

MINUTES
of the
FIFTH MEETING
of the
WATER AND NATURAL RESOURCES COMMITTEE
October 12-13, 2006
Artesia

The fifth meeting of the Water and Natural Resources Committee was called to order by Representative Joe M Stell, chair, on Thursday, October 12, 2006, at 10:05 a.m. at the Central Valley Electric Cooperative in Artesia.

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 (October 12)
Rep. Larry A. Larrañaga
Rep. Kathy A. McCoy
Rep. Andy Nunez
Sen. H. Diane Snyder
Rep. Sandra L. Townsend
Rep. Don L. Tripp (October 13)

Absent

Sen. Dede Feldman
Rep. Dona G. Irwin
Sen. Cynthia Nava
Sen. Steven P. Neville
Sen. Mary Kay Papen
Rep. Mimi Stewart

Advisory Members

Sen. Rod Adair (October 12)
Sen. Vernon D. Asbill
Rep. Anna M. Crook
Rep. Candy Spence Ezzell
Sen. Clinton D. Harden, Jr.
Sen. Timothy Z. Jennings
Sen. Gay G. Kernan
Rep. Ben Lujan
Sen. John C. Ryan
Rep. Henry Kiki Saavedra
Rep. Peter Wirth

Rep. Richard P. Cheney
Rep. Rhonda S. King
Rep. James Roger Madalena
Rep. Terry T. Marquardt
Rep. Danice Picraux
Sen. Leonard Lee Rawson
Sen. Nancy Rodriguez
Sen. Leonard Tsosie
Rep. Eric A. Youngberg

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

Staff

Gordon Meeks
Jeret Fleetwood

Guests

Rep. W.C. "Dub" Williams
The guest list is in the original meeting file.

Thursday, October 12

The committee began by introducing members and staff.

Manuel Madrid, mayor of Artesia, welcomed the committee to Artesia. He thanked the committee for coming to Artesia and for the support the legislature has provided to the community.

Chuck Pinson of the Central Valley Electric Cooperative also welcomed the committee to Artesia and provided the committee with a brief overview of the cooperative's history and operations.

Elk Population Management in the Sacramento Mountains

R.L. Posey, a landowner from the Sacramento Mountains area, provided the committee with testimony regarding the growing elk population in that area. He explained that native elk were eradicated from the area around 1900, but that some elk were reintroduced into the area in 1967. Mr. Posey noted that since then, the elk population in the area has grown to about 2,400. He went on to illustrate some of the problems that such a large elk population causes for landowners, including damage to the land and the fences marking its boundaries, competition with cattle for grazing and potential financial losses because of less available food for cattle.

Leo Sims, chair of the State Game Commission, and R.J. Kirkpatrick, state game commissioner, provided the committee with a brief history of elk population management efforts in Game Management Unit 34, which includes the Sacramento Mountains. Mr. Sims explained that the recommended population in 2003 for Unit 34 was between 1,700 and 1,800 elk, but that another agreement on the size of the area's elk population is being developed. He went on to point out that a delicate balance exists among the various interests in the area, noting that while agricultural and ranching interests would prefer to see the elk population reduced, others benefit from revenue generated by visitors who come to the area specifically for elk hunting. Mr. Sims also indicated that the Department of Game and Fish is developing elk population target numbers statewide, and noted that new mandatory reporting requirements should help determine the current size of the elk population in the state. He went on to explain that the Department of Game and Fish has spent about \$750,000 on elk problems in Unit 34, and that although not everyone involved is happy with what has been done so far, all the parties involved are still working toward a solution.

Questions and comments by committee members included:

- increases in elk hunting permit numbers versus permits awarded to landowners;
- meaningful enforcement of laws regarding elk depredation;
- accuracy of elk population estimates due to rapid growth of the population;
- work with the Mescalero Apache Tribe on elk population control;

- enforcement of provisions allowing landowners to kill elk that are damaging their property; and
- compensation for landowners whose land is damaged by elk.

Water Rights Files of the Office of the State Engineer

Representative Ezzell and A.J. Olsen, an attorney with Henninghausen and Olsen, provided the committee with testimony regarding the removal of files from the Office of the State Engineer's (OSE's) office in Roswell. Representative Ezzell explained that water users in the area received word that the OSE planned to remove water rights files from its District 2 office in Roswell and take them to Santa Fe to be copied. She explained that the OSE is moving and copying the files in order to input them into the WATERS database. However, Representative Ezzell emphasized that many of the documents are simply too old and fragile to scan, and that the files often do not return to the district office in the same condition in which they left. She also noted that the files are the original records of water and well use in the area. Representative Ezzell went on to explain that the OSE had indicated that individuals who needed to view the files while they were being scanned could travel to Albuquerque to do so.

