

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

**August 30-31, 2018
Chama Middle School
Chama**

The third meeting of the Water and Natural Resources Committee was called to order by Representative Matthew McQueen, co-chair, on August 30, 2018 at 9:30 a.m. in the gymnasium of Chama Middle School in Chama.

Present

Rep. Bealquin Bill Gomez, Co-Chair
Rep. Matthew McQueen, Co-Chair
Rep. Paul C. Bandy
Sen. Craig W. Brandt (8/30)
Sen. Sander Rue (8/30)
Sen. Benny Shendo, Jr. (8/30)
Rep. Nathan P. Small
Sen. Jeff Steinborn
Sen. Mimi Stewart
Rep. James R.J. Strickler
Sen. Pat Woods
Rep. Bob Wooley

Advisory Members

Sen. Pete Campos
Rep. Harry Garcia
Sen. Ron Griggs
Rep. Bill McCamley (8/31)
Sen. Cisco McSorley
Rep. Debbie A. Rodella
Rep. Tomás E. Salazar
Sen. William E. Sharer
Sen. Peter Wirth (8/31)

Absent

Sen. Joseph Cervantes, Vice Chair
Rep. Gail Armstrong
Rep. Randal S. Crowder
Rep. Derrick J. Lente
Rep. Rodolpho "Rudy" S. Martinez
Rep. Carl Trujillo

Sen. Carlos R. Cisneros
Rep. Sharon Clahchischilliage
Rep. George Dodge, Jr.
Rep. Rebecca Dow
Rep. Brian Egolf
Rep. Candy Spence Ezzell
Rep. Yvette Herrell
Sen. Stuart Ingle
Rep. D. Wonda Johnson
Sen. Gay G. Kernan
Rep. Larry A. Larrañaga
Sen. Carroll H. Leavell
Rep. Rick Little
Sen. Linda M. Lopez
Rep. Sarah Maestas Barnes
Rep. Javier Martínez

Sen. Steven P. Neville
Rep. Greg Nibert
Sen. Gerald Ortiz y Pino
Sen. Mary Kay Papen
Rep. William "Bill" R. Rehm
Sen. Nancy Rodriguez
Rep. Angelica Rubio
Rep. Patricio Ruiloba
Sen. John Arthur Smith

Guest Legislator

Rep. Joanne J. Ferrary (8/30)

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

Staff

Shawna Casebier, Legislative Council Service (LCS)

Pam Stokes, LCS

Sara Wiedmaier, LCS

Jeret Fleetwood, LCS

Guests

The guest list is in the original meeting file.

Handouts

Handouts and other written testimony can be found in the meeting file or on the New Mexico Legislature's website at www.nmlegis.gov.

Thursday, August 30

Call to Order and Introductions

Representative McQueen had members of the committee and staff introduce themselves.

Welcome

Anthony Casados, superintendent, Chama Valley Independent School District, welcomed the committee to Chama and noted that school would be in session on August 30 but not on August 31. He asked members of the committee and the audience to please be mindful of the school and its students.

Matthew Gallegos, a Chama village councilor, also welcomed the committee to Chama and thanked members for coming.

Expanding the Mission of the Department of Game and Fish (DGF), Including Funding Mechanisms

Michael Sloane, director, DGF, began by noting that he had assumed the position of DGF director on August 1, 2018 and was still learning on the job. He provided the committee with an overview of the department's creation, statutory authority and funding, explaining that most of the department's funding comes from the Game Protection Fund, the fees collected from the sale of hunting and fishing permits and from the state wildlife grant. Mr. Sloane pointed out that none of the department's funding is derived from General Fund appropriations.

Michael Dax, national outreach representative, Defenders of Wildlife, provided the committee with a brief history of wildlife management in New Mexico, pointing out that game and fish management and a license system actually predated statehood. He went on to discuss the various species managed by the DGF, explaining that the species are a small portion of the overall wildlife living in New Mexico. Mr. Dax provided the committee with both national and state data regarding hunters and fishermen as opposed to wildlife watchers, noting that in both instances, watchers more than doubled the number of sportsmen. He explained that several other states do not have game and fish departments but have wildlife departments with different funding mechanisms that allow those departments to more effectively manage all wildlife living in those states. For example, he noted that in Missouri, which he said is considered one of the top states regarding wildlife management and funding, one-eighth of one percent of the state's sales tax is set aside for wildlife, resulting in about \$100 million annually. Mr. Dax discussed proposed federal legislation, the Recovering America's Wildlife Act, which he said would allocate \$1.3 billion annually, funded by oil, gas and mineral development, \$27 million of which is projected to go to New Mexico each year.

