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2007 License and Dues

Late fees may be assessed if payment is not postmarked by Feb. 1, 2007.

$100 late fee for active members
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Due with payment

Special Insert:
Board of Bar Commissioners

www.nmbar.org
A Message from the President of the State Bar

Dear Members of the State Bar of New Mexico:

On December 13, 2006, I was sworn in by the New Mexico Supreme Court as the 111th president of the State Bar of New Mexico. This is an honor and certainly a highlight of my professional career as a lawyer which spans about 30 years. The president's office is a great responsibility that I take very seriously, and I commit to you that I will do my very best to represent our State Bar during the coming year. It is an honor to represent the profession that is so prominent in business and in all branches of government. Lawyers have been in the forefront in the development of our national heritage which respects the Rule of Law. My overall goal is to encourage respect for lawyers and self-respect by lawyers.

I would like to commend our immediate past president, Virginia Dugan, for her efforts in 2006. Like all good leaders, Virginia recognized and appreciated the importance of the position and did well to represent lawyers, both throughout our state and nationally. I would also like to mention the extraordinary and tireless work of the Board of Bar Commissioners, men and women elected from throughout the state who volunteer their time and considerable talent to serve the profession. They are your voice in the State Bar of New Mexico, and I strongly encourage you to study and save the board member insert in this issue of the Bar Bulletin. I would also like to thank our outstanding State Bar staff. They are a committed, professional group dedicated to the mission and goals of the State Bar.

As all presidents do, I have some very specific goals and plans for 2007 that I would like to share.

Legal-Business Community

In addition to my pride in the legal profession, I am also proud to be a member of the business community. I want to foster appreciation, mutual respect, and understanding between business and law. While working with my business friends, I want to create a better understanding about judicial decisions. While judicial outcomes are sometimes unpopular, how the judges make their decisions and the limitations of those decisions should be understood. I hope to help the business community recognize that New Mexico is a place that has robust legal resources available for business needs. I want businesses and consumers to know how much time lawyers give to the community. An example is the State Bar/Better Business Bureau Mediation and Arbitration Program. When I was state chairman of the Better Business Bureau in 1998, I asked the State Bar and BBB to launch the public service program to assist in resolving disputes between New Mexico consumers and businesses, and it was recently extended to non-BBB members. The State Bar provides mediation and arbitration services free of charge to businesses and consumers in resolving conflicts of $25,000 and under. Your participation will be appreciated.

2007 State Bar Annual Meeting

I hope the 2007 State Bar convention will serve to re-emphasize the meeting as the highlight of the year for lawyers, offering an opportunity to network, visit with one another and celebrate the profession we all chose. Many of you already know that Justice Sandra Day O’Connor has agreed to be the keynote speaker for our 2007 convention at the Inn of the Mountain Gods in Mescalero. The dates are July 12–15, and I can promise this will be an event not to be missed. In addition to Justice O’Connor, we are planning a series of plenary and CLE sessions centered on important topics. For example, we intend to offer track programming in five relevant categories: solo practice/law practice management, associate programming, government/public lawyer programming, federal practice, and alternative dispute resolution. I encourage you to contact me if you have ideas on how to make this the best convention ever. We are planning on a minimum registration of 500, with special pricing and discounts that will make getting CLE credit and entertaining your family a great value. We also have planned excellent receptions and an evening performance at the spectacular Spencer Theatre, a world-class venue.

During the formal statutory annual meeting, we plan to debate issues important to lawyers in New Mexico. We hope to enliven the meeting with the mature, thoughtful and enthusiastic debate for which lawyers are known.

Public Service

I plan to continue to raise the profile of all State Bar public service programs provided by the legal profession to New Mexico citizens. A few of the State Bar public service pro bono programs include the Lawyer Referral for the Elderly Program, consumer issue and consumer debt workshops, and legal referral information. The State Bar also helps coordinate legal services for the indigent and raises thousands of dollars for Equal Access to Justice, a program that provides legal assistance to those who need it but cannot afford it. Our public services fall under the Bar Foundation, which spends $585,000 per year on these programs.

continued on page 10
For Attorneys Only

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For a limited time your 2007 Premium Listings will cost $75 annually

For information on how you can set up your Attorney or Firm page contact:

Marcia Ulibarri
Direct 505.797.6058
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FEBRUARY 20TH VIDEO REPLAYS - STATE BAR CENTER

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8 – 10 a.m.
1.0 Ethics & 1.0 Professionalism CLE Credits
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**Professionalism:**
**All the World is a Stage**
10:30 a.m. – 11:30 a.m.
1.0 Professionalism CLE Credits
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**Search and Seizure**
11:30 a.m. – 12:30 p.m
1.0 General CLE Credits
☑ $49

**Gain the Edge!**
**Negotiation Strategies for Lawyers and Business Professionals with Marty Latz**
1 – 4 p.m.
3.2 General CLE Credits
☑ $130

**2006 Health Law Symposium**
8:30 a.m. – 3:30 p.m.
5.4 General & 1.0 Professionalism CLE Credits
☑ $199

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**FAX:** (505) 797-6071, Open 24 hours

**INTERNET:** www.nmbar.org, click CLE, then area of interest

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87199-2860
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NOTICES

COURT NEWS
N.M. Supreme Court
Address Changes
All New Mexico attorneys must notify the Supreme Court and the State Bar of any changes in address or telephone number. Information should be e-mailed to the Supreme Court at suprvm@nmcourts.com; faxed to (505) 827-4837; or mailed to PO Box 848, Santa Fe, NM 87504-0848. Information should be e-mailed to the State Bar at address@nmbar.org; faxed to (505) 828-3755; or mailed to PO Box 92860, Albuquerque, NM 87199-2860. The State Bar keeps both mailing and directory addresses. Contact the State Bar for more information.

Board Governing the Recording of Judicial Proceedings
Reporter/monitor Problems
The Supreme Court Board Governing the Recording of Judicial Proceedings ensures that outstanding reporting/recording services are provided to members of the Bar and to hearing agencies. If any user of recording services encounters a reporter/monitor problem, the board requests counsel notify it with the following information: the date and type of hearing, the person or service that recorded the hearing and the nature of the problem. E-mail notifications to Board Administrator Linda McGee, ccr@ccrboard.com; mail to PO Box 92648 Albuquerque, NM 87199-2648; or call (505) 821-1440.

Law Library
Open Monday–Friday, 8 a.m.–6 p.m.
Closed Saturdays and Sundays
Phone: (505) 827-4850; fax: (505) 827-4852; e-mail: libref@nmcourts.com; Web site: www.supremecourtlawlibrary.com.

First Judicial District Court
Criminal Bench and Bar Brown-Bag Meeting
The 1st Judicial District Court Criminal Bench and Bar will have a brown-bag meeting at noon, Feb. 13, in the courtroom of Judge Michael E. Vigil. Issues and topics for discussion may be submitted to Sally or Kim, (505) 827-5047.

Destruction of Exhibits
Pursuant to the Supreme Court ordered Judicial Records Retention and Disposition Schedules, the 1st Judicial District Court will destroy exhibits filed with the Court, in criminal, civil, children’s court, domestic, incompetency/mental health, adoption and probate cases for years 1970 to 1990 included but not limited to cases that have been consolidated. Cases on appeal are excluded. Counsel for parties are advised that exhibits can be retrieved through April 27. Attorneys who may have cases with exhibits may verify exhibit information with the Special Services Division, (505) 827-4687, from 8 a.m. to 5 p.m., Monday through Friday. Plaintiff exhibits will be released to counsel of record for the plaintiff(s) and defendant(s) exhibits will be released to counsel of record for the defendant(s) by Order of the Court. All exhibits will be released in their entirety. Exhibits not claimed by the allotted time will be considered abandoned and will be destroyed by Order of the Court.

Family Law Brown-Bag Meeting
The 1st Judicial District Court will host its family law brown-bag meeting at noon, Feb. 13, in the Grand Jury Room, second floor, Steve Herrera Judicial Complex, Santa Fe. The 1st Judicial District Court ADR Director Celia Ludi will discuss the ADR Pilot Project. For more information or to suggest agenda items, contact Elege Simons Harwood, (505) 988-5600 or esimons@wood@simonsfirm.com. Provide one dollar, name and State Bar number and receive 1.0 CLE credit.

Second Judicial District Court
Destruction of Criminal Tapes
Pursuant to the Judicial Records Retention and Disposition Schedules, the 2nd Judicial District Court will destroy tapes filed with the Court in criminal cases for years 1975 to 1984 included but not limited to cases that have been consolidated. Cases on appeal are excluded. Attorneys who have cases with tapes and who wish to have duplicates made, should verify tape information with the Special Services Division, (505) 841-6717, from 8 a.m. to noon and from 1 to 5 p.m., Monday through Friday. Aforementioned tapes will be destroyed after Feb. 23.

Fifth Judicial District Court
Reconvening of Nominating Commission
The 5th Judicial District Nominating Commission reconvened at the Eddy County Courthouse in Carlsbad at 9 a.m., Jan. 29, to consider Governor Richardson’s request for additional names to fill the vacancy on the 5th Judicial District Court. The commission voted not to nominate any additional names from the applicant pool.

U.S. District Court for the District of New Mexico
Proposed Amendment to Local Civil Rules
A proposed amendment to the Local Civil Rules of the U.S. District Court for the District of New Mexico is being considered. The proposed amendment is to D.N.M.LR-Civ. 83.1, Courtroom and Courthouse Decorum. A “redlined” version (with proposed additions underlined and proposed deletions stricken out) and a clean version are posted on the Court’s Web site, www.nmcourt.fed.us.

Members of the State Bar may submit comments no later than March 5 by e-mail to lriv@nmcourt.fed.us; or by mail to U.S. District Court, Clerk’s Office, Pete V. Domenici U.S. Courthouse, 333 Lomas Blvd. NW, Suite 270, Albuquerque, NM 87102, Attn: LR Civ.
Reduction of Calendar Year 2007 Annual Federal Bar Dues

For the past two years, Federal Bar dues for the District of New Mexico have been waived. With the concurrence of the Article III judges, collection of the calendar year 2007 attorney dues has been ordered at a reduced rate of $15 instead of $25. This rate is effective for calendar year 2007 dues only. Dues should be submitted to the Clerk of Court, U.S. District Court, 333 Lomas Blvd. NW, Suite 270, Albuquerque, NM 87102. For anyone who has submitted dues for calendar year 2007 in the amount of $25, reimbursement of the difference will be forthcoming.

STATE BAR NEWS

Attorney Support Group

The next Attorney Support Group meeting will be held at 5:30 p.m., Feb. 5, at the First United Methodist Church at Fourth and Lead SW, Albuquerque. The group meets regularly on the first Monday of the month. For more information, contact Bill Stratvert, (505) 242-6845.

Bankruptcy Law Section Annual Meeting and CLE

The Bankruptcy Law Section will hold its annual membership meeting at 1:15 p.m., March 9, in conjunction with the 22nd Annual Bankruptcy Year in Review at the State Bar Center. Specifics on the CLE program are forthcoming. Contact Chair James Jacobsen, jcJacobsen@ago.state.nm.us or (505) 222-9085, to place an item on the agenda. The board of directors would like input from members regarding areas of focus for 2007. Of particular interest is reaching members in outlying areas.

Casemaker

Online Legal Research

Free Training Available

Casemaker, the State Bar’s newest membership service, is free online legal research that includes New Mexico and federal materials as well as access to 25 other state libraries.

Trainings on how to use Casemaker will be held:

State Bar Center, Albuquerque: Feb. 16 and March 26, 3 to 4 p.m. R.S.V.P. to (505) 797-6000.
Grants: Feb. 28, noon to 1 p.m., Coyote del Malpais Golf Course, 2001 Camino del Coyote, Grants.

Farmington: Feb. 20, 12:30 to 1:30 p.m., San Juan Country Club, Farmington. Lunch is $12 and will be served from noon to 12:30 p.m. R.S.V.P. to Doug Echols, (505) 334-4301.

Seating is limited. The training is approved for 1.0 CLE general credit.

Anyone who has problems with access should contact the Casemaker helpline at (505) 797-6039 or e-mail vcordova@nmbar.org.

Elder Law Section Annual Meeting, CLE and Reception

The Elder Law Section will hold its annual meeting at 11:30 a.m., April 13, at the State Bar Center prior to the 4th Annual Elder Law Seminar. Details on the CLE program will be forthcoming. Send agenda items to Chair Amanda Hartmann, ahhlaw@comcast.net or call (505) 401-7832. Lunch will be provided and reservations are required: e-mail membership@nmbar.org or call (505) 797-6033.

Employment and Labor Law Section Board Meetings Open to Section Members

The Employment and Labor Law Section board of directors welcomes section members to attend its meetings on the first Wednesday of each month. The next meeting will be held at noon, Feb. 7, at the State Bar Center. Lunch is not provided. For information about the section, visit the State Bar Web site, www.nmbar.org, or call Charles Archuleta, section chair, (505) 346-4646.

Paralegal Division

Monthly Brown-Bag CLE for Attorneys and Paralegals

The Paralegal Division invites members of the legal community to bring a lunch and attend Water Law in New Mexico, presented by William Teel, Attorney at Law PC. The program will be held from noon to 1 p.m., Feb. 14, at the State Bar Center and offers 1.0 general CLE credit. Registration begins at the door at 11:30 a.m. and costs $16 for attorneys and $15 for paralegals, legal assistants and secretaries. For more information, contact Cheryl Passalaqua at Butt, Thornton & Baehr PC, (505) 884-0777.

Pro Hac Vice Fund

2007 Grant Application and Guidelines

The State Bar of New Mexico seeks grant applications from non-profit organizations that provide civil legal services to poor New Mexicans within the scope of the state plan for delivery of civil legal services as designated by Rule 24-106 NMRA. Pursuant to the rule, the State Bar of New Mexico collects a registration fee of $250 from non-admitted attorneys intending to appear in civil actions before New Mexico courts. The State Bar holds these fees in the State Bar Pro Hac Vice Fund which is distributed annually to non-profit organizations providing or supporting the provision of civil legal services to the poor. The 2007 Grant Application and Guidelines are now available online at www.nmbar.org. The deadline for the 2007 grant application is 5 p.m., Feb. 5.

Public Law Section

Nominations Sought for Public Lawyer Award

The Public Law Section is currently accepting nominations for the ninth annual Public Lawyer of the Year Award, which will be presented on Law Day, May 1. Prior recipients include Florenceruth Brown, Frank D. Katz, Douglas Meiklejohn, Martha A. Daly, Charles N. Estes, Mary M. McNenney, Gerald Bruce Richardson, Peter T. White, Robert M. White, Paul L. Biderman and Frank D. Weissbarth.

The work or service recognized by the award must have occurred in New Mexico. A candidate must be admitted to practice in New Mexico but does not have to be a member of the Public Law Section to be eligible. The following are factors that will be considered in making this award. An applicant need not meet all of these criteria:

1. significant length of service in government, which does not have to be continuous or for one specific employer, or for work as an attorney;
2. excellence as an attorney/advisor and/or advocate;
3. training or education of the public or employer, or for work as an attorney;
4. mentorship of junior attorneys in the public sector;
5. role model for other public lawyers;
6. involvement in one particularly difficult or important case or negotiation that significantly advanced a governmental policy or purpose;
7. service to social welfare organizations,
charitable institutions or nonprofit entities connected with the practice or enhancement of an area of public law;
8. advocacy of, or work on, issues or legislation of importance in the public sector, such as open meetings and public records, public procurement and administrative procedures;
9. a lawyer who is not likely to be recognized for his or her outstanding work as a public lawyer; and
10. a lawyer whose personal character and dedication to public law and public service further the integrity and repute of the legal profession.

Send nominations by 5 p.m., March 1, to Doug Meiklejohn, dmeiklejohn@nmelc.org or by mail to New Mexico Environmental Law Center, 1405 Luisa St. #5, Santa Fe 87505-4074. The selection committee will consider all nominated candidates and may nominate candidates on its own.

Prosecutors Section Annual Meeting
The Prosecutors Section will hold its annual meeting during the AODA Conference March 20–23. Details on the exact time, date and location are forthcoming. Agenda items should be sent to Chair Stephen Kovach, skovach@da.state.nm.us or (505) 622-4121.

Nominations Sought for Annual Awards
The Prosecutors Section is soliciting nominations for awards that the section will present to five prosecutors at the section’s annual meeting. The five award categories are as follows:
• **Prosecutor of the Year**: The nominee must have five or more years of full-time prosecution experience. The nomination should address the individual’s outstanding characteristics, prosecution history, work with the public and contributions to the quality of prosecution and the image of prosecutors.
• **Law Enforcement Prosecutor**: This nomination should address the support and assistance the nominee has provided to law enforcement agencies and his or her commitment of time in assisting law enforcement.
• **Community Service Prosecutor**: This nomination should address the service the nominee has provided to the community and the results of those efforts; e.g., volunteering at rape crisis centers, nursing homes, youth mentorship organizations, etc.
• **Legal Impact Prosecutor**: Along with the nominee’s outstanding character, this nomination should address the significant impact that resulted from the nominee’s efforts in criminal prosecution(s) and the significant and positive impact or effect on the law.
• **Rookie Prosecutor of the Year**: The nominee must have been prosecuting for no more than two years. The nomination should address the nominee’s dedication to criminal prosecution and commitment to making prosecution a career.

Nominations should be submitted by Feb. 23 to Michael Sanchez, (505) 622-4121 or msanchez@da.state.nm.us. The nominees will be presented to a selection committee.

Senior Lawyers Division Judicial Service Award Request for Nominees
The Senior Lawyers Division plans to recognize judges who have 25 years of service on the bench in the state of New Mexico. Service may be for any combination of courts if the total tenure on the bench reaches 25 years. E-mail or mail nominations of judges eligible for this recognition to The Honorable Robert Hayes Scott, rscott@nmcourt.gov, or 333 Lomas Blvd., NW, Chambers 620, Albuquerque, NM 87102.

Solo and Small Firm Practitioners Section Directory Update
The Solo and Small Firm Practitioners Section is updating its membership directory so that members can make referrals and seek advice from each other. The **Solo and Small Firm Practitioners Questionnaire** should be filled out and sent to the State Bar of New Mexico, PO Box 92860, Albuquerque, NM 87199 by March 1. The questionnaire may be found at http://www.nmbar.org/Content/NavigationMenu/Divisions_Sections_Committees/Sections/Solo_and_Small_Firm_Practitioners/solosmallnewsletterOct06.pdf. Few forms have been received, so all members are urged to complete this process.

Luncheon Presentation
Jason Marks, Public Regulation Commissioner, District 1 (Albuquerque area), will speak before the Solo and Small Firm Practitioners Section on **Update on the PRC, Renewable Energy and Climate Change.**

The PRC regulates the utilities, telecommunications, motor carriers and insurance industries to ensure fair and reasonable rates and reasonable and adequate services to the public as provided by law. Marks, who holds a law degree from the UNM School of Law, also has extensive experience in health care financing.

The meeting will be held at noon, March 20, at the State Bar Center, and lunch will be served to those who R.S.V.P. by March 19 to Tony Horvat, thorvat@nmbar.org, or (505) 797-6033. Each attendee should bring a $5 check made payable to the State Bar Solo and Small Firm Practitioners Section to help defray the cost of the lunch. The board of directors will meet at 11:30 a.m.

**Summer Law Clerk Program Seeking Participating Firms and Agencies**

The State Bar of New Mexico is partnering with major New Mexico law firms and governmental law departments to provide excellent employment opportunities for diverse and deserving law students at the UNM School of Law. The Summer Law Clerk Program provides law students who have capable research and writing skills with the opportunity to demonstrate the drive and excellence that law firms and agencies value most in making employment decisions.

The State Bar and its participating firms and agencies recognize that differences in the social, educational and economic backgrounds of individual law students can often create barriers to employment that have nothing to do with performance or the potential for success as an attorney. The rigorous application and interview process combines a unique learning experience for law students with a unique insight into the qualifications and potential of our applicants.

Working with law firms and agencies who are committed to the ideal of diversified applicant pools, the Summer Law Clerk Program has been bringing down artificial barriers to employment, producing quality law clerks and diversifying attorney applicants for nearly a generation.

Law firms or agencies interested in participating in the 2007 Summer Law Clerk Program should contact Art Jaramillo, Arturo.Jaramillo@state.nm.us, by 5 p.m., Feb. 28. Interviews will be held at UNM on March 3.
Young Lawyers Division 2007 Summer Fellowships

The Young Lawyers Division is currently accepting applications for its 2007 Summer Fellowships. Two fellowships will be awarded by the YLD to two law students who are interested in working in the public interest or government sector during the summer of 2007. The fellowship awards are intended to provide the opportunity for law students to work in positions that might not otherwise be possible because the positions are unpaid. The fellowship awards, depending on the circumstances of the position, could be up to $3,000 for the summer.

In order to be eligible, applicants must be a current law student in good standing with their school. Applications for the fellowship must include: (1) a letter of interest that details the student’s interest in public interest law or the government sector; (2) a resume; and (3) a written offer of employment for an unpaid legal position in public interest law or the government sector for the summer of 2007. Submit applications to:

J. Brent Moore, YLD Summer Fellowship Coordinator
Office of General Counsel
Department of Environment
1190 St. Francis Dr., Suite N-4050
Santa Fe, New Mexico 87501

Applications must be postmarked by March 31. Direct questions to J. Brent Moore, (505) 476-3783.

Dismas House Project

The Young Lawyers Division (YLD) is sponsoring the Second Annual Tools for Success Program for Dismas House, a transitional home with a family atmosphere to nonviolent parolees who are transitioning back into society.

YLD is seeking volunteer attorneys to provide training sessions to Dismas House residents on the following dates and topics:

- May 23: Criminal Law Issues
- Aug. 29: Landlord/Tenant Law
- Oct. 17: Restoration of Drivers License

Contact Briana Zamora, bhzamora@btblaw.com, to volunteer.

Other Bars

Albuquerque Bar Association Membership Luncheon

The Albuquerque Bar Association’s membership luncheon will be held at noon, Feb. 6, at the Albuquerque Petroleum Club. Mayor Martin Chavez will present the luncheon program on the State of the City.

The CLE (3.0 general CLE credits) will be from 1:30 to 4:30 p.m. Collaborative Law: What It Is and What You Need to Know will be presented Gretchen Walther and David Walther, Walther Family Law PA; Tom Burrage, CPA, Meyners and Company; Jan Gilman-Tepper, Little & Gilman-Tepper PA; and Max August, LL.M., Children First, Santa Fe.

Lunch only: $20 members/$25 non-members with reservations; $5 additional at the door. Lunch and CLE: $80 members/$105 non-members; $5 additional at the door. CLE only: $60 members/$90 non-members.

