

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

**October 27-28, 2008
Central Valley Electric Cooperative, Artesia**

The fifth meeting of the Water and Natural Resources Committee (WNRC) was called to order by Representative Andy Nuñez, chair, at 9:15 a.m. on Monday, October 27, 2008, in the boardroom of the Central Valley Electric Cooperative in Artesia.

Present

Rep. Andy Nuñez, Chair
Rep. Paul C. Bandy
Rep. Ray Begaye
Sen. Clinton D. Harden, Jr. (Oct. 28)
Rep. Dona G. Irwin
Rep. Larry A. Larrañaga
Rep. Kathy A. McCoy
Sen. Mary Kay Papen

Absent

Sen. Phil A. Griego, Vice Chair
Rep. Elias Barela
Sen. Sue Wilson Beffort
Rep. Joseph Cervantes
Sen. Dede Feldman
Sen. Mary Jane M. Garcia
Sen. Cynthia Nava
Sen. Steven P. Neville
Rep. Mimi Stewart
Rep. Don L. Tripp

Advisory Members

Sen. Vernon D. Asbill
Rep. Anna M. Crook
Rep. Nora Espinoza
Rep. Candy Spence Ezzell
Sen. Timothy Z. Jennings (Oct. 28)
Sen. Gay G. Kernan
Sen. Cisco McSorley
Rep. Henry Kiki Saavedra

Sen. Rod Adair
Sen. Carlos R. Cisneros
Rep. Ben Lujan
Rep. James Roger Madalena
Rep. Danice Picraux
Sen. Leonard Lee Rawson
Sen. Nancy Rodriguez
Sen. John C. Ryan
Rep. James R. J. Strickler
Rep. Peter Wirth
Rep. Eric A. Youngberg

Guest Legislators

Rep. William J. Gray
Rep. Shirley A. Tyler (Oct. 27)

(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 27

Phil Burch, mayor of Artesia, welcomed the committee members to Artesia and thanked them for holding the meeting in southeastern New Mexico.

Chuck Pinson of the Central Valley Electrical Cooperative also thanked the committee for coming to Artesia and for the contributions the legislature has made toward economic development in the region.

Members of the committee and staff introduced themselves to the audience.

Produced Water

Ned Godshall of Altela, Inc., provided the committee with an overview of the issues pertaining to water produced by oil and gas drilling. He explained that a significant amount of water is produced as oil and gas resources are extracted from the ground and that the current means of disposal of that water is to either send it back down the bore hole or to allow it to evaporate in pits next to the wells. Mr. Godshall pointed out that the water in question has significantly higher levels of salinity than that in the ocean, so some type of desalination would be required if the water is to be put to some other use. He also explained that Altela has developed technology that should be capable of desalinating produced water and went on to note that the business model for doing so is based on the fact that oil and gas companies currently have to pay to dispose the water, and Altela might be able to do it at less cost to the developers.

Questions and comments included:

- New Mexico oil and gas drilling regulations currently do not allow for the discharge of produced water due to the high levels of salinity, which creates a potential problem for development of technology to put that water to use;
- levels of salinity allowed by oil and gas drilling regulations;
- projects underway in New Mexico, Colorado and Canada to develop other uses for produced water;
- ownership issues associated with produced water;
- the cost of cleanup of oil and gas drilling sites;
- involvement of the Oil Conservation Division (OCD) in development of new rules that would allow for other uses for produced water;
- potential jurisdiction of the Environmental Protection Agency over produced water;
- difficulty in educating the public about the high quality of produced water that has gone through some type of desalination process;

- the tax credit offered by Colorado produced water; and
- disposal methods for the concentrate that is a byproduct of desalination.

Tim Coakley of the Second Chance Water Company also provided the committee with testimony regarding produced water. He explained that the Second Chance Water Company is also developing technology that can treat produced water in order to put it to some use. Mr. Coakley went on to outline the ways in which the legislature can help with development and implementation of produced water treatment technologies, including offering a tax credit for water producers, defining legal discharge liabilities and responsibilities, changing laws to allow for the creative reuse of produced water and changing laws concerning the discharge and monitoring of produced water by the OCD.

Questions and comments included:

- amounts of water disposed of by oil and gas companies could be as much as 18 million barrels of water;
- levels of contaminants present in untreated produced water;
- current OCD regulations regarding produced water;
- liability issues of sending treated produced water to Texas as part of New Mexico's compact deliveries;
- how various methods of treating produced water favor chemical separation of molecules;
- the Alamogordo facility dedicated to the study of brackish water desalination and its involvement in the development of produced water treatment technology; and
- the significance of the source of produced water in the ultimate determination of its legal status.

