

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

**August 25, 2016**  
**Clovis Civic Center**  
**Clovis**

**August 26, 2016**  
**Tucumcari Convention Center**  
**Tucumcari**

The third meeting of the Water and Natural Resources Committee was called to order by Representative Candy Spence Ezzell, chair, on August 25, 2016 at 10:00 a.m. in the Clovis Civic Center in Clovis.

**Present**

Rep. Candy Spence Ezzell, Chair  
Sen. Peter Wirth, Vice Chair (Aug. 25)  
Rep. Randal S. Crowder  
Rep. Javier Martínez  
Rep. Matthew McQueen  
Rep. Andy Nunez (Aug. 25)  
Sen. Cliff R. Pirtle (Aug. 25)  
Sen. Sander Rue  
Rep. Jeff Steinborn  
Rep. James R.J. Strickler  
Sen. Pat Woods

**Absent**

Rep. Paul C. Bandy  
Sen. Joseph Cervantes  
Rep. Dona G. Irwin  
Rep. James Roger Madalena  
Sen. Benny Shendo, Jr.  
Sen. Mimi Stewart

**Advisory Members**

Rep. David M. Gallegos (Aug. 25)  
Rep. Bealquin Bill Gomez  
Sen. Ron Griggs  
Rep. Idalia Lechuga-Tena  
Rep. Bill McCamley  
Sen. Cisco McSorley  
Sen. John C. Ryan (Aug. 25)  
Rep. James G. Townsend  
Rep. Bob Wooley  
Rep. John L. Zimmerman

Sen. Ted Barela  
Rep. Cathrynn N. Brown  
Sen. Pete Campos  
Sen. Carlos R. Cisneros  
Rep. Sharon Clahchischilliage  
Sen. Lee S. Cotter  
Rep. George Dodge, Jr.  
Rep. Brian Egolf  
Rep. Nora Espinoza  
Rep. Jimmie C. Hall  
Sen. Stuart Ingle  
Rep. D. Wonda Johnson  
Sen. Gay G. Kernan

Rep. Larry A. Larrañaga  
Sen. Carroll H. Leavell  
Rep. Tim D. Lewis  
Rep. Rick Little  
Sen. Linda M. Lopez  
Sen. Steven P. Neville  
Sen. Gerald Ortiz y Pino  
Sen. Mary Kay Papen  
Sen. Nancy Rodriguez  
Rep. G. Andrés Romero  
Rep. Tomás E. Salazar  
Sen. William E. Sharer  
Sen. John Arthur Smith  
Rep. Don L. Tripp

**Guest Legislator**

Rep. Dennis J. Roch (Aug. 26)

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

**Staff**

Jon Boller, Legislative Council Service (LCS)

Gordon Meeks, LCS

Jeret Fleetwood, LCS

**Guests**

The guest list is in the 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](http://www.nmlegis.gov).

**Thursday, August 25**

Representative Ezzell began the meeting by having members of the committee and staff introduce themselves.

**Welcome and Water Conservation Summit Report**

David Lansford, mayor, City of Clovis, and Curry County Commissioners Wendell Bostwick and Chet Spear welcomed the committee to Clovis and thanked members for coming.

Mayor Lansford discussed the importance of water to all communities, particularly in southeastern New Mexico. He explained that as ground water supplies continue to be depleted,

residents in the region are attempting to engineer a better future for themselves by planning and building the Ute Pipeline Project, which he noted has finally begun to move forward. Mayor Lansford went on to note that funding for large-scale water projects continues to be a problem at all levels and that while the Ute project will continue to move forward, communities in the region must conserve available water resources in the meantime to limit how much water is pumped from underground aquifers. With that in mind, he explained that Clovis had conducted a water conservation summit and planned to contract with a consultant who would help the city identify the best ways of conserving water.

Questions and comments from the committee included:

- a reference to an article written in *National Geographic* magazine about water mining in the Ogallala Aquifer, part of which is underneath Clovis;
- the effect of Texas' water laws, which allow unlimited water pumping, could negate any efforts by Clovis to slow down its pumping efforts, although studies on lateral movement of water and rock formations suggest that pumping in Texas may have less effect than previously thought; and
- asphalt companies are working with the state to try to develop methods of road building and repaving that use less water than the current process.