Mr. Olsen provided the committee with a brief history of the water files in the Roswell district office. He explained that the office has the information on most of the water use, both ground and surface, in the lower Pecos River Basin, and that the office serves seven counties in the area. Mr. Olsen went on to note that in 1953, the legislature enacted a statute mandating public access to water records. Then, in the 1990s, State Engineer Tom Turney began the WATERS database, which many believe is fundamentally flawed. Mr. Olsen emphasized the importance of the water records to the residents of seven New Mexico counties and questioned the OSE's decision to move the files rather than scan and copy them in Roswell. He noted that traveling to Albuquerque to view files is simply too long a trip for some residents who may need access to the files.

John Romero of the OSE provided the committee with a brief overview of the process the OSE is using to enter information into the WATERS database. He explained that moving files to the OSE office in Albuquerque is the normal process for getting file information into the database because the staff at that office have the necessary training and equipment to copy, enter and abstract the files. Mr. Romero pointed out that the Albuquerque office's staff have been using the imaging equipment used in this kind of process for six years. He also noted that some information is contained in files located in Santa Fe about water rights in the lower Pecos River Basin, and that the staff in Albuquerque match everything from both the Santa Fe and Roswell records before entering information into the database. Mr. Romero also indicated that six out of seven basins in New Mexico have been entered into the database and that, typically, the files used to enter the information are archived; however, they can be faxed or mailed overnight to the Roswell district office if someone needs to view the files.

Questions and comments from committee members included:

- the physical size of the files involved;

- insurance for the OSE district office in Roswell;
- the value of keeping the files in Roswell;
- problems with lost water files out of the Aztec district office; and
- lease information for the Roswell district office.

Engineering Community's Prioritization of Water Projects

Brian Burnett of the American Council of Engineering Companies and Scott Verhines, president of the New Mexico Society of Professional Engineers, presented the committee with an overview of the engineering community's concerns regarding the planned "year of water" in the legislature. They explained that a number of engineering groups, including the American Council of Engineering Companies (New Mexico), the American Society of Civil Engineers (New Mexico) and the New Mexico Society of Professional Engineers, have come together to provide input to the legislature regarding water projects and various other water issues.

First, Mr. Verhines discussed the Water Trust Fund and the Water Trust Board. He explained that the trust fund and the board were originally designed to create and manage a water trust fund with enough resources to leverage funds and implement large-scale regional water projects, but that they have since become another ineffective capital outlay program. Mr. Verhines provided the committee with suggestions from the engineering community for improving the operation and mission of the fund and the board, such as appointing a technically inclined board with a focused mission and making a significant and protected investment in the Water Trust Fund.

Next, Mr. Verhines discussed ways to improve the capital outlay process with regard to water and wastewater projects. He noted that the present capital outlay system is not cost-effective and, therefore, increases project costs and delays. He suggested several ways of improving the system, such as forming an independent committee to assess, rate and prioritize projects; developing a uniform application process; including infrastructure planning and assessment in the process; and providing oversight to ensure ongoing and appropriate asset management.

Finally, Mr. Verhines discussed Native American water rights settlements. He explained that while the federal government is primarily responsible for such settlements, the state bears some financial responsibility, and completing the settlements would greatly advance the certainty of long-term water supplies. Mr. Verhines suggested that \$35 million to \$75 million be placed in the Indian Water Rights Settlement Fund to represent a good-faith effort by New Mexico and to signal to congressional leaders that New Mexico is serious about completing the settlements.

Questions and comments from the committee included:

- how suggestions are the result of ongoing discussions within the engineering community;
- investment from the private sector in water projects;
- the OSE as the center of water infrastructure in New Mexico;

- the possible creation of a State Office of Water Infrastructure;
- the veto of a 2006 appropriation for the Indian Water Rights Settlement Fund;
- the Innovative Technologies Fund; and
- desalination plants.

Subdivision Approval Contingent on Water Rights

Lauren Ketcham of Environment New Mexico provided the committee with a proposal regarding a 100-year water supply planning horizon. She explained that such a measure would require all new residential, commercial and industrial developments to have a 100-year water supply before they are approved. Ms. Ketcham pointed out that while New Mexico will continue to grow, such a measure would allow it to grow in a more disciplined manner. She also indicated that while a bill detailing her proposal has not yet been drafted, a number of constituents, from environmental groups to homebuilders, are working to develop a proposal. Ms. Ketcham emphasized that long-term planning is the goal of such legislation.

Questions and comments from the committee included:

- the inclusion of watersheds and salt cedar control in any long-term water plan;
- domestic wells as part of the water planning process;
- 100-year water plans for utilities;
- similar programs in other states; and
- reuse of water in some areas without a water surplus as a means of establishing a water supply.

On a motion made, seconded and unanimously approved, the minutes of the September 21, 2006 meeting were approved as submitted.

Friday, October 13

Soil and Water Conservation Districts

Debbie Hughes, executive director of the New Mexico Association of Conservation Districts, provided the committee with an overview of the basic duties and powers of conservation districts. She explained that the districts basically work to maintain water supply, and that while they are political subdivisions of the state, they also administer other programs funded with federal money. Ms. Hughes also noted that conservation districts are able to provide aid that state government cannot, such as distributing state dollars to private landowners, provided that the money benefits taxpayers.

