

New Opportunities for Administration and Cooperation

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Prior to his appointment as State Engineer, Scott Verhines served as program manager for the Eastern New Mexico Rural Water Authority, overseeing a \$500 million regional water supply project that provided municipal and commercial water to communities throughout Eastern New Mexico. He has extensive experience with water issues both in and outside New Mexico. Verhines has managed and participated in over 200 hydrologic and hydraulic studies ranging in size from individual residential lots to over 500 square miles of watershed and has planned and designed over 60 major transportation projects. He earned his B.S. in civil engineering from Texas Tech University, as well as his M.S. in civil engineering and M.B.A. from the University of New Mexico.

Editor's Note: The following is an unedited, direct transcription of the presentation by State Engineer Scott Verhines.

Thank you for the invitation to come back this year. We certainly appreciate WRRI's continued sponsorship of this conference. Before we begin, I want to say kudos to the Western States Water Council. I think they are the unsung heroes—they do an absolutely fabulous job of looking after western water issues. They are on the frontlines with us, with Congress, and with others in the states. So thank you, Nathan Bracken, for that effort.

Good morning, and thank you for the impending snowfall. It will be good for all of us, a good running start to the year if we have what they are predicting is going to happen over the weekend.

My talk focuses on water administration, new opportunities for water administration, and cooperation. I am two years on the job this month, and I've learned a lot. It has been a pretty steep learning curve and I have a lot more to learn. I can tell you that the last 30 months in New Mexico have been the hottest and driest that we have had in a long time. It has not been without challenges, to which all of you can attest.

On day one of my new job, I inherited 18 lawsuits. We cleared a couple along the way, and I think we added a couple. We are going to try to hold the line and not add to that number. My mantra coming in was to solve problems and not fight, and I have to say, we have an absolutely fabulous staff working with me in the assumption that we are all better off if we can solve problems instead of continuing

to fight. My father Jack, who was a Roswell native and long-time civil engineer in New Mexico, often said to be careful not to back someone into a corner, because the only way out is on top of you. There is a lot of truth to that, so whenever we are trying to resolve issues around the state, I think we all ought to be conscious of the fact that if we back a person into the corner, there is not an easy way to get them back to the table. As we sit around the table, I think about that, and I also think about the times that we are backed into a corner and how we find a way back to the table.

I would like to share with you a couple of things from the last legislative session, and I'm going to pick on the legislature in a very respectful, friendly way. To their credit, in the last 60-day session, we were in constant hearings on water and in front of committees and joint committees for nearly all 60 days. Legislators were engaged, they were involved, and they wanted to talk through water issues. When the session was over and done, how did they help us resolve these problems? They cut our budget by \$750,000. The point is that we are not quite there yet. Legislators were engaged, they were trying, but a lot of issues are facing New Mexico that they are trying to balance, and that is where we found ourselves at the end of the session.

In July of this year, at the organizing meeting of the Interim Water and Natural Resources Committee—the largest legislative interim committee that we interact with as agencies—I provided the following remarks to the committee. We were in the depth

of the drought in July, and were starting to see some rain from the monsoon but not out of the drought yet. Here are my comments to the Interim Committee

First of all, you want the Office of the State Engineer (OSE) to protect New Mexico's water from aggressive action by our neighboring states—so do we. You want us to efficiently and effectively spend tax-payers' dollars on critical infrastructure. You want us to identify and provide the government resources of water, if they exist. You want us to protect senior water rights. You want New Mexicans to be able to maximize the benefit of their valid water rights, or you want mechanisms in place to provide others to do so if they cannot. You want a strong economy with New Mexicans back at work. Water is an element of almost any activity that gives us those benefits. You want us to drive forward effective planning for the future with a focus on implementation. Implementation is the hard part. We have done a lot of planning around New Mexico. Turning those plans into something that is implemented is the hard work—not just a planning document that gathers dust. You want locally derived solutions and plans that fit the uniqueness of the region that the state can come in and endorse.

You want OSE to have administrative programs in place that allow us to react collectively to conditions that present themselves in the current year—not down the road, years later, or not at all. Some of the discussions have acknowledged the variability that we see in New Mexico on a yearly basis. You want us to finish adjudications for water rights so that New Mexicans have certainty in their share of the \$15 billion plus back-of-the-envelope estimate of what water rights are worth in New Mexico. You want us to enforce water rights when we must and keep the system legally functioning. To all of the above, we do too.

The theme I'd like to try to work with you on today, as I have over the last couple of years, is the connectedness of all of these issues. We change hats all day every day, from being in front of chambers of commerce, to being in front of an agricultural community, to being in front of the Interim Legislative Committee, to addressing the legislature. We look at how to fund projects. How do we plan for them? How do we consider the ecosystem? All of these things are connected. I will give some examples of how these are connected from what I have seen over the last couple years.

We have talked a lot about living in a year of extremes, and I don't think that is lost on anybody.

