

WATER  
AND  
NATURAL RESOURCES  
COMMITTEE

2014 INTERIM  
FINAL REPORT  
to the  
FIFTY-SECOND LEGISLATURE  
FIRST SESSION



New Mexico Legislative Council Service  
Santa Fe, New Mexico  
January 2015

WATER  
AND  
NATURAL RESOURCES  
COMMITTEE

2014  
REPORT

Santa Fe, New Mexico  
January 2015

# **SUMMARY**

## **LEGISLATIVE INTERIM WATER AND NATURAL RESOURCES COMMITTEE SUMMARY OF WORK**

The Water and Natural Resources Committee (WNRC) was created by the New Mexico Legislative Council for the 2014 interim and scheduled five meetings, held in Santa Fe, Albuquerque, Artesia and Las Vegas.

Differing views on how best to fund water projects, and the level of involvement by the legislature in approving those projects, raised many questions about the water project funding process during the 2014 legislative session. With that in mind, the WNRC began the 2014 interim by holding a joint meeting with the New Mexico Finance Authority Oversight Committee, dedicating an entire meeting day to discussing water projects and the water project financing process.

In response to Senate Memorial 95 and House Memorial 80 from the 2014 legislative session concerning the need for long-term funding and planning for forest and watershed health, the committee further explored the need for federal, state and local cooperation on, and long-term funding of, watershed restoration and forest management programs. Numerous organizations and governmental entities, including the Association of Commerce and Industry, New Mexico Cattle Growers' Association, Albuquerque Metropolitan Arroyo Flood Control Authority, Trout Unlimited, Little Bear Forest Reform Coalition, New Mexico Watershed and Dam Owners Coalition, New Mexico Business Water Task Force, Albuquerque-Bernalillo County Water Utility Authority, New Mexico Association of Counties, Land Grant Council and others, pledged their support for such a program, and they urged the committee to support legislation to address the increasing frequency and severity of wildfires and encourage both the public and private sectors to be actively involved in that effort.

The New Mexico Universities Working Group on Water Supply Vulnerabilities gave a preliminary report to the committee on the effects of drought on New Mexico's industries, work force, population and economy. The working group also outlined the work it will be doing through the end of fiscal year 2015.

At its October meeting, the committee was updated on the various water projects that the Interstate Stream Commission (ISC) was considering for funding from the Arizona Water Settlements Act. Representatives from the ISC and opponents of potential diversion projects on the Gila River addressed the committee.

For several years, the committee has heard about the amount of water used in oil and gas extraction and the problems created by the disposal of produced water. In September, the committee heard from a number of companies that have developed technology to treat or recycle produced water for use in the drilling process.

The committee also received testimony from the Department of Environment regarding cleanup of the jet fuel spill at Kirtland Air Force Base.

The committee endorsed one piece of legislation this interim: a bill to create a board to coordinate planning and provide funding for forest and watershed restoration through the use of an existing tax on insurance premiums.

Total expenditures for voting members of the committee this interim were \$26,254 and for advisory members were \$34,015.

# WORK PLAN

**2014 APPROVED  
WORK PLAN AND MEETING SCHEDULE  
for the  
WATER AND NATURAL RESOURCES COMMITTEE**

**Members**

Rep. George Dodge, Jr., Chair	Rep. Larry A. Larrañaga
Sen. Phil A. Griego, Vice Chair	Sen. George K. Munoz
Rep. Phillip M. Archuleta	Sen. Cliff R. Pirtle
Rep. Paul C. Bandy	Sen. Benny Shendo, Jr.
Rep. Joseph Cervantes	Rep. Mimi Stewart
Rep. Brian F. Egolf, Jr.	Rep. James R.J. Strickler
Rep. William "Bill" J. Gray	Rep. Don L. Tripp
Rep. Dona G. Irwin	Sen. Peter Wirth
Rep. Emily Kane	Sen. Pat Woods

**Advisory Members**

Rep. Cathrynn N. Brown	Rep. W. Ken Martinez
Sen. Pete Campos	Sen. Cisco McSorley
Rep. Gail Chasey	Sen. Steven P. Neville
Sen. Carlos R. Cisneros	Sen. Gerald Ortiz y Pino
Rep. Sharon Clahchischilliage	Sen. Mary Kay Papen
Sen. Lee S. Cotter	Rep. Vickie Perea
Rep. Anna M. Crook	Sen. Nancy Rodriguez
Rep. Nora Espinoza	Sen. John C. Ryan
Rep. Candy Spence Ezzell	Rep. Henry Kiki Saavedra
Sen. Ron Griggs	Rep. Tomás E. Salazar
Sen. Stuart Ingle	Sen. William E. Sharer
Sen. Gay G. Kernan	Sen. John Arthur Smith
Rep. James Roger Madalena	Rep. Jeff Steinborn
Rep. Rodolpho "Rudy" S. Martinez	Rep. Bob Wooley

**Work Plan**

The Water and Natural Resources Committee was created by the New Mexico Legislative Council on May 5, 2014. The committee proposes to focus on the following topics.

1. Water management, research, litigation and projects, including 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 in the adjudication process;
  - c. active water resource management implementation;

- d. Gila River planning process and projects (federal Arizona Water Settlements Act of 2004);
  - e. acequia issues;
  - f. state and regional water plans update;
  - g. long-term financing of forest and watershed treatment and restoration and forest health;
  - h. report on the study of the Rio Grande levees within Valencia, Bernalillo and Sandoval counties — Mid-Rio Grande Levee Task Force;
  - i. water project financing programs and process;
  - j. the role of regional water authorities;
  - k. drought survey/water vulnerabilities study; and
  - l. water adjudications and courts.
2. Agriculture, land use, natural resource and game and fish issues, including:
- a. renewable energy portfolio standards for geothermal energy;
  - b. production tax credit for wind/solar energy;
  - c. capping of abandoned water, oil and gas wells;
  - d. Department of Game and Fish update and elk populations;
  - e. Kirtland Air Force Base fuel spill cleanup;
  - f. beaver management plan;
  - g. agricultural hemp production;
  - h. farm to table/healthy foods in schools program;
  - i. New Mexico Mining Association issues; and
  - j. access to water on federal lands.

**Water and Natural Resources Committee  
2014 Approved Meeting Schedule**

<u>Date</u>	<u>Location</u>
June 5	Santa Fe
*July 1-2	Albuquerque
September 4-5	Artesia
October 6-7	Las Vegas
December 2-3	Santa Fe

\*July 1 is a joint meeting with the New Mexico Finance Authority Oversight Committee.

# **AGENDAS**

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

**June 5, 2014  
Room 322, State Capitol  
Santa Fe**

**Thursday, June 5**

- 9:00 a.m.           **Call to Order**  
—Representative George Dodge, Jr., Chair, Water and Natural Resources  
Committee
- 9:05 a.m.       (1) **Status Reports — Office of the State Engineer and Interstate Stream  
Commission**  
—Scott Verhines, State Engineer  
—Amy Haas, General Counsel, Interstate Stream Commission
- 10:30 a.m.       (2) **2014 Interim Work Plan, Itinerary and Meeting Schedule**  
—Committee Members
- 12:00 noon       **Adjourn**



- 2:00 p.m. (4) **Water Trust Board Composition**  
—Tom Clifford, Secretary, Department of Finance and Administration  
—Debra Hughes, Executive Director, New Mexico Association of Conservation Districts  
—Marquita D. Russel, Chief of Programs, NMFA
- 3:00 p.m. (5) **Federal-State-Local Cooperation in Forest Watershed and Fire Management — The Necessity of Long-Term Forest and Watershed Management Planning**  
—Tony Delfin, New Mexico State Forester  
—Calvin Joyner, Regional Forester, Third Region, United States Forest Service (Invited)  
—Laura McCarthy, Director of Conservation Programs, New Mexico Field Office, The Nature Conservancy  
—Brent Racher, President, New Mexico Forest Industry Association  
—Kent Reid, Director, New Mexico Forest and Watershed Restoration Institute  
—Nita Taylor, Lincoln County Manager
- 4:30 p.m. (6) **Status of the Water Trust Fund**  
—Charles Wollman, State Investment Council
- 5:00 p.m. **Recess**

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

**July 2, 2014  
Science and Technology Park Rotunda  
University of New Mexico  
Albuquerque**

**Wednesday, July 2**

- 9:00 a.m.           **Welcome from Utton Transboundary Resources Center (UTRC)**  
                          —Adrian Oglesby, Director, UTRC
- 9:15 a.m.       (7)    **[State Response to Kirtland Air Force Base Fuel Spill](#)**  
                          —Ryan C. Flynn, Secretary, Department of Environment
- 10:00 a.m.       (8)    **[Grant County Regional Water Supply Project](#)**  
                          —Alex Brown, City Manager, Silver City
- 11:00 a.m.       (9)    **[Drought Status and Outlook](#)**  
                          —Dave DuBois, State Climatologist
- 12:00 noon       **Adjourn**

Revised: September 2, 2014

**TENTATIVE AGENDA  
for the  
THIRD MEETING IN 2014  
of the  
WATER AND NATURAL RESOURCES COMMITTEE**

**September 4-5, 2014  
Central Valley Electric Co-Op  
1403 N 13th Street  
Artesia**

**Thursday, September 4**

- 9:30 a.m.                    **Call to Order and Introductions**  
—Representative George Dodge, Jr., Chair, Water and Natural Resources  
Committee
- 9:35 a.m.            (1)    **New Mexico First Report on Water Issues**  
—Heather Balas, Executive Director, New Mexico First  
—John D'Antonio, Deputy District Engineer for Project Management,  
United States Army Corps of Engineers
- 10:30 a.m.            (2)    **Disposition of Produced Water Practices; Produced Water Rules**  
—Lee Livingston, Mack Energy Corporation  
—Kent Adams, BOPCO, L.P.  
—Josh Bruening, Devon Energy  
—David Martin, Secretary, Energy, Minerals and Natural Resources  
Department  
—Jeri Sullivan Graham, Chemical Diagnostics and Engineering Group,  
Los Alamos National Laboratory
- 12:00 noon                    **Lunch**
- 1:15 p.m.            (3)    **Introduction of the Director of the Department of Game and Fish; Elk  
Population Overview and Issues**  
—Alexa Sandoval, Director, Department of Game and Fish  
—Staff, Department of Game and Fish
- 2:15 p.m.            (4)    **Production Tax Credit Fix**  
—Keven J. Groenewold, Executive Vice President and General Manager,  
New Mexico Rural Electric Cooperative Association  
—Pat Boone, President, New Mexico Cattle Growers' Association  
—Varinder Singh, EDF Renewable Energy, Inc.  
—Chris Loehr, Director of Finance, Infigen Energy, Inc.

3:15 p.m. (5) **Thermal Energy and Renewable Energy Portfolio Standards**  
—Keven J. Groenewold, Executive Vice President and General Manager,  
New Mexico Rural Electric Cooperative Association  
—Eric Austin, Western Farmers Electric Cooperative  
—Jerry Partin, Roosevelt County Electric Cooperative

4:15 p.m. **Tour of Central Valley Electric Co-Op Facility**

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

**Friday, September 5**

9:00 a.m. (6) **Industrial Hemp Production**  
—Gloria Castillo, New Mexico Industrial Hemp Coalition  
—Other Speakers TBA

10:00 a.m. (7) **Liability Issues for Crop Mazes**  
—Anna Lyles, Mesilla Valley Maze

10:45 a.m. (8) **The Meadow Jumping Mouse and Access to Water on Federal Grazing Allotments**  
—Gary Stone, Otero County Cattleman's Association  
—Ron Rardin, Otero County Commission  
—Garrett VeneKlasen, New Mexico Wildlife Federation  
—Robert Trujillo, Acting Regional Wildlife Director, U.S. Forest Service  
—Wally Murphy, Field Supervisor, New Mexico Ecological Service  
Field Office, U.S. Fish and Wildlife Service

12:00 noon **Adjourn**

Revised: October 2, 2014

**TENTATIVE AGENDA  
for the  
FOURTH MEETING IN 2014  
of the  
WATER AND NATURAL RESOURCES COMMITTEE**

**October 6-7, 2014  
New Mexico Highlands University Student Union Building  
Las Vegas**

**Monday, October 6**

- 9:00 a.m.           **Call to Order and Introductions**  
—Representative George Dodge, Jr., Chair, Water and Natural Resources  
Committee
- 9:05 a.m.           **Opening Remarks and Welcome**  
—Dr. James Fries, President, New Mexico Highlands University
- 9:15 a.m.       (1)   **New Mexico Acequia Commission and Associations**  
—Ralph Vigil, Chair, Acequia Commission  
—Paula Garcia, Executive Director, New Mexico Acequia Association
- 10:15 a.m.       (2)   **Water Demand, Availability, Costs and Environmental Impacts Related  
to the Arizona Water Settlements Act and Proposed Gila River  
Diversion Projects**  
—Craig Roepke, Bureau Manager, Special Water Projects, Interstate Stream  
Commission (ISC)  
—Mark Stone, Assistant Professor, Department of Civil Engineering,  
University of New Mexico  
—David Propst, Adjunct Professor, Department of Biology, University of  
New Mexico  
—Norm Gaume, P.E., Consulting Engineer
- 12:15 p.m.           **Lunch**
- 1:15 p.m.       (3)   **Indian Water Rights Settlements and Issues**  
—Representative Carl Trujillo  
—Arianne Singer, Managing Attorney, Office of the State Engineer (OSE)  
—Amy Haas, General Counsel, ISC

2:15 p.m. (4) [Long-Term Funding for Forest and Watershed Restoration](#)  
—Kent Reid, Director, New Mexico Forest and Watershed Restoration  
Institute  
—Laura McCarthy, Director of Conservation Programs, New Mexico  
Office, The Nature Conservancy

3:15 p.m. (5) [Proposed Changes to the Emergency Notification Requirements for Mining](#)  
—Terrence Foreback, State Mine Inspector  
—Randy Logsdon, Chair, Mining Safety Board

4:15 p.m. (6) [Santa Cruz Irrigation District — Santa Cruz Dam](#)  
—Kenny Salazar, President, New Mexico Association of Conservation  
Districts

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

**Tuesday, October 7**

9:00 a.m. (7) [Healthy Food in Schools Program](#)  
—Pam Roy, Executive Director, Farm to Table

10:00 a.m. (8) [Temporary Water Use Permitting Process; Administrative Hearing Location Requirements](#)  
—A.J. Olsen, Partner, Hennighausen and Olsen, LLP  
—Debbie Hughes, Executive Director, New Mexico Association of  
Conservation Districts  
—Greg Ridgley, General Counsel, OSE  
—Chris Lindeen, Managing Attorney, Administrative Litigation Unit, OSE

11:00 a.m. (9) [Regional Water Association Proposal and Association Issues](#)  
—Ramon Lucero, President, El Valle Water Alliance  
—Rick Martinez, Director of Business Development, New Mexico  
Finance Authority  
—Adam Leigland, Director, Public Works Department, Santa Fe County  
—James Hayhoe, Resident of Las Cruces  
—Andy Philo, Resident of Las Cruces  
—Robert Crowley, Resident of Las Cruces

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

Revised: December 1, 2014

**TENTATIVE AGENDA  
for the  
FIFTH MEETING IN 2014  
of the  
WATER AND NATURAL RESOURCES COMMITTEE**

**December 2-3, 2014  
Room 322, State Capitol  
Santa Fe**

**Tuesday, December 2**

- 9:00 a.m.           **Call to Order and Introductions**  
—Representative George Dodge, Jr., Chair, Water and Natural Resources  
Committee
- 9:15 a.m.       (1)   **Plains of San Agustin Water Appropriation Proposal**  
—Anita Hand, Catron County Commissioner  
—Eileen Dodds and Linn Kennedy, San Agustin Water Coalition  
—Michel Jichlinski, Project Director, Augustin Plains Ranch Water Project
- 10:15 a.m.       (2)   **New Mexico Rural Water Association (NMRWA) Issues**  
—Bill Conner, Executive Director, NMRWA
- 11:15 a.m.       (3)   **Report on New Mexico Recycling — House Memorial 51 (2014)**  
—English Bird, Executive Director, New Mexico Recycling Coalition
- 12:00 noon       **Lunch**
- 1:30 p.m        (4)   **Water Supply Vulnerabilities Study**  
—J. Phillip King, Civil Engineering Department, New Mexico State  
University  
—Lee Reynis, Bureau of Business and Economic Research, University of  
New Mexico (UNM)  
—Peggy Johnson, New Mexico Bureau of Geology and Mineral Resources,  
New Mexico Institute of Mining and Technology  
—David Gutzler, Department of Earth and Planetary Sciences, UNM  
—Janie Chermak, Department of Economics, UNM
- 3:00 p.m.       (5)   **Extreme Precipitation Modeling Update Opportunities**  
—Charles Thompson, Chief, Dam Safety Bureau, Office of the  
State Engineer  
—Charles Easterling, New Mexico Watershed and Dam Owners Coalition

- 3:30 p.m. (6) [Statewide Elevation Data Acquisition Proposal](#)  
—Gar Clarke, New Mexico Geospatial Program Manager, Department of  
Information Technology  
—Michael Inglis, Associate Director, Earth Data Analysis Center, UNM
- 4:15 p.m. (7) [Nuestro Rio — Regional Water Initiatives](#)  
—Robert Apodaca, Motiva Corporation
- 5:00 p.m. **Recess**

**Wednesday, December 3**

- 9:00 a.m. (8) [Middle Rio Grande Levee Task Force](#)  
—Subhas Shah, Middle Rio Grande Conservancy District  
—John D'Antonio, United States Army Corps of Engineers
- 9:30 a.m. (9) [Proposed Legislation](#)  
—Forest and Watershed Funding  
—State Engineer Administrative Hearing Locations  
—Mutual Domestic Water Consumer Association Governance  
—Mining Safety Board Emergency Notification Changes  
—New Mexico Fruits and Vegetables for School Meals Appropriation  
—Interstate Wildfire Compact  
—Interstate Mining Compact  
—Trespass/Public Access to Streambeds  
—Private Boat Docks on Ute Reservoir  
—Changing the Definition of Livestock
- 12:00 noon **Adjourn**

# **MINUTES**

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

**June 5, 2014  
State Capitol, Room 322  
Santa Fe**

The first meeting of the Water and Natural Resources Committee was called to order on Thursday, June 5, 2014, at 9:20 a.m. by Representative George Dodge, Jr., chair, in Room 322 of the State Capitol in Santa Fe.

