

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

**July 6-7, 2009  
Copper Room, Macey Center  
New Mexico Institute of Mining and Technology  
Socorro**

**Present**

Sen. Phil A. Griego, Chair  
Rep. Andy Nuñez, Vice Chair  
Rep. Paul C. Bandy  
Rep. Ray Begaye  
Rep. Joseph Cervantes (July 6)  
Sen. Mary Jane M. Garcia (July 6)  
Rep. Thomas A. Garcia  
Rep. William J. Gray  
Sen. Clinton D. Harden, Jr.  
Rep. Larry A. Larrañaga  
Rep. Kathy A. McCoy  
Sen. George K. Munoz (July 6)  
Sen. Mary Kay Papen  
Sen. Sander Rue

**Absent**

Rep. Dona G. Irwin  
Sen. Steven P. Neville  
Sen. Gerald Ortiz y Pino  
Rep. Mimi Stewart

**Advisory Members**

Sen. Vernon D. Asbill  
Rep. Anna M. Crook  
Rep. Brian F. Egoft, Jr.  
Rep. Candy Spence Ezzell  
Sen. Timothy Z. Jennings (July 6)  
Sen. Cisco McSorley  
Sen. Nancy Rodriguez (July 6)  
Rep. Don L. Tripp  
Sen. Peter Wirth (July 6)

Sen. Rod Adair  
Sen. Carlos R. Cisneros  
Rep. Nora Espinoza  
Sen. Dede Feldman  
Sen. Gay G. Kernan  
Rep. Ben Lujan  
Rep. James Roger Madalena  
Rep. Danice Picraux  
Rep. Henry Kiki Saavedra  
Rep. Jeff Steinborn  
Rep. James R.J. Strickler

**Guests**

The guest list is in the original meeting file.

**Staff**

Jon Boller  
Gordon Meeks

Jeret Fleetwood

## **Monday, July 6**

The second meeting of the Water and Natural Resources Committee was called to order by Senator Phil A. Griego, chair, at 10:05 a.m.

### **Introduction and Welcome**

Senator Griego began by having the members of the committee and staff introduce themselves to the audience.

Dr. Daniel H. Lopez, president of the New Mexico Institute of Mining and Technology, welcomed the committee to Socorro and thanked them for coming. He also discussed the importance of the committee, and water in general, to New Mexico's overall well-being. Dr. Lopez also discussed the aquifer mapping project with which the school is currently involved.

### **State Parks Division Projects, Fees and Proposals**

David J. Simon, director of the State Parks Division of the Energy, Minerals and Natural Resources Department, provided the committee with testimony regarding New Mexico's state parks. He began by providing the committee with an overview of New Mexico's state parks system, noting that there are currently 34 state parks in the state with number 35 already on the way. Mr. Simon went on to discuss the revenue and fees that fund the state parks system, pointing out that only about one-third of state parks' operating budget comes from the general fund, while the rest is self-generated revenue, mostly from fees. He noted that state park visitation reached its peak in the mid-1990s, then dropped off somewhat and is rising again. Mr. Simon pointed out that much of the revenue the parks receive is tied to water and the boat industry and that declines in water levels at many of New Mexico's lakes during the first half of this decade help account for a drop in revenues.

Mr. Simon went on to discuss camping fees at state parks, explaining that those fees have remained unchanged since 1998 and that raising them is being considered. He pointed out that New Mexico's camping fees are by far the lowest among neighboring states. Mr. Simon also discussed a bill introduced during the 2009 legislative session that would have raised the fees for boat registration and change registration to a two-year cycle. He noted that the bill failed to pass even though New Mexico would still have the lowest boat registration fees in the region. He indicated that the department would like to reintroduce the bill next session and that he hoped the committee would endorse the bill.

Comments and questions focused on the following topics:

- the difference between commercial and recreational boats is that a concession permit may be required to operate a commercial boat;
- fees collected from New Mexico residents and out-of-state visitors are about equal;
- the difficulty in trying to generate income by raising fees for out-of-state visitors versus the simplicity of raising all fees by a dollar or two;

- the ability of the State Parks Division to raise fees administratively;
- 56 public hearings were held the last time camping fees were raised;
- capacity issues on lakes;
- state park fees are based on vehicles;
- jail time is a possibility for those who refuse to pay park fees;
- there is a lack of facilities in some parks;
- the amount of income that the State Parks Division receives from citations; and
- the 1998 camping fee increase raises about \$400,000 a year for the State Parks Division.

