

**OFFICE OF THE STATE ENGINEER AND  
INTERSTATE STREAM COMMISSION**

**PRESENTATION TO THE  
INTERIM WATER AND NATURAL RESOURCES COMMITTEE  
June 10, 2013**

**Scott A. Verhines, P.E., State Engineer  
Estevan R. López, P.E., Director, Interstate Stream Commission**

---

- 1. Opening Remarks** – Scott Verhines and Estevan Lopez
- 2. Drought Conditions** – John Longworth, Chief, Water Use and Conservation Bureau
- 3. Active Water Resource Management (AWRM)**
  - AWRM is the term adopted by the OSE to emphasize the agency’s transition from water permitting and accounting duties that were primarily handled in-office to an increased focus on duties relating to the physical administration of water in our fully appropriated stream systems.
  - AWRM coordinates a broad range of activities, including:
    - physical water distribution, measurement, and management through State Engineer water masters and standardized water master manuals.
    - legal activities including ongoing adjudications, water right licensing, and enforcement actions for over-use or illegal use of water.
    - river management activities to meet compact delivery obligations and to address evolving water needs for habitat maintenance and restoration for species covered by the Endangered Species Act.
  - Six statutes in the water code provide the State Engineer authority to physically distribute water and take enforcement actions for over-diversions, damaging measuring devices, and illegal diversions.
  - Under AWRM, the State Engineer promulgates rules for the measurement, distribution, apportionment, and enforcement activities undertaken to maximize beneficial use of the available water supply by existing valid water rights, to prevent over or illegal diversions, and to ensure continued compliance with New Mexico’s interstate delivery obligations.
  - AWRM district specific rules are being promulgated for the following 7 priority basins:
    - *San Juan River*
    - *Lower Rio Grande*
    - *Lower Pecos River*
    - Rio Mimbres
    - Nambe-Pojoaque-Tesuque
    - Rio Chama
    - Rio Gallinas

- The OSE’s initial focus is on the expeditious promulgation of district specific rules in the following three basins:
  - San Juan River: the Animas-La Plata Project is coming on line and the federal legislation for the Navajo Water Rights settlement provides for a top water bank. Prompt promulgation of district specific AWRM rules is critical to support the State Engineer’s administration of these waters.
  - Lower Rio Grande: all groundwater diversions are now metered, so rules are needed to reconcile diversions with farm management operations.
  - Pecos River: the Pecos settlement calls for priority administration rules to be promulgated and submitted to the district court. Now that the State Engineer’s authority to promulgate such rules has been confirmed and now that the Carlsbad Irrigation District has made a priority call, we are in the process of preparing such rules.
- We are moving forward with district specific rules for the remaining four priority basins as available budget and staff resources allow.

#### **4. Indian Water Rights Settlements**

- **Navajo Nation Water Rights Settlement**
  - Federal authorizing legislation approved by Congress in Public Law 111-11 and signed by President Obama in March 2009 authorized construction of the Navajo Gallup Water Supply Project, a major water infrastructure project that will provide water to the Navajo Nation, the city of Gallup and the southwest area of the Jicarilla Apache Nation.
  - The Navajo Nation Water Rights Settlement Agreement was executed by the Navajo Nation, the United States and the State of New Mexico in December 2010
  - The US Bureau of Reclamation (USBOR) awarded the first construction contract for the Project in mid-April 2012.
  - USBOR began construction of a section of the pipeline north of Gallup in 2012. Other elements of the project have already been or are being constructed by the Navajo Nation and the City of Gallup.
  - New Mexico is obligated to contribute \$50 million toward Project construction costs by the federal authorizing legislation and a 2011 cost share agreement between the state and the US. To date, State contributions including direct capital appropriations, Water Trust Board grant awards, and direct allocations from the Indian Water Rights Settlement Fund total just over \$50 million. However, a determination of our total cost share credit will depend on what portion of capital appropriations and WTB grants the state is given credit for. This may take a couple of years to determine. The Settlement Agreement also calls for the State to appropriate up to \$10 million to match federal appropriations to rehabilitate non-Navajo ditches in the San Juan, although funding of this amount by the state is not a condition of the settlement.
  - Navajo *inter se* proceeding – The parties are now in the process of presenting the proposed judgments and decrees adjudicating the Navajo Nation’s water rights to the Court for approval. The Court is conducting an *inter se* proceeding to allow all other water right claimants in the San Juan basin the opportunity to review and, if they

choose, object to the proposed water rights. The authorizing legislation sets December 31, 2013 as the deadline for the Court to enter the proposed judgments and decrees.

