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HOW A STATE WATER PLAN EXTENDS BEYOND OUR BORDERS

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Good morning. I would like to begin first by thanking the Water Resources Research Institute and New Mexico State University for this opportunity to speak to you today. I also want to comment on how beautiful it is here – the location where we are holding this conference is incredible. We are blessed to be able to spend some time here. I am going to try something I do not normally do. It might work, maybe it will bomb. I am going to tell a joke. All the people who are outside are going to wonder what the heck is going on when I try to tie this in at the end of my presentation.

A gentleman buys an exotic parrot. His friend comes in and sees the parrot and says, “Wow! That’s a beautiful bird.” “Well, you be careful with that bird, that’s a really expensive bird, I paid two thousand bucks for that bird.” “Two thousand bucks! What’s wrong with you!” says his friend. “Well, it’s a good investment, this is a bilingual parrot.” His friend says, “Yeah, yeah, yeah, right.” “No, no, try it. Pull his right leg.” says the gentleman. So his friend pulls the bird’s right leg, and the parrot says, “Good morning sir, how are you?” “Wow, okay, so he speaks English” acknowledges his friend. “Well, pull his left leg.” says the gentleman. So the friend pulls the bird’s left leg,

and the bird says, “Buenos días señor, como está?” “Whoa! That’s pretty impressive!” exclaims the friend. So the friend stands there looking at the parrot, and the parrot just stares back at him. Finally, the friend says, “I wonder what would happen if I pull both your legs at once?” The parrot glares at him and replies, “Pues qué crees...I’ll fall on my butt pendejo!” Loosely translated, “Well duh! What do you expect; I’m going to fall on my butt if you pull on both my legs, you idiot?!”

You have already heard today from John D’Antonio about our efforts to develop a State Water Plan and about the fact that our focus has been to develop a policy framework that will guide our state’s efforts in managing our water resources. As you heard from my introduction, the topic of my presentation is how the State Water Plan extends beyond our borders. In general, most of what we do with respect to water is done within our state for the benefit and with the state’s interest in mind. Nevertheless, those interests are often defined in large part by our agreements with other states or actions that happen beyond our boundaries. Various interstate stream compacts between New Mexico and its neighboring states dictate that New Mexico must deliver certain quantities of water to downstream states. There are also other non-compact related actions by other states or in some instances perhaps with nations beyond our borders that can set in motion specific plans within New Mexico.

I am going to discuss several examples of how our interstate stream compacts and issues beyond our borders are affecting New Mexico’s planning and how the State Water Plan takes into account those planning activities. Keep in mind that the examples I give are by no means exhaustive; there are other examples we could come up with if we think about this longer.

First I will talk about something close to home here: the Middle Rio Grande Endangered Species Act Collaborative Program. The State of New Mexico, through a number of its agencies, is heavily involved in this collaborative program. When the Rio Grande silvery minnow and southwest willow fly-catcher were listed as endangered species in this area back in the 90s, we quickly recognized that the efforts to preserve and improve the status of these species were going to require significant amounts of water and would probably change the way we operate the river to a great extent, and this in a river we generally consider to be fully appropriated. According to the Rio Grande Compact, New Mexico’s water delivery obligations to the Rio Grande Project and Texas are largely

determined by the amount of water flowing across the Otowi Gage just north of Cochiti Reservoir and these deliveries must be made into Elephant Butte Reservoir. This just happens to coincide with most, or all, of the critical habitat for the Rio Grande silvery minnow. In order for New Mexico to protect its ability to maintain administrative control over its waters to ensure that existing and future uses of water are able to continue, and that people will be able to continue to rely on Rio Grande flows for their water supplies, and to ensure the continued ability of the State to meet our compact obligations, we must be involved in generating the solutions that will help maintain and recover the endangered species.

Having just articulated those goals, if you go through and read the first draft of our State Water Plan, you will see that those goals pretty much correspond to what we have laid out as common priorities and objectives for the state as a whole. That is, we have articulated that the common priorities, goals, and objectives of the state’s water plan should be to protect senior water rights, specifically including those of pueblos and acequias, which are of the most senior water rights in the New Mexico stream systems; preservation of the state’s administrative authority over its waters; river restoration; and fish and wildlife habitat maintenance, reflecting the strong environmental policies that exist in New Mexico law. We have gone from our current efforts in the collaborative program to articulating some of the policy objectives for the state as a whole. And, in fact, they are derived directly from the activities that we have been participating in on the Middle Rio Grande.

