

UTTON TRANSBOUNDARY RESOURCES CENTER

Report for 2009-2010

Susan Kelly, Director

The Utton Transboundary Resources Center, at the University of New Mexico School of Law, supports collaborative natural resource management using multidisciplinary expertise and inclusive, diverse stakeholder involvement. The Utton Center conducts research and engages in projects related to its mission of promoting equitable and sustainable management of transboundary resources. Transboundary resources are shared resources which cross political jurisdictions, and international, state or tribal boundaries. Transboundary projects take place at all levels – local, state, tribal, national and international. The Utton Center was established to honor and carry on the work of the late Professor Albert E. Utton, a visionary man of diplomacy and scholarship. The Utton Center concerns itself with all natural resources; however, due to the legacy of Al Utton, the expertise of its staff, and the pressing nature of water issues in the Southwest, the Utton Center is currently focused on water issues.

The Utton Center became a part of the School of Law's Institute for Public Law and Susan Kelly became Director commencing July 1, 2010. In addition to Susan, Utton Center staff includes Darcy S. Bushnell, Director of the Joe Stell Ombudsman Program, and Torild Kristiansen, Administrative Assistant.

I. **SIGNIFICANT PROJECTS AND ACTIVITIES DURING 2009-2010**

New Mexico Water Law & Policy

[Environmental Flows in New Mexico](#)

The Utton Center held a workshop in March 2010, in partnership with Rio Grande Restoration and several other groups, bringing together about 120 stakeholders, lawyers, scientists, and decision-makers in order to create a better understanding of how environmental flows are successfully implemented across the West and in New Mexico. The workshop addressed ecological conditions on New Mexico's rivers as impacted by flow alteration. Work is underway on the proceedings of the workshop, which will be published in 2011. The proceedings will include policy recommendations to be used to support legislation or administrative action in protecting New Mexico's rivers.

[Land and Water Connection](#)

The Utton Center, with a broad group of experts, has been researching policy regarding the nexus between land use and the availability of water. The group is developing proposals to strengthen state and local legislative policy. The director spoke on different aspects of this subject at separate events:

- *The Land and Water Supply Connection: Does Water Limit Growth?*, Water Resources Research Institute's Annual Water Conference, October 15, 2009;
- *Planning for Climate Change and a Diminished Water Supply*, NM American Planning Association Conference, November 5, 2009; and
- *Land Use and Water: Is the Connection Finally Being Made?*, CLE International Land Use Conference, December 4, 2009.
- Discussed in context of broader matters at several presentations in 2010.

Joe M Stell Water Ombudsman Program

The [Joe M Stell Water Ombudsman Program](#) is a statewide program that provides information and procedural guidance about the adjudication of water rights to individual owners/claimants and professionals serving these claimants from across the State of New Mexico. It is named in honor of long-time State Representative Joe M Stell.

2010 Services: The Program provided services to 7 adjudications in state and federal courts for the Lower Rio Grande, the San Juan, the Nambe/Pojoaque/Tesuque (Aamodt), the Gallinas, the Red River, the Rio Chama, and the Rio Taos river systems. The outreach included Spanish and English telephone support through toll-free numbers and outreach telephone calls; distribution of the adjudication DVD; conduct of and participation in community and professional meetings; participation in a water fair for grade school students; distribution of printed materials and presentations to university classes.

Significant Events: During this reporting year, the Program, through Darcy Bushnell:

- Made almost 4,500 contacts while educating the public.
- Conducted or participated in 18 community meetings and gave three radio interviews explaining the Aamodt case and water right settlements.
- Participated in the San Juan Water Fair, educating about 320 fifth graders about water rights.
- Developed and implemented a web based Access database which allows staff to view and to record the current status of a water right while assisting water right claimants and allows more accurate reporting of Program activity.
- Conducted water mediator training and made presentations in law and water resource program classes.
- Supported PhD. Candidates research.
- Obtained two contracts to support Ombudsman outreach.

Education

[Water Matters!](#)

The Utton Center compiles informative articles on a variety of New Mexico water law topics as a primer and quick reference for State legislators. The articles and maps are concise, yet illustrate the varying perspectives on New Mexico's water challenges, ranging from urban supply and demand to the issues facing rural New Mexico. The Utton Center expects to continue to update and supplement with new material this informative primer on current water issues each year. Edited by Director Susan Kelly, this workbook was first prepared for the New Mexico State Legislature in 2007. The first edition highlighted the many contributions to New Mexico water

issues of Joe M Stell, who had retired after 20 years in the New Mexico House of Representatives. New articles were added in FY 2010 covering Land Use and Water Supply, and Rural Water Systems. Most of the other articles were updated. The January 2010 edition was distributed to all State legislators and other officials, approximately 300 in total. The 2010 publication is available for review at http://uttoncenter.unm.edu/Water_Matters!.html.

