

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

**November 7-8, 2011
State Capitol, Room 322
Santa Fe**

The fifth meeting of the Water and Natural Resources Committee was called to order by Representative Joseph Cervantes, vice chair, at 10:10 a.m. on Monday, November 7, 2011, in Room 322 of the State Capitol in Santa Fe.

Present

Rep. Joseph Cervantes, Vice Chair
Rep. Paul C. Bandy
Rep. Ray Begaye
Rep. Brian F. Egolf, Jr.
Sen. Mary Jane M. Garcia
Rep. Thomas A. Garcia (Nov. 7)
Rep. William "Bill" J. Gray
Sen. Clinton D. Harden, Jr. (Nov. 7)
Rep. Larry A. Larrañaga
Sen. George K. Munoz
Rep. Andy Nuñez
Sen. Gerald Ortiz y Pino
Sen. Sander Rue
Rep. Mimi Stewart
Rep. James R.J. Strickler
Rep. Don L. Tripp

Advisory Members

Sen. Vernon D. Asbill
Sen. Carlos R. Cisneros
Rep. Anna M. Crook
Rep. Nora Espinoza
Rep. Candy Spence Ezzell
Sen. Dede Feldman (Nov. 7)
Sen. Timothy Z. Jennings (Nov. 8)
Rep. Ben Lujan (Nov. 7)
Sen. Cisco McSorley
Rep. Bill B. O'Neill
Sen. Nancy Rodriguez
Sen. John C. Ryan
Sen. Peter Wirth

Absent

Sen. Phil A. Griego, Chair
Rep. Dona G. Irwin
Sen. Steven P. Neville
Sen. Mary Kay Papen

Sen. Rod Adair
Rep. James Roger Madalena
Rep. Rudolpho "Rudy" S. Martinez
Rep. Henry Kiki Saavedra

(Attendance dates are noted for those members not present for the entire meeting.)

Staff

Jon Boller
Gordon Meeks
Jeret Fleetwood

Guests

The guest list is in the original meeting file.

Handouts

Handouts and other written testimony can be found in the meeting file and on the Legislative Council Service web site.

Minutes Approval

Because the committee will not meet again this interim, the minutes of this meeting have not been officially approved by the committee.

Monday, November 7

On a motion made, seconded and passed, the minutes of the August 1-3, 2011 meeting of the committee were approved as submitted.

On a motion made, seconded and passed, the minutes of the October 11, 2011 meeting of the committee were approved as submitted.

Indian Water Rights Settlement Fund Report

Estevan Lopez, director of the Interstate Stream Commission (ISC), provided the committee with an update regarding the Indian Water Rights Settlement Fund. He explained that the 2005 Indian Water Rights Settlement Fund Act requires the State Engineer and the ISC to report to the legislature by November 15 each year regarding:

- the status of proposed Indian water rights settlements requiring state funding;
- distribution of funds from the settlement fund to implement approved settlements; and
- recommendations on appropriations to the fund necessary to implement settlements.

Mr. Lopez began by noting that New Mexico presently has three Indian water rights settlements pending: the Navajo settlement; the Aamodt adjudication settlement; and the Taos Pueblo settlement. He discussed the current status of each settlement. He noted the project costs for each settlement, pointing out the federal and non-federal portions of each project. Total federal funding for the three settlements will be \$1.3 billion, with the state share being \$130 million and local share being \$93 million. State funding, he noted, must be in place by 2017 for the Taos settlement and possibly the Aamodt settlement.

Next, Mr. Lopez discussed the distribution of funds from the settlement fund, noting that severance tax bonds (STB) were issued in the amount of \$10 million, with \$1.4 million allocated to Taos local parties for water rights acquisitions and \$8.6 million for Navajo settlement implementation. He also indicated that, during the 2011 special session, the legislature appropriated another \$15 million in STB authorizations.

Finally, Mr. Lopez recommended funding of \$15 million each year for the next five fiscal years to meet the state's cost-share obligations.

Questions and comments from the committee included:

- future availability of settlement funds;
- extension of time frames in settlement legislation requires agreement by all of the parties who entered into the settlement;
- stakeholders are meeting to ensure that the implementation of the Aamodt settlement complies with language in the federal legislation;
- well users can opt out of the Aamodt settlement, but they may be subject to a priority call;
- construction projects for the Navajo settlement are furthest along;
- the construction for the Navajo settlement is subject to a significant amount of gross receipts taxes and may generate \$60 million in revenue for the state;
- it would be difficult for parties who signed onto the Aamodt settlement to back out of the agreement now;
- there are three basic categories of non-Indian water users under the Aamodt settlement: those who sign on now, those who sign on later and those who do not sign on;
- money due to Gallup from the Navajo settlement does not offset the city's cost-share obligation;
- some money in the Taos settlement is for local parties to acquire water rights from willing sellers;
- Taos-area mutual domestic water consumers associations get federal money for water rights acquisitions because they are signing on to mutually beneficial water projects; and
- anti-donation clause issues may arise from the giving of money for Taos water rights acquisitions.

