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## WATER ISSUES IN THE WEST

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Good morning folks. You are going to have to bear with me as I got a bear of a cold in southern California last week and I'm still trying to shake it. Thanks very much for inviting me. I was unable to be with you last year. While I was on the plane yesterday flying in, I was thinking back to the first time I attended one of these New Mexico water conferences back in 1965. I was a second-year student at New Mexico State University. Now 35 years have gone by.

In those 35 years, I have seen a lot of changes in New Mexico, but I have also seen a lot of things that

remain the same. Some of the discussions on water that took place back then are basically the same discussions occurring here today, and probably will be for decades to come. In those 35 years, I have been fortunate to have gotten to know most of the water players in New Mexico. Some of them are no longer with us, and some of them are reluctant to admit that they have been involved in water and water issues in New Mexico for the last 35 years with me. I see a lot of new faces today, and these new folks are the ones who are going to face some rather interesting water issues in the next 10 or 20

years. It appears to me that water issues and water administration continue to get more and more complicated and that we are facing more special interests.

I recall that early in my career, when I went to work in the State Engineer Office, I was hired by Fred Allen. I don't know if Fred is in the audience today, but he was the key person who hired me in 1971. Back then there were some gentlemen waiting for retirement to come around, people like Earl Sorenson, Jack Kookler, and others. You may recall some of those folks. They finished their careers basically as water engineers whose main task was to develop water projects. Steve Reynolds and the Interstate Stream Commission at the time were mainly concerned with making sure that New Mexico was able to capture and utilize the waters that had been allocated to it through the interstate compacts. That was their primary task.

The Bureau of Reclamation, the agency I now head, was created in 1902. In the 1950s and 1960s, the Bureau had a staff of about 30,000 people building projects across the west. Slowly but surely since the early days of my career at the State Engineer Office in the 1970s to the time I left that agency in 1994, things gradually began to change. The era of development and building projects was coming to a close, except for projects that were badly needed and are still needed in the Native American community.

At any rate, a couple of things have happened. One is that the American public became more aware of environmental issues and more concerned about impacts to the environment. Also, the national budget was in severe deficit. There was not much interest back in Washington to fund large water projects. At the local level, consideration of environmental and similar issues began to creep into the decision-making process of the State Engineer's permitting process. That really came to a head in 1980, if I recall correctly, when the City of El Paso filed an application to divert water from southern New Mexico for its future growth. This move forced New Mexico to react and thus it implemented into its laws the concept of "public welfare." So State Engineer after State Engineer across the West had to deal with a nebulous concept called "public welfare" in the decision making process. The concept brought into the dialog who uses water and how it is used.

Players who had not taken part traditionally in these matters were suddenly at the table.

As an example, the last major application I acted on as State Engineer before Tom Turney replaced me was an application by Intel Corporation to take groundwater out of the Albuquerque regional area. If I recall correctly, the most contentious issue before me was NOT whether the water was available for the benefit of the applicant, or whether taking that water would impact existing water rights. Folks in Rio Rancho and the immediate area were concerned about growth issues involved with allowing Intel to expand and what impact that would have on roads, schools, and the character of life. The issue is still playing itself out across the West including New Mexico. At the time, I decided it was in the best interest of the State Engineer Office to stay out of that quarrel; planning issues and local-land use issues should be dealt with on the local level. I issued an opinion that was not appealed. I don't know if the issue has raised its head again in New Mexico or not—whether the State Engineer should or should not become involved in land-zoning issues by restricting who can and cannot use the water. I chose to stay out of that battle, hopefully that is still the case here in New Mexico. I would hate to see water officials, not only at the state level but at the federal level as well, dictate land-use policies. I think those policies should be dictated by local government authorities and that is the position I have taken and advocated in Washington D.C.

Those of you folks who know me, know I could stand up here for probably four hours talking about water issues and my art, but I only have 45 minutes today and then I have to be off to Santa Fe and Denver. My tenure as Commissioner of the Bureau of Reclamation is coming to an end on the 20th of January. I have made a conscious decision to come back to New Mexico. I have some things I must do here. Notwithstanding whoever gets elected President, my heart is here in New Mexico and I shall return and you will likely see me involved in water issues to some extent.

