



New Mexico Farm and Livestock Bureau®  
Since 1917...A Leader in New Mexico

## Farm Bureau is Working to Protect Your Water Rights

by John F. Wortman, Jr.

Water is our most important resource. Those of us in agriculture know that without a second thought. Consequently, Farm Bureau is constantly involved in activities dealing with water issues. This month we thought we would update you on some of what we are doing to help protect agricultural water and your water rights.

Many people understand the importance of agriculture in New Mexico, not only to the business of producing food, but also agriculture's importance in maintaining the aesthetics of green space in many parts of our state, especially the river valleys. Unfortunately, there are many who do not realize where their food comes from or why our valleys are so pretty and green. If agriculture were to disappear from our state because of the loss of agriculture water, so would the vast majority of the green space that so many admire, not to mention the New Mexico foods that they enjoy.

We adamantly believe that senior water rights must be protected and that our New Mexico Constitution is very clear about that point. We are very concerned when proposed regulations or bills introduced at the legislature contain provisions that infringe upon our constitutional rights with respect to water. We work hard to help ensure that regulatory language respects and protects our water and water rights and that is very difficult at times, given that there are quite a few people out there that want our agricultural water for a multitude of things other than food production.

In working to protect our water resources, our first level of activity is through meeting with those that regulate water and helping negotiate the best possible policies for water management that we can. We are deeply involved with the Office of the State Engineer and the Interstate Stream Commission, as well as the Department of Environment in trying to influence water policies implemented by our government. Secondly, we work water issues at the legislature. We work with the legislature, not only during their regular sessions, but especially during the interim. The legislature's interim committees do a great deal of work on the details of issues to help facilitate the process during the regular sessions. If we did not have a presence at the

interim committee meetings, then we would not be fully prepared to address the bills and memorials that get introduced once the session begins in January. Additionally, we are involved, especially through American Farm Bureau Federation, at the national level to affect the outcome of proposals from Congress and the federal agencies that have jurisdiction over our water and how it is managed.

One of the most controversial proceedings that we have entered is a law suit concerning water rights on the Mimbres River. There are several legal contentions for which this suit was filed, but our interest in it is confined to the idea that if all of the water is appropriated in a basin, then any new wells drilled without a water right will be taking water that belongs to someone else. Actually, the “rights” to that water belong to someone else, since water belongs to all of the citizens of New Mexico and we only own the right to use it.

We entered this suit because there is a growing number of people who own water rights that are being adversely impacted by the increasing rural development and the competition for available water that results from that population spread. There is no question that a person has the right to drill a well and pump what they are allotted if that person owns a “water right.” However, we do not believe that anyone should be allowed to drill anywhere by automatic permission if there is no water to appropriate. If the well is drilled, you must draw the logical conclusion that the pumping that well will impair a neighbor’s water right. So, we became interveners in the suit we refer to as the Mimbres Suit.

Historically, domestic wells have been considered to have no significant effect on the water table. With that premise, permits to drill domestic wells were nearly automatically granted. When populations in our state were low and sparse, there truly may have been a de minimis (or minimal) effect on surrounding water rights. However, as more and more people established residences in the country adjacent to agriculture operations, the high concentration of domestic wells in some locations has had an adverse affect on the neighboring agricultural wells. In spite of all of the suppositions about the effects of domestic wells, the logic that we present in our argument in this case is simple. Again, we say that if all the water is taken, any new wells without a water right are taking someone else’s water and that should not happen, especially given the protection granted in our state constitution.

We have been concerned about governmental entities and their ability to condemn water rights (which are private property rights) through eminent domain. When a municipality cannot meet its water needs, the powers that be often want to resort to eminent domain and take the water they need from farmers. Stopping or slowing the growth of our cities is not an issue I want to address here. Managing population growth would be nearly impossible given the personal freedoms we enjoy today. If we are not going to manage population growth, then we must conclude that our city governments must find ways to provide services, including water, for their

additional citizens. We believe that if the city needs more water, they should buy it from a willing seller, not condemn and take it from families that are using the water to grow food. A major effort of ours in the legislative sessions these past few years has been to work to curtail the powers of the government, specifically municipalities, to take agricultural water rights through eminent domain. Owners of water rights should not be forced out of agriculture because a city took their water by force. We do believe that anyone who owns water rights should be able to sell them, if they choose to do so. However, we are discouraged when the economic analysis of a situation leads the farmer to decide to take land out of production and convert the water to something other than food production. We should be thinking about how to keep farmers producing our food, not leading them away from producing food with dollars signs for water.

We will continue to work hard to help make sure that if someone wants to sell their water rights that they can freely exercise that right, as long as that sale does not impair other the rights of others. As mentioned earlier, we believe a person's right to sell their water rights should be protected. However, if that sale creates an adverse effect (impairment) on the water belonging to another person, then that right to do as they please is not quite as simple. Yes, we supposedly live in a free country, but that does not mean we can all do as we wish without regard to our neighbors. Therefore, if the sale of water rights and change of the use of that water creates impairment to neighboring water rights, we object. This is why several county Farm Bureau organizations and the New Mexico Farm & Livestock Bureau have filed protests to the sale of water rights in the Pecos River Basin north of Ft. Sumner and the plan to move that water by pipeline to Santa Fe for municipal use.

The water situation on the Pecos River has been difficult for many years. We have the compact obligation to supply Texas with the water they believe (and the courts agreed) belongs to them. Agriculture along the Pecos has been reduced in order to create a better balance between what is coming into the basin and what is being used or sent to Texas. There is grave concern that removing water from the Pecos watershed will adversely impact the downstream users. Again, we do not object to anyone exercising their private property rights and selling what water rights are rightfully theirs. However, we believe there is an inherent right held by all of the other private property owners that they not be harmed in that sale and change of use of their neighbor's water.

When we were in Washington, D.C., this spring, we spoke with our senators and Congressmen about our opposition to the proposed Clean Water Restoration Act, which contains revisions to the Clean Water Act. There is no question that everyone wants clean water and that the Clean Water Act passed way back in 1972 has had a beneficial effect on reducing pollution in our nation's waterways. However, we do not believe that striking the word "navigable" from the original act, as the sponsors of the revision propose, is good for America and agriculture. Extending jurisdiction of the federal government to ALL waters in the U.S. under this act would

hurt agriculture and violate states' rights. It is understandable that the federal government should have the power to control pollution on the larger waterways of our country that flow across state lines. We do not believe that it is constitutional for the federal government to seize authority from the states to regulate ALL waters of the U.S. Therefore, we asked each member of our delegation in D.C. to oppose the Clear Water Restoration Act and leave the Clean Water Act of 1972 as it is and was intended. This is not going to be an easy battle, because there is a great deal that is misunderstood about the proposal to revise the original act.

In an effort to remind our members and inform potential members that we work hard to protect water rights, we undertook a simple advertising campaign. You will see our ad on page 10 of this edition. This ad was also in the May issue of the New Mexico Stockman Magazine. We felt like it was a good time to send a positive message about what we do to protect water. We want everyone to know that we are working to protect water rights and maybe that will also help some people that are not members to see the value in joining our cause to protect and promote agriculture and the American food supply.

The results of image campaigns are at best difficult to ascertain. So, we may not be able to quantify any gains that the ad may bring, but we do know it will remind our existing members that we are always on the job working for them, and maybe it will re-energize some members to take action that in some way helps our Farm Bureau causes, including protecting agricultural water rights, which are critical to producing our food.