

Revised: July 23, 2009

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

June 5, 2009
Room 322, State Capitol
Santa Fe

Present

Sen. Phil A. Griego, Chair
Rep. Andy Nunez, Vice Chair
Rep. Paul C. Bandy
Rep. Ray Begaye
Rep. Joseph Cervantes
Sen. Mary Jane M. Garcia
Rep. Thomas A. Garcia
Rep. William J. Gray
Rep. Dona G. Irwin
Rep. Larry A. Larrañaga
Sen. Gerald Ortiz y Pino
Sen. Sander Rue
Rep. Mimi Stewart

Advisory Members

Sen. Rod Adair
Rep. Brian F. Egolf, Jr.
Rep. Candy Spence Ezzell
Sen. Dede Feldman
Rep. Ben Lujan
Rep. James Roger Madalena
Sen. Cisco McSorley
Rep. James R.J. Stickler

Guests

Sen. Bernadette M. Sanchez
The guest list is in the original meeting file.

Absent

Sen. Clinton D. Harden, Jr.
Rep. Kathy A. McCoy
Sen. George K. Munoz
Sen. Steven P. Neville
Sen. Mary Kay Papen

Sen. Vernon D. Asbill
Rep. Anna M. Crook
Sen. Carlos R. Cisneros
Rep. Nora Espinoza
Sen. Timothy Z. Jennings
Sen. Gay G. Kernan
Rep. Danice Picraux
Sen. Nancy Rodriguez
Rep. Henry Kiki Saavedra
Rep. Jeff Steinborn
Rep. Don L. Tripp
Sen. Peter Wirth

Staff

Jon Boller
Gordon Meeks
Jeret Fleetwood

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

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

Interim Committee Protocols

Paula Tackett, director, Legislative Council Service (LCS), provided the committee with testimony regarding interim committee protocols. She explained that, at the beginning of the 2008 interim, the Legislative Council directed staff to provide each interim committee with a brief presentation on some of the basic rules, policies and logistics regarding committees. Ms. Tackett went on to note that the council had provided staff with similar directions this interim.

Ms. Tackett began by noting that each committee must have a quorum to function and that a quorum for the WNRC consists of 10 voting members. She went on to explain that if a quorum is absent, a special subcommittee may be convened but only for the purpose of receiving testimony. She also pointed out that the speaker of the house and the president pro tempore may appoint additional members to the committee in certain situations, such as out-of-town meetings where a quorum is not present and the committee is required to act upon a motion.

Ms. Tackett went on to explain that only voting members may vote on matters before the committee and that once a quorum has been established, a quorum is presumed to exist until a voting member challenges the existence of the quorum or a roll call vote is requested. If a majority of the total committee membership of either chamber votes no on any measure before the committee, that measure will be deemed to have failed even if a majority of the voting members of the committee have approved the measure. She also pointed out that seating on the dais in meeting rooms at the capitol is generally reserved for voting members of a committee, with advisory members sitting at the tables in front of the dais or in the front row of seats in the audience.

Ms. Tackett went on to discuss the sound system installed at the capitol. She noted that the system was designed to be rather sensitive, adjusting its own volume relative to that of the speaker's voice, but that that sensitivity could create problems. For instance, Ms. Tackett indicated that the clicking of keys on laptop computers can be picked up by the system and cause it to turn itself down, making it difficult for voices to be audible via the speakers in the room. She also pointed out that laptop monitors in front of a microphone and papers covering a microphone cause audibility issues for the sound system. Ms. Tackett suggested that members only switch the microphone on when they wish to speak and that they be sure to switch it off once they are finished, lest private conversations be inadvertently picked up.

Finally, Ms. Tackett discussed out-of-state conferences, noting that council policy allows for reimbursement for attendance at conferences of organizations of which New Mexico is a dues-paying member. She also emphasized that prior approval from leadership is required for attendance at all out-of-state conferences.

Raúl E. Burciaga, assistant director for drafting, LCS, provided the committee with a calendar that listed suggested meeting dates for each interim committee. He explained that the council has directed staff for the past several interims to develop a calendar and suggested meeting dates that minimizes attendance conflicts for voting members. Mr. Burciaga went on to explain that the meeting dates listed for each committee may be changed by the committee, but approval of those changes would require the approval of the council at its June 24 meeting.

