

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

June 26, 2012
Santa Fe

The first meeting of the Water and Natural Resources Committee (WNRC) was called to order by Representative Joseph Cervantes, chair, at 10:20 a.m. on Tuesday, June 26, 2012, in Room 322 of the State Capitol.

Present

Rep. Joseph Cervantes, Chair
Sen. Phil A. Griego, Vice Chair
Rep. Paul C. Bandy
Rep. Ray Begaye
Rep. Brian F. Egolf, Jr.
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. Gerald Ortiz y Pino
Sen. Mary Kay Papen
Sen. Sander Rue
Rep. James R.J. Strickler

Absent

Sen. George K. Munoz
Sen. Steven P. Neville
Rep. Andy Nuñez
Rep. Mimi Stewart
Rep. Don L. Tripp

Advisory Members

Sen. Rod Adair
Sen. Carlos R. Cisneros
Rep. Anna M. Crook
Rep. Candy Spence Ezzell
Sen. Dede Feldman
Rep. James Roger Madalena
Rep. Rodolpho "Rudy" S. Martinez
Sen. Cisco McSorley
Rep. Bill B. O'Neill
Sen. Nancy Rodriguez
Rep. Henry Kiki Saavedra
Sen. Peter Wirth

Sen. Vernon D. Asbill
Rep. Nora Espinoza
Sen. Timothy Z. Jennings
Rep. Ben Lujan
Sen. John C. Ryan

Staff

Jon Boller, Legislative Council Service (LCS)
Gordon Meeks, 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 web site.

Tuesday, June 26

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

Status Reports — Office of the State Engineer; Interstate Stream Commission

Scott Verhines, state engineer, introduced himself and members of his staff to the committee. Mr. Verhines then provided the committee with updates on a number of subjects.

Mr. Verhines began by discussing the large and severe wildfires in New Mexico's watersheds over the past two years. He explained that because upland watersheds produce much of the surface water on which New Mexico relies, large and severe wildfires in those watersheds can significantly alter the water supplies for years. Mr. Verhines also pointed out that flooding tends to occur downstream of fire burn scars, containing sometimes large quantities of ash and debris, particularly as monsoon weather patterns set in.

John Longworth of the Office of the State Engineer (OSE) provided the committee with an update on New Mexico's drought status and weather outlook. He explained that New Mexico's statewide precipitation from January 2012 to May 2012 was about 56 percent of normal and significantly less in some areas. However, Mr. Longworth noted that while precipitation totals did represent some improvement over the same period in 2011, temperatures for New Mexico and the entire region were also much higher than normal from January 2012 through May 2012. Mr. Longworth went on to summarize some of the 2012 precipitation deficits in various New Mexico locales. He also provided the committee with drought information for the United States, pointing out that the Southwest is experiencing moderate to extreme drought. Mr. Longworth also noted that New Mexico is expected to show at least some improvement through the next several months.

Estevan Lopez, director of the Interstate Stream Commission (ISC), provided the committee with an update on the state's response to fire and flooding issues, particularly regarding the Whitewater Baldy Fire. He explained that maps had been developed indicating the location of public water suppliers and wells likely to be impacted by flooding from the fire's burn

scar. Mr. Lopez also noted that OSE personnel had performed initial assessments of mitigation options in the Glenwood area and that ISC staff is working with the area's burn area emergency rehabilitation team.

Mr. Lopez went on to discuss the status of the various Indian water rights settlements in the state. He noted that construction has begun on the Navajo settlement project and that the revised Taos and Aamodt settlements are under final review by the parties. The state's cost-share obligation for the three federally authorized settlements is approximately \$130 million, he said, which is being paid through the Indian Water Rights Settlement Fund. Since 2005, \$25 million has been appropriated to the fund, he explained, and the OSE and the ISC recommend that \$15 million per year be allocated to the fund over the next few years. Mr. Lopez also discussed the annual state tribal summit, which took place on June 8, 2012. He indicated that while Governor Martinez has expressed support for full funding of the state's cost-share obligation in the pending settlements, counsel for the state explained that in light of the changes in the federal approach to settlement funding, New Mexico does not support future negotiations for Indian water rights settlements that are centered around a significant infrastructure component, unless the federal infrastructure component will be funded by the United States as it has in the past.

