FALL 2013

Published by the New Mexico Water Dialogue

To promote the wise stewardship and ensure the availability of water resources for future generations of New Mexicans through support of community-based planning and creation of inclusive forums for education, communication, and development of common ground.

Responding to Drought: It Takes a Community

ew Mexico has always faced dry periods, and acequias have relied on shortage-sharing to get through those years. Their centuries of continued operation are a testament to their being willing to share water shortages and hardship.

1996 was one of the first drought years following a wet period that ran from the mid-1970s to the mid-1990s. It was the first time in decades that many communities faced water shortages. When news of a shortage-sharing agreement between acequias and pueblos along the Rio Jemez first appeared and was discussed at a Dialogue annual meeting, many of us had hope that we could all work together to face drier periods. That agreement has survived the last three years of extreme drought, a testament to the good will of the Rio Jemez community.

Years later, many diverse communities in northwestern New Mexico also signed shortage sharing agreements. These also survived the last three drought years.

This year, potential conflict appeared between acequia communities along the Rio Chama and communities that had contracted to receive San Juan/Chama water that made its way to the Rio Grande via the Rio Chama. A voluntary rotation agreement and diversion reductions were implemented this summer.

The following three articles describe these successful shortage-sharing agreements.

Jan. 9, 2014: Save the Date

The Dialogue's 20th Annual Statewide Meeting Implementing Change: Where's the Political Will?

he past three years have seen the worst long-term drought in many of our lifetimes, followed by flooding in many parts of the state this fall. Despite a fair amount of rain, many reservoirs contain much less water than normal. Water is back on the high priority list of problems facing the state. The legislature appropriated \$400,000 during the 2013 session to resume water planning. The ISC has prepared a draft "Updated Regional Water Planning Handbook." The state Supreme Court decided two important cases regarding Active Water Resource Management and domestic wells. There are long lists of things people think we can do to reduce the gap between supply and demand, but there is a lack of money to address many issues and no consensus on what the priorities should be. Please join us on January 9, 2014, to discuss these important water issues.

For more information or to register, please visit www.nmwaterdialogue.org or go to the event's registration form on page 7. We look forward to hearing from you!

Healing the Jemez

This article is reprinted from the November 1996 issue of the Dialogue newsletter.

he Rio Jemez joins the Rio Grande just downstream of Santa Ana Pueblo. Up-river, beyond a Corps of Engineers' reservoir that accumulates the red sediment for which the Jemez is named, lie two more Pueblos, Zia and Jemez, and a number of rural communities, including San Ysidro, Cañon, Jemez Springs/La Cueva, Ponderosa on Vallecitos Creek, and Gilman on the Rio Guadalupe.

As the last settlement ranged along an inconsistent mountain stream, Santa Ana must have had its problems receiving sufficient water; at some point in the past, the village and fields were moved closer to the more dependable Rio Grande, leaving Zia Pueblo to occupy the bottom rung on a ladder of users of the Rio Jemez.

The people of Zia are subsistence farmers, raising crops for food and for use in religious ceremonies. They are entirely dependent on water from the river. Nine years out of ten, says Tribal Administrator Peter Pino, the meager flow of the Jemez has to be rationed. Early each spring, tribal members check the snowfall in the Jemez Mountains to determine how much runoff can be expected, and fields are planted accordingly. In dry years, many lands lie fallow; farmers know there is not enough

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The New Mexico Water Dialogue

-=DIALOGUE=

Fall 2013 The *Dialogue* is a publication of the New Mexico Water Dialogue.

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Update from the President

by Jason John, President, Board of Directors

arge portions of New Mexico experienced severe drought conditions over that last year. Reservoir inflow records in the Southwest indicate this cycle of drought may have begun in 1998. Many New Mexicans know of and appreciate the monsoon season that brings much needed rains to the region. I attended the Santo Domingo feast day on August 4th and watched the traditional dancers of all ages rejoice when rain began to fall in the plaza. It was not a lot of rain but there were larger storms in the horizon that brought happiness to many of the visitors and families in the pueblo.

The monsoon rains this year have slowed the ongoing drought but more snow is needed this winter to bring the longer term averages closer to normal. The U.S. Bureau of Reclamation will continue to monitor reservoir levels and issue predictions on potential future shortages. At one point this summer it was noted that there could be more than a 30 percent shortage in 2014.

