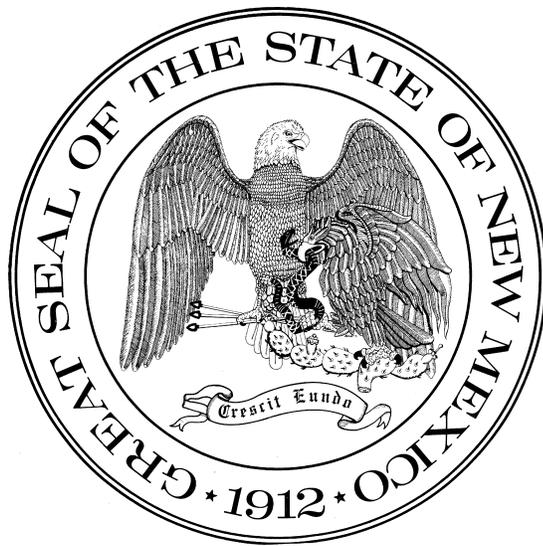


**WATER AND NATURAL RESOURCES
COMMITTEE**

**2008
FINAL REPORT**



Santa Fe, New Mexico
April 2009

WORK PLAN

2008 APPROVED WORK PLAN AND MEETING SCHEDULE
for the
WATER AND NATURAL RESOURCES COMMITTEE

Members

Rep. Andy Nuñez, Chair
Sen. Phil A. Griego, Vice Chair
Rep. Paul C. Bandy
Rep. Elias Barela
Sen. Sue Wilson Beffort
Rep. Ray Begaye
Rep. Joseph Cervantes
Sen. Dede Feldman
Sen. Mary Jane M. Garcia

Sen. Clinton D. Harden, Jr.
Rep. Dona G. Irwin
Rep. Larry A. Larrañaga
Rep. Kathy A. McCoy
Sen. Cynthia Nava
Sen. Steven P. Neville
Sen. Mary Kay Papen
Rep. Mimi Stewart
Rep. Don L. Tripp

Advisory Members

Sen. Rod Adair
Sen. Vernon D. Asbill
Sen. Carlos R. Cisneros
Rep. Anna M. Crook
Rep. Nora Espinoza
Rep. Candy Spence Ezzell
Sen. Timothy Z. Jennings
Sen. Gay G. Kernan
Rep. Ben Lujan
Rep. James Roger Madalena

Sen. Cisco McSorley
Rep. Danice Picraux
Sen. Leonard Lee Rawson
Sen. Nancy Rodriguez
Sen. John C. Ryan
Rep. Henry Kiki Saavedra
Rep. James R.J. Strickler
Rep. Peter Wirth
Rep. Eric A. Youngberg

Approved Work Plan

In light of the ongoing concerns regarding the delays in resolution of water rights issues, the Water and Natural Resources Committee proposes to focus on water rights adjudications and settlements, including Native American settlements. Additionally, the committee proposes to focus on other critical issues that include game management and conservation, protection of water and natural resources and energy resources.

APPROVED 2008 MEETING SCHEDULE

<u>Date</u>	<u>Location</u>
June 16	Santa Fe
July 14-15	Aztec
August 18-19	Las Cruces
September 18-19	Pueblo of Isleta/Belen
October 27-28	Artesia
November 24-26	Santa Fe

AGENDAS

Revised: June 11, 2008

**TENTATIVE AGENDA
for the
WATER AND NATURAL RESOURCES COMMITTEE**

**June 16, 2008
Room 307, State Capitol**

Monday, June 16

- 10:00 a.m. **Call to Order**
—Representative Andy Nuñez, Chair
- 10:05 a.m. **Interim Legislative Meeting Protocols**
—Paula Tackett, Director, Legislative Council Service
- 10:30 a.m. **Status Reports**
—John D'Antonio, State Engineer
—Craig Roepke, Office of the Interstate Stream Commission
- 12:00 noon **2008 Interim Work Plan, Itinerary and Meeting Schedule**
- 1:00 p.m. **Adjourn**

Revised: July 11, 2008

**TENTATIVE AGENDA
for the
WATER AND NATURAL RESOURCES COMMITTEE**

**July 14-15, 2008
San Juan County Administration Building
100 South Oliver Street
Aztec**

Monday, July 14

- 8:00 a.m. **Water Adjudication Subcommittee Discussion**
—Senator Mary Kay Papen, Subcommittee Chair
- 10:00 a.m. **Call to Order and Introductions (Full Committee)**
—Representative Andy Nuñez, Chair
Welcome to San Juan County
—Charlie Blassingame, San Juan County Farm Bureau President
- 10:15 a.m. **Indian Water Rights Settlement Agreements Status**
—Jim Dunlap, Chair, Interstate Stream Commission (ISC)
—Estevan Lopez, Director, ISC
—John Leeper, Navajo Nation Water Resources
—John D'Antonio, State Engineer
—D. L. Sanders, Chief Counsel, Office of the State Engineer (OSE)
—Benjamin Cowboy, Navajo Nation Water Rights Commissioner
—Gil Arviso, Navajo Nation Water Rights Commissioner
—Cletis Marks, Navajo Nation Water Rights Commissioner
- 11:30 a.m. **Concerns of Non-Signers to the Agreements**
—Dick Rochester, Pojoaque Basin Water Alliance
—Ray Kysar, San Juan Agricultural Water Users Association
- 1:00 p.m. **Working Lunch**
- 1:30 p.m. **Water Quality and Oil and Gas Drilling**
—Representative Paul C. Bandy, Rancher
—Steve Henke, Area Manager, Bureau of Land Management
—Mark Fesmire, Oil Conservation Division
—Adan Trujillo, Rio Arriba County Attorney
—Roman A. Abeyta, Santa Fe County Manager
—Rudy Garcia, Legislative Liaison, Santa Fe County
—Tom Mullins, Engineering Manager, Synergy Operating, LLC

3:30 p.m. **Tour of Oil and Gas Drilling Sites**
—Representative Paul C. Bandy

5:00 p.m. **Recess**

Tuesday July 15

9:00 a.m. **House Memorial 42 Task Force Status Report**
—John Longworth, OSE

10:00 a.m. **Dam Safety**
—John D'Antonio, State Engineer
—John Romero, Director, Water Resource Allocation Program, OSE
—Dave Velasquez, Aztec City Manager

11:00 a.m. **House Memorial 40, EPA Clean Water Standards Effect on New Mexico**
—Ron Curry, Secretary of Environment
—Karen Gallegos, Director, Water and Wastewater Infrastructure Development
 Division, Department of Environment
—Richard Rose, Chief, Construction Programs Bureau

12:00 noon **Adjourn**

Revised: July 31, 2008

**TENTATIVE AGENDA
for the
WATER AND NATURAL RESOURCES COMMITTEE
and the
COURTS, CORRECTIONS AND JUSTICE COMMITTEE**

**August 4-6, 2008
NMSU Golf Course Club House
3000 Herb Wimberly Drive
Las Cruces**

Monday, August 4

8:00 a.m. Call to Order and Introductions

- Representative Andy Nuñez, Water and Natural Resources Committee Chair
- Senator Cisco McSorley, Courts, Corrections and Justice Committee Co-Chair
- Representative Al Park, Courts, Corrections and Justice Committee Co-Chair

Welcome to NMSU

- Waded Cruzado-Salas, Interim President, New Mexico State University (NMSU)

8:15 a.m. Alamogordo Desalination Project Status

- Steven Castillo, Dean, College of Engineering, NMSU
- Karl Wood, Director, Water Resources Research Institute

9:15 a.m. Food Security and Farm Sustainability

- Jeff Witte, College of Agriculture, NMSU
- Janet Jarratt, Farmer
- Edward Avalos, New Mexico Department of Agriculture

10:30 a.m. Why Water Rights Adjudication Is Important

- Joe Stell, Former Chair, Water and Natural Resources Committee (WNRC)
- Tom Turney, Former State Engineer

12:00 noon Working Lunch

12:30 p.m. AOC-OSE Work Group Status Report

- Bill Hume, Office of the Governor
- Celina Jones, Administrative Office of the Courts

2:00 p.m. Texas Litigation; Status of Appropriation

- Frances Bassett, Office of the Attorney General
- John Draper, Attorney, Montgomery and Andrews

- 3:00 p.m. **Pre-1907 Water Rights Status and Acequia Adjudications**
—Tessa Davidson, Rio Grande Water Rights Association
—Richard Trujillo, Office of the State Engineer
—Hilario Rubio, Office of the State Engineer
- 4:00 p.m. **The Role of Ombudsman and Intervenors in Water Adjudications**
—Darcy Bushnell, Joe M Stell Ombudsman Program, Utton Transboundary
Center, University of New Mexico (UNM) Law School
- 5:00 p.m. **Recess**

Tuesday, August 5

- 8:00 a.m. **Gila River Planning**
—Estevan Lopez, Director, Interstate Stream Commission
—Adrian Oglesby, The Nature Conservancy
- 9:00 a.m. **Domestic Wells Legal Status (*Bounds vs. State*)**
—Steve Hernandez, Attorney
—Bill Hume, Office of the Governor
- 10:00 a.m. **Lower Rio Grande Adjudication Status Report**
—The Honorable Jerald A. Valentine, Judge, Third Judicial District
- 11:00 a.m. **Elephant Butte/El Paso Water District Settlement**
—Gary Esslinger, Manager, Elephant Butte Irrigation District
- 12:00 noon **WNRC Adjourn**
- COURTS, CORRECTIONS AND JUSTICE COMMITTEE**
- 1:00 p.m. **Call to Order**
—Senator Cisco McSorley, Courts, Corrections and Justice Committee Co-Chair
—Representative Al Park, Courts, Corrections and Justice Committee Co-Chair
- 1:05 p.m. **Juvenile Justice Reforms — Recent Efforts and Future Planning: The Missouri Model and Juvenile Facilities**
— Dorian Dodson, Secretary of Children, Youth and Families
— Debra Pritchard, Director, Juvenile Justice Services, Children, Youth and Families Department
- 3:30 p.m. **Tour of J. Paul Taylor Center**
- Recess**

Wednesday, August 6

- 9:00 a.m. **Report from the Attorney General's Animal Cruelty Task Force; Legislative Proposals**
—Heather Ferguson, Legislative Director, Animal Protection of New Mexico and Animal Protection Voters
—Steve Suttle, Special Counsel, Office of the Attorney General
- 10:30 a.m. **Legislative Proposal on Eyewitness Identification Procedures**
—Michael Stout, New Mexico Criminal Defense Lawyers Association (NMCDLA)
—Henry Valdez, First Judicial District Attorney
- 11:15 a.m. **Amenability Hearings for Serious Youthful Offenders**
—Anna Gabrielitis, Attorney, Juvenile Division, Public Defender Department
—Rory Rank, Attorney, Juvenile Division, Public Defender Department
—Michael Stout, NMCDLA
—Henry Valdez, First Judicial District Attorney

Public Comment

Adjourn

Revised: September 16, 2008

**TENTATIVE AGENDA
for the
WATER AND NATURAL RESOURCES COMMITTEE**

**September 18-19, 2008
Pueblo of Isleta Casino, Ballroom A/Belen Public Library**

Thursday, September 18, Pueblo of Isleta Casino

- 9:00 a.m. **Call to Order and Introductions**
—Representative Andy Nunez, Chair
- Welcome to Pueblo of Isleta**
—Governor Robert Benavides
- 9:15 a.m. **Pueblo of Isleta Water Issues**
—John Sorrell, Director, Water Resources Department
- 10:00 a.m. **Deep Water Regulation**
—John D'Antonio, State Engineer
- 11:00 a.m. **Water Availability for Land Development**
—John Wortman, New Mexico Farm and Livestock Bureau
- John Longworth, Office of the State Engineer
- 12:00 noon **Working Lunch**
- Funding for Regional Water Plan Updates**
—Tom Bates, Vice Chair, Gila/San Francisco Water Commission
—Michael Benson, Program Specialist, Water Management Branch, Navajo
Nation
—Consuelo Bokum, Board President, New Mexico Water Dialogue
—Brent Bullock, Acting Superintendent, Pecos Valley Artesian Conservancy
District
—Terese Ulivarri, City Councilor, City of Belen
- 1:00 p.m. **River Ecosystem Restoration Initiative**
—Marcy Leavitt, Department of Environment (NMED)
—Karen Menetrey, Surface Water Quality Bureau, NMED
- 2:00 p.m. **Tour Isleta Lakes, Isleta Habitat Restoration Project, Isleta Diversion Dam
and Los Lunas Silvery Minnow Refugium**
—John Sorrell, Pueblo of Isleta
—Estevan Lopez, Director, Interstate Stream Commission

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

Friday, September 19, Belen Public Library

9:00 a.m. **Albuquerque Bernalillo County Water Utility Authority (ABCWUA) and Surface Water Project**

—Mark Sanchez, Executive Director, ABCWUA

—Deanna Archuleta, Chair, ABCWUA and Commissioner, Bernalillo County

—John Stomp, Water Resources Manager, City of Albuquerque

10:30 a.m. **Active Water Resource Management Rules; Implications for Senior Water Rights**

—John D'Antonio, State Engineer

—Sunny Nixon, Rodey Law Firm (if available)

—A.J. Olsen, Hennighausen and Olsen

—Steve Hernandez, Hubert and Hernandez

—Paula Garcia, New Mexico Acequia Association

12:00 noon **Lunch at the Whitfield Wildlife Conservation Area**

—Charlie Sanchez, Valencia County Soil and Water Conservation District

1:30 p.m. **Middle Rio Grande Conservancy District (MRGCD)**

—MRGCD Board Members

2:30 p.m. **Water Rights Adjudications Subcommittee**

Parameters for Middle Rio Grande Adjudications

—Jesse Boyd, Attorney

—Ernest Coriz, Director of Planning and Engineering, Pueblo of Santo Domingo

—Tom Turney, Consulting Engineer

—Lawrence Gutierrez, Coalition of the Six Middle Rio Grande Basin
Pueblos (invited)

—Chuck DuMars, Law and Resource Planning Associates

4:00 p.m. **Adjourn**

Revised: October 20, 2008

TENTATIVE AGENDA
for the
WATER AND NATURAL RESOURCES COMMITTEE
October 27-28, 2008
Central Valley Electric Cooperative
1505 N. 13th Street
Artesia

Monday, October 27

- 9:00 a.m. **Call to Order and Introductions**
—Representative Andy Nunez, Water and Natural Resources Committee Chair
- Welcome to Artesia**
—Phil Burch, Artesia Mayor
- 9:15 a.m. **Produced Water**
—Ned Godshall, Altela, Inc.
—Tim Coakley, Second Chance Water Company
- 10:30 a.m. **Pecos River Settlement Status**
—Estevan Lopez, Director, Interstate Stream Commission (ISC)
- 12:00 noon **Lunch**
- 1:30 p.m. **Bonito Lake Water Rights Status**
—Joe M Stell
- 2:30 p.m. **Restore New Mexico**
—Linda Rundell, State Director, Bureau of Land Management
—Debra Hughes, Director, New Mexico Association of Conservation
 Districts
- 3:30 p.m. **Biofuels from Algae**
—TBA, Valcent Products
—Doug Lynn, Center of Excellence for Hazardous Materials Management
- 5:00 p.m. **Recess**

Tuesday, October 28

- 9:00 a.m. **Water and Wastewater Projects Funding Status**
—Karen Gallegos, Department of Environment
—Rick Martinez, Deputy Cabinet Secretary, Department of Finance and
Administration
- 10:00 a.m. **Water Cabinet Status Report**
—Estevan Lopez, Chair, Water Cabinet, and Director, ISC
- 11:00 a.m. **Livestock Transportation**
—Mr. Don L. "Bebo" Lee, New Mexico Cattle Growers Association
- 12:00 noon **Full Committee Adjourn**

Water Adjudications Subcommittee Discussion
- 2:00 p.m. **Subcommittee Adjourn**

Revised: November 18, 2008

**TENTATIVE AGENDA
for the
WATER AND NATURAL RESOURCES COMMITTEE**

**November 24-25, 2008
Room 322, State Capitol**

Monday, November 24

- 8:00 a.m. **Call to Order**
—Representative Andy Nuñez, Chair
- Regulation of Propane Suppliers**
—Robert Rivera
—Baron Glassgow, Executive Director, New Mexico Propane Gas
 Association
- 9:00 a.m. **Acequia Issues**
—Paula Garcia, New Mexico Acequia Association
- 10:00 a.m. **Governor's Outstanding National Resource Waters Initiative**
—Marcy Leavitt, Department of Environment
- 11:30 a.m. **Lunch**
- 1:00 p.m. **Off-Highway Motor Vehicle Act Amendments**
—Reese Fullerton, Energy, Minerals and Natural Resources Department
- 2:30 p.m. **Game and Forest Management Impacts**
—Tod Stevenson, Acting Director, Department of Game and Fish
—Art Martinez, Concerned Citizens of the Gallina, Coyote, Cuba Area
- 4:00 p.m. **Invasive Species Impact on Water Systems**
—Brian Lang, Department of Game and Fish
—Dave Moore, International Game Fish Association
- 5:00 p.m. **Recess**

Tuesday, November 25

- 9:00 a.m. **Proposed Legislation**
—Water Planning Appropriation
—Desalination Project Appropriation
—New Mexico Highlands University Watershed Institute Appropriation
—Aquifer Mapping Appropriation
—Española Basin Regional Issues Forum Appropriation
—Veterinarian Program Appropriation
—Water Adjudication Reform
—State Engineer Licensure
—Livestock Confiscation and Removal
—Dam Safety
—Eminent Domain
—Eastern New Mexico Water Authority
—Lower Rio Grande Public Water Works Authority
—Consumptive Water Use Conservation Memorial
- 12:00 noon **Lunch**
- 1:30 p.m. **Renewable Energy Transmission Authority**
—Lisa Szot, Director
- 2:30 p.m. **Valles Caldera National Preserve Management Status**
—Steve Henry, Member, Board of Trustees
- 3:30 p.m. **Water Conservation Initiatives**
—John Longworth, Office of the State Engineer
- 5:00 p.m. **Adjourn**

MINUTES

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

June 16, 2008
Santa Fe

The first meeting of the Water and Natural Resources Committee was called to order at 10:10 a.m. on Monday, June 16, 2008, by Representative Andy Nuñez, chair, in Room 307 of the State Capitol in Santa Fe.

Present

Rep. Andy Nuñez, Chair
Rep. Paul C. Bandy
Rep. Elias Barela
Sen. Sue Wilson Beffort
Rep. Ray Begaye
Rep. Joseph Cervantes
Sen. Dede Feldman
Sen. Mary Jane M. Garcia
Rep. Dona G. Irwin
Rep. Larry A. Larrañaga
Rep. Kathy A. McCoy
Sen. Mary Kay Papen
Rep. Mimi Stewart
Rep. Don L. Tripp

Advisory Members

Sen. Vernon D. Asbill
Sen. Carlos R. Cisneros
Rep. Anna M. Crook
Rep. Nora Espinoza
Rep. Candy Spence Ezzell
Rep. Ben Lujan
Rep. James Roger Madalena
Sen. Cisco McSorley
Rep. Danice Picraux
Rep. Henry Kiki Saavedra
Rep. James R.J. Strickler

Absent

Sen. Phil A. Griego, Vice Chair
Sen. Clinton D. Harden, Jr.
Sen. Cynthia Nava
Sen. Steven P. Neville

Sen. Rod Adair
Sen. Timothy Z. Jennings
Sen. Gay G. Kernan
Sen. Leonard Lee Rawson
Sen. Nancy Rodriguez
Sen. John C. Ryan
Rep. Peter Wirth
Rep. Eric A. Youngberg

Guests

The guest list is in the original meeting file.

Staff

Gordon Meeks
Jon Boller
Jeret Fleetwood

Monday, June 16

Representative Nuñez began the meeting by having members of the committee introduce themselves.

Interim Committee Meeting Protocols

Paula Tackett, director, Legislative Council Service (LCS), explained to the committee that, in response to concerns the Legislative Council had raised about misunderstandings regarding interim committee protocol, the council authorized her to make a presentation about those protocols at each committee's organizational meeting.

Ms. Tackett began by discussing quorums, pointing out that a quorum of any deliberative body must be present in order for that body to conduct business. She explained that a quorum is 50 percent of the voting members, plus one, and noted that a quorum for the Water and Natural Resources Committee would be 10 voting members. Ms. Tackett went on to explain that once established, a quorum is presumed to exist unless the lack of one is exposed by a question of no quorum or a roll call vote. She also noted that, since a quorum is presumed to exist, committees may take voice votes or consensus votes even when it is clear that a quorum is lacking.