**Present**

Rep. George Dodge, Jr., Chair  
Sen. Phil A. Griego, Vice Chair  
Rep. Dona G. Irwin  
Rep. Larry A. Larrañaga  
Sen. Sander Rue  
Rep. Mimi Stewart  
Rep. James R.J. Strickler  
Sen. Peter Wirth

**Absent**

Rep. Phillip M. Archuleta  
Rep. Paul C. Bandy  
Sen. Joseph Cervantes  
Rep. Brian F. Egolf, Jr.  
Rep. William "Bill" J. Gray  
Rep. Emily Kane  
Sen. George K. Munoz  
Sen. Cliff R. Pirtle  
Sen. Benny Shendo, Jr.  
Rep. Don L. Tripp  
Sen. Pat Woods

**Advisory Members**

Sen. Carlos R. Cisneros  
Rep. Sharon Clahchischilliage  
Rep. Anna M. Crook  
Rep. Nora Espinoza  
Rep. Candy Spence Ezzell  
Sen. Ron Griggs  
Rep. James Roger Madalena  
Rep. W. Ken Martinez  
Sen. Cisco McSorley  
Sen. Gerald Ortiz y Pino  
Rep. Vickie Perea  
Sen. Nancy Rodriguez  
Sen. John C. Ryan  
Rep. Tomás E. Salazar  
Sen. John Arthur Smith  
Rep. Jeff Steinborn

Rep. Cathrynn N. Brown  
Sen. Pete Campos  
Rep. Gail Chasey  
Sen. Lee S. Cotter  
Sen. Stuart Ingle  
Sen. Gay G. Kernan  
Rep. Rodolpho "Rudy" S. Martinez  
Sen. Steven P. Neville  
Sen. Mary Kay Papen  
Rep. Henry Kiki Saavedra  
Sen. William E. Sharer  
Rep. Bob Wooley

**Staff**

Jon Boller, Legislative Council Service (LCS)

Gordon Meeks, LCS

Mark Edwards, 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 at [www.nmlegis.gov](http://www.nmlegis.gov).

**Thursday, June 5****Introductions**

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

**Status Reports — Office of the State Engineer (OSE) and Interstate Stream Commission (ISC)**

Scott Verhines, state engineer, began by introducing several OSE and ISC staff members. He noted that 2014 will be a busy year, and he outlined several of the challenges facing the OSE, including:

- expanding water demands;
- watershed health issues and increased fire hazard;
- ecosystem health and environmental mandates;
- increased consumptive use of water;
- outside threats to New Mexico's jurisdiction over its water;
- infrastructure investment needs;
- interstate compact delivery obligations;
- competition for water resources; and
- economic impact and job creation.

Mr. Verhines went on to explain that the OSE also has several priorities for 2014, including:

- state and regional water planning;
- active water resource management (AWRM);
- defending New Mexico's jurisdiction over water;
- water rights adjudications;
- water project investments and financing;
- management of environmental mandates for water users; and
- the federal Arizona Water Settlements Act.

Amy Haas, ISC, provided the committee with an overview of the state and regional water planning process. She explained that after reviewing the 2003 state water plan in January, the ISC concluded that a full update of the plan is necessary. Ms. Haas said that while New Mexico is in the fourth year of extreme drought, the state has also experienced record levels of precipitation, which suggests a need for increased emphasis on water planning. She also said that regional water plan updates would take place over the next two years and should be completed by December 2015.

Greg Ridgely, OSE, provided the committee with an update on AWRM. He explained that the OSE is currently developing rules that focus primarily on ground water for the lower Rio Grande, noting that the Elephant Butte Irrigation District manages the surface water in the area. Mr. Ridgely said that the rules are designed to ensure that ground water pumping is consistent with water rights as well as developing joint water management plans. He explained that such plans will include procedures in the case that water rights are exceeded, as well as replacement plans in the event of a priority call. Mr. Ridgely went on to note that the OSE is currently meeting with stakeholders in the area and hopes to promulgate rules later this year.

Mr. Verhines said that the OSE is trying to develop a ground water market in the area.

Mr. Verhines also discussed the OSE's efforts to defend New Mexico's jurisdiction over water. He explained that federal agencies in all western states are trying to establish jurisdiction over ground water. Mr. Verhines said that New Mexico is aggressively defending its jurisdiction over water supply and administration in the U.S. Supreme Court, as well as in state court water rights adjudications.

Mr. Ridgely noted that the issue of federal control of state water resources takes many forms, and the lawsuit involving assertions by Texas and the federal Bureau of Reclamation (BOR) that certain New Mexico water users in the lower Rio Grande must obtain a permit from the BOR before pumping water is an extreme example. He also pointed out that this is the third time federal entities have attempted to circumvent New Mexico water courts.

Ms. Haas provided the committee with a time line in the Texas litigation, explaining that New Mexico moved to dismiss the case earlier in the spring. She noted that responses to the motion are due on June 16, with New Mexico's reply brief due on June 30.

Mr. Ridgely provided the committee with an update on the water rights adjudication process. He explained the federal McCarran Amendment of 1952 requires a comprehensive adjudication of all water rights in a river system to determine all federal and Indian water rights. Mr. Ridgely noted that unresolved Indian water rights claims are one of the largest sources of uncertainty in New Mexico's water landscape and that implementation of the three major Indian water rights settlements will help bring some certainty to Indian and non-Indian water users.

Mr. Verhines discussed the issue of capital investment in water projects, noting a need to improve coordination between water project funding programs. He also emphasized the importance of planning in the water project funding process. Mr. Verhines went on to say that a recent New Mexico First town hall meeting regarding water project financing resulted in two major recommendations: invest money more wisely and expand funding sources.

Ms. Haas spoke to the committee about managing environmental mandates for water rights users. She explained that New Mexico has used innovative approaches to balancing the water needs of the federal Endangered Species Act of 1973 activities with compact delivery obligations while still trying to protect the rights of water rights holders. Ms. Haas noted that dedicated endangered species programs are ongoing on the San Juan River, Pecos River and Rio Grande, pointing out that the OSE, ISC and other members of the Middle Rio Grande Endangered Species Collaborative Program continue recovery implementation programs to protect water rights owners and the Rio Grande silvery minnow. However, she also noted that the threat of litigation still exists, with WildEarth Guardians indicating its intention to sue several state and federal entities over compliance with the Endangered Species Act of 1973.

Ms. Haas went on to discuss the Arizona Water Settlements Act, providing the committee with a brief background on the settlement. She explained that the ISC is currently evaluating 15 proposals for use of the funding and will make a final determination before the December 31, 2014 deadline to notify the United States secretary of the interior. Ms. Haas emphasized that the ISC had not already made a decision on any of the proposals, as it is still trying to get as much information as possible on all 15 proposals.

Questions and comments from the committee included:

- federal agencies cutting off livestock access to drinking water on ranching allotments;
- the definition of ranching and grazing allotments;
- that endangered species issues occur all over New Mexico, not just on the middle Rio Grande;
- Governor Martinez's veto of funding for water projects and the use of Water Trust Fund money for water projects this year;
- Indian water rights settlement issues;
- time lines for the Taos and Aamodt settlements;
- potential restructuring of the Water Trust Board;
- legislative frustration over oversight of water project funding;
- regular updates for the committee on the Arizona Water Settlements Act;
- that a decision by the ISC to construct the New Mexico Unit would likely commit the state to provide additional funding for any kind of diversion project;
- the ISC makes the decision on use of funding from the Arizona Water Settlements Act;
- the process for negotiation of Indian water rights settlements;
- the recent reluctance of the federal government to fund large portions of massive water projects; and

- that each region of the state is different, and water plan developers must remain mindful of that and tailor plans to fit each region.

### **Work Plan and Meeting Schedule**

The committee developed a work plan and meeting schedule. The following topics were included in the work plan:

- long-term financing of forest and watershed treatment/restoration;
- forest health and fire;
- water project financing;
- the Acequia Commission and acequia issues;
- a drought survey/water vulnerabilities study;
- OSE and ISC updates, reports and issues;
- farm-to-table/healthy food in schools programs;
- the Middle Rio Grande Levee Task Force report;
- the Gila River and the Arizona Water Settlements Act;
- the state and regional water planning update;
- beaver management plan;
- drought status and outlook — report from the Drought Task Force;
- agricultural hemp production;
- policy responses to climate change;
- capping of abandoned water, oil and gas wells on public and private property;
- production tax credit for wind/solar energy;
- renewable portfolio standard for geothermal energy;
- Kirtland Air Force Base fuel spill;
- New Mexico Mining Association issues;
- Department of Game and Fish and the elk population;
- access to water for grazing on federal lands;
- regional water authorities;
- the Indian Water Rights Settlement process in adjudications;
- water adjudications and courts; and
- AWRM implementation.

### **Meeting Dates and Venues**

The committee agreed on the following meeting dates and locations:

- June 5 Santa Fe;
- July 1-2 Albuquerque (joint meeting with the New Mexico Finance Authority Oversight Committee);
- September 4-5 Artesia;
- October 6-7 Las Vegas; and
- December 2-3 Santa Fe.

### **Adjourn**

There being no further business, the committee adjourned at 11:40 a.m.

**MINUTES  
of the  
JOINT MEETING  
of the  
WATER AND NATURAL RESOURCES COMMITTEE  
and the  
NEW MEXICO FINANCE AUTHORITY OVERSIGHT COMMITTEE  
and the  
SECOND MEETING  
of the  
WATER AND NATURAL RESOURCES COMMITTEE**

**July 1-2, 2014  
Albuquerque**

The Water and Natural Resources Committee (WNRC) met jointly with the New Mexico Finance Authority (NMFA) Oversight Committee on Tuesday, July 1, 2014. The meeting was called to order on July 1, 2014 by Representative George Dodge, Jr., chair, WNRC, at 9:47 a.m. in the Science and Technology Park Rotunda at the University of New Mexico (UNM) in Albuquerque.

**Present**

Rep. George Dodge, Jr., Chair  
Sen. Phil A. Griego, Vice Chair (July 2)  
Rep. Paul C. Bandy  
Sen. Joseph Cervantes  
Rep. Dona G. Irwin  
Rep. Emily Kane  
Rep. Larry A. Larrañaga  
Sen. Cliff R. Pirtle  
Sen. Sander Rue  
Sen. Benny Shendo, Jr.  
Rep. James R.J. Strickler  
Rep. Don L. Tripp  
Sen. Peter Wirth  
Sen. Pat Woods

**Advisory Members**

Sen. Carlos R. Cisneros  
Rep. Sharon Clahchischilliage  
Sen. Lee S. Cotter  
Rep. Anna M. Crook  
Rep. Nora Espinoza  
Sen. Ron Griggs (July 1)  
Rep. James Roger Madalena  
Rep. Rodolpho "Rudy" S. Martinez

**Absent**

Rep. Phillip M. Archuleta  
Rep. Brian F. Egolf, Jr.  
Rep. William "Bill" J. Gray  
Sen. George K. Munoz  
Rep. Mimi Stewart

Rep. Cathrynn N. Brown  
Sen. Pete Campos  
Rep. Gail Chasey  
Rep. Candy Spence Ezzell  
Sen. Stuart Ingle  
Sen. Gay G. Kernan  
Rep. W. Ken Martinez  
Sen. Steven P. Neville

Sen. Cisco McSorley  
Sen. Gerald Ortiz y Pino  
Sen. Mary Kay Papen  
Rep. Vickie Perea  
Sen. Nancy Rodriguez  
Sen. John C. Ryan  
Rep. Tomás E. Salazar  
Sen. William E. Sharer (July 1)  
Rep. Jeff Steinborn  
Rep. Bob Wooley

Rep. Henry Kiki Saavedra  
Sen. John Arthur Smith

**Guest Legislator**

Rep. Zachary J. Cook

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

**Staff**

Jon Boller, Legislative Council Service (LCS)  
Gordon Meeks, LCS (July 2)  
Renée Gregorio, LCS (July 1)  
Lisa Sullivan, LCS (July 1)  
Tessa Ryan, LCS (July 1)  
Jeret Fleetwood, LCS  
Carolyn Ice, LCS

**Tuesday, July 1**

**Welcome from UNM**

Robert G. Frank, president, UNM, welcomed the committees and described UNM's efforts to graduate more students within four years and to improve the job outlook for graduates. Addressing the first initiative, UNM: adopted a new tuition model that encourages students to take more credit hours in a semester; reduced the number of credit hours required in many programs; and changed its advising process. Addressing the second initiative, UNM recently partnered with the City of Albuquerque and private-sector leaders to sponsor Innovate ABQ, a research district that facilitates entrepreneurship.

**Overview of Water Project Fund (WPF) Financing**

Marquita D. Russel, chief of programs, NMFA, outlined the statutes and processes that guide how community water projects are funded. Funding sources include: the Public Project Revolving Fund and the Rural Infrastructure Revolving Loan Fund, which sources require a monthly application process; the Drinking Water State Revolving Loan Fund and the Local Government Planning Fund, which sources require a quarterly application process; and the WPF,

the Colonias Infrastructure Project Fund, the Clean Water Administrative Fund and the Tribal Infrastructure Project Fund, which sources require an annual application process.

The largest of these funding sources is the WPF, which was established by the Water Project Finance Act (WPFA) and is administered by the NMFA. The Water Trust Board (WTB) receives applications for grants and loans from the WPF. A project may qualify for funding by meeting statutory requirements and WTB rule-based eligibility and prioritization criteria. A project management team consisting of representatives from seven agencies, each with its own project criteria, comprehensively reviews applications and provides technical advice on project merit, eligibility and fitness for funding. Then, the WTB ranks qualifying projects and selects the highest-ranked ones for legislative approval.

Mr. Boller discussed the legislature's role in WPF financing. Primarily, the legislature authorizes projects recommended by the WTB in a bill introduced each year.

Ms. Russel discussed the project-authorization bill from 2014, Senate Finance Committee Substitute for Senate Conservation Committee Substitute for Senate Bill 112, as amended (veto), (SB 112). SB 112 began with a list of 120 projects. The final version of the bill passed by the legislature listed 64 projects. The 64 projects' value was approximately \$70 million, and approximately \$33 million was available for project funding. Although SB 112 was vetoed, the \$33 million is still available for use because there are legislatively authorized projects from prior years that continue to need financing. That is, in past years, more projects were authorized than money was available to finance them.

Committee members offered comments and questions, and Ms. Russel responded, as follows.

- It seems that the legislature's role in the WTB's process is weak, given that projects can be funded in spite of a veto of the authorization bill — and that, typically, projects get "rubber stamp" approval.
- As shown in a spreadsheet depicting projects and authorizations, one project receiving funding this year received its authorization, which is being treated as ongoing, as long ago as 2005. The authorization language, as quoted in that spreadsheet, is very broad.
- Ms. Russel said that the application process recently changed to allow for a longer application period to help smaller communities. As a result, the project list presented to the legislature is more comprehensive, since further refinement of priorities occurs after the legislative session.
- Ms. Russel said that 10% of senior severance tax bond capacity is earmarked for the WPF, 5% for tribal infrastructure projects and 5% for colonias infrastructure projects. The latter two do not require legislative approval.
- The legislature might wish to have more oversight over tribal and colonias projects.

## **WTB: A Review of Planning, Spending and Outcomes**

Jonas Armstrong, program evaluator, Legislative Finance Committee (LFC), and Jon Courtney, program evaluation manager, LFC, reported on the findings of an analysis of the WPF program that was conducted by the LFC and published in a November 2013 report. They summarized the report's key findings and recommendations and responded to committee members' questions.

