

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

October 18-19, 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
Rep. Joseph Cervantes
Rep. Thomas A. Garcia (October 18)
Rep. William J. Gray
Sen. Clinton D. Harden, Jr.
Rep. Dona G. Irwin
Rep. Larry A. Larrañaga
Rep. Kathy A. McCoy (October 18)
Sen. George K. Munoz
Sen. Gerald Ortiz y Pino
Sen. Mary Kay Papen
Sen. Sander Rue
Rep. Mimi Stewart (October 18)

Absent

Sen. Mary Jane M. Garcia
Sen. Steven P. Neville

Advisory Members

Sen. Vernon D. Asbill
Sen. Carlos R. Cisneros
Rep. Anna M. Crook
Rep. Brian F. Egolf, Jr.
Rep. Nora Espinoza
Rep. Candy Spence Ezzell (October 19)
Sen. Dede Feldman
Sen. Timothy Z. Jennings (October 18)
Rep. Ben Lujan (October 18)
Rep. James Roger Madalena (October 18)
Sen. Cisco McSorley
Sen. Nancy Rodriguez
Rep. James R.J. Strickler
Rep. Don L. Tripp (October 19)
Sen. Peter Wirth

Sen. Rod Adair
Sen. Gay G. Kernan
Rep. Danice Picraux
Rep. Henry Kiki Saavedra
Rep. Jeff Steinborn

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

Staff

Jon Boller
Kim Bannerman
Jeret Fleetwood

Monday, October 18**Water Trust Board Report**

John D'Antonio, state engineer, began by offering a brief explanation of the Water Trust Board'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. D'Antonio went on to explain that while each fund derives income from separate, defined sources, all three exist to provide financial assistance for water projects. He indicated that while the board and its funds are mostly focused on water infrastructure projects, legislation passed during the 2005 session also dedicates 10 percent of all the money that goes into the Water Project Fund to the water rights adjudication process, with 20 percent of that amount going to the Administrative Office of the Courts for the courts' costs associated with those adjudications. However, Mr. D'Antonio explained, the funding for adjudications flowing to the Office of the State Engineer (OSE) has supplanted general fund appropriations to the office, and, therefore, there has not been increased funding for adjudications.

For 2010, the Water Project Fund received distributions from the Severance Tax Permanent Fund in the amount of \$29.6 million, plus \$4 million from the Water Trust Fund, according to Mr. D'Antonio. Loans and grants for projects authorized by the legislature and awarded in 2010 totaled \$31.5 million. He added that since 2002, 90 entities across the state have received approval for 195 funding awards totaling \$198 million.

Next, Mr. D'Antonio 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.

Regional Water Plan Update

Angela Bordegaray, senior water planner for the Interstate Stream Commission (ISC), and Estevan Lopez, ISC director, provided the committee with an overview of the statewide regional water planning process. Ms. Bordegaray began by reviewing the regional water planning process, pointing out that public meetings are an important part of the overall process. She emphasized the importance of water planning, and she explained that the first state water plan was completed in 2003 and was updated in 2008. Since then, she said, her office has held 22 public meetings aimed at updating the 16 regional plans and incorporating them into the state plan. However, she emphasized that constantly evolving conditions means that the plans need to be updated frequently in order to continue to be useful. Updating plans on a continuing basis, she noted, would take dedicated annual funding. She said she hopes to complete incorporation

of regional plan data into the state water plan in December.

Questions and comments included:

- whether integration of regional and state water plans occurs often enough to be useful in policy planning;
- templates were sent to each region, but responses used that template in markedly different ways, and one of the challenges facing planners now is revision of the data contained in each region's response;
- water management strategies in some regions have changed more than others; for instance, the regional plan for the lower Pecos River was completed before the settlement between various stakeholders on the river was negotiated and implemented;
- the plan for southwestern New Mexico does contemplate the Central Arizona Water Projects Settlement and the effect that settlement may have on administration of water on the Gila River, but it will have to be updated once the planning process is complete;
- there is a water shortage in the Ruidoso area, and the Mescalero Apache Tribe has proposed leasing some of its water rights to Ruidoso; however, that water is already being used, and therefore only the priority date, not the amount of water being used, would change; and
- while Bonito Lake may be geographically closer to Ruidoso, its water rights are already owned by Alamogordo, so that water is not available to address Ruidoso's water issues.

