

WATER AND NATURAL RESOURCES COMMITTEE

2007
FINAL REPORT



Santa Fe, New Mexico
March 2008

WORK PLAN

2007 APPROVED WORK PLAN AND MEETING SCHEDULE
for the
WATER AND NATURAL RESOURCES COMMITTEE

Members

Sen. Phil A. Griego, Chair
Rep. Andy Nunez, 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
Sen. H. Diane Snyder
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. Rhonda S. King
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

Work Plan

The committee will focus on:

1. water conservation policy;
2. coordination of regional water plans and status of planning for the Gila River;
3. agency oversight of water project development planning and funding;
4. status of water rights adjudication and the relationship to active water resource management and water transfers;
5. domestic well regulation and permitting policy, including land grant communal rights and pending litigation;
6. water availability for proposed and anticipated land development;
7. responsibilities and oversight of the Office of the State Engineer, the Interstate Stream Commission and the state land commissioner; and
8. "clean forest" initiatives and the effects of the national forests' work plans on water quality and quantity and elk population and the ranching economy.

Chairman Griego will appoint a subcommittee on water adjudications to meet no more than two additional days other than on full committee meeting dates.

MEETING SCHEDULE

<u>Date</u>	<u>Location</u>
June 12	Santa Fe
July 16-17	Clovis
August 28-29	Taos
September 24-25	Ruidoso
October 29-30	Santa Fe
November 26-27	Santa Fe

AGENDAS

TENTATIVE AGENDA
for the
WATER AND NATURAL RESOURCES COMMITTEE
June 12, 2007
Room 307, State Capitol

Tuesday, June 12

- 10:00 a.m. **Call to Order**
 —Senator Phil A. Griego, Chair
- 10:15 a.m. **Water Issues for 2007**
 —John D'Antonio, State Engineer (Invited)
- 11:30 a.m. **Lunch**
- 1:00 p.m. **2007 Interim Scope of Work, Itinerary and Meeting Schedule**
- 2:30 p.m. **Adjourn**

Revised: July 2, 2007

**TENTATIVE AGENDA
for the
WATER AND NATURAL RESOURCES COMMITTEE
July 16-17, 2007
Clovis Civic Center
801 Schepps Boulevard
Clovis**

Monday, July 16

- 10:00 a.m. **Call to Order**
—Senator Phil A. Griego, Chair
- Welcome to Clovis**
—Major David Lansford
- 10:15 a.m. **Financing Major Water Development Projects**
—Bill Sisneros, New Mexico Finance Authority
—Robert Apodaca, Department of Finance and Administration
- 11:15 a.m. **Eastern New Mexico Rural Water System Status**
—Scott Verhines, Program Manager, Eastern New Mexico Rural Water
 Authority
- 12:00 noon **Lunch**
- 1:00 p.m. **Interstate Stream Commission Management of Pecos River Retired
Farmland**
—Estevan Lopez, Director, Interstate Stream Commission
- 2:00 p.m. **Regional Water Planning Process Status Report**
—Angela Bordegaray, Interstate Stream Commission
- 3:00 p.m. **Estancia Basin Regional Water Planning**
—John L. Jones, Secretary, Estancia Basin Water Planning Committee
- 4:00 p.m. **Brackish Water Development in New Mexico**
—Karl Wood, Water Resources Research Institute, NMSU
—Abbas Ghassemi, Director, Institute for Energy and Environment, NMSU
- 5:00 p.m. **Recess**

Tuesday, July 17

- 9:00 a.m. **Phreatophyte Removal and Riparian Restoration**
—Jack Chatfield, Project Manager, Canadian River Riparian Restoration Project
—Levi Sanchez, Chair, Upper Rio Grande Phreatophyte Control Project
- 10:30 a.m. **Budgeting and Administering Phreatophyte Removal and Riparian
Restoration Statewide**
—Ricardo Gonzales, New Mexico Department of Agriculture
—Butch Blazer, State Forester, Energy, Minerals and Natural Resources
Department
—Cindy Padilla, Deputy Secretary of Environment
- 12:00 noon **Special Business**
- 1:00 p.m. **Adjourn**

Revised: August 7, 2007

TENTATIVE AGENDA
for the
WATER AND NATURAL RESOURCES COMMITTEE
August 28-29, 2007
Sagebrush Inn Convention Center
Chamisa II
Taos

Tuesday, August 28

- 10:00 a.m. **Call to Order**
 —Senator Phil A. Griego, Chair
- 10:15 a.m. **Acequia Perspective on Active Water Resource Management**
 —Fred Waltz, Attorney
 —Mary Humphrey, Attorney
 —David Benavides, Attorney
- 11:30 a.m. **Lunch and Field Trip**
- 2:00 p.m. **Water Transfers and Water Markets: Impacts on Acequias**
 —David Benavides, Attorney
 —Paula Garcia, Director, New Mexico Acequia Association
- 3:00 p.m. **Mutual Domestic Water Consumer Association (MDWCA) Issues**
 —Andy Madrid, Sangre de Cristo MDWCA
 —Ted Trujillo, Greater Chimayo MDWCA
- 4:00 p.m. **Acequia Construction Program Task Force Recommendations**
 —Paula Garcia, New Mexico Acequia Association
- 5:00 p.m. **Recess**

Wednesday, August 29

- 9:00 a.m. **Taos Valley Draft Water Agreement**
 —Governor Gilbert Suazo, Pueblo of Taos
 —Fred Waltz, Attorney, Taos Valley Acequia Association
- 10:00 a.m. **Taos Regional Water Plan**
 —Simeon Herskovits, Attorney, Public Welfare Subcommittee
 —Rudy Pacheco, Taos Regional Water Planning Committee
- 11:00 a.m. **Water Adjudications Subcommittee**
 —Peter White, Attorney
 —Victor Marshall, Attorney
 —David Benavides, Attorney
- 1:00 p.m. **Adjourn**

Revised: September 14, 2007

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

**September 24-25, 2007
Room 6, Aztec Room
Ruidoso Convention Center**

Monday, September 24

- 8:30 a.m. **Call to Order**
—Senator Phil A. Griego, Water and Natural Resources Committee Chair
—Representative Al Park, Courts, Corrections and Justice Committee Co-Chair
—Senator Cisco McSorley, Courts, Corrections and Justice Committee
Co-Chair
- 8:35 a.m. **Ruidoso and Hondo Valley Water Issues**
—Alvin Jones, Attorney
—Jackie Powell, Hondo Valley Acequia Association
- 10:00 a.m. **Water Adjudication Reform**
—Judge Jerald A. Valentine, Third Judicial District
—Celina Jones, Administrative Office of the Courts
—Steve Snyder, Special Master
- 12:00 noon **Lunch**
- 1:30 p.m. **Proposals to Expedite Adjudications:**
 - **Rio Chama Template for Expediting Water Adjudications**
 - **Proposed Schedule for Conducting Future Adjudications**
 - **Budget Requirements**—John D'Antonio, State Engineer (Invited)
—D.L. Sanders, General Counsel, Office of the State Engineer
—Greg Ridgely, Counsel, Office of the State Engineer (Invited)
- 3:30 p.m. **The Role of Ombudsman and Intervenors in Water Adjudications**
—Steve Hernandez, Attorney
—Susan Kelly, Joe M Stell Ombudsman Program, Utton Transboundary
Center,
University of New Mexico Law School
- 5:00 p.m. **Recess**

Tuesday, September 25

- 8:30 a.m. **Pecos River Settlement Issues**

—A.J. Olsen, Attorney

10:00 a.m.

Challenging Energy Era

—Art Hull, Public Service Company of New Mexico

11:00 a.m.

Grazing Units and Damage on National Forest Allotments

—Jimmy Goss, Rancher, Weed, New Mexico

—Charles Walker, Rancher, Cloudcroft, New Mexico

Otero County Resource Management Program

—Doug Moore, Chair, Otero County Commission

—Dr. Martin Moore, Otero County Administrator

Watershed Action

—Bill Mershon, Otero Soil and Water Conservation District

—Peggy Johnson, Bureau of Geology and Mineral Resources

State Forester Work Plan

—Butch Blazer, State Forester

1:00 p.m.

Adjourn

Revised: Oct. 18, 2007

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

**October 29-30, 2007
Room 322, State Capitol
Santa Fe**

Monday, October 29

- 8:00 a.m. **Water Adjudications Subcommittee
Lower Rio Grande Water Users Association Concerns**
—Karl Wood, Director, Water Resources Research Institute, New Mexico State
University
—Gary Esslinger, General Manager, Elephant Butte Irrigation District
—J. Phil King, Consultant, Elephant Butte Irrigation District
- 9:00 a.m. **Call to Order (Full Committee)**
—Senator Phil A. Griego, Chair
- Gila River Issues**
—Henry Torres, Gila-San Francisco Water Commission
—Howard Hutchison, Gila-San Francisco Water Commission
—Adrian Oglesby, The Nature Conservancy
- 10:30 a.m. **Forfeiture Exemption for 40- or 100-Year Planning Period?**
—John Longworth, Office of the State Engineer
- 12:00 noon **Lunch**
- 1:30 p.m. **Interstate Compacts—Status Report**
—Estevan Lopez, Director, Interstate Stream Commission
—Tanya Trujillo, General Counsel, Interstate Stream Commission
- 3:00 p.m. **Well Drillers—Domestic Well Pump Installer Certification**
—John Mahoney, President, New Mexico Ground Water Association
- 4:00 p.m. **Santa Fe Community College (SFCC) Water Conservation Strategies**
—Dr. Sheila R. Ortego, President, SFCC
—Lou Schreiber, Center for Community Sustainability, SFCC
—Frank Joy, Director of Plant Operations, SFCC
- 5:00 p.m. **Recess**

Tuesday, October 30

- 8:30 a.m. **Water Project Financing/Water Trust Board Procedures and Policies**
—Katherine Miller, Secretary of Finance and Administration

- Ron Curry, Secretary of Environment
- Bill Sisneros, Director, New Mexico Finance Authority
- John D'Antonio, State Engineer, and Water Trust Board Chair
- Marquita Russell, New Mexico Finance Authority

12:00 noon **Phreatophytes — Pueblo of Santo Domingo Treatment Area Tour and Discussion (Working Lunch)**

- Governor Nelson Pacheco, Pueblo of Santa Domingo
- Ernie Lovato, Acting Governor, Pueblo of Santa Domingo
- Gabriel Cosyleon, Pueblo of Santa Domingo

3:00 p.m. **Adjourn**

Revised: November 26, 2007

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

**November 26-28, 2007
Room 307, State Capitol**

Monday, November 26

- 9:00 a.m. **Call to Order**
—Senator Phil A. Griego, Chair
- Deep Water Development**
—Mark Fesmire, Director, Oil Conservation Division, Energy, Minerals and
 Natural Resources Department
—Ned Godshall, CEO, Altela, Inc.
—Peter White, Attorney
- 10:30 a.m. **Acequia Concerns Regarding Adjudication Reform**
—David Benavides, Attorney
—Fred Waltz, Attorney
—Paula Garcia, New Mexico Acequia Association
- 12:00 noon **Lunch**
- 1:30 p.m. **Responses to Committee Questions and Adjudication Reform Issues**
—John D'Antonio, State Engineer
—D.L. Sanders, General Counsel, Office of the State Engineer (OSE)
—Greg Ridgley, Counsel, OSE
- 4:30 p.m. **Recess**

Tuesday, November 27

- 9:00 a.m. **Proposed Legislation**
—Pecos Alternative Water Rights Retirement Method
—Aquifer Mapping
—Utton Transboundary Resources Center Appropriation
—Precision Irrigation Appropriation
—Mutual Domestics on Water Trust Board
—Water Adjudication Reform Memorial

- 10:30 a.m. **Indian Water Rights Negotiations and Settlements**
—Estevan Lopez, Director, Interstate Stream Commission
—John D'Antonio, State Engineer
—Victor Marshall, Attorney
- 12:00 noon **Lunch**
- 1:30 p.m. **Water Markets**
—Lee Brown, Economist
- 3:00 p.m. **Mutual Domestic Water Consumers Associations Critical Needs**
—George Maestas, Rodarte Mutual Domestic Water Consumers Association
—Charlie Sanchez, Rodarte Resident
—Rick Martinez, Department of Finance and Administration
- 4:30 p.m. **Recess**

Wednesday, November 28

- 9:00 a.m. **Game and Forest Management Impacts**
- Grazing Units and Damage on National Forest Allotments**
—Mrs. Jimmy Goss, Rancher
—Charles Walker, Rancher
- County Resource Management Programs**
—Doug Moore, Chair, Otero County Commission
—Marty Moore, Otero County Manager
—Michael Nivison, Otero County Commissioner
- Department of Game and Fish (DGF) Programs**
—Alfredo Montoya, State Game Commission Member
—Bruce Thompson, Director, DGF
- Range Improvement Task Force (RITF)**
—John Fowler, Chair, RITF
- Forest Management Policies**
—Gilbert Zepeda, Deputy Regional Forester, U.S. Forest Service
—Butch Blazer, State Forester
- 12:00 noon **Adjourn**

MINUTES

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

**June 12, 2007
Room 307, State Capitol
Santa Fe**

The first meeting of the Water and Natural Resources Committee was called to order on June 12, 2007 at 10:10 a.m. by Senator Phil A. Griego, chair, in Room 307 of the State Capitol in Santa Fe.

Present

Sen. Phil A. Griego, Chair
Rep. Andy Nuñez, Vice Chair
Rep. Paul C. Bandy
Rep. Elias Barela
Sen. Sue Wilson Beffort
Rep. Ray Begaye
Sen. Dede Feldman
Sen. Clinton D. Harden, Jr.
Rep. Dona G. Irwin
Rep. Larry A. Larrañaga
Rep. Kathy A. McCoy
Sen. Cynthia Nava
Sen. Mary Kay Papen
Rep. Mimi Stewart

Advisory Members

Sen. Rod Adair
Sen. Carlos R. Cisneros
Rep. Anna M. Crook
Rep. Nora Espinoza
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

Absent

Rep. Joseph Cervantes
Sen. Mary Jane M. Garcia
Sen. Steven P. Neville
Rep. Don L. Tripp

Sen. Vernon D. Asbill
Rep. Candy Spence Ezzell
Sen. Timothy Z. Jennings
Rep. Rhonda S. King
Rep. Eric A. Youngberg

Guests

The guest list is in the original meeting file.

Staff

Gordon Meeks
Jeret Fleetwood

Tuesday, June 12

Senator Griego began by welcoming members of the committee and the public and by having committee members and staff introduce themselves.

Water Issues for 2007

John D'Antonio, state engineer, and Estevan Lopez, Interstate Stream Commission, provided the committee with an overview of water issues facing New Mexico for 2007. Mr. D'Antonio began by telling the committee that Judge Reynolds had affirmed the state engineer's authority to implement active water resource management (AWRM) rules. He reviewed the AWRM program begun by the Office of the State Engineer (OSE). He explained that the program had recently survived a court challenge and was moving ahead with the hiring of water masters, development of basin-specific rules and regulations and metering of water users on the lower Rio Grande. Mr. D'Antonio also described public outreach efforts the OSE is making regarding AWRM, including listening sessions and public workshops. He also discussed future plans for AWRM, which include metering of water users on the Mimbres River and the Rio Gallinas, licensing of water rights and the hiring of still more water masters and development of manuals for them.

Next, Mr. D'Antonio discussed the status of New Mexico's compliance with the Rio Grande Compact. He explained that the large amount of rainfall received in southern New Mexico left the state with the maximum allowable compact delivery credit of 180,000 acre-feet of water, which should be helpful in case 2007 proves to be a dry year. Mr. D'Antonio also discussed the status of the Pecos River Compact, pointing out that New Mexico also has a compact delivery credit on the Pecos River.

Mr. D'Antonio went on to discuss the status of the pending settlements involving Native American tribes: the *Navajo* settlement, the *Aamodt* settlement and the *Taos* settlement. He indicated that the congressional legislation required for approval of the Navajo-Gallup Project, a major part of the *Navajo* settlement, had been introduced on April 19, 2007 and is awaiting a hearing. Mr. D'Antonio went on to note that the imported water issues in the *Aamodt* and *Taos* settlements have been resolved and that the federal-state cost-sharing agreements still need to be worked out. He also provided the committee with current cost estimates for each of the settlements.

Mr. D'Antonio also discussed the approval of regional and state water plans, acequia construction and management workshops conducted by the OSE, development of a strategic water reserve, the safety status of New Mexico's dams and the work done toward implementing

House Memorial 42 from the 2007 legislative session, which requests the OSE to conduct meetings with water stakeholders concerning the statute requiring 40-year water plans.

Questions and comments included:

- whether AWRM interferes with ongoing water rights adjudications;
- tax credits for water conservation programs;
- uses of the New Mexico Irrigation Works Construction Fund;
- management plans for lands with water rights purchased and retired by the state;
- long-term water supply projects;
- projects to make use of brackish water;
- OSE's use of bond money to pay for recurring expenses in adjudications;
- status and location of dams listed as unsafe by the OSE;
- development of regional water plans;
- allocation of money for adjudications between OSE and the Administrative Office of the Courts;
- status of pending Native American water rights settlements;
- water acquisition for the Desert Rock power plant;
- increases in funding requests by the OSE;
- transfers of water rights to mutual domestic water associations; and
- authority of the OSE to adjudicate water rights.

Senator Griego listed a number of issues he would like to see the committee address, such as concerns voiced by those who refuse to sign on to the *Aamodt* settlement, acequia construction programs, water transfers and licensed water rights. He also indicated that he would like to see a representative from the Governor's Office attend the committee's meetings whenever possible.

Work Plan

The committee developed a work plan and selected meeting dates and locations. Staff noted that the Legislative Council has provided each committee with suggested areas of focus for the interim. The committee also added the following items to the proposed areas of focus:

- status of planning for the Arizona Water Rights Settlement on the Gila River; and
- relationship between water adjudications, active water resource management and water rights transfers.

The committee also proposed the following meeting dates and locations, which staff noted would require the approval of the Legislative Council:

July 16-17	Clovis
August 28-29	Taos
September 24-26	Ruidoso
October 29-30	Aztec
November 26-27	Santa Fe

There being no further business, the committee adjourned at 1:12 p.m.

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

**July 16-17, 2007
Clovis Civic Center
Clovis**

The second meeting of the Water and Natural Resources Committee was called to order on July 16, 2007 at 10:10 a.m. by Senator Phil A. Griego, chair, at the Clovis Civic Center in Clovis.

