

# Water Matters!

A Primer on Water Issues for Members of the  
48th New Mexico State Legislature

1st Session • 2007

Prepared as a tribute to retired Representative  
*Joe Stell*,  
who served 1987 - 2006

The Utton Transboundary Resources Center  
University of New Mexico School of Law

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**Joe Stell**

Representative Joe Stell's retirement after 20 years in the New Mexico Legislature has many people wondering: How will we fare without his knowledge and history of New Mexico water matters? Stell viewed one of his most important roles as that of helping new legislators get up to speed on water issues. We hope that *Water Matters!* may assist in this role by providing legislators with background information on some of the issues they will encounter. The Utton Center also wanted to acknowledge Joe Stell's outstanding service to New Mexico, and we have therefore included a brief sketch about his career, personal life, and contributions to New Mexico water policy.

Through a grant obtained from the McCune Foundation, the Utton Center taped several interviews with Representative Stell on water issues. Stefanie Beninato, under contract with the Center, conducted research and wrote on several of the big issues that are important to New Mexico, and of particular interest to Representative Stell. This overview is not intended to substitute for formal legislative analysis, but instead is intended to put the issues in a broad context and provide background on how they have evolved.

We could not address all the water issues that the Legislature will consider this session or in those to follow. We anticipate that these papers will be updated and that additional subjects will be added in the future so that, eventually, the compilation will be an "encyclopedia" of water legislation in New Mexico. All quotations throughout the text are attributable to Joe Stell obtained through interviews during 2006. The tapes and transcripts of the interviews are available at the UNM School of Law Library.

Many people helped review the text and provided information. They are gratefully acknowledged at the end of *Water Matters!* •

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# JOE STELL'S Life, Career, & Contributions

By  
Susan Kelly

Joe Stell will be sorely missed in New Mexico's 48<sup>th</sup> Legislature and in many legislative sessions to follow. He has retired after serving New Mexicans in the Legislature for twenty years. His many valuable contributions to State water policy – deflecting potential “priority calls” on the Pecos, leading the way on the Strategic Water Reserve, supporting infrastructure funding (to name a few) – have earned him a reputation as the preeminent legislative expert on New Mexico water issues. Governor Richardson refers to Stell as “Mr. Water” and credits him with helping New Mexico implement a sensible set of water policies. This paper is a brief overview of Representative Joe Stell's rich career in New Mexico life and politics and some of his thoughts on State water issues.

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## **Personal History:**

Though Stell was born in Texas, when he was an infant his parents moved to New Mexico where he has lived for 78 years. Stell's grandparents were farmers who worked a section of land south of Lubbock, Texas in a little community called Wilson. In 1928 his father and mother moved to Carlsbad where his father became the parts manager at the Chevrolet dealership owned by his uncle. Stell grew up and went through the public schools in Carlsbad, where it became apparent he was gifted athletically. Stell made All-State football and basketball in his junior and senior years. In track-and-field events he was on a competitive relay team, and he won

the javelin throw and the discus throw his senior year.

He received an athletic scholarship to SMU for football, but didn't like it in the big city, so transferred with an athletic scholarship to the University of New Mexico where he was a football letterman and captain of the team his senior year. He graduated from UNM in 1951 with a Bachelor of Science degree in language arts, and also holds a Master of Science degree in school administration from Western New Mexico University.

*A Career in Education:* Stell took his first teaching and coaching job in Deming, New Mexico. After three years in Deming his former high school coach in Carlsbad, Ralph Bowyer, asked him to come back and help work with the Carlsbad High School program.

Hence, Stell and his wife and children returned to Carlsbad in 1953 where he coached and taught accelerated English classes. He coached football for about eleven years, taking Carlsbad to win four state championships in seven years. The last of these championships, in 1961, is the last state championship that Carlsbad has won. Stell then coached basketball, taking his teams to the state tournament in four of the five years he coached.

When his family leased, and later bought, a ranch southwest of Carlsbad, Stell continued to work in the school system, watching game films every night, and ranching on the weekends. In 1967 he moved into school administration and retired in 1987. Stell was the principal of Alta Vista Middle School for eleven years.

*Family and Interests:* Stell and his wife, Verna, went to high school together and were married when he was a junior at UNM. Verna was born in Oklahoma but moved to Carlsbad at an early age. They

celebrated their 58th anniversary in 2006. “In the twenty years I’ve been in the Legislature she campaigns for me and gets me reelected, because she’s more outgoing and able to express herself better than I can.”