Ms. Hughes also pointed out that conservation districts also set mill levies, but that the funding generated by such levies is not necessarily adequate to meet the needs of most districts, particularly when they sunset after 10 years. Ms. Hughes indicated that the Association of Conservation Districts would like to have the 10-year mill levy sunset removed from statute during the upcoming legislative session.

Finally, Ms. Hughes discussed some of the programs administered by conservation

districts that leverage federal funds. She explained that while many of the programs use federal money, they do not include federal employees. Ms. Hughes went on to discuss salt cedar removal programs in New Mexico, noting that those trees treated with herbicide must be left alone for two to three years for the herbicide to effectively kill the trees.

Eddie Vigil, also of the New Mexico Association of Conservation Districts, pointed out that all 47 conservation districts in New Mexico are governed by locally elected members. He also emphasized that serving on the board of a conservation district is a purely voluntary activity.

Questions and comments from the committee included:

- incentives for landowners to conserve water, such as drip irrigation;
- salt cedar control on the San Juan River;
- the boundary between the upper and lower Rio Grande; and
- how the work done by conservation districts across state lines allows leveraging of more federal money.

National Pollution Discharge Elimination System (NPDES) Primacy

Marcy Leavitt, chief of the Surface Water Quality Bureau of the New Mexico Department of Environment (NMED), and Tracy Hughes, general counsel for NMED, provided the committee with an overview of the NPDES program, explaining that currently, the federal Environmental Protection Agency is charged with the task of issuing permits for the program in New Mexico. Ms. Leavitt pointed out that New Mexico is one of only four states that does not have its own NPDES program in place. However, she went on to indicate that the NMED would not be seeking primacy over the NPDES program during the 2007 legislative session. Ms. Leavitt did note that the NMED would continue to work with stakeholders in the process of developing language for a bill to provide the NMED with primacy over the NPDES program.

Questions and comments from the committee included:

- the definition of "surface waters" of the state;
- litigation over Clean Water Act definitions;
- regulation of chemical waste dumping in arroyos;
- air quality complaints from residents of the Four Corners area;
- potential federal funding for assuming NPDES primacy;
- whether Native American tribes can also assume primacy; and
- monitoring of dairies in New Mexico by the NMED.

Regulatory Reform

Sayuri Yamada of the Association of Commerce and Industry (ACI) provided the committee with testimony regarding regulatory justice. She explained that New Mexico's regulatory system is composed of roughly 36 executive departments and independent agencies, 208 boards and commissions and thousands of rules and regulations within the New Mexico Administrative Code, with the number and complexity of those rules and regulations growing each year. Ms. Yamada went on to note that ACI has traveled to over 20 cities in New Mexico

and heard from over 1,000 citizens, and a common complaint is that the rules and regulations are simply too complicated for both the public and business community to be able to navigate. She also pointed out that because the State Administrative Procedures Act does not apply to most agencies, few uniform regulatory controls apply to all state agencies, leaving those agencies to establish their own administrative procedures without regard to consistency.

Ms. Yamada went on to explain that in early 2006, a group of businesses, industry groups, trade associations and other interested parties began meeting to develop potential solutions to the problems identified within New Mexico's regulatory system. She explained that the regulatory justice effort is based on the principle that government should create a regulatory system that is simple and clear, enhances confidence, promotes accountability and ensures consistency in administrative proceedings.

T.J. Trujillo, an attorney with Gallagher and Kennedy, explained to the committee that the regulatory justice effort has identified a number of regulatory obstacles and problems that will likely be addressed by about 10 bills to be introduced during the 2007 legislative session. He noted that these bills are still in the process of being refined and have not yet been drafted. However, Mr. Trujillo did provide the committee with a list of potential bills.

Questions and comments from the committee included:

- development of a legislative interim committee with the power to suspend rules and regulations to prevent agencies from passing regulations that should be the purview of the legislature;
- efforts in the 1980s to examine the Administrative Procedures Act; and
- methods other states use for rules and regulations.

Water Rights Transfers from Artesian Conservancy Districts

Brent Bullock of the Pecos Valley Artesian Conservancy District provided the committee with testimony regarding water rights transfers out of artesian conservancy districts. He provided the committee with copies of a bill introduced during the 2006 legislative session that would have required the state engineer to deny applications for water rights transfers out of artesian conservancy districts if the transfer had not been approved by the board of directors for the conservancy district. He explained that the budgets for conservancy districts are based upon the district's tax authority, and that water rights transfers to points of diversion outside of a district reduce the property values within the district and, therefore, lower the taxes that the conservancy district is able to collect.

Questions and comments from the committee included:

- whether conservancy districts can stop the sale or transfer of water rights through this legislation;
- court remedies for water rights transfer applicants;
- how the concept is similar to protections in place for acequias;
- the difference between water rights and water ownership; and
- other political subdivisions with the ability to reject water rights transfers.

There being no further business, the committee adjourned at 12:00 noon.

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