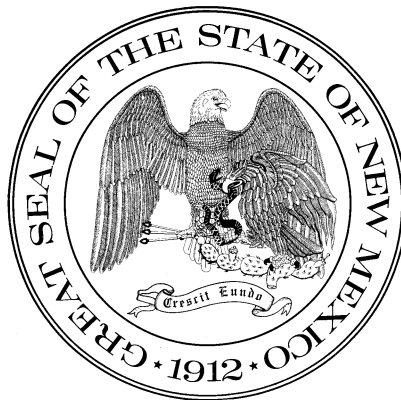


WATER AND NATURAL RESOURCES COMMITTEE

2012 INTERIM
FINAL REPORT
to the
FIFTIETH LEGISLATURE
SECOND SESSION



New Mexico Legislative Council Service
Santa Fe, New Mexico
December 2012

WATER
AND
NATURAL RESOURCES
COMMITTEE

2012
REPORT

Santa Fe, New Mexico
December 2012

2012 LEGISLATIVE INTERIM WATER AND NATURAL RESOURCES COMMITTEE SUMMARY OF WORK

The committee scheduled five meetings during the 2012 interim that were held in Las Cruces, Truth or Consequences, Ruidoso, Albuquerque and Santa Fe.

Continued drought and major wildfires again dominated the news in 2012. Through November 2012, the average precipitation for New Mexico was near the record lowest value, ranking as the second driest since 1895, as severe to exceptional drought continued across New Mexico, and the average temperature for the state for the year was the highest on record. It was also the second consecutive year during which record-breaking wildfires burned across the state. The lightning-sparked Whitewater-Baldy Complex Fire in the Gila Wilderness burned more than 297,845 acres, which surpassed the area burned by the Las Conchas Fire of 2011, making it the largest wildfire in New Mexico state history. The Little Bear Fire was also started by a lightning strike; it burned 44,330 acres and 254 buildings in Lincoln County after quickly growing out of control due to dry, windy conditions. The city of Ruidoso and the surrounding area will need more than \$14 million in the coming years to address the effects of that fire on their drinking water supplies alone.

At the committee's joint meeting in August with the Courts, Corrections and Justice Committee, the committees reviewed several legal issues of concern to both committees, including the state's suit against the federal Bureau of Reclamation on its administration of Rio Grande Project water, implementation of the Pecos River Settlement, the status of ongoing adjudications and the need for spaceport liability legislation.

Other issues covered during the interim included a final decision in the *Tri-State Generation and Transmission Assn., Inc. v. D'Antonio* case, in which the New Mexico Supreme Court upheld the state engineer's active water resource management rules and authority to administer water rights accordingly.

The committee endorsed three pieces of legislation this interim: a bill that changes the application procedures for certain replacement wells, a memorial urging Congress to reauthorize the Rio Grande environmental management program and an appropriation to fund farmers' markets across the state.

Total expenditures for voting members during the interim were \$32,336, and expenditures for advisory members totaled \$15,526.

**2012 APPROVED
WORK PLAN AND MEETING SCHEDULE
for the
WATER AND NATURAL RESOURCES COMMITTEE**

Members

Rep. Joseph Cervantes, Chair
Sen. Phil A. Griego, Vice Chair
Rep. Paul C. Bandy
Rep. Ray Begaye
Rep. Brian F. Egolf, Jr.
Sen. Mary Jane M. Garcia
Rep. Thomas A. Garcia
Rep. William "Bill" J. Gray
Sen. Clinton D. Harden, Jr.
Rep. Dona G. Irwin

Rep. Larry A. Larrañaga
Sen. George K. Munoz
Sen. Steven P. Neville
Rep. Andy Nuñez
Sen. Gerald Ortiz y Pino
Sen. Mary Kay Papen
Sen. Sander Rue
Rep. Mimi Stewart
Rep. James R.J. Strickler
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. Dede Feldman
Sen. Timothy Z. Jennings
Rep. Ben Lujan

Rep. James Roger Madalena
Rep. Rodolpho "Rudy" S. Martinez
Sen. Cisco McSorley
Rep. Bill B. O'Neill
Sen. Nancy Rodriguez
Sen. John C. Ryan
Rep. Henry Kiki Saavedra
Sen. Peter Wirth

Work Plan

The Water and Natural Resources Committee was created by the New Mexico Legislative Council on May 9, 2012. The committee proposes to focus on the following topics.

1. Water management, adjudication, research, litigation and projects, which may include testimony on the following agenda items:
 - a. reports required by statute from the state engineer and the Interstate Stream Commission;
 - b. Indian water rights settlements — update on status and continued need for state cost-share funding through the Indian Water Rights Settlement Fund;
 - c. update on the status of the revised biological assessment for the middle Rio Grande and the Middle Rio Grande Collaborative;
 - d. Arizona Water Settlements Act of 2004 implementation (Gila settlement);
 - e. dam safety and Watershed District Act issues;

- f. geothermal legislation implementation;
 - g. state water plan update and New Mexico First water policy recommendations;
 - h. adjudications status report;
 - i. Joe M Stell ombudsman program update;
 - j. major litigation and appeals update;
 - k. update on lower Rio Grande — 2008 Rio Grande Project Operating Agreement litigation;
 - l. water and aquifer contamination issues in Albuquerque;
 - m. Healthy Rivers New Mexico program report;
 - n. domestic wells and development;
 - o. environmental water transaction program with irrigation districts;
 - p. status of the San Agustin Basin water rights application; and
 - q. New Mexico-Texas groundwater issues in Jal and the Ogallala aquifer.
2. Agriculture, forest, land use and game and fish issues, including:
- a. forest management, fires and related issues;
 - b. New Mexico State University's Agricultural Experiment Station and Cooperative Extension Service;
 - c. fencing and railroads — cattlegrowers' concerns;
 - d. drought response issues;
 - e. industrial hemp production;
 - f. New Mexico-grown produce nutrition program; and
 - g. HJR 10 (2011) report on wildlife safety zones.
3. Other environmental and natural resource issues.

**Water and Natural Resources Committee
2012 Approved Meeting Schedule**

<u>Date</u>	<u>Location</u>
June 26	Santa Fe
July 30-31	Las Cruces
Aug. 27-28	Truth or Consequences (joint meeting with CCJ)
Oct. 15-16	Ruidoso
Nov. 8-9	Albuquerque/Santa Fe

AGENDAS

**TENTATIVE AGENDA
for the
FIRST MEETING IN 2012
of the
WATER AND NATURAL RESOURCES COMMITTEE**

**June 26, 2012
Room 307, State Capitol
Santa Fe**

Tuesday, June 26

- 10:00 a.m. **Call to Order**
—Representative Joseph Cervantes, Chair
- 10:05 a.m. **Status Reports — Office of the State Engineer and Interstate Stream
Commission**
—Scott Verhines, State Engineer
—Estevan Lopez, Director, Interstate Stream Commission
- 11:30 a.m. **2011 Interim Work Plan, Itinerary and Meeting Schedule**
—Jon Boller, Staff Attorney, Legislative Council Service
- 1:00 p.m. **Adjourn**

Revised: July 26, 2012

**TENTATIVE AGENDA
for the
SECOND MEETING IN 2012
of the
WATER AND NATURAL RESOURCES COMMITTEE**

**July 30-31, 2012
Barbara Hubbard Room, Pan American Center
New Mexico State University
Las Cruces**

Monday, July 30

- 9:00 a.m. **Call to Order**
—Representative Joseph Cervantes, Chair
- 9:05 a.m. **Welcome**
—Mike Cheney, New Mexico State University Board of Regents
- 9:30 a.m. **Arizona Water Settlements Act**
—Heather Balas, Executive Director, New Mexico First
—Craig Roepke, Interstate Stream Commission
- 10:30 a.m. **State and Regional Water Plans**
—Heather Balas, Executive Director, New Mexico First
—Michael Benson, Board Member, New Mexico Water Dialogue
- 11:30 a.m. **Water Resources Research Institute Current Projects (Regional
Water Plans, Hydraulic Fracturing, Watershed Management)**
—Sam Fernald, Director, Water Resources Research Institute
- 12:00 noon **Lunch**
- 1:30 p.m. **Federal Claims on State Ground Water Resources**
—Frank Reckard, Office of the State Engineer
—Michael J. Van Zandt, Hanson Bridgett LLP
—Jay Stein, Stein and Brockmann, P.A.
—Steve Hernandez, Steven L. Hernandez, P.C.
—Bureau of Reclamation Representative (pending)
- 3:00 p.m. **Dam Safety and Proposed Changes to the Watershed District Act**
—Debbie Hughes, New Mexico Association of Soil and Water
Conservation Districts

4:00 p.m. **Drought and Climate Update**
—Dave DuBois, New Mexico State Climatologist

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

Tuesday, July 31

9:00 a.m. **New Mexico Extension Services and Experiment Stations**
—Tracy Drummond, Catron County Extension Agent
—Sam Smallidge, Range Improvement Task Force
—Jerry Hawkes, Extension Animal and Range Science
—Bruce Hinrichs, Associate Director, Cooperative Extension Service
—Larry Dominguez, Division Director, New Mexico Department of
Agriculture

10:00 a.m. **Cattle Growers' Concerns About Railroad Fencing**
—Caren Cowan, Executive Director, New Mexico Cattle Growers'
Association
—Roberto Munguia, Burlington Northern Santa Fe Railway

11:00 a.m. **Weather Modification and Drought Relief**
—George Bomar, Meteorologist and Weather Modification Program
Specialist

12:00 noon **Adjourn**

Revised: August 22, 2012

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

**August 27-28, 2012
Ralph Edwards Auditorium
400 West Fourth Street
Truth or Consequences**

Monday, August 27

- 9:30 a.m. **Call to Order**
—Representative Joseph Cervantes, Chair, Water and Natural Resources
Committee
—Senator Peter Wirth and Representative Al Park, Co-Chairs, Courts,
Corrections and Justice Committee
- 9:35 a.m. **2008 Compromise and Settlement Agreement Between Elephant Butte
Irrigation District and El Paso County Water and Improvement
District Number 1**
—Steve Farris/Sarah Bond, Attorney General's Office
—Steve Hernandez and Dr. Phil King, Elephant Butte Irrigation District
—Chuck DuMars, Middle Rio Grande Conservancy District (Invited)
- 11:30 a.m. **Truth or Consequences Welcome**
—John Mulcahy, Mayor, Truth or Consequences
- 12:00 noon **Working Lunch**

Pecos River Settlement Lessons
—Aron Balok, Pecos Valley Artesian Conservancy District (PVACD)
—Bill Netherlin, PVACD Board and Local Farmer
—Dudley Jones, Manager, Carlsbad Irrigation District
—Greg Lewis, Interstate Stream Commission
- 2:30 p.m. **Water Rights Adjudication Process and Suggestions**
—Tessa Davidson (Tentative)
—Judge Jerald A. Valentine
—Celina Jones, Administrative Office of the Courts
—Scott A. Verhines, State Engineer

4:00 p.m.

Spaceport Liability Issues (Bill Draft #3)

—Christine Anderson, Executive Director, Spaceport Authority

—Robert Desiderio, Sanchez, Mowrer & Desiderio PC, Counsel for
Virgin Galactic

—David Jaramillo, Gaddy Jaramillo Touchet, New Mexico Trial Lawyers
Association

5:00 p.m.

Recess

Tuesday, August 28

9:00 a.m.

Spaceport America Briefing

—Christine Anderson, Executive Director, Spaceport Authority

9:30 a.m.

Travel to and Tour of Spaceport America

Adjourn

Revised: October 2, 2012

**TENTATIVE AGENDA
for the
FOURTH MEETING IN 2012
of the
WATER AND NATURAL RESOURCES COMMITTEE**

**October 15-16, 2012
Ruidoso Convention Center
Ruidoso**

Monday, October 15

- 9:00 a.m. **Call to Order**
—Senate Phil A. Griego, Vice Chair
- 9:05 a.m. **Welcome and Introduction**
- 9:35 a.m. **Potable Water for Small and Rural Communities**
—Kyle Lee, MIOX Corporation
—Matthew Holmes, New Mexico Rural Water Association
- 10:30 a.m. **Implementation of Changes to the Geothermal Resources
Conservation Act**
—Nicholas Goodman, Chief Executive Officer, Cyrq Energy, Inc.
—Chuck Smiley, Lightning Dock Site Manager, Cyrq Energy, Inc.
- 11:30 a.m. **San Agustin Basin Ground Water Appropriation Application**
—Eileen Dodds, Lynn Kennedy and Anita Hand, Protestants
—Bruce Fredericks, New Mexico Environmental Law Center, Attorney
for Protestants
—Joe Thompson, Consultant, Agustin Plains Ranch
- 12:15 p.m. **Lunch**
- 1:30 p.m. **Report on Local Effects of the Little Bear Fire**
—Debbie Lee, Ruidoso Village Manager
—Nita Taylor, County Manager, Lincoln County
—Mark Doth, Lincoln County Commissioner
- 2:30 p.m. **Wildfire Mitigation and Forest and Watershed Management**
—Tony Delfin, State Forester, Energy, Minerals and Natural Resources
Department

- Bob Leaverton, Southwestern Region Fire and Aviation Management
Director, U.S. Forest Service
- Andrew Egan, Director, New Mexico Forest and Watershed Restoration
Institute
- Brent Racher, President, New Mexico Forest Industries Association

4:00 p.m. **Public Comment**

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

Tuesday, October 16

9:00 a.m. **Report on Jal Basin Negotiations with Midland, Texas**
—Curtis Schrader, City Manager, Jal
—Senator Carroll H. Leavell
—Office of the State Engineer

10:00 a.m. **House Joint Memorial 10 Report on Wildlife Corridors**
—Coleman Burnett, Department of Transportation
—Mark Watson, Department of Game and Fish

11:00 a.m. **State Land Office Initiatives on State Land Management**
—Ray Powell, Commissioner of Public Lands

12:00 noon **Adjourn**

Revised: November 5, 2012

**TENTATIVE AGENDA
for the
FIFTH MEETING IN 2012
of the
WATER AND NATURAL RESOURCES COMMITTEE**

**November 8, 2012
Albuquerque-Bernalillo County Water Utility Authority
6000 Alexander Boulevard NE
Albuquerque**

**November 9, 2012
Room 322, State Capitol
Santa Fe**

Thursday, November 8

- 9:30 a.m. **Call to Order**
—Representative Joseph Cervantes, Chair
- 9:35 a.m. **Welcome**
—Ken Sanchez, Chair, Albuquerque-Bernalillo County Water Utility
 Authority (ABCWUA)
—Wayne Johnson, Vice Chair, ABCWUA
- 9:45 a.m. **New Mexico First/New Mexico Experimental Program to Stimulate
Competitive Research (NM EPSCoR) Report on the Las Conchas Fire**
—Mary Jo Daniel, Associate Director, NM EPSCoR
- 10:45 a.m. **Acequia Issues and HJM 10 (2012) Report**
—Paula Garcia, New Mexico Acequia Association
—Ralph Vigil, Chair, Acequia Commission
—Subhas Shah, Middle Rio Grande Conservancy District
- 11:45 a.m. **Fencing Issues on Railway Rights of Way**
—Caren Cowen, Executive Director, New Mexico Cattlegrowers'
 Association
—Railway Representatives (invited)
- 12:15 p.m. **Lunch**
- 1:15 p.m. **Rio Grande Environmental Management Program**
—Representative Mimi Stewart
—John D'Antonio, Deputy District Engineer for Project Management,
 U.S. Army Corps of Engineers

—James Hogan, Surface Water Quality Bureau, Department of Environment

2:30 p.m.

