

# **MIDDLE RIO GRANDE WATER ASSEMBLY**

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## **WHAT DO THEY KNOW (AND BELIEVE) ABOUT WATER POLICY?**

**FINDINGS FROM A 2008 SURVEY OF CANDIDATES**

**FOR THE NEW MEXICO LEGISLATURE**

**IN THE MIDDLE RIO GRANDE REGION**

**Prepared for the Middle Rio Grande Water Assembly**

**by**

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## Project Purposes

Since it was founded in 1997, the Middle Rio Grande Water Assembly has been responsible, along with the Mid-Region Council of Governments (MRCOG), for the development of and public involvement in the Middle Rio Grande (MRG) Regional Water Plan (RWP). That Plan was accepted in 2004 by all MRCOG member local governments in the three-county (Sandoval, Bernalillo and Valencia) region, and on behalf of the State by the New Mexico Interstate Stream Commission. The Water Assembly’s fundamental interest now is in seeing that water policies are put in place in New Mexico to achieve sustainable management and a fair and just allocation of the region's water resources, in accord with the mission of the plan: to balance water use with renewable supply. The Assembly sees this as one of the most serious concerns for the State’s long term future, and the role of the Legislature is key.

The project’s first purpose is to help the Assembly, and voters in the upcoming election, understand prospective legislators’ level of knowledge and positions on critical issues relating to this concern. Additionally, the Assembly is interested in assessing which issues have salience and may be ready for legislative action, and identifying potential policy “champions” who may be willing to sponsor or help move legislation. A broader goal is to inform and educate all candidates about critical water issues, the importance of water planning, and the MRG Regional Water Plan. (This goal doesn’t depend on responses to the questionnaire, as long as candidates receive, read, and consider the issues it raises.) Finally, the Assembly intends to publish and disseminate the findings in this report, and to use them in our efforts to implement the RWP, a principal mission of the Water Assembly.

## Method and Characteristics of the Population and Respondents Surveyed

Through an iterative process between the contractor and the WA’s Executive Committee, a thirteen-item questionnaire was developed and approved in May-June 2008. Though some items were applicable statewide, the primary focus was on the MRG region and elements of its plan, and it was decided to limit requests for response to candidates for seats in the NM House of Representatives and Senate whose districts fall partly or fully within the region. On June 21, the questionnaire was mailed to 70 candidates (incumbents, challengers, and contenders for open seats) in 31 House and 19 Senate Districts. Of these 50 seats, 29 were uncontested.

Although the deadline for receiving responses was extended from July 25 to August 8, and both email and telephone reminders were used, the response rate was lower than expected – 27%. Although it is not possible to discern the causes, examining the pattern of responses suggests that incumbents who are unopposed may have felt little incentive to participate, while those who face opposition and challengers were more likely to do so. The differences are shown in the following table. Since more than half the seats were uncontested, this could have affected the response rate.

<b>Respondent Characteristics</b>	House D	House R	Senate D	Senate R	Total
Incumbents responding					
Opposed	2	2	0	2	6
Unopposed	0	1	2	0	3
Challengers responding	3	1 (no incumbent)	3	1	8
Unopposed for Open seat	0	0	1	1	2

## Frequency Distribution of Responses to the Questions

The first ten questions are linked to MRG RWP recommendations. (The last three address the candidates' knowledge and attitude toward the water planning process itself.) Questions 1-10 ask how candidates, as legislators, would address each problem presented. Respondents were asked to circle only **one** response for questions 1-5, but some ignored this instruction. It was also possible to choose "other alternative" and to describe that choice, as well as to use the "comment" space to explain their choices. **Appendix A**, Legislative Candidate Questionnaire Responses, presents each candidate's responses, including "other alternatives" and comments (some edited for length). Following is an abbreviated list of the questions and a summary showing the frequency distribution of responses to the choices offered. (The entire questionnaire is reproduced in **Appendix B**.)

1. RWP Recommendation R2-11 – **Eminent Domain** – Which of the following alternatives comes closest to your position on legislation regarding the condemnation of water rights?