They have four children, all of whom graduated from college. “It took some sacrifice, but we always figured that an education was something you couldn’t take away from anybody.” The oldest, Jim Stell, was a high school teacher, then a farmer, and later a pilot with the parent company of American Airlines. He now operates simulators and certifies and recertifies pilots for a program in Dallas. His daughter, Kathy Kinzer, works at NMSU. Before Kathy earned her doctorate she devised a specialized math program for early childhood education. She travels all over the nation presenting the program and training teachers in early childhood education, kindergarten, and first, second, and third grades. “It makes math enjoyable and effective for the young kids.” Her husband also has a Ph.D. and is a department chairman in entomology at NMSU. A second daughter, Jo Beth Hawk, lives in Albuquerque. She worked with the State Department of Education until 2006 when she went to work for Albuquerque Public Schools. Stell’s third daughter, Linda Stell, lives on a small farm south of Carlsbad where she raises horses and works as a computer consultant.

In addition to his involvement with family, Stell is an avid sports fan. He follows college football and March Madness. “I like the University (UNM) team pretty well, but I’ve taken credit hours at NMSU and I like them too. NMSU was pretty impressive with what they had to work with this last year (2005) when they played the University – great game. It’s too bad about our UNM quarterback, Kole McKamey, who injured his knee and is out for the 2006

season.” And Stell will stay busy in his retirement. He plans to build a new barn in February, and he and Verna have plans to travel to Alaska in the spring.

#### **In the Legislature:**

In 1986 Stell’s predecessor in the Legislature, James Otts, decided not to run for reelection. Otts was a Democrat, a real “square shooter” in Stell’s opinion, but he joined a coalition whereby some Republicans and Democrats banded together to elect Gene Samberson as Speaker of the House. Stell was also a Democrat, and he thinks the leadership of that time may have assumed that he would be part of the coalition, but he wasn’t.

Stell ran for the Legislature against a teacher who was a member of his faculty and of whom he thought very highly. She was oriented towards teachers’ issues, including teachers’ salaries, but at about that time Carlsbad was having economic problems at the potash mines, in tourism, and in the oil bust – oilfield prices went down to \$8 a barrel. “I felt like I had a good background in the economy and agriculture. And I had worked at the potash mines when I was in college, in the summers, and I had worked at Carlsbad Caverns, and I owned a ranch. I decided I would give it a whirl and we won, so I’ve been up here 20 years now.”

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*House Committee Work:* Stell’s predecessor as chairman of the House Agriculture and Water Resources Committee was G. X. McSherry, a person extremely knowledgeable about water

and agriculture. In around 1996 McSherry decided not to seek reelection because of health reasons, which would leave a vacant spot for the chair position when McSherry's term ended in 1998. Stell was vice chairman of the committee and McSherry asked the Speaker to appoint Stell as chairman.

Stell characterizes himself as a conservative Democrat. He also served on the Interim Energy, Mineral, and Natural Resources Committee for years, and also on the Revenue Stabilization and Tax Policy Committee. Later he became chairman of the Interim Committee on Water and Natural Resources. "You know, we have had a big turnover of legislators. Probably 90 percent of the legislators I started out with are gone. They either don't seek reelection, or have health problems, or they get defeated in the election. So sometimes I know it's difficult for the Speaker. No matter what decision Speaker Lujan makes, or Speaker Sanchez made, you always have somebody that disagrees – that's just inherent in politics. So with that in mind, and the turnover, I guess they needed somebody that had a little background in water [to serve as chair of the Interim Committee]. I've dealt with water and water issues and water history for many years."

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There are nearly 25 Interim Committees covering all aspects of State business. Stell also served on the Legislative Council (which determines the funding for all the other committees), on the New Mexico Finance Authority Oversight Committee, and on the Investments and Pensions Oversight Committee.

Stell's knowledge of water issues, and of State finance, has contributed to all his committee assignments. For example, people or communities come to the Legislature wanting State funding for subdivision infrastructure, and part of that infrastructure is water and wastewater systems. "I ask, 'Where are you going to get the water?' 'Oh we're going to buy some water rights from people.' My advice is, you'd better be sure they are early-day rights and you'd better be sure there's really water, because you can have all the water rights on paper you want, but if the water is not there, you haven't got anything."