ABCWUA Overview

—Paul Robinson, Research Director, Southwest Research and Information Center

—Dave McCoy, Citizens Action New Mexico

—Leslie Weinstock and Joe Wexler, Agua es Vida Action Team

—Mark Sanchez, Executive Director, ABCWUA

3:45 p.m.

Tour of ABCWUA Surface Water Treatment Plant

—John Stomp, Chief Operating Officer, ABCWUA

5:00 p.m.

Recess

Friday, November 9

9:00 a.m.

Healthy Foods Initiative

—Pam Roy

9:30 a.m.

Right to Farm

—Senator Phil A. Griego

—T.J. Trujillo, Gallagher & Kennedy P.A.

10:00 a.m.

Report on *Tri-State Generation and Transmission Assn., Inc. v. D'Antonio*

—DL Sanders, General Counsel, Office of the State Engineer

—Reed Benson, Professor, University of New Mexico School of Law

10:30 a.m.

Review of Proposed Legislation

12:00 noon

Adjourn

MINUTES

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

**June 26, 2012
Santa Fe**

The first meeting of the Water and Natural Resources Committee (WNRC) was called to order by Representative Joseph Cervantes, chair, at 10:20 a.m. on Tuesday, June 26, 2012, in Room 322 of the State Capitol.

Present

Rep. Joseph Cervantes, Chair
Sen. Phil A. Griego, Vice Chair
Rep. Paul C. Bandy
Rep. Ray Begaye
Rep. Brian F. Egolf, Jr.
Sen. Mary Jane M. Garcia
Rep. Thomas A. Garcia
Rep. William "Bill" J. Gray
Sen. Clinton D. Harden, Jr.
Rep. Dona G. Irwin
Rep. Larry A. Larrañaga
Sen. Gerald Ortiz y Pino
Sen. Mary Kay Papen
Sen. Sander Rue
Rep. James R.J. Strickler

Absent

Sen. George K. Munoz
Sen. Steven P. Neville
Rep. Andy Nuñez
Rep. Mimi Stewart
Rep. Don L. Tripp

Advisory Members

Sen. Rod Adair
Sen. Carlos R. Cisneros
Rep. Anna M. Crook
Rep. Candy Spence Ezzell
Sen. Dede Feldman
Rep. James Roger Madalena
Rep. Rodolpho "Rudy" S. Martinez
Sen. Cisco McSorley
Rep. Bill B. O'Neill
Sen. Nancy Rodriguez
Rep. Henry Kiki Saavedra
Sen. Peter Wirth

Sen. Vernon D. Asbill
Rep. Nora Espinoza
Sen. Timothy Z. Jennings
Rep. Ben Lujan
Sen. John C. Ryan

Staff

Jon Boller, Legislative Council Service (LCS)
Gordon Meeks, LCS
Jeret Fleetwood, LCS

Guests

The guest list is in the original meeting file.

Handouts

Handouts and other written testimony can be found in the meeting file or on the New Mexico Legislature's web site.

Tuesday, June 26

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

Status Reports — Office of the State Engineer; Interstate Stream Commission

Scott Verhines, state engineer, introduced himself and members of his staff to the committee. Mr. Verhines then provided the committee with updates on a number of subjects.

Mr. Verhines began by discussing the large and severe wildfires in New Mexico's watersheds over the past two years. He explained that because upland watersheds produce much of the surface water on which New Mexico relies, large and severe wildfires in those watersheds can significantly alter the water supplies for years. Mr. Verhines also pointed out that flooding tends to occur downstream of fire burn scars, containing sometimes large quantities of ash and debris, particularly as monsoon weather patterns set in.

John Longworth of the Office of the State Engineer (OSE) provided the committee with an update on New Mexico's drought status and weather outlook. He explained that New Mexico's statewide precipitation from January 2012 to May 2012 was about 56 percent of normal and significantly less in some areas. However, Mr. Longworth noted that while precipitation totals did represent some improvement over the same period in 2011, temperatures for New Mexico and the entire region were also much higher than normal from January 2012 through May 2012. Mr. Longworth went on to summarize some of the 2012 precipitation deficits in various New Mexico locales. He also provided the committee with drought information for the United States, pointing out that the Southwest is experiencing moderate to extreme drought. Mr. Longworth also noted that New Mexico is expected to show at least some improvement through the next several months.

Estevan Lopez, director of the Interstate Stream Commission (ISC), provided the committee with an update on the state's response to fire and flooding issues, particularly regarding the Whitewater Baldy Fire. He explained that maps had been developed indicating the location of

public water suppliers and wells likely to be impacted by flooding from the fire's burn scar. Mr. Lopez also noted that OSE personnel had performed initial assessments of mitigation options in the Glenwood area and that ISC staff is working with the area's burn area emergency rehabilitation team.

Mr. Lopez went on to discuss the status of the various Indian water rights settlements in the state. He noted that construction has begun on the Navajo settlement project and that the revised Taos and Aamodt settlements are under final review by the parties. The state's cost-share obligation for the three federally authorized settlements is approximately \$130 million, he said, which is being paid through the Indian Water Rights Settlement Fund. Since 2005, \$25 million has been appropriated to the fund, he explained, and the OSE and the ISC recommend that \$15 million per year be allocated to the fund over the next few years. Mr. Lopez also discussed the annual state tribal summit, which took place on June 8, 2012. He indicated that while Governor Martinez has expressed support for full funding of the state's cost-share obligation in the pending settlements, counsel for the state explained that in light of the changes in the federal approach to settlement funding, New Mexico does not support future negotiations for Indian water rights settlements that are centered around a significant infrastructure component, unless the federal infrastructure component will be funded by the United States as it has in the past.

Mr. Lopez outlined a water issue in the Jal Basin, explaining that Midland, Texas, purchased the T-Bar Ranch on the Texas-New Mexico border in the 1960s as a potential well field. He noted that, in response to the severity of recent drought conditions that had virtually dried up the three reservoirs the city uses, Midland has initiated plans to develop a well field and pipeline on the T-Bar Ranch. Mr. Lopez explained that the well field would be located in the same small aquifer that serves as Jal's sole water supply. He went on to note that officials from the two cities have agreed to work together to address their water needs.

Mr. Lopez provided the committee with testimony regarding the Ute Pipeline Project, indicating that while work is scheduled to begin on the intake structure this summer, the Village of Logan has filed a lawsuit requesting that all work on the project stop until National Environmental Policy Act of 1969 work occurs. He noted that while the ISC is not a party to the suit, it is monitoring the suit closely.

Regarding the Arizona Water Rights Settlements Act, Mr. Lopez said that after nine months of evaluating the 41 proposals submitted, 16 were chosen for further study and assessment.

Several issues were raised by Mr. Lopez in reference to litigation over the 2008 Rio Grande Project Operating Agreement between the United States Bureau of Reclamation (Reclamation), the Elephant Butte Irrigation District (EBID) and El Paso County Water Improvement District No. 1 (EP1). He explained that approximately 170,000 acre-feet of surface water per year has been reallocated from the EBID to EP1 in full supply years, estimates of the value of which range from several hundreds of millions of dollars to \$2.5 billion. As a result of reduced allocations of surface water to the EBID, farmers are having to pump additional ground

water, which, he noted, doubly impacts the aquifer because: 1) reduced surface water is available to recharge the aquifer; and 2) increased pumping reduces the amount of ground water in the aquifer. In addition, he said, the Reclamation released 33,000 acre-feet of New Mexico's credit water to EP1 and Mexico without authorization from the state, none of which went to the EBID. Also at issue, Mr. Lopez remarked, is the Reclamation's claims to ownership of ground water under lands within the Rio Grande Project.

Mr. Lopez also touched on the following topics:

- the Western States Water Council;
- the Pecos River settlement and pumping targets for the Carlsbad Irrigation District that are not being met;
- Water Trust Board issues and projects, including reconsideration of two projects that were not initially approved; and
- appeals of water litigation decisions involving the state.

Questions and comments from the committee included:

- New Mexico's funding obligation for the Ute Pipeline Project is about 15 percent of the total project cost, or about \$75 million;
- issues regarding intervenors on the Navajo settlement lawsuit and their discovery requests for documents;
- the requirement for tribal entities to obtain a permit from the OSE to sell water rights to other entities;
- the implications of the decision in *Carangelo v. Albuquerque Bernalillo County Water Utility Authority* and whether the state has jurisdiction of San Juan/Chama water;
- how hydrologists are studying chloride levels in wells near the Pecos River to determine if a well is contaminating the artesian aquifer in the area;
- state jurisdiction regarding removal of fire-damaged trees in national forests;
- issues raised by the reluctance expressed by the state at the annual state tribal summit to commit to further Indian water rights settlements without federal commitment to fund settlement projects;
- discussions regarding watershed health and fire management at the Western States Water Council;
- ownership of water in the lower Rio Grande; and
- domestic wells in villages and towns affected by nearby developments.

2012 Interim Work Plan, Itinerary and Meeting Schedule

Staff provided the committee with a list of proposed meeting dates and locations, as well as suggested topics for a work plan.

The committee approved the following meeting dates and locations:

July 30-31	Las Cruces
August 27-28	Truth or Consequences (joint meeting with Courts, Corrections and Justice Committee)
October 15-16	Ruidoso
November 8-9	Albuquerque/Santa Fe

Representative Cervantes said he sees the committee's functions as hearing legislative proposals, with an emphasis on dialogue if there is not consensus on a particular proposal, providing information to committee members and providing outreach to communities and constituents. He also noted that he would prefer that the committee not duplicate the efforts of other interim committees during the interim.

The committee adopted the work plan without objection.

There being no further business, the committee adjourned at 12:35 p.m.

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

**July 30-31, 2012
Pan Am Center, New Mexico State University
Las Cruces**

The second meeting of the Water and Natural Resources Committee was called to order by Representative Joseph Cervantes, chair, at 9:20 a.m. on Monday, July 30, 2012, in the Barbara Hubbard Room of the Pan Am Center at New Mexico State University (NMSU) in Las Cruces.

Present

Rep. Joseph Cervantes, Chair
Rep. Paul C. Bandy
Rep. Ray Begaye
Rep. Brian F. Egolf, Jr.
Sen. Mary Jane M. Garcia
Rep. Thomas A. Garcia (July 30)
Sen. Clinton D. Harden, Jr.
Rep. Dona G. Irwin (July 30)
Rep. Larry A. Larrañaga
Rep. Andy Nuñez
Sen. Gerald Ortiz y Pino
Sen. Mary Kay Papen
Sen. Sander Rue
Rep. Mimi Stewart
Rep. James R.J. Strickler
Rep. Don L. Tripp

Advisory Members

Sen. Rod Adair (July 31)
Sen. Carlos R. Cisneros
Rep. Nora Espinoza
Rep. Candy Spence Ezzell
Rep. Rodolpho "Rudy" S. Martinez
Sen. Cisco McSorley (July 30)
Sen. Nancy Rodriguez
Sen. Peter Wirth

Absent

Sen. Phil A. Griego, Vice Chair
Rep. William "Bill" J. Gray
Sen. George K. Munoz
Sen. Steven P. Neville

Sen. Vernon D. Asbill
Rep. Anna M. Crook
Sen. Dede Feldman
Sen. Timothy Z. Jennings
Rep. Ben Lujan
Rep. James Roger Madalena
Rep. Bill B. O'Neill
Sen. John C. Ryan
Rep. Henry Kiki Saavedra

Guest Legislators

Rep. Mary Helen Garcia (July 30)

Rep. Rick Little (July 30)

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

Staff

Jon Boller, Legislative Council Service (LCS)

Jeret Fleetwood, LCS

Alexandria Tapia, LCS

Guests

The guest list is in the original meeting file.

Handouts

Handouts and other written testimony can be found in the meeting file or on the legislature's web site.

Monday, July 30

Representative Cervantes began the meeting by having members of the committee and audience introduce themselves.

Welcome

Mike Cheney, NMSU Board of Regents, welcomed the committee to Las Cruces and NMSU. He provided the committee with some background information about the university and its impact on New Mexico's economy, which he pointed out involves a significant amount of money and a large number of jobs. Mr. Cheney also provided the committee with a short video highlighting some of NMSU's programs.

On a motion made, seconded and approved, the minutes of the June 26, 2012 meeting were approved as submitted.

Arizona Water Settlements Act

Craig Roepke, Interstate Stream Commission (ISC), began by providing the committee with a brief history of the Arizona Water Settlements Act of 2004 (AWSA). He also noted that the New Mexico Unit Fund was created by the legislature, explaining that the fund exists to receive federal money disbursed to New Mexico from the settlement. Mr. Roepke went on to note that the ISC held over 200 meetings involving stakeholder groups to seek input on potential AWSA projects. He also explained that proposals were evaluated and ranked.

