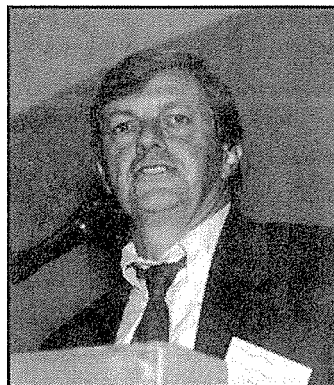
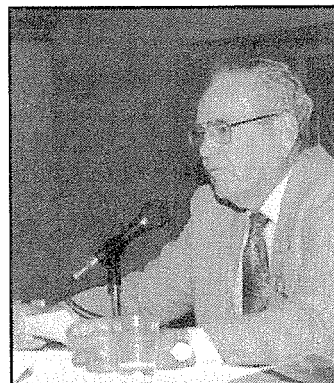


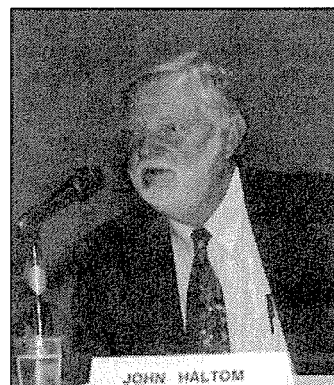
*Chuck DuMars is the author of numerous articles on water law and water rights, the co-author of Economic Impact of Alternative Resolutions of New Mexico Pueblo Indian Water Rights, and the principal author of Regional Water Plan Legislation in New Mexico. He is a member of the Western States Water Council, the Board of Trustees of the Rocky Mountain Mineral Law Institute, and the American Bar Association Natural Resources Committee. Chuck also is a professor at the UNM School of Law.*



*Woodrow Gary was born in Ganado, Texas and moved to La Mesa, New Mexico at the age of nine. He graduated from Las Cruces High School in 1935 and from New Mexico College of Agriculture and Mechanical Arts in 1940. Woodrow served in the U.S. Air Force from 1941-1946 and started farming in the Hatch Valley area upon returning home. He was elected to the Elephant Butte Irrigation District Board in 1982 and appointed to the Interstate Stream Commission in the same year by Governor Bruce King.*



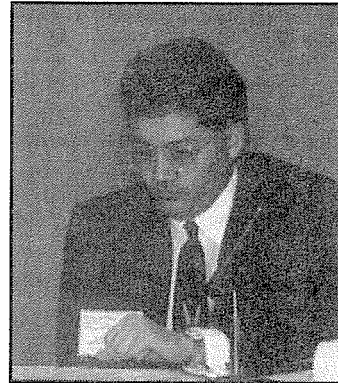
*John Haltom received a bachelor's degree in journalism and a master's degree in political science from the University of Alabama and a Ph.D. in government from the University of Texas at Austin. He began teaching at Auburn University in 1953 and continued at Texas Christian University from 1956-1970. John was a professor in New Mexico State University's Government Department from 1970 until 1986, serving as department head from 1970-1979. He was chairman of the City Charter Commission from 1984-1985 and has been a city councilor since 1987.*



*G. X. McSherry was born and raised in the Mimbres Valley on a cattle ranch and small farm irrigated from waters of the Mimbres River. In 1946, he moved to the Deming area and started his agricultural career by sharecropping and has engaged in agriculture ever since. G.X.'s farming business includes row crops irrigated by wells and pumps, and more recently he has diversified and incorporated ranching into his farming operation. He is in his seventh term as a state representative and has served on the Agriculture Committee for all seven terms. For the past several terms, G.X. has chaired the Agriculture and Water Resources Committee in the New Mexico House of Representatives.*



*Ken Miyagishima has lived in Las Cruces since 1971. In 1985, he received a bachelor's degree in business administration from New Mexico State University. For the past ten years he has owned an insurance agency and for the past six years, he has taught a course on personal finance at the Doña Ana Branch Community College. Ken has served on the Doña Ana County Commission for three years and is currently the Commission Chair.*



