

Regional Planners Meet: One Size Does Not Fit All

Summary by Lisa Robert

Regional water planning and the New Mexico Water Dialogue have been joined at the hip for more than 20 years.

The state's unique strategy for protecting New Mexico's water resources by allowing distinct hydro/geographic regions to assess their own future water requirements greatly increased the need for communication between stakeholders, planners and policymakers. Assisting that discourse has been the Dialogue's prime directive throughout its organizational existence. In countless forums since 1992, the Dialogue has assembled water system managers, government officials, technical experts, special interest advocates and members of the public to share experiences and information about water. It stands to reason that as physical and fiscal conditions change, and as state and local poli-

cies come under review, the body of knowledge that Dialogue's many participants represent is a trove of wisdom to be tapped.

To re-engage local planning committees and to spark revision of the Interstate Stream Commission's Regional Water Planning Handbook, the Dialogue invited representatives from all regions to Sevilleta National Wildlife Refuge in September to report on their implementation efforts, and to mull the mechanics of a required round of "updates" to existing plans. As always, hearing individual accounts of ordeal and exultation readjusted *everybody's* perspective, and misgivings about the value of grassroots planning were once again eclipsed by the magnitude of what has been accomplished under the radical, "one-size-does not fit-all" philosophy established by the state legislature in 1987.

A Status Report from the Regions

Region 1—Eastern Plains (Union, Harding, eastern San Miguel, Quay, Guadalupe, Curry, Roosevelt and DeBaca): Region 1 is implementing some of its plan components through municipal conservation and reuse initiatives, and representatives consider their biggest "success" the Eastern New Mexico Water System, a pipeline for transporting water from Ute Reservoir on the Canadian River down the eastern side of the state to communities in Quay, Roosevelt and Curry Counties. Despite the fact that full funding is not yet in place, the environmental assessment on the project has been completed; easements are being procured; construction has begun on the pipeline between Clovis and Portales; and work will soon commence on intake structures at the dam.

Region 2—San Juan Basin (San Juan, western Rio Arriba, and northern McKinley): The planning committee, which at one time boasted 66 active members, has met only once since the regional plan was completed in 2004. That same year, the San Juan Water Commission began work on a drought contingency plan with funds from the Interstate Stream Commission. Neither the long-anticipated Animas-La Plata Project nor the Navajo water rights settlement were built into that drought contingency plan, but both have since been authorized, and work on the Navajo Pipeline—a major component of the water rights settlement—is underway. A pair of lateral pipelines will carry treated

Come to the 2011 Annual Statewide Meeting on Jan. 13

Economic Stress: Hard Times for Water Planning and Management

This year's annual Dialogue Statewide Meeting will examine the impacts of ongoing economic stress on New Mexico's water planning and management at both state and regional levels. What are the consequences of the current economic downturn? What effects do "hard times" have on how public officials manage our water supplies? Do market-based transfers of water rights become more or less important? How does our thinking about "public welfare" change? How does the scarcity of financial resources interact with water scarcity to make planning both more necessary and more difficult, and what can we do about it? In addition, the Office of the State Engineer/Interstate Stream Commission is completing an update of the 2003 State Water Plan. Along with the economic climate, the plan is an important part of future water management in New Mexico. These two issues will be discussed on January 13, 2011 at the Indian Pueblo Cultural Center in Albuquerque. Please join us.



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Update from the President

by Mary Murnane, President, Board of Directors

Last month, the New Mexico Water Dialogue hosted a Regional Water Planning Workshop. A great deal of information about the workshop is included in this newsletter, so I will not repeat this information. I would simply like to thank all those who participated. I would also like to thank all the Dialogue Board members and dedicated regional planners who helped to organize and conduct the workshop, and our two speakers – Representative Don Tripp, and Patricia Dominguez of Senator Bingaman’s office.

The Dialogue Board of Directors has been busy developing the topic and the panels for the upcoming Annual Meeting. The topic has been selected: “Economic Stress: Hard Times for Water Planning and Management.” Speakers are still being sought, so if you have a recommendation, please email us at info@nmwaterdialogue.org.

There were a number of other topics suggested, but this topic seemed especially relevant at the current time. As a state, our economic situation is difficult, unemployment is high, and incomes are generally down. There are a multitude of pressing issues that we face as individuals and communities. In this sort of environment, planning for the future competes with surviving today. As a result, planning does not happen - so that when good policies and initiatives are needed, they have yet to have been created. Our collective future suffers. This seems especially true for water planning. As a Japanese proverb states: “When you’re thirsty, it’s too late to think about digging a well.”

The Interstate Stream Commission is scheduled to complete the update to the State Water Plan this year. This is welcome news in that it speaks to the value of water in our State. Some have concerns about the direction of the State Water Plan, and the relationship between the State Plan and all the regional plans that have been developed, as well as the relationship between and amongst the regional plans. The Dialogue supports processes that start to clarify and link the various plans, and provide for thoughtful implementation of said plans. The SWP and the relationship between state and regional planning will be discussed at the annual meeting in January 2011.

This will not be an easy task, and there are some fundamental barriers to integrating these plans. These efforts are not hopeless or futile, and success is possible. It will take a concerted effort, and a commitment to dialogue between and amongst the regions and the state.



