

## **Utton Center Projects April 2009**

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 Center conducts research and engages in projects related to its mission of promoting equitable and sustainable management and utilization of transboundary resources. Transboundary projects take place at all levels – local, state, tribal, national and international. Education is the keystone to all Utton Center activities.

### **International Projects**

#### **Border Governors Water Work Table (on-going)**

The Utton Center represents Governor Richardson as part of a 10-state work table of the Border Governors' Conference that deals with water issues of mutual interest to the U.S. and Mexico. As part of its work the Center prepared a report for the State of New Mexico on critical water issues between the border states. The 10 states prepared bilingual summaries of each state's system of water administration. The New Mexico paper is on the Utton Center's website in both English and Spanish. Each state also prepared PowerPoint presentations regarding their own water issues. These can be found at [http://www.tceq.state.tx.us/compliance/harlingen\\_r15/gov\\_watertable.html](http://www.tceq.state.tx.us/compliance/harlingen_r15/gov_watertable.html). The Utton Center coordinated the development of a border length map of binational water features.

#### **New Mexico/Chihuahua Border Commission (on-going)**

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. The Water Work Table sponsored a trip, organized by the Utton Center, for New Mexico irrigators to visit the Delicias Irrigation District, a 220,000 acre district south of Ciudad Chihuahua. A PowerPoint presentation that Susan Kelly presented on this project at the 2006 Annual Fall UNM Water Forum can be viewed at [http://uttoncenter.unm.edu/international\\_projects.html](http://uttoncenter.unm.edu/international_projects.html). In October 2007, the Utton Center organized a 3-day educational visit to the Middle Rio Grande region for irrigators and government officials from Chihuahua. The Center also coordinated a meeting in Juarez, Mexico between New Mexico water officials and their counterparts from Chihuahua and Ciudad Juarez to become better informed about Mexico's plan for development of groundwater in the Mesilla Bolson just south of New Mexico near Santa Teresa.

### **National Projects**

#### **Appropriative Rights Model Water Code Project (on-going)**

On request from the New Mexico judiciary and in partnership with *Dividing the Waters*, the Utton Center proposes to organize a wide-ranging discussion of western water policy, using an already published "Model Code" as the basis for the discussion. The Utton Center will convene a small group of water experts in May 2009 to discuss the objectives of such a project and the

best way to initiate and sustain the discussion. Potential approaches include a seminar, a policy research initiative, public meetings, and a facilitated group meeting.

***Winters Centennial Conference (completed 2008)***

The Utton Center and the American Indian Law Center co-sponsored a conference June 9-12, 2008 marking the 100<sup>th</sup> anniversary of the landmark Indian water rights case *Winters v. United States*. The conference was held at the Pueblo of Santa Ana's Hyatt Tamaya Resort in Santa Ana, New Mexico and reviewed the legal and cultural history of the *Winters* decision, assessed the contemporary consequences of the decision (both nationally and internationally), and projected the impact of Indian water rights settlements into the 21st century. The conference, which had a distinguished lineup of speakers from federal and state government, Indian tribes, and leading scholars and engineering firms, drew nearly 220 participants from all over the United States, including about 70 pueblo and tribal leaders. The proceedings of the conference will be published by the UNM Press.

***Dividing the Waters Conference Collaboration (completed 2008)***

The Utton Center played a major role in helping to plan for the *Dividing the Waters* conference held in El Paso, Texas and Ciudad Juarez, Mexico in November 2008. The Center collaborated with *Dividing the Waters* both in developing the program and in planning field education activities related to U.S.-Mexico issues. *Dividing the Waters* is an organization for judges and special masters who are responsible for many of the water adjudication proceedings in the West. This project utilized the Utton Center's expertise in border affairs, and also provided an opportunity to introduce the work of the Ombudsman Program to the western states judiciary.

***Energy Water Nexus Program (completed 2007)***

The Center assisted Sandia National Laboratories in its roadmapping effort for the DOE regarding the energy water nexus: the relationship between the water demands of energy production and the energy demands of water treatment and diversion. The Center participated in planning and implementation of three regional needs assessments workshops and in the drafting of the report. For more information see <http://www.sandia.gov/energy-water/>.

