



NEW MEXICO LEGISLATURE

**WATER AND
NATURAL RESOURCES
COMMITTEE**

2017 INTERIM FINAL REPORT

LEGISLATIVE COUNCIL SERVICE
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INTERIM SUMMARY

Water and Natural Resources Committee 2017 Interim Summary

The Water and Natural Resources Committee was created by the New Mexico Legislative Council for the 2017 interim and scheduled five meetings, which were held in Santa Fe, Las Vegas, Silver City and Socorro.

The committee discussed and received testimony regarding a number of water-related issues, including the *New Mexico v. Texas and Colorado* litigation in the United States Supreme Court; negotiations on ground water use in the lower Rio Grande; the status of the Navajo, Taos and Aamodt Indian water rights settlements; drinking water supply challenges in rural New Mexico; water project financing and infrastructure funding; acequia issues; regional and state water planning; an overview of the Middle Rio Grande Conservancy District; and implementation of the federal Arizona Water Settlements Act and proposed diversion projects on the Gila River.

The committee also devoted many hours to the discussion of issues not directly related to water, including:

- the proposed transfer of Mesilla Valley Bosque State Park from the State Parks Division of the Energy, Minerals and Natural Resources Department to the Department of Game and Fish, which raised concerns about whether legislative approval is required for transfers of state park land from one agency to another;
- the Carlsbad brine well collapse, which led to legislation and funding mechanisms that received significant attention during the legislative session;
- salt cedar eradication and the salt cedar beetle;
- forest and watershed restoration projects that are being conducted on a coordinated basis by federal, state, tribal and local governments and private industry;
- a policy implemented by the State Land Office on the use of water from the Ogallala Aquifer for oil and gas drilling, as well as use of recycled water by the oil and gas industry;
- electricity pricing by rural electric cooperatives and transmission and generation cooperatives;
- the economics of increasing and extending renewable energy portfolio standards;
- the regulation and tracking of natural gas venting and flaring;
- financing for distributed solar energy systems; and
- energy redevelopment bonding.

WORK PLAN AND MEETING SCHEDULE

**2017 APPROVED
WORK PLAN AND MEETING SCHEDULE
for the
WATER AND NATURAL RESOURCES COMMITTEE**

Members

Sen. Joseph Cervantes, Chair
Rep. Bealquin Bill Gomez, Co-Vice Chair
Rep. Matthew McQueen, Co-Vice Chair
Rep. Gail Armstrong
Rep. Paul C. Bandy
Rep. Randal S. Crowder
Rep. Derrick J. Lente
Rep. Rodolpho "Rudy" S. Martinez
Sen. Cliff R. Pirtle

Sen. Sander Rue
Sen. Benny Shendo, Jr.
Rep. Nathan P. Small
Sen. Jeff Steinborn
Sen. Mimi Stewart
Rep. James R.J. Strickler
Rep. Carl Trujillo
Sen. Pat Woods
Rep. Bob Wooley

Advisory Members

Sen. Craig W. Brandt
Sen. Pete Campos
Sen. Carlos R. Cisneros
Rep. Sharon Clahchischilliage
Rep. George Dodge, Jr.
Rep. Rebecca Dow
Rep. Brian Egolf
Rep. Candy Spence Ezzell
Rep. Harry Garcia
Sen. Ron Griggs
Rep. Yvette Herrell
Sen. Stuart Ingle
Rep. D. Wonda Johnson
Sen. Gay G. Kernan
Rep. Larry A. Larrañaga
Sen. Carroll H. Leavell
Rep. Rick Little

Sen. Linda M. Lopez
Rep. Sarah Maestas Barnes
Rep. Javier Martínez
Rep. Bill McCamley
Sen. Cisco McSorley
Sen. Steven P. Neville
Rep. Greg Nibert
Sen. Gerald Ortiz y Pino
Sen. Mary Kay Papen
Rep. Debbie A. Rodella
Sen. Nancy Rodriguez
Rep. Angelica Rubio
Rep. Patricio Ruiloba
Rep. Tomás E. Salazar
Sen. William E. Sharer
Sen. John Arthur Smith
Sen. Peter Wirth

Work Plan

The Water and Natural Resources Committee was created by the New Mexico Legislative Council on June 5, 2017. The committee proposes to focus on the following topics, as scheduling permits:

1. drinking water supply challenges in rural New Mexico;
2. forest and watershed restoration and treatment projects/forest management issues;
3. acequia project funding and water rights issues;

4. the Indian water rights settlement progress and next steps; and Santa Fe County's position on the Aamodt settlement;
5. Water Infrastructure Team report from the Department of Environment; and the Drinking Water State Revolving Loan Fund and state auditor report on water infrastructure funding;
6. Jicarilla Apache Nation game and fish management policies and practices;
7. Department of Game and Fish elk management policies and other department issues;
8. energy generation and electric transmission issues and Senate Memorial 102 (2017 regular session) Energy, Minerals and Natural Resources Department report;
9. Arizona Water Settlements Act of 2004 update from the Interstate Stream Commission and New Mexico CAP Entity on Gila River diversion proposals;
10. funding of water supply projects in southwest New Mexico;
11. southwest New Mexico ground water issues;
12. Interstate Stream Commission structure and appointment process;
13. regional and state water planning progress and issues;
14. Middle Rio Grande Conservancy District overview; federal Endangered Species Act of 1973 challenges; water operations in the middle valley; report on levees in the middle Rio Grande; Rio Grande Compact litigation update; and municipal issues;
15. priority administration progress on water rights adjudications and active water resource management rules;
16. interbasin transport of water and area of origin protection;
17. water utility governance issues;
18. Colorado River contingency planning and outlook;
19. reports required by statute from the state engineer and the Interstate Stream Commission;
20. agriculture resilience planning and development;

21. Senate Memorial 127 and House Memorial 95 (both from the 2017 regular session) — electric power rates, rural electric cooperatives and the energy sector;
22. changes in federal administration concerning water and environmental policies;
23. Kirtland fuel spill update;
24. Carlsbad brine well collapse update; and
25. oil and gas industry issues.

**Water and Natural Resources Committee
2017 Approved Meeting Schedule**

<u>Date</u>	<u>Location</u>
June 26	Santa Fe
August 1-2	Las Vegas
September 5-6	Silver City
October 12-13	Socorro
November 13-14	Santa Fe

AGENDAS AND MINUTES

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

June 26, 2017
State Capitol, Room 322
Santa Fe

The first meeting of the Water and Natural Resources Committee was called to order by Senator Joseph Cervantes, chair, on June 26, 2017 at 1:25 p.m. in Room 322 of the State Capitol in Santa Fe.

Present

Sen. Joseph Cervantes, Chair
Rep. Bealquin Bill Gomez, Vice Chair
Rep. Matthew McQueen, Vice Chair
Rep. Gail Armstrong
Rep. Randal S. Crowder
Rep. Derrick J. Lente
Rep. Rodolpho "Rudy" S. Martinez
Sen. Cliff R. Pirtle
Sen. Sander Rue
Sen. Benny Shendo, Jr.
Sen. Jeff Steinborn
Rep. James R.J. Strickler
Sen. Pat Woods
Rep. Bob Wooley

Advisory Members

Sen. Craig W. Brandt
Rep. George Dodge, Jr.
Rep. Harry Garcia
Sen. Ron Griggs
Rep. Larry A. Larrañaga
Rep. Rick Little
Rep. Sarah Maestas Barnes
Rep. Bill McCamley
Sen. Cisco McSorley
Sen. Gerald Ortiz y Pino
Sen. Mary Kay Papen
Rep. Debbie A. Rodella
Sen. William E. Sharer
Sen. Peter Wirth

Absent

Rep. Paul C. Bandy
Rep. Nathan P. Small
Sen. Mimi Stewart
Rep. Carl Trujillo

Sen. Pete Campos
Rep. Sharon Clahchischilliage
Sen. Carlos R. Cisneros
Rep. Rebecca Dow
Rep. Brian Egolf
Rep. Candy Spence Ezzell
Rep. Yvette Herrell
Sen. Stuart Ingle
Rep. D. Wonda Johnson
Sen. Gay G. Kernan
Sen. Carroll H. Leavell
Sen. Linda M. Lopez
Rep. Javier Martínez
Sen. Steven P. Neville

Rep. Greg Nibert
Sen. Nancy Rodriguez
Rep. Angelica Rubio
Rep. Patricio Ruiloba
Rep. Tomás E. Salazar
Sen. John Arthur Smith

Staff

Jon Boller, Legislative Council Service (LCS)
Shawna Casebier, LCS
Jeret Fleetwood, LCS

Guests

The guest list is in the meeting file.

Handouts

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

Monday, June 26

Senator Cervantes began the meeting by having members of the committee, audience and staff introduce themselves.

Discussion of 2017 Interim Work Plan and Itinerary

Senator Cervantes noted that the next committee meeting was tentatively scheduled for July 6-7. He suggested moving the meeting from July to September 5-6. He also indicated that he would like the committee to look at a variety of topics concerning geographically varied locations.

The committee developed a work plan, with individual members adding topics they would like the committee to address. The committee also selected the following meeting dates and locations:

- August 1-2 Las Vegas;
- September 5-6 Silver City;
- October 12-13 Socorro; and
- November 13-14 Santa Fe.

Senator Cervantes also discussed his expectations as chair of the committee, noting that he would prefer to hear more than one side of an issue and that agendas not be packed with presenters so that the committee would have more time to discuss issues.

The committee adopted the work plan and revised meeting dates without objection.

There being no further business, the committee adjourned at 2:35 p.m.

Revised: July 31, 2017

**TENTATIVE AGENDA
for the
SECOND MEETING IN 2017
of the
WATER AND NATURAL RESOURCES COMMITTEE**

**August 1-2, 2017
New Mexico Highlands University Student Union Building
Las Vegas**

Tuesday, August 1

- 9:00 a.m. **Call to Order and Welcome**
—Senator Joseph Cervantes, Chair, Water and Natural Resources
Committee
—Dr. Sam Minner, President, New Mexico Highlands University
- 9:30 a.m. (1) **Drinking Water Supply Challenges in Rural New Mexico**
—Robert Kirk, Hydrologist, Department of Water Resources, Navajo Nation
—Kristin Green, Hydrologist, Interstate Stream Commission
—Arianne Singer, Deputy General Counsel, Office of the State Engineer
—Bill Conner, Executive Director, New Mexico Rural Water Association
- 10:45 a.m. (2) **Department of Environment Water Infrastructure Team Report and
State Auditor Report on Water Infrastructure Funds**
—Timothy Keller, State Auditor
—Michaelene Kyrala, Department of Environment
- 12:30 p.m. **Lunch**
- 1:45 p.m. (3) **Acequia Project Funding and Water Rights Issues**
—Paula Garcia, Executive Director, New Mexico Acequia Association
—Ralph Vigil, Chair, Acequia Commission
- 3:00 p.m. (4) **Resilience in New Mexico Agriculture Project**
—Heather Balas, President, New Mexico First
—David Kraenzel, New Mexico State University Cooperative Extension
Service
- 5:00 p.m. **Recess**

Wednesday, August 2

- 9:00 a.m. (5) **Indian Water Rights Settlement Progress and Next Steps for the Aamodt Settlement**
- Arianne Singer, Deputy General Counsel, Office of the State Engineer
 - Charlie Dorame, Chair, Northern Pueblos Tributary Water Rights Association
 - James R. Mountain, Governor, Pueblo of San Ildefonso
 - Mark Mitchell, Governor, Pueblo of Tesuque
 - Speaker TBA, Pueblo of Nambe (invited)
 - Speaker TBA, Pueblo of Pojoaque (invited)
 - Sandra Ely, Project Manager, Santa Fe County Utilities, Santa Fe County
 - John Utton, Attorney, Santa Fe County
 - Rick Carpenter, Acting Water Division Director, City of Santa Fe
 - Marcos Martinez, Attorney, City of Santa Fe
 - Josh Mann, Office of the Solicitor, Department of the Interior
- 10:30 a.m. (6) **Aamodt Settlement and Road Easement Issues**
- Gregory Shaffer, Attorney, Santa Fe County (invited)
 - Dave Neal, Northern New Mexicans Protecting Land, Water, and Rights
 - John Fox, President, Southwestern Title and Escrow, Inc.
- 12:00 noon **Adjourn**

**MINUTES
of the
SECOND MEETING
of the
WATER AND NATURAL RESOURCES COMMITTEE**

**August 1-2, 2017
Student Union Building, New Mexico Highlands University
Las Vegas**

The second meeting of the Water and Natural Resources Committee was called to order by Senator Joseph Cervantes, chair, on August 1, 2017 at 9:30 a.m. in the Student Union Building at New Mexico Highlands University in Las Vegas.

