

TWENTY-EIGHTH NEW MEXICO FIRST TOWN HALL

NEW MEXICO'S WATER: PERCEPTIONS, REALITY, AND IMPERATIVES

Socorro, New Mexico

May 16-19, 2002

The twenty-eighth New Mexico First Town Hall convened in Socorro, New Mexico, on May 16-19, 2002, to agree on principles and priorities and to recommend actions for the protection and management of the state's water resources. Establishing a framework for policy decisions that involve tough, value-laden trade-offs is an urgent imperative, as is identifying specific institutional, technological and behavioral changes that will optimize the availability and quality of this vital resource. At the same time, questions and misperceptions abound about water supply and demand and the effects of consumption patterns on availability and quality. The complexity of the issues increases the need to galvanize public support for necessary changes.

The challenges are so compelling and persistent that a New Mexico First Town Hall is devoted to water issues for the third time, an unprecedented number for any topic. The new recommendations take into account the actions taken, and those not taken—and why—since a Town Hall last addressed what may be the most important subject facing New Mexico today.

PERCEPTIONS, REALITIES AND IMPERATIVES

The Town Hall concluded that public perceptions about water issues are based on varying degrees of understanding of water science and law. Many do not recognize that our water supply and demand are highly variable by region and climate. The status of the resource is determined by a complex interaction among physical, political, legal, economic, cultural, and technological systems, along with historical factors, as well as public attitudes. Consequently, perceptions often do not reflect reality. Because supplies are perceived to be adequate for current use practices and because both supply and demand vary over time and by region, many people accept present consumptive patterns. Some are confident that solutions like conservation and shifting water from one sector to another will easily solve the problem of demand that outstrips supply. Some also believe that there is plenty of water to go around and that officials are simply alarmist when they declare a water "crisis"; and, if there is a crisis, government will be able to fix the

problem fairly easily. Even when they accept that the situation is bad and worsening, many think that others should make the necessary sacrifices.

Fortunately, public concern is growing, particularly as coverage of drought conditions, forest fires and water quality issues are raised. Despite regional differences, many are beginning to understand that the magnitude and urgency of water issues requires statewide solutions. New Mexicans want and need more accurate information about the status of this precious resource in our state, especially when policy makers themselves are divided about the proper course of action. The media can play a productive role in painting a more accurate picture of the status of our state's water supply and demand. In addition, there are other sources of information that should play a productive role in public education, including schools, and business and civic associations.

Realities of Supply

In fact, New Mexico's water supply is finite and highly variable. Furthermore, in many areas it is not sustainable given present use levels, much less future needs. In any given year, supplies are unpredictable; over time, they are diminishing. Most people recognize that surface water depends on erratic climatic conditions, and drought is all too common in New Mexico. However, few understand the interdependence of ground and surface water and the reality that pumping the former can deplete the stream flow and adversely affect downstream users as well as endangered species. Many groundwater reservoirs are recharged on a human time scale, notably aquifers located along valleys of major streams and those connected with large mountain watersheds. However, other reservoirs, such as the Ogallala and many Southwest Alluvial-Basin aquifers, are recharged only on a geologic time scale.

Also frequently unacknowledged is that most of the state's surface water is already spoken for, although 85-90% of water rights claims have not been adjudicated under New Mexico's doctrine of prior appropriation. In some areas, legal rights to appropriate water exceed the amount of "wet" water available. This is only acceptable if an effective system of administration is in place to limit uses to those senior water rights that can be served from the currently available supply. However, New Mexico has implemented such administration in only a few areas of the state. New Mexico does not have a fully implemented system for quantifying the amount of water due particular claimants. Even knowing the status of existing water rights is difficult given the magnitude of Indian and other claims that are or will be making their painfully slow way through the courts. The uncertainty about who owns what rights—how much and for what uses—makes the prospect of planning for New Mexico's growing water usage particularly daunting. In addition, planning is needed to respond to external constraints on New Mexico's water, including federal regulation regarding quality, endangered species, interstate stream compacts and international treaties with Mexico.

Some of our water is lost needlessly. Excessive evaporation, poor watershed health, over-delivery, lack of conservation, inefficient infrastructure, degradation of quality and non-native vegetation rob New Mexico of its water. Also, New Mexico can anticipate

drier periods based on the past climactic record. More aridity means a greater loss of water due to evaporation and a reduction in renewable supply.