*William (Bill) Porter received a bachelor's degree in science education from Albion College in Michigan and a master's degree in educational administration from Kansas State University. After moving to Las Cruces in 1955, he taught high school science for the Las Cruces Public Schools for 30 years. In 1990, Bill was elected by District 36 to the New Mexico House of Representatives where he serves on the Agriculture and Water Resources Committee and on the interim Integrated Water and Resources Committee. He served on the Doña Ana Water Users' Board for several years and currently serves on the National Conference of State Legislators Agriculture and Forestry Committee. Bill and his wife own and operate a 2,000 apple-tree orchard north of Las Cruces.*



## REGIONAL WATER ISSUES FOR THE LOWER RIO GRANDE: ELECTED WATER POLICY MAKERS PANEL

*Note:* Panelists were asked to consider the following questions when preparing their comments for the discussion:

- From your particular perspective, what is the most important water resources issue?
- In terms of that issue, are there conflicts among different stakeholders and what are those conflicts? Who are the stakeholders?
- In your opinion, is resolution of the conflicts possible? If so, what are the best approaches to resolving the conflicts? Are new institutional arrangements necessary to foster conflict resolution? What are the politics involved in changing current policies?

The moderator for the panel discussion was Chuck DuMars.

### CHUCK DUMARS

School of Law

University of New Mexico

Albuquerque, NM 87131

It is a pleasure to be here. Let me briefly relate an experience I had a couple months ago. I was asked by the Intel Corporation, Portland office, to go to Arizona and evaluate the water rights position of a plant being built in Chandler. That plant will cost Intel about \$4.5 billion. Water is vital to Intel's processes and if they shut down for a day, it costs them \$10 million. Water problems are complex in Arizona where the water supply is scarce. But Intel knows what it needs. They have planned to use Central Arizona Project water and reuse water from Chandler and drill wells. They do not have any doubt as to the information they need, where they are going, and what they need to do. And there is a very good reason for this. Intel's investment is important to them. It is actual, it is immediate, and they have one thing that we all need more than anything now in New Mexico with respect to water resources, and that is, leadership.

You can talk all you want about stakeholder meetings and they are important. You can talk about interactive and integrated management and they are vitally important. But, the bottom line is ultimately leader-

ship within the state where people step up to the plate and do the things that are critical to our water future. That leadership will mean that somebody will force decision makers, that is, elected officials, to articulate with clarity of purpose and pursue it. If there is to be beneficial use of water, and there must be, it must be made possible through the leadership of those in New Mexico who are willing to decide. If there is to be water quality value protection in the minimum flows of streams, and there must be, somebody will be forced to decide. If there is to be that kind of leadership, it can only be supported if there is the willingness to commit the resources.

I currently am representing an upstream state against two downstream states in another part of the country. There has been a commitment of \$12 million on a multi-level computer model to determine how to coordinate management of that river basin. The contributions that New Mexico makes for its own water resources are pitiful at best. There is an absolute need to have a statewide geographic information system so every water user, when they go to the State Engineer Office or to any district office, can identify not only their own water resource but also the surrounding wells, the rates of flow and their impacts.

There must be published rules. We no longer can speculate how the state engineer or how the courts might rule. We must have administrative written decisions that clearly define whether or not Las Cruces can develop and use its wells, or go out and drill new wells.

Finally, we also must focus on low tech expenditures. We do not even have enough stream gauges on the Rio Grande or the Pecos to do the job we need. These points I make as challenges to our panel today.

Before turning to the panel, I want to give to you the remarks of senators Bingaman and Domenici and Representative Skeen (see pages xiv-xviii in these proceedings). They are enlightened and helpful. I will not read them, but let me summarize them. Senator Domenici directly focuses on the need for good hydrologic information and the need for New Mexico to engage in a cooperative effort, without strife, to understand more about the aquifer in the Middle Valley, so as to help that area plan for its future.