Ms. Tackett also explained that committees may also convene themselves as special subcommittees for the limited purpose of hearing testimony on the agenda. She explained that convening as a subcommittee allows members and presenters who may have traveled long distances to attend the meeting to hear or provide testimony as well as allowing members to be paid per diem and mileage. Ms. Tackett indicated that subcommittee members may only be paid if one of two conditions is met: all the members in attendance (voting, advisory and one-time attendees) add up to the number of voting members required for a quorum; or the chair or vice chair is present along with one member from each chamber and each party.

Ms. Tackett went on to point out that the Legislative Council routinely authorizes the speaker and president pro tempore to adjust membership of the committees as necessary in consultation with the respective minority leaders, which allows them to make last-minute substitutions to most committees in order to attain the number required for a quorum. However, Ms. Tackett emphasized that such authorization has not been construed as to allow the speaker or the president pro tempore to adjust the make-up of the committee for the apparent purpose of stacking the committee for a vote on a controversial subject. Ms. Tackett also discussed the ability of a member to resign from an interim committee at any time.

Ms. Tackett then provided the committee with details regarding interim committee voting, specifically pointing out that only voting members may vote. She also outlined the

blocking provision, which allows a majority of the members appointed from one chamber to a committee to block the action of the other chamber, despite the fact that a majority of the members present may have voted in favor of that action.

Finally, Ms. Tackett provided the committee with a brief overview of the use of the sound system in the capitol's meeting rooms, seating at the dais in those meeting rooms, seating of staff in committee rooms and the development of the calendar by the LCS to minimize meeting conflicts between voting members.

Status Reports

John D'Antonio, state engineer, provided the committee with an overview of several of the issues confronting the Office of the State Engineer (OSE). He began by discussing the status of several of the various Native American water rights settlements involving the OSE. Mr. D'Antonio explained that some of the settlements, such as the Navajo Water Rights Settlement, have already been negotiated and are currently awaiting approval by Congress, while others, such as the *Aamodt* settlement, are still being negotiated.

Mr. D'Antonio also discussed several of the other major water projects either underway or being planned in New Mexico, such as the Ute Pipeline project and the implementation of the Pecos settlement. He also provided the committee with an estimate of the costs associated with the water settlements and projects he discussed, which total roughly \$67 million.

Mr. D'Antonio also raised the issue of dam safety in New Mexico, pointing out that 142 dams in New Mexico have been deemed deficient by OSE standards. He indicated that one of the major obstacles to dam safety issues in the state is the lack of a competitive pay band to fill dam safety position vacancies on the OSE staff. Mr. D'Antonio also provided the committee with an overview of the costs associated with dam safety over the next five to 10 years, including \$186,200 for two permanent dam safety engineer positions, \$1 million for three years to prioritize the deficient dams and \$5 million a year to plan, design and perform construction upgrades to deficient dams.

Estevan Lopez, director of the Interstate Stream Commission (ISC), provided the committee with status updates regarding the Rio Grande, Pecos River and Canadian River basins. He explained that the ISC has worked on the Endangered Species Collaborative Program and Pilot Channel along the Rio Grande and has avoided interstate litigation between New Mexico and Texas over the river.

Mr. Lopez went on to discuss the ISC's work along the Pecos River. He noted that the ISC has almost completed its land and water rights acquisition as laid out in the Pecos River settlement plan. He also pointed out that New Mexico has built a cumulative compact credit with Texas of 67,300 acre-feet of water, a historic high.

Questions and comments included:

- the use of augmentation wells along the Pecos River;
- online use of OSE databases by the public;
- an OSE office along the middle Rio Grande;
- commitment of local governments funding their portion of water settlements;
- the importance of federal funding for settlement implementation;
- the total number of dams in New Mexico versus the number of ones deemed unsafe;
- adjudication issues along the lower Rio Grande;
- water licenses versus water rights;
- the ability of the state to continue to function and administer water without being fully adjudicated;
- the source of water rights obtained by the state along the Rio Grande; and
- the relationship between conservancy districts and the OSE.

2008 Interim Work Plan, Itinerary and Meeting Schedule

Staff provided the committee with a list of potential agenda items for discussion throughout the interim and potential meeting dates and sites.

Representative Barela suggested that the committee meet in September in Isleta or Belen instead of Artesia.

On a motion made, seconded and approved, the committee changed its proposed September meeting location from Artesia to Belen and Isleta, with Representatives Bandy, Irwin, Larrañaga and Nuñez and Senator Papen voting no.

The committee also changed its proposed October 27-28 meeting from Isleta and Santa Fe to Artesia.

Speaker Lujan reminded the committee that holding a meeting outside the State Capitol in October would require the approval of the Legislative Council.

The following meeting dates and locations were also approved:

- July 14-15 (Aztec);
- August 18-19 (Las Cruces, for a joint meeting with the Courts, Corrections and Justice Committee); and
- November 24-25 (Santa Fe).

The committee also moved to reconstitute the adjudications subcommittee with the same membership as the 2007 interim:

- Senator Papen, chair;
- Representative Begaye;
- Representative Cervantes;
- Representative Ezzell;
- Representative McCoy;
- Representative Larrañaga;

- Senator McSorley;
- Senator Ryan; and
- Representative Wirth.

There being no further business, the committee adjourned at 1:00 p.m.

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

**July 14-15, 2008
Aztec**

The second meeting of the Water and Natural Resources Committee was called to order by Representative Andy Nunez, chair, at 10:10 a.m. on July 14, 2008 in the San Juan County Administration Building in Aztec, New Mexico.

Present

Rep. Andy Nunez, Chair
Rep. Paul C. Bandy
Rep. Ray Begaye
Sen. Mary Jane M. Garcia (July 15)
Rep. Larry A. Larrañaga (July 14)
Rep. Kathy A. McCoy
Sen. Steven P. Neville
Sen. Mary Kay Papen
Rep. Mimi Stewart
Rep. Don L. Tripp

Advisory Members

Sen. Carlos R. Cisneros
Rep. Anna M. Crook
Rep. Nora Espinosa
Rep. Candy Spence Ezzell
Sen. Cisco McSorley

Absent

Sen. Phil A. Griego, Vice Chair
Rep. Elias Barela
Sen. Sue Wilson Beffort
Rep. Joseph Cervantes
Sen. Dede Feldman
Sen. Clinton D. Harden, Jr.
Rep. Dona G. Irwin
Sen. Cynthia Nava

Sen. Rod Adair
Sen. Vernon D. Asbill
Sen. Timothy Z. Jennings
Sen. Gay G. Kernan
Rep. Ben Lujan
Rep. James Roger Madalena
Rep. Danice Picraux
Sen. Leonard Lee Rawson
Sen. Nancy Rodriguez
Sen. John C. Ryan
Rep. Henry Kiki Saavedra
Rep. James R.J. Strickler
Rep. Peter Wirth
Rep. Eric A. Youngberg

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

Guests

The guest list is in the original meeting file.

Staff

Gordon Meeks
Jon Boller
Jeret Fleetwood

Monday, July 14

Representative Nunez began by having members of the committee and staff introduce themselves.

Welcome to San Juan County

Representatives of the San Juan County Commission welcomed committee members to Aztec and thanked them for coming.

Indian Water Rights Settlement Agreements Status

Jim Dunlap, chair of the Interstate Stream Commission (ISC), provided the committee with a brief overview of the Navajo Nation Water Rights Settlement. He explained that, while there is some disagreement over the settlement, it benefits both Native American and non-Native American water users in the Four Corners area in several ways. Mr. Dunlap pointed out that the settlement provides water to non-Native Americans without the threat of expensive court battles, which allows for continued economic development and growth throughout the region.

Estevan Lopez, director of the ISC, also provided the committee with testimony regarding the settlement. He explained that one of the steps toward completion of the settlement is passage of a bill through Congress. Mr. Lopez indicated that the Northern New Mexico Rural Water Projects Act was introduced by Senators Bingaman and Domenici and Congressman Udall on April 19, 2007. He noted that the act approves the settlement and authorizes construction of several of the projects laid out in the settlement, particularly the Navajo-Gallup Water Supply Project. Mr. Lopez went on to explain that the Senate version of the bill had been combined with 90 other bills as part of the Omnibus Public Land Management Act, which is ready for consideration by the full senate.

Mr. Lopez went on to provide the committee with some idea about the sequence of events that would occur once the bill becomes law and discussed the funding for the various projects. He noted that the settlement is currently estimated to cost \$900 million, with most of the money going toward construction of the Navajo-Gallup Water Supply Project.

John Leeper of Navajo Nation Water Resources also discussed the settlement. He began by emphasizing that the Navajo Nation strongly supports the settlement and its centerpiece, funding for the Navajo-Gallup Water Supply Project. Mr. Leeper illustrated the importance of the settlement by noting that many of the 80,000 inhabitants of the Navajo Nation currently have to haul water, most of whom would be served by the project. Mr. Leeper echoed Mr. Dunlap's

comments that the settlement would also greatly benefit non-Native American water users, explaining that if the settlement were to fall through, the Navajo Nation would be forced to determine its water rights through litigation, likely a much more expensive prospect for all involved.

Gil Arviso, a Navajo Nation water rights commissioner, underscored the importance of the settlement by also pointing out that a likely consequence of the settlement failing would be expensive litigation.

John D'Antonio, state engineer, provided the committee with a breakdown of some of the year-by-year costs of the settlement. He explained that while the federal government would provide the funding for most of the projects associated with the settlement, state and local governments would also contribute.

D.L. Sanders, chief counsel for the Office of the State Engineer (OSE), addressed some of the concerns expressed by parties who had not signed on to the settlement. He explained that the OSE has gone from a stance of not negotiating on Indian water rights claims to trying to build consensus and developing settlements that would maintain all existing water uses and provide water for tribal permanent homelands. Mr. Sanders also pointed out that the federal government would provide the funding for the portion of the settlement that funds Native American water projects since the state does not contribute to projects that do not also benefit non-Native Americans.

Questions and comments included:

- that San Juan/Chama project water allocations remain intact under the terms of the settlement;
- the division of water among New Mexico, the Navajo Nation and Arizona;
- whether the bill authorizing the projects is still subject to amendment or other modification;
- funding for the project, along with funds for the *Aamodt* and Taos settlements, is contained in the senate bill;
- whether a plan exists to address those families that will still have to haul water once construction of the Navajo-Gallup Water Supply Project is finished;
- where funding for the state and local contributions to the project will come from; and
- that over 250,000 will ultimately be served by the various projects contained in the settlement.

Concerns of Non-Signers to the Agreements

Dick Rochester of the Pojoaque Basin Water Alliance provided the committee with a list of the objections raised by individuals who have chosen not to sign on to Native American water rights settlements, particularly the *Aamodt* settlement. He explained that the principal objections of most non-signers include:

- costs to taxpayers;
- a lack of justification of the water system the settlement proposes;

- the possibility of water rights holder impairment by Native American water rights holders;
- potential effects of the settlements on acequia associations and other agricultural users; and
- cost-sharing arrangements of the settlements.

Former Senator Raymond Kysar also discussed the concerns of non-signers regarding Native American water rights settlements. He began by emphasizing the importance of water to all of New Mexico's inhabitants. Senator Kysar went on to suggest that no senior water rights holders in northwestern New Mexico were consulted about the terms of the Navajo Nation Water Rights Settlement. He then indicated that a better approach to administering water rights in the region would be for the OSE to hire someone to determine the amount of water available in San Juan County and adjudicate it. He also noted that New Mexico needs to implement and adequately fund water courts to expedite the adjudication process.

Jimmy Rogers, secretary/treasurer of the San Juan County Agricultural Water Users Association, echoed Senator Kysar's comments, particularly regarding the consultation with and protection for senior water rights holders in the region once the settlement is finished.

Questions and comments included:

- whether the Navajo Nation owns all of the water stored in Navajo Reservoir;
- notice of adjudication to water users on the San Juan River;
- whether a hydrographic survey has been conducted on the San Juan River and the surrounding area; and
- that the Navajo Nation Water Rights Settlement cannot be completed if the bill is signed into law and funding for the projects contained in it is not provided.

The state engineer responded to the concerns raised by non-signers by pointing out that:

- New Mexico does, in fact, have water courts;
- while adjudication of the San Juan River is underway, many water users in the area have not actually been served with court papers concerning the adjudication, and therefore have not been contacted yet;
- that many of the concerns raised by the non-signers are actually issues regarding water rights administration in New Mexico in general and not necessarily points of the Navajo Nation Water Rights Settlement;
- that the settlement is a negotiation, the nature of which often means that not everyone gets exactly what they want;
- that most water users in the area covered by the settlement are likely to fare better under the terms of the settlement than they would in a protracted court battle with the Navajo Nation, which has indicated that it would pursue that avenue if the settlement fails; and
- the hydrographic survey of the San Juan River has been conducted, mostly by the Bureau of Reclamation, and is a public document viewable by whomever wishes.

Water Quality and Oil and Gas Drilling

Mark Fesmire of the Oil Conservation Division (OCD) provided the committee with testimony regarding the promulgation of OCD rules regarding oil and gas wells, particularly the so-called "pit-rule". He explained that the rule was developed in response to several documented cases of ground water near oil and gas wells being contaminated. Mr. Fesmire also indicated that tests showed that leakage in the liners installed around wells could be the cause of contamination and pointed out that contaminants could be classified as hazardous waste. Mr. Fesmire went on to note that the rule governed the material construction and thickness of liners placed around wells to prevent such contamination. He acknowledged that while the new rules have not been well-received by the oil and gas industry because they increase the costs of drilling new wells, the increased costs of prevention are exponentially cheaper than the cost of remediation if a well site becomes contaminated. Mr. Fesmire finished by suggesting that the statutes governing oil and gas wells need to be updated.

Adan Trujillo, an attorney in Rio Arriba County, provided the committee with testimony regarding an oil company's activities in Rio Arriba County. He began by emphasizing that Rio Arriba County is not opposed to oil and gas development. However, he indicated that as an oil company submitted applications to begin drilling in the Rio Chama watershed, the county realized that both its regulations and those of the OCD might not be strong enough to protect the watershed.

Mr. Trujillo went on to discuss the specific points of the oil company's application in the Rio Chama watershed. He provided the committee with photographs showing that the proposed drilling site is in close proximity to the headwaters of Tierra Amarilla Creek, and while possibly allowable by OCD regulations, would almost certainly contaminate the headwaters of the creek and underlying ground water. Mr. Trujillo suggested that this indicates a lack of adequate siting by criteria and indicated that the OCD regulations governing the criteria need to be examined and probably strengthened. For example, he noted that requiring hydrographic surveys of proposed sites could have easily prevented the current situation, which has Rio Arriba County protesting the permit that would allow drilling at the site.

Tom Mullins, engineering manager for Synergy Operating, LLC, provided the committee with testimony regarding the work oil and gas companies generally do to ensure that water resources are adequately protected. He explained that oil and gas companies contemplate all kinds of risk, and emphasized that regulatory risk is perhaps the greatest threat to continued oil and gas resource development. He went on to note that regulatory and bureaucratic hurdles to oil and gas development are a large source of uncertainty in the industry. Mr. Mullins concluded by stating that the enactment of the pit rule by the OCD was simply unnecessary because of the work oil and gas companies already do to ensure the safety and quality of water resources when exploring and drilling.

Rudy Garcia, legislative liaison for Santa Fe County, echoed Mr. Trujillo's comments, indicating that Santa Fe County is experiencing similar issues with proposed oil and gas wells, and he hopes to develop regulations addressing those issues in the near future.

Representative Bandy, who emphasized that he was appearing before the committee as a landowner and rancher, explained that ranching in San Juan County is difficult and that oil and gas development provides financial opportunities to landowners in the area. He added that he has several oil and gas wells on his property, and that he has had to file two lawsuits with oil and gas companies regarding repair of damage done to his land by wells. Representative Bandy concluded by noting that oil and gas exploration in the region is a fact of life and that some balance between the industry and landowners will have to be worked out in the future.

Steve Henke, area manager for the Bureau of Land Management (BLM), provided the committee with some background information on the oil and gas industry in northwestern New Mexico and the role of the BLM in the struggle between landowners and the industry. He noted that oil and gas companies contact the BLM to set up an on-site meeting between the bureau, the landowner or grazing leaser and the company seeking a permit. Mr. Henke emphasized that the goal of the BLM in the process is to minimize the impact of wells on the land. Some of the tools he noted that the BLM employs in that regard include requirements for low-impact roads, recommendation of interim and final land reclamation improvements and final well plugging and abandonment procedures.

Questions and comments included:

- caveat emptor for landowners;
- the fate of marginal oil and gas wells if OCD rules are fully implemented;
- various levels of contamination in wells;
- that the size of drilling pads will have to increase under new requirements;
- disposal of well "cuttings";
- oil and gas exploration in Santa Fe County;
- the difficulty in reversing the existing pit rule if another administration so desired;
- consideration by Rio Arriba County of a moratorium on oil and gas drilling similar to Santa Fe County's; and
- what oil and gas companies are required to do in the event of a spill or some other form of contamination.

Tour of Oil and Gas Drilling Sites

Representative Bandy led the committee on a tour of several oil and gas drilling sites located on and near his property. Representatives of the oil and gas industry highlighted various aspects of the wells and surrounding terrain, such as the various strategies employed for environmental and wildlife protection, land remediation, noise management and safety. They pointed out that while the basic requirements are the same, different companies employ different methods to varying degrees of success.

Tuesday, July 15

House Memorial 42 Task Force Status Report

John Longworth and John Romero, both of the OSE, provided the committee with an

update regarding the task force convened in response to House Memorial 42, passed in 2007, which asked the OSE to set up a stakeholder group to address potential changes to Section 72-1-9 NMSA 1978, the statute requiring 40-year water plans for some entities. Mr. Longworth explained that the memorial contemplated three basic types of changes to the statute: adding to the list of entities allowed to hold unused water for 40 years, extending the time period from 40 years to 100 and establishing criteria for the OSE to review water development plans.

Mr. Longworth and Mr. Romero indicated that the OSE had put together a broad-based group of stakeholders, composed of about 50 organizations and individuals, to attend meetings to review issues raised by the memorial. Mr. Longworth indicated that the stakeholder group also solicited written comments from any other interested parties. Then, he explained, a template was developed for the analysis of the water plans, which the stakeholder group is reviewing.

Mr. Longworth and Mr. Romero explained that while the stakeholder group has also discussed the issues of adding entities to the statute and extending the period, the group has not been able to achieve consensus on either issue. Still, he pointed out that most stakeholders seem to feel that the process is valuable and has resulted in better understanding of the fundamental policy questions raised by the memorial. Mr. Longworth went on to note that the future of the task force involves development of a draft status report for the task force to review. He concluded by emphasizing that while the work of the task force has not yet been completed, the memorial and subsequent task force meetings have resulted in a positive exploration of public policy by water stakeholders in New Mexico.

Questions and comments included:

- discussion of the ability of some entities to hold 150 percent of their allotted water;
- specific entities that are covered by the statute and which ones might be added;
- whether state universities are covered by the statute;
- how the statute currently affects the transfer of water rights;
- the ability of municipalities to transfer and possibly hoard water rights for longer than the 40 years currently required;
- potential difficulties arising from increasing the time period to 100 years, particularly with respect to trying to predict growth patterns in the state;
- how increasing the time period for water plans might curtail the ability of the state engineer to administer water rights;
- whether out-of-basin water rights transfers are subject to approval by affected conservancy districts;
- issues related to the fact that all of the stakeholder meetings have been held in Santa Fe;
- the effect that increasing the time period to 100 years might have on major water projects, such as the Ute Pipeline Project, that are already planned; and
- the necessity of being careful about transferring water out of basins or planning projects such as pipelines that accomplish the same thing.

Dam Safety

Mr. D'Antonio and Mr. Romero provided the committee with testimony regarding dam

safety in New Mexico. Mr. Romero began by indicating that New Mexico has a significant number of dams that have been deemed to be in either unsatisfactory or poor condition, and that continued inattention will only cause the existing problem to get worse. He went on to explain that some of the dams in poor or unsatisfactory condition are considered "high hazard", which means that loss of life will occur if those dams fail. Mr. Romero then provided the committee with a county-by-county breakdown of high-hazard dams, pointing out those communities that have a particularly high number of high-hazard dams.

