

MINUTES
of the
FIRST MEETING
of the
WATER AND NATURAL RESOURCES COMMITTEE

June 1, 2011
Room 322, State Capitol
Santa Fe

The first meeting of the Water and Natural Resources Committee (WNRC) was called to order by Senator Phil A. Griego, chair, at 1:30 p.m. on Wednesday, June 1, 2011, in Room 322 of the State Capitol.

Present

Sen. Phil A. Griego, Chair
Rep. Paul C. Bandy
Rep. Ray Begaye
Sen. Mary Jane M. Garcia
Rep. Thomas A. Garcia
Rep. William "Bill" J. Gray
Sen. Clinton D. Harden, Jr.
Rep. Dona G. Irwin
Rep. Larry A. Larrañaga
Sen. George K. Munoz
Sen. Steven P. Neville
Rep. Andy Nuñez
Sen. Gerald Ortiz y Pino
Sen. Mary Kay Papen
Sen. Sander Rue
Rep. Mimi Stewart
Rep. James R.J. Strickler
Rep. Don L. Tripp

Advisory Members

Sen. Carlos R. Cisneros
Rep. Anna M. Crook
Rep. Nora Espinoza
Rep. Candy Spence Ezzell
Rep. Ben Lujan
Rep. James Roger Madalena
Rep. Bill B. O'Neill
Sen. Nancy Rodriguez
Sen. John C. Ryan
Rep. Henry Kiki Saavedra
Sen. Peter Wirth

Absent

Rep. Joseph Cervantes, Vice Chair
Rep. Brian F. Egolf, Jr.

Sen. Rod Adair
Sen. Vernon D. Asbill
Sen. Dede Feldman
Sen. Timothy Z. Jennings
Rep. Rodolpho "Rudy" S. Martinez
Sen. Cisco McSorley

Staff

Kim Bannerman
Gordon Meeks
Jeret Fleetwood

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 Legislative Council Service web site.

Wednesday, June 1

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

Interim Committee Protocols

Raúl E. Burciaga, director, Legislative Council Service, provided the committee with an overview of several interim committee protocols. He began by discussing establishment of a quorum for committees, pointing out that the WNRC needs 11 voting members to establish a quorum. Mr. Burciaga noted that committees that do not have a quorum present may still operate as a special subcommittee for the purpose of taking testimony.

Mr. Burciaga went on to discuss the rule provision that allows a majority of members from one house on a committee to block the actions of another house. In relation to the WNRC, the provision allows five senators or seven representatives to block an action by the committee if all vote to oppose the action. However, he pointed out that interim committees often perform actions by consensus, making voting and blocking unnecessary.

Finally, Mr. Burciaga discussed travel by interim committees. He explained that the New Mexico Legislative Council would allow interim committees to meet outside of Santa Fe during the 2011 interim, but only during July and August. He reminded the committee that a special session on redistricting was anticipated for September, so there would be no meetings during that time. Mr. Burciaga also noted that the legislative council requires interim committees to finish their work by December 1.

Questions and comments to Mr. Burciaga included such topics as:

- the Internal Revenue Service tax on per diem payments to legislators as income; and
- that interim committees began traveling both to help make the legislative process more accessible to citizens and because hotel rooms in Santa Fe during summer months are simply too expensive.

Equine Herpes Virus (EHV-1) Outbreak Update

Dr. Dave Fly, state veterinarian, and Myles Culbertson, director, New Mexico Livestock Board, provided the committee with an update regarding a recent outbreak of EHV-1 in several western states, including New Mexico. Dr. Fly explained that cases of the virus had been identified in horses that recently attended a cutting horse event in Ogden, Utah. He went on to discuss some symptoms of the virus. After receiving questions from committee members requesting further information, Dr. Fly presented an in-depth discussion of the incubation period of the virus. He explained that the virus is spread primarily through nasal mucus and that common vaccines are not working on this strain of the virus. Dr. Fly also discussed the long-lasting impact that the virus has on the athletic ability of a horse.

Dr. Fly and Mr. Culbertson also discussed how the state is monitoring exposed horses. They explained that horses that attended the Utah event and horses that reside on the same premises as those horses should be treated as suspect cases and monitored for at least seven days. Dr. Fly and Mr. Culbertson also explained management strategies for horses with confirmed cases of the virus and recommended that owners of those horses that might have been exposed to the virus have the horses tested. However, they also pointed out that there are levels of risk to consider, explaining that horses who live on ranches and have had no contact with other horses are at low risk for virus exposure and may not need to be tested. Committee members expressed concern regarding the spread of the disease to racehorses. Dr. Fly noted that while the virus has been found in racehorses on the East Coast, so far there is no link to racehorses in the West or New Mexico. However, a possible case of the virus was being examined in a Texas racehorse training facility but has not been confirmed.

Questions and comments included the following topics:

- the increasing number of unwanted horses in New Mexico;
- the reluctance by the United States Department of Agriculture (USDA) to allow increased on-site testing for equine infectious anemia in New Mexico, even though New Mexico only has one certified testing lab located in Albuquerque, which holds up the sale and transport of horses; and
- that there is no evidence that EHV-1 can spread to humans.

★ Regarding the committee's discussion of equine infectious anemia testing, the committee directed staff to send a letter on behalf of the committee to the USDA, urging it to allow on-site veterinarian testing for the disease.