Register for lunch by noon, Feb. 2. Register online at www.abqbar.com; by e-mail at abqbar@abqbar.com; by mail to ABA, 400 Gold SW, Suite 620, Albuquerque, NM 87102; by fax to (505) 842-0287; or call (505) 842-1151 or (505) 243-2615.

American Bar Association Legal Opportunity Scholarship Fund

The ABA Legal Opportunity Scholarship Fund is intended to encourage racial and ethnic minority students to apply to law school and to provide financial assistance to these students. The Scholarship Fund will award $5,000 annually to each recipient attending an ABA-accredited law school. An award made to an entering first-year student may be renewable for two additional years, resulting in financial assistance totaling $15,000 during his or her time in law school. The application can be downloaded from the ABA Web site, http://www.abanet.org/fje. Completed applications must be postmarked no later than March 1. Recipients will be selected based on their qualifications for the scholarship and not on the law school they plan to attend. Therefore, law students applying to any and all ABA-accredited law schools may benefit from these scholarships. Call (312) 988-5137 for additional information.

UNM School of Law Barrister’s Ball

Members of the State Bar and their guests are invited to attend the 1st Annual Barrister’s Ball sponsored by the UNM School of Law. This event is a networking opportunity, a celebration of the Class of 2007 and a social event for State Bar members, law students, faculty and staff. The ball will be held at 7:30 p.m., Feb. 24, in the Sierra Ballroom at the Embassy Suites Hotel, Albuquerque. Dress is formal. Tickets are $20 per person and include appetizers. A cash bar will be available. To purchase tickets, visit Career Services from 8 a.m. to noon and from 1 to 5 p.m., call (505) 277-0028 or e-mail wangam@law.unm.edu.

Library Spring Hours

Building and Circulation

Monday—Thursday 8 a.m. to 11 p.m.
Friday 8 a.m. to 6 p.m.
Saturday 9 a.m. to 6 p.m.
Sunday Noon to 11 p.m.
Mar. 12–16, Spring Break 8 a.m. to 6 p.m.
Reference

Monday—Friday 9 a.m. to 6 p.m.
Saturday Closed
Sunday Noon to 4 p.m.
Phone: (505) 277-6236

Other News

Mock Trial Program

Pojoaque High School needs three attorneys to provide legal expertise and coaching for three teams that are registered for the 2007 New Mexico High School Mock Trial Program. The amount of time invested will be decided by the volunteer and the teacher advisor, but teams usually meet at least once each week. Regionals are Feb. 16–17, state finals are March 16–17 and nationals are May 10–13. Contact Michelle Giger, (505) 764-9417, ext. 11.
A Message from the President of the State Bar of New Mexico
continued from page 2

Judicial Reform
In 2007 I will ask a group of lawyers, judges and business people to look afresh at the adjudication process and its current lack of efficiency. As usually happens, attention is given to the very poor who cannot afford any counsel, and we talk about mega cases where the funds are unlimited to litigate. The group left out of the equation are those who have a right to expect that their disputes can be litigated in a reasonable time for a reasonable cost, even though they are neither indigent nor multi-billion dollar corporations.

Regulatory Functions
The State Bar is not a trade association. It is created by statute, and all New Mexico lawyers are required to be members. We lobby the legislature primarily on public interest issues—and seldom at that. Our job is to assist in the regulation of the practice to promote competence and assist lawyers in maintaining their practices. The State Bar is already dynamic, but it must have more influence over regulation of the practice of law, and be more involved in promoting the fair judgment of the judiciary. Some of these issues can be controversial, but I intend to confront them over the coming year and, hopefully, beyond.

I’m proud of what the State Bar of New Mexico does for its lawyers, the judicial system, the business community, and the public. All of the current officers, which include our immediate past president, are totally committed to making the upcoming year a display of enthusiasm for lawyers, the State Bar. We will foster public respect for the contribution of lawyers as advocates, judges, public office holders and business people.

Sincerely,

Dennis E. Jontz
President

Web Corner

By Veronica Cordova,
Assistant Director of Administration

This month users are directed to an online legal research library known as Casemaker, accessible through the State Bar Web site at www.nmbar.org. Active members of the State Bar and Paralegal Division members have free access to the New Mexico Library that has case law, statutes and session law, the administrative code, state court rules, attorney general opinions and uniform jury instructions.

There are 44 state libraries that are accessible through Casemaker with the remaining states to be available sometime this year. A federal library is also available with U.S. Circuit Court opinions, U.S. Supreme Court opinions, U.S. District courts and U.S. Bankruptcy Court opinions, federal court rules, the U.S. Constitution, U.S. codes, USC Bankruptcy Reform Act, Federal Code of Regulations and federal court forms.

To access Casemaker through the State Bar Web site, click on the Casemaker graphic or text navigation link directly off the homepage. A secondary page provides additional information and training opportunities currently scheduled. Click on another graphic button and provide the login (State Bar ID number as the username and the last name as the password. Paralegal Division members use a paralegal ID number preceded by zeros to comprise a six-digit number). Members are routed to the term and conditions of use and directed to the Casemaker site.

Check the “Legal Education Calendar” in this issue of the Bar Bulletin for an upcoming training session on Casemaker (1.0 general CLE credit).

Contact Veronica Cordova, vcordova@nmbar.org or (505) 797-6039 for information about Casemaker or for technical support.

NOTE
SUBMISSION DEADLINES

All advertising must be submitted by e-mail or fax by 5 p.m. Wednesday, two weeks prior to publication (Bulletin publishes every Monday). Advertising will be accepted for publication in the Bar Bulletin in accordance with standards and ad rates set by the editor and subject to the availability of space. No guarantees can be given as to advertising publication dates or placement although every effort will be made to comply with publication request. The editor reserves the right to review and edit classified ads, to request that an ad be revised prior to publication or to reject any ad. Cancellations must be received by 10 a.m. on Thursday, two weeks prior to publication. For more advertising information, contact: Marcia C. Ulibarri at (505) 797-6058 or e-mail ad to ads@nmbar.org or fax (505) 797-6075.
Sanford H. Siegel has rejoined Atkinson & Kelsey PA, where he previously practiced divorce and family law from 1982 to 1995. Siegel is a member of both the New Mexico and Colorado State Bar associations. He has been listed in Best Lawyers in America and is a recognized family law specialist in New Mexico. The New York City native received his B.A. from Cornell University, an M.A. from the New School for Social Research and his J.D. from Fordham University School of Law. Before relocating to New Mexico, he was an assistant district attorney in the Office of the District Attorney of New York County.

Daniel P. Ulibarri, managing director of the firm of O’Brien & Ulibarri PC, was certified as a trial specialist in civil law by the New Mexico Board of Legal Specialization. Ulibarri graduated from the Baylor University School of Law in 1995, was licensed in Texas and New Mexico the same year and joined the firm in 1999.

R.E. Thompson has been elected president of Modrall Sperling. Thompson has been with the firm for 25 years and has extensive experience in helping businesses and others with civil litigation involving commercial disputes, products liability, class actions, malpractice, negligence, insurance and nursing homes. He also handles administrative law hearings and most recently served the firm as chairman of the Lobbying Practice Group.

The State Bar of New Mexico has appointed attorney Charles J. Vigil, managing director of the Rodey Law Firm, to serve as the State Bar’s representative in the American Bar Association’s House of Delegates. The ABA House of Delegates, which has 549 members, meets twice a year and is the policy-making body of the association. Vigil practices in the litigation department in employment law, civil rights, commercial litigation, products liability and professional liability. He is a past president of the State Bar and the past chair of the State Bar’s Client Protection Fund Commission.

At the suggestion of U.S. Senator Jeff Bingaman and upon the recommendation of the then Senate Minority Leader Harry Reid, President Bush nominated John P. Salazar for membership on the board of directors of the Inter-American Foundation (IAF), an independent foreign assistance federal agency that provides grants to nongovernmental and community-based organizations in Latin America and the Caribbean. Salazar is a director and shareholder in the Rodey Law Firm. He is a member of the firm’s executive committee and chairs the business department. His practice focuses on real estate, land use and development law, municipal and administrative law. He has substantial litigation experience in eminent domain and recently co-chaired the Governor’s Task Force on Eminent Domain.

Trent Howell has become a partner in Holland & Hart’s Santa Fe office. Howell is certified as a specialist in employment and labor law by the New Mexico Board of Legal Specialization. His practice focuses on commercial, employment, employee-benefits, tort and insurance litigation in all federal and state courts of New Mexico.

Patrick L. McDaniel, an attorney and shareholder practicing divorce and family law with Atkinson & Kelsey PA, has published an article entitled, “When a Parent Relocates: Policy Dilemmas and Proposed Reform” in the January-February 2007 issue of The New Mexico Trial Lawyer magazine. McDaniel has previously written articles on various divorce and family law topics for such national publications as the American Journal of Family Law and The Family Advocate.

In June of the past year, The Honorable Joseph E. Baca, retired chief justice of the New Mexico Supreme Court, addressed the Texas judiciary at the Texas Bar Association meeting in Austin. More than 250 Texas judges attended the breakfast event. In September, as the Marion R. Smyer Jurist-in-Residence at the University of South Dakota School of Law, Baca delivered two public lectures and helped teach several classes. He has been appointed to a three-year term on the council of the American Bar Association’s Legal Education and Admissions to the Bar Section, the national accrediting agency recognized by the U.S. Department of Education for law school programs leading to the JD degree. Baca continues to be involved in private mediations and arbitrations.

Four attorneys were recently honored at the State Bar of New Mexico’s Bench and Bar Conference held in Roswell for commitment to pro bono representation and equal access to justice.

Kenneth G. Egan is a sole practitioner in Las Cruces. He was honored for his commitment to providing family law-related pro bono services to his community. Egan volunteered 51 hours of his time to present family law workshops, free and open to the public, in Las Cruces. He still currently presents consumer debt/bankruptcy workshops on a monthly basis in Las Cruces.

Albert W. Schimmel III is a regular volunteer at the monthly consumer debt workshops, consulting with workshop participants in the clinic following the group presentation. Schimmel assists with pro bono referrals in estate planning and bankruptcy from both the Lawyer Referral for the Elderly Program and the Lawyers Care Program, accepting 15 pro bono referrals in the past year alone. He also performs home

BAR BULLETIN - February 5, 2007 - Volume 46, No. 6
visits for free for homebound clients in Albuquerque and the surrounding counties.

Laurie A. Hedrich, a sole practitioner in Albuquerque, has distinguished herself in the area of pro bono service by running the HIV-Aids helpline and assisting clients who have been referred to her from both the Lawyer Referral for the Elderly and the State Bar Referral Program. Hedrich has generously given her assistance pro bono in drafting powers of attorney, advance health care directives and wills for people in need. She has volunteered over the years to present workshops on advance health care directives to the public.

Robert F. Turner established the Turner Law Firm in Deming in 1994 and has a general law practice. Since 1998, he has accepted 59 cases through the General Referral Program and 48 cases through the Lawyer Referral for the Elderly Program. All of these involved some level of pro bono work. The estimated monetary value of his contributions over the years is $25,420. In addition to accepting cases in the Deming area, Turner assists people throughout southern New Mexico. If the client is unable to travel to him, he often consults with them via telephone or has them fax documents to him for review.

Meghan Stanford was elected to the Rodey Law Firm’s board of directors. Stanford practices in the litigation department with an emphasis in professional liability. Her experience includes business and employment litigation, as well as representation of governmental entities and appellate work.

District Judge John W. Pope received a temporary reassignment as Santa Claus for the New Mexico Women’s Recovery Academy and for the children of women in the Reentry Academy in Valencia County. Santa said he was relieved there were no appeals.

At its annual meeting in December, the New Mexico Chapter of the American Board of Trial Advocates New Mexico honored its outstanding members for their contributions to the right to a jury trial, the legal system and community education on the right to a jury trial. ABOTA is a national organization of more than 6,000 civil trial attorneys dedicated to preserving the right to a civil jury trial. Lawrence H. Hill, New Mexico chapter president, announced the following awards:

The Honorable James A. Parker, U.S. District judge, and The Honorable C. Leroy Hansen, U. S. District judge, were honored for their contributions to the federal judiciary in New Mexico.

Richard C. Civerolo, former national president and current chapter treasurer, was honored for his 40 years of service to ABOTA and his contribution in founding the local chapter.

The Honorable Gene E. Franchini, retired New Mexico Supreme Court justice, was given the chapter’s community service award for his contribution to the high school mock trial competition as a judge, coach and member of the board of directors.

The Cibola High School Mock Trial Team was honored for placing first in the moot court competition at the state level and placing 13th at the national competition. This was the highest finish for a New Mexico team since 1998.
## LEGAL EDUCATION

### FEBRUARY

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G = General  E = Ethics  P = Professionalism  VR = Video Replay

Programs have various sponsors; contact appropriate sponsor for more information.
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<td>Corporate Practice–Screening and Conflict Issues</td>
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<td>Public Sector Employment Law Update</td>
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<td>Access to Justice Programs Overview</td>
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<td>Accountability vs. the Right to Practice</td>
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<td>Surprising Legal Ethics Outcomes</td>
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<td>ADR in Estate Planning Disputes</td>
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WRITS OF CERTIORARI

AS UPDATED BY THE CLERK OF THE NEW MEXICO SUPREME COURT
Kathleen Jo Gibson, Chief Clerk New Mexico Supreme Court
PO Box 848 • Santa Fé, NM 87504-0848 • (505) 827-4860

EFFECTIVE FEBRUARY 5, 2007

PETITIONS FOR WRIT OF CERTIORARI FILED AND PENDING:
Date Petition Filed

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(Parties preparing briefs)
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## OPINIONS

**AS UPDATED BY THE CLERK OF THE NEW MEXICO COURT OF APPEALS**

Gina M. Maestas, Chief Clerk New Mexico Court of Appeals  
PO Box 2008 • Santa Fé, NM 87504-2008 • (505) 827-4925  
**EFFECTIVE JANUARY 26, 2007**

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### Slip Opinions for Published Opinions may be read on the Court’s Web site:

Meet the Board of Bar Commissioners

**Dennis E. Jontz**
is a partner in the Albuquerque office of Lewis and Roca Jontz Dawe LLP. He practices in the areas of business, real estate, intellectual property and government contract law, in addition to civil and commercial litigation. Jontz earned a B.A., M.B.A. and J.D. from Drake University in Des Moines, Iowa. He has practiced law since 1973 and served as judge advocate in the U.S. Air Force, active and reserve, from 1974 to 1998. Jontz serves on the board of directors for the Better Business Bureau, Albuquerque Economic Development, Inc., New Mexico Museum of Natural History Foundation, the Kirtland Partnership Committee and is chairman of the board of Oso Grande Technologies. He was selected as a New Mexico Power Broker for 2004, 2005 and 2006 (sponsored by *New Mexico Business Weekly*). An active member of the business and legal community, he is a member of the Economic Forum and has been a member of the Albuquerque Rotary Club since 1984. Jontz also represents the 1st Bar Commissioner District.

**Craig A. Orraj**
is the managing attorney for the Law Offices of Craig A. Orraj and staff counsel for Farmers Insurance Exchange and Affiliates. Orraj obtained a B.S. degree in justice studies from Arizona State University in 1985 and a J.D. from the University of Arizona in 1988. He is licensed in New Mexico and Texas. Orraj was elected as a State Bar Commissioner in 2002 and is a former president of the Young Lawyers Division. He is active in the American Bar Association Tort Trial and Insurance Practice Section where he serves as vice-chair of the Staff Counsel Committee, vice-chair of the Corporate Counsel Committee and member of the Long Range Planning Committee. Orraj also represents the 1st Bar Commissioner District.

**Henry A. Alaniz**
graduated from UNM from the Dual Degree Program with a J.D. and an M.B.A. He received a bachelor’s degree in business administration with a concentration in accounting from Eastern New Mexico University. He has had a law practice in Albuquerque from 2002 and was an assistant district attorney for the 2nd Judicial District in Bernalillo County from 1997 to 2002. Alaniz is a faculty member of the Central New Mexico Community College (formerly Albuquerque Technical Vocational Institute). He has been active in law and community-related organizations throughout New Mexico including past president of the Hobbs New Mexico Jaycees, past president of the Roswell Chamber of Commerce, past president of the Student Bar Association at UNM School of Law and former chair of the Young Lawyers Division. He has been a member of the New Mexico Conquistador Boy Scout Council, the Roswell Economic Forum, St. Mary’s Hospital Board and an associate board member of Security National Bank of Roswell. Alaniz also represents the 1st Bar Commissioner District.

**Stephen S. Shanor**
is a shareholder in the law firm of Atwood, Malone, Turner & Sabin in Roswell. His practice involves litigation, primarily in the field of medical malpractice. He received a B.A. degree from Wittenberg University in Springfield, Ohio, in 1990 and a J.D. degree from the University of Denver, College of Law School, in 1993. He is licensed to practice in New Mexico, Ohio, the 10th Circuit Court of Appeals and the U.S. Supreme Court. Shanor served as a law clerk in the 5th Judicial District; practiced in Carlsbad with the Law Offices of W.T. Martin, Jr., PA, becoming a partner in 1998; and in 2000 joined Martin, Browne, Hull & Harper PLL in Springfield, Ohio. Shanor served as president of the Eddy County Bar Association in 1995, 1996 and 1998 and as the director of Quadrant 3 for the Young Lawyers Division. He has served on the 5th Judicial District Local Rules Committee and the 5th Judicial District Judicial Selection Committee. He was co-chair of the 5th Judicial District Bench and Bar Conference from 1993-1999 and a member of the State Bar Bench and Bar Relations Committee. Shanor also represents the 6th Bar Commissioner District.

The State Bar of New Mexico is governed by the Board of Bar Commissioners, elected from throughout the state. The State Bar has recently elected its officers and members of the Board for 2007. Established in 1886, the State Bar currently has more than 7,500 members. Following are short biographies of the board members, beginning with the officers.
First Bar Commissioner District

**David M. Berlin**

is the managing partner of the law firm of Duhigg, Cronin, Spring, Berlin PA in Albuquerque where he practices in the areas of medical negligence, insurance law and other personal injury law. Berlin received a B.S. degree from Michigan State University and his J.D. degree, cum laude, from New York Law School. He is a member of the New Jersey, New York, Texas and New Mexico state bars, as well as a member of the New Mexico Trial Lawyers, Texas Trial Lawyers and American Trial Lawyers associations. Berlin sits on the board of directors for the Center for Civic Values, an organization dedicated to providing law-related education to the public and is also a member of the IOLTA Grant Committee. He has served on several State Bar committees including the Policies and Bylaws Committee, the Finance Committee, the Personnel Committee, the Board of Editors and other ad hoc committees. Berlin is the attorney coach for the Cibola High School Mock Trial Team and has been involved in the competition in various forms since 1988.

**Beatrice J. Brickhouse**

received her bachelor's degree from Western Illinois University and served three years in the U.S. Army as an officer. She graduated from the University of Arizona College of Law after completing the program in two and one-half years. Brickhouse moved to Albuquerque and was admitted to the State Bar in May 1993. Her first job was as a prosecutor in Farmington. She also practiced criminal defense in southeastern New Mexico. Brickhouse currently works as an assistant city attorney for the City of Albuquerque Legal Department, Litigation Division. She has worked with her neighborhood association and served on the board of directors for La Puerta de los Niños.

**Virginia R. Dugan (Past President)**

is a shareholder with the Albuquerque firm of Atkinson & Kelsey PA, practicing exclusively in divorce and family law. She graduated from State University of New York at New Paltz with a B.A., cum laude, in 1968, from UNM with an M.A. in 1971, an Ed. D. in 1992 and a J.D. in 1995. She was admitted to the State Bar and the U.S. District Court in 1995. Dugan is also admitted to the 10th Circuit Court of Appeals. She has served as State Bar president (2006), co-chair of the Professionalism Committee and chair of the Marital Property Committee for the Family Law Section of the ABA. Dugan is a Martindale Hubbell "A" rated lawyer and a recognized specialist in the area of family law in New Mexico. Her professional affiliations included Phi Delta Phi, International Legal Fraternity, 1993; University of New Mexico Law Review: Casenotes and comments editor, 1994-95; UNM Law Mock Trial Team, 1995; and president of the New Mexico Women's Bar, Mid-State Chapter, 2004. She is a member of the Albuquerque Bar Association, American Bar Association and the State Bar's Family Law Section. Dugan's hobbies include stain glass design and construction, doll collecting and playing with her Bouvier dog, Dulcinea.

**Danny W. Jarrett**

is a native New Mexican and a 1996 graduate of the UNM School of Law where he was a staff editor of the *New Mexico Law Review*. He was vice-president and corporate counsel for a national health care company as well as an attorney in private practice. Currently, he is the president of Noeding & Jarrett PC, where he counsels and represents public and private employers regarding labor and employment disputes. He represented the State Bar and set national precedent concerning NLRB jurisdiction in a representation election involving State Bar employees. Jarrett is a member of several practice committees in the ABA Labor and Employment Section and serves on the board of directors of the State Bar’s Employment and Labor Section. He is an appointee to a local public employer labor relations board and an arbitrator.

**Carla C. Martinez**

was appointed by Governor Bill Richardson to be chair of the New Mexico Gaming Control Board and also fills the certified public accountant position on the board. Martinez received her undergraduate degree in accounting from New Mexico State University and her law degree from the UNM School of Law. A certified public accountant, Martinez worked for the international accounting firm of Arthur Andersen LLP and the civil defense law firm of Hatch, Allen & Shepherd PA. She is a board member of the New Mexico Board of Bar Examiners. She has been a board member of the New Mexico Hispanic Bar since 1998 and has served on their executive committee. Martinez, a native of New Mexico, also participates on several advisory committees for Central New Mexico Community College.
Second Bar Commissioner District

Sandra Eileen Németh
was born in Farmington and graduated from the UNM School of Law in 1996. Prior to law school she was a union organizer and rehabilitation counselor and worked in various labor, feminist and progressive organizations. She received her master’s degree in industrial and labor relations from the University of Oregon. She has worked for DNA-People’s Legal Services; Community and Indian Legal Services; the Children, Youth and Families Department; and as a domestic violence shelter staff attorney. She has been in private practice as a sole practitioner for eight years, based in the 11th and 13th Judicial districts. Németh is married and has two grandchildren. Her community involvement includes sitting on the board of directors for the local hospital and the local Main Street Association. She lives in Grants “where the pace is slow and the people are friendly.”