Present

Sen. Phil A. Griego, Chair
Rep. Andy Nunez, Vice Chair
Rep. Paul C. Bandy
Rep. Ray Begaye
Rep. Joseph Cervantes
Sen. Mary Jane M. Garcia
Sen. Clinton D. Harden, Jr.
Rep. Larry A. Larranaga
Rep. Kathy A. McCoy
Sen. Steven P. Neville
Sen. Mary Kay Papen
Rep. Mimi Stewart
Rep. Don L. Tripp

Absent

Rep. Elias Barela
Sen. Sue Wilson Beffort
Sen. Dede Feldman
Rep. Dona G. Irwin
Sen. Cynthia Nava

Advisory Members

Sen. Rod Adair
Sen. Vernon D. Asbill
Rep. Anna M. Crook
Rep. Nora Espinoza
Rep. Candy Spence Ezzell
Sen. Gay G. Kernan
Sen. Cisco McSorley
Sen. John C. Ryan
Rep. Henry Kiki Saavedra
Rep. James R.J. Strickler

Sen. Carlos R. Cisneros
Sen. Timothy Z. Jennings
Rep. Rhonda S. King
Rep. Ben Lujan
Rep. James Roger Madalena
Rep. Danice Picraux
Sen. Leonard Lee Rawson
Sen. Nancy Rodriguez
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, July 16

Senator Griego began by having members of the committee introduce themselves to the audience. Senator Harden and Representative Crook welcomed committee members to Clovis and thanked them for holding a meeting there.

Mayor David Lansford also welcomed the committee to Clovis and thanked it for coming. He noted that Clovis is growing and thanked the legislature for its help in promoting economic development in eastern New Mexico.

Next, Senator Griego informed the committee that the Legislative Council had approved the committee's work plan, which included a subcommittee to discuss adjudications, and named the following members to the Subcommittee on Adjudications:

Sen. Mary Kay Papen, Chair	Sen. Cisco McSorley
Rep. Ray Begaye	Rep. Kathy A. McCoy
Rep. Joseph Cervantes	Sen. John C. Ryan
Rep. Candy Spence Ezzell	Rep. Peter Wirth
Rep. Larry A. Larranaga	

Senator Griego explained that the subcommittee will be meeting for the first time after the regular committee adjourns on July 17.

Financing Major Water Development Projects

Bill Sisneros, New Mexico Finance Authority (NMFA) director, provided the committee with an overview of how the NMFA operates. He explained that the NMFA was created to work with state, local and Native American governments to help build infrastructure with low-cost financing for projects. Mr. Sisneros noted that bonding and loan financing structures are an attractive alternative to "pay-as-you-go" financing for local governments whose finances are already stretched thin. He also pointed out that the NMFA has financed about \$2 billion in infrastructure and equipment projects since its inception.

Mr. Sisneros went on to discuss the various ways the NMFA helps communities fund their projects. He explained the differences among pay-as-you-go funding, annual funding from state or federal appropriations, annual funding from other revenues and bond financing. He went on to explain how various types of bonds work, noting the difference between revenue bonds and general obligation bonds.

Finally, Mr. Sisneros discussed the NMFA's financing of water projects, noting that the Public Project Revolving Fund has the capacity to fund water projects of all sizes. He also pointed out that the federally funded drinking water program, the Water Trust Board and the Local Government Planning Fund could all be used for certain types of water projects.

Rick Martinez, deputy secretary of the Department of Finance and Administration (DFA), provided the committee with a proposal to create a single governmental entity for all water and wastewater infrastructure requests, or what he described as a "one-stop shop" for water project financing needs. He explained that such an entity would include several state agencies and would feature a uniform application to be reviewed by the New Mexico Department of Environment (NMED), DFA and the NMFA for budget capacity, debt analysis and rate analysis.

Mr. Martinez went on to explain that the proposed entity would help provide capacity development assistance to water and wastewater systems.

Mr. Martinez then discussed the proposed criteria for water infrastructure projects, which include a financial plan, a fully allocated rate structure, asset management and maintenance plans, adequate governance (such as a board), operational planning and conformance with Office of the State Engineer (OSE) regulations. He also emphasized that projects receiving funding would have to be fully funded and planned.

Questions and comments included:

- negative feedback on proposed "one-stop shopping" for water projects as a consolidation of governmental power;
- options for project financing for small communities with no real revenue stream;
- whether Water Trust Fund money can be used for watershed restoration;
- how projects reviewed by the proposed entity would still have to be approved by the Water Trust Board, where there is broad representation of water stakeholders;
- the Ruidoso Downs wastewater project;
- Albuquerque's use of the NMFA to fund projects;
- which local government revenue streams are dedicated to paying off water projects first;
- whether large projects can be bonded when federal funding is involved;
- whether the proposed entity would mean a new cabinet secretary;
- prioritization of large and small water projects; and
- the amount of money in the Water Trust Fund.

Interstate Stream Commission Management of Pecos River Retired Farmland

Estevan Lopez, director of the Interstate Stream Commission (ISC), provided the committee with an overview on the efforts of the ISC to manage land along the Pecos River that has had its water rights retired as part of the Pecos River settlement. He began by explaining that the Pecos River settlement requires New Mexico to deliver a certain amount of water to Texas each year, and to ensure that enough water is delivered, the State of New Mexico purchased land along the river and retired its water rights. Mr. Lopez went on to explain that several issues have arisen on the land purchased by the state, pointing out that the land now lies either bare or

infested with extremely high weeds. He also noted that Representative Ezzell had introduced a bill during the 2007 session that would have allowed the state to retire water rights on a parcel of land without actually buying and managing the land, which would have helped address some of the issues with the land. However, he indicated that the bill had been passed by the legislature but pocket vetoed by the governor.

Mr. Lopez went on to discuss management of the purchased land by the ISC. He began by showing the committee the location of the various parcels of land being managed by the ISC and discussed a program implemented by the ISC to help the land progress from annual weed population to perennial native plant communities. Mr. Lopez noted that the goals of the program are to minimize adverse impacts of the land on adjacent landowners, to benefit local economies in the Pecos River Basin and to promote the general public welfare of the basin. He then outlined the process involved in the land management process, explaining that after the land is purchased, a baseline evaluation is conducted, a lease is offered to the previous landowner and a property management plan is negotiated and enforced. He also noted that it would take about 10 years for the land to complete its succession from farmland to perennial, native plant communities.

Finally, Mr. Lopez pointed out that the lands are still subject to oil and gas development. He also discussed the cost per acre of managing the purchased lands, indicating that it will cost about \$328,400 per year for the ISC to manage the 8,108 acres currently owned.

Questions and comments included:

- terms of the Pecos River settlement;
- whether water conserved by New Mexico through salt cedar removal programs has to be delivered to Texas as part of the Pecos River Compact;
- the effectiveness of computer modeling of the Pecos River and the aquifer underneath at helping to understand the effects of various land management strategies;
- impediments to buying land along the Pecos River;
- whether leases on purchased land generate any income for the state;
- the length of leases with previous landowners;
- the amount of money spent on the lawsuit with Texas over the Pecos River, purchasing lands and now managing those lands;
- the amount of maintenance required after 10 years; and
- how purchased land is evaluated to determine its lease value.

Regional Water Planning Process Status Report

Angela Bordegaray of the ISC provided the committee with an update regarding regional water planning in the state. She began by outlining the water planning regions in New Mexico and summarizing the ISC's regional water planning program. Ms. Bordegaray noted that the program was actually started in 1987, but initially was not well funded. She explained that funding levels were increased from 1999-2006, which led to the completion of most of the regional plans, and indicated that 15 of the 16 regional plans had been accepted by the ISC. Ms. Bordegaray also emphasized that regional water planning is not to be confused with 40-year water plans or the efforts to regionalize drinking water systems.

Next, Ms. Bordegaray explained that water plans are designed to answer a set of basic questions:

- how much water is available;
- how much water will be needed;
- will available water supply meet projected demand; and
- what strategies can be implemented so that demand can be met?

She also detailed the water plan development process, explaining that plans follow the ISC Regional Water Planning Handbook template.

Finally, Ms. Bordegaray discussed the involvement of the public and regional water stakeholders in regional water plan development. She also explained how the regional plans fit into the state water plan as a whole.

Questions and comments included:

- involvement of New Mexico State University (NMSU) in land management relative to regional water plans;
- whether regional water plans dovetail with water infrastructure needs of communities;
- the relationship between infrastructure planning and water planning;
- that the Taos region plan is the only one not yet approved by the ISC;
- water planning issues on the middle Rio Grande; and
- how regional water plans do not address water rights issues.

Eastern New Mexico Rural Water System Status

Scott Verhines, program manager for the Eastern New Mexico Rural Water System, provided the committee with an update on the water system's status. He began by providing the committee with a brief background of the water system, explaining that its concept was developed to ensure that eastern New Mexico would be assured an adequate supply of water in the face of continued development in the area and a declining aquifer that currently supplies much of the region with its water. Mr. Verhines went on to provide the committee with an overview of the project itself, explaining that it would take water from the Ute Reservoir on the Canadian River, treat it to improve its quality and transport it via pipeline to the project's member communities. He went on to indicate that the total cost of the project would be about \$436 million, which would be shared by the federal government, the State of New Mexico and local communities.

Finally, Mr. Verhines discussed the upcoming goals for the project. He indicated that federal legislation authorizing the project was introduced in fall 2006 and would be reintroduced in 2007 or early 2008. Mr. Verhines also noted that a Senate field hearing is tentatively scheduled for August 14, 2007 in Clovis. He also explained that an environmental impact statement is anticipated in the near future.

Questions and comments included:

- ownership of water in Ute Reservoir;
- project funding will be 75% federal, 15% state and 10% local;
- whether Hobbs used to be a project member;

- date of first right of refusal;
- whether Cannon Air Force Base's new mission will help leverage more federal money for the project; and
- the size of the pipeline that will transport water from Ute Reservoir.

Estancia Basin Regional Water Planning

John Jones, secretary of the Estancia Basin Water Planning Committee (EBWPC), provided the committee with a brief overview and summary of the efforts of the EBWPC. He began by thanking the committee for the support and funding it has provided throughout the regional water planning process. Next, Mr. Jones provided the committee with a summary of the EBWPC's work, explaining that efforts to begin water planning began in the 1990s. He noted that, after a large amount of public input, the Estancia Basin's plan was finalized in 1999 and went on to be the first one accepted by the ISC.

Mr. Jones then detailed the successes associated with the Estancia Basin water plan, which he said include a memorandum of understanding between the four soil and water conservation districts in the basin regarding watershed health, a partnership between the committee and the USGS and Sandia National Laboratories on data collection and the EBWPC's ability to maintain its position as an advisory group providing a balanced view on water issues.

Mr. Jones went on to note that while new information about available water resources suggests that the basin's water plan should be updated, its development is still a valuable exercise. He emphasized that even if the regional water plans are developed and never utilized, the process of developing them holds merit and value of its own.

Questions and comments included:

- whether the Estancia Basin's water rights have been fully adjudicated.

Brackish Water Development in New Mexico

Dr. Karl Wood of the Water Resources Research Institute at NMSU provided the committee with testimony regarding water research at NMSU. He explained that NMSU has formed five strategic research areas, or clusters, to try to provide solutions for New Mexico's citizens: bioscience, border issues, information science, aerospace and natural resources. He went on to note that the natural resources cluster includes a water research sub-cluster and listed several water research topics the university is currently working on, which include river salinity, wastewater treatment, surface-ground water interaction and desalination technology.

Dr. Wood went on to discuss several current trends in desalination, noting that there are currently more than 15,000 desalination plants in operation around the world. However, he pointed out that almost all of those desalination plants operate near an ocean, which makes it easier to dispose of the concentrate that is a byproduct of desalination. Dr. Wood indicated that while there is a relatively large supply of brackish water underneath New Mexico, inland desalination of that water presents a number of problems, such as variability of the saline content of the brackish water, energy requirements and concentrate disposal, which Dr. Wood noted would account for half of the cost of a desalination operation.

Dr. Wood went on to note that even though inland desalination presents a number of problems, it still may be developed into a viable technology. He noted that a new, federally funded facility had been constructed just west of Alamogordo to study various desalination technologies. Dr. Wood described the facility and cautioned the committee that New Mexico's water needs would not be completely satisfied by such facilities. He pointed out that additional research will still be necessary, such as a federal aquifer assessment and state initiatives for technologies that can be adapted to New Mexico's small communities, its agricultural and livestock needs and the water produced by oil and gas development. Dr. Wood did emphasize that the facility in Alamogordo provides a great opportunity for New Mexico to piggyback on federal programs to meet specific in-state needs.

Questions and comments included:

- depth of brackish water in New Mexico's aquifers;
- whether desalination technology is a priority in water funding;
- agricultural uses for research performed at the Alamogordo facility;
- whether water produced by methane wells can be converted to usable water;
- need for state money for NMSU to continue its water research;
- desalination of water produced by oil and gas development;
- whether desalination technology can be used to address arsenic levels in water; and
- ways for the legislature to help advance water research besides appropriating money.

Tuesday, July 17

Phreatophyte Removal and Riparian Restoration

Jack Chatfield, project manager of the Canadian River Riparian Restoration Project, began by providing the committee with a brief history of riparian restoration efforts on the Canadian River. He explained that in 2003, the New Mexico Association of Conservation Districts asked the legislature to authorize a salt cedar removal project in northeastern New Mexico, which led to the development of a statewide phreatophyte plan. Mr. Chatfield also pointed out that NMSU has developed a salt cedar monitoring program that is regarded as the best in the United States.

Mr. Chatfield went on to discuss the treatment of salt cedars along the Canadian River. He indicated that over 4,000 acres have been treated with a variety of means, including the use of goats and sowing grass seed, applying herbicides and mechanically clearing. He discussed the effectiveness of each method and provided the committee with photographs showing areas along the river before and after treatment. Mr. Chatfield also noted that some methods require follow-up treatments to address salt cedars that have resprouted.

Questions and comments included:

- reasons for less money being spent on treatment of salt cedars than in previous years;
- whether treatment of salt cedars actually equates to increased river flows;
- origin of salt cedars and Russian olive trees;
- history and purview of soil and water conservation districts;
- effectiveness of herbicides on various phreatophytes;
- issues related to treatment of salt cedars on privately owned land;

- ineffectiveness of fire as a means of controlling the salt cedar population;
- federal funding matches for salt cedar removal money appropriated by the state;
- how salt cedars have channelized New Mexico's rivers by eliminating over-bank flooding, which is beneficial to cottonwood trees;
- salt cedar work in the bosque areas in Albuquerque; and
- similarities and differences between salt cedar removal and habitat restoration.

Levi Sanchez, chair of the Upper Rio Grande Phreatophyte Control Project, also provided the committee with testimony regarding treatment of salt cedars. He explained that this project operates between Belen and Abiquiu, is made up of several communities and is managed by the Upper Rio Grande Steering Committee, a fiscal agent and an experienced project coordinator. Mr. Sanchez also noted that the project faces several unique conditions, such as the vegetation canopy along the river, the large percentage of privately owned land divided into small parcels and the cultural conditions that stem from the fact that 95% of the tribal entities in New Mexico are located in the northern half of the state and many of them are located within the project's boundary.

However, Mr. Sanchez emphasized that, despite the unique conditions present along the upper Rio Grande and the sub-watershed areas that drain into it, the Upper Rio Grande Phreatophyte Control Project complies with all the guidelines and protocols of the state phreatophyte control plan. He also noted that mechanical treatment has become the preferred method of salt cedar control in the area because the mixture of vegetation makes the area somewhat unsuitable for chemical spraying. Mr. Sanchez did note that no single treatment method is best for all locations.

Finally, Mr. Sanchez requested that the legislature continue to support phreatophyte removal in New Mexico and recommended that funding levels be restored to \$5 million per year.

Questions and comments included:

- reasons why aerial herbicide treatments do not suit the upper Rio Grande well;
- whether the federal government helps to defer the cost of salt cedar treatment on Native American land; and
- the average amount of water consumed by salt cedars.

Budgeting and Administering Phreatophyte Removal and Riparian Restoration Statewide

Senator Griego noted that the committee is disappointed when cabinet secretaries are invited to show up and they do not.

Ricardo Gonzales of the New Mexico Department of Agriculture provided the committee with testimony regarding the statewide phreatophyte/watershed management plan. He explained that money for salt cedar treatment from 2002-2005 had been appropriated by the legislature to the soil and water conservation districts, that in 2006 money for salt cedars had been vetoed by the governor and that \$500,000 had been appropriated to NMSU and the department of agriculture for implementation of the statewide salt cedar plan in 2007. Mr. Gonzales also

provided the committee with an overview of the statewide plan, discussing its history, vision, recommendations and implementation of those recommendations.

Butch Blazer, state forester, provided the committee with testimony regarding the efforts of the State Forestry Division of the Energy, Minerals and Natural Resources Department. He showed the committee a map indicating the location of the various watershed health projects underway in New Mexico and noted the involvement of the soil and water conservation districts throughout the state in helping to conduct watershed restoration projects.

Cindy Padilla of the NMED provided the committee with testimony regarding water quality issues as they relate to salt cedar removal. She noted that the NMED needs to work with local entities on addressing such issues as non-point-source pollutants and total maximum daily loads in New Mexico's waterways.

Ms. Padilla also noted that another method of reducing current impairments to New Mexico's surface waterways is through watershed restoration. She indicated that NMED intends to promote watershed restoration through a forum, planned for three days, to bring all the involved entities together to discuss who is doing what and how it can be improved.

Ms. Padilla went on to note that the NMED is helping to take the lead on watershed restoration because of its experience with the use of federal funds. She explained that river ecosystem restoration funds are available through the federal government and that a process is currently underway to determine how best to use those funds. Ms. Padilla listed habitat restoration, bank lowering and channel widening as possible activities for use of the funds. She also emphasized that salt cedar projects alone would not be considered unless they are part of a larger project.

Debbie Hughes of the New Mexico Soil and Water Conservation District Association explained to the committee that the phreatophyte management plan was put together without much input from the soil and water conservation districts. She also noted that soil and water conservation districts are political subdivisions of the state and, hence, submitted their budgets to the DFA and had them audited.

Questions and comments included:

- whether the NMED, Energy, Minerals and Natural Resources Department and New Mexico Department of Agriculture had specific requests for salt cedar removal in their budgets;
- salt cedar removal in San Juan County;
- whether soil and water conservation districts need increased oversight;
- how state funding for soil and water conservation districts goes through the New Mexico Department of Agriculture;
- how appointments to soil and water conservation districts are made; and
- involvement of the Western Governor's Association in phreatophyte issues.

After a lengthy discussion about the issue of phreatophyte removal and soil and water conservation districts, Senator Griego noted that an entire afternoon of the committee's October meeting would be dedicated to the issue.

On a motion made, seconded and unanimously approved, the minutes of the June 12, 2007 meeting of the committee were adopted as submitted.

On a motion made, seconded and unanimously approved, the committee decided to send a letter to the federal delegation expressing its support for the Eastern New Mexico Rural Water System.

There being no further business, the committee adjourned at 12:30 p.m.

