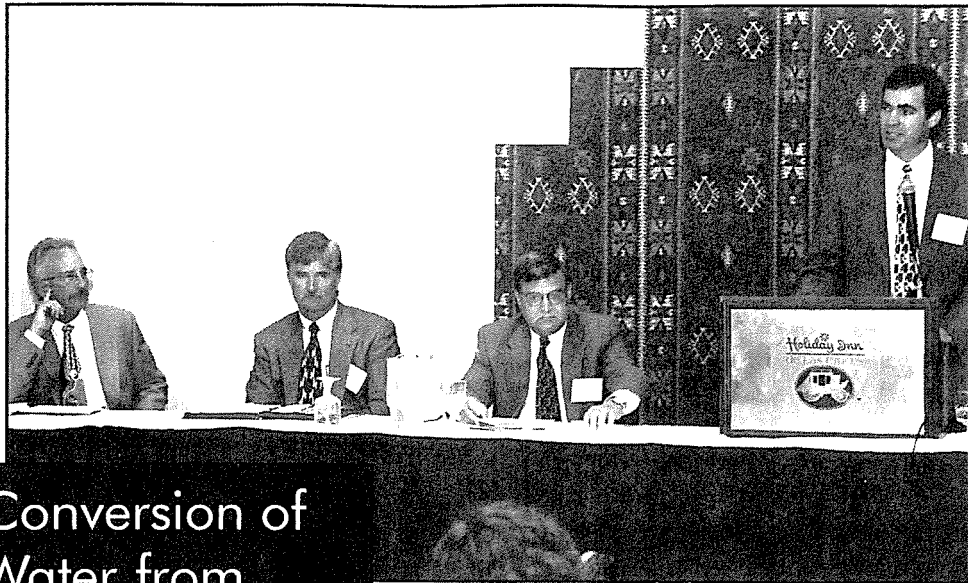


**WATER
CHALLENGES
ON THE
LOWER RIO
GRANDE**

Conversion of
Water from
Agriculture to
Municipal Use:
How to do it



**Conversion of
Water from
Agriculture to
Municipal Use:
How to do it**

Panelists: (from left) Len Stokes, Gary Arnold and Ed Archuleta; John Utton, moderator

Moderator:
John W. Utton
Sheehan, Sheehan and Stelzner, P.C.

Our last session featuring a panel discussion on conversion of agricultural water to municipal and industrial uses promises to be a lively discussion and in case we have any ties, we have an arm-wrestling table we can bring in and Tom Bahr will act as referee.

Before we begin, I wanted to take a moment to express my appreciation to Tom Bahr and the staff members of the Water Resources Research Institute for dedicating this two-day conference to my father. I am very touched by that, and as you know there are few things my father enjoyed doing more than going to gatherings like this and interacting with the other participants and engaging in conversation. After he stepped down as Chairman of the Interstate Stream Commission, his attendance at ISC meetings, simply as a member of the audience, was quite good. I think he attended nearly every water meeting he could. In August he told me he was hoping he would be well enough to be here today.

He enjoyed coming to these meetings not only to talk to people and hear their ideas, but also I think

because he truly believed that water policy and water issues are the essence of what we are about. These issues go to our fundamental well-being and our livelihood. Many of you who have been around the water business for a while have heard the often cited adage by Mark Twain that "whiskey is for drinking and water is for fighting." I think Twain came to that conclusion after spending some time as a reporter in the Nevada area during the silver and gold rush days. Certainly he witnessed various miners competing for water and what that meant. I think that my father's view would be that "the water is for sharing"—that water is too precious a commodity to fight over if you can avoid it. Sometimes you stand on a principle and you cannot avoid a fight, but if we can get along, sharing water is the best policy. I think that was my father's view. Working on behalf of the state of New Mexico, working as a law professor, and working on international law issues, I think he certainly believed that. This conference is an example of moving the process forward; people getting together and discussing ideas, understanding each other's positions, and trying to come up with a solution that makes sense for everyone.

Again, I certainly do thank Tom and his staff for providing this forum. I also want to thank everyone

who has given me their kind words and thoughts of condolence.

Moving to our panel discussion, our panelists have years of experience and expertise to share with us in the areas of agricultural water rights transfers and protection of agricultural water rights, and the general issue of how we should use water rights when we have competing interests, such as, agricultural, municipal, industrial and other uses. In the Lower Rio Grande, we have a well-established irrigation project and a long history of agriculture in the area. At the same time, we have a growing population both in New Mexico and Texas. We are experiencing economic development that everyone agrees much of which will be good. Yesterday Commissioner Martinez mentioned in his keynote address the inevitability of conversion, at least some conversion, of agriculture to municipal and industrial uses. It is happening throughout the West. He and most of us recognize that while the process may be inevitable, you cannot deny the importance that agriculture has in our history, culture and economy. In New Mexico we have practiced agriculture for more than 400 years.