Heather Balas, executive director of New Mexico First, provided the committee with testimony regarding a project contracted by the ISC involving New Mexico First convening and facilitating a series of town halls offering community members the opportunity to better

understand and offer feedback on the options associated with the AWSA. She summarized the town hall process, pointing out that the meetings were designed to be deliberative, and that several cross-cutting themes emerged from them. For example, Ms. Balas explained that proposals that met the needs of multiple communities seemed to be preferred over those that served only one or two counties, and that people did not seem to agree on the "New Mexico Unit" projects, or those projects that involved major diversions of the river. She also noted that water conservation projects, while meeting some disagreement about how helpful they really are, were generally well received, as were municipal infrastructure projects. Ms. Balas also pointed out that while watershed restoration projects were met with some degree of ambivalence, the town hall meetings were held well before the catastrophic wildfire in the Gila Wilderness, and that perceptions of those kinds of projects might have shifted.

Mr. Roepke explained that the applications submitted for AWSA projects have been narrowed to 16 projects, and that those 16 projects have been further divided into five categories: municipal conservation; effluent reuse and municipal infrastructure; diversion and storage; watershed restoration; and agricultural conservation and irrigation infrastructure. However, he noted that watershed restoration projects have been put on hold in the wake of the Whitewater-Baldy fire in the Gila Wilderness, mostly because the burn area is still inaccessible. Mr. Roepke went on to note that \$9.04 million had been disbursed to the New Mexico Unit Fund, and that the ISC had developed a work plan and budget for the use of some of that money for two full-time positions to work on further assessment of the 16 projects.

Questions and comments from the committee included:

- no state or local government matching funds are required by AWSA projects, and the ISC has no plans to ask for additional state funds;
- the ISC is required to make annual reports to the legislature regarding the AWSA, but the legislature does not have any control over the ISC with regard to the AWSA;
- the first \$66 million due to New Mexico from the settlement is indexed for inflation, making the total amount more than \$66 million;
- the time frame for project approval and implementation does not allow New Mexico much leeway;
- while New Mexico is not obligated to devote additional funds to AWSA projects, there could be additional costs to the state, as the eventual user of any additional water from an AWSA project would help pay for the project;
- the basics of the New Mexico Unit Fund;
- the City of Deming has withdrawn its proposal for a diversion project;
- decisions on projects will consider population but will not be entirely based on it;
- some agricultural projects may ultimately benefit residents of communities across New Mexico;
- the legislature may be able to weigh in on the decision-making process during the 2013 legislative session; and
- the AWSA does not specify whether project water can be exported elsewhere in New Mexico.

State and Regional Water Plans

Ms. Balas provided the committee with testimony regarding New Mexico First Centennial Town Hall, held on April 22-23, 2012. She explained that the town hall yielded a number of recommendations in various areas, some of which focused on water. Ms. Balas indicated that some of the water-related recommendations made by town hall participants were to update existing state and regional water plans to develop a comprehensive, long-range, statewide water strategy for New Mexico's surface and ground water and to do a better job of integrating those plans.

Michael Benson, board member of the New Mexico Water Dialogue, added that the state needs to continue giving resources to state and regional water plans. He explained that most water users want to know how they fit into the overall puzzle, and that understanding how pieces fit together and planning accordingly leads to better decision-making.

Eileen Dodds, San Augustin Water Coalition, echoed the comments of Ms. Balas and Mr. Benson. She explained that she supports the New Mexico Water Dialogue and any requests for more resources devoted to state and regional water planning.

Leslie Kryder, Elephant Butte Irrigation District (EBID), noted that EBID farmers have been receiving less than their full supply of water and emphasized that better planning would benefit all New Mexico water users. She also indicated that she supports permanent funding for water planning.

Scott Verhines, state engineer, explained that, as he is now a member of the Water Trust Board, he has a better understanding of the need to implement water planning. He explained that such efforts are important, because they influence how state money is spent in a number of ways.

Questions and comments by the committee included:

- the importance of funding state and regional water planning;
- the possibility of changing statutes regarding water planning;
- the evolution of regional water plans and how they fit into the state plan;
- that sometimes there is a disconnect between regional plans and the state plan; and
- the fiscal year 2013 water planning budget is still being worked out.

Water Resources Research Institute Current Projects (Regional Water Plans, Hydraulic Fracturing, Watershed Management)

Sam Fernald, director of the Water Resources Research Institute (WRRI), provided the committee with testimony regarding work performed at the institute. He began by providing the committee with a brief history of the WRRI, explaining that it was federally established but is attached to a land grant college, which is similar to institutes in other states. Dr. Fernald went on to explain that the WRRI's mission is to support research to address critical water problems, and he discussed some of the institute's research accomplishments, including salinity studies, desalination research and aquifer assessments.

Dr. Fernald went on to discuss some of the WRRRI's current projects, including:

- an aquifer sustainability study in the Mesilla Basin;
- research on acequia hydrology and aquifer interaction with rivers;
- watershed management research;
- hydraulic fracturing;
- brackish aquifer assessments; and
- statewide dynamic water budgets.

Dr. Fernald identified hydraulic fracturing, brackish aquifer assessments and dynamic water budgets as critical issues and new WRRRI efforts. He also discussed some of the other current and ongoing WRRRI research projects, such as a field project that will describe how contaminants are transported in karst aquifers. Dr. Fernald also mentioned some of the recent WRRRI technical publications.

Questions and comments from the committee included:

- the lack of sufficient funding for some National Science Foundation projects and reliance upon federal money for some WRRRI projects;
- how budget reductions almost forced the WRRRI to shut down, but that NMSU has since designated the institute as one of its priorities, which should improve its funding outlook;
- the possibility of using AWSA funds to map Gila area aquifers;
- capital outlay funding cannot be used to fund the WRRRI's base budget;
- how isotopes are used to trace Pecos aquifer characteristics, such as water age and flow pattern; and
- that federal agencies often do not completely understand what kind of contaminants they place in water.

Federal Claims on State Ground Water Resources

Frank Reckard, Office of the State Engineer (OSE), provided the committee with testimony regarding a series of federal claims on ground water that challenge the primacy of the state's jurisdiction over its ground water. He gave four examples where various federal agencies are pursuing claims that will undermine New Mexico's jurisdiction over its ground water:

- in a case involving a settlement with Molycorp over a federal Superfund site, the New Mexico Department of Agriculture is making an unprecedented claim on a portion of the damages awarded to the state based on a claim of federal ownership of ground water;
- the new biological opinion issued on the middle Rio Grande involving the Rio Grande silvery minnow focuses on ground water;
- federal claims in cases involving Native American tribes and pueblos that involve ground water; and
- an adjudications case involving the lower Rio Grande Water Project in which it is asserted that ground water is part of project water.

Michael Van Zandt, Hanson Bridgett LLP, provided the committee with testimony regarding livestock owners and their rights to stock water on federal lands. He provided the committee with the following suggestions for legislation that might clarify the issue and help livestock owners secure water rights for stock tank water:

- provide statutory recognition for stock water rights as beneficial use;
- recognize pre-1907 stock water rights and provide a mechanism for furnishing proof of such rights to the OSE;
- recognize the confirmation of stock water rights on federal land based on custom and practice per the federal Mining Act of 1866;
- clarify whether constructed works are necessary to prove pre-1907 stock water rights;
- clarify if there is a forage or grazing right appurtenant to a New Mexico water right;
- clarify whether there is a right of access to water rights on federal land; and
- clarify whether ditch rights of way established under the Mining Act of 1866 on federal lands are subject to the definition of scope and the extent of easements exclusively under New Mexico law.

Mr. Van Zandt explained that livestock owners do own a water right on stock tanks on federal land. However, he noted that federal agencies are trying to assert rights on the same water, claiming the water instead for livestock or recreational use.

Jay Stein, an attorney with Stein and Brockman, P.A., also discussed the issue of federal claims on state ground water resources. He explained that his law firm represents both the City of Las Cruces and the City of Española in adjudications where federal claims to ground water are at issue.

Mr. Stein began by saying that the City of Las Cruces planned for future growth and water use by supplementing its ground water supply with more renewable surface water through an agreement with the EBID that transfers agricultural water to municipal use. However, he indicated that the operating agreement among the EBID, El Paso Number 1 and the federal Bureau of Reclamation (BOR) has created some serious questions about the availability of surface water to the city and the sustainability of existing ground water resources upon which the city relies for its drinking water. Mr. Stein explained that the operating agreement has created additional stress on the city's water supply by encouraging area irrigators to drill wells to regain surface water lost to El Paso Number 1. He also noted that the exact effects of the operating agreement are still not clear, and that the City of Las Cruces has been granted intervenor status in a lawsuit brought by the attorney general in order to obtain a complete environmental impact statement. Mr. Stein noted that the BOR's claim that ground water is part of project water ignores the impact this will have on other ground water users in the basin and represents a practical obstacle to the city's ability to provide a long-term and sustainable supply of water.

Mr. Stein went on to discuss the City of Española's involvement in the stream system adjudication in northern New Mexico, *State Engineer v. Abbott*, in which the United States has made claims totaling 6,000 acre-feet of surface water on behalf of Ohkay Owingeh. However,

Mr. Stein explained that the United States' complaint also makes the assertion that when surface water is not available, it has the right to drill wells into the aquifer upon which Española depends for most of its water needs without going through the state engineer's permitting process. Moreover, he noted, there is concern that unrestricted pumping by the United States or Ohkay Owingeh could induce encroachment of contaminants into the city's wells.

Steve Hernandez, attorney for the EBID, explained that the lower Rio Grande stream adjudication has progressed to the point that the next question that must be answered is the source or sources of water for the Rio Grande Project. However, he noted that the position of state and local governments and that of the federal government are at opposite extremes, with the state holding that the federal government cannot own any ground water that is part of the Rio Grande Project, while the federal government claims it owns all hydrologically related ground water. Mr. Hernandez went on to explain that the EBID's position is that both sides miss the point in that ground water is hydrologically related to surface water, and that getting into a battle over ownership of the water before a more complete understanding of just how much water is available is a waste of time and money. Mr. Hernandez also summed up another case involving ownership of water rights on a reclamation project in the Pecos adjudication for the Carlsbad Reclamation Project, noting that Judge Byrd ruled that neither the United States nor the irrigation district owned ground water rights, but each owned an interest in the water. As such, he said, those interests could be recognized by the state in an adjudication.

Mr. Verhines noted that he serves on the Western States Water Council, which helps to inform 18 governors of western states on water issues. He explained that the council has recently identified state ownership and control of water rights as its number one issue, and that unprecedented federal claims to ground water are damaging the working relationship between the western states and federal agencies.

Questions and comments from the committee included:

- the parties will argue before the court on August 1 on this issue;
- the amount of water contained in area aquifers is still unknown, although much work has been performed to map the aquifers;
- the previous state engineer, John D'Antonio, addressed the stock water issue in the case of U.S. Forest Service claims by signing stock water licenses before he left;
- the City of Española has been aware of a contamination issue in its water for some time;
- federal courts are looking at the issue of ownership of ground water;
- the EBID's position is not the same as the federal government's position;
- these cases have broader statewide implications;
- the role of the legislature in these issues; and
- that the OSE said it would prefer to solve issues on technical merits, rather than through litigation.

Dam Safety and Proposed Changes to the Watershed District Act

Debbie Hughes, New Mexico Association of Soil and Water Conservation Districts, explained that several dams sponsored or owned by soil and water conservation districts (SWCD) are in need of maintenance or upgrades. However, Ms. Hughes noted that current law allows owners of land to petition SWCD boards to have their land removed from the watershed district, which triggers a hearing process that many districts cannot afford. In addition, she explained, if landowners are allowed to withdraw from watershed districts, there will be no ability to levy taxes for maintenance and operation of watershed dams.

Ms. Hughes noted that current law also allows for 25 landowners to petition to request that the existence of the watershed district be discontinued. She explained that even if the watershed district ceases to exist, dams built to protect life and property will still be there and require maintenance. Ms. Hughes suggested that this issue can be solved by simply repealing Sections 73-20-22 and 73-20-23 NMSA 1978, the sections of the Watershed District Act that address detaching land from districts and discontinuance of districts.

Mr. Verhines noted that the OSE Dam Safety Bureau chief is retiring and that a replacement is being sought. He also noted that risk of failure and hazard classifications for dams are constantly changing. Currently, he said, 10 out of 300 dams statewide are the responsibility of the state.

Questions and comments by the committee included:

- plans do not currently exist to build additional dams;
- many current dams are still valuable but need to be improved to be considered safe;
- earthen dam maintenance includes pest control and brush control;
- whether a mechanism exists for detaching land from the Albuquerque Metropolitan Arroyo Flood Control Authority;
- watershed districts can tax up to a five-mill levy;
- taxes collected by watershed districts are used to conduct maintenance and to match federal dollars for larger projects;
- SWCDs can also tax, up to a one-mill levy;
- that no one knows who built many of the small dams across the state, and a lack of data about their construction often causes a dam to be listed as in poor condition; and
- jurisdictional versus vested interests in dams and dam safety.

Drought and Climate Update

Dave Dubois, New Mexico state climatologist, briefed the committee on drought conditions in the state and climate conditions in general. He began by explaining that the first six months of 2012 were among the driest on record, with June 2012 being the seventh-driest month ever recorded for the state. Dr. Dubois went on to note that the temperature rankings for 2012 were also above average, with the past 12 and 24 months being the warmest on record. He indicated that while almost 24 percent of the state is currently classified as being in extreme drought, it shows improvement over this time last year, when 79 percent of the state was in

extreme drought, pointing out that precipitation totals have improved somewhat for most of the state. Dr. Dubois then noted that the precipitation outlook for the next several months is improved for the western half of the state, and that central Pacific Ocean surface temperatures are showing likely development of an El Niño weather pattern later this year.

Dr. Dubois discussed the NMSU climatology program, pointing out that 47 states currently have state climatologists. He explained that the climatology program was created in 1979 within the New Mexico Department of Agriculture, but was transferred to the Agricultural Experiment Station at NMSU in 1997. Dr. Dubois also noted that the NMSU Board of Regents appoints the state climatologist, but that the program is not permanently funded. Dr. Dubois said that the position's duties include:

- assessing climate effects on the natural environment;
- coordinating programs to improve understanding of climate processes;
- developing methods for state agencies and schools to participate in the program;
- disseminating climate data; and
- consulting and coordinating with the federal government and other states.

Dr. Dubois also discussed some of the other specific duties of his position, such as serving as the director of the New Mexico Climate Center and as state coordinator for the Community Collaborative Rain, Hail and Snow Network (CoCoRaHS), which enlists residents to help monitor precipitation data across the state.