The challenges of providing a reliable water supply for many New Mexico communities takes coordination between local residents, water system operators, local governments, the state, federal agencies and others. I appreciate the New Mexico legislature for appropriating additional funds to continue the regional water planning effort. I see the state water plan as a work in progress that will require the insight, expertise and willingness to communicate to make it worthwhile.

The theme of the upcoming Annual Meeting in January 2014 is "Implementing Change: Where's the Political Will." During that time the U.S. Congress will be trying to meet another deadline to fund the government and deal with the increasing debt. Many facets of water issues will require the political will to make changes whether it is for changing current laws, funding additional research, supporting new agreements or acknowledging certain realities.

Manual for Mutual Domestics Available

he Utton Center of the UNM School of Law announces the release of a Water Rights Manual for Mutual Domestic Water Consumers Associations (MDWCAs).

MDWCAs are formed under the New Mexico Sanitary Projects Act to improve the public health of rural communities in New Mexico. These associations are political subdivisions empowered by the State to receive public funds for acquisition, construction and improvement of water supply, reuse, storm drainage and wastewater facilities in communities, and to operate and maintain such facilities for the public good.

In the pursuit of this mission, MDWCAs are faced with many complex and challenging tasks, including compliance with a variety of governance, reporting, financing and water right rules and regulations. This manual focuses on pertinent water right rules. It provides a basic overview of water rights in New Mexico and explains how MDWCAs can acquire and maintain water rights.

The Water Rights Manual for Mutual Domestic Water Consumers Associations is available on line at http://uttoncenter.unm.edu/publications.php or can be requested from Darcy Bushnell at bushnell@law.unm.edu.

NM Supreme Court Decides Challenge to Domestic Well Statute

by Consuelo Bokum

ew Mexico's water law is based on the priority system; new users can't impair the rights of existing users. The legislature passed a statute in 1953 that required the state engineer to approve an application for a "domestic well" automatically, without any determination of impairment. Initially, new domestic wells were not likely to impact existing users because each well withdraws a fairly small amount of water and they were widely dispersed. But with increased population, many more wells became clustered in smaller areas, lowering water tables in some places. Automatic approval of new permits became controversial.

In 2001, the legislature granted municipalities the right to prohibit domestic wells within 300 feet of an existing water line. 2002 began a four-year, unsuccessful struggle at the legislature to amend the domestic well statute to prevent automatic approval of new applications for domestic wells in areas vulnerable to impairment from new depletions. Killing these bills was a priority for the homebuilders and realtors. It was only after these attempts failed that there was a legal challenge to the automatic provision in the statute.

In 2006, Horace Bounds' lawsuit challenged the constitutionality of the "domestic well statute" on the basis that it allowed the automatic granting of domestic well permits without a determination of impairment. In his area, the Gila Basin, a water rights adjudication had determined that all available water was fully appropriated so any new well would seem inevitably to violate Bounds' priority rights. The district court ruled in favor of Bounds, but the Court of Appeals overruled that decision. In July 2013, the New Mexico Supreme Court entered a final decision that held that the statute did not violate the provision in New Mexico's Constitution

that "priority of appropriation shall give the better right." The court in part based its opinion on a well-settled presumption in favor of the "validity" of legislative actions. Additional legal arguments supporting this decision are not easy to describe in a few sentences, but the court did seem to rely largely on a distinction between the "permitting" authorized by the domestic well statute and the ability of the state engineer to "administer" water rights in such a way as to prevent impairment of senior users.

One unfortunate outcome of this opinion is that buyers will continue to drill new domestic wells and be unprepared for the time when the state engineer decides to administer existing rights and cut off newer domestic wells.

Despite the court's decision not to prevent automatic approval of domestic well applications, several counties in the state are using their land use authority to limit the amount diverted by wells or prevent new wells in vulnerable areas. This year, Sen. Peter Wirth was able to get passed two bills: one prevents new wells in areas where the water rights had been sold off the land (double-dipping) and another amends an existing statute to lower from 20 to 10 the number of parcels in a subdivision that require proof of service from a water from a source other than domestic wells.

A significant message from the court in the Bounds decision was that "aggrieved citizens must look to the Legislature and the State Engineer for relief from many of these problems, seemingly so intractable." It would appear that the courts would prefer to defer to the legislature in the cases involving contentious water management issues. Fortunately, in some cases, "aggrieved citizens" can also look to their local governments as well.