Water Adjudications Subcommittee

Subcommittee members present were:

Sen. Mary Kay Papen, Chair
Rep. Ray Begaye
Rep. Joseph Cervantes
Rep. Candy Spence Ezzell
Rep. Kathy A. McCoy
Rep. Larry A. Larranaga
Sen. Cisco McSorley

Absent were:

Sen. John C. Ryan
Rep. Peter Wirth

The subcommittee chair began the meeting by asking each member to make a brief statement of interest and expectations from the subcommittee. The members expressed their hope that the subcommittee can:

- assess the progress of water rights adjudications;
- identify the courts' requirements to manage the adjudications;
- identify the best procedures for water adjudications;
- account for the money appropriated for the adjudications;
- recommend a reasonable base budget for adjudications;
- bring a heightened level of priority to water adjudications and increase pressure to expedite and accelerate adjudications;
- prioritize the most critical water adjudications;
- identify reliable funding for long-term water adjudication costs;
- identify the most efficacious division of responsibilities (and budgets) among the various responsible state institutions, i.e., the courts, the OSE, the Attorney General's Office and the Utton Transboundary Center's Joe Stell Ombudsman Program;
- strengthen mediation and community relations programs to encourage water claimants' participation and collaboration and reduce the role of lawyers and adversarial nature of the process;
- increase public disclosure and public education;
- ascertain the history of adjudications relative to the federal role in settlements and foster collaboration between the state and the federal agencies;
- bring some focus on the purpose of water adjudications and their importance;
- find ways to eliminate waste in the process;
- clarify the purpose and nature of water adjudications;
- increase the use of irrigation records in the process and reduce the reliance on and costs of hydrographic surveys;
- increase candor and improve communications;
- improve relationships between the state and Native American water rights owners; and
- provide assistance to small users who cannot afford attorney fees.

Greg Ridgely of the OSE, Celina Jones of the Administrative Office of the Courts (AOC), Brett Woods of the Legislative Finance Committee and Special Master Steve Snyder were present to answer questions of the subcommittee, including:

- the amount of money available from severance tax revenues, or sponge bonds issued against those revenues, for water adjudications;
- the attorney general's opinion regarding the use of money for salaries and operations in water adjudications;
- the original purpose of amendments to the Water Project Fund contained in HB 1110 from the 2005 session;
- use of HB 1110 to displace the general fund baseline budget for adjudications;
- how many water rights can be reasonably adjudicated annually and what budget is needed to accomplish that goal;
- how Native American lands' water is adjudicated or negotiated;
- request to the OSE for an adjudication schedule;
- legislation to mandate an adjudication schedule for the state engineer;
- progress in establishment of water courts or establishment of designated water judges in each district court;
- status of court rules for water adjudications;
- a request for the courts to take control of the process;
- consequences of loss of continuity over time;
- how to improve and enhance the ombudsman program and function;
- direction to the staff for the September agenda to include: Judge Valentine, Special Master Vickie Gabin, Ms. Jones, Mr. Ridgely, Alvin Jones and Fred Hennighausen and the Utton Transboundary Center;
- explanation of water adjudications as an accounting process, unless there is a dispute;
- four areas of potential reform:
 - new procedural rules;
 - enhanced coordination between the OSE and the courts;
 - improvement of ownership tracking over time, such as auto registration (Idaho example); and
 - court reform;
- potential for water rights claimants to play a more active role in the process;
- Rio Chama adjudications as a template and model of how to improve the process;
- alternative criteria for proving water rights;
- action plan:
 1. translate four areas of reform into legislation or court rules;
 2. replicate Rio Chama model; and
 3. increase resources of the Utton Center;
- request for the OSE to suggest improvements at the September 2007 meeting in Ruidoso; and
- direction to staff to invite the Governor's Office to explain the governor's water policy to the committee and his objections to adequate budgeting of water adjudications.

The subcommittee adjourned at 3:15 p.m.

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

**August 28-29, 2007
Sagebrush Inn Convention Center
Taos**

The third meeting of the Water and Natural Resources Committee was called to order on August 28, 2007 at 10:10 a.m. by Senator Phil A. Griego, chair, in the Chamisa Room of the Sagebrush Inn Convention Center in Taos.

Present

Sen. Phil A. Griego, Chair
Rep. Paul C. Bandy
Sen. Sue Wilson Beffort
Rep. Ray Begaye
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

Advisory Members

Sen. Rod Adair
Sen. Vernon D. Asbill
Sen. Carlos R. Cisneros
Rep. Anna M. Crook
Rep. Candy Spence Ezzell
Sen. Gay G. Kernan
Rep. Ben Lujan
Sen. Cisco McSorley
Sen. John C. Ryan
Rep. James R.J. Strickler
Rep. Peter Wirth

Guests

Rep. Roberto "Bobby" J. Gonzales
Rep. Jimmie C. Hall
Sen. Richard C. Martinez

Absent

Rep. Andy Nunez, Vice Chair
Rep. Elias Barela
Rep. Joseph Cervantes
Sen. Dede Feldman
Sen. Cynthia Nava

Rep. Nora Espinoza
Sen. Timothy Z. Jennings
Rep. James Roger Madalena
Rep. Danice Picraux
Sen. Leonard Lee Rawson
Sen. Nancy Rodriguez
Rep. Henry Kiki Saavedra
Rep. Eric A. Youngberg

Staff

Gordon Meeks
Jon Boller
Jeret Fleetwood

Tuesday, August 28

Mayor Bobby Duran welcomed the committee to Taos and thanked members for holding the meeting there.

The committee thanked the staff of the Sagebrush Inn for their work in preparing the facility for the committee's meeting.

Members of the committee introduced themselves to the audience.

Senator Griego asked members of the audience who were attending the committee on behalf of an acequia or acequia association to introduce themselves.

Acequia Perspectives on Active Water Resources Management

Fred Waltz, an attorney representing several acequia associations, provided the committee with testimony regarding the implementation of the Office of the State Engineer's (OSE) Active Water Resources Management Program (AWRM). He explained that while the program seems to be well-intentioned, it appears to be very problematic and often unworkable. Mr. Waltz went on to note that while the adjudications process seems painfully slow, it still provides due process protections for water rights owners that AWRM does not. He went on to predict that AWRM would be challenged in courts across the state and noted that acequias have been allocating their own water among themselves for hundreds of years without the help of programs such as AWRM.

Mary Humphrey, another attorney representing acequia associations, provided the committee with a brief history of court challenges to AWRM. She noted that in 2005, a court challenge to the program led to a judge's ruling that the legislature had failed to provide meaningful standards that would make the statute enabling AWRM constitutional. She also provided the committee with a timeline of litigation regarding AWRM, pointing out that after Judge Reynolds made his ruling regarding AWRM, the OSE issued a press release saying that the court had validated the program. However, she also pointed out that the OSE has sought to appeal the ruling, saying that it guts AWRM. Ms. Humphrey went on to note that the court of appeals heard oral arguments in the case on August 22, and that while she does not know how the case will turn out, the court of appeals' ruling will apply across the state, while Judge Reynolds' ruling may not.

David Benavides, another attorney representing acequia associations, provided the committee with his perspective on AWRM. He explained that while New Mexico's laws protect senior water rights holders, such as many acequia users, AWRM seems to erode some of those protections. Mr. Benavides indicated that the provision allowing for water replacement plans in AWRM is one such method of undermining the protections offered to senior water rights holders. For example, he noted that a 2003 law passed by the legislature says that bylaws passed by acequia associations regarding water rights transfers must be honored by the OSE, which he

explained forms a good framework for protection of senior water rights holders. However, Mr. Benavides pointed out that AWRM's replacement plans are actually water rights transfers without several of the legal steps involved in formal transfers, which could cause problems for senior water rights holders who would protest a formal transfer but may not be able to protest a replacement plan that could curtail use.

Mr. Benavides went on to explain that while the OSE worked with various water stakeholders in developing its statewide AWRM regulations, many important elements of the statewide regulations were left out of the district-specific regulations, such as hydraulic head and efficient watering methods necessary for acequias to continue to operate. Mr. Benavides also noted that the OSE's emphasis on metering of water users and insistence on issuing keys to acequia headgates to OSE employees seems problematic, too. He pointed out that acequia users have been equitably distributing water among themselves for hundreds of years without government employees being involved and questioned why senior users would need keys to get to their water when it seems more likely that junior users are the ones whose use would need to be curtailed.

In response to a question from the committee, John D'Antonio, state engineer, provided the committee with responses to the concerns raised by Mr. Waltz, Ms. Humphrey and Mr. Benavides. He explained that the legislature recognized the problems involved with managing water rights when it passed the law mandating AWRM in 2003. Mr. D'Antonio went on to explain that even though water rights adjudications take time, the OSE's actions, such as metering and appointment of water masters, will help it further adjudicate New Mexico's water resources. Mr. D'Antonio went on to note that the court ruling on AWRM was an exercise in due process and pointed out that due process protections are built into the AWRM regulations, too.

Questions and comments included:

- reasons for the creation of AWRM;
- reasons that water adjudications take so long to complete;
- the amount of water in New Mexico controlled by acequia associations;
- water rights transfers from senior users to junior ones and the desirability of senior water rights;
- how water replacement plans can help junior users who might otherwise have their use curtailed;
- whether recent protections for acequias enacted by the legislature are negated by AWRM;
- water rights transfers above and below Otowi Gauge;
- sales of water rights in the Taos area and their effect on the water landscape as a whole along the Rio Grande;
- impact of replacement plans on acequias;
- advantages and disadvantages of water use metering; and
- the value of communication and compromise when developing regulations such as AWRM.

The committee toured local acequias and diversion dams. Tour guides emphasized the importance of getting state funding to help maintain water infrastructure.

Water Transfers and Water Markets: Impacts on Acequias

Mr. Benavides and Paula Garcia, director of the New Mexico Acequia Association, provided the committee with testimony regarding the impacts of water markets and water transfers on acequias. Ms. Garcia began by noting that many people have reached the conclusion that fully adjudicating New Mexico's water resources will solve problems, but she cautioned that many issues remain to be resolved. For example, she explained that there are both short- and long-term concerns regarding water rights transfers. Ms. Garcia began discussing the concerns over water rights transfers by explaining that the physical impacts of water transfers are still relatively unknown. For example, she pointed out that it is impossible to tell how many water rights can be transferred out of an acequia system before that system will cease to work properly because of a lack of hydrologic pressure. Ms. Garcia went on to note that although the OSE considers water in acequias to be fair game for transfers, there are protections built into the law for acequias that OSE regulations should not be able to circumvent.

Ms. Garcia went on to discuss the transfer of water rights below Otowi Gauge. She explained that the gauge has been the de facto point of protection for water users in the north, pointing out that a memorial passed by the legislature discouraged the transfer of water rights from above the gauge to below it. However, she went on to indicate that a proposed water rights transfer involving a local ranch may circumvent the protections afforded to acequia users, which is a cause for concern among such users because of both the immediate concerns about the effect such a transfer will have on local water systems and the long-term implications of allowing such transfers to occur.

Mr. Benavides began by indicating to the committee that he believes there is no more difficult issue for policymakers to have to decide upon than market value versus cultural value, which in many ways is at the heart of the struggle over water in northern New Mexico. He explained that while water is the basis for survival of New Mexico's communities, many of those communities simply cannot afford to compete with developers for water rights. Mr. Benavides went on to point out that communities in California and along the Arkansas River in Colorado have been wiped away because they could not protect their water rights. However, he also noted that New Mexico has been able to stand up to more economically and politically powerful entities, such as California and Texas, to protect its own water, so there must be some belief here in the cultural value of water. Mr. Benavides emphasized that policymakers in New Mexico are going to have to identify ways to protect that cultural significance and allow the market to operate around those protections.

Questions and comments included:

- how little interest is shown by newcomers to New Mexico in preserving cultural traditions regarding water;
- a need to protect the storage of water, such as at Cabresto Dam;
- where the pressure to transfer water rights out of acequia systems is coming from; and
- issues related to the OSE's decision to breach Cabresto Dam.

Mutual Domestic Water Consumer Association (MDWCA) Issues

Andy Madrid of the Sangre de Cristo MDWCA, Ted Trujillo of the Greater Chimayo MDWCA and Roman Lucero provided the committee with testimony regarding the history, makeup and challenges faced by MDWCAs in New Mexico. They explained that there are about

650 such associations operating in New Mexico, serving mostly small rural communities, with a few regional systems serving over 1,200 households. The group also explained that many MDWCAs were organized under the Sanitary Projects Act in 1947, which was enacted in response to a public health crisis created by small rural communities getting their drinking water from ditches, streams and shallow wells. However, they noted that construction standards at the time most of the MDWCA systems were built did not account for meters, shut-off valves or today's drinking water standards. As a result, the group noted that over 200 MDWCA water systems have been found to be in violation of primary drinking water standards.

Another challenge noted by Mr. Madrid, Mr. Trujillo and Mr. Lucero is that many MDWCAs simply do not have the technical, operational, financial or managerial training to provide for long-term sustainability. For example, most MDWCAs do not have the technical resources to be able to complete five-year financial plans, adequate rate structures, asset management plans or full compliance with state regulatory requirements.

Mr. Madrid, Mr. Trujillo and Mr. Lucero went on to explain that another problem facing MDWCAs is that, unlike larger municipal water systems, the associations do not have an adequate tax base, bonding capacity or large number of users to be able to generate sufficient funding. They noted that without a dependable revenue stream, most MDWCAs cannot hire operators, bookkeepers and other necessary staff or maintain and repair existing infrastructure.

Questions and comments included:

- creation and membership of the Water Trust Board;
- the amount it would cost MDWCAs to come into compliance with drinking water standards;
- legislative oversight of the Water Trust Board;
- whether the councils of government could be helpful to MDWCAs; and
- the need for a liaison between MDWCAs and state agencies.

The committee recessed at 5:00 p.m.

Wednesday, August 29

Acequia Construction Program Task Force Recommendations

Ms. Garcia addressed the committee about the Water Trust Board and the proposal to create an office of water infrastructure development and centralize funding review and approval of water projects. Ms. Garcia introduced the partners in the Acequia Construction Program Task Force. She stated that the state/federal partnership has leveraged \$24 million in federal matching funds for acequia infrastructure since 1987. However, the current demand for new acequia infrastructure, or improvements to existing infrastructure, has increased substantially from five requests to 119 requests in the past five years. Ms. Garcia made the following suggestions to the state legislature: continue the Acequia Construction Program Task Force, implement staged construction projects, create an acequia construction fund and provide technical assistance.

Questions and comments included:

- inquiries about the waiting list for acequia projects;
- income to the New Mexico Irrigation Works Construction Fund (NMIWCF);
- bureaucratic red tape attached to the NMIWCF;

- how water funding has similar problems to educational funding; ideally it should be from one dedicated fund;
- who would prioritize projects for funding;
- controlling money in a fund so that it is spent on its intended projects;
- whether board membership should administer an acequia fund;
- the percentage of NMIWCF spent on acequias compared to other irrigation projects;
- who determines priorities;
- composition of the Acequia Construction Program Task Force;
- groups coming into the program feel overwhelmed;
- power and interest of the Interstate Stream Commission;
- depletion of the NMIWCF for other programs than irrigation projects;
- technical assistance to acequias;
- the creation of acequia associations;
- the role of the Army Corps of Engineers;
- the total amount of money for soil and water conservation districts; and
- relocation of the Natural Resources Conservation Service offices and consolidation of farm service agencies' effect on rural residents who need those services.

Taos Valley Draft Water Agreement

Governor Gilbert Suazo of the Pueblo of Taos addressed the committee on the ancient uses and occupation of the valley and threats to the water. He also discussed the history of the *Abeyta* lawsuit. He discussed the seven parties involved and how these parties ultimately came to a resolution regarding the water rights after 17 years.

Mr. Waltz said that there are currently 55 acequias in the Taos Valley. There are 12,000 acres of irrigated land and 7,000 *parciantes*. Some of the benefits of the Pueblo of Taos water rights settlement include mechanisms for the protection of the buffalo pasture, a sacred pueblo wetland that is a source of water for the pueblo and its neighbors; protection of the 55 acequias; agreement among the water rights-owning parties to offset surface water depletion effects; and a system to allow future water supply needs of non-Indian municipal water providers to be met by the use of the Rio Grande offset water.

Palemon Martinez from Taos Valley discussed the partnership process and said that he appreciates the legislature's role. Mr. Martinez then introduced Donovan Gomez, a tribal administrator. Mr. Gomez said that the roads in his community are dry, dusty and muddy, and the drainage system needs to be improved. He said that there are five divisions of pueblo tribal government and natural resources is one of them. He stated that both the draft water settlement and the land use plan are important. Mr. Gomez also requested money for capital improvements on pueblo land.

Questions and comments included:

- whether *Abeyta* parties plan to market water outside the valley;
- sustainability of the settlement;
- the effect of deep wells and domestic wells;
- the status of state appropriations for the settlement (\$3 million in last year's appropriations for Taos; the governor will request a similar amount this year);
- the number of Indian settlements;
- earmarking of money for Indian settlements;

- to whom does the OSE report;
- a report to the committee on Indian water rights;
- public hearing and public participation in arriving at the settlement; and
- \$75 million appropriated in 2006 for Indian settlements, but vetoed.

Taos Regional Water Plan

Simeon Herskovits, an attorney and member of the Public Welfare Subcommittee, and Rudy Pacheco of the Taos Regional Water Planning Committee provided the Water and Natural Resources Committee with testimony regarding the Taos Regional Water Plan. Mr. Herskovits began by noting that Taos is the last region in New Mexico to complete its regional water plan. He went on to explain that the region includes Taos County and some areas in northern Rio Arriba County, such as Dixon and Embudo. Mr. Herskovits then discussed the formation of the regional water plan, which began with stakeholder meetings, subcommittees and the development of a draft plan in April 2006.

Mr. Herskovits went on to note that public comment on the draft plan has resulted in some changes, but that the public welfare statement has been the cause of most of the delay in completing the plan. He stated that while a public welfare statement needs to be included in the regional plan so that it will be part of the statewide water plan, there has to be some kind of specificity about it, or a mechanism to insure it, for it to be of any practical use. Mr. Herskovits indicated that while such a statement is currently being worked out, it is still in flux. He said that he expects it to be finalized within a few weeks, at which time he would transmit it to the committee.

Mr. Pacheco provided the committee with an overview of the way cultures have changed in both the Taos Valley and America as a whole, and how such changes relate to water rights. He pointed out that the Taos Valley used to be an agricultural center of New Mexico and that while there are still a large number of farmers in the area, there simply is not the focus on farming and livestock that there used to be. Mr. Pacheco noted that many families who raise cattle today do it in addition to their other jobs. He went on to note that many of the residents of the Taos Valley were concerned that their water rights were going to be captured and marketed and emphasized that the Taos Valley Water Plan helped to ensure that such citizens, and those with a sense of the culture that has existed in the valley for centuries, had in a say in their water future.

Questions and comments included:

- continuous development of regional water plans;
- the effect that the creation of the department of water infrastructure may have on regional water plans; and
- participation by state government in development of regional water plans.

On a motion made, seconded and approved, the minutes of the July 16 meeting were approved as submitted.

The full committee adjourned at 11:40 a.m., at which time the Water Adjudications Subcommittee met.

Water Adjudications Subcommittee

Peter White, an attorney, began by providing the subcommittee with a brief history of water adjudications in New Mexico. He explained that there are also several goals involved in adjudication suits: to gain quiet title to water rights, to prohibit illegal water use, to determine the amount of unappropriated water, to administer water rights by direct flow and priorities and to establish certainty in water supply and demand.

Mr. White went on to discuss the problems associated with adjudications, which he said mainly fall into two categories: procedural and substantive. Examples he gave of procedural problems included: limited staff at the Office of the State Engineer (OSE) requires prioritization; coordination of hydrosurveys with legal proceedings; and problems communicating with defendants. Mr. White noted that examples of substantive problems with adjudications are the difficult legal issues surrounding Native American and non-Native American water rights, domestic wells and the duty of water.

