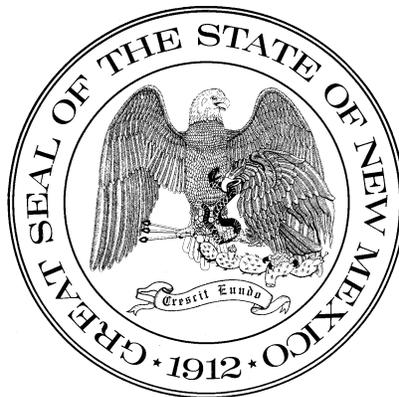


WATER AND NATURAL RESOURCES COMMITTEE

2011 INTERIM
FINAL REPORT
to the
FIFTIETH LEGISLATURE
SECOND SESSION



New Mexico Legislative Council Service
Santa Fe, New Mexico
December, 2011

WATER
AND
NATURAL RESOURCES
COMMITTEE

2011
REPORT

Santa Fe, New Mexico
December 2011
File No. 205-176-11

LEGISLATIVE INTERIM WATER AND NATURAL RESOURCES COMMITTEE SUMMARY OF WORK

The committee was scheduled for five meetings during the 2011 interim, with all except the August meeting being held in Santa Fe due to budget concerns. The committee held its August meeting in Silver City to address several issues specific to southern New Mexico.

Continued drought and major wildfires dominated the news in late spring and early summer; the state forester reported that as of June 30th, 1,021 fires had burned more than 750,000 acres and 100 structures in New Mexico, while the state engineer reported that the period between January and April 2011 was the third-driest on record in the state and the driest on record for the Albuquerque and Roswell areas. Partly in response to the effects of the drought, both the state engineer and the Interstate Stream Commission noted that the 2008 operating agreement between the United States Bureau of Reclamation (USBR), Elephant Butte Irrigation District and El Paso County Water Improvement District No. 1, to which the state was not a party, does not create a sustainable water management system for the Lower Rio Grande Valley and therefore needed to be modified. The attorney general filed suit in August against the USBR asking the court for declaratory and injunctive relief to prevent USBR from reallocating water from New Mexico to Texas under that agreement.

Other issues covered during the interim included the need for dam rehabilitation statewide; funding for levee reconstruction along the middle Rio Grande; implementation of the Navajo, Aamodt and Taos Indian water rights settlements; implementation of the Arizona Water Settlements Act; issues relating to the Endangered Species Act; how to address the problem of unwanted horses; costs of abandoned and orphan well sites that are not properly cleaned up; and staffing and funding levels for the state engineer adjudications program.

The committee endorsed one piece of legislation this interim, a bill that provides for the licensing of the growing, selling and processing of industrial hemp.

**2011 APPROVED
WORK PLAN AND MEETING SCHEDULE
for the
WATER AND NATURAL RESOURCES COMMITTEE**

Members

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

Rep. Larry A. Larrañaga
Sen. George K. Munoz
Sen. Steven P. Neville
Rep. Andy Nuñez
Sen. Gerald Ortiz y Pino
Sen. Mary Kay Papen
Sen. Sander Rue
Rep. Mimi Stewart
Rep. James R.J. Strickler
Rep. Don L. Tripp

Advisory Members

Sen. Rod Adair
Sen. Vernon D. Asbill
Sen. Carlos R. Cisneros
Rep. Anna M. Crook
Rep. Nora Espinoza
Rep. Candy Spence Ezzell
Sen. Dede Feldman
Sen. Timothy Z. Jennings
Rep. Ben Lujan

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

Work Plan

The Water and Natural Resources Committee was created by the New Mexico Legislative Council on May 9, 2011. The committee proposes to focus on the following topics.

1. Water management, adjudication, research, litigation and projects, including testimony on the following agenda items:
 - a. reports required by statute from the state engineer and the Interstate Stream Commission;
 - b. Indian water rights settlements — update on status and continued need for state cost-share funding through the Indian Water Rights Settlement Fund;
 - c. update on the status of the revised biological opinion for the middle Rio Grande;
 - d. Gila River planning process status update (Arizona Water Settlements Act of 2004);
 - e. dam safety and liability issues;
 - f. acequia issues;

- g. state water plan update;
 - h. adjudications status report;
 - i. Joe M Stell ombudsman program update;
 - j. major litigation and appeals update, including the active water resource management regulations challenge ("Tristate") and the domestic well statute challenge ("Bounds");
 - k. update on lower Rio Grande — 2008 Rio Grande Project Operating Agreement;
 - l. federal water projects and state cost-share funding;
 - m. report on the study of the Rio Grande levees within Valencia, Bernalillo and Sandoval counties;
 - n. update on Water Trust Board projects and funding; and
 - o. status of the St. Augustine Plains water rights transfer application.
2. Agriculture, land use and game and fish issues, including:
- a. integrating land use and water planning — Utton Transboundary Resources Center;
 - b. United States Department of Agriculture conservation programs in New Mexico;
 - c. wildlife depredation issues;
 - d. update on state parks from the State Parks Division of the Energy, Minerals and Natural Resources Department;
 - e. off-highway motor vehicle registration and regulation;
 - f. update on game and fish issues in the state from the New Mexico Department of Game and Fish;
 - g. New Mexico State University's Agricultural Experiment Station and Cooperative Extension Service and the New Mexico Department of Agriculture report on agricultural issues in New Mexico;
 - h. unwanted horses in New Mexico and efforts to control horse populations;
 - i. invasive and endangered species issues in New Mexico; and

- j. commercial hemp production.
3. Other environmental and natural resource issues, including:
- a. reports from the Energy, Minerals and Natural Resources Department and the Department of Environment;
 - b. a presentation addressing the United States' energy future as tied to national security; and
 - c. alternative energy issues in the state, including a report from the New Mexico Renewable Energy Transmission Authority.

2011 Approved Meeting Schedule

<u>Date</u>	<u>Location</u>
June 1	Santa Fe
June 30	Santa Fe
August 1-3	Silver City
October 11	Santa Fe
November 7-8	Santa Fe

AGENDAS

Revised: May 26, 2011

**TENTATIVE AGENDA
for the
FIRST MEETING IN 2011
of the
WATER AND NATURAL RESOURCES COMMITTEE**

**June 1, 2011
Room 322, State Capitol
Santa Fe**

Wednesday, June 1

- 1:30 p.m. **Call to Order**
—Senator Phil A. Griego, Chair
- 1:35 p.m. **Legislative Interim Committee Meeting Protocols**
—Raúl E. Burciaga, Director, Legislative Council Service (LCS)
- 1:45 p.m. **Equine Herpes Virus (EHV-1) Outbreak Update**
—Dr. Dave Fly, State Veterinarian, New Mexico Livestock Board
- 2:15 p.m. **Status Reports — Office of the State Engineer and Interstate Stream
Commission**
—Estevan Lopez, Director, Interstate Stream Commission
—John D'Antonio, State Engineer
- 3:45 p.m. **2011 Interim Work Plan, Itinerary and Meeting Schedule**
—Kim Bannerman, Staff Attorney, LCS
- 4:15 p.m. **Adjourn**

**TENTATIVE AGENDA
for the
SECOND MEETING IN 2011
of the
WATER AND NATURAL RESOURCES COMMITTEE**

**June 30, 2011
Room 322, State Capitol
Santa Fe**

Thursday, June 30

- 9:00 a.m. **Call to Order**
—Senator Phil A. Griego, Chair
- 9:05 a.m. **Acequia Report**
—Paula Garcia, Executive Director, New Mexico Acequia Association
- 10:00 a.m. **Integrating Land Use and Water Planning in New Mexico**
—Susan Kelly, Director, Utton Transboundary Resources Center,
University of New Mexico School of Law
- 11:00 a.m. **Status Report — State Parks Division of the Energy, Minerals and
Natural Resources Department (EMNRD)**
—John H. Bemis, Secretary-Designate, EMNRD
—Tommy Mutz, Division Director, State Parks Division, EMNRD
—Tony Delfin, State Forester
- 12:30 p.m. **Lunch**
- 2:00 p.m. **United States Department of Agriculture (USDA) Conservation
Programs in New Mexico**
—Robert Apodaca, Assistant Chief-Western Region, USDA Natural
Resources Conservation Service (NRCS)
—Dennis Alexander, New Mexico State Conservationist, USDA NRCS
- 3:30 p.m. **Report on the Unwanted Horse Problem in New Mexico**
—Dr. Dave Fly, State Veterinarian, New Mexico Livestock Board
—Myles Culbertson, Director, New Mexico Livestock Board
—Herman Upshaw, Navajo Nation Department of Agriculture
- 5:00 p.m. **Adjourn**

Revised: July 29, 2011

**TENTATIVE AGENDA
for the
THIRD MEETING IN 2011
of the
WATER AND NATURAL RESOURCES COMMITTEE**

**August 1-3, 2011
Grant County Business Center, 3031 Highway 180 East
Silver City**

Monday, August 1

- 9:00 a.m. **Call to Order**
—Senator Phil A. Griego, Chair
- 9:05 a.m. **Welcome**
—James Marshall, Mayor, Silver City
- 9:15 a.m. **Arizona Water Settlements Act; Gila River Planning Process Status**
—Craig Roepke, Interstate Stream Commission
—Vance Lee, Gila-San Francisco Water Commission
—Allyson Siwik, Executive Director, Gila Conservation Coalition
—Martha Cooper, Co-Chair, Arizona Water Settlements Act Stakeholder
Group and The Nature Conservancy
—Topper Thorpe, Co-Chair, Arizona Water Settlements Act Stakeholder
Group and Gila Basin Irrigation Commission
- 11:00 a.m. **Indian Water Rights Settlement Fund and Other Federal/State Cost-
Sharing Projects**
—Estevan Lopez, Director, Interstate Stream Commission
—John D'Antonio, State Engineer
- 12:00 noon **Lunch**
- 1:00 p.m. **Sacramento Watershed Hydrographic Study**
—B. Talon Newton, Hydrogeologist, New Mexico Institute of Mining and
Technology
—Bill Mershon, Supervisor, Otero Soil and Water Conservation District
—Rick Baish, Supervisor, Otero Soil and Water Conservation District
- 2:00 p.m. **Lower Rio Grande Update — 2008 Operating Agreement and
Adjudication Issues**
—Estevan Lopez, Director, Interstate Stream Commission
—John D'Antonio, State Engineer
—Steve Farris or Sarah Bond, New Mexico Attorney General's Office
—Phil King, Ph.D., and Samantha Barncastle, Elephant Butte Irrigation
District

—Filiberto Cortez, Manager, El Paso Field Division, United States Bureau of Reclamation

—Bill Gomez, Executive Director, Southern Rio Grande Diversified Crop Farmers Association

4:00 p.m.

San Augustine Plains Application to Appropriate Underground Waters

—Bruce Frederick, New Mexico Environmental Law Center, Attorney for Protestants

—Eileen Dodds, Protestant

—Anita Hand-Gutierrez, Protestant

—Lin Kennedy, Protestant

5:00 p.m.

Recess

Tuesday, August 2

9:00 a.m.

Call to Order

—Senator Phil A. Griego, Chair

9:05 a.m.

Update on the Middle Rio Grande Biological Opinion

—Rolf Schmidt-Peterson, Interstate Stream Commission

—Subhas Shah, Chief Engineer, Middle Rio Grande Conservancy District

—Mike Hamman, Albuquerque Area Manager, United States Bureau of Reclamation

10:30 a.m.

Seizure and Brand Inspection of Livestock

—Myles Culbertson, Executive Director, New Mexico Livestock Board

—Bebo Lee, Past President, New Mexico Cattle Growers' Association

11:45 a.m.

Lunch

—Western New Mexico University

1:30 p.m.