Mr. Romero then explained that the OSE has begun using capital outlay money to begin repairing dams, but noted that relatively little funding has been dedicated to the problem. He went on to note that one of the hurdles the OSE is facing is the difficulty the OSE has had in recruiting and retaining qualified dam engineers. He pointed out that dam engineering is a rather specialized field, and that engineers qualified to do it usually opt to seek employment with higher-paying private engineering firms. Mr. Romero also noted that the OSE does not actually own any of the dams; it only coordinates with the owners for maintenance and repairs.

Mr. Romero also discussed the statute that governs OSE oversight of dams in New Mexico, explaining that modifying the statute might also help address the problem. He explained that many of the dams the OSE must evaluate are actually stock tanks for livestock, but their height and capacity are sufficient to require that the OSE check on them. Mr. Romero pointed out that most livestock water tanks pose little risk to persons or property and provided the committee with proposed legislation that would exempt most of those dams from having to submit plans to the OSE.

Dave Velasquez, Aztec city manager, identified four area dams that may have safety issues. He explained that one of them is in Bloomfield, two are reservoirs near Aztec and the fourth one is a planned reservoir near Aztec. Mr. Velasquez indicated that safety problems had been identified with the dam for the planned reservoir, so the plans were redone and the location was changed. He noted that Aztec is currently moving forward with plans for the reservoir, which would hold 90 acre-feet of water once completed.

Questions and comments included:

- cost increases in dam and water project construction associated with delays in getting the projects started;
- problems with the OSE dam regulations and Aztec's planned reservoir;
- ownership statistics for dam ownership;
- financing help for dams from the New Mexico Finance Authority;
- problems the OSE has experienced attracting and retaining qualified dam safety engineers;
- potential outsourcing of OSE dam engineer work;
- performance bond requirements by the OSE for dam engineering work;
- the unlikely possibility that small livestock dams on BLM lands are included on the OSE's dam safety list; and
- potential changes to dam safety language and exemptions to that language.

House Memorial 40, EPA Clean Water Standards Effect on New Mexico

Ron Curry, secretary of the New Mexico Department of Environment (NMED), and Karen Gallegos, director of the NMED's Water and Wastewater Infrastructure Development Division, provided the committee with testimony regarding House Memorial 40, which addresses the clean water standards mandated by the Environmental Protection Agency (EPA). Ms. Gallegos explained that Governor Richardson has issued an executive order addressing clean water standards by creating a department to manage water and wastewater development, particularly with regard to the financial planning required to plan, construct and manage water and wastewater systems. She went on to explain that the Water and Wastewater Infrastructure Development Division will work closely with the drinking water and construction divisions of the NMED. Ms. Gallegos also highlighted the development of the uniform funding application, which should allow communities desiring to upgrade their water or wastewater systems in order to stay in compliance with federal regulations to apply for funding once and have their application submitted to dozens of state and federal agencies that help provide funding for those kinds of projects.

Secretary Curry then discussed House Memorial 40, which he explained addresses clean water standards. He explained that there are some basins in New Mexico, such as the Tularosa Basin, that could be unprotected, particularly since there are some streams on the eastern side of the state that do not run on an annual basis and therefore do not meet federal requirements.

Secretary Curry also discussed issues related to a wastewater treatment plant planned for the Ruidoso area that the EPA has raised concerns about. He pointed out that although \$30-40 million in costs had already been incurred, the possibility of the facility not being approved is a realistic possibility.

Questions and comments included:

- contaminant levels present in the water that have caused permit approval problems for the Ruidoso facility;
- costs and time frame for remediation of contaminated ground water depends heavily on the level of the contamination and the nature of the contaminant;
- who generally bears the cost of ground water remediation;
- whether the NMED has jurisdiction over Native American water;
- that the Attorney General's Office can only help NMED in criminal matters;
- remediation status of potash mine tailings;
- cleanup of abandoned uranium mines;
- federal contribution to the planned Ruidoso facility; and
- NMED jurisdiction over contamination that crosses state lines.

There being no further business, the committee adjourned at 12:00 noon.

WATER ADJUDICATIONS SUBCOMMITTEE

Senator Papen, chair of the Water Adjudications Subcommittee, called the subcommittee to order at 8:35 a.m. with Representatives Ezzell, Bandy, Nunez and McCoy present.

Mr. Meeks summarized the quarterly report of the OSE and Administrative Office of the Courts (AOC) task force on adjudication reform, which had been presented to the Legislative Finance Committee. The task force has traveled to Colorado, Montana and Idaho to interview court and water management agency officials on the effectiveness of their adjudication procedures. The task force also sent a survey to New Mexico water rights stakeholders, but to date, the response rate on the survey has been disappointing.

Bill Hume, the governor's special assistant on water, commented that the resignation of two members of the task force does not reflect the substance of the task force discussions as much as it reflects the role of the court personnel who resigned. The members were concerned that there may be a perception of impropriety if the task force recommends reform in a way that could be perceived as prejudging a particular water rights adjudication. The members' employment by the courts requires that they be scrupulous in maintaining independence and objectivity.

Mr. Sanders told the subcommittee that he had been skeptical at first of the effort to reform the adjudication process but that after the visits and research being conducted on other states' procedures, he has seen some avenues for improvement and the effort is paying off in developing worthwhile information for improving the process whether or not the task force recommends statutory change. He reported that politics still plays a role in the other states, describing Idaho and Montana's claims-based adjudications. He said that even though those two states have established deadlines for claimants to file their claims with penalties for non-filing, the deadlines are predictably delayed when claimants lobby the legislature for relief. He said that Arizona is not a good example to follow because it is not progressing any better than New Mexico on its adjudications because there is no motivation to complete its adjudications. He said that Colorado has a promising approach in that it does impose a deadline for claimants to file their claims, but the penalty is not loss of water rights but rather to put late-filing claimants into a second tier of priority relative to where their seniority date would have been had they met the deadline for filing. He also discussed the concept of licensing water rights, which is a current provision in state law that has not been used extensively. He said that licensing may minimize the role of the court and the adversarial nature of the process. He told the committee that his office is working on minor changes to the licensing statutes that he anticipates will be brought to the legislature next session. He concluded by saying, he is surprised at how much he has learned during this process of assessing how other states adjudicate water rights.

Questions and comments from the subcommittee addressed:

- the degree of completion of the Pecos River adjudication;
- the expected outcome of the OSE/AOC task force review;
- the low response rate to the OSE/AOC survey;
- clarification of what licensing means;
- the expectation that licensing will provide a reliable, marketable quantification of a

- water right;
- sufficiency of money appropriated for the OSE/AOC task force;
 - how the bottleneck for adjudication is state engineer resources (personnel staffing);
 - a potential single water court;
 - a four-person expansion of the OSE staff for the middle Rio Grande adjudication to phase in a licensing program;
 - encouraging the OSE to have a specific legislative request ready for the November meeting;
 - the McCarren amendment for federal reserved water rights;
 - pueblo intentions to initiate water rights affirmation;
 - the Pecos River as a bad model for the rest of the state;
 - the effect of the Elephant Butte Irrigation District's settlement with El Paso District Number 1;
 - potential standards for quantifying pueblo water rights;
 - the status of existing domestic wells in lieu of the Robinson Court decision; and
 - the responsibilities of four additional staff that the state engineer is requesting in his budget.

**MINUTES
of the
JOINT MEETING
of the
WATER AND NATURAL RESOURCES COMMITTEE
and the
COURTS, CORRECTIONS AND JUSTICE COMMITTEE**

**August 4-5, 2008
Las Cruces**

The joint meeting of the Courts, Corrections and Justice Committee and the Water and Natural Resources Committee (WNRC) was called to order by Representative Andy Nunez, chair, WNRC, at 8:10 a.m. on August 4, 2008 in the New Mexico State University (NMSU) Golf Course Club House in Las Cruces, New Mexico.

Present

Rep. Andy Nunez, Chair
Rep. Paul C. Bandy
Rep. Elias Barela
Rep. Ray Begaye
Rep. Joseph Cervantes
Sen. Mary Jane M. Garcia
Rep. Dona G. Irwin (August 5)
Rep. Larry A. Larrañaga
Rep. Kathy A. McCoy
Sen. Cynthia Nava
Sen. Steven P. Neville
Sen. Mary Kay Papen
Rep. Don L. Tripp

Advisory Members

Sen. Carlos R. Cisneros
Rep. Anna M. Crook
Rep. Nora Espinoza (August 4)
Rep. Candy Spence Ezzell
Sen. Gay G. Kernan
Sen. Cisco McSorley
Sen. Leonard Lee Rawson (August 5)
Rep. Henry Kiki Saavedra
Rep. Peter Wirth

Absent

Sen. Phil A. Griego, Vice Chair
Sen. Sue Wilson Beffort
Sen. Dede Feldman
Sen. Clinton D. Harden, Jr.
Rep. Mimi Stewart

Sen. Rod Adair
Sen. Vernon D. Asbill
Sen. Timothy Z. Jennings
Rep. Ben Lujan
Rep. James Roger Madalena
Rep. Danice Picraux
Sen. Nancy Rodriguez
Sen. John C. Ryan
Rep. James R.J. Strickler
Rep. Eric A. Youngberg

Guest Legislator

Rep. Nathan P. Cote

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

Staff

Jon Boller

Jeret Fleetwood

Maha Khoury

Gordon Meeks

Aldis Philipbar

Guests

The guest list is in the meeting file.

Monday, August 4

Waded Cruzado-Salas, interim president, NMSU, welcomed the committee to NMSU and thanked the members for coming.

Alamogordo Desalination Project

Karl Wood, director of the Water Resources Research Institute at NMSU, provided the committee with an update regarding desalination technology. He explained that water problems in New Mexico fall into one of four categories: it is available in the wrong place, at the wrong time or in the wrong quantity, or it is of poor quality. Dr. Wood went on to explain that while there are significant ground water resources beneath New Mexico, the water is of particularly poor quality. He noted that one way of taking advantage of those resources is through desalination. Dr. Wood pointed out that trying to make use of brackish water resources is not a problem unique to New Mexico and discussed the various challenges associated with desalination, such as energy requirements, scale buildup on filters and, most of all, disposal of the leftover concentrate.

Dr. Wood went on to explain that a federally funded program to study desalination technology has been established in Tularosa. He went on to provide the committee with some of the features of the facility built to house the program, including testing areas, bench-scale system testing, a laboratory, chemical storage facilities and renewable energy as a partial power source. However, Dr. Wood pointed out that the facility is still not operational.

Finally, Dr. Wood noted that not all of New Mexico's water problems will be solved through desalination and discussed several of the water-related study programs being conducted at NMSU. For example, Dr. Wood indicated that there are hydrogeology, surface-to-ground water interaction, irrigation efficiency and water and wastewater treatment programs available at NMSU.

Questions and comments included:

- money granted to Lea County for research on produced water;

- late summer rainfall as an example of water being available at the wrong time;
- whether the costs associated with desalination make it unattractive as a municipal water source;
- how much more federal money is required to make the Tularosa facility operational;
- reverse osmosis is the technology of choice for desalination;
- possibility of New Mexico purchasing water from a desalination plant operating in El Paso, Texas; and
- deep injection wells operating in Texas along the New Mexico border.

Food Security and Farm Sustainability

Jeff White, College of Agriculture, NMSU, provided the committee with testimony regarding the recent outbreak of salmonella and its suspected origin in jalapenos grown in Mexico. He pointed out that although New Mexico had not even harvested its jalapenos, many buyers may shy away from New Mexico products, which could have a tremendous impact on New Mexico's agricultural economy.

Mr. White went on to discuss the training and exercises that the College of Agriculture undergoes to help ensure that New Mexico's food is safe. He did point out, however, that recent federal Department of Homeland Security regulations concerning the registration of chemicals, including those used by farmers, could pose problems for the agricultural industry.

Janet Jarratt, a dairy farmer, explained that food security issues cover a wide range of topics, including availability. She explained that as land use trends continue to move toward the gentrification of farmland, many farmers, particularly small-scale ones, are being squeezed out of business. Ms. Jarratt went on to note that water issues are closely tied to agriculture and the issue of food availability. She pointed out that constant transfers of water rights, and their purpose, puts increased pressure on farmers. She also cautioned the committee to examine the ability of municipalities to condemn water rights. Ms. Jarratt went on to indicate that while there is a movement afoot to highlight locally grown produce, farmers' markets are simply not a viable means of distributing produce to the public. She also suggested that one way of getting more value out of agricultural products is to create regional brands, such as marketing chile grown in Hatch.

Edward Avalos, New Mexico Department of Agriculture, provided the committee with testimony regarding the various ways the state can aid local farmers in marketing their products. For example, he noted that international marketing strategies have helped New Mexico farmers and ranchers sell their products to China, Mexico and several other nations. Mr. Avalos also noted that label and marketing assistance, particularly the "Taste the Tradition" label, helps to brand products as produced in New Mexico. He also discussed how trade show, commodity and retail promotions conducted by the New Mexico Department of Agriculture can help New Mexico farmers and ranchers sell their products.

Questions and comments included:

- salmonella issues;
- the possibility of New Mexico losing its bovine tuberculosis-free designation;

- mixed effects of NAFTA on New Mexico's agricultural economy;
- regulatory barriers confronting farmers and ranchers;
- the source of funding for the "Taste the Tradition" label promotion;
- the power of the Bernalillo County/Albuquerque Water Utility Authority to condemn water rights in New Mexico; and
- the potentially devastating effects of the salmonella outbreak on New Mexico's agricultural economy.

Why Water Rights Adjudications Are Important

Former Representative Joe M Stell provided the committee with testimony regarding the history of water rights in New Mexico, explaining that the prior appropriation doctrine has roots in Spain and North Africa. He went on to discuss the effects of the Treaty of Guadalupe Hidalgo on water rights, pointing out that it was that treaty that tied water rights to property rights. Representative Stell went on to note that there are basically two kinds of water rights in New Mexico: pre-1907 and post-1907. He also discussed the relationship between ground water and surface water, and how that relationship came to be understood in New Mexico.

Representative Stell also discussed the recent court case concerning the Mimbres River and its potential effect on the future of water rights in New Mexico. He also discussed the fact that there are several rivers in the state that have not been fully adjudicated, including the Rio Grande. Representative Stell emphasized that completing those adjudications is important, because trying to administer water rights without a thorough understanding of how much water each user is entitled to is similar to spending money without really knowing how much money is available in the bank account.

Tom Turney, former state engineer, also provided the committee with testimony regarding the importance of water rights adjudications. He began by explaining that the state has a finite amount of water in the state, and that it is the state engineer's job to administer water rights in the state. Mr. Turney also explained that the tools available to the engineer to administer those water rights are licenses and adjudications. He highlighted the benefits of adjudications, particularly that they allow the engineer to adhere to the constitution and that they provide certainty to water users. He also provided the committee with a brief history of adjudications in the state and an overview of the ongoing ones and the issues associated with them.

Questions and comments included:

- whether the courts have adequate funding to carry adjudications out;
- whether separate courts dedicated to adjudications along the middle Rio Grande would work;
- the status of the silvery minnow;
- the use of claims-based adjudications in other states;
- why a lack of pressure to adjudicate makes adjudications take such a long time to complete;
- compact delivery issues;
- Native American water issues and their effect on adjudications; and
- the possibility of dedicating money for adjudications at the upcoming special

legislative session.

AOC-OSE Work Group Status Report

Celina Jones, Administrative Office of the Courts (AOC), provided the committee with an update on the progress of the work group made up of representatives of the AOC and the Office of the State Engineer (OSE) who are tasked with improving the adjudications process. She explained that while it is unlikely that large changes will be made to the process, some changes to streamline the process will probably occur. Ms. Jones indicated that the work group has had meetings with representatives from other states, and the meetings have been particularly helpful. She did caution, though, that keeping the adjudication process moving forward will require recurring funding.

Bill Hume, Office of the Governor, also updated the committee on the work group's progress. He indicated that while the work group still has some work to do, it is nearly finished and will issue a report detailing its work and will present that report to both the executive and the legislature.

Questions and comments included:

- why it may be necessary to re-adjudicate some areas;
- number of disputed claims along the middle Rio Grande;
- representation of special river masters on the work group;
- competition among water court judges and other judges for funding from the legislature; and
- whether water courts have a special line item in the unified judiciary budget.

Texas Litigation: Status of Appropriation

Frances Bassett, Office of the Attorney General, provided the committee with an update regarding money the legislature appropriated to defend New Mexico against threatened litigation by the State of Texas on the Rio Grande. She began by explaining that Texas claims that New Mexico has violated the Rio Grande Compact in two ways: first by depleting surface flows and then by delivering overly salinated water to Texas. Ms. Bassett then detailed the steps New Mexico has taken to address those claims, beginning with drilling wells equipped with monitoring devices that detect the effects of ground water pumping and water quality.

Ms. Bassett went on to note that still more money had been spent on development of a ground water computer model, which also took four years to complete. She emphasized that, for the time being, the efforts undertaken to this point have averted a potentially costly lawsuit. Ms. Bassett also noted that Texas's claims regarding New Mexico farmers increasing the salinity levels of the river have been refuted. However, Ms. Bassett cautioned that an agreement between the Elephant Butte Irrigation District and its El Paso counterpart, which helped avert any lawsuit with Texas, could have long-term ramifications for the region.

John Draper, a water rights attorney with Montgomery and Andrews, discussed several other interstate lawsuits over water and how they could affect New Mexico. He explained that each of the cases he has worked on has cost the losing state millions of dollars. Mr. Draper noted

that although none of those cases translates exactly to New Mexico's situation, there are similarities in that they all involve upstream states underdelivering water to downstream ones by curtailing surface flows. He emphasized that New Mexico should endeavor to avoid this type of lawsuit.

Pre-1907 Water Rights Status and Acequia Adjudications

Richard Trujillo and Hilario Rubio, both of the OSE, provided the committee with testimony regarding the OSE's communication plan, which is designed to improve communication between northern New Mexico water stakeholders and the OSE during the adjudication process. They explained that the plan was developed during the adjudication of the Rio Gallinas to help keep the lines of communication open between claimants and the OSE. Mr. Trujillo and Mr. Rubio outlined the core messages of the communication plan, which include fairness, an emphasis on the increasing demand for water resources and their decreasing availability and the notion that there is no simple solution to the problem of water availability.

Mr. Trujillo and Mr. Rubio explained that there is an element of mistrust among acequia users toward the OSE and that the communication plan is, in part, an attempt to address that. They noted that the adjudication on the Rio Gallinas went well and that the development of a line of communication between stakeholders and the OSE probably helped.

Questions and comments included:

- development of a procedural order by the OSE that reflects the successes experienced on the Rio Gallinas;
- a shift in focus by the OSE to smaller geographic areas for adjudications;
- success of the OSE field office in keeping lines of communication open throughout the adjudication process;
- whether any statutory changes are necessary to help the OSE implement the communication plan and field office approach; and
- source of historical data used by the OSE.

Tessa Davidson, Rio Grande Water Rights Association (RGWRA), provided the committee with testimony regarding the makeup and history of the RGWRA and issues related to the OSE's administration of water along the Rio Grande. She explained that the RGWRA is a grass-roots group of water users along the middle Rio Grande.

The Role of Ombudsman and Intervenors in Water Adjudications

Darcy Bushnell, director of the Joe M Stell Ombudsman Program at the Utton Transboundary Center at the University of New Mexico Law School, provided the committee with an overview of the ombudsman program, its past work and its ongoing needs. She began by noting that the program began as a pilot program in 2005 to ensure continued service to the water rights adjudication community. Ms. Bushnell went on to discuss the services provided by the program, including outreach, toll-free phone help lines, a detailed web site and instructional DVDs. She went on to note the work the program has done to aid claimants on the Rio Grande and San Juan rivers, the Nambe-Pojoaque-Tesuque area (for the *Aamodt* settlement), the Zuni and

Jemez basins and the Rio Gallinas. Finally, Ms. Bushnell emphasized that the program is composed of a relatively small staff whose needs are quickly outgrowing their resources.

Questions and comments included:

- funding needs for the program and the Utton center;
- work the program has done on adjudications in Lea and Curry counties; and
- that the program is currently funded with nonrecurring revenue.

