

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

**October 29-30, 2007  
Room 322, State Capitol  
Santa Fe**

The Water Adjudications Subcommittee convened at 8:15 a.m. on Monday, October 29, 2007, with Senator Mary Kay Papen as chair.

**Subcommittee Members Present**

Sen. Mary Kay Papen  
Rep. Ray Begaye  
Rep. Joseph Cervantes  
Rep. Candy Spence Ezzell  
Rep. Larry A. Larrañaga  
Rep. Kathy A. McCoy  
Sen. Cisco McSorley  
Sen. John C. Ryan  
Rep. Peter Wirth

**Lower Rio Grande Water Users' Organization Concerns**

Karl Wood, chair of the Lower Rio Grande Water Users' Organization, described the history of the organization and the water rights adjudication. The organization and the adjudication were the results of the City of El Paso's effort to drill 266 wells in New Mexico and export ground water to El Paso. The amount El Paso was seeking equaled the delivery of the Elephant Butte Irrigation District (EBID). The state engineer at the time, Steve Reynolds, declared the basin in 1980 to administer the water and formed a legal team to prepare a response to El Paso's action. This was when the initial planning process began in south central New Mexico, Mr. Wood explained. The state engineer had been avoiding adjudicating the lower Rio Grande, but the EBID filed suit in 1986 to begin an adjudication of water rights so that New Mexico's use could be demonstrated and defended. Former State Engineer Tom Turney eventually agreed to adjudication in the 1990s, when the legislature appropriated expenses for his legal team. The adjudication is not completed and, in anticipation of the potential need for prior administration, the state engineer adopted basin-specific active water resource management regulations in 2005. The Lower Rio Grande Water Users' Organization objects to the current regulations, among other reasons because they create exceptions to prior appropriation doctrine and set maximum diversion to four acre-feet for any crop rather than based on beneficial use. In the meantime, the Bureau of Reclamation (BOR) developed protocols (D3) in 2006 for delivery of water to project members that tie deliveries to Mexico and Texas to releases from Caballo Reservoir based on conditions that existed between 1951 and 1978, with EBID and New Mexico users getting whatever is left.

Phil King, consultant to EBID, explained the hydrologic cycle and the technical aspects of these BOR protocols. The Lower Rio Grande Water Users' Organization supports the BOR protocols because they are consistent with adjudicated water rights in Texas, they provide flexibility for conjunctive management in New Mexico and they are defensible. In conclusion, they told the subcommittee that the BOR protocols (D3) make the state engineer's lower Rio Grande basin-specific water resources management regulations unnecessary.

Dr. Wood closed by saying that future needs in southern New Mexico include:

1. access to and use of the state engineer's hydrologic model;
2. repeal of improper parts of the basin-specific active water resource management regulations;
3. funding for water treatment plants;
4. development of reservoirs and storage capacity for water to which New Mexico is entitled; and
5. consistent delivery of this water to users.

Questions and comments from the subcommittee addressed:

- the state engineer's position on active water resource management in the lower Rio Grande;
- the status of the regulations pursuant to recent court decisions;
- the state engineer's position on the BOR's D3 protocols;
- the rationale for the use of the 1951-1978 baseline period in D3;
- funding for adjudication;
- how there can be a priority call without an adjudication;
- why maximum diversion is set at four acre-feet in the state engineer's regulations;
- why carryover is not allowed;
- what happens in a flood year;
- what is a piezometer;
- the geographic coverage of D3;
- the development of custom systems elsewhere;
- the relationship of the D3 to the Rio Grande Compact;
- the mechanism of conjunctive management;
- brackish water;
- the measurement method for seepage;
- repeal of active water resource management rules that contradict prior appropriation doctrine;
- the amount of the request for three water treatment plants;
- the system for regulating flood flows; and
- the role of mutual domestics in the lower Rio Grande.

The subcommittee adopted a motion to ask the full committee to support a memorial requesting the state engineer and the Administrative Office of the Courts to continue discussions to reform the water rights adjudication process.

The fifth meeting of the Water and Natural Resources Committee was called to order at 9:28 a.m. by Senator Phil A. Griego, chair, in Room 322 of the State Capitol in Santa Fe.