Status Reports — Office of the State Engineer (OSE) and the Interstate Stream Commission (ISC)

John D'Antonio, state engineer, and Estevan Lopez, director, ISC, provided the committee with an update regarding water issues in New Mexico. Mr. D'Antonio began by addressing the drought conditions facing the state in 2011. He provided the committee with charts and graphs showing the lack of precipitation and snowpack across the state. He pointed out that the period between January 2011 and April 2011 was the third-driest on record in the state and the driest on record for the Albuquerque and Roswell areas. However, Mr. D'Antonio noted that, statistically, New Mexico's summer precipitation in years after poor spring snowpack has been significantly

higher than normal, and hopefully that will again be the case this year.

Mr. D'Antonio and Mr. Lopez gave the committee an update on the activities of the OSE and the ISC. Mr. D'Antonio highlighted the continued efforts of the OSE to improve its quality of services and cut costs where possible. Mr. Lopez then spoke to the committee about the various Indian water rights settlements in the state. He highlighted the Navajo, Taos and Aamodt settlements. He also reminded the committee of the continued need for cost-share funding through the Indian Water Rights Settlement Fund. Currently, there is an estimated need of \$130 million from the state over the next 10 years to ensure the receipt of \$1.2 billion in federal funds.

To update the committee further on the activities of the ISC, Mr. Lopez discussed the status of the Ute Pipeline project and the Pecos River settlement and the status of the Rio Grande Compact. Regarding the Pecos River settlement, Mr. Lopez noted that due to the extreme drought in the region, the ISC was pumping its ground water wells to augment surface water supply. He emphasized that the state is fully compliant with its required deliveries to Texas because of its compact credit from 2010. However, to meet the settlement's terms, water must also be delivered to the Carlsbad Irrigation District, which is why the pumping is necessary at this time.

Mr. Lopez discussed the Rio Grande Compact in depth. He noted that at the end of 2010, there was a credit of water stored in Elephant Butte Reservoir. Based on this credit, the Texas Rio Grande Compact commissioner had requested a relinquishment of 100,000 acre-feet of compact credit, but due to the detrimental effects relinquishment would have to New Mexico, the OSE did not agree to relinquish the water. Mr. Lopez emphasized that the relinquishment would have been detrimental in large part due to the 2008 operating agreement on the lower Rio Grande between El Paso County Water Improvement District No. 1, the Elephant Butte Irrigation District and the U.S. Bureau of Reclamation, to which the state was not a party. Mr. Lopez told the committee that the OSC and ISC have determined that the operating agreement does not create a sustainable water management system for the lower Rio Grande and must be modified.

Mr. Lopez then turned to other issues in New Mexico, including the pending middle Rio Grande biological opinion, the Colorado River collaboration between New Mexico and the other six basin states and the Gila River planning process for the Arizona Water Settlement Act of 2004. He noted that the biological opinion for the Rio Grande silvery minnow and the southwestern willow flycatcher is currently being formulated by various federal agencies for 2012. Depending on the outcome of the opinion, new endangered species litigation may be required to sort out water usage in the middle Rio Grande valley. Mr. Lopez briefly noted New Mexico's continued collaboration with the Colorado River basin states and Mexico to share the Colorado River and asserted the need for further participation by the state in this area to ensure the state continues to maximize its water entitlements on the river. Regarding the Gila River, Mr. Lopez briefly set forth the current process for selecting projects for the state plan required by 2014. To wrap up the discussion of the activities of the ISC, Mr. Lopez briefly discussed the status of the New Mexico Strategic Water Reserve and the state and regional water plans.

Mr. D'Antonio presented the OSE's work around the state. He discussed the active water resource management initiative. He noted the OSE's progress toward implementing the program, emphasizing that the office is 90% ready to proceed with the program. However, because the program continues to be tied up in active litigation, it is unclear when the program will become fully functional.

Mr. D'Antonio turned to the recent designation of critical management areas in the eastern part of the state. He also discussed dam safety matters, informing the committee that there are currently 165 deficient dams statewide and that to fix the dams, the OSE estimates that it will need \$5 million per year for 10 years. Along with the dam safety issue, Mr. D'Antonio told the committee of the federal push to address unsafe levees nationwide and how this will affect New Mexico's hundreds of miles of levees.

Lastly, Mr. D'Antonio gave the committee an update on the litigation and appeals in which the OSE is involved. He also highlighted major proceedings in the water rights adjudications proceeding around the state.

Questions and comments included the following topics:

- the effectiveness of the Pecos River settlement, the recent replacement wells drilled in the Lake Arthur well field, public involvement in the settlement process and the use of state funding for implementation of the settlement;
- progress of the shore projects at Ute Reservoir;
- the state's involvement with the federal government to address unsafe levees and how those costs are being covered;
- the status of the domestic well challenge in the New Mexico Supreme Court; and
- how the ISC is ranking projects for the Arizona Water Settlement Act of 2004 and concern over the impending deadline for submitting the projects to the federal government without forfeiting water.

2011 Interim Work Plan, Itinerary and Meeting Schedule

The committee added the following topics to the proposed work plan:

- acequia issues;
- an update on the lower Rio Grande, including the operating agreement;
- a discussion of all federal cost-sharing projects in which the state is involved, including the status of the Indian Water Rights Settlement Fund;
- Water Trust Board funding;
- issues associated with budget cuts at the New Mexico Department of Agriculture county extension services;
- energy issues, including alternative energy development in the state and national security issues related to energy production;
- fish and wildlife issues, including endangered species and invasive species updates;
- industrial hemp production;
- updates on the status of levees in the state;
- the unwanted horse problem in New Mexico; and
- the status of the St. Augustine-area well permit applications discussed by the committee

in 2010.

The committee also approved the following meeting dates and locations:

June 30	Santa Fe;
August 1-3	Silver City;
October 11	Santa Fe; and
November 7-8	Santa Fe.

Having no further business, the committee adjourned at 5:05 p.m.