

MINUTES
of the
SIXTH MEETING
of the
WATER AND NATURAL RESOURCES COMMITTEE
November 29-30, 2006
Santa Fe

The sixth meeting of the Water and Natural Resources Committee was called to order by Representative Joe M Stell, chair, on Wednesday, November 29, 2006, at 9:10 a.m. in Room 307 of the State Capitol in Santa Fe.

Present

Rep. Joe M Stell, Chair
Sen. Carlos R. Cisneros, Vice Chair
Sen. Sue Wilson Beffort
Rep. Ray Begaye
Rep. Joseph Cervantes
Sen. Mary Jane M. Garcia
Rep. Dona G. Irwin
Rep. Larry A. Larrañaga (November 29)
Rep. Kathy A. McCoy
Sen. Cynthia Nava (November 30)
Sen. Steven P. Neville
Rep. Andy Nunez
Sen. Mary Kay Papen
Sen. H. Diane Snyder (November 29)
Rep. Mimi Stewart
Rep. Sandra L. Townsend

Absent

Sen. Dede Feldman
Rep. Don L. Tripp

Advisory Members

Sen. Vernon D. Asbill (November 29)	Sen. Rod Adair
Rep. Anna M. Crook	Rep. Richard P. Cheney
Rep. Candy Spence Ezzell	Sen. Gay G. Kernan
Sen. Clinton D. Harden, Jr.	Rep. James Roger Madalena
Sen. Timothy Z. Jennings	Rep. Terry T. Marquardt
Rep. Rhonda S. King	Rep. Danice Picraux
Rep. Ben Lujan (November 29)	Sen. Leonard Lee Rawson
Sen. Nancy Rodriguez	Rep. Henry Kiki Saavedra
Sen. John C. Ryan	Sen. Leonard Tsosie
Rep. Peter Wirth	Rep. Eric A. Youngberg

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

Staff

Gordon Meeks
Jon Boller (November 30)
Jeret Fleetwood

Guests

The guest list is in the original meeting file.

Wednesday, November 29**Surface Owners' Protection**

Bob Gallagher of the New Mexico Oil and Gas Association provided the committee with testimony regarding the status of the oil and gas industry's support for a proposed Surface Owners' Protection Act. The act provides remedies and protection to those landowners who have leased the subsurface oil and gas rights on their property. He noted that during the 2006 session, a version of the act passed through the house, but became held up in the Senate Judiciary Committee and never made it to the senate floor for a vote. Mr. Gallagher went on to state that the oil and gas industry fully supports the amended version of the 2006 bill and provided the committee with an overview of the act. He explained that the keys to the Surface Owners' Protection Act can be summed up in four words: communication, cooperation, compensation and confidence.

Mr. Gallagher indicated that the communication and cooperation components of the act involve providing notice to landowners of a company's intention to extract resources on a piece of land, and working with landowners on a plan for removal of those resources, neither of which is currently required. He went on to explain that the compensation component requires a company extracting oil and gas to compensate landowners for any damages that occur as a direct result of oil and gas extraction activities. Mr. Gallagher pointed out that the law currently makes no such requirement. He noted that the confidence aspect of the act involves surety or bond posting by the oil and gas operators, and the company moving forward with mining if no agreement between them and the landowner can be reached.

Mr. Gallagher emphasized that the Surface Owners' Protection Act is not a compromise bill between competing interests, as the oil and gas industry is actually making all the concessions, but rather the industry's attempt to be a good neighbor. He also pointed out that his testimony was not a request for the committee's endorsement of a bill for the 2007 session, as there are still negotiations underway between the oil and gas industry and various environmental groups. He noted that a bill would be introduced in the 2007 session regardless of a committee endorsement.

Doug Meiklejohn of the New Mexico Environmental Law Center echoed Mr. Gallagher's comments regarding a committee endorsement for a 2007 bill, explaining that negotiations are still ongoing and it would simply be too early for the committee to endorse something.

