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Note: The following information was sent to the Steering Committee members by email, fax and regular mail. It was also posted on the web site <http://www.waterassembly.org/pdfs4/Public%20Welfare%20Info.pdf>. The Steering Committees reviewed the information as well as the process¹ utilized by the Middle Rio Grande region, leading them to decide to utilize the MRG Public Welfare Statement as a beginning.

Public Welfare Info-8/23/03 e-mail

1. Article abstract
2. Jemez y Sangre Fact Sheet
3. Jemez y Sangre Public Welfare statement
4. MRG Public Welfare statement

1. Article abstract

www.1000friends-nm.org/PDF/publicwelfare.pdf

IMPLEMENTING THE PUBLIC WELFARE REQUIREMENT IN NEW MEXICO'S WATER CODE

Consuelo Bokum

¹ The process began with Lora Lucero, who chaired the MRG subcommittee, intentionally inviting people with different perspectives --business, agricultural and environmental-- to be on it. The MRG committee met for a month and came up with the language as set out in the 7/31 draft.

State water management cannot effectively address and incorporate public interest values unless state statutory and regulatory provisions related to water management recognize the values and establish means for responding to them. It is critical that each state assess the adequacy of its existing legal framework and institutions in this regard. - Western Governors' Association

ABSTRACT

Despite the fact that the New Mexico legislature added a public welfare criterion to the water code over 10 years ago, the State Engineer Office has not addressed the application of the criterion by regulation and has only addressed public welfare briefly in a few decisions. There is almost no case law in New Mexico addressing this issue. More and more participants, however, are raising public welfare in water rights protests. This paper addresses how the public welfare criterion has developed in western water law and proposes an approach for use of the criterion in New Mexico.

2. Jemez y Sangre Fact Sheet
Jemez y Sangre Water Planning Council
Fact Sheet
Regional Water Planning and Public Welfare

WHY MUST PUBLIC WELFARE BE ADDRESSED IN THE REGIONAL WATER PLANNING PROCESS?

In 1987, the New Mexico Legislature passed a law that established a process for regional water planning. That law required regional water plans to give an "adequate review of the effect on the public welfare."

WHY DID THE LEGISLATURE INCLUDE PUBLIC WELFARE IN THE LAWS ESTABLISHING REGIONAL WATER PLANNING?

In the early 1980's, El Paso applied to the New Mexico State Engineer Office to obtain a permit to appropriate water. The State Engineer, relying on a statute that barred exportation of New Mexico's water resources, denied the application. El Paso sued and a federal court ruled that our statute violated the interstate commerce clause of the U.S. Constitution. The court relied on a U.S. Supreme Court case that prohibited bans against exportation of water on economic grounds, but indicated that a state may prevent "uncontrolled" transfers of water out-of-state based on conservation and public welfare considerations.

In response to the El Paso ruling, the New Mexico legislature amended a number of water statutes to give the State Engineer authority to deny an application if it is contrary to conservation of water or detrimental to the public welfare of the state. Significantly, these criteria apply to all new appropriations and transfers, not just to interstate transactions. The legislature also enacted statutes that established a process for regional water planning.

If we can prove that we need the water for our citizens, we can defend against attempts by other states to appropriate our water for use outside the state.

WHY IS PUBLIC WELFARE IMPORTANT?

Public welfare is important for two reasons.

First, when the U.S. Supreme Court provided a means for protecting our water from appropriations by other states, the court emphasized that state statutes must "regulate evenhandedly to effectuate a legitimate local public interest." Therefore, if we hope to retain our water in state to protect our communities, cultures and environment and to promote sustainable use of our water resources, we must apply those same concerns to applications for water to be used in-state. A regulation that clearly applies to all applications--interstate and intrastate--will accomplish the objective of keeping water in New Mexico more effectively.

Second, without public welfare, we have no mechanism for ensuring that the those things we value are not lost and those things that are needed for our future are protected. The public welfare criterion enables us to ask questions about our use of water. For example, do we want to promote sustainable uses of our water? Do we want to dry up

our rural areas to supply municipalities? Do we want to encourage industries that need large amounts of water to move here?

WHAT IS PUBLIC WELFARE?

The legislature did not define public welfare, nor has the State Engineer Office or the Interstate Stream Commission. One question for both the state and the Jemez y Sangre region is whether or not we want to define public welfare broadly and, if so, what should be included. The following is a list of public welfare values, most of which are compiled from definitions of public welfare in other western states.

- (1) health and safety;
- (2) economic consequences, including impacts on the existing economy and area of origin of water rights, maintenance of traditional rural and agricultural economies, recreation, and external costs;
- (3) encouragement of conservation and discouragement of waste or impractical or unreasonable uses of water;
- (4) environmental and ecological consequences, including impacts on fish, wildlife and plants, ecologically critical areas, riparian ecosystems, wetlands, and watershed management;
- (5) sustainability, sustained yield, groundwater recharge, and aquifer management;
- (6) water quality;
- (7) loss of alternative uses of water that might be made within a reasonable time if not precluded or hindered by the proposed application;
- (8) opportunities for reuse of return flows;
- (9) protection and enhancement of historic, cultural and natural resources, and aesthetic values;
- (10) preservation of public and trust lands, water and open space;
- (11) scientific study;
- (12) whether high-quality water is being used when locally available low-quality water would suffice;
- (13) public welfare as defined in the regional and state plans or by elected officials in land use planning;
- (14) benefit and harm to the applicant and other persons;
- (15) whether the applicant sets a precedent;
- (16) cumulative impacts; and
- (17) short and long-term consequences of application.

WHAT HAPPENS IF PUBLIC WELFARE IS DEFINED NARROWLY?

If public welfare is defined very narrowly, then it will not have much impact on the way water is managed. We will continue to base decisions only on whether:

- there is unappropriated water available;
- a new use or location will impair existing users; and
- whether the new use or location is contrary to conservation of water.

3. Jemez y Sangre Public Welfare statement

Jemez y Sangre
Regional Water Plan
March 2003

PUBLIC WELFARE STATEMENT FOR JEMEZ Y SANGRE REGION

Water is the element that interconnects all people and their environment in the Jemez y Sangre region, and the region to the larger environment that is the earth. Every person living in the region expects enough water for basic needs, and every person has the responsibility to protect water resources and use their share wisely. Using the best possible information, water planning and decision making should balance diverse needs and reflect the values of the region.

Rural and Wildlands Character

Residents of the Jemez y Sangre region place great value and importance on the preservation of the rural character of the region. Urban and rural residents alike appreciate and wish to maintain the historic, agriculture-based communities, rural vistas, wildlife habitat and attributes of natural landscapes including rivers, streams and trees.

Water Sustainability

Residents understand that the history of the region reflects water scarcity and cycles of drought. It is a high priority of residents of the region to serve current and future human needs without long-term depletion of the available water supply, while maintaining acceptable water quality and healthy interdependent ecological systems. Sustainability requires a combination of efforts, including encouraging conservation and efficiency by all sectors at every scale, discouraging activities that deplete or degrade the water supply, planning for population growth and land use, seeking new water sources that do not impair other regional values, and improving the use of existing water supplies.

Economic Sustainability

Each sub-region has unique economic needs and conditions that depend on the availability of water. It is important to have quality jobs and a healthy economy in order to maintain a good quality of life in the long term.

Water Quality

Water quality is a significant consideration in the region's water supply. In many sub-basins, the available groundwater has been compromised by contamination, either human caused or natural. Wastewater treatment and reuse of treated water should be expanded throughout the region. The available water should be protected from potential contamination from the impacts of human activities or natural events.

Rights and Responsibilities

Water planning must be carried out in a context of respect for water rights and property rights. Like all rights, the right to use water, especially in an arid region, is married to the responsibility to use water efficiently and wisely. The Jemez y Sangre region respects the senior water rights of the pueblos in the region and recognizes pueblos' tribal sovereignty.

Decision Making

In this demographically and geographically diverse region, it is necessary for all governmental and private entities to work together to achieve the goal of a balanced and sustainable water future. Fostering healthy, vibrant communities requires a commitment to open, inclusive dialogue and decision making.

