MINUTES
of the
FOURTH MEETING
of the
WATER AND NATURAL RESOURCES COMMITTEE

October 17-18, 2019
Miller Library
Western New Mexico University
1000 W. College Avenue
Silver City

The fourth meeting of the Water and Natural Resources Committee was called to order by Senator Joseph Cervantes, chair, on October 17, 2019, at 9:27 a.m. at the Miller Library at Western New Mexico University (WNMU) in Silver City.

Present
Sen. Joseph Cervantes, Chair
Rep. Matthew McQueen, Co-Vice Chair
Rep. Gail Armstrong
Rep. Paul C. Bandy
Sen. Craig W. Brandt
Rep. Christine Chandler (10/17)
Rep. Joanne J. Ferrary
Rep. Angelica Rubio (10/17)
Rep. Larry R. Scott
Sen. Benny Shendo, Jr. (10/17)
Rep. Nathan P. Small
Rep. Melanie A. Stansbury
Sen. Jeff Steinborn
Sen. Mimi Stewart
Rep. Candie G. Sweetser

Absent
Rep. Derrick J. Lente, Co-Vice Chair
Rep. Abbas Akhil
Sen. Sander Rue
Rep. James R.J. Strickler
Sen. Pat Woods

Advisory Members
Sen. Pete Campos
Sen. Ron Griggs
Rep. Susan K. Herrera
Rep. Rodolpho "Rudy" S. Martinez
Sen. Gerald Ortiz y Pino
Sen. Mary Kay Papen
Rep. Jane E. Powdrell-Culbert
Rep. Patricia Roybal Caballero
Sen. John Arthur Smith (10/18)
Sen. Peter Wirth
Rep. Martin R. Zamora
Rep. Anthony Allison
Rep. Jack Chatfield
Rep. Randal S. Crowder
Rep. Candy Spence Ezzell
Sen. Gregg Fulfer
Sen. Stuart Ingle
Sen. Gay G. Kernan
Rep. Tim D. Lewis
Sen. Linda M. Lopez
Rep. Javier Martínez
Sen. Steven P. Neville

Rep. Greg Nibert
Rep. William "Bill" R. Rehm
Sen. Nancy Rodriguez
Rep. G. Andrés Romero
Rep. Tomás E. Salazar
Rep. Debra M. Sariñana
Sen. Antoinette Sedillo Lopez
Sen. William E. Sharer
Rep. James G. Townsend

Guest Legislators
Rep. Rebecca Dow
Rep. Harry Garcia (10/18)
Sen. Gabriel Ramos

(Attendance dates are noted for members not present for the entire meeting.)

Staff
Shawna Casebier, Legislative Council Service (LCS)
Tom Kricka, LCS
Sara Wiedmaier, LCS
Shannon Rodriguez, LCS

Guests
The guest list is in the meeting file.

Handouts
Handouts and other written testimony are in the meeting file and on the New Mexico Legislature's website at www.nmlegis.gov.

Thursday, October 17

Welcome and Introductions
Senator Cervantes welcomed everyone to Silver City and invited members of the committee and staff to introduce themselves.

Dr. Isaac Brundage, vice president, Student Affairs and Enrollment Management, WNMU, welcomed everyone to Silver City and WNMU and recommended that the legislature take time to see the beautiful campus.

Evangeline Zamora, first vice president, Grant County Prospectors, welcomed everyone to Silver City. Ms. Zamora noted the work required to communicate the needs of the community to the New Mexico Legislature. Ms. Zamora introduced herself as well as members of the Grant

County Prospectors and recognized the organizations that sponsored refreshments: Advanced Air airline, Silver City Regional Association of Realtors and Grant County Prospectors.

History of the Gila River and the Federal Arizona Water Settlements Act (AWSA)

D.L. Sanders, attorney, provided the committee with some background on the Gila River and the AWSA. He said that New Mexico became involved in the AWSA because the flow of the Gila River through Arizona subjected New Mexico to jurisdiction in Arizona. In *Arizona v. California*, the United States Supreme Court adjudicated water rights in the lower basin of the Colorado River, which included New Mexico and Colorado. He noted that the ruling limited New Mexico's water rights to existing and historical uses; however, to make up for New Mexico not being entitled to water based on future use, New Mexico was allocated 18,000 acre-feet of Central Arizona Project (CAP) water. Mr. Sanders stated that while Arizona was concerned that New Mexico would build a diversion project to use the 18,000 acre-feet of water, New Mexico was only concerned with getting water to where it needed to be with no intention to make significant diversions.

