

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
ENSURE 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 the following purposes:

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1 (1) maintain New Mexico's continued compliance
2 with its obligations pursuant to Article 4 of the Rio Grande
3 Compact, Section 72-15-23 NMSA 1978, to deliver water through
4 the middle Rio Grande to Elephant Butte dam;

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

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

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

16 B. The state engineer shall:

17 (1) make a determination regarding the middle
18 Rio Grande conservancy district's 2018 application for proof of
19 beneficial use pertaining to state engineer permits 0620 and
20 1690 in the middle Rio Grande;

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

25 (3) determine the quantity and ownership of

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1 all remaining undeclared pre-1907 water rights in the middle
2 Rio Grande;

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

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

12 C. The interstate stream commission shall:

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

19 (2) participate actively in the Rio Grande-New
20 Mexico basin study led by the United States bureau of
21 reclamation and sponsored by the middle Rio Grande conservancy
22 district and encourage all water purveyors in the middle Rio
23 Grande to participate;

24 (3) convene a middle Rio Grande region water
25 users' workshop to determine the means of utilizing the Rio

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1 Grande-New Mexico basin study as a basis for a comprehensive
2 middle Rio Grande region water plan that if implemented would
3 achieve objectives to:

4 (a) maintain New Mexico's compliance
5 with its water delivery obligations through the middle Rio
6 Grande pursuant to Article 4 of the Rio Grande Compact, Section
7 72-15-23 NMSA 1978;

8 (b) comply with the middle Rio Grande
9 2016 biological opinion issued by the United States fish and
10 wildlife service or its agreed replacement;

11 (c) support the ecological values of the
12 middle Rio Grande; and

13 (d) implement a functional system of
14 expedited marketing and leasing of water or water banking
15 within the middle Rio Grande pursuant to Section 72-2-9.1 NMSA
16 1978 and in accordance with Sections 73-14-47 through 73-14-51
17 NMSA 1978 that: 1) provides for timely administrative
18 approvals of transactions that comply with rules promulgated by
19 the state engineer and the middle Rio Grande conservancy
20 district; and 2) ensures that any transaction will not increase
21 net depletions of water within the middle Rio Grande;

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

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

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

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

9 (1) make recommendations pertaining to
10 adoption of an appropriate multi-agency, multi-stakeholder
11 governance structure that shall determine and implement the
12 goals, tasks, schedules and fiscal management to complete the
13 middle Rio Grande region water plan;

14 (2) solicit and facilitate the participation
15 of knowledgeable water professionals and of the public in the
16 entity's technical work and development of recommended
17 policies;

18 (3) develop data and water resources
19 simulation models drawing on the best scientific information
20 that is available;

21 (4) publish an updated middle Rio Grande water
22 budget that compares water depletions in the middle Rio Grande
23 with the highly variable water supply and expected future water
24 supply amounts and expected trends;

25 (5) periodically develop and present public

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1 reports with summary and detailed information;

2 (6) consider measures to maintain or improve
3 the conveyance efficiency of water deliveries through the
4 middle Rio Grande into Elephant Butte reservoir;

5 (7) assist in developing options and projects
6 to meet the 2016 middle Rio Grande biological opinion
7 requirements and support ecological values within the middle
8 Rio Grande;

9 (8) evaluate options and alternatives for the
10 expedited marketing and leasing of water and water banking;

11 (9) timely provide to the state engineer the
12 models and recommendations that the entity believes would be
13 pertinent to the state engineer's promulgation of rules for
14 expedited marketing and leasing of water and water banking; and

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

18 E. All meetings of the entity and the meetings of
19 any committees of the entity shall be conducted in compliance
20 with the Open Meetings Act.

21 F. The state engineer shall determine if the middle
22 Rio Grande region water plan is adequate to ensure New Mexico's
23 continued compliance with its Rio Grande Compact obligations to
24 deliver water through the middle Rio Grande. If the state
25 engineer determines the middle Rio Grande region water plan is

1 not adequate, the state engineer shall make specific
2 recommendations for improvement of the plan and may implement
3 priority administration in accordance with Section 72-2-9.1
4 NMSA 1978 and in accordance with Sections 73-14-47 through
5 73-14-51 NMSA 1978.

6 G. The state engineer, the interstate stream
7 commission, the entity and the middle Rio Grande conservancy
8 district shall annually file detailed public reports
9 demonstrating progress, reporting encumbrances and
10 expenditures, and reporting staff and contractor labor and
11 costs to prepare the middle Rio Grande region water plan. The
12 reports shall describe problems and make recommendations to
13 address the problems. Reports demonstrating consensus shall be
14 jointly filed. Reports that do not reflect consensus may be
15 filed separately and shall contain specific recommendations to
16 the legislature pertaining to actions needed to create a
17 workable middle Rio Grande region water plan that meets the
18 objectives set forth in Paragraph (3) of Subsection C and
19 Subsection D of this section.

20 H. The appropriate interim committee shall
21 prioritize annual review of the progress made on the
22 requirements of this section by the state engineer, the
23 interstate stream commission and the entity.

24 I. Nothing in this section shall modify any
25 provision in the Conservancy Act of New Mexico, Sections

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1 73-14-47 through 73-14-51 NMSA 1978, nor expand the authority
2 of the state engineer or the interstate stream commission.

3 J. Nothing in this section shall affect or impair:

4 (1) the water rights of Indian nations, tribes
5 or pueblos located wholly or partially within New Mexico;

6 (2) the water rights of acequias or any other
7 water rights owners;

8 (3) the authority of the middle Rio Grande
9 conservancy district pursuant to Sections 73-14-47 through
10 73-14-51 NMSA 1978; or

11 (4) the authorities of the state engineer or
12 the interstate stream commission to administer water in New
13 Mexico or take actions to comply with the Rio Grande Compact.

14 K. For the purposes of this section:

15 (1) "entity" means the middle Rio Grande
16 region water planning entity; and

17 (2) "middle Rio Grande" or "middle Rio Grande
18 region" means the geographic area tributary to the Rio Grande
19 through surface water or ground water connections between the
20 Otowi gage and Elephant Butte dam."

21 **SECTION 2. APPROPRIATION.--**

22 A. Five hundred thousand dollars (\$500,000) is
23 appropriated from the general fund to the office of the state
24 engineer for expenditure in fiscal years 2020 through 2023 to
25 complete the requirements of this act. Any unexpended or

1 unencumbered balance remaining at the end of fiscal year 2023
2 shall revert to the general fund.

3 B. Three million five hundred thousand dollars
4 (\$3,500,000) is appropriated from the general fund to the
5 interstate stream commission for expenditure in fiscal years
6 2020 through 2023 to complete the requirements of this act,
7 including providing financial support to the middle Rio Grande
8 region water planning entity to carry out the requirements of
9 this act. Any unexpended or unencumbered balance remaining at
10 the end of fiscal year 2023 shall revert to the general fund.