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New Mexico Courts Uphold Water Conservation

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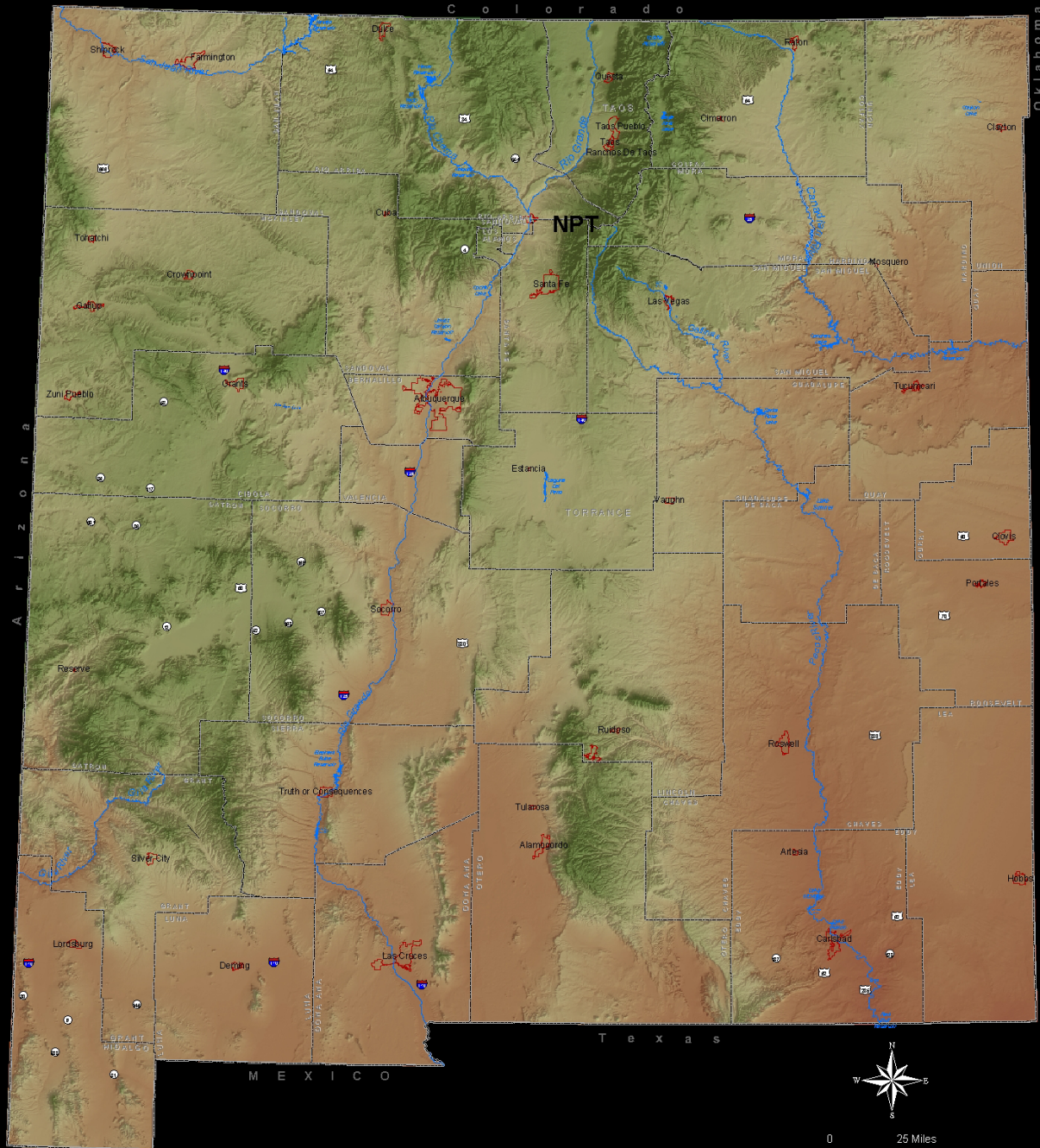


Today's Presentation

- New Mexico's "Climate"
 - Physical
 - Legal
- Specific Cases
- Direction of the NMOSE