Questions and comments from the committee included the following:

- it would be difficult for New Mexico to shift from a game and fish department to a wildlife department without significant additional funding;
- a wildlife department could help manage species such as wild horses;
- while expansion of the DGF mission would require some legislation, none has been drafted yet;
- federal funding, with restrictions placed on it, could provide the necessary funding for a wildlife department without any additional appropriations from the General Fund;
- the DGF does not manage any New Mexico parks, but the Mesilla Valley Bosque State Park is managed through a partnership between the DGF and the State Parks Division of the Energy, Minerals and Natural Resources Department;
- the DGF issues about 106,000 hunting and fishing licenses each year;
- the DGF helped reintroduce elk to New Mexico, and the DGF and private ranchers reintroduced bison;
- a bill to fund watershed restoration, passed by the legislature in 2015 but vetoed by the governor, would have taken some funding from the Game Protection Fund;
- the chances for passage of the proposed federal wildlife legislation;

- expansion of the DGF's mission to include all wildlife could potentially involve management of insects and vermin;
- funding possibilities for a wildlife department, absent federal funding, could come from a number of potential sources, including additional taxes;
- about nine percent of New Mexico residents are issued hunting licenses;
- the DGF has previously worked on broader wildlife issues, such as helping to prevent collisions between vehicles and wildlife on New Mexico highways;
- management of wildlife would have to be at the proposed department's discretion;
- potential economic impacts of managing all wildlife in New Mexico;
- Alexa Sandoval, former director, DGF, retired in July 2018; and
- population of various species, such as elk and cougar, in various regions of the state.

State Game Commission Reform

Paul M. Kienzle III, chair, State Game Commission, provided the committee with testimony regarding proposed changes to the appointment process for the State Game Commission. He began by acknowledging that, as gubernatorial administrations change, the commission is faced with the loss of significant institutional knowledge. Mr. Kienzle pointed out that while the commission does set policy for game management in New Mexico, it must also handle budget and personnel matters. He also said that the commission generally does not delve too deeply into the science behind policy decisions but depends upon the DGF for such information. Mr. Kienzle also discussed the current process for appointment of the commission, explaining that while the governor appoints members, the members must be confirmed by the senate, which does provide the legislature with some voice in the process. He also discussed the complexity of the job associated with being a game commissioner, noting that those members appointed to serve in the five districts that cover the state have daily contact with people in their districts, giving them working knowledge of the issues facing each district. Mr. Kienzle suggested that changing that arrangement to do away with districts and instead appointing all commissioners as at-large members would likely leave some parts of the state without a voice in game management decisions.

John Crenshaw, president, New Mexico Wildlife Federation, began by explaining that he and the wildlife federation support the current game commission and appreciate the complexity of the job commissioners must do, and he provided the committee with a brief history of the evolution of the State Game Commission. Mr. Crenshaw also discussed proposed changes to the process for appointing game commissioners, which he said should help them better perform in a position that oversees an industry that generates almost \$1 billion for the state. He noted that a bill introduced during the 2017 legislative session would have changed game commission appointments to allow the governor to appoint three commissioners and the New Mexico Legislative Council to appoint four members representing specified interests, including the hunting and fishing community, the agricultural community and a scientist with a background in biology, ecology or wildlife, with staggered terms. Mr. Crenshaw explained that staggering terms and allowing the legislature to appoint members would help avoid the pendulum effect that

occurs when new gubernatorial administrations replace the entire commission once they take office.

