

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

**June 30-July 1, 2005
Santa Rosa High School
Santa Rosa**

The second meeting of the Water and Natural Resources Committee was called to order at 10:10 a.m. on Thursday, June 30, 2005, by Representative Joe M Stell, vice chair.

Present

Sen. Carlos R. Cisneros, Chair (July 1)
Rep. Joe M Stell, Vice Chair
Sen. Sue Wilson Beffort
Rep. Ray Begaye
Rep. Joseph Cervantes
Sen. Dede Feldman (July 1)
Sen. Mary Jane M. Garcia
Rep. Dona G. Irwin
Rep. Larry A. Larrañaga
Sen. H. Diane Snyder
Rep. Mimi Stewart
Rep. Sandra L. Townsend
Rep. Don L. Tripp

Advisory Members

Sen. Rod Adair (July 1)
Sen. Vernon D. Asbill (July 1)
Rep. Anna M. Crook
Rep. Candy Spence Ezzell
Rep. Rhonda S. King (June 30)
Rep. James Roger Madalena (July 1)
Sen. Nancy Rodriguez
Sen. John C. Ryan
Sen. Leonard Tsosie
Rep. Peter Wirth

Absent

Rep. Kathy A. McCoy
Sen. Cynthia Nava
Sen. Steven P. Neville
Rep. Andy Nunez
Sen. Mary Kay Papen

Rep. Richard P. Cheney
Sen. Clinton D. Harden, Jr.
Sen. Timothy Z. Jennings
Sen. Gay G. Kernan
Rep. Ben Lujan
Rep. Greg Payne
Rep. Danice Picraux
Sen. Leonard Lee Rawson
Rep. Henry Kiki Saavedra
Rep. Eric A. Youngberg

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

Staff

Gordon Meeks
Evan Blackstone
Jeret Fleetwood

Guests

The guest list is in the meeting file.

Thursday, June 30

Representative Jose Campos, mayor of Santa Rosa, welcomed the committee to Santa Rosa and provided the committee with a brief history of the city. He also emphasized the importance of water to communities like Santa Rosa that depend heavily on tourism.

New Mexico Water History

Representative Joe Stell provided the committee with an overview of water rights in New Mexico. First, he explained how customs dating back to Moorish rule of Spain, particularly the notion of "first in time, first in right" brought to the new world by Spanish conquistadors, first began to impact New Mexico's water rights today. He noted that the "first in time" concept basically stipulates that the first person to lay claim to something, or to utilize it, is more entitled to it than subsequent claimants and that this concept forms the basis of the doctrine of prior appropriation that governs water rights in New Mexico.

Then, Representative Stell discussed the Treaty of Guadalupe Hidalgo and its effect on New Mexico's water. He explained that the treaty stated that the United States, in annexing present-day New Mexico, Arizona and Texas, would honor the culture and customs already in place in those lands and that the doctrine of prior appropriation was one of those customs.

Next, Representative Stell outlined how, in the late 1800s, a number of Texans fleeing prosecution came to settle in New Mexico. He noted that many of those settlers brought cattle with them and settled near springs. Later, under the Homestead Act, those settlers were granted the title to the lands they had settled, which led to private ownership of large amounts of New Mexico's water resources.

After discussing the evolution of water rights in New Mexico, Representative Stell went into some detail about the various water agreements involving the state. He began with the Pecos River Compact, then went on to discuss the Rio Grande Compact; the Colorado River Compact; the San Juan/Chama project; the Gila River Compact and the central Arizona water rights settlement; water rights on the Canadian River; and a water project designed to deliver water from the San Juan/Chama project to the city of Gallup.

There are two significant lawsuits between Texas and New Mexico regarding water. He explained that the United States Supreme Court decreed that New Mexico could pay Texas a substantially smaller sum of money than Texas desired for New Mexico's under-delivery of water on the Pecos River, but that New Mexico could never again pay for under-delivery with money again. Instead, under-deliveries must be made up with actual water. Representative Stell explained that another lawsuit between New Mexico and the City of El Paso highlighted some of the different rules the two states have regarding the pumping and diversion of underground water. While El Paso wanted to use some of New Mexico's water, a judge ruled that the city had not exhausted all of the means available to it in seeking water. However, he also ruled that water

is a commodity that can be transported across state lines like any other commodity. This led El Paso to build a pipeline to transport water from farmland east of the city into El Paso itself. Representative Stell remarked that the ability to pump water across state lines is important because it would allow a community such as Alamogordo to import water via a pipeline rather than continue to try to convert brackish water into potable water.