Tuesday, August 5

Gila River Planning

Allison Williams, Interstate Stream Commission (ISC), provided the committee with an update regarding the planning process for the Arizona Water Rights Settlement and the Gila River. She reminded the committee about the parameters of the settlement, which dictate that New Mexico must have a plan in place by 2012 regarding any water project along the Gila before the state can begin receiving federal funding from the settlement. She also reviewed the makeup of the stakeholder group that must begin developing such a plan and noted that several studies are currently being conducted by the stakeholder group to ensure that the best possible science is available to the stakeholders. She also noted that the stakeholder group has hired a public outreach employee to ensure that the public is adequately notified of any meetings or developments.

Adrian Oglesby, Nature Conservancy, also discussed the work of the stakeholder group, noting that some disagreement still exists among stakeholders about exactly what the desired future condition of the river is. He also acknowledged that any public planning process generally moves slowly, and that this one is no different. Mr. Oglesby went on to note that, in addition to a public relations person, the stakeholder group has also employed an information contractor to help organize the information and studies already gathered by the group.

Howard Hutchinson, Gila/San Francisco Study Group, echoed Mr. Oglesby's comments, explaining that the information contractor would help to determine the studies the stakeholder group had already requested to get a better understanding of the questions that still need to be answered.

Estevan Lopez, director of the ISC, reviewed the 2004 Arizona Water Rights Settlement Act, explaining that New Mexico receives both the right to develop some of the water on the Gila River and at least \$66 million in federal funding to do so. He pointed out that New Mexico does not need to develop a project, but that if the state does decide to do that, it must have a plan in place by 2012. Mr. Lopez noted that a project could be construed as any diversion of water along the Gila. He also acknowledged that a number of people are concerned about moving forward with any type of dam or diversion on the Gila.

Questions and comments included:

- the timetable for making a decision about whether or not to proceed with a project on the Gila;

- there is no requirement that New Mexico make use of any of the water offered to it under the settlement;
- the Consumptive Use and Forbearance Agreement dictates that New Mexico may only receive water during peak flows, so there is a potential need to store water if the state wishes to use it;
- the definition of a stakeholder;
- the nearest dam on the Gila River is 60 miles past the Arizona/New Mexico border;
- the desire of the executive to have the best possible science available before any kind of decision is made;
- the value of the water that would go to Arizona if New Mexico fails to use it somehow;
- the location of stakeholder meetings and notification for them;
- Endangered Species Act issues on the Gila River; and
- average and peak flows of the Gila River.

Domestic Well Legal Status

Mr. Hume provided the committee with a basic overview of the issues involved in a recent court case concerning domestic wells. He explained that the statute governing domestic wells allowed the OSE to issue permits for domestic wells. However, a senior water rights holder on the Mimbres River sued on the grounds that the domestic wells statute is unconstitutional in that it curtails senior water rights holders. Mr. Hume indicated that a district court and then the court of appeals ruled in favor of senior water rights holders. He pointed out that the OSE has attempted to address the issue of domestic wells through various other means, such as the Active Water Resource Management (AWRM) regulations, the promulgation of domestic well rules and declaring certain areas of the state as domestic well management areas. However, Mr. Hume pointed out that the AWRM regulations were challenged in court almost immediately. He also indicated that the OSE would likely appeal the court of appeals decision because the issue is of statewide importance and also because appealing would probably give the legislature time to address the issue. Mr. Hume acknowledged that it could be time to develop a new approach to domestic wells.

Steve Hernandez, the attorney representing senior water rights holders in the court case involving domestic wells, explained that the continued issuance of domestic well permits by the OSE will cause problems for water rights holders on the Pecos River and the Rio Grande, although he pointed out that there will likely be fewer problems in other areas of the state. He went on to note that while the state engineer has tried to manage domestic wells, his clients simply could not wait for their water rights to be impaired and took their case to court. Mr. Hernandez indicated that he felt that the reluctance of the state engineer to issue a priority call was probably a dereliction of duty. He went on to note that the decision in the case should hold up to further appeal. He finished by stating that there is a pressing need for water rights stakeholders and the OSE to develop an approach to the issue of domestic wells that addresses the problems yet ensures due process.

Questions and comments included:

- how a priority call by the state engineer would actually bring the domestic well statute

- back into compliance with the constitution;
- the status of adjudications on the Mimbres River and the Rio Grande;
- the number of new domestic wells drilled each year;
- allowing the OSE to issue well permits only when there is no other option;
- involvement of the legislature in any kind of plan to address the domestic well issue; and
- whether the OSE is still issuing well permits in the Sixth Judicial District (where the domestic well court case was originally heard).

Lower Rio Grande Adjudication Status Report

Judge Gerald A. Valentine, Third Judicial District, provided the WNRC with an update regarding the work his court is doing to adjudicate the water rights of the state. He presented the committee with statistics showing the overall number of existing subfiles, the number of cases with offers of judgments, the total number of claimants and the number of claimants joined. Judge Valentine also provided the committee with breakdowns by basin of those same statistics. He pointed out that almost all of the water rights claimants in the lower Rio Grande have been joined.

Judge Valentine went on to indicate that court personnel and OSE staff have been working together with representatives from other states, particularly Idaho, to identify efficient adjudication procedures that New Mexico can adopt. He also provided the committee with a preliminary list of suggestions that might help streamline the adjudication process. Judge Valentine's suggestions included maintaining online deed records, exploring the importance of hydrographic surveys and further study of the claims-based adjudication process that several other states employ.

Questions and comments included:

- use of the ombudsman program to mediate adjudications claims;
- the possibility of appropriating additional money for adjudications at the planned special legislative session;
- funding and staffing needs of the ombudsman program; and
- the possibility of drafting legislation based on Judge Valentine's suggestion for endorsement by the WNRC.

Elephant Butte/El Paso Water District Settlement

Gary Esslinger, manager of the Elephant Butte Irrigation District (EBID), provided the committee with testimony regarding the settlement reached between the EBID and El Paso Water Improvement District Number 1. He explained that the settlement, which divides water between New Mexico and Texas, was signed on February 14, 2008. Mr. Esslinger went on to discuss several key points of the settlement, such as that it:

- ties Texas's water allocation to storage levels in Elephant Butte and Caballo reservoirs;
- protects both Texas and Mexico from the impacts of ground water pumping in New Mexico;
- eliminates the threat of litigation between New Mexico and Texas over ground water

- pumping;
- provides New Mexico flexibility to conjunctively manage its surface and ground water without outside interference;
- costs New Mexico nothing; and
- allows New Mexico to capture and use, store or recharge to the aquifer any storm water without changing allocations to Texas or Mexico.

Mr. Esslinger also discussed the poor condition of the lower Rio Grande's flood control infrastructure and provided the committee with an overview of the various functions that the EBID performs.

The WNRC adjourned at 12:30 p.m.

Senator Papen, chair of the Water Adjudications Subcommittee, called the subcommittee to order at 8:35 a.m. with Representatives Ezzell, Bandy, Nunez and McCoy present.

Mr. Meeks summarized the quarterly report of the OSE and Administrative Office of the Courts (AOC) task force on adjudication reform, which had been presented to the Legislative Finance Committee. The task force has traveled to Colorado, Montana and Idaho to interview court and water management agency officials on the effectiveness of their adjudication procedures. The task force also sent a survey to New Mexico water rights stakeholders, but to date, the response rate on the survey has been disappointing.

Bill Hume, the governor's special assistant on water, commented that the resignation of two members of the task force does not reflect the substance of the task force discussions as much as it reflects the role of the court personnel who resigned. The members were concerned that there may be a perception of impropriety if the task force recommends reform in a way that could be perceived as prejudging a particular water rights adjudication. The members' employment by the courts requires that they be scrupulous in maintaining independence and objectivity.

Mr. Sanders told the subcommittee that he had been skeptical at first of the effort to reform the adjudication process but that after the visits and research being conducted on other states' procedures, he has seen some avenues for improvement and the effort is paying off in developing worthwhile information for improving the process whether or not the task force recommends statutory change. He reported that politics still plays a role in the other states, describing Idaho and Montana's claims-based adjudications. He said that even though those two states have established deadlines for claimants to file their claims with penalties for non-filing, the deadlines are predictably delayed when claimants lobby the legislature for relief. He said that Arizona is not a good example to follow because it is not progressing any better than New Mexico on its adjudications because there is no motivation to complete its adjudications. He said that Colorado has a promising approach in that it does impose a deadline for claimants to file their claims, but the penalty is not loss of water rights but rather to put late-filing claimants into a second tier of priority relative to where their seniority date would have been had they met the deadline for filing. He also discussed the concept of licensing water rights, which is a current provision in state law that has not been used extensively. He said that licensing may minimize the role of the court and the adversarial nature of the process. He told the committee that his office is working on minor changes to the licensing statutes that he anticipates will be brought to the legislature next session. He concluded by saying, he is surprised at how much he has learned during this process of assessing how other states adjudicate water rights.

Questions and comments from the subcommittee addressed:

- the degree of completion of the Pecos River adjudication;
- the expected outcome of the OSE/AOC task force review;
- the low response rate to the OSE/AOC survey;
- clarification of what licensing means;
- the expectation that licensing will provide a reliable, marketable quantification of a water right;
- sufficiency of money appropriated for the OSE/AOC task force;
- how the bottleneck for adjudication is state engineer resources (personnel staffing);

- a potential single water court;
- a four-person expansion of the OSE staff for the middle Rio Grande adjudication to phase in a licensing program;
- encouraging the OSE to have a specific legislative request ready for the November meeting;
- the McCarren amendment for federal reserved water rights;
- pueblo intentions to initiate water rights affirmation;
- the Pecos River as a bad model for the rest of the state;
- the effect of the Elephant Butte Irrigation District's settlement with El Paso District Number 1;
- potential standards for quantifying pueblo water rights;
- the status of existing domestic wells in lieu of the Robinson Court decision; and
- the responsibilities of four additional staff that the state engineer is requesting in his budget.

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

**September 18-19, 2008
Pueblo of Isleta Casino, Ballroom A/Belen Public Library**

The fourth meeting of the Water and Natural Resources Committee (WNRC) was called to order by Representative Andy Nuñez, chair, at 9:13 a.m. on Thursday, September 18, 2008, in Ballroom A of the Pueblo of Isleta Casino.

Present

Rep. Andy Nuñez, Chair
Rep. Paul C. Bandy
Rep. Elias Barela
Sen. Sue Wilson Beffort
Rep. Ray Begaye
Rep. Joseph Cervantes (Sept. 19)
Sen. Dede Feldman
Sen. Mary Jane M. Garcia (Sept. 18)
Rep. Dona G. Irwin
Rep. Larry A. Larrañaga
Rep. Kathy A. McCoy (Sept. 18)
Sen. Mary Kay Papen
Rep. Mimi Stewart
Rep. Don L. Tripp

Advisory Members

Sen. Vernon D. Asbill (Sept. 19)
Sen. Carlos R. Cisneros
Rep. Anna M. Crook
Rep. Ben Lujan (Sept. 19)
Rep. James Roger Madalena
Sen. Cisco McSorley
Sen. Leonard Lee Rawson (Sept. 18)
Sen. Nancy Rodriguez
Sen. John C. Ryan (Sept. 19)
Rep. Henry Kiki Saavedra (Sept. 18)
Rep. James R.J. Strickler
Rep. Peter Wirth (Sept. 19)

Absent

Sen. Phil A. Griego, Vice Chair
Sen. Clinton D. Harden, Jr.
Sen. Cynthia Nava
Sen. Steven P. Neville

Sen. Rod Adair
Rep. Nora Espinoza
Rep. Candy Spence Ezzell
Sen. Timothy Z. Jennings
Sen. Gay G. Kernan
Rep. Danice Picraux
Rep. Eric A. Youngberg

Guest Legislators

Rep. Andrew J. Barreras

Sen. Michael S. Sanchez (Sept. 19)

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

Staff

Gordon Meeks

Jon Boller

Aldis Philipbar

Mark Harben

Guests

The guest list is in the original meeting file.

Thursday, September 18

The meeting began with the introduction of the legislators, who were then welcomed to the Pueblo of Isleta.

Welcome to Pueblo of Isleta

Governor Robert Benavides welcomed the committee to the Pueblo of Isleta and stressed the importance of water to the way of life, customs and religion of the tribe. He said that the river flows below the diversion dam are essential to the pueblo's religious practices. He also said that water plays an important economic role by allowing for the growth of crops. Governor Benavides said he and the other pueblos are concerned about the future of agriculture and the diminishing river flow through the lands. He noted that municipalities are acquiring pre-1907 surface water rights formerly used for irrigation and transferring those rights into ground water wells. Water that was once only used during the irrigation season is now being pumped all year long. In addition, the City of Albuquerque and the City of Santa Fe will soon begin diverting the San Juan-Chama Project water directly out of the Rio Grande, and there does not seem to be a plan in place or any consideration given to downstream senior irrigators.

Pueblo of Isleta Water Issues

John Sorrell, director, Water Resources Department, elaborated on some of the concerns stated by Governor Benavides. He said that there are already depletions to the Rio Grande immediately above the pueblo from municipal pumping, and he is concerned these depletions will increase with the San Juan-Chama Project. The state does require municipalities to offset pumping impacts on the river system, but the intent is to provide year-end accounting to Texas. He said he is also concerned about the growing change from surface water irrigation rights to municipal ground water rights. In addition, he said there appears to be confusion about who has the authority to administer agricultural water deliveries. Mr. Sorrell said the state could do more to ensure that there are real-time (during the irrigation season) offsets on river flows to mitigate the effects of downstream to upstream transfers of water rights. He also said that the state could

do more to ensure proper monitoring and enforcement when surface rights are transferred away from formerly irrigated farmlands.

The panel then answered questions related to the following:

- how would one transfer surface rights to ground water rights? Filing an application; placing an ad in the paper stating the intention to transfer surface rights to ground rights; in the Middle Rio Grande (MRG), surface rights can be retired and changed to ground water rights;
- plants are not as healthy because of a decrease in water quality; and
- is the official position of pueblo to protest all transfers of water rights? It does not protest all transfers; it evaluates, transfers and decides from there.

Greg Ridgley, deputy chief counsel, Office of the State Engineer (OSE), said that any proposed change in diversion would be evaluated by the OSE to determine impairment to other water rights owners. Owners are allowed to protest and, if there are protests, a hearing will be held. He added that the law requires notice to be published in a public paper, but does not require specific notification. It was suggested that the law be changed to automatically notify tribes. Bill Hume, Office of the Governor, said that six MRG pueblos have contacted the governor expressing concern and that the office met with them on two occasions. Further questions included:

- what effect do bosque fires have?;
- silt is built up seven to eight feet at diversion dams, which could mean trouble if there is a big storm;
- fire provides a temporary solution to invasive species, but the best solution is to go in and remove them;
- wastewater plant effects on water in the Rio Grande;
- salt cedar issues;
- there is not enough money for adjudications;
- the arsenic standard was amended for the pueblo to meet Environmental Protection Agency (EPA) standard; and
- *City of Albuquerque v. Browner*: supreme court upheld pueblo's right to set own standard.

Deep Water Regulation

Mr. Ridgley explained the OSE's authority over ground water and its general jurisdiction. He said that Sections 72-12-25 through 72-12-28 NMSA 1978 limit the OSE's authority over deep saline water.

John Romero, director, Water Resources Allocation Program, OSE, presented the committee with a map of the deep water wells in the state and said that most are located in Bernalillo and Sandoval counties. Mr. Romero said that there are 178,400 acre-feet of water in the deep wells. He added that Albuquerque typically uses about 100,000 acre-feet per year, Rio Rancho uses 11,000 acre-feet per year and Santa Fe uses 10,000 acre-feet per year.

Mr. Ridgely then reviewed Senate Bill 262, which was developed with the Governor's Office. He said the bill addresses the concern that large amounts of ground water are being developed without the OSE. He said that the bill does not include oil and gas produced water. Mr. Hume added that he does not know whether the administration will reintroduce the bill. He said that it depends on the stakeholders and the potential for consensus.

The panel then answered questions from the committee related to:

- all ground water in the state belongs to the public and is subject to beneficial use;
- do wells impact basins? Is there any monitoring of potential impacts?;
- deep aquifers can impair other deep aquifers;
- mapping aquifers is essential to understanding resources and managing them correctly;
- is there technology available to map parameters and depth of deep aquifers?;
- no knowledge of the extent of deep aquifers exists;
- technology exists to seal upper aquifers to prevent commingling;
- all drilling is required by law to seal shafts to prevent commingling of water; and
- if commingling exists naturally through aquifers, then aquifers are not considered isolated.

Water Availability for Land Development

John Wortman, New Mexico Farm and Livestock Bureau, said that if one wants to be able to grow food in this country, one has to make decisions to make that possible. He said that eminent domain, clean water and the federal Endangered Species Act all affect agriculture. Mr. Wortman noted that three-fourths of people want their food grown locally (in the United States) and the committee should think about how their decisions will impact agriculture.

John Longworth, OSE, discussed statute requirements and Water Use and Conservation Board (WUCB) protocols. He said that there are five types of subdivisions defined by statute ranging from 500 or more parcels of land to 24 or less. Certain subdivisions are required by law to show whether the subdivider can fulfill the maximum annual water requirements of the subdivision. Mr. Longworth said that the WUCB review protocols are based on statute and county regulations and include a water demand analysis and water availability assessment. The review also includes domestic wells and a geo-hydrology report for ground water. Mr. Longworth noted some of the water availability challenges for subdivisions, including public water suppliers rescinding old commitments and extraterritorial zones and county and municipal authority.

Mr. Wortman and Mr. Longworth answered questions from the committee related to:

- New Mexico not being in favor of reopening the Colorado River Compact;
- thoughts on specific proposals that might make small farming more economically viable — if each generation did not have to buy the farm and address workers' compensation issues;
- the need to encourage marketing of New Mexico agricultural products;
- law passed last session that would allow farmers who conserved water on their land to keep that water. Has that gone forward; have there been any applications for that;

have any regulations developed? Law has not been acted on, development of rules and regulations is in the process (meeting next week);

- there is more awareness now; people want to buy local; and
- if the state makes a decision that it is going to develop, then the state needs to make sure it has that water indefinitely because if it does not, the water will come from agriculture.

Working Lunch

Funding for Regional Water Plans Updates

Terese Ulivarri, city councilor, City of Belen, told the committee about projects going on in her community. She said that the city will be asking for \$400,000 to update regional water planning statewide. Michael Benson, program specialist, Water Management Branch, Navajo Nation, said that the Navajo Nation has participated in regional water planning since 1982, calling it a success story. He said that the Navajo Nation is currently working on a water line from Farmington to Shiprock. Mr. Benson added that when there is a plan, needs can be more clear and a solution can be found.

Tom Bates, vice chair, Gila/San Francisco Water Commission (GSFWC), discussed his role as the southwest regional water planning manager, where he oversaw the coordination of the Southwest Regional Water Plan. After moving from a memorandum of understanding (MOU) to a joint powers agreement, the name was changed to the GSFWC. Mr. Bates said that the water commission's primary responsibility is to put the 14,000 acre-feet Central Arizona Project (CAP) water to beneficial use. He also said that per the governor's policy, the commission is considering alternatives other than diversion to make up for the shortfall between water availability and water needs in the southwest region. Mr. Bates said that the water plan is lacking in some areas due to gaps in the information on which the plan was written. He added that the GSFWC strongly supports the allocation of annually budgeted funds to update regional water plans. He also said that the GSFWC would like to use some of that money to dedicate to research and investigations that would fill in the information gaps. He said that the GSFWC is now a lesser player. The overall decision-making body is the Stakeholders Group and it wants up-to-date information. The GSFWC is seeking legislative allocations to complete the studies required to make a sound decision as to how to use the 14,000 acre-feet of water and to meet federal and state requirements as to the contract with the secretary of the interior for the water.

Brent Bullock, acting superintendent, Pecos Valley Artesian Conservancy District, said that it started its regional water plan in 1991, but many things in the plan have not been implemented because of the Pecos Water Settlement Agreement. However, he said that one good thing that came out of it was the spirit of cooperation. Jesse Boyd, attorney, said that if the constitution were followed, the pueblo, Hispanic, Mexican and territorial acequias and ditches that are the foundation of New Mexico's cultural identity would have their water rights protected first and foremost. He said that hydrographic surveys should contain all relevant information, not just that information the OSE thinks is important. He said that since there are very few final decrees in the state, the OSE has been unwilling or unable to administer rights by priority, leaving senior rights with no remedy when they are impaired in times of shortage.