Danielle Lowry, chair, Young Farmers and Ranchers Program, discussed the NMAg True Tour provided to some committee members on August 24. She noted that members were able to see a mock livestock auction and attend a dinner and various other events that showcase agriculture in New Mexico.

#### **New Mexico Beef Council Assessment on Livestock Sales (Senate Bill 65, 2016)**

Senator Woods began by discussing the NMAg True Tour, noting that one of the other stops on the tour was a local dairy that produces excellent yogurt.

Mark McCollum, member of the New Mexico Beef Council, provided the committee with a brief history of the Beef Check-Off Program. He explained that the program, which is funded by beef producers, allows for collection of \$1.00 for each head of cattle or calf sold in the state to be used for beef marketing programs. Mr. McCollum went on to note that the federal program consists of a nonrefundable \$1.00 collection, which is used to promote the beef industry and thereby strengthen beef's place in the food marketplace. At one point, New Mexico joined several other states in collecting an additional, refundable \$.25 per head. As time went on, state boards were authorized to collect both federal and state check-off collections, although state collections in New Mexico eventually ceased.

Mr. McCollum went on to explain that the New Mexico Beef Council collects about \$1 million annually, with half of that money staying in New Mexico for advertising and marketing programs. He also explained that the New Mexico Beef Council is beginning to focus its advertising efforts on the millennial age group through the use of social media and digital

advertising. For example, he discussed digital advertising campaigns that offer what appear to be recipes embedded in various web pages. Mr. McCollum noted that early results suggest that digital media efforts are working. He also emphasized that the Beef Check-Off Program itself is very effective.

Senator Woods noted that consumers want trust and transparency in their food supply. He also explained that many people are interested in the story behind their food, which the Beef Check-Off Program helps provide. Senator Woods also said that Senate Bill 65, introduced in 2016, and planned for reintroduction in 2017, seeks to reinstate the state portion of up to \$1.00 per head for the Beef Check-Off Program, pointing out that the state portion would be refundable.

Bernarr Treat, chair, New Mexico Beef Council, said that the beef industry provides jobs to lots of people. He also noted that while part of the revenue from the Beef Check-Off Program goes to advertising, the rest goes toward research, which should help keep some other jobs in New Mexico. Mr. Treat cautioned that the sheep industry in New Mexico has been devastated by lack of demand, which could also happen to beef if no efforts are taken to maintain and increase the demand for beef in the marketplace.

Questions and comments from the committee included:

- the beef check-off bill introduced in 2016 did not have a governor's message, while the 2015 version did not have enough agreement from the industry;
- the state check-off fee will be refundable because not all producers believe there is enough benefit to the program or because low beef prices may make the additional fee seem unfair;
- development of electronic forms has been deliberate because the beef industry wants to be careful about providing refunds to the proper people;
- changes in federal management of the Beef Check-Off Program should help it stay up to date; and
- the beef check-off fee is assessed when cattle change ownership.

### **Broadview Wind Power Facility Project**

Ward Marshall, director of business development, Pattern Energy Group, Inc., provided the committee with an update on construction of the Broadview wind power facility project. He explained that the project, which should generate a total capacity of 544 megawatts, is actually broken into three smaller projects, two of which are currently under construction, with the final phase scheduled for construction in 2017-2018. Mr. Marshall went on to note that all three projects will sell 100 percent of their power output to the California energy market via long-term power purchase agreements. He also noted that the projects have all had extensive environmental studies conducted.

Ben Givens, facility manager, Pattern Energy Group, Inc., provided the committee with an overview of the actual construction of wind turbines, showing step-by-step pictures of each phase of turbine construction.

Questions and comments from the committee included:

- Pattern Energy Group is headquartered in San Francisco, but the company's largest office is in Houston, Texas, which is where the operations center runs 24 hours per day and monitors wind projects in Canada, the United States, Chile and Japan;
- Pattern Energy Group's use of renewable energy tax credits and the impact of not renewing those tax credits on the renewable energy industry in New Mexico;
- most of the initial construction work to install wind turbines is contracted through local businesses, but some of the more specialized work, such as crane operation to install rotors, is done by out-of-state specialists;
- New Mexico benefits from wind projects that sell power to out-of-state buyers; benefits include construction jobs, tax money that goes to local school districts and lease payments to landowners;
- exporting more renewable energy to markets like California will require construction of large energy transmission projects, such as the SunZia Southwest Transmission Project, which are difficult to plan, fund, permit and construct;
- wind energy cannot compete with other renewable energy sources if those sources still enjoy tax credits while wind energy does not;
- the renewable energy market is becoming flooded with relatively cheap solar panels;
- wind energy and natural gas are an almost perfect marriage of power sources because natural gas can quickly fill in demand when wind is not available or is not sufficient to meet peak demand; and
- wind energy is actually helping to keep energy costs low in Texas markets.