Present

Sen. Joseph Cervantes, Chair
Rep. Bealquin Bill Gomez, Vice Chair
Rep. Matthew McQueen, Vice Chair
Rep. Gail Armstrong
Rep. Paul C. Bandy
Rep. Randal S. Crowder
Rep. Derrick J. Lente
Rep. Rodolpho "Rudy" S. Martinez
Sen. Cliff R. Pirtle (8/2)
Sen. Sander Rue
Rep. Nathan P. Small
Sen. Jeff Steinborn (8/1)
Sen. Mimi Stewart
Rep. James R.J. Strickler
Rep. Carl Trujillo
Sen. Pat Woods (8/1)
Rep. Bob Wooley

Advisory Members

Sen. Craig W. Brandt
Sen. Pete Campos
Sen. Carlos R. Cisneros
Rep. Sharon Clahchischilliage
Rep. Harry Garcia (8/1)
Rep. Larry A. Larrañaga
Sen. Linda M. Lopez (8/1)
Rep. Sarah Maestas Barnes (8/1)
Rep. Bill McCamley (8/1)
Sen. Gerald Ortiz y Pino (8/1)
Rep. Debbie A. Rodella (8/2)

Absent

Sen. Benny Shendo, Jr.

Rep. George Dodge, Jr.
Rep. Rebecca Dow
Rep. Brian Egolf
Rep. Candy Spence Ezzell
Sen. Ron Griggs
Rep. Yvette Herrell
Sen. Stuart Ingle
Rep. D. Wonda Johnson
Sen. Gay G. Kernan
Sen. Carroll H. Leavell
Rep. Rick Little

Rep. Tomás E. Salazar

Rep. Javier Martínez
Sen. Cisco McSorley
Sen. Steven P. Neville
Rep. Greg Nibert
Sen. Mary Kay Papen
Sen. Nancy Rodriguez
Rep. Angelica Rubio
Rep. Patricio Ruiloba
Sen. William E. Sharer
Sen. John Arthur Smith
Sen. Peter Wirth

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

Staff

Jon Boller, Legislative Council Service (LCS)
Shawna Casebier, LCS
Jeret Fleetwood, LCS
Maria Alaena Romero, LCS

Guests

The guest list is in the meeting file.

Handouts

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

Tuesday, August 1

Call to Order and Welcome

Senator Cervantes began the meeting by having members of the committee introduce themselves.

Dr. Sam Minner, president, New Mexico Highlands University, welcomed the committee and provided an overview of New Mexico Highlands University. He emphasized that the school focuses on affordability, social mobility and engagement in learning for its students.

Questions and comments from the committee included:

- enrollment declines track with declines in the rural population in New Mexico; and
- Dr. Minner is working to address concerns raised regarding accreditation for the college.

Drinking Water Supply Challenges in Rural New Mexico

Robert Kirk, hydrologist, Department of Water Resources, Navajo Nation, provided the committee with an overview of the Navajo-Gallup Water Supply Project, noting that construction of the water system has already generated about 900 jobs in the area. The system is designed to serve a population of 250,000, including the city of Gallup, Navajo Nation communities in New Mexico and Window Rock, Arizona, and the southwest area of the Jicarilla Apache Nation, he said. The project is 40 percent complete, with completion expected by December 2024. The project appropriation ceiling in 2017 dollars is \$1.135 billion, he explained, with \$50 million coming from the state.

Arianne Singer, deputy general counsel, Office of the State Engineer (OSE), also provided the committee with a brief overview of the project. She explained that it is the largest drinking water project in New Mexico and one of the largest in the United States. Ms. Singer noted that the state's funding is being used for the city of Gallup's water supply and that the state will have met its funding obligations once it is credited with its expenditures on the pipelines constructed using state funds.

Bill Conner, executive director, New Mexico Rural Water Association (NMRWA), provided the committee with an overview of rural and public water systems in New Mexico, noting that of the 1,095 public water systems in the state, 85 percent of them serve populations of 500 or less. Mr. Conner noted that all water and wastewater systems face challenges, such as aging infrastructure and changing requirements for compliance with safety regulations, emphasizing that those challenges are often amplified for smaller, rural systems. He went on to discuss training and technology issues facing rural systems. Mr. Conner also discussed potential future challenges, such as maintaining adequate cash flow and reserves to cover both day-to-day operations and emergencies.

Questions and comments from the committee included:

- the Navajo-Gallup Water Supply Project is not intended to supply agricultural water;
- 45.4 million gallons per day will be treated by the water system;
- many of the construction jobs for the water system will go to in-state contractors;
- about one-half of the residents of Navajo chapters still have to haul water from elsewhere;
- the NMRWA trains water system operators, but some New Mexico colleges also offer some programs;
- the San Juan-Chama Drinking Water Project is not part of the Navajo settlement;
- water will be supplied to the Window Rock area, but it will come from Arizona;
- the Navajo-Gallup project will be built to the state line; and
- the Navajo Nation is also appropriating funding for the project.

Department of Environment (NMED) Water Infrastructure Team Report and State Auditor Report on Water Infrastructure Funds

Timothy Keller, state auditor, and Sanjay Bhakta, deputy state auditor, outlined the functions of the Office of the State Auditor (OSA) and explained governmental, proprietary and fiduciary funds and fund balance reports, particularly for water-related infrastructure funds.

Auditor Keller began by discussing the basic functions of the OSA, including its constitutional authority, noting that there are 1,540 government entities submitting audits to the office.

Mr. Bhakta provided the committee with an overview of fund balance and net position classifications. He explained investment in capital assets and restricted and unrestricted net positions, noting that restricted net positions are those that have limitations placed on them by creditors, grantors, contributors, laws and regulations, as well as constitutional provisions, while unrestricted positions are neither restricted nor invested in capital assets.

Auditor Keller went on to discuss state agency fund balance reports, noting that the OSA has reviewed 431 funds of 91 state agencies and the state General Fund to better understand overall fund balance trends and to provide accountability and transparency. He noted that the main types of funds with significant remaining balances are unspent water-related infrastructure funds (totaling over \$512 million) and capital project balances (increasing since 2014 to about \$1.2 billion). Auditor Keller also pointed out that unspent water-related infrastructure balances continue to grow. He also identified several stagnant infrastructure funds, noting that while the legislature swept about \$900 million from various state funds, the governor vetoed about \$62 million of that money.

Michaelene Kyrala, NMED, noted that several executive agencies informed the governor that the legislature had swept too much out of their funds for them to be able to perform their necessary functions, which is why the governor vetoed some of the fund sweeps proposed by the legislature. Ms. Kyrala went on to discuss the NMED's formation of the Water Infrastructure Team (WIT), composed of representatives from various governmental agencies and nongovernmental organizations, and the team's initiatives. She noted that the WIT created several tools to help local governments manage their assets and identify potential funding sources. She also discussed a survey developed by the WIT to identify statewide water infrastructure needs and a public relations campaign called "The Value of Water". Ms. Kyrala also discussed some of the funding challenges the WIT has identified, such as the preference of most agencies to seek grants and capital outlay funding instead of securing loans for which they qualify.

Ms. Kyrala also provided the committee with a copy of the NMED's July 2017 Infrastructure Development Report, a publication of the department's Construction Programs Bureau. The report lists water, wastewater and solid waste projects administered by the bureau,

breaking them down by county and offering notes regarding each project's funding year, funding source, funding amount and status.

Questions and comments from the committee included:

- about \$300 million is available for wastewater funding, with authorized agencies also eligible for loans from the NMED;
- 20 percent of the \$300 million comes from state funds;
- a significant amount of the stagnant money identified by the OSA is actually federal money;
- funding for the Carlsbad brine well project was secured by the legislature changing the purpose of some unspent funds;
- the OSA does not have the staff to determine how much unspent money can be accessed;
- in the 1980s, the OSA began reviewing audits rather than auditing agencies; and
- the tiered audit structure means smaller entities require smaller, less costly audits, but the tiers could be better defined.

Acequia Project Funding and Water Rights Issues

Paula Garcia, executive director, New Mexico Acequia Association (NMAA), explained that acequias are centuries-old water delivery systems, noting that there are about 633 acequias in 20 New Mexico counties. Ms. Garcia highlighted the impact of acequias on New Mexico's agricultural industry, both in terms of livestock and crops. She also discussed funding for acequia projects, noting that a major concern of the NMAA is the short- and long-term solvency of the New Mexico Irrigation Works Construction Fund, which is being used for the operational expenses of the OSE and the Interstate Stream Commission. Other NMAA concerns included capital outlay reform, water rights adjudications, water rights transfers and the role of acequias in local water management decisions.

Ralph Vigil, chair, Acequia Commission, gave an overview of the makeup, function and history of the commission, which he pointed out is a separate body from the NMAA. The commission is tasked with advising the Interstate Stream Commission, the governor and the legislature on pending legislation, he said. He also discussed some of the funding concerns of the commission, such as bottlenecks that occur during the capital outlay process. Mr. Vigil pointed out that it is difficult for most small acequias to navigate the Water Trust Board application process. Other concerns raised by Mr. Vigil included recent distributions from the Acequia and Community Ditch Fund, water rights transfers that did not allow for sufficient time to protest and the expansion of wilderness areas into traditional acequia communities.

William Gonzales, a parciante on a local acequia and member of the Acequia Commission, discussed concerns of water users on the Gallinas River since the New Mexico Supreme Court's 2004 ruling on the Pueblo Rights Doctrine. He explained that since 2004, significant amounts of agricultural land have been taken out of production. Mr. Gonzales also

noted that water users are trying to come to an agreement with the City of Las Vegas to share water. He also asked the legislature to help area water users by improving the adjudication process and by funding critical water infrastructure projects.

Questions and comments from the committee included:

- there is no Native American representation on the NMAA, but the association does collaborate on issues relating to Native American water rights;
- as a result of the *Abeyta* settlement, acequias near Taos have benefited by receiving more water rights, but no additional money for infrastructure has been provided;
- transfer of one water right can affect water delivery for an entire acequia;
- funding for renovation of Bradner Dam;
- federal money available for water infrastructure projects, including an agreement New Mexico has to provide some funding through soil and water conservation districts;
- changes in archaeological clearances for acequia projects; and
- use of the New Mexico Irrigation Works Construction Fund for operations violates its intended purpose.

Resilience in New Mexico Agriculture Project

Heather Balas, president, New Mexico First, explained that New Mexico First is a nonprofit, nonpartisan public policy organization seeking to advance both research and citizen input in a number of policy areas. She also noted that New Mexico First partnered with the New Mexico State University (NMSU) Cooperative Extension Service to study agriculture in New Mexico and develop a plan for resilience in agriculture. Ms. Balas explained that such a plan was necessary for a number of reasons, including an aging population of farmers and ranchers; increasing pressure on limited water resources; increasing land and energy prices; and complex regulations. She went on to note that development of the agricultural resilience plan involved stakeholder input, a background report, development of an actual plan and feedback on the plan. Ms. Balas also discussed various approaches in other states and their results. She went on to discuss various components of the agricultural resilience plan.

David Kraenzel, NMSU Cooperative Extension Service, provided the committee with the parts of the agricultural resilience plan regarding the next generation of farmers and ranchers. He discussed various initiatives to help encourage more young and beginning farmers in New Mexico, including educational and financial assistance.

Ms. Balas also discussed land and water issues in encouraging more farming and ranching, such as improving the legal process surrounding water rights, watershed restoration and balancing the needs of both habitats and agriculture.

Mr. Kraenzel discussed the agricultural supply chain, which he explained would help tap agriculture's potential through export opportunities and increased revenue. He mentioned New

Mexico branding and verification, local food procurement and building capacity for food processors and distributors as examples.

Ms. Balas discussed agricultural economic viability, which she explained addresses the need to support and adopt regulations and programs that support agriculture. Examples she mentioned included workers' compensation and insurance, tax regulations impacting agriculture and agricultural leases and lending. She also discussed next steps for the agricultural resilience plan, which include a steering committee to oversee implementation of continued community involvement in the plan.

Questions and comments from the committee included:

- the need for better data on the economic impact of farmers' markets;
- the only United States Department of Agriculture meat processing facility in New Mexico is in Moriarty, which makes the supply chain somewhat complicated;
- overproduction and uncertainty in agriculture are largely driven by the weather, as a large hail storm can devastate entire crops;
- it can be less expensive to feed cattle in Kansas and Nebraska than in New Mexico;
- perceived competition between water conservation efforts and "use-it-or-lose-it" water rights in New Mexico;
- the shrinking sheep ranching industry in New Mexico;
- New Mexico First is happy to work with potential sponsors on bills regarding the report's recommendations, as well as seeking a message from the governor making bills germane to the upcoming session;
- agricultural businesses are typically high-risk and low-profit;
- loan repayment programs for farmers and ranchers;
- the importance of urban farming and K-12 education in cities on the importance of agriculture;
- there are about 43 million acres of farmland in New Mexico;
- crops in New Mexico have shifted from items such as watermelons and tomatoes to hay, wheat and corn;
- the increasing average age of farmers; and
- issues concerning water savings from conservation.

Minutes

On a motion made, seconded and passed, the minutes of the committee's June meeting were approved.

Recess

The committee recessed at 5:15 p.m.

Wednesday, August 2

Indian Water Rights Settlement Progress and Next Steps for the *Aamodt* Settlement

Ms. Singer began by explaining that the *Aamodt* water rights adjudication of the Nambe-Pojoaque-Tesuque (NPT) stream system, which, after 51 years, has been one of the longest-running federal cases, is nearing completion, with a final decree issued in July 2017. Ms. Singer thanked the legislature for its continued support of the process and discussed the settlement's major components, particularly as they relate to the state's obligations, which include implementation of the *Aamodt* settlement agreement and partial funding for construction of a regional water system. Ms. Singer pointed out that an appropriation of \$18 million must be made during the 2018 legislative session in order for construction to begin on schedule.

