

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

**July 21-22, 2010
Room 322, State Capitol
Santa Fe**

Present

Rep. Andy Nuñez, Chair
Sen. Phil A. Griego, Vice Chair
Rep. Paul C. Bandy
Rep. Ray Begaye
Sen. Mary Jane M. Garcia
Sen. Clinton D. Harden, Jr. (July 21)
Rep. Dona G. Irwin
Rep. Larry A. Larrañaga
Rep. Kathy A. McCoy
Sen. George K. Munoz
Sen. Steven P. Neville
Sen. Gerald Ortiz y Pino
Sen. Mary Kay Papen (July 21)
Sen. Sander Rue

Absent

Rep. Joseph Cervantes
Rep. Thomas A. Garcia
Rep. William J. Gray
Rep. Mimi Stewart

Advisory Members

Sen. Vernon D. Asbill
Rep. Anna M. Crook
Rep. Brian F. Egolf, Jr.
Rep. Nora Espinoza
Rep. Ben Lujan
Rep. James Roger Madalena
Sen. Cisco McSorley
Rep. Danice Picraux
Sen. Nancy Rodriguez
Rep. Jeff Steinborn
Rep. James R.J. Strickler

Sen. Rod Adair
Sen. Carlos R. Cisneros
Rep. Candy Spence Ezzell
Sen. Dede Feldman
Sen. Timothy Z. Jennings
Sen. Gay G. Kernan
Rep. Henry Kiki Saavedra
Rep. Don L. Tripp
Sen. Peter Wirth

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

Staff

Jon Boller
Kim Bannerman
Jeret Fleetwood

Guests

The guest list is in the meeting file.

Handouts

Handouts and other written testimony are in the meeting file.

Wednesday, July 21

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

Interstate Stream Commission Proposal for Offset Contract with Intel

Jim Dunlap, chair of the Interstate Stream Commission (ISC), and J. Phelps White, Patricio Garcia and Blane Sanchez, ISC commissioners, introduced themselves. Mr. Dunlap said that Estevan Lopez, director of the ISC, and his staff had advised the commission well over the past seven and one-half years and that the commission looks very closely at the public interest when it considers water policy issues.

Mr. Lopez began by providing the committee with an overview of a proposed contract between the ISC and Intel. He explained that the contract, while somewhat complicated, basically involves the transfer of senior surface water rights from Intel to the ISC in exchange for the ISC assuming some of Intel's obligations to offset the effects of its ground water pumping on the Rio Grande in the future. Specifically, Intel will transfer ownership of 740.9 acre-feet per year of senior surface water rights, pay \$10 million to the ISC and eventually extinguish its license to pump up to 3,248.6 acre-feet of ground water per year in return for the ISC's assumption of Intel's obligation to offset the effects of its ground water pumping. Mr. Lopez went on to explain that the water rights and funds received by the ISC could be used to address federal Endangered Species Act (ESA) of 1973 issues on the middle Rio Grande and for the strategic water reserve. The economic cost-benefit ratio of the agreement is estimated to be between seven-to-one and three-to-one in favor of the state, he noted, with major unquantifiable benefits also accruing to the state. For example, he explained, bringing the river back into balance could help avoid the types of problems and costs the state has experienced on the Pecos River, where the state spent nearly \$100 million to come into compact compliance. This agreement is a step forward in avoiding such problems on the Rio Grande, he said, and will also reduce demand for senior (pre-1907) agricultural water rights that would otherwise have to be transferred to Intel's well.

According to Mr. Lopez, the ISC's offset responsibilities would occur primarily when and if Intel ceases pumping, at which time the ISC would use return flows and the acquired water rights to offset the residual effects of Intel's pumping on the middle Rio Grande Valley and relinquishment credits to offset effects on compact deliveries. The state currently has 180,000 acre-feet of delivery credits with Texas, he said, 80,000 acre-feet of which Texas has agreed to relinquish to New Mexico. This gives New Mexico the right to store up to that amount in upstream storage when needed, he explained, which could then be released as needed to ensure the state's compact compliance. Mr. Lopez noted that from 2001 through 2008, the ISC used

approximately 60,000 acre-feet of credit water and 239,000 acre-feet of relinquishment credits for ESA compliance purposes and drought mitigation. Finally, Mr. Lopez noted that the agreement would improve the competitive position of Intel's Rio Rancho plant relative to its other plants, which will help ensure the plant's viability and keep thousands of jobs in New Mexico.