4. MRG Public Welfare statement

Draft of the public welfare statement - Lora Lucero and committee
July 31, 2003

Introduction

This public welfare statement is part of our regional water plan to provide guidance to the State Engineer in decisions concerning applications for transfer and new appropriations of water rights that affect the Middle Rio Grande Region. This public welfare statement will accomplish its purpose if conflicts are reduced in the region, and if decisions reflect the long-term future needs of the region, rather than merely responding to immediate demands. This must not be a static, final statement, but an iterative and evolving declaration which is continuously monitored by the public to ensure that it accurately reflects the welfare of the public, always remembering that there are unknown users and perspectives concerning our water resources that will need to be given a voice in the future.

General Statement

Water has many important values to the people in our region which need to be appreciated and fairly balanced to ensure the overall safety, security and well-being for the region. Such values include cultural, economic, environmental and hydrologic viability for the region. In times of scarcity, everyone must share the responsibility for making painful decisions. The present generation should bear the burden of correcting the past mistakes, while not passing the buck to future generations. The decisions made today must do no harm to the future.

Process

We believe the “public welfare” must be safeguarded by the State Engineer through active management of our limited water resources in the decision-making process used to evaluate new appropriations and transfer of water rights. A weak or flawed decision-making process undermines the “public welfare”. The public welfare criterion should be elevated in importance equal to the other two statutory criteria (no impairment and conservation). Transfers of water rights must involve all stakeholders and use the best available science. The public will be better served if the process encourages negotiation, not litigation; if the process provides reasonable and timely notice to and participation by all parties; and if the process avoids automatic (or exempt) transfers made outside of public review. A transfer of paper water rights needs to track the water resource itself (wet water) in order to eliminate the existing problems associated with de facto increases in draws upon this finite resource. Double and triple dipping prevents us from dealing with the current deficit.

Future use of our water resources consistent with the public welfare

The “public welfare” requires that our use of the water resources be consistent with three guiding principles: #1 - we maintain and improve the health of our region’s water resources; #2 - we encourage conservation and discourage waste or impractical or unreasonable use; and #3 - we maximize the efficient use of our limited water resources. The state engineer should consider the following competing water demands when evaluating new appropriations and transfers of water rights: health & safety concerns, recreational interests, aesthetic interests, environmental interests, economic interests, as well as social & cultural interests.

*When considering health & safety concerns, the state engineer should strive to maintain and improve the quality of our water resources as a basic human right to safe drinking water.

*When considering recreational interests, nonconsumptive, rather than new consumptive, recreational uses should be encouraged.

*When considering aesthetic interests, the state engineer should strive to maintain and improve the agricultural and riparian greenbelts along the flowing waters and ditches in our communities.

*When considering environmental interests, the state engineer should maintain and improve the biodiversity of the native ecosystem.

*When considering economic interests, the state engineer should evaluate both the positive and negative impacts of the transfer of water rights on both the area of origin as well as the area receiving the water rights.

*Economic concerns should not be a primary consideration.

*When considering the social & cultural interests, the state engineer should protect the water uses which support the diversity of cultures and traditions existing in our region. The promises contained in the Treaty of Guadalupe should be acknowledged and honored.



In an attempt to keep the Steering Committees informed of the changes made to the Public Welfare Statement in the MRG,² the following was sent to members as well as posted on the web site at <http://www.waterassembly.org/pdfs4/Public%20Welfare%20Info.pdf>. In turn, members were notified when the posting was made. as follows:

Saturday, October 18, 2003 1:02 PM -0600

Hi folks,

Instead of junking up email boxes, I asked Bob Prendergast to post a revised version of the Public Welfare Statement on the website, which he has done. I added the last two versions of the MRG statement to the earlier information I had posted, so that the .pdf file has the complete set.

² The Action Committee met for 4 hours and made the changes seen on the 9/20 draft. MRCOG made changes to that draft, then met with some Action Committee members to come up with the one sent out to the public.

The url www.waterassembly.org/pdfs4/Public%20Welfare%20Info.pdf contains the statement information. I have just now sent a note to Bob to update the information on the web page (www.waterassembly.org/9information/9_7.html).

Judith and Rebecca are working on a draft for the Río Jemez, and Ernie and Robert are working on one for the Río Puerco. As soon as I get them, they will be sent around for review by this group, and then posted.

I am working on a handout summarizing the plan, which I would like to send to those who respond indicating an interest in reviewing it.

Ciao,

Elaine

Public Welfare Information October 17, 2003

1. Article abstract
2. Jemez y Sangre Fact Sheet
3. Jemez y Sangre Public Welfare statement
4. MRG Public Welfare statement - 7-31-03
5. MRG Version - 9-20-03
6. MRG Final version accepted to be released to the public - 10-15-03

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#### **1. Article abstract**

[www.1000friends-nm.org/PDF/publicwelfare.pdf](http://www.1000friends-nm.org/PDF/publicwelfare.pdf)

#### **IMPLEMENTING THE PUBLIC WELFARE REQUIREMENT IN NEW MEXICO'S WATER CODE**

Consuelo Bokum

State water management cannot effectively address and incorporate public interest values unless state statutory and regulatory provisions related to water management recognize the values and establish means for responding to them. It is critical that each state assess the adequacy of its existing legal framework and institutions in this regard. - Western Governors' Association

ABSTRACT - Despite the fact that the New Mexico legislature added a public welfare criterion to the water code over 10 years ago, the State Engineer Office has not addressed the application of the criterion by regulation and has only addressed public welfare briefly in a few decisions. There is almost no case law in New Mexico addressing this issue. More and more participants, however, are raising public welfare in water rights protests. This paper addresses how the public welfare criterion has developed in western water law and proposes an approach for use of the criterion in New Mexico.

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2. Jemez y Sangre Fact Sheet

REGIONAL WATER PLANNING AND PUBLIC WELFARE

Jemez y Sangre Water Planning Council

Why Must Public Welfare Be Addressed In The Regional Water Planning Process?

In 1987, the New Mexico Legislature passed a law that established a process for regional water planning. That law required regional water plans to give an "adequate review of ... the effect on the public welfare."

Why Did The Legislature Include Public Welfare In The Laws Establishing Regional Water Planning?

In the early 1980's, El Paso applied to the New Mexico State Engineer Office to obtain a permit to appropriate water. The State Engineer, relying on a statute that barred exportation of New Mexico's water resources, denied the application. El Paso sued and a federal court ruled that our statute violated the interstate commerce clause of the U.S. Constitution. The court relied on a U.S. Supreme Court case that prohibited bans against exportation of water on economic grounds, but indicated that a state may prevent "uncontrolled" transfers of water out-of-state based on conservation and public welfare considerations.

In response to the El Paso ruling, the New Mexico legislature amended a number of water statutes to give the State Engineer authority to deny an application if it is contrary to conservation of water or detrimental to the public welfare of the state. Significantly, these criteria apply to all new appropriations and transfers, not just to interstate transactions. The legislature also enacted statutes that established a process for regional water planning.

If we can prove that we need the water for our citizens, we can defend against attempts by other states to appropriate our water for use outside the state.

Why Is Public Welfare Important?

Public welfare is important for two reasons.

First, when the U.S. Supreme Court provided a means for protecting our water from appropriations by other states, the court emphasized that state statutes must "regulate evenhandedly to effectuate a legitimate local public interest." Therefore, if we hope to retain our water in state to protect our communities, cultures and environment and to promote sustainable use of our water resources, we must apply those same concerns to applications for water to be used in-state. A regulation that clearly applies to all applications--interstate and intrastate--will accomplish the objective of keeping water in New Mexico more effectively.

Second, without public welfare, we have no mechanism for ensuring that the those things we value are not lost and those things that are needed for our future are protected. The public welfare criterion enables us to ask questions about our use of water. For example, do we want to promote sustainable uses of our water? Do we want to dry up our rural areas to supply municipalities? Do we want to encourage industries that need large amounts of water to move here?

What Is Public Welfare?

The legislature did not define public welfare, nor has the State Engineer Office or the Interstate Stream Commission. One question for both the state and the Jemez y Sangre region is whether or not we want to

define public welfare broadly and, if so, what should be included. The following is a list of public welfare values, most of which are compiled from definitions of public welfare in other western states.

