

**Janet Jarratt, et. al., v. Middle Rio Grande Conservancy District**

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"Priority of appropriation" says the New Mexico Constitution, "shall give the better right." Prior appropriation, or "first in time, first in right" means water is allocated to the state's oldest water use first. The oldest rights originated in our agricultural heritage. In 1880 some 125,000 acres were irrigated in the Middle Rio Grande valley. At its formation in 1927, the MRGCD asserted -- in its operating plan and applications to divert and store water (approved by the Legislature, State Engineer, and 2nd Judicial District Court) -- that 80,785 acres in the middle valley had "perfected prior water rights". Conservancy statutes as well as conditions of approval for its permits (620 and 1690) require the MRGCD to protect those pre-existing rights. The MRGCD's own Rule 23 --Water Bank Rule-- revised in 2009 and Irrigation Delivery Policy updated in 2012, require priority delivery to those who have not severed (transferred or sold) their historic water rights. The District has a duty to deliver water in accord with the Constitution; there is no statute that is capable of overriding the Constitution and ignoring that senior pre-existing water rights are vested private property rights.

When the MRGCD was formed, it was expected that a determination would be "made of the conditions and extent of the water rights, and water supply and of the watercourses within the district." Eighty years later such a determination has not been made, thus granting junior users an unfair share of scarce water supplies. The MRGCD has chosen to ignore prior appropriation in water deliveries, but rather has provided water to all irrigators on a parity basis, including those with a lease from the MRGCD Water Bank which clearly states such leases will be curtailed in times of shortage. Since 2009, the State Engineer has provided the MRGCD data regarding tracts of land from which water rights have been severed. Many of these lands continue to be irrigated, and the district has not acted to identify or curtail delivery to properties with no right to water. For several years the MRGCD has had knowledge that the Albuquerque / Bernalillo County Water Utility Authority's actions are adversely impacting delivery of water to district irrigators, including those holding prior rights to water. Nevertheless, the district has refused to act on this knowledge as well.

This year, the MRGCD announced that stored irrigation water would be exhausted as of August 16. By refusing to terminate illegal irrigation, refusing to deliver water in priority, and by not protecting pre-existing water rights from impacts caused by junior diversions, the MRGCD is failing in its duty to its constituent senior right holders, and acting contrary to the New Mexico Constitution. Without action, our property will continue to erode in value, and the ecosystem may suffer irreparable damage.

A group of priority rights holders is requesting the Court to order the MRGCD to (1) immediately prohibit delivery of water to those lacking any right to it; (2) curtail delivery of water to water bank leases until and unless full delivery to prior rights holders is assured; (3) use its statutory authority to make a determination of the rights, property easements or other interests in the waters within the MRGCD; (4) fully deliver water due to priority rights holders by delivering water on a priority basis; and (5) fully evaluate the hydrologic impacts of the ABCWUA actions on MRGCD facilities and pursue any and all relief allowed by law for any impacts. Our hope is that with such relief, all residents in the valley will benefit from better administration of our water.

*If you believe that lands irrigated since 1999, or 2008, or 2011 should not have the same right to water in times of shortage as lands farmed since 1850, or 1925, or even 1980, then this is your case. If you have a lease from the Water Bank, and think that those irrigating with no right to water should be curtailed before you, then this is your case. If you believe our government should protect property and provide water in accord with the law, this is your case.*

*For more information, check out [www.jjwater.info](http://www.jjwater.info)*