

Taking on NM's Water Czars

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Two-year fight led to changes in S.W. N.M. water project

Norm Gaume spent \$200,000 in pursuit of government transparency

Asked secretive state agency why \$800 million dam was necessary

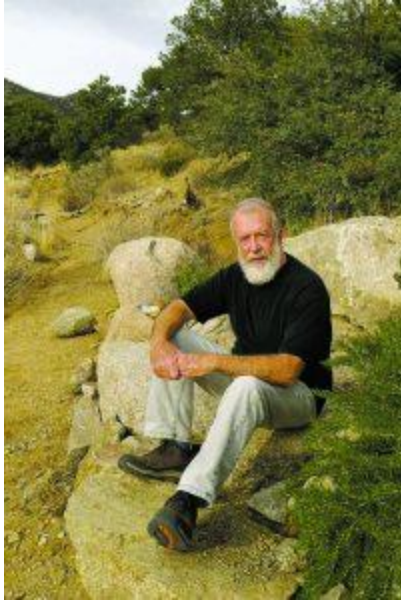
BY KEIKO OHNUMA

Sticking to your principles and expecting government to act as people deserve in a democracy can have terrible consequences if you don't let go.

Just ask Norm Gaume. The retired public servant with kindly eyes starts his tale slowly then gets swept along on a torrent of outrage – which is precisely how he ended up spending more than \$200,000 of his own money to take on the powerful and secretive New Mexico Interstate Stream Commission.

And he's not done yet. Far from it.

In New Mexico, where water is scarce, control of it is power and the ISC is the kingpin of all things water.



Gaume used to be director of the obscure water-policy agency, which is part of the Office of the State Engineer. After he left in 2002, the ISC started studying a possible diversion – or damming – of the Gila River to provide water for four southwestern counties, as permitted under the 2004 Arizona Water Settlements Act. Gaume, who had seen three previous efforts fail to justify dams on the river where he once canoed as a boy, pricked up his ears when he heard the ISC was talking seriously about another diversion concept.

“There wasn’t ever any documented need for the water,” he said. “Though they say the available water is fully used and we have shortages, when I looked into it, turns out that water is less than 50 percent developed.”

So he went to an ISC meeting in December 2013, his first in more than a decade. That visit would launch a three-year campaign of digesting technical reports, chasing down meeting minutes, filing legal briefs, and trying to alert the public via the press and Legislature that something rotten was going on at the Interstate Stream Commission.

The nine-person board, appointed by Gov. Susana Martinez, appeared hell-bent on pushing through an expensive, wasteful, technically infeasible project that would damage the state’s last free-flowing river, and he simply could not determine why.

Secret meetings

Gaume said he came away from that first ISC meeting totally confused as to what was being proposed. “And if I couldn’t understand it, how was anyone in the public going to?”

He wasn’t an environmentalist or any kind of activist. To the contrary, he was a professional water engineer who ran Albuquerque’s water utility in the 1990s and later headed the ISC itself. After that first meeting he concluded that the commissioners “just needed to be educated” as to the impracticality and outrageous cost – estimated to be between \$800 million and \$1 billion – of the proposed dam and water diversion.

When he asked to give a presentation about it, however, “They scheduled it in Tucumcari in April, and no one showed up.” Commissioners were warned not to ask questions, and nothing he said appeared in the minutes. Nonetheless, the ISC quietly abandoned the plan Gaume had criticized and ordered a new one. He discovered that fact only by filing an Inspection of Public Records Act request in the summer of 2014.

“Nothing had been reported publicly to authorize these contracts, so they had obviously been meeting in secrecy,” Gaume said.

The Arizona Water Settlements Act does not simply fund a diversion project; it offers New Mexico up to \$66 million in federal funding (inflation-adjusted to more than \$90 million) to implement *any* strategies that will help secure water resources for Catron, Grant, Hidalgo and Luna counties. This could include conservation, local water projects, or – if the ISC chose – a diversion of the Gila River of up to 14,000 acre-feet of water, but only during seasonal floods. For this last option only, another \$34 million could be made available from the federal government.

Gaume believed that the alternatives to the original plan recommended in the consultants’ reports were all “fatally flawed.” Unable to get clear answers on how they had reached their conclusions, he sued the agency in September 2014 for violations of the New Mexico Open Meetings Act. Since the deadline was approaching for the ISC to tell the U.S. Secretary of the Interior of its decision on the diversion, Gaume also requested a temporary restraining order to keep the agency from acting until it remedied its violation and made its rationale public.

“It took a while,” he said, “but I concluded that they were being dishonest deliberately. My premise had been, and remains, that if they were to discuss this publicly, it would surely fail. The only thing that keeps this project alive is its secrecy.”

He discovered that the ISC had created a technical subcommittee of commissioners who met with ISC staff behind closed doors, and then had their decisions rubber-stamped by the

full commission. That revelation came as a shock to others concerned about the project's environmental impact.

The Gila Conservation Coalition, an opponent of the diversion project, was one of them.