- **Taos Pueblo**
  - President Obama on December 8, 2010 signed federal authorizing legislation approved by Congress under the Claims Resolution Act of 2010, Public Law 111-291.
  - The parties have revised the Settlement Agreement to conform to the federal legislation, and all parties executed the revised Settlement Agreement by January 24, 2013.
  - The Court will conduct an expedited *inter se* proceeding to determine whether to enter the proposed Partial Final Judgment and Decree on the water rights of Taos Pueblo according to the terms of the Settlement Agreement.
- **Aamodt (San Ildefonso, Nambe, Pojoaque, and Tesuque Pueblos)**
  - President Obama on December 8, 2010 signed federal authorizing legislation approved by Congress under the Claims Resolution Act of 2010, Public Law 111-291.
  - The parties have revised the Settlement Agreement to conform to the federal legislation, and the parties executed the revised Settlement Agreement on March 14, 2013.
  - The Court will conduct an expedited *inter se* proceeding to determine whether to approve the Settlement Agreement and enter the proposed Partial Final Judgment and Decree on the Pueblos' water rights according to the terms of the Settlement Agreement.
- **Indian Water Rights Settlement Fund (IWRSF)** created in 2005:
  - State's cost-share obligation for the 3 federally authorized settlements (Navajo, Aamodt, and Taos) is approximately \$130 million.
  - Total appropriations to IWRSF to date = \$35 million
    - \$10 million appropriated in 2005 (converted to STBs in 2009) – ISC allocated \$8.6 million to Navajo Settlement and \$1.4 million to the Taos Settlement.
    - \$15 million appropriated in the 2011 Special Session (STBs) – ISC allocated \$5 million each to the Navajo, Aamodt and Taos Settlements.
    - \$10 million appropriated in 2013.
  - OSE/ISC have advocated funding the IWRSF at a rate of \$15 million/year

## 5. Native American Liaison Activities

- **State Tribal Summit** – June 20-21, 2013, Mescalero, NM. This year's State-Tribal Summit again has Water Rights as a topic of discussion. Tribal leaders have responded to the Department of Indian Affairs surveys with a range of issues to present to Governor Martinez.
- Some of the topics raised by Tribes, Pueblos and Nations:
  - resolutions to outstanding water rights asserted by Indian Tribes
  - commitment of financial resources of the State to finalize and implement Indian water rights settlements
  - the demand for accountability and enforcement of the Middle Rio Grande Conservancy District in its delivery of irrigation water to the middle valley pueblos

- Senior water rights should be made a priority by the Office of the State Engineer when considering adjudications, sales and or transfers of water rights.

## **6. Jal Basin**

- Midland, TX experienced significant impacts from the prolonged drought - virtually drying up their three reservoirs.
- Midland purchased the T-Bar ranch on the Texas-New Mexico border in the 1960's as a potential well field for additional water for just such an event. Due to the severity of the drought, last year Midland initiated plans to develop the T-Bar Ranch well field by drilling wells and building a pipeline.
- The wells are located in the same small aquifer utilized by the City of Jal, raising concern about depletion of Jal's sole supply of water. The wells and pipeline were completed at the end of May and the well field is now supplying up to 20 million gallons of water per day to Midland.
- Officials from Jal and Midland met last May and agreed to work together to address both cities water needs. At Midland's invitation, Jal commissioned a consulting engineer and hydrologist to develop alternative methods of obtaining water from the T-Bar Ranch and evaluate the associated costs.
- Jal proposed drilling its own well in the Midland well field and constructing a pipeline to pump the water back to Jal. Midland's staff had suggested just tapping into the Midland pipeline to forgo the cost of the well. Jal has not received a formal written response to its proposal and the issue remains unresolved.
- In the mean time, the State Engineer has closed the Jal Basin to new water right application on the New Mexico side and increased the number of monitor wells along the border to better determine effects from the Midland well field.

## **7. Eastern New Mexico Rural Water Supply Project/Ute Pipeline Project**

- Federal legislation authorizing this \$500 million project was signed on March 30, 2009, Public Law 111-11.
- Eastern New Mexico Rural Water Authority (Authority) began construction of its intake structure in February 2013.
- Litigation-In April 2012, the Village of Logan filed suit in federal district court in New Mexico against the US Bureau of Reclamation and the Authority alleging violations of National Environmental Policy Act (NEPA) on the Ute Pipeline Project. In January 2013, the US District Court denied Logan's motion for preliminary injunction to prevent construction on the Ute Pipeline. Logan has appealed the denial to the Tenth Circuit Court of Appeals. The ISC is not a party to the litigation but is closely monitoring the suit.
- Drought Management Plan – a major concern of Logan and local residents around and near Ute Reservoir is that the recreational value of the reservoir (and its development potential) may be diminished as water is taken and put to use. The Authority recently completed a draft Drought Management Plan and is currently working with Logan and other stakeholders to optimize management of water in the Reservoir to benefit all interests.
- Due to extreme low water conditions at Ute Reservoir, and attendant health and safety concerns at the reservoir, the New Mexico Interstate Stream Commission has revoked boat

dock license agreements for 13 out of a total of 18 boat dock licensees at Ute Reservoir, and is requiring the 13 boat dock owners to remove their docks by August 16, 2013.