The LFC found that: 1) the high proportion of grants to loans offered through the program dilutes the effectiveness of the loan programs; 2) although challenges exist for the fair administration of the WPF, the WTB is correctly funding projects according to policy; 3) the Water Trust Fund (WTF) is in danger of becoming insolvent; and 4) the WTB is implementing new policies to improve the program. Concerning the first finding, the LFC compared New Mexico's mostly-grant program to other states' corresponding programs and discovered that most other states have self-sustaining, revolving loan funds and that New Mexico spends more on grants than all of its neighboring states combined. Concerning the second finding, the LFC found that water project financing programs are not streamlined for applicant ease, that the WTB does not comply with interest rate rules, that the WTB too willingly forgives loan obligations, that the WTB has not delivered a statutorily required annual report to the legislature since 2006 and that more oversight of WTB administration and projects is needed. Concerning the third finding, the LFC found that it is projected that money in the WTF will be depleted by 2033. Lastly, the LFC found that the WTB is taking steps to employ best practices and improve the financial and environmental accountability of public utilities, and that these policies will result in an increased need for assistance to smaller participating entities.

The report contained the following recommendations, which Mr. Armstrong and Mr. Courtney outlined. Pertaining to the WTB: a centralized process for water infrastructure process funding, featuring the use of a uniform-across-agency application process, should be established; loan terms should comply with the law; policies should be implemented faithfully and consistently; and a third party should be contracted to help project recipients with planning and analysis. Pertaining to the legislature: the requirement for a uniform application process should be established; an interagency committee that coordinates all water infrastructure funding programs should be created; and water projects should be funded through the capital outlay process only when other sources of funding are not available.

Committee members offered comments and questions, and the presenters responded, as follows.

- It would help legislators to know of a given requesting entity's pursuit of project funding from other sources and the entity's ability to secure financing for all phases of its project.
- Considering that many communities' tax bases are inadequate to repay loans, the proportion of resources dedicated to grants and to loans is not necessarily

inappropriate. Further, the legislature intended the program to function as a grant program to assist small communities with their water infrastructure needs.

- The WTB should resume presenting its statutorily required report to the legislature.
- Committee members requested: 1) more detail on the options for making the WTF solvent; 2) more detail on the recommendation that the legislature create an interagency committee to coordinate all water infrastructure funding programs; and 3) more detail on the category of mutual domestics in the table on page 10 of the LFC presenters' handout.

### **WPF Application and Approval Process**

A panel consisting of Bill Fulginiti, executive director, New Mexico Municipal League, John Gasparich, former interim chief executive officer (CEO), NMFA, Richard Rose, director of water resources, Water Resources Allocation Program, Office of the State Engineer, Blanca Surgeon, rural development specialist, Rural Community Assistance Corporation New Mexico (RCAC), and Ms. Russel discussed the WPF application and approval process.

Mr. Fulginiti introduced himself as having been a board member of the NMFA and the WTB since those boards' inception. He stressed the importance of a long application period to allow small municipalities, especially, adequate time to undergo the relatively complex application process, and he stressed the importance of the technical review process. Mr. Fulginiti reported that the funding process has become more streamlined since the WTB's formation. He further stated that in the last legislative session, uncertainty about proposed projects could have been mitigated by providing more information to the NMFA Oversight Committee and to the full legislature.

Mr. Gasparich indicated that he is no longer affiliated with any state entity but that he was participating on the panel to be available to respond to questions that he might address in his capacity as former CEO of the NMFA and former member of the WTB. He echoed Mr. Fulginiti's assertion that less misunderstanding would have resulted had the legislature received more information about projects proposed for authorization.

Mr. Rose offered some background about the WPF program and commented on its current state. He noted that in 2002, there was a severe drought that caused many communities to run out of water. A specially created team found that the problem was largely the result of those communities' lacking technical expertise to develop systems to guard against such shortages. Now, with a longer application period and state-provided technical assistance, small communities are more likely to secure funding for their projects and avoid the most dire consequences of a severe drought.

Ms. Surgeon profiled the state's rural water systems, testified on the challenges that many water utilities face and provided some recommendations for legislative response. Small rural systems constitute a vast majority of all drinking water systems in the state. Small systems are generally run by volunteer boards of directors that must navigate a complex web of water project

funding programs and the requirements (depicted in a table that Ms. Surgeon provided) that they impose. In the case of WTB funding, an applicant community must meet a funding-match requirement. If the applicant is unsuccessful in that effort or if it fails to score the minimum number of points associated with all requirements, then it must restart the application process. Further, the RCAC could offer much-needed technical expertise to small communities if it were adequately funded. Ms. Surgeon recommended that the state encourage the development of regional umbrella projects, which achieve an economy of scale with respect to policy and funding. She further recommended that the entities that operate urban water systems be required to help neighboring rural communities with their water systems.

Ms. Russel reviewed a handout illustrating key statistics in the history of the WPF program and describing the evolution of the WTB's processes. Throughout the years, the WTB has adapted its vetting process. The ratio of projects submitted to the legislature to the projects ultimately funded has varied. The recently lengthened application period forestalls the WTB's project rankings, which, in turn, prevents the legislature from receiving a more refined list of project priorities before the end of the interim.

Committee members offered comments and questions, to which the presenters responded, as follows.

- Because of the onerous application process, must small communities be required to start the application process over if they are not initially selected?
- This program was designed to benefit small communities, and many of the rules that have been put in place since the program's inception interfere with that intent.
- Improvements to water project funding could be made by incorporating data and statistics into the analysis and developing mechanisms to help state agencies and rural communities to work together.
- Whether legislative authorizations of water projects are perpetual is debatable, and the possibility of a legal action to challenge the validity of past years' authorizations is being discussed. Deeming authorizations perpetual has the effect of diluting legislative prerogative. A provision in SB 112 would have put an expiration on authorizations. The effect that such an authorization cut-off would have on multi-phase projects that span more than one year should be considered.
- In response to the SB 112 veto message, SB 112 was debated multiple times in committee, and efforts at selecting and funding projects would be less frustrated if the legislative branch had more control over WTB composition. Legislative and executive cooperation in this context is essential to ensuring that worthwhile projects get funded.
- It is important for WTB members to be present at meetings like this to hear the concerns expressed.
- Mr. Rose indicated that there have been attempts throughout the years at making more uniform the requirements of the various water project funding programs. He said that a statutory scheme involving a central agency would be needed to achieve uniformity

on a wider scale. Ms. Russel cited technical problems as a barrier to uniformity; the federal programs, for instance, have different rules, and the various programs have different timing requirements. Compared with other states, she said, New Mexico has a high number of funding sources for its population.

- Ms. Russel said that, occasionally, the WTB, which has the final say in which projects get funded, deviates from the project management team's recommendations.
- A committee member requested more information on the WTB process for project consideration and funding.
- A committee member expressed strong concern about a situation in which the Ancones Mutual Domestic Water and Wastewater Consumers Association (MDWWCA) has tried for two years to implement a project, and, as a result of its initial failure at securing part of that funding, residents have had to haul water for the last year. The association recently learned that the capital outlay portion of funding that it was supposed to receive for the project has been held up by the Department of Finance and Administration (DFA) because of a perceived audit problem under EO 2013-006 and that the next opportunity for a bond sale to finance the project is in December, which the association and the member consider unacceptably late. Ms. Russel testified that the NMFA certified that the Ancones project was compliant with audit requirements imposed by Executive Order (EO) 2013-006. The member asked what safeguards — such as an emergency funding source — could be implemented to prevent such situations.

### **Capital Outlay for Water Infrastructure Projects and WTB Composition**

Tom Clifford, secretary of finance and administration and chair of the WTB, discussed the executive branch's efforts to improve the capital outlay process. He outlined areas seen as strengths, which include state and local cooperation, use of best practices and improvements in education and training, and areas seen as needing improvement. They include staffing, coordination, planning, prioritization and accountability. Secretary Clifford gave an overview of funding sources for capital outlay and noted that EO 2013-006 and the corresponding training by his staff to small communities have improved local governments' compliance with the Audit Act. Secretary Clifford added that \$89 million was appropriated through the 2014 capital outlay bill for water projects throughout the state.

Secretary Clifford also highlighted recent improvements to the WTB's process, responded briefly to the LFC's report on that process and commented on the WTB's composition. Improvements include implementation of a simplified project-interest form that screens for initial eligibility and the expanded window of opportunity for applicants to correct deficiencies that would otherwise disqualify them from consideration for funding. Regarding the 2013 LFC review, Secretary Clifford noted that the WTB carefully analyzes applicants' finances and finds that many are unable to repay loans, which helps to explain the LFC's finding of a high grant-to-loan ratio. He added that staff spends a lot of time preventing the duplication of efforts that applicants of the several funding programs sometimes encounter. Lastly, Secretary Clifford

pointed out that the legislature, in its role of confirming cabinet secretaries and the WTB's public member appointments, helps to determine who holds positions on the WTB.

Debra Hughes, executive director, New Mexico Association of Conservation Districts, introduced herself as a representative for the environmental community and treasurer of the WTB and said that she worked on the original WPFA and served on the first WTB. She expressed disagreement with the LFC report on its point that there should be a larger loan component in WPF program funding. Ms. Hughes concluded by indicating that the board scrutinizes projects to determine funding priority and by acknowledging that it would help the legislature to know what those priorities are.

Ms. Russel reviewed a handout summarizing major WTB-related legislation and outlining WTB composition.

Senator Cervantes thanked the members of the WTB in attendance, who were Brent Van Dyck, WTB representative of the soil and water conservation districts, Robert P. Coalter, CEO, NMFA, Mr. Fulginiti, Secretary Clifford and Ms. Hughes, for their participation. Mr. Van Dyck stressed the importance of protecting water and agriculture and helping small communities overcome the disadvantages that many face in securing funding for water projects.

Committee members directed comments and questions to Secretary Clifford as follows.

- Can the State Board of Finance find money to fund on an emergency basis the Ancones water project (whose status was discussed during the "Water Project Fund Application and Approval Process" presentation)? Secretary Clifford responded that it is possible that the DFA made a mistake and that the issue preventing the issuance of money for the project would be researched. He added that the process for such issuances includes measures to improve accountability.
- A motion was made, and passed without objection, that the following action be taken. The committees will send a letter to the secretary of finance and administration requesting: DFA staff to work with the Ancones MDWWCA to resolve the issue preventing the issuance of money for its project so that money is secured as soon as possible and construction may begin as planned in July; and that the DFA provide a follow-up report on the situation and how situations like it can be prevented.
- EO 2013-006 might be unconstitutional, as the attorney general opined.
- A partisan imbalance in the WTB representation occurs when 14 of the 16 members are executive appointees. Provisions guiding the composition of the State Investment Council (SIC) serve as an example of forming a more balanced oversight body. The legislature's influence through senate confirmation over WTB membership is too minor to prevent the imbalance. In the senate confirmation process, a candidate's worthiness to serve on the WTB is not actively considered.
- There should be an evaluation of colonias' infrastructure needs and a corresponding comprehensive plan to address them. Policymakers should know how much money is

available and how much would be needed to fully address colonias' infrastructure needs.

- The WTB should submit a more refined list of projects to the legislature next year. Secretary Clifford responded that the process to determine readiness to proceed will help cull the list submitted to the legislature, but it is difficult to strike a balance between applicants' and the legislature's needs and wishes. He said the WTB can work on getting the legislature a more refined list. Secretary Clifford also said that a rule change would be required to expand the application and funding cycle.
- Last session, efforts were made to conform the list of projects in SB 112 with the governor's agenda. Yet when asked, the state engineer said that, at the time, there was no list of projects having the governor's support. Such a list did not become available until two days before the end of the session, which was not enough time for the legislature to evaluate and incorporate them into its bill.
- A committee member requested that NMFA staff provide information on which of the governor's projects are part of entities' infrastructure capital improvement plans.
- Small communities should not have to restart the application process after being disqualified. Rather, there should be a period of years in which their applications should be held open. Further, if an entity receives approval contingent on securing a match for a grant, there should be assistance (e.g., a time extension or a supplemental grant) offered if the entity cannot satisfy the contingency.

### **Federal-State-Local Cooperation in Forest Watershed and Fire Management — The Necessity of Long-Term Forest and Watershed Management Planning**

Tony Delfin, New Mexico state forester, James Melonas, New Mexico state liaison, United States Forest Service Southwestern Region (USFS), Laura McCarthy, director of conservation programs, New Mexico Field Office, The Nature Conservancy, Brent Racher, president, New Mexico Forest Industry Association, Kent Reid, director, New Mexico Forest and Watershed Restoration Institute (NMFWRI), and Nita Taylor, Lincoln County manager, discussed federal, state and local cooperation in forest watershed and fire management efforts.

Mr. Delfin briefly described the role of the state Drought Task Force Watershed Subcommittee (DTFWS) in improving the health of forests and watersheds. The DTFWS developed a plan and funding request for watershed restoration projects on public lands. Mr. Delfin turned the committees' attention to a recent press release from the Office of the Governor that announced \$6.2 million for those projects and indicated that the projects are ready to begin. The larger projects could take up to about two years to complete.

Mr. Reid highlighted the NMFWRI's responsibilities and purpose, which consist of conducting long-range collaborative planning with other entities to "promote the use of adaptive ecosystem management ... reduce the risk of wildfires, and restore the health of fire-adapted forest and woodland ecosystems" in the region.

Mr. Melonas described three aspects of the USFS's efforts to quickly and sweepingly restore watersheds in New Mexico: science, tools and partnerships. With regard to the first aspect, the Forest Service Rocky Mountain Research Station recently published a report that outlines a comprehensive framework for "improving ecosystem resiliency". Mr. Melonas defined the "tools" as provisions in the 2014 federal farm bill. Lastly, he cited partnerships among the USFS and several public and private entities that will enhance the USFS's efforts.

Ms. Taylor described the effect that five recent wildfires have had on Lincoln County. She discussed the county's response while the fires were burning (establish effective communication systems and collaborate with first responders and partners) and the work required of the county after the fires were extinguished (assess the damage and the impact on the local economy and initiate a process of recovery and cleanup).

Ms. McCarthy described the damage that wildfires, which are occurring on an increasingly large scale, have on the ecosystem and communities' water systems. Fires like the Las Conchas fire of 2011 cause a massive movement of sediment from the mountains into rivers and lakes. That sediment pollutes municipal water supplies to the point that some water utilities have determined that the water is not worth treating. Moreover, a growing body of science is pointing to the condition of watersheds as a factor in the historical declines in stream flow. Ms. McCarthy indicated that the cost of reacting to fires (about \$2,000 per acre) exceeds the cost of preventative forest restoration measures (about \$700 per acre). Immediate action must be taken to restore forests. Ms. McCarthy described some efforts to address the problem. Many public and private entities helping to develop the Rio Grande Water Fund (RGWF) plan have built momentum in the undertaking and that the legislature's support of their efforts is critical.

Mr. Racher underscored the urgency of the situation and the current deficiencies in addressing the matter. He asked for the legislature's help in establishing a long-term funding plan to address wildfire risks and said that related legislation would be proposed in the next session.

Committee members offered comments and questions, and the presenters responded, as follows.

- This work will require the participation of the federal government and bipartisan, bicameral cooperation in the legislature.
- It would be worthwhile to understand what other states and the USFS are doing to address the wildfire issue. Arizona has begun a long-term project to improve forest thinning on a large scale and is exploring innovative ways to control the costs.
- Wildfires demand an immediate response, and New Mexico should take the lead among states in its efforts to address the problem. Those efforts should include training New Mexicans for forest restoration-related jobs. It would be appropriate for the Jobs Council to hear a presentation on the economic development aspects of forest restoration.

- At the request of a committee member, Dale Dekker, architect, Dekker/Perich/Sabatini, who was in the audience, commented on the discussion. Mr. Dekker expressed his enthusiasm about collaborative forest restoration efforts and suggested that the business community is playing a role in tackling the problem.
- At its October meeting, the WNRC should address options to generate revenue for forest restoration. Ms. McCarthy indicated that there have been conversations with the superintendent of insurance about the possibility of imposing a premium tax on homeowners insurance to help offset the cost of restoration efforts. She also said that the RGWF group has designed a model in which downstream water users help to pay the costs of water source protection. The cost during the transition to plan implementation will be about \$30 million per year, including a federal contribution of about \$20 million.
- Efforts at forest restoration would improve if there were fewer government-imposed restrictions on forest thinning; private industry would then be more willing to step in and invest in it. One of the most crucial components of forest restoration will be increasing private investment.

### **Status of the WTF**

Charles Wollman, SIC, provided some history of the WTF and reported on its status. The WTF was statutorily created in 2003. It received an initial \$40 million appropriation in 2007 and another of \$15 million in 2008, but none since then; its current value is \$45 million. Money in the fund is invested according to the terms that guide investment of the land grant permanent funds. Every year, at least \$4 million from the WTF is distributed to the WPF. Unlike other funds managed by the SIC, the WTF has not grown, in spite of the strong aggregate growth of permanent fund assets that has occurred since June 2009. From April 2010 to May 2014, the WTF lost \$304,000. It is predicted that the WTF will be depleted in 2035; but if market performance weakens, then the WTF's life could span as little as 15 more years. The SIC's consultant, having assumed that a targeted return of 7% will be met and having not taken into account inflation, has projected that a \$12 million contribution to the WTF would improve the chances of the fund being maintained; with inflation taken into account, more would be needed. Other options for making the fund solvent include: replenishing the fund annually through a recurring distribution; reducing the amount of annual distribution to the WPF; and basing the distribution on the fund's earnings. The SIC favors the recurring distribution option. Mr. Wollman acknowledged that the option of basing the distribution on earnings would protect the WTF's corpus but make planning difficult.

