



State-Tribal Water Institute
2009 State Water Plan Update Public Outreach
U.S. Army Corps of Engineers Conference Room
Albuquerque, NM
August 17, 2009

Summary of Discussion

Facilitator/Recorder: Gretel Follingstad

Welcome and Introductions

Myron Armijo, Tribal Liaison for the Interstate Stream Commission, welcomed the group of about 25 to this public forum sponsored jointly by the Office of the State Engineer and the Interstate Stream Commission (OSE/ISC). He explained that this is the 22nd meeting in the State Water Plan Update public outreach effort, created specifically for tribal input. Armijo reviewed the agenda and then requested that all tribal leaders/representatives and guests introduce themselves. The following pueblos, tribes and nations were represented: Pueblo of Zia, Pueblo of Jemez, Pueblo of Sandia, Pueblo of Santa Ana, Pueblo of Acoma, Pueblo of Zuni, Pueblo of Laguna, Pueblo of Isleta, Pueblo of San Felipe, Pueblo of Nambe, Navajo Nation.

Armijo also made note of OSE/ISC agency staff and contractors as well as other guests to the meeting:

John D'Antonio, New Mexico State Engineer

Estevan López, ISC Director

DL Sanders, OSE Chief Counsel

Karin Stangl, Planning and Communications Director

Richard Trujillo, OSE Community Liaison

Hilario Rubio, OSE Acequia Liaison

Maureen Haney, Communications Specialist

Gretel Follingstad, ISC State Water Planner

Angela Bordegaray, ISC State Water Planner

Amy Haas, ISC General Legal Counsel

Blane Sanchez, ISC Commissioner

Chris Shaw, ISC Legal Counsel

Bill Hume, Planning and Policy Director, Office of the Governor

Lt. Col. Kim Colloton, Army Corps of Engineers

Ron Kneebone, Army Corps of Engineers Tribal Liaison

Armijo gave the opening prayer for the meeting and thanked all participants for attending. He encouraged active participation from all tribal representatives.

Remarks from Officials

Remarks from Lieutenant Colonel Kim Colloton, Army Corps of Engineers (ACE)

Armijo introduced Lt. Col. Colloton of the Army Corps of Engineers (ACE) who gave a brief overview of ACE's work with New Mexico tribes, pueblos and nations. Colloton thanked the participants for attending. She then explained the Section 203 Tribal Partnership Program, which provides ACE with the funding means for partnerships with tribes for water resource projects (e.g. flood management, wastewater and cultural resource issue projects). The program is cost shared 50-50 between ACE and the Tribes, and the reconnaissance phase is federally funded. Jemez, San Felipe, Acoma, Santa Ana and Santa Clara, are just some of the tribes that have been involved to this point. The program is primarily for planning and is specifically designated to work with all tribes and pueblos in New Mexico. Colloton explained that next year ACE will still have funding and she encouraged all tribes to participate in the program. Her colleague, Ron Kneebone Tribal Liaison with ACE, gave further remarks encouraging the linking of water plans and promoted this opportunity to use federal funds for tribal projects. Armijo thanked the Army Corps of Engineers for their participation and remarks and opened the floor for questions and comments for Colloton and Kneebone.

John D'Antonio, New Mexico State Engineer

Armijo then asked for remarks from the State Engineer John D'Antonio. D'Antonio thanked the audience for taking the time to contribute to the State Water Plan update. He gave remarks regarding the State Water Update and the importance of tribal input, expressing his respect for tribal cultural values, specifically regarding water. He noted that one size does not fit all and that all tribes and nations have individual problems. D'Antonio remarked on Section E of the State Water Plan, which specifically addresses tribal water issues. He noted the 98 strategies in this section have had significant progress since 2003, though budgetary restraints have impeded the state from making vast progress in settlements. D'Antonio also mentioned the Section 7-27-10.1 of Article 27, bonding capacity authorization for severance tax bonds; water projects priority, which prioritizes water projects. He also pointed out a number of milestones regarding water issues:

- Senate Bill 196: State Tribal Collaboration Act. Requiring state tribal collaboration and communication. He noted the importance of this act for the State-Tribal Water Institute meetings.
- House Bill 19: Act Providing State Engineer Jurisdiction Over Some Non-potable Aquifers. This bill equates to 1.9 million acre-feet per year ground water supply. He said that there have been numerous discussions to determine how this groundwater will be used/appropriated. He explained that while this is a good new source of water, there will be restrictions against its use as well as protections for the shallow aquifers.
- House Bill 63: Construction and Operation of Dams. Giving the State Engineer jurisdiction over certain dams and the ability to order the repair of dilapidated dams.
- House Bill 37: Amendment to the Subdivision Act to Provide for Tribal Notification. Offering even more opportunity for collaboration in planning.

Armijo thanked D'Antonio for his comments and reminded the group of the importance of tribal input and cited the passing of House Bill 37 as an example of the affect that the State-Tribal Water Institute can have on water planning. He opened the floor to questions or comments for D'Antonio.

Question: Anthony Armijo from the Pueblo of Jemez asked about the status of Senate Bill 196.

Answer: D'Antonio explained that it was passed and has become law.

Estevan López, Interstate Stream Commission Director

Estevan López, the ISC Director, gave remarks regarding the accomplishments of the State Water Plan Update to date and the future implementation strategies. López also noted that tribal input, collaboration, and communication is not only important but is now law. He explained the statute calling for a State Water Plan was passed in 2003 and requires a review of the plan every five years and an update as needed. The internal review indicated that there was significant change requiring the update. Changes included: an increase in growth around the state creating a shift in how water will be used; increased awareness and concern for global climate variability and the necessity to plan for these changes. In addition there have been significant legal changes, such as the statutes D'Antonio had mentioned, but also court cases and non-tribal settlements (e.g. Pecos, Eagle Nest). Finally, there has been increased need for infrastructure repair and improvement statewide, and proposals for new inter-basin transfers (e.g. San Agustin Plains, Fort Sumner Pipeline, Salt Basin Resource Development). The appropriateness and affects of these potential transfers are currently being studied and reviewed at the OSE. All of these changes are the focus of the 2009 SWP update. López noted the public outreach efforts that have been made for the update and mentioned the summary of the public outreach efforts that is being worked on, as well as the regional compilation report that will be completed by the end of this fiscal year (June 2010). He mentioned that New Mexico regional plans are also in the process of being updated, a process is continuous, and integrating the regional plans is in discussion and the process of this integration will be continuously refined.

Armijo thanked López for his comments and opened the floor to questions or comments.

Question: A representative from Acoma Pueblo asked if tribal water plans would be integrated in the State Water Plan.

Answer: López explained that the OSE would not dictate any amount of integration, but that it would be the tribe decision to share and determine what should be integrated. Bill Hume noted that any part of the update process is subordinate to the tribal water plans.

Comment: The representative expressed that planning is nearly impossible without full adjudication of the basin in Acoma.

Answer: Armijo again expressed his understanding for this concern and the OSE is working as diligently as possible to get the entire state fully adjudicated. He also noted that it is entirely up to the tribe whether state tribal plans are integrated into the State Water Plan.

Comment: A representative from Isleta agreed with this concern and expressed that any collaboration of plans is nearly impossible without a good understanding of the regional water supply (specifically in the Middle Rio Grande Valley), and therefore adjudication is paramount. Several strategies have been initiated by tribes to show the need for the OSE to change policies like the transfer of water rights. He expressed appreciation for the effort to coordinate, but without full adjudication, they have no ability to present a functioning water plan. He noted that the information that would be put into the water plan is sensitive to the pueblos, and cannot be presented in an open forum.