If a transfer of water rights makes an irrigation district or an acequia less efficient, if it makes it less productive, even to the extent of harming the viability of the project, or if transfers are so numerous as to render an irrigation project essentially dry, I think we have to question whether we have struck upon a good deal—whether we will get a good result. People like to cite the example of Owens Valley outside of Los Angeles as reason to transfer water in a rational and careful way. The Middle Rio Grande Conservancy District, between Cochiti Dam and Elephant Butte, is facing the same situation. The city of Albuquerque is growing with a population increase of 600,000 new residents projected over the next 25 years in that valley. It has established a water bank trying to find a mechanism to best use their water so that agriculture is protected but newer uses also be accommodated.

These are not easy issues. At the most basic level, we are talking about economics and market forces. We heard Lieutenant Governor Bradley talk about how water rights are private property and they are. Ordinarily if you have a willing buyer and a willing seller you have a sale. There is something about water, and I think it is encapsulated in the Mark Twain quote, unlike whiskey which is a commodity you drink, water is something that you will fight for. Water is a commodity but there is a “plus” factor here, some public policy aspect that makes us all much more concerned about it. It is reflected in New Mexico law. You can sell a water right—and Steve Reynolds is often quoted as having

said that water runs uphill to money. That sentiment suggests an economic view of water that the highest dollar will determine what the highest use of water is and the water will flow in that direction. But I think there is more to it than that.

Public welfare considerations are a part of New Mexico’s transfer laws and they require an analysis of public welfare and conservation, in addition to whether you own a water right and whether you have a willing buyer and a willing seller. Even if you have a willing buyer and a willing seller, there must be public notice. If you are selling your house, you do not have to

advertise the sale in the newspaper if you already have a willing buyer, to see if anyone opposes the sale. But with water sales, you must advertise the sale. The public has an opportunity to respond and indicate whether the sale will be good or

bad or whether the sale should be conditioned on some factor. So there are public policy considerations wrapped up in this issue.

Yes, we would like to continue to have a viable and healthy agricultural sector. Yes, we would like to have a secure water supply for our municipalities, for our economic development. That makes good sense and I think it is inevitable. But we need to plan for this inevitability. Yes, we would like to have a healthy river. More and more, there is strong public sentiment for protecting the riverine environment with instream flows. Federal and state law are beginning to reflect that reality. A recent Attorney General decision in New Mexico concluded that instream flows in a limited fashion are lawful in New Mexico. It was the first time that conclusion has been reached in New Mexico.

Hopefully our panel will suggest how we can balance those competing objectives, how we can protect the values of our society while at the same time meet the economic and environmental interests that society refers to as prosperity. How do we achieve this? We have a very distinguished panel to discuss just that.

Public welfare considerations are a part of New Mexico’s transfer laws and they require an analysis of public welfare and conservation, in addition to whether you own a water right and whether you have a willing buyer and a willing seller.

John Utton

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**Edmund G. Archuleta
El Paso Water Utilities**

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I think it is appropriate that John Utton is chairing the panel this morning because when I lived in Albuquerque I worked with his father, Al Utton, on many occasions on issues affecting the City of Albuquerque. Later when I moved to El Paso, almost 10 years ago, Al Utton spent a significant amount of time in El Paso and as you know, he had a lot of empathy toward El Paso and particularly Mexico. I have read many of the articles he wrote on international issues, especially groundwater management

At some point, and this is my own personal opinion, looking down the road across this country, particularly in the West and in our geographic location, there will be a willing buyer - willing seller concept based on supply and demand economics.

Ed Archuleta

and his views on the need for groundwater treaties between the United States and Mexico. I think his vision will come to fruition in the not-too-distant future as we look for alternative ways to augment and even replace some of the current strate-

gies we have for using water. The issues are very complex and if there were easy answers we would not be here this morning.

I would like to provide you with a clear understanding of El Paso's facilities and the means by which we have been transferring water from agricultural to municipal use for a number of years. I know these are different from the emerging issues you face in this area or in New Mexico in general. They are different from other parts of the western United States. You also should know, and I mentioned this yesterday, that Texas passed Senate Bill #1 in 1997 which basically rewrote the whole water code. It was a complete sweep in terms of water planning and deals with issues that Texas faces on interbasin transfers and issues of groundwater and surface water management. Texas is very much like New Mexico and other states currently undergoing substantial changes in water policy and how water is managed. The future will likely be very different from what it has been in the past.

El Paso has two surface water treatment plants. One is a 40-million gallon per day (gpd) plant, our Canal Plant or the Downtown Plant as we call it. It was built in 1943 with a 20-million gpd capacity. In 1967, its capacity was doubled to 40-million gpd.

The plant cannot be expanded because it was built within the urban area of downtown El Paso and is pretty well fixed in capacity. Our newer plant, the Jonathan Rogers Plant, was opened in 1993 and it also treats 40 million gpd. Thus, we can treat a combined 80 million gpd.