Third Bar Commissioner District

Mónica M. Ontiveros
is a senior litigation attorney in the Risk Management Division, General Services Department. Her practice primarily involves employment litigation and supervising contract lawyers. She received her J.D. from the UNM School of Law in 1988 and an LL.M. in taxation from Washington University in 1989. She has practiced in the 1st Judicial District for approximately 14 years. Prior to working in Santa Fe, she worked as the Doña Ana County attorney and served as counsel to former New Mexico Attorney General Tom Udall, special assistant A.G. for the Taxation and Revenue Department and assistant Santa Fe County attorney. Ontiveros has served on the boards of the Hispanic Bar Association, the Women’s Bar Association and Equal Access to Justice. She currently serves on the Women’s Bar Foundation Board. Ontiveros is married to Bill Brancard and is the proud mother of two wonderful children, Pilar and Robert.

Fourth Bar Commissioner District

Carolyn A. Wolf
is an attorney with Montgomery & Andrews PA in Santa Fe. She joined the firm in 1995 after almost 17 years in state government, where she was an attorney for several agencies including the Taxation and Revenue Department and the Department of Finance and Administration. Wolf is a graduate of Manzano High School, Rice University and the UNM School of Law. She has served on the board of the Public Law Section and was its chair in 1995. She also previously served on the Board of Bar Commissioners from 1997 through 2003 representing the 3rd District.

Fifth Bar Commissioner District

Donal C. Schutte
resides in Tucumcari and practices with the 10th Judicial District Attorney’s Office as its chief deputy. He also runs and manages a farm and cow-calf operation in eastern New Mexico. Schutte received a B.A. from Bowling Green State University and a J.D. from The University of Akron, both in Ohio. Schutte has practiced law in New Mexico since 1974, initially in Albuquerque in a largely civil practice and now in Tucumcari where he resides on his ranch.

Sixth Bar Commissioner District

Andrew J. (Drew) Cloutier
is a partner in the Roswell office of Hinkle, Hensley, Shanor & Martin LLP. He has practiced law for 19 years, primarily in the areas of oil and gas, commercial and complex litigation. He is a 1987 graduate of the University of Texas School of Law and received a B.A. from the University of Dallas in 1984. Cloutier is licensed to practice law in New Mexico and Texas. He is a review officer for the Disciplinary Board and previously served as a director of the Bankruptcy Law Section. He presently serves as president of the Sidney Gutierrez Middle School Foundation, on the executive board of the Conquistador Boy Scouts Council, as scoutmaster of Boy Scout Troop 149, and teaches 9th grade religious education at his church. Cloutier and his wife, Carrie-Leigh, live in Roswell with their three sons.
D ominic (Don) E. Dutton holds the attorney position on the New Mexico Gaming Control Board (NMGCB). He was appointed by Governor Bill Richardson and unanimously confirmed by the New Mexico Senate in 2003. Dutton was reappointed to a five-year term, subject to Senate confirmation, and will serve in that capacity at the pleasure of the governor. As a board member, he, along with the other board members, regulates gaming in New Mexico, assuring its honesty, fairness and integrity. NMGCB also has oversight responsibility of the State-Tribal Compacts. Prior to his appointment, Dutton was in private practice with offices in Ruidoso and maintained a general civil practice, representing several local governments and entities. Don conducted mediations throughout the 3rd, 5th and 12th Judicial districts. He received his J.D. from the University of Houston, Bates College of Law; a B.S. in government from Lamar University; and his Mediation Certificate from the UNM School of Law. Additionally, Dutton graduated John F. Kennedy School's Senior Executive Fellows Program, Harvard University. He was elected vice president of the North American Gaming Regulators Association and will serve as president next July. Previously, he served on NAGRA’s board of directors representing the western states district. Don is active in his community and in local and State Bar activities.

Seventh Bar Commissioner District

Richard M. Jacquez has been a member of the State Bar for seven years. For the past six years, he has practiced law in Dona Ana County. He is currently a hearing officer with the New Mexico Taxation and Revenue Department. He previously worked for the City Attorney’s Office of Las Cruces. During this time, Jacquez remained involved in various legal organizations, committees and activities.

H ans William Voss is a 1998 graduate of the UNM School of Law. In addition to his J.D., he holds a Master of Arts degree in economics. Voss has taught micro-economics at UNM and has worked for the New Mexico Attorney General’s Office, State Engineer’s Office, the 4th Judicial District Court and was in private practice in Santa Fe for six and one-half years. He is currently the Grant County attorney and resides in Silver City.

Senior Lawyers Division Delegate

Daniel J. Behles is a sole practitioner in Albuquerque, practicing primarily in bankruptcy, commercial and real estate law. He received an undergraduate degree from the University of Notre Dame and has a J.D. degree from UNM. He is licensed in New Mexico and Colorado. Behles is a member of the American Bankruptcy Institute, the Albuquerque Bar Association and the Albuquerque Lawyer’s Club. He has been recognized as a specialist in both consumer and business bankruptcy law by the New Mexico Board of Legal Specialization and has also been nationally certified in both business and consumer bankruptcy law by the American Board of Certification. Behles was formerly a licensed New Mexico real estate broker and general contractor and taught business law for several years at UNM’s Anderson School of Management. He presently serves on the board of directors of the Senior Lawyers Division and the New Mexico Board of Legal Specialization. He has one daughter, Jessica. He is an avid “do-it-yourselfer” and likes to ski and white-water raft. He is also a private pilot, beginner golfer and an excellent cookie-baker.

Young Lawyers Division Chair

E rika E. Anderson received her undergraduate degree from the University of Colorado in 1992, her masters in counseling from UNM in 1995 and her J.D. from the UNM School of Law in 2001 where she was on the dean’s list and honor roll and received the A. McLeod Award for Skill in Advocacy. Anderson clerked for eight judges in the 5th Judicial District and for the Honorable Gene Franchini and the Honorable Richard C. Bosson on the New Mexico Supreme Court. She does civil litigation and works primarily on cases involving civil rights, employment, business and personal injury law. She is a member of the U.S. District Court for the District of New Mexico and the U.S. Court of Appeals for the 10th Circuit. She has served with the Young Lawyers Division since 2003 and will be its chair in 2007. She has been nationally selected to be a member of the American Bar Association Young Lawyers Division Affiliate Assistance Team, where she provides support to other affiliates throughout the country and assists with programming for national conferences. She is also on the board of directors for the 1st Judicial District Bar Association in Santa Fe and will be its president in 2008. Prior to becoming a lawyer, Anderson worked for four years as a counselor for adolescents and their families.

Paralegal Division Liaison

C arolyn Cochran, 2007 chair of the Paralegal Division, is a paralegal with the law firm of Thompson, Rose & Hickey PA. She has been a member of the Paralegal Division since 2000. She served as a board member for one year, as treasurer for three years and as chair-elect for one year. Cochran received her M.B.A. from the University of California, Los Angeles, with a major in arts management. She received a B.A. from the University of Texas, Austin, where she was a member of Alpha Lambda Delta, Junior Fellows and Phi Beta Kappa honor societies. Cochran interned in the Finance and Development Department of the Joffrey Ballet in New York City. She also served in the Marketing Department of the Houston Ballet, was the administrative director of Ballet Oklahoma in Oklahoma City, the administrative director of the Orchestra of Santa Fe and the director of investor relations for Vivigen. In 1990 she started as a legal secretary for White, Koch, Kelly & McCarthy, PA in Santa Fe. Encouraged by the firm and mentored by Kay Homan, C.P., she became a legal assistant and then a paralegal. In January 2006, she joined the new law firm, Thompson, Rose & Hickey PA as paralegal/office manager.
IN THE MATTER OF STAYING CERTAIN APPELLATE CASES INVOLVING ISSUES PENDING BEFORE THE NEW MEXICO SUPREME COURT

ORDER

This matter is before this Court pursuant to its own motion and is based on the following:

1. On December 8, 2006, the New Mexico Supreme Court entered an order in State v. Mark Joseph Lizzol, S. Ct. No. 30,019, directing that the opinion issued by the New Mexico Court of Appeals in State v. Mark Joseph Lizzol, Ct. App. No. 25,794, filed August 28, 2006, shall be held in abeyance and not published pending final resolution by the Supreme Court.

2. This Court has continued to receive appeals involving the same issues as those decided in Lizzol. We construe the Supreme Court’s order filed December 8, 2006, as a direction to this Court not to file any opinions in these cases, but instead to await the Supreme Court’s final resolution of Lizzol.

IT IS THEREFORE ORDERED that the following cases are HEREBY STAYED until the New Mexico Supreme Court’s final resolution of Lizzol:

- State v. Felker, Ct. App. No. 25,933
- State v. Granillo-Macias, Ct. App. No. 26,156
- State v. Julian, Ct. App. No. 26,583
- State v. Fuller, Ct. App. No. 26,672
- State v. Guerin, Ct. App. No. 26,712
- State v. Lopez, Ct. App. No. 26,789
- State v. Lingerfelt, Ct. App. No. 27,150
- State v. Tolon, Ct. App. No. 27,157

JONATHAN B. SUTIN, Chief Judge
The Pecos River, flowing from north (upstream) to south (downstream) in New Mexico and then into Texas, has challenged water experts for well over a hundred years, without meaningful resolution of the issues of rampant usage with attendant shortages.

In significant part, the Pecos River issues have revolved around: (1) the competing claims of downstream, senior surface water users in the Carlsbad, New Mexico area and upstream, junior groundwater users in New Mexico’s Roswell Artesian Basin; and (2) the competing claims of New Mexico users and Texas users. The present case involves the attempt by the State of New Mexico, the United States, and irrigation entities through a settlement agreement to resolve difficult long-pending water rights issues through public funding, without offending New Mexico’s bedrock doctrine of prior appropriation, and without resorting to a priority call. In this case, certain downstream, senior surface water users, specifically Tracy/Eddy Trusts and Farms (Tracy/Eddy), and Hope Community Ditch Association (Hope), who are the Appellants in this appeal, seek to abort that attempt and to require the doctrine of prior appropriation to be strictly enforced through senior against junior priority enforcement in order to assure adequate water for the downstream users and additionally to assure that the upstream, junior users and not the State’s taxpayers bear the burden of providing adequate water.

Appellees, who are Carlsbad Irrigation District (CID), Pecos Valley Artesian Conservancy District (PVACD), and the State of New Mexico, seek ratification of a settlement agreement among themselves and the United States establishing a managed water plan for the Pecos River, which recognizes prior appropriation rights but subsumes individual interests to collective and representative bodies. We affirm the judgments in favor of Appellees, including the partial final decree that incorporates the settlement agreement.

We begin with a thumbnail history of significant events in relation to the Pecos River, followed by a review of the court
determination that is the subject of the appeal now before this Court. We then discuss the points raised by Appellants.

HISTORY

A. A BRIEF LOOK AT TWENTIETH CENTURY ACTIVITY

{5} Jumping over nineteenth century Pecos River water issues, we start with the point at which the United States became involved with Pecos River water concerns. See generally G. Emlen Hall, High and Dry: The Texas-New Mexico Struggle for the Pecos River (2002) [hereinafter Hall, High and Dry]; Water Resources of the Lower Pecos Region, New Mexico: Science, Policy and a Look to the Future (Peggy S. Johnson et al. eds., 2003) [hereinafter Water Resources]. Following the 1904 Pecos River flood, the newly created United States Reclamation Service (later called the Bureau of Reclamation) became involved in a federal reclamation project located on the Pecos River called the Carlsbad Project, which consists of several dams, reservoirs, canals, and other works on the river. See Hall, High and Dry, supra, at 31, 36; see also Brantley Farms v. Carlsbad Irrigation Dist., 1998-NMCA-023, ¶ 26, 124 N.M. 698, 954 P.2d 763. The Bureau of Reclamation owns the reservoirs and other works servicing water users in the Carlsbad area, and owns and administers the Carlsbad Project. Brantley Farms, 1998-NMCA-023, ¶ 26. At the time of our statehood in 1912, and even before then, there existed issues of protection of downstream, senior users and Texas users from upstream, junior users. See Hall, High and Dry, supra, at 42-43.

{6} From these early times forward, the quest to resolve the water issues involved several significant activities and events. In 1920, in United States v. Hope Community Ditch, Cause No. 712 (Equity) (D.N.M. 1933), the United States sought a Pecos River stream system adjudication to establish downstream senior surface water rights. Entered in 1933, the final decree in the Hope Community Ditch adjudication (the Hope decree) recognized 1887 priorities for Hope farmers and for the irrigation area that included what is known as the Tracy/Eddy farmlands in the Carlsbad area. The Hope decree also recognized 25,055 water right acres in the Carlsbad Project along with a corresponding duty of water, three acre feet per year per acre. Hall, High and Dry, supra, at 41-42, 257 n.33. However, while the Hope decree recognized that downstream users had certain senior rights to surface water, the decree was problematic because it did not include claims to interrelated groundwater. See Hall, High and Dry, supra, at 41-42; cf. Cartwright v. Pub. Serv. Co. of N.M., 66 N.M. 64, 76, 343 P.2d 654, 662 (1958) (determining that the Hope decree was not res judicata with respect to entities that were not a party to the federal action), overruled on other grounds by State ex rel. Martinez v. City of Las Vegas, 2004-NMCA-009, 135 N.M. 375, 89 P.3d 47.

{7} It was during the Hope Community Ditch adjudication that Carlsbad area users organized the Carlsbad Irrigation District (the CID), which was court-approved in 1933. See Tompkins v. Carlsbad Irrigation Dist., 96 N.M. 368, 370, 630 P.2d 767, 769 (Ct. App. 1981). The CID was formed in cooperation with the Bureau of Reclamation pursuant to New Mexico law and is a “body corporate and politic.” Id.; see Brantley Farms, 1998-NMCA-023, ¶ 26; see also NMSA 1978, §§ 73-10-1 to -50 (1919, as amended through 2003) (providing for the creation of irrigation districts); NMSA 1978, §§ 73-13-43 to -46 (1934) (validating irrigation districts as “continued bodies corporate and politic”). The CID board of directors has broad powers to act on behalf of the CID, including authority to acquire and deal with water rights. See § 73-10-16. The CID board also has discretionary authority to make decisions on behalf of its constituent members regarding distribution and use of water supply. Id.; § 73-10-24; Brantley Farms, 1998-NMCA-023, ¶ 23.

{8} The CID is one of three irrigation entities established on the Pecos River. Another is the Fort Sumner Irrigation District (the FSID), which received Bureau of Reclamation funds to reconstruct a diversion dam. Like the CID, the FSID is an irrigation district cooperating with the United States. See John W. Utton, Irrigation Districts in New Mexico: A Legal Overview of Their Role and Function, in Water Resources 55, 55. The third irrigation entity is the Pecos Valley Artesian Conservancy District (the PVACD), which, like the CID and the FSID, is a political subdivision of the state. Id.; see NMSA 1978, § 73-1-11 (1931). The PVACD was formed in 1932 to conserve groundwater in the Roswell Artesian Basin, following the New Mexico Legislature’s enactment in 1931 of a groundwater code aimed at conservation of artesian waters. See 1931 N.M. Laws ch. 97, § 1 (codified at NMSA 1978, § 73-1-1 (1931)); see also John W. Shomaker, How We Got Here: A Brief History of Water Development in the Pecos Basin, in Water Resources 61, 63. Groundwater development in the Roswell Artesian Basin was unregulated prior to 1931. Shomaker, supra, at 63.

{9} In 1949, after negotiations occurring over many years, an interstate compact called the Pecos River Compact (the Compact) became established law for the Pecos River in relation to the water use issues between New Mexico and Texas. 81 Cong. ch. 184, 63 Stat. 159 (1949); see Hall, High and Dry, supra, at 45-48, 66, 77. The Compact was ratified and adopted in 1949 by the New Mexico Legislature. See NMSA 1978, § 72-15-19 (1949) (setting out the Compact). Among other provisions, the Compact required New Mexico to make up for under-deliveries of water to Texas. See § 72-15-19 art. III(a) (“New Mexico shall not deplete by man’s activities the flow of the Pecos river at the New Mexico-Texas state line below an amount which will give to Texas a quantity of water equivalent to that available to Texas under the 1947 condition.”); Hall, High and Dry, supra, at 49. Water shortages continued despite the existence and purposes of the irrigation districts and the authority of New Mexico’s State Engineer, and despite the obligations placed on New Mexico under the Compact.

{10} In 1974, because New Mexico did not fulfill its Compact obligations, Texas sued New Mexico to enforce the Compact. Texas’ lawsuit against New Mexico was finally decided by the United States Supreme Court in an amended decree (the amended decree) entered in 1988. Texas v. New Mexico, 485 U.S. 388 (1988) (per curiam); see Hall, High and Dry, supra, at 51, 72-73, 193; John E. Thorson, The U.S. Supreme Court in an Original Jurisdiction Action: Texas v. New Mexico, No. 65 Orig. (Pecos River), in Water Resources 47, 47-48. The amended decree added significant stress to New Mexico’s continual Pecos River water shortage concerns. Among other provisions, the amended decree required the appointment of a River Master to oversee water deliveries and assure New Mexico’s compliance and also required New Mexico, by injunction, to meet its Compact obligation to deliver water to Texas at the state line and to submit a proposed plan to erase any state line delivery shortfall. Texas v. New Mexico, 485 U.S. at 389-91 (specifically II(A)(2), (3), III(B)). Under the amended decree, if, based on findings of the River Master, New Mexico does not measure up to its compliance obligations, the River Master is to give New Mexico a six-month grace period to come up with water equaling under-delivery to
the New Mexico State Engineer in two.

This litigation was initiated in 1956 by
with the ultimate threat of a federal take-
was not provided by the Compact itself,

effect the Court imposed an administrative
in the present case, Dr. Lee Wilson, “[i]n

B. THE RISE OF THE PRESENT

1. New Mexico’s Compact Compliance

Statute

(12) After the United States Supreme
Court entered the amended decree in 1988,
the New Mexico Interstate Stream Com-
mision (the Stream Commission) created
the Lower Pecos River Advisory Commit-
tee to develop a consensus plan that would
achieve compliance with the amended
decree. See Reese Fullerton, Building Con-
sensus: A Plan for Long-term Management,
in Water Resources 109, 110. A consensus
plan was submitted to the New Mexico
Legislature, resulting in a substantial
appropriation of funds for implementing the
key elements of the plan. Id. at 110. The
plan was essentially endorsed when the
Legislature enacted NMSA 1978, § 72-1-
2.4 (2002) (the compliance statute), for the
express purpose of achieving compliance
with New Mexico’s obligations under the
Compact. See § 72-1-2.4(A). The purpose
of the compliance statute is to establish a
base flow of the river and provide a reliable
annual irrigation supply (a) for delivery of
a designated amount of acre feet per acre
of irrigated land in the CID, and (b) for
adequate water to fulfill delivery require-
mements to the Texas state line. Id. The statute
contemplates the appropriation of funds
and authorizes the Stream Commission to
fund projects to accomplish compliance with
the Compact:

The interstate stream commis-
sion shall determine the need for
projects to be funded with the ap-
propriations for compliance with
the Pecos River Compact and may
expend funds for the purchase of
land with appurtenant water rights
or rights to the delivery of water
and to take other appropriate ac-
tions that would effectively aid
New Mexico in compliance with
the United States supreme court
amended decree in Texas v. New
Mexico, No. 65 original.

§ 72-1-2.4(B). As a condition to the ex-
penditures of appropriated State funds by
the Stream Commission, the compliance
statute requires that the Stream Commis-
sion has entered into contracts with the
governing bodies of the CID, the PVACD,
and the FSID. § 72-1-2.4(C). The FSID is
not a party to the case before us.

2. The Lewis Case, Presently

(13) The present Lewis appeal derives
from the district court’s inter se adjudica-
tion of the water rights for the Carlsbad
Project. Those water rights were initially
claimed by the United States of America,
the CID, and individual users within the
CID, to the exclusion of one another. The
claims were disputed in substantial part by
the State of New Mexico and the PVACD.
The phase of the adjudication relevant to
this appeal was initiated by a stipulated
offer of judgment in 1994 by the State. See
NMSA 1978, § 72-4-15 (1907) (authoriz-
ing the state engineer through the attorney
general to initiate suits to determine water
rights). The offer of judgment set forth the
elements of the rights of the United States
and the CID to divert and store, and the
CID’s right to deliver, waters of the Pecos
River for the Carlsbad Project. Hundreds
of objections to the offer of judgment
were filed by water right owners on the
Pecos River and its tributaries. PVACD
was one of the objectors. The objections
were placed at issue virtually every element
of the rights accorded to the United States
and the CID in the offer of judgment.
Between 1996 and 2002, the district court
decided several “threshold legal issues,”
still, however, leaving the court and parties
with the prospect of litigating the merits of
the objections raised, which would involve
extensive development of expert testimony,
historical research, discovery, and a lengthy
trial on the merits.

(14) But the process turned toward
negotiation. After the enactment of the
compliance statute in 2002, the Lewis litiga-
tion became the avenue for the State of
New Mexico, the United States, and the
CID, to negotiate for resolving the
unfinished and difficult Pecos River water
issues. Prompted by the compliance statute,
the State of New Mexico, the United States,
the CID, and the PVACD (altogether, the
negotiating parties) negotiated a settlement
agreement and proposed partial final decree
in March 2003. In March and May 2003,
the negotiating parties filed joint motions
for entry of the proposed partial final decree
incorporating the settlement agreement and
for entry of a scheduling and procedural
order that would establish a process for
notifying interested parties and for allow-
ning objections.

(15) Moving the process along, the court
entered a scheduling and procedural order
in October 2003, and a notice approved by
the district court was published and also
sent to hundreds of interested or potentially
affected persons. The notice described the
settlement agreement and proposed par-
tial final decree. The court gave a helpful
bird’s-eye view of the proposed partial final
decree as follows:
The proposed [Partial Final] Decree judicially establishes the maximum allowable annual diversion and storage rights of the United States and CID, and CID’s right to deliver water for the members of the CID. Each individual CID member’s surface water rights, to be further determined in the Membership Phase of the Carlsbad Irrigation District Sub-Section of these proceedings, shall be limited by the diversion, storage, and delivery rights held by the United States and CID and shall be subject to applicable state and federal law.

Under the proposed decree, the United States and CID shall have the right to divert and to store public surface waters from the Pecos River stream system to irrigate an area within the CID (a/k/a the “Carlsbad Project”) not exceeding 25,055.00 acres.

The court also summarized the settlement agreement as follows:

The Settlement Agreement, which is an integral part of the Partial Final Decree adjudicating the diversion and storage rights of the United States and CID for the Carlsbad Project, is a water conservation plan among the State, ISC, the United States Department of the Interior, Bureau of Reclamation, CID, and PVACD designed to augment the surface flows of the lower Pecos River to:

(a) secure the delivery of Project water; (b) meet the State’s obligations to the State of Texas under the Pecos River Compact; and,

(c) limit the circumstances under which the United States and CID are entitled to make a call for the administration of water right priorities. Among other points summarized below, fundamental to the Settlement Agreement is the construction or development of a wellfield (the “Augmentation Wells”) to facilitate the physical delivery of groundwater directly into the Pecos River under certain, specified conditions, the purchase and transfer to the wellfield of existing groundwater rights in the Roswell Artesian Basin (“RAB”) by the ISC, and the purchase and retirement of irrigated land within PVACD and CID. The Settlement Agreement also defines the conditions under which the land purchased by the ISC in the CID will be allotted and receive water.

