

Messrs. Chairs, Members of the Committee

- Thank you for inviting me to present my perspective on legislation regarding water transfers from one county to other counties.
- Together with the invitation, I received a copy of House Bill 418 which was filed in 2017. I base my remarks on the assumption that we all agree with the constitution of the State of New Mexico where water is an asset of the state, and where the evaluation of public welfare takes place at the state level and where counties do not get an advantage simply for being areas of origin.
- Let me start by stating my belief that water transfers between counties are essential to a thriving economy.
- Economic development takes place in clusters defined as geographic locations where activities tend to concentrate. This happens because of natural circumstances such as soil and climate for agriculture or the presence of oil and minerals, while manufacturing and service clusters develop around urban centers with equipped infrastructure hubs and a trained workforce.
- Thriving economic clusters require readily available resources, including water. Because of the scarcity of water supply, pretty much every center of activity in New Mexico is reliant on water transfers directly or indirectly. Think of the San Juan Chama or the sources of water to Alamogordo. Without transfers, these communities could not exist in their present form.
- The recently published Water Plan indicates that water supply in New Mexico will be insufficient to cover demand in the next 40 years. The magnitude of the gap ranges from moderate in the case of low demand growth and continued water availability, to catastrophic if a drought takes hold.
- I would point out that a very likely reason for low demand growth is low economic growth, brought about in part by the lack of water. I would argue that this is already happening in New Mexico. It is well known that the State is falling behind in most indicators.
- Adding to the challenge, the water resources available to the State are subject to fluctuations. Surface water resources vary considerably between wet and dry years, and overtaxed aquifers can get depleted to the point that no recovery is possible.
- The Water Plan lists water transfers as one of several potential remedies. Unfortunately the plan doesn't evaluate or compare these remedies. I believe that had it done so, the plan would demonstrate that the transfer we are proposing as

the Augustin Plains Ranch project would provide more economic and environmental benefits to the Rio Grande valley and the State than any alternative.

- Over-extraction of Rio Grande water, directly or indirectly, is killing the river and an alternative source is urgently required.
- To those who say there is no demand in the Rio Grande Valley for our project, or that the economic won't work, let me ask you this question: Why are the parties in the Texas vs New Mexico lawsuit gearing up to spend over \$100 M in legal costs alone over a dispute for effectively the same amount of water than what we are proposing to capture and produce?
- I have in the past presented the project to this Committee and will not do it again today since it isn't the subject of the meeting. I am available for any subsequent presentation should the committee so desire. I will now confine my remarks to legislation aiming at regulating transfers such as the one we are proposing.
- Water transfers are extremely contentious, and recent history has shown that legislation enabling and regulating such transfers could be helpful. Our application has been both accepted and rejected several times, and our team's understanding of the law still differs significantly from that of the Office of the State Engineer. There clearly is a role for the legislature in this respect.
- However I do not believe that House Bill 418 adequately addresses the issues at stake. In its present form, I believe it will add cost to the process, increase legal disputes and essentially make transfers impossible, without addressing those areas that do need input from the legislature..
- For the most part, the bill appears to be providing a guideline for the State Engineer, repeatedly using the term "shall consider". If this is the intent maybe a memorial would be more appropriate.
- Section 1.B.(1) requires the state engineer to evaluate the consistency of a proposed diversion with the water plans. In the first place, the Office of the State Engineer already includes consideration of the State Plan in evaluating an application. But what if the proposed diversion isn't included in any of the plans? Should innovation be stifled simply because it is a novel idea? Also keep in mind that water plans are prepared at best every 10 years, so they are rarely up to date on the issues facing the state.
- Section 1.B.(2) is the only part of the bill that is prescriptive ordering that, I quote "the state engineer shall not approve the application until sufficient information [about the aquifer] is provided". What constitutes enough information isn't clear but this type of instruction will provides opponents of transfers with a weapon to

successfully contest virtually every application.

- Sections 1.B.(3) through (5) are other ways of wording impairment and public welfare considerations which are already part of the statute. Hoops are added, but not substance.
- Finally Section 1.B.(6) requires the State Engineer to consider, I quote: “the availability of alternative sources of water for the proposed use that would not rely on the diversion of ground water out of its area of origin”. What if the alternative is desalination of deep brackish water which would cost ten times as much and have significant negative environmental consequences? I do not believe it would be prudent policy for the State to adopt such a standard. In addition this strikes me as a major departure from the constitution and the statutes governing beneficial use that do not require an evaluation of alternative sources.
- I believe that it would be beneficial to the State of New Mexico if this committee considered and clarified two fundamental issues which I do not think are adequately covered presently. Namely the issue of speculation and the issue of equity.
- Speculation in water appropriations is the situation in which a person acquires water rights with the sole intent of hoarding them for future sale, without any probability of near-term use of the water beneficial to the public welfare of the state.
- I would argue that the current statute already offers significant protections against this possibility. First applications and hearings are expensive and time consuming. We have already spent several millions of dollars in the project over more than 10 years, including test wells, hydrological modeling, and environmental and economic research. I take this opportunity to note that we have shared the results of our drilling investigations with the New Mexico Bureau of Geology and Mineral Resources at no cost to the institution. We would need to spend more in a full hearing. Anyone who claims we are speculating by spending such sums over so many years doesn't understand speculation. But most importantly for the State, the fight against speculation should not be at the expense of scientific discovery, which is exactly what is happening, and what Bill 418 would worsen.
- In addition, this so called speculation should not work, because even if an application is granted, the statute demands that the water rights will need to be put to beneficial use in a reasonable time frame. In our case, this would imply that a well field and a pipeline would need to be constructed. In order to avoid speculation, the State Engineer must ensure that progress towards this objective actually takes place. I believe that there is room in the legislation to clarify this

notion of progress, and that the State Engineer should be urged to enforce the obligation of putting the water to beneficial use. This is the proper time to protect the State against speculation.

- I believe that the issue of equity is not contemplated in current legislation. Once approved, a transfer essentially benefits the area of proposed use, but the area of origin doesn't receive many direct economic benefits, aside from a few jobs. I think it would be good for this committee to explore avenues designed to ensure that the area of origin benefits from the project. One idea would be that in the case of transfers for the commercial sale of water, the Gross Receipts Tax should be that of the area of origin. I do not think this is clear in the current legislation. There may be other mechanisms that could ensure the equity of the distribution of economic benefits of a project such as the one we are proposing.
- I was also asked to inform the committee on the status of our appeal of the State Engineer's decision. Our appeal has been filed. The reason of our objection to the state engineer's decision should matter to all with an interest in the economic well-being of the State. Our application was denied without a full hearing based on the fact that it didn't include, I quote "a contractual agreement for the purchase or delivery of water". This is a novel regulatory treatment which departs from past practice and is inconsistent with the requirements for our application specifically expressed by the office of the State Engineer.
- I note that many applications for water rights destined to supply the oil and gas industry, which is so important to this area of South Eastern New Mexico, do not include such contracts. There is a reason for this. Off-takers are reluctant to sign contracts with suppliers that cannot demonstrate their capability to supply. They would now have to sign multiple contracts, not knowing who will get a permit and who will not. Should this regulatory treatment be applied to all future applications, it will certainly have a destabilizing effect on the industry.
- In closing, I would like to thank you Messrs. Chairs and members of the Committee for this opportunity to appear before you and am ready to answer any questions you may have.