

--Upon Federal Lands
Decisions by the Secretary
SHALL Be Subject to
VALID EXISTING RIGHTS
90 STAT 2786 Sect 701(h)

with it? In 1907, while New Mexico was still a territory, the territory adopted a water code and authorized a territorial engineer to administer the terms of the code. The basis of this code was "first in time; first in right." The New Mexico Constitution, adopted in 1911, contains the following language in Article XVI:

1. All existing rights to the use of any waters in this state for any useful or beneficial purpose are hereby recognized and confirmed.

2. The unappropriated water of every natural stream, perennial or torrential, within the state of New Mexico, is hereby declared to belong to the public and to be subject to appropriation for beneficial use, in accordance with the laws of the state. Priority of appropriation shall give the better right.

3. Beneficial use shall be the basis, the measure and the limit of the right to the use

Beneficial use shall be the basis, the measure and the limit of the right to the use of water.

--The Territorial supreme court held that water might be diverted from a stream and used for beneficial use.

Albuquerque Land & Irr. Co. v. Gutierrez, NM, (1900)

--The Doctrine of Prior Appropriation was applied by the earliest settlers to the use of waters

(Streams, Rivers, Lakes) for irrigation, mining, and other beneficial purposes." Lindsey v. McClure, (1943)

--New Mexico Supreme Court ruled that waters for stock raising is a beneficial use.

Farmers' Development Co. v. Rayado Land & Irr. Co, (1923)

--"1866 Mining Law authorizes non-federal appropriations of water on public lands. Pre-FLPMA, October 21, 1976, water rights on forest lands

are "Valid Existing Rights" for purposes of FLPMA." <https://www.fs.usda.gov/land/water/bypass8.html>



For the Farmer

A Water Right is Appurtenant to the Land

It shall be lawful ... and upon payment of 25 cents per acre in which any desert land is situated, ..., by conducting water upon the same, ...: Provided, however, That the right to the use of water ..., on or to any tract of desert land of 320 acres ... ; and such right shall not exceed the amount of water actually appropriated, ... and all surplus water over and above such actual appropriation and use, together with the water of all lakes, rivers, and other sources of water supply upon the public lands and not navigable, shall remain and be held free for the appropriation and use of the public for irrigation, ... purposes subject to existing rights. ... a patent for the same shall be issued to him.

43 U.S. Code § 321

Mar. 3, 1877, [19 Stat. 377](#); Mar. 3, 1891, [26 Stat. 1096](#); etc

For the Rancher

A water right for use in stock raising on the public domain is a right... that since the right in the lands is merely possessory, not resting in grant, such right with the incident or appurtenant water right may be transferred by parol.

(Parol, A handshake agreement)

First State Bank of Alamogordo v. McNew, NM (1928)
may have been updated to require a written agreement
Walker vs US, NM 2007



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Valid Existing Water Rights

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90 STAT 2786 Sect 701(h)

--1866, Congress relinquished all claims to water rights on public land, and ceded them to the respective states.
Bakersfield Morning Echo, Oct. 24, 1909