REGIONAL PLANNERS—*Cont. from page 1*

water to communities in the Navajo Nation that are currently mining groundwater, and eventually, surface water from Navajo Reservoir will be provided to those areas, further reducing the dependence on groundwater. The pipeline project will also serve the Apache Nation and the City of Gallup. A state initiative to regionalize existing water systems enabled the Navajo Nation to obtain 'Year of Water' funds in 2008 to begin the infrastructure that will serve the Gallup area, a decade ahead of the flow of San Juan River water. One concern for Navajo water planners is Desert Rock, a coal-burning power plant to be built on the reservation. The project is currently "stalled in the federal review process," delaying indefinitely a source of tribal income that could be used to complete crucial water projects.

Region 3—Jemez y Sangre (Santa Fe, Los Alamos, and southeastern Rio Arriba counties): JyS planners say they owe their success to "the quality of people involved" in the planning process, good public participation, and the regular presence of Pueblo observers. Dividing the region into sub-regions made the plan more valuable to local decision makers, and some 20 technical "white papers" on various topics are in use today. The region embarked on its first plan update in 2007, re-evaluating supply and demand and a survey of local water providers. In 2009, information was added to the plan regarding the reliability of diverted San Juan-Chama water (scheduled to go on-line in March of 2011); climate change; groundwater sustainability; and the status of agriculture in the region. The fact that there are fewer "caretakers" of the plan today, and that the Pueblos have (so far) declined to become full participants in regional planning are seen as shortcomings in the ongoing process.

Region 4— Southwest (Luna, Hidalgo, Grant and Catron): Although the regional planning committee has not continued to meet, data from the water plan is being used by other organizations

such as the Soil & Water Conservation District, the Gila Basin Irrigation Commission, and the Grant County Water Commission. The Southwest region's adjudicated Mimbres basin is home to the 2008 District Court case known as *Bounds*, in which the state's automatic granting of domestic well permits was ruled unconstitutional. The case is in appeal, but meanwhile, new non-domestic wells in the Mimbres must be backed by a water right. Another legal case, *Arizona v. California*, also figures prominently in Region 4's resource planning. Six years ago, as part of the Arizona Water Settlements Act, New Mexico was awarded the right to divert 14,000 acf from the Gila and San Francisco Rivers, and some \$6.6 million in federal subsidies has been made available for water project construction. The Southwest New Mexico Stakeholders Group, a collection of federal, state and local interests, is evaluating an array of proposed restoration, infrastructure and conservation projects, among them, irrigation ditch improvement, energy generation, and streambank storage. Elsewhere in the region, municipal pipelines are being built to supply water to the town of Hurley in Grant County, and the communities of Silver City and Tyrone obtained a USDA grant to merge and upgrade their wastewater systems. Finally, a 2009 application to transfer thousands of acre-feet of groundwater from the San Augustin area to the Rio Grande has galvanized an effort to protect the Upper Gila Basin from further resource speculation and export.

Region 5—Tularosa and Salt Basins, and Sacramento Watershed (Otero and western Lincoln): Region 5 was not represented at the 2010 RWP workshop, but one participant noted that the Salt Basin, which is shared by Texas and New Mexico, is thus under two different management regimes and has been targeted for groundwater extraction and transport. Plans also continue for a desalination plant to serve municipal demand.

Region 6—Northwest (Cibola and southern McKinley): With its many non-tribal

and non-municipal water systems, Region 6 is looking to unite existing infrastructure in order to improve services to adjacent towns like Grants and Milan. On the region's eastern edge, a pipeline from Albuquerque may someday supply Albuquerque Bernalillo County Water Utility Authority water to the village of Tohajiilee. Work on such efforts is proceeding "piecemeal" because the RWP committee is no longer in existence, and there is no funding for plan implementation, update, or monitoring, or for modeling and engineering proposed projects. The region is trying to identify an operating entity for the upcoming Gallup Pipeline, which will bring San Juan River water to the area. Because the communities around Gallup are badly in need of service, the southernmost segment of the pipeline is being constructed first, and will transport groundwater until the entire project is completed, some 14 years from now. Aquifer levels around Gallup have fallen several hundred feet over the last two decades, and with land ownership a checkerboard in the region, there are concerns about groundwater depletion, and about contamination from various mining processes, including *in situ* leaching.

Region 7—Taos County: Last of the 16 regions to develop its water plan, Taos completed the process in mid-2008, benefiting from what other regions had done, and concentrating on process and on incorporating good hydrology. Planners identified a need for aquifer mapping, but also desired to protect traditional irrigation and the watersheds that are essential to both surface and groundwater. To do that, they drafted a sweeping public welfare statement, the most "elaborate use of that element in all the regions." The process generated substantial controversy, however, and many references to implementation were stripped from the statement in order to get it passed. Now people are beginning to recognize the need for "teeth" and want the strong language reinserted. Sub-committees have been formed to promote implementation in the areas of

REGIONAL PLANNERS—*Cont. from page 3*

watershed management, water quality, agricultural protection, growth management, water rights retention, education, and environment and recreational water use. Disseminating data is essential, and for a while, the University of New Mexico at Taos served as a clearinghouse; however, the databank role may eventually fall to the Soil & Water Conservation District. Taos is exceptionally wary of “large urban areas” looking to transfer water from the region, and planners hope to create a process whereby notice of such proposals can be consistently provided to the public.

