MEXICO:

SECTION 1. A new section of Chapter 72, Article 2 NMSA 1978 is enacted to read:

"[NEW MATERIAL] ACTIVE WATER MANAGEMENT--MIDDLE RIO

GRANDE--STATE ENGINEER--INTERSTATE STREAM COMMISSION--DUTIES.--

A. The state engineer and the interstate stream commission shall prioritize and take actions within their respective authorities to achieve these purposes:

(1) maintain New Mexico's continued continuous compliance with its obligations pursuant to the Rio Grande Compact, Article IV ,72-15-23, to deliver water through the middle Rio Grande;

(2) provide a water future with increased certainty for middle Rio Grande water users by preventing the consequences of failing to continuously comply with Rio Grande Compact delivery obligations through the middle Rio Grande;

(3) prevent the difficulty and problems of a possible future requirement to implement strict priority enforcement of all water rights and permits within the middle Rio Grande; and

(4) facilitate the creation of a middle Rio Grande region water plan that demonstrates with specificity how these purposes may be achieved.

B. The state engineer shall:

(1) make a determination regarding the middle Rio Grande conservancy district's 2018 application for proof of beneficial use pertaining to state engineer permits 0620 and 1690 in the middle Rio Grande;

(2) assist the middle Rio Grande conservancy district to expedite declaration of all remaining undeclared pre-1907 water rights in the middle Rio Grande and determine their validity; and

(3) determine the quantity and ownership of all remaining undeclared pre-1907 water rights in the middle Rio Grande;

(4) promulgate rules for expedited marketing and leasing of water and water banking in the middle Rio Grande.

(5) encourage development by water rights owners of voluntary alternative approaches to continue New Mexico's compliance with the Rio Grande Compact requirements to deliver water through the middle Rio Grande so as to make strict priority administration of middle Rio Grande water rights unnecessary for Rio Grande Compact compliance.

C. The interstate stream commission shall:

(1) seek federal grants to fund infrastructure, management improvements and other activities to assist New Mexico in continuing its consistent compliance with its Rio Grande compact obligations to deliver water through the middle Rio Grande, to assist the middle Rio Grande to adapt to reduced amounts of surface water, and to mitigate impacts;

(2) participate actively in the Rio Grande-New Mexico Basin Study led by the Bureau of Reclamation and sponsored by the middle Rio Grande conservancy district and encourage all water purveyors in the middle Rio Grande to participate;

(3) convene a middle Rio Grande region water users' workshop to determine the means of utilizing the Rio Grande-New Mexico Basin Study as a basis for a comprehensive middle Rio Grande region water plan that if implemented would achieve these objectives;

- a. maintain New Mexico's compliance with its water delivery obligations through the middle Rio Grande pursuant to the Rio Grande compact, 72-15-23, Article IV;
- b. comply with the middle Rio Grande 2016 biological opinion issued by the US fish and wildlife service or its agreed replacement;
- c. support the ecological values of the middle Rio Grande
- d. implement a functional system of expedited marketing and leasing of water or water banking within the middle Rio Grande pursuant to 72-2-9.1 and in accordance with Section 73-14-47 through Section 73-14-51 that;
 - i. provides for timely administrative approvals of transactions that comply with rules promulgated by the state engineer and the middle Rio Grande conservancy district; and
 - ii. assures any transaction will not increase net depletions of water within the middle Rio Grande;

(4) create and convene a middle Rio Grande region water planning entity in cooperation with the middle Rio Grande conservancy district and other political subdivisions of the state located within the middle Rio Grande;

(5) cooperate with and support the entity to create a middle Rio Grande region water plan;

(6) in cooperation with the entity, create and maintain a web page presenting pertinent factual and scientific information, making publicly available all work products prepared pursuant to this Act, and summarizing expenditures.

