

VOL. 14, NO. 1 SUMMER 2004

*Utton Center Report*

is published by the Utton Transboundary Resources Center, UNM School of Law. Articles, speeches and research on transboundary resources scholarship and practical application will be considered for publication. For further information contact the Managing Editor at (505) 277-5655 or [uttoncenter@law.unm.edu](mailto:uttoncenter@law.unm.edu).

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## Selected Bibliography of Recent Journal Articles

*Related to Water Prepared by Ronald E. Wheeler, Jr. Interim Director, UNM Law Library. For additional information you may contact him by email at [wheeler@law.unm.edu](mailto:wheeler@law.unm.edu).*

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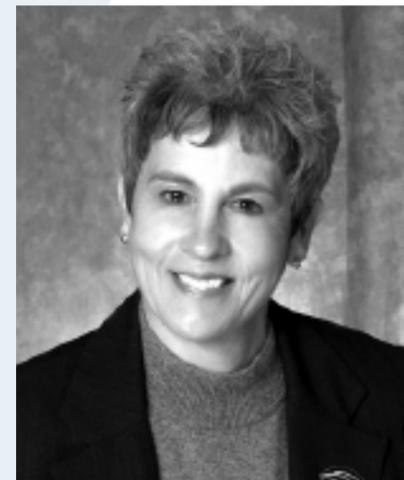
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# Utton Center Report

VOL. 14, NO. 1  
SUMMER 2004

## Message from the Director

*Marilyn C. O'Leary*



Welcome to the *Utton Center Report*. This edition focuses on computer modeling related to water planning, with an article on the Utton Center's role in facilitating a modeling project by Sandia National Laboratories to assist the Middle Rio Grande Water Assembly's public participation process. We also bring you a bibliography on articles related to modeling as an aid to understanding water use.

We have been very busy at the Center and last fall hired an

assistant director, Susan Kelly, formerly water rights manager for the City of Albuquerque. She is a 1981 graduate of the UNM School of Law and has experience in water rights, water supply and planning. With Susan's help, the Utton Center is working to provide assistance in establishing a water management plan for the Endangered Species Act Collaborative Program, a consortium of water interests in the Middle Rio Grande, to meet the needs of water users and improve the status of listed species in compliance with the Rio Grande Compact.

We have received significant funding from the State of New Mexico to assist Governor Richardson in bringing together border governors from the United States and Mexico to agree to management issues related to our shared water resources. We are preparing a report under the leadership of Alberto Székely, Director of International Research for the Center.

*(continued on page 2)*

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The mission of the

Utton Center is

to bring together

scientists, lawyers,

and policy makers,

and to use preventive

diplomacy to

create fact-based,

sustainable, resource

management plans.

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The  
Utton  
Center



TRANSBOUNDARY RESOURCES

The Center also continues its work with the New Mexico State Engineer/Interstate Stream Commission. We researched and wrote a report for the New Mexico State Engineer on the Colorado Water Court System to determine whether any aspects of that system might be applicable in New Mexico. Our recommendations were substantially followed by Governor Richardson in his action designating water judges in each judicial district. We are now involved in helping with judicial training for the water judges. The Center also helped New Mexico develop a State Water Plan. We worked with the Interstate Stream Commission to analyze and synthesize the hundreds of comments received at 29 public meetings held by the

Interstate Stream Commission in the Fall. These comments were included in the State Water Plan.

This year has also been significant because of visits to the Center by both of New Mexico's U.S. Senators. Senator Pete Domenici participated in the dedication of the Center in February. (See Report below.) Senator Jeff Bingaman visited the Center in March and received a briefing on the Center's activities.

A monograph on the career of Al Utton is in the works. It is being funded by Mary Utton and written by Professor Michele Minnis. We hope that this publication will not only capture Al's unique and special qualities, but will highlight his contributions to scholarship related to transboundary waters.

Today, with water as a high interest topic world-wide we can, yet again, appreciate the significance of Al's vision and leadership in this critical field.