Answer: D'Antonio noted that OSE limits depletions and does not allow for new appropriations, New Mexico is fully appropriated. Only 7,000 to 40,000 acre-feet of water, a relatively small amount of consumptive use, have been transferred and pueblos have never been shorted. OSE has managed river flows to ensure there are not additional depletions to the system. OSE employs a strong position that there has not been any downstream impairment due to transfer decisions. There is no anticipation that there will be shortages at the points of diversion, which would affect the pueblos. In 2004, Active Water Resource Management (AWRM) tried to put rules and regulations in place to protect senior water rights. At some point these tools will be in place to protect all points of diversions (three points total along the Rio Grande River).

DL Sanders clarified further that there is a memorandum of understanding (MOU) between the Middle Rio Grande Conservancy District and OSE that allows for data sharing between the entities. This helps to assure the effectiveness of the water administration work of the OSE.

Comment: Isleta noted that there is scientific documentation showing draw-down along the Rio Grande has increased over the last ten years.

Answer: D'Antonio expressed that over a period of time the goal is to decrease the rate of the draw down along the Rio Grande. It should be comforting to know that the way that water is managed now (e.g. allowing for no new appropriations, conjunctive ground-surface control, etc.) is more sustainable than many western states. Tools are in place to start managing depletions and the OSE is doing the best they can to manage the resource efficiently. He explained that the planning process is in place to aid in protection of pueblo water resources and economic development.

Comment: Glen Tenorio from the Pueblo of Santa Ana commented that state water planning does not address water quality very strongly. Pueblo standards for water quality are in place and the state should practice better enforcement of its water quality standards. Effluent from municipality's discharging permits affect pueblos cultural water uses and should be held at similar standards.

Answer: López noted that OSE recognizes the numerous issues around water and that quality is a high priority. He mentioned that there are a number of state agencies that have control/input on the subject of these issues and that there are collaborative efforts to meet these concerns. López explained the coordinated efforts of the Water Cabinet, which helps to ensure that any issues the OSE does not have control over are made part of the planning process.

Comment: The representative asked if there is analogous data to use in integrating the regional plans.

Answer: Follingstad noted that this would be addressed on a state level in the presentation and that the OSE has data available at the regional level as well. López noted that even though the regional plans were created on a template, the creators of the individual plans approached technical topics in different ways, and that the need to correlate the different data types is being addressed.

Bill Hume, Governor Richardson's Office

Bill Hume reflected on water policy and planning and the efforts that Governor Bill Richardson's office has made towards state water planning. He praised the progress of the ISC, and the multi-cultural inputs that have been incorporated in the past years. Hume noted that Richardson has only one year left in office and the more we can implement now, the better. He encouraged discourse between all entities. He noted that the Navajo Settlement is being implemented due to the Omnibus bill getting through Congress last spring. He also noted New Mexico's key connections in Washington to implement projects on a federal level and that this is the right time to ask questions and start conversations about water planning.

Armijo thanked Hume and opened the floor to questions and comments.

Question: Ernest Mirabal from Nambe Pueblo asked about the transfer of water in the Middle Rio Grande and said that mining water out of the basin does not make sense.

Hume suggested that OSE hydrologists measure these diversions and explain the quantity of the diversion and its affects.

Answer: D'Antonio noted that water rights transfers only allow for the water from one parcel of land (that could be downstream) can no longer be used on that parcel, it is simply moved upstream. A point of clarification is that the quantity of water, allowable for transfer is only the consumptive use portion. So though the whole water right is transferred, only the consumptive use is available for the "transfer to" parcel. OSE does not allow the transfers of the full amount that was diverted, only the consumptive

use. There are few people taking water directly out of the river, it only comes from points of diversion, which are critical for the pueblos to get their water. Transfers require impairment analysis and any water use that impairs an existing wells will not be approved.

Question: A representative from Isleta Pueblo asked about the dedications that have been made, and the long-term impacts of transfers. He suggested that analysis should be done on a larger level.