There is potential for expanding supplies through watershed restoration and development of new sources. There is also potential to make more efficient use of existing supplies through active management such as water banking and conservation, technological applications and infrastructure development. An important part of implementing these and other measures is an effort to build understanding among all New Mexicans of the benefits of careful water management, of water supplies and the importance of good stewardship over valuable and largely irreplaceable water resources.

Realities of Demand

The Town Hall recognizes that the concept of “demand” is imprecise. It may be defined as that water necessary to meet our wants, needs, valid existing water rights, or legal rights to appropriate water irrespective of the available water supply. “Demand” may be overstated as some rights to appropriate have not been exercised by either non-exercise or have been lost by non-use. Therefore, in New Mexico the definition of “demand” affects quantification and measurement. A constant in the definition of “demand” is population but water use and consumption is variable by lifestyles based on individual understandings of water supply and uses. “Demand” can also be influenced by realities of supply, by price and by public policy. While public attitudes are key, New Mexico allocates water by priority for beneficial use, without a hierarchy of preferred uses and whether economically, environmentally, and culturally sustainable.

CRITICAL ISSUES: CHALLENGES AND OPPORTUNITIES

The Town Hall identifies critical issues in five areas of concern that demand urgent attention by policy makers and all stakeholders in New Mexico’s water. These issues pose significant challenges. They also offer valuable opportunities to move New Mexico into a new era of active water management. Seizing those opportunities, which range from policy shifts to new infrastructure, will require creative, sustained collaboration among the various players with interests in New Mexico’s water resources. All will require an investment of money, staff and other resources, and the civic will to stay the course in the interest of the broadest community good.

In meeting these challenges and embracing a new approach to managing New Mexico’s water, the Town Hall declares that *balance* is a fundamental guiding principle — balance between sustainable supply and demand, growth and environmental protection, agricultural and municipal/industrial uses, rural and urban communities.

Who Has the Rights To Use New Mexico’s Water?

The Imperative for Adjudication

Knowing who has the rights to use what water is essential for planning; yet only a small percentage of claims to water rights have been adjudicated. The current adjudication

process is slow, cumbersome, and expensive. Recent efforts to accelerate adjudication have begun but need to be sustained and enhanced.

Increased funding for the Office of the State Engineer would provide opportunities to make the adjudication process more efficient. At present OSE staff is inadequate for the considerable work that is required to accelerate the adjudication of current and pending cases and to build a comprehensive database to improve enforcement and facilitate management. Eliminating the procedural and informational inefficiencies of the current system, and providing additional resources to the OSE to process applications, could allow for a more effective water market while protecting public welfare.

The adjudication process is divisive by definition. Encouraging parties to enter into negotiated settlements would be a preferred option under the adjudicatory process to polarizing, lengthy, and costly litigation.

How Do Additional Factors Relevant to New Mexico Affect Our Water Resources?

Among other obligations, we must comply with Endangered Species Act standards on riparian habitat maintenance, honor Native American rights, honor the legal standard of prior appropriation of rights, conform to treaties with Mexico, and meet rigid delivery schedules to fulfill our interstate river compacts. At the same time, we must be vigilant to avoid appropriation of the State's water supply by other states. We must also aggressively resist attempts by the federal government to assert jurisdiction over the management and allocation of New Mexico's internal waters.

These factors are often the source of litigation. This entails considerable expense and the pressure to stay ahead of potential claimants, including the federal government, whose future actions are unpredictable. Instead, New Mexico should take the lead in fostering alternative ways of handling such disputes. This is a model worth replicating throughout our water resource management system; the challenge is to use such collaboration to the advantage of all parties. In addition, New Mexico should explore the pros and cons of renegotiating interstate compacts and treaties to better meet delivery obligations. We must also study and find ways to store excess water above external delivery obligations in wet years.

How Will We Plan for the Future?

Managing Water Resources in Our Arid State

Planning for New Mexico's future water needs is complicated by water supply variability from region to region, year to year, and season to season. This reality is being addressed by current regional planning efforts, which also work to engage stakeholders at the grassroots and all other levels of the community. The challenge is to integrate regional initiatives for implementation of a statewide plan. Presently, however, there is no central plan to facilitate this crucial step in the process, nor is there adequate funding for regional planning and potential continued regional partnerships in planning and implementing water projects.

Information is key to planning, but New Mexico needs additional resources to complete a state water rights database for administration or to gather necessary historical data about the state's water resources. Finding funds to support these projects is a significant challenge, as is creating a plan that will balance the benefits of economic growth with the imperative to preserve traditional cultures and New Mexicans' high quality of life while remaining within projected supply.

