

Coalition of Six Middle Rio Grande Basin Pueblos

PUEBLO DE COCHITI ▪ SANTO DOMINGO TRIBE ▪ PUEBLO OF SAN FELIPE ▪ PUEBLO OF SANTA ANA
PUEBLO OF SANDIA ▪ PUEBLO OF ISLETA

% E. Paul Torres, Chairman

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“Issues of Concern to the Middle Rio Grande Pueblos and How the State Legislature Can Help”

E. Paul Torres, Governor
Pueblo of Isleta

Before the Indian Affairs Committee
Legislature of the State of New Mexico
Interim Committee Meeting
Isleta Resort & Casino
July 15, 2013

Though we are all extremely grateful for the recent monsoonal rains, and the promise of more to come, just several weeks ago we were facing the prospect of shortages and cut-offs of surface water deliveries to farmers on the Middle Rio Grande, and federal agencies were preparing to take extraordinary efforts to maintain minimum flows for the minnow.

All of us are aware that the current drought is not an isolated incident. In past droughts, development in the Middle Rio Grande region was not nearly as extensive as it currently is, and the effects over time of groundwater pumping associated with more intensive development had not yet begun to fully impact River flows. We are now experiencing depleted stream flows in Pueblo reaches of the River resulting from historic and current domestic, municipal, and industrial groundwater use off Pueblo lands. At the same time, climate change appears to be affecting snowfall and spring runoff, reducing water available for storage to make up for depleted stream flows.

On top of the backdrop of these difficult conditions, there is a new overlay of federal law over River and water management efforts under the Endangered Species Act imposing its own challenges. While a train wreck might be avoidable this year if monsoonal moisture continues,

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we have to start now thinking outside of the box to meet these challenges. We ask for the State's support of our efforts to develop and fund new approaches to maximize usable water supplies and to construct the infrastructure improvements necessary to efficiently use available water.

PUEBLO IRRIGATION INFRASTRUCTURE IMPROVEMENT

The Committee asked me to address the Pueblo Irrigation Infrastructure Improvement Act, which is federal legislation enacted in 2008 with the strong backing of then-Senators Bingaman and Domenici, and then-Congressman Udall. This important piece of legislation is intended to survey the state of Indian irrigation infrastructure along the entire Rio Grande and authorizes six million dollars per year to be appropriated annually for 10 years for irrigation efficiency improvements. The legislation provides for matching funds to support irrigation infrastructure improvements. Unfortunately, however, Congress has not appropriated any funds to support this important endeavor.

The first step under the Act is an assessment or survey of the condition of the infrastructure. The Pueblos continue to seek funding to get this work done so that the real work of improving the system can get under way.

We would like the State to support efforts to secure federal funding to complete the survey. The State can, and should, however, do even more: the State should actively fund infrastructure improvements either as matching funds under the Act or independently. Again, in these times of drought and climate change, it is incumbent on all of us to take steps to become more efficient in our use of water and we hope that the State will actively support these efforts.

PUEBLO WATER STORAGE

Long-term drought in the Middle Rio Grande basin is generally accompanied, and compounded, by storage restrictions imposed by the Rio Grande Compact. Specifically, a couple of consecutive years of poor snowpack and runoff frequently causes water levels in Elephant Butte Reservoir to drop below 400,000 acre feet, which means that there can be no upstream storage of Rio Grande Basin water, unless the State has accumulated water credits that it can release to Texas. Then, the amount of such water credits released to Texas can be stored and used, if there is sufficient runoff.

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In addition to credit relinquishment, which has its limits, the other storage that can occur even when the State is in Compact restrictions on storage, is storage for the six Middle Rio Grande Pueblos. That is because the Compact provides that "nothing" in it "shall be construed as affecting the obligations of the United States...to Indian tribes, or as impairing the rights of tribes." Currently, water is stored each spring in El Vado Reservoir for the six Pueblos under the terms of a 1981 storage agreement between the Pueblos and the Bureau of Reclamation.

Under that agreement, estimates are made as to how much additional water will be needed to meet the Pueblos' so-called Prior & Paramount, or P&P, water needs. Though the Pueblos also have P&P rights for domestic and stock purposes, the focus of the 1981 Agreement is on P&P irrigation needs. In addition, though Pueblo rights are exempt from the Rio Grande Compact, the federal government has not been storing water for other Pueblo irrigation rights, including Pueblo rights related to newly reclaimed lands or NRLs.

I believe that water storage options for the six Middle Rio Grande Pueblos need to be expanded. This would provide the Pueblos, non-Indian irrigators, the State, and the federal government a new potential source of water for irrigation and for ecological flows, among other possible uses. First and foremost, the rights of the six Middle Rio Grande Pueblos to carry over unused P&P water should be recognized. This would provide additional flexibility to address water supplies, particularly in times of drought. However, the State Engineer's Office and the Interstate Stream Commission have long taken a very narrow view of a Pueblo storage right with respect to the quantity stored, and when and for what purposes it can be released/used. And, at the end of irrigation seasons when Compact storage restrictions are in effect, they have pressed for the release downstream of any P&P water that remains in storage to help the State meet its Compact delivery obligations.

In short, though this water was stored to meet Pueblo water rights, we are receiving no credit or benefit for the release of our stored water or the Compact credits that result from it. I submit that this is bad policy and creates the wrong incentives in terms of water conservation.

STATE ADMINISTRATION OF WATER RIGHTS AND USE

For a number of years now, the Pueblos have expressed concern over the State's reluctance to actively administer and/or regulate water use in the Middle Rio Grande. The State's focus has

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been on meeting its Rio Grande Compact obligations to deliver water to Texas without a coherent policy that also protects the Middle Rio Grande from localized impacts, including impacts to Pueblos or other senior rights holders.

For example, the State Engineer routinely allows downstream-to-upstream water rights transfers. Apart from serious problems with certain of the assumptions that the State makes in approving such transfers, like, for example, assuming the move-from lands have historically received a full supply of water and assuming, without adequate monitoring, that the move-from lands cease to consume water post-transfer, the State's focus is exclusively on ensuring that aggregate water deliveries to Elephant Butte Reservoir are not reduced. No effort is made to assure that there are real-time, reach-specific, offsets.

Thus, during the critical summer months, new depletions are being permitted to occur within the Albuquerque reach. The State's current policies also ignore the cumulative impacts of such transfers and, indeed, the State Engineer's Hearing Unit will not even hear evidence on this issue. Instead, the State Engineer's Office looks only at the modeled impacts of each transfer, in isolation, leaving the River and surface water users like the Pueblos to absorb the impacts of hundreds of downstream-to-upstream transfers without offsets in the reaches affected by the new depletions. To further compound the problem, the impacts on the environment and other water users of these groundwater depletions, unlike surface water diversions, continue for decades after pumping stops.

The State must also get a handle on unregulated domestic groundwater withdrawals. Here too, the cumulative impacts are not accounted for and, taken together, will continue to result in declining water levels in the Middle Rio Grande and across the state.

In sum, State water administration policy must come into the 21st Century.

I emphasize that the issues of concern presented to the Committee today are of utmost importance. Please be aware that there are many other water rights issues facing the Pueblos and the Committee's continuing interest and support will be much appreciated.

Thank you and I will do my best to respond to any questions.