

Battles threaten NM water Legal cases may deplete supply

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Mother Nature gave New Mexico almost everything, except water.

In the Land of Enchantment, we have less surface water than any other state. And our natural water supply is evaporating as global warming intensifies the long-term drought in the Southwest.

But Mother Nature is not our main problem. If we're smart and resourceful, we can cope with Mother Nature, but we cannot survive human error.

In the next five years, New Mexico is on track to lose its remaining water supply. We are losing our water in the courtroom because of actions by former Gov. Bill Richardson and current Attorney General Hector Balderas.

The first courtroom disaster is happening in the Supreme Court of the United States, where the state of Texas is suing the state of New Mexico for more water from the Rio Grande.

Texas is claiming that New Mexico has not met its legal obligation to provide water to Texas under the Rio Grande Compact of 1938. Texas is claiming that New Mexico is grabbing water released from Elephant Butte Reservoir before the water reaches Texas.

To defend against Texas, Balderas argued that it makes no difference whether the water actually reaches Texas, so long as it is released from Elephant Butte Reservoir, 125 miles up the Rio Grande. On June 28, the Supreme Court's Special Master rejected this argument, calling it "stunted."

The Special Master ruled that the Rio Grande Compact would mean nothing "if New Mexico delivers water to the Rio Grande Project at Elephant Butte Reservoir and then immediately grabs it back upon release from the Reservoir."

The Special Master has a good point: The AG's argument makes no sense.

Therefore, it's now time for New Mexico to change strategies in this case.

The New Mexico Legislature has appropriated \$13.5 million for litigating with Texas, but this money is being wasted. No amount of money can rescue a legal argument that is intrinsically stupid.

The second courtroom disaster is unfolding in the state courts in New Mexico.

In late 2010, just weeks before he left office, Richardson signed an agreement that would give the Navajo Nation 640,000 acre-feet of water every year from the San Juan River.

That is a monstrous amount of water, more than six times the amount used by the Albuquerque metropolitan area.

Most of this water is earmarked for the Navajo Indian Irrigation Project, but that is not where the water would eventually go.

If the Navajo Nation is awarded this water, then the tribe can export it to other states.

New Mexico lost this legal battle in the 1980s, when the federal courts ruled that water is an "article of interstate commerce."

In a sense, water is no different than oil and gas — New Mexico cannot prevent it

from being exported.

It's easy for the Navajo Nation to export the water — just leave it in the San Juan River. The water will flow down to the Colorado River, where Los Angeles, Phoenix and Las Vegas, Nev., have their aqueducts ready and waiting.

If that happens, then the water supply to Albuquerque and Santa Fe will come up short, because our cities get water from the San Juan through the San Juan-Chama project.

Balderas is arguing in favor of the Richardson-Navajo deal, and so far Balderas has prevailed.

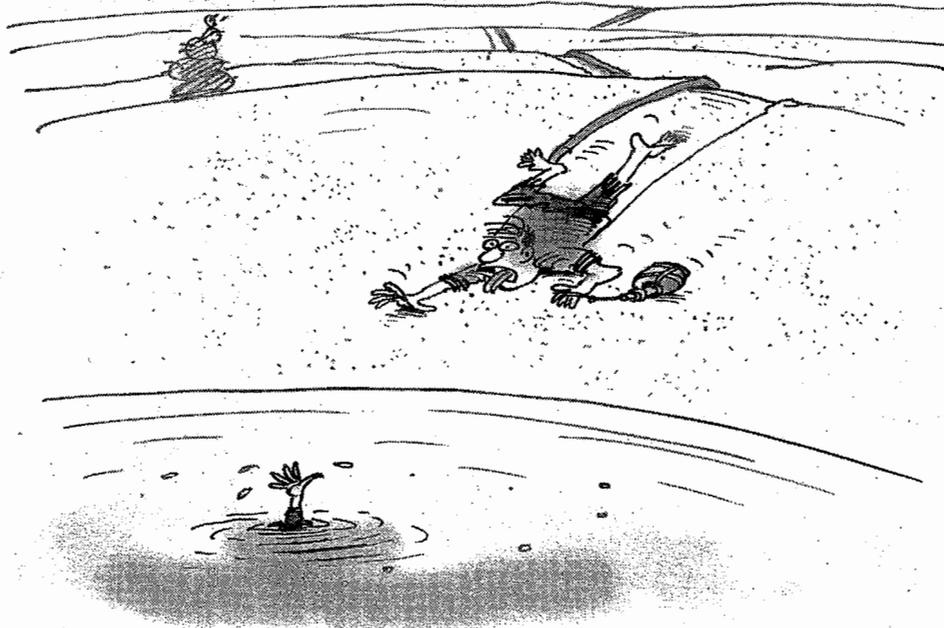
The ultimate decision will be made in the New Mexico Court of Appeals and the New Mexico Supreme Court.

So we are facing twin courtroom disasters. New Mexico's very survival is at stake, but don't blame Mother Nature, blame human errors in state government.

How come the public doesn't know about this? Welcome to New Mexico — we're asleep at the switch.

Luckily, we can correct these human errors before they become fatal, if we act quickly. In fairness to Balderas, he inherited these problems from the Richardson era, but as AG he has the power to change course before it's too late.

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