Phillip Perez, governor, Pueblo of Nambe, also began by noting that, after over 50 years of litigation, the final decree represents another step toward bringing the *Aamodt* case to a close. He noted that the settlement recognizes both the needs of northern pueblos for water to satisfy their permanent homeland needs, as well as the need for safe, reliable and secure water delivery for all area residents, both within and outside of pueblo boundaries. Governor Perez explained that the regional water system is the project at the center of the settlement and that the Pueblo of Nambe is working with federal, state and local governments to ensure that all of the analyses and designs required for the project are completed in a timely fashion.

Joseph Talachy, governor, Pueblo of Pojoaque, also noted that the final decree brings an end to decades of litigation. He acknowledged that there are some water quality concerns in the Pojoaque Valley, but said that testing water quality would begin soon.

Sandra Ely, project manager, Santa Fe County Utilities, Santa Fe County, provided the committee with a map of the proposed regional water system and a time line for the project and associated costs. She also noted Santa Fe County's support for the settlement and the regional water system. Ms. Ely explained that the settlement presents choices for domestic well owners, including allowing users to keep their wells and connect to the regional water system. She also discussed other benefits of the settlement, such as protection of pueblo water rights, ecosystem health and access to a safe, reliable source of water. Ms. Ely also noted the jobs and economic development that would come to the area with construction of the regional water system. She also pointed out that implementation of the settlement is far from complete, as state and county funding still needs to be secured before construction can begin on the water system in June 2018. Ms. Ely noted that a provision of the settlement requires the water system to be completed by 2024 or the parties will have to go back to court.

Josh Mann, Office of the Solicitor, United States Department of the Interior, informed the committee that Alan Mikkelsen, acting commissioner, Bureau of Reclamation, United States Department of the Interior, will host a public meeting on the settlement in August. Mr. Mann explained that in 2010, Congress authorized \$177.3 million in federal funds for the project but

that construction cannot begin until the state and county commit to funding their respective shares of the project.

Marcos Martinez, assistant city attorney, City of Santa Fe, explained that, although the city's role in the settlement is relatively small, the city has been an active participant in the settlement and has significant interest in the success of both the settlement and the regional water system. He also noted that the city owns 150 acre-feet of surface water rights on the NPT stream systems, which it uses to offset ground water pumping. Mr. Martinez also said that the city hoped that its Buckman Direct Diversion Facility could serve as a model for the diversion facility of the regional water system.

Questions and comments from the committee included:

- area boundaries for the NPT Basin;
- water rights in the NPT Basin are fully adjudicated and appropriated;
- closed-door negotiations of some parts of the settlement;
- some communities, such as Tano Road, Chupadero and Rio en Medio, will not be served by the regional water system;
- both Santa Fe County and the City of Santa Fe have no current plans to connect to the water system;
- adjudication is to determine water rights, not a quiet title action;
- the OSE used more than double the state average in determining how much water well users could pump under the settlement;
- notice provided from the OSE to well owners and other non-Native American water users regarding the settlement;
- Santa Fe County has committed some transferred water rights to the NPT Basin but also wants to retain some water right flexibility throughout the county;
- landowners are unable to build new homes until after the water system is built, which may be causing land to lose value;
- the state's total funding commitment is about \$45 million, and the legislature appropriating \$18 million during the 2018 session would count toward the total;
- additional costs to the state could include connecting users to the regional system, but only the \$45 million is required by the settlement;
- no additional water rights transfers are required to implement the settlement;
- the willingness of tribes to come to the negotiating table and the threat of a priority call have helped make the settlement successful;
- contractors for the regional water system construction are subject to the state's gross receipts tax;
- some older wells may pump more water than new ones under the settlement;
- there are no restrictions on pueblos being able to lease their water rights;
- the water system will operate under a joint powers agreement between Santa Fe County and the pueblos;
- fire suppression is also part of the regional water system; and

- the settlement was developed, in part, because parties recognized the futility of litigation.

***Aamodt* Settlement and Road Easement Issues**

John Fox, president, Southwestern Title and Escrow, provided the committee with an overview of the issues regarding county road easements on pueblo lands. He explained that the Bureau of Indian Affairs (BIA) has recently asserted that all Santa Fe County roads within the exterior boundaries of the Pueblo of San Ildefonso may be in trespass. Mr. Fox went on to note that, as a result of the BIA's assertion of trespass, title insurance companies will not underwrite policies to a property that does not have legal access to it without an exception to coverage of access. Such exceptions tend to be a red flag to lenders. He said that the situation has made it difficult for people to buy or sell property in the area. Mr. Fox went on to note that several meetings had already been held on the issue, and that while there have been somewhat productive discussions, no simple, concrete answer has been developed. He added that the issue exists for 500 to 700 parcels of land.

Dave Neal, Northern New Mexicans Protecting Land, Water, and Rights, read a letter from the Pueblo of San Ildefonso to Santa Fe County in which the pueblo asserts trespass on the county roads within its boundaries. He asked that the legislature not appropriate any additional funding for the *Aamodt* settlement until the issue has been resolved. Mr. Neal also suggested that the matter has already been resolved via the 1924 federal Pueblo Lands Act, amended in 1933, which he said provided access to private properties.

Beverly Duran-Cash, a landowner, also noted that people affected by the assertion of trespass cannot sell their lands, which has created a divide between Native American and non-Native American residents. She said that although residents of the NPT Basin are 80 percent non-Native American, most non-Native American residents were left out of the closed-door settlement negotiations. Ms. Duran-Cash explained that the Pueblo of San Ildefonso maintains that, per the settlement, it must own all rights of way in order to install water lines for the regional water system. She also raised concerns regarding water quality, noting that many wells in the basin are contaminated.

Mr. Neal said that a survey conducted by the Pueblo of San Ildefonso contained a number of mistakes. He also said that the water system needs further study, noting that some residents will not be served by it while many others will elect not to hook up to it.

Gregory Shaffer, an attorney for Santa Fe County, explained that the easement issue is largely a federal one but emphasized that discussions need to move forward. He also explained that it is the position of the Santa Fe County Board of County Commissioners that a recent meeting to discuss the easement issue did not violate the Open Meetings Act. Mr. Shaffer went on to note some of the benefits of the regional water system, such as its scalability and that hookups to the system will be covered by the state.

Questions and comments from the committee included:

- potential solutions to the easement issue are for congressional action or action by the BIA;
- the federal Pueblo Lands Act likely does not cover this issue;
- infrastructure for the regional water system will mostly be on Pueblo of San Ildefonso land;
- tribes are rarely appreciated for their contributions and sacrifices to the state;
- the process for the issue to work itself out could be a lengthy one;
- a similar issue has arisen with the Pueblo of Santa Clara, but the pueblo has been willing to participate in developing a solution;
- residents of the Pueblo of Nambe have been denied title insurance as well;
- Santa Fe County has initiated talks with other pueblos about potential issues that could threaten the settlement;
- Santa Fe County has articulated its stance in a resolution that states that it will not appropriate money to the settlement until this issue is resolved; and
- the *Aamodt* settlement is still somewhat fragile as these issues continue to arise and need to be negotiated.

Adjournment

There being no further business, the committee adjourned at 12:50 p.m.

Revised: August 31, 2017

**TENTATIVE AGENDA
for the
THIRD MEETING IN 2017
of the
WATER AND NATURAL RESOURCES COMMITTEE**

**September 5-6, 2017
Grant County Business and Conference Center
3031 U.S. Highway 180 E.
Silver City**

Tuesday, September 5

- 9:00 a.m. **Call to Order and Welcome**
—Senator Joseph Cervantes, Chair, Water and Natural Resources
 Committee
—Ken Ladner, Mayor, Silver City
—Brett Kasten, Chairman, Grant County Commission
—Linda Pecotte, Grant County Prospectors
- 9:15 a.m. (1) **Salt Cedar Eradication and the Salt Cedar Beetle**
—Carol Sutherland, Extension Entomologist, New Mexico State University
 (NMSU); State Entomologist, New Mexico Department of Agriculture
—Nyleen Troxel Stowe, Director of Special Projects, Socorro Soil and
 Water Conservation District
—Will Kolbenschlag, Range Technician, Socorro Soil and Water
 Conservation District
—Speaker TBA, Carlsbad Soil and Water Conservation District
- 10:30 a.m. (2) **Regional and State Water Plan Progress**
—Lucia Sanchez, Water Planning Program Manager, Interstate Stream
 Commission (ISC)
—Priscilla Lucero, Executive Director, Southwest New Mexico Council of
 Governments
- 12:00 noon **Lunch**
- 1:15 p.m. (3) **Southwest New Mexico Ground Water Hydrogeology Update;
Statewide Water Assessment and Water Budget**
—Stacy Timmons, Hydrogeologist and Aquifer Mapping Program Manager,
 New Mexico Bureau of Geology and Mineral Resources, New Mexico
 Institute of Mining and Technology
—Sam Fernald, Director, Water Resources Research Institute, NMSU

2:30 p.m. (4) [Proposed Transfer of Mesilla Valley Bosque State Park to the Department of Game and Fish](#)
—Nora L. Barraza, Mayor, Town of Mesilla
—Alexa Sandoval, Director, Department of Game and Fish
—Ken McQueen, Secretary, Energy, Minerals and Natural Resources Department (EMNRD)
—Matthias Sayer, Deputy Secretary, EMNRD
—Kevin Bixby, Executive Director, Southwest Environmental Center

4:15 p.m. (5) [Carlsbad Brine Well Collapse Remediation and Implementation of Legislation](#)
—Ken McQueen, Secretary, EMNRD

5:15 p.m. **Recess**

Wednesday, September 6

9:00 a.m. (6) [Arizona Water Settlements Act Implementation, Budget and Issues: New Mexico Central Arizona Project \(CAP\) Entity Plans; Southwest Region Water Project Alternatives](#)
—Kim Abeyta-Martinez, Program Manager, ISC
—Ali Effati, Gila Basin Manager, ISC
—Anthony Gutierrez, Executive Director, New Mexico CAP Entity
—Priscilla Lucero, Executive Director, Southwest New Mexico Council of Governments
—Harry Browne, Grant County Commissioner, District 5

12:00 noon **Adjourn**

**MINUTES
of the
THIRD MEETING
of the
WATER AND NATURAL RESOURCES COMMITTEE**

**September 5-6, 2017
Grant County Business and Conference Center
Silver City**

The third meeting of the Water and Natural Resources Committee was called to order by Senator Joseph Cervantes, chair, on September 5, 2017 at 9:30 a.m. in the Grant County Business and Conference Center in Silver City.

Present

Sen. Joseph Cervantes, Chair
Rep. Bealquin Bill Gomez, Co-Vice Chair
Rep. Matthew McQueen, Co-Vice Chair
Rep. Gail Armstrong
Rep. Paul C. Bandy
Rep. Rodolpho "Rudy" S. Martinez
Sen. Sander Rue
Rep. Nathan P. Small
Sen. Jeff Steinborn
Sen. Mimi Stewart
Rep. James R.J. Strickler
Rep. Carl Trujillo (9/5)
Sen. Pat Woods
Rep. Bob Wooley

Advisory Members

Sen. Craig W. Brandt
Rep. Candy Spence Ezzell
Rep. Harry Garcia (9/5)
Rep. D. Wonda Johnson
Rep. Larry A. Larrañaga
Rep. Rick Little
Rep. Bill McCamley
Sen. Gerald Ortiz y Pino (9/5)
Sen. Mary Kay Papen (9/5)
Rep. Debbie A. Rodella
Rep. Angelica Rubio
Sen. Peter Wirth

Absent

Rep. Randal S. Crowder
Rep. Derrick J. Lente
Sen. Cliff R. Pirtle
Sen. Benny Shendo, Jr.

Sen. Pete Campos
Sen. Carlos R. Cisneros
Rep. Sharon Clahchischilliage
Rep. George Dodge, Jr.
Rep. Rebecca Dow
Rep. Brian Egolf
Sen. Ron Griggs
Rep. Yvette Herrell
Sen. Stuart Ingle
Sen. Gay G. Kernan
Sen. Carroll H. Leavell
Sen. Linda M. Lopez
Rep. Sarah Maestas Barnes
Rep. Javier Martínez

Sen. Cisco McSorley
Sen. Steven P. Neville
Rep. Greg Nibert
Sen. Nancy Rodriguez
Rep. Patricio Ruiloba
Rep. Tomás E. Salazar
Sen. William E. Sharer
Sen. John Arthur Smith

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

Staff

Jon Boller, Legislative Council Service (LCS)
Shawna Casebier, LCS
Jeret Fleetwood, LCS
Maria Alaena Romero, LCS

Guests

The guest list is in the original meeting file.

Handouts

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

Tuesday, September 5

Call to Order and Welcome

Senator Howie C. Morales welcomed the committee to Silver City and thanked committee members for coming to southwestern New Mexico. He briefly discussed some of the water-related issues, noting efforts made by local communities to conserve water with an eye toward regionalizing water supply systems.

Several county commissioners echoed Senator Morales' comments, while also noting the importance of the mining industry to the local economy.