Electric Cooperatives Update

—Keven J. Groenewold, Executive Vice President and General Manager, New Mexico Rural Electric Cooperative Association

—Ron Cunningham, Vice President — Power Delivery, Western Farmers Electric Cooperative

—Joel Bladow, Senior Vice President — Transmission, Tri-State Generation and Transmission Association

3:00 p.m. **New Mexico State University (NMSU) and New Mexico Department of Agriculture Update on Agricultural Issues in the State — Agricultural Experiment Station and Cooperative Extension Service**
—Jeff M. Witte, Director, New Mexico Department of Agriculture
—David C. Thompson, Ph.D., Associate Dean and Director, Agricultural Experiment Station, NMSU
—Jon C. Boren, Ph.D., Associate Dean and Director, Cooperative Extension Service, NMSU

4:30 p.m. **Fireworks Ban Bill**
—Senator Dede Feldman

5:30 p.m. **Recess**

Wednesday, August 3

9:00 a.m. **Call to Order**
—Senator Phil A. Griego, Chair

9:05 a.m. **Game and Fish Update**

Invasive Species, Wildlife Depredation, Off-Highway Motor Vehicles, Hunting License Changes (SB 196)
—Tod Stevenson, Director, Department of Game and Fish

Possible Endangered Species Listings — Dunes Sagebrush Lizard and Lesser-Prairie Chicken
—Tod Stevenson, Director, Department of Game and Fish
—Debbie Hughes, Executive Director, New Mexico Association of Soil and Water Conservation Districts
—Steve Henke, President, New Mexico Oil and Gas Association
—Jerry Fanning, Environmental Coordinator, Yates Petroleum Corporation

11:00 a.m. **Wolf Reintroduction Management**
—Lorna Ruebelmann, Great Old Broads for Wilderness
—Nancy Gregory, Founder, Friends of the Frisco
—Michael Robinson, Biodiversity Conservation Advocate
—Ty Bays, Southwest Vice President, New Mexico Cattle Growers' Association

12:00 noon **Adjourn**

Revised: October 6, 2011

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

**October 11, 2011
Room 322, State Capitol
Santa Fe**

Tuesday, October 11

- 9:00 a.m. **Call to Order**
—Senator Phil A. Griego, Chair
- 9:05 a.m. **Adjudication Report**
—Greg Ridgley, Litigation and Adjudication Program, Office of the State
Engineer
- 10:30 a.m. **Joe M Stell Ombudsman Program**
—Darcy Bushnell, Utton Transboundary Resources Center
- 11:15 a.m. **Levee Conditions in the Middle Rio Grande**
—Joe Quintana, Regional Planning Manager, Mid-Region Council of
Governments
- 12:30 p.m. **Lunch**
- 1:30 p.m. **Dam Safety and Liability Issues**
—Elaine Pacheco, Bureau Chief, Dam Safety Bureau, Office of the State
Engineer
—Debbie Hughes, Executive Director, New Mexico Association of Conservation
Districts
—Eddie Vigil, President, New Mexico Association of Conservation Districts
- 2:30 p.m. **Deep Wells in Rio West**
—George King, Engineer, Aperion Company
—David Yates, Alpha Southwest, Inc.
—Michael Boyd, Layne Christensen Company
—Mark Scharenbroich, Layne Christensen Company
- 3:30 p.m. **Water Trust Board Report**
—Rick Martinez, New Mexico Finance Authority
- 4:30 p.m. **Regional Water Planning Status**
—Angela Bordegaray, Interstate Stream Commission
- 5:30 p.m. **Adjourn**

Tuesday, November 8

- 9:00 a.m. **Senate Memorial 48 (2011) Clean Arroyos Task Force Report**
—Joe Quintana, Regional Planning Manager, Mid-Region Council of
 Governments
- 10:00 a.m. **Restoration Costs of Abandoned Well Sites**
—Jeff Kramme, Bloomfield
- 11:00 a.m. **Water Rights on National Forest Lands**
—Darrell Allred, Glenwood and Reserve Realty
—Pete Domenici, Jr., Attorney
—Office of the State Engineer Representatives TBA
- 12:00 noon **Adjourn**

MINUTES

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

**June 1, 2011
Room 322, State Capitol
Santa Fe**

The first meeting of the Water and Natural Resources Committee (WNRC) was called to order by Senator Phil A. Griego, chair, at 1:30 p.m. on Wednesday, June 1, 2011, in Room 322 of the State Capitol.

Present

Sen. Phil A. Griego, Chair
Rep. Paul C. Bandy
Rep. Ray Begaye
Sen. Mary Jane M. Garcia
Rep. Thomas A. Garcia
Rep. William "Bill" J. Gray
Sen. Clinton D. Harden, Jr.
Rep. Dona G. Irwin
Rep. Larry A. Larrañaga
Sen. George K. Munoz
Sen. Steven P. Neville
Rep. Andy Nuñez
Sen. Gerald Ortiz y Pino
Sen. Mary Kay Papen
Sen. Sander Rue
Rep. Mimi Stewart
Rep. James R.J. Strickler
Rep. Don L. Tripp

Advisory Members

Sen. Carlos R. Cisneros
Rep. Anna M. Crook
Rep. Nora Espinoza
Rep. Candy Spence Ezzell
Rep. Ben Lujan
Rep. James Roger Madalena
Rep. Bill B. O'Neill
Sen. Nancy Rodriguez
Sen. John C. Ryan
Rep. Henry Kiki Saavedra
Sen. Peter Wirth

Absent

Rep. Joseph Cervantes, Vice Chair
Rep. Brian F. Egolf, Jr.

Sen. Rod Adair
Sen. Vernon D. Asbill
Sen. Dede Feldman
Sen. Timothy Z. Jennings
Rep. Rodolpho "Rudy" S. Martinez
Sen. Cisco McSorley

Staff

Kim Bannerman
Gordon Meeks
Jeret Fleetwood

Guests

The guest list is in the meeting file.

Handouts

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

Wednesday, June 1

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

Interim Committee Protocols

Raúl E. Burciaga, director, Legislative Council Service, provided the committee with an overview of several interim committee protocols. He began by discussing establishment of a quorum for committees, pointing out that the WNRC needs 11 voting members to establish a quorum. Mr. Burciaga noted that committees that do not have a quorum present may still operate as a special subcommittee for the purpose of taking testimony.

Mr. Burciaga went on to discuss the rule provision that allows a majority of members from one house on a committee to block the actions of another house. In relation to the WNRC, the provision allows five senators or seven representatives to block an action by the committee if all vote to oppose the action. However, he pointed out that interim committees often perform actions by consensus, making voting and blocking unnecessary.

Finally, Mr. Burciaga discussed travel by interim committees. He explained that the New Mexico Legislative Council would allow interim committees to meet outside of Santa Fe during the 2011 interim, but only during July and August. He reminded the committee that a special session on redistricting was anticipated for September, so there would be no meetings during that time. Mr. Burciaga also noted that the legislative council requires interim committees to finish their work by December 1.

Questions and comments to Mr. Burciaga included such topics as:

- the Internal Revenue Service tax on per diem payments to legislators as income; and
- that interim committees began traveling both to help make the legislative process more accessible to citizens and because hotel rooms in Santa Fe during summer months are simply too expensive.

Equine Herpes Virus (EHV-1) Outbreak Update

Dr. Dave Fly, state veterinarian, and Myles Culbertson, director, New Mexico Livestock Board, provided the committee with an update regarding a recent outbreak of EHV-1 in several western states, including New Mexico. Dr. Fly explained that cases of the virus had been identified in horses that recently attended a cutting horse event in Ogden, Utah. He went on to discuss some symptoms of the virus. After receiving questions from committee members requesting further information, Dr. Fly presented an in-depth discussion of the incubation period of the virus. He explained that the virus is spread primarily through nasal mucus and that common vaccines are not working on this strain of the virus. Dr. Fly also discussed the long-lasting impact that the virus has on the athletic ability of a horse.

Dr. Fly and Mr. Culbertson also discussed how the state is monitoring exposed horses. They explained that horses that attended the Utah event and horses that reside on the same premises as those horses should be treated as suspect cases and monitored for at least seven days. Dr. Fly and Mr. Culbertson also explained management strategies for horses with confirmed cases of the virus and recommended that owners of those horses that might have been exposed to the virus have the horses tested. However, they also pointed out that there are levels of risk to consider, explaining that horses who live on ranches and have had no contact with other horses are at low risk for virus exposure and may not need to be tested. Committee members expressed concern regarding the spread of the disease to racehorses. Dr. Fly noted that while the virus has been found in racehorses on the East Coast, so far there is no link to racehorses in the West or New Mexico. However, a possible case of the virus was being examined in a Texas racehorse training facility but has not been confirmed.

Questions and comments included the following topics:

- the increasing number of unwanted horses in New Mexico;
- the reluctance by the United States Department of Agriculture (USDA) to allow increased on-site testing for equine infectious anemia in New Mexico, even though New Mexico only has one certified testing lab located in Albuquerque, which holds up the sale and transport of horses; and
- that there is no evidence that EHV-1 can spread to humans.

★ Regarding the committee's discussion of equine infectious anemia testing, the committee directed staff to send a letter on behalf of the committee to the USDA, urging it to allow on-site veterinarian testing for the disease.

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

John D'Antonio, state engineer, and Estevan Lopez, director, ISC, provided the committee with an update regarding water issues in New Mexico. Mr. D'Antonio began by addressing the drought conditions facing the state in 2011. He provided the committee with charts and graphs showing the lack of precipitation and snowpack across the state. He pointed out that the period between January 2011 and April 2011 was the third-driest on record in the state and the driest on

record for the Albuquerque and Roswell areas. However, Mr. D'Antonio noted that, statistically, New Mexico's summer precipitation in years after poor spring snowpack has been significantly higher than normal, and hopefully that will again be the case this year.

Mr. D'Antonio and Mr. Lopez gave the committee an update on the activities of the OSE and the ISC. Mr. D'Antonio highlighted the continued efforts of the OSE to improve its quality of services and cut costs where possible. Mr. Lopez then spoke to the committee about the various Indian water rights settlements in the state. He highlighted the Navajo, Taos and Aamodt settlements. He also reminded the committee of the continued need for cost-share funding through the Indian Water Rights Settlement Fund. Currently, there is an estimated need of \$130 million from the state over the next 10 years to ensure the receipt of \$1.2 billion in federal funds.

To update the committee further on the activities of the ISC, Mr. Lopez discussed the status of the Ute Pipeline project and the Pecos River settlement and the status of the Rio Grande Compact. Regarding the Pecos River settlement, Mr. Lopez noted that due to the extreme drought in the region, the ISC was pumping its ground water wells to augment surface water supply. He emphasized that the state is fully compliant with its required deliveries to Texas because of its compact credit from 2010. However, to meet the settlement's terms, water must also be delivered to the Carlsbad Irrigation District, which is why the pumping is necessary at this time.

Mr. Lopez discussed the Rio Grande Compact in depth. He noted that at the end of 2010, there was a credit of water stored in Elephant Butte Reservoir. Based on this credit, the Texas Rio Grande Compact commissioner had requested a relinquishment of 100,000 acre-feet of compact credit, but due to the detrimental effects relinquishment would have to New Mexico, the OSE did not agree to relinquish the water. Mr. Lopez emphasized that the relinquishment would have been detrimental in large part due to the 2008 operating agreement on the lower Rio Grande between El Paso County Water Improvement District No. 1, the Elephant Butte Irrigation District and the U.S. Bureau of Reclamation, to which the state was not a party. Mr. Lopez told the committee that the OSC and ISC have determined that the operating agreement does not create a sustainable water management system for the lower Rio Grande and must be modified.

Mr. Lopez then turned to other issues in New Mexico, including the pending middle Rio Grande biological opinion, the Colorado River collaboration between New Mexico and the other six basin states and the Gila River planning process for the Arizona Water Settlement Act of 2004. He noted that the biological opinion for the Rio Grande silvery minnow and the southwestern willow flycatcher is currently being formulated by various federal agencies for 2012. Depending on the outcome of the opinion, new endangered species litigation may be required to sort out water usage in the middle Rio Grande valley. Mr. Lopez briefly noted New Mexico's continued collaboration with the Colorado River basin states and Mexico to share the Colorado River and asserted the need for further participation by the state in this area to ensure the state continues to maximize its water entitlements on the river. Regarding the Gila River, Mr. Lopez briefly set forth the current process for selecting projects for the state plan required by 2014. To wrap up the discussion of the activities of the ISC, Mr. Lopez briefly discussed the status of the New Mexico Strategic Water Reserve and the state and regional water plans.

Mr. D'Antonio presented the OSE's work around the state. He discussed the active water resource management initiative. He noted the OSE's progress toward implementing the program, emphasizing that the office is 90% ready to proceed with the program. However, because the program continues to be tied up in active litigation, it is unclear when the program will become fully functional.

Mr. D'Antonio turned to the recent designation of critical management areas in the eastern part of the state. He also discussed dam safety matters, informing the committee that there are currently 165 deficient dams statewide and that to fix the dams, the OSE estimates that it will need \$5 million per year for 10 years. Along with the dam safety issue, Mr. D'Antonio told the committee of the federal push to address unsafe levees nationwide and how this will affect New Mexico's hundreds of miles of levees.

Lastly, Mr. D'Antonio gave the committee an update on the litigation and appeals in which the OSE is involved. He also highlighted major proceedings in the water rights adjudications proceeding around the state.

Questions and comments included the following topics:

- the effectiveness of the Pecos River settlement, the recent replacement wells drilled in the Lake Arthur well field, public involvement in the settlement process and the use of state funding for implementation of the settlement;
- progress of the shore projects at Ute Reservoir;
- the state's involvement with the federal government to address unsafe levees and how those costs are being covered;
- the status of the domestic well challenge in the New Mexico Supreme Court; and
- how the ISC is ranking projects for the Arizona Water Settlement Act of 2004 and concern over the impending deadline for submitting the projects to the federal government without forfeiting water.

