

**MINUTES OF THE  
NEW MEXICO INTERSTATE STREAM COMMISSION**

**December 17, 2003**

The regular meeting of the State of New Mexico Interstate Stream Commission (ISC) was called to order on December 17, 2003, by Chairman Jim Dunlap at 9:05 a.m. at the State Education Building, Mabry Hall, 300 Don Gaspar, Santa Fe, New Mexico.

**Quorum of Members Present:**

Chairman Dunlap  
Vice Chairman Phelps White, III  
Patricio Garcia  
Blane Sanchez  
Buford Harris  
Judith Espinosa  
Jim Wilcox  
Julia Davis Stafford  
Secretary John D'Antonio

**OSE/ISC Staff Present:**

Director Estevan López	Lee Pease
Craig Roepke	John Stroud
Dan Rubin	Karin Stangl
Rhea Graham	J. Whipple
John Longworth	A. Salazar
Greg Ridgley	
D. L. Sanders	
Chris Schatzman	

**ISC Contractors:**

Phil Mutz  
Len Stokes  
Eluid Martinez  
Stella Cureton

**AGENDA ITEM # 1 – CONVENE:**

Chairman Dunlap called the meeting to order at 9:10 a.m.

**AGENDA ITEM # 2 - APPROVAL OF THE AGENDA [Attachment 1]:**

Commissioner Garcia moved, Commissioner Espinosa seconded, to approve the meeting agenda. The motion carried unanimously.

**AGENDA ITEM #3 - CLOSED SESSION--discussions regarding current and threatened litigation and the acquisition of real property and water rights in accordance with the Open Meetings Act, NMSA 1978, Chapter 10, Article 15, Section 1, Subsection H(7) and H(8):**

Commissioner Stafford moved, Commissioner Espinosa seconded, to meet in closed session pursuant to the provisions of the Open Meetings Act

**NMSA 1978, Chapter 10, Article 15, Section 1, Subsection H(7). A roll call vote was taken as follows:**

**Commissioner Espinosa – yes  
Commissioner Stafford - yes  
Commissioner Garcia - yes  
Commissioner Harris - yes  
Commissioner Wilcox – yes  
Vice Chairman White – yes  
Chairman Dunlap – yes**

**Motion passed.**

**Secretary D'Antonio and Commissioner Sanchez joined the meeting during the closed session.**

The Commission met in executive session.

**A motion was made and seconded to return to open session. The motion carried unanimously. It was stated, for the record, that the only items discussed in closed session were those set out in the motion to go into closed session and no action was taken.**

**AGENDA ITEM #4 – CONSENT AGENDA:**

**Commissioner Wilcox moved, Commissioner Harris seconded, to approve the Consent Agenda. The motion carried unanimously.**

**AGENDA ITEM #5 – SECRETARY REPORT:**

Secretary D'Antonio reported on the following items:

Active Water Resource Management is an ongoing effort in the OSE. The staff is putting into a place a regulatory scheme as well as trying to put together a realistic goal of starting active river management in some critical basins throughout the state. Staff is trying to get a framework established to promulgate active water resource management regulations that are specific to different water districts -- trying to get there by using the shortest path possible; achieving long term objectives in different areas.

Ten areas have been identified within the state where there will be regulations developed, and the areas will be ranked in order of priority. Four areas that are considered to be of highest priority include: the San Juan Basin, Nambepojoaque-Tesuque, the Gallinas, and the Chama below Abiquiu. Other areas having problems with water shortages are the Mimbres, the Mora area, Rio Hondo/Rio Peñasco, the Pecos and the Lower Rio Grande. As will be discussed later, in the San Juan Basin (the number one priority), shortage sharing is

considered preferable to active river management. On the Gallinas River, active water resource management will commence by the next irrigation season. That area is a little less sophisticated than the San Juan but still must be consistent with active water resource management regulations.

Secretary D'Antonio stated that staff is developing short- and long-term objectives and has created the position for a water master which is currently being recruited. There will be a contractor that will be working with the OSE; it is a huge effort over and above the day-to-day activities. The contract team will support the efforts in each basin.

On the staff of the OSE they have established active water resource management basin teams. Each basin team has identified tasks that are best suited to be accomplished by staff and best suited for the contract team. All the basin teams, together, have developed a conceptual schedule on how to proceed for next year. They are preparing a regulation development and implementation schedule to be proposed to an internal Project Review Board being established in the OSE. The board will consist of the State Engineer, ISC Director and Division Directors. This board will review projects on a monthly basis so staff can focus on milestones and activities to ensure that the OSE is accomplishing what needs to be done. The OSE is anticipating a very difficult time this year in administering water and wants to be very proactive in meeting those challenges.

#### **AGENDA ITEM #6 – STAFF REPORT:**

Director López reported on the following items:

**Staff** - Director López advised the Commission that the ISC Administrator, Mr. Lee Pease would be retiring at the end of the year and the ISC General Counsel, Mr. John Stroud would be resigning at the end of the year and would go into private practice. He went on to thank those two individuals for their efforts and noted that they had made his transition to the Commission much easier.