Region 8—Mora and western San Miguel: There are few members of the original planning committee left, but issues of overuse in the Gallinas Watershed are generating fresh political interest. A system engineering study was launched last year and should be completed in 2011. The region’s single large community, Las Vegas, relies on Petersen Dam, a 150-year-old concrete structure on the Gallinas River for its water supply. The city also contracts with the owners of Storey Lake, further upriver, to retain a drought reserve. The municipality hopes to rehabilitate Petersen Reservoir and a municipal well field to ensure a safer supply, and to lessen costs. Las Vegas has an enviable gallon-per-person-per-day of 105.

Region 9—Colfax County: Region 9 was not represented at the workshop.

Region 10—Lower Pecos (Chaves, Eddy, eastern Lincoln, and northeastern Otero): The region completed its water plan in 2001, and “everything in it was a struggle, motivated by water shortage in the Pecos.” The Pecos Compact is based on numbers from 1947, and in 1986, New Mexico learned it had been undelivering to Texas by some 10,000 acre feet annually. In addition to a \$14 million settlement, the region had to figure out to deliver sufficient wet water, and that provided the impetus to begin a water plan. Planners consider the settlement agreement between Texas, the

Pecos Valley Artesian Conservancy District, and Carlsbad Irrigation District the region’s “biggest success,” along with a rigorous irrigation efficiency program, and unrelenting phreatophyte control. The region contracted with a consultant to update the water plan, but funds have since dried up, and committee members are looking at performing the revision themselves. Pressing issues include “import schemes” such as a proposed pipeline from the Pecos to Santa Fe and possibly Rio Rancho, a prospect that greatly disturbs Region 10 residents; ongoing drought that has been worse than anything anticipated in the water plan; and domestic wells, which are a concern even though the region’s artesian aquifer has largely forestalled the mining of groundwater.

Region 11—Lower Rio Grande (Doña Ana County and Elephant Butte Irrigation District): As elsewhere, planning boundaries and hydrology are a less than perfect fit in Region 11, which realistically “has to manage all the way to Caballo Reservoir in Sierra County.” The water planning effort began in 1998, and what was envisioned was a hotter and drier future due to climate change. Planners failed to foresee *too much* water, like the monsoon flood of 2006, which left the community of Hatch buried under three feet of sediment. Neither could they have predicted the 2008 agreement between EBID and the El Paso Irrigation District that allows Texas to store water in Elephant Butte for up to a year. Prior to that pact, “half a million acre-feet of water went down the river and couldn’t be captured” because there were no structures with which to retain it. Due to an aggrading river, levees in the region are inadequate, and flood insurance has skyrocketed. Dams built on the outskirts of Las Cruces in the 1950s and 60s are today in the midst of the city, and “wilderness study areas” beyond the current urban edge preclude the construction of new flood control facilities. Time has revealed other inadequacies in the water plan: there are no provisions for gray water reuse, or for innovative hydro-

electric power generation on EBID’s drop structures. Surface water treatment plants anticipated in the water plan have failed to materialize, but not so an excess of independent mutual domestic systems. The troublesome issue of eminent domain, and the judgment offer of five acre-feet per acre to pecan farmers in the ongoing Lower Rio Grande adjudication are also sources for “hard feelings.”

Region 12—Middle Rio Grande (Sandoval, Bernalillo and Valencia): Topology in the region made two water plans necessary: one addressing the mainstem Rio Grande, and the other its tributaries, the Rio Jemez and Rio Puerco. The workshop presentation was limited to the mainstem portion of the plan. The region defined its overall mission as “balancing use with renewable supply,” and toward that end, hydrologists created a water budget that revealed an annual deficit of between 50,000 and 110,000 acre-feet a year, manifest as areas of aquifer drawdown that were accelerating river leakage, and putting at risk the state’s ability to meet Rio Grande Compact delivery requirements. Six years after completion of the water plan, there is no funding and little jurisdictional support for implementation or update, despite the fact that much has occurred to alter the basin’s water picture: Albuquerque’s conservation program has reduced per-capita use by 10 percent and Middle Rio Grande Conservancy District agricultural diversions are down by a factor of two, but scientists predict the Southwest’s warming climate will shrink the region’s annual inflows; the municipal switch to San Juan-Chama water has begun in hopes of mitigating damage to the local aquifer, but legal challenges remain regarding the adverse affects of the diversion on both river flows and water rights; a decade of riparian restoration projects in the Rio Grande bosque has not appreciably augmented water yield, but Region 12 has had to accommodate federal flow requirements for the endangered silvery minnow, a water “demand” not

—Reports from the Regions—

Update on Implementation and Revision of the Taos Regional Water Plan

by *Simeon Herskovits*

During 2010 the Taos Region has experienced a dramatic revival of efforts to revise and implement certain strategic priorities of the Taos Regional Water Plan. Taos was the last region in the State to finalize its Regional Water Plan, which was only accepted by the ISC in July of 2008. Yet Taos moved quickly to begin implementing certain strategies and priorities identified in the Plan. An Implementation Steering Committee was formed in the summer of 2008, and a first regional water assembly was held in November of 2008.

One of the Plan's priorities was the development of a water information center that would gather information about water resources, water rights, water quality and related issues pertaining to water in the Taos Region, and make that information readily accessible to the public. The goal is to enable residents of the Region to be better informed about local water issues. Work began almost immediately to develop such a center and to base it at the UNM Taos campus.

During 2009, however, fiscal constraints related to the recession and other local priorities delayed further implementation efforts. In addition, UNM Taos could not continue to serve as the principal base for the water information center, and development of the center was put on hold.

