

# WATER AND NATURAL RESOURCES COMMITTEE

2009 INTERIM  
FINAL REPORT  
to the  
FORTY-NINTH LEGISLATURE  
SECOND SESSION



New Mexico Legislative Council Service  
Santa Fe, New Mexico  
December 2009

WATER  
AND  
NATURAL RESOURCES  
COMMITTEE

2009  
REPORT

Santa Fe, New Mexico  
December 2009  
File No. 205.176-09

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

Though the committee was scheduled for six meetings during the 2009 interim, due to the October legislative special session, the committee combined its October meeting with its final meeting, which was held November 30 through December 2 in Santa Fe. The committee also canceled a subcommittee on acequia issues that was scheduled to meet October 26.

The committee endorsed four pieces of legislation this interim: one bill, two appropriations and one joint resolution.

House Bill 15, sponsored by Representative Anna M. Crook, creates the Eastern New Mexico Water Utility Authority, which will work with state, local and federal agencies to complete a water delivery system from the Ute Reservoir to local governments in eastern New Mexico. The bill provides for seven members on the authority — one each from Curry County, Clovis, Portales, Texico, Melrose, Elida and Grady.

House Bill 14, sponsored by Representative Andy Nuñez, appropriates \$400,000 to the Interstate Stream Commission to begin updating the state's 16 regional water plans.

House Bill 58, also sponsored by Representative Nuñez, appropriates \$3,000,000 to New Mexico State University to continue soil and water conservation district riparian restoration projects and removal of non-native phreatophytes from watersheds across the state. This is an ongoing program designed to lessen the impact of non-native trees on the state's watersheds.

The house joint resolution proposes a constitutional amendment to allow a legislative interim committee to nullify administrative rules in certain instances and prevent rules from taking effect until they are reviewed by an appropriate legislative committee.

Expenditures for voting members during the interim totaled \$30,880, and expenditures for advisory members totaled \$23,902.

**2009 APPROVED  
WORK PLAN AND MEETING SCHEDULE  
for the  
WATER AND NATURAL RESOURCES COMMITTEE**

**Members**

Sen. Phil A. Griego, Chair  
Rep. Andy Nuñez, Vice Chair  
Rep. Paul C. Bandy  
Rep. Ray Begaye  
Rep. Joseph Cervantes  
Sen. Mary Jane M. Garcia  
Rep. Thomas A. Garcia  
Rep. William J. Gray  
Sen. Clinton D. Harden, Jr.

Rep. Dona G. Irwin  
Rep. Larry A. Larrañaga  
Rep. Kathy A. McCoy  
Sen. George K. Munoz  
Sen. Steven P. Neville  
Sen. Gerald Ortiz y Pino  
Sen. Mary Kay Papen  
Sen. Sander Rue  
Rep. Mimi Stewart

**Advisory Members**

Sen. Rod Adair  
Sen. Vernon D. Asbill  
Rep. Anna M. Crook  
Sen. Carlos R. Cisneros  
Rep. Brian F. Egolf, Jr.  
Rep. Nora Espinoza  
Rep. Candy Spence Ezzell  
Sen. Dede Feldman  
Sen. Timothy Z. Jennings  
Sen. Gay G. Kernan

Rep. Ben Lujan  
Rep. James Roger Madalena  
Sen. Cisco McSorley  
Rep. Danice Picraux  
Sen. Nancy Rodriguez  
Rep. Henry Kiki Saavedra  
Rep. Jeff Steinborn  
Rep. James R.J. Strickler  
Rep. Don L. Tripp  
Sen. Peter Wirth

**Work Plan**

The Water and Natural Resources Committee proposes to focus on the following topics and issues during the 2009 interim:

- A. issues involving wildlife, livestock or agriculture, including:
  - 1. elk management and population and landowner compensation; and
  - 2. seizure of stray livestock and brand inspection;
- B. use and designation of land and water for recreation and other purposes, including:
  - 1. new state park projects, including Pecos State Park;
  - 2. off-highway motor vehicle registration and regulation;
  - 3. boat registration legislation;
  - 4. the Rio Grande trail project; and
  - 5. suggestions on making the Valles Caldera National Preserve self-sufficient;
- C. water management, adjudications, research, litigation and projects, including:
  - 1. creation of a subcommittee to hear from the acequia community on October 26, the day before the October 27-28 Española meeting and a report to the full committee on acequia issues;

2. state engineer jurisdiction over deep nonpotable aquifers;
  3. a report from the Institute for Public Law on stakeholder suggestions on changing the adjudication process;
  4. a report from the Middle Rio Grande Conservancy District and the Mid-Region Council of Governments on the state of levees in the middle Rio Grande;
  5. a report from New Mexico State University on water conservation methods;
  6. a report from the Department of the Environment on the status of the Water Conservation Fund;
  7. the status of the *Navajo*, *Taos*, *Aamodt* and *Pecos* water settlements and the Gila River planning process;
  8. an update on federal legislation authorizing the Ute pipeline;
  9. status of the strategic water reserve;
  10. an update on projects endorsed by the Water Trust Board;
  11. an update on the state and regional water plans;
  12. a report from the Buckman Direct Diversion Project Board;
  13. inter-basin water transfers;
  14. New Mexico Institute of Mining and Technology aquifer mapping project;
  15. the Utton Transboundary Resource Center ombudsman program;
  16. formation of new regional water associations;
  17. outstanding national resource waters designation of certain areas in New Mexico; and
  18. availability of federal stimulus money for water projects; and
- D. use of renewable energy payments as an alternative to renewable energy portfolio standards to promote the use of renewable energy in New Mexico.

### **2009 Approved Meeting Schedule**

<u>Date</u>	<u>Location</u>
June 5	Santa Fe
July 6-7	Socorro
August 20-21	Angel Fire
September 21-22	Silver City
October 27-28	Española
November 30 & December 1	Santa Fe

### **Subcommittee on Acequia Issues Meeting Schedule**

<u>Date</u>	<u>Location</u>
October 26	Santa Fe

# **AGENDAS**

Revised: June 1, 2009

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

**June 5, 2009  
Room 322, State Capitol**

**Friday, June 5**

- |            |   |
|------------|---|
| 10:00 a.m. | <b>Call to Order</b><br>—Senator Phil A. Griego, Chair  |
| 10:05 a.m. | <b>Legislative Interim Committee Meeting Protocols</b><br>—Paula Tackett, Director, Legislative Council Service                                 |
| 10:30 a.m. | <b>Status Reports — Office of the State Engineer and Interstate Stream Commission</b><br>—Estevan Lopez, Director, Interstate Stream Commission |
| 12:00 noon | <b>2009 Interim Work Plan, Itinerary and Meeting Schedule</b>   |
| 1:00 p.m.  | <b>Adjourn</b>  |

Revised: July 2, 2009

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

**July 6-7, 2009  
Copper Room, Macey Center  
New Mexico Institute of Mining and Technology  
Socorro**

**Monday, July 6**

- 10:00 a.m.           **Call to Order**  
—Senator Phil A. Griego, Chair
- 10:05 a.m.           **Introduction and Welcome**  
—Dr. Daniel H. Lopez, President, New Mexico Institute of Mining and  
Technology
- 10:20 a.m.           **State Parks Division Projects, Fees and Proposals**  
—David J. Simon, Director, State Parks Division, Energy, Minerals and  
Natural Resources Department
- 11:30 a.m.           **Valencia County Integrated Regional Water and Wastewater Master  
Plan**  
—Eric Zamora, Valencia County Manager  
—Tim Karpoff, Karpoff and Associates  
—Kelly Collins, CDM
- 12:30 p.m.           **Lunch**
- 1:45 p.m.           **Conservation Fund Report**  
—Karen Gallegos, Director, Water and Wastewater Infrastructure  
Development Division, Department of Environment
- 2:30 p.m.           **Off-Highway Vehicle Regulatory Changes — Laws 2009, Chapter 53**  
—Tod Stevenson, Director, Department of Game and Fish

3:30 p.m.                    **Elk Population Management and Depredation and Landowner Takings Policies — SB 391 (2009)**  
—Tod Stevenson, Director, Department of Game and Fish

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

**Tuesday, July 7**

9:00 a.m.                    **Seizure and Brand Inspection of Livestock — Proposed Legislation**  
—Caren Cowan, Executive Director, New Mexico Cattle Growers' Association  
—Miles Culbertson, Director, New Mexico Livestock Board

10:00 a.m.                    **Aquifer Mapping Project**  
—Peggy Johnson, Associate Director of Hydrogeologic Programs, New Mexico Bureau of Geology and Mineral Resources

11:00 a.m.                    **New Mexico Dairy Industry Issues**  
—Sharon Lombardi and T. J. Trujillo, Dairy Producers of New Mexico

12:00 noon                    **Adjourn**



4:00 p.m.                    **State Engineer Jurisdiction Over Deep Aquifers — Implementation of HB 19**  
—John D'Antonio, State Engineer

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

**Friday, August 21**

8:30 a.m.                    **Urban-Rural Communities At-Risk Program**  
—Dr. Kent Reid, Director, Watershed Institute

9:30 a.m.                    **Ute Pipeline Authorization and Proposed Legislation**  
—Gayla Brumfield, Mayor, Clovis (Invited)  
—Scott Verhines, Project Manager, Eastern New Mexico Rural Water System

10:30 a.m.                    **Controlling Aquatic Invasive Species — Zebra Mussels**  
—Bob Jenks, Deputy Director, Department of Game and Fish  
—Barbara Colter, Aquatic Invasive Species Program Coordinator, Department of Game and Fish

11:30 a.m.                    **New Mexico Rural Water Association Concerns**  
—Clarence Aragon, President  
—Matthew Holmes, Executive Director

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

Revised: September 17, 2009

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

**September 21-22, 2009  
Grant County Business Center, 3031 Highway 180 East  
Silver City**

**Monday, September 21**

- 9:00 a.m.           **Call to Order**  
—Senator Phil A. Griego, Chair, Water and Natural Resources Committee
- 9:05 a.m.           **Welcome**  
—James Marshall, Mayor, Silver City
- 9:15 a.m.           **Wolf Reintroduction Problems in Catron County**  
—Ed Wehrheim, Catron County Commissioner
- 10:15 a.m.          **Dam Liability Issues**  
—Elaine Pacheco, Bureau Chief, Dam Safety Bureau  
—Debbie Hughes, Executive Director, New Mexico Association of Soil  
and Water Conservation Districts  
—Al Duran, Risk Management Division, General Services Department
- 11:30 a.m.          **The Joe M Stell Water Ombudsman Program Update**  
—Darci Bushnell, Program Director, The Joe M Stell Water Ombudsman  
Program
- 12:15 p.m.          **Lunch**
- 1:30 p.m.           **Arizona Water Settlements Act; Gila River Planning Process Status**  
—TBA, Interstate Stream Commission  
—Topper Thorp, Co-Chair, Arizona Water Settlements Act Planning  
Process and Gila Basin Irrigation Commissioner  
—Adrian Ogleby, Co-Chair, Arizona Water Settlements Act Planning  
Process and Nature Conservancy Representative  
—Howard Hutchinson, Gila San Francisco Water Commission
- 3:00 p.m.           **Regional/State Water Plans Update**  
—Angela Schackel-Bordegaray, Water Planner, Planning and  
Communication Division, Interstate Stream Commission



Revised: November 24, 2009

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

**November 30-December 2, 2009  
Room 322, State Capitol  
Santa Fe**

**Monday, November 30**

- 9:00 a.m.     **Call to Order**  
—Senator Phil A. Griego, Chair, Water and Natural Resources Committee
- 9:05 a.m.     **Acequia Report**  
—Paula Garcia, Executive Director, New Mexico Acequia Association
- 10:00 a.m.    **Solid Waste Management — Landfill Management and Permitting**  
—Marla Shoats, Lobbyist, Waste Connections, Inc.  
—Mark Turnbough, Environmental Consultant  
—Mark Miller, National Solid Wastes Management Association, New Mexico  
Chapter Chair  
—I. Keith Gordon, Gordon Environmental, Inc.
- 11:00 a.m.    **Buckman Direct Diversion Project Status**  
—Rick Carpenter, Project Manager, Buckman Direct Diversion Project
- 12:00 noon    **Lunch**
- 1:15 p.m.     **Outstanding Resource Waters Designation**  
—Ron Curry, Secretary, Department of Environment  
—Marcy Leavitt, Director, Water and Waste Management Division, Department  
of Environment  
—Representative Debbie A. Rodella
- 2:15 p.m.     **Elk Depredation Issues in Northern New Mexico**  
—Art Martinez, Hunting and Fishing Outfitter  
—Tod Stevenson, Director, Department of Game and Fish
- 3:15 p.m.     **Report on Levees in the Middle Rio Grande**  
—Subhas Shah, Middle Rio Grande Conservancy District  
—Joe Quintana, Mid-Region Council of Governments

4:15 p.m.     **Acequia Issues in the Middle Rio Grande**  
—Senator Jerry Ortiz y Pino  
—James R. Maestas, President, South Valley Regional Association of Acequias  
—Robert Kyzer, President, Los Padillas Acequia  
—Andrew Leo Lopez, Conservancy Taxpayers Association