Consuelo Bokum, board president, New Mexico Water Dialogue, said that there are many reasons to provide funding for water plan updates. She said that water plans are like annual business reports. They allow a region to report on its water "financial" accounts, available water supply, demand, stored water and growing demand and drought. She said that water plans need to be updated in order to monitor progress and deal with new problems as they emerge. She said that water plans also need to be updated so that those water projects that appear in completed regional water plans can be given extra weight in the selection process for money from the Water Trust Fund.

River Ecosystem Restoration Initiative

Marcy Leavitt, Department of Environment (NMED), said that the New Mexico River Ecosystem Restoration Initiative (RERI), a multiagency initiative to restore ecosystems in the state, was implemented in 2007 as part of Governor Richardson's Year of Water. It includes 12 statewide projects that were awarded a total of \$2.5 million. The projects were selected through a robust, competitive request for proposal process. She said that all the projects included monitoring and education/outreach plans to facilitate long-term sustainability. Contractors include federal and state governments, tribes, nonprofit organizations and an irrigation district. She added that \$2.8 million was appropriated in 2008 and they have received 30 proposals totaling \$8.02 million. She said that the long-term activities have left many river ecosystems with significantly impaired ecological and physical functions. She added that the loss of aquatic habitat has been a major component of the fish species imperilment. Ms. Leavitt said that the NMED is working with river ecosystem stakeholders statewide. She said that the RERI complements the NMED's Clean Water Act and wetlands programs and aligns with the NMED's performance goal of addressing impaired stream miles through watershed restoration projects to improve surface water quality.

Karen Menetrey, Surface Water Quality Bureau, NMED, discussed the upcoming New Mexico watershed forum *From Mountain Top to River Bottom: Restoring New Mexico's Watersheds* on September 30 through October 2 at the Albuquerque Uptown Marriott. She said the forum provides the opportunity for residents to network and share challenges and innovations. She said 270 people are expected at the forum.

The panel then answered questions from the committee related to:

- how 2008 projects that will be approved in the next month have four years to be completed;
- one 2007 project has been completed;
- the watershed forum is open to the public for a \$130 registration fee;
- one proposal for MGR in 2007, but the project was not selected; and
- one MGR project being recommended for 2008 and one in San Juan.

Tour of Isleta Lakes, Isleta Habitat Restoration Project, Isleta Diversion Dam and Los Lunas Silvery Minnow Refugium

The committee was taken on a tour by Mr. Sorrell and Estevan Lopez, director, Interstate Stream Commission.

The committee recessed at 5:30 p.m.

Friday, September 19

The meeting was called to order at 9:14 a.m. by Representative Nuñez at the Belen Public Library. On a motion made, seconded and unanimously approved, the minutes from the July meeting were adopted.

Albuquerque Bernalillo County Water Utility Authority (ABCWUA) and Surface Water Project

Mark Sanchez, executive director, ABCWUA, said the ABCWUA was established in June 2003 by the New Mexico Legislature. The operation is funded through user rates, fees and charges. He said that new residential developments are required to use only 180 gallons per household. Mr. Sanchez said that the Rio Grande does not resupply the aquifer; thus, the San Juan-Chama Water Project was created. Mr. Sanchez discussed the water resource management strategy (WRMS) that was updated in 2007. New policies were established, including an update through 2060. He then discussed components of the conservation program, which includes utility reduction and drought management. He said the conservation program began in 1994 with the goal of reducing water usage by 30 percent in 10 years. By 2004, the program achieved a 33 percent reduction, or 177 gallons per capita per day (GPCD). By 2007, the program achieved 167 GPCD and he said they are on track to meeting the 150 GPCD target by 2014. Mr. Sanchez also said that many old, manually read meters only captured 50 to 60 percent of actual water usage, but the new automated meters are about 98 percent accurate. The new meters have been put into use in the last three years. He said that reuse sources include 400 acre-feet from industrial wastewater, 3,000 acre-feet from surface water and 2,800 acre-feet from municipal wastewater. Mr. Sanchez then moved on to aquifer storage and recovery projects. He said that the Bear Canyon Arroyo Pilot Project provided 500 acre-feet storage during a three-month period in 2008 and that planning is underway for a second larger demonstration project to be located at the new surface water treatment plant. He said that all 44 miles of pipeline for the San Juan-Chama Water Project have been constructed and are operational. He added that the surface water treatment plant is scheduled for completion in September 2008 and delivery of water from this project to ABCWUA customers is scheduled to begin by December 2008.

John Stomp, water resources manager, City of Albuquerque, said that when designing the treatment process, the city had to look at the current quality of water. He said that the water treatment plant uses chemical and physical processes. The process starts with ponds that separate out particles, then a coagulant is added and rapid mixing and flocculation are used to promote settling and smaller particles are removed. Ozone is added to disinfect and granular-activated carbon filtration removes impurities. Chlorine and fluoride are added before the water is sent out.

Mr. Sanchez added that the cheapest water is the water that already exists. He said that the state uses less water today than it did a decade ago, which proves that conservation is real. He also said that most systems lose 20 to 40 percent of their water in distribution due to leaks, etc., but this system loses only 10 percent. He said that a conservation standard for municipalities and counties would go a long way in saving water.

Mr. Sanchez, Mr. Stomp and Deanna Archuleta, chair, ABCWUA and commissioner, Bernalillo County, answered the following questions from the committee:

- ozone is a very strong disinfectant, but it does not last very long in the system;
- ultraviolet light can be used, but it is not as strong as ozone;
- chlorine is required because it is long lasting;
- what is the formal authority of the ABCWUA when other counties are using the same aquifer?;
- the interconnectedness of all basins is the focus of a project of the University of New Mexico Law School;
- eminent domain provision in water authority statute;
- the water code gives eminent domain authority all along the water system, which gives it the ability to protect itself;
- the ABCWUA is the only statutorily created water authority; other areas are working on creating their own authority;
- all municipalities have authority to purchase water rights, but no ability to transfer them;
- work on the wastewater plan and participating in the storm-water plan;
- request for lease-back information;
- the EPA lowered arsenic levels from 50 parts per billion to 10 parts per billion;
- Albuquerque must be in compliance by January;
- the standard has reduced the amount of water available; it is a very stringent standard;
- required posting on web site of how much water is being diverted and how much is being put back;
- problems with deep wells;
- the ABCWUA strongly supports giving the OSE authority;
- environmental concerns with disposal of byproduct of drilling in deep wells;
- 60,000 to 70,000 acre-feet of water is lost due to seeping, transport, etc.;
- current per capita use is 164 gallons per person per year;
- SunCal gets its water from the ABCWUA;
- SunCal must pay for the net cost of water;
- the ABCWUA is only committed to serving 4,000 acres of the 55,000 acres of SunCal; there are contingency plans to provide up to 900,000 people with water;
- what are fees and charges that produce revenue?; and
- maintain \$10 million reserve.

Active Water Resource Management Rules; Implications for Senior Water Rights

John D'Antonio, state engineer, summarized Section 72-2-9.1 NMSA 1978 and the history of active water resource management. He also discussed the pending court case in the court of appeals. He said that September 29 is the deadline to respond to five amicus briefs. A decision is anticipated in spring 2009. He said that the OSE has established 90 percent of the water master districts. Currently, 24 water masters are employed around the state. Mr. D'Antonio said that progress is being made. He said that the variable supply of water and the growing population create a need for active water resource management and that management gives the state the ability to continue economic development while still conserving resources.

Sunny Nixon, Rodey Law Firm, discussed the lawsuit brought against the OSE. She said that the regulations were faulty in not giving water rights owners due process. She said that the district court held that the regulations were unconstitutional due to a violation of separation of powers and due process. Ms. Nixon said that several irrigation districts have filed amicus briefs. She said that the clear language of the statute gave authority to the OSE to administer, not to determine, water rights.

A.J. Olsen, Hennighausen and Olsen, said that the Pecos Valley Artesian Conservancy District (PVACD) filed the first amicus brief in the lawsuit during the appeals process. He said that there are questions about whether active water resource management undermines the terms of the Pecos settlement. He said that the PVACD has been adjudicated so rights have been established. Mr. Olsen said that the water adjudication court order appointed a water master for PVACD and the OSE regulations infringed on that court order. He said that part of the adjudication required metering. He added that the adjudicated rights of the owner should be protected and not subjected to administrative processes that could revoke those rights.

Paula Garcia, New Mexico Acequia Association, said she agrees that the OSE cannot administer water rights in an adjudicated water district. She said that acequias have been managing water resources for hundreds of years and their concerns include:

- schedules: water masters do not take into account water needs for different crops;
- water master authority over diversion amounts; and
- protocols.

She said that there is a question of priorities for the legislature. She asked whether appointing water masters is a good idea. She also said that there is a double standard when it comes to priority administration; for example, individual junior water rights versus cities with junior water rights.

Steve Hernandez, Hubert and Hernandez, said that conflict spurs effective water policy. He said that exemptions to priority rights for junior water rights holders (wells and municipalities) violate the constitution. Mr. Hernandez said that managing water is not enforcing priorities.

Mr. D'Antonio said that the OSE has not promulgated basin-specific rules and regulations. He said the OSE is concerned about the cost of adjudications and accountability of water users.

The panel then answered questions from the committee related to:

- how the OSE is interpreting law in a way not intended by the legislature;
- how the OSE has only promulgated a general framework of rules and regulations; all details will be spelled out in a finished product, can be tweaked to accommodate certain areas and would restrict outdoor use but not consumptive use for domestic wells;
- judicial decisions must be honored; they cannot be usurped with administrative regulations;
- taxpayers carry the burden to pay for water masters;

- consider leasing before adjudication; and
- the point of contention is not whether metering is good: it is what is the cap, who decides the cap, what is the water master's role, etc.

Lunch at the Whitfield Wildlife Conservation Area

Charlie Sanchez, Jr., Valencia County Soil and Water Conservation District, said that all water rights issues are important, but they need to be handled correctly. He said that the conservation area consists of 100 acres that used to be a dairy, but the water was alkaline so the family donated the land to the conservancy with the stipulation that it be used as a wildlife conservancy to promote education.

Middle Rio Grande Conservancy District (MRGCD)

Gary Perry, chair, said that the MRGCD was created in 1925 as a political subdivision of the state. The MRGCD is governed by a seven-member elected board of directors. Board members serve four-year terms with elections every two years. Mr. Perry said that the conservancy district encompasses 277,760 acres and 150 river miles. He said that approximately 70,000 acres are actively under irrigation. The MRGCD also includes the six MRG pueblos. He said the MRGCD runs on an annual operating budget of \$23.2 million and has 197 full-time employees. Mr. Perry discussed the current issues facing the conservancy district, including urbanization, bosque management, endangered species, water conservation, water management and water rights. He said that in the future, the MRGCD plans to continue expansion of gauging network and automation structures and to continue emphasis and refinement of scheduling and rotation practices, various large-scale efficiency projects and levee reconstruction.

Bill Turner, MRGCD, discussed the potential for the ABCWUA to condemn MRGCD water rights and deep wells. He asked the committee to support the OSE authority enhancements. He said that investors want to pump water out of the San Augustine plains and that this application argues it will compensate for depletions of the ABCWUA. He also said that there is concern over the MRGCD's water bank program. Eugene Abeyta, MRGCD, added that there is concern with people who have sold water rights still using the water and urban residents demanding use.

Mr. Perry, Mr. Turner, Mr. Abeyta and Augusta Meyers then answered questions from the committee, including:

- does pre-1907 inventory of the MRGCD coincide with the state?;
- original well depth was 2,500 feet; it is now 3,000 feet;
- what is the actual percentage of rates and funding that comes from non-irrigated versus irrigated areas?;
- what benefits do non-irrigators get? Drainage, flood control;
- rail protection;
- efficiency in water distribution, how can water from irrigation canals be measured? There are no measuring devices on canals, which is a problem;
- Is there a way to know if someone who has not paid assessment is still getting water? Ditch riders have logs, not a tool to measure how many acre-feet of water was used. They can say water was used for this amount of time on this many acres;

- confusion about the MRGCD's purpose;
- Senator Tito Chavez's 1995 bill to change the mill levy;
- relations between the MRGCD and other agencies and organizations; and
- how has water use been cut in half? Improved efficiencies of diversion operations.

There being no further business, the committee adjourned at 4:00 p.m.

Water Rights Adjudication Subcommittee

The Water Rights Adjudication Subcommittee was called to order by Senator Mary Kay Papen, chair, at 4:00 p.m. in the Belen Public Library.

Parameters for Middle Rio Grande Adjudications

Ernest Coriz, Pueblo of Santo Domingo, summarized the various legal doctrines for Indian water rights. He discussed prior and paramount rights that were adjudicated in World War I. He said that newly reclaimed lands were created under a conservancy district. He also added that it was the one-hundredth anniversary of the "Winter's Doctrine" that resulted from a lawsuit with Montana. Mr. Coriz said that the federal government argued that when Indians were put on reservations, water was reserved also. He said the date of the treaties became the priority dates of "federal reserved rights". He added that 19 pueblos were not created by federal reserved rights, but by Spanish land grants protected by the Treaty of Guadalupe Hidalgo. Today, three of the four diversions are on pueblo land.

Lawrence Gutierrez, Coalition of the Six MRG Basin Pueblos, said that land grants are recognized as senior water rights, but Native Americans see inherited rights as senior. He said that the pueblos' locations are based on the availability of water and that unknowns in legislation cause concern about dilution. Mr. Gutierrez said that something needs to be done to protect the pueblos' usage. He added that adjudications could take decades, but what happens in the interim?

Tom Turney, consulting engineer, said that there are 55,000 to 66,000 irrigated acres within the MRG versus 45,000 to 55,000 irrigated acres to be retired to satisfy dedication/retirement permits. He said that the Lower Rio Grande (LRG) adjudication should have been finished in 2005 and that money thrown into hydrographic surveys is not going to be effective or efficient. Mr. Turney said that the top-down approach of the OSE will not work either, and he encouraged the OSE to work more closely with MRGCD. He said that any criteria that will work has to be set up cooperatively between the MRGCD and OSE. He added that movement of water rights from below the MRGCD to above results in local impairments, and said that as acreage is reduced, assessment costs to remaining irrigators increases.

Jesse Boyd, attorney, said that a lack of priority administration makes New Mexico water law meaningless and ineffective. He said that the 1907 framers expected reasonably efficient adjudications. Mr. Boyd encouraged people not to be afraid of adjudications. He said that adjudications are unavoidable and that delays will only make them more expensive. He added that with the proper process, senior water rights can be protected during the adjudication by order of the court. He encouraged perpetual jurisdiction in adjudication court. He said that the law recognizes pre-existing rights, but that law is not being followed. Senior users will be the most

protected as long as that law applies. He also encouraged the subcommittee to end blind devotion to a final decree, follow Colorado's example and adjudicate the oldest rights first.

Chuck DuMars, Law and Resource Planning Associates, discussed the basic operative facts of adjudications, stating that a water rights suit does not clarify title to the land, it just clarifies the "right to use" and clarifies location. He said that maps of the MRGCD are used in most transfers of land title. He added that assessments based on use are available. He proposed a new approach in which everything is neutralized. He suggested housing water rights records in a neutral depository. Mr. DuMars said that determining the duty of water is a scientific effort and asked whether it should be in the legal, adversarial process or if it should be a neutral, collaborative process. He suggested moving hydrographic surveys, record keeping and duty of water into neutral administration and said that priority dates could be performed as historical research out of the judicial hegemony.

Judge Jerald A. Valentine, presiding judge, LRG adjudication, said that any changes in the statute have to be made before the MRG adjudications start because no changes can be made in the middle of the adjudications. He said that the purpose of adjudications is to gather information for the OSE. Without that information, the OSE cannot properly supervise public water. He added that the title for water rights is an inherent part of the process. He said that if the legislature decides to change the water code, some form of verification process will still be needed. Judge Valentine said that most water rights claims pre-date the water code, resulting in over appropriation. He added that the record is the permit issued post-1907 but no record is necessary for pre-1907 rights and that the verification process is the key. He said that the current water code is not fatally flawed, but could use some tweaking.

In response to comments made by Mr. DuMars, Mr. Ridgley said that the special characteristics of the MRG were spot on, but the underlying comments of taking some duties away from the OSE and transferring them to some more neutral authority show a misunderstanding of the way the water code works. He said that any suggestion that there could be a better system by creating a new authority would only result in the same misconceptions.

Mr. Hume added that the MRG is blessed because it has a lot of technical data and detailed maps.

The panel then answered questions from the subcommittee related to:

- priority is determined during adjudication;
- part of the issue with current adjudications is they start with the largest rather than the oldest; and
- pueblos want more water than what they were using in historical times, so it has to come into current law to come up with a settlement.

There being no further business, the subcommittee adjourned at 5:45 p.m.

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

**October 27-28, 2008
Central Valley Electric Cooperative, Artesia**

The fifth meeting of the Water and Natural Resources Committee (WNRC) was called to order by Representative Andy Nuñez, chair, at 9:15 a.m. on Monday, October 27, 2008, in the boardroom of the Central Valley Electric Cooperative in Artesia.

Present

Rep. Andy Nuñez, Chair
Rep. Paul C. Bandy
Rep. Ray Begaye
Sen. Clinton D. Harden, Jr. (Oct. 28)
Rep. Dona G. Irwin
Rep. Larry A. Larrañaga
Rep. Kathy A. McCoy
Sen. Mary Kay Papen

Absent

Sen. Phil A. Griego, Vice Chair
Rep. Elias Barela
Sen. Sue Wilson Beffort
Rep. Joseph Cervantes
Sen. Dede Feldman
Sen. Mary Jane M. Garcia
Sen. Cynthia Nava
Sen. Steven P. Neville
Rep. Mimi Stewart
Rep. Don L. Tripp

Advisory Members

Sen. Vernon D. Asbill
Rep. Anna M. Crook
Rep. Nora Espinoza
Rep. Candy Spence Ezzell
Sen. Timothy Z. Jennings (Oct. 28)
Sen. Gay G. Kernan
Sen. Cisco McSorley
Rep. Henry Kiki Saavedra

Sen. Rod Adair
Sen. Carlos R. Cisneros
Rep. Ben Lujan
Rep. James Roger Madalena
Rep. Danice Picraux
Sen. Leonard Lee Rawson
Sen. Nancy Rodriguez
Sen. John C. Ryan
Rep. James R. J. Strickler
Rep. Peter Wirth
Rep. Eric A. Youngberg

Guest Legislators

Rep. William J. Gray
Rep. Shirley A. Tyler (Oct. 27)

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

Staff

Gordon Meeks
Jon Boller
Jeret Fleetwood

Guests

The guest list is in the original meeting file.

Monday, October 27

Phil Burch, mayor of Artesia, welcomed the committee members to Artesia and thanked them for holding the meeting in southeastern New Mexico.

Chuck Pinson of the Central Valley Electrical Cooperative also thanked the committee for coming to Artesia and for the contributions the legislature has made toward economic development in the region.

Members of the committee and staff introduced themselves to the audience.

Produced Water

Ned Godshall of Altela, Inc., provided the committee with an overview of the issues pertaining to water produced by oil and gas drilling. He explained that a significant amount of water is produced as oil and gas resources are extracted from the ground and that the current means of disposal of that water is to either send it back down the bore hole or to allow it to evaporate in pits next to the wells. Mr. Godshall pointed out that the water in question has significantly higher levels of salinity than that in the ocean, so some type of desalination would be required if the water is to be put to some other use. He also explained that Altela has developed technology that should be capable of desalinating produced water and went on to note that the business model for doing so is based on the fact that oil and gas companies currently have to pay to dispose the water, and Altela might be able to do it at less cost to the developers.

Questions and comments included:

- New Mexico oil and gas drilling regulations currently do not allow for the discharge of produced water due to the high levels of salinity, which creates a potential problem for development of technology to put that water to use;
- levels of salinity allowed by oil and gas drilling regulations;
- projects underway in New Mexico, Colorado and Canada to develop other uses for produced water;
- ownership issues associated with produced water;
- the cost of cleanup of oil and gas drilling sites;
- involvement of the Oil Conservation Division (OCD) in development of new rules that would allow for other uses for produced water;
- potential jurisdiction of the Environmental Protection Agency over produced water;
- difficulty in educating the public about the high quality of produced water that has gone through some type of desalination process;

- the tax credit offered by Colorado produced water; and
- disposal methods for the concentrate that is a byproduct of desalination.

