



NEW MEXICO LEGISLATURE

# **WATER AND NATURAL RESOURCES COMMITTEE**

2016 INTERIM FINAL REPORT

LEGISLATIVE COUNCIL SERVICE  
411 STATE CAPITOL  
SANTA FE, NEW MEXICO 87501  
(505) 986-4600  
[WWW.NMLEGIS.GOV](http://WWW.NMLEGIS.GOV)

# TABLE OF CONTENTS

INTERIM SUMMARY

WORK PLAN AND MEETING SCHEDULE

AGENDAS AND MINUTES

ENDORSED LEGISLATION



## INTERIM SUMMARY



## **Water and Natural Resources Committee 2016 Interim Summary**

The Water and Natural Resources Committee was created by the New Mexico Legislative Council for the 2016 interim and scheduled six meetings to be held in Santa Fe, Alamogordo, Clovis, Tucumcari, Socorro and Roswell. Although one of the committee's meetings was canceled because the legislature was in special session, the committee still managed to hold meetings in each city.

Historically, the committee has worked closely with New Mexico's water managers, receiving updates throughout each interim. Tom Blaine, state engineer, and Deborah Dixon, director of the Interstate Stream Commission, provided the committee with an update on the activities of their respective offices and New Mexico's water resources at the committee's June meeting.

As is customary, the committee spent most of its time in 2016 discussing water issues. However, the committee also devoted significant time to land use, livestock and wildlife issues. At its July meeting in Alamogordo, the committee heard testimony regarding the listing of the meadow jumping mouse as an endangered species, New Mexico's elk population and the state's policy regarding bear attacks. At its August meeting in Clovis, the committee heard from the New Mexico Beef Council regarding fees paid upon the sale of cattle. At its October meeting in Roswell, the committee learned about several New Mexico agencies working together to respond to an outbreak of equine herpes 1 virus.

The committee also discussed energy production issues. In both Clovis and Tucumcari, the committee examined the development of wind farms and a New Mexico college program that provides degrees to wind turbine technicians. Also while in Clovis, the committee discussed the federal Clean Power Plan. In Roswell, the committee discussed job losses and the overall economic outlook for the oil and gas industry.

The committee also devoted time to environmental issues. In Alamogordo, the committee received an update from the Department of Environment regarding the Gold King Mine spill and ongoing cleanup and monitoring efforts. In Socorro, the committee heard from stakeholders in the ongoing effort to restore New Mexico's watersheds. In Roswell, the committee heard from the commissioner of public lands regarding a proposal to fund cleanup of state trust lands.

Still, water issues tended to dominate the committee's time. At each meeting, the committee heard testimony on various water issues, ranging from water availability to storage to ongoing litigation. In Alamogordo, the committee heard from the Office of the State Engineer regarding New Mexico's drought outlook, as well as a report regarding restoration of some dams in the state. In Clovis, the committee discussed the status of federal Clean Water Act regulations on waters of the United States. In Socorro, and again in Santa Fe, the committee discussed litigation between Texas and New Mexico. The committee's October meeting also featured presentations and discussions on a well drilling permit application on the Augustin Plains Ranch;

water administration on the lower Rio Grande; regional water planning; in-stream flow water rights; contingency planning on the Colorado River; and water well drilling regulations.

Finally, the committee endorsed three pieces of legislation:

- a bill to create the State Trust Lands Restoration and Remediation Fund;
- a bill authorizing the New Mexico Department of Agriculture to adopt rules for research on industrial hemp; and
- a bill regarding water rights and liens in the Lower Rio Grande Public Water Works Authority.



## WORK PLAN AND MEETING SCHEDULE



**2016 APPROVED  
WORK PLAN AND MEETING SCHEDULE  
for the  
WATER AND NATURAL RESOURCES COMMITTEE**

**Members**

Rep. Candy Spence Ezzell, Chair  
Sen. Peter Wirth, Vice Chair  
Rep. Paul C. Bandy  
Sen. Joseph Cervantes  
Rep. Randal S. Crowder  
Rep. Dona G. Irwin  
Rep. James Roger Madalena  
Rep. Javier Martínez  
Rep. Matthew McQueen

Rep. Andy Nunez  
Sen. Cliff R. Pirtle  
Sen. Sander Rue  
Sen. Benny Shendo, Jr.  
Rep. Jeff Steinborn  
Sen. Mimi Stewart  
Rep. James R.J. Strickler  
Sen. Pat Woods

**Advisory Members**

Sen. Ted Barela  
Rep. Cathrynn N. Brown  
Sen. Pete Campos  
Sen. Carlos R. Cisneros  
Rep. Sharon Clahchischilliage  
Sen. Lee S. Cotter  
Rep. George Dodge, Jr.  
Rep. Brian Egolf  
Rep. Nora Espinoza  
Rep. David M. Gallegos  
Rep. Bealquin Bill Gomez  
Sen. Ron Griggs  
Rep. Jimmie C. Hall  
Sen. Stuart Ingle  
Rep. D. Wonda Johnson  
Sen. Gay G. Kernan  
Rep. Larry A. Larrañaga  
Sen. Carroll H. Leavell  
Rep. Idalia Lechuga-Tena

Rep. Tim D. Lewis  
Rep. Rick Little  
Sen. Linda M. Lopez  
Rep. Bill McCamley  
Sen. Cisco McSorley  
Sen. Steven P. Neville  
Sen. Gerald Ortiz y Pino  
Sen. Mary Kay Papen  
Sen. Nancy Rodriguez  
Rep. G. Andrés Romero  
Sen. John C. Ryan  
Rep. Tomás E. Salazar  
Sen. William E. Sharer  
Sen. John Arthur Smith  
Rep. James G. Townsend  
Rep. Don L. Tripp  
Rep. Bob Wooley  
Rep. John L. Zimmerman

**Work Plan**

The Water and Natural Resources Committee was created by the New Mexico Legislative Council on May 9, 2016. The committee proposes to focus on the following topics.

1. Water management, research, litigation and projects and agency issues, including testimony on the following agenda items:
  - a. water conservation goals for municipal water systems (House Memorial 15, 2016);

- b. regional water planning process and status and regional water planning Governance Study Group report;
  - c. reports required by statute from the state engineer and the Interstate Stream Commission;
  - d. active water resource management implementation and water banking;
  - e. Colorado River drought contingency planning;
  - f. cooperative water management operations in the middle Rio Grande;
  - g. lower Rio Grande management agreement efforts;
  - h. report from the New Mexico Acequia Association;
  - i. regional water authority legislation;
  - j. *Texas v. New Mexico* litigation update;
  - k. drought update/reservoir levels/seasonal outlook/Bradner Reservoir project status;
  - l. composition of the Interstate Stream Commission, Water Trust Board, State Game Commission and State Racing Commission;
  - m. New Mexico Institute of Mining and Technology report on joint research efforts with New Mexico State University and the University of New Mexico;
  - n. Bureau of Geology and Mineral Resources report on aquifer mapping projects;
  - o. state engineer regulations on reclamation/reuse of water;
  - p. water well drilling regulations;
  - q. New Mexico Beef Council assessment legislation (Senate Bill 65, 2016); and
  - r. adjudication process update.
2. Agriculture, land use, natural resource and game and fish issues, including:
- a. report on the oil and gas industry: job losses in southeast New Mexico and the economy in northwest New Mexico;
  - b. effects of the listing of the New Mexico meadow jumping mouse on grazing lessees' access to water;
  - c. report on the Gold King Mine spill and Albuquerque Laun-Dry spill;
  - d. report from the Young Farmers and Ranchers Program of the New Mexico Farm and Livestock Bureau;
  - e. report on forest and watershed restoration and treatment projects;
  - f. Department of Game and Fish report on elk population and the E-PLUS Program and Taxation and Revenue Department report on gross receipts tax collections related to the E-PLUS Program;
  - g. pollinators and food security;
  - h. Department of Environment briefing on the federal clean power program;
  - i. long-term financing of forest and watershed treatment, restoration and forest health;
  - j. State Land Office update on grazing land rental formula;
  - k. electric industry report on energy infrastructure and balanced energy mix and the solar energy tax credit renewal;
  - l. Department of Game and Fish position on San Juan River issues;
  - m. soil and water conservation districts update;
  - n. agri-tourism in New Mexico;
  - o. equine herpesvirus testing; and
  - p. the Industrial Hemp Farming Act.

**Water and Natural Resources Committee  
2016 Approved Meeting Schedule**

<u>Date</u>	<u>Location</u>
June 14	Santa Fe
July 14-15	Alamogordo
August 25-26	Clovis; Tucumcari
September 29-30	Socorro
October 27-28	Roswell
November 21	Santa Fe



## AGENDAS AND MINUTES





**TENTATIVE AGENDA  
for the  
FIRST MEETING IN 2016  
of the  
WATER AND NATURAL RESOURCES COMMITTEE**

**June 14, 2016**  
**Room 322, State Capitol**  
**Santa Fe**

**Tuesday, June 14**

10:00 a.m.                    **Call to Order and Introductions**  
—Representative Candy Spence Ezzell, Chair, Water and Natural Resources  
   Committee

10:10 a.m.            (1)    **Status Reports — Office of the State Engineer and Interstate Stream  
Commission**  
—Tom Blaine, State Engineer  
—Deborah Dixon, Director, Interstate Stream Commission

11:30 a.m.            (2)    **Discussion of 2016 Interim Work Plan and Itinerary**  
—Committee Members

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



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

**June 14, 2016  
Room 322, State Capitol  
Santa Fe**

The first meeting of the Water and Natural Resources Committee was called to order on June 14, 2016 at 9:00 a.m. in Room 322 of the State Capitol by Representative Candy Spence Ezzell, chair.

**Present**

Rep. Candy Spence Ezzell, Chair  
Sen. Peter Wirth, Vice Chair  
Rep. Paul C. Bandy  
Rep. Dona G. Irwin  
Rep. James Roger Madalena  
Rep. Javier Martínez  
Rep. Matthew McQueen  
Rep. Andy Nunez  
Sen. Sander Rue  
Rep. Jeff Steinborn  
Sen. Mimi Stewart  
Rep. James R.J. Strickler  
Sen. Pat Woods

**Advisory Members**

Sen. Lee S. Cotter  
Rep. Bealquin Bill Gomez  
Sen. Ron Griggs  
Rep. Jimmie C. Hall  
Rep. D. Wonda Johnson  
Rep. Larry A. Larrañaga  
Sen. Linda M. Lopez  
Rep. Bill McCamley  
Sen. Cisco McSorley  
Sen. Gerald Ortiz y Pino  
Sen. Mary Kay Papen  
Sen. Nancy Rodriguez  
Rep. Tomás E. Salazar  
Rep. James G. Townsend  
Rep. Don L. Tripp  
Rep. Bob Wooley

**Absent**

Sen. Joseph Cervantes  
Rep. Randal S. Crowder  
Sen. Cliff R. Pirtle  
Sen. Benny Shendo, Jr.

Sen. Ted Barela  
Rep. Cathrynn N. Brown  
Sen. Pete Campos  
Sen. Carlos R. Cisneros  
Rep. Sharon Clahchischilliage  
Rep. George Dodge, Jr.  
Rep. Brian Egolf  
Rep. Nora Espinoza  
Rep. David M. Gallegos  
Sen. Stuart Ingle  
Sen. Gay G. Kernan  
Sen. Carroll H. Leavell  
Rep. Idalia Lechuga-Tena  
Rep. Tim D. Lewis  
Rep. Rick Little  
Sen. Steven P. Neville

Rep. John L. Zimmerman

Rep. G. Andrés Romero

Sen. John C. Ryan

Sen. William E. Sharer

Sen. John Arthur Smith

### **Staff**

Jon Boller, Legislative Council Service (LCS)

Gordon Meeks, LCS

Jeret Fleetwood, LCS

### **Guests**

The guest list is in the meeting file.

### **Handouts**

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

### **Tuesday, June 14**

#### **Status Reports — Office of the State Engineer and Interstate Stream Commission**

Tom Blaine, state engineer, provided the committee with an update on the operations of the Office of the State Engineer (OSE). He explained that the OSE has spent the past year trying to engage water stakeholders on various issues. For example, Mr. Blaine noted that he had made trips to most of the tribes and pueblos in the state, as well as many of the acequias, to try to become better acquainted with their issues.

Mr. Blaine also discussed the OSE's efforts to reduce the backlog of water rights applications and protests, noting that applications are now reviewed within 10 days of their submission. He also explained development of a triage system in the office to identify which protests may be likely to settle without a hearing.

Mr. Blaine went on to discuss development of well drilling regulations, a draft of which should be available by July 20. He also noted that the office plans to hold a series of meetings in late August to address concerns over the proposed regulations.

Mr. Blaine provided the committee with an update on litigation between New Mexico and Texas. He explained that the special master assigned to the case was expected to issue a ruling in late 2015 or early 2016, but had not yet done so. However, Mr. Blaine noted that New Mexico and Texas have communicated with each other and have developed a framework for sharing the costs of the special master's work. He also noted that many of the parties involved in litigation with the state communicate better with each other now than they did before.

Mr. Blaine went on to discuss what he characterized as attempts by the federal government to control New Mexico's water. For example, he told the committee about an

attempt by the United States Forest Service to regulate ground water on federal lands, which was challenged by New Mexico and several other states. Mr. Blaine also noted a 2015 lawsuit between New Mexico and the federal Environmental Protection Agency regarding the federal Clean Water Act of 1977, and he described actions taken by the United States Forest Service to protect the meadow jumping mouse, which limited the ability of grazing animals to access water.

Mr. Blaine also discussed the status of various adjudications in the state. He explained that a working group had been formed to try to streamline the process and that the group's recommendation of using already adjudicated rights in some parts of the state should help save time and money. Mr. Blaine said that the OSE is trying to expedite stock well adjudications by using GPS data submitted to the office by well owners. He also updated the committee on the status of the Taos, Aamodt and Navajo settlements.

Deborah Dixon, director, Interstate Stream Commission (ISC), provided the committee with an update on the ISC's activities. She noted that in mid-winter, New Mexico's snowpack looked promising, but that most of the state is abnormally dry with a forecast calling for dry conditions through next winter.

As a result of dry conditions, Ms. Dixon explained, the ISC has begun to rely on creative ways of managing the state's compact obligations and endangered species management. For example, she mentioned that water was temporarily stored in El Vado Reservoir to delay peak flows until peak flows in the Rio Grande occurred, thus creating a better springtime environment for the Rio Grande silvery minnow.

Ms. Dixon also discussed recovery of the Pecos bluntnose shiner, explaining that the biological opinion on the fish had expired. She noted that flows are needed along about 60 miles of critical habitat and that water is being stored at Sumner Reservoir to meet that demand. Ms. Dixon said that a new biological opinion is being negotiated.

Ms. Dixon went on to discuss endangered species issues on the San Juan River, explaining that the ISC is hoping that the Colorado pikeminnow and razorback sucker are delisted by 2023. She noted that Colorado River water is being used for the fish and that New Mexico's cost share of the water use and capital projects is \$2.7 million, with \$1.8 million of that already paid.

Next, Ms. Dixon discussed regional water planning. She explained that a 2013 review of the water planning process recommended a wholesale update to water plans and dozens of meetings have been held to gather input on the planning process. Ms. Dixon said that regional plans are almost complete and should be done by fall 2016, with a complete statewide water plan finished in 2018.

Questions and comments from the committee included:

- that a permit is required for each well drilled in a declared basin;

- protests and public meetings regarding an application for an in-stream permit near Tucumcari;
- in-stream permits, which should help maintain base river flow rates, are new to New Mexico, and the OSE is moving forward carefully;
- an attorney general opinion that states that a statutory change is not required for in-stream permits;
- the ISC currently has an acting chair, but election of a new one is on the commission's next agenda;
- regional water plans do not absolve the ISC and the OSE of their constitutional and statutory duties and authority; they just help the agencies plan;
- the Navajo settlement will require about \$6 million in additional funding;
- there are at least 24 additional future water settlement funding needs;
- ditch owners are generally responsible for repair to ditches and lines;
- the definition of beneficial use of water;
- whether provisions in the Constitution of New Mexico could be strengthened to help protect New Mexico's water, particularly for agricultural use;
- the distinction between ground water and surface water in the Rio Grande Project;
- that the courts have ruled that ground water has not been appropriated as part of the Rio Grande Project; and
- the status of water cases involving the pueblos of Jemez, Zia and Santa Ana.

Michaelene Kyrala, director, strategic initiatives and legislative coordinator, Department of Environment, provided the committee with a brief presentation regarding the Water Infrastructure Team and a survey the team is conducting.

### **Discussion of 2016 Interim Work Plan and Itinerary**

The committee developed a work plan and the following meeting schedule:

- |                   |                   |
|-------------------|-------------------|
| • July 14-15      | Alamogordo        |
| • August 25-26    | Clovis; Tucumcari |
| • September 29-30 | Socorro           |
| • October 27-28   | Roswell           |
| • November 21     | Santa Fe          |

### **Adjournment**

There being no further business, the committee adjourned.

