

*Andy Nuñez was born and raised on the family ranch in Roswell. He is one of 11 children, seven boys and four girls. Six boys served in the military; the youngest was killed in Vietnam. Andy served three years in the US Marine Corps from 1953 to 1956. In 1957, he entered New Mexico State University on the GI Bill and received bachelor's and master's degrees. Andy went to work for the US Department of Agriculture for seven years in the Gallup area. He then returned to NMSU to work in the International Program office for seven years traveling to Mexico and Central and South America. Subsequently, Andy left NMSU and took a position in Puerto Rico on a two-year contract to establish a Farm Bureau organization. Upon returning to New Mexico, he started farming and ranching in the Roswell area until 1986 when he bought a farm in Hatch. In 1990, Andy started working for the New Mexico Farm and Livestock Bureau as Organizational Director and Lobbyist. In 1992, he was hired by NMSU as Legislative Liaison and General Director. He remained in this position until 2000 when he won the election as State Representative.*



## PREVIEW OF LEGISLATIVE WATER ISSUES 2008

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The legislature gives us so much money to operate on and you know how the legislature is. I complain the same way that John D'Antonio did about not being able to do an adjudication because he hasn't received any funding. Well, we've given him all the funds he can use each year. I don't know exactly what John covered before I got here this morning, but I have reviewed his PowerPoint presentation. Some of it I don't understand, and some of it I don't agree with. I want to start with what I am supposed to be talking about today. I am supposed to discuss legislative water issues for the 2008 session and what we legislators are going to be doing. This year's session is a fiscal session. Only those things that have to do with money

will be heard unless the governor puts other items on the call. There will be some issues that will be put on the call. I'm afraid it is going to be more than what we can handle, which means we will probably go into another special session and spend some more of the state's money.

The first thing I have on my list here is adjudication. John covered a little bit about it. This is a process that really has taken a long time. Yesterday the Water and Natural Resources Committee hearings ended for this year. We set up an adjudication subcommittee, because we feel that the adjudication process is taking too long. John talks about the Middle Rio Grande adjudications taking 15 years and more. We think that is just way

too long. We think we need to move a little faster and get a few things done. We've created a subcommittee, which includes the administrative offices of the courts, the Office of the State Engineer (OSE), the attorney general's office, DFA, the legislative finance committee, and the legislative council service. This group is supposed to develop a detailed amendment to

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adjudication pilot project and adopt a statute general reform goal for the Middle Rio Grande adjudication. We are going to create a Middle Rio Grande water court, effective July 1, 2009. We will endorse general fund appropriations adequate to support the Middle Rio Grande pilot project and practical resources for the Office of the State Engineer.

We feel that the statutory reform should include providing for a change in the role of the Office of the State Engineer to technical experts rather than plaintiff in a claim-based system, an alternative and less intimidating means of serving notice. John was on our committee, and we raked him over the coals for two days straight. The acequia people came up with a bunch of recommendations. Some of these small farmers are already intimidated when the state engineer goes in there and serves them notice. They are just scared to death. They don't see the adjudication process as the way it should be. I think John is taking that into account. They've got an Ombudsman who is going to be working with them. That is something that is really needed.

We are also going to try to get John enough funds for Indian rights settlements. He has requested, if I am not mistaken, \$13 million for three settlements. That will be one part that we will be bringing up this session. There are some more land purchases on the Pecos to settle a settlement. John told us a couple of days ago

that OSE needed more technical staff and a few more lawyers. My question was, "Well, how many lawyers do you have?" I suggested that they need more technical people and fewer lawyers. You've got Hernandez over here who you can use. I know that we will be putting some money into that. John won't have to worry about the money. It is going to be there.

We have the New Mexico Rural Water pipeline project over on the east side of the state. They will require a lot of money. All of these issues will be coming to us over this 30-day session. The Gila River settlement—we put some money into it last year, and the governor vetoed it, but we are going to go back and put some more money in. There was wording in the legislation that someone told the governor was bad, so he vetoed that bill. We only have, I think, until 2012 to get that thing settled or, I believe, Arizona is going to get our water. We must put some money in there and get that study started or we are going to do without water.

