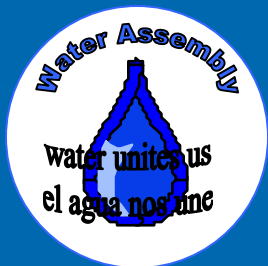
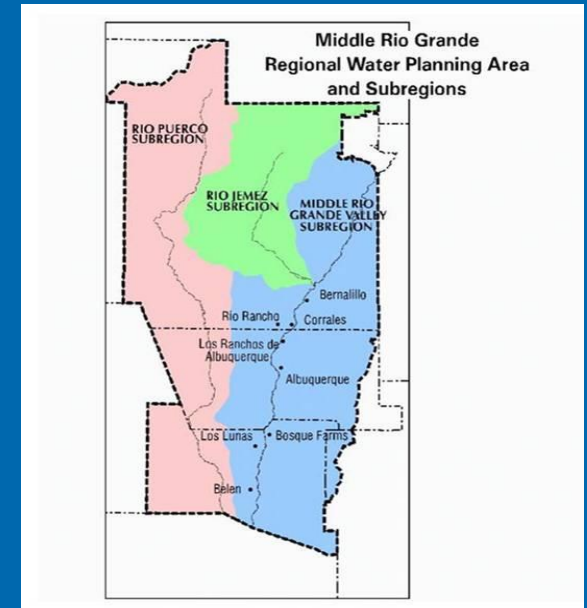


Middle Rio Grande Regional Water Plan

Presentation for the New Mexico Interstate Stream Commission

August 17, 2004



www.WaterAssembly.org
867-3889



Cuba Soil and Water
Conservation District
289-3950



www.MRCOG-NM.gov
247-1750

We Are Here ...

To Ask the Commission's Acceptance
of the
Middle Rio Grande
Regional Water Plan

and

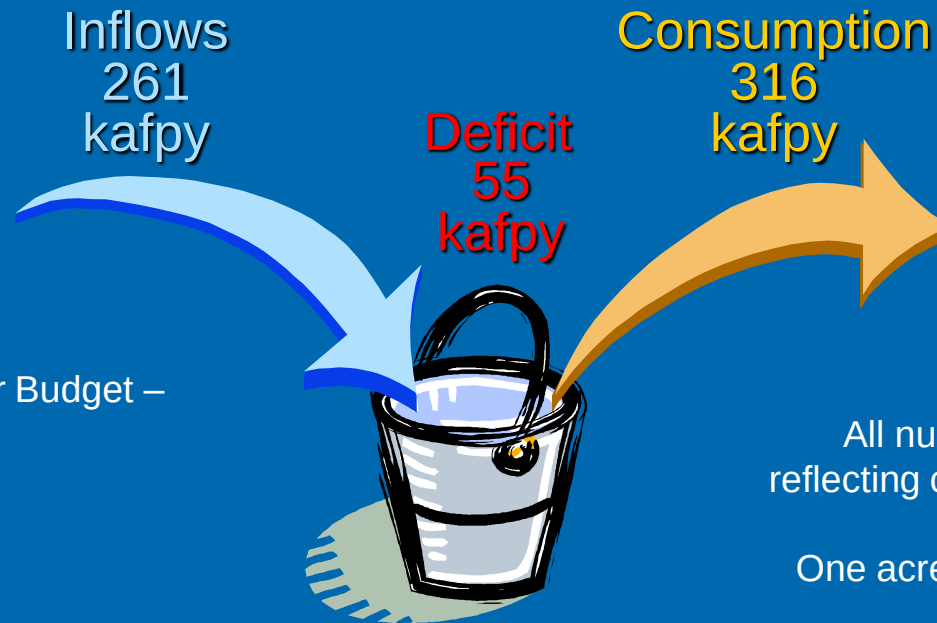
To Summarize the Next Steps –
Implementation Requirements

Selected Regional Attributes – all numbers approximate

- Three Counties; Three Watersheds
- 12 Tribes
- Over 18 Local Government Entities
- Over 130 Public Water Supply Providers
- Over 30 Acequias
- 40% of the State's Population, Predicted Doubling in 50 Years
- 60% Component of the State's Economy
- Substantial Agricultural Interests
- Habitat for Several Endangered and Threatened Species
- More Unadjudicated Paper Water than Wet Water
- Heavily Studied Hydrology - Mainstem
- Seriously Drawn Down Aquifer – In Critical Management Areas
- A Leaky Transmission Line for Downstream Uses – The Riverbed)
- We're Thirsty and We Have Thirsty Neighbors

The Regional Water Budget

Ongoing Deficit Spending of Water – Last Quarter of the 20th Century



Source:
Middle Rio Grande Water Budget –
Averages for 1972-1997,
October 1999

Note:
o EB Evaporation and
Deliveries are Excluded from
Inflows and from Consumptions

All numeric values are approximate,
reflecting currently available information,
in units of acre feet per year.
One acre foot is about 326,000 gallons

Planning Mission: Balance Budget (subject to constraints...)