Office of the State Engineer/ Interstate Stream Commission

Estevan Lopez, director of the Interstate Stream Commission, provided the committee with an update regarding the activities of the Office of the State Engineer (OSE) and the Interstate Stream Commission (ISC). He began by noting that the new administration and congressional turnover held a significant amount of promise for New Mexican water issues, pointing out that the congressional committee that typically addresses water-related issues is chaired by Senator Bingaman. Mr. Lopez also listed a number of federal appointees who either have ties to New Mexico or are familiar with western water and land-use issues and who are now serving the federal government in various capacities.

Mr. Lopez went on to provide the committee with the following summary of various water issues confronting New Mexico.

Indian Water Rights Settlements

- Navajo - Federal authorization included in the Omnibus Public Land Management Act signed by President Obama on March 30
- Taos - Federal legislation introduced in the Senate on May 4
- Aamodt - Federal legislation introduced in the Senate on May 20
- Continued need for state cost-share funding through the Indian Water Rights Settlement Fund (estimated need of \$105 million over the next 10 years)

Ute Pipeline Project

- Federal authorization included in the Omnibus Public Land Management Act signed by President Obama on March 30
- Continued need for state cost-share funding

Pecos River Settlement

- Settlement minimum water rights acquisitions and pumping capacity essentially complete
- Settlement parties considering whether to call settlement good with existing progress
- Once settlement implemented, funding for additional water rights and operation of well fields will be needed

Middle Rio Grande Biological Opinion

- Existing biological opinion provides compliance with the Endangered Species Act for all middle Rio Grande water users
- Federal agencies developing a new biological opinion by March 2010 because of reduced availability of both water and federal funding
- Long-term, sustainable water operations regime is the goal
- Requires active involvement by state and other non-federal agencies
- Possibility of new endangered-species litigation
- Need for continued funding and legislative support

Gila River Planning (Arizona Water Settlement Act 2004)

- Up to 14,000 acre-feet of additional water and between \$66 million and \$128 million of federal funding available
- Need a plan by 2014
- Open, inclusive stakeholder planning process is underway
- Legislative funding (\$800,000) extended through FY 2010
- Supply/demand; economic and ecological forums in progress to determine study methods

Strategic Water Reserve

- Vaughan pipeline project on the Pecos
- Rio Grande water rights for refugium and habitat projects
- Continued funding needed to ensure projects' success

State Water Plan/Regional Water Plans

- Update of state water plan in progress
- 21 public meetings held throughout the state
- Regions requesting funding for updating regional water plans
- Continued funding needed to ensure projects' success

Acequia Construction Program

- Continued work to expend prior year capital funds
- Working with New Mexico Acequia Association and others to streamline funding processes
- President's budget recommendation for 2010 has no funding for U.S. Army Corps of Engineers acequia programs
- Need a New Mexico champion in Congress to assure continued federal funding
- Need continued state funding support

Active Water Recourse Management (AWRM) Initiative Progress

- Statewide readiness to proceed (seven priority basins) at: 83%
- Water rights files abstracted into WATERS database: 86%
- Implementation of metering: 83%

- Technical and legal preparation: 68%
- Current number of water masters hired: 25 (18 are AWRM water masters, others court- appointed)
- Emphasis on alternative administration agreed upon by basin stakeholders in lieu of strict priority administration
- Development of protocols and guidelines defining water master authority and activities in the field
- Working with acequia community to increase ditch/acequia efficiencies
- Working with acequia community on statewide funding issues
- Increased communication with acequia community and public generally
- Ongoing metering of surface and ground water statewide and metering agreements between the state engineer and acequias
- Successes in Gallinas Basin, Nambe/Pojoaque/Tesuque Basin, Chama Basin, Mimbres and Lower Rio Grande

Critical Management Areas

- Current focus is on eastern part of the state (i.e., Hobbs, Clovis and Portales)
- Looking at regional drawdown effects on aquifer and limited aquifer thickness
- Goals:
 - Protect existing water users
 - Prolong life of High Plains Aquifer
 - Develop general guidelines for water rights administration (Lea County and Curry County/Portales guidelines)

Dam Safety

- 142 deficient dams statewide
- Estimated cost is \$5 million per year for 10 years to address these dams
- Funding for dams was taken during recent legislative session (\$4.5 million)
- Amending dam safety rules and regulations to conform to recent legislative changes to Section 72-5-32 NMSA 1978 (height and storage limits increase)
- Levees — big federal push to address unsafe levees nationwide; New Mexico has hundreds of miles of levees

