

Paso del Norte Watershed Council

STATEMENT OF PURPOSE

I. PURPOSE

The purpose of the Watershed Council (Council) will be to investigate, develop, and recommend options for watershed planning and management and explore how water-related resources can best be balanced to benefit the Rio Grande ecosystem and the interests of all watershed stakeholders. The Council will focus on the Paso del Norte Watershed, defined as the Rio Grande basin between Elephant Butte Dam/Reservoir in southern New Mexico and Fort Quitman, Hudspeth County, Texas.

II. OBJECTIVES

The Watershed Council will provide an open and inclusive forum for stakeholders who want to establish and maintain a healthy watershed.

Due to the complexity of interests and jurisdictions in the region, there is a need for a coordinated system to facilitate communication and promote cooperation for the purpose of balancing the needs of all stakeholders. The Council will provide such a system for exchanging data and other information pertinent to watershed management in the Paso del Norte region.

The objectives are:

- (1) Under the direction of the New Mexico-Texas Water Commission, the Council shall serve in an advisory capacity regarding the selection, planning and implementation of environmental enhancements and mitigations associated with the El Paso-Las Cruces Regional Sustainable Water Project.
- (2) The Council shall recommend policies for cooperation, coordination and the sharing of information concerning planning and management activities of projects affecting the Paso del Norte watershed.

III. ADMINISTRATION

A. COUNCILERS

- (a) The Council will consist of members who support the purposes and objectives of the Council.
- (b) The Council may create an Executive Committee to develop the administrative structure of the Council.
- (c) The elected chairperson of the Council will also serve as a non-voting member of the Management Advisory Committee of the New Mexico-Texas Water Commission.

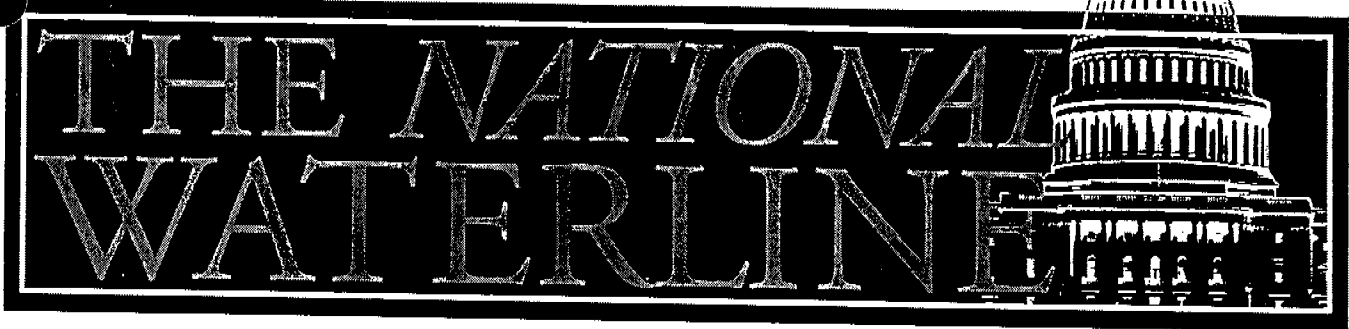
B. GENERAL ROLE AND ACTIVITIES

The Council shall have the power to:

- (a) adopt bylaws;
- (b) seek technical advisory services and arrange funding as approved by the Commission and/or other funding agencies;
- (c) create committees and delegate responsibilities; and,
- (d) plan, coordinate, monitor, and make recommendations on watershed issues and projects and coordinate with other planning entities.

C. MEETINGS, HEARINGS AND RECORDS

- (a) All meetings of the Council shall be open to the public.
- (b) The minutes of the Council shall be public record.



September 2000

STATE WATER LAW VICTORY FOR NEW MEXICO AND THE WEST

A federal judge's dismissal of a water rights case last month was a major victory for states' rights and the state water adjudication process in New Mexico and throughout the West.

U.S. District Judge James A. Parker rendered his decision on August 22 to dismiss a lawsuit by the Bureau of Reclamation seeking ownership of all Rio Grande water below Elephant Butte Dam in New Mexico. Judge Parker's ruling does not end the Bureau's claim of ownership of water, but requires the agency to pursue its claims in state court.