- To date, state support for the water system is approximately \$20 million in grants and loans and over \$150 million (in today's dollars) have been invested in Ute Dam.

#### **8. Gila/2004 Arizona Water Settlements Act (AWSA)**

- AWSA provides New Mexico the opportunity to develop up to an additional 14,000 acre-feet/year of water and receive between \$66 and \$128 million for water utilization projects.
- The ISC must inform the US Secretary of Interior of how New Mexico intends to use its benefits under the AWSA by December 31, 2014.
- The ISC has undertaken a public planning process to inform that decision.
- In June 2011, stakeholders submitted forty-one proposals to the Commission for allocation of the funding and water available to New Mexico in the AWSA.
- In February 2012, after nine months of evaluations, the Commission selected sixteen of the forty-one proposals for further study and assessment.
- In early 2013, ISC offered the 16 project proponents a one-time opportunity to amend their proposals. Five proponents chose to amend their proposals.
- ISC is conducting public meetings on a regular basis during which ISC contractors present on the progress of the study and assessment. The further study and assessment will provide the ISC with information and data on all sixteen projects and allow the Commission to make an informed decision prior to the 2014 deadline on what projects to pursue.
- All relevant AWSA planning documents are available to the public via an ISC Gila/AWSA website.

#### **9. Western States Water Council**

##### **A. Membership:**

- Created by the Western Governors Association (WGA) to provide water policy advice
- 18 western states are members, meet three times per year
- Three principal committees: Water Resources, Water Quality, Legal - and the Full Council
- Will meet June 24-26, 2013 in Casper, WY

##### **B. Major Accomplishments**

- Western States Water Council (WSWC) policy reports, "Water Needs and Strategies for a Sustainable Future," adopted in 2006 and 2008 by Western Governors Association (WGA); and a 2010 update accepted by WGA – with the following actions to implement WGA/WSWC policies highlighted.
- Establishment of a Western States Federal Agency Support Team (WestFAST) including 12 federal agencies and a liaison in WSWC office to facilitate collaboration on water resource issues identified in the WGA Water Reports.
- WGA acceptance of a June 2011 report on infrastructure needs and strategies to meet those needs.

- A 250-page WSWC report on state statutes, policies and problems related to “exempt” wells, i.e., domestic wells largely exempt from state regulation, published in the Lewis and Clark Law School’s Environmental Law journal.
- A 100-page report on state laws and policies regarding water reuse issues and options, accepted for publication in the University of California-Hastings College of Law’s West-Northwest Journal of Environmental Law and Policy.

### **C. Ongoing Efforts**

- Defining a vision for water in the West, a 2012 WGA Water Report on Managing Uncertainty, and developing a “M3” Water Initiative with specific strategies for measuring, monitoring and managing western water resources.
- “WADE,” a Water Availability Data Exchange, highlighting state information on water uses and supplies to allow users to visualize problems related scarcity, growth, drought, energy demands, and infrastructure needs.
- Supporting federal funding for critical water data gathering programs related to snowpack, streamflow, soil moisture, evapo-transpiration, remote sensing, & groundwater for water supply planning, drought, flooding, etc.
- Collaborating with WGA and National Labs to characterize water and energy related impacts of development in the West, as well as assess the potential water needs for concentrated solar projects in the Southwest.
- A biennial WSWC/Native American Rights Fund Indian Water Rights Settlement Symposia facilitating agreements; and efforts to secure federal funding for authorized settlements in fulfillment of federal trust responsibilities. Scheduled for August 20-22, 2013 at Buffalo Thunder, Pojoaque.
- A survey and summary report on federal non-Indian water rights claims and related federal/state issues.
- Encouraging greater use of the federal Reclamation Fund for authorized Bureau of Reclamation water projects including Jicarilla and Eastern New Mexico Water Utility Authority projects in New Mexico.
- Promoting a reasonable federal regulatory environment that recognizes both economic and environmental costs, and opposing efforts to preempt state authorities (and expand the reach of federal Clean Water Act jurisdiction).
- Coordination and collaboration with western states’ water resources research institutes and universities, the U.S. Geological Survey, National Oceanic and Atmospheric Administration, and others on priority research needs.
- Western States Water, a newsletter focused on water-related issues in the West distributed widely weekly.