Finally, Mr. White noted that, after 1992, a power vacuum had been created in the realm of water adjudications. He explained that former State Engineer Steve Reynolds held too much power, and that after he left the post, successive administrations of weak attorneys general and governors made solving the many problems associated with water and adjudications even more difficult. He went on to note that the complexity of problems along the middle Rio Grande, coupled with new uses by pueblos along the river, would require a strong hand if they were ever to be solved.

Victor Marshall, a former state senator and attorney, provided the subcommittee with testimony regarding water law in New Mexico, particularly with regard to adjudications and the San Juan River. He began by stating that although he is relatively new to water law, it appears not to work correctly in New Mexico. He went on to indicate that while New Mexicans spend a great deal of time discussing issues relating to the Rio Grande and Pecos River, most of the surface water in New Mexico, 60% by his estimate, comes from the San Juan River. Mr. Marshall went on to note that the proposed Navajo settlement would give 56% of that water to the Navajo Nation, which would create a crisis for thousands of other New Mexicans. He also discussed the numerous parties who are opposed to the settlement and their various objections to it.

Mr. Marshall went on to discuss his perception of the problems associated with adjudications, and water law in general, in New Mexico. He began by indicating that it is extremely difficult to get reliable information from the OSE. Mr. Marshall also pointed out that New Mexico is constantly threatened by Native American water rights claims, for which there simply is not enough water, or money, to satisfy them. He also noted that water law in New Mexico has become a narrow, specialized area dominated by a few expert attorneys, which usually results in an unhealthy situation for any branch of law.

Finally, Mr. Marshall cautioned that the answer to New Mexico's water problems is not to give more power to the OSE, but rather for the legislature to commission its own study to answer the basic question of how much water New Mexico has.

David Benavides, another attorney, provided the subcommittee with testimony regarding adjudications in New Mexico. He began by acknowledging that the fundamental question most

people seem to ask is why adjudications take so long to complete. Mr. Benavides went on to provide the subcommittee with two anecdotes regarding adjudications to show that some adjudications go smoothly while others do not.

The first account Mr. Benavides provided concerned an adjudication of a section of the Rio Chama, along a tributary to the river. There, Mr. Benevides noted that 136 out of 140 property owners were able to complete their adjudications in about three years. He said this was possible because of the high level of communication between involved parties, because the meetings in the field office were scheduled so that everyone involved could attend, because there was no inclusion of priority dates in the discussions and because necessary technical work was performed while other legal assessments were being made. Mr. Benavides also acknowledged that such a quick adjudication was possible in part because there were no pueblo water rights claims on the river and because it involved a very small section of the river with a relatively low number of involved parties.

Mr. Benavides contrasted the adjudication on the Rio Chama with the ongoing one on the Gallinas River near Las Vegas, which he said began in 1991 and still is not resolved. He explained that one of the reasons it has taken so long is because even though attorneys for stakeholders requested meeting scheduling similar to that of the Rio Chama adjudication, the OSE resisted. He also noted that the OSE did not appear to want to separate priority dates from the rest of the discussion or to want acequia attorneys to be present at the field office set up for the adjudication. Mr. Benavides went on to point out that, instead of scheduling meetings in such a way that everyone could attend, the OSE instead began unilaterally scheduling meetings without concern to who was able to attend. He stated that when a group of acequia stakeholders went to court over the OSE's methods, a judge agreed with most of the acequias' claims. Mr. Benavides noted that the adjudication of this area has taken so long because of a pattern of delay, appeal and exclusion of a support system for defendants by the OSE. He also acknowledged that the adjudication is a low priority for the OSE.

Mr. Benavides concluded by recommending that the notion of a support staff for adjudication defendants be formalized somehow.

Questions and comments included:

- whether agreements like the one in place in the Taos Valley could work on the San Juan River;
- the need to explore the idea of implementing a better process for completing adjudications in statute;
- the need to quantify the water rights of the Middle Rio Grande Conservancy District;
- whether it makes sense to have water rights claimants come forward with their claims and begin to adjudicate that way, rather than have the OSE try to determine how much water each stakeholder is entitled to;
- problems with the Navajo settlement;
- whether the Water Ombudsman's Office can help reduce the perceived adversarial nature of adjudications;
- limitations on the help that the Water Ombudsman's Office can provide;

- whether it makes sense to begin adjudications by figuring out how much water the largest users are entitled to and working down to the smaller users;
- how much it would cost to adjudicate the whole state;
- cost per defendant on the Rio Chama adjudication;
- appeals process for adjudications;
- whether the Navajo Nation could sell its water from the Navajo settlement to out-of-state parties;
- the number of active adjudications in the state;
- the total number of adjudicated acres versus total number of irrigated acres in the state; and
- OSE staffing levels.

There being no further business, the subcommittee adjourned at 2:00 p.m.

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

**September 24-25, 2007
Room 6, Aztec Room
Ruidoso Convention Center**

The joint meeting of the Water and Natural Resources Committee (WNRC) and Courts, Corrections and Justice Committee (CCJ) was called to order at 8:39 a.m. on Monday, September 24, 2007, by Senator Phil A. Griego, chair, in the Aztec Room of the Ruidoso Convention Center in Ruidoso, New Mexico.

Water and Natural Resources Committee

Present

Sen. Phil A. Griego, Chair
Rep. Andy Nunez, Vice Chair
Rep. Paul C. Bandy
Rep. Elias Barela
Sen. Sue Wilson Beffort
Rep. Joseph Cervantes
Sen. Mary M. Jane 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

Rep. Ray Begaye
Sen. Dede Feldman
Sen. Cynthia Nava

Advisory Members

Sen. Rod Adair (9/24)
Sen. Vernon D. Asbill
Rep. Anna M. Crook
Rep. Nora Espinoza (9/24)
Rep. Candy Spence Ezzell
Sen. Cisco McSorley
Sen. John C. Ryan
Rep. Henry Kiki Saavedra
Rep. James R.J. Strickler
Rep. Peter Wirth
Rep. Eric A. Youngberg
Sen. Carlos R. Cisneros

Sen. Timothy Z. Jennings
Sen. Gay G. Kernan
Rep. Rhonda S. King
Rep. Ben Lujan
Rep. James Roger Madalena
Rep. Danice Picraux
Sen. Leonard Lee Rawson
Sen. Nancy Rodriguez

Courts, Corrections and Justice Committee

Present

Rep. Al Park, Co-Chair
Sen. Cisco McSorley, Co-Chair
Sen. Rod Adair (9/24)
Rep. Thomas A. Anderson
Rep. Joseph Cervantes
Sen. Richard C. Martinez
Sen. Lidio G. Rainaldi
Rep. William "Bill" R. Rehm
Rep. Peter Wirth
Rep. Eric A. Youngberg

Absent

Rep. Gail Chasey
Sen. Kent L. Cravens
Sen. John T.L. Grubestic
Sen. Carroll H. Leavell
Rep. Antonio "Moe" Maestas

Advisory Members

Rep. Elias Barela
Rep. Daniel R. Foley (9/24)
Sen. Mary Jane M. Garcia
Sen. Clinton D. Harden, Jr.
Sen. John C. Ryan
Rep. Mimi Stewart
Sen. James G. Taylor
Rep. Teresa A. Zanetti

Sen. Ben D. Altamirano
Sen. Gay G. Kernan
Sen. Linda M. Lopez
Rep. W. Ken Martinez
Sen. William H. Payne
Rep. Jane E. Powdrell-Culbert
Sen. Michael S. Sanchez
Rep. Sheryl Williams Stapleton
Rep. Thomas E. Swisstack

Guest Legislator

Rep. Daniel P. Silva

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

Staff

Gordon Meeks
Maha Khoury
Aldis Philipbar

Guests

The guest list is in the original meeting file.

Monday, September 24

John Underwood, lobbyist for Ruidoso, began by welcoming the committee and pointing out that the legislature helped fund the convention center in which the meeting was taking place. Senator Adair then welcomed the committee to his district and introduced Alvin Jones, a state district attorney, and Jackie Powell, a county commissioner. The committee members introduced themselves and Representative W.C. "Dub" Williams welcomed them.

Ruidoso and Hondo Valley Water Issues

Ms. Powell discussed the immediate challenges facing Ruidoso and the Hondo Valley, including depleting flows in the Rio Ruidoso, raw sewage, poorly treated sewer plant effluents and water transfers. She gave a general description of the Rio Ruidoso watershed and the main users, i.e., the villages of Ruidoso and Ruidoso Downs and the farmers along the river valley. She told the committees that Eagle Creek, an entirely separate stream, was erroneously described as having 5,000 acre-feet of water available. The most water produced in any given year from Eagle Creek has been 1,200 acre-feet of water. The two villages are now hoping and planning to find water from the agricultural producers downstream to provide the water needed for their growth. Most of the streams in the valley have been overdrawn so that now agriculture is limited to torrential waters and supplemental wells because the natural flows of Rio Ruidoso have all been diverted. As water is removed from agriculture upstream, noxious weeds are also becoming a major issue. Ms. Powell commended the municipal employees for their work, but she noted that the villages have not yet solved their water quality or quantity problems and agriculture is continually pressured.

Mr. Jones, attorney for the Village of Ruidoso, summarized Ruidoso water rights and expressed appreciation for Ms. Powell's comments. He discussed permit transfers and the application process for obtaining a permit. Mr. Jones stated that the Village of Ruidoso is tightly regulated and conducts monthly reviews with the Office of the State Engineer (OSE). Mr. Underwood then explained Ruidoso's plans and current situation. He said that an application for a new wastewater treatment system has been submitted. He then explained the hookup of the Mescalero Inn of the Mountain Gods to the village system. Mr. Underwood stated that the wastewater system must be addressed in a conscientious manner.

Questions and discussions included the following:

- rates charged to water users;
- bonding capacity;
- the lawsuit of homeowners on opposite sides of Eagle Creek over contaminated wells;
- the prospect for a negotiated solution to objections over village permits;
- the potential terms of a negotiated settlement;
- total cost of treatment plan and phasing;
- support for designating a percentage of gaming revenue to go into infrastructure;
- acquisition of water rights for development;
- status of forest thinning;
- the Forest Guardians lawsuit;
- number of requests for water projects (\$2 billion total in 2007);
- population of Lincoln County;
- requirement of water rights for development and golf courses (not subdivisions);
- state and local financing is out of proportion to the funding that the federal government has committed;
- proportions of government's and legislature's funding;
- the economy of the Ruidoso/Lincoln County area and oil and gas revenues;
- Rio Bonito water rights and use of domestic wells in subdivisions in that basin;
- critical management area rules' limits on domestic wells permits;

- the appearance of phosphorous in high mountain streams due to failure of the wastewater treatment plant;
- problems with rules and regulations hampering economic development;
- the state applying more stringent standards in regard to nitrogen levels than federal regulations, causing the new plant to fail to meet new regulations; and
- funding requests for water projects to include capital outlay funds for each legislator.

Water Adjudication Reform

State District 3 Judge Jerald Valentine, Special Master Steve Snyder and Celina Jones, Administrative Office of the Courts (AOC), stated that there are no standards for conducting adjudications across the states, but there are many similarities between select western prior appropriation states. Ms. Jones said that New Mexico is trying to learn from common conceptual approaches in the states where a judicial officer has reported that adjudication procedures are successful to see what works best. The study was performed under the assumption that the purpose of adjudication is to compile a list of water rights and related elements. The other states examined by the AOC employ a claim-based adjudication system in which a claimant is required by law to prepare and file a water rights claim with either the court or the state water agency. The water rights claim must be filed by a statutory deadline.

Mr. Snyder identified several states with water rights adjudications procedures worth studying in relationship to New Mexico's. He summarized an AOC memorandum and a table comparing New Mexico, Idaho, Montana and Colorado. He said that other states have full-time water courts. Mr. Snyder said that general stream adjudications are different from regular lawsuits in that they are more technical due to a requirement to establish an inventory or accounting system for water. They each involve investigation into the water rights of a particular area. New Mexico adjudications are based on a 1907 statute and regulations developed by the OSE in the 1950s. Currently, New Mexico has a different process than other states in identifying claimants. The OSE prepares documents that lay out what the claimant's water rights are, which is a time-consuming project, and then the claimant is made a defendant in a lawsuit. In other states, the claimant files a personal claim that is reviewed by the state water agency for accuracy and validity, i.e., claims-based adjudications. In other states, the state water agency is not a party to a lawsuit, unlike in New Mexico, where the state engineer is in the awkward position of suing state residents who have water claims. The focus of other states' water agencies' duties in adjudications is to serve as a technical reviewer of the water rights claims and as a technical adviser to the courts.

The AOC began meeting with the OSE a few months ago, Mr. Snyder said, in attempts to develop improvements in the adjudication process that might result in less adversarialness and more positive participation by water rights claimants. Judge Valentine began participating in those discussions because of his role as presiding judge on the lower Rio Grande adjudication and as chair of the state supreme court's committee on water. The AOC emphasized that the development of procedural reforms should precede the identification of changes to the water court structure.

Judge Valentine then gave a brief summary of New Mexico water statutes that deal with water adjudications. He explained that the purpose of water adjudication is to give the OSE the means to manage the state's water rights. He said there are a number of problems that cause the process to be slow. He started looking at the issues five years ago because of the problems on the lower Rio Grande adjudication. Coincidentally, he looked at the same states that the AOC has been reviewing: Colorado, Idaho and Montana. He emphasized that as the committees look at these issues, they need to realize that under the New Mexico Constitution, the legislature cannot change the procedural rules that govern a particular adjudication while it is in process, but that conceivably it can change the rules prior to the initiation of a new adjudication, i.e., the middle Rio Grande.

Judge Valentine highlighted some of the issues that are slowing down the adjudication process:

- inability of the OSE to maintain up-to-date water ownership records;
- lack of timely and efficient use of hydrographic surveys;
- the historical OSE opposition to general stream adjudications;
- lack of legislative appropriations for adequate resources;
- inadequate judicial case management procedures;
- inadequate OSE field staff, as opposed to legal staff;
- a breakdown of court records related to water rights; and
- unreliability of hydrographic surveys as prima facie evidence of a water right (water use is too variable).

Judge Valentine's handout described some funding needs that the legislature should consider:

1. the Joe M Stell Ombudsman Program;
2. additional field staff in the OSE;
3. referees for the courts;
4. software development for the OSE's WATERS and WRATS databases to interact; and
5. improvements to the courts' FACTS case management system.

Judge Valentine, Ms. Jones and Special Master Snyder said that caution is needed in contemplation of changes to the adjudication process.

On a motion made and seconded, the minutes of the previous meeting of the WNRC were unanimously approved.

On a motion made and seconded, the minutes of the previous meeting of the CCJ were unanimously approved.

Questions and comments on water rights adjudications reform included the following:

- anticipated problems of adopting other state plans;
- frequency of forfeiture of water rights;
- description of conventional cases and progress to settle;

- lack of resources as a continuing problem (use of hydrographic surveys have contributed to this delay);
- adjudication as a necessary management tool because it helps determine how much water is available for appropriation;
- no deadline imposed on water adjudications;
- filing claims takes a lot of resources (i.e., lawyers; other states use technicians for technical issues);
- convert as much of this process as possible to a nonadversarial process;
- water courts are not a good idea because they are inefficient (but Judge Valentine suggested there be a chief water judge);
- an honest budget is needed as opposed to a flat budget;
- default on water rights adjudication relying on hydrographic survey results;
- dependency of the lower Rio Grande adjudication on the middle Rio Grande;
- federal rights need to be mediated not adjudicated;
- details of the OSE budgets;
- use of licensure;
- inherent intimidation of litigating water rights;
- role of the attorney general;
- prospects for automating the courts and the OSE's case management procedures;
- reform of the court structure to better accommodate water adjudications;
- who should lead an effort to redraft statutes;
- the need for better definition of adjudication procedures in the statutes;
- the percentage of default judgments and disputed cases;
- this year's budgeting schedule;
- budgeting committees' processes;
- too many agencies involved in water administration;
- Water Subcommittee of the House Appropriations and Finance Committee;
- the burden of proof in New Mexico of water rights claims; and
- the typical profile of default settlements.

Proposals to Expedite Adjudications:

- **Rio Chama Template for Expediting Water Adjudications**
- **Proposed Schedule for Conducting Future Adjudications**
- **Budget Requirements**

John D'Antonio, state engineer, said that the OSE faces special challenges in New Mexico in regard to water rights adjudication. They include:

1. the large number of Indian claimants who have rights going back to Spanish and Mexican rule;
2. the large number of early, poorly documented non-Indian claims;
3. informal acequia traditions;
4. extreme aridness of New Mexico and climate variability;
5. interstate compact delivery obligations;
6. multiple, simultaneous, complex adjudications; and
7. New Mexico's cultural diversity.

The OSE provided a handout that showed a \$6.971 million budget for all operations of the litigation and adjudication program, of which \$6.299 million is for water rights adjudications. The current primary adjudications are being undertaken by the Pecos Bureau, the Lower Rio Grande Bureau and the Northern New Mexico Bureau. The following summaries of the status of the following adjudications were included in the handout:

Lower Rio Grande:

- subfile orders have been entered by the court for 4,300 subfiles, about 33% of the approximately 13,150 subfiles in the lower Rio Grande, and the court has ordered that all known claimants be joined before resumption of service of offers of settlement;

Pecos River:

- Gallinas portion of the Pecos adjudication is proceeding with determination of the Las Vegas rights expected in 2008; and
- anticipated completion of the Carlsbad Irrigation District (CID) membership phase is set for 2007 and initiation of the CID *inter se* phase is expected in 2008; and

Northern New Mexico:

- 85% of the subfiles on the Rio Chama have been entered, covering 16,000 acres above Abiquiu;
- began subproceeding in 2007 to adjudicate Ohkay Owingeh rights;
- Taos Valley (*Abeyta* case) negotiated settlement pending congressional approval and contingent on state matching funds;
- Pojoaque Valley (*Aamodt* case) negotiated settlement pending congressional approval and contingent on state matching funds and began hydrographic survey of ground water to adjudicate domestic wells by 2012;
- settlement negotiations with the Pueblos of Jemez, Zia and Santa Ana begun in 2007;
- Pueblo of Zuni subproceeding begun in 2007;
- Pueblos of Acoma and Laguna under active adjudication;
- San Juan River has 600 parties joined, with 104 consent orders and 65 subfiles adjudicated since 2006;
- Navajo Nation-negotiated settlement signed in 2005, pending congressional approval and contingent upon state match;
- Santa Fe continuing adjudication;
- Red River: final decree on nonfederal water rights entered in 2000, but post-decree issues arose from Cabresto storage right in 2005, litigation pending; and
- Santa Cruz/Truchas in pending Ohkay Owingeh adjudications.

D.L. Sanders, OSE general counsel, gave a status report on the OSE adjudications caseload and said that the OSE is improving its current processes. It will cost an estimated \$94.5 million to complete the existing adjudications within 15 years. A dedicated budget of \$17 million per year will be required to complete an estimated 180,000 adjudication cases over the next 40 years. Mr. Sanders said that a new procedure for dealing with the middle Rio Grande would

likely not reduce the cost. Greg Ridgley, OSE counsel, also discussed water adjudication issues and answered questions from the committee.