**Chairman Dunlap made a motion, which passed unanimously, to express the appreciation of the Commissioners to Lee Pease and John Stroud for their service to the State of New Mexico.**

**State Water Plan** - Director López stated that most of the work since the last meeting has been focused on the State Water Plan. The following individuals, both ISC and OSE staff, came together to finish the final draft and devoted a significant amount of time: John Stroud, Greg Ridgley, Rolf Schmidt-Petersen, Tim Murrell, and Secretary D'Antonio. His thanks go out to them for all of the time they devoted to revise, edit and compile the latest version of the plan. Additionally, he noted John Romero had taken charge of developing the work plans included as appendices to the water plan. John is the Water Resource Allocation Program Director for the OSE. The Director also stated that several

staff members made significant contributions as well and include: Craig Roepke, D.L. Sanders, Anne Watkins, William Toribio, Paul Saavedra, Tom Morrison, and Mary Helen Follingstad.

**Canadian River** - The Director reported the Canadian River Compact Commission meeting was held in Amarillo, Texas on December 2<sup>nd</sup>. From New Mexico's perspective the meeting was uneventful. The Director stated he had been unable to attend, but was represented at the meeting by Craig Roepke. The Director stated that Mr. Roepke had reported that nothing of any significance to New Mexico occurred. They have completed a sediment survey that is required every ten years and that was accepted at the meeting.

**Navajo Nation Water Rights Settlement** - As noted by Secretary D'Antonio, the Director said that staff has also been busy with the Navajo Nation water rights settlement. The settlement was made public at several media events on December 5<sup>th</sup>. A public meeting was held to discuss the settlement and to answer questions in Farmington on December 15<sup>th</sup>. About 150 people attended that meeting and the Director stated he thought there was favorable acceptance.

**Salt Basin** - The Director reported that he and a few staff members joined Representative Joe Stell in a field visit of the salt basin. The ISC has filed an application to appropriate 90,000 acre feet of water rights for use in providing water supply to communities in New Mexico or to supplement compact deliveries to Texas on either the Rio Grande or Pecos River.

**Border Commission** - The Director noted that several months ago the Governor appointed him to the New Mexico-Chihuahua Commission and further assigned him to serve on a water subcommittee of that commission. Although it is not related specifically with the issues this Commission deals with, he thought it could be of interest to the ISC Commissioners. The first meeting was held in August in Santa Fe and the second meeting was held in Ciudad Juarez on December 16<sup>th</sup>. That meeting was with Mexican counterparts and general agreement was achieved there should be a sharing of information regarding our share of the water resources and a joint study to promote the efficient and wise use of the resource for our mutual benefit.

**Pecos** - The Director reported that on the prompting of Texas farmers in the Pecos River valley (Red Bluff Irrigation District), staff has commenced discussions with the Texas Pecos River Commissioner regarding the feasibility of forbearance by the State of Texas farmers as a mechanism for New Mexico to make compact compliance. The Texas Commissioner and the Engineer Advisor are generally opposed to this concept and recommended that New Mexico continue to work towards implementation of the Pecos River Settlement.

**AGENDA ITEM #7 – DELEGATION OF AUTHORITY TO THE DIRECTOR TO ENTER INTO AN AGREEMENT WITH INTERNATIONAL MINING CO. (IMC)**

**FOR TEMPORARY TRANSFER OF WATER INTO THE WATER RESOURCE CONSERVATION PROGRAM AND SALE OF RIGHTS OF FIRST REFUSAL:**

Chairman Dunlap asked what the pleasure of the Commission would be regarding Agenda Item #7.

**Commissioner Garcia moved, Commissioner White seconded, to approve Agenda Item #7. The motion passed unanimously.**

**AGENDA ITEM #8 – PRESENTATION ON THE NAVAJO NATION WATER RIGHTS SETTLEMENT:**

John Whipple reported that on December 5<sup>th</sup> the OSE released for public review and comment the draft Navajo Nation water rights settlement that had been developed by staff. One public meeting has been held in Farmington and there will be another one on January 5<sup>th</sup> in Shiprock at 6:00 P.M. Staff has already had several entities express an interest in coming in and meeting with the State Engineer staff to discuss concerns and issues they have. Staff would attempt to meet with those entities over time, probably the first half of January.

The public was somewhat concerned by the short time period for review and comment. Originally, a longer period for comment had been scheduled. However our congressional delegation requested to move it up to accommodate their timing to submit a bill to Congress. Mr. Whipple stated staff would take all comments seriously and have set an aggressive schedule to arrive at a settlement agreement by the middle to the end of February. They will then be seeking a resolution from the ISC in support of a settlement agreement. Staff will need to spend some time with the Commission as final negotiations of the settlement get closer. Once a bill is introduced there will still be plenty of opportunities for further public review, comment and negotiations as the bill goes through the legislative process in Congress and also through the adjudication process in the San Juan Basin. Part of the settlement calls for an entry of a partial final decree in the adjudication court. Mr. Whipple stated that it is hoped that the final settlement will be passed in 2006, or earlier, entry of a partial final decree by 2010 and then completion of various construction projects within the next ten to fifteen years.