Tim Coakley of the Second Chance Water Company also provided the committee with testimony regarding produced water. He explained that the Second Chance Water Company is also developing technology that can treat produced water in order to put it to some use. Mr. Coakley went on to outline the ways in which the legislature can help with development and implementation of produced water treatment technologies, including offering a tax credit for water producers, defining legal discharge liabilities and responsibilities, changing laws to allow for the creative reuse of produced water and changing laws concerning the discharge and monitoring of produced water by the OCD.

Questions and comments included:

- amounts of water disposed of by oil and gas companies could be as much as 18 million barrels of water;
- levels of contaminants present in untreated produced water;
- current OCD regulations regarding produced water;
- liability issues of sending treated produced water to Texas as part of New Mexico's compact deliveries;
- how various methods of treating produced water favor chemical separation of molecules;
- the Alamogordo facility dedicated to the study of brackish water desalination and its involvement in the development of produced water treatment technology; and
- the significance of the source of produced water in the ultimate determination of its legal status.

Pecos River Settlement Status

Estevan Lopez, director of the Interstate Stream Commission (ISC), provided the committee with an update on the status of the Pecos River settlement. He began by providing the committee with a brief history of the legal battle between Texas and New Mexico over compact delivery of water in the Pecos River. Mr. Lopez explained that one of the most significant results of the settlement of the case between the two states is the ruling by the U.S. Supreme Court that New Mexico is not ever allowed to under-deliver water to Texas again. He then discussed the strategies employed by the ISC, the Office of the State Engineer (OSE) and water stakeholders in the region to ensure that compact deliveries are made. He went on to indicate that acquisition of land by New Mexico, and the subsequent retirement of the water rights associated with that land, is one of the major components of the settlement. Mr. Lopez pointed out that implementation of the settlement is 95 percent complete.

Mr. Lopez went on to explain that management and resale of the land acquired as part of the settlement have become as an issue for the state. He discussed the means the state has employed to manage and eventually resell the land it has acquired, though he did emphasize that the value of the land once it has been stripped of its water rights is drastically lower than if the land still had water rights. Mr. Lopez also noted that original landowners are given the first opportunity to buy the land before it is put on the market.

Finally, Mr. Lopez emphasized that while the Pecos settlement has come at significant cost to New Mexico taxpayers, it still would not have been possible without the participation of the area stakeholders, most notably the Carlsbad Irrigation District, the Pecos Valley Artesian Conservancy District and the Bureau of Reclamation.

Questions and comments included:

- legislative approval is statutorily required for those parts of the settlement that cost over \$100,000;
- costs associated with pumping water out of wells in southeastern New Mexico and the likelihood that the water taken from those wells actually reaches Texas;
- how long the credit accrued by New Mexico for over-delivery of water to Texas over the past few years is likely to last;
- the time line for resale of land to private interests;
- uses and maintenance of land acquired through the settlement;
- that the exact amount of water New Mexico is required to deliver to Texas each year is based on a complex formula;
- mechanics of water leases;
- settlement and implementation of the agreement is a success story of water resource management in New Mexico; and
- legislative approval is required for implementation of the rest of the settlement.

Bonito Lake Water Rights Status

Former Representative Joe M Stell provided the committee with a brief history of water rights in New Mexico, with particular emphasis on how the development of railroads from the southern half of the state northward contributed to the current situation of water shortages in the mountainous regions of south central New Mexico. Representative Stell discussed how water availability and quality problems prompted construction of a wooden pipeline to transport water from Bonito Lake, on the eastern side of the mountains, to communities along the western slope of the southern mountains. He explained that the rail spur and pipeline allowed for the settlement and development of communities such as Alamogordo and present-day Ruidoso, which still struggle for adequate water resources. Representative Stell noted that a more modern pipeline has since been constructed to supply water from Bonito Lake to Alamogordo, while the rest of the water in the lake is used to help deliver water to Texas.

Questions and comments included:

- issues associated with transferring water from one basin to another;
- aquifer recharge issues that are still present in the Alamogordo/Tularosa Basin;
- the effect of domestic wells being drilled in the Ruidoso area on water resource availability;
- the agreement between Holloman Air Force Base and the City of Alamogordo to share water resources;
- the study and potential development of brackish water resources in the Salt Basin to help satisfy water needs in the area;
- the role of the legislature and the Water and Natural Resources Committee in the decisions concerning water that will confront New Mexico in the near future;

- the importance of developing a plan to administer water resources throughout the state;
- that the notion of transferring water from one basin to another is not a new idea;
- the example of Arizona using statewide water resources to develop a massive community like Phoenix;
- how best to begin gathering stakeholders in the major water issues facing New Mexico to work toward a solution to New Mexico's water problems;
- how best to begin developing water resources in the Salt Basin that might otherwise go to Texas;
- efforts by conservation districts to protect their own water rights and prevent water rights transfers to developers out of basins; and
- the development of water resources in the Gila Basin and funding for doing so as a result of the Arizona Central Water Projects Act.

On a motion made, seconded and unanimously approved, the committee moved to send a letter to the New Mexico congressional delegation urging the passage of the land use bill that provides funding for several large water projects in New Mexico.

Restore New Mexico

Linda Rundell, state director for the Bureau of Land Management, provided the committee with an overview of the makeup and goals of Restore New Mexico. She explained that Restore New Mexico is a partnership whose goal is the restoration of woodlands, grasslands and riparian areas to a healthy and productive condition.

Debbie Hughes of the New Mexico Association of Conservancy Districts provided the committee with testimony regarding the treatment and eradication of salt cedars and other invasive species along New Mexico's river beds. She explained that while initial treatments were effective at removing much of the salt cedar population, studies have shown that some re-treatment will likely be necessary to ensure that the non-native trees do not grow back.

Ms. Hughes also cautioned the committee about the potential endangered status of the lesser prairie chicken and a certain reptile species that could cause significant harm to oil and gas development in southeastern New Mexico.

Questions and comments included:

- strategies being employed to treat salt cedars;
- how the use of goats to combat salt cedars has been proven largely ineffective due to the sheer number of acres infested with salt cedars; and
- the current status of the lesser prairie chicken and efforts to keep it from being listed as endangered.

Biofuels from Algae

Doug Lynn of the Center of Excellence for Hazardous Materials Management provided the committee with an overview of the center's project to produce biodiesel fuel from algae. He noted that the center has developed a strain of algae that appears to thrive in brackish water and

emphasized the ideal conditions present in southeastern New Mexico for continued, large-scale development of the project.

Questions and comments included:

- potential uses of leftover algae;
- similarities between the biodiesel produced by Mr. Lynn's project and conventional, petroleum-based diesel fuel;
- the amount of biodiesel that the project can currently produce;
- obstacles to being able to move the project to commercial-scale production;
- recurring water needs of a commercial-scale biodiesel production project;
- other uses for the project, such as a potential means of carbon sequestration for coal-fired power plants; and
- the possibility of using highly saline water produced by the Malaga Bend to produce biodiesel in exchange for a compact delivery credit with Texas.

The committee recessed at 5:00 p.m.

Tuesday, October 28

Water and Wastewater Projects Funding Update and Water Cabinet Status Report

Karen Gallegos of the New Mexico Department of Environment, Rick Martinez, deputy secretary of the Department of Finance and Administration, and Mr. Lopez provided the committee with an overview of the efforts made by the executive to streamline water project funding and oversight.

Ms. Gallegos began by providing the committee with an overview of the creation of a water cabinet by Governor Richardson and the consolidation of water and wastewater project funding requests to a single application to her agency. She explained that consolidation would improve water and wastewater project funding by helping to provide better matches of funding requests to agencies and funds and allowing communities and entities seeking funding for projects to submit a single application instead of multiple applications to multiple state and federal entities.

Mr. Martinez then provided the committee with an overview of the financial framework for large-scale water projects provided for in the Water Project Finance Act. He pointed out that the legislature created two different funds in the act, the Water Trust Fund and the Water Project Fund. Mr. Martinez went on to provide the committee with details about each fund, the amount appropriated to each fund and how money from each fund is distributed. He also noted that part of the Water Project Fund had been dedicated by the legislature to water rights adjudication. Mr. Martinez went on to detail the yearly allocations to and from each fund, as well as highlighting the restrictions on how funds may be appropriated.

Mr. Lopez provided the committee with a brief history of the water cabinet. He noted that the cabinet has two basic areas of focus: the coordination of water policy statewide and the use of money from various sources for various water and wastewater projects. Mr. Lopez went

on to discuss the development of the statewide water plan, which he noted had recently been completed. Mr. Lopez concluded by acknowledging that the members of the committee are well aware of the importance of funding to water projects and emphasized that the water cabinet is not trying to usurp the legislature's authority so much as it is trying to make efficient use of the limited amount of funding available for water projects.

Questions and comments included:

- apparent bias toward Albuquerque and Santa Fe of the bodies that make the decisions about which water projects get funded;
- the potential for improving water availability issues by focusing on watershed health issues;
- the difference between those water rights acknowledged by the OSE and actual water resources and the "wet" water rights associated with them;
- acequia projects utilizing the Army Corps of Engineers;
- the status of the wastewater treatment plant proposed for the Ruidoso area and its funding needs; and
- potential losses of the Water Trust Fund due to downturns in the stock market and current economic conditions.

Livestock Transportation

Don "Bebo" Lee of the New Mexico Cattle Growers Association provided the committee with a proposed revision to The Livestock Code regarding the removal of cattle from United States Forest Service (USFS) land allotments. He explained that there have been some recent cases of the USFS removing cattle from land without the owner's permission and suggested that the committee consider endorsing a bill that would settle disputes between livestock owners and the USFS in state, rather than federal, court.

Questions and comments included:

- laws regarding fencing-in requirements in New Mexico and other states;
- jurisdiction of courts and the potential problems with hearing matters involving federal agencies in state courts; and
- New Mexico Livestock Board operational issues.

There being no further business, the committee adjourned at 11:45 a.m.

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

**November 24-25, 2008
Room 322, State Capitol
Santa Fe**

The sixth meeting of the Water and Natural Resources Committee was called to order at 8:04 a.m. on November 24, 2008 by Representative Andy Nuñez, chair.

Present

Rep. Andy Nuñez, Chair
Sen. Phil A. Griego, Vice Chair
Rep. Paul C. Bandy
Rep. Elias Barela (Nov. 24)
Sen. Sue Wilson Beffort (Nov. 24)
Rep. Ray Begaye
Rep. Joseph Cervantes
Sen. Dede Feldman
Sen. Mary Jane M. Garcia
Sen. Clinton D. Harden, Jr.
Rep. Dona G. Irwin
Rep. Larry A. Larrañaga
Rep. Kathy A. McCoy
Sen. Steven P. Neville
Sen. Mary Kay Papen
Rep. Mimi Stewart
Rep. Don L. Tripp

Absent

Sen. Cynthia Nava

Advisory Members

Sen. Rod Adair
Sen. Vernon D. Asbill
Sen. Carlos R. Cisneros
Rep. Nora Espinoza
Rep. Candy Spence Ezzell
Rep. Ben Lujan
Rep. James Roger Madalena (Nov. 24)
Sen. Cisco McSorley
Rep. Danice Picraux (Nov. 25)
Sen. Nancy Rodriguez
Rep. Peter Wirth (Nov. 24)

Rep. Anna M. Crook
Sen. Timothy Z. Jennings
Sen. Gay G. Kernan
Sen. Leonard Lee Rawson
Sen. John C. Ryan
Rep. Henry Kiki Saavedra
Rep. James R. J. Strickler
Rep. Eric A. Youngberg

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

Guest Legislators

Rep. Thomas A. Garcia
Rep. Joni M. Gutierrez
Rep. Jimmie C. Hall
Sen. Richard C. Martinez
Rep. Debbie A. Rodella
Rep. Jim R. Trujillo
Rep. Jeannette O. Wallace

Staff

Gordon Meeks
Jon Boller
Jeret Fleetwood

Guests

The guest list is in the original meeting file.

Monday, November 24**Regulation of Propane Suppliers**

Robert Rivera, lobbyist, explained utility regulation and the differences between utilities and the propane industry. He then introduced Baron Glassgow, executive director of the New Mexico Propane Gas Association, who summarized the 2007 memorials asking for studies of propane sales issues. At the request of Senator Griego, he said that 2008 has been the most volatile year for pricing in the industry's history. He told the committee that there are 60 propane companies in New Mexico with 120 retail stores. He explained that customers have been complaining that propane prices were high even though the price of oil, from which propane is derived, has been declining. He said that this is a function of the contract requirements for wholesale propane to which all the retailers are subject. The highest price at the wholesale level for propane in 2008 occurred in July, which is when the retailers have to contract for their winter supplies. Hence, the prices prevailing in July were passed on to the customers in the wintertime, when customers saw the price of oil declining. Each propane company has its own relationship with its wholesale supplier, and because it is a competitive market, the propane dealers do not share information on their prices with one another. In fact, he said, the association prohibits discussing prices at its meetings.

Mr. Glassgow said that the industry tries to be proactive in explaining energy issues to customers. For example, the association published information on the federal Low Income Home Energy Assistance Program (LIHEAP). He went on to say that tank leasing contracts are a difficult issue. Customers want to be able to buy gas from any dealer, but a customer who rents a tank from a dealer is required to buy gas from that dealer because the liability insurance of the dealer requires the owner of the tank to have the tank filled only by that dealer. If a customer chooses to replace that tank with one from another dealer, the state's Construction Industries Division's Liquefied Petroleum Gas Bureau requires an inspection and upgrades in connections if they no longer meet the building code requirements. These can be expensive, but the propane

industry is not trying to gouge the customer. He also said that delivery costs to customers can affect their costs.

Paul Pacheco, a propane retailer from Pecos, told the committee that he cannot make a profit delivering propane more than 50 miles away, which is true for other propane retailers as well. The retailers simply will not sell beyond that radius from their stores. Some customers perceive that as collusion, or as non-compete agreements, when it is really the simple economics of the business. He explained the details of his business, including the fluctuation of prices between \$.20 and \$.30. He explained that he has to pay the wholesaler within 10 days of delivery of his propane, and if his customers don't pay him, he is out of business. He said he competes with eight other propane sellers.

Ray Engstrom, a service provider and former Liquefied Petroleum Gas Bureau chief at the Construction Industries Division, explained that over the years, underground pipes can become corroded and any change in a propane dealer can result in requiring repairs to those pipes, which can be very expensive.

Questions and comments addressed:

- gaps in service when customers live between dealers that are each more than 50 miles away;
- details of inspection requirements;
- propane sellers' loyalty to and preference for regular customers;
- the danger to customers if propane dealers and tanks are changed without a pressure test;
- weather-related customer complaints, such as inability of dealers to receive wholesale deliveries, limitations on drivers' hours under federal law and snow blocking driveways;
- potential for "cooperation" among propane dealers;
- the price of propane at the rack being different among propane retailers;
- spot market purchases compared to futures;
- the benefits of free market competition in the propane industry;
- price notifications to customers;
- variable pricing to different customers;
- self-regulation; and
- amortization of tanks for purchase.

Betty Hagensted, a citizen from Ojo Caliente, testified that a lot of problems are associated with one propane company, but that other propane companies could do the same thing without regulation by the state. She said that different prices by the same company for different customers is discrimination. She demanded some kind of oversight by the state. She said that LIHEAP is nice, but it does not cover many of the costs charged by propane companies.

Pilar Faulkner, also from Ojo Caliente, echoed these concerns and said that the propane industry acts like an unregulated monopoly.

Acequia Issues

Paula Garcia, director of the New Mexico Acequia Association, told the committee that her organization opposes the licensure bill proposed by the state engineer and opposes legislation that would mandate that water rights owners file notices of claims. She testified that the concerns relate to due process, compromising the authority of the courts, the separation of powers and the disenfranchisement of water rights owners. She told the committee, however, that the association supports limitations of municipal eminent domain powers and increased funding for the Acequia and Community Ditch Fund.

Her organization is very concerned about active water resource management rules and the power given to water masters. She said that expedited water markets in the Mimbres Valley are circumventing the water adjudication process.

Questions and comments addressed:

- the extent and variety of eminent domain authorities;
- the dateline for potential mandatory notices of claims; and
- the role and rights of parciantes compared to the acequias and acequia associations.

Governor's Outstanding National Resource Waters Initiative

Marcy Leavitt and John Goldstein from the Department of Environment addressed the committee about the Water Quality Control Commission designating outstanding national resource waters for special protection from degradation under the state's antidegradation policy and the federal Clean Water Act. Existing waters with such designations are the Rio Santa Barbara in the Pecos wilderness and waters in the Valle Vidal Special Management Unit of the United States Forest Service. Designation means enhanced regulations of point sources of effluent discharge (such as wastewater and oil and gas and mining discharges) and best management practices for nonpoint source discharges (such as grazing, recreational uses, septic tank seepage and agricultural runoff). Designation of the new status will involve public hearings and ample opportunity for public comment.

Questions and comments from the committee addressed:

- permit conditions under the new designations;
- Forest Guardians' role in the policy;
- a hidden goal to eliminate grazing from public lands;
- ranchers' roles in watering wildlife;
- the effect on forest thinning;
- economic impacts and implications;
- the hostile regulatory environment;
- layers of bureaucracy;
- wildlife refuges;
- definitions of nonpoint sources;
- dairies in Dona Ana County;
- the degradation of water quality caused by elk overpopulation;
- the role of the Department of Game and Fish;
- a request to work with farmers and ranchers;

- counties' authority in regulating dairies;
- the role of land grants in designation of outstanding national resource waters;
- an invitation to attend and speak at the Cattle Growers Association's annual meeting;
- the role of the Department of Agriculture in selecting outstanding national resource waters;
- the differences between point source and nonpoint source discharges;
- the citation for existing rules on outstanding national resource waters, 20.6.4 C.A.R.; and
- how poisoning of invasive species relates to nondegradation of waters in the Valle Vidal.

A spokesperson from the audience said the United States Forest Service does not endorse the initiative.

The committee approved the minutes from the September and October meetings.

Off-Highway Motor Vehicle Act Amendments

Reese Fullerton, deputy secretary of energy, minerals and natural resources, gave the committee a status report on the implementation of Senate Joint Memorial 40, which requested the Energy, Minerals and Natural Resources Department to review issues related to off-highway motor vehicle (OHV) use. He said that OHV use is an issue nationwide because such vehicles now number more than 12 million as compared to three million in 1986. He testified that five state agencies participated in a working group to review the law and no conclusions have been reached yet. The working group is still meeting and hopes to have some recommendations in time to be considered during the regular session. He emphasized that any changes in the law, in order to be successful, must be supported by a consensus of stakeholders.

He told the committee that the primary issues are:

1. user conflicts;
2. enforcement and monitoring of OHVs obeying designated trails;
3. damage to natural resources;
4. safety (OHVs are involved in 50 percent more injuries to users than any other type of vehicle); and
5. lack of dedicated use areas.

Questions and comments from the committee dealt with:

- funding for the study;
- recommendations to the United States Forest Service for its travel management plans;
- primary components of proposed legislation;
- threats from OHV enthusiasts;
- the Tourism Department's advertisements promoting OHV tourism without public education promoting respect for natural resources and agricultural users;
- the purpose of the existing Off-Highway Motor Vehicle Act;
- damage to the paleozoic track near Las Cruces from OHVs; and
- state agency partners with some authority over OHVs.

Invasive Species Impact on Water Systems

Brian Long, Department of Game and Fish , and Dave Moore, International Game Fish Association, told the committee about potential threats from aquatic invasive species, mainly the zebra mussel. They said that a rigorous boat inspection program and public education are needed to inform the public about how important it is to make sure that boats are adequately cleaned. They said that eastern states are already infested, and the states surrounding New Mexico have reported colonization by zebra mussels in some of their water bodies. Boating marinas are supporting a more active role by state government, but there is limited funding. State agencies involved in monitoring the situation and gearing up to respond include the New Mexico Department of Agriculture, the Department of Public Safety, the Department of Game and Fish and the State Parks Division of the Energy, Minerals and Natural Resources Department.

Questions and comments addressed:

- the methods of introduction of exotic species;
- the methods and protocols for boat inspections;
- the consequences of colonization by zebra mussels;
- that this is a public education issue, not just a law enforcement issue;
- the effect on recreationists, including rafters and motor boaters;
- laws in Arizona, California, Colorado, Nevada and Utah;
- the degree of infestations in the eastern United States;
- animal vectors, birds and mammals;
- golden algae blooms;
- time constraints on transportation;
- the origin from freighters in the Great Lakes;
- the nature of eradication efforts;
- the model program in Minnesota, where only four lakes are affected;
- how Phoenix is draining all the area irrigation systems; and
- the funding request level, which is between \$2 million and \$4 million.

