

19th Annual Dialogue Statewide Meeting Reviving Water Planning in New Mexico

Summary by Lisa Robert

Decrying the trend of inactivity since completion of the last regional plan in 2008, New Mexico Water Dialogue President Mary Murnane says, “The absence of planning does not mean that the problems go away.” On the contrary, decisions that involve growing populations, aging infrastructure, groundwater declines, unworkable delivery obligations, incapacitating drought and the uncertainties of global climate change all get more challenging the longer they’re deferred. In recognition of that fact, the state’s network of water planners periodically reassesses what’s been done, and what still needs doing, for as Dialogue participants have always recognized, there’s ever a need to transmit the insights gleaned from planning to fresh ears, and to continually engage new players. Though a quarter century of data accretion and document development haven’t guaranteed solutions to all the state’s water dilemmas, the lessons of connectedness gained in the process surely point in the right direction.



IS THE PAST A GUIDE TO OUR WATER FUTURE?

John Fleck of the *Albuquerque Journal*, who writes about water in the state and

across the Southwest, says he recently came upon a 1903 USDA report by subsequent Bureau of Reclamation Commissioner Elwood Mead. The report contained the following paragraph, which Fleck believes “succinctly frames the core quandary for every arid region: *All studies of irrigation lead to one conclusion, that some public control of the water supply is necessary to the best use of the resources of an arid country. In the very nature of things, conflicts will arise, and when they do, some power beyond the conflicting parties must come in to define their respective rights. The most important question in irrigation in this country is, ‘Who shall be the arbiter when such conflicts over water arise?’*” Fleck has watched that exact situation play out on the Colorado River, where centuries of tree ring data indicate extreme variability in flows at Lee’s Ferry, “a good proxy for all the water in the basin,” he says, and in general, the entire Southwest. The early 20th century, when the majority of western river allocations were decided, was an unusually wet period, but the cambium record also bears evidence of recurring, severe, long-term droughts. Finding ways to fulfill compact promises during such exceptionally dry times is imperative on the Colorado, where since the late 1990s, more water is being used than nature is providing. For years, the river’s largest downstream consumer, California, increased its urban water use based on a theoretical surplus, and even peripheral basin cities like Albuquerque and Santa Fe grew more dependent on Colorado water. Then, in January of 2003, the Bureau of Reclamation assumed the role of arbitrator so presciently proposed

Regional Water Planning/Phase II

As noted in the legislative report on pg. 3, the legislature appropriated and the governor approved an appropriation for \$400,000 for water planning for the next fiscal year.

The OSE and ISC are currently preparing to award grants for updating regional water plans. The plan has been to update four plans each year for the next four years. Given the negative and severe impacts of the current on-going drought, making do has become much more difficult, especially in some areas of the state. The OSE and ISC are developing criteria for awarding money for regional water plan updates as well as working with planners on a revised handbook which reflects both completed plans and new issues. Please check the Dialogue website (www.nmwaterdialogue.org) for information as we receive it.



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Update from the President

by Mary Murnane, President, Board of Directors

Recently, I had the opportunity to go to the island of Hawaii. Some friends have moved there, and I went to visit. I was quite surprised to find that there has been a 10-year drought in parts of the island. Some Macadamia nut farms have gone out of business because they cannot afford to pay for water. Kona coffee, I was told, had low yields due to drought. Cattle ranching on the Big Island is suffering after eight years of drought.

As someone concerned about water, I was a bit embarrassed that I did not know the magnitude of the issues facing the drier side of this island. It seemed amazing to me that the small state with a community (Hilo) that receives 126 inches of rain a year would also have such drought issues. Like many people, I equated Hawaii with lush, green vegetation.

I then spent some time considering the differences and similarities between our New Mexico and Hawaii, at least the Big Island. We share fabulous and varied landscapes, volcanoes, lava, and mountains. Both states appeal to people as places to live because of deep roots and ties that extend back generations, or generally warm weather, or the dramatic landscapes. Both states have strong rural areas, and growing towns and cities. The states differ in that Hawaii is so heavily

dependent upon tourism that the landscape, even on the “dry” side, is made lush by extensive and frequent irrigation. People, (including me) don’t find this odd, because it matches their expectations of “Hawaii.”

In a bizarre and perhaps illogical (if not perverse) sort of way, this made me feel much more hopeful about our water issues in New Mexico. I am sure this is part ignorance and naiveté on my part, but I remain hopeful nonetheless. My hope is based on the fact that we in New Mexico seem to at least be acknowledging that we live in a desert. Our economy is not based upon presenting an image to the world of verdant greenery and flowering trees.

The other basis of my hope for the resolution of water issues in New Mexico is the people across this state, of varying interests and backgrounds, who agree that water planning is necessary, and that the process should incorporate our public values and aspirations for the future. The Annual Meeting of the New Mexico Water Dialogue reminded us all that water planning and water resource management are critical. Although we often feel as no progress has been made, we should step back and look at what has been accomplished. That is what the Annual Meeting has done, and what this issue of the Water Dialogue will do.

San Augustin Decision Appealed

The Hon. Matthew Reynolds of the 7th District Court in Socorro issued the order dismissing the appeal of the Augustin Plains Ranch, LLC (Ranch) on January 3, 2013. This dismissal upheld the decision by the Office of the State Engineer to deny the original drilling application. The Ranch had applied to drill 37 deep wells in Catron County, and pump 54,000 acre feet of water annually for use or sale to unspecified parties. The Ranch had 30 days to appeal this decision to the NM Court of Appeals, and they have done so. The concerned citizens in Catron, Socorro, and other surrounding counties who originally protested this drilling are waiting for the next step in the appeals process, which could take as long as a year to unfold.

Water Planning in the 2013 Legislative Session

By John Brown

Exclusive of Capital Outlay funding, the recently ended session of the New Mexico legislature demonstrated both a deep concern for the importance of our scarce and unpredictable water resources, and often a local focus on how they should be managed and protected. For better or worse, most of the 100 or more water-related bills, memorials, and joint memorials introduced died in committee. Without claiming to be comprehensive, the following is a discussion of some of the more significant legislative proposals related to water planning and their disposition.