Answer: D'Antonio noted that this has been done, and that the amount is not measurable. He concurred with Hume that there should be a workshop to explain how the affects of transfers are measured. He said in the future there might be a need for some sort of bulk transfer to offset the effects of well pumping. As of now though, the regional studies of gap analysis show that the transfer of water has little affect, water is simply being moved from one use to another, no additional water is being used, for instance from agricultural use to municipal. D'Antonio agreed that the long-term affects of pumping and transfers should be studied to a greater extent.

Most of the participants expressed interest in a workshop to outline the water transfer process, effects on the both areas and dedications and a gap analysis. Armijo agreed to move forward in creating such a workshop.

Comment: A representative from the Pueblo of Acoma noted that the flow of water has visibly decreased in her area. She said sooner or later groundwater pumping will have measurable effects on the surface water of the Rio San Jose.

Answer: Armijo took note to the concern and expressed that he has also noticed this lack of flow and hopes that the efforts that are being made will protect this water resource.

Presentation

Armijo introduced Gretel Follingstad, State and Regional Water Planner with the Interstate Stream Commission. Follingstad presented an overview of the New Mexico's state and regional water planning programs including data on population growth, climate variability and water supply and demands.

Questions and Comments on the Presentation

Follingstad opened the floor for questions and comments from the audience on the presentation and other related water issues.

Question: A representative from the Pueblo of Laguna asked how tribes were involved in the decision to focus on the four areas in the update (population, conservation, climate variability and water projects and programs).

Answer: Follingstad noted that the process was mostly internal and coordinated with other state agencies. Armijo as tribal liaison represented the tribes through the process

Comment: A representative from the Pueblo of Sandia noted that the questions are framed towards the state and the regions, not towards the pueblos individually or collectively. Tribes and Pueblos should answer the questions individually as their own entity, outside of regional boundary or state government restraints.

Answer: López responded saying, the tribes are able execute policy, projects and programs in their jurisdictional boundaries that where the state or region may not have any input. However, the tribal perspective is sought in the light of coordinating statewide or regional efforts that will affect all constituencies.

Comment: A representative from the Pueblo of Sandia stressed that water quality and quantity should be held in high priority.

Comment: A representative from the Pueblo of Zia noted that their aquifer alongside the southern boundary of Rio Rancho, and is concerned how Zia's shallow aquifer will be affected by deep brackish appropriations for the growth of Rio Rancho. He noted that communication is important between pueblos and surrounding communities, especially in terms of development. He feels that the state should stop granting domestic well permits without pueblo consultation.

Comment: A Pueblo of Acoma representative was concerned about the contamination in her region from the uranium-mining boom. She expressed Acoma's high priority for maintaining the health of their watershed and said that the affects of mining need to be more closely researched.

Answer: Armijo noted that there are proponents for mining and opponents of it and there is continuous discussion about its affects on watersheds and water quality.

Comment: Another representative from the Pueblo of Acoma noted that there is generally not enough water and that the top priority should be for domestic use. He said dewatering due to mines could have an affect on domestic use and economic development. He also noted the potential concerns about quality and contamination.

Answer: D'Antonio noted that domestic use is already given priority over any other use.

Question: A representative from the Pueblo of Zuni asked about produced water and its correlation with dewatering from mining.

Answer: D'Antonio explained that produced water is now often considered a beneficial use (example: State of Colorado calls water for mining a beneficial use). In New Mexico, a permit is needed from the Office of the State Engineer for the water used or produced in the mining process. An offset is required if there is an affect or impairment on an existing or future water use. However, OSE jurisdiction includes some exemptions from the law, including geothermal mining. There is a process and a set of well construction regulations that require separation from the lower to the upper aquifers. In Rio Rancho, the wells had to be dug to a certain level and pressure tested to ensure the protection of the upper aquifers.

Comment: A representative from the Pueblo of Sandia expressed the importance of enforcement of the existing rules and regulations in mining and water production.

Answer: D'Antonio suggested that the New Mexico Department of Energy, Minerals, and Natural Resources (EMNRD) Oil Conservation Division (OCD) regulates oil wells and mining regulations and they should have a way to offset any potential damages.

