

*Richard Cheney is President of Cheney-Walter-Echols, Inc., a Farmington-based civil engineering firm specializing in land development, water supply, wastewater treatment and municipal road design. He graduated from NMSU with a B.S. in civil engineering. Richard has served four terms in the NM House of Representatives and currently is a member of the NM Interstate Stream Commission and an alternate member of the San Juan Water Commission.*



## REGIONAL WATER PLANNING: INSTITUTIONAL ARRANGEMENTS AND POLITICS IN NORTHWESTERN NEW MEXICO

Richard Cheney  
Cheney-Walters-Echols, Inc.  
909 W. Apache  
Farmington, NM 87401

I am one of the newer members of the New Mexico Interstate Stream Commission and I know there are people a lot more qualified to talk about water planning than me. I had intended for Randy Kirkpatrick to take my place today, but I am low man on the totem pole on the San Juan Water Commission as well, and I discovered that Jim Dunlap had to be out of town today and had already commandeered Randy to take his place. So I have to do this myself.

I am glad Tom Davis mentioned that I ran for governor because that comment opens the door for me. All of you know that I am a Republican so that ought to allow me at least one Republican story this morning that relates to planning. When George Bush was president, he developed a plan to put a man on Mars by 2019. I heard on the news the other day that Bill Clinton has changed that to having a robot on

Mars by 2000. A little bit later I heard Al Gore said he'd enjoy the trip.

Being a right-wing extremist, I am always a bit nervous when we start talking about planning because we have watched planning efforts through the years in other countries. When we talk about planning, one of the first things that comes to mind is the five-year plan the Soviets were always developing to become self-sufficient in agriculture or the five-year plan they developed to become self-sufficient in industry. I think of what happened to those plans—all the Soviets did was get farther and farther behind, and in the process developed the most contaminated industrialized country on the face of the earth. So I am always a little bit nervous about planning.

One thing we must keep in mind when discussing planning—and this will be the theme throughout my

talk today—is the necessity of considering the importance of private property and individual rights. There is a tendency in planning to say we must sacrifice this particular right for the greater good. I want to leave you with this one thought—without freedom there can be no greater good. When we take away a private property right from one person, we damage the private property rights of all people. We must keep that foremost in our minds as we discuss planning.

In 1988 the New Mexico legislature wisely recognized the need for water planning to protect an essential and finite resource. Tom Davis pointed out how the El Paso-New Mexico lawsuit brought it home like a baseball bat between the eyes. That lawsuit was one element contributing to the legislature's farsightedness. Legislators felt planning efforts should be overseen by the Interstate Stream Commission because they are closest to the resource. The legislature felt it was important to have broad-based public input into water planning.

Previous regional plans, I think, confirmed the legislature's intuition that New Mexicans relate to water in diverse ways. Cultural, educational and regional differences have resulted in inconsistent efforts and results. Thus, a water-plan template was developed by the Interstate Stream Commission. Many people here were very active in developing the template under the direction of the Interstate Stream Commission. The *Regional Water Planning Handbook* is available and I think it is a good guide to developing a regional water plan.

Inconsistent public participation also motivated the creation of the template. The template encourages broad-based public participation and hopefully will produce useful regional plans protecting and planning for the effective use of existing water supplies. We are not going to obtain any additional water supplies. People occasionally talk about renegotiating the interstate stream compacts and if you believe that is necessary then you also must believe pigs can fly. If we go in and open up those compacts, given that we are a state with three U.S. Congressmen and we must compete with states like Texas and California—I believe California has 54 Congressmen right now—we do not stand a chance of gaining more water. Believe me, every state surrounding us wants the water supplies we have. It does not make any dif-

ference whether it is one acre-foot or one million acre-feet, they want it and will do anything in the world they can to get it because growth is going to continue in those states as well as our state. You are all familiar with the old saying that, "whiskey is to drink and water is to fight over." It is particularly true in New Mexico. It was one reason the legislature tried to encourage broad-based public participation in water planning, to encourage everyone who has a water right to be represented in the planning process.

Population growth will continue in New Mexico. It will continue in the Rio Grande Valley and in the San Juan Valley. Planning efforts sometimes use water as a means to control growth, but that is extremely difficult. We have areas here in San Juan County where people build \$250,000-\$300,000 homes and haul their water. They want to live in homes in areas away from the city limits, away from traffic. That is the new American Dream—to have a place where you can get away from other people. That trend will continue so we must come to terms with associated water issues.