The committee asked Mr. Lopez for an update on the proposed contract between the ISC and Intel. Mr. Lopez acknowledged that because some committee members expressed concern about the proposed contract, the ISC voted to postpone approval of the contract indefinitely and address those concerns before further action is taken. Accordingly, he said, the ISC is developing proposed guidelines to show how the ISC will handle compact credits. Mr. Lopez also noted that one of the biggest concerns is what process would be required for obtaining approval of the terms of the proposed agreement. The state engineer, he said, will require the ISC to go through the water rights permitting process.

Utton Transboundary Resources Center and Ombudsman Program Update

Susan Kelly, director of the Utton Transboundary Resources Center, provided the committee with an overview and update on the history, mission and projects involving the center. She began by explaining that the center had recently been reorganized and now falls under the purview of the Institute for Public Law. Ms. Kelly went on to discuss the various initiatives in which the center is involved, pointing out that one of the major legislative goals of the program is to be recognized in statute. She also noted that the center publishes the "Water Matters" handbook and is developing literature exploring the intertwining of water and land use policy. Ms. Kelly also pointed out that the center has been researching international water use issues and plans to produce a guide to model water rights legislation, which may help other border states develop policies on international water policy.

Darcy Bushnell, program director for the Joe M Stell Water Ombudsman Program, provided the committee with an overview of her program. She explained that the program was established to help those parties with adjudications that had not retained legal representation. Ms. Bushnell noted that the program's resources are focused primarily on the lower Rio Grande adjudication, but it also is working on the San Juan, *Aamodt* and Animas Valley adjudications.

Ms. Bushnell then went into more detail regarding the Animas Valley adjudication. She explained that the adjudication could help serve as a model for future proceedings, particularly in the Middle Rio Grande Basin, because nearly 80 percent of the water rights in the area were already licensed by the OSE. Ms. Bushnell also discussed outreach efforts on the Animas Valley adjudication, pointing out that her program had focused its efforts on contacting those claimants who had recently been contacted by the OSE. She pointed out that the ombudsman program employs a number of methods to help claimants, ranging from multimedia productions outlining the process to hosting public meetings and workshops. Ms. Bushnell indicated that the ombudsman program works closely with the OSE and the Administrative Office of the Courts.

Ms. Bushnell went on to discuss two other adjudications involving the ombudsman's program, the *Aamodt* and Navajo settlements. She noted that contact with small groups of people affected by the settlements allowed participants to voice their particular concerns.

Soil and Water Conservation Commission Proposals

Larry Wynn, chair of the Soil and Water Conservation Commission (SWCC), outlined the role that soil and water conservation districts (SWCDs) play in protecting the state's natural resources, and he stressed the need for consistent and predictable funding for the work the districts do. He suggested that identifying and dedicating funding to resource conservation would protect New Mexico's natural resources from ideological shifts among lawmakers.

To illustrate his point, Mr. Wynn pointed out that hundreds of dams had been constructed across New Mexico over the past 50 years. He acknowledged that while those dams may have enabled growth in many communities, most had languished without maintenance for decades and now constitute a threat to a number of communities. To complicate matters, Mr. Wynn indicated that while ownership of and responsibility for most of those dams was debatable, the matter had mostly been thrust upon SWCDs, most of which could not afford to maintain the dams.

Mr. Wynn went on to explain that possible liability for downstream developments from such dams could result in significant financial responsibility for the SWCDs in New Mexico and that a predictable, dependable funding stream is needed to address maintenance and liability issues.

Jose Varela-Lopez, SWCC member, presented the committee with proposed legislation revising the appointment of SWCC members. He explained that the changes would allow for better representation from the various SWCDs in the state and better cooperation with the New Mexico Department of Agriculture. He also presented a proposal for a permanent funding source for the SWCC and SWCD projects.

Questions and comments included:

- whether the changes proposed by Mr. Varela-Lopez would actually result in more diversified representation on the SWCC;
- how the current process for disbursement of funds to each district goes through the New Mexico Department of Agriculture and New Mexico State University;
- whether the governor must pick a name from those submitted or if the governor can send the list back;
- exactly how much money is appropriated to SWCDs for various purposes;
- how the proposal to revise the appointment of SWCC membership originated with the commission, rather than the districts themselves;
- allowing increased autonomy of boards and commissions lessens the legislature's prerogative to appoint boards and commissions;
- the Coronado SWCD is responsible for the dam located above the town of Bernalillo, and the Risk Management Division of the General Services Department has begun charging dramatically increased premiums to most SWCDs;
- confusion over ownership and responsibility for flood control dams, particularly because not all dams are the responsibility of local SWCDs;
- whether SWCC members should be confirmed by the senate;
- disputes over the certification of and fiscal agent for SWCD projects; and
- qualifications for audits of state subdivisions.