- (1) health and safety;
- (2) economic consequences, including impacts on the existing economy and area of origin of water rights, maintenance of traditional rural and agricultural economies, recreation, and external costs;
- (3) encouragement of conservation and discouragement of waste or impractical or unreasonable uses of water;
- (4) environmental and ecological consequences, including impacts on fish, wildlife and plants, ecologically critical areas, riparian ecosystems, wetlands, and watershed management;
- (5) sustainability, sustained yield, groundwater recharge, and aquifer management;
- (6) water quality;
- (7) loss of alternative uses of water that might be made within a reasonable time if not precluded or hindered by the proposed application;
- (8) opportunities for reuse of return flows;
- (9) protection and enhancement of historic, cultural and natural resources, and aesthetic values;
- (10) preservation of public and trust lands, water and open space;
- (11) scientific study;
- (12) whether high-quality water is being used when locally available low-quality water would suffice;
- (13) public welfare as defined in the regional and state plans or by elected officials in land use planning;
- (14) benefit and harm to the applicant and other persons;
- (15) whether the applicant sets a precedent;
- (16) cumulative impacts; and
- (17) short and long-term consequences of application.

What Happens If Public Welfare Is Defined Narrowly?

If public welfare is defined very narrowly, then it will not have much impact on the way water is managed. We will continue to base decisions only on whether:

- there is unappropriated water available;
- a new use or location will impair existing users; and
- whether the new use or location is contrary to conservation of water.

This fact sheet has been written by the Jemez y Sangre Regional Water Planning Council. For more information, contact Amy Lewis, Water Resources Planning Coordinator at 954-7123 or 801 W. San Mateo, Santa Fe, NM 87505. August, 2000

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### **3. Jemez y Sangre Public Welfare statement, Jemez y Sangre Regional Water Plan, March 2003**

#### **PUBLIC WELFARE STATEMENT FOR JEMEZ Y SANGRE REGION**

Water is the element that interconnects all people and their environment in the Jemez y Sangre region, and the region to the larger environment that is the earth. Every person living in the region expects enough water for basic needs, and every person has the responsibility to protect water resources and use their share wisely. Using the best possible information, water planning and decision making should balance diverse needs and reflect the values of the region.

Rural and Wildlands Character



Residents of the Jemez y Sangre region place great value and importance on the preservation of the rural character of the region. Urban and rural residents alike appreciate and wish to maintain the historic, agriculture-based communities, rural vistas, wildlife habitat and attributes of natural landscapes including rivers, streams and trees.

#### Water Sustainability

Residents understand that the history of the region reflects water scarcity and cycles of drought. It is a high priority of residents of the region to serve current and future human needs without long-term depletion of the available water supply, while maintaining acceptable water quality and healthy interdependent ecological systems. Sustainability requires a combination of efforts, including encouraging conservation and efficiency by all sectors at every scale, discouraging activities that deplete or degrade the water supply, planning for population growth and land use, seeking new water sources that do not impair other regional values, and improving the use of existing water supplies.

#### Economic Sustainability

Each sub-region has unique economic needs and conditions that depend on the availability of water. It is important to have quality jobs and a healthy economy in order to maintain a good quality of life in the long term.

#### Water Quality

Water quality is a significant consideration in the region's water supply. In many sub-basins, the available groundwater has been compromised by contamination, either human caused or natural. Wastewater treatment and reuse of treated water should be expanded throughout the region. The available water should be protected from potential contamination from the impacts of human activities or natural events.

#### Rights and Responsibilities

Water planning must be carried out in a context of respect for water rights and property rights. Like all rights, the right to use water, especially in an arid region, is married to the responsibility to use water efficiently and wisely. The Jemez y Sangre region respects the senior water rights of the pueblos in the region and recognizes pueblos' tribal sovereignty.

#### Decision Making

In this demographically and geographically diverse region, it is necessary for all governmental and private entities to work together to achieve the goal of a balanced and sustainable water future. Fostering healthy, vibrant communities requires a commitment to open, inclusive dialogue and decision making.

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4. MRG Public Welfare statement, Draft dated July 31, 2003

(note - Footnotes from original were placed in text)

Introduction

This public welfare statement is part of our regional water plan to provide guidance to the State Engineer in decisions concerning applications for transfer and new appropriations of water rights that affect the Middle Rio Grande Region. This public welfare statement will accomplish its purpose if conflicts are reduced in the region, and if decisions reflect the long-term future needs of the region, rather than merely

responding to immediate demands. This must not be a static, final statement, but an iterative and evolving declaration which is continuously monitored by the public to ensure that it accurately reflects the welfare of the public, always remembering that there are unknown users and perspectives concerning our water resources that will need to be given a voice in the future.

General Statement

Water has many important values to the people in our region which need to be appreciated and fairly balanced to ensure the overall safety, security and well-being for the region. Such values include cultural, economic, environmental and hydrologic viability for the region. In times of scarcity, everyone must share the responsibility for making painful decisions. The present generation should bear the burden of correcting the past mistakes, while not passing the buck to future generations. The decisions made today must do no harm to the future.

Process

We believe the “public welfare” must be safeguarded by the State Engineer through active management of our limited water resources in the decision-making process used to evaluate new appropriations and transfer of water rights. A weak or flawed decision-making process undermines the “public welfare”. The public welfare criterion should be elevated in importance equal to the other two statutory criteria (no impairment and conservation). Transfers of water rights must involve all stakeholders and use the best available science. The public will be better served if the process encourages negotiation, not litigation; if the process provides reasonable and timely notice to and participation by all parties; and if the process avoids automatic (or exempt) transfers made outside of public review. A transfer of paper water rights needs to track the water resource itself (wet water) in order to eliminate the existing problems associated with de facto increases in draws upon this finite resource. Double and triple dipping prevents us from dealing with the current deficit.

Future use of our water resources consistent with the public welfare

The “public welfare” requires that our use of the water resources be consistent with three guiding principles: #1 - we maintain and improve the health of our region’s water resources; #2 - we encourage conservation and discourage waste or impractical or unreasonable use; and #3 - we maximize the efficient use of our limited water resources. The state engineer should consider the following competing water demands when evaluating new appropriations and transfers of water rights: health & safety concerns, recreational interests, aesthetic interests, environmental interests, economic interests, as well as social & cultural interests.

- * When considering health & safety concerns, the state engineer should strive to maintain and improve the quality of our water resources as a basic human right to safe drinking water.
- * When considering recreational interests, nonconsumptive, rather than new consumptive, recreational uses should be encouraged.
- * When considering aesthetic interests, the state engineer should strive to maintain and improve the agricultural and riparian greenbelts along the flowing waters and ditches in our communities.
- * When considering environmental interests, the state engineer should maintain and improve the biodiversity of the native ecosystem.
- * When considering economic interests, the state engineer should evaluate both the positive and negative impacts of the transfer of water rights on both the area of origin as well as the area receiving the water rights. Economic concerns should not be a primary consideration.
- * When considering the social & cultural interests, the state engineer should protect the water uses which support the diversity of cultures and traditions existing in our region. The promises contained in the Treaty of Guadalupe should be acknowledged and honored.

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## 5. Version of 9-20-03: 10.4 Statement of Public Welfare for the Region

[When written, this paragraph will present the statement defining water-related Public Welfare within the Region. This statement is intended to be the guidance for state officials, particularly the Office of the State Engineer, in making decisions that affect the Region.]

### 10.4.1 Introduction

This public welfare statement is part of our regional water plan to provide guidance to the State Engineer in decisions concerning applications for transfer and new appropriations of water rights that affect the Middle Rio Grande Region. This public welfare statement will accomplish its purpose if conflicts are reduced in the region, and if decisions reflect the long-term future needs of the region, rather than merely responding to immediate demands. This must not be a static, final statement, but an iterative and evolving declaration which is continuously monitored by the public to ensure that it accurately reflects the welfare of the public, always remembering that there are unknown users and perspectives concerning our water resources that will need to be given a voice in the future.

### 10.4.2 General Statement

Water has many important values to the people in our region which need to be appreciated and fairly balanced to ensure the overall safety, security and well-being for the region. Such values include cultural, economic, environmental and hydrologic viability for the region. In times of scarcity, everyone must share the responsibility for living within the shortage. We recognize the current deficit situation and have a duty to balance water use with renewable supply, starting now and in the future. Decisions should be made so as to keep as many options as possible open for future generations.