Additionally, we realize if we are going to accomplish any of these goals, we are going to have to conserve water, use it efficiently; and actively manage our water resources. In the plan, we have stated that this will entail measurement, management, and markets. All three are going to be critical to the success of a collaborative program for the survival of endangered species.

A few other objectives are stated in our draft State Water Plan that are embodied in the activities of the collaborative program. First of all, there is collaboration and coordination with the various governmental entities at the local, state, federal, and pueblo levels. Collaboration and coordination with water users and water interests also includes government and non-government entities such as the Middle Rio Grande Conservancy District, the City of Albuquerque, environmental groups, and business organizations. And

although perhaps not completely effective, under the leadership of Governor Richardson we have, as mentioned by State Engineer D'Antonio a little bit earlier, done a considerable amount of outreach to the pueblos to try and coordinate our efforts with them better. We have specifically been reaching out to the pueblos in the Middle Rio Grande to participate in this collaborative effort. I think there is a substantial interest and we will continue to work with the pueblos as appropriate, and will make ourselves available to them for consultation on these and other issues. This is one example of how our need to meet our interstate compact requirements is playing out within the State Water Plan right here in our backyard.

The next example concerns the Lower Pecos River Consensus Solution and Settlement. I will give you a bit of a history first. New Mexico and Texas entered into a compact back in 1947 that said New Mexico would not deplete by mans' activities the flows of the river beyond the conditions that existed in 1947, or something roughly to that effect. I don't want the folks from down in the Lower Pecos Valley to have to come up here and correct me, so I'm just paraphrasing. Almost immediately there was disagreement as to exactly what that meant in terms of how much water New Mexico had to deliver to Texas. The disagreement continued for years until Texas took us to court; and ultimately the Supreme Court found that, in fact, we had been underdelivering to Texas. Under the Supreme Court Decree we are now obligated to deliver water on an annual basis. We can not carry accrued debits but we can carry accrued credits. Every year we must either meet the delivery requirements or, in a very short time frame after we have determined that we have not made the deliveries, make those up or risk losing control of that water. Since then, there have been extraordinary efforts through the leasing of water rights and purchasing of water rights to meet our compact obligations. But every year we are working under a crisis situation to try to make sure we meet our obligations. Last year, an ad hoc committee of water users from the Lower Pecos Valley was formed. They got together and formulated a plan that would allow us to meet our obligations in the short-term and also laid out a plan by which we could meet our state-line delivery obligations over the long-term. This plan will help get us out of crisis management mode. The committee was able to develop the plan while facing huge obstacles including a half-century history of disagreement and fighting.

Meanwhile, the state legislature, in order to support this consensus plan appropriated \$30 million to implement the plan provided that the parties also find a way to resolve the *Lewis* Adjudication, which has been going on for approximately 50 years. The ad hoc committee was able to accomplish that. This spring a settlement agreement was signed by the Carlsbad Irrigation District, the Pecos Valley Artesian Conservancy District, the State of New Mexico and the Bureau of Reclamation. The settlement calls for New Mexico to purchase 18,000 acres of land and the associated water rights. It calls for the state to develop a well-field capable of producing 20,000 acre-feet per year and putting that water into the river to make sure that we can make state-line deliveries in real-time. The idea is that by purchasing that amount of water and retiring those water rights, over time we will bring that whole system into balance. Over time, we should be able to use the augmenting well-field less and less. However, in the early years, it is expected that we are going to have to use it to make our state-line obligations.

