

John Horning has been with Forest Guardians since 1994 and became the Executive Director in April 2002. During his tenure, he has worked in a variety of positions including grazing program director, watershed protection program director, and conservation director. He has had extensive campaign and litigation experience working on western water, grazing, endangered species, and land-use management issues in addition to his development and administrative responsibilities. The Wilburforce Foundation recently recognized him with its annual outstanding conservation leadership award. A graduate of Colorado College, where he received a B.A. in American history, John has worked as a wilderness ranger for the U.S. Forest Service, as an environmental educator, and as an editorial intern at High County News. Immediately prior to coming to New Mexico, he worked for two and a half years in Washington, D.C., for the National Wildlife Federation on public lands and western resource issues. John loves hiking and skiing, endurance running, and speaking Italian, and assists his wife Terry with horse events.



A LIVING RIVER FUND

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Thank you. It is good to be here. My name is John Horning, and I am the executive director of Forest Guardians. Forest Guardians is a regional environmental advocacy organization. We are a membership-based organization. We are based here in Santa Fe. Our mission is simply to protect the wild lands, wildlife, and wild rivers in the American West.

For more than a decade now, environmental groups in New Mexico have been working to assert the Rio Grande's rights to its own waters. For years, the only way we sought to meet that goal was to enforce the legal mandate of the Endangered Species Act (ESA). As many of you know, we asserted in federal court that New Mexico's federal water projects, both the

San Juan-Chama project and the Middle Rio Grande project, were subject to the ESA's overriding purpose of protecting endangered fish, wildlife, and plants. We argued in many different forms that more water needed to be provided, both to prevent the extinction of the Rio Grande silvery minnow, but also more importantly to ensure that the river's ecosystem would be sustained and eventually recovered. Though those legal efforts – and they are still ongoing of course – have been successful in catalyzing a lot of change in water management on the part of both federal and state agencies and have benefited the river, they have not yet ensured that the Rio Grande has a permanent right

to its own water, and that is really what I want to talk about today.

The Rio Grande silvery minnow litigation has, however, spawned an unusual alliance that creates discomfort in me to this day. It is an alliance that is working to create some new mechanisms to ensure that the river has a permanent right to its own water. In February 2007, the same six environmental groups – including Forest Guardians – that brought the Rio Grande silvery minnow litigation, this time in partnership with both the City of Albuquerque and the Albuquerque-Bernalillo County Water Utility Authority (ABCWUA), announced the creation of what we are calling the Living River Fund. The partners seeded the fund with \$250,000. That was \$25,000 from the environmental groups and \$225,000 from the ABCWUA.

At the moment, the Living River Fund has one purpose. It is to create a pilot agricultural water leasing program in the Middle Rio Grande. The purpose of the program would be to free up more water that can then be allocated to the river when flows are needed most to sustain endangered fish and wildlife, including primarily the Rio Grande silvery minnow. The concept of agricultural forbearance is pretty simple, even if its implementation may be pretty complex. But before returning to the subject of agricultural water

forbearance, I would like to explain and provide a little bit of background on how the Living River Fund came about and also describe some

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other companion mechanisms that are called for and still need to be implemented in order to make this whole thing work.

Though the long version of this story has a little bit of drama, mostly lots of meetings with John Stomp, who is with the ABCWUA, the short version is that the Living River Fund implements a key component of the April 2005 partial legal settlement between the City of Albuquerque and the environmental plaintiffs. This again is in the still ongoing litigation, *The Rio Grande silvery minnow vs. Martinez*. In addition to committing the \$250,000 to this Living River Fund, the settlement also requires two other actions that are an important component of reclaiming the river's rights to its own water.

The first additional component of this agreement commits up to 30,000 acre-feet of ABCWUA-owned space in Abiquiu Reservoir. This would be for an environmental pool to hold water rights to sustain the river at critical times. We realize, of course, that water without storage is not as valuable as water with storage. That is why storage is a key component of this overall agreement. We have discussed this with the Corps of Engineers, the State Engineer's office, and others. We are engaged in not yet negotiations, but conversations about how to go about authorizing this storage. Of course, it will have to meet both the Rio Grande Compact and any requirements of the State Engineer's permits.

Second, the agreement requires the authority to establish a program that gives residents of Albuquerque and Bernalillo County the choice to add \$1 per month to their water bill or more that would be contributed to a Living River Fund. We call this the Living River check off, and that is because people would have to check off on their monthly water bill in order to participate in the program. The check off will certainly go into effect sometime in 2008. With almost 175,000 customers served by the authority, I think the mechanism has some potential to provide a significant and sustained revenue source to acquire water for the river. A similar program has already been implemented here in Santa Fe. Though the participation is not yet super robust, I think additional education and promotion of the program needs to occur. There already is fairly significant participation in the program.

The ingredients for a Living River Fund are coalescing and coming together. But to be frank, there is a lot more that needs to happen. For the Living River Fund to accomplish its goals, there are three additional entities that need to see it as a valuable tool and support it and provide both their political will and their financial capital. Those three entities, of course, are the state of New Mexico, the federal Bureau of Reclamation, and the Middle Rio Grande Conservancy District (MRGCD). Without any one of these players, the initiative of agricultural water forbearance is dead on arrival. We have started some conversations with these entities, and other conversations are planned.