Questions and comments included the following:

- not looking to other states to improve process is a copout;
- participation of the OSE with the AOC to improve adjudication procedures;
- OSE preparation of its own white paper on reform;
- legislators told the OSE that more money for adjudication will depend on progress in reforming that process;
- transfers of water rights records out of district offices;
- role of district offices in adjudication;
- use of the ombudsman program to reduce intimidation and the appropriate timing of ombudsman services;
- half of appropriated funds go to hydrographic survey/fieldwork;
- Idaho adjudication process;
- discussion of the process of hydrographic surveys;
- prioritization of adjudications;
- the OSE requesting capital outlay money for metering;
- how to return rights that were denied;
- San Juan irrigators do not support the Navajo settlement;
- status of lower Rio Grande adjudications;
- problems, miscommunication and misunderstandings caused by the state engineer being confined to flat-budget requests by the governor when expediting adjudications will necessitate increased budgets by each participating institution;
- detailed description of the process;
- use of the Water Project Fund for adjudications;
- how protested cases are resolved;
- compliments to Joey Fields in the OSE for his handling of a difficult constituent request;
- the Winters Indian water rights doctrine;
- a specific case in Dona Ana County where a claimant lost water rights;
- history of the protocols of hydrographic surveys;
- why hydrographic surveys are part of the process;
- results of the *Reynolds* decision overturning much of the Active Water Resource Management (AWRM) rules;
- whether or not prior appropriations is the doctrine of water law in New Mexico;
- whether the OSE intends to implement AWRM despite the *Reynolds* decision;
- the reason the Rio Chama template is not used in the Gallinas adjudication;
- where the automobile hybrid appropriation from the Water Project Fund came from;
- criteria for funding water projects from the Water Project Fund; and
- offers of settlements being made based on consumptive rights rather than diversion rights.

Senator Griego distributed a prepared set of questions for the OSE, based on questions from the WNRC's Taos meeting, among the committee members and the panel. He requested that

the OSE respond in writing to those questions and return to the next meeting with the answers. The questions included the following subjects, among others:

- does OSE favor junior users (municipalities) over senior users (agriculture);
- authorizing statute to conduct metering;
- total cost of WATERS;
- when is pro se litigation opposed in adjudications;
- how many water rights claimants are there in New Mexico;
- applicability of AWRM rules in lieu of the *Reynolds* decision;
- the reason for not using the template in the Rio Gallinas adjudication;
- who added the hybrid auto plant to the appropriation bill last year;
- criteria for water projects; and
- offers of settlements based on consumptive rights rather than diversion rights.

The Role of Ombudsman and Interveners in Water Adjudication

Steve Hernandez, attorney, stated that there are issues with people not opening/returning mail regarding water rights due to intimidation. There is much confusion over water rights. He gave examples of individual claimant's experiences. They included:

- acreage disputes;
- misunderstanding of the process;
- acreage measurements not matching titles and deeds;
- lack of probate under family bequests; and
- inaccurate recording or failure to record easements.

He said that adjudications force people to get their houses in order.

Susan Kelly, Joe M Stell Ombudsman Program, Utton Center, explained the services of the ombudsman program in adjudications. This is the first year the program has had state funding. The Utton Center takes calls regarding water rights issues to help people understand the process. She gave examples of the service in various adjudications.

Questions and comments included the following topics:

- nothing is going on in the middle Rio Grande;
- the ombudsman program has been approached about the middle Rio Grande, but is currently only working on active adjudications;
- hope is that funding will be a part of the higher education budget;
- anticipated increase in funding; and
- how much does an ombudsman's service cost in an average intervention and for the 180,000 estimated settlements in the middle Rio Grande.

The meeting recessed at 6:30 p.m.

Tuesday, September 25

Pecos River Settlement

A.J. Olsen, attorney, stated that the Pecos Valley Artesian Conservancy District (PVACD) was established in 1932. It is the only artesian conservancy in New Mexico and is funded by property taxes. The PVACD is 20-25 miles wide and extends from southern Chaves County north of Roswell to northern Eddy County just north of Carlsbad. At one time, the district included 144,000 acres under irrigation. That number has since been reduced to less than 110,000 acres. This has been a tremendous hit to the local economies.

The lower Pecos River settlement came out of a CID priority call and a 1988 supreme court order. In 2001, a drought brought all the large water users together in an ad hoc committee to determine how to make compact deliveries. This reduction has resulted in an economic hit to the surrounding communities. It takes 20 to 40 years to return lands to their natural state. In March 2003, the settlement agreement was signed. Mr. Olsen said that progress is being made thanks to funding from the legislature to make land purchases. Mr. Olsen said that the PVACD is currently in compliance with 80,000 acre-feet in credits at the state line. Once the PVACD reaches 115,000 acre-feet in credits, it can begin the process of selling water rights back to original owners. Mr. Olson also discussed HB 1278, which would have provided for an alternate method of acquisition to separate water rights from land to allow owners to retain land. HB 1278 was vetoed by the governor. Mr. Olsen asked the committees for assistance when the bill is reintroduced in the 2008 session.

Questions and comments included the following:

- salt water going into the Pecos River as a credit against New Mexico's compliance obligations;
- the potential to sell the land back to the original owners;
- requesting a letter from the governor as to why he chose to veto the bill;
- a potential veto override;
- 25,055 irrigated acres in CID;
- that current statute and settlement mandate that land and water rights be purchased together;
- municipalities can purchase water rights without purchasing land;
- water rights on purchased lands are being severed and transferred to augmentation wells for compact compliance;
- management of land after severance of the water rights to prevent invasion of noxious weeds;
- statutes requiring good land stewardship;
- inflation of land values as a result of the settlement conditions;
- water rights retirement program linked to settlement and not statewide;
- the provision in law to prevent double dipping of the water balance;
- phreatophyte treatments on the Pecos River;
- livestock grazing on retired land;
- loss of tax base from 18,000 retired acres; and
- buy-back provision at appraised value.

Challenging Energy Era

Art Hull, lobbyist, Public Service Company of New Mexico (PNM), stated that New Mexico is experiencing higher energy consumption due to refrigerated air, laptops, cell phones and larger homes. PNM estimates a 40% increase in energy consumption by 2030. New Mexico will need to invest \$400 billion in energy infrastructure to accommodate this growth. Rates at PNM have been frozen since 2003 in spite of increasing costs to the company. PNM will spend \$2 billion over the next five years to meet the energy consumption of New Mexico consumers, he said. In 2007, PNM filed for a rate increase to cover these costs. If approved by the Public Regulation Commission (PRC), customers will see a one-time 20% increase in their base rates. Mr. Hull discussed alternative energy solutions and stated that PNM constructed the third-largest wind farm in the world.

Questions and comments included the following:

- the average increased cost to customers will be \$100 per year;
- the need to double infrastructure nationwide — \$2 billion in New Mexico;
- rates set by the PRC;
- nuclear power as an optional energy source;
- stock value of PNM;
- 18% base rate increase, two percent adjustment for additional costs;
- no new transmission lines since 1989;
- how will PNM help low-income families pay for the increase;
- PNM works with communities to help find ways to reduce costs (e.g., reducing usage, weatherization, increasing efficiency, etc.);
- PRC adopted a rule requiring 20% of the renewable portfolio to be solar;
- solar energy is the most expensive;
- hydroelectricity;
- PNM uses tiered rates based on usage;
- suggestions to give incentives to customers who reduce their usage; and
- the only nuclear plant PNM has interests in is Palo Verde.

Grazing Units and Damage on National Forest Allotments and Otero County Resource Management Program

Dr. Martin Moore, Otero County administrator, introduced the panel to discuss this issue.

Charlie Walker, Otero County rancher, gave a brief history of ranching in the west and grazing practices. He claims that the U.S. Forest Service (USFS) does not have the authority to manage grazing or charge grazing fees. Mr. Walker said that proper range management is based on science. Elk, which were brought in by the Mescalero Apache, have become a huge problem for ranchers. Elk compete with cattle for forage. The USFS has reduced the number of cattle allowed on grazing allotments, but seven elk consume the same amount as 10 head of cattle. Mr. Walker requested elk tags for ranchers and hunting allotments provided to landowners so they can stay in business. He also wants the State Game Commission to change the formula for allotment owner tags.

Frances Goss, Otero County rancher, told the committee about her personal experiences with the USFS and grazing rights. In the early 1990s, she said, the USFS wanted to remove

everyone with cattle from the Lincoln National Forest — "cattle free by '93". In 2000, there was a drought and the USFS reduced her cattle from 553 to 330, cutting her income by one-third. The Range Improvement Task Force found a ratio of 187 elk to 71 cattle, but the USFS maintains that it could not cut the elk. The Goss' property received 35 inches of rain in the last year, and the USFS agreed to increase the number of cattle by 40 head. Ms. Goss stated that not all federal lands are public lands and her family is bearing the cost of supporting the elk. She feels this constitutes a taking without just compensation but her family has decided not to sue on those grounds, even though her family has lost \$669,000 since 2001. She said that David Sanchez was paid for his losses by the Department of Game and Fish (DGF), but not her, even though the former director of the department told her that her family could get paid for the losses. She testified that the supreme court ruled in 1928 that the USFS could protect the resources by killing game animals that damaged the federal resources, thereby preempting state laws. Mr. Walker and Ms. Goss requested legislation requiring DGF to use sound science in managing game. A recent DGF study showed that more elk and cattle could be put on the allotments.

Doug Moore, chair, Otero County Commission, said that elk are technically trespassing; if it were a cow or a horse, measures would be taken to remove the animal. There has been a two percent reduction in meadow size. Dr. Martin Moore, Otero County administrator, requested a task force involving the appropriate parties to work together to develop state policy. He requested that the legislative body adopt a joint resolution that recognizes and develops a workable compensation program for landowners and public land livestock producers; focuses on the habitat that sustains livestock, elk and native ungulates; and redirects attention toward science-based management.

Senator Griego told the presenters he will request an extra day in November for the WNRC to bring all of the appropriate parties to the table to discuss this issue.

Questions and comments included the following:

- the absence of USFS representation at the meeting even though the agency was invited to have its views presented;
- the problem is with USFS management;
- stories about wildlife damage;
- the DGF statement to the USFS that resources are not in jeopardy, so there is no justification for reducing the herd; and
- the DGF taking away ranchers' livelihood.

Watershed Action

Bill Mershon, chair, Otero Soil and Water Conservation District, stated that Otero County governs most of the Sacramento Mountains, which comprise the watershed for Tularosa. The Penasco River has dried up for the first time in over 60 years and the landscape has changed drastically since then. The drying of the river predates the drought. Mr. Mershon said that the landscape is not characterized by 1,600 trees per acre when the natural growth is only 40 to 50 trees per acre. Mr. Mershon requested funding from the legislature in 2005 to conduct a geological study of the Sacramento Mountains. He said that science is needed to understand how the watershed functions.

Peggy Johnson, Bureau of Geology and Minerals, stated that in 2005 the bureau began a hydrological/geological study in the Sacramento Mountains, and the study has been expanded to include a watershed study. The bureau will monitor spring and discharge levels and collect baseline data over three years. So far, the study has identified three drainages on private and USFS land.

State Forester Work Plan

Butch Blazer, state forester, outlined the objectives and strategies of the Forestry Division of the Energy, Minerals and Natural Resources Department in regard to forest and watershed management, community forestry, wildland fire management and capacity development. He discussed the Forest and Watershed Office Plan of Work that was developed by the Forest and Watershed Health Office staff. Mr. Blazer said that the Forest and Watershed Health Coordinating Group is made up of members from a variety of agencies, including New Mexico State University, the Bureau of Indian Affairs, the New Mexico Department of Environment and the Natural Resource Conservation Service. He stated that federal allocations for the Lincoln and Otero county areas total over \$4 million, which are used to assist the areas in conducting wildland urban interface, hazardous fuel reduction and forest and watershed restoration projects.

Questions and comments included the following:

- no public members on the Forest and Watershed Health Coordinating Group;
- the biomass processing facility and market for forest products;
- natural tritium sources; and
- use of tritium for water tracing (dating the water source).

The meeting adjourned at 1:24 p.m.

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

**October 29-30, 2007
Room 322, State Capitol
Santa Fe**

The Water Adjudications Subcommittee convened at 8:15 a.m. on Monday, October 29, 2007, with Senator Mary Kay Papen as chair.

Subcommittee Members Present

Sen. Mary Kay Papen
Rep. Ray Begaye
Rep. Joseph Cervantes
Rep. Candy Spence Ezzell
Rep. Larry A. Larrañaga
Rep. Kathy A. McCoy
Sen. Cisco McSorley
Sen. John C. Ryan
Rep. Peter Wirth

Lower Rio Grande Water Users' Organization Concerns

Karl Wood, chair of the Lower Rio Grande Water Users' Organization, described the history of the organization and the water rights adjudication. The organization and the adjudication were the results of the City of El Paso's effort to drill 266 wells in New Mexico and export ground water to El Paso. The amount El Paso was seeking equaled the delivery of the Elephant Butte Irrigation District (EBID). The state engineer at the time, Steve Reynolds, declared the basin in 1980 to administer the water and formed a legal team to prepare a response to El Paso's action. This was when the initial planning process began in south central New Mexico, Mr. Wood explained. The state engineer had been avoiding adjudicating the lower Rio Grande, but the EBID filed suit in 1986 to begin an adjudication of water rights so that New Mexico's use could be demonstrated and defended. Former State Engineer Tom Turney eventually agreed to adjudication in the 1990s, when the legislature appropriated expenses for his legal team. The adjudication is not completed and, in anticipation of the potential need for prior administration, the state engineer adopted basin-specific active water resource management regulations in 2005. The Lower Rio Grande Water Users' Organization objects to the current regulations, among other reasons because they create exceptions to prior appropriation doctrine and set maximum diversion to four acre-feet for any crop rather than based on beneficial use. In the meantime, the Bureau of Reclamation (BOR) developed protocols (D3) in 2006 for delivery of water to project members that tie deliveries to Mexico and Texas to releases from Caballo Reservoir based on conditions that existed between 1951 and 1978, with EBID and New Mexico users getting whatever is left.

Phil King, consultant to EBID, explained the hydrologic cycle and the technical aspects of these BOR protocols. The Lower Rio Grande Water Users' Organization supports the BOR protocols because they are consistent with adjudicated water rights in Texas, they provide flexibility for conjunctive management in New Mexico and they are defensible. In conclusion, they told the subcommittee that the BOR protocols (D3) make the state engineer's lower Rio Grande basin-specific water resources management regulations unnecessary.

Dr. Wood closed by saying that future needs in southern New Mexico include:

1. access to and use of the state engineer's hydrologic model;
2. repeal of improper parts of the basin-specific active water resource management regulations;
3. funding for water treatment plants;
4. development of reservoirs and storage capacity for water to which New Mexico is entitled; and
5. consistent delivery of this water to users.

Questions and comments from the subcommittee addressed:

- the state engineer's position on active water resource management in the lower Rio Grande;
- the status of the regulations pursuant to recent court decisions;
- the state engineer's position on the BOR's D3 protocols;
- the rationale for the use of the 1951-1978 baseline period in D3;
- funding for adjudication;
- how there can be a priority call without an adjudication;
- why maximum diversion is set at four acre-feet in the state engineer's regulations;
- why carryover is not allowed;
- what happens in a flood year;
- what is a piezometer;
- the geographic coverage of D3;
- the development of custom systems elsewhere;
- the relationship of the D3 to the Rio Grande Compact;
- the mechanism of conjunctive management;
- brackish water;
- the measurement method for seepage;
- repeal of active water resource management rules that contradict prior appropriation doctrine;
- the amount of the request for three water treatment plants;
- the system for regulating flood flows; and
- the role of mutual domestics in the lower Rio Grande.

The subcommittee adopted a motion to ask the full committee to support a memorial requesting the state engineer and the Administrative Office of the Courts to continue discussions to reform the water rights adjudication process.

The fifth meeting of the Water and Natural Resources Committee was called to order at 9:28 a.m. by Senator Phil A. Griego, chair, in Room 322 of the State Capitol in Santa Fe.

Present

Sen. Phil A. Griego, Chair
Rep. Andy Nuñez, Vice Chair
Rep. Paul C. Bandy
Rep. Elias Barela
Sen. Sue Wilson Beffort
Rep. Ray Begaye
Rep. Joseph Cervantes
Sen. Dede Feldman
Sen. Clinton D. Harden, Jr.
Rep. Dona G. Irwin
Rep. Larry A. Larrañaga (October 29)
Rep. Kathy A. McCoy
Sen. Steven P. Neville
Sen. Mary Kay Papen
Rep. Mimi Stewart
Rep. Don L. Tripp

Absent

Sen. Mary Jane M. Garcia
Sen. Cynthia Nava

Advisory Members

Sen. Rod Adair (October 30)
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
Sen. Nancy Rodriguez
Sen. John C. Ryan
Rep. Henry Kiki Saavedra
Rep. James R.J. Strickler
Rep. Peter Wirth

Sen. Timothy Z. Jennings
Sen. Gay G. Kernan
Sen. Leonard Lee Rawson
Rep. Eric A. Youngberg

(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 29

Gila River Issues

Henry Torres and Howard Hutchison of the Gila-San Francisco Water Commission and Adrian Oglesby of the Nature Conservancy provided the committee with testimony regarding the Gila-San Francisco Water Commission. They began by offering a brief history of the Arizona Water Settlement Act of 2004, which they explained grants New Mexico 140,000 additional acre-feet of water and between \$66 million and \$128 million. The group went on to explain that the Arizona Water Settlement Act assigned the task of determining how the water and money would be developed to the New Mexico Water Planning Group with approval from the Interstate Stream Commission (ISC).

Mr. Torres went on to explain that the New Mexico Water Planning Group has been succeeded by the Gila-San Francisco Water Commission, which will operate under a joint powers agreement. He explained that the commission consists of basically the same group of entities from Catron, Grant, Hidalgo and Luna counties.

Mr. Torres then explained that the commission will "use the best available science to fully assess and mitigate the ecological impacts on southwest New Mexico, the Gila River, its tributaries and riparian corridors, while also considering the historic uses of and future demand for water in the basin" to develop its recommendations.

Mr. Torres went on to indicate that the commission intends to facilitate ecological and environmental studies of the Gila and San Francisco rivers and emphasized that some funding would be required in order to conduct the studies.

Questions and comments included:

- the agreement from the Nature Conservancy with the actions and intentions of the Gila-San Francisco Water Commission;
- a commitment by the Governor's Office of some funding for the required studies;
- membership of the commission;
- participation on the commission of groups that are not members;
- varying opinions on appropriate uses of the additional water;
- the lack of participation by Silver City on some work by the commission;
- the availability of federal funding for some studies;
- that the ISC is the agency overseeing the activities of the commission; and
- funding from Sandia National Laboratories for some of the commission's work.

