AFTERNOON SESSION

WATER CONFERENCE PANEL DISCUSSION

May 3, 1979

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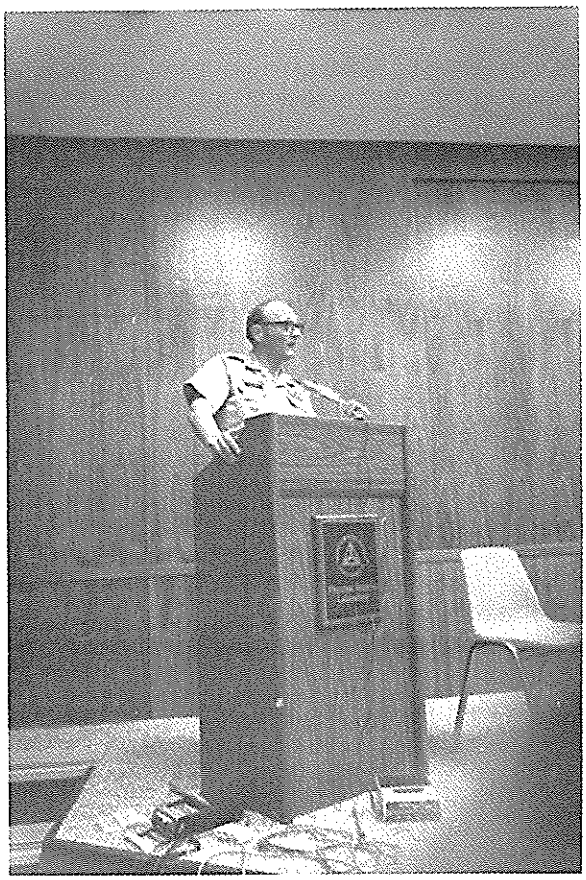

Session Moderator
Colonel Bernard J. Roth
District Engineer
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PANEL DISCUSSION - AFTERNOON SESSION

Colonel Roth: It's time for us to get started - and I'd like to remind you about the four splendid-looking fellows sitting in front of you: you've got Lee Lamb from the Fish and Wildlife Service, and Tom Lera from EPA; and our two resident non-federalists, Paul Turner, biologist-zoologist from the Department of Fishery and Wildlife Sciences here at New Mexico State, and our resident farmer, Bill Stephens, Director of the New Mexico Department of Agriculture. They will try to answer any questions you have or respond to any comments you would like to make on instream flows or clean water or just about any subject you want. We still have some of the panel left from this morning, and this is the last formal session, so if you still have something on your mind this is your chance to get it taken care of. Questions or comments? Al?

Al Utton (University of New Mexico Law School): On the legal aspects, in spite of all the jokes, we have to respond a little bit, it seems to me, on the question of instream flows in New Mexico and the legal situation. In New Mexico, to appropriate water, you have to divert it with the intention to appropriate it for a beneficial use. So, from an instream flows point of view, in New Mexico, the use of water for fishing and recreational purposes is recognized judicially as a beneficial use. So we are OK on that prong of the two prong requirement. The difficulty that we hang up on is the question of diversion, a man-made diversion. Frequently water flowing down a stream has not been diverted from that stream and therefore cannot qualify as an appropriation under New Mexico law. For example, in the Miranda case, you had a farmer that was grazing his cattle on grass that was grown from a diversion which was a natural diversion. The court held that that did not constitute an appropriation under New Mexico law because the diversion was not a man-made diversion. So, under New Mexico law it is a beneficial use for recreation or fishing, but that's only one of two requirements that you have to satisfy to appropriate, and the other one is a man-made diversion. That law could be changed, probably judicially, and certainly legislatively.

Colonel Roth: Comments, Paul?

Paul Turner: There are many cases where you might want to divert water to develop a fishery. For example, a large channel capable of handling thousands of cubic feet per second might be very difficult to manage from the standpoint of fishing, whereas if you could divert a smaller amount of water down a narrower side channel with pool-type habitats, you might, in fact, fulfill both prongs of the requirement.