The Overall Need

- To find a broadly acceptable solution to a difficult and complex problem by an open, inclusive, participatory process
- The problem is continuing to have sufficient affordable clean water to meet human and environmental needs, while maintaining all of our desired New Mexican lifestyles.

Planning Timeline

A Long Process; Substantial Public and Technical Involvement

- 1980s Lawsuits and Legislation
- 1992 – 94 Regional Water Planning Handbook
- 1997 Water Assembly (OSE-->UNM-->Non-Profit)
- 1998 – 99 Water Resources Board (MRCOG)
- 1998 WA / MRCOG Partnership
- 1999 Water Budget
- 1998 – 03 Developing the Plan
- 2001 Subregional Steering Committees (RPyRJ)
- 2003 – 04 Accepting the Plan
 - General Public, Water Assembly,*
 - Water Resources Board, Local Governments,*
 - Interstate Stream Commission*
- 2004 – ... Implementing and Updating the Plan

Regional Plan Contents – per handbook guidance

Acceptance Resolutions

0. Summaries
1. Introduction
2. Middle Rio Grande Region
3. Strategy Chosen to Maximize Public Participation
4. Public Participation in the Planning Process
5. Current Legal Issues
6. Water Resources Assessment for the Planning Region
7. Current Water Demand and No-Action Future Water Demand
8. Water Plan Alternative Actions and Evaluation
9. Scenarios of Alternative Actions
10. Recommendations
11. Implementation
12. Rio Puerco and Rio Jemez Subregional Plan

Appendices

Supporting Documents

Archival Materials

Key Planning Considerations

- Recognize that the Plan Represents a Snapshot in Time
 - *Everything is Evolving*
 - *Data Refinements, Responses to Actions Taken*
- Draw Mainstem Recommendations from a “Preferred” Scenario
 - *No “Single Silver Bullet”*
 - *No “One Size Fits All”*
- Focus on Critical Parameters, without Ignoring Others
 - *Wet Water*
 - *Longer Term Averages*
 - *Consumptive Uses*
 - *Broader Pan-Regional Context*
- Mutually Decide to Allow for Separate Subregional Solutions
 - *Rio Puerco and Rio Jemez - Chapter 12*
 - *Distinct Mission, Goals, Objectives, and Action Recommendations*
- Obtain Wide Acceptance of the Water Plan
 - *General Public, Water Assembly, Steering Committees*
 - *Water Resources Board, Governing Bodies*

Balancing the Budget

Principle Policies (p.12, ¶7.5)

➤ ***Principle Policy I: Ground Water***

We encourage adoption and implementation of policies that conserve use of ground water in the Middle Rio Grande subregion to create a reserve to deal with drought, prevent subsidence and mitigate other negative effects of ground-water depletion.

➤ ***Principle Policy II: Surface Water***

We encourage adoption and implementation of policies that conserve use of surface water. Any additional water that is available should be stored upstream and/or returned to the aquifer using appropriate technology. This principle is to reduce evaporative losses.

➤ ***Principle Policy III: Designing Implementation Mechanisms***

We encourage jurisdictions in the region to work together to design implementation mechanisms for the plan that are effective, fair, wise, equitable, legal and appropriate to local community concerns.

Mainstem Plan Attributes – A Shopping List

- Mission (*p.17, ¶1.3.2*): “Balance Water Use with Renewable Supply”
 - Considering Environment, Rights, Authorities, Cultures, Traditions, etc.
- Forty Three Recommendations (*p.39 ff, ¶10.2*) - Arranged in:
- Nine Recommendation Categories:
 1. Urban and Rural Conservation Activities
 2. Water Resources Planning and Management
 3. Water Monitoring and Measurement
 4. Agriculture
 5. Water Quality
 6. Bosque and Other Riparian Habitats
 7. Water Storage to Reduce Evaporative Losses
 8. Desalination
 9. Public Education
- Statement of Public Welfare (*p.33 ff, ¶10.4*)
- Implementation Strategy – Local/Regional Plans of Action (*¶11.4*)

Rio Puerco & Rio Jemez Subregional Plan

- Planning Mission (p.6, ¶12.3.2) – To Promote:
 - Sustainable Balance between Water Availability and Use
 - Healthy Watersheds
 - Retention of a Rural Lifestyle
- Top Alternatives (p.7, ¶12.3.4):
 - Protect Water Rights
 - Manage and Restore our Watersheds
 - Manage Growth and Land Use Together
- Separate Statement of Public Welfare (p.48, ¶12.12.1)
- Next Steps (p.50 ff, ¶12.13):
 - Supplement Current Information/Data
 - Establish Additional Planning Components
 - Coordinate with Mainstem Planning