We are working with New Mexico and all parties comprising the New Mexico/Texas Water Commission on the Regional Sustainable Water Project. The component part for El Paso is to expand the Jonathan Rogers Plant from 40 to 80 million gpd. We have already designed the first 20 million gpd expansion so we will be up to 100 million gpd capacity within the next 2½ years. Certainly by 2001 we will have a 100 million gpd surface water capability. Not long ago, we had only the Canal Plants's 40 million gpd. When I came to El Paso, we used about 20 percent surface water and 80 percent groundwater—now we are closer to 45 percent surface water and 55 percent groundwater. When we build the next phase of the project, at least in the short run, 55 percent of the water we use will be surface water.

Aside from expanding the Jonathan Rogers Plant, we plan to build an 80-million gpd plant in the Anthony area. The specific site has not yet been finalized but it will be very close to the New Mexico-Texas border in Texas. Its purpose is to provide water to the Upper Valley of Texas, and based on a recent analysis by our consultant and environmental engineers, the best site is in Anthony, New Mexico. Anthony could contract with the Public Service Board in order to provide their component part, not only for Anthony, but for the whole rural area which is growing as well, from an economy of scale as opposed to building a separate, small water plant in the Anthony, New Mexico area. That decision has not been made either by Anthony or by the Public Service Board. The Public Service Board is very interested in regional cooperation and has indicated as much by board resolution for a number of years.

In 1995 we approached our legislature and it eventually passed Senate Bill 450 making El Paso the regional planner for El Paso County. That allows us to plan for the big picture including the county as well as the small private and public municipal utility districts. The legislation also authorizes us to plan with New Mexico and Mexico. It would not be unusual for the Public Service Board to contract with Anthony, New Mexico and even Chaparral, New Mexico because the plan is to build a plant that is close to the state line to serve the Upper Valley, possibly serving Anthony. The line would cross the Anthony Gap into the El Paso area, right next to Anthony. If Anthony were interested in contracting

with us, the arrangements could be made and we would supply the water. Whenever there would be more water than could be contracted for and delivered, the intent is to recharge the aquifer, the Hueco Bolson, much like we are doing now—artificially through the Fred Hervey Plant that treats wastewater to drinking water standards. This would result in treated surface water that either would be put to beneficial use or recharged into the aquifer. There remains a lot of work to be done including substantial engineering work, environmental analysis, and of course, policy and management discussions with the parties affected.

One thing that I want to clarify concerns a misquote of mine or some misunderstanding in a recent article that appeared in the local newspaper, the *Las Cruces Sun-News*. The impression given was that somehow the Public Service Board was going to obtain surface water from Elephant Butte Irrigation District (EBID). That is not the case at all; our work is with the El Paso County Water Improvement District #1 (EPWID). What I did say is that if there are contracts in place with Anthony and Chaparral, in order for us to treat that water in an El Paso plant—a Texas plant—Anthony or Chaparral would have to bring New Mexico water rights with them. That is what I said. Secondly, I did say that at some point in time, I believe there will be a willing buyer - willing seller concept. I refer primarily to groundwater. At some point, and this is my own personal opinion, looking down the road across this country, particularly in the West and in our geographic location, there will be a willing buyer - willing seller concept based on supply and demand economics. Somehow the newspaper article was written leaving the impression that the Public Service Board would obtain its water supply for the 80-gpd plant from EBID. Now if EBID contacts us and wants to sell us water, I assume we will entertain that type of discussion. At this point, all our discussions continue to be with EPWID.

Yesterday Commissioner Martinez mentioned there are four contracts in place with EPWID. He also mentioned a fifth one that was just negotiated in March 1998 that provides for a different form of contract for agricultural to municipal transfers of water. Let me talk briefly about our contracts with EPWID. The first contract dates back to 1941 and allowed the initial plant to be built, which treated 20 million gpd. The contract allowed us to provide for long-term leases. You must understand that the El Paso irrigation district is very different from the EBID because there are thousands of landowners in the El Paso irrigation district. As El Paso urbanized, it has had to deal with thousands and thousands of landowner accounts in terms of managing the water.

Currently we have about 14,000 contracts with individual landowners in El Paso County. We have entered into 75-year contracts for long-term leases of water with those landowners. We entered into those contracts progressively over the years. It is particularly difficult dealing with contracts of small tracts, like one-tenth acre lots or one- or two-acre lots. We currently have almost 8,000 acres under lease in those 14,000 different accounts.