Committee members suggested other ideas for helping to sustain the fund, including conducting a study to determine a healthy rate of distribution and establishing a funding stream, such as a severance tax on water. In response to a committee member's question, Mr. Wollman indicated that the SIC believes that the fund is managed efficiently.

## Wednesday, July 2

### **Welcome from Utton Transboundary Resource Center (UTRC)**

Adrian Oglesby, the newly appointed director of the UTRC, welcomed the WNRC to UNM and thanked the members for coming. He provided the committee with an overview of the UTRC, explaining that it focuses entirely on water through law and policy. Mr. Oglesby went on to discuss several of the projects the center is currently working on, including:

- updating *Water Matters!*, an annual primer on current water issues in New Mexico;
- land use and the availability of water;
- modern interstate water compacts;
- Indian water rights settlements;
- the Joe M Stell Water Ombudsman Program and water rights adjudications;
- effects of Texas' ground water pumping on aquifers;
- best practices of water conservation (in conjunction with the Water Resources Research Institute at New Mexico State University); and
- development of implementable strategies for addressing water resource issues.

Mr. Oglesby also provided the committee with a brief personal history, noting that he currently serves as vice chair of the Middle Rio Grande Conservancy District.

Questions and comments from the committee included:

- mediation and nontraditional dispute resolution on Indian water rights adjudications;
- while the goal of water rights adjudications is that they will not be revisited, it has happened, such as on the San Juan River; and
- courts tend to view mediation and negotiation as more expeditious than litigation.

### **State Response to Kirtland Air Force Base (KAFB) Fuel Spill**

Ryan C. Flynn, secretary, Department of Environment (NMED), addressed the cleanup of the jet fuel spill at KAFB. He began with a review of the clean-up site's history, noting that the bulk fuels facility was constructed in 1953 and that the NMED was first notified of the fuel spill in 1999. Secretary Flynn explained that there are several contaminants that have been detected in both the soil and ground water and that the plumes for various contaminants vary in size. He also noted that different approaches and technologies have to be used for different contaminants, and he outlined the NMED's clean-up priorities. Secretary Flynn explained that the first priority is to mitigate the source of ground water contamination through soil vapor extraction (SVE), which will vacuum fuel out of the soil to prevent further ground water contamination. He pointed out that while 500,000 gallons of fuel have already been recovered by SVE, the existing SVE effort is undersized and must be made more robust. Secretary Flynn went on to explain that light non-aqueous phase liquid fuel (LNAPL) will also have to be removed to prevent additional contamination. He acknowledged that because LNAPL is floating on top of ground water, removal will be a challenge. Next, Secretary Flynn explained that interim containment systems

will be used to halt contaminant plume migration and prevent contaminants from reaching Albuquerque water supply wells while a long-term strategy is selected. Finally, he said that monthly testing of ground water, halting plume migration and ultimately protecting drinking water are the NMED's priorities.

Secretary Flynn acknowledged that he is not happy with the current situation, but he emphasized that progress has been made. He noted that each clean-up phase will offer separate, but related, challenges. Secretary Flynn also said that while it is impossible to prove zero contamination, as detectable levels are just above that, zero contamination is the goal.

Questions and comments from the committee included the following.

- The federal government has made funding available to the NMED and has stated that funding for the cleanup will not be an issue.
- The NMED does have the authority to fine KAFB.
- The NMED has contracted with a former geochemist from Los Alamos National Laboratory to help consult on the cleanup.
- The total amount of jet fuel spilled is between six million gallons and 24 million gallons.
- The NMED does have access as a regulator to check fuel storage tanks, and no further leaks have been detected.
- The contamination plume is slowly advancing in a north/northeastern direction.
- The NMED does not pay for the technology or the cleanup itself, only for agency staff and consultants.
- The contamination plume is not the largest one in New Mexico, but the NMED recognizes the problem presented by it being close to a city's drinking water.
- The U.S. Air Force proposes technologies to use for cleanup, and the NMED approves them.
- The NMED does not intend to approve of inexpensive or unproven technologies and, instead, will only approve of the best available technology for cleanup.
- The NMED meets with the Albuquerque-Bernalillo County Water Utility Authority and will inform the authority if wells ever need to be shut down.
- A public stakeholder process will develop a plan for use of the produced water from the cleanup.

### **Grant County Regional Water Supply Project**

Alex Brown, city manager, Silver City, outlined a water project to improve and increase access to public water supplies for residents of Grant County. He said that the project has two principal elements: (1) development of a new well field near the Grant County Airport; and (2) construction of an inter-community pipeline. Mr. Brown explained that many Grant County communities are looking for additional water sources, with Santa Clara needing to drill more wells and Hurley actually having negative water rights. He noted that the hydrogeology of the area suggests that drilling wells near Hurley and Santa Clara would yield uncertain results, but a

well field near the Grant County Airport would make use of almost 200 acre-feet of undeveloped water rights, which could be delivered to nearby communities via pipeline. Mr. Brown went on to explain that the project can be staged in four phases as funding becomes available:

1. develop the well field at the Grant County Airport and build a pipeline to Hurley;
2. extend the pipeline from Hurley to Bayard;
3. extend the pipeline from Bayard to Santa Clara; and
4. extend the pipeline from Santa Clara to Silver City.

Mr. Brown also noted that the total project cost would range from \$16.5 million to \$19.7 million, depending on factors such as pipeline diameter and the number of water storage tanks installed.

Questions and comments from the committee included:

- a cost breakdown for well drilling;
- that effluent is released into a channel where it helps infiltrate the aquifer;
- the regional governance of water systems;
- the Grant County Water Commission could enforce water conservation measures;
- that the project is included in the final list of projects being considered by the Interstate Stream Commission for funding from the Arizona Water Settlements Act;
- that ground water tends to move naturally from Silver City to Hurley; and
- that water rates in Hurley will almost certainly increase as a result of this project.

### **Drought Status and Outlook**

Dave DuBois, state climatologist, updated the committee on drought conditions in New Mexico. He explained that drought conditions had improved for most of New Mexico from late June 2013 to late June 2014, and only about 29% of the state was experiencing severe or exceptional drought in 2014, as opposed to about 93% in 2013. Dr. DuBois did point out that shifting weather patterns have caused a number of dust storms around the state, and one of those dust storms caused a vehicle crash near Lordsburg that was responsible for seven fatalities. He went on to note that June precipitation was better than in the two previous years, but it was still somewhat below normal levels, particularly in the western half of the state. Dr. DuBois also noted that snowpack in the Rio Grande Basin was significantly below median levels and that reservoir levels across the state were particularly low after consecutive years of drought. However, he noted that the seasonal forecast suggested that El Niño conditions are likely, beginning over the summer and continuing into the winter.

Questions and comments from the committee included the following.

- New Mexico sees limited effects from the rare hurricane track in the eastern United States.

- El Niño and La Niña patterns are difficult to predict over several years, as patterns do not appear to be the same as they were during the 1950s.
- Every region of the United States is affected differently by El Niño and La Niña patterns.

**Adjourn**

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

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

**September 4-5, 2014  
Central Valley Electric Cooperative  
Artesia**

The third meeting of the Water and Natural Resources Committee was called to order on Thursday, September 4, 2014, at 9:30 a.m. by Representative George Dodge, Jr., chair, in the Central Valley Electric Co-Op in Artesia.

**Present**

Rep. George Dodge, Jr., Chair (9/4)  
Rep. Paul C. Bandy  
Rep. William "Bill" J. Gray  
Rep. Dona G. Irwin  
Rep. Larry A. Larrañaga  
Sen. Cliff R. Pirtle  
Sen. Sander Rue  
Sen. Benny Shendo, Jr. (9/4)  
Rep. Mimi Stewart  
Rep. James R.J. Strickler  
Sen. Peter Wirth  
Sen. Pat Woods

**Advisory Members**

Rep. Cathrynn N. Brown  
Sen. Lee S. Cotter  
Rep. Anna M. Crook  
Rep. Nora Espinoza  
Rep. Candy Spence Ezzell  
Sen. Ron Griggs  
Sen. Gay G. Kernan  
Sen. Cisco McSorley  
Sen. Gerald Ortiz y Pino (9/4)  
Sen. Mary Kay Papen (9/4)  
Rep. Vickie Perea  
Sen. Nancy Rodriguez  
Rep. Tomás E. Salazar  
Sen. John Arthur Smith  
Rep. Bob Wooley

**Absent**

Sen. Phil A. Griego, Vice Chair  
Rep. Phillip M. Archuleta  
Sen. Joseph Cervantes  
Rep. Brian F. Egolf, Jr.  
Rep. Emily Kane  
Sen. George K. Munoz  
Rep. Don L. Tripp

Sen. Pete Campos  
Rep. Gail Chasey  
Sen. Carlos R. Cisneros  
Rep. Sharon Clahchischilliage  
Sen. Stuart Ingle  
Rep. James Roger Madalena  
Rep. Rodolpho "Rudy" S. Martinez  
Rep. W. Ken Martinez  
Sen. Steven P. Neville  
Sen. John C. Ryan  
Rep. Henry Kiki Saavedra  
Sen. William E. Sharer  
Rep. Jeff Steinborn

## **Guest Legislator**

Rep. Yvette M. Herrell (9/5)

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

## **Staff**

Jon Boller, Legislative Council Service (LCS)

Mark Edwards, 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 at [www.nmlegis.gov](http://www.nmlegis.gov).

## **Thursday, September 4**

### **Call to Order and Introductions**

Representative Dodge began by having members of the committee introduce themselves.

Chuck Pinson, general manager, Central Valley Electric Co-Op, welcomed committee members to the co-op's new facility and thanked them for coming. He provided the committee with a brief overview of the facility, noting that in addition to being significantly larger than the previous facility, it features several energy-efficient upgrades such as LED lighting and geothermal heating and cooling.

### **New Mexico First Report on Water Issues**

Heather Balas, executive director, New Mexico First, provided the committee with testimony regarding a town hall convened by New Mexico First to discuss water planning, development and use. She began by providing the committee with background on New Mexico First, explaining that it is a nonpartisan, nonprofit public policy organization focused on research and town halls and forums to engage New Mexicans on the important issues facing the state to develop concrete, actionable recommendations for policymakers and the public.

Ms. Balas noted that the New Mexico First Town Hall on Water Planning, Development and Use was held on April 15-16 in Albuquerque and that it was the largest town hall in New Mexico First history, which underscores the importance of the issue. She explained that recommendations adopted by the town hall fell into six major themes:

- plan for the future;
- keep watersheds and ecosystems healthy;
- address legal and management issues;

- pursue new sources of water;
- improve water funding practices; and
- protect water quality and quantity.

Ms. Balas explained that recommendations were developed for each theme, with 15 total recommendations, and that electronic polling at the meeting provided organizers with feedback on support for each recommendation. She went on to provide the committee with an overview of the recommendations. Recommendations included:

- improving state and regional water plans;
- making New Mexico's water supply resilient and flexible;
- planning for extreme droughts;
- restoring watersheds;
- protecting against wildfire and water source loss;
- advancing water shortage-sharing agreements;
- improving water rights management;
- improving the adjudications process;
- assessing brackish water reserves;
- expanding water funding sources; and
- conserving water and protecting it against contamination.

Questions and comments from the committee included the following:

- the effect and mitigation of evaporative water losses;
- development of brackish water policy;
- Los Alamos National Laboratory (LANL) is working with the New Mexico Department of Environment (NMED) on brackish water issues;
- the Office of the State Engineer (OSE) knows the location of most brackish water reserves in New Mexico but does not fully know how these reserves interact with freshwater sources;
- public/private partnerships could be one way of implementing some of the recommendations;
- developing a uniform shortage-sharing template may not work because each water-sharing agreement is unique;
- identifying common themes in successful shortage-sharing agreements may be the best way to move forward;
- management of federal land was discussed at the town hall;
- the importance of developing common sense land management policies; and
- maintaining a distinction between urban areas and rural areas when it comes to water project financing, as urban areas may have access to resources that rural areas do not.

**Disposition of Produced Water Practices: Produced Water Rules**

Lee Livingston, Mack Energy Corporation, outlined the use and disposition of produced water in oil and natural gas exploration. He explained that, until recently, the oil and gas industry

relied primarily on fresh water for most oil and gas wells, including hydraulic fracturing and horizontal drilling operations. However, Mr. Livingston said that recent advances in technology made the treatment and reuse of produced water an economically viable option for some operations. He provided the committee with a brief overview of the oil and gas exploration process, as well as drilling sites featuring treated water, and noted some of the differences. Mr. Livingston also discussed the water treatment cycle, explaining that water travels from a well facility to a treatment plant, then to storage pits and eventually to hydraulic fracturing sites, and then back to well facilities. Mr. Livingston also discussed the goals of the produced water treatment process, including the removal of iron sulfide and a reduction in the level of total dissolved solids (TDS). He also said that the company's treatment program included an avian and wildlife protection plan, overseen by the Center of Excellence for Hazardous Materials Management. Finally, Mr. Livingston discussed the advantages of reusing produced water, including reductions in the purchase and use of fresh water, reduced truck traffic and the use of 100 percent treated water in hydraulic fracturing wells.

Kent Adams, BOPCO, L.P., also discussed the use and treatment of produced water in oil and gas wells. He began by providing the committee with some background information on BOPCO, noting that the company is the fifth-largest oil and gas producer in New Mexico. He explained that BOPCO primarily drills horizontal wells using significant amounts of fresh water, noting that fresh water does offer certain advantages, such as known chemistry and storage and transport logistics. However, Mr. Adams acknowledged that the use of fresh water also presents challenges, particularly the cost and scarcity of water in southeastern New Mexican deserts. Mr. Adams went on to note that alternatives to fresh water have been considered for some time. He discussed development of systems using produced water, noting that such systems present another set of challenges, such as salt saturation, slightly higher acidity, high TDS amounts, storage and transport issues and higher cleanup costs for spills. Mr. Adams explained that BOPCO continues to pursue the use of treated produced water and uses the money saved on the purchase of fresh water to offset the costs associated with transport and storage of produced water.

Josh Bruening, Devon Energy, provided the committee with an overview of a Devon Energy project at the company's site near Cotton Draw, New Mexico, where produced water is recycled. He explained that produced water is transported via pipeline to the treatment site, where it passes through filter pads into an above-ground storage tank, through more filter pads and eventually through a mobile treatment unit. Mr. Bruening noted that personnel remain at the treatment site 24 hours a day for safety and security. He also provided the committee with projections of freshwater savings as a result of produced water reuse, noting that the company projects that over 300 million gallons of fresh water will be saved every year beginning in 2016.

David Martin, secretary of energy, minerals and natural resources, discussed the reuse and regulation of produced water. He began by explaining the relationship between water and energy, noting that as oil and gas production has increased in New Mexico in recent years, the use of limited freshwater resources has also increased. Secretary Martin also discussed regulatory treatment of produced water, explaining that produced water is currently regulated as a

waste and is commonly disposed of by injection into deep wells. However, he noted that produced water can be converted into an asset and replace the use of fresh water in oil and gas production operations, as well as serve as a consistent, stable water source. Secretary Martin also noted that treatment costs are now similar to disposal costs. He went on to explain that rules regarding produced water are being revised to encourage recycling and reuse of produced water. Finally, Secretary Martin discussed the formation of brackish water and produced water subcommittees of the New Mexico Drought Task Force.

Jeri Sullivan Graham, Chemical Diagnostics and Engineering Group, LANL, also addressed the reuse of produced water. She began by explaining that New Mexico, particularly the southeastern region, is currently facing drought conditions and that such conditions will recur over time. She went on to discuss the recommendations of a 2004 brackish ground water assessment program workshop, noting that the recommendations are still valid: New Mexico must develop new sources of water, including treatment of brackish water and treatment of wastewater. Ms. Graham also noted that some of the goals of the 2004 group are still being pursued, such as development of methods to treat and reuse produced water in the field. However, she acknowledged that reuse is challenging, and that while the oil and gas industry is evolving, some key challenges remain, including:

- costs to transport and treat produced water;
- treatment infrastructure;
- risk perception, particularly concerning potential future human use of treated water;
- environmental sustainability; and
- regulation.

Ms. Graham went on to discuss the path forward for treatment and reuse of produced water. She explained that the Energy, Minerals and Natural Resources Department (EMNRD) must adapt its regulations, while companies continue to invest in and build necessary infrastructure. She also noted the importance of the continued exchange of information about best practices, both within the industry and within the state.