Forfeiture Exemption for 40- or 100-Year Water Planning Period

John Longworth of the Office of the State Engineer (OSE) provided the committee with testimony regarding House Memorial 42, passed during the 2007 session, which requests the OSE to conduct stakeholder meetings to evaluate and make recommendations relating to water development planning authority for municipalities, counties, school districts, state universities,

member-owned community water systems, special water users associations and regulated public water and electric utilities. Mr. Longworth explained that the OSE had held two facilitated stakeholder meetings in July and September and set up a link on the OSE's web site offering a legal history of Section 72-1-9 NMSA 1978, a copy of the memorial, meeting summaries and written comments by stakeholders. He went on to indicate that the meetings were well-attended and that several new groups were invited to, and attended, the second meeting.

Mr. Longworth summarized the content of the meetings by pointing out that the local planning statute is a necessary and important tool, but that a template for 40-year plans is also needed. He also indicated that more time is needed to discuss relevant issues, such as the length of the planning period and expanding the number of covered entities.

Finally, Mr. Longworth indicated that the OSE recommends no changes to Section 72-1-9 NMSA 1978 during the 2008 legislative session, and that the process of evaluating the issues relating to the statute be continued.

Interstate Compacts — Status Report

Estevan Lopez, director of the ISC, and Tanya Trujillo, general counsel of the ISC, provided the committee with an update on the status of the various interstate water compacts affecting New Mexico's water resources. Mr. Lopez explained that the compacts are simply interstate agreements apportioning water resources between states and pointed out that New Mexico is in eight separate compacts. He emphasized that while the compacts do not eliminate conflicts between states over water use, they are a much more desirable alternative to the free-for-all that would be in effect should the compacts not exist.

Mr. Lopez went on to provide details about each of the compacts in which New Mexico is a participant: the Animas-La Plata, Plata, Upper Colorado River, Colorado River, Rio Grande, Pecos River, Canadian River and Costa River. He noted which compacts are based strictly on river flows, which appropriate a set amount of water to New Mexico each year and which appropriate a set percentage of a river's flow each year. Mr. Lopez also provided the committee with a brief overview of the legal issues involving several of the compacts, particularly the Rio Grande, Pecos River and Colorado River compacts.

Questions and comments included:

- whether the ISC has a map available showing the areas of New Mexico affected by each compact;
- the amount spent to date on the Pecos River settlement;
- the estimated length of the proposed Ute Pipeline Project;
- the number of acres of land and acre-feet of water purchased by the state on the Pecos River;
- development of the Animas-La Plata Project and the administration of water from it;
- limits on the credits New Mexico can accumulate on compact deliveries in a single year;
- the source of the additional 21,000 acre-feet of water gained by New Mexico in the Navajo settlement;
- the relatively small amount of water flowing into Texas via the Canadian River;

- the effect of evaporation issues on New Mexico's ability to make compact deliveries; and
- whether the Rio Grande Compact ever expires or whether it could be renegotiated.

Well Drillers — Domestic Well Pump Installer Certification

John Mahoney, president of the New Mexico Ground Water Association, provided the committee with testimony regarding the importance of developing some form of regulation for installers of pumps for domestic water wells. He explained that, currently, well pump installation and service is an unregulated industry in New Mexico, with no licensing, regulations or codes for pumping equipment. Mr. Mahoney went on to indicate that the equipment systems for water wells are something of a unique entity, meaning that typical plumbers and electricians generally do not have the technical knowledge to install such equipment. He explained that having such individuals install pumps on domestic wells can lead to unsafe electrical and plumbing conditions, and often results in unsanitary installations.

Mr. Mahoney went on to explain that although the OSE currently regulates well drillers, there are individuals who work solely as pumping equipment contractors and therefore do not require such a license. He suggested that a pump installer license be made necessary for anyone installing pump equipment and that the OSE be made the regulating authority for such licenses, pointing out that water wells and pumping equipment are directly related and should be regulated in harmony with one another. Mr. Mahoney also noted that Colorado, Texas and Utah have already implemented similar regulations, and that many more western states are in the process of doing so.

Questions and comments included:

- statutory changes that might be necessary in order to implement pump installer regulation.

Santa Fe Community College (SFCC) Water Conservation Strategies

Dr. Sheila Ortego, president of SFCC, began by introducing Lou Schreiber of SFCC's Center for Community Sustainability, and Frank Joy, SFCC's director of plant operations. She explained that the college has developed water conservation strategies in two important areas: coursework, including degrees, in water conservation strategies and changes to the physical plant at SFCC. These strategies help conserve both water and energy.

Mr. Joy provided the committee with an overview of the changes that SFCC has made to its physical campus to help conserve both energy and water. He explained that a retrofit of all the water fixtures to low-flow models at the school was implemented, as well as construction of a treatment plant for all of the school's water. Mr. Joy also noted that the entire campus has been xeriscaped. He went on to note that energy conservation measures in place at the school include retrofitting all of the lightbulbs and fans to models that consume less energy. Mr. Joy also indicated that a biomass boiler had recently been installed at the school, so that natural gas would no longer be used to heat the school, which will limit natural gas consumption to only the kitchen and a few academic areas.

Mr. Schreiber discussed efforts that SFCC has made toward developing work force training programs. He explained that the school began a water treatment program, a water conservation program and a program enabling students to earn either an associate's degree or a certificate in environmental issues. Mr. Schreiber noted that the high level of environmental awareness in the community of Santa Fe led the school to begin trying to help educate the public about climate change. He also indicated that the size of the solar energy industry in Santa Fe also prompted the school to offer courses in photovoltaic solar energy and solar-heated water.

Questions and comments included:

- the difference between woody biomass and simply using wood;
- potential benefits of implementing changes similar to SFCC's on a smaller, residential scale;
- difficulties in locating a steady source of biomass to burn at SFCC;
- problems with the biomass plant near Estancia and whether that plant is similar to SFCC's;
- that most of the changes at SFCC were financed by a \$25 million bond measure;
- the time it will take to realize savings from the changes;
- the time it takes to get participants in SFCC educational programs into the work force;
- job placement help from SFCC; and
- that demonstrations for the public of xeriscaping and water conservation strategies are just beginning.

The committee recessed at 4:25 p.m.

Tuesday, October 30

Water Project Financing/ Water Trust Board Procedures and Policies

Katherine Miller, secretary of finance and administration, began by providing the committee with an overview of the planning process for New Mexico's water and wastewater infrastructure. She explained that the current planning process is fragmented and decentralized and listed the large number of methods that could be used for water project financing and the entities that could be approached for financial help.

Secretary Miller then discussed House Joint Memorial 86, passed during the 2007 session, which requested that the OSE collaborate with the New Mexico Department of Environment (NMED) and other agencies to develop criteria for water system planning, performance and conservation as a condition of funding. She then provided the committee with the criteria developed in response to House Joint Memorial 86 and adopted by the Water Infrastructure Investment Team, which requires that funding recipients have a financial plan; an adequate rate structure; an asset management plan; compliance with the OSE regulatory requirements; compliance with the NMED and federal requirements; an adequate governance structure; and participation in regional efforts.

Next, Secretary Miller discussed the establishment of a water cabinet by the governor. She explained that the cabinet would include the ISC, the OSE, the NMED, the New Mexico Department of Agriculture, the Department of Game and Fish, the Energy, Minerals and Natural

Resources Department, the Department of Finance and Administration and the New Mexico Finance Authority (NMFA). Secretary Miller indicated that the cabinet would report to the governor annually on the steps taken to improve coordination and consultation in updating the state water plan, policy recommendations for improved water and wastewater infrastructure development, policy recommendations for expanding the management and fiscal capacity of local water and wastewater systems and recommendations for addressing drinking water emergencies.

Secretary Miller also discussed the formation of a water sub-cabinet, and how the water cabinet, water sub-cabinet, Water Trust Board and the legislature would work together to finance water and wastewater projects.

Bill Sisneros, director of the NMFA, provided the committee with an overview of the procedures and policies of the Water Trust Board. He began by giving the committee a brief history of policy development by the board, explaining that development of policies by the board helps to ensure a transparent and public process, helps applicants better understand the weight attached to various criteria and provides for flexibility in addressing the changing water needs of the state.

Mr. Sisneros went on to discuss policy development in several areas: project prioritization, local contribution to projects, financial structuring and eligibility criteria. He explained that the board's project prioritization policies favor those projects that are ready to begin immediately, with water rights secured and funding and design requirements in place at the time funding is awarded. He also noted that projects that leverage state funding with local and federal funds are rewarded with a higher priority by the board and pointed out that urgent projects are also prioritized.

Mr. Sisneros explained that local contribution policies in place with the Water Trust Board require a minimum contribution from all applicants in the form of hard and soft matching funds. He also indicated that there are local contribution requirements of those entities supported by rate-paying constituencies, tribal governments, watersheds and endangered species collaboratives. However, Mr. Sisneros also pointed out that annual "hardship waivers" are available for certain water systems not yet able to make their loan payments.

Mr. Sisneros then discussed the board's financial structuring policy, which explained how an application is to be evaluated, prioritized and recommended to the legislature. He also pointed out that the joint financial structuring policy of the Water Trust Board and the NMFA gives the board a clear voice in the actual terms of any financial assistance offered. He emphasized that having such a policy in place provides clarity to applicants as to what to expect from the Water Trust Board.

Mr. Sisneros also discussed the eligibility criteria for water project financing. He explained that the minimum criteria for water project applications includes: cost effectiveness of the project; water rights; scientific and biological studies; immediate threats to public welfare; regional dispersion; local effort; ability to pay; ability to leverage federal funds; priority; readiness; and urgency.

Mr. Sisneros then provided the committee with an overview of how applications to the Water Trust Board move through the process. He also pointed out that applications for this year's projects are due at the NMFA on November 5, 2007.

Questions and comments included:

- representation by mutual domestic water consumer associations on the Water Trust Board;
- the makeup of the Water Trust Board;
- readiness of the list of projects approved by the Water Trust Board;
- funding of a hybrid car facility by the board;
- the importance of having broad representation on the board;
- representation on the board by a representative of the acequia community;
- the importance of input from the legislature on projects;
- the importance of trying to loan communities money before simply granting it to them;
- the Public Project Revolving Fund versus the Water Trust Board;
- the executive order that creates the water cabinet;
- potential oversight of the water cabinet by the legislature;
- whether an explanation is provided to applicants who are denied funding by the board; and
- what authority the legislature has divested to executive agencies to allow the creation of the water cabinet.

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

Phreatophytes — Pueblo of Santo Domingo Treatment Area Tour

The committee toured an area of the Pueblo of Santo Domingo to view various strategies the pueblo has employed to remove salt cedars and various other non-native phreatophytes, monitor and address regrowth and restore other species of plant life to the land.

There being no further business, the committee adjourned at 2:30 p.m.

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

**November 26-28, 2007
Room 307, State Capitol
Santa Fe**

The sixth meeting of the Water and Natural Resources Committee was called to order at 9:06 a.m. on November 26, 2007 by Senator Phil A. Griego, chair.

Present

Sen. Phil A. Griego, Chair
Rep. Andy Nuñez, Vice Chair (11/26, 11/28)
Rep. Paul C. Bandy
Sen. Sue Wilson Beffort (11/26, 11/27)
Rep. Ray Begaye
Rep. Joseph Cervantes
Sen. Dede Feldman (11/26, 11/27)
Sen. Mary Jane M. Garcia
Sen. Clinton D. Harden, Jr. (11/26, 11/28)
Rep. Dona G. Irwin
Rep. Larry A. Larrañaga
Rep. Kathy A. McCoy
Sen. Steven P. Neville
Sen. Mary Kay Papen (11/26, 11/27)
Rep. Mimi Stewart

Absent

Rep. Elias Barela
Sen. Cynthia Nava
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 (11/26)
Rep. Ben Lujan
Rep. James Roger Madalena
Sen. Cisco McSorley
Rep. Danice Picraux (11/26)
Sen. Nancy Rodriguez
Sen. John C. Ryan
Rep. James R.J. Strickler
Rep. Peter Wirth

Sen. Timothy Z. Jennings
Sen. Gay G. Kernan
Sen. Leonard Lee Rawson
Rep. Henry Kiki Saavedra
Rep. Eric A. Youngberg

Guest Legislators

Rep. William "Bill" R. Rehm (11/27, 11/28)

Rep. Jeff Steinborn (11/27, 11/28)

(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, November 26**Deep Water Development**

Mark Fesmire, director of the Oil Conservation Division (OCD) of the Energy, Minerals and Natural Resources Department, told the committee that 83,000 acre-feet of water per year are produced by oil and gas production or coal bed methane development in New Mexico. He said that this is saline water with concentrations of dissolved solids ranging from 1,000 parts per million to 400,000 parts per million. Therefore, most produced water is of such poor quality that the only thing to do with it is to reinject it back into the ground. As technology advances, however, some of this water becomes potentially useable, and then the question arises as to who owns it or has the rights to use it, he testified. He went on to give a detailed explanation of produced water associated with oil and gas or coal bed methane and the depths to which each might be found. He further explained the history and meaning of Section 70-2-12.1 NMSA 1978, which provides that a permit from the state engineer is not required for disposition of produced water. This means, he testified, that produced water does not fall within the jurisdiction of the state engineer, even if that water is purified and used, but that it is subject to regulation by the OCD. He then went on to explain the parameters of the OCD's rulemaking concerning produced water. He also explained the conditions under which the state engineer's jurisdiction may be triggered, i.e., if produced water is in "hydrologic communication" with surface water that is under the jurisdiction of the state engineer. He went on to explain that as his agency begins to look at options for greenhouse gas sequestration, it becomes apparent that there may be market competition for deep saline aquifers due to their potential for carbon dioxide sequestration and produced water reinjection that may affect the valuation of produced water. The ownership and pore space of subsurface formations then become significant issues.

Questions and comments addressed:

- authority of the Oil Conservation Commission (OCC) and the OCD to develop rules for produced water;
- referral to produced water as a waste byproduct;
- the "ownership" of produced water by the producer;
- reuse of produced water for resale;
- communication and information-sharing among the OCD, the Office of the State Engineer (OSE) and the New Mexico Department of Environment (NMED);
- the effect of new rules on potential application to "beneficial use";
- the cost to purify produced water;
- the response of oil and gas owners to proposed new rules and discussions between the OSE and the OCC;
- how the OSE would require a permit for beneficial use, but not if water is used in a cooling system with a closed loop;
- the opposition expressed to double jurisdiction by the state engineer over produced water;
- the state engineer's statement that he was not looking for jurisdiction over produced water or deep water not put to beneficial use;
- the NMED representative's statement that he was not familiar with the OCD's proposed rules; and
- former Representative Rob Burpo's bill for a tax credit for cleaning up produced water to introduce into the Pecos River to meet Pecos River Compact compliance requirements.

Ned Godshall, chief executive officer of Altela, Inc., told the committee that there is no economically viable way to treat produced water to make it usable for drinking water. He told the committee that "deep brackish water being withdrawn for drinking water by some utilities is not the same as produced water in the oil and gas industry". The two must not be confused, he said. Altela services the oil and gas industry by treating produced water on site adequately enough to meet reinjection standards, thereby reducing the industry's costs to haul produced water offsite. He told the committee that there is no need for any change in the way produced water is currently regulated in New Mexico. He did, however, endorse a rule change for "deep water" that is not produced water, i.e., brackish water that is 2,500 feet below the surface, that is not produced as a result of oil and gas drilling and that is destined for human consumption pursuant to the beneficial use provisions in state law. He went on to summarize some of the economics of produced water.

Questions and comments from the committee dealt with:

- specific statutory provisions for produced water;
- the purpose of secondary well recovery;
- incidental depletion;
- New Mexico's under-delivery of water to Texas partially resulting from Texas withdrawing water from the Capitan Reef;
- the reason for the potential change in the deep water withdrawal jurisdiction and a proposal for the OSE's permitting authority;
- the hydrologic difference between deep water and produced water;
- the amount of produced water produced each year, 83,000 acre-feet;

- potential rules of non-appropriability of produced water discharged into the Pecos River to enhance compliance with the Pecos River Compact;
- the cost per barrel for cleaning deep water or produced water (\$1.00 to \$6.00);
- the potential for increasing the life of a productive oil or gas well by reducing the cost of disposal of produced water;
- the cost of installation of treatment units at each site;
- specifics of exempting water below a depth of 2,500 feet depth;
- the potential for contamination of water above 2,500 feet by drilling below 2,500 feet;
- the Wyoming/Montana coal bed methane case in the courts;
- the poor quality of produced water;
- the use of treated produced water for secondary recovery of oil and gas;
- the distance of oil and gas wells from municipalities as a factor in the economics of produced water for beneficial use;
- a comparison of New Mexico with other states on produced water policy;
- history of use in other states of Altela's technology;
- on-site storage tanks; and
- the number of Altela units statewide (three currently, with two more coming).

Peter White, attorney at law, provided a handout to the committee that gave a history of the state's water statutes that deal with deep water. Section 72-12-18 NMSA 1978 was enacted in 1953, he said, declaring all underground waters to be public waters subject to appropriations for beneficial use. Section 72-12-20 NMSA 1978, enacted that same year, provided that no permit is required for underground water except in basins "declared" by the OSE. Section 72-12-25 NMSA 1978, enacted in 1967, partially exempted nonpotable water below 2,500 feet from the state engineer's jurisdiction, but Section 72-12-26 NMSA 1978 requires a person drilling for that water to file a notice of intention with the OSE and to publish a notice in the county where that drilling will occur, and Section 72-12-27 NMSA 1978 allows the state engineer to require data on the amount and quality of the water withdrawn.

Acequia Concerns Regarding Adjudication Reform

Paula Garcia, executive director of the New Mexico Acequia Association, provided the committee with a handout on acequia concerns and introduced David Benavides and Mr. White, attorneys who represent acequias, to discuss adjudication reform.

Acequia concerns are as follows:

- the process is expensive, adversarial and time-consuming;
- the state engineer tends to diminish water rights claims;
- acequias do not have the legal and financial resources of the OSE;
- there is poor communication with parciantes by the OSE; and
- the OSE opposes motions for acequias to intervene on behalf of parciantes.

The speakers opposed any reform of the adjudication process that would include a claims-based system because of the burden that would be placed on parciantes and that the parciantes cannot bear the costs of surveys. The state should continue to bear the cost of creating and updating hydrographic surveys, they said. Their handout recommended that any working group on adjudication reform include defendants and water rights claimants, including acequia

organizations. They called for adequate funding for acequias' defense of their water rights through the Acequia and Community Ditch Fund.

Mr. Benavides contrasted the experience of two adjudications. On a section of the Rio Chama, he noted that 136 out of 140 property owners were able to complete their adjudications in about three years. He said this was possible because of the high level of communication between involved parties, that the meetings in the field office were scheduled so that everyone involved could attend, that there was no inclusion of priority dates in the discussions and that necessary technical work was performed while other legal assessments were being made. Mr. Benavides also acknowledged that such a quick adjudication was possible in part because there were no pueblo water rights claims on the river and it involved a very small section of the river with a relatively low number of involved parties. Regarding the other adjudication, Mr. Benavides said that the Gallinas River adjudication near Las Vegas began in 1991 and still is not resolved. He explained that one of the reasons it has taken so long is because even though attorneys for stakeholders requested meeting schedules similar to that of the Rio Chama adjudication, the OSE resisted. He also noted that the OSE opposed separate priority dates from the rest of the discussion and opposed acequia attorneys being present at the field office that was set up for the adjudication. Mr. Benavides pointed out that, instead of scheduling meetings in such a way that everyone could attend, the OSE instead began unilaterally scheduling meetings without concern as to who was able to attend. He stated that when a group of acequia stakeholders went to court over the OSE's methods, a judge agreed with most of the acequias' claims. Mr. Benavides noted that the adjudication of this area has taken so long because of a pattern of delay, appeal and exclusion of a support system for defendants by the OSE.