We also have annual short-term contracts with EPWID and individuals who for some reason do not want to use their water in a particular year; maybe they cannot use it for some reason or it is not available to them where they can physically divert the water. The District identifies those situations. A few years ago, we had a number of accounts that were delinquent on taxes. We paid those taxes and assumed the leases. In addition to paying the taxes in arrears, we continue to pay for the water, the fees to manage the water, and we will pay any future taxes on that water. The way we obtain these accounts is to pay an up-front

fee, which currently is \$1,000 per acre or a prorated portion of that, and then pay the individual's taxes. In some cases, landowners cannot even reach their water as when the edge of the

You must understand that the El Paso irrigation district is very different from the EBID because there are thousands of landowners in the El Paso irrigation district.

Ed Archuleta

acequia cannot provide water to their property. In other cases, the land has been subdivided and there is no need for the landowners to get the water. In yet other cases, some people simply want to hang onto their water right.

We currently have about 5,000 acres of small tracts still available for lease and we are aggressively working on obtaining those tracts. Sometimes landowners live in California or New York or elsewhere and may be difficult to reach. Because the tracts are so small, they are difficult to accumulate. We probably are accumulating about 100 acres per year and we are trying to increase that number significantly in order to obtain those water rights. Because of its urbanization, it is very difficult to accumulate water rights in the El Paso district.

In 1989 the Public Service Board signed a contract with the Lower Valley Water District— and the Bureau of Reclamation was part of the process— in order to allow us to provide services to colonias

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**The reason we are pushing
for year-round operation
is because we want
to fully utilize our two
treatment plants.**

Ed Archuleta

inside the city through the Lower Valley Water District. We agreed to provide services on the condition that they bring water rights to the table. We have a contract with the District which required, at the onset, that they accumulate a certain number of water rights up front and then provide a 20-year demand projection for water rights. One reason for this condition is there are some risks on our part. Treatment plants were shut down last week because both districts and Mexico quit calling for water. One result of the plants ceasing to operate was poor quality water down river. Both treatment plants

currently remain shut down so we are not treating 80 million gpd and we have reverted to using 100 percent groundwater. Many of our customers use surface water for part of the year and then switch to

groundwater, while some customers use groundwater year-round, particularly customers in northeast El Paso and the upper westside. When we shut down our plants, we move to using 100 percent groundwater and we start to provide the Lower Valley with groundwater.

Part of the 20-year projection is to make certain that we have sufficient water rights. We now have 50,000 people getting water where a few years ago there were less than 10,000. We now are providing water for nearly 40,000 additional people outside the city through a colonias program. Those living in the colonias must dedicate their water to us. If you live in the valley as part of the irrigation district and want the water, you must dedicate the water to us and in turn transfer that water right through the District to the Public Service Board for utilization at the Jonathan Rogers Plant.

We entered into another contract in 1992-1993 with EPWID in conjunction with the construction of the American Canal extension, which now is almost completed. It is an International Boundary and Water Commission project to separate United States waters from Mexican waters. Most of the project was paid for by the federal government, but we paid the local share for the EPWID in exchange for water.

By March 1999 we will have renovated the Haskell Street Plant which is a wastewater plant in central El Paso. We will be discharging into that canal as opposed to discharging into the river, which is the current practice. When that happens, we will get a 2 for 1 exchange of wastewater effluent for surface water. That effort should yield about 16,000

acre-feet of water per year. It is a large plant that will deliver about 32,000 acre-feet per year into the river.

I've described how we get water. If you add all the numbers, you get about 52,000 acre-feet of water, which represents about 45 percent of our annual requirements. The reason we are pushing for year-round operation is because we want to fully utilize our two treatment plants. The Jonathan Rogers Plant eventually will be expanded and in the future we will have the Anthony plant operating. By the way, 80 million gpd is a long-term projection. We see the Anthony plant initially operating in the 20-40 million gpd range. When a spill occurs on the river and no one can take the water, the Public Service Board could have contracts in place with our irrigation district to take the water and put it to beneficial use. Why not do that as opposed to wasting the water because there is no place to store the water? In times of operating spills or similar situations, we could have the contracts in place to do that. We currently do not have a contract in place for that water.

The Public Service Board sees the following possibilities. First, I believe that the one way to obtain more water for the project is by supply-side conservation. In other words, we have demand-side conservation in place in El Paso and Las Cruces, and we now need supply-side conservation. One method is through lining canals in El Paso as well as in New Mexico. One project being considered by the El Paso-Las Cruces Regional Sustainable Water Project—and most people agree it is a good candidate—is to line the Westside Canal. The several miles long canal could be lined and thereby convey water more efficiently. We also are working with EPWID on lining the Riverside Canal which carries a substantial amount of water to Lower Valley farmers right below the Jonathan Rogers Plant. Several projects in California and Arizona deal with this concept. I push for investing in efficiency measures for the irrigation system so we will have much more precise accounting, delivery, and measurement of the water. With increased efficiency, you can yield and conserve more water than what I think currently is being realized.