Gila River Planning Process, Projects and Alternatives; New Mexico Central Arizona Project Entity (NM CAP Entity) Updates

Rolf Schmidt-Petersen, director, Interstate Stream Commission (ISC); Anthony Gutierrez, executive director, NM CAP Entity; Joe Runyan, Gila Farms Irrigation Association, NM CAP Entity; Allyson Siwik, executive director, Gila Conservation Coalition; Pete Domenici, Jr., attorney, Domenici Law Firm, P.C.; and Harry Browne, commissioner, District 5, Grant County Board of County Commissioners, discussed the NM CAP Entity and the projects and alternatives for the Gila River planning process. Howard Hutchinson, San Francisco Soil and Water Conservation District, NM CAP Entity, did not present but answered some questions from the committee.

Mr. Schmidt-Petersen discussed the background of the NM CAP Entity, the ISC's role related to the NM CAP Entity, an update on the filing of an environmental impact statement (EIS) under the National Environmental Policy Act of 1969 (NEPA), the relevant legal authorities and contractual obligations, the ISC's roles related to non-New Mexico units of the CAP and an update on non-NM CAP Entity projects.

The United States Congress provided New Mexico with an annual average of up to 14,000 acre-feet of water from the Gila River, its tributaries, including the San Francisco River, or underground water sources in southwestern New Mexico through the enactment of the AWSA. This water, known as "AWSA water", is in addition to the water allocated to New Mexico by the 1964 United States Supreme Court decree in *Arizona v. California*. The New Mexico unit of the CAP is the project that would divert, convey and store the AWSA water for consumptive use in southwestern New Mexico. The AWSA designated the United States Bureau of Reclamation (Reclamation) as the lead federal agency for environmental compliance related to the NM CAP Entity. The AWSA also allowed the ISC to be designated as joint lead with the Reclamation upon request. The ISC made a request to be joint lead in 2015, and the Reclamation

and the ISC are now joint lead on environmental compliance for the New Mexico unit of the CAP. In November 2014, the ISC voted to send written notice to the secretary of the interior that New Mexico intended to build a New Mexico unit of the CAP. The ISC is in charge of funding and the EIS, while the NM CAP Entity is in charge of everything else, including construction, operation and maintenance of the New Mexico unit.

In June 2018, the Reclamation published a Notice of Intent to prepare an EIS for the New Mexico unit in the Federal Register. After a public scoping period, the Reclamation and the ISC started incorporating details of the NM CAP Entity's proposed action and alternative actions into the EIS. The draft EIS that will be published and available to the public in December 2019 will fully analyze the action alternatives and their impacts on various resource topics, including hydrology, biology and economics, compared to the no-action alternative.

In its work on the implementation of the NM CAP Entity, the ISC is bound by the following legal and contractual obligations: the provisions of the AWSA; the New Mexico Unit Fund statute (Section 72-14-45 NMSA 1978); the 2016 Memorandum of Understanding between the Reclamation and the ISC; the 2016 Interim Advance Funding Agreement between the Reclamation and the ISC; and the 2015 Joint Powers Agreement that created the NM CAP Entity. As of September 2019, New Mexico has expended $13.9 million from the New Mexico Unit Fund.

In addition to authorizing the ISC to fund the NM CAP Entity, the AWSA authorizes the ISC to fund any water utilization project to meet water supply demands in southwestern New Mexico in consultation with the NM CAP Entity. Between 2014 and 2016, the ISC allocated $9.1 million to 16 non-New Mexico unit projects, such as projects for acequia improvement, effluent reuse, water meter placement and aquifer storage and recovery. As of September 30, 2019, about 52% of the total ISC allocation has been requested by the non-New Mexico unit grantees. Only seven of the 16 projects are operational; the rest are in various stages of design and construction. The slow pace is due to technical, legal and procurement issues. As of September 2019, New Mexico has expended $6.2 million from the New Mexico Unit Fund for non-New Mexico unit projects.