Regional and State Water Planning Appropriation

The big news, of course, is the funding for updating regional and state water plans, added to the General Appropriations Act as a special appropriation (HAFC/HB2. Sec. 5, page 208, line 23). As written, this is a one-time \$400,000 block of funding, subject to an Interstate Stream Commission report to the interim Water and Natural Resources Committee on the “progress and contents” of the plans. The ISC reported at the Dialogue’s annual meeting that it intended to seek funding at this level for five years, and to allocate it among four regions each year (i.e., covering all 16 regions in four years). In the fifth year, the ISC would update the state water plan.

Local Proposals

Lawmakers’ interest in planning, however, was not limited to this appropriation. A few proposed measures sought funding to bring together stakeholders and experts in particular regions or basins to study how to “maximize” (as SM 8 stated) water resources for that area. These typically failed to recognize the existence of ISC-accepted regional water plans and the considerable research that had gone into making them. An example is SB 197, which would have funded (at \$20,000) a report based on a meeting to be convened by the Mid-Region Council of Governments and the Middle Rio Grande Conservancy District seeking to “optimize” water supply. Another was SB 449 (Cervantes),

which would have appropriated \$50,000 to NMSU to contract with a “lower Rio Grande water rights organization” (unnamed) to develop a “water management plan” to help Lower Rio Grande farmers manage their irrigation waters more efficiently.

Introducing SB 449 didn’t reflect its sponsor’s ignorance of the Lower Rio Grande regional water plan. Sen. Cervantes had earlier dropped SB 135, requesting a \$400,000 appropriation to update that plan, into the legislative hopper. Only after that bill failed to move in the Senate Finance Committee did SB 449 make its appearance. (In an even more quixotic quest – perhaps intended more to draw attention to the plight of drought-stricken LRG farmers than a serious proposal – Sen. Cervantes requested a \$120 million appropriation to buy, retire, and protect water rights in the LRG basin.)

Other Planning-related Items

Several other substantive planning measures deserve mention here. SM 89 (Cervantes) asserts the importance of, and requests the state engineer and the ISC director to, “engage stakeholders to explore measures to address water shortages and infrastructure needs.” The memorial passed the Senate unanimously after a floor amendment that added “pueblos, tribes, [and] Indian Nations” to the list of stakeholders to be engaged, which includes “representatives of agricultural, business and environmental interests; municipalities; and rural, urban, senior and junior water rights owners and users.” This memorial thus reinforces the guidance in the 1994 Regional Water Planning Handbook regarding public participation and stakeholder involvement in the planning process.

SB 482 (Wirth) proposed a \$250,000 appropriation to create a “working group” of climatologists, hydrologists, demographers and economists drawn from NM’s public universities to project “most likely” 20-year scenarios for water demand and supply, climate variability, and consequent economic impacts; and to develop a list of the greatest “vulnerabilities” facing the

state in that period. Though the bill died in the SFC, perhaps because of the appropriation, its science- and evidence-based approach might have provided a useful grounding for work updating regional and state water plans.

SJM 55 (Papen) requested the Legislative Council to appoint a subcommittee on “extreme drought and wet water usage.” Focused on the Rio Grande, and on the LRG in particular, the measure (which was adopted unanimously by both Houses) specifies the number and locations of meetings (two days each in Socorro, T or C, and Las Cruces), the sources of input to be invited (from Elephant Butte Irrigation District, Water Research and Resources Institute, NM Department of Agriculture, ISC, and OSE), and the subjects of options to be considered (including water supply augmentation, storage infrastructure, plans and tools for drought management, tax code changes, and feed augmentation in droughts). A Senate Conservation Committee amendment added conservation to that list. It is unclear how the subcommittee’s work might affect ongoing regional and state-level water planning, but it might lead to further legislation that could affect economic incentives of a variety of stakeholders.

Water for New Subdivisions

Based on ordinances adopted by Bernalillo and Torrance counties, Sen. Wirth introduced two bills which were passed and signed by the governor. SB 479 requires subdividers to prove adequate water supplies based on either a commitment from a water provider or approved water rights on land from which irrigation water rights have been severed before final plat approval of a proposed subdivision. These amendments to the Subdivision Act will prevent use of domestic wells when existing water rights have been sold off land intended for subdivisions. SB 480 lowered the application of provisions related to water use in subdivision applications from 20 or more lots to 10 or more lots.

REVIVING PLANNING—CONT. FROM PAGE 1

in the 100-year-old Mead report, and California's junior water uses were sharply curtailed in favor of older agricultural rights. Since then, California has managed to operate within its legal allotment, suggesting, says Fleck, "that when you have mechanisms in place to genuinely enforce shortage and sort out the need to share, communities in the West *can* use less water." Fleck believes what is missing is an ongoing forum "where all major water resource players meet regularly to talk about large-scale problems. Whether they solve the problems or not, the conversation needs to be underway between people with skin in the game."



Steve Harris, of Rio Grande Restoration, whose hobby is "going to water conferences," has been involved with three different regional water plans. It's a process "with promise" he believes, because it brings the community together, and brings competing interests together, even though "15 years later, we're still talking about how to implement some of the things we decided are important." Regional planning has chiefly been a response to *El Paso v. Reynolds* ("Can Texas develop a water supply based on New Mexico groundwater?") and the plans aimed to demonstrate that no, every drop is needed here in our own state. Harris thinks what's missing is agreement on a set of problems we're trying to solve, some sort of "public philosophy of water management (emphasis on 'philosophy') that cuts us off at the pass," preventing layers of promulgated rules, regulatory response, and increasingly complex ad-

ministration. "A philosophy would enable us to weigh any alternative management scenario against our vision. It would also save us from relying on our rather shaky court system to make water policy." Harris says the water problems we face are "endemic to the landscape" and are essentially the same ones our forbearers grappled with in 1890: how can we stretch supply? "We either rattle our sabers until a federal water master ends up running the Rio Grande, or we can come together and agree on some basic principles." Harris notes that even the state water plan stops short of implementation and is indicative of Western individualism. "We don't think collectively. We can't hold in our minds that 'water is private property' at the same time as 'water is a public good.' ... Where we've fallen down is with the 'voiceless parties,' like future generations, the idea of sustainability, other critters, ecosystems, and rivers themselves. They all need to be represented... We need to plan as if we were going to manage according to it."