### **D. Future Events**

- WSWC Summer meeting June 24-26, 2013 Casper Wyoming
- WSWC Quantifying Drought Impacts, August 5-7, 2013 San Diego, CA

## 10. The Pecos Settlement

- The Pecos Settlement was signed in March, 2003 and implemented in June, 2009.
- The New Mexico Interstate Stream Commission is responsible for complying with the Settlement's terms.
- Until this year (2013), due to the drought, the Settlement has resulted in significant additional water for Carlsbad Irrigation District Farmers; nevertheless, and New Mexico has stayed in compliance with the Pecos River Compact.
- **Augmentation Pumping:** ISC operates two well fields and pipelines; one in Lake Arthur and one in Seven Rivers. Since implementation, extreme drought conditions have necessitated augmentation pumping to provide water for CID farmers' use:
  - On March 1, 2011 pumping started and has been continuous since that date
  - Total pumped volume for 2012 Water Year: 18,774 acre feet
  - Total pumped volume for 2013 Water Year to date: 9384 acre feet
  - Cumulative total volume for Water Years 2011-2013 to date: 40,956 acre feet
  - Extraordinarily dry conditions and attendant meager surface water supplies have prevented ISC from meeting Target Supplies for CID
    - The well fields are designed to augment flow, and cannot entirely replace the lack of Pecos River flow as has been experienced since 2011.
  - Protests have been filed against some of the ISC's proposed water rights transfers
    - Extensive discovery/depositions process by plaintiffs
    - Filed 3 years ago
    - Hearing is June, 2013
  - Seven Rivers area well owners allege adverse impacts due to ISC's pumping
    - ISC has visited all allegedly impacted wells and reviewed available information
      - Roughly 50 wells
    - ISC asserts adverse impacts limited to artesian aquifer in immediate vicinity well field
    - Only a handful of potentially affected wells
    - High probability of litigation occurring
- **Pecos River Compact Compliance:** One of the principal goals of the Settlement was to ensure long-term compliance with New Mexico's Pecos River Compact water delivery obligations to Texas. Since the signing of the Settlement:
  - New Mexico has built up a substantial water delivery credit with Texas
  - The current credit is approximately 100,100 acre-feet til July 2013
  - The credit allows New Mexico to use all water available in water-short years like 2011, 2012 and 2013.

- There has been no augmentation pumping for delivery to Texas – all pumping has been for CID farmers’ use.
- **Priority Call on the Pecos River**
  - Initiated by CID Board Resolution, April 2, 2013 and a second one in May 2013
  - Initiated a series of activities:
    - The five parties to the Pecos Settlement – CID, PVACD, Reclamation, ISC and OSE - have initiated discussions to see if there are alternative means to deal with the dispute under the existing settlement or amendments thereto.
      - Two meetings have been held thus far, one in Santa Fe and one in Roswell.
    - OSE has begun creating a list of junior to senior water rights in the basin from best available information.
    - OSE is updating the previously draft Lower Pecos basin specific regulations under AWRM.
    - OSE is updating the groundwater and surface water models for the river and the Roswell Artesian Basin to serve as a tool for evaluating the impacts of curtailment – and have begun model runs in this regard.
- **ESA Issues – Pecos Bluntnose Shiner**
  - In 2012, over 50 miles of river went intermittent wet/dry
    - including significant critical habitat reaches
  - BO does not provide for such drying
  - Re-consultation almost certain in 2013
  - BO expires in 2016
  - Unknown, but likely adverse, impacts to water operations may result from possible BO changes

## **11. Water Trust Board**

- The Board, working with member agencies, is specifically charged with implementing the State Water Plan and is tasked with giving priority to projects that have urgent needs, and to those that have been identified for implementation through regional water plans accepted by the ISC.
- The WTB is meeting in Santa Fe on June 12, 2013 to award \$35M to over 30 projects and certify the sale of \$29M in Severance Tax Bonds to conclude the 2013 funding cycle.
- Last year Chairman Verhines appointed a Policy Task force to review the application process to streamline the process, provide clarity to applicants and the legislature, recognize the value of the planning steps, and better utilize the fiscal resources available.
- The Task force made recommendations to the Policy Committee and subsequently to the full Board on May 22<sup>nd</sup>. The Board accepted the recommendations that included splitting the application to a fall and spring filing.
- The fall application would include only basic applicant and project information to prepare a list of eligible projects for presentation to the NMFA Oversight Committee in November and subsequently to the full legislature in January for approval.