State and Regional Water Planning Update

The years 1999 to 2008 saw the completion of 16 regional water plans and the first version of the State Water Plan (SWP). Since then, not much has happened. 2008 was also the year of the financial crisis when funding was scarce for everything, including water planning.

Finally in 2013, the legislature approved \$400,000 "to update regional and state water plans." Initially, the ISC planned to update the SWP and provide funding to update up to three regional water plans. The Work Plan noted that "most of the chapters of the draft SWP are written, pending final review and technical editing." The Work Plan also proposed a schedule that would post three chapters of the SWP on the website between July and October and post the SWP update in December 2013.

The ISC also planned to issue an RFP for updating regional water plans in September, which were to be due in October, with awards to be made in December. ISC also proposed holding public meetings to discuss updates to the regional water planning handbook.

ISC's plans have changed. There is a plan to prepare water supply and demand data for all 16 plans and hold meetings in each planning area to discuss the data that will be based on a statewide "common technical platform." No awards will be made to any regions to update their plans during this fiscal year, and no draft chapters of the update to the SWP have been posted as of late October. The Dialogue will continue to monitor what happens and suggest changes if we are concerned that there is a better way to more forward.



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water to bring all crops to harvest, and they plant accordingly.

A Catalyst to Communicate

1996 showed all the signs of being a water-short year. In May, tribal representatives began negotiations with the village of San Ysidro—Zia's closest neighbor upstream—to renew an expired 1983 agreement that acknowledges the Pueblo's prior right to the surface flows of the Jemez and outlines the procedure for a "call" on the water.

As the drought's seriousness increased, however, both sides realized a renewed agreement between Zia and the San Ysidro Community Ditch Association wouldn't suffice. There was word that federal attorneys were preparing to file an injunction against non-Indian water users all the way up the valley on behalf of the Jemez, Zia and Santa Ana pueblos; it meant a court would get to determine the priority call procedure, and after 16 years of continuous adjudication, Jemez Basin irrigators weren't sure they wanted this to happen.

Notice of the pending legal action circulated among the community ditch associations, along with word of a meeting to be held at Jemez Pueblo. Gilbert Sandoval, who serves as chairman of the coalition of Jemez Valley irrigators in the *United States v. Abousleman* adjudication suit, decided to attend.

The Picture Worth 1,000 Words

On a June morning, Sandoval joined the governors, administrators and irrigation committee members of Jemez and Zia pueblos, spokesmen for the BIA, and several representatives of the New Mexico State Engineer Office on a field trip to assess firsthand the effects of the drought and the condition of irrigation facilities in each community on the Jemez.

As members of the tour met local officials the length of the valley, something unexpected happened: they recognized people they knew, people they had gone to school with. "We hadn't realized they were in positions of leadership, just like they hadn't realized we were. I guess we still had an image of ourselves as seniors at Jemez Valley High," says Peter Pino, who discovered that one of his classmates was mayordomo in the village of Ponderosa. A mutual past made the work of communication easier. "Because they knew us, they heard what we were telling them."

Sandoval, too, ran into old friends. A longtime employee of the Forest Service, he had "fought fire with these guys," living side-by-side often for a month at a time. But they had never discussed the issue of their common water supply: adjudication had peremptorily labeled them players on opposite sides.

In his own village of Jemez Springs, Sandoval showed the group the community's five headgates, less than state-of-the-art weirs of rock and brush that deflect water from the river into earthen ditches. The Pueblo visitors appeared dismayed. Curious, Sandoval proposed a change in plans: rather than driving north to visit more community ditches, he asked if the group might inspect some irrigation facilities at the Pueblos. In the spirit of exchange, the tribes agreed.

"It was an eye-opener," Sandoval concedes. "I didn't know how their system worked or what they were going through. When I saw their good concrete ditches and diversion structures and realized they still weren't getting sufficient flows, I thought, 'Hey, we're neighbors. Let's all suffer if we have to.""

Late that day as the junket came to an end near San Ysidro, it began to rain. Sandoval recalls, "It felt so good we just sat there, getting wet. Things got better from then on."