{16} The purpose of the notice was “to inform all defendants in the Pecos River stream system water rights adjudication and all persons claiming water rights in the Pecos River stream system whose water rights interests may be affected by the proposed Partial Final Decree of [their] right to object to all or any part of [the] proposed Partial Final Decree.” The notice indicated what recipients would need to do in response to the notice, giving them an opportunity to object to the settlement agreement and proposed partial final decree. The court’s scheduling and procedural order stated that those objecting “to all or any part of the water rights that would be adjudicated by the proposed Partial Final Decree” had the “initial burden to make a prima facie case showing how the[ir] water rights . . . will be adversely affected by the priority, amount, purpose, periods and place of use, or other matters as set forth in the Proposed Partial Final Decree.” See NMSA 1978, § 72-4-19 (1907) (stating that a decree adjudicating water rights shall declare as to the water right adjudged to each party the priority, amount, purpose, periods, and place of use). Five objected. The objections of three of the objectors were resolved and withdrawn. The two remaining objectors were Tracy/Eddy and Hope. Tracy/Eddy own approximately five hundred acres of senior (1887) CID served lands. Hope is an acequia association comprised of forty-two farm families and owns approximately 2759.25 acres of senior (1887) rights to Peñasco River (a Pecos River tributary) surface waters.

{17} Appellants’ objections, which were filed in March 2004, became the subject of dispositive motions filed by Appellees PVACD, the CID, and the State of New Mexico in September 2004. The district court granted these motions in November 2004, dismissing the objections filed by Appellants. The court entered the partial final decree (the settlement decree), incorporating the negotiating parties’ settlement agreement as an integral part of the settlement decree. In the settlement decree, the district court concluded:

3. The Court has jurisdiction over the parties and the subject matter of these proceedings for purposes of determining and adjudicating, between and among the United States, the State, the CID, the PVACD, and all other defendants in this proceeding, the United States’ and CID’s maximum allowable annual diversion and storage rights; and the CID’s right to deliver water for the members of the CID, and the administration of such rights as determined by the Court.

4. This Decree and the Settlement Agreement attached hereto and incorporated herein settle the surface water claims of the CID and the United States as contemplated by and for the purposes of [Section] 72-1-2.4 (D)(1)(c) (2002). As contemplated by and for the purposes of [Section] 72-1-2.4 (C), the Settlement Agreement attached hereto and incorporated herein and the FSID/ISC [Interstate Stream Commission] Agreement, include agreements with the governing bodies of the ISC, the CID, the PVACD and the FSID that specify the actions the parties agree will be taken or avoided to ensure that the expenditures by the ISC authorized under [Section] 72-1-2.4 will be effective toward permanent compliance with New Mexico’s obligations under the Pecos River Compact and the Pecos River Decree.

The court also determined that “[t]he Settlement Agreement and the FSID/ISC Agreement satisfy [Section] 72-1-2.4, which requires that the ISC enter into agreements with PVACD, CID and FSID.”

{18} Further, the court judicially established the maximum allowable annual diversion and storage rights of the United States and the CID, and the CID’s right to deliver water for members of the CID. In regard to each individual CID member’s surface water rights, the court stated that these rights were to be later determined in the “Membership Phase” of the litigation. However, the court specifically stated that each individual CID member’s surface water rights “shall be limited by the diversion, storage, and delivery rights held by the United States and the CID and shall be subject to applicable state and federal law.”

3. The Appellate Issues

{19} Appellants are in this fight because, in their view, they have been victims of water shortages for many years and the settlement agreement and settlement decree
Emlen Hall, junior Roswell Artesian Basin users. To assure that Texas shortages would not be obtained by CID representatives who wanted be that Article IX of the Compact was ob-

§ 72-15-19. The prevalent view seems to prior appropriation within New Mexico.” shall in all instances apply the principle of required by this compact, New Mexico

which states that “[p]riority of appropria-
tion doctrine as it has been tradi-
tionally understood and enforced, through priority administration, which, for Appellants, means priority enforcement through a priority call.

1. The Prior Appropriation Issue as Framed by Appellants

{26} The stress on Pecos River water is obvious and substantial. The issue before us is a limited but important one: whether the doctrine of prior appropriation requires that resolution of the existing and projected future water shortage issues be attempted exclusively through the procedure of a priority call. In other words, we consider whether a priority call is necessarily the only method of Pecos River water admin-
istration and resource management that can be used in the face of water shortages, in light of Article XVI, Section 2 of the New Mexico Constitution and Article IX of the Compact.

{27} Appellants argue that New Mexico cases and the Compact adhere to, and New Mexico’s adjudication statutes implement, the Constitution’s prior appropriation doc-

trine and, therefore, adjudication of water rights has always required and still requires application of priority enforcement through a priority call. Appellants emphasize that, in spite of the Constitution, Compact, statutes, and case law, New Mexico failed and refused to enforce priority rights in the Pecos River throughout the twentieth century, up to the present. They emphasize, too, that the “fundamental principle” of the doctrine of prior appropriation, one which had its origin in Spanish and Mexican law before 1848, is “first in time, first in right,” and one in which the earliest appropriator has an exclusive right “to the use of the water to the extent of his appropriation, without material diminution in quantity or deterioration in quality.” See State ex rel. State Game Comm’n v. Red River Valley Co., 51 N.M. 207, 217, 182 P.2d 421, 427 (1945) (holding that Article XVI, Section 2 of the New Mexico Constitution “is only declaratory of prior existing [New Mexico] law, always the rule and practice under Spanish and Mexican dominion” (internal quotation marks and citation omitted)); Yeo v. Tweedy, 34 N.M. 611, 613-16, 286 P. 970, 972-73 (1929) (affirming that priority appropriation was the law of New Mexico under Mexican sovereignty and continuing thereafter, with the New Mexico Constitu-
tion as merely declaratory of existing law); 1 Wells A. Hutchins, Water Rights Laws in the Nineteen Western States 157 (1971).

And Appellants further emphasize that central to the doctrine of prior appropriation

A. THE PRIOR APPROPRIATION DOCTRINE

{25} Appellants’ flagship contentions are that the settlement agreement violates the doctrine of prior appropriation adopted in Article XVI, Section 2 of the New Mexico Constitution and required in Article IX of the Compact. Appellants assert that, because of longstanding chronic short-
ages for senior CID and Hope farmers, the negotiating parties and the district court were duty-bound to adhere to the prior appropriation doctrine as it has been tradi-

## Discussion##

A. THE PRIOR APPROPRIATION DOCTRINE

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Discussion of Article XVI, Section 2 of the New Mexico Constitution
Reynolds (1983) was a prior appeal in this action to adjudicate the surface and groundwater rights to the entire Pecos River stream system. 99 N.M. at 700, 663 P.2d at 359. In Reynolds (1983), the PVACD and the Hagerman Canal Company (related to the Village of Fort Sumner) appealed after the district court adopted certain adjudication procedures proposed by the State that related to priorities affecting the CID. Id. After noting that “[t]he adjudication in the instant case is a massive undertaking[,]” our Supreme Court recited the history leading to the case before it. Id. Initially an adjudication of the groundwater diversions in the Roswell Artesian Basin and later consolidated with the Hagerman Canal adjudication, the suit was expanded in 1974 to include both the surface and groundwater uses in the tributary Rio Hondo system. Id. After that, in 1976, the CID, operating the 25,055 acre Carlsbad Project “with priorities dating back to 1887, formally requested the state engineer to administer the Pecos River in accordance with the doctrine of prior appropriation,” after which the State Engineer “decided to expand the suit to embrace all of the rights in the Pecos River stream system above the [CID’s] point of diversion, Avalon Dam.” Id.

{30} The issue before the Supreme Court in Reynolds (1983), however, was a limited one, namely whether the procedure adopted by the district court for adjudicating rights improperly modified the “usual procedure” of first adjudicating various claimants’ rights as against the State and then allowing individuals to contest inter se “any individually adjudicated rights,” before entering a final decree that “appoints a watermaster to administer the interrelated rights as shortage necessitates.” Id. The Court decided that procedural issue, but offered the following statement regarding procedures to be used in the administration of junior and senior rights.

While expediting priority administration, the procedure affords each defendant the opportunity to establish his priority and to contest the priority of the [CID]. The court will first determine which junior rights must, without question, be terminated to satisfy the senior rights of the [CID], the United States, or the individual water users served by the [CID]. Then the court will adjudicate all of the stream system priorities in reverse order, simultaneously ordering each junior user to show cause why his rights should not be terminated to satisfy such senior rights.

Id. at 701, 663 P.2d at 360. Appellants assert that this statement sets a precedent for priority enforcement, and that the priority enforcement procedure set out must be applied presently with respect to upstream junior users and downstream, senior users. They assert standing to insist on priority enforcement as is, they believe, required by Reynolds (1983), based on the district court’s threshold determination in the present case that “the beneficial ownership of Project water rights is vested in landowners in the Project measured by the amount of water devoted to beneficial use,” plus the right given them and the landowners in Hope to object to the settlement agreement.

{31} As we more fully discuss in the following section of this opinion, we decide the prior appropriation issues in favor of Appellees.

2. The Settlement Agreement and Decree

{32} By their settlement agreement, the negotiating parties sought to cut the water shortage Gordian knot through a process more flexible than strict priority enforcement, yet still comply with the doctrine of prior appropriation. The settlement agreement and decree are constitutional and an otherwise lawful resolution of the longstanding water rights and shortages issues.

a. Presumption of Constitutionality

{33} In entering into the settlement agreement, the Stream Commission was acting pursuant to authority granted by the compliance statute. The Legislature was obligated to act in an appropriate and effective manner to assure compliance with the amended decree. By enactment of the compliance statute, the Legislature called upon a state agency, the Stream Commission, to act, and authorized a procedure pursuant to which the Pecos River shortage problems might be resolved. The Legislature in effect

In November 1997, the district court in an “Opinion Re Threshold Legal Issue No. 3” determined that Carlsbad Project water rights were owned by members of the CID but that the United States and the CID had ownership rights and interests in Project water rights. The court concluded that it could adjudicate the storage and diversion rights of the United States and the CID. The court deferred for subsequent proceedings a determination regarding the need for adjudication of “elements of Project water rights to landowners individually.”
charged the Stream Commission with the
job of attempting to enter into agreements
with the CID and PVACD on “actions
that would effectively aid New Mexico in
compliance with the . . . amended decree.”
§ 72-1-2.4(B), (C). At the same time, the
State had the obligation to attempt to
secure protection of senior water rights. See
§ 72-1-2.4(A).
{34} While not a grant of regulatory
authority with the power to enact rules or
regulations, the compliance statute can be considered enabling and remedial legislation that (a) empowers and requires a
government agency to determine the need for projects to protect and use water
resources, and (b) authorizes that agency
to expend appropriated funds to carry out
the projects. See § 72-1-2.4(B), (C).
the intent and purpose of the legislation is
beyond dispute—to take charge of resolving
a critical situation created by the amended
decree, while complying with the State’s
obligation to protect downstream, senior
users. The compliance statute leaves imple-
mntation to specific critical governmental
players. Implementation necessarily means
establishing in detail the process broadly
set out in the compliance statute to achieve
the base flow and annual irrigation supplies
required under the compliance statute.
{35} As we have indicated, we read the
colastment statute to unmistakably intend,
if not to some degree mandate, that a par-
ticular process of augmentation and public
funding be implemented to attempt to fulfill
the State’s Compact obligations and at the
same time supply adequate surface water
to those holding downstream, senior rights.
We must assume that the Legislature was
aware of the prior appropriation doctrine.
By its silence as to strict priority enforce-
ment and its express intent to attempt
resolution through land and water rights
purchases using public funding, we also
read the compliance statute as intending
the land and water rights purchases, and
perhaps other actions, to be a first response
to the shortage and Compact compliance
communions, rather than resort to a priority call
as a first or exclusive response. The enact-
ment of the compliance statute is correctly
to be read as a clear signal that the Legis-
lature and governmental players wanted to
create a solution other than a priority call as
the first and only response. As we discuss,
this does not in and of itself abrogate the
system of priority enforcement.
{36} Thus, as long as the process selected
by the negotiating parties and placed in the
settlement agreement and approved by the
court is within the statutory authorization
and mandate, were we to invalidate the pro-
cess, we would, in effect, be undermining
the Legislature’s enactment. We therefore
view Appellants’ direct constitutional
attacks on the settlement agreement and
decree to be, in effect, subsurface, indirect
constitutional attacks on the authorizing
legislation. We will assume, without decid-
ing, that, in allowing persons to object to
the settlement agreement on any ground, the
district court intended to permit objec-
tors to attack the constitutionality of the
settlement agreement and decree as Ap-
pellants have without directly attacking
the constitutionality of the statute.
{37} We presume “that the Legislature
has performed its duty, and kept within the
bounds fixed by the Constitution.” State ex rel.
Pub. Employees Ret. Ass’n v. Longacre,
2002-NMSC-033, ¶ 10, 133 N.M. 20, 59
P.3d 500 (internal quotation marks and
citation omitted); see City of Las Cruces v.
El Paso Elec. Co., 1998-NMSC-006, ¶ 21,
124 N.M. 640, 954 P.2d 72 (stating that the
apellee courts presume the constitution-
ality of a statute). Further, if possible, we will
“give effect to the legislative intent unless
it clearly appears to be in conflict with the
Constitution.” Longacre, 2002-NMSC-
033, ¶ 10 (internal quotation marks and
citation omitted). We will not question the
wisdom, policy, or justness of a statute, and
the burden of establishing that the statute is
invalid rests on the party challenging the
Joseph Hosp., 1996-NMSC-064, ¶ 10, 122
N.M. 524, 928 P.2d 250. “[A]n act of the
Legislature will not be declared unconstitu-
tional in a doubtful case, and . . . if possible,
it will be so construed as to uphold it.” Yeo,
34 N.M. at 625, 286 P. at 976. We see no
reason why these presumptions and rules
in regard to statutes should not also, under
the circumstances in this case, extend to the
constitutionality of the implementation of
the statute enacted, when there exists no
showing that the implementation was out-
side the detailed authorizations and specific
requirements of the statute. We therefore
presume the constitutionality of the settle-
ment agreement insofar as it is within the
authorization and not in violation of the
compliance statute. For the reasons we
next discuss, Appellants have not overcome
the presumption. Further, even were no
presumption to apply, Appellants have not
made a case for strict priority enforcement
through a priority call. b. Constitutionality of a Flexible
Approach
{38} We see no reason to read Article XVI,
Section 2 of the Constitution and Article IX
of the Compact to require a priority call as
the first and only, and thus exclusive, re-
response to water shortage concerns. Rather,
we think it reasonable to construe these
provisions to permit a certain flexibility
within the prior appropriation doctrine
in attempting to resolve the longstanding
Pecos River water issues. We do not find
in the language of the Constitution or
the Compact an exclusive right to a priority
call. The relevant provisions do not by their
terms require strict priority enforcement
through a priority call when senior water
rights are supplied their adjudicated water
entitlement by other reasonable and accept-
able management methods.
{39} Thus, although priority calls have
been and continue to be on the table to
protect senior users’ rights, such a fixed and
strict administration is not designated in
the Constitution or laws of New Mexico
as the sole or exclusive means to resolve
water shortages where senior users can be
protected by other means. Reynolds (1983)
did not address this issue and did not rule
otherwise. See Fernandez v. Farmers Ins.
Co. of Ariz., 115 N.M. 622, 627, 857 P.2d
22, 27 (1993) (stating that cases are not
authority for issues not decided). Further,
the district court in the present case deter-
mined that Article IX of the Compact “is
not invoked until New Mexico has failed to
meet its delivery requirements,” and that
Article IX “does not mandate priority
administration and curtailment of uses [as]
the only option available to New Mexico.”
As a matter of contract construction, we
agree. Thus, the more flexible approach
pursued by the negotiating parties through
the settlement agreement is not ruled out
in the Constitution, the Compact, or case
precedent.
{40} New Mexico’s prior appropriation
doctrine is like Colorado’s prior appropria-
tion doctrine, called the Colorado doctrine.
See Yeo, 34 N.M. at 616, 286 P. at 972; Snow
v. Abalos, 18 N.M. 681, 693, 140 P. 1044,

2As well, although one Appellant raises the issue, neither Appellants nor Appellees cite authority as to whether Appellants can attack the constitutionality of the settlement agreement. We will not, for that reason, address the issue. See Smith v. Vill. of Ruidoso, 1999-
NMCA-151, ¶ 36, 128 N.M. 470, 994 P.2d 50.
The statute paves the way for public funding for the State to acquire land with appurtenant water rights or rights to the delivery of water. See § 72-1-2.4(B), (C), (D). It further authorizes “other appropriate actions that would effectively aid New Mexico in compliance with the . . . amended decree.” § 72-1-2.4(B). To comply with the Compact and the amended decree, the Stream Commission “is to purchase, and retire and place in a state water conservation program administered by the [Stream Commission], adequate water rights . . . to increase the flow of water in the Pecos River and diminish the impact of man-made depletions of the stream flow.” NMSA 1978, § 72-1-2.2(A), (D) (1991).

The Stream Commission must enter into contracts with the CID, the PVACD, and the FSID before spending funds to implement the conservation program. See § 72-1-2.4(C).

The settlement agreement follows through as a comprehensive contractual water resource management program involving land and water rights purchases, and including development of one or more well fields or the lease or purchase of existing wells to use as augmentation wells for the purpose of pumping water to the Pecos River to augment its flow. The settlement agreement contains specific targeted amounts of water to supply and deliver to the Pecos River and covers the supply for delivery to CID members after supply for delivery to the state line is met in conformity with Section 72-1-2.4(A).

The settlement agreement resolves what the parties refer to as the offer phase of the Pecos River adjudication, and covers procedures for what the parties refer to as the remaining CID-related membership surface water rights adjudication phase. The agreement was reached among the governmental entities charged with responsibilities to administer and protect the valuable water resource provided by the Pecos River and its stream system. Importantly, the settlement agreement does not rule out a priority call if needed to deliver the adjudicated acre-feet requirement to be delivered annually for the CID.

The settlement decree accepts and adopts the settlement agreement and “judicially establishes the maximum allowable annual diversion and storage rights of the United States and the CID, and the CID’s right to deliver water for the members of the CID.” The settlement decree states that each individual CID member’s surface water rights, which are still to be determined in the membership phase of the proceedings, are “limited by the diversion, storage, and delivery rights held by the United States and the CID.” The settlement decree sets out the diversion, impoundment, and storage rights of the United States and the CID. Thus, the compliance statute and the settlement agreement and decree combine in an effort to protect senior water rights while also attempting to assure state line delivery compliance.

Tracy/Eddy nevertheless assert that the legislation in Colorado allowed out-of-priority diversions under plans that would provide a substitute supply of water to fully satisfy downstream, senior users, whereas in the present case the settlement agreement curtails full satisfaction of downstream, senior users by waiving or blocking priority enforcement for CID members. Their point is that any water adjudication in the present case necessarily had to provide for full satisfaction of CID members. In particular, they argue that the storage requirements in the settlement agreement and decree of 50,000 acre feet “cannot guarantee a full demand of 3 [acre feet] delivered on the land for 25,055 acres of irrigated lands,” and that other factors, including “production caps” and priority for Texas users in times of shortage, combine to ensure that CID members will continue to suffer the same shortages as in the past. Thus, they contend they will have to continue augmenting their water from groundwater that is more saline and costly than surface water.

Tracy/Eddy’s positions are problematic. The settlement agreement and decree, to which the United States, the State, the CID, and the PVACD are parties and proponents, settle the offer phase of the water rights adjudication as to the CID’s diversion, storage, and delivery rights in regard to Pecos River surface water. Priorities have been afforded to Texas and to the CID and therefore to its members, although not at the expense of upstream, junior groundwater users as Tracy/Eddy have wanted and demanded. The settlement decree serves as an adjudication of the CID’s surface water rights. The CID agreed to that adjudication and to the manner of administration and management of waters as set out in the decree.

As an irrigation district, the CID’s board can “act as it, in the exercise of its discretion and judgment, believes best for all members of the [CID].”
v. Carlsbad Irrigation Dist., 1998-NMCA-023, ¶ 23, 124 N.M. 698, 954 P.2d 763. Although Tracy/Eddy demand a priority call to shut down junior users until senior users’ water entitlements are assured and satisfied, they nowhere provide authority stating that individual CID members are authorized to request and obtain such priority enforcement. Nor have they attacked the authority of the CID to enter into the settlement agreement and approve the settlement decree on behalf of the CID members. The fact of the matter is that the negotiating parties, including the CID, proposed an adjudication, the district court adopted the proposed adjudication, the district court adjudicated the water rights of the CID, and the CID agreed to that adjudication. Tracy/Eddy are bound by that adjudication, and is in no position to argue that the adjudication short the CID on water rights.

3. Conclusion

{48} We hold that the settlement agreement and decree do not violate Article XVI, Section 2 of the New Mexico Constitution or Article IX of the Compact.

B. N.M. CONST. ART. IX, § 14, AND ITS APPLICATION

{49} The “anti-donation clause” in Article IX, Section 14 of the New Mexico Constitution forbids the State to “directly or indirectly lend or pledge its credit, or make any donation to or in aid of any person, association or public or private corporation.” Our Supreme Court has defined “donation” in Article IX, Section 14 as “a gift, an allocation or appropriation of something of value, without consideration to a person, association or public or private corporation.” Vill. of Deming v. Hosdreg Co., 62 N.M. 18, 28, 303 P.2d 920, 926-27 (1956) (internal quotation marks omitted). Any “aid to private enterprise” must have the character of a donation “in substance and effect” in order to violate the anti-donation clause. See id. at 28, 303 P.2d at 927 (internal quotation marks omitted). Consideration for the allocation can be a defining element. See Treloar v. County of Chaves, 2001-NMCA-074, ¶ 32, 130 N.M. 794, 32 P.3d 803 (holding that because “severance pay is deemed to be in the nature of wages that have been earned,” such pay was in return for consideration and not in violation of the anti-donation clause); see also Battaglini v. Town of Red River, 100 N.M. 287, 289-90, 669 P.2d 1082, 1084-85 (1983) (holding that anti-donation clause was not violated where compensation paid to sign owners for removal of their signs was “just compensation” in that sign owners at the time had no duty to remove their signs).

