

NMSU president gets WRRRI welcome

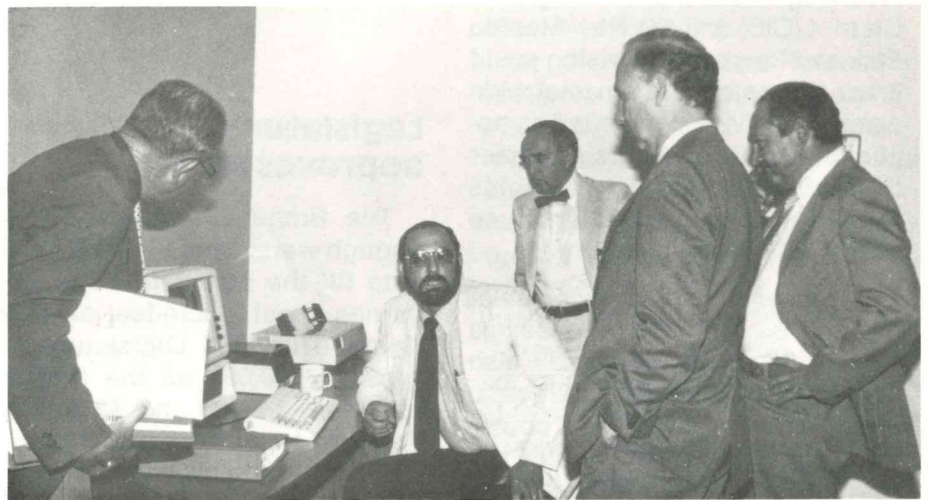
Dr. James E. Halligan spent his first month as New Mexico State University's 18th president becoming acquainted with the many facets of the university.

During Halligan's visit to the institute July 27, Thomas G. Bahr, institute director, presented an overview of New Mexico's water resources. Bahr also explained the institute's research funding methods and its information outreach program.

Halligan also received a briefing book containing topic summaries and detailed supporting information on the institute's research program. Harold Daw, NMSU's academic vice president for research and E. J. Waid, assistant to the president, also attended the meeting and received briefing books.

Before coming to NMSU, Halligan was vice chancellor for academic affairs at the University of Arkansas. Previously, he was dean of the School of Engineering at the University of Missouri-Rolla and chairman of the chemical engineering department at Texas Tech University. He also has worked as a process engineer for El Paso Products Co. and Humble Oil and Refining Co.

He holds a doctoral degree in chemical engineering from Iowa State University. His research background includes petrochemical production from biomass, solar energy from a cattle feedmill, and novel chemical separation techniques.



NMSU President James Halligan (center foreground) receives a short demonstration of the institute's computerized project tracking system from Peter Herman, assistant to the institute director. Also watching are (left to right) E.J. Waid, Harold Daw and Thomas Bahr.

Judge rules new law OK

U.S. District Judge Howard Bratton ruled Aug. 3 that most portions of New Mexico's 1983 law, which establishes criteria for water export, are constitutionally valid. The ruling runs contrary to El Paso's arguments that the criteria are discriminatory.

Under the new law, the state engineer considers export requests based on six criteria, including water availability and demand in New Mexico.

The new law limits exports if it is determined that export would be contrary to the conservation of water in New Mexico or contrary to

the public welfare of New Mexicans.

The judge, however, said that the same criteria cannot be applied to export of existing water rights or water from domestic wells because in-state transfers are exempt from the criteria. New Mexico's 1984 two-year moratorium on new water appropriations also was ruled unconstitutional.

Because El Paso's 326 well applications are new appropriations, the city must now show that its use would not violate the criteria. Neither New Mexico nor El Paso has decided whether to appeal all or part of Bratton's decision.

Irrigators fight water rights sale

New Mexico seems to have more water problems than it has water — but then that's the problem. Beginning with this Divining Rod, we will present our most objective look at these issues, not for a resolution, but for understanding.