As I have said, one of the key ingredients in the success of this program is additional financial support. The intention of seeding the fund with \$250,000 was the hope that that money would act like yeast and attract other funding. With that in mind, we have approached the Interstate Stream Commission and asked them to

allocate funds from the Strategic Water Reserve to supplement the \$250,000 currently in the Living River Fund. It is my hope and my belief that if the state provides funding to the program by putting money into a dedicated account that would sit and earn interest until the program is ready to be implemented, then that commitment would likely attract funding from federal agencies. I view that funding as critical to the long-term viability and sustenance of this overall program.

Then the question turns to the MRGCD, and I think to a somewhat lesser extent the Bureau of Reclamation and where they are on agricultural water forbearance. In preparing this talk, I went back and looked at all of the MRGCD's comments on this issue. Forbearance goes back a long way. It has been studied now for about 11 years. This first report on agricultural water forbearance was in the summer of 1997. I looked at press releases from the MRGCD going back to 2003, where studies have been made. There is general interest in exploring and seeing whether or not forbearance can make a difference. My point is that the issue has been well studied. More than anything, it is the political will and to an equal degree the financial capital that are needed in order for this program to be implemented.

I think from our perspective financial incentives can play a key role in providing flows to ensure that a river has a right to its own water. This is especially true as municipalities begin diverting their San Juan-Chama water, and that water is not available for the Bureau of Reclamation to acquire through short-term leases to provide flows to the Rio Grande. I view forbearance as the next possibility of providing flows for the river. My take on forbearance is that though the technical issues are significant, they are not insurmountable. The bottom line, as the saying goes, is that where there is a will, there is a way. If we have the political will, we will find a way to overcome the technical issues and make it one of the tools for providing flows to the Rio Grande.

My presentation is fairly brief, just giving you conceptually what this Living River Fund is all about and how it came about and what its vision is. I would like to close with just a few general thoughts.

First of all, I want to be clear that the environmental community has the same goal today that we had 11 years ago when many of us became involved with the Rio Grande. That goal is to secure the river's rights to its own water. That has not changed, and I suspect it will not. What has changed is that our methods and

our approach to securing the river's rights to its own water have evolved and diversified.

Second, my hope and my belief is that the Living River Fund will grow both by establishing other check off programs in other municipalities throughout the Rio Grande basin. I believe that urban constituencies can do a lot of things. One of them is to demonstrate that as we look to the river to sustain, we can take one

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small step to participate in a mechanism that is about sustaining the river. I also believe over time we should be creative in how we use these funds. In addition to outright leasing for acquiring water, the funds could also be used to increase efficiencies, whether through conveyance or shifts in crop uses that result in freeing up water. The real key is that in all these cases where water is freed up through efficiencies that water is devoted to or dedicated to the river.

Third, my grandfather, who actually celebrated his honeymoon here many, many decades ago, once said to me, "John, don't look a gift horse in the mouth." My point in saying that is I believe this Living River Fund has the potential, if supported by key constituencies out there, to move us beyond some of the conflict that has characterized and undoubtedly will continue to characterize water management in the Middle Rio Grande.

Finally, I just wanted to share what motivates me in all of our work. I have been at this now for 11 years, and it is about a commitment to ensure that future generations have the ability to enjoy the living river just as past generations have. That means that we don't leave those generations with a ghost river. There are many other examples of ghost rivers in the Southwest. I think people involved in those rivers might never have thought that the river that sustained the community and was the original reason for those communities to be established would once go dry and that that state would become permanent. For me, this means basically reclaiming the river's rights to its own water. Of course in my opinion, what is at stake is not just the fate of two or three unfortunately less than charismatic endangered species, but rather ensuring a living Rio Grande that is at the heart of our region's identity.

Again, I think that is what sustains and drives our work amidst what are extremely difficult odds. Thank you.

Question: It seems that you are focusing throwing money at the problem, when the problem is wet water. It seems to me that maybe rather than talking to John Stomp about storage and money, it might have been very productive to talk to the ABCWUA about using that wonderful tool – the drinking water project diversion. If people actually conserve water, they can make a determination for it to go to the river rather than to new uses, so you could actually put wet water in the river. Then the urbanites play a real role in wet water for the river rather than throwing money at it and looking at someone else's water to solve the problem. Why didn't you talk to the city about utilizing that diversion? The urban people could then go down to the river and say, "I put three gallons of water in here."

Horning: I agree completely with the ethic, the principle. In fact, in our negotiations with the city during ongoing litigation, we initially started with that very ethic. That is exactly what we wanted. Quite frankly, it was a very bitter pill for all of us to swallow that we were not able to manifest that ethic in this agreement. I feel like there is still work to be done. I think a lot of people who conserve water do so thinking that it has a connection to something they care about. In fact, you are absolutely right. I think conserved water merely subsidizes the next development. I feel like the next frontier in this campaign is to do just that, to allow people to ensure that their conserved water goes to the river. We were not able to secure that policy through this mechanism.

Question: Well, rather than naming a federal agency, a state agency, and the MRGCD as where you are going next, maybe you should focus on an advertising campaign, because it seems to me that there is a lot of power in creating political will.

Horning: I agree with you.

Question: What did you mean by agricultural forbearance?

Horning: Agricultural forbearance is the basic concept of paying an agricultural water user to forbear the use of the water—that is, not divert that water—to a farm field, so, to put it simply, that water can flow in the river, assuming there is one diversion and one user. It is obviously a lot more complex than that. The idea is

to forbear the use of water and be compensated for that forbearance and allow that water to be dedicated to another use, in this case to provide flows for the river. The idea of forbearance is not to acquire the water necessarily, but to lease the water. At least traditionally, the agricultural community has been resistant to out-and-out acquisition, though the previous presenter clearly demonstrated that there are a lot of willing sellers out there. That is the basic concept.