Frank Robinson, Intel facility operations manager, explained that the Intel plant in Rio Rancho is a manufacturing facility and that the production of microprocessors is both complex and expensive. He emphasized that water is a key part of the manufacturing process at Intel, pointing out that the company has entered into water contracts all around the world and found New Mexico's water laws to be unique. Mr. Robinson went on to note that Intel's motivation to enter into the contract with the ISC was the uncertainty that comes with water rights acquisitions, explaining that the company had been trying to buy surface water rights along the middle Rio Grande for years and only managed to come up with about 740 acre-feet. Mr. Robinson indicated that fluctuations in and the overall high price of middle Rio Grande water rights have created a concern within Intel's management over long-term planning, and this contract goes a long way toward addressing that concern. He also explained that Intel has been exploring other ways of meeting its water obligations and recognizes how economically, environmentally and culturally important that the water rights it already has are, and that it is troubling that these rights will be held for years until they are used for a short period of time. Mr. Robinson concluded by noting that Intel intends to meet its water obligations.

Representative Nuñez recognized several members of the public who wished to speak about the proposed contract.

Eluid Martinez, former state engineer, explained that he was state engineer during the early 1990s, when the original permit between Intel and the state was agreed upon. He indicated that he is well aware of the permit's requirements, pointing out that his issue with the proposed contract is whether the residents of New Mexico should assume the obligations of a private permittee. Mr. Martinez went on to note that acquiring any amount of water rights, from one acre-foot to 1,000 acre-feet, involves a certain amount of process and cost, both of which Intel was aware of when it entered into its original agreement with the state. He estimated that it would likely cost Intel between \$60 million to \$75 million to acquire sufficient water rights in the current market. However, he explained, the company is trying to meet its obligations in a more efficient, less costly manner. Mr. Martinez went on to caution that the residents of New Mexico, via the legislature, could one day be on the hook for the \$60 million to \$75 million if it is decided that relinquishment rights cannot be used for offsets. He praised the ISC for trying to manage the river as best it can and for trying to come up with creative ways of doing so, but he warned that the deal is so complicated and riddled with so many potential problems that it just is not worth the risk.

Dr. F. Lee Brown, a water economist and author of an independent economic analysis of the draft contract, indicated that he was speaking not as an ISC contractor but rather as a water

professional who strongly supports the proposed agreement. He stressed that United States Supreme Court decisions, such as *Colorado v. New Mexico* and *Texas v. New Mexico*, have shown that long-term water analysis and planning are vital and their absence is very costly. In order to avoid a multibillion dollar solution for water problems in the middle Rio Grande, he explained, the state needs to be creative and flexible in how it manages its water. The proposed agreement may help avoid compact noncompliance expenses, such as what happened on the Pecos River.

Steve Hernandez, an attorney representing the Carlsbad Irrigation District and Elephant Butte Irrigation District (EBID), noted that though his clients are not part of the middle Rio Grande, he wonders what kind of precedent the contract would set and whether the ISC could make such deals elsewhere in the state. He also asked whether this would diminish deliveries to the EBID, noting that though he had not studied this possibility, downstream water users always look upstream, and recently downstream users have seen a decline in the amount of water reaching Elephant Butte Reservoir, and they do not know why. Mr. Hernandez also expressed concern about the use of compact credit water in the proposed contract, stating that there may not always be credit water with Texas to rely upon, at which point the contract could become a compact delivery problem.

Steve Harris, of Rio Grande Restoration and a Taos County river rafting guide, discussed the proposed contract in terms of compact delivery issues. He explained that each year is different, but the amount of available water plays out in compact delivery, administration and compact compliance, noting that in 1998 there was not even enough water in the Rio Grande to float a raft. Mr. Harris went on to note that there are many more water rights claims on the Rio Grande than there is available water, and the assumption has been that any shortage will be made up by acquiring water rights from agricultural users, which he indicated would be bad policy. Mr. Harris said he had worked with Think! New Mexico to promote the establishment of the strategic water reserve in 2005, which was designed to mitigate the worst effects of increasing demands on the river. Though it was created with a substantial initial endowment, the current budget crisis has swallowed that up, he explained. The ISC-Intel agreement, he said, will help promote the long-term sustainability of the river at a time when the current water situation offers a chance to be proactive and fix some things before the next drought or endangered species crisis occurs. Mr. Harris noted that the proposed contract represents exactly the kind of innovative and proactive thinking that will help address future compact and supply-and-demand issues.

