

divining rod

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New Mexico Water Resources Research Institute

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Experts to speak on water law

It won't be a showdown, but when lawyers, engineers and economists present their views at the 1984 New Mexico Water Conference, you can bet on plenty of action.

The *El Paso* suit, Indian water claims, the Pecos and Vermejo disputes, and the Rio Grande Compact are a few of the issues that will be discussed. The conference, entitled "Water Law in the West," will be held April 26-27 at New Mexico State University in Las Cruces.

"We haven't had a good overview of New Mexico's water laws since the 1959 Water Conference. It's time we take another look," said Tom Bahr, WRRRI director. The tentative program includes speakers from Arizona, New Mexico, Texas, and Washington, D. C. The institute also has tentative speaking commitments from nationally known speakers.

Gerald W. Thomas, New Mexico State University president, will open the April 26 morning session. Thomas, who retires from NMSU in August 1984, has been a staunch advocate of water resources research during his university tenure.

Robert Clark, legal expert and former New Mexican, will discuss the development of western water law from an Arizona perspective. Giving the historical view of New Mexico water law will be State Engineer Steve Reynolds.

The morning program will close with presentations by three finalists in the WRRRI student competition for papers on a water resources topic.

Garrey Carruthers, assistant secretary, Land and Minerals Management in the Interior Department, will be the luncheon speaker. Carruthers also is a former WRRRI acting director.

The afternoon program kicks off with presentations by three more student finalists. Then, Tom Bahr will present an overview of the events and the issues in the *El Paso* lawsuit. Jesse Gilmer, Rio Grande Compact commissioner for Texas, will follow with a talk explaining the workings and the problems of the compact.

Charles DuMars, chairman of the Water Law Study Committee, will report on the committee's findings and recommendations. He also will discuss the Pecos River and Vermejo River controversies.

The Friday, April 27 session will focus on Indian water rights issues, including the Winters Doctrine and the *Aamodt* lawsuit.

Harold W. Furman II, deputy assistant secretary for the newly created Water and Science Division in the Interior Department, will discuss the complexities of federal water rights claims.

Bruce S. Garber, a Santa Fe attorney who was formerly with the New Mexico Environmental Im-

provement Division, will close the conference with a talk on legal protections of water quality.

The advance registration fee of \$25 includes the proceedings, lunch and a no-host reception. The student fee is \$10. A complete program and registration form will be mailed in early March. For more information, call the institute at (505) 646-4337.

There's more. After the conference closes, the New Mexico chapter of the American Planning Association will meet at NMSU for afternoon workshops on water resources topics.

Paul Brasher, of the Albuquerque Water Resources Department, will talk about water availability and urban growth. Chuck Caruso, of the Soil Conservation Service, will discuss water conservation and agriculture.

The fee for these workshops is \$10. Make registration checks payable to NMAPA; M. L. Casborne, treasurer, 504 Fruit Ave. NE, Albuquerque, NM 87102.

April 26-27

Regionalism clear in water survey

Looking out for number one seems to be New Mexico's motto when it comes to its water resources. In a 1983 survey of public preferences for managing New Mexico's water, protecting the state's water from others ranked as the top priority.