2011 Interim Work Plan, Itinerary and Meeting Schedule

The committee added the following topics to the proposed work plan:

- acequia issues;
- an update on the lower Rio Grande, including the operating agreement;
- a discussion of all federal cost-sharing projects in which the state is involved, including the status of the Indian Water Rights Settlement Fund;
- Water Trust Board funding;
- issues associated with budget cuts at the New Mexico Department of Agriculture county extension services;
- energy issues, including alternative energy development in the state and national security issues related to energy production;
- fish and wildlife issues, including endangered species and invasive species updates;
- industrial hemp production;
- updates on the status of levees in the state;
- the unwanted horse problem in New Mexico; and

- the status of the St. Augustine-area well permit applications discussed by the committee in 2010.

The committee also approved the following meeting dates and locations:

June 30	Santa Fe;
August 1-3	Silver City;
October 11	Santa Fe; and
November 7-8	Santa Fe.

Having no further business, the committee adjourned at 5:05 p.m.

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

**June 30, 2011
Room 322, State Capitol
Santa Fe**

The second meeting of the Water and Natural Resources Committee was called to order by Senator Phil A. Griego, chair, at 9:10 a.m. on Thursday, June 30, 2011, in Room 322 of the State Capitol.

Present

Sen. Phil A. Griego, Chair
Rep. Joseph Cervantes, Vice Chair
Rep. Ray Begaye
Rep. Brian F. Egolf, Jr.
Rep. Thomas A. Garcia
Rep. William "Bill" J. Gray
Sen. Clinton D. Harden, Jr.
Rep. Dona G. Irwin
Rep. Larry A. Larrañaga
Sen. Steven P. Neville
Rep. Andy Nuñez
Sen. Gerald Ortiz y Pino
Sen. Mary Kay Papen
Sen. Sander Rue
Rep. Mimi Stewart
Rep. James R.J. Strickler
Rep. Don L. Tripp

Advisory Members

Sen. Rod Adair
Sen. Vernon D. Asbill
Sen. Carlos R. Cisneros
Sen. Dede Feldman
Rep. Ben Lujan
Rep. James Roger Madalena
Rep. Rodolpho "Rudy" S. Martinez
Sen. Cisco McSorley
Rep. Bill B. O'Neill
Sen. Nancy Rodriguez

Staff

Kim Bannerman

Absent

Rep. Paul C. Bandy
Sen. Mary Jane M. Garcia
Sen. George K. Munoz

Rep. Anna M. Crook
Rep. Nora Espinoza
Rep. Candy Spence Ezzell
Sen. Timothy Z. Jennings
Sen. John C. Ryan
Rep. Henry Kiki Saavedra
Sen. Peter Wirth

Gordon Meeks
Jeret Fleetwood

Guests

The guest list is in the meeting file.

Handouts

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

Thursday, June 30

Welcome and Committee Business

After calling the meeting to order, the chair welcomed all the committee members. He then asked for review and discussion of the minutes. There being no discussion on the minutes, a motion to approve the minutes was made and seconded. The minutes were approved unanimously.

Acequia Report

Paula Garcia, executive director of the New Mexico Acequia Association (NMAA), provided the committee with an update regarding acequias in New Mexico and the work of the NMAA. She began with an overview of acequias, pointing out that they have managed water in New Mexico for centuries. Ms. Garcia also emphasized that acequias help support the social and economic livelihood of rural families across the state. She noted that acequias are recognized as political subdivisions of the state, and each is governed by a three-member elected commission and a mayordomo. Along with discussing their individual political status, Ms. Garcia explained how many acequias have joined the Congreso de las Acequias, where regional delegates represent various acequia interests around the state.

Ms. Garcia went on to discuss the importance of strategic investment in acequia infrastructure, explaining that acequia users understand that money is tight in today's economy. She told the committee that the strategic investment strategy maximizes leverage of federal, state and local government dollars and allows for phased projects to use funds more efficiently. However, Ms. Garcia noted that some capital outlay reform would help in this regard. She explained that the NMAA recommends that:

- technical assistance on project planning should be readily available to acequias;
- engineering designs for larger projects should be completed before construction funds are approved; and
- projects ready for construction can be combined with other statewide priorities.

Ms. Garcia then turned to the importance of self-governance by acequias. She explained that the NMAA has developed a specialized program to strengthen acequia governance and pointed out that teaching methods and educational materials used by the NMAA, such as the bilingual *Acequia Governance Handbook*, are culturally appropriate.

Next, Ms. Garcia discussed both the impact of drought conditions and water right transfers on acequias. She explained that while acequias have adapted their practices to compensate for water shortages, recent drought conditions have had a dramatic impact on many acequias, with some not receiving water for over three weeks. She said that acequias were authorized by the legislature to approve or deny certain water rights transfers out of an acequia system. However, she cautioned that while acequias enjoy a certain amount of protection, transfers of water rights from all rural communities to other regions of the state should be of some concern to the legislature. Ms. Garcia pointed to the proposed well field near San Augustin as an example of the potential for water rights to be exported from rural New Mexico to other areas. She suggested that the legislature consider enacting some degree of protection for such communities.

Questions and comments included the following topics:

- clarification on acequias' ability to approve water rights transfers, including:
 - Office of the State Engineer (OSE) involvement in informing water rights transfer applicants that they must have the approval of the acequia before the OSE will consider the transfer; and
 - the difference between the sale or transfer of ownership of a water right and transferring its place of use;
- the federal money available once an emergency is declared in an area, such as in areas affected by wildfires;
- the impact of the Las Conchas fire and other wildfires on watershed health and on acequias;
- the availability of money from the U.S. Department of Agriculture (USDA) for watershed maintenance and emergency watershed planning to prevent material from burned areas from getting into water supplies;
- the acequias' power of eminent domain;
- that currently, engineering designs are not required of all projects seeking capital outlay funding;
- the NMAA workshops for non-acequia entities on water management;
- the seniority of acequia water rights — with the exception of pueblos, acequia water rights are senior to most other water rights holders;
- that soil and water conservation districts do most of the salt cedar eradication work in the state; and
- drought condition problems for acequias, including low water flow that does not provide adequate hydraulics for the water to reach all the parcientes on an acequia.

Integrating Land Use and Water Planning in New Mexico

Susan Kelly, director of the Utton Transboundary Resources Center, provided the committee with a brief overview of the center, explaining its unique blend of expertise in water and natural resources law. Ms. Kelly said that the center produces the annual *Water Matters!* publication, convenes conferences on various water-related topics and provides research and guidance on water issues to elected officials, water managers, scientists, university faculty and students, the media and the public. She emphasized that the center hopes to continue its work, despite the pressure exerted in today's budget climate.

Ms. Kelly explained that water-use questions presented to the center often lead to larger land-use issues, prompting the center to produce a "white paper" on land use and water supply. She noted that while population growth estimates vary, it is clear that there will be increased pressure on the water supply over the next 40 years, making it pivotal that the decision-making process for land and water use planning strike a balance between economic growth, protection of the environment and respect for senior water rights. As examples of ways to strike such a balance at the state level, she suggested reducing the number of loopholes in subdivision rules, developing standard methodologies for calculating subdivision hydrology, coordinating projections and developing a state planning mechanism that keeps agencies informed about various development projects. She emphasized that the solution is not to place subdivision approval control with the OSE, but rather to coordinate OSE involvement with county control because of the state's interests in water development.

Questions and comments included the following:

- possible development of a bill to implement the center's recommendations;
- how the center addresses water issues on a greater level than individual lawsuits and therefore tries to avoid becoming involved with them;
- that looking at the cumulative effect of OSE actions with regard to land use planning helps people understand what a massive job the state engineer faces;
- the denial of permits by the OSE outside of Albuquerque;
- that while there is no formal relationship between the center and developers or other stakeholders, many show up at the conferences it convenes;
- how lack of funding makes the need for careful decision making even more critical than before;
- the methods used to calculate the percentage of water used for agriculture;
- whether agriculture's use of 78 percent of New Mexico's water is actually consumptive use; and
- whether New Mexico has any laws requiring coordinated land planning.

Status Report — State Parks Division of the Energy, Minerals and Natural Resources Department (EMNRD)

John H. Bemis, secretary-designate, EMNRD, provided the committee with a brief overview of the department, particularly the State Parks Division. He noted that the division is an enterprise agency because it brings economic growth to areas around the state where parks are located. Secretary Bemis went on to discuss the department's budget and current vacancies.

Tommy Mutz, director, State Parks Division, discussed the status of several state parks, explaining that many had been closed due to the threat of wildfires. He also noted that while Sumner Lake State Park had also been closed due to the presence of quagga mussels, it had recently reopened. Mr. Mutz emphasized the division's commitment to providing services to the citizens of the state despite drought conditions and staff shortages.

Tony Delfin, state forester, provided the committee with a more detailed update on wildfires burning in or near New Mexico. He explained that to date in fiscal year 2011, 1,021 fires in New Mexico have burned about 756,249 acres and more than 100 structures. Mr. Delfin

provided details about the major fires in New Mexico. He also touched on the Wallow Fire, which had already burned 538,043 acres in New Mexico and Arizona and was threatening homes and communities in Luna and Reserve. Mr. Delfin pointed out that the major fires he discussed qualify for Federal Emergency Management Agency (FEMA) fire management assistance grants, which would cover 75 percent of the state's cost for suppressing the fires. He also said that the cost of this year's fire season to date is about \$22 million. Finally, Mr. Delfin explained that there is still a significant risk of human-caused and dry lightning fires and noted that a pre-monsoon pattern seems to be in place but had not yet arrived.

Tod Stevenson, director, Department of Game and Fish (DGF), provided the committee with additional information about closure of areas controlled by the DGF, explaining that areas in Pecos, Chama, the Gila Wilderness and Cimarron had been shut down until the threat of fires lessens.

Questions and comments included the following topics:

- that in 2002, analysis was performed to determine the total economic impact of the Cerro Grande fire in Los Alamos, and similar research should be done this year; however, it will take years to determine the total impact of this year's fire season;
- how, typically, the state pays the up-front cost of fire suppression, and FEMA reimburses the state after about 18 months;
- that extra firefighting staff includes firefighters, dispatchers and accountants, and individual field offices hire additional firefighting staff, which can include out-of-state consultants;
- the State Parks Division's need to ensure a minimum level of quality at existing New Mexico parks before work can proceed on opening a new state park near Pecos;
- how a state park near Pecos would help protect some Native American cultural landmarks;
- the impact of the Cerro Grande fire and how that fire offered several lessons on how best to coordinate among state, federal and Native American entities with regard to firefighting;
- how firefighting efforts have depleted the water levels at some lakes and necessitated closing of boat ramps;
- that the Pacheco fire is almost entirely on federal land, so an emergency declaration is probably not necessary to secure FEMA funds;
- the effects of the veto of a bill that delayed sending additional money to the Fire Protection Fund; and
- the status of Sugarite Canyon State Park near Raton, much of which burned in the recent fire in that area; it will most likely reopen in August, but it is damaged to the point that people may not be interested in visiting the park this summer.

USDA Conservation Programs in New Mexico

Robert Apodaca, assistant chief of the western region, USDA Natural Resources Conservation Service (NRCS), provided the committee with an overview of NRCS programs and how those programs benefit all citizens. He explained that almost 75 percent of the land in the lower 48 states is private and rural. Mr. Apodaca also noted that while less than two percent of

the country's population farms, the agricultural industry adds about \$4 billion to the U.S. economy. He discussed some of the programs available through the NRCS that invest in conservation works for farmers, ranchers and other landowners, and he provided the committee with visual examples of land before and after NRCS projects were completed. Mr. Apodaca also provided brief examples of several NRCS programs.

Dennis Alexander, state conservationist, NRCS, provided the committee with more detailed information about several NRCS programs. He explained that the programs are available to private landowners and soil and water conservation districts. Mr. Alexander discussed the Environmental Quality Incentives Program, which he explained provides funding and technical expertise to farmers and ranchers to institute measures to protect soil, water, air and other resources while ensuring sustainable production. He discussed the Wildlife Habitat Incentives Program, which he said helps landowners protect wildlife habitats on private and tribal lands. Mr. Alexander also talked about the Conservation Stewardship Program (CSP), which encourages improving, maintaining and managing existing activities on agricultural and nonindustrial land. He pointed out that New Mexico producers account for a large portion of the national acreage enrolled under the CSP.

Questions and comments included the following topics:

- the lack of knowledge by small farmers and ranchers about the NRCS programs available to them and the process for using the programs;
- troubling statistics regarding the amount of agricultural land that has been developed over the past 25 years;
- a discussion of the worldwide need for agricultural development due, in part, to the pollution of Chinese land and rivers that makes the land unusable for farming;
- caps on NRCS program funding; and
- endangered species habitat restoration through NRCS programs.