- The spring application would contain more detail project information as well as verification of compliance with applicable laws, such as the Audit Act and Safe Drinking Water Act, for scoring and ranking in order to award funds.
- The recommendations will be implemented in the 2014 funding cycle.

## **12. 2008 Rio Grande Project Operating Agreement and N MAGO Litigation**

- The 2008 Rio Grande Project Operating Agreement between the US Bureau of Reclamation (Reclamation), the Elephant Butte Irrigation District (EBID) and El Paso County Water Improvement District No. 1 (EP1) has resulted in a reallocation of approximately 170,000 acre-feet/year of surface water supplies from EBID to EP1 in full supply years.
- The estimated value of that reallocated water ranges from several hundreds of millions of dollars to two and a half billion dollars.
- The 2008 Operating Agreement, exacerbated by the drought, is the reason for the low allotments of water to EBID district members since 2008.
- During recent full supply years, the new operations resulted in EBID farmers receiving only two-thirds of the surface water they normally would have received (2 feet per acre rather than 3). 2011 was even worse.
- As a result of the reduced surface water allocations, EBID farmers are having to pump additional groundwater.
  - This has resulted in a double-impact to the aquifer: 1) reduced surface water available to recharge the aquifer; and 2) increased groundwater pumping.
- The amount of surface water taken from New Mexico in full supply years is equivalent to about two to three times the water Albuquerque consumes in a year or about 15 times what Las Cruces consumes.
- In late July 2011, after New Mexico and Texas were unable to agree on a relinquishment of New Mexico credit water, ISC staff learned that Reclamation planned to release about 65,000 acre-feet of New Mexico' and Colorado' Rio Grande Compact credit water.
- Over New Mexico's objections, Reclamation ultimately released about 33,000 acre-feet of New Mexico credit water to EP1 and to Mexico – none of it went to EBID.
- This unilateral Reclamation action deprived New Mexico Middle Rio Grande water users upstream of Elephant Butte the ability to store, in future Article VII years, a part of their lawful apportionment, as a relinquishment would.
- In August 2011, the New Mexico Attorney General, on behalf of the state, filed a lawsuit against Reclamation in federal district court in New Mexico, based on Reclamation's unauthorized release and reduction of New Mexico's Rio Grande Compact credit water and inequities in the 2008 Rio Grande Project Operating Agreement.
  - Since the litigation was filed, EP1 and EBID have been joined in the litigation as party defendants, and the city of Las Cruces has intervened in the suit as a plaintiff-intervener.
  - The Middle Rio Grande Conservancy District (MRGCD) made a second request in early May to intervene in the suit as a plaintiff-intervener after the court denied its earlier request.

- The most recent activity in the case occurred on June 13, 2012, when the AG filed a response to EP1's motion to dismiss the lawsuit.
- OSE and ISC are providing support to the Attorney General's Office on the litigation.
- As a result of Reclamation's unauthorized release of credit water, the Compact Commission and its Engineer Advisors have not been able to agree on 2011 and 2012 credit water accounting.
  - EP1 (the Texas irrigation district) is the primary beneficiary of Reclamation's release.
    - Texas wants the Compact Commission to validate the release as a normal practice.
    - New Mexico and Colorado do not agree with the proposed change.

### **13. Major Litigation and Appeals Update**

- *Bounds, et al. v. The State of New Mexico, et al.*, NMSC No. 32,713 and *New Mexico Farm & Livestock Bureau v. The State of New Mexico, et al.*, NMSC No. 32,717, Domestic Well Statute ("Bounds"): challenge to the constitutionality of the domestic well statute, 1978 NMSA, § 72-12-1.1. The New Mexico Court of Appeals held that the domestic well statute is constitutional. Bounds and the Farm Bureau were both granted certiorari by the New Mexico Supreme Court. It has been briefed, argued, and submitted for decision.
- *Carangelo v. Albuquerque Bernalillo County Water Utility Authority*, NMCA No. 26,757, the NMCA issued an opinion, granted rehearing and issued a new opinion, then, withdrew that opinion so parties could file briefs on the issues in the rehearing. The briefs have been filed and we await another opinion.