### 10.4.3 Process

We believe the “public welfare” must be safeguarded by the State Engineer through active management of our limited water resources in the decision-making process used to evaluate new appropriations and transfer of water rights. A strong decision-making process supports “public welfare”. Public welfare is equal in importance to the other two statutory criteria (impairment and conservation). Transfers of water rights must be open to all affected stakeholders and use the best available science. The public will be better served: if the process encourages negotiation, not litigation. The process must provide reasonable and timely notice to and allow participation by all parties. The process must avoid automatic (or exempt) transfers or permits made outside of public review. *[[Footnote: Minority report recommends deletion of the previous sentence. (Simon)]]* Wet water use must be consistent with the administrative transfer of water rights (Double and triple dipping prevents us from dealing with the current deficit) *[Footnote: [Minority report recommends deletion of the previous sentence because it’s seen to terminate the current system of allowing domestic wells on land from which water rights have been sold. This statement is already contained in statement above that provides for balancing uses and sources. Wet water can not be defined until final adjudication of all water rights. (Simon)]]*. The evaluation of transfer must consider both the positive and negative impacts of the transfer of water rights on both the area of origin as well as the area receiving the water rights.*[Footnote: [Minority report recommends further discussion of the previous sentence because it might be an impediment to the most efficient use of water. (Simon)]]*

### 10.4.4 Future use of our water resources consistent with the public welfare

The “public welfare” requires that our use of the water resources be consistent with three guiding principles:

#1 - we maintain and improve the health of our region's water resources;  
#2 - we encourage conservation and discourage waste (e.g., impractical or unreasonable use); and  
#3 - we optimize the efficient use of our limited water resources. [A first minority report recommends inserting "economically" before "efficient" and deleting "limited" (Simon). A second minority report exists only in the context of the first minority report: The second minority report recommends amending the first minority report by adding the words "in the context of restoring the watershed and controlling urban growth" (Zehr)]

The state engineer should consider the following competing water demands when evaluating new appropriations and transfers of water rights: including but not limited to health & safety concerns, economic interests, agricultural interests, environmental interests, social & cultural interests, aesthetic interests, and recreational interests.

- When considering health & safety concerns, the state engineer should strive to maintain and improve the quality of our water resources as a basic human right to safe drinking water.
- When considering economic interests, the state engineer should manage water resources to optimize the sustainable economic potential of New Mexico. [A first minority report recommends replacing "optimize" with "promote" (Hebard). A second independent minority report recommends deleting the word "sustainable" (Simon and Hawley).]
- When considering agricultural interests, the state engineer should strive to develop and maintain a vibrant and efficient agricultural ecosystem, recognizing that agriculture has economic, historic, and cultural values.
- When considering environmental interests, the state engineer should maintain and improve ecosystem biodiversity. The state engineer should also consider instream flows as being essential for the region. [Minority report recommends deletion of the second sentence because it represents a red flag unless a definition of "instream flows" can be agreed upon (Simon and Brock).]
- When considering social & cultural interests, the state engineer should protect water uses which support the diversity of cultures and traditions existing in our region. The promises contained in the Treaty of Guadalupe Hidalgo should be acknowledged and honored. [Minority report recommends replacing "protect" with "consider" (Simon)]
- When considering aesthetic interests, the state engineer should strive to maintain and improve the agricultural and riparian greenbelts along the flowing waters and ditches in our communities.
- When considering recreational interests, low consumptive recreational uses should be encouraged.
- [A first minority report recommends adding a competing water demand bullet which reads, "When considering municipal and domestic needs, the State Engineer should consider adequate water supply to meet these needs. (Kelly, McGovern and Hawley). A second minority report exists in the content of the first minority report. The second minority report recommends adding a sentence which reads, "The State Engineer should connect water use decisions with local land use decisions. The State Engineer should support locally declared limitations on increases in urban water use and recognize that farmers should not be put out of business just so cities can grow." (Lucero, Zehr, Hebard, Jarratt, Robert, Brock, and Hawley). A third minority report recommends not incorporating the second minority report because it creates barriers to efficient transfer of water rights (Simon).]

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6. Version of 10-15-03: 10.4 Statement of Public Welfare for the Region

[When written, this paragraph will present the statement defining water-related Public Welfare within the Region. This statement is intended to be the guidance for state officials, particularly the Office of the State Engineer, in making decisions that affect the Region.]

10.4.1 Introduction

This public welfare statement is part of the regional water plan and is presented to provide guidance to the State Engineer in decisions concerning applications for transfer and new appropriations of water rights that affect the Middle Rio Grande Region as required in the Regional Water Planning Handbook. This public welfare statement will accomplish its purpose if conflicts are reduced in the region, and if decisions reflect the long-term future needs of the region, rather than merely responding to immediate demands. This must not be a static, final statement, but an iterative and evolving declaration which is continuously monitored by the public to ensure that it accurately reflects the welfare of the public, always remembering that there are unknown users and perspectives concerning our water resources that will need to be given a voice in the future.

10.4.2 General Statement

Water has many important values to the people in our region which need to be appreciated and fairly balanced to ensure the overall safety, security and well-being for the region. Such values include cultural, economic, environmental and hydrologic viability for the region. In times of scarcity, everyone must share the responsibility for living within the shortage. We recognize the current deficit situation and have a duty to balance water use with renewable supply, starting now and in the future. Decisions should be made so as to keep as many options as possible open for future generations.

10.4.3 Water Transfer Process

We believe the “public welfare” must be safeguarded by the State Engineer through active management of our limited water resources in the decision-making process used to evaluate new appropriations and transfer of water rights. A strong decision-making process supports “public welfare”. Public welfare is equal in importance to the other two statutory criteria (impairment and conservation). Transfers of water rights must be open to all affected stakeholders and use the best available science. The public will be better served: if the process encourages negotiation, not litigation. The process must provide reasonable and timely notice to and allow participation by all parties. Public review must be a part of the State Engineer’s decision-making process. The evaluation of transfer must consider both the positive and negative impacts of the transfer of water rights on both the area of origin as well as the area receiving the water rights. Bona fide reduction in wet water use at the source site must match the transferred water right. When considering water rights, the state engineer should respect an individual’s right to use, lease, sell or transfer that right, to the extent consistent with Public Welfare as defined herein.

10.4.4 Principles and Considerations

The “public welfare” requires that our use of the water resources be consistent with three guiding principles:

- #1 - Maintain, improve, and where possible, increase the quality and quantity of the region’s water resources;
- #2 - Promote conservation and reuse of the region’s water resources; and

#3 - Encourage efficient use of the region's water resources

The state engineer should consider the diversity of water demands and factors when evaluating new appropriations and transfers of water rights: including but not limited to health & safety concerns, economic interests, agricultural interests, environmental interests, social & cultural interests, aesthetic interests, and recreational interests.

- When considering health & safety concerns, the state engineer should strive to maintain and improve the quality of our water resources as a basic human right to safe drinking water.
- When considering economic interests, the state engineer should recognize that the Middle Rio Grande Region is a vital part of the New Mexico economy. Agreements and transfers of water rights should result in long term economic benefit to the Region and the State as a whole.
- When considering agricultural interests, the state engineer should strive to sustain a vibrant and efficient agricultural system, recognizing that agriculture has economic, ecological, historic, and cultural values.
- When considering environmental interests, the state engineer should maintain and improve ecosystem biodiversity. The state engineer should also consider instream flows as being essential for the region. [Footnote: Consensus on this sentence except for Simon and Brock who recommend deletion of the sentence because it represents a red flag unless a definition of “instream flows” can be agreed upon.]
- When considering social & cultural interests, the state engineer should protect water uses which support the diversity of cultures and traditions existing in our region. In particular, the sovereignty of tribal nations and pueblos must continue to be recognized. In addition, the promises contained in the Treaty of Guadalupe Hidalgo should be acknowledged and honored. [footnote: Consensus on this sentence except for Simon who recommends adding the following words after “honored” at the end of the sentence, “by recognizing the rights granted to land grants under Spanish and Mexican law for those entities that can trace their existence back to their Spanish and Mexican origins”. Simon also independently recommends replacing “protect” with “consider”]



Clip from Meeting Notes relevant to Public Welfare discussion:

Minutes Río Puerco y Río Jemez Steering Committees

Thursday October 16, 2003

6:30 pm - 8:30 pm

San Ysidro Village Hall

3. Review & Discussion of Public Welfare Statement

Ernie Torrez said that there was no mention of water being quantifiable as a tax base. Irrigated land is taxed differently than grazing land. Grazing land is appraised as low as \$3.60 an acre (in Lordsburg?), while his family's irrigated land in La Jara is \$675 an acre. One third of that, or \$200 an acre, reaches the public coffers and is the public welfare, supporting schools, roads, etc. Irrigated lands then drive the economic value of the area. Same with commercial cattle vs. registered cattle.