Report on the Horse Problem in New Mexico

Myles Culbertson, executive director, New Mexico Livestock Board, provided the committee with a report on the growing problem of unwanted, abandoned and neglected horses in New Mexico. This year, it is estimated that more than 100,000 horses will become unwanted and therefore abandoned or neglected. He explained that the problem became worse starting in 2007, when the USDA forced closure of all horse slaughter plants in the United States due to pressure from animal rights organizations. Mr. Culbertson described the steadily increasing occurrences of abandoned, neglected and starving horses since 2007. He emphasized the stress that these large populations of abandoned horses are placing on public and tribal lands. Dr. David E. Fly, state veterinarian, informed the committee that in the last year, the U.S. Bureau of Land Management spent \$35 million to feed feral horses on public lands.

In response to the growing numbers of unwanted horses, the U.S. Government Accountability Office (GAO) released a report in June 2011 titled "Action Needed to Address Unintended Consequences from Cessation of Domestic Slaughter". Mr. Culbertson provided the committee with a copy of the full report. While noting that the current economic recession is

another factor leading to the need for many people to dispose of their horses, he opined, based on the findings of the GAO report, that the major reason for the increase in unwanted horses is the close of the slaughterhouses. He explained why shutting down these facilities has led to this growing problem and said that it may not be the most ethical or humane decision when it comes to these unwanted horses.

In describing the repercussions of shutting down the slaughter facilities, Mr. Culbertson explained in depth why people need to dispose of horses and how difficult and expensive that process can be. Dumping horses often becomes the only alternative for many horse owners faced with economic stresses. Feral horse populations then grow uncontrolled, putting stress on the environment, especially during droughts such as the one New Mexico currently faces. While horse slaughter continues in Mexico and Canada, the cost of transporting unwanted horses to these countries does not make this a viable option for many individuals.

Mr. Culbertson discussed New Mexico's proud agriculture and livestock history, noting that very few involved in those industries want to treat horses inhumanely. However, a horse that is either sick, dead or no longer useful or that cannot be taken care of due to financial constraints will require disposal. Without slaughter, many horses face less humane treatment and death. Also, much of the financial burden of addressing unwanted horses falls on the state and a small number of rescue organizations. Dr. Fly emphasized the burden that rescue organizations around the state are facing because of the growth in the number of unwanted horses.

Laura Bonar and Deborah Torza from Animal Protection Voters of New Mexico (APV) described APV's strong working relationship with the New Mexico Livestock Board on this issue and how both organizations are working together to try to alleviate the problem. The APV does not support reopening the slaughterhouses. They stressed the need for other programs, such as sterilization for population control, animal feed assistance for families struggling with economic issues and low-cost euthanasia programs.

Questions and comments included the following topics:

- what industry's role should be in addressing unwanted horses;
- what steps need to be taken to reopen the slaughterhouses and whether doing so is a viable or desirable option;
- whether New Mexico has any programs to use horses in therapeutic settings; and
- concern over additional federal legislation that would ban transport of horses to Canada and Mexico for slaughter.

There being no further business, the committee adjourned at 4:00 p.m.

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

**August 1-3, 2011
Silver City**

The third meeting of the Water and Natural Resources Committee was called to order by Senator Phil A. Griego, chair, at 9:10 a.m. on Monday, August 1, 2011, in the Silver City Business Center in Silver City.

Present

Sen. Phil A. Griego, Chair
Rep. Joseph Cervantes, Vice Chair
Rep. Paul C. Bandy
Rep. Ray Begaye
Sen. Mary Jane M. Garcia (Aug. 1)
Rep. William "Bill" J. Gray
Rep. Dona G. Irwin
Rep. Larry A. Larrañaga
Rep. Andy Nuñez
Sen. Gerald Ortiz y Pino
Sen. Mary Kay Papen
Sen. Sander Rue
Rep. Mimi Stewart

Absent

Rep. Brian F. Egolf, Jr.
Rep. Thomas A. Garcia.
Sen. Clinton D. Harden, Jr.
Sen. George K. Munoz
Sen. Steven P. Neville
Rep. James R.J. Strickler
Rep. Don L. Tripp

Advisory Members

Sen. Vernon D. Asbill
Sen. Carlos R. Cisneros
Rep. Anna M. Crook
Rep. Nora Espinoza (Aug. 1-2)
Rep. Candy Spence Ezzell
Sen. Dede Feldman
Rep. Rodolpho "Rudy" S. Martinez
Sen. Cisco McSorley
Sen. Nancy Rodriguez (Aug. 2-3)
Sen. John C. Ryan (Aug. 2)

Sen. Rod Adair
Sen. Timothy Z. Jennings
Rep. Ben Lujan
Rep. James Roger Madalena
Rep. Bill B. O'Neill
Rep. Henry Kiki Saavedra
Sen. Peter Wirth

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

Staff

Kim Bannerman
Gordon Meeks
Jeret Fleetwood

Guests

The guest list is in the original meeting file.

Handouts

Handouts and other written testimony can be found in the meeting file and on the Legislative Council Service web site.

Monday, August 1

The committee observed a moment of silence for former Senate Chief Clerk Margaret Larragoite, who recently passed away.

James Marshall, mayor of Silver City, welcomed the committee members to Silver City and thanked them for holding a meeting in southwestern New Mexico.

Representative Martinez also thanked the committee for coming to Silver City and briefly discussed how regional municipalities are working closely with county governments on water projects.

Arizona Water Rights Settlement Act: Gila River Planning Process Status

Several individuals representing various entities involved with the planning process on the Arizona Water Rights Settlement Act updated the committee on progress so far.

Craig Roepke of the Interstate Stream Commission (ISC) began by explaining that the ISC had adopted criteria for Tier 1 and 2 evaluations of applications for using the water and funding available to New Mexico through the Arizona Water Settlements Act of 2004, as well as a schedule for evaluations and final assessments. Mr. Roepke also noted that the criteria had been simplified at the request of stakeholders, with some of the more contentious criteria being removed altogether. He also addressed some of the concerns expressed by various groups and individuals regarding the proposal evaluation and eventual selection process, explaining that while a number of complaints have been made regarding the transparency of the evaluation process, including demands for public presence at deliberations of the evaluation panel, the process adopted by the ISC is similar to that used by New Mexico's Water Trust Board and the United States Economic Development Administration. Mr. Roepke noted that public presence at evaluation panel deliberations can serve to taint the process by making evaluations into popularity contests instead of judging applications solely on merit. He also pointed out that an independent observer, chosen by stakeholder consensus, is present for all deliberations. Finally, Mr. Roepke emphasized that the ISC will arrive at any decision only in an open public meeting with ample opportunity for public and stakeholder comments.

Vance Lee of the Gila-San Francisco Water Commission explained that the commission is committed to developing the available water resources and using the money available in the settlement to do so. He noted that any use of the water and money should benefit the residents of the area. Mr. Lee also indicated that the commission is reviewing the process as it moves forward and that the commission is still fulfilling its role in consulting on the process. Finally,

he provided the committee with pictures of the Gila River, noting that it has been mostly dry for the past two months, pointing out that July had record lows in precipitation and flow.

Allyson Siwik, executive director of the Gila Conservation Coalition, provided the committee with testimony regarding the stance of the coalition. She explained that while the coalition supports a balanced, fair and financially responsible approach to decision-making, Gila River water is not really needed to satisfy the water demands of the area. Instead, Ms. Siwik noted that water needs can be met cost-effectively through conservation and sustainable ground water use. Finally, she emphasized that the Arizona settlement offers a choice, rather than a mandate that New Mexico must pursue some kind of diversion project on the Gila River.

Martha Cooper, co-chair, Arizona Water Settlements Act Stakeholder Group, and field representative, The Nature Conservancy (TNC), provided the committee with a brief overview of the involvement of TNC in maintaining the natural heritage of the Gila River. She went on to explain that while TNC appreciates the stakeholder input and review process adopted by the ISC, critical decisions have yet to be made. Ms. Cooper indicated that TNC is asking for the ISC to recognize the power of a science-based and collaborative approach by developing a transparent process that includes continued input from stakeholders for design, selection and implementation of Arizona Water Settlement Act projects.

Topper Thorpe, co-chair, Arizona Water Settlements Act Stakeholder Group, and member, Gila Basin Irrigation Commission (GBIC), explained to the committee that the GBIC strongly believes that the settlement is about water, specifically the ability to develop an additional 14,000 acre-feet of water in southwestern New Mexico. He noted that while there are those who contend that there is enough water in the area to make the additional water unnecessary and that nothing should be done to change the "last free-flowing river" in the country, many of those people do not live on the river and do not depend upon it to irrigate agricultural land and raise livestock, nor do they face the devastation that comes with periodic flooding on the river.

Questions and comments from committee members included:

- the first \$66 million from the settlement requires no further action;
- other free-flowing rivers in the region could include the Animas and San Francisco rivers;
- the process for evaluating Tier 1 and Tier 2 criteria;
- that costs of many water projects exceed \$66 million or even \$128 million;
- the method of calculating flows on the Gila River as they enter Arizona;
- that special interest groups from elsewhere appear to be weighing in on a process that should primarily involve stakeholders; and
- an agreement does not yet exist between stakeholders.

Senator Griego opened up the committee to public comment.

David Ogilvie testified that this is a once-in-a-lifetime opportunity for New Mexico and that developing some kind of flood control would be helpful, since roads and bridges in the area are now subject to damage from Gila River flooding.

Darrell Allred testified that much of the issue is about maintaining water rights, and that much of the data used in the 1960s adjudications are flawed. He also noted that the beneficial user of water is the one entitled to it.

Beth Bardwell testified that there is a need to balance the uses for funding that come to New Mexico from the settlement. She questioned where the state will come up with the additional money necessary to fund a large-scale water project.

Hugh McKeen testified that stakeholders do a good job of looking out for their group's interests. He also noted that wherever he has seen dams and lakes, he has also seen prosperity. Mr. McKeen also pointed out that many of the tributaries of the San Francisco River are dried up and that the watershed is in need of better management.

Mike Cuff testified that the Cliff Gila Farm Bureau strongly supports anything to use the additional water resources available.

Anthony Gutierrez explained that he is a planner for Grant County and would like some representation on the evaluation panel.

Donna Stevens explained that she is from the Upper Gila Watershed Alliance and that there is no demonstrated need for extra water. Instead, she suggested that conservation could help yield additional water resources.

The committee directed staff to draft a letter to the ISC requesting it to produce a list of recommendations for Arizona Water Settlement Act projects seven months earlier than initially planned in order to allow the legislature to provide input.

The minutes of the June 30, 2011 meeting were approved as submitted.

Indian Water Rights Settlement Fund and Other Federal/State Cost-Sharing Projects

Estevan Lopez, director of the ISC, and John D'Antonio, state engineer, provided the committee with an update on the three main Indian water rights settlements involving the state: the Navajo settlement, Aamodt adjudication and Taos Pueblo settlement. Mr. Lopez and Mr. D'Antonio began by providing background on the Navajo settlement, including its history, projected costs and funds dedicated to date by the state. They also discussed the settlement's time line, noting that the most recent activity involved execution of a cost-sharing agreement between the state and federal government on June 27, 2011. Mr. Lopez and Mr. D'Antonio also noted that implementation of the settlement and construction of the project will begin in earnest in 2012.

Mr. Lopez and Mr. D'Antonio went on to discuss the Aamodt adjudication, again providing the committee with background costs and a time line. They noted that the settlement agreement signed in 2006 by the involved entities and the federal legislation signed into law by President Obama in December 2010 have some differences between them, and that the settlement parties are currently tasked with editing the settlement agreement to conform it to the legislation. Also, Mr. Lopez and Mr. D'Antonio explained that a number of public settlement implementation meetings are scheduled through October as work continues toward finalizing the settlement.

Finally, Mr. Lopez and Mr. D'Antonio discussed the Taos Pueblo settlement, offering the same background, costs and time line as the other two settlements. They explained that federal legislation approving the settlement was also signed into law in December 2010 and that settlement implementation meetings have been under way all year.

Questions and comments from committee members included:

- funding set aside in the Navajo settlement for non-Indian users is available for acequias, irrigation districts and similar entities;
- the importance of leveraging most of the project funding from the federal government;
- the consequences of not completing the settlement include costly and time-consuming litigation;
- that treatment of water system and pipeline water is planned; and
- potential methods of appropriating funding for the various settlement projects.

Mr. Lopez and Mr. D'Antonio also provided the committee with a brief update on the Eastern New Mexico Rural Water System, explaining that legislation has already been signed into law and that agreements and funding are already in place. They went on to note that advertising, bidding and construction of phase one of the project will take place over the next two years.

Questions and comments from committee members included:

- ISC contracts with area landowners for water usage;
- that the project should provide enough water for the land currently being farmed in the region;
- that water rights in the area have not yet been fully adjudicated; and
- that ground water pumping by New Mexico water users probably has more effect on available water resources than pumping by Texas water users.