Responses to the Four Focus Questions

The group considered the four focus questions for public input on the State Water Plan Update.

1. What should your region and the state as a whole do to assure water for a growing population?

- One representative noted the sprawl issues in the Middle Rio Grande Valley and the need for water production, which will eventually affect the pueblos.
- Water quality should be a higher priority for the state as a whole. It is a tribal priority.
- Regions that border tribes should communicate with pueblos about plans for growth because aquifer drawdown due to new development affects tribal water resources.

- Stop continuous drilling of new domestic wells. There is a need for more restrictions on domestic well permits.
- Another participant noted that the state needs to take control of water use of non-tribal entities.
D'Antonio noted that the OSE has implemented water metering and measuring around the state, including in the Nambe, Pojoque area. Water Masters have been another key step in the progress of the controlling water use around the state. Hume noted that the attempt to move non-tribal communities to groundwater use was an effort to protect the tribal communities.
- A representative from Zuni noted the funding in the Aamodt settlement has decreased greatly in the past few years. It has taken forty-five years to get to this point. He suggested that fast tracking adjudications would potentially help to avoid such problems.
- D'Antonio noted that there are six adjudications in state court and six in federal court. The Rio Grande adjudications need to be carefully planned. Additional resources to expedite the adjudications would be helpful. Hume noted that if any tribe has a grant to do something, that they should be sure to make use of the money before the end of this fiscal year.

2. *What water conservation strategies would help meet increased constraints (population growth, climate variability) on water in your region and the state as a whole?*

- One representative suggested prohibiting grass lawns, especially in municipal areas.
- Another representative suggested more use of recycled waste water (many golf courses use wastewater). A representative from Sandia noted that many development plants have incorporated water re-use from parking lot run-off.
- A Pueblo of Zia representative explained that the pueblo does not allow lawns/car washing. Also, that there is an internal monitoring system, and that no-use is implemented at a certain metering point. He suggested rotational agreement as a shortage-sharing method.
D'Antonio noted that the OSE makes efforts to assist such programs.
- A representative from the Pueblo of Isleta commented that golf courses cannot be controlled by state regulation. There is only one federally recognized right to the pueblos in the Middle Rio Grande, which is prior and paramount. He believes that the only way for pueblos to protect their water rights from being lost (potentially to city golf courses) it is to use them, which inhibits conservation.
- A hydrologist from the Pueblo of Sandia asked for further clarification of the term 'riparian restoration' in *The Review and Proposed Update New Mexico State Water Plan 2008* (this is listed in the *What's Missing* section).
D'Antonio explained that the goal is to have the federal government interact with the state to make every effort to protect the basin in regards to depletions. The hydrologist further noted that there is a risk in not *maintaining* habitat restoration (e.g. if salt cedar is removed, it must be maintained and the area repaired to a properly functioning habitat).

- Another representative from the Pueblo of Sandia also expressed concern about the so-called ‘use it or lose it’ rule brought up earlier. He suggested more discourse between entities. He cited the comment: “Pueblos need to put more water to use to ensure their future beneficial use.”

Hume noted that there is no law that dictates how future pueblo water rights will be determined.

- A representative from the Pueblo of Jemez suggested that a priority be placed on greater water efficiencies in water systems such as diversions and deliveries in canals and laterals.
- A representative from the Pueblo of Acoma questioned why pueblos should have a different limit of water use than non-pueblos. She suggested considering a single per capita use for all communities.

Hume noted that the state has power to determine water rights usage for non-pueblo communities, but the federal government has no say over pueblo residents. Again, complete adjudication would make this clearer.

