

## **Why Good Government Advocates Should Sound the Alarm about Gila Project**

**Overall takeaway:** The state's vague – but costly – plan to dam and divert water from the Gila River in SW New Mexico is a glaring example of unaccountable government actions, secret dealings, and conflicts of interest, all leading to fiscal irresponsibility. The price New Mexicans pay could be from \$400 million to \$1 billion for construction of the project, and for local water users, a huge hike in water bills without any additional water.

The process surrounding the Gila River diversion is also a prime example of why New Mexico was designated in December 2015 by *24/7 Wall Street* as the Worst Run State in the US. It further illustrates why we received an overall D- grade from the Center for Public Integrity in 2015. On that report card, we received an F for public access to information; an F for executive accountability; and a D for procurement problems. Those specific failures are all evident in the case of the Gila River Diversion.

**Background:** Debate over whether to dam New Mexico's last free-flowing river has been going on for decades. The river is currently used for outdoor recreation and contributes \$1.2 billion to our economy.

In a complicated swap designed to settle water disputes between New Mexico and Arizona, in 2004, the Arizona Water Settlements Act (AWSA) provided New Mexico with federal funding to be used on projects on the Gila River. Under the federal act, New Mexico is eligible to receive federal funding for one of two options. The first is to receive up to \$66 million for water conservation projects in the Gila River basin, including forest and watershed restoration projects, irrigation efficiency upgrades, improvements to existing public water systems, and groundwater protection projects. The second option is to receive an estimated \$100 million toward a diversion project (i.e. a dam).

After a decade of planning and consulting with local stakeholders, the New Mexico Interstate Stream Commission (ISC), a nine-member commission appointed by the Governor, communicated to the US Interior Department in November 2014 its intention to choose a diversion project over other less costly alternatives. Local stakeholders stated that the possible loss of federal money was a major consideration.

### **Fiscal Irresponsibility: Waste of Money**

Projections for the total cost of the diversion project vary widely and have ballooned from a low of \$330 million to a high of \$1 billion. Beyond initial construction costs, annual ongoing expenses for operating and maintaining the pipeline and storage facilities, and purchasing the water will likely run in the millions. The initial \$100 million in federal funds would contribute only a fraction of the total cost of a diversion project. It is not likely that more federal funds will be forthcoming. In fact, in a recent US Senate hearing, Deputy Secretary of the Interior Michael Conner testified that, "There is not a good expectation that there would be additional federal funds available for this project, so yes, it would be state and local funds that would be needed to finance the balance of the Gila diversion project."

Deputy Secretary Conner also echoed the conclusions of the cost analyses done for the ISC, saying, "[The Bureau of] Reclamation has looked at the appraisal level, which is a very preliminary level of analysis, but

the range is somewhere in the neighborhood of \$600 million to over a billion dollars for a new diversion project on the Gila River.”

The current Gila River diversion plan calls for a pipeline over the Continental Divide to Deming. In testimony before a legislative committee, former ISC Director Norm Gaume has said that if Deming residents were to pay their share for water from a Gila River diversion project, “the typical monthly Deming water bill would increase from the current \$13.68 per month to over \$158 per month.” Luna County, where Deming is located, is one of the poorest counties in the state and nation. Approximately 44 percent of children in Luna County live in poverty. Families in the area could experience a tenfold increase in their water bills to help finance the costly project.

### **Flawed Process, Lack of Accountability Lead to Poor Infrastructure Planning**

The ISC has spent \$7 million on a flawed planning process over the past decade, yet it has failed to define scope of the project, its costs or benefits, or its technical feasibility. Nonetheless, the ISC voted on Nov. 24, 2015, with little public deliberation or disclosure of its rationale, to seek approval from the Bureau of Reclamation and begin an environmental impact process. Critics have charged that the ISC has deliberately hidden the cost of the project and overstated the benefits through strategic omissions, selective disclosures and flawed science. For example,

- ISC removed ‘cost-effectiveness’ as an evaluation criterion. Chairman Dunlap proposes that newly-developed water be weighted ten times higher than conserved water.
- ISC overstated net yield of usable water and understated cost estimates, in a series of expensive secret contracts issued to its stable of consultants. The studies contradict one another and ignore unit costs of new water and financial feasibility of the project, all while denying risks and constraints.

The federal permitting process, which started late last year, could last until 2020, leaving only half of New Mexico’s federal appropriation with which to build the project. The money will go to consultants, salaries and studies – not needed local infrastructure projects in the area to bring scarce water to the population of a desert area. For example,

- ISC withheld available federal funding from a practical and badly needed infrastructure project that would supply good water reliably to the colonias of the Grant County mining district outside Silver City, who have impaired and unreliable access to safe drinking water.

The process directly contradicts the need for sound infrastructure planning cited by Governor Martinez, who said in her 2016 state of the state address: “We need to fix the way we spend infrastructure money, because the way projects are funded now leads to unmet regional and state needs, and a string of projects that haven’t been vetted and can’t be completed.”