**Questions from the Commissioners:**

Chairman Dunlap inquired if Mr. Phil Mutz had any comments regarding the proposed settlement.

Mr. Mutz pointed out there has been some discussion about how can water be diverted from the San Juan River and the supply and demands in Arizona and the Window Rock-Fort Defiance area, which is proposed for a Navajo-Gallup project. Both compacts provide for diversion from one state for use in another.

Under the Upper Basin compact there is a specific provision that water can be diverted to upstream states for use in downstream states provided that uses are accounted to the state in which it is made.

Chairman Dunlap commented we refer to it as a partial final decree in 2010. He wondered how that fits in with the rest of the adjudication that is ongoing. With the other adjudications we had the Ute settlement that still has to be done. He wanted to know when a final decree be completed rather than a partial one?

Mr. Whipple stated he was not aware of the schedule, but a partial final decree would be final and binding on the Navajo Nation. The word partial just means that it only applies to the Navajo Nation.

**AGENDA ITEM #9 – DELEGATION OF AUTHORITY TO ENTER INTO AN AMENDED JPA WITH NEW MEXICO STATE UNIVERSITY AND APPROVAL OF ENCUMBRANCE FOR \$90,016 FROM THE RIO GRANDE INCOME FUND:**

Director López stated that we currently have a JPA with New Mexico State University under which they evaluate evapotranspiration in various vegetation areas along the Rio Grande. We also had a similar agreement with the Bureau of Reclamation to help us better understand evaporation in Elephant Butte Reservoir. The Bureau has now told us that they can no longer complete that work and are no longer interested in doing that work. Staff is proposing to let the money that had been encumbered to the BOR (approximately \$90,000), revert back to the Rio Grande Income Fund. At that point, staff would then amend our agreement with NMSU to add to their scope of work the work on erecting some towers within Elephant Butte to study evaporation off of the reservoir, in addition to the work they are doing in the vegetative areas.

The work will be directed by Dr. Salim Bawazir of NMSU whom he believes works with Dr. Phil King.

Commissioner Harris commented that he felt this would be important information for the Commission to have.

**Commissioner Wilcox moved, Vice Chairman White seconded, to approve Agenda Item #9. The motion carried unanimously.**

**AGENDA ITEM #10 – LUNCH:**

The Commission broke for lunch.

**AGENDA ITEM #11 – DISCUSSION AND APPROVAL OF DRAFT STATE WATER PLAN:**

Chairman Dunlap welcomed members of the public who were in attendance for the presentation to the Commission of the Draft State Water Plan and for the Commission's acceptance of that plan. The Chairman said that the plan would be presented by Director López and Tim Murrell. The Chairman also welcomed members of the Blue Ribbon Task Force on Water that were present.

Director López stated that before making the presentation he would like to recognize those individuals that have worked hard on the plan. Director López proceeded to give a brief summary of the history of the effort, beginning with the legislation that was passed that mandated development of the plan. The Director thanked Rhea Graham and her planning staff, Mary Helen Follingstad, Liz Zeiler, and Tim Murrell, for their work in accomplishing the 29 public meetings around the state. That effort culminated in a Town Hall Meeting in September 2003. Over the past several weeks, Rhea Graham had been required to travel outside the State, and several ISC and OSE staff members took the lead in drafting the final draft.

The Director wanted to recognize in particular John Stroud, Greg Ridgley, Rolf Schmidt-Petersen, Tim Murrell, and State Engineer John D'Antonio. The Director also recognized John Romero of the OSE staff who directed the development of the OSE work plans. Other members of the ISC/OSE staff contributed significantly—Craig Roepke, D. L. Sanders, Anne Watkins, William Toribio, Paul Saavedra, Tom Morrison and Mary Helen Follingstad. Karin Stangl from the OSE staff was key in setting up the media interviews that advertised our efforts in developing the plan.

Tim Murrell and Director López made a power point presentation. Tim Murrell covered, in more detail, the background for the development of the draft State Water Plan and the organization of the draft. Director López presented the Policy Statements that correspond to each section of the Act **[see attachment 2]**. The Director also talked about the Water Budget of State Major River Basins **[see attachment 3]**.

Following the presentation, Director López stated that he had a few comments on the document as a whole. First, staff attempted to be consistent in the development of the policy statements, for example when referring to the state it was in terms of "the state *shall* do something". There were certain exceptions to that; where the staff is recommending that there be appropriations for certain areas of concern, the staff did not feel it would be appropriate to be directing the legislature on what course of action to take. In developing the implementation strategies, staff attempted to be specific in spelling out which State agency would be responsible, and in those terms we used phrases like "the OSE *will* do this...".

Director López stated that the Secretary would briefly discuss the work plans that had been developed.

Chairman Dunlap invited members of the public in attendance to sign up with the Commission Administrator if they wished to address the Commission on the Draft State Water Plan.