Sacramento Watershed Hydrographic Study

B. Talon Newton, hydrogeologist, New Mexico Institute of Mining and Technology, and Bill Mershon and Rick Baish, supervisors for the Otero Soil and Water Conservation District, provided the committee with an update on the hydrographic study of the Sacramento watershed. They began by providing the committee with various maps detailing the interconnected nature of ground water tables and geologic formations, as well as maps showing how much of the overall geologic mapping program has been completed and what areas are still in progress. Mr. Newton,

Mr. Mershon and Mr. Baish pointed out that most of the geologic mapping project has been completed, but that it is really only part of the larger New Mexico state map project.

Lower Rio Grande Update — 2008 Operating Agreement and Adjudication Issues

Mr. Lopez and Mr. D'Antonio provided the committee with testimony regarding issues associated with adjudications of the lower Rio Grande and stream system issues that have arisen recently, mostly due to an agreement entered into between the Elephant Butte Irrigation District (EBID) and El Paso Irrigation District Number One (EP #1) involving compact water delivery amounts. Mr. D'Antonio provided the committee with a brief history leading up to the agreement. He went on to outline the agreement, which basically involves delivery of increased surface flows to Texas in exchange for the ability of EBID irrigators to increase ground water pumping. The increased flows in 2011 consist mostly of compact delivery credit water accumulated by New Mexico over the past several years but will later involve delivery of increased surface flows to Texas. Mr. D'Antonio pointed out that neither the Office of the State Engineer (OSE) nor the state of Texas has signed off on the agreement, but that the United States Bureau of Reclamation (BOR) has. He went on to raise a number of concerns regarding the agreement between the EBID and EP #1, including that it significantly alters the federally funded Rio Grande project, which divides water among New Mexico, Texas and Mexico.

Samantha Barncastle, counsel for the EBID, indicated that the agreement does not require the approval of New Mexico or Texas. She also indicated that the agreement is really a compromise between irrigation districts that helps avert litigation that would likely prove costly to all of the parties involved. Ms. Barncastle went on to address the concerns raised over the agreement's impact on the Rio Grande project, pointing out that the whole matter could become a matter of state law versus federal law, upon which the courts would ultimately have to decide.

Phil King, Ph.D., also of the EBID, stated that both the EBID and OSE are talking past one another, but did suggest that the numbers provided by Mr. D'Antonio do not provide a complete picture of the issue. He explained that credit water carries over from year to year, and that the EP #1 does have ground water storage, but instead chooses to store water in Elephant Butte Reservoir.

Filiberto Cortez, manager, El Paso Field Division, BOR, explained that it has taken over 30 years to divide water between the EBID and EP #1. He also noted that the BOR has to oversee between 51 and 78 operations, which is why most of the control over basic operations was turned over to the local districts, who have to use the past 30 years as a baseline. Mr. Cortez went on to note that while wetter than normal years were enjoyed for several years by farmers in the region, dry years will eventually force area stakeholders to develop a workable operating agreement.

Bill Gomez, executive director, Southern Rio Grande Diversified Crop Farmers Association, explained that his association represents 700 members irrigating over 36,000 acres of land. He noted that some like the agreement while others do not. He pointed out that while wells are more expensive to own and operate, they have allowed farmers to continue irrigating in unusually dry years. However, he also noted that those who did not invest in wells have not been

able to keep farming this year. Mr. Gomez emphasized that the agreement in place was negotiated mostly by farmers and that it lets most users divert a relatively equal amount of water while still allowing for some flexibility. He also acknowledged that the next few years will show whether or not it really works for everyone.

Questions and comments from committee members included:

- why some New Mexico farmers have to pay pumping costs while Texas farmers do not;
- the continued dry years will allow New Mexico farmers, who can pump ground water, to keep farming, while EP #1 farmers, who depend on surface flows, may not be able to;
- since New Mexico and Texas have not signed off on the agreement, nothing exists to prevent one state from suing another over compact deliveries;
- the EBID is not the only ground water user in the immediate area, as the City of Las Cruces and New Mexico State University (NMSU) also rely on ground water pumping;
- how the OSE tried to offer a memorandum of understanding to the EBID, but it was declined; the complex nature of water use in the region suggests that water users beyond the EBID and EP #1 are affected by the agreement;
- the agreement between districts is essentially a contract that both entities had to enter into;
- a technical committee meets annually to review the agreement and suggest changes that may improve it;
- that the agreement expires in 2015;
- the OSE still has limited authority over ground water pumping, unless it becomes federalized;
- while the agreement is basically fixed, a more detailed manual is revised each year, which allows for some changes; and
- that lower Rio Grande users in New Mexico realize they will likely have to pump water in order to deliver water to Texas.

San Augustine Plains Application to Appropriate Underground Waters

Bruce Frederick, New Mexico Environmental Law Center, attorney for protestants, and Eileen Dodds, Anita Hand-Gutierrez and Lin Kennedy, protestants, provided the committee with testimony regarding the application submitted to the OSE for 37 wells in the area. They explained that the permit for the wells identifies a number of potential uses for the water, but they warned that approval of those permits will likely impair the ability of area farmers to pump water from their own, shallower wells, which would harm area farmers and ranchers. Some presenters also expressed concern over the financial wherewithal of the applicant, as some of the test well drillers have yet to be paid and have since ceased drilling.

Questions and comments from committee members included:

- the application is for 37 wells that are 20 inches in diameter and 3,000 feet deep, but only two 1,500-foot test wells have been drilled so far;
- OSE permits are required for wells at the proposed depth;

- concerns exist over the quality of water available at the proposed depth of the wells, which may serve as another means of preventing approval of the permit application;
- the interconnectivity of deep aquifers and the potential effects of drilling the proposed wells on nearby water systems;
- potential legal loopholes that may exist for newly discovered water, which may make denial of the well permits difficult; and
- the applicant for the well permits has indicated that pipelines can be built to transfer water to other areas of New Mexico, which raises concerns regarding inter-basin transfers.

Tuesday, August 2

Update on the Middle Rio Grande Biological Opinion

Mr. Lopez began by explaining that the middle Rio Grande consists of the area between Cochiti Lake and Elephant Butte Reservoir. He went on to note that while compact compliance is important with regard to endangered species issues, the ISC prefers not to comply at the expense of farmers.

Rolf Schmidt-Peterson of the ISC provided the committee with testimony regarding an update of the biological opinion issued regarding endangered species in the middle Rio Grande, particularly the Rio Grande silvery minnow and the southwestern willow flycatcher. He explained that the biological opinion issued in 2003 expires in 2013.

Subhas Shah, chief engineer for the Middle Rio Grande Conservancy District (MRGCD), discussed the involvement of the MRGCD in the biological opinion. He explained that while the MRGCD has helped resolve issues related to the 2003 opinion, concerns still exist over whether adequate supply exists to satisfy both endangered species issues and the demands of irrigators within the district.

Mike Hamman, Albuquerque area manager, BOR, also discussed the biological opinion, highlighting progress made to date on habitat improvements for listed species and the role that the BOR plays in consulting with stakeholders to help them address all of the demands for water along the middle Rio Grande. He also noted that a more effective biological opinion will offer more flexibility, particularly since the 2003 opinion cannot simply be renewed.

Chuck DuMars, legal counsel for the MRGCD, acknowledged that, despite some differences, most of the entities involved in middle Rio Grande endangered species issues have the same goal in mind: protection of the species while helping farmers maintain their way of life. Mr. DuMars indicated that a new biological opinion will help stakeholders understand one another better, and that while there will be some scrutiny, the overall goal is to avoid litigation. He also acknowledged that compact deliveries will likely prove to be most important to the state as a whole, with the biological opinion being the secondary concern.

Questions and comments from committee members included:

- criteria required to remove a species from the endangered species list;

- long-term effects of the biological opinion and that resulting settlements will not be visible for another 10 years to 20 years;
- critical habitat, alternative habitat and the difficult nature of assessing the effect of unknown variables on endangered species populations;
- criteria for listing of a species as endangered in the first place;
- some species have been removed from the critical habitat list on the San Juan River, but the same thing has not happened on the Rio Grande;
- the effect of removal of non-native species on the Rio Grande on critical habitat improvements;
- the requirement of three separate populations for de-listing of a species;
- the cost to New Mexico of addressing federal Endangered Species Act of 1973 issues;
- the relationship of endangered species issues to the federal budget; and
- consequences of endangered species simply becoming extinct.

Seizure and Brand Inspection of Livestock

Myles Culbertson, executive director, New Mexico Livestock Board, and Bebo Lee, past president of the New Mexico Cattle Growers' Association, provided the committee with an update on the issues raised at a previous committee meeting regarding the increasingly unwanted horse population, explaining that the problem exists nationwide, and that the side effects of the issue include severe overgrazing of land set aside for unwanted horses and an increasing herd size.

Mr. Culbertson and Mr. Lee went on to discuss the issues associated with federal branding and seizure of livestock, providing the committee with revisions of a bill introduced during the last two legislative sessions that may help remedy the issues.

Questions and comments from committee members included:

- wild horse auctions do not necessarily draw enough buyers to lessen the available population;
- laws prohibiting the slaughter of horses in the United States have had the unintended consequence of dramatically increasing the number of unwanted horses;
- increased requirements for seizure of livestock as defined in the proposed bill should serve to help address the issue identified regarding federal seizure of livestock;
- costs associated with seizing cattle are significant; and
- previous efforts to address the seizure of livestock and their progress through the legislative process.

Electric Cooperatives Update

Keven J. Groenewold, executive vice president and general manager, New Mexico Rural Electric Cooperative Association; Ron Cunningham, vice president for power delivery for Western Farmers Electric Cooperative; and Joel Bladow, senior vice president for transmission for Tri-State Generation and Transmission Associations, provided the committee with an overview of the basic functions, service areas and visions for their various electric cooperatives. They began by explaining the basic differences between larger utility companies and rural electric cooperatives. Mr. Groenewold, Mr. Cunningham and Mr. Bladow went on to discuss

each co-op's pursuit of various renewable energy technologies in an effort to comply with renewable energy portfolio standards while still remaining competitive in the electric utility market.

Questions and comments from committee members included:

- the overall lack of incentives for customers to install solar systems in their homes;
- the lack of programs available for solar panel users to be able to sell power back to the grid in exchange for reduced rates;
- the most electric co-ops are not required to offer renewable energy to consumers; rather, they are being proactive;
- the small scale that most rural electric cooperatives operate on makes investments in unproven renewable energy technologies difficult, which makes larger scale reliance on such technologies unlikely at this time;
- transmission of electricity from generation sites to homes is a difficult endeavor, with larger transmission projects, which may open up additional markets, being particularly difficult; and
- exploration of nuclear plants as a power source is still an option.

NMSU and New Mexico Department of Agriculture Update on Agricultural Issues in the State — Agricultural Experiment Station and Cooperative Extension Service

Jeff M. Witte, director of the New Mexico Department of Agriculture, David C. Thompson, Ph.D., associate dean and director, Agricultural Experiment Station, NMSU, and Jon C. Boren, Ph.D., associate dean and director, Cooperative Extension Service, NMSU, provided the committee with testimony regarding the background, mission and past and current projects of the various services offered by cooperative extension services through NMSU and the New Mexico Department of Agriculture.

Questions and comments from committee members included:

- while staff is available in every county, funding for specific programs is still a problem;
- programs under way in individual extension stations;
- that work performed to date by NMSU programs on non-native phreatophyte control is a daily operation;
- the provision of safe food is embedded in the missions associated with each program, which involves the federal Department of Homeland Security;
- the importance of New Mexico and other rural food producers to the economy and well being of New Mexico residents;
- chile production in New Mexico and the lack of branding of New Mexico products; and
- the hard work performed by NMSU and the U.S. Department of Agriculture in the interest in helping to expand upon the opportunities available to New Mexico's agricultural producers.

Fireworks Ban Bill

Senator Griego cautioned the committee that the bill draft offered to the committee is not being considered at the time as a committee-endorsed bill for either the upcoming special session or the regular session in 2012.

Senator Feldman provided the committee with a draft of a bill that would allow the governor and local governments to ban or restrict open fires and the sale and use of fireworks in areas affected by extreme or severe drought.

Questions and comments from committee members included:

- whether any of the recent wildfires in the area had been caused by fireworks;
- the difficulty faced by business owners who accumulate fireworks inventory only to have fireworks banned, leaving them with goods they cannot sell;
- that both the New Mexico Association of Counties and New Mexico Municipal League will consider resolutions addressing this issue in September;
- whether Fourth of July celebrations by local governments can be banned under the proposed bill;
- that proclamations issued by the governor regarding severe or extreme drought would have to be specific to regions;
- a state of emergency declaration would enable the governor to mobilize law enforcement to enforce fireworks bans;
- coordination with tribal entities; and
- why consideration of the bill is necessary during the September special session.