New Mexico



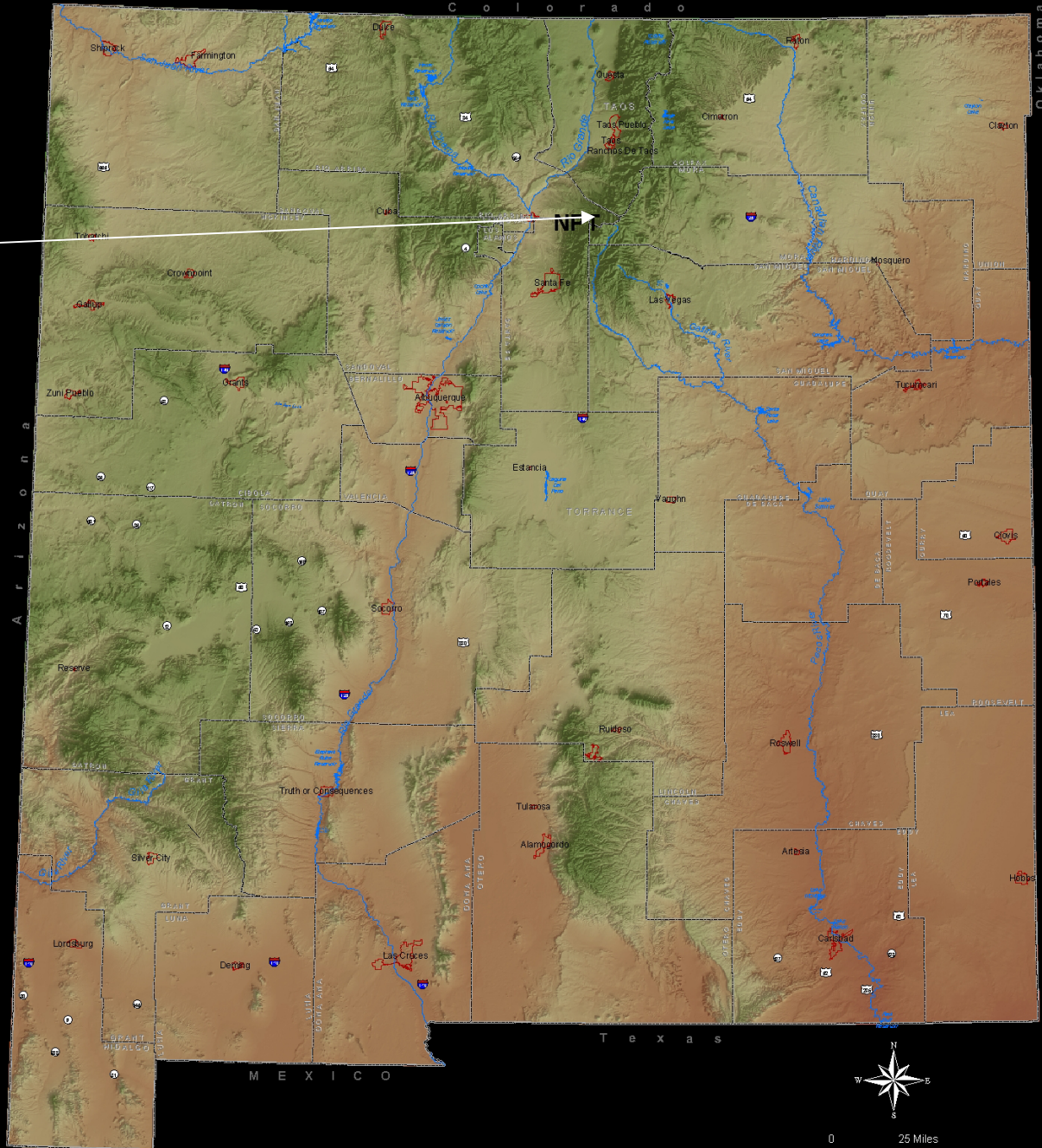
Physical Climate

- New Mexico is semi-arid
 - 20” to 30” in high mountains
 - 8 to 12 inches of precipitation in lower elevations (most of State)
- Variability
 - Significant +/- 20%
 - Difficult to predictable