Salt Cedar Eradication and the Salt Cedar Beetle

Carol Sutherland, extension entomologist, New Mexico State University (NMSU), and state entomologist, New Mexico Department of Agriculture, provided the committee with an overview of the proliferation of various non-native phreatophyte species, such as the salt cedar, along New Mexico waterways, noting that they tend to consume significant amounts of water, which can impact surface water flows and displace native species. She went on to discuss various means of phreatophyte control, noting that the use of several species of the *Diorhabda* beetle has proven particularly effective in attacking salt cedar, although mechanical removal of

dead trees is still necessary. Dr. Sutherland explained that four *Diorhabda* species have been introduced in the western United States, and even though New Mexico was denied release permits for the beetles, all four species that were released in neighboring states have migrated to New Mexico. The resulting die-off of salt cedar on certain stretches of the Rio Grande is particularly noticeable, she said, with large swaths of orange-colored trees lining the river. These trees may not be completely dead, she explained, although after five to seven years of attack by the beetles, they most likely will die off. Eradication of salt cedar presents other problems, such as fire risk and habitat loss, she noted.

Nyleen Troxel Stowe, director of special projects for the Socorro Soil and Water Conservation District, said that although *Diorhabda* beetles are now widely spread throughout the state and have defoliated trees, they have not yet caused significant mortality. Chemical control is no longer feasible, she explained, since herbicides cannot enter the trees in sufficient quantity due to defoliation caused by the beetles, and the beetles are fatally sensitive to herbicides. Mechanical treatment is still necessary, she said, and the Socorro Soil and Water Conservation District has worked with several landowners to reclaim farmland from large stands of salt cedar. Ms. Troxel Stowe gave several examples of projects along the Rio Grande where the district has worked with local farmers on reclamation projects.

Judy Bock and Judith McCollaum, Carlsbad Soil and Water Conservation District, outlined salt cedar treatment efforts on the Pecos River in southeastern New Mexico. They explained that the Pecos River Non-Native Phreatophyte Management Program began in the late 1990s, and from 2002 to 2006, approximately 18,000 acres were treated with aerial application of herbicides. The Carlsbad Soil and Water Conservation District has continued with mechanical treatments for the removal of salt cedar since 2006, and it continues to restore riparian habitat along the Pecos River and its tributaries, they explained.

Questions and comments from the committee included:

- beetles take about seven years to kill a tree, and they do not attack other plant species;
- in about 20 years, land near the river bank currently populated by salt cedar and other invasive species should see the return of native plant species;
- salt cedar and other invasive species may be used nearby for firewood, but the material is difficult to transport long distances as an economically viable fuel or mulch source;
- some landowners along the Pecos River have been reluctant to participate in salt cedar removal projects; and
- bird nesting season, particularly for the southwestern willow flycatcher (a protected species), and other habitat issues complicate treatment of some areas at certain times of the year.

Regional and State Water Plan Progress

Lucia Sanchez, water planning program manager, Interstate Stream Commission (ISC), provided the committee with an update on the regional and state water planning process. She began with an overview of the process and its importance, noting the benefits of water planning and acknowledging past planning efforts. Ms. Sanchez went on to discuss both the previous and current processes for developing water plans and how they relate to development of a state water plan for 2018. She pointed out the involvement of various stakeholders at multiple points in the process, as well as collaborative efforts between the ISC and various other entities throughout the state.

Priscilla Lucero, executive director, Southwest New Mexico Council of Governments, echoed Ms. Sanchez's comments, emphasizing the importance of updating plans and projects as the process continues, particularly as a means of showing that projects have been carefully planned.

Questions and comments from the committee included:

- funding issues associated with the water planning process and the importance of providing adequate funding for it;
- the importance of input from both governmental agencies and nongovernmental stakeholders in developing regional plans;
- the location of steering committee meetings;
- participation of federal agencies in the water plan development process; and
- some transfers of water rights, particularly from one basin to another, could complicate the water planning process.

Southwestern New Mexico Ground Water Hydrogeology Update; Statewide Water Assessment and Water Budget

Stacy Timmons, hydrogeologist and aquifer mapping program manager, New Mexico Bureau of Geology and Mineral Resources (NMBG), New Mexico Institute of Mining and Technology, provided the committee with an overview of the aquifer mapping process, pointing out its non-regulatory approach and unbiased interpretation of impartial data. She went on to discuss some of the projects the aquifer mapping program has been involved with in 2017, including long-term monitoring of the Animas River aquifer and the San Agustin Plains aquifer and ground-water-level monitoring in La Cienega. Ms. Timmons also discussed the hydrogeology of southwest New Mexico, noting that the geologic complexity of the region makes it difficult to accurately estimate both available ground water resources and surface water storage options.

The NMBG, in conjunction with the Water Resources Research Institute (WRRI) at NMSU, is conducting a statewide water assessment, part of which involves tracking ground water levels and storage changes. For example, in the Mimbres Basin, there has been a two million acre-foot storage loss since the 1960s, with a ground water level decline of more than 100

feet from 1910 to 1990 in some wells, she explained. However, she noted, declines in ground water levels are variable in the Mimbres Basin, with some areas more stressed than others. Continued monitoring is vital to understanding the effects of climate change on recharge to local aquifers and consequent increases in demand for ground water due to predicted decreases in the availability of surface water, she said.

Sam Fernald, director, WRRI, NMSU, explained that the WRRI has compiled available water data and developed an interactive visualization tool, which is publicly available, to help users compare multiple water use variables and scenarios. He said that conducting a statewide water assessment is critical for proper planning for the use of water resources in the state. Developing a statewide water budget involves tracking and combining a number of data sources and assessments from state and federal agencies, universities and other entities across the state, he explained. Data sources include ground water level and storage changes, ground water recharge assessments, remotely sensed evapotranspiration and precipitation assessments, surface water flow statistics, water use reports and the statewide systems dynamic water budget.

Questions and comments from the committee included:

- data quality issues complicate analysis of ground water in the Mesilla Basin;
- data outreach specialists could help decision makers, including the legislature, use available mapping data to inform decisions;
- some funding for the WRRI was vetoed by the governor over concerns regarding funding sources;
- a "data gap" exists regarding the quality of brackish water in aquifers;
- the potential effect of watershed restoration on available surface water resources and recharge of ground water in aquifers;
- there are indicators of long-term deficits in some aquifers, suggesting that rainfall alone is not sufficient to recharge them;
- the availability of tools and training to the public could increase citizen involvement in aquifer mapping programs and prove useful use in decision making; and
- aquifer recharge is driven mostly by snowpack levels and their effect on surface flows.

Proposed Transfer of Mesilla Valley Bosque State Park to the Department of Game and Fish

Kevin Bixby, executive director, Southwest Environmental Center, began by providing the committee with background information regarding the creation of the Mesilla Valley Bosque State Park along the Rio Grande near Mesilla in Dona Ana County. He outlined the park's location and the various funding mechanisms used to create it, emphasizing the significant amount of riparian restoration involved in its development. Mr. Bixby went on to explain that, while the State Parks Division of the Energy, Minerals and Natural Resources Department (EMNRD) initially managed the park, concerns over ongoing funding of park operations prompted the EMNRD to initiate the transfer of the park to the Department of Game and Fish

(DGF), which raised a number of concerns, particularly with regard to notice provided to local entities and stakeholders and their opportunity to participate in the decision-making process. Also of concern, he said, is whether the change in management will change the purposes of the park and the educational focus of the park. As he understood the plan, classrooms would be converted to office space for DGF employees, and the exhibit hall would be converted to a meeting room.

Nora L. Barraza, mayor, Town of Mesilla, noted that while the DGF has indicated that it plans to make education a focal point in its management of the park and that she agrees with the concept, she has serious concerns about the lack of notification to local entities from the EMNRD on its plans to transfer the park. She wanted to know if the DGF could guarantee that it would carry on the current programs and mission of the park.

Ken McQueen, secretary, EMNRD, noted that some parks present more challenges than others in terms of operations. He said that the Mesilla Valley Bosque State Park has been particularly challenging, given the budget problems of the past few years. He said that the transfer to the DGF is a unique solution to the problem.

Matthias Sayer, deputy secretary, EMNRD, also provided the committee with background information on the park. He went on to explain that both the EMNRD and the DGF are heavily involved in connecting people to the outdoors and that while most state parks tend to offer consumptive uses, such as camping, the Mesilla park does not. Mr. Sayer said that volunteers currently are keeping the park running, especially in regard to its educational programs, and that the DGF would continue those programs. He also pointed out that a key benefit of transferring the park is that it would be free for the public to use. He said that the EMNRD does not want to close the park, a prospect that other states, besides New Mexico, are facing due to budget shortfalls. The transfer would avoid having to make the decision to close the park.

Alexa Sandoval, director, DGF, explained that the DGF wants to shift its policy toward more conservation education and public outreach in an effort to reach more New Mexicans. She emphasized the potential of the Mesilla Valley Bosque State Park as an opportunity for the DGF to interact with more people.

Questions and comments from the committee included:

- public meetings regarding the proposed transfer consisted mainly of open houses;
- notices regarding the proposed transfer were published in Las Cruces-area newspapers;
- user fees are intended to cover ongoing operations of most state parks, but often do not, thus requiring additional funding from the state;
- legislative approval has traditionally been sought for a transfer of ownership of public lands worth more than \$100,000;
- most state parks offer value beyond profits and losses;

- concerns regarding state agencies transferring assets without public input;
- the DGF could run the park with the money it saves by not having to lease building space in Las Cruces;
- the transfer of the Vietnam Veterans' Memorial in Angel Fire required two separate pieces of legislation; and
- the DGF has been reluctant to expand its mission in the past but now appears to be willing to do so by acquiring the park.

On a motion made, seconded and passed, the committee directed staff to research the issue of transferring ownership of the Mesilla Valley Bosque State Park from the EMNRD to the DGF and to report on the statutory state property transfer process to the New Mexico Legislative Council.

Carlsbad Brine Well Collapse Remediation and Implementation of Legislation

Secretary McQueen provided the committee with an update regarding the collapse of a brine well in the Carlsbad area. Secretary McQueen began by explaining that a brine well forms when mining operations for salt create underground caverns filled with liquid salt solution. These caverns can collapse under certain conditions, Secretary McQueen said. He provided examples of collapsed brine wells, noting that, while previous collapses have occurred outside of populated areas, there is one brine well with significant potential for collapse located under Carlsbad. Secretary McQueen pointed out that while the brine well has ceased its use for salt production, conditions exist that could make a collapse possible, presenting a threat to both businesses and residents located within the brine well's footprint. He went on to discuss efforts to mitigate the effects of a collapse, including installation of monitoring and early warning systems, as well as efforts to ensure the stability of the cavern created by the well.

Questions and comments from the committee included:

- the site of the brine well is still owned by a now-defunct company;
- liability issues and tort claims are still being resolved;
- collapse of the brine well could cost \$1 billion, including \$100 million for transportation infrastructure;
- another 12 wells exist in the area, all of which have been inspected and none of which are near people, roads or businesses;
- a trailer park sits above the Carlsbad brine well site, meaning that collapse poses a risk to human life;
- the Oil Conservation Division of the EMNRD has inspected other brine wells in the area and is satisfied that the overburden (ground between the well cavity and the surface) is sufficient to prevent collapse;
- the current brine well permitting process requires study of the geology and overburden of proposed brine well sites, but the Carlsbad site was permitted before these requirements took effect; and
- no other brine wells have been permitted west of Carlsbad.

Recess

The committee recessed at 5:15 p.m.

Wednesday, September 6

Reconvene

The committee reconvened at 9:25 a.m.

Arizona Water Settlements Act Implementation, Budget and Issues: New Mexico Central Arizona Project (NM CAP) Entity Plans, Southwest Region Water Project Alternatives

Ali Effati, Gila Basin manager, ISC, and Kim Abeyta-Martinez, program manager, ISC, provided the committee with background information regarding implementation of the federal Arizona Water Settlements Act (AWSA), enacted in 2004. Mr. Effati began by explaining that the ISC has two roles in implementation of the settlement: acting as joint lead agency in the National Environmental Policy Act of 1969 (NEPA) process along with the federal Bureau of Reclamation; and continuing to administer the New Mexico Unit Fund. Ms. Abeyta-Martinez discussed the status of the New Mexico Unit Fund, noting that as of June 30, 2017, the fund had received \$54.24 million, spent \$12.64 million and earned \$2.5 million in interest, leaving a balance of \$44.1 million. She went on to provide the committee with a breakdown of expenditures since 2012, as well as an overview of the NM CAP Entity fiscal process. Mr. Effati went on to outline the ISC's involvement pursuant to the AWSA, including informing the U.S. secretary of the interior of the decision to pursue construction of a New Mexico Unit; requesting to be a joint lead in the NEPA process; and designating the NM CAP Entity, which, he noted, is a proponent of the project. He also outlined the role of the NM CAP Entity, the NEPA process and non-NM CAP projects that do not involve diversion of the Gila River.

Anthony Gutierrez, executive director, NM CAP Entity, began by clarifying that there are no plans for a \$1 billion diversion project, nor are there plans to build a dam along the Gila River. He provided the committee with maps showing three potential diversion sites, noting that the NM CAP Entity's goals are to develop a feasible, affordable project. Mr. Gutierrez also noted that the entity has removed consideration of municipal water delivery as a project and instead intends to focus on agricultural need, particularly on-farm storage, which should prove useful, both for agriculture and for aquifer recharge. He also discussed storage of water in the Winn Reservoir and two reservoirs located near the San Francisco River, noting that the entity has studied use of the most modern technology available for storage. Mr. Gutierrez went on to acknowledge that there are numerous constraints associated with construction of a New Mexico Unit project, including the cost of structures.