Holding Out for Harmony

In the weeks following the field trip, the group of stakeholders met again and again, bent on staving off the imminent federal injunction with a settlement of their own. Pino and Sandoval took the 1983 Zia/San Ysidro priority call agreement, dissected it paragraph by paragraph until they fully understood it, and presented it as a model for the far more significant pact Jemez water users were contemplating. After a number of drafts, the group produced a landmark contract between the pueblos of Zia and Jemez, and the Jemez River Basin Water Users Association, which includes the ditch associations of Jemez Springs, Nacimiento, San Ysidro, Cañon and Ponderosa. (The pueblo of Santa Ana did not participate in the negotiations as it uses little water from the Rio Jemez.)

The agreement acknowledges that although no final decree has been declared in the Jemez adjudication, the Pueblos have senior rights in the basin. In order "to satisfy the irrigation needs of the Pueblos and, to the extent possible, still allow upstream ditch associations to meet their members' needs," the signees devised a series of weekly rotation schedules to be used as conditions require. At the beginning of every irrigation season, one of the schedules will be selected, based on the National Resources Conservation Service snow pack information. If later shortages warrant, either Pueblo can request the implementation of a different schedule during the irrigation season. In the event of a dispute, administration and enforcement of the agreement will be carried out by a special Water Master, the combined action of the New Mexico State Engineer and the Bureau of Indian Affairs, or a committee appointed by all interests involved in the priority agreement.

The document also states that groundwater withdrawn to supplement irrigation is subject to the rotation schedule. Fear that the clause might be applied to domestic wells nearly dead-ended the agreement before it could be signed at a hearing in early July. As legal experts sparred over the language and dissatisfied parties to the agreement began to leave the courtroom, Pino and Sandoval realized that the negotiators' hard work was about to come unraveled. Seizing the moment, Sandoval approached the attorneys and asked them to declare a recess. "The judge gave us 30 minutes," says Pino. "We talked to all the community leaders - we had to run out to the parking lot and bring some of them back inside," but at the end of the half hour, the troublesome groundwater clause had been clarified with a reference to New Mexico statutes, and the historic document was

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ready to be signed – just in time for the Fourth of July.

In the Driver's Seat

The agreement, submitted for approval and adopted by the Court in *United States v. Abousleman*, marks the first time (in New Mexico's history and perhaps in the nation's) that affected water users in a steam system have delineated a priority call process for themselves. And the innovators aren't through yet. They want the priority call agreement to serve as a model for settlement in the Jemez Valley adjudication. "We hope what we've done will expedite the *Abousleman* case," says Sandoval. Since 1983, we've spent over a million dollars on the water rights suit, and we're tired of that."

Pino agrees the money currently being paid out in legal fees could be going to rehab upstream irrigation systems, thereby conserving and extending the scarce resource that the Jemez Valley water users originally went to court over. "I know the process of drawing up this agreement has brought us closer as communities. We've realized that in a joint effort, everyone has more to gain."

In that light, the Jemez stakeholders have vowed to work together to seek funding for irrigation system improvements and to address the need for storage facilities to capture excess runoff that presently passes by them unchecked.

The people who depend on the Rio Jemez are in the driver's seat, no longer mere passengers on the way to their future.



Surviving The Drought: Sharing Shortages On The San Juan River

by Pat Page, John Simons and Ryan Christianson

n 2002, the San Juan River Basin, along with the rest of the southwestern United States, suffered through its worst drought on record. That year, Navajo Reservoir, constructed by the U.S. Bureau of Reclamation in the 1960s, received only 15% of its 30-year average annual inflow. Releases made throughout the summer to meet downstream demands, including maintaining adequate flows through designated critical habitat area for two endangered fish, severely depleted the content of Navajo Reservoir. Faced with this bleak outlook, the Navajo Nation requested a meeting with the 10 major water users along the San Juan River in New Mexico. The Bureau of Reclamation and the New Mexico Interstate Stream Commission initiated discussions in September 2003.

Water use on the San Juan River in New Mexico is divided into two distinct user groups: those who have an authorized use or a subcontract with the United States for Navajo Reservoir storage water, and those who divert a direct-flow water right on the San Juan River via a state permit. In order to develop a cooperative plan for water use on the San Juan River, both groups had to be represented. Also involved in the discussions were the U.S. Fish & Wildlife Service, the Bureau of Indian Affairs, and the San Juan River Basin Recovery Implementation Program. Recreational uses, both in the reservoir and downstream of the dam, were not represented in the discussions. However, those interests were considered in the development of the recommendations.