Book Chapter on Water Rates

Director Susan Kelly collaborated with J. Thomas McGuckin and Kyle Harwood to write a chapter titled *The Pricing and Conservation of Water in Urban Areas* which will be included in a book, *New Mexico Water Policy and Management Issues: Science, Modeling, Institutions and the Future* to be published by RFF Press and edited by UNM Professor David Brookshire and others. The focus of the chapter is on the effect of water rates as an incentive to water conservation in New Mexico cities.

Expertise and Outreach

The Utton Center assists in a broad array of projects concerning water and natural resources policy. The Utton Center conducts research and writing and makes presentations on water and natural resource issues, serving as a resource for elected officials, water managers, scientists, the media, faculty, students and many other people. These activities are representative of the broad services provided by the Utton Center which help promote understanding of legal and long-term sustainability issues.

Coordination with University Programs

Throughout the reporting year, Utton Center staff attorneys coordinate programs and teach classes upon request for the UNM Water Resources Program and the Natural Resource Program at the School of Law. We attend working meetings and engage in planning for both programs. We mentor students, guide their research, and employ student researchers. We provide material for the School of Law web page and publications. In 2010, Susan Kelly contributed to the law school's 60 for 60 publication about sixty years of history at the UNM School of law. See <http://lawschool.unm.edu/60for60/index.php>.

Biography of Albert E. Utton

A monograph on the life, career and contributions of Professor Albert E. Utton is being developed. This work is being researched and written by Michele Minnis, retired professor in the UNM Water Resources Program and former colleague of Professor Utton.

Website

The Utton Center maintains a website at <http://uttoncenter.unm.edu> which contains documentation of current initiatives and projects, past projects, conference proceedings, and resource links.

National Projects

Western Water Policy

On request from the New Mexico judiciary, the Utton Center has taken steps to organize a wide-ranging discussion of western water policy, using the 2007 Appropriative Rights Model Water

Code as the starting point for the discussion. The Utton Center convened a small group of water experts in May 2009 to discuss the objectives of the project and the best way to initiate and sustain the discussion and in FY 2010 continued to develop and test ideas with key stakeholders, the judiciary and water management agencies. Potential approaches include a policy research initiative, a seminar series and stakeholder meetings. The Center also played a role in the Institute of Public Law's Adjudication Reform Project, assisting in stakeholder outreach, review of the alternatives, and filming a video regarding water law.

[Winters Centennial Conference](#)

The Utton Center and the American Indian Law Center co-sponsored a conference in June 2008 marking the 100th anniversary of the landmark Indian water rights case *Winters v. United States*. During this reporting year, the proceedings of the conference, with additional scholarly articles submitted in response to a call for papers, neared completion and is expected to be published by the UNM Press in late 2010. In FY10 the Utton Center worked with UNM Press and editors, Barbara Cosens, University of Idaho and Judith Royster, University of Tulsa, to finalize copyright agreements from the conference. Susan Kelly also presented findings from the conference at the Indian Water Working Group meeting on August 13, 2009.

[Model Interstate Water Compact](#)

The Model Interstate Water Compact book, was provided to all the members of the project's advisory board on October 1, 2009. Susan Kelly made a presentation to the Energy Producers Research Institute on the project on February 24, 2010.

International Projects

[Border Governors Water Work Table](#)

The Utton Center represents Governor Richardson as part of a 10-state water work table of the Border Governors which deals with water issues of mutual interest to the U.S. and Mexico. Susan Kelly participated in developing joint declarations for the September 2009 Border Governors Conference held in Monterrey, Mexico. She participated in the conference, but due to funding limitations attended the March Water Table meeting by conference call instead of travelling to California. The Utton Center Director works with the Director of the Interstate Stream Commission on this committee.

[New Mexico/Chihuahua Commission](#)

The Utton Center represents the State of New Mexico on the Water Work Table in developing educational programs between New Mexico and Chihuahua on water resources. One goal of the Water Work Table is to facilitate dialogue between New Mexican and Chihuahuan agricultural groups and to highlight new technologies in the hopes of improving techniques for conserving water. In partnership with the State of Chihuahua, Susan Kelly made a presentation on water issues to the two Governors and the full New Mexico/Chihuahua Commission at their August 2009 meeting in Ruidoso, NM. Due to funding limitations and continuing difficulties with travel due to the border violence, the activities of the Table have been limited.

Universities Partnership for Transboundary Waters

The Utton Center continues to be a member of this international consortium of universities, whose goal is to provide training to stakeholders regarding transboundary management issues.