John Shomaker, a local hydrologist and educator, says of the big picture for water planning, "One fundamental issue for us is the fact that the curves for supply and demand are crossing, just as the data on the Colorado indicates... We know the population is growing, and the consumptive irrigation requirement is going up, even if the amount of land in irrigation isn't, and that this is occurring while the supply is going down." New Mexico's constitution says water belongs to the public, but, Shomaker says, "it turns out that it only belongs to the public *so that* the right to use it—and

in using it, to destroy it by evaporating it—belongs to whomsoever shall first snatch it away. That's prior appropriation. And after enough of that snatching away, we have nearly fully appropriated our streams, and we've found that our law didn't quite control water as effectively as we thought it did. First came the interstate compacts, and then the Endangered Species Act, and now we're considering whether our rivers should just be 'plumbing,' or whether there is a community interest to be looked into... We're thinking there might be reasons for rivers that are not contemplated in Section 72..." Shomaker doesn't see an alternative to "negotiating our way out" of the problem of more owners than there is water. Litigated settlements involving all parties, as was attempted in the Pecos, may be the answer, although Shomaker admits that couldn't have been accomplished by people *in* the basin: it required "encouragement from outside," in the form of millions of dollars and the threat of "draconian enforcement by the state engineer." He suggests that water planning should invoke the question, "In what sense do we own water?" "We think of water ownership as a property right, enshrined in the constitution just like the ownership of land, but in reality, a water right is an authorization to capture something as it's passing by. Even groundwater... is something that's moving from one place to another... and conditions change all the way along that path." The concept of planning is deeply incompatible with the doctrine of prior appropriation, Shomaker believes. "Under genuine prior appropriation, there is no reason to plan. The juniors just don't get any, and that's that." Trying to administer according to priority in a place where higher value uses tend to be served by junior groundwater, and where the physical relationship between ground and surface flow includes a time lag between pumping and its effects on the river, "makes every priority call a futile call," Shomaker adds. It would be easier to solve supply problems, he thinks, if water were instead distributed more along the lines of a commodity and on a shorter-term basis. Beyond settling competing claims, his suggestions for increasing the amount of water available include expanding the concept of conjunctive management, so that groundwater could be managed as a non-evaporative reservoir for a stream system; engineering more

capture of precipitation and more artificial recharge; and taking compact deliveries in winter and storing them in the ground to stem evaporative losses from lowland reservoirs. Shomaker predicts that more “reprehensible” actions, such as lining the channel of the Rio Grande, will again be up for debate in the future. A lined channel *would* facilitate the passage of water for compact deliveries, he says, and it would lower the water table to make room for more underground storage, but, “if you lowered the water table sufficiently, the whole river would dump into it, and you wouldn’t be able to make downstream deliveries at all.”



REGIONAL WATER PLANNING SUCCESSES

Michael Benson of the San Juan Region and the Navajo Nation’s Water Resources Department has effusive praise for the State of New Mexico and its history of multiculturalism and inclusiveness. He cites the Navajo’s excellent cooperative relationship with the Office of the State Engineer and the Interstate Stream Commission, and lauds the importance of going to the grassroots to build support for whatever is planned. “Planning is what you want to have happen,” he says. “When you put a plan into words, it comes closer to reality.” To emphasize that point, Benson notes how familiarity with planning made a difference in the way the states of New Mexico and Arizona settled Navajo water claims. Because of their decades-long participation in regional water planning, New Mexico’s Navajo chapters “felt informed and were more open to negotiating

water rights with state officials than their counterparts in Arizona.” That, Benson believes, ensured the success of the New Mexico Navajo San Juan settlement. He observes, too, that when the Colorado River Compact was negotiated in the early 1920s, New Mexico was apportioned a far greater amount of Colorado River water than what would have been the state’s share based on the tiny part of it that lies within the Colorado drainage. That’s because compact signatories “anticipated a Navajo water rights settlement,” Benson says. He recalls the words to a sad song of hope which the Navajo people composed while imprisoned by the United States at Ft. Sumner, New Mexico: “Where I come from is beautiful. I want to go home now. I want to go home now. I am going now. I am going now.” “Plans and words cause things to happen,” he encourages, “so if you want something to happen with water, put it into words. It is thanks to plans and the written word that Navajos now have a homeland and water.”



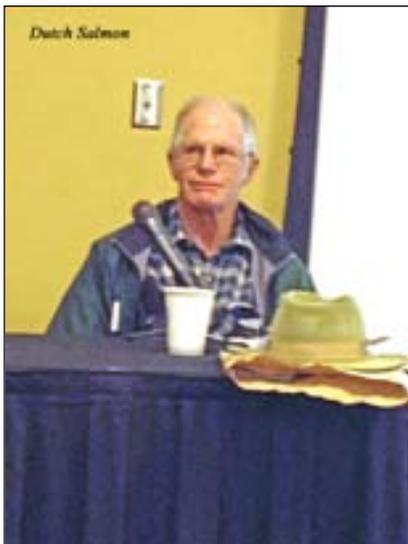
Simeon Herskovits of the Taos Region says an ambitious and controversial Public Welfare Statement delayed consensus on the regional water plan, making it the last to be submitted to the Interstate Stream Commission in the summer of 2008. After a year of dormancy, the County began devising processes for implementation, and also for revising both the plan and the public welfare statement. In regard to implementation, a review committee was established in 2010 to “provide more information on the implications of Public

Welfare to the county, the public, and ultimately, to the OSE.” Protests have been filed on two different appropriation and/or transfer applications in the region, and now there is a broad desire, Herskovits says, to “restore meat to the Public Welfare Statement.” Through a slow, iterative process, a subcommittee of the original Regional Planning Committee is “adding details back in,” and in general, sharpening and streamlining the PWS. That process has “led/forced leaders to examine other aspects of the Regional Water Plan,” and there is renewed desire to promote implementation, to refine the plan’s goals and objectives, and to gather additional data about local water supplies, uses and needs. The challenges Herskovits sees in going forward include establishing “institutional continuity” for both the public welfare review and the regional planning committees; traversing intra-regional and inter-regional politics; using new information gained in the review process to “inform and influence decisions”; and obtaining funding to continue plan updates and revision processes, and to accomplish specifics such as groundwater mapping, infrastructure projects, and creation of an accessible local repository for information on water resources.