Mr. Simon then discussed the development of the Rio Grande Trail. He explained that, once completed, the trail will run parallel to the river from Bernalillo to Belen and that progress on the trail is being made. Mr. Simon indicated, however, that funding for the trail is coming from a number of sources and that construction of the trail itself and the resolution of management issues particular to a linear park will take time. Last session, he said, the State Parks Division supported House Bill 273, which amended the State Trails System Act and passed the house without opposition. He urged the committee to support its reintroduction during the next legislative session.

Questions and comments focused on such topics as:

- liability issues with private landowners along the trail; and
- legal protection provided by the original State Trails System Act.

Finally, Mr. Simon discussed new and future state parks. He noted that Pecos Canyon State Park had been created by the 2009 legislature and that a feasibility study on a Shiprock state park had recently been conducted. Mr. Simon explained that the study found that a state park in the Shiprock area would only work as a partnership between the state and the Navajo Nation, and he outlined some of the issues related to such a partnership.

Questions and comments focused on the following topics:

- golden algae problems in Brantley State Park;
- the difference between state parks and state monuments;
- that the potential benefit to merging the State Parks Division and the State Monuments Division would likely be some increased administrative effectiveness;
- the Navajo Nation owns the land where the Shiprock monument is proposed;
- Eagle Nest visitors' center issues;
- disagreement between the State Parks Division and the Department of Transportation over responsibility for state park road maintenance;
- sovereignty and funding are two major issues that remain unresolved regarding a Shiprock state park;
- the amounts of money already appropriated and still needed to complete work on Pecos Canyon State Park; and
- the potential use of federal stimulus money for Pecos Canyon State Park.

## **Invasive Species Update**

Dave Mohr provided the committee with an update regarding problems New Mexico may be facing from Quagga and Zebra mussels. He explained that House Bill 467, passed during the 2009 legislative session, directed the Department of Transportation and law enforcement agencies to begin checking boats that had been in out-of-state waters for both species. Mr. Mohr went on to note that once the mussels get into a body of water, they multiply extremely quickly and can cause tremendous problems for boaters, swimmers and most other forms of life already inhabiting the water. He indicated that the mussels have already been found in neighboring states and that the Department of Game and Fish estimates that the mussels will make their way into New Mexico by the end of the summer. Mr. Mohr went on to explain that the best way to cleanse boats of the mussels is to spray them with Formula 409, a commercial cleaner, that has been heated to 182 degrees, pointing out that anything that touches the water, including motors, anchors, trailers and hulls, needs to be cleaned. Finally, Mr. Mohr noted that while HB 467 did direct agencies to begin checking boats, it did not provide funding for equipment to clean them, which he estimated would cost between \$4 million and \$7 million. The committee expressed concern that no one seemed to be taking the lead in coordinating the effort to deal with the problem and suggested that staff contact the appropriate agencies to see what efforts were being made on controlling the problem and to invite them to report at the next meeting of the committee.

## **Valencia County Integrated Regional Water and Wastewater Master Plan**

Eric Zamora, Valencia County manager; Tim Karpoff of Karpoff and Associates; and Kelly Collins of CDM provided the committee with an overview of Valencia County's project to manage its water and wastewater issues better. They explained that the Integrated Regional Water and Wastewater Master Plan comprises four interlocking parts: concepts to guide construction of physical infrastructure, policy guidelines, countywide programs and an organizational framework. The group went on to explain that the project evolved from a drought preparedness and water conservation pilot project into a conceptual-level plan for water and wastewater infrastructure to support projected population growth and land use issues for the next 40 years. They stressed that the proposals that came out of the process came from participants, such as the county and municipalities, that have traditionally not worked well together on water planning issues. And while such cooperation was not easy at first, they noted that once the various parties to the process realized their input was being taken seriously, the planning process produced results that all parties could agree to. There was no minority report.

Mr. Zamora, Mr. Karpoff and Ms. Collins went on to outline the various aspects of the project, including community outreach, naming of a citizens' advisory board and efforts to change the way citizens and planners conceive of regionalization. They also discussed the three phases of the master planning process: understanding existing conditions and projecting future growth and water use trends; examination of alternatives; and development of the actual master plan. The group noted that they had completed the first phase of the master planning process and initiated its first project, an extension of Bosque Farms' wastewater system to Peralta.

Questions and comments focused on the following topics:

- how Valencia County's plan interacts with the statewide regional water plan;
- the makeup of the entity charged with overseeing and implementing the master plan;
- that no funding requests will be made until a formal entity is formed;
- the involvement of the Office of the State Engineer in the process;
- the development of policies for water use and development that cross municipal boundaries;
- the plans for physical structures and consistent development and growth policies;
- the inclusion of Valencia County land grants in the planning process; and
- the role of planning and zoning in the overall process.

