



2011 ANNUAL REPORT



NEW MEXICO
ATTORNEY GENERAL'S OFFICE

MESSAGE FROM ATTORNEY GENERAL

GARY K. KING

Once again, I am pleased to report to the New Mexico Legislature that the State Attorney General's Office had a very productive year in 2011. For your convenience and information, we have compiled the following comprehensive accounting of activities from each of the agency's divisions. Here are a few highlights from the past year.

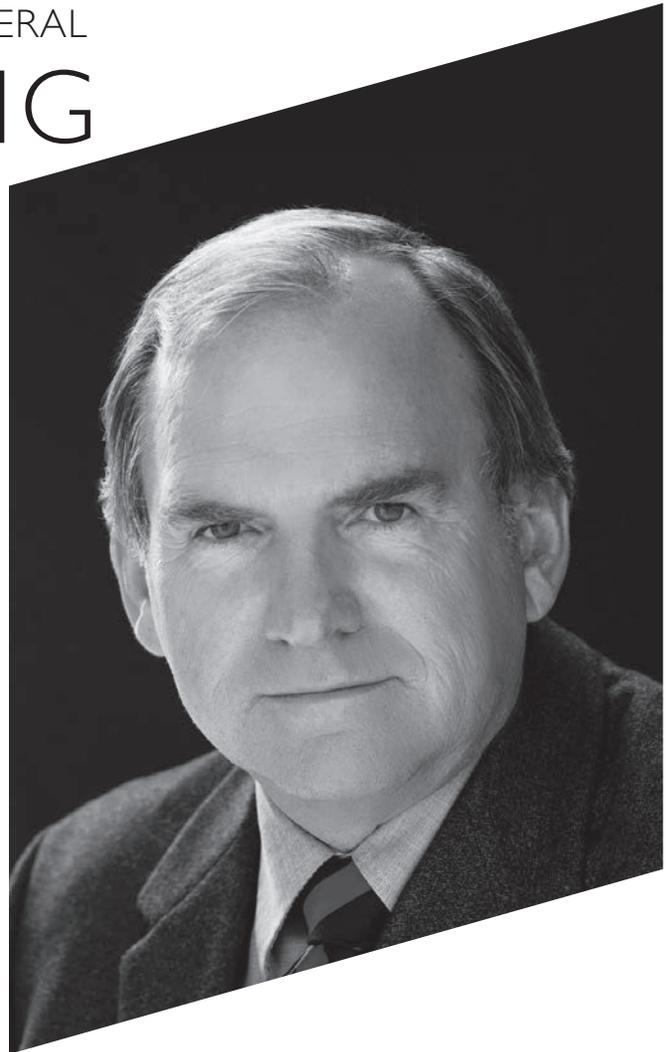
The Attorney General's Office Government Accountability Division secured guilty pleas on a number of charges filed against former PRC Commissioner Jerome Block, Jr. for misuse of public monies and resources. He was ordered to make restitution to the State and agreed to never again run for public office in New Mexico. Our plea agreement with Block, Jr. made a planned legislative impeachment proceeding unnecessary, thereby saving taxpayers the high cost of that action. At the time of this report, sentencing of the defendant, which could lead to further incarceration, had not yet occurred.

Our Internet Crimes Against Children (ICAC) unit is responsible for a significant increase in felony prosecutions involving sexual exploitation of children. During my administration, 56 child predator or child pornography cases have been prosecuted or are pending prosecution.

In a lawsuit to protect New Mexico's precious water resources, the agency's Water, Environment, and Utilities Division filed suit against the U.S. Department of Interior to strike down the 2008 Operating Agreement for the Rio Grande Project which we contend illegally takes water that should be allocated to New Mexico farmers and allocates it to farmers in the State of Texas. Thanks to the Legislature for appropriating the funds to my office to bring the lawsuit.

Our DWI Resource Prosecutor successfully prosecuted several challenging DWI cases involving significant policy issues. We continue to be leaders in combating the DWI problem in New Mexico. Please see the full report for details

Our Consumer Protection Division has recovered almost \$4 million dollars on behalf of consumers and continues to fight against unfair mortgage foreclosure practices, debt collection frauds, and predatory lending. Additionally, AGO prosecutors and coordinators have trained hundreds of lawyers, law enforcement personnel, victim advocates, and volunteers in areas such as Internet crimes against children,



DWI prosecution, human trafficking prevention, domestic violence cases, teen dating safety, and methamphetamine abuse prevention.

I am extremely proud that Attorney General's Office personnel have accomplished so much, particularly while operating within reduced or flat budgetary appropriations. We pledge to continue finding ways to better serve the people of New Mexico and I look forward to working with Legislators and the Governor to accomplish the tasks entrusted to all of us elected officials by our constituents. Thank you for your continued support as we embrace the work ahead for the remainder of 2012.

Sincerely,

A handwritten signature in cursive script that reads "Gary K." followed by a stylized flourish.

Gary K. King
New Mexico Attorney General



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CHIEF DEPUTY ATTORNEY GENERAL

ALBERT J. LAMA



This annual report documents some examples of how the Attorney General Gary King and his staff accomplished the duties of the office in 2011. We continue to appreciate the support that Legislators have provided throughout the years and we ask for your continued support in the coming fiscal year.

As Chief Deputy, I am committed to doing my best to ensure that our responsibilities as the State's Attorney are met on behalf of the citizens of the State of New Mexico. In looking ahead to 2012, our plate is full of challenges and opportunities and our resources are limited. Nevertheless, these circumstances will not change our resolve to provide high quality legal representation to our client, the State of New Mexico. Also, we will continue to hold individuals accountable when they act illegally or otherwise violate the public trust. Under Attorney General King's leadership, we will continue to pursue efforts to support the enactment and enforcement of laws that protect the interests of our state, its people, and its resources.

Of course, nothing can be accomplished without the commitment and hard work of the professional men and women who I am proud to call my colleagues. I salute their continued efforts to produce the highest quality work product in state government.

Recognizing that political rhetoric will not satisfy our obligations as lawyers and as officers of our Judiciary, I am confident that Attorney General King and all of us at the Attorney General's Office will continue to do the right thing: to ensure that our elected and appointed officials receive the best legal advice available to assist them in making wise and effective decisions on behalf of all New Mexicans.



CHIEF OF STAFF

MICHELLE GARCIA



Chief of Staff Michelle Garcia assists in the development of policies for the Attorney General's Office and provides direction to the divisions within the agency to implement those policies. She directs the multi-disciplinary staff in accomplishing the goals and objectives of the Attorney General by supporting activities and participation in projects and programs initiated at the request of Attorney General King. Chief of Staff Garcia enhances staff development through interaction with employees within the agency, assisting in interviews with personnel applicants, and developing staff training programs within the agency, as well as training for law enforcement. She also represents the Attorney General on several law enforcement boards.

As a law enforcement officer, Chief of Staff Garcia brings a wealth of knowledge and experience to her duties as liaison to the state's law enforcement community.

She serves as a representative on the Anti-Terrorism Advisory Council (ATAC), the High Intensity Drug Trafficking Area (HIDTA), Child Fatality Review Panel and is the 2012 Vice Chair for the New Mexico Intimate Partner Violence Death Review Team. Chief of Staff Garcia was recently appointed to the Pillars of Hope Operations Committee: Attorney General's Unite against Human Trafficking Initiative. This 2011-2012 NAAG presidential initiative will work to combat human trafficking nationwide. This initiative will focus on: preparing a sound assessment of the problem of human trafficking; development of comprehensive training initiatives and implementation of effective criminal justice strategies for law enforcement across the country, which will serve to hold traffickers and abusers accountable; mobilizing communities to provide services for victims; and reduce demand for trafficking victims through public awareness campaigns and promote community awareness to identify victims.

Chief of Staff Garcia also chairs the Prescription Drug Disposal project task force. This year, she is working closely with law enforcement to set up take-back programs throughout New Mexico, to help youth, parents, and the elderly understand safe ways to dispose of unused and unwanted medications. This Task Force developed an informative guide on how to host take-back programs for law enforcement across the state. This guide will help begin the process of keeping our communities and our environment safe from this hazardous waste.

Ms. Garcia will continue to develop and support the priorities of Attorney General King in 2012.



AGO LEGISLATIVE TEAM

STUART BLUESTONE • PHILLIP BACA • VICTORIA BRANSFORD



VISION

The Attorney General's Legislative Team is responsible for developing, reviewing, and recommending policy positions to the Attorney General on legislation that promotes the Attorney General's priorities.

YEAR IN REVIEW

During the 2011 Legislative Session, the Attorney General's Legislative Team worked on numerous pieces of legislation, including Ethics and Campaign Finance Reform, DWI and Underage Drinking Prevention, Consumer Protection, Civil -General Fund Recoveries, Criminal Law Enforcement, Domestic Violence, Environmental, and Border and Drug Enforcement issues.

Notably, the team was instrumental in the passage of Enhancements to Katie's Law, which now requires DNA collection at the time of all felony arrests. Another significant success included amending the Governmental Conduct Act to make it applicable to local/municipal governments. The team also assisted in securing \$1.5M in funding for litigation to protect New Mexico's water rights for future generations.

LOOKING AHEAD

This year, 2012, the AG's Legislative Team will be working on more significant pieces of legislation important to New Mexicans. High priority bills include Electioneering Communication Contribution Disclosures, Enacting the Mortgage Fair Foreclosure Act, Amendments to Sex Offender Registration laws, DWI prevention legislation, and enhancements to Domestic Violence laws.