Q. 1 – Eminent Domain – Alternatives	Number choosing (n=16)
a. Legislation that prevents local jurisdictions from condemning water rights to support growth of urban uses?	5
b. Legislation that limits condemnation of water rights to clearly defined public purposes, and requires a public referendum showing the source of the rights, the proposed use, and the cost to taxpayers prior to initiating condemnation proceedings?	9 (+1 – see comment)#
c. Taking no legislative action on eminent domain?	0.5##
d. Legislation explicitly allowing local jurisdictions to condemn water rights to support urban growth?	0.5##
e. Other alternative:	0

# Sen. Snyder did not choose any alternative, but her comment seems clearly to support this choice.

## Mr. Vassilopoulos chose both alternative c and d. Two choices for an item are coded as 0.5 point each.

2. RWP Recommendation R1-1 – **Domestic Wells** – Position on limiting issuance of permits for new domestic wells. Would you:

Q. 2 – Domestic Wells – Alternatives	Number choosing (n=15)
a. Support legislation that prohibits domestic well drilling for new housing developments anywhere in the State without retirement of existing rights?	4
b. Support legislation that prohibits domestic well drilling without a water right in Critical Management Areas (including much of the Albuquerque reach of the Rio Grande)?	5.5
c. Support legislation that requires the State Engineer to purchase and retire uses in bulk to offset his new domestic well authorizations?	2
d. Oppose any change in the current domestic well statute?	3.5
e. Other alternative:	0

3. RWP Recommendation R2-8 – **RWP Update and Monitoring** – Candidates’ positions on State support of regional water planning.

Q. 3 – RWP Update – Alternatives	Number choosing (n=15)
a. Support legislation that provides substantial multi-year funding to regional water planning entities both for updating the plans and for monitoring and evaluating their implementation?	13
b. Support legislation providing one-time funding for a single update to each RWP?	0
c. Oppose additional funding for regional water planning activities?	0
d. Other alternative	2

4. RWP Recommendation R8-2 – **Area of Origin Protection** measures to inhibit the transfer of water rights from rural communities.

Q. 4 – Area of Origin Protection – Alternatives	Number choosing (n=16)
a. Support legislation that prohibits the transfer of water over long distances from its area of origin?	8
b. Support legislation to require “transfer to” parties to compensate “transfer from” communities for the environmental and economic impacts of the loss of their water?	1.5
c. Support legislation that would encourage market transfers of water rights regardless of distance or consideration of economic, environmental, social, or cultural effects?	4
d. Oppose legislating on this issue?	0.5
e. Other alternative:	2

5. RWP Recommendation R2-1 – **Adjudication** – position on legislation to instruct the OSE to act promptly to adjudicate water right claims in the MRG and to provide funding to do so?

Q. 5 – Adjudication – Alternatives	Number choosing (n=14)
a. Strongly support (5)	9
b. Support (4)	5
c. Neither support nor oppose (3)	0
d. Oppose (2)	0
e. Strongly oppose (1)	0
f. Other alternative (not used in calculating mean/median score)	[2]
→ Mean / Median	4.6 / 5

6-8. RWP Recommendation R2-5 and §10.4 (Public Welfare) – **Post-Adjudication Governance**  
*These three questions asked respondents to rate their support or opposition to a number of proposals for change in the institutions for governing water resources.*

6. A constitutional amendment to change New Mexico’s requirement to administer water and water rights according to first use priority, by allowing the legislature to set priorities among “beneficial uses.”
7. Legislation recognizing “in-stream” uses of water as beneficial uses for the purpose of allocating water rights.
8. Legislation instructing the State Engineer to address “public welfare” as expressed in a given region’s RWP in any decision to approve or deny an application for a water right transfer.