### **14. Endangered Species Act (ESA) Challenges-Middle Rio Grande**

- The existing 2003 Biological Opinion (BO) for MRG Water Operations provides compliance with the Endangered Species Act (ESA) for all Rio Grande water users from the NM/CO state line to Elephant Butte Reservoir until the beginning of 2013.
  - Since 2003, ISC has provided about \$14 million to match over \$120 million of federal dollars for ESA compliance activities.
- The ISC is working with Federal agencies (the US Army Corps of Engineers, Reclamation, and the US Fish and Wildlife Service) and Non-Federal entities (NM Department of Agriculture, NM Department of Game & Fish, NM Attorney General's Office, MRGCD, Albuquerque Bernalillo County Water Utility Authority, City of Albuquerque, Buckman Direct Diversion, Sandia Pueblo, Isleta Pueblo, Santa Ana Pueblo, Santo Domingo Pueblo, MRGCD Rate Payers Association) to develop a new Biological Opinion by 2013, because of expiration of current Biological Opinion and the reduced availability of supplemental water for the minnow.
- Our goals are: continued ESA compliance for our water users, recovery of the silvery minnow and southwestern willow flycatcher, and implementing a long-term, sustainable, water operations regime that provides certainty for our water users.
- Currently the Middle Rio Grande Endangered Species Collaborative Program is in the middle of a transition into a Recovery Implementation Program (RIP).

- RIP provides an end game strategy (i.e., recovery).
- RIP provides additional water management flexibility through adaptive management.
- Possibility of new endangered species litigation once the new biological opinion is issued.

## 15. Water Rights Adjudications Status Report

- New Mexico has twelve water rights adjudication suits pending in the state and federal courts. These cases involve a combined total of over 72,000 defendants.
- Later this summer, Special Assistant Attorneys General from the OSE Litigation and Adjudication Program (LAP) will present to the courts the State’s Rule 71.3 Report for FY 2014. The Rule 71.3 Report will summarize the State’s available resources, priorities, and resource allocations across all twelve pending adjudications for FY 2014. The State Engineer would welcome an opportunity during the interim to present this report to the committee.
- LAP continues to experience a high vacancy rate (currently 35%) in the core technical and legal positions dedicated to adjudication work. LAP’s remaining hydrographic survey staff and attorneys nonetheless continue to work to move all twelve pending adjudications forward towards the entry of final decrees.
  - In the Chama water rights adjudication, the Court on March 6, 2013 entered a Consent Order adjudicating the state law-based water rights of the Jicarilla Apache Nation on lands acquired by the Nation in recent years. This consent order is the product of months of negotiations and collaborative work by attorneys and technical experts representing the Nation, the State, and the United States.
  - In the Pecos adjudication, the Court is conducting an *inter se* proceeding to complete the adjudication of all surface water rights and supplemental groundwater rights within the Carlsbad Irrigation District (CID). The Court and the parties are working toward entry of a partial final judgment and decree for the CID section of the Pecos adjudication by the end of the summer.
- In addition to ongoing work to resolve individual water right “subfiles,” proceedings in the Lower Rio Grande (“LRG”) adjudication have focused over the past year on three separate “Stream System Issue Sub-proceedings.” These are proceedings to resolve issues which could directly affect the water rights of all or a significant number of water right owners in the LRG stream system. These three LRG stream system issue proceedings are:
  - *SSI 101: Irrigation Water Requirements* – This proceeding determined the amount of water to be adjudicated for irrigation water rights in the LRG. Issues included the determination of a basin-wide consumptive irrigation requirement (“CIR”) and farm delivery requirement (“FDR”) for all crops, and whether mature pecan orchards should be adjudicated, based on beneficial use, a CIR and FDR that are different from the basin-wide CIR and FDR. In addition to the State, the main parties to this proceeding were the New Mexico Pecan Growers, the Southern Rio Grande Diversified Crop Farmers Association, and the Elephant Butte Irrigation District. After trial commenced in June, 2011, the four main parties agreed on a settlement in principle, and Judge Valentine on August 22, 2011 entered a Final Judgment adopting the agreed upon irrigation water requirements for all crops, including pecans. The Judgment provides for a base FDR of 4.5 acre-feet per acre per year (afay) for acreage irrigated with

groundwater, and 3.024 afay for acreage irrigated with surface water only. The Judgment also provides that individual groundwater irrigators may receive a higher FDR of up to 5.5 afay if they submit proof they have beneficially used such an amount of water in the past. Close to 600 groundwater irrigators submitted evidence by June 30, 2012 supporting an FDR higher than 4.5. The LRG adjudication technical staff is now in the process of reviewing and evaluating that evidence.