Another potential contract between the Bureau of Reclamation and our district will allow for a third-party contract. We have not yet negotiated that contract with the Bureau and the irrigation district, but we certainly hope to do so before the end of the year or at least have substantial progress toward that end. The contract would allow us to negotiate directly with individual farmers anywhere within the district. In the early days, we were restricted to negotiating within El Paso's city limits. This

contract would allow us to negotiate contracts in the Valley for the short-term. The contracts would probably be the drought type because I think most farmers would want to negotiate in the short-term— one to ten years. In that way, we would accumulate water to deal with drought, even in a non-drought year if farmers want to negotiate part or all their water. As I said, the contract is not yet in place but we hope to have it in place in the next few months.

Finally, let me say that I must be very careful because I have a lot of customers. We have 150,000 meters and customers expecting good service. They expect value and we try to deliver that. On the other hand, my board has recognized it has to raise rates periodically and send a signal to our customers that water is precious. We revamped our water rate structure in 1991 to a conservation rate structure. We penalize customers in summertime compared to winter use. We clearly must continue to send a pricing signal. The board's five-year financial plan indicates that rates will increase. The projects to which I have referred are going to be very expensive for El Paso and that is why we visit Washington and Austin trying to get federal and state assistance. But there will be a big local burden, I can assure you of that, and the price of the water will increase.

The price of water for agricultural use has been very low. We know it's low and it's a good deal but it's not going to last. Currently we pay about \$21 per acre-foot to EPWID for water, which includes the actual cost of the water plus administrative fees. We know that price will increase but I have asked the District not to give us a big bump but to give us progressive bumps. We may need a short bump and some other increases periodically. Whether you are in the agriculture business or municipal business, you know that people do not like rate shock. It is not easy to plan for rate shock. We know the price of water will go up and must go up, and we have to increase our rates to fund necessary capital facilities— but we must raise rates in a way that is reasonable and responsive.

A problem we face is that we have customers who can least afford rate increases. We deal with colonias and with a city that is one of the poorest in this country. From that standpoint, I think there must be reasonable approaches to transfers as they occur in order to respect the customer, realizing that where water is diminishing, we must send a pricing signal. I encourage the attendees at this conference from New Mexico and the agricultural community to work with El Paso in terms of sending that pricing signal and provide information so that people are aware that water is in short supply and it always will be an issue in this area. The problem will never be solved totally as long as we keep growing and demanding more water. Thank you very much.

Gary Arnold Elephant Butte Irrigation District

We at Elephant Butte Irrigation District (EBID) realize that as municipalities grow and more farmland in the District is urbanized, there will be a need to convert water from agricultural to municipal and industrial use. Currently our district consists of 133,000 acres and 90,640 acres of that total have water rights. We use that base to assess charges for operation and maintenance and it is very essential that we keep that base.

Currently water is transferred within our district from one constituent to another. We do voluntary transfers, which means that when a constituent with water rights no longer needs the water or wants to pay the assessment and wants to give up his water rights, those water rights are then transferred to other landowners within the District. We also allow transfers of annual water sold by one owner to another.

Since New Mexico has recognized conservation as a beneficial use, we have been working on a water banking concept called a conservation pool. In other words, if a water rights owner does not use his annual water, then the water is placed in the conservation pool and made available to other farmers. This allows EBID to promote conservation by giving the water right owner a financial incentive to conserve water.

We currently are using our full allotment of water on agricultural production within the Mesilla Valley. We feel that if this water is converted to municipal use, it should be made available to New Mexico municipalities first, particularly the municipalities within District boundaries. We have been working with the City of Las Cruces to develop policy to allow the City to use EBID water for surface water treatment. The City currently is the owner of some of EBID land which means that it is one of our constituents and has rights to water use. Other ways to allow for municipal use would be to lease annual water from the conservation pool. The City and EBID also have a resolution allowing the City to assign water from urbanized tracts within the city for surface water use. This agreement would prevent transfers of water back to other farmlands within the District. This water is a major concern to the City. The land is urbanized, for example,

This [conservation pool] allows EBID to promote conservation by giving the water-right owner a financial incentive to conserve water.

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parking lots paved over agricultural land. EBID would deal with the situation by having those individuals owning the water rights make those rights available to other farmers in the District through annual water sales. Once an individual decides to voluntarily transfer the water right away from the parking lot or the nonuse, they would give up those rights. EBID would have a waiting list for people who meet criteria to get those first-class water rights. The first individual on the list would get the water rights available from any voluntary transfer.

We are hoping if the negotiation is done properly and policy is set correctly, it would actually allow for a market approach to this water. The marketplace, the demand for water, would drive the price of the water.

Gary Arnold

under the resolution until the City can build a treatment facility, which is approximately five to fifteen years down the road.

Several items must be considered when you start looking at transferring water. First, any transfers under New Mexico law have to be approved by the State. Depending upon the outcome of the current lawsuit, there potentially could be conversion contracts required by the Bureau of Reclamation between our district and the Bureau. Also, third-party contracts would involve the City and the District. You also need the successful negotiation of leases between the water-right owner and the City. We are hoping if the negotiation is done properly and policy is set correctly, it would actually allow for a market approach to this water. The marketplace, the demand for water, would drive the price of the water.