Of course, given that I am a farmer in the lower Rio Grande, we need some money down there for more metering and other work that John and Gary Esslinger are doing. John, I hope we will get some money for that also.

I am not sure what is going to happen with the domestic wells issue. We haven't mentioned that issue in any of our meetings lately. I hope that those things kind of go by the wayside. I know that someone is going to bring up the water use forfeiture law—the use-it-or-lose-it law. It comes up every year, and we'll see if we can put a little money into it this year.

Some are recommending that we extend the 40-Year Water Plan to 100 years, to modify section 72-1-9 and to add utility companies, water utilities, and water sanitation districts to all of this. That issue may be coming up.

The Water Trust Board is one issue that I wasn't in agreement. The Water Trust Board in my estimation and the estimation of a lot of legislators wasn't doing what it should have been doing. Perhaps the changes that they are recommending may work. I'm against appointing the cabinet by executive order. I think that ought to be done by the legislative process. We need to fund it some way. The way we have seen it and the impression given to a lot of legislators by the Water Trust Board is that a lot of the money that has been doled out has been more about political power than need. We have some improvements in Albuquerque where there is a lot of the political power that in my

estimation should have never been approved for funding. I'm kind of leery. I've always introduced the bill to get that Water Trust Fund up to \$100 million, which is what the original law indicated. I'm a little leery about asking for any more money to be put in there until we get this Water Trust Board going in the right direction because that is a lot of money to be used. There is some \$60 million in the fund. The original law said \$100 million, and I would like to see it get to that \$100 million. Eventually we will get it there.

There will be new funding requests for salt cedar control and for riparian restoration after salt cedar control. The state forest service will be asking for forest restoration funds. I am sure we will put a little bit of money in there. For the salt cedar project, I would like to see a continuing resolution so that they do not have to come back every year. Last year, the money was vetoed out, so we were stopped for a year. That is a project that needs to get done. I would like to see the money stay in there for a certain period of time, so that we can continue clearing salt cedar and saving what water we can.

I'd like to mention some of the bills that will come up during this session. One of them I've mentioned already, which is the Pecos River alternative water rights retirement method. This is another bill that we introduced last year, whereby the Office of the State Engineer can purchase land with water rights in the Pecos valley to satisfy the Pecos settlement. This bill allows the state engineer to go ahead and purchase just the water and let the owner keep the land, and the land remains on the tax rolls. The governor vetoed that bill last year. We are going to reintroduce it this year, and hopefully it will get through. We thought we had everyone behind it last year. Why the governor vetoed it I have no idea.

We also have funding requests for aquifer mapping. We do not know just yet how much money is being requested in that bill.

The Utton Transboundary Resource Center appropriation will come up again to fund the Center's work on cooperative, interdisciplinary resource planning, and conflict avoidance across political boundaries. We are probably going to fund that.

Concerning the precision irrigation appropriation, there is a gentleman from Australia who made a good presentation on the subject, and I think we are going to introduce that bill and see if we can get funding for that one. The Mutual Domestic are asking to become a member of the Water Trust Board. I don't think the

governor will add them, but they would like to be on the Board, and they are going to try to get on the agenda. The water adjudication memorial that I read awhile ago is simply going to be a memorial. It will be heard.

If you listen to some of the financial people who we have in the legislature, they say we have a lot less money than we had last year. For ten years I lobbied for the university before I

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became a legislator seven years ago. Every year, you would go up to Santa Fe and be told they had less money than the year before. For some reason in January, they find all kinds of money somewhere. I don't see how we can have half as much money this year as last year when oil and gas prices haven't gone down. Oil just went up to about \$98 a barrel, and gas stayed kind of close. Gas brings more money in than oil, but we still have a lot of money in the coffer. That doesn't mean we have to spend it. We need to use it prudently. I think we are going to do that.

I think that's all. I think I spent all the money for the session.

