

Overview of New Mexico's Groundwater Code

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INTRODUCTION

New Mexico's groundwater law accomplishes four broad objectives: 1) Promotes the orderly development and optimum utilization of a diminishing groundwater resource (*see City of El Paso ex rel. Pub. Serv. Bd. v. Reynolds*, 563 F. Supp. 379 (D.N.M. 1983); 2) allows the transfer of existing water rights to address ever-evolving needs and priorities; 3) protects existing surface water and groundwater rights; and 4) provides for interstate stream compact compliance. Much of New Mexico's groundwater law that is set forth below is wrapped around these basic concepts.

I.

LEGAL AND HISTORICAL CONTEXT

Like many western states, the doctrine of prior appropriation governs the use of groundwater in New Mexico. *See Yeo v. Tweedy*, 34 N.M. 611, 286 P. 970 (1929). The basic elements of the doctrine of prior appropriation are first in time, first in right, and beneficial as the basis, measure, and limit of the right to the use of water. N.M. Const. art. XVI § 2 and art. XVI § 3; NMSA 1978, § 72-12-2 (1931); *State ex rel. Erickson v. McLean*, 62 N.M. 264, 308 P.2d 983 (1957). All water in New Mexico is owned by the State and the appropriator obtains a usufructuary right. *See State ex rel. Erickson v. McLean*, 62 N.M. 264, 308 P.2d 983 (1957); *Coldwater Cattle Co. v. Portales Valley Project, Inc.*, 78 N.M. 41, 428 P.2d 15 (1967). A groundwater right is a property right and inherent therein is a right to change the place of use, purpose of use, and/or point of diversion, so long as existing rights are not impaired. *See Clodfelter v. Reynolds*, 68 N.M. 61, 358 P.2d 626 (1961); *Durand v. Reynolds*, 75 N.M. 497, 406 P.2d 817 (1965).

A. *History of Groundwater Development in New Mexico*

Groundwater development in New Mexico began in the late 1880s in the Roswell Artesian Basin. The first recorded flowing well was drilled in Roswell in the spring of 1891 and flowed at a gallon per minute. *Geology and Ground-Water Resources of the Roswell Artesian Basin, New Mexico*, Fiedler, A. G. & Nye S.S., U.S.G.S. Water Supply Paper 639 (1933). This

first well was followed by limited groundwater development in the Deming area and the discovery of artesian aquifers near Roswell. At that same time, reports by geologic surveyors across the State in the late 1800s led to an increased interest in the use of groundwater in New Mexico.

The first large scale well used for municipal supply was completed in July of 1903 in Artesia. *History of New Mexico: Its Resources and People*, Anderson, George B., Pacific States Publishing Co. (1907). Although drilling for water was purely an experiment at that time, the well proved to be a boon not only for Artesia, but to the surrounding area as well, showing that groundwater could be obtained in that way.

The first major groundwater irrigation project followed closely thereafter in 1904 with the formation of the Portales Irrigation Company. The irrigation company contracted with the Westinghouse Company to install a pump and power plant capable of irrigating ten thousand acres of land. *Water in New Mexico: A History of its Management and Use*, Clark, Ira G. University of New Mexico Press (1987). Although this irrigation system was never truly feasible or adequate for such large scale cultivation, the effort did prove that groundwater use for irrigation was possible.

Certain setbacks in the development of groundwater in New Mexico in the early 1900s led to a slowdown in groundwater development until after World War I. At that time, however, new technologies and population growth in the western United States led to a renewal of groundwater development in the 1920s.