### **Attempts to Make Water Policy Decisions More Accountable**

Several bills have been introduced in the legislature to oversee the huge expenditure of public funds on contracts made by the ISC on this project with minimal input and oversight. Some have also sought to address the failure of the water czars to abide by the Open Meetings Act.

In 2015, Sen. Peter Wirth’s Senate Bill 467 passed the Senate but failed to clear the legislature. It would have required the Interstate Stream Commission to be a bipartisan body with members possessing technical expertise and at least 10 years experience in NM water resources. Members would be confirmed by the Senate and appointed by both the Governor and the Legislature. New members would

include a hydrologist, a water lawyer from UNM Law School and a member of a non-governmental water quality or environmental organization. No member could have had a contract with the State Engineer's office, an irrigation or conservancy district for two years prior to his or her appointment; members could not obtain contracts with those entities for two years after their service.

Sen. Sander Rue's Senate Bill 542, also introduced in 2015, required the ISC to promulgate rules regarding actions to approve or disapprove of spending in accordance with the Open Meetings Act. It would also have required the State Engineer to come up with a project design, including costs and feasibility; provisions for public comment before contracts are issued; and a determination of the actual probability of the receipt of federal funds. The bill did not make it out of the Senate.

### **Lack of Transparency**

Discussions of this proposal have largely occurred outside the public eye. Wilderness advocates contend that the commission illegally awarded \$23 million dollars in consulting contracts from 2012 through 2015 and when confronted with the illegality, made amends by voting to approve them all, en masse, without comment or disclosure of the true scopes of work.

An additional \$4 million in contracts for the same time period was ratified in the same manner on January 19, 2016.

More recently, the entity created to develop the controversial diversion project, the New Mexico Unit of the Central Arizona Project (NM CAP), met in Jan. 2016 to set a scope of work for engineering contracts to design a portion of the project so that the federal environmental review process can begin. The semi-governmental body went into closed session to discuss the project, angering members of the public assembled to hear the deliberations.

Norm Gaume, the former director of the Interstate Stream Commission, has sued the ISC and the NMCAP for similar violations of Open Meetings Act. The ISC has vigorously opposed his action. The matter is still pending in court. Initially successful in obtaining a restraining order, a new judge subsequently allowed the process to continue. The ISC then countersued Gaume. When it occurs in the private sector, such vindictive legal actions are called "slap suits." About a decade ago, the NM legislature passed a law curbing them, but it is unclear whether the law extends to a governmental agency like the ISC. Susan Boe, director of the NM Foundation for Open Government, says that the state's counterclaim appears to be unprecedented. "It is likely to have a chilling effect on citizens hoping to use the courts to hold government agencies accountable," Boe said.

### **Conflicts of Interest and Ethics**

The ISC had total control of the project until 2015, spending money without oversight from the legislature or the public. ISC members are appointed by the Governor and are not confirmed by the Senate, as are other members of boards and commissions.

One member of the ISC, Topper Thorpe, is also chairman of the Gila Basin Irrigation Commission, which had a diversion proposal. He is an irrigator whose farm would be a beneficiary of the project.

Deborah Dixon has recently been appointed ISC staff director by Gov. Martinez. She is the former Bohannon Houston, Inc. senior vice president for water projects. Bohannon Houston, Inc., an engineering firm, was a contractor for ISC, which performed several of the million dollar studies yielding no firm information on the costs or benefits of the project.

NM CAP was created in the fall of 2015 to develop the project. It includes representatives from local counties, municipalities, and soil and water conservation districts. Grant County's planning director, Anthony Gutierrez, was selected to lead the effort, despite his employment with one of the stakeholders in the project. He has been at the center of an open meetings controversy as a result of his behind-closed door discussions of possible financing mechanisms. Recent meetings have been characterized by closures to the public and controversies over compliance with open meetings laws.

Opaque contracting practices and decisions made by those with conflicts of interest often lead to fiscal irresponsibility and misuse of public funds. The public deserves decisions made on the basis of scientific information, facts and input from all sectors of the public. This is especially true when large amounts of public money are to be directed to a single project, to the virtual exclusion of all others.

**At Common Cause New Mexico**, we believe **everyone deserves to know** the true costs and benefits of a project, and the cost and nature of government contracts to determine the scope and future of the government's action.

We believe **everyone deserves to participate** in open meetings where there are meaningful discussions, and opportunities for public comment.

We believe **decision makers should be held accountable** for the expenditure of public money and the results of flawed processes.

Therefore, we are asking the New Mexico legislature, Governor Martinez, the federal government and the Interstate Stream Commission to:

- stop using federal money on this wasteful diversion project;
- start holding all meetings in public and allow for full participation by all stakeholders;
- pass meaningful laws so that all state commissions are open and transparent;
- and explore alternative uses of this federal funding that are less costly and more in line with what our community needs.