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*Office of the State Engineer:* Stell says he has enjoyed working with each of the four State Engineers who served during his time in the Legislature. "I think a lot of John D'Antonio. John has inherited some problems. Some of the other Engineers didn't have time really to get a lot of the wrinkles ironed out with the problems we have. I don't fault them, but John D'Antonio is addressing the problems head-on." He has many tough issues confronting him. "There will be people disagreeing with his Active Water Resource Management Plan. There will be disagreement with his new domestic well policy – and yet, it's the only way to resolve some of these problems. Adjudication is a problem and he can trigger it alright, but it's got to be settled in the courts. So it's going to be a tedious affair and the longer we are not in agreement on this adjudication, the more at risk we are of losing our water to downstream states." Regarding the

Colorado River Compact, "I am concerned about the voting power that California, Arizona, and Nevada have in Congress. California's got more congressional representation than all the Upper Basin states put together."

### **Pecos Basin:**

The Pecos Basin's history of development, water issues, and water litigation is especially complex. It is also the history and the area with which Joe Stell has been most involved. Here are some of Stell's thoughts and recollections on Pecos Basin water history and law as he discussed them in 2006.

The first irrigation project in the Pecos Basin began about 1889. Several development-minded men, including Charles B. Eddy, Pat Garrett, and Charles W. Greene, "came up with the idea of a land development/farming project in the Carlsbad area for which they claimed surface water rights from 1887. They had a dream of a 25,000-acre project to sell land and develop farms that would be advertised worldwide. And they did it!" Many Italian and Swiss farmers came to the area, and some of those families are still there.

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The project came to include construction of Avalon and McMillan dams and several miles of canals, all of which were originally built without government involvement. Eventually, however, the project had financial difficulties, and after 1905 it received assistance from the federal government's new Bureau of

Reclamation. The project also became organized under State law as the Carlsbad Irrigation District.

Meanwhile, in the vicinity of Roswell, many artesian wells began to be drilled. Homesteaders there found they could drill wells that didn't need to be pumped at all. "Because of hydrostatic pressure, the water just spurted out. With that supposedly permanent supply of water they started developing rich farms. Most wells were drilled in the 1920s and early 1930s, and eventually about 1,450 artesian water wells were drilled."

Before these wells were drilled five or six streams of water flowed through Roswell or originated in the Roswell area. The Hondo was a perennial stream from the Sacramento Mountains which brought waters from the Bonito and other streams. "It had been a crystal clear, free flowing, fish-filled stream flowing to the Pecos." Two or three spring-fed rivers – North, Middle and South Spring rivers – originated in and near Roswell. "The North Spring River had enough flow that they ran boats up the present Main Street in Roswell all the way to the park. They also had a hydroelectric generating plant, and a couple of ice plants that were hydro-powered." The other spring rivers contributed flow and there were also two minor rivers. Altogether, approximately 240,000 acre-feet of water came to the surface and contributed directly to the flow of the Pecos River.

The artesian wells, however, sapped water from the lower Hondo and from the spring-fed rivers – gradually drying them up. Furthermore, "by the early 1930s, the flow of the artesian wells began to disappear – too many had been drilled, and they hadn't been capped or cased. The wells were located from Seven Rivers on upstream to north of Roswell and Macho Draw."

Thus, in time, this area of bounteous waters came to have its own problems. Furthermore, the irrigators at Carlsbad believed they were being hurt because the spring waters and river waters of the Roswell area no longer added to the Pecos River's flow.

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The major attempt to rectify the situation was the formation of the Pecos Valley Artesian Conservancy District in 1931. This new district, helped by some State money, "purchased some farms that went up for sale, and put them into a water bank or a conservation fund, you might say. Many conservation practices were put in place over time. They started using concrete-lined ditches and low-profile sprinklers. They metered the water and appointed a water master. The Pecos Valley Artesian Conservancy District bought up and retired a lot of land from cultivation." At one time about 149,000 acres were farmed, but that acreage has declined significantly.

But that did not ease the Carlsbad Irrigation District members' feelings that their project had been derailed because of upstream diversions which cut off the flow of 240,000 acre-feet of water to their project downstream. The delivery to the Carlsbad Irrigation District became erratic. It was dependent almost solely on the flow from the distant headwaters of the Pecos in the Sangre de Cristo Mountains. The snow pack was the main source of their delivery.