D. The interstate stream commission shall support the entity to:

- (1) make recommendations pertaining to adoption of an appropriate multi-agency, multi-stakeholder governance structure that shall determine and implement the goals, tasks, schedules and fiscal management to complete the middle Rio Grande region water plan;
- (2) solicit and facilitate the participation of knowledgeable water professionals and of the public in the entity's technical work and development of recommended policies;
- (3) develop data and water resources simulation models drawing on the best scientific information that is available;
- (4) publish an updated middle Rio Grande water budget that compares water depletions in the middle Rio Grande with the highly variable water supply and expected future water supply amounts and expected trends;
- (5) periodically develop and present public reports with summary and detailed information;
- (6) consider measures to maintain or improve the conveyance efficiency of water deliveries through the middle Rio Grande into Elephant Butte reservoir;
- (7) assist in developing options and projects to meet the 2016 MRG biological opinion requirements and support ecological values within the middle Rio Grande;
- (8) evaluate options and alternatives for the expedited marketing and leasing of water and water banking;
- (9) timely provide to the state engineer the models and recommendations that the entity believes would be pertinent to the state engineer's promulgation of rules for expedited marketing and leasing of water and water banking; and

(10) complete the middle Rio Grande region water plan and present it to the interstate stream commission for approval no later than 2024.

E. All meetings of the entity and the meetings of any committees of the entity shall be conducted in compliance with the New Mexico Open Meetings Act.

F. The state engineer shall determine if the middle Rio Grande region water plan is adequate to assure New Mexico's continued compliance with its Rio Grande compact obligations to deliver water through the middle Rio Grande. If the state engineer determines the plan is not adequate, the state engineer shall make specific recommendations for improvement of the plan and may implement priority administration in accordance with Chapter 72 and in accordance with Section 73-14-47 through Section 73-14-51.

G. The state engineer, the interstate stream commission, the entity, and the middle Rio Grande conservancy district shall annually file detailed public reports demonstrating progress, reporting encumbrances and expenditures, and reporting staff and contractor labor and costs to prepare the plan. The reports shall describe problems and make recommendations to address the problems. Reports demonstrating consensus shall be jointly filed. Reports that do not reflect consensus may be filed separately and shall contain specific recommendations to the legislature pertaining to actions needed to create a workable plan that meets the objectives set forth in subsections C (3) and D of this Act.

H. The appropriate interim committee shall prioritize annual attention to the progress with the requirements of this Act that is demonstrated by the state engineer, the interstate stream commission, and the entity.

I. Nothing in this Act shall modify any provision in the Conservancy Act Section 73-14-47 through Section 73-14-51 nor expand the authority of the state engineer or the interstate stream.

J. Nothing in this Act shall affect or impair;

- a. the water rights of Indian nations, tribes and pueblos,
- b. the water rights of acequias or of any other water rights owners;
- c. the authorities of the middle Rio Grande conservancy district pursuant to the Conservancy Act Section 73-14-47 through Section 73-14-51; or
- d. the authorities of the state engineer or the interstate stream commission to administer water in New Mexico or take actions to comply with the Rio Grande Compact.

K. For the purposes of this section;

- a. "entity" means the middle Rio Grande region water planning entity
- b. "middle Rio Grande" or "middle Rio Grande region" means the geographic area tributary to the Rio Grande through surface water or ground water connections between the Otowi gage and Elephant Butte dam.
- c. "Rio Grande-New Mexico basin study" means the Rio Grande water resources study selected for funding in 2017 by the Bureau of Reclamation under its basin study program and authorized by the SECURE Water Act of 2009.
- d. "plan" means the middle Rio Grande region water plan.

SECTION 2. APPROPRIATION.--

A. Five hundred thousand dollars (\$500,000) is appropriated from the general fund to the office of the state engineer for expenditure in fiscal years 2020 through 2023 to complete

the requirements of this act. Any unexpended or unencumbered balance remaining at the end of fiscal year 2023 shall revert to the general fund.

B. Three million five hundred thousand dollars (\$3,500,000) is appropriated from the general fund to the interstate stream commission for expenditure in fiscal years 2020 through 2023 to complete the requirements of this act including providing financial support to the entity. Any unexpended or unencumbered balance remaining at the end of fiscal year 2023 shall revert to the general fund.