Mr. White told the committee that existing statutes on adjudication should not be amended. He said the hydrographic surveys should continue to be the driver and conducted by the state engineer. He said that claims-based adjudications would be disastrous. He said the main problems with adjudications are management coordination or hydrographic surveys and service. Where acequias are being adjudicated, acequia associations ought to be parties to the adjudication and should be allowed amicus status to assist parciantes. He said the high default judgment rate raises the question of whether the state engineer conducted enough outreach and made an adequate effort to communicate with parciantes. He closed by saying it is important to start at the top with the big players and "work down".

Greg Ridgley, counsel to the state engineer, was invited to respond to these presentations. Mr. Ridgley said that the comments made by Mr. Benavides were unbalanced and biased. He said that the Gallinas adjudication has some significant matters of procedure and that personality conflicts are at play there. He said the history of tension between acequias and the City of Las Vegas is a major factor in the delays. The Rio Chama is a model that works for specific geographic areas. The reason the OSE opposes acequia associations acting as amicus parties is that the water right belongs to the parciantes, not the acequias. However, recent instructions to attorneys leading adjudications are to allow acequia associations' staff to participate. Once an adjudication reaches a court, the acequia needs to make a motion to the court to allow it to intervene or to become an attorney to the parciante.

Questions and comments from the committee addressed the following:

- the rules of civil procedure as set by the courts;
- an acequia's role in determining "duty of water";
- the germaneness of adjudication reform for the next session;
- the assistance to individual water rights owners by the state;
- the role of irrigation and conservancy districts as amicus participants;
- the disparity between acequia resources and resources of irrigation and conservancy districts; and
- a time frame for the court decision on the Pecos.

Responses to Committee Questions and Adjudication Reform Issues

John D'Antonio, state engineer, and D.L. Sanders, chief counsel to the state engineer, presented a letter to the committee acknowledging the committee's concerns about water adjudications and committing to a continuation of meetings with the judicial branch to "identify how to make future adjudication suits faster, more efficient and less intimidating for water rights claimants".

The OSE also submitted 86 pages of answers and supporting documentation to the committee to questions the committee asked the state engineer at its meeting in September. These minutes do not include the verbatim submission of the state engineer's answers. The submission is available from the OSE or from Legislative Council Service staff. The following is a summary of the points of discussion and dialogue that were conducted between the committee and the OSE.

- Valencia County meters and the Middle Rio Grande Conservancy District's authority to distribute water to junior owners and to allow well water withdrawals and the relationship to a court ruling against the state engineer;
- the Pecos River Settlement as an alternative administration scheme to prior administration schemes;
- the emphasis on budgets for attorneys in the adjudication process rather than clerical and hydrographic personnel;
- the total legal staff of the OSE (25);
- the OSE's budget for water rights adjudications and the legal division and the source of funding;
- how much money would be required to complete adjudications in the next 10 years statewide;
- the need to expedite the process in order to avoid higher costs in the future;
- the use of law students as interns and recruitment of legal students to work for the state (evaluate the budget for the University of New Mexico (UNM) School of Law to ratchet up education of legal personnel);
- a suggestion for a pre-adjudication bureau and why the OSE is not asking for a bigger budget;
- obstacles to moving forward: 13 active adjudications spread the OSE resources too thin, and there is a need for base budget expansion;
- the need for a pre-adjudication program for the middle Rio Grande reach;
- the need for a project management plan;
- the status of meetings on active water resource management rules;

- de minimis rights (domestic wells) and the fact that other states do not adjudicate de minimis water uses;
- the role of the ombudsman program in water rights adjudications and its relationship to the OSE;
- Cabresto Dam storage rights and the supplemental decree from the court;
- the need to breach Cabresto Dam to make repairs and improvements;
- a request for an electronic method for asking questions and posting the answers on the OSE web site;
- the governor's water subcabinet, its legality, its process of prioritizing projects and its cooperation with the legislature;
- a suggestion for the lower Rio Grande adjudication to begin with the Elephant Butte Irrigation District's data on irrigated acreage as the lynchpin for determination of the water rights;
- statutory authority for active water management rules applied to the Pecos River to remove the use of carriage water; and
- the current balance of the New Mexico Irrigation Works Construction Fund, its purpose and for what purpose recent appropriations have been used.

Tuesday, November 27

Proposed Legislation (Approved Legislation Provided in Appendix)

1. A bill to provide an alternative method for water rights acquisition and retirement on the Pecos River, pursuant to the Pecos River Settlement, was discussed and endorsed by the committee, with Senator Griego as the sponsor. Points of discussion included:

- the disposition of revenue to the state from leasing water or land acquired under the program;
- the use of water to revegetate retired land to native plants to control weeds;
- the support of the governor;
- provisions to prevent "double dipping" of retired water rights;
- germaneness and cost savings; and
- support from irrigators on the Pecos River.

2. A bill to appropriate money to the Bureau of Geology and Mineral Resources at New Mexico Tech for statewide aquifer mapping was approved for sponsorship by Senator Cisneros. Points of discussion included:

- the role of and support from the OSE;
- the use of aquifer maps and data in the water rights adjudication process;
- the estimated time to complete aquifer characterization (20 years);
- the use of x-ray or other advanced technologies to map aquifers more efficiently;
- the specific areas to be characterized and other uses of the appropriation;
- the technique for measuring the quantity of water in a characterized aquifer;
- the prioritization of locales for characterization;
- the cost per acre or unit costs;
- the publication and dissemination of aquifer maps;
- the need to make this appropriation part of the base budget for the bureau;
- the cost of the Sacramento Mountains study and adequacy of the appropriation ;

- the cost of the Salt Basin Aquifer characterization and status;
- the governor's previous vetoes;
- New Mexico Tech's education of hydrologists; and
- overlap and duplication of other universities' capacities for similar work.

3. An appropriation for general operating expenses for the Utton Transboundary Center at the UNM law school was approved with little discussion. Senator McSorley will sponsor the bill.

4. An appropriation for continued testing and research of an automatic precision irrigation system based on soil moisture was endorsed by the committee to be sponsored by Senator Beffort. Points of discussion included:

- protocols for measuring success;
- an appropriation to go to the OSE;
- whether there is an anti-donation issue involved;
- the applicability of the Procurement Code;
- unit cost per acreage (varies by location and by crop — an 18-hole golf course with 60 sensors costs \$50,000, with repeaters and software included);
- the geographic distribution and usefulness of the technology;
- the participation by the agriculture community;
- the cost to farmers for installation of a system (economics of the system to be part of the study);
- the source of previous funding for the research (\$335,000 from the governor's water innovation "fund");
- the parameters of the research program;
- the wireless technology used;
- the potential use of the New Mexico Irrigation Works Construction Fund and other options for financing farmers' acquisition of the system; and
- the record of use on golf courses in New Mexico.

5. The committee endorsed a bill to add a representative of the mutual domestic water consumers association community to the Water Trust Board after discussing whether similar representation should be extended to irrigation districts, conservancy districts, acequias and soil and water conservation districts. Representatives Larrañaga and Begaye opposed the endorsement. Representative McCoy was appointed to sponsor the bill.

6. The committee endorsed, with Senator McSorley in opposition, a memorial asking the state engineer and the Administrative Office of the Courts to continue their discussions and exploration of options to improve and expedite the water rights adjudication process. Senator Papen was appointed to sponsor the memorial. Discussion points included:

- a letter from the state engineer committing his office to the dialogue;
- contents of a memorandum of understanding (MOU) outlining the parameters of the discussions and providing for quarterly progress reports to the committee;
- provisions for public input;
- the degree of potential changes to the adjudication process;
- the need for two years to consider these options;

- the advantages and disadvantages of opening the dialogue at this point, before any proposals are actually defined;
- identification of goals in the MOU;
- the applicability statewide and prospectively, not retrospectively to existing ongoing adjudications; and
- the MOU should reflect some of the committee's concerns.

7. The committee also approved endorsement of an appropriations bill to help defray expenses of the decision-makers conference organized by the Bureau of Geology and Mineral Resources at New Mexico Tech. Representative Stewart and Senator Feldman will co-sponsor the measure.

Indian Water Rights, Negotiations and Settlements

Estevan Lopez, director of the Interstate Stream Commission, and Mr. D'Antonio summarized the status of the three Indian water rights settlements agreed to by the state: the Navajo settlement, the *Aamodt* case and the Taos settlement. Their handout states that federal government agency representatives have not yet signed any of the three settlements and will not sign until Congress directs them to do so. Legislation is pending in Congress to achieve that. Mr. Lopez disputed many of attorney Victor Marshall's objections, which Mr. Marshall expressed at the committee's meeting in Taos in August 2007.

The presenters reported that the Navajo settlement, signed in 2005, provides for water development projects for both the Navajo Nation and non-Indian communities in exchange for release of Navajo claims to water that could have displaced non-Indian water claimants' rights. One of the key components of the settlement is the Navajo-Gallup Water Supply Project to bring water from Navajo Reservoir to Navajo and non-Indian communities in northwest New Mexico. The settlement also includes a proposed settlement contract that will provide for deliveries to the Northwestern New Mexico Rural Water Supply Project as well as the Navajo Indian Irrigation Project. As far as the adequacy of water to fulfill the provisions of the settlement, the Upper Colorado River Commission supports the Department of Interior's hydrologic determination that sufficient water is available to satisfy the terms of the settlement. A draft environmental impact statement (EIS) has been completed and a final EIS is expected this spring.

The presenters told the committee that the total estimated cost of the settlement is now \$900 million. The most expensive component is the Navajo-Gallup pipeline, at a cost of \$864 million. The congressional delegation has requested the state to commit \$50 million of that cost.

The *Aamodt* settlement involves the City of Santa Fe and Santa Fe County and the pueblos of Nambe, Pojoaque, San Ildefonso and Tesuque. They told the committee that the settlement will protect the non-pueblo junior water rights from future pueblo priority calls. The agreement provides for forbearance by the pueblos on priority calls, except under certain conditions, and provides for the federal government to acquire 2,500 acre-feet of additional water for the pueblos to make up for that forbearance. A pipeline will be constructed from the Rio Grande to serve pueblo and non-pueblo residents of the area, and well owners may hook up to that pipeline and stop using ground water.

The total estimated cost of the *Aamodt* settlement is \$309 million, of which the state would provide \$50 million.

The presenters told the committee that the Pueblo of Taos, the state and several Taos area non-pueblo water rights owners, including the Town of Taos, the Taos Valley Acequia Association, El Prado Water and Sanitation District and 12 mutual domestic water consumers associations, signed an agreement in May 2006. They said it preserves existing acequia water uses, water-sharing agreements between the pueblo and acequias and allocation of San Juan-Chama Project water available for the settlement. The estimated total cost of the settlement is \$134 million, \$14 million of which would be the up-front cost to the state in addition to 25% of whatever escalation in costs are experienced. They requested an appropriation in fiscal year 2008 of \$13,070,000 to meet the settlement provisions of that much for each year over the next nine years.

Mr. Marshall characterized the Indian water rights settlements and their negotiations as follows: they are conditional, unrealistic and exclusionary of key water rights owners; there is over-allocation of water to Native Americans; negotiations were closed to the general public's participation; there were overreactions to the "Winters Doctrine"; they are the political vehicles of the governor; and the settlements may prolong litigation. He criticized the Navajo settlement in particular, emphasizing that it gives away one-third of the state's surface water to the Navajo Nation, and it ignores all the non-Indian water claimants on the San Juan River. He said the settlement gives away more water than exists and that the Navajo Nation should have to document their claim under the Winters Doctrine.

Points of discussion by the committee included:

- the high costs of the settlements;
- pending action by Congress;
- the role of the state courts and relationship of negotiated settlements between the state and the tribes alone and the determination of water rights by adjudicating courts;
- the effect of the settlements on the San Juan-Chama diversion;
- disposition of the settlements if the conditions of appropriations and/or adjudications are not met;
- status of the water rights adjudication on the San Juan River;
- the relationship of the Navajo irrigation project and agricultural program to the settlement;
- the potential export of water by the Navajo Nation (the settlement prohibits this, but enforceability of the settlement was questioned);
- why the whole San Juan Basin is not adjudicated simultaneously;
- Arizona's position on New Mexico's settlement with the Navajo Nation and whether Arizona has negotiated a settlement as well;
- Gallup's role and the MOU between Gallup and the Navajo Nation;
- the legislature's jurisdiction to approve these settlements;
- the Taos settlement terms;
- the ability under the settlement for the Navajo Nation to export the settlement water to its members living in other states;
- an invitation to Navajo representatives to testify to the committee next year;

- the issue of some Navajo acquiring water from non-Navajo communities and acequias or ditches and potential opposition to the settlement by some Navajo members;
- the history of appropriations for Indian water rights settlements and the governor's veto two years ago;
- the incoherence of water law;
- the legislature's responsibility and constitutional role to set policy, not the executive through closed negotiations; and
- the need for negotiated settlements.

Water Markets

Lee Brown, economist, testified that New Mexico water markets have been relying on nonrenewable water, i.e., ground water mining. He said that markets for water are merging now after years of significant urban growth. In this environment, it is important for price information to be available. Water is measured in acre-feet or acres of water rights. Prices for water vary widely between the basins from \$2,381 per acre-foot to \$45,000 per acre-foot. He said that mining of water in the high plains, the Gallup area, the Estancia Basin and the middle Rio Grande is not sustainable and will eventually price the remaining ground water out of reach. Political intervention is needed. He recommended that the legislature consider stronger regulation, water banking and local severance taxes on mined water. He said that the state may need to become an active facilitator of water sales or leases. The proprietary treatment of water prices is an obstacle to the public interest of water markets. Prices need to be reported on change of ownership forms issued by the state engineer, but the state engineer argues that he does not have the statutory authority.

Points of discussion included:

- dramatic increases in the water rights process; and
- the mining of aquifers and theoretical value of "dry water rights".

Mutual Domestic Water Consumers Associations' Critical Needs

Senator Cisneros addressed the committee on behalf of Rodarte, a community in his district. He told the committee that 14 homes in Rodarte have contaminated wells and need immediate assistance. The governor provided \$300,000 in emergency funds, and the Rodarte Mutual Domestic Water Consumers Association may extend its lines to connect the homeowners, but if this happens, the association will need additional help to enlarge its service capacity.

Rick Martinez, deputy secretary for finance and administration, explained that this is a statewide issue. House Joint Memorial 86 from the 2005 session asked that the state engineer collaborate with the NMED in water system planning and move toward regionalization as a condition for financing.

Charlie Sanchez, a Rodarte resident, explained that the water is significantly contaminated. George Maestas, a member of the Rodarte Mutual Domestic Water Consumers Association, told the committee that the association had 33 members in 1987 when it was last upgraded and it now has 58 member-connections. He said it needs a bigger storage tank and needs to relocate its well because there are seven septic systems within a radius of 200 feet.

Points of discussion included:

- a description of the 1987 upgrades;
- the source of the contamination;
- water heater problems;
- the shallowness of the wells;
- the location of the proposed new well and the need to serve Llano and Rodarte;
- the anti-donation issue of using public money to benefit private residences for replacement of private appliances (i.e., water heaters);
- coordination by the water subcommittee to assist communities like this;
- mutual domestic service rates and hookup costs;
- the Department of Transportation's refusal to break pavement to install new pipes;
- low-income communities;
- an evaluation of regional jurisdictions based on criteria of optimal rate base; and
- examples of regionalization.

Wednesday, November 28

Game and Forest Management Impacts

Charles Walker, a rancher from Otero County, addressed the committee about the impact on his family of grazing allotment reductions by the U.S. Forest Service (USFS) due to the elk population on his ranch. He explained that he is a third-generation rancher in that area with four more generations to follow him if they can stay in the ranching business under the current conditions. His grandfather started in 1887, and he described the history of the pioneers in the area. He said when the federal government established the USFS, ranchers were promised they would be able to continue to hold their grazing rights, just as they were promised their water rights as prior appropriated rights as long as they put them to beneficial use. Ranchers were grazing in the public domain before the creation of the USFS, but there was abuse of the range at the time, and the USFS established limits through grazing allotments and permits. Part of those controls was the establishment of grazing advisory boards, one of which Mr. Walker was a member for 25 years. He said that in the early days, science was not used as the basis for management but experts were eventually brought in to establish better management, standards. He said Rocky Mountain elk were introduced in the early twentieth century onto the range, where they were not native. Commitments were made at the time that elk would not be allowed to harm ranching allotments. Since then, however, the elk population has multiplied and damage to the range has occurred. The elk population has not been managed as promised. Instead, he said, the USFS has reduced the animal unit months allowed ranchers. He asked for compensation for the elk depredation and reduction of his livelihood and damage to the range resources. He suggested that landowner hunting permits from the Department of Game and Fish would suffice to redress the harm to ranchers.

Mrs. Jimmy Goss, also a rancher from Otero County, told the committee that her family has ranched the land since the 1880s. She said allotments on federal land are private property rights. They are like a split estate and have a market value. She said she did a title search and found that the Lincoln National Forest supervisor is a title holder of grazing allotments. She said title allotments are like land grants in that the USFS issued the original allotments when it was created to the existing ranchers on the land. She said that her family's ranch is a combination of 12 title allotments that go back to 1910. She told the committee that the position of the USFS is

that the allotments are not property of the ranchers, but she can demonstrate that the history of the legal title to these allotments extends back before the creation of the USFS.

She testified that, using science, the Range Improvement Task Force found that 18% of the use of the range resources can be attributed to cattle and, 82% to elk. She produced records that show the cost to her ranch of Department of Game and Fish and USFS policies. Her grazing right should be 553 cattle, but she was ordered to remove 120 cattle by a court in a lawsuit filed by Forest Guardians. She said there are 4,000 elk presently on her family's allotment. She asked for compensation and for legislation to require the USFS to manage the land fairly.

Mike Nivison, Otero County commissioner, testified that Otero County has enacted an ordinance concerning elk management. For perspective, he told the committee that on 139,000 acres, there is an average number of 330 cattle and an average of 4,000 elk. They rely on the same range grasses. The numbers tell the story, he said. He said allotment holders pay taxes on the original valuation of the allotment, but they are subsidizing the wildlife and are being damaged by the state and federal range management decisions. He said the federal land is in the public trust and should be used for what it was set aside for. He said these policies are a danger to the continuation of agriculture in New Mexico. He said imported food is more dangerous to public health than local food and with policies such as these, agricultural producers will be unfairly displaced from their land and people will be increasingly reliant on imported food.