B. New Mexico's Groundwater Code

Surface waters in New Mexico were developed prior to groundwater. On March 19, 1907, the New Mexico Territorial Legislature passed a surface water code that gave the Territorial Engineer jurisdiction over all of the surface waters in New Mexico. Against that backdrop, groundwater legislation was next considered. The increased use and reliance on groundwater in the 1920s, combined with already noticeable effects of groundwater development on hydrologically connected streams and other groundwater rights in parts of the State led to the introduction of the New Mexico's first groundwater code in 1927. Due to certain constitutional infirmities, it was declared unconstitutional in 1929. *See Yeo v. Tweedy*, 34 N.M. 611, 286 P. 970 (1929). Another groundwater code was passed by the State Legislature in 1931 that remedied the constitutional problem and is the basis for New Mexico's groundwater law today. *See Bliss v. Dority*, 55 N.M. 12, 25 P.2d 1007 (1950). The groundwater code is declaratory of existing law. *See Pecos Valley Conservancy Dist. v. Peters*, 50 N.M. 165, 173 P.2d 490 (1945).

C. Declared Groundwater Basins

Rather than give the State Engineer administrative jurisdiction over all of the groundwater in the State as of 1931, the groundwater code states that groundwater will only be subject to State Engineer jurisdiction after the State Engineer issues an order declaring an underground water basin "having reasonably ascertainable boundaries." *See NMSA 1978, § 72-12-1* (2003); *State v. Mendenhall*, 68 N.M. 467, 362 P.2d 998 (1961). There were many rural areas in New Mexico with very little groundwater use and the Legislature saw no need to extend administrative control over all groundwater throughout the entire State at once. If a groundwater

basin was not declared, the State Engineer had no authority over the appropriation and use of groundwater in that area. See *McBee v. Reynolds*, 74 N.M. 783, 399 P.2d 110 (1965) (“We have held unequivocally that as to underground waters, until a basin was declared by the state engineer, he could not exercise jurisdiction in connection therewith. [citations omitted]”). See also *State v. Mendenhall*, 68 N.M. 467, 362 P.2d 998 (1961). The result is a patchwork of groundwater basins across the State with different declaration dates. See Exhibit No. 1. On September 23, 2005, the State Engineer declared the remaining groundwater basins in New Mexico, meaning that all groundwater within the State of New Mexico is now within a declared basin and subject to regulation by the State Engineer. There are 108 separate groundwater basins or extensions of groundwater basins in New Mexico with declaration dates ranging from August 21, 1931, to September 23, 2005.

As a general proposition, the State Engineers’ declarations of the various groundwater basins were driven by increased groundwater development and use that was threatening existing intrastate or interstate rights.

II. OBTAINING GROUNDWATER RIGHTS

An appropriator can obtain a groundwater right both prior to and after the declaration of a groundwater basin.

A. Obtaining a Groundwater Right Prior to the Declaration of a Groundwater Basin

Prior to the State Engineer’s declaration of a groundwater basin, the common law applied to the appropriation and use of groundwater. See *State v. Mendenhall*, 68 N.M. 467, 362 P.2d 998 (1961); *Yeo v. Tweedy*, 34 N.M. 611, 286 P. 970 (1929). An appropriator who drilled a groundwater well and placed the water to beneficial use prior to the declaration of a groundwater basin obtained a vested or perfected water right. See *State ex rel. Erickson v. McLean*, 62 N.M. 264, 308 P.2d 983 (1957).

Moreover, if a groundwater right was initiated prior to the declaration of a groundwater basin, but not placed to beneficial use, an appropriator is allowed to place the groundwater to beneficial use after the declaration of a groundwater basin, so long as the appropriator does so with reasonable diligence. See *State v. Mendenhall*, 68 N.M. 467, 362 P.2d 998 (1961). The New Mexico Supreme Court described the three elements of a “*Mendenhall*” right. First, an appropriator must legally commence drilling a well prior to declaration of the basin. Second, an appropriator must proceed diligently to develop the water pursuant to a plan. Third, the appropriator must apply the water to beneficial use. See *State ex rel. Reynolds v. Rio Rancho*, 95 N.M. 560, 624 P.2d 502 (1981). Compliance with these three requirements involves questions of fact. *Id.* If an appropriator meets these criteria, he acquires a good and valid water right with a priority date as of the initiation of the right, with the intervening declaration of the basin having no effect on the legality, validity, or extent of the appropriation. See *State v. Mendenhall*, 68 N.M. 467, 362 P.2d 998 (1961); *State ex rel. Reynolds v. Rio Rancho*, 95 N.M. 560, 624 P.2d 502 (1981); *Eldorado Utilities, Inc. v. State of New Mexico ex rel. D’Antonio*, 2005-NMCA-041, 137 N.M. 268, 110 P.3d 76.