Revised: July 7, 2016

**TENTATIVE AGENDA  
for the  
SECOND MEETING IN 2016  
of the  
WATER AND NATURAL RESOURCES COMMITTEE**

**July 14-15, 2016  
Tays Auditorium, NMSU-A  
Alamogordo**

**Thursday, July 14**

- 10:00 a.m.        **Call to Order and Introductions**  
—Representative Candy Spence Ezzell, Chair, Water and Natural Resources Committee
- 10:05 a.m.        (1)    **Effect of Meadow Jumping Mouse Listing on Access to Water**  
—Grazing Allottees Representatives (TBA)  
—Jim Upchurch, Deputy Regional Forester, United States Forest Service (USFS)  
—Steve Hattenbach, Director, Range Land Management, USFS  
—Wally Murphy, United States Fish and Wildlife Service  
—Tom Blaine, State Engineer
- 12:15 p.m.        **Lunch**
- 1:30 p.m.        (2)    **Department of Game and Fish Report on Elk Population and Taxation and Revenue Department Report on Gross Receipts Tax Collections from E-PLUS Program Activity**  
—Alexa Sandoval, Director, Department of Game and Fish  
—Demesia Padilla, Secretary, Taxation and Revenue Department
- 2:30 p.m.        (3)    **Bear Attack Policy**  
—Karen Williams, Resident, Los Alamos
- 4:00 p.m.        **Report and Committee Tour of Brackish Groundwater National Desalination Research Facility**  
—Randy Shaw, Facility Manager, Brackish Groundwater National Desalination Research Facility
- 6:00 p.m.        **Recess**

**Friday, July 15**

- 9:00 a.m.      (4)    **Water Infrastructure Financing Working Group; Briefing on the Federal Clean Power Program; Gold King Mine Spill Update**  
—Ryan C. Flynn, Secretary, Department of Environment  
—Michaelene Kyrala, Director, Strategic Initiatives and Legislative Coordinator, Department of Environment
- 11:00 a.m.      (5)    **Drought Update/Seasonal Outlook; Bradner Reservoir Project Status**  
—Tom Blaine, State Engineer  
—Staff, Office of the State Engineer
- 12:00 noon      **Adjourn**



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

**July 14-15, 2016  
New Mexico State University-Alamogordo  
Tays Auditorium  
Alamogordo**

The second meeting of the Water and Natural Resources Committee was called to order by Representative Candy Spence Ezzell, chair, on July 14, 2016 at 10:20 a.m. in Tays Auditorium at New Mexico State University-Alamogordo in Alamogordo.

**Present**

Rep. Candy Spence Ezzell, Chair  
Sen. Peter Wirth, Vice Chair  
Rep. Paul C. Bandy  
Sen. Joseph Cervantes  
Rep. Randal S. Crowder  
Rep. Matthew McQueen  
Rep. Andy Nunez  
Sen. Cliff R. Pirtle  
Rep. Jeff Steinborn  
Rep. James R.J. Strickler

**Advisory Members**

Sen. Ted Barela  
Sen. Lee S. Cotter  
Rep. Bealquin Bill Gomez  
Sen. Ron Griggs  
Rep. Idalia Lechuga-Tena  
Sen. Cisco McSorley (7/15)  
Sen. Nancy Rodriguez  
Rep. James G. Townsend  
Rep. Bob Wooley  
Rep. John L. Zimmerman

**Absent**

Rep. Dona G. Irwin  
Rep. James Roger Madalena  
Rep. Javier Martínez  
Sen. Sander Rue  
Sen. Benny Shendo, Jr.  
Sen. Mimi Stewart  
Sen. Pat Woods

Rep. Cathrynn N. Brown  
Sen. Pete Campos  
Sen. Carlos R. Cisneros  
Rep. Sharon Clahchischilliage  
Rep. George Dodge, Jr.  
Rep. Brian Egolf  
Rep. Nora Espinoza  
Rep. David M. Gallegos  
Rep. Jimmie C. Hall  
Sen. Stuart Ingle  
Rep. D. Wonda Johnson  
Sen. Gay G. Kernan  
Rep. Larry A. Larrañaga  
Sen. Carroll H. Leavell  
Rep. Tim D. Lewis  
Rep. Rick Little

Sen. Linda M. Lopez  
Rep. Bill McCamley  
Sen. Steven P. Neville  
Sen. Gerald Ortiz y Pino  
Sen. Mary Kay Papen  
Rep. G. Andrés Romero  
Sen. John C. Ryan  
Rep. Tomás E. Salazar  
Sen. William E. Sharer  
Sen. John Arthur Smith  
Rep. Don L. Tripp

**Guest Legislators**

Sen. William F. Burt  
Rep. Yvette Herrell

(Attendance dates are noted for 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 meeting file.

**Handouts**

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

**Thursday, July 14**

Representative Ezzell began the meeting by having members of the committee, staff and audience introduce themselves.

**Effect of Meadow Jumping Mouse Listing on Access to Water**

Representative Ezzell asked that parties affected by the listing of the New Mexico meadow jumping mouse speak first, after which representatives from the United States Fish and Wildlife Service (FWS) and the United States Forest Service (USFS), as well as the Office of State Engineer (OSE), would address the committee.

Kelly Goss, Sacramento Grazing Association, Inc., explained that the fences erected to protect the mouse habitat directly affected her family's cattle operation. She noted that the

electric fences put up by the USFS were larger than stakeholders had been told they would be and did not leave enough room to work cattle. Ms. Goss also said that the water lanes that had been dug to move water outside of the fenced area were not sufficient and would be dry soon. She also suggested that the fences were protecting a larger area than was necessary. Ms. Goss went on to say that federal agencies have been taking water from citizens for years without due process and that temporary arrangements rarely turn out to actually be temporary.

JudyAnn Medeiros said that the Aqua Chiquita Creek runs through her family's land and is a good source of water. She noted that her family has been ranching in the area since the 1950s and that while federal fencing began to appear in the 1990s, there has been more fencing since the mouse was listed. Ms. Medeiros said that the federal government has been taking water from ranchers and land users bit by bit, despite efforts by the USFS to work with them.

Ernie Torres, New Mexico Cattle Growers' Association, said that the federal government had fenced off portions of a waterway in New Mexico to protect the mouse before, on the La Jara ditch in the Jemez area. He explained that fences were erected between Jemez and Cuba to protect jumping mouse habitat. Mr. Torres went on to explain that while the fences are designed to protect the mouse and its habitat from cattle, elk in the area also cause damage to the habitat. He said that ranchers in New Mexico are losing patience with the federal government, particularly regarding the federal Endangered Species Act of 1973. Mr. Torres also said that while the federal government has fenced off portions of land and offered drinking areas elsewhere, some of the affected parties have water rights that go back to the Treaty of Guadalupe Hidalgo and should be protected. He noted that it seems as though mice are currently more important than people, going on to suggest that continued taking of water will lead to bad attitudes. He urged the legislature to protect New Mexico's citizens before they are forced to protect themselves.

Colt Howland, Otero County Cattlemen's Association, said that listing the mouse has had effects on private property and states' rights, pointing out that fences keep other land users, such as hunters, campers and birdwatchers, off of public land, too.

Gary Stone said that designation of critical habitat has the effect of denying water to industries that need it. For example, he said that hunters and trappers are now unable to get to traps. Mr. Stone said that the decision to protect the spotted owl's habitat had a significant negative effect on the logging industry and local customs and culture, eventually forcing sawmills and schools to close and devastating families. He went on to say that the science on some decisions to list a species as endangered is based on suspect science because the FWS is caving in to organizations such as the Center for Biological Diversity. Mr. Stone explained that some federal laws that were initially designed to protect ranchers are now serving to help eradicate them because federal bureaucrats are willfully misinterpreting court decisions, laws and the constitution to suit their own agendas.

Jim Upchurch, deputy regional forester, Southwest Region, USFS, introduced Steve Hattenbach, director of range land management, USFS, and Wally Murphy, FWS. Mr. Upchurch explained that the USFS has a very broad mission to maintain forest resources for present and future generations and that it can be difficult for the agency to balance all of the needs and resources, which can lead to controversy. He said that there are 1,350 grazing allotments in Arizona and New Mexico, with 600 allotments in New Mexico. Fourteen allotments, three in the Lincoln National Forest, six in the Santa Fe National Forest and five in Arizona, are affected by the listing of the New Mexico meadow jumping mouse, he explained. Mr. Upchurch went on to say that the mouse was listed as an endangered species in 2014, with critical habitat identified in 2016. He emphasized that the USFS has no intention of affecting grazing permit holders if at all possible, noting that the agency prefers to seek collaborative solutions. Mr. Upchurch said that the number of cattle allowed to graze has not been reduced but that the USFS has been forced to alter some grazing practices. He noted that the USFS has met with several of the people whose cattle have been affected by the fences put up to protect the mouse's habitat and that the USFS is willing to be flexible and discuss moving some of the fences. However, he said that the USFS would have to visit each site to determine if moving fences is feasible or not. He said that the USFS is currently in the process of moving some fences and trying to reach agreements with cattle owners and that in 13 of the 14 allotments, consensus has been reached. Mr. Upchurch emphasized that settling upon workable solutions is incumbent upon all parties involved.

Questions and comments from the committee included the following:

- a letter from Governor Martinez was recently sent to the USFS urging that a solution be developed to both protect the mouse and maintain the ability of cattle to graze;
- the importance of grazing as a valid land use;
- the fences erected have not prevented access to any diversions, so the OSE was not contacted before the fences were put up;
- the USFS tried to work with local ranchers on initial fence locations;
- the meadow jumping mouse has a relatively restricted range and small habitat area, but it hibernates for about nine months and feeds on seeds in long grasses that tend to grow in wet soil;
- the draft biological assessment for the mouse identified between 220 and 290 acres of critical habitat to be enclosed by temporary fencing, but that number could change once the National Environmental Policy Act of 1969 (NEPA) process is completed;
- there is limited historical information available for the mouse;
- the USFS does erect erosion control structures but not diversions;
- the last count of the mouse population was done about 10 years ago;
- by law, a recovery plan for the mouse must be developed within the next five years;
- the NEPA process allows for input from the public and grazing permit holders;
- the USFS intends to complete fencing and the NEPA process in 2016, but it depends upon reaching workable solutions with stakeholders;
- development of reachable solutions often involves USFS staff and grazing permit holders walking together along fence lines and negotiating the fence's location;

- the FWS is responsible for protecting a species once it becomes listed as endangered;
- while cattle grazing has affected mouse habitat, other grazing species have had some impact, too;
- there is not enough information to determine the effect of elk on the mouse habitat or the effectiveness of temporary fencing on elk behavior;
- it is difficult to predict how much land will ultimately have to be fenced off to adequately protect the mouse habitat;
- protecting endangered species' habitat is more about protection of an ecosystem than any one species;
- federal encroachment on New Mexico water resources extends beyond fencing off the mouse habitat; and
- fences will likely also affect other types of land users, such as those who hike and fish.

Tom Blaine, state engineer, explained that the OSE has been aware of the issue for years and has toured area ranches and the areas enclosed by fencing to try to better understand the issue.

Questions and comments from the committee included:

- the fencing is more of a streambed management issue than a diversion issue;
- that the OSE has worked with some affected parties to develop off-channel drinking areas to deliver water to cattle;
- stock watering rights versus other types of water rights;
- blocking access to points of diversion could be considered a taking;
- acquisition and application for water rights for beneficial use; and
- the OSE cannot force federal agencies to tear fences down but can provide mechanisms to help deliver water to cattle.

**Department of Game and Fish (DGF) Report on Elk Population and Taxation and Revenue Department (TRD) Report on Gross Receipts Tax Collections from the Elk-Private Lands Use System (E-PLUS) Program Activity**

Alexa Sandoval, director, DGF, briefly discussed the work of a subcommittee formed by the House Agriculture, Water and Wildlife Committee to discuss New Mexico's elk population and gross receipts taxes (GRT) on the E-PLUS program.

Demesia Padilla, secretary, TRD, and Ron Scott, audit and compliance director, TRD, explained that all goods and services in New Mexico are subject to the GRT unless a specific exemption exists. Mr. Scott explained that landowners who sell private land authorizations or elk hunting licenses are subject to the GRT. He briefly discussed the GRT itself and what types of goods, services and property are subject to the tax. Mr. Scott went on to explain that the TRD had been conducting managed audits of landowners subject to the tax but who not have paid it. He said that the department had conducted 269 managed audits and collected \$837,000, noting

that managed audits mean that taxpayers must pay the taxes they owe but are not subject to penalties.

Questions and comments from the committee included:

- between 2,000 and 4,000 landowners have not taken advantage of managed audits and could still be subject to additional taxes;
- about 5,000 landowners are part of the E-PLUS program;
- DGF issues about 20,000 authorizations for elk each year, but 33 percent to 35 percent are not turned into game licenses;
- it is difficult to determine how many landowners are not in compliance with their tax liability;
- estimates for unreported income are about \$15 million for landowners and \$16 million for outfitters, which should equal about \$3.3 million in uncollected GRT, or \$31 million over the past six years;
- some outreach has been conducted to let landowners know that the managed audit program exists;
- landowner authorizations are generally not considered income until a landowner sells that authorization to a third party;
- the DGF is trying to stabilize or reduce the elk population in New Mexico, in part by increasing the number of hunting licenses and landowner authorizations;
- the difficulty in estimating the size of elk herds;
- the depredation program awards additional licenses to landowners for damage caused by wildlife;
- the potential downside of forcing authorization sales underground to avoid taxes;
- the number of depredation cases has steadily gone down each year; and
- the TRD is increasing compliance with the tax code in every area, not just landowner permits.

On a motion made, seconded and passed, the minutes of the committee's June 14, 2016 meeting were approved as submitted.

### **Bear Attack Policy**

Karen Williams, a New Mexico marathon runner, explained that she was near the end of a marathon in the Valles Caldera National Preserve on June 18 when she encountered a bear that charged and attacked her, causing significant injuries. She explained that bear attacks tend to happen because bears act either defensively or in a predatory manner. Ms. Williams went on to note that the law states that bears that attack humans must be destroyed immediately, mostly out of concerns that the bear could carry rabies. She said that the bear that attacked her was acting defensively because Ms. Williams had stumbled onto the bear and her three cubs. She said that there is some evidence that black bears, which are the most common type in New Mexico, may be fairly resistant to rabies. Ms. Williams suggested either creating an exception for bears in the law that states that animals that attack must immediately be euthanized or for developing a rapid

response team to be able to assess whether animals exhibiting defensive behavior actually need to be killed.

Ms. Sandoval, explained that her department worries constantly about employees or the public having a bad interaction with wildlife. She pointed out that a rapid response team is already in place. Ms. Sandoval also explained that while significant research has been conducted on how to determine whether an animal has rabies, the only sure test currently available is to kill the animal and take a small sample of its brain for testing.

Dr. Michael Landen, state epidemiologist, Department of Health (DOH), explained that state agencies would prefer not to have to kill bears, noting that an average of about one bear per year has to be killed. He contrasted that number by pointing out that almost 500 bears are killed each year by hunters. Dr. Landen went on to explain that while it is relatively uncommon, rabies has been found in black bears. He also noted that there is no canine variant of rabies, so bears have contracted the disease from other species, such as skunks, foxes or bats. Dr. Landen also pointed out that rabies is fatal and that while observation periods of about 10 days can work to determine whether dogs and cats may have the disease, no such period exists for wildlife. Instead, he explained, a fluorescent antibody test conducted on brain matter is the only definitive test. Dr. Landen explained the treatment for rabies in humans, involving a series of painful shots over several weeks, costing \$3,500 to \$4,000, which may not be covered by insurance companies and carries significant side effects, sometimes serious. He explained that forcing humans to decide between painful treatment and an animal's life is not sound policy. Dr. Landen also said that 11 of 12 states in the West confirmed they would do the same as New Mexico in this type of case, and four of the 12 states require by statute that the attacking animal be killed.

Questions and comments from the committee included:

- the requirement that attacking animals be killed exists in regulation, not statute, but no plans exist to change the regulation;
- the fluorescent antibody test requires a slice of the brain, so merely tranquilizing an animal will not be sufficient to conduct it;
- of the 12 western states surveyed by the DOH, four have mandatory requirements to kill attacking wildlife and eight treat attacks on a case-by-case basis;
- the states in the eight case-by-case incidents all agreed that killing the bear in Ms. Williams' case was the correct response;
- the attacking animal is rarely available after the attack occurs, but doctors tend to resist prescribing unnecessary courses of treatment such as the one required for rabies; and
- even in states that do not automatically kill attacking animals by law or regulation, in practice, state policy almost always results in the animal's death.

## **Report and Committee Tour of Brackish Groundwater National Desalination Research Facility**

Members of the committee toured the Brackish Groundwater National Desalination Research Facility in Alamogordo.

### **Friday, July 15**

#### **Water Infrastructure Financing Working Group; Briefing on the Federal Clean Power Plan; Gold King Mine Spill Update**

Ryan C. Flynn, secretary, Department of Environment (NMED), discussed the federal clean power plan and the legal challenges facing the rule. He explained that implementation of the rule was stayed by the United States Supreme Court and that the stay will remain in place at least until the United States Court of Appeals for the District of Columbia Circuit rehears the case en banc some time in September. Secretary Flynn also noted that New Mexico Attorney General Hector Balderas has joined with attorneys general from several other states in supporting the clean power plan and that while the attorney general did not initially discuss the matter with the NMED, communication between the NMED and the attorney general has since improved. He also said that New Mexico has already taken steps that will result in greenhouse gas reductions by 2017 that will be in compliance with the regulations, regardless of the outcome in court. Secretary Flynn acknowledged that although the clean power plan is on uncertain legal ground and could likely threaten some jobs in New Mexico, the safest course for the state is to move forward with compliance. He said that while the department supports the idea, there are problems with the plan, particularly the ozone regulations, with which it will be difficult for some western mountain states to comply.

Secretary Flynn and Dennis McQuillan, chief scientist, NMED, also provided the committee with an update on the Gold King Mine spill. Mr. McQuillan explained that some contamination is still present in the Animas River and that contaminant levels appear to spike during storm and other high river flow events. Secretary Flynn discussed efforts to monitor contaminant levels in the river, noting that the NMED does not have sufficient funding to conduct the monitoring that the department believes is necessary. However, he said that the United States Environmental Protection Agency (EPA) refuses to fund additional monitoring, in part because the EPA appears to be manipulating data to suggest that contaminant levels are lower than they actually are. Secretary Flynn also discussed the communication among New Mexico, Colorado and the EPA regarding the process of listing the mine spill as a Superfund site.

Questions and comments from the committee included:

- whether the EPA was invited to appear before the committee;
- the standard used by the EPA to determine acceptable contaminant levels in waterways;
- use of potentially contaminated water for agricultural use;
- cleanup efforts at the source of the spill;



- direct and indirect costs associated with the spill and ongoing monitoring and clean-up efforts;
- the declaration of a state of emergency by the state and whether existing conditions constitute an ongoing emergency;
- the testing of water samples taken from waterways located in Colorado;
- that New Mexico has already spent about \$2 million on monitoring water quality in affected waterways, but additional monitoring is necessary and should be funded with federal money; and
- that New Mexico needs about \$6 million to continue monitoring water quality, while litigation costs can be determined later.