Questions and comments by the committee included:

- budget needs for the program are about \$150,000 per year;
- the program is not currently identified as one of NMSU's funding priorities;
- El Niño and La Niña weather patterns are cued by Pacific Ocean temperatures, with cool ocean temperatures causing La Niña, which features warmer and drier weather, and warmer ocean temperatures translating to cooler and wetter patterns;
- climate change seems to have differing effects by region on El Niño and La Niña patterns; and
- CoCoRaHS participation is about 300 individuals in New Mexico.

The committee recessed at 5:25 p.m.

Tuesday, July 31

New Mexico Extension Services and Experiment Station

Several representatives of various county extension programs provided the committee with testimony regarding the various projects and services currently under way or available.

Bruce Hinrichs, associate director of the Cooperative Extension Service, NMSU, began by explaining that cooperative extension services are available to help residents in all 33 New Mexico counties. He also pointed out that NMSU's agriculture experiment stations conduct

research that can be converted into useable data.

Tracy Drummond, Catron County extension agent, discussed the catastrophic wildfires that occurred in southwestern New Mexico. He explained that two such fires had occurred in the region over the past two years: the Wallow fire in 2011 and the Whitewater-Baldy fire in 2012. Mr. Drummond said that his office acts as a liaison between U.S. Forest Service firefighters and other groups involved in the fire response to facilitate the movement of people and pets and to direct those people to designated evacuee areas. He pointed out that one hurdle in the coordination of resources is the Constitution of New Mexico's anti-donation clause, which prohibits the purchase of resources such as hay to feed animals that have been evacuated to shelters during events like large wildfires. However, he did note that in such situations, he remains in daily contact with state government officials who can deploy resources through the Cooperative Extension Service.

Sam Smallidge, Range Improvement Task Force, discussed the damage caused by recent catastrophic wildfires to local ecosystems. He explained that the loss of land, life and property during the Cerro Grande fire led NMSU to begin fire research and education, particularly with regard to how fires behave in thinned and treated areas of forest and untreated areas. He explained that researchers had visited all of the national forests in New Mexico and Arizona for data and concluded that active forest management tends to reduce the damage caused by catastrophic wildfires. As a result, Mr. Smallidge indicated that a fire extension program has been developed for resource managers, which is being disseminated at conferences, demonstrations and one-on-one meetings.

Larry Dominguez, division director for the New Mexico Department of Agriculture, also discussed research conducted on wildfires. He explained that while comparisons offered somewhat anecdotal evidence, data suggested that when surface and aerial fuel loads were diminished, fire severity tended to diminish. Mr. Dominguez went on to note that data seemed to indicate that treatment by mechanical thinning followed by prescribed fires showed the greatest impact toward mitigating fire severity.

Mr. Hinrichs also provided the committee with an update regarding the budget for programs associated with NMSU College of Agriculture programs. He explained that state funding had been reduced by 21.8 percent, causing some organizations to downsize. Mr. Hinrichs indicated that while some funding may be restored, continued state support would be necessary in order to avoid changes to the structure of available programs.

Questions and comments from the committee included:

- techniques that seem to work, and others that do not, in keeping forests healthy and mitigating wildfire damage;
- the disappearance of timber harvesting mills in small New Mexican communities, which seemed to encourage forest thinning;
- potential development of local forest product industries;

- whether the U.S. Forest Service allowed some fires to burn too long, allowing them to grow out-of-control and destroy significant amounts of private property;
- the responsibility of local governments to manage nearby forests before fires become catastrophic;
- restrictions on dealing with fires deep in wilderness areas, where deploying resources is costly and potentially dangerous;
- the use of fire by many agencies as a forest management tool;
- the tendency of fires to cycle between low and high intensity over the course of two to three years;
- problems faced over environmental regulations as a hurdle to developing small mills to help thin forests;
- livestock issues associated with land and fire management;
- that federal lands account for about 35 percent of the land in New Mexico; and
- the process for fire management sometimes depends on ownership of the land.

Cattle Growers' Concerns About Railroad Fencing

Caren Cowan, executive director of the New Mexico Cattle Growers' Association, expressed the concerns of livestock owners over fencing issues with railroads and the responsibility of railroad operators to repair certain fences. Ms. Cowan explained that state statute identifies railroad companies as the responsible party for erecting and maintaining fences along the paths of railroad tracks. However, Ms. Cowan noted that the law is not being enforced and does not carry any penalties. She also said that numerous landowners have encountered reluctance or refusal by railroad companies to erect or adequately maintain such fences, resulting in collisions between livestock and trains that result in significant losses for livestock owners. Ms. Cowan provided the committee with pictures of collisions between trains and livestock. She also provided examples of communication between livestock owners and Burlington Northern Santa Fe Railway (BNSF) that she said showed that the railroad seemed unconcerned with legitimate complaints.

Several other landowners provided similar testimony and provided the committee with copies of emails exchanged between themselves and BNSF representatives.

Roberto Munguia, BNSF, explained to the committee that the BNSF has been working diligently to address the concerns of some of the landowners identified earlier. He acknowledged that while the company's first priority is maintenance of the railroad track itself, it could do a better job of erecting and maintaining fences. He explained that communication remains open between the BNSF and parties filing claims regarding loss of livestock and railroad fencing. Mr. Munguia also emphasized that the BNSF is working to address all of the identified fencing issues.

Questions and comments from the committee included:

- that the BNSF and the other railroads operating in New Mexico need to follow the law regarding fencing;

- the possibility of the committee endorsing a bill that carries penalties for railroads not erecting or maintaining fences;
- that livestock owners feel that settlements with the railroads often do not provide fair compensation for losses;
- in the event of a collision, livestock is inspected to tie it to landowners;
- railroads will compensate tribal landowners for losses, too;
- the BNSF has told some claimants that they are in the railroad business, not the fence business;
- the possibility of landowners repairing fences and taking the railroad to court for the costs; and
- the BNSF worked to repair fences and install gates on a ranch in the Gallup area, but fences are repeatedly cut by people using the area for parties.

Weather Modification and Drought Relief

George Bomar, meteorologist and weather modification program specialist, provided the committee with testimony regarding weather modification efforts in eastern New Mexico. He explained that a partnership between eastern New Mexico and western Texas had sponsored a five-year cloud seeding project, beginning in 1997, that yielded promising results. Mr. Bomar went on to explain that more recent efforts, both in New Mexico and in neighboring states, had yielded even more encouraging results. However, he pointed out that cloud seeding is not effective drought relief, particularly because there tend to be fewer clouds during droughts.

Questions and comments by the committee included:

- that silver iodide is used to seed clouds, and it only minimally raises the silver levels in soil;
- downwind areas of seeded clouds show positive results for about 100 miles;
- weather patterns in New Mexico tend to flow from the southwest to the northeast, while Texas relies more on Gulf of Mexico moisture;
- that New Mexico did not match funds for a recent cloud seeding project in conjunction with a group from Plains, Texas; and
- technological advances have made predicting which clouds to seed much more reliable.

There being no further business, the committee adjourned at 12:25 p.m.

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

August 27-28, 2012
Ralph Edwards Auditorium
Truth or Consequences, NM

The third meeting of the Courts, Corrections and Justice Committee and the Water and Natural Resources Committee was called to order by Representative Joseph Cervantes on August 27, 2012 at 9:50 a.m. at the Ralph Edwards Auditorium in Truth or Consequences.

Water and Natural Resources Committee Attendance:

Present

Rep. Joseph Cervantes, Chair
Rep. Paul C. Bandy
Rep. Ray Begaye (8/27)
Rep. Brian F. Egolf, Jr.
Sen. Mary Jane M. Garcia (8/27)
Rep. Thomas A. Garcia (8/27)
Rep. William "Bill" J. Gray (8/27)
Sen. Clinton D. Harden, Jr. (8/27)
Rep. Dona G. Irwin (8/27)
Rep. Larry A. Larrañaga
Sen. George K. Munoz (8/27)
Rep. Andy Nuñez (8/27)
Sen. Gerald Ortiz y Pino
Sen. Mary Kay Papen
Sen. Sander Rue (8/27)
Rep Mimi Stewart (8/27)

Advisory Members

Sen. Rod Adair (8/27)
Sen. Carlos R. Cisneros
Rep. Nora Espinoza (8/27)
Rep. Candy Spence Ezzell (8/27)
Sen. Cisco McSorley
Rep. Bill B. O'Neill
Sen. Nancy Rodriguez
Sen. Peter Wirth

Absent

Sen. Phil A. Griego, Vice Chair
Sen. Steven P. Neville
Rep. James R.J. Strickler
Rep. Don L. Tripp

Sen. Vernon D. Asbill
Rep. Anna M. Crook
Sen. Dede Feldman
Sen. Timothy Z. Jennings
Rep. Ben Lujan
Rep. James Roger Madalena
Rep. Rodolpho "Rudy" S. Martinez
Sen. John C. Ryan
Rep. Henry Kiki Saavedra

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

Guest Legislator

Rep. Debbie A. Rodella

Staff

Jon Boller, Legislative Council Service (LCS)

Maha Khoury, LCS

Douglas Carver, LCS

Cassandra Jones, LCS

Guests

The guest list is in the meeting file.

Handouts

Handouts and other written testimony are in the meeting file.

Monday, August 27

Members of the committee introduced themselves.

2008 Compromise and Settlement Agreement Between Elephant Butte Irrigation District (EBID) and El Paso County Water and Improvement District Number 1 (EPD1)

Steve Farris and Sarah Bond, Office of the Attorney General, presented the state's rationale for challenging the Bureau of Reclamation's release of water from Elephant Butte Dam without obtaining permission from the Rio Grande Compact Commission or the state engineer. Mr. Farris began by noting that, currently, the Rio Grande below the dam is full, that 100% of that water is going to Texas and that 100% of that water is New Mexico Compact credit water that was released without the state's permission. The 2008 operating agreement between the EBID, EPD1 and the Bureau of Reclamation, he said, resulted in an allocation of only 10 inches of surface water per acre this year from Elephant Butte Dam to New Mexico farmers, while giving 30 inches per acre to El Paso farmers. Mr. Farris explained that New Mexico is suing the Bureau of Reclamation because the:

"Reclamation stole 10.9 billion gallons (33,000 acre feet) of New Mexico Compact credit water and delivered it to Texas in 2011;

Reclamation's operating agreement gives more surface water to Texas and forces New Mexico farmers to rely more heavily on groundwater;

Reclamation's operating agreement has taken up to 170,000 acre feet of water from New Mexico farmers . . .; and

Reclamation submitted a 2011 mid-year "water audit" where 65,000 acre feet of water . . . from New Mexico's savings account was relabeled as "Usable Water".

He estimated that the total economic cost to the state of losing the suit would be \$183 million per year, with a loss of 1,000 jobs. Mr. Farris said that in the Lower Rio Grande region, continuing to follow the operating agreement will result in a loss of aquifer recharge, a loss of surface water storage in Elephant Butte, the loss of a sustainable supply of water for farmers, the loss of a sustainable water supply for Las Cruces and the destruction of the aquifer that supports 200,000 people in southern New Mexico. Moreover, he noted, the agreement threatens the state's ability to store water in most of the state's northern reservoirs, which means there will be less water available for farmers and municipalities in the Middle Rio Grande region and less water to deal with endangered species in that region. Finally, he said that losing the suit would mean that the state would continue to lose control of its water to the federal government.

Steve Hernandez and Phil King, representing the EBID, explained how the EBID, the EPD1 and the Bureau of Reclamation reached an agreement on the operation of the Rio Grande Project and how the operating agreement avoided litigation that would have ended up in the U.S. Supreme Court. Mr. Hernandez said that the EPD1 complained that it was not getting its full allocation of project water due to the amount of ground water pumping occurring in New Mexico north of the Texas border. Fearing a lawsuit that would end up in the U.S. Supreme Court and the threat of having all of the EBID's ground water pumping cut off, he explained, the two irrigation districts and the bureau agreed upon a new operating agreement to address the allocation of project water between the two districts. The reduced allocation of surface water to the EBID is made up for by allowing the EBID to use ground water to make up the difference, he explained. Dr. King disputed the attorney general's assertion that the state faces jobs losses and economic damages due to the operation agreement. He noted that agricultural production was up and that drought is the key reason for the EBID's low allotments of water. The reason the EPD1 is receiving more water this year, he explained, is because it had lots of carryover water from previous years, whereas the EBID did not.

Truth or Consequences Welcome

John Mulcahy, mayor of Truth or Consequences, welcomed the committees to Ralph Edwards Auditorium and the city. Mayor Mulcahy informed the committees that the city commission had taken a bold step to preserve the city's hot springs by passing a one-year moratorium on domestic well drilling within the city. He explained that there are a lot of wells being drilled in the city that are not for drinking water, yet that water is being disposed of through the city's sewer system. Some 146 well permits have been issued in an 11-acre area, he noted. The moratorium will allow the city to study the effects of the new wells on the city's existing wells and resources and help ensure that the city can protect its resources in the future. When asked about the effect of low lake levels on the city, he replied that it is always a negative when there is low water in the reservoir. He also said that Spaceport American is a priority for the city.

Pecos River Settlement Issues

Greg Lewis, Interstate Stream Commission (ISC), gave a brief history of the Pecos River Settlement, which was entered into by the parties in 2003 (and was implemented in 2009) to address Pecos River Compact compliance issues and bring the state into compliance with the court's 1988 amended decree. The objectives of the settlement, he explained, were to ensure permanent compliance with the Pecos River Compact and decree; increase and stabilize the water supply for the Carlsbad Irrigation District (CID); and reduce the likelihood of a priority call affecting ground water users in the Roswell Basin and bring the basin back into hydrologic balance. This required the retirement of up to 6,000 acres of irrigation rights within the CID and 11,000 acres within the Pecos Valley Artesian Conservation District (PVACD), along with the augmentation pumping of up to 35,000 acre-feet per year as needed. Mr. Lewis explained that 2011 was the first year that any augmentation pumping was required (with nearly 13,000 acre-feet pumped from March to October), and that the ISC has been pumping continuously since then (approximately 17,000 acre-feet since last November). All pumping has been to augment CID farmers' use; none has been required for deliveries to Texas, he noted. Addressing overall performance of the settlement, Mr. Lewis said that it is working (New Mexico has a supply credit with Texas, and augmentation pumping has provided significant additional supply to the CID), but that the extraordinary drought has precluded meeting settlement supply targets for the CID.