Questions and comments from the committee included the following:

- the industry appears to be engineering a solution that economically favors the treatment and reuse of produced water, rather than the use of fresh water;
- not all sites currently employ treatment and reuse technology, as some sites do not lend themselves to it yet;
- treatment technology requires a minimal amount of fresh water;
- most of the solid waste produced by treatment is suitable for disposal in landfills;
- liners in storage and treatment pits are replaced periodically;
- treatment technology is specific to oil and gas rather than other extractive industries;
- other industries, such as mining, are beginning to recognize the benefits of transitioning away from the use of fresh water;
- the expected life cycle of produced water pits and the eventual reclamation back to

- being able to sustain vegetation;
- the cost difference between treated water and fresh water is widely variable, depending mostly on the volume required;
- the industry is close to the point at which it is cheaper to treat produced water instead of purchasing fresh water;
- proposed rules by the Oil Conservation Division of the EMNRD call for the use of produced water for four years;
- it is difficult to use 100 percent produced water in wells, but that remains the goal of most companies;
- produced water moves from oil and gas wells to treatment and eventual use in hydraulic fracturing, then back to treatment for use in hydraulic fracturing again; and
- the involvement of New Mexico's universities and national laboratories in developing future technologies.

## **Introduction of the Director of the Department of Game and Fish: Elk Population Overview and Issues**

Alexa Sandoval, director, Department of Game and Fish, provided the committee with an overview of elk population issues in New Mexico. She began with a brief personal history, then outlined the various elk herd units in New Mexico and their populations. Ms. Sandoval noted that statewide elk harvest statistics suggest that license sales and both male and female elk harvests are increasing. She also discussed the depredation program and intervention statistics.

Questions and comments from the committee included the following:

- management strategies for higher population levels include an increase in license opportunities;
- the department tries to address individual situations separately in awarding landowner permits to small parcels of land;
- while the department will provide fencing materials, landowners themselves have to construct fences;
- deer population estimates for the southeast region are stable, as wildfires in the region helped habitat issues;
- the department has seen higher-than-average revenue, based on ammunition sales, and is trying to manage larger scale land issues;
- the adjustment of hunt timing to avoid warmer-than-average seasonal temperatures;
- complaints in the northeast/north central region tend to come from a particular area, which the department has tried to address;
- department strategies for addressing issues raised by certain landowners include increased benefits to landowners and specific population control hunts;
- the minimum acreage required for the issuance of landowner permits;
- the department is collecting data on the effect of predators on elk herd size, but it still needs more information before deciding on a strategy;
- the consideration of fees for other land uses, including tourism, rather than forcing hunters to bear the costs of habitat programs;

- the designation of critical habitat on federal lands and its effect on all land users;
- the potential increase in cost for certain elk permits; and
- holistic approaches to land management.

On a motion made, seconded and passed, the minutes of the June 5 and July 1-2, 2014 meetings were approved as submitted.

### **Production Tax Credit**

Keven J. Groenewold, executive vice president and general manager, New Mexico Rural Electric Cooperative Association, addressed the topic of tax credits for renewable energy. He explained that the current tax credit is fully allocated and suggested that it be fixed in three ways: extending the credit's sunset date, changing the collection date for the credit and expanding eligibility. Mr. Groenewold pointed out that, although rural electric cooperatives would still be unable to take advantage of the tax credit directly, fixing the tax credit would affect both suppliers and the grid itself, so it would likely help rural electric cooperatives negotiate better agreements and pass savings on to members. He also noted that because many renewable energy projects are located in rural New Mexico, fixing the tax credit could mean economic development to those areas of the state.

Varinder Singh, EDF Renewable Energy, Inc., explained that his company is negotiating a 250-megawatt wind generation project in Elida, New Mexico. He noted that the project would provide the community with industrial revenue bond and property tax income, which would benefit the local school district. Mr. Singh also noted that EDF already has agreements with about 55 local landowners. He discussed wind projects in Texas that employed 160 people in the area and injected about \$2.3 million into local economies. Mr. Singh said that there is significant interest in renewable energy projects in New Mexico and that the state has significant wind and solar potential. However, he indicated that neighboring states are also pursuing renewable energy projects and that New Mexico must compete for them.

Chris Loehr, director of finance, Infigen Energy, Inc., said that his company is committed to developing renewable energy projects in New Mexico, noting that a project is currently being developed near Caprock and Aragon, New Mexico.

Pat Boone, president, New Mexico Cattle growers' Association, indicated that a 120-megawatt wind generation project was constructed on property owned by him and two other family members in 2005. He explained that the project has proven to be good for both his family and the community, including schools that see revenue from taxes on the project. Mr. Boone also noted that several members of the community were employed because of the project. However, he pointed out that because expenses for wind generation increased, tax credits are essential to make the project viable. Mr. Boone emphasized that wind energy works and the project he has been involved with has turned out to be a good one.

Laura Sanchez explained that stakeholders need to continue to work together to improve language in potential legislation before the beginning of the next legislative session.

Questions and comments from the committee included the following:

- the current cap on the tax credit;
- the tax credit is fully subscribed, meaning that no entity may take advantage of it unless a current subscriber drops out;
- the actual cost to the state of the current tax credit and potential cost of expanding the credit;
- bond obligations of power generation companies;
- electricity transmission issues, such as the location of transmission lines and challenges in building new ones;
- Texas' approach to transmission line expansion is to ensure that adequate investment exists to fund lines before approval is considered;
- most of the projects contemplated by rural electric cooperatives would serve New Mexico residents and do not seek to export energy;
- wind turbines appear to have a minimal effect on livestock and other wildlife;
- the project in Elida would provide economic benefit to schools in the district;
- tie-ins to transmission lines are already in place for the Elida project;
- the typical concrete footprint of a wind turbine is about 30 feet long, 30 feet wide and eight feet deep;
- wind turbine height averages about 220 feet;
- tax credits often cost more than projections indicate, and one challenge for the legislature is to balance steady, predictable revenues with economic development; and
- the proposed sunset date for tax credit extension.

### **Thermal Energy and Renewable Energy Portfolio Standards**

Mr. Groenewold provided the committee with testimony regarding thermal energy and renewable portfolio standards. He explained that the use of geothermal heat pumps presents a viable alternative to increasing production capacity.

Eric Austin, Western Farmers Electric Cooperative, explained the use of geothermal heat pumps to heat and cool buildings. He said that geothermal heat pumps can reduce peak demand for utilities, and he provided the committee with an overview of a geothermal heat pump system.

Jerry Partin, Roosevelt County Electric Cooperative, discussed a Roosevelt County validation study conducted by retrofitting 22 residences with geothermal heat pumps. Mr. Partin noted that selected locations had heating and cooling systems that were 10 to 12 years old, and that all applications, such as the water heater and air conditioning, were submetered to determine specific energy use. He said that energy savings at the homes averaged about 41 percent. Mr. Partin explained that one of the challenges is educating homeowners on geothermal power, as the word tends to suggest steam geysers for most people. He also discussed changing the business model for energy consumption, comparing it to satellite television, in which the homeowner pays for the service itself, regardless of how much power is consumed or television is watched.

Questions and comments from the committee included the following:

- the depth of geothermal ground pump lines ranges from about six feet deep to up to 250 feet deep, depending on soil and environmental characteristics;
- horizontal systems are also feasible; and
- some types of soil are better suited to geothermal systems than others.

## **Friday, September 5**

### **Industrial Hemp Production**

Jerry Fuentes and Gloria Castillo, both representing the New Mexico Industrial Hemp Coalition, provided the committee with a presentation on the economics of industrial hemp, noting that the U.S. imports tens of millions of dollars in hemp products each year. They also discussed various uses for industrial hemp and the economic development opportunities related to industrial hemp, such as food, animal food, specialty oils, plastics and paper. Mr. Fuentes and Ms. Castillo also pointed out the differences between industrial hemp and marijuana, emphasizing that they are not the same product. They also discussed recent federal legislation authorizing industrial hemp research and the potential for New Mexico universities to conduct such research.

Robert Flynn, New Mexico State University's Agricultural Science Center in Artesia, said that New Mexico has several agricultural research stations that could perform research on industrial hemp.

Belaquin "Bill" Gomez, an unopposed candidate for House District 34, explained that he helped develop the wine-making industry in New Mexico, in part to help farmers find new crops. He said that industrial hemp has similar potential as an alternative crop, noting that hemp uses significantly less water than alfalfa. Mr. Gomez pointed to the situation on the Pecos River, where the purchase and retirement of water rights by the state had a negative effect on some farming communities. He said industrial hemp may not ever be a major crop, but that it could provide some help for farmers.

Questions and comments from the committee included the following:

- development of draft bill language to allow New Mexico universities to conduct research on industrial hemp;
- Kentucky has an industrial hemp research model that New Mexico could follow;
- about \$500 million in industrial hemp was imported into the U.S. in 2012, and much of that could be grown in New Mexico;
- hemp seed sources depend on the desired end use;
- New Mexico would need a different seed strain than the one primarily used in Canada;
- side businesses can grow from industrial hemp production, such as processing and oil extraction;

- industrial hemp has a similar growing season to other New Mexico crops;
- industrial hemp is harvested by cutting and bailing;
- regulatory problems encountered by Colorado after decriminalizing marijuana; and
- industrial hemp seed, with low amounts of THC, is fairly easy to find.

### **Liability Issues for Crop Mazes**

Anna Lyles, Mesilla Valley Maze, talked about insurance liability for crop mazes. She explained that her family began as farmers, then built a crop maze, which attracted visitors and schoolchildren interested in learning about agriculture. Ms. Lyles noted that the crop maze receives an annual safety inspection and is protected by three layers of liability insurance so that an accident involving the crop maze will not cause the family to lose its farm. However, she noted that insurance companies identify the crop maze as an amusement park. Ms. Lyles suggested that the legislature enact a bill allowing for agri-tourism, which exists in 28 other states. She explained that visitors to the crop maze learn the story and processes of modern farming, as well as where food actually comes from.

Senator Cotter explained that staff indicated that insurance coverage for horse riding stables serves as a more accurate insurance template for crop mazes than amusement parks. He said that the stables template allows horse riding without the threat of certain lawsuits for accidents. Senator Cotter also noted that legislation allowing agri-tourism would cover many operations, including crop mazes.

Questions and comments from the committee included the following:

- crop mazes would prefer to be defined separately from amusement parks;
- costs of different insurance coverage for crop mazes are currently unknown;
- smaller tours, ranch days and similar local festivities likely do not currently have adequate insurance coverage;
- other approaches to the insurance coverage issue may also work, but this one seems best suited;
- the rising costs of farming are difficult to explain to people outside of the industry;
- the United States could be self-sufficient but currently imports significant amounts of food;
- agri-tourism has proven to be a profitable business in some other states;
- no lawsuits have been filed against crop mazes yet;
- amusement park insurance typically costs \$6,000 for five weeks of coverage; and
- revenue from admission fees covers insurance, workers' compensation, staff salaries and inventory.

### **The Meadow Jumping Mouse and Access to Water on Federal Grazing Allotments**

Wally Murphy, field supervisor, New Mexico Ecological Service Field Office, U.S. Fish and Wildlife Service (FWS), provided the committee with a brief overview of the situation concerning the meadow jumping mouse, explaining that the mouse was listed as an endangered species on June 10, 2014. He said that once the mouse was listed, the FWS has a statutory duty

to assess the effect of ongoing activities on the mouse's habitat. Mr. Murphy indicated that both the Santa Fe and Lincoln national forests were affected.

Robert Trujillo, acting regional wildlife director, U.S. Forest Service (USFS), explained that designation of a critical habitat for the mouse is expected this year, and that protection of that habitat will affect management of certain grazing allotments. He pointed out that the habitat is limited to a very specific riparian habitat that represents under one percent of New Mexico's grazing allotments. Mr. Trujillo also discussed steps that the USFS has taken since the mouse was listed, including meeting with stakeholders, sending letters to permit holders and training forest management staff. He went on to clarify some legal issues, noting that courts have upheld that grazing on forest land is a privilege, not a property right. Mr. Trujillo also pointed out that the use of any water right, regardless of ownership, is subject to USFS regulation to protect and manage federal resources, including protection of riparian areas. He also noted that livestock watering rights are not tied to the land and therefore are not transferable to a new point of diversion. Mr. Trujillo said that fencing sensitive riparian areas to protect wildlife habitat is a common USFS practice, noting construction of a fence in the Agua Chiquita area of the Lincoln National Forest in the 1990s. Finally, Mr. Trujillo acknowledged that ranching is an important economic and cultural activity, and he said that the USFS is committed to working with livestock owners, state and local officials and the ranching community to find a practical solution to the issue.

Gary Stone, Otero County Cattleman's Association, said that he disagreed with Mr. Trujillo's statement and that the USFS had no legal right to fence off streams in the Lincoln National Forest. He noted that while the habitat may be less than one percent of grazing land, it is an important one percent, as without water the land becomes useless. Mr. Stone said that the actions of the USFS represent federal takeover of New Mexico's water, with the federal government using the Endangered Species Act like a fist. He also emphasized that ranching is an industry of custom and culture.

Ron Rardin, Otero County commissioner, explained that efforts to save the mouse hurt New Mexicans at a local level and will eventually hurt the state. He indicated that the OSE refuses to make a decision on changing the point of diversion for livestock watering rights holders and had not attended meetings that the OSE had been invited to. Commissioner Rardin said that a solution needs to be developed to protect New Mexico water and law from federal encroachment.

Blair Dunn, Otero County attorney, explained that the issue is mostly a federal one, but its effect on water complicates matters. He said that building a fence around a stream amounts to taking a private water right, which makes state sovereignty over its water an issue. Mr. Dunn also pointed out that the USFS did not study how to build a fence properly and used old oil field pipe, which sank into the water and contaminated it.

Garrett VeneKlasen, New Mexico Wildlife Federation, explained that riparian areas are critical for wildlife and that many watersheds have been adversely affected by overgrazing,

which results in poor water productivity and delivery. He said that grazing does not need to be stopped but should be done responsibly. Mr. VeneKlasen noted that one of the problems with the issue is a lack of communication between the parties involved. He suggested that watersheds are broken and that the mouse is analogous to a canary in the coal mine. Mr. VeneKlasen also indicated that livestock in the area do have access to water, but that the issue is a case-building exercise over the notion that federal entities should not manage lands in New Mexico. He explained that the fence in question was built and paid for by the New Mexico Wild Turkey Federation.

Greg Ridgley, OSE general counsel, explained that the OSE's response to Otero County's letter was to meet with the actual parties and find a way to make sure the cattle had access to water. He also noted that allowing cattle to drink water out of a stream does not create a water right under state law. Rather, he explained, there must be some type of diversion, tank or other improvement constructed before a person can claim to have developed a water right.

Questions and comments from the committee included the following:

- eight sites in the Santa Fe and Lincoln national forests are affected by the mouse listing;
- issues concerning federal management of land are not isolated to Otero County;
- the location and acreage of overgrazed land in New Mexico;
- elk are also responsible for overgrazing;
- the Constitution of New Mexico establishes that water is owned by the state and that individuals may develop a right to put water to beneficial use;
- federal land management issues extend beyond New Mexico;
- New Mexico is a member of the Western States Water Council, which has asked the OSE to testify before Congress on land and water management issues;
- involvement by the OSE in resolving a similar issue regarding fencing off livestock from access to streams;
- communication is critical in resolving the issue;
- state water law applies to national forests, but the land is managed by the federal government; and
- allowing livestock to drink from a stream does not create a water right, whereas structures or other improvements may help establish a water right.

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

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

**October 6-7, 2014  
New Mexico Highlands University Student Union Building  
Las Vegas**

The fourth meeting of the Water and Natural Resources Committee (WNRC) was called to order on Monday, October 6, 2014, at 9:10 a.m. by Representative George Dodge, Jr., chair, in the New Mexico Highlands University (NMHU) Student Union Building in Las Vegas.

**Present**

Rep. George Dodge, Jr., Chair  
Sen. Phil A. Griego, Vice Chair  
Rep. Paul C. Bandy  
Sen. Joseph Cervantes  
Rep. Larry A. Larrañaga  
Sen. Sander Rue  
Sen. Benny Shendo, Jr.  
Rep. Mimi Stewart  
Rep. Don L. Tripp  
Sen. Peter Wirth  
Sen. Pat Woods

**Advisory Members**

Sen. Carlos R. Cisneros  
Sen. Lee S. Cotter  
Rep. Anna M. Crook  
Sen. Ron Griggs  
Rep. Rodolpho "Rudy" S. Martinez  
Sen. Cisco McSorley  
Sen. Gerald Ortiz y Pino  
Sen. Nancy Rodriguez  
Rep. Tomás E. Salazar  
Sen. John Arthur Smith (October 6)  
Rep. Bob Wooley

**Absent**

Rep. Phillip M. Archuleta  
Rep. Brian F. Egolf, Jr.  
Rep. William "Bill" J. Gray  
Rep. Dona G. Irwin  
Rep. Emily Kane  
Sen. George K. Munoz  
Sen. Cliff R. Pirtle  
Rep. James R.J. Strickler  
  
Rep. Cathrynn N. Brown  
Sen. Pete Campos  
Rep. Gail Chasey  
Rep. Sharon Clahchischilliage  
Rep. Nora Espinoza  
Rep. Candy Spence Ezzell  
Sen. Stuart Ingle  
Sen. Gay G. Kernan  
Rep. James Roger Madalena  
Rep. W. Ken Martinez  
Sen. Steven P. Neville  
Sen. Mary Kay Papen  
Rep. Vickie Perea  
Sen. John C. Ryan  
Rep. Henry Kiki Saavedra  
Sen. William E. Sharer  
Rep. Jeff Steinborn

**Guest Legislator**

Rep. Carl Trujillo (October 6)

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

**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 at [www.nmlegis.gov](http://www.nmlegis.gov).

**Monday, October 6****Call to Order and Introductions**

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

**Opening Remarks and Welcome**

Dr. James Fries, president of NMHU, provided the committee with an overview of current projects at the school. He noted that the committee meeting was being held in the recently completed Student Union Building and pointed out some of the new building's features, such as geothermal heat pumps. Dr. Fries also discussed NMHU's students, noting that the school has an especially high percentage of its overall student body seeking graduate-level degrees.