"There was no understanding of how commissioners were reaching decisions," said executive director Allyson Siwik. "We asked, 'What's going on here, how did you get from A to B?' There were a lot of red flags."

ISC pushback

Gaume decided to sue the agency as a private citizen, at a cost his attorneys initially estimated at \$40,000 ("a big bite for me," he recalled with a wince), which he could recoup if he won. Siwik saw it as a highly personal crusade.

"As a former director of the agency, it was disappointing to him that they were not following good-government principles. I think Norm, when he was a public servant, took that role very seriously," Siwik said.

Gaume said he was just being naïve. "I thought they would remedy their violation and continue with their business in public." Instead, the agency's lawyers asked the court to require him to post a \$62 million bond to cover its losses if it missed the federal deadline – which was impossible for him. That led the judge to lift the restraining order. Then, worse, the agency countersued him for its legal costs in the fight. On Nov. 24 of 2014, the ISC voted to go ahead with the Gila diversion.

News reports began appearing region-wide about the diversion plan that raised more questions than answers – that it could alter the ecology of the Gila ecosystem, that it could cost up to \$1 billion, which was more than provided for by the federal fund. It was unclear who would make up this funding gap, or whether water users could even afford their new bounty of Gila River water.

The ISC, hewing to its publicly documented penchant for secrecy, did not respond to requests for comment for this story.

Gaume pointed out repeatedly that storing water during floods would be enormously expensive and wasteful, benefiting just "a few hundred" downstream agricultural irrigators. These proponents, along with the city of Deming, now make up the Central Arizona Project entity, a body created by the ISC in August 2015 to design, build, and maintain the diversion project.

"The ISC never published their hydrology," Gaume said. "They never acknowledged the magnitude of water they could develop is tiny. There's plenty of water in the [Mimbres River] aquifer for Deming and other cities. They never determined the feasibility of the

project, and in my view, that's where things start. So somehow the ISC transformed from being a technical agency to pursue what I can only call water-development religion."

Indeed, in May 2015 Anthony Gutierrez, chairman of the project subcommittee, told High Country News that the need to grab any available water outweighed all other concerns, including damage to the river ecosystem, which depends on seasonal flooding.

Meanwhile, Silver City and other communities that supported other alternatives – such as conservation measures and improvements to local water infrastructure – feared their funding would be diverted toward the diversion. "These are critical projects that will meet real water needs *now*," said Siwik. "We need this money."

In October 2015, Gaume was vindicated – partly – when Santa Fe District Judge Francis J. Mathew agreed that the ISC had violated the New Mexico Open Meetings Act in awarding two of the contracts. He canceled them until they could be approved in open public meetings, which was done retroactively. But in the meantime, Gaume had been forced to spend tens of thousands of dollars fighting the ISC countersuit so as not to lose his case.

"They cut off my escape route," he said. "I had taken money out of an IRA, had borrowed from family and friends." The judge ultimately awarded him \$115,600 in legal fees, but he offset that by ordering Gaume to pay the ISC \$38,700 for its legal fees.

Still, he feels he had no choice. "What I brought to the table was credible testimony on the facts. The ISC buries the opposition in technical reports, and you can't make any sense of them unless you have an engineering degree."

Thanks to his relentless criticism, the current diversion plan commissioned by the CAP entity begins far below the boundary of the Gila Wilderness, about a mile above the first irrigators. Public money for the dam will be spent, but "the wild river is mostly preserved, and the ISC has changed their behavior," Gaume said. "Now they follow the Open Meetings Act to the letter in their contracts."

In recognition of his work, the New Mexico Foundation for Open Government in October gave Gaume its Citizens Award. "Because of Norm," said Susan Boe, the group's executive director, "both the ISC and CAP know someone is watching how these decisions are made."

Accountability

Ultimately, Gaume's lawsuit was not about the Gila diversion – much as he opposes it – but about the fact that the ISC was making decisions without public knowledge or input. That aspect of the fight is not over. Gaume calculates that the agency has spent \$6.5 million out of the Arizona Water Settlements Act fund to pay consultants to shore up its diversion plan. And it continues to funnel money to them, primarily to the Albuquerque engineering firm of Bohannon Huston Inc., whose former senior vice president sits on the ISC. That spending

is occurring without legislative approval, despite the Legislature's constitutional role as the sole appropriator of state funds.

"They've just appropriated the money to themselves and spent it. My feeling was, no one will hold these people accountable if I don't," Gaume said. "Is it my duty? No. Can I do it? I have to do it, given my values."

So he continues to pore over technical reports and keep watch over the ISC and CAP, which in his view still have not gone public with the truth of what they are proposing. Siwik agrees. "We're still filing Inspection of Public Record Act [requests] every month to get information. That's the only way to find out what's really happening."

Gaume said he's optimistic legislators and the public will eventually wake up to the flaws of the ISC's plan to divert water from the Gila River. And he feels good about that.

"I was willing to put my money where my mouth was," he said. "I just didn't expect it to cost so much."

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