Senator Bingaman focuses his remarks on the need to develop local control in the sense that people will cooperatively move to action. Representative Skeen also points out that if there is not local decision making, if people do not take action and provide leadership, the federal government is certainly willing to do so and they have their own ideas at many levels. People a long way from New Mexico have a lot of ideas about how the water in New Mexico ought to be used. I turn now to the panel.

**WOODROW GARY**  
Elephant Butte Irrigation District  
P.O. Drawer A  
Las Cruces, NM 88004

Since I am not running for any political office and have no political ties, I am in the enviable position of saying what I think. As I listened to the earlier discussions, I was reminded of the time Senator Anderson wanted to put a penstock in a dam and use Indian water to generate electricity on an intermittent stream. Senator Anderson said, "I can't understand if a man can't have the whole hog, why doesn't he take half the hog?" An Indian got up and said, "The trouble with it is it's my hog we're dividing up!"

As farmers, we own about 85 percent of the water or the use of that water. I think the critical issue at this time is whether to turn the water back and put it in the hands of the farmers. You can drink and be merry without water but you will not eat without it. Second to the importance of domestic use of water is the production of food and energy. Today we use 6,000 BTU of fuel to produce 1,000 BTU of food. As I look out to the audience today, I think all of you are in the habit of eating. I do not think anybody is passing food up. We use 200-300 gallons of water to produce enough food to feed a group of four people per day not including what you drink yourself. That is the actual cost in terms of the agriculture and energy used to put that food on the table.

Conflicts come about because of the power of the different bureaus and agencies that have used water for nonproductive purposes having to do with endangered species, instream flow, and arid areas and habitats. I am more impressed with private enterprise getting their share of the water, whether it be farming,

producing cars, railroads, or plastics. I think we need all these things. Somewhere down the road, are cultural practices, recreation, endangered species, and so forth.

I am reminded of two conflicts we have in our own government agencies. The Corps of Engineers determines the rules and regulations for wetlands and the Environmental Protection Agency has the right to veto those rules and regulations. You can spend millions of dollars trying to figure out how to comply with the Corps of Engineers regulations only to have them vetoed by the Environmental Protection Agency. In Oregon, the squawfish abounds and in Idaho, he is an endangered species. The squawfish eat all the food forcing the salmon to come up the river in search of food. Below the Elephant Butte Dam in the Rio Grande there is a plug in the river due to the draining of an arroyo into the river. This plug can not be removed because of an endangered species habitat in the arroyo, and the removal would disturb the habitat. I could go on and on with similar examples. I recently heard of a California man who while disking up his field, ran over a kangaroo rat. He was fined \$50,000. Believe me when I say the rules coming out of Congress are causing most of the conflicts. Thank you.

**JOHN HALTOM**  
Las Cruces City Council  
P.O. Drawer CLC  
Las Cruces, NM 88004

Mr. Gary indicates that he says what he thinks. I am noted for doing the same thing even though I am a politician by definition. As an office holder, as a city councillor, I am concerned with power. If I do not have the authority to do something or the power to act, if I cannot effectively deal with the problems that my constituents face, then I am very uncomfortable. As a former political scientist, I realize the importance of power in everything we do. In fact, some argue that it is the basis of everything we do. But, we have heard for two days now criticism of people who are adversarial. We have been urged to cooperate, work together, and try to resolve our problems.

As an office holder in a city which has water plans but cannot implement them because of an inability to obtain well permits for wells that we think we have a

right to, I am concerned with the fact that one of the players, one of the stakeholders, in New Mexico in the Mesilla Valley claims to hold all the cards. It is hard to deal and to negotiate with someone else who holds all the cards. I am referring to Elephant Butte Irrigation District (EBID), of course, which says they own all the water rights—all the surface water rights and all the groundwater rights in this valley. This means none of the water rights of the municipalities are valid. It means that the landowners, the farmers and others who own land in the valley, do not have any water rights.