Middle Rio Grande Conservancy District and U.S. Army Corps of Engineers Financing of Levee Reconstruction Projects

Deborah Foley, chief of civil works for the Army Corps of Engineers, Subbas Shah, chief engineer for the Middle Rio Grande Conservancy District (MRGCD), and John Kelly, MRGCD board member, provided the committee with testimony regarding questions raised by the committee at its October 11 meeting. The committee expressed concern regarding cost-sharing requirements for levee projects and a request from MRGCD for the state to fund a significant amount of the non-federal costs, despite MRGCD's operating budget and significant available cash balances.

Ms. Foley and Mr. Shah began by providing the committee with an overview of the district's operating budget and reserve balances, as well as other available funds. They discussed the cost-sharing requirements for phase one of the levee project, noting that the federal government is providing \$10 million for the project in fiscal year 2010, while state and local entities must add another \$2.1 million. Mr. Kelly explained that MRGCD had matched the ISC contribution of \$300,000, and that additional funding would have to come from other sources.

Ms. Foley and Mr. Shah then went on to discuss the importance of the levee project, noting that while a relatively small number of MRGCD constituents will receive flood protection from the completed project, the county and city of Socorro will benefit from flood protection, as will endangered species habitats.

Finally, Mr. Shah discussed planned future uses of MRGCD reserves, such as infrastructure repair and replacement and backup funding for retiree health care benefits.

Questions and comments from the committee included:

- prioritization of the San Acacia levee project over projects closer to Albuquerque that may benefit more people;
- issue of ownership of levees is currently being decided in court;
- funding for the state's share of the project would go through the Water Trust Board (WTB);
- flood control and protection offered by Cochiti Dam;
- potential precedent set by the committee if it endorses a project before it goes before the WTB;
- Socorro-area levees were not designed for flood-control, but more as an afterthought to conveyance;
- explanation of individual items in the MRGCD budget;
- how do people get who have to pay taxes to the MRGCD even though they receive no water from the project benefit; and
- potential for job creation through the levee project.

On a motion made and seconded, the committee voted 10 to 3 to endorse funding of phase one of the levee project for the WTB's consideration, with Representatives Gray and Stewart and Senator Harden voting NO.

Industrial Hemp Production

Bernice Muskrat, of The Native International Solutions, Inc., and Jerry Fuentes, of the New Mexico Industrial Hemp Coalition, provided the committee with testimony regarding industrial hemp. They began by emphasizing the fundamental differences between industrial hemp and marijuana. Ms. Muskrat went on to explain that commercialized hemp presents a viable economic opportunity for domestic producers, noting that hemp products produced outside of the United States already enjoy a small, robust market that shows significant potential for growth. To illustrate, Ms. Muskrat and Mr. Fuentes listed a number of hemp products, emphasizing that while most of them are sold in domestic stores, state and federal regulations prohibit the growth of domestic hemp. Hemp production in New Mexico has a potential

economic impact of up to \$800 million, they said.

To further illustrate the difference between industrial hemp and marijuana, Ms. Muskrat and Mr. Fuentes provided the committee with a study regarding the distinct genetic composition of each. They went on to emphasize that industrial hemp is being cultivated in a number of other countries, much of which is being imported into the United States.

Ms. Muskrat also noted that enough research has already been conducted to acknowledge that various strains would likely perform better in certain climates, and that only a little research would be required to identify a strain that would flourish in New Mexico.

Questions and comments from the committee included:

- percentage of active ingredients is primarily what separates marijuana from industrial hemp;
- studies show that hemp would likely grow well as a crop in New Mexico;
- issues regarding hemp production on Native American lands;
- hemp is included in the federal law that prohibits marijuana;
- possibility of New Mexico State University conducting research on hemp seeds that contain zero percent THC; and
- while tribes would be capable of growing industrial hemp, they are looking for New Mexico to take the first step in licensing its cultivation.

On a motion made and seconded, the committee endorsed a bill providing for the licensing of the growing, selling and processing of industrial hemp on a vote of 11 to 2, with Representatives Gray and Strickler voting NO.

New Mexico Forest and Watershed Institute

Dr. Andrew Egan, director of the New Mexico Forest and Watershed Institute at New Mexico Highlands University, provided the committee with testimony regarding the institute. He began by providing an overview of the institute's funding sources, strategic plan and most recent work.