Finally, Representative Stell discussed New Mexico's water future and ways to finance water projects. He explained that the state has enough water to secure its water situation, but that it faces two problems: growth and drought. Representative Stell went on to note that the state simply does not have the resources to be able to play godfather to each New Mexico community seeking help with a water project. Instead, he said that citizens will have to roll their sleeves up. He also suggested that one solution would be the formation of water authorities that have the authority to tax users. Representative Stell noted that another solution would be public/private partnerships that would allow private companies to sell water for a reasonable profit in return for infrastructure financing.

Questions and comments addressed:

- money and politics as obstacles to solutions;
- the Last Chance Water Company and the Salt Basin water reserves;
- Alamogordo's options;
- the need to avoid additional lawsuits;
- terms of the Pecos River water rights settlement;
- Canadian River Compact terms;
- costs of litigation with Texas;
- definition of beneficial use;
- status of water rights adjudication in Dona Ana County;
- use of eminent domain for water rights acquisition;
- history of domestic wells;
- why most of the water is being used by the Rio Grande corridor;
- future of the doctrine of prior appropriation; and
- using the CALFED model for prioritizing water projects.

Water Innovation Projects—Status

James Jimenez, secretary of finance and administration, and Robert Apodaca, also of the Department of Finance and Administration (DFA), provided the committee with an update on some of the water-project-financing mechanisms in place. Mr. Jimenez noted that Governor Richardson and the Governor's Finance Council have identified water as one of their top priorities. He also noted that water projects received a large percentage of the \$470 million in capital outlay approved during the 2005 legislative session. Mr. Jimenez then discussed the results of the first phase of the Water Innovation Fund, which began with a \$10 million appropriation from the 2004 legislature. He explained that out of 115 proposals, 25 projects were chosen and that those 25 projects were then divided into 4 categories: water-recycling projects, water-producing projects, water-conservation projects and communities in crisis. Mr. Jimenez provided examples of projects in each category and noted that estimates of the total amount of water conserved, recycled or produced by the 25 projects chosen was approximately

32 billion gallons per year.

Mr. Jimenez then discussed Phase 2 of the Water Innovation Fund, which he explained will function similarly to Phase 1. He went on to note that an RFP was issued on June 10, 2005 and that July 11, 2005 is the proposal deadline. Mr. Jimenez also provided the committee with a list of the entities responsible for choosing the proposals, which includes representatives of the Office of the State Engineer, the DFA and the Governor's Office.

Finally, Mr. Jimenez discussed the formation and goals of the Water Infrastructure Technical Team and the Water Infrastructure Investment Team. He also noted the development of a Uniform Funding Application that he said would help entities seeking funding for water and wastewater projects by providing one application for funding that would be forwarded to the DFA, the New Mexico Finance Authority, the New Mexico Department of Environment and the USDA/RUS.

Mr. Apodaca echoed Mr. Jimenez's comments and also noted that the DFA was trying to do a better job of working with federal entities and helping communities secure federal funding for their water and wastewater projects.

Questions and comments included:

- responses to Phase 2 of the Water Innovation Fund RFP;
- the process and criteria of selecting fund recipients;
- better ways for legislators to communicate with the executive branch;
- advantages of changes to the capital outlay application process;
- the use of nonrecurring surplus general fund money for projects versus placing funds in the Water Trust Fund endowment;
- the governor's position on requirements for local financing commitments;
- dedication of revenue surplus to the Water Trust Fund;
- monitoring of projects;
- the use of federal funds to help defray the large costs of many New Mexico water projects, such as the Ute Reservoir project;
- consumer financing for water projects;
- the geographic location of Water Innovation Fund Phase 1 projects;
- methods for gauging the success of Water Innovation Fund Phase 1 projects;
- prioritizing water projects throughout the state to avoid dumping relatively small amounts of money into a variety of projects instead of funding one or two large projects at a time;
- the innovativeness of the projects;
- the continuing need for water hauling;
- specific savings per project;
- a list of projects denied funding;
- evaluation of committee membership;
- how stakeholders can influence the selection process;
- leveraging financing;
- allocation among legislative districts;

- recycling technologies; and
- development of leak detection technology in Water Innovation Fund Phase 1 projects.