International Study Tours

Susan Kelly presented on the topic of water law and ecosystem restoration to a group from Jordan, Egypt and several other countries in April 2010. In September she participated in a water study tour with a group of South Africans.

Middle Rio Grande Basin projects

Middle Rio Grande Endangered Species Act Collaborative Program

In conjunction with the Director of UNM's Water Resources Program, Director Susan Kelly represented the University of New Mexico on the Executive Committee and the Coordinating Committee of this Program. The Program is made up of representatives of federal, state, tribal and other interest groups. It is intended to address water supply, science, and habitat restoration in the Middle Rio Grande so that progress can be made in the recovery of endangered species while not impairing water rights and use. The Utton Center's role is to involve UNM faculty in the Program and provide a neutral position in the decision-making process.

Upstream-Downstream Project

This project was sponsored by the N.M. Water Dialogue with a grant from the McCune Foundation and in cooperation with the Interstate Stream Commission and the Utton Center. The Utton Center, through Susan Kelly, was active in trying to help the parties work towards consistency in the three regional plans within the Rio Grande Compact accounting region: Jemez y Sangre, Middle Rio Grande, and Socorro/Sierra. This project involved numerous water management agencies, sustainability advocates, and planners and was intended to address projected water deficits in the Middle Rio Grande Basin. Although the majority of the work was concluded prior to the reporting year - the diverse stakeholders and elected officials were unable to agree on a consistent basin water supply and demand budget- the Utton Center has continued to explore basin planning through meetings with the Interstate Stream Commission, Water Dialogue members, and basin water officials.

Utton Center Advisory Board

The Utton Center has a distinguished advisory board, consisting of about 40 premier natural resource scholars from academic institutions in the United States, New Mexico attorneys, experts in water law and policy, and international scholars. The list is available at http://uttoncenter.unm.edu/pdfs/UC_Advisory_2010.pdf. The Board reflects the broad impact of Professor Utton's career at the UNM School of Law, as faculty, research scholar, diplomat, and chairman of the State's Interstate Stream Commission for 20 years.

A meeting of the Advisory Board was convened in November 2009 with approximately one-half of the Board members in attendance. The Center's staff reviewed on-going projects and

programs, and sought input into the future direction of the Center. We spent a significant amount of time in the Spring of 2010 pursuing recommendations from that meeting. In June 2010, we organized three working committees to provide advice to us in a more direct fashion:

Utton Center Executive Committee
Utton Center International Committee
Joe Stell Ombudsman Program Advisory Board

In FY 2010, we began communications with these groups to obtain their advice on programs and projects. We provided reports to the full advisory board. One of the Board's strong recommendations has been that the Utton Center should have a faculty member as part of its leadership structure. To that end, the Director has worked with the Dean and the Natural Resources faculty. There has not been a resolution of this issue, but through work with the Natural Resources Committee at the law school, it is hoped that a better organizational link between the Center and the law school will be developed.

Pursuit of external funding

The Utton Center/Joe Stell Ombudsman Program pursued a number of funding opportunities in FY 2010:

- U.S. Bureau of Reclamation Ecosystem Restoration Workshop (successful)
- Santa Fe County – Ombudsman Program Aamodt public meetings (successful)
- McCune – received small grant for Environmental Flows workshop
- Thaw – received small discretionary grant
- San Juan County – small grant to Ombudsman Program for Children's Water Festival
- Wick Kenney Foundation – as a result of our application, we obtained a donation to law school foundation account to support Professor Fort's research
- National Science Foundation- as part of an interdisciplinary UNM team we made a proposal on the Water, Climate and Sustainability project. We were not successful, but scored highly and are now working on re-submitting.
- Hewlett – letter of inquiry; response: “not within current funding priorities”
- Healy – proposal; response: “funding not available at this time”
- Turner-letter of inquiry; response: “we are only funding existing projects/programs”
- Department of Interior – New Mexico Water Planning Assistance Act (with N.M. Interstate Stream Commission) – pending
- McCune – Ombudsman Program proposal for mutual domestics handbook – pending

II. SIGNIFICANT PLANS FOR 2011

In the upcoming year, the Utton Center intends to use its expertise in support of state and civic activities in New Mexico, studying and developing policy recommendations for adapting the management of the State's resources to current and expected patterns of climate change, and escalating energy-water demands. This work could also profitably include collaboration with

Mexico on water resources management, particularly with regard to aspects of climate change, desalination and water quality.

A major initiative will involve creating the Utton Center/Stell Ombudsman Program permanently in state statute.

The Utton Center will continue to cooperate with the New Mexico Interstate Stream Commission, the New Mexico Water Dialogue, and other Basin participants in efforts to coordinate water-planning activities in the Middle Rio Grande Basin. This will most likely be a long-term effort.