Questions and comments from the committee included the following:

- game commissioners' terms will expire as the next governor takes office, allowing the next governor to appoint an entirely new commission;
- qualifications of current at-large appointments to the commission;
- budget and financial duties of the commission include bonding authority and disposition of revenue derived from the Game Protection Fund;
- decisions made by the commission regarding certain hunting units and consideration of public comment in those decisions;
- allowing appointed members of the commission to sit in meetings without a confirmation hearing by the senate;
- wildlife and habitat issues are important decisions and should be left to a game commission, even if the current process is imperfect;
- the commission sets policy while the DGF implements it;
- the decision by the commission not to participate in the recovery program for the Mexican gray wolf;
- commission meeting locations are planned at the beginning of each year, so meetings sometimes take place in areas that are not affected by agenda items at those meetings;
- alternative methods of offering public comment, such as electronic submissions, email and traditional mail, are effective;
- identification of core occupied elk range (COER) lands in various areas of the state means additional steps are taken to manage the population there;
- the legislature sets hunting and fishing license fees but has not changed them since 2006; and
- recent changes to the rulemaking process likely allow the commission to make some changes without legislative approval.

Elk Management Issues

Gerald Chacon, member, board of directors, New Mexico Cattle Growers' Association, provided the committee with testimony regarding elk populations in various parts of the state. He explained that his family owns a ranch south of Chama and that drought and other factors have decreased the quality of the land, while a steadily growing elk population competing for the same limited resources as cattle has become too much for the land to handle. Mr. Chacon added that trespassers come to ranches to harvest elk horns but ruin fences and shoot at water tanks in the process. He explained that there is little that the DGF can do to compensate for landowners' significant losses, in part because the federal Bureau of Land Management (BLM) is in charge of the elk population. Mr. Chacon recommended that the DGF increase the number of fall elk hunting licenses, rather than those issued for March depredation hunts; that unused tags from one hunting unit be allowed to be transferred to other units, particularly if those units represent the same biological group of elk; that methods for erecting fences on BLM lands be improved; and

that advisory groups be formed to address jurisdictional issues and help make decisions regarding various units.

Mr. Sloane provided the committee with information regarding the elk population in New Mexico and DGF efforts to manage it. He explained that there are an estimated 80,000 to 90,000 elk in New Mexico, and he reviewed both the number of elk hunting permits issued and rules changes to better manage elk. For example, Mr. Sloane noted that the Elk Private Lands Use System, known as E-Plus, program provides private landowners with certificates that can be converted into elk hunting licenses, which is separate from the depredation system used to manage elk causing damage to private property. He also said that the DGF is looking into increasing penalties for illegally harvesting elk horns, as the current penalty is just a citation.

Questions and comments from the committee included the following:

- ranchers can sell the permits they are issued, but this may still not be enough to adequately address damages;
- the importance of working closely with federal agencies to address elk management issues;
- the potential link between the decline in the health of some public forests and the intrusion of elk onto private land, which may be better cared for, and strategies to thin overgrown watersheds;
- deer hunting licenses cost much less than elk hunting licenses;
- the latest estimate of the elk population in New Mexico was conducted in October 2017;
- the DGF used to help landowners erect fences to keep elk out, but the department now only provides landowners with fencing materials;
- the DGF used to provide residents below Los Ojos Fish Hatchery with excess water via a spigot, but the Office of the State Engineer determined that such a use had not been properly permitted, forcing the DGF to stop the practice;
- the status of a proposed transfer of land from the DGF to a certain land grant;
- the difference between deer and elk herd sizes and the damage caused by each species;
- the number of permits issued by the DGF relative to herd size in certain hunting units;
- whether the DGF building fences for private landowners could violate the Anti-Donation Clause; and
- additional proposed COER areas.

Mexican Gray Wolf Recovery and Reintroduction

Mr. Sloane explained that the DGF has been working with the United States Fish and Wildlife Service to develop a wolf recovery and reintroduction plan. He noted that the federal plan involves releasing 120 wolves in New Mexico, adding that another 200 wolves are to be released in Mexico. Mr. Sloane also said that the current plan appears to be a good path forward because it is based on solid science.