### **Drought Update/Seasonal Outlook; Bradner Reservoir Project Status**

Mr. Blaine provided the committee with an update on New Mexico's drought status. He said that the state's drought status remains similar to one year ago, although some parts of the state are experiencing slightly more pronounced drought conditions. Mr. Blaine also said that late summer monsoon rains should offer some drought relief. He said that the regional outlook calls for slightly below normal precipitation through fall and that ocean temperatures suggest that New Mexico could be facing a La Niña weather pattern during the winter, which may mean below-average snowfall. Mr. Blaine went on to discuss reservoir levels in the state, noting that while reservoir levels statewide are below average, three northern reservoirs, El Vado, Abiquiu and Cochiti, have slightly above-average water levels. He did point out, though, that Elephant Butte Reservoir levels are much below average, which is of concern.

Chuck Thompson, chief, Dam Safety Bureau, OSE, discussed the project to rehabilitate the dam at Bradner Reservoir. He explained that the City of Las Vegas owns two reservoirs, Bradner and Peterson, both of which have dams with deficiencies. Mr. Thompson went on to say that Las Vegas was able to secure capital outlay funding in 2014 to rehabilitate Bradner Dam and that the city has drained the water from the reservoir. He noted that construction will begin in 2017 and should be completed by 2018.

Questions and comments from the committee included:

- the special master assigned to the Texas versus New Mexico water case issued his ruling on New Mexico's motion to dismiss the case, recommending in his 254-page decision that the case proceed to the U.S. Supreme Court;
- review of the special master's report is on the committee's September agenda;
- the special master's report is a draft, and both parties can comment on it before the final report goes to the U.S. Supreme Court;
- the OSE reduced the backlog of permit requests by 50 percent in 2015 and is still working to reduce the current backlog;
- the OSE does not regulate Army Corps of Engineers dams, but the agency does work with the corps, particularly on the permitting process;

- the Army Corps of Engineers will raise the dam level at Santa Cruz Dam while the OSE will work on the permitting process; and
- the OSE maintains a database that contains information on ownership of dams in New Mexico.

The presentation on water infrastructure financing was postponed until the August meeting of the committee.

**Adjournment**

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

Revised: August 17, 2016

**TENTATIVE AGENDA  
for the  
THIRD MEETING IN 2016  
of the  
WATER AND NATURAL RESOURCES COMMITTEE**

**August 25, 2016  
Clovis Civic Center, 801 Schepps Blvd.  
Clovis**

**August 26, 2016  
Tucumcari Convention Center, 1500 Rte. 66  
Tucumcari**

**Thursday, August 25**

- 10:00 a.m.           **Call to Order and Introductions**  
—Representative Candy Spence Ezzell, Chair, Water and Natural Resources Committee
- 10:05 a.m.           **Welcome and Water Conservation Summit Report**  
—David Lansford, Mayor, City of Clovis
- 10:30 a.m.       (1)   **[New Mexico Beef Council Assessment on Livestock Sales \(Senate Bill 65, 2016\)](#)**  
—Senator Pat Woods  
—Bernarr Treat, Chair, New Mexico Beef Council
- 11:30 a.m.       (2)   **[Broadview Wind Power Facility Project](#)**  
—Ward Marshall, Director of Business Development, Pattern Energy Group, Inc.
- 12:00 noon           **Lunch**
- 1:00 p.m.           (3)   **[Report on Soil and Water Conservation Districts](#)**  
—Debbie Hughes, Executive Director, New Mexico Association of Conservation Districts
- 2:00 p.m.           (4)   **[Water Infrastructure Team and Funding Subgroup Report and Construction Programs Bureau Infrastructure Development Report](#)**  
—Michaelene Kyrala, Director, Strategic Initiatives and Policy, New Mexico Department of Environment (NMED)  
—NMED Staff

4:00 p.m.       (5)    [Federal Clean Water Act Regulations on Waters of the United States Status](#)  
                              —Butch Tongate, Acting Secretary, NMED

5:00 p.m.        **Recess**

**Friday, August 26**

9:00 a.m.       (6)    [New Mexico Acequia Association Briefing](#)  
                              —Paula Garcia, Executive Director, New Mexico Acequia Association

10:00 a.m.       (7)    [Rural Water Association \(RWA\) Update](#)  
                              —Bill Conner, Executive Director, RWA

11:00 a.m.       (8)    [Mesalands Community College Wind Energy Program](#)  
                              —Andy Swapp, Wind Energy Instructor, Mesalands Community College  
                              —Jim Morgan, Director, North American Wind Research and Training  
  Center

11:30 a.m.       **Committee Tour**

2:00 p.m.        **Adjourn** (estimated)

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

**August 25, 2016  
Clovis Civic Center  
Clovis**

**August 26, 2016  
Tucumcari Convention Center  
Tucumcari**

The third meeting of the Water and Natural Resources Committee was called to order by Representative Candy Spence Ezzell, chair, on August 25, 2016 at 10:00 a.m. in the Clovis Civic Center in Clovis.

**Present**

Rep. Candy Spence Ezzell, Chair  
Sen. Peter Wirth, Vice Chair (Aug. 25)  
Rep. Randal S. Crowder  
Rep. Javier Martínez  
Rep. Matthew McQueen  
Rep. Andy Nunez (Aug. 25)  
Sen. Cliff R. Pirtle (Aug. 25)  
Sen. Sander Rue  
Rep. Jeff Steinborn  
Rep. James R.J. Strickler  
Sen. Pat Woods

**Advisory Members**

Rep. David M. Gallegos (Aug. 25)  
Rep. Bealquin Bill Gomez  
Sen. Ron Griggs  
Rep. Idalia Lechuga-Tena  
Rep. Bill McCamley  
Sen. Cisco McSorley  
Sen. John C. Ryan (Aug. 25)  
Rep. James G. Townsend  
Rep. Bob Wooley  
Rep. John L. Zimmerman

**Absent**

Rep. Paul C. Bandy  
Sen. Joseph Cervantes  
Rep. Dona G. Irwin  
Rep. James Roger Madalena  
Sen. Benny Shendo, Jr.  
Sen. Mimi Stewart

Sen. Ted Barela  
Rep. Cathrynn N. Brown  
Sen. Pete Campos  
Sen. Carlos R. Cisneros  
Rep. Sharon Clahchischilliage  
Sen. Lee S. Cotter  
Rep. George Dodge, Jr.  
Rep. Brian Egolf  
Rep. Nora Espinoza  
Rep. Jimmie C. Hall  
Sen. Stuart Ingle  
Rep. D. Wonda Johnson  
Sen. Gay G. Kernan

Rep. Larry A. Larrañaga  
Sen. Carroll H. Leavell  
Rep. Tim D. Lewis  
Rep. Rick Little  
Sen. Linda M. Lopez  
Sen. Steven P. Neville  
Sen. Gerald Ortiz y Pino  
Sen. Mary Kay Papen  
Sen. Nancy Rodriguez  
Rep. G. Andrés Romero  
Rep. Tomás E. Salazar  
Sen. William E. Sharer  
Sen. John Arthur Smith  
Rep. Don L. Tripp

**Guest Legislator**

Rep. Dennis J. Roch (Aug. 26)

(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 meeting file.

**Handouts**

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

**Thursday, August 25**

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

**Welcome and Water Conservation Summit Report**

David Lansford, mayor, City of Clovis, and Curry County Commissioners Wendell Bostwick and Chet Spear welcomed the committee to Clovis and thanked members for coming.

Mayor Lansford discussed the importance of water to all communities, particularly in southeastern New Mexico. He explained that as ground water supplies continue to be depleted,

residents in the region are attempting to engineer a better future for themselves by planning and building the Ute Pipeline Project, which he noted has finally begun to move forward. Mayor Lansford went on to note that funding for large-scale water projects continues to be a problem at all levels and that while the Ute project will continue to move forward, communities in the region must conserve available water resources in the meantime to limit how much water is pumped from underground aquifers. With that in mind, he explained that Clovis had conducted a water conservation summit and planned to contract with a consultant who would help the city identify the best ways of conserving water.

Questions and comments from the committee included:

- a reference to an article written in *National Geographic* magazine about water mining in the Ogallala Aquifer, part of which is underneath Clovis;
- the effect of Texas' water laws, which allow unlimited water pumping, could negate any efforts by Clovis to slow down its pumping efforts, although studies on lateral movement of water and rock formations suggest that pumping in Texas may have less effect than previously thought; and
- asphalt companies are working with the state to try to develop methods of road building and repaving that use less water than the current process.

Danielle Lowry, chair, Young Farmers and Ranchers Program, discussed the NMAg True Tour provided to some committee members on August 24. She noted that members were able to see a mock livestock auction and attend a dinner and various other events that showcase agriculture in New Mexico.

#### **New Mexico Beef Council Assessment on Livestock Sales (Senate Bill 65, 2016)**

Senator Woods began by discussing the NMAg True Tour, noting that one of the other stops on the tour was a local dairy that produces excellent yogurt.

Mark McCollum, member of the New Mexico Beef Council, provided the committee with a brief history of the Beef Check-Off Program. He explained that the program, which is funded by beef producers, allows for collection of \$1.00 for each head of cattle or calf sold in the state to be used for beef marketing programs. Mr. McCollum went on to note that the federal program consists of a nonrefundable \$1.00 collection, which is used to promote the beef industry and thereby strengthen beef's place in the food marketplace. At one point, New Mexico joined several other states in collecting an additional, refundable \$.25 per head. As time went on, state boards were authorized to collect both federal and state check-off collections, although state collections in New Mexico eventually ceased.

Mr. McCollum went on to explain that the New Mexico Beef Council collects about \$1 million annually, with half of that money staying in New Mexico for advertising and marketing programs. He also explained that the New Mexico Beef Council is beginning to focus its advertising efforts on the millennial age group through the use of social media and digital

advertising. For example, he discussed digital advertising campaigns that offer what appear to be recipes embedded in various web pages. Mr. McCollum noted that early results suggest that digital media efforts are working. He also emphasized that the Beef Check-Off Program itself is very effective.

Senator Woods noted that consumers want trust and transparency in their food supply. He also explained that many people are interested in the story behind their food, which the Beef Check-Off Program helps provide. Senator Woods also said that Senate Bill 65, introduced in 2016, and planned for reintroduction in 2017, seeks to reinstate the state portion of up to \$1.00 per head for the Beef Check-Off Program, pointing out that the state portion would be refundable.

Bernarr Treat, chair, New Mexico Beef Council, said that the beef industry provides jobs to lots of people. He also noted that while part of the revenue from the Beef Check-Off Program goes to advertising, the rest goes toward research, which should help keep some other jobs in New Mexico. Mr. Treat cautioned that the sheep industry in New Mexico has been devastated by lack of demand, which could also happen to beef if no efforts are taken to maintain and increase the demand for beef in the marketplace.

Questions and comments from the committee included:

- the beef check-off bill introduced in 2016 did not have a governor's message, while the 2015 version did not have enough agreement from the industry;
- the state check-off fee will be refundable because not all producers believe there is enough benefit to the program or because low beef prices may make the additional fee seem unfair;
- development of electronic forms has been deliberate because the beef industry wants to be careful about providing refunds to the proper people;
- changes in federal management of the Beef Check-Off Program should help it stay up to date; and
- the beef check-off fee is assessed when cattle change ownership.

### **Broadview Wind Power Facility Project**

Ward Marshall, director of business development, Pattern Energy Group, Inc., provided the committee with an update on construction of the Broadview wind power facility project. He explained that the project, which should generate a total capacity of 544 megawatts, is actually broken into three smaller projects, two of which are currently under construction, with the final phase scheduled for construction in 2017-2018. Mr. Marshall went on to note that all three projects will sell 100 percent of their power output to the California energy market via long-term power purchase agreements. He also noted that the projects have all had extensive environmental studies conducted.



Ben Givens, facility manager, Pattern Energy Group, Inc., provided the committee with an overview of the actual construction of wind turbines, showing step-by-step pictures of each phase of turbine construction.

Questions and comments from the committee included:

- Pattern Energy Group is headquartered in San Francisco, but the company's largest office is in Houston, Texas, which is where the operations center runs 24 hours per day and monitors wind projects in Canada, the United States, Chile and Japan;
- Pattern Energy Group's use of renewable energy tax credits and the impact of not renewing those tax credits on the renewable energy industry in New Mexico;
- most of the initial construction work to install wind turbines is contracted through local businesses, but some of the more specialized work, such as crane operation to install rotors, is done by out-of-state specialists;
- New Mexico benefits from wind projects that sell power to out-of-state buyers; benefits include construction jobs, tax money that goes to local school districts and lease payments to landowners;
- exporting more renewable energy to markets like California will require construction of large energy transmission projects, such as the SunZia Southwest Transmission Project, which are difficult to plan, fund, permit and construct;
- wind energy cannot compete with other renewable energy sources if those sources still enjoy tax credits while wind energy does not;
- the renewable energy market is becoming flooded with relatively cheap solar panels;
- wind energy and natural gas are an almost perfect marriage of power sources because natural gas can quickly fill in demand when wind is not available or is not sufficient to meet peak demand; and
- wind energy is actually helping to keep energy costs low in Texas markets.

### **Report on Soil and Water Conservation Districts**

Debbie Hughes, executive director, New Mexico Association of Conservation Districts (NMACD), provided the committee with an update on soil and water conservation districts (SWCDs) in New Mexico. She began by providing the committee with a brief history and overview of SWCDs in New Mexico. Ms. Hughes also discussed several legislative concerns regarding SWCDs, most notably legislation proposing to change election dates of SWCDs to make them match other local district general elections. She explained that SWCDs have concerns about the costs associated with general elections, the ability of SWCDs to pass future mill levies, mill levy sunsets and mill levy limits for some special districts.

Ms. Hughes also discussed New Mexico's technical service provider program, which she explained is authorized by the federal farm bill and provides full-time employees in rural New Mexico, as well as supplies, offices, vehicles and training. Ms. Hughes noted that the NMACD has served as the fiscal agent for the program in New Mexico since 2003.

Ms. Hughes also discussed the use of federal funds by the NMACD for the Restore New Mexico Program, which addresses invasive species on range and woodland on private, state and federal lands. She also described a grant agreement with the National Fish and Wildlife Foundation to provide technical assistance for protecting and improving habitat for the lesser prairie chicken, which will not be listed as an endangered species.

Finally, Ms. Hughes discussed changes in funding for forest restoration projects. She explained that three tiers of funding are now available, one of which is available for competitive bids for watershed-scale restoration projects.

Questions and comments from the committee included:

- SWCDs had some concerns regarding a bill introduced by Representative Bandy that would have provided for a single election date for a number of different elections, including SWCDs, school district bonds and special hospital districts;
- some SWCDs use mill levies and some do not;
- SWCDs work with all local government entities, although some work more closely with one another than others; and
- SWCD mill levy election procedures.

#### **Water Infrastructure Team and Funding Subgroup Report and Construction Programs Bureau Infrastructure Development Report**

Michaelene Kyrala, director, strategic initiatives and policy, Department of Environment (NMED), provided the committee with an overview of the Water Infrastructure Team (WIT), which she explained was created to address stakeholder concerns regarding competition for and coordination among water funding mechanisms. She went on to note the various WIT members, which include both state agencies and several nongovernmental organizations, including the New Mexico Municipal League, the New Mexico Association of Counties and the New Mexico Rural Water Association (NMRWA). Ms. Kyrala also discussed WIT accomplishments to date, including development of a uniform asset management plan for all agencies and creation of a local government funding source guide, which includes updating the Department of Finance and Administration's "Complete Catalog of Local Assistance Programs". She also discussed a partnership with the Albuquerque-Bernalillo County Water Utility Authority on a campaign highlighting the value of water. Ms. Kyrala went on to discuss the WIT funding group, which consists of both state and federal agencies in New Mexico that administer or monitor funding for water or wastewater. She explained that the funding group discusses project collaboration, application processes and which funding programs might be the best fit for various applicants and their projects. Finally, Ms. Kyrala discussed debt capacity and water rate setting. She explained that many entities do not have debt capacity while others shop around for grants or grant-loan combinations. Ms. Kyrala noted that many entities are unwilling to either acquire debt or raise their rates, which makes it difficult for them to secure loans or even grant-loan combinations.

Ms. Kyrala also discussed the NMED's Construction Programs Bureau. She provided the committee with a brief overview of the bureau and presented the committee with the July 2016 "Infrastructure Development Report" for water, wastewater and solid waste projects administered by the bureau. The report lists projects by county; the projects are arranged alphabetically by community. Ms. Kyrala explained that projects receive funding from a number of sources, including the Capital Outlay Special Appropriation Program, the Clean Water State Revolving Fund Program and the Rural Infrastructure Revolving Loan Program.

### **Federal Clean Water Act Regulations on Waters of the United States Status**

Ms. Kyrala gave a brief explanation of a proposed rule by the federal Environmental Protection Agency (EPA) related to the federal Clean Water Act definition of "waters of the United States" (WOTUS). She explained that the rule would expand the authority of the EPA under the Clean Water Act to regulate many more bodies of water and stream systems than are currently under its jurisdiction. Ms. Kyrala noted that the proposed rule is under appeal in three different courts, and New Mexico is one of 131 separate petitioners divided into three groups: states, business/municipalities and associations. She also explained that New Mexico has joined the North Dakota coalition, which includes 12 other states. Ms. Kyrala provided the committee with a brief overview of the three separate appeals and a time line for the next several months. She noted that the rule is of particular concern to states such as New Mexico because it fails to consider the unique conditions of arid western states with remote and intermittent bodies of water and ephemeral streams and channels that only flow during seasonal rains or exceptional flooding events.