These events were happening in the 1930s, which makes one appreciate how

problems of water use can continue from years ago into present-day, though varying solutions and changes occur. Also, in those early twentieth-century times development of irrigation began in the Ft. Sumner area. The dam now known as Ft. Sumner Dam was completed in 1938. And it should be mentioned that Santa Rosa Dam and Brantley Dam have been constructed more recently. These have all provided partial solutions to water shortages.

Meanwhile, Texas was complaining that the New Mexico projects kept water from flowing to the Texas reach of the Pecos River. Events moved slowly and years went by while New Mexico worked with Texas on forming a Pecos River Compact. "Both the State of New Mexico and the State of Texas kept thinking about it, and there's a story in itself that would take up a chapter of a book. In fact, it does take up quite a few pages in Professor Em Hall's book *High and Dry*, which is a complete history of the Pecos Basin's water issues." But eventually both states signed the Compact, believing that the federal government could be convinced to supply funding to eradicate salt cedar and mesquite from the banks of the Pecos River, and that the conservation of water by that action would 'create' more water than either one of them was using in 1947. In the Compact, the proportion of the Pecos River's flow that reached Texas in 1947 was used as the proportion that New Mexico had to provide to the State of Texas every year. "With high hopes they awaited the water to start flowing, which of course it has not done. In 1948 Congress signed off on the Compact, making it official."

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As indicated by Stell's comment, the Pecos River Compact's apportioning of water to the two states didn't solve the problems with Texas irrigators. Time and analysis have shown that the compact apportionment scheme made compliance by New Mexico extremely difficult in most years.

Moreover, the Compact did not take into account the effect that the *pumping* of irrigation water had, and would have, on the river's flow. "Everybody kind of knew of the surface/groundwater connection, but it wasn't 'official.' One of the provisions in the Compact is Article III, I believe, which says that the State of New Mexico won't reduce the flow of the Pecos River by any manmade diversions. At the time, we still had not tied in groundwater to surface water, but when a well is drilled, it *is* a manmade diversion. The State had allowed some irrigation wells to be drilled after 1948, and when we finally got to the 1986 court decision, those manmade diversions hurt us. We had allowed groundwater diversions which eventually were proved to abduct the flow of the Pecos River."

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"To back up a moment, Texas filed suit against New Mexico in 1974, alleging under-delivery of Pecos River water under the terms of the 1948 Compact. The case came to the U.S. Supreme Court – though not to a conclusion until 1986 – with a decision in favor of Texas." The Court found a 340,000 acre-foot under-delivery (380,000 acre-feet per the 1988 Amended Decree).

"In settlement, we, the State of New Mexico, paid the State of Texas \$14 million and agreed not to under-deliver. We would have to meet annual deliveries with actual wet water. That could have been a pretty drastic impact on the State of New Mexico because we have to follow the doctrine of prior appropriation, which means that the junior water rights holders and even senior water rights holders in New Mexico would have to be shut down until we replaced with wet water any shortfall that we incurred with Texas."

Here Stell is speaking of the possibility of "priority calls," meaning that in order to deliver enough water to Texas, individual water rights holders in New Mexico would be called upon – required – to receive less water or no water, according to the seniority of their rights (later rights would be cut back first, more senior rights would be cut back last).

"Some people were for following prior appropriation [in effect, priority enforcement, denying irrigators water as just mentioned]. I felt personally, in about 1993, that we had waited too long, that the impact financially would be \$300 million [in lost farm production and income] the first year alone with a priority call. This is because Chaves County and northern Eddy County are very agriculturally productive. Sometimes they vie for number one in the State with Doña Ana County on the lower Rio Grande."

Then Stell's comments turn to an alternative course of action, one that was in fact adopted. New Mexico state government would lease water from individual farmers or eventually buy up their water rights so as to retire those rights. Thus, equivalent volumes of water, so the theory was, could be left in the river and be sent on to Texas. "We thought the cost would be about \$52 million for leasing water until we had



purchased and retired enough land with early-day water rights. By delaying the program for four or five years, it has now escalated to \$92 million. Now we're very far along with commitments that we can't very well turn back from. If we did turn back, we would lose our investment."

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"I carried the bill in 1992 that proposed leasing the water, if we had to, in water-short years, which also authorized eventually phasing out the leasing program by the purchase and retirement of water rights because we have over-appropriated the river by allowing manmade diversions. As I mentioned a few moments ago, the court case or decision didn't occur until 1986, and I didn't get here in the House of Representatives until 1987. We started immediately with remedies, but it's a complicated issue and many legislators have come and gone. In fact, probably 90 percent of the legislators that were here 20 years ago are not here now. And because it's such a complicated issue they just have to have confidence in somebody telling them that it's a good bill, and so we have been able to keep the project moving. That's where we are today."