The Attorney General's Legislative Team in 2012 will also include Assistant Attorney General R. David Pederson; a former State Legislator. The team will continue to work with other agencies, concerned citizens, and interest groups and leaders from business and industry communities to ensure that all proposals are fully vetted and fairly considered. While it is difficult to reach a consensus on every bill, the team always tries to consider alternative points of view and seeks to be an honest broker of competing interests while pursuing AG King's legislative priorities.





CONSTITUENT SERVICES

CORDY MEDINA



Attorney General King's Constituent Services Coordinator attempts to resolve issues and problems reported to the Office by the general public. In 2011, Cordy Medina received nearly 300 letters asking for help on a myriad of personal constituent issues. Ms. Medina also fielded more than 400 emails from the public and other state agencies looking for direction on addressing various constituent concerns. Additionally, her office telephone never seems to stop ringing. Many people also simply stop by her office to speak with Ms. Medina in person.

If a particular problem is of a legal nature and appropriate for the Office to handle, it is routed to staff within the Attorney General's Office. Other constituent complaints are often handled by collaborating with other state agencies to find solutions. Throughout the year Ms. Medina travels across New Mexico to meet with individuals, groups, or organizations that need help from state government.

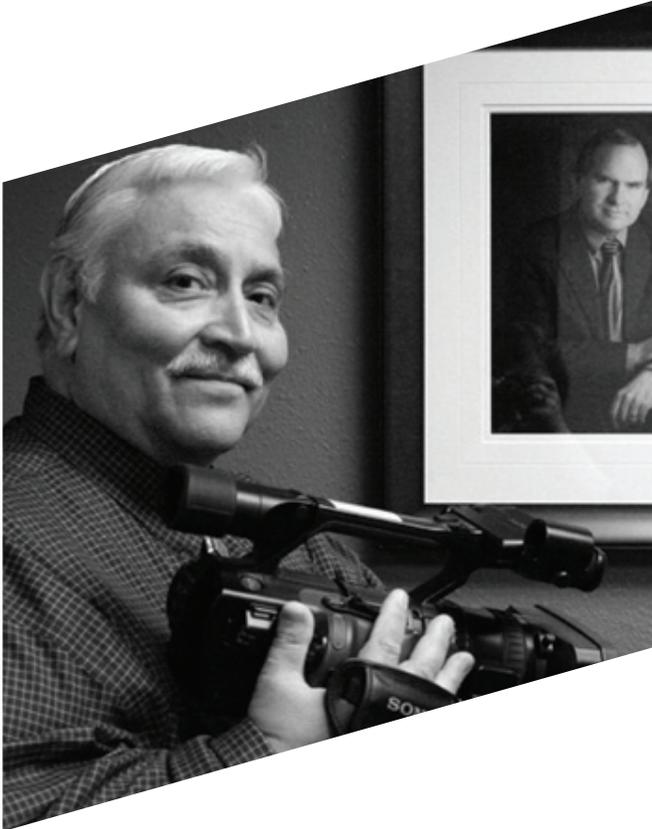
Attorney General King established this position in the office in order to help people who might be having a difficult time navigating the sometimes intimidating bureaucracy of government. Judging by the hundreds of letters, phone calls, and emails received by her office Cordy Medina has become the "go to" person not only within the Attorney General's Office but for other state government agencies as well.





COMMUNICATIONS DIVISION

DIRECTOR PHILLIP SISNEROS



VISION

The Communications Division responsibilities include writing and distributing agency news releases, media advisories, publications, and other public interface for the office. The division is also involved in education & outreach presentations on behalf of the AGO. Communications staff are responsible for design and content of the AGO's Website and work together with the IT Division to regularly update and add new Internet-based services to the general public. The division's goal is to consistently and accurately serve as the conduit by which important information from the AGO is passed on to the public.

YEAR IN REVIEW

The continuation of Attorney General King's Methamphetamine Initiative stands out as a major accomplishment for the Communications Division for 2011. Utilizing funding from the U.S. Department of Justice, the Train the Trainer project was presented in ten (10) communities across New

Mexico, sometimes multiple presentations were given in these locations. The AGO's Meth Project coordinator developed a new instructive anti-meth presentation designed specifically for volunteer trainers who then teach members of their home communities about the dangers of methamphetamine abuse. The intent behind the third expansion of the AG's Meth Initiative was to empower local communities with the ability and expertise to adapt the base AGO presentation to meet specific needs in those communities. The Train-the-Trainer program has been very successful around the state and will continue until it is phased out and local New Mexico communities will be better equipped to carry on the fight against methamphetamine abuse. The Train the Trainer program has far exceeded the goals set forth in the federal grant and the community volunteers who were trained will continue the anti-meth message for years to come.

The division also helped organize and publicize five (5) AGO Road Shows around the state in 2011. Nearly three hundred (300) state, county, and municipal government employees and others attended the "Sunshine Law" seminars presented by the AGO Civil Division attorneys. The Road Shows also included presentations on Internet Safety and Cyberbullying.

LOOKING AHEAD

The Communications Division continues to explore new technologies to facilitate contact with the general public, other state agencies, and media outlets. In-house publication of numerous AGO informational booklets for the public continues to save on outside publication costs. Social media, Web graphics, and digital video-audio recordings are increasingly being incorporated into marketing AGO services and messaging. The division continues to work closely with the AGO Information Technologies Division to simplify inter-office communications with an eye toward advancing the concept of paperless operations.

The Communications Division expects to continue updating all informational publications developed by the AGO and move toward production of new and technologically advanced services to the public.



INFORMATION AND TECHNOLOGY DIVISION

DIRECTOR JAMES FERREIRA



VISION

Computers and communication devices play a significant roll in the daily operations of the Attorney General's Office. The mission of the Information and Technology Division is to facilitate information sharing between staff and communication with the general public.

YEAR IN REVIEW

The last year has been a time of settling into new systems and learning about agency capabilities in a modern cloud infrastructure. Due to budget restrictions the server network has not expanded, in fact, the total number of servers in use has been reduced. Fewer servers means less money is spent on power, cooling, and service contracts. To accomplish this equipment reduction the agency has taken advantage of hosted or cloud based services. In the past there have been concerns about hosting data outside of the AGO premises. However, to ensure the best security for the AGO's data, the IT division spent months in both legal contract review and data security testing. This process resulted in AGO data confidentiality that meets the New Mexico Rules of Professional Conduct and is certified secure by the Federal Information Security Management Act.

LOOKING AHEAD

The technology world is moving to a mobile platform and the AGO IT division is moving to join in the use of this new technology. One area of particular focus will be to replace old out- of-service laptops with WiFi and cellular-enabled tablets. Not only are these devices a quarter of the cost compared to a laptop, they allow IT to manage and deploy them in much the same way as phones. Set up only takes a minute and cleaning for redeployment is a single button press. Additionally, video conferencing, 24/7 connectivity, and remote security management make this new equipment invaluable. The agency has never lost a computer but if that did happen, the new tablets have built in GPS tracking features enabling recovery. Moving to mobile means further reducing numbers of servers and copper wiring by employing several wireless technologies. Embracing this new technology has many benefits including reduced cost, better security, a more agile workforce, and lowered data loss risk due to disaster.



ADMINISTRATIVE SERVICES DIVISION

DIRECTOR EVANGELINE TINAJERO



VISION

The Administrative Services Division serves the entire Attorney General's Office and facilitates its fiscal operation within the parameters of the budget established and appropriated by the Legislature. The division also provides Human Resources Management and other services for the AGO. The division is also responsible for financial management and the purchasing functions within the Attorney General's Office in order for the agency to function properly and provide the public and the State of New Mexico with its statutorily directed duties and responsibilities.

YEAR IN REVIEW

2011 was a challenge in terms of continuing to provide budget resources to meet ever increasing demands in the business of the Attorney General's Office. As in the past few years, the AGO was required to use reserved funds to supplement shrinking appropriations from the General Fund. Additionally, an increase in federally funded and other grant projects required refocused efforts to provide financial and management oversight. Where necessary, expenditures were reduced and, in other cases, resources increased to meet the demand created by increased litigation and its attendant expenses. Through financial guidance, assistance

to all of the divisions and promoting creative solutions, the Administrative Services Division maximized available resources so that the Attorney General's Office could operate at a professional level without resorting to layoffs or furloughs.

Attorney General's Office staff members are considered to be most important resource in the office and Administrative Services pays very close attention to their needs. In 2011, a special recruiting effort was conducted to fill positions created by grants, retirements and increased case load.

LOOKING AHEAD

For the coming year, to the extent possible, the Administrative Services Division expects to continue doing more even though financial resources are restrictive. Regardless of difficult economic times and continued strained state budgets and federal funding, ASD remains committed to providing creative but sound solutions so that AGO personnel and their respective divisions can continue their important work. Our continuing goal is to provide the necessary financial guidance and management assistance for the Attorney General to accomplish his statutory responsibilities and committed service to the people and government of New Mexico.



BORDER VIOLENCE DIVISION

DIRECTOR MARIA SANCHEZ-GAGNE



VISION

The Border Violence Division (BVD) is a legal division which drafts, compiles, and requests international criminal extraditions and investigates and prosecutes human trafficking and money laundering cases throughout the State. Using a multi-agency, multi-jurisdictional approach, the BVD strives to educate and foster cooperation and mutual support among the network of legal, law enforcement, and social service agencies that serve as collaborative partners. BVD provides investigative support and training to all NM law enforcement agencies. The division had a large role in drafting New Mexico's human trafficking statute and has taken the lead role in promoting awareness of the law. BVD does this through trainings and media campaigns as well as through the development of statewide anti-human trafficking work groups which have established partnerships between service providers, victim advocates, and law enforcement.