### **Report on Soil and Water Conservation Districts**

Debbie Hughes, executive director, New Mexico Association of Conservation Districts (NMACD), provided the committee with an update on soil and water conservation districts (SWCDs) in New Mexico. She began by providing the committee with a brief history and overview of SWCDs in New Mexico. Ms. Hughes also discussed several legislative concerns regarding SWCDs, most notably legislation proposing to change election dates of SWCDs to make them match other local district general elections. She explained that SWCDs have concerns about the costs associated with general elections, the ability of SWCDs to pass future mill levies, mill levy sunsets and mill levy limits for some special districts.

Ms. Hughes also discussed New Mexico's technical service provider program, which she explained is authorized by the federal farm bill and provides full-time employees in rural New Mexico, as well as supplies, offices, vehicles and training. Ms. Hughes noted that the NMACD has served as the fiscal agent for the program in New Mexico since 2003.

Ms. Hughes also discussed the use of federal funds by the NMACD for the Restore New Mexico Program, which addresses invasive species on range and woodland on private, state and federal lands. She also described a grant agreement with the National Fish and Wildlife Foundation to provide technical assistance for protecting and improving habitat for the lesser prairie chicken, which will not be listed as an endangered species.

Finally, Ms. Hughes discussed changes in funding for forest restoration projects. She explained that three tiers of funding are now available, one of which is available for competitive bids for watershed-scale restoration projects.

Questions and comments from the committee included:

- SWCDs had some concerns regarding a bill introduced by Representative Bandy that would have provided for a single election date for a number of different elections, including SWCDs, school district bonds and special hospital districts;
- some SWCDs use mill levies and some do not;
- SWCDs work with all local government entities, although some work more closely with one another than others; and
- SWCD mill levy election procedures.

### **Water Infrastructure Team and Funding Subgroup Report and Construction Programs Bureau Infrastructure Development Report**

Michaelene Kyrala, director, strategic initiatives and policy, Department of Environment (NMED), provided the committee with an overview of the Water Infrastructure Team (WIT), which she explained was created to address stakeholder concerns regarding competition for and coordination among water funding mechanisms. She went on to note the various WIT members, which include both state agencies and several nongovernmental organizations, including the New Mexico Municipal League, the New Mexico Association of Counties and the New Mexico Rural Water Association (NMRWA). Ms. Kyrala also discussed WIT accomplishments to date, including development of a uniform asset management plan for all agencies and creation of a local government funding source guide, which includes updating the Department of Finance and Administration's "Complete Catalog of Local Assistance Programs". She also discussed a partnership with the Albuquerque-Bernalillo County Water Utility Authority on a campaign highlighting the value of water. Ms. Kyrala went on to discuss the WIT funding group, which consists of both state and federal agencies in New Mexico that administer or monitor funding for water or wastewater. She explained that the funding group discusses project collaboration, application processes and which funding programs might be the best fit for various applicants and their projects. Finally, Ms. Kyrala discussed debt capacity and water rate setting. She explained that many entities do not have debt capacity while others shop around for grants or grant-loan combinations. Ms. Kyrala noted that many entities are unwilling to either acquire debt or raise their rates, which makes it difficult for them to secure loans or even grant-loan combinations.

Ms. Kyrala also discussed the NMED's Construction Programs Bureau. She provided the committee with a brief overview of the bureau and presented the committee with the July 2016 "Infrastructure Development Report" for water, wastewater and solid waste projects administered by the bureau. The report lists projects by county; the projects are arranged alphabetically by community. Ms. Kyrala explained that projects receive funding from a number of sources, including the Capital Outlay Special Appropriation Program, the Clean Water State Revolving Fund Program and the Rural Infrastructure Revolving Loan Program.