Mr. Gutierrez discussed NM CAP Entity history and the Virden alternative project. Early on, the board of the NM CAP Entity and the ISC recognized the need to amend the joint powers agreement to give authority to allow the funding of water projects other than the New Mexico unit. Mr. Gutierrez stated that in the afternoon after the committee meeting, the NM CAP Entity would make a decision to select the preferred alternative from among five. The preferred alternative is the Virden area project. The proposed action would utilize the existing Sunset and New Model diversions, as well as other existing canals without the need for modification. Pump facilities for the delivery of water from ponds back into canals will be constructed, along with two lined gravity-fed storage ponds, for a combined capacity of 550 acre-feet. The maximum potential AWSA water diversion available in the Virden area is approximately 1,277 acre-feet at a capital cost for construction of $7 million. This alternative would not require new construction

on the Gila River. The affected area is a well-established farming community on privately owned land that currently does not store water. Mr. Gutierrez stated that if New Mexico did not store water in the Virden area, the water would end up in Arizona.

Mr. Runyan spoke in support of diversion projects along the Gila River to support irrigated agriculture. Currently, there are three diversions along the Gila. Mr. Runyan stated that the existing gravel berms that are being used tend to have a high profile. Farmers could capture more water with a project that expanded diversion into farm ponds for storage. Farmers in the area support a long-term diversion and storage project in the area.

Ms. Siwik discussed challenges with the implementation of the NM CAP Entity project. Ms. Siwik explained that the AWSA makes an additional $34 million (adjusted for inflation to $56.3 million) available for the NM CAP Entity as long as a record of decision is issued by the secretary of the interior by December 31, 2019. To issue a record of decision, there must be a determination that the NM CAP Entity Gila diversion project complies with the NEPA. The NEPA requires that an EIS be prepared by the applicant detailing the impact the project will have on the environment and proposing alternatives. Because the draft EIS is not scheduled to be published until December 2019, the NM CAP Entity has asked the secretary of the interior for an extension, which may be granted for delays resulting from reasons outside the control of the State of New Mexico. Ms. Siwik stated that it is past time to end work on the Gila diversion of the NM CAP Entity because the project is not technically feasible nor economically viable. Instead, the state should use CAP money to pay for existing projects. One problem with the alternatives proposed for the NM CAP Entity is that the alternatives will be unreliable in years when New Mexico is in a drought and water will not be able to be delivered to Arizona. Also, the CAP business plan does not have a budget or specific source of revenue. The only way to pay for the project is for farmers to convert from low- to high-value crops. Furthermore, the cost estimates for the Virden Valley and the Cliff-Gila Valley are too low. The actual costs in Cliff-Gila Valley could end up being 40 times what is currently being paid for water. Ms. Siwik noted that Governor Michelle Lujan Grisham and the Gila River Indian Community oppose an extension of the deadline for a record of decision to pursue the NM CAP Entity. In southwestern New Mexico, there is approximately $64 million in infrastructure needs in low-income communities that need money now to fund critical water projects.

Mr. Browne, appearing on his own behalf and not on behalf of the Grant County Board of County Commissioners, discussed some of the problems he sees with the Virden alternative. Mr. Browne stated that he would be making very similar comments to those he made two years prior. Mr. Browne expressed suspicion at the last-minute decision to support the Virden alternative because there are still no identified users for the water and there are a lot of technical and economic issues that remain unresolved. According to Mr. Browne, the NM CAP Entity is not capable of undertaking this project, and the delay in getting the EIS to the secretary of the interior may cause New Mexico to lose $50 million in funding. The funds that are allocated for the New Mexico CAP unit would be better used on other water projects. For example, the residents of Hurley, New Mexico, are paying an additional $34.00 per month for water and New Mexico

CAP funds are not yet available for them. The NM CAP Entity project continues despite there being no results. The projected yields for the NM CAP Entity are based on the historic record that does not comport with future estimates. The cost estimate of $200 per acre-foot of water in the Gila Valley is much too low. The real cost is likely to be about $470 per acre-foot. New Mexico is obligated to pay for delivery of water to senior users in Arizona. There are a lot of water projects that need funding right now, and this could be accomplished by freeing up NM CAP Entity funds.