***Universities Partnership for Transboundary Waters (on-going)***

The Center is included in an international consortium of universities that trains stakeholders regarding transboundary management issues.

**New Mexico Water Law & Policy**

***Joe M Stell Water Ombudsman Program (on-going)***

The Ombudsman Program is a state-wide program that provides information and procedural guidance about the adjudication of water rights to individual owners or claimants. The Program becomes involved in a particular adjudication at the invitation of the court and with the agreement of the parties to the case. The service is valuable to many individuals who become involved in a general stream adjudication but do not understand the process or its possible effect on their rights. The Program provides only information and explanation. It does not offer legal advice.

The initial phase of the project was a pilot project in the Lower Rio Grande adjudication where service of process to join remaining claimants to the adjudication began April 1, 2007. The Ombudsman Program established a helpline, an instructional video, and other materials to assist claimants in responding to the Summons. The Program contacted 8,160+ claimants. Ombudsman activities for water rights adjudications have since expanded to other parts of New Mexico, including the San Juan adjudication. The Program is expected to be a major ongoing program for the Center, expanding into other adjudication proceedings as the need arises and funding allows.

The Program was named after retired Representative Joe M. Stell as a tribute to his years of service to the legislature and his knowledge of New Mexico water issues.

### **Upstream/Downstream (on-going)**

The Utton Center assisted in a series of five workshops from 2006 through 2009 to address existing and projected deficits of Middle Rio Grande water. The workshops were sponsored by the New Mexico Water Dialogue with a grant from the McCune Foundation and in cooperation with the Interstate Stream Commission. Six representatives from three regions (Jemez y Sangre, Middle Rio Grande and Socorro/Sierra) discussed a broad range of issues. More information on the Upstream-Downstream project is at the following website: [nmwaterdialogue.org/id15.html](http://nmwaterdialogue.org/id15.html).

In an effort to keep the dialogue going, the Utton Center spearheaded an effort in 2007 to work with a smaller group of stakeholders to develop a collaborative project for the three regions. This project involves numerous water management agencies, sustainability advocates, and planners. The group is evaluating integration of some aspects of their regional plans, in order to be able to jointly implement regional strategies and assess progress. This work is essential as the Middle Rio Grande Basin contains one-half the population of the State, in both rural and urban communities, and potentially faces severe future water deficits.

### **Land and Water Connection (on-going)**

The Utton Center is a participant in a group of experts exploring the nexus between land use and availability of water. The group is planning to develop and strengthen state and local legislative policy. The Utton Center held a workshop in October, 2008 bringing together a diverse group of New Mexico citizens, practitioners, and government officials (including three state legislators) to develop a shared understanding of critical land planning and water use in the Middle Rio Grande Valley. Presentations and breakout sessions yielded an array of challenges. Initiatives identified in the workshop are already being further developed. Additional workshops are being planned which will have a similar mix of land and water planning participants. They will take the issues and policy challenges identified in the 2008 workshop as a starting point and focus on developing feasible solutions to the identified challenges.

### **New Mexico Regional Water and Waste Water Authority Statute (completed 2007)**

Through a contract with the Office of the State Engineer the Center drafted legislation to allow small water providers to join together to form a regional water authority. The purpose of this legislation is to respond to the concern of the legislature to encourage the provision of safe,

affordable and sustainable supplies of drinking water to New Mexicans living in rural areas. The legislation has not been introduced, but is available on the Utton Center's website.

**Rural Water Systems Statutory Assessment (completed December, 2005)**

This project was conducted for the State of New Mexico in collaboration with the Institute of Public Law. State statutes concerning the regulatory framework for the approximately 1,500 small water utilities in New Mexico were analyzed. The purpose of the report was to enable the Office of the State Engineer to assess whether such water systems have adequate statutory authority to manage the effect of drought conditions on the water systems and their sources of supply.