The Center continues its by-invitation "crossing boundaries" conferences where selected representatives of diverse resource or stakeholder groups gather to learn how they might improve their collaboration to solve water issues. Our first conference of lawyers and scientists is being followed by a second where tribal representatives, farmers and irrigators and acequia representatives, governmental entities, and environmentalists will focus on the role of water in their respective cultures. Our goal is to sponsor an inclusive conference to enhance understanding of

diverse values and uses of water. This gathering, planned for September of 2004, will provide an opportunity to build community in order to foster collaborative approaches to managing water issues.

In the Fall, the Center worked with UNM's Water Resources Program on our first joint Speakers Series. We had a panel presentation on drought by climatologists and the chair of the Governor's Drought Task Force. This was followed by presentations on New Mexico's interstate water compacts by an employee of the Interstate Stream Commission, on U.S.-Mexico border issues by former ambassador Alberto Székely, and critical water issues in New Mexico by the State Engineer. The Center continued to bring speakers to the School of Law in conjunction with my International Water Law class being taught this Spring. National and international experts in water law came to Albuquerque as part of the class program. Stephen McCaffrey, Dan Tarlock, Robert Glennon, and our visiting scholar, Carlos Lascrain, gave presentations to students, faculty and the public. A number of noted New Mexico experts also spoke to the class.

Based on the knowledge that interstate water compacts are one way to effectively resolve transboundary water disputes, the Utton Center has undertaken a project to design a model water compact to be used as the basis for forging new agreements and for thinking about issues not included

Senator Jeff Bingaman with Marilyn O'Leary



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Today, with water as a high interest topic world-wide, we can, yet again, appreciate the significance of Al Utton's vision and leadership in this critical field.

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## Senator Domenici Dedicates Utton Center

Senator Pete Domenici dedicated the Utton Center in February. The ceremony was held in the School of Law forum, with Dean Suellyn Scarnecchia welcoming the Senator. Marilyn O'Leary thanked the Senator for his role in bringing the Center into being. She then described a number of projects the Center was engaged in as a result of the Senator's funding efforts. Senator Domenici spoke about the need for having the Utton Center pursue policy research and innovations related to water development and use. UNM President Louis Caldera also thanked the Senator for his efforts on behalf of the University.



Marilyn O'Leary and Senator Domenici, Dean Suellyn Scarnecchia behind Marilyn and John Utton (son of late Professor Al Utton) behind Senator. Professor Robert Desiderio (former law school dean) behind Suellyn and Pete Domenici, Jr. behind John.

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We recommend the use of impartial facilitation to optimally incorporate scientific and technical processes and information into educational and decision-making processes.

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# Water Models and Water Planning

**Report of the Utton Center role of facilitation in the public use of the Sandia National Laboratories hydrologic model within the Middle Rio Grande Water Assembly**

*Marilyn C. O'Leary and Celina M. Jones\**

## Background

The Middle Rio Grande (MRG) region of New Mexico is currently estimated to incur an annual deficit of 55,000 acre-feet of water through groundwater mining, even as the region continues to grow. A state-mandated regional water planning process involving significant public participation is nearly complete at this writing. The resulting regional water plan is intended to chart a sustainable course for future water use.

The Middle Rio Grande planning region stretches from the northern and eastern borders of Sandoval County downstream to the southern border of Valencia County, a distance of roughly 160 miles. The region encompasses nearly 5,500 square miles, and contains a population of over 700,000, 78% of whom live in greater Albuquerque.

In 1987, legislation was passed that requires regional water planning. The law allows for individual regions to adopt plans that meet their own unique needs.<sup>1</sup> The law also tasks the New Mexico Interstate Stream Commission (ISC) with administering funding to the planning parties within the water planning regions.<sup>2</sup>

The Middle Rio Grande Water Assembly began meeting in August 1997 to develop a regional water

plan. The MRG water planning region, in addition to the fifteen other water planning regions in the state, was designated by the ISC based upon common hydrological and political interests. Effective public participation was identified early in the process as a key to creating a successful, representative water plan. This allowed the diverse needs and goals of the population to be incorporated.