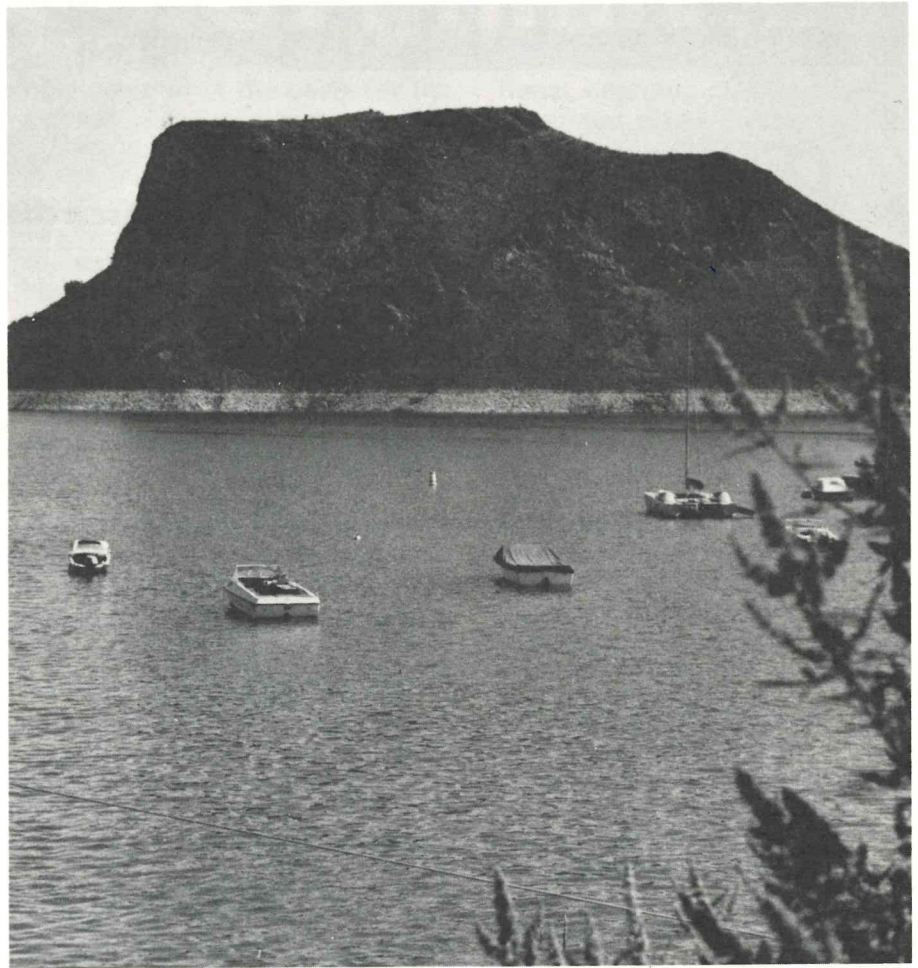
"Many researchers have studied the water management preferences of such institutions as the courts, private water markets and the State Engineer Office. But researchers haven't asked what the public prefers," said Tim DeYoung, assistant professor of public administration at the University of New Mexico. To fill

Old timers outside the urban areas support the existing system, while those who want change are relative newcomers to New Mexico living in Santa Fe or Bernalillo County.

this gap, DeYoung surveyed both water "experts" and the general public. Water experts include elected public officials; public administrators from federal, state and local agencies; academic researchers; and representatives of private interest groups concerned with water. Opinions from the general public were obtained from a statewide random telephone survey.

The responses showed two differing views of water management. The difference, however, was not between the experts and the public, but between regions. "Old timers outside the urban areas support the existing system," he said, "while those who want change are relative newcomers to New Mexico who live in Santa Fe or Bernalillo County."

DeYoung said the findings show that, by and large, the preferences of the water experts were representative of public preferences. "The experts are the movers and shakers who make the day-to-day decisions affecting



water policy. It's encouraging to find that their opinions also reflect the public's views," he said.

A top concern of both groups involved the *El Paso* dispute. All respondents were asked if they favored or opposed a compromise or out-of-court settlement of the case. Of the experts, 44 percent favored a negotiated settlement compared with 60 percent for the public. However, about 70 percent of the water experts in the southcentral region opposed a negotiated settlement.

The regionalism also is evident in responses to an economic boycott of *El Paso*. Only about one-fourth of both the experts and the public favored such a boycott. However, about one-third of the experts in the southcentral region favored a boycott.

In similar questions regarding Indian water rights, an even larger

proportion of the experts, 67 percent, favored negotiated settlement. While most respondents, especially conservatives, agreed that Indian water claims are unrealistic, liberal and academic respondents generally were more sympathetic to Indian claims.

"Underlying these disputes," he said, "may be the fact that New Mexico water law allows for private ownership of water rights." He found that almost 60 percent of the water experts agreed that market forces, including increased water prices, rather than governmental regulations, are the best way to encourage efficient water use.

A slight majority, 54 percent, opposed changing water rights from being granted in perpetuity to being granted for a fixed term. In what DeYoung calls a "stakeholder" view, current water rights owners were especially opposed to the change. However, water ex-

perts who are liberal, more highly educated, or live in the central region of the state supported the change.

In the case of water rights ownership, respondents took two views. DeYoung generally found strong support for private water

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rights as long as there is no conflict. However, he said that during conflict, people adopt a double standard. "In the *El Paso* case, people say, 'The state ought to go in there and stop those guys,' but they don't want the state to interfere with their private rights," he said.

"We are seeing, as is evident from the *El Paso* and Indian water rights disputes, that conflicts are becoming more frequent and more difficult to resolve," he said. The state, in dealing with the uncertainty of conflict, is having to move from an attitude of water development to one of water management.

DeYoung believes, and the survey bears him out, that the key to good water management is knowing what the public wants. "The state water law is based on beneficial use that is in the public interest. We should know what that interest is," he said.

Water journal

The Water Resources Research Journal, published by the American Geophysical Union, is seeking papers from political scientists, lawyers and other social scientists writing on water-related topics. For information, contact editor Ronald G. Cummings, Department of Economics, 1915 Roma NE, University of New Mexico, Albuquerque, NM 87131.