The following points represent information provided by the panelists in response to questions and comments from committee members:

- the NM CAP Entity is funded using New Mexico Unit Fund dollars; Governor Lujan Grisham signed an appropriation for this fiscal year;
- the NM CAP Entity has a meeting planned with the ISC for participants to discuss the Virden alternative, which is the preferred alternative out of the five alternatives;
- the analysis of the Virden alternative includes economic viability, as well as the social and environmental impacts; this alternative appears viable from the EIS analysis, although the costs probably represent the lowest estimate of costs;
- a comment was made that the NM CAP Entity project has been delayed and will miss the upcoming deadline to get a record of decision from the secretary of the interior, but the reason for completing the project should not be just to use water so Arizona cannot use that water; instead of going forward with the NM CAP Entity, the money should be used for other water projects;
- there is a possibility for legislation in the 2020 session to address funding non-diversion projects by requiring the ISC to appropriate money for such projects;
- if an extension is granted by the secretary of the interior, New Mexico will not lose its rights to the 14,000 acre-feet of water, and there will continue to be a search for projects; however, New Mexico could lose $50 million in federal funding;
- originally, New Mexico had rights to 18,000 acre-feet of water, but in 2004, New Mexico exchanged 4,000 acre-feet of water for more funding;
- even if New Mexico only approves projects for a portion of the 14,000 acre-feet of water to which New Mexico is entitled, New Mexico can still access the full 14,000 acre-feet of water at a later date;
- senior Arizona water rights were part of the Globe Equity Decree and the *Arizona v. California* decree;
- diversions can be accomplished by the development of surface and underground water resources;
- the following diversions are on the Gila River: the dam for Snow Lake and Lake Roberts, three diversions in the Gila Valley, two diversions in the Virden area and farmers diverting water for ranches and domestic use;
- it is possible to create more diversions to support recreational use of water resources;
- funding for watershed restoration projects could be leveraged from federal funding as an alternative to aboveground diversion projects;

- there has been a shift from working on large projects that require construction to focusing on the basics and working with water entities that are already in existence; 170 diversion and non-diversion projects were submitted to the ISC, and 16 of those projects were selected; the market should decide whether current projects are viable;
- among the existing diversions, there are three projects that could be made more permanent; the farmers in those areas pay for the water through their irrigation district but those farmers do not have to pay Arizona because these are adjudicated water rights; however, there is a plan to build a structure, pending approval by the irrigation district, that would allow these farmers to take more water, in which case whether the farmers have to pay Arizona for the water would depend on when the water was removed; sometimes the water would be adjudicated water and sometimes it would be AWSA water; the farmers would only pay for what they consume, not what they divert; the farmers would pay a small amount for access to the water — about $25.00 per year for costs associated with evaporation;
- in the upper Gila area, the proposed action would build a single diversion to replace the three diversions that currently exist; this action would have less of an ecological impact than the existing diversions;
- New Mexico is required under the CAP to pay Arizona for water at rates that are set by the CAP, not by New Mexico; these water rates may increase or decrease based on a determination by the CAP;
- currently, about 50% of all adjudicated water rights are being used in the Gila River Basin;
- the AWSA funds are only available in Catron, Grant, Hidalgo and Luna counties; these counties have access to CAP funds while other counties in New Mexico that need funds for water projects do not have access;
- a third party was employed for the hydrological analysis that will be part of the EIS; the analysis considered climate change only by looking at historical data to make sure downstream users are kept whole;
- a concern was expressed that projections on water availability on the Gila River have some of the flows going to zero; therefore, it may not be prudent to use New Mexico and federal funds on projects when the water may not be there in the future;
- the availability of surface water is subject to change; for example, wildfires can cause more runoff in early spring, which makes less water available later in the year; and
- the number-one criteria used by the NM CAP Entity in selecting projects is whether the project is in line with community interests; also, the NM CAP Entity and the ISC work together on determining which project gets funding, but there is little selection criteria in place.

Approval of Minutes

On a motion made, seconded and duly passed, the minutes of the September 5-6, 2019 meeting were approved as submitted.

Aquifer Mapping and Managed Aquifer Recharge

J. Michael Timmons, Ph.D., associate director for mapping programs and deputy director, New Mexico Bureau of Geology and Mineral Resources, New Mexico Institute of Mining and Technology (NM Tech); Daniel Koning, senior field geologist, New Mexico Bureau of Geology and Mineral Resources, NM Tech; and Steven T. Finch, Jr., vice president and principal hydrogeologist/geochemist, John Shomaker and Associates, Inc., discussed aquifer mapping and managed aquifer recharge.

