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For more information, contact:

Karin Stangl, Public Information Officer
(505) 827-6139

OPINION-EDITORIAL: ACTIVE WATER RESOURCE MANAGEMENT IS KEY TO SURVIVING THE DROUGHT

by New Mexico State Engineer, John D'Antonio, PE

(SANTA FE, New Mexico) – New Mexico is experiencing a drought, which is part of a natural cycle that will continue to occur in our state. In order to effectively manage our water resources and deal with this variability in our water supply, I have launched a program called – Active Water Resource Management.

Last week, I began the formal process of doing what previous State Engineers were asked to do for decades -- to put in place the tools for physically administering our state's water supplies. To accomplish this, I am promulgating rules and regulations to implement Active Water Resource Management initiatives. There are currently two areas of the state where priority administration is enforced – on the Cimarron and Rio Costilla.

My current efforts are to implement NMSA 1978, Sections 72-2-9.1, which was enacted in 2003 by the State Legislature in response to the drought. It provides that "the adjudication process is slow, the need for water administration is urgent, compliance with the interstate compacts is imperative, and the State Engineer has the authority to administer...in accordance with water right priorities recorded with or declared or otherwise available to the State Engineer." This statute is consistent with New Mexico Constitution Article XVI Sections 2 & 3 providing for priority administration by beneficial use.

The regulations I have proposed begin a long, challenging task that will culminate with New Mexico controlling its water destiny. My hope is that there will be a break in the drought. I am committed, however, to taking proactive steps toward the management of all New Mexico rivers. Steps taken this year to develop Active Water Resource Management into a statewide program will help provide services for active administration that will apply to future drought cycles as well as during wet cycles in our state.

Let me stress that my objective is not to threaten rights to the use of water. Quite the contrary, Active Water Resource Management is aimed at protecting and preserving rights to the use of water, in the amount and priority of use of each water rights owner.

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These regulations will enable me to begin administration of New Mexico's waters by preventing waste and maximize beneficial use from the available supply under the Constitution. The water administration that is the subject of these regulations must be done primarily to protect property rights. The value of a water right is predicated upon the system that gives meaning to a priority date. That makes a workable administration essential. If junior water rights cannot be administratively curtailed for the benefit of a senior water right, then senior water rights have no value.

The public understands this. Since becoming State Engineer, 18 months ago, I have had requests from numerous areas that I administer the waters of a stream or groundwater basin for the benefit of senior water right owners including the Mimbres, San Juan, Lower Pecos Rivers, the Rio Gallinas, Rio Chama, Nambe-Pojoaque-Tesuque Basin, and the Lower Rio Grande. I have issued these regulations in order to respond to those requests in an orderly and effective manner. The regulations provide the administrative framework to gain the knowledge we need and the acceptance of water rights holders for water administration.

It is important to get that framework into place quickly. Then, with the promulgation of district-specific regulations, which will govern the actual administration in the field, I intend to have as many public meetings and sessions as possible, accompanied with opportunities for additional informal and formal comments before adoption. Meanwhile, in each of the key areas, I will appoint a water master to gain the benefits of the real world experience so that what is adopted is practical.

Part of the regulatory scheme I have proposed are provisions that allow for expedited transfers and replacement plans. These, in my view, are necessary components if there is to be workable priority administration. They provide a process to allow junior water right owners curtailed by priority administration to be able to quickly get access to a supply of water from willing sellers. The safety and welfare of the public require that drinking water not be cut off without recourse. However, expedited transfers do not apply within acequias or community ditches. The expedited transfer provisions won't take water from senior water rights holders, it will enhance their ability to benefit from the higher monetary value of those rights, should they choose, either on a temporary lease basis or a sale.

I have approached these regulations with great consideration, knowing that the changes we need in water administration would challenge us all. Difficult times call for difficult measures. But this is the trust that has been given to me. I am vested with both the duty and the authority. Unless we can together find and agree upon another way, the State Engineer must administer the waters of the state.

I want to thank all those who have offered comments on the regulations or who intend to comment. My staff will use the written and oral comments submitted to assure that I provide an intelligible, workable system of administration, informed by the benefit of as many of the public's suggestions as possible.

While I have received quiet support for the regulatory effort, and many constructive comments, a vocal opposition would have the public believe that there can be no water administration until an adjudication is completed. This claim is unfounded in law. Further, given the length of adjudication cases -- five decades and counting in the longest instance -- the assertion that the waters of the state must await the completion of an adjudication before they may be administered does a vast disservice to New Mexico's citizens. The holders of senior water rights deserve the protection their seniority bestows under state law -- and they deserve it even before their rights have been through an adjudication.

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I believe that my actions are consistent with the Constitution, with the needs of the State, and with the intent of the Office of the Attorney General, State Legislature, and Executive Branch in fairly administering state water law. Finally, I am acting under the recently adopted State Water Plan, which recognizes how important it is to manage our limited water supplies effectively and wisely.

The Office of the State Engineer is charged with administering the state's water resources. The State Engineer has power over the supervision, measurement, appropriation, and distribution of all surface and groundwater in New Mexico, including streams and rivers that cross state boundaries. The State Engineer is also Secretary of the Interstate Stream Commission and oversees its staff. The Interstate Stream Commission is charged with separate duties including protecting New Mexico's right to water under eight interstate stream compacts, ensuring the state complies with each of those compacts, as well as water planning.

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