YEAR IN REVIEW

- Establishment of NM Anti-Money Laundering Strike Teams in Las Cruces and Albuquerque. The mission is to provide NM law enforcement and prosecutors with resources to effectively investigate and prosecute cases involving money laundering.

- Human Trafficking Cases: The BVD is currently prosecuting 9 individuals in Bernalillo County on human trafficking charges, all of which were indicted in 2011 and are awaiting trial.

- In 2011 the BVD also received and investigated 43 tips, leads and referrals of possible human trafficking throughout the state.

- International Extraditions: In 2011 the BVD prepared Provisional Arrest Warrant Requests on 8 international extradition cases. The BVD also had one successful international extradition from Mexico and successfully prosecuted the case wherein Raul Chavez-Ramirez was sentenced to nine years incarceration for Criminal Sexual Contact of a Minor.

- Statewide Public Awareness Campaign: In 2011 the BVD encouraged information sharing to reduce the incidence of crime by providing public awareness regarding human trafficking with a media campaign throughout NM that included 16 full-sized billboards strategically placed in 13 cities, 7 buses with full wraps or 2/3 back wraps, 28 bus interior signs and



a bus shelter. BVD collaborated with the National Human Trafficking Resource Center (NHTRC) and used their toll-free, 24/7 National Hotline number on all public information materials.

- Human Trafficking Law Enforcement Training Manual: In 2011, the BVD created a Human Trafficking Law Enforcement Manual. It has been distributed to numerous law enforcement agencies throughout the state and has been requested by many law enforcement agencies throughout the United States to help develop their own state model.

- Human Trafficking Victim Service Provider Video: In 2011, the BVD created and helped produce a resource training video for victim service providers to assist them with victims of human trafficking. The video was distributed at BVD's human trafficking trainings and task force meetings throughout the year.

- Trainings: In 2011, the BVD provided two successful human trafficking conferences for victim service providers which featured nationally acclaimed speaker Tina Frundt, who is the Director/ Founder of Courtney's House in Washington, DC.

- Division Director, AAG Maria Sanchez-Gagne was a presenter at the SW Border Anti-Money Laundering Organizational Conference in November, 2011. The BVD also provided smaller trainings to numerous agencies throughout the state.

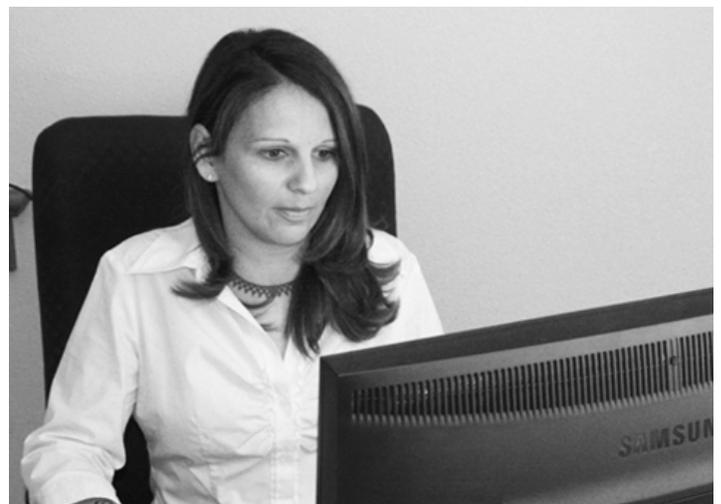
LOOKING AHEAD

- The division continues to establish collaborations and partnerships with law enforcement and social service providers; hold traffickers accountable; coordinate benefits and services for victims of human trafficking; and increase public awareness regarding human trafficking.

- BVD expects to increase investigations and prosecutions pertaining to crimes involving money laundering and human trafficking.

- Continue to increase law enforcement awareness of services provided for international extradition.

- Continue providing trainings to local, state, and federal law enforcement agencies on key topics involving human trafficking and money laundering.





CIVIL DIVISION

DIRECTOR MARK REYNOLDS



VISION

The Civil Division has three primary areas of responsibility: (1) providing high-quality legal advice and representation to more than 100 state agencies, boards and commissions; (2) researching and drafting Attorney General Opinions and advisory letters in response to requests by state legislators, state officers and district attorneys; and (3) enforcing the Open Meetings Act and Inspection of Public Records Act by investigating as responding to complaints alleging violations of the Acts and by providing training to governmental bodies and the public regarding their rights and responsibilities under the Acts. Other responsibilities of the Civil Division include reviewing and approving state professional services contracts for compliance with the certain provisions of the Governmental Conduct Act, answering writs of garnishment that seek to attach state employee wages, and issuing approving opinions for school district general obligation bond issues.

YEAR IN REVIEW

The Civil Division provided legal services to state agency clients on a daily basis including legal advice at board meetings, disciplinary hearings and rulemaking proceedings; defending and enforcing agency decisions in judicial appeals; and reviewing contracts and other legal documents. The division

provided legal representation for state agencies in controversial and contentious proceedings including the Environmental Improvement Board (air emissions and cap and trade regulations); Water Quality Control Commission (dairy rules); Labor Relations Division of Workforce Solutions (public works wage rates); Public Education Department (a suit brought by the Zuni Public School District against the state for substantial money damages based on a federal impact aid statute); and Human Services Department (a lawsuit brought against the state alleging violations of the National Voter Registration Act).

The Civil Division investigated 47 complaints alleging violations of the Open Meetings Act and Inspection of Public Records. The division issued 38 determination letters responding to the complaints. vThe remaining complaints are still being investigated, have been withdrawn or have been otherwise resolved.

The Attorney General's Office issued 21 advisory letters and 6 formal opinions. Topics addressed included whether same-sex marriages performed in other jurisdictions are valid in New Mexico; the ability of homeowners associations to require prior approval before the installation of solar panels; clarification of drivers license reinstatement/DWI revocations affected by a 2009 amendment to the Motor Vehicle



Code; whether a county charter may require prior approval of county voters for capital projects; the constitutionality of a residency requirement in the Public School Code, Subsection C of NMSA 1978, Section 22-13-8 (2009); the extent of the authority of the Construction Industries Division of the New Mexico Regulation and Licensing Department in relation to local jurisdictions; the lawfulness of closing the high plains aquifer to new appropriations; and the legality of school board members becoming employed by the school district governed by the board.

Division attorneys conducted 10 training sessions throughout the state on the Open Meetings Act and Inspection of Public Records Act as part of the AGO's outreach program and made numerous additional presentations at trainings and conferences of other organizations and associations. Division attorneys also answered phone call and email inquiries regarding the Open Meetings Act and the Inspection of Public Records Act on a daily basis. Questions came from government officials, members of the news media, and the general public.

The division published an update insert to the Attorney General's Inspection of Public Records Act Compliance Guide to advise government agencies and the public on changes made to the law during the the 2011 regular legislative session.

The division handled approximately 40 judicial appeals and similar court proceedings on behalf of state agencies, boards, and commissions including challenges to decisions by professional licensing boards to revoke or suspend licenses; a challenge to Environmental Improvement Board regulations; an appeal of a licensing decision by the NM Racing Commission; challenges to decisions of the Construction Industries Commission; and appeals involving multiple other state agencies.

The division reviewed and issued opinions on 42 school district general obligation bonds issues totaling \$351,865,000.

The Civil Division reviewed approximately 100 state agency contracts for legal sufficiency and/or compliance with the former state employee provisions of the Governmental Conduct Act.

The division processed 349 writs of garnishment involving creditor attachment of state employee wages.

During the 2011 Legislative Session, the Civil Division received, routed, and administered 479 requests from Legislative Finance Council and others for bill analyses. The Attorney General's Office completed 473 bill analyses, 47 percent of which were drafted by the Civil Division.

LOOKING AHEAD

The Civil Division will concentrate on producing timely and legally accurate opinions and advisory letters and will seek to eliminate the backlog of opinion requests. The division will continue to provide high-quality legal representation of state agencies. To help ensure state agency clients are able to effectively perform their public functions, the division will institute a training for boards and commissions on the administrative process. Regarding the Open Meetings and Inspection of Public Records Acts, the division will timely facilitate the resolution of complaints and will continue to provide statewide training to government agencies and the public.



CONSUMER PROTECTION DIVISION

DIRECTOR KAREN MEYERS



The AGO's Charitable Organizations Unit is now part of the Consumer Protection Division. The unit acts on behalf of the public to protect the interest of donors to charitable organizations, the beneficiaries of those donations, and to ensure that each charity meets the obligations it has assumed under the public trust.

In furtherance, the unit enforces the provision of the Charitable Solicitations Act, including registration and reporting, investigation of complaints, and guidance to the general public to assure compliance with the law and to assist donors in making informed decisions.

YEAR IN REVIEW

- Recovered more than 4 million dollars (\$4,000,000) to benefit consumers through dispute resolution
- Consumer intake calls continue to increase--the division received more than 21,000 calls from consumers
- New written complaints filed: 2,975
- Complaints closed: 3,249
- Complaints pending in negotiation or investigation: 1,700
- Presented 51 community outreach and education events throughout the state on consumer protection issues.

