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Protecting Our Natural Environment

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SMALL SCHOOL.
BIG VALUE.

Protecting Our Natural Environment

Denise Fort, Utton Transboundary Resources Center

Denise Fort is a Professor of Law at the University of New Mexico School of Law and Director of the School's Utton Center. She writes about environmental law, water policy, river restoration, and climate policy. She chaired the Western Water Policy Review Advisory Commission, by appointment of President Clinton, which prepared a seminal report on western water policy.

Fort also served as Director of New Mexico's Environmental Improvement Division, as an attorney with New Mexico PIRG and Southwest Research and Information Center, and as Executive Director of Citizens for a Better Environment (CA). She was a member of the National Research Council's Water, Science, and Technology Board and participates in NRC reports. She has worked in public finance as the Secretary of Finance and Administration for New Mexico and an assistant Attorney General in the Taxation and Revenue Department of the state.

I'm very happy to be here. I've been coming to NMSU for many years to talk about water and environmental issues and it's great to see a growing number of people, including students who have graduated from UNM Law School here. So thank you very much for inviting me to give an environmental perspective. I confess that giving any environmental perspective is a little daunting when many of you consider yourselves environmentalists who take some stewardship responsibility for the natural environment. I'm just going to give one perspective and give only two points about things that matter for the environment.

A question earlier was asked about water quality in New Mexico and that of course is an important part of our environmental protection of water within the state. We have a framework to protect water quality in the state. Indeed, we've had it since before the passage of the federal Clean Water Act. We have groundwater laws to protect groundwater quality. There are loopholes in both of these statutory schemes to protect certain industries, but we do have a framework for protecting water quality.

We don't have a framework for protecting the ecological aspects of rivers and streams and that's what I want to talk about today. We have failed to protect these natural values in our rivers, and my concern as we look toward the future is what sorts of steps Congress should take to stem further damage and to help us restore our rivers and streams.

So my first point is that New Mexico should manage water demand rather than investing in large-scale water projects. I don't want to give a break-off on how big is big, but let's say that we do still have half a billion dollars in water projects on the drawing boards (see Fig. 1, page 62) These projects to which the state has committed monies under the Water Trust Board are far from having the entire amount of money available. With respect to the tribal water projects, some of the issues are different there because of the federal trust responsibility towards tribes. But in some instances, the solutions we have identified have a high environmental cost both in terms of the rivers from which the water is taken and the cost of the energy that is being used to pump the water to different places.

Let me give you a few examples that may raise a few hackles. The Arizona Water Settlement Act is an instance in which Congress said that we had an opportunity to get additional water out of the Gila River, water for which New Mexico doesn't necessarily have a need, and we would get that water out at a pretty high cost. Some of the costs would be paid for by the federal government, but not necessarily the entire cost. Why would the Congress make a commitment to provide "new" water for New Mexico rather than looking for cheaper solutions, which might be available closer at hand? The communities involved are looking for cheaper solutions in terms of lining leaking water systems

and so on. But we have \$66 million in free federal money if we go the route of a diversion project to take extra water out of the Gila River. Once we remove that water, we perhaps have pipeline costs, energy costs, and other costs in delivering that water to a place where it could be used.

The Ute Lake Project is another controversial example of this. Congress has committed about \$400 million for a pipeline project to deliver water to different parts of eastern New Mexico. The question has to be asked as to whether there were cheaper alternatives that could have been used, including demand management, to address those water needs. In general, demand management will be a better alternative for the state unless we have large federal money that intervenes and makes a difference.

I appreciated Paula Garcia's comments earlier on water markets. I did know how controversial this panel would be. Water markets and water transfers are probably how we are going to address these water needs in the future in New Mexico. I'm not sure exactly what she'd propose in terms of the more nuanced and adaptive approach, but that's what we should be doing.

Let me turn quickly to my second recommendation and that is restoration. Restoration of the state's rivers is something we had begun to a limited degree using state funds under a WRRRI program, but the program did not have statutory authorization and there is a question as to whether or not we can continue it. I believe that there is a role for the federal government in protecting and restoring our state's rivers, especially where federal projects have degraded these rivers.

Thank you.

Flaming Gorge, WY and CO

- Communities Served: The Front Range of Colorado, and Wyoming
- Water Source: Green River
- Federal Funding: Funding not yet identified

Lake Powell Project, AZ and UT

- Communities Served: Utah
- Water Source: Colorado River
- Federal Funding: No

Yampa River Pumpback, CO

- Communities Served: The Front Range of Colorado
- Water Source: Yampa River
- Federal Funding: No

Navajo-Gallup Project, NM

- Communities Served: Eastern section of the Navajo Nation, the southwestern part of the Jicarilla Apache Nation, and the City of Gallup
- Water Source: San Juan River
- Federal Funding: Yes (100%)

Southern Delivery System, CO

- Communities Served: Colorado Springs and surrounding communities
- Water Source: Arkansas River
- Federal Funding: No

Cadiz Valley Water Conservation, Recovery and Storage Project, CA

- Communities Served: Southern California Water Districts
- Water Source: Groundwater from Bristol, Fenner, and Cadiz Watersheds
- Federal Funding: No

Peripheral Canal/Tunnel, CA

- Communities Served: Central California, Southern California, and some Northern California water agencies
- Water Source: Sacramento River
- Federal Funding: No

Weber Siphon, WA

- Communities Served: Agricultural land in the Odessa Subregion in Washington State
- Water Source: Columbia River
- Federal Funding: Yes (100%)

Figure 2: Projects in the Pipeline



Lewis and Clark Regional Water System, SD, IA, and MN

- Communities Served: South Dakota, Iowa, Minnesota
- Water Source: Aquifer adjacent to the Missouri River near Vermillion, SD
- Federal Funding: Yes (80%)

Mississippi River/Ogallala Aquifer, Various States

- Communities Served: Colorado River Basin communities, including Las Vegas, and western irrigation
- Water Source: Mississippi River
- Federal Funding: No

Narrows Project, UT

- Communities Served: Sanpete County in Utah
- Water Source: Price River, a tributary of the Green River
- Federal Funding: The applicants propose funding from the Small Reclamation Projects Act

Ute Lake Project, NM

- Communities Served: Eight Eastern New Mexico communities
- Water Source: Canadian River
- Federal Funding: Yes (75%)

Santa Fe-Pecos, NM

- Communities Served: Santa Fe and other communities in the Rio Grande Basin
- Water Source: Transfer of Pecos River water rights used for agriculture
- Federal Funding: No

Eastern Nevada to Las Vegas, NV

- Communities Served: Las Vegas and surrounding communities
- Water Source: Groundwater from 5 Basins: Snake Valley, Spring Valley, Cave Valley, Dry Lake Valley, and Delamar Valley
- Federal Funding: No

Northern Integrated Supply Project, CO

- Communities Served: 15 Northern Front Range water providers
- Water Source: Cache la Poudre River
- Federal Funding: No

Uvalde County - San Antonio Pipeline Project, TX

- Communities Served: San Antonio, Texas
- Water Source: Groundwater from Edwards Aquifer
- Federal Funding: No

Figure 1. Projects in the Pipeline. Pipe Dreams Report, NRDC; available at: <http://www.nrdc.org/water/management/pipelines-project.asp>

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Hard Choices

Adapting Policy and Management to Water Scarcity

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