5:15 p.m.     **Recess**

**Tuesday, December 1**

9:00 a.m.     **Wolf Reintroduction in the Gila National Forest**  
—Michael Robinson, Center for Biological Diversity  
—Tod Stevenson, Director, Department of Game and Fish  
—Bud Fazio, U.S. Fish and Wildlife Service  
—Ed Wehrheim, Catron County Commissioner

10:00 a.m.    **Utton Transboundary Resources Center Programs**  
—Susan Kelly, Interim Director, Utton Transboundary Resources Center

10:15 a.m.    **Triennial Review of Water Quality Standards**  
—Marcy Leavitt, Director, Water and Waste Management Division, Department  
of Environment  
—Pam Homer, Water Quality Standards Coordinator, Department of  
Environment  
—T.J. Trujillo, Lobbyist

11:15 a.m.    **Indian Water Rights Settlement Fund Annual Report**  
—Estevan Lopez, Director, Interstate Stream Commission  
—John D'Antonio, State Engineer

12:00 noon    **Lunch**

1:30 p.m.     **Proposed Bills for the 2010 Legislative Session**  
—Ownership of Pore Space  
—Game Depredation  
—Natural Resources Trustee Authority  
—Conservation, Recreation and Resource Protection  
—Oil and Gas Regulatory Reform  
—Farmer Protection Act  
—Air Quality, Bad Actor  
—Eastern New Mexico Water Utility Authority  
—Other Bills TBD

5:00 p.m.     **Recess**

**Wednesday, December 2**

- 9:00 a.m.     **Consumptive Use of Crops, Conservation and the Implementation of SB 461 (2007); HJM 1 (2009)**  
—Phil King, New Mexico State University  
—Rhonda Skaggs, Department of Agricultural Economics and Agricultural Business, New Mexico State University  
—Zohrab Samani, Department of Civil Engineering, New Mexico State University
- 10:15 a.m.    **Proposed Bills for the 2010 Legislative Session (Continued)**  
—Bills Not Covered from Previous Day's Meeting
- 12:00 noon    **Adjourn**

# **MINUTES**

Revised: July 23, 2009

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

**June 5, 2009  
Room 322, State Capitol  
Santa Fe**

**Present**

Sen. Phil A. Griego, Chair  
Rep. Andy Nunez, Vice Chair  
Rep. Paul C. Bandy  
Rep. Ray Begaye  
Rep. Joseph Cervantes  
Sen. Mary Jane M. Garcia  
Rep. Thomas A. Garcia  
Rep. William J. Gray  
Rep. Dona G. Irwin  
Rep. Larry A. Larrañaga  
Sen. Gerald Ortiz y Pino  
Sen. Sander Rue  
Rep. Mimi Stewart

**Advisory Members**

Sen. Rod Adair  
Rep. Brian F. Egolf, Jr.  
Rep. Candy Spence Ezzell  
Sen. Dede Feldman  
Rep. Ben Lujan  
Rep. James Roger Madalena  
Sen. Cisco McSorley  
Rep. James R.J. Stickler

**Guests**

Sen. Bernadette M. Sanchez  
The guest list is in the original meeting file.

**Absent**

Sen. Clinton D. Harden, Jr.  
Rep. Kathy A. McCoy  
Sen. George K. Munoz  
Sen. Steven P. Neville  
Sen. Mary Kay Papen

Sen. Vernon D. Asbill  
Rep. Anna M. Crook  
Sen. Carlos R. Cisneros  
Rep. Nora Espinoza  
Sen. Timothy Z. Jennings  
Sen. Gay G. Kernan  
Rep. Danice Picraux  
Sen. Nancy Rodriguez  
Rep. Henry Kiki Saavedra  
Rep. Jeff Steinborn  
Rep. Don L. Tripp  
Sen. Peter Wirth

## **Staff**

Jon Boller  
Gordon Meeks  
Jeret Fleetwood

The first meeting of the Water and Natural Resources Committee (WNRC) was called to order by Senator Phil A. Griego, chair, at 10:05 a.m.

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

## **Interim Committee Protocols**

Paula Tackett, director, Legislative Council Service (LCS), provided the committee with testimony regarding interim committee protocols. She explained that, at the beginning of the 2008 interim, the Legislative Council directed staff to provide each interim committee with a brief presentation on some of the basic rules, policies and logistics regarding committees. Ms. Tackett went on to note that the council had provided staff with similar directions this interim.

Ms. Tackett began by noting that each committee must have a quorum to function and that a quorum for the WNRC consists of 10 voting members. She went on to explain that if a quorum is absent, a special subcommittee may be convened but only for the purpose of receiving testimony. She also pointed out that the speaker of the house and the president pro tempore may appoint additional members to the committee in certain situations, such as out-of-town meetings where a quorum is not present and the committee is required to act upon a motion.

Ms. Tackett went on to explain that only voting members may vote on matters before the committee and that once a quorum has been established, a quorum is presumed to exist until a voting member challenges the existence of the quorum or a roll call vote is requested. If a majority of the total committee membership of either chamber votes no on any measure before the committee, that measure will be deemed to have failed even if a majority of the voting members of the committee have approved the measure. She also pointed out that seating on the dais in meeting rooms at the capitol is generally reserved for voting members of a committee, with advisory members sitting at the tables in front of the dais or in the front row of seats in the audience.

Ms. Tackett went on to discuss the sound system installed at the capitol. She noted that the system was designed to be rather sensitive, adjusting its own volume relative to that of the speaker's voice, but that that sensitivity could create problems. For instance, Ms. Tackett indicated that the clicking of keys on laptop computers can be picked up by the system and cause it to turn itself down, making it difficult for voices to be audible via the speakers in the room. She also pointed out that laptop monitors in front of a microphone and papers covering a microphone cause audibility issues for the sound system. Ms. Tackett suggested that members only switch the microphone on when they wish to speak and that they be sure to switch it off once they are finished, lest private conversations be inadvertently picked up.

Finally, Ms. Tackett discussed out-of-state conferences, noting that council policy allows for reimbursement for attendance at conferences of organizations of which New Mexico is a dues-paying member. She also emphasized that prior approval from leadership is required for attendance at all out-of-state conferences.

Raúl E. Burciaga, assistant director for drafting, LCS, provided the committee with a calendar that listed suggested meeting dates for each interim committee. He explained that the council has directed staff for the past several interims to develop a calendar and suggested meeting dates that minimizes attendance conflicts for voting members. Mr. Burciaga went on to explain that the meeting dates listed for each committee may be changed by the committee, but approval of those changes would require the approval of the council at its June 24 meeting.

### **Office of the State Engineer/ Interstate Stream Commission**

Estevan Lopez, director of the Interstate Stream Commission, provided the committee with an update regarding the activities of the Office of the State Engineer (OSE) and the Interstate Stream Commission (ISC). He began by noting that the new administration and congressional turnover held a significant amount of promise for New Mexican water issues, pointing out that the congressional committee that typically addresses water-related issues is chaired by Senator Bingaman. Mr. Lopez also listed a number of federal appointees who either have ties to New Mexico or are familiar with western water and land-use issues and who are now serving the federal government in various capacities.

Mr. Lopez went on to provide the committee with the following summary of various water issues confronting New Mexico.

#### **Indian Water Rights Settlements**

- Navajo - Federal authorization included in the Omnibus Public Land Management Act signed by President Obama on March 30
- Taos - Federal legislation introduced in the Senate on May 4
- Aamodt - Federal legislation introduced in the Senate on May 20
- Continued need for state cost-share funding through the Indian Water Rights Settlement Fund (estimated need of \$105 million over the next 10 years)

#### **Ute Pipeline Project**

- Federal authorization included in the Omnibus Public Land Management Act signed by President Obama on March 30
- Continued need for state cost-share funding

#### **Pecos River Settlement**

- Settlement minimum water rights acquisitions and pumping capacity essentially complete
- Settlement parties considering whether to call settlement good with existing progress
- Once settlement implemented, funding for additional water rights and operation of well fields will be needed

#### Middle Rio Grande Biological Opinion

- Existing biological opinion provides compliance with the Endangered Species Act for all middle Rio Grande water users
- Federal agencies developing a new biological opinion by March 2010 because of reduced availability of both water and federal funding
- Long-term, sustainable water operations regime is the goal
- Requires active involvement by state and other non-federal agencies
- Possibility of new endangered-species litigation
- Need for continued funding and legislative support

#### Gila River Planning (Arizona Water Settlement Act 2004)

- Up to 14,000 acre-feet of additional water and between \$66 million and \$128 million of federal funding available
- Need a plan by 2014
- Open, inclusive stakeholder planning process is underway
- Legislative funding (\$800,000) extended through FY 2010
- Supply/demand; economic and ecological forums in progress to determine study methods

#### Strategic Water Reserve

- Vaughan pipeline project on the Pecos
- Rio Grande water rights for refugium and habitat projects
- Continued funding needed to ensure projects' success

#### State Water Plan/Regional Water Plans

- Update of state water plan in progress
- 21 public meetings held throughout the state
- Regions requesting funding for updating regional water plans
- Continued funding needed to ensure projects' success

#### Acequia Construction Program

- Continued work to expend prior year capital funds
- Working with New Mexico Acequia Association and others to streamline funding processes
- President's budget recommendation for 2010 has no funding for U.S. Army Corps of Engineers acequia programs
- Need a New Mexico champion in Congress to assure continued federal funding
- Need continued state funding support

#### Active Water Recourse Management (AWRM) Initiative Progress

- Statewide readiness to proceed (seven priority basins) at: 83%
- Water rights files abstracted into WATERS database: 86%
- Implementation of metering: 83%

- Technical and legal preparation: 68%
- Current number of water masters hired: 25 (18 are AWRM water masters, others court- appointed)
- Emphasis on alternative administration agreed upon by basin stakeholders in lieu of strict priority administration
- Development of protocols and guidelines defining water master authority and activities in the field
- Working with acequia community to increase ditch/acequia efficiencies
- Working with acequia community on statewide funding issues
- Increased communication with acequia community and public generally
- Ongoing metering of surface and ground water statewide and metering agreements between the state engineer and acequias
- Successes in Gallinas Basin, Nambe/Pojoaque/Tesuque Basin, Chama Basin, Mimbres and Lower Rio Grande

#### Critical Management Areas

- Current focus is on eastern part of the state (i.e., Hobbs, Clovis and Portales)
- Looking at regional drawdown effects on aquifer and limited aquifer thickness
- Goals:
  - Protect existing water users
  - Prolong life of High Plains Aquifer
  - Develop general guidelines for water rights administration (Lea County and Curry County/Portales guidelines)

#### Dam Safety

- 142 deficient dams statewide
- Estimated cost is \$5 million per year for 10 years to address these dams
- Funding for dams was taken during recent legislative session (\$4.5 million)
- Amending dam safety rules and regulations to conform to recent legislative changes to Section 72-5-32 NMSA 1978 (height and storage limits increase)
- Levees — big federal push to address unsafe levees nationwide; New Mexico has hundreds of miles of levees

#### House Memorial 42 Task Force (2007 session)

- Task force looking at Section 72-1-9 NMSA 1978 (40-year planning — ability to hold water rights unused)
- Task force considering draft guidelines for water development plans based on stakeholder-agreed consensus memo, existing (draft) water development template

#### Deep Well Legislation

- With amendments to Section 72-12-25 NMSA 1978, state engineer now has the authority to declare all ground water basins in the state
- State engineer's authority limited to acting on applications to appropriate for municipal purposes of use

- State engineer directed staff to develop legal and technical bases for declaring those aquifers that will benefit most from his administration

#### Major Litigation and Appeals Update

- AWRM ("Tristate"): challenge to the state engineer's framework rules for implementing priority administration, whether the water rights to be administered have been adjudicated or not, as directed by the legislature pursuant to Section 72-2-9.1 NMSA 1978; pending before the court of appeals, fully briefed and submitted to the panel for decision
- Domestic Well Statute ("Bounds"): challenge to the constitutionality of the domestic well statute, Section 72-12-1.1 NMSA 1978; pending before the court of appeals, fully briefed, but no panel has been assigned, which must occur before being submitted for decision
- State Land Office ("SLO") Reserved Water Rights: the SLO claimed water rights under the federal reserved water rights doctrine in the San Juan River adjudication; court of appeals upheld the district court's rejection of the SLO's legal theory, and New Mexico Supreme Court denied certiorari; SLO filed for certiorari in the United States Supreme Court, which was denied; after some 20 years, the final decision is that the SLO does not have a federal reserved water right

#### Adjudications Status Report

- Litigation and adjudication program (LAP) just completed its annual report of the status of all pending adjudications, dedicated resources, resource assessment and priorities for FY 2010; state engineer requests opportunity to present report to committee, in light of interest in adjudication reform; information from report will benefit the committee's ability to evaluate reform for potential benefits and possible negative consequences
- Water rights settlement negotiations and settlement update will be summarized with presentation of annual adjudication report
- Summary of the state engineer's and LAP's comments and considerations on reforms being presented by administrative office of the courts for discussion

#### Questions and comments focused on:

- the use of church records in assessing water rights dates;
- commending the state engineer and the ISC on the use of negotiation rather than litigation in settling the various Indian water rights claims;
- the potential for loss of life and significant property damage resulting from dam safety/failure issues;
- the fact that the use of federal stimulus funds for repair and maintenance of dams is not allowed;
- the availability of federal matching funds for acequia construction programs;
- deep-well aquifers on Albuquerque's west side;
- certification standards for levees; and



There being no further business, the committee adjourned at 1:25 p.m.

