

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

**September 28-29, 2005
New Mexico State University Golf Course Club House
Las Cruces**

The fifth meeting of the Water and Natural Resources Committee was called to order at 10:10 a.m. on Wednesday, September 28, 2005, by Senator Carlos R. Cisneros, chair.

PRESENT

Sen. Carlos R. Cisneros, Chair
Rep. Joe M Stell, Vice Chair
Rep. Ray Begaye
Rep. Joseph Cervantes
Sen. Mary Jane M. Garcia (September 28)
Rep. Larry A. Larrañaga
Sen. Cynthia Nava
Sen. Steven P. Neville
Rep. Andy Nunez
Sen. Mary Kay Papen
Rep. Mimi Stewart
Rep. Sandra L. Townsend
Rep. Don L. Tripp

Advisory Members

Sen. Rod Adair
Sen. Vernon D. Asbill
Rep. Anna M. Crook
Rep. Candy Spence Ezzell
Sen. Leonard Lee Rawson
Sen. Nancy Rodriguez
Sen. John C. Ryan
Sen. Leonard Tsosie (September 29)
Rep. Peter Wirth

ABSENT

Sen. Sue Wilson Beffort
Sen. Dede Feldman
Rep. Dona G. Irwin
Rep. Kathy A. McCoy
Sen. H. Diane Snyder

Rep. Richard P. Cheney
Sen. Clinton D. Harden, Jr.
Sen. Timothy Z. Jennings
Sen. Gay G. Kernan
Rep. Rhonda S. King
Rep. Ben Lujan
Rep. James Roger Madalena
Rep. Greg Payne
Rep. Danice Picraux
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 original meeting file.

Wednesday, September 28**WELCOME TO LAS CRUCES AND TO NEW MEXICO STATE UNIVERSITY**

Dr. William Flores, provost at New Mexico State University (NMSU), welcomed the committee to NMSU and provided the committee with a brief history of the meeting facility and an overview of some of the water-related projects currently underway at NMSU.

William M. Mattiace, mayor of Las Cruces, welcomed the committee to Las Cruces and briefly discussed the importance of water to the community, as well as some of the efforts made by the city to make more efficient use of its limited water resources.

WATER PLANNING USING GEOGRAPHIC INFORMATION

Janet Jarratt of the Middle Rio Grande Conservancy District and Karl Benedict of the Earth Data Analysis Center provided the committee with an overview of their proposed project to use Geographic Information Systems (GIS) to help with the water planning process along the middle Rio Grande. They began by explaining that GIS are computerized information management systems designed for the creation, management and analysis of data that relate objects or events to specified locations. For example, they explained that by combining several layers of data, such as information regarding urban and agricultural areas, elevation, roads and streams, they can create a GIS that would show how various water-use strategies will likely affect a particular area like the middle Rio Grande.

Next, Ms. Jarratt and Mr. Benedict discussed how the Middle Rio Grande Water Assembly worked to develop the Middle Rio Grande Water Plan, which they noted was a cooperative effort among a number of stakeholders. They indicated that the water budget developed as part of the Middle Rio Grande Water Plan would require careful use of available water resources in order to be able to supply water to the region's growing population.

Then Ms. Jarratt and Mr. Benedict explained that their project involves the use of GIS data to help make more efficient use of water resources. They explained that their project would make GIS data and water-use models available via the internet. Ms. Jarratt and Mr. Benedict emphasized that their GIS project is fairly user-friendly and does not require a scientific background to use. They also suggested that making it available to everyone would likely foster a greater understanding among water stakeholders in the area about how various water and land-use strategies would affect the region as a whole, which would in turn lead to better use of

water resources.

Finally, Ms. Jarratt and Mr. Benedict noted that they are seeking \$80,000 in state funding to begin work on their project.

Questions and comments included:

- to which agency the funding from the state would be allocated;
- whether similar models could be created for other regions;
- the similarities and differences between middle Rio Grande GIS models and other computer models of water use;
- how success of the proposed GIS project would be measured;
- domestic well information in GIS models; and
- the value of the GIS model to people without technical backgrounds versus other water models that demand some technical proficiency in order to be useful.

