



NEW MEXICO
STATE-TRIBAL LEADERS SUMMIT

2013 State-Tribal Leaders Summit Issue Paper
Water Rights and Natural Resources

The following Water Rights and Natural Resources issue paper contains three sections- (1) Issues Identified by Tribal Leadership; (2) Potential Solutions; and (3) State Achievements. The N.M. Indian Affairs Department, in collaboration with the State-Tribal Leaders Summit Planning Committee, issued surveys to Tribal leadership in order to identify which issues and potential solutions should be discussed at the 2013 State-Tribal Leaders Summit. The “Issues Identified” and “Potential Solutions” discussed below do not necessarily reflect the views of the State of New Mexico and are merely provided to summarize the survey responses received. The “State Achievements” section has been developed with input from various State agencies.

Issues Identified by Tribal Leadership: A strong and meaningful partnership between the State and the N.M. Tribes, Nations and Pueblos (collectively referred to as “Tribes”) is needed in order to address important water rights issues, including such matters as jurisdiction and enforcement. Clearly defined consultation parameters, as well as strong cooperative agreements, could benefit both parties and promote more successful collaboration.

Several Tribal leaders recommend that the Governor continue to support appropriations to the Indian Water Rights Settlement Fund to fund New Mexico’s cost share obligations under pending Indian water rights settlements, additionally assuring that these appropriations will not come at the expense of other funding sources available to the Tribes.

San Felipe Pueblo states that the U.S. Bureau of Reclamation (USBOR) should more effectively collaborate with the six Middle Rio Grande Pueblos regarding the storage of water at El Vado dam and reservoir to serve the prior and paramount (P&P) irrigation water rights of the Pueblos. State assistance may be requested in this endeavor.

Picuris Pueblo requests consultation regarding ongoing trans-basin diversions of water that will affect Tribal lands. Picuris is also concerned about the distribution of the water of the Rio Pueblo and how such diversions are measured. Picuris recommends that all affected parties should be brought to the table in the planning of trans-basin diversions.

The Pueblo of Isleta is concerned with the potential effects of population growth and the diversion of water in the Rio Grande. Isleta encourages collaboration between municipalities, such as Albuquerque, Rio Rancho and Santa Fe, and other affected parties, to ensure that transfers do not adversely affect the tribal community and other water users.

The Navajo Nation would like to work with the State to address remaining Navajo water rights claims in areas outside the San Juan River stream system, including Tohajilee and Alamo, either through litigation, negotiation, or both. The Navajo Nation is concerned that the State Engineer may need additional resources to adjudicate these outstanding Indian water rights claims.

The people, the landscape, and the ecosystem are at-risk during this time of extreme drought. State-Tribal collaboration in the area of state disaster declarations and emergency response would benefit all parties, especially as it relates to fire prevention, protection and flood mitigation. Federal funds to address drought and increased fire danger are limited, as is staffing for wildfire prevention and response. Tribes

are currently experiencing the effects of drought and have identified the need to develop a coordinated and comprehensive plan for support during the fires, in the aftermath, and in prioritizing the use of existing resources for mitigation, rehabilitation, and flood protection. Sediment erosion into the rivers and tributaries negatively affects water quality for both tribal and non-tribal communities. State support of additional funding for fire scar erosion control could assist in addressing water quality concerns.

Potential Solutions Identified by Tribal Leadership:

- Continually utilize the State-Tribal Collaboration Act to improve collaboration and communication between the Tribes and all cabinet-level agencies;
- Governor's continued support for appropriations to the Indian Water Rights Settlement Fund to fund New Mexico's cost share obligations under pending Indian water rights settlements, additionally assuring that these appropriations will not come at the expense of other funding sources available to the Tribes;
- Consider allocating additional funding toward irrigation system projects that would promote water efficiency;
- Consider assisting the Tribes in their relations with the MRGCD and the request for an audit from the MRGCD;
- Work to protect senior water rights held by Tribes, including, where necessary, enforcement actions by State and Tribes to shut down illegal diversions of water;
- Continually consider tribal representation with regard to boards, work groups and organizations that address water rights issues;
- Explore partnerships in relation to fire fuel reduction projects. Such partnerships could include the availability of state resources for tribal use (e.g. specialized equipment and trucks) and use of tribal field crews to complete projects;
- Tribal support when Governor Martinez requests additional federal funding for emergency management, including fire fuels management, fire control, and fire scar rehabilitation. These funds were severely cut as a result of the sequestration; and
- Consider developing a coordinated and comprehensive plan for support during fires, in the aftermath, and in prioritizing the use of existing resources for mitigation, rehabilitation, and flood protection

State Achievements:

Indian Water Rights –

- The N.M. Office of the State Engineer (OSE) and Interstate Stream Commission (ISC) continue to work closely with tribal representatives to implement the three pending Indian water rights settlements: the Navajo Nation Water Rights Settlement, the *Aamodt* Water Rights Settlement, and the Taos Pueblo Water Rights Settlement. These efforts include ongoing education of legislators on the need for the State to fully fund the State's cost share obligations under these three settlements;
- The State continues to work with the Tribes to resolve water rights claims in five other water rights adjudication suits. The State and the Tribes are currently actively litigating the claims of the Pueblos of Acoma and Laguna in the Rio San Jose adjudication; the claims of the Zuni Indian Tribe and the Navajo Nation in the Zuni adjudication; and the claims of Jemez, Santa Ana and Zia Pueblos in the Jemez adjudication. In addition, the State is engaged in preliminary settlement discussions with the Pueblo of Ohkay Owingeh in the Santa Cruz/Truchas adjudication which may extend to the Pueblo's claims in the Chama adjudication;
- State Engineer, Scott Verhines, has appeared before the All-Indian Pueblo Council to hear from Tribal leadership;
- The State Engineer and the OSE Tribal Liaison met with the Pueblo of Acoma to address its position paper given to the agency at last year's State-Tribal Leaders Summit;

- OSE staff and representatives of Taos, Nambe, Pojoaque, Tesuque, and San Ildefonso Pueblos are working together to develop, for consideration by the 2014 legislature, proposed legislation relating to leasing of water rights held by those Pueblos in relation to the Taos Pueblo and *Aamodt* settlements;
- The State Engineer and ISC Director, along with the OSE Tribal Liaison, met with the Governor of San Ildefonso regarding the situation of the regional water system required by the *Aamodt* settlement;
- The OSE Tribal Liaison worked with the ISC and San Ildefonso regarding access to stream gauging instruments located at the Otowi gage on the Rio Grande;
- The OSE Tribal Liaison assisted the ISC in its request for permission from Ohkay Owingeh to access Pueblo lands above the confluence of the Rio Chama and Rio Grande to take streamflow measurements. Ohkay Owingeh leadership granted the requested access and the ISC provided to Ohkay Owingeh the data collected;
- The OSE Tribal Liaison continues to work with the Pueblo of Santa Clara regarding the effects of the Las Conchas fire on the community;
- State Engineer Verhines recently met with Gilbert Zepeda, Regional Forester for the U.S. Forest Service Southwest Region, to discuss watershed management and fire recovery issues. The State Engineer emphasized New Mexico's interest in prioritizing USFS activities to protect downstream water supplies;
- State Engineer Verhines met with the Mescalero Apache Tribe on the Tribe's interest in leasing water rights to the Village of Ruidoso;
- In March 2013, the State and the Jicarilla Apache Nation successfully concluded years of negotiation and collaborative technical work with the entry by the Chama adjudication court of a Consent Order recognizing the Nation's water rights on lands the Nation has acquired since the entry of the 1998 decree adjudicating the Nation's water rights on the Chama; and
- The New Mexico Water Trust Board recently approved two funding requests for projects proposed by Cochiti Pueblo to address the Pueblo's needs to mitigate recent fire damage on Pueblo lands and reduce the risk of future fire scar erosion.

Natural Resources –

- In FY12, the New Mexico Energy Minerals and Natural Resources Department (EMNRD), Energy Conservation and Management Division (ECMD), completed three tribal projects for a total of \$716K in ARRA funding, provided through the US Department of Energy, State Energy Program (SEP);
- ECMD continues to respond to technical assistance requests from tribal entities, which may include collaboration on woody biomass-to-energy, energy efficiency, regional transit, and alternative transportation fuels projects;
- EMNRD's State Forestry Division (SFD) completed two tribal ARRA funded projects – The Forest Inventory and Analysis project, which employed contractors from the Mescalero Apache, Navajo Nation, and Santa Clara Pueblo; and the Santa Clara Pueblo Ecosystem Restoration Project;
- SFD holds several Joint Powers Agreements with Tribes and continues to work with the Tribes regarding fire suppression, hazardous fuel treatments, bosque restoration projects, access issues and technical assistance to support those Tribes interested in forest industry as economic development;
- EMNRD's Mining and Minerals Division facilitates the Abandoned Mine Land Program, and in partnership with the U.S. Department of the Interior, Office of Surface Mining, and various land managing agencies initiates tribal consultation prior to conducting safeguarding and reclamation activities. To date, the program has initiated consultation with 24 tribal groups within NM, AZ, and OK;
- EMNRD's Oil Conservation Division, State Parks Division, and Youth Conservation Corp also engage in tribal initiatives such as remedial proposals, cultural sites, park projects, and YCC grants;
- While the New Mexico Environment Department (NMED) does not have jurisdiction over tribal waters under the New Mexico Water Quality Act or the federal Clean Water Act, because many surface waters of the State pass through tribal lands NMED consults with tribal governments in

regard to: State and Tribal water quality standards; the National Pollutant Discharge Elimination System (NPDES) permit program; and funding agreements for state-funded river restoration project; and watershed protection;

- NMED continues to engage in consultation activities regarding mining and milling proposals, soil and water sampling, tribal environmental program development, solid water management and illegal dumping, and hazardous waste issues relating to federal facilities;
- Notably, NMED provides technical and administrative support to the Indian Affairs Department with regard to the Tribal Infrastructure Fund program; and
- Department of Homeland Security and Emergency Management has provided support and services to nearly all of the Tribes focused on providing technical assistance and resources in the areas of planning, training, exercise, National Incident Management System (NIMS) compliance, grants management/funding, hazard mitigation, flood plain management and disaster recovery.