

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

**June 30, 2011  
Room 322, State Capitol  
Santa Fe**

The second meeting of the Water and Natural Resources Committee was called to order by Senator Phil A. Griego, chair, at 9:10 a.m. on Thursday, June 30, 2011, in Room 322 of the State Capitol.

**Present**

Sen. Phil A. Griego, Chair  
Rep. Joseph Cervantes, Vice Chair  
Rep. Ray Begaye  
Rep. Brian F. Egolf, Jr.  
Rep. Thomas A. Garcia  
Rep. William "Bill" J. Gray  
Sen. Clinton D. Harden, Jr.  
Rep. Dona G. Irwin  
Rep. Larry A. Larrañaga  
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. Rod Adair  
Sen. Vernon D. Asbill  
Sen. Carlos R. Cisneros  
Sen. Dede Feldman  
Rep. Ben Lujan  
Rep. James Roger Madalena  
Rep. Rodolpho "Rudy" S. Martinez  
Sen. Cisco McSorley  
Rep. Bill B. O'Neill  
Sen. Nancy Rodriguez

**Absent**

Rep. Paul C. Bandy  
Sen. Mary Jane M. Garcia  
Sen. George K. Munoz

Rep. Anna M. Crook  
Rep. Nora Espinoza  
Rep. Candy Spence Ezzell  
Sen. Timothy Z. Jennings  
Sen. John C. Ryan  
Rep. Henry Kiki Saavedra  
Sen. Peter Wirth

**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.

### **Thursday, June 30**

#### **Welcome and Committee Business**

After calling the meeting to order, the chair welcomed all the committee members. He then asked for review and discussion of the minutes. There being no discussion on the minutes, a motion to approve the minutes was made and seconded. The minutes were approved unanimously.

#### **Acequia Report**

Paula Garcia, executive director of the New Mexico Acequia Association (NMAA), provided the committee with an update regarding acequias in New Mexico and the work of the NMAA. She began with an overview of acequias, pointing out that they have managed water in New Mexico for centuries. Ms. Garcia also emphasized that acequias help support the social and economic livelihood of rural families across the state. She noted that acequias are recognized as political subdivisions of the state, and each is governed by a three-member elected commission and a mayordomo. Along with discussing their individual political status, Ms. Garcia explained how many acequias have joined the Congreso de las Acequias, where regional delegates represent various acequia interests around the state.

Ms. Garcia went on to discuss the importance of strategic investment in acequia infrastructure, explaining that acequia users understand that money is tight in today's economy. She told the committee that the strategic investment strategy maximizes leverage of federal, state and local government dollars and allows for phased projects to use funds more efficiently. However, Ms. Garcia noted that some capital outlay reform would help in this regard. She explained that the NMAA recommends that:

- technical assistance on project planning should be readily available to acequias;
- engineering designs for larger projects should be completed before construction funds are approved; and
- projects ready for construction can be combined with other statewide priorities.

Ms. Garcia then turned to the importance of self-governance by acequias. She explained that the NMAA has developed a specialized program to strengthen acequia governance and

pointed out that teaching methods and educational materials used by the NMAA, such as the bilingual *Acequia Governance Handbook*, are culturally appropriate.

Next, Ms. Garcia discussed both the impact of drought conditions and water right transfers on acequias. She explained that while acequias have adapted their practices to compensate for water shortages, recent drought conditions have had a dramatic impact on many acequias, with some not receiving water for over three weeks. She said that acequias were authorized by the legislature to approve or deny certain water rights transfers out of an acequia system. However, she cautioned that while acequias enjoy a certain amount of protection, transfers of water rights from all rural communities to other regions of the state should be of some concern to the legislature. Ms. Garcia pointed to the proposed well field near San Augustin as an example of the potential for water rights to be exported from rural New Mexico to other areas. She suggested that the legislature consider enacting some degree of protection for such communities.

Questions and comments included the following topics:

- clarification on acequias' ability to approve water rights transfers, including:
  - Office of the State Engineer (OSE) involvement in informing water rights transfer applicants that they must have the approval of the acequia before the OSE will consider the transfer; and
  - the difference between the sale or transfer of ownership of a water right and transferring its place of use;
- the federal money available once an emergency is declared in an area, such as in areas affected by wildfires;
- the impact of the Las Conchas fire and other wildfires on watershed health and on acequias;
- the availability of money from the U.S. Department of Agriculture (USDA) for watershed maintenance and emergency watershed planning to prevent material from burned areas from getting into water supplies;
- the acequias' power of eminent domain;
- that currently, engineering designs are not required of all projects seeking capital outlay funding;
- the NMAA workshops for non-acequia entities on water management;
- the seniority of acequia water rights — with the exception of pueblos, acequia water rights are senior to most other water rights holders;
- that soil and water conservation districts do most of the salt cedar eradication work in the state; and
- drought condition problems for acequias, including low water flow that does not provide adequate hydraulics for the water to reach all the parcientes on an acequia.