**Present**

Sen. Phil A. Griego, Chair  
Rep. Andy Nuñez, Vice Chair  
Rep. Paul C. Bandy  
Rep. Elias Barela  
Sen. Sue Wilson Beffort  
Rep. Ray Begaye  
Rep. Joseph Cervantes  
Sen. Dede Feldman  
Sen. Clinton D. Harden, Jr.  
Rep. Dona G. Irwin  
Rep. Larry A. Larrañaga (October 29)  
Rep. Kathy A. McCoy  
Sen. Steven P. Neville  
Sen. Mary Kay Papen  
Rep. Mimi Stewart  
Rep. Don L. Tripp

**Absent**

Sen. Mary Jane M. Garcia  
Sen. Cynthia Nava

**Advisory Members**

Sen. Rod Adair (October 30)  
Sen. Vernon D. Asbill  
Sen. Carlos R. Cisneros  
Rep. Anna M. Crook  
Rep. Nora Espinoza  
Rep. Candy Spence Ezzell  
Rep. Ben Lujan  
Rep. James Roger Madalena  
Sen. Cisco McSorley  
Rep. Danice Picraux  
Sen. Nancy Rodriguez  
Sen. John C. Ryan  
Rep. Henry Kiki Saavedra  
Rep. James R.J. Strickler  
Rep. Peter Wirth

Sen. Timothy Z. Jennings  
Sen. Gay G. Kernan  
Sen. Leonard Lee Rawson  
Rep. Eric A. Youngberg

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

**Staff**

Gordon Meeks  
Jon Boller

Jeret Fleetwood

## **Guests**

The guest list is in the original meeting file.

## **Monday, October 29**

### **Gila River Issues**

Henry Torres and Howard Hutchison of the Gila-San Francisco Water Commission and Adrian Oglesby of the Nature Conservancy provided the committee with testimony regarding the Gila-San Francisco Water Commission. They began by offering a brief history of the Arizona Water Settlement Act of 2004, which they explained grants New Mexico 140,000 additional acre-feet of water and between \$66 million and \$128 million. The group went on to explain that the Arizona Water Settlement Act assigned the task of determining how the water and money would be developed to the New Mexico Water Planning Group with approval from the Interstate Stream Commission (ISC).

Mr. Torres went on to explain that the New Mexico Water Planning Group has been succeeded by the Gila-San Francisco Water Commission, which will operate under a joint powers agreement. He explained that the commission consists of basically the same group of entities from Catron, Grant, Hidalgo and Luna counties.

Mr. Torres then explained that the commission will "use the best available science to fully assess and mitigate the ecological impacts on southwest New Mexico, the Gila River, its tributaries and riparian corridors, while also considering the historic uses of and future demand for water in the basin" to develop its recommendations.

Mr. Torres went on to indicate that the commission intends to facilitate ecological and environmental studies of the Gila and San Francisco rivers and emphasized that some funding would be required in order to conduct the studies.

Questions and comments included:

- the agreement from the Nature Conservancy with the actions and intentions of the Gila-San Francisco Water Commission;
- a commitment by the Governor's Office of some funding for the required studies;
- membership of the commission;
- participation on the commission of groups that are not members;
- varying opinions on appropriate uses of the additional water;
- the lack of participation by Silver City on some work by the commission;
- the availability of federal funding for some studies;
- that the ISC is the agency overseeing the activities of the commission; and
- funding from Sandia National Laboratories for some of the commission's work.

### **Forfeiture Exemption for 40- or 100-Year Water Planning Period**

John Longworth of the Office of the State Engineer (OSE) provided the committee with testimony regarding House Memorial 42, passed during the 2007 session, which requests the OSE to conduct stakeholder meetings to evaluate and make recommendations relating to water development planning authority for municipalities, counties, school districts, state universities, member-owned community water systems, special water users associations and regulated public water and electric utilities. Mr. Longworth explained that the OSE had held two facilitated stakeholder meetings in July and September and set up a link on the OSE's web site offering a legal history of Section 72-1-9 NMSA 1978, a copy of the memorial, meeting summaries and written comments by stakeholders. He went on to indicate that the meetings were well-attended and that several new groups were invited to, and attended, the second meeting.

Mr. Longworth summarized the content of the meetings by pointing out that the local planning statute is a necessary and important tool, but that a template for 40-year plans is also needed. He also indicated that more time is needed to discuss relevant issues, such as the length of the planning period and expanding the number of covered entities.

Finally, Mr. Longworth indicated that the OSE recommends no changes to Section 72-1-9 NMSA 1978 during the 2008 legislative session, and that the process of evaluating the issues relating to the statute be continued.

### **Interstate Compacts — Status Report**

Estevan Lopez, director of the ISC, and Tanya Trujillo, general counsel of the ISC, provided the committee with an update on the status of the various interstate water compacts affecting New Mexico's water resources. Mr. Lopez explained that the compacts are simply interstate agreements apportioning water resources between states and pointed out that New Mexico is in eight separate compacts. He emphasized that while the compacts do not eliminate conflicts between states over water use, they are a much more desirable alternative to the free-for-all that would be in effect should the compacts not exist.