Bob Wesley, vice president of the Middle Rio Grande Water Assembly, questioned the wisdom of enacting a policy that uses credit water the way the proposed contract does. He said that he thinks that the existing credit is the result of good weather and good management and suggested that it be saved for bad weather years.

Bill Turner, a hydrologist and consultant, indicated that he has filed a number of applications with and lawsuits against the Office of the State Engineer (OSE). He noted that the biggest threat to his many lawsuits is the rejection by the OSE of applications on the grounds that the Rio Grande is already fully appropriated. Mr. Turner said he disagreed, and went on to

discuss the concept of tail water, or water returned to the river by users, which he noted is used by the next person downriver. He explained that all the water in Elephant Butte Reservoir is the tail water from upstream users, but that much of that water evaporates in the reservoir because poor management practices allow for the storage of Texas' water there. Mr. Turner offered that there really is no shortage of water in the Rio Grande Basin, and that changes in management and gauging will help fix many water demand issues. He also indicated that water law in New Mexico is not actually broken, but its rules are not always followed. Mr. Turner also said that while endangered species in the river do need to be protected, farmers and other users need to be protected, too.

Kristina Gray Fisher, associate director of Think! New Mexico, praised the proposed contract, noting that it could help avoid the types of compact delivery lawsuits with Texas that New Mexico faced on the Pecos River. Ms. Fisher explained how, five years ago, Think! New Mexico had worked closely with Representative Joe M Stell on creating the strategic water reserve and how difficult it has been since then to get either funding or acquire water rights for the reserve. The proposed contract would help with funding, she noted, as well as provide hard-to-come-by water rights into the strategic water reserve. Ms. Fisher said that she also supports the proposed agreement in part because she would prefer to see 2,500 acre-feet of water rights remain in the hands of agricultural users in the middle Rio Grande rather than be bought by Intel, used for seven years and then sold to the highest bidder, which would certainly not be agricultural users.

Janet Jarrett, chair of the Middle Rio Grande Conservancy District Board, expressed concern over the ISC's plan to store credit water above Elephant Butte Reservoir, as well as the notion that credit water is really just "paper" water rather than "wet" water. She went on to note that another concern raised by agricultural water users is the potential for the ISC to be able to modify the offset plan without notice by the OSE. Ms. Jarrett went on to explain that no one will know the full impact of the contract for some time and that there are simply too many unanswered questions about the contract to be able to support it.

Steven Curtis, an Albuquerque water lawyer, discussed water disputes in other states, explaining that there are basically two ways to move water between states: compact agreements and supreme court lawsuits. He went on to note that compacts really only govern the delivery of water from state to state, rather than the administration of water within a state's boundaries. Mr. Curtis indicated that the constitution of New Mexico governs the administration of water within the state, and he questioned whether the ISC is given the authority to store water in El Vado Reservoir or any other upstream reservoir.

Interstate Stream Commissioner White noted the overall complexity of the contract and said that the commission has also found it difficult to keep up with the legal and hydrological jargon in the contract, particularly because the commission is mostly composed of laypeople. However, Mr. White said that while he could not speak for the commission as a body, he does not see any downside to the contract, he thinks it would be a good thing for New Mexico as a whole and that, as a representative from the middle Pecos Valley, he sees no risks to the Pecos

River water users.

The committee had a lengthy question-and-answer session regarding the proposed contract.

Some members expressed concern over the perception that the ISC feels it owns the water in New Mexico's rivers and reservoirs and that credit water should be available for appropriation. Mr. Lopez explained that the ISC does not own relinquishment rights; rather, the state does and the ISC simply manages those rights in order to meet New Mexico's compact delivery obligations and for drought mitigation and ESA compliance. Credit water, he said, is not subject to private appropriation; otherwise, all the state would have left is water debt with no credit to pay it. As for the use of relinquishment rights to offset Intel's pumping, Mr. Lopez explained that he disagrees with Mr. Martinez's statement that this is risky because the contract provides that if the offset plan is not approved by the OSE, the deal is off.