**Grasshopper Population in New Mexico**

Senator Woods discussed the recent infestation of grasshoppers in eastern New Mexico. He showed several pictures of the damage that grasshoppers have caused and noted that in Curry County, the grasshopper population was measured at 38 grasshoppers per square yard in some fields.

**Acequia Commission and New Mexico Acequia Association**

Ralph Vigil, chair, Acequia Commission, explained that the commission was established by statute to advise the governor and legislature on acequia issues. He pointed out that while the commission works with the New Mexico Acequia Association, they are separate entities. Mr. Vigil said that the commission is administratively attached to the Department of Finance and Administration (DFA), but the DFA has cut back its support for the commission and provides no

office space or information technology support. He also noted that the DFA will not pay his per diem and mileage for attending the WNRC meeting.

Mr. Vigil went on to discuss the challenges faced by the commission and by acequias in general. For example, he said, funding for projects has been inexplicably delayed, technological support denied and per diem and mileage reimbursement issues raised. Also, Mr. Vigil said, federal issues, such as United States Forest Service denial of permits for necessary acequia infrastructure improvements and general land management issues, only add to problems faced by acequias. He pointed out that poor federal land management actually invited catastrophic wildfires. Mr. Vigil asked the legislature to support acequias by recognizing the importance of traditional agricultural practices, protecting the water rights of acequia users and appropriating funds to help the commission function as intended.

Paula Garcia, executive director, New Mexico Acequia Association, began by providing the committee with a brief history and overview of the association, noting that it has operated for 25 years and has more than 400 members. Ms. Garcia said that the association focuses primarily on outreach and education. She also highlighted some of the challenges facing acequias, particularly a lack of sufficient resources to perform basic functions, such as updates to bylaws, help with budgets and audits and other issues in critical areas throughout New Mexico.

Ms. Garcia also noted that the New Mexico Irrigation Works Construction Fund (NMIWCF), which helps fund acequia infrastructure needs, is being depleted because the legislature has been using the fund to cover the costs of operations of the Office of the State Engineer (OSE) and Interstate Stream Commission (ISC).

Finally, Ms. Garcia discussed water management issues, including negotiation of shortage-sharing agreements, the ability of acequia users to approve water rights transfers and water leasing programs, the use of meters to measure water use and how counties are valuing agricultural lands.

Questions and comments from the committee included the following:

- the importance of preserving traditional agricultural ways of life, especially acequias;
- Acequia Commission funding levels returned to pre-recession levels in fiscal year 2015;
- Abby Lewis of the Attorney General's Office explained that a difference exists between the per diem and mileage statute and DFA rules regarding per diem and mileage in that the DFA requires 11 hours of work before it will pay per diem and mileage for members to attend out-of-town meetings, which is not in keeping with the spirit of the statute;
- the Office of the State Auditor began helping acequias meet the audit requirements necessary for bond sales in 2013;
- recent funding requests and appropriations for Acequia Commission operations and acequia infrastructure;

- the development of rules regarding audit requirements of acequias and other entities receiving state funding;
- current and potential changes to the statutory role of the Acequia Commission;
- consideration of long-term cycles in valuation of agricultural land;
- adjudication of acequia water rights;
- the process for requesting and securing funds for acequia systems; and
- the ISC recommends that the NMIWCF not be used to fund the administrative costs of the ISC or OSE.

### **Water Demand, Availability, Costs and Environmental Impacts Related to the Arizona Water Settlements Act (AWSA) and Proposed Gila River Diversion Projects**

Craig Roepke, bureau manager, special water projects, ISC, submitted a report on the AWSA to the committee (available on the committee's web page) and briefly summarized the activities of the ISC since its last report to the committee. He noted that two studies of the effects of climate change on the flows of the Gila River projected reductions in flow of between six and eight percent of average mean flow and a 15 percent reduction in median flows. Mr. Roepke also reported that the ISC must notify the U.S. secretary of the interior by December 31, 2014 on whether or not the state intends to build a New Mexico unit. He also updated the committee on the current balance of the New Mexico Unit Fund, noting that of the approximately \$27 million the state has received under the AWSA, \$22 million remains in the fund.

Norm Gaume, former director of the ISC, noted that he served as director of the ISC when negotiation of the AWSA began, and he briefly outlined the formulation of the AWSA. Mr. Gaume explained that two-thirds of the \$100 million (in 2004 dollars) that then-U.S. Senator Pete Domenici secured under the AWSA could be used to fund water supply projects in the four southwestern counties of the state, with the remaining one-third used solely for the construction of a diversion project on the Gila River. He said that in current dollars, over \$90 million could be used on infrastructure improvements for drinking water, irrigation systems and conservation in that region. However, he said, he is concerned that the ISC will instead decide to use this money to fund a diversion project that will cost over \$1 billion. Mr. Gaume warned that this would be a mistake because median flows of the Gila average only 3,700 acre-feet per year (a/f/y), and thus, for 45 percent of the years, no diversions would be allowed; all available reservoir sites are leaky and thus impractical; taking into account bonding, operation and maintenance costs, users would have to pay \$47 million per year to produce 6,000 a/f/y; and National Environmental Policy Act of 1969 and Endangered Species Act of 1973 costs will be in the millions. Mr. Gaume closed by urging that the \$90 million be used for practical, cost-effective projects in the four-county region instead of on an unfeasible diversion project.

Mark Stone, Department of Civil Engineering, University of New Mexico (UNM), and David Propst, Department of Biology, UNM, presented their studies of Gila River streamflow and on the endangered spikedace.

Mr. Stone explained that the Gila River streamflow is wildly diverse, with huge differences between median and mean flows, in different months and in different years.

Consequently, there is wide geomorphic variability with many flood plain side channels, all of which drives important ecological processes such as cottonwood regeneration. In short, he explained, the various Gila River diversion scenarios being considered will likely reduce recruitment of riparian vegetation, such as cottonwoods, along the river.

Mr. Propst evaluated the effects of changed streamflow regimes on the life cycle of the spikedace, noting that a diversion dam may limit the interchange between upstream and downstream spikedace populations, and changes in the flow regime may increase the prevalence of invasive species. Consequently, the extinction risk of the spikedace will have to be evaluated, and a long list of factors will have to be examined before a diversion structure can be constructed on the Gila, he said.

Questions and comments from the committee included:

- issues regarding access to information possessed by state agencies, including the ISC, and the nature of statutory protection of certain information; and
- potential flaws in computer models used by the ISC to develop AWSA scenarios.

### **Update on City of Las Vegas Dam Issues**

Alfonso Ortiz, Jr., mayor, City of Las Vegas, updated the committee on a city water storage project in Las Vegas. He explained that construction should begin soon on expansion of Bradner Reservoir and dam, pointing out that the city has completed in four years a process that normally takes five years.

Ken Garcia, utilities director, City of Las Vegas, explained that the project involves increasing the height of Bradner Reservoir's dam from 70 feet to 120 feet, which should allow the city to increase water storage from 300 acre-feet to 2,100 acre-feet. Mr. Garcia noted that the project should be completed by 2016 and has received funding from multiple sources, including capital outlay expenditures and money from the Water Trust Board. He also noted that water rates were increased 60 percent in 2012 to help fund the city's share of the project.

Questions and comments from the committee included the following:

- sustainability of the watershed;
- most of the city's water comes from surface water, although there is some ground water pumping;
- the city is moving toward increased use of treated and recycled water;
- the city has acquired 250 acre-feet of additional water rights;
- some city water rights are in litigation;
- the seniority of the city's water rights;
- storing water in Storrie Lake and pumping it to Bradner Reservoir would have been too expensive; and
- 95 percent of the city's parks are watered with treated effluent.

## **Indian Water Rights Settlements and Issues**

Representative Trujillo testified on the Aamodt water rights settlement. He began by providing the committee with a brief time line of the settlement. Representative Trujillo noted that the settlement is in the inter se process and that the OSE has mailed out more than 2,500 packets to non-pueblo water users. However, he pointed out, about 30 percent of the packets were returned to the OSE as undeliverable. Representative Trujillo also said that 800 objections to the settlement were filed in federal court. He discussed settlement terms, including options for non-pueblo well owners and that several major components of the settlement have not been completed, including OSE promulgation of settlement rules, completion of an environmental impact study and notification of all well owners.

Questions and comments from the committee included the following:

- some information about the settlements was limited at the time the legislature created the Indian Water Rights Settlement Fund;
- the number of objections to the settlement; and
- the legislature has appropriated funding to the settlement fund and can continue to do so.

Arianne Singer, managing attorney, OSE, addressed several questions regarding the Aamodt settlement. She explained that the State of New Mexico entered into the Aamodt settlement agreement, not the OSE, and that attempts were made to identify every water user in the settlement area such that notice was sent out to more than 7,000 people, not 2,500. Ms. Singer also noted that the number of objections filed, about 16 percent, is not necessarily high, particularly given the complexity of the settlement. She also addressed transfer of water rights below the Ottowi Gauge and Top of the World Farms and noted that the state has no obligation to compensate pueblo parties to the settlement. Ms. Singer explained that no one is being required to cap domestic wells and that, since most households use less than one-third a/f/y and owners can use up to one-half a/f/y, almost no one will have to reduce current usage.

Questions and comments from the committee included the following:

- involvement of the legislature in negotiating settlements before committing the state to funding them;
- tribal entities have been involved in each step of the settlement negotiation process;
- metering of pueblo water use;
- sharing of draft rules with settlement parties; and
- potential monthly water use fees.

Robert Mora, Sr., governor, Pueblo of Tesuque, discussed his pueblo's involvement in settlement negotiations and his impression that the representative is attempting to persuade the legislature not to fund the settlement. He explained that the settlement originally concerned the use of surface water, but that now has been completely overturned and everyone is talking about ground water. He emphasized the complexity of the allocation of water in the settlement and noted that sustainability is a key concern of the pueblo. He closed by noting that water belongs to all of us, not to any one of us.

### **Long-Term Funding for Forest and Watershed Restoration**

Kent Reid, director, New Mexico Forest and Watershed Restoration Institute, and Laura McCarthy, director of conservation programs, New Mexico Office, The Nature Conservancy, provided the committee with an update on a presentation given to the committee at its July meeting, at which various entities discussed the need for long-term planning and funding for forest and watershed health. Since then, Mr. Reid and Ms. McCarthy noted, many stakeholders, including representatives from state and federal land management agencies, local government, private industry, the environmental community and state universities, met to develop a basic agreement on the need to promote forest and watershed health, protect water sources and reduce the risk of catastrophic fire. Mr. Reid and Ms. McCarthy explained that the group settled on an annual funding need of about \$61 million for watershed treatment, with about \$15 million of that coming from the state. However, Mr. Reid and Ms. McCarthy explained, the distribution of the money and its source have yet to be decided. They indicated that funding could come from several sources, including capital outlay, insurance premium tax revenue or water use charges, along with local, tribal and federal government sources and private industry. The committee requested that a bill be presented at the final meeting.

Questions and comments from the committee included the following:

- about seven million acres of watershed need to be treated over the next 20 years;
- biomass projects as an eventual destination for material harvested through watershed treatment are questionable without a long-term commitment to forest treatments;
- other potential uses for material harvested from watersheds;
- the use of state funding to treat federal land;
- the economic consequences of not treating watersheds, such as catastrophic wildfire, reduced water availability and unemployment, are potentially much greater than \$61 million;
- watershed thinning typically begins at the edge of forests and works inward;
- the inclusion of agricultural water use in contemplated water use fees; and
- watershed treatment is not cheap, but it needs to be done.

### **Proposed Changes to the Emergency Notification Requirements for Mining**

Terrence Foreback, state mine inspector, explained the statutory requirements for mine operators to report accidents to the New Mexico Mine Emergency Operations Center within 30 minutes of their occurrence. However, Mr. Foreback noted, because New Mexico law currently does not differentiate between surface and underground mines, some of the definitions in statute are not well-suited to surface mines. He explained that there is confusion among surface mine owners on reporting requirements for accidents that do not involve rescue scenarios. Mr. Foreback also noted that there is some confusion regarding enforcement action by the state mine inspector in situations where mine operators did not report relatively minor accidents within 30 minutes.

Randy Logsdon, chair, Mining Safety Board, provided the committee with proposed changes to state mining statutes, explaining that the changes would differentiate between surface and underground mines. He also noted that surface mines and local resources are sufficient to

respond to most accidents that do not represent a reasonable expectation of death or serious injury. For example, Mr. Logsdon told the committee about a piece of equipment that caught fire at a surface mine in San Juan County. He said that because the driver exited the cab and was never in any danger, the mine did not notify the New Mexico Mine Emergency Operations Center until the next day, but it was fined \$10,000 for being out of compliance with the statute.

Mr. Foreback and Mr. Logsdon indicated that the Mining Safety Board is in unanimous agreement with the proposed statutory changes.

Questions and comments from the committee included the following:

- changing burdensome requirements for mine operators would make it easier for them to stay in compliance;
- some incidents do not merit a call within 30 minutes;
- safety training for mine operators;
- proposed changes would not alter federal agency oversight of some aspects of mine operations; and
- there appears to be little, if any, opposition to the proposed changes.

#### **Santa Cruz Irrigation District — Santa Cruz Dam**

Kenny Salazar, president, New Mexico Association of Conservation Districts, explained that silt has filled a significant portion of the reservoir of the Santa Cruz dam, reducing storage capacity. Mr. Salazar noted that the cost estimate for dredging silt out of the reservoir is approximately \$26 million but that raising the wall of the dam would cost about \$5 million. He indicated that the project to raise the wall is shovel-ready and that applications with the Water Trust Board and the U.S. Army Corps of Engineers have already been submitted. Mr. Salazar noted that the application process with the Water Trust Board was difficult to navigate.

Mike Martinez, program manager, U.S. Army Corps of Engineers, indicated that the U.S. Army Corps of Engineers views the Santa Cruz project as a good one and hopes to make it a priority. However, funding will not be announced until later in the year. Mr. Martinez also noted that the U.S. Army Corps of Engineers is asking New Mexico's congressional delegation to appropriate some of the necessary funding.

Questions and comments from the committee included the following:

- Santa Cruz Irrigation District taxes on acequia users has helped generate about \$85,000 per year to help pay some of the project costs;
- safety factors associated with raising the dam wall;
- demand for water is high, but dam operators can only release water two days per week, if they are lucky;
- raising the dam wall will allow operators to release water up to four days per week;
- debris filters will be installed around the lake to help mitigate future silt deposits;
- federal funding will be announced in December, with money becoming available in January or February 2015;
- the increase in the time it takes farmers to water small plots of subdivided land;

- the dam is structurally solid, it just does not hold the amount of water that it used to; and
- the dam project would be a good candidate for statewide capital outlay funding to address a critical need.

The committee recessed at 4:50 p.m.

## **Tuesday, October 7**

### **Healthy Food in Schools Program**

Pam Roy, executive director, Farm to Table, provided the committee with an update on the Healthy Food in Schools Program. She explained that the program secured \$240,000 to provide local produce to New Mexico schools statewide last year. Ms. Roy indicated that the program is growing, but some timing issues were encountered last year. She said that program managers will have better processes in place for next year. Ms. Roy also discussed plans to expand the program even further by tying it to math, science and engineering programs in schools and by studying food and agricultural programs that may already exist in schools.

Questions and comments from the committee included the following:

- juvenile correctional facilities are the best places to start trying to introduce fresh produce into the corrections system;
- Farm to Table is working to help farmers and farmers' markets to understand and navigate the government procurement process;
- the difference between pesticide-free produce and certified organic produce;
- federal nutritional requirements for school meals;
- farmers, particularly in northern New Mexico, are beginning to look toward crops that can be grown year-round, such as bok choy;
- requirements of school district contracts with farmers;
- the importance of educating farmers on the whole process, from harvest through handling, boxing and delivery;
- preparing farmers for audits; and
- the importance of teaching schoolchildren where their food comes from.

### **Temporary Water Use Permitting Process — Administrative Hearing Location Requirements**

A.J. Olsen, partner, Hennighausen and Olsen, LLP, began by providing the committee with a brief history of administrative hearings for temporary water use permits. He explained that the practice of holding such hearings began in the 1960s, and that ground water use hearings began in the 1990s, noting that those hearings were held in the county where the permit was being sought or by agreement of all involved parties. However, Mr. Olsen said, the rules were changed in 2013 to state that hearings shall be held in Santa Fe. He said that Santa Fe is a long way to travel for some New Mexicans. Mr. Olsen proposed that all hearings be held in the county where a well is sought unless all parties agree to hold a meeting elsewhere.