Questions and comments from the committee included:

- 2014 funding for water projects has been spent down more slowly than other funds, in part because water project funding often takes one or two years to begin spending down;
- small-scale water projects often take time to begin spending money because of the time it takes for small entities to become compliant with audit requirements;
- while some of the various coalitions that have formed in response to the proposed WOTUS rule are not opposed to the rule, most are opposed to it and believe it is an overreach on the part of the EPA and the federal government;
- most entities seeking water infrastructure funding vastly prefer "free" money in the form of capital outlay and grants even to low-interest loans;
- a simpler, more streamlined application process would help steer entities seeking free money to loans;
- the amount of Water Trust Fund money that goes toward conservation projects;
- development of a checklist for applicants to use when seeking funding;
- water system regionalization can help small communities come together to seek infrastructure and financing solutions that will work for everyone;
- development of a regionalization bill for introduction in the 2017 legislative session will likely require review during the interim due to its sheer complexity;

- at least three other states have redone their approaches to water project financing through local infrastructure capital improvement plans;
- the NMED is trying to streamline and expedite the funding application process;
- larger entities tend to receive more funding because it is difficult for smaller ones to navigate the application process;
- lack of oversight on water rate structures;
- the North Dakota coalition in the WOTUS case is mostly made up of western states and states with arid climates;
- \$4 million in loans offered by the NMED were rejected because so many entities prefer capital outlay and grant money;
- New Mexico as a state is not listed in the North Dakota coalition, but the NMED and Office of the State Engineer (OSE) are listed instead;
- many small communities cannot afford the audits required to receive funding; and
- the state auditor does provide some assistance to those communities that need help with their audits.

On a motion made, seconded and passed, the minutes of the committee's July 14-15 meeting were approved.

The committee recessed at 3:40 p.m.

### **Friday, August 26**

Ruth Ann Litchfield, mayor of Tucumcari, and Jared Langenegger, Tucumcari city manager, welcomed the committee and thanked members for meeting in Tucumcari.

### **New Mexico Acequia Association Briefing**

Paula Garcia, executive director, New Mexico Acequia Association (NMAA), and Harold Trujillo, president, NMAA, briefed the committee on the NMAA, which was established in 1989. Ms. Garcia began with a short history and overview of the association, noting that while acequias maintain centuries-old customs and traditions, more than 700 acequias in New Mexico also perform the vital role of delivering water to users. Acequias range in size from those serving three families to those with more than 650 irrigators, she said, with the largest in San Juan County. She provided the committee with a list and a map indicating the general location of most of those acequias.

Ms. Garcia went on to discuss several policy issues concerning acequias, such as infrastructure funding. She explained that while acequias do receive funding from a number of different sources, all capital outlay funding for acequias was vetoed after the 2016 legislative session. Ms. Garcia noted that there are also concerns regarding future project funding because of depletion to the New Mexico Irrigation Works Construction Fund (NMIWCF).

Ms. Garcia discussed other challenges to acequias, such as the proposed WOTUS rules, which she explained could place overly burdensome permitting requirements on acequias. She noted that some acequias are concerned about potential wilderness designations and critical habitat designations for endangered species.

Mr. Trujillo discussed improvements to the Morphy Lake dam near Las Vegas, noting that the OSE has called for an additional \$105,000 in improvements to the acequia that feeds the lake, adding additional cost to the project. He also noted that after the governor's vetoes of acequia capital outlay funding, acequias were told to seek funding through the Interstate Stream Commission's 90-10 Grant Program, which is a cost-sharing program. However, Mr. Trujillo reiterated that there are concerns regarding depletion of the NMIWCF, which funds the 90-10 Grant Program. He also noted that many acequia users are concerned because of aging infrastructure, pointing out that some acequias are almost 400 years old.

Patricia Quintana, lobbyist for the NMAA, noted that the association is made up entirely of small agricultural producers, which includes several people with small cattle grazing allotments, and that the acequia community shares many of the same interests and concerns of the larger agricultural sectors of the state.

Questions and comments from the committee included:

- changing land use patterns have led ditches that were once privately owned to form into community ditch systems with help in developing bylaws from the NMAA;
- the differences among ditches, irrigation districts and acequias, including which entities have taxation authority and which do not;
- federal grant programs often need local partnerships;
- difficulty in navigating the federal grant and loan process tends to limit participation in funding programs;
- acequias often have pre-1907 water rights, which must be adjudicated the same way as other water rights;
- the NMAA is made up of more than 50,000 acequia users;
- 2016 is the first time that no capital outlay money has been made available to acequias;
- the estimated costs to improve aging infrastructure in acequias are over \$100 million;
- the governor vetoed about \$900,000 for acequias in 2016; and
- the smaller number of acequias in southwestern New Mexico is why the region does not have more members in the Congreso de las Acequias.

### **NMRWA Update**

Bill Connor, executive director, NMRWA, provided an overview of 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 1.2 million customers and was established in 1978 in response to the federal Safe Drinking

Water Act of 1974. The association is funded through membership dues and contracts for service, some of which are with the NMED. The NMRWA also monitors projects for the United States Department of Agriculture (USDA) Rural Development Program. Mr. Connor 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. Connor also discussed operator and board member training offered by the NMRWA, as well as public education and outreach efforts.

Fred Black, a circuit rider, discussed developing wastewater treatment technologies, such as bioaugmentation to remove sludge from wastewater. He noted that the NMRWA is working with the NMED on some projects, mostly to buy time for aging wastewater infrastructure.

Questions and comments from the committee included:

- the shortage of qualified operators and a pipeline for training new ones extends beyond New Mexico to most of the country;
- issues created by having small and large water and wastewater systems next to each other; and
- water and wastewater infrastructure funding issues.

### **Mesalands Community College Wind Energy Program**

Andy Swapp, wind energy instructor, Mesalands Community College, and Jim Morgan, director, North American Wind Research and Training Center (NAWRTC), provided the committee with a presentation regarding the school's wind energy technician training program. They began by providing the committee with an overview of Mesalands Community College, describing the school's enrollment, student makeup and graduation rate. Mr. Morgan also discussed the NAWRTC, explaining that the center, located on Mesalands' campus, went from a concept in 2007 to a functioning facility in 2008. He said that the center began because wind farm developers could not find enough wind turbine technicians to complete projects.

Mr. Swapp went on to discuss the wind technician training program, explaining that there are three programs of study: a one-semester occupational certificate, a one-year occupational license and a two-year associate degree in applied science. He discussed enrollment for each program, noting that total enrollment has grown 71 percent since fall 2015. Mr. Swapp also explained that continued growth in the wind energy industry has created a demand for program graduates, many of whom go on to work for Granite Services, a service and project arm of General Electric Company's Renewable Energy.

Questions and comments from the committee included:

- many NAWRTC students pay their own tuition, but most, if not all, graduate with zero student debt;

- General Electric makes about 40 percent of the wind turbines currently available on the market;
- an introduction to wind energy is the only dual-credit program available to high school students at the NAWRTC, mostly because the rest of the courses involve hands-on learning;
- the NAWRTC does offer some training programs to prisoners at Guadalupe County Correctional Facility in Santa Rosa;
- the NAWRTC offers the lowest-cost wind turbine training program in the country; and
- the school is working to develop more online courses.

**Committee Tour**

The committee toured the intake structure for the Ute Pipeline Project at Ute Reservoir, near Logan, New Mexico.

**Adjournment**

There being no further business, the committee adjourned at 3:00 p.m. following the tour.





Revised: October 25, 2016

**TENTATIVE AGENDA  
for the  
FOURTH MEETING IN 2016  
of the  
WATER AND NATURAL RESOURCES COMMITTEE**

**October 26, 2016  
Ballroom B, Fidel Center  
New Mexico Institute of Mining and Technology  
Socorro**

**October 27-28, 2016  
Roswell Convention Center  
912 N. Main  
Roswell**

**Wednesday, October 26 — Socorro**

- 9:30 a.m.            **Call to Order and Welcome**  
                         —Representative Candy Spence Ezzell, Chair, Water and Natural Resources  
                         Committee  
                         —Representative Don L. Tripp  
                         —Ravi Bhasker, Mayor, City of Socorro  
                         —Dr. Stephen G. Wells, President, New Mexico Institute of Mining and  
                         Technology (NMIMT)
- 9:45 a.m.            (1)    **[NMIMT Report on Aquifer Mapping and Other Research Projects](#)**  
                         —Nelia Dunbar, Ph.D., Director and State Geologist, New Mexico Bureau  
                         of Geology and Mineral Resources, NMIMT  
                         —J. Michael Timmons, Ph.D., Deputy Director, New Mexico Bureau of  
                         Geology and Mineral Resources, NMIMT  
                         —Stacy Timmons, Aquifer Mapping Program Manager, New Mexico  
                         Bureau of Geology and Mineral Resources, NMIMT
- 10:45 a.m.            (2)    **[Regional Water Planning Status and Governance Study Group Report](#)**  
                         —Deborah Dixon, P.E., Director, Interstate Stream Commission (ISC)  
                         —Bob Wessely, Governance Study Group Representative
- 12:00 noon           **Lunch**

- 1:00 p.m. (3) [\*\*Forest and Watershed Restoration Projects and Funding\*\*](#)  
—Kent Reid, Ph.D., Director, New Mexico Forest and Watershed Restoration Institute  
—Bob Davis, Director of Planning, Southwestern Region, United States Forest Service  
—Susan Rich, Forest and Watershed Health Coordinator, Forestry Division, Energy, Minerals and Natural Resources Department (EMNRD)  
—Donald Auer, Assistant Chief for Habitat and Lands, Department of Game and Fish  
—Kim Kostelnik, New Mexico Forest Industry Association  
—Laura McCarthy, Director of Conservation Programs, The Nature Conservancy
- 2:30 p.m. (4) [\*\*San Agustin Plains Proposed Appropriation Update\*\*](#)  
—Chris Lindeen, Deputy General Counsel, Office of the State Engineer  
—Anita A. Hand, Catron County Commissioner  
—Henry Edwards, San Augustin Water Coalition  
—Brett Bruton, San Augustin Water Coalition
- 3:45 p.m. (5) [\*\*Lower Rio Grande Alternative Administration and Ground Water Management and \*Texas v. New Mexico\* Update\*\*](#)  
—Mike Greene, Public Service Company of New Mexico (PNM)  
—Clayton Bradley, Director of Real Estate and Water Development, New Mexico State University  
—Sue Padilla, Camino Real Regional Utility Authority  
—Greg Daviet, New Mexico Pecan Growers Association  
—Edmund Ogas, Southern Rio Grande Diversified Crop Farmers Association  
—Jay Stein, City of Las Cruces
- 4:45 p.m. (6) [\*\*\*Texas v. New Mexico\* Litigation Update\*\*](#)  
—TBA, Office of the Attorney General
- 5:30 p.m. **Recess**

**Thursday, October 27 — Roswell**

- 9:00 a.m. (7) [\*\*Electric Industry Report on Energy Infrastructure and Balanced Energy Mix\*\*](#)  
—TBA, Xcel Energy  
—TBA, NextEra Energy  
—Carlos Lucero, P.E., State and Federal Government Affairs, PNM  
—Matthew Jaramillo, State and Government Affairs, PNM
- 10:00 a.m. (8) [\*\*Laun-Dry Spill Status and Ground Water Regulations\*\*](#)  
—Michelle Hunter, Chief, Ground Water Quality Bureau, Department of Environment

- 11:15 a.m. (9) [\*\*Instream Flow Rights\*\*](#)  
—Chris Lindeen, Deputy General Counsel, Office of the State Engineer
- 12:15 p.m. **Lunch**
- 1:15 p.m. (10) [\*\*Colorado River Drought Contingency Planning and Cooperative Water Management Operations in the Middle Rio Grande\*\*](#)  
—Amy Haas, General Counsel, ISC  
—Kevin Flanigan, Colorado River Bureau Chief, ISC  
—Deborah Dixon, P.E., Director, ISC  
—Mike Hamman, Chief Engineer, Middle Rio Grande Conservancy District  
—Jennifer Faler, Area Manager, Albuquerque Area Office, Bureau of Reclamation
- 3:00 p.m. (11) [\*\*Water Well Drilling Regulations\*\*](#)  
—Chris Lindeen, Deputy General Counsel, Office of the State Engineer
- 4:00 p.m. (12) [\*\*Chaves County Economic Development\*\*](#)  
—John Mulcahy, President, Roswell Chaves County Economic Development Corporation
- 5:00 p.m. **Recess**

**Friday, October 28 — Roswell**

- 9:00 a.m. (13) [\*\*State Land Office Watershed Restoration Proposal\*\*](#)  
—Aubrey Dunn, Commissioner of Public Lands
- 10:00 a.m. (14) [\*\*Reclamation/Reuse of Produced Water Regulations\*\*](#)  
—David Catanach, Director, Oil Conservation Division (OCD), EMNRD  
—Jim Griswold, Chief, Environmental Bureau, OCD, EMNRD
- 11:00 a.m. (15) [\*\*Agri-Tourism in New Mexico\*\*](#)  
—Andrew Graves, Graves Farm and Garden, Roswell  
—Kim Chesser, Burnt Well Guest Ranch
- 12:00 noon **Lunch**
- 1:00 p.m. (16) [\*\*Report on Oil and Gas Industry Job Loss and Economic Outlook\*\*](#)  
—Michael D'Antonio, Director of Government Affairs, New Mexico Oil and Gas Association  
—Claire Chase, Director of Government Affairs, Mack Energy Corporation
- 2:30 p.m. (17) [\*\*Update on Equine Herpes Virus 1 Epidemic\*\*](#)  
—William W. Bunce, Executive Director, New Mexico Livestock Board  
—Ismael "Izzy" Trejo, Executive Director, State Racing Commission
- 3:30 p.m. **Adjourn**



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

**October 26  
Ballroom B, Fidel Center  
New Mexico Institute of Mining and Technology  
Socorro**

**October 27-28  
Roswell Convention Center  
Roswell**

The fourth meeting of the Water and Natural Resources Committee was called to order by Representative Candy Spence Ezzell, chair, on October 26, 2016 at 9:25 a.m. in Ballroom B of the Fidel Center at the New Mexico Institute of Mining and Technology (NMIMT) in Socorro.

**Present**

Rep. Candy Spence Ezzell, Chair  
Sen. Peter Wirth, Vice Chair (Oct. 26)  
Rep. Paul C. Bandy (Oct. 26)  
Sen. Joseph Cervantes (Oct. 26)  
Rep. Randal S. Crowder  
Rep. Javier Martinez (Oct. 27)  
Rep. Matthew McQueen  
Sen. Cliff R. Pirtle  
Rep. Jeff Steinborn (Oct. 26)  
Rep. James R.J. Strickler (Oct. 28)  
Sen. Pat Woods

**Advisory Members**

Sen. Ted Barela (Oct. 26)  
Sen. Lee S. Cotter  
Rep. David M. Gallegos (Oct. 27-28)  
Rep. Bealquin Bill Gomez  
Sen. Ron Griggs  
Rep. Idalia Lechuga-Tena  
Sen. Stuart Ingle (Oct. 28)  
Rep. Bill McCamley  
Rep. Don L. Tripp (Oct. 26)  
Rep. Bob Wooley (Oct. 27-28)

**Absent**

Rep. Dona G. Irwin  
Rep. James Roger Madalena  
Rep. Andy Nunez  
Sen. Sander Rue  
Sen. Benny Shendo, Jr.  
Sen. Mimi Stewart

Rep. Cathrynn N. Brown  
Sen. Pete Campos  
Sen. Carlos R. Cisneros  
Rep. Sharon Clahchischilliage  
Rep. George Dodge, Jr.  
Rep. Brian Egolf  
Rep. Nora Espinoza  
Rep. Jimmie C. Hall  
Rep. D. Wonda Johnson  
Sen. Gay G. Kernan  
Rep. Larry A. Larrañaga  
Sen. Carroll H. Leavell

Rep. Tim D. Lewis  
Rep. Rick Little  
Sen. Linda M. Lopez  
Sen. Cisco McSorley  
Sen. Steven P. Neville  
Sen. Gerald Ortiz y Pino  
Sen. Mary Kay Papen  
Sen. Nancy Rodriguez  
Rep. G. Andrés Romero  
Sen. John C. Ryan  
Rep. Tomás E. Salazar  
Sen. William E. Sharer  
Sen. John Arthur Smith  
Rep. James G. Townsend  
Rep. John L. Zimmerman

**Guest Legislator**

Rep. Debbie A. Rodella (Oct. 26)

(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 meeting file.

**Handouts**

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

**Wednesday, October 26**

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

**Welcoming Remarks**

Representative Tripp welcomed the committee to Socorro and noted that the previous meeting had been canceled due to a special session of the legislature.

Ravi Bhasker, mayor of the City of Socorro, welcomed the committee to Socorro and discussed three water projects currently under way in the area.

### **NMIMT Report on Aquifer Mapping and Other Research Projects**

Nelia Dunbar, director and state geologist, New Mexico Bureau of Geology and Mineral Resources, NMIMT, provided the committee with an overview of her bureau, explaining that its core mission is to conduct research, distribute accurate information and create accurate, up-to-date maps. She also noted that some of the research conducted has proven critical to the state's petroleum industry and has helped with exploration of New Mexico's mineral wealth, both of which contribute significantly to New Mexico's economy. Dr. Dunbar also provided the committee with overviews of the laboratories used by the bureau, its public outreach efforts and some of its various publications.

J. Michael Timmons, deputy director, New Mexico Bureau of Geology and Mineral Resources, NMIMT, outlined the bureau's geologic mapping program. He explained that the program's mission is to provide state-of-the-art, digital geologic maps for the State of New Mexico, in part to help address state-defined needs in natural resources. Dr. Timmons provided the committee with examples of the program's geologic map series and discussed some of the interactive web maps available on the program's website, which include mineral resource and petroleum pool maps.

Stacy Timmons, manager Aquifer Mapping Program (AMP), New Mexico Bureau of Geology and Mineral Resources, NMIMT, provided the committee with a status report on the AMP. She explained that there is a high demand for aquifer mapping, particularly as a part of the regional water planning process. Ms. Timmons went on to note some of the specifics regarding the AMP, explaining that the program uses a nonregulatory approach and collects impartial data to make unbiased interpretations and that results can be used to inform decision-making. She also pointed out that funds appropriated by the state are leveraged into additional funding. Ms. Timmons also discussed an interactive water quality map, as well as ground water monitoring as a result of the Gold King Mine spill.

Questions and comments from the committee included:

- work with the Department of Transportation to identify areas where there might be potential ground shifting that could damage highways;
- well core samples are donated to NMIMT by drillers;
- if aquifer mapping funding continues, it should take between three and five years to develop new data sets;
- core samples housed at NMIMT are mostly from oil and gas wells, as the Office of the State Engineer (OSE) has data about water wells;
- data quality on the interactive maps improves as the user zooms in on specific areas of the state;
- the OSE, particularly the Hydrology Bureau, works closely with the AMP;
- aquifer lifetime maps are built, in part, on mathematical models; and
- aquifer models with good data play an important role in decision-making.