By June, we had the hottest, driest 30 months we had ever seen, and it was hard on New Mexicans. We lost 40 percent of the cattle herd, and it had a huge impact on agriculture. We were seeing an agricultural community that is used to having feet of water to apply to their land having inches in these years. We had communities where water tables had dropped below their wells, and suddenly we had emergencies we had to deal with in many places around the state. We had a priority call on the Pecos River—there was no water, how do we address the shortage? The Lower Rio Grande Valley had the shortest irrigation season ever.

In July, as predicted by our scientists, we began to see a monsoon season. It was slow at first, then cranked up by September to something we had not seen in a long time. Back in June, I had literally been talking on the phone with Mike Hamman from Reclamation on amending a prior state engineer's order on how to manage Sumner Reservoir for drought conditions to getting another phone call from Mike saying I needed to start exercising the gates—we were in flood operations. It was an incredible swing between June and September with flood conditions in four reservoirs on the Pecos system: Avalon, Brantley, Fort Sumner, and Santa Rosa. The anecdote was that within 36 hours, Santa Rosa came up roughly 30 feet, peaking at a foot an hour. It was an incredible amount of water coming into the system. The Pecos River basin actually benefitted from the rain the most of all the basins around New Mexico.

Let me start by talking about one of the connections—water planning. A favorite quote of mine, from Albert Einstein, is "In theory, theory and practice are the same, but in practice, they are not." Certainly we see that all over New Mexico. Planning must respect that we are a big rural state. We have very different situations and conditions throughout the state. In the eastern part of the state, they get 100 percent of their water from the Ogallala, all groundwater, and that is a different situation from the Lower Rio Grande, where a river runs through the basin, with groundwater and surface water being used. In the Middle Valley, we have the largest concentration of citizens in New Mexico. This year is the perfect backdrop for the importance of doing water planning. Most of you are aware that the legislature approved, and the governor signed, a \$400,000 appropriation to reinstate state regional water planning

around New Mexico. Water planning had been languishing for years. There has not been much support for planning the past five or six years. The new appropriation got us off and running.

The Interstate Stream Commission (ISC) is charged with implementing state regional planning, and in a series of meetings, over days and weeks, the ISC planning commission sat down and said, let's look at the records for the last 15 to 20 years of planning, what worked and what didn't work, and how are we going to roll this out for the future. We came up with a different approach after much thoughtful input on how we should proceed. This is one of those places for opportunity. Here are some of the changes, and they are not without detractors, but to me they make a lot of sense.

First is that the state, through its various commissions, the ISC, the OSC, the Environment Department, and the legal teams is going to provide to the regions, a common technical platform from which to start the planning process. The technical platform will provide supply and demand projections, and the legal framework that New Mexico needs to work within, for the 16 planning regions around the state. The charge to the regions will be to start from that place. We know there will be some give and take that needs to occur over the supply and demand projections, and that is part of the process. But instead of spending too much time and effort getting to that place as happened in prior efforts, we want to provide that information to the regions and let the regions go from there. Then, the hardest part is what to do with the projections. If there is a supply and demand imbalance, what does the region propose to do in terms of policies, programs, and projects to deal with the imbalance within the available legal framework? We then need to decide what to do about it. How do we implement what regions have come up with? That's part of the connection—the best planning cooperation.

Now I want to talk about how this relates to the funding connection. Before I move off this topic, I want to provide a couple of other examples for opportunities. First, I ask you to consider the magnitude of the effort in the Colorado Basin where there are seven states, Mexico, two compacts, an agricultural community, hydro-power, and the environmental community. The magnitude is not insignificant. Work is being done to look at supply and demand, and what the future ought to look like. Probably for a lot of

us, that is a model for cooperation. It is not easy, it is contentious, and it has a ways to go. But it is an example of an effort where tools have been developed that I believe we can all capitalize on.

Also, I want to talk a bit about the Gila program, and the Arizona Water Settlement Act. Through the Act, New Mexico has the opportunity to develop up to 14,000 acre-feet of additional water in a given year, with some funding to back that up. I have seen articles in the paper lately about this—with the assumption that the ISC has already predetermined what the outcome of that effort is going to be. I can assure you that is not true. I am the secretary for the ISC and I can tell you we are not conspiring among ourselves. We are waiting for work to be done in order that the recommendations can be considered by the commission for a decision that must be delivered to the Secretary of the Interior by the end of next year. The presumption that we have already decided on projects is wrong. We have 15 project proposals still on the table. They fall into five categories: watershed improvement, municipal conservation, diversion and storage, community ditch improvement, and wastewater reuse.

We would like to change the connotation of wastewater effluent. One of the things we are doing with the State Water Plan is that we are trying to coin the term "recoverable water." We are trying to change the thinking behind brackish water, potable, and non-potable wastewater reuse, and produced water. We are attempting to change the connotation that we had in the past where these uses were thought of as a liability—that we needed to find a way to get rid of this water. Instead, this water can be an important asset to New Mexico down the road. It is being considered in each of the 15 remaining Gila proposals being evaluated for technical feasibility, environmental impact, cultural consideration, economics, and water supply. The plan is to deliver the final reports back to the commission for a preliminary decision in August of 2014 with the goal of delivering a final decision to Interior by December 31, 2014.

