

Mimi Stewart was raised in the Southwest, educated in Massachusetts, and has been active in New Mexico politics since moving to the state in 1978. A State Representative since 1994, she is a Resource Teacher at Teaching & Learning Systems with the Albuquerque Public Schools. Mimi has sponsored bills to create an extended school year for disadvantaged youth called Kindergarten Plus, a statewide water plan, gray-water system regulations, summer youth gang intervention programs, domestic violence interventions, a school board campaign reporting act, emergency contraception for rape victims, and rights for mobile home park tenants. She was chosen by the Center for Policy Alternatives to be trained at the 1997 Flemming Fellow Institute in Washington, DC, to enhance her skills as a progressive legislator. Mimi was voted Legislator of the Year by the New Mexico Wildlife Federation for her work to decrease poaching of wildlife in New Mexico. She has gained national recognition for her innovative work on prohibiting insurance companies from discriminating against victims of domestic abuse by passing legislation that has become a model for other states. Mimi has two children, a thirty-year-old stepson working in the computer industry in Boston, and a twenty-year-old daughter attending Wellesley College. In what spare time she can find, she enjoys gardening, running, painting, and calling traditional contra and square dances.



LEGISLATIVE PERSPECTIVE ON WATER CONSERVATION

Mimi Stewart
New Mexico State Representative
District 21 - Bernalillo
313 Moon NE
Albuquerque, NM 87123

Good morning. Thank you for the opportunity to talk about the legislative history and perspective on water conservation. The legislature has considered dozens of ideas for water conservation over the past ten years. I will use a few to illustrate the dilemmas we face in conserving our water.

One of the first bills introduced was in 1997, from former Representative Pauline Gubbels, House Bill 928, that would have defined “beneficial use” to include

conservation. That bill was defeated because we could not agree on the real definition of beneficial use. Our Constitution says that beneficial use is: “The basis, the measure, and the limit of the right to the use of water in New Mexico.” But beneficial use is not defined at all in the Constitution or in the statutes, but rather is defined in case law essentially to mean “use,” not conservation. So Representative Gubbels and some of her supporters thought that just including the word

“conservation” in a statutory definition of beneficial use would help. That bill got nowhere because there was no consensus on the definition of “conservation.”

For example, does conservation include lining ditches to minimize depletions? What about the cottonwoods growing along the ditches? If they die from lack of water, what about the conservation of habitat and the ecosystem? Defining conservation in statute may confuse existing case law, and perhaps create more lawsuits. We continue to be faced with this dilemma.

Representative Gubbels and Senator Sue Wilson-Beffort introduced the Water Banking Bill about five or six years in a row before it was passed as a pilot project in 2002 along the Pecos. It was generally well received and we broadened the application of water banking last year. Water banking was opposed year after year because it was perceived to be a threat to local irrigators who did not want the state to pre-empt their existing “water banking” practices. They did not trust the Office of the State Engineer to be fair in the administration of a centralized bank. They were suspicious of the State Engineer who they perceived to be taking away their own water rights.

There also was confusion over exactly what water was eligible to be banked, that is paper water rights or so-called “wet” water—water that had been adjudicated and had some real value relative to seniority in time.

It seems like we have gotten past the banking issue. We have tried it on the Pecos, and now the acequias can do water-banking; but all you have to do is look at Elephant Butte at 15 percent of capacity to know that water banking goes only so far when you do not have water to put in the bank.

Next, we have had several versions of bills that would have provided tax credits for installation of water conservation technologies. Former Representative G.X. McSherry from Deming introduced the first one in 1996, House Bill 124. That bill did not go anywhere, again, because of difficulties in defining “conservation” and conservation technologies, and also because of an unfavorable fiscal impact report. In other words, it would have cost the state a lot of tax revenue. If only the fiscal analysts understood and accounted for the costs to the state of NOT conserving water.

Last year, Representative Stell introduced House Bill 481. It would have provided an exemption from the gross receipts tax for the purchase of water conserving irrigation systems. House Bill 481 got through the House but was tabled in the Senate

Finance Committee. I am not sure what the opposition was, but the bigger question is: why can't the various interest groups in New Mexico get together and develop water conservation policies that are good for us all? As they say, “whiskey's for drinking and water's for fighting,” but I'm afraid when it comes to water issues, we are getting in the habit of fighting instead of trying to move forward on these issues.

Look at the Pecos River, where you have farmer against farmer, irrigation district against irrigation district, community against community. We have different viewpoints over water law, we have different priority dates, and we have different economic interests, different cultures, different hydrologic conditions, different diversions, uses, and goals.

They say water is a complex issue. That may be, but even if it were simple, we would still disagree on PRINCIPLE and never conserve it, because the constitution requires us to “beneficially use” it. I believe that water is not so complex that we can not come to some rational agreements if we exercise our collective political will.