Another strategy identified as a priority in the Regional Water Plan that was temporarily stalled was implementation of the Plan's Public Welfare Statement by local governments within the Taos Region. As those who followed the regional water planning process in Taos will recall, the Taos Region developed an especially detailed, thorough Public Welfare Statement, which contained individual criteria and out-

lined standards to be applied in assessing potential impacts to each criterion making up the Public Welfare. The Plan also expressly advocated concrete implementation of the Public Welfare Statement by local governments.

While there was broad consensus within the Region about the basic definition and goals of the Public Welfare Statement, during the finalization of the Plan there was significant disagreement about what level of detail and forcefulness was appropriate for the criteria and standards in the Statement, and about the degree of specificity in the mandate for implementation of the Statement. To achieve consensus, some detail was removed from the Public Welfare Statement to reassure some local entities that they would have flexibility in interpreting it as they saw fit. Although implementation of the Public Welfare Statement remained a top priority for many in the Taos Region, the controversy preceding the Plan's finalization and acceptance by the ISC led local leaders to pause before moving ahead with implementation.

By 2010, however, any reservations regarding the Public Welfare Statement seem to have dissipated, and both the Steering Committee and the Taos County Commission have been moving forward in a vigorous, coordinated fashion to strengthen and implement the Statement. The Committee has been meeting and is in the process of reintroducing rigorous details and standards back into the Public Welfare Statement. Meanwhile the County Commission is well along in the process of adopting an ordinance that concretely implements the Public Welfare Statement in a robust form. The County Ordinance implements the Public Welfare Statement by creating a committee to review water rights applications concerning the waters of the Region and provide information and advice to the County Commission and the public regarding the public welfare implications of such applications. The Ordinance would not impinge on the State Engineer's authority, but would give effect to the Regional Water Plan's definition of Public Welfare by informing local government and the local public about proposed appropriations and transfers as gauged under the criteria comprising that definition.

Along with these Public Welfare implementation efforts, another water assembly will be convened this winter to: revive implementation of the regional water information center; revise and improve other implementation strategies in the Plan; and coordinate focused efforts to fund and implement additional strategies and priorities. Altogether, 2010 has been an exciting, dynamic second act for the Taos Regional Water Plan, and 2011 is shaping up to be more of the same.



Sangre de Cristos, Aug 2010

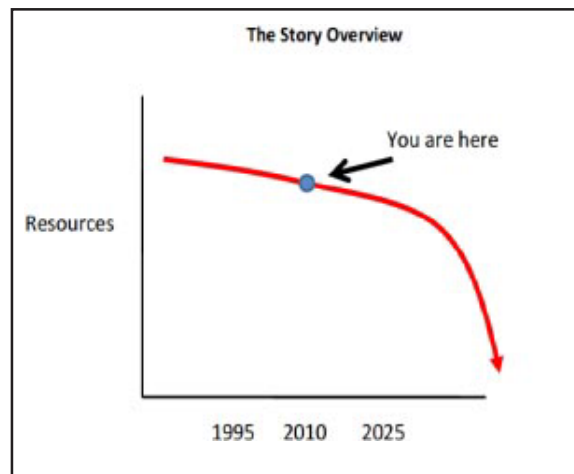
“Story” Portrays Bleak Water Future for MRG Unless Policies Change

by John R. Brown

In the fall of 2009, the Middle Rio Grande Water Assembly found itself facing a problem: six years had passed since the MRG Regional Water Plan was accepted by all the non-Pueblo local governments in the region and by the New Mexico Interstate Stream Commission. To address an unsustainable annual shortfall (15-to-30%), the Plan’s mission and strategies aimed to balance all uses of the region’s water resources with renewable supply. But the public lacks means to evaluate the Plan’s implementation and to measure its success against that mission.

The Futures Project is an effort to refocus public attention on the MRG Regional Water Plan and on weaknesses in its implementation, and to provide incentives for political leaders and water managers to seriously address this issue. This spring, the Water Assembly initiated a strategy to increase public awareness, dialogue, and engagement with local officials to mobilize support for more aggressive policies and actions by water managers and governments throughout the Region. (Our model, loosely adapted, is a “scenario planning process” used in South Africa in the 1990s during the transition from apartheid to democratic majority rule.) We aim to use scenario planning to help chart a course to a sustainable water future.

To initiate the Futures Project, we enlisted an interdisciplinary team of experts in hydrology, ecology, economics, law, demography, biology, modeling, climate, and political science to help establish a *baseline* story about the Region’s water future in 2025. The key baseline assumption was “business as usual”; i.e. current water policies, conservation efforts, and rates of progress continue, but no new or enhanced inter-



ventions (technical, managerial or institutional) are undertaken. The experts’ baseline descriptions provided factual support for Lisa Robert to write a compelling and plausible “Future Story.” The Story was presented in June at the 14th Water Assembly. Though a stark graphic overview is shown above, we encourage you to read the three-page

text online: <http://waterassembly.org/archives/14th%20Assembly/TheStory-Text.pdf>

This dystopian vision of our likely future, the Water Assembly Board hopes, will provide an incentive for engaged members of the public to envision alternative outcomes—and to prompt a

conversation within communities throughout the Region about the course we’re on and what we can do to choose a different path.