John Jones of the Estancia Basin Water Planning Committee says the successes of his region “stand out.” The committee was formed by an MOU between Santa Fe, Bernalillo and Torrance Counties, with weighted membership based on use, impact, and access to water within the Estancia

cia Basin. Torrance has the most members, and Bernalillo the fewest. A wide range of interests is represented on the committee, and the members are tasked with specific functions in addition to having created the regional water plan in 1999, and overseeing its update 10 years later. One of the committee's strengths is "corporate memory," Jones says, with two or three of the original members still serving after 20 years. The committee maintains a well-monitoring program, with 15 sites that can be used to track trends. Committee review of development plans is sometimes requested, and committee members have been influential regarding legislation to prevent exportation of water from the basin. The committee has also provided input to the counties on "double dipping," and as a result, Bernalillo County recently adopted a resolution disallowing development served by domestic well on agricultural lands from which the water rights have been transferred. Jones paraphrases Dwight Eisenhower, conceding that the plan itself may prove worthless, but the planning *process* is critical and vital because whatever assumptions you've made "aren't necessarily the facts... It's planning as a *process* that allows you to adapt, persevere and overcome."



Dutch Salmon of the Southwest New Mexico Region says his area is "close to achieving that most rare and desirable of water management templates: sustainability." Unlike most places in the West with a quantity of clean, available water, southwestern New Mexico has not experienced a population boom, meaning it has not

yet overtaxed its water resources. Salmon notes that the Mimbres basin contains a "sea" of groundwater with an estimated storage of as much as 74 million acre-feet. Agriculture is the largest water user, and between 1995 and 2005, basin depletions were reduced by some 55,000 acre-feet per year (afy) through conversion to drip irrigation. The northern part of the Mimbres may actually be approaching equilibrium, Salmon says, with recharge exceeding depletion. The region's two largest municipalities have both adopted water plans: Silver City has "plenty of resources to handle the growth that never seems to come," and Deming has "bought up sufficient water rights from nearby farms that it is now set with a 40-year water plan to meet projected growth." To the west, across the Continental Divide, the region's other principal watershed is the Gila/San Francisco. "During the 1960s," Salmon says, "Special Master Simon Rifkind used the doctrine of 'equitable apportionment' to grant New Mexico 31,000 afy from the Gila/San Francisco watershed... New Mexico has opined ever since that it was shorted," but that claim is mitigated, Salmon believes, "by the reality that we have 31,000 afy for a portion of the State that holds little more than 5,000 people." Some 4,000 afy of the allotment goes unused, while basin residents without a water right are restricted to in-home use. One possible solution, Salmon thinks, would be for the State to buy some of those fallow rights at fair market value and sell or lease them in quarter-acre-foot quantities to qualified homeowners. Two other "newsworthy" issues in the Southwest region include the damming or diverting of the Gila River for offstream storage under the Arizona Water Settlements Act, and the controversial proposal to pump 54,000 afy of groundwater from the San Augustin Plains "to service a water debt in the middle Rio Grande." Both proposals boast gargantuan price tags, as-yet unidentified beneficiaries, and likely negative economic and environmental consequences for Salmon's "faraway, still pastoral world."

Dick Smith from the Lower Pecos Valley says when work on that region's water plan began in 1991, "we were under tremendous pressure," having recently lost a lawsuit to Texas for under-delivery of about 10,000 acre-feet a year of Pecos



River water. "It was essential to avoid a priority call and bring the basin into balance..." Smith says, and that meant trying to ensure an adequate supply for existing water rights, projected population growth, commercial/industrial demand, agricultural and environmental needs, and compact obligations, and then to allocate "all future water available for beneficial use in New Mexico." Planners eventually settled on four alternatives they believed to be the "most doable." They were: managed well-field operations, agricultural water conservation, riparian vegetative management, and watershed management. The Pecos Valley Artesian Conservancy District initiated a loan program enabling landowners to upgrade irrigation systems and maximize water use, resulting in the conversion of about 85 percent of the region's cropland to center pivot and sideroll sprinklers. "We're leaving the saved water in the ground," Smith says, but given successive years of decreased river flows due to drought, "we're not seeing a huge difference" from the agricultural conservation alternative. The jury may still be out regarding riparian vegetation management undertaken by the Soil & Water Conservation Districts through a state-funded saltcedar eradication program, but Smith is unambiguous about the watershed management alternative: forest vegetation was so thick that fires over the last 15 years have "destroyed just about everything," immobilizing the watershed's ability to store water. "It's all going to burn," he predicts, but he also sees the devastation as an opportunity to adopt a wiser management approach. As to the Lower Pecos water plan's top alternative of managed well-

field operations, it too may fall short of expectations under the continued drought. The strategy involved state purchase of 10,000 acre-feet of surface water rights in the basin, and subsequent pumping of an equivalent amount of groundwater from two well fields to make up deficiencies in river flow in dry years. After “some hundred million dollars” and continuous pumping since March of 2011, the Pecos has been augmented by only 33,600 acre-feet, and several wells have had to be replaced. The settlement agreement anticipates extraction of up to 35,000 acre-feet in one year, but Smith says the capability isn’t there. In retrospect, he acknowledges that the regional water plan, created during a period of ample precipitation, simply fails to anticipate the harshness of the current shortage, and his warning, delivered in the colloquial of the school of hard knocks, is that a plan “ain’t no good if you can’t *do* it.”