Game and Forest Management Impacts

Tod Stevenson, director of the Department of Game and Fish, addressed the committee concerning elk issues. He is confident that the department's hunting rules and opportunities are consistent within elk management units. He said many of the issues are ones of perception; the department manages individual management units differently depending on habitat conditions and specific elk populations. Hunters or landowners may perceive inconsistencies, but the department is managing the herds based on those varying conditions between management units. He said that regarding depredation compensation, large ranches are easier to make decisions about compared to small ranches, which are managed differently and may have very different needs and varying degrees of wildlife damage. The number of authorizations between different management units may seem inequitable, but the management rationale is based on biology. The next State Game Commission meeting may include consideration of changes in managing Unit 6, which is a particular dilemma. Small landowners in the unit may opt out of the program, he said, if a longer hunting season is allowed. He said that the department will be coming to the legislature with a proposed change in the depredation law.

Art Martinez, an outfitter, told the committee that there have been problems in the Cuba/Coyote/Gallina area since 2001. He said those issues were brought to the State Game Commission in 2006. He testified that the Department of Game and Fish has increased the hunting allotments for large landowners and reduced the authorizations for small landowners. The small landowners do not want the elk killed off. He said that small landowner permits were reduced in value by Department of Game and Fish decisions. He told the committee that the department told him that it is not in business to repay landowners. He itemized his complaints by saying that 70 percent of the permits in Unit 6C went to the two largest landowners and that the small landowners' permits were collectively reduced from 16 to only two permits this year. He described the problems in Unit A where one area of 6,000 acres received 74 tags while another area of 5,000 acres only received 6 permits. He said that another area of more than 3,000 acres was getting 44 permits, but it consists of rangeland and no cropland. It is the cropland that sustains the most damage and, therefore, should get more tags. He said that a herd of elk feeding on cultivated cropland can wipe a farm family out, but compensation and hunting tags and permits go to big ranches that have no cultivated acres and no forage damage. The Department of Game and Fish will not even inspect claims by small landowners in Unit 6C. He said that Unit 6 should be reconsolidated. Landowners in Unit 6 have held public meetings and have petitioned the State Game Commission, but they have been "totally ignored". He said that the department should investigate damage claims and the director should be elected. He also called for a change in the law to provide for election of the state game commissioners because they are not currently accountable.

Mr. Stevenson rebutted Mr. Martinez by saying that there are diverse voices on elk issues; that the hunting strategy to reduce the elk population is a result of many voices from other populations; and that cooperation from the United States Forest Service has been slow.

Questions and comments from the committee addressed:

- Chama issues;
- the lack of responsiveness from the Department of Game and Fish;
- how the Department of Game and Fish determines game population in a particular unit;
- hunting license rules;
- how state wildlife eating private forage can set the state up for large class action lawsuits;
- that landowner permits should be issued in proportion to depredation;
- a review of the law for changes;
- how the formula for allocation of landowner permits is too complicated;
- the timing of landowner permits based on the time of depredation;
- compensation for use of grass on federal allotments;
- the history of livestock law and takings as split title;
- the consideration of federal allotments for hunting permit tags;
- the need for conjunctive management of elk with federal public lands grazing policy;
- the rationale for issuing hunting tags;
- tags for land grants;
- the membership of the State Game Commission;

- a direct request from legislators to the director of the Department of Game and Fish and the State Game Commission to listen to landowners;
- the source of rules for the game depredation program;
- the splitting of units in Canjilon;
- rotting carcasses;
- the potential to dedicate hunting and fishing license revenues to the general fund and to budget Department of Game and Fish operations from the general fund through House Bill 2;
- the arbitrariness and capriciousness of game and fish rules;
- how much of the rulemaking is specifically authorized by statute and how much is exceeding statutory authority; and
- specific directions from committee members to the Department of Game and Fish to meet with small landowners and threat to remove revenue stream if the department does not adequately respond.

The public comment period was dominated by general criticism of the department from two citizens.

Tuesday, November 25

Proposed Legislation (Approved Legislation Provided in Appendix)

The committee endorsed legislation to:

- appropriate money to the Interstate Stream Commission for water planning;
- appropriate money to New Mexico State University for water quality research;
- appropriate money to New Mexico Highlands University's Forest and Watershed Restoration Institute;
- appropriate money to New Mexico Tech's Bureau of Geology and Mineral Resources for aquifer mapping;
- establish the Water and Wastewater System Management Assistance Fund;
- establish the Liquid Waste Disposal System Assistance Fund;
- appropriate money to New Mexico State University for a veterinary program;
- increase the state engineer's authority over dams;
- limit eminent domain authority of municipalities in water rights acquisitions;
- create a lower Rio Grande water authority;
- request through a memorial that New Mexico State University report its research on reducing water consumption; and
- extend the state engineer's authority to ground water below 2,500 feet.

The committee tabled a proposal to enhance the state engineer's licensing authority and legislation to move forward on adjudication reform.

New Mexico Renewable Energy Transmission Authority

Lisa Szot, executive director, New Mexico Renewable Energy Transmission Authority (NMRETA), and Ted Apodaca, general counsel, NMRETA, gave a status report on the actions of the authority and asked the committee to support legislation to allow the NMRETA to issue bonds

to finance its projects and to provide developers of transmission lines with the same tax benefits given to electric power generators. Ms. Szot also asked the committee to support legislation to allow the State Investment Council and the state treasurer to buy the authority bonds.

Questions and comments to the committee addressed:

- the federal Energy Regulatory Commission's responsibility for transmission line regulation and the state's authority; and
- the effect of speculation on commodity prices and, therefore, the price of electric power.

Water Conservation Initiatives

John Longworth, bureau chief for water conservation in the Office of the State Engineer, described his bureau's responsibilities and gave a status report on various activities. He said that his bureau has prepared a rainwater harvesting manual, a web-based low-water plant list, a residential irrigation calculator and a DVD on how to irrigate landscapes. The bureau sponsors training and certifications for landscapers and irrigation specialists and cooperates with New Mexico State University on research projects related to evapotranspiration. The bureau also reviews water development and conservation planning, analyzes water systems for leaks, provides leak detection monitoring and conducts water demand analyses. The bureau staffed the House Memorial 42 stakeholder meetings and reviewed the 40-year planning law and proposed changes to the 40-year time period. Nine public meetings have been held so far, but no consensus has been reached. The stakeholders have drafted a consensus memo, which they believe needs to be distributed to the broader public for review and comment.

Committee questions and comments focused on web site information on appropriate climate and weather conditions for irrigation.

Valles Caldera National Preserve Management Status

Bill Kelleher, board chair of the Valles Caldera National Preserve, and Dennis Trujillo, preserve manager, told the committee that they want to ask the legislature to support a change in the Department of Game and Fish statutes to provide for 20 landowner permits to hunt in the Valles Caldera preserve. They said that the preserve is required by federal law to raise enough revenue to sustain its operations and that this revenue would be of significant assistance in accomplishing that requirement. They said they could expect as much as \$100,000 per hunt to be raised in this way, similar to the revenue the White Mountain Apache Tribe receives for high-dollar hunts in its game operations. Bob Jenks of the Department of Game and Fish was present and told the committee that the department supports the request.

Questions and comments from the committee addressed:

- the potential for the preserve to become a Class A park;
- the attorney general's opinion on ownership and wildlife laws of the state;
- the number of hunting permits currently issued for lottery hunts in the Valles Caldera;
- facilities for overnight accommodations;
- road infrastructure on the preserve;
- the number of guided hunts and outfitters operating on the preserve;

- the condition of the lodge;
- the economics of the cattle operations on the preserve;
- preferential times or places for hunts; and
- the economic burden of the preserve, with its excess elk depredation, to adjacent landowners and farmers.

The committee adjourned at 3:45 p.m.

ENDORSED LEGISLATION

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HOUSE BILL

49TH LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2009

INTRODUCED BY

FOR THE
WATER AND NATURAL RESOURCES COMMITTEE
AND THE INDIAN AFFAIRS COMMITTEE

AN ACT

MAKING AN APPROPRIATION TO THE INTERSTATE STREAM COMMISSION FOR
WATER PLANNING.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF NEW MEXICO:

Section 1. APPROPRIATION.--Four hundred thousand dollars
(\$400,000) is appropriated from the general fund to the
interstate stream commission for expenditure in fiscal year
2010 and subsequent fiscal years to continue the water planning
program. Any unexpended or unencumbered balance remaining at
the end of a fiscal year shall not revert to the general fund.

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HOUSE BILL

49TH LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2009

INTRODUCED BY

FOR THE

WATER AND NATURAL RESOURCES COMMITTEE

AN ACT

MAKING AN APPROPRIATION TO EXPAND RESEARCH AT NEW MEXICO STATE
UNIVERSITY IN WATER QUALITY AND AVAILABILITY.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF NEW MEXICO:

Section 1. APPROPRIATION.--Three hundred fifty thousand
dollars (\$350,000) is appropriated from the general fund to the
board of regents of New Mexico state university for expenditure
in fiscal year 2010 to expand research in water quality and
availability. Any unexpended or unencumbered balance remaining
at the end of fiscal year 2010 shall revert to the general
fund.

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HOUSE BILL

49TH LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2009

INTRODUCED BY

FOR THE WATER AND NATURAL RESOURCES COMMITTEE

AN ACT

MAKING AN APPROPRIATION TO THE NEW MEXICO FORESTRY AND
WATERSHED RESTORATION INSTITUTE AT NEW MEXICO HIGHLANDS
UNIVERSITY.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF NEW MEXICO:

Section 1. APPROPRIATION.--One hundred twenty-five
thousand dollars (\$125,000) is appropriated from the general
fund to the board of regents of New Mexico highlands university
for expenditure in fiscal year 2010 for the New Mexico forestry
and watershed restoration institute. Any unexpended or
unencumbered balance remaining at the end of fiscal year 2010
shall revert to the general fund.

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HOUSE BILL

49TH LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2009

INTRODUCED BY

FOR THE WATER AND NATURAL RESOURCES COMMITTEE

AN ACT

MAKING AN APPROPRIATION TO THE NEW MEXICO INSTITUTE OF MINING
AND TECHNOLOGY FOR AQUIFER MAPPING.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF NEW MEXICO:

Section 1. APPROPRIATION.--Four hundred fifty thousand
dollars (\$450,000) is appropriated from the general fund to the
board of regents of New Mexico institute of mining and
technology for expenditure in fiscal year 2010 and subsequent
fiscal years for the bureau of geology and mineral resources to
conduct statewide aquifer mapping and characterization. Any
unexpended or unencumbered balance remaining at the end of a
fiscal year shall not revert to the general fund.

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SENATE BILL

49TH LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2009

INTRODUCED BY

FOR THE WATER AND NATURAL RESOURCES COMMITTEE

AN ACT

RELATING TO THE ENVIRONMENT; ENACTING A NEW SECTION OF THE ENVIRONMENTAL IMPROVEMENT ACT TO PROVIDE FOR ASSISTANCE TO WATER AND WASTEWATER SYSTEMS; CREATING A FUND; MAKING AN APPROPRIATION.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF NEW MEXICO:

Section 1. A new section of the Environmental Improvement Act is enacted to read:

"NEW MATERIAL WATER AND WASTEWATER SYSTEM MANAGEMENT ASSISTANCE FUND--CREATED--PURPOSE.--

A. The "water and wastewater system management assistance fund" is created in the state treasury. The department shall administer the fund. The fund is composed of appropriations, donations and transfers of money earned from investment of the fund and otherwise accruing to the fund.

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1 Balances remaining in the fund at the end of a fiscal year
2 shall remain to the credit of the fund. Disbursements from the
3 fund shall be drawn on warrant of the secretary of finance and
4 administration pursuant to vouchers signed by the secretary of
5 environment or the secretary's authorized representative.

6 Money in the fund is appropriated to the department to assist
7 small water and wastewater systems that qualify for funding to
8 pay for:

9 (1) a certified water or wastewater operator
10 to maintain and manage a small water or wastewater system;

11 (2) the administrative management of a small
12 water or wastewater system; or

13 (3) all or a portion of the connection fees to
14 connect a small water or wastewater system to another water or
15 wastewater system so as to create a regional water or
16 wastewater system.

17 B. System operation, maintenance, construction and
18 administrative activities funded by the water and wastewater
19 system management assistance fund shall be performed by
20 contractors selected through competitive bid pursuant to
21 guidelines provided by the department.

22 C. No more than ten percent of the fund shall be
23 used by the department on an annual basis to pay for the
24 department costs associated with management and implementation
25 of fund activities.

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1 D. As used in this section:

2 (1) "administrative management" means
3 activities such as rate structure development and other system
4 business management, record keeping, customer service and
5 customer invoicing and collections;

6 (2) "connection fee" means the fee paid
7 directly to a public water or wastewater system or other water
8 or wastewater management organization and does not include
9 other fees, such as legal fees, related to connecting a small
10 water or wastewater system to another water or wastewater
11 system to create a regional water or wastewater system; and

12 (3) "small water or wastewater system" means a
13 water or wastewater system that serves no more than three
14 hundred connections, whether public or private, including small
15 systems managed by a political subdivision of the state,
16 including a water and sanitation district, a mutual domestic
17 water consumers association or a public school district and as
18 further established by department qualification criteria."

19 Section 2. APPROPRIATION.--Two million dollars
20 (\$2,000,000) is appropriated from the general fund to the water
21 and wastewater system management assistance fund for
22 expenditure in fiscal year 2010 and subsequent fiscal years to
23 carry out the purposes of the water and wastewater system
24 management assistance fund. Any unexpended or unencumbered
25 balance remaining at the end of a fiscal year shall not revert

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SENATE BILL

49TH LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2009

INTRODUCED BY

FOR THE WATER AND NATURAL RESOURCES COMMITTEE

AN ACT

RELATING TO THE ENVIRONMENT; ENACTING A NEW SECTION OF THE ENVIRONMENTAL IMPROVEMENT ACT TO PROVIDE FOR ASSISTANCE TO INDIGENT PERSONS TO REPLACE SUBSTANDARD LIQUID WASTE DISPOSAL SYSTEMS; CREATING A FUND; MAKING AN APPROPRIATION.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF NEW MEXICO:

Section 1. A new section of the Environmental Improvement Act is enacted to read:

"NEW MATERIAL LIQUID WASTE DISPOSAL SYSTEM ASSISTANCE FUND--CREATED--PURPOSE.--

A. The "liquid waste disposal system assistance fund" is created in the state treasury. The department shall administer the fund. The fund is composed of appropriations, donations and transfers of money earned from investment of the fund and otherwise accruing to the fund. Balances remaining in

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1 the fund at the end of a fiscal year shall remain to the credit
2 of the fund. Disbursements from the fund shall be drawn on
3 warrant of the secretary of finance and administration pursuant
4 to vouchers signed by the secretary of environment or the
5 secretary's authorized representative. Money in the fund is
6 appropriated to the department for the sole purpose of
7 assisting indigent individuals or households that qualify for
8 funding to accomplish one of the following purposes where there
9 is a real or potential negative impact to public health or
10 water quality from on-site liquid waste disposal system
11 effluent:

12 (1) to pay for a liquid waste disposal system
13 to replace a cesspool or other failed or improper on-site
14 liquid waste disposal system;

15 (2) to purchase, install or maintain an
16 advanced treatment system as required by the Environmental
17 Improvement Act or regulations issued pursuant to that act;

18 (3) to pay for the decommissioning and removal
19 of a cesspool or other failed or improper on-site liquid waste
20 disposal system; or

21 (4) to pay for all or a portion of the
22 connection fees in order to connect an individual or household
23 to a centralized wastewater collection and treatment system.

24 B. Construction activities sponsored by the fund
25 shall be performed by licensed contractors selected through

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1 competitive bid by the department and shall be managed by the
2 department.

3 C. No more than ten percent of the fund shall be
4 used by the department on an annual basis to pay for the
5 department costs associated with management and implementation
6 of fund activities.

7 D. As used in this section:

8 (1) "advanced treatment system" means an on-
9 site liquid wastewater treatment system that removes a greater
10 amount of contaminants than is accomplished by a primary
11 treatment system;

12 (2) "connection fee" means the fee paid
13 directly to a public water or wastewater system or other
14 wastewater management organization and does not include other
15 fees, such as legal fees, related to connecting an individual
16 or household to a centralized wastewater collection and
17 treatment system; and

18 (3) "indigent individuals or households" means
19 individuals or households whose annual incomes meet the
20 criteria established by the department."

21 Section 2. APPROPRIATION--Four million dollars
22 (\$4,000,000) is appropriated from the general fund to the
23 liquid waste disposal system assistance fund for expenditure in
24 fiscal year 2010 and subsequent fiscal years to provide for
25 assistance to indigent persons to replace substandard liquid

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1 waste disposal systems. Any unexpended or unencumbered balance
2 remaining at the end of a fiscal year shall not revert to the
3 general fund.

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HOUSE BILL

49TH LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2009

INTRODUCED BY

FOR THE WATER AND NATURAL RESOURCES COMMITTEE

AN ACT

MAKING AN APPROPRIATION TO NEW MEXICO STATE UNIVERSITY FOR
VETERINARY EDUCATION THROUGH THE NEW MEXICO RURAL VETERINARY
PRACTICE RELIEF PROGRAM.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF NEW MEXICO:

Section 1. APPROPRIATION.--Two hundred fifty thousand
dollars (\$250,000) is appropriated from the general fund to the
board of regents of New Mexico state university for expenditure
in fiscal year 2010 to support veterinary education through the
New Mexico rural veterinary practice relief program. Any
unexpended or unencumbered balance remaining at the end of
fiscal year 2010 shall revert to the general fund.

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HOUSE BILL

49TH LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2009

INTRODUCED BY

FOR THE

WATER AND NATURAL RESOURCES COMMITTEE

AN ACT

RELATING TO WATER; REQUIRING STATE ENGINEER REVIEW AND APPROVAL FOR THE CONSTRUCTION AND OPERATION OF DAMS; PROVIDING FOR EXCEPTIONS.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF NEW MEXICO:

Section 1. Section 72-5-32 NMSA 1978 (being Laws 1941, Chapter 126, Section 25, as amended) is amended to read:

"72-5-32. CONSTRUCTION AND OPERATION OF DAMS [~~EXCEEDING TEN FEET IN HEIGHT~~]--STATE ENGINEER AUTHORITY.--

A. Except as provided in Subsection D of this section, any person, association or corporation, public or private, the state or the United States [~~hereafter~~] intending to construct a dam shall [~~meet the requirements of filing~~] file applications for appropriations and use of water pursuant to Section 72-5-1, 72-5-22, 72-5-23 or 72-5-24 NMSA 1978.

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1 B. Any person, association or corporation, public
2 or private, the state or the United States intending to
3 construct or operate a dam [~~that exceeds ten feet in height~~
4 ~~from the lowest natural ground surface elevation to the crest~~
5 ~~of the dam or impounds more than ten acre-feet of water]~~ shall
6 submit [~~on a form prescribed by the state engineer~~] detailed
7 plans to the state engineer for approval before construction or
8 operation of the dam, except for a dam that:

9 (1) is less than twenty-five feet in height
10 from the lowest natural ground surface elevation at the
11 downstream toe of the dam to the crest of the dam and has a
12 storage capacity of less than fifty acre-feet of water;

13 (2) is less than six feet in height from the
14 lowest natural ground surface elevation at the downstream toe
15 of the dam to the crest of the dam, regardless of storage
16 capacity; or

17 (3) has a storage capacity of fifteen acre-
18 feet or less of water, regardless of height.

19 C. If the state engineer finds that the dam design
20 [~~is~~] and operational plan are safe, [he] the state engineer
21 shall approve the plans [~~provided that this section shall not~~
22 ~~apply to erosion control structures whose maximum storage~~
23 ~~capacity does not exceed ten acre-feet and are constructed for~~
24 ~~the sole purpose of sediment control. An erosion control~~
25 ~~structure shall not impound surface water in any amount for~~

1 ~~fishing, fish propagation, recreation or aesthetic purposes,~~
2 ~~which shall require a permit pursuant to Section 72-5-1 NMSA~~
3 ~~1978].~~

4 D. Filing an application for the appropriation and
5 use of water is not required for the construction or operation
6 of a flood or erosion control dam; provided that a flood or
7 erosion control dam shall not store water for more than
8 ninety-six hours unless a longer duration time is authorized by
9 the state engineer and water stored shall not be placed to any
10 beneficial use unless specifically authorized by the state
11 engineer.