New Mexico

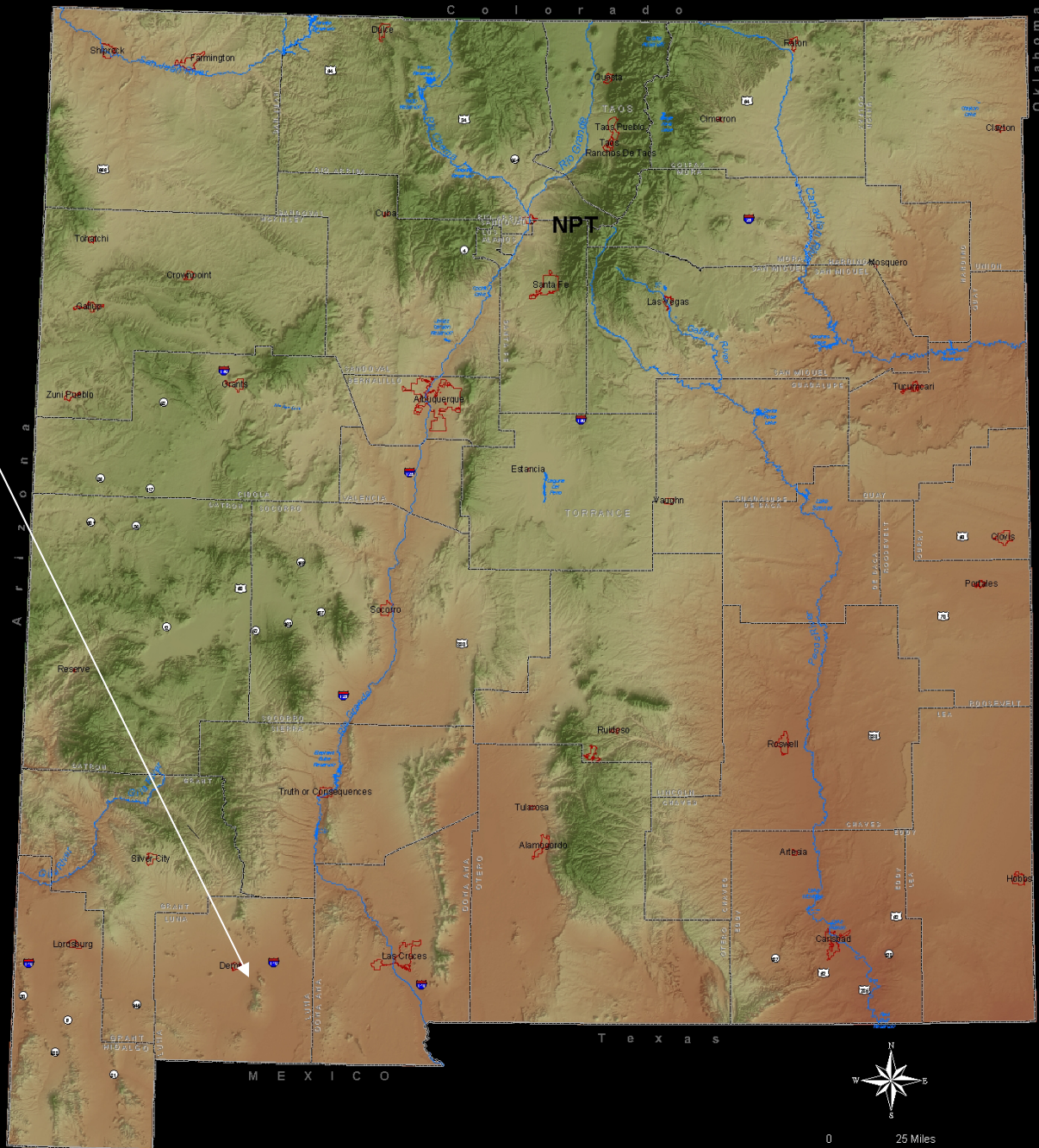
Truchas Peak



Truchas Peak, Northern NM



New Mexico



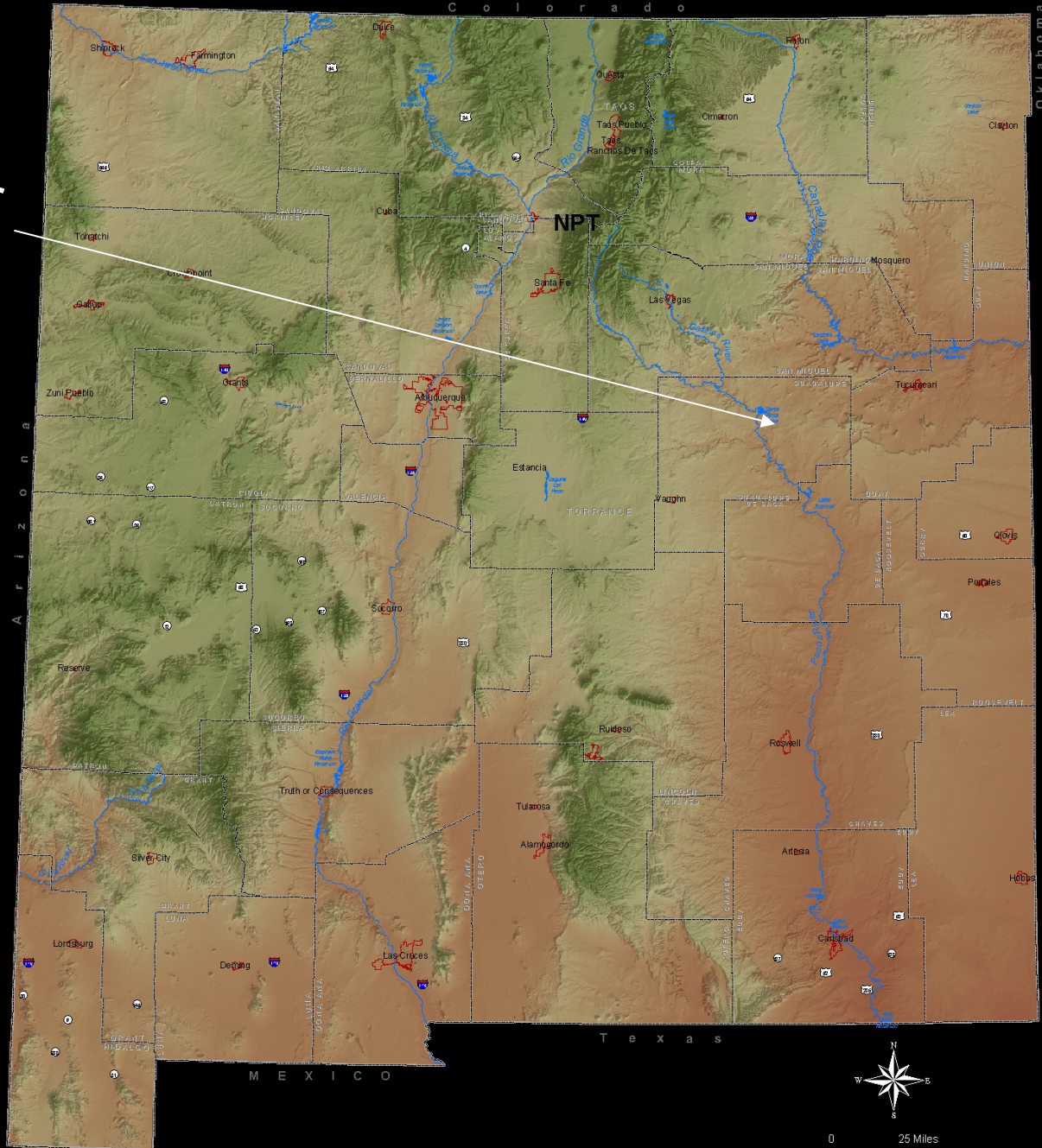
Chihuahuan
Desert
(Salt Flat)

Chihuahuan Desert (Salt Flat)