That has very interesting implications for the future. I always thought we were in pretty good shape because if we ever got in a position where we did not have water rights, we could buy land and acquire the water rights. In the position held by the EBID, we cannot do that. I have been urged, and I must say that Ken Needham has cautioned me, that we have to talk and we have to understand where we all stand. If EBID's position is sound, then it is hard to negotiate.

We also find that the EBID currently is protesting all applications for well permits, whether they are in established permitable areas or not. We have an emergency need for water. We may be looking at a moratorium on drilling wells on the east mesa of Las Cruces where we have been trying to direct development rather than to the valley and we need it right away.

We have a player who maintains that the state engineer has no jurisdiction within the boundaries of EBID. They do not have to apply to the state engineer for a permit to drill a well, rather, the farmers apply to the EBID. Nobody keeps a record of how much water is pumped out of those wells. This creates a situation that is very frustrating given that 85 percent of that water goes to agriculture and 15 percent goes to municipalities for domestic use.

We are willing to conserve water. We have a conservation measure, which Ken Needham mentioned earlier, requiring that you pay for water that you get from the City of Las Cruces on the basis of how much you use, instead of the normal practice where the more you use the cheaper it is. In Las Cruces, the more you use the more expensive it is. We are going to continue and expand upon this conservation program, but we are facing a situation now that is unresolvable.

We find another contradiction. A short time ago EBID was saying that their charter prevents them from allocating surface water for municipal and industrial purposes. What about the water that is already allocated, what about the water that has to be sent to Texas, what about the fact that there is a seasonal release of water in the Rio Grande? These are problems that must be addressed.

My answer to the question of what is the most important question in terms of water is the answer of a political scientist and an office holder. The question is who has the power to determine the allocation of water resources in the Mesilla Valley? If that question is already resolved, we do have a major problem and it is a problem that I face as a public official. I want to talk, I want to cooperate, but if the assumptions are established in advance of the discussion or as they have been stated by EBID, then what do we talk about? It is a very difficult problem. I do not want to be controversial, but an adversarial position has already been established. All the water rights are ours, says EBID. Now what that position does to farmers who might want to sell their land for development is kind of interesting. It changes the value of the land five-fold, and in some cases ten-fold, just to have the water rights associated with it. What happens to all those efforts to encourage economic development while having no water to offer?

So yes, the problem has to be resolved but first we have to determine who is going to make that decision. My own feeling about it is that it has to be someone with authority over the whole area. I think that suggestion has been made by Ed Archuleta who also said that it should be allocated by someone with authority over the whole area. There may be a necessity for federal intervention because the federal government has jurisdiction when you involve three states and a foreign country as well. What I am not willing to accept is an agency with limited representation making the decision. I would be amenable to the suggestion—and I might even make it—that if a district with jurisdiction over the areas included is representative of all interests, then that institution could handle the job. That means the EBID, which is a district chartered under the laws of New Mexico, a special district, whereas I represent a municipal district, could become that body. However, people who irrigate are the only ones who are going to have a vote in selecting

the members of this representative body. It cannot represent me, it cannot represent the people of my constituency, because all the cards are in one hand. So I would suggest if we are going to look at it that way, we should look at possibly revising the laws to make the body that has that power more representative of all interests in water.

**G. X. MCSHERRY**  
New Mexico State Representative  
Route 2, Box 138  
Deming, NM 88030

Thank you for allowing me to appear here before you this morning. Meetings such as this are very necessary and very informative, and if you will allow me, I am going to stretch some of my comments beyond and above the title of this conference, "Stretching the Resources of the Lower Rio Grande." I think we have all heard pros and cons about the efforts in this particular area, so let me spread it out a little bit and go statewide.

For those who do not know, I chair the Agriculture and Water Resources Committee in the New Mexico House of Representatives. I am a member of the Water Policy Council of the Western Legislative Conference Committee which represents 15 western states. Also, I serve on the Water and International Committee at the national level so I get to hear about water needs not only throughout the West but throughout the entire United States. Water problems exist all over the United States; some places have too much and other states have too little. I have an opportunity to raise some of our problems for discussion and listen to problems from other areas and learn how they are being resolved.