Questions and comments included:

- directional drilling for oil and gas to avoid the problem of placing a drilling pad in the middle of agricultural fields;
- drawbacks of directional drilling;
- adequate remediation of land where oil and gas activity has taken place;
- the effect of financial surety provision of the bill on smaller oil and gas operators;
- oil and gas companies crossing over several different landowner's properties to extract resources, and remedies for all affected landowners;
- other consequences of oil and gas activity, such as poachers and trespassers using roads built for oil and gas activity;
- legal issues contained in the 2006 bill;
- the importance of implementing *some* protections for landowners; and
- whether the bill being discussed is supported by all landowners and cattlegrowers, or just some.

Gila River Settlement

Craig Roepke of the Office of the State Engineer (OSE) provided the committee with an update regarding the Gila River Settlement. He began by reviewing the settlement's planning process, pointing out the technical subcommittees, science forums, studies and various other forms of input gathered by the Gila-San Francisco Coordinating Committee. Mr. Roepke went on to note that the Gila-San Francisco Coordinating Committee will take the input from those sources and develop options for the Interstate Stream Commission to consider when making recommendations on use of the water and federal funds awarded to New Mexico through the settlement. Mr. Roepke also emphasized that the planning process in place must be carefully followed and kept on schedule if a determination is to be made on how best to make use of the settlement by 2012. He noted that the Gila River Settlement Act has statutory deadlines built into it.

Peter Wilkinson of the Interstate Steam Commission provided the committee with an update on the Gila River Science Forum, which had recently been held. He explained that the forum featured a number of scientists well-versed in river and watershed management whose input would help inform decision-making in the Upper Gila Watershed. Mr. Wilkinson discussed the goals of the forum and then provided the committee with summaries of recommendations of several scientists who presented at the forum. He then provided the committee with the forum's recommendations on the overall process, which included identifying ecological, cultural and economic assets; developing a framework for integrating scientific information; ensuring continued stakeholder involvement; and considering future conditions of both the river and population in the area.

Mr. Roepke then provided the committee with the financial aspects of the settlement process. He listed the year-by-year costs of the settlement process, noting that while the total cost of studying options for use of the settlement is \$4.6 million, the costs are spread out over the years between 2006 and 2013.

Questions and comments included:

- use of the 14,000 acre-feet of water provided for in the settlement for economic development in southwestern New Mexico;
- the effect of modification of the Colorado River Compact and San Juan/Chama water for New Mexico;
- the possibility of using Gila River water for Las Cruces via a pipeline;
- how helpful 14,000 additional acre-feet of water is to New Mexico's overall water budget;
- federal legislation worded in such a way that requires extensive study of all available options, including doing nothing;
- whether anything prohibits building a dam or retractable dam in the area;
- whether there have been public hearings on pumping Gila River water elsewhere; and
- possible committee endorsement of a bill for the \$1.8 million required to move studies forward in 2007.

Salt Basin/ Sacramento Mountain Hydrologic Study

Mr. Roepke also provided the committee with an update regarding a hydrologic study in the Salt Basin. He explained that while the potential availability of water in the Salt Basin aquifer is important, the geology of the area makes removal of water resources difficult without further study. Mr. Roepke also noted that one of the factors making study of the aquifer difficult is that the area's extremely complex geology makes it impossible to remove a sample from one area and be able to extrapolate about resources elsewhere in the aquifer. He stated that three areas will require further investigation:

- ground water recharge entering and natural discharge leaving the area's hydrogeologic systems;
- distributions and movements of ground water within the Salt Basin; and
- the volume and quality of ground water in the Salt Basin.

Mr. Roepke went on to indicate that the plan is to conduct a three-year study of the Salt Basin aquifer and noted that the total cost of the study would be about \$2.5 million.