New Mexico

Fort Sumner



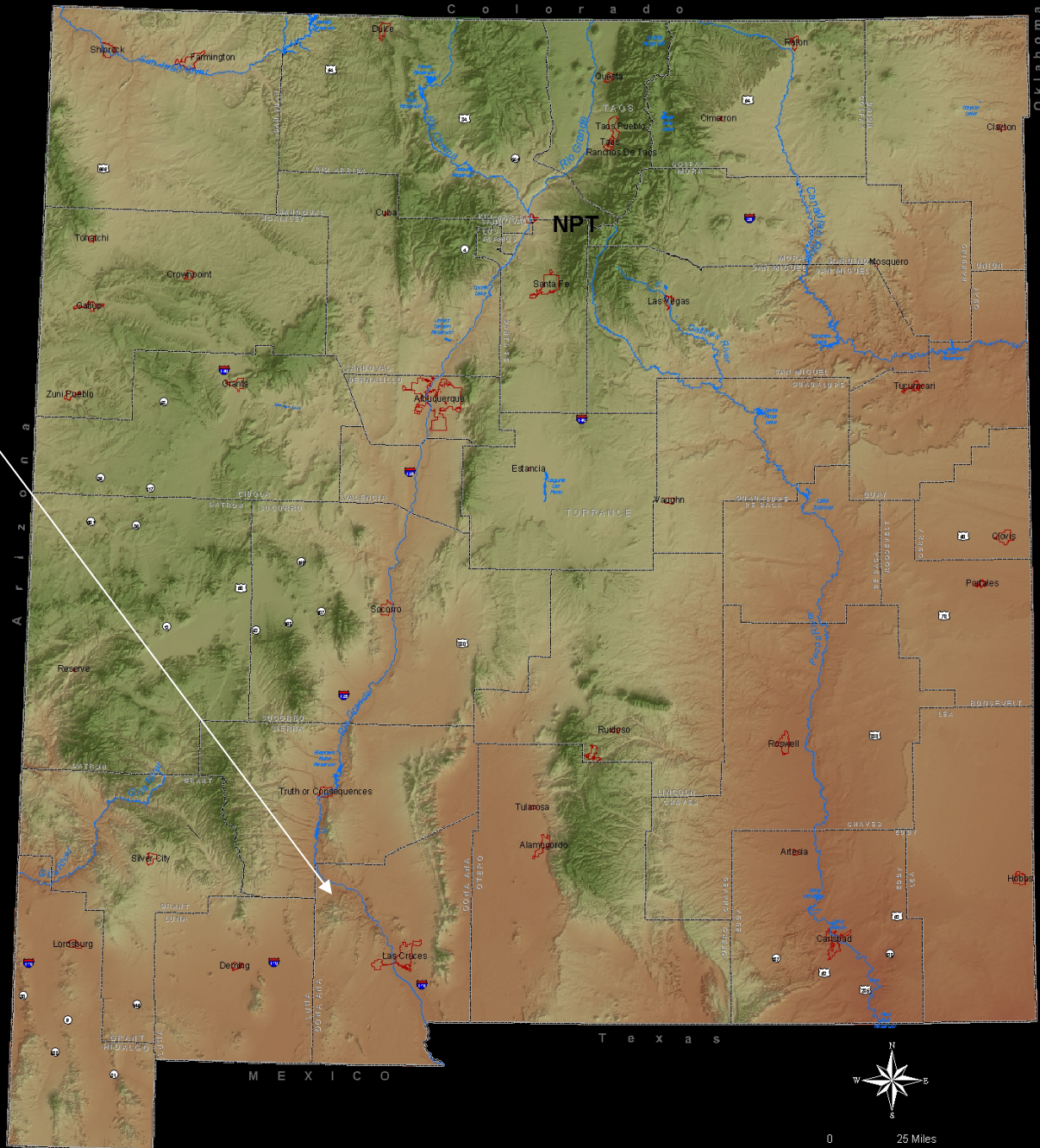
Fort Sumner

This is where water leaves the lake and enters the river



New Mexico

Hatch



Hatch Flood 2006



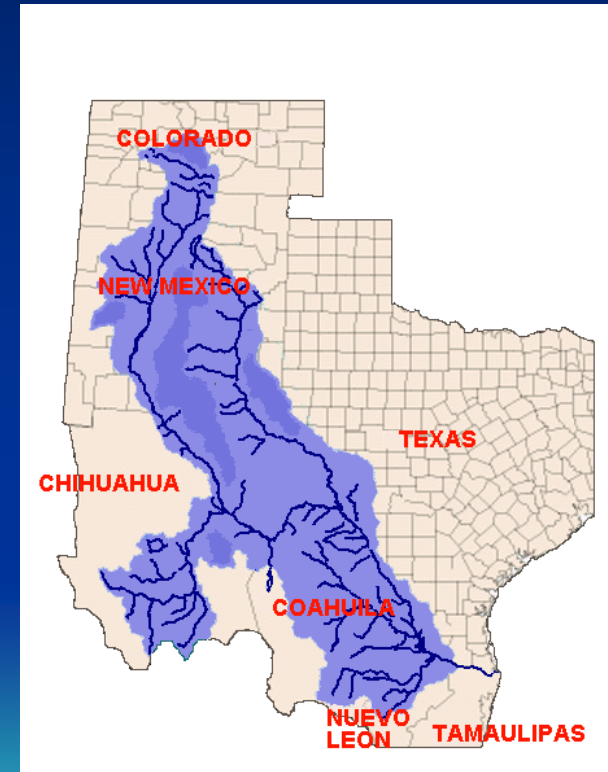
Projected Trends M&I Uses Next 30 years

- 800,000 new residents
 - 70% in the Rio Grande Basin
- Rio Grande Basin water use
 - No new appropriations
 - 100,000 AF/y of new demand (@ 160 GPCD)
 - Approximately 10% of Rio Grande's average surface water supply