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

**July 6-7, 2009**  
**Copper Room, Macey Center**  
**New Mexico Institute of Mining and Technology**  
**Socorro**

**Present**

Sen. Phil A. Griego, Chair  
Rep. Andy Nuñez, Vice Chair  
Rep. Paul C. Bandy  
Rep. Ray Begaye  
Rep. Joseph Cervantes (July 6)  
Sen. Mary Jane M. Garcia (July 6)  
Rep. Thomas A. Garcia  
Rep. William J. Gray  
Sen. Clinton D. Harden, Jr.  
Rep. Larry A. Larrañaga  
Rep. Kathy A. McCoy  
Sen. George K. Munoz (July 6)  
Sen. Mary Kay Papen  
Sen. Sander Rue

**Advisory Members**

Sen. Vernon D. Asbill  
Rep. Anna M. Crook  
Rep. Brian F. Egolf, Jr.  
Rep. Candy Spence Ezzell  
Sen. Timothy Z. Jennings (July 6)  
Sen. Cisco McSorley  
Sen. Nancy Rodriguez (July 6)  
Rep. Don L. Tripp  
Sen. Peter Wirth (July 6)

**Absent**

Rep. Dona G. Irwin  
Sen. Steven P. Neville  
Sen. Gerald Ortiz y Pino  
Rep. Mimi Stewart

Sen. Rod Adair  
Sen. Carlos R. Cisneros  
Rep. Nora Espinoza  
Sen. Dede Feldman  
Sen. Gay G. Kernan  
Rep. Ben Lujan  
Rep. James Roger Madalena  
Rep. Danice Picraux  
Rep. Henry Kiki Saavedra  
Rep. Jeff Steinborn  
Rep. James R.J. Strickler

**Guests**

The guest list is in the original meeting file.

## **Staff**

Jon Boller  
Gordon Meeks  
Jeret Fleetwood

## **Monday, July 6**

The second meeting of the Water and Natural Resources Committee was called to order by Senator Phil A. Griego, chair, at 10:05 a.m.

### **Introduction and Welcome**

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

Dr. Daniel H. Lopez, president of the New Mexico Institute of Mining and Technology, welcomed the committee to Socorro and thanked them for coming. He also discussed the importance of the committee, and water in general, to New Mexico's overall well-being. Dr. Lopez also discussed the aquifer mapping project with which the school is currently involved.

### **State Parks Division Projects, Fees and Proposals**

David J. Simon, director of the State Parks Division of the Energy, Minerals and Natural Resources Department, provided the committee with testimony regarding New Mexico's state parks. He began by providing the committee with an overview of New Mexico's state parks system, noting that there are currently 34 state parks in the state with number 35 already on the way. Mr. Simon went on to discuss the revenue and fees that fund the state parks system, pointing out that only about one-third of state parks' operating budget comes from the general fund, while the rest is self-generated revenue, mostly from fees. He noted that state park visitation reached its peak in the mid-1990s, then dropped off somewhat and is rising again. Mr. Simon pointed out that much of the revenue the parks receive is tied to water and the boat industry and that declines in water levels at many of New Mexico's lakes during the first half of this decade help account for a drop in revenues.

Mr. Simon went on to discuss camping fees at state parks, explaining that those fees have remained unchanged since 1998 and that raising them is being considered. He pointed out that New Mexico's camping fees are by far the lowest among neighboring states. Mr. Simon also discussed a bill introduced during the 2009 legislative session that would have raised the fees for boat registration and change registration to a two-year cycle. He noted that the bill failed to pass even though New Mexico would still have the lowest boat registration fees in the region. He indicated that the department would like to reintroduce the bill next session and that he hoped the committee would endorse the bill.

Comments and questions focused on the following topics:

- the difference between commercial and recreational boats is that a concession permit may be required to operate a commercial boat;

- fees collected from New Mexico residents and out-of-state visitors are about equal;
- the difficulty in trying to generate income by raising fees for out-of-state visitors versus the simplicity of raising all fees by a dollar or two;
- the ability of the State Parks Division to raise fees administratively;
- 56 public hearings were held the last time camping fees were raised;
- capacity issues on lakes;
- state park fees are based on vehicles;
- jail time is a possibility for those who refuse to pay park fees;
- there is a lack of facilities in some parks;
- the amount of income that the State Parks Division receives from citations; and
- the 1998 camping fee increase raises about \$400,000 a year for the State Parks Division.

Mr. Simon then discussed the development of the Rio Grande Trail. He explained that, once completed, the trail will run parallel to the river from Bernalillo to Belen and that progress on the trail is being made. Mr. Simon indicated, however, that funding for the trail is coming from a number of sources and that construction of the trail itself and the resolution of management issues particular to a linear park will take time. Last session, he said, the State Parks Division supported House Bill 273, which amended the State Trails System Act and passed the house without opposition. He urged the committee to support its reintroduction during the next legislative session.

Questions and comments focused on such topics as:

- liability issues with private landowners along the trail; and
- legal protection provided by the original State Trails System Act.

Finally, Mr. Simon discussed new and future state parks. He noted that Pecos Canyon State Park had been created by the 2009 legislature and that a feasibility study on a Shiprock state park had recently been conducted. Mr. Simon explained that the study found that a state park in the Shiprock area would only work as a partnership between the state and the Navajo Nation, and he outlined some of the issues related to such a partnership.

Questions and comments focused on the following topics:

- golden algae problems in Brantley State Park;
- the difference between state parks and state monuments;
- that the potential benefit to merging the State Parks Division and the State Monuments Division would likely be some increased administrative effectiveness;
- the Navajo Nation owns the land where the Shiprock monument is proposed;
- Eagle Nest visitors' center issues;
- disagreement between the State Parks Division and the Department of Transportation over responsibility for state park road maintenance;
- sovereignty and funding are two major issues that remain unresolved regarding a Shiprock state park;

- the amounts of money already appropriated and still needed to complete work on Pecos Canyon State Park; and
- the potential use of federal stimulus money for Pecos Canyon State Park.

### **Invasive Species Update**

Dave Mohr provided the committee with an update regarding problems New Mexico may be facing from Quagga and Zebra mussels. He explained that House Bill 467, passed during the 2009 legislative session, directed the Department of Transportation and law enforcement agencies to begin checking boats that had been in out-of-state waters for both species. Mr. Mohr went on to note that once the mussels get into a body of water, they multiply extremely quickly and can cause tremendous problems for boaters, swimmers and most other forms of life already inhabiting the water. He indicated that the mussels have already been found in neighboring states and that the Department of Game and Fish estimates that the mussels will make their way into New Mexico by the end of the summer. Mr. Mohr went on to explain that the best way to cleanse boats of the mussels is to spray them with Formula 409, a commercial cleaner, that has been heated to 182 degrees, pointing out that anything that touches the water, including motors, anchors, trailers and hulls, needs to be cleaned. Finally, Mr. Mohr noted that while HB 467 did direct agencies to begin checking boats, it did not provide funding for equipment to clean them, which he estimated would cost between \$4 million and \$7 million. The committee expressed concern that no one seemed to be taking the lead in coordinating the effort to deal with the problem and suggested that staff contact the appropriate agencies to see what efforts were being made on controlling the problem and to invite them to report at the next meeting of the committee.

### **Valencia County Integrated Regional Water and Wastewater Master Plan**

Eric Zamora, Valencia County manager; Tim Karpoff of Karpoff and Associates; and Kelly Collins of CDM provided the committee with an overview of Valencia County's project to manage its water and wastewater issues better. They explained that the Integrated Regional Water and Wastewater Master Plan comprises four interlocking parts: concepts to guide construction of physical infrastructure, policy guidelines, countywide programs and an organizational framework. The group went on to explain that the project evolved from a drought preparedness and water conservation pilot project into a conceptual-level plan for water and wastewater infrastructure to support projected population growth and land use issues for the next 40 years. They stressed that the proposals that came out of the process came from participants, such as the county and municipalities, that have traditionally not worked well together on water planning issues. And while such cooperation was not easy at first, they noted that once the various parties to the process realized their input was being taken seriously, the planning process produced results that all parties could agree to. There was no minority report.

Mr. Zamora, Mr. Karpoff and Ms. Collins went on to outline the various aspects of the project, including community outreach, naming of a citizens' advisory board and efforts to change the way citizens and planners conceive of regionalization. They also discussed the three phases of the master planning process: understanding existing conditions and projecting future growth and water use trends; examination of alternatives; and development of the actual master

plan. The group noted that they had completed the first phase of the master planning process and initiated its first project, an extension of Bosque Farms' wastewater system to Peralta.

Questions and comments focused on the following topics:

- how Valencia County's plan interacts with the statewide regional water plan;
- the makeup of the entity charged with overseeing and implementing the master plan;
- that no funding requests will be made until a formal entity is formed;
- the involvement of the Office of the State Engineer in the process;
- the development of policies for water use and development that cross municipal boundaries;
- the plans for physical structures and consistent development and growth policies;
- the inclusion of Valencia County land grants in the planning process; and
- the role of planning and zoning in the overall process.

### **Conservation Fund Report**

Karen Gallegos, director of the Water and Wastewater Infrastructure Development Division of the Department of Environment, provided the committee with an update on the status of the Water Conservation Fund. She began by explaining that the fund comes from a fee of three cents per thousand gallons of water produced by all public water system operators in the state and that it is primarily used to test public water supplies for contaminants. Ms. Gallegos went on to provide the committee with data regarding the amount in the fund and expenditures made from the fund since 2007.

Questions and comments focused on the following topics:

- that the reduction of salaries and benefits by \$160,000 in the fund is due to a switch to federal dollars for that purpose;
- that the money spent on contract sampling is down in some years because sampling runs in three-year cycles;
- that a request for proposals was issued for chemical laboratory costs;
- that the Albuquerque Bernalillo County Water Authority does in-house sampling now and therefore does not need the state to perform water sampling services;
- that the geographic spread of sampling sites necessitates the use of several different laboratories and that consolidating them into one lab would create more problems than it solves; and
- the three-cents-per-thousand-gallons fee is charged for all water used for domestic purposes.

Due to a number of questions related to how federal and state funds are allocated among various programs for various purposes, the committee asked Ms. Gallegos to request the Department of Environment to attend the August or September meeting of the committee and present a full report on what state and federal funds are being used for administrative expenses, salaries and projects related to the Drinking Water State Revolving Loan Fund, the Water Conservation Fund and any federal stimulus money the department has received.

### **Off-Highway Vehicle Regulatory Changes — Laws 2009, Chapter 53**

Tod Stevenson, director of the Department of Game and Fish, provided the committee with an update on New Mexico's Off-Highway Vehicle (OHV) Program. He explained that Senate Bill 379, introduced, passed and signed by the governor during the 2009 session, transferred the OHV Program from the Tourism Department to the Department of Game and Fish as well as established new regulations for the registration and operation of OHVs. Mr. Stevenson began by discussing the memorandum of understanding between the two agencies to coordinate the transition of the program from one department to the other.

Next, Mr. Stevenson discussed implementation of the new regulations. He provided the committee with an overview of the public outreach efforts geared toward educating the users about the new OHV regulations, particularly the safety training program required of riders under 18 years old. Mr. Stevenson pointed out that one of the concerns that has arisen is the cost of enrollment in the safety training program. He indicated that the Department of Game and Fish may attempt to devote some funding to paying instructors to offer free or significantly reduced-cost safety classes. Mr. Stevenson also discussed enforcement efforts for the new regulations, noting that the Department of Game and Fish met with concerned individuals from the Jemez Mountain area before performing a law enforcement sweep in the Jemez Mountains and Pecos Canyon in late June 2009. He also noted that the Department of Game and Fish plans to request that the Department of Public Safety Board require an OHV training course for all certified peace officers.

Finally, Mr. Stevenson discussed ongoing and planned efforts to operate the OHV Program web site called for in the bill as well as plans that the Game and Fish Department has to improve the OHV Program. He indicated that those plans include modification of the rules dictating the size and agency attachment of the board that oversees the OHV Program and the language regarding instructors for the safety certification program.

Questions and comments focused on the following:

- the board is appointed entirely by the governor;
- whether the Department of Game and Fish has adequate staff to administer the OHV Program;
- the drain on department resources that hunting season and administration of the OHV Program will likely cause;
- memoranda of understanding with law enforcement agencies for enforcement of new regulations;
- registration fees charged to out-of-state residents;
- exemptions for OHVs used for agricultural uses;
- penalties for DWIs on OHVs are covered by the statute governing highway vehicle DWIs;
- the laws New Mexico has developed regarding OHVs are used as a model for other states seeking to address the issue of OHV safety and registration;
- an institute of off-road safety is currently compiling data on OHV safety;
- the money that citizens have to spend to be able to operate their OHVs; and

- much of the effort to pass legislation regarding OHVs stems from a desire to protect wildlife and the environment, but there is not much language in the final version of the bill that actually addresses those concerns.

### **Elk Population Management and Depredation and Landowner Takings Policies — SB 391 (2009)**

Mr. Stevenson provided the committee with an update regarding the issue of elk population management. He explained that the growing elk population in New Mexico is causing an increasing amount of damage to private property across the state. Mr. Stevenson went on to note that a number of bills have been introduced over the last few years to attempt to help landowners address the issue, most recently Senate Bill 391, introduced during the 2009 session. However, he indicated that the bill failed because stakeholders failed to reach a compromise on two issues: the bill's focus on agricultural crops rather than including rangeland and other types of private property and concerns of livestock producers over competition between elk and other types of wildlife.