Water Conservation Program

John Longworth, Office of the State Engineer (OSE), provided the committee with an overview of the OSE's Water Use and Conservation Bureau. He explained that the Water Use and Conservation Bureau reviews proposed subdivisions to determine whether the developer can provide adequate water to the subdivision. Next, Mr. Longworth discussed water-use trends in New Mexico. He noted that, in 2000, irrigated agriculture accounted for 76 percent of the total water withdrawals for the state. Mr. Longworth also pointed out that while agricultural use of water has slowly but steadily declined over the past 20 years, municipal and industrial use has been just as steadily increasing. He explained that these trends can be expected to continue as New Mexico's population continues to grow, particularly in the Rio Grande Basin.

Finally, Mr. Longworth provided the committee with a packet of materials available through the OSE regarding water conservation. He explained that some of those materials, such as how to effectively water trees, are the kind of public outreach and education that the OSE's water conservation program tries to distribute throughout the state. Mr. Longworth emphasized that public outreach and education about water use and conservation will likely play a large role in ensuring that New Mexico's water resources are adequate to allow for continued population growth.

Questions and comments included:

- tax rebates for water conservation in Albuquerque;
- average per capita water use by city and reasons for large disparities between seemingly similar desert cities;
- use of low-flow plumbing as a means of water conservation; and
- watering trees.

Wind Energy Development

Price Hatcher and Sonia Phillips, both of Excel Energy, provided the committee with an update on Excel Energy's wind energy projects. They explained that the rules regulating energy production companies in New Mexico call for 10 percent of the energy that the company produces to come from renewable energy sources. Mr. Hatcher pointed out that while there are several different renewable energy sources, such as solar, biomass and hydroelectric, New Mexico is particularly well-suited to using wind as a renewable energy source, which is why Excel has focused most of its renewable energy portfolio on it. He went on to discuss the location and output of the company's wind energy units. Mr. Hatcher also noted that Excel Energy also produces 93 megawatts of energy from biomass and he outlined the company's solar energy initiatives. Finally, he discussed what makes renewable energy resources attractive to both power companies and their customers, as well as some of the hurdles that he believes need to be overcome in order to expand energy production from renewable resources.

Questions and comments included:

- federal incentives and comparison of New Mexico's incentives for renewable energy production with other states' incentives (the best);

- dairy waste biomass energy production;
- net metering;
- additional surcharges for customers wishing to pay for wind energy production;
- whether customers who do not pay additional surcharges are getting their energy from wind energy anyway;
- the Public Regulation Commission's interpretation of legislative intent mandating use of renewable energy resources;
- the need for improved transmission capacity for alternative energy;
- other states' financing capacity for alternative energy;
- state agencies' purchase of renewable energy;
- backup for renewable energy to serve the "load";
- quality of renewable energy compared to conventional energy generation;
- comparison of costs of various alternatives;
- the cost of operating the Amarillo power plant; and
- federal rebates and credits.

The committee recessed at 5:15 p.m.

Friday, July 1

Ute Reservoir Project— Status Report

Scott Verhines, Eastern New Mexico Rural Water Association (ENMRWA), and David Lansford, mayor of Clovis, provided the committee with an overview of the ENMRWA system. They explained that the project, when completed, would provide water to 75,000 people residing in nine communities in three counties. Mr. Verhines indicated that the project would cost approximately \$296 million, 80 percent of which, hopefully, would come from the federal government and the remaining 20 percent would be split between the state and the affected local governments. He also discussed some of the challenges facing the project, such as equitably distributing financing for the project among its users and balancing commercial, environmental and recreational interests at Ute Reservoir where most of the water for the project would be stored. Mr. Verhines went on to point out that hydrological conditions in eastern New Mexico are such that the aquifer from which the water users pump their water will likely run out in 20 to 25 years and it will take 10 years to complete the Ute Reservoir project, which, he said, underscores the need to get the project finished.