### **Federal Clean Water Act Regulations on Waters of the United States Status**

Ms. Kyrala gave a brief explanation of a proposed rule by the federal Environmental Protection Agency (EPA) related to the federal Clean Water Act definition of "waters of the United States" (WOTUS). She explained that the rule would expand the authority of the EPA under the Clean Water Act to regulate many more bodies of water and stream systems than are currently under its jurisdiction. Ms. Kyrala noted that the proposed rule is under appeal in three different courts, and New Mexico is one of 131 separate petitioners divided into three groups: states, business/municipalities and associations. She also explained that New Mexico has joined the North Dakota coalition, which includes 12 other states. Ms. Kyrala provided the committee with a brief overview of the three separate appeals and a time line for the next several months. She noted that the rule is of particular concern to states such as New Mexico because it fails to consider the unique conditions of arid western states with remote and intermittent bodies of water and ephemeral streams and channels that only flow during seasonal rains or exceptional flooding events.

Questions and comments from the committee included:

- 2014 funding for water projects has been spent down more slowly than other funds, in part because water project funding often takes one or two years to begin spending down;
- small-scale water projects often take time to begin spending money because of the time it takes for small entities to become compliant with audit requirements;
- while some of the various coalitions that have formed in response to the proposed WOTUS rule are not opposed to the rule, most are opposed to it and believe it is an overreach on the part of the EPA and the federal government;
- most entities seeking water infrastructure funding vastly prefer "free" money in the form of capital outlay and grants even to low-interest loans;
- a simpler, more streamlined application process would help steer entities seeking free money to loans;
- the amount of Water Trust Fund money that goes toward conservation projects;
- development of a checklist for applicants to use when seeking funding;
- water system regionalization can help small communities come together to seek infrastructure and financing solutions that will work for everyone;
- development of a regionalization bill for introduction in the 2017 legislative session will likely require review during the interim due to its sheer complexity;

- at least three other states have redone their approaches to water project financing through local infrastructure capital improvement plans;
- the NMED is trying to streamline and expedite the funding application process;
- larger entities tend to receive more funding because it is difficult for smaller ones to navigate the application process;
- lack of oversight on water rate structures;
- the North Dakota coalition in the WOTUS case is mostly made up of western states and states with arid climates;
- \$4 million in loans offered by the NMED were rejected because so many entities prefer capital outlay and grant money;
- New Mexico as a state is not listed in the North Dakota coalition, but the NMED and Office of the State Engineer (OSE) are listed instead;
- many small communities cannot afford the audits required to receive funding; and
- the state auditor does provide some assistance to those communities that need help with their audits.

On a motion made, seconded and passed, the minutes of the committee's July 14-15 meeting were approved.

The committee recessed at 3:40 p.m.

### **Friday, August 26**

Ruth Ann Litchfield, mayor of Tatum, and Jared Langenegger, Tatum city manager, welcomed the committee and thanked members for meeting in Tatum.

### **New Mexico Acequia Association Briefing**

Paula Garcia, executive director, New Mexico Acequia Association (NMAA), and Harold Trujillo, president, NMAA, briefed the committee on the NMAA, which was established in 1989. Ms. Garcia began with a short history and overview of the association, noting that while acequias maintain centuries-old customs and traditions, more than 700 acequias in New Mexico also perform the vital role of delivering water to users. Acequias range in size from those serving three families to those with more than 650 irrigators, she said, with the largest in San Juan County. She provided the committee with a list and a map indicating the general location of most of those acequias.

Ms. Garcia went on to discuss several policy issues concerning acequias, such as infrastructure funding. She explained that while acequias do receive funding from a number of different sources, all capital outlay funding for acequias was vetoed after the 2016 legislative session. Ms. Garcia noted that there are also concerns regarding future project funding because of depletion to the New Mexico Irrigation Works Construction Fund (NMIWCF).



Ms. Garcia discussed other challenges to acequias, such as the proposed WOTUS rules, which she explained could place overly burdensome permitting requirements on acequias. She noted that some acequias are concerned about potential wilderness designations and critical habitat designations for endangered species.

Mr. Trujillo discussed improvements to the Morphy Lake dam near Las Vegas, noting that the OSE has called for an additional \$105,000 in improvements to the acequia that feeds the lake, adding additional cost to the project. He also noted that after the governor's vetoes of acequia capital outlay funding, acequias were told to seek funding through the Interstate Stream Commission's 90-10 Grant Program, which is a cost-sharing program. However, Mr. Trujillo reiterated that there are concerns regarding depletion of the NMIWCF, which funds the 90-10 Grant Program. He also noted that many acequia users are concerned because of aging infrastructure, pointing out that some acequias are almost 400 years old.