### **Conservation Fund Report**

Karen Gallegos, director of the Water and Wastewater Infrastructure Development Division of the Department of Environment, provided the committee with an update on the status of the Water Conservation Fund. She began by explaining that the fund comes from a fee of three cents per thousand gallons of water produced by all public water system operators in the state and that it is primarily used to test public water supplies for contaminants. Ms. Gallegos went on to provide the committee with data regarding the amount in the fund and expenditures made from the fund since 2007.

Questions and comments focused on the following topics:

- that the reduction of salaries and benefits by \$160,000 in the fund is due to a switch to federal dollars for that purpose;
- that the money spent on contract sampling is down in some years because sampling runs in three-year cycles;
- that a request for proposals was issued for chemical laboratory costs;
- that the Albuquerque Bernalillo County Water Authority does in-house sampling now and therefore does not need the state to perform water sampling services;
- that the geographic spread of sampling sites necessitates the use of several different laboratories and that consolidating them into one lab would create more problems than it solves; and
- the three-cents-per-thousand-gallons fee is charged for all water used for domestic purposes.

Due to a number of questions related to how federal and state funds are allocated among various programs for various purposes, the committee asked Ms. Gallegos to request the Department of Environment to attend the August or September meeting of the committee and present a full report on what state and federal funds are being used for administrative expenses, salaries and projects related to the Drinking Water State Revolving Loan Fund, the Water Conservation Fund and any federal stimulus money the department has received.

### **Off-Highway Vehicle Regulatory Changes — Laws 2009, Chapter 53**

Tod Stevenson, director of the Department of Game and Fish, provided the committee with an update on New Mexico's Off-Highway Vehicle (OHV) Program. He explained that Senate Bill 379, introduced, passed and signed by the governor during the 2009 session,

transferred the OHV Program from the Tourism Department to the Department of Game and Fish as well as established new regulations for the registration and operation of OHVs. Mr. Stevenson began by discussing the memorandum of understanding between the two agencies to coordinate the transition of the program from one department to the other.

Next, Mr. Stevenson discussed implementation of the new regulations. He provided the committee with an overview of the public outreach efforts geared toward educating the users about the new OHV regulations, particularly the safety training program required of riders under 18 years old. Mr. Stevenson pointed out that one of the concerns that has arisen is the cost of enrollment in the safety training program. He indicated that the Department of Game and Fish may attempt to devote some funding to paying instructors to offer free or significantly reduced-cost safety classes. Mr. Stevenson also discussed enforcement efforts for the new regulations, noting that the Department of Game and Fish met with concerned individuals from the Jemez Mountain area before performing a law enforcement sweep in the Jemez Mountains and Pecos Canyon in late June 2009. He also noted that the Department of Game and Fish plans to request that the Department of Public Safety Board require an OHV training course for all certified peace officers.

Finally, Mr. Stevenson discussed ongoing and planned efforts to operate the OHV Program web site called for in the bill as well as plans that the Game and Fish Department has to improve the OHV Program. He indicated that those plans include modification of the rules dictating the size and agency attachment of the board that oversees the OHV Program and the language regarding instructors for the safety certification program.

Questions and comments focused on the following:

- the board is appointed entirely by the governor;
- whether the Department of Game and Fish has adequate staff to administer the OHV Program;
- the drain on department resources that hunting season and administration of the OHV Program will likely cause;
- memoranda of understanding with law enforcement agencies for enforcement of new regulations;
- registration fees charged to out-of-state residents;
- exemptions for OHVs used for agricultural uses;
- penalties for DWIs on OHVs are covered by the statute governing highway vehicle DWIs;
- the laws New Mexico has developed regarding OHVs are used as a model for other states seeking to address the issue of OHV safety and registration;
- an institute of off-road safety is currently compiling data on OHV safety;
- the money that citizens have to spend to be able to operate their OHVs; and
- much of the effort to pass legislation regarding OHVs stems from a desire to protect wildlife and the environment, but there is not much language in the final version of the bill that actually addresses those concerns.

## **Elk Population Management and Depredation and Landowner Takings Policies — SB 391 (2009)**

Mr. Stevenson provided the committee with an update regarding the issue of elk population management. He explained that the growing elk population in New Mexico is causing an increasing amount of damage to private property across the state. Mr. Stevenson went on to note that a number of bills have been introduced over the last few years to attempt to help landowners address the issue, most recently Senate Bill 391, introduced during the 2009 session. However, he indicated that the bill failed because stakeholders failed to reach a compromise on two issues: the bill's focus on agricultural crops rather than including rangeland and other types of private property and concerns of livestock producers over competition between elk and other types of wildlife.