When I first went to work for the State Engineer Office, Steve Reynolds was 55 years of age and I was about 27. I remember I would sit back and wonder when that old guy was ever going to retire—it is all relative to where you sit at the time. Steve went on working, and as most of you know, he

passed away while still on the job. Had he not passed away, he'd probably still be State Engineer. He remained active in water issues at the age of 74. I don't know if I'm going to be around when I'm 74 years old, but if I am, I will still be involved in New Mexico water issues in one way or another. I want to thank Tom Turney for the good job he is doing as State Engineer. It is a contentious position, a difficult position, and anybody who takes on that job is going to lose a lot of sleep given the issues—no wonder Tom is getting gray hair.

One thing I would like to acknowledge about New Mexico is that given my extensive travel across the West and across the world, I have had an opportunity over the last five years to see a lot of things and to deal with a lot of water issues. The folks in New Mexico, both on the technical level and on the administrative level, are at a par with anyone in the West and in the world. New Mexico water interests will be well protected.

The Bureau of Reclamation is involved in one way or the other in most, if not all, water issues today. The Bureau is that arm of the Department of the Interior that is looked at, at least in Washington, as the water agency of the United States, along with the Corps of Engineers. There are those in Washington and in the West who have been concerned about the direction the Bureau has taken in the past six years. An issue I have tried to address concerns the extent to which the federal government, through the Bureau of Reclamation, should be involved in the management of water and water resources. That issue is still playing itself out.

As I was sitting on the plane last night flying into Albuquerque, I made a list of Bureau of Reclamation water projects in New Mexico. Let me read that list although I will probably miss some. The Bureau of Reclamation is involved in the San Juan/Chama Project—it constructed the project and also is a contractor for water on the project that impacts water users in New Mexico. The Bureau is involved with the Middle Rio Grande Conservancy District, the Low-Flow Conveyance Channel, the Lower Rio Grande Project, the Elephant Butte Irrigation District, and the Carlsbad Irrigation District. It is involved with the Hammond Project and the Fort Sumner Project as well as with the Closed Basin at the head waters on the Rio Grande. It also is a partner with the City of Albuquerque's North I-25 Reuse Corridor Project. The Bureau has authority to work with the

City of Santa Fe to reuse its wastewater and this year's budget includes funds for a feasibility study to begin looking at the reuse potential for both surface and groundwater.

We have an ongoing study on the potential Navajo-Gallup pipeline to bring water to the Navajo Nation and the city of Gallup. We have conducted and want to continue to conduct studies on a pipeline from Brantley Dam to southeastern New Mexico. The Bureau has substantial involvement in the state of New Mexico. The policies and the direction the Bureau takes will impact New Mexico for years to come.

I have been asked questions concerning staffing issues at the Bureau. As Commissioner, I will continue to carry out my duties. I have always kept an eye out for the best interests of the state of New Mexico. You will not only be losing a Commissioner of Reclamation with a history of water and water issues in New Mexico. Regional director, Charlie Calhoun, out of the Salt Lake City office, will be retiring on the 31st of January. The Area Manager, Mike Gabaldon, who I hand selected and placed here in Albuquerque, and who has done a good job for the Bureau and for New Mexico, will be taking the number two position in Washington D.C. for the Bureau.

I was asked what these personnel changes will mean for New Mexico in terms of the Bureau of Reclamation. The replacement for Charlie Calhoun, at least in the interim, is Rick Gold. He has a history of working with New Mexico on water issues and is very knowledgeable. To the extent that I have been able to educate the career staff back in Washington about New Mexico and western water issues, I believe that both will do a good job.

My tenure as Commissioner will end on January 20, 2001. Before that, I will be looking for somebody within the Bureau of Reclamation with the caliber of Mike Gabaldon, Garry Rowe, or Charlie Calhoun to bring to New Mexico as Area Manager. If I am unsuccessful, it will be up to the next administration to make that selection.