We have certain implementation criteria that must be achieved by the end of next year: we must purchase 12,000 of those acres with the water rights, and we must develop a well-field capable of producing 15,750 acre-feet. We are well on our way to doing that and getting the settlement implemented. We have many bids well in excess of those minimum acreages. The potential sellers' offered price is higher than what we had anticipated. We are now facing the unexpected problem of coming up with some additional money to implement this settlement. Nevertheless, I think we are well on our way, if funding can be found. If we are successful in implementing this effort, it will have settled a long running adjudication issue. As I mentioned, it will provide a mechanism by which to meet our state-line delivery obligations, both in the near-term by using the augmentation wells if we need to, and in the long-term by bringing the system into balance. The emphasis is on making certain that we have a mechanism for meeting our compact compliance obligations. It represents a negotiated shortage sharing agreement that is not strictly based on priority administration. It is being driven by the reality of looming priority administration and our need to protect senior water users.

Endangered species issues are just now beginning to come into focus on the Pecos as they relate to how we implement that settlement. Here again, we are emphasizing that any water that is acquired for those

purposes be acquired via willing buyer/willing seller transactions. Those transactions must comply with state law and permitting and our activities to protect the endangered species must not prejudice the state's ability to meet its compact obligations.

In terms of how this fits within our water plan, most of the things I just mentioned are policies articulated in our State Water Plan. Initially, the plan focuses on collaboration and coordination with other government agencies at state, local, and federal levels as well as coordination among users. In sum, the successful implementation of this settlement is hugely important to the state of New Mexico. We must deal with it once and for all so we can focus our efforts on some of the other important issues facing our state. We have been putting bandaids on this problem for the past 15 years, since the Supreme Court Decree. We had been spending our money on solutions that basically met our needs a year at a time. We must get this behind us so that we can focus on some of the other important issues.

A third example: on the Colorado River, New Mexico is participating in the Colorado River Salinity Control Forum to protect our uses of the San Juan River. Although this Salinity Control Forum is not explicitly a requirement of the Colorado River Compact, Mexico and downstream states expect to get water that is of a useable quality. In other words, we can not just send water downstream that is no longer of a quality that can be used. The various states involved in this compact have recognized that this could become a problem if we do not deal with it proactively and collaboratively. Thus the states have set up the Salinity Control Forum to manage the increases in salinity that naturally occur as we use water. The forum provides a mechanism to determine jointly what projects will be most effective in controlling salinity along the Colorado River and its tributaries, and how to fund those projects. This effort promotes environmental quality. It is likely to defuse potential conflict with other states or Mexico, and it protects the water users — all aspects of the policy that we, as a state, want to pursue.

Fourth example: we are in a series of interstate negotiations with Arizona regarding our rights on the Gila River. Arizona is attempting to put forth a massive water rights settlement that includes the Gila River Indian community and several other users. Initially when we got wind of what Arizona was trying to do, we realized that they had kind of left us out. They cut New Mexico out of 18,000 acre-feet of water that

New Mexico was supposed to have a right to. We have become active in the negotiations and have been focusing on making sure that the 18,000 acre-feet that was due New Mexico is protected for New Mexico's uses in the southwest portion of the state. Additionally, we are trying to make sure that if there is a settlement that goes forward that funds a number of projects in Arizona, that funding is similarly provided for projects in New Mexico so that we can utilize that water.

An interesting kind of sideline to this particular discussion is that the Navajos have raised an issue about getting an allocation in terms of Arizona's settlement that might ultimately help facilitate New Mexico's settlement of Navajo water rights claims in this state. New Mexico and the Navajos have been talking about, in terms of water rights settlements, the possibility of building a pipeline between the San Juan River and Gallup. The Navajo Nation straddles the state-line and some of their end users are on the Arizona side. While we want to facilitate the efficient use of a pipeline, we do not want the water for Arizona users to come out of New Mexico's apportionment. So the Navajos have asked Arizona to consider making some of the water that is part of this massive water rights settlement, 6,500 acre-feet, available for transport through such a New Mexico pipeline for Navajo users within Arizona. Some of our policy focus in this regard is making sure that there is a sustainable supply for communities in the southwest corner of the state, and by extension, in the northwest corner of the state if we are able to get a Navajo settlement. We recognize that any water development will have to address environmental issues adequately, but at this point, our focus is to make sure we actually have something to manage. We want to make sure we have a right to use that 18,000 acre-feet.

