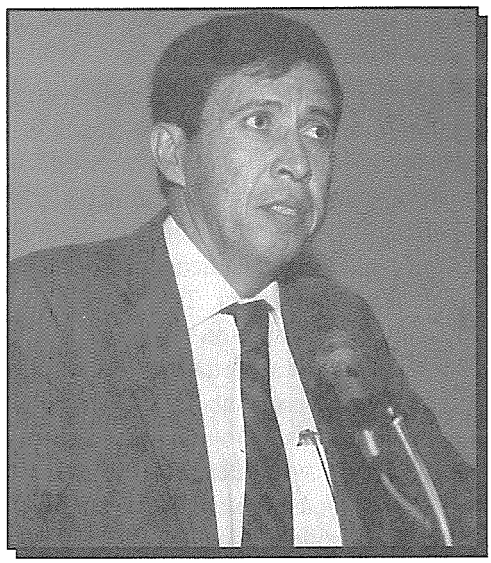

Eluid Martinez has held the post of New Mexico State Engineer since December 1990. Along with this significant appointment, he also holds many other positions. He is the secretary and chief executive officer of the Interstate Stream Commission and is the New Mexico Compact Commissioner to four interstate stream compacts. He is a member of 12 regional and national water associations, or councils and is a brother in three honorary engineering fraternities. As an appointee under four Santa Fe mayors, he chaired numerous planning and development commissions. Eluid also was elected to and served as the president of the Santa Fe Board of Education. His various honors include NMSU's Civil Engineering College recognition for his achievements. He is listed in Marquis' Who's Who in the West and Who's Who of Emerging Leaders in America. Eluid is an artist and his work is in the permanent collections of many museums, including the Smithsonian Institute.

NEW MEXICO'S ADMINISTRATION OF WATER: PAST, PRESENT AND FUTURE

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Let me begin today by reminiscing a little. This morning, in the audience, I recognized many faces of people I have worked with for approximately 24 years. Some of you know that I have been in the water business since I was 27 years old. I am 50 years old now and looking forward to retirement by the time I am 52, God willing. I appreciate the support all of you have given me over the last four years as your State Engineer. When I accepted the position, I really did not know what I was stepping into. I stepped into some big shoes and have come to realize that over the last four years I have learned a little and I still have a lot to learn.

Two individuals in today's audience have been particularly helpful to me over the past four years and in providing me assistance they have done a tremendous job for the state of New Mexico. New Mexico has been fortunate, in my opinion, in having three state engineers for the price of one during my tenure. One of those individuals, Phil Mutz, has been gracious enough to serve as the Upper Colorado River Compact Commissioner for the last three-and-a-half years and has helped me make sure that New Mexico's interests are represented adequately in the Colorado River. Thank you, Phil, on behalf of myself and the people of the state of New Mexico. The other individual, who I believe is of State Engineer caliber and I hope he will be State Engineer some day, is Dr. John Hernandez. John and I go back to the mid-1960s when he was a professor at New Mexico State University

and I was an undergraduate student. Thank you, John, for your counsel and your assistance over the last four years and thank you on behalf of the people of the state of New Mexico.

That said, let me turn to the reason I am here. I was reminded this morning of the wealth of talented New Mexicans in the water-resources business. Some of them spoke this morning and when the day comes for me to step down as State Engineer, I would gladly recommend each and every one of them for the position. This morning I also was reminded of my tenure on the Santa Fe Public School Board. Before I served on the school board, I was a concerned parent about education in the Santa Fe public schools. I would criticize the school board and come up with ideal ways of improving the schools. After being elected to the school board and serving as president, I came away with a different perspective. It often depends on what side of the aisle you sit on as to what can or cannot be done.

The State Engineer Office, with the assistance of federal and state agencies, has been trying to address many of the concerns discussed this morning. One aspect that state agencies share with federal agencies is that they are bureaucracies. The State Engineer Office has been a bureaucracy and continues to be a bureaucracy. It is like a freight train racing down the track, sometimes difficult to maneuver or even slow down.

Most of you know the State Engineer is appointed by the governor for a two-year tenure and is confirmed by the Senate. The appointee serves until a successor is named and confirmed, unless the governor wishes to remove him or her for cause, and that option has not been exercised by past governors. Steve Reynolds, my predecessor, served as State Engineer for 35 years and set into place a certain philosophy, a certain way of administering water in the state of New Mexico. Aspects of that philosophy and certain procedures now are being questioned. Personally, I think Steve did a good job for New Mexico. He became State Engineer in an era of water buffalos not only in state government but also at the federal level. Agencies were preoccupied with insuring that water resources in the western United States were harnessed and put to maximum beneficial use for the good of its citizens. The philosophy back then concerning conservation was to dam all the water in the rivers as best you could to conserve it and make sure it did not go to the downstream state.