In early January 2002, a new working team was created. The Cooperative Modeling Team (CMT) was formed to provide a developmental interface between the Water Assembly constituencies and Sandia National Laboratories (SNL) as an integrated model of hydrology, ecology and economy of the region was being built. The purpose of the model is to provide a highly accessible, user-friendly tool to evaluate various plans proposed by the Water Assembly constituency and the impact of those plans on long-term water supply, costs, and other variables. The model incorporates the most current scientific understanding of the physical hydrologic system within the MRG and can evaluate the feasibility and utility of plans with particular physical or legal boundaries. As such, the model is designed to accommodate a wide community of policy makers, legal strategists, scientists, and concerned citizens, and further their active cooperation in the water planning process. This capability makes the Water Assembly modeling effort quite consistent with the goals and approach adopted by the Utton Transboundary Resources Center (Utton Center) in bringing together law, science, and policy in searching for sustainable solutions to complex water allocation issues.

Soon after the idea of the model was presented to the Water Assembly, the Utton Center was approached

by SNL to facilitate development and use of the hydrologic model by the Water Assembly. Utton Center personnel met with the Executive Committee of the Middle Rio Grande Water Assembly to discuss ways that the Utton Center could help, and propose a partnership with SNL in the effort to work cooperatively with the Water Assembly in the development of an analytical model. SNL was to provide technical expertise and guidance in the area of hydrologic modeling, and the Utton Center involvement was designed to facilitate the process.

By way of vote, the Water Assembly accepted the proposal by the Utton Center to support and facilitate SNL's modeling efforts, and thus was born the Cooperative Modeling Team (CMT). The Utton Center would provide active facilitation to members of the model development team through a facilitator with extensive experience in the area of New Mexico water disputes and the assistance of a law student who was also a professional hydrologist. In addition, the Utton Center committed to providing administrative support for the process. The Utton Center would be responsible for organizing and recording meetings, tracking the progress of the team, and insuring that the flow of information was prompt and complete to enable all participating members of the Water Assembly complete access to the process.

The Cooperative Modeling Team was composed of members representing each of the Water Assembly constituency groups and working teams. These constituency groups included five broad categories of water interests: Agricultural/Cultural/Historical Advocates; Riparian/Environmental Advocates; Economic/Urban Advocates; Specialists; and Water Managers. The working teams included the Alternatives Team, the Analysis Team, and the Public Participation and Communications Working Team. The broad spectrum of interests were included to provide a diverse panel of voices to review and comment on the model as it grew and evolved.

An important application of the model was to assist in the evaluation of those alternatives that were amenable to modeling. The alternatives developed through the water planning process are grouped by subject area, such as alternatives to increase water supply, including importation of water, water harvesting, and soil and vegetation management. Alternatives included topics such as economic approaches to affecting water use, increased education, and protection of water quality. The model presented a tool for evaluating the potential trade offs and benefits of many of these alternatives to aid the assembly as it selected a scenario for the water plan.

## I – The Early Meetings

The Utton Center's role was to facilitate the productive interplay between law, policy, and the physical sciences. The cooperative modeling process, which brought together representatives from the legal, policy, and scientific fields to jointly develop a hydrologic model, was the first of its kind. The activities of the Utton Center were focused on:

- streamlining the model development process,
- insuring maximum productivity during meetings,
- helping to manage disagreement that arose over approaches to model development, and
- fostering open access to the model by water assembly members.

The model team initially had a broad mandate to identify data and information necessary to incorporate into the model, as well as to identify and quantify the hydrologic processes of import in the region. The facilitation process was directed at establishing group procedures and bringing organization to these tasks. A meeting and facilitation schedule was developed. Notes documenting the progress and decisions made at each meeting were recorded and distributed to the team and all interested individuals by the Utton Center.

The Utton Center also had a role in the public outreach portion of the water planning process. The model was presented during community conversations, both

to educate the public about the complexity of the planning process and to gather comments. Community conversations are public meetings designed to gather feedback and generate discussion. The facilitation of these meetings greatly enhanced the process by providing a meaningful way for the public to participate. The attendees were divided into four groups, each with its own facilitator, and were then afforded the opportunity to design one or more scenarios for water use in the MRG region.