Most of the projects and activities described above will continue throughout 2011.

Water Matters! Edition for the New Mexico Legislature – This informative primer on New Mexico water issues is in the process of being updated and distributed to the New Mexico legislature. Due to the increasing size, it will have a new look and many of the articles will be updated on-line.

Joe M Stell Ombudsman Program – The Joe M Stell Ombudsman Program of the Utton Center continues to expand its services, as funding allows, meeting its constituents' needs. Most of the projects and activities described above for this reporting year will continue throughout 2011. The Program has added the Animus Valley adjudication in the boot heel of the State to its roster. Several events are slated for the upcoming reporting year which will require significant Ombudsman Program involvement. Service of subfiles for the Lower Rio Grande will progress on a regional basis. This change will allow the Program staff to conduct meetings in communities before the state begins work in a particular area. The Navajo Settlement outreach and the domestic well phases are opening in the San Juan adjudication which will require focused outreach. The courts of the Aamodt, San Juan and Rio Gallina section of the Rio Chama adjudications anticipate conducting *inter se* proceedings. The Project is collaborating with the Centennial Science and Engineering Library on the University of New Mexico main campus to develop a "water portal" which will make mapping, historical documents, and academic professional research available on the web, thus increasing the information available to claimants for researching their water right claims.

The Program is also engaged in projects to assist populations that will one day be involved in adjudications. To this end, it is developing a water rights handbook for mutual domestic community water associations and will teach at their annual state wide conference. It participated in the San Juan Water Fair for 5th graders in FY 10 and will be seeking other such opportunities throughout the state. In addition, the Program is examining opportunities to participate in educational events such as continuing education classes, mediation programs at courts and professional groups.

To support its continued services in multiple adjudications, the Ombudsman Program will continue to work with its constituents, funding entities such as the NSR, Mellon Foundation and McCune as well as the State Legislature to identify funding needs and resources.

Water Planning projects – The Utton Center will continue to support and participate in State and Regional water planning, including developing proposals for federal assistance to New Mexico including Utton Center and Ombudsman Program activities.

Rio Grande projects – The Center will continue to represent UNM in the Middle Rio Grande Endangered Species Collaborative Program, serve on the Water Protection Advisory Board, and work with the ISC in developing initiatives to meet long range supply and demand for the Middle Rio Grande Basin.

Environmental Flows – Proceedings and recommendations are in development from our 2010 workshop. The Center will evaluate policy and statutory recommendations as appropriate.

Land and Water Connection – The policy analysis among experts regarding the nexus between land use and availability of water will be completed. The product will be a report and recommended actions. The draft report will be vetted by a group of experts at a multi-disciplinary conference in April 2011.

Federal projects – The Center is organizing a west-wide conference and analysis of federal/state/tribal collaborative processes to address endangered species issues. With funding from the U.S. Bureau of Reclamation, this conference will take place in September 2011.

International – As funding allows, the Center will continue to work with the work tables of the Border Governors Conference and the New Mexico–Chihuahua Commission. We hope to create a new International/Development staff position (a part-time, term position) to seek funding opportunities for international and other work, and collaborate on new projects with academic institutions, International Committee advisory board members, and the Universities Partnership.

Tribal – Susan Kelly and Darcy Bushnell were part of a national tribal water rights working group meeting held in Albuquerque in November 2010. The Center will work with Udall Foundation and Sandia National Labs to develop strategies for supporting tribal water rights settlements.

School of Law – The Utton Center will continue to participate fully in the Natural Resources Committee at the UNM School of Law, reviewing curriculum, making recommendations and working with students. We will help coordinate research with the law professors as requested, and mentor students. We plan to develop a regularly scheduled process for supporting the Natural Resources Journal symposium.

Appropriative Rights Model Water Code – Continue policy research initiative based on a 2007 model water code and locate an appropriate funding source for this project.

III. [PUBLICATIONS OF THE UTTON CENTER](#)

- *New Mexico Environmental Flows* booklet, handout for March 15, 2010 workshop.
- *Water Matters!*, Background on Selected Water Issues for Members of the 49th New Mexico Legislature 2nd Session - 2010.

- Updated brochures – Utton Center and Ombudsman Program.
- Aamodt Handbook.

Water Matters! will continue to be updated. Additional papers and maps are being developed for the 2011 legislative session.

IV. OUTSIDE PROFESSIONAL ACTIVITIES

Susan Kelly, Director, is an attorney and active in several professional organizations, including a member of the New Mexico State Bar, American Planning Association, American Institute of Certified Planners, American Water Resources Association, and Urban Land Institute.

Darcy S. Bushnell, Program Director, Joe M Stell Water Ombudsman Program, is an attorney and a member of the New Mexico State Bar Association.