Finally, Mr. Verhines discussed the current status of the project. He explained that money appropriated by the legislature in 2002 went toward a design and consulting team that is currently working on the project. Mr. Verhines identified the federal Bureau of Reclamation as the project's federal collaborator. He also discussed some of the membership changes in the project, indicating that several entities had dropped out and decided to address water issues through other means. Finally, Mr. Verhines discussed a potential challenge for the project with designation of an area south of the reservoir as critical habitat for the Arkansas River shiner.

Questions and comments included:

- the project's planned 18,400 acre-feet and the ability of the project to meet future demands;
- the Water Trust Board application process;
- sources of and prospects for federal money for the project;
- the reasons for communities dropping out of the project and variation of needs among the eastern communities;
- CH2MHill design engineers and lobbyists on the project;
- cost/benefit analyses of large water projects;
- regionalization of community water projects;
- alternative aquifer sources;
- interstate efforts to conserve the Ogallala aquifer;
- effectiveness of the Water Trust Board; and
- the potential advantages of a legislative authorization process similar to the federal process.

On a motion made, seconded and unanimously approved, the minutes of the June 10, 2005 meeting were approved as submitted.

Clean Energy Initiatives

Craig O'Hare, Energy, Minerals and Natural Resources Department, provided the committee with an overview of clean energy initiatives being pursued throughout New Mexico. He began by defining clean energy as belonging to one of three categories: renewable energy, energy efficiency and clean fuels. Mr. O'Hare explained that renewable energy involves the use of solar power, wind energy and burning biomass and described examples of projects utilizing each of these in New Mexico. He also indicated that New Mexico ranks second in the nation with regard to solar resources. Mr. O'Hare went on to discuss energy efficiency, which he explained involves constructing energy efficient buildings or manufacturing more efficient appliances and vehicles. He pointed out that while constructing buildings that are more energy efficient does increase construction costs, those costs are typically defrayed within four or five years by significantly reduced energy utility costs. Mr. O'Hare then discussed the use of clean fuels such as ethanol, biodiesel, compressed natural gas and hydrogen. He noted that most of these fuels can be produced domestically, which would help reduce reliance on imported oil.

Mr. O'Hare went on to discuss the benefits of pursuing clean energy initiatives in New Mexico both in terms of economic development and in addressing the need to diversify the energy economy rather than continue to depend on a finite amount of fossil fuels. He also reviewed legislation introduced during the 2005 legislative session concerning clean energy and outlined proposals that will likely be brought before the legislature in 2006, such as amending the Public Regulation Commission's "net metering" rule through statute.

Questions and comments included:

- percent of power companies' portfolios dedicated to renewable energy;
- New Mexico declining to join Western States Power Group;
- number of solar homes in New Mexico and the difference between incentives for use of solar and wind energy due to differences in costs and economics related to each

- one;
- state vehicles using clean fuels;
- octane rating of biodiesel and ethanol;
- clean energy funding for tribes and Indian jurisdictions;
- weatherization of homes; and
- green building standards for state buildings and public schools.

Solar Energy Development

Joel Goldblatt, of the Spire Corporation, provided the committee with an overview of solar energy production in New Mexico. He explained that the Spire Corporation manufactures solar panels and showed the committee how those panels can be used to power a building. He also pointed out that some configurations allow solar panel owners to feed power back into the grid and receive usage credits on their accounts. Mr. Goldblatt also discussed the roots of the Spire Corporation and provided the committee with an overview of one of the company's solar panel manufacturing projects in Chicago, Illinois. He went on to indicate that the company has plans to build a manufacturing plant in Questa, New Mexico, and noted some of the economic development benefits of such a plant. He noted, however, that construction of the plant had yet to begin.

Questions and discussion addressed:

- the number of solar panels needed to fuel the average home; and
- the cost of installation of solar panels on residences.

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