It was clear from the outset that many unresolved issues would have to be set aside if a plan were to be developed and implemented in 2003. Some issues, however, could not be ignored and would have to be factored into any plan that was developed. These included flow recommendations for the endangered fish, restrictions on minimum reservoir releases, the physical and operational limitations of the Main Headworks of the Navajo Indian Irrigation Project (NIIP), Indian Trust Assets, and compliance with the National Environmental Policy Act and the Endangered Species Act.

Once the group had identified the issues, the next formidable task was to develop a method as to how shortages would first be calculated and, second, apportioned to the participating entities. The group developed a computer model to calculate anticipated shortages using the Minimum Probable Forecast, the available water supply in Navajo Reservoir, and the anticipated demands from the various users and uses. This model was updated twice a month as new forecasts became available. Using the Minimum Probable Forecast and the anticipated demands for water, the model ran through the entire year of Navajo Reservoir operation. If the model caused the reservoir level to drop below elevation 5,990 feet (bottom of active storage, delineated by the intake structure for the NIIP anytime during the irrigation season of March through early November), this indicated that a shortage would occur. The model would then proportionally allocate that shortage to all users and uses based upon their respective demands for the year. As a result of decreasing or shorting the demands of all users and uses, the reservoir level would not drop below elevation 5,990 feet. As the inflow forecasts and actual water levels in Navajo Reservoir changed, so did the anticipated shortage amount.

Once the shortage volume had been calculated, the next step was to apportion the shortage to the various users on a pro-rata basis. A unique aspect of this agreement was that several methods of taking shortages were developed and made available to the various users. Users could elect to have shortages applied to their instantaneous diversion rate, their annual diversion volume, or their calculated depletion volume.

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In the end, thanks in large part to the willingness of diverse water user interests to work together, as well as some timely rain events that occurred in September, the anticipated shortage never materialized into an actual shortage; consequently most water users received their full supply, and others, who had voluntarily reduced their use in anticipation of a shortage, were not greatly impacted. While no major shortages were realized in 2003, with an inflow to Navajo Reservoir in 2003 of 402,000 acre-feet (39%), reservoir storage was further depleted, to an all-time post-fill low.

The original 2003 agreement became the template for similar agreements that followed in 2004, 2005, and 2006, which included only minor changes. The 2005 water year provided above average inflows, and Navajo Reservoir returned to storage levels seen previous to the drought. As a result, the endorsing parties decided to adopt a multi-year agreement, as long as a shortage was not determined within the term of the agreement, which would have made it mandatory to revisit the agreement for the following year. The first of the multi-year agreements began in 2007-08, followed by 2009-12. The latest agreement was endorsed in the summer of 2012 for the years 2013 through 2016.

Experiencing below average Navajo Reservoir inflows in every year since 2008, including inflows of 41% and 46% in 2012 and 2013, respectively, the reservoir has returned to levels not seen since the agreement was first contemplated. As a result, shortages for 2014 are again a real possibility. Currently, there are no indicators of what the next winter precipitation will be, but if a shortage sharing is necessary, the current agreement maintains the same cooperative philosophy employed in 2003 -a philosophy that has resulted in a diverse group of competing water interests coming together for the good of all to resolve their differences in a meeting room and not a court room.



Rio Chama Farmers Survive 2013 Drought Thanks to Voluntary Agreement

he Rio Chama carries not only "native" New Mexico water that originates in the Rio Grande Basin, but "non-native" water from the San Juan Chama Project which brings water from tributaries to the San Juan River in Colorado through a tunnel under the Continental Divide into New Mexico. When native flows are meager in dry years, acequias along the Rio Chama must watch San Juan Chama water flow by to meet the downstream needs, despite the fact that the acequias have some of the earliest, non-tribal native water priority rights in the state. Native water right priority dates range from 1600 near the Rio Grande to about 1734 in the Abiquiu area. This is an area of farms and orchards that supply the communities Santa Fe, Espanola and Los Alamos with fresh fruits and vegetables.

The San Juan Chama Project water is held by contract by numerous entities including cities, conservancy districts, pueblos and tribes along the Rio Grande from Taos south through the Española and Middle Rio Grande valleys. The San Juan Chama water is stored in reservoirs on the Rio Chama for call and use by the contractors at their discretion. San Juan Chama water is also leased by the federal government for use to help meet endangered species flow targets.