The outcome of a legal contest involving the Carlsbad Irrigation District (CID) and the New Mexico Park and Recreation Division could break the water rights market wide open. The division has filed an application with the State Engineer Office (SEO) to transfer water rights from the CID for recreational use nearly 300 miles upstream.

It is legal and common for water rights to be sold for a new use in a new location. New Mexico law also considers agricultural and recreational uses as beneficial, counting them equal regardless of the economic value of their use.

The unique character of this case, however, is that the water rights for sale are in an irrigation district. Irrigation districts have long held that they control water rights within their districts.

The proposed transfer would create a permanent pool in a reservoir near Santa Rosa with a surface area of about one square mile. The reservoir would be used for fishing, recreation and as wildlife habitat.

Interest in the Santa Rosa Reservoir goes back some 20 years when the New Mexico Legislature passed an initiative to support water diversions for recreational purposes. Without funding, however, enthusiasm waned. The Legislature later passed a memorial directing the SEO and the Natural Resources Department—the parent agency of the Park and Recreation Division—to analyze the feasibility of such a project.

According to Park and Recreation Division Director Robert Findling, land ownership patterns and the lack of available upstream water rights forced the two agencies to look for water rights below Avalon Dam in Eddy County. The dam is the CID's principal point of diversion. Eventually, they found their sellers in Draper and George Brantley.

Legislature approves funds

The Brantley brothers owned enough water rights—882.9 acres—to fill the reservoir. Each acre carries about 3 acre-feet of water rights. The 1983 Legislature approved \$300,000 as the first installment toward the \$3 million needed to buy the water rights.

Findling acknowledged that the sale will set bold precedents. "But, it's an issue whose time has come," he said. "Pressure from industrial and commercial developers combined with water scarcity will have a major bearing on development patterns in the state, not just in the Carlsbad Irrigation District."

Members of the CID view the proposed sale as a threat to their livelihood. CID members, primarily agricultural producers in Eddy County, share construction and maintenance costs as well as the right to use the water in the district.

According to CID Manager Oral Nichols, the district's construction and rehabilitation debts amount to \$290 for each of the 25,055 acres in the district. Since 1979, the CID has spent \$6 million to concrete line 83 miles of lateral canals and a two-mile portion of the main irrigation canal.

The CID contends that if water rights are sold outside the district, the remaining members must continue to pay expenses and meet obligations based on the district's original acreage and water rights. "We will still have the same number of miles to maintain, the same costs," Nichols said.

In addition, he explained that CID members are assessed a charge based on the number of acres subject to irrigation, whether or not they are irrigated. "Farmers in the district often don't even have a full water supply. It's very killing to receive only 1 acre-foot of water and be assessed the same as if you're receiving 3 acre-feet of water," he said. In 1982, Eddy County ranked in the top five counties in New Mexico in cash receipts from alfalfa, livestock, poultry, cattle and calf production.

Bureau holds title

The U.S. Bureau of Reclamation made the \$6 million interest-free loan to the CID and still holds title to the project. Larry King, Bureau of Reclamation project manager of Pecos River Projects, said the loan on those acres for sale would have to be paid off before the transfer of the water rights would be allowed. "It doesn't matter who pays it off as long as the bureau gets the money from somebody," he said. He added that contract repayment is a separate issue from the approval of the water rights transfer.

Peter White agrees. He is the SEO special assistant attorney general. "The question of who pays the costs must be decided

between the Department of Natural Resources and the Bureau of Reclamation," he said. The SEO has no authority over contract issues, according to White.

The Department of Natural Resources has not formally offered to pay off the debt to the bureau, according to the department's assistant attorney general, Lee E. Peters. He also said the department has not decided whether to pick up the continued operating and maintenance charges associated with the transferred water rights.