Sisto Hernandez, chair, Mexican Wolf/Livestock Council, explained that he is a range management specialist in Arizona and is working to develop a strategy for wolf reintroduction that focuses on coexistence of wolves and livestock. He said that the plan recognizes the increased costs for land management involving wolves and livestock, and the losses due to weight loss and reproductive inefficiency in livestock due to stress, and awards money to landowners based on a formula that assigns points for items such as the presence of wolves and wolf pups and includes multipliers for various other factors. Mr. Hernandez also noted that wolf management plans from around the world were reviewed in developing this plan and said that applications for financial awards are increasing, which suggests that landowners are willing to participate in the plan.

Craig Miller, coordinator, Coexistence Programs, noted that Mexican gray wolves are among the rarest breeds of wolves, and that while there is a long history of coexistence with them, the primary conflict is between wolves and livestock. He acknowledged that the recovery plan is controversial and that much of the conflict between wolf reintroduction proponents and opponents is identity-based. Mr. Miller went on to note that early approaches to wolf reintroduction resulted in dead wolves and livestock, which led to the current approach that emphasizes working together and sharing responsibility. He also said that, because of the controversy that still surrounds wolves, participants in the current plan are kept confidential. Mr. Miller added that, while still not perfect, the current approach is the best yet and the DGF not participating in the reintroduction plan has cost the state about eight years of progress.

Questions and comments from the committee included the following:

- New Mexico pulled out of the reintroduction plan because of uncertainty regarding the federal plan and the science behind it;
- the process for compensation for wolf depredation, which involves a combination of federal funding, private funds and money appropriated by the Arizona Legislature;
- the amount of compensation varies, depending on the age of livestock;
- wolf kills must be verified as part of the process for compensation;
- the expanded recovery area is still limited to the Gila Wilderness, and wolves that stray north of the area are returned to it;
- there is no compensation for kills by other vermin because of the legal distinction between vermin and wolves;
- in 2015, the Arizona Legislature began appropriating money for compensation, which flows through the Arizona Livestock Loss Board; and
- despite some shortcomings, such as the increased burden placed upon ranchers, the program is mostly effective.

Horse Management Issues

Robert Alexander, executive director, New Mexico Livestock Board (NMLB), began by explaining that, while horses do not represent a large part of the overall animal population of New Mexico, they are consuming increasingly larger amounts of NMLB resources. For example,

he said that family disputes over horse ownership and time-sensitive and labor-intensive Inspection of Public Records Act requests involving horse management are beginning to take significant amounts of staff time. Mr. Alexander also said that, while wild horses were traditionally managed under The Livestock Code, changes made to the code have created a lack of clarity in a number of areas. For example, he explained that while statute refers to horses on "public land", the NMLB cannot manage wild horses on BLM, United States Forest Service or state trust land managed by the State Land Office. Mr. Alexander also pointed out issues regarding definitions of wild horses and testing requirements to determine whether a horse is a colonial Spanish horse. He went on to discuss the wild horse issues in the communities of Alto and Placitas, noting that some residents want wild horses to roam there while others do not. Mr. Alexander noted that, in some cases, wild horse herds present a safety issue that needs to be resolved. He suggested that the state provide a clearer definition of public lands, determine the number of wild horses that need to be managed and clearly designate an agency to manage them.

Patience O'Dowd, president, Wild Horse Observers Association, echoed several of the concerns raised by Mr. Alexander, such as a definition of public lands that does not include federal and even some state lands. She also raised the issue of fencing, explaining that New Mexico is a "fence-out" state, meaning that livestock may roam anywhere unless fenced out by landowners. Ms. O'Dowd also discussed obstacles to better wild horse management in New Mexico, which she said include land grants, the livestock industry, BLM alignment with the horse industry regarding horse slaughter and lack of action at various federal levels. She provided the committee with a list of recommendations, which include stopping horse slaughter and advertising tourism featuring wild horses.

Sandi Claypool, president, Monero Mustangs, provided the committee with a brief personal history, noting that she has lived in New Mexico for over 40 years. She discussed Monero Mustangs' establishment of a 5,000-acre wild horse sanctuary in the Chama area, which she said currently allows for about 50 acres per horse. Ms. Claypool said that the sanctuary has been used to promote ecotourism, pointing out that Monero Mustangs were featured in the 2003 Rose Bowl Parade. She also said that Monero Mustangs were used as part of a program based in Chama that uses fly fishing and horses to help treat veterans from across the country, and their families, for posttraumatic stress disorder (PTSD).