Aron Balock and Bill Netherland, PVACD, said the settlement has to be viewed in context — without an agreement, things could be much worse, even though with hindsight some things could have been done differently. It was local people working together, they noted, that allowed the parties to come to a solution, even if things are not working perfectly.

Charlie Jerva, CID, said that even as a senior water rights owner, he has been hurt by the drought, though on the positive side, 50% more water has been available to him than would have been the case without the settlement. Dudley Jones, CID, described the severity of the drought over the past two years and how this has resulted in allocations of only 1.4 and .9 acre-feet of water per acre in the CID in 2011 and 2012. These allocations would have been half those amounts without the augmentation pumping, he noted, though augmentation pumping has not been able to keep allocations close to the 100-year annual allotment average of 2.41 acre-feet.

Water Rights Adjudications Process and Suggestions

Judge Jerald Valentine outlined what he did in certain court orders to improve the process of adjudications, including deciding certain stream system issues up front, providing notice provisions for posting of issues for nonparticipating parties, updating requirements for address changes of parties and supporting the Joe M Stell Ombudsman Program.

Celina Jones, Administrative Office of the Courts, noted that a lot of what the courts are doing now is based on Judge Valentine's suggestions. She explained that there are now dedicated water judges for all adjudications, improved customer services that make things more accessible to claimants and in the Hidalgo County Animas Underground Basin adjudication, an opportunity to apply a new case management system. She explained that the Animas adjudication all stream

issues will be resolved first and that all claims between the 300 or so claimants will be resolved at one time, rather than later in the process.

Darcy Bushnell, Joe M Stell Ombudsman Program, reviewed the adjudications process from the individual claimant's perspective, from the initial notice of the suit through the final inter se process, and the roles that the courts, the state engineer and the ombudsman play in the process.

Scott Verhines, state engineer, began by noting that the current value of water rights in New Mexico is estimated to be from \$16 billion to \$18 billion and that adjudicating those rights is of prime importance to the state. He went on to list 21 measures that the state engineer, the legislature and the courts have changed over the past 20 years to improve the process. Greg Ridgley, deputy chief counsel of the Office of the State Engineer, outlined seven suggestions for improving the adjudications process, noting that there is always a tension between fairness and efficiency in the process.

Spaceport Liability Issues (Draft Bill #3)

Christine Anderson, executive director of the Spaceport Authority, told the committees that the spaceport is committed to providing a tourist experience for those that stay on the ground as well as passengers. She told the committees that there have been 15 vertical launches at Spaceport America, with two additional launches scheduled in the coming months. Spaceport America anticipates being financially self-sufficient in 2014. Ms. Anderson referred the committee to draft bill #3, a bill that would allow fully informed participants to hold harmless flight companies. The waiver would only apply to the passengers and would not protect flight companies if property or people on the ground were damaged as a result of space flight. New Mexico currently has informed consent legislation that holds the operator of the spacecraft harmless but does not protect manufacturers or suppliers. Current legislation will sunset in 2018.

Robert Desiderio, counsel for Virgin Galactic from Sanchez, Mowrer & Desiderio PC, told the committees that four other states have enacted informed consent legislation: Florida, Colorado, Virginia and Texas. The proposed legislation shares the greatest similarity to statutes in Texas and affords the greatest protection for operators, manufacturers and suppliers. The current New Mexico statute refers to federal law for definitions of terms while the proposed legislation defines the terms. The proposed legislation also extends protections to manufacturers, suppliers, employees, managers, directors and officers.

David Jaramillo from Gaddy Jaramillo Touchet, representing the New Mexico Trial Lawyers Association, told the committees that New Mexico law has traditionally held businesses and people responsible for negligent conduct. He stated that New Mexico tort law provides protections for businesses and people, and additional protections do not need to be imposed by legislation. He told the committees that business should not be conducted at any cost and that the proposed legislation provides a great protection for those that might cause the greatest harm. Mr. Jaramillo told the committees that there is no proof or evidence that companies have chosen

other spaceports rather than Spaceport America because of the informed consent legislation. Currently, businesses and people are only held liable for an accident after a jury of 12 citizens determines that a product or behavior is defective or finds negligence.

Members of the committees and the panel discussed the benefits of and concerns about the proposed legislation. Among other things, members discussed: the contribution of Spaceport America to the economic development of the surrounding areas; the ability of Spaceport America to attract tenants with and without expanded informed consent legislation; tort law and policy issues; state funds appropriated to Spaceport America; and safety concerns associated with space flight.

Recess

The committees recessed at 5:23 p.m.

Tuesday, August 28

Travel to and Tour of Spaceport America

Christine Anderson and other members of the Spaceport Authority and Virgin Galactic led members and staff of the committees on a tour of Spaceport America.

Adjournment

There being no further business before the committees, the third meeting of the Courts, Corrections and Justice Committee and the Water and Natural Resources Committee for the 2012 interim adjourned at 1:38 p.m.

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

**October 15-16, 2012
Ruidoso**

The fourth meeting of the Water and Natural Resources Committee was called to order by Senator Phil A. Griego, vice chair, at 9:20 a.m. on Monday, October 15, 2012 in the Ruidoso Convention Center in Ruidoso.

Present

Sen. Phil A. Griego, Vice Chair
Rep. Joseph Cervantes, Chair
Sen. Mary Jane M. Garcia (Oct. 15)
Rep. Thomas A. Garcia (Oct. 15)
Rep. William "Bill" J. Gray
Rep. Dona G. Irwin
Rep. Larry A. Larrañaga
Sen. Steven P. Neville
Rep. Andy Nuñez
Sen. Gerald Ortiz y Pino
Sen. Mary Kay Papen (Oct. 15)
Sen. Sander Rue
Rep. Don L. Tripp

Advisory Members

Rep. Anna M. Crook
Rep. Nora Espinoza
Rep. Candy Spence Ezzell
Sen. Cisco McSorley
Sen. Nancy Rodriguez
Sen. Peter Wirth

Guest Legislators

Rep. Yvette Herrell (Oct. 15)
Sen. Carroll H. Leavell (Oct. 16)

Absent

Rep. Paul C. Bandy
Rep. Ray Begaye
Rep. Brian F. Egolf, Jr.
Sen. George K. Munoz
Rep. Mimi Stewart
Rep. James R.J. Strickler

Sen. Rod Adair
Sen. Vernon D. Asbill
Sen. Carlos R. Cisneros
Sen. Dede Feldman
Sen. Timothy Z. Jennings
Rep. Ben Lujan
Rep. James Roger Madalena
Rep. Rodolpho "Rudy" S. Martinez
Rep. Bill B. O'Neill
Sen. John C. Ryan
Rep. Henry Kiki Saavedra

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

Staff

Jon Boller, Legislative Council Service (LCS)
Jeret Fleetwood, LCS
Gordon Meeks, LCS

Guests

The guest list is in the meeting file.

Handouts

Handouts and other written testimony can be found in the meeting file or on the LCS web site.

Monday, October 15

Senator Griego began the meeting by having members of the committee and audience introduce themselves.

Gloria Sayers, councilor for the Village of Ruidoso, Sam Hammonds, mayor of Capitan, and former Senator Clinton D. Harden, Jr., welcomed the committee to Ruidoso and thanked them for coming.

Potable Water for Small and Rural Communities

Matthew Holmes, executive director of the New Mexico Rural Water Association (NMRWA), outlined the mission, governance and programs of the NMRWA. He began by explaining that the association tries to provide the highest quality training and technical assistance to rural water and wastewater utilities throughout New Mexico, and he discussed some of the training programs available to community and private utility operators and board members. He also noted that available technology tends to focus on large water systems and that, whenever possible, the NMRWA tries to build partnerships to help solve some of the problems facing smaller water systems. Small water utilities, he said, often have a difficult time finding small, affordable and scalable technology to provide safe, clean drinking water. Mr. Holmes pointed out a partnership that the NMRWA developed with a New Mexico company called MIOX and of which it is particularly proud.

Kyle Lee of MIOX provided the committee with an overview of technology that the company has developed to help purify water and make it suitable for drinking. Mr. Lee explained that while more traditional water treatments use chemicals such as chlorine, MIOX has developed a combination of salt, water and electricity that is actually cheaper and more efficient than chemical treatment. He also indicated that the technology was developed by Los Alamos Technical Associates as part of a project for the U.S. Navy. Mr. Lee said that the company is 20

years old, is based in New Mexico and distributes its products worldwide, with 100 percent of its manufacturing and testing done in Albuquerque.

Mr. Holmes provided the committee with more information regarding the NMRWA. He explained that the association is funded through membership fees and federal funds. He indicated that while the NMRWA offered free training for water system operators in the past, the association now charges a fee for the training. Mr. Holmes also discussed the New Mexico Water/Wastewater Agency Response Network, explaining that it is modeled on agreements in other states that allow water systems to help each other during emergencies. He noted that the water sector, particularly in New Mexico, is behind in emergency preparedness. Finally, Mr. Holmes noted some of the federal funding that the NMRWA has helped to secure for New Mexico, such as funds for the New Mexico Environmental Finance Center. Mr. Holmes also requested that there be an accounting done of the Drinking Water State Revolving Loan Fund and the use of the state's water conservation fee.

Questions and comments from the committee members included:

- smaller MIOX systems are designed to handle about 100 hookups, while much larger, city-scale systems are available;
- smaller MIOX systems are designed to be operated with minimal training, while larger ones require two days of training;
- Los Alamos Technical Associates is a contractor with Los Alamos National Laboratory;
- the U.S. Navy uses reverse osmosis systems, but because those systems can leave biofilm buildup, MIOX is also used;
- cyberattacks are a legitimate concern for water and other utilities, most of which use some type of internet connection in their daily operations;
- the NMRWA's plan for attacks is to deter them if possible, detect them as soon as they occur and respond rapidly to them;
- MIOX systems have been in use in some water systems for about 15 years;
- table salt is actually the preferred salt for MIOX systems;
- a large number of variables, such as the initial price of MIOX units, dictate whether MIOX makes a suitable replacement for large chlorine tanks and regular chlorine injections;
- some commercial applications are possible for MIOX systems, particularly in oil and gas production;
- sodium production in the MIOX process is minimal; and
- there are ways for small communities and businesses to find out about MIOX and its products.

Implementation of Changes to the Geothermal Resources Conservation Act

Nicholas Goodman, chief executive officer of Cyrq Energy Incorporated, and Chuck Smiley, Lightning Dock site manager for Cyrq, briefed the committee on a geothermal power project the company is developing in southwestern New Mexico. They began by providing the

committee with an overview of geothermal power, explaining that the energy source is used in 24 countries around the world, with the United States having the largest geothermal capacity at 3,187 megawatts. Mr. Goodman and Mr. Smiley went on to note that New Mexico sits atop a world-class geothermal resource but currently produces no geothermal energy. They also discussed geothermal energy as a renewable resource capable of producing baseload capacity, which most other renewable sources cannot. Mr. Goodman and Mr. Smiley explained that the Lightning Dock facility, located near Lordsburg, is a closed "binary" geothermal system, which features fluid with a low boiling point being pumped at high pressure through a heat exchanger to vaporize and propel a turbine. They also provided the committee with a time line for the Lightning Dock facility, noting that several wells have already been dug and should produce power by the end of 2013. Mr. Goodman and Mr. Smiley indicated that the project would generate about 700 construction jobs and 10 other full-time jobs and would have an economic impact of about \$11 million a year.

Questions and comments by committee members included:

- the estimated output of the Lightning Dock facility will be between 11 and 27 megawatts;
- the location for the Lightning Dock facility was selected because it is closest to the resource;
- another potential resource is located near Rio Rancho, but it is much deeper and riskier to invest in;
- Lightning Dock is regulated by the Oil Conservation Division (OCD) of the Energy, Minerals and Natural Resources Department (EMNRD), which handles both extraction industries and renewable energy;
- monitoring wells are shallower wells drilled to the depth of the water table;
- Cyrq shares information with both the OCD and the Office of the State Engineer (OSE);
- royalties are paid to the U.S. Bureau of Land Management (BLM), which automatically pays 50 percent back to the state;
- if the Lightning Dock facility only manages to produce 11 megawatts of power, the economics are somewhat competitive for Cyrq, but the economics improve drastically if capacity is expanded, mostly because of the value of the resource as a base load;
- tax credits for renewable energy tend to impose artificial time lines on production that are not in line with financing cycles of renewable energy facilities, making financing of those facilities more difficult;
- continuation of wind production tax credits would help with geothermal production;
- re-injection of the binary fluid in geothermal systems too close to the heat source eventually reduces the temperature of the heat source;
- the New Mexico Renewable Energy Transmission Authority has played a vital role in providing transmission capacity for projects in the state;
- the Lightning Dock facility is Cyrq's primary focus at the moment, although the company does own leases in Oregon and Nevada and in Indonesia;

- horizontal drilling is less effective for geothermal resources than it is in oil and gas development; and
- Cyrq is working with the State Land Office (SLO) on lease and royalty issues and may propose legislation to set royalties to match the federal gross rate, which is much easier to calculate and administer, rather than the current net rate that applies to state lands.

San Agustin Basin Ground Water Appropriation Application

Lynn Kennedy, protestant to the San Agustin Basin Ground Water Appropriation application, explained that the application is to pump ground water from 35 wells for 24 hours a day, seven days a week, from the same aquifer that many of the residents in the area depend on for drinking water and livestock. Ms. Kennedy noted that while the OSE had turned down the application, an appeal was pending in district court. She also pointed out that the applicant is an out-of-state corporation that likely has little interest in area residents or the numerous people who visit the area for hunting and tourism.

Anita Hand, another protestant, said that her property is adjacent to the Plains of San Agustin property and that her well would almost certainly be affected by the deeper wells proposed in the application. She also noted that Catron and Socorro counties passed declarations of a public welfare policy for retaining water use and conservation.

Eileen Dodds, another protestant, said that water is closely tied to life in the Southwest and questioned whether that is a right or a privilege.