The federal Rio Chama adjudication includes procedures for the OSE Water Master to implement priority administration of Rio Chama diversions between Abiquiu Dam and the confluence of the Rio Chama and Rio Grande when native water flows are low.As an alternative, the Rio Chama Acequia Association (RCAA) has worked proactively with the OSE/ISC and Middle Rio Grande Conservancy District to implement alternatives to priority administration.

However, in 2013 as the drought progressed, alternatives that had worked in past were no longer viable. Faced with a possible shutdown of most of the acequias along the river below Abiquiu Dam to ensure San Juan/Chama deliveries, members of the RCAA and OSE/ISC met on a number of occasions to discuss options.

The result was a voluntary, collaborative agreement in which RCAA members rotated irrigation schedules and ceased diversions in order to share the water available to them in the lower Rio Chama. The agreement provided for shutting down half of the acequias two times a week and reducing diversions by about half at other times. These drastic measures enabled the RCAA members to continue to irrigate their crops rather than see them wither as the drought continued. The rotation schedule and agreement provided adequate water for irrigation needs until sufficient rains came and the rotation schedule and the times water was not diverted were no longer necessary.

At the same time, the OSE/ISC and RCAA collaborated with the acequia leaders in the Upper Chama Valley, most specifically the Acequias Norteñas, who have water rights junior to those in the RCAA acequias and took initial steps with the OSE to reduce diversions and allow some native water flow to continue flowing to the Lower Chama valley. And the RCAA and Acequias Norteñas are working collaboratively to lease San Juan/Chama Project water for use in the future.

The voluntary agreement demonstrates that there are alternative solutions to priority administration on the Rio Chama that can meet legal and OSE requirements while also meeting the needs of the local community and protecting its economy. The agreement worked. It avoided a total shut down of most of the RCAA acequias and an attempted priority call of all water rights junior to 1600. RCAA has proven that communities can work with their neighbors and groups such as the OSE/ ISC to create shortage sharing plans that provide sufficient water to keep crops alive. RCAA has also proven that conflict and litigation are avoidable when water is scarce.

New Mexico Water Dialogue 20th Annual Meeting January 9, 2014 8:00 am to 4:30 pm Indian Pueblo Cultural Center 2401 12th Street., NW, Albuquerque, NM 87104

Implementing Change: Where's The Political Will?

Registration includes lunch catered by the Indian Pueblo Cultural Center and morning beverages and snacks. By registering early, you help us plan for these items, and we offer discounts. The simplest way to register for the 20th Annual Statewide Meeting is to go on line to http://nmwaterdialogue.org and click on the "Register Now" button. Credit cards can be used online only. Alternatively, you may fill out this form and mail it with a check or purchase order to NMWD c/o John Brown, PO Box 1387, Corrales, NM 87048. The registration fee after January 6th is \$50 and will need to be paid at the door the day of the meeting.

Registration Form

Name(s)	
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Title or position (optional)	
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New Mexico Water Dialogue 20th Annual Statewide Meeting Implementing Change: Where's the Political Will? January 9, 2014 8:00 Am - 4:30 Pm Indian Pueblo Cultural Center, Albuquerque, New Mexico 2401 12th St. NW Albuquerque, NM 87104

Draft Agenda

8:00 - 8:30 AM	Registration
8:30 - 9:00 AM	Introductions/Opening Remarks
9:00 –10:00 AM	Keynote Speaker: John Leeper, PE, PhD, Senior Project Manager AMEC, former Manager Navajo Nation Water Management Branch "Is There Political Will to Avoid Train Wrecks?"
10:00– 10:15 AM	Break
10:15 – 12:00 PM	Panel: Water Philosophy - Highest & Best Use of Water?
12:00 – 1:00 PM	Lunch
1:00 – 2:30PM	Panel: Lessons from the Drought - Shortage Sharing
2:30 –2:45 PM	Break
2:45-4:00 PM	Panel: Political Will - Implementing Change
4:00 – 4:30 PM	Closing Remarks: Next Steps for the Dialogue and New Mexicans Nominations of candidates for the Dialogue Board

Please check www.nmwaterdialogue.org for additions and changes to the agenda and to register.