Mike Neas, member, Let Our Lands Rest, said that he is a resident of Placitas, where feral horses have become a problem. He noted that feral horses are not managed, and as they roam wild on roads and across private property, they cause damage. Mr. Neas said that the situation needs to be addressed, suggesting that the legislature designate an agency to manage wild horses as soon as possible.

Questions and comments from the committee included the following:

- the difference between fence-in and fence-out states for livestock;
- road signs to indicate areas where wild horses are present;

- the use of phencyclidine as a birth control method for wild horses and reasons for discontinuation of its use; and
- other potential methods of delivering birth control treatments to wild horses.

Public Comment

Lynn Montgomery, who represents the Coronado Soil and Water Conservation District and is a Placitas resident, recommended the removal of feral horses from communities such as Placitas, where lack of authority and funding have caused problems. He said that a friend's son recently died in a collision between his vehicle and feral horses crossing the highway. Mr. Montgomery also noted that there were no true wild horses left, as breeding practices have eliminated them. He added that wild horses have devastated the open spaces in his community, and their continued presence is beginning to breed violence within it.

James Ulibarri said that a number of area residents depended upon the spigot provided by the DGF at Los Ojos Fish Hatchery for water, particularly those who had built homes in the area and drilled wells only to find contaminated water. He asked the committee to help those communities find a reliable source of water.

Stephan Helgesen, formerly of the Office of Science and Technology, spoke to the committee regarding problems with bears. He said that most bear problems are actually caused by people who do not secure their trash or electrify their chicken coops. Mr. Helgesen also said that state agencies do not manage the bear population properly, noting that while Colorado has a statutorily established program, New Mexico relies upon a memorandum that identifies bears as a nuisance. He also noted that the DGF policy is to kill bears rather than to relocate them.

Kevin Bixby, Southwest Environmental Center, discussed a recent conference held in Albuquerque that emphasized enjoyment of wildlife, noting that visitors come from around the world to enjoy wildlife in New Mexico. He also said that most states, including New Mexico, rely upon an outdated system of wildlife management. Mr. Bixby noted that wildlife management problems will likely continue to grow and suggested shifting the financial burden away from the relatively small number of sportsmen in the state to all New Mexico residents.

Tom Sidwell said that while wolf reintroduction is mostly publicly financed, ranchers still face most of the financial burden. He noted that wolves are less accepted than tolerated and asked that ranchers be better compensated for their wolf-related losses. Mr. Sidwell suggested working with various entities to better quantify the financial and stress-related losses incurred by ranchers in order to better compensate them. Mr. Sidwell also discussed the safety issue presented by wild horses, suggesting potential remedies for some communities and suggesting that the issues regarding the definition of public lands be addressed by the legislature.

Carol Kennedy of Placitas noted that horses are domestic animals and should not be allowed to roam around, pointing out that it creates a public safety issue. She also said that a

relatively large herd of wild horses is roaming near Petroglyph National Monument, and, as a safety hazard, needs to be removed.

Andrew Genovese said that horses represent a deep emotional issue for him and that some horses should be considered wildlife, similar to elk and deer, rather than livestock. He said that the PTSD therapy cited by Ms. Claypool showed that horses could actually save lives, noting that his brother, a combat veteran suffering from PTSD, first showed signs of progress upon seeing wild horses in Arizona. Mr. Genovese stressed that horses in New Mexico should not be killed, noting that logistical challenges such as fencing issues should be resolved.

Terry Shea, a combat veteran, said that he helped teach horseback riding to veterans as part of the program in Chama, noting that he believes that many veterans benefited from the program, and asked the committee to help protect wild horses.

Recess

The committee recessed at 4:45 p.m.