Student employee Cory Cooper and Mari Bateman, WRRRI secretary, mail the institute's latest publication, *Water Directory: Where to get water information in New Mexico*. Free directories are being mailed to New Mexico subscribers to the *Divining Rod*. Others may obtain a copy of the *Water Directory, Misc. Report No. 14*, upon request.

WRRRI offers three new publications

It may not answer everything you always wanted to know about water, but the institute's new *Water Directory* will tell you where to find those answers. The directory's first two sections contain information on the agencies and people who deal with water in New Mexico. A third section contains 22 water resources topics and lists those with expertise in those areas.

Other reports just published are:

#159 *Water-Use Production Functions of Selected Agro-nomic Crops in Northwestern New Mexico* - Kallsen, C. E. - March 1983

#171 *Irrigated Agricultural Decision Strategies for Variable Weather Conditions* - Lansford, R. R. - June 1983

Program to cover wide agenda

A conference on "Water Quality and Water Pollution in New Mexico" will be held April 11-12 at New Mexico Tech in Socorro. The New Mexico Institute of Mining and Technology and the New Mexico Environmental Improvement Division are the conference sponsors.

Dennis McQuillan, conference chairman, said the conference is designed to bring together earth scientists, physicians and attorneys for a comprehensive view of water quality and water pollution concerns in New Mexico.

Some 15 speakers will cover topics ranging from heavy metals and pesticides in water and

sediments in the Middle Rio Grande Valley, to oil field brine contamination, to characterizing solute retention in New Mexico soils. Also discussed will be the legal mechanisms for controlling ground water pollution.

Three medical experts will be featured during a luncheon panel discussion of water pollution and cancer risks.

A conference flyer detailing program information will be sent out in March. For registration information contact William Stone, New Mexico Bureau of Mines and Mineral Resources, Socorro, NM 87801, phone (505) 835-5331.

New Mexico finally wins a round

New Mexico has won its first round in the legal battle over exporting its ground water resources. On Dec. 16, 1983, the 10th Circuit Court of Appeals voided U.S. District Court Judge Howard Bratton's decision and sent the case back to him for "fresh consideration" in light of a new state law governing water export.

Bratton, in a Jan. 17, 1983, ruling, contending that the purpose of New Mexico's ground water export ban was to "promote New Mexico's economic advantage," ruled the ban unconstitutional.

The 1983 New Mexico Legisla-

ture responded quickly by enacting a new law allowing export under certain conditions. It is this new law that is the basis for the Appeals Court decision.

The court said that deciding whether or not the law and the circumstances have changed enough to alter El Paso's claims or the enforceability of the court's decision "are difficult and complex questions which we will not now undertake to answer in an appellate setting."

Although New Mexico views the ruling with optimism, neither side in the case has let down its guard.

Lawyers for El Paso have filed a new motion asking Bratton to declare the new law unconstitutional, charging that it is a poorly disguised effort to maintain the essence of a total export ban.

In response, New Mexico filed a brief Jan. 20, 1984, denying the charges and arguing for a delay in considering El Paso's latest challenge. New Mexico said El Paso should not contest the new law until the city has gone through hearings before the state engineer to appropriate ground water for transport outside the state. In addition, New Mexico contends that the case first must be reviewed by state courts.

New Mexico also is exploring other avenues for protecting its water. The 1984 Legislature recently passed three actions in response to the recommendations of the Water Law Study Committee (see box).

One bill funds a \$200,000 study to determine the desirability of the state appropriating to itself, all unappropriated ground water. A second bill, which imposes a two-year "stay" on water wells, is designed to give the state time to institute other plans for managing the state's water. The Legislature also passed a memorial asking Congress to give states the right to limit or restrict water exports.

Committee reports on water plan

The Water Law Study Committee was formed at the request of the 1983 New Mexico Legislature to evaluate the impact of recent court decisions of the state's water resources. In its final report to Gov. Toney Anaya Jan. 1, 1984, the committee recommended that New Mexico:

1. ask Congress to pass an act allowing New Mexico to keep its water resources within its borders;
2. meet with Texas to clarify the Rio Grande Compact on the division of the surface water below Elephant Butte Dam, which also would clarify the status of related ground water;
3. provide funds to study the possibility of a state takeover of unappropriated ground water; and
4. declare a five-year moratorium on permits for unappropriated ground water, exempting vested water rights and emergency appropriations. The Rio Grande from Elephant Butte Dam to the state line should be considered in the moratorium because:
 - a) the area is now under great hydrologic uncertainty;
 - b) the applications for ground water exceed the supply; and
 - c) confusion exists about the effect of the existing compact on the Rio Grande's surface water at and below Elephant Butte Dam.

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