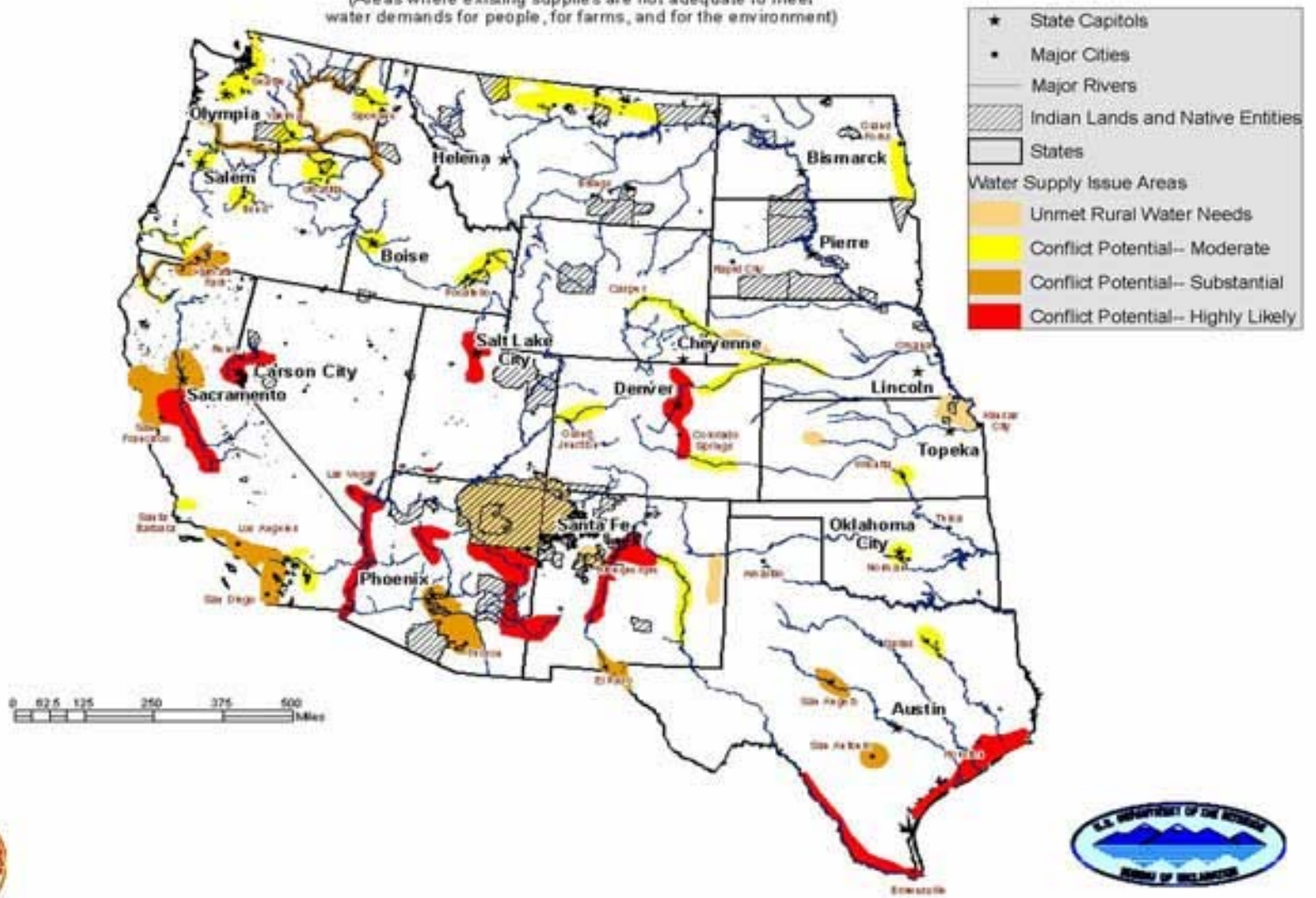
Legal Climate

- Western Water Law
 - Doctrine of Prior Appropriation
 - Interstate Compacts
 - Native American
 - Endangered Species Act



Potential Water Supply Crises by 2025

(Areas where existing supplies are not adequate to meet water demands for people, for farms, and for the environment)



NMOSE Tools

- NM Constitution
 - Beneficial use shall be the basis, the measure and the limit of the right to use water
 - Priority of appropriation shall give the better right
- Statutes
- Rules and Regulations
 - Surface Water
 - Groundwater
- Policies



Water Right Permitting

- Application Process
 - File and Publish Notices
 - Protested or Unprotested
- Evaluate Permits (circa 1986)
 - Impairment
 - Conservation
 - Public Welfare



Permit Conditions (circa 1997)

All permits conditioned with:

- Permittee “shall utilize highest and best technology available to ensure conservation of water to the maximum extent (practical/economically feasible)”
- Permit “shall not be exercised ... in a manner that is contrary to the conservation of water within the state...”



Protested or Aggrieved

- Protested or Aggrieved Application Process
 - Administrative Hearing
 - District Court
 - Court of Appeals
 - Supreme Court