In keeping with the scenario planning model, our intention has been to assemble a team of community leaders to develop alternative narratives in contrast to the status quo “Story.” Our premise is that different futures are possible, but will require choosing different policies and courses of action from those now in place. Members of the team should credibly represent diverse communities of interest. They would not be expected to concur on a *preferred* outcome. They would have to agree only that each of the alternatives they describe constitutes a *plausible* path to a different future. After deliberation, they would select perhaps three distinctly different alternative stories to be used in a variety of forums with community groups and public officials to generate serious conversations about our water future.

How to approach these next steps is still unsettled. The Assembly is working within its limited financial resources to assemble a team of community leaders who can meet over an extended period to undertake this work. We are also concerned about when and how to bring into the process people who have an institutional interest in the outcomes of water policy—actors who, as John Fleck has written in the *Albuquerque Journal*, have “skin in the game.” It is possible that as a volunteer non-governmental organization, the Water Assembly will need to collaborate with others to create a forum for the serious consideration of major policy changes by parties that have a real stake in the outcomes. We’re seeking to resolve these questions before moving ahead, but meanwhile The Story stands as a stark reminder of why we must still try.



Gila River Proposals Reviewed by Interstate Stream Commission

by M.H. Salmon

The Interstate Stream Commission (ISC) got what it wanted. On September 21, 2010, at a meeting of the Gila/San Francisco Water Commission (GSFWC), Vance Lee, chairman of the group, passed out a paper. Composed of representatives of local government entities in southwest New Mexico, the GSFWC proposed to divert up to 14,000 acre feet from the Gila River for use primarily in irrigation agriculture in the Virden Valley (Hidalgo County) and the Cliff/Gila Valley (Grant County).

“I like what you’ve done here,” Craig Roepke of the ISC said. “This is what the ISC has been waiting for—a simple proposal in black and white for use of project water and money that the ISC can review for compliance with the Arizona Water Settlements Act (AWSA).”

Signed by President Bush in 2004, the AWSA grants New Mexico \$66 million for any water project in the four-county area (Grant, Luna, Hidalgo, Catron) that meets a “water supply demand,” and up to \$62 million more if a Gila River dam or diversion is initiated to capture the authorized 14,000 acre feet. Project proposals from the GSFWC, the local Stakeholders Group, and any other individual or entity, are due by the end of 2010 and will be reviewed thereafter by the ISC. The \$66 million will begin to arrive in increments in 2012 and, by 2014, New Mexico must indicate to the Secretary of the Interior whether it wants to pursue a major water development on the currently free-flowing Gila River.

In fact, the GSFWC submission was not the first “simple proposal in black and white” that the ISC had received. The Gila Conservation Coalition of Silver City, among other entities, had previously presented at Stakeholders’ meetings a realm of water development/water conservation proposals using the \$66 million as seed money. But these pro-



Cooney Canyon, Gila Wilderness, Sept 2010

posals do not involve additional diversion/consumption of the Gila River and so have not been embraced by the ISC.

Not surprisingly, Roepke and the ISC did embrace the GSFWC diversion proposal as it is reminiscent of one Roepke himself presented at a public meeting in 2008. The basics: A diversion somewhere between Mogollon Creek and Turkey Creek with gravity feed at up to 350 cubic feet per second downstream 15 miles by canal or pipeline for storage off-stream at Schoolhouse Canyon. From storage, water could then be shunted to crops, municipal and industrial use, or, if available, back to the river for environmental mitigation.

After the GSFWC meeting in Deming, some participants adjourned to a local café for a meeting of the Silver City Prospectors and Deming Silver Spikes, two booster groups. The subject: Water and the AWSA. The membership was briefed by Roepke on the GSFWC proposal; it seemed to meet strong approval—anything “to keep that water from running downstream to Arizona.” And

the boosters had their own plan: a New Mexico First gathering on the issue to be held summer or fall of 2011. The cost would approach \$40,000 plus², but it was quickly pledged including \$10,000 by Roepke and the ISC. All said, a big diversion on the Gila River seemed ripe for presentation to, and acceptance by, the ISC circa 2011. And yet.....

.....Nobody so far has offered to contract for the water. The subsidy could total as high as \$128 million but capital costs for the project are estimated at \$300 million, operation and maintenance at roughly \$5 million/year, and “exchange costs” at \$1.5 million/year (New Mexico must pay the “exchange” of Gila water diverted here for lower Colorado River water diverted to the Gila River Indian Community near Phoenix). New Mexico irrigators can’t even afford the exchange costs; who is going to pony up the big bucks for construction and maintenance?

Thousands of acre feet of water rights, and wet water, lie fallow in both the Gila and Mimbres Basins while human populations are nearly static; who can demonstrate need in the midst of plenty?

Three federally threatened or endangered species (spike dace, loach minnow, southwest willow flycatcher) reside in the vicinity of the project, and the river has a large constituency of defenders.

The canal, when carrying its capacity 350 cfs, would need to be six or more feet deep and over 20 feet wide and would trespass private land. How would condemnation be received in the valley?

Other obstacles remain, yet the ISC is clearly in the driver’s seat. The year 2011 could be a monumental chapter in the long history of the Gila River.

REGIONAL PLANNERS—*Cont. from page 4*

included in the water budget; the gulf between paper promises and wet water in the MRG is proving to be even greater than previously believed, but water right ownership is still in limbo in the unadjudicated basin; and even as pricey engineering projects like aquifer storage and recovery (ASR) and desalination are promoted as solutions to looming water problems, one previous engineered solution—the system of river levees the length of the region—is in poor condition and faces de-certification by the Federal Emergency Management Agency.