Secretary D'Antonio stated that the plan calls for active work plans and staff felt that it was important to start with litigation and adjudication program work plans for all of the proposed adjudications that are forthcoming. The Secretary stated that it is important to advise everyone concerned of the staff baseline schedules in terms of data collection, the status of the adjudications and the timelines that are being established for the various tasks that are required. Staff has developed Gant charts to track progress on the milestones for the adjudications.

Secretary D'Antonio stated that the work plans will evolve into a Strategic Plan for the Agency. The plan will be establishing a Project Review Board that will monitor progress on the projects within the work plans on a monthly basis. In this way, the staff will be accountable, and will use that process as a tool for future funding for the OSE and for active water resource management.

Director López stated that members of the public that will be commenting on the plan are requested to not focus on stylistic or minor changes. He also stated that when the Commission approves the plan, he would ask for latitude to make formatting and minor changes as appropriate.

Chairman Dunlap asked Director López if there are plans to update the plan in the coming year. He stated he felt that it would probably be a good idea to let the public know that will occur; it is not a document that is "set in concrete" but a plan that should be changed as time changes.

Director López noted the Act calls for a review of the plan at least every five years and agreed with Chairman Dunlap's comments. He and Secretary D'Antonio, at every opportunity, let members of the public know the plan will be a living document, something that will be updated and refined, and hopefully improved.

Chairman Dunlap believes the plan should be revisited within the next 12 months to ensure that the document reflects current information. The Chairman went on to assure members of the public that if some of the changes have not been incorporated to this point, then there will be additional opportunity to pursue that.

Vice Chairman White mentioned that over the past week he had submitted some recommended changes to the plan. He went on to discuss some specific areas of the plan that he felt were problematic:

- On page 2, in the second full paragraph, strike the words after "welfare" and substitute therefor, "This goal must depend upon adequate water resources."



- Also on page 2, the fourth full paragraph he suggested the sentence ending in "American sovereignty" is incomplete, and that the words "to New Mexico" be added.
- The penultimate paragraph on that page, he suggested all words after the word "to" on the second line be struck, and the following words substituted "manage New Mexico's resources under the constitution and laws of New Mexico".

Chairman Dunlap interjected that he thought it would be appropriate that the full Commission address the suggested changes as they are brought up to determine if anyone had a problem with what was being recommended. Vice Chairman White reiterated his first comment with respect to striking the words "and water use must be managed to support growth" in the second full paragraph on Page 2, and substituting therefor the sentence "This goal must depend upon adequate water resources".

Mr. Pat McCourt, representing the City of Alamogordo, stated he had a little problem with that suggestion. In the United States people are allowed to move and live wherever they want to. We happen to live in the Land of Enchantment, so we attract a lot of people to our State. It is likely our population growth will continue to grow, whether we like it or not. We are not able to control the population growth by our own current population. Mr. McCourt concluded that he felt the proposed change does not reflect his concerns.

Vice Chairman White stated that his thought in suggesting the change was to clarify the language and if the Commission can live with the way it was originally written then he would withdraw his recommendation.

Commissioner Espinosa indicated that she supported the language change suggested by Vice Chairman White.

Vice Chairman White stated that he had thought this process would move faster than it had and that he would be willing to yield if it was determined by the Commission. He reiterated his suggestion about the addition of "to New Mexico" for the sentence ending with "American sovereignty".

Mr. Bill Turner, a member of the public, suggested that the sentence end with the word "Hidalgo". Commissioner White stated that that would be acceptable to him.

Mr. Tony Lucero, representing San Antonio De Las Huertos Land Grant, stated that in the same paragraph being discussed there is language that states "The water rights of Indian Pueblos and Tribes....." It goes on to discuss acequias and community irrigation systems; the land grants are not being included in this, in the Treaty of Guadalupe Hidalgo the rights of the grants are protected, and under the State constitution the rights of the land grants are also protected. Mr. Lucero stated that in the area speaking to the Treaty of Guadalupe Hidalgo, he would

like to see the rights of the land grants included, not only in this particular paragraph, but throughout the plan. Mr. Lucero explained that the land grants were in existence long before the Treaty.

The Chairman stated that he would like Mr. Lucero to submit his written comments to the staff so that they may be properly reviewed.

Vice Chairman White continued by referring to Page 7, the first full paragraph beginning with "New Mexico's surface waters....." In the fifth line beginning with the words "State's rivers" he suggested that everything thereafter be struck until the sentence that begins with "Continued development of potable.....". The phrase "and is not available for use because the pumping of that ground water would reduce river flows and impair senior surface rights. Therefore, development of these ground water resources has required the identification, purchase and retirement of surface rights."; was recommended by Vice Chairman White to be stricken as he felt it was inappropriate.

Commissioner Wilcox stated he respectfully disagreed; that the words that are being recommended to remove are exactly the words that represent what is being done on the Pecos River.

Vice Chairman White stated he would go along with the pleasure of the Commission. He said that he felt that there are some areas of the State where the phrase does not apply. Vice Chairman White stated that if the plan is going to be submitted to the Governor, it should be as accurate as possible.