Linda Weiss, director of the United States Geological Survey (USGS) Water Science Center, presented the committee with a report on the USGS's knowledge and understanding of the hydrogeology of the Salt Basin. She explained that the Salt Basin covers about 2,400 square miles and extends from south-central New Mexico into Texas, and that recoverable ground water resources could be between 15 million and 57 million acre-feet. She echoed Mr. Roepke's comments about the complexity of the geology in the area. Ms. Weiss went on to indicate that the USGS is interested in collaborating with New Mexico on a study of the water resources in the Salt Basin.

Questions and comments included:

- coordination between a hydrologic study of the Sacramento Mountains and the proposed study of the Salt Basin;
- the interpretation of USGS data; and
- the size of the aquifer in the Salt Basin.

Senator Asbill presented the committee with a letter regarding elk population issues in the Sacramento Mountains. He requested that the committee endorse the letter requesting interested parties to meet in Santa Fe on January 18 to discuss the issue.

What New Mexico Can Do to Respond to Global Climate Change

John Hernandez, a consultant and former engineer at New Mexico State University, provided the committee with recommendations regarding ways New Mexico can address issues related to global climate change. He pointed out that while the recommendations primarily address climate change, implementation of them should save New Mexico money in the long run. Mr. Hernandez's recommendations included creating the position of state surface water hydrologist; professional exams for certain engineers and geologists; distribution of surface hydrologic data by the OSE via the internet; additional funding for the New Mexico Water Resources Research Institute for analysis of surface water hydrology; and establishment of a subcommittee on climate change.

Questions and comments included:

- whether New Mexico needs more hydrologists;
- potential funding sources for Mr. Hernandez's recommendations; and
- the likely cost of implementing the recommendations.

Gallup/Navajo Project Status

John Leeper, manager of the Navajo Nation's Water Management Office, provided the committee with an overview of the Gallup Project and the Navajo Water Settlement. He explained that the settlement is important to New Mexico in part because it helps protect New Mexico's San Juan/Chama water. Mr. Leeper also pointed out that the settlement is preferable to a long, difficult court battle over water resources in the area. He went on to note that the Gallup project is a regional one, consisting of the Kirtland Treatment Plant, the Gallup regional system and a ground water system.

Lance Allgood, utilities director for the City of Gallup, explained that the project is actually the hub of a much larger water system, with water service planned for the outlying Navajo Nation chapters. He indicated that construction on the project is scheduled to begin in six months.

Marc Edwards, a consultant for the City of Gallup, Mr. Leeper and Mr. Allgood extended an invitation to the committee to tour the project whenever the members wished to do so.

Questions and comments included:

- legislative proposals connected to the project;
- the status of Arizona's water settlements relative to the project;
- potential areas for legislative meetings and project tours;
- points of diversion for the project; and
- issues raised by Senator Domenici regarding the project's cost.

On a motion made, seconded and unanimously approved, the committee approved the minutes of the October 12, 2006 meeting.

Governor's Task Force on Eminent Domain

J.D. Bullington, co-chair of the Governor's Task Force on Eminent Domain, presented the committee with a report from the task force. He began by noting that while the legislature had passed a bill addressing eminent domain issues during the 2006 session, the governor vetoed the bill amid concerns that it might not withstand a court challenge and instead established a task force to study the issue and make recommendations. Mr. Bullington went on to explain that most of the recent attention paid to the issue of eminent domain stems from the United States Supreme Court case *Kelo v. the City of New London*, which upheld the use of eminent domain for certain economic development purposes and, many critics feel, weakened private property rights.

First, Mr. Bullington reviewed the *Kelo* case for the committee and explained that Governor Richardson instructed the task force to study whether legal protections are needed in New Mexico to limit or prohibit the use of eminent domain for economic development. He also discussed the membership of and methodology used by the task force.

Next, Mr. Bullington provided the committee with a review of existing laws in New Mexico regarding eminent domain, particularly the Metropolitan Redevelopment Act. He explained how the act authorizes the use of eminent domain in certain cases, pointing out that Rio Rancho is apparently the only government entity to have used the power of eminent domain as permitted in the act.