A groundwater appropriator who has a pre-basin groundwater right may, but is not required to, file a Declaration of Ownership of Groundwater Right. *See* NMSA 1978, § 72-12-5 (1931). A Declaration states the elements of a claimed pre-basin groundwater right and is *prima facie* evidence of the truth of the contents therein. *Id.* A Declaration provides public notice of a claimed pre-basin groundwater right.

After the declaration of a groundwater basin, no one can make a new appropriation of groundwater without first receiving administrative approval.

B. Obtaining a Groundwater Right After the Declaration of a Groundwater Basin

After the declaration of a groundwater basin, an individual or entity can obtain a new appropriation of groundwater by following the administrative procedures prescribed by statute. The process is initiated by filing an application for a new appropriation of groundwater on a form prescribed by the State Engineer. *See* NMSA 1978, § 72-12-3 (2001). The statute specifically identifies the information required in an application. *Id.*

An application for a new appropriation of groundwater will be granted if there is unappropriated groundwater available for appropriation or the proposed new appropriation will not impair existing water rights, if granting the application will not be contrary to the conservation of water within the State, and if granting the application will not be detrimental to the public welfare of the State. *Id.*

1. No Impairment to Existing Water Rights

There is no statutory definition of impairment to existing water rights. Impairment is determined on a case-by-case basis. *See City of Roswell v. Berry*, 80 N.M. 110, 452 P.2d 179 (1969); *United States v. Plains Elec. Generation & Transmission Coop.*, 106 N.M. 775, 750 P.2d 475 (Ct. App. 1988); *Mathers v. Texaco, Inc.*, 77 N.M. 239, 421 P.2d 771 (1966). An application for a new appropriation of groundwater is allowed to result in some lowering of the static groundwater level in other wells. Any other result would prevent the development of the resource. Said differently, merely lowering the static water level in a nearby well does not constitute impairment. *See In re City of Roswell*, 86 N.M. 249, 522 P.2d 796 (1974); *City of Roswell v. Berry*, 80 N.M. 110, 452 P.2d 179 (1969); *Stokes v. Morgan*, 101 N.M. 195, 680 P.2d 335 (1984). Factors to consider in analyzing impairment include the incremental drawdown that would result from granting the application, the age of the well, how it was constructed, the ability of the water right owner to continue to use the well, and whether there is saturated thickness to deepen a well. *See Mathers v. Texaco*, 77 N.M. 239, 421 P.2d 771 (1966). Importantly, the statute does not protect a well from impairment, only the water right.

In considering an application for a new appropriation of groundwater, the State Engineer will also ensure that there is no impairment to existing surface water rights. All surface water in New Mexico is fully appropriated. Accordingly, if a new appropriation of groundwater has an effect on hydrologically connected surface water, the State Engineer will deny the application unless the applicant can offset the surface water effect caused by the proposed new groundwater diversion. *See City of Albuquerque v. Reynolds*, 71 N.M. 428, 379 P.2d 73 (1962). This offset

typically comes in the form of the purchase and retirement of existing surface water rights. The State Engineer can allow a *de minimus* hydrologic effect on surface water supplies. See *Montgomery v. Lomos Altos, Inc.*, 2007-NMSC-002, 141 N.M. 21, 150 P.3d 971. This protects not only New Mexico surface water users, but also assists to ensure interstate stream contact deliveries.