Let me talk about western water issues and the Bureau of Reclamation. In the time I have, I can take you through the legal and water issues of one river, the Rio Grande. If I have time, I will get to the other rivers in New Mexico as well as to discuss issues the Bureau of Reclamation and water users across the West face, particularly in New Mexico.

At this time, the Bureau of Reclamation is focused on several activities. One focus is to maintain adequately and operate its facilities. Secondly, it is trying to comply with water delivery contracts, fully realizing we have both national and state laws that impact the ability to deliver that water, including endangered species and state water laws, the Clean Water Act, and other affected statutes. We also are engaged in rural water distribution system development, wastewater reuse reclamation projects, drought emergency assistance, and countless other issues.

I don't know how many of you folks attended the workshop jointly sponsored by the United States and Mexico three or four months ago in El Paso. The workshop was principally driven by Secretary Bruce Babbitt of the Interior Department. That conference dealt with the bottom line: what can be done in the future to increase flows to the Big Bend area of Texas for the park and environmental purposes? It was an interesting workshop. What I submit to you is this: if flows are increased in the Big Bend area of Texas, those flows are going to come from upstream sources. It is in New Mexico's interest as well as Texas' and Colorado's, to keep its ear to the ground on that issue. There are groups in this country—and I won't take a position pro or con, I am just raising this as an issue so you are aware of it—especially the environmental community, who are looking for water flows for environmental purposes. These groups are pressing not only for water flows within our southwestern states, but also for water flows going into other countries. If you are interested in that dialog, follow what is taking place regarding the request by the environmental community to the Bureau of Reclamation to deliver water to endangered species in Mexico in the Colorado River Delta. That is an issue for New Mexico and other water users along the Rio Grande to keep their eye on.

As we work our way upstream, Juárez, the city of El Paso, and southern New Mexico form a major urban area with a limited water supply. Groundwater aquifers are tied to a surface stream and pumping the aquifer affects the stream. We have three straws taking that water out of the aquifer, one straw in Mexico, one straw in Texas, and one straw in New Mexico. The regulation of those straws varies depending on where the straw is located. It's a very contentious issue and will continue to be. The City of El Paso has, I believe, appropriately decided that it

will look toward water resources from the state of Texas—water Texas is entitled to from the district of Texas under the Lower Rio Grande Project, a means by which to convert water from agriculture uses to other uses. The Bureau of Reclamation entered into a contract with the El Paso Irrigation District that allows water to be converted from agricultural purposes to municipal purposes. This contract was not viewed favorably by some in New Mexico and some across the West. But it was a contract, I think, that provides a vehicle for the people in the state of Texas to use Texas water. The City and the District have been having difficulties in agreeing to a third party contract on how that water will be converted, principally driven by the cost the City must pay for that water. The City has been paying, but don't quote me on these figures, somewhere around \$15 an acre-foot for converting agricultural water in the past. Now they are looking at paying somewhere around \$190 an acre-foot with increasing costs in the future—significant increases. At any rate, it appears the City and the water users down in the El Paso area might come to an agreement. To the extent that they come to an agreement and that water is transferred, El Paso will have a firm water supply and they won't bother New Mexico. I have to be careful what I say here because I don't want to get into an area belonging to attorneys. There is litigation currently taking place in New Mexico, and in part of that litigation, New Mexico parties have taken the position that the contract the Bureau of Reclamation has entered into in that area should be voided—it should not be a viable contact. Personally, and I am not speaking as Commissioner, I am not speaking as a person involved in water issues, but I would hate to see the day that contract gets voided. If the contract is voided, it will force El Paso, because it will have no other recourse, to once again reach out with its tentacles to supply water to its citizens. And it will be reaching to southern New Mexico.