Patricia Quintana, lobbyist for the NMAA, noted that the association is made up entirely of small agricultural producers, which includes several people with small cattle grazing allotments, and that the acequia community shares many of the same interests and concerns of the larger agricultural sectors of the state.

Questions and comments from the committee included:

- changing land use patterns have led ditches that were once privately owned to form into community ditch systems with help in developing bylaws from the NMAA;
- the differences among ditches, irrigation districts and acequias, including which entities have taxation authority and which do not;
- federal grant programs often need local partnerships;
- difficulty in navigating the federal grant and loan process tends to limit participation in funding programs;
- acequias often have pre-1907 water rights, which must be adjudicated the same way as other water rights;
- the NMAA is made up of more than 50,000 acequia users;
- 2016 is the first time that no capital outlay money has been made available to acequias;
- the estimated costs to improve aging infrastructure in acequias are over \$100 million;
- the governor vetoed about \$900,000 for acequias in 2016; and
- the smaller number of acequias in southwestern New Mexico is why the region does not have more members in the Congreso de las Acequias.

### **NMRWA Update**

Bill Connor, executive director, NMRWA, provided an overview of the background, mission, membership, governance and activities of the association. He began with some background on the NMRWA, explaining that it represents 488 community water systems serving about 1.2 million customers and was established in 1978 in response to the federal Safe Drinking

Water Act of 1974. The association is funded through membership dues and contracts for service, some of which are with the NMED. The NMRWA also monitors projects for the United States Department of Agriculture (USDA) Rural Development Program. Mr. Connor discussed some of the work of the NMRWA, noting that it helps with water and wastewater system development, as well as emergency assistance to communities and source water protection plans for community systems. He also said that the NMRWA helps with solid waste management and energy efficiency assessments. Mr. Connor also discussed operator and board member training offered by the NMRWA, as well as public education and outreach efforts.

Fred Black, a circuit rider, discussed developing wastewater treatment technologies, such as bioaugmentation to remove sludge from wastewater. He noted that the NMRWA is working with the NMED on some projects, mostly to buy time for aging wastewater infrastructure.

Questions and comments from the committee included:

- the shortage of qualified operators and a pipeline for training new ones extends beyond New Mexico to most of the country;
- issues created by having small and large water and wastewater systems next to each other; and
- water and wastewater infrastructure funding issues.

### **Mesalands Community College Wind Energy Program**

Andy Swapp, wind energy instructor, Mesalands Community College, and Jim Morgan, director, North American Wind Research and Training Center (NAWRTC), provided the committee with a presentation regarding the school's wind energy technician training program. They began by providing the committee with an overview of Mesalands Community College, describing the school's enrollment, student makeup and graduation rate. Mr. Morgan also discussed the NAWRTC, explaining that the center, located on Mesalands' campus, went from a concept in 2007 to a functioning facility in 2008. He said that the center began because wind farm developers could not find enough wind turbine technicians to complete projects.

Mr. Swapp went on to discuss the wind technician training program, explaining that there are three programs of study: a one-semester occupational certificate, a one-year occupational license and a two-year associate degree in applied science. He discussed enrollment for each program, noting that total enrollment has grown 71 percent since fall 2015. Mr. Swapp also explained that continued growth in the wind energy industry has created a demand for program graduates, many of whom go on to work for Granite Services, a service and project arm of General Electric Company's Renewable Energy.

Questions and comments from the committee included:

- many NAWRTC students pay their own tuition, but most, if not all, graduate with zero student debt;

- General Electric makes about 40 percent of the wind turbines currently available on the market;
- an introduction to wind energy is the only dual-credit program available to high school students at the NAWRTC, mostly because the rest of the courses involve hands-on learning;
- the NAWRTC does offer some training programs to prisoners at Guadalupe County Correctional Facility in Santa Rosa;
- the NAWRTC offers the lowest-cost wind turbine training program in the country; and
- the school is working to develop more online courses.

### **Committee Tour**

The committee toured the intake structure for the Ute Pipeline Project at Ute Reservoir, near Logan, New Mexico.

### **Adjournment**

There being no further business, the committee adjourned at 3:00 p.m. following the tour.