REGIONAL WATER PLANNING CHALLENGES

David Benavidez, of New Mexico Legal Aid, says that most water planning meetings he’s attended are about “closing the gap,” which doesn’t apply to stakeholders like acequias that have no gap to close. “The discussion is really about how people without enough water rights can get water from people who *do* have enough.” Originally, Benavidez recalls, water transfers were entirely a state engineer decision based on impairment to other rights or to the hydrologic system. In 1985, however, “conservation and public welfare” were added to the evaluation criteria, and “much time has been spent trying to define what public welfare is.” After 1987, the state engineer was also mandated to recognize

regional water planning as being “in the public welfare,” and to consider such plans in making water transfer decisions. Finally, in 2003, individual acequia commissions with correspondingly amended bylaws were granted power over water transfers into or out of their acequias. The official state policy is that transfers with a willing buyer and seller are allowed only to the extent that they are not detrimental to the acequia or its members. Such considerations are making a difference, Benavidez says, because acequias can now be protected from the detrimental effects of water transfers. He likens the new criteria to collective bargaining agreements, or the National Labor Relations Act, which allowed “more interests to be served... There has to be *more* dialogue rather than less; *more* collaboration that lets you reach a solution.” Given that overlay of public welfare, the survival prospects for the acequia community are certainly better,” and regional water planning is “more expansive than it otherwise would have been.”



Claudia Borchert, of the City of Santa Fe’s Water Division, notes that the Jemez y Sangre Region has multiple cities and watersheds, and its boundaries are “somewhat arbitrary,” a fact that “plays a role in what can or can’t be accomplished at the regional level.” The regional water plan was updated in 2007, and again in 2009, to reflect the likely effects of climate change on the gap between supply and demand. Studies are underway in the basin to further ascertain how water resources will be impacted, and to improve current water models for the region, but Borchert says the more important issue is how to respond to predict-

ed increases in evaporation, hotter temperatures, drier conditions, more destructive forest fires, and ecosystem declines. “We have to act. We have to transform the way we work now.” When dealing with climate change, all the usual water planning challenges—costs, political will, resource limitations, inertia, institutional structures, and entrenched thinking—still apply, and the region is also constrained by what can be accomplished on a geographical scale. “It takes a lot of effort to get even two entities sharing the same watershed to plan... The easier route is to work within one’s own jurisdiction,” Borchert says. That begs the question, “Are water-planning regions the right geographic context in which to effect needed policy changes?” Increased stakeholder involvement is good, Borchert grants, but she has observed that “the more diverse the group, the more guarded people can become,” reducing the number of actions that may be agreed upon. Other impediments are the lack of defined lines of communication, and of commitment between governmental entities. “Staff-to-staff conversations don’t filter up, or down, or sideways, or anywhere else,” she says, and in light of such confines, alleviating the effects of climate change may be undertaken more expediently with “small scale solutions that are implementable within the jurisdiction of the body that’s working on them.”



Steve Hernandez, a Las Cruces attorney and water specialist, can recall firsthand the year 1980, when the City of El Paso filed 266 applications to export groundwater from the Lower Rio Grande, initiating

a legendary lawsuit over New Mexico's embargo statute. Hernandez, a member of the defense team for the case, says, "That litigation *caused* regional water planning... It forced us to ask, 'How do we protect water when we don't know how much is there?'... Regional water planning became a population projection, with water use tied to that projection, and it served as a basis for our defense, which was that at a minimum, *El Paso* needed to leave us 40 years' worth of water in southern New Mexico." Water conservation and public welfare were also integral to the protection criteria and as an expert witness on the subject in a case, Hernandez called Dr. Helen Ingram of the University of Arizona. Ingram's testimony established that public welfare derives from public institutions that oversee water for the constituency of the state. "She envisioned groups—such as governments that have to plan for growth, and districts that have to deliver water—getting together, sorting out their issues, determining what's in the best interest of that community for the future, and making hard decisions about water: Do we grow? Do we not grow? Do we live within our means? Do we import water? Do we allow it to be exported? And now that we *have* regional water planning," Hernandez says, "I see that we still struggle with all those issues. We'll never get total agreement in an area unless you're driven there by litigation. That's what happened to us... It gave us a common core to rally around; it made you sit down and listen to people who had other needs, and it made them listen to you." Another basin in the state where litigation forced regional water planning was in the Pecos. "Texas-New Mexico litigation forced us into a room with upstream junior users, upstream senior users, municipalities, *all* users, to say, 'We have a common issue now.' There were contentious meetings throughout that process, but what came out of it was a plan that recognized *everybody* had to give a little." Recently, Hernandez says, two permit applications—San Augustin Plains and Berrendo—brought disparate members of another community together. "It was like watching the *El Paso* situation all over again. You had everybody in the town talking about it. 'How do we protect ourselves? What did we do wrong? How does regional water planning help or hurt us? What do we need to do now?' Those are

tough questions in an area viewed as having excess water for its foreseeable future needs." As in *El Paso* in 1980, "It isn't as simple as saying 'the water is there,'" Hernandez declares. The way the resource is removed from an area can impact how entities like irrigation districts and municipalities deliver water to their constituents. It can also undermine hope for the future, land values, and the capacity of local governments to provide services. In short, exportation raises the issue of protecting the area of origin. "I think the legislature needs to take a hard look at areas viewed as having 'excess water', and put in protections, aside from what the state engineer may or may not do." Unless large transfers become more of a partnership, with "buy-in" on the front end, Hernandez says they will be "held up in the courts for years." And of course, new litigation continues to crop up. On January 8, 2013, the State of Texas filed an original action in the U.S. Supreme Court, charging that New Mexico "has allowed harm to occur to all of the beneficiaries of the Rio Grande Project," including New Mexico's own Elephant Butte Irrigation District. That same day, Carlsbad Irrigation District threatened to make a priority call on upstream neighbors along the Pecos unless signatories of the hard-won settlement agreement devise a new strategy for meeting the current shortfall.