Mr. Lopez outlined a water issue in the Jal Basin, explaining that Midland, Texas, purchased the T-Bar Ranch on the Texas-New Mexico border in the 1960s as a potential well field. He noted that, in response to the severity of recent drought conditions that had virtually dried up the three reservoirs the city uses, Midland has initiated plans to develop a well field and pipeline on the T-Bar Ranch. Mr. Lopez explained that the well field would be located in the same small aquifer that serves as Jal's sole water supply. He went on to note that officials from the two cities have agreed to work together to address their water needs.

Mr. Lopez provided the committee with testimony regarding the Ute Pipeline Project, indicating that while work is scheduled to begin on the intake structure this summer, the Village of Logan has filed a lawsuit requesting that all work on the project stop until National Environmental Policy Act of 1969 work occurs. He noted that while the ISC is not a party to the suit, it is monitoring the suit closely.

Regarding the Arizona Water Rights Settlements Act, Mr. Lopez said that after nine months of evaluating the 41 proposals submitted, 16 were chosen for further study and assessment.

Several issues were raised by Mr. Lopez in reference to litigation over the 2008 Rio Grande Project Operating Agreement between the United States Bureau of Reclamation (Reclamation), the Elephant Butte Irrigation District (EBID) and El Paso County Water Improvement District No. 1 (EP1). He explained that approximately 170,000 acre-feet of surface water per year has been reallocated from the EBID to EP1 in full supply years, estimates of the value of which range from several hundreds of millions of dollars to \$2.5 billion. As a result of reduced allocations of surface water to the EBID, farmers are having to pump additional ground water, which, he noted, doubly impacts the aquifer because: 1) reduced surface water is

available to recharge the aquifer; and 2) increased pumping reduces the amount of ground water in the aquifer. In addition, he said, the Reclamation released 33,000 acre-feet of New Mexico's credit water to EP1 and Mexico without authorization from the state, none of which went to the EBID. Also at issue, Mr. Lopez remarked, is the Reclamation's claims to ownership of ground water under lands within the Rio Grande Project.

Mr. Lopez also touched on the following topics:

- the Western States Water Council;
- the Pecos River settlement and pumping targets for the Carlsbad Irrigation District that are not being met;
- Water Trust Board issues and projects, including reconsideration of two projects that were not initially approved; and
- appeals of water litigation decisions involving the state.

Questions and comments from the committee included:

- New Mexico's funding obligation for the Ute Pipeline Project is about 15 percent of the total project cost, or about \$75 million;
- issues regarding intervenors on the Navajo settlement lawsuit and their discovery requests for documents;
- the requirement for tribal entities to obtain a permit from the OSE to sell water rights to other entities;
- the implications of the decision in *Carangelo v. Albuquerque Bernalillo County Water Utility Authority* and whether the state has jurisdiction of San Juan/Chama water;
- how hydrologists are studying chloride levels in wells near the Pecos River to determine if a well is contaminating the artesian aquifer in the area;
- state jurisdiction regarding removal of fire-damaged trees in national forests;
- issues raised by the reluctance expressed by the state at the annual state tribal summit to commit to further Indian water rights settlements without federal commitment to fund settlement projects;
- discussions regarding watershed health and fire management at the Western States Water Council;
- ownership of water in the lower Rio Grande; and
- domestic wells in villages and towns affected by nearby developments.

2012 Interim Work Plan, Itinerary and Meeting Schedule

Staff provided the committee with a list of proposed meeting dates and locations, as well as suggested topics for a work plan.

The committee approved the following meeting dates and locations:

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| July 30-31 | Las Cruces |
| August 27-28 | Truth or Consequences (joint meeting with Courts, Corrections and Justice Committee) |
| October 15-16 | Ruidoso |
| November 8-9 | Albuquerque/Santa Fe |

Representative Cervantes said he sees the committee's functions as hearing legislative proposals, with an emphasis on dialogue if there is not consensus on a particular proposal, providing information to committee members and providing outreach to communities and constituents. He also noted that he would prefer that the committee not duplicate the efforts of other interim committees during the interim.

The committee adopted the work plan without objection.

There being no further business, the committee adjourned at 12:35 p.m.