He told the committee that it is a matter of sustaining the environment as well and that science should be used in determining how much elk to allow. Water is becoming scarce, he said. Cloudcroft ran out of water this year, and the elk had a role in that by the damage they do to the ecosystem from overgrazing and harming the land's ability to act like a sponge and absorb rain and snow precipitation. Without the grass cover and trees, the water just runs off. The elk population is so large that the vegetation is being removed faster than it can grow and provide cover and retain water. He closed by saying that good forest health would support a full cattle grazing allotment and a lot of elk, but best available management practices are not in place.

Senator Griego made some comments about the presentations. He said that this is an issue all over the state. It is very difficult to deal with the USFS or the National Park Service. They are not always user friendly, he said. They are not friendly to the constituency. He said while the USFS cuts the amount of cattle grazing on historic ranch allotments, it wants to open the same lands to off-highway vehicle usage, which does more damage than any grazing does. Hopefully, the USFS can be moved off dead center, he said. He said the land is good and beautiful because of the ranchers and farmers. He said the state legislature does not have a lot of power over federal land management agencies, but perhaps it can influence the New Mexico congressional delegation. Congressman Steve Pearce of the Second Congressional District was in the audience, and Senator Griego introduced him and gave him a letter concerning USFS policies.

Mr. Walker pointed out that there is no more rotation grazing on the forest resources because elk move in and undo the beneficial effect of reduced cattle. He then gave the microphone to Congressman Pearce.

Congressman Pearce thanked Senator Griego for the gracious introduction and for his assistance. Congressman Pearce told the committee that he is a member of the congressional committee whose mission corresponds with that of the Water and Natural Resources Committee, and he has not gotten briefings as good as the ones he received as a member of this committee when he was a member of the state House of Representatives for four years. He discussed the situation in Catron County involving a rancher who was arrested for running his cattle on USFS property without a valid permit. He said the federal government confiscated more than \$400,000 off that allotment. The USFS paid truckers to remove the cattle but did not pay the rancher for his cattle. He said this constitutes a culture of arrogance in the USFS. He said the USFS should clean up the forest and that it plays off the Department of Game and Fish. Elected officials have to address the fact that these agencies make decisions without being accountable for the consequences, he said, but there are reasonable solutions on every issue if negotiations are held in good faith, he added. Congressman Pearce invited questions from the committee and the following topics were discussed in a general give and take between the congressman and committee members:

- the Mescalero Apache Tribe's better management of its natural resources than that of the federal agencies;
- the basis for the USFS's allocation for watershed management;
- watershed restoration;
- Otero County's wildlife ordinance;
- the healthy forest initiative;
- the need for collaboration;
- farmers' markets;
- progress in elk management;
- division of ownership (split estate) between ranchers (grass, water and cattle), the Department of Game and Fish (elk) and USFS (trees);
- lawsuits as obstacles to progress;
- the decline of mills in New Mexico and 20,000 lost jobs to Canada;
- how USFS claims to infrastructure and bureaucracy are bound by many conflicting functions;
- lawsuits blocking logging; and
- the need to unravel the bureaucracy's ball of thread.

Points of discussion and questions to Mr. Walker and Mrs. Goss included:

- the date of the Mescalero Apache Tribe's introduction of elk into forests;
- the number of elk tags needed to compensate ranchers adequately;
- landowner permits;
- animal unit months (AUM) allowed on USFS allotment units (100);
- legal options for ranchers;
- how much is spent each year to improve allotments;
- the unresponsiveness of state and federal bureaucracies;
- the economic impact of reducing elk and/or elk hunting;
- the amount of land in an allotment;
- how state law does not allow private permits of public lands; and
- the number of ranches being affected.

The committee approved the minutes of the October meeting.

Bruce Thompson, director of Department of the Game and Fish, asked the committee to consider the issue in context. He said there are 65,000 residents in Otero County. It is not as simple as elk and cattle, and it is not just about a couple of people that have elk or cattle on their ranch; it is an issue of the ecosystem needs, he said. The department has spent \$2 million attempting to address habitat improvement. He testified that 8,000 elk have been killed in that unit and the department is making progress, but it cannot satisfy every individual. Others are supportive of what the department is doing, he said.

Butch Blazer, state forester, testified that the problem on the national forests is too many trees. The density of trees on national forest land is much higher than it ever was in a natural state before mankind intervened and suppressed naturally occurring wildfires. There have been some leadership changes in the USFS that will lead to progress to improve the conditions. He said there is now a willingness and an understanding to work with the counties and local communities. There is a need to develop a "large stewardship contract" to get infrastructure in place. One of these contracts has been developed in Arizona and may serve as a model for New Mexico. Stewardship protocols are based on science, and New Mexico's Range Improvement Task Force represents that good science in the state.

John Fowler, director of the Range Improvement Task Force based at New Mexico State University, told the committee that there were 9,000 head of cattle in New Mexico in 1988. In 2005, there were less than 4,000. During the same time, trees have increased and meadows have declined. The contribution of logging to New Mexico's economy in 1987 was more than \$6 million and now it is zero. Catastrophic fires are possible, he said. Resources need to be brought in to manage the forests, but one notice of intent to sue stops resource management dead in its tracks. Good science and data are needed to respond to notices of intent. Prolonged, thoughtful study can improve decision-making and can support the benefit of salvage cuts that enhance wildlife, water production and fire prevention, he testified. Harmful clearcutting that has generated environmental opposition is not the issue. Selective thinning that is monitored and whose effects are documented is the issue.

Gilbert Zepeda, deputy regional USFS supervisor, former regional director of the State and Private Cooperative Forestry Program and former district ranger for the Santa Fe National Forest, told the committee that there are 985 permits and 600 grazing allotments in New Mexico. This translates into 928,000 AUMs on the national forests and 164,000 AUMs on the national grasslands. Solutions to these problems rely on all parties working together, he said.

Points of discussion on these comments included:

- economic development associated with more elk permits and reducing the elk herd population;
- whether it is more economical to compare hunting and agriculture than the departmental budgets;
- the issuance of individual permits on USFS land to allottees;
- the fair estimate of elk population on the Lincoln National Forest (1,500-3,000) ;
- the \$37 million budget of the Department of Game and Fish being dependent on hunting and fishing licenses (elk being the largest single component);

- detailed discussion, disputed numbers and confusion over the data of elk populations, acreage of habitat, tribal acreage versus national forest, costs and revenues;
- wolf introduction in southwest New Mexico and why public meetings are held in Phoenix, Tucson and Albuquerque rather than in the areas where the wolves are being introduced;
- federal budgets for thinning the forests (or lack thereof);
- the mindset and distance between facts and emotions and the need for all parties to move toward solutions;
- disputes over science between the Range Improvement Task Force and the Department of Game and Fish;
- the penalization of ranchers because of elk population and the potential for compromise;
- a statutory change to allow issuance of hunting permits and authorizations to public land allottees, not just private landowners;
- a requirement to get infrastructure for timber harvesting and material processing back in place;
- the source of investments for allotment improvements;
- a comparison of USFS management and Mescalero Tribal Apache management;
- how the population of elk on Unit 34 varies (2,300-5,000) depending on the year, season and climate;
- the amount of money paid out to private property owners for damage by the Department of Game and Fish (none);
- assistance to private landowners for damage (fencing, etc.);
- the role in court suits of data and science;
- the need for a paradigm shift;
- sportsmen opposition; and
- how fast can forests be brought back to equilibrium.

The chair summarized the need for state and federal agencies to work with one another to find a resolution to this problem to benefit the constituents.

The committee adjourned at 1:00 p.m.

ENDORSED LEGISLATION

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SENATE JOINT MEMORIAL

48TH LEGISLATURE - STATE OF NEW MEXICO - SECOND SESSION, 2008

INTRODUCED BY

FOR THE WATER AND NATURAL RESOURCES COMMITTEE

A JOINT MEMORIAL

REQUESTING THE OFFICE OF THE STATE ENGINEER AND THE ADMINISTRATIVE OFFICE OF THE COURTS TO CONTINUE TO EXPLORE WAYS TO IMPROVE AND EXPEDITE THE WATER RIGHTS ADJUDICATION PROCESS.

WHEREAS, significant money has been appropriated for the adjudication of water rights; and

WHEREAS, water rights are a form of property right and the determination of the elements of water rights through water rights adjudications promotes an efficient market for such rights; and

WHEREAS, the determination of the elements of water rights through water rights adjudications also promotes other policy goals, including the ability of the state engineer to supervise the apportionment of the state's waters, conservation and compliance with compacts and the federal Endangered Species Act

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1 of 1973; and

2 WHEREAS, water rights adjudications involve thousands of
3 water rights claimants and are consequently complex, expensive
4 and divisive; and

5 WHEREAS, the office of the state engineer and the
6 administrative office of the courts have been exploring ideas
7 for improving the water rights adjudication process;

8 NOW, THEREFORE, BE IT RESOLVED BY THE LEGISLATURE OF THE
9 STATE OF NEW MEXICO that the office of the state engineer and
10 the administrative office of the courts be requested to
11 continue to explore ways to improve and expedite the water
12 rights adjudication process; and

13 BE IT FURTHER RESOLVED that the office of the state
14 engineer and the administrative office of the courts report
15 their progress to the appropriate committee of the legislature
16 by December 1, 2008; and

17 BE IT FURTHER RESOLVED that copies of this memorial be
18 transmitted to the state engineer and the chief justice of the
19 state supreme court.

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SENATE BILL

48TH LEGISLATURE - STATE OF NEW MEXICO - SECOND SESSION, 2008

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 2009 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

48TH LEGISLATURE - STATE OF NEW MEXICO - SECOND SESSION, 2008

INTRODUCED BY

FOR THE WATER AND NATURAL RESOURCES COMMITTEE

AN ACT

RELATING TO WATER; AMENDING AND ENACTING SECTIONS OF CHAPTER
72, ARTICLE 1 NMSA 1978 TO PROVIDE FOR AN ALTERNATIVE METHOD OF
ACQUIRING WATER RIGHTS TO SATISFY THE PECOS RIVER SETTLEMENT;
DECLARING AN EMERGENCY.

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

Section 1. A new section of Chapter 72, Article 1 NMSA
1978 is enacted to read:

"[NEW MATERIAL] PECOS RIVER--PURCHASE OF ADDITIONAL WATER
RIGHTS.--

A. In addition to the land with appurtenant water
rights or rights to the delivery of water acquired pursuant to
the provisions of Section 72-1-2.4 NMSA 1978, the interstate
stream commission may expend funds for the purchase of water
rights or rights to the delivery of water without acquiring the

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1 surface of the land to which the water rights or rights to the
2 delivery of water are appurtenant. No such expenditure shall
3 be made unless the commission has entered into contracts with
4 the governing bodies of the Carlsbad irrigation district, the
5 Pecos valley artesian conservancy district and the Fort Sumner
6 irrigation district that specify the actions the parties agree
7 will be taken or avoided to ensure that the expenditures will
8 be effective toward permanent compliance with New Mexico's
9 obligations under the Pecos River Compact pursuant to Section
10 72-15-19 NMSA 1978 and the amended decree.

11 B. Expenditures for the purchase of water rights or
12 rights to the delivery of water pursuant to this section shall
13 be made only from willing sellers in accordance with the
14 following criteria:

15 (1) the water rights or rights to the delivery
16 of water are located within the Carlsbad irrigation district,
17 the Roswell artesian basin, the Pecos valley artesian
18 conservancy district or between the Acme gauge to and including
19 the Fort Sumner irrigation district;

20 (2) the transactions through which the
21 commission purchases the water rights or rights to the delivery
22 of water are conducted in compliance with procedures set forth
23 in Subsections F and G of Section 72-1-2.4 NMSA 1978, except
24 that the resulting contracts shall not require the commission
25 to purchase the land to which the water rights or rights to the

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1 delivery of water are appurtenant; and

2 (3) the purchase of water rights or rights to
3 the delivery of water authorized by this section and the
4 subsequent use of the land to which the rights are appurtenant
5 comply with the provisions of Section 5D(1) and (2) of the
6 settlement agreement dated March 25, 2003 entered in *State v.*
7 *Lewis*; provided that the commission shall not be responsible
8 for the establishment of cover vegetation or the ongoing
9 maintenance of the land.

10 C. Water rights or rights to the delivery of water
11 purchased by the commission pursuant to this section shall be
12 included in the calculation of the ratio mandated by Section
13 72-1-2.4 NMSA 1978.

14 D. If the interstate stream commission determines
15 that ownership of all or any part of the surface of land
16 acquired by the commission pursuant to Section 72-1-2.4 NMSA
17 1978 is not necessary or desirable, the commission may offer
18 the land for sale. The land may be offered for sale by sending
19 a written offer to sell, by certified mail, to the party from
20 whom the commission purchased the land at the party's last
21 known address. The offer shall remain open for at least sixty
22 days from the date of mailing. The offer shall include a
23 notice that, if the offer is not accepted by the prior owner
24 within the time stated pursuant to this section, the offer will
25 be deemed rejected and automatically withdrawn and the land may

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1 be made available for purchase by third parties in accordance
2 with state law. The revenue from the sale shall be deposited
3 into the Pecos river basin land management fund.

4 E. If the interstate stream commission determines
5 that the total water rights and the rights to the delivery of
6 water purchased pursuant to Chapter 72, Article 1 NMSA 1978 are
7 in excess of those rights permanently needed for New Mexico's
8 obligations under the Pecos River Compact, the commission shall
9 offer the excess water rights for sale in the manner set forth
10 in Section 72-1-2.4 NMSA 1978."

11 Section 2. Section 72-1-2.5 NMSA 1978 (being Laws 2006,
12 Chapter 77, Section 1) is amended to read:

13 "72-1-2.5. PECOS RIVER BASIN LAND MANAGEMENT FUND.--The
14 "Pecos river basin land management fund" is created in the
15 state treasury. The fund shall consist of appropriations,
16 grants, donations or bequests to the fund, [~~all revenues~~]
17 income from land and water rights purchased pursuant to
18 [~~Section 72-1-2.4 NMSA 1978~~] Chapter 72, Article 1 NMSA 1978,
19 revenue from land sold pursuant to Chapter 72, Article 1 NMSA
20 1978 and income from investment of the fund or money otherwise
21 accruing to the fund. Money in the fund shall be invested
22 pursuant to Chapter 6, Article 10 NMSA 1978. The interstate
23 stream commission shall adopt rules for managing the land, for
24 depositing revenues from the land and to administer the fund,
25 and money in the fund is appropriated to the commission to

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1 manage the land purchases pursuant to Section 72-1-2.4 NMSA
2 1978 and to manage augmentation well fields in the lower Pecos
3 river basin. Money in the fund shall not revert to any other
4 fund at the end of a fiscal year. Money in the fund shall be
5 disbursed on warrants signed by the secretary of finance and
6 administration pursuant to vouchers signed by the director of
7 the interstate stream commission or the director's authorized
8 representative."

9 Section 3. EMERGENCY.--It is necessary for the public
10 peace, health and safety that this act take effect immediately.

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SENATE BILL

48TH LEGISLATURE - STATE OF NEW MEXICO - SECOND SESSION, 2008

INTRODUCED BY

FOR THE WATER AND NATURAL RESOURCES COMMITTEE

AN ACT

MAKING AN APPROPRIATION TO THE OFFICE OF THE STATE ENGINEER FOR
PHASE 2 DEMONSTRATION OF A WIRELESS SOIL SENSING SYSTEM.

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

Section 1. APPROPRIATION.--Five hundred thousand dollars
(\$500,000) is appropriated from the general fund to the office
of the state engineer for expenditure in fiscal year 2009 to
conduct the phase 2 demonstration of a wireless soil sensing
system on irrigated cropland. Any unexpended or unencumbered
balance remaining at the end of fiscal year 2009 shall revert
to the general fund.

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HOUSE BILL

48TH LEGISLATURE - STATE OF NEW MEXICO - SECOND SESSION, 2008

INTRODUCED BY

FOR THE WATER AND NATURAL RESOURCES COMMITTEE

AN ACT

RELATING TO WATER; AMENDING A SECTION OF THE WATER PROJECT
FINANCE ACT TO PROVIDE FOR A REPRESENTATIVE OF MUTUAL DOMESTIC
WATER CONSUMERS ASSOCIATIONS ON THE WATER TRUST BOARD.

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

Section 1. Section 72-4A-4 NMSA 1978 (being Laws 2001,
Chapter 164, Section 4, as amended) is amended to read:

"72-4A-4. WATER TRUST BOARD CREATED.--

A. The "water trust board" is created. The board
is composed of the following [~~sixteen~~] seventeen members:

(1) the state engineer or the state engineer's
designee;

(2) the secretary of finance and
administration or the secretary's designee;

(3) the chief executive [~~director~~] officer of

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1 the New Mexico finance authority or the [~~executive director's~~
2 officer's designee;

3 (4) the secretary of environment or the
4 secretary's designee;

5 (5) the secretary of energy, minerals and
6 natural resources or the secretary's designee;

7 (6) the director of the department of game and
8 fish or the director's designee;

9 (7) the director of the New Mexico department
10 of agriculture or the director's designee;

11 (8) the executive director of the New Mexico
12 municipal league or the executive director's designee;

13 (9) the executive director of the New Mexico
14 association of counties or the executive director's designee;

15 (10) [~~five~~] six public members appointed by
16 the governor and confirmed by the senate and who represent:

17 (a) the environmental community;

18 (b) an irrigation or conservancy
19 district that uses surface water;

20 (c) an irrigation or conservancy
21 district that uses ground water;

22 (d) the New Mexico acequia [~~water users;~~
23 ~~and~~] association;

24 (e) soil and water conservation
25 districts; and

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1 receive no other compensation, perquisite or allowance.

2 E. Public members of the board are appointed public
3 officials of the state while carrying out their duties and
4 activities under the Water Project Finance Act."

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HOUSE BILL

48TH LEGISLATURE - STATE OF NEW MEXICO - SECOND SESSION, 2008

INTRODUCED BY

FOR THE WATER AND NATURAL RESOURCES COMMITTEE

AN ACT

MAKING AN APPROPRIATION TO THE NEW MEXICO INSTITUTE OF MINING
AND TECHNOLOGY FOR THE DECISION-MAKERS FIELD CONFERENCES.

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

Section 1. APPROPRIATION.--Seventy-five thousand dollars
(\$75,000) is appropriated from the general fund to the board of
regents of New Mexico institute of mining and technology for
expenditure in fiscal year 2009 and subsequent fiscal years for
the bureau of geology and mineral resources to conduct the
decision-makers field conferences. 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

48TH LEGISLATURE - STATE OF NEW MEXICO - SECOND SESSION, 2008

INTRODUCED BY

FOR THE WATER AND NATURAL RESOURCES COMMITTEE

AN ACT

MAKING AN APPROPRIATION TO THE UNIVERSITY OF NEW MEXICO TO
INCREASE THE OPERATIONAL BUDGET FOR THE UTTON TRANSBOUNDARY
RESOURCES CENTER.

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

Section 1. APPROPRIATION.--Seventy-five thousand dollars
(\$75,000) is appropriated from the general fund to the board of
regents of the university of New Mexico for expenditure in
fiscal year 2009 to increase the operational budget for the
Utton transboundary resources center at the school of law. Any
unexpended or unencumbered balance remaining at the end of
fiscal year 2009 shall revert to the general fund.

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