Mr. Stevenson went on to note that the current economic climate has only served to intensify the problem. For example, he relayed the concern expressed by many landowners that the hunting permits issued by the state, which allow property owners to receive some compensation for the damage done by elk, will not be enough this year to make up for the damage done by elk to their property. Mr. Stevenson also noted that getting a bill passed that stakeholders can agree upon during a 30-day session will be rather difficult. However, he indicated that the Department of Game and Fish has provided the Governor's Office with a proposed bill in hopes that it will be part of the governor's call for the 2010 session. Mr. Stevenson also noted that his department is working with several groups on elk population issues to try to resolve some concerns before the session begins.

Questions and comments focused on the following:

- because SB 391 did not pass during the 2009 session, the Department of Game and Fish rules regarding elk herd management are still in place;
- the work done so far to address the issues surrounding elk population management;
- the capability of the department to investigate damage to crops; and
- the difficulty for ranchers to make a living because of the damage wildlife causes to their property.

On a motion made, seconded and approved, the minutes of the June 5, 2009 meeting were approved.

### **Tuesday, July 7**

Debbie Hughes of the soil and water conservation districts addressed the committee regarding flood protection dams. She explained that 50 years ago, federal money was being disbursed for flood protection dams to anyone who could find a local sponsor, such as an irrigation district or a soil and water conservation district. Ms. Hughes indicated that there are flood protection dams all over the state, but that many of them have not been maintained and are getting old. She also pointed out that several now have subdivisions or other types of development beneath them. Ms. Hughes went on to explain that there appears to be some issue over liability for the dams. She said the Coronado Soil and Water Conservation District in

Bernalillo County contacted the Risk Management Division (RMD) of the General Services Department about liability and was told that soil and water conservation districts are not covered under division policy. She also indicated that the RMD has changed its policy, raising premiums so that if soil and water conservation districts do seek coverage, they often cannot afford the premiums. Ms. Hughes noted that a dam group has been formed to address issues surrounding dams, and she asked if she could bring more information on the issue to a later meeting of the committee. The chair asked staff to work with Ms. Hughes to schedule a presentation on the dam issue at a future meeting.

Howard Hutchison of Silver City extended an invitation to the committee to tour the San Francisco River area on the Sunday before the committee's September meeting. Senator Griego directed staff to send a notice to committee members about the tour.

### **Seizure and Brand Inspection of Livestock – Proposed Legislation**

Caren Cowan, executive director of the New Mexico Cattle Growers' Association, and Miles Culbertson, director of the New Mexico Livestock Board, provided the committee with copies of a bill introduced during the 2009 session that would have provided clarification to the livestock board regarding cattle ownership and branding. They noted that the bill did not pass.

Mr. Culbertson explained that a brand provides final authority on cattle ownership and that federal authorities have seized livestock grazing on federal land. He pointed out that there is a difference between animals that have been seized and those considered strays, explaining that cattle bearing a brand clearly identifying ownership are seized while those without any brand are considered strays. Mr. Culbertson noted that seizures are typically performed by counties, mostly in animal cruelty situations.

Ms. Cowan indicated that there have been cases in neighboring states in which the federal government seized livestock, moved them to another state and sold them without a court order. Mr. Culbertson and Ms. Cowan indicated that they would like the committee to endorse the bill from the 2009 session for introduction in the 2010 session.

Questions and comments focused on the following:

- that wild horses are being turned loose on federal land and the ability of the government to seize or otherwise take them;
- the lack of an outlet in the United States for horse slaughter, which the bill does not address;
- the reasons a livestock owner would not brand cattle;
- the reasons for federal seizure of livestock;
- the definitions of "animal" and "livestock" in the proposed bill;
- the methods of branding or otherwise marking livestock;
- that the purpose of the bill is to protect the livestock board from a lawsuit involving a seized animal;
- the unlikelihood of a federal agency to go along with a New Mexico court decision;

- a horse slaughter law in Montana passed two months ago;
- the need to get a bill on the governor's call for the 2010 session; and
- a court case involving a seized animal and a confrontation with a federal marshal.