Al Utton: I think that's certainly true under Red River Valley Company case, which involved the Conchas Dam. That is where the court said that fishing and recreational uses are a beneficial use. There you did have a diversion; it was a reservoir situation. In that kind of impoundment situation you wouldn't have a problem in New Mexico. It's in the flowing stream type of fishing where you would not have a diversion and legally you would have a problem. There are lots of other lawyers, so we might get another opinion. Tillotson?

Voice from back of auditorium: You are doing OK, Al.

Colonel Roth: There's no question if there's another lawyer here we'll get another opinion! There's another lawyer, the State Engineer.

Steve Reynolds: I might just add the Engineer's view. Of course, I agree with everything Professor Utton has said, but I think that the important thing is that while there is no such thing as an instream water right in New Mexico, it doesn't mean at all that there are not benefits from water in the stream. It's simply not a beneficial use and could not be made such a beneficial use in my opinion without amending our constitution. The very important thing about the doctrine of prior appropriation is, in New Mexico's case, use of water in New Mexico is governed by international treaty, interstate compacts, Federal District Court decrees, Supreme Court decrees, and water rights granted under state law. All of those elements have the effect of providing some very important instream values to New Mexico's water. The other very important thing is that the geography and land ownership pattern in New Mexico does a great deal to protect instream values. Our mountain streams don't offer many good storage sites. They are still there; there's still good fishing. I think it was Paul that touched on a very important way that you can manage instream values under the appropriation doctrine, if you have money. If you can rearrange the stream so that the

senior rights are at the end of the stream, you can maintain some values. So there's nothing about the doctrine of prior appropriation which is antithetical to instream values. I think most New Mexicans agree that we still have some pretty important instream values in New Mexico and I expect we are going to keep them.

Lee Lamb: I don't want to disagree with anything that either Professor Utton or the State Engineer said, but I'd like to say two things. Generally, political scientists have three things, but I couldn't think of three things here.

There are two different kinds of arguments. If you talk to the classic environmentalist, he will say to you that what we need to do here in New Mexico or anywhere else is change the law. "If we could just change the law we could protect stream flows." Well, my view is that if you could change the law you wouldn't have to change the law. If you could change the law, then people would already be doing things the way you wanted them done anyway. I think changing the law is a very difficult problem. Now if you could change the law, you would want to write in specifically that instream flows were beneficial use and that you could have an appropriation or at least that the state could have an appropriation (I somehow don't think it's appropriate for an individual to appropriate for instream flows) for instream values. If you do that, you are allowing the body which represents the public to protect the instream value, and you would therefore assure yourself that if you didn't like what they were doing there you could throw the rascals out.

That's on the one side. On the other side is sort of the situation which Mr. Reynolds has indicated. It seems to me that what we are looking at in New Mexico are the ways in which we could manage the resource to provide for multiple benefits. We are very interested in that approach to the protection of stream flows, particularly where there isn't the kind of clear statutory language which would allow for the other kind of protection.

There are a number of states which have analogous situations to the one that you are talking about with regard to instream flows. One of them is California to some extent. They also have a provision which says that you can't have a water right unless you have something akin to possession of the water. Diversion is one way to get possession, impoundment is another way, and they have also allowed some kind of a measuring device as one way to get possession of the water.

There have been two cases in California which we have been following rather closely. One is the Fullerton case and the other is the California Trout case. In one case a private party tried to appropriate water for instream purposes without any kind of diversion or control and in the other case the State Department of Fish and Game tried to do so. One was upheld in a Superior Court, which is a low court, and one was not, and they were two different courts. They were then brought up on appeal, and both appeals courts said that what was lacking was the "akin to possession" test. That is, nobody had possession of the water. The court didn't even say that Cal Trout had no standing to bring the action. They said that if Cal Trout had some kind of control over that water, the club could have a water right to protect fish and wildlife.

The courts felt that the State of California has the ability on specific rivers to refuse to appropriate below a certain level. They can do this stream-by-stream, although the state doesn't do it in a very comprehensive way. So the court was saying that California already has a way to protect stream flows.

In our booklet entitled Instream Flow Strategies for New Mexico, we argue that New Mexico has similar potential for protecting instream uses to California. I think I know what Steve would say about the strategy which our booklet identifies. We argue that there is some potential under the State Engineer's authority to consider the public welfare, and in doing so, if he finds that an application would be detrimental to the public welfare, he could reject a water right permit.* It's an interesting thing for discussion and that's essentially what the situation in California is. The State Engineer may have discretion within his consideration of the public welfare, and within that consideration may set a flow level that he won't appropriate below. That doesn't mean that you can't transfer or sell your water rights, except that you would have a base flow level there.