Mr. Stevenson went on to note that the current economic climate has only served to intensify the problem. For example, he relayed the concern expressed by many landowners that the hunting permits issued by the state, which allow property owners to receive some compensation for the damage done by elk, will not be enough this year to make up for the damage done by elk to their property. Mr. Stevenson also noted that getting a bill passed that stakeholders can agree upon during a 30-day session will be rather difficult. However, he indicated that the Department of Game and Fish has provided the Governor's Office with a proposed bill in hopes that it will be part of the governor's call for the 2010 session. Mr. Stevenson also noted that his department is working with several groups on elk population issues to try to resolve some concerns before the session begins.

Questions and comments focused on the following:

- because SB 391 did not pass during the 2009 session, the Department of Game and Fish rules regarding elk herd management are still in place;
- the work done so far to address the issues surrounding elk population management;
- the capability of the department to investigate damage to crops; and
- the difficulty for ranchers to make a living because of the damage wildlife causes to their property.

On a motion made, seconded and approved, the minutes of the June 5, 2009 meeting were approved.

### **Tuesday, July 7**

Debbie Hughes of the soil and water conservation districts addressed the committee regarding flood protection dams. She explained that 50 years ago, federal money was being disbursed for flood protection dams to anyone who could find a local sponsor, such as an irrigation district or a soil and water conservation district. Ms. Hughes indicated that there are

flood protection dams all over the state, but that many of them have not been maintained and are getting old. She also pointed out that several now have subdivisions or other types of development beneath them. Ms. Hughes went on to explain that there appears to be some issue over liability for the dams. She said the Coronado Soil and Water Conservation District in Bernalillo County contacted the Risk Management Division (RMD) of the General Services Department about liability and was told that soil and water conservation districts are not covered under division policy. She also indicated that the RMD has changed its policy, raising premiums so that if soil and water conservation districts do seek coverage, they often cannot afford the premiums. Ms. Hughes noted that a dam group has been formed to address issues surrounding dams, and she asked if she could bring more information on the issue to a later meeting of the committee. The chair asked staff to work with Ms. Hughes to schedule a presentation on the dam issue at a future meeting.

Howard Hutchison of Silver City extended an invitation to the committee to tour the San Francisco River area on the Sunday before the committee's September meeting. Senator Griego directed staff to send a notice to committee members about the tour.

### **Seizure and Brand Inspection of Livestock – Proposed Legislation**

Caren Cowan, executive director of the New Mexico Cattle Growers' Association, and Miles Culbertson, director of the New Mexico Livestock Board, provided the committee with copies of a bill introduced during the 2009 session that would have provided clarification to the livestock board regarding cattle ownership and branding. They noted that the bill did not pass.

Mr. Culbertson explained that a brand provides final authority on cattle ownership and that federal authorities have seized livestock grazing on federal land. He pointed out that there is a difference between animals that have been seized and those considered strays, explaining that cattle bearing a brand clearly identifying ownership are seized while those without any brand are considered strays. Mr. Culbertson noted that seizures are typically performed by counties, mostly in animal cruelty situations.

Ms. Cowan indicated that there have been cases in neighboring states in which the federal government seized livestock, moved them to another state and sold them without a court order. Mr. Culbertson and Ms. Cowan indicated that they would like the committee to endorse the bill from the 2009 session for introduction in the 2010 session.

Questions and comments focused on the following:

- that wild horses are being turned loose on federal land and the ability of the government to seize or otherwise take them;
- the lack of an outlet in the United States for horse slaughter, which the bill does not address;
- the reasons a livestock owner would not brand cattle;
- the reasons for federal seizure of livestock;
- the definitions of "animal" and "livestock" in the proposed bill;

- the methods of branding or otherwise marking livestock;
- that the purpose of the bill is to protect the livestock board from a lawsuit involving a seized animal;
- the unlikelihood of a federal agency to go along with a New Mexico court decision;
- a horse slaughter law in Montana passed two months ago;
- the need to get a bill on the governor's call for the 2010 session; and
- a court case involving a seized animal and a confrontation with a federal marshal.

### **Aquifer Mapping Project**

Peter Scholle, state geologist and director of the Bureau of Geology and Mineral Resources of the New Mexico Institute of Mining and Technology, and Peggy Johnson, associate director of Hydrogeologic Programs at the Bureau of Geology and Mineral Resources, provided the committee with an update on the status of the Aquifer Mapping Project. Ms. Johnson explained that mapping is a multidisciplinary science that involves geologic mapping, geophysical surveys, hole-drilling, 3-D geologic modeling, hydrologic data, geochemical mapping and ground water flow models. Ms. Johnson went on to list the various partners and users of aquifer mapping, including academic institutions, state and federal agencies, local and tribal governments and soil and water conservation districts. She then provided the committee with an overview of the active and completed projects, including ones in the Santa Fe area, the southern Sacramento Mountains and Taos County. Finally, Ms. Johnson discussed potential future projects, including deep aquifer characterization, uranium and mining legacy issues and carbon sequestration.

The committee asked Dr. Scholle to submit a formal proposal on deep aquifer characterization, given the huge interest various parties have shown in the past year in drilling for sources of nonpotable water located in deep aquifers across the state. The committee requested staff to write a letter to the governor in support of Dr. Scholle's proposal requesting the governor to expend some of the federal stimulus money to fund the proposed project.

Questions and comments focused on the following:

- the importance of the statewide aquifer map;
- federal stimulus money for mapping projects;
- inclination of the U.S. Geological Survey to put federal stimulus money into bricks-and-mortar projects;
- discretionary funding to which the Governor's Office may have access;
- surveys, tests of salinity and costs of drilling holes to map deep aquifers;
- the risk of contamination from bringing high-quality water through areas with contaminated or lower quality water;
- the use of horizontal drilling to get access to some aquifers;
- the location of the St. Augustin survey on the list of priorities to survey;
- the reliability of information on unmapped areas that can drive policymaking;
- that hydrologists derive their assumptions based on gravity surveys, believed material makeup and porosity, among other factors;
- the status of the application for stimulus money for aquifer mapping;

- the process involved for procuring federal stimulus money from the Governor's Office; and
- rechargeable basins in New Mexico.

### **New Mexico Dairy Industry Issues**

Sharon Lombardi and T.J. Trujillo of the Dairy Producers of New Mexico provided the committee with an update on the status of the dairy industry both in New Mexico and nationally. Ms. Lombardi began by providing the committee with a brief overview of the agriculture and dairy industries. She explained that the overall number of dairy farms in the United States has sharply declined over the last 50 years, with New Mexico currently having over 172 dairies. Ms. Lombardi then noted that the average New Mexican dairy is a small family business possessing about 2,000 cows and producing roughly 42 million pounds of milk per year and employing about 10 direct and 92 indirect employees.

Next, Ms. Lombardi discussed dairy economics, explaining that while the dairy industry has a large impact on New Mexico's overall economy and the state's dairy industry compares very favorably to that in other states, costs are at an all-time high and dairies are not allowed to pass their costs on to consumers because of the regulatory system that governs them. She went on to point out that while dairies in the state are losing money, the state can help the industry by sustaining or reducing those costs that affect the industry.

Mr. Trujillo then discussed legislative and regulatory issues affecting the dairy industry. He began by pointing out the importance of the agricultural industry to New Mexico's economy and the environmental stewardship that is a guiding influence on the dairy industry. For example, Mr. Trujillo noted that dairies must submit monthly water readings to the Office of the State Engineer and the New Mexico Department of Environment, unlike other irrigators. He also noted that proper re-use of dairy-generated nutrients actually improves soil quality and reduces the amount of water necessary to grow crops.

Finally, Mr. Trujillo outlined some of the ways state government can help sustain and possibly grow the dairy industry in New Mexico. For example, he recommended adopting new regulations for the dairy industry regarding water quality and ground water discharges. Mr. Trujillo also discussed regulatory reform legislation, which he said would help create a predictable and transparent regulatory system and encourage economic development.

Questions and comments focused on the following:

- that the impact of state government on the costs associated with the dairy industry include regulation by the Departments of Health, Agriculture and Environment as well as the Office of the State Engineer;
- ways to help negate those costs;
- that the price of milk has not dropped enough to trigger federal subsidies for dairy farmers;
- that New Mexico is still very competitive with the dairy industries in neighboring states;

- that number of dairies that have left New Mexico to do business in other states;
- awards given to New Mexico dairies and cheese producers;
- the desire by the dairy industry to have better regulation rather than outright deregulation;
- the impact of the dairy industry on specific economies in New Mexico, such as that in the Roswell area;
- how the price of milk is determined; and
- that the quality of milk produced in New Mexico is recognized as some of the best in the world.

Senator Griego named the following legislators, who expressed an interest in serving on the Acequia Subcommittee, as members of the subcommittee: Representative Thomas A. Garcia will serve as the chair, Representatives Bandy, Begaye and Larrañaga and Senator Ortiz y Pino.

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

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

**August 20-21, 2009**  
**Angel Fire Resort**  
**Angel Fire**

**Present**

Sen. Phil A. Griego, Chair  
Rep. Andy Nuñez, Vice Chair  
Rep. Paul C. Bandy  
Rep. Ray Begaye  
Rep. Joseph Cervantes (August 20)  
Sen. Mary Jane M. Garcia  
Rep. Thomas A. Garcia  
Sen. Clinton D. Harden, Jr.  
Rep. Dona G. Irwin  
Rep. Larry A. Larrañaga  
Sen. Steven P. Neville (August 20)  
Sen. Gerald Ortiz y Pino (August 20)  
Sen. Mary Kay Papen  
Sen. Sander Rue  
Rep. Mimi Stewart (August 20)

**Absent**

Rep. William J. Gray  
Rep. Kathy A. McCoy  
Sen. George K. Munoz

**Advisory Members**

Sen. Rod Adair (August 20)  
Sen. Vernon D. Asbill  
Rep. Anna M. Crook  
Rep. Brian F. Egolf, Jr. (August 20)  
Rep. Nora Espinoza  
Rep. Candy Spence Ezzell  
Sen. Cisco McSorley (August 21)  
Rep. Danice Picraux (August 20)  
Sen. Nancy Rodriguez  
Rep. James R.J. Strickler  
Sen. Peter Wirth (August 20)

Sen. Carlos R. Cisneros  
Sen. Dede Feldman  
Sen. Timothy Z. Jennings  
Sen. Gay G. Kernan  
Rep. Ben Lujan  
Rep. James Roger Madalena  
Rep. Henry Kiki Saavedra  
Rep. Jeff Steinborn  
Rep. Don L. Tripp

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

**Guest Legislator**

Rep. Nathan P. Cote

**Staff**

Jon Boller  
Gordon Meeks  
Jeret Fleetwood

### **Guests**

The guest list is in the original meeting file.

### **Thursday, August 20**

On August 20, 2009, the Water and Natural Resources Committee met jointly with the Courts, Corrections and Justice Committee.

### **Call to Order and Opening Remarks**

Representative Nuñez called the meeting to order, thanked those in the audience for coming and had members of the two committees introduce themselves.

Larry Leahy, mayor of Angel Fire, welcomed the committees to Angel Fire, thanked them for coming and provided them with an overview of the community's history and plans for the future.

### **Institute of Public Law Report on Adjudications (SJM 3) and Comments**

Paul Biderman, director of the Institute of Public Law (IPL), provided the committee with an overview of the process his office used in response to Senate Joint Memorial 3, passed during the 2009 session, which called for the IPL to devise a format for and hold public meetings to obtain public comment on the water rights adjudication process. He began by explaining that the IPL held six meetings between June and August 2009 that were designed to involve water rights stakeholders and focus on four approaches to adjudication reform suggested by the Administrative Office of the Courts (AOC). Mr. Biderman acknowledged that while those goals met with varying degrees of success, some conclusions, based on the discussions held at the forums, could be drawn.

For example, Mr. Biderman indicated that forum participants were generally supportive of the existing law and were generally more concerned with achieving fairness and accuracy of adjudications than with speeding them up. Mr. Biderman also noted that the IPL found a desire among stakeholders to have some type of state-funded entity to provide objective information on the process to the public, mostly borne of a belief among many stakeholders that the Office of the State Engineer (OSE) has conflicting duties that prevent it from being truly neutral.

Finally, Mr. Biderman noted that the IPL believes that it will be difficult to improve water adjudication and administration policies without a joint effort from the OSE and the AOC and relayed its recommendation that the efforts begun in 2008 to examine water adjudication and administration be continued.

John D'Antonio, state engineer, said that while the OSE has chosen not to participate in the process assigned to Mr. Biderman, there are likely valuable insights to be found in the

discussions conducted at the IPL forums. Mr. D'Antonio pointed out what he felt were flaws in the IPL process. He said that the IPL process implies that adjudication processes in other states are better, even though this often has not been borne out by the facts. He also questioned the inclusion of the water rights licensing process as an adjudication reform because that is not an alternative to adjudications. As for greater use of mediation in the adjudication process, Mr. D'Antonio noted that the approach used in the Chama River adjudication is based on the mediation model and has been very successful.