### **Integrating Land Use and Water Planning in New Mexico**

Susan Kelly, director of the Utton Transboundary Resources Center, provided the committee with a brief overview of the center, explaining its unique blend of expertise in water and natural resources law. Ms. Kelly said that the center produces the annual *Water Matters!* publication, convenes conferences on various water-related topics and provides research and guidance on

water issues to elected officials, water managers, scientists, university faculty and students, the media and the public. She emphasized that the center hopes to continue its work, despite the pressure exerted in today's budget climate.

Ms. Kelly explained that water-use questions presented to the center often lead to larger land-use issues, prompting the center to produce a "white paper" on land use and water supply. She noted that while population growth estimates vary, it is clear that there will be increased pressure on the water supply over the next 40 years, making it pivotal that the decision-making process for land and water use planning strike a balance between economic growth, protection of the environment and respect for senior water rights. As examples of ways to strike such a balance at the state level, she suggested reducing the number of loopholes in subdivision rules, developing standard methodologies for calculating subdivision hydrology, coordinating projections and developing a state planning mechanism that keeps agencies informed about various development projects. She emphasized that the solution is not to place subdivision approval control with the OSE, but rather to coordinate OSE involvement with county control because of the state's interests in water development.

Questions and comments included the following:

- possible development of a bill to implement the center's recommendations;
- how the center addresses water issues on a greater level than individual lawsuits and therefore tries to avoid becoming involved with them;
- that looking at the cumulative effect of OSE actions with regard to land use planning helps people understand what a massive job the state engineer faces;
- the denial of permits by the OSE outside of Albuquerque;
- that while there is no formal relationship between the center and developers or other stakeholders, many show up at the conferences it convenes;
- how lack of funding makes the need for careful decision making even more critical than before;
- the methods used to calculate the percentage of water used for agriculture;
- whether agriculture's use of 78 percent of New Mexico's water is actually consumptive use; and
- whether New Mexico has any laws requiring coordinated land planning.

#### **Status Report — State Parks Division of the Energy, Minerals and Natural Resources Department (EMNRD)**

John H. Bemis, secretary-designate, EMNRD, provided the committee with a brief overview of the department, particularly the State Parks Division. He noted that the division is an enterprise agency because it brings economic growth to areas around the state where parks are located. Secretary Bemis went on to discuss the department's budget and current vacancies.

Tommy Mutz, director, State Parks Division, discussed the status of several state parks, explaining that many had been closed due to the threat of wildfires. He also noted that while Sumner Lake State Park had also been closed due to the presence of quagga mussels, it had recently reopened. Mr. Mutz emphasized the division's commitment to providing services to the

citizens of the state despite drought conditions and staff shortages.

Tony Delfin, state forester, provided the committee with a more detailed update on wildfires burning in or near New Mexico. He explained that to date in fiscal year 2011, 1,021 fires in New Mexico have burned about 756,249 acres and more than 100 structures. Mr. Delfin provided details about the major fires in New Mexico. He also touched on the Wallow Fire, which had already burned 538,043 acres in New Mexico and Arizona and was threatening homes and communities in Luna and Reserve. Mr. Delfin pointed out that the major fires he discussed qualify for Federal Emergency Management Agency (FEMA) fire management assistance grants, which would cover 75 percent of the state's cost for suppressing the fires. He also said that the cost of this year's fire season to date is about \$22 million. Finally, Mr. Delfin explained that there is still a significant risk of human-caused and dry lightning fires and noted that a pre-monsoon pattern seems to be in place but had not yet arrived.

Tod Stevenson, director, Department of Game and Fish (DGF), provided the committee with additional information about closure of areas controlled by the DGF, explaining that areas in Pecos, Chama, the Gila Wilderness and Cimarron had been shut down until the threat of fires lessens.

Questions and comments included the following topics:

- that in 2002, analysis was performed to determine the total economic impact of the Cerro Grande fire in Los Alamos, and similar research should be done this year; however, it will take years to determine the total impact of this year's fire season;
- how, typically, the state pays the up-front cost of fire suppression, and FEMA reimburses the state after about 18 months;
- that extra firefighting staff includes firefighters, dispatchers and accountants, and individual field offices hire additional firefighting staff, which can include out-of-state consultants;
- the State Parks Division's need to ensure a minimum level of quality at existing New Mexico parks before work can proceed on opening a new state park near Pecos;
- how a state park near Pecos would help protect some Native American cultural landmarks;
- the impact of the Cerro Grande fire and how that fire offered several lessons on how best to coordinate among state, federal and Native American entities with regard to firefighting;
- how firefighting efforts have depleted the water levels at some lakes and necessitated closing of boat ramps;
- that the Pacheco fire is almost entirely on federal land, so an emergency declaration is probably not necessary to secure FEMA funds;
- the effects of the veto of a bill that delayed sending additional money to the Fire Protection Fund; and
- the status of Sugarite Canyon State Park near Raton, much of which burned in the recent fire in that area; it will most likely reopen in August, but it is damaged to the point that people may not be interested in visiting the park this summer.