Ms. Lucero provided the committee with an overview of the Grant County Regional Water Project. She began with the history of the project and the development of a 40-year water plan, which identified area water needs, such as a primary water supply for Hurley and supplemental water supplies for Bayard, Santa Clara and Silver City. Ms. Lucero went on to discuss the development of a regional water system to address water needs in the area, including

the development of wells and the construction of water lines throughout the area. She also provided the committee with an overview of funding sources for the system, as well as maps detailing the various existing and planned components of the regional water system.

Harry Browne, Grant County commissioner, outlined his concerns regarding potential NM CAP Entity projects. He acknowledged that involved parties are moving toward general agreement, but he noted that concerns still exist over funding of any diversion projects. Commissioner Browne pointed out that less than 2,000 acres of agricultural land are irrigated in the Gila Valley, suggesting that additional water in the area is not necessary. He also raised concerns over an amendment to the NM CAP Entity agreement involving the purchase of water rights by mine operators in the area.

Senator Cervantes requested that Mr. Gutierrez report back to the committee at its November meeting on what decisions the NM CAP Entity made at the entity's October meeting.

Questions and comments from the committee included:

- increasing estimated costs for construction of New Mexico Unit projects;
- users must bear the cost of any diverted water;
- use of AWSA funding for projects other than a New Mexico Unit project, particularly for water supply and conservation projects;
- funds available for non-diversion projects and their cost, versus available funds for diversion projects, and the potential cost of those projects;
- \$1.2 million has been set aside for wetlands projects, which can help with aquifer recharge;
- the NM CAP Entity has focused more on water availability than on the economic development benefits of potential projects;
- agricultural users face water availability issues during the growing season, which could be addressed through some of the storage scenarios contemplated by the NM CAP Entity;
- per the terms of the AWSA, water available for diversion will not be available every year;
- while the ISC is a nonvoting member of the NM CAP Entity, the agency is still responsible for allocation of funds for various projects;
- involvement of mining companies in the AWSA, their ownership of existing water rights in the basin and whether transfer of water rights to area mines constitutes an inter-basin transfer;
- unclear details of a joint powers agreement involving mining companies and the NM CAP Entity;
- details and time line for the NEPA process;
- cost of conveyance of diverted water to agricultural interests in the valley and responsibility for those costs;
- scalability of potential projects;

- about 35 studies have already been conducted on various aspects of the AWSA;
- water projects are considered using a 50-year horizon;
- the value of investment of current funds could yield better returns in the future;
- the time line for completion of studies, funding and project construction; and
- responsibility of the legislature to consider and fund water projects.

Adjournment

There being no further business, the committee adjourned at 12:45 p.m.

Revised: October 6, 2017

**TENTATIVE AGENDA
for the
FOURTH MEETING IN 2017
of the
WATER AND NATURAL RESOURCES COMMITTEE**

**October 12-13, 2017
Ballroom B, Fidel Center
New Mexico Institute of Mining and Technology
Socorro**

Thursday, October 12

- 10:00 a.m. **Call to Order and Welcome**
—Senator Joseph Cervantes, Chair, Water and Natural Resources
 Committee (WNRC)
—Representative Gail Armstrong, Member, WNRC
—Stephen G. Wells, President, New Mexico Institute of Mining and
 Technology (NMIMT)
- 10:30 a.m. (1) **[Watershed Restoration Program Update and Response to House
Memorial 99 and Senate Memorial 124 \(2017 Regular Session\)](#)**
—Brent Racher, President, New Mexico Forest Industry Association
—Laura McCarthy, Director, Conservation Programs, The Nature
 Conservancy
—Other Speakers, TBA
- 12:00 noon **Lunch**
- 1:15 p.m. (2) **[Oil and Gas Research at NMIMT](#)**
—Dr. Nelia Dunbar, Director and State Geologist, New Mexico Bureau of
 Geology and Mineral Resources, NMIMT
—Ron Broadhead, Senior Principal Petroleum Geologist, New Mexico
 Bureau of Geology and Mineral Resources, NMIMT
—Robert Balch, Director, Petroleum Recovery Research Center, NMIMT
- 2:30 p.m. (3) **[Middle Rio Grande Conservancy District Overview; Middle Rio
Grande Levee Projects; Endangered Species Act Collaborative
Compliance Efforts; Cooperative Management of the Middle Rio
Grande for Water Deliveries](#)**
—Mike A. Hamman, Chief Executive Officer/Chief Engineer, Middle Rio
 Grande Conservancy District (MRGCD)
—John Kelly, Chair, Board of Directors, MRGCD
—Glen Duggins, Vice Chair, Board of Directors, MRGCD
—Interstate Stream Commission

4:30 p.m. **Tour of New Mexico Bureau of Geology and Mineral Resources,
NMIMT**

5:30 p.m. **Recess**

Friday, October 13

9:00 a.m. (4) **State Land Office Issues: Implementation of State Trust Lands
Restoration and Remediation Fund**
—Laura Riley, Deputy Commissioner of Public Lands, State Land Office

10:00 a.m. (5) **State Land Office Policy on Protection of the Ogallala Aquifer**
—Laura Riley, Deputy Commissioner of Public Lands, State Land Office

11:00 a.m. (6) **Oil and Gas Water Recycling/Reuse Technology**
—Patrick Padilla, Deputy Director, New Mexico Oil and Gas Association
—Robert Huizenga, Cimarex Energy
—Ken Nichols, Devon Energy

12:30 p.m. **Adjourn**

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

**October 12-13, 2017
Ballroom B, Fidel Center
New Mexico Institute of Mining and Technology
Socorro**

The fourth meeting of the Water and Natural Resources Committee was called to order by Senator Joseph Cervantes, chair, on October 12, 2017 at 10:15 a.m. in Ballroom B of the Fidel Center at the New Mexico Institute of Mining and Technology (NMIMT) in Socorro.

Present

Sen. Joseph Cervantes, Chair
Rep. Bealquin Bill Gomez, Co-Vice Chair
Rep. Matthew McQueen, Co-Vice Chair (10/13)
Rep. Gail Armstrong
Rep. Paul C. Bandy
Rep. Randal S. Crowder
Rep. Derrick J. Lente
Rep. Rodolpho "Rudy" S. Martinez (10/13)
Sen. Sander Rue
Sen. Benny Shendo, Jr. (10/12)
Rep. Nathan P. Small (10/12)
Sen. Jeff Steinborn
Sen. Mimi Stewart
Rep. James R.J. Strickler
Rep. Carl Trujillo
Sen. Pat Woods
Rep. Bob Wooley

Absent

Sen. Cliff R. Pirtle

Advisory Members

Sen. Carlos R. Cisneros
Rep. Rebecca Dow (10/13)
Rep. Candy Spence Ezzell
Rep. Harry Garcia (10/12)
Rep. Yvette Herrell
Rep. D. Wonda Johnson
Rep. Larry A. Larrañaga
Rep. Rick Little
Rep. Sarah Maestas Barnes (10/12)
Rep. Bill McCamley (10/12)

Sen. Craig Brandt
Sen. Pete Campos
Rep. Sharon Clahchischilliage
Rep. George Dodge, Jr.
Rep. Brian Egolf
Sen. Ron Griggs
Sen. Stuart Ingle
Sen. Gay G. Kernan
Sen. Carroll H. Leavell
Sen. Linda M. Lopez

Sen. Cisco McSorley
Rep. Greg Nibert
Sen. Gerald Ortiz y Pino (10/12)
Sen. Mary Kay Papen
Rep. Debbie A. Rodella
Sen. Nancy Rodriguez
Sen. Peter Wirth

Rep. Javier Martínez
Sen. Steven P. Neville
Rep. Angelica Rubio
Rep. Patricio Ruiloba
Rep. Tomás E. Salazar
Sen. William E. Sharer
Sen. John Arthur Smith

Guest Legislators

Rep. Kelly K. Fajardo (10/13)
Rep. Jason C. Harper (10/13)
Rep. Rod Montoya
Rep. Larry R. Scott
Rep. James G. Townsend

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

Staff

Jon Boller, Legislative Council Service (LCS)
Shawna Casebier, LCS
Jeret Fleetwood, LCS
Sara Weidmaier, LCS

Guests

The guest list is in the meeting file.

Handouts

Handouts and other written testimony are in the meeting file.

Thursday, October 12

Call to Order and Welcome

Senator Cervantes began the meeting by having members of the committee introduce themselves to the audience.

Stephen G. Wells, president, NMIMT, welcomed the committee to Socorro, provided the committee with an overview of the university's operations and thanked the committee for coming.

Before the committee began its agenda, several members raised the issue of the sudden resignations of three interstate stream commissioners, Caleb Chandler, James Wilcox and Jim Dunlap, as well as the departure of several senior water policy staff members, including the director, of the Interstate Stream Commission (ISC). Senator Cervantes noted that the

resignations come at a particularly bad time, as the United States Supreme Court earlier in the week denied New Mexico's motion to dismiss Texas' complaint against New Mexico concerning water deliveries to Texas under the Rio Grande Compact.

Watershed Restoration Program Update and Response to House Memorial 99 and Senate Memorial 124 (2017 Regular Session)

Laura McCarthy, director of conservation programs, The Nature Conservancy, provided the committee with an update regarding watershed restoration programs. She noted the importance of watershed restoration, explaining that wildfires have produced significant amounts of sediment, which then washes into rivers and has had a negative impact on several New Mexico communities.

Brent Racher, president, New Mexico Forest Industry Association, explained that recent massive wildfires have had an estimated \$1.5 billion impact on the state. He noted that watershed restoration, particularly forest thinning and controlled burns, helps to mitigate the effects of wildfires. Mr. Racher also said that restoration efforts have to take place across watersheds, regardless of land ownership.

Ms. McCarthy explained that state funds for restoration have been used to leverage federal funds, resulting in a watershed workforce that has grown to 330 employees working 10 months per year on restoration projects. She noted that increased funding has also led to a massive increase in thinning projects and prescribed burns, with still more projects in the planning stages. Ms. McCarthy highlighted agreements between Bernalillo County and the Middle Rio Grande Conservancy District (MRGCD) as an example of cross-agency collaboration on watersheds projects.

Mr. Racher and Ms. McCarthy both noted that differing interpretations of the Constitution of New Mexico's Anti-Donation Clause could present an obstacle to using public money to the benefit of private land, regardless of the public benefit that watershed thinning represents. They stated that the issue prevents many projects from getting past the planning process. Mr. Racher and Ms. McCarthy explained that this issue was also a driving force behind House Memorial 99 and Senate Memorial 124 (both from the 2017 regular legislative session), which directed Governor Susana Martinez and the attorney general to conduct meetings to develop a consistent application of the law governing the use of public funds for watershed restoration projects on any lands within the state. They went on to note that meetings between stakeholders and state agencies identified the critical need for cross-boundary management of land and suggested that a solution to the issue of the Anti-Donation Clause and use of public money on private land would be to seek an attorney general opinion on the matter.

Questions and comments from the committee included the following:

- soil and water conservation districts routinely conduct watershed restoration projects that benefit private lands;

- stakeholders have not yet begun to seek an amendment to the Constitution of New Mexico regarding the Anti-Donation Clause;
- the shrinking of the timber industry in New Mexico and fewer sawmills;
- several studies have drawn a link between rising global temperatures and catastrophic wildfires;
- controlled burns do create air quality issues, but they tend to be a short-term imposition in order to address a larger problem;
- thinning projects are under way in various parts of the state;
- the important role of the United States Forest Service in land management; and
- that the federal National Environmental Policy Act of 1969 process can take anywhere from 18 months to six years to complete.

On a motion made, seconded and passed, the committee directed staff to work with stakeholders to draft a letter to the attorney general seeking an opinion on whether the incidental benefits to non-state-owned lands from watershed restoration projects violate the Anti-Donation Clause and asking for a response in a reasonable amount of time.

Senator Cervantes explained that he planned to deviate from the agenda in order to hear an update regarding developments on litigation between New Mexico and Texas. He said that New Mexico had filed a motion to dismiss the case but that the special master assigned to the case recommended the motion be denied, and the United States Supreme Court later denied the motion.

Tessa Davidson, an attorney representing pecan growers, provided the committee with additional updates regarding amicus parties to the suit and motions by various parties seeking to intervene, including a motion by the federal government to join the case, which has not yet been granted but will be argued in the court in the near future. She noted that the court's calendar is full for the remainder of 2017 and that she expects the federal motion to be argued in early 2018.

Questions and comments from the committee included the following:

- additional details regarding New Mexico's motion to dismiss and the court's denial of the motion;
- that Elephant Butte Irrigation District and El Paso County Water Improvement District Number One were denied intervenor status because United States Supreme Court cases typically concern litigation between states, making it difficult for parties that are not states to join;
- involvement of the federal government in the case could set a precedent regarding jurisdiction over ground water resources in many western states, which could prompt other states to file amicus briefs in the case; and
- possible outcomes in the case.