Apparently in New Mexico, the State Engineer, and you can speak to this, I wish you would, too, has some ability to do this, but it is severely constrained, it seems to me, in the statutes. This is one thing that people bring up to me all the time.

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*The booklet Instream Flow Strategies for New Mexico has been amended regarding this point. After careful analysis and review, corrections and further qualifications are made.

Steve Reynolds: You said you knew what I would say; let's see if I can surprise you. As I recall, it says the Engineer may consider the public interest. That's a little different from the public welfare. I have sought advice on that, and some of you may remember that Judge Irwin S. Moise, who was then a Supreme Court Justice, presented a very scholarly paper on just that point some years ago, and while he was my legal advisor he convinced me that that was, as you have said, very limited. I clearly could not, under that clause of the statute, allow, or if you like, prohibit diversion to preserve instream rights, fundamentally because of the constitution itself. It says the water belongs to the public, and is subject to appropriation in accordance with law. Beneficial use is the basis, the measure, and the limit. The court has already, as Professor Utton has said, said that appropriation for beneficial use, requires a man-made diversion. So I think that there is virtually no latitude for the Engineer under that public interest clause of our statutes. Judge Moise said, as I recall, that the Engineer could act to deny an application or grant one instead of the other where there is reason to believe that there is some kind of fraud involved. That was the one case in New Mexico where they thought that someone was trying to sell acreage for farming with simply not enough water in the river at any time to support the promotion that they were making, and the Engineer was proper in denying the application for that reason, but that was about the limit of this public interest provision.

Lee Lamb: I think that this leads to another, and a very important consideration with regard to the new Malomes decision in California and the prerogatives of the State Engineer in that regard. It seems to me that the State Engineer could condition the kind of permits which the Bureau of Reclamation or the Corps of Engineers may come to have to obtain in terms of the projects which they are building. That kind of condition, while under the constraints you have just talked about, might not talk to instream flows themselves, but might speak to the beneficial uses which the Corps or the Bureau plans to put the water to. If the State Engineer determined that inefficient use was going to result from the project, he could deny the permit. Now this doesn't mean that we would get instream flows from the state, but it does mean that the Fish and Wildlife Service would jump on that like a chicken on a junebug. We would argue with the Bureau or the Corps that what they would have to do, since they already have authorization for the project, is to get the Congress in a reauthorization to speak directly to the instream flow values.

Of course, if the Congress authorizes a project which is to provide those values and says so in specific terms then the project would have to operate according to the Congressional mandate. We'd then go back and talk to those agencies and say that what they need to do would be to manage the project in such a way that it would provide the instream uses and perhaps deliver water downstream to beneficial uses.

Colonel Roth: I think we had a comment back there. Go ahead, sir.

Mark Burrough: (Department of Fishery and Wildlife Sciences, NMSU) I was wondering if a transfer from one reservoir to another reservoir, say from an irrigation reservoir to a flood control reservoir, would that qualify as that type of diversion? Like the Rio Chama between El Vado and Abiquiu Dams, supplying instream flow in that stretch of river, would that be a beneficial use? You wouldn't actually have a loss of water, you would just be transferring water.

Colonel Roth: Steve, do you want to address that?

Steve Reynolds: I think the example with Abiquiu, with a flood control reservoir, is probably misleading. But let's assume an irrigation company had an upstream reservoir and one downstream, they can release from the upstream reservoir, prohibit any diversion of their water - let's assume the stream is dry except when they are making releases - they can prevent diversions of their water released from the upstream reservoir down to their downstream reservoir. I think maybe I can help with the point if I sort of volunteer a little bit. There is, in New Mexico, precedent for federal legislation authorizing a federal project, requiring a certain minimum release from that reservoir. That gives you some instream benefit. Now,that's no instream right. That is, the State Engineer cannot prohibit somebody from diverting and using that water bypassed through the reservoir, but in those instances that exist, as a practical matter nobody is going to do that. They can't. So you do have, under federal law, a created instream value that otherwise would not have been there. Now let me give you the outstanding one, which is not based on a requirement of federal law; that's Navajo Dam and Reservoir. Prior to the construction of Navajo Dam, authorized in 1956, that stream furnished marginal warm water fishery. Under the present operation of that dam and any reasonable operation that anybody can see, we have some seven or eight miles of what has been characterized as the finest trout fishery in the West. That goes to your point, Lee, of coordinating the conservation of water and realizing the maximum instream values. That, to me, is a beautiful example.