Elaine suggested that the group needed a working definition of public welfare.

Robert Cordova and Ernie agreed that public welfare is property.

Steve Lucero said that public welfare was the community.

Robert Cordova asked about the difference between water management and water rights.

Ernie said that his property right is compromised over time by public welfare. If the plan compromises property, he will have a legal remedy.

Judith said that she could accept the first MRG Public Welfare statement sent around. Elaine mentioned that there had been two versions since then, which had been sent by email but not everyone had had time to review.

Robert suggested that the two basins have separate public welfare statements, since they are different. He acknowledged the pressures being felt by the Río Jemez.

Steve said that the pressures felt by the Río Jemez today would be felt by the Río Puerco tomorrow, so that he didn't think there was that much difference.

Decisions:

Judith and Rebecca Christman agreed to work on the Río Jemez's public welfare statement, send a draft to Elaine who would then distribute it including faxing it to Steve and Peter Pino. The accepted version will be sent to the *Jemez Thunder* for publication, along with a notice about the Open House in November. Publication date is October 25, so everything needs to be finalized before then.

Ernie and Robert agreed to work on the draft of the Río Puerco's public welfare statement, with others in the basin. The draft is to be sent to Elaine by the end of the month. It will be presented at the Open House in Cuba. If the *Cuba News* comes out prior to the Open House, it will also be sent for inclusion.



Comment on Public Welfare

In Water Plan for the Rio Puerco/Rio Jemez Watersheds

Local Hydrography/Hydrology

During the summer of 2002, Dr. Daniels who leads the North Carolina Universities Coalition Field Camp in this area, and has done so for years, met with the co-chairmen of the Rio Puerco/Rio Jemez Watershed Planning Sub-Region (Emmett Cart and Marion Woolf) to give a layman's explanation of the hydrography of the watershed area.

Dr. Daniel's studies have taken place over the past fourteen years along the Jemez River and the Los Pinos Creek (a tributary of the Rio Puerco).

Dr. Daniels stated that the pediments of the mountains are alternating layers of sandstone, which holds the water, and shale, which is impermeable to water. Where the shale "fingers" turn towards the surface, we get springs. There are no artesian wells; all our water is from snow pack.

An interesting phenomenon is that 90% of the water running in creeks and ditches, after the snow melt, is *re-emergence* ground water. That is, we would have no water running in acequias or creeks, if the aquifer had not already collected it and then released it.

He emphasized how important it is to recharge the aquifer. His one line recommendation was, "The greatest benefit to water users in the watershed is to slow the rate of flow and keep as much water up here (in the mountains) as you can."

He then spoke about the deep arroyos that occur once the water flows off the pediment. He says the soil appears to be almost some type of volcanic ash, which cuts easily. He recommends that the water be slowed just as it comes off the mountain. He suggests some type of holding ponds that receive the swift inflow, but let it out more slowly.

It seems the old-time acequias on the pediment greatly help recharge the aquifer, by slowing the rate of run-off and enlarging the area in which water will be absorbed, as that benefits everyone down stream.

Acequias as Political/Ecological Communities

In addition to the hydrological function of acequias, the political/cultural organization does much to enhance and equalize water use. Most acequia associations require contributions in dues and work to keep the ditches cleared of growth that otherwise absorbs and transpires considerable water, depriving the aquifer.

Additionally, the associations generally work to "share the shortages". In dry years, each *parciete* takes a little less to make sure the ditch flows all the way to the end. Here is a group of people who truly understands interdependence and water scarcity. The nature of the associations and cooperative collaboration required to make the ditch operate well for all, ensures that along the waterway, everyone shares. The self-interest of the small-time farmers most often ensures efficient use is made of water.

Measurement

It seems important to take a very scientific look at the watersheds. Water flow and use is apparently far from a mechanical model capable of being metered in pipes. How do we measure what's needed to recharge the aquifer? How and where do we allot it? How can we ensure that this recharge water will NOT BE SEEN as unallocated water?

Analogies exist in our history. We European colonists have often upset the natural balance to everyone's detriment. Let's make sure we're not, *once again*, fixing anything that ain't broke! Let's look at Nature's Model thoroughly to understand how it really does work. Let's not make any silly assumptions that will leave our creeks and acequias dry, and let the water run away from the watershed so there is no water to re-emerge and provide in-stream flow.

Marion Woolf
October 21, 2003

<><><

Date: Fri, 24 Oct 2003 12:23:23 -0600
From: elaine hebard <emhebard@unm.edu>
To: "Johnson/Yomi" <yomi@nm.net>, Charlotte Mitchell <mitchell@sulphurcanyon.com>, Emmett Cart <emmett@sulphurcanyon.com>, Peggy Ohler <pegohler@yahoo.com>, Larry Rogers <TheRange@compuserve.com>, Judith Isaacs <jisaacs@sulphurcanyon.com>, Dennis Smith <Dennis_Smith@sulphurcanyon.com>, Bob Wilson <wilsons@desertwillowbandb.com>, Armand Groffman <groffman@lanl.gov>, Rebecca Christman <brc@sulphurcanyon.com>, Paul Yoder <pmy@cubawebnet.com>, Nancy Blecha Aguamadre <Aguamadre@sulphurcanyon.com>, Lupe Aragon <lupe@nmrwa.org>, Don Buttry <debuttry@cubawebnet.com>, Anthony Armijo <aarmijo@jemezpuablo-drp.org>, Vicki McBride <vlmad2002@yahoo.com>, Torreon LUP Board Secretary <evtachine@yahoo.com>, Torreon Chapter <naneelzhiin@yahoo.com>, Tom <TMenicucci@cabq.gov>, Anna Gahl <agahl@mail.jvps.org>, Lisa Matlock <lmatlock@fs.fed.us>, Derek Padilla <dpadilla@fs.fed.us>, EMaharg@hotmail.com, Karen Cowan <nmcga@rt66.com>, Marti Blad <mblad@jemezpuablo-drp.org>, Mark Curley <markcurley@navajo.org>, William Eaton <weaton01@fs.fed.us>, bjbrockx@aol.com
cc: Bob Prendergast <rnpptep@swcp.com>, wessely@sciso.com

RPyRJ Draft Rio Jemez Public Welfare Statement - Please review and comment ASAP

Content-Type: multipart/mixed; boundary="====280417647===="

Hi folks,

I would ask that you read the attached as soon as possible. We'd like to submit this for publication today.

The italicized words were those added by Peter Pino and others. One question which arose is whether to also include the mission and goals. My thought would be to tweak the principles section to include the language of the mission statement, since the bullet points hopefully pick up the goals. Since this is a draft, that can be done in the comment process as well.

I mentioned to Peter Pino that leaving the language with respect to instream flows was bound to engender quite a reaction. He said that such are essential for religious purposes and need to be included since Zia Pueblo is at the lower end of the river system,. Also, in thinking of downstream neighbors, such as Santa Ana Pueblo, instream flows ensure water, if available, for their uses.

What I'd like to get is an okay to submit.

Thanks,

Elaine

In case you don't have these at your finger tips, here are the mission and goals:

Mission Statement

The residents of the Río Puerco y Río Jemez Sub-watersheds promote a sustainable balance between the availability and use of water, promote healthy watersheds, and promote retention of a rural lifestyle to benefit local communities and residents.