It is interesting how time and philosophies change and how people perceive those changes. Mr. Reynolds did a great job for New Mexico in insuring that the state was able to make the best use of and fully utilize waters apportioned to it under different compacts. However, others have a different perspective and feel that when rivers are dammed, when water is diverted from the rivers, there are consequences to be paid and some of those consequences are becoming more evident across the West. Mr. Reynolds served as State Engineer when environmental and public welfare issues were still on the back burner. Gone are the days when New Mexico or any western state will be building new irrigation and water projects. We now are in an era when we must make do with the available water resources; we must live within our means.

Changing existing water uses to new uses and the consequences of water transfers are issues at today's forefront. New Mexico is unique in that it has always had a free market system for transferring water rights. The concept of transferring water rights from one location to another and from one use to another is nothing novel or unusual in New Mexico. It has been the law since the territorial legislation passed the first surface water code in 1907.

Until fairly recently, in some parts of New Mexico, there had been no need or occasion to transfer water from one use to another. These areas include villages with acequias in northern New Mexico. The concept of a water rights transfer in acequias meant one individual selling part of his share of the water to another individual out of the same ditch or selling the number of hours to which he was entitled. The water stayed within the ditch and moved from one tract to another.

However, economic development requires a sustainable water resource and water use transfers are the mechanism for moving water from a traditional use to a new use. This is beginning to occur in some areas of New Mexico and is bringing into the public welfare debate the conflict over traditional uses versus new uses. Many people are misinformed, thinking that this situation is novel to New Mexico and they want to change the law to

make sure that it is unlawful to allow the transfer of water rights from one use to another. It certainly would make for interesting debate in the New Mexico legislature if a bill were presented that does away with the transfer of water rights from one use to another. The debate would center on economic growth and development versus an economic standstill. Some western states, California in particular, have recently turned to the free market system in the transfer of water rights. While several states are using the New Mexico model, some concerned New Mexicans are wanting to reinvent the wheel and revert to where we were prior to 1907.

My talk today addresses past, present and future water resources administration in New Mexico. Let me deal a bit with the future, which in a certain respect ties into the present and the past. I will outline the issues I, as your State Engineer, feel need to be addressed. The discussion will center on those elements the State Engineer considers when reviewing a new application or a transfer of existing use.

First, let's consider an application for a new appropriation. The State Engineer is concerned with two basic issues: the availability of water and the affect of taking that water on existing uses. Prior to mid-1985, the State Engineer when reviewing an application for a new use of surface water had to consider the public interest. I think the only Supreme Court decision on that issue was a decision on the San Juan River stream system in the early 1900s when the State Engineer considered two competing applications for the same water supply. His decision as to which applicant received the water rested on his opinion that one applicant would be in a better position to develop the water right. That was basically the extent to which the State Engineer considered the public interest.

The first step in reviewing an application is to determine water availability. There are those who take the view that the engineer cannot make a decision as to whether water is available until a comprehensive inventory of surface and groundwater exists—that such an inventory is necessary to determine how existing water uses might be affected by the application. I do not subscribe to that position because to subscribe to that position means the State Engineer probably would never be able to act on an application. We always are gaining new information as time passes. As was mentioned this morning, how we viewed the Albuquerque aquifer in the 1960s is quite different from what we think about it today. Those of us who might be fortunate enough to be here 30-40 years from now will have new information available. When I consider an application, I must make a finding from existing information as to whether water is available for the benefit of the applicant for the stated purpose.

Let's look at the Intel application as an example. There is no question that there was a lot of debate prior to the hearings about how much water was in the Albuquerque aquifer and that perhaps we were running out of water because there was less water than once believed. Interestingly, three experts, one representing the applicant, another representing the protestant, and one from the State Engineer Office's Water Rights Division, all agreed that there was water available for the benefit of the applicant. However, the media was reporting that there was a lot less water available. I concluded that if you look at water availability on a case-by-case basis, the engineer can determine that there is water available for a particular case. What has been missing from this equation, and I think it needs correcting, is knowledge of the extent of the resource available for future appropriation. Then the State Engineer can begin making decisions as to whether that limited resource is best used for one purpose or another.