#### **On Ranching:**

*Historical Perspective, Southeast New Mexico:* In the late 1800s many Texans moved west. "A lot of them settled in the southeastern part of New Mexico, both in the Tularosa Basin and the Pecos River Basin. They moved in with cattle, horses, and livestock – into an area that needed water in order to graze the animals. They needed a lot of grass but they

needed the water along with that grass. Most of them settled where there were permanent springs of water where they could build a house."

"In those days there were hundreds of springs. No one was farming the land. This was in the late 1880s before irrigation had really developed on the Pecos and it was primarily cattle ranching. All of these ranchers or would-be-ranchers settled on springs where they could have household water as well as livestock water. They built earthen dams to impound flood runoff and started drilling wells to pump groundwater. Now we've brought into the picture groundwater being commingled with surface water. As more ranchers moved in, grazing increased. It was open range, which meant it belonged to the guy who claimed the water. If you claimed the spring, you could run cattle – as much as the land around the spring would support."

"But eventually it got to where there were more cattle than water sources, and there started being, as has always been the case, drought in New Mexico. In the middle '30s the federal government realized that there were overgrazing problems and established the U.S. Grazing Service, which eventually became the Bureau of Land Management. On the public domain lands they started marking off grazing allotments. Usually there would be a ranch homesteader who had a home established at a spring. The Grazing Service would maybe put a line halfway between that spring and the neighboring rancher's spring. They marked off allotments and set the limit of cattle that could be grazed on those allotments. That system still exists today on BLM and National Forest lands."

"It's an interesting fact that there were so many thousands of cattle in New Mexico in

the fifty years from the late 1880s through the 1930s, that they damaged the environment. So the BLM can easily make the claim that present-day rangelands are in their best condition since the early 1900s, because they put a limit on the number of cattle. The Forest Service did the same thing. So with a limit on grazing, the rangeland could only get better.”

*Ranching Today:* “You’ve got to be conservative in ranching and that’s why they call ranchers conservationists.” Stell runs enough cows to take half of the grass and leave half of the grass. “If you’ve got a 200-head permit, you probably run 150 head. And if you don’t get rain pretty quickly the next year, if you haven’t had rain by mid-August, you’d better start thinking which ones you want to get rid of. I did that in 2004 and got rid of a bunch of them and then it rained and came back lush and beautiful and I didn’t have enough cows on there. I didn’t make as much money as I could have made if I’d been stocked the way I was before I sold off. But I didn’t go buy any because the price was so high, and that was good because 2005 wasn’t a great year. It wasn’t bad but it wasn’t great. And then this year, 2006 – well, I kept all my heifers in 2005, and it’s balanced out about right in 2006, but who knows what next year will be. We will have more dry years than we will have wet years.”

#### **On Politics:**

Other than his first election, Stell has had only two opponents during his 20 years in the Legislature. He ran seven times unopposed. “That may be good, or it may be bad. Ideally, it would be good for every elected position in the State – counties, cities, legislature, governor – to have numerous opponents with various programs and philosophies for people to choose from. The only problem is that people don’t turn out and vote. I don’t know if we don’t value our democracy or

our freedom as much as we should, but even though I ran unopposed, I think it would have been better if I had been opposed some of those times. Obviously people tell you what you want to hear, and say, ‘Oh it’s because the people like you so well.’ Well, maybe so, or maybe it’s complacency. I do think I’m doing a good job, and am appreciated. But if it’s because they are complacent and don’t go to elections, we may end up like Iraq or Iran, or some of those places.”

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“I know my shortcomings and I’m not a good debater, but I think I do study the issues pretty deeply. When my vote is cast I’ll be with what I believe the people would want.” Stell’s reputation for voting the way he thinks is right – not necessarily along party lines – is legendary. “I was just talking to a legislator about a race that’s going on this November [2006] for an elected position, and he told me of a constituent who had endorsed the opponent of the person he likes, and he said, ‘I’m not going to give him any more support.’ And I said, ‘you’d be wrong if you don’t because it doesn’t make any difference whether he’s for your candidate or not. He’s voting the way he thinks is right and you need to represent him the same as if he were in your party or not in your party. It’s not a party issue, it’s a people issue.’ I think he’s thinking that over. He’s young, he’ll learn.” •