The State Engineer has the authority to condition a permit to prevent impairment to existing water rights. See *Roswell v. Berry*, 80 N.M. 110, 452 P.2d 179 (1969); *City of Albuquerque v. Reynolds*, 71 N.M. 428, 379 P.2d 73 (1962).

Because of its importance in New Mexico water law and because it served as precedent to other western states, a short summary of a seminal case in New Mexico is appropriate. The principle of the conjunctive management of surface and hydrologically related groundwater was established in the case of *City of Albuquerque v. Reynolds*, 71 N.M. 428, 379 P.2d 73 (1962). That case, which resulted from the State Engineer's decision on certain applications filed by the City of Albuquerque which affected the exercise of senior agricultural rights, has been cited as the basis for the conjunctive management of surface and groundwater throughout the western United States.

On November 29, 1956, the State Engineer declared the Rio Grande Underground Water Basin. The City of Albuquerque filed four separate applications for permits to appropriate underground waters from the Rio Grande Underground Water Basin with the State Engineer. Each application proposed to drill a well capable of producing 1,500 acre-feet of water per annum to be used for municipal water supply. Attached to each application was a letter claiming that the City had the absolute right to divert the water for the benefit of its inhabitants under the pueblo rights doctrine as a successor to the Pueblo de Albuquerque y San Francisco Xavier founded not later than 1706. Following hearing, the State Engineer issued an order finding that the granting of the applications impaired existing water rights to the use of water in the Rio Grande and that the City had refused to take the steps required by him to offset the adverse effects of that use upon other users. The applications were denied.

Upon appeal to the District Court, the State Engineer was reversed. Among the findings made by the District Court were that the State Engineer had "no jurisdiction to impose upon the City of Albuquerque any requirement of retiring surface water rights as a condition precedent to the diversion and use of underground waters forming the subject of the four applications" *Id.* at 431-32. The State Engineer appealed to the New Mexico Supreme Court.

While the New Mexico Supreme Court dealt with all aspects to the appeal, including the City's contentions under the pueblo rights doctrine and the Territorial statute of 1884, the focus of the court's opinion was on the issue of the conjunctive use of groundwater and hydrologically related surface water and the State Engineer's authority to condition the exercise of groundwater to protect senior surface water users. The New Mexico Supreme Court addressed the City's contention, from the District Court's findings, that assuming the interrelationship of the groundwater and surface waters in the Rio Grande Underground Water Basin, the State Engineer did not have the power and authority to consider the two interrelated sources as a matter of law so as to require the retirement of surface water rights as a condition precedent to the

appropriation of groundwater. *Id.* The New Mexico Supreme Court concluded that “[u]nder the facts of this case, with the Rio Grande stream flow being fully appropriated, it would indeed be anomalous for the legislature to enact laws designed to prevent water, which would otherwise reach the stream in substantial quantities, to be withdrawn by pumps and thereby attempt to deprive the prior appropriators of their vested rights.” *Id.* at 437. This holding has been significant in the nineteen western states in two respects. First, it provided the basis for considering hydrologically connected surface water and groundwater as one administrable resource. Second, it provided the method under which groundwater appropriators who impacted the surface supply could nevertheless have their appropriation, *i.e.*, by providing an equal amount of “offsets” on the surface water supply to compensate for the impact of their new groundwater diversions.

2. *Conservation and Public Welfare*

With respect to the statutory criteria that granting the application will not be contrary to the conservation of water within the State and that granting the application will not be detrimental to the public welfare of the State, there is no statutory definition for either of these criteria and no case law. There is, however, increasing administrative precedent. Recent large-scale municipal applications related to major public works projects by the City of Albuquerque and the City of Alamogordo have emphasized their past and present water conservation plans and successes in municipal water conservation. *See* City of Albuquerque Permit No. 4830; City of Alamogordo Permit No. T-3825 *et al.* These recent municipal permits have been based on daily per capita water usage expected by the State Engineer. Likewise, the law related to public welfare continues to develop. *Ensenda Land & Water Ass’n. v. Sleeper*, 107 N.M. 494, 760 P.2d 787 (Ct. App. 1988), writ quashed 107 N.M. 413, 759 P.2d 200 (S. Ct. 1988). Like impairment, the criteria related to conservation and public welfare are determined on a case-by-case basis.