DONA ANA COUNTY FARM AND LIVESTOCK BUREAU (DACFLB)

Craig Tharp and Phil Arnold, members of the DACFLB, provided the committee with testimony regarding the activities of their organization. They explained that farmland is being taken out of production and developed for other uses and that those developments increase the demand for domestic water. Mr. Tharp and Mr. Arnold suggested that continuation of that trend could mean that one day there will not be enough farmland to adequately provide food for the population of the United States, and food will have to be imported from other countries. They explained that one of the missions of their organization is to promote farming to children in New Mexico, and they provided the committee with an overview of some of the programs DACFLB has in place to do so, such as Kids, Cows and More, buses to the state fair and scholarship programs.

Mr. Tharp and Mr. Arnold went on to discuss several of the DACFLB's legislative priorities, particularly domestic well issues.

Questions and comments included:

- importance of farming to local communities;
- domestic well permits;
- improved irrigation technology;
- impact of the Supreme Court's ruling regarding property condemnation; and
- other problems facing agriculture, such as importation of cattle and foreign competition.

On a motion made, seconded and unanimously approved, the minutes of the September 1-2, 2005 meeting were approved as submitted.

STATE PRIMACY FOR THE NATIONAL POLLUTION DISCHARGE ELIMINATION SYSTEM (NPDES)

Randy Traynor, a lobbyist with the New Mexico Home Builders Association and the

National Association of Industrial and Office Properties, began by providing the committee with an overview of the NPDES. He explained that the system is contained within the federal Clean Water Act and that it involves the issuance of permits for various industrial and municipal water discharges. Mr. Traynor pointed out that permits for storm sewer systems in large cities, certain activities at construction sites, mining operations and animal feedlots all fall under NPDES. He went on to note that while the federal Environmental Protection Agency (EPA) currently handles permit requests for New Mexico out of its Region 6 office in Dallas, Texas, it is the intention of the New Mexico Department of Environment (NMED) to gain authorization to issue NPDES permits, which is sometimes called primacy.

Next, Mr. Traynor provided the committee with an overview of the changes that NMED primacy over NPDES permits would bring. He explained that NMED plans to phase in primacy over several years and that it will likely seek authorization to begin phase one from the legislature during the upcoming legislative session. However, Mr. Traynor warned that concerns expressed by New Mexico businesses and industries over how NMED plans to operate its NPDES permitting program have gone unaddressed. He went on to list several of those concerns, such as the fact that while the EPA does not charge for permits, NMED likely will begin to charge for permits; how the program will be budgeted; how NMED primacy will improve on the EPA's program; and how NMED primacy will affect the daily operations of the entities involved.

Mike Bowen of the New Mexico Mining Association provided the committee with an overview of the mining industry's concerns over NMED primacy. He echoed Mr. Traynor's concerns about NMED charging fees for permits even though the EPA charges none. However, Mr. Bowen indicated that the mining industry has worked with NMED since it first began to seek primacy and continues to work with it to identify and address issues.

John Horton, government affairs director, Associated General Contractors, also discussed concerns over NMED seeking primacy over NPDES permitting. He pointed out that the system that is already in place, in which contractors file storm water pollution plans for their construction sites with the EPA, seems to work well. Mr. Horton also discussed Court of Appeals cases involving violations of the federal Endangered Species Act of 1973 and their impact on the primacy issue. Finally, he cautioned the legislature to move slowly when considering legislation enabling the NMED to take over NPDES primacy from the EPA.

Sharon Lombardi, executive director, Dairy Producers of New Mexico, discussed the relationship of dairies to the NPDES permitting process. She explained that there are various divisions within NPDES that require different permits, such as the Concentrated Animal Feed Operations (CAFO) permits and ground water discharge plans. She noted that while most dairies band together to obtain a general CAFO permit to cover their operations, confusion over the waiting period for those permits and NMED's attempt to gain primacy over the permitting process has caused several dairies to go ahead and obtain individual permits.

Walter Bradley, representing dairy farmers, provided the committee with an example of

NMED's proposed language regarding surface waters of the state. He explained that while NMED had initially agreed to keep its NPDES regulations as stringent as the federal ones, the proposed surface-water language is actually much more stringent than the federal regulations. Mr. Bradley pointed out that some of the proposed NMED surface-water definitions are so broad that they could even apply to golf course water hazards and possibly a depression in the middle of the desert that holds rainwater.

Mr. Bradley went on to discuss other concerns the dairy industry has with NMED's proposed primacy over NPDES permitting. First, he noted that the program is difficult to run, so much so that Arizona, Louisiana and Nevada have all had difficulty maintaining the program and that a lawsuit between dairies and the state of Texas will likely cause serious financial problems for that state. Mr. Bradley also noted that primacy will likely be expensive for New Mexico, too, as it appears that the first phase of NMED's proposed program will cost \$1.4 million.