Dr. Egan discussed a recent initiative by the institute and the Forestry Division of the Energy, Minerals and Natural Resources Department to convene a stakeholder group to develop and implement a strategy to improve the health and safety of the Gallinas and neighboring watersheds in order to mitigate the potential for catastrophic wildfire. He noted that the stakeholder group will secure a more certain and sustainable water supply for the city of Las Vegas and the region through the reduction of hazardous forest fire fuels. Dr. Egan listed the stakeholders in the group and spoke about the work conducted so far, such as touring the Track Fire site, to better understand how potentially catastrophic wildfires in watersheds can be. He also discussed similar efforts in other watersheds.

Questions and comments from the committee included:

- effects of forest overgrowth on spring runoff flows and forest fire fuel accumulation;

- climate data suggests that New Mexico is getting hotter and drier;
- federal and state forestry officials differ on the diameter of trees that should be removed in forest-thinning efforts;
- forest thinning would likely not have made much difference in the intensity of the Track Fire;
- the Gallinas Watershed will become problematic if it is not thinned and does catch fire; and
- efforts to make forest thinning economically sustainable, through sale of raw materials, have not been successful to date.

Rio Grande Restoration Report

Steve Harris, of Rio Grande Restoration, provided the committee with testimony regarding the functioning condition of New Mexico's rivers, which he explained depends upon the amount of water flowing in each of them. Mr. Harris noted that New Mexico seems to have a policy of developing water supplies, but does not have one to manage the health and integrity of rivers. He acknowledged that while policymakers in the state are becoming more aware of the importance of undertaking river improvement projects, there is still much work to be done.

Mr. Harris updated the committee on a study performed in response to House Joint Memorial 3, from the 2009 session, which did not pass but sought to identify streams at risk of degradation due to hydrologic alteration. He explained that the study did indicate that there were significant flow alterations on 28 of the 32 gauge sites, which suggests that New Mexico should develop robust flow-ecology relationships on individual streams, where practical opportunities to improve flows exist.

Mr. Harris also discussed an environmental flow demonstration project underway on the Rio Chama and concluded with some steps that the legislature might take to improve and protect environmental flows in the state's rivers. He suggested that New Mexico invest more in river science to better understand environmental flows and that the state resolve the issue of beneficial use.

Questions and comments from the committee included:

- accuracy of data regarding flows and private property on the Rio Hondo; and
- importance of taking care of New Mexico's rivers.

Promoting Energy Efficient Buildings in New Mexico

Sean Maguire, of Johnson Controls, provided the committee with testimony regarding energy-efficient buildings. He began by explaining that a number of energy and water-related challenges are facing states, including:

- increasing energy costs;
- increased emphasis on efficiency;
- increased facility costs due to aging and deferred maintenance;
- water scarcity; and
- limited and unpredictable revenues.

Mr. Maguire further noted that there are a number of ways of increasing a building's

energy efficiency, and that through performance contracting, states are able to contract with companies such as Johnson Controls to improve efficiency. He provided the committee with an overview of the performance contracting process, beginning with identification of goals and a detailed energy audit, through building improvements such as lighting, water and heating and cooling upgrades. Mr. Maguire noted how investing in energy efficiency would help pay for itself over time through reduced energy costs.

Finally, Mr. Maguire provided the committee with a case study of performance contracting in the state of Missouri. He explained that the state had 32 million square feet of buildings and annual operation and maintenance costs of \$300 million. After performance contracting improved the energy efficiency of those buildings, the state saw annual savings of about \$35 million and expected payback of the initial investment in about one year.

Questions and comments from the committee included:

- performance contracting work done on buildings at New Mexico Military Institute;
- companies like Johnson Controls make money by installing energy-efficient devices;
- methodology for verifying energy savings;
- efficiency-improving devices include timers and motion detectors to shut lights on and off and photovoltaic solar panels;
- anti-donation clause issues that may be present in contracting with specific companies to improve state building energy efficiency;
- whether funds in the Efficient Use of Energy Act are starting to be used;
- success in Missouri might not equal success in New Mexico; and
- some energy-efficiency improvements can be done through executive order.

Other Business

Representative Bandy presented the committee with a letter to the U.S. Fish and Wildlife Service, asking them to consider delaying listing of the dunes sagebrush lizard as an endangered species. He explained that listing the lizard as endangered could harm oil and gas exploration in the area. Several members of the committee expressed concern regarding the content and accuracy of the letter.

On a motion made and seconded, the committee voted 10 to 4 to send the letter to the U.S. Fish and Wildlife Service asking that listing of the dunes sagebrush lizard as endangered be postponed for one year, with Representatives Cervantes and Stewart and Senators Garcia and Ortiz y Pino voting NO.