Industrial Hemp Production

Gloria Castillo, New Mexico Industrial Hemp Coalition, provided the committee with an overview regarding industrialized hemp. She began by emphasizing the fundamental differences between industrial hemp and marijuana. Ms. Castillo went on to explain that commercialized hemp presents a viable economic opportunity for domestic producers, noting that hemp products produced outside of the U.S. already enjoy a small, robust market that shows significant potential for growth. To illustrate, Ms. Castillo provided the committee with a number of hemp products, emphasizing that while most of them are sold in domestic stores, state and federal regulations prohibit the growing, processing and sale of domestic hemp.

To illustrate further the difference between industrial hemp and marijuana, Dr. Daniel Manuchia, Greenveld Foundation of New Mexico, provided the committee with evidence of the chemical composition of each. He went on to emphasize that in a number of other countries, industrial hemp is being cultivated, much of which is being imported into the U.S. as part of the products shown to the committee. Dr. Manuchia also noted that enough research had 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 included:

- industrial hemp tends to compare very favorably to other domesticated crops in terms of yield per acre;
- harvest methods still need some development, but much of the required research has

- already been conducted;
- the process to develop hemp strains and land use policies that maximize the crop's potential will take some time;
- the major difference between marijuana and industrial hemp centers on THC content, with hemp's content being exponentially lower;
- U.S. demand for hemp products totaled approximately \$325 million in 2008;
- legislative committees can help by submitting letters to the U.S. attorney general urging support for hemp-related research projects;
- legislation authorizing the cultivation of industrial hemp is being considered by several other states; and
- federal law supersedes tribal sovereignty, making hemp cultivation illegal on tribal lands, too.

Buckman Direct Diversion Project Status

Rick Carpenter, project manager of the Buckman Direct Diversion Project, Brian Snyder, public utilities director for the City of Santa Fe, and George Rael, environmental programs manager for the Los Alamos Office, provided the committee with an overview of the Buckman Direct Diversion Project. They explained that construction of the project began in late 2008 and is about 92 percent complete. They also thanked the committee for its work on HM 21 (2010), which they said helped the parties come together to resolve the remaining issues on the project.

Mr. Carpenter, Mr. Snyder and Mr. Rael went on to discuss the various monitoring systems incorporated into the project, particularly those that focus on runoff originating in canyons that may contain pollutants produced by Los Alamos National Laboratory. The group provided the committee with an overview of the various monitors designed to detect pollutants in runoff flows that may pose health risks to downstream water users.

Questions and comments included:

- the water quality sampling system is operational and did pick up contaminants that were well below accepted standards;
- the total cost of the diversion project is about \$200 million;
- the project benefits Los Alamos and Santa Fe in that it allows for cessation of ground water pumping, which has often exceeded allowable levels;
- most of the diverted water is sampled and analyzed, then treated if necessary;
- water is tested both for contaminants listed in the federal Clean Water Act and some contaminants specifically related to laboratory activities;
- grade control structures have been installed above the project to catch most of the sediments that can contaminate water; and
- intake valves can be shut off if large storms that can wash excessive amounts of sediment or other contaminants are in the area, but it has not been necessary so far.

Environmental Flow Proposal

Steve Harris of Rio Grande Restoration provided the committee with testimony regarding the New Mexico Environmental Flows Project. He explained that a study on the impacts of

hydrologic alteration on New Mexico's rivers is currently underway and that a technical team had already been assembled. Mr. Harris went on to note that various stream and river flows are being monitored for factors, such as flow timing, magnitude and rate of change. He also discussed the types of questions he hopes the study would help answer, such as whether changing the timing of the annual spring runoff floods might actually foster growth in non-native species and how important channel maintenance is to overall river health.

Mr. Harris went on to explain that while the report called for in House Joint Memorial 3 (which passed the house, but not the senate, during the 2009 regular session) would probably be available in October 2011, a larger four-year study that hopes to leverage federal funding is also underway.