VISION

The Consumer Protection Division (CPD) acts on behalf of the public to enforce consumer protection laws and prevent and deter unfair, deceptive, and unlawful practices that injure consumers and harm businesses that operate lawfully in the competitive market place. Division staff promote and improve consumer protection through:

- Community education and outreach
- Voluntary dispute resolution services to resolve consumer complaints
- Monitoring and investigations of suspicious business practices when business activities or practices may violate consumer protection laws
- Regulatory enactment and legislative proposals to address evolving issues
- Promulgation of regulations and legislative initiatives
- Legal actions to enforce consumer protection laws where violations have occurred

Consumer Protection Enforcement actions include:

- Contempt citation against car dealer for violation of 2006 Consent Judgment and violations of Unfair Practices Act for failing to pay off loans on trade-ins; Direct consumer restitution of \$135,887; plus, indirect consumer restitution of \$197,246 based on FTC "holder rule."
- Settlement of unfair trade practice action against automobile floor-planner for failure to release titles and registration to purchasers of cars; Injunctive relief and restitution for 12 consumers.
- Injunction against unconscionable practices of small loan lender prohibiting practices that have the effect of increasing the amount of indebtedness of an active borrower; targeting inactive borrowers for new loans within 60 days of paying off a loan; quoting the cost of loans as a daily rate; and affirmatively



requiring the lender to advise any borrower they may have a defense to enforcement of their contract in any collection effort.

- Settlement of lawsuit against a land developer for failure to disclose adverse material facts regarding deficient and illegal water system and water quality; Injunctive relief and \$300,00 for remediation of water system, with any balance going to consumers as restitution. Lawsuit brought in conjunction with NMED.
- Court judgment entered against immigration consultant providing unauthorized services in violation of law and granting restitution, injunctive relief and, civil penalties.
- Preliminary injunction entered and Ne Exeat Bond against asphalt company for unfair and deceptive practices.
- Preliminary injunction entered against immigration consultant to stop him from providing immigration services to public in violation of New Mexico law.
- Pending lawsuit against small loan lender challenging interest rates of 600% APR and loan origination and marketing practices.
- Pending lawsuit against mobile home seller operating without a license and for fraudulent and deceptive practices selling mobile homes which he does not own; Temporary restraining order issued.
- \$1.8 million awarded in civil penalties against Texas lawyer whose advertisement and solicitation of New Mexico clients was in violation of New Mexico law and pending claims for restitution for individual clients subjected to his practices.
- Pending lawsuit against jewelry company for misrepresentations of pricing and deceptive practices in the use of a leasing program.
- Achieved loan modifications for many homeowners facing foreclosures and preserved homeownership.
- Participation in multi-state investigation of mortgage lenders and servicers.
- Multi-state settlement with Valero regarding sale of tobacco/cigarettes to minors.
- Multi-state settlement with Publisher's

Clearinghouse with amended consent judgment to prevent targeting of seniors.

- Multi-state settlement with Ameriquest for final disbursement of restitution to consumers for misrepresentations in mortgage lending.
- Multi-state settlement with debt settlement company Amerix for misrepresentations with injunctive relief, consent judgment and costs and fees.
- Multi-state settlement with Dannon, Inc. for misrepresentation of health claims with injunctive relief and payment of costs and fees.
- Multi-state settlement with DirecTV for unfair practice claims arising from programming unavailability, disclosures and cancellation problems; Payment of restitution to qualified consumers is underway.
- Settlement of 2 lawsuits against Indian jewelry companies for fraudulent representations.
- Cease and Desist issued against out-of-state companies for fraudulent and misleading sweepstakes mailings.
- Cease and Desist issued against five immigration consultants providing unauthorized services.
- Assurance of Discontinuance executed by three immigration consultants agreeing to cease illegal activities.

CHARITABLE ORGANIZATIONS UNIT

- Continued to work with the charitable community to convert from hard copy registration to electronic registration.
- Increased the number of electronically registered charitable organizations to 5,217; received and reviewed the annual reports for the registered organizations; and overall improved compliance with state law requirements.
- Is leading the nationwide multi-state action against a target group of organizations whose actions violate multiple state laws applicable to charitable organizations.
- Secured the participation of the Federal Trade Commission as co-counsel in a national multi-state action.



- Participated as presenter at national conference and meetings on charities law and electronic registration.
- Providing leadership in national charitable oversight and enforcement efforts.

LOOKING AHEAD

The staff of the division will continue its successful dispute resolution efforts to assure that consumers and business can resolve disputes efficiently and economically. The staff of the charities unit will continue its successful compliance process for charities subject to New Mexico law and enhance enforcement efforts where violations have occurred. The division is committed to working with other state agencies

and interested parties to respond to problems of predatory lending, the impact of mortgage foreclosures, ongoing sharp dealings by some businesses that use deceptive practices to gain unfair and, illegal advantages over consumers, and fraudulent charitable solicitations. The division will continue its outreach and education focus because experience shows that knowledgeable consumers help level the marketplace playing field.





CRIMINAL APPEALS DIVISION

DIRECTOR MARGARET MCCLEAN



VISION

The Criminal Appeals Division represents the State of New Mexico in the state district courts, the New Mexico Court of Appeals, the New Mexico Supreme Court, the United States District Court for the District of New Mexico, the United States Court of Appeals for the Tenth Circuit, and the United States Supreme Court. The duties and responsibilities of the division are mandatory and the division is a core function of the Office of the Attorney General. See NMSA 1978, Section 8-5-2 (1975).

The division is staffed with one division director, fourteen attorneys, and two support staff. The division director carries a full caseload of state and federal cases in addition to the management of the division. The staff serves in Santa Fe and Albuquerque. During 2011, one attorney resigned and two new attorneys were hired: Olga Serafimova and Yvonne Chicoine. Since May 2011, the division is experiencing a vacancy of one staff attorney position.

Each attorney manages an intense and large workload with an average assignment of four briefs and other projects. Time and case management skills are essential because of the volume. The majority of the federal habeas corpus cases are assigned to Margaret McLean. Mark Lovato practices exclusively

in the area of state habeas corpus and is responsible for pleadings and appearances at hearings throughout the State. Mr. Lovato is also responsible for maintaining cooperative relationships with the Corrections Department and the Adult Probation and Parole Department.

The tenure of the attorneys ranges from less than one year to over twenty-four years of criminal appellate practice. Attorneys possess expertise in juvenile cases, death penalty cases, DWI cases, and sexual assault appeals. In addition to an overwhelming and varied caseload and oral arguments, the division also provides support and advice through an established liaison program to the district attorneys in the thirteen judicial districts throughout New Mexico. The division counsels and advises other divisions including Litigation, Governmental Accountability, Prosecutions, ICAC, Medicaid Fraud, Border Violence, and Water, Energy and Utilities. The specialized knowledge and proficiency about criminal law, appellate law, and writ proceedings are distinctive to the division. Another function is to provide notice as required by the Victims of Crime Act, NMSA 1978, Section 31-26-1 (1994).

Attorneys of the division serve on the DNA Oversight Committee, the Rules of Appellate Procedure



Committee, and the Equal Access to Justice Commission. A committee was formed by the New Mexico Supreme Court to address the ramifications of *Bullcoming v. New Mexico*. Margaret McLean served on this committee and submitted proposed recommendations. The division participates in the statewide district attorneys conference and provides updates on specialized areas of the law. For example, James Grayson and Margaret McLean gave a two-day presentation at the Second Judicial District Attorney's Office about practical considerations involving the right of confrontation. Current updates on New Mexico and federal law influencing New Mexico criminal prosecutions are sent on a regular and routine basis.

YEAR IN REVIEW

The highlight of 2011 was the oral argument in *Bullcoming v. New Mexico* before the United States Supreme Court on March 2, 2011. Attorney General King argued on behalf of the State of New Mexico. Assisting Attorney General King were Ann Harvey, Victoria Wilson, James Grayson, and Margaret McLean. Moot courts were held in the office, at the University of New Mexico School of Law, the Heritage Foundation, and the National Association of Attorneys General. The 5-4 opinion was issued on June 25, 2011, and was of national significance regarding the right of confrontation.

In 2011, twenty two reported opinions involving criminal appeals were issued by the New Mexico Supreme Court. Oral arguments and writ proceedings were also part of the practice before the New Mexico Supreme Court. Sixty nine reported cases were released by the New Mexico Court of Appeals. Unpublished decisions were also issued by the New Mexico appellate courts that required representation by the division. Several cases were recommended for mediation in the New Mexico Supreme Court and New Mexico Court of Appeals.

Mark Lovato handled approximately 125 state habeas corpus matters during 2011. In the practice of federal habeas corpus in 2011, nineteen cases were issued by the United States Court of Appeals for the Tenth Circuit. Thirty one responsive pleadings were filed in the United States District Court for the District of New Mexico.

Victoria Wilson filed one response to a petition for writ of certiorari in the United States Supreme Court in *State v. Rudy B.* The issue involved the constitutionality of the sentencing scheme in the New Mexico Children's Code.

During the 2011 session of the New Mexico Legislature, the division performed bill analysis for proposals involving criminal law. Cooperation with the Governor's Office included review of extraditions and renditions.

LOOKING AHEAD

In 2012, as in all previous years, the division will continue to ably and competently represent the interests of the State of New Mexico in all criminal and habeas proceedings. Briefing and oral argument will be held in *Case v. Hatch*, a thirty-year old first-degree murder case from Carlsbad. A writ of habeas corpus was granted in 2011 and the appeal is pending in the United States Court of Appeals for the Tenth Circuit. The State of New Mexico seeks to reverse this lower court ruling vacating the first degree murder conviction. Another critical legal trend is immigration and naturalization consequences and the interplay with federal law.

Other activities include appearances for oral arguments at high schools throughout New Mexico. Margaret McLean appeared at East Mountain High School in January 2012 and Ralph Trujillo will appear at Valencia High School in February 2012.

Public service to the criminal justice system and the community will continue through participation on various committees and cooperation with other law enforcement and related agencies.

The liaison program will continue to provide advice to prosecutors and valuable updates on criminal law. Ongoing cooperation will take place with other divisions to ensure a comprehensive and consistent approach to legal issues and analysis.