Wednesday, August 3

Game and Fish Update: Invasive Species, Wildlife Depredation, Off-Highway Motor Vehicles and Hunting License Changes (SB 196)

Tod Stevenson, director of the Department of Game and Fish, provided the committee with an update regarding invasive aquatic species. He explained that the department is regularly testing lakes for zebra and quagga mussels, which have infested lakes in surrounding states. Mr. Stevenson went on to note that boats are being checked at all public lakes in the state and that 30 employees have been hired for that purpose. He also indicated that a test earlier in the year at Sumner Lake was positive for quagga mussels, at which point the lake was closed. However, subsequent tests have come back negative, so the lake has been reopened.

Mr. Stevenson then discussed game depredation issues, explaining that increased numbers of deer have been reported in the Silver City area and that collisions between deer and vehicles seem to be on the rise. He also noted that predators tend to follow deer, which could mean more mountain lions in Silver City. Mr. Stevenson also discussed bear and cougar issues, as well as work with the United States Forest Service on management of the state's elk population.

Mr. Stevenson then discussed off-highway motor vehicles, explaining that the program for off-highway motor vehicle training and certification had been moved from the Tourism

Department to the Department of Game and Fish. He also explained that while there are various training programs available, including classroom style and online programs, dealer coupons for free training have not been used much. Mr. Stevenson also noted that enforcement of safety laws has been stepped up, with blitzes and hotspot patrols across the state. He pointed out that patrols have shown that just over 85% of riders are compliant with safety laws.

Finally, Mr. Stevenson discussed the changes to hunting licenses required in SB 196 from the 2011 session, which changed license types and increases the percentage of hunting licenses awarded to New Mexico residents.

Possible Endangered Species Listings — Dunes Sagebrush Lizard and Lesser Prairie Chicken

Mr. Stevenson, Debbie Hughes, executive director of the New Mexico Association of Soil and Water Conservation Districts (NMACD), Steve Henke, president of the New Mexico Oil and Gas Association, and Jerry Fanning, environmental coordinator for Yates Petroleum Corporation, provided the committee with testimony regarding the possibility that the dunes sagebrush lizard and lesser prairie chicken will soon be listed as endangered species. Mr. Stevenson explained that the Department of Game and Fish is required to help the species if they are listed.

Ms. Hughes explained that the NMACD, through the Restore New Mexico Program, is working to maintain and improve the habitat for both animals. She explained that the habitat areas are also where a significant amount of oil and gas exploration occurs and that listing the animals as endangered would likely damage the industry. Ms. Hughes went on to note that many companies are now signing voluntary agreements to help maintain and improve the habitat in areas where wells are located.

Mr. Henke and Mr. Fanning explained that the U.S. Fish and Wildlife Service will decide on the listing in December. They pointed out that a number of large wells are in the area that would likely be designated critical habitat and that listing the species as endangered would almost certainly force some of those wells to close.

Wolf Reintroduction Management

Lorna Ruebelmann, Great Old Broads for Wilderness, testified that reintroduction of wolves is critical to the area's ecosystem. She emphasized that the Great Old Broads for Wilderness is very much in favor of wolf reintroduction. Ms. Ruebelmann noted that the group went to the Department of Game and Fish to tell it about the group's stance on wolves, but that it seemed to the group as though the State Game Commission has already made up its mind on the issue.

Jean Osorio provided the committee with her personal perspective on wolves as a Las Cruces resident. She explained that she takes groups of women into wolf habitat where they sleep in tents in hopes of seeing wolves. Ms. Osorio noted that women between 75 years and 11 weeks old have spent time as part of her groups in wolf habitat, and that while they have encountered 41 wolves, none of the women were attacked or threatened by them.

Michael Robinson of the Center for Biological Diversity explained that wolves are one of the most imperiled mammals in the world. He also detailed how wolf reintroduction has improved the ecosystem in Yellowstone National Park. Mr. Robinson went on to note that despite continued persecution from the livestock industry, 60% of respondents to a poll favored wolf reintroduction.

Ty Bays, southwest vice president of the New Mexico Cattle Growers' Association, indicated that wolf reintroduction is a waste of taxpayer money. He also noted that since inbreeding in the wolf population forced researchers to introduce non-wolf genes into the gene pool, the species in question are not really wolves at all.

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

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

**October 11, 2011
State Capitol, Room 322
Santa Fe**

The fourth meeting of the Water and Natural Resources Committee was called to order by Senator Phil A. Griego, chair, at 9:10 a.m. on Tuesday, October 11, 2011, in Room 322 of the State Capitol in Santa Fe.

Present

Sen. Phil A. Griego, Chair
Rep. Joseph Cervantes, Vice Chair
Rep. Paul C. Bandy
Rep. Ray Begaye
Rep. Brian F. Egolf, Jr.
Sen. Mary Jane M. Garcia
Rep. Thomas A. Garcia
Sen. Clinton D. Harden, Jr.
Sen. Mary Kay Papen
Sen. Sander Rue
Rep. Mimi Stewart
Rep. Don L. Tripp

Absent

Rep. William "Bill" J. Gray
Rep. Dona G. Irwin
Rep. Larry A. Larrañaga
Sen. George K. Munoz
Sen. Steven P. Neville
Rep. Andy Nuñez
Sen. Gerald Ortiz y Pino
Rep. James R.J. Strickler

Advisory Members

Sen. Vernon D. Asbill
Sen. Carlos R. Cisneros
Rep. Anna M. Crook
Rep. Nora Espinoza
Sen. Dede Feldman
Rep. Ben Lujan
Rep. James Roger Madalena
Sen. Cisco McSorley
Sen. Nancy Rodriguez
Sen. Peter Wirth

Sen. Rod Adair
Rep. Candy Spence Ezzell
Sen. Timothy Z. Jennings
Rep. Rodolpho "Rudy" S. Martinez
Rep. Bill B. O'Neill
Sen. John C. Ryan
Rep. Henry Kiki Saavedra

Staff

Jon Boller
Gordon Meeks
Jeret Fleetwood

Guests

The guest list is in the original file.

Handouts

Handouts and other written testimony can be found in the meeting file and on the Legislative Council Service web site.

Tuesday, October 11

Senator Griego noted that Kim Bannerman would no longer be staffing the committee and would be replaced by Mr. Boller. He also thanked John D'Antonio for his service to the State of New Mexico, pointing out that Mr. D'Antonio had recently announced his resignation as state engineer.

Adjudications Report

Greg Ridgley, deputy chief counsel of the Office of the State Engineer (OSE), provided the committee with an update regarding water rights adjudications in New Mexico. He explained that the OSE has 12 active adjudication suits involving an estimated 72,000 water rights owners. Mr. Ridgley provided the committee with a map showing both completed and active adjudications, as well as data regarding the total acres, adjudicated acres and defendants in pending adjudications.

Mr. Ridgley went on to discuss the OSE's adjudication performance measures, pointing out that legislative targets have been exceeded for the past eight years. He also discussed the number of vacancies in the office, noting that the number of attorneys and hydrographic surveyors has continued to shrink over the past two years, leaving the office with a 30 percent to 35 percent vacancy rate. Mr. Ridgley explained that HB 1110 (2005) funding, which was originally supposed to provide additional funding for the adjudication program, has resulted in a \$500,000 to \$700,000 shortfall in funding the program due to reductions in general fund appropriations elsewhere in the OSE budget. He stressed the need to replace the general fund amounts that were swapped out.

Mr. Ridgley provided the committee with a summary of a report detailing each active adjudication in the state, which he said will be presented next week to a working session with the judges involved in adjudications in the state. He noted that the full report is available through the OSE and that a copy was provided to staff. He also noted that \$15 million had been appropriated to the Indian Water Rights Settlement Fund in the capital outlay bill passed by the legislature during the recent special session.

Questions and comments from the committee included:

- the difference between water rights adjudications and licenses;
- that more than 900 protests were filed in response to well requests in the St. Augustine area, but most protestants did not pay the \$25.00 protest fee, reducing the number of formal protests to about 200 (still a new record);

- that adjudicating the middle Rio Grande will require as many resources as the 12 existing adjudications combined, which is why the OSE is currently focused on licensing in that region; and
- that an increase of \$2 million to \$3 million dollars per year is needed to make up for the general fund revenue subtracted from the OSE budget after the increase in funding of the adjudication program was added to the OSE's budget from the HB 1110 appropriation.

Joe M Stell Water Ombudsman Program

Darcy Bushnell of the Utton Transboundary Resources Center provided the committee with an update on the Joe M Stell Water Ombudsman Program, including the program's history and the adjudications in which the program is currently involved. She noted that the program currently works in the lower Rio Grande, San Juan and Aamodt adjudications, but help is available by request for the Chama, Zuni and Pecos adjudications. Ms. Bushnell went on to discuss the various services offered by the program as they relate to specific adjudications, as well as additional services the program could provide given the opportunity and additional staffing. Potential new services include a watershed portal for New Mexico and a national Indian water rights settlement e-repository.

Questions and comments from the committee included:

- San Juan County issues related to junior water rights holders not fully understanding how their water rights are administered;
- that enthusiasm for the program has not diminished, but the funding has;
- that members talk to their respective caucuses to support the restoration of funding to the program; and
- that Judge Gerald Valentine suggested the program several years ago, and he remains a supporter of it.

Levee Conditions in the Middle Rio Grande

Joe Quintana, regional planning manager for the Mid-Region Council of Governments (MRCOG), Subbas Shah and Derrick Lente of the Middle Rio Grande Conservancy District (MRGCD) and Deborah Foley of the U.S. Army Corps of Engineers provided the committee with the third report of the Mid-Rio Grande Levee Task Force. They explained that the task force was created in response to a senate memorial passed in 2009 and provided the committee with an update on efforts to bring levees into compliance with federal regulations. The group also discussed construction of the San Acacia to Bosque del Apache levee system, which is scheduled to begin construction in September 2012. They explained that current law requires that costs of U.S. Army Corps of Engineers levee projects be shared with a local sponsor, noting that the federal cost portion of the project is \$138 million and the local share is \$28 million, to be shared by the MRGCD and the Interstate Stream Commission (ISC). The group went on to explain that the project will be constructed in phases, with the non-federal portion of the first phase, \$2.1 million, due in August 2012.

The group also discussed levees in Albuquerque and Bernalillo, noting that levees in both areas will require either improvements or, in most cases, reconstruction to stay compliant with

federal regulations. However, the speakers noted that no funding for either area has been provided yet to initiate projects.

Finally, the group discussed mapping efforts by the Federal Emergency Management Agency (FEMA) as part of a major effort to revise the National Flood Insurance Program. The speakers explained that FEMA is working to revise the process for analyzing and modeling flood hazards, or risk, in the vicinity of levees, which will affect the accreditation of levees.

Questions and comments from the committee included:

- the need for levees in the Albuquerque area;
- that the U.S. Army Corp of Engineers cannot begin levee construction projects unless authorized by Congress;
- that it is likely that FEMA will redraw flood plain boundaries and ask the MRGCD to certify levees;
- that runoff and historical events include what is known as the 100-year flood;
- that support from the committee for a Water Trust Board (WTB) appropriation for levee repair and construction projects would be helpful;
- that the MRGCD's cash balances are about \$20 million, yet it is asking the state for \$2.1 million for the levee project; and
- acreage within MRGCD that is state versus federal land.

Representatives of the MRGCD were asked to come back to the committee in November and give details on its operating costs, funds available for projects and other funding sources.

Dam Safety and Liability Issues

Elaine Pacheco, bureau chief of the Dam Safety Bureau, OSE, provided the committee with an update regarding dam safety issues in New Mexico. She began by outlining the dam classification system adopted by the OSE in 2006, which includes condition ratings and hazard classifications. Ms. Pacheco went on to provide the committee with a list of dams in the state based on their classification, explaining that high-hazard dams are ones whose failure will likely cause loss of human life, while significant and low-hazard classifications pose less risk to human life, but failure could cause economic damage. She also pointed out that there are 111 deficient publicly owned dams classified as having a high hazard potential and that an estimated \$183 million is needed to repair them. Finally, Ms. Pacheco updated the committee on the progress of dam rehabilitation projects in Bloomfield, Cabresto and Springer.

Debbie Hughes and Eddie Vigil of the New Mexico Association of Conservation Districts provided the committee with concerns related to soil and water conservation district (SWCD) payment of insurance premiums to the Risk Management Division (RMD) of the General Services Department. They explained that, as of 2009, each of the 47 districts is required to pay \$1,000 insurance premiums to the RMD, even though many districts have difficulty coming up with the money to do so. Ms. Hughes and Mr. Vigil went on to note that some question exists about RMD approval of SWCD emergency action plans and subsequent coverage by the RMD in the event of dam failure.

Questions and comments from the committee included:

- the difficulty the OSE has in attracting employees, particularly engineers, to work in dam safety;
- that a dam has yet to fail in New Mexico;
- whether dam safety regulations are being updated similar to safety regulations for levees;
- that a dam in Los Alamos came close to failure over the summer, but ultimately it did not fail; and
- floodplain issues in Hatch.