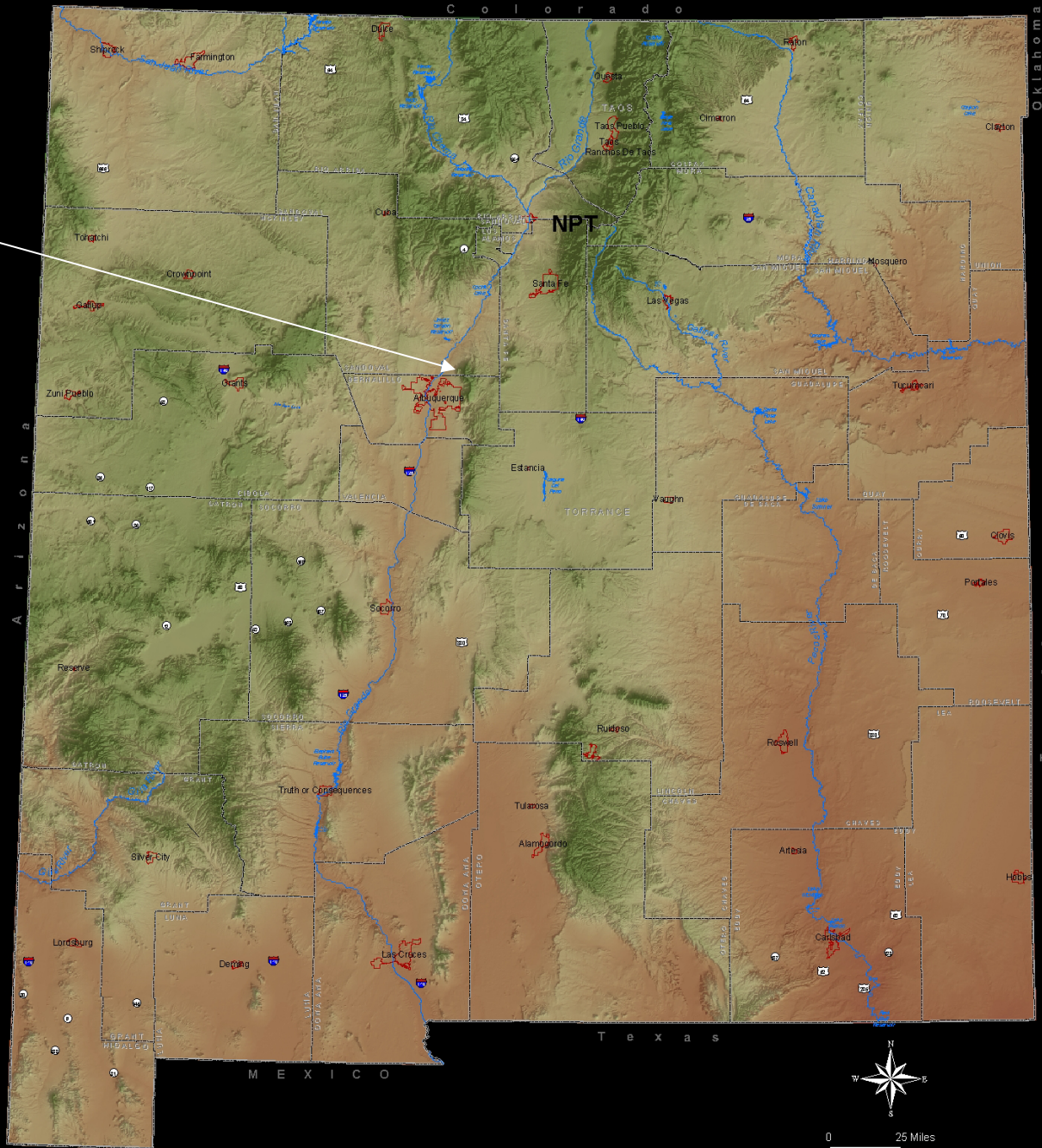
Specific Cases

- Lomos Altos, Inc.
- Albuquerque Bernalillo County Water Utility Authority (ABCWUA)
- City of Alamogordo
- Berrendo Cooperative Water Users Association



New Mexico

Lomos Altos



Lomos Altos – Case Study

- Change of point of diversion and place of use (15.05 AF in 1999)
- Protested under impairment, contrary to conservation and detrimental to public welfare
- Hearing Examiner protests without merit – approved application
- Appeal to District Court, Court of Appeals and Supreme Court of NM