Tuesday, November 8

Clean Arroyos Task Force Report

Charles Thomas, executive engineer of the Southern Sandoval County Arroyo Flood Control Authority, explained that the Clean Arroyos Task Force (CATF) was formed in response to Senate Memorial 48 (2011) and House Memorial 9 (2011) and was convened by the Mid-

Region Council of Governments with representation from cities, counties, flood control authorities, the Department of Environment, the Environmental Improvement Board and others with experience and knowledge regarding arroyos and city planning. The mission of the CATF is to study ways to prevent the buildup of trash in arroyos and formulate findings and recommendations to address the problem. The study area includes parts of Sandoval, Bernalillo and Valencia counties, he noted, where nearly 35 million pounds of trash and debris was collected in 2010 from arroyos in the Middle Rio Grande Valley by various entities at a cost of nearly \$15 million. These totals, he stressed, paint an incomplete picture of the actual amount of trash and debris found in arroyos in a given year.

Mr. Thomas outlined several recommendations designed to address the problem, including the following:

- enact legislation that establishes recycling market development zones to encourage recycling end markets to locate in New Mexico;
- provide incentives for the proper disposal or recycling of targeted materials;
- authorize new sources of funding and resources to secure appropriate staff resources for local governments to enforce existing laws and ordinances related to litter and illegal dumping;
- appropriate funding for the Rubberized Asphalt Fund that was created by Section 74-13-20 NMSA 1978, which would create an in-state market for ground rubber;
- encourage judicial enforcement programs to require offenders to clean up and restore the area of the offense; and
- increase support for additional education and public outreach programs and materials on how water quality is affected by illegal dumping and litter in arroyos.

Restoration Costs of Abandoned Well Sites

Jeff Kramme, of Bloomfield, explained how the process of final reclamation of abandoned well sites in the San Juan Basin is working and how that process is passing liability to the New Mexico taxpayer for the ultimate reclamation of these wells. Mr. Kramme stressed that he is pro-drilling, but that everyone should play by the rules, among which are the simple rules that everyone learned in kindergarten: 1) play fair; 2) clean up your own mess; 3) do not take things that are not yours; and 4) if you use it, put it back the way you found it. Unfortunately, he noted, operators do not always play by the rules and government agencies do not always enforce the rules. Consequently, Mr. Kramme explained, there are an estimated 2,500 abandoned well sites in the San Juan Basin, the liability for which has been passed on to New Mexico taxpayers. Given that the average cost of reclamation for a well site ranges from \$16,500 to \$50,000, he said, the liability passed on to New Mexico taxpayers would total between \$41,250,000 and \$125,000,000. Mr. Kramme explained that as long as current regulations are not enforced, the incentive for many operators is to avoid spending money on reclamation and pocket the money. He asked that the legislature put pressure on the Bureau of Land Management (BLM) to address the problem and enforce the law.

Questions and comments from the committee included:

- number of wells in New Mexico regulated by the Oil Conservation Division;
- many wells in New Mexico are regulated by the BLM, which does not seem to

- enforce regulations very strictly;
- operators who abandon wells in New Mexico are actually rewarded because they walk away from significant financial liability and their bonds are usually released anyway;
- differences in process for reclamation of private and public lands;
- it is the duty of the well operator to plant and replant native grass until it takes root;
- many abandoned wells in San Juan County are from the 1950s;
- difficulties private landowners have in sorting through the reclamation guidelines and seeking recourse;
- there is a zero balance in the Oil and Gas Reclamation Fund; and
- status of cleanup on Horseshoe Well.

Water Rights on National Forest Lands

Darrell Allred, Glenwood Realty and Reserve Realty, and Pete Domenici, Jr., attorney, explained that many ranchers in the Gila National Forest did not file water rights declarations for their stock wells back in the 1960s, when the area was being adjudicated, due to then-State Engineer Steve Reynold advising them to do so. Later, after the court in *U.S. v. N.M.*, 438 U.S. 696 ruled on the question of which law governs water allocation within the state, water rights owners in the Gila were at a loss as to how to claim water rights on federal lands. However, State Engineer John D'Antonio, they said, has been very receptive to finding a way to recognize these rights and will license valid rights with certain restrictions, namely that the rights cannot be transferred off the ranch and the purpose of water use cannot change, though the diversion method could be changed. Mr. Domenici said that a good balance has been established, though a lot of work remains to be done. Mr. Allred asked that the committee support funding to increase the number of employees in the Deming Office of the State Engineer to help the process along, and fund a public outreach effort to get all the ranchers in the Gila to declare their water rights.