

New Mexico native Eluid Martinez was appointed state engineer last December. He has worked for the State Engineer Office for almost 22 years. He served on the Santa Fe School Board from 1979-1985 and was board president during the last two years of his tenure. Mr. Martinez is an accomplished artist and recently created the official poster commemorating the New Mexico Columbus Quincentennial.

CURRENT ISSUES IN NEW MEXICO WATER RESOURCES

*Eluid Martinez
New Mexico State Engineer Office
PO Box 25102
Santa Fe, New Mexico 87504*

In 1963, I attended my first water conference as a NMSU student in the College of Engineering. Today I return as a speaker to provide you with the philosophy and direction the State Engineer Office (SEO) is taking and will take in the future. In my opinion, New Mexico's water laws developed in the early 1900s for the purpose of exploiting the state's water resources. By Indian and Hispanic custom, there was no such thing as legal title to water. Water was held in common for the benefit of the public. But New Mexico and the West began to develop, and as money came in from the East, bankers insisted on collateral for any money they made available. The result was a mechanism put in place across the West to acquire title to water. The prior appropriation doctrine permitting system was developed as a way to obtain some definitive paper title to water which could be taken to the bank to serve as collateral. Water began, to paraphrase Steve Reynolds, to flow uphill to money.

We had an era from the early 1900s until fairly recently where water development and exploitation was the norm—big dams, big irrigation projects, and so forth. During this period in New Mexico, state engineers and other water administrators across the West were primarily concerned with the development of water resources and the protection of rights authorized under the permitting system or by the courts. The administrators served as protectors of those rights, protectors of prior rights, and as advocates for water development.

We have come to the end of the development era. We are now faced with the reallocation of

existing uses. There is no magical new source of water, and we must deal with public welfare questions and environmental concerns. Not only New Mexico's State Engineer Office, but water resource agencies across the West, as well as federal agencies, are having to shift their objectives. They must be more involved with environmental problems. The Bureau of Reclamation, for example, is developing a statement of new direction. At the SEO, we are not so much involved with water developmental issues, but with how to best utilize our resources.

The New Mexico SEO is unique in the West. Because of Steve Reynolds' 35-year tenure as state engineer, there was not much change during that period as to how New Mexico directed its efforts regarding administration or development of water rights. The administration of water resources in other western states, whether good or bad, evolved into separate agencies with no one agency having an overall authority, responsibility, or final word on how water should be developed in that state. In the past, some efforts were made in New Mexico to take the state engineer's power and authority and piecemeal it out. Those efforts were not very successful primarily because of Steve Reynolds' stature. Thus, it is the state engineer's sole responsibility to administer the state's water resources.

The state engineer permits new water uses, allows transfers of uses, and so forth. This is a little different from other states. Some states require an application to go through the court system to secure water rights. In New Mexico, if you want a water

right permit, you go to the state engineer and he makes the decision to grant or deny that request. His decision is appealable to district court. For all practical purposes, unless the state engineer makes a decision that does not provide somebody their legal remedy, or if a procedural mistake occurred, historically the courts have not overturned his technical decisions. Therefore, the state engineer has great power in the way water is administered in New Mexico.

Some argue that the state engineer is as powerful as the governor because of his authority to administer water and the effects of that authority on the state's future growth. Steve Reynolds often said it was not that he was powerful, it was the position that was powerful. I have come to realize that this is very true. It is the person who fills those shoes at a particular point in time that has the authority under law to make certain decisions. When that individual moves on, another person fills those shoes. Similarly, when I was president of the Santa Fe School Board, I had a bit more clout than if I were merely a board member. That is basically the state engineer's position. If you have a person in that position who has integrity and intelligence, and the best interest of the state, the state can go forward. If you do not have that combination, you could have some problems in the water rights administration of the state.

The SEO consists of a legal division, an administrative services division and a technical division, which is divided into sections. This method of operation has existed for at least 21 years—as long as I have been with the SEO—and the organizational structure probably predates my tenure. The SEO's structure is currently being changed.

The technical division has four sections—a section primarily involved in the adjudication of water rights throughout the state; a hydrology section involved in surface and groundwater analysis of new water rights applications or the transfer of surface or groundwater rights; a water planning section; and a dam section responsible for dam inspections, dam safety, assisting the ditch program, and rehabilitating ditches. The SEO also has the water rights administration division responsible for administering water rights, providing permits, and processing applications.