Non-Prioritized Goals

- o Restore and manage the watersheds on public and private land to enhance water production, retention, and quality, to reduce the threat of wildfire, and to preserve natural systems dependent on water.
- o Support the cultural and spiritual values of water, and the universal need for and importance of water.
- o Ensure treaty, water and acequia rights to preserve and protect local agricultural traditions.
- o Retain land use patterns that support and ensure a rural lifestyle and economy.
- o Promote the conservation of water.
- o Promote education for area residents regarding the connection between land use, water and environmental health, and ways to conserve water. These concepts should be incorporated into the curriculum of area schools.
- o Provide for monitoring the implementation of the water plan.

~~~~~

Elaine

### **Río Jemez Draft Public Welfare Statement**

### **Río Jemez Draft Public Welfare Statement 2**

#### **Introduction**

This public welfare statement is part of our regional water plan to provide guidance to the State Engineer in decisions concerning applications for transfer and new appropriations of water rights that affect the Río Jemez. This public welfare statement will accomplish its purpose if conflicts are reduced in the region, and if decisions reflect the long-term future needs of the region, rather than merely responding to immediate demands. This must not be a static, final statement, but an iterative and evolving declaration which is continuously monitored by the public to ensure that it accurately reflects the welfare of the public, always remembering that there are unknown users and perspectives concerning our water resources that will need to be given a voice in the future.

#### **General Statement**

Water has many important values to the people in our region which need to be appreciated and fairly balanced to ensure the overall safety, security and well-being for the region. Such values include cultural, *spiritual*, economic, environmental and hydrologic viability for the region. In times of scarcity, everyone must share the responsibility for living within the shortage. We recognize the current deficit situation and have a duty to balance water use with renewable supply, starting now and in the future. Decisions should be made so as to keep as many options as possible open for future generations.

## **Process**

We believe the “public welfare” must be safeguarded by the State Engineer through active management of our limited water resources in the decision-making process used to evaluate new appropriations and transfer of water rights. A strong decision-making process supports “public welfare”. Public welfare is equal in importance to the other two statutory criteria (impairment and conservation). Transfers of water rights must be open to all affected stakeholders and use the best available science. The public will be better served if the process encourages negotiation, not litigation. The process must provide reasonable and timely notice to and allow participation by all parties. The process must avoid automatic (or exempt) transfers or permits made outside of public review. Wet water use must be consistent with the administrative transfer of water rights (Double and triple dipping *should be avoided*). The evaluation of transfer must consider both the positive and negative impacts of the transfer of water rights on both the area of origin as well as the area receiving the water rights.

## **Future use of our water resources consistent with the public welfare**

The “public welfare” requires that our use of the water resources be consistent with three guiding principles:

#1 - we maintain and improve the health of our region’s water resources; #2 - we encourage conservation and discourage waste (e.g., impractical or unreasonable use); and #3 - we optimize the efficient use of our limited water resources in the context of restoring watersheds and controlling urban growth.

The state engineer should consider the following competing water demands when evaluating new appropriations and transfers of water rights: including but not limited to health and safety concerns, economic interests, agricultural interests, environmental interests, social and cultural interests, aesthetic interests, recreational interests, *and municipal and domestic interests*.

- When considering health and safety concerns, the state engineer should strive to maintain and improve the quality of our water resources as a basic human right to safe drinking water.
- When considering economic interests, the state engineer should evaluate both the positive and negative impacts of the transfer of water rights on both the area of origin as well as the area receiving the water rights. Economic concerns should not be a primary consideration.

- When considering agricultural interests, the state engineer should strive to develop and maintain a vibrant and efficient agricultural ecosystem, recognizing that agriculture has economic, *ecologic*, historic, and cultural values.
- When considering environmental interests, the state engineer should maintain and improve ecosystem biodiversity. The state engineer should also consider in-stream flows as being essential for the region.
- When considering social & cultural interests, the state engineer should protect water uses which support the diversity of *communities*, cultures and traditions existing in our region. The promises contained in the Treaty of Guadalupe Hidalgo should be acknowledged and honored.
- When considering aesthetic interests, the state engineer should strive to maintain and improve the agricultural and riparian greenbelts along the flowing waters and ditches in our communities.
- When considering recreational interests, low consumptive recreational uses should be encouraged.
- *When considering municipal and domestic needs, the State Engineer should strive to sustain an adequate water supply to meet these needs. The State Engineer should connect water use decisions with local land use decisions.*



Letter to Ernest Torrez & Robert Cordova

Elaine Moore Hebard  
 1513 Escalante SW  
 Albuquerque, New Mexico 87104  
 (505) 247-8767

October 24, 2003

Mr. Robert Cordova  
 5609 La Corrida NE  
 Albuquerque NM 87110

Mr. Ernest Torrez  
 402 Mesilla NE  
 Albuquerque, NM 87108

Re: Río Puerco y Río Jemez Subregional Water Planning

Dear Robert and Ernie,

I am sending you the draft Río Jemez Public Welfare Statement which has been put together by folks there. I have also sent this draft for review by other members of the Steering Committees. You may recall that both Steering Committees decided to use the MRG Statement as the starting point. Since you will be working with Marion on one for the Río Puerco, I'll look forward to receiving a draft quite soon after November 4. It, too, will be sent around in accord with the group process. Your recommendation that such important items be translated is a good one. I would like to ask you to do so.

This morning, Peter Pino called to relay his comments regarding the draft, which he liked. I mentioned that language with respect to instream flows was bound to engender quite a reaction. He said that such are essential for religious purposes and need to be included since Zia Pueblo is at the lower end of the river system. Also, in thinking of downstream neighbors, such as Santa Ana Pueblo, instream flows ensure water, if available, for their uses.

Public welfare is known as public interest in Washington State. I thought that a couple of key concepts in their *Guide to Watershed Planning and Management* might be of interest:

- \* A watershed plan does not need to offer all the answers. Instead, it can lay out a long-term process towards finding answers and improving solutions.
- \* The plan must establish a vision and context for the entire watershed

I also like Mark Martinez' concept that a regional water plan is a manual - ideas as to how to manage the watershed and attain the goals of the plan.

Hope that helps. Let me know if you have any comments with respect to the draft Río Jemez Public Welfare Statement.

*(Note: same public welfare statement as sent to SC members above, so omitted here)*



Date: Fri, 24 Oct 2003 19:17:01 -0600  
From: elaine hebard <emhebard@unm.edu>  
To: marion woolf <marionwoolf@yahoo.com>

**RPyRJ\_Draft\_Río\_Jemez\_Public\_Welfare\_Statement**

Content-Type: multipart/mixed; boundary="====305244421===="

Hi Marion,

I am sending you the draft Río Jemez Public Welfare Statement, which has been put together by folks there. Ernest and Robert will be working with you on one for the Río Puerco. To find out more about Public Welfare Statements, and the subregional water plan in general, please go to [www.waterassembly.org](http://www.waterassembly.org) and scroll down the page to where it says The Subregions - Rio Puerco y Rio Jemez. Click on "Information on the Subregions" and then on "Public Welfare

Information." You may also comment on-line with respect to the plan at "Sections of the Subregional Water Plan."

This morning, Peter Pino called this morning to relate his comments regarding the draft, which he liked. I mentioned that leaving the language with respect to instream flows was bound to engender quite a reaction. He said that such are essential for religious purposes and need to be included since Zia Pueblo is at the lower end of the river system,. Also, in thinking of downstream neighbors, such as Santa Ana Pueblo, instream flows ensure water, if available, for their uses. I sent out this draft for review of all those on the email list, and will send it to Robert and Ernest.

I am also sending a copy of the memo I prepared for Dennis Smith, who is working with Jemez Springs Mutual Domestic, as well as the analysis done by Susan Kery, an attorney with Sheehan, Sheehan and Stelzner. Dennis was satisfied when he learned that the State already recognized in-stream flow as a beneficial use and that we weren't making new law.

Finally, I thought that the following answered another issue we were discussing. I rather like Mark Martinez' concept that a regional water plan is a manual. Here is a definition from Washington State:

#### Key Concepts in Watershed Planning Manual

- \* A watershed plan does not need to offer all the answers. Instead, it can lay out a long-term process towards finding answers and improving solutions.
- \* The plan must establish a vision and context for the entire watershed

Guide to Watershed Planning and Management  
A Manual to Assist Washington's Local Governments and Tribes with Watershed  
Planning and Management Under the Watershed  