## **USDA Conservation Programs in New Mexico**

Robert Apodaca, assistant chief of the western region, USDA Natural Resources Conservation Service (NRCS), provided the committee with an overview of NRCS programs and how those programs benefit all citizens. He explained that almost 75 percent of the land in the lower 48 states is private and rural. Mr. Apodaca also noted that while less than two percent of the country's population farms, the agricultural industry adds about \$4 billion to the U.S. economy. He discussed some of the programs available through the NRCS that invest in conservation works for farmers, ranchers and other landowners, and he provided the committee with visual examples of land before and after NRCS projects were completed. Mr. Apodaca also provided brief examples of several NRCS programs.

Dennis Alexander, state conservationist, NRCS, provided the committee with more detailed information about several NRCS programs. He explained that the programs are available to private landowners and soil and water conservation districts. Mr. Alexander discussed the Environmental Quality Incentives Program, which he explained provides funding and technical expertise to farmers and ranchers to institute measures to protect soil, water, air and other resources while ensuring sustainable production. He discussed the Wildlife Habitat Incentives Program, which he said helps landowners protect wildlife habitats on private and tribal lands. Mr. Alexander also talked about the Conservation Stewardship Program (CSP), which encourages improving, maintaining and managing existing activities on agricultural and nonindustrial land. He pointed out that New Mexico producers account for a large portion of the national acreage enrolled under the CSP.

Questions and comments included the following topics:

- the lack of knowledge by small farmers and ranchers about the NRCS programs available to them and the process for using the programs;
- troubling statistics regarding the amount of agricultural land that has been developed over the past 25 years;
- a discussion of the worldwide need for agricultural development due, in part, to the pollution of Chinese land and rivers that makes the land unusable for farming;
- caps on NRCS program funding; and
- endangered species habitat restoration through NRCS programs.

## **Report on the Horse Problem in New Mexico**

Myles Culbertson, executive director, New Mexico Livestock Board, provided the committee with a report on the growing problem of unwanted, abandoned and neglected horses in New Mexico. This year, it is estimated that more than 100,000 horses will become unwanted and therefore abandoned or neglected. He explained that the problem became worse starting in 2007, when the USDA forced closure of all horse slaughter plants in the United States due to pressure from animal rights organizations. Mr. Culbertson described the steadily increasing occurrences of abandoned, neglected and starving horses since 2007. He emphasized the stress that these large populations of abandoned horses are placing on public and tribal lands. Dr. David E. Fly,

state veterinarian, informed the committee that in the last year, the U.S. Bureau of Land Management spent \$35 million to feed feral horses on public lands.

In response to the growing numbers of unwanted horses, the U.S. Government Accountability Office (GAO) released a report in June 2011 titled "Action Needed to Address Unintended Consequences from Cessation of Domestic Slaughter". Mr. Culbertson provided the committee with a copy of the full report. While noting that the current economic recession is another factor leading to the need for many people to dispose of their horses, he opined, based on the findings of the GAO report, that the major reason for the increase in unwanted horses is the close of the slaughterhouses. He explained why shutting down these facilities has led to this growing problem and said that it may not be the most ethical or humane decision when it comes to these unwanted horses.

In describing the repercussions of shutting down the slaughter facilities, Mr. Culbertson explained in depth why people need to dispose of horses and how difficult and expensive that process can be. Dumping horses often becomes the only alternative for many horse owners faced with economic stresses. Feral horse populations then grow uncontrolled, putting stress on the environment, especially during droughts such as the one New Mexico currently faces. While horse slaughter continues in Mexico and Canada, the cost of transporting unwanted horses to these countries does not make this a viable option for many individuals.

Mr. Culbertson discussed New Mexico's proud agriculture and livestock history, noting that very few involved in those industries want to treat horses inhumanely. However, a horse that is either sick, dead or no longer useful or that cannot be taken care of due to financial constraints will require disposal. Without slaughter, many horses face less humane treatment and death. Also, much of the financial burden of addressing unwanted horses falls on the state and a small number of rescue organizations. Dr. Fly emphasized the burden that rescue organizations around the state are facing because of the growth in the number of unwanted horses.

Laura Bonar and Deborah Torza from Animal Protection Voters of New Mexico (APV) described APV's strong working relationship with the New Mexico Livestock Board on this issue and how both organizations are working together to try to alleviate the problem. The APV does not support reopening the slaughterhouses. They stressed the need for other programs, such as sterilization for population control, animal feed assistance for families struggling with economic issues and low-cost euthanasia programs.

Questions and comments included the following topics:

- what industry's role should be in addressing unwanted horses;
- what steps need to be taken to reopen the slaughterhouses and whether doing so is a viable or desirable option;
- whether New Mexico has any programs to use horses in therapeutic settings; and
- concern over additional federal legislation that would ban transport of horses to Canada and Mexico for slaughter.

There being no further business, the committee adjourned at 4:00 p.m.

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