John Kelly, of the Middle Rio Grande Conservancy District board of directors, believes the biggest challenge to regional water planning is the "disconnect between planning and implementation." Although

the Middle Rio Grande Region has a "great, citizen-developed grassroots plan, it runs into entrenched bureaucrats at various agencies, gets thumbed through, put up on a shelf, and ignored... Day-to-day and season-to-season business becomes the focus of the elected body, and long-term planning efforts, premises and goals are never discussed at the policymaker level." Kelly reports that regulatory impacts consume much of the MRGCD board's time, for example, the new Biological Assessment and Biological Opinion for the Rio Grande silvery minnow. As a member of the Middle Rio Grande Endangered Species Collaborative Program, the conservancy has "devoted countless hours" to negotiation with the Bureau of Reclamation and Fish & Wildlife, but Kelly finds those discussions have been "ESA-driven, Fish & Wildlife-driven, and nobody has stepped back and looked at the regional water plan," in which "protecting our bosque and keeping water in the river" was one of the most important elements derived from public involvement. "That has never come up at one of our board meetings; instead, it's been this federal deal with the minnow." MRGCD board members also spent much of the last year modifying MRGCD water distribution and water bank policy, but "nowhere in those discussions were the premises and goals of the regional water plan brought up." The review, Kelly says, focused on the "problem of illegal irrigation" and existing disconnects between state and MRGCD records regarding transfers, leasebacks, and dried-up lands. In respect for the private property right of pre-1907 owners, the board does not protest every transfer of water in the middle Rio Grande basin. It *did*, however, protest the San Augustin Plains transfer, and Kelly wonders, "At what point should we begin looking at interbasin transfers here? At what point do they become contrary to the public welfare and the continued need for the district?" He also notes several essential capital improvements that will soon have to be included in the conservancy's budget, specifically, long-deferred maintenance on El Vado Dam, and matching funds for the Corps of Engineer's Socorro Levee Project. Neither does the agency have a program for upgrading the agricultural conveyance system, or for ensuring that water gets delivered where it's actually needed.

Kelly believes that by accident, many of the board's decisions are "right in line with the regional water plan policies...but we could do better." He proposes tying Water Trust Board capital outlay to projects that have been identified and prioritized in regional water plans, and believes that the OSE should require metes-and-bounds surveys of all tracts from which water rights are transferred. He acknowledges the pressure to suspend MRGCD water bank operations in light of the ongoing drought, and the need for some sort of "crash effort" to identify properties with senior water rights. "Right now, the only certainty we have is Prior and Paramount rights for the six Pueblos." He also sees opportunity rather than calamity in two looming circumstances: (1) the advance of the saltcedar beetle, which he hopes will assist human efforts to restore the bosque to a more natural condition, and (2) the recent suit filed by Texas, which has the potential to transform ground and surface water management in the Rio Grande basin.



Peter Pino, of the Pueblo of Zia, cautions, "No matter what kind of plans you have, they never work out...The archaic, the simple, is going to prevail in the end, for no matter how much technology we have, or planning we do, there's a power greater than the human race, and that is Mother Nature." It is crisis that usually forces us to make important decisions, Pino says, and in doing so, we have to decide whether to act on behalf of ourselves, or for the good of the bigger society. "As Indian people we've always looked back three generations and forward three generations. How

will the decisions we make today impact our ancestors, or the children yet unborn?" Zia is the last water user on the Jemez River, a stream system under adjudication since 1983. In 1994, stakeholders in the valley bypassed the court process and agreed to share water in a very dry year. Afterward, negotiations proceeded until late in 2012, when the settlement discussions broke down and litigants returned to court. "One of the problems," explains Pino, "is that the State of New Mexico is not a water owner, yet they were calling the shots...The amount of water the tribe was being offered wasn't sufficient to sustain three generations into the future and beyond... We figured we only have one chance to divide that water pie, and if we settled for something less, it would make it impossible for future generations to exist on our homeland. Our forefathers *chose* that location because water from the Jemez River was available to irrigate their farmlands...but others moved in upstream from us, and whether they have water rights or not, if the resource is there, they'll use it." Pino's single visual aid—a 1920s photo of a Zia woman collecting seep water from the bed of the Rio Jemez—illustrates the result. "We find ourselves in this situation," he says, "even though we don't take water from the bottom of the river anymore because we have domestic wells. The river runs dry every summer, nine years out of ten. We know what it is to do without." In 2003, Pino participated in the creation of a sub-regional water plan for the Rio Jemez/Rio Puerco drainage. The document makes repeated references to the desired relationship between the State of New Mexico and the tribes: government-to-government consultation on water planning, water settlements, and adjudication. "It's good to see it in print," Pino declares, "but in practice, it never really happened. The people who were part of the process were never fully engaged. We never listened to one another in what our needs and desires were." In a similar vein, the State Water Plan provides for an Indian Water Right Settlement Trust Fund as an indication of New Mexico's commitment, and an incentive to tribes and the federal government to settle Indian water claims. But state funds have not been made available for the Rio Jemez settlement, and Pino says, "We feel they reneged on their promise." He speculates that by working out

the shortage sharing agreement in 1995, Jemez basin litigants put themselves "on the back burner. There was no crisis, no need to address that issue, because we as local people took care of it and agreed to share the water among the communities." Another impediment to settlement, Pino notes, was the familiar assurance that state compliance with the Rio Grande compact shall in no way affect Indian water rights. "In the settlement negotiations, that issue kept coming up. It was disguised, but it kept coming up. The less water they can give us, the more water they'll have for Texas." Likewise, Pino regrets the state's use-it-or-lose-it policy. "With that mentality, you're taking away from future generations," he says, a philosophy decidedly at odds with Zia's tribal council, whose goal in 1983 was to ensure water for the needs of the people "to the end of time." Eventually, Pino believes, "those that fight over resources will kill themselves off. Self-centeredness, greed, and ego will be their demise." Instead, he counsels mutual respect, and truly listening to what others have to say. "If we just go through the motions, Mother Nature is going to shake us up and we will have no choice."