The early CMT meetings were devoted largely to issues of process: how the cooperative modeling process fit within the overall Water Assembly organization and defining the roles of the CMT members, the Utton Center, and SNL. At this stage of the process, three goals for the CMT were defined:

1. Provide a credible tool for quantifying the consequences of alternative water management and administrative strategies.
2. Develop an interactive tool for education and participation in water resource issues, including water administration and the water management decision process.
3. Provide a link between the modeling effort and the constituency and working groups in the Water Assembly.

In these early meetings, the focus of discussion remained on process:

- How within the Water Assembly structure would these goals be realized?

- What resources would be utilized?
- How would the appropriate constituencies be incorporated into the process?

Several months into the process, the CMT continued to discuss these issues.

The modeling objectives of the CMT were defined very specifically early in the process: members were to undertake the development of the model, gathering existing data and defining in mathematical terms the dynamics present in the regional hydrological/ecological/economic system. CMT members were also to fully integrate the views and input of their individual constituency groups. At this point, and generally throughout the process, the CMT was engaged and eager to participate in producing an open and readily accessible product.

By the third CMT meeting, a system of educating the CMT and gathering key information had begun. SNL began to make presentations to the group about technical issues, first guiding the group through the process of modeling and introducing basic concepts. The group, in turn, was to focus on what they wanted the model to be capable of simulating, and to consider what kinds of questions they would like the model to be able to answer. Team members were also asked to focus on the kind of information needed to produce a water plan for the region. This work was stressed in meetings and assigned as homework. However, this broad question was

difficult to answer without a more specific focus. Ultimately, the question was answered through the work being performed by the Alternative Actions working group.

SNL had already developed the basic framework of the model at the beginning of the process. CMT discussions generally focused upon how to work with the existing model and what types of manipulations were feasible with the existing technology. Starting a process such as this with an existing piece of technology hampered the creativity of the members, and may have made it difficult for team members to 'think outside the box.' Although the group was encouraged to independently identify what they would like to see in terms of model capabilities, member's expectations may nonetheless have been rooted in the existing technology.

SNL proposed an effective approach for trying to elicit the needs of the group: to meet individually with members of different working teams and constituency groups to learn more about the needs and concerns of each group. At this point, SNL envisioned a process whereby the constituencies would provide data and perhaps even 'quantify relationships' – develop the mathematical descriptions – of the key processes affecting the basin.

### Redirected focus of group

Then, on March 13, 2002 SNL met with technical personnel from a

hydrologic consulting firm that had produced a water supply study for the Middle Rio Grande region. The study had been funded by the Interstate Stream Commission and was viewed by the ISC as the most current and authoritative work describing the hydrology of the Middle Rio Grande. As a result, SNL received direction from the ISC that their model should conform to the ISC model in areas where they described similar processes. Modifications of the SNL model were needed to conform to the existing ISC model

After this development, the CMT focused on alternatives analysis. Various alternatives had been developed by the entire Water Assembly through individual team meetings and at the larger Action Committee meetings. The Alternatives Analysis Team had compiled and organized the alternatives. Although the CMT would continue to identify individual needs and concerns of the members, and discussion was still open to the development of new alternatives, the focus was on those already identified by the Alternatives Analysis Team.

The CMT aired concerns about the reliance on the ISC model because a number of members felt that independent analysis and verification would be of value. The ISC, however, considered it critical that consistent modeling data be used for ISC and the CMT acceded to the request. SNL noted that

very minor differences existed between the analytical results of the two models.

At the end of spring 2002, the mandate of the CMT had shifted significantly. The initial stage of the plan involved a broad, creative process and was largely completed. The team then began to focus upon the detailed review of each of the alternatives developed by the Alternatives working group and the model as presented by SNL. SNL continued to compile a comprehensive list of additions and modifications to the model to enable it to simulate the existing alternatives. Over the next several months SNL made presentations to the CMT to present the progress of the model. As the team became educated about the model the first phase of the validation process was in motion. The team responded to the work of SNL with suggestions and general comments, thus initiating an iterative process through which the model was updated.

The narrowed focus for the CMT was a positive development. The initial scope of work was quite broad and required a considerable commitment from volunteers who were already busy with jobs and other Water Assembly activities. Although the members brought enthusiasm and creativity to the meetings, it was often difficult for members to accomplish tasks outside of the meetings. Considering the time constraint for producing a working model it may have been

almost impossible for members to build pieces of the model as originally proposed.