Mr. Traynor summarized the comments of the previous speakers and emphasized that if the legislature is going to consider enabling legislation for primacy, it should move slowly in doing so.

Ron Curry, secretary of environment, and Cindy Padilla, Brett Moore and Marcy Levitt, NMED, provided the committee with further information regarding NMED's intention to assume primacy. They explained the NPDES program and NMED's motive for attempting to assume primacy. Secretary Curry explained that the issue is simply about providing better protection for New Mexico's surface water. He also indicated that while taking over the NPDES program will require several new full-time positions, resources such as corrective action funds and permit fees will help offset the additional costs. Secretary Curry went on to discuss the formation of the NPDES stakeholder work group, which was set up to address concerns such as those expressed by the business community over primacy. Finally, he outlined the potential benefits of NPDES primacy, such as better oversight of New Mexico's surface-water resources, increased flexibility in permitting and fines and local oversight over NPDES programs, as opposed to permit holders having to communicate with the EPA office in Dallas.

Questions and comments included:

- how improvements that usually come with bringing government regulation closer to the people are being regulated;
- how other states have had primacy but lost it;
- shifting EPA resources;
- whether state primacy regulations can be weaker than federal regulations;
- the appeal process on NMED fines;
- the definition of United States surface water; and
- NMED's plan for phasing in primacy.

ACTIVE WATER RESOURCE MANAGEMENT EFFECTS IN THE LOWER RIO GRANDE BASIN

Gary Esslinger of the Elephant Butte Irrigation District (EBID) provided the committee with testimony regarding the effects of Active Water Resource Management (AWRM) on water users in the Lower Rio Grande Basin. First, he discussed legal issues involving EBID, the El Paso Water Improvement District, New Mexico and Texas. Mr. Esslinger pointed out that EBID's location close to the border between Texas and New Mexico places a heavy burden on the irrigation district to ensure that compact deliveries are made to Texas. However, he noted that it is the state that must deliver water to Texas, not EBID.

Next, Mr. Esslinger explained that the Office of the State Engineer (OSE) declared that the Lower Rio Grande Basin was a closed basin, at which time it appointed a water master to oversee water management in the area. Mr. Esslinger went on to explain that while water users in the area will have to pay the water master's salary, many of the duties of the water master are already performed by EBID, which would mean that members of EBID would have to pay twice for the same service. He indicated that EBID would like to see the legislature direct the OSE and the Interstate Stream Commission (ISC) to pay for the water master instead of EBID, as well as pass legislation limiting the duties of water masters.

Questions and comments included:

- changes in water management practices due to prolonged drought conditions;
- AWRM requiring water users to pay for services the state should take care of;
- legislation passed to pay for adjudications, which was challenged by the Department of Finance and Administration and later ruled an appropriate legislative action by the attorney general;
- whether acequias exist in southern New Mexico;
- special irrigation district regulations compared to those of acequias; and
- effects of high fuel costs on agricultural industry.

On a motion made, seconded and unanimously passed, the committee directed staff to send a letter to the governor on behalf of the committee asking him to evaluate the impact of rising fuel costs on the agricultural industry when considering legislation to include in the proclamation calling the legislature into special session.

Thursday, September 29

NMSU'S ROLE IN ADDRESSING WATER ISSUES

Michael Martin, president, NMSU, welcomed the committee to NMSU and provided it with a brief history of the school. He also pointed out that NMSU recently became the first school in the nation to broadcast a football game in Navajo. Dr. Martin went on to discuss changes the university has made in research and outreach by clustering existing talent together to help solve real problems. He provided examples of research clusters for border issues, biosciences,

information sciences, aerospace engineering and sustaining natural resources in an arid climate. Dr. Martin pointed out that the research cluster focusing on sustaining natural resources involves improving irrigation, developing more drought-resistant plants, desalination and projects to protect both the quality and quantity of water available in the region.

Dr. Martin then discussed other issues involving NMSU, such as increases in enrollment, faculty issues and efforts to recruit and retain students. He explained that there were two periods of major U.S. college and university enrollment growth: the G.I. Bill and the baby boomer generation. Dr. Martin noted that many of those who attended college during those periods went on to become faculty, and that many of those faculty members either have retired or are quickly approaching retirement age. He explained that one of the points of emphasis at NMSU is trying to prepare as many students as possible to become college professors. Dr. Martin also pointed out that those periods of enrollment expansion coincided with construction of new buildings on many college campuses, and many of those buildings will soon require replacement, too.