THE STATE WATER PLAN AND REGIONAL WATER PLAN UPDATES

Scott Verhines, New Mexico's State Engineer, is "a year and two weeks on the job," and among the day's Dialogue presentations, he says he notes "a sequence of events that makes a lot of sense." That sequence goes: Planning is important, and planning along with the threat of litigation can inform a settlement discussion, with the goal of trying to provide certainty to everybody in an area of the state. "We

have settlements that have taken place,” he avows, and yet, “those that we thought were done are hard to meet” under the extraordinary drought conditions the state currently faces. Perhaps, he suggests, settlements are works in progress, and the certainty afforded by them “is a certainty, but...” As State Engineer, Verhines chairs the Water Trust Board, an infrastructure-funding entity originally formed to leverage local, state and federal resources for large projects, and to improve the state’s watersheds. “Statutorily and in policy, the Water Trust Board is supposed to implement the recommendations of the State Water Plan. It is also supposed to give preference to projects that were identified and prioritized in regional water plans. I’m not sure we’ve quite got there yet... We need to provide a continuing opportunity for regional water plans to get updated. What if there’s a good idea that doesn’t have a path forward because it was not in the original regional plan?” Verhines says that although planning has taken on a negative connotation over the years, the Office of the State Engineer still supports it, given one caveat: “Planning efforts need to result in something. If we can’t get somewhere in 18 months or two years, let’s spend that money somewhere else... Maybe that process (planning ► settlement ► certainty) is something to consider, because where it’s happened, we’re that much further on.” Verhines believes regional water planning served its original purpose of keeping water in the state, but the resultant plans may not be representative of all interests in a region. “If you want a plan to be implemented,” he says, “it’s important to have all the right people at the table.” At a Western States Water Council conference on infrastructure, Verhines learned a few things that may aid the Water Trust Board in reforming its capital outlay program. The private investment sector is eager to finance large infrastructure projects, but the single biggest credit risk in doing so is *deferred maintenance*. What shows up on an entity’s books as an asset may actually represent a liability if essential upkeep has been put off. Public funding sources need to apply a similar yardstick, and some prioritizing must be done so the available dollars aren’t spread too thin. Verhines concludes with the cold, hard fact that the past 24 months have been among the driest in state history. Record low flows were set on 220 *separate*

days at several gauges on the Upper Pecos. “No amount of administration is going to resolve *that*,” he says. “We need to bring planning back into the picture. What are we going to do [given the scale of looming drought and lawsuits!] so that we’re *solving* rather than fighting?”



Estevan Lopez, Director of the Interstate Stream Commission, admits, “not much has happened” toward updating state and regional water plans. With no funding available for planning in recent years, the OSE is carrying out an internal update of the state water plan. Most of the chapters have been drafted, Lopez says, and will be put out for public comment soon. The work plan calls for the update to be completed by June of this year. On the regional front, little has been accomplished unless the regions themselves raised the funds to do an update. “A few have,” Lopez says, “and I commend those that have kept the process going.” There is broad-based support this year for “modest funding for the planning process. Our request is going to be for \$400,000 in recurrent funding. There are 16 planning regions, and if we could allocate \$100,000 to four regions per year, in four years we’ll get through updating all 16. I’m sure it’s not going to work out that cleanly, but in the fifth year, we’ll have \$400,000 to focus efforts on updating the state plan.” Several initiatives underway are “either planning processes themselves, or the implementation of something that’s been planned for many years,” Lopez reports. A Colorado River basin study, done by the Bureau of Reclamation and released in December, predicts an annual shortage of between 3.2 million and 7.5 million acre-feet over the next 50 years. The study evaluated some 150 proposals for making up for such a shortfall

that could be taken quickly if climate effects begin to accelerate. “After spending \$6 million over three years,” Lopez says, “this really is a call for action.” Also on the Colorado river, Mexican and U.S. sections of the International Boundary and Water Commission have negotiated a five-year amendment to the 1944 treaty that provides a mechanism for sharing shortages and surpluses. “It contemplates some joint environmental efforts in the Colorado delta area, and some joint projects to try to add water to the system, so it’s one component of how we’ll address the conclusions of the basin study.” In the Middle Rio Grande, work is proceeding on the Biological Opinion for the silvery minnow and southwest willow flycatcher. The current Opinion expires in March, and Lopez is hopeful that the new plan can be completed by the time irrigation season starts. “We’re also working to transition from simply a collaborative program that seeks to avoid jeopardy for those species, to a recovery and implementation program, something that gets us to an endgame on this.” He adds, “Maybe that’s too ambitious for this system, but I think we have to try.” In the southwest corner of the state, the Arizona Water Settlement Act allows New Mexico to use up to 14,000 acre-feet of additional water from the Gila and San Francisco Rivers, “a 50 percent increase in the right we have today, so we’re trying to plan how we’ll use that water, and the substantial amount of federal funding that goes with it.” On the other side of the state, the Eastern New Mexico Water Supply System, or Ute Pipeline, which will carry water from Ute Reservoir to communities like Clovis and Portales, has been in planning for 50 years. To date the project has received authorizing legislation, some aspects of construction have begun, and litigation that previously held the project up has been resolved. As to Indian water right settlements, Lopez names three that have been negotiated, authorized, and “are being implemented right now.” Those are the Navajo Settlement in the San Juan Basin, which includes a billion-dollar infrastructure project with a state cost-share of \$50 million; the Aamodt Settlement, which addresses the claims of San Ildefonso, Pojoaque, Tesuque and Nambé Pueblos, promising \$50 million in state money for water and wastewater infrastructure; and the Taos Settlement, which represents a \$20 million commitment in state funds.