GOVERNMENT ACCOUNTABILITY DIVISION

CHRIS LACKMANN



VISION

Public corruption poses the single greatest threat to government and the credibility of government. Attorney General King is committed to protecting the citizens of New Mexico from corruption and abuses in government. As part of this dedication, the mission of the Government Accountability Division (GA) is to fight corruption and ensure that state government serves all New Mexicans. The vigorous enforcement of laws intended to ensure transparency, clean government, and accountability of all public employees is good for everyone.

YEAR IN REVIEW

REGION 3 HOUSING AUTHORITY

Defendants Vincent “Smiley” Gallegos, and Dennis Kennedy are charged with fraud, money laundering, conspiracy, and other crimes in two separate but related cases. Robert Strumor is a co-defendant in one case and David Hernandez is a co-defendant in the other.

Gallegos served as Executive Director of Region 3 when it issued \$5,000,000 in bonds to the NM State Investment Council. Region 3 later defaulted on the bonds and an investigation lead to the charges. Defendants moved to disqualify the Attorney General from prosecuting the cases because the AGO provided civil legal assistance to State agencies, including the SIC. The Court of Appeals denied interlocutory review, and the Supreme Court refused to review that denial. The AGO asked for trial settings and motion hearing dates but, instead, the Defendants filed 22 separate motions asking for some or all of the cases to be dismissed. The AGO filed written responses to all motions, and hearings were set on those motions for January 19, February 16, and March 29, 2012. The AGO also asked, again, for trial dates but none have yet been scheduled.

SECRETARY OF STATE/HELP AMERICA VOTE ACT

Former Secretary of State Rebecca Vigil-Giron, along with Elizabeth Kupfer, Joseph Kupfer, and Armando Gutierrez, are charged with fifty felonies relating to a \$6,000,000 HAVA media campaign. Defendants moved to disqualify the Attorney General’s Office and an evidentiary hearing took place on March 17 through 20, 2011. District Judge Murdoch heard testimony from twelve witnesses, including Attorney General King, former Attorney General Patricia Madrid, and Defendants Joseph and Elizabeth Kupfer. Although Judge Murdoch found no conflict or improper motive on the part of the AGO, he ruled that a cloud existed and ordered the AGO to obtain another prosecutor. The AGO signed a Joint Powers Agreement with the Second Judicial District Attorney’s office to hire a contract special prosecutor, with the AGO paying the costs. Mr. Joseph Campbell, a former Deputy DA in the First Judicial District, was awarded the contract and has taken over the case.

In December, 2010, the Kupfers were indicted in federal court on three counts of tax evasion, based on their alleged failure to report over \$750,000 to the IRS. In July, 2011, a superceding federal indictment was filed charging the Kupfers and Armando Gutierrez with theft, money laundering, obstruction of justice, obstruction of a federal audit, income tax evasion and conspiracy, based on the same facts as the State case. The federal charges are based on the



AGO's investigation, and are the result of a 2.5 year collaboration between the AGO, the FBI, the IRS, and the United States Attorney's Office.

JEROME BLOCK JR.

In October 2011, Jerome D. Block Jr. pled guilty to violations of the NM Voter Action Act and other crimes relating to his use of money he received from the NM Public Election Fund during his 2008 campaign for election to the Public Regulation Commission. Block also pled guilty to fraudulent use of a state credit card and other charges arising out of his misuse of a state Wright Express gas card while a Public Regulation Commissioner. Block agreed to and did resign from the PRC days before an impeachment proceeding was to begin; was ordered to make restitution of all state funds; was ordered into the Drug Court program pending sentencing; and agreed to never again run for elected office in New Mexico. Block has since been terminated from Drug Court; sentencing was set for January 27, 2012.

VIRGINIA GUZMAN

MVD ROADRUNNER REGISTRATION

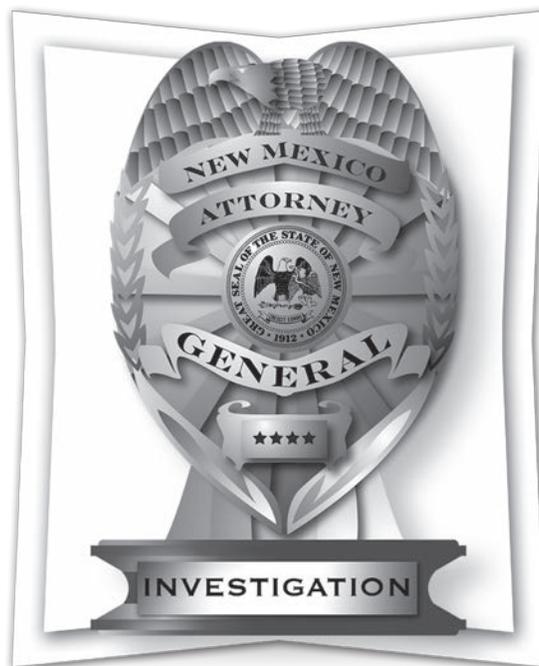
Guzman, owner and operator of MVD Roadrunner Registration, was indicted on March 23, 2011, charged with embezzlement and tax fraud. The allegation is that Guzman, as a provider of registration and titling services from NM Motor Vehicle Department, embezzled more than \$600,000 and failed to report the income. Guzman is represented by a Public Defender and the AGO is pursuing discovery and a trial setting.

LAURIE CHAPMAN

Chapman was the Facilities Manager for the NM Department of Corrections, and was charged in federal court with 30 counts of bribery relating to contracts she procured for DOC. In July, 2011, Chapman pled guilty to all charges and agreed not to contest restitution. In return, the AGO agreed not to pursue any state charges resulting from the facts set out in the federal indictment, however, the AGO's investigation is continuing.

LOOKING AHEAD

The Government Accountability Division is actively pursuing a number of other investigations, which cannot be discussed further at this time. GA, and the AGO, will continue to work with other agencies, state, county, local, and federal, to fight corruption and ensure that state government serves all New Mexicans. Government employees and officials, and all residents of New Mexico, are encouraged to report any indication of corruption or misconduct to the AGO; all reports will be promptly and thoroughly pursued. GA expects to continue successful fulfillment of its stated mission in the year ahead.





INVESTIGATIONS DIVISION

DIRECTOR EARL HOLMES



VISION

The Investigations Division provides highly experienced special agents to conduct major criminal investigations throughout the state. The division assists district attorneys and local law enforcement agencies in complex and multi-jurisdictional investigations where many cases involve local conflicts of interest. The division specializes in investigating white collar and multi-jurisdictional crimes, working in cooperation with local, state, and federal agencies.

The Internet Crimes Against Children Unit (ICAC) assists agencies within New Mexico and throughout the nation with child exploitation crime investigations and prosecutions. In its role as developer of the statewide ICAC Task Force, this unit routinely assists in tactical operations with State Probation/Parole, U.S. Marshals, and Federal Probation/Parole in the monitoring of sex offenders residing in New Mexico.

YEAR IN REVIEW

The Investigations Division is currently staffed with six (6) Special Agents and one (1) financial investigator along with two (2) administrative assistants. Last year, the unit closed approximately thirty-three (33) cases / inquiries and continues to actively work approximately twenty-five (25) open cases / inquiries. Besides managing their caseloads Special Agents work closely with AGO attorneys on indicted cases, assisting with subpoena service and a variety of other support duties for other divisions within the agency.

Over the past year the AGO Internet Crimes Against Children Unit (ICAC) executed eleven (11) unrelated ICAC federal and state search warrants throughout the state. The unit seized computers and computer-related evidence related to child pornography and served five (5) arrest warrants. Over the last fiscal year, the ICAC task force, as a whole, has conducted three hundred seventy-six (376) investigations, ninety-one (91) arrests, and nine hundred fifty-three (953) forensic exams throughout the state.

The ICAC unit now has a fully functional forensic lab, two (2) IACIS certified examiner instructors and one (1) smart phone/GPS investigator. The ICAC Task Force has six (6) additional labs with forensic examiners throughout the state and eight (8) smart phone/GPS investigators.

The AGO ICAC unit and task force continue to provide training on Internet safety and prevention throughout the state, reaching more than seven thousand one-hundred (7100) participants.



LOOKING AHEAD

The Investigations Division's capabilities continue to evolve technologically. The division expects to apply newly acquired technologies and methods internally and to its cooperative efforts involving federal and other state/local agencies. The Investigations Division will continually strive toward improving the investigative capabilities of the New Mexico Attorney General's Office over the coming year by fine tuning many of the changes that have been made over the past year such as:

- Increasing effectiveness
- Improving investigative product
- Conducting more comprehensive investigations
- Evaluating the integration of the Governmental Conduct Act as it relates to joint investigations with local law enforcement agencies

In 2012, the Internet Crimes Against Children Unit anticipates increasing the number of investigations, prosecutions, and outreach efforts statewide involving the sexual exploitation of children. The ICAC Unit will continue to participate in the sex offender compliance operations conducted by the U.S. Marshals Office, Probation/Parole, and various NM Counties. During these operations, trained AGO Special Agents examine computers and electronic media belonging to sex offenders under the direction of Probation/Parole. ICAC is dedicated to ensuring that more offenders are held accountable for their actions.



LITIGATION DIVISION

DIRECTOR SCOTT FUQUA



The division continued to represent the interests of the State as a creditor in bankruptcy actions. AAG Jim Jacobsen, who was selected to present at the National Association of Attorneys General bankruptcy conference, handled every bankruptcy case in which the State was involved.

AAG Nan Erdman split her time in 2011 between enforcing New Mexico's tobacco escrow laws and preparing for arbitration slated for 2012 that will determine whether New Mexico is entitled to retain the payments made in 2003 by the tobacco companies that signed the Master Settlement Agreement in 1998. The arbitration is the first of its kind and will set an important precedent for the efforts a State must make in order to meet its obligations under that Agreement. The arbitration will potentially touch \$7 billion of payments made by tobacco companies with New Mexico's portion at nearly \$40 million. AAGs Matthew Jackson and Cholla Khoury also handled tobacco enforcement cases against manufacturers and distributors that have not made the escrow payments required by New Mexico law.