Finally, Dr. Martin discussed his goal of having NMSU rank higher, possibly in the top 50, on the list of the top colleges and universities in the United States.

Questions and comments included:

- NMSU working with the city of Alamogordo on desalination projects;
- five-year college programs;
- loss of transfer credits with other New Mexico post-secondary schools; and
- the marketing of NMSU.

LAS CRUCES' WATER ISSUES STATUS REPORT

Terrence Moore, Las Cruces city manager, and Jorge Garcia, utilities director for the city of Las Cruces, provided the committee with an overview of the water initiatives being explored by the city. They discussed programs involving ground water development and well drilling; ground water plume cleanup; surface water planning; conservation and cost-of-service rates; and programs to address new federal uranium regulations. Mr. Moore and Mr. Garcia pointed out that outdoor watering is currently the focus of their conservation efforts, as statistics show that simply too much water is wasted as a result of such practices.

Questions and comments included:

- water rights purchase in the Rincon area;
- plans by the city to construct an ice arena;
- increases in the city's revenue and whether there are plans to use some of that revenue to upgrade utilities;
- wells located in Dona Ana County that pump water to Texas;
- using money from the state to finance new wells to make up for those wells that had to be shut down because of arsenic levels;
- water conservation education programs; and
- efforts to municipalize the electric utility in the Las Cruces area.

NEW MEXICO FARM AND LIVESTOCK BUREAU

John Wortman of the New Mexico Farm and Livestock Bureau emphasized the importance of agriculture to the committee. He explained that people eat and wear the products of farming. However, Mr. Wortman discussed a number of issues, such as water, fuel and labor costs and development that threaten the agricultural way of life by making it too difficult for farmers to make ends meet. He indicated that value-added agriculture is one means of addressing the threat to agriculture by increasing the cost at which some agricultural products can be sold. Mr. Wortman noted that a number of commodities grown in New Mexico could easily be branded and become examples of value-added agriculture.

Dr. Octavio Ramirez, NMSU, provided some more information about value-added agriculture to the committee. He pointed out that poverty and agriculture are directly related, since many poor people live in rural areas that are economically dependent on agriculture. Dr. Ramirez also listed a number of issues that could help ensure that the agricultural sector remains robust, including increasing concern from federal lawmakers about western agriculture; development of better technology for agriculture; improvement of marketing strategies for agricultural products; and expanding markets into Mexico.

Dr. Terry Crawford, NMSU, explained that since New Mexico's agricultural sector is too small to be able to take advantage of economies of size, increased value from agricultural products would have to be sought elsewhere. For example, he pointed out that there is currently no means of processing butter in New Mexico, which deprives dairy farmers of value they could be getting out of their products if a facility to produce butter from milk did exist in New Mexico.

Jay Lillywhite, NMSU, discussed a number of New Mexico agricultural products that could have value added to them and fetch higher prices with the right marketing strategies. For example, he noted that New Mexican wines, green chile, onions and specialty cheeses could all be marketed, as well as agricultural equipment and agri-tourism. Mr. Lillywhite emphasized that the key to value-added agriculture involves a change in mindset and lamented the lack of entrepreneurial desire in New Mexico.

Questions and comments included:

- existing programs that farmers do not take advantage of;
- the Farm and Livestock Bureau as a partisan organization;
- agricultural hemp as a potential value-added agriculture product;
- the impact of the Endangered Species Act of 1973 on agriculture;
- Farm and Livestock Bureau water issues; and
- subsidies for agriculture.

PINK BOLLWORM CONTROL

Robert Sloan of the South Central Pink Bollworm Control District provided the committee with testimony regarding the damage that pink bollworms can cause to agriculture. He also provided an overview of a program that uses state funding to help control pink bollworms, noting

that currently there is an emphasis on reducing the use of pesticides while focusing on other methods of control, such as pheromones and trapping. Mr. Sloan indicated that successful pink bollworm control programs result in increased savings for farmers.

Questions and comments included:

- pink bollworm control programs in El Paso and West Texas; and
- the value of showing beneficial uses of state funds.

There being no further business, the committee adjourned at 12:35 p.m.