An Indian Water Rights Settlement Fund was created in 2005, and to date, the legislature has appropriated \$25 million for the three settlements mentioned above. In reference to the “failed negotiations” on the Rio Jemez, Lopez says, “New Mexico has consistently maintained a position that the Indian portion of Indian water right settlements—to the extent that there’s funding required for that—is a federal obligation. We don’t have the resources to take that on... Unfortunately, very late in the negotiations with Zia, Santa Ana and Jemez Pueblos, the federal government said, ‘We’re not going to fund any more than 50 percent of these settlements,’ and the state balked at that. That’s what broke down in that negotiation. Absolutely, we have a role to play in funding these settlements... We feel like we’ve done that, but we have to maintain some principles, otherwise we’ll never be able to get through the remaining negotiations with some 16 Pueblos and tribes.” Finally, in regard to the Pecos, Lopez says that in 2001, the state was so close to under-delivery to Texas that a group of water users in the Lower Pecos was convened to come up with a consensus solution. The resulting settlement required the Interstate Stream Commission to acquire water rights in the Roswell artesian basin, and to construct augmentation well fields so that in times of low flow, groundwater can be pumped into the river to increase supply to the Carlsbad Irrigation District or for state line deliveries. But since March of 2011, the drought has made it necessary to pump constantly, and well capacity has “dropped dramatically.” The present drought is “beyond any of our modeling,” Lopez concedes, and “tensions are high as a result. We’re trying to work through those issues.”



Angela Bordegaray, senior water planner for the Interstate Stream Commission, says, “It’s easy to focus on what we haven’t done, what we can’t do, and what we aren’t doing,” when in actuality, so much *has* been accomplished. “I want to express my gratitude for this particular venue... it really is our state’s Town Hall on water, and while we on the public funding level haven’t come through consistently with support for water planning, the Water Dialogue board and all who put this meeting together year after year have sustained the effort. For that we can be grateful.” Another thing that deserves our gratitude, Bordegaray says, is *change*, because along with it come new opportunities and new perspectives. “I don’t claim to know how to define climate change,” she says, “or to distinguish it from drought, but obviously something is going on... I’m speaking most deeply as a mother: if the forecasts play out, my 10-year-old daughter won’t be able to raise her children in the same environment that I am raising her. That’s very close to me and close to all of us... Clearly, as a planet, we don’t know what to do about it because we think we have to agree on whether it’s really happening, or who is causing it. I think that is going to change, and quickly.” We may not have answers, Bordegaray encourages, but our best bet for finding them lies in “listening to each other and building on our successes.”



Dominique Cartron, of D.B. Stephens and Associates, has researched how water plans in Colorado, Arizona, Oregon and Texas have been developed; how regional plans were or were not integrated with

a state plan; and how funding and plan implementation are connected.

Arizona’s plan is “groundwater focused,” Cartron says, concentrating on population centers and active management areas where 75 percent of the state’s water is used. The goal is to reach “a sustainable yield situation in the aquifers” by 2025. The state has been actively planning since 1980, and although funding is down, the program is well staffed. The planning division also encompasses water conservation, water use and permitting, with revenue coming from several key funds, including the ecosystem-and-environment-focused Arizona Water Protection Fund, and the implementation-oriented Water Management Assistance Program, which is dependent on groundwater withdrawal fees. In regard to climate change, Arizona is looking at various basin studies and models to aid in scenario planning and future projections.

Colorado has no comprehensive water plan, but a six-year program called the Statewide Water Supply Initiative is underway to gather data and “identify gaps and needs.” In 2005, permanent Basin Roundtables (the equivalent of New Mexico’s regions) were established to do basin-wide assessments that will be integrated at the state level. A committee of basin representatives meets to address inter-regional issues, and the combined regional and state planning program receives \$1.5 million in funding each year. Colorado’s equivalent of New Mexico’s Water Trust Board is the \$10 million Water Supply Reserve Account that funds projects originating from Basin Roundtable recommendations. In terms of climate change, numerous studies suggest its effects are already underway, but how to address those through water planning is as yet undetermined since Colorado’s Climate Action Plan focuses on greenhouse emissions, and not on water.

Oregon began its state water plan in 2009. The program is “very much top-down,” notes Cartron, with but two staff members and a lot of in-kind contributions from other agencies. The Governor’s budget request for water planning from 2013 to 2015 is for \$66 million, with \$21 million for a project implementation fund, \$10 million for basin aquifer recovery projects, \$4.5 million for data collection, and the remainder for measuring, metering, and

REVIVING PLANNING--CONT. ON PG.12

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REVIVING PLANNING--CONT. FROM PG. 11

studying instream flows. There is no regional planning program, but groups doing watershed planning are being funded through the legislature. The state water plan includes specific climate goals, with the intent to develop a suite of "climate change adaptation strategies."

Texas has engaged in "robust water planning since about 2000." A third-iteration state water plan, published in 2012, was funded to the tune of \$16 million, and is based entirely on regional water plans. Any project funded at the state level must be consistent with the applicable regional plan. The state does provide technical support to the regions, and maintains about 20 permanent staff positions in the planning division. As to climate change, Cartron concedes wryly, "I don't think you talk about that in Texas."

REVIVING WHAT LIVES

There is no quarrel: water planning is as significant in 2013 as it was when the legislature mandated it in 1987. We have not exhausted its learning curve, regardless of the money spent, the input accumulated, or the revisions carried out, for such recipes overlook the most essential ingredient. Planning is the process whereby, as John Fleck puts it, "a community's values become functionally enshrined." But as we have seen, values *change*, rearranged by circumstance and necessity. Perhaps, then, what must be "enshrined" is the obligation to acknowledge values, to include the organic soul of community and continuity in the dry mechanism of every plan. As the "generation of right now," the ones with current skin in the game, our choices proscribe or enlarge the prospects of those who follow us; they also revere or discredit the values of those who came before. To plan is to tell *that* story, which breathes, and has no end.

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The Dialogue board thanks all of you who support the New Mexico Water Dialogue and make our work possible. Because of cut backs from foundations, we no longer have staff, and board members and volunteers have taken all of the work of the Dialogue without any impact to the substance of our work.

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