**Question:** I keep hearing that 180,000 will be impacted by adjudication in the Middle Rio Grande. I want you to clarify something. I called the assessment's office for the district. The Middle Rio Grande Conservancy District basically from Cochiti to Bosque del Apache—the majority of the irrigators in the Middle Rio Grande—only sends out about 15,000 assessments. Everybody who irrigates has to pay an assessment to the district in addition to the property taxes that are paid by everybody who lives within the district. The qualified electors in the district are only 94,000 people. That is everybody that lives within the district boundaries. The assessments or irrigators are only about 15,000 people. I ask where that 180,000 comes from. I don't know. No one will tell me. I don't think it's even based on noncontiguous tracks, because my dad gets 16 bills when they only have two parcels. I think there is a little bit of a misconception about the number of impacted people.

**John D'Antonio:** That is a good question. We are still trying to get a handle on the numbers. It is not just owners. It is sub-files. Sometimes a parcel of land has multiple sub-files with respect to it. There are some

other issues. We looked at it from an acreage standpoint, about 150,000 acres. There is also the complexity of having the state's largest metropolitan area with Albuquerque and Rio Rancho, the six Middle Rio Grande pueblos, and the conservancy district itself. When you talk about the layers of complexity with respect to that adjudication as it moves forward, it is a huge effort. We will look at that. It is one of the reasons we tried to set up the Middle Rio Grande pre-adjudication bureau. We tried to do it last year; hopefully we can get it funded this year. Its purpose is to get a handle on putting a plan together and getting a really good estimate on how much it is going to take to do that. We will get a better handle on the exact numbers once we get that group together.

**Question:** It just seems real disingenuous to talk about 180,000 parties without parceling out what the complexities might be.

**Nuñez:** I need to correct that. I didn't say 180,000. I said 80,000 because that is what I heard, but that is still a lot of people.

**Question:** Do you anticipate funding agricultural efficiency improvements?

**Nuñez:** Are you talking about the federal funds? Yes. I am sure we will, but we do not know how much, probably \$5 million.

**Question:** Is your understanding of the adjudication process involving the whole sum of everybody, or are we keeping that adjudication of water rights to the sovereigns of the states and pueblos, or users individually?

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**John D'Antonio:** With the six Middle Rio Grande pueblos and their sovereign status, federal and

state law with respect to how they come together when you are doing adjudications are two different animals. The reason that we look at separating them out and have done that in other areas is that the Navajo settlement agreement actually settled the Navajo claims in the San Juan basin. It didn't involve the non-Indians. There are other issues to fully complete that adjudication. We are talking about two different processes. Because the Indian water rights settlements involve the trustee responsibilities, they are a federal

entity, and given their sovereign status, they must be dealt with differently. The only way you can do that is through negotiated settlement agreements. What you wind up doing is entering into negotiated settlement agreements to establish and come up with a negotiated settlement on what the six Middle Rio Grande pueblo's water rights are within that basin. That is far different from looking at the adjudication on the state-based rights, which goes through an adjudication process. You are looking at beneficial use. There are some linkages to it, but it gets far too complicated for me to explain. I would rather have one of my attorneys explain it. Suffice it to say that it is very complex, and it will be two different things: a non-Indian portion with the state-based rights that will go through state-based adjudications and the Indian settlements. We are looking at adjudication reform, so for future adjudications there may be something a bit different. There are the protracted negotiation settlement discussions that take place between the sovereign nations, the United States, and the state of New Mexico. That doesn't end there. Even the Navajo Nation settlement is not a settlement recognized by the federal government until there is authorization and the Department of the Interior secretary signs off on it. There are still some things that need to happen even with the Navajo settlement. The Navajo, the water settlement, and the San Juan settlement are just done with the state and those respective pueblos or tribes. There is still a federal portion that has to happen, so we are still quite a ways out. It is really complex.

**Question:** John expressed some concern about our agricultural products leaving the state. I think what he was trying to say is that he doesn't think Hatch chile should leave the state.

**Nuñez:** He said we are exporting our water when we export our pecans to China and our chile to California and Texas. For those who don't know it, there is a grocery store in Texas that has a chile festival for Hatch chile on a regular basis down there.

**Question:** The bill on the Gila River that the governor vetoed last year I think was in excess of roughly \$900,000 for studies. Will the 2008 legislative session try to put the original amount back in again?