{50} Appellants argue that the State is violating the anti-donation clause because the substitution of public funds for enforcement of priorities, in order to avoid creating financial difficulties for the upstream, junior pumpers constitutes the appropriation of public funds for private benefit. Appellants assert that relieving private persons and entities of their obligations to submit to priority administration and shut down pumping “is simply an unconstitutional ‘donation’ of [s]tate funds to juniors . . . who are now being richly rewarded . . . for their . . . efforts to thwart priority enforcement. Appellants support this contention with the further argument that the purchase of junior water rights does not give the State value for every dollar spent because the State pays full market value for junior rights that would have no market value were priority to be called against them as New Mexico law requires. See White v. Bd. of Educ. of Silver City, 42 N.M. 94, 105, 75 P.2d 712, 719 (1938) (expressing that municipal school district’s issuance of bonds to construct a school and giving funds from the sale of the bonds to the state school would “get value received for every dollar put into the enterprise”). Appellants see the negotiating parties’ collaboration as nothing more than a pay-off that saves wealthy and influential upstream farmers who have benefitted from relatively cheap water supplies from the consequences of prior appropriation enforcement. This is not the case because the State receives present value for its purchase, even though subsequent circumstance may diminish the value.

{51} Appellants analogize this case to State ex rel. Mechem v. Hannah, 63 N.M. 110, 314 P.2d 714 (1957). In Hannah, the State passed an appropriation to give vouchers to ranchers in a drought condition so that they could maintain livestock for breeding purposes. Id. at 111-12, 314 P.2d at 715-16. Hannah is easily distinguished from the case at hand, however, because in Hannah the vouchers were a gift and the State received no consideration in return for the vouchers. In the case at hand, on the face of the transactions the State is purchasing land and water rights at market value, thus receiving valuable consideration for its expenditure of funds. We note, too, that the State also benefits because the purchases are made in the context of the settlement of a lawsuit that has stretched on for thirty years, and also that the State will be able to more quickly meet its obligations to Texas under the Compact. As such, we believe that the State will be receiving valuable consideration for its purchase of the land and water rights as contemplated by the settlement agreement. While Appellants argue that if there were a priority call the water rights would be worthless, priority calls are not contemplated or required as long as the required minimum amount of water is supplied. We need not speculate on value, however, because unless and until the priority call is made, junior appropria tors can continue to use the water. To the extent Appellants suggest that the State is receiving some lesser value for what it is paying, Appellants are simply suggesting that an issue of fact exists in regard to consideration. Appellants have not, however, attacked the provision allowing purchases on the ground that there exists a genuine issue of material fact that precludes summary judgment.

{52} Accordingly, we hold that Appellants have not proven that the settlement agreement and decree violate the anti-donation clause in Article IX, Section 14 of the New Mexico Constitution.

C. THE COURT’S POWER TO ENTER THE SETTLEMENT DECREE

{53} Appellants contend that nothing in New Mexico’s statutes and case law authorizes the district court to order, as a part of its water rights adjudication process, a program to spend public money as the court has done pursuant to the settlement agreement and decree. Appellants construct this contention based on the following arguments.

{54} According to Appellants, the settlement agreement “overruled” New Mexico case law by its dismissal of priority enforcement as unsuitable for use on the Pecos River and by proceeding on the methodologies and predictions advanced by Appellees pursuant to which water shortages will hopefully be remedied not by priority appropriation but by expenditure of public money to buy and transfer water rights and construct augmentation wells. Appellants argue that the settlement agreement means that “except in the unlikeliest of cases priority enforcement [in the present case] will never be possible,” and that the approval of the settlement agreement and entry of the settlement decree repudiates prior appropriation law as applied in Reynolds (1983). Appellants further argue that the type of discretionary remedial decision exercised by the district court more
properly belongs in either the executive or legislative branch of government, since the New Mexico Constitution, Compact Article IX, and the adjudication statutes as applied in Reynolds (1983) intend adjudication authority to involve priority administration in adjudicating water rights.

Appellants point particularly to New Mexico’s adjudication legislation, originating in 1907 N.M. Laws ch. 49, § 21 that placed exclusive jurisdiction to adjudicate water rights in the courts. See Lewis, 84 N.M. at 772, 508 P.2d at 581 (“We note that, under our laws, only the courts are given the power and authority to adjudicate water rights.”); NMSA 1978, § 72-4-17 (1965) (providing that the court “shall have exclusive jurisdiction to hear and determine all questions necessary for the adjudication of all water rights within the stream system”). Appellants assert that the court’s adjudication power is set out in, and limited by, Sections 72-4-15, and -17 through -19, characterizing these statutes as setting out the “scheme” of the adjudication process approved by the New Mexico Supreme Court in State ex rel. Reynolds v. Sharp, 66 N.M. 192, 193-97, 344 P.2d 943, 944-46 (1959). Part of this scheme, Appellants continue, involves the requirement that court decrees of final adjudication of water rights be filed with the State Engineer, and thereafter be enforced by the State Engineer according to priorities, as necessary. See § 72-4-19. Our Supreme Court, Appellants say, has authorized district courts to order junior appropriators “to show cause in individual proceedings why their uses should not be enjoined” so as not to impair downstream, senior rights. Reynolds (1983), 99 N.M. at 700-02, 663 P.2d at 359-61.

Appellants provide no case law limiting the district court's broad adjudication authority in the manner Appellants seek. We reject Appellants’ arguments that our Supreme Court’s approval of the statutory adjudication process and its validation of the use of priority enforcement in Reynolds (1983) somehow translates into a limitation on the adjudication authority exercised by the district court in the present case. Nor do we see any basis on which to hold that the settlement agreement and decree are inconsistent with or precluded by the authority granted the district court in Sections 72-4-15 through -19.

The district court has authority “to hear and determine all questions necessary for the adjudication of all water rights within the stream system involved.” § 72-4-17. Section 72-4-19 refers to adjudicating priorities. We do not, however, view Sections 72-4-15 through -19 or any part of the adjudication statutes to either deny or to be inconsistent with the authority of the district court to adjudicate water rights as has occurred through the settlement agreement and decree. Cf. State ex rel. State Eng’r v. Crider, 78 N.M. 312, 431 P.2d 45 (1967) (upholding adjudication of water rights to municipalities for future use even though such water had not yet been put to beneficial use and no statute authorized such future use). This view is supported by the Legislature’s enactment of Section 72-1-2.4. By enacting Section 72-1-2.4, the Legislature has shown an intent that the water resource management approach, as implemented in this case, is consistent with the concept in Section 72-4-19 that final decrees are to declare, “as to the water right adjudged to each party, the priority, amount, purpose, periods and place of use . . . together with such other conditions as may be necessary to define the right and its priority.” The language in Section 72-4-19 indicates authority for the district court to act as it did in the present case, namely, to approve a settlement agreement and enter a decree necessary to define rights and priorities.

That the Legislature intended such authority is made even more clear when one looks at NMSA 1978, § 72-2-9.1 (2003). See Kilmer v. Goodwin, 2004-NMCA-122, ¶ 19, 136 N.M. 440, 99 P.3d 690 (noting that a subsequent change to a statute supported its interpretation). In Section 72-2-9.1, the Legislature expressly provided, under the title of “priority administration,” for the State Engineer to address in certain specified ways the urgent need for water administration outside of the adjudication process. However, this authority was limited—it was not to “affect the partial final decree and settlement agreement as may be entered in the [CID] project offer phase of [the Lewis case presently before this Court].” § 72-2-9.1(A)-(D); cf. Reynolds (1983), 99 N.M. at 701, 663 P.2d at 360 (“Where a procedure that was not required or prohibited by statute was challenged, this Court has previously held that such procedure could be adopted by the state engineer because it was in substantial compliance with the requirements of the adjudication statutes, and a reasonable and practical way to accomplish the desired purposes.” (internal quotation marks and citation omitted)).

We hold that the district court did not exceed its authority or power to approve the settlement agreement and enter the settlement decree.

D. GENUINE ISSUE OF MATERIAL FACT

In opposing summary judgment, Appellants argued that certain facts presented by Appellees to prove that the settlement agreement would be effective to solve water shortage problems were disputed. More particularly, Appellants argued that the entire premise of the settlement agreement, namely, that a priority call would be impractical, too costly, and ineffective, was faulty because this assumption overlooks flexible ways to enforce priority and excuses the negotiating parties’ failure to make a good faith effort to apply priority enforcement. In addition, Appellants also disputed the reliability and predicted results of the “model suite” for resource administration that the negotiating parties used as an integral part of their settlement. Appellants’ ultimate goal was to show that genuine issues of material fact existed as to whether the settlement agreement would benefit them, asserting that, to the contrary, the settlement agreement would harm them in that they would continue to be plagued with water shortages.

The district court framed the issue before it as whether the settlement agreement and decree would adversely affect the value of Appellants’ water rights. The court rejected Appellants’ position, holding it to be an invalid objection to the settlement agreement. The court reasoned that other remedies were available to Appellants to protect against the adverse effect of which they complained. Further, the court held that Appellants did not specifically controvert any of the material facts on which the court was basing its grant of summary judgment.

What Appellants sought to prove in a hearing on the merits was that implementation of the settlement agreement would not rectify continuing harm to Appellants. In Appellants’ eyes, this proof would have been material evidence for the district court’s determination whether to approve the settlement agreement and enter the proposed settlement decree. We assume, without deciding, that issues of fact exist. The issue is whether the disputed issues were genuine issues of material fact as to Appellants’ claim of harm.

It is important at the outset to reiterate the posture of the case leading in to summary judgment. The settlement agreement
was the outcome of the negotiating parties’ attempt to implement the compliance statute. Thus, the district court was presented with a settlement of the parties to the adjudication proceeding. The court nevertheless gave non-parties an opportunity to object to the settlement agreement and proposed decree. The ultimate questions for the court were whether the court should approve and adopt the settlement agreement as the court’s adjudication of water rights in the offer phase of the litigation and reject Appellants’ objections.

{64} The court presumably could have rejected the settlement agreement if it unfairly and adversely affected the water rights of third parties who were allowed to object to it. Cf. *In re Masters Mates & Pilots Pension Plan and IRA* Litig., 957 F.2d 1020, 1026 (2d Cir. 1992) (stating, in a class action settlement, that where third parties are concerned a proposed class action settlement must be reviewed not only for its fairness, reasonableness, and adequacy, but also whether a decree approving the settlement will be inequitable because it will harm third parties unjustly); *Manual for Complex Litigation* (Fourth) § 13.14 (2004) (stating, as to review and approval of settlements under the Federal Rules of Civil Procedure where a settlement affects the rights of non-parties or non-settling parties or where a settlement is signed by a party acting in a representative capacity, that “in general the judge is required to scrutinize the proposed settlement to ensure that it is fair to the persons whose interests the court is to protect”). The challenge Appellants present is that there exists a genuine issue of material fact as to whether Appellants will be unjustly harmed by not receiving the amount of water to which they are entitled. For the reasons that follow, we determine this question against Appellants.

{65} First, we have already determined that the settlement agreement and decree are not invalid for having placed a priority call in reserve. Also, Appellants have never contended that a genuine issue of material fact existed in relation to the legal validity of the settlement agreement or the settlement decree. Thus, even were the settlement agreement premised on the impracticability or cost or ineffectiveness of a priority call, as Appellants contend, this does not present a genuine issue of material fact that can defeat summary judgment.

{66} Second, as we discussed earlier in this opinion, the CID agreed to the settlement agreement and decree and thus to the adjudication of the amount of water the CID had a right to divert for storage and distribution to CID members. Tracy/Eddy have not attacked the CID’s authority to agree to the adjudication and to bind the CID’s members to the adjudication. Tracy/Eddy, therefore, are saddled with adjudication of water to the CID contained in the settlement agreement and decree to which the CID agreed, relegating Tracy/Eddy to attacking in later proceedings any percentage or acreage mis-allocation to which they claim entitlement as a member of the CID.

{67} It appears, nevertheless, that Tracy/Eddy in effect assert that the settlement decree adjudication is invalid because it conflicts with the earlier Hope decree adjudication of the CID’s water rights, that it is the earlier adjudication that marks the CID’s water rights, and that Tracy/Eddy are harmed because the present adjudication does not provide sufficient water to fully satisfy the CID’s entitlement. This argument was not clear from any of Appellants’ briefs; it became clearer in oral argument.

{68} In the background section of their brief in chief on appeal, Appellants simply mention in a footnote that CID members have a permitted and licensed annual reservoir storage right of 176,000 acre feet, and that the 50,000 minimum in the settlement agreement and decree, being the only assured supply in the settlement decree, is far too little to satisfy their “full decreed” right of three acre feet per year for each of 25,055 acres. In the same footnote, Tracy/Eddy conclude that “[t]hus, the Settlement Agreement, based on waiver of priority enforcement by and for CID farmers, allows, indeed ensures, that serious surface water shortages for CID will continue into the future.” Elsewhere, Tracy/Eddy state that CID’s surface water rights were “decreed 1887 rights,” having been decreed in the Hope decree. However, nowhere in their briefs do Tracy/Eddy explain how and why the CID or they have an adjudicated, decreed water right that is superior to or different than that adjudicated for the CID in the settlement decree in the present case, or how or why the CID’s adjudicated right in the present case is not controlling as the effective adjudication of the CID’s water rights.

{69} Presumably because they discerned no separate issue having been raised by Appellants, in their answer briefs on appeal Appellees make no mention of the specific difference between the earlier and present adjudications. Nor do they respond to Tracy/Eddy’s footnote. In addressing the Hope decree, the PVACD does state that any adjudication of the rights of the CID was not binding upon those who were not parties or privity, which would include the State, the PVACD, and the upstream, junior users in the Roswell Artesian Basin.

{70} In oral argument, this Court raised the issue of proof of harm to Appellants, including the question of the adequacy of the 50,000 acre feet minimum set out in the settlement agreement and decree. Appellants’ counsel stated that the settlement decree does not dispute the “176,000 acre feet maximum carryover storage and 3 acre feet per acre for 25,055 acres,” and that the numbers were taken from a PVACD expert’s materials and represented “a full supply [of water] for the farmers of the CID.” Counsel for Tracy/Eddy also stated that “the only thing that matters in terms of the waiver of priority enforcement is they keep this facially inadequate 50,000 acre feet in there as of March 1, [and] the poor individual farmers are stuck with the situation, and this is what constitutes the harm, the adverse effect I was talking about.”

{71} As expected, counsel for the PVACD took a position in oral argument contrary to Appellants’ position, stating that the Hope decree was not binding on the parties in the present litigation who were not parties in the *Hope* proceeding; that there existed no decree of the CID senior rights as of the time of the settlement agreement in the present case, but only an earlier decree of senior rights to be adjudicated in the future; that the present case became that anticipated future adjudication of the CID’s rights to divert, store, and distribute; and that the CID had authority to negotiate and agree to the settlement on behalf of the members of the CID. Thus, according to the PVACD, Tracy/Eddy presented no facts in regard to harm or impairment that created a genuine issue of material fact. Counsel for the CID also disputed Tracy/Eddy’s contention that the CID had decreed rights from the time of the Hope decree that defined and controlled the CID’s water rights.

{72} We agree with Appellees that, to the extent Tracy/Eddy claim that they are harmed by the settlement decree’s adjudication of the storage and distribution rights of the CID, Tracy/Eddy failed to present any genuine issue of material fact as to harm. The Hope decree was not binding on the State or the PVACD, and it is not an adjudication with respect to the CID that precluded the adjudication in the present case. Tracy/Eddy present no authority to the contrary. Furthermore, the lack of a
genuine issue of material fact is demonstrated, as we have indicated earlier in this opinion, by the fact that the CID members, including Tracy/Eddy, are bound by the adjudication in the settlement decree of the CID’s storage and distribution rights. Thus, Tracy/Eddy cannot measure harm by what may have been adjudicated in the Hope decree. As far as we can determine, they can only measure harm, if at all, by how they fare in the membership phase or any other phases of this litigation relating to their entitlement as a CID member.

{73} It appears that Tracy/Eddy may have fallen victim to the inability or failure of the State and the irrigation entities over many years to complete an adjudication of the Pecos River surface and groundwater rights. They have sought their day in court through factual development that the new adjudication contained in the settlement agreement and decree. Nor have they shown, and perhaps it was illusory to think that they could show, that a genuine issue of material fact exists regarding unjust harm to the CID or CID members.

{74} Last, specifically as to Hope, we do not find anywhere in Appellants’ briefs any evidence, discussion, or authority specific to Hope as to how Hope has been harmed and what genuine issues of material fact exist as to any such harm. We therefore decline to address the issue. A party that fails to present argument or authority to support a contention runs a very substantial risk that this Court will not address the contention, either because of the failure of argument or authority, or because the party is deemed to have abandoned the contention. See In re Adoption of Doe, 100 N.M. 764, 765, 676 P.2d 1329, 1330 (1984) (holding that a party must submit argument and authority in order to present an issue for review on appeal); Murken v. Solv-Ex Corp., 2006-NMCA-064, ¶ 6, 139 N.M. 625, 136 P.3d 1035 (stating that this Court will not address contentions not supported by argument and authority); In re Candice Y., 2000-NMCA-035, ¶ 19, 128 N.M. 813, 999 P.2d 1045 (holding an issue abandoned upon failure to present argument or authority).

{75} We hold that Appellants have failed to show any genuine issue of material fact that would preclude entry of summary judgment.

CONCLUSION

{76} We affirm the district court’s judgments in favor of Appellees and against Appellants.

{77} IT IS SO ORDERED.

JONATHAN B. SUTIN, Judge

WE CONCUR:

CELIA FOY CASTILLO, Judge
RODERICK T. KENNEDY, Judge

Beth Fassler also received a deed to the disputed property originating from the same previous owner. Fassler granted Defendant an easement as to a part of the disputed property bordering Defendant’s property. Plaintiff and Defendant dispute the validity of the easement. Plaintiff asserts that he owns the property in question and that Fassler never owned the property, and therefore Defendant’s easement is invalid and her use of the property is a trespass on Plaintiff’s property.

{3} As to this disputed property issue, the district court concluded that Plaintiff failed to establish superior title and, applying the after-acquired title doctrine, concluded that Fassler owned the land when she granted Defendant the easement. The doctrine of after-acquired title estops a grantor who obtains title to land after already granting the land from claiming the land as against the grantee. Hays v. King, 109 N.M. 202, 204, 784 P.2d 21, 23 (1989). The issue is whether the district court erred in applying the after-acquired title doctrine to estop Plaintiff from claiming title to the land as against Defendant where Plaintiff was not the initial grantor, Defendant’s chain of title began before the initial grantor obtained clear title, and Plaintiff’s chain of title began after the initial grantor obtained clear title and after Defendant’s chain of title.

{4} We will discuss the pertinent facts later in this opinion. We affirm the district court’s rulings.
DISCUSSION
Claim of Trespass on Plaintiff’s Property to Defendant’s North

{5} Plaintiff asserts that Defendant trespassed on his property which bounded Defendant’s property to the north. At the center of this boundary and trespass issue is the Rio Grande river, which runs along the southern edge of Plaintiff’s land. The district court stated in its findings that “[t]he general terms, the Rio Grande river flows between the usable property of [Plaintiff and Defendant] with [Plaintiff’s] usable property located to the north of the river and [Defendant’s] property to the south.” The district court further found that the “actual property line,” as determined in a previous quiet title suit between Plaintiff and Defendant, was located approximately at the southern bank of the Rio Grande with the result that [Plaintiff] owns the property over which the river flows. Depending on the height and flow of the river, [Plaintiff’s] property may or may not be submerged on the south bank. When the river is low, a small portion of [Plaintiff’s] property is exposed on the southern bank. When the river is high, all of [Plaintiff’s] property on the south bank is completely submerged.

{6} On appeal, Plaintiff asserts that Defendant trespassed in two ways. One way was that Defendant’s wall, although built on her property, in effect caused or required a trespass on his land because a gate in the wall and steps leading from the gate could not be used except to enter upon Plaintiff’s land. The other way was that Defendant placed a hose or hoses over her wall and into the river in order to pump water from the river for irrigation purposes.

{7} The district court found:

48. The credible evidence before the Court fails to establish that [Defendant] has constructed walls or any other structures on [Plaintiff’s] property.

... 52. [Defendant] did place hoses into the Rio Grande river for the purpose of irrigating her property. The credible evidence before the Court fails to establish that the hoses were actually placed on the ground owned by [Plaintiff]. To the extent that the hoses may have touched the property owned by [Plaintiff], [Plaintiff] was not damaged by such touching of his property. The court concluded that Plaintiff failed to establish trespass.

{8} On appeal, Plaintiff claims that the district court’s determination that Defendant did not trespass by placing the hoses in the river is inconsistent with the court’s finding that Plaintiff owned a small portion of land on the south bank of the river as there is no other way for the hoses to go from Defendant’s property to the river than to traverse a strip of Plaintiff’s land. Plaintiff also claims that finding number 52 is inconsistent with the earlier boundary adjudication in the first quiet title action. Finally, Plaintiff argues that the district court’s determination that Plaintiff failed to establish any damage even if a trespass occurred is contrary to trespass law, which Plaintiff posits requires at least nominal damages if there is an unauthorized entry.

{9} Findings of fact supported by substantial evidence will not be disturbed on appeal. Abinett v. Fox, 103 N.M. 80, 84, 703 P.2d 177, 181 (Ct. App. 1985). Substantial evidence is such evidence “that a reasonable mind would find adequate to support a conclusion.” Sitterly v. Matthews, 2000-NMCA-037, ¶ 22, 129 N.M. 134, 2 P.3d 871.

{10} We conclude that there was substantial evidence in the record to support the district court’s findings of fact and that the findings support the court’s determination that Plaintiff failed to establish that Defendant trespassed on Plaintiff’s property. The district court’s findings essentially indicate that Plaintiff failed to meet his burden of establishing a preponderance of evidence that Defendant trespassed. We cannot overturn the determination with respect to Defendant or her guests entering onto Plaintiff’s land by using the wall and steps or as to the hoses because of the district court’s pivotal finding, which is not challenged, that when the river is high all of Plaintiff’s property on the river’s south bank is submerged. An unchallenged finding is binding on appeal. Stueber v. Pickard, 112 N.M. 489, 491, 816 P.2d 1111, 1113 (1991). To the extent that there may have been evidence of a trespass, the district court found that it was not credible when it determined that the “credible evidence . . . fail[ed] to establish” a trespass. “[W]here there is conflicting evidence, the trial court, as fact finder, resolves all disparities in the testimony and determines the weight and credibility to be accorded to the witnesses.” New Mexicans for Free Enter. v. City of Santa Fe, 2006-NMCA-007, ¶ 71, 138 N.M. 785, 126 P.3d 1149 (internal quotation marks and citation omitted). We note that there was not any testimony or other evidence as to the height and flow of the river during the complained of hose entries or when Defendant or her guests accessed the river using the steps. Further, while Plaintiff’s expert testified during direct examination that Defendant’s wall was along the boundary where the hoses were and thus the hoses would have to have crossed Plaintiff’s land to reach the river, on cross-examination Plaintiff’s expert conceded that the wall may have been on Defendant’s land set back several feet from the boundary. As such, we cannot overturn the district court’s finding that there is no credible evidence that the hoses resulted in a trespass on Plaintiff’s property.