Oil and Gas Research at NMIMT

Dr. Nelia Dunbar, director and state geologist, NMIMT, provided the committee with an overview of the New Mexico Bureau of Geology and Mineral Resources, explaining its role as a non-regulatory government agency that conducts scientific investigations leading to responsible economic development of the state's resources. She also noted the bureau's research activities and its efforts to distribute accurate information in the form of maps and reports available to decision makers and the public, both physically and on the internet.

Dr. Ron Broadhead, senior principal petroleum geologist, New Mexico Bureau of Geology and Mineral Resources, NMIMT, provided the committee with an overview of oil and gas research at NMIMT. He began by highlighting the bureau's areas of activity, including data collection and archives, service to industry and the public, applied research projects, educational activities and petroleum staffing. Dr. Broadhead noted the school's core collection that features cores from 1,433 drill holes, including oil and gas cores, mineral cores and various other cores. He also noted the school's cuttings collection of over 50,000 cuttings from 16,639 drill holes, representing 150 million feet of drill holes. He explained that both collections are used by industry, researchers and students. Dr. Broadhead discussed the school's subsurface library, which contains data from oil and gas wells, uranium wells, deep water wells and a host of other data regarding subsurface resources across New Mexico. He went on to discuss some of the current research the bureau is conducting in both the Permian Basin and in Sandoval County, as well as research regarding environmental and societal concerns regarding petroleum production.

Robert Balch, director, Petroleum Recovery Research Center (PRRC), NMIMT, provided the committee with an overview of the PRRC, including its location, history and relationship with NMIMT. Mr. Balch also discussed the PRRC's finances, noting that while the state provides a base budget, other research, particularly federally funded research, accounts for a significant portion of its overall budget. He also discussed various PRRC research projects, including 12 active federally and industry-funded projects that were active in 2016, the largest of which involved carbon sequestration. Mr. Balch described several other PRRC efforts, such as development of hollow fiber membranes for use in water filtration, which can remove over 95 percent of some contaminants at relatively low pressure. He also discussed several other PRRC research capabilities.

Questions and comments from the committee included the following:

- involvement of the bureau in brine well remediation;
- mapping of underground water resources in Sandoval County;
- the difficulty in spinning off new technology into jobs for New Mexico residents;
- new uses for carbon sequestration technology;
- that oil and gas resources near Raton consist mostly of methane, but also some deeper oil deposits in shale;

- that rare earth elements exist in south central New Mexico, but not in economic quantities, so research is being conducted into their formation in an effort to find economic deposits;
- deep water well information in the subsurface library includes information on wells up to 2,000 feet deep near Albuquerque;
- industrial uses for water purified by hollow fiber membrane technology; and
- the NMIMT's decision-makers field conference was staff- and funding-intensive and was discontinued, but the school is looking into pursuing grants from the National Science Foundation as a means of bringing the conference back.

On a motion made, seconded and passed, the minutes of the June meeting were approved as submitted.

MRGCD Overview; Middle Rio Grande Levee Projects; Federal Endangered Species Act of 1973 (ESA) Collaborative Compliance Efforts; Cooperative Management of the Middle Rio Grande for Water Deliveries

John Kelly, chair, Board of Directors, MRGCD, provided the committee with an overview of the investments made by the district in water infrastructure projects in central and northern New Mexico, including watershed restoration projects, recreation trails, dam restoration projects and various other projects along the Rio Grande.

Mike Hamman, chief executive officer/chief engineer, MRGCD, provided the committee with an overview of the hydrology and operations of the district. He began by explaining that between 2010 and 2016, annual river flows were below average and the district was forced to use credit water and stored water to help deliver enough water to Elephant Butte Reservoir to avoid compact debits. Mr. Hamman noted that the outlook in 2017 is better, though. He discussed operations by the district, pointing out that operational efficiency has helped the district to significantly lower its river diversions over the past 20 years. Mr. Hamman went on to discuss the district's role in Rio Grande Compact deliveries to Texas, as well as the various consumptive uses of water in the district, noting that agriculture and the bosque account for about two-thirds of total consumption. He went on to discuss the partnership between the district and the Office of the State Engineer (OSE) and the ISC, particularly in the area of ESA compliance, noting the district's efforts to comply with the United States Fish and Wildlife Service's 2016 Biological Opinion regarding the Rio Grande silvery minnow. Mr. Hamman also discussed the district's involvement with the Middle Rio Grande Levee Task Force and the district's response to recent flooding events.

Glen Duggins, vice chair, Board of Directors, MRGCD, provided the committee with information regarding his background as a farmer in the district, his involvement with the Board of Directors and the district itself. He noted that the district focuses on the wise use of water and strives to be a good neighbor by working with other area entities, including tribes and pueblos.

Rolf Schmidt-Petersen, acting manager, Colorado River Basin, ISC, provided the committee with a presentation regarding cooperative management between the MRGCD and ISC for water deliveries, levee projects and ESA collaborative compliance efforts.

Questions and comments from the committee included the following:

- continued work on the Rio Grande Trail;
- in the wake of Hurricane Katrina, many levees in New Mexico have been deemed not compliant with federal regulations, prompting a massive effort to upgrade them, with projects under way near San Acacia and Bernalillo, as well as others planned for the Belen area and, eventually, Albuquerque;
- attempts to return the Rio Grande to its appearance of decades ago and the difficulty of getting sediment onto some parts of the flood plain without actually flooding other areas;
- it is necessary to provide backwater spawning habitats for the silvery minnow;
- the MRGCD is trying to better cooperate with area acequia users to address their concerns;
- the district has an extensive observation system in place, featuring ditch riders who consult maps provided by the OSE to prevent residents from selling their water rights but continuing to divert water;
- water rights in the district have been lost due to sale, transfer and development;
- users in the district may sell their water rights and continue diverting water by leasing those rights;
- the status of lawsuits regarding approved annual accounting by the district;
- the middle Rio Grande is the most active water rights market in the state, with transfers approved through the permitting process and a sophisticated process in place at the OSE's Albuquerque office, which serves as a rolling adjudication;
- older lawsuits questioning ownership of water rights in other parts of the state have made adjudications in those areas a more urgent priority; and
- different rules for water use exist in different regions of the state.

Greg Ridgley, general counsel, OSE, also provided the committee with an update regarding the *Texas v. New Mexico* lawsuit. He explained that New Mexico's motion to dismiss the case had been denied by the United States Supreme Court and that oral arguments on the federal government's motion to intervene would be scheduled for 2018. Mr. Ridgley noted that, despite the special master's report and the denial of New Mexico's motion to dismiss, the case will not be one-sided in favor of Texas. Rather, now that the court has decided to hear the case, New Mexico and Colorado can file an answer to Texas' claims and file counterclaims against Texas.

Senator Cervantes suggested that the issue be heard in a closed hearing at the committee's November meeting and asked committee members to raise their concerns so that presenters would be prepared to address them in November. Some of those concerns include:

- the federal government's role in the case and the implications for jurisdiction over ground water both in New Mexico and in other states;
- the basis of the lawsuit and its relationship to compact deliveries and ground water pumping below Elephant Butte Reservoir;
- the responsible party for New Mexico's defense, which is the attorney general, and experts hired to help the state prepare for the case;
- the pursuit of two approaches by both states: litigation and settlement;
- the likelihood of multiple amicus briefs being filed by various parties;
- the role of the special master versus that of the United States Supreme Court itself;
- the complex hydrology of the area;
- what remedies Texas has requested;
- the likelihood of multiple developments as the case moves on; and
- that the case could take years to reach completion.

Recess

The committee recessed at 5:15 p.m.

Friday, October 13

State Land Office (SLO) Issues: Implementation of State Trust Lands Restoration and Remediation Fund

Laura Riley, deputy commissioner of public lands, SLO, provided the committee with an update regarding implementation of the State Trust Lands Restoration and Remediation Fund, explaining that the fund had been created by the legislature during the 2017 regular session. She provided the committee with a map showing the locations of various remediation projects, as well as total funding for projects and various partnerships the SLO has entered into as a means of identifying and completing restoration and remediation projects. Ms. Riley also provided the committee with a breakdown, by county, of fiscal year 2018 projects, as well as a copy of the rule developed for use of the fund.

Questions and comments from the committee included that:

- fiscal year 2018 projects are focused on watershed restoration, as the land commissioner has identified it as a priority;
- current projects do not involve salt cedar removal, in part because state trust lands do not consist of much land along stream beds; and
- other projects involving invasive species are planned.

SLO Policy on Protection of the Ogallala Aquifer

Ms. Riley provided the committee with a presentation regarding the commissioner of public lands' announcement of a policy to not automatically approve or renew land access, without first reviewing hydrologic data, to drill water wells on state trust land that involve the use of fresh water from the Ogallala Aquifer for oil and gas production and related activities. She

explained that the commissioner issued the policy in response to the rapid depletion of the Ogallala Aquifer, despite the availability of other non-fresh water resources that can be used in oil and gas production. Ms. Riley went on to explain that the commissioner of public lands has a fiduciary duty to oversee state trust lands and optimize the revenue earned from them, as well as to balance management of lands in terms of both income and conservation, thus preserving their legacy for generations to come. She provided the committee with a breakdown of water easements in the Ogallala Aquifer in 2016, noting that oil and gas used, by far, the most water. Ms. Riley also provided the committee with a map showing water easements in the area of southeastern New Mexico that sit above the Ogallala Aquifer, as well as a copy of the SLO's new policy regarding easements for drilling and operating water wells.

Ray Westall, a business owner in Loco Hills, explained that the policy would have a massive effect on his company, which transports and sells water for oil and gas development. He noted that he had invested about \$15 million in new water lines and that the policy would make it difficult, if not impossible, for him to recoup his investment.

Questions and comments from the committee included:

- that the Ogallala Aquifer stretches from Nebraska through Texas to southeastern New Mexico, but other states, particularly Texas, do not have a similar policy in place;
- the effect of implementation of the policy on the oil and gas industry;
- the commissioner will evaluate applications and renewals on a case-by-case basis;
- SLO staff makes recommendations to the commissioner;
- the SLO owns some water rights and has joint ownership with other agencies on other water rights;
- the commissioner can evaluate land uses based on future values and protection of state trust lands for long-term use;
- the SLO rules on water easements have not changed, but this is a new policy;
- the potential economic impact of the policy;
- the amount of fresh water used for oil and gas development versus amounts used for other industries, such as agriculture;
- that oil and gas production contributes to the growth of the Land Grant Permanent Fund and to gross receipts tax income for all of New Mexico;
- the potential cost of transporting water to oil and gas wells;
- that most leases on state land are five-year leases; longer leases require public auctions;
- that some municipalities have well fields on state trust land, including some with long-term leases;
- the SLO has tried to improve the turnaround time on right-of-way applications;
- administrative differences between rules and policies;
- the policy does not affect existing leases, only new ones and renewals;
- the notice provided to stakeholders regarding the policy change; and
- that Mr. Westall owns wells on state trust land.

Oil and Gas Water Recycling Reuse Technology

Kenneth Nichols, Devon Energy, described his company's efforts to treat water for reuse in oil and gas production. He began with an overview of Devon Energy's operations in southeastern New Mexico. Mr. Nichols noted that the company has highlighted the cost and availability of fresh water as a potential risk, which has led to identifying recycling of produced water as a key strategy. He also noted that some regulatory changes have made it easier to use produced water for hydraulic fracturing. Mr. Nichols went on to discuss two separate technologies the company is using to treat water: a mobile technology produced by Fountain Quail Energy Services called ROVER; and a gradient selective chemical extraction process.

Robert Huizenga, Cimarex Energy, also discussed efforts to develop long-term water sourcing and disposal solutions for oil and gas development projects. He provided the committee with a map of the company's water reuse area that is mostly located in Texas. Mr. Huizenga went on to discuss the various methods used by Cimarex, beginning in 2013, to treat water for reuse, noting the pros and cons of each method, as well as the volume of water produced for reuse. Mr. Huizenga noted that while the technology currently employed by the company features less operational maintenance cost and reduced environmental liability, it still presents issues with regard to disposal of solids and the balancing act between reuse and production operations.

Patrick Padilla, deputy director, New Mexico Oil and Gas Association, also provided the committee with a presentation regarding reuse and recycling of water used in oil and gas development. He explained that technological advances allow for treatment of water to secondary drinking water standards, as well as creating multiple opportunities for reuse and commoditization of what are currently classified as waste products. Mr. Padilla noted that challenges to recycling include New Mexico's checkerboard land ownership and regulatory impediments and suggested that solutions include regulatory improvements such as rule changes to allow for industrial uses of produced water outside of the oilfield.

Questions and comments from the committee included:

- evaporation of water held in open storage ponds;
- development of desalination technology for use in oil and gas development;
- that use of recycled water tends to be near recycling facilities because of the current costs of transporting it;
- varying philosophies about how to use and store produced water; and
- deeper well casings help protect water in shallow aquifers.

Adjournment

There being no further business, the committee adjourned at 12:10 p.m.