## **Regional Water Planning Status and Governance Study Group Report**

Deborah Dixon, director, Interstate Stream Commission (ISC), provided the committee with an update on the regional water planning process. She explained the process of beginning with a common technical approach that uses similar assumptions, then putting each of the 16 regions on a schedule for completion of its plan. She also listed several of the shared interests of the various regions, such as watershed restoration, water and wastewater project financing and aquifer mapping. Ms. Dixon also discussed development of a state water plan charter, which includes research on other states, as well as dialogue with various New Mexico stakeholder groups.

Bob Wessely, a representative of the Governance Study Group, explained that the group formed after a July 2015 statewide regional water planning meeting, during which several flaws in the process were identified. He explained that the Governance Study Group was an all-volunteer group of nine water planners from around the state. Mr. Wessely noted that the group met 10 times and identified six areas that need improvement:

- governance and institutional arrangements;
- strengthening linkages;
- public participation;
- tribal participation;
- technical information; and
- water rights adjudication.

Mr. Wessely noted that the legislature could help the process by supporting grassroots regional collaborations, recognizing and supporting regional water planning entities and establishing statewide working groups.

Questions and comments from the committee included:

- regional water plans should be aimed at implementation;
- mapping of brackish water resources;
- planning currently serves more of an advisory role and tends to be ignored by policymakers;
- other means than priority administration of administering water;
- the importance of water planning as part of a larger conversation about water;
- restructuring of the ISC to include some input from the legislature through legislative appointments;
- active water resource management as it applies to the lower Rio Grande;
- New Mexico is living in a fiction, as it does not follow prior administration;
- most watersheds have been adjudicated;
- tribal entities have the earliest water rights;
- notification to stakeholders of regional water planning meetings; and
- location of regional water planning meetings.



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

Susan Rich, coordinator, forest and watershed health, Forestry Division, Energy, Minerals and Natural Resources Department (EMNRD), provided the committee with testimony regarding treatment of forests and watersheds as a means of mitigating the damage caused by wildfires. She explained that many areas of the state have already been treated, and while there is evidence that the treatments have helped, there are still millions of acres left to treat in New Mexico.

Bob Davis, director of planning, Southwestern Region, United States Forest Service, discussed the importance of watershed restoration work and the critical importance of collaboration among state, local and federal agencies, as well as private landowners and businesses, to do it. He pointed out the large amount of federal acreage in New Mexico, noting that about 40 percent of it is at high risk for catastrophic wildfire. Mr. Davis also noted that state funds for water restoration are matched on a one-to-one basis with federal funds. He also emphasized that there is a huge need to continue forest and watershed treatments, as well as the need for cooperation.

Donald Auer, assistant chief for habitat and lands, Department of Game and Fish, explained that land restoration is a priority for both watershed health and wildlife habitat, as well as to mitigate fire danger. He explained that one of the current goals is to develop both public and private partnerships, particularly as a means of leveraging funding. Mr. Auer said that the Department of Game and Fish is dedicated to working with other agencies and private landowners to build a collaborative forest restoration program.

Kent Reid, director, New Mexico Forest and Watershed Restoration Institute, discussed a landscape assessment tool, consisting of a website and database developed by the Forest and Watershed Restoration Institute. He explained that the tool can serve as a one-stop shop for finding and viewing information on forests, watersheds and treatments. To illustrate, Mr. Reid showed the committee an interactive map with eight layers, including water sources, fuel load, treatments, past fires, insects and disease. He also noted that the assessment tool contains a database of treatment methods, such as chemical and mechanical treatment.

Laura McCarthy, director of conservation programs, The Nature Conservancy, began by acknowledging the difficult financial times the state is currently facing, noting that getting the most return on investment is even more important now. She provided the committee with the results of a study regarding attitudes toward fire and watershed restoration. Ms. McCarthy noted that drought was identified as one of the top concerns of New Mexicans, with forest fires viewed as one of the top threats to water supply. She also noted that most study participants supported the establishment of a fund to pay for a 20-year, large-scale restoration of forests and lands around other water sources, which would require \$20 million per year in state funding.

Kim Kostelnik, New Mexico Forest Industry Association, explained that the industry needs long-term projects to make investment in watershed restoration and the resulting timber economically viable. She discussed the southwest Jemez forestry project as an example of a local contractor partnering with the Pueblo of Jemez and the timber industry to work together to

treat watersheds and produce enough lumber-related products to make the effort profitable. Ms. Kostelnik said that in her 30 years in the industry, she has never seen as much collaboration between agencies and industry as is currently happening.

Questions and comments from the committee included:

- millions of acres need to be treated, and the current rate of treatment appears to be insufficient;
- the compensation that will be available for victims of the Doghead fire;
- private industry needs to be involved, but a market for the small-diameter timber produced by watershed thinning treatments must be found;
- characteristics of healthy versus overgrown forests;
- decline of the timber industry in New Mexico; and
- ways the legislature can help with the process, particularly through long-term funding.

### **Minutes**

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

### **San Augustin Plains Proposed Appropriation Update**

Chris Lindeen, deputy general counsel, OSE, provided the committee with background information on the initial application from Augustin Plains Ranch (APR) for appropriation of ground water, which was rejected by the OSE as being incomplete. He noted that the OSE ruling was appealed in court and upheld at the same time another application was filed. Mr. Lindeen explained that the new application was published in early September 2016, and it is currently in the publication and protest phase. He also noted that the 900 parties who filed protests on the original application were added as protests to the new one, in addition to 150 new protestants.

Brett Bruton, San Augustin Water Coalition, explained that many residents of Catron and Socorro counties, particularly those associated with agriculture, fear that approval of the APR application, and the large amount of ground water that will then be pumped from the aquifer, will dry up the relatively shallow wells most ranchers and landowners in the area have, forcing them to dig deeper wells at tremendous expense and potentially putting their way of life at risk. He noted that some estimates suggest that the aquifer does not recharge at the rate contemplated by the application and that large-scale ground water pumping and export of that ground water will deplete the aquifer completely within 10 years.

Henry Edwards, San Augustin Water Coalition, began by noting that opposition to the APR application is the first time that all of the demographic groups in Catron County have agreed on something. He also noted that the annual rainfall in Catron County is not sufficient to recharge the aquifer to compensate for the amount of water the APR intends to withdraw from it, based upon available information on the aquifer.

Anita A. Hand, county commissioner, Catron County noted that the state empowers counties to develop water policy at some levels. She also emphasized that the new APR

application still does not meet all of the criteria required for approval, pointing out that several of the end users identified in the application are actually protesting it. Ms. Hand also said that the application runs contrary to the statutory and constitutional requirements of conservation of water resources and not impairing other users.

Questions and comments from the committee included:

- a process exists for all applications filed with the OSE, which allows for protest of the application, places the burden of proof on the applicant and stresses the importance of adhering to that process;
- existing data on the aquifer are limited — some studies have been done, but not as many as in other areas of the state;
- rates of recharge and depletion on the aquifer are still relatively uncertain;
- the timetable for an application with significantly fewer protests is about 12 months from application to approval or denial — additional protests lengthen the timetable;
- the OSE considers several factors in the application process, including impairment, conservation of water and the detriment to public welfare;
- the approach of other western states to similar issues;
- the first APR ranch application was about seven pages, while the second one is about 200 pages, which requires significantly more research; and
- several other western states have enacted statutes that set conditions for transfer of water rights, particularly across basins.

### **Lower Rio Grande Alternative Administration and Ground Water Management**

Mike Greene, Public Service Company of New Mexico (PNM), explained that several entities, which along with their members account for 90 percent of the surface and ground water use in the lower Rio Grande region, have entered into a memorandum of understanding to develop adaptive water management tools for sustainable use of ground water in the lower Rio Grande region. These entities include agricultural, municipal, educational and commercial interests, he said, and they hope to develop a homegrown solution to a local problem. He explained the need for development of a robust model of surface and ground water interaction and tools like water banking and expedited transfer of water uses. He said that PNM uses both air and water cooling at its plant in Afton and cannot afford to be cut off in the case of a priority call, which could happen due to the junior status of its ground water rights. PNM is involved in the process as a means of ensuring water availability to all users in the region.

Jay Stein, water counsel for the City of Las Cruces, noted that the Las Cruces water system currently serves 100,000 users and is projected to have up to 160,000 users in the next 40 years, all supplied by ground water. Ground water users in the lower Rio Grande began meeting in 2014, he explained, to develop management tools to ensure a stable supply of ground water for use in the region and in response to the state engineer's development of active water resource management policies. The group developed and agreed to a settlement framework in June 2016, which Mr. Stein said addresses several issues, including calling for revision of the 2008 operating agreement, implementation of a ground water management program, methods to offset surface depletions and the securing of agreements not to seek priority enforcement against each

other. Asked about the difference between the 2008 operating agreement and the group's settlement framework, Mr. Stein said the operating agreement changed the allocation of surface water between New Mexico and Texas from 57/43 to 50/50 or 38/62, depending on conditions. The attorney general, as well as the City of Las Cruces, challenged that agreement, he explained, in part because the U.S. Bureau of Reclamation (BOR) did not conduct an environmental impact assessment on the effect the agreement would have on ground water supply over the next 50 years, which is of great concern to all the ground water users in the region.

Clayton Bradley, director of real estate and water development, New Mexico State University, explained that the group is attempting to resolve water users' differences in a nonlitigious way. He also acknowledged Texas' threat to long-standing New Mexico water rights and emphasized the importance of agriculture in the lower Rio Grande valley and the importance of working with each other to protect those interests.

Alvin Jones, Southern Rio Grande Diversified Crop Farmers Association, also discussed the settlement framework, explaining that it represents an effort by various groups to manage their own water destiny. He said that agriculture uses over 80 percent of the water in the lower Rio Grande, with a 50/50 split between open crop growers, such as chile and onion growers, and permanent crop growers, such as pecan growers. It has taken years of effort to get to this agreement, he explained, which memorializes stakeholders' desire to avoid the "buy-and-dry" approach used to help New Mexico satisfy its compact delivery obligations on the Pecos River, as well as avoid any kind of priority call on the Rio Grande. Working together, he said, users could use rotational fallowing of cropland to respond quickly to dry conditions and avoid priority calls, which will protect all water users in times of drought.

Tessa Davidson, New Mexico Pecan Growers Association, explained that permanent crops, such as pecan orchards, cannot be fallowed in times of shortage, and therefore pecan growers do not want strict priority enforcement. Consequently, water users in the area are seeking to reduce ground water pumping and need to develop mechanisms for moving water around in times of shortage. She characterized the framework as an agreement between area stakeholders to stop fighting and to seek mutually beneficial solutions to water shortages.

Sue Padilla, Camino Real Regional Utility Authority, noted that drought has placed most water users in the area in litigation with one another but that this agreement is an example of how water users can learn to share water resources with one another.

Questions and comments by the committee included:

- the Elephant Butte Irrigation District (EBID) will not agree to the Ground Water Users' Group's (GWUG) proposal to modify the 2008 operating agreement;
- Texas is suing New Mexico because the attorney general sued the BOR over the 2008 operating agreement;
- whether the GWUG represents 90 percent of the water users in the lower Rio Grande;
- the GWUG is committed to the notion that the state, not the BOR, is in control of the state's ground water and that the state's sovereignty is being challenged on this issue;

- there is not enough surface water available to sustain all crops currently being grown in the lower Rio Grande region;
- the goals of the settlement framework fit with active water resource management principles; and
- the option of transferring surface water to the City of Las Cruces to supplement its ground water supplies is no longer a viable option due to the effects of the 2008 operating agreement.

### ***Texas v. New Mexico Update***

David Roman, a contract attorney working as special counsel to the attorney general, began by providing the committee with a summary of the draft report issued by the special master assigned by the United States Supreme Court regarding *Texas v. New Mexico and Colorado*, No. 141, Original, including the case's history, New Mexico's position and the projected time line as the case moves forward. Mr. Roman stressed that the draft report contained many mischaracterizations of New Mexico's position, and until the special master issues his final report, the state will not have a chance to make legal arguments to the contrary. The draft report, he said, only deals with two issues: whether to grant New Mexico's motion to dismiss and whether to allow the EBID and El Paso County Water Improvement District No. 1 (EPD#1) to intervene in the case. The draft report, he noted, recommended that the motion to dismiss be denied and that the EBID and EPD#1 not be allowed to intervene. The committee requested that the attorney general, state engineer and director of the ISC be invited to the final meeting of the committee to more thoroughly brief the committee on the litigation.

Questions and comments from the committee included:

- the background of the special master assigned to the case;
- legal representation of New Mexico depends on the approach of the attorney general; and
- expectations of counsel as the case moves forward.

On a motion made, seconded and approved, the committee requested Mr. Roman to inform Attorney General Hector Balderas that the committee requests an update from Attorney General Balderas on the case at its November meeting.

### **Thursday, October 27**

Dennis Kintigh, mayor, City of Roswell, welcomed the committee, thanked the committee for coming to Roswell and briefly discussed some of the economic development initiatives under way in the area.

Members of the committee and staff introduced themselves.

### **Electric Industry Report on Energy Infrastructure and Balanced Energy Mix**

Carlos Lucero, state and federal government affairs, PNM, provided the committee with an overview of PNM's operations and infrastructure.

Matthew Jaramillo, State and Government Affairs, PNM, provided the committee with an overview of PNM's alternative energy programs, particularly solar. He also discussed misleading sales tactics employed by some companies in the Albuquerque area offering solar panels and financing to residential customers.

Bernarr Treat and Mike McLeod, Excel Energy, provided the committee with an overview of the company's operations, which include about 100,000 customers in New Mexico and three million users nationwide. They also discussed wind and solar projects in New Mexico, including a \$260 million solar project near the Roswell area.

Steve Kowalik, NextEra Energy Resources, explained that the 1,400-acre solar farm the company built near Roswell produces 140 megawatts, which is enough to power 40,000 homes.

Questions and comments from the committee included:

- how cost-per-customer estimates are developed;
- participation in energy audit programs;
- time-of-use rates versus traditional rate structures;
- implications of the proposed rate increase by PNM;
- the status of solar energy rewards programs; and
- tracking of consumer complaints regarding solar panel sales.

### **Laun-Dry Spill Status and Ground Water Regulations**

Michelle Hunter, chief, Ground Water Quality Bureau, Department of Environment (NMED), provided the committee with a brief history of the Laun-Dry spill, which involves a dry cleaning business in Albuquerque. She explained the source of the spill, the primary contaminant involved, its migration and cleanup and monitoring efforts. Ms. Hunter also discussed ongoing contact with affected residents and ongoing plans for cleanup.

Ms. Hunter discussed proposed updates to ground water regulations in New Mexico. She provided the committee with a summary of the proposed changes, which include introduction of vapor intrusion protections, and discussed their importance. Ms. Hunter also pointed out that ground water standards have not been updated since 1982, noting that available science has increased since their promulgation. She also discussed involvement in development of the proposed rules, which include public meetings.

Questions and comments from the committee included:

- pollution plumes and clean-up efforts in other areas of the state;
- public hearings regarding cleanup of contaminated sites;
- testing of wells on private land;
- the time line of discovery and clean-up efforts to this point; and
- determination methods for chemicals that require immediate versus long-term cleanup.

## **Instream Flow Rights**

Mr. Lindeen provided the committee with a brief overview of the concept of instream flow rights, noting the basic legal requirements of "dominion and control" and the various legal theories regarding how to satisfy those requirements. In short, Mr. Lindeen said, an instream flow right must be administrable.

Questions and comments from the committee included:

- the status of lawsuits filed regarding instream flow;
- attorney general opinions regarding instream flow; and
- the use of instream flows to protect endangered species while maintaining compact delivery obligations.

## **Colorado River Drought Contingency Planning**

Amy Haas, general counsel, ISC, provided the committee with an overview of the Colorado River Basin, including its upper and lower basins, and the interstate and international compacts that allocate water between the upper and lower basins. She explained that the Colorado River Compact is a consumptive-use-based compact, which apportions 7.5 million acre-feet of consumptive use per year each to the upper and lower basins. New Mexico, she said, was allocated 11.25 percent of the upper basin allocation, which is a larger share than it would otherwise have been allocated, to account for Navajo and Jicarilla Apache claims in the state. San Juan-Chama water accounts for 96,200 acre-feet per year of the state's allocation, she explained, and given that New Mexico's compact allocation is more or less fully used, any reductions in delivery could have severe consequences. Accordingly, the ISC is engaged in contingency planning with the other upper basin users to address the effects of long-term drought in the region.

Kevin Flanigan, Colorado River bureau chief, ISC, provided the committee with an overview of water use in the Colorado River Basin, noting that 40 million people depend on it for water. He also discussed New Mexico's use of water in the basin, both in terms of surface water that flows through New Mexico in the San Juan and Animas rivers, and the San Juan/Chama diversion, which diverts water under the Continental Divide and helps provide water to other users in the state, such as the cities of Albuquerque and Santa Fe. He also discussed the basin's hydrology, noting that water levels in Lake Powell and Lake Mead are already low and that continued depletion of those reservoirs could actually result in a national emergency, meaning that the federal government could assume management of water in the upper basin.

Mr. Flanigan and Ms. Haas discussed the implications of a federal takeover of the upper Colorado River Basin, and they emphasized that contingency planning is under way to avoid water shortages in the event of such a development.

Questions and comments from the committee included:

- the status of tribal and international stakeholders in contingency planning;
- storage of water by Mexico in U.S. reservoirs; and
- requirements of the upper basin compact and tribal obligations.

### **Cooperative Water Management Operations in the Middle Rio Grande**

Ms. Dixon discussed issues that have arisen on the Rio Grande over the past six years, including below-average snowpack, drought and endangered species issues. She explained that New Mexico, Colorado and Texas are currently working together within the framework of the Rio Grande Compact to develop creative solutions to these issues. For example, she discussed a resolution passed by the Rio Grande Compact Commission allowing storage of additional water in El Vado Reservoir to delay spring runoff, which helped maintain a minimum flow in the river over a longer period of time to provide the Rio Grande silvery minnow additional time to spawn.