Mr. Howard Hutchinson, representing the Coalition of Arizona and New Mexico Counties, said that he had a general comment that relates to the issue being discussed. He went on to say that the State has already embarked on a "slippery slope" with the adoption of the prior appropriation doctrine. The language under discussion points directly to the prior appropriation doctrine; the administration of our rivers, those that have hydrologically connected groundwater, can be administered under the powers of the State Engineer. He said that the problem has been in the time lag of junior water rights, being groundwater, and senior rights are surface water; how can corrective actions be put in place to satisfy the interstate stream compacts? Mr. Hutchinson went on to say, that at the same time by proposing these types of actions, we are going to further erode that prior appropriation concept. He was afraid the State would reach a point on the "slippery slope" that we will never be able to get back up again. He concluded his comment by saying that he was somewhat in agreement with Vice Chairman White. By putting this type of language in the plan we continue to encourage the utilization of other methods, other than existing law, to manage our water resources.

Mr. Bill Turner agreed with Mr. Hutchinson's comments. The State Engineer's Office already recognizes the hydrologic continuity between groundwater and

surface water systems and administers them in that manner. He went on to say that he would agree with Vice Chairman White's changes as well.

Chairman Dunlap stated the Commission needed to change the way that the comments on the plan were being heard. The way things were going, it would take an inordinate amount of time to complete. They needed to hear everyone's comments, but he also stated that they should only hear the individuals that have signed up to address the Commission and give the latitude to staff to be able to consider recommended changes in due course.

Vice Chairman White stated that he had one last comment to make and that is on Page 38 of the plan, Section C.8. This is the section dealing with riparian and watershed restoration. Vice Chairman White stated that he felt this section gives priority to the Endangered Species Act. He said that to him, watershed restoration should be aimed at water quality, water quantity, and erosion control. He said the ESA is only a collateral beneficiary of good watershed restoration. Vice Chairman White recommended that the last "arrow" in the Policy Statements "The State will support and conduct watershed restoration projects with a high potential to increase the water supply or improve the quality of water.", be moved to the top of the statement, rather than at the bottom.

Vice Chairman White stated that he would withdraw his recommendation, which had been discussed by Mr. Hutchinson and Mr. Turner, due to the disagreement within the Commission.

Commissioner Espinosa stated she wanted to echo Mr. Lucero's comments on the land grants. She stated that in order to be accurate, the rights of the land grant holders be included with any reference to the Treaty of Guadalupe Hidalgo throughout the plan. She referred to Page 13, C.2, which seems to have missed a policy statement on priority rights and how that relates to the constitution. The Commission needs to state that we will adjudicate water rights and administer them to enforce the priority system of water rights. Commissioner Espinosa then referred the Commission to the following pages of the draft plan and recommended changes:

- Page 13 - a policy statement should be added to address the constitutional enforcement by priority.
- Page 13 - the third bullet under Policy Statements referring to water markets and enabling the efficient movement -- sometimes words mean different things. If we are talking about water markets she stated she felt that it is not just a matter of moving water efficiently, it is a matter of efficiently managing water. She said in whatever market system that will be going on. She requested we should add language to reflect efficient management since water markets would be used as a management tool.
- Page 14 - we need again to talk about priority rights and impairment of those rights. The second bullet on that page talks about how resources

should be allocated. She requested language be added about where senior rights exist and will not be harmed or impaired.

- Page 26 - in talking about conservation she wanted to know if we are referring to all of the State's agencies and elected offices like the Land Office. State and local governments are referred to, but not the specific agencies and elected offices. Commissioner Espinosa stated the offices that have critical water-related issues should be specifically identified in the plan. A bullet could be added that when the Office of the State Engineer looks at applications to appropriate or transfer water rights and conservation needs are being accomplished by the applicant, that should be taken into consideration of those applications.

Secretary D'Antonio stated that conservation measures are taken into consideration in the processing of applications. With respect to integration of other State agencies into the plan, State agencies involved in watershed management are mentioned in Section C10, on Page 46. The Secretary stated that under the discussion on management in terms of managing of water markets, he believed that the management is covered there.

Commissioner Espinosa stated that she understood what the Secretary was saying, but her focus was to get a specific reference to management into the Policy Statement that speaks to water markets. She also requested that the State Land Office be added to the agencies listed in Section C10, Page 46.

Commission Garcia requested that within the plan when referring to the Treaty of Guadalupe Hidalgo, that language be added something like "the State of New Mexico has obligations under Article 2, Section 5 of the constitution in regards to the protection of the Treaty of Guadalupe and all of its parts and rights". He went on to say that he was concerned that acequias, and Rio Arriba County, being one of the major holders of waters in the State, were not given significant recognition. This draft is better than previous drafts of the plan, but could still be expanded. Further, he will draft language that he would like to have included in the plan.