The opportunities afforded by comprehensive planning for New Mexico's water are many, beginning with greater public participation in building consensus as regional plans are developed and compiled at the state level. A specific benefit may be a new relationship of trust with irrigation and conservancy districts, Native Americans, acequias and other users. The involvement of diverse stakeholders will increase the likelihood of attracting funds from a variety of sources. With data generated in the planning process, innovations in conservation and technology can be explored, and ground and surface water can be managed conjunctively. Regional plans that acknowledge unique features of supply and demand in their geographical areas will give officials better tools for making decisions about infrastructure. In addition, the State will have both the data and the credibility to demonstrate beneficial use and thus withstand demands for water from other states.

How Can We Involve the Public in Addressing Critical Water Issues?

Droughts heighten public awareness of critical water issues, underscoring the need for more information about the complex interplay of factors and interests comprising our water system. What is the best way to develop and disseminate factual, balanced, broad-based knowledge? How can we foster a sense of personal responsibility among water users for conscientious stewardship of this precious resource? Diverse groups of people must be engaged in the process. Decision makers must be given the tools to take action on complex water issues. Scientists who will stay and work in the state must be trained and educated. Both urban and rural users need information about conservation and related matters. Agricultural users must be given resources and incentives to implement conservation and watershed rehabilitation programs. And, grassroots support must be rallied to advocate for the resources needed to actively manage water supply and demand.

Better-informed citizens are more likely to participate in planning processes and help garner the support of others for decisions they help to make. Universities, the New Mexico Department of Education, the National Labs and others might jointly convene public forums to debate priorities for regional and statewide water administration. An informed and engaged public can stimulate more funding for planning and for research and development. Furthermore, when people understand more clearly what is at stake if we fail to manage our water responsibly, they may scrutinize their use practices more closely and be willing to make changes in the interest of conservation.

THE VISION

The Town Hall envisions a New Mexico where water is valued as the lifeblood of the state's rich cultural diversity and the basis for its economic engine. Preserved and protected water nurtures New Mexico's magnificent environment while also supplying the economic growth needed to provide jobs and maintain quality of life within the state.

New Mexicans share an ethic of stewardship for water -- a precious resource they are committed to preserve for future generations. In recognition of that ethic, New Mexicans envision an active water management system that ensures dependable water delivery through uniform guidelines for water administration. Communities, institutions and individuals in New Mexico will use water wisely and efficiently and pursue conservation wherever possible.

New Mexicans also desire that state and local authorities allocate water effectively, equitably, and collaboratively, and that strong leadership is exercised by managing the resource based on the thoughtful use of current science and technology, informed anticipation of long-term needs, and effective handling of shortages. New Mexico must also encourage a robust water market, ongoing collaborative planning processes, and thriving communities that include farmers, ranchers, miners, industrial workers, Native American communities and urban citizens. Research and development continue to provide a cutting-edge environment for science and technology. New Mexicans embrace balance as a principle for making decisions about water. They desire watersheds to be managed for sustainable growth while mindful of the importance of honoring the frailty and the beauty of the land, plants, and creatures that co-exist in the state's naturally varied environments.

New Mexicans are justly proud of the central role water has played and continues to play in the physical, social, cultural, and economic history of their state and of its continuing importance as New Mexico gracefully evolves, never sacrificing its uniqueness. They would not choose to live anywhere else.

WHAT NOW?

Realizing this vision of a New Mexico that is actively managing its water resource and enjoying all the benefits of responsible stewardship requires action . . . now. The Town Hall recognizes that there are many opportunities for immediate steps toward the future we imagine. The recommendations that follow are far from exhaustive but, in the Town Hall's judgment -- after considerable research and productive debate -- represent the highest priorities for action to protect the state's water for the citizens of New Mexico for beneficial uses within our state. These recommendations take into account the critical water issues facing New Mexico, the present capability to address those issues, the values we all hope to preserve, and the fundamental guiding principle of balance.