Texas joins CID in protest

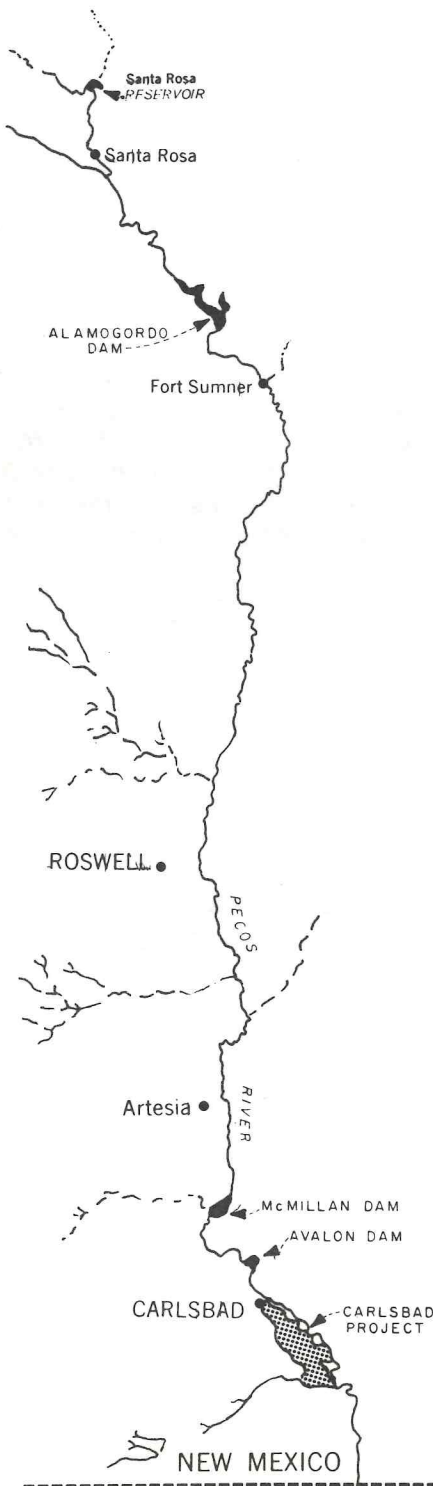
Following the June 9, 1983, application to move the water rights, the CID formally protested the application. Texas also entered a protest, contending that the upstream water rights transfer would be detrimental to Texas and a violation of the Pecos River Compact.

At the April 14, 1984, formal hearing, the state engineer dismissed Texas as a party to the protest. According to White, Texas was not considered in the application because the question of water rights impairment applied only to New Mexico. "If the state engineer found no change in New Mexico, then it's hard to imagine adverse effects on users in Texas. However, this question was not specifically addressed," he said.

SEO conditions permit

Reynolds granted the permit on the conditions that: 1) the findings do not conflict with the authority of the U.S. Bureau of Reclamation, the U.S. Army Corps of Engineers or the CID; 2) the surface area of the Santa Rosa reservoir not exceed 510 acres; 3) the 882.9 acres of land not be ir-

rigated with water from any source; 4) the reservoir water not be counted as storage for the CID; 5) the reservoir not be started before state engineer approval of a Park and Recreation Division plan for determining how much water can be withheld without harming other rights; and 6) the division annually report the determinations to the state engineer.



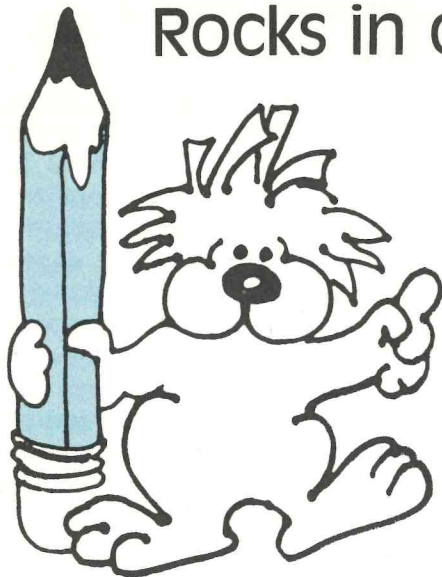
CID seeks federal decision

On June 28, 1984, the CID and the state of Texas petitioned the U.S. District Court to have jurisdiction taken away from New Mexico courts in order to receive fresh consideration in federal court. Their petition contends that federal review is warranted because the water rights belong to the United States. They also state that the proposed transfer would violate a federal agreement with the U.S. Bureau of Reclamation, and would violate the Pecos River Compact, which is under federal jurisdiction.