12 E. The state engineer shall determine how the
13 height, storage capacity and storage duration for all dams are
14 calculated or measured and shall prescribe the form in which
15 dam design plans and operational plans are submitted."

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HOUSE BILL

49TH LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2009

INTRODUCED BY

FOR THE WATER AND NATURAL RESOURCES COMMITTEE

AN ACT

RELATING TO MUNICIPALITIES; PROHIBITING, IN CERTAIN CASES, THE
POWERS OF MUNICIPALITIES TO CONDEMN PROPERTY OUTSIDE MUNICIPAL
BOUNDARIES; LIMITING MUNICIPAL JURISDICTION IN CERTAIN
SITUATIONS; CHANGING ANNEXATION PROCEDURES FOR CERTAIN
MUNICIPALITIES.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF NEW MEXICO:

Section 1. Section 3-7-17 NMSA 1978 (being Laws 1965,
Chapter 300, Section 14-7-17, as amended) is amended to read:

"3-7-17. ANNEXATION--PETITION BY OWNERS OF CONTIGUOUS
TERRITORY--DUTY OF GOVERNING BODY--ORDINANCE--APPEAL.--

A. Except as provided in Sections 3-7-17.1 and
3-57-4 NMSA 1978, whenever a petition:

(1) seeks the annexation of territory
contiguous to a municipality;

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1 (2) is signed by the owners of a majority of
2 the number of acres in the contiguous territory;

3 (3) is signed by a majority of the owners of
4 land in the contiguous territory;

5 [~~(3)~~] (4) is accompanied by a map that shows
6 the external boundary of the territory proposed to be annexed
7 and the relationship of the territory proposed to be annexed to
8 the existing boundary of the municipality; and

9 [~~(4)~~] (5) is presented to the governing body,
10 the governing body shall by ordinance express its consent or
11 rejection to the annexation of such contiguous territory.

12 B. If the ordinance consents to the annexation of
13 the contiguous territory, a copy of the ordinance, with a copy
14 of the plat of the territory so annexed, shall be filed in the
15 office of the county clerk. After the filing, the contiguous
16 territory is part of the municipality. The clerk of the
17 municipality shall also send copies of the ordinance annexing
18 the territory and of the plat of the territory so annexed to
19 the secretary of finance and administration and to the
20 secretary of taxation and revenue.

21 C. Within thirty days after the filing of the copy
22 of the ordinance in the office of the county clerk, any person
23 owning land within the territory annexed to the municipality
24 may appeal to the district court questioning the validity of
25 the annexation proceedings. If no appeal to the district court

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1 is filed within thirty days after the filing of the ordinance
2 in the office of the county clerk or if the court renders
3 judgment in favor of the municipality, the annexation shall be
4 deemed complete."

5 Section 2. Section 3-27-1 NMSA 1978 (being Laws 1965,
6 Chapter 300, Section 14-26-1) is amended to read:

7 "3-27-1. POTABLE--AUTHORITY TO ACQUIRE AND OPERATE WATER
8 FACILITIES.--

9 A. A municipality, within and without the municipal
10 boundary, may:

11 [~~A.~~] (1) acquire water facilities [~~which~~] that
12 may include but are not limited to:

13 [~~(1)~~] (a) wells, cisterns and
14 reservoirs;

15 [~~(2)~~] (b) distribution pipes and
16 ditches;

17 [~~(3)~~] (c) pumps;

18 [~~(4) right~~] (d) rights of way;

19 [~~(5)~~] (e) water treatment [~~plant~~]
20 plants; and

21 [~~(6)~~] (f) their necessary appurtenances;

22 and

23 [~~B.~~] (2) use and supply water for:

24 [~~(1)~~] (a) sewer purposes;

25 [~~(2)~~] (b) private use; and

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[~~3~~] (c) public use.

B. In acquiring private property pursuant to this section, a municipality may exercise the power of eminent domain pursuant to the procedures of the Eminent Domain Code, but nothing in this section gives a municipality the right to condemn wells, cisterns, reservoirs, distribution pipes and ditches, springs, streams, water or water rights outside the boundaries of the municipality."

Section 3. Section 3-27-2 NMSA 1978 (being Laws 1965, Chapter 300, Section 14-26-2, as amended) is amended to read:

"3-27-2. POTABLE--METHODS OF ACQUISITION--CONDEMNATION CONVEYANCES AUTHORIZED--LAND FOR APPURTENANCES--PUBLIC AND PRIVATE USE--COMPENSATION.--

A. Municipalities [~~within and without the municipal boundary~~] may:

(1) within the municipal boundary, acquire, contract for or condemn:

- (a) springs;
- (b) wells;
- (c) water rights;
- (d) other water supplies; and
- (e) right-of-way or other necessary

ownership for the acquisition of water facilities; and

(2) within and without the municipal boundary, acquire, maintain, contract for or condemn for use [~~as~~] by a

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1 municipal utility [~~privately owned water facilities used or to~~
2 ~~be used~~] property and right of way for the construction,
3 maintenance and operation of reservoirs, canals, ditches,
4 flumes, aqueducts, pipelines or other works for the storage or
5 conveyance of water for the furnishing and supply of water to
6 the municipality or its inhabitants [~~and~~
7 ~~(3)~~] or change the place of diversion of any
8 water to any place selected by the municipality in order to
9 make the water available to the municipality.

10 B. For the purposes stated in Section 3-27-3 NMSA
11 1978, a municipality may take water from any stream, gulch or
12 spring. If the taking of the water materially interferes with
13 or impairs the vested right of any person [~~who resides upon~~] to
14 the creek, gulch or stream or [~~does~~] to any milling or
15 manufacturing on the creek, gulch or stream, the municipality
16 shall obtain the consent of the person with the vested right
17 or, if the affected vested right is entirely within the
18 boundaries of the municipality, acquire the vested right by
19 condemnation and make full compensation or satisfaction for all
20 damages occasioned to the person.

21 C. Any person may lawfully convey to any
22 municipality any water, water right and ditch right or any
23 interest in any water, water right and ditch right held or
24 claimed by the grantor. No change or use of the:

25 (1) water;

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- 1 (2) water right;
2 (3) place of diversion; or
3 (4) purpose for which the water or water right
4 was originally acquired by the grantor, shall invalidate the
5 right of the municipality to use the water or water right.

6 D. Proceedings to obtain any condemnation
7 authorized in this section shall be in the manner provided by
8 law."

9 Section 4. Section 3-27-3 NMSA 1978 (being Laws 1965,
10 Chapter 300, Section 14-26-3, as amended) is amended to read:

11 "3-27-3. POTABLE--JURISDICTION OVER WATER FACILITIES AND
12 SOURCE.--For the purpose of [~~acquiring~~] maintaining
13 [~~contracting for, condemning~~] or protecting its water
14 facilities and water from pollution, the jurisdiction of the
15 municipality extends within and without its boundary to:

16 A. all territory occupied by the water facilities;

17 B. all reservoirs, streams and other sources
18 supplying the reservoirs and streams within their planning and
19 platting jurisdiction; and

20 C. five miles above the point from which the water
21 is taken.

22 In exercising its jurisdiction to [~~acquire~~] maintain
23 [~~contract for or condemn~~] and protect the water facilities, the
24 municipality shall not act so as to physically isolate and make
25 nonviable any portion of the water facilities, within or

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1 without the municipality. The municipality may adopt any
2 ordinance and regulation necessary to carry out the power
3 conferred by this section."

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HOUSE BILL

49TH LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2009

INTRODUCED BY

FOR THE WATER AND NATURAL RESOURCES COMMITTEE

AN ACT

RELATING TO SPECIAL DISTRICTS; AMENDING AND ENACTING SECTIONS OF THE NMSA 1978 TO PROVIDE FOR THE CREATION OF THE LOWER RIO GRANDE PUBLIC WORKS AUTHORITY; PROVIDING FOR POWERS AND DUTIES OF THE AUTHORITY.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF NEW MEXICO:

Section 1. A new section of Chapter 73 NMSA 1978 is enacted to read:

"[NEW MATERIAL] LOWER RIO GRANDE PUBLIC WORKS AUTHORITY.--

A. The "Lower Rio Grande public works authority" is created. The authority is a political subdivision of the state and shall be an independent public body. The authority is composed of Berino mutual domestic water consumers and mutual sewage works association, Desert Sands mutual domestic water consumers association, La Mesa mutual domestic water consumers

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1 association, Mesquite mutual domestic water consumers and
2 mutual sewage works association and Vado mutual domestic water
3 consumers association, all serving unincorporated communities
4 within Dona Ana county.

5 B. The authority may adopt rules and resolutions,
6 governance policies and procedures necessary to exercise the
7 powers conferred pursuant to this section.

8 C. All functions, appropriations, money, records
9 and equipment and all personal property and real property,
10 including water rights, easements, permits and infrastructure,
11 as well as all encumbrances, debts and liabilities pertaining
12 to or owned by the founding entities shall be transferred to
13 the authority.

14 D. The authority shall declare a service area
15 consisting of the founding entities' service areas, and the
16 authority may amend its service area as additional members join
17 the authority. The authority's service area shall be
18 designated on a plat filed in the public records of Dona Ana
19 county.

20 E. The authority may provide for water and
21 wastewater services, road improvements or renewable energy
22 projects that are integral to the operation and maintenance of
23 the authority's facilities or any combination or parts thereof.

24 F. The authority may exercise all powers allowed
25 pursuant to law, including:

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1 (1) regulating, supervising and operating the
2 authority's facilities;

3 (2) establishing rates and imposing
4 assessments, fees and charges and taking action necessary for
5 the enforcement thereof;

6 (3) implementing water conservation and source
7 water protection, including adopting rules and regulations
8 relating to the drilling of domestic wells within the
9 authority's service area pursuant to Sections 3-53-1.1 and
10 72-12-1.1 NMSA 1978;

11 (4) acquiring, holding and using water rights
12 in an amount necessary to meet its reasonable needs within
13 forty years;

14 (5) shutting off, after notice, unauthorized
15 connections, illegal connections or a connection for which
16 charges are delinquent in payment;

17 (6) entering into contracts with private
18 entities, the state, municipalities, counties and the federal
19 government and other public bodies to further its public
20 purposes;

21 (7) entering into joint powers agreements with
22 other governmental entities relating to providing public
23 services;

24 (8) acquiring property and services and
25 maintaining and operating its facilities;

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- 1 (9) condemning property pursuant to the
2 Eminent Domain Code;
- 3 (10) hiring and retaining agents, employees
4 and consultants, as needed;
- 5 (11) adopting and using a governmental seal;
- 6 (12) placing a lien on property for unpaid
7 assessments, charges and fees and enforcing the lien in a
8 manner pursuant to law;
- 9 (13) suing and being sued and being a party to
10 suits, actions and proceedings; and
- 11 (14) having and exercising all rights and
12 powers necessary, incidental to or implied from the specific
13 powers granted in this section.

14 G. The authority shall be subject to the:

- 15 (1) Open Meetings Act and Inspection of Public
16 Records Act;
- 17 (2) Audit Act; and
- 18 (3) Procurement Code.

19 H. The authority shall not be subject to the
20 jurisdiction of the public regulation commission, the
21 provisions of the Public Utility Act, the requirements and
22 review set forth in the Special District Procedures Act or, in
23 the case of constructing publicly funded utility and public
24 works projects, the zoning or planning jurisdiction or
25 authority of any municipality or county.

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1 I. The authority may issue utility system revenue
2 bonds and obligations for acquiring real and personal property
3 needed for the utility system and for extending, enlarging,
4 renovating, repairing or otherwise improving its facilities.
5 The authority may issue revenue anticipation notes with
6 maturities and terms to be approved by the board of directors
7 of the authority. The authority may pledge irrevocably net
8 revenues from the operation of the utility system for payment
9 of the principal, premiums and interest on the bonds. The
10 utility system revenue bonds:

11 (1) may have interest, appreciated principal
12 value or any part thereof payable at intervals or at maturity
13 as the authority determines;

14 (2) may be subject to prior redemption at the
15 authority's option at such time and upon such terms and
16 conditions, with or without the payment of a premium, as
17 determined by the authority;

18 (3) may mature at any time not exceeding fifty
19 years after the date of issuance;

20 (4) may be serial in form and maturity, may
21 consist of one bond payable at one time or in installments or
22 may be in another form as determined by the authority;

23 (5) shall be sold for cash at, above or below
24 par and at a price that results in a net effective interest
25 rate that does not exceed the maximum permitted by the Public

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1 Securities Act; and

2 (6) may be sold at a public or negotiated
3 sale.

4 J. The authority's board of directors may adopt a
5 resolution declaring the necessity for the issuance of utility
6 system revenue bonds or other obligations and may authorize the
7 issuance of utility system revenue bonds or other obligations
8 by an affirmative vote of a majority of all members of the
9 authority's board of directors. Utility revenue bonds and the
10 resolution authorizing their issuance shall not be subject to
11 the approval of the public regulation commission pursuant to
12 Section 3-23-3 NMSA 1978 and shall not be subject to voter
13 approval pursuant to Section 3-23-2 NMSA 1978. The bonds
14 authorized by the authority and their income shall be exempt
15 from taxation by the state and its political subdivisions.

16 K. Except for the purpose of refunding previous
17 utility system revenue bond issues, the authority shall not
18 sell utility system revenue bonds payable from pledged revenues
19 after the expiration of three years from the date of the
20 resolution authorizing their issuance. Any period of time
21 during which a utility system revenue bond is in litigation
22 shall not count toward the determination of the expiration date
23 of that issue.

24 L. The authority shall be governed by a board of
25 directors. The directors of the initial board shall consist of

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1 five directors representing each of the founding entities. The
2 directors of the initial board shall serve until their
3 successors are elected. After the terms of the initial
4 directors are completed, the succeeding board of directors
5 shall be elected by districts from a minimum of five and a
6 maximum of seven electoral districts. Each director, at the
7 time of election, shall reside within the electoral district of
8 the authority from which that member is elected. The
9 boundaries and the number of electoral districts shall be
10 established by the initial board within two years of the
11 creation of the authority. The board may in its governance
12 document provide for redistricting upon any change in the
13 authority's boundary. The elected board of directors shall
14 serve staggered terms to be established in the governance
15 document developed by the initial board."

16 Section 2. Section 3-53-1.1 NMSA 1978 (being Laws 2001,
17 Chapter 207, Section 1) is amended to read:

18 "3-53-1.1. NEW DOMESTIC WATER WELLS--MUNICIPAL
19 AUTHORITY--PUBLIC WORKS AUTHORITY.--

20 A. A municipality or a public works authority may,
21 by ordinance, restrict the drilling of new domestic water
22 wells, except for property zoned agricultural, if the property
23 line of the applicant is within three hundred feet of the
24 municipal or the public works authority water distribution
25 lines and the property is located within the exterior

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1 boundaries of the municipality or the public works authority.

2 B. No municipality or public works authority may
3 deny authorization for a new domestic water well permit to an
4 applicant if the total cost to the applicant of extending the
5 municipal or the public works authority water distribution
6 line, meter and hook-up to the applicant's residence exceeds
7 the cost of drilling a new domestic water well.

8 C. A municipality or a public works authority that
9 fails to authorize the drilling of a new domestic water well
10 shall provide domestic water service within ninety days to the
11 property owner under the municipal water provider's or the
12 public works authority's usual and customary charges and rate
13 schedules.

14 D. A municipality or a public works authority shall
15 file with the state engineer its municipal ordinance or its
16 resolution or rule restricting the drilling of new domestic
17 water wells.

18 E. An applicant for a domestic water well located
19 within the exterior boundaries of a municipality or a public
20 works authority with a new domestic water well drilling
21 ordinance shall obtain a permit to drill the well from the
22 municipality or the public works authority subsequent to the
23 state engineer's approval.

24 F. A municipality or a public works authority with
25 a domestic water well drilling ordinance or resolution or rule

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1 shall act upon a new domestic water well permit application
2 within thirty days of receipt of the request.

3 G. A municipality or a public works authority shall
4 notify the state engineer of all municipal or public works
5 authority permit denials for domestic well authorization.

6 H. An applicant may appeal the decision of the
7 municipality or the public works authority to the district
8 court in the county of the municipality or public works
9 authority.

10 I. Nothing in this section shall limit the
11 authority of the state engineer to administer water rights as
12 provided by law.

13 J. The state engineer shall not be liable for
14 actions taken in accordance with a municipal ordinance or a
15 public works authority policy authorizing restriction of
16 domestic well drilling within the exterior boundaries of a
17 qualified municipality or public works authority."

18 Section 3. Section 72-12-1.1 NMSA 1978 (being Laws 2003,
19 Chapter 298, Section 2) is amended to read:

20 "72-12-1.1. UNDERGROUND WATERS--DOMESTIC USE--PERMIT.--A
21 person, firm or corporation desiring to use public underground
22 waters described in this section for irrigation of not to
23 exceed one acre of noncommercial trees, lawn or garden or for
24 household or other domestic use shall make application to the
25 state engineer for a well on a form to be prescribed by the

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1 state engineer. Upon the filing of each application describing
2 the use applied for, the state engineer shall issue a permit to
3 the applicant to use the underground waters applied for;
4 provided that permits for domestic water use within
5 municipalities or within the jurisdiction of a public works
6 authority shall be conditioned to require the permittee to
7 comply with all applicable municipal ordinances enacted
8 pursuant to Chapter 3, Article 53 NMSA 1978 or all policies
9 adopted by the public works authority."

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HOUSE JOINT MEMORIAL

49TH LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2009

INTRODUCED BY

FOR THE

WATER AND NATURAL RESOURCES COMMITTEE

A JOINT MEMORIAL

REQUESTING NEW MEXICO STATE UNIVERSITY TO REPORT RESULTS OF
RESEARCH ON WATER CONSERVATION METHODS THAT REDUCE CONSUMPTIVE
USE.

WHEREAS, the legislature has received testimony on the
need for water conservation; and

WHEREAS, agriculture is the single largest consumer of
water; and

WHEREAS, Senate Bill 461 was negotiated and enacted in
2007 to provide incentives for irrigators to conserve more
water; and

WHEREAS, implementation of Senate Bill 461 by the office
of the state engineer has not resulted in water savings as
intended; and

WHEREAS, the need to encourage conservation and respect

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HOUSE BILL

49TH LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2009

INTRODUCED BY

FOR THE WATER AND NATURAL RESOURCES COMMITTEE

AN ACT

RELATING TO WATER; PROVIDING STATE ENGINEER JURISDICTION OVER CERTAIN NONPOTABLE UNDERGROUND AQUIFERS.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF NEW MEXICO:

Section 1. Section 72-12-25 NMSA 1978 (being Laws 1967, Chapter 86, Section 1) is amended to read:

"72-12-25. DECLARATION OF BASIN--NONPOTABLE DEEP AQUIFERS.-- [~~No past or future order of the state engineer declaring~~]

A. An underground water basin having reasonably ascertainable boundaries [~~shall include~~] that includes water in an aquifer, the top of which aquifer is at a depth of [~~twenty-five~~] two thousand five hundred feet or more below the ground surface at any location at which a well is drilled and which aquifer contains nonpotable water, is subject to state

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1 engineer administration in accordance with Sections 72-12-26
2 through 72-12-28 NMSA 1978 except as provided by Subsections B
3 and C of this section.

4 B. If the state engineer declares the type of
5 underground water basin described in Subsection A of this
6 section, all appropriations of water from that basin for:

7 (1) oil and gas exploration and production or
8 geothermal use shall remain subject to Sections 72-12-26
9 through 72-12-28 NMSA 1978; and

10 (2) all other uses shall be subject to
11 Sections 72-12-1 through 72-12-24 NMSA 1978.

12 C. Nothing in this section shall affect water
13 produced incidental to oil and gas exploration or production or
14 the disposition of produced water pursuant to Paragraph (15) of
15 Subsection B of Section 70-2-12 NMSA 1978 and Section 70-2-12.1
16 NMSA 1978.

17 D. "Nonpotable water", for the purpose of [this
18 act] Sections 72-12-25 through 72-12-28 NMSA 1978, means water
19 containing not less than one thousand parts per million of
20 dissolved solids."