Lee Lamb: As we look at more and more projects we are going to be talking about more of what I guess the Colonel would say were "clever means" to protect stream flows. Something like negotiating transfers and exchanges so we can have a flow through a certain area. While you would do it with the expressed purpose of protecting stream flows, all the transfers and exchanges would be to other beneficial uses. The State Engineer's office is bound to protect all those transfers and exchanges which are done legally, and thereby you'd be protecting the stream when you wanted it.

The technique in Colorado where they intend to buy an upstream senior right and sell it downstream, but in the sale prohibit the resale at a later time upstream, is the kind of business that goes on all the time anyway. It is a way that the state can take its money and roll it over several times to protect more and more stream flows. It does get diminished each time because you have to absorb some transportation costs, but it's another technique. We think there are a number of opportunities to do that, and look forward to working with state water resource administrators in the future to work those things out. The outfit that I work for is very much into that kind of ball game, at the same time advising fish and wildlife service people on how to get the Corps to do what we want. It's not always easy, but we try.

Colonel Roth: I'm just the moderator, guys. Don't pick on the moderator. Yes, sir?

Adrian Ogaz: (Mesilla Valley Farmer) I would like to know whether something has been established as to priorities of beneficial use. Which use has priority over which other use, because we had a problem here in the valley several years ago. Elephant Butte Dam was made by man for irrigation. Then somebody at Truth or Consequences got a court order and they closed the gates up there and wouldn't let us use the water for irrigation, so I was wondering if it had ever been established which use has priority over what - like fishing and recreation over irrigation or farming. Has that ever been established in any court of law?

Colonel Roth: Steve, that's in your area. Would you answer it, please?

Steve Reynolds: That's clear, I think, in our constitution and statutes. All beneficial uses are on equal footing. They are all the same, except that municipalities, counties, and the state have the power to condemn water rights for public purposes. Other than that, every beneficial use is as good as the next. Priority of appropriation is what

controls. In the incident you mentioned, as I recall, the court order didn't hold up. As a practical matter, though, the limit on pulling down a reservoir operated by the United States, at least, is public health. The last time we left water in Elephant Butte was when it fell to about 35,000 acre-feet and the district and/or the bureau decided they should not take more because of the threat to public health from dead fish and things of that nature. But the right to drain that reservoir, except for the adverse effects on the public health, is clear.

Adrian Ogaz: Then public health has priority over everything else?

Steve Reynolds: Not as a water use, but as a part of the police power of the state and the federal government.

Colonel Roth: That's part of operational control of water impoundments. Public health and safety take first priority in everybody's book. Lee, did you want to comment on this from your point of view?

Lee Lamb: Yes, it's not really priority in the sense of my date against your date. It's preference in that respect. It's also the police power, as you brought up. I think it's very interesting, and we should understand that under the police power the government can act in a number of ways, and can take property without compensating. The fact that they withheld water for public health purposes is not terribly surprising, and the fact that they did not have to compensate anybody for it is pretty well understood and established. The same thing they would do, for example, if there was a break in the sewer main. They might ask you to leave your property for the time being. They don't have to pay you for the time that you would be out of business.

Colonel Roth: We have a question here.

Jim Hughes: (New Mexico Farm and Livestock Bureau) Regarding the Section 208 program. What happens in, let's assume, three or four years using the data that Dr. Stephens talked about and the conditional approval, they determine that best management practices are necessary in regard to irrigated agriculture. Who will determine the best management practices; will this go back to a public input session? I guess what I'm getting at is that, if it ever comes to best management practices, farmers would like to have the input to determine whether these best management practices are economically feasible given the price they receive for their products.