The Interstate Stream Commission (ISC) is comprised of nine members, eight appointed from different areas of the state by the governor, and the state engineer who serves as secretary of the com-

mission. During the last 35 years, the state engineer served not only as the secretary of the commission but also directed the ISC staff consisting of 10 to 13 individuals. For all practical purposes, the state engineer was the voice of the commission. The ISC is responsible for water matters related to neighboring states across the West. Because of the state engineer's power on the ISC, it has been said the state engineer was the commission. Decisions made by the state engineer were the decisions of the commission.

Today the state engineer also serves on six compact commissions. In the past, he served on seven commissions. The Pecos River Commission was the only commission on which he did not serve. Therefore, New Mexico's state engineer used to serve on seven compact commissions, directed and was the voice of the ISC, and administered the water resources within the state of New Mexico. There are those who will argue that it is best to have one individual responsible for all directions New Mexico takes concerning its water resources. Only history will tell us if they are right.

I assumed the position as state engineer with the understanding that I do not want to be in that position for 35 years. I have been with state government for nearly 28 years and I could have retired two years ago. That puts me in a very interesting position because I am able to retire, and much of what I do or say is because of that flexibility.

When I took the position I realized where the agency was and where it should be in four years. With that in mind, I have begun to change how the agency is operated internally by gathering around me the best people I can find within the agency and hiring others from outside the agency. Some NMSU professors, for example, are working under contract with the SEO and have been given a lot of authority to make decisions. In the past, the state engineer made the ultimate decisions. There were many people who put in substantial time with the SEO and left the agency feeling that they never really made much of an impact because they did not make decisions on their own. I am changing that. I don't work at night, and I don't work on weekends, even with all the responsibilities I have. I am delegating authority to others. The primary reason for delegating authority is so that the agency does not vest all its knowledge in one, two or three individuals. If those individuals walk out the door, you really have some problems. I am trying to spread responsibility across all supervisory levels,

and staff members are taking it to task and doing a good job. Staff members who had never been out of New Mexico are being sent across the West to expose them to western water resource development. They also are being sent across New Mexico to meet with water user groups. They are testifying before the legislature and you would be surprised what people will do when given an opportunity.

This conference's topic concerns how universities and state and federal agencies cooperate. The SEO has historically funded a water-use program with the U.S. Geological Survey (USGS) for a half million dollars per year. Our efforts with the USGS have primarily dealt with data acquisition. We have always worked with the U.S. Army Corps of Engineers and with the Bureau of Reclamation.

However, I have not had the opportunity to sit across from individuals representing these agencies and say, "What do you think would be in the best interest of water resources development for this state? Give me your perspective." When I first became state engineer I found that many people did not know how to relate to me but they did remember how they had related with my predecessor. I am beginning to open lines of communication and have no problem sitting down and talking with staff from the U.S. Fish and Wildlife Service, or with the State Land Office Commissioner, although I realize that some people might not like that fact. I also have no problem sitting down with the Indian leaders across New Mexico and discussing their concerns even though some water users might not like that. These relationships should have been cultivated long ago. These discussions have opened my eyes to what I perceive to be in the best interest of New Mexico in terms of water rights administration and I am trying to pass that same feeling onto my staff. Staff now come to me and express concerns about the environment and I foster that communication. Although I don't necessarily agree with them in every decision, I hope they feel they can come to me with their concerns.

In 1976, a water resource assessment was completed for New Mexico. The SEO has made attempts to update that assessment. We now project the completion of a state water plan within 24 months. The plan will address concerns such as instream flows, water conservation, and issues of public welfare. These issues are very emotional and should be addressed in the context of a state water plan rather than through individual legislation. If you do not have a well laid foundation, you might as

well forget trying to get an instream flow bill or conservation bill passed through the legislature.

New Mexico is the only western state that does not have some kind of instream flow law. Growing up in northern New Mexico, I lived next to a river where I would fish every weekend. My kids have grown up in New Mexico and I hope their kids do also. I want to preserve the environment and the qualities of New Mexico. I am not serving as the state engineer having relocated from another state, working for two or three years, and then going to work elsewhere. My roots are here and this is where I am going to stay.