Dr. Timmons discussed the utility of mapping geologic systems and aquifers. The New Mexico Bureau of Geology and Mineral Resources collects data, creates detailed geologic maps and builds conceptual models of the geologic system that are essential to: model the movement of ground water; forecast future conditions; and ultimately serve as a basis for decision making regarding land use planning, allocation decisions and pollution prevention and cleanup. Dr. Timmons explained that geologic history can be seen as a series of processes that shape the landscape. To date, 33% of New Mexico has been geologically mapped. Geologic mapping is used for mineral and energy resource evaluations, water assessments, city planning, hydrologic modeling and hazards assessments. One goal of geologic mapping is to identify areas that store and transmit water in ways that may be useful in managing water resources. Geologic mapping has completely altered the view of aquifers located under the city of Albuquerque. The 1961 view was that Albuquerque was on top of a vast aquifer or underground lake. However, in 1995, a more realistic view based on geologic mapping showed that there is a much smaller aquifer under Albuquerque, representing a considerably smaller amount of water resources.

Mr. Koning discussed managed aquifer recharge, which is the intentional recharge and storage of water into an aquifer for subsequent recovery or for environmental benefit. New Mexico engages in managed aquifer recharge because it saves water for future use, similar to having a water savings account. The geologic conditions in the Albuquerque area are favorable for managed aquifer recharge because of favorable water table geometry, a deep basin filled with sandy sediment and good subsurface geology. Mr. Koning stated that the Albuquerque area is ideal for storing water underground because: there is potential excess water from the San Juan-Chama project; long-term pumping has created an elongated cone of depression east of the Rio Grande; and mapping of the water table indicates that most of the recharged water will stay within the jurisdiction of the Albuquerque-Bernalillo County Water Utility Authority. The use of a three-dimensional geologic model has been essential to determining the suitability of a location for managed aquifer recharge.

Mr. Finch discussed aquifer storage and recovery in New Mexico. Aquifers may be recharged through off-channel infiltration, direct injection, natural infiltration and basin infiltration. The sources of water for recharge include surface water, ground water and reclaimed water. Mr. Finch described two water management projects in New Mexico: the 1956 project in the city of Santa Rosa and the 1997 project in the city of Alamogordo. In 1999, New Mexico passed the Ground Water Storage and Recovery Act to improve water and environmental quality, reduce ground-water level declines and promote conservation of water. The application process,

the hydrologic, technical and financial capability report requirements and the permit terms and conditions for projects authorized under the Ground Water Storage and Recovery Act are set forth in Section 19.25.8 of the New Mexico Administrative Code. The following entities are considered authorized applicants under the applicable law: Indian nations, tribes or pueblos; municipalities; counties; acequias; and irrigation or conservancy districts. There are several challenges presented by aquifer storage and recovery, including that the system must be designed and built before the applicant can obtain a permit, the source water must meet drinking water standards even if the receiving aquifer does not meet the same standards and authorized applicants are limited to governmental entities. Also, Mr. Finch stated that aquifer storage and recovery is best suited for municipalities because smaller entities may not be able to afford the cost of implementation. The benefits to New Mexico from aquifer storage and recovery include conjunctive use management of surface water, ground water and reclaimed water sources and long-term storage for times of drought.

The following points represent information provided by the panelists in response to questions and comments from committee members:

- aquifer storage and recovery is economical and better for the environment because less water is lost from evaporation when water is stored underground;
- more work is needed to identify suitable places where aquifer storage may be possible because only 33% of New Mexico has been geologically mapped in detail;
- the New Mexico Bureau of Geology and Mineral Resources operates on a budget of $300,000 a year, which is not enough to map the entire state; the bureau is prioritizing which areas should be mapped first;
- managed aquifer recharge does not affect water quality and should not degrade water quality in Corrales;
- a requirement that the source water must meet drinking water standards even if the receiving aquifer does not meet the same standards is part of the New Mexico Administrative Code, which could be changed by the Department of Environment in a rulemaking process; and
- approximately $40,000 was spent on mapping the Albuquerque area for suitability; it will cost over $1 million to implement the Albuquerque underground water storage project and take six to 10 years to finalize.