III. REGULATION OF GROUNDWATER RIGHTS

As is the case with the creation of a groundwater right, the regulation of a groundwater right differs depending upon whether it was initiated before or after the declaration of a groundwater basin.

A. Regulation of Groundwater Rights Prior to the Declaration of a Groundwater Basin

Prior to the declaration of a groundwater basin, the common law applied to the development and use of a groundwater right. *See Yeo v. Tweedy*, 34 N.M. 611, 286 P. 970 (1929); *State v. Mendenhall*, 68 N.M. 467, 362 P.2d 998 (1961). Basic common law principles such as priority of right and beneficial use as the basis, measure, and limit of right governed the use of groundwater.

B. Regulation of Groundwater Rights After the Declaration of a Groundwater Basin

After the declaration of a groundwater basin, the State Engineer has jurisdiction over the use of existing groundwater rights within the basin. This includes groundwater rights perfected before the declaration of the groundwater basin and those perfected after the declaration of the basin. Applications that relate to the regulation of a groundwater right after the declaration of a basin include those to change the point of diversion, purpose of use, or place of use of the groundwater right, as well as applications for supplemental and replacement wells. *See* NMSA 1978, § 72-12-7 (1985); NMSA 1978, §§ 72-12-22 thru 24 (1959).

For any of these applications, the same legal criteria apply for granting an application as those that apply for a new appropriation of groundwater. *See* NMSA 1978, § 72-12-3 (2001).

C. Administrative Procedures

The groundwater code specifies the administrative procedures for processing any application for a new application of groundwater, to change the place of use or purpose of use of an existing groundwater right, to change the location of a well, to add a supplemental well, or to drill a replacement well.

Shortly after any of these applications are filed with the State Engineer, a legal notice must be published in a newspaper of general circulation in the county in which the well is to be located once a week for three consecutive weeks. *See* NMSA 1978, § 72-12-3 (2001). Within 10 days of the last day of publication, protests can be filed to the application. *Id.*

Any person or entity claiming that granting the application will impair the objector's water rights has standing to protest. *Id.* Moreover, any person or entity objecting that granting the application will be contrary to conservation of water within the State or detrimental to the public welfare of the State *and* showing that the objector will be substantially and specifically affected by the granting of the application has standing to file a protest to the application. *Id.* Standing has been liberally construed.

With respect to all of these applications, the applicant has the burden of proof. *See Heine v. Reynolds*, 69 N.M. 398, 367 P.2d 708 (1962); *Durand v. Reynolds*, 75 N.M. 497, 406 P.2d 817 (1965); *McBee v. Reynolds*, 74 N.M. 783, 399 P.2d 110 (1965); *City of Roswell v. Berry*, 80 N.M. 110, 452 P.2d 179 (1969).

If there are no protests to an application, a very rare occurrence, the State Engineer will act on the application, applying the statutory criteria. *See* NMSA 1978, § 72-12-3 (2001); NMSA 1978, § 72-12-7 (1985); NMSA 1978, §§ 72-12-22 thru 24 (1959).

If there are protests to an application, the matter is referred to the Administrative Hearing Unit, a branch of the Office of the State Engineer, where a quasi-legal administrative process is held. The New Mexico Rules of Evidence and the New Mexico Rules of Civil Procedure generally apply, but are not strictly enforced. The State Engineer has two designated Hearing Examiners for protested applications, one an attorney and one a hydrologist. The process

typically involves a pre-hearing scheduling conference, simultaneous exchanges of witness lists, exhibits, and rebuttal exhibits among all parties. Deadlines are established for close of discovery, motions, and objections to exhibits and witnesses. Hearing dates are also established.