Jennifer Faler, area manager, Albuquerque Area Office, BOR, noted that there are about 337 reservoirs and 53 hydropower plants in the Colorado River Basin, most of which contain aging infrastructure. She said that the federal funding stream for maintenance of infrastructure has remained the same for many years, while demands on the agency have increased over that time. Consequently, she said, the agency is relying more and more on cooperation and collaboration with state agencies and other stakeholders to address water problems in the West.

Mike Hamman, chief engineer, Middle Rio Grande Conservancy District (MRGCD), emphasized the need for all water users to work together, particularly as realities continue to evolve. He emphasized the need for cooperation among state, federal and local agencies and water users and said that no one can solve water shortage problems alone. Mr. Hamman also outlined the priorities of the MRGCD, including its role in ensuring that New Mexico meets its compact obligation, compliance with the federal Endangered Species Act of 1973 and improving opportunities for agriculture in the middle Rio Grande.

Questions and comments from the committee included:

- the role of the BOR in operating and maintaining El Vado Reservoir;
- the MRGCD has reduced net diversion by one-third since the 1990s;
- there are approximately 60,000 acres under cultivation in the MRGCD;
- whether land from water rights that have been severed could still be irrigated with leased water; and
- whether there are unused water rights in the MRGCD.

### **Water Well Drilling Regulations**

Mr. Lindeen summarized the proposed changes to the 2005 well drilling standards, which have now been published and are open for comment. He said the new rules will establish industry-wide standards consistent with nationwide standards, address definitions, exclude other kinds of wells and cover monitoring wells. The rules will also address licensure standards, well construction, continuing education and "notice of intent" wells.

### **Chaves County Economic Development**

John Mulcahy, president, Roswell Chaves County Economic Development Corporation, provided the committee with an overview of economic development efforts in the Roswell area, including development of renewable technology. He discussed development of solar and wind



energy facilities near Roswell. Mr. Mulcahy noted that the Roswell International Air Center offers both air service and pilot training for nearby partner schools. Mr. Mulcahy also discussed the presence of a private company specializing in aircraft painting, emphasizing that while the facility offers many benefits, such as a trained workforce, deterioration of the company's hangar, particularly its ceiling is a major drawback. He acknowledged that while the state is facing difficult financial times, investment in renovation of the air center, particularly its hangars, will allow the company to expand its operation in New Mexico.

Questions and comments from the committee included:

- the solar farm near Roswell is currently the largest in New Mexico; and
- the cost of electricity from the solar farm is less than that produced by natural gas.

### **Friday, October 28**

#### **State Land Office Watershed Restoration Proposal**

Aubrey Dunn, commissioner of public lands, presented the committee with proposed legislation that would establish a fund that could be used for restoration of caliche pits, plug abandoned wells and conduct watershed restoration on state lands. Mr. Dunn outlined how the fund would be used and why there is a need to commit funding to the restoration of state lands.

#### **Reclamation/Reuse of Produced Water Regulations**

David Catanach, director, Oil Conservation Division (OCD), EMNRD, and Jim Griswold, chief, Environmental Bureau, OCD, EMNRD, explained how OCD rules were amended in 2015 to encourage the reuse of produced water. The OCD is solely responsible for regulating the disposition of produced water, they explained, though other agencies may be involved once the water leaves the oil fields.

Questions and comments from the committee included:

- the possibility of using treated produced water in lieu of fresh water for certain non-food crops or construction;
- the OCD requires a \$10,000 bond on oil and gas wells, but if a company abandons a well, it may cost \$33,000 to plug the well, which leaves it up to the state to cover the difference; and
- 200 wells were recently abandoned by a company that went bankrupt.

#### **Agri-Tourism in New Mexico**

Kim and Patricia Chesser, owners of Burnt Well Guest Ranch, explained how they came to establish the guest ranch and detailed the difficulties and rewards in doing so over the past 13 years. Mr. Chesser reported that the ranch has hosted nearly 1,600 guests in that time and that guests have come from 45 states and several foreign nations. He said he would like to see an environment in which agri-tourism is protected, if not encouraged, because many small farms and ranches cannot survive unless they diversify. One of his biggest concerns is the cost of liability insurance, he explained, and that without such insurance, his business and the ranch could be lost.

Andrew Graves of Graves Farm and Garden echoed the Chessers' concerns about liability insurance. He explained that his liability insurance is in the same category as a county fair, carnival or amusement park and costs \$45,000 per year. Though he has to carry \$1 million in coverage for his farm, he said, he has to double that coverage for the tourism part of his business. Mr. Graves requested that the committee consider legislation limiting the liability of agri-tourism businesses as 23 other states have already done.

### **Report on Oil and Gas Industry Job Loss and Economic Outlook**

Michael D'Antonio, director of government relations, New Mexico Oil and Gas Association, gave an overview of the current state of the oil and gas industry in New Mexico, noting that the current rig count is 32, down from 102 in 2014. He said that at 50 employees per rig, that means there are 3,500 fewer rig jobs in 2016. Direct oil and gas job losses from 2012 through 2015 were 2,245, with 5,390 direct and indirect losses over that time period, according to the Interstate Oil and Gas Compact Commission report for 2015. In San Juan County, the population has declined by 11,500 over the past two years, with 6,500 job losses over the last eight years. Mr. D'Antonio reported that 6,900 jobs were lost over the past year statewide, with 967 from Farmington, 1,504 from Eddy County and 1,739 from Lea County. With continuing low oil prices, the threat of increased federal regulation and a new Bureau of Land Management resource management plan, the industry is facing strong headwinds over the next few years, he said.

### **Update on Equine Herpes Virus 1 Epidemic**

William W. Bunce, executive director, New Mexico Livestock Board; Ismael "Izzy" Trejo, executive director, State Racing Commission; and Ray Willis, chair, State Racing Commission, reported on the equine herpes virus 1 outbreak that occurred at Sunland Park last year. Mr. Willis said it could have been a catastrophic event resulting in shutting down all horse racing in the state for a year or more. Instead, Mr. Bunce explained, interagency cooperation, along with cooperation from the racetrack and horse owners, avoided the specter of a half-billion-dollar disaster. Mr. Trejo explained that Sunland Park closed for 19 days at a cost of \$15.2 million and 72 races, with \$4 million in purses, canceled. The protocols developed during the crisis at Sunland Park were tested last summer, Mr. Bunce said, when a horse developed equine herpes at Ruidoso Downs. In that case, no other horses were infected. All three presenters stressed the importance of interagency cooperation and support in dealing with the outbreak.

### **Adjournment**

There being no other business, the committee adjourned at 2:15 p.m.

Revised: November 18, 2016

**TENTATIVE AGENDA  
for the  
FIFTH MEETING IN 2016  
of the  
WATER AND NATURAL RESOURCES COMMITTEE**

**November 21, 2016  
Room 307, State Capitol  
Santa Fe**

**Monday, November 21**

- 9:00 a.m.           **Call to Order**  
                          —Representative Candy Spence Ezzell, Chair, Water and Natural Resources Committee
- 9:15 a.m.           (1)   **EXECUTIVE SESSION on Litigation Issues (closed meeting) Briefing on Texas v. New Mexico and Colorado, No. 141, Original**  
                          —Hector Balderas, Attorney General of the State of New Mexico, Office of the Attorney General  
                          —Tom Blaine, State Engineer, Office of the State Engineer  
                          —Deborah Dixon, Director, Interstate Stream Commission (ISC)  
                          —Attorney General, State Engineer and ISC Counsel
- 10:30 a.m.           (2)   **New Mexico Municipal League Water Use Recommendations (House Memorial 15)(2016)**  
                          —Regina Romero, Intergovernmental Relations Director, New Mexico Municipal League  
                          —Christine Chavez, Water Conservation Manager, City of Santa Fe  
                          —Katherine Yuhas, Conservation Officer, Albuquerque-Bernalillo County Water Utility Authority  
                          —Rhonda Diaz, Water Conservation Program Coordinator, City of Las Cruces  
                          —Steve Gallegos, Acting Utilities Director, City of Rio Rancho
- 11:30 a.m.           (3)   **Discussion of Proposed Legislation**  
                          —State Land Office Watershed Restoration  
                          —Industrial Hemp Production  
                          —Interstate Stream Commission Membership Changes  
                          —Lower Rio Grande Public Water Works Authority Water Rights and Liens  
                          —Water Trust Board Membership Changes
- 1:00 p.m.           **Adjourn**



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

**November 21, 2016  
Room 307, State Capitol  
Santa Fe**

The fifth meeting of the Water and Natural Resources Committee was called to order by Representative Candy Spence Ezzell, chair, on November 21, 2016 at 9:15 a.m. in Room 307 of the State Capitol in Santa Fe.

**Present**

Rep. Candy Spence Ezzell, Chair  
Sen. Peter Wirth, Vice Chair  
Rep. Paul C. Bandy  
Sen. Joseph Cervantes  
Rep. Javier Martínez  
Rep. Matthew McQueen  
Sen. Sander Rue  
Sen. Benny Shendo, Jr.

**Absent**

Rep. Randal S. Crowder  
Rep. Dona G. Irwin  
Rep. James Roger Madalena  
Rep. Andy Nunez  
Sen. Cliff R. Pirtle  
Rep. Jeff Steinborn  
Sen. Mimi Stewart  
Rep. James R.J. Strickler  
Sen. Pat Woods

**Advisory Members**

Sen. Ted Barela  
Sen. Pete Campos  
Sen. Lee S. Cotter  
Rep. David M. Gallegos  
Rep. Bealquin Bill Gomez  
Sen. Ron Griggs  
Rep. Jimmie C. Hall  
Rep. Larry A. Larrañaga  
Rep. Idalia Lechuga-Tena  
Rep. Bill McCamley  
Sen. Cisco McSorley  
Sen. Mary Kay Papen  
Sen. Nancy Rodriguez  
Rep. James G. Townsend  
Rep. Bob Wooley

Rep. Cathrynn N. Brown  
Sen. Carlos R. Cisneros  
Rep. Sharon Clahchischilliage  
Rep. George Dodge, Jr.  
Rep. Brian Egolf  
Rep. Nora Espinoza  
Sen. Stuart Ingle  
Rep. D. Wonda Johnson  
Sen. Gay G. Kernan  
Sen. Carroll H. Leavell  
Rep. Tim D. Lewis  
Rep. Rick Little  
Sen. Linda M. Lopez  
Sen. Steven P. Neville  
Sen. Gerald Ortiz y Pino  
Rep. G. Andrés Romero  
Rep. Tomás E. Salazar  
Sen. William E. Sharer  
Sen. John Arthur Smith

Rep. Don L. Tripp  
Rep. John L. Zimmerman

Senators Griggs and McSorley were named as voting members by Senator Papen for the purpose of establishing a quorum at the meeting.

#### **Staff**

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

#### **Minutes Approval**

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

#### **Guests**

The guest list is in the meeting file.

#### **Handouts**

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

#### **Monday, November 21**

#### **Call to Order**

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

#### **EXECUTIVE SESSION on Litigation Issues (closed meeting); Briefing on *Texas v. New Mexico and Colorado*, No. 141, Original**

The committee met in executive session to discuss matters relating to litigation between New Mexico and Texas.

#### **New Mexico Municipal League Water Use Recommendations (House Memorial 15) (2016)**

In response to House Memorial 15 from the 2016 regular session, which requested municipal officials to design a series of recommendations for statewide efficient residential water use, Regina Romero, intergovernmental relations director, New Mexico Municipal League, provided the committee with a report regarding efficient residential water use. Several representatives from New Mexico municipalities also offered input to the committee.

Christine Chavez, water conservation manager, City of Santa Fe, began by providing the committee with an overview of Santa Fe's water conservation programs. She explained that a variety of measures, including a seasonal block-pricing structure that encourages conservation

and educational and outreach measures, have helped Santa Fe steadily reduce its water use from 168 gallons per capita per day (GPCD) in 1995 to less than 90 GPCD in 2015, which is one of the lowest consumption rates in the southwestern region. Single-family residential use in Santa Fe has been reduced to less than 55 GPCD in 2015, she added. However, she cautioned that GPCD is only one measure of a conservation program's effectiveness and that system resiliency and total production capacity must also be considered when evaluating a municipality's conservation program.

Katherine Yuhas, conservation officer, Albuquerque-Bernalillo County Water Utility Authority (ABCWUA), said that education was likely one of the biggest factors in improving Albuquerque's conservation efforts, noting that research has shown that water conservation education in schools is particularly effective. Ms. Yuhas also noted that successful conservation measures may result in less revenue for utilities. The ABCWUA stabilized its revenue by raising and restructuring its rates. Albuquerque has reduced its water use from 251 GPCD in 1995 to 127 GPCD in 2015, she said, with a single-family residential use of 58 GPCD in 2015.

Rhonda Diaz, water conservation program coordinator, City of Las Cruces, discussed conservation efforts in terms of outdoor water use. She explained that the city implemented staggered watering schedules and added administrative fees for excessive water use to help encourage conservation. She said that Las Cruces launched its water conservation program in 2005 and, in the past 10 years, it has reduced its water use from 201 GPCD in 2006 to 161 GPCD in 2015, with single-family residential use dropping from 134 GPCD in 2006 to 108 GPCD in 2015.

Steve Gallegos, acting utilities director, City of Rio Rancho, began by discussing incentives and rebates offered by Rio Rancho to encourage conservation. He also noted that the city began conducting water audits to find leaks and inefficiencies. Mr. Gallegos said that Rio Rancho conducted about 630 audits in fiscal year 2016, which resulted in saving about six million gallons of water, mostly in homes. He explained that Rio Rancho implemented its water resources management plan in 2004, which is a holistic approach to water management that includes reuse, source water protection, education, supply and infrastructure, economic development and enforcement. System-wide consumption stood at 112 GPCD in 2015, he said, with single-family residential use at 66 GPCD.

Questions and comments from the committee included:

- the memorial was intended for cities to provide input to help the legislature incentivize conservation;
- GPCD is only one measure of water conservation; different cities may find success through other efforts and measures;
- conservation education efforts by the Office of the State Engineer include radio advertisements;

- New Mexico needs to take action now to avoid a situation similar to the one that currently exists in California;
- different solutions will work in different cities across New Mexico, so it will be difficult for the state to develop one set of conservation incentives that will work statewide;
- the importance of educating water consumers;
- potential strategies for reducing industrial and commercial uses of water; and
- different communities measure water use in different ways.

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

### **Discussion of Proposed Legislation**

The committee heard testimony from Aubrey Dunn, commissioner of public lands, regarding a bill to create the State Trust Lands Restoration and Remediation Fund. The committee endorsed the bill, with Senator Cervantes voting NO.

Senator McSorley presented the committee with a bill authorizing the New Mexico Department of Agriculture to adopt rules for research on industrial hemp. He noted that it was the same bill endorsed by the committee in 2015. On a vote of 6-3, the committee endorsed the bill, with Representative Bandy and Senators Griggs and Rue voting NO.

Senator Wirth presented the committee with a bill changing the membership of the Interstate Stream Commission. He indicated that he was not seeking the committee's endorsement on the bill.

Senator Cervantes presented the committee with a bill regarding water rights in the Lower Rio Grande Public Water Works Authority. The committee unanimously endorsed the bill.

Senator Cervantes also presented the committee with a bill changing the membership of the Water Trust Board to allow for some members to be appointed by the legislature. He indicated that he was not seeking the committee's endorsement on the bill.

There being no further business, the committee adjourned at 1:15 p.m.



## ENDORSED LEGISLATION



underscored material = new  
[bracketed material] = delete

HOUSE BILL

**53RD LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2017**

INTRODUCED BY

ENDORSED BY THE WATER AND NATURAL RESOURCES COMMITTEE

AN ACT

RELATING TO PUBLIC LANDS; CREATING THE STATE TRUST LANDS  
RESTORATION AND REMEDIATION FUND; MAKING AN APPROPRIATION.

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

SECTION 1. Section 19-1-11 NMSA 1978 (being Laws 1912,  
Chapter 82, Section 6, as amended) is amended to read:

"19-1-11. STATE LANDS MAINTENANCE FUND--CREATED--STATE  
LANDS INCOME--DISPOSITION--STATE TRUST LANDS RESTORATION AND  
REMEDATION FUND CREATED.--

[The] A. Ninety-nine percent of the income derived  
from any state lands granted or confirmed by the Enabling Act  
or otherwise under the management, care, custody and control of  
the commissioner of public lands shall constitute a fund to be  
known as the "state lands maintenance fund"; provided that the  
state lands maintenance fund shall not include any money

.204340.4SA

1 required to be transferred to any permanent fund created in  
2 Chapter 19 NMSA 1978.

3 B. The "state trust lands restoration and  
4 remediation fund" is created in the state treasury. One  
5 percent of the income derived from any state trust lands  
6 granted or confirmed by the Enabling Act or otherwise under the  
7 management, care, custody and control of the commissioner of  
8 public lands shall be deposited in the state trust lands  
9 restoration and remediation fund; provided that the state trust  
10 lands restoration and remediation fund shall not include any  
11 money required to be transferred to any permanent fund created  
12 in Chapter 19 NMSA 1978. The state trust lands restoration and  
13 remediation fund also consists of income from investment of the  
14 fund and money otherwise accruing to the fund. Money in the  
15 state trust lands restoration and remediation fund that exceeds  
16 five million dollars (\$5,000,000) shall be distributed to the  
17 trust beneficiaries in the same manner that surpluses in the  
18 state lands maintenance fund are distributed. Money in the  
19 fund shall not revert to any other fund at the end of a fiscal  
20 year. The state land office shall administer the fund.  
21 Subject to legislative appropriation, expenditures may be made  
22 from the state trust lands restoration and remediation fund  
23 upon vouchers signed by the commissioner or the commissioner's  
24 authorized representative and issued by the secretary of  
25 finance and administration to administer contractual surface

.204340.4SA

underscored material = new  
[bracketed material] = delete

1 damage and watershed restoration and remediation projects on  
2 state trust lands."

3 - 3 -  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25

.204340.4SA



SENATE BILL

**53RD LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2017**

INTRODUCED BY

FOR THE WATER AND NATURAL RESOURCES COMMITTEE

AN ACT

RELATING TO SPECIAL DISTRICTS; AMENDING A SECTION OF THE NMSA  
1978; PROVIDING THAT WATER RIGHTS SHALL BE COMBINED AND  
COMMINGLED AMONG CONTIGUOUS MERGING COMPONENTS OF THE LOWER RIO  
GRANDE PUBLIC WATER WORKS AUTHORITY; PROVIDING FOR UTILITY  
CHARGES OF THE LOWER RIO GRANDE PUBLIC WATER WORKS AUTHORITY AS  
A LIEN AGAINST PROPERTY SERVED.