Pecos River Settlement Status

Estevan Lopez, director of the Interstate Stream Commission (ISC), provided the committee with an update on the status of the Pecos River settlement. He began by providing the committee with a brief history of the legal battle between Texas and New Mexico over compact delivery of water in the Pecos River. Mr. Lopez explained that one of the most significant results of the settlement of the case between the two states is the ruling by the U.S. Supreme Court that New Mexico is not ever allowed to under-deliver water to Texas again. He then discussed the strategies employed by the ISC, the Office of the State Engineer (OSE) and water stakeholders in the region to ensure that compact deliveries are made. He went on to indicate that acquisition of land by New Mexico, and the subsequent retirement of the water rights associated with that land, is one of the major components of the settlement. Mr. Lopez pointed out that implementation of the settlement is 95 percent complete.

Mr. Lopez went on to explain that management and resale of the land acquired as part of the settlement have become as an issue for the state. He discussed the means the state has employed to manage and eventually resell the land it has acquired, though he did emphasize that the value of the land once it has been stripped of its water rights is drastically lower than if the

land still had water rights. Mr. Lopez also noted that original landowners are given the first opportunity to buy the land before it is put on the market.

Finally, Mr. Lopez emphasized that while the Pecos settlement has come at significant cost to New Mexico taxpayers, it still would not have been possible without the participation of the area stakeholders, most notably the Carlsbad Irrigation District, the Pecos Valley Artesian Conservancy District and the Bureau of Reclamation.

Questions and comments included:

- legislative approval is statutorily required for those parts of the settlement that cost over \$100,000;
- costs associated with pumping water out of wells in southeastern New Mexico and the likelihood that the water taken from those wells actually reaches Texas;
- how long the credit accrued by New Mexico for over-delivery of water to Texas over the past few years is likely to last;
- the time line for resale of land to private interests;
- uses and maintenance of land acquired through the settlement;
- that the exact amount of water New Mexico is required to deliver to Texas each year is based on a complex formula;
- mechanics of water leases;
- settlement and implementation of the agreement is a success story of water resource management in New Mexico; and
- legislative approval is required for implementation of the rest of the settlement.

Bonito Lake Water Rights Status

Former Representative Joe M Stell provided the committee with a brief history of water rights in New Mexico, with particular emphasis on how the development of railroads from the southern half of the state northward contributed to the current situation of water shortages in the mountainous regions of south central New Mexico. Representative Stell discussed how water availability and quality problems prompted construction of a wooden pipeline to transport water from Bonito Lake, on the eastern side of the mountains, to communities along the western slope of the southern mountains. He explained that the rail spur and pipeline allowed for the settlement and development of communities such as Alamogordo and present-day Ruidoso, which still struggle for adequate water resources. Representative Stell noted that a more modern pipeline has since been constructed to supply water from Bonito Lake to Alamogordo, while the rest of the water in the lake is used to help deliver water to Texas.

Questions and comments included:

- issues associated with transferring water from one basin to another;
- aquifer recharge issues that are still present in the Alamogordo/Tularosa Basin;
- the effect of domestic wells being drilled in the Ruidoso area on water resource availability;
- the agreement between Holloman Air Force Base and the City of Alamogordo to share water resources;

- the study and potential development of brackish water resources in the Salt Basin to help satisfy water needs in the area;
- the role of the legislature and the Water and Natural Resources Committee in the decisions concerning water that will confront New Mexico in the near future;
- the importance of developing a plan to administer water resources throughout the state;
- that the notion of transferring water from one basin to another is not a new idea;
- the example of Arizona using statewide water resources to develop a massive community like Phoenix;
- how best to begin gathering stakeholders in the major water issues facing New Mexico to work toward a solution to New Mexico's water problems;
- how best to begin developing water resources in the Salt Basin that might otherwise go to Texas;
- efforts by conservation districts to protect their own water rights and prevent water rights transfers to developers out of basins; and
- the development of water resources in the Gila Basin and funding for doing so as a result of the Arizona Central Water Projects Act.

On a motion made, seconded and unanimously approved, the committee moved to send a letter to the New Mexico congressional delegation urging the passage of the land use bill that provides funding for several large water projects in New Mexico.

Restore New Mexico

Linda Rundell, state director for the Bureau of Land Management, provided the committee with an overview of the makeup and goals of Restore New Mexico. She explained that Restore New Mexico is a partnership whose goal is the restoration of woodlands, grasslands and riparian areas to a healthy and productive condition.