Management Act (RCW 90.82/ESHB 2514)  
DRAFT - January 11, 1999

For more information, please see the Regional Water Planning Handbook at <http://www.seo.state.nm.us/doing-business/water-plan/rwp-handbook.html>. Copies of the handbook and the plan can be found at the Village Hall, the Library and Cuba Soil and Water Conservation District Office.

Have a great weekend!

Elaine



Date: Sun, 26 Oct 2003 22:06:03 -0700  
From: elaine hebard <emhebard@unm.edu>

To: "Johnson/Yomi" <yomi@nm.net>, Charlotte Mitchell <mitchell@sulphurcanyon.com>, Emmett Cart <emmett@sulphurcanyon.com>, Peggy Ohler <pegohler@yahoo.com>, Larry Rogers <TheRange@compuserve.com>, Judith Isaacs <jisaacs@sulphurcanyon.com>, Dennis Smith <Dennis\_Smith@sulphurcanyon.com>, Bob Wilson <wilsons@desertwillowbandb.com>, Armand Groffman <groffman@lanl.gov>, Rebecca Christman <brc@sulphurcanyon.com>, Paul Yoder <pmy@cubawebnet.com>, Nancy Blecha Aguamadre <Aguamadre@sulphurcanyon.com>, Lupe Aragon <lupe@nmrwa.org>, Don Buttry <debuttry@cubawebnet.com>, Anthony Armijo <aarmijo@jemezpuablo-drp.org>, Vicki McBride <vlmad2002@yahoo.com>, Torreon LUP Board Secretary <evtachine@yahoo.com>, Torreon Chapter <naneelzhiin@yahoo.com>, Tom <TMenicucci@cabq.gov>, Anna Gahl <agahl@mail.jvps.org>, Lisa Matlock <lmatlock@fs.fed.us>, Derek Padilla <dpadilla@fs.fed.us>, EMaharg@hotmail.com, Karen Cowan <nmcga@rt66.com>, Marti Blad <mblad@jemezpuablo-drp.org>, Mark Curley <markcurley@navajo.org>, William Eaton <weaton01@fs.fed.us>, bjbrockx@aol.com

### **RPyRJ Public Welfare Statement**

Content-Type: multipart/mixed; boundary="====491785542===="

Hi folks,

I had asked Marion Woolf to work on a Public Welfare Statement before the Steering Committees decided to use the MRG one as the basis. She came to the endorsement workshops and presented it. I am attaching the statement for everyone's benefit who wasn't able to attend. The subcommittee on the Río Puerco will be using it as well as the Río Jemez and MRG statements, when working on their own. I wanted to give the Río Jemez subcommittee a like opportunity. If the concepts should be included, please consider how. If not, how might they be incorporated?

Another question. The two Open Houses are now set for Saturday, November 15, for two hours each (10-12 and 2-4). There's a two hour space in between, which will be taken up with an hour drive and a half hour set-up. That means that those of us heading to Cuba must leave Cañon by 12:30, not leaving much time for laggards. So, here's the question. What do you think of announcing the Cuba Open House from 3-5? Gets us home a bit later, but lessens the pressure.

A subcommittee is preparing for the Open Houses. Please let me know if you are interested in joining. In addition, ideas are being collected for this Steering Committee to consider in its next phase. Please look through the goals, objectives and actions with the idea of how they might be prioritized as well as how they might be achieved. Send your lists to Peggy Ohler.

Thanks,

Elaine

cc: marion woolf <marionwoolf@yahoo.com>



*Note: the following is a clip from a longer email to Ernest Torrez*

Date: Tue, 28 Oct 2003 18:44:03 -0700  
From: emhebard@unm.edu  
To: Ernest Torrez <Etorrez@cabq.gov>

### **RpyRj Information**

Hi Ernie,

Sorry to have missed you when I called. I hope that you received my letter of October 24. I am sending you additional information in hopes that you find it useful in answering your questions.

2. Public Welfare: You said last week that we did not need to include a Public Welfare Statement in the Plan. It is a criteria to be considered by the State Engineer when considering a transfer of use or point of diversion, and thus should be included in a regional water plan to assist him. It is also a criteria for water plans in accord with §72-14-44 NMSA, as mentioned in the Jemez y Sangre Fact Sheet which I mailed to you in August. Also, as mentioned in the fact sheet, "without public welfare, we have no mechanism for ensuring that the those things we value are not lost and those things that are needed for our future are protected. The public welfare criterion enables us to ask questions about our use of water." A long list of items considered to be public welfare is also included.

With respect to public welfare, one way to look at it would be that that public welfare is akin to public interest. What your tax dollars purchase isn't really the same as what the State Engineer needs to consider as he contemplates the effect to the public welfare should a transfer proceed or not. As Steve Lucero mentioned a couple of weeks ago, it's more thinking how the community would be affected. As such, it needs to be pretty broad. A treatise on the subject is, "Implementing The Public Welfare Requirement In New Mexico's Water Code," by Consuelo Bokum, and is found in the Natural Resources Journal, University of New Mexico School of Law (Fall 1996).



FOR IMMEDIATE RELEASE

For more information: Judith Isaacs, 829-3382

### **PUBLIC COMMENT INVITED ON PUBLIC WELFARE STATEMENT**

The latest document to come before the Rio Jemez Water Planning Steering Committee is a draft of a public welfare statement. At its meeting on Oct. 16, the committee agreed to publish the draft statement and invite public comment at the open house being held 10-12 Saturday, Nov. 15, at the Jemez Valley Community Center in Cañon. Following is the text of the draft statement: If you have any thoughts on this, please come to the



open house to share your comments. If you have questions before then, please call Judith Isaacs, 829-3382.

## **Introduction**

This public welfare statement is part of our regional water plan to provide guidance to the State Engineer in decisions concerning applications for transfer and new appropriations of water rights that affect the Río Jemez. This public welfare statement will accomplish its purpose if conflicts are reduced in the region, and if decisions reflect the long-term future needs of the region, rather than merely responding to immediate demands. This must not be a static, final statement, but an iterative and evolving declaration which is continuously monitored by the public to ensure that it accurately reflects the welfare of the public, always remembering that there are unknown users and perspectives concerning our water resources that will need to be given a voice in the future.

## **General Statement**

Water has many important values to the people in our region which need to be appreciated and fairly balanced to ensure the overall safety, security and well-being for the region. Such values include cultural, spiritual, economic, environmental and hydrologic viability for the region. In times of scarcity, everyone must share the responsibility for living within the shortage. We recognize the current deficit situation and have a duty to balance water use with renewable supply, starting now and in the future. Decisions should be made so as to keep as many options as possible open for future generations.

## **Process**

We believe the “public welfare” must be safeguarded by the State Engineer through active management of our limited water resources in the decision-making process used to evaluate new appropriations and transfer of water rights. A strong decision-making process supports “public welfare”. Public welfare is equal in importance to the other two statutory criteria (impairment and conservation). Transfers of water rights must be open to all affected stakeholders and use the best available science. The public will be better served if the process encourages negotiation, not litigation. The process must provide reasonable and timely notice to and allow participation by all parties. The process must avoid automatic (or exempt) transfers or permits made outside of public review. Wet water use must be consistent with the administrative transfer of water rights (Double and triple dipping should be avoided). The evaluation of transfer must consider both the positive and negative impacts of the transfer of water rights on both the area of origin as well as the area receiving the water rights.

## **Future use of our water resources consistent with the public welfare**

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- #1 - we maintain and improve the health of our region’s water resources;
- #2 - we encourage conservation and discourage waste (e.g., impractical or unreasonable use); and
- #3 - we optimize the efficient use of our limited water resources in the context of restoring watersheds and controlling urban growth.

The state engineer should consider the following competing water demands when evaluating new appropriations and transfers of water rights: including but not limited to health and safety concerns, economic interests, agricultural interests, environmental interests, social and cultural interests, aesthetic interests, recreational interests, and municipal and domestic interests.

- When considering health and safety concerns, the state engineer should strive to maintain and improve the quality of our water resources as a basic human right to safe drinking water.
- When considering economic interests, the state engineer should evaluate both the positive and negative impacts of the transfer of water rights on both the area of origin as well as the area receiving the water rights. Economic concerns should not be a primary consideration.
- When considering agricultural interests, the state engineer should strive to develop and maintain a vibrant and efficient agricultural ecosystem, recognizing that agriculture has economic, ecologic, historic, and cultural values.
- When considering environmental interests, the state engineer should maintain and improve ecosystem biodiversity. The state engineer should also consider instream flows as being essential for the region.
- When considering social & cultural interests, the state engineer should protect water uses which support the diversity of communities, cultures and traditions existing in our region. The promises contained in the Treaty of Guadalupe Hidalgo should be acknowledged and honored.
- When considering aesthetic interests, the state engineer should strive to maintain and improve the agricultural and riparian greenbelts along the flowing waters and ditches in our communities.
- When considering recreational interests, low consumptive recreational uses should be encouraged.

- When considering municipal and domestic needs, the State Engineer should strive to sustain an adequate water supply to meet these needs. The State Engineer should connect water use decisions with local land use decisions.