Implementation

- Action and Activities are Now Needed -
by individual, local, state, tribal and federal entities
 - Implementation Team (Technical Assistance):
WRB, WA, MRCOG, CS&WCD, SCs, others
 - Develop/Implement Local and Regional Plans of Action
 - Regional Water Monitoring and Associated Water Database
 - Public Steps: Educational, Voluntary, Incentive, Regulatory, Enforcement
 - Subregional Technical Data and Analysis
 - Interregional Coordination
 - Continuing Water Plan Updates
 - Additional Requirements:
 - Strong Federal, State and ISC Support
 - Substantial External Funding in All Areas

List of Unresolved Issues (1 of 2)

Primarily Local Issues

- Inter-Jurisdictional Coordination of Actions (intra- and multi-level)
- Public/Political Support for Making Difficult Choices/Decisions
- Economic and Wet Water Impacts from Water Rights Transfers
- Export/import to/from Other Regions
- Shortage of Local Resources to Implement Needed Actions

List of Unresolved Issues (2 of 2)

Primarily State and/or Federal Issues

- Means to Resolve Impending Rio Grande Compact Shortfall
- ESA Requirements (e.g., silvery minnow, willow flycatcher)
- Ambiguity of Native and Non-Native Americans' Water Rights
- Lack of Completed Adjudications
- Fundamental Policies such as Domestic Wells, Use It/Lose It
- Appropriate Methods/Constraints for Transferring Water Rights
- Authorization for Albuquerque Drinking Water Project
- Funding Mechanisms for Local Plans and Projects

Native American Participation

Summary

- The MRG regional water planners regularly invited the pueblos to participate in the water planning process.
- We repeatedly offered to give water planning presentations to each of the pueblo governors and/or to their tribal councils.
- Each sovereign pueblo participated to the extent that it determined to be appropriate.
- We would have preferred substantially more Native American participation.
- The Section of the MRG Regional Water Plan entitled "Tribal Participation" briefly describes the participation (RWP page 4-3).

In Summary, The Plan's Challenge:

For Each Person, For Each Entity, For Each Level

- Think Cooperatively
 - Beyond Boundaries of Jurisdiction
- Think Broadly
 - Beyond Duration of Term of Office
- Think Wet Water
 - Beyond Own Special Interests
 - Beyond Our Current Generation

Backup Slides
Start Here

Native American Participation

Summary – Details Follow

- The MRG regional water planners regularly invited the pueblos to participate in the water planning process.
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- Each sovereign pueblo participated to the extent that it determined to be appropriate.
- We would have preferred substantially more Native American participation.
- The Section of the MRG Regional Water Plan entitled "Tribal Participation" briefly describes the participation (RWP page 4-3).

Native American Participation

Selected Opportunities

- We sent invitations to the pueblos in the region for all of the annual Water Assemblies.
- We repeatedly offered to give water planning presentations to each of the pueblo governors and/or to their tribal councils.
- Bylaws of the MRGOG Water Resources Board (WRB) specifically identify tribal governments as eligible members.
- For most of the planning years, the Water Assembly had a Bylaw Constituency Group for Native American interests.

Native American Participation

Selected Participations

- An invited speaker presented “The Pueblo Perspective” at each of our eight annual Water Assemblies.
- Zia Pueblo participated actively in the subregional planning.
- Jemez Pueblo participated actively in the subregional planning.
- Isleta Pueblo attended early Water Resources Board meetings.
- We met with and gave a formal presentation to Sandia Pueblo.
- The Six Southern Pueblo Water Coalition spoke to the Assembly.

Native American Participation

Additional Items

- The Interstate Stream Commission tried and failed to negotiate a \$50,000 participation contract with the Six Southern Pueblos.
- Representatives from tribal governments have attended Water Resources Board and Action Committee meetings intermittently as “observers” but not as participants.
- Tribal governments have orally indicated an interest in the Regional Water Plan but not in terms of participation, rather in terms of the allocation of water rights during periods of scarcity.
- The MRCOG Executive Director has initiated several one-on-one meetings with individual Pueblo Governors to discuss various regional issues including water resources.