The last example I have concerns the eastern New Mexico pipeline project on the Canadian River. Communities in eastern New Mexico are pretty much dependent on groundwater from the massive Ogallala Aquifer. This aquifer extends under several neighboring states and New Mexico sits over the outer fringe of the aquifer. Texas users right across the state-line are able to use as much water as they can capture, basically. The situation is causing a depletion of the water in the aquifer, and the depletion is going to occur first within New Mexico. Several studies indicate that some communities in New Mexico may be running dry as soon as 15 years from now. About 24,000 acre-feet of water is available from the Canadian River in the Ute Reservoir. As a result of the threat to the

groundwater supplies, and the eminent threat to the various communities dependent on those supplies, folks having access to or located relatively close to Ute Reservoir have come together to propose a pipeline that can deliver water from Ute Reservoir to the various communities. I am not going to mention all the communities but they include Tucumcari, Clovis, and Portales, and several of the smaller communities and counties also have an interest in this. Here again, actions beyond our state boundaries are driving some of what we are trying to do, as it relates to our objectives in the State Water Plan.

The State Water Plan vision statement mentions that sustainability must be a hallmark. We must create a sustainable water supply for these communities. Somebody earlier today asked about the relationship between the state plan and regional water plans. Our State Water Plan states that on issues of regional importance we should, to the extent we can, give deference to the projects afforded by the regional water plan. Although the regional water plan for eastern New Mexico has not yet been accepted, a pipeline project from Ute Reservoir is a centerpiece for that plan. Here again, we want to focus on conserving and beneficially using New Mexico's water within New Mexico. We do not want it to simply evaporate or go downstream to Texas. Finally, this particular project also supports regionalization, creating projects that benefit a number of different entities within a given region and cooperation amongst those various entities.

I have tried to give five specific examples of how either our compact obligations or actions beyond our borders are driving implementation of New Mexico's water plan. I have tried to describe how our actions relate to the policy objectives we have articulated in the State Water Plan. So how does this all relate to the bird joke? Well, hopefully the State Water Plan policy framework will provide us a uniform basis for translating our various reactions all over the state – our reactions to our compact obligations such that we react consistently from place to place and hopefully this will result in New Mexico's not falling on its butt when we get pulled on all the various stream systems, that are like our legs that hold us up.

This concludes my talk. I have plenty of time for questions.

Question: I am Valda Terauds with the Bureau of Reclamation. and have a question regarding the development of groundwater compacts across borders

where we have states that have unlimited capture rules. Any thoughts on that?

Response: Yes, in listening to the communities, particularly those on the eastern side of the state, there is substantial interest among the people in those communities that we try to establish some groundwater compacts. I think it is in New Mexico's interest to try and begin those discussions and it can not be a one-sided discussion – we must engage Texas effectively in dealing with this issue. I do think there is definitely a need for that. I believe that it is actually mentioned in the first draft of the State Water Plan. We ought to be pursuing this and I think Senator Bingaman has introduced some legislation to at least study and understand some of the physical realities that we face with respect to those shared aquifers. Hopefully that will lead to a discussion of what makes sense, not only for us, but also for Texas.

Question: I work with the State Geologist, New Mexico Bureau of Geology. In the Pecos Valley, a very careful analysis using the best available data has concluded that in order to maintain our concept of priority system on the Pecos, we have to retire 18,000 acres of irrigated cropland. This acreage has been intercepting groundwater, which originally fed the Pecos River. This is the first serious attempt the state has made to balance the priority system against the divergent ways between groundwater and surface water. Has an estimate been made on how much acreage we might have to take out of agriculture production on the Middle Rio Grande and Lower Rio Grande in order to meet our compact requirements in the Rio Grande?

Response: I am unaware of any such estimate and I think that the situation in the Rio Grande is probably not quite as dire as what we have in the Pecos, but hopefully we will learn something from the Pecos. We do not want to get into a situation where we have to try and do some sort of buyout of the sort that we are talking about on the Pecos.

Follow-up: Let me follow-up on that. That is a good answer. But, you know, I have published several things in the recent past that points out that we should have used the Pecos as a wake-up call. We should have been concentrating on the fact that we failed to make our deliveries on the Pecos and therefore the Supreme Court stepped in and insisted on telling us how we are

going to manage our own water resources. We should have used that as a wake-up call on the Rio Grande. The second point of my question, in your dealings with the state of Texas, on compact water rights on the Rio Grande, are you optimistic that we might be able to reach some win-win negotiated settlement in devising a compact so that Texas gains some benefit and New Mexico gains some more flexibility in using its waters from the Rio Grande?