Questions and comments included:

- the goal of the study is not necessarily to suggest going back to rivers without dams, but rather to suggest that storing water using better science may help rivers function more like they did before dams;
- similar issues have been contemplated in Colorado; and
- changing the timing of compact delivery flows may help return rivers to a more natural state.

The committee recessed at 4:00 p.m.

Thursday, October 19

St. Augustin Plains Water Issues

Eileen Dodds, a Socorro County landowner, provided the committee with testimony regarding an application by an area landowner to drill 37 deep water wells near the border between Socorro and Catron counties. She explained that there are about 905 wells in the St. Augustin watershed, most of which are used by ranchers and all of which may go dry if the wells are approved. Ms. Dodds went on to note that the ranching, farming and tourism industries, and much of the wildlife, in the area will also likely expire once the shallower wells dry up.

Ms. Dodds and area landowners Anita Hand-Gutierrez and Lin Kennedy urged the committee, and the legislature as a whole, to consider legislation:

1. for the protection of surface and subsurface waters within the state for current use and for the use of all future generations with an emphasis on long-term sustainability;
2. to limit interbasin transfers;
3. to close the practice of automatic approval of the drilling of domestic wells. They should require an impact statement, too;
4. prohibit the mining of the deep aquifers statewide by requiring the proponents of this

drilling to demonstrate that any and all waters extracted are in excess of the area's future needs;

5. to restrict commercial and residential development until the proponents can prove they have the long-term water allotment necessary to support growth and to prevent developers from "borrowing" for future development from today's finite resources;
6. to consider the effect on public welfare in rural areas and protect the rights of all New Mexicans to have the sustainable use of clean water; and
7. to provide oversight of the OSE process for hearing appeals from the residents of New Mexico.

Questions and comments included:

- the proposed well permits list numerous proposed uses for the water, including pumping it to the Rio Grande for use in compact deliveries;
- the aquifer in question goes as deep as 3,000 feet, but it begins much closer to the surface in some spots;
- the aquifer appears to be connected to surface water;
- the average depth of most existing wells in the area is between 200 feet and 300 feet;
- the application was originally filed in 2007 by the listed landowner, an Italian corporation;
- exploratory well permits are available from the OSE to determine water location and quality, but then another permit must be approved for use of the water; and
- the relative unlikelihood of the permits being approved as they are written.

Bruce Frederick of the New Mexico Environmental Law Center also discussed the proposed wells with the committee. He explained that the New Mexico Environmental Law Center already represents a number of protestors. Mr. Frederick explained that the permits seek to appropriate nearly 54,000 acre-feet of water, yet there is no end user listed in the application. As such, this is a speculative appropriation, which is counter to New Mexico law. He referenced a Colorado case that made a similar speculative application but had no end use.

Organic Commodity Commission

Theresa Connaughton, chair of the Organic Commodity Commission, provided the committee with an overview of the commission's mission and current situation. She explained that the commission is tasked with ensuring compliance with National Organic Program standards by businesses and operations desiring to be certified as United States Department of Agriculture (USDA) organic and to act as the certifying agent for USDA organic-designated businesses and operations in New Mexico. Ms. Connaughton went on to summarize the makeup, staff and funding issues associated with the commission, noting that estimates suggest that it will cost \$80,000 more than the program has received from the general fund and fees in FY11. She also pointed out that the program does not have a director or chief financial officer and lacks sufficient managerial and administrative support due to budget cuts. General fund

appropriations fell from \$280,000 to \$25,000, she explained. Finally, Ms. Connaughton addressed a proposal to merge the Organic Commodity Commission with the New Mexico Department of Agriculture, noting that it would integrate some agricultural disciplines and would likely yield administrative efficiencies.

Questions and comments included:

- there is no direct link between the commission and local farmers' markets, and while certified organic products must be inspected, markets can sell all types of products;
- there are 205 certified organic operations in New Mexico;
- currently, fees and assessments produce about \$150,000 annually;
- total sales of organic products in New Mexico amount to about \$60 million, although it is difficult to determine what percentage of that amount comes from sellers who have been certified by the commission;
- a reasonable increase in fees would bring in about \$225,000 per year; and
- total costs to operate the program are approximately \$305,000.