"I was exhilarated," said Senator Pete Domenici (R-NM) in commenting on the decision. "I could not believe that a federal judge finally did the right thing...and a New Mexico judge at that. I'm very, very proud of that judge."

"It's an incredible victory, especially when you consider all the issues. What makes it more important is that we realize

our state courts can now handle our state water adjudication," said Mr. Gary Esslinger, treasurer/manager of the case defendant Elephant Butte Irrigation District (EBID).

One issue that Judge Parker's decision may impact is the protecting of the endangered silvery minnow, a fish native to the Rio Grande. In this case, the primacy of state water law is pitted against the ability of the Endangered Species Act to take precedence before all laws. New Mexico asserts all water used for minnow habitat must be obtained under state law. Following the state's water law requirement is a major factor in a recent interim compromise for protecting the minnow that was negotiated between Senator Domenici and Interior Secretary Bruce Babbitt.

Ms. Beverly Singleman, an attorney of Hubert & Hernandez who wrote the legal arguments for the federal case on behalf of

the irrigation district, explained Judge Parker's decision as based on "Colorado River Doctrine." Established by a 1976 Supreme Court case, the doctrine states a federal court will decline to hear a federal water rights claim when such a claim is currently pending in a state adjudication. Such a case is pending before the New Mexico 3rd Judicial District Court of Judge Jerald Valentine. The doctrine in turn is the policy of the McCaran Amendment, the federal law that authorizes adjudicating federal water claims in state court.

This issue began in 1986 when EBID filed a complaint in the New Mexico state district court seeking a comprehensive adjudication of water rights in the state's lower Rio Grande system. The Bureau filed suit in federal court on June 12, 1997 seeking to "quiet title" in its water rights for the Rio Grand Reclamation Project. The project includes water in the Rio Grand from the headwaters of Elephant Butte Reservoir to Fort Quitman, Texas. In their complaint, the Bureau claims the right to divert, impound, and store waters of the Rio Grande with a priority date of 1906.

"Judge Parker agreed with the argument of EBID and other defendants in the case, who said the case should never have been filed in federal court and that the United States should make whatever arguments it wants to make in the state court," Ms. Singleman said.

When asked her thoughts on the Bureau's next legal move, Ms. Singleman

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said, "I would be surprised if the U.S. didn't appeal. The U.S. attorneys have maintained all along this case involved significant issues of law affecting not only this case, but water rights adjudications going on throughout the West."

Attorneys for the Bureau have 60 days from the release of Judge Parker's decision to file an appeal.

Since Judge Parker's decision, EBID has counter sued to "limit the discretionary power of the Bureau of Reclamation," said Gary Esslinger. "We want to bring finality to these lawsuits and to determine everyone's authority and what can and cannot be done. We hope that by filing this last suit, we can accomplish finality."



NWRA BOARD DIRECTOR NORMAN SEMANKO TESTIFIES BEFORE SENATE EPW

Over the course of three days, 26 panel members testified their thoughts on the Biological Opinions of the National Marine Fisheries Service and the U.S. Fish and Wildlife Service with regard to the operations of the Federal hydropower system of the Columbia River, and the Biological Opinion on the Federal Caucus Draft Basinwide Salmon Recovery plan. Among those testifying was Mr. Norman Semanko, director of the Idaho Water Users Association and a member of the NWRA Board of Directors.

On September 12 through the 14 hearings were held in the Senate Committees of Energy and Natural Resources; Subcommittee on Water and Power and Committee on Environment and Public Works; Subcommittee on Fisheries, Wildlife, and Water to discuss the Biological Opinions.

Most panel members supported breach-

ing dams in the Pacific Northwest as the best way to restore endangered wild salmon runs. "The single most important thing we can do for fish is take out dams," said George Frampton, acting chairman of the White House Council on Environmental Equality during the September 12 hearing.

Though most of panel members are for breaching the dams, Semanko said he doesn't believe breaching of the dams is the solution. He focused his testimony on flow augmentation.

"The science is on this issue clearly demonstrates that flow augmentation using water from the Upper Snake River Basin is a failed experiment," Semanko said. According to Semanko increased amount of flow augmentation would only increase the velocity of the water by one-tenth of one-mile per hour. Semanko presented graphs in his written testimony that showed these results.