Q. 6-8 – Post-Adjudication Governance – Alternatives	Q. 6 (n=16)	Q. 7 (n=17)	Q. 8 (n=17)
Strongly support (5)	3	5	4
Support (4)	2	3	4
Neither support nor oppose (3)	4	3	4
Oppose (2)	1	1	5
Strongly oppose (1)	6	5	0
→ Mean / Median	2.7 / 3	3.4 / 3	3.4 / 3

9-10. *These questions relate to the authority of the State Engineer over matters relating to growth and development.*

9. RWP Recommendation R2-12 – **Linking Water to Land Use** – Legislation that would prohibit counties from approving subdivisions unless the developers have demonstrated to the State Engineer that there is an adequate water supply?
10. RWP Recommendation R8-3 – **Undeclared Water** – Legislation granting the OSE jurisdiction over all waters, regardless of their depth or quality?

Q. 9-10 – OSE Authority – Alternatives	Q. 9 (n=17)	Q. 10 (n=17)
Strongly support (5)	7	7
Support (4)	3	0
Neither support nor oppose (3)	4	3
Oppose (2)	1	3
Strongly oppose (1)	2	4
→ Mean / Median	3.8 / 4	3.2 / 3

11-13. The final questions asked the candidates to assess their knowledge, involvement in, and attitude toward the regional and state water planning process itself.

11. How familiar would you say you were with the content of the Middle Rio Grande Regional Water Plan before receiving this questionnaire?

12. How involved would you say you have been in the process of developing the Middle Rio Grande Regional Water Plan?

13. How do you view the importance of ongoing regional and state water planning to the administration of water resources in New Mexico?

Q. 11-13 – Water Planning Process – Alternatives	Q. 11 (n=18)	Q. 12 (n=18)	Q. 13 (n=18)
Very knowledgeable / active participant / important (5)	2	1	14
Quite knowledgeable / involved / important (4)	4	2	4
More than slightly aware / involved / important (3)	4	2	0
Slightly aware / involved / important (2)	6	5	0
Not at all aware / involved / important (1)	2	8	0
→ Mean / Median	2.9 / 3	1.9 / 2	4.8 / 5

### Summary Findings and Conclusions

Because of the small sample size and self-selection of the respondents, no statistical conclusions can be drawn from the data presented here. However, it may be possible to draw some inferences from examination of the individual responses in **Appendix A**. It is likely that readers will notice associations between a candidate’s policy position on an issue and such variables as his or her party or demographic, economic, and social characteristics of the candidate’s district. These observations are beyond the scope of this report, and left up to the reader to interpret.

Questions 5 through 13 asked for a rating on a scale of 1 to 5, making it possible to calculate mean (average) and median scores for those items. Again, though the ratings are not statistically significant, large deviations from the midpoint (3) may indicate generalized support for or opposition to a policy proposal. One caution: in many cases it is important to look at the distribution of responses. Responses clustered near both the top and the bottom of the spectrum suggest fundamental disagreements (as in Question 10 on giving the OSE authority over deep, brackish water), though the average and median scores are close to “3.”

On a final note, perhaps one reason for the low response rate was the difficulty candidates may have had in knowing what the Water Assembly considered to be the “correct” responses. Unlike many advocacy groups, the WA’s approach to asking questions was as neutral and unbiased as we could make it. (Please read the “setup” information preceding each question at **Appendix B**.) Only in a few cases did a candidate challenge the premise of a question. (The principal example is a single candidate’s assertion on Q. 3 that mention of “climate changes” affecting water supply constituted “not science; it is speaking PC.” This does suggest that even more care could be used in framing issues, such as including documentation for potentially contestable factual statements.

**APPENDIX A – CANDIDATE RESPONSES (INSERT HERE)**

**This is the Excel file MRG leg candidates 08 at the page tabbed “Responses.”**

**It should already be properly formatted as “APPENDIX A” and numbered Page A-1 through A-3.**

**APPENDIX B**  
**MIDDLE RIO GRANDE WATER ASSEMBLY CANDIDATE QUESTIONNAIRE**

**Name:**

**House / Senate District #**

**The Questions:** The first ten questions are linked to MRG RWP recommendations. They ask how you as a legislator intend to address key aspects of each problem presented. For each question please circle only **one** response. On some questions, if you don't like any of the options offered, you may briefly describe your choice at "other alternative." You may also use the "comment" space to explain your choice. (Comments may be edited for length in our report.)