Region 13—Estancia Basin (Torrance, SW Santa Fe, and eastern Bernalillo): Declaring itself separate from the MRG in 1993, and operating under a 1995 tri-county Memorandum of Understanding, Estancia was the first of the 16 regions to submit its water plan to the Interstate Stream Commission, a landmark event that occurred before publication of the ISC template, which offers a checklist of components to be considered. The original document was revised last year with ISC funds, and guidance from the Dialogue's draft template for plan updates. The region relies on groundwater, not surface water, and the foremost use is spray irrigation for agriculture. Perhaps 80 percent of all farm systems have been converted to high efficiency, and the region has also done a lot of watershed restoration. Nonetheless, there is a water overdraft of 30- to 40,000 acre-feet per year, and planners have no "low-hanging fruit" to turn to because there are few municipalities where water conservation measures might apply; small-system water suppliers are not represented on the RWP committee; and monitoring is problematic because private landowners generally view it an intrusion. On the plus side, the regional planning committee has both new members and continuity; a public welfare statement that "fits"; and few expectations about receiving outside funding. Conversion from agricultural to urban uses is foreseen, along with a shift to more water-efficient

crops, an intra-basin pipeline to service growing communities, and better coordination of local government policies.

Region 14—Rio Chama Basin (eastern Rio Arriba): Rio Arriba County is split between two planning regions, and is currently trying to develop a 40-year water plan. Ordinances have been passed to regulate tapping the "deep pockets" of the oil and gas industry, and to preserve farmland by requiring developers to leave 70 percent of a proposed site in agriculture, a move designed to encourage cluster development. There are numerous mutual domestics, and the county has authorized funding for a circuit rider position in hopes of "regionalizing support," and improving the organization and record keeping of each of those water systems. There is also strong backing for the livestock industry, along with resistance to some of the mandates of the Clean Water Act and Endangered Species Act that affect grazing on public and private lands.

Region 15—Socorro/Sierra Counties: Region 15 stretches from Belen to below Elephant Butte Reservoir. It is sparsely populated, with only a few incorporated entities, among them Socorro, Truth or Consequences, and New Mexico Tech. Major water uses include evapotranspiration at Elephant Butte, agriculture, and recreation. The regional plan, completed in 2003, acknowledges a historically variable water supply, and despite plan alternatives being implemented by the Soil and Water Conservation District and other entities to reduce water consumption (particularly with regard to agriculture), drought conditions prevail every one in five years. There is concern about maintaining the natural connectivity between ground and surface water; about increased salinity in agricultural soils; and about the reduced functionality of the MRGCD drainage system over time. Above all, Socorro/Sierra is feeling the pressure from population centers upstream, and although protecting farmland is a priority for the region, historic water rights have already been transferred from hundreds of agricultural acres.

Region 16—Lea County: Lea County is experiencing "huge growth" due to new finds of potash, and to the expansion of the nuclear industry in southeastern New Mexico. The non-replenishable Ogallala Aquifer underlies the region, so planners must look elsewhere to increase the water supply. One possibility is wastewater produced by the oil and gas industry, and the county hopes to clean up and reuse millions of gallons of "produced" water currently being reinjected into abandoned wells. There are, however, legal issues surrounding the permitting process for produced water and which agency should oversee it. The region has also experienced "a big push" for weather modification. Cloud seeding has yielded a "3-to-13 percent increase" in precipitation over the last six years, but funding is needed to solve some problems associated with the program. Meanwhile, agricultural water conservation is key for the region. Farmers have converted to minimum till programs, and to LEPA (low energy precision application) and drip irrigation systems.

Interregional Conflicts and Opportunities for Cooperation

Workshop participants were asked to confer with individuals from other regions to identify common conflicts, and to brainstorm about prospects for improving the RWP program and water planning in general. Common threads that emerged include how to meet projected demands, concerns about over-pumping, and friction with neighbors over covetous plans.

The issue of funding affects every facet of regional planning, from maintaining working committees to putting plan recommendations into action and monitoring the results. Planners seemed bewildered that the RWP program was at least nominally supported by the legislature until all 16 water plans were received by the ISC, but now, the true harvests of implementation and re-evaluation may wither on the vine for lack of patronage.

REGIONAL PLANNERS—*Cont. from page 9*

Another widespread problem/opportunity recognized by planners is the need to standardize metrics, to adopt an across-the-board language for reporting resource data that facilitates communication within and between regions, and assists the integration of regional plans into a State Water Plan.

A third concern—undeniably more strident than either of the previous items—is the dilemma of transfers, the siphoning of water from areas of lesser clout despite the best efforts of the raided region to preserve its resources for local use. Almost all of the regional representatives mentioned some threat of impending transfer, and it is ironic that the original impetus for the RWP program—protecting New Mexico’s water against exportation across state lines—should ultimately result in equivalent tactics among even nearer neighbors.

Also troublesome is the issue of adjudication—the constitutionally mandated process for determining the priority and extent of all water rights in a particular basin. The fact that adjudication is not being undertaken everywhere in New Mexico diminishes trust in the legal system and in the ability of state agencies to impartially administer both public resources and private property rights. It has also fostered discord between urban and rural constituencies, forcing the most historic water users to the sidelines as wary “observers,” and consigning to agriculture the unwarranted role of sacrificial lamb.