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

**SECTION 1.** Section 73-26-1 NMSA 1978 (being Laws 2009,  
Chapter 100, Section 1) is amended to read:

"73-26-1. LOWER RIO GRANDE PUBLIC WATER WORKS  
AUTHORITY.--

A. The "Lower Rio Grande public water works  
authority" is created. The authority is a political  
subdivision of the state and shall be an independent public

.205092.4

1 body. The authority is composed of Berino mutual domestic  
2 water consumers and mutual sewage works association, Desert  
3 Sands mutual domestic water consumers association, La Mesa  
4 mutual domestic water consumers association, Mesquite mutual  
5 domestic water consumers and mutual sewage works association  
6 and Vado mutual domestic water consumers association, all  
7 serving unincorporated communities within Dona Ana county. The  
8 voting community membership of the five founding entities have  
9 approved by resolution the development of the authority.

10 B. The authority may adopt rules and resolutions,  
11 governance policies and procedures necessary to exercise the  
12 powers conferred pursuant to this section.

13 C. All functions, appropriations, money, records  
14 and equipment and all personal property and real property,  
15 including water rights, easements, permits and infrastructure,  
16 as well as all encumbrances, debts and liabilities pertaining  
17 to or owned by the founding entities shall be transferred to  
18 the authority.

19 D. The authority's service area shall consist of  
20 the founding entities' existing place of use on file with and  
21 approved by the state engineer and shall be filed in the public  
22 records of Dona Ana county. An application shall be filed with  
23 the state engineer to combine and commingle water rights and to  
24 combine the existing entities' place of use into the  
25 authority's service area. In the event that another entity



1 elects to merge into the authority, [~~the merger shall include~~  
2 ~~the combining and commingling of water rights with the~~  
3 ~~authority, and]~~ the authority's service area shall be amended  
4 to include that entity's place of use and shall be filed with  
5 the state engineer. The authority's initial service area and  
6 any subsequent amendments to its service area shall be  
7 designated in a plat filed in the public records of Dona Ana  
8 county. If the service area of the merging entity is  
9 contiguous with the service area of the authority, the merger  
10 shall include the combining and commingling of water rights  
11 with the authority by application filed with the state  
12 engineer.

13 E. The authority may provide for water and  
14 wastewater services, road improvements for the protection of  
15 the authority's infrastructure or renewable energy projects  
16 that are integral to the operation and maintenance of the  
17 authority's facilities or any combination or parts thereof.

18 F. The authority shall exercise all powers allowed  
19 pursuant to law, including:

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

22 (2) establishing rates and imposing  
23 assessments, fees and charges and taking action necessary for  
24 the enforcement thereof;

25 (3) assessing a standby charge for the

1 privilege of connection into the authority's service at some  
2 date in the future if the property line is within three hundred  
3 feet of the authority's service lines and the property line is  
4 located within the boundaries of the authority. This section  
5 applies to new connections after the enactment of this act;

6 (4) acquiring, from a willing seller only,  
7 holding and using water rights in an amount necessary to meet  
8 its reasonable needs not to exceed forty years pursuant to  
9 Section 72-1-9 NMSA 1978;

10 (5) shutting off, after notice, unauthorized  
11 connections, illegal connections or a connection for which  
12 charges are delinquent in payment;

13 (6) entering into contracts for services with  
14 private entities, the state, municipalities, counties and the  
15 federal government and other public bodies to further its  
16 public purposes;

17 (7) entering into joint powers agreements with  
18 other governmental entities;

19 (8) acquiring and disposing of real property,  
20 personal property and rights of way;

21 (9) condemning property pursuant to the  
22 Eminent Domain Code as the last resort and only for the  
23 purposes of construction, maintenance and operations of the  
24 authority's infrastructure;

25 (10) hiring and retaining agents, employees

1 and consultants, as needed;

2 (11) adopting and using a governmental seal;

3 (12) placing a lien on property for unpaid  
4 assessments, charges and fees and enforcing the lien in a  
5 manner pursuant to ~~[law]~~ this section;

6 (13) suing and being sued and being a party to  
7 suits, actions and proceedings; and

8 (14) having and exercising all rights and  
9 powers necessary, incidental to or implied from the specific  
10 powers granted in this section.

11 G. As a political subdivision of the state and a  
12 member-owned community water system, the authority shall be  
13 subject to the:

14 (1) applicable rules and regulations of the  
15 department of environment, and in its discretion the department  
16 may:

17 (a) conduct periodic reviews of the  
18 operation of the authority;

19 (b) require the authority to submit  
20 information to the department;

21 (c) upon department of environment  
22 discretion or upon a petition of twenty-five percent of the  
23 members of the authority, conduct an investigation as it deems  
24 necessary to ensure the authority's compliance with all  
25 applicable statutes, rules, regulations and reporting

.205092.4

1 requirements; and

2 (d) after a hearing, set and collect  
3 rates and fees and use the same for the proper operation and  
4 management of the authority;

5 (2) applicable rules and regulations of the  
6 department of finance and administration, local government  
7 division and budget and finance bureau;

8 (3) Open Meetings Act;

9 (4) Inspection of Public Records Act;

10 (5) Audit Act;

11 (6) Procurement Code;

12 (7) Governmental Conduct Act;

13 (8) special election procedures pursuant to  
14 Chapter 1, Article 24 NMSA 1978;

15 (9) Chapter 72 NMSA 1978; and

16 (10) applicable rules and regulations of the  
17 state engineer.

18 H. The authority is a political subdivision of the  
19 state and a member-owned community water system and shall not  
20 be subject to the jurisdiction of the public regulation  
21 commission or the provisions of the Public Utility Act.

22 I. The authority may issue utility system revenue  
23 bonds and obligations for acquiring real and personal property  
24 needed for the utility system and for extending, enlarging,  
25 renovating, repairing or otherwise improving its facilities.

.205092.4

1 The authority may issue revenue anticipation notes with  
2 maturities and terms to be approved by the board of directors  
3 of the authority. The authority may pledge irrevocably net  
4 revenues from the operation of the utility system for payment  
5 of the principal, premiums and interest on the bonds. The  
6 utility system revenue bonds:

7 (1) may have interest, appreciated principal  
8 value or any part thereof payable at intervals or at maturity  
9 as the authority determines;

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

14 (3) may mature at any time not exceeding forty  
15 years after the date of issuance;

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

19 (5) shall be sold for cash at, above or below  
20 par and at a price that results in a net effective interest  
21 rate that does not exceed the maximum permitted by the Public  
22 Securities Act; and

23 (6) may be sold at a public or negotiated  
24 sale.

25 J. The authority's board of directors may adopt a

1 resolution declaring the necessity for the issuance of utility  
2 system revenue bonds or other obligations and may authorize the  
3 issuance of utility system revenue bonds or other obligations  
4 by an affirmative vote of a majority of all members of the  
5 authority's board of directors. Utility revenue bonds and the  
6 resolution authorizing their issuance shall be subject to voter  
7 approval with oversight from the department of finance and  
8 administration and the New Mexico finance authority. The bonds  
9 authorized by the authority and their income shall be exempt  
10 from taxation by the state and its political subdivisions.

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

19 L. The authority shall be governed by a board of  
20 directors. The directors of the initial board shall consist of  
21 five directors representing each of the founding entities. The  
22 directors of the initial board shall serve until their  
23 successors are elected. After the terms of the initial  
24 directors are completed, the succeeding board of directors  
25 shall be elected by districts from a minimum of five and a

1 maximum of seven electoral districts. Each director, at the  
2 time of election, shall reside within the electoral district of  
3 the authority from which that member is elected. The  
4 boundaries and the number of electoral districts shall be  
5 established by the initial board within two years of the  
6 creation of the authority. The board may in its governance  
7 document provide for redistricting upon any change in the  
8 authority's boundary. The elected board of directors shall  
9 serve staggered terms to be established in the governance  
10 document developed by the initial board. Elections shall be  
11 conducted in accordance with the special election procedures  
12 pursuant to Chapter 1, Article 24 NMSA 1978 and may be  
13 conducted by the Dona Ana county elections bureau.

14 M. If the authority places a lien on property for  
15 nonpayment of money owed, the authority shall file in the  
16 office of the county clerk a notice of lien, which shall  
17 include:

18 (1) identification of the outstanding debt to  
19 the authority;

20 (2) the fact that a lien is established;

21 (3) the general purpose of the lien;

22 (4) the name of the owner of the property  
23 against which the lien is established as determined from the  
24 records of the county assessor;

25 (5) a description of the property against

1 which the lien is established;

2 (6) the amount of the lien; and

3 (7) if the lien is for more than one period of  
4 time, the date for which the lien is established.

5 N. A lien for multiple charges or assessments on a  
6 property owner may be included in the same notice of lien, and  
7 it shall not be necessary to file separate liens against the  
8 separate properties. The lien shall be attested in the name of  
9 the authority. The principal amount of any lien imposed for a  
10 charge or assessment shall bear interest at the rate of twelve  
11 percent per year from the date of filing the notice of lien  
12 unless otherwise provided by law.

13 O. After the filing of the notice of lien in the  
14 office of the county clerk, the authority shall have a lien  
15 upon the property described in the notice of lien. The filing  
16 of the notice of lien shall be notice to all the world of the  
17 existence of the lien and of the contents of the notice of  
18 lien. No such lien shall affect the title or rights to or in  
19 any real estate, of any purchaser, mortgagee in good faith or  
20 judgment lien creditor, without knowledge of the existence of  
21 such lien, unless the notice of lien is filed in accordance  
22 with this section in the office of the county clerk of the  
23 county in which the real estate is situated. All authority  
24 liens shall be first and prior liens on the property subject  
25 only to the lien of federal, state and county taxes. The



1 authority may release a lien against any specific property by:

2 (1) entering and signing a receipt of payment  
3 upon the notice of lien filed in the office of the county  
4 clerk; or

5 (2) issuing a separate receipt that recites  
6 that payment of the lien with any accrued interest and penalty  
7 has been made.

8 P. The authority may, in a single suit, foreclose  
9 the liens against all persons named in the notice of liens or  
10 against the property if the owners are unknown. The complaint  
11 filed shall:

12 (1) expressly name each defendant, if known;

13 (2) describe the property against which the  
14 lien is established; and

15 (3) set forth the amount of the lien.

16 Q. The judgment or decree rendered in said cause  
17 shall be several against the named defendants and against the  
18 several properties for the amounts decreed to be due by each.  
19 A lien against real estate may be foreclosed in the same manner  
20 that mortgages or other liens against real estate are  
21 foreclosed with like rights of redemption. In the foreclosure  
22 of any lien created by the authority, reasonable attorney fees  
23 may be taxed by the court as part of the costs in favor of the  
24 prevailing party.

25 R. The authority shall prepare and sign a notice of

1 foreclosure, which shall also bear the signature and mailing  
2 address of an attorney representing the authority. The  
3 proceeds of the sale of the property by the authority pursuant  
4 to a foreclosure sale on a lien shall be applied as follows:

5 (1) first, to the payment of costs in giving  
6 notice of the sale and of conducting the sale;

7 (2) second, to the indebtedness claimed under  
8 a lien on the property for federal, state, county, municipal or  
9 ad valorem taxes;

10 (3) third, to the indebtedness claimed under  
11 the lien of the authority;

12 (4) fourth, to all other special assessments  
13 having a lien on the property; and

14 (5) fifth, after all such costs, liens,  
15 assessments and taxes are paid, to the former owner, mortgage  
16 holder or parties having an interest in the tract or parcel,  
17 upon such persons providing satisfactory proof to the court of  
18 such interest and upon approval of the court.

19 [M-] S. As used in this section, "public water  
20 works authority" means a utility organized as a political  
21 subdivision of the state for the purposes of constructing  
22 infrastructure and furnishing water and wastewater services for  
23 domestic, commercial or industrial uses, road improvements for  
24 the protection of the authority's infrastructure and renewable  
25 energy projects; and entering into agreements with other

1 entities for the provision of other services, including [~~but~~  
2 ~~not limited to~~] water conservation and reclamation, source  
3 water protection, drainage, flood control, solid waste,  
4 planning and zoning."

5 - 13 -  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25



1 SENATE BILL

2 **53RD LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2017**

3 INTRODUCED BY

4  
5  
6 FOR THE COURTS, CORRECTIONS AND JUSTICE COMMITTEE AND THE  
7 WATER AND NATURAL RESOURCES COMMITTEE

8  
9 AN ACT

10 RELATING TO AGRICULTURE; ENACTING A NEW SECTION OF CHAPTER 76  
11 NMSA 1978 TO PROVIDE AUTHORIZATION FOR THE NEW MEXICO  
12 DEPARTMENT OF AGRICULTURE TO ADOPT RULES FOR RESEARCH ON  
13 INDUSTRIAL HEMP; PROVIDING FOR THE ESTABLISHMENT OF THE NEW  
14 MEXICO INDUSTRIAL HEMP RESEARCH AND DEVELOPMENT FUND.

15  
16 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF NEW MEXICO:

17 SECTION 1. A new section of Chapter 76 NMSA 1978 is  
18 enacted to read:

19 "[NEW MATERIAL] INDUSTRIAL HEMP RESEARCH--NEW MEXICO  
20 DEPARTMENT OF AGRICULTURE.--

21 A. As used in this section, "industrial hemp" means  
22 the plant Cannabis sativa L. and any part of the plant, whether  
23 growing or not, containing a delta-9-tetrahydrocannabinol  
24 concentration of no more than three-tenths percent on a dry  
25 weight basis.

.205096.1

1           B. The intent of this section is to bring New  
2 Mexico into compliance with federal law.

3           C. Notwithstanding any other provision of law to  
4 the contrary, the New Mexico department of agriculture shall  
5 issue licenses pursuant to rules enacted under Subsection D of  
6 this section to grow industrial hemp for research and  
7 development purposes, including agricultural, agronomic,  
8 ecological, processing, sales and marketing research.

9           D. The director of the New Mexico department of  
10 agriculture shall adopt rules to establish and carry out the  
11 provisions of this section, including requirements for  
12 licensure, training of law enforcement personnel, inspection,  
13 recordkeeping, fees not to exceed program costs and compliance  
14 processes. An institution of higher education, person or  
15 business that plans to grow industrial hemp seed or industrial  
16 hemp fiber shall obtain a grower's license by submitting an  
17 application to the New Mexico department of agriculture  
18 pursuant to promulgated rules.

19           E. A person who holds a license issued pursuant to  
20 this section may grow industrial hemp for commercial or  
21 research and development purposes, including agricultural,  
22 agronomic, ecological, processing, sales and marketing  
23 research.

24           F. New Mexico state university shall establish a  
25 "New Mexico industrial hemp research and development fund".

1 The fund consists of fees collected by the New Mexico  
2 department of agriculture for administration of the industrial  
3 hemp research and development program, donations, grants and  
4 income earned from investment of the fund and money otherwise  
5 accruing to the fund. Money in the fund shall not revert to  
6 any other fund at the end of a fiscal year. The New Mexico  
7 department of agriculture shall administer the fund, and money  
8 in the fund is subject to appropriation by the legislature to  
9 the New Mexico department of agriculture to conduct related  
10 programs. Money in the fund shall be disbursed on warrants  
11 signed by the secretary of finance and administration pursuant  
12 to vouchers signed by the director of the New Mexico department  
13 of agriculture or the director's authorized representative."