Commissioner Sanchez stated when he was appointed to the Commission by the Governor, he was instructed that he should be a voice for tribal government in the area of water issues. In regards to the State Water Plan, he is concerned there are inconsistencies in integration of tribal sovereign governments in some aspects of the policies. As an example, there are pueblos in the State that do have water quality standards approved by the EPA. Nowhere in the document is there recognition of the water quality standards in some of the applicable Sections. Commissioner Sanchez also mentioned that there needs to be a better understanding of what constitutes government-to-government consultation and at that point the integration of tribal concerns into the plan. The tribal working group which did consist of the majority of tribal representatives, to his knowledge, was never officially recognized by the tribal governments or their councils. Commissioner Sanchez said he was uncertain on how to acknowledge that tribal

governments do support the plan. He stated that the indication he has received from the pueblos and tribes are neutral on the State Water Plan. However, he stated, until the government-to-government consultation process is implemented they would withhold any endorsement on the plan.

Commissioner Sanchez also stated that some of the policy language refers to the protection of pueblo and tribal rights to use water; he stated that the pueblos and tribes would assert that the right to water is not a use right, but a property right. The concern there, in his discussion with the tribal representatives, was that the plan should not promote a legal position; but the tribes feel that such language does promote a legal position.

#### **Questions from the public:**

Jay Stein, representing Stein and Brockman, P.A., stated that his firm had commented previously in their representation of certain water right purveyors; those included the City of Alamogordo, the City of Albuquerque, El Prado Water and Sanitation District in Taos, and the cities of Española, Las Cruces and Gallup. He said that he had just two comments to make. Accompanying him is Peter Dwyer, City Attorney for Española who has comments, Tully Gonzales, representing the El Prado Water and Sanitation District, and Pat McCourt, City Manager for the City of Alamogordo. Mr. Stein distributed his comments to the Commissioners [see Attachment 4].

Mr. Stein's first comment was on the Common Priorities, Goals, and Objectives addressed on Page 5 of the plan. He had two suggestions. First, throughout the document it speaks of New Mexico's obligations to make compact deliveries. That is set forth in the second bullet from the bottom, "Maintaining and enforcing interstate stream compact compliance". He agreed the State has important compact obligations which it must maintain. The State also has rights under interstate compacts, which were secured to the State by our congressional delegation. The State also has the right to use water and he believes it should be identified as a co-equal responsibility, that the State maintain and secure our compact rights that interstate compacts obtain for us. He pointed to the San Juan-Chama Project as an example which provides New Mexico's allocation of Colorado River water and provides agricultural and municipal water along the Rio Grande.

His second comment also on Page 5 and other places refers to 80% of the population of the State of New Mexico that lives in municipalities or receives water from municipal supply organizations. He believed that component should be strengthened in the plan. For example, in the second bullet, which speaks in terms of drinking water, the words "municipal, domestic and" should be inserted before the words "drinking water" to emphasize that municipal supply encompasses more than just drinking water, but is a public welfare element. Mr. Stein also suggested the same language be inserted on Pages 6 and 7 under the

subheading of "Ensuring a Safe and Adequate Drinking Water Supply for all New Mexicans" by adding the following words after the words "Water Trust Board" on Page 7, "The State recognizes that local government provision of safe and adequate municipal, domestic and drinking water serves a fundamental public welfare interest for the majority of New Mexicans."

Peter Dwyer, City Attorney for Española, stated that he would encourage the Commission to adopt the plan and if it needs to be amended in the future we could all agree that that needs to happen. Mr. Dwyer said his particular concern was on Section C.7 on Page 34, that the Commission incorporate language into that area that recognizes the fundamental role of cities, counties, and local governments, and pueblos, as zoning, planning and subdivision authorities. He said that the plan generally asserts the cooperation with local governments, but he felt that it is important to affirm that cooperation. He stated that in his work as a city attorney, land use issues can be very difficult because neighbors will be concerned about the way their neighborhood develops. Mr. Dwyer said he thought that everyone would agree that the subdivision, zoning-type function is best left at the local government level. He said the plan should make clear that these kinds of decisions would remain at the local level and not be elevated to the State. Mr. Dwyer outlined his specific language changes as on Page 34, Section C.7 the following additional language be inserted as a fourth bullet after the third "Policy Statement", "The State shall continue to respect, preserve, and support existing local zoning, planning and subdivision authority." Mr. Dwyer said that the document that was distributed [Attachment 4], contained additional language changes that he would not go into.

Mr. Pat McCourt, City Manager of Alamogordo, stated that he would recommend the changes suggested by Mr. Stein. One thing taken for granted is very basic: the purpose of government is for the health, safety and welfare of its citizens. He said the plan sometimes focuses on particular problems, and fails to reflect the underlying purpose of government i.e., protecting the citizens. The plan acknowledges population increases will occur and it is likely those increases will be concentrated in municipalities.

Mr. Tully Gonzales, representing the El Prado Water and Sanitation District, stated he also wanted to support the language changes recommended by Mr. Stein. About 80% of the population in New Mexico relies on municipalities to provide their drinking water, agencies such as water and sanitation districts. In the El Prado area there are three water and sanitation districts, eight mutual domestics, and over 80% of their population in the Taos area is provided safe drinking water. The health of citizens is one of the highest priorities his district has. The State needs to support that priority in the water plan; the State should not want to make it harder for communities to provide safe drinking water.