Subsequent to an administrative hearing, parties submit proposed findings of fact. The Hearing Examiner will submit a Report and Recommendation to the State Engineer that the State Engineer will then accept, reject, or modify.

Any party dissatisfied with a decision, act, or refusal to act of the State Engineer may appeal to the district court of the county in which the diversion works or point of diversion is situated. *See* N.M. Const. art. XVI § 5; NMSA 1978, § 72-12-10 (1931); NMSA 1978, § 72-7-1 (1971). The litigation in state district court is *de novo* as a case originally docketed. *Id.*

D. Public Data

All documents filed with the New Mexico Office of the State Engineer are public records and citizens of New Mexico have a fundamental right to access these records. NMSA 1978, § 14-2-1 *et seq.* (2005); *State ex rel. Newsome v. Alarid*, 90 N.M. 790, 568 P.2d 1236 (1977). This includes applications, Declarations, well logs, reported diversions, technical analyses, correspondence, and intra-staff memoranda.

E. Metering, Monitoring, and Reporting

Requirements for metering, monitoring and reporting groundwater diversions have changed over time. Initially, meters were not required. Because of increased groundwater development in the Roswell Artesian Basin, by court order all wells within the basin were required to install meters by the mid-1960s. All recent permits issued by the State Engineer state-wide now require meters, monitoring, and reporting of groundwater diversions. The State Engineer is also working on basin-wide orders that will require meters, monitoring, and reporting on all existing wells. The State Engineer's authority derives from NMSA 1978, § 72-12-27 (1967).

IV.

INTERSTATE RAMIFICATIONS OF NEW MEXICO GROUNDWATER LAW

New Mexico has also regulated groundwater to comply with the State's delivery obligations to downstream states under interstate stream compacts. The first effort in this direction was the declaration of the Roswell Artesian Basin on August 21, 1931. This occurred at a time when it became apparent that groundwater development in southeastern New Mexico required regulation and when the first studies were beginning to suggest a hydrologic connection between groundwater usage and flows on the Pecos River. Ultimately the Pecos River was apportioned between the states of Texas and New Mexico by the Pecos River Compact. *See* Act of June 9, 1949, 81 Cong. Ch. 184, 63 Stat. 159 (1949). Regulatory efforts begun in the 1930s were not successful and New Mexico violated the Pecos River Compact. To achieve compliance, New Mexico instituted a compact compliance program involving the purchase of artesian and shallow groundwater rights and the transfer of these rights to "augmentation well

fields” which would pump artesian water into the Pecos to enable New Mexico to remain in compliance with the court’s final decree when necessary. The Pecos River Compliance Program was validated by the New Mexico Court of Appeals in the case of *State ex rel. Office of the State Engineer v. Lewis*, 2007-NMCA-008, 141 N.M. 1, 150 P.3d 375.

Another example involves the Rio Grande. On November 29, 1956, the State Engineer declared the Middle Rio Grande Underground Water Basin to maintain New Mexico’s ability to make deliveries into Elephant Butte Reservoir where native Rio Grande water is divided between the two components of the Rio Grande Project, *i.e.*, Elephant Butte Irrigation District in New Mexico and El Paso County Water Improvement District No. 1 in Texas. The Rio Grande Compact, Act of May 31, 1939, 53 Stat. 785 (1939), apportioned the native flows of the Rio Grande among the states of Colorado, New Mexico, and Texas. At issue in the State Engineer’s declaration of the basin, was the growing realization that control of groundwater was administratively necessary where it was hydrologically connected to interstate streams. To date, there has been no litigation interpreting the Rio Grande Compact or violations of the Compact by New Mexico.