Revised: November 13, 2017

**TENTATIVE AGENDA
for the
FIFTH MEETING IN 2017
of the
WATER AND NATURAL RESOURCES COMMITTEE**

**November 13-14, 2017
State Capitol, Room 322
Santa Fe**

Monday, November 13

- 8:30 a.m. **Call to Order and Welcome**
—Senator Joseph Cervantes, Chair, Water and Natural Resources
Committee
- 8:45 a.m. (1) **Rural Electric Cooperative Rates for Retail Customers Who Consume
the Majority of Electricity from a Local Distribution Cooperative**
—Julie Moore, Senior Director, State Government Affairs, Occidental
Petroleum Corporation
—Melissa A. Trevino, Energy Manager, Occidental Energy Ventures LLC
—Anthony "T.J." Trujillo, Attorney, Gallagher and Kennedy
—Brad Nebergall, Senior Vice President of Energy Management, Tri-State
Generation and Transmission Association
—Keven Groenewold, Chief Executive Officer, New Mexico Rural Electric
Cooperative Association
—Brian Hobbs, General Counsel, Western Farmers Electric Cooperative
—Gary Rinker, General Manager, Southwestern Electric Cooperative
- 10:15 a.m. (2) **Changing the Renewable Portfolio Standard**
—Theresa Cardenas, New Mexico Outreach Consultant, Union of
Concerned Scientists (UCS)
—Julie McNamara, Energy Analyst, UCS
—Tom Solomon, 350 New Mexico
—Patrick O'Connell, Director of Planning and Resources, Public Service
Company of New Mexico (PNM)
- 11:45 a.m. **Working Lunch**
- (3) **Natural Gas Venting and Flaring; Report on Senate Memorial 102
(2017) and Responses**
—Ken McQueen, Secretary of Energy, Minerals and Natural Resources
—Jon Goldstein, Director, Regulatory and Legislative Affairs,
Environmental Defense Fund
—James Jimenez, New Mexico Voices for Children
—Ryan Flynn, Executive Director, New Mexico Oil and Gas Association

- 1:45 p.m. (4) [Distributed Solar Energy Financing Issues](#)
—Rachel Hillier, Executive Director, Renewable Energy Industry Association
—Kent R. Williams, Vice President, Asset Management, Vivint Solar
—Regina Wheeler, Chief Executive Officer, Positive Energy Solar
—Athena Christodoulou, President, New Mexico Solar Energy Association
- 3:00 p.m. (5) [Follow-Up Report from the New Mexico Central Arizona Project \(NM CAP\) Entity](#)
—Anthony Gutierrez, Executive Director, NM CAP Entity
- 4:15 p.m. (6) [Required Reports from the Interstate Stream Commission and State Engineer](#)
—Office of the State Engineer
—Interstate Stream Commission
- 5:00 p.m. **Recess**

Tuesday, November 14

- 9:00 a.m. (7) [Texas v. New Mexico and Colorado, No. 141, Original; Status and Litigation Update](#) [Executive Session—Closed to the Public]
—Tania Maestas, Office of the Attorney General
—Office of the State Engineer
- 10:30 a.m. (8) [Lower Rio Grande Water Users and Elephant Butte Irrigation District \(EBID\); Negotiations on Water Management in the Lower Rio Grande and Related Issues](#)
—Alvin Jones, Attorney, Southern Rio Grande Diversified Crop Farmers Association
—John Utton, Attorney, New Mexico State University, PNM and Camino Real Regional Utility Authority
—Jay Stein, Attorney, City of Las Cruces
—Tessa Davidson, Attorney, New Mexico Pecan Growers Association
—Samantha Barncastle, Attorney, EBID
- 12:00 noon (9) [Energy Redevelopment Bonding Act Proposal](#)
—Gerard Ortiz, Vice President, Regulatory Affairs and Economic Development, PNM
—Sayuri Yamada, Director of Governmental Affairs, PNM
—Noah Long, Legal Director, Western Energy, Natural Resources Defense Council
- 1:00 p.m. **Adjourn**

**MINUTES
of the
FIFTH MEETING
of the
WATER AND NATURAL RESOURCES COMMITTEE**

**November 13-14, 2017
State Capitol, Room 322
Santa Fe**

The fifth meeting of the Water and Natural Resources Committee was called to order by Representative Bealquin Bill Gomez, co-vice chair, on November 13, 2017 at 8:35 a.m. in Room 322 of the State Capitol in Santa Fe.

Present

Sen. Joseph Cervantes, Chair
Rep. Bealquin Bill Gomez, Co-Vice Chair
Rep. Matthew McQueen, Co-Vice Chair
Rep. Gail Armstrong
Rep. Paul C. Bandy
Rep. Randal S. Crowder
Rep. Derrick J. Lente
Rep. Rodolpho "Rudy" S. Martinez
Sen. Cliff R. Pirtle (11/14)
Sen. Benny Shendo, Jr.
Rep. Nathan P. Small
Sen. Jeff Steinborn
Sen. Mimi Stewart
Rep. James R.J. Strickler
Rep. Carl Trujillo
Sen. Pat Woods
Rep. Bob Wooley

Absent

Sen. Sander Rue

Advisory Members

Sen. Craig W. Brandt (11/14)
Sen. Pete Campos (11/13)
Rep. Sharon Clahchischilliage (11/13)
Rep. George Dodge, Jr. (11/13)
Rep. Brian Egolf (11/13)
Rep. Candy Spence Ezzell
Rep. Harry Garcia
Sen. Ron Griggs
Rep. Yvette Herrell (11/14)
Sen. Gay G. Kernan
Rep. Rick Little

Sen. Carlos R. Cisneros
Rep. Rebecca Dow
Sen. Stuart Ingle
Rep. D. Wonda Johnson
Rep. Larry A. Larrañaga
Sen. Carroll H. Leavell
Rep. Javier Martínez
Sen. Cisco McSorley
Sen. Steven P. Neville
Rep. Greg Nibert
Rep. Angelica Rubio

Sen. Linda M. Lopez
Rep. Sarah Maestas Barnes
Rep. Bill McCamley
Sen. Gerald Ortiz y Pino
Sen. Mary Kay Papen
Rep. Debbie A. Rodella
Sen. Nancy Rodriguez (11/13)
Sen. Peter Wirth

Rep. Patricio Ruiloba
Rep. Tomás E. Salazar
Sen. William E. Sharer
Sen. John Arthur Smith

Guest Legislators

Sen. Jacob R. Candelaria
Sen. Michael Padilla

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

Staff

Jon Boller, Legislative Council Service (LCS)
Shawna Casebier, LCS
Jeret Fleetwood, LCS
Sarah Weidmaier, LCS

Minutes Approval

Because the committee will not meet again this year, the minutes for this meeting have not been officially approved by the committee.

Guests

The guest list is in the meeting file.

Handouts

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

Monday, November 13

Rural Electric Cooperative Rates for Retail Customers Who Consume the Majority of Electricity from a Local Distribution Cooperative

Anthony "T.J." Trujillo, attorney, Gallagher and Kennedy; Julie Moore, senior director, state government affairs, Occidental Petroleum Corporation (OXY); and Melissa A. Trevino, energy manager, Occidental Energy Ventures LLC, spoke on behalf of OXY. Mr. Trujillo and Ms. Trevino gave a brief description of investor-owned utilities, generation and transmission cooperatives (G&Ts) and distribution cooperatives, explaining that OXY receives its power from the Southwestern Electric Cooperative (SWEC) and Springer Electric Cooperative, which in turn receive their power from Tri-State Generation and Transmission Association (Tri-State). Ms.

Trevino stated that OXY accounts for 90 percent of SWEC's load but only gets one vote as a member of the cooperative, and that the protest rules do not allow an individual end user to participate in the rate protest process. Mr. Trujillo presented concerns about a lack of transparency in the process by which rates are developed by G&Ts and then passed on to the member distribution cooperatives, and he noted that under current law, at least three member cooperatives must protest a G&T's rates before the Public Regulation Commission (PRC) may consider whether to suspend and review the rates, which has happened only once and was settled prior to PRC review.

Brad Nebergall, senior vice president of energy management, Tri-State; Keven Groenewold, chief executive officer, New Mexico Rural Electric Cooperative Association; Brian Hobbs, general counsel, Western Farmers Electric Cooperative; and Gary Rinker, general manager, SWEC, presented on behalf of the G&Ts and rural electric cooperatives (local distribution cooperatives). Mr. Groenewold explained that Tri-State and Western Farmers are G&Ts, with 43 and 21 local member distribution cooperatives, respectively, that serve customers in five states (New Mexico, Oklahoma, Colorado, Wyoming and Nebraska). He disputed OXY's contention that the processes by which rates are developed by the G&Ts and distribution cooperatives are not transparent, noting that decisions are made by the elected representatives of members/consumers at both the distribution cooperative level and the G&T level, which is a more transparent process than that used by investor-owned utilities.

Mr. Rinker noted that OXY's rates are much lower than the rates of residential customers and that any decrease in rates for OXY would have to be offset by an increase in all other members' rates. Mr. Nebergall added that Tri-State is a not-for-profit company owned by 43 member cooperatives serving 1.5 million customers over a 200,000-square-mile area. Each member distribution cooperative gets one voting member on the Tri-State board, he explained, and all members pay the same wholesale rate in the four states that Tri-State serves. He said that OXY pays a rate that is one of the lowest in New Mexico and a retail rate that is lower than that of 40 other cooperatives. Mr. Hobbs explained that cooperatives are fundamentally different from investor-owned utilities in that they are governed to cover the costs of service and return any excess to their members. Rate regulation by membership is the purest form of regulation, he said, especially with a two-thirds' vote required to approve any rate increase.

Changing the Renewable Portfolio Standard (RPS)

Tom Solomon, 350 New Mexico, explained that the state's RPS requires that 20 percent of investor-owned utility electricity production be from renewable energy sources by 2020 and that he is advocating that the RPS be raised to 80 percent by 2040. Mr. Solomon described the projected consequences of not reducing carbon emissions, noting that 2016 was the hottest year on record, for the third year in a row, and that the impacts are already being felt with the increasing frequency and severity of droughts, heat waves, wildfires and superstorms across the country. Mr. Solomon stressed that the RPS has no impact on oil industry jobs or revenues in the state since oil is not used to generate electricity in the state, whereas coal is used to produce 63 percent of New Mexico's electricity. However, he said, the economics of energy production has

resulted in the closing of coal-fired plants across the nation and the planned closure of such plants in New Mexico. Given the huge drop in wind and solar production costs over the past seven years, he explained, and the world-class wind and solar resources of the state, encouraging investment in clean energy will bring thousands of jobs to New Mexico, reduce carbon dioxide and other emissions and cut annual water consumption in the energy sector by 90 percent.

Theresa Cardenas, New Mexico outreach consultant, Union of Concerned Scientists (UCS), explained that the UCS is a not-for-profit, nonpartisan organization devoted to providing science-based analyses to help policymakers make informed choices in public policy. Ms. Cardenas outlined studies that the UCS is conducting in New Mexico, including a study of how to make water planning efforts more effective and a study of water supply and demand on the Rio Grande.

Julie McNamara, energy analyst, UCS, presented results of a UCS study on RPS standards in New Mexico and the state's transition away from coal-based electricity production. The transition from coal to other energy sources, such as natural gas, solar and wind, she said, presents the state with a choice. The study, she said, found that the least-cost path was with wind- and solar-based energy production. The state has incredible wind and solar resources, she explained, and making investments in that sector would create 2,400 jobs annually across the state and \$9.5 million in annual land lease payments. An 80 percent RPS by 2050 would not drag rates higher than not increasing the RPS, according to the study. In addition, Ms. McNamara said, the shift to more renewables offers the added advantage of reduced carbon emissions and cleaner air.

Pat O'Connell, director of planning and resources, Public Service Company of New Mexico (PNM), said he was not present to oppose an expansion in New Mexico's RPS but did have suggestions on how to reevaluate the goal of promoting renewable energy growth in the state. To the credit of RPS standards here and in other states, he said, wind and solar have become stable mainstream sources of energy. He suggested that it may be time to redefine the RPS to recognize other renewable sources that may need help to develop, like geothermal energy, and that carveouts for wind and solar are no longer necessary since these sources are already established and growing on their own. A greater focus on transmission and storage or possibly changing to a results-based standard based on carbon output may be approaches to consider going forward, he explained.

Natural Gas Venting and Flaring; Report on Senate Memorial 102 (2017) and Responses

Ken McQueen, secretary of energy, minerals and natural resources, reported on the findings of the Governor's 2015 Gas Capture Task Force, which was directed to quantify the volumes of natural gas that are vented and flared in New Mexico and compare them with surrounding states, identify technology that could be used to reduce flaring and propose regulations to reduce flaring or changes to regulations that slow technological innovations or implementation that could reduce flaring. The group recommended collecting data on venting and flaring, and regulations were issued requiring reporting of the data by oil and gas producers,

he explained. He said that New Mexico's venting and flaring volume rates were in line with six other states (Alaska, Colorado, Kansas, Louisiana, Texas and Wyoming) and much lower than two others (North Dakota and Montana). Producers now report the volumes of gas vented or flared, along with five other disposition categories, he explained. Secretary McQueen outlined several technological advancements in gas capture and noted that vented gas production has declined by 56 percent since November 2015, and flared gas production has declined by 54 percent since that date. Total gas production in the state has remained relatively flat over the past few years, with changes in where the gas has been produced moving from the northwestern to the southeastern part of the state, with about one percent of total production of gas being flared or vented each year, he explained.