VISION

The Litigation Division handles all of the State's non-tort claim civil litigation. This often takes the form of defending New Mexico's statutes against constitutional challenge. The division also prosecutes for all of the professional licensing boards in the State with the exception of the Medical Board and the State Bar.

YEAR IN REVIEW

The Litigation Division handled more than 200 administrative prosecutions in 2011. They included licensing actions against financial professionals who had defrauded clients, other professionals who had mishandled client affairs, and actions against the certifications of law enforcement officers who had violated the law. Assistant Attorneys General Eric Miller, David Tourek, Gloria Lucero, Bill Moon, Matthew Jackson, and Cholla Khoury handled the vast majority of these cases.

AAG Jackson oversaw the State's effort to obtain compensation for the losses suffered by investors in the State's 529 plan, so named for the portion of the federal tax code giving preferential tax treatment to certain investments made for the purpose of paying future educational expenses. This has been an ongoing piece of litigation for more than two years, but in 2011, the division saw the completion of litigation that had prevented disbursement of the nearly \$68.5 million dollars the defendant had agreed to pay.

Litigation Division Director Scott Fuqua represented the State Investment Council in litigation filed against Gary Bland, the former State Investment Officer, and several third party placement agents (including Anthony and Marc Correra) alleging distortion of the State's investment decisions through various pay-to-play schemes. The litigation is ongoing and should progress well in 2012.



AAG Seth Cohen oversaw the State's burgeoning qui tam docket in 2011 and also worked to recover funds from pharmaceutical companies in connection with off-label marketing of certain drugs. Those efforts continue and stand to potentially produce significant recoveries for the State.

LOOKING AHEAD

The Litigation Division will continue providing the same services to the State that it has provided in the past. We have hired a new lawyer specifically tasked with enforcing our tobacco escrow statutes to ensure both compliance with the Master Settlement Agreement and the collection of funds to which the State may be entitled in the future. The division will continue to pursue losses incurred by the State in pharmaceutical, securities-related, and antitrust actions. Finally, the division will continue to protect New Mexicans from licensed professionals whose conduct warrants revocation of or other action against their licenses.





MEDICAID FRAUD AND ELDER ABUSE DIVISION

DIRECTOR JODY CURRAN



VISION

The Medicaid Fraud and Elder Abuse Division (MFEAD) is the Medicaid Fraud Control Unit for the State of New Mexico. The MFEAD is centrally located in the Albuquerque office of the Attorney General, which has statewide authority to prosecute violations of criminal laws with respect to fraud in the provision or administration of medical assistance under the State plan implementing title XIX of the Act. Pursuant to Section 42 U.S.C. 1396b(q) of the Social Security Act, the MFEAD is vested with the responsibility for the investigation and prosecution of all applicable state laws regarding any aspect of fraud in connection with provision of medical assistance, and for reviewing and acting upon all complaints regarding abuse, mistreatment, or neglect of patients of health care facilities that receive payments under public medical assistance programs.

- The MFEAD vision is to be New Mexico's leader in ensuring the integrity of the Medicaid program by protecting residents in Medicaid funded facilities from abuse and neglect and healthcare resources from fraud through investigation, prosecution, and prevention efforts.

- The MFEAD will uphold the highest standards of

excellence, ethics, and effectiveness in carrying out our duties to include:

- Conducting high quality investigations and engaging in aggressive prosecutions.
- Fulfilling all federal grant requirements and expectations. Maintaining and enhancing an effective internal case tracking system, as a management and investigative tool for all staff.
- Improving effectiveness by acquiring and providing quality training.
- Providing technical assistance and expertise to prosecuting attorneys and law enforcement.
- Coordinating effectively with federal, state, and local criminal justice, law enforcement, regulatory agencies, and private entities concerned with the fair and impartial administration of the Medicaid Program, and the criminal justice process, in efforts to deter fraud and abuse.

YEAR IN REVIEW

During calendar year 1/1/2011 to 12/21/2011, the MFEAD's criminal prosecutions secured 5



indictments and 5 convictions. Additionally, 9 individuals were sentenced resulting in 5 being incarcerated and contributed toward a cumulative ordered restitution of \$150,315.40. Regarding civil prosecutions, the MFEAD secured 21 civil settlements, which identified \$2.17 million in recoveries. The MFEAD collected \$2.20 million in Federal and State Program recoveries. Medicaid program recoveries are returned by the MFEAD to the New Mexico Human Services Department in order to ensure that funds collected are credited exclusively to, and available for expenditure under, the Medicaid program.

The following are significant results garnered as a result of MFEAD prosecutions:

State V. Arcilia Holguin and Counseling and Mediation Services, LLC: The MFEAD is particularly proud of this criminal conviction of a corporation since nationally a minority of cases include a corporation or partnership that is itself subjected to criminal charges. Convicting corporations for wrongdoing enables the government to address and be a force for positive change of corporate culture, alter corporate behavior, and prevent, discover, and punish white collar crime.

Counseling and Mediation, LLC, and Arcilia Holguin, the owner of Counseling and Mediation, were indicted in April 2010 on various counts of Medicaid Fraud, Fraud, and other related charges. Arcilia Holguin and Counseling and Mediation Services, LLC, were each found guilty on all the counts on 11/4/2011 after trial by jury. Holguin was found guilty of Medicaid Fraud - Falsification of Documents (a fourth degree felony), Fraud over \$20,000 (a second degree felony offense), Medicaid Fraud - Excessive Claims (a fourth degree felony offense), Medicaid Fraud - Substantially Inadequate Treatment over \$20,000 (a second degree felony offense), and Fraud (over \$20,000). Counseling and Mediation, LLC, was found guilty on similar charges.

AG prosecutors showed that Ms. Holguin and Counseling and Mediation, LLC, over-billed Medicaid in the amount of \$218,132.38. The corporation is also potentially subject to \$500,000 worth of fines for the felony convictions, based on the Medicaid Fraud statute Section 30-44-7 (G). Holguin has 36 years exposure to jail time and the AG's office will recommend restitution, although sentencing has not yet been scheduled. Holguin will also be excluded from employment in any facility participating in a federally-funded healthcare program for a period of 5 years.

State V. Lazaro Molina: A supervisor for Counseling and

Mediation Services, LLC, a mental health provider doing business in Dona Ana County, was convicted on 6/17/2011 during a jury trial of 1 count of Fraud (over \$20,000), a second degree felony, and 1 count of Medicaid Fraud (Excessive Claims), a fourth degree felony. Molina was sentenced to 9 years for Fraud and 18 months for Medicaid Fraud. The sentences will run concurrently with all but 14 months suspended. Additionally, Molina was sentenced to 3 years of supervised probation, \$40,630.00 in Medicaid restitution, and a fine of \$5,000. Molina will also be excluded from employment in any facility participating in a federally-funded healthcare program for a period of 5 years.

State V. Juanita Barba: Barba, a supervisor for Counseling and Mediation, plead guilty to 2 counts of Medicaid Fraud, both fourth degree felonies, and 1 count of Forgery, a third degree felony. Barba was sentenced in Dona Ana County District Court to 6 months incarceration followed by 2.5 years unsupervised probation. Barba also received a \$5000 fine, which she was required to pay before the expiration of her probation. Barba will be excluded from any employment in which she would receive compensation from a federally funded healthcare program for a period of 5 years.

State V. Christopher Maeker: Maeker entered into a joint plea combining the case being handled by the Attorney General and two cases being handled by the Sandoval County District Attorney's Office. Maeker plead to Aggravated Fleeing a Law Enforcement Officer, Trafficking a Controlled Substance, Forgery, Larceny, Attempted Larceny and Exploitation of a Resident. Maeker was sentenced on 4/19/2011 by the Sandoval County District Court to 5 years imprisonment and 4.5 years of supervised probation. Maeker has also been excluded from employment in any facility participating in a federally-funded healthcare program.

State V. Mollie Stacey and Deborah Cronn: Stacey and Cronn received Medicaid benefits after falsely claiming to be disabled and needing PCO services. Upon submitting requests through different agencies to be each other's caregiver, they were each able to submit time sheets and receive paychecks. The false submissions resulted in Medicaid payments of \$96,264.80. Stacey entered into a plea agreement and was sentenced on 1/5/2011 to 3 years incarceration while Deborah Cronn plead and was sentenced on 1/5/2011 to supervised probation for 3 years and ordered to make restitution. Both women are



excluded from employment in any facility participating in a federally-funded healthcare program.

State V. Antoinette Lopez: Following her 4/21/2011 guilty plea to 1 count of Medicaid Fraud (a fourth degree felony), Lopez was sentenced to 18 months of supervised probation. The conviction for Medicaid fraud requires that she repay every penny she stole from the program. Additionally, Lopez is subject to an administrative exclusion prohibiting her future employment in health care facilities that participate in federally-funded health care programs.

State V. THI of New Mexico at En Su Casa, LLC: An agreement was reached with THI of New Mexico at En Su Casa, LLC. to reimburse the State and improve caregiver screening after a MFEAD investigation uncovered that En Su Casa was utilizing unqualified, untrained and unscreened caregivers as a part of its PCO program. As the result of a settlement agreement, En Su Casa has instituted new policies, conducted staff training, and regular audits for compliance with regulations. In addition, En Su Casa shall pay the State of New Mexico a total amount of \$622,709.20, which involves two separate cases.