Mexico, and Juárez in particular, is growing. Where will Mexico get its water? There are noises being made about renegotiating our compact and treaty. I don't know how far that idea will get, but that is for future generations to look at. We have an adjudication taking place on the Lower Rio Grande. At issue is what the Federal interest is in terms of water rights and the issue will play itself out. Tom Turney is having to deal with groundwater administration in the lower reaches—I don't know how that

situation will play out, but its results will have an impact on the development of southern New Mexico. Many of the issues are more complicated than I have lead on and future state engineers and attorneys are in for an interesting time.

Traveling upstream we get to the reach from San Acacia to Elephant Butte where we have the Low-Flow Conveyance Channel that is very instrumental in delivering water across that reach so that New Mexico can make its deliveries to the downstream entities. There is some discussion as to what the future holds for the Low-Flow Conveyance Channel. The Bureau of Reclamation is in the process of finalizing, but not during my tenure, its position on the Low-Flow Conveyance Channel. New Mexico has a fairly crucial interest in this because to the extent that the channel is not utilized or not properly utilized, it increases depletions into the river that decreases the amount of water delivered to Elephant Butte. And of course, this impacts the ability of the State of New Mexico to deliver its compact obligations.

We have the silvery minnow involved in the San Acacia reach and that has been the subject of intense discussion and litigation over the last couple of years. That is an issue yet to play itself out. Ultimately, if the decision by the courts is that the river will be keep wet, that will have immense ramifications for New Mexico upstream water users. Not only New Mexico upstream users, but also those in Colorado. I think Colorado interests have not come into play yet but they will as well as native Rio Grande water. This issue even impacts the state of Texas. Putting aside my Commissioner hat, I don't think it's fair for one state or one reach of a state to bear the entire responsibility for providing habitat for an endangered species on a given river. To the extent that water is necessary for an endangered species, I think that water should come proportionally from all users of the river. I am glad it is snowing up on the mountains because if it continues to snow and we have a good run-off this year, we will have some breathing room. I would hate to see a new Commissioner and other new personnel as well as the State Engineer have to deal with these issues given the same kind of drought conditions you had last year. If they do, Tom won't just have his hair turn gray, he'll lose his hair—the issues are that insurmountable. The City of Albuquerque is trying to implement its water resources plan and deliver water on the San Juan/

Chama water contracts. The City is going through a process with state and federal environmental regulations. We will see where that leads. Albuquerque is trying to put in a wastewater recycling project and the Bureau of Reclamation is involved in that effort. Going from Cochiti to San Acacia, there is some activity taking place concerning a habitat restoration plan that will look at improving the habitat for the silvery minnow on that reach of the river. The Bureau is involved in that effort along with other water agencies.

Let's continue up the river to Santa Fe. We are quite concerned whether Santa Fe will be able to effect its San Juan/Chama water contract. You may have read in the paper where Tom Turney has probably appropriately stated that you guys better start using your water because you guys don't know what Uncle Sam might do in the year 2016 if you haven't used your water and used it effectively, especially given the issues on the Rio Grande. It would appear to me, notwithstanding the fact that the contractors of the San Juan/Chama water have that water under contract, there is a well-known old premise in western water law that says "use it or lose it." Beneficial use is the basis of a water right. My advice to the Mayor of the City of Santa Fe, or to any water user to be, if you have a contract or a right of water that you have not exercised, you better get out there and exercise it, especially given a system with higher demand than supply. I expect to see a flurry of activity on the part of contractors on San Juan/ Chama water—those who to date have not beneficially used their water will make sure they start beneficially using it. And there are some interesting implications because once they start using their water and that water does not become available for other purposes, you will have interest groups who will want to weigh in on that matter.