1. RWP Recommendation R2-11 – **Eminent Domain** – There is a dwindling supply of willing sellers of senior water rights to meet the growth of urban or industrial demands for water. Some have advocated that urban jurisdictions use eminent domain condemnation to force the sale of water rights by unwilling sellers. Others promote a free market approach with prices determined purely by supply and demand among willing and knowledgeable sellers and buyers. Still others would discourage water right transactions that might have environmental or social costs. Which of the following alternatives comes closest to your position on legislation regarding the condemnation of water rights? Would you favor:

- f. Legislation that prevents local jurisdictions from condemning water rights to support growth of urban uses?
- g. Legislation that limits condemnation of water rights to clearly defined public purposes, and requires a public referendum showing the source of the rights, the proposed use, and the cost to taxpayers prior to initiating condemnation proceedings?
- h. Taking no legislative action on eminent domain?
- i. Legislation explicitly allowing local jurisdictions to condemn water rights to support urban growth?
- j. Other alternative:

Comment:

2. RWP Recommendation R1-1 – **Domestic Wells** – In most cases, new uses of water require retirement of old uses so that the State's total use does not increase. However, there is an exception. State law *requires* the State Engineer to issue permits for new *domestic wells* (averaging about 7000 per year) without any offsetting reduction in old uses. In some jurisdictions, large developments of new homes are authorized to drill many shared domestic wells in order to avoid the need to purchase and retire water rights. Would you:

- a. Support legislation that prohibits domestic well drilling for new housing developments anywhere in the State without retirement of existing rights?
- b. Support legislation that prohibits domestic well drilling without a water right in Critical Management Areas (including much of the Albuquerque reach of the Rio Grande)?
- c. Support legislation that requires the State Engineer to purchase and retire uses in bulk to offset his new domestic well authorizations?
- d. Oppose any change in the current domestic well statute?



**APPENDIX B**  
**CANDIDATE QUESTIONNAIRE (CONTINUED)**

e. Other alternative:

Comment:

3. RWP Recommendation R2-8 – **RWP Update and Monitoring** - With some State funding, the sixteen Regional Water Plans required by State law have been developed and accepted over the course of the past decade. Since the MRG RWP's acceptance, many circumstances have changed. There are new endangered species requirements. Climate changes are expected to include a reduced water supply. Urban demands have increased. Increasing energy demands will require additional water. In the MRG we have discovered substantial incompatibilities between our plan and those of adjacent regions. (The 2003 State Water Plan does little to resolve the regional plans' inconsistencies.) Growth continues to be permitted based on *promises* to acquire water, so that the deficit may be far greater than imagined. Yet, since the ISC "accepted" the RWPs, State support of ongoing planning has been virtually non-existent. Planners argue that funding is needed to update regional water plans to take this new knowledge into account, and to provide the capacity to monitor their implementation, In light of this, would you:

- a. Support legislation that provides substantial multi-year funding to regional water planning entities both for updating the plans and for monitoring and evaluating their implementation?
- b. Support legislation providing one-time funding for a single update to each RWP?
- c. Oppose additional funding for regional water planning activities?
- d. Other alternative:

Comment:

4. RWP Recommendation R8-2 – **Area of Origin Protection** - Claims are often made that New Mexico has plenty of water to supply urban needs if transferred from agriculture. Sources of such water may be located far from new demands and such transfers may affect rural communities adversely. Some have suggested that New Mexico should adopt a policy encouraging the transfer of water rights and moving water across long distances from rural areas to support increasing demands for urban and suburban water uses. Examples include moving water from southern New Mexico to El Paso and moving water from northern New Mexico or Sierra County to the MRG. Others have expressed concerns for the impact of such transfers on the economies and communities of the exporting rural areas, as well as about relying on imported water to supply additional demands for future populations. "Area of origin protection" measures seek to inhibit the transfer of water rights from rural communities. Would you:

- a. Support legislation that prohibits the transfer of water over long distances from its area of origin?
- b. Support legislation to require "transfer to" parties to compensate "transfer from" communities for the environmental and economic impacts of the loss of their water?
- c. Support legislation that would encourage market transfers of water rights regardless of distance or consideration of economic, environmental, social, or cultural effects?