State V. Thoreau Navajo Outreach, Inc: Following a MFEAD investigation, Thoreau Navajo Outreach, Inc. was found to have employed caregivers without completing the required criminal history screenings. Caregiver screenings are an essential component in protecting the safety and well-being of Medicaid recipients. As a result, a settlement agreement was executed whereby Thoreau Navajo Outreach, Inc. agreed to pay the State of New Mexico \$101,723.03

State V. Dr. Walter Balfour: Balfour, an Optometrist doing business in McKinley County, was found to have submitted claims to Medicaid that were not in compliance with Medicaid Program regulations. Programs regulations are vital in maintaining the quality of services rendered as well as the safety of Medicaid recipients. As a result, a settlement agreement was executed whereby Balfour agreed to pay the State of New Mexico \$50,308.15.

State V. Consumer Direct Personal Care, LLC: Following a MFEAD investigation, it was discovered that caregiver Ramona Jaramillo fraudulently submitted time sheets for services not rendered to client James Talachy, who is also the brother of Jaramillo. Talachy was found to have been splitting Medicaid monies with his caregivers over a two year span. Further investigation also revealed that

Jaramillo submitted time sheets for daily living services purportedly rendered to her mother after her mother's date of death. Pursuant to these findings, a settlement agreement was reached with Consumer Direct Personal Care, LLC in order to recover \$40,000.00 worth of Medicaid payments.

United States V. Forest Labs (Celexa, Lexapro, Levothroid): Forest Pharmaceuticals Inc., a subsidiary of New York City-based Forest Laboratories Inc., agreed to plead guilty to charges relating to obstruction of justice, the distribution of Levothroid, which at the time was an unapproved new drug, and the illegal promotion of Celexa for use in treating children and adolescents suffering from depression. The companies also agreed to settle pending False Claims Act allegations that Forest caused false claims to be submitted to federal health care programs for the drugs Levothroid, Celexa, and Lexapro. Forest has agreed to pay a national settlement of more than \$313 million to resolve criminal and civil liability arising from these matters. New Mexico's State and Federal share of recoveries totaled \$574,086.85.

United States V. Elan Corporation PLC and Eisai, Inc. (Zonegran): Elan Corp., PLC, its American subsidiary, and the Japanese firm Eisai, Inc., have agreed to pay a combined \$214.5 million to resolve claims that the companies promoted the anti-epilepsy drug Zonegran for off-label uses. Irish pharmaceutical manufacturer Elan Corporation PLC and its U.S. subsidiary Elan Pharmaceuticals Inc. (EPI) have agreed to pay more than \$203 million to resolve criminal and civil liability arising from the illegal promotion of the epilepsy drug Zonegran. In a separate civil settlement, Japanese drug marketer Eisai Inc., which purchased the drug from Elan, will pay \$11 million to resolve civil liability for off-label marketing of Zonegran. The case arose from a qui-tam suit brought by a physician. The whistleblower will receive approximately \$11 million (approximately a 16.4% relator's share of the federal civil recoveries). In addition to the payments and guilty plea, Elan has agreed to enter into a Corporate Integrity Agreement with HHS-OIG. New Mexico's State and Federal share of recoveries totaled \$278,142.25.

LOOKING AHEAD

Our mission is to enhance the integrity of the New Mexico State Medicaid program by preventing and detecting fraudulent, abusive, and wasteful practices within the Medicaid program and recovering improperly expended Medicaid funds while promoting high quality patient care.



In support of this mission, the division is working to fill two additional positions; one attorney and one Special Agent in Charge. The additional staffing will provide the division with greater flexibility in investigating and prosecuting fraud for the benefit of all New Mexico citizens. Additionally, the division is preparing statutory revisions to current applicable fraud statutes in order to increase recoveries. The revisions will also provide greater protection and incentives to citizens reporting Medicaid fraud, which may increase the number of qui tam actions.

The following major cases are expected to be begin trial within the next year:

State V. Raymond Eichwald: On 11/28/2011, Eichwald was indicted on charges that he submitted claims to the State of New Mexico Medicaid System for services he did not provide or for services that were inadequately documented. The defendant operated an eyeglass business from his home in Albuquerque and a shop in Cuba, N.M., called Old 44 Optical. For some of Eichwald's clients, claims were submitted to Medicaid for more than 35 pairs of eyeglasses for one person. When interviewed, the Medicaid clients stated that they may have received 1 or 2 pairs of glasses. Eichwald faces up to 18-months incarceration and fines up to \$5,000 for each of the 96 felony counts of Medicaid Fraud.

State V. Catherine and Joseph Hernandez: On 4/29/2011, Catherine and Joseph Hernandez of Santa Fe were indicted on Medicaid Fraud and other related charges. Catherine Hernandez is charged with 3 counts of Medicaid Fraud or in the alternative Fraud, and 3 counts of Falsification of Documents.

Charges carry a potential of 25.5 years of incarceration and repayment of \$71,700 to the State of New Mexico. Joseph Hernandez is charged with 1 count of Medicaid Fraud or in the alternative Fraud, and 1 count of Falsification of Documents. Charges carry a potential of 4.5 years of incarceration and repayment of \$6,900 to the State of New Mexico. Trial is currently set for 1/3/2010 before the Honorable Michael Vigil in Santa Fe.

State V. Candelario Gabaldon: On 6/9/2011, Gabaldon of Los Lunas was indicted by a Valencia County grand jury of 3 counts of Criminal Sexual Penetration in the third degree, and 3 counts of Criminal Sexual Contact. The charges carry a potential 12 years of incarceration. The victim is developmentally disabled and is a recipient of Medicaid funds. Gabaldon was arraigned and released on \$10,000 bond.





PROSECUTIONS DIVISION

DIRECTOR MARY HELEN BABER



VISION

Internet crimes against children (ICAC), child predators, DWI, domestic violence, sex crimes and, increasingly white collar crimes continue to be the focus of the Prosecutions Division. Significant cases which impact New Mexico are selected by the Attorney General and assigned to the division.

YEAR IN REVIEW

DWI

Assistant Attorney General Donna Bevacqua-Young, winner of the State Bar of New Mexico DWI Prosecutor of the Year award and winner of the 2011 Mothers Against Drunk Drivers Milford Award for Excellence, had a busy year successfully prosecuting several DWI cases, including many police officer or law enforcement defendants.

ICAC

The Internet Crimes Against Children (ICAC) subdivision has increased the number of felony ICAC prosecutions from a handful in 2007 (4) to more than 22 felony prosecutions from August 2010 through 2011. Since the Attorney General's Office was awarded the federal ICAC grant in 2009, the Prosecutions Division, with sophisticated and highly technical investigations from the Attorney General's Office Investigations Division and local law enforcement agencies, prosecuted more than 30 cases involving child pornography. During the King administration, more than 56 child predators or child pornography cases have been prosecuted or are pending prosecution.

Led by AG prosecutors Jennifer Saavedra and Shannon Murdock, the ICAC subdivision vigorously pursued ICAC cases resulting in stiff prison sentences. Felix Romero, 12 years incarceration after jury conviction of 40 felony counts of child pornography, plus 10 additional years after his guilty plea to sex crimes against two little girls, to be served consecutively, Gabriel Ashley, 9 year sentence; and Gregory Converse, 8 years. In some significant or high profile cases, prosecutors have transferred cases to the U.S. Attorney's Office for federal prosecution where prison terms are almost certain. In one case, the defendant was a high-ranking NM state government worker who had been employed in a child protection agency. In a pending case, the defendant caught with child pornography was a supervisor of the Corrections



Department. Two other defendants, Elquest and Madison, each received federal prison terms of more than 15 years because they had prior child-related felony convictions. AG King’s collaboration and cooperative relationship with the U.S. Attorney’s Office has been a powerful weapon in the fight against child predators.

One sexual assault case came into the office in an unusual way. The mother of a 13 year old victim contacted AG King in the fall of 2010. She had seen the Attorney General’s television spots about the AG’s efforts to protect children from sexual predators. The mother asked AG King to investigate the 2009 incident in which her child was sexually assaulted by a 26-year-old female, after being provided with alcohol by the adult female and her 36-year-old boyfriend. AG Special Agent Michael Sandoval investigated the case and obtained critical evidence. The matter was presented to a Santa Fe County grand jury in July 2011. Both adults were indicted on several felonies including criminal sexual contact of a minor, contributing, and providing alcohol to a minor.

DOMESTIC VIOLENCE

Violence Against Women Act (VAWA) resource prosecutors provided legal advice to prosecuting agencies across the state and took the lead in 6 conflict cases, resulting in 2 felony convictions, 2 misdemeanor convictions, one dismissal, and another misdemeanor conviction in a challenging case against a Taos police officer.

Chief of Staff Michelle Garcia and Executive Assistant Heather Sandoval took charge of the VAWA resources project and developed, designed and distributed more than 300 domestic violence and sexual assault booklets for prosecutors. Due to high demand, a second printing is pending.

TEEN DATING VIOLENCE COORDINATOR GRANT

Kari Meredith, Attorney General’s Office coordinator for this grant has developed statewide programs and provided training and resources to teachers, pregnant teens, and at-risk teens. Ms. Meredith brought a nationally acclaimed program to New Mexico, Expect Respect, which is an innovative and successful teen resource program. In her first nine months in the position, Ms. Meredith has trained or presented to more than 900 New Mexico teens and providers.

LOOKING AHEAD

AAGs Shannon Murdock and Carlos Gutierrez are headed to trial in Carlsbad for the sexual assault and murder of a 20-month-old infant in 2004. The trial is scheduled for two weeks beginning in February 2012.