Agricultural Issues and Game Permits

Caren Cowan of the New Mexico Cattlegrowers' Association briefed the committee on several issues concerning the association. She began by explaining that a sportsmen's coalition was recently formed to work with the Department of Game and Fish on hunting-related issues. Ms. Cowan indicated that agreements were recently reached regarding most of the association's concerns, noting that landowner permit rules for antelope were modified, bear and cougar management efforts were addressed by changing the dates for those hunts and a moratorium was placed on wolf trapping in the Gila Wilderness area for everyone but landowners.

Ms. Cowan went on to explain that the hearings regarding designation of outstanding natural resource waters in New Mexico had recently concluded, with the association being on record during those hearings should it desire to appeal any decision. She also noted that the Department of Game and Fish had recently indicated that it will help manage elk herd issues.

Questions and comments included:

- professional trappers may not trap wolves in the Gila Wilderness area while the moratorium is in effect;
- the agreement regarding landowner antelope permits involves the switching of permits between ranches that do and do not have antelope on them; and
- the director will recommend the change to the State Game Commission, which plans to meet soon.

The E-File Program, Elk Permits and Game Management Unit Boundaries

Tod Stevenson, director of the Department of Game and Fish, and Jim McClintock of the State Game Commission provided the committee with an update regarding several issues. Mr. Stevenson began by noting that there are continuing concerns over a number of department actions, such as the July redrawing of the boundary between two Jemez subunits and rule changes regarding elk permits. He also noted that some small landowners continue to create

problems for the department, and that while a task force has been assembled to address some issues, the department's staff has been so overwhelmed by antelope issues that recommendations have not yet been made to the commission.

Mr. Stevenson went on to note that he appreciates the formation of the sportsmen's coalition because it helps maintain a dialogue between the department and interested groups and helps reach compromises. He did point out that some compromises still demand a significant amount of time.

Mr. Stevenson then discussed the landowner system for certain hunting permits, indicating that the department intends to recommend keeping that component of the system intact. He acknowledged that many sportsmen will not like such a decision, but the department simply could not devise a way to make a straight public draw for permits to work. Mr. Stevenson noted that while the current system is somewhat skewed toward landowners, it does provide an opportunity for other sportsmen to obtain a permit while still encouraging landowners to keep wildlife on their property and compensating them for the damage that wildlife causes.

Mr. Stevenson also discussed the designation of outstanding natural resource waters in New Mexico, questioning the claim by some groups that such a designation will help manage elk herds. He noted that the department will likely be forced to do more elk herd management in order to stay in compliance with the designation.

Finally, Mr. Stevenson discussed the ban on wolf trapping in the Gila Wilderness. He explained that while a significant number of people have approached the involved government agencies on the issue of wolves, there simply are not very many wolves in the wild. Mr. Stevenson indicated that the ban was addressed in an executive order, but it is limited to U.S. National Forest lands. He also noted that the department is currently seeking help in completing some of the studies called for in the executive order.

Mr. McClintock discussed the State Game Commission's decision to redraw the 6A-6B subunit boundary in the Jemez. He explained that when the boundary was first changed, many hunters wandered into the wrong parcels of land because they had no way of telling where the boundaries were. Mr. McClintock noted that the commission voted unanimously to put the boundary back to its previous location, and the new boundary is posted on the Department of Game and Fish's web site.

Mr. McClintock also discussed the E-File Program, explaining that most antelope in the state are on private property. He noted that the program allowed for a total of 5,000 permit conversions: 1,800 for the public and 3,200 for landowners, which would allow for almost 350 additional opportunities for the public to shoot an antelope. Mr. McClintock acknowledged that the program is not where it needs to be yet, but the commission continues to work with all the stakeholders to develop a solution.

Questions and comments included:

- compensation for wolf damage requires a 50/50 funding match from the state, and the department hopes to take its share of the funds from a new funding source;
- the department is working with the U.S. Fish and Wildlife Service to improve the compensation program;
- there are stringent requirements regarding what can and cannot be compensated;
- problems arise when the same approach to a game and fish problem is applied statewide because what works in one area may not work in another;
- the importance of compensating landowners for wildlife damage because those landowners take care of the wildlife most of the time;
- issues related to a grant proposal involving a Luna County landowner and his attempts to reduce interaction between wildlife and livestock;
- the amount of money claimed and paid to landowners for wolf damages varies but seems smaller this year compared to last year;
- the zebra mussel program seems to be working well, as several infested boats were stopped and cleaned at the border; and
- a microscopic positive has turned up at Sumner Lake, but it is too early to tell if it presents a problem or not.

The committee adjourned at 12:15 p.m.