Debbie Hughes, executive director, New Mexico Association of Conservation Districts, also discussed issues related to hearing protests for water use permits, which she said affect two statutes. First, she discussed the process for filing protests under the Water Use Leasing Act. Second, Ms. Hughes discussed issues with emergency and temporary water use permits, which she said allow for use of up to nine acre-feet of water. She explained that the protest process allows applicants to obtain permits, install pumps on existing water wells, sometimes without the well owners' knowledge, and begin using water for oil and gas exploration before the protest process can play out.

Chris Lindeen, managing attorney, Administrative Litigation Unit, OSE, explained that while the OSE does conduct impairment analysis of permit applications, sometimes multiple uses of one well are better for the aquifer than multiple wells. He also emphasized that the OSE tends to be very conservative in approving permits, as checks need to be in place on the process. Mr. Lindeen also explained that since 1998, the OSE has had discretion on hearing locations. He said that although the legislature provided the OSE with broad power to determine hearing locations, the majority of hearings actually take place outside of Santa Fe. He noted that during the budget crisis, all hearings were conducted in Santa Fe, but since then, that has not been the case.

Questions and comments from the committee included the following:

- the OSE has two hearing examiners, both based in Santa Fe;
- many cases are resolved before a hearing actually takes place;
- no hearings have been held in Santa Fe against the request of the parties involved;
- Mr. Olsen's solution would remove all discretion from hearing examiners;
- the status of various hearings on cases currently under way; and
- the Water Use Leasing Act may be more problematic than it is part of the solution.

### **Regional Water Association Proposal and Association Issues**

Rick Martinez, director of business development, New Mexico Finance Authority (NMFA), began by saying that issues relating to mutual domestic water consumers associations (MDWCAs) have been developing over the past eight years.

Ramon Lucero, president, El Valle Water Alliance, discussed legislation allowing the creation of regional water utility authorities. He explained that the process began several years ago and that a recent memorial directed the Department of Environment (NMED) and the OSE to develop criteria for regional water associations.

Adam Leigland, director of public works, Santa Fe County, indicated that the framework that has been developed is a good start toward legislation.

Robert Crowley, Andy Philo and James Hayhoe began by providing the committee with a brief history of MDWCAs, noting that they were created by the Sanitary Projects Act to address health impacts due to unsafe drinking water supplies in rural New Mexico. They noted that there are currently more than 200 MDWCAs in New Mexico, and while they almost all began as small associations with fewer than 100 members, some now have more than 1,000 members.

However, Mr. Crowley, Mr. Philo and Mr. Hayhoe explained, state oversight of MDWCAs is performed by several agencies and is uneven. For example, they noted that the attorney general oversees compliance with state law, while the NMED oversees water and wastewater purity and the NMFA has jurisdiction over state loans and grants.

Mr. Crowley, Mr. Philo and Mr. Hayhoe went on to discuss acquisition of the Picacho Hills Utility Company by the Dona Ana Mutual Domestic Water Consumers Association (DAMDWCA). They contended that the DAMDWCA has taken steps to limit the influence of the Picacho Hills Utility Company on the DAMDWCA board, noting that they have filed several formal complaints with the attorney general for violations of the Open Meetings Act and with the NMED regarding lack of board governance. Mr. Crowley, Mr. Philo and Mr. Hayhoe also discussed several other complaints about the DAMDWCA, such as the lack of a definition of "members", customer service and billing issues and the inability of members to have input.

Mr. Crowley, Mr. Philo and Mr. Hayhoe suggested that the legislature revisit the Sanitary Projects Act and amend it to place MDWCAs with more than 1,000 members under the oversight of the Public Regulation Commission.

#### **Approval of Minutes**

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

There being no further business, the WNRC adjourned at 12:05 p.m.

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

**December 2-3, 2014  
Room 322, State Capitol  
Santa Fe**

The fifth meeting of the Water and Natural Resources Committee was called to order on Tuesday, December 2, 2014, at 9:05 a.m. by Representative George Dodge, Jr., chair, in Room 322 of the State Capitol in Santa Fe.

**Present**

Rep. George Dodge, Jr., Chair  
Sen. Phil A. Griego, Vice Chair  
Rep. Paul C. Bandy (Dec. 2)  
Sen. Joseph Cervantes  
Sen. Cliff R. Pirtle  
Sen. Sander Rue  
Sen. Benny Shendo, Jr. (Dec. 2)  
Rep. Mimi Stewart  
Rep. Don L. Tripp  
Sen. Peter Wirth  
Sen. Pat Woods

**Advisory Members**

Sen. Carlos R. Cisneros  
Rep. Sharon Clahchischilliage  
Sen. Lee S. Cotter  
Rep. Nora Espinoza (Dec. 2)  
Rep. Candy Spence Ezzell  
Sen. Ron Griggs  
Sen. Stuart Ingle (Dec. 2)  
Sen. Gay G. Kernan (Dec. 2)  
Rep. James Roger Madalena (Dec. 2)  
Sen. Cisco McSorley  
Sen. Gerald Ortiz y Pino (Dec. 2)  
Sen. Mary Kay Papen (Dec. 2)  
Sen. Nancy Rodriguez (Dec. 3)  
Rep. Tomás E. Salazar  
Sen. John Arthur Smith  
Rep. Jeff Steinborn

**Absent**

Rep. Phillip M. Archuleta  
Rep. Brian Egolf  
Rep. William "Bill" J. Gray  
Rep. Dona G. Irwin  
Rep. Emily Kane  
Rep. Larry A. Larrañaga  
Sen. George K. Munoz  
Rep. James R.J. Strickler

Rep. Cathrynn N. Brown  
Sen. Pete Campos  
Rep. Gail Chasey  
Rep. Anna M. Crook  
Rep. Rodolpho "Rudy" S. Martinez  
Rep. W. Ken Martinez  
Sen. Steven P. Neville  
Rep. Vickie Perea  
Sen. John C. Ryan  
Rep. Henry Kiki Saavedra  
Sen. William E. Sharer  
Rep. Bob Wooley

**Guest Legislators**

Sen. Linda M. Lopez (Dec. 2)

Rep. Debbie A. Rodella (Dec. 2)

(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 original meeting file.

**Minutes Approval**

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

**Handouts**

Handouts and other written testimony can be found in the meeting file or on the New Mexico Legislature's web site at [www.nmlegis.gov](http://www.nmlegis.gov).

**Tuesday, December 2****Plains of San Agustin Water Appropriation Proposal**

Eileen Dodds of the San Augustin Water Coalition began by explaining that an application to appropriate and export 54,000 acre-feet of water from the Plains of San Agustin had been rejected by the Office of the State Engineer (OSE), but the applicant, San Augustin Plains Ranch, has now filed a second application. She noted that the second application was more polished than the first one but emphasized that the concerns are the same for area well owners and water users: drilling numerous, deep wells in the area will be a detriment to everyone else in the basin. Ms. Dodds said that while some proponents of the project argue that the basin will not be depleted for at least 300 years, there are others who suggest that the wells could deplete the basin within 10 years. She suggested that a hydrologist study the basin and the proposal to determine what effect the project will have on water in the basin. Ms. Dodds concluded by requesting that the OSE not accept the application until area stakeholders have a chance to protest it.

Anita Hand, Catron County commissioner, noted that the first application was vague about end users and about uses for the water pumped from the proposed wells and that the second application is similarly vague. She also pointed out that Augustin Plains Ranch had only

had one meeting with residents and did not sufficiently address their concerns. Commissioner Hand said that other problems with the application are that the applicant's theory regarding the rate of aquifer recharge is unproven, that there is an unknown impact on water supplies in Catron and Socorro counties and that there is no known plan for making up water to impaired users in the area.

Michel Jichlinski, project director, Augustin Plains Ranch Water Project, said he believes the proposed project has potential and that the company will try to provide as much information as possible to interested parties. He explained that the new application has been published on the company's web site, and it includes much of the information that was not in the first one. Finally, Mr. Jichlinski acknowledged that the project must pass several tests before it actually begins, including approval of the application, demonstration that the project meets the necessary legal requirements and study of the project's economic viability. He asked that committee members continue to keep an open mind regarding the project.

Questions and comments from the committee included:

- the balance between existing uses and potential beneficial uses;
- the contemplated yield of wells versus needs and the average yield of wells used by some New Mexico well users;
- that seemingly similar projects proposed elsewhere in New Mexico appear to appropriate nonrecurring water sources for recurring uses;
- that the proper forum for questions, such as aquifer recharge rates, is at OSE hearings;
- the depth of test wells in relation to existing wells and the difficulty in determining the effect, and potential impairment, of deep test wells to relatively shallow established wells;
- the original application was deemed withdrawn upon submission of a second application;
- the basin in question has been closed by the OSE;
- once a basin is closed, the burden falls upon the applicant to prove that no impairment to existing users will occur;
- the role of the legislature in influencing water policy;
- the time elapsed between applications and the questions that continue to be raised regarding both applications;
- the legal subtleties regarding impairment of water rights;
- the time frame for putting water rights to beneficial use; and
- that the application is uncommon but not without precedent.

### **New Mexico Rural Water Association Issues**

Bill Conner, executive director of the New Mexico Rural Water Association (NMRWA), briefed the committee on the background, mission, membership, governance and activities of the association. He began with some background on the NMRWA, explaining that it represents 488 community water systems serving about 1.3 million customers in New Mexico, and it is

governed by a board of directors elected from system membership. Mr. Conner also discussed some of the work of the NMRWA, noting that it helps with water and wastewater system development, as well as emergency assistance to communities and source water protection plans for community systems. He also said that the NMRWA helps with solid waste management and energy-efficiency assessments. Mr. Conner also discussed operator and board member training offered by the NMRWA, as well as public education and outreach efforts.

Questions and comments from the committee included:

- that the water projects the state prioritizes and the needs of small, rural communities may not be aligned;
- that New Mexico is not deficient in funding water projects, but it does have problems getting money to those who need it;
- audit issues for small water systems;
- that membership fees help fund operations of water associations, but they do not generate enough income to carry them;
- the procedures for addressing dry or contaminated wells;
- that most associations try to have various funding sources complement one another;
- that regionalization of water systems can happen at several different service levels, such as sharing bookkeeping services with neighboring systems;
- that water systems need to become more sustainable; and
- that some water systems come in and out of associations.

#### **Report on New Mexico Recycling — House Memorial 51 (2014)**

English Bird, executive director, New Mexico Recycling Coalition (NMRC), began by explaining that House Memorial 51 (2014) requested that strategies be developed to attain the state recycling goal of 50 percent, as outlined by the Solid Waste Act. She noted that the state is currently at a 15.7 percent recycling rate. Ms. Bird pointed out that a link exists between increased recycling and the creation of jobs, citing estimates of more than 3,500 additional jobs that could be directly related to recycling at a 50 percent rate.

Ms. Bird also discussed current recycling capacity, noting that while there are 22 regionalized recycling hubs, traditional recyclables only represent a portion of all recyclable materials.

Ms. Bird went on to discuss recommendations for attaining a 50 percent recycling rate, which centered on a handful of questions, including:

- what resources the Department of Environment (NMED) would need to accomplish such a goal;
- funding mechanisms to support a 50 percent recycling rate;
- short-term policy recommendations; and
- long-term policy recommendations.

Ms. Bird went on to provide the committee with the following recommendations:

- convene four stakeholder groups to study funding, commercial recycling, state agency recycling and construction and demolition recycling;
- the NMRC and NMED will work together to host stakeholder group meetings and consolidate results;
- expect a multi-year process as evidenced by similar efforts in other states; and
- ensure proper staffing to conduct stakeholder meetings, including creation of at least one new NMED position.

Questions and comments from the committee included the following:

- there are examples of public/private partnerships working well to address recycling issues;
- regionalized "hub-and-spoke" recycling models seem to work well in more urbanized states;
- the importance of education and outreach;
- simply expanding landfills costs a minimum of \$1 million;
- the NMED is not currently seeking additional funding or positions for recycling;
- the diversion of organic material, such as recycling yard waste as mulch;
- the measurement of recycling rates;
- Silver City and San Juan County have adopted "pay-as-you-go" recycling models;
- low-value materials, such as glass and plastic, and the relatively high cost of transporting them to be recycled;
- the NMRC worked with the Eight Northern Indian Pueblos Council on recycling issues; and
- the value of public service announcements regarding recycling.

### **Nuestro Rio — Regional Water Initiatives**

Robert Apodaca of the Motiva Corporation provided the committee with a presentation regarding the Nuestro Rio initiative. He explained that Nuestro Rio is a network of more than 30,000 Latinos based in western states whose mission is to educate communities about the history of Latinos and their relationship with rivers and water in the West in order to advocate for healthy rivers in the West for generations to come. Mr. Apodaca began by discussing the status of the Colorado River, pointing out its importance as a water supply for most southwestern states while acknowledging that its supply continues to decrease as demand increases. Mr. Apodaca went on to discuss a Nuestro Rio youth initiative, which included a Colorado River raft trip for students of the Nuestro Rio Youth Leadership Program to help educate them on both the river's importance and the challenges surrounding it. He also discussed the Nuestro Rio Regional Water Caucus, which convened local Latino leaders from New Mexico, Arizona, Colorado, Nevada and California, to discuss and find regional solutions to water issues.

Questions and comments from the committee included the following:

- the youth group opposes any diversion project on the Gila River;
- there have been some discussions about tying in the Nuestro Rio youth initiative with acequias; and
- youth group members were selected from applicants who wrote essays about the importance of rivers and conducted short phone interviews.

### **Water Supply Vulnerabilities Study**

David Gutzler, Department of Earth and Planetary Sciences, University of New Mexico (UNM), began by explaining that several researchers worked together to determine the short- and long-term vulnerabilities of water supply in New Mexico, particularly the lower Rio Grande. He began by providing the committee with a comparison of two droughts that affected the region, one occurring in the 1950s and the other between 2008 and 2013. He provided comparisons regarding precipitation, reservoir outflow, reservoir storage and temperatures. Mr. Gutzler also discussed weather projections and streamflow forecast analyses.

Peggy Johnson, New Mexico Bureau of Geology and Mineral Resources, New Mexico Institute of Mining and Technology, discussed ground water vulnerabilities during the most recent drought. She began by discussing the complex relationship between surface water and ground water recharge and discharge and changes in aquifer storage. Ms. Johnson pointed out that aquifer recharge occurs when precipitation is greater than evaporation and withdrawals from the aquifer, explaining that while ground water has provided a stable water reserve during short-term droughts, warming temperatures will affect the balance of aquifer recharge and change the distribution of ground water recharge and availability, as warming temperatures may trigger a cascade of negative impacts on ground water.

Janie Chermak, Department of Economics, UNM, provided the committee with an overview of changes in agriculture in New Mexico since the 1950s, comparing data from the 1950s drought to current data. She provided the committee with data for the state and data specific to Dona Ana County. Ms. Chermak noted changes in farm size, pointing out that the percentage of small farms in the state (10 acres or less) has grown from just over 20 percent in 1954 to over 60 percent in 2007. She also noted that the number of operations with animals has dropped significantly since 1954. Ms. Chermak concluded that while agriculture today is significantly different from the 1950s, crop changes and farm size changes have a significant impact on management choices. For example, she said that while cotton was the preferred crop in Dona Ana County in the 1950s, most farmers there now grow pecans or tree fruits. Ms. Chermak suggested that management choices in times of drought are difficult with pecan trees, as losing a tree means a loss of capital investment.

Dr. Lee Reynis, Bureau of Business and Economic Research, UNM, also discussed New Mexico agriculture from the 1950s to the present. She explained that farm income as a percentage of total income in New Mexico has declined steadily since the early 1900s and now

accounts for less than five percent of New Mexico's total income. Dr. Reynis noted that agricultural production has also declined since the 1950s. She went on to discuss private sector wage and salary employment, both in New Mexico and in Las Cruces, pointing out that as the agricultural work force has shrunk, the non-agricultural labor force has grown significantly.

Questions and comments from the committee included the following:

- agriculture accounts for about 80 percent of the water used by the state and about 90 percent of the water used in Dona Ana County;
- some agricultural job losses are because of automation and mechanization;
- aquifer mapping efforts;
- the difference between diversions of water versus consumptive water use in calculating water use statistics;
- agriculture cannot be considered an old or new economy;
- the effect of trade agreements with China on American agriculture;
- much of the supply vulnerabilities study has focused on Dona Ana County and southern New Mexico, but further study on the middle Rio Grande is planned;
- the legislature appropriated \$100,000 for the study;
- future El Nino weather patterns are impossible to predict;
- the growth of the non-agricultural work force in Dona Ana County;
- farmers have adapted their techniques in response to conditions such as pivot irrigation and growing different crops; and
- the amount of water going to aquifer and irrigation recharge.

Tom Blaine, newly appointed state engineer, was introduced to the committee.

### **Extreme Precipitation Modeling Update/Opportunities**

Charles Thompson, chief, Dam Safety Bureau, OSE, provided the committee with background on the safety of publicly owned dams in New Mexico. He explained that dams that have the potential to cause loss of life should they fail are required to have a spillway that can safely pass floodwater resulting from the probable maximum precipitation. Mr. Thompson explained the methodology used to determine probable maximum precipitation, noting that 40 years of rainfall data are required for modeling. He explained that compilation of that data relied on outdated data collection methods, and while more than 70 publicly owned dams have been identified as high hazard and requiring a spillway, updated data collection should identify some dams that have been incorrectly characterized. Mr. Thompson recommended that the probable maximum precipitation estimation methodology be updated by developing a geographic information system (GIS) tool for New Mexico.