DL Sanders, chief counsel, OSE, explained that while Mr. Biderman's report does reflect a skewed view of the overall issue of water rights adjudications, it was still the result of hard work, and although there are fundamental problems with the process, Mr. Biderman's efforts are nonetheless laudable. Mr. Sanders reminded the committee that in 1998, the legislature was concerned about how long the adjudication process was taking and, in response, commissioned John Thorson to analyze and report on the process. Mr. Thorson's conclusion, Mr. Sanders said, was that it is a basic lack of resources committed to the process that is holding things up. In response, the OSE has tripled the number of personnel working on adjudications, has hired a tribal liaison and an acequia liaison, has added a community liaison in Las Vegas and employed a staff dedicated to adjudications to give consistency to the process and has worked with the legislature to address problems as they arise. Mr. Sanders also noted that the legislature has already created an objective state-funded entity, the Joe M Stell Water Ombudsman Program, that is designed to fulfill many of the functions that stakeholders suggested would help improve the adjudication process in the IPL report.

Bill Hume, special advisor to the governor, provided the committee with some comments regarding Mr. Biderman's presentation, saying that he feels the report is better than he expected. He indicated that the process designed by the IPL and implemented by Mr. Biderman is quite different from the public meetings called for in SJM 3. Mr. Hume noted that the public forums were actually invitation-only meetings and that at times the process gave the impression that the sponsors lacked adequate working knowledge of the complexities and nuances associated with water law. Mr. Hume also complained that the topics of the meetings represented a small, arbitrary sampling of the topics discussed by the adjudication working group, made up of representatives from the OSE and AOC.

Mr. Hume went on to indicate that the OSE has made Mr. Biderman aware first of the potential problems with his approach and later of the errors in his original fact paper. Finally, Mr. Hume noted that he feels that the discussions at the forums focused, fairly or not, on problems and perceptions of the OSE and not on a collaborative process to improve adjudications.

Celina Jones, AOC, thanked the IPL for taking on this very complex issue and noted that the IPL has made a good-faith effort to create a process for public input. She added that the AOC remains committed to adjudication reform and that it will continue to work on the issue.

State District 3 Judge Jerald Valentine gave accolades to Mr. Biederman and the IPL for their work. He said there are no surprises in the report's conclusions and agreed that more resources need to be dedicated to explaining the adjudication process before it starts in a particular river basin. Accordingly, he stressed that the Joe M Stell Water Ombudsman Program is vital to the process and must survive any proposed budget cuts and that cuts in the adjudication process in general would be bad, as would trying to speed up the process. Addressing the report's conclusions, Judge Valentine observed that there is nothing fundamentally wrong with the adjudication statutes — rather, many of the criticisms of the OSE and the process come from the past. As for the use of mediation in the process, he explained that it is already used in the Lower Rio Grande adjudication, but he cautioned that it is not the same as that used in other civil cases because the OSE cannot "give away" water in the process. Finally, the suggestion that associations be able to represent individual water rights holders raises serious legal questions, he said, because they must first have the legal authority to represent a group.

Paula Garcia, executive director, New Mexico Acequia Association, expressed her strong support of the SJM 3 process, though she said the association had hoped to play a larger role in the process. She said that the report's conclusions are consistent with acequia concerns, noting that the hydrographic survey is a positive part of the current process and that the association has serious concerns about proposals to switch to a more claims-based system. The Chama River approach to adjudications, she said, is good, and, though the adjudication process in general is imperfect, the association agrees that no major statutory changes need to be made.

### **Adjudications Status Report**

Greg Ridgely, deputy chief counsel, OSE, provided the committee with an overview of the various adjudications across the state. He began by providing the committee with a map that shows the areas in New Mexico that were already adjudicated, involved in active cases or not yet adjudicated. He then went into detail about several active adjudications, particularly those in northwest and north central New Mexico. He explained how the adjudication process being conducted along the Gallinas River, in the Upper Chama basin, has been modified by the OSE to accommodate the nature of adjudications in the area better and how it has served as a blueprint for adjudications in other basins. However, Mr. Ridgely emphasized that an approach that works well in a small basin might not work as well in a more contentious basin, though he did acknowledge that establishing satellite offices staffed with representatives somewhat familiar with the specific concerns of a given region has helped establish a less adversarial stance than many stakeholders associated with the OSE in the past.

Asked about an end date for the various adjudications, Mr. Ridgely estimated it would take about 15 years. Mr. Sanders replied that the courts all have schedules and that he could provide the committee with a chart of each of the active cases. Vicki Gabin, a federal magistrate judge, cautioned the committee, that although the legislature could give the OSE more money to speed the conduct of adjudications, the OSE is just one party in an adjudication case that also includes tribes, acequias, irrigation districts, the federal government, local governments and individuals. Asked what resources he would need to expedite adjudications, Mr. D'Antonio

explained that the legislature had given the OSE a dedicated source of funding for adjudications with the passage of HB 1110 a few years ago, but later on the OSE's general fund appropriation was cut by an equivalent amount. Asked if the Middle Rio Grande was included in the 15-year estimate, Mr. Ridgley answered no, and he added that, using the entire \$7 million budget of the OSE, it might take 40 years to complete because of the size and complexity of the issues in that area. He explained that no other state has as many adjudications as New Mexico and that because of the difficulty in developing in-house expertise, it is best to finish the current adjudications before starting another one. That way, he said, sufficient resources can be committed to the Middle Rio Grande, and planning can be done before filing, rather than the other way around.

### **Water Litigation Update**

Mr. Sanders provided the committee with an update regarding the status of various cases pending before state courts involving water rights. Mr. Sanders said he would provide a written summary of this testimony to the committee.

### **Strategic Water Reserve Status**

Estevan Lopez, director of the Interstate Stream Commission (ISC), introduced Amy Haas as the new general counsel to the ISC. He then provided the committee with an overview regarding the status of the strategic water reserve. He explained that the legislature authorized the creation of the strategic water reserve in 2005 to provide a buffer between water shortages and the demands of water users. He gave the committee a brief history of the reserve, noting that it was intended to provide the state with a tool to buy and lease water storage rights from willing sellers to be used for two purposes: interstate compact compliance and protection of threatened and endangered species.

Mr. Lopez went on to detail specific projects involving the strategic water reserve, particularly those along the Pecos River and the Rio Grande, noting that the more water the ISC can place in the reserve to cover species and compact needs, the less potential for federal intervention or curtailment of individual water rights. Currently, the funding for the reserve is \$600,000, he said.

### **Pecos River Settlement Update**

Mr. Lopez provided the committee with an update on the status of the implementation of the Pecos River Settlement. He began by providing the committee with an overview of the history of the Pecos River Settlement, explaining that past lawsuits between New Mexico and Texas mandate that New Mexico will no longer be able to under-deliver on its Pecos River Compact deliveries. Mr. Lopez went on to note that in 2001, a compact delivery shortfall was anticipated, which led to a short-term plan to avoid a shortfall in 2001 and the negotiation of a long-term plan to avoid future problems.

Mr. Lopez went on to explain that the Pecos River Settlement was the result of efforts conducted by an ad hoc committee of water stakeholders in the area composed of representatives from the irrigation districts, municipalities, counties, industry and various other water users

along the lower Pecos River. Mr. Lopez explained that the Pecos River Settlement involved sacrifices by many water rights owners along the river, coupled with the purchase of parcels of land and the retirement of water rights associated with those parcels.

Mr. Lopez also discussed the various other aspects of the settlement, including drilling of augmentation wells and their anticipated pumping capacities that would be diverted into surface flows to help meet compact delivery obligations. He also addressed benefits of the settlement to the various irrigation and conservancy districts in the region, including the Pecos Valley Artesian and Conservancy District and the Carlsbad Irrigation District, emphasizing that the settlement provides for short-term protection from priority calls as well as long-term protection of recognized water rights for area irrigators.

Mr. Lopez went on to note other benefits of the settlement, including protection of organisms protected under the federal Endangered Species Act of 1973. He also explained that implementation of the settlement is almost complete, with a ceremony acknowledging complete implementation of the terms of the settlement scheduled for September 10, 2009.

#### **State Engineer Jurisdiction Over Deep Aquifers — Implementation of HB 19 (2009)**

Mr. D'Antonio gave a brief history of the statutes governing the appropriation of nonpotable (brackish) water from aquifers located at a depth of 2,500 feet or more. The first deep well drilled pursuant to the original 1967 statute was drilled near Rio Puerco in 1997, he said, and since then, the OSE has received 64 notices of intent to drill 607 more wells with potential appropriations of 1.7 million acre-feet of water annually. Only six or seven wells have actually been drilled so far, he observed. The provisions of House Bill 19 (2009), he explained, require prospective appropriators to follow the normal application process before making any appropriations for supplying drinking water, for example, from a declared deep-water aquifer basin. Most other commercial, industrial and agricultural uses are exempt from the added procedures required by the statute, he added. Asked if the bill really changes anything, Mr. D'Antonio replied that the OSE makes a distinction between a notice of intent to drill and a notice to appropriate water, and this should make a difference once a basin is declared. The OSE is still in the process of promulgating rules to implement the law, he added.

The committee recessed at 5:30 p.m.

#### **Friday, August 21**

The committee was called to order by the vice chair, Representative Andy Nuñez, at 8:50 a.m.

#### **Urban-Rural Communities At-Risk Program**

Dr. Kent Reid, interim director, New Mexico Forest and Watershed Restoration Institute (FWRI), explained that the institute was established by the federal Southwest Forest Health and Wildfire Prevention Act of 2004 to demonstrate and promote the use of adaptive ecosystem management to reduce the risk of wildfires and restore the health of fire-adapted forest and

woodland ecosystems in the interior of the American West. The FWRI is working on 44 projects in 18 counties in New Mexico, he said, which projects are designed to promote the restoration of the historic structure of vegetation, principally through the removal of small-diameter trees and reintroduction of the historic fire regime in the forest and woodlands of the state.

### **Ute Pipeline Authorization and Proposed Legislation**

Gayla Brumfield, mayor of Clovis, and Scott Verhines, project manager, Eastern New Mexico Rural Water System, presented legislation to the committee that would create a formal authority to construct a pipeline and distribute water from the Ute Reservoir to its members. They explained that they had been operating under a joint powers agreement, but now that federal authorization has come through, a more formal structure is necessary to carry out the project. Mr. Verhines said that members of the authority will be financing 10 percent of the \$436 million capital cost of the project, with 15 percent coming from the state and 75 percent from the federal government.

### **Controlling Aquatic Invasive Species — Zebra Mussels**

Bob Jenks, deputy director, Department of Game and Fish (DGF), and Barbara Colter, coordinator of the DGF's Aquatic Invasive Species (AIS) Program, thanked the committee for supporting legislation last year (SB 467 (2009)) that allows for the regulation of exotic and non-native species, such as quagga and zebra mussels. Ms. Colter stressed that education and awareness of the problems that an AIS poses is vital to programs designed to limit the damage caused by an AIS. The Department of Environment and the Energy, Minerals and Natural Resources Department, she said, are working with the DGF to keep quagga and zebra mussels out of New Mexico's waterways, and, though the DGF currently has no decontamination equipment, it will be purchasing some in the next few months. Though no contamination of lakes in the state has yet been confirmed, Ms. Colter warned that the state is at great risk. Discussion included the possibility of increasing boat registration fees to help pay for the program, the number of staff needed to administer the program and the problems posed by disposal of water used to decontaminate boats.

### **New Mexico Rural Water Association Concerns**

Matthew Holmes, executive director, and Clarence Aragon, president, New Mexico Rural Water Association (NMRWA), presented the association's annual report to the committee. Mr. Holmes explained that the NMRWA assists the state's 400 rural water systems with training of system operators, and it lobbies Congress for continued funding of rural water systems. He expressed the NMRWA's strong support for the state-imposed water conservation fee, which he said is unique in the United States and helps pay for the testing of water, vulnerability assessments of systems and operator training. Without the fee, many rural systems would shut down, he said, something that has already happened in neighboring Texas and Arizona. Current concerns of the NMRWA, he said, include replacement of retiring operators, new ground water rules, system funding and emergency preparedness. Mr. Holmes requested that the NMRWA be allowed to present its annual report to the committee on a regular basis.

The committee adjourned at 1:30 p.m.



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

**September 21-22, 2009  
Grant County Business Center  
Silver City**

**Present**

Sen. Phil A. Griego, Chair  
Rep. Andy Nuñez, Vice Chair  
Rep. Paul C. Bandy  
Rep. Joseph Cervantes  
Sen. Mary Jane M. Garcia (September 21)  
Rep. William J. Gray  
Sen. Clinton D. Harden, Jr. (September 21)  
Rep. Larry A. Larrañaga  
Sen. Gerald Ortiz y Pino (September 21)  
Sen. Mary Kay Papen  
Sen. Sander Rue  
Rep. Mimi Stewart

**Advisory Members**

Sen. Rod Adair  
Sen. Vernon D. Asbill  
Rep. Anna M. Crook  
Rep. Nora Espinoza  
Rep. Candy Spence Ezzell  
Sen. Cisco McSorley  
Rep. Jeff Steinborn  
Rep. James R.J. Strickler  
Rep. Don L. Tripp  
Sen. Peter Wirth

**Guest Legislators**

Rep. Andrew J. Barreras  
Sen. Linda M. Lopez  
Sen. Richard C. Martinez  
Rep. Rodolpho "Rudy" S. Martinez

**Absent**

Rep. Ray Begaye  
Rep. Thomas A. Garcia  
Rep. Dona G. Irwin  
Rep. Kathy A. McCoy  
Sen. George K. Munoz  
Sen. Steven P. Neville

Sen. Carlos R. Cisneros  
Rep. Brian F. Egolf, Jr.  
Sen. Dede Feldman  
Sen. Timothy Z. Jennings  
Sen. Gay G. Kernan  
Rep. Ben Lujan  
Rep. James Roger Madalena  
Rep. Danice Picraux  
Sen. Nancy Rodriguez  
Rep. Henry Kiki Saavedra

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

**Guests**

The guest list is in the original meeting file.