Response: I am optimistic about the possibility of talking to Texas and negotiating a solution that is mutually beneficial. I don't know if that will mean amending the compact. I do hope that it does not get to that level. I think that we can do a considerable amount by defining how we are going to operate the system in a way that both of us can understand, and that is mutually beneficial. I am optimistic we will be able to do that and hopefully avoid some litigation on the Rio Grande.

Question: I have a question about the word "sustainability." You mentioned it in the planning process. Sustainability has to do with our state's population growth and I am wondering what kind of posture you are taking in this planning effort to look at growth control in the state.

Response: We have not addressed that at all directly in the first draft of the State Water Plan and I do not anticipate that we will address that between now and December. We do, however, recognize that we must make more serious evaluations whenever we allow a new development to go forward. We must take seriously the evaluation of available water rights and not only water rights, but actual wet water. We must make sure the Office of the State Engineer's analysis is actually heeded. The state as a whole generally just requires that we look at a 40-year window to the future. Why? It does not seem to be adequate, at least to me, in terms of defining the sustainability of a supply for what in essence is going to be a permanent community. I think we need to carefully think about longer planning horizons. We also mention in the State Water Plan that to the extent that a basin is fully appropriated, or closed, we should not allow additional appropriations unless some water uses retire and that water is transferred. We do not address directly the question of population growth in the water plan, but we do think that the impacts of population growth on our water supply need to be addressed.

Question: My name is Danny Hernandez. Just to follow-up on what are you going to do about actually retiring water. In other words, agricultural land is retired but then that land is developed and you use the same land all over again. Someone buys the water and uses it somewhere else, but then whoever moves onto the retired land, uses the water again. How can we fix that problem?

Response: I am assuming that at least in part, you are talking about the issue of domestic wells. As you heard from our State Engineer a little bit earlier, that is one of the primary areas in which we must perhaps bolster the State Engineer's authority to deny such things, particularly in areas where we know there is a critical supply shortage. I do not think that we want a blanket policy, but we do have to understand our supply and understand where there are critical areas that we have to manage better, and we have to give authority to the State Engineer to be able to manage those resources better. But this is not something we can do in a policy document. Ultimately those sorts of issues must be dealt with by the legislature.

Question: Before we got into compacts and their impact on planning in New Mexico, I would like to ask the question in the reverse way, that is, how planning in New Mexico is impacting the compacts to which we are a party. I think on the Colorado, both Arizona and Nevada have proven that the terms of the compacts can be re-interpreted; in Arizona's case, the introduction of using water, storing it, putting it to beneficial use, and increasingly building up their entitlement. Nevada worked with Arizona in the lower basin to get water banking, which I think 20 years ago people would have said was not acceptable under the compact. I am wondering how much you and John are thinking about the interpretations of the compacts that New Mexico is party to that might be beneficial to our being able to meet compact requirements. For example, in the Rio Grande the Silvery Minnow's historic habitat stretched all the way to the Gulf and yet the critical habitat designation is putting the burden of water consumption in the Middle Rio Grande. Is there any possibility that the compact could be interpreted such that that obligation is not just the Middle Rio Grande's, but extends throughout the basin?

Response: Yes, there is a possibility. I guess the best way for me to answer that, and particularly focusing on the Rio Grande, is to say that we are evaluating

that and a number of other issues. There were a lot of issues that were not contemplated back when the compacts were negotiated. We are exploring as many issues of that sort as we can. All of them are possibilities, but before we actually get out there and try to push something, we want to have the issue evaluated internally as well as we possibly can so that we understand the strengths and weaknesses of any such argument. We have an excellent technical staff, they eat, live, and dream about this stuff I'm sure, and they are constantly generating ideas of this sort. Every time one of these issues comes up, we try to focus some discussion on those issues and ultimately determine their technical merit. I do not want to speak to any specifics but we do discuss these possibilities as a matter of course.