Native American Participation

RWP Text (slide 1 of 2)

- Tribal entities were invited to participate in both Water Assembly activities and to be members of the Water Resources Board. Water Assembly volunteers invited pueblo representatives to all meetings and have consistently had tribal representatives speak at the Annual Assemblies. Representatives from the planning group have discussed the water planning process with the pueblos and other tribal entities on various occasions. Additionally, following Water Resources Board meetings concerning the plan, the MRCOG sent information the pueblos to keep them apprised of planning activities and to reiterate that the pueblos were welcome to join the process at any time. See Historical Archive B for sample correspondence.

Native American Participation

RWP Text (slide 2 of 2)

- The tribes were reluctant to participate directly in the water planning process, perhaps due to concerns that such participation could jeopardize their legal positions and set a precedent for engaging in government to non-government relations. Tribal entities have prior and paramount water rights. What this means for the future is uncertain and most likely will become mired in the courts. Although this uncertainty of rights imposes uncertainty upon the planning process, the water plan can still make recommendations for how water should be used in the region while deferring the not inconsequential issues of who pays and who gets paid for the water.

WRB / WA Partnership Issues

Very Close Agreement

- The Entire Plan was Jointly Reviewed
 - Water Resources Board
 - Water Assembly
- Much of it Critiqued/Edited Line-by-Line in Many Joint Meetings
- Concurrence Reached on Nearly the Entire Plan
- The Three Points of Disagreement are Cited in the RWP Text
 - Only One in the April 2004 Final Submittal (Goal K and R2-12)
 - Two in the July 14, 2004 Suggested Modification (USR, R2-2)

Water Priority Considerations

Sentence at Issue

➤ December 2003 RWP Draft:

“...Water rights holders must be fairly compensated for the temporary loss of use rights when water is reallocated to meet compact delivery requirements.”

➤ January 2004 ISC Staff Comment:

"The last sentence of this section should be deleted. A water right is not an absolute right, but rather a right with a priority attached to it in accordance with Article XVI of the Constitution of the State of New Mexico. ..."

➤ April 2004 RWP Final Submittal:

“...**Unless there is a priority call,** water rights holders must be fairly compensated for the temporary loss of use rights when water is reallocated to meet compact delivery requirements”

Water Priority Considerations

Sentence at Issue

- **July 14, 2004 ISC Oral Concerns:**
 - Compact Requirements Take Precedence over Individual Rights.
 - OSE/ISC Does Not Have to Heed Priorities in Allocating the Impact.

- **Change Approved by WRB; Rejected by WA:**

“...~~Unless there is a priority call,~~ We recommend that water-rights holders ~~must~~ be fairly compensated for the temporary loss of use rights when water is reallocated to meet compact delivery requirements.

Water Priority Considerations

New Mexico State Constitution Article XVI

- **Section 1 – Existing water rights confirmed** - All existing rights to the use of any waters in this state for any useful or beneficial purpose are hereby recognized and confirmed.
- **Section 2 – Appropriation of water** - The unappropriated water of every natural stream, perennial or torrential, within the state of New Mexico, is hereby declared to belong to the public and to be subject to appropriation for beneficial use, in accordance with the laws of the state. Priority of appropriation shall give the better right.
- **Section 3 – Beneficial use of water** – Beneficial use shall be the basis, the measure and the limit of the right to the use of water.

Conjunctive Use Recommendation

Suggests Change in State Law

➤ **December 2003 Draft and April 2004 Final RWP Submittal:**

Ground water and surface water are two parts of the same system in the Middle Rio Grande Region; each interacts with and markedly affects the other. For water resources in such a system to be managed effectively, they must be managed together, that is, “conjunctively.” New Mexico is presently unable to conjunctively manage its ground and surface waters effectively because of state laws that are mutually incompatible and that have led to overdrafts that greatly exceed sustainability.

... (continued on next slide)

Conjunctive Use Recommendation

Suggests Change in State Law

➤ **December 2003 Draft and April 2004 Final RWP Submittal (cont'd):**

Some of the main impediments to good conjunctive-use management are: junior ground-water rights that intercept and draw the flow of ground water away from nearby rivers, thereby impairing older surface-water rights; uncontrolled domestic well development in some local high density areas; inability to strictly apply the priority system; and woefully inadequate requirements for metering and reporting water diversions.

This plan recommends strengthening conjunctive-use management by encouraging the state legislature to ...

Water Priority Considerations

Sentence at Issue

➤ July 14, 2004 ISC Oral Concerns:

- OSE/ISC Has Done Some Conjunctive Management.

➤ Change Approved by WRB; Rejected by WA:

Ground water and surface water are two parts of the same system in the Middle Rio Grande Region; each interacts with and markedly affects the other. For water resources in such a system to be managed effectively, they must be managed together, that is, “conjunctively.” ~~New Mexico is presently unable to conjunctively manage its ground and surface waters effectively because of state laws that are mutually incompatible and that have led to overdrafts that greatly exceed sustainability.~~