To recoup operation and maintenance costs, the District must continue to keep the 90,640 acre base. If an overage occurs, that is, an amount over and above operation and maintenance and administration of the water, the excess funds would go back to the person who owns the land and has the right to use the water. Another related concern would be year-round flows. The situation is similar to the one Ed Archuleta has in El Paso. EBID has approximately 7,000 contracts with individuals within our district. About half of those are small tract owners. The other

We have worked with the City of Las Cruces on this resolution to keep the water within the city limits and not have it transferred out, and we hope that it helps build a surface water supply for municipal and industrial uses. The water would be made available for agricultural use

3,500 are larger tract owners who are involved in commercial production of agricultural products.

Our emphasis has been to try to keep New Mexico water for New Mexicans. We feel the duty of the water that has been appropriated for the acreage within EBID should stay with the land. It should be appurtenant to the land. We feel the water should be used by either the people who have established the property rights or the populace, either within the municipality or adjacent to or a part of District land. There are some problems though. When you allow these transfers, the first thing we see is competition for the water among our farmers.

We have come to the realization that conversion of water from agricultural to municipal and industrial uses will happen. It is a demand that will be placed on our system. The timing might be such that by the time the City of Las Cruces, or the area's mutual domestics, or Anthony, or any of the other municipalities up and down the river are ready to use surface water, more agricultural lands will be ready for retirement within the District and thus help create part of the supply for that demand. We feel we will be able to transfer some of the water.

I really feel like this is something that I am at home with because I am a native of Las Cruces, I live right on the river, and I have watched the valley do what it has done for 50 years. The health of the river is

critical to the health of agriculture in the Mesilla Valley. We stand ready to work with the City to see how we can evolve and move toward municipal and industrial transfers, and hopefully we will be able to overcome the obstacles that we will undoubtedly meet in the future. Thank you.

Our [EBID] emphasis has been to try to keep New Mexico water for New Mexicans. We feel the water should be used by either the people who have established the property rights or the populace, either within the municipality or adjacent to or a part of District land. There are some problems though. When you allow these transfers, the first thing we see is competition for the water among our farmers.

Gary Arnold

Len Stokes
Progressive Environmental Systems Inc.

This conference has been very interesting to me. We have had the federal government make some statements, and we have had the state government make some statements. We are in a heck of a squabble and our squabble is about control. It is a very simple matter. The federal government wants control, the state government wants control, and the local government wants control. The issue of control has to do with responsibilities. The City of Las Cruces wants to control its own destiny and local entities such as the Elephant Butte Irrigation District (EBID) wants to do the same. Control carries with it responsibility. If our constituents do not have water at their tap or the District's farmers do not have water at the headgate, they are not going to call the Bureau of Reclamation or the State Engineer. They call us and what they call us is not very nice.

Local entities have a responsibility to our constituents and we are fulfilling that responsibility. We do so through planning and working together. Contrary to a lot of what you have heard at this conference, the sky is not falling. Problems with water issues are ongoing, but the resolution to those problems is ongoing as well. That is the attitude I have found working here in southern New Mexico. I have probably enjoyed working with EBID more on the issue of municipal and industrial transfers than on any other issue because of the willingness of both parties to work together.

Currently, the City of Las Cruces utilizes groundwater exclusively. We know that will change. The time table for that change is not definite. Gary Arnold gave a good estimation and although it is hard to determine a target date, we must start to prepare for that day.

Las Cruces sits partially in the valley and partially on the east mesa. Figure 1 delineates the portion of the city of Las Cruces within the boundaries of EBID. This was all farmland at one time and over the years it has urbanized.

Figure 2 shows all the areas that are irrigated. Gary Arnold talked about what happens when someone comes in, buys a parcel, does not pay their assessment, and is not going to use the land for agricultural purposes. They voluntarily suspend their water rights. EBID takes those rights, refers to EBID's waiting list, and transfers those rights to an agricultural use in the valley. EBID has the statutory authority to do this and must keep their water in beneficial use. The black areas indicate where rights have been transferred to another agricultural use.

The grey areas depict areas that continue to have project water rights appurtenant to the land.

The City of Las Cruces passed an ordinance that addresses two different issues. It addresses the areas within the city limits that are in grey in Figure 2. The ordinance states that anyone who wishes to develop those areas and take the land out of agricultural production must lease those water rights to the City of Las Cruces. Price will be determined by market value. We have not processed any of these yet so we do not know what the price will be, but there are several requests on the table currently so we are going to get our feet wet pretty quickly. This arrangement does not constitute a taking. The landowner will be compensated for their water allotment. We will not lease the water right but we will lease the water allotment appurtenant to the land. I think this will be a major accomplishment. We put in many hours with EBID working on this plan and I think the effects will be very positive for Las Cruces' future.