William Stephens: I might try to answer that. We do have an expert in the audience here in the person of Cathy Callahan in case I bog down. If I understood your question, Jim, I would say that the public will have an opportunity for input as we establish best management practices. I think first of all, we will have to determine that there is a problem to solve. I would assume, Cathy, that as we go down the pike, any changes that are made, the public will be allowed to have input. She says that is correct, so I would say yes, that at every point of change the public will be allowed it's say.

Steve Reynolds: I have a question. Is it clear that economic feasibility would be a controlling factor in the adoption of best management practices?

William Stephens: Gentlemen, to my knowledge it is not clear that that would be necessary before this is adopted. I think that has some real implications. As I indicated earlier, it may not be to the benefit of the general public that you do some of these things, but it may not be economically feasible to the farmer or the rancher to do these things.

Colonel Roth: Tom. do you want a federal input to that?

Thomas Lera: Yes, I'd like to agree with Dr. Stephens here, and go one step further. Public involvement is a two-way program. It stresses public participation, public involvement. Secondly, the plan is a very flexible document. It's a 20-year plan, with an annual update. Third, as I stated in my remarks, we have to determine whether or not there is a problem. Once there is a problem, we have to come up with some solutions, whether they be current management practices or best management practices. The decision rests upon the Water Quality Control Commission. They are the body that determine the practices, whether or not they are the best or current, whether or not there is an economic benefit or an economic loss. The state then certifies it to the EPA and we either agree or disagree. The most important thing is that it's a voluntary program, and I think that's the key to the whole issue, the bottom line. Best management practices should be voluntary. I don't think that there should be a regulatory control mandating farmers or foresters to do certain things. I think if the problem is recognized, the benefits are shown, the management practices will be adopted.

Colonel Roth: Another question. Yes, go ahead please.

Jim Goodrich: (Private Feasibility Consultant) I'm wondering whether Adrian Ogaz' remarks may have referred also to the request of Truth or Consequences for a 50,000 acre-foot recreation pooling to be maintained in Elephant Butte Reservoir at all times. That point came up several years ago. I don't know what the present situation is on it, but after some consideration, the Bureau of Reclamation, Jim Kirby, authorized that in that particular year. I don't know for how long. I'd like to have someone comment on that.

Steve Reynolds: As a matter of fact the Congress authorized the Secretary of the Interior to store 50,000 acre-feet of water in the Elephant Butte Reservoir, imported San Juan-Chama Project water, and to maintain that pool against evaporation for a period of ten years. That authority expires in 1985. The State Legislature has considered, made some provision which I'll not go into, but not yet adequate, to acquire water rights or purchase imported water to continue the offsetting of evaporation from that 50,000 acre-foot pool past 1985. I project that the legislature will give further consideration to that question in years to come.

Colonel Roth: Questions or comments? Way in the back.

Audi Miranda: (Soil Conservation Division) Mr. Lera, I'm kind of concerned about a comment you made earlier when you said that in some 208 activities that the federal government will take the initiative, and in others that the state government will take the initiative. I would like you to be more specific. The reason is that we just finished doing a 208 sediment control study and one of the things that we have been stressing and emphasing to the people involved is that it will be a voluntary program. This is what we are going to recommend to the governor. Now, I'm sort of concerned about what the EPA will decide if they don't particularly agree with what the people provided as input into this program.

Thomas Lera: I think my comments may not have come across very clearly. When I was talking about the federal government taking the lead or the state government taking the lead, I was talking about the state-EPA agreement. There may be a portion in the agreement where we may decide to provide technical assistance to the state for training, for operation and maintenance of wastewater treatment plants. We may think we agree that the voluntary approach to regulate agricultural problems is the way to go, but if the voluntary approach doesn't work, I think, and I guess Mr. Reynolds can correct me on this if I'm wrong, if there is a problem that has been shown, a water quality violation that exists, I

believe that the Water Quality Control Commission has the authority to institute a regulatory action to correct that. Right now, EPA is stressing voluntary programs. We are not talking regulatory programs.

William Stephens: I think he has interpreted it correctly. The important thing is that we know what these best management practices are, that they do make sense and this type of thing, before we even get there. Again, the responsible society may have, and in many instances does have, a stake in this. As I commented earlier, many of these range management practices have been supported and recommended by the Soil Conservation Service for a number of years, so what is man-caused and what is nature-caused? It would be reasonable, as we establish these best management practices, if society owes something here, if they will carry that load, then you will have very little problem getting the farmers and ranchers to implement these.