Other members asked about the concerns raised regarding a lack of public input on the contract. Mr. Lopez explained that approval of the contract is only the beginning of a lengthy process involving three separate OSE processes: transfer of the water rights into Intel's wells, submission of an offset plan by the ISC and Intel to the OSE and joint filing of an application with the OSE to change the purpose and place of use of the water rights. He pointed out that those processes each call for a number of meetings and that public comment will be solicited at each meeting.

Members of the committee also asked about a recent newspaper article that suggested that Intel's water rights return flow credits may actually be the property of the Albuquerque-Bernalillo County Water Utility Authority. Mr. Lopez explained that the ISC had researched that issue and that the agreement between Intel and the Albuquerque-Bernalillo County Water Utility Authority is fairly clear. He explained that since 1995, the City of Albuquerque and later the Albuquerque-Bernalillo County Water Utility Authority have been treating Intel's wastewater return flows and discharging them to the Rio Grande, and that agreements executed between the two entities in 1993 and 1994 provide Intel with the rights to all the return flow credits corresponding to how much water it discharges. Jay Stein, an attorney representing the Albuquerque-Bernalillo County Water Utility Authority, also discussed the agreement between Intel and the Albuquerque-Bernalillo County Water Utility Authority, explaining that the agreement states that Intel "may" receive the return flow credits. He indicated that the Albuquerque-Bernalillo County Water Utility Authority did not necessarily agree to permanently treat Intel's water and never actually waived its claim on the credits.

Asked what would happen on the Pecos River if the state were faced with that situation today, Mr. Lopez replied that the Pecos River settlement was only possible because of the amount of money available to the state at the time. Speaker Lujan explained that a more contentious settlement, and eventual agreement, would likely be less feasible in the current budget environment, which may make proactive action more sensible. However, he also pointed out that Pecos River settlement funding was approved yearly by the legislature, which provided the

legislative branch with enough oversight to make that branch feel comfortable.

Speaker Lujan expressed concern about future contracts that might not provide the legislature with sufficient oversight. He noted that while the contract under review might indeed put the state in a better position, a standard for similar contracts may eventually have to be established. Speaker Lujan also asked about Intel's commitment to the contract and, specifically, whether Intel would remain committed to New Mexico if the ISC or the legislature sought to postpone the agreement pending more information. Mr. Robinson indicated that Intel is committed to a certain point but is free to eventually walk away from the contract.

Representative Madalena noted that he was a member of the Sandoval County Commission that originally negotiated Intel's contract. He pointed out that Intel promised increased, and higher-paying, employment for county residents once Intel established operations in the area. However, he expressed doubt about whether the company had actually followed through on its promises and whether New Mexico could count on Intel to keep its word.

Representative Bandy asked why the continued presence of Intel is not being emphasized, which he thinks is very important to the state, and how this agreement will benefit Intel. Mr. Robinson replied that the company had invested \$5 billion in the existing plant, and certainly had the resources to buy up water rights, but that the company is not good at the water business. Intel's management would rather focus on making chips than on the water market.

Representative Egolf asked whether the risk to middle Rio Grande water users would be greater without this deal because the burden of ESA obligations will fall on farmers if the state does not come up with the water. Mr. Lopez said that because San Juan Chama water will no longer be available to cover ESA obligations and a new biological opinion is due in 2013, it will be more difficult to meet demands in the future.

Several members of the committee expressed concern that the contract could wind up in court no matter what the OSE and the legislature may decide. Mr. Lopez and several other individuals explained that some of the issues raised by the proposed contract could be challenged in court no matter how the issue at hand turns out.

Senator Griego pointed out that a number of steps must be followed before the current agreement is implemented. He indicated that a number of questions remain unanswered or unresolved, and that while some questions might be regarded as irrelevant, legislators still reserve the right to ask them and still may exert some influence over the agreement. He suggested that stakeholders continue to work toward an agreement that most users can agree to and can understand.