V. GENERAL EXCEPTIONS

A. Municipal, Livestock, and De Minimus Commercial Wells

Beginning in 1953, by statute, the State Engineer was required to grant applications that were filed seeking groundwater diversions for livestock wells and for household and domestic purposes, including the irrigation of up to one acre of non-commercial trees, lawns, and gardens. *See* NMSA 1978, § 72-12-1 (2003). Historically, the State Engineer granted applications that fell within these parameters for up to 3.0 acre-feet per year. These so called domestic and livestock wells did not require public notice and were not subject to review according to the statutory criteria that applied to new appropriations of groundwater. By State Engineer regulations enacted in 2006, the amount was reduced to a maximum of 1.0 afy. *See Rules and Regulations Governing the Use of Public Underground Waters for Household or Other Domestic Use in Accordance with Section 72-12-1.1 NMSA, § 19.27.5.7.E.* Livestock wells were not affected by the State Engineer’s 2006 regulations.

In the recent case of *Horace Bounds v. John D’Antonio, State Engineer* (No. CV-2006-166), the Sixth Judicial District Court found NMSA 1978, §72-12-1 (2003) to be unconstitutional because it did not follow the doctrine of prior appropriation. The case is pending on appeal to the New Mexico Court of Appeals. The court’s ruling raises significant legal questions regarding the validity and extent of domestic and livestock wells permitted under NMSA 1978, §72-12-1 (2003).

B. Deep Wells

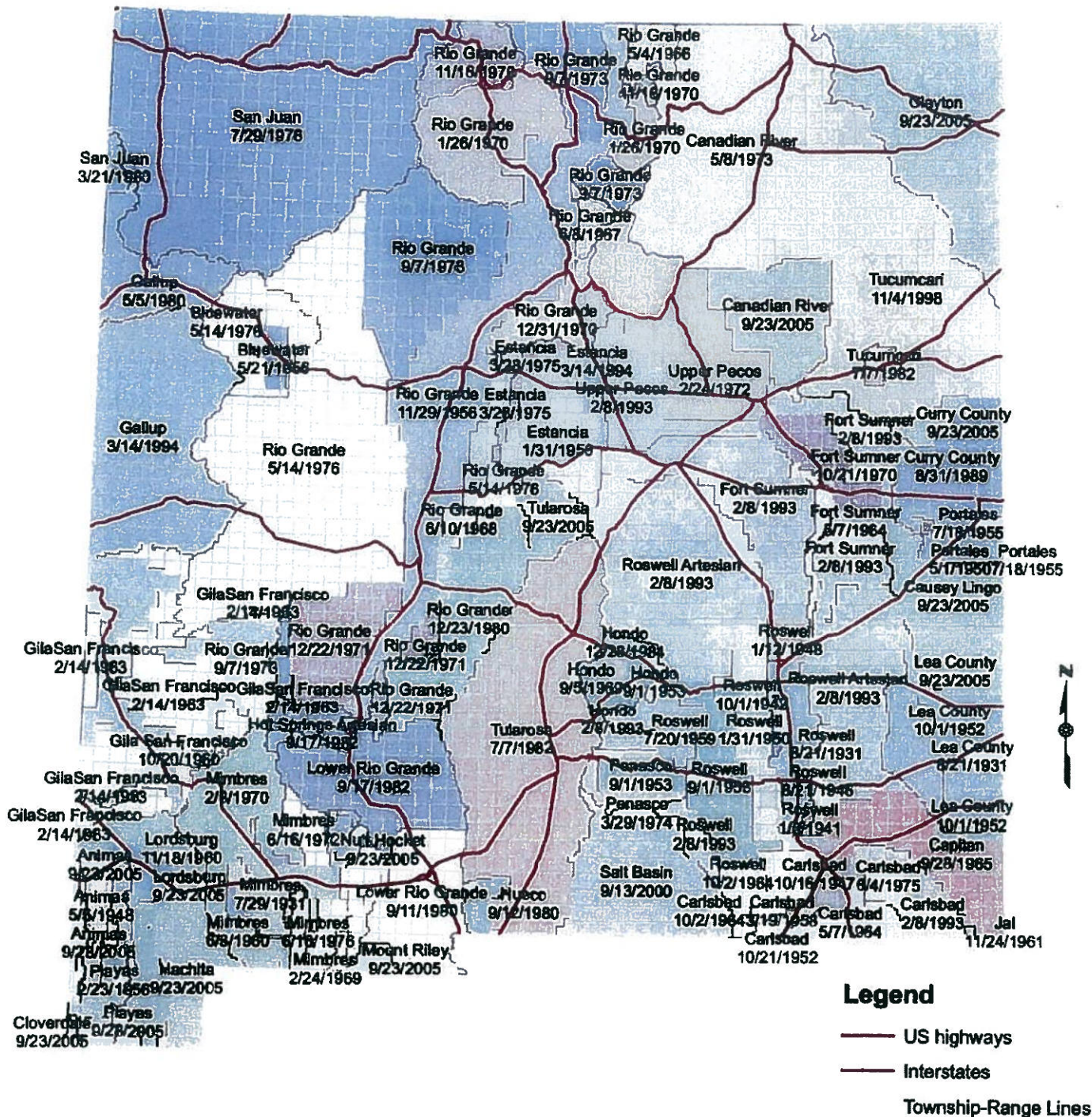
Prior to New Mexico's 2009 legislative session, wells in which the top of the aquifer was 2,500 feet or more below ground surface containing groundwater that is not less than 1,000 mg/l total dissolved solids could be constructed and divert groundwater without an application to the State Engineer. Instead, a simple notice of intention was all that was required. *See* NMSA 1978, §§ 72-12-25 thru 28 (1967). Effective March 30, 2009, the law was changed to require all uses other than oil and gas exploration and production, prospecting, mining, road construction, agriculture, generation of electricity, use in an industrial process, or geothermal use to abide by the regular provisions of the groundwater code, but only if the State Engineer declares a deep groundwater basin. *See* NMSA 1978, § 72-12-25 (2009). This statute allows, but does not mandate, further State Engineer jurisdiction into an area that previously had not been regulated.