Finally, on every region’s plate is the colossal matter of water quality, that mind-numbing catch all of compulsory dynamics that encompasses everything from aquifers, watersheds and riparian ecosystems degraded by poop and radionuclides, to an aging network of essential reservoirs, their specified capacities choked with 60 years of silt. Without the assurance of water *quality*, every region will eventually find itself short on *quantity*, regardless of the time and money lavished on a water plan.

No Aid On the Horizon

The bad news is that neither the state nor the federal government can promise funds to tackle such issues at present. State legislator Don Tripp from Socorro quotes a sign in his office that reads: “There IS no money. Next?” Regional water planning was not funded last year, nor does it stand a chance of receiving an appropriation in 2011. Only 10 percent of New Mexico’s severance tax fund will go to the Water Trust Board; the rest will be used to “shore up state government,” Tripp said. That means no new programs, and no updating of regional water plans.

Expectations are dark at the federal level, too, according to Patricia Dominguez of Sen. Jeff Bingaman’s office. Proposed and existing legislation, including the American Clean Energy Leadership Act, the Secure Water Act (part of the Omnibus Public Land Management Act), the New Mexico Water Planning Assistance Act, the Land and Water Conservation Fund, the Water Resources Development Act, and several pending Indian water rights settlements, will all have to wait for a change in the political and economic climate. “Indications are that it will be very difficult to pass anything this year—even bills that just authorize expenditures,” Dominguez warned. (For more information on the aforementioned legislation, see Dominguez’ Power Point presentation on the Dialogue’s website.)

Doing Without

The good news is this isn’t the first time regional water planners have confronted pressing needs with no apparent means of addressing them. Early in the RWP process, pioneer planners recognized that without some sort of guiding parameters, the 16 separate regions would give birth to 16 incongruent plans. What they needed was a checklist to ensure that each planning group at least considered all the essential issues. But who would craft such a list, and how might it be funded? The answer turned out to be a group of citizen volunteers and two

members of the Interstate Stream Commission, who met diligently for months to create the Regional Water Planning Handbook, a valuable little document that cost taxpayers almost nothing. Momentum for the effort came mainly from an organization that would eventually be known as the New Mexico Water Dialogue.

Now, with all water plans completed and the regions about to embark on compulsory updates, the template itself is in need of revision. There are new considerations that the guide’s authors could not have foreseen—federal mandates for protecting species and habitat; reductions in water supply due to changing climate; increasing concerns about homeland security, and more. Beyond reworking plans to include such additions, another question still begs to be answered: How will regional plans be incorporated into a state water plan? The legislature originally chose regional planning over a state approach, but there are no guidelines for melding localized priorities and caveats into an overarching state policy.

In the past few years, Dialogue has prompted state and local planners to address this issue, first through a project known as Upstream/Downstream, which brought representatives from three adjacent regions together with state water administrators to identify inconsistencies among the several plans, and to work toward solutions to shared problems. The project was envisioned as a *social* template of sorts, a blueprint for ameliorating through ‘dialogue’ the instances where one region’s choices ‘rubbed’ against the choices of its neighbors.

In addition to the Upstream/Downstream experiment, the Dialogue also began to consider possible revisions to the Regional Water Planning Handbook in hopes of addressing some of the significant items currently missing from the 16-year-old template. The draft revision (available on Dialogue’s website) is an acknowledgement that some of the handbook’s original assumptions no longer hold true, and that for the next

REGIONAL PLANNERS—*Cont. from page 9*

iteration of water planning—the regional updates—the template itself must be amended. For example, the handbook assumes "no change in federal law," a stipulation that elicits a guffaw from any water savvy audience. The template also anticipated that regions would meet their future water needs *with the supply available to them*, a condition long since fallen by the wayside judging by the proliferation of transfer applications. Also out-of-date is the handbook's concept of water conservation: there is no advice on estimating projected savings, or on clearly designating which use sector will bear the responsibility for conserving.

These and other transformations in philosophy and reality argue for a collective review of the water planning template, and in the end, the workshop's participants came full circle about how such an enormous task could be accomplished: as with the first Regional Water Planning Handbook, revision has to involve both the regions and the state. It is the icky, prickly process of meeting and debating and objecting and submitting and finally, finally backtracking to some tolerable degree of consensus that defines water planning in New Mexico. Anything less would constitute heresy.

And so, regional water planning appears to be on the verge of another era of 'doing without,' its proponents pledging to take on the challenge, despite some very long odds. As the September workshop came to a close, all agreed to cooperate in amending the template. Yes, anxieties linger: ISC staffers are at work on a new version of the State Water Plan and say they won't have time before next January to attend to the template, a situation that for regional planners puts the cart before the horse. Yet both sides know collaboration is the only course. Without local backing, state policy is tough to enact and tougher still to enforce, and without the cohesiveness of some umbrella strategy, New Mexico's water planning regions are little but fiefdoms, looting the lifeblood from one another.

This Just In: Water News

The last week of October was active: The Taos County Commission passed the "Public Welfare Ordinance" discussed in the article on page 5 and the N.M. Court of Appeals issued two decisions, including the *Bounds* appeal discussed on page 3.