That brings me to the legislation that I will be introducing this year, instituting a water resource fee, and I know it is going to have a hard time from many of you. But let me discuss some implications.

The New Mexico Finance Authority and the Office of the State Engineer prepared cost estimates of needed water projects for the next twenty years. Most of you are already aware of this, but we need almost \$4 billion dollars and that estimate will probably go higher. This is not money for golf courses and ballparks—this is billions so people have water to drink and to bathe in. Projects like the Navajo-Gallup Project to keep the city of Gallup from going dry; for Albuquerque to use its San Juan-Chama water to stop our rapid depletion of groundwater; for Clovis to replace the groundwater that Texas is stealing from us; for Las Cruces and Rio Rancho and Santa Fe and Española and for literally hundreds of thousands of people in small and large communities all over the state TO LIVE, not newcomers from California, but US.

And yes, it is also for the silvery minnow and the cottonwoods and the willow fly catcher AND the river rafters, the fishermen, the boaters in Elephant Butte, AND for Texas. Ah, yes, Texas. You know that if we do not spend some money now on conserving water and augmenting what flows we can, that sure enough, the great state of Texas will haul us back into the Supreme Court. How much will we spend on “water” then?

So I am going to propose a water user fee to pay for some water conservation measures to avoid disaster. Joe Stell got a bill through a few years ago to create a water project finance act, and he made sure that everyone could get a little something through that institution. Unfortunately, Gary Johnson vetoed the money to fund it; we had a \$400 million surplus then, by the way, that we do not have now. We put in a little money last year, so we are making progress, but we are a long way from \$4 billion dollars.

And I know the politics of a water user fee/tax/surcharge, call it whatever you want. But what is YOUR alternative? We're going to have to come up with more money for water somewhere, sometime, and I think it is time we start telling the public, our constituents, that water has to be paid for because it costs a lot to deliver it. I am going to propose that everybody puts something in and everybody gets something back.

My legislation will create a recurring dedicated funding source for water conservation projects and for a state program for voluntary acquisition of water rights for public use and benefit. It will:

1. Authorize the Tax and Revenue Department to collect fees from irrigation and conservancy districts, public water suppliers, self-supplied commercial, industrial, mining, power, and agricultural water users, domestic wells, and utilities for groundwater pumpers;
2. Assess fees on a variable rate depending upon class of water user, based on the amount of permitted water right, unless the user is metered with an approved meter, at \$2.00 per acre-foot for agriculture users, \$20.00 per acre-foot for public water system suppliers, \$20.00 per acre-foot for self-supplied commercial, industrial, mining and power, and a fixed annual fee of \$20.00 per well for domestic users;
3. Deposit the revenues into the Water Project Fund and the irrigation Construction Works Fund; and
4. Finance water conservation projects (giving priority to grants or loans for metering of withdrawals and divisions), state acquisition of water rights from willing sellers or lessors for public use and benefit including interstate compact deliveries, recreation, conservation, and enhancement of fish and wildlife and their habitats.

Let me conclude by summarizing some issues about water conservation and paying for the true costs of water.

Demands for our limited water supply are increasing. Demands for our water are increasing as a result of our growing population, diminishing groundwater reserves, and the decline of our river dependent species. Improved water management and water conservation are essential to ensure that New Mexico has water available for New Mexicans, economic development, and the rivers that are critical to our quality of life and economy.

Water conservation measures are a good investment because they are less expensive than developing new water supplies and they are the environmentally most benign way of providing adequate water to all users. Water conservation is a vital part of the solution to meeting increased demands for water.

Until this year, New Mexico did not have a recurring dedicated funding source for water projects including conservation. Trust funds for statewide water conservation programs have been significantly depleted. Independent experts on New Mexico water policy have recommended user fees as a potential revenue stream. We need money to secure our future water supply.

New Mexico's current policy of "no charge" for water ignores the cost to the state of effectively managing its water and watersheds, and discourages water conservation. I believe that charging a minimal fee for water would encourage conservation. We tend to devalue what we receive for free. This proposal would directly benefit both farmers and urban residents because they would be the beneficiaries of the water resource fee. The revenues could be used to address leaking water systems, make farm conservation improvements, pay for metering, protect the ecology of streams and rivers, expedite priority administration of water, adjudicate water rights, and support efficient transfers of water rights.

I am sure many of you do not like this, but what is your idea for funding our water needs? How do you propose that we institute conservation methods to better use this precious resource? If you show me that your idea is better, I will help you, but come on folks, let us stop fighting and criticizing and whining and do our jobs. I want us to sit down and roll up our sleeves and negotiate a plan for conservation that will hold water.