Continuing up the river, the City of Española has sent a delegation to talk to me to express their concern about San Juan/Chama water and about making better use of their water resources. Española area groundwater has some nitrate concentrations. Through the efforts of New Mexico's Congressional delegation, the Bureau of Reclamation will begin a feasibility study of the potential to reuse the ground/ surface water in the Espanola valley. Leaders of that area came to me in Washington and said they wanted to go one step further. They would like to do a study of the potential to incorporate a massive

regional water system and wastewater reuse system that would go from Abiqui to Embudo to Velarde down to Santa Fe County and maybe as far south as Santa Fe. The Bureau of Reclamation, while it is not in the wastewater business, it is in the business of building regional water systems. We are now building regional water systems in the Dakotas and have been authorized to do a regional water system that will involve three states. These are multi-million dollar projects. I look forward to a future Reclamation official working with the State Engineer, the Española delegation, and water users in northern New Mexico, if, in fact, that regional water system project turns out to be feasible.

The drought issue continues to be with us and the Bureau of Reclamation is working on it and will continue to do so as this issue will be revisited throughout the West depending on our climate. The Bureau of Reclamation is the only federal agency today that has been authorized by Congress to provide assistance to the states by its local entities through drought contingency plans. We have worked with Tom Turney and with water users across the state to try to implement plans. Once plans are prepared, they will be forwarded to Congress, where they will seek approval for implementation. No entity that I am aware of has sent a plan to Congress through the Bureau of Reclamation for implementation. Whether implementation leads to federal dollars remains to be seen, but I expect to see more of that kind of activity.

Let me leave you with this thought. The issues that are playing themselves out in New Mexico are the same issues playing themselves out across the American West. They are a bit more acute in New Mexico because we have less water—that is a given. The water needs of endangered species and endangered habitats will continue to play a major role, notwithstanding whoever gets elected President. While the policies of the Bureau of Reclamation may change, there will still be people litigating issues and judges making decisions. It looks to me that at this time, the majority of the American people are interested in environmental issues and thus those demands will continue on a limited water resource.

To give you an example, in the Pacific Northwest, we have the endangered salmon. I don't know how many of you have had an opportunity to see the Columbia River. When I became Commissioner of the Bureau of Reclamation and had the opportunity

to see many of our country's rivers, I wondered about our mighty Rio Grande. It certainly gives you a different perspective on things. On the Columbia River, the Bureau of Reclamation is now purchasing 420,000 acre-feet per year of water to move fish down the river in their early stages of development. On a river like the Columbia, the Bureau of Reclamation is purchasing on the average of 420,000 acre-feet per year, representing not even 1% of its flow. When you contrast that with the Pecos River in New Mexico and the Bureau's effort to buy water of 15 cfs in the river for one summer, you begin to see that the magnitude of a river's flow doesn't provide relief. The national Marine and Fishery Service is now on the verge of asking the Bureau to increase that requirement to over 600,000 acre-feet. Those issues will continue to be important.

I have not touched much on Native American issues, and I need to do that in closing. New Mexico is fortunate to have as many Pueblos and Indian Tribes as it does. However, when the State of Colorado settles the Animas/La Plata project issue, it will have settled its Native American water right issues. When some states deal with Native American water issues, they deal with two or three tribes. Here in New Mexico we have 19 Pueblos and two reservations. Except for the Jicarilla Indian water rights settlement, there are no final settlements on Indian water rights claims with any of the Native American communities. When and if claims are settled and to the extent they are settled, it will have a significant impact on the state's water resources and its ability to use its water resources. At the rate settlements are taking place, I don't know whether Tom Turney in his tenure, or me in my lifetime, will ever be able to see them come to closure. I went to work when I was 27 years old and the Aamodt lawsuit was already eight years old and it still has yet to be concluded. The Bureau of Reclamation has been very active trying to work with the Indian Tribes and the states to bring some issues to closure.

Now I have painted a picture as best I can, and let me leave you with this thought. I feel comfortable that there is no reason for panic, but there is reason for concern, not only in New Mexico but across the American West, about the fact that we have increasing water demands and a limited resource. However, I think we have the expertise, the knowledge, the ability, and the will to work through these issues.

Working through these issues will mean that there must be some give and take. There will not be, in my opinion, a solution by consensus. But there will be solutions that I think will be acceptable. I plan to join you here in New Mexico in 60 days to continue to wrestle with these issues and to continue to give Tom Turney a little bit more gray hair.

Thank you very much.