Another part of the ordinance deals with areas outside the city limits that have petitioned for annexation. Areas petitioning for annexation must lease their allotment at no charge to the City. For the lease of that allotment, the City will furnish water by extending City service to the area. This does not constitute a taking either. We are trading a service for a water allotment. This effort will provide a pool of surface water rights from which we will draw when we begin to utilize surface water.

We have three sources for building a pool of surface water rights. The source with probably the least number of rights is on property owned by the City of Las Cruces. Currently, the City owns approximately 160 acres within the irrigation district and we have project rights appurtenant to that land. The tracts with water leased by the City are represented in grey in Figure 2. These tracts will be another source for our surface water base when they are developed. The largest source for securing surface water rights will come from the conservation pool that Gary Arnold discussed.

We do not have a third-party contract in place but we are working with EBID to build the framework of a transfer agreement. We understand we must go through the Office of the State Engineer. I have had discussions as recently as this morning with our district manager from the Office of the State Engineer. I think these transfers will happen

Problems with water issues are ongoing, but the resolution to those problems is ongoing as well.

Len Stokes

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and they will happen at a local level. We will have buy-off from the federal government as well as the Office of the State Engineer. However, we are not asking any federal or state agency to come do this for us. I think every local entity represented here needs to understand that. The notion that "I am from the government and I am here to help you" is not right. Local entities had better help themselves because if

you ask for help from Washington, D.C. or from the State, you are not going to simply get help, you also are going to relinquish control to the federal or state government.

I have been privileged to work on these issues and to work with EBID and the City of Las Cruces. It has been an enlightening experience and I hope it continues. Thank you very much.