{11} As we are upholding the district court’s findings and determination that Plaintiff failed to establish trespass, we do not address Plaintiff’s argument that the district court misinterpreted the law by determining that even if there were a trespass there were no damages. The district court’s determination that even if there were a trespass there were no damages was in the form of an alternative determination to its finding that there simply was no trespass. Because we have upheld the court’s finding that there was no trespass, there is no need to address the alternative determination.

See Antillon v. N.M. State Highway Dep’t, 113 N.M. 2, 8, 820 P.2d 436, 442 (Ct. App. 1991) (refusing to address a party’s argument based on case law where, based on factual findings which were supported by substantial evidence, addressing the issue would not change the outcome of the case).

Claim of Ownership of and Trespass on the Disputed Property East of Defendant’s Property

{12} Two chains of title leading from Guadalupe T. Lujan have created the question of whether Defendant’s easement on the disputed property is valid or whether Plaintiff owns the disputed property and Defendant has trespassed. The earlier of the two separate chains of title to the disputed property is traced from Guadalupe T. Lujan and his wife, J. O. Lujan, Sr. The Lujans conveyed the disputed property to Brian Patrick Bennett in 1958. The disputed property was eventually conveyed to Fassler. While Fassler held title to the property, she granted Defendant an easement. The latter of the two chains of title indicates that in 1967 Domitilia Montoya...
conveyed the disputed property to Guadalupe T. Lujan. Thereafter, Guadalupe T. Lujan conveyed the disputed property to her daughter Margaret T. Lujan. This chain of title eventually led to Plaintiff.

The common law doctrine of after-acquired title is one under which title to land is subsequently acquired by a grantor who previously attempted to convey title to the same land, which he then did not own, completely and automatically inures to the benefit of his prior grantee. Hays, 109 N.M. at 204, 784 P.2d at 23.

[A] deed may have the effect of passing to the grantee a title subsequently acquired by the grantor. A grantor who executes a deed purporting to convey land to which he has no title or to which he has a defective title at the time of the conveyance will not be permitted, when he afterward acquires a good title to the land, to claim in opposition to his deed as against the grantee or any person claiming title under him. . . . One of the chief theories upon which this doctrine rests is that the deed operates on the after-acquired title by way of an estoppel, usually deemed to arise from some express or implied covenant or recital . . . . [T]o permit the grantor who sells land which he does not own to assert a subsequently acquired title against the grantee or those claiming under him would be to permit the grantor to perpetrate a fraud upon the grantee.

Id. at 204-05, 784 P.2d at 23-24 (internal quotation marks and citation omitted).

Whether the doctrine of after-acquired title applies is a question of law, which we review de novo. See id. at 204, 784 P.2d at 23 (noting that the doctrine of after-acquired title is a sub-category of the doctrine of estoppel by deed); see also Mannick v. Wakeland, 2005-NMCA-098, ¶ 27, 138 N.M. 113, 117 P.3d 919 (stating, in the context of equitable estoppel, “[t]he question of whether, on a particular set of facts, the district court is permitted to exercise its equitable powers is a question of law” (internal quotation marks and citation omitted)).

In Hays, our Supreme Court adopted and applied the after-acquired title doctrine where, as in the present case, there were two chains of title originating from a common grantor. Gabaldon entered into a real estate contract to sell the land in question to Bosworth in 1968, which was recorded in 1973. Hays, 109 N.M. at 203, 784 P.2d at 22. The first chain of title began when Bosworth conveyed the land in 1977 and the land was eventually conveyed to the defendant, King. Id. The second chain of title began when Bosworth conveyed the land to another in 1982 and this chain of title led to the plaintiff, Hays. Id. at 203-04, 784 P.2d at 23. “Finally, . . . a warranty deed from Gabaldon to Bosworth was recorded,” and the district court found that this cleared any defect in the Gabaldon-Bosworth real estate contract. Id. at 203, 784 P.2d at 22. The Court applied the doctrine of after-acquired title to estop Hays from asserting title against King. Id. at 205, 784 P.2d at 24.

In the present case, addressing Hays, Plaintiff argues that, while the Lujans would have been estopped from asserting title against Bennett, the after-acquired title doctrine does not necessarily bind a subsequent purchaser, such as Plaintiff, from the original owner. Stating the law to be that “[w]henever there are conflicting chains of title to real property, courts must determine which chain of title is superior[,]” Plaintiff contends that his title is superior to that of Fassler. He argues that the after-acquired title doctrine controls only when it is the originating grantor that asserts ownership rights against the grantor’s prior grantee. Thus, according to Plaintiff, when the rights of an originating owner’s subsequent grantee have intervened, the inquiry changes, focusing only on which of the two title holders has the superior title.

Plaintiff asserts superior title based on two circumstances: (1) a title originating from a United States patent, and (2) the fact that the deeds in the Fassler chain of title contain only vague property descriptions that cannot be located on the ground, thereby requiring that the more definite property description in the chain leading to Plaintiff’s deed be the deciding factor in his favor. Plaintiff downplays Hays, because Hays did not specifically address the issue of superior title. Plaintiff argues that in Board of County Commissioners v. Ogden, 117 N.M. 181, 186, 870 P.2d 143, 148 (Ct. App. 1994), this Court refused to apply the after-acquired title doctrine. In Ogden, this Court quieted title in the party with superior title and Plaintiff characterizes Ogden as hinging on the fact that the prevailing party held title from a United States patent.

We find Hays to be instructive and Plaintiff’s reliance on Ogden to be misplaced. While Hays admittedly did not specifically address the issue Plaintiff raises here, the Court in Hays unquestionably applied the doctrine to estop a subsequent grantee from asserting a superior title as against one claiming under the prior grantee. See Hays, 109 N.M. at 203-05, 784 P.2d at 22-25. The Hays Court did not limit the after-acquired title doctrine to estop only the original grantor as Plaintiff would have us do. Id. Plaintiff cites no authority that supports his position that only the original grantor, and not a subsequent grantee from the original grantor, can be estopped from asserting title against a prior grantee from the original grantor. As for Ogden, relied on by Plaintiff, contrary to the circumstances in the present case, it became clear on appeal in Ogden that under the facts of that case, the doctrine of after-acquired title could not apply because there had been no attempt by the grantor to convey the property in question to one of the parties. See Ogden, 117 N.M. at 186, 870 P.2d at 148. The decision of this Court was not, therefore, based on two conflicting titles from two chains originating with an original grantor, but was instead based solely on the relative strengths of the two deeds, one emanating from a United States patent and the other consisting only of a quitclaim deed from a man who never owned the land. See id. at 185-86, 870 P.2d at 147-48. We see no basis on which to hold that the after-acquired title doctrine has no application in the present case.

Cases from other jurisdictions show that, since early on, the after-acquired title doctrine was applied to vest title in the first grantee and those holding under him where there were two chains of title from one initial grantor. For example, in Doe v. Roe, 1866 WL 955, *1 (Del. Super. Ct. Fall Sess. 1866), the Menoughs conveyed the land to Dowdall in 1850, warranting to defend the grantee against all persons claiming by or from the grantors. The Menoughs obtained title to the land from the Boyds in 1851. Id. In 1853 the Menoughs mortgaged the same land and it was eventually bought by Potts at a sheriff’s sale after the Menoughs stopped paying on the mortgage. Id. The court held that title passed to Dowdall, the original grantee, when the Menoughs obtained title from the Boyds, and that the Menoughs and all subsequently claiming under them, including Potts, who was a privy in estate, were estopped from claiming title based on the warranty in the deed.
to Dowdall. Id. at *6. The court elaborated on the policy behind applying the after-acquired title doctrine, a form of estoppel, to estop a subsequent grantee:

Estoppels are said to be of two kinds—the one personal in its character, operating as a personal rebuttal and preventing the grantor, and those claiming under him, from asserting title, or contradicting the intent and effect of his deed, which Lord Coke calls a “kind of estoppel;” the other, however, is of larger scope, for whilst it carries with it all the qualities and attributes of the former, it also possesses the additional function of operating an actual transfer of an after acquired estate. . . .

Where one who has no title conveys land with warranty, and afterward acquires title, and conveys to another, the second grantee is estopped to say that the grantor was not seized at the time of the first conveyance. And where both parties claim under the same person they are privies in estate, and can not, as such, deny the title of the grantor at the time of the first conveyance; and the estoppel working upon the estate, binds both parties and privies. In the language of the court in the case of Douglass v. Scott, “the obligation created by the estoppel, not only binds the parties making it, but all persons privy to him; the legal representatives of the party,—those who stand in his situation by act of law,—and all those who take his estate by contract stand in his stead, and subject to all the consequences which accrue to him. It adheres to the land, is transmitted with the estate, it becomes a muniment of title, and all who afterward acquire, take it subject to the burden which the existence of the fact imposes on it.”

Id. at *3, 5 (citation omitted).

{20} Similarly, in Bernardy v. Colonial & United States Mortgage Co., 98 N.W. 166 (S.D. 1904), the court employed the doctrine of after-acquired title and the rule that a subsequent purchaser with actual or constructive notice that the land had already been sold cannot claim title to the land. In that case, the grantor deeded the land to the initial grantee, subsequently mortgaged it to another party who eventually foreclosed the mortgage, and then finally obtained title to the land. Id. at 167. The court held that when the grantor obtained title to the land, title immediately vested in the initial grantee, and the grantor had no interest in the property at the time of the mortgage, thus the mortgagee had no interest in the property. Id. at 170. And in Morrison’s Executor v. Caldwell, 1827 WL 1584, *6 (Ky. Ct. App. Oct. 4, 1827), the court held “that where a person conveys and warrants, and has no title, and afterwards acquires title, this after-[a]quired title enures to the benefit of, and passes to his alienee[.]” And in the case of two conveyances by him when he had no title, we can have no hesitation in saying that the title enures to the benefit of, and passes to the first grante, if he be a fair purchaser.” (Citations omitted).

{21} We find the rationales in the cited cases persuasive and believe that it is proper to apply the after-acquired title doctrine to estop Plaintiff. Additionally, given that application of the after-acquired title doctrine is appropriate, we reject Plaintiff’s arguments underlying his contention that this case should be resolved in his favor by comparing the strengths of the two chains of title. First, assuming without addressing or deciding that, generally, a chain of title stemming from a patent might create a superior title, in this case, application of the after-acquired title doctrine vests title in Defendant, not Plaintiff, notwithstanding the patent Plaintiff claims for superior title. When good title was granted to Guadalupe T. Lujan, it immediately vested in the prior grantee and the person holding under him based on the conveyance from Guadalupe T. Lujan and her husband. After making the initial conveyance to Bennett, Guadalupe T. Lujan had nothing more to convey and, because Plaintiff asserts his claims under a subsequent conveyance, his claim to having a superior title fails.

{22} Second, we are unpersuaded by Plaintiff’s argument that the after-acquired title doctrine cannot defeat his title either because the Fassler chain is deficient as a result of void deeds due to defective property descriptions, or because his title is superior as a result of a more definite property description in the deeds in his chain of title. We reject this argument because we conclude that the district court did not abuse its discretion in rejecting Plaintiff’s proposed finding that the deeds in Defendant’s chain of title were vague.

{23} Whether a description in a deed sufficiently identifies the land it attempts to convey is a question of fact which we do not disturb if there is substantial evidence in the record to support the district court’s finding. See Komadina v. Edmondson, 81 N.M. 467, 468, 470, 468 P.2d 632, 633, 635 (1970) (reviewing the district court’s finding of fact for substantial evidence); Blumenthal v. Concrete Constructors Co., 102 N.M. 125, 129, 692 P.2d 50, 54 (Ct. App. 1984) (same).

{24} In Komadina, 81 N.M. at 468, 468 P.2d at 633, our Supreme Court affirmed the lower court’s conclusion that certain deeds were “void for insufficiency of description of the land they purport to convey.” The district court based this conclusion on its finding, challenged by the plaintiffs, that “[t]he land described in the complaint . . . cannot be located or identified solely from the deeds” in question. Id. (internal quotation marks omitted). In doing so, the Supreme Court pointed out that the “[p]laintiffs relied solely upon a paper title.” Id. The deeds were a series of four deeds describing land as being bounded by a nameless road on the north, the property of another person on the east, another nameless road on the south, and the property of a separate person on the west. Id. at 469, 468 P.2d at 634. The plaintiffs’ expert found the land by referring to a plat given to him by a member of the board of the town, but the deeds did not refer to the plat. Id. at 470, 468 P.2d at 635. There was evidence that no roads were in existence when the deeds were executed, that the area had not been platted, and that the land could not be located on the ground from the information contained in the deeds or based on extrinsic information. Id. at 469-70, 468 P.2d at 634-35. The Supreme Court did not disturb the challenged finding of fact, concluding that it was based on substantial evidence. Id. at 470, 468 P.2d at 635.

{25} However, where a district court has found that a deed did sufficiently describe the land in question, and there was substantial evidence supporting that conclusion in the record, appellate courts have refused to overturn the district court’s finding. In Sternlof v. Hughes, 91 N.M. 604, 605, 608, 577 P.2d 1250, 1251, 1254 (1978), our Supreme Court upheld the lower court’s judgment quieting title in the plaintiff despite the defendants’ claim that the description of the property in the deed was vague and therefore void. The Supreme Court found substantial evidence supporting the findings of fact setting the boundaries of the land based upon the deed itself and extrinsic evidence offered at trial. Id. at
608, 577 P.2d at 1254. The Court stated “an indefinite and uncertain description may be clarified by subsequent acts of the parties and other extrinsic evidence.” Id. at 606, 577 P.2d at 1252.

{26} Similarly, in Blumenthal, this Court upheld the district court’s judgment quieting title in the plaintiffs where the district court found the description in the deed adequate and its finding was supported by evidence in the record. 102 N.M. at 129, 692 P.2d at 54. In Blumenthal, a surveyor had testified “that the identity of several of the adjoining landowners named in the deed’s description were ascertained and thus boundaries could be established.” Id. We also reiterated the general rule that “if the description of the premises given in a deed affords sufficient means of ascertaining and identifying the land intended to be conveyed, it is sufficient to sustain the conveyance.” Id. at 129-30, 692 P.2d at 54-55.

{27} In this case, the description in the deed from the Lujans to Bennett, as best as we can make out from the poor copy in the record, is as follows:

Bounded on the North by the Rio Grande; on the West by land formerly of Antonio Roybal now Brown’s; on the South by Highway N. __, and on the East by an orchard retained by the seller, which is a part of La Cienega proper and is bounded by a barbed wire fence which starts on the highway on the South and runs approximately North-east from Highway Stake __ + 1.

The next two deeds, which lead to Fassler, are legible and complete, and use nearly the same description. They read:

Bounded on the North by the Rio Grande River; on the West by land formerly of Antonio Roybal, now Brown; on the South by U.S. Highway 64; and on the East by an orchard and land of J.O. Lujan and Guadalupe T. Lujan, which is a part of La Cienega proper and is bounded by a barbed wire fence which starts on the highway on the South and runs approximately Northeast from Highway stake 234 + 81[.]”

{28} All three of these deeds also refer to three earlier deeds, which led to the Lujans. In the district court, both Plaintiff’s expert and Defendant’s expert testified that the descriptions in the three earlier deeds were vague. Plaintiff argues that because the descriptions in the earlier deeds did not sufficiently identify the land they were conveying and the later deeds leading from the Lujans to Fassler referred to the earlier deeds that the later deeds were vague. Plaintiff argues that we should find the deeds void based on this vagueness just as the court did in Komadina.

{29} We disagree with Plaintiff because given the district court’s findings and the standard of review, the present case is more like Sternloff and Blumenthal than Komadina. Plaintiff submitted a proposed finding of fact that “[t]he warranty deed of December 26, 1958 from J.O. and Guadalupe Lujan to Brian Patrick Bennet and recorded at Book 59, Page 106 does not specify boundaries or extrinsic evidence from which the property conveyed can be ascertained.” The district court did not adopt this proposed finding and instead concluded that Plaintiff failed to establish title to the disputed property and that Fassler owned the disputed property when she granted the easement to Defendant. This rejection of Plaintiff’s factual contentions constituted a finding against Plaintiff. See Landskroner v. McClure, 107 N.M. 773, 775, 765 P.2d 189, 191 (1988) (holding that the failure to make a finding of fact is regarded as a finding against the party seeking to establish the fact).

{30} There is substantial evidence in the record from which the district court could reasonably conclude that the descriptions in the deeds were not vague. Defendant’s expert testified that because of the reference to the highway marker and the river she was able to identify the disputed property on a plat. Plaintiff’s expert testified that he could place the property based on the deed from the Lujans to Bennett. J.P. Lujan, the son of the Lujans, also testified regarding the fence bounding the land, the land owners or former land owners bounding the land, and the general area of the land.

{31} As there was substantial evidence in the record that the deeds adequately described the disputed property, we will not disturb the district court’s determination that Fassler owned the disputed property at the time she granted the easement to Defendant. Therefore, Defendant’s easement is valid, her use of the easement did not constitute a trespass, and Plaintiff’s claim of trespass on the disputed property fails.

CONCLUSION

{32} We affirm the district court.

{33} IT IS SO ORDERED.

WE CONCUR:

MICHAEL D. BUSTAMANTE,
Chief Judge

RODERICK T. KENNEDY, Judge
IN THE MATTER OF THE PETITION TO AMEND GROUND WATER QUALITY STANDARDS CONTAINED IN 20.6.2 NMAC NEW MEXICO MINING ASSOCIATION and NEW MEXICO OIL AND GAS ASSOCIATION, Appellants,
versus
NEW MEXICO WATER QUALITY CONTROL COMMISSION, NEW MEXICO ENVIRONMENT DEPARTMENT, and NEW MEXICO DEPARTMENT OF HEALTH, Appellees, and
EASTERN NAVAJO DINÉ AGAINST URANIUM MINING, Intervenor-Appellee.
Nos. 25,186 and 25,191 (filed: November 22, 2006)

APPEAL FROM THE NEW MEXICO WATER QUALITY CONTROL COMMISSION

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OPINION

CELIA FOY CASTILLO, JUDGE

{1} In this case, we review the action of New Mexico’s Water Quality Control Commission (Commission) in revising the water quality standard for uranium in groundwater. We conclude that the Commission properly amended the standard pursuant to NMSA 1978, § 74-6-4(C) (2003), and that credible scientific data existed in the record to support its action. Appropriate review of Appellants’ remaining concerns can be conducted only after the standard has been applied to a fact-specific situation. Accordingly, we affirm.

I. BACKGROUND

A. Facts

{2} In October 2002, the New Mexico Environment Department (Department) petitioned the Commission to revise New Mexico’s numeric human health standard for uranium in groundwater. See NMSA 1978, § 74-6-6(B) (1993); 20.6.2.3103(A)(12) NMAC. The Department asked the Commission to lower the standard for uranium from 5 milligrams per liter (mg/L) to 0.007 mg/L because of the toxic effects of uranium on the public’s health and particularly because the state has a high Native American and Hispanic population, which is especially susceptible to those effects.

{3} Prior to filing its petition, the Department requested public comment from interested parties. Interested parties, including the New Mexico Mining Association (NMMA) and the New Mexico Oil and Gas Association (NMOGA) (together, Appellants), had the opportunity to submit comments and to participate in seven days of hearing, over the course of several months, where substantial scientific, medical, and technical testimony was presented. After public deliberation in June 2004, the Commission voted unanimously to change the numeric standard for uranium from 5 mg/L to 0.03 mg/L, pursuant to Section 74-6-4(C). Subsequently, the Commission issued its statement of reasons with its final order, from which Appellants appeal.

{4} The new standard, 0.03 mg/L is the same as the United States Environmental Protection Agency’s (EPA) standard for
drinking water. See 40 C.F.R. § 141.66(e) (2005). The parties agree that the previous standard, 5 mg/L, is not protective of public health. Because it was the standard in effect at the pertinent times, the 5 mg/L standard was used by uranium operators to develop remediation and closure strategies. Of those mine and mill sites where documentation exists, the groundwater samples at all but one site are in compliance with the 5 mg/L standard. The Commission’s new standard for uranium became effective for new water discharges on September 26, 2004, and it becomes effective on June 1, 2007, for past discharges and discharges in existence as of September 26, 2004. See 20.6.2.3103 note NMAC.

B. Appellants’ Arguments

{5} Appellants challenge the amendment to the numeric standard for uranium on grounds that the standard is unattainable and economically infeasible when applied to abatement of contamination at uranium mills or mines. Since existing abatement plans are not affected, we understand that Appellants’ concerns center primarily on the effect of the new standard on abatement currently conducted under discharge plans and on new abatements that would be required under the revised standard. Compare 20.6.2.3109(E) NMAC with 20.6.2.4101(B) NMAC. Secondly, Appellants express concern regarding the effect of the new standard on future mining.

{6} Appellants contend that the Commission’s action was arbitrary and capricious and a violation of New Mexico’s Water Quality Act, NMSA 1978, §§ 74-6-1 to -17 (1967, as amended through 2005) (WQA), because the revised standard is unattainable. They argue that the Commission was required to adopt the revised standard pursuant to Section 74-6-4(D) and that therefore the Commission acted improperly because it failed to consider technical feasibility and economic reasonableness and failed to establish the existence of “available demonstrated control technology.” Thus, Appellants assert that the Commission failed to engage in reasoned decision making and, consequently, ask this Court to reverse the decision of the Commission. See Atlixco Coal. v. Maggiore, 1998-NMCA-134, ¶ 2, 125 N.M. 786, 965 P.2d 370 (remanding for “more reasoned decision making”). We review the Commission’s actions pursuant to NMSA 1978, § 74-6-7 (1993).