The "domestic well" statute, 72-12.1 *et seq.*, which requires the State Engineer to approve all applications for new domestic wells, has been contentious for years. The automatic approval requirement means these wells are not evaluated to determine if existing, senior users' water will be impaired as a prerequisite to approval or denial. After four years, it became clear that the legislature would not change the statute, and subsequently the *Bounds*, a couple in the Mimbres Valley, challenged the statute on the grounds that it conflicts with the constitutional protection of senior users (the priority system). In July 2008, a district court agreed with the plaintiffs and ruled the statute to be unconstitutional. The ruling was appealed by the State Engineer, and the N.M. Court of Appeals ruled on October 29, 2010 that the constitutional priority doctrine is "but a broad principle," noted that the State Engineer has broad discretion to curtail use when senior users are impaired, and upheld the constitutionality of the domestic well statute.

In another opinion released on the same day, the court issued its "Tri State" decision. At issue was the validity of the OSE's Active Water Management Regulations (AWRM). Those regulations were promulgated in response to the Legislature's enactment of NMSA 1978 §72-2-9.1 directing the OSE to adopt rules for priority administration.

AWRM sets up a process by which the OSE would determine priority dates of holders of administrable water right in an area and set a cutoff date under which junior uses would be required to cease taking water.

The regulations granted the OSE authority to define each administrable water right by its elements as set forth in: a) decree entered by an adjudication court; b) a subfile order; c) an offer of

judgment; d) a hydrographic survey; e) a license; f) a permit; and g) a determination made by the state engineer based on the best available evidence.

The Court of Appeals determined that §72-2-9.1 did not grant any additional power to the OSE to set priority dates and that the only basis on which the OSE can conduct priority administration is the power granted in §72-2-9 ("The state engineer shall have the supervision of the apportionment of water in this state according to the licenses issued by him and his predecessors and the adjudications of the courts"), thereby striking out all but subsections a) and e) quoted above. This decision rested partially on the fact that the adjudication process and the permitting process that leads to the licensing provide adequate due process. (While the permitting process is what provides licensing with due process, presumably it was the language of §72-2-9 that caused the Court to focus only on licensing and adjudications.)

The Court appeared to ignore the fact that in order to determine whether new appropriations of surface or ground water should be permitted pursuant to §72-5-6 and §72-12-12(E), the OSE must necessarily identify all valid administrable water rights that the new appropriation could impair. Even more clear is the requirement that to approve a transfer of a water right under §72-5-23, the OSE must necessarily determine the priority date of *all* valid administrable water rights (see *Montgomery v. Lomos Altos, Inc.*, 2007-NMSC-2) since the transferred right would carry its priority date and impairment would thus be measured only against more senior water rights in that area. The Court also ignores the statement in §72-2-8 authorizing the OSE to adopt regulations for enforcement of the water code that "[i]n order to accomplish its purpose, this provision is to be liberally construed."

Nevertheless, the Court makes clear that the Legislature can easily expressly grant the OSE authority to determine priority of administrable water rights using any or all of the elements of evidence set out in the AWRM.

The New Mexico Water Dialogue

17th Annual Statewide Meeting
 January 13, 2011
 Indian Pueblo Cultural Center
 2401 12th Street NW, Albuquerque

ECONOMICSTRESS: HARDTIMESFORWATERPLANNINGANDMANAGEMENT

Registration includes lunch catered by the Indian Pueblo Cultural Center and morning and afternoon beverages and snacks. By registering early, you help us plan for these items, and we offer substantial discounts. The simplest way to register for the 17th Annual Statewide Meeting is to go online 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.

Early Registration Form

Name(s) _____

Organization (optional, except for purchase orders) _____

Title or position (optional) _____

Address (street or box) _____

City, State, Zip _____

Contact email _____ Phone _____

I/we want to:

- Register for the 17th Annual Statewide Meeting
 - ___ member(s) @ \$30 until Dec. 15; \$35 until Jan. 10, 2011.
 - ___ non-member(s) @ \$35 until Dec. 15; \$40 until Jan. 10, 2011 Amount included: \$ _____.
- Become a member of the NM Water Dialogue (includes 1-year subscription to *Dialogue*).
 - ___ Individual \$20;
 - ___ Representative of non-profit organization \$40
 - ___ Representative of government agency \$75
 - ___ Representative of business or trade association \$150. Amount included: \$ _____.
- Make a tax-deductible contribution to the Dialogue. Amount included: \$ _____.

- Payment options: A check is enclosed. Total amount: \$ _____.
- Our organization will pay. Invoice our P.O. # _____ for \$ _____.
 - Payment is being mailed separately (must arrive by January 10, 2011).
 - I (We) will pay (\$40 for members; \$45 for non-members) at the door.

If you wish to receive Dialogue electronically, check here: (Include email address above.)

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ECONOMIC STRESS: HARD TIMES FOR WATER PLANNING AND MANAGEMENT

DRAFT AGENDA

- 8:00 On-site registration
- 8:30 Welcome and introductions
- 8:45 **Keynote: Dr. Janie Chermak**, Professor of Economics, UNM
- 9:45 Break
- 10:00 **Panel – Update on the 2010 State Water Plan**
- 12:00 LUNCH
- 1:00 **Panel – Adventures in Regional Water Planning**
- 2:15 Break
- 2:30 **Panel – Economic Slowdown: Impacts on Growth, Water and Land Use**
- 3:45 **Summation and Nominations for the Dialogue Board of Directors**
- 4:00 **Close**

Please check www.nmwaterdialogue.org for changes to the agenda.

New Mexico Water Dialogue
c/o John Brown
P.O. Box 1387
Corrales, NM 87048

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