House Memorial 42 Task Force (2007 session)

- Task force looking at Section 72-1-9 NMSA 1978 (40-year planning — ability to hold water rights unused)
- Task force considering draft guidelines for water development plans based on stakeholder-agreed consensus memo, existing (draft) water development template

Deep Well Legislation

- With amendments to Section 72-12-25 NMSA 1978, state engineer now has the authority to declare all ground water basins in the state
- State engineer's authority limited to acting on applications to appropriate for municipal purposes of use

- State engineer directed staff to develop legal and technical bases for declaring those aquifers that will benefit most from his administration

Major Litigation and Appeals Update

- AWRM ("Tristate"): challenge to the state engineer's framework rules for implementing priority administration, whether the water rights to be administered have been adjudicated or not, as directed by the legislature pursuant to Section 72-2-9.1 NMSA 1978; pending before the court of appeals, fully briefed and submitted to the panel for decision
- Domestic Well Statute ("Bounds"): challenge to the constitutionality of the domestic well statute, Section 72-12-1.1 NMSA 1978; pending before the court of appeals, fully briefed, but no panel has been assigned, which must occur before being submitted for decision
- State Land Office ("SLO") Reserved Water Rights: the SLO claimed water rights under the federal reserved water rights doctrine in the San Juan River adjudication; court of appeals upheld the district court's rejection of the SLO's legal theory, and New Mexico Supreme Court denied certiorari; SLO filed for certiorari in the United States Supreme Court, which was denied; after some 20 years, the final decision is that the SLO does not have a federal reserved water right

Adjudications Status Report

- Litigation and adjudication program (LAP) just completed its annual report of the status of all pending adjudications, dedicated resources, resource assessment and priorities for FY 2010; state engineer requests opportunity to present report to committee, in light of interest in adjudication reform; information from report will benefit the committee's ability to evaluate reform for potential benefits and possible negative consequences
- Water rights settlement negotiations and settlement update will be summarized with presentation of annual adjudication report
- Summary of the state engineer's and LAP's comments and considerations on reforms being presented by administrative office of the courts for discussion

Questions and comments focused on:

- the use of church records in assessing water rights dates;
- commending the state engineer and the ISC on the use of negotiation rather than litigation in settling the various Indian water rights claims;
- the potential for loss of life and significant property damage resulting from dam safety/failure issues;
- the fact that the use of federal stimulus funds for repair and maintenance of dams is not allowed;
- the availability of federal matching funds for acequia construction programs;
- deep-well aquifers on Albuquerque's west side;
- certification standards for levees; and

- the amount of money needed to implement the various Indian water settlements now that Congress is in the process of approving them.

Work Plan and Meeting Dates

Staff presented the committee with a list of focus areas suggested by the council. The committee also discussed a number of additional issues to add to the work plan, which will be presented to the council for approval in late June.

Staff also pointed out that the Courts, Corrections and Justice Committee would like to have a joint meeting with the committee in August.

Senator Griego raised the issue of changes by the Taxation and Revenue Department (TRD) to the agricultural exemption to property tax assessments. He explained that the department is considering allowing smaller plots of land for the exemption.

Mike O'Melia, deputy director, Property Tax Division, TRD, explained to the committee that the proposed change would allow property owners, particularly small farmers, more discretion in their property tax claims and will likely allow farmers whose operation is currently too small to meet the agricultural exemption threshold to meet it. Mr. O'Melia emphasized that the department intends to continue to hold meetings on the proposed changes.

Senator Griego requested that Mr. O'Melia relay a request to the secretary of taxation and revenue for postponing any changes until after the committee has had a chance to hold hearings on the subject and asked staff to find out if the Revenue Stabilization and Tax Policy Committee will be holding hearings on the topic.

The committee had a lengthy discussion about the formation of a subcommittee to address acequia issues. Members of the committee raised the possibility of devoting an entire meeting day to acequia issues as an alternative.

Eventually, a motion in favor of the creation of the subcommittee was passed with one dissenting vote.

The committee selected the following meeting dates and locations:

- July 6-7 Socorro
- August 20-21 Angel Fire (joint meeting with the Courts, Corrections and Justice Committee)
- September 21-22 Silver City
- October 27-28 Espanola
- November 30-
December 1 Santa Fe

Staff noted that the council would have to approve the meeting in Espanola and the meeting on December 1, along with the formation of a subcommittee.

There being no further business, the committee adjourned at 1:25 p.m.

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