**APPENDIX B**  
**CANDIDATE QUESTIONNAIRE (CONTINUED)**

- d. Oppose legislating on this issue?
- e. Other alternative:

Comment:

5. RWP Recommendation R2-1 – **Adjudication** – Under New Mexico’s Constitution, administering water resources requires, among other things, knowing who owns how much of a right to the use of water with what priority in time. Ownership of water rights is undetermined in many parts of the State, and yet “marketing” goes on. Adjudication, the process the state has adopted to resolve the ambiguity, has been extraordinarily protracted and expensive in many areas of the State (often taking decades). Costs of undertaking an adjudication of the magnitude and complexity of the MRG region would be high, and the OSE has not chosen to make it a priority. Moreover, the outcome might involve substantial economic dislocation, since most rights held by agricultural users are senior to those held by urban interests. Thus there are substantial incentives to some stakeholders not to resolve the ambiguity. Weighing the potential economic costs and benefits of an adjudication of claims in the MRG, and the subsequent administration of water rights according to the law, what would be your position on legislation to instruct the OSE to act promptly to adjudicate water right claims in the MRG and to provide funding to do so?

- a. strongly support
- b. support
- c. neither support nor oppose
- d. oppose
- e. strongly oppose
- f. other alternative:

Comment:

6-8. RWP Recommendation R2-5 and §10.4 (Public Welfare) – **Post-Adjudication Governance** – Once adjudication has been accomplished, the State Engineer will be able to administer water according to the New Mexico constitutional mandate. That means each year those who hold the most senior rights to a “beneficial use” will get their full allotment of water, while those holding relatively junior rights (newer users) will get what water is left over, perhaps zero. Generally, but with numerous exceptions, agricultural surface water uses are senior and urban groundwater uses are junior. River and riparian uses have no rights. Some advocates for modifying this “first in time, first in right” system to take account of changing public values and economic realities believe that the NM Constitution should be amended to allow other criteria to be used in establishing “priority.” Others favor new legislation to allow “in-stream flows” to be considered a beneficial use. Still others think it would be sufficient if the State Engineer were required to consider the “public welfare” as defined in RWPs in his decisions to approve or deny

**APPENDIX B**  
**CANDIDATE QUESTIONNAIRE (CONTINUED)**

applications to transfer water rights. Finally, some believe that it is best not to tamper with rules that have been in place for 100 years.

The following questions ask you to rate your degree of support or opposition to a number of proposals for change in the institutions for governing this scarce resource. On a scale of 1 to 5, where 1 means “strongly oppose,” 5 means “strongly support,” and 3 means “neither support nor oppose,” please indicate your assessment of each of the following policy proposals.

6. A constitutional amendment to change New Mexico’s requirement to administer water and water rights according to first use priority, by allowing the legislature to set priorities among “beneficial uses.” Rating (1-5): \_\_\_\_
7. Legislation recognizing “in-stream” uses of water as beneficial uses for the purpose of allocating water rights. Rating (1-5): \_\_\_\_
8. Legislation instructing the State Engineer to address “public welfare” as expressed in a given region’s Regional Water Plan in any decision to approve or deny an application for a water right transfer. Rating (1-5): \_\_\_\_
9. RWP Recommendation R2-12 – **Linking Water to Land Use** – Under current law, counties may approve a new development even when the State Engineer determines that there is not sufficient water to support it. Using the same 1 to 5 scale (1 = “strongly oppose,” 5 = “strongly support,” and 3 = “neither support nor oppose”), would you support or oppose legislation that would prohibit counties from approving subdivisions unless the developers have demonstrated to the State Engineer that there is an adequate water supply? Rating (1-5): \_\_\_\_
10. RWP Recommendation R8-3 – **Undeclared Water** – Currently, the State Engineer lacks authority over drilling deep wells (>2,500 feet) for brackish water. Because of concerns that pumping deep saline water can affect aquifer quality above it, many argue that the authority of the State Engineer should be broadened. Using the same 1 to 5 scale (1 = “strongly oppose,” 5 = “strongly support,” and 3 = “neither support nor oppose”), would you support or oppose granting the OSE jurisdiction over all waters, regardless of their depth or quality? Rating (1-5): \_\_\_\_

The final questions relate to the water planning process.