AAG Donna Bevacqua-Young is also scheduled for jury trial in Santa Fe in late February in State v. Lovato, the controversial and high profile case involving a former NM State Police Officer and former head of Governor Richardson’s security force, who was the passenger in the State v. Fierro vehicular homicide case. She is prosecuting the case with co-counsel Alfred Walker of the Santa Fe City Attorney’s Office.

AG General Counsel R. David Pederson and Prosecutions Division Director Mary Helen Baber have already conducted the first round of sex offender parole hearings for the ever increasing number of sex crime offenders who are required to appear before the parole board for extended supervision.



WATER, ENVIRONMENT AND UTILITIES DIVISION

DIRECTOR STEPHEN FARRIS



Rio Grande Project alleging hundreds of thousands of acre feet of water have been illegally allocated to Texas irrigators at the expense of New Mexico irrigators since the United States changed the way it had operated the project for a century. This complex litigation is in its early stages and is expected to continue for multiple years. The Middle Rio Grande Conservancy District and the City of Las Cruces have moved to intervene in the lawsuit on the state's side.

In 2009, the State of New Mexico intervened in the Grand Canyon Trust case in federal district court in Arizona along with the other six states who are parties to the Colorado River Compact - Arizona, California, Nevada, Utah, Colorado and Wyoming. The case is a challenge by environmental groups to the operation of federal facilities on the Colorado River. The state intervened to defend existing environmental protections and to ensure that the compact was not violated. The judge in the case ruled in favor of the States and the United States, and the case is now on appeal to the 9th Circuit Court of Appeals.

VISION

The Water, Environment & Utilities Division (WEUD) works to protect, preserve and recover New Mexico's beautiful but fragile environment as well as our precious water and other natural resources. Division staff accomplishes this task through litigation when necessary and through unique cooperative efforts with stakeholders such as farmers, environmentalists, municipalities, industry and state and federal government agencies. In addition, WEUD will continue to represent the interests of New Mexico's residential and small business consumers in matters of natural gas, electricity and telecommunications regulation.

YEAR IN REVIEW

WATER AND ENVIRONMENT

INTERSTATE RIVERS

On August 8, 2011 the Attorney General sued the United States of America over the operations of the

On the Colorado River and its tributaries, the Attorney General continues to serve as the legal advisor to New Mexico in the Upper Colorado River Compact Commission and in meetings with the seven Colorado River Basin states that are parties to the Colorado River Compact. Drought and other issues have raised the specter of interstate litigation on this river also, and the Attorney General is actively working with the New Mexico Interstate Stream Commission to prepare to both defend and bring litigation to protect New Mexico's water as necessary.

ENDANGERED SPECIES

The Attorney General continued a multi-year effort to collaboratively solve endangered species problems in New Mexico while continuing to protect New Mexico's water and water users. The Attorney General continues efforts in conjunction with the New Mexico Department of Agriculture, Department of Game and Fish and the Interstate Stream Commission to develop a Biological Assessment with the Bureau of Reclamation resulting in a



long-term, sustainable Biological Opinion from the Fish and Wildlife Service.

OFFICE OF THE NATURAL RESOURCES TRUSTEE (ONRT)

WEUD continues to provide legal counsel for the ONRT in support of its efforts to recover Natural Resource Damages (NRD) at sites with hazardous substance releases throughout the State. In 2010 these efforts were highlighted by settlement of the state's ground water NRD claims at three Freeport McMoRan mines near Silver City. An agreement in principle has also been reached for NRD regarding other resources at the three Freeport McMoRan mines and a Consent Decree settling those claims is near completion. Work continues on finalizing the consent decree for the Chevron Molycorp NRD settlement for the mine near Questa, initiation of an NRD assessment at the Los Alamos National Laboratory and conduct of a NRD assessment for the Fort Wingate Depot Army facility. A pre-assessment screen was completed for Rio Algom Mining's ten mines/mill in the Ambrosia Lake mining district.

Tri-State Generation and Transmission Association, Inc. v. D'Antonio, Oral argument has been held before the New Mexico Supreme Court and a decision should be forthcoming.

Sanders-Reed and WildEarth Guardians v. Susana Martinez, Governor and the State of New Mexico; Suit was filed against the State of New Mexico and Governor Martinez in state district court in Santa Fe asking the court to declare that the atmosphere was protected through the public trust doctrine rather than through New Mexico's constitution and statutes. The State and the Governor filed a joint motion to dismiss which has been fully briefed. No hearing date has been set.

Environmental Crimes Unit

Pursuant to a grant from the United States Department of Justice, the Attorney General has hired a Special Agent as Environmental Crimes Investigator. The Investigator is actively investigating cases.

UTILITIES

TELECOMMUNICATIONS

10-00315-UT - Sacred Wind Communications is a new company serving the hard to reach Navajo Nation using a form of wireless technology. In the first

telecommunications rate case filed in more than a decade in New Mexico, Sacred Wind is seeking ongoing subsidies from the New Mexico State Rural Universal Service Fund. The Attorney General intervened to conduct an analysis on how this would impact the fund and to advocate for a detailed study of all relevant costs to make sure the subsidy request is fully supported.

After extensive discovery and negotiations, the Attorney General stipulated with Sacred Wind over the amount of the subsidy. Other telecommunications carriers objected to this stipulation and the agreement was litigated before the PRC. Parties are currently waiting to present final oral argument before the Commissioners and a final decision to be issued in the case.

In brief, the Stipulation allows Sacred Wind to receive up to \$2 million/per annum from the New Mexico State Rural Universal Service Fund, as well as providing assurances that needed funds over this amount will be offset by additional Federal subsidies.

Fourteen rural New Mexico telephone companies currently receive support from this fund, and none have had to fight as hard as Sacred Wind to receive their fair share.

32,193 - S. Ct. Appeal of 09-00094-UT (Qwest AFOR)

After the Public Regulation Commission imported findings of fact and conclusions of law from one case into the promulgation of Qwest's new "alternative form of regulation" the New Mexico Attorney General intervened to ask the Court to cure this deprivation of all parties due process rights to present evidence and be heard on the merits.

The Court announced its decision in June, accepting the Attorney General's legal conclusions and remanding the case back to the PRC.

Cases 11-00315 and 11-00340-UT both Qwest/Century Link and Verizon Corporation have filed petitions with the Public Regulation Commission seeking regulatory relief based on claims that the market for a wide variety of telecommunications services is "effectively competitive" to protect the consumer interest. Both petitions seek this designation on a statewide basis. The Attorney General will be assessing these claims to determine their accuracy and advising the PRC as to the proper amount of regulation necessary to continue protecting the consumer interest in lower



rates, reliable infrastructure and widespread availability of telecommunications services.

Case 09-00044-UT More than two years ago the Attorney General filed an Expert's Report with the Public Regulation Commission documenting problems with the billing systems and associated business practices of Qwest and other phone companies and seeking a formal investigation. The PRC recently acted on this request and has created an informal "workshop" process to ascertain if these systems are serving the public interest convenience and necessity in New Mexico.

INSURANCE

Case 11-00386-IN Blue Cross Blue Shield of New Mexico is seeking its second major rate increase in as many years. After last year's 21% increase it is seeking another 9.9% increase for this year. The Attorney General has intervened in this case to advocate on behalf of the individuals most affected by this proposed increase.

Senate Bill 210 The Attorney General lobbied extensively for passage of this bill, which will tighten the standards under which the New Mexico Insurance Department may approve proposed increases in health insurance rates. It becomes effective January 1, 2012.

ELECTRICITY

The Attorney General represented residential and small business consumers in more than twenty-five cases involving electric utilities during 2011. The largest of these cases were rate cases filed by Public Service Company of New Mexico, which serves almost 500,000 customers in New Mexico and Southwestern Public Service Company, providing service to approximately 100,000 customers on the state's east side.

PNM

In its filing, PNM sought an increase for residential and small business customers of 25%. Through negotiations with the Attorney General and other intervenors, the Company agreed to limit its increase to 10%. Although the Attorney General also agreed with the company that there would be no increase in the residential first usage block rate of 7.3 cents, the Public Regulation Commission increased this rate by 15%, to the 9 cents originally proposed in the Company's filing, a move that the Attorney General believes harms residential customers. Other benefits of the settlement included a 3 year period before

another rate increase and limits on fuel, efficiency and renewable cost during this period.

SPS

In the SPS rate case, the Company had sought a residential increase of almost 10%, but agreed with the Attorney General and other intervenors to an increase of about 5%. Consumers received many other benefits in the settlement, including limits on transmission costs.

NEW MEXICO SUPREME COURT

Also in 2011, the Attorney General prevailed in a case in the state Supreme Court against the PRC for its flawed efficiency rulemaking. The Court ruled that the rate established by the Commission to be paid to utilities by consumers for lost revenues resulting from efficiency programs was arbitrary and capricious and not based on substantial evidence. The ruling should save customers of the three electric utilities millions of dollars annually.

LOOKING AHEAD

Most work of the Water, Environment and Utilities Division is ongoing and long term. Some litigation can take many years. Additionally, WEUD's collaborative efforts to protect New Mexico's interests involve projects that require long-term planning and implementation. These efforts are continuing and, as new issues arise, they will be handled in ways that protect and preserve New Mexico's environment, natural resources, utility consumer interests, and the health and welfare of the state's residents. An example of the long term work of the division is the litigation filed against the United States Bureau of Reclamation over the Rio Grande Project operations. After many years of analysis in cooperation with the State Engineer and the Interstate Stream Commission, the Attorney General's Office attempted to negotiate a more fair agreement with the United States. When it became obvious that negotiations were not going to be productive, the state was forced to sue to recover water that has unlawfully been allocated to farmers in Texas and taken away from farmers in New Mexico.





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