- *SSI 104: Interests of the United States* – This proceeding will determine the interests of the United States deriving from the establishment of the Rio Grande Project in the LRG. This SSI was designated in 2010 in response to claims of some water right owners to priority dates senior to the Project. It was also prompted by the collapse of an agreement in principle announced in 2009 between the State and the United States on the rights of the United States for the Project. After negotiations among the parties to this SSI reached an impasse in late 2011, Judge Wechsler returned the proceeding to a litigation schedule. The initial issue addressed by the court in the proceeding pertained to the United States' claims to groundwater as a source of Rio Grande Project supply. After briefing by the parties and a hearing, on August 16, 2012 the court entered its order granting the State's motion to dismiss the United States' claims to groundwater as a source of water for the Project. The issue of the amounts of water and priority dates for the Rio Grande Project is now being addressed by the court. Summary judgment motions on this issue have been filed by the United States, the State and the City of Las Cruces, responses to these motions have been filed by the parties and reply briefs are scheduled to be filed on June 24, 2013.
- *SSI 105: Claims of the Estate of Nathan Boyd* – This was an expedited *inter se* proceeding on the claims asserted in the LRG adjudication by Scott Boyd, the administrator of the estate of Nathan Boyd, his grandfather. The Boyd estate had filed claims with the adjudication court that, if recognized, would have displaced the United States' rights to impound and store surface water in Elephant Butte and Caballo reservoirs for the Rio Grande Project. The Boyd Estate's claims were extensively litigated in the New Mexico and US Supreme Courts in the 1890s and 1900s. On February 24, 2012, Judge Wechsler issued an order granting motions to dismiss filed by the United States and the City of Las Cruces. Judge Wechsler ruled that the final judgment entered against the Boyd estate in 1903 precludes the estate's claims today, and that the estate had failed to show that the 1903 judgment was the product of fraud. The Boyd estate's appeal of the dismissal of their claims is currently in the briefing phase before the Court of Appeals.

## **16. Middle Rio Grande (MRG) Flood Control Infrastructure**

- Big federal push to address unsafe levees nationwide.
- The Rio Grande has hundreds of miles of levees many of which are over 50 years old and in poor shape.
- The Interim Water and Natural Resources Committee have been briefed on the status of MRG levees for the past few years, including FEMA insurance issues.
- The ISC is collaborating with the Middle Rio Grande Conservancy District (MRGCD) as local sponsors to a multi-year US Army Corps of Engineers (Corps) project to replace over

50 miles of non-engineered levee near Socorro and the Bosque del Apache with an engineered levee.

- The total cost of the project is estimated at \$290 million over twenty plus years with a non-federal cost share of approximately 15 percent.
  - The first segment of the project is to construct approximately 9 miles of levee adjacent to the river near Socorro.
  - The Corps has received \$19.8 million to begin work. This will address FEMA insurance issues in that area.
  - The MRGCD, the Water Trust Board, and ISC have secured approximately \$3 million of funding to match the \$19.8 million of Corps funds for planning, design, compliance, and initial construction costs.
  - Construction on the first segment could occur this fall depending on the Corps decision on sunk costs and subsequent completion of a project partnership agreement with the Corps.
- Additional annual State cost share funding will be needed for about 5 years to complete the first segment and the next 15 years if the entire project is to be completed.

#### **17. The Rio Chama Basin**

- River flow conditions on the Rio Chama below Abiquiu Reservoir may decrease to levels that require curtailment of native water diversions by Rio Chama diversions by the early July 2013. Given the small snowpack this year which is now gone, the two preceding years of low river flow conditions, limited ambient soil moisture, and reduced groundwater levels, less of the snow that melts will reach the river this spring than under normal conditions.
- The Rio Chama Acequia Association and its member ditches have worked collaboratively with the OSE/ISC for a number of years on curtailment issues. Both the RCAA alternative administration and the collaborative curtailment operations that occurred in the past have been successful. However, under the conditions described above, the RCAA has indicated it would seek a priority call to have the entire Rio Chama Basin administered in priority by curtailing all junior upstream surface water rights.
- OSE/ISC staff facilitated a number of individual meetings with the RCAA and Acequias Nortenas in 2012 and one with both entities in January 2013 seeking a shortage sharing agreement between them. We were hopeful that the two parties would reach an accord prior to the 2013 irrigation season but none has been received. We anticipate the need to limit RCAA diversions to the available native water by early July 2013 to protect SJCP water being released from storage for other uses. Once the Water Master begins limiting RCAA diversions to only the native direct flow, RCAA may initiate a priority call or other legal action if no voluntary alternative administration agreement is reached.

#### **18. Colorado River Basin**

- In December 2012, Reclamation, in collaboration with the seven Colorado River basin states (AZ, CA, CO, NM, NV, UT & WY), released a comprehensive study evaluating projected water supply and demand in the Colorado River basin through the year 2060.
  - Demand is projected to outstrip supply by year 2060 by 3.2 million acre-feet, and could range as high as 7.7 million acre-feet in individual years.