Bruce Fredericks, an attorney for the New Mexico Environmental Law Center, explained that he represents several of the people protesting the Augustin Plains Ranch application. He noted that the application seeks to use water for every purpose under the sun in a large geographic area twice the size of New Jersey, all without identifying a particular place or purpose of use for the water. Mr. Fredericks also noted that most states that use prior appropriation water law have case law that prohibits such speculation in the water market, and in some cases, statutes prohibit such practices.

Joe Thompson, consultant for the Augustin Plains Ranch, introduced three members of the group applying to drill the wells.

Bob Bowcok, technical adviser of the project, said that the Plains of San Agustin are a closed basin and that about 50 million acre-feet of water are available in the underlying aquifer to serve the people of New Mexico. He likened the aquifer to a bathtub and explained that while it is full now, drilling would deplete the water in that bathtub, but it could be filled back up by digging holes in certain areas to stimulate artificial recharge. Mr. Bowcok noted that rainwater that could be used for artificial recharge is currently being lost to evaporation. He said that by approving the well application and tapping into the available water resources in the aquifer, resource planners across the state could engage in real, conjunctive water use.

Michel Jichlinski, program manager, explained that it is not possible to take all the available water in the aquifer. Instead, he noted that the vision of the Augustin Plains Ranch is for a public-private partnership. Mr. Jichlinski also indicated that it is possible to prevent nearby wells, such as Ms. Hand's, from being affected by drilling activities. He said that the vision is to have the private sector provide the funding for development of the water, which would involve no government debt or cost to taxpayers and that this amounts to a good opportunity for New Mexico.

Mr. Thompson added that it is worth finding out if the applicants are right that the water in the aquifer can be developed using private funds without affecting the wells of other residents in the area.

Questions and comments from committee members included:

- the OSE found that the application did not identify the water user nor did the applicant appear ready to put the water to beneficial use;
- about 100 individuals and companies have formally protested the application;
- the Augustin Basin is physically closed, not legally closed;
- the Augustin Plains Ranch is about 20,000 acres, is located about two miles east of Datil and is not irrigated, but it does have some stock tanks on it;
- artificial recharge has worked in Chino, California;
- granting the application would turn water law on its head;
- the OSE has said that other ranches in New Mexico are not entitled to all of the water underneath them;
- there is a difference between the average rainfall in Chino, California, and the average rainfall in Catron County;
- it is possible for this application to set a precedent in New Mexico and lead other developers to do the same thing;
- there are eminent domain issues regarding any pipeline used to transfer water from the ranch to somewhere else in the state; and
- Augustin Plains Ranch hopes to keep some water for local use.

Report on Local Effects of the Little Bear Fire

Debbie Lee, Ruidoso village manager, explained that while the Little Bear fire occurred in Lincoln County, mostly out of the jurisdiction of the Village of Ruidoso, the fire has had a significant impact on the village and serves as an example of various government entities coming together to address a problem. She explained that the fire burned a large portion of the watershed in the area, affecting the complex system that Ruidoso uses to provide water to its residents and that includes three surface water reservoirs as well as some ground water resources. Ms. Lee explained that one reservoir has become unusable after it filled with sludge from post-fire runoff, and while the village understands that it will have to convert to wells to deliver water, it will take time and money to do so. She indicated that it will cost about \$14.8 million over the next four years to accomplish all of the village's water supply needs. Ms. Lee emphasized that it would be

easier to manage the aftermath of the fire if this were the first disaster Ruidoso has faced in recent years; instead, this is the fourth disaster in five years.

Justin King, director of public works for the Village of Ruidoso, provided the committee with an overview of the damage caused by the Little Bear fire to the various water sources for the village and some of the efforts undertaken to address the damage. He noted that the Alto Reservoir duck pond, which is actually a sediment reservoir, has almost completely filled with sediment from the fire and that while 90,000 cubic yards of sediment have been removed, the pond has become anaerobic and is unusable. Mr. King also indicated that the main Alto Reservoir had to be lined with rock to reinforce it in case flooding caused the dam to breach.

Mr. King went on to explain that the Eagle Creek drainage will have to be cleared of woody debris, which will cost about \$300,000. He also noted that 100 percent of the surface water in the Eagle Creek drainage is compromised, forcing the village to rely on ground water resources. However, he explained that because water has to be pumped up and down canyons, a complex pressure reduction system has been in use in the village for some time but that additional pressure valves and zones would have to be installed and interconnected.

Mr. King also noted that the Village of Ruidoso is currently under a stage five water emergency, which means no extra watering, causing additional economic impact to the area. He also discussed some of the other work that needs to take place to address water issues in the area, such as relocation of a bypass line for Eagle Creek, well rehabilitation, water treatment systems and development of alternative water sources.

Nita Taylor, Lincoln County manager, provided the committee with the basic facts regarding the Little Bear fire. She said that 44,000 acres were burned and 224 residences were destroyed in the fire. She also explained that the success of fire response efforts, both during and after the fire, relied on partnerships between federal, state and local governments and volunteers. For example, Ms. Taylor noted, immediately after the fire, the Watershed Protection and Restoration Team coordinated the efforts of 27 agencies and organizations to help assess immediate and future problems caused by fire damage. Volunteers put in over 18,000 hours in response to the fire. She also indicated that Lincoln County has been authorized as the fiscal agent for all of the county and local governments affected by the fire and has provided so far about \$1.4 million in funding up front to address problems caused by the fire.

Jackie Powell, Lincoln County commissioner, also provided the committee with testimony regarding the fire. She noted that the community was still dealing with the White fire, which occurred in 2011. Ms. Powell also indicated that a vast amount of silt covered much of the area affected by both fires, pointing out that it has almost completely filled in many of the 92 acequias in the area. She explained that the legislature can help all New Mexico counties by learning about the incident command system and perhaps providing some funding for each county to develop incident command systems. Ms. Powell also emphasized that some policies

need to be changed, in particular those of the U.S. Forest Service (USFS), which does not allow for enough input at the local level.

Kathryn Minter, Lincoln County commissioner, explained that the BLM and the USFS are thinning as much of the watershed as they can and that a matching funds program exists to do so. She also noted that if homeowners are educated about forest thinning, they are likely to do the right thing, pointing out that while only 98 of the 227 homes that burned during the Little Bear fire were actually primary residences, many of those who did lose second homes are not planning on coming back to Ruidoso. Ms. Minter echoed the comments of Ms. Powell that some of the policies of the USFS do not make sense but that local officials would stand by Dave Warnack, their local USFS ranger, anytime.

Mr. Warnack explained that while an "us against them" mentality has developed between some residents and the USFS, the reality is that everyone is involved in forest health and fire issues and that the only way to get things done is to work together. He also noted that some of the bureaucratic problems discussed by residents are not as pronounced as they suggest, citing as an example the seeding of 19,000 acres and mulching of 11,000 acres since the fire. Mr. Warnack also indicated that the USFS is working closely with both the Village of Ruidoso and Ski Apache to try to repair damage done by the fire.

Questions and comments by committee members included:

- the silt removed from reservoirs is deposited at an old Lincoln County landfill site;
- Ruidoso's wastewater treatment plant is completed and functioning;
- an agreement is in place between Alamogordo and Holloman Air Force Base for water;
- one identified emergency need is for radio equipment because mobile phone service went down during the fire;
- there are problems with various USFS policies;
- the potential cost to taxpayers of firefighting efforts for wildfires versus forest thinning and treatment;
- driving factors in the severity of the Little Bear fire were forest conditions, drought, a hard freeze the winter before and high winds;
- tying domestic wells to city wells will not work, mostly because there is not sufficient benefit given the costs;
- while many small fires will likely burn themselves out, firefighting agencies still try to respond;
- searches for fires are based on lightning maps rather than smoke reports;
- at least three fire towers in the area are manned constantly during fire season; and
- while cooperation between government entities is not mandated, many of them are cooperating anyway.

Wildfire Mitigation and Forest and Watershed Management

Tony Delfin, state forester with the EMNRD, listed the many catastrophic wildfires in New Mexico over the past few years, noting that the 2011-2012 period was the worst wildfire season on record. He explained that about 22.5 million acres in New Mexico have burned over the past few years, with the two biggest fires being the Las Conchas and Whitewater Baldy fires. He said that the Little Bear fire was the most destructive in terms of burned structures. Mr. Delfin pointed out that Governor Susana Martinez spent a week in Ruidoso monitoring the Little Bear fire. He also noted that four Federal Emergency Management Administration grants had been given to New Mexico for the Whitewater Baldy, Blanco, Romero and Little Bear fires.

Mr. Delfin also discussed the statewide fire situation, which he noted does not have a good outlook. He also noted that forests in the Southwest are experiencing more drought stress now than at any time since the 1200s and 1500s. However, he pointed out that there are opportunities to treat forests and watersheds, noting that the Little Bear fire is an example of forest treatments being effective. Mr. Delfin indicated that the Forestry Division of the EMNRD has used \$20.5 million in federal funds to treat 17,453 acres of nonfederal lands and another \$1.9 million in state funds to treat 3,000 acres of state lands, explaining that thinning, slash reduction and maintenance seem to be the most effective forest treatments.

Bob Leaverton, Southwestern Region Fire and Aviation Management director for the USFS, explained that the massive fires that have burned in the Southwest over the past two years are completely different from what was faced over the preceding 40 years. The Southwest is 10 to 15 years into the current drought, he explained, noting that fire season comes faster and lasts longer than ever before and that the fires are much larger, driven by drought conditions, warmer ambient temperatures and fuel in the form of forests that have gone untreated for decades. Mr. Leaverton said that everyone will have to work together to address forest conditions, including thinning them and reengaging the private timber industry. He pointed out that while current economic conditions are not favorable to the timber industry, opportunities still exist.

Mr. Leaverton also discussed the practice of controlled burns in forests, explaining that it is an effective way of thinning the fuel load and addressing canopy closure. However, he indicated that controlled burns create smoke to which nearby residents, particularly those with sensitivities to smoke, often object. He cited as an example of dealing with the issue that during a controlled burn in Flagstaff, Phoenix hotels offered free rooms to those with smoke sensitivities.

Andrew Egan, director, New Mexico Forest and Watershed Restoration Institute, noted that partnerships in dealing with post-fire issues are critical, particularly when it comes to flooding. However, he pointed out that when possible, it is best to have partnerships in place beforehand. Mr. Egan also stressed the need to get private industry involved in the thinning process, given the immense amount of acreage in need of treatment and the limited amount of federal, state and local money available to pay for treatment.

Brent Racher, president, New Mexico Forest Industries Association, explained that research has shown that forest treatments are an effective tool in active forest management. However, he explained that neither the state nor the federal government has the billions of dollars necessary to treat forests on the massive scale they require. Instead, Mr. Racher stressed that it is vital that forest treatments be market-driven and that markets must be diversified because 60 percent to 70 percent of forest products often have no value except as fuel. He also noted that public-private partnerships, especially in the form of government funding to help with planning and prioritization, are necessary to implement an effective forest treatment program. The committee requested staff to work with Mr. Racher on legislation that he thought would help address the issue.

Mark Doth, Lincoln County commissioner, said that Ruidoso is the poster child for what can go wrong as a result of catastrophic fires and their aftermath. He also noted that fire issues are not going away, as the Ruidoso area has experienced at least seven or eight fires in the last 20 years. Mr. Doth also discussed an interstate compact with the federal government and western states regarding land management. He said Lincoln County is trying to use the little amount of money it has on forest thinning and other related projects. Mr. Doth went on to note that New Mexico is not the only western state facing this issue, and he listed a number of bills that Congress has considered but not passed in recent years that address healthy forests. He explained that small-diameter trees need to be dealt with, and he emphasized that it is much easier to deal with these issues up front than it is to pay for the aftermath of a catastrophic wildfire.

Questions and comments from committee members included:

- waiting for private industry to help deal with forest health could mean waiting for a long time;
- while prescribed burns may present some health issues, ash falling on Albuquerque from massive fires in Arizona has presented an even larger health concern;
- some land grants appear to have good firewood harvesting programs;
- federal standards have stalled many large-scale forest health and firewood harvesting programs;
- forest health plans should be looking at least 50 years into the future;
- some wilderness areas are simply too steep and rugged to be able to accommodate treatments easily;
- smaller forest health projects are fine, but a need exists for bigger thinking; and
- each forest has slightly different policies regarding dead and downed trees, but for the most part, free permits are available to harvest them.

Public Comment

Gene Colton of Capitan expressed concerns about the availability of water during droughts. He noted that research conducted by the national laboratories suggests that nearby villages can only sustain a little more growth. He also suggested that the state develop and mandate plans addressing water conservation and coordination of rural water supplies.

Dr. Bernhard Reimann of Capitan explained that he has studied water for most of his life, most recently as an environmental adviser to the Village of Capitan. He explained that there are some contamination issues with area water supplies, noting that while he helped design a constructive wetlands system to mitigate some contamination, such a system cannot handle a sudden influx of newcomers. Dr. Reimann acknowledged that while some mismanagement of water resources has occurred, failure to investigate what water resources are available and unchecked growth will only serve to worsen the area's water issues.

Ellen Wedum, whose land is adjacent to the Lincoln National Forest, said some of the damage to structures during the Little Bear fire could have been prevented by allowing defensive thinning up to 300 feet into adjoining forest lands. She also noted that policymakers in Washington, D.C., do not understand the state of forests in New Mexico, emphasizing that local solutions are necessary. She also pointed out that criticism of the USFS is a bit unfair as its budget has been cut significantly in recent years.

Roger Mallin, representing the biomass industry, explained that a biomass plant near Holloman Air Force Base was going to be discussed by the Public Regulation Commission and that long-term forest stewardship could go toward providing the plant with fuel.

Dan Bryant, county attorney for Otero County, lost his home to the Little Bear fire. He explained that while bureaucracies tend to move slowly, New Mexico is empowered to sit with the USFS at the time it develops plans, but New Mexico has never been at that table. He said that he sat on an identification team for an endangered butterfly in the area and that the butterfly population is coming back, which has avoided placement of the butterfly on the endangered species. He stressed that state and local agencies must be at the table when the USFS is developing its plans or nothing will change.

Tuesday, October 16

Report on Jal Basin Negotiations with Midland, Texas

Senator Leavell explained to the committee that the city of Jal has relied on the 13-square-mile Jal basin for water since 1961. However, he noted that the aquifer the community relies on extends into Texas and that prolonged drought has led the city of Midland, Texas, to initiate plans to pump ground water out of the aquifer into a 48-inch, 70-mile-long pipeline to Midland. Senator Leavell indicated that Midland plans to pump about 15 million to 20 million gallons a day, which the aquifer cannot sustain. He said that the two communities were involved in ongoing talks, and while Midland has not yet said no to any proposals, it appears that Jal may eventually have to buy water from Midland.