An exercise in perseverance that is particularly difficult in the Middle Valley is the Recovery Implementation Program, and the Biological Opinion for endangered species—the Silvery Minnow and Southwest Willow Flycatcher, in particular. It is hard work. Many folks in this room are at the table trying to work through this. Again,

these are opportunities for collaboration.

An issue that everybody is talking about, because I think it is part of our future in this administration, is New Mexico's Active Water Resource Management (AWRM). You will recall the *Tri-State* case that was decided by the New Mexico Supreme Court a year ago concerning priority administration. To me, AWRM boils down to three components. One is pure priority administration with a fully adjudicated basin where you have certainty regarding everybody's rights. That is part of the process. AWRM asked what happens if you do not have a fully adjudicated water basin. Either it is not fully adjudicated, or is partially adjudicated, or we just haven't gotten to it yet. In water-short years, how should the state engineer administer that water? And AWRM, according to the New Mexico Supreme Court, is based on a hierarchy of data, and that will do the same thing. Thus you could administer in priority based on this hierarchy of information. Lastly, the ruling provided for an alternative administration. We have heard today that parties say that pure priority administration does not make sense for us—let's work through a way to alternatively administer what would be a locally generated solution that the state can support. I want to point out a couple of very specific examples that took place this year. In April, we had the two largest groundwater user groups in the Lower Rio Grande come see us. To their credit, they brought this local initiative to us, and said now that *Tri-State* has been decided and AWRM is implementable, we would rather not litigate for the next 50 years. Let's sit down and work together through an administration scheme that is locally directed. That got us off and running. They are leading and working together with us. A lot of discussion has occurred since April, and I think we are getting close.

In the early stages of water resource management, which includes things like expedited water leasing, a water banking arrangement, placement of plans [tape ends and new tape is inserted with a loss of some recording] that is a really significant step, and I think what we're learning we'll be able to roll out to other parts of New Mexico.

Last Thursday, Steve Vandiver—who some of you know and who has been around a long time including as a state engineer from Colorado—made a presentation to the interim water committee in Santa Fe. In his retirement now, running the closed basin project in the San Luis

Valley of Colorado, and he is doing a great job. Steve talked to our legislators about the project being a locally generated solution to help stave off a priority call by senior surface water users in their valley. Steve talked about the triggers that led to the effort. He talked about the importance of the modeling effort in order to avoid a competing modelling problem that we see all over the West. They actually went to court and had the court adopt a model that would be used to manage it. It made a lot of sense. Steve talked about the importance of having the adjudication completed in that basin and how that served as the underlying framework for how it would be administered. He talked about how it wasn't a "slam dunk." It took a lot of work and was very contentious, but it was locally generated. They taxed themselves in order to do certain things and it seems to be very effective right now. The New Mexico legislative interim committee comprised of nearly a third of the entire legislature, was very engaged in this discussion and they were saying "Hey, this makes sense for New Mexico." What we, from OSE, were sitting back thinking was, "This is what we are doing in New Mexico." Almost every western state—and I think Nathan Bracken would agree with this—is utilizing some form of what we refer to in New Mexico as AWRM. In most cases, it is some sort of alternative administration scheme.

I will wrap up by talking about infrastructure. On Tuesday, the governor announced a challenge to the legislature to consider using 60 percent of the state's capital outlay program for water infrastructure statewide. This request was not done in a vacuum. We have been traveling around New Mexico and have heard communities tell us about their needs. New Mexico's Water Trust Board's capital outlay program was created about 13 years ago. The Board uses 10 percent of the state's severance tax capacity for funding five categories of water-related infrastructure projects. This year we had 120 applications for over \$140 million worth of funding. We will have about \$30 million to spend that links into the capital outlay program. That is not enough. The governor's challenge is to do it right this year. It will be very interesting to see if the legislature supports this request.

A bill concerning public-private partnerships was introduced last year, but it did not get very far in last year's 60-day session. Nathan Bracken and several others talked about where the money

comes from for this work across the West. We have a lot of experience around the country with public-private partnerships. There will likely be renewed interest in connecting the private sector and public needs as we go into the upcoming session.

Another connection I wanted to talk about is the Rio Chama Acequia Association that developed a shortage sharing agreement this past year. Right where the Rio Chama meets the Rio Grande in New Mexico are some of the oldest water rights in the state as well as the whole country. Those old water rights go back to the 1600s and 1700s. What do you do when there is essentially no native water left in the river, and acequia users with the oldest water rights in the state watch imported San water go by? They are saying, "We have senior water rights, that water should be ours." And we are saying that it is not native water; that is not part of the management deal. I give kudos to Frank Hill with the Rio Chama Acequia Association and our staff for coming together and working through a shortage sharing agreement to get through the year. They have recently been on the circuit talking about how the shortage sharing agreement was accomplished. Lots of other opportunities exist for us to work on together.

As a new state engineer working with the staffs of both the ISC and OSE, I can tell you that these agencies have very professional, very smart, hard working groups of people working on your behalf. These agencies are probably two of the most beat-up agencies out there. Everybody takes a lot of heat for trying to do the right thing. They are a really good group of folks and you should be proud of them.

Thank you all very much.