- The study also identified and performed an initial evaluation of over 150 options on how to resolve the projected imbalance in supply and demand.
- Four example portfolios of options exploring different approaches towards addressing the supply-demand imbalance were assembled, yielding a total of 4.1 to 6.3 million acre-feet by year 2060, at annual costs ranging from \$3.5 to \$4.5 billion.
- The study generated a large amount of interest among water users in the Colorado River basin.
- Reclamation, the seven Colorado River basin states, conservation organizations and tribal representatives held a public event in San Diego two weeks ago to officially kick off the “Next Steps” towards solving the challenges identified by the study.
- The seven Colorado River basin states worked with Reclamation and the US International Boundary and Water Commission throughout 2011 and 2012 to find ways to collaborate with Mexico to augment supplies, share shortages, share surpluses and work on environmental issues of mutual interest. The basin states are currently participating in efforts by Reclamation, the US International Boundary and Water Commission and their counterparts in Mexico to implement some of the plans developed during that earlier work.
- The seven Colorado River basin states collaborated to prepare a science-based alternative for the operation of Glen Canyon Dam below Lake Powell on the Colorado River for the next twenty years as part of the Department of the Interior’s Long Term Experimental Management Plan and EIS for the dam. The basin states are currently working with Interior to refine the alternative and hope to have it selected as the preferred alternative for the EIS.
- The ten major water users on the San Juan River in New Mexico endorsed a shortage sharing agreement for the years 2013 through 2016. The agreement provides for criteria for determining a shortage, with limitations on diversions and shortage-sharing requirements in the event of a water supply shortfall, including sharing of shortages between the water users and flows for endangered fish habitat.

## **19. State Water Plan/Regional Water Plans**

- Water planning (state and regional) funded with special appropriation this legislative session (2013) - \$400,000
- State Water Plan Update is in progress and targeted to be published in Fall 2013.
- Using OSE/ISC website for disseminating draft chapters this summer.
- ISC currently developing process and criteria for Regional Water Plan update funding.
- ISC revising the regional water planning template (“Guidelines” to guide plans that will be more compatible with each other and relate to the state water plan).
- The biggest challenge in water planning is resolving inconsistencies between the state’s 16 regional plans and the State Water Plan.
- The water planning funding received this year is one year only; the program needs ongoing funding and enough of it to assist with resolving water shortages and conflicts arising all over the state.

## **20. Dam Safety**

- 214 deficient dams statewide with 104 publicly owned.

- Estimated cost to address the deficient publicly owned dams is \$200 million. The cost to address the top ten projects averages \$5 million per year for 10 years. Most of the deficiencies are related to problems that could cause dam failure during an extreme loading situation (ex. deficient spillway).
- Capital Improvement Project (CIP) funds in State Severance Tax Bonds (STB) were provided for the following dams during the 2013 legislative session –
  - \$6.4 million in STB to the Town of Springer for construction of rehabilitation project for Springer Dams 1 and 2 (drinking water supply dams).
  - \$1.8 million in STB to the City of Las Vegas to develop a design for enlargement of Bradner Dam to increase its capacity to store drinking water.
  - \$100,000 in STB to Morphy Lake Dam to evaluate alternatives to restore the dam.
  - \$50,000 in STB to Nambe Falls Dam for restoration works needed after wildfire in the watershed. This is a federal dam.
- Dam Safety Bureau Responsibilities:
  - Safety inspections of existing dams – a goal of 100 dams per year.
  - Review of plans for improvements and repairs to existing dams.
  - Review and approval of Emergency Action Plans for existing dams – dams with the potential to cause loss of life or damage lifeline infrastructures are required by the State to hold and exercise an emergency action plan.
  - Review and approval of Operation and Maintenance Manuals for existing dams.
  - Management of grants and funds provided for statewide dam rehabilitation, repair and new construction.
- Cabresto Dam rehabilitation project (OSE providing project management for the ditch owners):
  - Majority of construction works were completed June through December 2012. Site cleanup works were completed in April 2013. There are some minor works the contractor is still working on.
  - The dam is storing water since December 2012.
  - The bureau staff provided training to the dam tenders and owners for inspection and monitoring of the dam during the first fill. The dam tenders will receive additional training by the contractor.
  - The project is expected to be complete and closed out this summer.

## **21. Resource Implications - OSE/ISC**

- Drought induced activities
- AWRM Implementation
- CID Priority Call on the Pecos River
- Colorado Basin Study – Next Steps Implementation
- Aamodt Settlement Implementation.

- Animas –La Plata administration in New Mexico
- Support for increased economic activity
- ESA compliance activities