Friday, August 31

Wildlife Rehabilitation Licensure

Dr. Kathleen Ramsay, founder, New Mexico Wildlife Center, began by explaining that a conflict exists between statute and rules regarding rehabilitation of wildlife. She said that she helped draft initial rules, which became law in 1994, were updated slightly in 2001 and have not been changed since. Dr. Ramsay said that either rules or statutes need to be updated to better reflect growth in population density and a new era of people who both watch wildlife and want to help individual animals. She noted that the DGF really just manages mammals and some endangered birds and that the department's current policy is to euthanize all animals that are caught because of the existence of rabies in the state, rather than to evaluate individual animals and rehabilitate them. She noted that, in addition to the threat of rabies, hantavirus poses a risk to animals and people in New Mexico. Dr. Ramsay suggested that a group made up of one or two members of the legislature, one or two representatives from the DGF and one or two individuals trained to rehabilitate animals could successfully update either statute or current rules.

Questions and comments from the committee included the following:

- modernizing the rules will likely require a top-to-bottom revision;
- it would be helpful to publicly post the names and contact information of trained animal rehabilitators and their specialties on the DGF website;
- rules revision should also allow for disease surveillance, such as for wasting disease in deer;
- part of the disconnect among statute, rules and practices is because the DGF is understaffed;

- wasting disease is a threat to a deer herd living near Carlsbad, as its population numbers are already declining;
- people have shown a willingness to try to rehabilitate all manner of species, but doing so places them at risk of inadvertently contracting diseases;
- funding for animal rehabilitation has come from private donors, and state funds have not been necessary;
- part of any rules cleanup should involve adding disease-specific language;
- trying to rehabilitate most species now is difficult because of the DGF policy of euthanization;
- there are two national organizations that train people in wildlife rehabilitation;
- current rabies tests are antiquated;
- current rules regarding wildlife rehabilitation are part of the New Mexico Administrative Code;
- the DGF has not been interested in revising the rules;
- veterinary medicine is a separate discipline from wildlife rehabilitation; and
- drafting and passing a memorial asking the DGF and other groups to participate in revising the rules should help get the process started.

Development of an Office of Outdoor Recreation

Victoria Gregg, research director, Tourism Department, provided the committee with a presentation regarding tourism visitation to New Mexico, noting that it has risen steadily since 2011. She said that of the 15.7 million overnight visits to New Mexico in 2017, 7.7 percent were for the main purpose of outdoor recreation, above the national average of six percent. Ms. Gregg broke down how visitors to New Mexico spent money in 2016, noting that while most of it went to lodging, food and beverages, visitors also spent \$820 million on recreation. She also discussed efforts by the Tourism Department, such as the New Mexico True Thirty website and promotional campaign and the New Mexico True Dark Skies Trail, to attract visitors to New Mexico.

Garrett VeneKlasen, consultant, provided the committee with a presentation on behalf of the New Mexico Wildlife Federation regarding formation of an office of outdoor recreation. He began by discussing the activities that make up the outdoor recreation economy. Mr. VeneKlasen went on to discuss the goals of an office of outdoor recreation, which he identified as protecting New Mexico's unique cultural assets, land and water; supporting communities by expanding outdoor recreation; investing in infrastructure to improve access to public land and water; and promoting outdoor recreation. He also discussed potential focus areas to help achieve those goals, plans for the proposed office's growth and potential funding mechanisms for the proposed office.

Questions and comments from the committee included the following:

- an office of outdoor recreation would require a dedicated funding source that is immune from the influence of one gubernatorial administration to the next;

- the potential of making such an office a cabinet-level department;
- spending on ecotourism by tourists from Asia;
- marketing spending offers a return on investment ratio of 7:1;
- the difference between ecotourism and outdoor recreation;
- Arizona has a dedicated budget for golf tourism;
- liquor licensing and marketing for promoting tourism;
- the relationship between the public trust doctrine and wildlife conservation;
- taxation hurdles to promoting outdoor tourism and potential increases to the gross receipts tax as a means of funding a new office;
- grants issued for restoration of the Ruidoso River and completion of the work there;
- spending by other states on outdoor recreation varies: New Mexico spends less than \$10 million; most other states' spending is higher than that; and California spends about \$90 million; and
- the cultural component of outdoor recreation in New Mexico that other states cannot match.

Mesilla Valley Bosque State Park: Update

The committee went into executive session to discuss litigation related to the Mesilla Valley Bosque State Park.

Adjournment

Upon coming out of executive session, the committee adjourned at 11:55 a.m.