DL Sanders, OSE Chief Legal Counsel, noted that states penalize other states as well. Western states planning can be very different. Nevada has spent millions of dollars getting rid of their lawns to accommodate growth

- Blaine Sanchez, ISC Commissioner commented that water development strategies should be incorporated on top of conservation, and that water planning should be looked at positively. For example, if farming is important to a pueblo, the development of agricultural land should be a priority. Rather than waiting for a negotiated settlement (which could take 50 years), focus on the issues that can be taken care of now, focus on development.
- A representative suggested that when pueblos plan they should look at a 40 to 100 year plan, especially when considering new developments. High efficiency water devices should be implemented in all new developments.
- Riparian restoration to eradicate non-native and invasive species that consume high quantities of water. Create incentives for healthy riparian corridors.
- Rotational water use agreement using an allocation schedule was suggested. Something similar to shortage sharing mechanism should be more widely used.
- Enforcement of watering ordinances in metropolitan areas like Albuquerque.
- Repair aging and leaky infrastructure.
- The state should determine one per capita amount for water use for all people across all boundaries.

3. *Have you observed climate variability (e.g. drought, flooding, severe storms) in your region? What should be done to prepare for these extreme circumstances in your region and the state as a whole?*

- One representative asked what happens to the floodwater from the north, and if it goes on to Texas. López explained that waters at Nambe come in at the Otowi Gage, which increases the obligation to Texas, based on a percentage share. However, water that flows to the Rio Grande south of the Otowi Gage can be consumed entirely in New Mexico.

- A representative from the Pueblo of Zuni suggested that regions should develop regional specific drought plans.
D'Antonio explained the work the Drought Task Force does in New Mexico. Work includes droughts categories on levels from D0 to D4, if a community is in the D2 status for a certain amount of time (6-7 months), that community is eligible for low interest funding for agriculture. The group is primarily for monitoring, and works with the Department of Agriculture, Tourism Department, the New Mexico Department of Game and Fish and other entities to determine the effects that a drought may have on a community and what needs to be done/planned for. He also noted that the OSE's AWRM is in place to plan for emergencies like drought planning. Sanders mentioned other tools like permits granted to use sources such as surface, saline, and injecting water effluent to protect groundwater for drought emergencies. D'Antonio noted that the drought monitoring can be accessed through our website (<http://www.ose.state.nm.us/>).
- Hume noted that over his lifetime he has seen a large fluctuation in weather patterns, New Mexico is known for huge differentiations
- A representative from the Pueblo of Zuni suggested more metering and monitoring to better manage water as it becomes more scarce and unpredictable.
- A participant asked how to capture some of the water from monsoon rains and how to keep the water in the basins. He suggested the use of dams or jetties, or just to repair current infrastructure.
- One representative noted that residents are often told to create pastures, which use more water, rather than develop historic sustainable crops to conserve water. He expressed further frustration about having his hands tied until adjudications are complete.
- One participant suggested educating farmers to use conservation techniques, and maintain their cultural heritage.
- Armijo noted that planning is a positive and important effort. Tribes should map out how water will be used for the tribe.

4. *What water projects are needed in your region? How should these projects be prioritized for funding?*

- One representative mentioned the Zuni River Basin Adjudication Settlement Project.
- Armijo noted the great need for aging infrastructure repair funding.
- Hume noted the Omnibus Bill and suggested that tribes should communicate with the Bureau of Indian Affairs.
- A representative from the Pueblo of Acoma suggested an upstream-downstream project between the City of Grants and the surrounding pueblos for watershed rehabilitation/protection.
- A participant asked who will be checking the numbers and figures in creating/updating the regional plans.
- Gretel explained that the ISC is in the process of determining more specifics in the technical components of determining the supply demand gap.
- López agreed with the need for comprehensive data for future projections and planning.

- A representative from the Pueblo of Laguna asked how the consultation process will proceed in the plan update. Armijo explained that the summary will be distributed to the tribes for review and that the consultation will continue, per the statute requirements.
- López noted that the State Water Plan has been a topic of the State-Tribal Water Institute for a long time, and that the level of discourse has continued to grow.

Follingstad noted that there is further opportunity for comments and suggestions on the OSE website (<http://www.ose.state.nm.us/>).

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