

Abstract

(Shot Off the Saddle: New Mexico Water Law Meets Climate Change)

Shot Off the Saddle reviews the climate change challenges that New Mexico's water law is confronting from not only a historical trajectory, but also through its current evolution and development. For New Mexico and most of the Western States, the primary feature of climate change is water, or more precisely, the lack of water. While an aspect of climate change is drought, New Mexico is no stranger to dealing with the scarcity of water although, in a more periodic and predictable manner. Early in its statehood, New Mexico adopted the doctrine of prior appropriation and beneficial use within the body of its water law, and most subsequent changes in water law have been policy-driven by the doctrine. One of the challenges is to reconcile if at all possible, prior appropriation with climate change. The path to reconciliation however, has been narrowed by other challenges arising from the invocation of federal jurisdiction, the Commerce Clause, and the application of equitable apportionment. The question raised by this paper is, has New Mexico been "shot off the saddle", or can it still recover to meet the challenge?