Semanko said the flow augmentation effort is costly, not effective and is using water that Idaho farmers need. He also noted that annual flows have increased over the last 80 years. "Flows are up in the summer and all year," Semanko told the subcommittee.

Senator Michael Crapo (R-ID), chairman of Subcommittee of Environment and Public Works agreed with Semanko's thoughts on flow augmentation. Senator Crapo also said he doesn't view breaching the dams as a solution to salmon recovery.

Most panel members agreed that collaboration between the federal government and state government is essential in finding a solution to the salmon recovery problem. According to many panel members collaboration thus far has not been successful. Many feel their thoughts, evidence and advice is often ignored by the federal government.

During the question and answer period discussion on collaboration, Semanko explained, "Though NMFS has not collaborated with others to the degree we would like, they have collaborated far beyond what they had to as there is no such requirement in the Endangered Species Act."

Senator Crapo agreed that a major shortcoming of the act was its lack of deference to states and local government agencies to resolve endangered and threatened species issues.

In closing the subcommittee hearing, Senator Crapo said additional hearings would be held to address further salmon recovery efforts.

DONNELLY SELECTED FOR ASPEN INSTITUTE STUDY

NWRA's Executive Vice President, Thomas F. Donnelly has been selected by the Aspen Institute to participate in the "Dialogue on Dams and Rivers." The Aspen Institute is convening a group of leaders to consider and recommend guidelines for decision-making regarding dam removal/non-removal, and to streamline implementation of decisions. Potential questions driving the dialogue include:

- How are current decisions made about dam removal/non-removal?

- What are the points of view regarding why, when, and under what conditions a dam removal project should or should not go forward?

- What problems prevent the implementation of sound policies for making decisions on dam removal/non-removal?

- How can decisions on dam removal/non-removal be expedited?

The scope of the dialogue includes all dams in the U.S. regardless of purpose, size, and ownership. The Institute expects that emphasis will be directed at small and medium sized dams. All options for addressing dams will be open for dialogue.

The project anticipates a two-year schedule of meetings and development of recommendations, followed by a three-month period for dissemination of results. Representing a diversity of views and interests, approximately 30 knowledgeable participants from government, industry, environmental groups and other non-governmental organizations have been invited to a series of quarterly, professionally facil-

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is published by the National Water Resources Association, the oldest and most active national association concerned with water resources policy and development.

Editor.....Kris Polly

Home Page.....www.nwra.org

RESOLUTION

A RESOLUTION AUTHORIZING THE NEW MEXICO-TEXAS WATER COMMISSION (COMMISSION) TO ESTABLISH THE PASO DEL NORTE WATERSHED COUNCIL (COUNCIL), AND ENDORSE THE COUNCIL'S PURPOSE, OBJECTIVES, AND ADMINISTRATION.

WHEREAS, concerned parties have requested that the Commission form a watershed advisory group entitled the Paso Del Norte Watershed Council (Council); and

WHEREAS, these concerned parties have prepared a "Statement of Purpose" stipulating the Purpose, Objectives, and Administration of the Council; and

WHEREAS, the Council desires to act in an advisory capacity to the Commission in areas related to watershed planning and management.

NOW, THEREFORE, BE IT RESOLVED by the New Mexico-Texas Water Commission:

Section 1. That the Commission recognizes that the formation and purpose of a watershed council is consistent with Commission goals and objectives, and that such a Council will be instrumental in providing recommendations for environmental enhancements and mitigations associated with the El Paso -Las Cruces Regional Sustainable Water Project, and for other watershed projects within the Paso Del Norte Watershed.

Section 2. That the Commission hereby recognizes the formation of the Council and its Purpose, Objective, and Administration, as incorporated in the attached Council's "Statement of Purpose".

PASSED AND APPROVED at a regular meeting of the New Mexico-Texas Water Commission, this ~~7th~~ ^{11th} day of ~~September~~ ^{October}, 2000.