### **Aquifer Mapping Project**

Peter Scholle, state geologist and director of the Bureau of Geology and Mineral Resources of the New Mexico Institute of Mining and Technology, and Peggy Johnson, associate director of Hydrogeologic Programs at the Bureau of Geology and Mineral Resources, provided the committee with an update on the status of the Aquifer Mapping Project. Ms. Johnson explained that mapping is a multidisciplinary science that involves geologic mapping, geophysical surveys, hole-drilling, 3-D geologic modeling, hydrologic data, geochemical mapping and ground water flow models. Ms. Johnson went on to list the various partners and users of aquifer mapping, including academic institutions, state and federal agencies, local and tribal governments and soil and water conservation districts. She then provided the committee with an overview of the active and completed projects, including ones in the Santa Fe area, the southern Sacramento Mountains and Taos County. Finally, Ms. Johnson discussed potential future projects, including deep aquifer characterization, uranium and mining legacy issues and carbon sequestration.

The committee asked Dr. Scholle to submit a formal proposal on deep aquifer characterization, given the huge interest various parties have shown in the past year in drilling for sources of nonpotable water located in deep aquifers across the state. The committee requested staff to write a letter to the governor in support of Dr. Scholle's proposal requesting the governor to expend some of the federal stimulus money to fund the proposed project.

Questions and comments focused on the following:

- the importance of the statewide aquifer map;
- federal stimulus money for mapping projects;
- inclination of the U.S. Geological Survey to put federal stimulus money into bricks-and-mortar projects;
- discretionary funding to which the Governor's Office may have access;
- surveys, tests of salinity and costs of drilling holes to map deep aquifers;
- the risk of contamination from bringing high-quality water through areas with contaminated or lower quality water;
- the use of horizontal drilling to get access to some aquifers;
- the location of the St. Augustin survey on the list of priorities to survey;
- the reliability of information on unmapped areas that can drive policymaking;
- that hydrologists derive their assumptions based on gravity surveys, believed material makeup and porosity, among other factors;
- the status of the application for stimulus money for aquifer mapping;
- the process involved for procuring federal stimulus money from the Governor's Office; and
- rechargeable basins in New Mexico.

## **New Mexico Dairy Industry Issues**

Sharon Lombardi and T.J. Trujillo of the Dairy Producers of New Mexico provided the committee with an update on the status of the dairy industry both in New Mexico and nationally. Ms. Lombardi began by providing the committee with a brief overview of the agriculture and dairy industries. She explained that the overall number of dairy farms in the United States has sharply declined over the last 50 years, with New Mexico currently having over 172 dairies. Ms. Lombardi then noted that the average New Mexican dairy is a small family business possessing about 2,000 cows and producing roughly 42 million pounds of milk per year and employing about 10 direct and 92 indirect employees.

Next, Ms. Lombardi discussed dairy economics, explaining that while the dairy industry has a large impact on New Mexico's overall economy and the state's dairy industry compares very favorably to that in other states, costs are at an all-time high and dairies are not allowed to pass their costs on to consumers because of the regulatory system that governs them. She went on to point out that while dairies in the state are losing money, the state can help the industry by sustaining or reducing those costs that affect the industry.

Mr. Trujillo then discussed legislative and regulatory issues affecting the dairy industry. He began by pointing out the importance of the agricultural industry to New Mexico's economy and the environmental stewardship that is a guiding influence on the dairy industry. For example, Mr. Trujillo noted that dairies must submit monthly water readings to the Office of the State Engineer and the New Mexico Department of Environment, unlike other irrigators. He also noted that proper re-use of dairy-generated nutrients actually improves soil quality and reduces the amount of water necessary to grow crops.

Finally, Mr. Trujillo outlined some of the ways state government can help sustain and possibly grow the dairy industry in New Mexico. For example, he recommended adopting new regulations for the dairy industry regarding water quality and ground water discharges. Mr. Trujillo also discussed regulatory reform legislation, which he said would help create a predictable and transparent regulatory system and encourage economic development.

Questions and comments focused on the following:

- that the impact of state government on the costs associated with the dairy industry include regulation by the Departments of Health, Agriculture and Environment as well as the Office of the State Engineer;
- ways to help negate those costs;
- that the price of milk has not dropped enough to trigger federal subsidies for dairy farmers;
- that New Mexico is still very competitive with the dairy industries in neighboring states;
- that number of dairies that have left New Mexico to do business in other states;
- awards given to New Mexico dairies and cheese producers;
- the desire by the dairy industry to have better regulation rather than outright deregulation;

- the impact of the dairy industry on specific economies in New Mexico, such as that in the Roswell area;
- how the price of milk is determined; and
- that the quality of milk produced in New Mexico is recognized as some of the best in the world.

Senator Griego named the following legislators, who expressed an interest in serving on the Acequia Subcommittee, as members of the subcommittee: Representative Thomas A. Garcia will serve as the chair, Representatives Bandy, Begaye and Larrañaga and Senator Ortiz y Pino.

There being no further business, the committee adjourned at 12:25 p.m.