Representative Begaye asked about the involvement of tribal and pueblo entities in the proposed contract. Mr. Lopez indicated that while a number of meetings had been held regarding the contract, several of them involving tribal representatives, Native American stakeholders have not expressed support or opposition to the contract yet. Mr. Lopez noted that, should the contract

move forward, several more opportunities exist for public and tribal representatives to weigh in on the proposed contract.

Senator Michael S. Sanchez questioned the perceived rush by the ISC to approve and implement the contract, explaining that while the involved parties may have been negotiating the contract for some time, the public has enjoyed much less time to review the agreement. Senator Sanchez suggested that the ISC and Intel provide the legislature, the public and stakeholders more time to review the contract before moving forward with it.

Deep Well Permitting Process and Aquifer Mapping

John D'Antonio, state engineer, provided the committee with testimony regarding deep well permitting, explaining that there are 40 existing ground water basins in New Mexico and that determining if there is a hydrologic connection between deep aquifers and shallower aquifers in those basins will be an ongoing project. Only eight wells, three of which are natural gas wells, have been drilled into deep aquifers so far, mostly in Sandoval County, he said. He noted that his office is still working to develop definitions of deep wells and the permitting procedure itself and that there is still some work remaining on what defines brackish water. Mr. D'Antonio said he is totally supportive of the aquifer mapping budget at the New Mexico Institute of Mining and Technology (NMIMT).

Peggy Johnson, associate director of hydrogeologic programs for the Bureau of Geology and Mineral Resources at the NMIMT, explained that aquifer mapping is a multidisciplinary science involving geologic mapping, drill hole data, geophysical surveys, three-dimensional mapping, hydrogeologic data, geochemical data and ground water flow models. Ms. Johnson went on to discuss some of the active and completed aquifer mapping projects, as well as planned projects. Ms. Johnson described some of the work that has been conducted in the Santa Fe area, Taos, the Sacramento Mountains and Albuquerque's West Mesa area.

Questions and comments from the committee included the following:

- only one permit application has been filed since the deep well permit law took effect in 2009, although a number of applications were filed during the session that produced the law;
- the Coleman Ranch area forest thinning project will begin this year, and the effects of the thinning on the aquifer will be monitored for about 18 months;
- NMIMT has data from more than 60,000 wells across the state, including core and cutting samples from many of those wells;
- there is a need to interpret all the data that have been collected so that the data may be used by policymakers to begin making decisions;
- there almost always seems to be some connection between deep and shallow aquifers; it remains to be seen whether this will affect the approval of deep well permits;
- focus of the NMIMT work has tended to be on shallower aquifers rather than the deeper ones; and
- New Mexico's aquifer mapping technology is state-of-the-art, but other states are a little further ahead on geographic content.

***Aamodt* Settlement Update**

Mr. D'Antonio and DL Sanders, chief counsel for the OSE, provided the committee with an update regarding the *Aamodt* water rights settlement. They offered a brief overview of the settlement's history and an update on the status of the agreement, explaining that attempts to move the federal authorizing language by unanimous consent had been unsuccessful. Mr. D'Antonio noted that the next best chance for passage would probably come in fall 2010.

John Utton, an attorney for Santa Fe County, noted that he was one year old when the *Aamodt* settlement first began. He explained that the settlement as currently constituted is the result of a great deal of compromise on the parts of the involved parties. Mr. Utton pointed out that while none of the parties likes all aspects of the current agreement, most recognize that it is good for Pojoaque Valley residents and that Santa Fe County supports it. He also noted that the current agreement is likely to be the only chance to have the federal government build the water system proposed by the settlement, with local and state governments paying only the relatively small costs of upsizing the system. Without the settlement, he explained, there would be no imported water into the valley and no agreement on how to satisfy the water claims of the most senior water users in the region. The parties fought about this issue from 1966 to 2000 without coming to an agreement, he noted.

John Gunning of the Pojoaque Basin Water Alliance noted that Pojoaque water users and other affected parties had been involved in a number of meetings with the OSE, but that many people continued to oppose the settlement because they felt the part of the settlement involving non-Indian water users had not been studied enough. He went on to note that the settlement calls for the Pueblos of Tesuque and Pojoaque to operate the water system, which may not allow for sufficient transparency. Mr. Gunning emphasized that most water users really do want to follow the rules, and while they do not actively oppose the *Aamodt* settlement, they do not support it, either.