C. Statutory and Regulatory Framework

{7} An overview of the relevant statutes and regulations is essential to our analysis. The Commission was created by the WQA. See § 74-6-3; Bokum Res. Corp. v. N.M. Water Quality Control Comm’n, 93 N.M. 546, 555, 603 P.2d 285, 294 (1979) (stating that the objective of the WQA is to abate and prevent water pollution). The Commission is authorized to adopt water quality standards, which “shall at a minimum protect the public health or welfare, enhance the quality of water and serve the purposes of the Water Quality Act.” Section 74-6-4(C). It is also empowered to adopt regulations for the prevention or abatement of water pollution. Section 74-6-4(D). To protect groundwater, the Commission has adopted regulations and standards, including human health standards, that control discharges and provide for remediation and protection of groundwater for use as domestic and agricultural water supply. See 20.6.2.3101(A); 4101(A) NMAC. The human health standards include the numeric standard for uranium. 20.6.2.3103(A) NMAC.

{8} The Commission is administratively attached to the Department, which is a “constituent agency” charged with implementing regulations promulgated by the Commission. Sections 74-6-2(K)(1), -3(F), -8; see §§ 74-6-5, -9; 20.6.2.7(N) NMAC. As a constituent agency under the WQA, the Department is charged with issuing permits for the discharge of water containing identified contaminants, Section 74-6-5(A); 20.6.2.3104 NMAC, and administering regulations regarding abatement of pollution. See § 74-6-4(E); 20.6.2.4104(A) NMAC; see also §§ 74-6-9, -11. The numeric human health standards established by the Commission are incorporated by reference into regulations that guide the Department in its administration of discharge permits and abatement plans. See 20.6.2.3101, .3104, .4103(B), .4104 NMAC. The Department is directed to deny an application for a discharge permit if, inter alia, (1) the discharge would not meet applicable effluent regulations, standards of performance or limitations; (2) any provision of the WQA would be violated, or; (3) the discharge would cause or contribute to water contaminant levels in excess of any state or federal standard, to be determined by measuring the effect of the discharge on groundwater “at any place of withdrawal of water for present or reasonably foreseeable future use.” Section 74-6-5(E). Thus, regulations regarding discharge permits incorporate by reference the numeric standard for uranium, and a regulated entity could be subject to consequences for failure to meet the standard. See, e.g., 20.6.2.3101(A)(1)-(2) NMAC (using the standards to determine whether degradation of the groundwater will be allowed); 20.6.2.3107(A)(11) NMAC (requiring a closure plan that will “prevent the exceedance of [water quality] standards . . . in ground water . . . or abate such contamination”); 20.6.2.3109(C)(2) NMAC (providing that a proposed discharge plan, modification, or renewal cannot result in concentrations in excess of the standards at any place of withdrawal of water for present or reasonably foreseeable future use, unless an exception applies); 20.6.2.3109(E) NMAC (providing that noncompliance with the standards, “in ground water at any place of withdrawal for present or reasonably foreseeable future use,” may result in a discharge permit modification that requires abatement or prevention); 20.6.2.3109(F) NMAC (providing that if a discharge permit is terminated or expires, an abatement plan may be required if contamination levels exceed or will exceed standards).

{9} Regulations regarding abatement plans also incorporate the numeric standard for uranium. See 20.6.2.4103(B) NMAC (requiring abatement of groundwater pollution, at any place of withdrawal for present or reasonably foreseeable future use, to conform to the groundwater standards); see also 20.6.2.4101(B) NMAC (requiring abatement by the person responsible for a background concentration of a water contaminant that exceeds the groundwater standards). The purpose of the abatement regulations is to remediate or protect all groundwater for use as domestic and agricultural water supply. 20.6.2.4101(A)(1) NMAC. If a person responsible for contamination cannot meet the abatement standards through the use of appropriate technology and procedure, the secretary may approve a technical infeasibility proposal involving the use of experimental abatement technology, provided the resulting concentration of contaminants is no greater than 200 percent of the standard for that contaminant. 20.6.2.4103(E) NMAC. If the 200 percent limit on concentration is technically infeasible, the responsible person may file a petition with the Commission for alternative abatement standards or for a variance. 20.6.2.4103(E)(3) NMAC; see also 20.6.2.4103(F) NMAC. The petitioner must show either that compliance is technically infeasible when the responsible party makes “the maximum use of technology within the economic
capability of the responsible person,” or that “there is no reasonable relationship between the economic and social costs and benefits.” 20.6.2.4103(F)(1)(a) NMAC. In addition, the responsible person must show that the proposed alternative standards are achievable, justifiable, and will not cause undue damage to property or create a present or future hazard to public health. 20.6.2.4103(F)(1)(b)-(c) NMAC.

II. DISCUSSION

A. Standard of Review

{10} As an appellate court, we ask whether the Commission’s action was arbitrary, capricious, or an abuse of discretion; not supported by substantial evidence in the record as a whole; or otherwise not in accordance with law. Section 74-6-7(B). We address Appellants’ arguments first in the context of each standard of review. We then address the remaining arguments. Because Appellants’ arguments rest on the assertion that the Commission must act pursuant to Section 74-6-4(D), we begin by asking whether the Commission acted in accordance with law when it adopted the revised standard pursuant to Section 74-6-4(C).

B. Otherwise Not in Accordance With Law

{11} A ruling that is not in accordance with law should be reversed “if the agency unreasonably or unlawfully misinterprets or misapplies the law.” Archuleta v. Santa Fe Police Dep’t, 2005-NMSC-006, ¶ 18, 137 N.M. 161, 108 P.3d 1019. We are not bound by an agency’s interpretation of a statute, since it is a matter of law that is reviewed de novo. Rio Grande Chapter of the Sierra Club v. N.M. Mining Comm’n, 2003-NMSC-005, ¶ 17, 133 N.M. 97, 61 P.3d 806; Colonias Dev. Council v. Rhino Envtl. Servs., Inc., 2003-NMCA-141, ¶ 5, 134 N.M. 637, 81 P.3d 580, rev’d on other grounds, 2005-NMSC-024, ¶ 1, 138 N.M. 133, 117 P.3d 939. Rules, regulations, and standards that have been enacted by an agency are presumptively valid and will be upheld if reasonably consistent with the authorizing statutes. See Tenneco Oil Co. v. N.M. Water Quality Control Comm’n, 107 N.M. 469, 473, 760 P.2d 161, 165 (Ct. App. 1987).

{12} When construing a statute, we begin with the plain language, and we assume that the ordinary meaning of the words expresses the legislative purpose. Regents of the Univ. of Cal. v. N.M. Water Quality Control Comm’n, 2004-NMCA-073, ¶ 18, 136 N.M. 45, 94 P.3d 788. If, however, the plain language of a statute creates an absurd or unreasonable result, we will reject the literal language. Phelps Dodge Tyrone, Inc. v. N.M. Water Quality Control Comm’n, 2006-NMCA-115, ¶ 15, ___ N.M. ___, 143 P.3d 502. Our main goal is to give effect to the legislature’s intent. Wilson v. Denver, 1998-NMSC-016, ¶ 36, 125 N.M. 308, 98 P.2d 153. We ascertain the intent of the legislature by reading all the provisions of a statute together, along with other statutes in pari materia. Id.; see Tenneco, 107 N.M. at 473, 760 P.2d at 165 (“[T]he reviewing court . . . will read an act in its entirety and construe each part in order to produce a harmonious whole.”). We also consider the history and background of the statute, as we harmonize the language in a manner that facilitates the operation of the statute and the achievement of its goals. Phelps Dodge Tyrone, 2006-NMCA-115, ¶ 15; Regents, 2004-NMCA-073, ¶ 18. Agency rules are construed in the same manner as statutes. N.M. Dep’t of Health v. Ulibarri, 115 N.M. 413, 416, 852 P.2d 686, 689 (Ct. App. 1993).

{13} Appellants contend that the Commission must adopt a revised standard pursuant to Section 74-6-4(D) and thus were required to consider technical feasibility and economic reasonableness of the proposed standard. The Commission, according to Appellants, must determine that a proposed standard is “achievable through application of the best available demonstrated control technology, processes, operating methods or other alternatives” before adopting that standard. See Section 74-6-4(D). We disagree.

{14} The plain language of the statute supports the Commission’s action when it adopted the revised standard pursuant to Section 74-6-4(C), Subsection C delegates authority to the commission to adopt water quality standards and provides guidance for adopting these standards: “In making standards, the commission shall give weight it deems appropriate to all facts and circumstances, including the use and value of the water for water supplies, propagation of fish and wildlife, recreational purposes and agricultural, industrial and other purposes.” Subsection D delegates authority to the commission to adopt regulations for the prevention and abatement of water pollution and provides guidance for adopting these regulations: “In making regulations, the commission shall give weight it deems appropriate to all relevant facts and circumstances, including . . . the social and economic value of the sources of water contaminants [and] technical practicability and economic reasonableness of reducing or eliminating water contaminants from the sources involved.” Section 74-6-4(D)(2)-(3). The plain language of each subsection, “in making standards” and “in making regulations,” indicates the legislature’s intent to distinguish both between water quality standards and regulations regarding water pollution and between the procedures by which each are adopted. See § 74-6-4(C)-(D).

{15} Appellants rely on additional language in Subsection D to argue that the Commission must make a determination that the standard was achievable: “Regulations . . . may specify a standard . . . that the commission determines to be achievable through application of the best available demonstrated control technology, processes, operating methods or other alternatives.” Subsection 74-6-4(D). Appellants read this language out of context. The sentence reads in full:

Regulations shall not specify the method to be used to prevent or abate water pollution but may specify a standard of performance for new sources that reflects the greatest reduction in the concentration of water contaminants that the commission determines to be achievable through application of the best available demonstrated control technology, processes, operating methods or other alternatives, including where practicable a standard permitting no discharge of pollutants.

Id.

{16} Read in context, the language upon which Appellants rely is a condition limiting the commission’s authority to adopt regulations that specify a standard of performance for new sources. Reading the language of all the provisions of the statute together, we conclude that the legislature intended to distinguish between factors the Commission could consider when adopting a water quality standard, see § 74-6-4(C), and a determination that the Commission must make when it adopts a regulation that specifies a standard of performance for new sources. See § 74-6-4(D). Appellants do not argue that the Commission specified a standard of performance for new sources. Thus, we conclude that the legislature intended the commission to consider the factors identified in Subsection C when it adopts water quality standards to protect human health. See 74-6-4(C) (“The standards shall
at a minimum protect the public health or welfare, enhance the quality of water and serve the purposes of the Water Quality Act.”). We hold that the Commission acted in accordance with law when it adopted the revised water quality standard for uranium because the Commission did not unreasonably or unlawfully misinterpret or misapply the authorizing statute. Cf. Archuleta, 2005-NMSC-006, ¶ 18 (“We should reverse the ruling if the agency unreasonably or unlawfully misinterprets or misapplies the law[.]”).

{17} Our interpretation of the current statutory language is supported by Regents, 2004-NMCA-073, ¶ 3 (discussing the application of water quality standards to surface waters). In Regents, the appellant argued that a sentence applying the standards to ephemeral tributaries was a regulation and that the commission’s actions should therefore have complied with Subsection D. Id. ¶ 25. In responding to this argument, we addressed the difference between a standard and a regulation: “[A] standard defines the amount of contaminant in the . . . water and . . . a regulation defines the conduct necessary for an entity that discharges pollutants to comply with the standard.” Id. We also distinguished between setting limits on effluent that is discharged and setting water quality standards. Id. ¶¶ 25, 27. Limits on effluent, which are “typically based on the best available technology,” are measured against the standards to determine whether the limits are adequate to protect human health. Id. ¶¶ 16, 27. We concluded that the language at issue was not a regulation subject to Subsection D because the sentence did not regulate the effluent as argued by the appellant. Id. ¶¶ 25, 27 (noting that the possibility of “more stringent effluent limits in [the appellants’] permit [as a result of the state’s standard] does not support a conclusion that the state’s standard is consequently a regulation”).

{18} While we recognize that Regents dealt with water quality standards as incorporated in surface water regulations and enacted to comply with minimum standards established by the federal Clean Water Act, see Regents, 2004-NMCA-073, ¶¶ 4, 7; see also 33 U.S.C. § 1313(a)-(c) (2000), we find the distinction between regulating effluent and setting water quality standards to be helpful in our case. Here, similar to the language at issue in Regents, the revised standard is not used to measure contaminants in effluent and thereby directly regulate Appellants’ conduct; rather, the standard is used to measure contaminants in groundwater. 20.6.2.3103 NMAC. Moreover, the standard is generally applied “at any place of withdrawal for present or reasonably foreseeable future use.” See, e.g., § 74-6-5(E) (providing that the Department shall deny an application for a permit if the discharge’s effect on groundwater, “measured at any place of withdrawal of water for present or reasonably foreseeable future use,” would result in water contaminant levels in excess of a federal or state standard); 20.6.2.7(AA) NMAC (defining a “hazard to public health” by incorporating the water quality standards and directing the secretary to “investigate and consider the purification and dilution reasonably expected to occur from the time and place of discharge to the time and place of withdrawal for use as human drinking water” when “determining whether a discharge would cause a hazard to public health to exist”); 20.6.2.4103(B) NMAC (“Groundwater pollution at any place of withdrawal for present or reasonably foreseeable future use . . . shall be abated to conform to the . . . [water quality] standards[,]”). The distinction between standards that measure the level of contamination in groundwater used for domestic purposes and standards that measure the level of contaminants in a discharge reflect the flexibility necessary to set limits that are practical for facilities while protecting the public from the risks of consuming water that could be affected by those discharges. See Phelps Dodge Tyrone, 2006-NMCA-115, ¶ 33.

{19} Appellants rely on Tenneco to support their claim that when the commission adopts a new standard, the commission must determine achievability by considering the “technical practicability, economic reasonableness, and previous experience with the methods available.” See 107 N.M. at 475, 760 P.2d at 167. In Tenneco, this Court considered Section 74-6-4 and the commission’s duties in adopting regulations that established numeric water quality standards. 107 N.M. at 470, 472-73, 760 P.2d at 162,164-65. We conducted our review of the commission’s actions using the factors of Subsection D, Tenneco, 107 N.M. at 472, 760 P.2d at 164, because at that time Subsection C did not enumerate the factors necessary for adopting water quality standards. See NMSA 1978, § 74-6-4(C) (1984). At the time Tenneco was decided, Subsection C merely stated that the commission “shall adopt water quality standards as a guide to water pollution control.” Id. Subsequently, the legislature amended Subsection C to more clearly describe the water quality standards, to define the purpose of those standards, and to identify the factors that should be considered by the commission in making water quality standards. See 1993 N.M. Laws, ch. 291, § 4; 2001 N.M. Laws, ch. 281, § 1. Thus, Tenneco’s discussion of Section 74-6-4, as it read before amendment, is not helpful in our analysis.

{20} Appellants further argue that the Subsection D factors for adopting regulations “should at least be considered” because the standards have been incorporated into discharge and abatement regulations, and the Commission thus adopted a standard that will require the mining industry to abate groundwater to an unattainable standard. The regulations prohibit discharges that will result in concentrations of a contaminant in excess of the standards. See 20.6.2.3106(C)(7) NMAC (providing that a proposed discharge plan will include “[a]ny additional information that may be necessary to demonstrate that the discharge permit will not result in concentrations in excess of the standards”). The regulations also require abatement to meet these standards in groundwater. 20.6.2.4103(B) NMAC (“Groundwater pollution at any place of withdrawal for present or reasonably foreseeable future use . . . shall be abated to conform to the [groundwater] standards.”). The Department agrees: “These standards are applicable to discharges of effluent and leachate . . . that may affect groundwater, and also to abatement, or clean-up, of groundwater that has been contaminated by discharges.” It is not clear under the facts of this case, however, how the new numeric standard will be applied as an abatement standard. The new standard has not yet been applied to a discharge or an abatement at a uranium mine or mill site. Nor is it clear how the old numeric standard was applied as an abatement standard. Appellants’ brief-in-chief discusses abatement that has taken place under the old standard of 5 mg/L: “Through 20 years of [pump-and-treat technology], . . , contamination at one New Mexico site has been reduced from a high of [4-5 mg/L] . . . to a more acceptable level of [2-4 mg/L] at monitoring points adjacent to the tailings.” Clearly, there are considerations requiring technical expertise that preface the determination of how a standard is applied to a particular site. Cf. Phelps Dodge Tyrone, 2006-NMCA-115, ¶¶ 36-37.

{21} We understand the concerns expressed by Appellants regarding the feasibility of groundwater abatement using
the new standard at a mine or mill site. However, the posture of the case at hand does not present the facts necessary for appellate review of their concerns. Until the new standard has been applied in a fact-specific manner, our review is limited to whether the Commission properly adopted a new water quality standard pursuant to its statutory authority. See Rauscher, Pierce, Refnes, Inc. v. Taxation & Revenue Dep’t, 2002-NMSC-013, ¶ 42, 132 N.M. 226, 46 P.3d 687 (“Rulemaking . . . is prospective, and has a definitive effect on individuals only after the rule subsequently is applied.” (internal quotation marks and citation omitted)); U S West Commc’ns, Inc. v. N.M. State Corp. Comm’n, 1998-NMSC-032, ¶ 8, 125 N.M. 798, 965 P.2d 917 (“As applied in the context of an administrative proceeding, the doctrine of ripeness serves to prevent the courts, through avoidance of premature adjudication, from entangling themselves in abstract disagreements over administrative policies, and also to protect the agencies from judicial interference until an administrative decision has been formalized and its effects felt in a concrete way by the challenging parties.” (internal quotation marks and citation omitted)); N.M. Indus. Energy Consumers v. N.M. Pub. Serv. Comm’n, 111 N.M. 622, 629-30, 808 P.2d 592, 599-600 (1991) (“The determination of finality must be based on pragmatic consideration of the matters at issue and analysis of whether the administrative body has in fact finally resolved the issues.”).

Our discussion regarding the difference between standards and effluent limits, as well as our recent opinion Phelps Dodge Tyrone, might prove helpful to the Department in this regard. See 2006-NMCA-115, ¶¶ 25-35 (discussing the reasonableness of permit conditions). For the foregoing reasons, we conclude that the Commission need not determine that there is “available demonstrated control technology” when it adopts a new water quality standard pursuant to Section 74-6-4(C).

C. Arbitrary and Capricious —Consideration of the Statutory Factors

{22} An agency action is arbitrary and capricious if it is unreasonable, if it provides no rational connection between the facts found and the choices made, or if it entirely omits consideration of important aspects or relevant factors of the issue at hand. Sierra Club, 2003-NMSC-005, ¶ 17; Atlixco, 1998-NMSC-134, ¶ 24. In Section 74-6-4(C), the legislature directed the commission to “give weight it deems appropriate to all facts and circumstances, including the use and value of the water for water supplies, propagation of fish and wildlife, recreational purposes and agricultural, industrial and other purposes,” when it is adopting standards.

{23} The Commission made its decision after considering the following facts presented in proceedings below. The new standard is the same as the United States Environmental Protection Agency’s (EPA) standard for drinking water. See 40 C.F.R. § 141.66(e). Public water supply systems supplied by groundwater must meet the EPA drinking water standard. Approximately ninety percent of the people in New Mexico rely on groundwater for drinking water, and approximately ten percent of the population obtain their drinking water from private supply systems that are not subject to the federal drinking water standards. A witness for NMMA testified that a standard for groundwater expected to be used for domestic purposes should be the same as the drinking water standard. In setting the federal standard, the EPA determined that available scientific evidence indicated 0.02 mg/L would be protective of public health. It established a standard of 0.03 mg/L, however, because the health benefits of requiring 0.02 mg/L instead of 0.03 mg/L were minimal compared to the costs saved by permitting 0.03 mg/L. Moreover, the United States Court of Appeals for the District of Columbia ruled that the scientific evidence used by the EPA to set its standard of 0.03 mg/L for uranium was reasonable. City of Waukesha v. EPA, 320 F.3d 228, 254 (D.C. Cir. 2003) (per curiam). Other health organizations have recommended a health-based standard ranging from 0.005 mg/L to 0.02 mg/L, based on chemical toxicity to the kidneys. The parties agree that the previous standard, 5 mg/L, is not protective of public health and that the revised standard, 0.03 mg/L, would be protective of public health.

{24} The Commission also considered the costs related to kidney disease occurring in New Mexicans. It considered the current inactive status of uranium production in New Mexico, which employs only 85 people between New Mexico and Nebraska. It considered the testimony of the Department’s expert that it is feasible, through a variety of methods, to treat the uranium level to an acceptable concentration before a subsequent use. The Commission heard from NMMA experts who testified that the relationship between uranium in drinking water and overt disease is not clear and that the uncertainties require judgments in which there may be differences of opinion when doing health risk assessments. The Commission also considered that the Department would address other factors, such as the “social and economic value of the sources of the contaminants, technical practicability and economic feasibility,” on a case-by-case basis when the standard is applied.

{25} After considering this testimony, the Commission concluded that a drinking water standard was appropriate for use as a groundwater standard because ninety percent of New Mexicans drink groundwater and because the groundwater is delivered to ten percent of New Mexicans through private supply systems that are unprotected by the EPA drinking water standard. The Commission also concluded that credible scientific data and other appropriate evidence indicated the uranium standard should be 0.03 mg/L. Although scientific evidence was presented by the Department in support of a lower standard (0.007 mg/L) for protection of public health, the Commission considered testimony regarding the difficulties of compliance with two different standards, for federal and state regulations, and determined that the revised standard should be the same as the federal standard. Thus, the Commission amended the uranium standard to 0.03 mg/L, instead of the proposed 0.007 mg/L, in order to fulfill its duty to “at a minimum protect the public health or welfare, enhance the quality of water and serve the purposes of the Water Quality Act.” See § 74-6-4(C).

{26} The Commission considered these facts, relevant to Subsection C, regarding the use and value of the groundwater for domestic water supply and for mining purposes, and engaged in public deliberation before it unanimously adopted the revised standard. We cannot say that the Commission failed to engage in reasoned decision making as defined by Section 74-6-4(C); thus, we conclude that the Commission’s action was not arbitrary and capricious. Tenneco, 107 N.M. at 473, 760 P.2d at 165 (stating that even though one may believe an erroneous conclusion has been reached, the action is not arbitrary and capricious when there is room for two opinions). The Commission gave weight it deemed appropriate to all facts and circumstances and independently concluded that the state water quality standard for groundwater should be the same as the federal water quality standard for drinking water. An agency’s rule-making function is discretionary, and we will not substitute our judgment for that of the agency on that
issue if there is no showing of an abuse of that discretion. Tenneco, 107 N.M. at 473, 760 P.2d at 165.

{27} Appellants rely on National Lime Association v. EPA, 627 F.2d 416 (D.C. Cir. 1980), to argue that the amendment to the numeric standard was arbitrary and capricious because the standard is “unachievable.” In National Lime, the standards at issue were new source performance standards that specifically limited discharges emitted from active facilities. 627 F.2d at 422. As discussed above, the revised standard for uranium at issue today is not a new source performance standard or an effluent limit. Cf. Tenneco, 107 N.M. at 475-76, 760 P.2d at 167-68 (distinguishing between the application of numeric standards for prevention of contamination and the application of numeric standards for remedial clean-up actions). Thus, National Lime is not on point.