**Bosque Restoration Workshops (completed 2005)**

In 2004 the Center sponsored a one-day workshop to bring scientists together to critique bosque restoration concepts and assist scientists in reaching consensus on how to approach these projects. A second workshop was held in May 2005 to further develop guidelines to assist in a more consistent approach to Rio Grande restoration projects.

**Water Rights Transfer Model (completed 2004)**

The Center advised Sandia National Laboratory on a project to develop a systems dynamics model regarding water rights transfers in the Middle Rio Grande.

**Water Courts Analysis and Judicial Training (completed 2003)**

The Center prepared a report for the New Mexico Office of the State Engineer on the Colorado Water Court system and whether adoption of its processes might help streamline the New Mexico adjudication process. The recommendations were substantially followed by the State of New Mexico in designating water judges in each of the judicial districts. Subsequently, the Utton Center assisted in training the newly appointed Water Court judges.

**State Water Plan - Public Comment Synthesis (completed 2003)**

The Center synthesized hundreds of public comments from meetings held by the Interstate Stream Commission around the State. This analysis helped inform development of the State Water Plan.

**Association with SONREEL (on-going)**

The Center Director is the School of Law's representative on the Board of the New Mexico State Bar Section on Natural Resources, Energy and Environmental Law (SONREEL), along with a student representative. Mutual support is given for conferences, CLE's, mentoring and externship programs. SONREEL regularly contributes scholarship funds to students and helps defray expenses for student activities.

**Work Upon Request (on-going)**

The Utton Center provides information and analysis upon request of the State of New Mexico, Sandia National Laboratories and others.

## **Transboundary Preventive Diplomacy**

### **Middle Rio Grande Endangered Species Act Collaborative Program (on-going)**

The Utton Center represents the University of New Mexico on the Water Acquisition and Management Subcommittee of this program. The Program is made up of representatives of federal, state, tribal and other interest groups. The purpose is 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.

### **Model Interstate Water Compact (completed 2006)**

The Utton Center developed a Model Interstate Water Compact. The Center sponsored a workshop at Bishop's Lodge in Santa Fe in March 2005 where thirty national experts in interstate compacts gathered to give the Center input on critical issues to be included in the Model Compact. The Model Compact proposes a new institutional form to deal with water allocation and water quality, and includes issues not treated in current compacts, such as tribal water rights and the effects of drought. States interested in entering into a compact or dealing with issues not included in existing compacts could use the Model Compact in their basins. The Compact has been published in the *Natural Resources Journal* (Vol. 47, No. 1) and will be published in book form by UNM Press in 2009.

### **Reservoir Storage Modeling Scenarios (completed 2005)**

The Utton Center worked with stakeholders to create scenarios for reservoir storage. The goal was to reach consensus on several potential scenarios that would modify river operations to optimize reservoir management, leading to discussions of proposed changes in reservoir authorizations that could provide benefits to New Mexico for many years. The Utton Center prepared a report on this project entitled, "Preliminary Reservoir Storage Modeling Analysis." The information in the report is helpful as support for continued progress on these issues. The report is included in the Water Acquisition and Management Subcommittee's Long Term Plan for the Middle Rio Grande Endangered Species Act Collaborative Program.

### **Transboundary Waters Conference: Crossing Cultural Boundaries for Sustainable Solutions (completed September, 2004)**

The Utton Center convened stakeholders in water rights negotiations, including tribes and acequias, to build skills in preventive diplomacy. The purpose was to help foster communication and avoid costly litigation over shared waters. We produced a high-quality video, *Voices of the Jemez River*, and developed research papers regarding the Rio Jemez adjudication, *U.S. v. Abousleman*, to illustrate one approach to sharing of shortages negotiations. The proceedings are available on the Utton Center's website.

### **Middle Rio Grande Water Model Project (completed 2002 – 2003)**

The Center facilitated a cooperative modeling effort in conjunction with Sandia National Laboratories' development of a water model for the Middle Rio Grande water budget. The model was used in the development of the Middle Rio Grande Regional Water Plan.