14 SECTION 2. Section 30-31-2 NMSA 1978 (being Laws 1972,  
15 Chapter 84, Section 2, as amended) is amended to read:

16 "30-31-2. DEFINITIONS.--As used in the Controlled  
17 Substances Act:

18 A. "administer" means the direct application of a  
19 controlled substance by any means to the body of a patient or  
20 research subject by a practitioner or the practitioner's agent;

21 B. "agent" includes an authorized person who acts  
22 on behalf of a manufacturer, distributor or dispenser. It does  
23 not include a common or contract carrier, public  
24 warehouseperson or employee of the carrier or warehouseperson;

25 C. "board" means the board of pharmacy;

1           D. "bureau" means the narcotic and dangerous drug  
2 section of the criminal division of the United States  
3 department of justice, or its successor agency;

4           E. "controlled substance" means a drug or substance  
5 listed in Schedules I through V of the Controlled Substances  
6 Act or rules adopted thereto;

7           F. "counterfeit substance" means a controlled  
8 substance that bears the unauthorized trademark, trade name,  
9 imprint, number, device or other identifying mark or likeness  
10 of a manufacturer, distributor or dispenser other than the  
11 person who in fact manufactured, distributed or dispensed the  
12 controlled substance;

13           G. "deliver" means the actual, constructive or  
14 attempted transfer from one person to another of a controlled  
15 substance or controlled substance analog, whether or not there  
16 is an agency relationship;

17           H. "dispense" means to deliver a controlled  
18 substance to an ultimate user or research subject pursuant to  
19 the lawful order of a practitioner, including the  
20 administering, prescribing, packaging, labeling or compounding  
21 necessary to prepare the controlled substance for that  
22 delivery;

23           I. "dispenser" means a practitioner who dispenses  
24 and includes hospitals, pharmacies and clinics where controlled  
25 substances are dispensed;

.205096.1



1 J. "distribute" means to deliver other than by  
2 administering or dispensing a controlled substance or  
3 controlled substance analog;

4 K. "drug" or "substance" means substances  
5 recognized as drugs in the official United States  
6 pharmacopoeia, official homeopathic pharmacopoeia of the United  
7 States or official national formulary or any respective  
8 supplement to those publications. It does not include devices  
9 or their components, parts or accessories;

10 L. "hashish" means the resin extracted from any  
11 part of marijuana, whether growing or not, and every compound,  
12 manufacture, salt, derivative, mixture or preparation of such  
13 resins;

14 M. "manufacture" means the production, preparation,  
15 compounding, conversion or processing of a controlled substance  
16 or controlled substance analog by extraction from substances of  
17 natural origin or independently by means of chemical synthesis  
18 or by a combination of extraction and chemical synthesis and  
19 includes any packaging or repackaging of the substance or  
20 labeling or relabeling of its container, except that this term  
21 does not include the preparation or compounding of a controlled  
22 substance:

23 (1) by a practitioner as an incident to  
24 administering or dispensing a controlled substance in the  
25 course of the practitioner's professional practice; or

1 (2) by a practitioner, or by the  
2 practitioner's agent under the practitioner's supervision, for  
3 the purpose of or as an incident to research, teaching or  
4 chemical analysis and not for sale;

5 N. "marijuana" means all parts of the plant  
6 cannabis, including any and all varieties, species and  
7 subspecies of the genus Cannabis, whether growing or not, the  
8 seeds thereof and every compound, manufacture, salt,  
9 derivative, mixture or preparation of the plant or its seeds.  
10 It does not include the mature stalks of the plant, hashish,  
11 tetrahydrocannabinols extracted or isolated from marijuana,  
12 fiber produced from the stalks, oil or cake made from the seeds  
13 of the plant, any other compound, manufacture, salt,  
14 derivative, mixture or preparation of the mature stalks, fiber,  
15 oil or cake, or the sterilized seed of the plant that is  
16 incapable of germination; or the plant Cannabis sativa L. and  
17 any part of the plant, whether growing or not, containing a  
18 delta-9-tetrahydrocannabinol concentration of no more than  
19 three-tenths percent on a dry weight basis;

20 O. "narcotic drug" means any of the following,  
21 whether produced directly or indirectly by extraction from  
22 substances of vegetable origin or independently by means of  
23 chemical synthesis or by a combination of extraction and  
24 chemical synthesis:

25 (1) opium and opiate and any salt, compound,

1 derivative or preparation of opium or opiate;

2 (2) any salt, compound, isomer, derivative or  
3 preparation that is a chemical equivalent of any of the  
4 substances referred to in Paragraph (1) of this subsection,  
5 except the isoquinoline alkaloids of opium;

6 (3) opium poppy and poppy straw, including all  
7 parts of the plant of the species *Papaver somniferum* L. except  
8 its seeds; or

9 (4) coca leaves and any salt, compound,  
10 derivative or preparation of coca leaves, any salt, compound,  
11 isomer, derivative or preparation that is a chemical equivalent  
12 of any of these substances except decocainized coca leaves or  
13 extractions of coca leaves that do not contain cocaine or  
14 ecgonine;

15 P. "opiate" means any substance having an  
16 addiction-forming or addiction-sustaining liability similar to  
17 morphine or being capable of conversion into a drug having  
18 addiction-forming or addiction-sustaining liability. "Opiate"  
19 does not include, unless specifically designated as controlled  
20 under Section 30-31-5 NMSA 1978, the dextrorotatory isomer of  
21 3-methoxy-n-methylmorphinan and its salts, dextromethorphan.  
22 "Opiate" does include its racemic and levorotatory forms;

23 Q. "person" means an individual, partnership,  
24 corporation, association, institution, political subdivision,  
25 government agency or other legal entity;

.205096.1

1           R. "practitioner" means a physician, certified  
2     advanced practice chiropractic physician, doctor of oriental  
3     medicine, dentist, physician assistant, certified nurse  
4     practitioner, clinical nurse specialist, certified nurse-  
5     midwife, prescribing psychologist, veterinarian, euthanasia  
6     technician, pharmacist, pharmacist clinician or other person  
7     licensed or certified to prescribe and administer drugs that  
8     are subject to the Controlled Substances Act;

9           S. "prescription" means an order given individually  
10    for the person for whom is prescribed a controlled substance,  
11    either directly from a licensed practitioner or the  
12    practitioner's agent to the pharmacist, including by means of  
13    electronic transmission, or indirectly by means of a written  
14    order signed by the prescriber, bearing the name and address of  
15    the prescriber, the prescriber's license classification, the  
16    name and address of the patient, the name and quantity of the  
17    drug prescribed, directions for use and the date of issue and  
18    in accordance with the Controlled Substances Act or rules  
19    adopted thereto;

20           T. "scientific investigator" means a person  
21    registered to conduct research with controlled substances in  
22    the course of the person's professional practice or research  
23    and includes analytical laboratories;

24           U. "ultimate user" means a person who lawfully  
25    possesses a controlled substance for the person's own use or

1 for the use of a member of the person's household or for  
2 administering to an animal under the care, custody and control  
3 of the person or by a member of the person's household;

4 V. "drug paraphernalia" means all equipment,  
5 products and materials of any kind that are used, intended for  
6 use or designed for use in planting, propagating, cultivating,  
7 growing, harvesting, manufacturing, compounding, converting,  
8 producing, processing, preparing, testing, analyzing,  
9 packaging, repackaging, storing, containing, concealing,  
10 injecting, ingesting, inhaling or otherwise introducing into  
11 the human body a controlled substance or controlled substance  
12 analog in violation of the Controlled Substances Act. It  
13 includes:

14 (1) kits used, intended for use or designed  
15 for use in planting, propagating, cultivating, growing or  
16 harvesting any species of plant that is a controlled substance  
17 or controlled substance analog or from which a controlled  
18 substance can be derived;

19 (2) kits used, intended for use or designed  
20 for use in manufacturing, compounding, converting, producing,  
21 processing or preparing controlled substances or controlled  
22 substance analogs;

23 (3) isomerization devices used, intended for  
24 use or designed for use in increasing the potency of any  
25 species of plant that is a controlled substance;

.205096.1

1 (4) testing equipment used, intended for use  
2 or designed for use in identifying or in analyzing the  
3 strength, effectiveness or purity of controlled substances or  
4 controlled substance analogs;

5 (5) scales or balances used, intended for use  
6 or designed for use in weighing or measuring controlled  
7 substances or controlled substance analogs;

8 (6) diluents and adulterants, such as quinine  
9 hydrochloride, mannitol, mannite dextrose and lactose, used,  
10 intended for use or designed for use in cutting controlled  
11 substances or controlled substance analogs;

12 (7) separation gins and sifters used, intended  
13 for use or designed for use in removing twigs and seeds from,  
14 or in otherwise cleaning and refining, marijuana;

15 (8) blenders, bowls, containers, spoons and  
16 mixing devices used, intended for use or designed for use in  
17 compounding controlled substances or controlled substance  
18 analogs;

19 (9) capsules, balloons, envelopes and other  
20 containers used, intended for use or designed for use in  
21 packaging small quantities of controlled substances or  
22 controlled substance analogs;

23 (10) containers and other objects used,  
24 intended for use or designed for use in storing or concealing  
25 controlled substances or controlled substance analogs;

1 (11) hypodermic syringes, needles and other  
2 objects used, intended for use or designed for use in  
3 parenterally injecting controlled substances or controlled  
4 substance analogs into the human body;

5 (12) objects used, intended for use or  
6 designed for use in ingesting, inhaling or otherwise  
7 introducing marijuana, cocaine, hashish or hashish oil into the  
8 human body, such as:

9 (a) metal, wooden, acrylic, glass,  
10 stone, plastic or ceramic pipes, with or without screens,  
11 permanent screens, hashish heads or punctured metal bowls;

12 (b) water pipes;

13 (c) carburetion tubes and devices;

14 (d) smoking and carburetion masks;

15 (e) roach clips, meaning objects used to  
16 hold burning material, such as a marijuana cigarette, that has  
17 become too small to hold in the hand;

18 (f) miniature cocaine spoons and cocaine  
19 vials;

20 (g) chamber pipes;

21 (h) carburetor pipes;

22 (i) electric pipes;

23 (j) air-driven pipes;

24 (k) chilams;

25 (l) bongs; or

1 (m) ice pipes or chillers; and  
2 (13) in determining whether an object is drug  
3 paraphernalia, a court or other authority should consider, in  
4 addition to all other logically relevant factors, the  
5 following:

6 (a) statements by the owner or by anyone  
7 in control of the object concerning its use;

8 (b) the proximity of the object, in time  
9 and space, to a direct violation of the Controlled Substances  
10 Act or any other law relating to controlled substances or  
11 controlled substance analogs;

12 (c) the proximity of the object to  
13 controlled substances or controlled substance analogs;

14 (d) the existence of any residue of a  
15 controlled substance or controlled substance analog on the  
16 object;

17 (e) instructions, written or oral,  
18 provided with the object concerning its use;

19 (f) descriptive materials accompanying  
20 the object that explain or depict its use;

21 (g) the manner in which the object is  
22 displayed for sale; and

23 (h) expert testimony concerning its use;

24 W. "controlled substance analog" means a substance  
25 other than a controlled substance that has a chemical structure



1 substantially similar to that of a controlled substance in  
2 Schedule I, II, III, IV or V or that was specifically designed  
3 to produce effects substantially similar to that of controlled  
4 substances in Schedule I, II, III, IV or V. Examples of  
5 chemical classes in which controlled substance analogs are  
6 found include the following:

- 7 (1) phenethylamines;
- 8 (2) N-substituted piperidines;
- 9 (3) morphinans;
- 10 (4) ecgonines;
- 11 (5) quinazolinones;
- 12 (6) substituted indoles; and
- 13 (7) arylcycloalkylamines.

14 Specifically excluded from the definition of "controlled  
15 substance analog" are those substances that are generally  
16 recognized as safe and effective within the meaning of the  
17 Federal Food, Drug, and Cosmetic Act or have been manufactured,  
18 distributed or possessed in conformance with the provisions of  
19 an approved new drug application or an exemption for  
20 investigational use within the meaning of Section 505 of the  
21 Federal Food, Drug, and Cosmetic Act;

22 X. "human consumption" includes application,  
23 injection, inhalation, ingestion or any other manner of  
24 introduction;

25 Y. "drug-free school zone" means a public school,

1 parochial school or private school or property that is used for  
2 a public, parochial or private school purpose and the area  
3 within one thousand feet of the school property line, but it  
4 does not mean any post-secondary school; and

5 Z. "valid practitioner-patient relationship" means  
6 a professional relationship, as defined by the practitioner's  
7 licensing board, between the practitioner and the patient."

8 SECTION 3. Section 30-31-6 NMSA 1978 (being Laws 1972,  
9 Chapter 84, Section 6, as amended) is amended to read:

10 "30-31-6. SCHEDULE I.--The following controlled  
11 substances are included in Schedule I:

12 A. any of the following opiates, including their  
13 isomers, esters, ethers, salts, and salts of isomers, esters  
14 and ethers, unless specifically exempted, whenever the  
15 existence of these isomers, esters, ethers and salts is  
16 possible within the specific chemical designation:

- 17 (1) acetylmethadol;
- 18 (2) allylprodine;
- 19 (3) alphacetylmethadol;
- 20 (4) alphameprodine;
- 21 (5) alphamethadol;
- 22 (6) benzethidine;
- 23 (7) betacetylmethadol;
- 24 (8) betameprodine;
- 25 (9) betamethadol;

- 1 (10) betaprodine;
- 2 (11) clonitazene;
- 3 (12) dextromoramide;
- 4 (13) dextrorphan;
- 5 (14) diampromide;
- 6 (15) diethylthiambutene;
- 7 (16) dimenoxadol;
- 8 (17) dimepheptanol;
- 9 (18) dimethylthiambutene;
- 10 (19) dioxaphetyl butyrate;
- 11 (20) dipipanone;
- 12 (21) ethylmethylthiambutene;
- 13 (22) etonitazene;
- 14 (23) etoxeridine;
- 15 (24) furethidine;
- 16 (25) hydroxypethidine;
- 17 (26) ketobemidone;
- 18 (27) levomoramide;
- 19 (28) levophenacymorphan;
- 20 (29) morpheridine;
- 21 (30) noracymethadol;
- 22 (31) norlevorphanol;
- 23 (32) normethadone;
- 24 (33) norpipanone;
- 25 (34) phenadoxone;

- 1 (35) phenampromide;
- 2 (36) phenomorphan;
- 3 (37) phenoperidine;
- 4 (38) piritramide;
- 5 (39) proheptazine;
- 6 (40) properidine;
- 7 (41) racemoramide; and
- 8 (42) trimeperidine;

9 B. any of the following opium derivatives, their  
10 salts, isomers and salts of isomers, unless specifically  
11 exempted, whenever the existence of these salts, isomers and  
12 salts of isomers is possible within the specific chemical  
13 designation:

- 14 (1) acetorphine;
- 15 (2) acetyldihydrocodeine;
- 16 (3) benzylmorphine;
- 17 (4) codeine methylbromide;
- 18 (5) codeine-N-oxide;
- 19 (6) cyprenorphine;
- 20 (7) desomorphine;
- 21 (8) dihydromorphine;
- 22 (9) etorphine;
- 23 (10) heroin;
- 24 (11) hydromorphenol;
- 25 (12) methylodesorphine;

- (13) methyldihydromorphine;
- (14) morphine methylbromide;
- (15) morphine methylsulfonate;
- (16) morphine-N-oxide;
- (17) myrophine;
- (18) nicocodeine;
- (19) nicomorphine;
- (20) normorphine;
- (21) pholcodine; and
- (22) thebacon;

C. any material, compound, mixture or preparation that contains any quantity of the following hallucinogenic substances, their salts, isomers and salts of isomers, unless specifically exempted, whenever the existence of these salts, isomers and salts of isomers is possible within the specific chemical designation:

- (1) 3,4-methylenedioxy amphetamine;
- (2) 5-methoxy-3,4-methylenedioxy amphetamine;
- (3) 3,4,5-trimethoxy amphetamine;
- (4) bufotenine;
- (5) diethyltryptamine;
- (6) dimethyltryptamine;
- (7) 4-methyl-2,5-dimethoxy amphetamine;
- (8) ibogaine;
- (9) lysergic acid diethylamide;

- 1 (10) marijuana;
- 2 (11) mescaline;
- 3 (12) peyote, except as otherwise provided in
- 4 the Controlled Substances Act;
- 5 (13) N-ethyl-3-piperidyl benzilate;
- 6 (14) N-methyl-3-piperidyl benzilate;
- 7 (15) psilocybin;
- 8 (16) psilocyn;
- 9 (17) tetrahydrocannabinols;
- 10 (18) hashish;
- 11 (19) synthetic cannabinoids, including:
- 12 (a) 1-[2-(4-(morpholinyl)ethyl)-3-(1-
- 13 naphthoyl)indole;
- 14 (b) 1-butyl-3-(1-naphthoyl)indole;
- 15 (c) 1-hexyl-3-(1-naphthoyl)indole;
- 16 (d) 1-pentyl-3-(1-naphthoyl)indole;
- 17 (e) 1-pentyl-3-(2-methoxyphenylacetyl)
- 18 indole;
- 19 (f) cannabicyclohexanol (CP 47, 497 and
- 20 homologues: 5-(1,1-dimethylheptyl)-2-[(1R,3S)
- 21 -3-hydroxycyclohexyl]-phenol (CP-47,497); and 5-(1,
- 22 1-dimethyloctyl)-2-[(1R,3S)-3-hydroxycyclohexyl]-phenol;
- 23 (g) 6aR,10aR)-9-(hydroxymethyl)
- 24 -6,6-dimethyl-3-(2-methyloctan-2-yl)-6a,7,10,
- 25 10a-tetrahydrobenzo[c]chromen-1-ol);

- 1 (h) dexanabinol, (6aS,10aS)  
2 -9-(hydroxymethyl)-6,6-dimethyl-3-(2-methyloctan-2-yl)  
3 -6a,7,10,10a-tetrahydrobenzo[c]chromen-1-ol;  
4 (i) 1-pentyl-3-(4-chloro naphthoyl)  
5 indole;  
6 (j) (2-methyl-1-propyl-1H-indol-3-yl)  
7 -1-naphthalenyl-methanone; and  
8 (k) 5-(1,1-dimethylheptyl)-2-(3-hydroxy  
9 cyclohexyl)-phenol;  
10 (20) 3,4-methylenedioxymethcathinone;  
11 (21) 3,4-methylenedioxypyrovalerone;  
12 (22) 4-methylmethcathinone;  
13 (23) 4-methoxymethcathinone;  
14 (24) 3-fluoromethcathinone; and  
15 (25) 4-fluoromethcathinone;

16 D. the enumeration of peyote as a controlled  
17 substance does not apply to the use of peyote in bona fide  
18 religious ceremonies by a bona fide religious organization, and  
19 members of the organization so using peyote are exempt from  
20 registration. Any person who manufactures peyote for or  
21 distributes peyote to the organization or its members shall  
22 comply with the federal Comprehensive Drug Abuse Prevention and  
23 Control Act of 1970 and all other requirements of law;

24 E. the enumeration of marijuana,  
25 tetrahydrocannabinols or chemical derivatives of

1       tetrahydrocannabinol as Schedule I controlled substances does  
2       not apply to:

3                       (1) cultivation of industrial hemp by  
4       qualified entities pursuant to rules adopted by the New Mexico  
5       department of agriculture; or

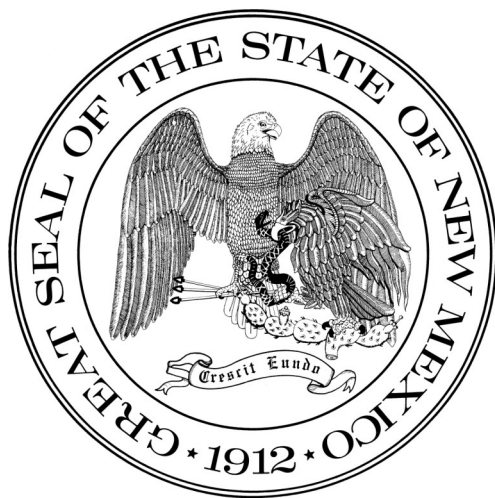
6                       (2) the use of marijuana,  
7       tetrahydrocannabinols or chemical derivatives of  
8       tetrahydrocannabinol by certified patients pursuant to the  
9       Controlled Substances Therapeutic Research Act or by qualified  
10      patients pursuant to the provisions of the Lynn and Erin  
11      Compassionate Use Act; and

12                      F. controlled substances added to Schedule I by  
13      rule adopted by the board pursuant to Section 30-31-3 NMSA  
14      1978."

15                                       - 20 -







LEGISLATIVE COUNCIL SERVICE  
SANTA FE, NEW MEXICO