Charles Youberg: (Soil Conservation Service) I would like to address a question to Mr. Lera. The 1977 amendments to the Clean Water Act, particularly Section 208-J, directed the Secretary of Agriculture to initiate a program for addressing non-point sources of pollution, in particular those associated with agriculture. The Secretary of Agriculture has developed the rules and regulations for a program known as the Rural Clean Water Program. This program will address, and be available to, those farmers and ranchers in problem areas. Now there are several things these regulations say that the state 208 plan must have in it before a rural clean water plan can be offered. First of all, there must be an approved agricultural portion in the 208 plan, and secondly, there must be a problem that is recognized; thirdly, there must be designated problem areas within the state in order to offer a program; fourth, there must be best management practices; and fifth, there must be a management agency in order to carry out the program. So my question may boil down to one or three. First of all, does New Mexico's plan as it now stands allow us to offer a Rural Clean Water Program in New Mexico?

Thomas Lera: To answer your question, Chuck, no. Very simply, the portions of the plan do not identify the critical areas, the problem areas. There are no best management practices outlined in the agricultural portion. The plan is lacking in several respects.

Charles Youberg: Then this leads to a second question. Providing New Mexico wants a Rural Clean Water Program to address non-point sources of pollution, when might we expect the plan to shape up so that it could be offered?

Thomas Lera: That's a difficult question to answer. It can be handled in the continuing planning process, the ongoing process. I think that the plan has the components there, but the direction hasn't been achieved yet. There's a portion of it here and a portion there, but they haven't been tied together yet to identify the critical areas and to come to some definite conclusion that these current or best management practices can be adopted. The plan, as I said before, is a flexible plan. The state can amend the plan whenever they see fit. They can certify the amendments to the EPA and the EPA has a statutory time frame to act to approve the amendments or not. So actually, the ball is in the state's lap, not in EPA's lap. We are willing to fund continuing studies to determine whether or not there are critical areas or problems. We are willing to work toward the goals that address the Rural Clean Water Program, should it even become funded. I don't believe it is funded right now. I know that in the President's budget they are talking about $40 million or so to it, but also the Rural Clean Water Program is at a minimum a 50-50 cost sharing program.

Colonel Roth: I want to give Bill Stephens a chance to comment on that.

William Stephens: When we go the sedimentation plan, I can see there, more quickly, best management practices being accepted by the state, and perhaps implemented, than I can in irrigated agriculture at this point in time. Because, as I indicated, even though much of the data that went into this is not research data, most of the stuff looks sound to me, and the practices are sound. They've already been implemented in many instances, but in irrigated agriculture, I just don't feel at this point in time that we have the data necessary to say that we have a problem. I think we are going to have to identify problems before we can get to this program of helping people implement a best management practice, when we really don't know that that is.

Thomas Lera: Let me set a little time frame for people who may be confused here. As I said in my opening remarks, the state has certified and the EPA has conditionally approved various portions of the plan, except for four parts. One of the parts was Mr. Miranda's sediment study, which would relate to the agricultural problems of the state. They have gone through public hearings and the Water Quality Control Commission will be, at their next meeting on May 22nd, reviewing that

portion of the plan and sending it to the Governor for certification. Then it will come to EPA. So should rural clean water funds become available and the critical agricultural areas are identified in the sediment plan, and best management practices are outlined, and a management agency is designated, I believe we'll be ready to act rather fast to try and get some of those rural clean water funds.

Colonel Roth: Was there another question in the back? Up front here, please.

Adrian Ogaz: I have a question for Mr. Lera. Maybe I've been dealing with government regulations too long, but I'm getting a little suspicious here. Maybe I'm wrong, but it looks to me like the government wants us to find problems where there aren't any, especially in irrigated agriculture. Up to now it has been proven that there's no problem, but if I understand what you have been saying, you won't approve anything unless there are problems. You want us to find problems, even if they are not there, is that right?

William Stephens: Tom, do you want me to respond to that? I don't really think that's what Tom said, of course he can speak for himself, but I think what he said is that if there are problems, and we identify them, and there are pollutants, for example, then we have to do something about it.