Mr. Tony Lucero, representing the San Antonio De Las Huertos Land Grant, said that what has been talked about to this point is the 80% of people that rely on the

municipalities and that he wanted to talk about the other 20% that live in rural areas and use domestic wells. One of his concerns is that a lot of these people have been living on land grants and other rural areas for many generations and one of the considerations is the domestic well. He was concerned with the rights of people to use their land, not only land grant properties, but other rural properties, that it is going to be encroached upon. He said that what he would ask for, now and in the future, the Commission would be considerate of rural people in any legislation that is presented and that it does not encroach upon their rights.

Mr. Howard Hutchinson, representing the Coalition of Arizona and New Mexico Counties, stated that he was very concerned the State is departing from the prior appropriation doctrine and said that he thought it is a well-suited doctrine for the State's arid lands. He made a comment through the Blue Ribbon Water Task Force, "if it ain't broke, don't fix it." The prior appropriation doctrine's principles aren't broken. One of the things that the prior appropriation doctrine does is it echoes the natural process. When there is a shortage of water, some things simply do not get the water. The prior appropriation doctrine is built on a natural process concept which could not be improved. One of the things it does is to promote efficiencies, for example, plants in our arid lands that are more efficient with water are the ones that survive. Junior and senior water rights echo that type of a system and first in time, first in right is important to maintain. Mr. Hutchinson stated that in promoting those types of efficiencies the system calls upon us as humans with intellect to seek new solutions and efficiencies. The concept that crisis is the mother of invention applies, and we are certainly in a crisis with the continuing drought. If the State continues to try to apply bandages, it promotes a false sense of security amongst the public. He specifically referred to the plan as it is presented, at Section C.7 with respect to departure from prior appropriation, and what the State is doing with shifting these management activities over to the municipalities and the counties. OSE is transferring active management responsibility to those entities. The transfer is without funding, and the counties represented by his coalition are the rural counties in New Mexico. When you look at the recommendations for zoning enforcements, these types of things become very difficult for those counties because they do not have the resources and are burdened with regulations.

Secretary D'Antonio stated he needed to make a comment about prior appropriation. There is nothing that the Office of the State Engineer does that is not in total support of the prior appropriation system. The Secretary stated that the plan supports prior appropriation. He said it was very important to protect senior rights in the priority system.

Ms. Sharon Hausam, an economic development planner with the Pueblo of Sandia, stated Governor Stewart Paisano and Councilman Frank Chavez, a member of the Blue Ribbon Water Task Force were unable to attend. The pueblo would be submitting written comments on the plan. She reiterated a point

made by Commissioner Sanchez -- for the most part the statements in Section E of the plan which addresses pueblos and tribes are identical to the statements submitted by the tribal working group. There is one important exception, i.e. the heading of the second bullet on Page 71. The language submitted by the tribal working group had a heading for this bullet that was "Respect for pueblo and tribal rights" and the language that is written is "respect for pueblo and tribal rights to the use of water". The phrase "to the use of water" implies the pueblos and tribes have rights to use water but they do not own the water, i.e., they do not have a property right to this water. In the tribal working groups' interaction with the State staff in the process, staff explained these statements should not convey any legal position. Members of the working group worked very diligently to remove a lot of positions from the policy statements. However, the draft plan in putting back this language to the "use of water" makes it a legal statement. If the phrase, "respect for pueblo and tribal rights" is used, she believed that statement to be neutral and it does not imply a specific legal position. Ms. Hausam concluded by requesting, on behalf of the Pueblo of Sandia, that the five words "to the use of water" be deleted from the plan. If they are not removed the pueblo would be unable to support the policy statements and, in that regard, she asked the consensus statements in the plan be removed.

Ms. B. J. Brock, representing New Mexico Cattle Growers and New Mexico Wool Growers, stated she appreciated Secretary D'Antonio's pledge to the prior appropriation doctrine. On page 33, third paragraph, the first sentence says "Many participants of the agricultural community voiced the necessity for farmers to reduce the amount of water used in times of drought by changing the type of crop grown." That statement does not represent members of the rank-and-file agricultural community, certainly not from cattle growers or wool growers. She had heard comments in some of the meetings like this, but it was by people who were involved in offering water systems for alternative crops. Her organization would like to see that sentence stricken from the plan. She went on to refer to page 53 where it talks about water users and for alternative funding methods. She specifically referenced the inclusion of "surcharges on large water users" and that the issue of water user fees was discussed in the Town Hall. The participants voted to not endorse those methods. Her organization's position is to not burden or tax water rights holders and users. She submitted to staff some recommended language and would ensure the Director received additional written comments.

Mr. Bud Hagerman, a member of the Estancia Basin Planning Committee, stated he had previously been complaining about the earlier drafts, but now congratulates everybody on producing a plan that is completely different and a workable document. The Estancia Basin Planning Committee would like to work with staff in the preparation of any amended or revised plan in the future.