**Public Welfare comment** from Ernest Torrez. Received certified mail, November 12, 2003, 3:30 pm. Scanned and sent to Steering Committee members by email or fax.

Elaine Hebard  
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30 Oct. 03

Public welfare is the responsibility of local governments (county, municipalities, acequias) and justifies the need to tax property where water is put to beneficial use. The taxable wealth of property owners/water users in close proximity to point of origin sources of water becomes a priority when defining Public Welfare since the monies collected as property taxes are applied to roads, schools, social services and safety within the boundaries of those same local governments. The Federal government (BLM, Forest Service etc) has no right to water unless the state allows such and only when the state determines the impact of a permit on the aforementioned public welfare conditions.



Date: Wed, 12 Nov 2003 16:20:25 -0800 (PST)  
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CC: emhebard@unm.edu

### **Re: RPyRJ Open Houses Update**

Hi everyone,

This afternoon, I received the public welfare statement from Ernie, and am sending it around in accord with the group process. Seeing as how he wrote it on October 30, clearly it was not the product of the subcommittee which was to meet on November 4. Please make sure to share it with folks who are not on email (ie, fax to Steve Lucero and Peter Pino). It came in too late to insert in the handout for Saturday, which I had already taken in to be copied.

Robert announced at the Water Resources Board that the Cuba meeting would be a ghost town as the Village and acequias are boycotting it. Gee, I thought that they would want to come and comment on the draft. It certainly is a proper forum to do so! Anyway, I sure hope that you invite everyone to attend.

Robert and Ernie both mentioned that Chapter 12, the subregional plan, is too heavily focused on the Rio Jemez. In the data search I made, I tried to present that which I found. However, the stresses now being experienced by the Jemez do provide a good example and one which hopefully the Puerco can learn from.

Finally, the Water Resources Board decided to meet on November 21 at the COG office to discuss Chapter 12. At that time, Ernie and Robert will make their comments and suggestions known. Steve Lucero, who attended today's meeting, asked that I attend. I would like to invite anyone else to also attend if they would like.

I have the posters and sign-up sheets. See you on Saturday,

Elaine

cc: "Marion Woolf" <marionwoolf@yahoo.com>



## Comments From Openhouses

11/15/03

### Public Welfare

1. RP- Public Welfare in New Mexico should include a realization that the preservation of this unique state--- and our watershed, especially--- requires us to drop the American motto: “if it makes money, it’s good”. We can be made into Owens Valley if we don’t actually protect the cultures and character of our area. Developers need to be held at bay with legislation that recognizes preservation of customs, cultures, beliefs and practices takes precedent.

This would require the state to take the point of view that maintaining northern NM as a “traditional national treasurer”— of more value as it is, than as a site for greater economic development.

2. RP- Public welfare should be just that and not for the benefit only of those who profit from the labor of New Mexicans.

3. RJ- It seems as though the Principle #2 (*in the public welfare statement*) is not needed since it is already reflected in the authority of the St. Eng. to deny an application. I would delete #2, and split #3, moving “control of urban growth”, and developing another principle that reflects the importance of the use of water to enhance a rural agricultural economy as opposed to urban growth. Since Ag land is worth less in taxes than industrial/residential/subdivision land that it could be argued in the future that land uses that bring in higher tax revenues are more beneficial than open space/wildlife/and agriculture.



December 1, 2003

**Tentative Agenda  
12/08/03 - San Ysidro  
6:30 pm**

### A. Public Welfare Statement

(please review material beforehand and bring your copies)

- \* review & discuss the comments made to the draft Río Jemez Public Welfare Statement,
- \* review & discuss Ernie's and Marion's suggestions, and
- \* adopt one statement, or one for each watershed, for the Plan.



**Río Puerco y Río Jemez Steering Committees  
Monday, December 8**

### Public Welfare Statement

We reviewed the draft Río Jemez Public Welfare Statement, Ernie's and Marion's written comments, and the comments made to the public welfare statement at the Open Houses. The only changes made to the draft Public Welfare Statement that was reviewed by the public at the open houses in November were in the guiding principles, which were expanded from three to five, and included Río Puerco as an adoptee.

Marion Woolf phoned in her approval prior to the meeting.

## **Public Welfare Statement Adopted for Water Plan**

### **Río Jemez & Río Puerco Public Welfare Statement**

#### **Introduction**

This public welfare statement is for the Río Jemez and Río Puerco watersheds, being subregions to the Middle Río Grande Regional Water Planning Region. It is part of our subregional water plan to provide guidance to the State Engineer in decisions concerning applications for transfer and new appropriations of water rights that affect the Río Jemez or the Río Puerco. This public welfare statement will accomplish its purpose if conflicts are reduced in the subregions, and if decisions reflect the long-term future needs of the subregions, rather than merely responding to immediate demands. This must not be a static, final statement, but an iterative and evolving declaration which is continuously monitored by the public to ensure that it accurately reflects the welfare of the public, always remembering that there are unknown users and perspectives concerning our water resources that will need to be given a voice in the future.

#### **General Statement**

Water has many important values to the people in our subregions which need to be appreciated and fairly balanced to ensure the overall safety, security and well-being for the subregions. Such values include cultural, spiritual, economic, environmental and hydrologic viability for the subregions. In times of scarcity, everyone must share the responsibility for living within the shortage. We recognize the current deficit situation and have a duty to balance water use with renewable supply, starting now and in the future. Decisions should be made so as to keep as many options as possible open for future generations.

#### **Process**

We believe the “public welfare” must be safeguarded by the State Engineer through active management of our limited water resources in the decision-making process used to evaluate new appropriations and transfer of water rights. A strong decision-making process supports “public welfare”. Public welfare is equal in importance to the other two statutory criteria (impairment and conservation). Transfers of water rights must be open to all affected stakeholders and use the

best available science. The public will be better served if the process encourages negotiation, not litigation. The process must provide reasonable and timely notice to and allow participation by all parties. The process must avoid automatic (or exempt) transfers or permits made outside of public review. Wet water use must be consistent with the administrative transfer of water rights (Double and triple dipping should be avoided). The evaluation of transfer must consider both the positive and negative impacts of the transfer of water rights on both the area of origin as well as the area receiving the water rights.

### **Future use of our water resources consistent with the public welfare**

The “public welfare” requires that our use of the water resources be consistent with five guiding principles:

#1 - we respect the essential role of water in maintaining our spiritual and cultural values;

#2 - we maintain and improve the health of our region’s water resources; i.e., the greatest benefit to water users in the watershed is to slow the rate of flow and keep as much water up here (in the mountains) and within the watersheds as we can;

#3 - we encourage conservation and discourage waste (e.g., impractical or unreasonable use);

#4 - we optimize the efficient use of our limited water resources in the context of restoring watersheds; and

#5 - we enhance a rural agricultural economy as opposed to urban growth.

The state engineer should consider the following competing water demands when evaluating new appropriations and transfers of water rights: including but not limited to health and safety concerns, economic interests, agricultural interests, environmental interests, social and cultural interests, aesthetic interests, recreational interests, and municipal and domestic interests.

- When considering health and safety concerns, the state engineer should strive to maintain and improve the quality of our water resources as a basic human right to safe drinking water.
- When considering economic interests, the state engineer should evaluate both the positive and negative impacts of the transfer of water rights on both the area of origin as well as the area receiving the water rights. Economic concerns should not be a primary consideration.
- When considering agricultural interests, the state engineer should strive to develop and maintain a vibrant and efficient agricultural ecosystem, recognizing that agriculture has economic, ecologic, historic, and cultural values.
- When considering environmental interests, the state engineer should maintain and improve ecosystem biodiversity. The state engineer should also consider instream flows as being essential for the region.

- When considering social & cultural interests, the state engineer should protect water uses which support the diversity of communities, cultures and traditions existing in our region. The promises contained in the Treaty of Guadalupe Hidalgo should be acknowledged and honored.
- When considering aesthetic interests, the state engineer should strive to maintain and improve the agricultural and riparian greenbelts along the flowing waters and ditches in our communities.
- When considering recreational interests, low consumptive recreational uses should be encouraged.
- When considering municipal and domestic needs, the State Engineer should strive to sustain an adequate water supply to meet these needs. The State Engineer should connect water use decisions with local land use decisions.