Sometimes I wonder what the public reaction in the Albuquerque area would be if a farmer were to apply to take water to start a new farm of 1,500-2,000 acres for the purpose of raising Belen or Albuquerque chile. That type of application might involve the same quantity of water taken from the aquifer that was proposed by Intel for the purpose of producing micro chips. The Intel debate did not focus on whether water was available or not, but on whether the available water should be used for the benefit of this kind of industry. The debate brought into play fundamental questions such as, "Should the State Engineer, who is in charge of administering the water resources in New Mexico, be making decisions on how water should be used in the state of New Mexico?" As State Engineer, I have resisted, and will continue to resist until I am convinced otherwise, dictating to different parts of

the state what kind of development should occur or should not occur.

My experience as a Santa Fe city planning commissioner under four different mayors taught me one thing. Before a certain kind of development can occur in any given area, a conscious decision must be made by appointed and ultimately elected officials of the local area as to what they believe is in the public welfare in terms of land use. Officials and their staff then zone accordingly. For example, suppose the City of Albuquerque or the County of Bernalillo zones for an industrial park. The City or County then attempts to recruit appropriate industry. Suppose an interested industry requires water for their purposes and files an application with the State Engineer Office. The State Engineer then finds himself in an interesting position. He is asked, as State Engineer, to turn down the water use application because the type of industry is not appropriate, in certain people's opinion, for the area. Some feel the industry will cause pollution, create traffic problems, affect the existing rural lifestyle, and negatively impact the school district. I do not think it is the State Engineer's place to make those kinds of decisions, although under the law it appears that the State Engineer is vested with that responsibility until a court or state legislature indicates otherwise. What is very important is that until the law is changed so that water is administered by someone other than the State Engineer, you must make sure that any future State Engineer has a tendency to balance conflicting needs and act in the best interest of the state. Otherwise you will have a State Engineer who could really cause some problems.

I accepted this position with the understanding that I would not be in this position for 35 years and am looking seriously at no more than two additional years as State Engineer. If at all possible, I would like to step down like a senior judge and make my services available to the new State Engineer, whomever that might be. I make this announcement today for a specific reason. I remember Mr. Reynolds being quoted that there were several occasions when he would have liked to retire, but he never found an opportune time because crises kept coming up every time he thought of leaving. I do not know whether that was the truth or whether that was just a position he was taking. I have decided to make an announcement to my staff that I am looking at no more than two additional years as State Engineer so that I do not get caught in that situation. That is, assuming that I stay on beyond the coming election.

Let me briefly discuss a couple of other issues of concern. First, there are endangered species issues and how they will affect the use of water. Specifically, the silvery minnow might influence the amount of water that can be taken from the ground in the Albuquerque area or the regional system to the extent that it can be shown that groundwater pumpage affects the habitat. Not withstanding the City of Albuquerque's elaborate plans about how they want to use water in the future, unless the Endangered Species Act is somehow amended, we may be constrained by those endangered species.

Another issue of interest is Indian water rights and the quantities to which the pueblos along the Rio Grande, or New Mexico in general, are entitled. I met with the Indian leadership in September 1991 and committed myself to trying to work with the Indian community to resolve some of the Indian water rights cases pending in the federal and state courts. If you were to gauge my success by the number of settlements that have occurred, you would have to conclude that my administration has been a failure because there has not been one settlement in the last four years other than the Jicarilla case. But consider the fact that, at least in Taos Pueblo, Indian and non-Indian water users have been sitting at the table trying to address their problems during the past three-and-a-half years, the same is occurring in the Pojoaque lawsuit, and five other tribes have requested that negotiation teams be established. Maybe these examples can be used as some kind of measure of success. The dialogue certainly needs to continue; we need to settle these cases.

About a month ago I spoke at a groundwater symposium in Las Vegas, to groundwater specialists from throughout the West who met for three days. It was interesting that they were discussing some of the same issues being discussed here, primarily, a lack of information on the resource. New Mexico is not unique nor is Albuquerque for this point. Most of the West is struggling with the same problem. Determining what information is avail-

able, how much of the resource is available especially with respect to groundwater, and where the available groundwater is, are questions being grappled with throughout the West.

Sophisticated models are being developed, but not having worked with these models daily, my basic position is to look at them with some suspicion, which reminds me of a story. After graduating from New Mexico State University in 1968, I went to work for the Highway Department. One of my first projects was sizing culverts using a rather crude empirical equation. Somebody had the bright idea that perhaps we were oversizing the structures and smaller structures would save the Highway Department money. So we came up with a sophisticated method for sizing culverts. A bunch of structures were built and placed in the road between Deming and Lordsburg. The first time they had a flood it wiped out the road, yet the culverts that had been sized by the old empirical formula stayed in place. I'm not sure what the moral of that story is. Sometimes you are better off with half the technology and being a little conservative. Until I am convinced otherwise, I will stick with what works.

Again, I thank you for your support.