**Staff**

Jon Boller

Jeret Fleetwood

**Monday, September 21**

Representative Martinez, also the mayor of Bayard, welcomed the committee members to southwestern New Mexico and thanked them for coming.

James Marshall, mayor of Silver City, also welcomed the committee to Silver City. He provided the committee with an overview of some of the economic development initiatives currently underway in Silver City and in southwestern New Mexico.

**Wolf Reintroduction Problems in Catron County**

Ed Wehrheim, a Catron County commissioner, provided the committee with testimony regarding reintroduction of the Mexican grey wolf in Catron County. He explained that while the program costs about \$400,000 per wolf, the price paid by area landowners is much steeper, estimating that wolves will kill 7,000 animals in the area over the next five years. Mr. Wehrheim went on to explain that about 300 documented cases of wolf depredation or contact with humans have been reported over the past three years and stated that wolves have even gone so far as to invade homes and kill household pets.

Mr. Wehrheim then noted that a petition had been filed with the federal Department of the Interior to designate critical habitat areas for wolves and afford them full protection offered to endangered species. He indicated that the driving force behind the petition, and wolf reintroduction in general, was the Center for Biological Diversity in Tucson, Arizona.

Questions and comments included:

- wolves are roaming well outside their estimated range;
- critical habitat issues;
- whether landowners are compensated for property damage caused by wolves;
- the U.S. Fish and Wildlife Service and the Department of Game and Fish (DGF) are the agencies spearheading wolf reintroduction, with the DGF a full partner in the program;
- the wolf reintroduction program began in 1995;
- the influence of environmental groups on policy that affects small, rural communities;
- use of the federal Endangered Species Act for uses other than its original purpose; and
- lack of decline in deer and horse populations in Catron County.

Michael Robinson of the Center for Biological Diversity also provided the committee with testimony regarding wolf reintroduction. He pointed out that while he is the author of the

petition submitted to the Department of the Interior, he is also a Grant County landowner with some understanding of multiple sides of the issue. Mr. Robinson went on to explain that while the petition does call for critical habitat for the Mexican grey wolf, it also seeks to have the wolves designated as their own species, rather than as part of a larger listing, which allows for eventual delisting of protected species. He also indicated that the large number of depredation cases cited by Mr. Wehrheim are not confirmed, and that there are, in fact, compensation programs for landowners. Finally, Mr. Robinson noted that there is significant public support of wolf reintroduction and that most of the public money spent on wolf reintroduction programs actually goes toward tracking and trapping wolves rather than on habitat.

Questions and comments included:

- memorandum of understanding between the U.S. Fish and Wildlife Service and four other entities, including the DGF;
- Wildlife Defenders helps pay for some depredation compensation, and its funding comes from membership dues;
- potential changes to New Mexico law to encourage or limit wolf reintroduction;
- wolves have been proven to have killed livestock;
- solutions such as outdoor zoos, while well-intentioned, may actually frustrate efforts to preserve original ecosystems;
- Research and Polling, Inc., conducted the poll that revealed that 61 percent of those asked supported wolf reintroduction; and
- dues payments also help fund the Center for Biological Diversity.

### **Dam Liability Issues**

Elaine Pacheco, bureau chief of the Dam Safety Bureau of the Office of the State Engineer (OSE), provided the committee with testimony regarding dam safety issues. She explained that the OSE is responsible for dam safety and annually lists those dams with hazard potential. She pointed out that the rating system changed in 2008, which has resulted in many more dams being rated as in poor condition, though several dams are listed as being in poor condition simply because of insufficient documentation.

Ms. Pacheco went on to discuss the problem of hazard creep, explaining that many dams originally built to protect farmland now have subdivisions beneath them, which dramatically increases risks to businesses, homes and lives. She noted that hazard creep often occurs when county and municipal governments approve developments on lands lying below existing dams that were originally designed to protect agricultural lands, without making the developer take responsibility for any needed improvements to flood control facilities. In the case of Piedra Liza dam, just to the east of the Town of Bernalillo, neither the county nor the city has taken responsibility for the dam, and yet developments downstream of the dam have been approved. Only the Coronado Soil and Water Conservation District has stepped up to help with an emergency management plan for the area and maintenance of the dam. Ms. Pacheco pointed out that current statutes do not allow the bureau or soil and water conservation districts to prohibit, or place conditions on, construction below dams, and cities and counties have no incentive to take responsibility for dam safety or make developers do so. Roger Ford of the Natural

Resources Conservation Service (NRCS) agreed that there is no rule or law that requires developers to improve or pay for infrastructure, such as dams, and added that that may have to change.

Debbie Hughes, executive director of the New Mexico Association of Soil and Water Conservation Districts, discussed dams owned or sponsored by soil and water conservation districts, noting that most of the dams classified as being in poor condition are listed as such because of the lack of critical design information about them. Many of these dams, she said, were originally constructed by the NRCS 40 or 50 years ago, on condition that local governments take responsibility for maintaining the dams. Approximately 60 of the 102 dams constructed by the NRCS are owned by soil and water conservation districts across the state, according to Ms. Hughes. She also addressed a dam managed by the Coronado Soil and Water Conservation District, located above land that Bernalillo wants to annex and a developer has plans on which to build a shopping mall. She explained that new construction just beneath the dam will alter the dam's outflow and create additional liability problems due to the increased number of people that will come and go from the area. The required emergency action plans for dams cost between \$20,000 and 450,000, which the soil and water conservation districts can ill afford.

Ms. Hughes then explained that soil and water conservation districts do not receive much funding from the state and most are too small to be able to generate income through mechanisms like mill levies. She went on to explain that soil and water conservation districts recently received invoices from the state's Risk Management Division (RMD) of the General Services Department for insurance premiums, despite the fact that they have historically been covered. Ms. Hughes noted that while soil and water conservation districts are political subdivisions of the state, with members paying state health insurance premiums and contributing to the Public Employees Retirement Association, they receive minimal funding from the state and simply do not have enough money to start paying the RMD for insurance coverage.

Al Duran of the RMD explained that the division does provide insurance coverage to public bodies, but indicated the recordkeeping by the division is somewhat spotty. For example, Mr. Duran noted that the division recently became aware of a number of state-owned vans that no one in the division knew existed. In addressing the issue of soil and water conservation district insurance, Mr. Duran explained that the districts have historically been covered by New Mexico State University's policy, but the school recently informed the RMD that soil and water conservation districts would no longer be covered by the policy. Mr. Duran emphasized that the resulting situation came as a bit of a surprise to everyone and that the RMD is working to fix the problem.

Questions and comments included:

- problems that will arise if the RMD pays for tort claims coverage for entities that do not pay into the division's funds;
- the ability of soil and water conservation districts to obtain insurance coverage, either through the RMD or commercially;

- the cost of insurance coverage for districts will be about \$1,000 per district;
- conservation district vehicles will only be covered if premiums are paid;
- the methodology for determining how much premiums cost;
- the potential for loss of life if dams are not maintained;
- that nothing currently requires developers to explore potential dangers present in adjacent or upstream land;
- probable maximum precipitation in determining likelihood of dam failure and resulting damage;
- the role of the U.S. Army Corps of Engineers in dam maintenance is limited to the dams it owns;
- local governments are currently powerless to require developers to help maintain dams located above their lands; and
- the RMD is working with the Acequia Commission to obtain insurance coverage for member acequias.

### **The Joe M Stell Water Ombudsman Program Update**

Darci Bushnell, program director for the Joe M Stell Water Ombudsman program, provided the committee with testimony regarding the ombudsman program. She began by reviewing the program's history and went on to provide the committee with an overview of the program's function and current and planned projects. Ms. Bushnell pointed out that while the program provides adjudication information and procedural guidance to water rights claimants, it does not offer legal advice. She went on to note that the program works closely with the OSE so that the program's workload is closely tied to the number of packets mailed out by the OSE. Ms. Bushnell indicated that the program made contact with almost 3,000 individuals in fiscal year 2009, in addition to speaking to various groups and producing a DVD. She went to explain that plans for 2010 are tied to several slated events, including a mailing to all the claimants on the lower Rio Grande, opening of the adjudication on a major portion of the San Juan River and ongoing work involving the Aamodt and Rio Gallina section of the Rio Chama.

Questions and comments included:

- Judge Gerald A. Valentine has indicated that the program has been extremely helpful in adjudications along the lower Rio Grande;
- the history of the program and its move to the University of New Mexico to keep it independent of the OSE;
- methods employed by the program to identify and contact people;
- a list of individuals who have received packets from the OSE is provided to the program;
- difficulty in contacting people with unlisted cell phones; and
- the necessity for continued funding for the program.

### **Arizona Water Settlements Act: Gila River Planning Process Status**

Craig Roepke of the Interstate Stream Commission (ISC) provided the committee with an update on the planning process for the potential use of federal funding to develop water resources on the Gila River as allowed by the Arizona Water Rights Settlement Act. He

explained that the act provides for between \$66 million and \$120 million for New Mexico to develop up to 14,000 acre-feet of water on the Gila River, noting that New Mexico must inform the secretary of the interior of any intent to use any water by 2014. Mr. Roepke pointed out that the 2014 deadline is approaching quickly and noted that while some progress toward developing a plan to use some of the federal money and water resources had been made, it is less progress than the ISC had hoped for. He also provided the committee with a report on how funds appropriated by the legislature have been spent to date. Finally, Mr. Roepke emphasized that the ISC does not have, or even favor, a plan to use federal money and Gila River water. Instead, he discussed the collaborative process, featuring area water stakeholders, being used to develop a plan.

Topper Thorp, co-chair of the Arizona Water Settlements Act Planning Process and a Gila Basin irrigation commissioner, also provided the committee with testimony regarding the use of federal money to develop water in the area. He explained that the agricultural industry is an important asset to the economy and environment of the Gila Basin. Mr. Thorp expressed some regret that area water users have not had the foresight to secure enough water resources to allow for the area's future needs. He went on to emphasize the importance of developing some sort of plan to make the best use of available water, rather than not be able to come up with any plan at all and end up losing the water to Arizona.

Adrian Oglesby, co-chair of the Arizona Water Settlements Act Planning Process and a representative of the Nature Conservancy, also provided the committee with testimony regarding the use of federal money to develop water in the area. He began by giving the committee an overview of the work performed by the Nature Conservancy, noting that it identifies endangered ecosystems and works to preserve them, often by forming partnerships with area stakeholders. Mr. Oglesby also listed some of the area projects with which the Nature Conservancy has been involved. He went on to review the progress made by the Arizona Water Settlements Act Planning Process, noting that the legislature funded a community-based planning process in 2008. Mr. Oglesby indicated that about half of the initial \$800,000 originally appropriated had been expended so far. He also explained that there are a number of competing viewpoints at work in the planning process, but that the goal remains to make a consensus decision based on science, rather than a politically driven decision. Finally, Mr. Oglesby noted that the planning process group hopes to review all of its options in November and come to the legislature with a plan in 2010.

Howard Hutchinson of the Gila San Francisco Water Commission also spoke about the settlement and the plans to use the money and water. He noted that there are a number of entities involved in the planning process, resulting in constant meetings that do not seem to accomplish very much. Mr. Hutchinson suggested that it would probably be best to put the federal money into projects that will help utilize water for future use. He also listed some of the studies that have been conducted as part of the planning process and noted that he does not believe that further studies are necessary.

Questions and comments included:

- the structure of the settlement makes it difficult to get things done;
- plans for remaining money appropriated by the legislature;
- the necessity of understanding the interaction between surface and ground water in the area before making decisions about how to use water resources;
- money set aside for the planning process must flow from the legislature to the Department of Finance and Administration to the ISC, and the planning group must write a letter to the ISC specifically requesting funds in order to begin the process;
- New Mexico will receive \$66 million from the settlement for anything that helps meet water demand issues; any funding in excess of that must be for water project construction and be approved by the secretary of the interior;
- potential projects that combine water storage, distribution and diversion;
- there is little demand, population-wise, for area water resources, but agricultural uses account for significant demand;
- most water users in southwestern New Mexico would probably benefit from increased water supply in the area; and
- a combination of projects, rather than one large one, is the most likely outcome of the planning process.

### **Regional/State Water Plans Update**

Estevan Lopez, director of the ISC, and Angela Schackel-Bordegaray, a water planner with the Planning and Communication Division of the ISC, provided the committee with an update on the regional water planning process. They explained that the initial law mandating regional water planning calls for the statewide water plan to be updated every five years. Ms. Schackel-Bordegaray went on to note that 22 public meetings had been held earlier in the summer regarding regional water plans. She said the meetings focused on four basic concepts:

- population and demand changes;
- conservation efforts;
- climate change planning; and
- necessary water infrastructure.

