

An epic legal battle to be fought over water

Dispatch New Mexico, 2/6/2014

It's been a while since New Mexico had any good news about water.

I guess the last time was in September, when copious amounts of rain brought with it a hope that, with a wet winter, we might just pull out of a record-setting drought. Remember the U.S. Drought Monitor map from last summer, the one that showed virtually all of New Mexico in extreme or exceptional drought? Thanks mostly to those late-summer rains, that map now looks better, but it's still showing most of the state in moderate to extreme drought conditions.

Furthermore, it hasn't helped that, as of this writing, many areas of the state haven't had any measurable precipitation since mid-December. Also as of this writing, snow is in the forecast for some parts of New Mexico, but it's going to take more than a single snowstorm to pull us out of this dry and dusty hole we're in. So here we are, entering our fourth straight year of a drought of unprecedented proportions. Maybe we'd better get used to it, because it might be the new normal. Climate change could actually turn this dry region abnormally drier. The worldwide trend toward warmer temperatures suggests that, unfortunately, the worst is yet to come.

And, now, there's no guarantee the state will get to keep what little water it has. Last week, the U.S. Supreme Court gave Texas the go-ahead to proceed with its lawsuit against New Mexico over the Rio Grande's water.

The issue stems from the Rio Grande Compact, signed in 1938, which allocates the river's water between Colorado, where the river originates, New Mexico and Texas. The compact requires that New Mexico deliver water into the Elephant Butte Reservoir, where the U.S. Bureau of Reclamation divvies up the water between the Elephant Butte Irrigation District in New Mexico and the El Paso County Water Improvement District out of Texas.

In its lawsuit, Texas is alleging that New Mexico is illegally depleting the Rio Grande's water before it reaches Texas. New Mexico, in response, says its only obligation is to deliver a certain amount of water to the Elephant Butte Reservoir about 90 miles north of the state line, and that no specific amount of water is required to be sent to Texas.

If Texas prevails in the suit, the entire state of New Mexico will feel the consequences. There's the potential loss of water rights, which may hit New Mexico farmers the hardest, and that may be exacerbated by the fact that there are more water rights allocated than there is water in this state. Add to that an overall rise in temperatures, the prolonged drought that's depleted the amount of water in the river and the reservoir, and you've got a bad situation that could only get worse.

New Mexico's legal defense is in the hands of Attorney General Gary King, who said he isn't surprised with the Supreme Court's decision to allow the suit to move forward. Texas is claiming

that New Mexico is violating the Rio Grande Compact, signed in 1938, but King sounds confident, at least in a news release, that he can defend his state's position. He said he is looking forward "to being able to tell New Mexico's side of the story and to have our day in court."

King didn't go into detail about the defense he's putting together, but he did drop a hint. "Since 2008, Texas has been getting far more than what we believe is its rightful share of water under the Rio Grande Compact," he said. In another words, his best defense may turn out to be a good offense.

Let's hope he's not bluffing. Let's hope he really has a solid defense. To suffer the consequences of losing this court battle would be tough on the entire state of New Mexico. And those who would take the worst hit would be the state's farmers, and particularly for those who water their crops with the Rio Grande.

Call it bad news, or even good news if New Mexico prevails, but one thing's for certain: the progression of this lawsuit will be big news — especially for all that parched New Mexico land on either side of the Rio Grande.

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