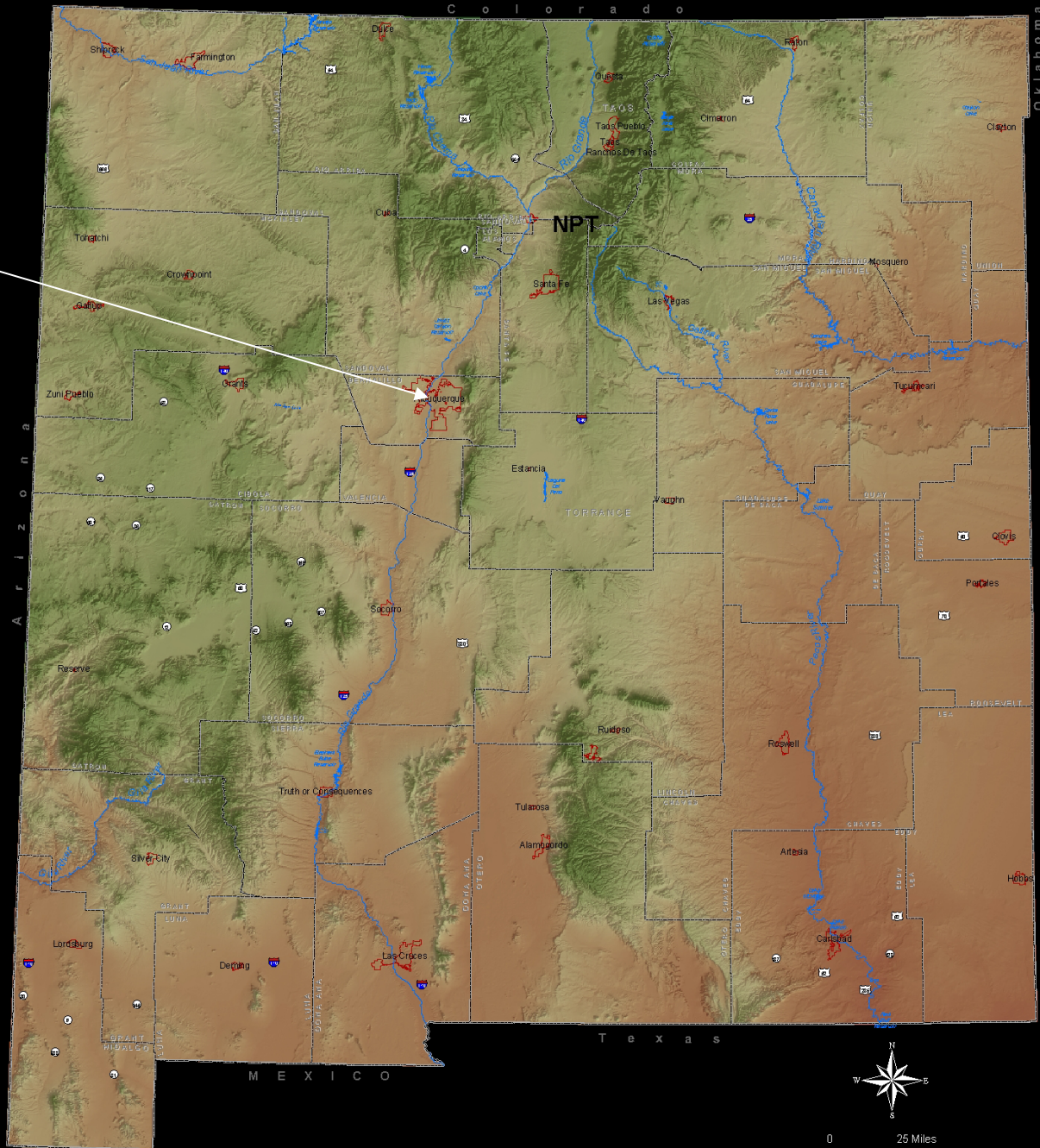
Lomos Altos - Conclusion

- Supreme Court (Dec 2006) - District Courts must also determine whether the applications are contrary to conservation or detrimental to public welfare of the state.



New Mexico

Albuquerque



ABCWUA – Case Study

- Divert from Rio Grande from the San Juan/Chama Project (96,000 AF in 2001)
- Move from groundwater supply only to conjunctive use of surface and groundwater
- History of strong conservation programs
- Several third party protests filed



ABCWUA - Conclusions

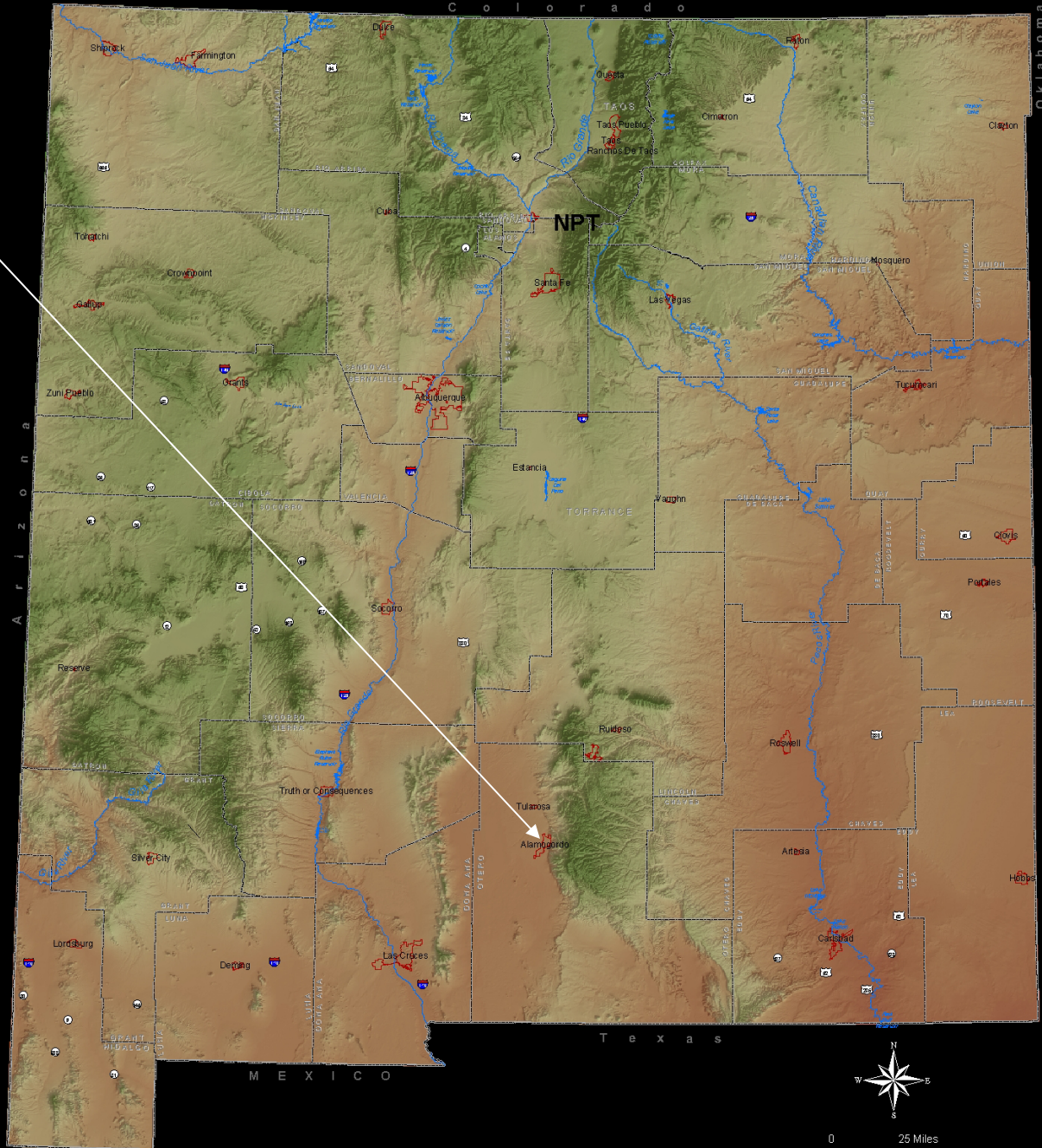
Conditional Approval from Administrative Hearing (July 2004)