In turn, the Park and Recreation Division filed a motion July 23, 1984, stating that the proceedings must be heard in Eddy County District Court. Division attorneys contend that the division's application arises under state, not federal, law. In addition, the motion states that the CID and Texas "lack standing" to speak for the United States in asserting U.S. ownership of the water rights involved, and states that even after notification, the United States did not protest the application.

Because Texas was dismissed earlier as a participant in the hearing, the motion also asks that Texas again be dismissed because only a party to the hearing can remove an action to federal court. The motion also states that violation of the Pecos River Compact cannot be considered because another suit on the compact is now before the U.S. Supreme Court.

Nichols said the CID plans to file additional briefs in federal court in early August. In addition, Elephant Butte Irrigation District, which serves 90,640 acres in Dona Ana County, has filed a petition to intervene in behalf of the CID. Nichols said Elephant Butte's intervention is "proper" because of El Paso's proximity to Dona Ana County. "If water can be moved 286 miles up the Pecos, then it can be moved 286 miles down the Rio Grande," he said.



Rocks in our water?

a stream, and showing us how we can tell if we have rocks in our water. Thank you again.

Doreen

Dear Mr. Orr,

Just want to thank you for coming to tell us about water. I hope you can come next year to tell the kids about water. I love your corny jokes and the slides with those funny pictures. But just the regular ones were neat to see. Well, thank you again for the corny jokes, the funny slides and most of all for coming.

*Thank you
Julie*

After Brennon Orr spoke about water to Donna Chilton's fifth grade class at Dona Ana Elementary School, he received a whole stack of fan mail. A few of those letters are printed here. Orr is the hydrologist in charge of the Las Cruces USGS field office.

Dear Mr. Orr,

Thank you for coming to our classroom to talk about what you do. I really enjoyed watching the slides and showing us how you tell how much water comes down

Dear Mr. Orr,

We enjoyed your slides last Friday. We liked those books you gave us too. I read all of them already. I liked the book with the satellite pictures in it the best. I told my parents that you came, and I told them that you looked to see if our water here was good for drinking. They said that was nice of you to come, and it was. I hope you come back soon.

*Yours truly,
Wesley*

WRII proceedings, video available

The proceedings of the 29th Annual New Mexico Water Conference, "Water Law in the West," is now available from the institute. Participants at the April 26-27, 1984, conference will be mailed a free copy. Additional copies are \$5 each.

The edited videotape of the conference also is available. The fee for the one and one-half hour videotape is \$20. Order the proceedings and the videotape from: New Mexico Water Resources Research Institute, Box 3167, NMSU, Las Cruces, NM 88003.

Report from Tech

The proceedings of the New Mexico Institute of Mining and Technology Symposium, "Water Quality and Pollution in New Mexico," is now available. The 300-page publication contains 25 articles that were presented at the April 12, 1984, conference. The proceedings costs \$11.50 postpaid. To order, write: Dr. William J. Stone, New Mexico Bureau of Mines and Mineral Resources, Socorro, NM 87801.

**Thomas G. Bahr, director, New Mexico Water Resources Research Institute
Linda G. Harris, editor**

the divining rod
New Mexico Water Resources Research Institute
Box 3167, NMSU
Las Cruces, NM 88003

(Address correction requested)

Non-Profit Org.
U.S. Postage
PAID
Las Cruces, N.M. 88003
Permit No. 162