Jon Goldstein, director of regulatory and legislative affairs, Environmental Defense Fund (EDF), said that he appreciated the reporting of data on venting and flaring but also noted that leakage was another large source of methane release that remains unaccounted for. He said it is estimated that producers in New Mexico emit approximately 570,000 tons of methane each year, which equals \$180 million to \$224 million of wasted gas per year. This is not only a problem, he explained, but also an opportunity to collect up to \$27 million more in tax revenue. Mr. Goldstein highlighted the "hotspot" of methane concentrations in the San Juan Basin that could be seen from space. He also pointed out greater ozone and smog pollution in areas with high concentrations of oil and gas wells that rival levels in urban areas such as Albuquerque and Las Cruces. Mr. Goldstein said that regulations for leak detection and repair programs in other states have resulted in significant reductions in methane emissions. There is still much room for improvement in New Mexico, he explained, noting that only 19 percent of applications for permits to drill were submitted with gas capture plans by applicants wanting to drill on state-owned lands. He said that 10 of the largest producers worldwide have already committed to cutting methane emissions and that the federal Bureau of Land Management Methane and Waste Prevention Rule will have a positive effect on the state's production and royalty revenue.

James Jimenez, New Mexico Voices for Children, echoed Mr. Goldstein's concerns about the amount of methane being wasted each year and reiterated that the resulting foregone revenue could be as much as \$27 million a year. He also expressed concern about the health effects of volatile organic compounds being released along with the methane.

Ryan Flynn, executive director, New Mexico Oil and Gas Association, began with an explanation of flaring, which he said is the burning off of gas that cannot be otherwise collected or used, while venting is the release of methane without burning. He said that the oil and gas industry has the biggest incentive to reduce amounts that are vented, flared or leaked. Methane emissions have been reduced in both the San Juan and Permian basins between 2011 and 2016, he said, even with record levels of production in the state. There has also been a decrease in carbon dioxide emissions over the past five years. Switching from coal to natural gas has resulted in large reductions in smog-producing emissions across the United States, he explained. New rules by the United States Environmental Protection Agency on volatile organic compounds have directly impacted leakage of methane, which is often released with these compounds, he

explained. The biggest change in the oil and gas industry is the use of new pneumatic controllers, he said, that have reduced leakage dramatically. He also disputed some of the conclusions of the EDF's analysis of costs and lost revenues attributed to gas losses and offered to study the problem.

Distributed Solar Energy Financing Issues

Secretary McQueen requested that the presenters address reports that the legislature heard during the previous session concerning problems that consumers have had with high-pressure sales of rooftop solar systems and issues homeowners have had with selling a home that had a rooftop solar system installed on a long-term lease contract.

Kent Williams, vice president, asset management, Vivant Solar, said that Vivant Solar does sell door-to-door in 21 states and has more than 2,000 customers and 81 employees in New Mexico. The vast majority of Vivant's customers have a power purchase agreement with the company, he explained, in which Vivant installs solar panels on the customer's home and sells the customer the power it produces at 10 percent to 15 percent below the market rate, with Vivant retaining ownership of the system. The agreement is usually for 20 years. He said that there are two issues that may come up. One is that the company files a notice with the county that the company owns the solar panels on a home, which is not a lien but simply notice to anyone who may buy the house that Vivant will still own the solar panels, he explained. The other issue, he said, may occur with the transfer of ownership of a home, where Vivant executes a transfer of ownership and the new owner assumes the term of the contract. Less than five percent of Vivant's customers are through a loan program, in which a third party-lender loans the homeowner the amount needed to purchase the panels. Only six customers in the state have paid cash up front for a system from Vivant, he said.

Rachel Hillier, executive director, Renewable Energy Industry Association (REIA), described the REIA's role and structure and explained how the organization became aware of complaints that PNM was receiving from some of its customers regarding rooftop solar energy systems. PNM, she said, had proposed legislation last session that would affect the residential solar industry, and the REIA offered to help with the legislation. The bad business practices of some solar system companies threatened those with good practices, she explained, and the REIA wanted to ensure that the bill would not negatively impact the good actors in the industry. The REIA did not want cookie-cutter legislation such as that authored by the American Legislative Exchange Council that had been used in other states to overregulate and slow solar energy development, she explained. Aggressive door-to-door sales, she said, have resulted in some deceptive trade practices where customers are not fully informed about the economics of purchasing through a power purchase agreement or long-term leasing arrangement in which the customer does not own the system. The legislation passed last session requires better disclosure of the terms of sales of solar systems. Most of the members of the REIA do customer-owned system sales, she explained, rather than power purchase agreements. Ms. Hillier said that the REIA has an ethical code of conduct that all members must sign, and since most members rely on customer referrals, members are very aware of the importance of maintaining a good reputation.

Regina Wheeler, chief executive officer, Positive Energy Solar (PES), said that PES is a locally owned and operated company with 65 employees and 20 years of experience installing solar panels in New Mexico. PES's customers purchase their systems outright rather than lease them from the company. This gives the customer the best value, she explained, since the solar system becomes an asset rather than a liability for the customer. Many of PES's customers finance their systems through Nusenda Credit Union or Homewise and often use a home improvement loan to pay off their systems.

Athena Christodoulou, president, New Mexico Solar Energy Association, explained how she navigated the market and learned how to go about purchasing a solar energy system for her home. She compared marketing practices in the 1970s for thermal solar systems with some of today's practices, saying that she wants to ensure that customers today are not abandoned by out-of-state companies that installed systems and then left customers without support, as often happened in the 1970s. She said that she appreciates the solar industry's efforts to make the bill that passed a better bill but said that she wishes other bills dealing with the solar industry had also passed. She urged the committee to support the solar energy industry and other renewable technologies and proposed converting coal plants to thermal solar facilities.

Approval of Minutes

The committee adopted without objection the minutes of the September and October meetings.

Follow-Up Report from the New Mexico Central Arizona Project (NM CAP) Entity

The committee received an update on implementation of the federal Arizona Water Settlements Act (AWSA) from Anthony Gutierrez, the executive director of the NM CAP Entity. The NM CAP Entity and the New Mexico Unit Fund were created pursuant to the AWSA, which addresses water claims on the Gila River among Native American tribes in Arizona, the State of Arizona and the State of New Mexico. The settlement provides New Mexico with about \$90 million for water supply projects in southwestern New Mexico, with the potential for another \$50 million if New Mexico elects to pursue a water diversion project on the Gila River or its tributaries. Mr. Gutierrez explained that the entity had voted to amend the New Mexico Unit's proposed projects, which include a mixture of planned diversion projects and other water projects in the region, such as improved conveyance mechanisms and water conservation projects. He said that the amended proposal now includes a diversion of the Gila River near the upper Gila irrigation diversion, although specific designs of the proposed diversion have not been worked out yet. The amended proposal also includes diversions on the San Francisco River, a well system in the upper Gila for alternative irrigation methods, such as drip irrigation, lining some ditches and improving the ditch systems in other areas. The amended proposed action also includes some water storage projects, such as on- and off-farm storage ponds and excavation of several other storage ponds. The total cost of the proposed projects is about \$44 million. In order for New Mexico to receive the additional \$50 million, environmental studies for any diversion project must be completed and approved by the federal government by December 31, 2019.

Required Reports from the Interstate Stream Commission (ISC) and State Engineer

John Longworth, acting director, ISC, provided the committee with an update on the New Mexico Unit Fund, including its history, distributions, investment (\$37 million has been invested and \$3.26 million has been earned) and expenditures. He reported that the fund pays for the ISC's AWSA operating budget (including some staff salaries and support costs), contractual services (including legal costs) and advances to the federal Bureau of Reclamation for the National Environmental Policy Act of 1969 process. Mr. Longworth said that he would send the committee the full report after November 15.

Mr. Longworth also provided the committee with an update on the state's strategic water reserve, noting that it can only be used to help the ISC meet compact delivery obligations or to help the state and water users manage water to help endangered or threatened species. There are currently 2,682 acre-feet in the reserve, he said. Of the \$5.3 million the legislature appropriated in capital outlay for the purchase of water for the reserve, \$3.3 million has been expended, and in 2017, the legislature took the remaining \$2 million and reallocated it for other purposes, so there is a zero balance in the New Mexico Unit Fund at this point, he explained.

Tuesday, November 14

***Texas v. New Mexico and Colorado*, No. 141, Original; Status and Litigation Update [Executive Session]**

The committee reconvened at 9:05 a.m. on Tuesday, November 14, and went into executive session to discuss ongoing litigation.

Lower Rio Grande Water Users and Elephant Butte Irrigation District (EBID); Negotiations on Ground Water Management in the Lower Rio Grande and Related Issues

Tessa Davidson, attorney, New Mexico Pecan Growers Association, reviewed the progress of the Lower Rio Grande Water Users Organization (LRGWU) regarding negotiations on ground water management in the lower Rio Grande since the group's last presentation to the committee in October 2016. Ms. Davidson explained that since then, the EBID has joined in the negotiations, a confidentiality order and stay in the lower Rio Grande adjudication have been put in place, there has been close collaboration with the attorney general and Office of the State Engineer and work on a written agreement is progressing. In the coming months, she said, the LRGWU hopes to complete the New Mexico portion of the settlement among ground water users, the state and the EBID, work with the United States and Texas parties on a settlement in the *Texas v. New Mexico and Colorado* litigation and possibly propose legislation to create a governmental structure, if necessary, to address ground water management and seek financial support for implementation of a settlement from the state.

Jay Stein, water counsel, City of Las Cruces, explained that Las Cruces currently supplies water to 100,000 customers, with plans to supply up to 140,000 in the next 40 years, all with ground water. Consequently, the city has a vested interest in maintaining its 21,000 acre-feet of ground water supplies now and in the future, he said. Two goals of the LRGWU are key to this,

he explained, which are creating a sustainable ground water management regime and solving outstanding legal questions.

John Utton, an attorney speaking on behalf of New Mexico State University, PNM and the Camino Real Regional Utility Authority, explained how two areas of concern are addressed by the settlement framework of the LRGWU: 1) because the current operating agreement does not cover municipal and industrial uses, the LRGWU seeks to extend the operating agreement to cover non-farmers; and 2) the settlement framework sets out a long-term and adaptive ground water management plan to protect Rio Grande Project surface supplies.

Alvin Jones, counsel for the Southern Rio Grande Diversified Crop Farmers Association, stated that the association is committed to the preservation of row crop farming in the lower Rio Grande and recognizes the stresses in the lower Rio Grande Basin as a result of changes to the environment. Recognizing that the open ground utilized by the row crop farmers is regularly looked upon as the only means of responding to sometimes drastic fluctuations in the available water resource in the lower Rio Grande, he said that the association is committed to the rotational fallowing leasing approach to reducing depletions — as opposed to the buy-and-dry process that was used in the lower Pecos River. Members of the association are multigenerational farmers, he explained, and recognize that rotational fallowing and leasing in response to continually shifting depletion requirements will require a flexible, responsive, hydrologically sound management system backed by a responsive water rights administration system able to adapt promptly in real time to changes in the environment. He also thanked the EBID for participating in the settlement process.

Samantha Barncastle, attorney, EBID, explained that the EBID is participating because discussion without participation of a key player in the region is not productive. She stressed that ground water use in the lower Rio Grande is necessary to keep agriculture functioning and that sustainability and conservation are vital to the EBID's operation. Ms. Barncastle said that she thinks the LRGWU will be able to successfully address many of the litigation issues in the region.

Energy Redevelopment Bonding Act Proposal

Sayuri Yamada, director of governmental affairs, PNM, discussed PNM's recent history with the legislature, explaining that the company is seeking to earn the legislature's trust, in part by being a partner on the development of renewable energy. She noted that PNM has recently worked with Facebook and Santa Fe County on renewable energy projects. Ms. Yamada also said that PNM is working with Farmington and surrounding communities to retire the coal-fired plant in the area, as well as to invest in more renewable energy projects and help customers bear the costs associated with retiring the coal plant earlier than initially anticipated. She also said that the company would pursue legislation regarding the generating station in Farmington and renewable energy but that a bill draft was not available yet.

Noah Long, legal director, Western Energy, Natural Resources Defense Council,

explained that the generating station in San Juan County is similar to other coal-fired plants in the western United States, in that retiring it early creates significant stranded costs and harms the area economy. He also noted that while opportunities exist to transition to cleaner energy sources, there are also risks involved. Mr. Long suggested some approaches to the issue of closing down the coal-fired plant in San Juan County, such as PNM refinancing its debt, then paying it off faster and using the savings to invest in renewable energy and energy storage.

Questions and comments from the committee included:

- PNM is seeking a bill in 2018 because credit agencies need securitization, which cannot be sought through the PRC;
- closure of a nuclear power plant in California required some statutory changes both to help with debt refinancing and to mandate reinvestment in renewable energy;
- the importance of protecting New Mexico PNM customers, not just shareholders, from bearing the cost of shutting plants down and refinancing;
- other areas of New Mexico have been hit hard by market changes and were not bailed out by the legislature;
- legislation to help PNM securitize its debt will help the company improve its credit rating, which could help save money for customers in the long run;
- the economic importance of the coal-fired plant in San Juan County extends past the jobs immediately associated with the plant, and the impacts of closing the plant are worsened because of the jobs already lost in the oil and gas industry;
- large regional issues have an effect on the entire state; and
- utility debt refinancing has never been tried before in New Mexico.

Adjournment

There being no further business, the committee adjourned at 1:20 p.m.



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