Eileen Grevey Hillson, a member of the Water Trust Board, stated she appreciated the work plan charts. She felt that would give the staff something to



hang their hat on, in presenting to the legislature water as a priority need among other competing State issues. That should help in getting the legislative action that will give the State Engineer the tools necessary to get the job done. Ms. Grevey Hillson referred to page 2, paragraph 7 where it speaks to prioritizing water improvement projects. At the end of the sentence it states "...facilitating economic development and serving existing populations." She thought it would be appropriate to add the words "and for future populations". Ms. Grevey Hillson referred to page 39 and the top of page 40 that talks about watershed restoration projects and would suggest including the Water Trust Board because when the Water Project Finance Act created a Water Trust Board, one of the five categorical areas that it is responsible for is financing projects and doing monitoring on how those watershed restoration projects are carried out.

Phillip Martinez, an acequia liaison for Rio Arriba County, stated it is still the position of his group that the plan has not gone far enough in addressing some of the acequias' concerns. Specifically, the acequias have been requesting a section be dedicated to the acequias in the water plan and urge the Commission to reconsider a section for acequias. Mr. Martinez wanted to echo Mr. Lucero's land grant apportionment statement, that land grants have not been mentioned at all in the water plan. He thought it would be prudent to incorporate some language that would give land grants some protections. Mr. Martinez stated that the reference in the plan on page 53, to a water user fee, surcharges on large water users, should be stricken from the plan. Acequias already pay a water user fee internally and another tax would be double taxation. The plan encourages the creation and expansion of community water systems and to this end, they believe the plan should recognize that mutual domestic water associations are an extension of the acequia system. It would seem logical that this plan would allow water transferring from domestic wells to mutual domestic water associations. Mr. Martinez distributed written comments [**see Attachment 5**].

The Secretary stated that the reference on page 53, under the surcharges on large water users, it is not being encouraged by OSE and only mentioned for research as an alternate funding method.

Mr. A. J. Olsen, representing Pecos Valley Artesian Conservancy District, had two recommendations. Throughout the document the verb "control" is utilized. His group recommends staff use the word "administer" or "administration" instead of "control" as it would suit the document better. The State Engineer is vested with authority to administer the waters of New Mexico along with the ISC. Secondly, they would request that the conservancy districts be included throughout the document along with recognition of the various entities identified in the document. This would include irrigation districts, municipalities, pueblos and tribes. There is only one place where the conservancy districts are identified and are clearly lacking mention in Section C.12.

Mr. Paul Paryski, representing the Sierra Club, the Alliance for the Rio Grande Heritage, and a member of the Blue Ribbon Water Task Force, commented on the sustainable use of the State's waters. Some of those ideas are sprinkled throughout the document. On page 4, second paragraph, the last sentence "Conversely, the State can invest in its future through active water resource management", he suggested the addition of the words "to ensure its sustainability."

**Commissioner Wilcox moved that the Commission adopt the State Water Plan with the understanding that changes will be made to the document, Commissioner Stafford seconded the motion.**

Director López thanked the public in general that has reviewed the plan and provided comments and constructive criticisms. He also thanked the Commissioners for their comments and support.

Secretary D'Antonio reiterated the thanks mentioned by the Director. He wanted to emphasize this plan will not be put on the shelf. It is something we will be using continuously and will be modifying and developing it as appropriate into our agency strategic plan.

**The motion carried by majority vote, with Commissioner Sanchez abstaining.**

Commissioner Sanchez explained his abstention vote by stating he wanted to ensure that government-to-government consultation in the protocol be followed. He made the abstention on the basis of the request made by the All Indian Pueblo Council that this State Water Plan be presented to them as early as possible after the first of the year. Commissioner Sanchez said he believed that would be part of the government-to-government consultation that needs to occur. He also requested the other tribes receive the presentation individually.

Chairman Dunlap said that he would be remiss if he did not congratulate the State Engineer, the Director, all of the staff, and all of the people. The magnitude of the job that was done was remarkable. He reinforced the Secretary's comment that the plan will be a living document.

**AGENDA ITEM #12 – SET FUTURE MEETING DATE, OTHER BUSINESS AND INFORMATIONAL ITEMS NOT REQUIRING ISC ACTION:**

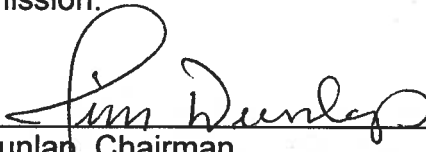
The Chairman suggested the next meeting of the Commission be on January 21, 2004 in Santa Fe.

**Commissioner Wilcox moved to have the next meeting on January 21, 2004, Commissioner Stafford seconded the motion. The motion carried unanimously.**

**AGENDA ITEM #13 - ADJOURN:** Commissioner Wilcox moved, Commissioner White seconded, to adjourn the meeting. The motion carried unanimously. The meeting was adjourned at 3:50 p.m.

Minutes were prepared by Stella Brady Cureton and edited by Director López.

Approved at the \_\_\_\_\_, 2004 meeting of the Interstate Stream Commission.

  
\_\_\_\_\_  
Jim Dunlap, Chairman \_\_\_\_\_ Date \_\_\_\_\_