The question is how to achieve what is best for New Mexico. In some areas, certain water user groups in the state—and this is not only common to water user groups—take the position that they want all the pie or none of it. They are not willing to sit down and talk. As long as people take that kind of position, you will never reach common ground. When I became state engineer and appeared before the first legislative session, a Representative introduced an instream flow bill. I think there may have been the perception that since we have a new state engineer, we might get something by him that appeared impossible under Mr. Stephen E. Reynolds. What they did not realize was that there was another water user group very concerned about instream flow. Regardless of who the new state engineer was, they were not going to allow certain things to occur. I very hurriedly looked at the legislation and said that I was not prepared to address instream flow 30 days after becoming state engineer. Instream flow is a very critical issue to New Mexico. Although I am using instream flow as an example, there are other important issues. Taking the safe course, I took the position Mr. Reynolds usually took—creating instream flow laws in New Mexico is against the state's constitution. That is a very simple statement, but you would be surprised how effective. Because I said it was unconstitutional, the bill was tabled. To the community concerned with instream flow, I have indicated that I need some time. We must look at instream flow in the context of the state water plan. I think we can then come up with something that is in the best interest of all New Mexicans and get that through the legislature.

Some might say that my operating style might cause me a lot of headaches. Maybe allowing other folks to have a say will ultimately get you into a worse situation. My gut feeling is that this is not

true. One could argue that if I made every decision, I would know what each decision was, and I would have to deal with my own decisions. The problem with not delegating decision making within an agency is that you do not allow staff members to grow professionally. You must give them a little push and see if they sink or swim.

Currently, there are some difficult decisions before the state engineer. We have an application from a gold mining company for water rights in the Cerrillos Mountains. This is a situation potentially falling under the public welfare criteria where the state engineer might be called upon to determine whether it is in the best interest or in the public welfare of the state of New Mexico to allow a mining operation to be built versus—what the environmental community in Santa Fe is calling—the destruction of the environment and the potential for groundwater contamination.

In Taos a developer wants to build a \$45,000,000 development with an 18-hole golf course. There are folks in Taos that want the development because they feel it will provide income and jobs. There are others in Taos who do not want the development because they are concerned that it will change the character of Taos and northern New Mexico.

The U.S. Fish and Wildlife Service has applied to build an experimental fish hatchery in Mora, completely funded by federal monies. Some in the Mora Valley think it is going to bring tourism into the area and provide some jobs. Others say Mora does not want the jobs or the tourism. They feel it will ruin their countryside and their quality of life.

These issues will force the state engineer to deal with the public welfare criteria. When I took office fully realizing that I was going to have to deal with the public welfare issue, I called in my legal staff and asked for a review of options. One option is to continue to deal with public welfare on an application-by-application basis. Another option is to do what other western states have done—set up criteria through the rule-making authority or develop regulations indicating what is considered in the public welfare, with a final clause that says you will consider everything else that has not been considered in the regulations. Another option is to look seriously at this issue during the planning process. The 21 regions in New Mexico now developing water plans should indicate what they perceive to be in the best interest of the public welfare in terms of water resources development. Those 21 regional

water plans could then be used to develop the state water plan. Through a series of public hearings and input from all interested water groups, one could produce a state water plan that is perceived to be in the best interest of New Mexico. The plan would not only assist me, but also will help future state engineers who will have to deal with this issue.

I have decided to take my staff's advice and deal with the issue on a case-by-case basis for the next two years, assuming I am the state engineer for the next two years. We will address the public welfare issue in the state water plan. Farmers, ranchers, environmentalists, mining interests, cities, and so forth will have input through the state water plan hearing process. Hopefully, the state water plan will serve as the foundation for where this state is going in its use of its water resources. It will not be an easy task. Ultimately, the state engineer will have to make the final recommendations. We must wait to see whether the legislature and the public accept the recommendations.

Since December the state engineer has conducted public meetings in Alamogordo, Carlsbad, Roswell, Ft. Sumner, and Silver City, and has met with the 22 Indian tribes. We had a state fair exhibit for the first time and the SEO has contracted with an individual to develop a water conservation course for public elementary schools. A publicity program on water conservation soon will be aired on radio and television. These activities are an attempt to educate people of the State Engineer Office's responsibilities.

When I appear before many groups and tell them that I am the state engineer, most people think that I either drive the state's locomotive or I build highways. Recently I visited the Navajo Nation. I went into one of their leader's offices and sat down with the leader and said, "I'm Mr. Martinez, the state engineer." The individual looked at me and said, "Well, we don't have any problems right now with our roads." I said to myself right then, "there is a perception problem." I am going to try and change that perception under my tenure. Future decisions having to do with water and water administration in the state are going to take on a broader focus, are going to have more input from universities, from other state agencies, and so forth. Hopefully we will do what is in the best interest of the state.