Recess

The committee recessed at 3:05 p.m. for a tour of the Chino mine.

Friday, October 18

Reconvene

Senator Cervantes reconvened the meeting at 9:00 a.m.

Forest and Watershed Restoration and Health; Reforestation Best Practices; Addressing Fire Risk; Impacts of the United States Forest Service Owl Protection Order

Laura McCarthy, state forester, Forestry Division, Energy, Minerals and Natural Resources Department; Steve Hernandez, public member, Forest and Watershed Restoration Act Advisory Board, and attorney, Carlsbad Irrigation District; Keven Groenewold, chief executive officer, New Mexico Rural Electric Cooperative Association (NMRECA); Kent Reid, Ph.D., director, New Mexico Forest and Watershed Restoration Institute, New Mexico Highlands University; Robert Trujillo, regional director, Wildlife, Fish, Rare Plants and Rangeland Management, United States Department of Agriculture; and Brent Racher, Ph.D., president, New Mexico Forest Industry Association, discussed the state of forest and watershed restoration in New Mexico.

Ms. McCarthy discussed restoring health and resilience in forests and watersheds. Climate change has caused an increase in wildfires in the last 50 years. During the 2019 wildfire season in New Mexico, there were 537 statistical fires and 22,125 acres of state and private land affected. Ms. McCarthy said that the 2019 wildfire season was not too severe, but there has been growth of fine dry grasses that could lead to big fires in the future. The number of wildfires in any given year is not a good indicator of forest health because wildfires are also used to keep people and property safe when some fires are intentionally set and allowed to burn. The Forestry Division has completed proactive forest management to prevent forest fires on 35,729 acres since 2014, and there are pending and ongoing projects on 13,267 acres. Ms. McCarthy presented an index of the completed, ongoing and pending projects around New Mexico with information on funding for each project.

Mr. Hernandez presented a different perspective on watershed and forest management by suggesting that, instead of looking at the management of forests and watersheds separately, consideration should be given to forest resilience depending on a healthy watershed with more water in the streams and rivers. To be most effective at managing forests, water agencies need to be included in the discussion.

Mr. Groenewold discussed the NMRECA and its activities to clear rights of way for fire prevention. Since it is a cooperative association, the goal is to minimize costs rather than maximize profits. The members of the NMRECA are elected and not appointed by industry. The NMRECA serves about 88% of the land area and 22% of the population of the state. New Mexico is in Region 3 in the United States Forest Service structure, which includes New Mexico and Arizona. Mr. Groenewold discussed a vegetation removal pilot program established through the 2018 federal Farm Bill to clear vegetation from utility rights of way. He indicated that the NMRECA would be working with the state forester to implement two to three projects. He also highlighted a map of New Mexico showing the areas where ignitions are predicted to impact the wildland-urban interface.

Dr. Reid discussed ways to maintain healthy forests, including that reducing standing biomass, or killing the little trees, is key to reducing fire risk. However, little trees in the right

place can be beneficial. Replanting trees involves a three-stage process: seed collection, nursery management and outplanting. Seeds need to be collected from standing forests from trees with minimal disease present, and trees should not be planted in places that seem very different from where the seed originated. The areas that are currently without trees need to be replanted because without planting trees, these areas will take centuries to regrow.

Mr. Trujillo discussed the injunction on all timber management activities that resulted from litigation over the Mexican spotted owl. In 2013, WildEarth Guardians sued the United States Forest Service and the United States Fish and Wildlife Service for failing to adequately monitor and protect the Mexican spotted owl, in Arizona and New Mexico. The federal agencies created a range-wide monitoring plan to keep track of the owl, but it was technically and financially unfeasible so the plan was never implemented. On October 10, 2019, the United States Forest Service filed a motion with the court to narrow the injunction to exclude timber management activities that do not occur on owl habitat land or are insignificant in their effect. The motion asked the court to allow commercial timber activities, personal and tribal ceremonial use of forest products and collection of Christmas trees.

Dr. Racher discussed how the injunction on timber management activities is affecting people who directly depend on forest products and people who depend on those products for secondary manufacturing.