Mr. Bullington then provided the committee with a list of the task force's recommendations. He noted that one recommendation, repeal of both the Urban Renewal Law and the Community Development Law, was unanimously endorsed by the task force. Mr. Bullington went on to discuss the recommendations endorsed by a majority of the task force's members: removal of eminent domain authority from the Metropolitan Redevelopment Act and additional procedural protections for property owners in the same act.

Finally, Mr. Bullington discussed the recommendation made by a minority of voters regarding removal of eminent domain authority from the Metropolitan Redevelopment Act. He explained that the task force endorsed the recommendation by a 10-7 vote and discussed the minority's position that those procedural protections recommended by the task force and already outlined in the Metropolitan Redevelopment Act form enough of a framework for local governments to follow.

Questions and comments included:

- whether the task force discussed water rights along with property rights;
- blighted areas and economic development;
- continued use of eminent domain through public nuisance laws;
- simpler methods of protecting private property provided by the vetoed 2006 bill; and
- pipeline and electric utility rights of way.

Thursday, November 30

Office of the State Engineer/Interstate Stream Commission Issues

"Year of Water" Proposals

John D'Antonio, state engineer, began by providing the committee with a list of policy priorities for Governor Richardson's "Year of Water". He explained that a number of proposals have been developed for the Year of Water, and he provided the committee with a brief description of each proposal and its anticipated cost. Those proposals included:

- establishing the Office of Water Infrastructure Development;
- technical assistance on acequia governance;
- an additional appropriation to the Water Trust Fund;
- a statewide leak detection and system repair program;
- water innovation and demonstration projects;
- a project to provide safe and clean water to the eastern Navajo Reservation;
- additional capital outlay for the Ute Pipeline Project;
- continued study of the Salt Basin aquifer;
- Indian water rights settlements;
- capital outlay for the strategic water reserve; and
- river ecosystem restoration.

Questions and comments included:

- funding for water rights adjudications;
- protections for agricultural land use;
- lack of measures in the proposals for conservation of agricultural water;
- conservation easements;
- potential cost of adjudications; and
- proposed budget for the OSE.

Diversion Deliveries and Consumptive Transfers

Mr. D'Antonio and John Longworth of the OSE provided the committee with an overview of the general elements of a water right. Mr. Longworth went on to discuss such considerations as diversion and beneficial use. He explained that a certain amount of water is required to convey water from a point of diversion to a place of use, as well as the measure and limit of the right to use water in New Mexico. Mr. Longworth went on to explain that when adjudicating a

water right, both the measure and limit of a water right, or the consumptive irrigation requirement (CIR), and the water necessary to convey the CIR must be considered.

Pecos River Compact Deliveries

Estevan Lopez, interstate stream commissioner, provided the committee with an overview of how much water New Mexico has delivered to Texas over the past 50 years relative to its compact obligations. He explained that New Mexico was required to pay Texas \$14 million for failure to comply with compact delivery requirements in 1985, which ended a long period of steadily increasing underdeliveries. Mr. Lopez went on to note that New Mexico has since steadily built up a credit of water deliveries but pointed out that the credit is relatively small and could be wiped out with one or two years of underdelivery. He went on to discuss implementation of the Pecos River Settlement, which includes land and water rights acquisitions, water leases and augmentation wells and the projected cost of implementation. Mr. Lopez noted that the total cost of implementation of the Pecos River Settlement would be about \$66.5 million and outlined various funding sources.

Rio Grande Compact Deliveries

Mr. Lopez went on to discuss compact delivery issues on the Rio Grande. He provided the committee with an illustration of New Mexico's compact deliveries to Texas relative to its obligations. Mr. Lopez also discussed various means New Mexico uses to ensure that compact delivery obligations are met, such as continued work on a pilot channel near Elephant Butte and clearing of sediment in the river channel to improve flow.

