A Water Court for New Mexico
Perspectives From the Bench

Institute for Court Management
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This paper evaluates the New Mexico stream adjudication process and how New Mexico Courts can timely resolve them. Drought, compact delivery requirements on the Pecos River and concern regarding interstate disputes on the Lower Rio Grande have given timely resolution of stream adjudications high political priority in New Mexico. Stream adjudications can involve thousands of water right owners which can greatly impact the resources of the court if the procedure is expedited.

The goal was to identify an efficient and cost-effective structure of the court considering the magnitude of stream adjudications and limited resources. There are few testable objectives. Although most western states which have some version of the Prior Appropriation Doctrine have statutory procedure for stream adjudications, the manner that each state has tried to address the problems inherent in the process has varied substantially and there are very significant historical differences among states which minimize the value of precedent of other jurisdictions and make comparisons difficult.

The research methodology included the following:

- evaluating Water Court proposals of the gubernatorial candidates;
- evaluating the critique of the Office of the State Engineer in an Audit by the Legislative Finance Committee;
- evaluating a discussion draft of proposed legislation addressing adequate resources for adjudications;
- sending a questionnaire to the General Counsel of the State Engineer requesting him to identify problems that the State Engineer perceived;
- informal discussions of problems with stream adjudications with judicial officers assigned to stream adjudication;
- review of the statutory process of stream adjudications in New Mexico and other states that have adopted the Prior Appropriation Doctrine and the interrelated jurisdiction of state and federal courts; and,
- review of the structure of the New Mexico Judiciary and the role of the courts in stream adjudications.

Whether the recommendations will satisfy the objectives cannot be determined presently. The New Mexico Supreme Court has not yet adopted the recommendation of the paper to judicially establish Water Court Divisions within the present structure of the court although they have approved the concept. The Legislature must adequately fund both the courts and the State Engineer. Inadequate funding has been the major cause of the delays in stream adjudication, and without
prudent action by the Legislature, the ability of the court or the State Engineer to improve the time to disposition of stream adjudications is restricted regardless of what choices are made for a Water Court.

Summary of Conclusions and Recommendations:

The Supreme Court should establish a Water Court Division within the court by designating a Chief Water Judge to oversee stream adjudications in the state, designate a Water Judge in each judicial district, provide for adequate training and education in water law, and establish an appropriate administrative structure within the current hierarchy of the court.

There should be no any major revisions of the Water Codes or modifications of the administrative or adjudicative duties of the OSE. Any legislative changes should be focused on reducing specific impediments to efficient adjudications and not to any change of institutional structure.

Representatives of the Executive, the Legislative and Judicial branches should review and determine adequate funding and resources for the OSE and the courts to effectively, efficiently and timely complete stream adjudications.

This research paper is available in its entirety in portable document format. To access, you must first obtain and install the Adobe Acrobat Reader.

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