Deep Wells in Rio West

George King, an engineer with Aperion Companies, provided the committee with testimony regarding a deep well project in Rio West, located west of Rio Rancho. He explained that the company has drilled a 4,000-foot well into an aquifer and plans to treat the water pumped from the well to utility-quality water for sale to anticipated buyers in the region. Mr. King explained that the water, which is somewhat brackish, will be transported from the well via pipeline to a treatment plant, then sold. He also discussed the company's work with the OSE, noting that the company has forged a good working relationship with the agency.

Other representatives from Aperion discussed specific aspects of the operation, including drilling, transmission via pipeline and booster pumps and treatment. They emphasized that safety of both the well site and the public, both in terms of well operations and water quality, is the company's top priority. For example, the company's representatives pointed out that a telescoping well casing protects any other shallower aquifers that it passes through from contamination by the brackish water. They also discussed the multiple technologies running at the treatment site to maximize both the quality and quantity of the water being treated.

Questions and comments from the committee included:

- that byproducts from the water treatment will not present a problem as markets exist for all of the byproducts, including radium, which is used in semiconductors;
- that the company's final plan is to form a utility and sell water to other, smaller utilities;
- that the well is about 4,200 feet deep;
- hydrostatic pressure issues;
- that OSE jurisdiction over the well is limited, but because the water does pass through its jurisdiction, the office will always be involved with the project;
- that eventually, two utility companies will exist: one to drill and export the water and a second to treat it and reform the byproducts;
- that the water will be sold by the gallon, similar to other water utilities;
- that legislation providing the OSE with authority over deep aquifers and wells came after Aperion's initial permit; and
- that upwards of 15 billion acre-feet are believed to be in the aquifer.

Water Trust Board Report

Rick Martinez of the New Mexico Finance Authority (NMFA) provided the committee with an update regarding the WTB. He began by offering a brief explanation of the WTB's history, mission, makeup and ongoing projects, pointing out that the board oversees three separate funds that may be used for statewide water projects: the Water Trust Fund, the Water Project Fund and the Acequia Project Fund. Mr. Martinez went on to explain that while each fund comes from separate, defined sources, all three exist to provide financial assistance for water projects. He went on to indicate that while the board and its funds are mostly focused on water infrastructure projects, legislation passed during the 2005 session dedicates a percentage of all the money that goes into each of the funds toward water rights adjudications.

Next, Mr. Martinez detailed the process used by the board to determine whether or not a project is funded and, if so, at what level. He also provided the committee with an overview of the various projects approved for funding by the board relative to their location in the state. Mr. Martinez noted that the NMFA has also begun to involve federal entities in looking at proposed projects to determine if federal funding might be a better fit for some projects.

Questions and comments from the committee included:

- the difficulty of looking at projects without some kind of cost/benefit analysis for each one; and
- that funds revert back to either the Water Trust Fund or to the Severance Tax Permanent Fund, depending on their source.

Regional Water Planning Status

Angela Bordegaray of the ISC provided the committee with an update on the regional water planning process. She began by emphasizing the importance of water planning, pointing out that plans are a tool for protecting and preserving water, as well as helping to provide a foundation for water management. Ms. Bordegaray went on to review the ISC water planning program, noting that it began in 2003 and was integrated, where possible, in 2008. Finally, Ms. Bordegaray provided the committee with a map indicating the status of water plans throughout the various regions of the state. She noted that several plans have not been updated for several years, and while some regions have been able to update without ISC assistance, others have requested assistance. However, Ms. Bordegaray indicated that funding constraints make it difficult for the ISC to provide much assistance.

Questions and comments from the committee included:

- that lack of funding for water planning further speaks to the need to spend public money carefully;
- the progress made by the ISC in regional water planning since its inception in 2003; and
- that while the plans take into account adjudication issues in many regions, there is no formal relationship between the regional water planning process and adjudications.

There being no further business, the committee adjourned at 4:30 p.m.

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

**November 7-8, 2011
State Capitol, Room 322
Santa Fe**

The fifth meeting of the Water and Natural Resources Committee was called to order by Representative Joseph Cervantes, vice chair, at 10:10 a.m. on Monday, November 7, 2011, in Room 322 of the State Capitol in Santa Fe.

Present

Rep. Joseph Cervantes, Vice Chair
Rep. Paul C. Bandy
Rep. Ray Begaye
Rep. Brian F. Egolf, Jr.
Sen. Mary Jane M. Garcia
Rep. Thomas A. Garcia (Nov. 7)
Rep. William "Bill" J. Gray
Sen. Clinton D. Harden, Jr. (Nov. 7)
Rep. Larry A. Larrañaga
Sen. George K. Munoz
Rep. Andy Nuñez
Sen. Gerald Ortiz y Pino
Sen. Sander Rue
Rep. Mimi Stewart
Rep. James R.J. Strickler
Rep. Don L. Tripp

Advisory Members

Sen. Vernon D. Asbill
Sen. Carlos R. Cisneros
Rep. Anna M. Crook
Rep. Nora Espinoza
Rep. Candy Spence Ezzell
Sen. Dede Feldman (Nov. 7)
Sen. Timothy Z. Jennings (Nov. 8)
Rep. Ben Lujan (Nov. 7)
Sen. Cisco McSorley
Rep. Bill B. O'Neill
Sen. Nancy Rodriguez
Sen. John C. Ryan
Sen. Peter Wirth

Absent

Sen. Phil A. Griego, Chair
Rep. Dona G. Irwin
Sen. Steven P. Neville
Sen. Mary Kay Papen

Sen. Rod Adair
Rep. James Roger Madalena
Rep. Rudolpho "Rudy" S. Martinez
Rep. Henry Kiki Saavedra

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

Staff

Jon Boller
Gordon Meeks
Jeret Fleetwood

Guests

The guest list is in the original meeting file.

Handouts

Handouts and other written testimony can be found in the meeting file and on the Legislative Council Service web site.

Minutes Approval

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

Monday, November 7

On a motion made, seconded and passed, the minutes of the August 1-3, 2011 meeting of the committee were approved as submitted.

On a motion made, seconded and passed, the minutes of the October 11, 2011 meeting of the committee were approved as submitted.

Indian Water Rights Settlement Fund Report

Estevan Lopez, director of the Interstate Stream Commission (ISC), provided the committee with an update regarding the Indian Water Rights Settlement Fund. He explained that the 2005 Indian Water Rights Settlement Fund Act requires the State Engineer and the ISC to report to the legislature by November 15 each year regarding:

- the status of proposed Indian water rights settlements requiring state funding;
- distribution of funds from the settlement fund to implement approved settlements;
and
- recommendations on appropriations to the fund necessary to implement settlements.

Mr. Lopez began by noting that New Mexico presently has three Indian water rights settlements pending: the Navajo settlement; the Aamodt adjudication settlement; and the Taos Pueblo settlement. He discussed the current status of each settlement. He noted the project costs for each settlement, pointing out the federal and non-federal portions of each project. Total federal funding for the three settlements will be \$1.3 billion, with the state share being \$130 million and local share being \$93 million. State funding, he noted, must be in place by 2017 for the Taos settlement and possibly the Aamodt settlement.

Next, Mr. Lopez discussed the distribution of funds from the settlement fund, noting that severance tax bonds (STB) were issued in the amount of \$10 million, with \$1.4 million allocated to Taos local parties for water rights acquisitions and \$8.6 million for Navajo settlement implementation. He also indicated that, during the 2011 special session, the legislature appropriated another \$15 million in STB authorizations.

Finally, Mr. Lopez recommended funding of \$15 million each year for the next five fiscal years to meet the state's cost-share obligations.

Questions and comments from the committee included:

- future availability of settlement funds;
- extension of time frames in settlement legislation requires agreement by all of the parties who entered into the settlement;
- stakeholders are meeting to ensure that the implementation of the Aamodt settlement complies with language in the federal legislation;
- well users can opt out of the Aamodt settlement, but they may be subject to a priority call;
- construction projects for the Navajo settlement are furthest along;
- the construction for the Navajo settlement is subject to a significant amount of gross receipts taxes and may generate \$60 million in revenue for the state;
- it would be difficult for parties who signed onto the Aamodt settlement to back out of the agreement now;
- there are three basic categories of non-Indian water users under the Aamodt settlement: those who sign on now, those who sign on later and those who do not sign on;
- money due to Gallup from the Navajo settlement does not offset the city's cost-share obligation;
- some money in the Taos settlement is for local parties to acquire water rights from willing sellers;
- Taos-area mutual domestic water consumers associations get federal money for water rights acquisitions because they are signing on to mutually beneficial water projects; and
- anti-donation clause issues may arise from the giving of money for Taos water rights acquisitions.

Middle Rio Grande Conservancy District and U.S. Army Corps of Engineers Financing of Levee Reconstruction Projects

Deborah Foley, chief of civil works for the Army Corps of Engineers, Subbas Shah, chief engineer for the Middle Rio Grande Conservancy District (MRGCD), and John Kelly, MRGCD board member, provided the committee with testimony regarding questions raised by the committee at its October 11 meeting. The committee expressed concern regarding cost-sharing requirements for levee projects and a request from MRGCD for the state to fund a significant amount of the non-federal costs, despite MRGCD's operating budget and significant available cash balances.

Ms. Foley and Mr. Shah began by providing the committee with an overview of the district's operating budget and reserve balances, as well as other available funds. They discussed the cost-sharing requirements for phase one of the levee project, noting that the federal government is providing \$10 million for the project in fiscal year 2010, while state and local entities must add another \$2.1 million. Mr. Kelly explained that MRGCD had matched the ISC contribution of \$300,000, and that additional funding would have to come from other sources.

Ms. Foley and Mr. Shah then went on to discuss the importance of the levee project, noting that while a relatively small number of MRGCD constituents will receive flood protection from the completed project, the county and city of Socorro will benefit from flood protection, as will endangered species habitats.

Finally, Mr. Shah discussed planned future uses of MRGCD reserves, such as infrastructure repair and replacement and backup funding for retiree health care benefits.

Questions and comments from the committee included:

- prioritization of the San Acacia levee project over projects closer to Albuquerque that may benefit more people;
- issue of ownership of levees is currently being decided in court;
- funding for the state's share of the project would go through the Water Trust Board (WTB);
- flood control and protection offered by Cochiti Dam;
- potential precedent set by the committee if it endorses a project before it goes before the WTB;
- Socorro-area levees were not designed for flood-control, but more as an afterthought to conveyance;
- explanation of individual items in the MRGCD budget;
- how do people get who have to pay taxes to the MRGCD even though they receive no water from the project benefit; and
- potential for job creation through the levee project.

On a motion made and seconded, the committee voted 10 to 3 to endorse funding of phase one of the levee project for the WTB's consideration, with Representatives Gray and Stewart and Senator Harden voting NO.

Industrial Hemp Production

Bernice Muskrat, of The Native International Solutions, Inc., and Jerry Fuentes, of the New Mexico Industrial Hemp Coalition, provided the committee with testimony regarding industrial hemp. They began by emphasizing the fundamental differences between industrial hemp and marijuana. Ms. Muskrat went on to explain that commercialized hemp presents a viable economic opportunity for domestic producers, noting that hemp products produced outside of the United States already enjoy a small, robust market that shows significant potential for growth. To illustrate, Ms. Muskrat and Mr. Fuentes listed a number of hemp products, emphasizing that while most of them are sold in domestic stores, state and federal regulations

prohibit the growth of domestic hemp. Hemp production in New Mexico has a potential economic impact of up to \$800 million, they said.

To further illustrate the difference between industrial hemp and marijuana, Ms. Muskrat and Mr. Fuentes provided the committee with a study regarding the distinct genetic composition of each. They went on to emphasize that industrial hemp is being cultivated in a number of other countries, much of which is being imported into the United States.

Ms. Muskrat also noted that enough research has already been conducted to acknowledge that various strains would likely perform better in certain climates, and that only a little research would be required to identify a strain that would flourish in New Mexico.

Questions and comments from the committee included:

- percentage of active ingredients is primarily what separates marijuana from industrial hemp;
- studies show that hemp would likely grow well as a crop in New Mexico;
- issues regarding hemp production on Native American lands;
- hemp is included in the federal law that prohibits marijuana;
- possibility of New Mexico State University conducting research on hemp seeds that contain zero percent THC; and
- while tribes would be capable of growing industrial hemp, they are looking for New Mexico to take the first step in licensing its cultivation.

On a motion made and seconded, the committee endorsed a bill providing for the licensing of the growing, selling and processing of industrial hemp on a vote of 11 to 2, with Representatives Gray and Strickler voting NO.

New Mexico Forest and Watershed Institute

Dr. Andrew Egan, director of the New Mexico Forest and Watershed Institute at New Mexico Highlands University, provided the committee with testimony regarding the institute. He began by providing an overview of the institute's funding sources, strategic plan and most recent work.