### III - Facilitation During the First Year

During the first year of facilitation, efforts to specify concrete tasks for individual members had encouraged active participation. When members committed to a clearly defined task at a meeting, and were then reminded of the task prior to the next meetings through meeting minutes and email reminders, they were more likely to follow through.

The sharper focus aided meeting productivity. Many early CMT meetings were not productive because the task of developing a model was quite broad and discussions would cover disparate, unrelated topics. Productivity was enhanced by preparing members to work on a few, discrete topics. A clear schedule assigning specific pockets of time to distinct tasks proved more likely to result in effective participation from team members and a successful meeting that accomplished its goals.

This format was reinforced in mid-June of 2002, when the Chair of the Water Assembly distributed a draft schedule for the CMT. This detailed and well-organized schedule clearly delineated the broad water planning deadlines, as well as specific tasks for the CMT and the associated deadline.

### IV – Project Accomplishments and Objectives, 2003

The first full iteration of model development was completed in late November, 2002. The model was then ready to analyze alternatives and scenarios. The scenarios brought together different interlocking alternatives for water use by various sectors, such as municipal growth, agricultural use, and consumption by the Rio Grande bosque.<sup>3</sup> The model helped analyze the cumulative impact of these scenarios on the long-term water supply in the region. These analyses were a very important analytical tool for defining a Water Management Plan for the region. In January, 2003, the Water Assembly broke into scenario-building teams to concentrate on compiling and analyzing regional water plan scenarios. The Water Assembly also focused on analyzing and rating various alternative actions on an individual basis. Therefore the CMT was less active during the winter and spring of 2003. The team continued to meet regularly, though not as frequently, to discuss current model issues, such as a particular module, or public display issues such as the format of a graph displaying model results. The team also continued to discuss areas for possible future development of the model, and SNL continued to make adjustments to the model.

In April, 2003, the scenario building process was largely completed and the scenario-building

teams were using the model to test their work. Much effort was then invested in the development of a “preferred” scenario. At this point, and through the summer of 2003, the CMT met several times to discuss new updates to the SNL model and assess future needs. Future needs may include:

- capacity to analyze economic impacts of groundwater depletion,
- different water uses of different kinds of commercial enterprises, and
- how the growth of these varied enterprises will affect demand.

The CMT also has expressed a need for the model to analyze a variety of emergency water management measures, such as pumping water and discharging it directly into the river to meet compact obligations, and large-scale purchase of water rights to meet compact obligations. The team also plans to continue to evaluate the utility and clarity of the user interface of the model.

### V - Utility of the Model in the Water Plan Development Process

The hydrologic model was a very useful tool in reaching the public and effectively conveying information about the physical nature of the hydrologic system. The first model used to present the hydrologic system to the public (referred to as the ‘mini-model’) was effective at engaging lay people

in the process of proposing a change in water use, and visually displaying the impact of the change. Although the mini-model was quite simple, it facilitated a high level of involvement by the public and permitted the public to quickly appreciate the difficulty of long-term water planning within a fixed budget.

The more sophisticated model developed during the CMT process was also quite useful during the public presentations. This hydrologic model more effectively demonstrated the technical basis for the analytical results produced by the model. It also effectively conveyed the complexity of the hydrologic interactions that occur in the Middle Rio Grande region. For example, a change in water use may benefit a local area or interest while negatively impacting another. This made the model quite useful as a tool for the working teams because participants were able to consider their choices about water use and the related implications more carefully. Participants were also viewing various scenarios with the same understanding about their effect on the overall water budget and New Mexico’s compact obligations. Most importantly, the model made clear the necessity of taking significant steps if sustainable water use is to be achieved.

### VI- Conclusions and Recommendations

The Utton Center’s work on this phase of the project ended in the spring of 2003. We offer the following recommendations:

#### Facilitation

We believe that using trained facilitators to implement the use of the model greatly enhanced its role. Some team members initially voiced suspicion over the use of the model in the planning process. Many of their misgivings were resolved through the facilitation process as they were able to participate in its development. The Utton Center’s impartial role assisted in the planning process. We recommend the use of impartial facilitation to optimally incorporate scientific and technical processes and information into educational and decision-making processes.