C. Aquifer Storage and Recovery Act

In 1999, the New Mexico legislature passed the State's first aquifer storage and recovery act. *See* NMSA 1978, §§ 72-5A-1 *et seq.* (1999). This law allows certain governmental entities to store water underground and recovery it in specified circumstances.

CONCLUSION

The State of New Mexico has been regulating groundwater for nearly 80 years through which it has seen both successes and failures. Some of New Mexico's greatest successes involve the early recognition in the 1920s of the need to regulate groundwater in certain parts of the state and in the recognition in the 1950s of the need to require surface water offsets when new groundwater appropriations caused surface water depletions on hydrologically connected streams. One of its failures related to excess groundwater development and resultant surface water depletions on the Pecos River which resulted in violations of the Pecos River Compact by under-deliveries of surface water to the State of Texas. *See Texas v. New Mexico*, 446 U.S. 540 (1980); *Texas v. New Mexico*, 462 U.S. 554 (1983); *Texas v. New Mexico*, 482 U.S. 124 (1987); and *Texas v. New Mexico*, 485 U.S. 388 (1988). As water demand continues to increase over time, New Mexico will look to a combination of new supplies through interbasin transfers and desalination and a re-allocation of existing rights. The law will continue to evolve to face these new circumstances and challenges.



1:3,500,000

Coordinate System
UTM, NAD83, meters

New Mexico Declared Groundwater Basins



STATE OF NEW MEXICO
Office of the State Engineer
John R. D'Antonio, Jr., P.E.,
State Engineer

Created by Christina Nofsker
OSE - Water Rights
May 8, 2007

NOTE: Data presented in this map is in Draft form.
Data users are solely responsible for confirming data accuracy when necessary.