Dr. Egan discussed a recent initiative by the institute and the Forestry Division of the Energy, Minerals and Natural Resources Department to convene a stakeholder group to develop and implement a strategy to improve the health and safety of the Gallinas and neighboring watersheds in order to mitigate the potential for catastrophic wildfire. He noted that the stakeholder group will secure a more certain and sustainable water supply for the city of Las Vegas and the region through the reduction of hazardous forest fire fuels. Dr. Egan listed the stakeholders in the group and spoke about the work conducted so far, such as touring the Track Fire site, to better understand how potentially catastrophic wildfires in watersheds can be. He also discussed similar efforts in other watersheds.

Questions and comments from the committee included:

- effects of forest overgrowth on spring runoff flows and forest fire fuel accumulation;

- climate data suggests that New Mexico is getting hotter and drier;
- federal and state forestry officials differ on the diameter of trees that should be removed in forest-thinning efforts;
- forest thinning would likely not have made much difference in the intensity of the Track Fire;
- the Gallinas Watershed will become problematic if it is not thinned and does catch fire; and
- efforts to make forest thinning economically sustainable, through sale of raw materials, have not been successful to date.

Rio Grande Restoration Report

Steve Harris, of Rio Grande Restoration, provided the committee with testimony regarding the functioning condition of New Mexico's rivers, which he explained depends upon the amount of water flowing in each of them. Mr. Harris noted that New Mexico seems to have a policy of developing water supplies, but does not have one to manage the health and integrity of rivers. He acknowledged that while policymakers in the state are becoming more aware of the importance of undertaking river improvement projects, there is still much work to be done.

Mr. Harris updated the committee on a study performed in response to House Joint Memorial 3, from the 2009 session, which did not pass but sought to identify streams at risk of degradation due to hydrologic alteration. He explained that the study did indicate that there were significant flow alterations on 28 of the 32 gauge sites, which suggests that New Mexico should develop robust flow-ecology relationships on individual streams, where practical opportunities to improve flows exist.

Mr. Harris also discussed an environmental flow demonstration project underway on the Rio Chama and concluded with some steps that the legislature might take to improve and protect environmental flows in the state's rivers. He suggested that New Mexico invest more in river science to better understand environmental flows and that the state resolve the issue of beneficial use.

Questions and comments from the committee included:

- accuracy of data regarding flows and private property on the Rio Hondo; and
- importance of taking care of New Mexico's rivers.

Promoting Energy Efficient Buildings in New Mexico

Sean Maguire, of Johnson Controls, provided the committee with testimony regarding energy-efficient buildings. He began by explaining that a number of energy and water-related challenges are facing states, including:

- increasing energy costs;
- increased emphasis on efficiency;
- increased facility costs due to aging and deferred maintenance;
- water scarcity; and
- limited and unpredictable revenues.

Mr. Maguire further noted that there are a number of ways of increasing a building's energy efficiency, and that through performance contracting, states are able to contract with companies such as Johnson Controls to improve efficiency. He provided the committee with an overview of the performance contracting process, beginning with identification of goals and a detailed energy audit, through building improvements such as lighting, water and heating and cooling upgrades. Mr. Maguire noted how investing in energy efficiency would help pay for itself over time through reduced energy costs.

Finally, Mr. Maguire provided the committee with a case study of performance contracting in the state of Missouri. He explained that the state had 32 million square feet of buildings and annual operation and maintenance costs of \$300 million. After performance contracting improved the energy efficiency of those buildings, the state saw annual savings of about \$35 million and expected payback of the initial investment in about one year.

Questions and comments from the committee included:

- performance contracting work done on buildings at New Mexico Military Institute;
- companies like Johnson Controls make money by installing energy-efficient devices;
- methodology for verifying energy savings;
- efficiency-improving devices include timers and motion detectors to shut lights on and off and photovoltaic solar panels;
- anti-donation clause issues that may be present in contracting with specific companies to improve state building energy efficiency;
- whether funds in the Efficient Use of Energy Act are starting to be used;
- success in Missouri might not equal success in New Mexico; and
- some energy-efficiency improvements can be done through executive order.

Other Business

Representative Bandy presented the committee with a letter to the U.S. Fish and Wildlife Service, asking them to consider delaying listing of the dunes sagebrush lizard as an endangered species. He explained that listing the lizard as endangered could harm oil and gas exploration in the area. Several members of the committee expressed concern regarding the content and accuracy of the letter.

On a motion made and seconded, the committee voted 10 to 4 to send the letter to the U.S. Fish and Wildlife Service asking that listing of the dunes sagebrush lizard as endangered be postponed for one year, with Representatives Cervantes and Stewart and Senators Garcia and Ortiz y Pino voting NO.

Tuesday, November 8

Clean Arroyos Task Force Report

Charles Thomas, executive engineer of the Southern Sandoval County Arroyo Flood Control Authority, explained that the Clean Arroyos Task Force (CATF) was formed in response to Senate Memorial 48 (2011) and House Memorial 9 (2011) and was convened by the Mid-Region Council of Governments with representation from cities, counties, flood control

authorities, the Department of Environment, the Environmental Improvement Board and others with experience and knowledge regarding arroyos and city planning. The mission of the CATF is to study ways to prevent the buildup of trash in arroyos and formulate findings and recommendations to address the problem. The study area includes parts of Sandoval, Bernalillo and Valencia counties, he noted, where nearly 35 million pounds of trash and debris was collected in 2010 from arroyos in the Middle Rio Grande Valley by various entities at a cost of nearly \$15 million. These totals, he stressed, paint an incomplete picture of the actual amount of trash and debris found in arroyos in a given year.

Mr. Thomas outlined several recommendations designed to address the problem, including the following:

- enact legislation that establishes recycling market development zones to encourage recycling end markets to locate in New Mexico;
- provide incentives for the proper disposal or recycling of targeted materials;
- authorize new sources of funding and resources to secure appropriate staff resources for local governments to enforce existing laws and ordinances related to litter and illegal dumping;
- appropriate funding for the Rubberized Asphalt Fund that was created by Section 74-13-20 NMSA 1978, which would create an in-state market for ground rubber;
- encourage judicial enforcement programs to require offenders to clean up and restore the area of the offense; and
- increase support for additional education and public outreach programs and materials on how water quality is affected by illegal dumping and litter in arroyos.

Restoration Costs of Abandoned Well Sites

Jeff Kramme, of Bloomfield, explained how the process of final reclamation of abandoned well sites in the San Juan Basin is working and how that process is passing liability to the New Mexico taxpayer for the ultimate reclamation of these wells. Mr. Kramme stressed that he is pro-drilling, but that everyone should play by the rules, among which are the simple rules that everyone learned in kindergarten: 1) play fair; 2) clean up your own mess; 3) do not take things that are not yours; and 4) if you use it, put it back the way you found it. Unfortunately, he noted, operators do not always play by the rules and government agencies do not always enforce the rules. Consequently, Mr. Kramme explained, there are an estimated 2,500 abandoned well sites in the San Juan Basin, the liability for which has been passed on to New Mexico taxpayers. Given that the average cost of reclamation for a well site ranges from \$16,500 to \$50,000, he said, the liability passed on to New Mexico taxpayers would total between \$41,250,000 and \$125,000,000. Mr. Kramme explained that as long as current regulations are not enforced, the incentive for many operators is to avoid spending money on reclamation and pocket the money. He asked that the legislature put pressure on the Bureau of Land Management (BLM) to address the problem and enforce the law.

Questions and comments from the committee included:

- number of wells in New Mexico regulated by the Oil Conservation Division;
- many wells in New Mexico are regulated by the BLM, which does not seem to enforce regulations very strictly;

- operators who abandon wells in New Mexico are actually rewarded because they walk away from significant financial liability and their bonds are usually released anyway;
- differences in process for reclamation of private and public lands;
- it is the duty of the well operator to plant and replant native grass until it takes root;
- many abandoned wells in San Juan County are from the 1950s;
- difficulties private landowners have in sorting through the reclamation guidelines and seeking recourse;
- there is a zero balance in the Oil and Gas Reclamation Fund; and
- status of cleanup on Horseshoe Well.

Water Rights on National Forest Lands

Darrell Allred, Glenwood Realty and Reserve Realty, and Pete Domenici, Jr., attorney, explained that many ranchers in the Gila National Forest did not file water rights declarations for their stock wells back in the 1960s, when the area was being adjudicated, due to then-State Engineer Steve Reynold advising them to do so. Later, after the court in *U.S. v. N.M.*, 438 U.S. 696 ruled on the question of which law governs water allocation within the state, water rights owners in the Gila were at a loss as to how to claim water rights on federal lands. However, State Engineer John D'Antonio, they said, has been very receptive to finding a way to recognize these rights and will license valid rights with certain restrictions, namely that the rights cannot be transferred off the ranch and the purpose of water use cannot change, though the diversion method could be changed. Mr. Domenici said that a good balance has been established, though a lot of work remains to be done. Mr. Allred asked that the committee support funding to increase the number of employees in the Deming Office of the State Engineer to help the process along, and fund a public outreach effort to get all the ranchers in the Gila to declare their water rights.

LEGISLATION

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HOUSE BILL

50TH LEGISLATURE - STATE OF NEW MEXICO - SECOND SESSION, 2012

INTRODUCED BY

FOR THE WATER AND NATURAL RESOURCES COMMITTEE

AN ACT

RELATING TO AGRICULTURE; PROVIDING FOR LICENSING THE GROWING,
SELLING AND PROCESSING OF INDUSTRIAL HEMP; ESTABLISHING FEES;
PROVIDING FOR ADMINISTRATIVE MONITORING; MAKING AN
APPROPRIATION.

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

**SECTION 1. RULES TO ENCOURAGE GROWTH AND SALES OF
INDUSTRIAL SANTHICA--REGISTRATION.--**The New Mexico department
of agriculture shall:

A. provide for registration of Santhica plants and
seeds and act as a monitoring and marketing agency for growers
of Santhica and of other hemp varieties that are THC-free; and

B. determine rules to encourage growth and sales of
industrial Santhica and ensure the participation by and
inclusion of individual farmers, agricultural cooperatives and

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1 businesses in the rulemaking process.

2 SECTION 2. LICENSE--FEES.--

3 A. A person or business planning to grow and sell
4 industrial Santhica seed or industrial Santhica fiber shall
5 obtain a grower's license by submitting an application to the
6 New Mexico department of agriculture containing the following:

7 (1) the name and address of the applicant;

8 (2) the location and legal description of the
9 land to be used for the production of industrial Santhica and
10 the name and address of the person holding title to the land on
11 which the industrial Santhica will be planted;

12 (3) authorization of field inspections and
13 certification at the time of sale; and

14 (4) a nonrefundable application or renewal fee
15 of no more than one hundred fifty dollars (\$150).

16 B. A grower shall maintain records showing:

17 (1) the origin of the seed purchased and
18 planted;

19 (2) the quantity of the seed purchased and
20 planted;

21 (3) the amount of industrial Santhica
22 harvested and sold; and

23 (4) buyers and recipients of the industrial
24 Santhica plants, fiber and seed.

25 C. The New Mexico department of agriculture shall

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1 help to ensure availability of seed. The department shall:

2 (1) maintain an authorized list of certified
3 seed sources for industrial Santhica;

4 (2) certify industrial Santhica seed obtained
5 from other sources;

6 (3) maintain a list of growers and processors
7 for whom seed has been provided; and

8 (4) maintain a list of growers and processors.

9 D. The New Mexico department of agriculture may
10 enter into joint powers agreements with an Indian nation, tribe
11 or pueblo to share information, to provide technical assistance
12 and to generally cooperate with the Indian nation, tribe or
13 pueblo to facilitate the production of industrial Santhica.

14 E. The New Mexico department of agriculture may
15 revoke or suspend the license of a grower if there is
16 substantial evidence of violations of the provisions of or
17 rules adopted pursuant to this act.

18 F. Fees collected pursuant to this section are
19 appropriated to the New Mexico department of agriculture to
20 carry out the provisions of this act, including assistance to
21 Indian tribes, nations and pueblos in New Mexico.

22 **SECTION 3. DEPARTMENT OF PUBLIC SAFETY--DUTIES AND**
23 **POWERS.--**The department of public safety:

24 A. shall inspect growing fields and processing
25 facilities upon verifiable evidence that a designated

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1 industrial Santhica field is unlicensed and is in violation of
2 this act; and

3 B. may enter into joint powers agreements with an
4 Indian nation, tribe or pueblo to share information, to provide
5 technical assistance and to generally cooperate with the Indian
6 nation, tribe or pueblo to facilitate the production of
7 industrial Santhica on tribal land.

8 SECTION 4. COOPERATION BETWEEN AGENCIES.--The New Mexico
9 department of agriculture and the department of public safety
10 shall cooperate fully with one another to implement and enforce
11 the provisions of this act.

12 SECTION 5. EFFECTIVE DATE.--The effective date of the
13 provisions of this act is July 1, 2012.