{28} Appellants also rely on Industrial Union Department, AFL-CIO v. American Petroleum Institute (Benzene), 448 U.S. 607 (1980), for the proposition that this Court should strike down the new standard for uranium because significant risk to human health posed by low levels of uranium is uncertain and the “cost of compliance far exceeds any realizable benefits.” Like the standard in National Lime, the standard in Benzene is different from the water quality standard at issue today. The standard in Benzene was a limit directly imposed on the employer at the place of business, thereby specifically regulating the conduct of the entity. 448 U.S. at 613. As discussed earlier, water quality standards do not regulate the conduct of an entity; thus, we do not find Benzene applicable to the issue presented today.

{29} Appellants cite to a number of cases arguing that the Commission must determine a standard to be technologically feasible before it can be adopted. Given our conclusion that the water quality standard was properly adopted pursuant to Section 74-6-4(C), and the distinction we have made between standards imposed for water quality and standards imposed for effluent or discharges, these cases cited by Appellants are also inapposite. See Am. Fed’n of Labor & Cong. of Indus. Orgs. v. OSHA, 965 F.2d 962, 968 (11th Cir. 1992) (reviewing air contaminant standards applicable to employee exposure in the workplace); Wells Mfg. Co. v. Pollution Control Bd., 363 N.E.2d 26, 26-28 (Ill. App. Ct. 1977) (reviewing an order that required a foundry to eliminate the discharge or odor emanating from the plant); Commonwealth ex rel. State Water Control Bd. v. County Utils. Corp., 290 S.E.2d 867, 870 (Va. 1982) (reviewing standards that limited nitrogen in effluent).

D. Substantial Evidence—Credible Scientific Data

{30} Substantial evidence is evidence that a reasonable mind would recognize as adequate to support the conclusions reached by a fact-finder. Wagner v. AGW Consultants, 2005-NMSC-016, ¶ 85, 137 N.M. 734, 114 P.3d 1050; Regents of the Univ. of N.M. v. N.M. Fed’n of Teachers, 1998-NMSC-020, ¶ 17, 125 N.M. 401, 962 P.2d 1236. This Court reviews the record as a whole, in the light most favorable to the decision of the Commission, Zia Natural Gas Co. v. N.M. Pub. Util. Comm’n, 2000-NMSC-011, ¶ 25, 128 N.M. 728, 998 P.2d 564, and refrains from reweighing the evidence. Regents, 2004-NMCA-073, ¶ 29.

{31} Section 74-6-4(C) provides that the standards shall be “based on credible scientific data and other evidence appropriate under the Water Quality Act.” The Commission heard testimony from the Department’s three experts, all of whom testified in support of amending the standard to 0.007 mg/L. The Commission relied on the peer-reviewed Lewis study that addressed the toxic effects of uranium on humans, particularly chemical toxicity on the kidney. The Lewis study reviewed non-human animal studies of uranium toxicity and human exposure data and used an EPA recognized methodology, the exposure dose approach, to estimate a numeric standard for uranium in drinking water, 0.007 mg/L, that is protective of human health. The 0.007 mg/L proposed standard was based in part on the high incidence of kidney ailments that exist in several New Mexico populations, especially Native American and Hispanic communities, which are often located in areas of uranium deposits.

{32} The EPA methodology and the Lewis study documented uncertainty factors that were used to correct for uncertainties resulting from various extrapolations, within and between species, as well as other factors. Clinical studies of the effects of uranium on humans are not available because it is unethical to knowingly subject persons to a harmful exposure. One study, however, shows that people exhibited subclinical effects to their kidneys after being exposed to average concentrations ranging from 0.005 mg/L to 0.196 mg/L. The Commission also considered City of Waukesha, which held that the EPA’s use of epidemiological data and non-human animal studies to set a drinking water standard for uranium of 0.03 mg/L was reasonable. 320 F.3d at 254 (concluding that “in the face of uncertain laboratory and epidemiological data, it was reasonable for EPA to take the risk-averse approach of relying on the animal laboratory data to develop a lower standard”).

{33} Moreover, the Commission heard from epidemiologists and experts, who testified about populations in New Mexico that were especially sensitive to the toxic effects of uranium. One epidemiologist further testified that the proposed standard was based on credible scientific evidence and would be protective of public health. In addition, two experts spoke on behalf of NMMA. Both experts testified that the 5 mg/L standard does not protect public health. One NMMA expert testified that a standard for groundwater used as a domestic water resource should be the same as the standard for drinking water and, speaking as a risk assessor, recommended a drinking water standard between 0.03 and 0.1 mg/L. Another NMMA expert testified that the 0.03 mg/L standard would be protective of public health.

{34} Viewing the record as a whole, we conclude that substantial evidence exists in the record, based on credible scientific data, to support the Commission’s actions. See Bokum, 93 N.M. at 554, 603 P.2d at 293 (stating that conflicting expert testimony is resolved in favor of the successful party on appeal); Regents, 2004-NMCA-073, ¶ 34 (“We find in the whole record ample evidence to affirm.”). The EPA’s reliance on similar data and the court’s ruling on the reasonableness of this type of data in City of Waukesha further provide support for our conclusion. See Benzene, 448 U.S. at 656 (“[T]he agency is not required to support its finding that a significant risk exists with anything approaching scientific certainty. . . . [T]he statute specifically allows the Secretary to regulate on the basis of the ‘best available evidence.’ . . . [T]his provision requires a reviewing court to give [the agency] some leeway where its findings must be made on the frontiers of scientific knowledge. Thus, so long as they are supported by a body of reputable scientific thought, the [agency] is free to use conservative assumptions in interpreting the data with respect to carcinogens, risking error on the side of overprotection.
rather than underprotection.” (internal citations omitted)).

E. Alternative Abatement Plans

{35} Appellants argue that the opportunity to petition for Alternative Abatement Standards (AAS), see 20.6.2.4103(F) NMAC, does not cure an “otherwise defective” regulation. Appellants contend that the AAS process involves a discretionary variance procedure, “haphazard at best,” which allows a regulation to be applied using a “standard du jour.” See Bokum, 93 N.M. at 552, 603 P.2d at 291 (holding that a regulation defining “toxic pollutants” was unconstitutionally vague). This appeal involves review of the standard adopted by the Commission; Appellants do not argue that the standard is unconstitutionally vague.

Given our conclusion that the Commission properly adopted the revised standard pursuant to Section 74-6-4(C), this argument fails. To the extent that Appellants argue the AAS procedure is without any “guidelines for the exercise of the authority to approve or disapprove” an AAS, we disagree. See Bokum, 93 N.M. at 552, 603 P.2d at 291. As noted earlier, the regulations require determinations involving technical expertise that guide the Department in its application of the standard.

F. Incorporation of the Standards Into Oil and Gas Regulations

{36} For the reasons discussed throughout the opinion, we conclude that the concerns of NMOGA regarding implementation of the revised standard can be adequately reviewed only after the revised standard has been applied in a fact-specific manner. However, we briefly address NMOGA’s other arguments. With inaccurate citations to the record, NMOGA asserts that the Commission’s action was improper because the Commission failed to consider the effect of the revised standard on the Oil Conservation Division’s (OCD) regulatory scheme and the oil and gas industry and because the Oil Conservation Division was not a party to the proceeding. We disagree.

First, we observe that the Commission did hear testimony from NMOGA. NMOGA’s witness appeared on the final day of the hearing to ask the Commission to delay its revision of the standard, so the industry could look at the impact of the revised standard and provide that information to the Commission. The witness testified that he had “no expertise or technical knowledge to suggest that [the uranium standard] should be at one level or the other” and that he “couldn’t tell you if there has been testing of produced water.” Finally, he testified that NMOGA did not submit comments to the Department when the new standard was first proposed in 2001, even though the Department first began discussing the possibility of revised standards in the mid-1990’s and had attempted to meet with NMOGA during the previous summer. If we found NMOGA’s argument to be persuasive, any interested party could delay administrative action by ignoring adequate notice of the proceedings. NMOGA does not argue that it had inadequate notice of the hearing. In fact, the record reveals that notice was sent to NMOGA fifty-one days prior to the hearing.

{37} Second, Section 74-6-3(A)(4) specifically provides that the commission shall include the chairman of the oil conservation commission or a designated member of his staff. See generally NMSA 1978, § 70-2-4 (1987) (providing for the creation of the oil conservation commission); NMSA 1978, § 70-2-6 (1979) (discussing the jurisdiction of the division and the commission). NMOGA does not argue that the Commission failed to comply with Section 74-6-3(A)(4). Without more, we cannot conclude that the representative of the oil conservation commission, sitting as a member of the Commission as statutorily required, does not adequately represent the interests of the OCD and the industry it regulates.

III. CONCLUSION

{38} The Commission properly adopted the revised water quality standard for uranium pursuant to Section 74-6-4(C). Concerns regarding the application of the standard can be adequately addressed only after the standard has been applied. Accordingly, we affirm the action of the Commission.

{39} IT IS SO ORDERED.

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Protection and Advocacy System, a state-wide non-profit agency which promotes and protects the rights of persons with disabilities, seeks Staff Attorney to represent agency clients in informal, administrative, and legal proceedings; comment on proposed regulations and legislation; provide technical assistance; participate in policy advocacy. Must be member of New Mexico Bar, demonstrate competence in range of legal practice including litigation, and any combination of advanced education, legal practice, professional work experience or volunteer activities relevant to disability issues. Three years experience preferred. Persons with disabilities and minorities strongly encouraged to apply. Competitive salary, excellent fringe benefits. Send letter of interest addressing above qualifications, resume and three references to P & A System, 1720 Louisiana Blvd NE, Suite 204, Albuquerque, NM 87110, or by fax to (505) 256-3184 by February 20, 2006. No calls please. AA/EEO

Executive Director

New Mexico Legal Aid (NMLA) seeks a respected, experienced, innovative and dynamic leader who is passionate about and has demonstrated commitment to advocate on behalf of low-income people. The new Executive Director must be an experienced attorney knowledgeable in public interest law, federal and state government administration and operations, and have an understanding of the organization and operations of non-profit corporations. NMLA, an equal opportunity employer, is a high quality, non-profit legal services organization that serves the entire state, with offices in Albuquerque, Las Cruces, Santa Fe, Gallup, Roswell, Taos, Silver City, Las Vegas, Mescalero, and Santa Ana, as well as a Migrant unit located in our Las Cruces office. Both our Santa Ana and Mescalero offices serve the Native American population of New Mexico. Our Migrant component serves the State migrant population in the southern part of New Mexico. NMLA has been committed to serving all of New Mexico for over 32 years (as separate programs and since becoming one statewide program in 2003). NMLA is the largest legal services field program in New Mexico, with a unionized staff of over 40 employees and serving almost 5,000 clients per year. Candidates must have at least 10 years legal experience and admittance to or eligibility for admittance to practice in New Mexico. Candidates must also have demonstrated successful experience in grant development, management and fundraising, and be skilled in personnel and financial management, program planning, development and administration. Preference will be given to candidates with at least 3 years of legal services management experience or comparable experience with another legal advocacy organization. Compensation is competitive and based on experience. Excellent benefits. Applications should include a cover letter expressing in detail why the candidate is interested in the position of Executive Director of NMLA as well as what the candidate believes he/she can contribute to the future of the organization and its client community, a resume, and names and contact information for three references. The position of Executive Director will be physically located in Albuquerque, New Mexico. Our office in Albuquerque is located on 6th & Copper NW in the downtown business area. Position is open until filled. Please forward your application to either the physical and/or email address to: Gloria A. Molinar, NMLA Search Committee, New Mexico Legal Aid, 300 N Downtown Mall, Las Cruces, NM 88001, gloriam@nmlegalaid.org.

Experienced Prosecutor

Attorney wanted for employment with the First Judicial District Attorney’s Office in Rio Arriba County. This is a general attorney position in the Espanola office. Salary will be based upon experience. Please email resume to sweinstein@ da.state.nm.us or mail to Shari Weinstein, Chief Deputy District Attorney, PO Box 2041, Santa Fe, NM, 87504-2041.
Attorney
Busy law firm seeks attorney to handle primarily criminal and family law cases in the Roswell/Carlsbad/Artesia area. Applicants must be willing to relocate to Roswell, New Mexico. Also must have good communication skills and ability to work unsupervised. Requires trial practice and traveling. All inquiries will remain confidential. Resume must list three references. Fax Resume with cover letter, including salary requirements, to Frank B. Patterson at (505) 625-9501 or e-mail to pattersonlaw@dfn.com.

Farmington Attorney
Val R. Jolley, P.C. Law Firm seeks a full-time attorney with 3-5 years experience to handle Civil, Probate, Business, and Family Law. Salary DOE. Please forward a cover letter, resume, writing sample and references to vjolley@valjolleypc.com or mail to P.O. Box 2364, Farmington, NM 87499. All inquiries held in strict confidence.

NM Center on Law and Poverty - Staff Attorney
Public interest, non-profit law firm seeks attorney to engage in advocacy and litigation on poverty law issues. Looking for someone with 0 to 5 years of experience and a demonstrated commitment to addressing poverty and/or equal access to justice issues. Candidates should have extraordinary drive, research, writing and verbal skills. Spanish proficiency a plus. Non-profit salary offered with excellent benefits. Apply in confidence by sending letter of interest, resume, and writing sample to kim@nmpovertylaw.org. We are an equal opportunity employer.

Law Clerk Position
The Fifth Judicial District Court of Chaves, Eddy and Lea Counties is seeking a law clerk. This is a one year position beginning July 1, 2007 and ending June 30, 2008, and will be located in Lovington, Lea County, NM. Salary is $40,346.00 annually plus benefits. Must be a graduate of an accredited law school. Send resume and 3-5 pages of your writing skills to: Hon. Gary L. Clinkman, Chief Judge, 100 N. Main, Box 6-C, Lovington, NM 88260, by 5:00 P.M., on March 15, 2007. The New Mexico Judicial Branch of Government is an Equal Opportunity Employer. You may visit our web-site at www.fifthdistrictcourt.com.

Lawyer Position
Guebert, Bruckner & Boots, P.C. seeks an attorney with one to three years of experience and the desire to work in tort and commercial litigation. If interested, please send resume and recent writing sample to: Hiring Partner, Guebert, Bruckner & Boots, P.C., P.O. Box 93880, Albuquerque, NM 87199-3880. All replies are kept confidential. No telephone calls please.

Manager
The New Mexico Developmental Disabilities Planning Council is seeking a manager for their Office of Guardianship (OG) in Santa Fe. OG provides guardianship services to income and resource eligible incapacitated persons over the age of eighteen (18) years old. Duties include: staff supervision, strategic planning & budget management, contract negotiation & monitoring, interface with the courts, advocates, community providers, families and other state agencies on guardianship issues. Qualifications: Master's Degree required, Law Degree preferred. Five years' management experience (two of which must be supervisory), which includes financial, personnel, legislation, outcome-based management, work in the field of disabilities and knowledge of the New Mexico probate code and guardianship statutes. Beginning salary range $43,064 - $59,810 per year depending on qualifications. To apply: http://www.spo.state.nm.us/ click on 'Jobs', then 'Apply for a Job Online'. Job ID number: 5195. Position will close at midnight, 2/9/07.

Legal Assistant
Established medium-sized law firm seeks full time legal assistant. Applicants should have 3 years experience in civil litigation. Must be a team player who can perform multi-tasks in a high volume, fast paced practice. Please submit cover letter, resume and salary requirements to Office Manager, YLAW, 4908 Alameda Blvd. NE, Albuquerque, NM 87113 or email to fruiz@ylawfirm.com. No phone calls please.

Legal Assistant
Legal Assistant needed for Santa Fe, NM Plaintiff Civil Litigation firm. Bi-lingual preferred min. 3 yrs. Civil Litigation exp., knowledge of Word Perfect and MS Office required, and must be familiar with state & federal court rules. Salary negotiable based on experience. Full benefits provided. Fax resume to 505/986-0632.

Legal Secretary
Busy and growing downtown law firm seeks experienced legal secretary for established lawyers. The successful candidate should know Microsoft Word, possess a strong work ethic, exceptional communication and organizational skills and a commitment to consistent quality work. Must have prior experience. Additionally, experience in workers’ compensation cases a plus. We offer an excellent work environment, competitive salary package. For consideration, please forward your resume, references & salary requirements to: Office Manager, P.O. Box 1578, Albuquerque, NM 87103-1578, fax to 505-247-8125, or email to Nichole@maestasandluggett.com

Secretory/Legal Assistant/Paralegal
FT position available for secretary/legal assistant/paralegal for small, extremely busy firm. Candidate should have a minimum of 5 yrs. experience, preferably in transactional work, excellent typing skills and work well in a team setting. Strong word processing skills a must. Competitive salary and benefit package. Please submit resume to rgomez@bhsf.com or fax to 505.244.9266.

Legal Assistant
Established medium-sized law firm seeks full time legal assistant. Applicants should have 3 years experience in civil litigation. Must be a team player who can perform multi-tasks in a high volume, fast paced practice. Please submit cover letter, resume and salary requirements to Office Manager, YLAW, 4908 Alameda Blvd. NE, Albuquerque, NM 87113 or email to fruiz@ylawfirm.com. No phone calls please.

Experienced Legal Assistant
Experienced Legal Assistant needed for a fast-paced plaintiffs’ firm. Must be organized, self-motivated, and able to work independently. Previous legal experience required, specifically in the preparation of pleadings and correspondence, state and federal court filings, and calendaring. Must be computer literate and have experience with MS Word and Outlook Email. Fax or email resume with salary requirements to Cindy Wade at Gaddy & Jaramillo, (505) 254-9366; cindy@gaddyfirm.com

Experienced Santa Fe Paralegal
Small collegial Santa Fe firm needs a bright, energetic, mature, meticulous and experienced (5+ years) Paralegal. Very substantial client contact. Excellent writing, communication and organizational skills required. Computer intensive, informal non-smoking office. Paralegal Certificate desirable. Recent law firm experience required. Our firm offers a fun small office workplace. Competitive Compensation Pkg. $45,000 (salary plus monthly bonus), 100% paid Medical/Hosp; parking; paid holidays + sick and personal leave. All responses are confidential. Resume with cover letter please to P.O. Box 4817, Santa Fe, NM 87502-4817.
Part-time Paralegal
Part-time paralegal need for busy criminal defense practice. Fax resume to the office of Lisa Torraco 244-0532 - no phone calls please!

Positions Wanted

Paralegal/Legal Assistant
Experienced paralegal/legal assistant seeking employment Santa Fe/Albuquerque 265-5484

Consulting

Forensic Psychiatrist
Board certified in adult and forensic psychiatry, available for psychiatric evaluations, consultation, case review, and expert testimony; CV and case listings available upon request. Contact Dr. Kelly at 1-866-317-7959 or by email at forensicpsychiatry@comcast.net

Accounting Services
15 years experience in the legal field. Advanced client costs, trust fund accounting, fee distribution, retirement plan administration, A/R, A/P, Payroll and all P/R taxes and NMGRT. Available for monthly reconciliations and/or large one-time projects. Please call for a consultation: Cindy Hoke @ 254.4665 or email cahoke@swcp.com

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Downtown Office
Extremely close to all courts. Space for two offices with staff and reception. Beautiful hard wood floors. Security wraught iron on all windows and doors. Tons of parking in rear. Remodeled kitchen with new stove, sinks and cabinets. Plenty of space for copiers, fax, storage. Reasonable rent. 205-6141

Transcription
Three Offices Available
Best location in town, one block or less from the new federal, state, metropolitan courts. Includes secretarial space, phones and service, parking, library, janitorial, security, receptionist, runner, etc. Contact Thomas Nance Jones, (505) 247-2972.

Downtown Offices
Up to three (3) offices with secretarial areas available in downtown area (4th Street & I-40). Rent includes receptionist; use of conference room; high speed internet connection; phone system; runner 3 days a week; free parking for staff and clients; use of copy machine; and employee lounge. Janitorial and utilities included in rent. Contact Jerry at 505-243-6721 or gbischof@dcbf.net.

Santa Fe
Two to three professional offices in beautiful historic building, exquisite downtown compound. Shared reception area, conference room, copier, broadband, parking. 216-0400

Albuquerque Offices
Albuquerque offices for rent, 820 2nd NW, one block from courthouses, copier, fax, high speed internet, off street parking, library, statutes up to date, telephone system, conference room, receptionist, rates depending on space rented $500 to $1000 monthly. Call Ramona at 243-7170 for appointment.

Office Space Available
400 Gold SW
Executive suite includes reception, conference rooms, breakroom, copy/fax services, & phone system. Offices starting at $475/month. Suites also available 950SF to 5000 SF, negotiable lease terms and improvements. Covered onsite parking available. Call Daniel 241-3803, daniel@armstrongproperties.net.

Very Desirable Uptown Location
Beautiful, newly renovated single story building w/ two individual offices available starting Feb 1, 2007. Shared conference room and reception area. Perfect setting for business consultant, accountant, attorney or therapist requiring a short commute from the NE Heights. $525.00 per office (including utilities, Janitorial and internet access). Call Sharon @ 385-9133.

Office Space
Available at 4600 A & B Montgomery NE. Great location, easy access to I-25. First and second floors available from 1012 to 2446 Sq. Ft. On-site April of 2007 a Conference/Training Center/Executive Board Room with Audio/Visual Technology. Special rates for tenant use from meetings to depositions. Contact Barbara Comstock, (505)889-8262 or (505)803-2109. www.calsaraj.com

Share Office Space
Office space available in N.E. Heights (vicinity of Eubank and Comanche). Share space with five other sole practitioners. Includes usual amenities. Call Walter Reardon at (505) 293-7000.

Office Space Available
400 Gold SW
Executive suite includes reception, conference rooms, breakroom, copy/fax services, & phone system. Offices starting at $475/month. Suites also available 950SF to 5000 SF, negotiable lease terms and improvements. Covered onsite parking available. Call Daniel 241-3803, daniel@armstrongproperties.net.

Downtown
Beautiful adobe building near MLK on north I-25 on-ramp. Convenient to courthouses with free adequate parking for staff and clients. Conference room, reception room, employee lounge, utilities and janitor service included. Broad band access, copy machine available. From $165 per month. Call Orville, (505) 867-6566; or Jon, (505) 507-5145. Oak Street Professional Bldg., 500 Oak NE.

Office Space
Available in N.E. Heights (vicinity of Eubank and Comanche). Share space with five other sole practitioners. Includes usual amenities. Call Walter Reardon at (505) 293-7000.
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