It is a time-consuming process to go from the earliest stages through the implementation of some of these water plans. A couple of examples come to mind immediately. Before water was delivered by the Lake Merideth Project to the Amarillo/Lubbock area, there was a planning process that went on for 25 years. The Navajo Indian Irrigation Project here in northwestern New Mexico was discussed and funded for the first time by Congress in the mid-1950s, and yet that project is still not completed today. The current most controversial project in the area, the Animas-La Plata Project, was first discussed in the early part of the century and is still not completed today. Congress had indicated the Animas-La Plata should be completed as nearly as possible concurrent to the Central Arizona Project. I once suggested that maybe we ought to sue to stop delivery of water to the Central Arizona Project because that project is complete and our water is still going downstream to Arizona. However, Arizona has been quite cooperative with us.

What happens here in the Four Corners region affects the entire state and not many people realize that. There is beginning to be a better recognition of that fact. The San Juan-Chama diversion could ultimately be affected by what happens to the Animas-La

Plata Project and the squawfish situation here. I know in the early 1960s the New Mexico Department of Game and Fish and the U.S. Fish and Wildlife Service poisoned all of the fish in the river so we could create the quality waters several of you have enjoyed during your stay here; it is a wonderful area in which to fish. Now the same agencies have come back today and say we have to recover the endangered squawfish. It was not the dam that killed them, yet we have to recover the squawfish. I don't think people are getting upset enough about the dollars proposed to be spent on the recovery. But if you look closely, the total amount of money proposed for the recovery of the squawfish comes to \$150 million. One hundred fifty million dollars for the recovery of the squawfish! That money could build a lot of water projects and go a long way toward solving the needs we have in New Mexico when it comes to water development projects. Along the Rio Grande, the same is true for the silvery minnow. I am not sure what is endangered over in the Pecos area, but I am sure there are endangered fish there, too.

There is substantial time consumed during the planning and construction phases of a project. You will be confronted with the Endangered Species Act, which is sloppy science and bad law, and I have a speech on that, too. We grow squawfish in a fish hatchery down in Dexter—I think they grow them by the thousands—and they are put in the river. But instead, we have to spend \$150 million to try to recover the squawfish! In planning a water project, you will run into environmental problems, archeological problems, and problems with the Endangered Species Act. The Act will probably cause you more problems than anything else. There is a good videotape available from the Federal Land Bank of Texas called "When the Environment Collides with the Constitution," and every American ought to view that tape to see what happens when we start to confiscate private property.

The entire Rocky Mountain west has been the fastest growing region in the United States throughout this decade. Nine of the ten fastest growing states are in the inner-mountain west. Many of those states encompass the Colorado River Basin, and that is what we are particularly concerned with here in northwestern New Mexico since we are part of the Colorado River system. The area is one of the fastest

growing regions in the United States and the growth will continue. Although the focus areas of population growth may change, there appears to be no end to growth in sight, at least in the near term and this is particularly true for New Mexico.

Surveys show that among the primary attractions of the west to migration during this decade is its quality environment. It also is a good place to raise a family, has dramatic scenic beauty and offers traditional jobs. Important economic activities in New Mexico that attract burgeoning populations are retirement and recreation, both of which require water. The primary factors pushing people out of urban areas are fear of crime, dissatisfaction with public schools, urban congestion, pollution, racial tension, high cost of living and housing, and general dissatisfaction with the perceived ruthlessness of metropolitan living.

Telecommunications and other modern technologies are making it increasingly possible for people to live and work outside metropolitan areas. A large stock brokerage firm has moved into the Durango area and employs 30-40 people. The business operates with computers and modems and telecommunication systems. The owner had visited and liked the Durango area and one day walked into his office and asked how many people would like to move to Durango. He relocated the entire business from San Francisco to Durango. We have people here in Farmington who have brought their computers and modems with them and run their businesses from their homes. During a campaign trip in Las Vegas, New Mexico, I met two gentlemen from New York who happened to be on vacation and were driving through Las Vegas. They did not know each other but later became acquainted and both enjoyed the area. One was a stockbroker and the other a real estate investor. They packed up and moved to Las Vegas, New Mexico, and now operate their businesses back in New York from Las Vegas. That is what the telecommunications age is doing for us. We will continue to grow here in New Mexico, I do not think there is any doubt about it.

Much new growth is occurring in the agricultural valleys, such as the San Juan Basin, and in largely unzoned and unplanned rural areas. One reason growth is taking place in irrigated agricultural areas in the San Juan Basin is that only about seven percent

of our county is privately owned. Those areas where good agricultural lands exist up and down the river valley are private lands. The rest of the area is owned by the state and federal governments or is land on the Indian reservation. That is why we are losing agricultural land along the river valley in San Juan County. We are very short on private land.