- System total 175 GPCD “computed in accordance with standards and methodology described by and acceptable to State Engineer Water Conservation Bureau”
- Utilization of the highest and best technology
- Reduce to system total 155 GPCD as soon as practical and no later than 20 years from initial diversion
- Annual GPCD reporting
- 5 Year progress reports on conservation and water development plan



New Mexico

Alamogordo



Alamogordo – Case Study

- Application for brackish water obtained through desalination (1500 AF in 2000)
- City appealed partial approval to District Court
- City required to utilize the highest and best technology available to ensure ongoing conservation to the maximum extent practical
- History of conservation



Alamogordo - Conclusions

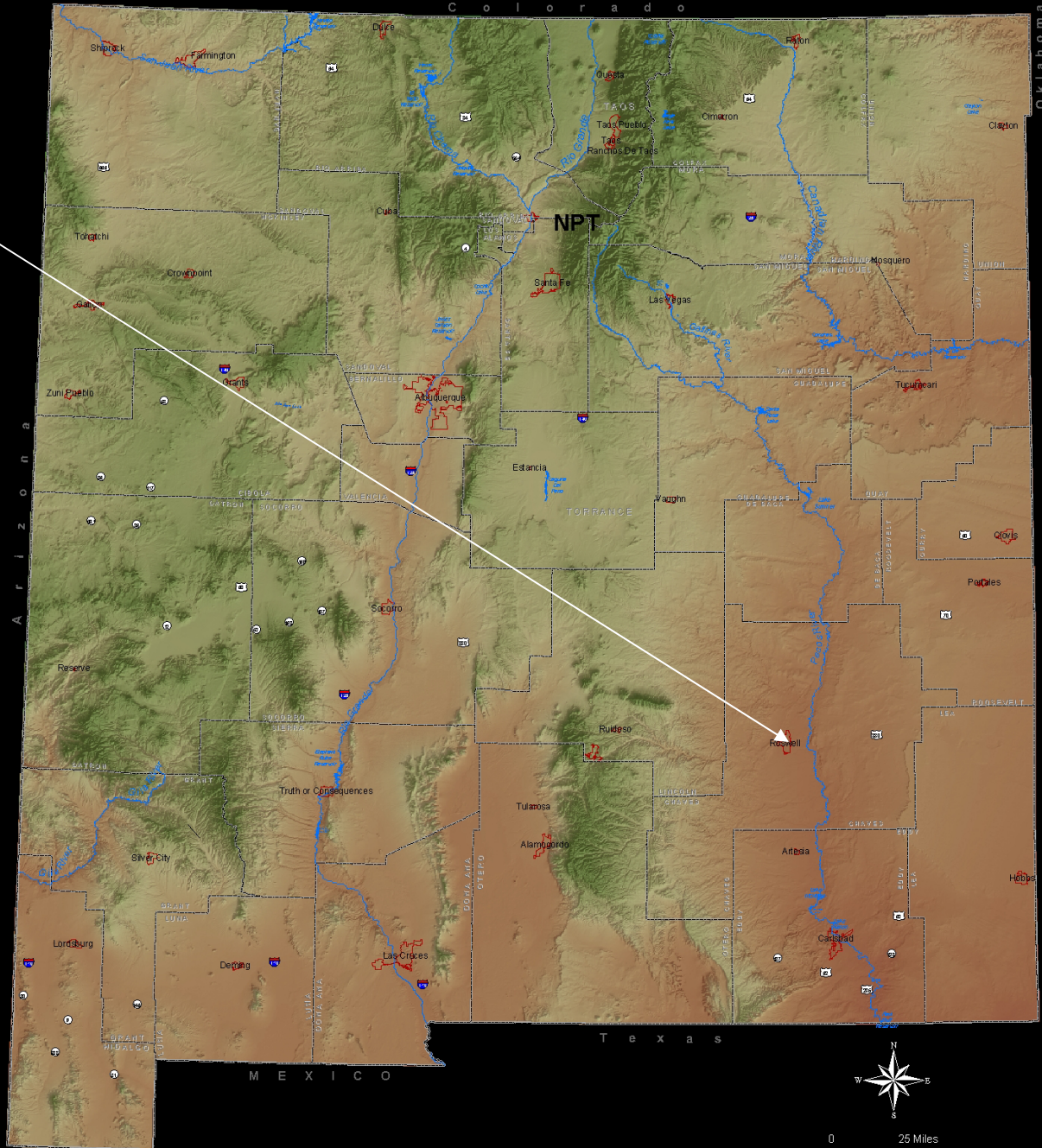
Revised Permit Approved by District Court (April 2008)

- Formal Conservation plan to be submitted and approved by State Engineer prior to diversion
- Limits system's potable GPCD to 165
- Requires updates every five years to State Engineer on water conservation plan and population projections



New Mexico

Berrendo



Berrendo – Case Study

- Submitted new application to increase diversion in recognition of return flow (375 AF in 2001)
- Administrative Hearing denied application
- Best technology clause condition in existing Berrendo permit
- History of lack of conservation efforts and excessive GPCD
- Berrendo appealed



Berrendo - Findings

- Had not “undertaken significant conservation measures in accordance with permits”
- 2006 Berrendo report cited 27% UAW, contrary to AWWA Water Audit Method – “no water is unaccounted-for”
- State Engineer does not recognize UAW as return flow
- Did not take advantage of:
 - free education materials (NMOSE)
 - circuit rider programs (NMRWA) or
 - implement outdoor water ordinances which were within their authority (1973 users agreement)



Berrendo - Conclusion

Permit Denied in District Court

- Failed to utilize highest and best technology as required by permit – granting application would be contrary to conservation.



NMOSE Direction

- Publishing GPCD Calculator for permit reporting
- Assist State Engineer in new permit conditions
- Provide expert testimony on “highest and best technology” and “contrary to conservation” requirements



Questions?



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