### **Conference on Law, Science and Water (completed October, 2002)**

The Center convened a workshop of national experts in law, biology, hydrology, and economics to address transboundary water issues. The meeting resulted in a published conference report on approaches to address transboundary water allocation and quality problems. It also initiated the four-year process that culminated in the Model Interstate Water Compact. The proceedings are available on the Utton Center's website.

## **Education**

### **Water Matters! Primer for the New Mexico Legislature on water issues (on-going)**

This workbook on current water issues was first prepared for the New Mexico State Legislature in 2007, highlighting the many contributions to New Mexico water issues of Joe Stell, who had retired after 20 years in the New Mexico House of Representatives. The primer was updated and supplemented with new material for the 2008 Legislature, with a tribute to the work of Senator Carlos Cisneros, and again for the 2009 Legislature, with a tribute to Representative Andy Nuñez. The Utton Center expects to continue to update and expand the primer each year.

### **Practical Application of Water Law, UNM School of Law course (on-going)**

Two of the Utton Center staff, Susan Kelly and Darcy Bushnell, are co-teaching a class during the Spring 2009 semester on the practical application of water law for students who had already taken the Water Law class. The first half of the course focused on the complex nature of water rights in New Mexico and the second half focused on the adjudication of water rights process. It is expected that this course will be taught every other year.

### **Decision-Makers Field Guide Collaboration (on going)**

In 2007 the Associate Director of the Center contributed an article to New Mexico Tech's Decision-Makers Field Guide. The Associate Director was invited to help shape New Mexico Tech's 2009 Decision-Makers Field Guide on Albuquerque area natural resource issues and policy. She will moderate the 2009 conference. This is an important conference and publication, aimed at New Mexico State legislators, the Congressional delegation, and other officials in the State.

### **Annual Water Policy Conferences (on-going)**

In May 2004, the first annual University of New Mexico School of Law Utton Center Continuing Legal Education course regarding water policy was conducted in conjunction with the New Mexico State Bar. The focus of the 2005 conference was on institutional responses to drought. The 2006 CLE dealt with the relationship between water supply and energy development. In 2007 the CLE presented a number of panels on the Model Compact.

### **Development of a Complete Legislative History of Rio Grande Reservoirs (completed 2007)**

Working cooperatively with the *Natural Resources Journal* staff, this project updated work done by Professor Al Utton in 1979 and expanded it to address other historical/legal issues of importance to New Mexico's reservoirs. A symposium on these issues was held April 2006, which examined legal and operational issues to provide a basis for evaluating water management

options. The Summer 2007 edition of the Natural Resources Journal (Vol. 47, No. 3) is devoted to these legal issues.

**Rocky Mountain Mineral Law Foundation (on-going)**

The Utton Center was active in helping to organize the biannual law teachers' conference held June 2-4, 2005, in Santa Fe. The Center organized a field trip to the Jemez Valley, with stops at Bandelier National Monument, the Valles Caldera, Zia Pueblo and Santa Ana Pueblo. This meeting brought over 80 law professors to Santa Fe to learn about Indian water rights issues as well as other resource development issues.

**Monograph of Albert E. Utton (on-going)**

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

**Media Workshop (completed April, 2004)**

The Center held a one-day workshop in cooperation with the New Mexico Press Association to educate the media regarding water issues. The purpose was to provide basic information and terminology to assist print and electronic journalists in accurate reporting on water issues.

**Speaker Series (completed Fall, 2003)**

Held at the law school, this series included guest lecturers on international, national and State of New Mexico water issues.

**International Water Law Classes (completed Spring 2004)**

Marilyn O'Leary developed curriculum for and taught an International Water Law class at the University of New Mexico School of Law that included tribal water rights, acequias, and U.S.-Mexico border issues. She also co-taught a multidisciplinary class titled "The Culture of Water."

**Newsletter/Website (on-going)**

The Utton Center produced a semi-annual newsletter, the Utton Center Report, which has been distributed internationally. The Utton Center contributed a two page section to UNM Law, the University of New Mexico School of Law's alumni magazine, which was published three times a year. The Utton Center also maintains a website at <http://uttoncenter.unm.edu>.