Historically water policies in the West and New Mexico have been linked with the region's desire to grow crops, develop industries, extract minerals and satisfy the thirst of small and scattered cities. The federal government supported these desires by constructing massive dams to store water and supply power to farms, industries and cities. The investment provided substantial benefits to the rest of the nation by stimulating the economy, strengthening agricultural resources, developing energy resources, satisfying regional needs and preventing floods. However, the West is no longer predominantly rural; 65 percent of the people living in the inner-mountain west now reside in metropolitan areas.

Most of the West's water has already been allocated and providing new water supplies through large storage projects is generally not going to help. The best sites for large dams are largely taken and the few remaining sites, for the most part, are off-limits due to economic and environmental considerations. To solve the region's new water challenges, many observers urge water conservation as a means to achieve greater efficiency in the use of existing supplies, and support water reallocation from agricultural to urban uses. We already are seeing the tendency to shift water from agricultural to urban uses. This is something that must be taken into consideration during any planning effort. I do not know if there is a way to prevent the reallocation of water from the agricultural to urban sector, and I do not think it is in the best interest of the country, but it may be one of those things that is impossible to stop.

To achieve some of the goals the proposed water plans have established, people are saying we must change current laws and policies. Probably that is true—as long as we change those laws to encourage conservation and to foster water markets to aid and transfer water for urban and environmental needs. Environmental needs must be addressed, they are not going away as much as we might disagree with them. We must address them in a common sense manner

that makes sense both to the nation and the region. In other words, whatever the state of Colorado does within the Colorado River system affects us here in New Mexico, and affects the Rio Grande river system as well through the San Juan-Chama diversion.

To deal with these challenges, we must recognize that the region exhibits an institutional schizophrenia about whether to treat water as a private or public good. Water law in the West developed on the basis that water is a scarce resource. Water should be allocated under the prior appropriation doctrine, which essentially holds that water users acquire private property rights to the use of water on a first come, first serve basis, as long as water is available and meets beneficial-use definitions prescribed by state law. Once water is allocated, it may be reallocated through the marketplace, and free markets will be restrained only when the water rights of others are compromised or violated. People have developed water rights and have developed a private property right to that water. When we begin to change that, it may constitute an unlawful taking so we have to be very careful about it.

I believe it is imperative that all planning efforts ensure private property rights and those rights should be protected or the planning efforts themselves will be doing a disservice. The private property rights of one class of citizens cannot be confiscated without trampling on the private property rights of all citizens. That must be foremost in mind in any plan. Planning is essential. The only way we will keep Arizona from getting our water is to show the courts we have a plan to put our allocated water to beneficial use. Water fights will continue for the foreseeable future. I received an article sent to me recently from San Diego about a fight with the local water district. They may have to turn to additional Colorado River water for their supply. So you see how important it is to put our water to beneficial use. We also must keep in mind that we live in a desert. That fact was brought home to us the last several years with the drought conditions we have had. If you have lived here for any length of time, if you have observed our state's weather patterns, I do not understand how you could possibly be opposed to a water storage project. We know the rivers are not going to run at maximum capacity all the time. That was brought home to us this year when the Animas River nearly dried up. It is

essential to be able to store water. We must also contend with the Endangered Species Act, archeological considerations; and environmental considerations such as instream flow.

Instream flow for New Mexico is an extremely dangerous concept. If water must be maintained in the stream, it will go downstream from us. It will go to Arizona, it will go to Texas, it will go to Mexico, it will go to Las Vegas, Nevada. I know we want to keep our rivers flowing where we can look at them and enjoy the beauty they create. But as long as water is going down the stream, and if we do not have storage for the water we are allocated, then that water is going to continue to move toward Arizona and California. And they will use it and will fight for it whether through the courts or through Congress. I want to remind you again that California has 54 congressmen and we have three, and we will not win any battles if we go to Congress.

So continue your planning efforts. I hope each region completes a plan that will protect its water resources. And if challenged in court, those plans will protect the water resources for municipalities, irrigators and agriculture, and for recreational use as well. Make sure you plan in a manner that will develop broad-based support throughout the community, or your planning efforts will be doomed to failure because you will be taken to court, or others will continue to bring up environmental concerns, continue to bring up Endangered Species Act concerns. This will tie you up for the next fifty years and will permit the water to go out of state.

It has been my pleasure being here. I understand you have had a good turnout. We certainly hope those of you who have come from out of town have enjoyed your stay up here in northwestern New Mexico. We think it is a well-kept secret. Normally September is a beautiful time of year and we think the rain has been beautiful because we need it desperately. If you get an opportunity, we hope you will enjoy Piñon Hills Golf Course, the River Walk, and some of the other amenities we have to offer. Have a good time and come back in the near future.