**Nuñez:** I think what we want to do is put the amount that Greg and others think they need. I am leery about even giving the state engineer more money than he can spend in one year. That money sits there, and the



state is paying the interest on it. If they ask for that \$900,000 or \$1 million to do it, that is probably what we will try to give them.

**John D'Antonio:** It wasn't a bill that was vetoed. It was a line-item authorization for \$945,000 for hydrological studies for the Gila. We have included in our budget a request for \$1.5 million to include additional hydrological studies to make sure that everything is taken into consideration and to meet those 2012, 2014 deadlines. That is a special request within our budget for \$1.5 million.

**Nuñez:** I'm sure that is probably what we will recommend as well.

**Response:** The people down there are very happy to hear that.

**Question:** In your itinerary here, Mr. Chairman, you put down Colorado compact issues. Would you elaborate on that a little bit please?

**John D'Antonio:** The Colorado issues are heating up and have been heating up for some time. It is potential litigation with respect to the Colorado River issue. We have addressed potential litigation with our friends here from Texas over the last few years on deliveries. The Colorado River system is really interesting because you have seven basin states essentially. You've got the upper basin, which is New Mexico, Utah, Colorado, and Wyoming. And you've got a lower basin, which is Arizona, California, and Nevada. The lower basin is far in excess of their apportionment on that particular river. The upper basin has not used their full apportionment. There are some issues with Arizona in a seven basin states agreement that had been signed. They are sort of backtracking on whether or not they want to be part of that agreement. Part of it is because Arizona has the junior priority on that lower basin system. They've gone and developed a lot of their property and a lot of their growth is based on Colorado River water, Arizona Project Water. They feel they need to apply for every drop of water they can get. Part of the money that must be appropriated is to make sure we've got a stake to ensure that New Mexico gets its apportionment off that river. It leads to interstate litigation. In that regard, there is probably some money associated with lawyers. Sorry, Andy, we need lawyers to defend the state and the state's waters. I am sure that is part of it.

**Nuñez:** The federal environmental impact statement is still in progress with the Colorado River, and it is expected to be done by this December.

**Question:** You were saying that the state engineer can buy just the water rights down on the Pecos and let the landowner keep the land and keep it on the tax rolls. How are you going to adjust that tax rate on unproductive farmland?

**Nuñez:** The land can still be used for grazing. It doesn't mean it is completely unproductive. It is just taken out of irrigated agriculture. There are people who can use that for grazing, and they have livestock water that they can use. They don't sell all the farm, just a piece of it. The cattle can water in another place.

**Question:** I was listening to the news and there were some issues regarding the drilling for our natural resources as we become more energy independent. As a state that has energy resources of oil and gas and the concerns

about the penetrations of the drilling activities through aquifers in Santa Fe County, this is really important. Just outside of Carlsbad, I am familiar with an interesting and innovative group that is preparing to demonstrate beneficial use of produced water. How are the state engineer and legislative actions going to deal with the productive use of these produced waters?

**Nuñez:** We recently heard a presentation by a company that has done just what you are saying. They are obtaining produced water right there at the well site and cleaning it up. They have two on the Navajo reservation, and they are just starting another one in Farmington so they can use it for golf courses. They can improve that water to where it can be potable water, but they can also use it for other things. They made a presentation to our committee. They are working on it.

**John D'Antonio:** You asked about well construction standards. There are strict well construction standards to protect the aquifer. As they drill down, they have to seal off those intervening aquifer areas as they get to the source. There are probably nine or ten barrels of water produced for every one barrel of oil. When this water comes up, it obviously needs to be treated. What Mr. Nuñez was talking about was a distillation

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procedure that can turn the product into distilled water and could be used. OCD is a division within Energy and Minerals that has jurisdiction over produced water. We are trying to stay out of gaining jurisdiction, unless it goes to a beneficial use that has further jurisdictional issues with it. We are trying to work closely with them and will be working with them during this next interim period to come up with rules and regulations that make sure the source is protected, any jurisdictional issues are taken care of, and that water is permitted if it needs to be, while giving them the flexibility to use that water so we can save freshwater supplies.