#### Process support

Providing support to the modeling process appears to have been helpful in keeping it on track and keeping team members informed of the results of each step in the process. This support was particularly important during the first year of the process while the model was being developed. A written summary documented the progress made during each meeting and kept all members informed about developments planned for the future. Providing adequate support for a process involving multiple parties, disciplines and issues is critical to its successful completion.

<sup>1</sup> N. M. Stat. Ann. §72-14-43.

<sup>2</sup> N. M. Stat. Ann. §72-14-4. Created in 1935, the ISC has broad powers to investigate, protect, conserve and develop New Mexico’s waters and stream systems, both interstate and intrastate. The commission is authorized to negotiate compacts with other states to settle interstate controversies, match congressional appropriations, investigate and develop the water supplies of the state’s stream systems, and institute legal proceedings. When the legislature created the regional water planning process in 1987 to protect New Mexico waters and to provide for regional growth and development consistent with the available water resource, the ISC became the agency responsible for granting funds and oversight of the regional water plans. Funding for planning in 16 regions was sporadic and never exceeded \$350,000 between 1987 and 1998. For Fiscal Year 1999 the legislature appropriated \$1,750,000 for regional water planning and for a companion program to develop a State Water Plan to integrate and reconcile the regional plans. (BROWN, NRJ, Winter 2002). In 2002 the New Mexico legislature enacted a bill requiring that a State Water Plan be drafted by the Interstate Stream Commission. The State Water Plan was completed in December, 2003.

<sup>3</sup> The bosque is the riparian forest along the river and includes cottonwood trees, willows, salt cedars, and Russian olives.

\* 2003 graduate of UNM School of Law and professional hydrologist.

Proceedings  
available

The proceedings  
of the Center's  
first conference, a  
national landmark  
water forum,  
*Interstate Waters:  
Crossing Boundaries  
for Sustainable  
Solutions*, is now  
available from the  
Center for \$10.

## Around the Center

### Utton Center moves to new suite of offices

In September we moved into a new suite of offices, sharing a wing with the American Indian Law Center. We had a small celebration to open the new space and guests enjoyed looking at the old photos we have hanging along the hallway. To celebrate the move and to honor Al Utton's memory we received a number of gifts. We are grateful for the support from Al's family and friends: Nancy and Claude Lewis, Jontz Dawe Gulley and Crown, PC, Paul and Dorcas Doering, Minette and Melanie Patten, John and Gretchen Clatworthy, Mary Utton, Max and Dorothy Hirdler, Clint Smith, Ralph and Marie Denney, Bill and Gwyn Ellis, and Jeff Albright. Thank you all for your generous contributions.



We are still at 1117 Stanford, NE but please take note of our new mailing address: School of Law, Utton Transboundary Resources Center MSC 11-6070, 1 University of New Mexico, Albuquerque, NM 87131-0001

### Visiting Scholar Carlos Lascurain



Carlos Lascurain is a visiting Post Doctoral Scholar this year. Carlos Lascurain has received a fellowship from the Instituto de Ecología in Mexico to complete his research for a book he is writing on the management of the US-Mexico Border regions of the Rio Grande and Colorado River. Dr. Lascurain is a member of the faculty at El Colegio de Veracruz and was recently named a member of the Veracruz State Council for Environmental Protection. He has been a Personal Advisor to the Government of the State of Veracruz on international and environmental issues, the Coordinator for the Gulf of Mexico States Accord 2000-2002, the Mexican representative for the Global Youth Exchange Program in Tokyo, Japan, 1995 and, while working towards his Ph.D. at the University of Essex in England, was a Research Assistant at the Center for Environment and Society.

### New Mexico/Chihuahua Border Commission

Marilyn O'Leary was appointed by Governor Bill Richardson to the New Mexico/Chihuahua Border Commission. The purpose of the Commission is to encourage commerce, travel and economic development between the two states. The Governor also asked Marilyn to co-chair the Water Work Table of the Commission.