Debbie Hughes of the New Mexico Association of Conservancy Districts provided the committee with testimony regarding the treatment and eradication of salt cedars and other invasive species along New Mexico's river beds. She explained that while initial treatments were effective at removing much of the salt cedar population, studies have shown that some re-treatment will likely be necessary to ensure that the non-native trees do not grow back.

Ms. Hughes also cautioned the committee about the potential endangered status of the lesser prairie chicken and a certain reptile species that could cause significant harm to oil and gas development in southeastern New Mexico.

Questions and comments included:

- strategies being employed to treat salt cedars;
- how the use of goats to combat salt cedars has been proven largely ineffective due to the sheer number of acres infested with salt cedars; and
- the current status of the lesser prairie chicken and efforts to keep it from being listed as endangered.

Biofuels from Algae

Doug Lynn of the Center of Excellence for Hazardous Materials Management provided the committee with an overview of the center's project to produce biodiesel fuel from algae. He noted that the center has developed a strain of algae that appears to thrive in brackish water and emphasized the ideal conditions present in southeastern New Mexico for continued, large-scale development of the project.

Questions and comments included:

- potential uses of leftover algae;
- similarities between the biodiesel produced by Mr. Lynn's project and conventional, petroleum-based diesel fuel;
- the amount of biodiesel that the project can currently produce;
- obstacles to being able to move the project to commercial-scale production;
- recurring water needs of a commercial-scale biodiesel production project;
- other uses for the project, such as a potential means of carbon sequestration for coal-fired power plants; and
- the possibility of using highly saline water produced by the Malaga Bend to produce biodiesel in exchange for a compact delivery credit with Texas.

The committee recessed at 5:00 p.m.

Tuesday, October 28

Water and Wastewater Projects Funding Update and Water Cabinet Status Report

Karen Gallegos of the New Mexico Department of Environment, Rick Martinez, deputy secretary of the Department of Finance and Administration, and Mr. Lopez provided the committee with an overview of the efforts made by the executive to streamline water project funding and oversight.

Ms. Gallegos began by providing the committee with an overview of the creation of a water cabinet by Governor Richardson and the consolidation of water and wastewater project funding requests to a single application to her agency. She explained that consolidation would improve water and wastewater project funding by helping to provide better matches of funding requests to agencies and funds and allowing communities and entities seeking funding for projects to submit a single application instead of multiple applications to multiple state and federal entities.

Mr. Martinez then provided the committee with an overview of the financial framework for large-scale water projects provided for in the Water Project Finance Act. He pointed out that the legislature created two different funds in the act, the Water Trust Fund and the Water Project Fund. Mr. Martinez went on to provide the committee with details about each fund, the amount appropriated to each fund and how money from each fund is distributed. He also noted that part of the Water Project Fund had been dedicated by the legislature to water rights adjudication. Mr.

Martinez went on to detail the yearly allocations to and from each fund, as well as highlighting the restrictions on how funds may be appropriated.

Mr. Lopez provided the committee with a brief history of the water cabinet. He noted that the cabinet has two basic areas of focus: the coordination of water policy statewide and the use of money from various sources for various water and wastewater projects. Mr. Lopez went on to discuss the development of the statewide water plan, which he noted had recently been completed. Mr. Lopez concluded by acknowledging that the members of the committee are well aware of the importance of funding to water projects and emphasized that the water cabinet is not trying to usurp the legislature's authority so much as it is trying to make efficient use of the limited amount of funding available for water projects.

Questions and comments included:

- apparent bias toward Albuquerque and Santa Fe of the bodies that make the decisions about which water projects get funded;
- the potential for improving water availability issues by focusing on watershed health issues;
- the difference between those water rights acknowledged by the OSE and actual water resources and the "wet" water rights associated with them;
- acequia projects utilizing the Army Corps of Engineers;
- the status of the wastewater treatment plant proposed for the Ruidoso area and its funding needs; and
- potential losses of the Water Trust Fund due to downturns in the stock market and current economic conditions.

Livestock Transportation

Don "Bebo" Lee of the New Mexico Cattle Growers Association provided the committee with a proposed revision to The Livestock Code regarding the removal of cattle from United States Forest Service (USFS) land allotments. He explained that there have been some recent cases of the USFS removing cattle from land without the owner's permission and suggested that the committee consider endorsing a bill that would settle disputes between livestock owners and the USFS in state, rather than federal, court.

Questions and comments included:

- laws regarding fencing-in requirements in New Mexico and other states;
- jurisdiction of courts and the potential problems with hearing matters involving federal agencies in state courts; and
- New Mexico Livestock Board operational issues.

There being no further business, the committee adjourned at 11:45 a.m.