Charles Easterling, New Mexico Watershed and Dam Owners Coalition, explained that some dams classified as high hazards are incorrectly classified. For example, he noted that there is insufficient atmosphere at Morphy Lake's altitude to generate the 17-plus inches of rain to cause the dam there to fail. He also said that developing a GIS tool for New Mexico would

require state sponsorship and a little bit of funding but that it would help classify dams correctly.

Questions and comments from the committee included the following:

- the federal agency takeovers of dams in southeastern New Mexico;
- the United States Army Corps of Engineers is providing peer review support; and
- the United States Army Corps of Engineers is developing some state-specific project management plans.

### **Statewide Elevation Data Acquisition Proposal**

Gar Clarke, New Mexico geospatial program manager, Department of Information Technology, and Michael Inglis, associate director, Earth Data Analysis Center, UNM, explained that key geospatial data needs can be met with high-quality, high-resolution elevation data, but much of the existing data are outdated and at low resolution. Mr. Clarke and Mr. Inglis explained that lidar, which measures distances to the earth using laser pulses from aircraft, can provide the necessary data. They provided the committee with examples of the current data and lidar maps of the same patch of land. Mr. Clarke and Mr. Inglis said that the New Mexico Elevation Data Planning and Acquisition Subcommittee is responding to a national effort to collect high-quality topographic data. They said that a proposal is being developed and that some funding will be necessary.

Questions and comments by the committee included the following:

- data collection is a one-time event to create a baseline; updated data will require additional data collection efforts;
- the ability of state and federal agencies to view and manipulate data;
- free mapping services, such as Google Earth, are not as accurate and likely not as helpful to land managers;
- coordination with other government agencies on use of the data;
- some ground truthing will have to take place on private land;
- cleanup of ground truthing work on private land;
- funding will likely come from a combination of state money and federal grants;
- a state fiscal agent will be required, possibly the Department of Information Technology; and
- data should be available to tribes and the public.

### **Wednesday, December 3**

On a motion made, seconded and passed, the minutes of the October 6-7, 2014 meeting of the committee were approved as submitted.

### **Mid-Rio Grande Levee Task Force**

Subhas Shah, Middle Rio Grande Conservancy District (MRGCD), provided the

committee with an overview of the work of the Mid-Rio Grande Levee Task Force. He explained that the task force is continuing its work in evaluating and planning for reconstruction of levees along middle Rio Grande. Mr. Shah went on to discuss levee-related activities in five middle Rio Grande regions: San Acacia, Bernalillo to Belen, Albuquerque, the Town of Bernalillo and the Montañño area. He provided an overview of the status of levee reconstruction projects, cost-sharing agreements for various projects, plans for future construction projects and various studies.

Amy Haas, general counsel and acting director, Interstate Stream Commission (ISC), explained that the ISC is the non-federal cost-sharing entity for the San Acacia levee project. She explained that the ISC is interested in helping with agriculture and erosion control and that the project will also help with water compact delivery obligations.

Jerry Nieto, United States Army Corps of Engineers, explained that the United States Army Corps of Engineers has been working with the MRGCD and the ISC for several years on the San Acacia levee project. He said that while there are still feasibility studies being conducted on some parts of the project, it is still a huge project for the Socorro area and will bring more than 50 jobs to the area over the next few years.

Questions and comments from the committee included:

- that the concerns of Bernalillo residents regarding flood plain classifications and the likelihood that the project will help many residents; and
- that the identification of local government matching funds is one of the biggest challenges facing the levee projects.

## **Proposed Legislation**

### **Forest and Watershed Restoration Funding**

Kent Reid, director, New Mexico Forest and Watershed Restoration Institute, presented the committee with a proposed bill that would create a forest and watershed restoration board, coordinate watershed restoration efforts statewide and use existing insurance premium taxes to fund watershed treatment and thinning of New Mexico forests to help mitigate the threat of catastrophic wildfire.

On a motion made, seconded and passed, the committee endorsed the bill, with Senator Griego voting NO.

During the presentation of the second proposed bill, members of the committee questioned the presence of a quorum. The chair, upon establishing that a quorum was not present, explained to presenters that the committee could not endorse any bills unless a quorum was reestablished. He agreed to hear the following presentations:

- administrative water hearing locations;
- mutual domestic water consumer association governance;
- Mining Safety Board emergency notification changes;
- New Mexico fruits and vegetables for school meals appropriation;
- Interstate Wildlife Compact;
- Interstate Mining Compact;
- trespass/public access to
- streambeds;
- private boat docks on Ute Reservoir; and
- changing the definition of "livestock".

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

# **ENDORSED LEGISLATION**

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HOUSE BILL

**52ND LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2015**

INTRODUCED BY

FOR THE WATER AND NATURAL RESOURCES COMMITTEE

AN ACT

RELATING TO NATURAL RESOURCES; ENACTING THE FOREST AND  
WATERSHED RESTORATION ACT; PROVIDING LONG-TERM FUNDING FOR  
FOREST AND WATERSHED RESTORATION; CREATING THE FOREST AND  
WATERSHED RESTORATION BOARD; CREATING THE FOREST AND WATERSHED  
RESTORATION FUND; PROVIDING FOR A DISTRIBUTION FROM THE  
INSURANCE DEPARTMENT SUSPENSE FUND TO THE FOREST AND WATERSHED  
RESTORATION FUND; MAKING AN APPROPRIATION.

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

SECTION 1. [NEW MATERIAL] SHORT TITLE.--Sections 1  
through 8 of this act may be cited as the "Forest and Watershed  
Restoration Act".

SECTION 2. [NEW MATERIAL] DEFINITIONS.--As used in the  
Forest and Watershed Restoration Act:

A. "board" means the forest and watershed

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1 restoration board;

2 B. "division" means the forestry division of the  
3 energy, minerals and natural resources department;

4 C. "project" means a forest and watershed  
5 restoration project to increase the adaptability and resilience  
6 to recurring drought and extreme weather events of the state's  
7 forests and watersheds; protect water sources; reduce the risk  
8 of wildfire, including plans for watershed preservation;  
9 restore burned areas; thin forests; or a related economic or  
10 work force development project; and

11 D. "sponsor" means a federal, state or local  
12 government agency, tribal entity, corporation or organization  
13 that applies for a project or is conducting such a project in  
14 conjunction with the division.

15 SECTION 3. [NEW MATERIAL] FOREST AND WATERSHED  
16 RESTORATION BOARD CREATED--MEMBERSHIP--APPOINTMENTS--TERMS--  
17 VACANCIES--COMPENSATION.--

18 A. A ten-member "forest and watershed restoration  
19 board" is created, which is administratively attached to the  
20 energy, minerals and natural resources department. The board  
21 consists of the following members:

- 22 (1) the state forester;
- 23 (2) the commissioner of public lands or the  
24 commissioner's designee;
- 25 (3) the director of the New Mexico forest and

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1 watershed restoration institute at New Mexico highlands  
2 university or the director's designee;

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

5 (5) the secretary of environment or the  
6 secretary's designee; and

7 (6) five public members appointed by the governor  
8 from a list of nominees submitted to the governor jointly by the  
9 senate and house majority and minority floor leaders of the  
10 legislature:

11 (a) one of whom shall be a representative of  
12 a statewide association of counties;

13 (b) one of whom shall be a member of the  
14 soil and water conservation commission; and

15 (c) three of whom shall be practitioners,  
16 with diverse expertise in the ecology and economics, of treatment  
17 and restoration of forests and forest watersheds.

18 B. Of the public members of the board, two shall be  
19 appointed for initial two-year terms and three shall be appointed  
20 for four-year terms, and all subsequent appointments shall be made  
21 for four-year terms.

22 C. The public members of the board shall not be  
23 removed during their terms except for misconduct, incompetence,  
24 neglect of duty or malfeasance in office. No removal shall be  
25 made without prior approval of the senate. Vacancies on the board

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1 shall be filled by appointment by the governor for the unexpired  
2 term within sixty days of the vacancy. Board members shall serve  
3 until their successors have been appointed.

4 D. A majority of the members of the board constitutes  
5 a quorum for transaction of business. The board shall elect a  
6 chair from among its members.

7 E. Members of the board shall be eligible for  
8 compensation as provided in the Per Diem and Mileage Act and shall  
9 receive no other compensation, perquisite or allowance.

10 SECTION 4. [NEW MATERIAL] FOREST AND WATERSHED RESTORATION  
11 BOARD--POWERS AND DUTIES.--

12 A. The board shall:

13 (1) adopt guidelines, protocols and best  
14 management practices for forest and watershed preservation  
15 projects;

16 (2) foster partnerships and cooperation among  
17 federal, state and county agencies, tribal entities, political  
18 subdivisions of the state, soil and water conservation districts,  
19 the forest products industry and other public or private  
20 organizations dedicated to forest and watershed preservation and  
21 restoration programs or projects;

22 (3) evaluate and prioritize projects for funding;  
23 and

24 (4) adopt rules necessary for the proper  
25 administration of the Forest and Watershed Restoration Act.

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B. The board may:

(1) seek and accept all public and private funds and gifts, devises, grants and donations from others to carry out the provisions of the Forest and Watershed Restoration Act;

(2) request assistance and staff support from the state agencies represented on the board;

(3) employ such personnel as necessary to carry out the provisions of the Forest and Watershed Restoration Act;

(4) delegate responsibility for the administration and implementation of projects, project supervision, project coordination and other program matters;

(5) employ or contract with experts to plan and evaluate projects and update state forest and watershed restoration plans;

(6) beginning July 1, 2015, provide partial or full funding for approved projects and facilitate and coordinate funding from multiple sources for projects, when appropriate;

(7) develop or approve projects, activities, agreements and contracts with project sponsors; and

(8) monitor, evaluate and revise plans and projects using adaptive management practices to ensure the long-term effectiveness of projects funded by the board.

SECTION 5. [NEW MATERIAL] FOREST AND WATERSHED RESTORATION FUND CREATED--ADMINISTRATION.--The "forest and watershed restoration fund" is created in the state treasury. The fund

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1 consists of appropriations, distributions, gifts, grants,  
2 donations, income from investment of the fund and any other money  
3 credited to the fund. The fund shall be administered by the  
4 energy, minerals and natural resources department, and money in  
5 the fund is appropriated to the board to administer and to fund  
6 projects approved by the board pursuant to the Forest and  
7 Watershed Restoration Act. Expenditures from the fund shall be by  
8 warrants of the secretary of finance and administration upon  
9 vouchers signed by the state forester. Money in the fund shall  
10 not revert to the general fund.

11 SECTION 6. [NEW MATERIAL] USE OF FOREST AND WATERSHED  
12 RESTORATION FUND--PROJECT EVALUATION AND PRIORITIZATION.--

13 A. Money in the forest and watershed restoration fund  
14 may be used to carry out the purposes of the Forest and Watershed  
15 Restoration Act and to fund projects authorized by the board for:

16 (1) on-the-ground restoration treatments, in an  
17 amount equal to not less than seventy percent of expenditures from  
18 the fund in any one year;

19 (2) project planning, provided that not more than  
20 fifty percent of the costs of a project may be expended on  
21 planning for that project;

22 (3) economic development programs to promote the  
23 state's forest products industry; and

24 (4) work force development for wood utilization  
25 projects.

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1           B. A project shall be given priority for funding if  
2 the project:

3           (1) is part of a current state forest and  
4 watershed health plan or forest action plan, community wildfire  
5 protection plan or other comprehensive forest and watershed  
6 treatment plan approved by the board;

7           (2) incorporates actions recommended by current  
8 plans or, where new plans are developed, seeks to integrate  
9 forest, fire and water management with community and economic  
10 development plans;

11           (3) will protect watersheds that are the source  
12 of drinking water;

13           (4) targets an area at high risk of catastrophic  
14 wildfire;

15           (5) has matching contributions from federal,  
16 state, local, tribal or private sources and, if available, support  
17 from other public or private water, forest, fire, wildlife habitat  
18 or economic development programs;

19           (6) has obtained all requisite state and federal  
20 permits and authorizations necessary to initiate the project, if  
21 the project is other than a planning project;

22           (7) is in an area:

23                   (a) with a wood supply that can be used as  
24 biomass for energy production;

25                   (b) where small-diameter trees may be put to

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1 commercial use; or

2 (c) where traditional forest products may be  
3 produced;

4 (8) is clustered around priority areas that can  
5 supply a useful amount of wood products for industry; and

6 (9) creates incentives to increase investment by  
7 federal, state, local, tribal or private entities, including  
8 investment by downstream water users to manage forested headwaters  
9 and water sources.

10 SECTION 7. [NEW MATERIAL] APPLICATION FOR PROJECT APPROVAL--  
11 CONSIDERATIONS FOR APPROVAL.--

12 A. Beginning July 1, 2015, sponsors may apply to the  
13 board for project approval.

14 B. A sponsor's application shall include:

15 (1) a comprehensive work plan;

16 (2) a complete project cost estimate;

17 (3) how the plan meets board best management  
18 practices and project protocols;

19 (4) funding sources for the project;

20 (5) other partners and cooperating entities  
21 involved in the project; and

22 (6) the estimated time necessary to complete the  
23 project.

24 C. The board shall examine the following in  
25 considering a project for approval:

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1 (1) the project's compliance with the board's  
2 protocols and standards for projects;

3 (2) the sponsor's ability to contribute the  
4 necessary financial and human resources to the project;

5 (3) the project's conformance with the  
6 requirements of Section 6 of the Forest and Watershed Restoration  
7 Act; and

8 (4) the project's compatibility with concurrent  
9 forest and watershed restoration projects.

10 SECTION 8. [NEW MATERIAL] REPORT BY BOARD.--At least forty-  
11 five days prior to each legislative session, the board shall  
12 submit a report concerning its activities, the projects  
13 implemented and any recommended legislation to the governor and  
14 the legislature.

15 SECTION 9. Section 59A-6-5 NMSA 1978 (being Laws 1984,  
16 Chapter 127, Section 105, as amended) is amended to read:

17 "59A-6-5. DISTRIBUTION OF DIVISION COLLECTIONS.--

18 A. All money received by the division for fees,  
19 licenses, penalties and taxes shall be paid daily by the  
20 superintendent to the state treasurer and credited to the  
21 "insurance department suspense fund" except as provided by:

22 (1) the Law Enforcement Protection Fund Act; and

23 (2) Section 59A-6-1.1 NMSA 1978.

24 B. The superintendent may authorize refund of money  
25 erroneously paid as fees, licenses, penalties or taxes from the

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1 insurance department suspense fund under request for refund made  
2 within three years after the erroneous payment. In the case of  
3 premium taxes erroneously paid or overpaid in accordance with law,  
4 refund may also be requested as a credit against premium taxes due  
5 in any annual or quarterly premium tax return filed within three  
6 years of the erroneous or excess payment.

7 C. If required by a compact to which New Mexico has  
8 joined pursuant to law, the superintendent shall authorize the  
9 allocation of premiums collected pursuant to Section 59A-14-12  
10 NMSA 1978 to other states that have joined the compact pursuant to  
11 an allocation formula agreed upon by the compacting states.

12 D. The "insurance operations fund" is created in the  
13 state treasury. The fund shall consist of the distributions made  
14 to it pursuant to Subsection ~~[E]~~ F of this section. The  
15 legislature shall annually appropriate from the fund to the  
16 division those amounts necessary for the division to carry out its  
17 responsibilities pursuant to the Insurance Code and other laws.  
18 Any balance in the fund at the end of a fiscal year greater than  
19 one-half of that fiscal year's appropriation shall revert to the  
20 general fund.

21 E. At the end of every month, after applicable refunds  
22 are made pursuant to Subsection B of this section and after any  
23 allocations have been made pursuant to Subsection C of this  
24 section, the state treasurer shall transfer one million two  
25 hundred fifty thousand dollars (\$1,250,000) to the forest and

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1 watershed restoration fund from that part of the balance remaining  
2 in the insurance department suspense fund derived from the premium  
3 tax.

4           ~~[E.]~~ F. At the end of every month, after applicable  
5 refunds are made pursuant to Subsection B of this section and  
6 after any allocations have been made pursuant to ~~[Subsection]~~  
7 Subsections C and E of this section, the state treasurer shall  
8 make the following transfers from the balance remaining in the  
9 insurance department suspense fund:

10                   (1) to the "fire protection fund", that part of  
11 the balance derived from property and vehicle insurance business;

12                   (2) to the insurance operations fund, that part  
13 of the balance derived from the fees imposed pursuant to  
14 Subsections A and E of Section 59A-6-1 NMSA 1978 other than fees  
15 derived from property and vehicle insurance business; and

16                   (3) to the general fund, the balance remaining in  
17 the insurance department suspense fund derived from all other  
18 kinds of insurance business."

19           **SECTION 10. EFFECTIVE DATE.**--The effective date of the  
20 provisions of this act is July 1, 2015.