She indicated that some region-specific data were discussed at each meeting, notes of which are available online. Ms. Schackel-Bordegaray provided the committee with several of the recommendations that were developed after the public meetings for updating regional water plans, including:

- development of consistent methodologies;
- stronger linkage between regional water plans and 40-year water plans;
- enhanced communication between regions;
- increased emphasis on environmental and energy impacts in plans;
- quicker implementation of plans; and
- annual reports.

Questions and comments included:

- local meeting attendance and issues;
- water plan procedures employed by neighboring states;

- the low amount of money spent developing regional water plans in New Mexico compared to spending in surrounding states;
- the need for meaningful public participation to make the planning process work; and
- implementation of regional water plans and infrastructure plans.

### **Water Trust Board Report**

John D'Antonio, state engineer and co-chair of the Water Trust Board, provided the committee with an overview of the Water Trust Board. He began by providing a brief history of the board, created in 2001 by the Water Project Finance Act. Mr. D'Antonio went on to note that the board is charged with prioritizing projects for recommendation to the legislature for financing from the Water Project Fund. He also provided the committee with the makeup of the Water Trust Board, discussed the origin and oversight of the Water Trust Fund, the Water Project Fund and the Acequia Project Fund and what kinds of projects may be funded by the funds. Finally, Mr. D'Antonio discussed funds paid out of the various funds, noting the amount paid for various types of projects, and walked the committee through the process a project must go through in order to obtain funding.

Questions and comments included:

- Water Project Fund project managers are selected by technical employees from executive agencies because the Water Trust Board is essentially an executive board;
- increased funding for adjudications over the past few years are likely to shrink again since that money came from severance tax bonds;
- infrastructure needs in the state are enormous — at least \$1 billion for new projects and another \$1 billion for maintenance;
- New Mexico's infrastructure needs are similar to those in other states; and
- potential funding sources for water infrastructure.

### **Tuesday, September 22**

#### **Environmental River Flows**

Steve Harris of Rio Grande Restoration provided the committee with testimony regarding the value of rivers to New Mexico and the importance of trying to both use and protect them. He explained that New Mexico has no real policy or agency to guide or even address river conditions, noting that this is primarily because the water in rivers is treated more as a commodity than anything else. However, Mr. Harris emphasized that rivers represent much more than a commodity, suggesting that their somewhat intangible cultural and environmental value establishes them as icons in the New Mexico landscape that merit special attention and protection. He offered four river protection goals to the committee:

- maintaining high water quality;
- engineering infrastructure that utilizes water while minimizing the impact to the rivers themselves and nearby wildlife;
- ecological infrastructure that maintains or restores natural habitat for more species than those listed as threatened or endangered; and

- river flow management that provides water at times and places appropriate for both environmental maintenance and human use.

Mr. Harris noted that initial steps toward these goals were laid out in House Joint Memorial 3, introduced during the 2009 session, which called for using scientifically derived information to manage stream flows so as to protect the environmental integrity of rivers. He pointed out that while the measure received bipartisan support and was developed in conjunction with multiple stakeholders, it died awaiting final passage. However, he offered to convene a workshop to continue addressing stream flow issues.

Questions and comments included:

- benefits of managing an entire ecosystem rather than for particular species that tend to lead to unintended, and sometimes undesirable, consequences;
- invasive species control issues;
- the movement toward reservoir releases emphasizing water user rotation, instead of a free-for-all approach, seems to be helpful;
- decision support and infrastructure improvements, such as automatic gates and water user metering, have already helped improve stream flow management in some areas;
- the value of river flow modeling;
- the time frame for a stream flow workshop is still a year away without state resources; and
- Texas' efforts to address environmental river flows, first through executive order, then through sweeping legislative initiatives.

### **Federal/State Support of Drinking Water Systems**

Karen Gallegos, director of the Water and Wastewater Infrastructure Development Division of the New Mexico Department of Environment (NMED), provided the committee with testimony regarding financing of drinking water systems. She explained that there are a number of federal and state programs in place to help communities establish and maintain drinking water systems, including the Public Water System Supervision Grant program; expense reimbursement grants and counterterrorism grants at the federal level and the Water Conservation Fund, the Corrective Action Fund and general fund appropriations at the state level. Ms. Gallegos went on to provide the committee with further details about each fund.

Jim Perry, director of the Administrative Services Division of the NMED, provided the committee with testimony regarding the use of federal American Reinvestment and Recovery Act of 2009 (ARRA) funds to help communities finance drinking water systems. He noted that while some funding is available for such purposes, contractors are not likely to receive funds before January or February 2010.

Questions and comments included:

- the use of counterterrorism funds for drinking water systems is primarily to ensure the safety of existing infrastructure through the placement of security measures such as fences, locks and barbed wire;

- consolidation of rural drinking water systems can help to make things cheaper and more efficient;
- some rural water systems, while not able to take advantage of regionalized water system infrastructure, can still enjoy more centralized accounting and bookkeeping services; and
- policy goals of regionalization of drinking water systems involve working to take better advantage of the expertise of technical institutions such as universities and national laboratories.

### **Interbasin Changes of Place of Use of Water**

DL Sanders, chief counsel for the OSE, provided the committee with testimony regarding changes in place of use for water rights. He explained that interbasin water rights transfers involve moving water from one drainage basin to another, even if there is a confluence of the drainages, pointing out that there are eight places in New Mexico where water moves from one basin to another already. Mr. Sanders went on to explain that such transfers were contemplated in laws dating back to 1907, if only to establish penalties regarding such transfers. He also noted some of the other noteworthy interbasin transfers, such as the San Juan/Chama project and the Rio Bonito to La Luz transfer that moves water from the Ruidoso area to Alamogordo. Mr. Sanders noted that while there are eight existing interbasin transfers, another three are planned, plus another six applications for such transfers pending with the OSE. He said he is unable to go into much depth about pending applications.

Mr. Sanders also discussed the difficulty of the OSE's role in administering water rights in basins such as the Pecos River and the Gila, where all available resources are already appropriated, areas featuring competing federal and state jurisdictions and basins such as those served by the San Juan/Chama project, which are already so heavily contested that special masters have been appointed to administer water rights.

Questions and comments included:

- out-of-basin transfers require a change in the point of use, but not a change in the point of diversion;
- out-of-basin transfer applicants must prove that no impairment will be caused to downstream users by the transfer;
- a proposed transfer from the Pecos Basin to the Rio Grande Basin must demonstrate no increase in depletions on the Pecos;
- concerns expressed by downstream water users over the proposed Pecos to Rio Grande transfer; and
- there are three applications involving the transfer of water from the Salt Basin to the Rio Grande.

Senator Asbill provided the committee with an update regarding data concerning elk herd size in New Mexico and neighboring states, noting that a full report would be provided to the committee in October.

There being no further business, the committee adjourned at 11:10 a.m.

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

**November 30-December 2, 2009**  
**Room 322, State Capitol**  
**Santa Fe**

**Present**

Sen. Phil A. Griego, Chair  
Rep. Andy Nuñez, Vice Chair  
Rep. Paul C. Bandy  
Rep. Ray Begaye  
Rep. Joseph Cervantes  
Sen. Mary Jane M. Garcia (Dec. 1-2)  
Rep. Thomas A. Garcia  
Rep. William J. Gray  
Sen. Clinton D. Harden, Jr. (Nov. 30, Dec. 1)  
Rep. Larry A. Larrañaga  
Rep. Kathy A. McCoy  
Sen. George K. Munoz  
Sen. Gerald Ortiz y Pino (Nov. 30, Dec. 2)  
Sen. Mary Kay Papen  
Sen. Sander Rue

**Absent**

Rep. Dona G. Irwin  
Sen. Steven P. Neville  
Rep. Mimi Stewart

**Advisory Members**

Sen. Rod Adair (Dec. 2)  
Sen. Carlos R. Cisneros  
Rep. Anna M. Crook (Nov. 30, Dec. 1)  
Rep. Brian F. Egolf, Jr.  
Rep. Nora Espinoza  
Rep. Candy Spence Ezzell  
Sen. Dede Feldman  
Rep. Ben Lujan (Nov. 30, Dec. 2)  
Rep. James Roger Madalena  
Sen. Cisco McSorley  
Rep. Danice Picraux (Dec. 1-2)  
Sen. Nancy Rodriguez (Dec. 1-2)  
Rep. Henry Kiki Saavedra (Dec. 1-2)  
Rep. James R.J. Strickler  
Rep. Don L. Tripp

Sen. Vernon D. Asbill  
Sen. Timothy Z. Jennings  
Sen. Gay G. Kernan  
Rep. Jeff Steinborn  
Sen. Peter Wirth

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

**Guest Legislators**

Rep. Nick L. Salazar  
Rep. Gloria C. Vaughn

### **Guests**

The guest list is in the original meeting file.

### **Staff**

Jon Boller  
Gordon Meeks  
Jeret Fleetwood

### **Monday, November 30**

Senator Griego called to order the fifth meeting of the 2009 legislative interim Water and Natural Resources Committee at 9:00 a.m. on November 30, 2009 in Room 322 of the State Capitol.

### **Acequia Report**

Paula Garcia and Kenneth Salazar, representing the New Mexico Acequia Association (NMAA), gave a brief history of the organization and then outlined the association's Acequia Governance Program, Food and Agricultural Program and the Acquia Infrastructure Program. Ms. Garcia explained that the NMAA, through its Acequia Governance Program, had conducted 71 workshops on training for 1,309 acequia officials and attended 390 acequia meetings since July 2007 in order to strengthen acequia governance. Through its Food and Agricultural Program, she said, the NMAA is working directly with families to promote acequia agriculture through youth membership and cultural activities. Through its Good Food for New Mexico Families Initiative, she added, the NMAA hopes to strengthen the economic viability of small-scale agriculture in the state and improve availability of affordable, locally grown food to New Mexico families. Ms. Garcia also described various federal, state and local funding mechanisms for acequia infrastructure projects and recommended that the legislature support a more phased approach to funding acequia projects, which could result in a more efficient use of capital outlay.

### **Solid Waste Management — Landfill Management and Permitting**

A summary of the presentation on solid waste management is available in the minutes of the September 2009 meeting of the legislative interim Radioactive and Hazardous Materials Committee. The discussion following the presentation included concerns about the differences in the permitting process for private versus public landfills, staffing levels at the Department of Environment and funding for the permitting and inspection program.

### **Buckman Direct Diversion Project Status**

Rick Carpenter, project manager for the Buckman Direct Diversion Project (BDDP), provided an update on the project and negotiations with the United States Department of Energy (DOE) and Los Alamos National Laboratory (LANL) that were requested in House Memorial

120 (2009). Mr. Carpenter noted that the project was 60 percent complete as of November and is on schedule to be completed within its budget. He said that ensuring water quality has been a major concern of the project and that the BDDP board is continuing its discussions with LANL on how to deal with LANL contaminants being washed into the Rio Grande during storms. The board has asked LANL to take the following steps to address the board's concerns:

- stop migration of LANL contaminants to the Rio Grande and ground water;
- properly monitor the transport of legacy contaminants;
- measure the radioactive and toxic contamination of buried sediments in side channels of the Rio Grande (this was completed by the BDDP and the Department of Environment);
- provide an early notification system for elevated contamination levels so that diversions may be stopped;
- monitor LANL contaminants in BDDP diversions, sand return, residuals and drinking water; and
- provide funding for an independent peer review of LANL-origin contamination of public drinking water sources.

Mr. Carpenter said that significant progress has been made on most of the issues, but the DOE and LANL have not yet committed to monitoring LANL contaminants in BDDP diversions. Discussions are also ongoing concerning the details of the early notification system for elevated contamination levels.

### **Outstanding National Resource Waters Designation**

Ron Curry, secretary of environment, and Marcy Leavitt, director of the Water and Waste Management Division of the Department of Environment, presented the latest (November 20, 2009) draft of the department's proposed outstanding national resource waters (ONRW) designation of surface waters in national forest wilderness areas located in New Mexico. Secretary Curry said he considers this to be a states' rights issue because the designation would allow the state to protect New Mexico's water instead of relying on federal authorities to do so. He said that the state's water quality is not the federal government's primary concern regarding the management of federal lands. Other western states, he noted, such as Arizona, Colorado, Utah and Wyoming, have used the ONRW designation to protect water quality on federal lands located in their states.

Ms. Leavitt explained that the first draft proposal was released in April 2008, and after 21 public meetings and the incorporation of comments, the most recent draft was completed on November 20, 2009 and addresses most of the concerns expressed during the process. She stressed that the latest ONRW proposal is strictly a water quality measure affecting existing wilderness areas (and excluding roadless areas) and that under its provisions:

- there is no reduction in current uses, such as grazing;
- there is no reduction in the current number of grazing permits;
- there are no new requirements on acequias;

- there is a priority placed on forest restoration to reduce fire hazards; and
- it does not violate treaties or impair existing land use activities.

Two areas of the state have previously been designated as ONRW, she noted, and there have not been problems in those areas.

Representative Debbie A. Rodella stated that she had requested in HJM 49 (2009) that the ONRW designation process be canceled or postponed and that several organizations oppose ONRW designation due to concerns about the loss of traditional uses of that land by land grants, acequias, ranchers and others. Michael Nevenson said he was worried that the ONRW designation would allow third-party lawsuits to be filed in federal court, that an environmental impact statement should be done before any designation, that the National Environmental Policy Act may apply and that the logging industry in the state was lost due to third-party lawsuits. Carlos Salazar said that most ranchers are concerned about the way the ONRW issue came about and that no one has shown that water quality is impaired. He also said he felt that the federal government has already taken away many rights and that this process felt like cultural genocide. Representative Rodella added that she thought it was an injustice for the executive to do things without legislative approval.