Curtis Schrader, Jal city manager, explained that while Jal has received a lot of support from Congressman Steve Pearce and Senator Tom Udall, there are no federal laws or interstate compacts that address ground water. He went on to provide a brief history of the situation, noting that Midland conducted a study in 2005 that identified water in the aquifer as a potential

source but did not inform Jal or two small Texas communities of Midland's plans. Mr. Schrader also discussed talks, between Jal and Midland, explaining that while a number of options have been discussed, such as buffer zones and a cap on how much water can be pumped each day, it appears that Jal may eventually have to tap into Midland's pipeline and buy water. He did note that he and the Midland city manager are still working on a fair price, but he pointed out that the citizens of Jal would eventually have to bear the cost of buying water from Midland. Mr. Schrader explained that while Jal is not seeking any type of legal help from the legislature, the city is hoping for more financial support.

Scott Verhines, state engineer, explained that there are no easy answers in the situation. He noted that the Texas Supreme Court had recently reaffirmed the rule of capture, which allows well users to pump as much ground water as they can. Mr. Verhines said that the OSE has been working with Jal since Senator Leavell informed him of the issue in March 2012 and that the OSE recognizes the need to monitor the aquifer.

Questions and comments from committee members included:

- the aquifer represents a somewhat long-term water supply, even with modest drawdown and recharge;
- some combination of strategies might help solve the two communities' problems, but Midland's preference does not represent what is best for Jal;
- if a solution cannot be worked out with Midland, Jal will have to turn to desalination, and the city has already toured the desalination facility in Alamogordo;
- similar concerns exist over Texas' rule of capture for Clovis and other eastern New Mexico cities;
- New Mexico communities will have to negotiate with Texas, as they have little ability to influence state law there;
- the federal government is not involved in the process to this point, although other states are dealing with federal assertion over ground water; and
- a discussion about the water and the federal commerce clause.

House Joint Memorial 10 Report on Wildlife Corridors

Coleman Burnett, Department of Transportation (NMDOT), and Mark Watson, Department of Game and Fish, provided the committee with a report on House Joint Memorial 10 from the 2011 session, which was developed by the Wild Friends and which asks that a pilot project be conducted to try to reduce the number of collisions between cars and large animals. More than 7,000 such collisions have been reported over the past five years, they said, with as many as another 7,000 unreported because collisions with pronghorn antelope often are not reported at all. They explained that five roads have been considered for the project based on the number of collisions, with a stretch of U.S. 64 between Tierra Amarilla and Chama selected for the pilot project. Ms. Burnett and Mr. Watson explained that the project consists of installing signs with flashing lights and of a vegetation management program. Other recommendations from the pilot project include implementation of a wildlife corridor speeding law, reconvening a critical mass workshop, investigating federal funding for wildlife crossing, best management

practices along certain roads and using other collision mitigation strategies as highway improvement projects are implemented.

Questions and comments from committee members included:

- the best use of fencing is to push wildlife to safer crossing areas;
- drought conditions seem to increase collisions;
- NMDOT designation of special speed zones;
- animal collision incident data do not contain data on tourists versus locals;
- data suggest that slower speeds have a significant impact on lowering collision rates;
- the study used existing funding on fencing and other project costs, but it does not have funding to extend the program to other roads at this time; and
- bumper-mounted wildlife deterrent devices are not effective.

SLO Initiatives on State Land Management

Ray Powell, state land commissioner, provided the committee with an overview of the operations of the SLO. He discussed the various revenue sources and beneficiaries of funds distributed annually by the SLO, particularly for public education. Commissioner Powell also discussed some of the other projects the SLO has worked on, such as the Sandia Science and Technology Park and Mesa del Sol. He also noted some of the agreements the SLO has entered into, such as one with the Melrose Bombing Range, with 13 field district resource managers handling some of the day-to-day operations. Commissioner Powell went on to discuss some of the work done by his office to clean up problems on state trust lands, particularly the "river of tires" and a massive chicken manure dumpsite. Mr. Powell asked for support from the legislature on his budget and explained that it is very difficult for the office to keep employees because the SLO has had a flat budget for eight years, so staff members have not gotten raises and consequently are being lured away by other agencies and the private sector. Finally, Commissioner Powell noted some of the strategic goals of the SLO, such as generating optimum revenues and managing them soundly, developing renewable energy resources and managing natural and cultural resources for future generations.

Questions and comments from committee members included:

- most of the SLO's money is generated by oil and gas leases on state lands;
- endangered species issues require working together to use resources in a responsible way;
- new technology may help the oil and gas industry and the potash industry work together on saltwater disposal;
- feral pig issues in New Mexico;
- costs of cleanup of state trust lands;
- budget requests for the SLO; and
- speculators appear to have benefited from deals cut by the SLO in recent years, but many of those leases are now expiring, so the SLO will be able to enter into new leases that actually benefit the taxpayers of New Mexico.

There being no further business, the committee adjourned at 12:15 p.m.

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

**November 8, 2012
Albuquerque
November 9, 2012
Santa Fe**

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The fifth meeting of the Water and Natural Resources Committee was called to order by Representative Joseph Cervantes, chair, at 9:50 a.m. on Thursday, November 8, 2012, at the Albuquerque-Bernalillo County Water Utility Authority in Albuquerque.

Present

Rep. Joseph Cervantes, Chair
Rep. Paul C. Bandy
Sen. Mary Jane M. Garcia (Nov. 8)
Rep. Thomas A. Garcia
Rep. Larry A. Larrañaga (Nov. 9)
Sen. Gerald Ortiz y Pino
Sen. Sander Rue
Rep. Mimi Stewart
Rep. James R.J. Strickler
Rep. Don L. Tripp
Sen. Pat Woods

Absent

Sen. Phil A. Griego, Vice Chair
Rep. Ray Begaye
Rep. Brian F. Egolf, Jr.
Rep. William "Bill" J. Gray
Rep. Dona G. Irwin
Sen. George K. Munoz
Sen. Steven P. Neville
Rep. Andy Nuñez
Sen. Mary Kay Papen

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Advisory Members

Sen. Rod Adair
Rep. Anna M. Crook
Rep. Nora Espinoza (Nov. 8)
Rep. James Roger Madalena (Nov. 8)
Sen. Cisco McSorley
Rep. Bill B. O'Neill (Nov. 9)
Sen. Nancy Rodriguez (Nov. 8)
Sen. John C. Ryan (Nov. 9)
Sen. Peter Wirth

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Sen. Vernon D. Asbill
Sen. Carlos R. Cisneros
Rep. Candy Spence Ezzell
Sen. Dede Feldman
Sen. Timothy Z. Jennings
Rep. Ben Lujan
Rep. Rodolpho "Rudy" S. Martinez
Rep. Henry Kiki Saavedra

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

Staff

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

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Guests

The guest list is in the original meeting file.

Handouts

Handouts and other written testimony can be found in the meeting file or on the LCS web site.

Thursday, November 8

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

Ken Sanchez, chair of the Albuquerque-Bernalillo County Water Utility Authority (ABCWUA), welcomed the committee and thanked the members for holding the meeting in Albuquerque.

Wayne Johnson, vice chair of the ABCWUA, also welcomed the committee to the facility and thanked the members for holding a meeting there.

New Mexico First/New Mexico Environmental Program to Stimulate Competitive Research (NMEPSCor) Report on the Las Conchas Fire

Mary Jo Daniel, associate director of NMEPSCor, provided the committee with a brief overview of NMEPSCor, explaining that the program seeks to build on New Mexico's ability to do research, education and outreach. She went on to note that NMEPSCor held a series of town hall meetings regarding the Los Conchas fire to gather input and develop recommendations. Ms. Daniel went on to discuss some of the recommendations produced by the town halls, such as:

- creating and implementing water source protection plans;
- creating and implementing landscape-scale plans for forests and watersheds;
- updating and re-implementing the New Mexico Forest and Watershed Health Plan;
- highlighting the economic benefits of fire mitigation and watershed protection and restoration;
- developing sustainable economic development opportunities using renewable forests and resources;
- educating the public about wildfire effects and mitigation; and
- educating the public about controlled burns.

Janie Chermak of the University of New Mexico was one of the town hall speakers. She noted that there have been several catastrophic wildfires in the last few years. She pointed out that the suppression and re-seeding costs, in addition to other one-time costs associated with wildfires, add up to tremendous amounts of money. She also noted that water quality issues and downstream costs add to the overall price tag. Dr. Chermak pointed out that a chance exists to reduce the potential for wildfires through watershed management and restoration.

Questions and comments from the committee included:

- use of cattle in multi-use areas to help improve forest health;
- the necessity for government agencies to work with one another to address forest health issues;
- consideration of a bill to allow counties to declare emergencies in their forests;
- development of landowner liability legislation;
- changes the U.S. Forest Service can make to improve the job it does;
- that adequate funding does not exist to conduct forest health improvements on the necessary scale;
- controlled burns and commercial timber harvesting as means of improving forest health; and
- other ways of looking at forest health costs, such as involving private industry in improving forest health.

Acequia Issues and HJM 10 (2012) Report

Paula Garcia of the New Mexico Acequia Association provided the committee with testimony regarding the association's legislative priorities. She explained that budget priorities include continued solvency of the New Mexico Irrigation Works Construction Fund, restoration of higher funding levels for the Acequia and Community Ditch Fund and continued funding for the Acequia and Community Ditch Education Program. Ms. Garcia also noted that policy issues include capital outlay reform, legislation addressing water rights transfers and clarification about the method to be used by the state engineer in making administrative determinations of water rights where there is no partial or final decree from a court.

Ralph Vigil, chair of the Acequia Commission, also discussed capital outlay issues as they relate to acequias, recommending that capital outlay reform include consideration of acequias, including the need for technical assistance in the planning and design process.

William Gonzales provided the committee with a report on House Joint Memorial 10 from the 2012 session, which called for studying methods of mutual cooperation between the Middle Rio Grande Conservancy District (MRGCD) and acequia associations in Albuquerque's South Valley. He explained that representatives from the MRGCD and South Valley acequia associations met over the past few months. He noted that while some issues have been brought up, such as problems between acequia mayordomos and MRGCD ditch riders, all parties seem to agree that discussion and dialogue are the best ways of addressing those issues, as opposed to litigation.

Questions and comments from the committee included the following:

- the MRGCD and acequia associations are looking for ways to solve problems other than the state paying everyone's attorney fees;
- while a bill addressing some the acequia and MRGCD issues died during the 2009 legislative session, it became clear that progress could be made by getting the parties together;

- many water projects funded by severance tax bonds go through the Water Trust Board;
- water projects are not usually funded by general obligation bonds;
- the lack of representation in the Congreso de las Acequias from San Juan County; and
- inclusion of lateral ditches on acequia maps.

Fencing Issues on Railway Rights of Way

Caren Cowan, executive director of the New Mexico Cattle Growers' Association, and John Conner provided the committee with an update on an issue the committee heard at its July 30-31 meeting regarding fencing and railroads. Mr. Conner indicated that two days after the July meeting, he was contacted by the railroad about repairing his fence, but actual repairs had only begun recently. Mr. Conner and Ms. Cowan noted that progress in this type of case is usually slow, and there is not especially good communication with the railroads. They also pointed out that while some questions might exist about land ownership, it seems as though it would be best for the railroad to build all necessary fences now.

Questions and comments from the committee included the following:

- the law addressing fencing issues could be clarified to include penalties for railroads that do not comply with the law; and
- landowners can sue the railroad for both damages and attorney fees.

Rio Grande Environmental Management Program

Representative Stewart explained that the Rio Grande Environmental Management Program is a multistate collaborative mechanism for working with state, federal, local, international, tribal and nongovernmental stakeholders to develop a database for information regarding the Rio Grande Basin. She noted that it is a basin-specific authority that will help leverage federal money for the Rio Grande.

John D'Antonio, deputy district engineer for project management for the U.S. Army Corps of Engineers, explained that the program was originally authorized in 2007, and that while it sunset in 2011, the United States Senate has started to work on a new bill that could reauthorize up to \$15 million for the entire basin. He noted that the basin stretches from Colorado to the Gulf of Mexico and includes the river's major tributaries, including the Pecos River. Mr. D'Antonio also pointed out that the program requires a local sponsor and that nothing in the program would preempt state water law. Instead, he indicated that the program would help fund construction of water projects, not studies, in the basin. Mr. D'Antonio pointed out that the threat of litigation with Texas over water is always present, and any program that helps address water issues in the Rio Grande Basin could prove helpful in preventing litigation.

James Hogan of the Department of Environment's Surface Water Quality Bureau echoed Mr. D'Antonio's comments, noting that the Rio Grande Basin covers the two most important rivers in New Mexico, and helps address the Rio Grande Basin Salinity Management Program, which examines salinity in the river between San Acacia, New Mexico and Fort Quitman, Texas.

Questions and comments from the committee included the following:

- the Rio Grande Basin Salinity Management Program looked at river salinity farther north than San Acacia, but the size of Elephant Butte Reservoir means that the most impact would be realized below the reservoir;
- a memorial encouraging Congress to reauthorize the program is the only likely legislation for the 2013 session;
- the Rio Grande Environmental Management Program could address salinity issues as part of its mission;
- most of the Rio Grande's salinity comes from geologic processes and is not easily mitigated;
- too many drip systems can contribute to increased consumptive use of water and salinity levels; and
- most New Mexico irrigation districts use a return flow system, and the MRGCD has reduced some of its diversions due to increased efficiency.

ABCWUA Overview

Paul Robinson, research director for the Southwest Research and Information Center, explained that there are a number of threats to Albuquerque's drinking water, most notably from Kirtland Air Force Base (KAFB), where large jet fuel spills are creeping toward the city's ground water supplies. He noted that the Department of Environment served KAFB with a notice of deficiency, but the order is not being enforced. Mr. Robinson encouraged the legislature to draft a memorial asking the federal government to commit additional funding to address ground water contamination in Albuquerque.