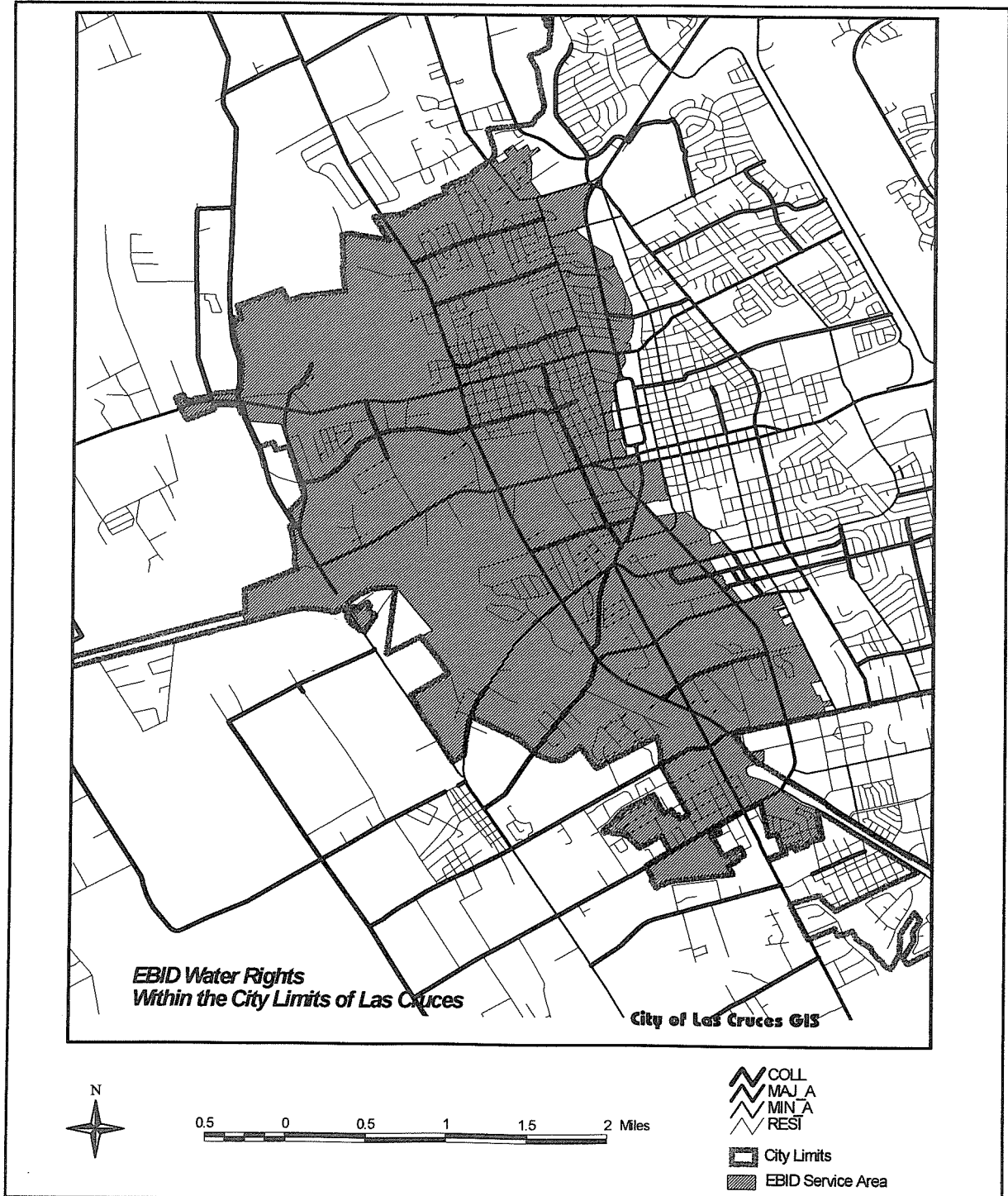


Figure 1. Portion of Las Cruces within the boundaries of the Elephant Butte Irrigation District

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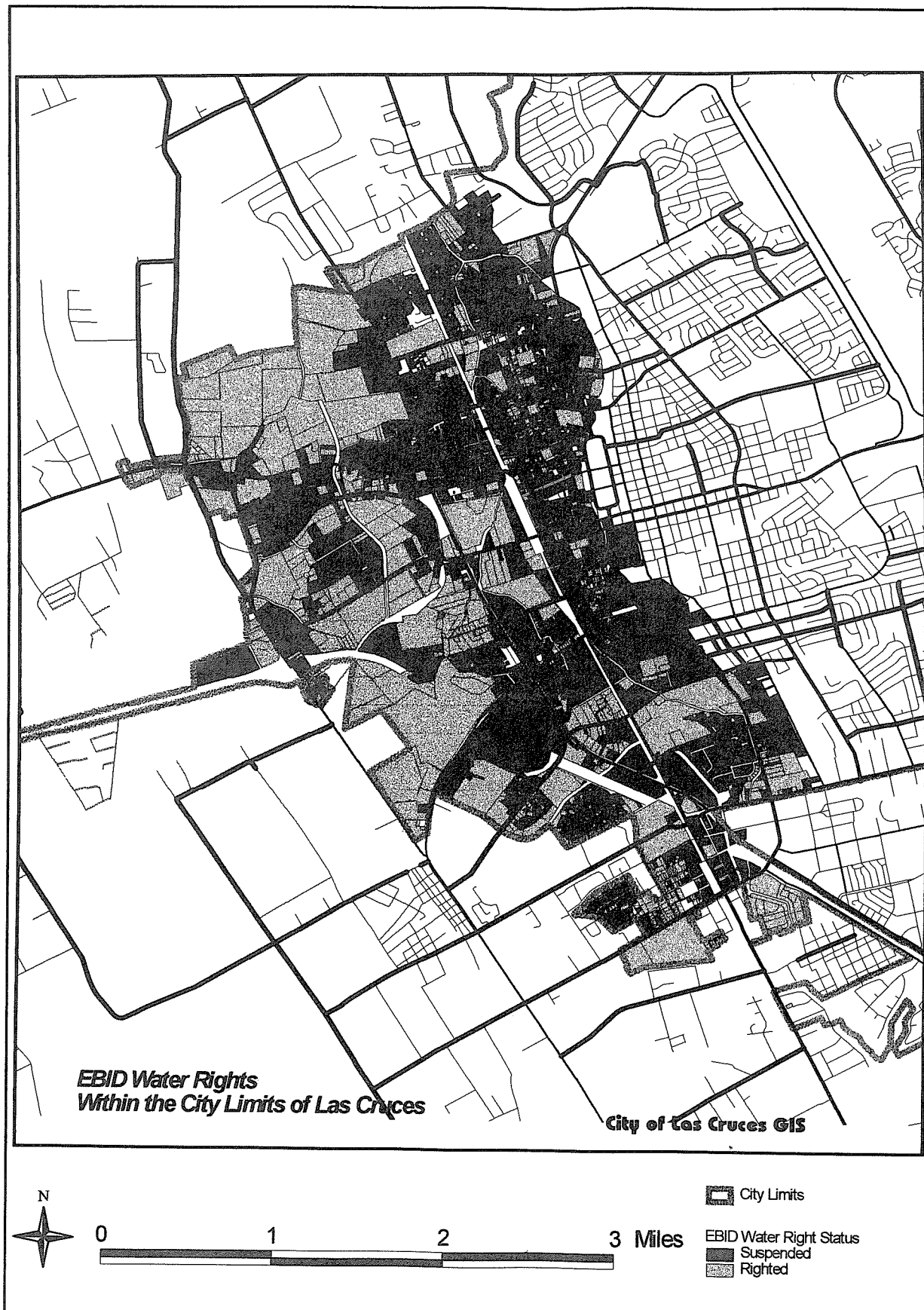


Figure 2. Elephant Butte Irrigation District Water Rights within the City Limits of Las Cruces