Adrian Ogaz: I haven't found any problems. I've been farming for forty years, and it's ...

William Stephens: You don't have any problems and you've been farming for forty years?

Adrian Ogaz: Problems, but not pollution problems.

Colonel Roth: I think Steve had a comment.

Steve Reynolds: As you well know, Colonel, I'm never completely satisfied with the performance of any of the federales, and I think you didn't do an adequate job in introducing Tom Lera. I've been working with Tom for a year or two as a member of the Water Quality Control Commission, and he's a bureaucrat, in the sense that he works for the EPA, and he tries to implement their objectives. He is not a bureaucrat in the pejorative sense, in that he has been just as forthcoming, as reasonable, as productive as a man can be within the limits of the statutes and regulations that he is employed to administer. And while I'm about it, I want to congratulate you, sir, on the performance of your district

in repairing flood damage from the floods of last fall, and in the carrying out of advance measures to prevent or minimize damage that we might have expected from this spring runoff.

Colonel Roth: Well, I wasn't going to bring this up, but I'm about to put you in the bureaucrat's thing. I noticed earlier that you found a subtle but necessary distinction between public welfare and public interest. I think someday in a different forum you need to explain to a bunch of folks here what that subtle difference is. Be that as it may, any other questions or comments? Yes, in the back please.

David Abeebe: (Los Alamos Scientific Laboratory) I would like Mr. Reynolds to comment on the likelihood and the desirability of mine dewatering being declared a beneficial use in the state of New Mexico.

Steve Reynolds: I don't quite like the way the question is worded, whether mine dewatering would be declared a beneficial use, but that's close enough. The question really is whether the legislature will require that the miner apply for and receive a permit from the Engineer before undertaking to dewater a mine. The Legislature has considered that in the last two sessions, has created an interim committee to study that question, and I've been around long enough that I never predict what the courts or the Legislature will do. I work for the Executive Branch.

Colonel Roth: Any other questions or comments?

Paul Turner: I might just say a couple of things. From what I have seen with the federal and state agency people within this state, I think there are many opportunities for innovative uses of water, saline waters as well as existing surface waters. I think that, given the direction that may well come out of the New Mexico Water Resources Research Institute, there is a capability within this state of doing some things that are rather interesting. We haven't talked about uses of saline waters in great detail. Particularly, I, coming from the Department of Fishery and Wildlife Sciences, like the idea of aquaculture and potential culture of fish and invertebrates. I think this is something that has good potential, and it ties in with your question of dewatering mines. The potential for using water pumped from mines for an additional beneficial use such as growing fish and invertebrates would be an interesting add-on water use which would

be compatible with mining. Perhaps we could create a temporary reservoir for fishing purposes. There are many innovative ways of using water if we don't let current legal and technological problems limit our planning for research and development.

Unidentified Voice: That would be a beneficial use, though. That would require a permit.

Paul Turner: Might be able to get it, maybe. I would hope so.

Colonel Roth: Any other comments from the panel or anyone else? Well, I'm not going to delay closing. I want to thank the panel on behalf of both you and I, and this morning's panel for just an outstanding day. It has been a long day. I certainly am not going to summarize. That's not in my charter anyway. The question for the day was, "Will the new national water policy work in New Mexico?" I'm not sure we have even defined what the new national water policy is. I suspect we may have to do this yet again after the new national water policy is finally resolved by the Congress and the Executive Branch, Gerry, and maybe that's an open invitation to come back and do this again some time. I would like to thank you all personally for allowing me to moderate. Steve's kind remarks not withstanding, I would hope, representing the federal people that have been up here that the feds aren't viewed as a bunch of "bad guys." They represent a government which you have created. By and large I would say that the folks in the federal government don't find bureaucrat as bad a word as many would make it. Now, did you have a comment, sir?

Jim Goodrich: Yes, Colonel Roth, I would like, following your comment on the national water policy, to see the word "conservation" defined, spelled out. You can get as many definitions of conservation almost as the number of people you talk to. It begins with those who say conservation means don't use any more, to those that say use all you want but use it most efficiently.

Colonel Roth: I appreciate that. I will remind you that there is a banquet this evening and we are going to innovatively use water with various other things starting at 6:00. I thank you all for your patience.