Dick Rochester, president of the Pojoaque Basin Water Alliance, suggested that some of the people pushing the settlement forward may have put the cart before the horse in trying to win local support for the project before securing federal approval and funding. He also said that he feels that many of the numbers in the federal legislation are wrong and include target dates that cannot be met.

Projected Costs of Current and Planned Water Projects and Programs

Mr. D'Antonio and Mr. Lopez provided the committee with information regarding the big-ticket budget items involving the OSE and ISC. They noted how much money had already been appropriated for each project, the anticipated state and federal costs for each project and the state share of the projects per year for the next 10 years. For example, Mr. D'Antonio explained that about \$31.2 million had been appropriated to date for Indian water rights settlements, with the anticipated state costs to run between \$50 million and \$112 million, anticipated federal costs running between \$757.5 million and \$775.4 million and the state costs per year running between

\$3.4 million and \$9.7 million over the next 10 years. Mr. D'Antonio and Mr. Lopez provided the committee with the same type of information for each of the Indian water rights settlements: Navajo, Taos, *Aamodt* and the Indian Water Rights Settlement Fund. They also provided the committee with cost information for other major projects, such as the Ute Pipeline, the Pecos settlement, the Gila settlement and the Middle Rio Grande ESA Collaborative Program.

Thursday, July 22

Representative Nuñez reconvened the meeting at 9:10 a.m.

Government Restructuring Reports — Department of Environment and Energy, Minerals and Natural Resources Department

Jim Noel, secretary-designate of the Energy, Minerals and Natural Resources Department (EMNRD), provided the committee with testimony regarding a questionnaire issued by the Government Restructuring Task Force (GRTF) to other state government entities. He began by providing the committee with an overview of the EMNRD, noting the department's mission, goals, various divisions and the number of employees working in each division. Secretary-Designate Noel also pointed out the number of vacant positions in each division, noting that the department is currently averaging about an 11% vacancy rate. He went on to detail each vacancy and discuss those positions that had been eliminated from House Bill 2 during the 2010 session. Secretary-Designate Noel then discussed the operating budget for the EMNRD as a whole and its various divisions, as well as the grants and special funds that pass through the department.

Secretary-Designate Noel then provided the committee with division-by-division answers to the following GRTF questions:

- What options have been explored or are under consideration by your agency to become more efficient and cost-effective in the face of a continuing decline in revenue? Please report all possible options, including programmatic, fiscal and contractual modifications.
- What technological changes could be instituted to make the agency more effective and efficient?
- Can changes be made to the agency's procurement/contracting services to save money?
- Is a program outdated, and can a major, or minor, overhaul of that program create a more efficient and effective state government?
- Is the program better suited to another government level (e.g., municipalities, counties, school districts) or is it a program that should not be provided by the public sector?
- Could the services be provided more effectively by another state agency?
- Can some programs be consolidated with others to save on administrative costs?
- Is there a new revenue source that should be examined for a program?

Secretary-Designate Noel listed several steps that the EMNRD has already taken to become more efficient, and he identified those areas where increased fees may be helpful. For example, he noted that an increase in state park fees is long overdue and pointed out that moving

toward electronic and paperless permits might help the department operate more efficiently at less cost to taxpayers.

Ron Curry, secretary of the Department of Environment (NMED), also provided the committee with testimony regarding the questionnaire issued by the GRTF. He explained that the NMED is driven by its budget and that much of the department's overall budget comes from either federal funding in the form of grants or specific appropriations or enterprise funding generated by departmental functions such as permit and inspection fees. Secretary Curry pointed out that only 16% of its operating budget comes from general fund appropriations and that the NMED's general fund revenues are actually smaller than they were in 2002. He also explained that while much of its overall budget comes from federal agencies, particularly the Environmental Protection Agency, those funds are dedicated to specific functions and may not be used for any other purpose.

Secretary Curry went on to discuss issues regarding the NMED permitting process. He indicated that the department emphasizes transparency and public participation throughout the permitting process. Secretary Curry explained that a permit is, in essence, a license to pollute and that the NMED issues or denies permits based on the amount of control it has over the proposed pollution.