In 1983, when I was first in the legislature, the conflict between El Paso and New Mexico came before us and a resolution was attempted. I am hearing today that there are still some discussions underway and eventually we will resolve the problems.

Six years ago the title of the Agriculture Committee was changed to Water and Agriculture Committee, reflecting the importance water plays in agriculture. I was pleased to see that change. This past session we had four times the legislation brought before the committee I chair than we have had before.

Water has become an enormous bone of contention and significant interest in the legislature, and I am glad to see it. Years ago, when I first became a legislator, there were only two or three of us who were actually in agriculture—incidentally, I am a farmer and rancher. All western states share a similar problem with New Mexico and the downstream states seem to be more concerned than those upstream. Take, for example, Colorado feeds water into New Mexico, and New Mexico feeds water into Texas. And here in New Mexico we not only have the Rio Grande, but we also have the Pecos River.

The Pecos is one of our biggest financial concerns in the legislature. We have a compact with Texas to furnish them with some water that we had borrowed from them in past years. A couple of years ago Texas decided we should pay some of that back monetarily, so we gave them \$14 million and thought that would satisfy them and that we could continue to pay them in dollars. However, now they have come back and said that they could not use dollars to irrigate their farms nor could they run dollars through taps in their homes. So now they want actual water. New Mexico has been in a really tough situation trying to provide live water for that area. What we have done is to buy out junior water rights and initiate other innovative programs to try to get some water down to Texas.

Over on the northwestern side of the state, we have the San Juan/Chama situation, which includes Colorado, New Mexico, Arizona, and on over to California. So we do have a lot of other areas of concern in New Mexico when we discuss water. As I said when I started, I know we are supposed to be focusing on the Lower Rio Grande but I think you have been thoroughly saturated with information about that this morning, and might want to know what other issues exist in New Mexico.

The basic idea behind these problems is that we are short of water. The well is going dry. We are being mined—all western states have done this. Look at what Arizona has done with the Central Arizona Project. I do not know if we can do something like that here in New Mexico; such projects are very expensive. Representative Porter mentioned a while ago about food and water, but I think he has it turned around. You can live a lot longer without food than you can without water, so I think water should be in the number priority.

Conservation of water is important. I saw in the paper the other day that \$1 million was made available to people so that they could install low water-usage shower heads and smaller water closets in order to conserve water. Well, that is fine. All those things are really great, but it might be kind of like the story about the ship that was stuck on a sandbar and a lady with a glass of water that she was pouring over the side. The captain asked, "What are you doing?" She responded, "The ship has to float off the sandbar and every little bit is going to help." Whatever conservation efforts we implement will help conserve water. However, we have water conservation districts in the state of New Mexico begging for funds. What we need is a concerted effort and leadership, which I am seeing at this meeting here today. We must focus these areas of concern into something that we can bring before the legislature. As far as the legislature is concerned, and my position in it, I am very much aware of all of the things that we have been hearing over the past day-and-a-half. Ms. Gilbert referred to some water resolutions and communications, I think that is probably the number one thing we must concern ourselves with. We must have an integrated plan from which we can move forward so that we can all live together in an atmosphere where everybody has water to drink and food to eat and clothes to wear. Thank you.

**KEN MIYAGISHIMA**  
Doña Ana County Commission  
180 W. Amador  
Las Cruces, NM 88001

First off, let me welcome everyone here today to the New Mexico Water Resources Research Institute's 40th Annual Water Conference. I would be remiss if I did not thank Tom Bahr for inviting me as well as organizing this conference. I think the institute has done a great job and this appears to be a very successful conference.

I will briefly discuss some of Doña Ana County's water concerns and touch base a bit on the Santa Teresa area. First, let me begin by commenting on what Councillor Haltom said regarding water conservation. I recently learned about municipalities' using 15 percent of the water and agriculture using

the other 85 percent. I think we need to work together on that situation. At the behest of Mayor Smith, I met with him earlier today at breakfast along with Councillor Haltom and State Engineer Tom Turney. They suggested that the city, county, Elephant Butte Irrigation District, and the State Engineer Office come together and determine what our water problems are and how we can work with one another to alleviate some of those problems.