Mr. Lopez also discussed the threat of litigation between New Mexico and Texas over the lower Rio Grande. He reminded the committee that the Texas legislature had appropriated money to begin preparing to sue New Mexico over water issues, focusing on two areas: excessive salination of the lower Rio Grande's water and unregulated ground water pumping. Mr. Lopez also noted that about \$5 million had been appropriated by the New Mexico legislature in 2002 to prevent and prepare for such litigation. He indicated that since then, the OSE, Interstate Stream Commission, Department of Environment (NMED) and the Attorney General's Office have made a great deal of progress in forestalling threatened litigation, developing the technical tools needed for better water administration on the lower Rio Grande, acquiring physical data needed for assessing hydrological conditions and protecting New Mexico's water supplies. Mr. Lopez also discussed progress made on addressing the two focal points of Texas' threatened lawsuit.

Questions and comments included:

- uses for money appropriated for New Mexico's legal defense.

Legislative Proposals

The committee endorsed the following legislative proposals:

- enforcement of OSE's compliance orders;
- extend 40-year planning period;

- \$60 million for the Water Trust Fund (appropriation);
- salt cedar treatments (appropriation);
- silvery minnow recovery (appropriation);
- New Mexico State University chile industry research (appropriation);
- Natural Resources Trustee Act amendments and appropriation;
- mercury task force (appropriation);
- NMED Illegal Dumping Task Force (appropriation) and a memorial to support the creation of a coalition to combat illegal dumping;
- Utton Transboundary Resources Center water rights ombudsman (appropriation);
- acequia governance education, training and technical assistance (appropriation);
- statewide aquifer mapping project (appropriation);
- Santa Cruz Reservoir silt removal project (capital appropriation);
- a meeting on the elk depredation issue;
- a memorial opposing water rights files removal from the Roswell office;
- Gila River Settlement planning; and
- the Forestry and Watershed Restoration Institute at New Mexico Highlands University (appropriation).

Middle Rio Grande Conservancy District Functions

Chuck DuMars, an attorney for the Middle Rio Grande Conservancy District (MRGCD), provided the committee with testimony regarding MRGCD's makeup, governance, functions and current projects. He began by providing the committee with a brief history of the conservancy district, noting that while it became a political entity 80 years ago, much of the irrigation system that makes up the district has been in use for close to 400 years. Mr. DuMars went on to outline the conservancy district's operation in terms of diversions and return flows, pointing out that MRGCD diverts about 275,000 acre-feet of water annually and returns about 52,000 acre-feet to the river. He also discussed the physical and operational improvements the district has undergone in an attempt to increase irrigation efficiency. Finally, Mr. DuMars covered the MRGCD's involvement in the Middle Rio Grande Endangered Species Act Collaborative Program, a partnership created to protect listed endangered species in the area, particularly the Rio Grande silvery minnow. He explained that a number of program activities are underway, including captive breeding of the minnow for release into the river, supplemental water releases to meet federal flow targets, irrigation and management improvements and scientific research.

Questions and comments included:

- the length of irrigation ditches in the conservancy district;
- aerial photographs of daily water use;
- total acreage of agricultural land within the district;
- disposition of "saved" water acquired through improved management and physical structures; and
- adjudication of water rights in the conservancy district.

A number of members of the conservancy district came forward to voice their concerns about its management. They provided the committee with a list of complaints regarding district functions, including unresponsiveness by the MRGCD Board, water delivery problems, noxious weed problems, members who sell their water rights and continue to lease them, ditch maintenance problems and a lack of cooperation between irrigators in the district and the board.

State Engineer D'Antonio explained to the committee that the OSE is aware of some of the problems listed and indicated that his office is working to address them. He also pointed out that many of those problems are with MRGCD's management and not necessarily the OSE.

Members of the committee thanked the chair for his leadership.

There being no further business, the committee adjourned at 5:20 p.m.