RECOMMENDATIONS

1. ADJUDICATE WATER RIGHTS FOR THE ENTIRE STATE OF NEW MEXICO WITH THE GOAL OF COMPLETION WITHIN THE NEXT 15-25 YEARS

Enforcement of water rights and usage, protection against losing New Mexico's water to neighboring states and Mexico, and an effective system for transferring water rights and for water banking that consider the impacts on existing rights, all depend on an accurate accounting of who has the right to use what quantities of New Mexico's water and how they may use it. To date, only a small portion of water rights claims have been adjudicated, due to the painfully slow and inefficient process and the lack of resources to comprehensively address its many components, including hydrological surveys, preparation and negotiation of offers of judgment, and litigation and contested offers. The Town Hall urges the following actions to ensure that all claims now underway and those yet to begin are adjudicated in timely fashion, as a first step in improving enforcement and assembling comprehensive and accurate information to assist in water resource planning.

- The governor, legislature and judiciary should establish and fund procedures and proceedings to determine the volume and priority dates of New Mexico water rights, including Native American rights, by 2018 with first priority given to interstate streams.
- The Legislature should authorize and fund the creation of a system of New Mexico water courts to allow development of specialized judicial consideration of complex water rights cases and to improve the efficiency and timeliness of adjudications and administrative appeals from the State Engineer. The water court system should include rights administration and law and a mediation process to resolve disputes in the context of adjudication or the permitting and transfer process.
- Funding will be needed for additional staff, contractors, technical experts, new data acquisition and interpretation, and model development.

2. AGGRESSIVELY DEVELOP, PRESERVE AND PROTECT NEW MEXICO'S WATER SOURCES

The growing demand for water in New Mexico makes it imperative to supplement our finite supply with new sources and protect existing resources.

- Adequate resources should also be provided for New Mexico's legal defense against external threats.
- The Legislature should authorize and fund the Office of the State Engineer to provide a comprehensive water model to determine quantities and projected longevity of our water resources.
- An entity, preferably existing, should be designated with the authority and responsibility for guiding, coordinating, and implementing from among the

various water-related activities including but not limited to water resources planning, research activities and water projects in New Mexico.

➤ A dedicated revenue stream should be established for this purpose.

- Conservation should be aggressively promoted at the local and regional levels among all beneficial users to implement such strategies as:
 - Tax incentives
 - Water banking
 - Public education and involvement
 - Structuring water rates to provide incentives for conservation and disincentives for waste
 - Conservation technologies
- Watersheds and riparian areas should be rehabilitated, protected, and maintained through comprehensive management including non-native phreatophyte control.
- Current and developing technologies should be deployed for the purification of water of impaired quality—such as brackish groundwater, produced water, arsenic-laden water, and gray water—as soon as practical to increase New Mexico’s supply of consumable water.
- Methods for reuse of treated effluent for beneficial use should be researched and implemented.
- Building codes should be revised to encourage water saving and harvesting designs, such as water-collecting gutters, storm sewers, and landscaping.
- Infrastructure and systems for conservation and more efficient distribution and waste collection and disposal should be upgraded.
- Existing consortiums of research institutions should be developed and enhanced to work on developing technology in the areas of:
 - Evaporation
 - Sensor technology
 - Real-time data collection systems
 - Desalinization
 - Reinjection
 - Watershed rehabilitation
 - Weather modification
- Water law should be aggressively enforced by priority and amount and those who illegally use water as well as those who vandalize and/or damage water resource measurement/monitoring infrastructure should be prosecuted.
- Loss of entitlements should be prevented by placing full allocations to beneficial use of:
 - San Juan-Chama Project water
 - Gila River water

3. PROVIDE ADEQUATE FUNDING, APPROPRIATE ORGANIZATIONAL STRUCTURE, AND NECESSARY STATUTORY LANGUAGE TO ENSURE IMPLEMENTATION OF ALL ASPECTS OF NEW MEXICO’S ACTIVE WATER RESOURCE MANAGEMENT.

The Town Hall sees an urgent need to adequately fund and to coordinate the activities of all state agencies and other entities involved in water management, including the following issues, which are part of New Mexico's water agencies' statutory authorities:

- water rights adjudication: administration and mediation
- water resources: data collection, supply determination
- water planning: regional, drought, conservation
- compliance issues (e.g., interstate river compacts, ESA, NEPA)
- interaction and cross-agency coordination
- providing accountability to the Legislature
- providing technical assistance to Indian and non-Indian communities to secure sufficient water rights and water supplies for economic and cultural sustainability.