Secretary Curry also discussed realignment issues as they relate to the NMED. He indicated that some steps had already been taken to realign and consolidate functions within the department. Secretary Curry explained that while realignment and consolidation efforts may eventually realize long-term benefits, they often result in a certain amount of short-term inefficiency. For example, he noted that while NMED bureau chiefs had been shuffled in between 2003 and 2004, the department was only beginning to enjoy the benefits of the realignment.

Finally, Secretary Curry discussed the emphasis that the NMED has placed on improving water quality in New Mexico, explaining that much of the work the department does has at least some impact on water quality, which is why the department tries to view much of its continuing mission through the prism of water quality.

The committee expressed interest in the Oil Conservation Division (OCD) of the EMNRD and the rule it promulgated regarding oil and gas wells, known as the "pit rule". Mark Fesmire, director of the OCD, explained that the pit rule was enacted to limit the potential pollution that oil and gas wells present to the ecosystem surrounding drilling sites. He noted that the rule requires environmental protections, such as specific liners, to be placed around the drilling site. Mr. Fesmire went on to address concerns that the pit rule has had a direct impact on the oil and gas industry in New Mexico, explaining that the OCD maintains statistics on the number of oil and gas rigs operating in the state. He pointed out that the number of active wells in New Mexico appeared to correlate with the price at which oil and gas traded in financial markets, noting that implementation of the pit rule appeared to have less effect on the number of wells than price fluctuations. Mr. Fesmire also noted that while the New Mexico oil and gas industry tends to

blame the pit rule for lost revenue, the rule also serves to protect oil and gas well operators by limiting their exposure to the kinds of catastrophic incidents recently witnessed in the Gulf of Mexico, which ultimately saves oil and gas companies money.

Some members of the committee questioned Mr. Fesmire's conclusions, indicating that as the price of oil has rebounded, the number of oil and gas wells has increased more significantly in some states than it has in New Mexico. They acknowledged that while price does seem to drive oil and gas well development, additional state regulations may steer some companies to states featuring less regulation.

Questions and comments from the committee included the following:

- proposals to merge the NMED and the EMNRD would likely cause short-term inefficiencies and may not yield any long-term benefits;
- the number and nature of the thousands of permits issued by the NMED seem to make it more of an enforcement agency;
- recent efforts by the Association of Commerce and Industry to remove the Environmental Improvement Board (EIB) and the Water Quality Control Commission (WQCC) from statute;
- the value of the EIB and the WQCC as checks on the power of the secretary of environment, whose rulings the boards have the authority to overturn;
- Pecos Canyon State Park, although statutorily authorized by the legislature, is currently not operating because sufficient funding for park staff was not authorized by the legislature;
- while there are a number of boards and commissions attached to the NMED, Secretary Curry identified the EIB and the WQCC as the most important;
- state agencies should have been using technology to streamline their functions all along; and
- most of the low-hanging fruit associated with making state government more efficient has already been harvested; the difficulty lies in the next round of decisions.

On a motion made, seconded and unanimously approved, the minutes of the June 2010 meeting were approved as submitted.

Government Restructuring Report — OSE

Mr. D'Antonio provided the committee with testimony regarding a questionnaire issued by the GRTF to various state government entities. Mr. D'Antonio responded to specific questions asked by the task force and responded to questions from the committee.

Questions and comments from the committee included the following:

- the OSE has already made significant cuts to its operating budget, with further cuts likely to affect core functions, given that the office currently is operating with 60 vacant positions;
- overall vacancies in the OSE are at about 15% to 16%, with some, but not all, vacant positions not funded by the legislature during the 2010 session;

- receipt by the OSE of the Piñon Award is noteworthy;
- difficulty in online posting of legal briefs relating to applications filed with the OSE is the result of a lack of available resources at the OSE;
- continued diligence on Indian water rights settlements is important because missed deadlines could result in collapse of the settlements;
- the importance of continuing to offer technical assistance to acequias, particularly because similar assistance remains available to similar entities, such as mutual domestic water cooperatives; and
- ditch metering and water masters in certain areas are important because they ensure no one is overdiverting or illegally diverting water, although all parties involved are still learning how best to use them.

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