### **Elk Depredation Issues in Northern New Mexico**

Art Martinez, a hunting and fishing outfitter representing landowners in game management units 6A and 6C, said he has been working with the Department of Game and Fish (DGF) to get equal treatment for small landowners, those with less than 300 acres of land, regarding elk depredation and the issuance of elk hunting permits. The State Game Commission changed the boundaries of units 6A and 6C in September, as requested, but there are still problems with elk depredation and permitting. He said that, currently, the DGF gives more permits to those with more land, instead of giving more permits to those whose land is destroyed by elk. Mr. Martinez said the issuance of elk permits should be based on usage, rather than the number of acres.

Tod Stephenson, DGF director, acknowledged that the boundary changes have not solved the small contributing ranch problem in units 6A and 6C and that elk depredation issues are a problem statewide. In unit 6A for example, 16 percent of elk permits are given to property owners in the area, which amounts to 113 permits, he said. However, there are 310 property owners in the unit, so some owners do not receive permits every year. Installing elk-proof fencing to limit damage to one property usually means more damage is done to adjoining properties, he added. Mr. Thompson stated that the DGF would continue to work with landowners on these issues.

### **Mid-Rio Grande Levee Task Force Report — Senate Memorial 18**

Janet Jarratt, chair of the Middle Rio Grande Conservancy District (MRGCD) board of directors, and Subhas Shah, director of the MRGCD, presented the task force's findings. Several other participants attended the meeting, including Joe Quintana, regional planning manager for

the Mid-Region Council of Governments, and Deb Foley, United States Army Corps of Engineers (USACE) chief of civil works project management for the Albuquerque district.

Ms. Jarratt thanked the members of the task force for their work, noting that it was a cooperative effort by the parties involved in the process. According to Ms. Jarratt, standards for levees are set by both the Federal Emergency Management Agency (FEMA) and the USACE. FEMA requirements affect what areas may be covered by the National Flood Insurance Program, while USACE requirements determine whether federal funds may be used to repair levees damaged by floods. According to the task force report, nearly all of the existing levees or spoil bank sections of levees in the middle Rio Grande study area would not be certified as levees under new federal regulations. This may affect both how much homeowners and others living in the flood plain will pay for flood insurance, what areas are considered to be in a flood plain and whether federal dollars would be available to repair levees after any flooding that occurs. According to the USACE, the estimated cost of rebuilding just the Albuquerque levees is \$120 million.

The task force made several recommendations, including that it should continue to meet in 2010 to further evaluate levee projects and explore funding sources for any proposed projects. Committee members expressed support for the task force's continued work, and further discussion included the following:

- whether FEMA would be moving toward a more risk-based standard for the issuance of flood insurance;
- the possibility of changing vegetation standards for levees to avoid having to remove trees from the bosque in the Corrales/Albuquerque area;
- whether economic impact and cost/benefit studies will be done to help determine if any or all of the levees and spoil banks need to be rebuilt; and
- what sources of funding for projects could be expected from federal sources, local government bodies tasked with flood control or levee maintenance and state agency sources.

### **Acequia Issues in the Middle Rio Grande**

Senator Ortiz y Pino requested the committee's support for reintroduction of Senate Bill 486 (2009), a bill clarifying the management authority of acequias located within the boundaries of the MRGCD. James Maestas, president of the South Valley Regional Association of Acequias, explained that the New Mexico Supreme Court, in *Middle Rio Grande Conservancy Dist. v. Chavez*, 44 N.M. 240 (S.Ct. 1940), had left open the question of what duties remained for the commissioners of some community ditches that are within the MRGCD. Because of this uncertainty, he explained, over \$200,000 in capital improvement projects for six acequias are being held up by the Interstate Stream Commission, which has requested an attorney general opinion on whether it may enter into contracts with these acequias. Robert Kyzer, a Los Padillas Acequia commissioner, said he felt there was a breach of contract on the part of the MRGCD in maintaining the acequia and that passage of the proposed legislation would force the MRGCD to revisit the contract it entered into with the acequia in 1935. Ron Olivas, Pajarito Acequia

commissioner, complained that people are interfering with ditches and turnouts, which has resulted in some *parciantes* being unable to irrigate. He also said that water is being leased by the MRGCD without compensating the owners of the water right.

Andrew Leo Lopez, Conservancy Taxpayers Association, asked the committee to support legislation sponsored by Senator Linda M. Lopez that would redistrict the MRGCD into districts of equal population. Mr. Lopez observed that the South Valley of Albuquerque is not represented on the board of the MRGCD for the first time. He presented a breakdown of the number of voters in each district of the MRGCD, indicating that the number of voters per district varied from 3,774 per director in Socorro County to 22,963 voters per director in Valencia County. Equal representation would require 11,452 voters per district, according to Mr. Lopez.

The committee recessed at 5:40 p.m.

### **Tuesday, December 1**

The committee reconvened at 9:00 a.m. in Room 322 of the State Capitol.

#### **Wolf Reintroduction in the Gila National Forest**

Ed Werheim, Catron County commissioner, stated his opposition to the wolf reintroduction program in Catron County. He said the consequences of reintroduction would be catastrophic for cattlegrowers in the area and a death sentence for game. He said that over 1,500 lawsuits have been filed by environmentalists over the years and that the government is having to pay for these lawsuits. The compensation program for depredations will need tens of millions of dollars, not the \$2 million or \$3 million currently projected, he explained. Mr. Werheim asked that a statewide vote be held on whether wolves should be reintroduced.

Bud Fazio, United States Fish and Wildlife Service (FWS), explained that the FWS is the primary implementing agency for the federal Endangered Species Act of 1973 and is responsible for coordination of the Mexican Gray Wolf Recovery Program. The program is at a crossroads, he said, because the old plan is due to be revised, with meetings on the issue starting next week in Albuquerque. An environmental impact statement, including a social/economic impact assessment, will be part of the plan, he added. Congress has just established a demonstration project to compensate ranchers for depredation, he said, which is funded at \$1 million per year for the next five years, and the Defenders of Wildlife have also established a program to compensate ranchers that have sustained losses. Mr. Fazio said the FWS is not discussing or declaring critical habitat for the Mexican gray wolf in New Mexico, and it has not yet addressed the new petition for establishing critical habitat from the Center for Biological Diversity. As for the number of livestock lost to wolves, Mr. Fazio said the FWS had confirmation of 138, rather than 1,500, though he said it was the FWS's responsibility to confirm losses.

Mr. Stephenson explained that the state's Wildlife Conservation Act tells the DGF how it should deal with endangered species and that the DGF has assigned two field officers to work on the wolf program. He noted that the experimental status of the wolf program governs how things

are managed on the ground and that an endangered species designation would change the management protocols significantly. Public involvement in the program is crucial, he said, and ensuring the survival of ranching is critical.

Michael Robinson, Center for Biological Diversity, gave a brief history of the federal Endangered Species Act of 1973 and the natural history of the Mexican gray wolf. Reintroduction of wolves in other areas, such as Yellowstone National Park, has changed ecosystems for the better, he said, resulting in diminished coyote populations and healthier forests. Mr. Robinson explained that millions of dollars were spent eradicating wolves, far more than it is costing to reintroduce them and pay compensation for depredation. The wolf reintroduction program started in 1998, he explained, but because the FWS has failed to follow recommendations from an evaluation study done in 2001, the center filed suit in 2006 to force the FWS to implement the recommendations. Mr. Robinson also noted that the livestock industry has made unconstructive, inflammatory comments on the program.

### **Utton Transboundary Resources Center Programs**

Susan Kelly, interim director of the Utton Transboundary Resources Center, gave a brief summary of current and proposed projects of the center. The new edition of *Water Matters!*, a publication summarizing current water issues in the state, will be distributed to the legislature in January, she said. The Joe M Stell Ombudsman Program, though a statewide program, she explained, is currently focused on three adjudications, the lower Rio Grande, San Juan and *Aamodt*, and functions as a neutral source of information on the adjudication process. Ms. Kelly also mentioned the following projects the center is involved with:

- developing an appropriative rights model water code;
- studying the nexus between land use and water availability;
- meeting on upstream/downstream issues; and
- a river restoration review project.

### **Indian Water Rights Settlement Fund Annual Report**

Estevan Lopez, director of the Interstate Stream Commission, and John D'Antonio, state engineer, summarized the latest developments on three pending Indian water rights settlements: the Navajo Nation settlement; the *Aamodt* settlement; and the Taos Pueblo settlement. Mr. Lopez reported that President Obama signed legislation on March 30, 2009 authorizing the Navajo settlement, including the Navajo-Gallup Water Supply Project, and on July 6, 2009, Secretary of Interior Ken Salazar signed the record of decision, making official the environmental impact statement for the project. The Bureau of Reclamation received \$3 million in federal fiscal year 2010 to begin construction of the project. Mr. D'Antonio reported that partial funding of the *Aamodt* settlement is provided for in the Omnibus Public Lands Management Act of 2009, though federal authorization legislation is still pending in Congress. Likewise, federal authorizing legislation for the Taos Pueblo settlement is still pending. According to Mr. Lopez, there is \$10 million of severance tax bonding authority in the Indian Water Rights Settlement Fund, but the Interstate Stream Commission has not yet exercised its

authority to sell the bonds. Mr. D'Antonio and Mr. Lopez recommended an appropriation of \$15.2 million to the fund for fiscal year 2011.

### **Proposed Bills for the 2010 Legislative Session**

Nine pieces of proposed legislation were presented to the committee for its endorsement. The committee endorsed the following pieces of legislation:

- a bill establishing the Eastern New Mexico Water Utility Authority;
- reintroducing House Joint Resolution 6 (2009) concerning legislative review of executive agency rules;
- an appropriation to the Interstate Stream Commission for water planning; and
- an appropriation for non-native phreatophyte removal and riparian restoration projects.

The committee failed to endorse the following:

- a bill establishing ownership of pore space;
- a bill on game depredation;
- a bill extending authority of the natural resources trustee over contamination of ground water;
- a bill updating the penalties for violations of the Oil and Gas Act; and
- the Farmer Protection Act.

The committee recessed at 6:00 p.m.

### **Wednesday, December 2**

The committee reconvened at 9:00 a.m. in Room 322 of the State Capitol.

### **Triennial Review of Water Quality Standards**

Ms. Leavitt explained that the triennial review of water quality standards is required by Section 303 of the federal Clean Water Act of 1977 every three years. The Department of Environment reviews existing standards, such as how much bacteria is acceptable in water used for recreational purposes, and makes recommendations to the Water Quality Control Commission, which holds public hearings on any proposed modifications to the standards. All Department of Environment proposals and comments are prefiled with the commission and made available to the public. The commission, she said, then makes the final decision on whether to adopt the proposed changes or not, and the Environmental Protection Agency may accept the changes or issue its own standards.

T.J. Trujillo, lobbyist, said that Ms. Leavitt and Pam Homer, the Department of Environment's water quality standards coordinator, have been very accommodating in getting information out to the public. But the system as a whole is problematic, he explained, because the process requires stakeholders to hire people to read and interpret the administrative record,

which is intimidating and discourages public participation. He also noted that the Water Quality Control Commission has guidelines, rather than formal rules, that can be changed on an ad hoc basis. He said his clients are not asking for anything at this point, but that in the future they may be requesting legislation.

The committee approved the minutes from the July and September meetings without objection.

### **Consumptive Use of Crops, Conservation and the Implementation of SB 461 (2007)**

J. Phillip King, civil engineer, New Mexico State University, and Rhonda Skaggs, agricultural economist, New Mexico State University, made presentations on the consequences of implementing conservation measures in the agricultural sector. Dr. King pointed out that there is much confusion about what water conservation is. He explained that water conservation measures, such as lining ditches or precision application of water to plants, may decrease non-consumptive losses to the system, but doing so will actually result in increases in consumptive losses to the system, thus leaving less water in the system for other uses and potentially impairing the water rights of downstream users. The advantage to the farmer is increased crop yield because increased consumption of water by crops resulting from more efficient application of water to the crop should result in increased crop production, he said, but the consequent decreases in return flow (a non-consumptive loss to the system) will impair downstream rights. Implementing the provisions of SB 461, he said, is problematic because research is not available to implement it.

Dr. Skaggs began by pointing out that conservation means different things to different people. If conservation is defined as an act or policy that will result in additional water for other uses or users, then much of what is called water conservation does not qualify as such because it does not make more water available, she explained. She noted that hydrologic reality does not coincide with public perception when it comes to water issues. Conventional wisdom, she said, is that improved agricultural irrigation will make more water available to other users. Instead, she explained, instituting such practices as drip irrigation or optimizing irrigation scheduling will actually increase consumptive use and decrease the amount of water downstream and for other users. Improvement in agricultural infrastructure and technology will likely increase total consumptive use and crop yields, she concluded, but may not qualify as water conservation.

When asked about implementing the provisions of SB 461, the presenters said the bill did not seem to take into consideration the concerns expressed today.

The committee adjourned at 11:45 a.m.

**ENDORSED  
LEGISLATION**