Mr. Lopez went on to provide details about each of the compacts in which New Mexico is a participant: the Animas-La Plata, Plata, Upper Colorado River, Colorado River, Rio Grande, Pecos River, Canadian River and Costa River. He noted which compacts are based strictly on river flows, which appropriate a set amount of water to New Mexico each year and which appropriate a set percentage of a river's flow each year. Mr. Lopez also provided the committee with a brief overview of the legal issues involving several of the compacts, particularly the Rio Grande, Pecos River and Colorado River compacts.

Questions and comments included:

- whether the ISC has a map available showing the areas of New Mexico affected by each compact;
- the amount spent to date on the Pecos River settlement;

- the estimated length of the proposed Ute Pipeline Project;
- the number of acres of land and acre-feet of water purchased by the state on the Pecos River;
- development of the Animas-La Plata Project and the administration of water from it;
- limits on the credits New Mexico can accumulate on compact deliveries in a single year;
- the source of the additional 21,000 acre-feet of water gained by New Mexico in the Navajo settlement;
- the relatively small amount of water flowing into Texas via the Canadian River;
- the effect of evaporation issues on New Mexico's ability to make compact deliveries; and
- whether the Rio Grande Compact ever expires or whether it could be renegotiated.

### **Well Drillers — Domestic Well Pump Installer Certification**

John Mahoney, president of the New Mexico Ground Water Association, provided the committee with testimony regarding the importance of developing some form of regulation for installers of pumps for domestic water wells. He explained that, currently, well pump installation and service is an unregulated industry in New Mexico, with no licensing, regulations or codes for pumping equipment. Mr. Mahoney went on to indicate that the equipment systems for water wells are something of a unique entity, meaning that typical plumbers and electricians generally do not have the technical knowledge to install such equipment. He explained that having such individuals install pumps on domestic wells can lead to unsafe electrical and plumbing conditions, and often results in unsanitary installations.

Mr. Mahoney went on to explain that although the OSE currently regulates well drillers, there are individuals who work solely as pumping equipment contractors and therefore do not require such a license. He suggested that a pump installer license be made necessary for anyone installing pump equipment and that the OSE be made the regulating authority for such licenses, pointing out that water wells and pumping equipment are directly related and should be regulated in harmony with one another. Mr. Mahoney also noted that Colorado, Texas and Utah have already implemented similar regulations, and that many more western states are in the process of doing so.

Questions and comments included:

- statutory changes that might be necessary in order to implement pump installer regulation.

### **Santa Fe Community College (SFCC) Water Conservation Strategies**

Dr. Sheila Ortego, president of SFCC, began by introducing Lou Schreiber of SFCC's Center for Community Sustainability, and Frank Joy, SFCC's director of plant operations. She explained that the college has developed water conservation strategies in two important areas: coursework, including degrees, in water conservation strategies and changes to the physical plant at SFCC. These strategies help conserve both water and energy.

Mr. Joy provided the committee with an overview of the changes that SFCC has made to its physical campus to help conserve both energy and water. He explained that a retrofit of all the water fixtures to low-flow models at the school was implemented, as well as construction of a treatment plant for all of the school's water. Mr. Joy also noted that the entire campus has been xeriscaped. He went on to note that energy conservation measures in place at the school include retrofitting all of the lightbulbs and fans to models that consume less energy. Mr. Joy also indicated that a biomass boiler had recently been installed at the school, so that natural gas would no longer be used to heat the school, which will limit natural gas consumption to only the kitchen and a few academic areas.

Mr. Schreiber discussed efforts that SFCC has made toward developing work force training programs. He explained that the school began a water treatment training program, a water conservation program and a program enabling students to earn either an associate's degree or a certificate in environmental issues. Mr. Schreiber noted that the high level of environmental awareness in the community of Santa Fe led the school to begin trying to help educate the public about climate change. He also indicated that the size of the solar energy industry in Santa Fe also prompted the school to offer courses in photovoltaic solar energy and solar-heated water.

Questions and comments included:

- the difference between woody biomass and simply using wood;
- potential benefits of implementing changes similar to SFCC's on a smaller, residential scale;
- difficulties in locating a steady source of biomass to burn at SFCC;
- problems with the biomass plant near Estancia and whether that plant is similar to SFCC's;
- that most of the changes at SFCC were financed by a \$25 million bond measure;
- the time it will take to realize savings from the changes;
- the time it takes to get participants in SFCC educational programs into the work force;
- job placement help from SFCC; and
- that demonstrations for the public of xeriscaping and water conservation strategies are just beginning.

The committee recessed at 4:25 p.m.