I think everyone here is aware of our exploding population. Recently in the news we discovered that Las Cruces is the ninth-fastest growing city in the country. Also we are experiencing rapid growth in the Santa Teresa border area. Let me just say, regarding the colonias issue, I think we now have an instance where the Village of Anthony has submitted requests for water wells and they are discovering some roadblocks. I think it is imperative that our legislators do everything they can to support the State Engineer Office. The SEO currently is facing some budget crunches and I think it is imperative that we send our legislators some kind of joint resolution letting them know that we support the SEO and recognize that office as a truly important office. Thus, when the SEO goes before the legislature, they should have an indication how their proposals will benefit the residents of Doña Ana County.

I want to touch base on what the county is doing in the Santa Teresa area. First, I want to thank Senator Domenici. He was instrumental in obtaining a \$4 million grant for wastewater needs here in Doña Ana County. We are looking at acquiring some water rights in Santa Teresa in exchange for some facilities we are trying to build. We know the Santa Teresa area is targeted for great growth and we do not want to let opportunities get by us. However, we also must think of our residents living there.

The Anthony area and other communities around the state currently are in need of water, as is the city of Las Cruces. We are facing some water crunches with the population explosion and obviously we all need water in our daily lives. Right now we are looking at developing some areas on the east mesa of Las Cruces, an area represented by City Councillor Haltom and myself on the County Commission. That is the fastest growing area in Las Cruces.

Thank you for inviting me and allowing me to participate on this panel.

**WILLIAM (BILL) PORTER**  
New Mexico State Representative  
5200 North U.S. Highway 85  
Las Cruces, NM 88005

We must keep in mind that food and water are essentials and whoever controls the food and water of the world controls the world. Concerning our most important water issues, Gary Esslinger hit it right on the head when he talked about a water inventory. That inventory may cost as much as \$50 million. We are going to have to come up with that money. We also must look at conservation, underground drip systems, geothermal greenhouses, and crop water use.

Some of you know that I own an apple orchard. As I sit back and look at it today, I think what an idiotic thing it is to turn part of the desert into a temperate deciduous forest when we have a limited supply of water. We must look at incoming industry to be sure that they are low water consuming industries. We must look at cleanup because we have plenty of water in New Mexico, but it's full of salts. We have water that is being contaminated, so the legislature must look at increasing funding for underground tank removal and techniques to clean up contaminated waters.

Now then, who are the stakeholders? Everyone is the stakeholder when it comes to water. I'm told I have three acre-feet of water rights for my apples, but you know that is not true. I have three acre-feet of water when it rains. There was one year that we were offered three acre-inches of water. So ownership does not necessarily mean anything unless the water is there. When you contemplate the problem of Las Cruces running short of water, is it really a problem of ownership of water rights? If you're thirsty and someone has water and you do not, do you have a right to that water? Ownership lasts only as long as there is water. Just as with ownership of land, the only right you have to land is, in the final analysis, about six-feet under and even then, in a hundred years or so, someone will be plowing over that land and planting it.

Now is the time to set aside politics and get on with solving our water problems. There are some things we can do immediately. I suggest we first look at supporting an arid lands research building because that would provide an institution where we could start

looking at agriculture and arid lands and determine how to go about solving agricultural water use problems. To do that you need to call not only the appropriate legislators but also the governor. We also must have some coordinated effort to allocate water. I suggest you read the book *Cadillac Desert*. When you look at problems like the Animas/La Plata project, you realize that many states, like California, Arizona and Nevada are involved. When you look at instream flow issues, you need to consider ranchers'—who are renting land to fishermen—concerns as well as the fishermen's concerns.

Finally, I would like to say, and I've been shot down once before on this in the legislature, that I think it is time for us to look at a five percent tax on water which will go directly toward solving water problems. Thank you.