These elements of water management currently are assigned to specific agencies. For those that are not, the Town Hall recommends:

- Add to the Interstate Stream Commission's statutory mandate to include explicit authority to acquire and manage water for environmental and quality of life uses.
- Support a State Engineer's forum for the purpose of developing legislation in 2003 to address current loopholes in the permitting process, including
 - unregulated domestic well development
 - lack of required metering for surface and ground water diversions
 - clarifying the purpose of impounding water for unregulated use
- Provide adequate funding of existing agencies to allow them to fulfill their statutory authorities.
- Provide resources to the OSE to exercise its authority to limit ground water diversions and require metering of domestic well use.
- Adequately endow the Water Trust Board and appropriate funds for water projects, especially to leverage federal funds.
- Avoid costly and lengthy litigation by having the 2003 Legislature consider a joint memorial to the US Congress asking that judicial agencies emphasize settlement of Native American water claims.
- Ask the state legislature for a joint memorial to encourage our Congressional delegation to secure additional federal funding for our National Labs and universities for water-related research and development.

4. CREATE A STATE WATER PLAN, INTEGRATING REGIONAL PLANS, NO LATER THAN DECEMBER 31, 2004.

The Town Hall believes a comprehensive state water plan, reflecting significant public involvement, is a central tool for actively managing water resources. The plan must acknowledge variability of water systems across the state and incorporate regional plans. To this end, the Town Hall agrees that

- The Legislature should mandate the creation of the State Water Plan, with its content elements defined, utilizing completed regional water plans to the extent practical. The Town Hall makes these further recommendations:

- Include in the mandate adequate funding for staff, consultants, quantification, data base development, and other expenses necessary to complete the plan in a timely manner.
- Include in the plan mechanisms for implementation of recommendations, ongoing management of the resource and regular revisions and updates.
- Incorporate concepts of sustainability to insure that short-term uses do not compromise our ability to meet long term needs.
- Strengthen the existing regional water-planning template and create a state water-planning template to ensure stakeholder driven public participation. Such a process would encourage the preservation of acequia and agricultural water rights, culture and heritage, and area of origin protection, with the aim of achieving a balance of economic development with supply and conservation.
- Use the State Water Plan as a strategic umbrella, wrapping regional plans within it, to generate a list of projects within the State framework, followed by prioritization of funding for projects. The State Legislature should be encouraged in the near future to fund only projects in the regional plans that have been wrapped into the State plan.
- Provide in the plan model ordinances for small communities and templates for drought plans.
- Make public education an integral part of the State Water Plan.
 - Engage and fund agencies at all levels of government and also engage non-government organizations to conduct ongoing public awareness campaigns. The Town Hall implementation team should:
 - ✓ Work with the media to ensure comprehensive, timely water-issue coverage.
 - ✓ Recommend funding for a public information officer and a legislative liaison at the Office of the State Engineer and the Interstate Stream Commission, which currently have insufficient staff serving these functions.
 - ✓ Work with other entities in the state that can assist with public awareness, including such groups as the New Mexico Water Dialogue.

5. Create A Recurring Revenue Source For Funding The Office Of The State Engineer, Interstate Stream Commission and Water Trust Fund.

The Town Hall believes that a long-term revenue source, in addition to general funding, is needed for managing the state's water.

In Conclusion:

The Town Hall Believes that it is critical to New Mexico's future to implement these recommendations in a timely fashion. We charge the New Mexico First Implementation Team to go forward, work with New Mexico's leaders and local communities and make these recommendations a reality.

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DISCUSSION OUTLINE

Friday Morning: 8:00 a.m. – 12:00 p.m.

1.
 - a) What is your perception of water supply in New Mexico?
 - b) What is your perception of water demand in New Mexico?
 - c) How do you believe our perceptions of water supply and demand differ from the public's perception?
2. What are the critical issues concerning water in New Mexico? Which of these issues are the highest priorities in our group?
3. Who are the key players for each of the critical issues?

Friday Afternoon: 1:30 p.m. – 5:00 p.m.

4. What are the challenges and opportunities for each of the critical issues?
5. Given New Mexico's reality regarding water, what is a desirable image of water use in New Mexico?

Saturday Morning: 8:00 a.m. – 12:00 p.m.

6. How can we use existing resources (institutions, organizations, assets, etc.) to achieve the desired future?
7. What is missing in the status quo that prevents us from realizing the desired future?

Saturday Afternoon: 1:30 p.m. – 5:00 p.m.

8.
 - a) What are some potential solutions to the critical issues identified earlier and/or the desired future?
 - b) What are the criteria for a good solution?
 - c) What 3 specific recommendations for change would our group like to make?

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