## **Tuesday, October 30**

### **Water Project Financing/ Water Trust Board Procedures and Policies**

Katherine Miller, secretary of finance and administration, began by providing the committee with an overview of the planning process for New Mexico's water and wastewater infrastructure. She explained that the current planning process is fragmented and decentralized and listed the large number of methods that could be used for water project financing and the entities that could be approached for financial help.

Secretary Miller then discussed House Joint Memorial 86, passed during the 2007 session, which requested that the OSE collaborate with the New Mexico Department of Environment (NMED) and other agencies to develop criteria for water system planning, performance and conservation as a condition of funding. She then provided the committee with the criteria developed in response to House Joint Memorial 86 and adopted by the Water Infrastructure Investment Team, which requires that funding recipients have a financial plan; an adequate rate structure; an asset management plan; compliance with the OSE regulatory requirements; compliance with the NMED and federal requirements; an adequate governance structure; and participation in regional efforts.

Next, Secretary Miller discussed the establishment of a water cabinet by the governor. She explained that the cabinet would include the ISC, the OSE, the NMED, the New Mexico Department of Agriculture, the Department of Game and Fish, the Energy, Minerals and Natural Resources Department, the Department of Finance and Administration and the New Mexico Finance Authority (NMFA). Secretary Miller indicated that the cabinet would report to the governor annually on the steps taken to improve coordination and consultation in updating the state water plan, policy recommendations for improved water and wastewater infrastructure development, policy recommendations for expanding the management and fiscal capacity of local water and wastewater systems and recommendations for addressing drinking water emergencies.

Secretary Miller also discussed the formation of a water sub-cabinet, and how the water cabinet, water sub-cabinet, Water Trust Board and the legislature would work together to finance water and wastewater projects.

Bill Sisneros, director of the NMFA, provided the committee with an overview of the procedures and policies of the Water Trust Board. He began by giving the committee a brief history of policy development by the board, explaining that development of policies by the board helps to ensure a transparent and public process, helps applicants better understand the weight attached to various criteria and provides for flexibility in addressing the changing water needs of the state.

Mr. Sisneros went on to discuss policy development in several areas: project prioritization, local contribution to projects, financial structuring and eligibility criteria. He explained that the board's project prioritization policies favor those projects that are ready to begin immediately, with water rights secured and funding and design requirements in place at the time funding is awarded. He also noted that projects that leverage state funding with local and federal funds are rewarded with a higher priority by the board and pointed out that urgent projects are also prioritized.

Mr. Sisneros explained that local contribution policies in place with the Water Trust Board require a minimum contribution from all applicants in the form of hard and soft matching funds. He also indicated that there are local contribution requirements of those entities supported

by rate-paying constituencies, tribal governments, watersheds and endangered species collaboratives. However, Mr. Sisneros also pointed out that annual "hardship waivers" are available for certain water systems not yet able to make their loan payments.

Mr. Sisneros then discussed the board's financial structuring policy, which explained how an application is to be evaluated, prioritized and recommended to the legislature. He also pointed out that the joint financial structuring policy of the Water Trust Board and the NMFA gives the board a clear voice in the actual terms of any financial assistance offered. He emphasized that having such a policy in place provides clarity to applicants as to what to expect from the Water Trust Board.

Mr. Sisneros also discussed the eligibility criteria for water project financing. He explained that the minimum criteria for water project applications includes: cost effectiveness of the project; water rights; scientific and biological studies; immediate threats to public welfare; regional dispersion; local effort; ability to pay; ability to leverage federal funds; priority; readiness; and urgency.

Mr. Sisneros then provided the committee with an overview of how applications to the Water Trust Board move through the process. He also pointed out that applications for this year's projects are due at the NMFA on November 5, 2007.

Questions and comments included:

- representation by mutual domestic water consumer associations on the Water Trust Board;
- the makeup of the Water Trust Board;
- readiness of the list of projects approved by the Water Trust Board;
- funding of a hybrid car facility by the board;
- the importance of having broad representation on the board;
- representation on the board by a representative of the acequia community;
- the importance of input from the legislature on projects;
- the importance of trying to loan communities money before simply granting it to them;
- the Public Project Revolving Fund versus the Water Trust Board;
- the executive order that creates the water cabinet;
- potential oversight of the water cabinet by the legislature;
- whether an explanation is provided to applicants who are denied funding by the board; and
- what authority the legislature has divested to executive agencies to allow the creation of the water cabinet.

On a motion made, seconded and approved, the minutes of the September meeting of the committee were approved as submitted.

**Phreatophytes — Pueblo of Santo Domingo Treatment Area Tour**

The committee toured an area of the Pueblo of Santo Domingo to view various strategies the pueblo has employed to remove salt cedars and various other non-native phreatophytes, monitor and address regrowth and restore other species of plant life to the land.

There being no further business, the committee adjourned at 2:30 p.m.