Dave McCoy of Citizen Action New Mexico noted that the biggest threats to Albuquerque's ground water supplies are dumping and drought. He mentioned that a mixed-use landfill used by Sandia National Laboratories (SNL) and the KAFB jet fuel spill were both contaminating the ground water. He emphasized that small amounts of jet fuel are capable of contaminating trillions of gallons of water and that most known technologies will not be able to clean it. He suggested that memorials asking for a five-year review to be conducted on the area's ground water and for increased monitoring wells be considered by the legislature.

Joe Wexler of the Agua es Vida Action Team provided the committee with additional testimony regarding Albuquerque's ground water supply. Mr. Wexler noted that SNL and KAFB need help in addressing their respective contamination issues before the contamination damages the city water supply. He also said that the ABCWUA plans to pump water into aquifers to store water for future use, but that water could become contaminated, too. Mr. Wexler suggested that the Office of the State Engineer review how the ABCWUA uses its water.

Leslie Weinstock, also of the Agua es Vida Action Team, explained that the action team is primarily a watchdog group. She went on to note that there are unregulated chemicals contaminating Albuquerque's water supply, and while the ABCWUA employs federal Environmental Protection Agency standards, those standards are outdated. Ms. Weinstock went

on to say that the public has some right to know what is in its drinking water. Reports detailing specific levels of contaminants are no longer available. She acknowledged that local entities have tried to address contamination levels in the Rio Grande, but treatment methods leave too many chemicals in the water, suggesting a need for more advanced treatment methods. Ms. Weinstock said that Santa Fe employs membrane technology, which is better suited to filtration of pharmaceutical and similar contaminants. She also addressed plans to store water in aquifers and other water and watershed management issues.

Questions and comments from the committee included:

- the amount and radioactive levels of waste associated with SNL;
- the progress of contamination from SNL's landfill and whether it is already contaminating ground water;
- the potential importance of underground water quality monitoring to determine the progress and severity of ground water contamination;
- the willingness of federally funded entities to pay for cleanup of contaminated sites;
- the responsibility of involved parties to pay for assessments of ground water contamination levels; and
- the technological feasibility of assessing and mitigating ground water contamination in the Albuquerque area.

Mark Sanchez of the ABCWUA provided the committee with an update regarding concerns raised by the previous presenters. He explained that meetings had already been held to address recommendations made by various citizen groups, and while continued funding is necessary to implement many of the recommendations, the ABCWUA is aware of the concerns raised by the previous presenters. Mr. Sanchez emphasized that the ABCWUA is constantly working to meet safe water standards and that intake wells will be shut down if they present problems. He also pointed out that the Department of Environment is actually the regulatory authority in matters of water quality, and he noted the difficulty in determining the accuracy of monitoring data.

Mr. Sanchez also addressed plans to store water in aquifers, explaining that the ABCWUA is looking into the storage of water without the loss to evaporation usually associated with traditional storage methods. However, he pointed out that no plans exist to inject water into aquifers. Mr. Sanchez also noted that all data addressed in the previous presenter's comments are available to the public.

Barbara Gaston, compliance manager for the ABCWUA, said that there are laboratories at both ABCWUA facilities that collect and monitor water samples. She noted that ground water monitoring is regulated by the federal Safe Drinking Water Act of 1974 and that the mixture of ground and surface water that tends to be distributed to most people is a blend of water that is safe for everyone. Ms. Gaston went on to note that the ABCWUA does a significant amount of outreach to the community, and recent water test results were available in the committee's packet.

John Stomp, chief operating officer, ABCWUA, provided the committee with a brief overview of the ABCWUA's facility and design. He pointed out that various levels of water quality had been looked at by the ABCWUA, and various tests revealed that while high-quality water was available in most cases, assessments suggested that upstream processes could be added that could improve overall water quality.

Questions and comments by the committee included:

- the relationship between the ABCWUA and federal entities and the ability of the ABCWUA to demand cleanup of water contaminated by federal entities;
- the effectiveness of public meetings to address water contamination issues;
- the accountability of the ABCWUA to other government and nongovernment entities;
- the response of the ABCWUA to jet fuel contamination of the ABCWUA's ground water resources;
- that the response of the ABCWUA to ground water contamination is to shut wells down, but the contamination plume continues to grow; and
- the removal of source contaminants might not stop the spread of pollutants into the ground water supply.

The chair acknowledged several members of the public who addressed the issue before the committee. Several members of the public identified themselves, but others did not. All of them expressed concern regarding potential contamination of Albuquerque water resources, mostly due to the KAFB fuel spill and the lack of action from state and federal government officials.

After the public comment portion of the meeting, the committee toured the ABCWUA facility.

There being no further business for the day, the committee recessed at 5:00 p.m.

Friday, November 9

Healthy Foods Initiative

Pam Roy provided the committee with an overview of the Farm-to-School Program. She explained that the program involves local school districts buying locally grown produce to provide more fresh fruits and vegetables for school meals, pointing out that the program has grown significantly in its first few years. Ms. Roy also pointed out that recent federal regulations require additional produce for school meals.

Antony Wagner of Wagner Farms explained that he recently became involved in the Farm-to-School Program but that his farm has been supplying local schools with fresh fruits for about three years. He said demand from local schools has steadily increased over the past few years, and he would be able to plant additional crops if more school districts committed to buying from his operation.

Questions and comments from the committee included:

- the extra costs associated with providing local produce to school districts versus federal requirements;
- that new requirements could create additional opportunities for local produce growers;
- the requirements that allow some growers to keep crops in storage for several months while other growers must deal with shorter windows of freshness;
- the value of locally grown produce over processed foods; and
- the potential health benefits of re-emphasizing fruits and vegetables over processed foods in the diet of school-aged children.

Report on *Tri-State Generation and Transmission Assn., Inc. v. D'Antonio*

DL Sanders, general counsel for the Office of the State Engineer (OSE), provided the committee with an overview of the recent New Mexico Supreme Court decision involving the OSE's defense of its Active Water Resource Management (AWRM) rules. He began by providing the committee with a review of the development of the legislation considered by the supreme court. Mr. Sanders explained that by 2002, ongoing drought conditions resulted in water struggles that led to repeated priority calls by the OSE, which would curtail the water rights of water users who held rights less senior than those of other users. In an attempt to address the concerns of all water users, the legislature passed a bill during the 2003 session directing the OSE to develop rules addressing the administration of water rights.

Mr. Sanders explained that lawsuits were filed challenging the OSE's authority to promulgate such rules. He said that the New Mexico Supreme Court, in considering the case, tied a number of water cases together and affirmed the OSE's authority to administer water rights in the absence of a final adjudication of those rights in accordance with the rules it had promulgated.

Professor Reed Benson, University of New Mexico School of Law, said he thought that the legislature made a difficult policy call in passing the 2003 law that called for the water management rules, which the courts eventually upheld. Mr. Benson explained that the statute indicates that the legislature thought it was necessary for the OSE to adopt such rules because "the adjudication process is slow, the need for water administration is urgent, [and] the need for compliance with interstate compacts is imperative . . .". Section 72-2-9.1 NMSA 1978. Mr. Benson said he thought the supreme court's ruling in *Tri-State* was faithful to the legislature's specific direction to the state engineer. He also noted that the AWRM rules do not dictate that juniors be cut off in times of shortage but, rather, authorize replacement plans that encourage water users to develop local solutions for voluntary water sharing. However, he noted that good policy and good implementation of policy can be two different things.

The committee had a lengthy discussion about the issues raised by Mr. Sanders and Mr. Benson.

Minutes

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

Review of Proposed Legislation

A bill addressing funding for farmers' markets was endorsed by the committee.

A memorial endorsing reauthorization of federal funding for the Rio Grande Environmental Management Program was endorsed by the committee.

D A bill addressing the procedure for authorizing replacement wells was endorsed by the committee.

A bill for funding the Healthy Initiatives Farm-to-School Program failed to be endorsed due to lack of a quorum.

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

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ENDORSED BILLS

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HOUSE BILL

51ST LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2013

INTRODUCED BY

FOR THE WATER AND NATURAL RESOURCES COMMITTEE

AN ACT

RELATING TO WATER; PROVIDING PROCEDURES FOR DRILLING
REPLACEMENT WELLS THAT ARE LESS THAN ONE HUNDRED FEET FROM THE
ORIGINAL WELL.

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

SECTION 1. Section 72-12-22 NMSA 1978 (being Laws 1959,
Chapter 41, Section 1) is amended to read:

"72-12-22. REPLACEMENT WELL WITHIN ONE HUNDRED FEET.--

A. Notwithstanding the provisions of Section
72-12-7 NMSA 1978, the owner of a water right may drill and use
a replacement well drilled within one hundred feet of the
original well [~~prior to~~] upon application to and the granting
of a permit by the state engineer [~~and the publication and~~
~~hearing set out in Section 75-11-3 New Mexico Statutes~~
~~Annotated, 1953 Compilation~~] if:

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(1) the well is drilled into the same and only the same underground stream, channel, artesian basin, reservoir or lake as the original well; [~~and~~]

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(2) the appropriation is [~~of~~] for the same or a lesser amount of water as is being put to beneficial use from the well being replaced and no more than the amount allowed by [his] the owner's water right in the original well; [~~and~~

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~~(3) an emergency situation exists in which the delay caused by application, publication and hearing would result in crop loss or other serious economic loss; and~~

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~~(4) he files application or notifies the state engineer office of these facts and the location of the proposed replacement well by registered letter, prior to drilling; provided that he shall file application for a permit within 30 days after drilling begins.~~

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~~B. The owners of other water rights, who claim to be injured by the drilling of a replacement well under these circumstances, may not enjoin the drilling of such a well or the use of the water from the well, but are limited to an action at law to recover damages and to their right to protest the granting of a permit]~~

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(3) the state engineer finds that the change in location will not impair existing rights; and

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(4) the original well is plugged, not capped.

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B. If the applicant is aggrieved by the decision of the

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state engineer, the applicant may request a hearing pursuant to the provisions of Section 72-2-16 NMSA 1978; provided that notice of application and the opportunity to protest are given pursuant to Subsection D of Section 72-12-3 NMSA 1978."

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HOUSE BILL

51ST LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2013

INTRODUCED BY

FOR THE WATER AND NATURAL RESOURCES COMMITTEE

AN ACT

MAKING AN APPROPRIATION FOR THE NEW MEXICO DEPARTMENT OF AGRICULTURE TO DEVELOP AND PROMOTE FARMERS' MARKETS IN NEW MEXICO.

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

SECTION 1. APPROPRIATION.--Eighty-five thousand dollars (\$85,000) is appropriated from the general fund to the board of regents of New Mexico state university for expenditure in fiscal year 2014 for the New Mexico department of agriculture to develop and promote farmers' markets in New Mexico. Any unexpended or unencumbered balance remaining at the end of a fiscal year shall revert to the general fund.

SECTION 2. EFFECTIVE DATE.--The effective date of the provisions of this act is July 1, 2013.

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HOUSE JOINT MEMORIAL

51ST LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2013

INTRODUCED BY

FOR THE WATER AND NATURAL RESOURCES COMMITTEE

A JOINT MEMORIAL

REQUESTING CONGRESS TO REAUTHORIZE THE WATER RESOURCES DEVELOPMENT ACT OF 2007, SECTION 5056, AND TO APPROPRIATE SUFFICIENT FUNDS TO CARRY OUT THE PURPOSES OF THE ACT.

WHEREAS, the Rio Grande basin spans the territory of three states, Colorado, New Mexico and Texas, and twenty-two Native American tribes and pueblos and is one of the most rapidly growing areas in the United States; and

WHEREAS, the Rio Grande runs the entire length of New Mexico, for more than four hundred fifty river-miles, and major tributaries to the Rio Grande are located in New Mexico, including the Pecos river, the Rio Chama, the Jemez river and the Rio Puerco, and many other smaller tributaries too numerous to list; and

WHEREAS, the Rio Grande mainstem and tributaries provide a

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renewable water supply for irrigation and drinking water and
support nationally significant ecosystems for fish and wildlife
and renowned tourism destinations; and

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WHEREAS, the water quality of the Rio Grande and the Pecos
river and other tributaries is impaired, in part, by high
concentrations of dissolved salts and elevated levels of
bacteria that can limit available water supply for municipal
and agricultural use; and

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WHEREAS, the recent catastrophic fires in the upper Rio
Grande basin watersheds have further degraded water quality in
the basin's streams and rivers and the ecological health of the
river ecosystem; and

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WHEREAS, the Rio Grande and Pecos watersheds in New Mexico
have the highest total number of New Mexico species of greatest
conservation need across all taxa and are predicted to contain
some of the greatest diversity of aquatic species of greatest
conservation need; and

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WHEREAS, water quality, supply, conveyance and delivery;
ecosystem degradation; and flooding are major issues in the Rio
Grande basin in New Mexico, and state and local funding to
address these issues is inadequate; and

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WHEREAS, while the United States army corps of engineers
has nationwide watershed assessment and construction
authorities to study problems, recommend solutions and
construct projects to restore the health of rivers, all Rio

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Grande basin projects must compete nationally for these limited federal funds; and

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WHEREAS, the United States congress and president of the United States established a Rio Grande basin-specific funding authority in the Water Resource Development Act of 2007 under Section 5056, called the Rio Grande environmental management program, which authorized federal funding of up to fifteen million dollars (\$15,000,000) annually for the Rio Grande mainstem and tributaries and directed the secretary of the army to rehabilitate and enhance fish and wildlife habitat in partnership with local sponsors and to implement long-term monitoring, data collection and analysis, applied research and adaptive management; and

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WHEREAS, the Rio Grande environmental management program authority expired in September 2011 before any funds could be appropriated to carry out the program, and congress is considering draft language for the next water resource development act;

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NOW, THEREFORE, BE IT RESOLVED BY THE LEGISLATURE OF THE STATE OF NEW MEXICO that congress be requested to reauthorize Section 5056 of the Water Resource Development Act of 2007 and to appropriate sufficient funds to carry out work related to that legislation; and

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BE IT FURTHER RESOLVED that copies of this memorial be transmitted to the president of the United States, the speaker

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of the United States house of representatives, the president of
the United States senate, the members of the New Mexico
congressional delegation, the commanding general of the United
States army corps of engineers, the assistant secretary of the
army (civil works), the district commander of the United States
army corps of engineers, Albuquerque district, and the chair of
the president's council on environmental quality.

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