

## **Water Rights, Priority and Sustainability: How Avoiding This Conversation Endangers Our Common Interest**

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When I saw that this presentation had been characterized as “avoided conversations about value differences and tradeoffs,” I was uneasy. I had only intended to talk about senior water rights here in my region, and to suggest that thinking of them as merely an antiquated form of water allocation might be a serious mistake. Then I was reminded that in drafting the Middle Rio Grande Regional Water Plan, compromise was reached by not raising some very troublesome issues, and that in ignoring those issues, we risked the plan’s coming apart in the future. Unfortunately, that is true of all the regional water plans, and in fact, of the state water plan as well, because planners have repeatedly been urged to steer clear of the topic of water rights. Since I don’t believe it’s sane to continue to do that, I’m going to wade right in.

In public discussions about water in New Mexico, one frequently encounters the view that prior appropriation represents some sort of stumbling block to future prosperity, and that those who hold water rights are adverse to sharing and are essentially wasting the resource while they wait to sell out to the highest bidder. That presumption always appalls me. What I am going to suggest, instead, is that wherever senior water rights are still being applied to historic agricultural lands, they represent a convergence of several fundamental elements of our community, and that rather than devising ways to wrest water away from them, we might be wise to protect them from assault.

The first of those fundamental elements is, of course, the law. New Mexico’s constitution maintains that he who first diverts water from a stream and puts it to beneficial use is accorded priority over subsequent users, even in times of scarcity. The United States government recognizes senior appropriators, too: Native Americans have been guaranteed water sufficient unto their future needs, and the water rights that accompanied Spanish land grants are sanctioned by federal treaty. Unfortunately, where rights have not been adjudicated and where more paper promises exist than there is water to meet them, you are likely to hear that the concept of ‘rights’ is obsolete, and that it should give way to other methods of water allocation. Why should state and federal edicts be ignored while ever-increasing numbers of new users are granted water sufficient unto their needs? In neglecting to quantify and honor prior rights, we are, quite bluntly, circumventing the law.

In addition to being legally defensible, senior water rights are a living embodiment of New Mexico’s cultural inheritance. Our state recently sent a float to the Rose Bowl parade so that millions across the country and around the world could glimpse the icons of the Land of Enchantment: the art, architecture, foods and traditions of southwestern culture were proudly represented there, an alluring summons to all who live outside the ‘enchantment’ to come visit, and come spend. History is alive in New Mexico. This is a place of indigenous peoples and enduring ethnologies, and we celebrate that legacy, use it to attract tourists and industry, and adopt many of those traditions as our own. Yet we see no incongruity in our failure to safeguard water and land, the two-chambered heart of Native American and Hispano culture. Most of us are unaware of the never-ending prayers for rain, and we partake of the goodness of the land without a thought to its

fragile nature. We seem not to comprehend that those who have survived here the longest have done so through respect for what nourishes them.

But gradually, painfully, we too are learning the rules of the high desert, as hydrologic and ecologic research reveal the wisdom of homage to water and land. The middle basin is a great bowl of sediment, in which the Rio Grande has long accumulated the excess of wet years. This aquifer, where river and groundwater interact, is the region's most important resource, yet we have taken careless advantage of it. Engineered 'improvements' have impaired the river's flow and affected its crucial relationship with subterranean water. Indispensable floodplain and recharge areas are disappearing beneath concrete and pavement, and the effects of past and present aquifer pumping are proving more detrimental than we ever supposed. The groundwater withdrawals we have made—and will still be making as long as our urban centers continue to grow—have started to undermine the river, and to capture its flow to fill the voids created by more and more municipal, domestic, and supplemental wells. The "cures" that we have so far come up with to mitigate this damage all involve the deferral of prior appropriation. In one way or another, we have assumed that by re-allocating water from historic uses, the consequences of hydrologic overindulgence can be averted.

But what we may eventually discover is that historic water rights are far more valuable when they remain appurtenant to the land. Senior rights represent ongoing links between river and groundwater, points in the system where irrigation still permits the spread of surface flow across the natural floodplain; where recharge is still both feasible and economical; and where restitution to the aquifer may most reasonably be undertaken. These same irrigated lands are also ecological refuges, where uncultivated native species flourish at no cost to the public. Since government programs to 'restore habitat' come with astronomical price tags, it seems counterintuitive not to preserve the places where habitat already exists.

I've suggested just a few fundamental values that we jeopardize when water is severed from the land. Now I'm going to ask you to entertain a radical idea: that senior water rights and the historic lands they serve *together* constitute the real wealth of our populated river basin. In an age when global corporations are buying up regional water supplies and determining where to apply them according to the highest dollar return, imagine an alternative wherein local tenure is afforded every protection because that is what anchors us legally, defines us culturally, and sustains us environmentally.