The following points represent information provided by the panelists in response to questions and comments from committee members:

- there are approximately 11 million acres of forested land in New Mexico, all of which are controlled by the State Land Office;
- a comment was made that New Mexico needs to cut down more trees and thin out more vegetation to prevent catastrophic fires;
- currently, there is no time line for the court to consider a request to lift the injunction as to commercial firewood cutting and a request to lift the injunction as a whole;
- a comment was made that the injunction has hurt residents of Catron County, Socorro and Magdalena because they are involved in projects to cut or thin forests;
- watershed restoration project proposals should be brought to district offices;
- a comment was made that the injunction is overly broad because it is not limited to the Mexican spotted owl's actual habitat;
- the City of Alamogordo is working on reforestation of Bonito Lake, but the panelist was not sure if reforestation work was happening in Nogal Canyon;
- the state is dealing with slash from logging operations by using some for firewood and burning it;
- at least 250 people, but probably closer to 400 or 500 people, have lost work because of the injunction;

- a comment was made that the United States Forest Service is not doing its job and that is why the court issued the injunction; the consideration of an endangered species is proper and this matter should be resolved in the best interests of the people;
- the United States Forest Service is taking steps to protect the owl and other listed species to avoid future lawsuits;
- successful work on forest restoration in the area south of Albuquerque allowed a fire last summer to be controlled and put out; and
- seed collection is mostly done by government employees, although it could be done by private enterprise.

On motion by Representative Bandy seconded by Representative Armstrong, the committee voted in favor of sending a letter to the United States Forest Service in support of its request to limit the injunction prohibiting timber activities.

Department of Game and Fish Issues; Native Fish Restoration; Wildlife Corridors; Resident License Draws; Stream Access Rule

Michael B. Sloane, director, Department of Game and Fish; Jesse Deubel, executive director, New Mexico Wildlife Federation; Marco Gonzales, attorney, New Mexico Habitat Conservation Initiative; and Norm Gaume, New Mexico state board member, American Canoe Association, Adobe Whitewater Club of New Mexico, discussed the restoration of fish and wildlife and river access in New Mexico. John Cornell, southwest field manager, Theodore Roosevelt Conservation Partnership, was going to talk about migration corridors, but since that topic had already been discussed, he only responded to questions.

Mr. Sloane discussed the restoration of fish and other wildlife. The Department of Game and Fish has had some success restoring fish and wildlife species and habitats. For example, bighorn sheep have been delisted and there are currently efforts to get pupfish delisted. Mineral Creek and Whitewater Creek were both affected by wildfires and there is an effort to restore fish in those waterways. The Department of Game and Fish is working with the Department of Transportation to implement the Wildlife Corridors Act. So far, about 800 global positioning system collars have been put on animals across the state and a database for those animals is under development. Regarding river access in New Mexico, Mr. Sloane stated that no person can access water through private property without consent and that nothing shall affect whether water is navigable for Waters of the United States purposes.

Mr. Deubel discussed river access in New Mexico, stating that the State Game Commission has stopped acting on the rule allowing a petition to declare water on private property to be non-navigable. The concern about the adoption of this rule is that New Mexico residents are being blocked from access to waterways by private property owners, some of whom are nonresidents.

Mr. Gonzales also discussed river access in New Mexico and said that the issue is important because it involves constitutional rights and the individual right to own private property.

Mr. Gaume expressed support for protecting New Mexico residents' constitutional rights to access public waters for recreational nonconsumptive use. Mr. Gaume said that he had seen private property owners wielding guns at people who are using public waters for recreation.

The following points represent information provided by the panelists in response to questions and comments from committee members:

- a comment was made that the State Game Commission had no authority to adopt a rule that contradicts the language of the legislation that was passed regarding stream access; a rule cannot exclude the public from accessing public water so long as the public does not trespass, and the term "non-navigable" cannot be used to limit the public's access to public waters;
- there are currently two applications to close public access to portions of streams that run through private land;
- the State Game Commission is currently reviewing implementation of the stream access rule, partly due to the attorney general's opinion;
- members of the public have expressed concern to the State Game Commission that some places may become inaccessible;
- a comment was made that the legislature needs to broaden its statutory authority over the State Game Commission and manage based on the best science available and with the interests of all people in New Mexico; and
- a comment was made that the debate over public access to water and the rights of private landowners should be resolved in the best interests of the people of New Mexico.

Adjournment

There being no further business, the committee adjourned at 12:01 p.m.