NEW MEXICO-TEXAS
WATER COMMISSION

NEW MEXICO-TEXAS
WATER COMMISSION

Co-Chairperson

Co-Chairperson



INTERNATIONAL BOUNDARY AND WATER COMMISSION
UNITED STATES AND MEXICO

OFFICE OF THE COMMISSIONER
UNITED STATES SECTION

SEP 12 2000

Mr. Jerry Leyendecker, P.E.
Utilities Administrator
Dona Ana County Utilities Department
180 West Amador, Room 210
Las Cruces, New Mexico 88001

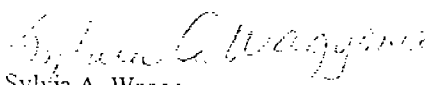
Dear Mr. Leyendecker:

The Draft Fish and Wildlife Coordination Act Report for the El Paso-Las Cruces Regional Sustainable Water Project is enclosed for your information and review. The report was hand delivered to Mr. Douglas Echlin at the September 7, 2000 Management Advisory Committee/Steering Committee meeting by Mr. Brian Hanson, Supervisory Fish and Wildlife Biologist, United States Fish and Wildlife Service (USFWS), New Mexico Ecological Services Office, Albuquerque, New Mexico. As lead federal agency for the subject project, it is incumbent upon the United States Section, International Boundary and Water Commission (USIBWC) to respond (by October 5, 2000) to the USFWS about the report and recommendations (See, pages 39-40) which are based on its impact analysis of the proposed project on fish and wildlife resources.

The report has also been to Mr. Michael Fahy, El Paso Water Utilities and Mr. Thomas Haislip, CH2M Hill. You are among the individuals which are most affected by the recommendations made by the USFWS and are requested by this transmittal to review the report. You are invited to a meeting on September 21, 2000 at the EPWU at 2:00 p.m. to discuss the report and recommendations. A USIBWC response would be formulated following that meeting. The Consultant would like to include the correspondence from this process in the Final EIS.

I would appreciate your not distributing the report further at this time. If you have questions, please call Mr. Echlin at 915/832-4741.

Sincerely,


Sylvia A. Waggoner
Division Engineer
Environmental Management Division

Enclosure:

Draft Fish and Wildlife Coordination Act Report

Same letter w/enclosure sent to:

Buck Monday, City of Las Cruces Utility Department

cc w/o enclosure:

Michael P. Fahy, El Paso Water Utilities/Public Service Board ✓
Thomas W. Haislip, Jr., CH2M Hill, Boise, Idaho

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United States Department of the Interior

FISH AND WILDLIFE SERVICE
New Mexico Ecological Services Field Office
2105 Osuna NE
Albuquerque, New Mexico 87113
Phone: (505) 346-2525 Fax: (505) 346-2542

September 6, 2000

Cons. #2-22-98-I-270

John Bernal, P.E., Commissioner, Attn. Doug Echlin
International Boundary and Water Commission
The Commons, Building C, Suite 310
4171 N. Mesa
El Paso, Texas 77902

Dear Commissioner Bernal:

Enclosed is the Draft Fish and Wildlife Coordination Act Report for the El Paso-Las Cruces Regional Sustainable Water Project as proposed by the New Mexico-Texas Water Commission. The proposed project would provide additional surface water year-round to communities and other water users in Sierra and Doña Ana Counties, New Mexico, and El Paso County, Texas.

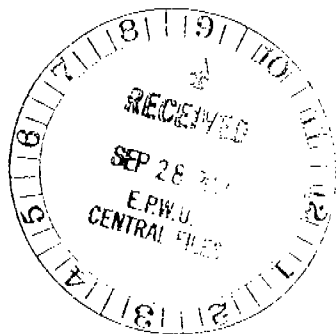
This report has been prepared by the U.S. Fish and Wildlife Service, New Mexico Ecological Services Field Office, under the authority of and in accordance with the requirements of Section 2(b) of the Fish and Wildlife Coordination Act (48 Stat. 401, as amended; 16 U.S.C. 661-667e). Please provide us comments concerning this document within 30 days.

Sincerely,

Joy E. Nicholopoulos
Field Supervisor

Enclosure

Memo



To: Tom Bahr and Ed Archuleta ✓
From: Hernandez, Steven L.
Subject: Resolution Establishing Watershed Council
Date: September 24, 2000
CC: Gary Esslinger

K	ETA	COPY	SET
4	A	EA	
4	B	JBK	
4	E	MF	

Gentlemen,

Attached is my re-draft of the resolution. Please call me if you need any more changes made.