11. Using a scale of 1 to 5, where 1 = “not at all aware” and 5 = “very knowledgeable,” how familiar would you say you were with the content of the Middle Rio Grande Regional Water Plan before receiving this questionnaire? \_\_\_\_\_
12. Using a scale of 1 to 5, where 1 = “not at all involved” and 5 = “active participant throughout the process,” how involved would you say you have been in the process of developing the Middle Rio Grande Regional Water Plan? \_\_\_\_\_
13. Using a scale of 1 to 5, where 1 = “not at all important” and 5 = “very important,” how do you view the importance of ongoing regional and state water planning to the administration of water resources in New Mexico? \_\_\_\_\_

This completes our questionnaire. Feel free to add your own comments. Please follow the instructions in the cover letter to return the questionnaire to the Water Assembly. Our report should be completed by the end of August. Thank you for your participation.

## ADDENDUM

### (Continuation of “comment” responses)

#### Snyder (Senate District 15)

*[1-5 No alternatives selected; comments edited for length.]*

1- I believe in a free market with a willing seller and a willing buyer, [but also] in the principle of eminent domain for the public good. With respect to water neither of these should be unconstrained. The Subdivision Act requires each County to include a water component; perhaps municipalities should be subject to something similar. [Use of eminent domain] power must not conflict with statutes governing the transfer of a permit: public welfare, conservation, and impairment. The focus of the question is the ability of ABCWUA to go anywhere, up and down the Rio Grande, and file eminent domain to gain access to water. The giant maw of this robust Robo-entity must not be allowed to function without constraint.

2- I support the intent of the original domestic well statute that enables a family to gain access to water for personal use. Such wells and permits do not use a lot of water. [In t]he recent Mimbres decision the judge concluded that the domestic well statute violated the constitutional prior appropriation clause, and he is correct. [However] the OSE cannot handle the influx of thousands of applications [for permits under the prior appropriation system]. In remote areas it is unreasonable not to grant those permits, even in critical management areas. In the Estancia Basin they aren't a big deal. In the Rio Grande valley, where there are compact delivery issues, tens of thousands of domestic wells do impact the ability of the State to meet its obligations. The interests of your district constituents are met by this ruling, but it isn't a good statewide decision.

3- Providing funding is appropriate; it gives the legislature and the OSE a good picture, largely from grassroots folks, about the perspective of the region, and it doesn't cost a lot of money. Fund it with limitations and one time appropriations so results can be assessed. Regions must be required to have membership from community water systems.

4- We don't need an area of origin statute; existing water law requires consideration of public welfare-- enough said, in my opinion.

5- I support prompt adjudication of water rights. There are incoit [sic] rights, sitting unused. The OSE should pursue those aggressively. Having said that, to think that the market isn't providing its own form of adjudication is myopic; real water will be used, fake rights won't.

6- The market determines priority. That is not inappropriate given that water rights permits are personal property. Constitutional language provides equity and equal protection.

7- While 'in stream flow' is a good thing, the ISC has the authority to buy water rights and place them to that use. Private water rights owners should not be required to serve this need.

8- A hearing examiner's decision [on a water right transfer application must consider] the content of a regional plan and public welfare. [But whose] public welfare[?] Water belongs to the people of the state, not necessarily a region[;] in cases involving export of water from a basin into another, the impact on the losing basin must be considered, as well as the options available to the gaining basin.

9- Current statute requires OSE to provide an opinion on a developer's proposal to provide water to a new subdivision that satisfies county requirements. For good or bad, those decisions should be left to local elected officials, not the OSE.

10- While the OSE lacks [such] authority, the action is still subject to water law concerning impairment. Such an action cannot impair an existing right, and if it doesn't, who cares?